T.C. Memo. 1947-324

Transfers of property, including the severance of joint tenancies, made with the primary motive of reducing estate taxes and in close proximity to death, are considered to be made in contemplation of death and are includible in the gross estate for tax purposes.

Summary

The Tax Court determined that transfers of property by the decedent to his son and wife, including the severance of joint tenancies, were made in contemplation of death. The decedent's actions, prompted by estate tax planning advice shortly before his death from cancer, indicated a primary motive to reduce estate taxes rather than lifetime motives. The court found that these transfers lacked the characteristics of a bona fide sale and were therefore includible in the decedent's gross estate, despite arguments that they merely converted joint tenancies into tenancies in common.

Facts

The decedent, Carl H. Belser, made two sets of transfers shortly before his death. On November 19, 1943, he made a gift of property to his son. On November 24, 1943, following advice from counsel, he entered into an agreement with his wife to sever joint tenancies in their property, converting them into tenancies in common. The decedent began experiencing health issues, including weight loss and jaundice, and consulted a physician for the first time on November 18, 1943. He was hospitalized for three days for examination and signed the transfer papers immediately after his discharge. He died less than two months later from cancer. The Commissioner determined that these transfers were made in contemplation of death and included the value of the transferred property in the decedent's gross estate.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in the estate tax of Carl H. Belser. The Estate of Carl H. Belser, the petitioner, contested this determination in the Tax Court. The Tax Court reviewed the Commissioner's determination and the petitioner's arguments.

Issue(s)

1. Whether the transfers of property to the decedent's son were made in contemplation of death within the meaning of Section 811(c) of the Internal Revenue Code.
2. Whether the transfers severing joint tenancies with the decedent's wife were made in contemplation of death within the meaning of Section 811(c) of the Internal Revenue Code.

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3. Whether the transfers severing joint tenancies constituted a bona fide sale for an adequate and full consideration in money or money's worth, thereby exempting them from inclusion in the gross estate under Section 811(c).
4. Whether only one-half of the value of the transferred property should be included in the gross estate because the property was held as joint tenants or tenants in common.

Holding

1. Yes, because the transfer of property to the son was a substantial portion of the estate and under the circumstances indicates a purpose associated with death instead of life.
2. Yes, because the transfers were initiated with the intention to reduce death taxes.
3. No, because the transaction was a family arrangement intended to lessen death duties, rather than a bona fide sale for adequate consideration.
4. No, because the decedent supplied all the property, and the transfers made in contemplation of death are treated as if they had not been made, meaning the property is valued as it was before the transfers.

Court's Reasoning

The court reasoned that the transfers to the son, representing a significant portion of the decedent's estate, lacked evidence of lifetime motives, suggesting a purpose associated with death. Regarding the severance of joint tenancies, the court found that the transfers were directly linked to the decedent's concern about estate taxes, thus falling under the definition of transfers made in contemplation of death, citing *Allen v. Trust Co. of Georgia, 326 U.S. 630*. The court distinguished the transfers from a bona fide sale, emphasizing that the transaction lacked the characteristics of an arm's-length bargain and was primarily aimed at reducing estate taxes, rather than exchanging value. The court stated that "the statute is satisfied, it is said, where for any reason the decedent becomes concerned about what will happen to his property at his death and as a result takes action to control or in some maimer affect its devolution." The court also held that because the decedent originally owned all of the property, severing the joint tenancy shortly before death did not change the amount includible in his estate, citing *Inglehart v. Commissioner, 77 Fed. (2d) 704* which stated, "…for the purposes of the tax, property transferred by the decedent in contemplation of death is in the same category as it would have been if the transfer had not been made and the transferred property had continued to be owned by the decedent up to the time of his death…"

Practical Implications

This case illustrates that transfers of property, even those that alter the form of ownership (e.g., severing joint tenancies), will be closely scrutinized if they occur shortly before death and are motivated by estate tax planning. Attorneys must

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advise clients that such transfers may be deemed to be made in contemplation of death and included in the gross estate, negating the intended tax benefits. The case also highlights the importance of documenting lifetime motives for gifts and transfers to counter the presumption that they were made in contemplation of death. Later cases applying this ruling emphasize that the primary motive behind the transfer, as evidenced by the timing and circumstances, is the key determinant. Estate planning should be conducted well in advance of any known health issues to avoid the appearance of tax avoidance motivated by imminent death.

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