***11 T.C. 178 (1948)***

A beneficiary with the unrestricted power to demand trust income is taxable on that income, even if they choose not to exercise that power and the income is added to the trust corpus.

**Summary**

Annie Inman Grant was the beneficiary and co-trustee of a testamentary trust established by her deceased husband. The trust granted her the power to elect to receive all or part of the trust's net income annually. Any income not withdrawn was added to the trust's corpus. Grant never elected to receive any income, and in 1945, she formally renounced her rights to the trust income. The Commissioner of Internal Revenue assessed deficiencies against Grant, arguing that she was taxable on the trust income because of her power to control its distribution. The Tax Court agreed with the Commissioner, holding that Grant's power to demand the income was equivalent to ownership for tax purposes, regardless of whether she actually received it, until her renunciation.

**Facts**

John W. Grant died on March 8, 1938, leaving a will that created a testamentary trust with his residuary estate.
The will named his wife, Annie Inman Grant, and his son, John W. Grant, Jr., as co-executors and co-trustees.
The trust provided that at the end of each calendar year, the trustees would pay Annie Inman Grant all or any part of the net income she elected to receive. Any undistributed income was to be added to the trust corpus.
Annie Inman Grant never elected to take any of the trust income during 1943, 1944 or the first part of 1945.
On June 20, 1945, Annie Inman Grant executed a formal renunciation and release of her rights to the trust income, which was recorded on June 28, 1945.
The income from the trust was added to the corpus at the close of each year.

**Procedural History**

The Commissioner of Internal Revenue determined deficiencies in Annie Inman Grant's income and victory taxes for 1943 and 1944, and income tax for 1945.
Grant petitioned the Tax Court for a redetermination of these deficiencies.

**Issue(s)**

Whether the income of a testamentary trust, which is distributable to the beneficiary upon request, is taxable to the beneficiary under Section 22(a) of the Internal Revenue Code, even if the beneficiary does not elect to receive the income and it is added to the trust corpus.
Whether the beneficiary's renunciation and release of her rights to the trust income

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operated retroactively to relieve her of tax liability for income available to her before the renunciation.

## Holding

Yes, because “the power of petitioner to receive this trust income each year, upon request, can be regarded as the equivalent of ownership of the income for purposes of taxation.”
No, because the renunciation did not retroactively negate the tax liability for income that was available to her prior to the disclaimer; the income was hers for the taking.

## Court’s Reasoning

The court relied heavily on the precedent set in *Mallinckrodt v. Nunan*, which held that the power to control the disposition of trust income is the key factor in determining taxability under Section 22(a).
The court reasoned that Grant’s ability to demand the trust income each year gave her a “realizable” economic benefit, making the income taxable to her, regardless of whether she actually received it. The court stated, “Since the trust income in suit was available to petitioner upon request in each of the years involved, he had in each of those years the ‘realizable’ economic gain necessary to make the income taxable to him.”
The court distinguished *Hallowell v. Commissioner*, a case cited by the petitioner, by noting that in *Hallowell*, the beneficiary was not entitled to receive the income within the taxable year, whereas Grant, like Mallinckrodt, had that right.
The court rejected Grant’s argument that her renunciation operated retroactively, stating that while the renunciation may have terminated the trust in her favor and protected her rights as to other parties, “we can not agree that it operated retroactively to relieve her of tax liability on income that was hers for the taking.”

## Practical Implications

This case reinforces the principle that control over income, even without actual receipt, can trigger tax liability.
It clarifies that a beneficiary’s power to demand trust income is equivalent to ownership for tax purposes, emphasizing the importance of carefully drafting trust provisions to avoid unintended tax consequences.
The case demonstrates that a subsequent renunciation of rights will not retroactively eliminate tax obligations for income that was previously available to the beneficiary.
This ruling influences how similar cases are analyzed, directing legal practitioners to focus on the extent of the beneficiary’s control over the trust income during the relevant tax years. This case is often cited when determining constructive receipt of income and the tax implications of powers of appointment in trusts.

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