Estate of Carrie Grossman, Trixy G. Lewis, Executrix, Petitioner, v. Commissioner of Internal Revenue, Respondent, 27 T.C. 707 (1957)

Under I.R.C. § 811(d)(2), the value of an inter vivos trust is includible in the decedent's gross estate if the decedent retained the power, either alone or in conjunction with others, to alter, amend, or revoke the trust, even if the power is limited or requires the consent of others.

Summary

The Estate of Carrie Grossman challenged the Commissioner's inclusion of the principal of an inter vivos trust in her gross estate. The Tax Court held that the trust assets were properly included because Grossman, as trustee, possessed the power to distribute principal to beneficiaries in her discretion, and the trust could be terminated with her consent and the request of a majority of the beneficiaries. These powers constituted a power to "alter, amend, or revoke" the trust, making its assets includible under I.R.C. § 811(d)(2). The court rejected the estate's argument that the value of the life estates should reduce the includible amount, emphasizing the defeasible nature of those interests.

Facts

In 1930, Carrie Grossman created a trust for her three adult children, naming herself as sole trustee. The trust provided that she, in her sole and uncontrolled discretion, could apply principal to the use of any of the beneficiaries. The trust also stated that it could be terminated upon the written request of a majority of the children and with Grossman's written consent, with assets distributed according to the request. At the time of Grossman's death in 1951, the corpus of the trust was valued at $105,229.30. The Commissioner determined that this amount was includible in Grossman's gross estate.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in estate tax. The Estate of Carrie Grossman challenged this determination in the United States Tax Court. The Tax Court reviewed stipulated facts, and ruled in favor of the Commissioner, holding that the trust corpus was includible in the decedent's gross estate.

Issue(s)

1. Whether the principal of the 1930 trust is includible in the gross estate under I.R.C. § 811(d)(2) because the decedent retained the power to alter, amend, or revoke the trust.

2. Whether the amount includible in the gross estate should be reduced by the value

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of the life estates of the decedent’s children.

Holding

1. Yes, because the decedent, as trustee, had the power, in her sole discretion, to apply principal to the use of any of her children, thereby altering their interests. Furthermore, the trust could be terminated with her consent and the request of the children, giving her a power to revoke the trust.

2. No, because even if the life estates were considered vested, they were defeasible, and therefore their value could not reduce the includible amount.

Court's Reasoning

The court based its decision on I.R.C. § 811(d)(2), which requires inclusion in the gross estate of transfers where the decedent retained the power to alter, amend, or revoke the trust. The court found that the decedent’s power to distribute principal to any of her children at her discretion under paragraph III of the trust instrument, was a power to alter or amend. The court referenced that power was not limited to the needs of the children. The court found that the power to terminate the trust under paragraph IX, in conjunction with the children, was a power to revoke, as it gave the decedent the power to end the trust’s existence and distribute its assets. The court cited prior case law holding that a power to terminate is within a power to alter, amend, or revoke. The court dismissed the estate’s argument that the value of life estates should be subtracted, finding the interests defeasible.

Practical Implications

This case reinforces the importance of understanding the scope of powers retained by the settlor of a trust. It highlights that even seemingly limited powers, such as the discretion to distribute principal or the ability to consent to termination, can trigger inclusion of the trust assets in the gross estate. Practitioners must carefully examine trust instruments to identify any powers that could be construed as a power to alter, amend, or revoke. The case also demonstrates that even if the decedent’s power requires the consent of others, the assets may still be included. When drafting estate plans, practitioners should advise clients about the estate tax consequences of retaining such powers. This case should be considered in any similar estate tax disputes involving trusts where the decedent retained any control over trust distributions or termination.

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