***Topsnik v. Commissioner, 143 T. C. 240 (2014)***

In Topsnik v. Commissioner, the U. S. Tax Court ruled that a German citizen, Gerd Topsnik, remained a U. S. resident for tax purposes during 2004-2009 despite his claim of German residency. The decision hinged on Topsnik's failure to formally abandon his U. S. lawful permanent resident status until 2010. As a result, he was subject to U. S. taxation on his worldwide income, including gains from an installment sale of U. S. stock. The court also upheld penalties for late filing and payment, emphasizing the significance of formal procedures in determining tax residency status under U. S. law and treaties.

**Parties**

Gerd Topsnik, the Petitioner, was the plaintiff in this case before the U. S. Tax Court. The Respondent was the Commissioner of Internal Revenue, representing the U. S. government. Topsnik was a German citizen who had been a lawful permanent resident of the United States since 1977. The Commissioner challenged Topsnik's tax filings and sought to impose income tax deficiencies and penalties for the years 2004 through 2009.

**Facts**

Gerd Topsnik, a German citizen, became a lawful permanent resident (LPR) of the United States in 1977. In 2004, he sold his shares in Gourmet Foods, Inc. (GFI), a U. S. corporation, for $5,427,000, with payments made in installments over several years. Topsnik received a down payment of $1. 6 million in 2004 and monthly payments of $42,500 from 2004 to 2009. He filed U. S. tax returns for 2004 and 2005, reporting identical portions of the gain from the stock sale, but did not file returns for 2006-2009. Topsnik claimed he had informally abandoned his LPR status in 2003 and resided in Germany during the years in issue, thus asserting he was exempt from U. S. taxation under the U. S. -Germany Income Tax Treaty. The Commissioner argued that Topsnik remained a U. S. LPR until 2010 and was not a German resident for tax purposes.

**Procedural History**

The Commissioner issued a notice of deficiency to Topsnik for tax years 2004-2009, asserting deficiencies and additions to tax under IRC sections 6651(a)(1), 6651(a)(2), and 6654. Topsnik challenged these determinations in the U. S. Tax Court. Prior to the Tax Court case, Topsnik had filed a complaint in the U. S. District Court for the Central District of California to review the Commissioner's jeopardy assessments and levies, but the case was dismissed for lack of venue due to Topsnik's residence in Germany. The Tax Court considered the case de novo, focusing on Topsnik's residency status and tax liability.

**Issue(s)**

© 2025 SCOTUSreports.com. All rights reserved. 

1. Whether Gerd Topsnik was subject to U. S. taxation as a resident alien during the years 2004-2009?

2. If Topsnik was a U. S. resident alien, whether he is liable for additions to tax under IRC sections 6651(a)(1), 6651(a)(2), and 6654?

**Rule(s) of Law**

Under IRC section 7701(b)(1)(A)(i), a lawful permanent resident is considered a resident alien subject to U. S. taxation on worldwide income unless that status is formally revoked or administratively or judicially determined to have been abandoned. The U. S. -Germany Income Tax Treaty defines a resident as an individual liable to tax in a contracting state by reason of domicile or residence, excluding those liable to tax only on income from sources within that state. The treaty also includes provisions on the taxation of gains from the alienation of property.

**Holding**

The Tax Court held that Gerd Topsnik was a U. S. resident alien during the years in issue (2004-2009) because he did not formally abandon his lawful permanent resident status until 2010. As a result, he remained subject to U. S. taxation on his worldwide income, including the gain from the installment sale of his GFI stock. The court further held that Topsnik was not a German resident under the U. S. -Germany Treaty during those years because he was not subject to German taxation on his worldwide income. The court sustained the Commissioner's additions to tax under IRC sections 6651(a)(1) and 6654, but required recalculation of the section 6651(a)(2) addition for 2004.

**Reasoning**

The court reasoned that Topsnik's U. S. LPR status continued until his formal abandonment in 2010, as required by IRC section 7701(b)(6) and related regulations. The court rejected Topsnik's claim of informal abandonment, citing the statutory requirement for formal procedures to abandon LPR status. Regarding German residency, the court found that Topsnik was not liable to German taxation on his worldwide income during the years in issue, as confirmed by the German tax authority. Therefore, he did not qualify as a German resident under the U. S. -Germany Treaty, which requires liability to tax on worldwide income. The court also dismissed Topsnik's estoppel arguments, finding that the prior District Court litigation concerned only his residency status in 2011, not the years at issue. The court upheld the penalties for late filing and payment, rejecting Topsnik's arguments of reasonable cause and reliance on counsel.

**Disposition**

The Tax Court ruled in favor of the Commissioner, affirming Topsnik's status as a U.

© 2025 SCOTUSreports.com. All rights reserved. 

S. resident alien subject to U. S. taxation on his worldwide income for the years 2004-2009. The court sustained the additions to tax under IRC sections 6651(a)(1) and 6654 but directed a recalculation of the section 6651(a)(2) addition for 2004 based on the late payment of the tax shown on Topsnik's 2004 return. The decision was to be entered under Rule 155 for computation of the tax liabilities.

**Significance/Impact**

The Topsnik case underscores the importance of formal procedures in determining tax residency status under U. S. tax law. It clarifies that an individual's lawful permanent resident status for tax purposes continues until formally abandoned, regardless of informal actions or intentions to the contrary. The decision also highlights the significance of the tax treaty residency definition, which requires liability to tax on worldwide income, not merely physical presence or informal ties to a country. The case has implications for nonresident aliens seeking to claim treaty benefits and underscores the need for clear documentation and formal abandonment of U. S. residency to avoid U. S. taxation on worldwide income.

© 2025 SCOTUSreports.com. All rights reserved. 