4 T.C. 449 (1944)

A grantor’s power to alter the relative interests of trust beneficiaries, once exercised to eliminate certain beneficiaries, is exhausted when no more than one beneficiary remains, precluding inclusion of the trust corpus in the grantor’s estate under Section 811(d)(2) of the Internal Revenue Code.

Summary

The Tax Court addressed whether the corpus of an inter vivos trust was includible in the decedent’s gross estate. The decedent had created a trust, reserving the right to change the beneficiaries’ interests. He later directed the trustee to liquidate the interests of some beneficiaries. The court held that because the power to alter beneficial interests was exhausted when only one beneficiary remained, the trust corpus was not includible in the decedent’s estate. The court also addressed the deductibility of executor commissions and attorney’s fees, holding that reasonable, unpaid fees and commissions were deductible, even if one executor declined their portion.

Facts

I.H. Burney created an inter vivos trust in 1927, naming his brothers and wife as beneficiaries and reserving the right to change their interests. In 1929, Burney directed the trustee to distribute cash to his brothers, liquidating their interests in the trust. Upon Burney’s death in 1940, the trust held significant assets. His will addressed the trust, acknowledging his wife as the sole beneficiary. The IRS sought to include the trust’s value in Burney’s gross estate.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in the federal estate tax for the estate of I.H. Burney. The executors of Burney’s estate petitioned the Tax Court contesting the deficiency. The Tax Court addressed multiple issues, including the inclusion of the trust assets and the deductibility of expenses.

Issue(s)

1. Whether the corpus of an inter vivos trust is includible in the decedent’s gross estate under Section 811(d)(2) of the Internal Revenue Code, where the decedent reserved the power to change the relative interests of the beneficiaries but exercised that power to eliminate certain beneficiaries.

2. Whether executors’ commissions, otherwise allowable under state statutes and federal estate tax law, are deductible in full, even if one of the co-executors refuses their portion.

3. Whether estimated additional attorney’s fees and executors’ commissions, to be

© 2025 SCOTUSreports.com. All rights reserved.

incurred and paid before completion of the estate's administration, are deductible.

Holding

1. No, because the decedent's power to alter the relative interests of the beneficiaries was exhausted when he eliminated the brothers' interests, leaving his wife as the sole beneficiary.

2. Yes, because the commissions were otherwise allowable under state and federal law.

3. Yes, because the estimated fees and commissions were deemed reasonable and would be incurred and paid before the estate administration was complete.

Court's Reasoning

The court reasoned that Section 811(d)(2) required the decedent to have the power to alter, amend, or revoke the trust at the date of his death. While Burney initially retained such power, his direction to liquidate his brothers' interests effectively exhausted that power. As the court stated, the decedent exercised the power in a manner "consistent with the terms of that power and that, as a result of the action taken by the decedent, all beneficial interest of the brothers in the trust was effectively and finally eliminated." Once only one beneficiary remained, the power to change *relative* interests became impossible to exercise. The court distinguished cases cited by the Commissioner, noting that in those cases, the power to alter was *never* exercised during the settlor's lifetime.

Regarding the executors' commissions, the court found the commissions were allowable under Texas law and that the agreement among the executors regarding the distribution of the declined portion was valid. As for the additional fees and commissions, the court relied on Regulation 105, Section 81.29, which allows for the deduction of administration expenses even if the exact amount is unknown, provided it is "ascertainable with reasonable certainty, and will be paid." The court found the $5,000 estimate reasonable.

Practical Implications

This case illustrates that the scope of a retained power to alter or amend a trust can be limited by the manner in which it is exercised. Lawyers drafting trust instruments should consider the potential tax consequences of retaining such powers. If a grantor intends to retain a power exercisable multiple times, the trust language must be explicit. For estate administration, this case supports deducting reasonably estimated future expenses, provided they are allowable under state law. It also clarifies that a fiduciary's refusal of compensation does not necessarily preclude deducting the full allowable amount for estate tax purposes.

© 2025 SCOTUSreports.com. All rights reserved.