Kazuko S. Marsh v. Commissioner, 69 T. C. 25 (1977)

An alien's intent to maintain U. S. residency for tax purposes is determined by their actions and circumstances, not solely by immigration status.

Summary

Kazuko S. Marsh, a Japanese citizen, entered the U. S. in 1962 as a permanent resident and was later stationed with her husband, a U. S. Air Force officer, at various military bases. After leaving the U. S. in 1966 to live in Japan due to her husband's deployment, she returned briefly in 1968 on a tourist visa and permanently in 1970. The Tax Court held that Kazuko remained a U. S. resident for tax purposes throughout her absence because she did not intend to abandon her U. S. residency. This case underscores that an alien's tax residency status hinges on their intent and actions, not merely on their immigration status or length of absence.

Facts

Kazuko S. Marsh, a Japanese citizen, married Wesley C. Marsh, a U. S. Air Force officer, in 1962. She entered the U. S. on September 20, 1962, as a permanent resident and lived with Wesley at various military bases. In October 1966, Kazuko returned to Japan when Wesley was deployed to Vietnam. They reunited in Japan in 1967, and Kazuko briefly visited Hawaii in 1968 on a tourist visa. In December 1970, Kazuko and Wesley returned to the U. S. , with Kazuko reentering under an SB-1 immigrant visa, indicating she was returning from a temporary visit abroad. Kazuko filed nonresident alien tax returns for 1966-1969, but the IRS determined she was a resident alien during those years.

Procedural History

The IRS issued deficiency notices for Kazuko's federal income taxes for 1966-1969, asserting she was a resident alien. Kazuko contested this in the U. S. Tax Court, which heard the case and determined her residency status for tax purposes.

Issue(s)

1. Whether Kazuko S. Marsh was a resident or nonresident alien of the United States for federal income tax purposes under sections 871-874 during the taxable years 1966 through 1969.

Holding

1. Yes, because Kazuko did not intend to abandon her U. S. residency during her absence, as evidenced by her actions and circumstances.

Court's Reasoning

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The court applied Treasury regulations under section 871, which state that an alien's nonresidency is presumed but can be rebutted by evidence of intent to acquire or maintain U. S. residency. Kazuko's initial entry as a permanent resident in 1962 established her as a resident alien, and the court found no evidence that she intended to abandon this status during her absence. The court emphasized that Kazuko's intent was influenced by her husband's military service, and her actions, such as leasing their U. S. home, indicated an intent to return. The court also noted that immigration status does not conclusively determine tax residency, citing previous cases like Brittingham v. Commissioner. The court rejected Kazuko's argument that her absence and immigration status changed her tax residency, concluding she remained a resident alien throughout the years in question.

Practical Implications

This decision clarifies that an alien's tax residency is determined by their intent and actions, not solely by their immigration status or length of absence. Legal practitioners should advise clients to consider their actions and circumstances when determining tax residency status, as these can override immigration classifications. The case may affect how military families and other expatriates manage their tax obligations, emphasizing the importance of maintaining ties to the U. S. to preserve resident alien status. Subsequent cases, such as Brittingham v. Commissioner, have reinforced this principle, distinguishing between immigration and tax residency statuses.

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