Harrington v. Commissioner, 93 T. C. 297 (1989)

A U. S. citizen working abroad on a rotational schedule does not qualify for the foreign earned income exclusion if their abode remains in the U. S.

Summary

James Harrington, a U. S. citizen working in Angola on a 28-day work/28-day rest rotation, sought to exclude his foreign income under IRC § 911. The Tax Court held that Harrington's strong ties to his Texas home meant his abode remained in the U. S. , disqualifying him from the exclusion. Additionally, Harrington failed to show he could have met the tax home, bona fide residence, or physical presence requirements but for Angola's adverse conditions, as required for a waiver under § 911(d)(4). This case clarifies that rotational workers must establish a foreign tax home to claim the exclusion.

Facts

James Harrington worked for SECO Industries in Angola from January 1983, on a 28-day work/28-day rest schedule. During work periods, he lived on a platform and a moored ship off Angola's coast. He returned to his family in Frankston, Texas, during rest periods. Harrington's family remained in Texas, where they maintained a home, bank accounts, and vehicles. Angola's government prohibited Harrington's family from joining him and restricted his movements within the country. He was physically present in Angola for 199 days in 1983 and 179 days in 1984.

Procedural History

The Commissioner determined deficiencies in Harrington's 1983 and 1984 federal income taxes, disallowing his claimed foreign earned income exclusion. Harrington petitioned the Tax Court for a redetermination. The court found Harrington did not qualify for the exclusion and upheld the deficiencies.

Issue(s)

1. Whether Harrington's abode was in the United States during the years at issue, preventing him from having a tax home in Angola for purposes of IRC § 911.
2. Whether Harrington could reasonably have been expected to meet the tax home, bona fide residence, or physical presence requirements of IRC § 911(d)(1) but for war, civil unrest, or similar adverse conditions in Angola, entitling him to a waiver under IRC § 911(d)(4).

Holding

1. Yes, because Harrington maintained strong domestic ties to Texas, including family, bank accounts, and vehicles, while his ties to Angola were limited and transitory.

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2. No, because Harrington failed to show that, but for Angola's conditions, he would have established a tax home there, become a bona fide resident, or remained physically present for the required 330 days.

Court's Reasoning

The court applied the domestic ties analysis from *Lemay v. Commissioner*, focusing on Harrington's strong ties to Texas and limited, transitory connections to Angola. The court rejected Harrington's argument that his abode shifted to Angola during work periods, finding no support for a different interpretation of "abode" under the physical presence test. Regarding the waiver under § 911(d)(4), the court found Harrington did not show a direct causal link between Angola's conditions and his failure to meet § 911(d)(1) requirements. His rotational schedule was common in the industry and not unique to Angola. Additionally, Harrington could not have reasonably expected to meet the requirements, as he knew his schedule and Angola's conditions from the start. The court noted that Harrington was never forced to permanently leave Angola as contemplated by the waiver provision.

Practical Implications

This decision impacts how attorneys should analyze similar cases involving rotational workers seeking the foreign earned income exclusion. It clarifies that a strong U. S. abode precludes establishing a foreign tax home, even for those working abroad for significant periods. Practitioners must carefully assess clients' domestic ties when considering the exclusion. The case also limits the applicability of the § 911(d)(4) waiver, requiring a direct causal link between a country's adverse conditions and a taxpayer's inability to meet the exclusion requirements. This ruling may affect how businesses structure expatriate assignments and how tax professionals advise clients on rotational work arrangements. Subsequent cases like *Barbieri v. Commissioner* have followed this reasoning, reinforcing its importance in international tax practice.

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