6 T.C. 832 (1946)

The corpus of a trust is includible in the gross estate of the decedent for estate tax purposes if the grantor retained the right to have the trust corpus invaded for their benefit during their lifetime based on ascertainable standards, even if the trustee has broad discretion.

Summary

John J. Toeller created a trust in 1930, reserving a portion of the income for himself and granting the trustee discretion to invade the corpus for his benefit in case of "misfortune or sickness." Upon his death, the trust corpus was to be distributed to his wife and children. The Tax Court addressed whether the trust corpus should be included in Toeller's gross estate for federal estate tax purposes. The Court held that because Toeller retained a right, albeit conditional, to the trust corpus during his life, the trust was includible in his gross estate. The Court also addressed deductions for a charitable bequest and trustee expenses.

Facts

John J. Toeller established a trust in 1930, naming Continental Illinois Bank & Trust Co. as trustee. The trust provided income to his estranged wife, Myrtle, his children, and himself. Critically, the trust instrument stated that "should misfortune or sickness cause the expenses of Trustor to increase so that in the judgment of the Trustee the net income so payable to Trustor is not sufficient to meet the living expenses of Trustor," the trustee was authorized to invade the principal. The trustee had "sole right" to determine when and how much to pay. Upon Toeller's death, the corpus was to be divided among his wife and children. Toeller died in 1942, and his will left the remainder of his estate to the Society of the Divine Word, a charitable organization.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Toeller's federal estate taxes, including the trust corpus in the gross estate and disallowing deductions for a charitable bequest and certain expenses. The administrator of Toeller's estate petitioned the Tax Court for review. Toeller's daughter contested the will, resulting in a compromise. The trustee also sought a construction of the trust provisions in state court. The Tax Court then reviewed the Commissioner's deficiency determination.

Issue(s)

1. Whether the trust transfers were intended to take effect in possession or enjoyment at or after Toeller's death, making the trust corpus includible in his gross estate under Section 811(c) of the Internal Revenue Code.

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2. Whether the amount paid to the Society of the Divine Word pursuant to the compromise of the will contest is deductible from the gross estate.

3. Whether certain expenses of the trustee are deductible from Toeller's gross estate.

Holding

1. Yes, because Toeller retained a conditional right to the trust corpus during his life, the transfer did not take effect until his death.

2. Yes, because the amount paid to the charity pursuant to the compromise is deductible from the gross estate.

3. No, because the trustee expenses do not constitute allowable deductions for expenses of administration under the statute and regulations.

Court's Reasoning

The Tax Court relied on the principle established in *Blunt v. Kelly, 131 F.2d 632*, distinguishing it from *Commissioner v. Irving Trust Co., 147 F.2d 946*. The key distinction was whether the trustee's discretion to invade the corpus was governed by external standards. In *Toeller*, the trust instrument specified that the trustee could invade the corpus if "misfortune or sickness cause the expenses of Trustor to increase so that in the judgment of the Trustee the net income so payable to Trustor is not sufficient to meet the living expenses." Even with the "sole right" of the trustee to determine payments, the Court found that the trustee's discretion was not absolute but governed by the ascertainable standard of Toeller's needs due to misfortune or sickness. The court reasoned that the language of the trust instrument created external standards that a court could use to compel compliance. Because Toeller retained the right to receive the trust corpus under certain circumstances, the transfer was not complete until his death, making it includible in his gross estate. Regarding the charitable deduction, the Court held that because the amount was ascertainable, it was deductible. However, the trustee's fees and expenses were deemed not deductible as administration expenses of the estate.

Practical Implications

Toeller v. Commissioner clarifies that even broad discretionary powers granted to a trustee are not absolute if the trust instrument provides external standards for the trustee's decision-making. When drafting trust instruments, attorneys must carefully consider the implications of discretionary clauses, especially those related to the invasion of the trust corpus for the benefit of the grantor. The case emphasizes that the presence of ascertainable standards, even if broadly defined, can result in the inclusion of the trust corpus in the grantor's gross estate for estate tax purposes. Later cases have cited *Toeller* when determining whether a grantor has retained sufficient control or benefit in a trust to warrant inclusion in the gross estate. This

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case serves as a reminder that seemingly broad discretion can be limited by the overall context and language of the trust document. As the court noted, “All discretions conferred upon the Trustee by this instrument shall, unless specifically limited, be absolute and uncontrolled and their exercise conclusive on all persons in this trust or Trust Estate.”

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