20 T.C. 871 (1953)

A grantor’s retention of the right to trust income, even if discretionary with the trustees, results in the inclusion of the trust corpus in the gross estate under Section 811(c)(1)(B) of the Internal Revenue Code if the grantor effectively and intentionally retained the right to income for life.

Summary

The Estate of Carolyn Peck Boardman challenged the Commissioner of Internal Revenue’s inclusion of an inter vivos trust corpus in the gross estate for estate tax purposes. Carolyn and her husband, Henry Boardman, created reciprocal trusts for each other, with Carolyn’s trust specifying that income and principal could be distributed for her “comfort, support and/or happiness.” The court addressed whether Carolyn retained the right to trust income, leading to the inclusion of the trust assets under Section 811(c)(1)(B) of the Internal Revenue Code. Despite a provision allowing her sons to amend the trust, the court found that Carolyn effectively retained the right to the income because of the discretion given to the trustees to distribute funds for her happiness. The court held the trust corpus was properly included, and determined the extent of Carolyn’s contribution to the reciprocal trust for valuation purposes.

Facts

Carolyn Boardman created a trust on June 18, 1935, transferring securities valued at $62,953.76 to the trust, with her son William and Old Colony Trust Company as trustees. The purpose was to provide for Carolyn’s comfort, support and/or happiness during her life, with any undistributed income added to the principal for distribution to the sons and their families after her death. Henry Boardman created a similar trust on June 19, 1935. Carolyn added securities to her trust in 1939. The trust provided that income and principal could be distributed for her “comfort, support and/or happiness.” The trustees rendered annual accounts to Carolyn. Carolyn received distributions from both income and principal. Her son William and later Ronald, with trustee consent, could amend the trust but did not do so. Henry died in 1940, and Carolyn died on March 19, 1947. The Commissioner determined a deficiency in estate tax and included the trust corpus in Carolyn’s gross estate.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in estate tax, leading the Estate to file a petition with the United States Tax Court. The Tax Court was tasked with deciding whether the trust corpus should be included in the gross estate and, if so, the extent to which it should be included. The case was heard by Judge Murdock.

Issue(s)

1. Whether the trust property is includible in the gross estate under Section 811(c)(1)(B) of the Internal Revenue Code because Carolyn effectively retained the right to income from the property for a period which did not in fact end before her death.

2. If the trust property is includible in the gross estate, what portion of the total value of the trust should be included, considering that Carolyn and her husband created reciprocal trusts.

Holding

1. Yes, because Carolyn effectively and intentionally retained the right to the income for her life, or for a period which did not in fact end before her death, despite the discretion given to the trustees to distribute funds for her comfort, support and happiness.

2. The court determined that Carolyn was the grantor to the extent of her contributions to both her trust and the reciprocal trust created by her husband. The Commissioner's position, that Carolyn should be treated as the grantor of the trust (created by Henry) to the extent of the percentage that results from dividing her total contributions ($67,953.76) by the total originating with her husband ($68,226.26), was deemed fair by the court.

Court's Reasoning

The court relied on Section 811(c)(1)(B) of the Internal Revenue Code, which includes in the gross estate property transferred in trust if the decedent retained the right to the income for life. The court determined that the provision giving the trustees discretion to distribute funds for Carolyn's "comfort, support and/or happiness" effectively reserved the right to the income to her. The court emphasized that, despite the ability of the sons to amend the trust, such a power was never exercised, and Carolyn received most of the trust income during her lifetime. The court distinguished this case from scenarios where the trustee's discretion was limited by the needs of a minor child. The court cited *Merchants National Bank of Boston v. Commissioner*, 320 U.S. 256, and *Henslee v. Union Planters National Bank*, 335 U.S. 595, highlighting that the term

