Estate of Leonard P. Kincade, Deceased, Verl G. Miller, Ralph Berry, and Lilien Kincade, Co-Executors v. Commissioner of Internal Revenue, 69 T. C. 247 (1977)

Bearer bonds found in a safe-deposit box are includable in the decedent's estate unless clear evidence of ownership by another is established.

Summary

Leonard Kincade purchased bearer bonds through separate brokerage accounts in his name, his wife's name, and their joint names. Upon his death, these bonds were discovered in a safe-deposit box to which his wife had no access. The Tax Court held that the bonds purchased through his wife's account were not proven to be hers, and those from the joint account did not establish joint tenancy, thus all bonds were properly included in Kincade's estate for tax purposes. The court emphasized the necessity of clear evidence of delivery for a valid inter vivos gift under Indiana law.

Facts

Leonard Kincade maintained brokerage accounts in his name, his wife Lilien's name, and their joint names. After his death, nonregistered bearer bonds were found in a safe-deposit box accessible only to Kincade and his law partners. The bonds were purchased through these accounts, but no evidence showed Lilien contributed to the purchase funds or had access to the box. Kincade's will left a life estate to Lilien, which did not qualify for the marital deduction.

Procedural History

The IRS determined a deficiency in estate tax, including the value of the bonds in Kincade's gross estate. The Estate contested this, arguing some bonds were owned by Lilien or jointly. The Tax Court reviewed the case, considering a local court settlement that had assigned ownership to Lilien but found it non-binding.

Issue(s)

1. Whether the bearer bonds purchased through Lilien Kincade's brokerage account were her sole property and thus not includable in Leonard's estate?
2. Whether the bearer bonds purchased through the joint brokerage account were owned by Leonard and Lilien as joint tenants with right of survivorship, qualifying for the marital deduction?

Holding

1. No, because the Estate failed to prove that the bonds were delivered to Lilien, a necessary element of a valid inter vivos gift under Indiana law.
2. No, because the Estate failed to show that the bonds were owned as joint tenants with right of survivorship, as there was no evidence of delivery or contribution by

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Lilien.

Court’s Reasoning

The court applied Indiana law on inter vivos gifts, requiring clear evidence of delivery to establish ownership. It rejected the Estate’s reliance on a local court’s decision based on a settlement, as it was not an independent judicial determination. The court found no evidence that Lilien had access to the safe-deposit box or contributed to the purchase of the bonds, thus failing to establish her ownership or joint tenancy. The court cited *Zorich v. Zorich* for the principle that delivery must strip the donor of all dominion over the gift, which was not met here. The court also noted that the absence of Lilien’s name on the bonds themselves or any clear indication of her ownership further supported inclusion in the estate.

Practical Implications

This decision underscores the importance of clear evidence of delivery and intent in establishing ownership of assets for estate tax purposes, particularly with bearer bonds. Practitioners should ensure that clients document and complete inter vivos gifts properly to avoid inclusion in the estate. The case also highlights the limited weight given to local court decisions based on settlements rather than judicial determinations. Subsequent cases involving estate tax and asset ownership should consider this ruling when analyzing the sufficiency of evidence for claimed ownership outside the estate.

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