7 T.C. 705 (1946)

For estate tax purposes, the value of property passing under a power of appointment is determined at the time of the decedent's death, not at the termination of the trust, and includes the value of the executory interest that passed, even if subject to encroachment.

Summary

The Tax Court addressed the inclusion of trust property in a decedent's gross estate under sections 811(d)(2) and 811(f) of the Internal Revenue Code. The decedent possessed a power, as co-trustee, to distribute trust corpus to his wife, impacting remainder interests. Additionally, he exercised a power of appointment granted by his mother's trust. The court held that the power to distribute corpus made the remainder interests subject to alteration, requiring inclusion in the estate. The court further held that the value of property passing under the power of appointment is determined at the time of death, regardless of subsequent distributions from the trust.

Facts

The decedent, DuCharme, was a co-trustee of a trust established during his lifetime. The trust instrument allowed the co-trustee to distribute portions of the principal to DuCharme's wife, Isabel, during her lifetime. DuCharme also held a power of appointment over one-half of the property in a trust created by his mother. DuCharme died, and the Commissioner sought to include the trust property in his gross estate for tax purposes. The value of the trust property at the time of DuCharme's death differed from its value at the trust's termination due to distributions made after his death.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in the decedent's estate tax. The Estate of DuCharme petitioned the Tax Court for a redetermination of the deficiency. The Tax Court reviewed the case to determine the proper valuation of the trust property includible in the decedent's gross estate.

Issue(s)

1. Whether the decedent's power, as co-trustee, to distribute trust corpus to his wife constituted a power to alter, amend, or revoke the trust within the meaning of section 811(d)(2) of the Internal Revenue Code, thus requiring the inclusion of the trust property in his gross estate.

2. Whether the basis for evaluating the property to be included in the decedent's estate as having passed under the power of appointment should be the property in trust at the decedent's death or the property in trust when the trust terminated.

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Holding

1. Yes, because the power to distribute corpus to the life tenant authorized the decedent, in his capacity as co-trustee, to distribute any or all of the corpus to his wife, diminishing or extinguishing the remainder interests of his children, thus making the enjoyment of the remainder interests subject to change through the exercise of a power to alter, amend, or revoke.

2. The basis for evaluating the property is the property in trust at the decedent's death because the word "passing," as used in the statute, refers to property passing at decedent's death rather than to the property which actually may pass into the possession and enjoyment of the appointee as determined by subsequent events.

Court's Reasoning

Regarding the first issue, the court relied on "Commissioner v. Holmes' Estate, 326 U. S. 480," stating that the power to distribute corpus equated to a power to alter, amend, or revoke the trust. The court stated, "the enjoyment of the remainder interests was subject at decedent's death to 'change through the exercise of a power * * * to alter, amend or revoke' within the meaning of section 811 (d) (2)." That the power was held in a trustee capacity was immaterial based on precedent. Regarding the second issue, the court reasoned that the statute requires valuation at the time of death. The court emphasized, "Petitioner's construction also ignores the statutory language which marks decedent's death as the time of evaluation." The court distinguished "Helvering v. Grinnell, 294 U. S. 153," noting that subsequent events only affected the validity of the power's exercise, not the quantum of property passing. The court found the trustee's power to distribute corpus after the decedent's death impossible to evaluate actuarially, thus precluding its consideration in valuing the interest passing at death.

Practical Implications

This case provides a clear directive on how to value property subject to a power of appointment for estate tax purposes. It clarifies that valuation must occur at the time of the decedent's death, regardless of subsequent changes in the property's value due to distributions or other events. The ruling emphasizes that an executory interest passes at death, and its value is includible in the gross estate, even if the ultimate amount received by the appointee is diminished by subsequent actions. Attorneys should advise clients that powers to alter trust distributions or invade corpus will likely result in the inclusion of the trust's assets in the grantor's estate, valued at the date of death, impacting estate tax liabilities. Later cases will rely on this for estate tax valuations.

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