Estate of Robert R. Ware, Deceased, Robert R. Ware, Jr. , Executor, Petitioner v. Commissioner of Internal Revenue, Respondent, 55 T. C. 69 (1970)

A grantor's unilateral attempt to resign as trustee and release the power to accumulate or distribute income does not effectively remove trust property from the grantor's gross estate if not done in accordance with state law.

Summary

Robert R. Ware created five trusts and served as their sole trustee with the power to accumulate or distribute income. He later attempted to resign as trustee and release his powers over the trusts through notarized documents. The Tax Court held that under Illinois law, Ware's resignation was ineffective because he did not obtain court approval or consent from all beneficiaries, including minors and unascertained beneficiaries. As a result, the value of the trust corpora was includable in Ware's gross estate under sections 2036 and 2038 of the Internal Revenue Code, as he retained the power to control income distribution until his death.

Facts

Robert R. Ware established five trusts on December 26, 1936, naming himself as the sole trustee with the power to accumulate or distribute income. Each trust had specific beneficiaries, including his wife and children. In 1940 and 1943, Ware executed notarized documents attempting to resign as trustee and release his powers, including the right to appoint successor trustees. At the time of these actions, two of the primary beneficiaries were minors, and there were also contingent and unascertained beneficiaries. Ware died on July 25, 1964, and the Commissioner of Internal Revenue included the value of the trust corpora in his gross estate.

Procedural History

The Commissioner determined a deficiency in the estate tax, attributing $289,493. 66 to the inclusion of the trust corpora in Ware's gross estate. The executor of Ware's estate challenged this determination before the United States Tax Court.

Issue(s)

1. Whether Robert R. Ware effectively resigned as trustee of the trusts and released his power to accumulate or distribute income under Illinois law?

Holding

1. No, because under Illinois law, a trustee cannot resign unilaterally without court approval or the consent of all beneficiaries, including minors and unascertained beneficiaries. Ware's attempts to resign and release his powers were ineffective, and

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the trust corpora remained includable in his gross estate under sections 2036 and 2038 of the Internal Revenue Code.

Court’s Reasoning

The Tax Court analyzed Illinois law governing the resignation of trustees and the modification of trusts. It found that Ware could not resign without court approval or the consent of all beneficiaries, as two of the beneficiaries were minors and there were contingent and unascertained beneficiaries. The court rejected the argument that the Illinois Termination of Powers Act allowed Ware to resign unilaterally, as the Act was intended to address powers of appointment, not trustee resignations. The court also determined that the power to accumulate or distribute income was an element of the trusteeship, not a personal power that could be released independently. Consequently, Ware’s attempts to resign and release his powers were ineffective, and the trust corpora remained subject to inclusion in his gross estate.

Practical Implications

This decision underscores the importance of following state law when attempting to resign as a trustee or modify a trust. Grantors and trustees must obtain court approval or the consent of all beneficiaries, including minors and unascertained beneficiaries, to effectively resign or release powers over a trust. The case also highlights the distinction between powers of appointment and trustee powers, with different legal requirements for releasing each. Practitioners should carefully draft trust instruments to provide for the resignation of trustees and the modification of trust terms, and advise clients on the tax implications of retaining control over trust assets. This decision may influence how similar cases are analyzed, particularly in states with similar laws governing trusts and trustee resignations.

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