11 T.C. 783 (1948)

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A taxable gift can be established when a partnership agreement is signed, entries are made on the partnership books reflecting a transfer of capital, and the parties conduct themselves in accordance with the agreement, even absent a formal deed or bill of sale.

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Summary

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Walter Lippert and his brother formed a partnership, Lippert Brothers. In 1943, intending to reduce income tax, they executed a partnership agreement including their wives as equal partners, making corresponding entries in the books and filing gift tax returns. Later, after an IRS examination and advice that such partnerships might not be recognized, they reversed the entries. The Tax Court held that a taxable gift of a one-fourth interest in the partnership to Lippert's wife occurred in 1943, based on the agreement and their conduct. The court also upheld the Commissioner's valuation of the gift, considering the earning capacity of the business, despite the taxpayer's argument against valuing goodwill.

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Facts

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Walter and Eric Lippert operated a contracting business as Lippert Brothers. In 1942, they sought tax savings by including their wives in the partnership. On December 31, 1942, they drafted an agreement effective January 1, 1943, making their wives equal partners. The partnership books reflected a transfer of capital to the wives' accounts. Walter and his wife filed a joint income tax return and a gift tax return reporting the gift of a one-fourth interest in the partnership, valuing it at $49,882.68. This value was based on the book value of tangible assets, excluding any value for existing contracts or goodwill.

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Procedural History

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The Commissioner determined a deficiency in Lippert's gift tax for 1943, challenging the valuation of the gift. Lippert petitioned the Tax Court for a refund of the gift tax he had paid. The Tax Court upheld the Commissioner's determination that a gift had been made and that the value of the gift was higher than reported.

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Issue(s)

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1. Whether the Commissioner erred in determining that the petitioner made a gift of a one-fourth interest in the partnership business of Lippert Brothers to his wife.

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2. Whether the Commissioner erred in determining that the value of the one-fourth interest in Lippert Brothers at the time of the transfer was $95,000 rather than $49,882.68 as reported.

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Holding

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1. Yes, because the execution of the partnership agreement, the capital account entries, and the conduct of the parties demonstrated a completed gift.

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2. No, because the Commissioner's valuation, considering the earning capacity of the enterprise, was reasonable.

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Court's Reasoning

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The court reasoned that the partnership agreement, coupled with the capital account entries and the filing of gift tax returns, evidenced a clear intent to make a gift. The court stated, "Petitioner and his wife, with an idea of reducing their income

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tax burdens, entered into the partnership agreement herein involved. Following the partnership agreement, a division of the partnership capital was made in conformity with that agreement. Both Lippert and his wife reported a gift to the Federal Government and Lippert paid his tax thereon." Citing precedent, the court found that a formal deed or bill of sale was not required to effectuate a gift of a partnership interest. Regarding valuation, the court acknowledged the taxpayer's argument against including goodwill, but emphasized the earning capacity represented by existing contracts. The court noted that the petitioner failed to provide specific evidence about the number and potential profitability of these contracts. Given the partnership's substantial earnings in 1943, the court deferred to the Commissioner's valuation, stating that, "in the absence of all knowledge as to what proportion of those earnings came from contracts in existence on January 1, 1943, or as to what the prospects of profits on contracts in existence on January 1, 1943, were at that time, we accept the Commissioner's valuation based upon earning capacity."

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