6 T.C. 604 (1946)

A transfer to a trust where the decedent retains a secondary life estate (i.e., a life estate that vests only if the primary beneficiary predeceases the decedent) is not includible in the decedent's gross estate under Section 811(c) of the Internal Revenue Code.

Summary

Charles Nathan created a trust in 1941, naming his sister, Rose Straus, as the primary life beneficiary. The trust stipulated that if Nathan survived Straus, the income would be paid to him for life, with remainders over upon both their deaths. Nathan died in 1943, while Straus was still alive. The Commissioner of Internal Revenue included the value of the trust corpus (less the value of Straus's life estate) in Nathan's gross estate, arguing that Nathan retained an interest for a period not ascertainable without reference to his death. The Tax Court held that the Commissioner's determination was erroneous, following its prior decision in *Estate of Charles Curie*.

Facts

On December 23, 1941, Charles Nathan established a trust. The trust agreement stipulated:

- Rose Straus, Nathan's sister, was to receive the entire net income for her life.
- If Straus predeceased Nathan, the income would be paid to Nathan for his life.
- Upon the deaths of both Straus and Nathan, the trust estate would be divided into two equal shares for the benefit of Nathan's niece and nephew.

Nathan died on April 11, 1943, survived by his sister, Rose Straus.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Nathan's federal estate tax. The Commissioner included the value of the trust corpus, less the value of Rose Straus's life estate, in Nathan's gross estate. Nathan's estate petitioned the Tax Court, contesting the Commissioner's determination.

Issue(s)

Whether the value of the corpus of a trust, where the decedent retained a secondary life estate, is includible in the decedent's gross estate under Section 811(c) of the Internal Revenue Code as a transfer under which the decedent retained for his life, or for any period not ascertainable without reference to his death, the possession or enjoyment of, or the income from, the property.

Holding

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No, because the reservation of the possibility of coming into a life estate does not amount to the retained estate contemplated by the statute.

Court's Reasoning

The court relied heavily on its prior decision in *Estate of Charles Curie*, which addressed the same issue and statutory provision. The court acknowledged the Commissioner's argument that Regulations 80 and 105 were in effect during Nathan's case, whereas E.T. 5 (an administrative ruling to the contrary) was in effect during the *Curie* case. However, the court emphasized that its decision in *Curie* disapproved of the construction in the later regulations, finding it unsupported by legislative history. The court stated, "since the reservation of the possibility of 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 also distinguished *Goldstone v. United States*, the case relied upon by the Commissioner, on its facts.

Practical Implications

This case clarifies that a retained secondary life estate, contingent upon the primary beneficiary predeceasing the grantor, is not a sufficient retained interest to warrant inclusion of the trust corpus in the grantor's gross estate under Section 811(c). This ruling provides guidance for estate planning, indicating that such contingent interests do not automatically trigger estate tax inclusion. Attorneys should analyze the specific terms of the trust instrument and applicable regulations to determine whether the decedent retained a substantial interest in the property. Later cases may distinguish this ruling based on different factual scenarios or changes in the applicable tax laws and regulations.

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