Estate of De Foucaucourt v. Commissioner, 63 T. C. 493 (1975)

Trustee commissions are deductible or excludable from the gross estate upon trust termination, and retained life estates are included in the gross estate under certain conditions.

Summary

In Estate of De Foucaucourt, the Tax Court addressed whether trustee commissions could be excluded or deducted from the decedent's gross estate, and the extent to which a retained life estate should be included. The court held that trustee commissions were deductible upon trust termination under New York law, despite the dual roles of the trustees as executors. Additionally, the court ruled that a life estate retained by the decedent in property transferred to her nephews was includable in her estate. Lastly, the court allowed a charitable deduction for a contingent charitable remainder interest, finding the possibility of its defeat was negligible due to the beneficiary's poor health and age.

Facts

Marie A. De Foucaucourt established an inter vivos trust in 1946, amended in 1947, with income payable to her during her lifetime and the bulk of the assets payable to her estate upon her death. She sold an undivided one-half interest in Paris property to her nephews in 1963, retaining a life estate in half of the property. Her will included a bequest of a contingent charitable remainder interest, subject to the condition that her nephew die without issue. At her death in 1967, the trustees claimed a deduction for their commissions, and the estate contested the inclusion of the Paris property and the charitable deduction.

Procedural History

The case was brought before the U. S. Tax Court to determine deficiencies in federal gift and estate taxes assessed by the Commissioner of Internal Revenue. Several issues were settled, leaving the court to decide on the deductibility of trustee commissions, the inclusion of the Paris property in the estate, and the allowance of a charitable deduction.

Issue(s)

1. Whether principal commissions payable to trustees of an inter vivos trust established by decedent are excludable or deductible from decedent's gross estate.
2. Whether the sale of an undivided one-half interest in real property by decedent was partially a gift.
3. Whether decedent, by retaining a life interest in property in which she owned an undivided one-half interest, is required to include one-half the value of the property in her gross estate or a lesser amount.
4. Whether decedent's estate is entitled to a deduction for the value of a contingent

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charitable remainder interest.

Holding

1. Yes, because under New York law, trustees are entitled to commissions upon termination of the trust, which can be excluded or deducted from the gross estate.
2. Yes, because the parties conceded that the transfer of the Paris property was partially a gift.
3. Yes, because under Section 2036, the retained life estate is included in the gross estate, subject to a reduction for consideration received under Section 2043.
4. Yes, because the possibility that the charitable remainder interest would be defeated was so remote as to be negligible due to the beneficiary's age and health.

Court's Reasoning

The court applied Section 2031 and Section 2033, which define the gross estate, and Section 2053, which allows deductions for administration expenses. For the trustee commissions, the court relied on precedent like Haggart's Estate v. Commissioner, which supports the exclusion or deduction of such commissions upon trust termination. The court rejected the Commissioner's argument about 'double' commissions, citing New York law allowing separate commissions for different fiduciary roles. On the Paris property, the court applied Section 2036, which requires the inclusion of property where the decedent retains a life interest, and Section 2043, which adjusts for consideration received. For the charitable deduction, the court interpreted Section 2055 and the regulations, determining that the possibility of the charitable remainder being defeated by adoption was negligible given the beneficiary's age and health, citing cases like Estate of George M. Moffett for the standard of 'so remote as to be negligible. ' No dissenting or concurring opinions were noted.

Practical Implications

This decision clarifies that trustee commissions upon termination of a trust can be excluded or deducted from the gross estate, which is crucial for estate planning involving trusts in jurisdictions like New York. It also reinforces the broad application of Section 2036 for including retained life estates in the gross estate, impacting how attorneys advise clients on property transfers. The case sets a precedent for determining the 'remoteness' of conditions defeating charitable bequests, which could influence how estates structure such bequests. Practitioners should consider these factors when advising clients on estate planning to minimize tax liabilities. Subsequent cases, such as Estate of Marcellus L. Joslyn, have cited De Foucaucourt in discussions about trustee commissions and retained interests.

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