8 T.C. 1248 (1947)

To establish a new domicile for tax purposes, a taxpayer must demonstrate both physical presence in the new location and a clear intention to make that place their permanent home, effectively abandoning their prior domicile.

Summary

George Westervelt disputed a tax deficiency, claiming his income earned in Texas during 1941 should be treated as community property due to his alleged Texas domicile. He also sought to deduct certain travel expenses as business expenses related to a cattle business. The Tax Court ruled against Westervelt, finding he failed to prove he had abandoned his Florida domicile in favor of a Texas domicile, and that his activities related to the cattle business were merely preparatory and not deductible business expenses. This case underscores the stringent requirements for proving a change of domicile for tax purposes.

Facts

Westervelt, a retired Navy captain, had a long-established domicile in Florida from 1934-1940. In late 1940, he became associated with an engineering firm and was assigned to oversee the construction of a shipyard in Houston, Texas. He lived in a hotel in Houston for approximately nine months in 1941. His family remained in Florida until the end of the school year in May 1941, after which they briefly visited him in Houston before renting a house in Santa Fe, New Mexico, and later returning to Florida. Westervelt claimed he intended to establish a permanent home in Texas, citing letters to family and friends.

Procedural History

The Commissioner of Internal Revenue assessed a deficiency against Westervelt for the 1941 tax year. Westervelt petitioned the Tax Court for a redetermination of the deficiency, arguing that a portion of his income should be treated as community property under Texas law and that certain travel expenses were deductible business expenses. The Tax Court upheld the Commissioner’s determination.

Issue(s)

1. Whether Westervelt abandoned his Florida domicile and established a new domicile in Texas, thus entitling him to report his income under Texas community property laws.
2. Whether Westervelt’s travel expenses were ordinary and necessary business expenses deductible under Section 23(a)(1)(A) of the Internal Revenue Code.

Holding

1. No, because Westervelt’s family did not establish a permanent residence with

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him in Texas, and he did not sufficiently demonstrate an intent to abandon his Florida domicile.
2. No, because Westervelt was not actively engaged in a cattle business during the taxable year, and the expenses were related to preliminary investigations rather than an existing trade or business.

Court's Reasoning

The court reasoned that establishing a new domicile requires both physical presence and the intent to make the new location a permanent home. Citing *Texas v. Florida, 306 U.S. 398 (1939)*, the court emphasized that "[r]esidence in fact, coupled with the purpose to make the place of residence one's home, are the essential elements of domicile." Westervelt's family's brief visits to Texas and subsequent residence in New Mexico did not establish a permanent home in Texas. Furthermore, Westervelt's continued maintenance of a home in Florida and the fact that his family only joined him in New York after his Texas employment ended indicated he never fully committed to making Texas his permanent residence. Regarding the travel expenses, the court found that Westervelt's activities were merely preparatory to entering the cattle business, and not expenses incurred while actively carrying on a trade or business. The court also noted the lack of detailed records to substantiate the expenses.

Practical Implications

Westervelt v. Commissioner provides a clear example of the difficulty in establishing a change of domicile for tax purposes. Taxpayers must demonstrate more than just temporary residence in a new location; they must provide convincing evidence of an intention to make that location their permanent home. This case is often cited in disputes involving state residency, community property, and other tax matters where domicile is a key determinant. It highlights the importance of maintaining consistent records and demonstrating a clear pattern of conduct consistent with the claimed domicile. The case also reinforces the principle that expenses incurred in preparing to enter a business are generally not deductible as ordinary and necessary business expenses until the business has commenced.

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