6 T.C. 933 (1946)

Assets transferred into an irrevocable trust before March 3, 1931, where the grantor retained a life income interest but no power to alter, amend, or revoke the trust, are not includible in the grantor's gross estate for federal estate tax purposes under Section 811(c) or 811(d)(2) of the Internal Revenue Code.

Summary

The Tax Court held that the value of assets transferred by the decedent into two irrevocable trusts prior to March 3, 1931, were not includible in his gross estate. The decedent's children had formally created the trusts, but the assets originated from the decedent. The decedent retained a life income interest and the ability to advise the trustee on investments, but possessed no power to alter, amend, or revoke the trusts after a six-month revocation period. The court found that the decedent did not retain a reversionary interest or sufficient control to warrant inclusion under sections 811(c) or 811(d)(2) of the Internal Revenue Code.

Facts

George W. Hall (the decedent) provided securities to his two children in 1929 and 1930. The children then established two trusts, naming a bank as trustee for each. The trust instruments were substantially identical. The decedent received the trust income for life, followed by his wife. Upon the death of both, the corpus was to be distributed to the decedent's children and their descendants. The decedent could advise the trustee on investments, but the trustee was not obligated to follow the advice. The trusts became irrevocable six months after their creation and were, in fact, irrevocable at the time of Hall's death.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in the decedent's estate tax, including the value of the trust assets in the gross estate. The Estate petitioned the Tax Court for redetermination. The Commissioner amended his answer to argue for inclusion under both sections 811(c) and 811(d) of the Internal Revenue Code.

Issue(s)

1. Whether the value of assets transferred to irrevocable trusts before March 3, 1931, in which the grantor retained a life income interest, should be included in the grantor'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 value of assets transferred to irrevocable trusts before June 22, 1936, should be included in the grantor's gross estate under Section 811(d)(2) of the Internal Revenue Code, because the grantor retained powers that allowed him to

alter, amend, or revoke the trusts.

Holding

1. No, because the decedent retained only a life income interest and the transfers occurred before the 1931 Joint Resolution, which amended section 811(c) to specifically include such transfers.

2. No, because the decedent's power to advise the trustee on investments did not constitute a power to alter, amend, or revoke the trusts.

Court's Reasoning

The court acknowledged that the decedent was the effective grantor of the trusts, as he furnished the assets. However, because the trusts were created before the 1931 Joint Resolution, the retention of a life income interest alone was insufficient for inclusion under Section 811(c), citing *May v. Heiner, 281 U.S. 238 (1930)*. The court distinguished *Estate of Bertha Low, 2 T.C. 1114*, because the trusts in this case were irrevocable and had ascertainable beneficiaries with vested remainder interests. Regarding Section 811(d)(2), the court found that the decedent's power to advise the trustee was not equivalent to a power to alter, amend, or revoke the trusts. The court relied on *Estate of Henry S. Downe, 2 T.C. 967*, noting that the grantor did not have the unrestricted power to substitute securities like the grantor in *Commonwealth Trust Co. v. Driscoll, 50 F. Supp. 949*. The court concluded that "the powers and rights referred to in articles I-B and II of the trust instruments amounted to no more, in our opinion, than the reservation by the grantor of the right to direct the investment policy of the trustee."

Practical Implications

This case illustrates the importance of the timing of trust creation in relation to changes in estate tax law. Transfers made before the 1931 Joint Resolution are governed by different rules regarding retained life estates. The case also clarifies the scope of powers that will trigger inclusion under Section 811(d) (now Section 2038 of the Internal Revenue Code), emphasizing that mere advisory roles in investment management do not equate to a power to alter, amend, or revoke a trust. Later cases distinguish Hall where the grantor retains significant control over trust assets or has the power to substitute assets without limitation.

