3 T.C. 562 (1944)

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When a grantor creates an irrevocable trust and retains no express reversionary rights, the trust assets are not includible in the grantor's gross estate for estate tax purposes, even if a remote possibility exists that the assets could revert to the grantor's estate by operation of law.

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Summary

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The estate of Joseph K. Cass challenged the Commissioner's determination that the remainder values of two irrevocable trusts Cass created should be included in his gross estate. Cass established the trusts in 1918 and 1928, retaining no right to alter, amend, or revoke them, nor any express reversionary interest. The Tax Court held that because Cass made absolute gifts and retained no express reversionary rights, the trust assets were not includible in his gross estate, despite a remote possibility of reversion by operation of law. This decision emphasizes that the absence of an express reversionary interest is crucial in determining estate tax inclusion for irrevocable trusts.

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Facts

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Joseph K. Cass created two irrevocable trusts during his lifetime:

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- A trust created in 1918 (amended in 1922) provided income to his brother for life, then to his sister for life, with the remainder to his grandchildren.

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- A trust created in 1928 provided income to his sister for life, with the remainder to his children or the issue of deceased children.

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Cass retained no right to alter, amend, modify, or direct the investments of the trust corpus in either trust. At the time of his death, beneficiaries of both trusts were still living.

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Procedural History

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The Commissioner of Internal Revenue determined a deficiency in Joseph K. Cass's estate tax, including the remainder values of the two trusts in the gross estate. The executors of Cass's estate petitioned the Tax Court for a redetermination of the deficiency. The Tax Court reviewed the case based on stipulated facts.

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Issue(s)

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Whether the remainder values of the corpora of two *inter vivos* trusts, created by the decedent, are includible in the decedent's gross estate as transfers intended to take effect in possession or enjoyment at or after his death within the meaning of section 302(c) of the Revenue Act of 1926, as amended, when the grantor retained no express reversionary rights?

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Holding

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No, because the decedent retained no express reversionary rights in the trust assets, making the gifts absolute despite a remote possibility of reversion by operation of law.

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Court’s Reasoning

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The court emphasized that the trust instruments were irrevocable and that Cass retained no right to alter, amend, or modify them. Applying section 302(c) of the Revenue Act of 1926, as amended, the court distinguished this case from *Helvering v. Hallock*, which involved a specific reversionary interest retained by the grantor. The court stated:

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“In the trust instruments with which we are here concerned the grantor made no provision for a reversion of the trust assets to himself or to his estate. He attached no string to his gifts. They were absolute gifts.”

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The court acknowledged that a remote possibility existed that the trust assets might revert to Cass’s estate by operation of law if all beneficiaries predeceased him, but stated that this possibility did not trigger estate tax inclusion because the gifts were absolute and immediately effective. The Tax Court relied on a consistent line of its own prior decisions, which were contrary to the Commissioner’s position. Citing precedent, the court highlighted that the absence of an express retention of reversionary rights by the grantor is crucial. The court noted that it did

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