14 T.C. 1467 (1950)

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A non-resident alien author is taxable on income derived from U.S. sources, including lump-sum payments for serial rights, and cannot avoid taxation by assigning income rights after the income is earned.

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Summary

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Sax Rohmer, a non-resident alien author, contested deficiencies in his 1938 U.S. income tax. The Tax Court addressed whether income from U.S. serial rights was taxable to Rohmer, whether an assignment of income to his wife was effective, whether the statute of limitations barred assessment, how to allocate income between U.S. and Canadian sources, and whether Rohmer could claim deductions. The Court held that the income was taxable to Rohmer, the assignment was ineffective, the statute of limitations did not bar assessment because of a substantial omission of income, and provided guidance on allocating income and deductions.

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Facts

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Sax Rohmer, a British author and nonresident alien, earned income from U.S. sources through serial rights to his literary works. Rohmer assigned a one-half interest in the serial rights for “Drums of Fu Manchu” to his wife after the rights were sold to Collier’s magazine. Paul R. Reynolds & Son served as Rohmer’s exclusive literary agent in the U.S. Rohmer organized a British corporation, Fu Manchu, Ltd., for accounting purposes. Rohmer filed his 1938 tax return, but the Commissioner determined deficiencies, arguing that Rohmer had understated his income and was not entitled to certain deductions.

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Procedural History

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The Commissioner of Internal Revenue determined a deficiency in Rohmer's 1938 income tax and later asserted an additional deficiency. Rohmer contested the deficiency in the U.S. Tax Court. The Tax Court reviewed the Commissioner's determination and Rohmer's claims for refund.

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Issue(s)

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1. Whether lump-sum payments made to Rohmer's wife for serial rights to his literary works are properly included in Rohmer's income.

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2. Whether lump-sum payments received by Rohmer for serial rights to his literary works are properly included in his income.

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3. Whether the assessment of the deficiency is barred by the statute of limitations.

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4. Whether income received by Rohmer for the use of his literary property was properly allocable between sources within and without the United States.

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5. Whether the Commissioner erred in disallowing deductions, earned income credit, or personal exemption to Rohmer.

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Holding

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1. No, because the assignment to Rohmer's wife occurred after the income-producing event (sale of serial rights), making it an assignment of income, which is taxable to the assignor.

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2. Yes, because lump-sum payments for serial rights are considered income from

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sources within the United States for nonresident aliens.

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3. No, because Rohmer omitted more than 25% of his gross income, extending the statute of limitations to five years, making the deficiency notice timely.

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4. Yes, because based on circulation figures and expert testimony, an allocation of 95% to U.S. sources and 5% to Canadian sources is reasonable.

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5. Yes, because Rohmer is entitled to deductions allocable to his U.S. source income, as well as an earned income credit and personal exemption.

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Court’s Reasoning

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The court reasoned that the assignment of income to Rohmer’s wife was ineffective for tax purposes because it occurred after the income was earned. Citing Helvering v. Eubank, <span normalizedcite="311 U.S. 122“>311 U.S. 122, and Lucas v. Earl, <span normalizedcite="281 U.S. 111“>281 U.S. 111, the court emphasized that income is taxed to the one who earns it, regardless of subsequent assignments. Regarding the lump-sum payments, the court relied on Wodehouse v. Commissioner, <span normalizedcite="337 U.S. 369“>337 U.S. 369, which established that such payments are U.S. source income for nonresident aliens. Since Rohmer omitted more than 25% of his gross income, the court applied the extended statute of limitations under section 275(c). The court allocated income between U.S. and Canadian sources based on circulation figures, stating,

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