13 T.C. 566 (1949)

A nonresident alien's presence in the U.S., even for an extended period, does not automatically equate to residency for tax purposes, and trading in securities or commodities through a U.S. resident broker does not constitute 'engaging in a trade or business' within the U.S. under Internal Revenue Code Section 211(b).

Summary

Zareh Nubar, an Egyptian citizen, entered the U.S. on a visitor's visa in 1939 and remained until 1945 due to wartime travel restrictions. During this time, he engaged in substantial securities and commodities trading through U.S. brokers. The Commissioner of Internal Revenue determined Nubar was a resident alien and thus taxable on all income. The Tax Court held that Nubar was a nonresident alien and that his trading activities, conducted through resident brokers, did not constitute 'engaging in a trade or business' in the U.S., thus exempting him from U.S. tax on foreign income and capital gains.

Facts

Nubar, a wealthy Egyptian citizen, entered the U.S. in August 1939 on a visitor's visa. He intended to visit the New York World's Fair, meet with Dr. Einstein, and travel in the Americas. Due to the outbreak of World War II, he could not return to Europe. He applied for and received extensions to his visa, but was eventually subject to deportation proceedings. During his time in the U.S., Nubar maintained a hotel room, traveled extensively, and engaged in significant trading of securities and commodities through various U.S. brokerage firms. He maintained a residence in Paris and expressed his intent to return to Europe.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in Nubar's income tax for the years 1941, 1943, and 1944, asserting that Nubar was a resident alien subject to U.S. tax on all income. Nubar petitioned the Tax Court for a redetermination, arguing he was a nonresident alien not engaged in a trade or business in the U.S. The Tax Court ruled in favor of Nubar.

Issue(s)

1. Whether Nubar was a resident alien of the United States during the years 1941 through 1944.
2. Whether Nubar was engaged in a trade or business in the United States during the years 1941 through 1944.

Holding

1. No, because Nubar's intent was to be a temporary visitor, and his extended

© 2025 SCOTUSreports.com. All rights reserved.

stay was due to wartime travel restrictions.
2. No, because Section 211(b) of the Internal Revenue Code specifically excludes trading in securities or commodities through a resident broker from constituting a trade or business.

Court's Reasoning

The court reasoned that residency for tax purposes depends on an individual's intent, as determined by the totality of the facts. Nubar's intent was to visit the U.S. temporarily, and his extended stay was due to circumstances beyond his control. The court emphasized Nubar's maintenance of a residence abroad, his expressions of intent to return, and his transient living arrangements in the U.S. Regarding the 'engaged in trade or business' issue, the court relied on Section 211(b) of the Internal Revenue Code, which states that effecting transactions in commodities or securities through a resident broker does not constitute engaging in a trade or business. The court distinguished this case from Adda v. Commissioner, where a resident agent was making discretionary trading decisions for a nonresident alien, while in Nubar's case, Nubar himself made all trading decisions.

The court quoted Beale, Conflict of Laws, vol. 1, p. 109, sec. 10.3 stating, "For residence there is an intention to live in the place for the time being. For the establishment of domicil the intention must be not merely to live in the place but to make a home there."

Practical Implications

This case clarifies the distinction between physical presence and residency for tax purposes, particularly for aliens whose stay in the U.S. is prolonged due to unforeseen circumstances. It confirms that nonresident aliens can engage in significant trading activities in the U.S. through resident brokers without being deemed to be 'engaged in a trade or business,' thus avoiding U.S. tax on foreign income and capital gains. This encourages foreign investment and trading in U.S. markets. Later cases have cited Nubar to support the principle that intent is paramount in determining residency, and the 'engaged in trade or business' exception for trading through resident brokers remains a key aspect of tax law for nonresident aliens.

© 2025 SCOTUSreports.com. All rights reserved.