29 T.C. 217 (1957)

For a trust to qualify for the marital deduction, the surviving spouse must be entitled to all income for life without any discretion given to the trustee to divert income to others, even if the likelihood of diversion is small.

Summary

The Estate of Allen L. Weisberger contested the Commissioner's denial of the marital deduction for a trust established in Weisberger's will. The will provided that the widow receive all trust income, but the trustee had discretion to divert income to the decedent's sons for their maintenance and education. The court held that the trust did not qualify for the marital deduction because the widow was not absolutely entitled to all the income. The court also addressed the estate's claim for a state inheritance tax credit, ruling that the full amount paid, even with the possibility of a refund, qualified for the credit.

Facts

Allen L. Weisberger died testate in 1952, survived by his widow and two sons. His will established a trust (Trust No. 1) for his widow, with the corpus intended to equal one-third of the entire trust fund. The widow was to receive all net income quarterly. However, the trustee had the discretion to divert income from the trust to the sons for their maintenance and education, considering other available income to the sons. Trust No. 2 held the remaining two-thirds of the residuary estate and was not subject to a power of appointment by the widow. The estate paid Ohio inheritance tax. The Commissioner disallowed the marital deduction for Trust No. 1 and a portion of the state tax credit.

Procedural History

The United States Tax Court reviewed the estate's challenge to the Commissioner's deficiency determination. The Commissioner disallowed the marital deduction and a portion of the state tax credit, prompting the estate to petition the Tax Court for a redetermination of the deficiency. The court considered the facts, including the provisions of the will, and made its determination based on the relevant tax code provisions.

Issue(s)

1. Whether the trust established in the decedent's will qualified for the marital deduction under I.R.C. §812(e)(1)(F), considering the trustee's discretion to divert income to the sons.

2. Whether the estate was entitled to a credit for the full amount of state inheritance tax paid, even though a portion of it might be refunded later.

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Holding

1. No, because the trustee's discretion to divert income meant the widow was not entitled to all the income.

2. Yes, because the full amount paid qualified for the state tax credit.

Court's Reasoning

The court focused on I.R.C. §812(e)(1)(F), which requires that the surviving spouse be "entitled for life to all the income" of a trust for the marital deduction. The court cited legislative history, noting that this requirement meant the surviving spouse must be the "virtual owner" of the property. The court emphasized that any discretion given to a trustee to divert income, regardless of how likely it was to be exercised, disqualified the trust. "It is not enough that such conditions are nearly met, or that a potentiality inconsistent with the legislative mandate is unlikely to actually become operative," the court stated. The court also distinguished this situation from cases involving charitable deductions, where the possibility of a future event defeating the bequest might be considered remote enough to not disqualify the deduction. As for the state tax credit, the court reasoned that since the tax was actually paid, it should be credited, regardless of the possibility of a future refund.

Practical Implications

This case underscores the critical importance of strict adherence to the statutory requirements for the marital deduction. Attorneys must carefully review trust documents to ensure that the surviving spouse is entitled to all income without any conditions or discretion that could divert income to other beneficiaries. Even if the possibility of diversion is remote, the deduction may be disallowed. This case also highlights the potential for immediate tax benefits where state inheritance taxes are paid, even if a future refund is possible. Later cases have consistently followed Weisberger, emphasizing the absolute requirement of all income for the marital deduction. Therefore, practitioners must draft and interpret estate planning documents with this strict standard in mind.

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