21 T.C. 64 (1953)

For estate tax purposes of a non-resident alien, the situs of assets is crucial for determining whether those assets are includible in the gross estate; assets physically located in the United States may not be subject to estate tax if the underlying property is not considered situated in the United States.

Summary

The United States Tax Court addressed several issues concerning the estate tax liability of a non-resident alien. The court determined that a dividend declared before the decedent's death, but payable to stockholders of record after his death, was not includible in the gross estate. The court also considered the situs of certain assets owned by the decedent, including British Treasury Certificates and shares of stock in the Bank of Nova Scotia. The court found that the certificates and the stock certificates, though physically located in the United States, did not have a situs within the United States because the underlying assets themselves (loans to the British Treasury and the bank stock) were not considered property within the United States. Finally, the court ruled that securities the decedent had contracted to purchase shortly before his death were not includible in the gross estate because he did not own the securities at the time of his death, and the contracts to purchase them had no value.

Facts

George McNaught Lockie, a British subject domiciled in the Dominican Republic, died on September 20, 1945. At the time of his death, he owned 200 shares of General Electric Company stock, on which a dividend had been declared, but payable to shareholders of record after his death. He also owned British Treasury Certificates, representing loans to the British government, and 5,000 shares of Bank of Nova Scotia stock. These certificates and stock certificate were located in the United States. Lockie's broker had entered into contracts to purchase securities on the New York Stock Exchange for Lockie on the day before his death; the securities would be delivered and paid for two days later.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in the estate tax. The ancillary executor, Guaranty Trust Company of New York, filed a petition with the United States Tax Court, contesting the Commissioner's determination. The Tax Court heard the case and issued its decision on October 15, 1953.

Issue(s)

1. Whether the value of a dividend declared prior to the decedent's death, but payable to stockholders of record after his death, is includible in the gross estate.

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2. Whether the loans to the British Treasury, evidenced by certificates located in the United States, had a situs in the United States such that they were subject to estate tax.

3. Whether the shares of stock of the Bank of Nova Scotia, along with the associated certificates located in the United States, had a situs in the United States such that they were subject to estate tax.

4. Whether the value of securities contracted for by the decedent's broker shortly before his death was properly included in the gross estate.

Holding

1. No, because the dividend was not payable to the decedent, and he did not have a right to the dividend at the time of his death.

2. No, because the loans were payable in London, and the certificates were not considered the property itself.

3. No, because the stock had a situs only in Halifax, where it was registered, and the certificate was not considered the property itself.

4. No, because the decedent did not own the securities at the time of his death, and the contracts to purchase them had no value.

Court's Reasoning

The court first addressed the dividend issue, holding that it should not be included in the gross estate because the decedent was not entitled to it at the time of his death. The court stated that the value of his shares at the date of death would include the right those shares had at that time to the dividend. The court distinguished the circumstances of the case from those where a dividend is payable to stockholders of record when the decedent was still alive.

Regarding the British Treasury Certificates, the court reasoned that the certificates were not securities, and the loans they represented were not considered property situated within the United States. The loans were payable in London, and the certificates were merely acknowledgments of the loans. Therefore, they had no situs within the United States for estate tax purposes.

The court then turned to the Bank of Nova Scotia stock and found that although the certificate was located in the United States, the stock itself was registered in Halifax, and the certificate was not considered the property itself. The certificate indicated ownership at a certain date. The court emphasized that the shares could only be transferred with powers of attorney from the transferor and transferee supplied to the Bank at Halifax. The certificate was not the property itself.

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Finally, the court determined that the securities purchased by the broker were not part of the gross estate. The court stated that, pursuant to the established practices of the New York Stock Exchange, the decedent did not acquire ownership of the securities until the delivery date. At the time of his death, the contracts had no value because the market value of the securities was less than the purchase price.

Practical Implications

This case is significant for its clarification of the concept of situs concerning the estate tax for non-resident aliens. The court emphasized that the mere physical presence of documents or certificates in the United States is not sufficient to establish situs; the location of the underlying property interests matters. This case provides that when evaluating whether assets are subject to U.S. estate tax, one must first determine where the assets are considered to be situated. This informs attorneys about where they should look to determine tax obligations.

The court’s reasoning provides a framework for analyzing the situs of various types of assets, including debt instruments and stock. Lawyers and tax advisors should carefully examine the nature of the asset, the location of the rights associated with the asset, and any applicable regulations or treaties when determining the situs of property for estate tax purposes. This case also clarifies that the value of a decedent’s property is determined at the time of death and not at an earlier date where property rights may have been created but not yet vested.

Later cases continue to cite this case for its treatment of situs for estate tax purposes and continue to require careful examination of the nature of the asset and the legal rights associated with it.

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