Estate of George C. Mackie, Deceased, Kathleen G. Robinson Mackie, Executrix, Petitioner v. Commissioner of Internal Revenue, Respondent, 64 T. C. 308 (1975)

A bequest to a surviving spouse, subject to the spouse's election to accept or reject it, qualifies for the marital deduction if the interest passing to the spouse is not terminable.

Summary

In Estate of Mackie, the decedent's will allowed his surviving spouse to elect to take property up to the maximum marital deduction within four months of his death. The Tax Court held that this bequest qualified for the marital deduction under I. R. C. § 2056(a) because the interest was not terminable. The court reasoned that the spouse's right to elect was akin to a statutory right of election, and thus did not render the interest conditional or terminable. This decision clarified that a surviving spouse's right to elect property does not disqualify the bequest from the marital deduction, impacting estate planning by allowing flexibility in utilizing the marital deduction.

Facts

George C. Mackie died in 1969, leaving a will that provided his surviving spouse, Kathleen G. Robinson Mackie, the opportunity to elect to receive property from his estate up to the maximum marital deduction within four months of his death. If she did not elect within that time, the bequest would be deemed rejected, and the property would pass to a residuary trust. On April 16, 1969, within the four-month period, Mrs. Mackie elected to accept the bequest in full. The Commissioner of Internal Revenue challenged the estate's claim for a marital deduction, arguing that the bequest constituted a terminable interest.

Procedural History

The estate filed a federal estate tax return and claimed a marital deduction for the property elected by Mrs. Mackie. The Commissioner determined a deficiency and disallowed the deduction. The estate petitioned the United States Tax Court, which held that the bequest qualified for the marital deduction.

Issue(s)

1. Whether the interest bequeathed to the decedent's surviving spouse, subject to her election, qualifies for the marital deduction under I. R. C. § 2056(a).

Holding

1. Yes, because the interest bequeathed to the surviving spouse was not a terminable interest within the meaning of I. R. C. § 2056(b), and thus qualified for

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the marital deduction.

Court’s Reasoning

The court reasoned that the bequest to Mrs. Mackie was not terminable because her right to elect was analogous to a statutory right of election, which has been held not to disqualify a bequest from the marital deduction. The court cited cases such as *Dougherty v. United States* and *United States v. Crosby* to support this view. The court rejected the Commissioner’s argument that the bequest was conditional, noting that the possibility of the spouse’s death or incompetency within the election period did not render the interest terminable. The court emphasized that the will did not impose any substantive limitations on the interest beyond the requirement of acceptance, distinguishing it from cases where additional conditions were imposed on the beneficiary.

Practical Implications

This decision allows estate planners to include provisions in wills that permit surviving spouses to elect property up to the marital deduction without jeopardizing the deduction. It clarifies that such elections do not create terminable interests, thereby providing flexibility in estate planning. The ruling impacts how estates utilize the marital deduction, potentially reducing estate taxes by allowing the surviving spouse to choose the most tax-efficient assets. Subsequent cases have followed this reasoning, further solidifying the principle that an elective bequest to a surviving spouse is not terminable for marital deduction purposes.

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