9 T.C. 742 (1947)

A decedent's partial exercise of a general power of appointment only triggers estate tax inclusion for the portion of the property actually appointed, leaving the unappointed portion subject to pre-1942 estate tax rules.

Summary

The Tax Court addressed whether the value of property subject to a decedent's general power of appointment should be included in her gross estate under Section 811(f) of the Internal Revenue Code, as amended by the Revenue Act of 1942. The decedent had a power of appointment over a trust established by her father. She partially exercised this power in her will. The court held that only the portion of the property she specifically appointed was includible in her gross estate under the amended statute; the remainder was governed by pre-1942 law, which required the property to actually "pass" under the power.

Facts

William Wooster created a trust in 1916 for his wife and three daughters, including Mabel Wooster (the decedent). Each daughter had a general power of appointment over one-third of the trust corpus and income. If a daughter died without exercising the power and without surviving issue, the power passed to the surviving sisters. Louise, one of the sisters, died without issue or exercising her power. Mabel Wooster died in 1943, survived by her sister Ruth. Mabel's will appointed one-half of her share of the trust principal and income to her sister Clara if Ruth survived her, and specified that the will would not operate as an exercise of the power for the remaining portion. If Ruth did not survive Mabel, Clara would receive all of Mabel's share.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Mabel Wooster's estate tax, including the value of the property subject to her power of appointment in the gross estate. The executor of the estate petitioned the Tax Court, arguing that only the portion of the property Mabel Wooster appointed to Clara should be included. The Tax Court ruled in favor of the petitioner in part, holding that only the portion appointed to Clara was includible.

Issue(s)

1. Whether the 1942 amendments to Section 811(f) of the Internal Revenue Code apply to the portion of the trust property over which the decedent held a power of appointment but did not exercise, such that the value of that property is includible in her gross estate.

2. Whether the portion of the trust property that the decedent appointed to her

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sister Clara is includible in her gross estate under the 1942 amendments to Section 811(f).

3. Whether a judgment of a Connecticut court regarding the trust is controlling for federal estate tax purposes.

4. Whether the application of Section 811(f) as amended violates the Fifth Amendment of the U.S. Constitution.

Holding

1. No, because the decedent's will explicitly stated that it would not operate as an exercise of the power of appointment with respect to the unappointed portion if Ruth survived. Thus, the pre-1942 law applies, which requires the property to "pass" under the power, and it did not pass here.

2. Yes, because the decedent exercised the power of appointment over that portion, and the 1942 amendments apply to exercised powers.

3. No, because the judgment was collusive and did not address the specific issue of whether the decedent exercised the power of appointment.

4. No, because the petitioner did not provide sufficient evidence to overcome the presumption that the law is constitutional.

Court's Reasoning

The court reasoned that the 1942 amendments to Section 811(f) applied if the power of appointment was exercised. The will explicitly stated that it would not operate as an exercise of the power with respect to the portion not appointed to Clara if Ruth survived. Since Ruth did survive, the pre-1942 law applied to that portion. The court cited authority that a partial execution of a power does not release it as to other property or exhaust it, and that powers of appointment "need not be executed to the utmost extent at once, but may be executed at different times over different parts of the estate." Since the decedent did exercise the power as to the share appointed to Clara, those assets were includible. Regarding the Connecticut court judgment, the Tax Court found it collusive and not controlling. Finally, the court rejected the constitutional argument, stating that no showing was made to overcome the presumption that the law is constitutional.

Practical Implications

This case demonstrates that the specific language used in a will when addressing a power of appointment is crucial in determining estate tax consequences. A partial exercise of a power of appointment does not automatically trigger the application of the 1942 amendments to the entire property subject to the power. Only the portion actually appointed is affected. This ruling provides guidance on how to analyze cases

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involving powers of appointment created before the 1942 amendments and clarifies the definition of “exercise” of a power. It also highlights the limited weight given to state court decisions in federal tax matters, particularly when collusion is suspected. It emphasizes the continuing relevance of the pre-1942 law in situations where a power is not fully exercised.

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