5 T.C. 202 (1945)

When a beneficiary renounces a power of appointment, the property does not pass under the power for estate tax purposes, and the estate is not taxed on assets that might revert based on remote contingencies.

Summary

The Tax Court addressed whether certain assets were includible in a decedent's gross estate. The decedent possessed a power of appointment that she exercised in her will, but the beneficiary renounced the appointment. The court held that because the beneficiary renounced the power, the assets did not pass under it and were not includible in the decedent's estate. The court also found that assets with a remote possibility of reverting to the decedent's estate should not be included, as their value would be speculative. Donations to a trust where decedent retained a life interest, however, were includable.

Facts

Thomas Drake created a testamentary trust, granting his daughter, Charlotte Cardeza (the decedent), $5,000 annually for life. She also received income from two-thirds of the remaining trust assets, with the power to appoint the principal by will. The remaining one-third of the income went to Cardeza's son, Thomas Cardeza, for life, with the principal to his children. If Charlotte died without exercising her power, her income share went to Drake's grandchildren. Charlotte was Drake's sole heir at law. She exercised her power in favor of her son, Thomas, who then renounced it. During her life, Charlotte also made donations to the trust to enable the trustees to exercise stock subscription warrants. At the time of her death, Thomas Cardeza was 64, married, and childless.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Charlotte Cardeza's estate tax. The executors of the estate petitioned the Tax Court, contesting the Commissioner's inclusion of certain assets in the gross estate. The Tax Court reviewed the Commissioner's determination.

Issue(s)

1. Whether the value of two-thirds of the trust estate is includible in the decedent's gross estate under Section 811(f) of the Internal Revenue Code as property passing under a general power of appointment.
2. Whether any part of the corpus of the trust is includible in the decedent's gross estate as intestate property inherited by her from her father.
3. Whether payments made by the decedent to the trust are includible in her gross estate.
4. Whether an amount bequeathed by the decedent in perpetuity for the

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maintenance of her place of burial is deductible from her gross estate under section 812 (b) of the Internal Revenue Code.
5. Whether executors' fees are deductible from the decedent's gross estate.

Holding

1. No, because the son renounced the appointment, and the property did not pass under the power.
2. No, because it was not proven that Thomas Cardeza would not have issue, and such determination would be speculative.
3. Two-thirds of the payments were includible because the decedent had the power to dispose of the remainder after her death. One-third was also includible because the decedent would receive the income if she outlived her son and his descendants.
4. Yes, if it could be shown that the payments were actually made, because it would be classified as a funeral expense under Pennsylvania law.
5. Yes, because the full amount of the fees were paid, and were deemed reasonable.

Court's Reasoning

The court relied on *Helvering v. Grinnell*, which held that property does not pass under a power of appointment if the appointee renounces the appointment. The court distinguished *Rogers' Estate v. Helvering*, noting that in *Rogers' Estate*, the appointees received a lesser estate, and no renunciation occurred. The court also considered the Pennsylvania Orphans' Court's adjudication, which gave effect to the son's renunciation. The court stated that Pennsylvania law, as determined by its courts, made it clear that the exercise of power was ineffectual.

Regarding the intestate property claim, the court noted the presumption that a person can have issue, even at an older age, and that this possibility was not rebutted. A doctor testified that there were no physical impediments that would prevent Thomas Cardeza from procreating. "To attempt to value, as of the date of the decedent's death, such a highly contingent and remote interest and include anything in her gross estate on account thereof would, in our opinion, be 'mere speculation bearing the delusive appearance of accuracy.'"

As for the donations to enable the trust to exercise warrants, the court found that these donations became part of the trust and were subject to its terms. Because the decedent had the right to income and the power to dispose of the remainder for two-thirds, these were includible under Section 811(d). The court also found that as to one-third of the donations, the decedent retained the possibility of regaining control and making them subject to testamentary bequests per *Helvering v. Hallock.*

Practical Implications

Cardeza clarifies that a renounced power of appointment does not trigger estate tax liability. It emphasizes the importance of state law in determining the legal effect of

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a renunciation. The case also highlights the difficulty of valuing contingent interests for estate tax purposes. Attorneys must consider the likelihood of future events and avoid speculation. Further, the case underscores that when making trust donations, grantors must understand that these funds become part of the trust itself, and will be subject to applicable estate tax law. Later cases have cited Cardeza when discussing the valuation of complex or contingent assets in estate tax law.

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