5 T.C. 971 (1945)

A transfer to a trust with remainder interests contingent upon surviving the decedent is considered a transfer taking effect in possession or enjoyment at or after death and is includable in the gross estate for estate tax purposes, even if the trust was created before the enactment of the first estate tax act.

Summary

The Estate of Jane B. Barnard challenged the Commissioner's determination that $36,815.14, representing the value of property transferred into an irrevocable trust in 1911, should be included in her gross estate for estate tax purposes. The Tax Court upheld the Commissioner's decision, finding that the transfer took effect in possession or enjoyment at the death of the decedent because the remainder interests were contingent upon surviving her. The court relied on *Fidelity-Philadelphia Trust Co. v. Rothensies*, and rejected the argument that because the trust was created before the first estate tax act, it should not be included.

Facts

Jane B. Barnard (the decedent) died in 1942. In 1911, following the death of her mother, Anna Eliza Barnard, and a dispute over the validity of Anna Eliza's exercise of a power of appointment, Jane and her siblings created an irrevocable trust. The trust directed the trustee bank to use the funds for the same purposes as outlined in their mother's will: to pay income to the children during their lives, and upon the death of a child, to that child's spouse and issue. Upon the death of the last surviving child (or spouse), the principal was to go to the descendants of Eliza's three children. Jane survived her siblings and their spouses and was survived by her sister's children and grandchildren.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in the estate tax of Jane B. Barnard's estate. The estate petitioned the Tax Court, arguing that the trust property should not be included in the gross estate. The Tax Court ruled in favor of the Commissioner, determining the trust should be included.

Issue(s)

1. Whether the transfer made by the decedent in 1911 was intended to take effect in possession or enjoyment at or after her death within the meaning of Section 811(c) of the Internal Revenue Code.

2. Whether the transfer by the decedent was for adequate consideration in money or money's worth.

3. Whether Section 811(c) applies to an irrevocable transfer made before the

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enactment of the first estate tax act.

Holding

1. No, because the remainder interests in the descendants of Anna were contingent upon their surviving the decedent and took effect in possession only after her death.

2. No, because if Eliza's appointment was valid to the extent of the life estates, then the decedent acquired the right to receive income from the entire estate by Eliza's will not the 1911 transfer.

3. No, following the precedent set in *Estate of Harold I. Pratt*, the court held that the transfer was includable in the gross estate despite being created before the enactment of the first estate tax act.

Court's Reasoning

The court reasoned that the case was analogous to *Fidelity-Philadelphia Trust Co. v. Rothensies*, where the Supreme Court held that similar transfers took effect in possession or enjoyment at or after death. The court emphasized that the remainder interests were contingent upon surviving the decedent. It also rejected the argument that the transfer was for adequate consideration, as the decedent's right to income stemmed from her mother's will, not the 1911 transfer itself. Finally, the court addressed the argument that the transfer predated the estate tax act, acknowledging a previous ruling in *Mabel Shaw Birkbeck* which supported that view. However, the court chose to follow its more recent decision in *Estate of Harold I. Pratt*, which held that Section 811(c) applied even to transfers made before the estate tax act. The court stated that any distinction between this case and *Pratt* was "wiped away in the opinion of the Supreme Court in the *Stinson* case, in which the Court said that the remainder interests of the surviving descendants were freed from the contingency of divestment (through the contingent power of appointment) only at or after the decedent's death." Judge Arundell dissented, referencing his dissent in *Estate of Harold I. Pratt*.

Practical Implications

This case demonstrates the application of estate tax law to irrevocable trusts created before the enactment of estate tax legislation. It highlights that the key factor in determining whether such a trust is includable in the gross estate is whether the beneficiaries' interests were contingent upon surviving the grantor. This ruling clarifies that even very old trusts can be subject to estate tax if they contain such contingencies. Later cases would need to distinguish themselves by demonstrating that the beneficiaries' interests were not contingent on surviving the grantor, or that the grantor did not retain any power or control over the trust that would bring it within the scope of estate tax laws.

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