Estate of Willard E. Robertson, Deceased, Tom Stockland, Successor-Executor, Petitioner v. Commissioner of Internal Revenue, Respondent, 98 T. C. 678 (1992)

An executor's discretionary power to elect QTIP treatment can prevent an interest from qualifying as a "qualified terminable interest property" for marital deduction purposes if the surviving spouse's interest is contingent on that election.

Summary

Willard E. Robertson's will provided his wife with an income interest in trusts M-2 and M-3, contingent on the executor's election of QTIP status. If the executor did not make the election, the trust assets would be redirected to a nonmarital trust. The Tax Court held that this contingency meant the wife's interest did not qualify as QTIP property under IRC section 2056(b)(7), as her interest was not guaranteed independent of the executor's election. Consequently, the estate was not entitled to a marital deduction for these trusts. The court's decision emphasized the importance of a clear and independent interest for the surviving spouse to qualify for QTIP treatment, impacting estate planning strategies involving discretionary elections by executors.

Facts

Willard E. Robertson died in 1983, leaving a will that divided his estate into four trusts, three of which were for his surviving spouse, Marlin Head Robertson. Trusts M-2 and M-3 were to provide the surviving spouse with an income interest for life, but only if the executor elected QTIP treatment under IRC section 2056(b)(7). If the executor did not make the election, the assets of these trusts would be added to the Willard Robertson Trust, benefiting the decedent's sons from a previous marriage. The executor made the QTIP election on the estate tax return, but the IRS challenged the marital deduction claimed for these trusts.

Procedural History

The estate filed a U. S. Estate Tax Return, claiming a marital deduction for the property in trusts M-2 and M-3 based on the executor's QTIP election. The IRS issued a notice of deficiency, disallowing the marital deduction for these trusts. The estate petitioned the U. S. Tax Court, where the IRS moved for partial summary judgment on the issue of the marital deduction for trusts M-2 and M-3. The Tax Court granted the IRS's motion, denying the marital deduction.

Issue(s)

1. Whether the surviving spouse's interest in the property of trusts M-2 and M-3 constitutes "qualified terminable interest property" under IRC section 2056(b)(7) when that interest is contingent on the executor's making a QTIP election.

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Holding

1. No, because the surviving spouse's interest in trusts M-2 and M-3 did not qualify as QTIP property under IRC section 2056(b)(7). The court reasoned that the executor's discretionary power to elect or not elect QTIP treatment created a contingency that could result in the termination or failure of the surviving spouse's income interest, thereby preventing the interest from meeting the requirements of a "qualifying income interest for life. "

Court's Reasoning

The Tax Court applied the principle that the possibility, not the probability, of an interest terminating or failing determines its qualification for the marital deduction. The court found that the executor's discretion to elect QTIP treatment for trusts M-2 and M-3, as stated in the will, created a contingency that could divest the surviving spouse of her interest if the election was not made. This contingency violated the requirements of IRC section 2056(b)(7)(B)(ii), which mandates that the surviving spouse must have an indefeasible interest in the income from the property for life. The court also rejected the estate's arguments about ambiguities in the will and the executor's fiduciary duties under Arkansas law, stating that the will's language was clear and did not limit the executor's discretion. The court followed its precedent in Estate of Clayton v. Commissioner, emphasizing that the executor's power over the trust assets was tantamount to a power of appointment, which disqualified the interest from being a QTIP.

Practical Implications

This decision underscores the importance of ensuring that a surviving spouse's interest in a trust is not contingent on an executor's discretionary election to qualify for QTIP treatment. Estate planners must draft wills with clear language that guarantees the surviving spouse's income interest independent of any election to avoid similar outcomes. The ruling affects how estates are structured to minimize tax liabilities, as it limits the use of discretionary QTIP elections. Practitioners should consider alternative strategies to achieve tax benefits, such as using mandatory QTIP elections or structuring trusts to provide the surviving spouse with a guaranteed income interest. Subsequent cases have cited Estate of Robertson to reinforce the necessity of an independent and indefeasible interest for QTIP qualification.

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