***Sochurek v. Commissioner*, 30 T.C. 540 (1958)**

To qualify for the foreign earned income exclusion, a U.S. citizen must establish a bona fide residence in a foreign country, which requires more than a mere floating intention to return, particularly when considering the impact of events such as war on the taxpayer's ability to return.

Summary

The case addresses whether a U.S. citizen, who had resided in China for several years but returned to the U.S. due to WWII, could exclude foreign-earned income for the years 1946 and 1947. The court held that the taxpayer had abandoned his Chinese residence upon his return to the U.S. in 1941 and failed to reestablish it during the relevant tax years. The court distinguished between residence and domicile, emphasizing the importance of the taxpayer's intentions and actions regarding their return to the foreign country. The court also addressed a failure to file penalty, and the proper tax year to report a bonus payment. The case is significant for clarifying the requirements for the foreign earned income exclusion under the Internal Revenue Code.

Facts

The taxpayer, an American citizen, was a bona fide resident of China from October 1929 to November 1941. He returned to the United States in November 1941 due to an agreement with his employer for a rotation of duties. Shortly after his return, the United States declared war on Japan, preventing his return to China until February 1946. He returned to the U.S. on December 6, 1947. The IRS contended the taxpayer abandoned his China residence, while the taxpayer argued he maintained a continuous bona fide residence in China, or at least for part of 1947, and sought to exclude income earned from sources outside the United States for tax purposes.

Procedural History

The case was heard by the U.S. Tax Court. The Commissioner of Internal Revenue determined deficiencies in the taxpayer's income tax for 1946 and 1947, including an addition to tax for failure to file a return in 1946. The taxpayer contested the determination, leading to the Tax Court's review of the facts and applicable law.

Issue(s)

1. Whether the income earned by the taxpayer from sources outside the United States during 1946 and 1947 was excludable from taxation under Section 116(a) of the Internal Revenue Code of 1939.
2. Whether the taxpayer was subject to an addition to tax under section 291(a) of the 1939 Code for failure to file a tax return in 1946.
3. In what year should the taxpayer be taxed on a $100,000 bonus payment.

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Holding

1. No, because the taxpayer abandoned his China residence when he returned to the U.S. in 1941.
2. Yes, because the taxpayer's belief that he was not required to file a return was insufficient to constitute reasonable cause.
3. The bonus should be included in 1947, not 1946.

Court's Reasoning

The court distinguished between residence and domicile, applying the definition of "resident" from Regulations 111, section 29.211-2, which states, "An alien actually present in the United States who is not a mere transient or sojourner is a resident of the United States for purposes of the income tax. Whether he is a transient is determined by his intentions with regard to the length and nature of his stay." The court determined that the taxpayer abandoned his China residence upon his return to the United States in 1941. His intention to return was indefinite, and his return was prevented by the war. The court reasoned that the taxpayer's intent, after being prevented from returning, was to reside in the U.S. until conditions changed, thus he became a resident of the United States. Furthermore, the court rejected the alternative argument that he was a resident of Hong Kong in 1947 because he never established residence there, only intending to do so in the future.

The Court cited, "did he not then, from the time it was determined that conditions would not permit his return, fully intend to be a resident of the United States until those conditions were removed?" In regard to the failure to file penalty, the court stated, "Mere uninformed and unsupported belief by a taxpayer, no matter how sincere that belief may be, that he is not required to file a tax return, is insufficient to constitute reasonable cause for his failure so to file."

Practical Implications

This case is important for understanding how the IRS and the courts interpret the "bona fide residence" requirement for the foreign earned income exclusion. Legal practitioners should advise clients to document their intentions when relocating or returning from a foreign country, including any factors (e.g., war or other events) that may affect their ability to return. This case also highlights the need to establish an actual residence, rather than merely intending to establish a residence in the future. Taxpayers should also seek professional tax advice to avoid penalties for failing to file returns. Later cases will likely examine the facts and the taxpayer's intentions to determine if they abandoned their foreign residence.

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