Estate of Fannie Bomash, Deceased, Julian Bomash, Administrator, Petitioner v. Commissioner of Internal Revenue, Respondent, 50 T. C. 667 (1968)

A surviving spouse's transfer of their share of community property to a trust established by the deceased spouse's will is subject to estate tax under Section 2036 if they retain an income interest in the transferred property.

Summary

Fannie Bomash agreed to her husband's will, allowing her share of their California community property to be included in a trust that provided her with 50% of the trust income for life. The remaining income and corpus were designated for their children and grandchildren. The IRS included half of the value of the trust corpus in Fannie's estate upon her death, asserting she made a taxable transfer under Section 2036. The Tax Court agreed, ruling that Fannie's transfer of her community property interest to the trust, while retaining a life income interest, subjected half the value of the transferred property to estate tax. The court rejected the estate's argument for a reduction under Section 2043, finding no adequate consideration for the transfer.

Facts

Louis Bomash died in 1942, leaving a will that disposed of all community property, including his wife Fannie's share, into a trust. Fannie agreed to this disposition, retaining a 50% life income interest from the trust, with the remainder going to their children and grandchildren. At the time of Louis's death, the entire community property was included in his taxable estate under the then-applicable tax law. Upon Fannie's death in 1962, the IRS included 50% of the trust's value in her taxable estate, claiming a transfer under Section 2036.

Procedural History

The IRS determined a deficiency in Fannie Bomash's estate tax. The estate challenged this in the U. S. Tax Court, arguing that no transfer occurred under Section 2036 and seeking a reduction under Section 2043. The Tax Court upheld the IRS's position on the transfer but rejected the estate's argument for a reduction.

Issue(s)

1. Whether Fannie Bomash's acquiescence to her husband's will, allowing her share of community property to pass into a trust, constituted a transfer under Section 2036.
2. Whether the value of the transferred property includable in Fannie's estate should be reduced under Section 2043 due to consideration received.

Holding

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1. Yes, because Fannie's agreement to the disposition of her community property into the trust, while retaining a life income interest, was considered a transfer under Section 2036.
2. No, because the court found no adequate consideration received by Fannie for the transfer that would warrant a reduction under Section 2043.

Court's Reasoning

The court applied Section 2036, which includes in a decedent's estate the value of property transferred where the decedent retained an income interest. It rejected the estate's argument that the entire community property passed under Louis's will without a transfer by Fannie, citing prior cases like *Mildred Irene Siegel* and *Estate of Lillian B. Gregory*. The court emphasized that under California law, Fannie had a vested interest in the community property, and her agreement to its disposition into the trust constituted a transfer. Regarding Section 2043, the court found that the income interest Fannie received from Louis's share of the property was not consideration for her transfer of her own share, as it was not a measurable type of consideration. The court also dismissed the reciprocal trust theory, as it was not applicable to the facts of the case.

Practical Implications

This decision clarifies that a surviving spouse's consent to the disposition of their community property into a trust under a deceased spouse's will, while retaining a life income interest, constitutes a taxable transfer under Section 2036. Attorneys should advise clients on the potential estate tax consequences of such arrangements. The ruling also underscores the difficulty in claiming a reduction under Section 2043, as the court found no adequate consideration in this case. Estate planners must carefully consider the implications of income interests retained by a surviving spouse in trusts funded with community property. Subsequent cases, such as *Whiteley v. United States*, have further discussed the concept of consideration in similar contexts, emphasizing the need for clear and measurable consideration to warrant a Section 2043 reduction.

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