3 T.C. 1133 (1944)

Broad powers granted to a trustee, including investment discretion, do not necessarily constitute an implied power to revoke a trust or revest the corpus in the grantor, thus the trust income is not automatically taxable to the grantor.

Summary

Benjamin Lowenstein created three trusts, naming himself trustee and his adult children as life beneficiaries. The trusts granted Lowenstein broad powers of management and investment. The Commissioner argued that, due to these powers, Lowenstein effectively retained ownership and control over the trust assets, making the trust income taxable to him under Sections 166 and 22(a) of the Revenue Acts of 1936 and 1938. The Tax Court disagreed, holding that Lowenstein's powers were fiduciary in nature, limited by New York law, and did not constitute an implied power to revoke the trusts or revest the corpus in himself. The court distinguished *Helvering v. Clifford*, finding Lowenstein's control insufficient to warrant taxing the trust income to him.

Facts

- Benjamin Lowenstein created three trusts on June 11, 1930, one for each of his adult children: Leo Lowenstein, Doretta Wallace, and Carrie L. Groedel.
- Lowenstein named himself as the initial trustee for each trust.
- Each trust named one of Lowenstein's children as the life beneficiary, with the principal to be distributed to their issue upon their death.
- The trust instruments granted Lowenstein broad powers to invest and reinvest the trust principal, even in speculative or non-income-producing assets.
- Lowenstein, as trustee, could sell, exchange, mortgage, or lease trust property, even to himself in his individual capacity.
- The trusts were funded with promissory notes from Wallau Realty Co., Inc., a company whose stock was initially held by Lowenstein and his children.
- Lowenstein did not resign as trustee and acted in that capacity during the tax years in question (1936, 1937, and 1938).

Procedural History

- The Commissioner of Internal Revenue determined deficiencies in Benjamin Lowenstein's income tax for 1936, 1937, and 1938, including the income from the three trusts in his taxable income.
- Lowenstein's executors, Leo Lowenstein and Harry Groedel, petitioned the Tax Court for a redetermination of the deficiencies.
- The cases were consolidated and submitted to the Tax Court based on stipulated facts and exhibits.

Issue(s)

© 2025 SCOTUSreports.com. All rights reserved.

1. Whether the broad powers granted to Benjamin Lowenstein as trustee of the three trusts constituted an implied power to revoke the trusts or revest the corpus in himself, making the trust income taxable to him under Section 166 of the Revenue Acts of 1936 and 1938.
2. Whether the control which Benjamin Lowenstein could legally exercise over the trust corpus was sufficient to make the trust income taxable to him under Section 22(a) of the Revenue Acts of 1936 and 1938.

Holding

1. No, because under New York law, the powers granted to Lowenstein as trustee were fiduciary in nature and did not constitute an implied power to revoke the trusts or revest the corpus in himself.
2. No, because the control which Lowenstein could legally exercise over the trust corpus was insufficient to make the trust income taxable to him under Section 22(a).

Court’s Reasoning

The Tax Court reasoned that the trust instruments did not grant Lowenstein any express power to revoke the trusts. The Commissioner argued that the broad powers of management and investment granted to Lowenstein were equivalent to a power to revoke. The court disagreed, emphasizing that Lowenstein’s authority was as a trustee, not as a grantor acting for his own benefit. The trusts were created for the benefit of his children and their issue. The court cited New York law, stating that Lowenstein’s powers were limited by his fiduciary duty to act in the best interests of the beneficiaries. The court quoted *Carrier v. Carrier*, emphasizing that even

© 2025 SCOTUSreports.com. All rights reserved.