***76 T.C. 142 (1981)***

Under Missouri law, an insurance policy amendment altering ownership is ineffective if not agreed to by the original applicant, and corporate incidents of ownership in a split-dollar life insurance policy are not attributed to a controlling stockholder when the policy is effectively owned by another party.

**Summary**

The Tax Court addressed whether life insurance proceeds should be included in the decedent's gross estate. The decedent's wife applied for a split-dollar life insurance policy, naming herself as owner and beneficiary. An amendment, executed by the decedent as company president without the wife's consent, designated the company as the policy owner. The court held that under Missouri contract law, the amendment was invalid because the wife, the original applicant and owner, did not consent. Therefore, the company did not effectively own the policy and its incidents of ownership could not be attributed to the decedent, even as a controlling shareholder. The proceeds were thus not includable in the decedent's gross estate under section 2042. The court also found that even if the policy transfer to the wife was considered, it was not made in contemplation of death under section 2035.

**Facts**

Betty Carlstrom applied for an "employer pay all" split-dollar life insurance policy on her husband, Howard Carlstrom's, life, naming herself as owner and primary beneficiary.
Carlstrom Foods, Inc. (CFI), Howard's employer, agreed to pay the premiums in lieu of a salary increase.
Betty paid the initial premium using a CFI check.
Phoenix Mutual Life Insurance Company issued the policy.
Phoenix sent a policy amendment to CFI, designating CFI as the owner, which Howard, as president of CFI, signed along with his brother, without Betty's knowledge or consent.
Howard Carlstrom died within three years of the policy's effective date, owning 71% of CFI stock.
Phoenix paid CFI the premiums and the balance of the policy proceeds to Betty.

**Procedural History**

The Estate of Howard F. Carlstrom petitioned the Tax Court to contest the Commissioner of Internal Revenue's determination that life insurance proceeds paid to Betty Carlstrom should be included in Howard's gross estate for federal estate tax purposes.

**Issue(s)**

1. Whether the policy amendment was effective under Missouri law to transfer

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policy ownership to Carlstrom Foods, Inc. (CFI)?
2. If the amendment was ineffective, whether the incidents of ownership held by CFI should be attributed to the decedent, Howard Carlstrom, as a controlling stockholder, thus requiring inclusion of the life insurance proceeds in his gross estate under section 2042 of the Internal Revenue Code?
3. Alternatively, if Betty Carlstrom was deemed the owner and a transfer occurred, whether such transfer was made in contemplation of death under section 2035 of the Internal Revenue Code?

**Holding**

1. No, because under Missouri law, the policy amendment was not effective as Betty Carlstrom, the original applicant and owner, did not consent to it.
2. No, because CFI was not the effective owner of the policy due to the invalid amendment, and neither CFI nor the decedent possessed incidents of ownership attributable to the decedent. Therefore, section 2042 does not apply.
3. No, because even assuming a transfer to Betty, the transfer was not made in contemplation of death as the decedent's primary motive was to provide financial security for his wife, a life-related motive, not death-related estate tax avoidance.

**Court's Reasoning**

The court applied Missouri contract law, stating that insurance policies are governed by contract principles requiring offer and acceptance.
The court found that Betty's application was the offer, and Phoenix's issuance of the policy to Betty constituted acceptance, establishing Betty as the policy owner before the amendment.
The amendment, executed without Betty's consent, was deemed a unilateral act by Phoenix and third parties (decedent and his brother as CFI officers) and thus ineffective to alter Betty's ownership rights under Missouri law. The court stated, "The execution of an amendment to a contract by a stranger thereto is of no legal effect."
Because the amendment was invalid, CFI did not become the policy owner and therefore held no incidents of ownership to be attributed to the decedent under Treasury Regulation § 20.2042-1(c)(6).
Regarding section 2035, the court found that the decedent's dominant motive for the insurance was to provide financial security and peace of mind for his wife, prompted by a friend's widow's financial difficulties. The court noted the decedent's good health, athletic lifestyle, and the wife's credible testimony about her concerns as evidence against a death-contemplating motive. The court concluded, "…the weight of the evidence leads to the conclusion that any such considerations [estate tax savings] were merely incidental to his dominant motivation for making the transfer — to provide tranquility and composure to his wife and children."

**Practical Implications**

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This case highlights the importance of adhering to state contract law in insurance policy ownership disputes, particularly in split-dollar arrangements and estate tax planning.
It clarifies that unilateral amendments to insurance policies, without the consent of the original applicant/owner, are likely invalid, preventing unintended changes in ownership for estate tax purposes.
For split-dollar life insurance, proper documentation and consent from all parties, especially the intended policy owner, are crucial to ensure the desired estate tax treatment.
The case reinforces that life insurance policies acquired to provide family financial security are less likely to be considered transfers in contemplation of death, even if obtained within three years of death, if there is evidence of life-related motives.
Later cases considering section 2042 and split-dollar insurance often cite *Estate of Carlstrom* for the principle that incidents of corporate ownership are not attributed to a controlling shareholder if the corporation is not the effective policy owner due to invalid transfers or amendments.

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