8 T.C. 68 (1947)

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When a decedent creates an irrevocable trust, retaining only a life estate with no reversionary interest, the trust corpus is not included in the decedent's gross estate for estate tax purposes, even if the trust specifies beneficiaries living at the time of the grantor's death.

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Summary

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Nettie Friedman created an irrevocable trust in 1930, retaining a life estate but no reversionary interest. The trust provided income to her for life, with the principal distributed to her nephews and nieces living at her death, or to their children *per stirpes*. Upon her death in 1942, the Commissioner argued that the trust corpus should be included in her gross estate under Section 811(c) of the Internal Revenue Code. The Tax Court held that because Friedman retained no reversionary interest and made a completed gift, the trust corpus was not includible in her gross estate. The court emphasized that the transfer took effect immediately and was not contingent on her death.

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Facts

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In 1930, at age 72, Nettie Friedman created an irrevocable trust with her nephews as trustees. The trust provided that income would be paid to Friedman for life. Upon her death, the trust principal was to be distributed equally to her nephews and nieces living at the time of her death, with the children of any deceased nephew or niece taking their parent's share *per stirpes*. Friedman retained no right to alter, amend, or modify the trust, nor did she retain any reversionary interest in the trust corpus. She was survived by all the named nephews and nieces and their children.

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Procedural History

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The Commissioner of Internal Revenue determined a deficiency in Friedman's estate tax, arguing that the trust corpus should be included in her gross estate. Friedman's estate petitioned the Tax Court for a redetermination of the deficiency.

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Issue(s)

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Whether the corpus of an irrevocable trust, where the decedent retained a life estate but no reversionary interest, is includible in the decedent'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 her death.

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Holding

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No, because the decedent made a completed gift when she established the irrevocable trust, retaining only a life estate and no reversionary interest; the transfer took effect immediately and was not contingent on her death.

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Court's Reasoning

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The court reasoned that the critical factor was that Friedman retained no reversionary interest in the trust corpus and made a completed gift *inter vivos*. The court relied heavily on the Supreme Court's decision in *May v. Heiner*, 281 U.S. 238 (1930), which held that

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