Estate of Charles Ray Tompkins, Deceased, William A. Tompkins, Executor, Petitioner v. Commissioner of Internal Revenue, Respondent, 68 T. C. 912 (1977); 1977 U. S. Tax Ct. LEXIS 48

A testamentary right of election by a surviving spouse to take a nonterminable interest in property qualifies for the marital deduction under section 2056(a) of the Internal Revenue Code.

Summary

Charles Ray Tompkins' will provided his surviving spouse, Clara, with a life estate in a trust or the option to elect $40,000 outright. Clara timely elected the cash bequest, and the estate claimed a marital deduction. The issue was whether this right of election constituted an "interest in property" under section 2056(a). The Tax Court held that the election was not a power of appointment and that the $40,000 bequest was a nonterminable interest, thus qualifying for the marital deduction. The decision underscores the distinction between a power of appointment and a right of election, clarifying the requirements for the marital deduction in estate planning.

Facts

Charles Ray Tompkins died on July 18, 1972. His will, probated on August 11, 1972, established a trust for his surviving spouse, Clara Tompkins, providing her with a life estate. A codicil to the will allowed Clara to elect to receive $40,000 outright in lieu of the trust interest. To exercise this option, Clara had to notify the executor within 60 days of his qualification. On August 1, 1972, Clara made a timely election to take the $40,000, rendering the trust provision void. The estate claimed a marital deduction for the $40,000 payment, which the Commissioner of Internal Revenue challenged.

Procedural History

The estate filed a federal estate tax return and claimed a marital deduction for the $40,000 paid to Clara Tompkins. The Commissioner determined a deficiency and disallowed the deduction. The Estate of Tompkins then petitioned the United States Tax Court for review. The case was fully stipulated under Rule 122 of the Tax Court Rules of Practice and Procedure, and the court issued its opinion on September 13, 1977.

Issue(s)

1. Whether the surviving spouse's right to elect $40,000 in lieu of a life estate in the trust constitutes an "interest in property" under section 2056(a) of the Internal Revenue Code, rather than a power of appointment.
2. Whether the surviving spouse's interest in the $40,000 is terminable under section 2056(b)(1), thereby disqualifying it from the marital deduction.

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Holding

1. Yes, because the right to elect $40,000 was an absolute right to take a nonterminable interest that vested from the date of the decedent's death, it constituted an "interest in property" under section 2056(a), not a power of appointment.
2. No, because the act of electing the $40,000 was a mere procedural formality and not a contingency that would render the interest terminable under section 2056(b)(1).

Court's Reasoning

The court distinguished between a power of appointment and a right of election, emphasizing that the latter is an absolute right to take a nonterminable interest in property. The court relied on prior cases such as *Estate of Mackie v. Commissioner* and *Estate of Neugass v. Commissioner* to support its conclusion that the right to elect was not a power of appointment. The court also clarified that the requirement of a written election was a procedural formality, not a contingency that would make the interest terminable. The court noted that survival of the surviving spouse is not a condition that makes an interest terminable under section 2056(b)(3). The court quoted from *Heidrich v. Commissioner* to emphasize that the written demand for the trust funds was within the donee's power and thus did not make the interest contingent.

Practical Implications

This decision provides clarity on when a testamentary right of election qualifies for the marital deduction, which is crucial for estate planning. Estate planners should ensure that any elective bequest to a surviving spouse is structured as a nonterminable interest to maximize the marital deduction. The ruling distinguishes between powers of appointment and rights of election, guiding practitioners in drafting wills and codicils. Subsequent cases, such as *Estate of Neugass* and *Estate of Mackie*, have built on this decision, further refining the application of section 2056. This case also underscores the importance of understanding procedural formalities versus substantive conditions in the context of estate tax deductions.

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