13 T.C. 201 (1949)

For a gift of stock to be considered complete for tax purposes, the donor must not only intend to make the gift but also unconditionally deliver the stock to the donee, relinquishing dominion and control.

Summary

Naomi Bucholz intended to gift stock in Towle Realty Co. to her three children. Shares were transferred on the corporate books, but physical certificates were only delivered to one child. Bucholz hesitated on gifting to her minor children after her father's disapproval. The Tax Court had to determine whether the book transfer, absent physical delivery and with reservations about intent, constituted completed gifts for gift tax purposes. The court held that the gifts to the minor children were not completed because Bucholz did not unconditionally deliver the shares or relinquish control. The key was her retained control and lack of intent to make a present gift.

Facts

Naomi Bucholz owned 360 shares of Towle Realty Co. stock.
In December 1942, she decided to gift 120 shares to each of her three children.
She instructed Edwin Towle, a company officer, to prepare new stock certificates.
The stock book was updated to reflect the transfer, but the new certificates weren't delivered immediately.
Bucholz's father disapproved of gifting stock to the minor children.
In January 1943, Bucholz instructed Edwin to deliver one certificate to her adult son's bank. She told Edwin to hold the other two certificates.
In March 1943, Bucholz canceled the certificates for the minor children and had her own certificate reissued.

Procedural History

The Commissioner of Internal Revenue assessed a gift tax deficiency against Naomi Bucholz for 1942.
Bucholz and her children (as transferees) petitioned the Tax Court for review.
The cases were consolidated.

Issue(s)

Whether Naomi Bucholz completed gifts of Towle Realty Co. stock to her two minor children in 1942, despite transferring the shares on the company books, but retaining the certificates and expressing reservations about completing the gifts.

Holding

No, because Naomi Bucholz did not unconditionally deliver the stock certificates to

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her minor children and did not relinquish dominion and control over the shares. The transfer on the books alone was insufficient to constitute a completed gift given the surrounding circumstances.

Court's Reasoning

The court stated that a valid gift requires both intent to donate and unconditional delivery of the gift to the donee.
Citing *Lunsford Richardson, 39 B.T.A. 927*, the court emphasized the donor must surrender dominion and control.
While transferring shares on the books can sometimes effectuate delivery (citing *Marshall v. Commissioner, 57 F.2d 633*), other circumstances must support the finding of a completed gift.
The court distinguished this case from others where book transfer was sufficient, noting Bucholz's explicit instructions to hold the certificates and her subsequent cancellation of those certificates.
Quoting *Weil v. Commissioner, 82 F.2d 561*, the court stated, "If the donor intends to give, and even goes so far as to transfer stock on the books of the company, but intends first to do something else and retains control of the transferred stock for that purpose, there is no completed gift."
The court found that Bucholz never intended a present transfer to the minor children and retained control over the certificates. Edwin Towle was not acting as a trustee for the children.

Practical Implications

This case reinforces that a mere book entry is insufficient to prove a completed gift of stock for tax purposes.
Attorneys should advise clients that physical delivery of stock certificates (or equivalent evidence of ownership) to the donee is crucial to establish a completed gift, especially when dealing with closely held corporations.
Intent to make a present gift must be clearly demonstrated; any reservations or conditions placed on the transfer can jeopardize the gift's validity.
The case illustrates that actions speak louder than words; even reporting the gifts on a tax return does not guarantee the gifts are considered complete if other actions indicate otherwise.
Subsequent cases have cited Bucholz to emphasize the importance of relinquishing control for a gift to be complete. Legal practitioners can use this case to distinguish situations where control was effectively relinquished, even without physical delivery, by pointing to evidence of the donor's intent and actions consistent with a completed transfer.

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