Estate of Levin v. Commissioner, 92 T. C. 88 (1989)

A post-mortem annuity provided by an employer to a decedent's surviving spouse is includable in the decedent's gross estate under section 2038 if the decedent controlled the employer and could amend or terminate the annuity plan.

Summary

In Estate of Levin, the Tax Court ruled that a post-mortem annuity payable by Marstan Industries to the decedent's widow was includable in the decedent's gross estate under section 2038. The decedent, Stanton A. Levin, was a controlling shareholder of Marstan and had the power to alter or terminate the annuity plan. The court held that the annuity was property transferred by the decedent during his lifetime, and his control over the plan's amendment or termination meant that he retained the power to change the transfer, thus including it in his estate. The court rejected the argument that the annuity was a gift subject to gift tax, as the decedent retained control over the transfer. This decision highlights the importance of considering the decedent's control over corporate decisions in estate planning involving employer-provided benefits.

Facts

Stanton A. Levin, aged 64, died while employed by Marstan Industries, a corporation he controlled. Marstan adopted a plan to provide a post-mortem annuity to surviving spouses of eligible officers, including Levin. At the time of his death, Levin had served Marstan for 34 years and was the only officer eligible under the plan. The plan required 30 years of service and an age of 64, with payments contingent on the officer's death during employment. Levin's widow, aged 63, began receiving $34,000 annually in monthly installments upon his death. The commuted value of the annuity was $344,343. 16, which was not included in Levin's estate, nor was gift tax paid on it.

Procedural History

The Commissioner of Internal Revenue determined estate and gift tax deficiencies against Levin's estate, asserting that the annuity should be included in the gross estate under sections 2035 or 2038, or alternatively, that it constituted a taxable gift under section 2511. The estate challenged these determinations in the Tax Court. After concessions, the court focused on the applicability of sections 2035, 2038, and 2511.

Issue(s)

1. Whether the commuted value of the post-mortem annuity is includable in the decedent's gross estate under section 2038.
2. Whether the post-mortem annuity constituted an inter vivos gift subject to gift taxation under section 2511.

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Holding

1. Yes, because the decedent had a property interest in the annuity, transferred it during his lifetime, and retained the power to alter, amend, revoke, or terminate the transfer through his control over Marstan's board.
2. No, because the decedent retained control over the annuity, preventing it from being a completed gift.

Court's Reasoning

The court found that the annuity was property in which Levin had an interest, as it was deferred compensation for his services at Marstan. Levin's continued employment was considered acceptance of Marstan's offer, and the annuity was thus a transfer of property. The court applied section 2038, noting that Levin's control over Marstan's board gave him the power to amend or terminate the plan, satisfying the requirement that he retained the power to change the transfer. The court distinguished this case from Estate of DiMarco, where the decedent had no such control. On the gift tax issue, the court held that no gift occurred because Levin retained control over the annuity by being able to terminate his employment, divorce his spouse, or agree to terminate the plan. The court emphasized the importance of the decedent's control in determining estate tax inclusion and gift tax liability.

Practical Implications

This decision underscores the significance of a decedent's control over corporate decisions in estate planning, particularly when employer-provided benefits are involved. Attorneys should advise clients to consider the tax implications of retaining control over such plans, as it can lead to inclusion in the gross estate under section 2038. The ruling suggests that similar cases involving controlling shareholders and employer-provided annuities will likely result in estate tax inclusion. Legal practitioners must also be aware that retaining control over a transfer prevents it from being considered a completed gift, thus avoiding gift tax liability. This case has influenced subsequent cases dealing with estate and gift tax treatment of employee benefits, emphasizing the need to analyze the decedent's power over the plan's terms and termination.

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