Estate of Vissering v. Commissioner, 96 T. C. 749 (1991)

A trustee-beneficiary's power to invade trust principal for their own "comfort" is a general power of appointment unless limited by an ascertainable standard related to health, education, support, or maintenance.

Summary

In Estate of Vissering v. Commissioner, the Tax Court ruled that Norman H. Vissering, who was both a beneficiary and cotrustee of a family trust, possessed a general power of appointment over the trust principal at his death. The trust allowed the trustees to distribute principal for the beneficiary's "continued comfort, support, maintenance, or education. " The court held that the term "comfort" did not constitute an ascertainable standard related to health, education, support, or maintenance, thus making the power a general one subject to estate tax inclusion. This decision highlights the importance of precise language in trust agreements to avoid unintended tax consequences.

Facts

Norman H. Vissering was a cotrustee and beneficiary of a family trust established by his mother, Grace Hayden Vissering. The trust allowed the cotrustees to invade the principal for any beneficiary's "continued comfort, support, maintenance, or education. " Vissering developed Alzheimer's disease and was declared incapacitated, but he remained a cotrustee until his death. At the time of his death, Vissering was receiving all of the trust's net income, and the trust's principal was valued at $1,516,187.

Procedural History

The executrix of Vissering's estate filed a U. S. Estate Tax Return and received a notice of deficiency from the Commissioner of Internal Revenue. The estate petitioned the Tax Court, which fully stipulated the facts. The Tax Court ruled that Vissering possessed a general power of appointment over the trust principal at his death.

Issue(s)

1. Whether the decedent, Norman H. Vissering, possessed at his death a general power of appointment over the principal of the family trust under Section 2041(a)(2) of the Internal Revenue Code?
2. Whether the power to invade the trust principal for the decedent's "continued comfort, support, maintenance, or education" was limited by an ascertainable standard related to health, education, support, or maintenance under Section 2041(b)(1)(A)?
3. Whether the decedent's incapacity and the appointment of a guardian affected his status as a cotrustee?

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Holding

1. Yes, because the decedent had the power to distribute trust principal to himself, which constituted a general power of appointment unless an exception applied.
2. No, because the term “comfort” did not constitute an ascertainable standard related to health, education, support, or maintenance.
3. No, because the decedent’s incapacity did not automatically cause him to cease being a cotrustee under Florida law.

Court’s Reasoning

The Tax Court applied Section 2041 of the Internal Revenue Code, which includes in a decedent’s gross estate the value of property over which the decedent had a general power of appointment at death. The court determined that Vissering’s power to invade the trust principal for his own “comfort” was a general power of appointment unless limited by an ascertainable standard related to health, education, support, or maintenance. The court relied on Florida law to interpret the trust agreement and found that the term “comfort” did not meet the required standard. The court also considered the Treasury regulations, which state that a power to use property for the comfort of the holder is not limited by the statutory standard. The court rejected the argument that Vissering’s incapacity automatically terminated his status as a cotrustee, as no judicial action was taken to remove him. The court’s decision was based on the plain language of the trust agreement and the applicable legal standards.

Practical Implications

This decision underscores the importance of precise language in trust agreements to avoid unintended tax consequences. Trust drafters should be cautious in using terms like “comfort” without clear limitations, as such language may result in the inclusion of trust assets in the beneficiary’s taxable estate. Attorneys advising clients on estate planning should ensure that trust agreements are drafted with specific standards related to health, education, support, or maintenance to qualify for the exception under Section 2041(b)(1)(A). The decision also clarifies that a beneficiary’s incapacity does not automatically terminate their status as a trustee, which may affect the administration of trusts in similar situations. This case has been cited in subsequent cases involving the interpretation of trust powers and the application of Section 2041, reinforcing its significance in estate tax planning and litigation.

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