Baer v. Commissioner, 6 T.C. 1195 (1946)

An alien's residency for U.S. income tax purposes, once established, continues until there is evidence of a clear intention to change it, and temporary absences, even prolonged ones, do not necessarily negate residency status if intent to return remains.

Summary

Walter Baer, a Swiss citizen, immigrated to the U.S. in 1940. In 1941, he returned to Switzerland. The IRS determined that Baer was a U.S. resident for the entire year and taxed his worldwide income, including his share of partnership income from a Swiss firm. Baer argued he was a non-resident alien for part of 1941. The Tax Court held that Baer remained a U.S. resident for the entire year because he failed to demonstrate an intention to abandon his U.S. residency, evidenced by his reentry permit application indicating a temporary absence for business reasons and an intent to return.

Facts

Walter Baer, a Swiss citizen, arrived in the U.S. with his family in October 1940 under an immigration quota, stating his intent to remain permanently. Shortly after arriving, Baer indicated a need to return temporarily to Switzerland for business reasons related to establishing a U.S. branch of his Swiss banking firm. Baer resided in New York City until July 12, 1941, when he and his family left for Switzerland. Before leaving, he applied for his first citizenship papers. Upon departure, Baer obtained a reentry permit valid for one year, stating his trip was for business and his intention to return. He later applied for a six-month extension on the reentry permit, reaffirming his intent to return to the U.S. for further residence as soon as possible. He remained in Switzerland since his departure in July 1941.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Baer's 1941 income tax due to the inclusion of partnership income. Baer challenged this assessment, arguing non-resident alien status for part of the year. The Tax Court reviewed the Commissioner's determination.

Issue(s)

1. Whether Walter Baer was a resident of the United States for the entire year 1941 for income tax purposes, despite his departure to Switzerland in July 1941.

Holding

1. No, because the evidence failed to show that Baer intended to change his residence from the United States back to Switzerland during 1941. His actions

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indicated a temporary absence with the intent to return.

Court’s Reasoning

The Tax Court emphasized that residency, once established, is presumed to continue until proven otherwise. The court distinguished between “residence” and “domicile,” noting that while Baer may have abandoned his U.S. domicile, the critical issue was his residency. The court found that Baer’s statements and actions, particularly his applications for reentry permits, demonstrated a continuing intention to return to the U.S. The court cited *L. E. L. Thomas, 33 B. T. A. 725*, stating, “Having thus held himself out and satisfied the immigration officials that his absence was to be only temporary and thereby having obtained the benefits of his action, we think he is to be bound by it.” The court distinguished this case from *John Ernest Goldring, 36 B. T. A. 779*, where the taxpayer demonstrably packed up his possessions and left the U.S. with no intention of returning. Here, Baer’s application for an extension to his re-entry permit confirmed his intent to return.

Practical Implications

This case clarifies that an alien’s declaration of intent, coupled with objective actions like applying for reentry permits, heavily influences residency determinations for tax purposes. Attorneys should advise clients to carefully document their intentions and actions when leaving the U.S. temporarily, especially regarding reentry permits, to avoid unintended tax consequences. The case underscores that demonstrating an intent to abandon U.S. residency requires more than a mere physical departure; it requires clear and convincing evidence of an intention to establish permanent residency elsewhere. Tax advisors need to analyze these cases based on facts and circumstances. The case’s holding is very dependent on the specific facts and the documentation filed.

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