33 T.C. 1089 (1960)

A U.S. citizen working abroad can qualify for a foreign earned income exclusion if they are a bona fide resident of a foreign country, even if their family resides in the United States for specific purposes like education.

Summary

Frederick Hack, employed by a U.S. corporation and working primarily on a ship in international waters, sought to exclude his foreign-earned income from federal income tax. He argued he was a bona fide resident of foreign countries, despite his family residing in the United States. The Tax Court held in favor of Hack, determining that his continuous employment abroad, intent to remain there, and the temporary nature of his family's U.S. residency for educational purposes established his bona fide foreign residency. The court found that Hack met the requirements for the foreign earned income exclusion under the Internal Revenue Code of 1939.

Facts

Frederick F. Hack worked as a ship master for All America Cables and Radio, Inc. (AACR) from 1936. From 1936 until 1946, Hack and his family resided in Peru. In 1946, Hack's wife and children moved to the United States so the children could receive higher education. Hack stayed in his role as ship master, signing a new three-year contract, and intended to continue working abroad. He maintained ties to his foreign employment, and the family planned to rejoin him abroad after the children completed their education. Hack sought advice from the IRS in 1946 and received a letter stating he could claim the exemption under Section 116(a)(1) if he was a bona fide resident of a foreign country. For the years in question (1947-1953), Hack did not file tax returns, believing his foreign-earned income was exempt.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in Hack's income tax for the years 1947-1953, along with additions for failure to file returns. The Tax Court addressed the sole remaining issue of whether Hack qualified as a bona fide resident of a foreign country within the meaning of Section 116(a)(1) of the Internal Revenue Code of 1939.

Issue(s)

1. Whether Hack was a bona fide resident of a foreign country or countries during the tax years 1947-1953, under Section 116(a)(1) of the Internal Revenue Code of 1939?

Holding

1. Yes, Hack was a bona fide resident of a foreign country or countries because he

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maintained his employment and intent to reside abroad, even though his family lived in the United States for the education of the children.

Court’s Reasoning

The court emphasized that the determination of bona fide residence is a question of fact. The court examined the facts of the case and the relevant regulations. The court considered that before 1946, Hack clearly was a bona fide resident of Peru. Although Hack’s family moved to the U.S., he continued his employment and maintained his primary base of operations in foreign countries. The court noted that the family’s move to the U.S. was for a specific purpose (education), after which the family intended to rejoin Hack abroad. The court also highlighted the advice Hack received from the IRS in 1946. Given the circumstances, the court found Hack’s absence from the U.S. to be temporary, and his bona fide foreign residency to be maintained.

The court cited prior cases, specifically Donald H. Nelson, Joseph A. McCurnin, and Leonard Larsen, to underscore that the determination of bona fide residence hinges on the specific facts. There was no discussion of any dissenting or concurring opinions.

Practical Implications

This case provides guidance on how the Tax Court evaluates whether a taxpayer is a bona fide resident of a foreign country for tax purposes. It highlights the importance of:

• The taxpayer’s intention to reside abroad.

• The nature and duration of the taxpayer’s employment abroad.

• The purpose of the taxpayer’s family’s residency in the U.S. (e.g., education).

• Continuity of foreign residency even when family members may reside elsewhere for limited purposes.

• The significance of prior IRS guidance on the matter.

Taxpayers working abroad should carefully document their intent, employment, and family circumstances to support a claim for foreign earned income exclusion. Subsequent cases rely on the specific facts and circumstances test applied in this case, including the temporary nature of the family’s residency in the U.S.

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