Estate of Julius Selling, Deceased, Fred M. Selling and Hanna Selling, Executors, Petitioners, v. Commissioner of Internal Revenue, Respondent, 24 T.C. 191 (1955)

A bequest to a surviving spouse that grants a life estate with the power to dispose of the property, but with the remainder going to another party upon the spouse's death, is considered a terminable interest and does not qualify for the marital deduction for estate tax purposes.

Summary

The Estate of Julius Selling contested a deficiency in estate tax. The issues were: (1) whether gifts from the decedent to his wife were made in contemplation of death and includible in the gross estate; (2) whether life insurance proceeds should be included in the gross estate; and (3) whether a bequest of insurance renewal commissions to the wife qualified for the marital deduction. The Tax Court held that the gifts were not made in contemplation of death, the insurance proceeds were not includible, but the bequest of renewal commissions was a terminable interest and did not qualify for the marital deduction because the will stipulated that any unpaid commissions at the wife's death would go to the son. The court looked to New York law to determine the nature of the property interest passing under the will.

Facts

Julius Selling died on July 3, 1950. He made cash gifts totaling $24,000 to his wife between 1944 and 1949. Selling's wife applied for and owned a $10,000 life insurance policy on his life, paying the premiums from her own bank account, where the gift money was deposited. Selling was a life insurance agent and entitled to renewal commissions. His will bequeathed these commissions to his wife, with a provision that any unpaid commissions at her death would pass to their son.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in estate tax. The executors of the estate contested the deficiency in the United States Tax Court. The Tax Court rendered a decision, and the decision was entered under Rule 50.

Issue(s)

1. Whether cash gifts from the decedent to his wife were includible in the gross estate as being made in contemplation of death.

2. Whether the proceeds of a policy of insurance on decedent's life are includible in his estate under Section 811 (g)(2) of the Internal Revenue Code of 1939.

3. Whether the marital deduction is applicable to the decedent's bequest to his wife of certain rights to renewal commissions on insurance policies, or whether the wife

took a terminable interest precluding the marital deduction because of a further provision of the will that upon the death of decedent's wife, any rights to receive the renewal commissions which had not become due or been previously disposed of by the wife were bequeathed to decedent's son.

Holding

1. No, because the court found the gifts were not made in contemplation of death.

2. No, because the premiums were not paid directly or indirectly by the decedent.

3. No, because the wife's interest in the renewal commissions was a terminable interest.

Court's Reasoning

The court addressed the issues in the order presented. First, the court considered the gifts in contemplation of death, finding that the gifts, made over a period of years, were not testamentary in nature considering the decedent's age, health, and the size of the gifts relative to the overall estate. Second, the court found that the life insurance proceeds were not includible in the gross estate because the wife owned the policy, applied for it, and paid the premiums from her own account, using the gifted funds. The court distinguished the facts from those in the *Estate of E. A. Showers*, where the decedent had assigned the policies but paid the premiums or transferred funds to his wife for that purpose.

Finally, the court examined whether the bequest of insurance renewal commissions qualified for the marital deduction. The court determined that under New York law, the bequest of renewal commissions to the wife was not a fee simple interest, but a life estate with a power of disposition. Because the will provided that any remaining commissions not yet due at the time of her death would pass to the son, the court held that the interest was terminable and therefore did not qualify for the marital deduction. The court cited several New York cases (e.g., *Leggett v. Firth*) to support its interpretation of the will and the nature of the property interest created.

Practical Implications

This case underscores the importance of carefully drafting wills to ensure that bequests qualify for the marital deduction. A bequest that grants a surviving spouse a life estate with a remainder interest to another party is a terminable interest and will not qualify for the deduction. When structuring bequests, especially those involving income streams like renewal commissions, practitioners must consider the applicable state law (in this case, New York law) to determine the nature of the interest created. The court's emphasis on the testator's intent, as determined by state law, highlights the need for precise language to avoid unintended tax consequences. This case should be used as a guide to explain to clients the limits of marital deductions and the importance of choosing the right estate plan when they want to provide for their spouse.

This case has implications for how life insurance proceeds are treated. If the decedent is the owner of the life insurance policy, the proceeds are included in the decedent's gross estate. However, if the surviving spouse is the owner and pays the premiums, the proceeds will not be included in the gross estate. Finally, in community property states, the characterization of assets and the marital deduction calculation may differ.

