Estate of Harriet C. Evilsizor, 27 T.C. 710 (1957)

A life estate granted to a surviving spouse, even with a power to sell, does not qualify for the marital deduction if the property passes to other beneficiaries upon the spouse's death.

Summary

The Estate of Harriet Evilsizor challenged the Commissioner's denial of a marital deduction. Harriet's will granted her husband, Homer, a life estate in her real property, with the remainder to their children. The will also authorized Homer to sell the property if it was in his best interest. The Tax Court held that Homer's interest was a terminable interest, specifically a life estate with a power of sale, and thus did not qualify for the marital deduction under Section 812(e) of the 1939 Internal Revenue Code, because the children held a vested remainder and could possess or enjoy the property after Homer's death. The court relied on Ohio law, which held that a power of sale does not convert a life estate into a fee simple.

Facts

Harriet Evilsizor died in 1951, survived by her husband, Homer, and two children. Her will gave Homer a life estate in her real property, with the remainder to the children in fee simple. The will included a clause authorizing Homer to sell the property if he deemed it to his best interest. The estate claimed a marital deduction for the real estate. The Commissioner of Internal Revenue denied the deduction, contending that Homer received a terminable interest.

Procedural History

The Commissioner determined a deficiency in the estate tax. The Estate of Harriet Evilsizor petitioned the United States Tax Court for a redetermination of the deficiency, disputing the denial of the marital deduction. The Tax Court ruled in favor of the Commissioner, upholding the denial.

Issue(s)

Whether the interest devised to the surviving spouse qualified for the marital deduction.

Holding

No, because the surviving spouse received a life estate, which is a terminable interest under the Internal Revenue Code, and did not qualify for the marital deduction.

Court's Reasoning

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The court focused on the intent of the testator as expressed in the will. The will clearly gave Homer a life estate. The court cited Ohio law to interpret the effect of the power of sale, referencing *Tax Commission v. Oswald*, 109 Ohio St. 36, which held that a power to sell does not enlarge a life estate to a fee simple. The court concluded that the children held a vested remainder. Since the children would possess and enjoy the property after the termination of Homer's interest, the requirements of Section 812(e)(1)(B) of the Internal Revenue Code were not met. The court reasoned that the interest passing to the surviving spouse was a life estate or other terminable interest, and therefore, it did not qualify for the marital deduction.

Practical Implications

This case provides essential guidance on drafting wills to ensure eligibility for the marital deduction. It highlights that a life estate, even with a power of sale, is a terminable interest that typically won't qualify. Legal practitioners should advise clients to structure bequests to the surviving spouse to avoid terminable interests if the marital deduction is a goal. The case underscores that the surviving spouse should receive an interest that is not subject to termination or failure at a later date if the goal is to claim the marital deduction. If a power of sale is included, the will must provide for the proceeds of the sale to pass to the spouse or the spouse's estate.

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