***14 T.C. 1144 (1950)***

A taxpayer who makes a complete and unconditional gift of their partnership interest, relinquishing all control and dominion over the business, is not liable for income tax on the partnership's profits, even if the partnership continues operating with new partners.

**Summary**

The Tax Court determined that a taxpayer, Bein, was not liable for income tax on partnership income after he made a bona fide gift of his entire partnership interest to his wife. The court emphasized that Bein completely divested himself of all proprietary interests and rights in the partnership and its assets, and he exercised no control over the business. The new partnership consisted of parties who had no prior proprietary interest. This differed from typical family partnerships where the transferor retains control. The court distinguished the case from situations where the donor retains dominion or control over the gifted interest.

**Facts**

Prior to December 30, 1942, Bein was a partner with Willis H. Vance in operating two theaters. On December 30, 1942, Bein executed assignments transferring all his legal title, right, interest, and control over his assets in the dissolved Willis Vance Ohio Co. and the capital stock of the Monmouth Co. to his wife, Esther C. Bein. Bein devoted no time to the management, control, or operation of the theaters before or after December 30, 1942. After the transfer, Esther C. Bein and Mayme C. Vance (Willis's wife) operated the theaters as partners. Willis H. Vance was hired as a general manager by the new partnership.

**Procedural History**

The Commissioner of Internal Revenue assessed a deficiency against Bein, arguing that the partnership income was still attributable to him despite the gift to his wife. Bein petitioned the Tax Court for a redetermination of the deficiency.

**Issue(s)**

1. Whether Bein made a bona fide gift to his wife in December 1942 of his entire proprietary interest in the two theaters, which was effective for income tax purposes.
2. Whether the income from the partnership is taxable to Bein even though he made a valid gift.

**Holding**

1. Yes, because the assignments executed on December 30, 1942, were clear and unequivocal, transferring all his legal title, right, interest, and control over the

 

assets without any strings or conditions.
2. No, because Bein completely divested himself of all proprietary interests and rights in the partnership and its assets, and he exercised no control over the business's operations after the transfer.

## Court's Reasoning

The court found that Bein made a valid and unconditional gift, complete and effectual for all purposes. This determination hinged on the fact that Bein relinquished all control and dominion over the transferred assets. The court distinguished this case from typical family partnership cases, where the transferor retains significant control, citing *Commissioner v. Tower, 327 U.S. 280 (1946)*, and *Lusthaus v. Commissioner, 327 U.S. 293 (1946)*. The court noted that the new partnership was composed of parties who had no proprietary right or interest in the business prior to the gift. The court emphasized Bein's lack of involvement in the business after the gift, stating, "Here the petitioner, as the undisputed testimony of several witnesses shows, had absolutely nothing to do with the operation of the business after December 30, 1942." The court also stated, "When he and Vance disposed of their entire proprietary interests their partnership terminated. During 1943 and 1944 a new partnership operated the business. Bein had no vestige of right or control in this new partnership 'and it is undisputed that he in fact exercised none.'"

## Practical Implications

This case clarifies that a complete and irrevocable gift of a partnership interest can effectively shift the tax burden of the partnership income to the recipient of the gift, provided the donor relinquishes all control and dominion over the business. The case highlights the importance of documenting the transfer and ensuring the donor's complete detachment from the business's operations. It underscores that the critical factor is not merely the familial relationship but the degree of control retained by the donor. Later cases distinguish *Bein* by focusing on whether the donor truly relinquished control. This case informs practitioners advising on family business succession planning, emphasizing the need for careful structuring to ensure that the transferor does not retain control, which could jeopardize the tax benefits of the transfer.

 