17 T.C. 748 (1951)

A nonresident alien is not considered to be 'engaged in business' in the United States for estate tax purposes merely by owning stock in a domestic corporation, nor are funds held in trust for foreign entities includible in their gross estate.

Summary

The Tax Court addressed the estate tax deficiency assessed against the estate of Bozo Banac, a nonresident alien. The key issues were the valuation of Banac's stock in a domestic corporation, whether Banac was 'engaged in business' in the U.S. at the time of his death, and whether funds held in a corporate account were his personal assets or held in trust for Yugoslav corporations. The court determined the stock value based on stipulated facts, found Banac was not 'engaged in business,' and concluded the funds were held in trust, thus excluding them from his gross estate. This decision clarifies the criteria for determining business engagement and the treatment of trust assets for nonresident alien estates.

Facts

Bozo Banac, a Yugoslavian citizen and nonresident alien, died in the U.S. while on a visitor's permit. Prior to World War II, as general manager of two Yugoslav shipping corporations, he transferred corporate funds to the U.S., establishing Combined Argosies, Inc., a New York corporation. Banac owned all the stock of Combined Argosies. He was hospitalized frequently before his death. At the time of his death, Banac had personal checking accounts in the U.S. and an account with Combined Argosies containing funds from the Yugoslav corporations.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Banac's estate tax. Banac's estate challenged this determination in the Tax Court. The Tax Court reviewed the facts, considered stipulations from both parties, and ruled on the contested issues.

Issue(s)

1. What was the fair market value of the Combined Argosies stock at the time of Banac's death?
2. Was Banac 'engaged in business' in the United States at the time of his death, thereby subjecting his U.S. bank deposits to estate tax?
3. Were the funds in the Combined Argosies account Banac's personal assets, or were they held in trust for the Yugoslav corporations?

Holding

1. The value of the stock was $59.503902 per share because the parties

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stipulated to that value, and the petitioner failed to demonstrate that other factors should further reduce that value.
2. No, because Banac's stock ownership in a domestic corporation does not, by itself, constitute 'engaging in business' within the U.S., especially given his limited involvement due to poor health.
3. No, because the funds were held in trust for the Yugoslav corporations, as evidenced by Banac's fiduciary duty as a corporate director and the subsequent accounting and distribution of the funds to the corporations and their shareholders.

Court's Reasoning

Regarding stock valuation, the court deferred to the stipulated net asset value, noting the petitioner's failure to present compelling evidence for a lower valuation. On the 'engaged in business' issue, the court cited *Estate of Jose M. Tarafa y Armas, 37 B.T.A. 19*, stating, "The domestication of a corporation does not domesticate its nonresident stockholders to the extent of causing them to be in business in the United States if they are not otherwise engaged in business in the United States." The court found no evidence Banac was actively engaged in business, given his health and limited participation. Regarding the funds in the Combined Argosies account, the court emphasized Banac's role as a fiduciary for the Yugoslav corporations. The court reasoned that Banac's broad powers of attorney indicated no intent to create a debtor-creditor relationship. Citing *Kavanaugh v. Kavanaugh Knitting Co., 226 N.Y. 185*, the court reinforced that corporate directors in possession of corporate property have a fiduciary duty. The court concluded that the funds were held in trust and not includible in Banac's gross estate, despite some conflicting evidence of personal use and reporting to the Treasury Department.

Practical Implications

This case provides guidance on determining whether a nonresident alien is 'engaged in business' in the U.S. for estate tax purposes. Mere stock ownership is insufficient; active participation is required. It also clarifies the treatment of funds held by a nonresident alien that are ultimately traceable to a foreign corporation where the alien acted in a fiduciary capacity. Attorneys should carefully examine the source of funds and the nature of the relationship between the alien and foreign entities to determine if a trust relationship exists. This case illustrates that funds held in trust are not part of the taxable estate, even if commingled, if a clear fiduciary duty can be established. Later cases would cite this decision for the principle that mere stock ownership, without further business activities, does not constitute being 'engaged in business' for a nonresident alien.

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