32 T.C. 386 (1959)

For a life estate with a power of invasion to qualify for the marital deduction under the Internal Revenue Code, the surviving spouse's power must extend to the right to appoint the property to herself or her estate, not just to consume it for her benefit.

Summary

In *Estate of May v. Commissioner*, the U.S. Tax Court addressed whether a testamentary provision granting a surviving spouse a life estate with the right to invade principal for her comfort, happiness, and well-being qualified for the marital deduction. The court held that it did not. The will's language granted the wife the "sole life use" of the property and the "right to invade and use" the principal, but did not grant her the power to appoint the remaining principal to herself or her estate. The court reasoned that the power to invade was limited to use and consumption and did not meet the statutory requirement for the marital deduction. The decision highlights the importance of explicitly granting a surviving spouse the power to dispose of property, not just consume it, to qualify for the marital deduction.

Facts

Ralph G. May died in 1953, a resident of New York. His will granted his wife, Mildred K. May, the sole life use of the residue of his estate, with the right to invade and use the principal "not only for necessities but generally for her comfort, happiness, and well-being." Upon Mildred's death, any remaining property was to be divided among May's children or their issue. The value of the residuary estate was $245,657.68. The estate claimed a marital deduction on its tax return for one-half of the adjusted gross estate, arguing that the property qualified because of Mildred's power to invade the principal. The Commissioner of Internal Revenue disallowed a significant portion of the deduction, arguing that the power of invasion did not meet the requirements for the marital deduction.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in the estate tax. The Estate of May petitioned the U.S. Tax Court challenging the disallowance of the marital deduction. The case was submitted to the Tax Court on stipulated facts.

Issue(s)

1. Whether the surviving spouse's power to invade the principal of the residuary estate, for her comfort, happiness, and well-being, constituted an unlimited power of appointment as defined in I.R.C. § 812(e)(1)(F).

Holding

1. No, because the power was limited to the use and consumption of the principal,

and did not include the power to appoint the unconsumed portion to herself or her estate.

Court's Reasoning

The court analyzed the will's language and relevant provisions of the Internal Revenue Code of 1939, § 812(e), as amended. Section 812(e)(1)(F) allows a marital deduction for a life estate if the surviving spouse is entitled to all the income for life and has the power to appoint the entire interest in the property to herself or her estate. The court emphasized that the surviving spouse must possess the power to appoint the entire interest "in all events." The court focused on whether Mildred's power to invade the principal constituted such a power of appointment. The court cited Regulation 105, section 81.47(a), which requires that the power to invade the principal must include the ability to appoint the corpus to herself as unqualified owner or to her estate. The court determined that the will granted the wife the "sole life use" and the "right to invade and use" the principal, but did not explicitly give her the power to dispose of the remaining property. The court distinguished between the power to consume or use property, and the power to appoint the remainder, noting that the latter was absent in the will. The court looked to New York law to interpret the terms of the will, noting that under New York law, the broad lifetime power of invasion to use and consume, but with remainder over, did not qualify for the marital deduction.

Practical Implications

This case underscores the critical importance of carefully drafting testamentary instruments to ensure compliance with tax laws. It emphasizes that a power of invasion, even if broadly worded to allow for the surviving spouse's comfort and well-being, may not suffice for the marital deduction. To qualify for the marital deduction, a will or trust must explicitly grant the surviving spouse the power to appoint the property to herself or her estate, or otherwise to dispose of it as she wishes. Attorneys must understand that a power of invasion is not automatically a power of appointment under the I.R.C. The language must be precise. This case also highlights the interplay of state law in interpreting the terms of wills and the importance of consulting state law when drafting estate plans.