***Estate of Matthew J. Nubar v. Commissioner*, 18 T.C. 11 (1952)**

To establish U.S. domicile, and therefore qualify for a gift tax exemption, a non-resident alien must demonstrate both physical presence in the United States and the intention to remain indefinitely.

Summary

The case concerned the gift tax liability of an Italian diplomat who transferred assets to a U.S. trust. The issue was whether he was a U.S. resident at the time of the transfer, qualifying him for a gift tax exemption. The Tax Court held that the diplomat was not a U.S. resident because, despite his physical presence in the country for several months, he lacked the required intention to remain indefinitely. The court emphasized that his primary purpose for being in the United States was temporary – to resolve financial issues related to his blocked assets and create a trust – and that his ties to Italy remained stronger than to the U.S.

Facts

Matthew J. Nubar, an Italian citizen and diplomat, retired in 1927 and lived with his American wife in multiple countries. After her death, he resided in Lugano, Switzerland. He owned property in Italy and had financial assets held by a U.S. trust company. During WWII, his funds were blocked, but he later received payments from the trust. He sought to return to Italy but was advised against it by his attorneys due to concerns about the seizure of his assets. He came to the U.S. to unblock his assets and create an irrevocable trust, staying from April 27 to October 2, 1948. He executed the trust agreement on September 21, 1948, and then returned to Europe. Nubar's primary motivation for coming to the US was to unblock his assets and create a trust.

Procedural History

The case originated in the Tax Court. The Commissioner of Internal Revenue determined a gift tax deficiency based on Nubar's transfer to the trust. The Tax Court heard the case and determined the outcome.

Issue(s)

Whether the petitioner was a resident of the United States at the time of the gift, qualifying for a gift tax exemption under section 1004(a)(1) of the Internal Revenue Code.

Holding

No, because Nubar did not possess the requisite intention to remain in the United States indefinitely, thus failing to establish domicile.

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Court’s Reasoning

The court relied on the definition of “resident” provided in Regulations 108, § 86.4, which equated residence with domicile and required both physical presence and an intention to remain indefinitely. The court referenced *Mitchell v. United States*, which stated, "A domicile once acquired is presumed to continue until it is shown to have been changed… To constitute the new domicile two things are indispensable: First, residence in the new locality; and, second, the intention to remain there. The change cannot be made except facto et animo. Both are alike necessary."

The court found that while Nubar resided in the U.S., he lacked the necessary intention to remain indefinitely. Key factors included that his primary reasons for being in the U.S. – unblocking assets and creating a trust – were temporary. He owned houses in Italy and had close relatives there, while his U.S. ties were more transient, and his motivation to come to the U.S. was to accomplish a specific, limited goal. He testified that he did not intend to become a permanent resident of the United States. Additionally, his non-immigrant visa as a visitor and the fact that he did not apply for an extension of stay further indicated a lack of intent to remain indefinitely.

Practical Implications

The case underscores the importance of establishing both physical presence and intent to remain indefinitely to establish U.S. domicile. Attorneys advising non-resident aliens contemplating gifts should carefully document and analyze the client’s intent, as demonstrated by objective facts, to determine the client’s domicile. This case illustrates that a temporary stay in the United States, even for several months, for a specific purpose, is unlikely to establish domicile if strong ties remain to a foreign country, and no effort is made to change residence from a foreign country to the United States. The court’s reliance on immigration documents and intentions further emphasizes the need for comprehensive evidence.

This case is often cited in tax law to differentiate between residents and non-residents, especially regarding gift and estate taxes. Subsequent cases continue to use this decision’s guidance to define residency for tax purposes. The lack of a clear intent to remain indefinitely, despite physical presence, is a key point in analyzing similar situations.

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