



foreign country and he was physically present in a foreign country for 330 days. Petitioner stated he had a regular place of business in the foreign country for his tax home; therefore, the concept of abode is not relevant in his case.

Petitioner stated the cases cited by the Bureau are no longer relevant because the law changed since those cases were decided. Petitioner stated his work and living situation was not the same as the taxpayers in the cases cited; primarily, he was not on a rotational work schedule. Petitioner stated he remained overseas during his contracts and only temporarily visited the United States.

Petitioner stated the Bureau's determination of his abode was based upon limited information and not qualifications based on U.S. income tax law.

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. The Tax Commission also sent Petitioner a list of additional questions designed to obtain more information for determining where Petitioner's abode was during the year in question. Petitioner's representative (Representative) contacted the Tax Commission and argued the validity of the questions being asked by the Tax Commission. Representative challenged the Tax Commission's authority to look at a federal exclusion and argued Petitioner's abode was irrelevant because his tax home was in Afghanistan. The Tax Commission explained its authority and the relevance of determining Petitioner's abode. Representative conceded the Tax Commission's authority and stated they would reconsider responding to the Tax Commission's questions. A few weeks later, the Tax Commission received Petitioner's responses to its questions. The information Petitioner provided is as follows.

Petitioner is a helicopter mechanic. He received his training while serving in the military for 20 years. When Petitioner retired from the Army [Redacted], he accepted employment with [REDACTED] in the Middle East as the next phase of his career. Petitioner took this employment based on his previous experience in the military and in the Middle East. This employment allowed him to work in the only field directly applicable to his military service and training. Petitioner stated he usually worked 12 – 15 hours a day, 7 days a week. Petitioner stated he was restricted to the base and not allowed to go out into the local Afghan community.

While in Afghanistan, all housing and utilities were provided by his employer. Petitioner lived in a semi-permanent, 8-man tent with separate living quarters for each individual. Petitioner furnished his living quarters with a laptop computer, refrigerator, microwave, crock pot, bedding, power strip, chair, and rugs. Petitioner provided and paid for his own internet access, cell phone, and cell service. Petitioner also did his own laundry.

Petitioner stated meals were provided in the base chow hall; however, he rarely ate there due to the conflict of his work hours and the hours the chow hall was open. Petitioner stated he more frequently ate at the fast food restaurants on the base, purchased food at the commissary that he prepared in his room, or purchased food from the Afghan vendors that were allowed on the base.

Petitioner stated he had little time for recreation. Petitioner stated he had a laptop on which he frequently played games on and surfed the internet. Petitioner stated he also went to the recreation center to watch professional sporting events that were broadcasted on the base.

Petitioner's interaction with the local populace was limited to the Afghans that were allowed on base to sell goods in an open market. Petitioner stated he frequented the market to purchase items for himself or to send back to the States to family members. Petitioner stated

defense contractors were restricted to the base and not allowed to go out into the local Afghan community. Petitioner stated his community was limited exclusively to the military base.

Petitioner stated several of his close friends from the [Redacted] retired and went to work for [REDACTED] and other contractors in the Middle East. Petitioner stated he chose to follow suit knowing he would have a ready built community of former and current military friends. Petitioner stated he also established new friendships with other contractors who were in Afghanistan and he remains friends with them today. Petitioner stated he also met other employees that he currently stays in contact with through social media. Petitioner stated his only contact with the locals was with the ones allowed on base as laborers or with the merchants at the weekend bazaars.

Petitioner stated that in the case of a medical need he could go to contract physicians for a fee. His employer did not sponsor a physician for its contract workers. Petitioner stated Army physicians were available for minor or urgent care needs if you were a veteran, and since he was a veteran, he was able to use the Army physicians.

Petitioner stated his day-to-day purchases were made via a cash or debit card in the commissary, and cash for local purchases with merchants. Petitioner stated his house in Idaho was maintained by his girlfriend and she handled paying of all his bills in the States. Petitioner stated that since he was not allowed off base, he walked everywhere that he needed to go whether for work, shopping, entertainment or dining.

Petitioner stated his R&R/vacation time was spent camping in Idaho, usually for a couple of weeks. He did family barbeques and visited friends. Time permitting, Petitioner worked on some small home projects. All flights back to Idaho were paid for by Petitioner's employer.

Petitioner stated he has worked in the Middle East for Department of Defense contractors exclusively for the last seven years in the only field directly applicable to his 20 years of work experience in the military.

## **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 return looked specifically at the foreign earned income exclusion claimed. The Bureau determined Petitioner had stronger ties to the United States than to Afghanistan; therefore, Petitioner's abode was in the United States. Since Petitioner's abode was in the United States rather than in a foreign country, Petitioner was not considered to have a tax home in Afghanistan. Consequently, Petitioner was not a qualified individual for the foreign earned income exclusion. Therefore, the Bureau disallowed the foreign earned income exclusion Petitioner claimed on his Idaho income tax return.

Petitioner argued the Tax Commission's authority to adjust a federal tax provision and its reliance on irrelevant court cases. Petitioner argued he did not work a rotational work schedule and his living situation is distinguishable from the taxpayers in the cited cases. Petitioner argued the Bureau's determination was made on limited information and was not based upon federal tax law. Petitioner believes he was correct in electing the foreign earned income exclusion.

The issue in this case is Petitioner's tax home for taxable year 2011. As previously

stated, IRC section 911 refers to IRC section 162(a)(2) for the determination of an individual's tax home. However, the general rule of tax home found in IRC section 162(a)(2) is subject to an overriding exception placed in IRC section 911(d)(3) for the purposes of the foreign earned income exclusion. 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's abode is 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, *ibid.* 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, *supra*.

The decisions the Tax Court relies heavily upon in the determination of a taxpayer's abode are Bujol v. Commissioner, T.C. Memo. 1987-230, *affd.* without published opinion 842 F. 2 d 328 (5th Cir. 1988), and LeMay v. Commissioner, T.C. Memo. 1987-256, *affd.* 837 F. 2 d

681 (5th Cir. 1988). In those cases, the taxpayers were employed on off-shore drilling rigs located in territorial waters of a foreign country. The taxpayers worked a shift of 28 days on the rig followed by 28 days of off-duty, wherein both taxpayers went home to their families in the United States. The taxpayers were required to live on premises and had little contact with the local people. The court concluded that both Bujol's and LeMay's abode was at a location where they had strong economic, family, and personal ties, which was within the United States.

Citing the Bujol and LeMay cases, the court in Welsh v. C.I.R., T.C. Memo. 1988-512, (1988), found that,

Although petitioner was not employed on an offshore drilling rig, the nature of his employment allowed only transitory contacts with Saudi Arabia. See Brobst v. Commissioner, T.C. Memo. 1988-456. He lived at a bachelor camp provided by Aramco. He traveled between the camp and the work site, and he occasionally traveled in Saudi Arabia to shop or to eat. He obtained a Saudi Arabian driver's license; however, he did not relinquish his Kansas driver's license. Thus, petitioner had minimal contact with Saudi Arabian society. Further, he always returned to Kansas at the end of his 56-day work period in order to visit his wife and children. It was not practicable or possible for petitioner to establish an abode in Saudi Arabia. Therefore, we find that petitioner's abode remained in the United States during the years in issue. Sec. 911(d)(1).

In the case at hand, Petitioner's work schedule was not rotational; he did not work for a period and then was off for a period. From the information available it is clear Petitioner did not return to the United States on a regular and consistent basis as did the taxpayers in Bujol, LeMay, and Welsh. On the contrary, Petitioner's presence in the foreign country was regular and consistent.

Petitioner's employment in the Middle East was indefinite. As long as Petitioner's performance was satisfactory and his employer was able to maintain its contract with the U.S. government, it appeared that Petitioner could have continued to renew his employment contract. Petitioner stated, in his chosen profession, employment in the Middle East gave him the

opportunity to use his 20 years of military work experience and skills. Petitioner did not intend temporary or transitory stays in the Middle East.

Using the definition of abode, that it has a domestic rather than vocational meaning, (Bujol, 53 T.C.M. at 763) the courts have concluded, based upon the blocks of time spent in the United States and other factors, such as a U.S. bank account, U.S. driver's license, and U.S. voter's registration, that taxpayers with these characteristics had strong familial, economic and personal ties in the United States and only transitory ties in the foreign country where the taxpayers worked, and thus those taxpayers were held to have a U.S. abode.

However, with the case at hand, Petitioner did not have the significant or repeated blocks of time in the United States which seems to be a key factor in the determination of where a taxpayer's stronger ties lie for purposes of the taxpayer's abode. Seeing that Petitioner employment was indefinite and that he did not frequently and regularly return to the United States, the Tax Commission finds that Petitioner's stronger ties were to Afghanistan for purposes of determining abode. As a result, Petitioner's tax home was in a foreign country and therefore, he was a qualified individual for the foreign earned income exclusion.

### **CONCLUSION**

Seeing that Petitioner, a citizen of the United States, was physically present in a foreign country for a full 330 days during a relevant period in taxable years 2010 and 2011, and that his tax home was in a foreign country, Petitioner was a qualified individual for the purposes of the foreign earned income exclusion.

THEREFORE, the Notice of Deficiency Determination dated August 12, 2014, and directed to [Redacted] is CANCELLED.

An explanation of the Petitioner's 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.

---