Estate of Gagliardi v. Commissioner, 91 T. C. 1243 (1988)

For estate tax purposes, gifts are only excluded from the gross estate if they are complete under state law at the time of the decedent's death.

Summary

In Estate of Gagliardi, the Tax Court addressed whether certain gifts made by checks drawn on the decedent's bank and brokerage accounts should be excluded from the gross estate. The court held that gifts are only excluded if they are complete under state law at the time of death. Checks cashed before death were excluded, but those cashed after death were included in the estate. The court also ruled that gifts made via a brokerage account were only excluded if the instructions to the broker were sufficiently specific and the checks were issued before death. This case underscores the importance of ensuring gifts are completed before death to avoid estate tax inclusion.

Facts

Joseph M. Gagliardi died in February 1982. Before his death, he granted his son Richard a power of attorney to manage his assets. Richard wrote checks from Gagliardi's bank account to family members on February 4, 1982. Some were cashed before Gagliardi's death, while others were cashed after. Gagliardi also instructed his broker, Bache, to sell securities and issue checks to family members and their spouses. Some checks were issued before his death, while others were issued after.

Procedural History

The Estate of Gagliardi filed a Federal estate tax return and subsequently filed a revised return. The IRS determined a deficiency, leading to the case being heard by the U. S. Tax Court. The court considered whether the funds represented by the checks should be included in Gagliardi's gross estate.

Issue(s)

1. Whether funds represented by checks drawn on decedent's bank account before death but cashed after death are includable in the gross estate.
2. Whether funds represented by checks issued by a broker before and after decedent's death, pursuant to decedent's instructions, are includable in the gross estate.

Holding

1. Yes, because under Pennsylvania law, the funds represented by the checks still belonged to the decedent at the time of death.
2. Yes for checks issued after death, because the broker's authority terminated upon death; No for checks issued before death, because the decedent relinquished all

interest in the funds when the checks were issued.

Court's Reasoning

The court applied Pennsylvania law to determine whether the gifts were complete at the time of death. For the bank account checks, the court followed IRS regulations and state law, ruling that checks cashed before death were excluded from the estate, while those cashed after were included. The court distinguished charitable gifts, which can relate back to the date of the check, from noncharitable gifts, which do not. For the brokerage account, the court found that the gifts were only complete if the instructions to the broker were sufficiently specific and the checks were issued before death. The court emphasized that the broker was acting as the decedent's agent, whose authority terminated at death. The court quoted from the regulation: "The amount of cash belonging to the decedent at the date of his death, whether in his possession or in the possession of another, or deposited with a bank, is included in the decedent's gross estate. "

Practical Implications

This decision clarifies that for estate tax purposes, gifts must be complete under state law at the time of death to be excluded from the gross estate. Practitioners should ensure that gifts are completed before death, with clear instructions and delivery of assets. The case highlights the importance of understanding the agency relationship between the decedent and third parties like brokers. It also underscores the distinction between charitable and noncharitable gifts for tax purposes. Later cases have followed this ruling, emphasizing the need for completed gifts to avoid estate tax inclusion.

