Estate of Elena B. Drake, Deceased, Shawmut Bank of Boston, N. A. , Executor, Petitioner v. Commissioner of Internal Revenue, Respondent, 67 T. C. 844 (1977); 1977 U. S. Tax Ct. LEXIS 145

Property transferred in contemplation of death is includable in the decedent's gross estate regardless of original ownership, and a power of appointment is not general if exercisable only with others' consent.

Summary

Elena B. Drake transferred property to herself and her husband as joint tenants in contemplation of death. The court ruled this property was includable in her estate under Section 2035, despite her husband originally purchasing it. Additionally, Drake's power of appointment under a family trust was not considered general because it required the consent of her siblings, thus not includable in her estate under Section 2041. The decision clarifies the estate tax implications of property transfers made in contemplation of death and the criteria for a general power of appointment.

Facts

In March 1950, Frederick C. Drake, Jr. , Elena's husband, gifted her property in Bath, Maine. In May 1970, Elena transferred this property to herself and her husband as joint tenants with right of survivorship. This transfer was deemed made in contemplation of death. Elena died in July 1970. She also had a power of appointment under a trust established by her father in 1931, which she could exercise by will. However, a 1948 agreement among Elena and her siblings required mutual consent for any changes to their wills, effectively limiting her power of appointment.

Procedural History

The executor of Elena's estate filed a federal estate tax return, excluding the Bath property and the trust interest from the gross estate. The Commissioner of Internal Revenue issued a notice of deficiency, asserting that these assets should be included. The case proceeded to the U. S. Tax Court, which upheld the inclusion of the Bath property under Section 2035 but ruled the trust interest was not includable under Section 2041 due to the limitations imposed by the 1948 agreement.

Issue(s)

1. Whether the value of the Bath property, transferred by Elena to herself and her husband as joint tenants in contemplation of death, is includable in her gross estate under Section 2035, despite her husband originally paying for it.
2. Whether Elena's power of appointment under her father's trust, which required the consent of her siblings to change her will, constitutes a general power of appointment under Section 2041.

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Holding

1. Yes, because the transfer of the Bath property was made in contemplation of death, and Section 2035 mandates inclusion in the gross estate regardless of who initially paid for the property.
2. No, because the 1948 agreement limited Elena's power of appointment to be exercisable only in conjunction with her siblings, thus not meeting the criteria for a general power of appointment under Section 2041(b)(1)(B).

Court's Reasoning

The court applied Section 2035, which requires the inclusion of property transferred in contemplation of death in the decedent's gross estate. The court reasoned that the transfer of the Bath property, despite being originally purchased by Elena's husband, was effectively a transfer by Elena in contemplation of death, thus includable in her estate. The court cited *United States v. Jacobs* and *Estate of Nathalie Koussevitsky* to support this interpretation. For the second issue, the court analyzed Section 2041 and its regulations, concluding that Elena's power of appointment was not general because it required the consent of her siblings, as per the 1948 agreement. This limitation meant it was not exercisable solely by Elena, aligning with Section 2041(b)(1)(B). The court referenced Massachusetts and Maine laws validating such agreements, reinforcing the enforceability of the 1948 contract.

Practical Implications

This decision underscores that property transferred in contemplation of death is fully includable in the decedent's estate, regardless of the original source of funds. Estate planners must consider this when advising clients on property transfers near the end of life. Additionally, the ruling clarifies that a power of appointment is not general if it requires the consent of others, impacting estate planning strategies involving family agreements. Practitioners should carefully draft such agreements to ensure they effectively limit powers of appointment to avoid estate tax inclusion. Subsequent cases like *Estate of Sedgwick Minot* have followed this precedent, further solidifying its impact on estate tax law.

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