34 T.C. 144 (1960)

For estate tax purposes, a power of appointment is considered "created" when the instrument granting the power is executed, even if the power is revocable or contingent upon a future event.

Summary

The Estate of Ernestina Rosenthal contested the Commissioner of Internal Revenue's determination that certain life insurance proceeds should be included in the decedent's gross estate. The issue centered on whether powers of appointment over the insurance proceeds, granted to the decedent in 1938 but exercisable only after her son's death in 1945, were "created" before October 21, 1942. The court held that the powers were created in 1938 when the settlement agreements were executed, not when they became exercisable. This determination meant that the insurance proceeds were not subject to estate tax under the applicable law, as the powers were created before the critical date.

Facts

Ernestina Rosenthal was the beneficiary of life insurance policies on the life of her son, Nathaniel. In 1938, Nathaniel entered into settlement agreements with the insurance companies, under which the proceeds would be held by the insurers, with interest paid to Ernestina. Ernestina was given general powers of appointment over the proceeds. Nathaniel retained the right to revoke or change beneficiaries and methods of payment. Nathaniel died in 1945. Ernestina died in 1956 without having exercised the powers of appointment. The Commissioner asserted a deficiency in estate tax, arguing that the insurance proceeds were includible in Ernestina's gross estate because the powers of appointment were created after October 21, 1942.

Procedural History

The case was brought before the United States Tax Court. The estate filed an estate tax return claiming no tax was due. The Commissioner determined a deficiency, leading to the estate's challenge in the Tax Court, which was decided in favor of the estate.

Issue(s)

Whether the powers of appointment possessed by the decedent at the time of her death were "created" before or after October 21, 1942, for the purposes of determining estate tax liability.

Holding

Yes, the powers of appointment were created before October 21, 1942, because they were created when the settlement agreements were executed in 1938, even though

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they were revocable by the son and not exercisable until after his death.

Court's Reasoning

The court focused on interpreting the meaning of "created" as used in the Internal Revenue Code. The statute did not define "created." The Commissioner argued that the powers were "created" in 1945, when the policies matured as death claims. The court rejected this, holding that the powers of appointment were created in 1938 when the settlement agreements were executed, citing that the powers existed from that date, even though subject to the insured's power to revoke. The court found no warrant in the statute for differentiating between revocable and non-revocable powers when determining the date a power of appointment is created. The court cited the case of *United States v. Merchants National Bank of Mobile*, which distinguished between the date a power is created and the date it becomes exercisable. The court emphasized that the term "create" implied going back to the beginning. The court referenced the ordinary and normal meaning of "created", referencing how the word is generally used in legal context. The court reasoned that this interpretation carried out Congress's intent.

Practical Implications

This case provides guidance on when a power of appointment is considered "created" for estate tax purposes, especially regarding insurance policies and similar arrangements. It emphasizes that the creation date is typically the date of the instrument's execution, regardless of whether the power is revocable or contingent. Attorneys should consider this when drafting estate planning documents and advising clients on the tax implications of powers of appointment, including understanding the impact of the date a power is established. This case supports the view that the date of creation is the date of the instrument, not the date the power becomes exercisable. Later cases may distinguish this if the agreement creating the power is substantially changed after the critical date.

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