***17 T.C. 579 (1951)***

For a gift of property to be valid for estate tax purposes, the donor must have the intent to make a gift, and must relinquish dominion and control over the property, which requires both delivery and acceptance by the donee.

**Summary**

The Estate of John W. Mortimer challenged the Commissioner's inclusion of certain properties in Mortimer's gross estate. Mortimer had executed deeds purporting to transfer properties to his grandchildren in 1938, but he never delivered the deeds to them, nor did he inform them of the transfers. Mortimer continued to collect rents, pay taxes, and make repairs on the properties, reporting the income and expenses on his tax returns until his death in 1946. The Tax Court held that the purported transfers were not completed gifts because Mortimer did not relinquish control over the properties, and the grandchildren never accepted the gifts. Thus, the properties were properly included in Mortimer's gross estate.

**Facts**

John W. Mortimer executed and recorded deeds in 1938, conveying several properties to his three grandchildren. He did not deliver the deeds to his grandchildren or inform them of the conveyances. Mortimer continued to manage the properties, collect rents, pay taxes, and make repairs. He reported the rental income and related expenses on his personal income tax returns. In 1940, Mortimer filed an amended gift tax return including the conveyances to his grandchildren. In 1941, he executed an affidavit stating the grandchildren were unaware of the transfers and that he continued to collect rents as the beneficial owner. Mortimer's will, executed in 1945, bequeathed only $5 to each grandchild, stating that he had already provided for them via lifetime gifts, subject to his right to collect rents for life. At the time of Mortimer's death, the properties' value was $62,000.

**Procedural History**

The Commissioner of Internal Revenue included the value of the properties in John W. Mortimer's gross estate for estate tax purposes. The Estate of Mortimer, through its executrix, challenged the Commissioner's determination in the United States Tax Court.

**Issue(s)**

Whether the execution and recording of deeds, without delivery to or knowledge by the donees, and with continued control and benefit by the donor, constituted completed gifts, thus excluding the value of the properties from the donor's gross estate under Section 811(a) of the Internal Revenue Code.

**Holding**

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No, because the decedent did not relinquish dominion and control over the properties, and the donees never accepted the gifts. Thus, a valid inter vivos gift was not made, and the value of the properties was properly included in the decedent's gross estate.

**Court's Reasoning**

The court reasoned that a valid inter vivos gift requires: (1) a competent donor; (2) a clear intent to make a gift; (3) a capable donee; (4) a sufficient transfer to vest legal title; and (5) relinquishment of dominion and control by delivery to the donee. Citing *Edson v. Lucas*, the court emphasized the necessity of relinquishing control and the importance of delivery to effectuate a transfer. The court found that Mortimer lacked the clear intention to make a completed gift because he did not inform his grandchildren of the transfers and continued to treat the properties as his own. The court stated,

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