***Estate of Leander Neisen, Deceased, Elizabeth Neisen, Personal Representative, Petitioner v. Commissioner of Internal Revenue, Respondent, 89 T. C. 939, 1987 U. S. Tax Ct. LEXIS 154, 89 T. C. No. 65 (1987)***

A minimum marital deduction formula in a will does not preclude an estate from claiming an unlimited marital deduction under the Economic Recovery Tax Act of 1981.

**Summary**

Leander Neisen's will, executed before the 1981 Economic Recovery Tax Act (ERTA), contained a formula marital deduction provision intended to minimize federal estate tax. The IRS argued that this provision, not amended post-ERTA, limited the estate to a 50% marital deduction. The Tax Court held that because the will's formula aimed to ensure the least tax, not to maximize the deduction, it did not fall under ERTA's transitional rule limiting pre-ERTA wills to the former maximum marital deduction. Thus, the estate qualified for an unlimited marital deduction.

**Facts**

Leander Neisen died testate on April 20, 1982, survived by his wife, Elizabeth, and six children. His will, executed on January 31, 1980, contained a formula marital deduction provision that bequeathed to his wife the minimum amount necessary to secure the maximum marital deduction or to result in no federal estate tax. The estate claimed a marital deduction of $1,015,207. 14, but the IRS determined a deduction of only $633,532. 39, citing the will's formula as not amended post-ERTA.

**Procedural History**

The IRS issued a notice of deficiency on January 3, 1986, asserting a $127,065. 68 deficiency in federal estate tax. The estate petitioned the U. S. Tax Court, which heard the case fully stipulated. The Tax Court issued its opinion on October 28, 1987, as amended on December 7, 1987.

**Issue(s)**

1. Whether the formula marital deduction provision in Leander Neisen's will, not amended after the enactment of the Economic Recovery Tax Act of 1981, precludes the estate from qualifying for an unlimited marital deduction under section 2056 of the Internal Revenue Code.

**Holding**

1. No, because the formula in the will did not expressly provide that the spouse is to receive the maximum amount of property qualifying for the marital deduction allowable by federal law, and thus did not fall within the transitional rule of ERTA

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section 403(e)(3).

### Court’s Reasoning

The Tax Court focused on the language of the will, which sought to give the spouse the minimum necessary to minimize estate tax, not to maximize the marital deduction. The court noted that ERTA’s transitional rule (section 403(e)(3)) was intended to preserve the effect of pre-ERTA wills, not to defeat their intended purpose. The court found that applying the transitional rule as the IRS suggested would contradict the will’s intent. The court cited the Senate report’s concern about changing the effect of existing wills and distinguished the case from Shapiro v. United States, where the will’s language was different. The court concluded that the estate was entitled to an unlimited marital deduction under section 2056 because the will’s formula did not meet the criteria of section 403(e)(3).

### Practical Implications

This decision clarifies that estates with minimum marital deduction formulas in wills predating ERTA can still claim the unlimited marital deduction if their formula does not meet the criteria of ERTA’s transitional rule. Attorneys drafting wills should be aware of the distinction between minimum and maximum marital deduction formulas and advise clients on the potential tax implications. The ruling may affect estate planning practices, encouraging more precise language in wills to reflect the testator’s intent regarding marital deductions. This case has been cited in subsequent decisions, such as Estate of Morgens v. Commissioner, where similar issues were addressed, reinforcing its impact on estate tax law and planning.

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