15 T.C. 716 (1950)

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When a grantor establishes an irrevocable trust, retaining the right to income for life, the assets transferred to the trust are includible in the grantor's gross estate for estate tax purposes, even if the grantor does not receive every last cent of income before death.

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Summary

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The Tax Court addressed whether assets transferred to an irrevocable trust created by the decedent should be included in his gross estate for tax purposes. The decedent retained the right to receive income from the trust during his lifetime, with any accrued but undistributed income passing to the next beneficiary. The court held that both the non-insurance assets and the life insurance policies transferred to the trust were includible in the decedent's gross estate. The court reasoned that the decedent retained the right to income for life, thus triggering inclusion under Section 811(c) and that he held incidents of ownership over the life insurance policies, making them includible under Section 811(g) of the Internal Revenue Code.

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Facts

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Myron Selznick created an irrevocable trust on January 29, 1932, naming Citizens National Trust and Savings Bank of Los Angeles as trustee. He transferred income-yielding assets and life insurance policies to the trust. The trust agreement stipulated that the net income from the trust was to be paid to Selznick during his lifetime, in monthly installments as directed by him. The trustor reserved the right to direct the trustee to credit or add any income payable to him to the principal of the trust estate. The trust also gave Selznick the right to cancel any of the insurance policies with the consent of two of the following: The Trustee, David O. Selznick, or Loyd Wright. Upon Selznick's death, any accrued but undistributed income would go to the next beneficiary. At the time of Selznick's death, there was $1,138.36 of accrued trust income on hand with the trustee which had not been distributed to him.

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Procedural History

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The Commissioner of Internal Revenue determined a deficiency in Selznick's estate tax. The executors petitioned the Tax Court for a redetermination. The Tax Court initially sustained the Commissioner's inclusion of the trust property in the gross estate based on *Commissioner v. Estate of Church*. The Ninth Circuit Court of Appeals vacated the Tax Court's decision and remanded the case for further consideration in light of amendments to Section 811(c), (d) and (g) of the Internal Revenue Code enacted in 1949, which addressed retroactive statutory changes.

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Issue(s)

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Whether the assets transferred by the decedent to a trust created by him on January 29, 1932, should be included in the decedent's gross estate under Section 811(c), (d), or (g) of the Internal Revenue Code, as amended by P. L. 378, 81st Cong. (1949).

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Holding

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1. Yes, the non-insurance assets transferred to the trust prior to June 7, 1932, are includible in the decedent's gross estate because the decedent retained the right to income for life under the amendatory language of the Joint Resolution of March 3, 1931, and Section 811(c) of the Code.

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2. Yes, the insurance assets are includible in the decedent's gross estate because the decedent possessed incidents of ownership in the policies under Section 811(g) of the Code.

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Court's Reasoning

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The court reasoned that Section 7(b) of P.L. 378, 81st Congress (1949), amending Section 811(c) of the Code, applied to estates of decedents dying after February 10, 1939, including Selznick. The court noted that property transferred after March 3, 1931, and before June 7, 1932, is included in the gross estate if it would have been includible by reason of the amendatory language of the Joint Resolution of March 3, 1931, which included transfers where the transferor retained the income from the property for life. The court rejected the petitioner's argument that the decedent did not retain "the income from the property" because he did not receive all of the income before death. The court emphasized that the decedent had the power to command the payment of income and enjoyed the trust income during his life to the extent desired.

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Regarding the insurance policies, the court stated that the proceeds allocable to premiums paid before January 10, 1941, were includible under Section 811(g) if the decedent possessed any incident of ownership after that date. The court found that the decedent retained the right to cancel the insurance policies, even though the proceeds would go to the trust, because the income from the invested proceeds would ultimately benefit the decedent. The court stated that, "The right to receive the income from such property is an 'incident of ownership' within the meaning of the statute."

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Practical Implications

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The Selznick case clarifies that the retention of a lifetime income interest in a trust, even with some limitations on the actual receipt of all income before death, is sufficient to include the trust assets in the grantor's gross estate for estate tax purposes. This case also reinforces that the term

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