***28 T.C. 1259 (1957)***

A charitable deduction is allowed for estate tax purposes when the possibility of invading the corpus of a trust for a private beneficiary is so remote as to be negligible, but not when the possibility of invading the income stream is not negligible.

**Summary**

The Estate of Oliver Lee sought a charitable deduction for bequests to two charities, where the testator's will allowed the trustees to invade the trust's income and principal for the testator's brother's "emergency, illness or necessity." The Tax Court had to determine whether the possibility of invasion rendered the charitable bequests unascertainable, thus disallowing the deduction under the Internal Revenue Code. The court differentiated between the income and corpus, holding that the possibility of invading the income was not negligible, but the possibility of invading the corpus was so remote as to be ignored. Therefore, a deduction was allowed for the remainder interests in the corpus, but not for the income interests.

**Facts**

Oliver Lee's will established a testamentary trust. The residue of his estate was to pay an annuity of $5,000 annually to his 78-year-old brother, David Lee, for life, with any excess income distributed to the Salvation Army and St. Luke's Hospital. Upon the brother's death, the remaining corpus was to be divided equally between the charities. Crucially, the trustees could invade the income or principal, "to take care of any emergency, illness or necessity" of the brother. At the time of the testator's death, David Lee had limited income, some liquid assets, and suffered from arthritis and a heart condition, but his expenses were more than his income.

**Procedural History**

The Commissioner of Internal Revenue disallowed the estate's claimed deduction for charitable bequests, arguing that the possibility of invading the corpus rendered the value of the charitable interests unascertainable. The estate challenged this decision in the United States Tax Court.

**Issue(s)**

1. Whether the provisions in the will providing for the trustees' power to invade corpus or income set forth a standard that limited the power of invasion.

2. Whether, assuming that the provisions do contain a limitation, the facts established that the possibility of invasion of the charitable bequests was so remote as to be negligible.

**Holding**

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1. Yes, because the will's language provided an objective standard for the power of invasion, allowing the trustees to invade the corpus for the brother's "emergency, illness or necessity."

2. Yes, in part, because the possibility of invading the income stream was not so remote as to be negligible, but the possibility of invading the corpus was so remote as to be negligible.

**Court's Reasoning**

The court followed the established precedent, holding that a charitable interest is deductible when the power of invasion is limited by a fixed standard. The court found that the language "emergency, illness or necessity" provided a sufficiently definite standard, unlike the standard of "happiness" or "pleasure" which could not be measured. The court distinguished this case from cases where no measurable standard was fixed. The court examined David Lee's circumstances, including his age, health, income, and expenses. The court determined that the possibility of invading the income stream was not so remote as to be negligible. However, the court concluded the possibility of invading the corpus of the trust was so remote as to be negligible, because the trust corpus was substantial and the needs would likely be met by the income stream. The Court cited *Berry v. Kuhl* for the principle that charitable interests are deductible in full where the invasion of corpus is limited by terms of the will with a fixed standard and the possibility of invasion is so remote as to be negligible.

**Practical Implications**

This case provides guidance on drafting estate planning documents when charitable deductions are intended. It emphasizes that the language used in the trust instrument regarding the power of invasion is critical. The inclusion of clear, objective standards for invasion is crucial for ensuring the deductibility of charitable bequests. Furthermore, the case underscores the importance of assessing the specific circumstances of the private beneficiary to determine the likelihood of invasion. Estate planners should carefully analyze a beneficiary's financial resources and health to determine how remote the possibility of invasion might be. The decision also highlights the distinction between the income and principal of the trust and the different standards applied to each. This case has been cited in numerous subsequent cases addressing the same issues of ascertainability in charitable trusts.

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