25 T.C. 584 (1955)

When property held by a husband and wife as tenants by the entirety is transferred to an irrevocable trust with retained income, only one-half of the property's value is includible in the deceased spouse's gross estate under Section 811(c) of the Internal Revenue Code of 1939.

Summary

The Estate of A. Carl Borner challenged the Commissioner of Internal Revenue's determination of a deficiency in estate tax. Borner and his wife, holding property as tenants by the entirety, transferred it to an irrevocable trust, reserving the income for their joint lives and the life of the survivor. The Tax Court addressed whether the transfer was in contemplation of death and, if so, the value to be included in the gross estate. The court held that the transfer was in contemplation of death, but only one-half the property's value was includible, aligning with the deceased's ownership interest at the time of transfer. This decision clarified how property held by the entirety, and transferred with a retained life estate, is treated for estate tax purposes, influencing future applications of Section 811(c).

Facts

A. Carl Borner and his wife, Bertha, transferred stock and securities held as tenants by the entirety to an irrevocable trust in 1938. They retained the income for their joint lives and the life of the survivor. The consideration for the assets came solely from A. Carl Borner. At the time of the transfer, Borner was suffering from Parkinson's disease, which was progressively worsening. He executed a will shortly after creating the trust, leaving his estate to his wife. The value of the assets transferred was $85,140.41 at the time of the transfer and $102,818.31 on the optional valuation date. Borner died in 1947.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in estate tax. The estate challenged this determination in the U.S. Tax Court, disputing the inclusion of the trust assets in the gross estate and the valuation method. The Tax Court ruled in favor of the estate, deciding that only half the property was includible in the gross estate.

Issue(s)

1. Whether the transfer of property to an irrevocable trust with retained income by the decedent and his wife was a transfer in contemplation of death under Section 811(c) of the Internal Revenue Code of 1939.

2. If the transfer was in contemplation of death, what value of the property should be included in the gross estate?

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Holding

1. Yes, the transfer was made in contemplation of death because the facts and circumstances, including the decedent's illness and the trust provisions, indicated a testamentary plan.

2. Yes, only one-half of the value of the property transferred in trust is includible in the decedent's gross estate because his interest in the property at the time of transfer was one-half, as the property was held as tenants by the entirety.

Court's Reasoning

The court applied Section 811(c) of the Internal Revenue Code of 1939, which addresses transfers in contemplation of death and transfers with retained life estates. The court found that the transfer was in contemplation of death based on the decedent's advanced age, serious illness (Parkinson's disease), the near-simultaneous execution of the will, and the nature of the trust. In determining the value to be included, the court followed the reasoning of the Ninth Circuit in *Estate of Sullivan v. Commissioner*, which considered similar joint property transfers, and held that only the decedent's one-half interest in the property was includible, even though the wife also held an interest in the property. The court reasoned that, as a practical matter, tenancies by the entirety and joint tenancies are so much alike that the rule applied in joint tenancy cases should be applied to cases involving tenancies by the entirety.

Practical Implications

This case underscores the importance of understanding how jointly held property is treated under estate tax laws when transferred to a trust with a retained life estate. It establishes that for property held by the entirety, only the deceased's fractional interest is included in the gross estate under Section 811(c). This has implications for estate planning, particularly in jurisdictions that recognize tenancies by the entirety. Lawyers advising clients in these situations must carefully consider the nature of the property ownership to determine the extent of the tax consequences. Subsequent cases must differentiate between this case and prior precedent, for example, *Estate of William MacPherson Hornor*, which had a distinguishable fact pattern and resulted in a different holding. Also, cases addressing similar transfers should consider the transferor's interest at the time of the transfer to a trust with retained income.

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