

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 26065
[Redacted],)	
)	
Petitioners.)	DECISION
_____)	

[Redacted] and [Redacted] (Petitioners) protested the Notice of Deficiency Determination issued by the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission asserting additional income tax and interest for taxable years 2010, 2011, and 2012 in the total amount of \$16,737. Petitioners disagreed that [Redacted] did not meet the requirements of a qualified individual for the foreign earned income exclusion. The Tax Commission, having reviewed the file, hereby issues its decision.

BACKGROUND

Petitioners timely filed Idaho resident individual income tax returns for taxable years 2010, 2011, and 2012. On each return, Petitioners claimed an exclusion from gross income for foreign earned income. The Bureau selected Petitioners' returns as part of a project verifying the foreign earned income exclusion claimed on Idaho resident income tax returns. The Bureau requested information from Petitioners, reviewed it, and determined [Redacted] was not a qualified individual as defined in Internal Revenue Code section 911(d)(3). The Bureau determined [Redacted] tax home was not in a foreign country because his abode remained in the United States. The Bureau corrected Petitioners' Idaho individual income tax returns and sent them a Notice of Deficiency Determination.

Petitioners protested the Bureau's determination. Petitioners stated [Redacted] was not required to establish domicile or bona fide residence while working in [Redacted]. All

[Redacted] needed to show is that he had a foreign tax home during the period he worked and lived in [Redacted], and that he met the 330 day physical presence test. Petitioners stated [Redacted] tax home was in [Redacted] because his employment was indefinite. Petitioners stated they disagreed with the Bureau's interpretation of abode. Petitioners stated when an individual spends 24 hours a day, 330 days out of 365 days, his abode is definitely at the location where he works, eats, sleeps, showers, socializes, exercises, and spends his spare time. [Redacted] abode was where he dwelled and resided, in [Redacted].

The Bureau acknowledged Petitioners' protest and referred the matter for administrative review. The Tax Commission reviewed Petitioners' case and sent them a hearing rights letter. Petitioners requested a hearing, which was held April 2, 2015. During the hearing, Petitioners provided the following information.

[Redacted] began working overseas in 2004. Petitioners stated that when [Redacted] was asked to work overseas he thought it would be a good opportunity to see a different part of the world. [Redacted] stated he always goes where the work is and there was plenty of work in [Redacted] and [Redacted]. [Redacted] first contract, in 2004, was for work in [Redacted]. He worked in [Redacted] into 2010. In 2010, [Redacted] contracted to work in [Redacted]. [Redacted] stated when he left for his overseas employment, he took all the personal items he needed to care for himself while being in a foreign country.

[Redacted] occupation is a welder. He worked with a [Redacted] that did [Redacted] in [Redacted] and [Redacted]. [Redacted] stated he also [Redacted], both on and off the base, and did work on other company contracts, as well as for the governments of the two countries. [Redacted] stated he would still be overseas if the Company contract had not ended. At the end

of the contract [Redacted] did not return to Idaho, rather he went directly to the next job, which was in [Redacted]; he is currently in [Redacted].

[Redacted] living accommodations while in [Redacted] and [Redacted] were employer provided, but figured into his salary. Petitioners stated [Redacted] lived in tents and trailers. Petitioners stated [Redacted] was provided a bed and not much else. [Redacted] stated he provided bedding, chairs, a TV, a stereo, a DVD player, a computer, and his phone. [Redacted] stated he also had a portrait made of his family, while he was in [Redacted], that he displayed in his living space.

[Redacted] stated some of his meals were provided by his employer; however, the majority of the time he ate out and paid for his own meals. Eating out was a social activity for [Redacted]. He and his co-workers, both locals and others, would go out to local restaurants for tea and their meals. [Redacted] ate the local cuisine and snack food.

In addition to eating out, [Redacted] free time was spent watching movies, shopping, playing cards, and karate. [Redacted] stated he was not restricted to the base. In [Redacted], [Redacted] was able to go into the cities that were near the bases where he worked. When shopping, [Redacted] stated he used whatever currency was needed to make the purchase. [Redacted] stated he also used credit cards, as well as ATMs.

When [Redacted] vacationed, he came back to the United States, Idaho, to be with family and friends. Petitioners stated [Redacted] time spent in Idaho was for vacations and relaxation, not to catch up on the household chores. Petitioners stated they had a very close relationship and when [Redacted] was overseas he would Skype with [Redacted] one to two times per week.

Petitioners stated [Redacted] lived in the foreign countries where he worked. He met the 330 day physical presence test and his tax home and abode was in the foreign country.

[Redacted] stated his home was wherever he was working, whether it was in a foreign country or somewhere within the United States. [Redacted] stated he took everything he needed to be comfortable wherever his career took him.

LAW AND ANALYSIS

Internal Revenue Code (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 a 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's examination of Petitioners' Idaho income tax returns encompassed taxable years 2010, 2011, and 2012, looking specifically at the foreign earned income exclusion Petitioners claimed each year. The Bureau determined [Redacted] did not have a tax home in [Redacted] because his abode was in the United States rather than [Redacted]; therefore, [Redacted] was not a qualified individual for the foreign earned income exclusion. The Bureau disallowed the foreign earned income exclusion Petitioners claimed for each taxable year.

The Bureau's determination was based upon the facts that [Redacted] retained significant U.S. ties such as a home, a driver's license, banking in the United States, and family. The Bureau determined, based upon the information available, [Redacted] familial, economic, and personal ties to the United States were stronger than his ties to [Redacted].

Petitioners argued that [Redacted] met the physical presence test and that his tax home was in [Redacted] for the periods in question. The Bureau did not question the time [Redacted] spent outside the United States. However, as discussed in Harrington v. Commissioner, 93 T.C. 307-308, (1989), the requirement that the taxpayer not have an abode in the United

States is a requirement separate and apart from the requirement that the taxpayer also meet the physical presence test or the bona fide resident test. A taxpayer can meet either the physical presence or the bona fide resident tests and still fail the tax home test.

The general rule that a taxpayer's tax home be in a foreign country (IRC section 911(d)(1)) is subject to an overriding exception. IRC section 911(d)(3) states, "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." Therefore, even though an individual's tax home is in a foreign country by definition of IRC section 162(a)(2), if that individual has his abode in the United States, the individual is not considered to have a tax home in the foreign country.

"Abode" is not defined in IRC section 911 or the regulations thereunder. However, the courts have examined the issue and determined, in the context of IRC section 911, that abode is directly associated with a taxpayer's ties, i.e. familial, economic, and personal. See Harrington v. Commissioner, 93 T.C. 307-308, (1989); Daly v. Commissioner, T.C. Memo. 2013-147, 2013; Struck v. Commissioner, T.C. Memo. 2007-42, 2007; Eram v. Commissioner, T.C. Memo. 2014-60, 2014. The courts examine and contrast a taxpayer's domestic ties with his or her ties to the foreign country in which he or she claims a tax home in order to determine whether his or her abode was in the United States during a particular period. Eram v. Commissioner, Id. Even though a taxpayer may have some limited ties to a foreign country during a particular period, if the taxpayer's ties to the United States remain strong, the courts have held that his or her abode remained in the United States, especially when his or her ties to the foreign country were transitory or limited during that period. Harrington v. Commissioner, 93 T.C. at 308.

In the case at hand, [Redacted] ties to the United States included his family, a house, banking, and a driver's license. [Redacted] had at least one tie in each of the factors for determining abode (familial, economic, and personal). On the other side, [Redacted] ties or connections with [Redacted] seem more substantial and durable. [Redacted] livelihood came from [Redacted], he contributed to the local economy, he socialized with his co-workers and the locals of the establishments he frequented, he was not restricted in his movements within the community, he provided for the majority of his own meals, he customized his living space to make it a home, he observed the customary [Redacted] holidays, and he filled his free time with recreation.

[Redacted] was accustomed to making his abode wherever he was working. He always went to where the work was, which meant being away from family and his state of residence. From the information available and presented, the Tax Commission believes [Redacted] abode was in [Redacted] for the periods in question.

CONCLUSION

Since [Redacted] tax home was [Redacted] and his abode was not in the United States, and he met the physical presence test, [Redacted] was a qualified individual for the foreign earned income exclusion.

THEREFORE, the Notice of Deficiency Determination dated September 17, 2013, and directed to [Redacted] and [Redacted] is CANCELLED.

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

DATED this _____ day of _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.