***Estate of Marine v. Commissioner, 97 T. C. 368 (1991)***

A charitable bequest must have an ascertainable value at the time of the testator's death to qualify for an estate tax deduction.

**Summary**

Dr. David N. Marine's will bequeathed his residuary estate to Princeton University and Johns Hopkins University, but a codicil allowed his personal representatives to make discretionary bequests to individuals who had helped him during his lifetime. Each bequest was limited to 1% of the estate, but the total number of such bequests was unlimited. The IRS challenged the estate's charitable deduction, arguing that the value of the residue was not ascertainable at Dr. Marine's death. The Tax Court agreed, holding that the discretionary power of the personal representatives created too much uncertainty about the amount that would ultimately go to the charities, thereby disallowing the deduction.

**Facts**

Dr. David N. Marine died in 1984, leaving a will that bequeathed his residuary estate to Princeton University and Johns Hopkins University. A codicil to his will allowed his personal representatives to make discretionary bequests to individuals who had contributed to his well-being during his lifetime. Each bequest was limited to 1% of the gross probate estate, but the codicil did not limit the total number of such bequests. After Dr. Marine's death, his personal representatives made discretionary bequests to two individuals. The estate claimed a charitable deduction for the residuary bequest, but the IRS challenged it, arguing that the value of the residue was not ascertainable at Dr. Marine's death due to the discretionary bequests.

**Procedural History**

The estate filed a federal estate tax return claiming a deduction for the residuary bequest. The IRS disallowed the deduction, and the estate petitioned the U. S. Tax Court. The Tax Court heard the case and ruled in favor of the Commissioner, disallowing the charitable deduction.

**Issue(s)**

1. Whether the value of the residuary estate bequeathed to Princeton University and Johns Hopkins University was ascertainable at the time of Dr. Marine's death, such that it qualified for a charitable deduction under section 2055(a) of the Internal Revenue Code.

**Holding**

1. No, because the discretionary power granted to the personal representatives to

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make bequests to individuals created too much uncertainty about the amount that would ultimately go to the charities, making the value of the residue not ascertainable at Dr. Marine's death.

**Court's Reasoning**

The court applied the principle that a charitable bequest must be "fixed in fact and capable of being stated in definite terms of money" at the time of the testator's death to qualify for a deduction. The court reasoned that the codicil's provision for discretionary bequests to an unlimited number of individuals, each up to 1% of the estate, created uncertainty about the amount that would ultimately go to the charities. The court distinguished cases where the uncertainty arose from state law, rather than the testator's will, and noted that the personal representatives' discretion was not subject to any "ascertainable standard. " The court also considered that the personal representatives' actions after Dr. Marine's death, including obtaining a court order closing the class of beneficiaries, did not cure the uncertainty that existed at the time of his death. The court relied on Supreme Court precedent and other circuit court decisions to support its holding.

**Practical Implications**

This decision emphasizes the importance of ensuring that charitable bequests are clearly defined and not subject to discretionary powers that could affect their value at the time of the testator's death. Estate planners must carefully draft wills to avoid provisions that could lead to uncertainty about the amount of a charitable bequest. The case also highlights the need for executors to consider the tax implications of discretionary powers granted in wills. Subsequent cases have continued to apply the principle that charitable bequests must be ascertainable at the time of death to qualify for a deduction, and this case serves as a reminder of the potential pitfalls of discretionary bequests in estate planning.

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