11 T.C. 576 (1948)

A transfer to a trust is considered to be made in contemplation of death, and thus includable in the decedent's estate for tax purposes, if the dominant purpose of the transfer was to arrange for the beneficiary's care after the grantor's death, essentially acting as a substitute for a testamentary disposition.

Summary

The Tax Court reconsidered its prior decision regarding whether a trust created by the decedent for his incompetent son was made in contemplation of death, thereby requiring its inclusion in the decedent's taxable estate. The court affirmed its original holding, finding that the trust was indeed created in contemplation of death because the decedent's primary motive was to provide for his son's welfare after the decedent's death, effectively substituting for a testamentary provision. This decision hinged on the court's interpretation of the decedent's intent and the circumstances surrounding the trust's creation.

Facts

James E. Frizzell, born in 1856, created an irrevocable trust in October 1937 for his incompetent son, William Pitts Frizzell, transferring 1,132 shares of Coca-Cola stock to the Trust Co. of Georgia as trustee. At the time, James was 81 years old, and his son, William, was 40 but had the mental capacity of a 12-year-old. The trust directed the trustee to provide for William's reasonable needs, primarily through distributions to his mother or sisters, accumulating undistributed income, and allowing encroachment upon the corpus in emergencies. James died in August 1940 at the age of 84.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Frizzell's estate tax, asserting that the trust was created in contemplation of death and should be included in the taxable estate. The Tax Court initially sustained the Commissioner's determination. The petitioners moved for reconsideration, which was granted, leading to this supplemental opinion where the court reaffirmed its original holding.

Issue(s)

Whether the transfer of property to the trust for the benefit of the decedent's incompetent son was made in contemplation of death within the meaning of Section 811(c) of the Internal Revenue Code, thus requiring the trust's inclusion in the decedent's gross estate for estate tax purposes.

Holding

Yes, because the dominant purpose of the decedent in creating the trust was to

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arrange for the care of his incompetent son after the decedent's death, making it a substitute for a testamentary disposition and thus a transfer in contemplation of death.

Court's Reasoning

The court reasoned that the key factor was the decedent's dominant motive in establishing the trust. It distinguished this case from *Colorado National Bank of Denver v. Commissioner*, where the trust was created to protect assets from the grantor's speculative business ventures. Here, the court found little evidence of such speculative activity by Frizzell. Instead, the court emphasized testimony indicating Frizzell's concern for his son's long-term care, especially the possibility of the son being alone and without support. The court noted that the trust was structured to provide for the son's needs in a manner similar to what a will would accomplish. The court concluded, "It is our judgment that the evidence shows that the dominant purpose of the decedent in creating the trust was to arrange for such time as the incompetent son might be alone… In this proceeding the evidence shows, in our opinion, that the trust was created in 1937 in lieu of making the same provision under a will. Therefore, the trust comes within the scope of section 811 (c) as a transfer in contemplation of death." Judge Black dissented, arguing that the dominant motive was associated with life—providing for the son's support regardless of the decedent's future financial circumstances—analogizing it to providing for an invalid relative, and thus should not be considered in contemplation of death.

Practical Implications

This case highlights the importance of documenting lifetime motives for establishing trusts, especially when the grantor is elderly or in failing health. It emphasizes that even trusts created to provide for loved ones can be deemed transfers in contemplation of death if the court perceives them as substitutes for testamentary dispositions. Attorneys should advise clients to articulate and document lifetime purposes for creating trusts, such as relieving current burdens of care, providing immediate benefits, or pursuing specific investment strategies. This case serves as a cautionary tale, urging careful consideration of the potential estate tax consequences of *inter vivos* transfers, especially when the beneficiaries are individuals who would typically be provided for in a will. Later cases have distinguished *Frizzell* by focusing on the presence of significant lifetime motives and benefits associated with the trust's creation.

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