9 T.C. 338 (1947)

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A federal estate tax is not a direct tax on property but an excise tax on the transfer of property at death; therefore, a statutory exemption of U.S. bonds “from any and all taxation” does not exempt them from estate tax when owned by a non-resident alien.

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Summary

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The estate of Karl Jandorf, a non-resident alien, challenged the IRS’s determination that U.S. Treasury bonds located in the U.S. were subject to estate tax. Jandorf argued that Section 4 of the Victory Liberty Loan Act of 1919 exempted the bonds from “any and all taxation.” The Tax Court held that the estate tax was an excise tax on the transfer of property, not a direct tax on the bonds themselves and therefore the bonds were not exempt. The court also denied deductions for counsel fees and administration expenses because the estate failed to include the value of the gross estate not situated in the U.S. on its return.

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Facts

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Karl Jandorf, a citizen and resident of Tel Aviv, Palestine, was a non-resident alien not engaged in business in the United States.

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In 1938 and 1939, Jandorf remitted approximately $200,000 to his brothers in the U.S. with instructions to keep the funds in safekeeping for him.

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In 1942 and 1943, Jandorf’s brothers purchased U.S. Treasury bonds with these funds, totaling $150,000, held in custodian accounts at Guaranty Trust Co. and First National Bank of Boston.

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Certificates for $75,000 worth of bonds were issued after March 1, 1941.

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Procedural History

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The First National Bank of Boston filed an estate tax return, including the bonds and paying the tax, but filed a claim for refund, arguing the bonds were exempt.

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Guaranty Trust Co. filed a return listing the bonds but claiming they were exempt, reporting zero value for the gross estate.

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The IRS consolidated the properties and determined that bonds issued after March 1, 1941, were includible in the gross estate, leading to a deficiency assessment.

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Issue(s)

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1. Whether United States Treasury bonds, beneficially owned by a nonresident alien individual not doing business in the United States, issued after March 1, 1941, and physically located in the United States, are subject to estate tax, despite Section 4 of the Victory Liberty Loan Act of 1919 which declares such bonds to be "exempt both as to principal and interest from any and all taxation."

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2. Whether the petitioner is entitled to deductions for counsel fees and other administration expenses, despite failing to comply with Section 861(b) of the Internal Revenue Code.

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Holding

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1. No, because the federal estate tax is an excise tax on the transfer of property at death, not a direct tax on the bonds themselves. The exemption in the Victory Liberty Loan Act only applies to direct taxes on the principal and interest of the bonds.

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2. No, because Section 861(b) requires the executor to include in the return the value of the gross estate not situated in the United States, and the petitioner failed to do so. Also, the petitioner offered no evidence to support the claim for deductions.

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Court’s Reasoning

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The court reasoned that the estate tax is not a tax on the bonds or their income, but an excise tax on the transfer of property at death. Citing *United States Trust Co. of New York v. Helvering, 307 U.S. 57*, the court emphasized that it is a tax on the shifting of relationships to property.

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The court distinguished between direct taxes on property and excise taxes on the transfer of property, relying on *Plummer v. Coler, 178 U.S. 115*, and *Murdock v. Ward, 178 U.S. 139*, which held that state inheritance taxes and the federal inheritance tax could be applied to U.S. bonds despite clauses exempting the

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