33 T.C. 817 (1960)

To exclude foreign earned income, a taxpayer must either be physically present in a foreign country for a specified period or be a bona fide resident of a foreign country during the taxable year, with physical presence being the key factor for the former and residence requiring more than mere presence.

Summary

Frank Souza, a U.S. citizen and fisherman, sought to exclude his foreign-earned income from U.S. taxation under Internal Revenue Code provisions. The case involved two primary issues: whether Souza was present in Peru for 510 days within an 18-month period and whether he was a bona fide resident of Peru. The Tax Court held that Souza's fishing in waters beyond 3 miles of the Peruvian coastline did not constitute presence in Peru due to the U.S. government's position on territorial waters. The court also determined Souza was not a bona fide resident of Peru, as he maintained a home in the U.S. and had no intention of permanent residence abroad. Additionally, the court addressed penalties for failing to file declarations of estimated tax, finding them applicable.

Facts

Frank Souza, a U.S. citizen and captain of a fishing vessel, fished in waters off the coast of Peru. Peru claimed jurisdiction over waters up to 200 miles from its coastline and required permits for fishing within those waters, while the U.S. government only recognized Peruvian jurisdiction up to 3 miles. Souza fished in waters beyond the 3-mile limit. He maintained a hotel room in Peru where he kept his belongings and stayed when in port. His wife and daughter visited him in Peru. Souza received advice from an accountant, who was not his tax preparer, about his tax obligations. He did not file declarations of estimated tax for the years in question.

Procedural History

The Commissioner of Internal Revenue determined deficiencies and additions to tax for Souza. Souza challenged this determination in the U.S. Tax Court, arguing that his income was excludable under the foreign earned income provisions of the Internal Revenue Code. The Tax Court held a trial and issued a ruling.

Issue(s)

1. Whether Frank Souza was present in Peru for 510 days during an 18-month period to exclude his income under section 911(a)(2) of the 1954 Code.

2. Whether Frank Souza was a bona fide resident of Peru during the entire year 1954 to exclude his income under section 911(a)(1) of the 1954 Code.

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3. Whether the petitioners were liable for additions to tax for failure to file a declaration of estimated tax and for substantial underestimation of estimated tax.

Holding

1. No, because fishing in waters beyond 3 miles from the Peruvian coastline did not constitute being present in Peru, due to U.S. recognition of Peru's territorial waters.

2. No, because Souza was not a bona fide resident of Peru during 1954 as he maintained a home in the U.S. and had no intention of permanent residence.

3. Yes, the petitioners are liable for additions to tax for failure to file declarations of estimated tax, but not for substantial underestimation as no declaration of estimated tax was filed.

Court's Reasoning

The court first addressed the definition of

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