4 T.C. 542 (1945)

A transfer of stock to a trust is includible in a decedent's gross estate if the decedent retained control and enjoyment of the transferred property through a guaranteed lifetime salary and restrictions on the sale of the stock.

Summary

The Tax Court addressed whether the value of stock transferred to trusts and the cost of an annuity purchased for the decedent's wife should be included in the decedent's gross estate for estate tax purposes. The court found that while the transfers were not made in contemplation of death, the stock transfers were includible because the decedent retained control and enjoyment. However, the annuity purchase was not includible because the wife's interest was complete and irrevocable. The court also held that a debt the decedent endorsed was deductible from the gross estate.

Facts

William F. Hofford (decedent) owned all the stock of W.F. Hofford, Inc. In 1937, at age 73, he created six irrevocable trusts: one each for his wife, daughter, and four grandchildren. He transferred all his company stock to these trusts. Simultaneously, he entered into a contract with his company to remain its manager for life at a fixed salary, irrespective of his ability to serve. Decedent died about three years later. Also in 1937, he purchased a life annuity for his wife, with a provision that any remaining premium would revert to him if she predeceased him, unless she designated otherwise.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in the estate tax, including the value of the stock transfers and the annuity in the gross estate. The executors of the estate petitioned the Tax Court for a redetermination of the deficiency.

Issue(s)

1. Whether the transfers of stock to the trusts were made in contemplation of death and therefore includible in the decedent's gross estate under Section 811(c) of the Internal Revenue Code?

2. Whether the transfers of stock to the trusts were intended to take effect in possession or enjoyment at or after the decedent's death and therefore includible in the decedent's gross estate under Section 811(c) of the Internal Revenue Code?

3. Whether the purchase of the annuity contract for the decedent's wife was made in contemplation of death and therefore includible in the decedent's gross estate under

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Section 811(c) of the Internal Revenue Code?

4. Whether the purchase of the annuity contract was a transfer intended to take effect in possession or enjoyment at or after the decedent's death and therefore includible in the decedent's gross estate under Section 811(c) of the Internal Revenue Code?

5. Whether the amount of a note endorsed by the decedent is deductible from the decedent's gross estate under Section 812(b)(3) of the Internal Revenue Code?

Holding

1. No, because the dominant motive for the stock transfers was to induce Smith to rejoin the business and reconcile their families, not in contemplation of death.

2. Yes, because the decedent retained control and enjoyment of the transferred property through a guaranteed lifetime salary and restrictions on the sale of the stock.

3. No, because the annuity took effect immediately and was not conditional on the decedent's death.

4. No, because the wife's interest in the annuity policy was irrevocable and complete upon issuance, and the decedent's potential interest was contingent and did not cause the transfer to take effect at death.

5. Yes, because the note was contracted for adequate and full consideration, and the debt was uncollectible from the primary obligor.

Court's Reasoning

The court reasoned that the stock transfers were not made in contemplation of death, citing *United States v. Wells*, focusing on the decedent's dominant motive: to bring Smith back into the business and reconcile their families. The court distinguished this from a testamentary motive. However, the court found the stock transfers includible under Section 811(c) because the decedent retained control and enjoyment, relying on *Estate of Pamelia D. Holland*. The guaranteed lifetime salary and the restriction on selling the stock without his consent demonstrated this retained control. As the court stated, "the salary represented a 10 percent return on such a valuation… [and] all of these circumstances when taken together… require us to hold that the stock transfers fall within the meaning of the above mentioned classifications (2) and (3), and the stock is includible in the decedent's gross estate."

Regarding the annuity, the court distinguished *Helvering v. Hallock*, stating that the decedent did not retain an interest that caused the transfer to take effect at death. Cora's interest in the annuity was "irrevocably fixed when the annuity policy was written."

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For the debt endorsement, the court noted that consideration need not flow to the decedent. Since the funds were used to purchase uniforms and the association was unable to repay the note, the amount was deductible.

Practical Implications

This case highlights that even if a transfer is not made in contemplation of death, it can still be included in the gross estate if the transferor retains significant control or enjoyment. Attorneys should advise clients to relinquish control over transferred assets to avoid estate tax inclusion. Guaranteed lifetime payments and restrictions on asset sales are factors that suggest retained control. This case also illustrates that accommodation endorsements can be deductible as debts of the estate if they were contracted for full consideration and are uncollectible from the primary obligor. Later cases will look at the totality of the circumstances in determining whether the decedent truly relinquished control over the assets.

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