• (1225)

Often family members will come to a lawyer because they believe a member of their family is a spend-thrift, incompetent or incapable. They want to set up some asset for the benefit of that person for the length of his or her life. That is very frequently the situation. The problem is that under the current statute the trust either has to be rolled over or terminated in 21 years. Frequently that creates a real problem because it causes the forced sale of an asset in order to get the money to pay the capital gain, if any. If it cannot be rolled over it is a real problem. If it can be rolled over then there is still a great legal problem. Therefore we have said the trust can be carried on until the particular beneficiary of the trust passes away. Then it has to be wound up as far as the capital gains tax is concerned.

Now remember, we are only talking about the capital gains tax and the gain made on the asset. Capital gains tax is paid on all the assets of the settlor that go into a trust, whether it is an estate or an *inter vivos* trust.

Suppose there was no trust. Suppose that instead of putting the assets for a crippled daughter, for example, in trust she was just given title to the assets. She would receive title and the capital gain would have been paid by the estate. She would not have to pay capital gains tax on that asset again until she either sold the asset or died and there was deemed realization.

Why should the matter be any different with the imposition of a trust? There is really no difference at all. We make a grant to a trust the same as a grant to an individual. In the case of an individual, the capital gains on the second sale, if there is a further gain, is paid either when the asset is sold or when there is a death and that creates what is called a deemed disposition. We say the same thing ought to apply on the trust. When the asset is sold by the trust or the beneficiary of the asset dies, the capital gain must be paid. We are trying to make the matter equal for everyone. There is no attempt to create any massive tax shelter for the rich, the poor or anybody else. We are trying to clean up the question of the deemed realization of capital gains in a trust.

I would like to say that trusts are very common. They are not deemed and dreamed up to bury money for tax purposes. This government, through a whole series of loophole-closing devices has stopped virtually every conceivable use of trusts or powers of attorney or splitting of assets or cheap loans and deductions and so on with one change in the Income Tax Act after another. There is no use in a trust to save tax. When assets earn a profit in a trust they pay income tax exactly the same way an individual pays income tax on the profits every year those assets earn income. A trust pays income tax and files personal income tax returns the same as an individual files personal income tax returns.

• (1230)

If money is paid out of a trust then the beneficiary of the trust has to pay the income tax. The trust can deduct the money it pays out and the beneficiary pays the tax. If the money stays in the trust then the trust pays the tax. On cumulative trusts that is exactly what happens. The trust pays the tax on the income from the asset and the cumulative income from cumulated savings the same as you do. There is no magic in these systems.

Trusts are set up to control the ownership of assets to prevent them from being disposed improperly, to prevent the beneficiaries from having the control of the asset and to make sure the beneficiaries have the income from the asset. They are set up as control mechanisms in estate planning by people who want to transfer assets to people and retain the control of those assets. They are not designed for any other purpose.

There is no rationale to say they are somehow tax saving schemes. They are not tax saving schemes. They are planning schemes. They are designed for families who have people within the family who the testator or the settlor believes cannot handle his or her own affairs. It is in the best interest of the family that the asset we are talking about be held in trust. When it is held in trust it is protected in trust so the beneficiary cannot dispose of it, sell it, mortgage it or do a lot of other things beneficiaries might want to do, particularly beneficiaries who have great capacity to spend money but not earn or save it.