***Estate of Etta Himmelstein, Shirleyann Haveson and Mary H. Diamond, Coexecutrices, Petitioners v. Commissioner of Internal Revenue, Respondent, 73 T. C. 868 (1980)***

Transfers of an incompetent's property authorized by a court are imputed to the incompetent for estate tax purposes and may be deemed made in contemplation of death.

**Summary**

Etta Himmelstein, an adjudicated incompetent, had her assets transferred by her guardians to her daughter and granddaughter within three years of her death, pursuant to a New Jersey court order. The transfers were made to reduce estate taxes and were approved based on the court's application of a substituted judgment standard. The Tax Court held that these transfers were imputed to Himmelstein and were made in contemplation of death under Section 2035 of the Internal Revenue Code, as they were motivated by her failing health, testamentary intent, and the desire to minimize estate taxes. This ruling highlights the application of the contemplation of death doctrine to transfers authorized by a court for an incompetent person.

**Facts**

Etta Himmelstein suffered a stroke in 1970 and was subsequently adjudged mentally incompetent. Her daughter, Mary H. Diamond, and granddaughter, Shirleyann Haveson, were appointed as her guardians. In 1972, the guardians sought court approval to transfer a portion of Himmelstein's assets to themselves to reduce estate taxes. The New Jersey Superior Court authorized these transfers, finding that they were in line with what a reasonably prudent person in Himmelstein's position would do. The transfers were completed within three years of Himmelstein's death in 1974.

**Procedural History**

The guardians filed an estate tax return on behalf of Himmelstein's estate, which the IRS audited and determined a deficiency due to the inclusion of the court-ordered transfers under Section 2035. The estate petitioned the U. S. Tax Court for a redetermination of the deficiency, arguing that the transfers were not made in contemplation of death since Himmelstein was incompetent and incapable of forming such intent.

**Issue(s)**

1. Whether transfers of an incompetent's property, authorized by a court, are imputed to the incompetent for purposes of Section 2035 of the Internal Revenue Code?
2. Whether these court-ordered transfers were made in contemplation of death under Section 2035?

## Holding

1. Yes, because the court acts as the incompetent's substitute and the transfers are considered the incompetent's act under the doctrine of substituted judgment.
2. Yes, because the transfers were motivated by Himmelstein's failing health, the relationship of the donees to Himmelstein, and the intent to reduce estate taxes.

## Court's Reasoning

The Tax Court relied on *City Bank Farmers Trust Co. v. McGowan*, which established that transfers made by a court on behalf of an incompetent are imputed to the incompetent for tax purposes. The court rejected the argument that the New Jersey standard, which used an objective "reasonable and prudent person" test, was different from the subjective standard in *City Bank*, finding it a distinction without a difference. The court also noted that the transfers were made within three years of Himmelstein's death, triggering the rebuttable presumption under Section 2035 that they were made in contemplation of death. The court found that the estate failed to rebut this presumption, citing Himmelstein's advanced age and poor health, the familial relationship of the donees to Himmelstein, the alignment of the transfers with her will, and the explicit motive to save on estate taxes as evidence of a death motive. The court emphasized that "the transfers authorized by the New Jersey Superior Court were, for purposes of section 2035, those of the decedent and the considerations which motivated the court in making its determination are to be imputed to the decedent. "

## Practical Implications

This decision reinforces the application of Section 2035 to court-ordered transfers of an incompetent's property, indicating that such transfers can be subject to estate tax if made within three years of death. Legal practitioners should be aware that the doctrine of substituted judgment does not provide a shield against estate tax inclusion for transfers motivated by death-related considerations. Estate planners must carefully consider the timing and rationale of transfers for incompetent individuals to avoid unintended tax consequences. The ruling also underscores the importance of the three-year lookback period in Section 2035, which can capture transfers made with a death motive. Subsequent cases, such as *Estate of Ford v. Commissioner*, have continued to apply the principles established in *Estate of Himmelstein*, reaffirming the court's approach to transfers by incompetents.

 