6 T.C. 230 (1946)

Under California community property law, a husband's gift of community property without the wife's written consent is voidable by the wife, and if she retains the power to revoke the gift during the tax year, the trust income remains taxable to the community.

Summary

Roy P. Harper created trusts for his children using community property, but his wife, Dorothy, did not provide written consent as required by California law for gifts of community property. The Commissioner of Internal Revenue determined that the trust income was taxable to the Harpers as community income. The Tax Court held that because Dorothy had the power to revoke the gifts due to lack of written consent, the trust income remained taxable to the Harpers. This case illustrates the importance of adhering to state community property laws when creating trusts with community assets to avoid unintended tax consequences.

Facts

Roy and Dorothy Harper were a married couple residing in California. Roy established two trusts for their children in 1939, funded with shares of stock that constituted community property. Dorothy orally agreed to the gifts, but did not provide written consent as required under California law for a husband to make a gift of community property. The trust instrument stated that Harper was transferring the stock in an irrevocable trust. In 1940, the trusts generated income, which was reported on fiduciary returns for the trusts and individual returns for the children. The Commissioner determined that this income was taxable to the Harpers as community income.

Procedural History

The Commissioner of Internal Revenue assessed a deficiency against Roy and Dorothy Harper, determining that the income from the trusts was taxable to them as community income. The Harpers petitioned the Tax Court for a redetermination of the deficiency. The Tax Court upheld the Commissioner's determination, finding the trust income taxable to the Harpers.

Issue(s)

Whether the income from trusts established by a husband using community property, without the wife's written consent as required by California law, is taxable to the husband and wife as community income.

Holding

Yes, because under California law, a gift of community property by the husband

© 2025 SCOTUSreports.com. All rights reserved.

without the wife's written consent is voidable by the wife, and because the wife retained the power to revoke the gifts during the tax year in question, the trust income remained taxable to the community.

Court's Reasoning

The Tax Court relied on California Civil Code Section 172, which gives the husband management and control of community personal property but prohibits him from making a gift of it without the wife's written consent. The court cited California Supreme Court cases such as *Spreckels v. Spreckels*, holding that such a gift is not void but voidable at the option of the wife. The court emphasized that, absent written consent, the wife retains the right to revoke the gift and reinstate the property as community property. The court rejected the petitioners' argument that the wife's oral consent and failure to report the income estopped her from revoking the gifts, distinguishing *Lahaney v. Lahaney*. The court stated, "To concede the contention of the petitioners would defeat the will of Congress as expressed in section 166 of the Internal Revenue Code, if, under the law of California and the facts presented, Mrs. Harper had the power to effect a revocation of the trusts." Because Mrs. Harper retained the power to revoke the trusts, the income was taxable to the community under Section 166 of the Internal Revenue Code.

Practical Implications

This case highlights the critical importance of obtaining written consent from a spouse when transferring community property into a trust, particularly when seeking to shift the tax burden. Attorneys in community property states must ensure strict compliance with state law requirements for gifting community property. Failure to do so can result in the trust income being taxed to the grantors, defeating the purpose of the trust. This case serves as a reminder that federal tax law often defers to state property law in determining ownership and control, which in turn affects taxability. The ruling clarifies that mere knowledge and oral consent are insufficient substitutes for written consent when dealing with community property gifts and their associated tax consequences. Later cases would cite this to distinguish fact patterns where a wife took active steps to ratify a gift, or was estopped from denying her consent.

© 2025 SCOTUSreports.com. All rights reserved.