3 T.C. 844 (1944)

A transfer in trust with a remote possibility of reverter (contingent on numerous beneficiaries dying without issue before the grantor) is not a transfer intended to take effect in possession or enjoyment at or after death under Section 811(c) of the Internal Revenue Code.

Summary

The Tax Court addressed whether a trust created by the decedent in 1919, which included a possibility of reverter if all named beneficiaries died without issue before him, should be included in his gross estate for estate tax purposes. The Commissioner argued it was a transfer to take effect at or after death. The court, relying on a similar case, *Frances Biddle Trust*, held that the remote possibility of reverter did not make the transfer taxable as part of the gross estate. A dissenting opinion argued the possibility of reverter, however remote, constituted a retained interest.

Facts

Benjamin L. Allen (the decedent) created an irrevocable trust in 1919. The trust provided income to his daughter, Catharine, for life after she turned 21. Upon Catharine's death, the principal would go to her issue, and if none, to her siblings or their issue. The trust also stipulated that if Catharine and all her siblings died without issue before the decedent, the trust estate would revert to the decedent or as he directed by will. The decedent died in 1939, survived by Catharine, her child, Catharine's siblings, and their children.

Procedural History

The executors of Allen's estate did not include the trust corpus in the gross estate for estate tax purposes. The Commissioner determined a deficiency, including the remainder interest in the trust, claiming it was a transfer to take effect at or after death under Sec. 811(c), I.R.C. The Tax Court initially issued an opinion, reconsidered, and then rejected it, leading to the present opinion.

Issue(s)

Whether a transfer in trust, where the grantor retained a possibility of reverter conditioned upon all named beneficiaries and their issue dying before the grantor, is a transfer intended to take effect in possession or enjoyment at or after the grantor's death under Section 811(c) of the Internal Revenue Code.

Holding

No, because the facts are sufficiently similar to those in *Frances Biddle Trust* to require a similar result.

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Court’s Reasoning

The Tax Court, in its majority opinion, relied entirely on the precedent set by *Frances Biddle Trust*, finding the facts in both cases sufficiently similar to warrant the same outcome. The court did not elaborate further on its reasoning, simply stating that the two cases were analogous. The dissenting judge argued that *Biddle* was distinguishable because in that case, the decedent did not provide that any part of the assets of the trust should revert to her if living at the date of the death of her son and descendants.

The dissent argued that the decedent intended to retain an interest in the transferred assets and that the value of that interest should be includible in the gross estate. The dissent cited *Helvering v. Hallock*, 309 U.S. 106 (1940), to support its argument that if a decedent grantor has an interest in the transferred assets at the date of death, the value of that interest is includible in the gross estate.

Practical Implications

This case, while decided before significant changes in estate tax law, illustrates the complexities of determining when a transfer with a retained interest should be included in the gross estate. Post-*Hallock*, the focus shifted to whether the transferor retained any interest that could affect the possession or enjoyment of the property. This case, alongside *Frances Biddle Trust*, was later superseded by statutory changes and subsequent case law that broadened the scope of what constitutes a retained interest. Attorneys analyzing estate tax issues must now consider the nuances of retained life estates and other retained powers in light of current regulations and case law like *United States v. Estate of Grace*, 395 U.S. 316 (1969), which established the reciprocal trust doctrine.

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