4 T.C. 265 (1944)

When a decedent furnishes the consideration for a trust, they can be considered the grantor for estate tax purposes, even if another party is nominally the grantor, especially where the decedent retains significant control or benefit from the trust.

Summary

The Tax Court addressed whether the value of two trusts should be included in the decedent's gross estate for estate tax purposes. The first trust, initially created by the decedent for his daughter, was terminated and immediately re-established by the daughter with the decedent as the income beneficiary. The court determined the decedent was effectively the grantor of the second trust. The second trust, created by the decedent in 1923, was later modified to require his daughter's consent for revocation. The court held that because the decedent retained the power to alter or revoke the trust in conjunction with another person after the enactment of relevant tax laws, the trust corpus was includible in his gross estate under Section 811(d)(2) of the Internal Revenue Code.

Facts

George W. Sweeney (decedent) created a trust in 1927, naming his daughter, Alice S. Mergenthaler, as beneficiary, with income to himself for life and the corpus to her upon his death or at age 55. The trust allowed Sweeney and his daughter to jointly terminate it. In 1933, due to the bank's closure acting as trustee, Sweeney and his daughter terminated the trust, and the assets were transferred to her. Immediately thereafter, the daughter created a new trust with the same assets, naming her father (Sweeney) as the income beneficiary for life, with the remainder to her. Sweeney had also created a separate trust in 1923, retaining the power to modify or revoke it. In 1932, he modified the trust to require his daughter's consent for any changes.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in the estate tax of George W. Sweeney. The estate, through its executrix, petitioned the Tax Court for redetermination, contesting the inclusion of the two trusts in the gross estate. The Tax Court reviewed the facts and applicable law to determine whether the trusts were properly included in the decedent's gross estate.

Issue(s)

1. Whether the decedent should be considered the grantor of the 1933 trust established by his daughter, making the trust corpus includible in his gross estate.

2. Whether the 1923 trust, modified in 1932 to require the daughter's consent for revocation, is includible in the decedent's gross estate under Section 811(d)(2) of

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the Internal Revenue Code.

Holding

1. Yes, because the decedent furnished the consideration for the 1933 trust, and the daughter's role was merely a conduit to re-establish a trust with substantially the same terms, benefiting the decedent.

2. Yes, because the decedent retained the power to alter or revoke the trust in conjunction with his daughter after the enactment of tax laws that included such trusts in the gross estate.

Court's Reasoning

Regarding the 1933 trust, the court reasoned that Sweeney provided all the assets for the initial trust, and the subsequent trust was essentially a continuation of the first, with Sweeney retaining a life interest. The court emphasized that the daughter's consent to terminate the first trust did not negate the fact that Sweeney furnished the trust corpus. Citing *Lehman v. Commissioner*, the court affirmed the principle that the person who furnishes the consideration for a trust is considered the grantor. Regarding the 1923 trust, the court noted that because Sweeney maintained the power to modify or revoke the trust jointly with his daughter after the passage of legislation including such trusts in the gross estate, the trust corpus was includible. The court referenced *Helvering v. City Bank Farmers Trust Co.*, stating that reserving the power of revocation jointly with another person after the enactment of relevant tax laws makes the transaction testamentary in character. The court rejected the argument that the original creation of the trust prior to the enactment of these laws prevented their application, stating that because the trust was revocable, the transfer was incomplete and subject to later legislation.

Practical Implications

This case reinforces the substance-over-form doctrine in tax law, particularly in the context of trusts. It clarifies that courts will look beyond the nominal grantor of a trust to determine who actually furnished the consideration. It also serves as a reminder that amendments to trust agreements made after the enactment of tax laws can subject the trust to those laws, even if the original trust was created before the laws were in place. This decision highlights the importance of carefully considering the estate tax implications when modifying existing trusts, particularly when retaining powers to alter, amend, or revoke the trust in conjunction with another person. Later cases have cited *Sweeney* for the principle that the grantor of a trust, for tax purposes, is the person who furnishes the consideration, regardless of nominal title.

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