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the workmen's compensation law to provide explicitly that workmen's compensation benefits are excluded for the time period when unemployment benefits have been collected.

TAYLOR MATTIS

SALE OF A RETAINED LIFE ESTATE IN CONTEMPLATION OF DEATH—EFFECT UPON THE GROSS ESTATE

The deceased created an irrevocable trust for her children, reserving to herself three-fifths of the income for life. In contemplation of death, at a time when her life estate was valued at $135,000, the deceased transferred her life estate to her son for a consideration of $140,000 dollars. At the time of the deceased's death three-fifths of the corpus was valued at $900,000. The commissioner assessed an estate tax on the corpus, less the $140,000-dollar purchase price of the life estate. The executors were successful in their suit for a refund. On appeal, held, reversed: the corpus of a reserved life estate is not removed from a decedent's gross estate by a transfer at the value of the life estate in contemplation of death. United States v. Allen, 293 F.2d 916 (10th Cir.), cert. denied, 368 U.S. 944 (1961).

The question of whether the sale of a retained life estate, for adequate consideration, in contemplation of death, will remove the entire corpus of previously transferred property from the gross estate appears to be novel to the federal courts. Section 2036(a)(1) of the Internal Revenue Code of 1954\(^1\) provides, in part, that the value of the corpus of a trust created by the decedent, in which the decedent retained the right to income for life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death, shall be included in his gross estate.\(^2\) A literal reading of this

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1. In the instant case decedent died and the controversy arose prior to the adoption of the Internal Revenue Code of 1954. Therefore, the 1939 Code was applicable. The applicable sections of the 1939 Code and their 1954 counterparts are as follows: Section 811(c)(1)(A) of the 1939 Code corresponds to section 2035 of the 1954 Code and section 811(c)(1)(B) of the 1939 Code corresponds to section 2036 of the 1954 Code. In so far as the instant case is concerned there is no difference in effect between these sections of the Code. For purposes of clarity the 1954 Code will be used as the reference herein. Unless otherwise specified all citations will be to that Code.

2. Section 2036(a)(1) reads as follows:
   (a) The value of the gross estate shall include the value of all property (except real property situated outside of the United States) to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death—
      (1) the possession or enjoyment of, or the right to the income from, the property . . . .
section indicates that the interest is not to be included in the gross estate if it has not been retained for life. Section 2035 provides that the gross estate shall include property transferred by the decedent in contemplation of death to the extent that he has not received a money's worth flow therefor. The value of property transferred by the decedent for a full money's worth flow is not included in his gross estate even if it was transferred in contemplation of death.

Prior to United States v. Allen no federal tax case ruled directly on this point. However, the issue has been touched upon in two cases involving local estate taxes and in one revenue ruling.

In In re Thurston's Estate, the decedent conveyed two parcels of real estate to his children and reserved to himself a life estate in each. Subsequently, he relinquished the life estate in one of the parcels for 10,000 dollars, which was adequate consideration for the life estate. The tract had a value of 134,000 dollars. The California Code contained provisions essentially the same as sections 2035 and 2036 of the Internal Revenue Code. The court excluded the relinquished tract from the gross estate of the decedent upon a finding that the release of the life estate was not made in contemplation of death. By way of dicta the court said:

There is no reason to favor the transferor who relinquishes his interest in contemplation of death over the taxpayer who retains the shackles on the property until his death . . . . The life estate relinquished in contemplation of death is therefore in the same category as it would have been if the transfer had not been made, and the tax is imposed as if it had been retained until the transferor's death. A tax measured by the value of the entire corpus transferred cannot be avoided by the payment of consideration equal to the value of the interest relinquished.

In Heller v. District of Columbia the decedent executed a trust in which she retained the right to income for her life. Three months prior to her death she renounced her right to the income. The Board of Tax

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4. Section 2035(a) provides:
   (a) The value of the gross estate shall include the value of all property . . . to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, in contemplation of death.
5. The rationale is that the consideration, if adequate and full, will take the place of the transferred property and the decedent's gross estate will not have been depleted.
11. 198 F.2d 983 (D.C. Cir. 1952).
Appeals for the District of Columbia found the renunciation to have been in contemplation of death and assessed an estate tax. The court of appeals affirmed saying in part:

Obviously she could not render non-taxable a previous transfer which was clearly taxable by renouncing, in contemplation of death, the reserved interest which had made it taxable.

In a 1956 revenue ruling the commissioner took the position that the assignment or relinquishment by the decedent of the possession, enjoyment, or right to the income from the property, or the right to designate the persons who shall possess or enjoy the property or the income therefrom in contemplation of death, will render the entire value of property, otherwise includible in the decedent's gross estate under section 2036(a)(1), includible in his gross estate under section 2035. This ruling cited with approval, both the dicta in Thurston and the holding in Heller. It should be noted, however, that only in Thurston did the decedent receive an adequate money's worth flow of consideration for the life estate. In Heller there was no consideration given for the decedent's relinquishment. In Revenue Ruling 56-324 the effect of adequate consideration paid for the life estate, does not appear to have been considered. Only in Thurston, and there only by way of dicta, does the effect of adequate consideration for the transfer of the life estate appear to have been considered.

In reaching its conclusion in Allen, the court did not rely upon the express terms of either section 2035 or section 2036, nor did it rely upon any case in point. Instead, the court looked to the intent of Congress and to the general policy of the estate tax. The court said:

It does not seem plausible... that Congress intended to allow such an easy avoidance of the taxable incidence befalling reserved life estates. This result would allow a taxpayer to reap the benefits of property for his lifetime and, in contemplation of death, sell only the interest entitling him to the income, thereby removing all of the property which he has enjoyed from his gross estate. Giving the statute a reasonable interpretation, we cannot believe this to be its intendment. It seems certain that... Congress meant the estate to include the corpus of the trust or, in its stead, an amount equal in value.

Noteworthy is the fact that the court cited as authority Helvering v.
Hallock, Commissioner v. Wemyss, and Commissioner v. Estate of Church. In these cases the Supreme Court determined that substance governs form and that the niceties of property conveyancing have no proper place in the law of taxation.

The result in United States v. Allen contains implications which go beyond section 2036. The decision indicates that one who keeps a “string” on property given to others in an inter vivos transfer may not sell that “string” in contemplation of death and expect the property to escape the estate tax, even if he receives adequate consideration for the “string.” There is no reason why this rationale can not be applied to all sections of the Code dealing with inter vivos transfers in which some “string” or hold was retained by the deceased. Similar treatment should be accorded to the sale of retained interests in contemplation of death when applied to: (1) a reserved life estate in connection with section 2036; (2) a reversionary interest in connection with section 2037; (3) a power to alter or revoke in connection with section 2038; (4) the decedent’s annuity in connection with section 2039; (5) the interest of a joint owner in connection with section 2040; (6) a power of appointment in connection with section 2041; and (7) incidents of ownership in life insurance payable to beneficiaries other than the estate of the insured in connection with section 2042.

From a policy point of view the decision seems correct, even though it does stretch the Code to some degree. The determination of what consideration will be adequate to remove the entire property from the gross

17. 309 U.S. 106 (1940).
18. 324 U.S. 303 (1945).
20. Breitenstein, J., in a separate concurring opinion, interpreted section 2036 (811(1)(B) of the 1939 Code) differently than the majority. “As I read the statute the tax liability arises at the time of the inter vivos transfer under which there was a retention of the right to income for life. The disposition thereafter of that retained right does not eliminate the tax liability.” United States v. Allen, 293 F.2d 916, 918 (10th Cir. 1961). This view does not appear to be in accord with the commissioner’s position in Rev. Rul. 56-324, 1956-2 Cum. Bull. 999. It was rejected in In re Thurston, 36 Cal. 2d 207, 223 P.2d 12 (1950). There is some support for this view. See Rottschaeffer, Taxation of Transfers Taking Effect in Possession at Grantor’s Death, 26 Iowa L. Rev. 514, 526-28 (1941).

21. As in the instant case.
22. There are a number of cases which indicate that a contrary result has been reached where property held by a decedent and another as joint tenants or tenants by the entirety has been transferred in contemplation of death, or where the joint estate has been converted into a tenancy in common in contemplation of death. A. Carl Borner, 25 T.C. 584 (1955), acq., Rev. Rul. 57-448, 1957-2 Cum. Bull. 618; Sullivan’s Estate v. Commissioner, 175 F.2d 657 (9th Cir. 1949). These cases apparently follow the theory that the word “interest,” as contained in section 2035, refers only to the retained interest and that a transfer of the retained interest for adequate consideration will exclude the entire property, otherwise taxable, from the gross estate. The result is that only one-half of the value of the property is included in the decedent’s gross estate.
23. See generally, Lowndes, Cutting the “Strings” on Inter Vivos Transfers in Contemplation of Death, 43 Minn. L. Rev. 57 (1958).
estate was made from the viewpoint of tax law rather than from the viewpoint of technical property law, and this is as it should be.24

DAVID S. KENIN

THE EXEMPTION OF PROCEEDS FROM A VOLUNTARY SALE OF HOMESTEAD PROPERTY

The plaintiff-appellant secured a writ of garnishment against the proceeds of a voluntary sale of the defendant-appellees' homestead property. Subsequently, the court dissolved the writ upholding the defendants' contention that the constitutional provision exempting homestead property from forced sale extended to the proceeds of this sale. On appeal, the District Court of Appeal, Second District, noting the lower court's construction of a constitutional provision, transferred the case to the Florida Supreme Court.3 Held, reversed and remanded with directions to apply the following rule: All or any portion of the proceeds of a voluntary sale will be exempt from forced levy, provided the vendor can show by a preponderance of the evidence the existence of a bona fide pre-sale intention to reinvest the designated amount in another homestead within a reasonable time. These proceeds must be kept segregated from other monies and must not be put to intervening use. Orange Brevard Plumbing & Heating Co. v. LaCroix, 137 So.2d 201 (Fla. 1962).

The underlying purpose of exempting homestead property from forced sale is to conserve the home in order to protect "the family from dependence and want."37 The first homestead exemption law was enacted


1. FLA. CONST. art. X, § 1. "A homestead to the extent of one hundred and sixty acres of land, or the half of one acre within the limits of any incorporated city or town, owned by the head of a family residing in this state, together with one thousand dollars worth of personal property, and the improvements on the real estate, shall be exempt from forced sale under process of any court . . . ."

2. FLA. APP. R. 2.1(a) (5)(d). "When the jurisdiction of an appellate court has been improvidently invoked, that court may of its own motion . . . enter an order transferring [the case] . . . to the court having jurisdiction."

3. FLA. APP. R. 2.1(a) (5)(a). "Appeals from trial courts may be taken directly to the Supreme Court as a matter of right . . . from final judgments . . . construing a controlling provision of the Florida or Federal Constitution . . . ."

See note 31 infra.


6. WAPLES, HOMESTEAD AND EXEMPTIONS 3 (1893).

7. THOMPSON, HOMESTEAD AND EXEMPTIONS 39 (1886); Beall v. Pinckney, 150 F.2d 467, 470 (5th Cir. 1945); 16 FLA. JUR. Homestead § 4 (1957); 26 AM. JUR. Homestead § 6 (1940); BOYER, FLORIDA REAL ESTATE TRANSACTIONS § 21.03, at 467, 471 (1959). In Collins v. Collins, 150 Fla. 374, 377, 7 So.2d 443, 444 (1942), the court said: "The purpose of the homestead is to shelter the family and to provide it a refuge from the stresses and strains of misfortune."