

## Foreign Earned Income Exclusion Not Allowed

Joseph Bellwood worked as a helicopter pilot in Saudi Arabia during 2013-2015. He worked a 28-days on and 28-days off schedule. During his “28-days on” period, he stayed in employer-provided housing in Saudi Arabia. During his “28-days off” period, he traveled to the United States and resided in his home in Georgia with his wife and their son.

He claimed the foreign earned income exclusion (FEIE). IRS denied him the exclusion stating he failed the “tax home” provision and Tax Court agreed with IRS.

In order to claim the FEIE the taxpayer must meet 2 conditions:

- 1) The taxpayer’s tax home must be in the foreign country, and
- 2) The taxpayer must meet either the bona fide resident test or the physical presence test.

Although the Court had already denied Mr. Bellwood the exclusion, the Court continued to discuss the rules for Bona Fide residency and Mr. Bellwood’s situation. The purpose of our article is to remind everyone of the “tax home” provision, but if the Bona Fide residency tests are of interest, you can find the discussion in the case summary at [ustaxcourt.gov](http://ustaxcourt.gov).

This article focuses on the “tax home” condition, which is the one IRS challenged in this case. Here are details:

The employer provided housing in Saudi Arabia consisting of an employer-furnished apartment. Mr. Bellwood did not purchase anything for his apartment. He stayed in the same apartment during his time in Saudi Arabia. He also left his belongings in the apartment each time he left Saudi Arabia. During his time in Saudi Arabia he left the gated housing compound to get groceries, to eat out, visit a barber, and socialize with the locals from time to time. He was prohibited from participating in civic activities because he was not a citizen.

Mr. Bellwood originally lived in Maine when he took this assignment in Saudi Arabia. He then moved to Georgia (U.S.), where he obtained a Georgia driver’s license, registered to vote, and sought medical care. He retained his U.S. citizenship. His only bank account was in Maine. During his time in the U.S., he spent time with his family, pursued his hobbies, and managed the day-to-day affairs of his personal life.

On his 2013-2015 Forms 2555, Foreign Earned Income Exclusion, he gave his foreign address as Saudi Arabia, and listed Maine as his tax home.

Based on Mr. Bellwood’s activities in Georgia and Saudi Arabia, his tax home was in Georgia as opposed to Saudi Arabia. One of the conditions of the FEIE is that the taxpayer’s tax home must be in a foreign country. For this purpose, “tax home” includes his primary “abode” which is determined partly by comparing the domestic and vocational qualities involved in each place the taxpayer resides. Mr. Bellwood had more

ties (family, hobbies, medical personnel, etc.) in the United States. Therefore, the Court determined Mr. Bellwood's "tax home" was inside the United States, not in a foreign country. Thus, he was not allowed the FEIE.

Joseph & Jacqueline Bellwood, TC Memo 2019-135. This case can be found by going to [ustaxcourt.gov](http://ustaxcourt.gov), clicking on the Opinion Search tab, and entering Bellwood in the Case Name box.

This text has been shared by David & Mary Mellem, EAs & Ashwaubenon Tax Professionals, 920-496-1065.

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