Whiteley v. Commissioner, 42 B.T.A. 316 (1940)

A grantor is not taxable on trust income under Section 22(a) of the tax code merely because they are the trustee, the beneficiary is their spouse, administrative control is reserved, and the trust term is relatively short; the key question is whether the grantor has truly relinquished ownership of the property.

Summary

The Board of Tax Appeals addressed whether the income from certain trusts established by a wife for her husband's benefit should be taxed to her. The trusts varied in their terms, with some granting the husband full access to income and principal, and one allowing the grantor to appoint beneficiaries among her husband, nieces, and nephews. The Board held that the income from the trusts where the husband had unrestricted access was not taxable to the grantor, as she had relinquished ownership. However, the income from the trust where she retained a power of appointment was taxable to her, as she maintained significant control.

Facts

The petitioner, a woman of ample means, created five trusts. Trusts A, B, C, and D provided income and principal to her husband with no restrictions. Trust E allowed her to appoint the income and corpus among her husband, nieces, and nephews. In all trusts, she served as trustee and retained some administrative powers over investments. The Commissioner sought to tax the income from all five trusts to the petitioner.

Procedural History

The Commissioner determined a deficiency in the petitioner's income tax, arguing that the income from the five trusts should be included in her taxable income. The petitioner appealed this determination to the Board of Tax Appeals.

Issue(s)

1. Whether the income from Trusts A, B, C, and D should be taxed to the grantor under Section 22(a) or Section 167 of the Internal Revenue Code, given her role as trustee, her husband's status as beneficiary, and her retained administrative control?
2. Whether the income from Trust E should be taxed to the grantor, considering her power to appoint beneficiaries among her husband, nieces, and nephews?

Holding

1. No, because the grantor relinquished ownership of the property in Trusts A, B, C, and D, giving her husband unrestricted access to the income and principal.
2. Yes, because the grantor retained significant control over Trust E through her

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power to appoint beneficiaries, making the trust akin to one where the grantor could direct the flow of income.

Court’s Reasoning

Regarding Trusts A, B, C, and D, the court distinguished this case from *Helvering v. Clifford*, emphasizing that the grantor had irrevocably given away the property and could never again use the income or corpus for her own benefit. The court stated,

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