***Estate of Emil Linderme, Sr. , Deceased, Emil M. Linderme, Executor, Petitioner v. Commissioner of Internal Revenue, Respondent, 52 T. C. 305 (1969); 1969 U. S. Tax Ct. LEXIS 126***

Exclusive use of transferred property by the decedent until death can be deemed a retained interest, making the property includable in the gross estate under section 2036(a)(1) of the Internal Revenue Code.

**Summary**

Emil Linderme, Sr. transferred his residence to his sons via a quitclaim deed but continued to live there exclusively until moving to a nursing home, where he died. The court held that, due to the exclusive use and payment of all expenses by Linderme until his death, the property was includable in his gross estate under section 2036(a)(1), as there was an implied understanding of retained possession or enjoyment. This case expands the interpretation of what constitutes a retained interest beyond scenarios involving income-producing property.

**Facts**

In 1956, Emil Linderme, Sr. executed a quitclaim deed transferring his residence to his three sons. He continued to live alone in the house until March 1963, when he moved to a nursing home, where he died in October 1964. Throughout this period, Linderme paid all expenses related to the property, and it remained vacant after he entered the nursing home. The sons did not discuss selling or renting the property until after Linderme’s death.

**Procedural History**

The Commissioner of Internal Revenue determined a deficiency in Linderme’s estate tax, asserting that the residence should be included in the gross estate under section 2036(a)(1). The case was brought before the United States Tax Court, where the sole issue was whether Linderme retained possession or enjoyment of the residence.

**Issue(s)**

1. Whether the decedent’s continued exclusive occupancy and payment of all expenses related to the transferred property until his death constituted a retention of “possession or enjoyment” under section 2036(a)(1) of the Internal Revenue Code.

**Holding**

1. Yes, because the court found an implied understanding that the decedent retained the exclusive use of the residence until his death, based on the totality of circumstances, including his exclusive occupancy and payment of expenses.

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## Court’s Reasoning

The court emphasized that the decedent’s continued exclusive occupancy and payment of all property expenses indicated an understanding that he retained the property’s use. The court rejected the petitioner’s argument that section 2036(a)(1) should only apply to income-producing property, noting that the key factor was the withholding of occupancy from the donees. The court cited Commissioner v. Estate of Church, which supports a broad interpretation of what constitutes a retained interest. The court concluded that the decedent’s actions were sufficient to infer an understanding of retained possession or enjoyment, thus requiring the property’s inclusion in the gross estate.

## Practical Implications

This decision expands the scope of section 2036(a)(1) to include non-income-producing property where the transferor retains exclusive use. Attorneys should advise clients that the mere transfer of title without relinquishing actual use may still result in estate tax inclusion. This ruling underscores the importance of documenting any transfer of property to avoid implied understandings of retained interest. Subsequent cases have referenced Linderme to support the inclusion of property in estates where the decedent retained some form of control or benefit, even if not explicitly stated in the transfer document.

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