***11 T.C. 205 (1948)***

A charitable deduction for a remainder interest in a trust is only allowed if the value of the charitable bequest is ascertainable at the time of the decedent's death, considering any potential invasion of the trust principal for the benefit of non-charitable life beneficiaries.

**Summary**

The Tax Court addressed whether a charitable deduction could be taken for remainder interests bequeathed to charity under two trusts. The will allowed the trustee to invade the principal for the benefit of the life beneficiaries if the trust income did not equal $1,000 per year, and for medical/hospital expenses. The court held that because the potential for invasion of the trust principal was significant and not subject to a readily ascertainable standard, the value of the charitable remainder interests was not ascertainable at the time of the decedent's death, and therefore, no charitable deduction was permitted.

**Facts**

Eunice Greene's will established two trusts, each with seventeen ninety-fifths of her estate. The income from each trust was to be paid to Laura Washburn and Helen Chase (life beneficiaries), respectively, and upon their deaths, the principal was to go to the Home for Aged Men and Aged Couples. The will stipulated that if the trust income did not equal $1,000 annually, the trustee was to make up the difference from the principal. Additionally, the trustee had the discretion to use the principal for medical or hospital expenses of the life beneficiaries. At the time of Greene's death, Washburn was 76, and Chase was 73 years old. Both trusts had a principal of $29,049.28.

**Procedural History**

The Commissioner of Internal Revenue disallowed a deduction from the gross estate for the bequest to the Home for Aged Men and Aged Couples, determining that the amount ultimately passing to the organization was not ascertainable. The executor of Greene's estate petitioned the Tax Court for review.

**Issue(s)**

Whether the remainder interests bequeathed to charity under the trusts were ascertainable in value at the time of the decedent's death, considering the potential for invasion of the trust principal for the benefit of the life beneficiaries.

**Holding**

No, because a valuation of the remainder interests was not possible at the date of the decedent's death due to the probability of substantial invasion of trust principal for the benefit of the life beneficiaries.

### Court's Reasoning

The court reasoned that to qualify for a charitable deduction, the value of the charitable remainder interest must be ascertainable at the date of the decedent's death. This requires that the possibility of the principal being diverted to the life tenant be measurable with reasonable accuracy. Citing *Ithaca Trust Co. v. United States*, 279 U.S. 151 (1929), the court acknowledged that if the will sets a standard by which the rights of the life tenant can be fixed in definite terms of money, and it appears with reasonable certainty that no invasion of principal is necessary, then the value of the remainder is ascertainable.

However, the court found that even if the trustee's power to invade the principal was limited to providing $1,000 per year and covering reasonable medical and hospital expenses, the likelihood of that power being exercised was not so remote as to be negligible. The court noted that the facts showed actual invasion of the principal during the years examined, making it probable that such invasion would continue. The court considered several factors relevant to calculating the total amount of invasion, including the life expectancies of the beneficiaries, the annual income of the trusts, the potential medical and hospital expenses, and the independent means of the beneficiaries. Because the medical and hospital expenses were unknown and unknowable at the time of death, the court determined that the value of the remainder interests bequeathed to charity could not be reliably valued.

### Practical Implications

This case emphasizes the importance of clear and definite standards in trust documents when charitable deductions are intended. Drafters must be mindful of potential invasion of trust principal for non-charitable beneficiaries. If the power to invade is too broad or the standards for invasion are vague, a charitable deduction may be disallowed. The court looks to the likelihood of invasion at the time of death, not just the language of the will. Actual invasions of principal after the decedent's death are strong evidence that invasion was likely at the time of death. *Estate of Greene* continues to be cited for the principle that the valuation of a charitable bequest must be measured as of the date of the decedent's death and that uncertainty regarding potential invasion of principal can defeat a charitable deduction.

 