

result and if legislation is ambiguous its construction should avoid such a result. But the rationale of construction ought not to be based on the impact of a single bizarre instance.

A deduction for trust income applied to charitable purposes should not be disallowed merely because one taxpayer can effect the payment of a lower income tax than another through the mode by which the charitable contribution is made. Thus, where the trust instrument provides that all charitable donations shall be allocated from ordinary income and not from capital gains, the taxpayer may doubtless deduct such charitable contributions in full and may at the same time report any capital gains under the special capital gains provisions of the Code. This would secure the very benefits sought by the taxpayers here. The rule enunciated by the Court may therefore itself rest tax liability on the astuteness shown in drawing the trust instrument allocating income for charitable purposes.

Since I am not alone in entertaining these doubts and they have not been dispelled, it seems appropriate to express them.

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EDITORIAL NOTE.

The next page is purposely numbered 801. The numbers from 700 to 801 were purposely omitted, in order to make it possible to publish the *per curiam* decisions and orders in the current advance sheets or "preliminary prints" of the United States Reports with *permanent* page numbers, thus making the official citations available immediately.

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