Abdel-Fattah v. Commissioner, 134 T. C. 190 (2010)

In Abdel-Fattah v. Commissioner, the U. S. Tax Court ruled that wages earned by a non-U. S. citizen working for a foreign embassy are exempt from U. S. income tax under I. R. C. § 893(a), without requiring a certification of reciprocity by the U. S. Department of State. This decision clarifies that the exemption is available if the employee meets the statutory criteria, even in the absence of State Department certification, impacting how foreign embassy employees' tax obligations are determined.

Parties

Shoukri Osman Saleh Abdel-Fattah, the petitioner, was a non-U. S. citizen employed by the Embassy of the United Arab Emirates (UAE) in Washington, D. C. The respondent was the Commissioner of Internal Revenue.

Facts

Shoukri Osman Saleh Abdel-Fattah, an Egyptian national, worked as a security guard and driver at the UAE Embassy in Washington, D. C. from 2000 through 2007, except for a six-month period in 2006 when he was unemployed. During the years 2005-2007, Abdel-Fattah filed U. S. income tax returns reporting his embassy wages as income. The UAE does not impose an income tax, and thus U. S. Embassy employees in the UAE were not subject to income tax there. In 2008, after the years in issue, the UAE Embassy requested and received certification from the U. S. Department of State that the UAE did not tax U. S. Embassy employees' wages. However, the IRS had already issued a notice of deficiency for 2005-2007, which did not account for the exemption of Abdel-Fattah's embassy wages.

Procedural History

The IRS issued a notice of deficiency to Abdel-Fattah for the tax years 2005-2007, asserting deficiencies based on adjustments unrelated to his embassy wages. Abdel-Fattah petitioned the U. S. Tax Court for a redetermination of the deficiencies, claiming his embassy wages were exempt under I. R. C. § 893. Both parties filed cross-motions for summary judgment on the issue of whether Abdel-Fattah's embassy wages were exempt from U. S. income tax.

Issue(s)

Whether the exemption from U. S. income tax under I. R. C. § 893(a) for wages earned by a non-U. S. citizen employee of a foreign government requires certification by the U. S. Department of State under I. R. C. § 893(b)?

Rule(s) of Law

I. R. C. § 893(a) provides that wages, fees, or salary of an employee of a foreign

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government received as compensation for official services shall be exempt from U. S. income tax if: (1) the employee is not a citizen of the United States, (2) the services are similar to those performed by U. S. government employees in foreign countries, and (3) the foreign government grants an equivalent exemption to U. S. employees performing similar services in that country. I. R. C. § 893(b) states that the Secretary of State shall certify to the Secretary of the Treasury the names of foreign countries that grant such exemptions and the character of the services performed by U. S. employees in those countries.

Holding

The U. S. Tax Court held that the exemption from U. S. income tax under I. R. C. § 893(a) does not require certification by the U. S. Department of State under I. R. C. § 893(b). Therefore, Abdel-Fattah's wages from working for the UAE Embassy from 2005-2007 were exempt from U. S. income tax because he satisfied the three conditions of I. R. C. § 893(a).

Reasoning

The court's reasoning focused on the statutory interpretation of I. R. C. § 893. The court noted that the plain language of § 893(a) lists three conditions for exemption without mentioning certification as a prerequisite. In contrast, § 893(b) mandates that the Secretary of State certify reciprocity to the Secretary of the Treasury but does not state that such certification is required for the exemption to apply. The court distinguished § 893 from other tax statutes where certification is explicitly required as a condition for a tax benefit, such as in I. R. C. § 3121(b)(12)(B) for employment tax exemptions. The court also considered the legislative history and purpose behind § 893, which was to provide reciprocal exemptions to prevent U. S. consular employees from being taxed by foreign countries. The court concluded that treating certification as a prerequisite would contradict the legislative intent to facilitate exemptions and could unfairly deny exemptions due to delays or failures in the certification process. The court rejected the Commissioner's argument that certification should be required for administrative convenience and uniformity, stating that any difficulties in administering the statute without certification should be addressed by Congress, not by judicial reinterpretation.

Disposition

The court granted Abdel-Fattah's motion for summary judgment and denied the Commissioner's motion. An appropriate order was issued, and a decision was to be entered under Tax Court Rule 155.

Significance/Impact

This decision clarifies that the exemption from U. S. income tax for foreign government employees under I. R. C. § 893(a) is not contingent on a certification by

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the U. S. Department of State. It affirms that the statutory conditions for exemption are sufficient to claim the benefit, which may lead to increased claims by foreign embassy employees for tax exemptions. The ruling underscores the importance of adhering to the statutory text over administrative convenience and may influence how the IRS processes such claims in the future. It also highlights the potential need for legislative action if Congress wishes to make certification a prerequisite for the exemption. The decision may prompt other courts to similarly interpret the statute, affecting the tax treatment of foreign embassy employees across the U. S.

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