

Summary  
42 T.C.M. (CCH) 1305  
ESTATE OF GIZELLA WELLS  
T.C. MEMO 1980-574

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"SYLLABUS: Decedent transferred property to a trust which provided that the trustee may, in his sole and absolute discretion, distribute to decedent corpus and/or income. Held, although decedent received the income from the trust, she did not receive it pursuant to an agreement, express or implied, entered into contemporaneously with the transfer of the property to the trust and therefore she did not retain "possession or enjoyment" of the property within the meaning of sec. 2036(a)(1)."

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"Respondent contends that by receiving the income from the trust, decedent retained enjoyment of the transferred property. However, the mere receipt of all the income from the transferred property does not of itself trigger inclusion in the gross estate under section 2036(a)(1); such enjoyment must have been 'retained'."

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"The existence of such an agreement or prearrangement can be inferred from the facts and circumstances surrounding the transfer, and the subsequent use, of the property."

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"After careful consideration of the entire record, we find that petitioner has sustained his burden of showing that no income was received by decedent from the trust pursuant to an agreement, express or implied, entered into contemporaneously with the transfer of the property to the trust. Thus, decedent did not reserve or retain any 'enjoyment or possession' of the trust property within the meaning of section 2036(a)(1) when she transferred such property to the trust."