

***Estate of John Edgar McAllister, Samuel Lewis McAllister and Merrill Des Brisay, Executors, Petitioners v. Commissioner of Internal Revenue, Respondent, 54 T. C. 1407 (1970)***

A nonresident alien's estate can claim a charitable deduction for a bequest to a foreign foundation if the funds are used within the United States for charitable purposes and the likelihood of the bequest failing is negligible.

**Summary**

The Estate of John Edgar McAllister, a nonresident alien, sought a charitable deduction for a bequest to a Canadian foundation, which was to benefit Canadian students studying at Michigan College of Mining and Technology. The bequest was contingent upon the establishment of a tax-exempt foundation in Canada. The Tax Court held that the possibility of the bequest failing was negligible and that the funds were used within the U. S. , allowing the estate to claim the deduction under Section 2106(a)(2)(A)(iii) of the Internal Revenue Code.

**Facts**

John Edgar McAllister, a Canadian resident, died in 1959. His will directed that 25% of his residuary estate's income be paid to a Canadian foundation, established by Michigan College of Mining and Technology, to benefit Canadian students attending the college. The bequest was contingent upon the foundation's establishment and tax-exempt status under Canadian law. The foundation was established, received tax exemptions, and distributed funds to students, who used them primarily for tuition at Michigan College.

**Procedural History**

The estate filed a U. S. Nonresident Alien Estate Tax Return claiming a charitable deduction for the bequest. The Commissioner of Internal Revenue disallowed the deduction, leading to a petition in the U. S. Tax Court. The court ruled in favor of the estate, allowing the deduction.

**Issue(s)**

1. Whether the possibility that the bequest would not become effective was so remote as to be negligible?
2. Whether the bequest was "to a trustee or trustees \* \* \* to be used within the United States" under Section 2106(a)(2)(A)(iii) of the Internal Revenue Code?

**Holding**

1. Yes, because the conditions for the bequest were easily met, and the foundation was established and operated without significant obstacles.
2. Yes, because the funds were expended in the United States for the benefit of

students attending Michigan College.

### **Court's Reasoning**

The court determined that the likelihood of the bequest failing was negligible due to the ease with which the foundation was established and the tax exemptions were obtained. The court noted that Michigan College had a strong incentive to ensure the bequest's success and that the Canadian tax authorities had no discretion in granting the exemptions once the foundation met the legal criteria. Regarding the use of funds within the U. S. , the court found that the Canadian foundation acted as a conduit, with the funds ultimately being used by students for tuition and expenses at Michigan College, thus meeting the requirements of Section 2106(a)(2)(A)(iii). The court emphasized that the U. S. benefited from the funds being spent within its borders, aligning with the legislative intent behind the charitable deduction provision.

### **Practical Implications**

This decision clarifies that estates of nonresident aliens can claim charitable deductions for bequests to foreign foundations if the funds are used within the U. S. for charitable purposes. It expands the scope of permissible deductions by recognizing the "conduit" concept, where funds pass through a foreign entity but are ultimately used domestically. Legal practitioners should consider this ruling when advising on estate planning for nonresident aliens, ensuring that the conditions for the bequest are clearly defined and achievable. The decision may encourage more cross-border charitable giving by nonresident aliens, potentially increasing funding for U. S. educational institutions. Subsequent cases have cited this ruling to support similar deductions, reinforcing its impact on estate tax law.