8 T.C. 1099 (1947)

A grantor does not have the power to revoke a trust unless they expressly reserve that power in the trust instrument; the absence of a reservation of power to revoke indicates an intent to relinquish such power.

Summary

The Tax Court addressed whether the value of property transferred into a trust should be included in the decedent's gross estate for tax purposes. The Commissioner argued that the decedent retained the power to revoke the trust or relinquished it in contemplation of death. The court held that the decedent did not retain the power to revoke the trust after a 1941 amendment and did not relinquish the power in contemplation of death. The court also addressed deductions related to a lease and the valuation of the decedent's interest in a trust.

Facts

Walter A. May created a trust in 1933, naming a New York bank as trustee and his son as the primary beneficiary. The trust initially included a provision allowing May to revoke it, with the income taxed to him. In December 1941, the trust was amended, intentionally omitting the revocation provision. Following the amendment, the trust income was taxed to the beneficiary. The amendment was suggested by May's brother, a lawyer, and was designed to relieve May of income tax liability and provide the beneficiary with the bank's investment management benefits.

Procedural History

The Commissioner determined a deficiency in the estate tax. The executors of May's estate petitioned the Tax Court. The Tax Court addressed several issues, including the revocability of the trust, a deduction for an alleged liability under a lease, and the valuation of May's interest in the May Properties Trust.

Issue(s)

1. Whether the value of property transferred in trust on June 23, 1933, should be included in the gross estate under section 811(d)(2) because the decedent retained the power to revoke the trust.
2. Whether the value of property transferred in trust on June 23, 1933, should be included in the gross estate under section 811(d)(4) because he relinquished the power of revocation in contemplation of death.
3. Whether the Commissioner erred in failing to allow a deduction for an alleged liability of the decedent under a non-profitable lease or in failing to recognize the lease as a liability in computing the value of the decedent's interest in a trust.
4. Whether the Commissioner erred in valuing the decedent's fractional interest in properties as a proportionate part of the value of the properties as a whole.

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Holding

1. No, because the decedent intentionally omitted the power to revoke from the trust amendment on December 27, 1941, indicating a surrender of that power.
2. No, because the amendment was not motivated by contemplation of death but by tax and investment considerations.
3. No, because the record did not show that the decedent was liable at the time of his death for any amount under the lease.
4. Yes, in part. The court found that the Commissioner's valuation of the decedent's interest in the May Properties Trust was too high and determined a lower value.

Court's Reasoning

The court reasoned that under Pennsylvania and New York law, a grantor does not have the power to revoke a trust unless the power is expressly reserved in the instrument. The omission of the revocation clause in the 1941 amendment indicated the decedent's intent to surrender the power. The court found no evidence that the amendment was made in contemplation of death, noting that the decedent's health was unchanged, and the amendment was suggested by his brother for tax and investment purposes. Regarding the lease liability, the court held that the decedent's estate was not liable as long as the May Properties Trust was solvent. The court determined a value of $25,000 for the decedent's 18.125% interest in the May Properties Trust, lower than the Commissioner's valuation.

Practical Implications

This case illustrates the importance of clearly expressing the grantor's intent regarding the power to revoke a trust. The absence of an express reservation of the power to revoke can be construed as a relinquishment of that power, regardless of prior trust provisions. This ruling informs estate planning by emphasizing the need for explicit language regarding revocation rights. The case also clarifies that tax and investment motivations can negate a claim that a trust amendment was made in contemplation of death. Finally, it highlights the complexities in valuing interests in trusts holding potentially unprofitable assets, requiring a realistic assessment of liabilities affecting all participants.

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