Estate of Sarah H. Newman, Deceased, Mark M. Newman, Co-Executor and Minna N. Nathanson, Co-Executor v. Commissioner of Internal Revenue, 111 T. C. 81 (1998)

Checks written before but paid after a donor's death are not considered completed gifts and must be included in the donor's gross estate for estate tax purposes.

Summary

Before her death, Sarah Newman's son, acting under power of attorney, wrote checks from her account to family members. These checks, intended as gifts, were not cashed until after Newman's death. The court ruled that because the checks were not accepted by the bank before Newman's death, they did not constitute completed gifts. Thus, the funds remained part of her estate for tax purposes. The decision hinged on the principle that a gift is not complete until the donor relinquishes control, and checks do not transfer control until accepted by the bank. This ruling distinguishes between charitable and noncharitable gifts in terms of the "relation-back doctrine," impacting how estate planners must consider the timing of gift checks.

Facts

Sarah H. Newman appointed her son, Mark, as her attorney-in-fact. Before her death on September 28, 1992, Mark wrote six checks from Newman's checking account, payable to family members and others, totaling $95,000. These checks were dated and delivered before Newman's death but were not accepted or paid by the bank until after her death. Newman's estate argued these checks represented completed gifts and should not be included in her gross estate for tax purposes.

Procedural History

The estate filed a tax return excluding the funds represented by the checks from Newman's gross estate. The Commissioner of Internal Revenue challenged this, asserting the checks were not completed gifts and should be included. The case was brought before the United States Tax Court, which had to determine if the funds were part of Newman's gross estate.

Issue(s)

1. Whether the checks drawn on Newman's account before her death but paid after her death constitute completed gifts, thus not includable in her gross estate?
2. Whether the "relation-back doctrine" applies to noncharitable gifts made by check, which were paid after the donor's death?

Holding

1. No, because the checks were not accepted or paid by the bank before Newman's

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death, she retained dominion and control over the funds, and thus the gifts were not complete.
2. No, because the "relation-back doctrine" does not apply to noncharitable gifts when the donor dies before the checks are paid, as established in prior cases like Estate of Gagliardi and McCarthy v. United States.

Court's Reasoning

The court applied the legal principle that a gift is not complete until the donor relinquishes control over the property. Under D. C. law, a check is considered conditional payment until accepted by the bank. The court relied on Estate of Metzger, which clarified that a check remains revocable until accepted by the drawee bank. Newman retained the ability to stop payment on the checks, even if practically she might not have been able to exercise this power. The court distinguished this case from those involving charitable contributions where the "relation-back doctrine" might apply, citing Estate of Gagliardi and McCarthy v. United States, where the doctrine was not extended to noncharitable gifts paid after the donor's death. The court's decision was influenced by policy considerations to prevent estate tax avoidance, as noted in McCarthy.

Practical Implications

This ruling has significant implications for estate planning and tax law. Estate planners must now ensure that gifts by check are cashed or accepted by the bank before the donor's death to be considered completed and excluded from the gross estate. The decision underscores the difference in treatment between charitable and noncharitable gifts regarding the timing of payment. Practitioners should advise clients that any noncharitable gift checks outstanding at the time of death will be included in the gross estate, potentially affecting estate tax liabilities. This case also reaffirms the principle that mere possession of the power to revoke a gift is controlling, not the practical ability to exercise it. Subsequent cases have continued to apply this ruling, reinforcing its impact on estate tax planning strategies.

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