6 T.C. 280 (1946)

A trust is includible in the decedent's gross estate under Section 811(c) of the Internal Revenue Code as a transfer intended to take effect in possession or enjoyment at or after his death if the trustee, in its discretion, could invade the principal to provide for the comfort and support of the settlor during their lifetime.

Summary

The Tax Court addressed whether the corpus of a trust created by the decedent, which allowed the trustee to invade the principal for the decedent's or his wife's comfort and support, should be included in the decedent's gross estate for federal estate tax purposes. The court held that the trust was includible in the gross estate because the transfer was intended to take effect at or after the decedent's death. The court also determined the liability of the trustee and administrator for the deficiency and interest.

Facts

The decedent created an irrevocable trust in 1928, naming Worcester Bank & Trust Co. (later Worcester County Trust Co.) as trustee. The trust allowed the trustee, at its discretion, to use the principal for the comfort, maintenance, or benefit of the decedent or his wife, but only to the extent consistent with providing for them during their probable lifetimes. From the trust's creation until the decedent's death, no part of the principal was distributed to the decedent or his wife. The decedent died in 1942, and the estate tax return did not include the trust property, valued at $69,601.19, in the gross estate.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in estate tax, including the value of the trust in the gross estate. The administrator of the estate and the trustee petitioned the Tax Court for redetermination. The cases were consolidated. The trustee admitted liability for the tax if the deficiency was upheld.

Issue(s)

1. Whether the corpus of a trust, where the trustee has discretion to invade the principal for the settlor's benefit, is includible in the settlor's gross estate under Section 811(c) of the Internal Revenue Code as a transfer intended to take effect in possession or enjoyment at or after death.
2. Whether the administrator c. t. a. is personally liable for the estate tax deficiency.

Holding

1. Yes, because the potential use of the trust principal for the decedent's comfort

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and support until his death prevented the beneficiary of that fund from coming into complete enjoyment of it, making it a transfer intended to take effect at or after death.
2. The administrator is liable only to the extent of payments of debts or distributions to legatees, after deducting administrative expenses, because the necessary expenses of administration are properly payable before a debt due to the United States.

Court's Reasoning

The court reasoned that although the decedent's right to the trust principal was contingent on need, this contingency was immaterial. The availability of the trust fund for the decedent's comfort and support provided a material satisfaction. The court relied on prior cases such as *Blunt v. Kelly* and *Estate of Ida Rosenwasser*, which held that similar reserved rights postponed the complete devolution of the property until death, thus falling under Section 811(c). The court distinguished cases lacking an "external standard" by which a court could compel compliance from the trustee, stating that the trustee's discretion here was governed by such a standard. Regarding the administrator's liability, the court noted that administrative expenses have priority over debts to the United States, citing *Hammond v. Carthage Sulphite Pulp & Paper Co.*

Practical Implications

This case clarifies that even a discretionary power granted to a trustee to invade a trust's principal for the benefit of the settlor can result in the trust's inclusion in the settlor's gross estate. Attorneys drafting trust documents should advise settlors that granting such powers, even if discretionary, may have estate tax consequences. For estate administrators, this case affirms the priority of administrative expenses over tax liabilities when determining personal liability. Later cases applying this ruling focus on the degree of control retained by the settlor and the existence of ascertainable standards limiting the trustee's discretion.

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