Larsen v Commissioner
23 TC 599

Edward J. Ruff, Esq., for the petitioners. Wayne L. Prim, Esq., for the respondent.

The Commissioner determined a deficiency in income tax in the amount of $830.80 for the year 1949. The sole issue is whether petitioner Leonard O. Larsen was a bona fide resident of a foreign country throughout the year 1949 within the meaning of section 116 (a) of the Internal Revenue Code of 1939.

FINDINGS OF FACT.

A stipulation of facts filed by the parties is hereby adopted as part of our findings and is incorporated herein by reference.

Petitioners are husband and wife. They filed a joint income tax return for the year 1949 with the collector of internal revenue for the district of Boston, Massachusetts. The income in controversy was that of the husband, and he will sometimes hereinafter be referred to as the petitioner.

Petitioner is and, during the taxable period in question, was a citizen of the United States. He was born in Minnesota. In 1939 at the age of 25 he enlisted in the United States Army, and was sent to Manila in the Philippine Islands, with an automotive repair ordnance section. He remained in Manila until shortly after the outbreak of war between Japan and the United States. Thereafter, he went to Bataan and Corregidor, was captured by the enemy, and remained [pg. 600]in a prisoner of war camp until 1945. After release he remained in Manila in the Army for 1 year, until October 1946.

During the year in Manila after his release, and while in the Army, petitioner attempted to start a lumber business with two other persons. Although this was intended as a permanent business venture, it was unsuccessful.

In October 1946, petitioner was returned to the United States. He was married on March 15, 1947. In April 1947, while still in the military service, he was sent back to Manila, anticipating an overseas discharge and hoping to salvage his business. Preparations were made for his wife to follow, but, because of his inability to obtain a discharge in Manila, he returned to the United States in October 1947 and was discharged at Fort Lawton, Washington, in November 1947. He then went to San Francisco.

Petitioner's wife had been in San Francisco, but sometime during October 1947 she had left for Massachusetts to undergo surgery. Petitioner lived in San Francisco approximately 6 months in a furnished 2-room apartment. In February 1948, he was notified of his wife's recovery.

After his discharge petitioner had no definite plans other than to try to find work overseas. After an unsuccessful attempt to obtain work abroad, he accepted a temporary position in the sheriff's office of the City and County of San Francisco.

On April 1, 1948, petitioner made application for foreign employment with International Bechtel, Inc. The application was accepted, and he left the United States on May 10, 1948, arriving in Saudi Arabia, on May 13, 1948. Upon arrival in Dhahran, Saudi Arabia, he executed a contract of employment for work in Saudi Arabia at a monthly salary of $450. His work was with materials and supplies, similar to the work performed by him in the Army. The employment contract executed by petitioner on this and subsequent occasions hereinafter mentioned was a standard form contract which could be terminated by the employee after 18 months' employment.

Since 1939, when he first left the continental United States petitioner has not sought domestic employment in the United States at any time other than the temporary job in the sheriff's office in San Francisco for a short period in late 1947 and early 1948.

When petitioner departed for Saudi Arabia in May 1948, he had no specific intention to remain for any fixed period, but rather intended to remain as long as he was needed. His wife was then in Massachusetts. He left no personal property in the United States when he went overseas.

In connection with his work in Saudi Arabia, he was located in and near Dhahran, a city developed entirely by American oil interests.[pg. 601] No natives lived there, and all native employees had to be out of the area by 5 p. m. The nearest native community, the town of Alcobar, 3 miles from Dhahran, offered nothing that appealed to petitioner in the way of recreation or social life.

Under the contract of employment, the employer furnished the employee with transportation to and from the United States, food, lodging, and medical care. Petitioner was required to use the facilities so furnished, and was forbidden to take part in local politics. Pursuant to an agreement with the King of Saudi Arabia, International Bechtel, Inc., was required to return to the United States all Americans on termination of their employment.

During the year 1949, by arrangement with the King of Saudi Arabia, all activities of the contracting companies were limited to certain areas of operation. The American employees of the various companies were housed in company-built and company-controlled communities and could visit the surrounding country only with the approval of the employer.

The work being performed in Saudi Arabia in 1949 by International Bechtel, Inc., petitioner's employer, was of a continuing nature and indefinite as to duration, having commenced in the year 1944, and having continued up to and including the present time.

Petitioner actually resided in Saudi Arabia under employment with International Bechtel, Inc., from May 13, 1948, until February 1951, when he was transferred to Beirut, Lebanon, and actually resided in other Near or Middle Eastern countries under employment with International Bechtel, Inc., and Arabian Bechtel Company until May 12, 1952, except for occasional vacation periods spent in the United States.

Petitioner's first vacation was during his taxable year 1949, and began shortly more than 18 months after his employment in Saudi Arabia had begun; he departed Saudi Arabia for the United States on November 28, 1949, and arrived in the United States November 30, 1949. Petitioner went then to Boston, Massachusetts, to visit his wife and her mother.

In order to receive vacation travel pay from Saudi Arabia to the United States and return it was necessary for petitioner to terminate his employment contract with International Bechtel, Inc. However, more than a month prior to his departure, petitioner had discussed the matter of his return to Saudi Arabia with his superior, E. J. Beers, and personnel manager, Bill Ralston, and more than a month before his departure, under date of October 20, 1949, a letter of requisition was sent to San Francisco requesting that petitioner be returned to his job in Saudi Arabia upon completion of his vacation. When petitioner left Saudi Arabia all arrangements had been made for his return, and he left most of his belongings in Dhahran.[pg. 602]

Having completed his vacation in the United States, petitioner returned to Saudi Arabia, departing New York on January 14, 1950, and arriving in Ras el Misha'ab on January 16, 1950. Upon arrival, petitioner executed another contract of employment with International Bechtel, Inc., for work in Saudi Arabia at a monthly salary of $625, continuing to work in the same capacity as when he had left on vacation.

Petitioner continued to reside in Saudi Arabia in the employ of International Bechtel, Inc., until February of 1951 at which time he moved to Beirut, Lebanon. He remained in Beirut, until August 1, 1951, at which time he again left for a vacation in the United States.

Prior to departure from Saudi Arabia, petitioner had had discussions and correspondence with different superiors with reference to his next foreign assignment, and expected to continue his employment either in Iraq or Venezuela. Petitioner on this occasion came to San Francisco from abroad, reported to the Bechtel office, and was advised that he was required in Iraq. He thereupon commenced processing and returned to the Middle East, departing the United States on September 21, 1951.

Upon arrival in Homs, Syria, on September 22 or 23, 1951, petitioner executed a contract of employment with Arabian Bechtel Company for work in the Near or Middle East at a monthly salary of $675, continuing in work with material and supplies as he had in previous assignments in the Near or Middle East.

In March of 1952, petitioner conferred with Mr. Cyester, a Bechtel personnel officer, in Baiji, Iraq, with regard to accepting a different assignment with Bechtel interests in Aden. At this time it developed that petitioner's services had been requested in Venezuela; petitioner's preference was for work in Venezuela, and this choice was agreeable to Mr. Cyester.

Petitioner departed from Iraq upon completion of the project there in May of 1952, and was sent to the United States in order to be processed for his Venezuela assignment. Pursuant to petitioner's prior conversation with Mr. Cyester petitioner immediately began processing for Venezuela, and departed the United States for Venezuela on June 16, 1952. Upon arrival in Ciudad Bolivar, Venezuela, on June 18, 1952, petitioner executed a contract of employment with Constructora Bechtel, S. A., for work in Venezuela at a monthly salary of $715, continuing his work with materials as a warehouse supervisor. After 20 months of employment, petitioner departed Venezuela, on February 15, 1954, for another vacation in the United States, when the deposition herein was taken.

During petitioner's entire period of residence abroad to date as an employee of various Bechtel companies, including the entire taxable[pg. 603] year 1949, all of his work was performed in the foreign country in which he was residing at the time, and all his salary was received by him in such foreign country.

During petitioner's entire period of residence abroad to date as an employee of various Bechtel companies, he paid income taxes to the Government of each of the countries in which he resided when required, including the Governments of Saudi Arabia, Lebanon, Syria, and Iraq. No such taxes were paid by petitioner during the year 1949, however, because of an agreement with the King of Saudi Arabia exempting employees of the various Bechtel companies from Arabian tax.

During petitioner's entire period of residence abroad to date as an employee of various Bechtel companies, petitioner had little opportunity to participate in social or educational activities pertaining to the country or the localities where he lived, because of the nature of the job locations. However, for approximately 2 months in 1948 during the early part of his residence in Saudi Arabia, petitioner participated in night classes in Arabic. Later, during 1951 when petitioner was in Beirut, he attended classes in the Arabic language and studied the history and customs of Saudi Arabia for a period of approximately 3 months.

Although petitioner was still married at the time of the deposition (March 5, 1954), his marital status was indefinite. His wife resided in Boston since her convalescence until 1950 when she moved to San Francisco, where she has been living ever since. At some unidentified time she commenced divorce proceedings, but, by March 5, 1954, had not yet obtained her final decree.

It was petitioner's intention to reside in the Kingdom of Saudi Arabia during all of the year 1949, and for as indefinite a period thereafter as might be required to complete the job on which he was employed.

It was petitioner's intention to work with Bechtel interests in foreign employment as long as there was work to do, and it was petitioner's thought that when a job was completed his employer would find something else to do. It was known that after the Dhahran job the trans-Arabian pipe line was going through.

Petitioner was a bona fide resident of Saudi Arabia during the entire year 1949.

OPINION.

Raum, Judge:

Petitioner seeks exemption from tax with respect to income earned by him in Saudi Arabia in 1949. He relies upon section 116 (a) of the Internal Revenue Code of 1939, and seeks to bring himself within those provisions as a "bona fide resident of a foreign country *** during the entire taxable year."[pg. 604]

The question is primarily one of fact, and it is not always easy to harmonize the decided cases. Cf., e. g., Arthur J. H. Johnson, 7 T. C. 1040; Michael Downs, 7 T. C. 1053, affirmed, 116 F. 2d 504 (C. A. 9), certiorari denied, 334 U. S. 832; Swenson v. Thomas, 164 F. 2d 783 (C. A. 5); Audio Gray Harvey, 10 T. C. 183; Jones v. Kyle, 190 F. 2d 353 (C. A. 10);Burlin B. Hamer , 22 T. C. 343;Fred H. Pierce , 22 T. C. 493. Each case must turn upon the particular facts involved.

The present case is on the borderline, and we find our decision a difficult one to make. On the one hand, cases such as Michael Downs, supra, would seem to weigh against petitioner's position. Indeed, it has been relied upon in Jones v. Kyle, supra, and in four unreported Memorandum Opinions of this Court in cases involving work performed in Saudi Arabia under

contracts similar to that of petitioner. On the other hand, a different result is suggested by Swenson v.Thomas, supra , and Audio Gray Harvey, supra, where it is shown that the taxpayer has undertaken to make a career of foreign employment, even though his living conditions abroad are of the type that have been emphasized in Michael Downs.

It is our best judgment, on the present record, that this case follows more closely the pattern of the Audio Gray Harvey andSwenson cases. Petitioner herein had determined to make a career of foreign employment. We do not have merely one or two employment contracts, contemplating temporary absence from the United States. The contract in effect in 1949 should be viewed against the entire background of petitioner's foreign employment, involving a series of contracts. The fact that the other contracts were executed after 1949 is not fatal to petitioner's position; they throw helpful light on the situation as it existed in 1949. Although petitioner's first contract was technically terminated when he returned to the United States in November 1949, we are satisfied by the evidence that his visit to the United States at that time was merely a vacation, and that termination of the contract was simply a device for obtaining his transportation. It was in form but not in fact "terminal leave." It was understood when he left Saudi Arabia in November 1949 that he would return, and indeed he left most of his belongings there upon that expectation. Such temporary absence from the foreign country does not interrupt his period of foreign residence. See David E. Rose, 16 T. C. 232, 237.

We have concluded and found as a fact that petitioner was a bona fide resident of Saudi Arabia during 1949 within the meaning of section 116 (a).

Decision will be entered for the petitioners.