9 T.C. 627 (1947)

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Income earned by a decedent but not received before death is taxable to the estate or beneficiary receiving it in the year of receipt, under Section 126 of the Internal Revenue Code, if the decedent used the cash method of accounting and did not constructively receive the income before death.

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Summary

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The Tax Court addressed whether a decedent's bonus, trustee commissions, and certain interest income were taxable to the decedent's estate or to the decedent individually. The decedent, who used the cash method of accounting, died on January 2, 1943. The court held that the bonus and commissions, which were not definitively ascertained or awarded until after the decedent's death, were taxable to the estate under Section 126 of the Internal Revenue Code. The court also addressed certain interest income, finding a duplication in the Commissioner's assessment, but otherwise upholding the assessment due to lack of evidence from the petitioner.

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Facts

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Fred Basch died on January 2, 1943. Prior to his death, he was employed by Herman Basch & Co. His employment contract provided for a salary plus a bonus of 11% of the company's net annual profits, as ascertained by its certified public accountants. The bonus for 1942, amounting to $15,826.76, was calculated in February 1943 and credited to Basch's account. Basch also served as a co-trustee for another estate. On July 20, 1943, the court approved commissions of $2,072.31 for his service as co-trustee.

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Procedural History

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The Commissioner of Internal Revenue determined a deficiency in the income and Victory tax liability of Fred Basch's estate for the taxable year 1943. The Commissioner argued that the bonus and trustee commissions should have been included in the estate's income. The estate contested this determination, arguing the amounts should have been taxed on the decedent's final individual income tax return. The cases were consolidated in the Tax Court.

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Issue(s)

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1. Whether the bonus earned by the decedent but calculated and credited after his death is taxable to the decedent's estate.

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2. Whether the trustee commissions awarded after the decedent's death are taxable to the decedent's estate.

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3. Whether certain interest income was properly included in the estate's income by the Commissioner.

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4. Whether applying Section 126 of the Internal Revenue Code is unconstitutional in this case.

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Holding

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1. Yes, because the bonus was not constructively received by the decedent before his death, as the amount was not ascertained until after his death.

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2. Yes, because the trustee commissions were not awarded until after the decedent's death, and there was no showing that the decedent could have accessed the funds

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before death.

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3. Mostly yes, because the estate failed to provide sufficient evidence to prove the Commissioner’s determination was incorrect, except for a duplicated item.

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4. No, because Section 126, as applied here, is not unconstitutional.

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Court’s Reasoning

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The court relied on Section 126 of the Internal Revenue Code, which addresses income in respect of decedents. Since the decedent used the cash method of accounting, the court considered whether the income items were constructively received by the decedent before death. The court stated,

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