Goosen v. Commissioner, 136 T. C. 547 (U. S. Tax Court 2011)

In Goosen v. Commissioner, the U. S. Tax Court ruled on the characterization and sourcing of endorsement income for a nonresident alien golfer. Retief Goosen, a U. K. resident, was found to have received income that was part personal services and part royalty from endorsement agreements with sponsors like Acushnet, TaylorMade, and Izod. The court determined that 50% of this income should be treated as U. S. -source royalty income connected to his U. S. business activities, impacting how nonresident athletes report and tax endorsement earnings.

Parties

Retief Goosen, a professional golfer and a nonresident of the United States residing in the United Kingdom, was the Petitioner. The Commissioner of Internal Revenue was the Respondent.

Facts

Retief Goosen, a South African citizen residing in the United Kingdom, entered into various worldwide endorsement agreements with sponsors such as Acushnet, TaylorMade, Izod, Upper Deck, Electronic Arts, and Rolex. These agreements allowed the sponsors to use Goosen's name, face, image, and likeness for marketing purposes. The agreements with Acushnet, TaylorMade, and Izod (on-course endorsements) required Goosen to wear or use their products during tournaments, while the agreements with Upper Deck, Electronic Arts, and Rolex (off-course endorsements) did not have such requirements. Goosen's income from these agreements included base endorsement fees, which were prorated if he did not play in a specified number of tournaments, and bonuses for specific tournament finishes or rankings. Goosen reported his income as 50% personal services income and 50% royalty income for on-course endorsements, and 100% royalty income for off-course endorsements, with a small percentage as U. S. -source income.

Procedural History

The Commissioner of Internal Revenue audited Goosen's federal income tax returns for 2002 and 2003 and determined deficiencies due to different characterizations and allocations of endorsement income. Goosen challenged these determinations by filing a petition with the U. S. Tax Court. The Tax Court heard the case and issued its opinion on June 9, 2011, resolving the issues of characterization and sourcing of Goosen's endorsement income.

Issue(s)

Whether the endorsement fees and bonuses received by Goosen from Acushnet, TaylorMade, and Izod should be characterized as solely personal services income, solely royalty income, or part personal services income and part royalty income?

Whether the royalty income received by Goosen from the endorsement agreements should be sourced to the United States, and if so, what percentage?

Whether Goosen is eligible for any benefits under the U. S. -U. K. income tax treaties?

Rule(s) of Law

Income received by nonresident aliens for the use of their name and likeness is generally considered royalty income, as the individual retains an ownership interest in these rights. See *Cepeda v. Swift & Co.* , 415 F. 2d 1205 (8th Cir. 1969). Royalty income is sourced to the location where the intangible property is used or granted the privilege of being used. See 26 U. S. C. §§ 861(a)(4), 862(a)(4). For nonresident aliens engaged in a U. S. trade or business, U. S. -source income that is effectively connected with that business is taxed at graduated rates applicable to U. S. residents. See 26 U. S. C. § 882(a)(1). U. S. -source royalty income is effectively connected with a U. S. trade or business if the activities of the business are a material factor in realizing the royalty income. See 26 C. F. R. § 1. 864-4(c)(3)(i).

Holding

The endorsement fees and bonuses received by Goosen from Acushnet, TaylorMade, and Izod are allocated 50% to personal services income and 50% to royalty income. Fifty percent of the royalty income received from Acushnet, TaylorMade, and Izod, and from Rolex, is U. S. -source income effectively connected with Goosen’s U. S. trade or business. Ninety-two percent of the royalty income from Upper Deck and seventy percent from Electronic Arts are U. S. -source income, but not effectively connected with a U. S. trade or business. Goosen does not benefit from any provision under the 1975 or the 2001 U. S. -U. K. income tax treaties.

Reasoning

The court reasoned that the sponsors paid Goosen for both the services he provided and the right to use his name and likeness. The endorsement agreements required Goosen to wear or use the sponsors’ products during tournaments and to engage in promotional activities, indicating that his services were a significant component of the income. However, the sponsors also valued Goosen’s image and brand, which they used in global marketing campaigns, justifying the allocation of part of the income as royalty income. The court found that the evidence supported an equal split between personal services and royalty income, as both were equally important to the sponsors. For sourcing, the court determined that Goosen’s name and likeness were used worldwide, but the U. S. market was significant enough to warrant a 50% allocation of royalty income to the United States for the on-course and Rolex endorsements. The court used sales data to allocate 92% of Upper Deck’s and 70% of Electronic Arts’ royalties to the U. S. The court also determined that the U. S. -source royalty income from on-course endorsements was effectively connected

with Goosen's U. S. trade or business of playing golf, while the off-course endorsements were not. Finally, the court held that Goosen did not meet his burden of proving that any endorsement income was remitted to or received in the United Kingdom, thus making him ineligible for treaty benefits.

Disposition

The court's decision was entered under Rule 155 of the Tax Court Rules of Practice and Procedure, allowing the parties to compute the specific tax deficiencies based on the court's holdings.

Significance/Impact

The Goosen case is significant for its detailed analysis of the characterization and sourcing of endorsement income for nonresident aliens, particularly athletes. It establishes a framework for determining when income from endorsement agreements should be treated as personal services income or royalty income and how such income should be sourced for tax purposes. The case also highlights the importance of the connection between the income and the U. S. trade or business in determining whether the income is effectively connected and thus subject to graduated tax rates. Subsequent cases have cited Goosen for its principles on the taxation of endorsement income, affecting how nonresident athletes structure their endorsement deals and report their income for U. S. tax purposes.

