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TAXATION - GIFT TAX - EACH BENEFICIARY OF TRUST AS DONEE FOR PURPOSE OF EXEMPTION PROVISION

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TAXATION — GIFT TAX — EACH BENEFICIARY OF TRUST AS DONEE FOR PURPOSE OF EXEMPTION PROVISION — In 1935, the donor created a trust for the benefit of seven children. The donor in her gift tax return, pursuant to section 504b of the Gift Tax Act,¹ excluded from the taxable amount \$5,000 for each child. The commissioner's action in treating the trustee as the donee and in allowing a single deduction of \$5,000 was sustained by the Board of Tax Appeals. The circuit court of appeals reversed.² *Held*, that the taxpayer was entitled to seven deductions, one for each beneficiary under the trust. *Helvering v. Hutchings*, (U. S. 1941) 61 S. Ct. 653.

The Supreme Court, in holding that for the purpose of ascertaining the gift tax deductions each beneficiary, rather than the trust itself, is the person to whom the gift is made, sustained the practically unanimous view of the lower federal courts.³ The opposite view, until recently tenaciously adhered to by the Board of Tax Appeals,⁴ was based on the statutory definition of "person," which

¹ Revenue Act of 1932, 47 Stat. L. 169 at 247, § 504(b) (1932), 26 U. S. C. (1934), § 553 (b): "In the case of gifts (other than of future interests in property) made to any person by the donor during the calendar year, the first \$5,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year."

² *Hutchings v. Commissioner*, (C. C. A. 5th, 1940) 111 F. (2d) 229.

³ *Pelzer v. United States*, (Ct. Cl. 1940) 31 F. Supp. 770; *Welch v. Davidson*, (C. C. A. 1st, 1939) 102 F. (2d) 100, affirming *Davidson v. Welch*, (D. C. Mass. 1938) 22 F. Supp. 726; *Rheinstrom v. Commissioner*, (C. C. A. 8th, 1939) 105 F. (2d) 642; *Robertson v. Nee*, (C. C. A. 8th, 1939) 105 F. (2d) 651; *McBrier v. Commissioner*, (C. C. A. 3d, 1939) 108 F. (2d) 967. *Contra*, *United States v. Ryerson*, (C. C. A. 7th, 1940) 114 F. (2d) 150.

⁴ *Hutchings v. Commissioner*, 40 B. T. A. 27 (1939); *Knox v. Commissioner*, 36 B. T. A. 630 (1937); *Rheinstrom v. Commissioner*, 37 B. T. A. 308 (1938);

encompassed a "trust or estate," and upon remarks of the Circuit Court of Appeals for the Seventh Circuit in *Commissioner v. Wells*,⁵ a case involving the question whether the transfer was a gift of a "future interest in property." As pointed out by Justice Stone, since the statutory definition of "person" applies broadly to the entire revenue act, whether it means "trust" or "individual" will depend on the context and purpose of the particular provision of the statute.⁶ The crux of the matter is Congressional intent. If the gift tax emphasis is on the transfer of economic benefits rather than passage of legal title, then the result of the principal case is easily justifiable.⁷ Aside from questions of statutory construction and Congressional intent, the chief argument for the view sustained by the Supreme Court has been prevention of tax avoidance. A contrary result would enable a donor to create many trusts for the same beneficiary, and thereby become entitled to an exemption for each trust.⁸ Though meritorious at one time, this argument has little foundation at present, since Congress in 1938, impelled by the possibility of such contrivances,⁹ amended the exemption clause to exclude all gifts in trust, as well as gifts of future interests previously excluded.¹⁰ The decision in the principal case will affect only those trusts created prior to the effective date of that amendment. Even then, many gifts in trust will fall within the provision denying benefit of exemptions to gifts of "future interests" in property.¹¹ In two cases companion to the principal case, the Court indicated that it will take a very broad view as to what constitutes a gift of a "future interest." Thus gifts of accumulated income or gifts contingent on survivorship of the grantor are gifts of future interests.¹² The Court in the principal case refused to express any opinion as to situations where the beneficiaries are presently unknown or unascertainable or where impersonal or charitable pur-

Cox v. Commissioner, 38 B. T. A. 865 (1938). However, in recent decisions the Board of Tax Appeals yielded to the decisions of the circuit courts of appeal and allowed deductions for each beneficiary. *Rubinstein v. Commissioner*, 41 B. T. A., No. 34 (1940).

⁵ *Commissioner v. Wells*, (C. C. A. 7th, 1937) 88 F. (2d) 339.

⁶ See the dissenting opinion by Disney in *Cox v. Commissioner*, 38 B. T. A. 865 at 868 (1938).

⁷ Although the legal title passes to the trustee, still there is no taxable gift where the settlor reserves some benefit or the power of disposition. *Estate of Sanford v. Commissioner*, 308 U. S. 39, 60 S. Ct. 51 (1939). In *Burnet v. Guggenheim*, 288 U. S. 280 at 286, 287, 53 S. Ct. 369 (1933), the Court said: "The statute is not aimed at every transfer of the legal title without consideration. . . . It is aimed at transfers of the title that have the quality of a gift. . . ." And again: "Congress was aware that what was of the essence of a transfer had come to be identified more nearly with a change of economic benefits than with technicalities of title."

⁸ HARRISS, GIFT TAXATION IN THE UNITED STATES 71 (1940). *Cox v. Commissioner*, 38 B. T. A. 865 at 869 (1938) (dissenting opinion by Disney). S. REP. 1567, 75th Cong., 3d sess. (1938), p. 41.

⁹ S. REP. 1567, 75th Cong., 3d sess. (1938), p. 41.

¹⁰ Revenue Act of 1938, 52 Stat. L. 447 at 565, § 505 (1938), 26 U. S. C. (Supp. 1939), § 1003(b)(2).

¹¹ See *supra*, note 1.

¹² *Ryerson v. United States*, (U. S. 1941) 61 S. Ct. 656; *United States v. Pelzer*, (U. S. 1941) 61 S. Ct. 659.

poses are to be benefited. It has been suggested that in such circumstances the transfer should be deemed a single gift to the trust, because the donor is motivated by a "general idea or ideal" rather than by "personal affection" for designated individuals.¹³ However, where the ascertainment of the beneficiaries is dependent on the happening of an uncertain future event, no difficulty arises, for in such case there is a gift of a "future interest."¹⁴

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¹³ See the concurring opinion by Judge Sibley in *Hutchings v. Commissioner*, (C. C. A. 5th, 1940) 111 F. (2d) 229 at 231 (the principal case in the circuit court of appeals).

¹⁴ *Ryerson v. United States*, (U. S. 1941) 61 S. Ct. 656. "The exclusion is denied to gifts of future interests because of the difficulty of determining the identity and the number of the beneficiaries when the gift is to take effect only in the future." HARRISS, *GIFT TAXATION IN THE UNITED STATES* 70 (1940).