

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25910
[REDACTED],)	
)	
Petitioners.)	DECISION
<hr style="width: 40%; margin-left: 0;"/>)	

[Redacted] (Petitioners) protested the Notice of Deficiency Determination dated June 24, 2013, issued by the Income Tax Audit Bureau (Bureau) proposing additional Idaho income tax, penalty, and interest for taxable years 2010, 2011, and 2012 in the total amount of \$10,678. Petitioners disagreed with the Bureau’s determination that Mr. [Redacted] was not a qualified individual for purposes of the foreign earned income exclusion. The Tax Commission, having reviewed the file and being fully advised thereof, hereby issues its decision.

Petitioners’ Idaho individual income tax returns for taxable years 2010 through 2012 were selected for examination. Specifically, the Bureau reviewed Petitioners’ claim of the foreign earned income exclusion. After reviewing the information the Bureau asked Petitioners to provide, the Bureau determined Mr. [Redacted] was not a qualified individual as defined in Internal Revenue Code (IRC) section 911. The Bureau determined Mr. [Redacted] abode was in the United States; therefore, his tax home could not be considered to be in a foreign country. The Bureau adjusted Petitioners’ 2010, 2011, and 2012 Idaho individual income tax returns and sent them a Notice of Deficiency Determination.

Petitioners protested the Bureau’s determination, and during their hearing on October 15, 2015, Petitioners provided additional information. The Tax Commission reviewed all the available information and found that even though Mr. [Redacted] ties to the foreign country were limited, Mr. [Redacted] did have strong ties to where he was living in the foreign country. Therefore, because Mr. [Redacted] employment was considered indefinite (IRC section

162(a)(2)) and his abode was outside the United States, his tax home was in a foreign country. And since Mr. [Redacted] was physically present in the foreign country for the required number of days, he met the requirements of a qualified individual for purposes of the foreign earned income exclusion. As a result, Petitioners could elect to exclude a portion of their foreign earned income for each of the taxable years in question.

Petitioners asked for attorney's fees pursuant to Idaho Code section 12-117(1) on the basis that there are no court cases where an individual who meets the physical presence test that was denied the foreign earned income exclusion. Petitioners also stated that the Bureau's position had no basis in fact or law to deny the foreign earned income exclusion.

Idaho Code section 12-117(1) states in part,

[I]n any proceeding involving as adverse parties a state agency or a political subdivision and a person, the state agency, political subdivision or the court hearing the proceeding, including on appeal, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.

Idaho Code section 63-3045 states in pertinent part,

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any tax payable under this act or the liability at law or in equity of any person in respect to any tax provided in this act or collecting any such liability, the state tax commission or its duly authorized deputy is authorized—

(a) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

IRC section 911 states that certain requirements must be met before a taxpayer can claim an exclusion from income of their foreign earned income. Not meeting one of those requirements was the basis of the Bureau's determination that Petitioners had a tax deficiency. The law states that a taxpayer's tax home is not treated as being in a foreign country if the taxpayer has an abode in the United States during the period. The Bureau examined

Mr. [Redacted] tax home and abode, and from the information Petitioners, provided the Bureau determined Mr. [Redacted] had an abode in the United States during the time he was employed in Afghanistan.

Since Petitioners claimed the foreign earned income exclusion, it is within the Tax Commission's purview to review and examine the validity of the deduction claimed. The information Petitioners provided during the audit phase led the Bureau to believe Mr. [Redacted] abode was in the United States while he was employed in Afghanistan. While ultimately the Tax Commission found in Petitioners' favor, the Bureau did not have an unreasonable position in fact or law. Therefore, Petitioners' request for attorney's fees is denied.

THEREFORE, the Notice of Deficiency Determination dated June 24, 2013, and directed to [Redacted] is CANCELED.

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

DATED this _____ day of _____ 2016.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2016, 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.
