1 T.C. 508 (1943)

A donor is taxable on dividends credited to shares of a building and loan association prior to the gift of the shares if the donee collects the dividends in the same taxable year.

Summary

Bertha May Holmes gifted shares in a building and loan association, including accumulated dividends, to her son and daughter just before the shares' maturity date. The donees collected the dividends in the same year. The Tax Court held that Holmes was taxable on the dividends credited to the shares before the gift. This decision hinges on the principle that a donor realizes income when they give away the right to receive income, and the donee collects it in the same taxable year, drawing on the precedent set by *Helvering v. Horst*.

Facts

Bertha May Holmes owned 100 installment shares in Pioneer Building & Loan Association. Before April 12, 1937, the association had credited $7,316 in dividends to these shares. On April 12, 1937, fifteen days before the shares' maturity date of April 27, 1937, Holmes gifted the shares and the accumulated dividends to her son and daughter. The son and daughter completed the subscription payments and received $25,025, including $7,402 in dividends, upon maturity. They reported their share of the dividends as income.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Holmes's income tax for 1937, attributing the $7,316 in dividends as income to her. Holmes's executor contested this determination in the Tax Court.

Issue(s)

Whether the gift of building and loan association shares, along with credited accumulated dividends, shortly before the maturity date, constitutes a realization of income by the donor when the donees collect the dividends in the same taxable year.

Holding

Yes, because the gift of the dividends, followed by the collection of such dividends by the donees in the same taxable year, is such a realization of the dividends as to make them taxable to the donor.

Court's Reasoning

The Tax Court relied heavily on *Helvering v. Horst*, stating that the gift of the

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dividends, coupled with the collection of those dividends by the donees in the same year, constituted a realization of income by the donor. The court reasoned that Holmes obtained the "fruition of the economic gain which has already accrued to him" by gifting the shares with the dividends. Although the shares themselves were also gifted, the court distinguished this case from situations where only the right to receive income is transferred, emphasizing that the key factor was the donees' collection of the income in the same taxable year as the gift. The court used the metaphor of a tree and its fruit: "all the fruit of the tree that had grown on the tree at the time of the gift and was plucked by the donee in the same year as the gift was as effectively gathered by the owner of the tree as if he had plucked the fruit himself."

Practical Implications

This case, along with *Helvering v. Horst*, clarifies that a taxpayer cannot avoid income tax by gifting accrued income rights if the income is realized by the donee in the same taxable year. It demonstrates that the assignment of income doctrine extends to situations involving gifts of property with accrued income. Attorneys should advise clients that gifting appreciated assets, or assets with accrued income, immediately before the income is realized will likely not shift the tax burden. This impacts estate planning and tax strategies, urging taxpayers to consider the timing of gifts relative to income realization events. This case highlights the importance of the "fruit and tree" metaphor in assignment of income cases.

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