20 T.C. 1094 (1953)

Dividends are not constructively received by a cash-basis taxpayer, and thus not taxable, in the year declared if, in accordance with company practice, they are paid by check mailed so that the shareholder will not receive them until the following year.

Summary

The case of *Fox v. Commissioner* concerns the timing of income recognition for a cash-basis taxpayer who received dividends from savings and loan associations. The IRS argued that the dividends were constructively received in 1949 because they were declared and payable in that year, even though the taxpayer received the dividend checks in 1950. The Tax Court held that the dividends were not constructively received in 1949 because, in accordance with company practice, the checks were mailed to the shareholder. The court emphasized that, under the facts, the taxpayer did not have unqualified access to the funds in 1949, as he would have had to travel to many different states and personally request payment on the last day of the year. The court thus decided that the dividends were properly reported in 1950 when received.

Facts

Maurice Fox, a cash-basis taxpayer, owned shares in 100 federally insured savings and loan associations located across various states. On December 31, 1949, these associations declared dividends, payable on or before December 31, 1949. The dividends were paid via mailed checks, received by Fox in 1950. The associations followed this practice as a convenience to shareholders, and not to prevent the shareholders from receiving the dividend checks before January 1, 1950. The IRS determined a deficiency, arguing that the dividends were constructively received in 1949, because they were available to the taxpayer if he had personally appeared and demanded them on December 31, 1949. The amount in controversy was $2,050.

Procedural History

The Commissioner determined a tax deficiency based on the contention that dividends received in 1950 were constructively received in 1949. Fox petitioned the United States Tax Court, disputing this determination. The Tax Court held in favor of the taxpayer, and ruled the dividends were taxable in 1950 when received.

Issue(s)

Whether dividends from federal savings and loan associations, declared and payable in 1949 but received by check in 1950 by a cash-basis taxpayer, were constructively received in 1949.

Holding

No, because the dividends were not constructively received in 1949. The dividends were income in 1950 when they were actually received. The Court found that the taxpayer, a cash-basis taxpayer, did not have unqualified access to the funds in 1949 because the dividends were paid by check mailed in accordance with company policy.

Court's Reasoning

The court analyzed Section 42 of the Internal Revenue Code, which provides that income is included in the gross income for the taxable year in which it is received by the taxpayer. The court cited the Treasury Regulations that address when dividends are subject to tax, stating that dividends are subject to tax when "unqualifiedly made subject to the demand of the shareholder." The court also stated that, if a dividend is declared payable on December 31 and the corporation intends to and does follow its practice of paying the dividends by checks mailed so that the shareholders would not receive them until January of the following year, such dividends are not considered to have been unqualifiedly made subject to the demand of the shareholders prior to January, when the checks were actually received. The Court distinguished the *Kunze* case, which involved a taxpayer requesting to have a dividend check mailed to him, which the court noted was not the case here. The court concluded that, based on the stipulated facts, the dividends were not constructively received in 1949.

The dissenting opinion argued that the dividends were unqualifiedly available to the taxpayer in 1949, as evidenced by the stipulation that the taxpayer could have obtained the funds by personally appearing and demanding them on December 31, 1949. The dissent argued that the majority's decision would lead to uncertainty in tax administration and that the dividend checks were mailed for the convenience of the taxpayer. Furthermore, the dissent argued that the savings and loan situation was analogous to the rules for building and loan associations, where credit of earnings to shareholders is taxable income in the year of credit. It was emphasized that the relevant inquiry was whether the dividends were unqualifiedly available in 1949, which, in the dissent's view, was the case.

Practical Implications

This case clarifies the application of the constructive receipt doctrine, especially when dividends are paid by check. It establishes that the mere declaration of dividends and their availability on the books of the paying entity does not automatically trigger constructive receipt. The court emphasized that dividends paid by check and received in the subsequent year are taxable in the year of receipt, particularly when this payment method is the standard practice of the business. This ruling affects cash-basis taxpayers, corporate dividend policies, and tax planning. It is particularly relevant to businesses using year-end dividend payments and should inform legal advice regarding income recognition. Future cases involving similar facts should be analyzed in light of *Fox*, distinguishing it from cases involving dividends available at the end of the year where there has been a request to mail the check. The *Fox* case has been cited in subsequent cases involving the timing of income recognition.

