10 T.C. 810 (1948)

A grantor's power, exercisable in conjunction with other beneficiaries, to terminate a trust results in the inclusion of the trust assets in the grantor's gross estate for federal estate tax purposes, even if the grantor's power is contingent.

Summary

The Tax Court held that the value of a trust estate was includible in the decedent's gross estate because the decedent, as grantor, retained the power to terminate the trust in conjunction with other beneficiaries. The trust agreement allowed termination with the written consent of all living beneficiaries over 21. The court reasoned that this power, even though exercisable with others, fell under Internal Revenue Code Section 811(d)(1), making the trust assets includible in the estate despite the grantor's initial attempt to make the trust irrevocable. The court distinguished this case from others where the grantor's powers were more limited or the relevant statutes were different.

Facts

A. Frank Seltzer established a trust on December 3, 1936. The trust's income from seven-ninths of the estate was payable to his wife for life, then to himself if he survived her, and ultimately to his son or other designated beneficiaries. The trust agreement stated it was irrevocable by the grantor alone. However, it could be revoked or terminated with the written consent of all living beneficiaries 21 years or older. Seltzer died on December 3, 1941. The Commissioner of Internal Revenue sought to include the value of the trust in Seltzer's gross estate for tax purposes.

Procedural History

The Commissioner determined a deficiency in estate tax. The executrix of Seltzer's estate, Louise K. Seltzer, challenged this determination in the United States Tax Court. The Tax Court upheld the Commissioner's determination, finding the trust assets includible in the gross estate.

Issue(s)

Whether the value of the trust estate created by the decedent is includible in his gross estate under Section 811(d)(1) of the Internal Revenue Code, given the provision allowing termination with the consent of all living beneficiaries over 21.

Holding

Yes, because the decedent, as grantor and a contingent beneficiary, retained the power to terminate the trust in conjunction with other beneficiaries, making the trust assets includible in his gross estate under Section 811(d)(1) of the Internal Revenue Code.

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Court's Reasoning

The court reasoned that the trust agreement allowed the grantor, in his capacity as a beneficiary, to terminate the trust with the consent of other beneficiaries. The court emphasized that the clause stating the settlement was made without any right of revocation or recall applied only to the grantor in his capacity as grantor. The later clause regarding revocation by all beneficiaries over 21 provided a separate power. The court cited Section 302(d)(1) of the Revenue Act of 1926, as amended by the Revenue Act of 1936 (now Section 811(d)(1) of the Internal Revenue Code), which includes in the gross estate any interest where enjoyment was subject to change through the exercise of a power by the decedent alone or in conjunction with any other person to alter, amend, revoke, or terminate the trust. The court stated, "Under the terms of the agreement the grantor reserved the right to terminate the trust and to dispose of the trust property in his capacity as beneficiary in conjunction with 'all of the then living beneficiaries * * * who are twenty-one (21) years or more of age.' The provision in the trust upon which the respondent relies brings the trust within the express language of section 302 (d) (1) of the Revenue Act of 1926 as amended, now section 811 (d) (1) of the Internal Revenue Code." The court distinguished Helvering v. Helmholz, 296 U.S. 93, because in that case, state law already allowed beneficiaries to terminate the trust, so the trust provision added nothing. Also, Helvering v. Helmholz, 296 U.S. 93 was decided before the 1936 amendment that explicitly included the power to terminate. The court relied on Commissioner v. Estate of Holmes, 326 U.S. 480, stating "To clarify the matter Congress removed all doubt for the future by enacting § 811 (d) (1)" in the 1936 revision, and that the addition of "or terminate" in section 811 (d) (1) was declaratory of existing law and not a substantive change thereof.

Practical Implications

This case illustrates that even a seemingly irrevocable trust can be included in a grantor's estate if the grantor retains the power to terminate it in conjunction with other beneficiaries. It reinforces the broad scope of Section 2038 (formerly 811(d)(1)) in capturing trusts where the grantor has retained some control over the timing of enjoyment. Attorneys drafting trust documents must carefully consider any provisions that allow the grantor to participate in decisions affecting the trust's termination or amendment. This case is frequently cited to support the IRS's position that any retained power, no matter how indirect, can trigger estate tax inclusion. Later cases have further refined the application of this principle, focusing on the nature and extent of the retained powers and the specific language of the trust agreement. It serves as a cautionary tale for estate planners aiming to minimize estate taxes while maintaining some degree of grantor control.

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