***9 T.C. 979 (1947)***

r
r

When a transfer to a trust is deemed to be made in contemplation of death, only the value of the assets originally transferred by the decedent to the trust are included in the gross estate, not the increased value due to the trustee's subsequent investment activity.

r
r

**Summary**

r

James E. Frizzell, at age 81, established an irrevocable trust for his incompetent son, naming Trust Co. of Georgia as trustee. Frizzell transferred 1,132 shares of Coca-Cola stock to the trust and directed the trustee to distribute income as needed for his son's care, accumulating undistributed income. Upon Frizzell's death, the Commissioner of Internal Revenue included the entire trust corpus in his gross estate, arguing it was a transfer in contemplation of death. The Tax Court agreed that the transfer was made in contemplation of death but held that only the value of the Coca-Cola stock at the time of death, not the accumulated income and subsequent investments made by the trustee, should be included in the gross estate.

r
r

**Facts**

r

James E. Frizzell, born in 1856, created an irrevocable trust on October 14, 1937, for his 40-year-old incompetent son, William Pitts Frizzell. At the time, James was 81 years old and in good health. William had the mental capacity of a 12-year-old and was unable to manage his own affairs. James transferred 1,132 shares of Coca-Cola stock to the Trust Co. of Georgia as trustee. The trust directed the trustee to distribute income necessary for William's needs, with any undistributed income to be accumulated. James died on August 23, 1940, at age 84, following a heart attack.

r
r

**Procedural History**

© 2025 SCOTUSreports.com. All rights reserved. 

r

The Commissioner of Internal Revenue determined a deficiency in Frizzell's estate tax, arguing that the trust transfer was made in contemplation of death and that the entire trust corpus at the date of death should be included in the gross estate. The executors of Frizzell's estate petitioned the Tax Court to contest this determination.

r
r

**Issue(s)**

r

1. Whether the transfer of Coca-Cola stock to the trust in 1937 was made in contemplation of death under Section 811(c) of the Internal Revenue Code.

r

2. Whether the entire corpus of the trust at the date of death, including accumulated income and subsequent investments, is includible in the gross estate for estate tax purposes.

r
r

**Holding**

r

1. Yes, because the trust was established primarily to provide for the son after the decedent's death, acting as a substitute for a testamentary disposition.

r

2. No, because only the value of the property originally transferred by the decedent (the Coca-Cola stock) is includible in the gross estate; the accumulated income and subsequent investments made by the trustee are not.

r
r

**Court's Reasoning**

r

Regarding the first issue, the court emphasized that determining whether a gift was made in contemplation of death requires scrutinizing the circumstances surrounding

© 2025 SCOTUSreports.com. All rights reserved. 

the gift to ascertain the donor's dominant motive. Citing *United States v. Wells, 283 U.S. 102 (1931)*, the court noted that the chief purpose of Section 811(c) is to reach substitutes for testamentary dispositions. The court found that although Frizzell was in good health when he created the trust, his primary motive was to ensure his incompetent son's care after his death, given that the son's needs were minimal and already being met during Frizzell's lifetime. The Court noted Frizzell's will stated that he made no provisions for his son in the will because he created a trust for the son's benefit. This indicated the trust was a substitute for testamentary disposition, establishing the transfer was made in contemplation of death. The court quoted *Igleheart v. Commissioner, 77 F.2d 704, 709*, stating, "A gift is to be regarded as made in contemplation of death where the dominant motive of the donor is to make proper provision of the donee after the death of the donor."

© 2025 SCOTUSreports.com. All rights reserved. 