17 T.C. 1330 (1952)

A transfer in trust is not subject to gift tax if the settlor retains the power, directly or through a trustee, to invade the trust corpus for their own benefit, making the gift incomplete.

Summary

The Tax Court held that a transfer in trust was not subject to gift tax because the corporate trustee had the power to invade the trust corpus for the settlor's comfort, education, maintenance, or support. The settlor retained the income for life, and the trust terms did not limit the amount of principal that could be used. Because of the trustee's broad discretion to invade the corpus, the court reasoned that the gift was incomplete at the time of the trust's creation, as the settlor could potentially receive the entire corpus back. Thus, no taxable gift occurred.

Facts

The decedent, Mrs. Gramm, created an irrevocable trust in May 1946, naming a corporate trustee (Provident Trust Company) and two individual trustees (her children). The trust provided that Mrs. Gramm would receive the income for her life. Upon her death, the principal would be distributed to the remaindermen. The trust deed gave the corporate trustee the power to invade the principal for any amount it considered proper for the comfort, education, maintenance, or support of the income beneficiaries, and during the settlor's lifetime she was the only income beneficiary. The trust was created in lieu of a power of attorney the corporate trustee previously held for Mrs. Gramm.

Procedural History

The Commissioner of Internal Revenue determined that the transfer to the trust was subject to gift tax. The taxpayer (Gramm's estate) challenged this determination in the Tax Court.

Issue(s)

Whether the transfer in trust by the decedent in May 1946 constituted a completed gift subject to gift tax under Section 1000 of the Internal Revenue Code.

Holding

No, because the settlor, through the corporate trustee's power to invade the trust corpus for her benefit, retained dominion and control over the transferred property, making the gift incomplete.

Court's Reasoning

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The court reasoned that the critical issue was whether the remaindermen received an interest that constituted a taxable gift. The court emphasized that the corporate trustee had broad discretion to invade the principal for the settlor’s

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