

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 39003
Petitioner.)
DECISION
_____)

[Redacted] (Petitioner) protested the Notice of Deficiency Determination dated June 26, 2014, asserting income tax, penalty, and interest for taxable years 2010 and 2011, in the total amount of \$11,521. Petitioner disagreed that he was not a qualified individual for the purposes of the foreign earned income exclusion. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioner timely filed his Idaho individual income tax returns for taxable years 2010 and 2011. Petitioner excluded foreign earned income on each of those returns. As part of the Income Tax Audit Bureau’s (Bureau) project to determine the validity of the foreign earned income exclusion, Petitioner’s 2010 and 2011 Idaho individual income tax returns were selected for examination. The Bureau notified Petitioner of its intent to examine his returns and requested specific information from Petitioner to support the foreign earned income exclusion. The Bureau also requested a waiver from Petitioner for taxable year 2010, because the statute of limitations was about to expire. The Bureau’s letter was returned as “undeliverable as addressed”, so the Bureau prepared a Notice of Deficiency Determination to protect the statute of limitations and sent it to Petitioner at a secondary address. The Bureau stated in its Notice of Deficiency Determination that it determined Petitioner did not meet the requirements of a qualified individual for the foreign earned income exclusion. The Bureau determined Petitioner did not

have a tax home in the foreign country because his abode remained in the United States while he was in the foreign country.

Petitioner protested the Bureau's determination, stating that his income tax returns were prepared following the instructions of the company he was employed by and his tax professional. Petitioner stated he was present in a foreign country for at least 330 days in 2010 and, therefore, met the physical presence test. Petitioner also stated he was registered to vote in Idaho and voted absentee. Petitioner stated he learned the language and dialect of the foreign country to support the [Redacted]. Petitioner stated he lived in employer-provided housing and he was restricted in his movements in the country due to his [Redacted] and the fact that [Redacted] in the country had a [Redacted] on every [Redacted]. Petitioner stated he was diagnosed with [Redacted] in 2011 and, as a result, his 2011 deployment was cut short. However, due to his lack of family support in Idaho, Petitioner stated his doctor recommended that he go and live with his family in [Redacted]. Therefore, Petitioner has not been in Idaho since he was sent home due to [Redacted].

The Bureau acknowledged Petitioner's protest and referred the matter for administrative review. The Tax Commission reviewed the matter and sent Petitioner a letter discussing the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner contacted the Tax Commission and through a series of telephone calls, Petitioner provided the following information.

In December 2007, Petitioner hired on with [Redacted] for work in [Redacted] in support of the [Redacted] in [Redacted]. Petitioner stated he was hired December 7, 2007, but he did not leave Idaho until after Christmas. Petitioner stated he was authorized to spend Christmas with his children. Petitioner stated he did not get to his destination until the last few days of

December 2007. Petitioner provided a copy of his Letter of Authorization and a copy of his [Redacted] identification card to verify the date of his contract and a date when he was out of Idaho. Petitioner stated he was divorced and his children lived with his ex-wife in Idaho. Petitioner stated his divorce was not very amicable and was partly the reason he took the employment overseas.

Petitioner stated his first return to the United States and Idaho was in March 2009. Petitioner provided copies of his flight itinerary showing his arrival in Idaho and his departure from Idaho. Petitioner stated he timed his vacation in Idaho to coincide with spring break so he could spend as much time as he could with his children. Petitioner stated he always spent at least thirteen months out of the country before he came back to visit his children. This was mostly done to meet the 330 day physical presence test of Internal Revenue Code section 911.

Petitioner stated when he was vacationing in the U.S. in 2009, he spent spring break week with his children and then went to [Redacted] to get his passport renewed. Petitioner stated he left for [Redacted] on March 26, 2009. Petitioner stated he visited with friends for several days and then returned to Idaho on April 5, 2009. Petitioner stated he left Idaho the next day and traveled to [Redacted], and [Redacted]. Petitioner returned to Idaho on April 13, 2009, and flew back to [Redacted] the morning of April 14, 2009. Petitioner's next visit to Idaho and the U.S. was from May 19, 2010, to June 17, 2010.

Petitioner did, and still does, have a house in Idaho. The house was not rented out while Petitioner was overseas and Petitioner only stayed in the house when in Idaho visiting with his children.

LAW AND ANALYSIS

IRC section 911 provides for the exclusion from taxable income an amount of income earned from sources within a foreign country or countries which constitutes earned income attributable to services performed by a qualified individual. IRC section 911(d)(1) defines a qualified individual as,

(1) Qualified individual.

The term “qualified individual” means an individual whose tax home is in a foreign country and who is-

(A) a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

(B) a citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.

IRC section 911(d)(3) defines the term “tax home” for purposes of IRC section 911 as,

(3) Tax home.

The term “tax home” means, with respect to any individual, such individual’s home for purposes of section 162(a)(2) (relating to traveling expenses while away from home). An individual shall not be treated as having a tax home in a foreign country for any period for which his abode is within the United States. (Underlining added.)

Treasury Regulation 1.911-2(b) further clarifies tax home for purposes of IRC section 911.

(b) Tax home. For purposes of paragraph (a)(i) of this section, the term “tax home” has the same meaning which it has for purposes of section 162(a)(2) (relating to travel expenses away from home). Thus, under section 911, an individual’s tax home is considered to be located at his regular or principal (if more than one regular) place of business or, if the individual has no regular or principal place of business because of the nature of the business, then at his regular place of abode in a real and substantial sense. An individual shall not, however, be considered to have a tax home in a foreign country for any period for which the individual’s abode is in the United States. Temporary presence of the individual in the United States does not necessarily mean that the individual’s abode is in the United States during that time. Maintenance of a dwelling in the

United States by an individual, whether or not that dwelling is used by the individual's spouse and dependents, does not necessarily mean that the individual's abode is in the United States. (Underlining added.)

To be allowed the foreign earned income exclusion, the taxpayer must have a tax home in the foreign country and he must either be outside the United States for a period of 330 days in a consecutive 12 month period or be a bona fide resident of the foreign country. As a qualifier to the tax home requirement, the taxpayer is not considered to have a tax home in the foreign country if his abode is in the United States during the period he is in the foreign country.

The Bureau determined Petitioner had an abode in Idaho (the United States), therefore, Petitioner did not have a tax home in a foreign country and Petitioner was not a qualified individual eligible for the foreign earned income exclusion. The Bureau made its determination primarily to protect the statute of limitations and to protect the State's interests.

Idaho Code section 63-3013 defines a resident for Idaho income tax purposes. It states that a resident is an individual who is domiciled in Idaho or who has an abode in Idaho and lived in Idaho for more than 270 days in a taxable year. However, subsection (2) provides a safe harbor for resident individuals that meet certain criteria. It states, a resident individual who is absent from Idaho for 445 days in the first fifteen consecutive months and then is not present in Idaho for more than 60 days in a calendar year will be considered a nonresident for Idaho income tax purposes.

Petitioner left Idaho in late December 2007, to begin working overseas. Petitioner returned to Idaho on March 19, 2009, and was in Idaho for seven days before leaving for [Redacted]. Petitioner was back in Idaho on April 5, 2009, and left again on April 6, 2009. Petitioner returned to Idaho on April 13 and then left for [Redacted]the morning of April 14, 2009. Depending on the day in December 2007 when Petitioner left Idaho, Petitioner may have

met the 445 day requirement of Idaho Code section 63-3013 before he returned to Idaho. Regardless, Petitioner was only in Idaho for, at most, seven days prior to meeting the 445 day requirement; three days short of disqualifying him for the safe harbor. Therefore, Petitioner is considered a nonresident for Idaho income tax purposes.

Since Petitioner is considered a nonresident, Petitioner is only required to report his Idaho source income to Idaho. Petitioner's foreign earned income is not Idaho source income. Consequently, Petitioner is not required to report his foreign earned income to Idaho, and since Petitioner is not required to report his foreign-sourced income to Idaho, the foreign earned income exclusion is not an issue for Idaho income tax purposes and need not be addressed.

CONCLUSION

Petitioner was a resident and domiciled in Idaho prior to going overseas for employment. Petitioner left Idaho in December 2007, and he did not return to Idaho until March 2009. Petitioner stated he was in Idaho to see his children over their spring break. Petitioner left Idaho after visiting his children that week and was only present in Idaho for two more days before going back to his overseas employment. Considering this, Petitioner was not present in Idaho for more days than what would disqualify him for Idaho's safe harbor. Petitioner met Idaho's safe harbor provision.

Since Petitioner is considered a nonresident under Idaho's safe harbor provision, the Tax Commission finds Petitioner was not required to report his foreign earned income to Idaho. Therefore, the Bureau's determination is reversed and Petitioner is entitled to a refund of the tax paid on his foreign-sourced earned income.

THEREFORE, the Notice of Deficiency Determination dated June 26, 2014, and directed to [Redacted] is **AFFIRMED** as **MODIFIED** by this decision.

IT IS ORDERED that Petitioner receive the following REFUND of tax plus interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2010	\$(1,929)	\$(274)	\$(2,203)
2011	(140)	(15)	(155)
		TOTAL REFUND	<u>\$(2,358)</u>

An explanation of the Petitioner's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2014.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2014, a copy of the within and foregoing DECISION was served by sending the same by email addressed to:

[Redacted]

Receipt No.
