13 T.C. 816 (1949)

An alien is considered a U.S. resident for income tax purposes if they are physically present in the U.S. and are not a mere transient or sojourner, with their intent regarding the length and nature of their stay being the determining factor.

Summary

Cristina deBourbon Patino, a Spanish national and wife of a Bolivian diplomat, came to the U.S. with her family as war refugees in 1940. She remained in New York City, except for brief trips, until at least the end of 1945. She twice filed for divorce, claiming New York residence. The Tax Court needed to determine whether Patino was a resident alien for the tax years 1944 and 1945. The court held that based on her physical presence, intent to remain in the U.S., and independent actions from her husband, she was a resident alien. Additionally, the court found that her failure to file a timely return was due to reasonable cause based on advice from counsel.

Facts

Cristina deBourbon Patino married Antenor Patino, a Bolivian diplomat, in 1931. The family lived in Europe until 1940 when they fled to the U.S. as war refugees. Patino entered the U.S. under a diplomatic passport. She resided in New York City hotels and apartments. In 1942, she initiated divorce proceedings and entered into a separation agreement with her husband, which granted her the ability to reside anywhere as if unmarried. She filed a second divorce suit in 1943, alleging New York residency. The couple reconciled in 1944 but separated again in 1945 when her husband abandoned her.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in Patino’s income tax for 1944 and 1945, asserting she was a resident alien. Patino challenged this determination in the Tax Court, arguing she was a nonresident alien. The Tax Court ruled against Patino, finding her to be a resident alien for the tax years in question.

Issue(s)

1. Whether Patino was a resident alien of the United States for income tax purposes during 1944 and 1945.
2. Whether Patino is liable for a penalty for failing to file a timely income tax return for 1944.

Holding

1. Yes, because Patino was physically present in the U.S., was not a mere transient, and demonstrated an intent to remain in the U.S. for an indefinite period.

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2. No, because Patino’s failure to file a timely return was due to reasonable cause, based on advice from counsel that she was a nonresident alien.

Court’s Reasoning

The Tax Court relied on Treasury Regulation 111, Section 29.211-2, which defines a resident alien as someone physically present in the U.S. who is not a mere transient. The court emphasized Patino’s prolonged stay in the U.S., her actions independent of her husband (particularly during the separation agreement), and her intent to remain in New York. The court considered her divorce filings, where she claimed New York residency, as evidence of her intent. The court noted, “An alien actually present in the United States who is not a mere transient or sojourner is a resident of the United States for purposes of the income tax. Whether he is a transient is determined by his intentions with regard to the length and nature of his stay.” The court distinguished this case from others where the alien’s stay was more temporary or tied to diplomatic obligations. On the penalty issue, the court accepted her defense that she relied on advice from counsel, which constituted reasonable cause for the late filing.

Practical Implications

This case provides a clear illustration of how the Tax Court determines residency for aliens, focusing on their physical presence and intent. It highlights the importance of actions demonstrating an intent to remain in the U.S., such as establishing a home, pursuing legal actions based on residency, and engaging in community activities. It also shows the weight given to independent actions by a spouse, particularly when a separation agreement is in place. The case also affirms that reliance on professional tax advice can be a valid defense against penalties for failure to file. Later cases cite this ruling for the principle that resident status depends on physical presence and intent, and for the application of the regulations defining “transient” versus “resident” aliens.

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