JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-02-10-004 / NOT PRECEDENTIAL**
ID: **P9600516**
DATE: **02-10-00**
DISPOSITION: **SUSTAINED**
TAX TYPE: **ESTATE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS estate protests an order assessing estate tax on the transfer by the DECEDENT of a number of shares of bank stock to a trust in favor of his son and grandchildren, approximately two years prior to DECEDENT'S death. Upon consideration of the record herein, the evidence adduced and the arguments of counsel, we enter the following order, sustaining said protest.

FACTS

1. The DECEDENT in this case, then aged 69, transferred 5,229 shares of ANONYMOUS BANCSHARES, INC. to the DECEDENT Irrevocable Trust on December 17, 1990. ANONYMOUS BANCSHARES is a privately held Oklahoma Corporation which holds a 90% ownership interest in AN ANONYMOUS BANK. The beneficiaries of the DECEDENT Irrevocable Trust were DECEDENT'S son and grandchildren.

2. Prior to the transfer, DECEDENT held 16,357 of the 27,034 issued and outstanding shares of the holding company. From 1990 until DECEDENT'S death in 1992, DECEDENT reduced his holdings to 3,177 shares.

3. At the time of the transfer, DECEDENT had a life expectancy of 11.8 years according to the U.S. National Center for Health Statistics-Life Expectancy Chart promulgated in 1988. DECEDENT was in good health and very active in his leisurely pursuits when he made the transfer, but he was ready to retire from the day-to-day management of his businesses. DECEDENT was motivated by a desire to see the businesses carried on by his family and continue in an orderly fashion.

4. In 1978, then aged 57, DECEDENT started transferring shares of stock in another of his businesses, COMPANY ONE, to his son, his son's wife and his grandchildren. By 1990, DECEDENT had divested himself of all interest in COMPANY ONE. The transfers of stock in COMPANY ONE were equal in value to approximately $10,000 per recipient per year. Beginning in 1990 and continuing to his death, DECEDENT had started divesting his interest in BANCSHARES.

5. Prior to the transfer, on October 26, 1990, DECEDENT submitted an application to A LIFE INSURANCE COMPANY for a life insurance policy with a face amount of $500,000. The application for life insurance indicates that it was purchased for purposes of estate liquidity. The application for life insurance also reports that DECEDENT'S father died at the age of 53 from cerebral vascular accident, his mother died at the age of 78 from a cardiac arrest, and his brother died at the age of 64 from cardiac arrest.

6. As part of the life insurance policy application, DECEDENT passed a physical examination administered on October 23, 1990, and submitted his medical history to A LIFE INSURANCE COMPANY. DECEDENT did not exhibit any indications of ill health until approximately eleven months prior to his death.

7. After the transfer, DECEDENT reduced the face amount of the life insurance policy to $300,000, in January, 1991.

8. DECEDENT died on November 13, 1992.

9. The taxpayer's Oklahoma estate tax return filed on October 9, 1993, listed the value of the total gross estate at $1,634, 373, and indicated that taxpayer was entitled to a refund of $40,313. The Commission's Order assessing tax issued on October 26, 1994, included the transfer in the Estate. The Order valued the Estate at $2,300,212, and indicated that taxpayer was entitled to a refund of $19,748.44. The value of the transfer is $465,839. On November 21, 1994, the taxpayer submitted a letter with the OTC protesting its decision to include the transfer in the valuation of the Estate.

CONCLUSIONS OF LAW

1. Gifts of real or personal property made by a DECEDENT in contemplation of death shall be included in the value of the gross estate of the DECEDENT. 68 O.S. 1991, § 807 (A) (2). A presumption that the gift of property was made in contemplation of death arises where the transfer is made within three (3) years of the death of DECEDENT, without an equivalent in monetary consideration, and the transfer consists of a material part of DECEDENT'S estate. Id. The presumption is rebuttable. Id.

2. The differentiating factor between an inter vivos gift and one made in contemplation of death is the transferor's motive. U.S. v. Wells, 283 U.S. 102, 51 S. Ct. 446, 75 L.Ed. 867 (1931). A transfer "in contemplation of death" is a disposition of property prompted by the thought of death (although it need not be solely so prompted). 26 C.F.R. §20.2035-1(c) (1954). A transfer is prompted by the thought of death if (1) made with the purpose of avoiding death taxes, (2) made as a substitute for a testamentary disposition of the property, or (3) made for any other motive associated with death. Id. Contemplation of death is the statutory criteria, not necessarily contemplation of imminent death, Fatter v. Usry, 269 F. Supp. 582, 584 (E.D. La. 1967); or expectation of death, Beaman v. U.S., 487 F. 2d 70, 72 (5th Cir. 1973).

3. Factors to be considered in determining whether the estate has overcome the presumption that the gift is made in contemplation of death are:

(a) the age of the DECEDENT at the time the transfers were made; (b) the DECEDENT'S health, as he knew it, at or before the time of the transfers; (c) the interval between the transfers and the DECEDENT'S health; (d) the amount of the property transferred in proportion to the amount of property retained; (e) the nature and disposition of the DECEDENT; (f) the existence of a general testamentary scheme of which the transfers were a part; (g) whether the donees to the DECEDENT were the natural objects of his bounty; (h) the existence of a long established gift-making policy on the part of DECEDENT; (i) the existence of a desire on the part of the DECEDENT to escape the burden of managing property by transferring the property to others; (j) the existence of a desire on the part of the DECEDENT to experience vicariously the enjoyment of the donees of the property transferred; and (k) the existence of the desire by the DECEDENT of avoiding estate taxes by means of making inter vivos transfers of property.

Cunningham v. U.S., 553 F. 2d 394, 396 (5th Cir. 1977).

4. Here, the transfer in question, although sizeable and a material part of DECEDENT'S estate, was made by a man in apparent good health, with an actuarial life expectancy of approximately 12 more years, who had long before established a pattern of gift giving of sizeable portions of his estate, and who was ready to retire from the day-to-day management of his businesses. Although a natural consequence of the transfer of the bank shares, as with any gift, was that it reduced the size of DECEDENT'S estate and the eventual taxes thereon, we are not compelled to conclude-and we do not-that avoidance of taxes was the purpose or motive behind the transfer.

5. We do not believe that the stock transfer to the trust in this case was a substitute for a testamentary disposition. Considering all of the facts of this case, we are persuaded that the dominant motive behind the transfer was one associated with life, not death, nor was it made in contemplation thereof. See, e.g., Cunningham v. U.S., 553 F. 2d 394 (5th Cir. 1977).

ORDER

For reasons stated, the foregoing protest WAS sustained.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are not generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.