



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: M. Grace Fleeman, Assistant to the Branch Chief
CC:INTL:BR1

SUBJECT: Availability of Standard Deduction to Nonresident Alien

This Field Service Advice responds to your submission received by this office on February 17, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be used or cited as precedent.

LEGEND:

Taxpayer=

ISSUE(S):

Whether denial of the standard deduction to Taxpayer, a citizen of Greece, who filed a Form 1040NR is a violation of the nondiscrimination provision of the United States - Greece Income Tax Treaty.

CONCLUSION:

Denial of the standard deduction to Taxpayer, a citizen of Greece, who filed a Form 1040NR is not a violation of the nondiscrimination provision of the United States - Greece Income Tax Treaty because that provision of the treaty applies only where the Greek citizen is a resident of the United States. Taxpayer filed a Form 1040NR

thereby asserting that Taxpayer is not a resident of the United States, and, therefore, the nondiscrimination provision of the United States - Greece Income Tax Treaty does not apply to the Taxpayer.

FACTS:

Taxpayer is a citizen of Greece. Taxpayer filed a Form 1040NR claiming the standard deduction. The Service denied Taxpayer's claim for the standard deduction. Taxpayer appealed the denial of the standard deduction on the basis that such denial violates the nondiscrimination provision of the United States - Greece Income Tax Treaty.

LAW AND ANALYSIS

Code section 63(c)(6)(B) provides that in the case of a nonresident alien individual the standard deduction shall be zero. Although Taxpayer filed as a nonresident alien individual, Taxpayer asserts that Taxpayer is entitled to the standard deduction because denial of the standard deduction, pursuant to Code section 63(c)(6)(B), would be a violation of Article XVI, paragraph 3, of the United States - Greece Income Tax Treaty.

Article XVI, paragraph 3, of the United States - Greece Income Tax Treaty provides:

The citizens and subjects of one of the Contracting States shall not, while resident in the other Contracting State, be subject therein to other or more burdensome taxes than are the citizens or subjects of such other Contracting State residing in its territory. The term "citizens" or "subjects", as used in this Article includes all legal persons, partnerships and associations deriving their status from, or created or organized under, the laws in force in, the respective Contracting States. In this Article the word "taxes" means taxes of every kind or description whether, national, federal, state, provincial or municipal. (Emphasis added.)

Pursuant to the words of the United States - Greece Income Tax Treaty itself, paragraph 3 only applies to citizens and subjects of a Contracting State "while resident in the other Contracting State". The United States - Greece Income Tax Treaty does not define the term "resident," so that term has the same meaning for purposes of the treaty that it does under the laws of the United States. Art II(2). Taxpayer filed a Form 1040NR thereby representing that Taxpayer is not a resident of the United States. Accordingly, the provisions of Article XVI, paragraph 3, of the United States - Greece Income Tax Treaty, by its own language, does not apply to the Taxpayer.

The Service addressed a similar issue in Revenue Ruling 74-239, 1974-1 C.B. 372. Revenue Ruling 74-239 considered the taxation of Canadian citizens with dual status (residents of the United States for part of the taxable year and residents of Canada for the remainder of the year). Revenue Ruling 74-239 found that the nondiscrimination clause of the United States - Canada Income Tax Treaty did not prevent the United States from denying a dual status Canadian citizen the standard deduction. The nondiscrimination clause of the United States - Canada Income Tax Treaty provided that the citizens of one of the contracting States residing within the other contracting State shall not be subject to the payment of more burdensome taxes than the citizens of such other State, which is similar to the provision in the United States - Greece Income Tax Treaty here at issue.

Based on the foregoing, denying Taxpayer the standard deduction does not violate the United States - Greece Income Tax Treaty because Taxpayer is asserting that Taxpayer is not a resident of the United States. Since Taxpayer filed as a nonresident alien individual, Code section 63(c)(6)(B) provides that Taxpayer is not entitled to the standard deduction. Accordingly, denial of the standard deduction, under these circumstances, is consistent with the provisions of the Code and of the United States - Greece Income Tax Treaty.

If you have any further questions, please call (202) 622-3880.

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