22 T.C. 343 (1954)

To qualify for the foreign earned income exclusion, a U.S. citizen must establish bona fide residency in a foreign country, which is determined by examining the individual's intentions regarding the length and nature of their stay, and the nature of their employment.

Summary

The United States Tax Court considered whether Burlin and Marjorie Hamer were bona fide residents of China during 1948, entitling them to exclude their foreign-earned income from U.S. taxes. The Hamers, U.S. citizens, worked for UNRRA and then FAO in China. The court, applying residency tests similar to those for aliens in the U.S., found that the Hamers had established bona fide residency in China, focusing on the indefinite nature of their employment with FAO, their intentions to remain employed in the region, and their integration into the local community. This case clarifies the factors used to determine bona fide residence abroad for purposes of the foreign earned income exclusion under the Internal Revenue Code.

Facts

Burlin and Marjorie Hamer, husband and wife, were U.S. citizens. Before 1946, they lived in Iowa. In 1946, Burlin accepted employment with UNRRA and went to China, followed by Marjorie. They intended to stay for the duration of UNRRA, seeking other foreign employment opportunities. They sold some of their belongings and shipped other possessions to China. They worked for UNRRA until it ceased operations in China in late 1947, then transitioned to employment with FAO. The Hamers rented a house in Nanking but were evacuated due to the advance of Chinese Communist forces. The Hamers maintained bank accounts and church memberships in the U.S. They did not apply for citizenship in China.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in the Hamers' 1948 income taxes, disputing their claim for the foreign earned income exclusion, because the Commissioner did not believe they were bona fide residents of China. The Hamers petitioned the United States Tax Court, which ruled in their favor.

Issue(s)

Whether the petitioners were bona fide residents of China during the entire taxable year 1948, as defined by the applicable tax code and regulations.

Holding

Yes, because the court found that the Hamers had established bona fide residency in China during 1948.

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Court’s Reasoning

The court considered whether the Hamers met the requirements for the foreign earned income exclusion under Section 116(a)(1) of the Internal Revenue Code. The court stated the criteria for determining residency, noting the emphasis on the intention of the taxpayer. The court examined the regulations for determining alien residency in the U.S. and applied those criteria to the Hamers, focusing on their intent and the nature of their stay in China.

The court distinguished this case from others, like *Lovald v. Commissioner*, where the taxpayer’s employment ended before the end of the tax year or *Steve P. Sladack, 51 T.C. 1081 (1969)* where the employment had a fixed end date. The court found that the Hamers’ employment with FAO was indefinite and the organization’s work was ongoing. The court noted that although the Hamers’ contracts were for short periods, these contracts were renewable and provided for repatriation. Also, they established a home and participated in social activities. The court emphasized that Burlin intended to remain in foreign work. Therefore, the court concluded that the Hamers had established bona fide residency in China during the entire taxable year 1948. The Court also recognized that the nature of FAO’s work, and the Hamers’ indefinite intentions, supported the residency determination.

Practical Implications

This case is essential for understanding what constitutes “bona fide residence” in a foreign country for U.S. tax purposes. Attorneys and tax advisors can use this case to guide clients in establishing and documenting their foreign residency to support claims for the foreign earned income exclusion.

- Demonstrates that a taxpayer’s intent to stay in a foreign country for an indefinite period, especially for a job that is not time-limited, is a critical factor.
- Shows that even short-term contracts may not preclude a finding of bona fide residence if the overall employment situation indicates a long-term commitment.
- Emphasizes the importance of integrating into the local community, although this is only one factor to be considered.
- Guides tax professionals in advising clients who work abroad on what evidence to gather to prove residency.

The case highlights the importance of the taxpayer’s intention to establish a foreign home for an extended period as a central factor. The facts showing the indefinite duration of employment and the Hamers’ plans for the future were critical to the Court’s decision.

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