Estate of Hofheimer v. Commissioner, 149 F.2d 733 (2d Cir. 1945)

A grantor's retained power to alter the income stream of a trust results in the inclusion of the life estate in the grantor's gross estate for tax purposes, while the relinquishment of a power to revoke a trust within two years of death is presumed to be in contemplation of death and thus includable in the gross estate, absent sufficient evidence to the contrary.

Summary

The Second Circuit addressed the taxability of two trusts created by the decedent. The first trust allowed the grantor to alter the income payments to the beneficiary. The second trust was amended, relinquishing the grantor's power to revoke within two years of his death. The court held that the life estate of the first trust was includable in the gross estate due to the retained power to alter income. The court also held that the relinquished power in the second trust was presumed to be made in contemplation of death, and the taxpayer failed to rebut this presumption, thus making the value of the life interest in the second trust includable in the gross estate. The court found that the corpus of neither trust was includable under the Hallock doctrine because the decedent's reversionary interest was too remote.

Facts

The decedent, Lester Hofheimer, created two trusts. The first, created in 1922, named his cousin as the life beneficiary with the remainder to his children. The trust agreement allowed Hofheimer to terminate the trust or amend its terms regarding income payments. The second trust, created in 1923 and amended in 1928 and 1936, provided a life estate to his wife's parents, with the remainder to his daughter. The 1936 amendment gave Hofheimer's wife the power to alter the trust in favor of their issue. Hofheimer died in 1936.

Procedural History

The Commissioner of Internal Revenue sought to include portions of both trusts in the decedent's gross estate. The Board of Tax Appeals partially sided with the Commissioner. The Second Circuit Court of Appeals reviewed the decision.

Issue(s)

1. Whether the value of the interest contributed by the decedent to the first trust is includable in his gross estate due to his retained power to alter or amend the trust terms.
2. Whether the relinquishment of the power to revoke in the second trust amendment was made in contemplation of death and thus includable in the gross estate.
3. Whether the corpus of either trust should be included in the decedent's gross estate under the doctrine of *Helvering v. Hallock*.

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Holding

1. Yes, because the decedent retained the power to alter the enjoyment of the life estate.

2. Yes, because the relinquishment of the power to revoke within two years of death is presumed to be in contemplation of death, and the taxpayer failed to rebut this presumption.

3. No, because the decedent's reversionary interest in both trusts was too remote.

Court's Reasoning

Regarding the first trust, the court relied on *Commissioner v. Bridgeport Trust Co.*, stating the power to reallocate income is tantamount to a power "to alter, amend or revoke" the trust. The court emphasized that the power of recall ceased only with decedent's death, justifying the life estate's inclusion under section 302(d) of the Revenue Act of 1926, as amended.

As for the second trust, the court determined the 1936 amendment relinquishing the decedent's power to revoke the estate pur autre vie (the life estate of the Kodziesens) was made in contemplation of death. The court referenced section 401 of the Revenue Act of 1934, which created a rebuttable presumption when such a relinquishment occurred within two years of death. The court found that the taxpayer's evidence was insufficient to overcome this presumption, noting inconsistencies in the wife's testimony and the unlikelihood that the amendment was made primarily to benefit the Kodziesens.

The court distinguished *Helvering v. Hallock*, emphasizing that the Hallock case involved settlements providing for a return of the corpus to the donor upon a contingency terminable at his death. In contrast, the trusts in this case had more remote reversionary interests, with multiple beneficiaries and contingent remainders in place before the possibility of the decedent's estate receiving the assets. The court emphasized the importance of the "degree of probability" of the reversion, citing *Commissioner v. Kellogg*.

Practical Implications

This case reinforces the principle that retained powers over trust income or corpus can lead to inclusion in the grantor's gross estate. It highlights the importance of carefully considering the potential estate tax consequences when drafting trust agreements, especially concerning powers to alter, amend, or revoke. The case also underscores the difficulty in rebutting the presumption that relinquishments of such powers within two years of death are made in contemplation of death. This decision informs practitioners to diligently document lifetime motives when such relinquishments occur. *Estate of Hofheimer* clarifies that remote reversionary interests, where the likelihood of the grantor receiving the trust assets is minimal,

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will not trigger inclusion in the gross estate under the *Hallock* doctrine.

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