Estate of Abely v. Commissioner, 56 T. C. 128 (1971)

A widow's allowance granted post-mortem is a terminable interest and does not qualify for the marital deduction under IRC Section 2056(b).

Summary

In Estate of Abely, the Tax Court determined that a $50,000 widow's allowance awarded to Nora Abely under Massachusetts law did not qualify for the marital deduction under IRC Section 2056(b). The court reasoned that the allowance was a terminable interest because it could terminate upon the widow's death before the allowance was finalized, and an interest in the same property had passed to the decedent's sons through a trust. This decision was influenced by the Supreme Court's ruling in Jackson v. United States, which established that the determination of whether an interest is terminable should be made as of the date of the decedent's death.

Facts

Joseph F. Abely died testate in 1969, leaving a will that included specific bequests and a residuary estate placed in a testamentary trust. Nora Abely, the widow, was the income beneficiary of the trust, and the remainder was to be divided among their three sons upon her death. In 1970, Nora petitioned for a widow's allowance, which was granted at $50,000. The estate tax return claimed a marital deduction that included this allowance, but the Commissioner disallowed it, asserting that the allowance was a terminable interest under IRC Section 2056(b).

Procedural History

The estate filed a tax return claiming a marital deduction that included the widow's allowance. The Commissioner issued a deficiency notice disallowing part of the deduction, including the widow's allowance. The estate petitioned the Tax Court for a redetermination of the deficiency.

Issue(s)

1. Whether a widow's allowance granted under Massachusetts law qualifies as a terminable interest under IRC Section 2056(b), thus disqualifying it from the marital deduction.

Holding

1. No, because the widow's allowance is a terminable interest as it could terminate upon the widow's death before the allowance was finalized, and an interest in the same property had passed to the decedent's sons through the trust.

Court's Reasoning

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The Tax Court applied the principles established in Jackson v. United States, which held that the determination of whether an interest is terminable should be made as of the date of the decedent's death. Under Massachusetts law, the widow's allowance is personal to the widow and terminates upon her death if not finalized. The court also noted that an interest in the same property had passed to the decedent's sons through the trust, satisfying the conditions for a terminable interest under IRC Section 2056(b). The court rejected the estate's reliance on Estate of Rudnick, which was decided before Jackson and analyzed the widow's allowance at the time of the probate court's order rather than the decedent's death. The court also dismissed the estate's argument that a distinction should be drawn between lump-sum and monthly allowances, as no such distinction was recognized in Jackson or subsequent cases.

Practical Implications

This decision clarifies that widow's allowances granted post-mortem are terminable interests and do not qualify for the marital deduction. Estate planners and tax attorneys must consider this ruling when advising clients on estate planning, particularly in jurisdictions with similar widow's allowance statutes. The decision reinforces the importance of analyzing the nature of interests as of the date of the decedent's death, impacting how similar cases should be approached. It also affects the tax planning of estates, potentially increasing the taxable estate when such allowances are involved. Subsequent cases have consistently applied this principle, further solidifying its impact on estate tax law.

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