***10 T.C. 680 (1948)***

Whether a transfer of property is made in contemplation of death depends on the decedent's dominant motive, considering factors like age, health, the proportion of property transferred, and the existence of testamentary schemes.

**Summary**

The Tax Court addressed whether lifetime transfers made by Oliver Johnson, who died at age 94, were made in contemplation of death, thus includible in his gross estate for estate tax purposes. Johnson transferred a significant portion of his property to his children about four years before his death. The court held that the transfers were not made in contemplation of death because Johnson's dominant motive was to relieve himself of the burdens of property management, not to distribute his estate in anticipation of death, despite his advanced age.

**Facts**

Oliver Johnson, a retired farmer, moved to California at age 71. He actively managed his farms and loans until his 80s. Between 1932 and 1934, he acquired numerous rental properties due to loan defaults, which he disliked managing. In 1939, at age 90, he transferred all his real properties to his five children, retaining notes, mortgages, and cash sufficient for his frugal lifestyle. Johnson was remarkably vigorous, cheerful, and independent for his age. He executed a will four months after the transfers.

**Procedural History**

The Commissioner of Internal Revenue determined a deficiency in estate tax, including the value of the transferred properties in Johnson's gross estate. The Estate petitioned the Tax Court, contesting the Commissioner's determination that the transfers were made in contemplation of death.

**Issue(s)**

Whether the transfers of real property made by the decedent, Oliver Johnson, to his children on March 3, 1939, were made in contemplation of death within the meaning of Section 811(c) of the Internal Revenue Code, and thus includible in his gross estate for estate tax purposes.

**Holding**

No, because the decedent's dominant motive in making the transfers was to relieve himself of the burdens of managing the properties, not to distribute his estate in anticipation of death.

**Court's Reasoning**

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The court emphasized that the determination of whether a transfer is made in contemplation of death is a subjective inquiry into the decedent's dominant motive. The court considered numerous factors, including Johnson's age, health, the time between the transfer and death, the proportion of property transferred versus retained, Johnson's disposition, and any testamentary scheme. While Johnson's advanced age was a significant factor suggesting contemplation of death, the court found that his exceptional health, vigor, cheerful disposition, and the substantial evidence demonstrating his desire to escape the burdens of property management outweighed this factor. The court noted Johnson's statements expressing his dislike for managing rental properties and his intent to transfer them to his children once the titles were clear. The court quoted *United States v. Wells, 282 U.S. 102*, stating that age is not a decisive test when "sound health and purposes associated with life, rather than death, may motivate the transfer."

**Practical Implications**

This case illustrates the importance of establishing the decedent's dominant motive through concrete evidence when determining whether lifetime transfers should be included in the gross estate. It emphasizes that advanced age alone is not sufficient to prove contemplation of death if other factors suggest life-related motives, such as relieving oneself of management burdens or a history of lifetime gift-giving. Attorneys should gather extensive evidence regarding the decedent's health, lifestyle, statements, and reasons for making the transfers. This case is frequently cited in estate tax litigation to argue that transfers by elderly individuals were motivated by lifetime concerns rather than anticipation of death. It highlights the need for a holistic analysis of the decedent's circumstances, demonstrating that even very old individuals can have motives unrelated to mortality when making significant lifetime gifts.

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