50 T.C. 177 (1968)

To qualify for the foreign earned income exclusion under Section 911(a)(1) of the Internal Revenue Code, a U.S. citizen working abroad must demonstrate bona fide residence in a foreign country, which requires a degree of permanent attachment to that country, beyond mere transient presence for specific projects.

Summary

Jose Ferrer, a U.S. citizen and actor, claimed foreign earned income exclusion for salaries earned while working on films in various foreign countries in 1962. The Tax Court denied the exclusion, finding Ferrer was not a bona fide resident of any foreign country. The court reasoned that Ferrer's presence in foreign countries was temporary and project-based, lacking the requisite degree of permanent attachment indicative of bona fide residence. The court did, however, allow a deduction for certain secretarial expenses as ordinary and necessary business expenses, while disallowing other claimed deductions due to insufficient evidence.

Facts

Petitioner Jose Ferrer, a U.S. citizen, worked as an actor, director, and producer. In 1962, he traveled extensively to India, England, Spain, Yugoslavia, Italy, and other European countries for film projects. During this time, he maintained a home in Ossining, N.Y., and faced marital difficulties in the U.S. Ferrer claimed foreign earned income exclusion on his U.S. tax return for income earned abroad, arguing he was a bona fide resident of foreign countries. He lived in rented apartments or hotels while abroad, never owned property, voted, or participated in community life in any foreign country. His agent actively sought employment for him both in the U.S. and abroad.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Ferrer's federal income tax for 1962, disallowing the foreign earned income exclusion. Ferrer petitioned the Tax Court, contesting the deficiency. The Tax Court upheld the Commissioner's determination regarding the foreign earned income exclusion but allowed a deduction for some business expenses.

Issue(s)

1. Whether the income earned by Ferrer in 1962 while working on films in foreign countries is exempt from U.S. taxation under Section 911(a)(1) of the Internal Revenue Code as income earned by a bona fide resident of a foreign country.
2. If the foreign earned income exclusion is not applicable, whether Ferrer is entitled to deduct unreimbursed business expenses related to his foreign income, beyond the amount already allowed by the Commissioner.

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Holding

1. No, because Ferrer did not establish that he was a bona fide resident of a foreign country or countries for an uninterrupted period including an entire taxable year.
2. Yes, in part. Ferrer is entitled to a deduction for certain secretarial expenses under Section 162(a)(1) as ordinary and necessary business expenses, but other claimed deductions are disallowed due to insufficient proof.

Court's Reasoning

The Tax Court reasoned that to qualify as a bona fide resident of a foreign country under Section 911(a)(1), a taxpayer must demonstrate a degree of permanent attachment to that country. The court referenced regulations defining residence by analogy to alien residency in the U.S., emphasizing the need for more than a transient or temporary presence. Citing *Rudolf Jellinek, 36 T.C. 826 (1961)*, the court stated that bona fide residence requires "some degree of permanent attachment for the country of which he is an alien." The court found Ferrer's presence in foreign countries was solely for specific film projects, lacking intent for indefinite or extended stay. His agent sought work for him globally, indicating no commitment to foreign residency. The court distinguished this case from *Leonard Larsen, 23 T.C. 599 (1955)*, where the taxpayer intended to make a career of foreign employment. Regarding business expenses, the court applied the three conditions from *Commissioner v. Flowers, 326 U.S. 465 (1946)* for travel expense deductibility, finding Ferrer failed to adequately substantiate most expenses as being incurred in pursuit of business, except for secretarial expenses, which were sufficiently proven by testimony.

Practical Implications

Ferrer v. Commissioner clarifies the distinction between being physically present in a foreign country and establishing bona fide residence for tax purposes. It emphasizes that temporary work assignments abroad, even if extended, do not automatically confer bona fide residency. Legal professionals and taxpayers should consider factors demonstrating a degree of permanent attachment to a foreign country, such as establishing a home, participating in community life, and the nature and duration of foreign stays, when evaluating eligibility for the foreign earned income exclusion. This case serves as a reminder that the IRS and courts scrutinize claims of foreign bona fide residence, requiring taxpayers to provide substantial evidence beyond mere physical presence and foreign income generation.

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