Brittingham v. Commissioner, 57 T. C. 91 (1971)

Funds received and held as an agent are not taxable income to the recipient.

Summary

In Brittingham v. Commissioner, the court determined that $241,000 deposited into Robert Brittingham's account was not taxable income. The funds, intended for bond purchases on behalf of his mother, Roberta, were held by Robert as her agent. The court also clarified the scope of the attorney-client privilege, ruling that communications intended for disclosure to third parties do not qualify for the privilege. The decision underscores that funds held in an agency capacity are not income, and it provides guidance on the attorney-client privilege's application to communications involving agents.

Facts

Juan Brittingham, Robert's brother, sold Mexican bonds belonging to their mother, Roberta, and sent the proceeds of $241,000 to Robert in Dallas with instructions to invest in U. S. bonds for Roberta. Robert deposited the funds into his account and immediately instructed the bank to purchase bonds for Roberta's account. Due to a clerical error, the bonds were initially issued in Robert's name, but he corrected this mistake. The Commissioner argued that the $241,000 was taxable income to Robert.

Procedural History

The Commissioner determined a deficiency in the Brittinghams' 1962 income tax and assessed a penalty for negligence or intentional disregard of rules. The case was brought before the U. S. Tax Court, where the petitioners challenged the deficiency and penalty assessments.

Issue(s)

1. Whether the $241,000 bank deposit was gross income to the petitioners or held only as an agent for Roberta Brittingham.
2. Whether communications made to an attorney by a client's agent are protected by the attorney-client privilege.
3. Whether communications made to an attorney with the intention of disclosure to a third party are protected by the attorney-client privilege.

Holding

1. No, because the funds were received by Robert as an agent for his mother and were used to purchase bonds on her behalf.
2. Yes, because communications made by a client's agent to the attorney are privileged if made in confidence.
3. No, because communications intended for disclosure to third parties are not made

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in confidence and thus are not privileged.

Court’s Reasoning

The court ruled that the $241,000 was not taxable income to Robert because he held the funds as an agent for Roberta, not for his own benefit. The court emphasized that mere dominion over money does not constitute taxable income unless there is an accrual of gain or benefit to the taxpayer. Robert’s quick correction of the clerical error further supported his agency status. Regarding the attorney-client privilege, the court applied Wigmore’s principles, stating that communications by an agent are privileged if made in confidence. However, communications intended for third parties, as evidenced by the letters in question, were not confidential and thus not privileged. The court cited cases like *Tellier* and *Colton* to support its reasoning on confidentiality. The court also noted that the privilege could be claimed by Roberta, even though she was not a party to the case.

Practical Implications

This decision clarifies that funds held in an agency capacity are not taxable income to the agent, which is crucial for individuals managing finances on behalf of others. It also delineates the boundaries of the attorney-client privilege, particularly in situations involving agents and communications intended for third parties. Practitioners should be aware that communications made to attorneys for the purpose of being relayed to others are not protected by the privilege. This case may influence how similar tax cases are analyzed, especially when dealing with agency relationships and the application of the attorney-client privilege. It also serves as a reminder to attorneys and clients to clearly delineate which communications are intended to remain confidential.

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