*17 T.C. 597 (1951)*

The reciprocal trust doctrine requires the inclusion of the value of trust corpus in a decedent's gross estate under Section 811(d)(2) of the Internal Revenue Code when the decedent, in substance, is the grantor of a trust in which they retain the power to change beneficiaries, regardless of whether the power is directly held in a trust they formally established.

**Summary**

Myrtle Newberry's estate faced a tax deficiency because the IRS argued that trusts created by her husband should be included in her gross estate due to the reciprocal trust doctrine. The Newberrys had established similar trusts for their children, with each spouse granting the other the power to alter beneficiaries. The Tax Court agreed with the IRS, finding that the trusts were interdependent and designed to maintain control over the assets. The court held that Myrtle Newberry's power to change beneficiaries in her husband's trusts was equivalent to retaining that power in her own, thus requiring the inclusion of the trust assets and accumulated income in her gross estate. This case clarifies the reach of the reciprocal trust doctrine and its implications for estate tax liability.

**Facts**

Myrtle and John Newberry created reciprocal trusts for their two children on July 6, 1934, and December 26, 1935. John created four trusts, and Myrtle created four trusts. The corpus of each trust primarily consisted of John J. Newberry Co. stock. The trust instruments were substantially the same, with John and Myrtle serving as co-trustees. Originally, Myrtle had the power to modify, alter, amend, or revoke John's trusts, including the right to change beneficiaries, provided she could not revest the assets in John. On May 31, 1943, the trusts were amended to limit Myrtle's power to change beneficiaries to descendants, their spouses, or charitable donees. Myrtle died on May 9, 1944. At the time of her death, the trusts contained accumulated income.

**Procedural History**

The Commissioner of Internal Revenue determined a deficiency in Myrtle Newberry's estate tax. The executors of Myrtle's estate petitioned the Tax Court for a redetermination of the deficiency. The cases involving the estate tax deficiency (Docket No. 19480) and transferee liability (Docket No. 20519) were consolidated. The executors had also sought a construction of the trust agreements in the Bergen County Orphans' Court, which concluded Myrtle did not have the power to change the beneficial enjoyment of the accumulated income; however, the Tax Court found this order not conclusive.

**Issue(s)**

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1. Whether the value of the trusts created by John J. Newberry is includible in Myrtle H. Newberry's gross estate under the reciprocal trust doctrine?

2. Whether the income accrued on those trusts and undistributed at Myrtle H. Newberry's death is also includible in her gross estate?

**Holding**

1. Yes, because the trusts were part of an interdependent arrangement, and Myrtle possessed the power to change beneficiaries in John's trusts, making her, in substance, the grantor.

2. Yes, because Myrtle retained the power to change the beneficiaries of the accumulated income until her death, therefore, it is includible in her gross estate.

**Court's Reasoning**

The court applied the reciprocal trust doctrine, stating that the crucial question is whether the decedent possessed the power to change the beneficiaries at the time of her death. The court dismissed the argument that Myrtle needed to be the "generating force" behind the creation of the cross-trusts. It was enough that both trusts were part of an interdependent reciprocal arrangement. The court emphasized the importance of the power Myrtle had to change beneficiaries, despite amendments limiting the scope of potential beneficiaries, referencing *Werner A. Wieboldt, 5 T.C. 946*. The court found that the Orphans' Court decision was not binding, as it lacked jurisdiction to construe the inter vivos trust. The court reasoned that the accumulated income had not vested in the children at the time of accumulation, stating, "the trusts 'were made principally to turn over income' to the children, and that decedent and her husband had a 'purpose of wanting to control the trusts,' which can mean nothing less than control primarily over income." Therefore, the court held that the corpus and accumulated income were includible in Myrtle's gross estate.

**Practical Implications**

This case highlights that the reciprocal trust doctrine can ensnare estates where spouses create similar trusts, even if they are not directly the grantor of the specific trust in question. Attorneys drafting trust documents must carefully consider the estate tax implications of granting powers to a spouse in a reciprocal trust arrangement. It underscores that the substance of the arrangement, rather than the form, will determine whether the assets are included in the gross estate. The decision also emphasizes the importance of ensuring that state court orders regarding trust construction are obtained from courts with proper jurisdiction. Later cases have distinguished *Newberry* based on the specific powers retained by the decedent and the degree of interdependence between the trusts.

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