

TAX COURT CASE UPDATE

Citation:

Estate of Elwood H. Olsen, et al. v. Commissioner, T.C. Memo 2014-58, April 2, 2014.

Overview:

The Tax Court has held that an individual's estate had to include the value of *some* of the assets that a trust held on the applicable alternate valuation date of the individual's estate under Code Section 2044. The trust was set up by his predeceased spouse and should have been, but was not, severed into marital and family trusts on her death. The estate included none of the trust's assets, and the IRS sought to include *all* of them, totaling over \$1 million, but the Tax Court found that only \$607,928 of the assets had to be included.

The Facts:

On February 25, 2008, Elwood H. Olsen (the decedent) died in Florida with a will. In late 1994, Mr. Olsen, who had earned an advanced law degree, created the Elwood H. Olsen Revocable Trust ("EHO trust"). He appointed himself as the trustee of that trust. On the same date, his spouse, Grace T. Olsen, created the Grace T. Olsen Revocable Trust ("GTO trust"). She appointed Mr. Olsen as the trustee of that trust. The substantive terms of the two trusts were identical.

The terms of the GTO trust directed that on Mrs. Olsen's death, if Mrs. Olsen's spouse survived her, the trustee was to transfer certain assets of the GTO trust to (1) a so-called Marital Trust that in turn was to be divided into two separate and distinct trusts known as Marital Trust A and Marital Trust B, and (2) a separate and distinct trust known as the Family Trust. So, pursuant to the terms of the GTO trust, on Mrs. Olsen's death, if Mr. Olsen survived her, the assets of that trust were to be distributed to the three separate and distinct trusts (Marital Trusts A and B, and the Family Trust) in the amounts that the terms of that trust required.

Mrs. Olsen died on December 9, 1988. At the time of her death, the GTO trust held certain assets. Mr. Olsen continued to serve as the trustee of the GTO trust after Mrs. Olsen's death until his death. Mr. Olsen, as the personal representative of the estate of Mrs. Olsen, signed and filed Form 706 for Mrs. Olsen's estate. In that return, he reported that the total value of the assets that the GTO trust held on the date of Mrs. Olsen's death was \$2,104,695 and that those assets were to be distributed as follows: (1) \$1 million to Marital Trust A; (2) \$504,695 to Marital Trust B; and (3) \$600,000 to the Family Trust.

Under Code Section 2056(b)(7), Mr. Olsen elected to treat Marital Trusts A and B as qualified terminable interest property ("QTIP"). Accordingly, he claimed a marital deduction of \$1,504,695 on Mrs. Olsen's estate tax return.

The value of the QTIP assets in Mrs. Olsen's gross estate that Mr. Olsen reported in the estate tax return was 71.4923 percent of the total value of all of the assets that Mr. Olsen reported in that return that the GTO trust held on the date of Mrs. Olsen's death. After claiming the marital

deduction, deductions totaling \$24,998 for funeral expenses and Mrs. Olsen's debts, and an allowable unified credit of \$192,800, Mr. Olsen reported zero tax in Mrs. Olsen's estate tax return.

After Mrs. Olsen's death, Mr. Olsen did not, as required by the terms of the GTO trust, segregate the GTO trust into the three separate and distinct trusts or fund them. Nor did he send any annual accountings for that trust to the beneficiaries of that trust. On December 31, 2000, the value of the GTO trust had increased to \$2,664,583.78.

As trustee of the GTO trust, Mr. Olsen made three significant withdrawals from that trust that totaled \$1,474,7804 (GTO trust withdrawals). Two were used to make charitable contributions. The third, amounting to \$393,978, was deposited into one of Mr. Olsen's accounts.

On November 25, 2008, Mr. Olsen's son, Ty Olsen, as the personal representative of Mr. Olsen's estate, filed Form 706. In that return, Ty Olsen did not include any portion of the value of the GTO trust.

The IRS issued a notice of deficiency with respect to Mr. Olsen's estate. In that notice, the IRS made a determination to include \$1,071,224 in the value of Mr. Olsen's gross estate under Code Section 2044. This was the amount that the IRS determined was the value of the GTO trust "as of decedent's date of death" that was allocable to Marital Trusts A and B. Before the Tax Court, the IRS stipulated that the value of the GTO trust on the applicable alternate valuation date was \$1,001,905.51, not \$1,071,224 as it determined in the notice.

Discussion:

Before the Tax Court, the parties agreed that the respective values of any assets that Marital Trusts A and B held on the date of Mr. Olsen's death are includible in the value of his gross estate under Code Section 2044, and that the respective values of any assets that the Family Trust held on that date are not includible in the value of his gross estate. However, after Mrs. Olsen died, Mr. Olsen, as trustee of the GTO trust, did not segregate the GTO trust into the three separate and distinct trusts or fund them. As a result, as the Tax Court noted, resolution of the issue presented under Code Section 2044 was not as straightforward as it would have been if Mr. Olsen had done so.

The estate took the position that Marital Trusts A and B should not be considered to have held any assets of the GTO trust on the date of Mr. Olsen's death, that the Family Trust should be considered to have held all of the assets of the GTO trust on that date, and that consequently the value of none of the assets that the GTO trust held on the date of Mr. Olsen's death is includible in the value of his gross estate. The IRS countered that the Family Trust should not be considered to have held any of the assets of the GTO trust on the date of Mr. Olsen's death, that the Marital Trusts should be considered to have held all of the assets of the GTO trust on that date, and that consequently the respective values of all of the assets that the GTO trust held on the date of Mr. Olsen's death are includible in the value of his gross estate.

The estate argued that the withdrawals should be attributed to Marital Trusts A and B, while the IRS argued the withdrawals constituted exercises of a power of appointment over the Family trust assets by Mr. Olsen.

Conclusion:

Based upon its examination of the entire detailed record, the Tax Court found that \$1,080,802 of the GTO trust withdrawals should be considered to have been made from the Family Trust and \$393,978 of them should be considered to have been made from Marital Trusts A and B. Thus, under Code Section 2044, the estate had to include \$607,927.51, which is \$1,001,905.51, the stipulated value of the GTO trust on the applicable alternate valuation date that the IRS determined to consist entirely of assets of Marital Trusts A and B, reduced by \$393,978, the GTO trust withdrawal that the court found Mr. Olsen made from Marital Trusts A and B.