7 T.C. 1236 (1946)

A gift is considered made in contemplation of death, and therefore includible in the gross estate for tax purposes, if the dominant motive for the transfer is the thought of death, resembling a testamentary disposition.

Summary

The case concerns whether gifts made by the decedent, D.I. Cooper, to his son and trusts for his wife and daughter, should be included in his gross estate for estate tax purposes. The Tax Court held that the gifts to the son were not made in contemplation of death because the primary motive was to encourage his involvement in the family business. However, the transfers to the trusts were deemed to be in contemplation of death because they were linked to the terms of his will, indicating a testamentary intent and the decedent retained until his death the power to alter the enjoyment of the trust property through his will.

Facts

D.I. Cooper made outright gifts of stock to his son, Frank, in 1936, 1937, and 1938. The stated intention was to motivate Frank to actively participate in the Howard-Cooper Corporation. Cooper also established two trusts in 1936, one for his wife, Nellie, and one for his daughter, Eileen. The trust income was to be accumulated during Cooper's life, and upon his death, the funds were to be transferred to a bank (executor of his will) to be managed and distributed according to the terms of his will. Cooper made transfers of stock to these trusts in 1936, 1937, 1938, and 1939. Cooper died in 1940.

Procedural History

The Commissioner of Internal Revenue determined an estate tax deficiency, including the value of the gifts to Frank and the trusts for Nellie and Eileen in Cooper's gross estate. The executor of Cooper's estate, The First National Bank of Portland, challenged this determination in the United States Tax Court.

Issue(s)

1. Whether the transfers of stock to decedent's son, Frank, were made in contemplation of death under Section 811(c) of the Internal Revenue Code?

2. Whether the transfers of stock to the trusts for the benefit of decedent's wife and daughter were made in contemplation of death under Section 811(c) of the Internal Revenue Code; and alternatively, whether those transfers should be included in the gross estate under sections 811(c) or 811(d) because the decedent retained power over the trusts or because the transfers were intended to take effect at or after his death?

Holding

1. No, because the dominant motive for the transfers to Frank was to encourage his involvement in the family business, a motive associated with life rather than death.

2. Yes, the transfers of stock to the trusts for the decedent's wife and daughter were made in contemplation of death because the trust instruments referenced and depended upon the terms of the decedent's will, indicating a testamentary disposition; and further because the decedent retained the power to alter the enjoyment of the trust property through his will until his death.

Court's Reasoning

The court applied the test from *United States v. Wells, 283 U.S. 102 (1931)*, stating that the thought of death must be the "impelling cause," "inducing cause," or "controlling motive" prompting the disposition of property for it to be considered in contemplation of death. For the gifts to Frank, the court found that the dominant motive was to encourage his active participation in the family business. This was supported by testimony and the fact that the gifts occurred before the decedent's serious illness. The court emphasized that the desire to reduce income tax burden, while a contributing factor, was also a motive connected with life. Regarding the trusts, the court found that the trust instruments were not complete in themselves and were dependent on the terms of the decedent's will. The court reasoned, "That fact, the fact that the transfers in trust were conditioned upon the provisions of 'the Trustor's will,' and almost every other circumstance point unmistakably to a primary purpose to make proper provision for his wife and daughter only after his death." Furthermore, the court found that by tying the transfers to the provisions of his will, the decedent retained the power to alter the enjoyment of the trust property until his death, making the trust property includible in his gross estate under sections 811(c) and 811(d) of the Internal Revenue Code.

Practical Implications

This case highlights the importance of documenting the motives behind significant gifts, especially when made close to the donor's death. It demonstrates that gifts made to incentivize a family member's participation in a business can be considered motives associated with life. The case illustrates that when trusts are explicitly linked to the provisions of a will, they are more likely to be viewed as testamentary in nature and included in the gross estate. This emphasizes the need for careful drafting of trust documents to ensure they stand alone and are not interpreted as mere supplements to a will. Estate planners must be aware that any retained power by the grantor to alter the beneficial enjoyment of trust assets can lead to inclusion of those assets in the grantor's estate for tax purposes. Subsequent cases may distinguish *Cooper* based on the degree of independence of the trust from the grantor's will and the evidence presented regarding the donor's motives.

