7 T.C. 1053 (1946)

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A U.S. citizen working abroad temporarily on a war-related project, without intending to establish permanent residency in the foreign country, is not considered a bona fide resident of that foreign country for the purposes of excluding foreign-earned income from U.S. income tax.

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Summary

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Michael Downs, a U.S. citizen, worked in the British Isles for Lockheed Overseas Corporation during 1943. He sought to exclude his foreign-earned income under Section 116 of the Internal Revenue Code, arguing he was a bona fide resident of a foreign country. The Tax Court held that Downs was not a bona fide resident because his presence was temporary, linked to a specific project, and he intended to return to the U.S. after the war. His wife, Eleanor Downs, was also assessed a penalty for failing to file a return, which the court upheld due to a lack of evidence showing reasonable cause.

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Facts

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Michael Downs was a U.S. citizen domiciled in California. In 1942, he was hired by Lockheed Overseas Corporation to work at an aircraft depot in the British Isles, a project essential to the war effort. He signed a contract agreeing to work overseas, initially for a specified period, later extended for the duration of the contract between Lockheed and the government. Downs worked in England and Ireland from July 1942 to July 1944, performing essential mechanical services. He never applied for citizenship in the British Isles and intended to return to the U.S. after the war. His wife remained in the U.S. during his absence.

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Procedural History

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Downs excluded his 1943 foreign-earned income from his U.S. income tax return, claiming he was a bona fide resident of a foreign country. The Commissioner of Internal Revenue determined a deficiency, arguing Downs did not meet the residency requirement. The Commissioner also assessed a deficiency and penalty against Eleanor Downs for failing to file an income tax return. The Tax Court consolidated the cases.

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Issue(s)

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Whether Michael Downs was a “bona fide resident of a foreign country or countries” during the entire taxable year of 1943 within the meaning of Section 116 of the Internal Revenue Code, thus entitling him to exclude his foreign-earned income from U.S. income tax. Whether the penalty assessed against Eleanor J. Downs for failure to file a tax return should be upheld.

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Holding

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1. No, because Downs’ presence in the British Isles was temporary and tied to a specific war-related project, and he always intended to return to the United States.

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2. Yes, because Eleanor Downs did not present evidence showing reasonable cause for failing to file a tax return.

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Court’s Reasoning

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The court relied on Treasury Regulations interpreting Section 116, which consider principles used to determine residency for aliens in the U.S. The court cited I. T. 3642, 1944 C. B. 262, which stated that a U.S. citizen employed on a temporary war construction project in a foreign country and living in temporary quarters is

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considered a transient, not a bona fide resident. The court acknowledged Downs' good faith in serving overseas but emphasized that good faith alone doesn't establish residency. Because Downs's presence abroad was linked to a specific project and he intended to return to the U.S., he did not qualify as a bona fide resident. Regarding Eleanor Downs, the court noted that she had not provided sufficient evidence to prove reasonable cause for failing to file, as required by <span normalizedcite="26 U.S.C. 3612 (d)(1)

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