## *13 T.C. 869 (1949)*

A transfer to a trust is not considered in contemplation of death if the purposes of the transfer are primarily connected with life rather than death, and the grantor does not retain powers to alter, amend, or revoke the trust.

**Summary**

The Tax Court ruled that transfers made by the decedent to trusts for his children and direct gifts of stock were not made in contemplation of death and were not includible in his gross estate. The court emphasized the decedent's good health, active lifestyle, and the life-related purposes behind establishing the trusts. Furthermore, the court found that the decedent did not retain powers over the trusts that would cause inclusion under Section 811(c) or (d) of the Internal Revenue Code. The decedent's power to change the trustee did not equate to the power to terminate the trust.

**Facts**

The decedent, C. Dudley Wilson, created trusts for his two children in 1937, naming Trenton Banking Co. as trustee. The trust terms stipulated that income would accumulate until the beneficiary reached 21, then be paid to the beneficiary. Corpus distribution was scheduled for age 30. The decedent expressly relinquished all rights to amend, modify, or revoke the trusts, divesting himself of all ownership incidents. However, the decedent retained the right to change the trustee. The trustee could accelerate payments of interest or principal for educational purposes, illness, or other good reasons. The decedent also made gifts of stock to his children at Christmas in 1943 and 1944. He died in February 1945 from cancer, which was diagnosed shortly before his death.

**Procedural History**

The Commissioner of Internal Revenue determined a deficiency in the decedent's estate tax. The Estate of Wilson petitioned the Tax Court, contesting the inclusion of assets transferred to the trusts and the Christmas gifts in the gross estate. The Tax Court ruled in favor of the estate.

**Issue(s)**

1. Whether the transfers to the trusts and the gifts of stock were made in contemplation of death under Section 811(c) of the Internal Revenue Code.
2. Whether the transfers to the trusts were intended to take effect in possession or enjoyment at or after the decedent's death.
3. Whether the decedent retained a power to alter, amend, revoke, or terminate the trusts, thus requiring inclusion of the trust assets in his gross estate under Section 811(d).

 

## Holding

1. No, because the transfers were primarily associated with life-related motives and were not prompted by a belief of poor health or impending death.
2. No, because the decedent did not retain such control over the trust that the transfer would take effect at death.
3. No, because the decedent relinquished all power to alter, amend, or revoke the trusts and did not possess the power to terminate the trusts through the power to change the trustee; the trustee's power to accelerate payments was limited.

## Court's Reasoning

The court found that the transfers of stock were ordinary Christmas presents and not testamentary in character. Regarding the trusts, the court noted the decedent's active life, good health until shortly before his death, and the purpose of the trusts (to ensure the children's education and financial security). These factors indicated life-related motives. The court emphasized that the decedent "expressly stated in the deeds that he did not retain any power to alter, amend, or revoke." The court distinguished this case from others where the grantor had unfettered power over the trust. Here, the trustee's discretion to accelerate payments was limited by the standard of "need for educational purposes or because of illness or for any other good reason." The court dismissed the Commissioner's arguments that the decedent could control dividends or the trustee's actions, finding them without sufficient weight.

## Practical Implications

This case clarifies the importance of demonstrating life-related motives when establishing trusts to avoid inclusion in the grantor's estate. It highlights that retaining limited powers, such as the ability to change trustees, does not automatically trigger estate tax inclusion, especially when the trustee's discretionary powers are subject to external standards. Further, the explicit relinquishment of the right to alter, amend, or revoke a trust is a crucial factor in preventing estate tax inclusion. This case should be consulted when establishing trusts and evaluating the estate tax implications of retained powers, particularly in family trust situations. Subsequent cases will often scrutinize the degree of control the grantor retains and the presence of ascertainable standards governing distributions.

 