Harrison v. Commissioner, 138 T. C. 340, 2012 U. S. Tax Ct. LEXIS 18 (U. S. Tax Court 2012)

In Harrison v. Commissioner, the U. S. Tax Court ruled that wages paid to a German citizen and U. S. permanent resident employed by a German defense administration office were not exempt from U. S. federal income tax. The court rejected claims of exemption under both U. S. tax law and the NATO Status of Forces Agreement, emphasizing the lack of reciprocity in German tax law and the resident status of the employee. This decision clarifies the tax treatment of foreign government employees residing permanently in the U. S. , impacting similar cases involving tax exemptions for non-diplomatic foreign workers.

Parties

Rosemarie E. Harrison, the petitioner, was the plaintiff at the trial level before the U. S. Tax Court. The Commissioner of Internal Revenue was the respondent and defendant.

Facts

Rosemarie E. Harrison, a German citizen and permanent resident of the United States, was employed by the Federal Republic of Germany, Office of Defense Administration, U. S. A. and Canada (German Defense Administration) from 1977 until her retirement. During the tax years in question (2006-2008), she worked as an administrative analyst and transportation specialist at Dulles International Airport in Sterling, Virginia. Harrison received wages of $83,249, $85,275, and $126,863 for 2006, 2007, and 2008, respectively, which were not taxed by Germany. She filed her U. S. federal income tax returns for these years but claimed her wages were exempt from U. S. taxation under I. R. C. section 893(a) and the NATO Status of Forces Agreement (NATO SOFA). The Commissioner determined deficiencies in her taxes, leading to this litigation.

Procedural History

Harrison timely filed her federal income tax returns for 2006-2008, asserting her wages were exempt from U. S. taxation. The Commissioner of Internal Revenue issued a notice of deficiency, determining that Harrison’s wages were taxable and assessing additional taxes. Harrison petitioned the U. S. Tax Court for a redetermination of the deficiency. The Commissioner conceded that the addition to tax under section 6651(a)(1) for 2008 was not applicable due to timely filing. The Tax Court then proceeded to decide the sole issue of whether Harrison’s wages were exempt from U. S. taxation under section 893(a) or NATO SOFA.

Issue(s)

Whether wages paid by the German Defense Administration to Rosemarie E. Harrison, a German citizen and U. S. permanent resident, are exempt from U. S.

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federal income tax under I. R. C. section 893(a)?

Whether Harrison’s wages are exempt from U. S. federal income tax under the NATO Status of Forces Agreement?

Rule(s) of Law

Section 893(a) of the Internal Revenue Code provides that compensation paid by a foreign government to its employees for official services is exempt from U. S. taxation if the employee is not a U. S. citizen, the services are similar to those performed by U. S. government employees in foreign countries, and the foreign government grants an equivalent exemption to U. S. employees performing similar services in that foreign country.

The NATO Status of Forces Agreement (NATO SOFA) exempts members of a force or civilian component from taxation in the receiving state on salary and emoluments paid by the sending state, provided they are not ordinarily resident in the receiving state.

Holding

The U. S. Tax Court held that Harrison’s wages were not exempt from U. S. federal income tax under either section 893(a) of the Internal Revenue Code or the NATO Status of Forces Agreement. The court found that the reciprocity condition required by section 893(a) was not met because German law does not exempt wages of U. S. government employees who are permanent residents of Germany. Additionally, the court determined that Harrison was not a member of the civilian component under NATO SOFA due to her status as a U. S. permanent resident.

Reasoning

The court’s reasoning focused on the interpretation and application of section 893(a) and NATO SOFA. For section 893(a), the court emphasized that the exemption requires reciprocity, which was not present because German law does not exempt wages of U. S. government employees residing permanently in Germany. The court cited the relevant provisions of German tax law, Einkommensteuergesetz (EStG), which explicitly excludes permanent residents from the tax exemption. The court also noted the absence of a certification by the U. S. Department of State under section 893(b) for the German Defense Administration, although this was not dispositive following the precedent set in Abdel-Fattah v. Commissioner.

Regarding NATO SOFA, the court interpreted the agreement’s definition of “civilian component” and found that Harrison did not meet this definition because she was ordinarily resident in the United States, the receiving state. The court relied on the specific language of the agreement, which excludes individuals who are ordinarily resident in the receiving state from the civilian component and thus from the tax exemption.

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The court also addressed Harrison’s arguments regarding prior IRS concessions and audits. It rejected these arguments, citing the principle that the Commissioner is not bound by prior settlements or audits and that each case must be decided on its own merits.

Disposition

The U. S. Tax Court ruled that Harrison’s wages were subject to U. S. federal income tax and were not exempt under either section 893(a) or NATO SOFA. The court entered its decision under Rule 155 of the Tax Court Rules of Practice and Procedure.

Significance/Impact

Harrison v. Commissioner clarifies the tax treatment of foreign government employees who are permanent residents of the United States. The decision emphasizes the importance of reciprocity in tax treaties and the specific definitions and exclusions within such agreements. It impacts similar cases involving claims for tax exemptions by non-diplomatic foreign government employees residing in the U. S. , reinforcing the principle that such exemptions are not automatically granted and require specific legal and factual conditions to be met. The case also highlights the limited scope of exemptions under NATO SOFA, particularly for individuals with permanent resident status in the receiving state.

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