

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 39183
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

[Redacted] (Petitioner) protested the Notice of Deficiency Determination issued by the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission asserting additional income tax, penalty, and interest for taxable years 2010, 2012, and 2013 in the total amount of \$13,996. Petitioner disagreed that he 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

Petitioner filed Idaho resident individual income tax returns for taxable years 2010 and 2012. Petitioner filed an Idaho nonresident individual income tax return for taxable year 2013. On each return, Petitioner claimed an exclusion from gross income for foreign earned income. The Bureau selected Petitioner’s returns as part of a project verifying the foreign earned income exclusion claimed on Idaho resident income tax returns. The Bureau requested information from Petitioner, reviewed it, and determined Petitioner was not a qualified individual as defined in Internal Revenue Code section 911(d)(3). The Bureau determined Petitioner’s tax home was not in a foreign country because his abode remained in the United States. Additionally, the Bureau determined Petitioner’s 2013 Idaho income tax return was filed incorrectly as a nonresident. The Bureau found that Petitioner was an Idaho resident for taxable year 2013. The Bureau corrected

Petitioner's Idaho individual income tax returns and sent him a Notice of Deficiency Determination.

Petitioner protested the Bureau's determination. Petitioner stated, initially, that he was unaware his ex-wife did not timely file their 2010 tax returns. Petitioner stated he contacted the [Redacted] and they advised him to file married filing separate, which he did. Petitioner stated as for the foreign earned income exclusion, he followed the rules and screens as laid out in [Redacted]. Petitioner stated he was in [Redacted] for the better part of the last five years and at no time did he violate the 330 day requirement for being outside the United States. Petitioner stated that he responded to the Bureau's questionnaire the best he could, but while he was in [Redacted] his ex-wife took all his personal and professional files, so there were several questions he could not answer. Petitioner provided additional information, but it did not persuade the Bureau to change its determination.

The Bureau acknowledged Petitioner's protest and referred the matter for administrative review. However, before the Tax Commission could review Petitioner's case and send him a hearing rights letter, Petitioner contacted the Tax Commission and a hearing was scheduled to discuss his case, since he was getting ready to go overseas again. During the hearing, Petitioner provided the following information.

Petitioner spent 28 years in the [Redacted] in Idaho. Petitioner began working overseas in [Redacted] in September 2008. Petitioner was having marital problems, so he decided being separated and working in [Redacted] might be the best for his marriage. Petitioner considered himself separated from his wife in 2008. Petitioner stated he and his wife could not salvage their marriage, and it was on one of his trips to Idaho to see his kids that Petitioner's wife had his son serve him with divorce papers. Petitioner stated when he came back to Idaho for vacation,

usually he and the children went on vacation while his wife went somewhere else. Petitioner's divorce was finalized in 2012. Petitioner stated prior to the divorce, his wife cleaned out their house and left him with virtually nothing. Petitioner stated his relationship with his wife became more and more distasteful to the point he does not care to ever see or speak to the woman again.

Petitioner's employment in [Redacted] began in September 2008. He continued working in [Redacted] until March 2010. Petitioner began working again in [Redacted] in January 2011 and continued working until he was injured and sent back to the United States on December 3, 2013. Petitioner has not returned to [Redacted] and has not found suitable work after being medically released on June 3, 2014. Nevertheless, Petitioner spends very little time in Idaho or the United States. Petitioner stated he traveled to [Redacted] and has spent a lot of time in the [Redacted]. Petitioner stated his plans are to move to the [Redacted].

In [Redacted], Petitioner lived in employer provided housing. Petitioner stated generally he lived in tents that were supplied with heating and air conditioning. To make his living space his own, Petitioner stated he made furniture for himself and purchased a television. Petitioner stated his employer provided his meals, which consisted of having "mess" with the military. Petitioner stated he had access to the [Redacted], where he was able to purchase most of his personal care and living needs. Petitioner also stated he purchased many items from [Redacted], since where he was it was easy to get mail and packages.

Petitioner stated he worked seven days a week in [Redacted] and usually fourteen hours per day. Petitioner stated he did not have a lot of free time, but when he did he built his furniture. Petitioner stated he was not allowed off the base unless it was for recon or going on a mission. Petitioner stated any travel he did in country was by air. Petitioner stated the only activities he could participate in were on the base, but he chose not to participate. Petitioner

stated there was a bazaar on base where the local [Redacted] were allowed to sell goods and food items. Petitioner stated he stayed away from the locals and the bazaar. Petitioner stated he had no [Redacted] friends and no real contact with the [Redacted] people. Petitioner stated any [Redacted] contact was usually delegated to someone else.

Petitioner stated that if he needed money, there was an ATM on the base where he could get cash. He could also buy goods through the [Redacted] with his debit card. Presumably Petitioner's purchases were with dollars rather than with [Redacted] currency, since Petitioner stated he stayed away from the [Redacted] bazaars.

Petitioner stated his son stayed in his house in Idaho after his wife left. Petitioner's son was attending a community college near where Petitioner's house was located. Petitioner kept the house so his son would have a place to live and, because of the downturn in the economy, his house had lost a lot of its value.

Petitioner stated the primary reason for taking the job overseas was to get away from where his marriage was headed. Regardless, Petitioner's marriage failed and he became very bitter towards his ex-wife. Petitioner stated when he vacationed or came back to Idaho it was for his kids or for something his kids were doing, i.e. his daughter's wedding. Otherwise, Petitioner spent his time elsewhere. Petitioner stated his ties to Idaho and/or the United States were limited and strained.

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 Petitioner's Idaho income tax returns encompassed taxable years 2010, 2011, 2012, and 2013, looking specifically at the foreign earned income exclusion Petitioner claimed each year. The Bureau determined Petitioner did not have a tax home in [Redacted] because his abode was in the United States rather than [Redacted]; therefore, Petitioner was not a qualified individual for the foreign earned income exclusion. The Bureau disallowed the foreign earned income exclusion Petitioner claimed for each taxable year.

The Bureau's determination was based upon the facts that Petitioner 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, Petitioner's familial, economic, and personal ties to the United States were stronger than his ties to [Redacted].

Petitioner argued that he met the physical presence test and never once was he present in the United States long enough to break the 330 day rule. The Bureau did not question the time Petitioner 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.

For the case at hand, Petitioner’s ties to the United States were few and limited. Petitioner’s relationship with his wife was estranged, he had two adult children who were more or less on their own, and he had some minor personal ties (a bank account and driver’s license). Petitioner’s [Redacted] ties were also limited; however, because Petitioner spent several years in [Redacted], until his injury, because Petitioner’s professional contacts were in [Redacted], and because Petitioner’s livelihood stemmed from [Redacted], the Tax Commission finds Petitioner’s ties to [Redacted] slightly stronger.

CONCLUSION

Since Petitioner’s ties slightly favored [Redacted] and because of the somewhat hostile environment Petitioner had at home in Idaho, the facts point to Petitioner’s abode being in [Redacted]. And, since Petitioner’s tax home was [Redacted] and his abode was not in the United States, and he met the physical presence test, Petitioner was a qualified individual for the foreign earned income exclusion.

THEREFORE, the Notice of Deficiency Determination dated October 7, 2014, and directed to [Redacted] is CANCELLED.

An explanation of the Petitioner’s 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.
