Dammers v. Commissioner, 73 T. C. 761 (1980)

Reimbursed moving expenses are sourced to the location of services that prompted the initial move, not the location of subsequent employment.

Summary

In Dammers v. Commissioner, the Tax Court ruled that reimbursed moving expenses of $7,312. 05 should be attributed to foreign source income, impacting the calculation of the foreign tax credit. Clifford Dammers, an attorney, was promised moving expense reimbursement by his employer, Cleary, Gottlieb, as an inducement to transfer to their Paris office. The court held that since the promise was made before the move and not contingent on future U. S. employment, the reimbursement was compensation for foreign services, allowing for a larger foreign tax credit.

Facts

Clifford Dammers, employed by Cleary, Gottlieb, was transferred to the firm's Paris office in 1971, with a promise of reimbursement for moving expenses to France and back to the U. S. In 1973, he moved to the firm's London office, again with a promise of reimbursement for the move back to the U. S. Dammers returned to the U. S. in 1975 and was reimbursed $7,312. 05 for his move. The IRS argued this reimbursement should be considered U. S. source income, while Dammers claimed it was foreign source income for foreign tax credit purposes.

Procedural History

The case was submitted fully stipulated under Rule 122. The Tax Court was tasked with deciding whether the reimbursed moving expenses were attributable to foreign or U. S. source income, affecting the computation of Dammers' foreign tax credit for 1975.

Issue(s)

1. Whether the reimbursed moving expenses of $7,312. 05 received by Clifford Dammers are attributable to income from sources outside the United States for the purpose of calculating his foreign tax credit.

Holding

1. Yes, because the reimbursement was promised before and as an inducement for Dammers' transfer to the Paris office, making it compensation for services performed abroad and thus foreign source income.

Court's Reasoning

The court applied sections 861(a)(3) and 862(a)(3) of the Internal Revenue Code,

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which determine the source of income based on the location where services are performed. The court emphasized that the promise to reimburse Dammers' moving expenses was made before his move to Paris and was not contingent on his future U. S. employment. The court distinguished this case from Hughes v. Commissioner, noting that in Dammers' case, the reimbursement was tied to the initial foreign move rather than subsequent U. S. employment. The court quoted, "the reimbursement must be considered compensation for services performed without the United States, and thus income from sources without the United States," highlighting the significance of the timing and purpose of the reimbursement promise.

Practical Implications

This decision clarifies that for tax purposes, the source of reimbursed moving expenses should be determined by the location of services that prompted the initial move, not subsequent employment. Legal practitioners should ensure that agreements for moving expense reimbursements clearly state their purpose and timing to optimize tax benefits. For businesses, this ruling suggests structuring international employee transfers with careful consideration of tax implications. Subsequent cases like Rev. Rul. 93-86 have further refined these principles, affirming that the source of income for moving expenses depends on the employment that occasioned the move.

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