16 T.C. 807 (1951)

Executors who maintain control of corporate stock and receive dividends as executors, rather than as trustees, can be held liable as transferees for the corporation's unpaid income taxes.

Summary

The executors of Irving Smith's estate were deemed liable as transferees for the unpaid income taxes of two telegraph companies. The executors, also named as trustees in the will, argued they held the stock and received dividends as trustees, not executors, and therefore were not liable. The Tax Court held the executors liable because they consistently acted as executors, maintained stock registration in that capacity, and never clearly distinguished between their roles as executors and trustees. The court reasoned that the executors could not, after a long period, deny the reality of their actions as executors, upon which the Commissioner had relied.

Facts

Irving Smith's will designated The Stamford Trust Company and Irving Smith, Jr., as both executors and trustees of a $200,000 trust for his former wife. The trust was funded with assets from the estate, including stock in Southern and Atlantic Telegraph Company and Empire and Bay States Telegraph Company. These companies leased their telegraph systems to Western Union, which paid rental dividends directly to the stockholders. The executors received these dividends. The Commissioner later determined deficiencies in the income taxes of the telegraph companies for 1930, finding that the dividends paid to shareholders were taxable income to the companies. The companies failed to pay the taxes.

Procedural History

The Commissioner issued notices of transferee liability to the

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