

Summary

IN ESTATE OF GERMAN 85-1 USTC ¶ 13,610 (CCH) (CT. Cl. 1985), MRS. GERMAN WAS DOMICILED IN FLORIDA WHEN SHE CREATED THE TRUST. MARYLAND LAW GOVERNED THE TRUST - ONE OF THE TRUSTEES RESIDED THERE. MRS. GERMAN WAS NOT DOMICILED IN MARYLAND WHEN SHE DIED. YET, CLEARLY, THE COURT HELD CREDITORS' RIGHTS UNDER MARYLAND LAW CONTROLLED THE ESTATE TAX INCLUSION ISSUE.

Summary

ESTATE OF ESTELLE E. GERMAN, 7 CL. CT. 641

"Internal Revenue Code § **2036** includes in the gross estate the value of any interest in property of which a decedent has at any time made a transfer under which he has retained for his life the possession or enjoyment of, or the right to income from, the property, or the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom."

* * *

"The question presented is whether the decedent divested herself of her interest in property in 1969 when she transferred such property to a trust with a proviso that the trustee might, in their absolute discretion, pay any or all of the income or principal to decedent at any time during her lifetime, if they received the written consent of the person who was entitled to receive the principal and accumulated income of the trust after her death, or whether she continued to enjoy the right to the income or principal of the trust up to the date of her death, because under Maryland law if she chose to incur any debts her creditors could still attach or levy upon the trust assets to collect them."

* * *

"During the grantor's life the trustees had the power at anytime in their absolute and uncontrolled discretion to pay to or apply for the benefit of the grantor all or part of the net income and principal as the trustees should determine, in their absolute and uncontrolled discretion, for any reason whatsoever, including the termination of the trust, subject only to the condition

that the trustees receive the written consent thereto of the respective beneficiary of the particular trust, Frederick or Arthur, individually."

* * *

"Thus, the narrow issue to be decided herein is as to the extent of decedent's creditors' rights with respect to the trust income and assets under Maryland law."

* * *

"Defendant [IRS] has not established that under Maryland law creditors of the settlor could have reached the trust income or principal of her discretionary trust up to the time of her death."