Estate of Louise V. Kerr, Deceased, Samuel K. Kerr and Lewis S. Kerr, Jr., Executors, Petitioners, v. Commissioner of Internal Revenue, Respondent, 9 T.C. 359 (1947).

Property subject to a power of appointment is includible in the decedent's gross estate for federal estate tax purposes, even if the beneficiaries renounce the appointment and elect to take under the original donor's will, if the decedent's exercise of the power altered the beneficial interests that would have existed in default of appointment.

Summary

Louise Kerr had a testamentary power of appointment over a trust corpus from her mother's will, which stipulated that in default of appointment, the corpus would pass to Kerr's two sons. Kerr exercised this power by appointing a life estate to her husband, with the remainder to her sons. The sons renounced their appointment under Kerr's will, choosing to take directly under their grandmother's will. The Tax Court held that the full value of the trust corpus was includible in Kerr's gross estate because her exercise of the power, regardless of the subsequent renunciation, dictated the passage of property, creating new values that would not have existed otherwise.

Facts

1. Sarah J. Kissam's will created a testamentary trust, granting her daughter, Louise V. Kerr, a life income interest and a testamentary power of appointment over the trust corpus.
2. Kissam's will stipulated that if Kerr did not exercise the power of appointment, the trust corpus would be distributed equally to Kerr's two sons, Samuel and Lewis Kerr, Jr., upon reaching age 35 (which they had).
3. Louise Kerr died in 1942 and exercised her power of appointment in her will, creating a life estate in the trust for her husband, Lewis S. Kerr, with the remainder to her two sons.
4. After Louise Kerr's death, her sons renounced the appointments made to them in her will and elected to take directly under their grandmother Kissam's will.
5. The Surrogate's Court of New York County decreed that upon the death of Louise Kerr's husband, the trust corpus would be distributed to her sons according to Kissam's will and their renunciations.
6. The value of the trust corpus at Louise Kerr's death was $240,847.77.
7. The estate tax return initially included only the value of the life estate appointed to Kerr's husband. The Commissioner argued the entire corpus should be included in Kerr's gross estate.

Procedural History

1. The executors of Louise Kerr's estate filed an estate tax return, including only

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the life estate value.
2. The Commissioner of Internal Revenue determined a deficiency, arguing the entire trust corpus was includible.
3. The Tax Court heard the case to determine whether the entire corpus or only the life estate was includible in Louise Kerr's gross estate under Section 811(f) of the Internal Revenue Code.

Issue(s)

1. Whether the value of the entire corpus of the testamentary trust, over which the decedent had a power of appointment, is includible in her gross estate under Section 811(f) of the Internal Revenue Code, or only the value of the life estate she appointed to her surviving husband, given that the remaindermen renounced their appointment and elected to take under the donor's will?

Holding

1. Yes, the value of the entire corpus is includible in the decedent's gross estate because the decedent exercised her power of appointment, thereby directing the course of the property and creating new values, regardless of the subsequent renunciation by the appointees.

Court's Reasoning

The Tax Court distinguished this case from *Helvering v. Grinnell*, emphasizing the Supreme Court's shift in *Rogers' Estate v. Helvering* towards a federal law standard over state property law in determining whether property

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