Estate of Herbert R. Penney, Deceased, Milton H. Penney, Executor, Petitioner v. Commissioner of Internal Revenue, Respondent, 59 T. C. 102 (1972)

In the absence of a clear tax clause, Ohio law requires equitable apportionment of federal estate tax among probate and nonprobate assets, including those not generating tax.

Summary

In Estate of Penney v. Commissioner, the U. S. Tax Court addressed how to allocate federal estate tax under Ohio law when there was no specific tax clause in the estate's governing documents. Herbert Penney had established a revocable trust and made charitable and marital bequests in his will. The court held that, under Ohio's doctrine of equitable apportionment, both the probate estate and the nonprobate trust assets must contribute to the estate tax, even if some assets do not generate the tax. This ruling was based on Ohio case law, which supports prorating the tax among all assets includable in the gross estate but disfavors exoneration of non-tax-generating transfers.

Facts

Herbert R. Penney created a revocable trust in 1941, which he amended in 1946 and 1948 to maximize the federal estate tax marital deduction. At his death in 1966, the trust's assets were valued at $9,765,372. 32. Penney's will directed charitable bequests and a marital bequest designed to secure the maximum marital deduction. Neither the trust nor the will contained a clause specifying how federal estate taxes should be allocated among the beneficiaries. The estate tax return was filed in Cincinnati, Ohio, and the Commissioner determined a deficiency of $2,392,016. 62.

Procedural History

The executor of Penney's estate filed a petition with the U. S. Tax Court challenging the Commissioner's determination of the estate tax deficiency. The case proceeded to trial, focusing solely on the allocation of the federal estate tax under Ohio law. No will construction or declaratory judgment action was filed in the probate court regarding the allocation of the tax.

Issue(s)

1. Whether, under Ohio law, the federal estate tax should be equitably apportioned among all assets includable in the gross estate, including nonprobate assets.
2. Whether transfers that do not generate estate tax, such as marital and charitable bequests, should be exonerated from the tax burden.

Holding

© 2025 SCOTUSreports.com. All rights reserved.

1. Yes, because Ohio law, as established in McDougall v. Central Nat. Bank of Cleveland, requires that the federal estate tax be prorated among all assets includable in the gross estate, including nonprobate assets, in the absence of a clear contrary intent.
2. No, because Ohio case law, particularly Campbell v. Lloyd and Hall v. Ball, disfavors the exoneration of transfers that do not generate tax, requiring that both marital and charitable bequests bear part of the tax burden.

Court's Reasoning

The court relied on Ohio case law to determine that equitable apportionment of the federal estate tax was required. In McDougall v. Central Nat. Bank of Cleveland, the Ohio Supreme Court held that nonprobate assets must contribute to the tax burden in proportion to their value relative to the entire taxable estate. The court rejected the estate's argument that transfers not generating tax should be exonerated, citing Campbell v. Lloyd, which overruled a prior decision favoring exoneration, and Hall v. Ball, which extended this policy to charitable bequests. The court concluded that the absence of a tax clause in Penney's estate planning documents meant that all assets, including those in the marital and charitable bequests, must share the tax burden. The court emphasized that equitable apportionment was the applicable principle, as stated by Judge Tietjens: "The Ohio legislature has not dealt with the question of equitable apportionment. . . only the second contention states the law of Ohio. "

Practical Implications

This decision clarifies that in Ohio, without a specific tax clause, federal estate taxes must be apportioned equitably among all assets included in the gross estate, regardless of whether they generate tax. Estate planners in Ohio should include clear tax allocation clauses in wills and trusts to avoid unintended tax burdens on beneficiaries. The ruling impacts how estates are administered in Ohio, as executors must now consider the tax implications for all assets, including those in nonprobate transfers. This case has been cited in subsequent Ohio estate tax cases, reinforcing the principle of equitable apportionment and affecting how similar cases are analyzed. Businesses and individuals involved in estate planning in Ohio must account for this ruling to ensure that their estate plans align with their intentions regarding tax allocation.

© 2025 SCOTUSreports.com. All rights reserved.