Estate of Marion Levine v. Commissioner, 158 T. C. No. 2 (2022)

The U. S. Tax Court ruled that the cash surrender values of life insurance policies funded through a split-dollar arrangement were not includible in the decedent's estate. The court held that the estate's valuation of the split-dollar receivable, rather than the policies' cash values, was correct under sections 2036, 2038, and 2703 of the Internal Revenue Code, due to the fiduciary duties of the investment committee member and the absence of restrictions on the receivable itself.

Parties

The petitioner was the Estate of Marion Levine, with Robert L. Larson serving as the personal representative. The respondent was the Commissioner of Internal Revenue.

Facts

Marion Levine, before her death in 2009, entered into a split-dollar life insurance arrangement. Her revocable trust paid premiums for life insurance policies on the lives of her daughter Nancy and son-in-law Larry, held by an irrevocable trust (the Insurance Trust). The Insurance Trust's beneficiaries were Levine's children and grandchildren. The arrangement stipulated that Levine's revocable trust had the right to receive the greater of the total premiums paid or the cash surrender value of the policies upon termination or the death of the insureds. Bob Larson, a family friend and business associate, was the sole member of the investment committee managing the irrevocable trust. Levine's children, Nancy and Robert, and Larson also served as attorneys-in-fact under her power of attorney.

Procedural History

The IRS audited Levine's estate and issued a notice of deficiency, asserting that the estate's reported value of the split-dollar receivable was too low. The Commissioner argued that the cash surrender value of the insurance policies should be included in the estate's valuation. The case was heard by the U. S. Tax Court, with the parties stipulating that the fair market value of the split-dollar receivable was $2,282,195 if the estate prevailed. The court focused on the applicability of sections 2036, 2038, and 2703 of the Internal Revenue Code.

Issue(s)

Whether the cash surrender value of the life insurance policies held by the Insurance Trust should be included in Levine's gross estate under sections 2036(a), 2038(a)(1), or 2703 of the Internal Revenue Code?

Rule(s) of Law

Sections 2036(a) and 2038(a)(1) of the Internal Revenue Code include in a decedent's gross estate the value of any transferred property if the decedent

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retained certain rights or powers over it. Section 2036(a)(1) applies if the decedent retained possession or enjoyment of, or the right to income from, the property. Section 2036(a)(2) applies if the decedent retained the right, alone or with others, to designate who shall possess or enjoy the property or its income. Section 2038(a)(1) applies if the decedent retained the power, alone or with others, to alter, amend, revoke, or terminate the enjoyment of the property. Section 2703 requires property to be valued without regard to certain options, agreements, or restrictions. The regulations under section 1. 61-22 govern the tax consequences of split-dollar life insurance arrangements.

Holding

The Tax Court held that the cash surrender values of the life insurance policies were not includible in Levine's gross estate under sections 2036(a), 2038(a)(1), or 2703. The court found that Levine did not retain any rights to the policies themselves and that the split-dollar receivable, valued at $2,282,195, was the only asset to be included in her estate.

Reasoning

The court's reasoning focused on the specific terms of the split-dollar arrangement and the fiduciary duties of Larson as the sole member of the investment committee. The court rejected the Commissioner's argument that Levine retained rights to the cash surrender value of the policies under sections 2036(a) and 2038(a)(1), as only the Insurance Trust had the unilateral right to terminate the arrangement. The court distinguished this case from others like *Estate of Strangi* and *Estate of Powell*, where fiduciary duties were owed essentially to the decedent. Here, Larson owed enforceable fiduciary duties to all beneficiaries of the Insurance Trust, including Levine's grandchildren, which would be breached if the policies were surrendered prematurely. The court also held that section 2703 did not apply, as it only pertains to property owned by the decedent at death, and there were no restrictions on the split-dollar receivable held by Levine's estate. The court emphasized that general contract law principles allowing for modification do not constitute a retained power under sections 2036 or 2038, citing *Helvering v. Helmholz* and *Estate of Tully*.

Disposition

The Tax Court ruled in favor of the Estate, holding that the value of the split-dollar receivable, not the cash surrender values of the insurance policies, should be included in Levine's gross estate. The court ordered a decision to be entered under Rule 155.

Significance/Impact

This case clarifies the treatment of split-dollar life insurance arrangements under the estate tax provisions of the Internal Revenue Code. It highlights the importance

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of the specific terms of the arrangement and the fiduciary duties of those managing the trust in determining whether a decedent retains rights to the property transferred. The decision reinforces the principle that only property owned by the decedent at death is subject to valuation under section 2703, and that general contract law principles do not automatically constitute retained powers for estate tax purposes. This ruling may influence future estate planning involving split-dollar life insurance, particularly in ensuring that the terms of the arrangement and the fiduciary duties of trust managers are clearly defined to avoid unintended estate tax consequences.

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