***Wilson v. Comm'r, 56 T. C. 579 (1971)***

A transfer is not a completed gift for estate tax purposes if the donor retains the power to withdraw the transferred funds.

**Summary**

In Wilson v. Comm'r, the U. S. Tax Court determined that funds in joint bank accounts and certificates of deposit, where the decedent retained withdrawal rights, were includable in the decedent's estate under IRC sections 2040 and 2033. The court found that no completed gifts were made because the decedent retained control over the funds. Additionally, the court held that a withdrawal by the decedent's daughter from one account was not in contemplation of death, thus not subject to estate tax under IRC section 2035. This case clarifies that for a gift to be complete, the donor must relinquish dominion and control over the asset.

**Facts**

Stella M. Wilson established several joint savings accounts and certificates of deposit with her adult children, Beulah Zurcher and Harley Wilson, between July 1963 and January 1965. She added their names to the accounts but retained her name on them, allowing both parties the right to withdraw funds. She told her children they could use the money but made no withdrawals herself. Beulah withdrew funds from one account on February 2, 1965, ten days before Stella's death. Stella had not filed gift tax returns for these transfers until after her death.

**Procedural History**

The Commissioner of Internal Revenue determined deficiencies in Stella's estate tax, asserting that the funds in the joint accounts and certificates were includable in her estate. The petitioners, as transferees, challenged these determinations. The Tax Court reviewed the case and issued its opinion on June 21, 1971, ruling on the issues related to the inclusion of the accounts in the estate and the contemplation of death transfer.

**Issue(s)**

1. Whether Stella M. Wilson had a contract right to collect accrued interest from her grandson at the time of her death.
2. Whether Stella M. Wilson made completed gifts to her children of the funds in joint bank accounts and certificates of deposit.
3. Whether the transfer of funds from one savings account to Beulah Zurcher was made in contemplation of death.

**Holding**

1. No, because Stella had waived her right to interest and her grandson did not owe

 

it at her death.
2. No, because Stella retained the power to withdraw the funds, indicating the gifts were not complete.
3. No, because the transfer was not prompted by the thought of death when the joint account was established in 1963.

**Court’s Reasoning**

The court applied IRC section 2040, which includes in the estate the value of property held in joint tenancy or in joint bank accounts payable to either party or the survivor. Since Stella retained her name on the accounts and the power to withdraw funds, the transfers were not complete gifts. The court also considered IRC section 2033, which includes in the estate all property in which the decedent had an interest at death. The court found no evidence that Stella intended to make completed gifts when she added her children’s names to the accounts, as she retained control over the funds. For the contemplation of death issue, the court examined Stella’s motives at the time of the account creation in 1963, finding no association with death. The court cited Estate Tax Regulation 20. 2035-1(c) to clarify that a transfer is in contemplation of death if prompted by thoughts of death, which was not the case here.

**Practical Implications**

This decision underscores the importance of relinquishing control over assets for a gift to be considered complete for estate tax purposes. Attorneys should advise clients to ensure that, if they intend to make a gift, they fully divest themselves of control over the asset. The ruling also highlights that estate tax planning involving joint accounts must consider the donor’s retained rights. Practitioners should be cautious when advising on gifts made close to death, as they may be scrutinized under IRC section 2035. The case has been influential in subsequent rulings involving joint accounts and the completeness of gifts, reinforcing the need for clear intent and action in estate planning.

 