Estate of Charles Gilman, Deceased, Charles Gilman, Jr. and Howard Gilman, Executors v. Commissioner of Internal Revenue, T.C. Memo. 1976-370

Retained managerial powers over a corporation, solely in a fiduciary capacity as a trustee and corporate executive after transferring stock to a trust, do not constitute retained enjoyment or the right to designate income recipients under Section 2036(a) of the Internal Revenue Code, thus not requiring inclusion of the stock in the decedent's gross estate, absent an express or implied agreement for direct economic benefit.

Summary

The decedent, Charles Gilman, transferred common stock of Gilman Paper Company into an irrevocable trust for his sons, naming himself as a co-trustee. The IRS argued that the value of the stock should be included in Gilman's gross estate under Section 2036(a), asserting that Gilman retained "enjoyment" of the stock and the "right to designate" who would enjoy the income due to his control over the corporation as a trustee, director, and CEO. The Tax Court held that Gilman's retained powers were fiduciary in nature, constrained by co-trustees and minority shareholders, and did not constitute the "enjoyment" or "right" contemplated by Section 2036(a). The court emphasized that the statute requires a legally enforceable right to economic benefit, not mere de facto control.

Facts

In 1948, Charles Gilman transferred common stock of Gilman Paper Company to an irrevocable trust, naming himself, his son Howard, and his attorney as trustees. The trust income was payable to his sons for life, with remainder to their issue. Gilman was also CEO and a director of Gilman Paper. The company had an unusual stock structure with only 10 shares of common stock, which controlled voting rights, and nearly 10,000 shares of preferred stock. Gilman's sisters owned 40% of the common and 47% of the preferred stock, representing significant minority interests. Gilman's salary was challenged by the IRS in a prior case, with a portion deemed excessive. The IRS also assessed accumulated earnings tax against Gilman Paper after Gilman's death.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in the estate tax of Charles Gilman, including the value of the Gilman Paper stock held in trust in the gross estate. The Estate petitioned the Tax Court for a redetermination. The Tax Court considered the Commissioner's arguments under Section 2036(a) and issued this memorandum opinion in favor of the Estate.

Issue(s)

1. Whether the decedent, by serving as a trustee and corporate executive of Gilman

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Paper after transferring stock to a trust, retained "enjoyment" of the transferred property within the meaning of Section 2036(a)(1) of the Internal Revenue Code?

2. Whether the decedent, by serving as a trustee and corporate executive, retained the "right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom" within the meaning of Section 2036(a)(2) of the Internal Revenue Code?

Holding

1. No, because the decedent's retained powers were exercised in a fiduciary capacity, constrained by fiduciary duties to the trust beneficiaries and minority shareholders, and did not constitute a legally enforceable right to "enjoyment" of the transferred stock under Section 2036(a)(1).

2. No, because the decedent's power to influence dividend policy through his corporate positions was not a legally enforceable "right to designate" income recipients, but rather a de facto influence limited by fiduciary duties and the independent actions of co-trustees and other directors, and thus did not fall under Section 2036(a)(2).

Court's Reasoning

The court relied heavily on *United States v. Byrum*, 408 U.S. 125 (1972), which held that retained voting control of stock in a fiduciary capacity does not automatically trigger Section 2036(a). The court emphasized that Section 2036(a) requires the retention of a "right," which connotes an "ascertainable and legally enforceable power." The court found that Gilman's powers as trustee and executive were constrained by fiduciary duties to the trust beneficiaries and the corporation itself. "The statutory language [of sec. 2036(a)] plainly contemplates retention of an attribute of the property transferred — such as a right to income, use of the property itself, or a power of appointment with respect either to income or principal." The court distinguished de facto control from a legally enforceable right, stating, "The Government seeks to equate the de facto position of a controlling stockholder with the legally enforceable 'right' specified by the statute." The presence of independent co-trustees, minority shareholders (Gilman's sisters), and the fiduciary duties of directors further diluted Gilman's control. The court dismissed arguments about Gilman's past salary issues and accumulated earnings tax, finding no evidence of an express or implied agreement at the time of the trust creation that Gilman would retain economic benefit from the transferred stock.

Practical Implications

This case reinforces the precedent set by *Byrum*, clarifying that the retention of managerial powers in a fiduciary capacity, such as through a trusteeship or corporate executive role, does not automatically trigger estate tax inclusion under

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Section 2036(a). It emphasizes the importance of fiduciary duties in mitigating estate tax risks when settlors act as trustees or retain corporate positions after transferring stock to trusts. The case underscores that Section 2036(a) requires a retained “right” to economic benefit or to designate enjoyment, which must be legally enforceable, not merely de facto influence. This decision provides guidance for estate planners structuring trusts involving family businesses, highlighting the need to ensure that any retained powers are clearly fiduciary and constrained, and that there is no express or implied agreement for the settlor to derive direct economic benefit from the transferred property. Later cases distinguish *Gilman* and *Byrum* based on the specific nature and extent of retained powers and the presence or absence of genuine fiduciary constraints.

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