***5 T.C. 1043 (1945)***

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When a grantor retains the right to receive distributions from the corpus of a trust, with the trustee’s discretion governed by an ascertainable standard and subject to the approval of other beneficiaries acting in a fiduciary capacity, the trust corpus is includible in the grantor’s gross estate for estate tax purposes.

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**Summary**

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Ida Rosenwasser created a trust in 1930, naming her son as trustee and retaining the right to income for life, with potential distributions from the principal for her maintenance and comfort, subject to the consent of her other two children. No principal was ever distributed. The Tax Court held that the trust corpus was includible in her gross estate because she retained a right to the corpus until her death, making it a transfer intended to take effect at or after death. The requirement for her children’s consent was deemed a fiduciary duty, not an arbitrary power.

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**Facts**

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In 1930, Ida Rosenwasser, a 73-year-old widow, created a trust with her son, Paul, as trustee, comprising substantially all of her property. The trust instrument stipulated that Ida would receive the net income for life. Additionally, the trustee could distribute principal to Ida for her maintenance and comfort, but only with the consent of her other two children, Herman and Alice. Ida had managed her own property with assistance from Herman, but his illness prompted the creation of the trust for more efficient management by Paul. The trust provided for equal distribution of the assets among her three children upon her death. No distributions from the trust principal were ever made to Ida.

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**Procedural History**

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The Commissioner of Internal Revenue determined a deficiency in estate tax, including the trust assets in Ida Rosenwasser's gross estate. Paul Rosenwasser, as trustee, petitioned the Tax Court for a redetermination, arguing that the trust assets should not be included in the gross estate.

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**Issue(s)**

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Whether the corpus of a trust created by the decedent is includible in her gross estate, where the decedent retained the right to receive income for life and potential distributions from the trust corpus for her maintenance and comfort, subject to the consent of her other children.

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**Holding**

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Yes, because the decedent retained the right to potential distributions from the trust corpus during her life, and the power of the other beneficiaries to consent to such distributions was deemed a fiduciary power, making the transfer one intended to take effect in possession or enjoyment at or after death.

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**Court's Reasoning**

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The Tax Court relied on precedents like *Blunt v. Kelly*, where similar trust provisions led to the inclusion of the trust corpus in the gross estate. The court distinguished *Commissioner v. Irving Trust Co.*, where the trustee had "untrammelled discretion" to distribute the corpus. In this case, the court reasoned that the requirement for the other children's consent did not grant them an arbitrary power. Instead, they held a fiduciary duty to consider the settlor's needs for maintenance and comfort. The court stated that the trustee's discretion was governed by an "external standard which a court may apply in compelling compliance." The court emphasized that the settlor's intent was to provide for her well-being, and the children's power was

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meant to facilitate, not obstruct, that intent. Therefore, the transfer was deemed to take effect at or after death, justifying the inclusion of the trust corpus in the gross estate.

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**Practical Implications**

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This case clarifies that even if a grantor does not have absolute control over a trust corpus, the retention of a right to potential distributions, especially when tied to an ascertainable standard like

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