***Estate of James R. Lowe, Deceased, Crocker National Bank, James R. Lowe, Jr. , and Margot H. Lowe, Co-executors, Petitioners v. Commissioner of Internal Revenue, Respondent, 64 T. C. 663 (1975)***

A transfer is considered made in contemplation of death if the dominant motive is testamentary disposition rather than a life-connected purpose, regardless of the transferor's perceived proximity to death.

**Summary**

James R. Lowe transferred $1. 128 million in stock to a trust for his daughter and grandchildren just before his death in 1969. The IRS argued this was a transfer in contemplation of death under IRC Section 2035, thus includable in his estate. The Tax Court agreed, finding the transfer part of Lowe's testamentary plan, motivated by thoughts of death due to his heart condition diagnosed in 1961. The decision hinged on the lack of a clear life motive, Lowe's health concerns, and the transfer's integration into his estate plan, despite subsequent will changes.

**Facts**

James R. Lowe died in 1969 from heart disease, first diagnosed in 1961. In January 1967, he transferred 6,000 shares of Arcata National Corp. stock worth $1. 128 million into an irrevocable trust for his unmarried daughter and five grandchildren. This transfer occurred less than three years before his death, triggering a presumption under IRC Section 2035 that it was made in contemplation of death. Lowe had made several wills and codicils post-diagnosis, with a February 1967 codicil integrating the trust into his estate plan. Despite his active lifestyle and investments, his health remained a concern.

**Procedural History**

The IRS determined a deficiency in Lowe's estate tax, arguing the stock transfer should be included in his gross estate under Section 2035. The estate contested this in the U. S. Tax Court, which found for the Commissioner, holding the transfer was made in contemplation of death and thus includable in the estate.

**Issue(s)**

1. Whether the January 1967 transfer of stock to a trust was made in contemplation of death within the meaning of IRC Section 2035?

**Holding**

1. Yes, because the transfer was part of an overall testamentary plan and motivated by Lowe's concern over his estate's disposition due to his health condition.

**Court's Reasoning**

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The court applied the rule that a transfer is in contemplation of death if the dominant motive is testamentary disposition rather than a life-connected purpose. It considered Lowe's health condition, the timing and size of the transfer, the integration of the trust into his estate plan, and the lack of a convincing life motive. The court noted Lowe's frequent will changes post-diagnosis, the trust's irrevocable nature, and its beneficiaries mirroring those of his testamentary trust. Despite Lowe's active lifestyle, his health was a significant concern, and the transfer's size was unprecedented in his history of giving. The court concluded that the thought of death was the impelling cause of the transfer, not any life-connected motive.

**Practical Implications**

This decision clarifies that for estate tax purposes, the timing and size of a transfer, its integration into an estate plan, and the transferor's health can indicate a transfer in contemplation of death, even if the transferor leads an active life. Practitioners must advise clients to document clear life motives for large transfers, especially if made within three years of death. The ruling impacts estate planning by emphasizing the importance of demonstrating non-testamentary intent for significant gifts. Subsequent cases like Estate of Maxwell have applied this principle, while others like Estate of Christensen have distinguished it based on clearer life motives.

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