3 T.C. 1224 (1944)

A gift in trust where the beneficiary's present enjoyment of the income or corpus is contingent upon surviving to a future date or is subject to the discretion of a trustee constitutes a gift of a future interest, not eligible for the gift tax exclusion.

Summary

Vivian B. Allen created trusts in 1933, 1935, and 1941 for her granddaughter, with income use during minority at the trustee's discretion and principal distribution later in life. The Tax Court addressed whether the 1933 and 1935 gifts were future interests, impacting 1941 tax calculations, and the valuation of stock gifted in 1941. The court held the 1933 and 1935 gifts were future interests because the beneficiary's enjoyment was delayed and contingent. It valued the 1941 stock gift based on stock exchange sales on the gift date.

Facts

In 1933, Allen transferred 3,500 shares of May Department Stores Co. stock in trust for her one-year-old granddaughter. The trust directed the trustee to pay net income to the granddaughter monthly for life, using income for her education and support during her minority as directed by her parents or trustee, with surplus accumulated until age 21. In 1935, Allen transferred 10,000 shares of Commercial Investment Trust Corporation stock to a similar trust, allowing income use for the granddaughter's support and maintenance at the trustees' discretion, accumulating surplus income until age 21. In 1941, Allen added 10,000 more shares of the latter stock to the 1935 trust. The 1933 and 1935 gift tax returns claimed a $5,000 exclusion.

Procedural History

The Commissioner of Internal Revenue determined a gift tax deficiency for 1941, arguing that the 1933 and 1935 gifts were future interests for which the $5,000 exclusions were improperly claimed, and adjusted the value of the 1941 stock gift. Allen petitioned the Tax Court for a redetermination of the deficiency.

Issue(s)

1. Whether the gifts in trust made in 1933 and 1935 were gifts of future interests, thus precluding the gift tax exclusion.
2. What was the fair market value for gift tax purposes of the 10,000 shares of Commercial Investment Trust Corporation stock transferred in 1941?

Holding

1. Yes, the gifts in trust in 1933 and 1935 were gifts of future interests because the beneficiary's present enjoyment of the income or corpus was contingent

upon surviving to a future date or was subject to the discretion of a trustee.
2. The fair market value of the 10,000 shares of stock transferred on August 5, 1941, was 30 1/8 per share, based on the median of the high and low prices on the New York Stock Exchange on the date of the gift.

Court's Reasoning

The court reasoned that the 1933 and 1935 gifts were future interests because the granddaughter's right to present enjoyment of the trust income was not absolute. During her minority, the income was to be applied to her education and support at the discretion of her parents or the trustees, with any surplus accumulated until she reached 21. Citing *United States v. Pelzer, 312 U.S. 399 (1941)*, the court emphasized that the donee had no right to present enjoyment of the corpus or income; therefore, the gift involved difficulties in determining the number of eventual donees and the value of their gifts, which the statute sought to avoid. The court stated, "Here the beneficiaries had no right to the present enjoyment of the corpus or of the income and unless they survive the ten-year period they will never receive any part of either. The "use, possession or enjoyment" of each donee is thus postponed to the happening of a future uncertain event. The gift thus involved the difficulties of determining the "number of eventual donees and the value of their respective gifts" which it was the purpose of the statute to avoid."
Regarding the valuation of the 1941 stock gift, the court determined that the median of the high and low prices on the New York Stock Exchange on the date of the gift was the best indication of fair market value, despite the petitioner's argument that a large block of shares should be valued at a discount. The court noted that quoted prices are the best approximation of market value unless the market is shown to be fictitious and considered the company's financial condition, dividend record, and trading volume to support its conclusion.

Practical Implications

This case reinforces the principle that a gift in trust is considered a future interest, ineligible for the gift tax exclusion, if the beneficiary's right to present enjoyment is contingent or discretionary. Attorneys should carefully draft trust agreements to ensure immediate and ascertainable benefits to the donee to qualify for the exclusion. It also reaffirms the use of stock exchange prices as a primary indicator of fair market value for gift tax purposes, even for large blocks of stock, unless evidence demonstrates that the market price does not reflect true value. Later cases may distinguish *Allen* by demonstrating a mandatory and ascertainable income stream to a minor beneficiary, thus creating a present interest eligible for the annual exclusion.

