2 T.C. 263 (1943)

A transfer of property to a trust, where the grantor retains a life estate, the right to income, and the power to withdraw a fixed amount of principal annually, constitutes a taxable gift to the extent of the remainder interest's value.

Summary

Daisy B. Plummer created a trust, retaining the income for life and the right to withdraw $15,000 annually. The Commissioner of Internal Revenue determined that the transfer constituted a taxable gift. The Tax Court addressed whether this transfer was a taxable gift and whether the Commissioner correctly valued the gift using actuarial tables. The Tax Court held that the transfer was indeed a taxable gift to the extent of the remainder interest, following the principles established in *Smith v. Shaughnessy*. The court sustained the Commissioner's valuation method.

Facts

On December 7, 1938, Daisy B. Plummer transferred securities worth $419,225 to a trust. The trust agreement stipulated that Plummer would receive the net income for life. Upon her death, the income would be divided between her son and daughter for their lives, with further provisions for their spouses and children. Plummer also retained the right to withdraw up to $15,000 of the principal annually, non-cumulatively. The trust was otherwise irrevocable. The Commissioner determined a gift tax deficiency based on the remainder interest's value.

Procedural History

Plummer filed a gift tax return for 1938, reporting a gift value of $125,415.74. The Commissioner increased this value to $158,015.73 in a notice of deficiency. Plummer then petitioned the Tax Court, challenging the Commissioner's determination and claiming an overpayment. The Tax Court sustained the Commissioner's determination and valuation method.

Issue(s)

1. Whether the transfer of property to a trust, with the grantor retaining a life estate and the right to withdraw principal, constitutes a taxable gift.

2. Whether the Commissioner properly computed the value of the gift using the Actuaries' or Combined Experience Table of Mortality.

Holding

1. Yes, because the transfer of property to a trust with a retained life estate and the right to withdraw principal constitutes a taxable gift to the extent of the remainder interest's value, as the grantor relinquishes dominion and control over that portion

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of the property.

2. Yes, because the Commissioner's use of the Actuaries' or Combined Experience Table was an acceptable method for valuing the remainder interest at the time of the gift.

Court's Reasoning

The court relied heavily on the Supreme Court's decisions in *Smith v. Shaughnessy* and *Robinette v. Helvering*, which established that a transfer in trust is subject to gift tax to the extent of the value of the remainder interest, even if the grantor retains a life estate. The court reasoned that Plummer relinquished control over the remainder interest when she created the trust. The possibility of Plummer regaining the entire property through annual withdrawals was considered, but the court found that this did not change the fundamental principle that a gift of the remainder interest had been made. The court explicitly overruled a prior case that was inconsistent with this holding. Regarding the valuation, the court found the Commissioner's use of actuarial tables to be appropriate, emphasizing that the tables reflected conditions at the time of the gift.

The court stated, "At the time the gift was created the possibility that the donor could regain any part of the property constituting the corpus of the gift depended upon the contingency of how long she might live…[T]he grantor has neither the form nor substance of control and never will have unless he outlives' the stipulated period."

Practical Implications

Plummer v. Commissioner reinforces the principle that retaining a life estate or certain powers over a trust does not necessarily prevent a gift tax from applying to the remainder interest. Attorneys must carefully analyze the terms of trusts to determine the extent to which a gift has been made. This case demonstrates the importance of actuarial valuations in determining the value of remainder interests, especially when the grantor retains certain withdrawal rights. Subsequent cases have cited *Plummer* for the proposition that the gift tax applies to the value of property transferred to a trust, less the value of any retained interest that is susceptible of actuarial calculation. This decision informs estate planning strategies and helps attorneys advise clients on the potential gift tax consequences of creating trusts.

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