Curie v. Commissioner, Tax Ct. Memo. 1943-201

A contingent right to income from a trust, which is extinguished upon the grantor's death before the primary beneficiary, does not constitute a retained life estate or interest that would cause the trust corpus to be included in the grantor's gross estate under Section 302(c) of the Revenue Act of 1926, as amended.

Summary

This Tax Court case addresses whether the corpus of two trusts created by the decedent should be included in his gross estate for estate tax purposes. The first trust, created in 1925, reserved income to the decedent for life and then to appointees, with remainder to children contingent on surviving the decedent's wife and reaching age 30. The second trust, created in 1928 and amended in 1935, provided income to the decedent's wife, then excess income to the decedent, and contingent life income to the decedent if he survived his wife, with remainder to issue. The court held that the corpus of the 1925 trust was includible due to a retained contingent power of appointment. However, it held that the corpus of the 1928 trust (specifically the 1935 additions) was not includible because the decedent's contingent income interest did not constitute a retained life estate under the relevant statutes, as he predeceased his wife and never received income from it. The court also upheld a penalty for the executor's delinquent filing of the estate tax return.

Facts

1. **1925 Trust:** Decedent created a trust, reserving income for life, then to his appointees, and upon his wife's death, income to his children until age 30, with corpus distribution at age 30. If children died before 30 or wife's death, corpus reverted to decedent or his appointees.
2. **1928 Trust:** Decedent created a trust, amended in 1935 by adding securities. Terms provided income to wife, excess income to decedent, then all income to decedent if he survived wife, remainder to issue.
3. Decedent died before his wife, never receiving income from the 1928 trust beyond any excess income, which was also never realized as income never exceeded $12,000 per year.
4. The estate tax return was due October 15, 1937, but was not filed until August 15, 1940, despite repeated notices from the Commissioner.
5. The executor, a national bank, claimed reliance on attorneys and difficulty in obtaining asset information as reasons for late filing.

Procedural History

The Commissioner determined deficiencies in estate tax, including the inclusion of the trust corpora in the gross estate and penalties for late filing. The case was brought before the Tax Court (then the Board of Tax Appeals) to contest these

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determinations.

Issue(s)

1. Whether the corpus of the 1925 trust is includible in the decedent's gross estate under Section 302(c) of the Revenue Act of 1926 as a transfer intended to take effect in possession or enjoyment at or after death.
2. Whether the value of the securities added to the 1928 trust in 1935 is includible in the decedent's gross estate under Section 302(c) of the Revenue Act of 1926, as amended by Section 803(a) of the Revenue Act of 1932, because of the decedent's contingent right to income if he survived his wife.
3. Whether the penalty for delinquent filing of the estate tax return was properly assessed.

Holding

1. **Issue 1:** Yes. The corpus of the 1925 trust is includible because the decedent retained a contingent power of appointment, making it uncertain until his death whether the property would pass according to the trust or his appointment.
2. **Issue 2:** No. The value of the securities added to the 1928 trust in 1935 is not includible because the decedent's contingent right to income, which was extinguished by his death before his wife, does not constitute a retained interest for life or a period not ascertainable without reference to his death under Section 302(c), as amended.
3. **Issue 3:** Yes. The penalty for delinquent filing was properly assessed because the executor failed to demonstrate reasonable cause for the significant delay, despite being aware of the filing deadline and receiving warnings from the Commissioner.

Court's Reasoning

1. **1925 Trust Inclusion:** The court relied on *Klein v. United States*, *Helvering v. Hallock*, and *Fidelity-Philadelphia Trust Co. v. Rothensies*, stating that the decedent's retained contingent power of appointment created a "string" subjecting the property to estate tax liability. The remainder to the children was not absolute until they reached 30 and survived their mother, and if they failed to take, the corpus would revert to the decedent or his appointee.
2. **1928 Trust Exclusion:** The court analyzed Section 803(a) of the Revenue Act of 1932, which amended Section 302(c) to tax transfers where the grantor retained income for life or for periods related to death. Referencing legislative history and Treasury Regulations (specifically E.T. 5 and Regulations 80, Article 18), the court interpreted the statute as targeting situations where the decedent actually enjoyed income or had a vested right to it, not merely a contingent right that failed to materialize due to predeceasing a primary beneficiary. The court stated, "Since the reservation of the possibility of

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coming into a life estate does not amount to the retained estate contemplated by the statute, we are of the opinion that the petitioner should prevail." The court distinguished the decedent's contingent right from a retained life estate, emphasizing that his death extinguished the possibility of receiving income.

3. **Penalty for Delinquency:** The court found no reasonable cause for the prolonged delay in filing. It rejected the executor's arguments of reliance on attorneys and difficulty in obtaining asset information. The court noted the executor was a national banking institution presumed to be familiar with tax filing obligations. The court emphasized the extended delay of almost two and a half years after being advised to file a return, concluding there was a "lack of reasonable cause for failure to file, if not willful neglect to file."

Practical Implications

- **Contingent Income Interests:** This case clarifies that a purely contingent and unvested right to income, which depends on surviving another beneficiary and does not materialize due to the grantor's death, is generally not considered a retained life estate for estate tax inclusion under Section 302(c) as amended by the 1932 Act. This is crucial for estate planning involving trusts where grantors retain secondary or contingent income interests.
- **Legislative Intent:** The decision highlights the importance of legislative history and regulatory interpretations in understanding tax statutes. The court's reliance on committee reports and prior Treasury rulings (E.T. 5) demonstrates a practical approach to statutory interpretation in tax law.
- **Executor's Duty to File Timely Returns:** The upholding of the penalty serves as a strong reminder to executors of their non-delegable duty to ensure timely filing of estate tax returns. Reliance on agents or internal difficulties does not automatically constitute reasonable cause for late filing, especially for professional executors like banks.
- **Subsequent Developments:** While Section 302(c) has been further amended and replaced by later provisions (like Section 2036 of the Internal Revenue Code), the principles regarding retained interests and the distinction between vested and contingent rights remain relevant in modern estate tax law. Later cases and regulations continue to grapple with the nuances of what constitutes a "retained interest" triggering estate tax inclusion.

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