

***Estate of Elizabeth C. Dillingham, Deceased, Dan L. Dillingham and Tom B. Dillingham, Coexecutors, Petitioner v. Commissioner of Internal Revenue, Respondent, 88 T. C. 1569 (1987)***

A gift by check is not complete for federal gift and estate tax purposes until the check is paid by the drawee bank, as the donor retains dominion and control over the funds until payment.

### **Summary**

Elizabeth Dillingham delivered checks to six individuals on December 24, 1980, but they were not cashed until January 28, 1981. The key issue was whether the gift was complete in 1980 or 1981 for tax purposes. The Tax Court held that the gift was not complete until the checks were paid in 1981, as Dillingham retained the ability to stop payment, thus maintaining dominion and control over the funds. This ruling impacts when gifts by check are considered complete for tax purposes, affecting the application of annual exclusions and the statute of limitations for estate tax assessments.

### **Facts**

Elizabeth C. Dillingham delivered six checks of \$3,000 each to six different individuals on December 24, 1980. These checks were not cashed until January 28, 1981. On the same day, she delivered additional checks of \$3,000 to the same individuals, which were also cashed on January 28, 1981. The checks were drawn on Dillingham's personal account, and there was no evidence of any agreement that the checks would not be cashed until after her death.

### **Procedural History**

The estate filed a petition with the U. S. Tax Court challenging a gift tax deficiency for the quarter ended December 31, 1980, and an estate tax deficiency. The cases were submitted fully stipulated, and the court focused on the issue of when the gifts were complete for tax purposes.

### **Issue(s)**

1. Whether a noncharitable gift made by check is complete for federal gift and estate tax purposes when the check is delivered to the donee or when it is paid by the drawee bank.

### **Holding**

1. No, because the gift is not complete until the check is paid by the drawee bank. The court found that Dillingham did not part with dominion and control over the funds until payment in 1981.

## **Court's Reasoning**

The court applied the legal principle that a gift is complete when the donor parts with dominion and control over the property. It rejected the 'relation back doctrine' for noncharitable gifts by check, noting that the doctrine had previously been applied only to charitable contributions. The court emphasized that Dillingham retained the power to stop payment on the checks until they were cashed, thus retaining control over the funds. The court also considered Oklahoma state law, which does not consider a gift by check complete upon delivery. The lack of evidence regarding unconditional delivery and the delay in cashing the checks further supported the court's decision. The court cited prior cases like *McCarthy v. United States* and *Estate of Belcher v. Commissioner*, which expressed concerns about extending the relation back doctrine to noncharitable gifts.

## **Practical Implications**

This decision clarifies that for tax purposes, a gift by check to a noncharitable donee is not complete until the check is paid by the bank. This affects the timing of when gifts are reported for gift tax purposes and the applicability of annual exclusions. It also impacts estate tax planning, as gifts made within three years of death are generally included in the gross estate unless completed earlier. Legal practitioners must advise clients that gifts by check should be cashed promptly to ensure they are considered complete for tax purposes. This ruling may influence how similar cases are analyzed in other jurisdictions, particularly those with similar state laws regarding checks.