

## ***1 T.C. 355 (1942)***

When determining whether a U.S. citizen is a bona fide nonresident for more than six months for tax exemption purposes, the calculation should include aggregate days of absence, not just full calendar months.

### **Summary**

Michel Bertin, a U.S. citizen, worked for Socony-Vacuum Oil Co. and traveled extensively abroad. In 1939, he was outside the U.S. for 186 days across three trips. Bertin prorated his salary, excluding income earned while abroad. The Commissioner argued that only full calendar months of absence could be counted, and Bertin did not meet the six-month requirement. The Tax Court held that the statute intended for the aggregate days of absence to be considered, not just full months, and ruled in favor of Bertin, allowing the exemption.

### **Facts**

Michel J. A. Bertin, a U.S. citizen, worked for Socony-Vacuum Oil Co. His duties required him to travel to European, South, and Central American countries. In 1939, Bertin was absent from the U.S. for 186 days, spread across three separate trips. His salary was deposited monthly in his New York bank account.

### **Procedural History**

Bertin filed his 1939 tax return, prorating his salary based on time spent inside and outside the U.S. The Commissioner determined a deficiency, arguing that Bertin did not qualify for the foreign earned income exclusion because he was not a bona fide nonresident for more than six months. The Tax Court reviewed the Commissioner's determination.

### **Issue(s)**

Whether, in determining if a U.S. citizen is a bona fide nonresident of the United States for more than six months during a taxable year under Section 116(a) of the Internal Revenue Code, the calculation should include the aggregate of days spent outside the U.S., or only full calendar months?

### **Holding**

Yes, because the statute intended to include aggregate days of absence, not just full calendar months, in determining whether the six-month nonresidency requirement was met.

### **Court's Reasoning**

The court rejected the Commissioner's argument that only full calendar months

should be counted, relying on a General Counsel Memorandum (G.C.M. 22065) that supported this view. The court noted that prior G.C.M.s had allowed the aggregation of days to meet the six-month requirement. The court found that the Commissioner's interpretation was too narrow and not supported by the statute's intent. The court reasoned that the purpose of the statute, originating in the Revenue Act of 1926, was to encourage foreign trade by exempting income earned by U.S. citizens working abroad. The court stated, "Taxation is a realistic matter...the respondent's view here is, in our opinion, the antithesis of realism." The court highlighted the absence of specific language in Section 116 requiring the exclusion of partial months, contrasting it with explicit language in Section 25(b)(3) regarding personal exemptions, which provided specific rules for fractional parts of months. The court held that Bertin's 186 days of absence, consisting of five full calendar months and 36 additional days, satisfied the more-than-six-month requirement.

### **Practical Implications**

This case clarifies how to calculate the six-month nonresidency requirement for U.S. citizens seeking the foreign earned income exclusion. It confirms that taxpayers can aggregate days of absence from the U.S. to meet the requirement, even if they do not have six full calendar months of continuous absence. This ruling benefits taxpayers who travel frequently for work, ensuring they are not penalized for shorter trips abroad. Later cases and IRS guidance continue to refine the definition of "bona fide resident," but Bertin remains a key authority for understanding the temporal aspect of the six-month rule.