[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10692
Non-Argument Calendar

Agency No. 25667-15

JANICE KAY HASKINS,
JULIAN WILLIAM HASKINS,

Petitioners-Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Petition for Review of a Decision of the
U.S. Tax Court

(September 8, 2020)

Before WILSON, MARTIN, and ROSENBAUM, Circuit Judges.

PER CURIAM:

This is a tax case. The appellants Janice and Julian Haskins say that Janice's work in Afghanistan in 2011-2012 qualified them for a foreign income tax

exclusion under 26 U.S.C. § 911. The Tax Court held otherwise; it found that Janice maintained an abode within the United States during this time and thus did not qualify for the exclusion. We affirm the Tax Court's decision.

We review decisions of the Tax Court just as we do "decisions of the district courts in civil actions tried without a jury." *Comm'r v. Neal*, 557 F.3d 1262, 1268-69 (11th Cir. 2009). We review the Tax Court's interpretation and application of the Internal Revenue Code de novo and its factual findings for clear error. *Campbell v. Comm'r*, 658 F.3d 1255, 1258 (11th Cir. 2011) (per curiam).

Under 26 U.S.C. § 911, "qualified individual[s]" can exclude their foreign earned income from their gross income, up to a statutory limit, and thereby exempt such amounts from income tax. A taxpayer must meet two general requirements to be a "qualified individual": (1) the taxpayer must have a "tax home" in a foreign country; and (2) an individual taxpayer must be either a bona-fide resident of a foreign country, 26 U.S.C. § 911(d)(1)(A), or be physically present in a foreign country for 330 days. 26 U.S.C. § 911(d)(1)(B).

The Tax Court found, and the Commissioner concedes, that Janice was physically present in Afghanistan for more than 330 days. The only question for us, then, is whether Janice had a "tax home" in Afghanistan.

During the relevant time, "tax home" was defined as:

> such individual's home for purposes of section 162(a)(2) (relating to traveling expenses while away from home). An individual shall not be

> treated as having a tax home in a foreign country for any period for which his abode is within the United States.

26 U.S.C. § 911(d)(3) (2017).[1] We must decide, then, whether the Tax Court erred in concluding that Janice kept an abode within the United States.

To decide where an individual's abode is located under Section 911(d)(3), the Tax Court compares and contrasts "the taxpayer's domestic ties (i.e., his familial, economic, and personal ties) to the United States with his ties to the foreign country in which he claims a tax home" during the particular period. *Harrington v. Comm'r*, 93 T.C. 297, 307–08 (1989). The court has found that a taxpayer retained strong ties with the United States when, despite living abroad, he maintained a bank account in Texas and had a Texas driver's license. *Id.* at 309. The court has also emphasized that an "abode remain[s] within the United States especially where [the] ties to the foreign country were transitory or limited." *Id.* at 308. And it has found that ties were limited and transitory when the taxpayer lived

[1] In 2018, it was amended to:

> An individual shall not be treated as having a tax home in a foreign country for any period for which his abode is within the United States, unless such individual is serving in an area designated by the President of the United States by Executive order as a combat zone for purposes of section 112 in support of the Armed Forces of the United States.

26 U.S.C. § 911(d)(3). The Bipartisan Budget Act of 2018, which amended the section, provided that "[t]he amendment made by this section shall apply to taxable years beginning after December 31, 2017." PL 115-123, § 41116(b), 132 Stat. 64, 162. Since the Haskins seek an exclusion for the 2011-2012 tax term, the amendment does not affect this appeal. Nor does IRS Publication 54, which also issued in 2018.

on military bases, could not have his family live with him, did not travel within a foreign country, and did not open a bank account in a foreign country. *See Harrington*, 93 T.C. at 309; *Daly v. Comm'r*, 105 T.C.M. (CCH) 1850 (T.C. 2013).

The Tax Court did not err in holding that Janice kept an abode within the United States or in concluding that she was thus ineligible for the exclusion. The court found, with good reason, that Janice maintained strong connections to the United States in the form of her driver's license, home in Arizona, and bank account. *See Harrington*, 93 T.C. at 309. The court also correctly noted that she continued to be involved in her family's finances, as reflected by her supporting her son's schooling, paying household bills, and buying gift cards for her husband. In contrast, her connections to Afghanistan were transitory or limited. *See id.* at 308. She lived only on military bases, could not travel off of the base, could not meet with local residents in their homes, did not have a choice in where she lived, and her family could not join her in Afghanistan. *See id.* at 309; *Daly*, 105 T.C.M. (CCH) 1850. Given her strong ties to the United States and her weak ties abroad, the tax court did not err in concluding that she kept her abode within the United States and was thus ineligible for the foreign tax home exclusion.

AFFIRMED.