45 B.T.A. 146

Trust income is not taxable to the grantor merely because the trustee has discretion to use the income for the support of beneficiaries whom the grantor is legally obligated to support, except to the extent that such income is actually so applied.

Summary

The Board of Tax Appeals addressed whether trust income was taxable to the grantor-trustee under Section 22(a) due to the controls retained over the trust and the discretionary use of income for the maintenance of his dependents. The Board held that the income was not taxable to the grantor, relying on its prior decision in *Frederick Ayer*, which was deemed to be re-established after Congress retroactively repealed *Helvering v. Stuart* via Section 134 of the Revenue Act of 1943, thereby reinstating the rule exemplified by *E.E. Black*.

Facts

The petitioner established a trust with himself as grantor-trustee. The trust instrument allowed for the discretionary use of income for the "support, education, comfort and happiness" of the grantor's minor children. A provision existed stating that the grantor believed it would be desirable to maintain property at 314 Summit Avenue as a home for his children. The grantor retained broad powers of management over the trust. The wife was the cotrustee, but it was stipulated that decisions were made by the petitioner. No income was actually used for the support of the children.

Procedural History

The Commissioner determined that the trust income was taxable to the petitioner. The case was brought before the Board of Tax Appeals.

Issue(s)

Whether the controls retained by the petitioner over the trust, including the possible benefit available through the discretionary use of income for the maintenance of his dependents, are such as to make the trust income his own under section 22(a) and the principle of *Helvering v. Clifford*?

Holding

No, because the result of the *Ayer* case is reestablished after the retroactive legislative repeal of the *Stuart* case, and hence governs all similar situations.

Court's Reasoning

The Board relied heavily on its prior decision in *Frederick Ayer*, which involved

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similar facts. In *Ayer*, the Board held that the grantor was not taxable under Section 22(a). The Board distinguished *White v. Higgins*, noting that in *White*, the grantor could immediately pay any or all of the principal or income to herself, while no such provisions existed in *Ayer*. The Board acknowledged that the Supreme Court's decision in *Helvering v. Stuart* cast doubt on the correctness of the *Ayer* conclusion by repudiating the theory of the *Black* case. However, Congress then enacted Section 134 of the Revenue Act of 1943, which retroactively repealed the *Stuart* case and reinstated the rule exemplified by *E.E. Black*. The Board noted respondent's acquiescence in *Frederick Ayer*, stating it augmented the obligation of consistency. Regarding the clause about maintaining the property, the Board stated the failure to acquire the property as part of the trust estate eliminates the necessary condition precedent to the application of the provision. The Board then concluded that the trust income is not taxable to the petitioner.

Practical Implications

This decision, particularly when considered in conjunction with the Revenue Act of 1943, provides a framework for analyzing the tax implications of grantor trusts where income may be used for the support of dependents. It clarifies that the mere possibility of using trust income for support does not automatically render the income taxable to the grantor. The income is taxable only to the extent it is actually used for such support. The case highlights the importance of considering subsequent legislative actions and administrative practices (such as agency acquiescence in prior decisions) when interpreting tax law. Later cases would apply this ruling when the terms of the trust were similar and the income was not used to support the grantor's dependents. It serves as a reminder that the actual application of trust income is a key factor in determining tax liability in these situations.

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