6 T.C. 1088 (1946)

When a grantor retains a contingent power of appointment over trust assets, such that the ultimate disposition of those assets is not fully determined until the grantor's death, the entire value of the trust assets is includible in the grantor's gross estate for federal estate tax purposes.

Summary

Florence Althea Gibb created a trust in 1930, retaining income for life, then to her daughter, with remainders to the daughter's issue. If the daughter left no issue, the trust assets would pass as dictated by Gibb's will. Gibb's estate argued the trust assets should not be included in her gross estate for tax purposes, claiming she intended an irrevocable transfer. The Tax Court held that because Gibb retained a contingent power to control the trust's devolution through her will, the trust assets were includible in her gross estate. This decision emphasizes that even a contingent power of appointment retained by the grantor can trigger estate tax liability.

Facts

In 1930, Florence Althea Gibb established a trust with Brooklyn Trust Co. as trustee, initially funded with approximately $1,000,000. The trust terms provided that Gibb would receive the income for life, followed by her daughter, Althea Gibb Hunter. Upon the daughter's death, the principal would be distributed to her surviving issue. However, if the daughter had no surviving issue, the trust estate would be distributed according to Gibb's will. Gibb's will, executed in 1938, directed her residuary estate (which could include the trust assets if the contingency occurred) be held in trust for her daughter and grandchildren. Gibb died in 1941, survived by her daughter and four grandchildren. The trust's value at her death was $1,106,190.57.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Gibb's estate tax, including the trust assets in her gross estate. Gibb's executors petitioned the Tax Court, contesting the inclusion of the trust assets and their valuation. The Tax Court ruled in favor of the Commissioner, holding that the trust assets were properly included in Gibb's gross estate.

Issue(s)

Whether the value of the assets of a trust, created by the decedent where she retained a contingent power to designate the ultimate beneficiaries through her will, is includible in her gross estate under Section 811 of the Internal Revenue Code.

Holding

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Yes, because the decedent retained a contingent power of appointment over the trust assets, allowing her to control their devolution through her will in certain circumstances, making the transfer one intended to take effect at or after her death.

Court’s Reasoning

The Tax Court relied heavily on *Fidelity-Philadelphia Trust Co. v. Rothensies, 324 U.S. 108 (1945)*, which held that retaining a power of appointment by will over remainder interests, even contingent ones, subjected the trust corpus to estate tax liability. The court emphasized that until Gibb’s death, she could have altered her will, changing the ultimate beneficiaries of the trust assets, had the daughter died without issue. The court stated, “Only at or after her death was it certain whether the property would be distributed under the power of appointment or as provided in the trust instrument… Thus until the moment of her death… the decedent held a string or contingent power of appointment over the total corpus of the trust.” Because Gibb retained a

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