



TaxNewsFlash

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U.S. Tax Court: Nonresident's unemployment compensation held taxable income under treaty with Canada

The U.S. Tax Court today issued an opinion holding that unemployment compensation received by a nonresident alien was not exempt from U.S. income tax under a provision of the income tax treaty between the United States and Canada.

The case is: *Guo v. Commissioner*, 149 T.C. No. 14 (October 2, 2017). Read the Tax Court's [opinion](#) [PDF 60 KB]

Summary

The taxpayer, a citizen of Canada, entered the United States in 2010 to work as a post-doctoral fellow at a university. The taxpayer resided in the United States until November 2011 when her employment contract with the university ended. After unsuccessfully attempting to find other employment in the United States, the taxpayer returned to Canada.

At a point in 2012, the taxpayer applied for and received unemployment compensation from the State of Ohio. For 2012, she timely filed a U.S. federal income tax return, and on that return she reported her unemployment compensation as exempt from tax under a provision of the United States-Canada income tax treaty. The taxpayer was a nonresident alien during 2012.

The IRS determined that the unemployment compensation received by the taxpayer was taxable income, and issued a notice of deficiency. The taxpayer countered that unemployment compensation was exempt from U.S. income tax under Article XV of the treaty (the treaty provision on "dependent personal services"). The IRS countered that under treaty Article XXII (concerning "other income"), the unemployment compensation was taxable income in the United States.

The Tax Court today agreed with the IRS and held that:

- Article XV of the treaty does not exempt the taxpayer's unemployment compensation from U.S. income tax.
- Article XXII of the treaty governs the tax treatment of the taxpayer's unemployment compensation and permits the United States to tax it.

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