Estate of Fannie Bomash v. Commissioner, T.C. Memo. 1971-138

When a surviving spouse elects to transfer her community property share into a testamentary trust established by her predeceased husband, while retaining a life income interest in the entire trust, a portion of her community property is includable in her gross estate under Section 2036, reduced by consideration received.

Summary

Fannie Bomash elected to take under her husband Louis's will, which placed their community property into a trust. Fannie received a 50% life income interest in the trust. The Tax Court addressed whether Fannie's share of the community property, now in the trust, was includable in her estate under Section 2036, and if so, whether she received consideration to offset this inclusion. The court held that Fannie made a transfer with a retained life estate, triggering Section 2036 inclusion. However, the court also found that the life income interest Fannie received from her husband's share of the community property constituted consideration, partially offsetting the includable amount. The court ultimately determined that approximately 26.06% of the trust corpus was includable in Fannie's estate.

Facts

Louis and Fannie Bomash were married and resided in California, a community property state. Louis's will purported to dispose of the entire community property, placing it into a trust. Under the trust terms, Fannie was to receive 50% of the trust income for life, with the remainder to their children and grandchildren. Fannie signed an election to take under the will, agreeing to its terms. Upon Louis's death, the community property was transferred to the trust. Fannie received income from the trust until her death. For Louis's estate tax purposes, the entire community property was included in his gross estate under the then-applicable 1942 Revenue Act.

Procedural History

The IRS determined a deficiency in Fannie Bomash's estate tax, arguing that a portion of the trust corpus was includable in her estate under Section 2036 because she had transferred her community property share to the trust while retaining a life income interest. The Estate of Fannie Bomash petitioned the Tax Court to contest this deficiency.

Issue(s)

1. Whether Fannie Bomash's election to take under her husband's will and transfer her community property share into the testamentary trust constituted a "transfer" under Section 2036.
2. If so, whether Fannie retained a life income interest in the transferred property, thereby triggering inclusion under Section 2036.

© 2025 SCOTUSreports.com. All rights reserved.

3. If Section 2036 applies, whether the life income interest Fannie received from her husband's share of the community property constituted "consideration" under Section 2043(a) to reduce the includable amount.

Holding

1. Yes, Fannie's election constituted a "transfer" of her community property share.
2. Yes, Fannie retained a life income interest in the transferred property because she received income from the trust that included her transferred property.
3. Yes, the life income interest Fannie received from Louis's share of the community property was consideration under Section 2043(a), reducing the includable amount, but not eliminating it entirely.

Court's Reasoning

The court reasoned that under California community property law, Fannie had a vested, equal interest in the community property. By electing to take under Louis's will, she acquiesced to the testamentary disposition of her share, effectively transferring it to the trust. This transfer was made when she signed the election, even though it became effective upon Louis's death and probate of his will. The court cited *Mildred Irene Siegel, 26 T.C. 743 (1956)*, affirming that such an election constitutes a transfer by the wife.

Regarding retained life estate, the court found that Fannie retained a 50% income interest in the entire trust, which included her transferred property. This retention of income triggered Section 2036. The court rejected the IRS's argument that Fannie effectively retained 100% of the income from her contributed property, noting the trust was a single, indivisible entity.

On consideration, the court acknowledged that Fannie received a 50% life income interest from Louis's share of the community property. Following *Vardell's Estate v. Commissioner, 307 F.2d 688 (5th Cir. 1962)*, the court held that this income interest constituted consideration under Section 2043(a). The court distinguished this from a situation where the wife only receives income from her own transferred property, which would not be consideration. However, the consideration received was less than the value of the property transferred, leading to a partial inclusion. The court calculated the includable amount by reducing Fannie's transferred share by the value of the consideration received, resulting in approximately 26.06% of the trust corpus being included in her estate.

The court rejected the reciprocal trust doctrine argument, as Louis's transfer was not made in exchange for Fannie's transfer, but was a testamentary disposition of his property.

Practical Implications

© 2025 SCOTUSreports.com. All rights reserved.

Bomash clarifies the estate tax consequences of electing to take under a deceased spouse's will in community property states, particularly when the will creates a trust funded with community property and the surviving spouse receives a life income interest. It establishes that such an election can be a transfer with a retained life estate by the surviving spouse, triggering estate tax inclusion under Section 2036. However, it also provides a crucial offset: the income interest received from the deceased spouse's share of community property can be considered consideration under Section 2043(a), reducing the taxable amount. This case highlights the importance of carefully considering the estate tax implications of spousal elections in community property settings and structuring trusts to minimize unintended tax consequences. Practitioners should analyze the value of the consideration received to accurately calculate potential estate tax liabilities in similar situations. Later cases have applied *Bomash* to refine the valuation of consideration and the application of Section 2043 in community property trust scenarios.

© 2025 SCOTUSreports.com. All rights reserved.