***Estate of Halbach v. Commissioner*, T.C. Memo. 1984-590**

A disclaimer of a remainder interest in a trust is considered a taxable gift if it is not made within a reasonable time after the creation of the interest, not from when the interest becomes possessory.

Summary

In 1970, Helen Halbach disclaimed a remainder interest in a trust created by her father's will in 1937, five days after her mother (the life tenant) died and the interest became possessory. The Tax Court held that the disclaimer was not made within a reasonable time as required by gift tax regulations, because the reasonable time period begins when the remainder interest is created, not when it becomes possessory. Therefore, Halbach's disclaimer constituted a taxable gift to her children. The court further held that Halbach's children were liable as donee-transferees for the gift tax to the extent of the value of the gift they received, including interest from the date of the notice of transferee liability.

Facts

Parker Webster Page's will, executed in 1937, established a trust with income to his wife, Nellie Page, for life, and the remainder to his daughters, Helen Halbach (decedent) and Lois Cottrell. Upon Nellie Page's death in 1970, the trust terminated, and the remainder was to pass to Helen and Lois. Five days after Nellie Page's death, Helen Halbach executed a disclaimer of her remainder interest. This disclaimer resulted in her share passing to her children, Lois Poinier and W. Page Wodell. The IRS determined that this disclaimer was a taxable gift from Helen to her children and assessed gift tax deficiencies.

Procedural History

The IRS issued notices of gift tax deficiency against Helen Halbach's estate and notices of transferee liability against her children. The Tax Court previously considered whether the disclaimer was a transfer in contemplation of death for estate tax purposes, finding it was a transfer but not in contemplation of death (*Estate of Halbach v. Commissioner*, 71 T.C. 141 (1978) and T.C. Memo. 1980-309). This case addresses the gift tax implications of the disclaimer and the transferee liability of Halbach's children in Tax Court.

Issue(s)

1. Whether Helen Halbach's disclaimer of a remainder interest in the 1937 testamentary trust in 1970 constituted a taxable transfer under section 2511 of the Internal Revenue Code.
2. Whether Halbach's children are liable as donee-transferees for the gift tax deficiency under section 6324(b).
3. Whether the liability of each donee-transferee, including interest, is limited to

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the value of the assets transferred.
4. Whether the Tax Court has jurisdiction to offset the gift tax deficiency or transferee liabilities with estate or income tax refunds claimed by the estate or transferees.
5. Whether the Tax Court can consider prepayments made after the commencement of proceedings in determining liability.

Holding

1. Yes, because the disclaimer was not made within a reasonable time after knowledge of the creation of the remainder interest in 1937, and therefore constituted a taxable gift.
2. Yes, because as donees of a taxable gift, Halbach's children are personally liable for the gift tax to the extent of the value of the gift under section 6324(b).
3. Yes, the liability is limited to the value of the gift received, but this limit includes interest accrued up to the notice of transferee liability, and interest accrues thereafter on the unpaid tax.
4. No, the Tax Court lacks jurisdiction to offset gift tax deficiencies or transferee liabilities with overpayments from other tax years or different types of taxes.
5. No, the Tax Court lacks jurisdiction to determine the income tax implications of prepayments made towards interest on the gift tax liability in this gift tax proceeding.

Court's Reasoning

The court relied on Treasury Regulation § 25.2511-1(c), which states that a disclaimer must be made within a "reasonable time after knowledge of the existence of the transfer" to avoid gift tax consequences. The court followed the Supreme Court's decision in *Jewett v. Commissioner*, 455 U.S. 305 (1982), which held that the "reasonable time" period begins from the creation of the remainder interest, not when it becomes possessory. Since Halbach knew of her remainder interest since 1937 but disclaimed only in 1970, the disclaimer was untimely. The court rejected petitioners' arguments to distinguish *Jewett*. Regarding transferee liability, the court emphasized that section 6324(b) imposes direct federal liability on donees, irrespective of state law or the donor's solvency. The limit on liability under section 6324(b) extends to interest on the unpaid gift tax up to the notice of transferee liability, and further interest accrues from that point. Finally, the court cited section 6214(b) and Supreme Court precedent (*Commissioner v. Gooch Milling & Elevator Co.*, 320 U.S. 418 (1943)) to affirm the Tax Court's lack of jurisdiction to offset liabilities across different tax years or tax types.

Practical Implications

This case reinforces the importance of timely disclaimers in estate and gift tax planning. It clarifies that for remainder interests created before 1977 (when section

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2518 was enacted), the “reasonable time” for disclaimer begins at the interest’s creation, not its vesting or possession. Legal professionals must advise clients with remainder interests to consider disclaiming promptly after the interest is created to avoid unintended gift tax consequences. The case also underscores the direct liability of donees for unpaid gift taxes and the Tax Court’s limited jurisdiction, preventing taxpayers from resolving broader tax refund issues within a deficiency proceeding. This decision, following *Jewett*, provides a clear rule for determining the timeliness of pre-1977 disclaimers of remainder interests and highlights the potential gift tax traps for beneficiaries who delay disclaiming.

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