19 T.C. 1013 (1953)

The value of a trust corpus is includible in a decedent's gross estate under Section 811(d)(2) of the Internal Revenue Code when the decedent, as settlor, retained the power to revoke the trust until his death, even if another person initially had to join in the revocation.

Summary

Arthur Curtiss James and his wife created a trust in 1915, funded solely by Arthur, for the benefit of his wife's sister, reserving the right to revoke jointly and then by the survivor. Arthur survived his wife by three weeks and died in 1941. The Tax Court held that the value of the trust corpus was includible in Arthur's gross estate under Section 811(d)(2) of the Internal Revenue Code, because he possessed the power to revoke the trust at the time of his death, regardless of the initial requirement of joint revocation. The court emphasized that the regulations did not exclude the trust assets since Arthur possessed an unfettered power of revocation at the time of death.

Facts

In 1911, Arthur Curtiss James purchased bonds and transferred them to a trust for his wife's sister, Maud Larson, reserving the right to cancel the trust jointly with his wife. In 1915, the trust was canceled, and the bonds were returned to Arthur and his wife. On the same day, Arthur and his wife executed a new trust agreement, funded with the same bonds and $75,000 of Arthur's funds, again naming Maud Larson as beneficiary and reserving the right to revoke, jointly or by the survivor. The trust was never altered or revoked. Arthur's wife predeceased him by approximately three weeks. The value of the trust corpus on the optional valuation date was $84,252.26.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Arthur Curtiss James' estate taxes. The executor, United States Trust Company of New York, contested the deficiency in the Tax Court, arguing the trust corpus should not be included in the gross estate. Maud Larson's successor in interest intervened. The Tax Court ruled in favor of the Commissioner, holding the trust corpus was includible in the gross estate.

Issue(s)

Whether the value of the corpus of a trust, established by the decedent who retained the power to revoke either jointly with his wife or, as the survivor, alone, is includible in the decedent's gross estate under Section 811(d)(2) of the Internal Revenue Code when the decedent survived his wife and possessed the power to revoke the trust at the time of his death.

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Holding

Yes, because at the time of the decedent's death, he possessed the power to revoke the trust alone, making the trust corpus includible in his gross estate under Section 811(d)(2) of the Internal Revenue Code.

Court's Reasoning

The court reasoned that Section 811(d)(2) explicitly applied because the enjoyment of the trust property was subject to change through the exercise of a power by the decedent alone to alter, amend, or revoke at the date of his death. The court found that the decedent alone contributed the corpus of the trust, even though his wife was a co-settlor. The court distinguished Treasury Regulations 105, section 81.20(b), noting that the regulations primarily addressed transfers made before the Revenue Act of 1924, where the retained power was conditioned upon the assent of a person having a substantial adverse interest, which persisted until the decedent's death. The court cited *Commissioner v. Hofheimer's Estate*, which held that Section 302(d) of the Revenue Act of 1926 (comparable to Section 811(d)) could be applied to an earlier transfer when the power was exercisable by the decedent alone. The court stated, "Here there was a long period after the death of Arthur when the decedent could have alone exercised the power That is the power which his death cut off and as to that the statute is not retroactive." The court found any challenge based on retroactivity to be without merit because of the decedent's power of revocation at the time of death.

Practical Implications

This case clarifies that even if a trust initially requires joint action for revocation, the trust assets will be included in the grantor's gross estate if the grantor possesses the unilateral power to revoke at the time of death. This reinforces the importance of carefully considering the estate tax implications of retaining powers over trusts. Attorneys drafting trust documents must advise clients that retaining the power to revoke, even if initially shared, will likely result in the inclusion of the trust assets in the grantor's taxable estate. This case is consistently cited in estate tax litigation where a decedent retained a power to alter, amend, revoke, or terminate a trust, highlighting the continuing relevance of Section 2038 of the Internal Revenue Code (the successor to Section 811(d)(2)).

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