Estate of Henry F. Du Pont, 2 T.C. 246 (1943)

A grantor's retention of the power, as trustee, to distribute trust income or accumulate it, effectively designating who enjoys the income, requires inclusion of the trust property in the grantor's gross estate for estate tax purposes, particularly for transfers made after March 3, 1931.

Summary

The Tax Court addressed whether the value of property transferred into several trusts created by the decedent should be included in his gross estate. The decedent, acting as trustee, possessed the discretionary power to distribute or accumulate trust income. The court held that the value of property transferred to the trusts after March 3, 1931, should be included in the gross estate because the decedent retained the right to designate who would enjoy the trust income. However, transfers made before that date were excluded, and a limited power to invade corpus for beneficiaries' emergencies was deemed insufficient to trigger inclusion.

Facts

The decedent created several trusts for his children and sister in 1929 and 1937. As trustee, he had broad discretionary powers over income distribution. The 1929 trusts gave him the power to distribute or accumulate income as he saw fit. One trust for his sister provided a minimum annual payment to her, but the decedent had discretion over the remaining income. The 1937 trusts also allowed the decedent to distribute or accumulate income. The trust instruments also allowed the trustee to use the corpus for the benefit of income beneficiaries in case of sickness or other emergency.

Procedural History

The Commissioner of Internal Revenue sought to include the value of the trust property in the decedent's gross estate. The Tax Court reviewed the Commissioner's determination, considering arguments from both the estate's petitioner and the respondent (Commissioner).

Issue(s)

1. Whether the decedent's power, as trustee, to distribute or accumulate trust income constituted a right to designate who would possess or enjoy the income, thus requiring inclusion of the trust property in his gross estate under Section 811(c) of the Internal Revenue Code.
2. Whether the decedent's power to invade the trust corpus for the beneficiaries' sickness or other emergency constituted a power to alter, amend, or revoke the trust, thus requiring inclusion of the trust property in his gross estate under Section 811(d)(2) of the Internal Revenue Code.

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Holding

1. Yes, because the decedent's power to distribute or accumulate income allowed him to shift economic benefits between beneficiaries, effectively designating who would enjoy the income. This applied only to transfers made after March 3, 1931.
2. No, because the power to invade corpus was limited by an ascertainable standard (sickness or emergency) and did not give the decedent absolute control over the corpus.

Court's Reasoning

The court reasoned that the power to distribute or accumulate income was a "right to shift economic benefits and enjoyment from one person to another, which is, we think, contemplated by the phrase 'to designate the persons who shall possess or enjoy * * * the income' from the property." Because the decedent retained this right until his death, Section 811(c) required inclusion of transfers made after March 3, 1931. The court distinguished transfers made before this date based on the prospective application of amendments to Section 811(c). Regarding the power to invade the corpus, the court held that it was not an unrestricted power to

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