Swenson v. Thomas, 164 F.2d 783 (5th Cir. 1947)

To qualify for the foreign earned income exclusion under Section 116(a) of the Internal Revenue Code, a U.S. citizen must establish a bona fide residence in a foreign country, which requires demonstrating an intention to live there for the time being, not necessarily with the intent to make it a permanent home or domicile.

Summary

Swenson, a U.S. citizen, claimed a foreign earned income exclusion based on his alleged residence in Sweden and later England. The court held that Swenson was not a bona fide resident of either country during the tax years in question (1943 and 1944). The court reasoned that Swenson's ties to Sweden were severed when he relinquished his apartment and employment there. His time in England was deemed a temporary sojourn, not a residence, due to frequent trips back to the U.S. and his family's continued residence in the U.S. This case clarifies the criteria for establishing foreign residence for tax purposes, distinguishing it from domicile.

Facts

Swenson, a U.S. citizen, arrived in the U.S. from Sweden in February 1941.
He had been employed by General Motors Overseas Operations.
Approximately six months after arriving in the U.S., he relinquished his apartment and domestic help in Stockholm.
In June 1941, he was assigned to work in the U.S. by his employer.
His wife and children resided with him in the U.S., where the children attended school.
From June 1942 he was assigned to England, but made multiple return trips to the US.
He did not report income or pay taxes to any foreign country during the years in question.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in Swenson's income tax for 1943 and 1944.
Swenson petitioned the Tax Court for review, arguing he was a bona fide resident of Sweden or, alternatively, England, and thus entitled to the foreign earned income exclusion.
The Tax Court upheld the Commissioner's determination.
Swenson appealed to the Fifth Circuit Court of Appeals.

Issue(s)

Whether Swenson was a bona fide resident of Sweden during the tax years 1943 and 1944, entitling him to the foreign earned income exclusion under Section 116(a) of the Internal Revenue Code.

© 2025 SCOTUSreports.com. All rights reserved.

Whether, in the alternative, Swenson was a bona fide resident of England during the tax years 1943 and 1944, entitling him to the foreign earned income exclusion under Section 116(a) of the Internal Revenue Code.

Holding

No, because Swenson relinquished his ties to Sweden and established a residence in the United States.
No, because Swenson's time in England was a temporary sojourn rather than a bona fide residence.

Court's Reasoning

The court relied on the definition of "residence" as an intention to live in a place for the time being, as opposed to "domicile," which requires an intention to make a home there. It distinguished "sojourn" which requires no specific intent.
The court determined that Swenson's actions, such as relinquishing his apartment in Stockholm and working in the U.S., indicated he was no longer a resident of Sweden. The court noted: "Though of course not conclusive, we regard the point of taxes paid one to be weighed in determining foreign residence".
The court considered Treasury Regulations defining residence for aliens, noting that an alien can become a U.S. resident even with the intention to return to their domicile abroad eventually.
The court dismissed Swenson's argument that wartime conditions prevented his return to Sweden, reasoning that this circumstance reinforced the idea that he intended to reside in the U.S. until conditions changed.
Regarding the claim of English residence, the court emphasized the temporary nature of Swenson's stays in England, his frequent returns to the U.S., and the fact that his family remained in the U.S. These factors indicated a sojourn, not a residence.

Practical Implications

This case highlights the importance of demonstrating a clear intention to reside in a foreign country to qualify for the foreign earned income exclusion. Taxpayers must show more than a mere physical presence; they must establish ties to the foreign country that indicate an intent to live there for the time being.
The decision emphasizes that maintaining a residence in the U.S., frequent trips back to the U.S., and the location of one's family are factors that weigh against establishing a bona fide foreign residence.
The case underscores the distinction between "residence" and "domicile" for tax purposes. A taxpayer can be a resident of a foreign country without intending to make it their permanent home.
The case is frequently cited in subsequent cases involving the foreign earned income exclusion, particularly when determining whether a taxpayer's presence in a foreign country constitutes a bona fide residence or merely a temporary sojourn. Later cases

© 2025 SCOTUSreports.com. All rights reserved.

citing Swenson include those that distinguish between temporary assignments and indefinite stays.

© 2025 SCOTUSreports.com. All rights reserved.