F. Giacomo Fara Forni, Petitioner, v. Commissioner of Internal Revenue, Respondent, 22 T.C. 975 (1954)

To establish U.S. domicile for tax purposes, a person must reside in the U.S. with the intention to remain indefinitely, not just for a limited purpose.

Summary

The United States Tax Court held that the taxpayer, an Italian citizen, was not a U.S. resident for gift tax purposes in 1948. Forni came to the U.S. to unblock his assets and create a trust to protect them from potential seizure by a European government. He stayed long enough to accomplish these specific objectives but maintained his ties to Italy, where he had family and property. The court found that his intention to remain in the U.S. was limited to these specific purposes, not indefinite, therefore he failed to establish domicile and was not entitled to the specific gift tax exemption for U.S. residents.

Facts

Forni, an Italian citizen and former diplomat, had spent a significant portion of his life living abroad. In 1948, he came to the United States to address issues related to his blocked assets held by a U.S. trust company. His primary motivation was to obtain a license that would unblock his funds and to establish an irrevocable trust to safeguard his assets from potential seizure by a foreign government. Forni arrived in the U.S. on a non-immigrant visa, and stayed at a transient hotel. While in the U.S., he owned two houses in Italy and his immediate family resided in Italy. He had no relatives in the U.S., but did have friends in New York. He filed an application for a Treasury Department license, and later executed a trust agreement. Once these objectives were achieved, he departed the U.S. and did not return.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in gift tax for 1948, denying Forni a specific exemption because he was not considered a U.S. resident. Forni challenged this determination in the United States Tax Court.

Issue(s)

Whether Forni was a resident of the United States in 1948, thereby entitling him to a specific exemption from gift tax?

Holding

No, because Forni did not have the intention to remain in the U.S. indefinitely, he was not a resident.

Court’s Reasoning

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The court focused on the definition of “resident” for gift tax purposes, as outlined in the regulations which stated that a resident is someone who has his domicile in the U.S. The court further noted that domicile requires both residence and the intention to remain indefinitely. The court cited *Mitchell v. United States*, emphasizing that “To constitute the new domicile two things are indispensable: First, residence in the new locality; and, second, the intention to remain there.” The court found that although Forni resided in the U.S. for a period, his intention was not to remain indefinitely. His actions, such as maintaining ties to Italy, limited his stay in the U.S. to the accomplishment of specific financial goals and the fact that he entered the country on a non-immigrant visa supported the conclusion that he did not have the requisite intention to remain. The court emphasized that Forni’s intention was to return to Europe after these goals were achieved. The court noted that the “absence of any present intention of not residing permanently or indefinitely in” the new abode is key.

Practical Implications

This case is critical for attorneys advising clients on tax residency. It underscores the importance of demonstrating a client’s intention to remain in the U.S. indefinitely. A transient lifestyle, maintenance of foreign ties, and the procurement of non-immigrant visas are all factors the courts consider when determining domicile for tax purposes. This case demonstrates the need for clear evidence of an indefinite intent to stay in the U.S., such as purchasing a home, seeking permanent residency, and severing ties with the former country of residence. For legal practitioners in this area, this case sets the standard for proving the intent required to establish U.S. domicile.

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