7 T.C. 1183 (1946)

A transfer of property is deemed to be made in contemplation of death if the primary or dominant motive for the transfer is to avoid estate taxes, regardless of whether death is imminent.

Summary

The Tax Court held that property transferred by the decedent to his wife was includable in his gross estate because the transfer was made in contemplation of death. The court found that the primary motive behind the transfer was to avoid estate taxes, based on advice the decedent received from an insurance agent and attorney. The court rejected the petitioner's argument that the transfer was a bona fide sale for adequate consideration, finding that the relinquishment of marital rights did not constitute adequate consideration and that the transfer did not leave the decedent's estate intact.

Facts

The decedent, a California resident, transferred community property to his wife in December 1942, approximately 18 months before his death from a heart attack. An insurance agent advised the decedent on a plan to minimize estate taxes, and an attorney drafted the agreement. The insurance agent outlined the plan where estate taxes could be avoided. The property had previously been held as community property, or in joint tenancy. The transfer was structured as an agreement between the decedent and his wife, dividing their property. The Commissioner determined the transfer should be included in the gross estate, since it was in contemplation of death, to avoid estate tax.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in the decedent's estate tax. The Estate of Kickenberg petitioned the Tax Court for a redetermination. The Tax Court reviewed the Commissioner's determination.

Issue(s)

1. Whether the transfer of property from the decedent to his wife was made in contemplation of death within the meaning of Section 811(c) of the Internal Revenue Code?
2. Whether the transfer was a bona fide sale for an adequate and full consideration in money or money's worth, thus exempting it from inclusion in the gross estate under Section 811(c)?

Holding

1. Yes, because the primary and dominant purpose of the transfer was to escape

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estate taxes.
2. No, because there was no sale in the ordinary sense, the relinquishment of marital rights does not constitute adequate consideration, and the transfer diminished the decedent's estate without a corresponding increase in value.

Court's Reasoning

The court reasoned that the decedent's dominant motive for the transfer was to avoid estate taxes. The court pointed to the advice received from the insurance agent and attorney, which explicitly mentioned estate tax savings. The court emphasized that the desire to execute the transfer before January 1, 1943, did not necessarily indicate a desire to avoid gift tax, as no gift tax would have been incurred if no transfer had been made. The court dismissed the argument that the transfer was a bona fide sale, stating: "In its ordinary sense the term means transfer for a fixed price in money or its equivalent." The court also noted that relinquishment of marital rights is not considered consideration in money or money's worth under Section 812(b)(5) of the Internal Revenue Code. The court found that the transfer diminished the decedent's estate without bringing an equivalent value back into the estate. The court reasoned that to be a bona fide sale "the intent of the exception stated in section 811 (c) is that if the transfer of property from a decedent brought into his estate the equivalent thereof, the estate, of course, was not diminished."

Practical Implications

This case illustrates that transfers made with the primary intent to avoid estate taxes will likely be deemed to be made in contemplation of death, thus requiring inclusion of the transferred property in the gross estate. The case reinforces the importance of considering the decedent's motivations and the surrounding circumstances when determining whether a transfer was made in contemplation of death. The case also highlights that the relinquishment of marital rights does not constitute adequate consideration for estate tax purposes and that a transfer must not diminish the decedent's estate without a corresponding increase in value to be considered a bona fide sale. The case also confirms that an attorney or advisor's recommendation to avoid tax can be used to demonstrate that a transfer was made to avoid tax.

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