19 T.C. 1093 (1953)

For estates of nonresident aliens dying between October 22, 1942, and December 31, 1947, the entire value of community property situated in the United States is includible in the decedent's gross estate, except for any portion proven to be derived from the surviving spouse's separate property.

Summary

This case concerns the estate tax liability of a French citizen and resident who died in 1943, owning community property with his surviving spouse located in the United States. The Tax Court addressed whether the entire value of this community property was includible in the decedent's gross estate under Section 811(e)(2) of the Internal Revenue Code, and whether the estate was entitled to a deduction for attorney's fees. The court held that the entire value of the U.S.-situated community property was includible in the gross estate, except for the portion traceable to the surviving spouse's separate property, and that the estate was entitled to a proportionate deduction for attorney's fees.

Facts

Louis Bordes, a French citizen and resident, died intestate in France in 1943. He was married to Clemence Bordes, and they had a community property regime under the Civil Code of France. The couple owned various assets located in the United States, including stocks and a credit balance with J.P. Morgan & Co. The estate tax return only included one-half the value of the U.S. assets, claiming the other half belonged to the surviving spouse due to the community property laws. The marriage contract stipulated the separate property contributions to the marriage. The surviving spouse had made contributions to the marriage and received an inheritance during the marriage.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in estate taxes. The Commissioner included the entire value of the U.S. stocks in the gross estate. The estate petitioned the Tax Court, contesting the inclusion of the entire value of the community property. The Tax Court addressed the includibility of the community property in the gross estate and the estate's entitlement to a deduction for attorney's fees.

Issue(s)

1. Whether the community property of the decedent and his surviving spouse, which was situated in the United States on the date of his death, is includible in his gross estate under the provisions of Section 811(e)(2) of the Internal Revenue Code.

2. Whether the estate is entitled to a proportionate deduction under Section 861 of

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the Internal Revenue Code for attorney's fees.

Holding

1. No, except that part thereof constituting less than one-half which was identified and traced to the separate property of the surviving spouse, because Section 811(e)(2) requires the inclusion of the entire value of community property, except such part as is clearly traceable to the separate property of the surviving spouse.

2. Yes, because Section 861 of the Internal Revenue Code allows a proportionate deduction for administration expenses.

Court's Reasoning

The court reasoned that Section 811(e)(2) of the Internal Revenue Code, as amended in 1942, mandates the inclusion of the entire value of community property in the decedent's gross estate, irrespective of foreign community property laws, except for the portion demonstrably derived from the surviving spouse's separate property or compensation for personal services. The court emphasized that the burden of proving such derivation rests on the estate. The Court stated, "the petitioners cannot discharge the burden imposed upon them by the statute by merely showing the respective contributions of the spouses to the community at its inception. That fact alone may bear no relation to their respective economic contributions to the assets held in the community upon its dissolution." The court allowed an exclusion for 100 shares of General Electric stock proven to have been purchased with the wife's separate funds. As for the deduction for attorney's fees, the court found that the estate was entitled to a proportionate deduction under Section 861, based on the ratio of the gross estate situated in the United States to the entire gross estate wherever situated.

Practical Implications

This case illustrates the application of specific estate tax rules to community property owned by nonresident aliens. It emphasizes the importance of tracing assets to their original source to claim exclusions from the gross estate. Attorneys handling estates with community property elements, particularly those involving nonresident aliens, must meticulously document the source and derivation of assets to minimize estate tax liability. The case also clarifies the method for calculating deductions for expenses when dealing with nonresident alien estates, highlighting the need to accurately value both U.S. and foreign assets. This decision was relevant for estates of decedents dying between October 22, 1942, and December 31, 1947, due to the specific language of Section 811(e)(2) during that period. The tracing rules established in this case can still be instructive in other areas of estate tax law.

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