19 T.C. 109 (1952)

To qualify for the foreign earned income exclusion under 26 U.S.C. § 116(a)(1) (1939 I.R.C.), a U.S. citizen working abroad must demonstrate a bona fide residency in a foreign country, not merely a temporary presence for employment purposes.

Summary

Ernest Hertig, a U.S. citizen, worked in Afghanistan for nearly three years and sought to exclude his foreign earnings from U.S. income tax under Section 116(a)(1) of the Internal Revenue Code of 1939, claiming bona fide residency in Afghanistan. The Tax Court denied the exclusion, finding that Hertig was merely a transient or sojourner in Afghanistan for a specific employment purpose, lacking the intent to establish a true residence there. The court emphasized that the 1942 amendment to the statute required residency in a specific foreign country, not simply non-residency in the U.S.

Facts

Hertig, a U.S. citizen and former construction engineer for Union Pacific, divorced his wife in 1946. Prior to the divorce, he expressed interest in working abroad permanently. He entered a 2-year employment contract with Morrison-Knudsen Afghanistan, Inc. in October 1946 and worked in Afghanistan until September 1949. His contract provided board and lodging and obligated the employer to pay any foreign income taxes. He lived in company-provided barracks and spent weekends in Pakistan for recreation. After his contract ended, he sought other foreign employment before returning to the U.S.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in Hertig’s income tax for 1947 and 1948. Hertig petitioned the Tax Court, arguing that he was exempt from U.S. income tax under Section 116(a)(1) of the Internal Revenue Code because he was a bona fide resident of Afghanistan. The Tax Court ruled in favor of the Commissioner, upholding the tax deficiencies.

Issue(s)

Whether Ernest Hertig was a bona fide resident of Afghanistan during the tax years 1947 and 1948 within the meaning of Section 116(a)(1) of the Internal Revenue Code of 1939, thus entitling him to exclude his income earned in Afghanistan from U.S. income tax.

Holding

No, because Hertig’s presence in Afghanistan was solely for employment purposes, and he did not demonstrate an intention to establish a bona fide residence there.

© 2025 SCOTUSreports.com. All rights reserved.

Court’s Reasoning

The Tax Court emphasized that the 1942 amendment to Section 116(a)(1) required a taxpayer to be a bona fide resident “of a foreign country,” not merely a nonresident of the United States. The court distinguished this case from cases like *Charles F. Bouldin, 8 T.C. 959* and *Audio Gray Harvey, 10 T.C. 183*, where the taxpayers demonstrated a stronger connection to the foreign country. The court noted that Hertig’s intent was to work abroad generally, not specifically to reside in Afghanistan. His employer paid any foreign taxes, and his stay was relatively short. Citing *Downs v. Commissioner, 166 F.2d 504*, the court viewed Hertig as a “transient or sojourner” in Afghanistan for a specific purpose and definite period, lacking the obligations of a true home there. The court quoted Senator George’s explanation that the amendment was intended to exempt American citizens “who establish a home, maintains his establishment and is taking on corresponding obligations of a home in a foreign country,” while reaching “technicians… who are merely temporarily away from home.”

Practical Implications

This case clarifies the requirements for establishing bona fide residency in a foreign country for the purpose of excluding foreign earned income from U.S. taxation. It highlights that merely working in a foreign country under an employment contract is insufficient. Taxpayers must demonstrate an intent to establish a genuine residence in the foreign country, taking on the obligations and characteristics of a resident. Later cases have cited Hertig to emphasize the importance of intent and the specific facts demonstrating residency, focusing on factors like the duration of stay, integration into the local community, payment of foreign taxes, and the establishment of a home in the foreign country. The ruling underscores the need for detailed documentation and a clear demonstration of residential intent when claiming the foreign earned income exclusion.

© 2025 SCOTUSreports.com. All rights reserved.