6 T.C. 535 (1946)

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Payments from a testamentary trust to French citizens, designated as annuities in a will but not arising from a contractual agreement or prior employment in consideration of past services, do not qualify as “life annuities” or “private pensions” exempt from U.S. withholding tax under the 1935 tax treaty with France.

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Summary

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The trustee of a testamentary trust sought to avoid withholding tax on payments made to two French citizens, arguing the payments qualified as tax-exempt “life annuities” or “private pensions” under a 1935 double taxation treaty between the U.S. and France. The Tax Court disagreed, holding that the payments, made from trust income and not based on any contract or employment relationship, did not fall within the treaty’s intended scope of either term. The court analyzed the historical context of international tax treaties to interpret the meaning of “life annuities” and “private pensions”.

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Facts

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Annie B. Webb’s will established a testamentary trust, directing the trustee to make payments from net income to several individuals, including Ethel Duncan ($200) and Germaine St. Laurent ($800), both citizens and residents of France. Kimball, as trustee, made these payments in 1941 and 1942. St. Laurent had been employed by Webb from 1913 to 1925. Kimball did not withhold U.S. income tax from these payments, claiming they were exempt under the U.S.-France tax treaty as “life annuities” or “private pensions.” Other payments to Mabel Duncan and Fenella Lovell were treated as annuities, and tax was withheld.

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Procedural History

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The Commissioner of Internal Revenue determined deficiencies in Kimball's withholding tax liability for 1941 and 1942, including the payments to Ethel Duncan and Germaine St. Laurent as income subject to withholding. Kimball, as trustee, petitioned the Tax Court for a redetermination of the deficiencies.

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Issue(s)

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1. Whether payments from a testamentary trust to Ethel Duncan constituted a "life annuity" within the meaning of Article IX(c) of the Convention on Double Taxation between the United States and the Republic of France.

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2. Whether payments from a testamentary trust to Germaine St. Laurent constituted a "private pension" or a "life annuity" within the meaning of Article IX(c) of the Convention on Double Taxation between the United States and the Republic of France.

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Holding

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1. No, because the term

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