Estate of Elwood Comer, 31 T.C. 1202 (1959)

A power of invasion in a surviving spouse is not considered an unlimited power of appointment, and therefore does not qualify for the marital deduction, if it is limited under applicable state law.

Summary

The Estate of Elwood Comer challenged the IRS's denial of a marital deduction. The decedent's will established a trust for his wife, Catherine, granting her lifetime income and the right to withdraw principal for her "maintenance, comfort, and general welfare." The issue was whether this power to consume principal constituted a general power of appointment, allowing the trust to qualify for the marital deduction under the Internal Revenue Code. The Tax Court, applying Ohio law, determined that the wife's power of invasion was limited, not absolute, and therefore, the trust did not qualify for the marital deduction because the wife's interest was a terminable interest.

Facts

Elwood Comer died in 1952, leaving a will that created a trust for his wife, Catherine. The will granted Catherine the income from the residuary estate for life, along with the power to withdraw principal for her maintenance, comfort, and general welfare. The will also directed that after her death, the income was to be paid to their son for life, with the remainder going to the son's children. The IRS disallowed the marital deduction for the residuary trust, arguing that the wife's interest was a terminable interest. The estate contended that the power to withdraw principal was a general power of appointment, thus qualifying for the marital deduction.

Procedural History

The case began with a determination by the Commissioner of Internal Revenue that a deficiency existed in the federal estate tax, disallowing the marital deduction for the residuary trust. The Estate filed a petition with the Tax Court, contesting the disallowance. The Tax Court considered the case on stipulated facts and ultimately upheld the IRS's determination.

Issue(s)

1. Whether the interest created in Catherine Comer under Item 6 of the decedent's will qualifies for the marital deduction under section 812(e) of the 1939 Internal Revenue Code as amended?

Holding

1. No, because the power of invasion given to Catherine Comer was a limited power

under Ohio law, not an unlimited power of appointment as required to qualify for the marital deduction.

Court's Reasoning

The court focused on whether the power granted to Catherine to withdraw principal from the trust was equivalent to an unlimited power of invasion, which would qualify the interest for the marital deduction. The court noted that the determination of the nature of the power was to be decided under Ohio law. The court cited Ohio cases, including *Tax Commission v. Oswald* and *Windnagel v. Windnagel*, to establish that the power granted to Catherine was limited to her maintenance, comfort, and general welfare. The court reasoned that, based on the language of the will and Ohio precedent, Catherine did not have the power to appoint the entire interest in all events, as would be required for it to qualify. The court emphasized that her power was limited by the testator's intent, as demonstrated by the remainder interests created by the will. Because her power was not absolute, the trust did not qualify for the marital deduction, and the IRS was correct to disallow it.

Practical Implications

This case underscores the importance of precision in estate planning, particularly when seeking to qualify a trust for the marital deduction. Attorneys must carefully draft testamentary instruments to create the appropriate powers for the surviving spouse to meet the requirements of the Internal Revenue Code and the applicable state law. If a power of invasion is intended to qualify a trust for the marital deduction, it must be an unlimited power. This means the surviving spouse must have the absolute right to withdraw principal for any purpose, without limitation. Any limitations on the surviving spouse's power of invasion, such as those based on a standard (e.g., for support, maintenance, or comfort) or the presence of remainder interests, can disqualify the trust for the marital deduction. State law governing the interpretation of wills and trusts is critical, as it determines the nature of the powers created. Later cases will likely continue to examine whether particular language creates a general power of appointment. Practitioners must review current IRS rulings and court decisions to ensure that trust documents are drafted consistent with the latest interpretations of the law.