12 T.C. 40 (1949)

A U.S. citizen residing and conducting business in a foreign country for many years, who is not physically present in the United States for at least half of the taxable year, qualifies as a nonresident for income tax exemption purposes under Section 116(a) of the Internal Revenue Code, even if time spent outside the U.S. includes visits to other countries like Canada.

Summary

The Tax Court addressed whether Charles Salmon, a U.S. citizen residing in the Philippines, qualified as a bona fide nonresident of the United States for more than six months in 1939, thus entitling him to an income tax exemption on income earned abroad under Section 116(a) of the Internal Revenue Code. Salmon, who had lived in the Philippines for 39 years and operated insurance agencies there, spent a significant portion of 1939 in the U.S. for medical treatment, with a deliberate trip to Canada to potentially bolster his nonresident status. The court held that Salmon was a bona fide nonresident because he maintained his business and residence abroad and was not physically present in the U.S. for more than half the year.

Facts

Charles Salmon, a U.S. citizen, resided in the Philippines for 39 years prior to 1939, operating insurance agencies there. He maintained a home in Manila since 1912 and only occasionally visited the U.S. for vacations. In early 1939, due to ill health, he traveled to the U.S. for medical treatment, arriving in San Francisco on April 11 and staying until August 26. He then visited Canada from August 26 to November 5 before returning to the U.S. briefly and sailing back to the Philippines. He spent 168 days in the U.S. and 71 days in Canada during 1939.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Salmon’s 1939 income tax, arguing he was not a bona fide nonresident for more than six months. Salmon petitioned the Tax Court for a redetermination, asserting his eligibility for the exemption under Section 116(a) of the Internal Revenue Code.

Issue(s)

Whether Charles Salmon, a U.S. citizen who resided and conducted business in the Philippines but spent 168 days in the United States and 71 days in Canada during 1939, qualifies as a bona fide nonresident of the United States for more than six months during the taxable year under Section 116(a) of the Internal Revenue Code, thereby entitling him to an exemption from U.S. income tax on income earned from sources outside the United States?

Holding

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Yes, because Salmon maintained his business and residence in the Philippines, and was not physically present in the United States for more than one-half of the taxable year, despite spending time in Canada.

Court’s Reasoning

The Tax Court relied on the precedent set in *Paul J. Fichter, 9 T.C. 1126*, which held that a taxpayer residing and working in Japan was a nonresident despite visiting Canada during the tax year. The court emphasized that the critical factors are the taxpayer’s bona fide residence and business location outside the U.S., coupled with not being physically present in the U.S. for more than half the year. The court distinguished its earlier decisions in *Estate of W. M. L. Fiske, 44 B. T. A. 227* and *J. W. Swent, 5 T. C. 33*, which had been reversed by Circuit Courts, which effectively held that physical presence in the United States for more than half the year automatically disqualifies one from being a nonresident under Section 116(a). The court noted,

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