Kresge v. Commissioner, 38 B.T.A. 660 (1938)

Property received in consideration of marriage is considered a gift for federal income tax purposes, meaning the recipient's basis in the property is the same as the donor's basis.

Summary

This case addresses the determination of the basis of stock received by the petitioner as part of a prenuptial agreement. The Commissioner determined a deficiency in the petitioner's income tax, arguing that her basis in the stock was the same as her former husband's (S.S. Kresge) because the transfer was a gift. The petitioner argued she acquired the shares for a consideration larger than the donor's basis. The Board of Tax Appeals upheld the Commissioner's determination, citing *Wemyss v. Commissioner* and *Merrill v. Fahs*, and held the transfer to be a gift for tax purposes, thus requiring the use of the donor's basis.

Facts

The petitioner received 2,500 shares of S. S. Kresge Co. stock in December 1923 and January 1924 as part of a prenuptial agreement with S. S. Kresge. They married in April 1924 and divorced in 1928. The petitioner received stock dividends that increased her holdings significantly. In 1938, she sold 12,000 shares of the stock.

Procedural History

The Commissioner determined a deficiency in the petitioner's income tax for 1937, 1938, and 1939. The petitioner contested the Commissioner's calculation of profit from the 1938 sale of the stock, arguing the Commissioner incorrectly determined her basis. The Board of Tax Appeals reviewed the Commissioner's determination.

Issue(s)

Whether the stock received by the petitioner pursuant to a prenuptial agreement should be considered a gift for income tax purposes, thus requiring her to use the donor's basis when calculating gain or loss upon its sale.

Holding

Yes, because the transfer of stock as part of a prenuptial agreement, in consideration of marriage, constitutes a gift for federal income tax purposes. Therefore, the petitioner's basis in the stock is the same as that of her former husband, S.S. Kresge.

Court's Reasoning

The Board of Tax Appeals relied on *Wemyss v. Commissioner*, 324 U.S. 303 (1945),

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and *Merrill v. Fahs*, 324 U.S. 308 (1945), to conclude that the transfer of stock in consideration of marriage is treated as a gift for federal tax purposes. Although the opinion provides no further analysis, the cited cases clarify the definition of "gift" in the context of federal gift and income tax laws. These cases state that even a transfer made pursuant to a legally binding agreement can be a gift if the exchange isn't made at arm's length and the transferor doesn't receive adequate and full consideration in return. Marriage itself is not considered adequate consideration in a business sense.

Practical Implications

This case, along with *Wemyss* and *Merrill*, establishes that transfers of property pursuant to prenuptial agreements are generally considered gifts for tax purposes. This means the recipient takes the donor's basis in the property, which can have significant implications when the recipient later sells the property. Attorneys drafting prenuptial agreements must be aware of these tax implications and advise their clients accordingly. While Kresge dealt with stock, the principles apply to any type of property transferred. Later cases have affirmed this principle, emphasizing the importance of establishing fair market value and ensuring adequate consideration beyond the marriage itself if the parties intend the transfer to be treated as a sale rather than a gift.

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