11 T.C. 37 (1948)

An alien's physical presence in the United States, even if prolonged, does not automatically establish residency for income tax purposes, particularly when their stay is subject to deportation proceedings and legal restrictions.

Summary

The Tax Court addressed whether Florica Constantinescu, a Romanian citizen, was a resident alien in the U.S. during 1944 and part of 1945, making her taxable on capital gains. Constantinescu had been in the U.S. since 1939 under temporary visas and was subject to deportation proceedings. The court held that despite her prolonged physical presence, the restrictions on her stay due to the deportation order meant she was not a resident alien and thus not taxable on capital gains. The decision emphasizes that residency requires more than mere presence; it necessitates an absence of legal restrictions indicating transience.

Facts

Constantinescu, a Romanian citizen, initially entered the U.S. in 1939 on a temporary visitor's visa. She obtained several extensions. In 1942, her application for an immigrant visa was denied, and a deportation warrant was issued in 1943. She was arrested but released on bond, requiring her to report to the Department of Justice regularly. The Board of Immigration Appeals ordered her to depart the U.S. by May 1944, but granted her several extensions. She finally departed for France on November 3, 1945. During 1944 and 1945, she received income from U.S. sources, including capital gains, but filed no tax returns for those years.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in Constantinescu's income tax for 1944 and 1945, arguing she was a resident alien and taxable on her capital gains. Constantinescu contested this, asserting she was a nonresident alien not engaged in business in the U.S. and therefore not taxable on capital gains. The Tax Court heard the case to determine her residency status.

Issue(s)

Whether, despite her extended physical presence in the United States, Florica Constantinescu was a resident alien for income tax purposes during 1944 and the period from January 1 to November 3, 1945, considering she was under deportation proceedings and subject to legal restrictions.

Holding

No, because Constantinescu's presence in the U.S. was restricted by deportation proceedings, meaning that she did not demonstrate the intention to make the U.S.

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her residence during the tax years in question, despite her physical presence and the absence of other exceptional circumstances. The Court rejected the Commissioner's argument that once residency is established, it continues until departure, holding that the specific facts and circumstances of each tax year must be considered.

Court's Reasoning

The court relied on Treasury Regulations defining a resident alien as someone who is not a mere transient or sojourner. It acknowledged that an alien whose stay is limited by immigration laws is generally not a resident, absent "exceptional circumstances." The court cited *J.P. Schumacher, 32 B.T.A. 1242*, stating that the limitation of stay isn't conclusive of nonresidence and that the question must be determined by all facts. The court found that during 1944 and 1945, Constantinescu was under arrest (incarcerated or on bail), confined to prescribed limits, required to report to the Department of Justice, and under orders to leave the country. The court determined these facts outweighed her physical presence in the U.S., and that such "exceptional circumstances" were not present. The court also cited the Commissioner's Mimeograph No. 5883 which clarified that temporary visas issued to aliens fleeing war-torn countries did not automatically make them residents, even with visa extensions. The Tax Court emphasized that residence hinges on the intention to make the United States one's home, something Constantinescu could not demonstrate given the pending deportation order.

Practical Implications

This case illustrates that physical presence alone is insufficient to establish residency for tax purposes. Attorneys must consider the individual's immigration status and any legal restrictions on their stay. It provides a framework for analyzing similar cases involving aliens facing deportation or other legal limitations on their presence in the U.S. The ruling emphasizes that the intent to establish residency must be evaluated annually based on the specific facts and circumstances of each tax year. Later cases must consider whether an individual's actions demonstrate an intent to remain in the U.S. indefinitely, despite any existing legal restrictions.

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