2 T.C. 1114 (1943)

A trust is considered testamentary and includible in the grantor's gross estate under Section 811(c) of the Internal Revenue Code if the grantor retains the income for life and the principal is to be paid to the grantor's heirs at law upon death, effectively postponing possession or enjoyment until after death.

Summary

Bertha Low created a trust, retaining the income for life, with the principal to be distributed to her heirs at law upon her death. The Tax Court addressed whether the trust corpus should be included in Low's gross estate for tax purposes. The court held that because Low retained the trust income for life and the trust's principal was to be distributed to her heirs upon her death, the trust was testamentary. It was intended to take effect in possession and enjoyment after death, making the trust corpus includible in her gross estate under Section 811(c) of the Internal Revenue Code.

Facts

Bertha Low created a trust on September 25, 1923, naming John Gilgar and the United States Trust Co. of New York as trustees. The trust indenture directed the trustees to pay the net income to Low for life. Upon her death, the principal was to be paid to her heirs at law and next of kin living at the time of her death, as if she had died intestate in New York. Low amended the trust in 1927 to exclude her aunt, Adele T. Low, as a remainderman.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Low's estate tax, including the trust corpus in the gross estate. Low's executors challenged this determination in the United States Tax Court.

Issue(s)

Whether the trust created by the decedent was a transfer in contemplation of death or a transfer intended to take effect in possession or enjoyment at or after her death, within the meaning of Section 811(c) of the Internal Revenue Code.

Holding

No, the transfer was not made in contemplation of death. Yes, the transfer was intended to take effect in possession or enjoyment at or after death because Low retained the income for life and the distribution of the trust corpus to her heirs was testamentary in character.

Court's Reasoning

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The court reasoned that the trust was not made in contemplation of death, as Low was in good health and created the trust to relieve herself of managing her estate. However, the court found that the trust was testamentary in nature, relying on *Helvering v. Hallock, 309 U.S. 106 (1940)*. The court emphasized that Low's heirs at law and next of kin could not be determined until her death, indicating that the transfer was intended to take effect at or after her death. The court noted that the wording of the trust indenture indicated that the distribution of the trust corpus was testamentary in character. Citing *Doctor v. Hughes, 225 N.Y. 305*, the court stated that "a reservation to the heirs of the grantor is equivalent to the reservation of a reversion to the grantor himself." The court also pointed out that Low's amendment of the trust indicated she believed it was revocable, suggesting she did not intend to create vested remainder interests in her heirs. Therefore, the court concluded that

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