

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-1289

September Term, 2005

FILED ON: DECEMBER 5, 2005 [935398]

ISMAT M. ABEID,

APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE,

APPELLEE

On Appeal from the United States Tax Court
(No. 10441-02)

Before: TATEL and GARLAND, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*.

JUDGMENT

This appeal from an order of the United States Tax Court was presented to the court, and briefed and argued by counsel. The court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. Rule 36(b). It is

ORDERED and **ADJUDGED** that the order of the Tax Court denying appellant's motion for summary judgment and granting appellee's motion for summary judgment is affirmed.

Appellant Ismat M. Abeid, an Israeli citizen, won the California State Lottery in 1992. In 1997, 1998, and 1999, Abeid resided in Israel and filed tax returns in the United States as a nonresident alien, but did not report his annual receipt of \$722,000 from the California State Lottery as income. Abeid argued that his winnings were exempt from taxation by the United States because they constituted an annuity under the terms of Income Tax Treaty Between Israel and the United States (1975), as amended by Protocols of 1980 and 1993. Under Article 20(2) of the Treaty, an annuity is taxable only in the state in which the taxpayer resides. Article 20(5) of the Treaty defines an annuity as "a stated sum paid periodically at stated times during life, or during a specified number of years, under an

obligation to make the payments in return for adequate and full consideration (other than services rendered).”

The Internal Revenue Service conceded that the terms of the Treaty govern this dispute, but challenged Abeid’s characterization of his lottery winnings as an annuity. With no material facts in dispute, the parties cross-moved for summary judgment in the Tax Court. Abeid made two arguments: First, he argued that the one dollar he paid for his lottery ticket was the full, undiscounted price and therefore constituted “adequate and full consideration” as required by the Treaty. The Tax Court disagreed, and Abeid has not appealed the decision in that respect. Second, he argued that the California State Lottery received “adequate and full consideration” from all of the nonwinning purchasers of tickets for the lottery he won. This is the only argument Abeid raises on appeal.

The Tax Court rejected this argument, as do we. For the reasons set forth by the Tax Court, California’s “obligation” to pay Abeid did not arise “in return for” the consideration provided by all nonwinning lottery ticket purchasers, but rather because he held the winning ticket. The nonwinning purchasers provided consideration only for a chance to win the lottery themselves. *See Abeid v. Comm’r*, 122 T.C. 404, 410 (2004) (citing *Goldman v. Comm’r*, 46 T.C. 136, 139 (1966), *aff’d*, 388 F.2d 476 (6th Cir. 1967)). Accordingly, the lottery payments were not made “in return for adequate and full consideration,” and therefore were not an annuity within the meaning of the Treaty.

The clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing. *See* D.C. Cir. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:
Michael C. McGrail
Deputy Clerk