**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

| | | |
|---|---|---|
| In the Matter of the Protest of | ) | |
| | ) | DOCKET NO. 39128 |
| **[Redacted]** , | ) | |
| | ) | |
| Petitioners. | ) | DECISION |
| | ) | |

**[Redacted]** (Petitioners) protested the Notice of Deficiency Determination dated August 28, 2014, asserting income tax and interest for taxable years 2011, 2012, and 2013 in the total amount of $20,608. Petitioners disagreed that Mr. **[Redacted]** 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

Petitioners' filed their Idaho individual income tax returns for taxable years 2011, 2012, and 2013 claiming an exclusion from their gross income for foreign earned income on each return. The Income Tax Audit Bureau (Bureau) selected Petitioners' returns to verify the foreign earned income exclusion claimed. The Bureau notified Petitioners of its intent to examine their returns and requested specific information from Petitioners to support the foreign earned income exclusion. Petitioners provided the information the Bureau requested.

The Bureau reviewed the information and determined that 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' 2011, 2012, and 2013 Idaho individual income tax returns and sent them a Notice of Deficiency Determination.

Petitioners protested the Bureau's determination and provided a statement from Mr. **[Redacted]** supervisor verifying the fact that Mr. **[Redacted]** was in Afghanistan during the years in question. Petitioners stated this documentation, along with the previously submitted documentation, should be sufficient to support the foreign earned income exclusion.

The Bureau referred the matter for administrative review and the Tax Commission sent Petitioners a letter describing the methods available for redetermining a protested Notice of Deficiency Determination. Petitioners requested a hearing which was held on June 30, 2016. During the hearing, Petitioners provided additional information regarding Mr. [Redacted] employment in Afghanistan. The information provided included a detailed look into Mr. [Redacted] tax home and abode, and his physical presence in a foreign country, Afghanistan. The Tax Commission also briefly talked about the employee business expenses claimed in 2012 for travel and other related business expenses.

## 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.

Mr. [Redacted] employment in Afghanistan encompassed several years. Mr. [Redacted] initial contract was for a 12-month tour after which he was eligible for extensions. Mr. [Redacted] employment was extended through September 2013. Because Mr. [Redacted] employment was considered indefinite per IRC section 162(a)(2), Mr. [Redacted] tax home was in a foreign country. And, after reviewing the information Petitioners provided, the Tax Commission determined that even though Mr. [Redacted] ties or connections to Afghanistan were limited, his ties and connections to the community wherein he was employed, in Afghanistan, were stronger than his connections in the United States. Seeing that Mr. [Redacted] met the physical presence test and his living in a foreign country was sufficient enough not to have his abode in the United States for purposes of a foreign tax home, Mr. [Redacted] was a qualified individual. Therefore, Petitioners could elect to exclude a portion of their foreign earned income for taxable years 2011, 2012, and 2013.

However, for taxable year 2012 Petitioners claimed a qualifying period for the physical presence test of January 1, 2012, to December 31, 2012. Based upon the information Petitioners provided, Mr. [Redacted] was short of the required 330 days in a foreign country to meet the physical presence test for that defined period. Nevertheless, by moving the 12 consecutive month period into the subsequent tax year Mr. [Redacted] does meet the physical presence test. But, by moving the 12-month period into another tax year the amount of the foreign earned income exclusion must be prorated for the days the period falls within the taxable year. Therefore, an adjustment to Petitioners' claimed exclusion for 2012 is necessary.

In addition to the foreign earned income exclusion, Petitioners claimed employee business expenses for travel and other business expenses incurred while away from home overnight. Petitioners stated the expenses were related to Mr. [Redacted] trip to the United States for the adoption of their daughter.

IRC section 162 allows as a deduction expenses related to an individual's business while away from home. Home has generally been defined as the vicinity of a taxpayer's principal place of business or employment. Marin Johnson v. CIR, 115 T.C. 210, (2000). Since it was previously determined Mr. [Redacted] tax home was in a foreign country as part of the foreign earned income exclusion, then for purposes of IRC section 162(a)(2) Mr. [Redacted] tax home was also in that foreign country. Therefore, because Mr. [Redacted] tax home was in Afghanistan, any expense incurred for travel, meals, and lodging while in the United States on personal business were not away from home business expenses. Furthermore, the expenses claimed were personal expenses and not deductible. (*See* IRC section 262.)

## CONCLUSION

Seeing that Mr. [Redacted], a citizen of the United States, met the requirements of a qualified individual for the purposes of the foreign earned income exclusion, the Tax Commission reverses the adjustment made to Petitioners' 2011 and 2013 Idaho individual income tax returns for the foreign earned income exclusion. However, for Mr. [Redacted] to be a qualified individual for the exclusion for taxable year 2012, his 12-month period needed to span two tax years thereby requiring a proration of the exclusion. Therefore, the Tax Commission modified the Bureau's adjustment to account for the proration of the exclusion. The Tax Commission also disallowed Petitioners' claimed employee business expenses because they were non-deductible personal, living, and family expenses.

THEREFORE, the Notice of Deficiency Determination dated August 28, 2014, and directed to **[Redacted]** is AFFIRMED as MODIFIED by this decision.

IT IS ORDERED that Petitioners pay the following tax and interest:

| YEAR | TAX | INTEREST | TOTAL |
|---|---|---|---|
| 2011 | $ 0 | $ 0 | $ 0 |
| 2012 | 483 | 61 | 544 |
| 2013 | 0 | 0 | 0 |
| | | TOTAL DUE | $544 |

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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.

________________________________________