7 T.C. 705 (1946)

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A trust corpus is includible in a decedent's gross estate under Section 811(d)(2) of the Internal Revenue Code if the decedent, as trustee, possessed the power to distribute trust corpus to a beneficiary, thereby altering or extinguishing remainder interests, and under Section 811(f) if the decedent held a general power of appointment over the trust.

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Summary

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The Tax Court addressed whether the corpus of two trusts should be included in the decedent's gross estate for tax purposes. The first trust, created by the decedent, allowed him to distribute corpus to his wife, affecting the remainder interests of his children. The second trust, created by the decedent's mother, gave the decedent a general power of appointment over half of the trust's assets. The court held that both trust portions were includible in the decedent's gross estate. It reasoned that the power to distribute corpus in the first trust constituted a power to alter or revoke under Section 811(d)(2), and the power of appointment in the second trust triggered inclusion under Section 811(f), valued at the time of the decedent's death.

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Facts

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The decedent created a trust on June 19, 1928, naming himself and Detroit Trust Company as trustees, benefiting his wife and children. Crucially, the decedent, as co-trustee, had the sole right to direct portions of the principal to be paid or transferred to his wife during his lifetime. The decedent's mother created a separate trust on July 17, 1928, benefiting the decedent and his brother, with the decedent possessing a testamentary power of appointment over one-half of the trust property. The decedent exercised this power in his will. After the decedent's death, the trustee of the mother's trust distributed portions of the trust corpus. The decedent died on October 12, 1940.

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Procedural History

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The Commissioner of Internal Revenue determined a deficiency in the decedent's estate tax. The petitioner, the executor of the estate, challenged the Commissioner's determination in the Tax Court. The primary issues concerned the inclusion of the two trust corpora in the decedent's gross estate. A Michigan state court decree addressed the power of appointment in the mother's trust, determining it related only to property remaining in the trust at its termination and did not restrict the trustee's power to distribute the corpus.

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Issue(s)

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1. Whether the corpus of the trust created by the decedent is includible in his gross estate under Section 811(d)(2) of the Internal Revenue Code due to his power to distribute the corpus to his wife.

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2. Whether one-half of the corpus of the trust created by the decedent's mother, over which the decedent held a general power of appointment, should be included in the decedent's gross estate under Section 811(f) of the Internal Revenue Code, valued at the date of the decedent's death.

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Holding

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1. Yes, because the decedent, as co-trustee, had the unqualified power to distribute any or all of the trust corpus to his wife, thereby diminishing or extinguishing the remainder interests of his children, making the enjoyment of those remainder interests subject to change through the exercise of a power to alter, amend, or revoke.

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2. Yes, because the property in the nature of an executory interest passed under the power of appointment at the decedent's death. The value of such interest is

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includible in the decedent’s gross estate under Section 811(f), based on the property in trust at the decedent’s death, with allowances for the estate intervening between the decedent’s death and the trust’s termination.

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Court’s Reasoning

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The court reasoned that the decedent’s power to distribute corpus to his wife was not qualified or limited, and therefore constituted a power to alter, amend, or revoke within the meaning of Section 811(d)(2). The court cited *Commissioner v. Holmes’ Estate, 326 U.S. 480*, and other cases to support its conclusion that such a power, even if exercisable in a fiduciary capacity, mandates inclusion of the trust corpus in the gross estate. Regarding the power of appointment, the court emphasized that

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