Estate of Oei Tjong Swan, 24 T.C. 829 (1955)

Transfers to foreign family foundations (Stiftungs) over which the decedent retained control through the power to amend and revoke are includible in the gross estate under I.R.C. § 811(d).

Summary

This case involves the estate of a Dutch citizen who died in 1943. The primary issue was whether assets held by two foreign Stiftungs, family foundations created by the decedent, were includible in his gross estate for federal estate tax purposes. The court held that, despite their legal structure as foreign entities, the Stiftungs were essentially revocable, and assets held by them were includible. The court also addressed the valuation of securities located in Holland during wartime and the applicability of the Netherlands government's decree of May 24, 1940. Furthermore, the court found that the delay in filing the estate tax return was due to reasonable cause, and not to willful neglect.

Facts

Oei Tjong Swan, a Dutch citizen and resident, died in the Netherlands in 1943. Before his death, he established two Swiss Stiftungs. The Yan Stiftung was located in Vaduz, Liechtenstein, and the Kien Stiftung was located in Chur, Switzerland. The purpose of these Stiftungs was to provide funds for the education and support of the decedent's descendants. The decedent retained the power to amend or revoke the Stiftungs. At the time of the decedent's death, both Stiftungs held assets, including cash and U.S. securities, in New York banks. The estate tax return was filed in 1949 and a deficiency was determined by the Commissioner.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in estate tax and imposed a penalty. The estate contested this determination in the U.S. Tax Court. The Tax Court found in favor of the Commissioner on the main issue of including the Stiftungs' assets in the gross estate, but did not uphold the penalty. The case was decided under Rule 50.

Issue(s)

1. Whether the assets held by the Yan and Kien Stiftungs are includible in the gross estate under I.R.C. § 811(d), and whether the cash deposits were "for" the decedent under I.R.C. § 863(b).

2. Whether the value of securities located in Holland should be valued in accordance with regulations, despite the war-time restrictions on them.

3. Whether a 25% penalty for late filing of an estate tax return should be assessed

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against the estate.

Holding

1. Yes, because the decedent retained the power to amend and revoke the Stiftungs, making the assets held in them includible in the gross estate under § 811(d). No, the deposits were not considered to be “for” the decedent, under I.R.C. § 863(b).

2. Yes, the securities should be valued, even though they were located in Holland during the war, and subject to restrictions at a rate of $0.065 per guilder.

3. No, because the delay in filing the return was due to reasonable cause, not willful neglect.

Court’s Reasoning

The court focused on the substance over form, concluding that the Stiftungs, though structured under foreign law, were functionally equivalent to revocable trusts. Because the decedent retained the power to amend, alter, or revoke the Stiftungs, the assets held by them were includible under I.R.C. § 811(d). The court held that the decedent did not have the degree of control over the cash deposits at the time of death to be considered “for” him under I.R.C. § 863(b). The court also held that the value of the securities located in Holland during the war had some value, even though they could not be sold at that time, and was valued on the basis of the value of corresponding unrestricted securities traded on the New York Stock Exchange and then converted into guilders and finally into U.S. dollars at a rate of $0.065 per guilder. Furthermore, the court found that the delay in filing the estate tax return was due to reasonable cause.

Practical Implications

This case underscores the importance of substance over form in tax law, particularly in the context of estate planning and the creation of foreign entities. Lawyers must carefully analyze the degree of control a decedent retained over assets, regardless of the formal structure used. This case highlights that the IRS and the courts will look past the formal structure and will tax assets that are under the control of the decedent at the time of death. It also demonstrates the importance of considering how wartime or economic conditions affect asset valuation. The case further highlights the importance of diligence in filing estate tax returns, but also that good faith efforts to comply with complex tax laws can excuse penalties for late filing.

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