10 T.C. 183 (1948)

A U.S. citizen working abroad for an extended period, demonstrating intent to remain in a foreign country, and integrating into that country's economic and social life can be considered a bona fide resident of that foreign country for U.S. tax purposes, even if subject to potential military draft and temporary work contracts.

Summary

Audio Gray Harvey, a U.S. citizen employed by Geophysical Service, Inc., sought to exclude income earned in Colombia from U.S. taxation, claiming bona fide residency in Colombia during 1943. The Tax Court ruled in Harvey's favor, finding that his continuous employment abroad since 1938, his integration into Colombian life through language acquisition and tax payments, and his intent to remain in Colombia for the duration of his work contract established bona fide residency despite temporary deferments from military service. This case highlights the factors courts consider when determining foreign residency for tax exemptions.

Facts

Harvey was employed by Geophysical Service, Inc. since 1936. From 1938 to 1945, he worked in various foreign countries, including Colombia from September 1941 to February 1945. He performed services for the company outside the U.S. throughout 1943 and did not return to the U.S. at any time during that year. His income in 1943 included salary for services performed in Colombia. He obtained temporary deferments from the Selective Service based on his essential work. Harvey's employment contract, a "Foreign Service Agreement", contemplated a three-year term. He paid Colombian income taxes.

Procedural History

Harvey filed his income tax return for 1943 with the collector at Dallas, Texas, excluding income earned in Colombia. The Commissioner of Internal Revenue assessed a deficiency, arguing that Harvey was not a bona fide resident of Colombia. Harvey petitioned the Tax Court for a redetermination of the deficiency.

Issue(s)

Whether Audio Gray Harvey was a bona fide resident of Colombia during the entire taxable year of 1943, thus exempting his income earned in Colombia from U.S. taxation under Section 116(a)(1) of the Internal Revenue Code, as amended.

Holding

Yes, because Harvey's continuous presence in Colombia, coupled with his intent to remain there for an extended period for employment purposes and his integration into Colombian society, established bona fide residency despite temporary

© 2025 SCOTUSreports.com. All rights reserved.

deferments from military service.

Court’s Reasoning

The court emphasized the distinction between mere physical presence and bona fide residency. It distinguished Harvey’s situation from cases involving temporary absences from the U.S., noting that Harvey’s career was centered on foreign service. The court considered several factors: Harvey’s continuous employment abroad since 1938, his intent to remain in Colombia for at least three years (and potentially longer), his payment of Colombian income taxes, and his adaptation to the local language. The court noted, “Though of course not conclusive, we regard the point of taxes paid one to be weighed in determining foreign residence. They were paid by the petitioner… It was not the act of a transient, and it is consistent with residence.” The court found that the temporary nature of his draft deferments did not negate his intent to reside in Colombia for an extended period. It cited *Swenson v. Thomas*, a similar case involving a colleague, as further support for its decision.

Practical Implications

This case provides guidance on determining bona fide foreign residency for U.S. tax purposes. It emphasizes the importance of demonstrating an intent to reside in a foreign country for more than a temporary or transient purpose. Factors such as the duration of stay, integration into the local community (e.g., language acquisition, payment of local taxes), and the nature of employment are crucial. The ruling clarifies that temporary factors, such as renewable work contracts or potential military service obligations, do not automatically preclude a finding of bona fide residency if other factors support such a determination. This case is frequently cited when individuals working abroad seek to exclude foreign-earned income from U.S. taxation and provides a framework for analyzing similar cases.

© 2025 SCOTUSreports.com. All rights reserved.