Estate of Sumner Gerard, Chemical Bank New York Trust Company, C. H. Coster Gerard, Sumner Gerard, Jr. , James W. Gerard II, Executors, Petitioner v. Commissioners of Internal Revenue, Respondent, 57 T. C. 749 (1972); 1972 U. S. Tax Ct. LEXIS 168

Gifts made within three years of death are presumed to be made in contemplation of death unless proven otherwise.

Summary

Sumner Gerard, an 89-year-old man, transferred 51 shares of Aeon Realty Co. stock to his three sons just over two years before his death. The Internal Revenue Service (IRS) included the value of these shares in his estate, asserting they were gifts made in contemplation of death under IRC section 2035. The Tax Court upheld the IRS's position, finding that Gerard's age, health, and the testamentary nature of the gifts indicated they were made with death as the impelling cause. The court emphasized the lack of a prior gift-giving pattern and the unsuitable nature of the stock for the son's financial needs, further supporting the conclusion that the gifts were motivated by death.

Facts

Sumner Gerard, born in 1874, transferred 51 shares of Aeon Realty Co. stock to his sons on January 2, 1964, when he was 89 years old. He died on March 10, 1966. At the time of the transfer, Gerard suffered from multiple health issues, including emphysema, chronic bronchitis, and a prostate condition. He was confined to his home and required a full-time nurse. Gerard had no history of significant gifts to his sons prior to this transfer, typically giving them only small annual gifts. The sons were the primary beneficiaries under his will, and the stock transfer was made in the same proportions as his will.

Procedural History

The IRS determined a deficiency in the federal estate tax of Gerard's estate due to the inclusion of the Aeon stock under IRC section 2035. The estate contested this, leading to a trial before the United States Tax Court. The court ultimately ruled in favor of the IRS, holding that the stock transfer was made in contemplation of death.

Issue(s)

1. Whether the transfer of 51 shares of Aeon Realty Co. stock by Sumner Gerard to his sons on January 2, 1964, was made in contemplation of death within the meaning of IRC section 2035.

Holding

1. Yes, because the transfer was made within three years of Gerard's death, and the

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court found that the dominant motive was testamentary in nature, influenced by Gerard's age, health, and lack of prior gift-giving history.

Court's Reasoning

The court applied the legal rule from IRC section 2035, which presumes gifts made within three years of death to be in contemplation of death unless proven otherwise. The court analyzed Gerard's age, health, and the testamentary nature of the gift, finding that these factors suggested the gift was motivated by death. The court noted that Gerard's health was poor and deteriorating, and he was aware of this. The lack of a prior gift-making pattern and the fact that the stock was not suitable for addressing his son's financial needs further supported the court's conclusion. The court cited *United States v. Wells* for the principle that the thought of death must be the impelling cause of the transfer, and found that Gerard's actions aligned with this standard. There were no dissenting or concurring opinions.

Practical Implications

This decision reinforces the need for careful consideration when making large gifts near the end of life, as they may be included in the estate for tax purposes. Attorneys should advise clients to document non-testamentary motives for large gifts, especially within three years of death. The ruling impacts estate planning strategies, particularly for those with significant assets, encouraging the use of marketable securities for financial assistance rather than closely held stock. The case has been cited in subsequent decisions to uphold the three-year presumption under IRC section 2035, affecting how similar cases are analyzed and resolved.

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