## *Griswold v. Commissioner, 3 T.C. 909 (1944)*

When a settlor of an irrevocable trust retains no economic control over the trust corpus, even if they are a trustee, the entire value of the transferred property is subject to gift tax, not just the value of the life estate.

### Summary

John A. Griswold established an irrevocable trust, naming himself, his brother, and a bank as trustees. The trust income was payable to his mother for life, with discretionary power for the trustees to invade the corpus for her benefit. Upon her death, the remaining corpus would revert to Griswold if living, or to contingent beneficiaries. Griswold argued that only the life estate given to his mother was subject to gift tax, not the entire trust corpus, because he retained some control as a trustee. The Tax Court held that the entire value of the trust corpus was subject to gift tax because Griswold relinquished economic control, despite being a trustee, due to the discretionary power given to the trustees to distribute the corpus to his mother.

### Facts

Petitioner, John A. Griswold, Jr., created an irrevocable trust on April 30, 1941, and transferred property valued at $125,125 to it.

The trustees were Griswold himself, his brother John Wool Griswold, and the Fifth Avenue Bank of New York.

The trust terms stipulated that the net income was to be paid to Griswold’s mother, Helene Robson Griswold, for her life.

The trustees, with the consent of at least two, could distribute trust principal to Helene Robson Griswold at their discretion.

If the corporate trustee was the sole survivor, it could distribute up to $5,000 of the principal per request from Helene Robson Griswold.

Upon Helene Robson Griswold’s death, the remaining principal was to be paid to John A. Griswold, Jr., if living, otherwise to contingent beneficiaries.

Griswold, in his gift tax return, reported a gift only of the life estate to his mother, valuing it at $59,479.82.

### Procedural History

The Commissioner of Internal Revenue determined a deficiency, arguing the entire trust corpus of $125,125 was subject to gift tax.

 

Griswold petitioned the Tax Court, contesting the deficiency.

The Tax Court reviewed the case and issued its opinion.

**Issue(s)**

1. Whether the gift tax should be applied to the entire value of the trust corpus, or only to the value of the life estate granted to the petitioner's mother.

2. Whether the petitioner retained sufficient economic control over the trust corpus, by virtue of being a trustee, to prevent the entire transfer from being considered a completed gift for tax purposes.

**Holding**

1. No, the gift tax applies to the entire value of the trust corpus because the petitioner relinquished dominion and control over the entire property.

2. No, despite being a trustee, the petitioner did not retain sufficient economic control because the trust instrument allowed a majority of trustees, or solely the corporate trustee, to distribute the corpus to the life tenant, thereby placing control outside of the settlor's sole discretion.

**Court's Reasoning**

The court reasoned that the critical factor was whether the settlor retained "economic control" over the transferred property. Citing *Robinette v. Helvering* and *Smith v. Shaughnessy*, the court emphasized that when a donor has so parted with dominion and control as to leave in him no power to change its disposition…his gift is to that extent complete.

The court noted the trust instrument allowed a majority of trustees to distribute the corpus to the life tenant. "The Trustees may act with respect to any matter or thing connected with the trust or the administration thereof by a majority of the Trustees."

Even the corporate trustee alone, if the sole survivor, could distribute corpus (up to $5,000 per request) to the mother. This further demonstrated that control of the corpus was not retained by Griswold.

The court rejected Griswold's argument that under New York law, unanimous consent of trustees is required, stating the trust instrument explicitly allowed majority rule. "Where a majority is by the instrument given power to act, consent by only a majority is necessary."

The court concluded that the possibility of the settlor receiving the reversionary interest was contingent upon the trustees' discretionary actions, which was beyond his control. Therefore, the entire value of the corpus was subject to gift tax at the time of the transfer.

## Practical Implications

*Griswold v. Commissioner* clarifies that for gift tax purposes, the relinquishment of economic control over trust property is paramount, even if the settlor is a trustee. The ability of other trustees, or a majority thereof, to alter the beneficial enjoyment of the trust assets, particularly through discretionary distributions of corpus, can result in the entire trust corpus being subject to gift tax at the time of transfer.

This case highlights the importance of carefully drafting trust instruments to understand the gift tax consequences. Settlors who wish to avoid gift tax on the entire corpus must retain significant control, which may be inconsistent with their estate planning goals. Conversely, settlors aiming to make a completed gift of the entire corpus should ensure they relinquish sufficient control, as was found in *Griswold*.

Later cases applying *Griswold* have focused on the extent of control retained by the settlor-trustee, examining the specific powers granted to trustees and the limitations on the settlor's ability to influence trust distributions. The case serves as a reminder that the substance of control, not merely the settlor's role as trustee, dictates gift tax implications.

 