Estate of Glen v. Commissioner, 45 T.C. 323 (1965) (Dissent)

Dissenting opinion arguing against the majority's view that the release of statutory marital rights in a Scottish divorce settlement constitutes adequate and full consideration for estate tax deduction purposes, particularly when such rights did not exist at the time of the settlement agreement.

Summary

This is a dissenting opinion in a Tax Court case concerning the estate tax implications of a divorce settlement. The dissent argues that the majority incorrectly allowed a deduction from the gross estate based on the decedent's transfer of assets to trusts as part of a divorce settlement with his former wife under Scottish law. Judge Tannenwald dissents, contending that the majority misapplied the concept of "consideration" under estate tax law. He argues that the wife's statutory rights under Scottish law to a portion of the husband's estate only arose upon divorce, and therefore, her relinquishment of these rights prior to the divorce decree did not constitute valid consideration in "money or money's worth" at the time of the trust transfers. The dissent also disputes the allocation method used by the majority even if consideration were found.

Facts

1. Decedent established trusts (Robert Story Glen Trust and Jane S. Durand Trust) reserving life estates.
2. These trusts were created as part of a divorce settlement agreement with his former wife, Jane Glen, in May 1938, three months before the divorce decree.
3. Under Scottish law, a wife is entitled to one-third of her husband's movable estate upon divorce.
4. The settlement agreement and trust transfers were not contingent on the divorce decree and would have remained effective even if the divorce had not occurred.
5. The Commissioner argued that the trust assets should be included in the decedent's gross estate under Section 2036 of the Internal Revenue Code, as transfers with retained life estates, and were not made for adequate consideration.
6. The majority opinion, not included here, presumably held that the release of Jane Glen's Scottish marital rights constituted consideration, allowing a deduction.
7. Judge Tannenwald dissents, arguing against this conclusion.

Procedural History

This is a dissenting opinion from the Tax Court. The majority opinion is not included in this excerpt, but it can be inferred that the Tax Court majority ruled in favor of the taxpayer, allowing a deduction from the gross estate. This dissent challenges

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that majority decision within the Tax Court.

Issue(s)

1. Whether the release of inchoate statutory marital rights under Scottish law, which rights arise only upon divorce, constitutes "consideration in money or money's worth" under Section 2043(b) of the Internal Revenue Code for estate tax purposes when the release occurs prior to the divorce decree.
2. Whether the majority erred in allocating the consideration, even if the release of marital rights is considered valid consideration for estate tax deduction purposes.

Holding

1. Dissenting Judge Tannenwald would likely hold: No, because the statutory right to one-third of the movable estate under Scottish law did not exist at the time of the settlement agreement and trust transfers, as it was contingent upon the divorce decree. Therefore, the relinquishment of a non-existent right cannot constitute valid consideration.
2. Dissenting Judge Tannenwald would likely hold: Yes, because even if consideration were found, the majority's method of allocating the consideration is erroneous, particularly concerning the exclusion of Jane Glen's life interest and the treatment of consideration for other interests in the trusts.

Court's Reasoning

Judge Tannenwald's dissent reasons as follows:

- **Lack of Existing Right:** He emphasizes that Jane Glen's right to one-third of the movable estate under Scottish law was contingent upon the divorce. At the time of the settlement agreement and trust transfers, she did not yet possess this right. Therefore, releasing a right that did not yet exist cannot be considered "consideration." He distinguishes this from settling existing claims or rights.
- **Section 2043(b) and Marital Rights:** He points to Section 2043(b), which specifically excludes the relinquishment of dower, curtesy, or other marital rights as consideration, arguing that the Scottish statutory right is akin to these excluded marital rights. He argues against extending the rationale of *Harris v. Commissioner* to this situation, as *Harris* dealt with gift tax and a different statutory provision related to claims against the estate, not inclusions in the gross estate under Section 2036.
- **True Rights Relinquished:** Judge Tannenwald argues that the actual rights Jane Glen relinquished were inchoate dower rights (terce), inheritance rights (jus relictae), and the right to support. Of these, only the right to support qualifies as valid consideration. He estimates the value of the support right based on one-third of the income from decedent's assets until death or

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remarriage, which he values at $190,131, significantly less than the full one-third of the estate.
- **Allocation Error:** Even if the majority is correct about the consideration, Judge Tannenwald argues their allocation is flawed. He states that under Section 2043, the consideration should only reduce the value of property "otherwise to be included." Since Jane Glen's life interest would be excluded under Section 2036 anyway, the consideration paid for it should not be further deducted. He believes the majority incorrectly gives credit for both the consideration paid ($190,131) and a portion of the value of Jane Glen's life interest at death ($82,991.35).
- **Rejection of Pari Materia and Section 2516 Analogy:** Judge Tannenwald rejects the idea of importing Section 2516 (gift tax provision treating transfers in divorce as for consideration) into estate tax law or applying the doctrine of pari materia, arguing that Section 2516 is a substantive gift tax provision and should not redefine "consideration" for estate tax purposes.

Practical Implications

This dissenting opinion highlights the strict interpretation of "consideration" required for estate tax deductions, particularly in the context of marital settlements. It serves as a cautionary note against broadly interpreting marital right releases as automatic consideration. For legal professionals, this dissent underscores the importance of:

- **Timing of Rights:** Carefully analyzing when marital rights vest and whether the release truly constitutes consideration at the time of transfer. Rights contingent on future events like divorce may not qualify as consideration if released beforehand.
- **Statutory Basis of Rights:** Differentiating between statutory marital rights and other forms of consideration, especially in light of Section 2043(b).
- **Allocation of Consideration:** Precisely allocating consideration to the specific interests included in the gross estate, as per Section 2043, and avoiding double deductions.
- **Jurisdictional Differences:** Recognizing that marital property laws and divorce rights vary significantly across jurisdictions (in this case, Scottish law), and these differences can impact estate tax outcomes.

While a dissent, Judge Tannenwald's reasoning provides a valuable counterpoint and emphasizes a narrower, more technical reading of the "consideration" requirement in estate tax law, urging against expansive interpretations that could erode the estate tax base through marital settlement deductions. Later cases would need to consider the majority opinion in *Estate of Glen* and how it aligns with or diverges from this dissenting view, as well as the influence of Section 2516 in related contexts.

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