***Estate of □□□, 8 T.C. 622 (1947)***

A family allowance paid to a widow from the income of a testamentary trust during estate administration, as directed by the will, is not taxable income to the widow, even if the will specifies the allowance be paid from the trust's income.

**Summary**

The Tax Court addressed whether a family allowance paid to the petitioner (widow) from the income of a testamentary trust during the administration of her husband's estate was taxable to her as income. The will directed that the allowance be paid from the trust's income. The court held that because the allowance was paid as directed by the will, and family allowances are generally not taxable as income under California law, the amounts were not taxable to the petitioner. The court also held that the petitioner was not entitled to a depreciation deduction for buildings passing under the will during estate administration, as the relevant Internal Revenue Code provision applied to trusts, not estates.

**Facts**

The decedent's will established a testamentary trust for the benefit of his widow (petitioner). The will specified that during the administration of the estate, the executor should pay the income from the trust property to the petitioner. The will also directed that the family allowance be paid from the income of this trust. The executor followed these directions. The Commissioner argued that the family allowance should be considered income distributable to the petitioner and therefore taxable to her.

**Procedural History**

The Commissioner determined a deficiency in the petitioner's income tax for the years 1943, 1944, and 1945. The petitioner appealed to the Tax Court.

**Issue(s)**

1. Whether the executor, in determining the amount of trust income distributable to the petitioner, properly subtracted the amount of the family allowance paid to her from the income of the testamentary trust.
2. Whether, during the administration of the estate, the petitioner is entitled to deduct depreciation for buildings passing to her under the will.

**Holding**

1. No, because the executor was following a valid direction in the decedent's will to pay the family allowance from the trust income, and family allowances are not considered taxable income to the recipient under California law.
2. No, because the provision of the Internal Revenue Code allowing for

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depreciation deductions in the case of property held in trust does not extend to property held by an estate during administration.

**Court's Reasoning**

Regarding the family allowance, the court emphasized that under California Probate Code sections 680 and 750, a testator can designate which part of the estate should be used to pay the family allowance. Since the decedent specified that the income from the trust established for his widow should be used for this purpose, and this direction was valid, the executor acted correctly in subtracting the allowance from the income distributable to the petitioner. The court cited *Buck v. McLaughlin*, which held that family allowances are distinct from rights to the corpus or income of the estate and are not taxable as income under California law. The court stated, "The money paid by the estate to the widow as a family allowance is quite distinct from her rights, if any, in and to the corpus or income of the estate…Her right to the family allowance is purely statutory."

Regarding the depreciation deduction, the court noted that Section 23(l)(2) of the Internal Revenue Code allows depreciation deductions for property held in trust, with the deduction apportioned between income beneficiaries and the trustee. However, the court found no indication in the legislative history that the term "trust" was intended to include estates. The court stated, "It is not within the power of this Court to read the word 'estate' into this provision. That is a function of the Congress." Therefore, the petitioner was not entitled to the depreciation deduction until the trust assets were distributed to the trustee.

**Practical Implications**

This case clarifies that if a will explicitly directs the source of payment for a family allowance (e.g., from a specific trust's income), and that direction is permissible under state law, the payment retains its character as a non-taxable family allowance to the recipient. Attorneys drafting wills should be aware of the tax implications of directing the source of payment for family allowances. This decision also highlights the importance of strict interpretation of tax statutes; absent clear congressional intent, courts are hesitant to extend tax benefits (like depreciation deductions) beyond the explicitly defined entities (e.g., trusts but not estates). This case informs how similar cases involving estate administration, trust income, and family allowances are analyzed, particularly in jurisdictions with similar probate codes.

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