4 T.C. 407 (1944)

A gift made specifically to enable the formation of a partnership fails if the partnership is illegal under state law, rendering the entire income of the business taxable to the donor.

Summary

E.C. Ellery was engaged in the business of operating slot machines, which was illegal under Ohio law. To avoid problems while he served a prison sentence, Ellery executed a gift of one-half of his business to his wife, Bernice, simultaneously with articles of partnership. The Tax Court held that because the partnership was for an illegal purpose under Ohio law, the gift was conditional and failed at its inception. As a result, the entire income from the slot machine business was taxable to E.C. Ellery, the donor, not as a partnership.

Facts

E.C. Ellery operated a slot machine business in Ohio, which was illegal under state law. Anticipating a prison sentence for tax fraud, Ellery executed a

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