4 T.C. 286 (1944)

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A grantor is taxable on trust income under Section 167 of the Revenue Act of 1938 if the income may be distributed to the grantor's benefit at the discretion of a person without a substantial adverse interest in the trust.

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Summary

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Clair and Margaret Savage each created two trusts for their minor children, with the other spouse as trustee, possessing the power to amend the trust (but not to revoke or increase their own or the beneficiary's interest) and, jointly with the beneficiary, to revoke it. The Tax Court held that the income from these trusts was taxable to the grantors under Section 167 of the Revenue Act of 1938. The court reasoned that the trustee-spouse lacked a substantial adverse interest, given their remote and contingent interest in the trust, and that the power to amend could be used to benefit the grantors.

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Facts

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Clair and Margaret Savage, husband and wife, established four trusts, two for each of their two minor children. Each spouse was the grantor of two trusts and the trustee of the trusts created by the other spouse. The trusts were funded with $5,000 each. The trustee-spouse had the power to amend the trust, but not to increase their own or the beneficiary's interest. They also had the power, along with the beneficiary (once the beneficiary reached the age of majority), to revoke the trust. The trust income could be distributed to or accumulated for the beneficiary at the trustee's discretion. The trust corpus would revert to the grantor only under specific, unlikely circumstances.

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Procedural History

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The Commissioner of Internal Revenue assessed income tax deficiencies against Clair and Margaret Savage, arguing that the income from the trusts should be taxed to them as grantors. The Savages petitioned the Tax Court for a redetermination of these deficiencies. The cases were consolidated.

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Issue(s)

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Whether the income of trusts created by the petitioners is taxable to them as grantors under Section 167 of the Revenue Act of 1938 because the income may be distributed to the grantor’s benefit at the discretion of a person without a substantial adverse interest in the trust.

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Holding

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Yes, because the trustee-spouse lacked a substantial adverse interest, given their remote and contingent interest in the trust, and the power to amend could be used to benefit the grantors.

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Court’s Reasoning

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The court focused on whether the trustee-spouse had a

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