***10 T.C. 597 (1948)***

Life insurance proceeds are includible in a decedent's gross estate if the decedent possessed an "incident of ownership," including a reversionary interest, in the policies at any time after January 10, 1941, even if the policies named beneficiaries other than the estate.

**Summary**

The Tax Court addressed whether life insurance proceeds were includible in the decedent's gross estate under Section 811(g) of the Internal Revenue Code, as amended by the Revenue Act of 1942. The decedent had paid all premiums on policies issued in 1918, naming his children as beneficiaries, but the policies contained a provision that the decedent would receive the interest of a beneficiary who died before the insured. The court held that this reversionary interest constituted an "incident of ownership," requiring inclusion of the policy proceeds in the gross estate to the extent attributable to premiums paid after January 10, 1941.

**Facts**

Herman D. Brous died on January 3, 1943. Three life insurance policies, issued in 1918, named his son and two daughters as beneficiaries. The policies stated that if any beneficiary predeceased the insured, their interest would vest in the insured (Brous). Brous paid all premiums on the policies. The policies totaled $27,294.60 in proceeds. $1,679.30 of that total was attributable to premiums paid after January 10, 1941.

**Procedural History**

The Commissioner of Internal Revenue determined a deficiency in the estate tax, arguing that the life insurance proceeds should be included in the gross estate. The Estate of Brous petitioned the Tax Court for a redetermination of the deficiency.

**Issue(s)**

Whether the proceeds of the life insurance policies are includible in the decedent's gross estate under Section 811(g) of the Internal Revenue Code, as amended by Section 404 of the Revenue Act of 1942, due to the decedent's reversionary interest in the policies?

**Holding**

Yes, because the decedent possessed an "incident of ownership" in the policies in the form of a reversionary interest, which caused the policies to be included in his gross estate.

**Court's Reasoning**

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The court relied on Section 811(g) of the Internal Revenue Code, as amended, which includes in the gross estate life insurance proceeds receivable by beneficiaries other than the estate (A) if purchased with premiums paid by the decedent, or (B) if the decedent possessed at his death any "incidents of ownership." The court found that the decedent's right to receive the beneficiary's interest if they predeceased him constituted a reversionary interest and, therefore, an "incident of ownership." Section 404(c) of the Revenue Act of 1942 states that the amendments are applicable to estates of decedents dying after the enactment of the act; however, premiums paid on or before January 10, 1941, are excluded if at no time after such date did the decedent possess an incident of ownership. The court reasoned that the language in the amendment to Section 811(g) which states that "the term 'incident of ownership' does not include a reversionary interest" applied only to clause (B) of that paragraph, while the present case fell under clause (A). The court stated, "[t]his provision seems necessary *in view of the treatment of a reversionary interest as an incident of ownership* under existing law and *under subsection (c) of this section* [404] of the bill." Since the decedent retained this reversionary interest after January 10, 1941, the proceeds attributable to premiums paid after that date ($1,679.30) were includible in the gross estate. The court relied on Treasury Regulations, which state that Section 811(g)(2) expressly provides that for the purposes of Section 811(g)(2)(B), but not for the purposes of Section 811(g)(2)(A), the term "incidents of ownership" does not include a reversionary interest.

**Practical Implications**

This case clarifies the treatment of reversionary interests as "incidents of ownership" for estate tax purposes under the 1942 amendments to the Internal Revenue Code. It highlights the importance of carefully reviewing life insurance policies to determine if the decedent possessed any rights that could be construed as an "incident of ownership," even if the decedent did not directly control the policy. Attorneys must be aware that even a remote reversionary interest can cause inclusion of life insurance proceeds in the gross estate, especially regarding premiums paid after January 10, 1941. This case influenced later cases involving the definition of "incidents of ownership" and the application of the 1942 amendments.

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