Abrahamsen v. Commissioner, 142 T. C. 22 (U. S. Tax Ct. 2014)

In Abrahamsen v. Commissioner, the U. S. Tax Court ruled that a permanent U. S. resident cannot claim a tax exemption under I. R. C. § 893 for income earned after waiving rights to such exemptions. Sole K. Abrahamsen, a Finnish citizen and U. S. permanent resident, had waived her rights to tax exemptions when she became a permanent resident. The court upheld the IRS's decision to tax her income from Finland's Permanent Mission to the United Nations, emphasizing that the waiver was irrevocable and applicable to future income, setting a clear precedent on the limits of tax exemptions for permanent residents employed by international organizations.

Parties

Clifford A. Abrahamsen and Sole K. Abrahamsen, petitioners, v. Commissioner of Internal Revenue, respondent.

Facts

Sole K. Abrahamsen, a Finnish citizen, entered the United States in 1983 to work for Finland's Permanent Mission to the United Nations (Mission) in New York. She initially held a G-1 visa and worked in an administrative support role. In 1985, she left the Mission to work for Kansallis-Osake-Pankki, a Finnish bank, under an E-1 visa. On January 29, 1992, Ms. Abrahamsen obtained U. S. permanent resident status and executed Form I-508, thereby waiving rights, privileges, exemptions, and immunities that she would have otherwise been entitled to due to her occupational status. In 1996, she recommenced employment with the Mission, where she continued to work through the tax years at issue (2004-2009). During this period, she held various positions including secretary, adviser, and attaché. Petitioners did not report Ms. Abrahamsen's wages from the Mission as income for the tax years 2004-2009, claiming exemption under I. R. C. § 893, the U. S. -Finland tax treaty, the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, and the International Organizations Immunities Act.

Procedural History

After examining the Abrahamsens' tax returns, the IRS issued notices of deficiency for the tax years 2004-2009, including Ms. Abrahamsen's wages from the Mission in petitioners' gross income and determining accuracy-related penalties under I. R. C. § 6662. The petitioners timely filed a petition with the U. S. Tax Court seeking redetermination of the deficiencies and penalties. Both parties filed cross-motions for summary judgment on the issue of whether Ms. Abrahamsen's wages were exempt from Federal income tax.

Issue(s)

Whether Ms. Abrahamsen's wages from Finland's Permanent Mission to the United

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Nations for the tax years 2004-2009 were exempt from Federal income tax under I. R. C. § 893, the U. S. -Finland tax treaty, the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, or the International Organizations Immunities Act?

Rule(s) of Law

I. R. C. § 893 excludes from gross income and exempts from taxation income received by an employee of a foreign government or international organization if certain conditions are met. However, this exemption can be waived, and it must be waived by a person who wishes to become a permanent resident of the United States. The exemption does not apply to income received by a permanent resident after filing the waiver. See I. R. C. § 1. 893-1(b)(5), Income Tax Regs.

Holding

The court held that Ms. Abrahamsen's wages from the Mission for the tax years 2004-2009 were not exempt from Federal income tax because she had previously executed a valid waiver of rights, privileges, exemptions, and immunities when she became a permanent resident in 1992. Furthermore, the court held that neither the U. S. -Finland tax treaty, the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, nor the International Organizations Immunities Act provided an income tax exemption for permanent U. S. residents working in nondiplomatic positions for international organizations.

Reasoning

The court reasoned that Ms. Abrahamsen's execution of Form I-508 in 1992 constituted a valid waiver of her rights to tax exemptions under I. R. C. § 893. The court rejected petitioners' argument that the waiver should not be enforced due to Ms. Abrahamsen's limited understanding of English and the passage of time since signing the form, emphasizing that such arguments would undermine the effectiveness of the waiver procedure if accepted. The court also found that the U. S. -Finland tax treaty's saving clause allowed the United States to tax Ms. Abrahamsen's income as a permanent resident, overriding any potential exemptions under the treaty. Regarding diplomatic status, the court determined that Ms. Abrahamsen did not hold diplomatic rank during the relevant period, thus not qualifying for exemptions under the Vienna Convention on Diplomatic Relations or the International Organizations Immunities Act. The court's analysis included a review of statutory interpretation, the effectiveness of the waiver, and the application of international law to the specific facts of the case.

Disposition

The court granted the respondent's motion for summary judgment and denied the petitioners' motion with respect to the taxability of Ms. Abrahamsen's wages. The

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court denied both parties' motions for summary judgment regarding the accuracy-related penalties, finding a triable issue on whether petitioners could establish reasonable cause under I. R. C. § 6664(c)(1).

Significance/Impact

Abrahamsen v. Commissioner clarifies the irrevocable nature of the waiver required for permanent U. S. residents under I. R. C. § 893, impacting the tax treatment of income earned by such individuals after waiving their exemptions. The decision reinforces the principle that permanent residents cannot claim exemptions under international agreements or conventions unless specifically provided for those with diplomatic status. The case is significant for tax practitioners advising clients on the tax implications of permanent residency and the application of tax treaties and international law.

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