9 T.C. 503 (1947)

Transfers with retained interests are included in a decedent's gross estate for estate tax purposes, while transfers made to satisfy lifetime motives are not considered in contemplation of death.

Summary

The Tax Court addressed whether certain transfers made by Ambrose Fry before his death should be included in his gross estate for estate tax purposes. The court considered whether the transfers were made in contemplation of death or if Fry retained an interest in the transferred property. The court held that a transfer of stock to a key employee was not made in contemplation of death, but a later transfer of mortgage certificates to his grandchildren was. Further, a stock transfer to his daughter, where Fry retained the right to the first $15,000 in dividends, was included in his estate because he retained an interest that did not end before his death. The court also determined the value of certain foreign assets and disallowed a deduction for a claim against the estate.

Facts

Ambrose Fry died on October 22, 1941. Prior to his death, he made several transfers: 1) 100 shares of Feedwaters, Inc., stock to Franklin Lang, the company's vice president, to retain his services. 2) 150 shares of Feedwaters, Inc., stock to his daughter, Muriel, subject to Fry receiving the first $15,000 in dividends. 3) Mortgage certificates to Franklin Lang for Lang's children. Fry also owned assets in England, which were subject to exchange controls. Aimee P. Hare held a lease on Fry's residence at a nominal rental, which the estate settled after Fry's death by purchasing the lease.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Fry's estate tax. The estate challenged the Commissioner's inclusion of the stock transfers and foreign assets in the gross estate, as well as the disallowance of a deduction for the settlement payment to Aimee P. Hare. The Tax Court heard the case to determine the estate tax implications of these transactions.

Issue(s)

1. Whether the transfer of 100 shares of Feedwaters, Inc., stock to Franklin Lang was a gift in contemplation of death under Section 811(c) of the Internal Revenue Code.

2. Whether the transfer of 150 shares of Feedwaters, Inc., stock to Muriel Fry Gee, subject to the decedent receiving the first $15,000 in dividends, should be included in the gross estate under Section 811(c).

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3. Whether the transfer of mortgage certificates to Franklin Lang for his children was made in contemplation of death.

4. What was the proper valuation of the Feedwaters, Inc., stock and the English assets for estate tax purposes?

5. Whether the $1,000 payment to Aimee P. Hare was a deductible claim against the estate under Section 812(b).

Holding

1. No, because the transfer was made to retain Lang's services and not in contemplation of death.

2. Yes, because Fry retained the right to income from the property for a period that did not end before his death.

3. Yes, because the transfer was made shortly before Fry's death and the estate failed to overcome the presumption that it was made in contemplation of death.

4. The value of the Feedwaters, Inc., stock was $245 per share, and the value of the British assets was $39,500.

5. No, because the claim was not contracted bona fide for an adequate and full consideration.

Court's Reasoning

The court reasoned that the gift to Lang was motivated by a desire to retain his services, a motive associated with continued life. The court emphasized, "he gave the shares, not in contemplation of death, but to satisfy Lang and to retain his services, a motive connected with continued life." For the transfer to Muriel, the court found that Fry retained an interest in the stock because he was entitled to the first $15,000 in dividends, thus triggering inclusion under Section 811(c). As for the mortgage certificates, the court noted the transfer occurred shortly before Fry's death, and the estate failed to provide sufficient evidence to overcome the statutory presumption that it was made in contemplation of death, stating, "the evidence does not fairly preponderate in the petitioner's favor." The court considered expert testimony and other relevant factors to determine the value of the Feedwaters, Inc., stock. For the British assets, the court recognized the impact of British exchange controls on their value. Finally, the court disallowed the deduction for the payment to Aimee P. Hare, finding that the lease agreement was not made for adequate consideration as required by Section 812(b).

Practical Implications

This case illustrates the importance of understanding the motives behind lifetime

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transfers for estate tax planning. Transfers made to achieve lifetime objectives are less likely to be considered in contemplation of death. Retaining any form of control or benefit from transferred property can result in its inclusion in the gross estate, even if the transfer was structured as a gift. Additionally, it highlights the need to properly value assets, considering any restrictions that may affect their marketability, and provides a reminder that claims against an estate must be bona fide and supported by adequate consideration to be deductible.

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