4 T.C. 1096 (1945)

A transfer of property to a trust is not includable in a decedent's gross estate as a transfer intended to take effect in possession or enjoyment at or after death if the decedent's death was not the intended event that enlarged the estate of the grantees.

Summary

Harris Fahnestock created five irrevocable trusts for his children and their issue, with income payable to the child for life. Upon the child's death, the principal was to be paid to their issue; absent issue, to siblings or their issue; and if none, to revert to Fahnestock or his legal representatives. The Commissioner of Internal Revenue sought to include the value of the trust remainders in Fahnestock's gross estate, arguing they were transfers intended to take effect at or after death. The Tax Court disagreed, holding that because Fahnestock's death did not enlarge the beneficiaries' interests, the transfers were not taxable as part of his estate. This case distinguishes transfers contingent on the grantor's death from those where death merely eliminates a remote possibility of reverter.

Facts

- Harris Fahnestock created five irrevocable trusts for the benefit of his children (Harris Jr., Ruth, and Faith) and their descendants.
- Each trust provided that the income would be paid to the named child for life.
- Upon the death of the child, the principal was to be distributed to their issue.
- If a child died without issue, the principal would go to the child's siblings or their issue.
- In the absence of any surviving issue of the children or their siblings, the trust assets would revert to Harris Fahnestock or his legal representatives.
- Harris Fahnestock died on October 11, 1939. His children and several grandchildren survived him.

Procedural History

- The Commissioner of Internal Revenue determined a deficiency in Harris Fahnestock's estate tax return.
- The Commissioner included the value of the remainders in the five trusts in the gross estate, arguing that they were transfers intended to take effect in possession or enjoyment at or after death under Section 811(c) of the Internal Revenue Code.
- The executors of the estate petitioned the Tax Court, contesting this adjustment.

Issue(s)

1. Whether the transfers to the five trusts were intended to take effect in

possession or enjoyment at or after Harris Fahnestock's death within the meaning of Section 811(c) of the Internal Revenue Code.

Holding

1. No, because the decedent's death was not the intended event which brought the larger estate into being for the grantees; the gifts were not contingent upon surviving the grantor.

Court's Reasoning

The Tax Court reasoned that the transfers to the trusts were not intended to take effect in possession or enjoyment at or after Fahnestock's death. The court distinguished the case from *Helvering v. Hallock*, where the transfer was conditioned on survivorship, making the grantor's death the "indispensable and intended event" that brought the larger estate into being for the grantee. Here, the court noted that the remaindermen's interests were not enlarged or augmented by Fahnestock's death. The death merely extinguished a remote possibility of reverter. The court relied on *Frances Biddle Trust*, stating that the test is "whether the death was the intended event which brought the larger estate into being for the grantee." The court also distinguished *Fidelity-Philadelphia Trust Co. v. Rothensies*, noting that in that case, the grantor retained a "string or contingent power of appointment" that suspended the ultimate disposition of the trust property until her death. Fahnestock, however, retained no such power. As the court stated, "If the grantor had died on the next day after the creation of the trusts, this event would not have changed or affected in any way the devolution of the trust estates."

Practical Implications

This case clarifies the scope of Section 811(c) (now Section 2037) of the Internal Revenue Code concerning transfers intended to take effect at death. It establishes that the mere existence of a remote reversionary interest retained by the grantor is not sufficient to include the trust assets in the grantor's gross estate unless the grantor's death is the operative event that determines who ultimately possesses or enjoys the property. When drafting trust agreements, attorneys must consider whether the grantor's death affects the beneficiaries' interests. The holding emphasizes the importance of determining whether the transfer is akin to a testamentary disposition, where the grantor's death is a condition precedent to the beneficiaries' full enjoyment of the property. This ruling continues to inform how courts analyze whether retained reversionary interests cause inclusion in the gross estate, focusing on the practical impact of the grantor's death on the beneficiaries' rights.

