*7 T.C. 263 (1946)*

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A grantor is taxable on trust income under Section 22(a) where the grantor retains substantial control over the trust, including the power to deal with the trust property as if it were his own, despite the trust being nominally irrevocable.

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**Summary**

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Leslie Green created two trusts for his wife and son, naming himself as trustee and retaining broad managerial powers, including the ability to transact with the trust as an individual. The IRS assessed deficiencies, arguing Green was taxable on the trust income. The Tax Court held Green taxable under Section 22(a) because of the extensive control he retained. The court also addressed the statute of limitations, finding a five-year limit applicable for one year due to a substantial omission of income but not for another. The court further denied Green's attempt to offset taxes paid by the trusts against his personal tax liability.

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**Facts**

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Leslie Green, president of Standard Cotton Products Co. and owner of Automotive Materials Corporation, created two irrevocable trusts in 1935, one for his wife and one for his son. Each trust was funded with 400 shares of Standard stock. Green, as trustee, possessed broad powers: to manage the trust, vote stock, sell or exchange property, borrow money using the trust as security, and transact with himself. The trusts allowed income accumulation or distribution at Green's discretion. Green borrowed from the trusts and sold a note to one trust.r

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**Procedural History**

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The IRS assessed income tax deficiencies against Green for 1937-1941, arguing he was taxable on the trust income. Green challenged the deficiencies in Tax Court. After the petitions were filed, Green initiated state court proceedings to construe the trust instruments. The Michigan court issued a decree stating the trusts were irrevocable and limited Green's powers, but the Tax Court found this decree non-binding. The Tax Court sustained the deficiencies for some years but found the statute of limitations barred assessment for 1938.r

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**Issue(s)**

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1. Whether Green is taxable on the income of the trusts he created for his wife and son.r
2. Whether the statute of limitations bars assessment of deficiencies for 1937 and 1938.r
3. Whether Green can offset taxes paid by the trusts against his individual tax liability.r

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**Holding**

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1. Yes, because Green retained substantial control over the trusts, including the power to deal with the trust property as if it were his own.r
2. No, the statute of limitations does not bar assessment for 1937 because Green omitted income exceeding 25% of the gross income stated on his return; Yes, the statute of limitations bars assessment for 1938 because the amount omitted did not exceed 25% of the gross income stated on his return.r
3. No, because Green is seeking to offset taxes paid in his capacity as trustee against taxes owed in his individual capacity.r

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**Court's Reasoning**

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The court relied on Section 22(a) and the principle that a grantor is taxable when they retain substantial dominion and control over a trust. The court cited *Helvering v. Elias*, stating that the court must consider "the whole nexus of relations between the settlor, the trustee and the beneficiary, and if it concludes that in spite of their changed legal relations the three continue in fact to act and feel toward each other as they did before, the income remains the settlor's." Green's broad powers as trustee, including transacting with himself, made him the virtual owner. The court disregarded the state court decree, deeming it a collusive attempt to avoid federal tax liability, noting that the proceedings were commenced after the Tax Court case began and presented no genuine controversy. On the statute of limitations issue, the court held that

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