Silverman v. Commissioner, 61 T.C. 346 (1974)

When a life insurance policy is transferred in contemplation of death, only the portion of the policy's value attributable to premiums paid by the decedent is includable in the gross estate if the transferee pays subsequent premiums.

Summary

In *Silverman v. Commissioner*, the Tax Court addressed whether the assignment of a life insurance policy by the decedent to his son six months before his death was "in contemplation of death" and includable in his gross estate under Section 2035 of the Internal Revenue Code. The court found the transfer was indeed in contemplation of death, noting the decedent's awareness of serious illness and tax avoidance as a motive. However, the court ruled that only a portion of the policy's face value, proportional to the premiums paid by the decedent before the transfer, should be included in the gross estate, acknowledging the son's premium payments after the assignment. This case illustrates the application of the "contemplation of death" doctrine to life insurance transfers and establishes a proportional inclusion rule when the transferee contributes to the policy's value by paying premiums.

Facts

In 1961, Morris Silverman (decedent) purchased a life insurance policy, naming his wife Mabel as primary beneficiary and his son Avrum (petitioner) as secondary. Mabel Silverman suffered from cancer for 2-3 years, requiring hospitalization, and passed away on December 12, 1965. Ten days later, on December 22, 1965, the decedent underwent a medical examination where X-rays indicated a possible colon malignancy. On January 29, 1966, the decedent assigned the life insurance policy to his son, Avrum, who began paying the monthly premiums. On February 18, 1966, the decedent was hospitalized and diagnosed with colon cancer with liver involvement. He underwent surgery and chemotherapy but died on July 26, 1966. Testimony from the decedent's insurance broker indicated the transfer was recommended to avoid estate taxes following his wife's death. Evidence also suggested the decedent was generally frugal and not in the habit of making large gifts.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in the decedent's federal estate tax, asserting that the life insurance policy assignment was made in contemplation of death and should be included in the gross estate. The petitioner, Avrum Silverman, contested this determination in the Tax Court. The Tax Court upheld the Commissioner's determination that the transfer was made in contemplation of death but modified the amount includable in the gross estate to reflect the premiums paid by the petitioner after the assignment.

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Issue(s)

1. Whether the assignment of the life insurance policy by the decedent to his son was made "in contemplation of death" within the meaning of Section 2035 of the Internal Revenue Code.

2. If the assignment was made in contemplation of death, what portion of the life insurance policy's value is includable in the decedent's gross estate.

3. Whether certain jewelry inherited by the decedent from his wife must be included in his gross estate.

Holding

1. Yes, because the assignment of the life insurance policy within three years of the decedent's death is presumed to be in contemplation of death, and the petitioner failed to rebut this presumption. The court found that the decedent was likely aware of his serious illness at the time of transfer and that tax avoidance was a significant motive for the transfer.

2. Only a portion of the life insurance policy's face value is includable in the gross estate, because the petitioner made premium payments after the assignment. The includable amount is proportional to the premiums paid by the decedent compared to the total premiums paid.

3. Yes, because the petitioner failed to present any evidence to dispute the inclusion of the jewelry in the gross estate, thus the Commissioner's determination is presumed correct.

Court's Reasoning

The court applied Section 2035(b), which presumes transfers within three years of death to be in contemplation of death, placing the burden on the petitioner to prove otherwise. Citing *United States v. Wells*, the court sought to determine if the "dominant purpose" of the transfer was the thought of death or life motives. The court found substantial evidence suggesting the decedent was aware of his declining health at the time of the transfer. His recent diagnosis of possible colon cancer, coupled with his wife's prolonged battle with cancer, and his age of 65, led the court to conclude he was likely contemplating death. The court also noted the insurance broker's advice to transfer the policy to avoid estate taxes, indicating a testamentary motive. Furthermore, the decedent's general frugality made such a gift appear more testamentary than life-motivated. Regarding the amount includable, the court reasoned that since the son paid premiums after the assignment, including the full face value would be taxing more than the decedent transferred. Referencing Estate Tax Regulation 20.2035-1(e) and *Liebmann v. Hassett*, the court held that only the portion of the policy's face value attributable to the decedent's premium payments should be included, proportionally reducing the taxable amount to reflect the son's

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financial contributions to maintaining the policy.

Practical Implications

This case reinforces the statutory presumption under Section 2035 that transfers made within three years of death are considered “in contemplation of death,” especially for life insurance policies. It underscores the importance of establishing demonstrable “life motives” to rebut this presumption, as evidence of tax avoidance will strengthen the IRS’s position. *Silverman* establishes a practical rule for valuing life insurance policies transferred in contemplation of death when the transferee pays premiums post-transfer: only the portion of the death benefit proportional to the decedent’s premium payments is includable in the gross estate. This provides a fairer outcome than including the entire face value. Practitioners must advise clients transferring life insurance policies, particularly those with health concerns, to document and emphasize any bona fide life-related motives for the transfer to mitigate estate tax implications. Later cases will likely apply this proportional inclusion rule in similar scenarios where transferees contribute to the policy’s value.

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