Gerd Topsnik v. Commissioner of Internal Revenue, 143 T. C. No. 12 (2014)

In Gerd Topsnik v. Commissioner, the U. S. Tax Court ruled that a German citizen, who had been a U. S. lawful permanent resident (LPR), remained taxable in the U. S. on his worldwide income during the years in issue due to his failure to formally abandon his LPR status. The court also determined that Topsnik was not a German resident under the U. S. -Germany Income Tax Treaty, thus not exempt from U. S. taxation. This case underscores the complexities of tax residency and treaty application in international tax law.

Parties

Gerd Topsnik, the petitioner, was a German citizen and a U. S. lawful permanent resident until he formally abandoned this status in 2010. The respondent was the Commissioner of Internal Revenue. Throughout the litigation, Topsnik was referred to as the petitioner, and the Commissioner as the respondent.

Facts

Gerd Topsnik, a German citizen, became a U. S. lawful permanent resident (LPR) in 1977. In 2004, he sold his stock in a U. S. corporation, Gourmet Foods, Inc. , for $5,427,000 via an installment sale, receiving payments from 2004 to 2009. Topsnik reported portions of the gain on his U. S. tax returns for 2004 and 2005, but did not file returns for 2006-2009. He claimed to have informally abandoned his LPR status in 2003 and asserted that he was a German resident during the years in issue, thus exempt from U. S. taxation under the U. S. -Germany Income Tax Treaty. The Commissioner challenged Topsnik's installment sale reporting and filed substitutes for returns for 2006-2009, asserting that Topsnik remained a U. S. resident and was liable for tax deficiencies and additions to tax.

Procedural History

The Commissioner issued a notice of deficiency for the years 2004-2009, asserting tax deficiencies and additions to tax. Topsnik filed a petition in the U. S. Tax Court challenging the notice. Prior to this, Topsnik had filed a suit in Federal District Court to review the Commissioner's jeopardy assessments and levies, which was dismissed for lack of venue. The Tax Court reviewed the case de novo, considering whether Topsnik was a U. S. resident during the years in issue and whether he was liable for the asserted additions to tax.

Issue(s)

Whether Gerd Topsnik was subject to U. S. taxation as a resident alien during the years 2004-2009, and if so, whether he is liable for additions to tax under sections 6651(a)(1), 6651(a)(2), and 6654 of the Internal Revenue Code?

Rule(s) of Law

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An alien is considered a resident alien with respect to a calendar year if the individual is a lawful permanent resident at any time during the calendar year. A lawful permanent resident is deemed to continue unless it is rescinded or administratively or judicially determined to have been abandoned. See sec. 7701(b)(1)(A)(i), sec. 301. 7701(b)-1(b)(1), Proced. & Admin. Regs. Under the U. S. -Germany Income Tax Treaty, a resident of a Contracting State is an individual liable to tax therein by reason of domicile or residence, excluding individuals liable to tax only on income from sources in that State or capital situated therein. See U. S. -Germany Treaty, art. 4, para. 1.

Holding

The Tax Court held that Gerd Topsnik remained a U. S. lawful permanent resident during the years in issue, 2004-2009, because he did not formally abandon his LPR status until 2010. Consequently, he was subject to U. S. taxation on his worldwide income, including the gain from the 2004 installment sale of stock. The court further held that Topsnik was not a German resident under the U. S. -Germany Income Tax Treaty during those years, as he was not subject to German taxation on his worldwide income. Therefore, he was not exempt from U. S. taxation under the treaty. The court sustained the Commissioner's additions to tax, with the exception of the section 6651(a)(2) addition for 2004, which was to be recalculated.

Reasoning

The court's reasoning focused on the definition of a lawful permanent resident under U. S. tax law, which requires formal abandonment for the status to cease. Topsnik's informal abandonment in 2003 was insufficient under section 301. 7701(b)-1(b)(3), Proced. & Admin. Regs. , which stipulates that an alien's resident status is considered abandoned only when an application for abandonment (Form I-407) is filed with the immigration authorities. The court rejected Topsnik's argument based on United States v. Yakou, noting that LPR status for tax purposes is governed by tax law, not immigration law. Regarding the U. S. -Germany Treaty, the court determined that Topsnik was not a German resident because he was not liable to German tax on his worldwide income, but rather only on German source income. The court also dismissed Topsnik's judicial estoppel argument, as the prior Federal District Court litigation concerned only his status as a German resident for a year after the years in issue. The court's analysis of the additions to tax followed statutory requirements and precedent, sustaining them except for the section 6651(a)(2) addition for 2004, which required recalculation based on the tax shown on Topsnik's 2004 return.

Disposition

The court affirmed the Commissioner's determination of tax deficiencies and additions to tax, except for the section 6651(a)(2) addition to tax for 2004, which was to be recalculated based on the tax shown on Topsnik's 2004 return.

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Significance/Impact

This case clarifies the stringent requirements for abandoning lawful permanent resident status for U. S. tax purposes and the criteria for determining residency under the U. S. -Germany Income Tax Treaty. It emphasizes the importance of formal abandonment procedures and the necessity of being liable to tax on worldwide income to claim treaty benefits. The decision has implications for taxpayers with dual residency claims and underscores the need for clear evidence of tax liability to the foreign country to claim exemptions under tax treaties. Subsequent cases have referenced Topsnik for its interpretation of LPR status and treaty residency rules.

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