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TRANSACTIONS

SUBJECT TO GIFT TAX

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The gift tax is imposed on the "transfer of property by gift." INTERNAL REVENUE CODE OF 1954 (hereafter "Code") §2501. The term gift is not expressly defined either in the Code or in the Treasury Regulations. However, section 2512(b), dealing with the valuation of gifts, states that "where property is transferred for less than an adequate and full consideration in money or money's worth," the difference between the value of the property transferred and the consideration received constitutes a gift.

Thus, for gift tax purposes, the determination of whether a gift was made does not turn so much on the intent of the transferor as it does on the mechanics of the transfer—whether property was transferred without full and adequate consideration in money and money's worth. Treas. Reg. §25.2511-1(g) (1). The absence of donative intent still can be a significant factor.

The gift tax applies only to transfers by individuals, but a transfer of property by an entity such as a corporation may be attributed to

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individuals, e.g., the corporation's shareholders. See Treas. Reg. §25-2511-1(h)(1).

TRANSFER OF PROPERTY

Only the transfer of property is subject to the gift tax. No gift tax is imposed on account of the contribution of personal services. *Cf.* Rev. Rul. 56-472, 1956-2 CUM. BULL. 21.

Virtually every kind of property, tangible or intangible, including state and municipal securities that are immune from federal income taxes, is subject to the gift tax. Treas. Reg. §25.2511-1(a). For example, transfers of royalty rights, life insurance, partnership interests, and checks or notes of third parties are subject to the gift tax.

The gift tax applies to transfers of property without full and adequate consideration in money or money's worth regardless of the manner in which made. Among others, the tax applies to indirect transfers, to transfers in trust, and to gifts of future interests.

Illustration a:

F transferred \$100,000 to his son, *S*, upon *S*'s promise to pay *X*, his sister, a comparable annuity. *F* has made an indirect gift of the annuity to *X*. If, however, *F* made the gift to *S* with no obligation, and if *S*, on his own initiative, made a comparable gift to *X*, there are two gifts: *F*'s gift to *S* and *S*'s gift to *X*,

both of which are taxable events.

Illustration b:

If an heir or beneficiary of an estate refuses to accept his interest in an estate, he has made a taxable gift if under the local law he could not prevent the passage of title to himself by renouncing. Treas. Reg. §25.2511-1(c); *William L. Maxwell*, 17 T.C. 1589 (1952). See also *Krakoff v. United States*, 439 F.2d 1023 (6th Cir. 1971), where a widow's attempted renunciation of her survivorship interest in bank accounts and corporate stocks she held jointly with her deceased husband was deemed to be ineffective under state law and therefore her relinquishment of her property rights constituted a taxable gift. Even where a beneficiary is permitted to renounce his interest in an estate, he must do so within a reasonable time after learning of the transfer to avoid a gift tax. Treas. Reg. §25.2511-1(c).

It should be noted that a sizable number of states, by statute, permit an heir to renounce his interest in an estate so that the renunciation relates back and constitutes a non-acceptance, but many states do not. Section 2-801 of the Uniform Probate Code, which, at this writing, has been adopted by 10 states, provides for renunciation by heirs, and the American Bar Association has published a model disclaimer act in 4 REAL PROP., PROB. & TRUST J. 658 (1969).

Illustration c:

G died testate in 1944 and bequeathed his estate to a testamentary trust in which his widow, *W*, had a life income interest. On *W*'s death, the trust corpus was to be divided equally between *G*'s two sons, *R* and *S*, if they survive *W*. If either son failed to survive *W*, his share of the trust corpus was to be distributed to his issue. *W* died in March 1963, and in May 1963, *R* filed a disclaimer of his half interest in the trust, which disclaimer became effective in September 1963. Accordingly, *R*'s half interest in the trust became the property of *R*'s issue. The question was whether *R*'s renunciation constituted a gift for gift tax purposes.

In *Keinarth v. Commissioner*, 480 F.2d 57 (8th Cir. 1973), *rev'g* 58 T.C. 352 (1972), the Court held that, in determining whether a renunciation of a remainder interest was made within a reasonable time, the period is to be measured from the earliest date that the remainderman's interest is not subject to divestiture. *R*'s renunciation was not a gift for gift tax purposes, since it was made within six months after the death of the life income beneficiary (*W*), which is the date on which *R*'s interest became indefeasible. The renunciation of the remainder interest was timely, even though it was made 19 years after the interest was created in *G*'s will.

Since *R*'s interest was subject to divestiture if he failed to survive *W*, the period is measured from *W*'s death. The Commissioner and the Tax Court had determined that the period should be measured from the date of *G*'s death and, therefore, the renunciation was a taxable gift.

Illustration d:

A fiduciary who waives his right to statutory commissions after performing services may be deemed to have made a gift to the beneficiaries involved. Rev. Rul. 64-225, 1964-2 CUM. BULL. 15. However, there is no gift where the fiduciary waives his right to commissions either before commencing his services (Rev. Rul. 56-472, 1956-2 CUM. BULL. 21), or within a reasonable time after commencing to serve where all the executor's actions are consistent with a gratuitous performance of services. Rev. Rul. 66-167, 1966-1 CUM. BULL. 20. Also, a testamentary trustee's waiver of his right to an increase in commissions under a state law raising the statutory fees did not constitute a gift where the waiver was made shortly after the increase in fees had been adopted by the state legislature. Rev. Rul. 70-237, 1970-1 CUM. BULL. 13.

Generally the gift tax applies only to transfers of property, and therefore the performance of services without compensation does not constitute a gift. However, once

personal services have been converted into a property right for compensation, it is arguable that the forgiveness of the debt will constitute a gift. A reasonable argument can also be made that the forgiveness in this case is merely an adjustment of the price to be paid for the services and should not constitute a gift, even if the price adjustment is made after the services have been performed. The Commissioner's position has not yet been tested in litigation.

Illustration e:

Forgiving a debt may constitute a gift. *Selsor R. Haygood*, 42 T.C. 936 (1964), *acquiesced in result*, 1965-1 CUM. BULL. 4. *F* lent his son, *X*, \$12,000. Subsequently *F* forgave *X* the debt at a time when *X* was not financially sound and could have paid *F* only 50 cents on the dollar. Assuming that the cancellation of the debt was donatively motivated, *F* made a gift to *X* of the fair market value of *X*'s obligation, which might be valued as low as \$6,000.

Illustration f:

W owned a life insurance policy on the life of her husband, *H*, and she designated *X* as beneficiary of the policy. *W* retained the power to change the beneficiary of the policy. Upon *H*'s death, the owner of the policy, *W*, is deemed to have made a gift to *X*, the beneficiary, of the

proceeds of the policy. *Goodman v. Commissioner*, 156 F.2d 218 (2d Cir. 1946). Indeed, in such cases, the Commissioner has ruled that since the gift to *X* is not complete until after *H* died, the split gift provisions of section 2513 are not applicable. Rev. Rul. 73-207, 1973-1 CUM. BULL. 409.

If, however, *W* had irrevocably designated *X* as the beneficiary and had retained no other beneficial interest in the policy, like the power to surrender the policy or to borrow against the cash value, the designation of beneficiary would constitute a completed gift of the policy at the time of designation.

Illustration g:

A transferred property to *T* in trust to pay the income to himself for life, remainder to *X*. The remainder interest, determined by deducting the value of *A*'s income rights, is a completed gift subject to the gift tax. The value of *A*'s income rights at the date of transfer is determined under tables set forth in Treas. Reg. §25.2512-9(f).

In *Johnson v. United States*, 254 F. Supp. 73 (N.D. Tex. 1966), the District Court held that large bona fide loans to children or children-in-law, which were repayable without interest, did not constitute a gift for gift tax purposes. The Commissioner has ruled that an interest free loan is a gift to the

borrower of the value of the use of the money, and the Commissioner will not follow the *Johnson* decision. Rev. Rul. 73-61, 1973-1 CUM. BULL. 408. See *Gertrude H. Blackburn*, 20 T.C. 204 (1953).

Under the Commissioner's view, if an interest-free loan is made for a term of years, with the note maturing at a specified date, the gift is made on the same date that the loan is given, and the amount of the gift is the value of the right to use the borrowed cash for the period of the loan. However, if the loan is made for a noninterest bearing demand note, a gift is made in each calendar quarter that the debt is outstanding of the value of the use of the money for that quarter.

TRANSFERS FOR BUSINESS PURPOSES

A transfer for inadequate consideration is not necessarily taxed as a gift. In particular, those transfers made in the ordinary course of business are not deemed gifts, despite the lack of full and adequate consideration. Treas. Reg. §25.2512-8. The regulations define a business transaction as one that is "bona fide, at arm's length, and free from any donative intent."

Accordingly, the gift tax is not imposed on the sale of property for less than its market value where the seller makes an error in business judgment. *Carl E. Weller*, 38 T.C. 790 (1962), *acquiesced in*,

1968-2 CUM. BULL. 3. Also, where a bargain sale to an employee is motivated by business judgment, the transfer is not subject to the gift tax. *Estate of Monroe D. Anderson*, 8 T.C. 706 (1947).

Where a transfer of property is made for profit motives or for the purpose of making a bona fide economic settlement of a claim against the transferor, the gift tax is not usually applicable. See *Catherine S. Beveridge*, 10 T.C. 915 (1948), *acquiesced in*, 1949-1 CUM. BULL. 1; *Gertrude Friedman*, 40 T.C. 714 (1963), *acquiesced in*, 1964-1 CUM. BULL. 4.

Political Contributions

The Commissioner has ruled that contributions to political organizations and political action groups are subject to the gift tax, even though the donor may hope to profit therefrom. Rev. Rul. 59-57, 1959-1 CUM. BULL. 626. His view was undercut by the decision in *Stern v. United States*, 436 F.2d 1327 (5th Cir. 1971), where the taxpayer had given large contributions to secure the election of a "reform slate" that was dedicated to curing the economic ills of the State of Louisiana. The Court held that the contributions were not gifts because of the business transaction exception. Since it was conceded that the contributions were made bona fide, at arm's length, and without donative intent, the satis-

faction of these three criteria removed the transfer from the gift category.

The ruling in *Stern* conforms with the purpose of the gift tax to complement the estate and income taxes by exacting a tax on the transfer of property to another. A political contribution is more like consumption than transfer, on which a gift tax should not be imposed. However, the Commissioner announced that he will not follow the *Stern* decision except in cases in the Fifth Circuit that are factually indistinguishable. TIR-1125 (1972), Rev. Rul. 72-583, 1972-2 CUM. BULL. 534, and Rev. Rul. 72-355, 1972-2 CUM. BULL. 532.

The Commissioner did rule that contributions made by a donor to a number of political organizations will be treated as a gift to separate donees, each of which can qualify for the \$3,000 annual exclusion, except that organizations which have essentially the same officers and supported candidates and no substantial independent purpose will be treated as one donee, and gifts to them will be aggregated. Rev. Rul. 72-355, 1972-2 CUM. BULL. 532. See Rev. Rul. 74-199 for a statement of the evidentiary requirements that must be satisfied to qualify a gift to a political organization for an annual exclusion.

Believing that the Commissioner's ruling was too generous to political donors, and that gifts to

political organizations which support the same candidate should be aggregated, one consumer-type group brought an injunctive suit against the Commissioner to prevent him from applying his ruling, and the ruling was held invalid by the District Court for the District of Columbia. *Tax Analysts & Advocates v. Shultz*, 34 Am. Fed. Tax R.2d 74-5289 (D.C. 1974). It appears that the Government will appeal this decision, presumably both on the merits and on the question of jurisdiction. Cf. *Bob Jones University v. Simon*, 33 Am. Fed. Tax R.2d 74-1279 (USSC 1974); *Alexander v. "Americans United," Inc.*, 33 Am. Fed. Tax R.2d 74-1289 (USSC 1974).

It is noteworthy that Congress is currently considering a statutory proposal that would exempt gifts to political organizations from the gift tax.

INVOLUNTARY TRANSFERS

The gift tax applies only to voluntary transfers of property. Thus, a payment made under the compulsion of a tort judgment does not constitute a gift. Cf. *Harris v. Commissioner*, 340 U.S. 106 (1950). The payment of an award might also meet the criteria of the regulations defining business transactions. Treas. Reg. §25.2512-8.

TRANSFERS FOR CONSIDERATION

A transfer of property is not re-

moved from the reach of the gift tax merely because it was made for consideration. To be exempt from tax, the consideration received must equal in value the property transferred and must be received "in money or money's worth." Moral consideration, past consideration, or consideration in the form of a detriment to the transferee that does not benefit the transferor will not bar the imposition of the tax.

Illustration a:

Since the remarriage of *X*, a widow, to *A* would result in her forfeiting a \$100,000 interest in a trust established by her first husband, *A* gave her \$100,000 upon her promise to marry him. There is a gift from *A* to *X*. *X*'s promise to marry *A* is not sufficient consideration because it cannot be valued in money or money's worth. Although *X*'s loss of interest in the trust is a detriment to her, it does not constitute a benefit to *A*. Thus, there is a gift tax on *A*'s transfer. *Commissioner v. Wemyss*, 324 U.S. 303 (1945).

Relinquishment of Marital Rights

Under the estate tax statutes, the relinquishment of marital rights, including dower, curtesy, and statutory estates in lieu thereof, does not constitute consideration in money or money's worth. Code, §2043(b). The Supreme Court has applied this estate tax provision to the gift tax on the ground that the two

taxes are in *pari materia*. *Merrill v. Fahs*, 324 U.S. 308 (1945). Accordingly, a husband's transfer of property in exchange for his wife's relinquishment of her marital rights constitutes a taxable gift to the wife.

However, under section 2516, a transfer of property from one spouse to the other pursuant to a written agreement relative to their marital and property rights shall be deemed to have been made for "full and adequate consideration in money or money's worth," provided that the spouses are divorced within two years after the execution of the agreement.

Although every effort should be made to comply with section 2516 where applicable, if, for some reason, the terms of the statute are not satisfied—if, e.g., the divorce occurs more than two years after the agreement—the transferor may contend that a transfer in anticipation of a divorce is not voluntarily made and therefore is exempt from the tax. The Supreme Court's decision in *Harris v. Commissioner*, 340 U.S. 106 (1950), provides substantial support for that contention. See *Rosenthal v. Commissioner*, 205 F.2d 505 (2d Cir. 1953). But it is unlikely that the Service will accept that contention without litigating the issue.

Relinquishment of Support

It now appears settled that a

wife's relinquishment of her right to support constitutes consideration in "money or money's worth." The Service has ruled that support rights are money's worth, Rev. Rul. 68-379, 1968-2 CUM. BULL. 414, superseding E.T. 19, 1946-2 CUM. BULL. 166, though there are two court decisions involving estate taxes to the contrary. *Meyer's Estate v. Commissioner*, 110 F.2d 367 (2d Cir. 1940); *Estate of Robert Manning McKeon*, 25 T.C. 697, 706-707 (1956), *acquiesced in*, 1958-2 CUM. BULL. 6. The administrative position of the Service, as evidenced by its rulings, and the more recent court decisions clearly establish that the wife's support rights qualify as money's worth consideration. See *H.B. Hundley*, 52 T.C. 495 (1969), *aff'd*, 435 F.2d 1311 (4th Cir. 1971); *Estate of Hubert Keller*, 44 T.C. 851 (1965); *Estate of Morrison T. O'Nan*, 47 T.C. 648 (1967), *acquiesced in*, 1967-2 CUM. BULL. 3.

A transfer in satisfaction of the duty to support the minor children of the transferor is made for money's worth. *Estate of Robert Manning McKeon*, 25 T.C. 697 (1956), *acquiesced in*, 1958-2 CUM. BULL. 6.

Support payments to indigent adult children that are required to be made by state law were held to be gifts in *Commissioner v. Greene*, 119 F.2d 383 (9th Cir. 1941), *cert. denied*, 314 U.S. 641 (1941). However, *Greene* was decided by a di-

vided court and the result is difficult to rationalize.

INCOMPLETE TRANSFERS

A transfer of property is not subject to the gift tax unless it is complete and irrevocable. A transfer that may be revoked by the donor alone or in conjunction with any party who does not have a substantial adverse interest in the revocation is not a completed gift for tax purposes. *Burnet v. Guggenheim*, 288 U.S. 280 (1933). Similarly, where the donor has retained the power, either alone or in conjunction with others who do not have a substantial adverse interest, to change the beneficiaries of the gift, the transfer is not complete for gift tax purposes. *Sanford's Estate v. Commissioner*, 308 U.S. 39 (1939). If the donor's power to change beneficiaries is limited to the beneficiaries of either the income or the remainder interest in the transferred property, then the gift is incomplete as to that interest only. Thus, if the donor retained the power to change the income beneficiary of a trust from *A* to *B*, but he did not retain a power to change the remainderman, the gift of the income interest is incomplete, but the gift to the remainderman is complete.

Illustration a:

A transferred property to *T* in trust for *A* for life, remainder to

B. This is a completed gift of the remainder interest, because the donor has relinquished all control over that interest. However, if *A* had retained the power to revoke the whole trust, there is no gift. If *A* can revoke only with the consent of *T*, who does not have a substantial adverse interest, there is no completed gift. If *A* can revoke only with *B*'s consent, then the gift is complete.

The mere delivery without consideration of a personal check or note of the transferor does not constitute a completed gift, because no enforceable obligation is incurred. The Service has stated that the transfer of a personal check becomes complete and therefore taxable when it is paid, certified, or accepted by the drawee, or is negotiated for value to a third person. Similarly, payment or transfer for value is necessary to complete a gift of a negotiable note. Rev. Rul. 67-396, 1967-2 CUM. BULL. 351. Though there exists a conflict among the court decisions which have passed on these transfers—compare *John D. Archbold*, 42 B.T.A. 453 (1940), with *Commissioner v. Copley's Estate*, 194 F.2d 364 (7th Cir. 1952), *aff'g* 15 T.C. 17 (1950)—the more recent decisions support the Service. *E.g.*, *Eleanor A. Bradford*, 34 T.C. 1059, 1065 (1960). See Rev. Rul. 69-347, 1969-1 CUM. BULL. 227.

A gift *causa mortis* is incomplete during the life of the donor. If a transfer is made in anticipation of death from a specific illness and contingent on such death occurring, and if the transferor recovers from his illness and the transferee accordingly returns the funds, neither the original transfer nor the return of the funds to the transferor is subject to the gift tax. Rev. Rul. 74-365, 1074 INT. REV. BULL. No. 28.

Completed Transfers

Where the donor's power to alter or revoke the transfer can be exercised only with the consent of a party with a substantially adverse interest, the transfer is complete for gift tax purposes. *Commissioner v. Prouty*, 115 F.2d 331 (1st Cir. 1940).

Illustration b:

A transferred property to *T* in trust for *C* for life, remainder to *D*, and *A* reserved the power to alter or amend the trust as he sees fit. The transfer is not complete and there is no taxable gift. If, however, *A* later amends the trust so that he can exercise the power of further amendment only with the consent of *C*, there will then be a complete transfer and a taxable gift on *C*'s life estate, but not as to *D*'s remainder interest. The gift of *C*'s life estate is effected on the date that the amendment was made. *C* does not have an adverse interest as to *A*'s alteration of the remainder

interest in the trust; hence the requirement that *C* consent to such alterations does not render complete the transfer of the remainder interest in the trust.

Where the donor's reserved power to alter a transfer can affect only the time when the transferred property will be received by the beneficiaries, there is a completed gift at the date of the transfer. Treas. Reg. §25.2511-2(d).

Illustration c:

A transferred property to *T* in trust to pay the income annually to *B* for 20 years, and at the end of that period, to distribute the corpus to *B* or *B's* estate. *A* retained the power to direct *T* to accumulate the income in any year and to distribute it together with the corpus after the expiration of the 20-year period. *B's* interest in the trust is vested, and only the timing of enjoyment is subject to change. Therefore, *A* has made a completed gift that is subject to the gift tax.

Of course, when the grantor has a power to revoke subject to the approval of an adverse party, or when he has the power to affect the timing of enjoyment of the transfer, the property is includable in the gross estate of the donor at his death under section 2038, even though the transfer is treated as a completed gift.

Where a donor retains a power such as the power to revoke, preventing a transfer from constituting a completed gift, the subsequent relinquishment of that power by the grantor creates a gift at the date of relinquishment. Treas. Reg. §25.2511-2(f). Similarly, when income from an incomplete transfer is paid to a beneficiary and thus placed beyond the control of the donor, there is a completed gift of the income at the date of payment.

Illustration d:

A declared himself trustee of certain properties owned by him. Under the declaration of trust, the trustee is to distribute the income quarterly between *B* and *C* in such proportions as the trustee shall determine in his discretion. Upon the death of the survivor of *B* and *C*, the trust corpus is to be distributed to *X* or his estate. The trust is irrevocable. Since *A* retained the power as trustee to change the proportionate interests of *B* and *C*, the gift of the income interests was incomplete, and consequently *A* incurred no gift tax liability. However, the gift of the remainder interest to *X* was complete. Subsequently, *A* resigned, and *T* was appointed as trustee in *A's* place. Since *A's* power over the income interest was terminated by his resignation, the gift of the income interest became complete at that date. Prior to the resignation of *A*, any current in-

come of the trust that was actually distributed by the trustee to either *B* or *C* was placed beyond *A*'s power of control, and consequently there was a completed gift of the distributed income on the date of distribution from the trust.

Joint Accounts and Savings Bonds

One of the most commonly recurring examples of an incomplete transfer is the creation of a joint bank account. Since the grantor alone may withdraw any or all of the funds from the joint account, he has retained a power of revocation and there is no completed gift. However, when the donee actually withdraws funds from the account and thereby removes those funds from the control of the grantor, there is a gift of the funds in question at the date of withdrawal. Treas. Reg. §25.2511-1(h)(4). Of course, if local law required the donee to return the withdrawn funds upon the donor's demand, the gift would not be complete on withdrawal; but if the donor fails to demand return of the funds, at some subsequent date the donor's inaction may be deemed his acquiescence in the withdrawal, which will then be a completed gift.

Similarly, if *A* purchases a United States savings bond registered as payable to "*A* or *B*," there is no gift to *B* unless and until *B* surrenders the bond for cash. Treas. Reg. §25.2511-1(h)(4).

Also, the creation of and contribution to a joint brokerage account registered in the name of a nominee of the brokerage firm does not constitute a gift unless and until the joint owner draws on the account for his benefit. Rev. Rul. 69-148, 1969-1 CUM. BULL. 226.

TRANSFERS WITH RETAINED INTERESTS

Transfers of property in which the donor retains a reversionary interest are subject to the gift tax. *Smith v. Shaughnessy*, 318 U.S. 176 (1943).

Illustration a:

F transferred property to *T* in trust for *X* for life, remainder to *X*'s children who are living at *X*'s death. There is a valid gift of the remainder, even though *X* might not have children at the time of the transfer, and even if *X* has children living at that time, they might not survive *X*, thus creating the possibility that the property may revert to *F* on *X*'s death.

In this event, the value of the donor's reversionary interest must be deducted from the property transferred in order to determine the value of the gift. The donor has the burden of proving the value of his retained interest, and if his interest is so speculative as to have no ascertainable value under recognized actuarial methods, the

amount of the gift is treated as equal to the entire value of the property transferred. *Robinette v. Helvering*, 318 U.S. 184 (1943). Treas. Reg. §25.2511-1(e). Similarly, if the donor retains a life estate in the transferred property, the gift tax will be imposed on the value of the remainder. *Robinette v. Helvering*, 318 U.S. 184 (1943).

Of course, the retention of a life estate will cause the inclusion of the transferred property in the gross estate of the donor upon his death, notwithstanding the fact that the transfer was previously taxed under the gift tax laws. Code, §2036.

Where the donor has transferred property in trust and where a non-adverse third party, such as an independent trustee, has the discretionary power to make distributions of principal or income to the donor, the gift tax consequences will depend upon the extent of the third party's discretion. If the discretionary power of the third party to make distributions to the grantor is limited by an external standard, then the donor's contingent interest must be valued as of the date of transfer. The amount of the completed gift is deemed to be the value of the property transferred in trust less the value of the donor's contingent interest. Rev. Rul. 54-538, 1954-2 CUM. BULL. 316.

Where the external standards are so encompassing that there is no

limit on the amount of trust corpus that might be distributed to the donor, the gift will be treated as incomplete. See *Estate of Leon Holtz*, 38 T.C. 37 (1962), *acquiesced in*, 1962-2 CUM. BULL. 4; *Commissioner v. Vander Weele*, 254 F.2d 895 (6th Cir. 1958), *aff'g* 27 T.C. 340, *acquiesced in*, 1962-2 CUM. BULL. 5. See also Rev. Rul. 62-13, 1962-1 CUM. BULL. 181.

The Service has ruled that where a third party is given very broad discretion to make distributions of principal to the donor, including transfers where the third party's power to invade is not limited by external standards, so that there is no assurance at the time of transfer that anything of value will pass to a beneficiary of the trust, the gift is not complete for gift tax purposes. Rev. Rul. 62-13, 1962-1 CUM. BULL. 181. *But see Herzog v. Commissioner*, 116 F.2d 591 (2d Cir. 1941).

VOID AND VOIDABLE TRANSFERS

If the transferor of property is incompetent, his attempted transfer is void and no gift tax is imposed. However, a gift tax will be imposed upon a gift made by an incompetent's lawfully appointed guardian who was authorized to make the gift on behalf of the incompetent. Rev. Rul. 67-280, 1967-2 CUM. BULL. 349.

If the transferor of property is under a temporary disability such

as infancy, and if the transferor can affirm or rescind the transfer when the disability has been removed, there is no gift at the time of transfer, but a gift will be deemed to have been made when the transferor's disability is removed and he does not rescind the transfer within a reasonable time. *Commissioner v. Allen*, 108 F.2d 961 (3d Cir. 1939), *cert. denied*, 309 U.S. 680 (1940).

It is not clear whether a transfer that is voidable for reasons other than disability, as, for example, a transfer voidable under the Statute of Frauds, is subject to the gift tax when made.

NONRESIDENT ALIENS

From 1955 to 1966, a transfer of intangible property made by a nonresident who was not a citizen and who was not engaged in business in the United States was exempt from the gift tax. This provision has been amended to delete the nonbusiness requirement. Thus, for 1967 and all succeeding years, a nonresident who is not a citizen is exempt from the gift tax on transfers of intangible property. Code, §2501(a). This exemption from gift tax may not apply to gifts made by a donor within 10 years after having lost his Ameri-

can citizenship. Code, §2501(a)(3). However, the gift tax does apply to transfers by a nonresident non-citizen of real property and tangible personal property located in the United States. A resident is a person who was domiciled in the United States at the time of the gift. Treas. Reg. §25.2501-1(b).

SURVIVORSHIP ANNUITY BENEFITS

If an annuitant acquires an annuity for himself that contains a provision for a survivorship annuity or for a refund upon the death of the annuitant, a taxable gift from the annuitant to the beneficiary entitled to the survivorship or refund benefits is made on the date that the designation of such beneficiary becomes irrevocable. See Treas. Reg. §25.2512-6, Ex. (5); I.T. 3322, 1939-2 CUM. BULL. 177; Rev. Rul. 70-514, 1970-2 CUM. BULL. 198; Rev. Rul. 72-62, 1972-1 CUM. BULL. 312; *Wagner, Jr. v. United States*, 387 F.2d 966 (Ct. Cl. 1967). However, no gift tax is imposed where an irrevocable designation of the beneficiary is made by an employee entitled to an annuity under certain qualified deferred compensation plans, except to the extent that the value of the annuity is attributable to contributions of the employee. Code, §2517.

A man's rights often depend upon his estimating correctly what a jury will later decide.

OLIVER WENDELL HOLMES