4 T.C. 878 (1945)

A grantor remains taxable on trust income under Section 22(a) of the Internal Revenue Code when they retain substantial control over the trust corpus and income, effectively remaining the beneficial owner, even if legal title is transferred to the trust.

Summary

G. Lester and Rose Mary Hash, husband and wife, operated two businesses as equal partners. They created trusts for their daughters, transferring portions of their business interests to the trusts, with themselves and their attorney as trustees. The Tax Court held that the Hashes retained so much control over the trusts that they remained the de facto owners of the transferred assets, making them liable for income tax on the trust's earnings under Section 22(a) of the Internal Revenue Code. The court also addressed the proper tax year for reporting partnership income and determined that certain investments were partnership property, not the individual property of G. Lester Hash.

Facts

The Hashes jointly owned and operated the Hash Furniture Company and the National Finance Company. They established trusts for their two daughters, transferring one-half of their respective interests in each business to the trusts. G. Lester was co-trustee of the trusts benefiting his daughter Doris, and Rose Mary was co-trustee of the trusts benefiting her daughter Rosemary. The other co-trustee was the family attorney, F.W. Mann. Following these transfers, the businesses continued to operate under the Hashes' control. The daughters were schoolgirls with no business experience, and Mann played a minimal role in business operations. The trust income was retained in the businesses and not distributed to the beneficiaries.

Procedural History

The Commissioner of Internal Revenue assessed deficiencies against the Hashes, arguing they retained too much control over the trusts and that partnership income should be calculated on a calendar year basis. The Hashes petitioned the Tax Court for review. The Tax Court consolidated the proceedings.

Issue(s)

1. Whether the petitioners retained sufficient control over the trusts they created, rendering them taxable on the income from the trust assets under Section 22(a) of the Internal Revenue Code.
2. Whether the income of the partnerships should be determined on a calendar or fiscal year basis.
3. Whether income from certain ventures was attributable to G. Lester Hash individually or to the Hash Furniture Company partnership.

Holding

1. Yes, because the petitioners retained substantial control over the trusts through their roles as trustees and the terms of the trust agreements, making them the effective owners for tax purposes.
2. The income should be determined on a fiscal year basis, because two new separate and distinct partnerships were created, which had a right to and did adopt a fiscal year basis for accounting.
3. The income from the ventures was partnership income, because partnership funds were used for the investments, and the partnership books reflected these investments.

Court's Reasoning

The court applied the principle established in *Helvering v. Clifford*, which holds that a grantor is treated as the owner of a trust if they retain substantial dominion and control over the trust property. The court found that the Hashes, as trustees, had broad powers over the trust assets, including the ability to invest in ventures in which they were majority stockholders, and to control the distribution of income. The trusts were structured in a way that the settlors were, for all practical purposes, the real beneficiaries. The court highlighted the lack of independence of the co-trustee and the fact that the trust income was not distributed to the daughters, further solidifying the Hashes' control. Regarding the tax year, the court found that the creation of the trusts constituted the creation of new partnerships, entitling them to elect a fiscal year. The court determined that the oil investments were made with partnership funds. It noted that the fact that title to the properties was held in the name of one of the partners does not contradict this conclusion.

Practical Implications

Hash v. Commissioner serves as a warning to taxpayers attempting to shift income to family members through trusts while maintaining control over the assets. It reinforces the *Clifford* doctrine and emphasizes the importance of genuine economic transfer, not just legal title transfer, to avoid grantor trust rules. When analyzing similar cases, attorneys must scrutinize the trust documents and the actual administration of the trust to determine who truly controls the trust assets. This case is frequently cited in cases involving family partnerships and attempts to allocate income to lower tax bracket family members. Later cases distinguish *Hash* by emphasizing the independence of the trustees and the actual distribution of income to the beneficiaries, demonstrating a genuine shift in economic benefit.

