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Rev. Rul. 70-155

Advice has been requested whether the value of property transferred by a decedent under the circumstances described below is includible in his gross estate under section 2036 of the Internal Revenue Code of 1954.

An elderly man transferred title to his residence to his son and daughter-in-law. In accordance with an understanding by all parties at the time of the transfer that the father would retain the use of the property, he continued to live there until the time of his death. The decedent's son and daughter-in-law neither occupied the property nor received reasonable income therefrom during his lifetime.

Section 2036(a)(1) of the Code provides that 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 the 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, the possession or enjoyment of the property.

A donor's continued occupancy of a transferred residence rent free until his death is as much an economic benefit as if he had rented the property and obtained the income therefrom. See in this respect *Estate of Daniel McNichol, et al. v. Commissioner*, 265 F. 2d 667 (1959), certiorari denied, 361 U.S. 829, which holds that enjoyment as used in the death tax statute is not a term of art but is synonymous with substantial present economic benefit. The retained interest need not be stated in the instrument of transfer, nor need it be a legally enforceable right. An understanding or agreement, express or implied, as to the donor's retained use of the transferred property is sufficient to bring the transfer within the provisions of section 2036 of the Code. *Estate of Emil Linderme, Sr. v. Commissioner*, 52 T.C. 305 (1969); *Marvin W. Peck, Sr. v. United States*, 65-2 USTC par. 12,333, 16 AFTR 2d 6125 (1965).

Accordingly, since the decedent-donor in this case continued in exclusive possession or enjoyment of the residence after making the transfer, pursuant to the understanding of the parties, it is held that the value of the property is includible in his gross estate under section 2036(a)(1) of the Code.

Continued occupancy under the facts stated above may be distinguished from the husband-wife cases involving co-occupancy by the donor with the <Page 190> donee. Such co-occupancy, where the donor and donee are husband and wife, does not of itself support an inference of an agreement or understanding as to retained possession or enjoyment by the donor. *Estate of Allen D. Gutchess*, 46 T.C. 554 (1966), acquiescence, C.B. 1967-1, 2.