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Casenotes: Federal Income Tax — Section 1001 — Donor's Gift of Appreciated Property Conditioned on the Donee's Payment of Resulting Gift Tax Results in Taxable Income to the Extent That Gift Tax Paid by Donee Exceeds Donor's Adjusted Basis in the Property. Diedrich v. Commissioner, 457 U.S. 191 (1982)

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CASENOTES

FEDERAL INCOME TAX — SECTION 1001 — DONOR'S GIFT OF APPRECIATED PROPERTY CONDITIONED ON THE DONEE'S PAYMENT OF RESULTING GIFT TAX RESULTS IN TAXABLE INCOME TO THE EXTENT THAT GIFT TAX PAID BY DONEE EXCEEDS DONOR'S ADJUSTED BASIS IN THE PROPERTY. *Diedrich v. Commissioner*, 457 U.S. 191 (1982).

A taxpayer made a gift of low basis,[1] highly appreciated securities to family members expressly conditioned on the donee's promise to pay the resulting gift tax.[2] The donor did not include as income any portion of the gift tax paid by the donee. Although the Commissioner of Internal Revenue determined a deficiency,[3] the Tax Court held for the donor, ruling that no income was realized by the taxpayer.[4] The United States Court of Appeals for the Eighth Circuit reversed the Tax Court's decision.[5] The Supreme Court, acting to resolve a circuit conflict,[6] affirmed the Eighth Circuit and held that a donor who makes a gift of property on the condition that the donee pay the resulting gift tax receives taxable income to the extent that the gift tax paid by the donee exceeds the donor's adjusted basis[7] in the property transferred.[8]

In *Diedrich v. Commissioner*,[9] the Supreme Court found that the donor had made a conditional gift of appreciated property.[10] The donor had conditioned his gift of appreciated securities on the donee's

1. Basis is the original cost of property. I.R.C. § 1012 (1976); Treas. Reg. § 1.1012-1 (1976); *see* 7 FED. TAXES (P-H) ¶ 31,152 (1983).
2. Diedrich v. Commissioner, 457 U.S. 191, 192-93 (1982). The United States Court of Appeals for the Eighth Circuit consolidated two cases, each of which involved a gift of low basis, highly appreciated securities by the taxpayer to family members expressly conditioned on the donee's promise to pay the resulting gift taxes. *Id.*
3. *Id.* at 193. The Commissioner had determined that the donor had realized income ($5,959) to the extent that the gift tax paid by the donee ($62,992) exceeded the donor's basis ($51,073), as adjusted for long term capital gain ($5,959). *Id.*
4. Diedrich v. Commissioner, 39 T.C.M. (CCH) 433, 435 (1979).
5. Diedrich v. Commissioner, 643 F.2d 499, 504 (8th Cir. 1981).
6. The Fourth, Fifth, and Sixth Circuits had held that a net gift transaction resulted in no income to the donor. Owen v. Commissioner, 37 T.C.M. (CCH) 272 (1978), *aff'd,* 652 F.2d 1271 (6th Cir. 1981) (decision later withdrawn pending the Supreme Court's decision in *Diedrich*); Hirst v. Commissioner, 63 T.C. 307 (1974), *aff'd,* 572 F.2d 427 (4th Cir. 1978); Estate of Davis v. Commissioner, 30 T.C.M. (CCH) 1363 (1971), *aff'd per curiam,* 469 F.2d 694 (5th Cir. 1972). By contrast, the Second, Seventh, and Eighth Circuits had held that a net gift resulted in income to the donor. Estate of Levine v. Commissioner, 72 T.C. 307 (1974), *aff'd,* 634 F.2d 12 (2d Cir. 1980); Diedrich v. Commissioner, 39 T.C.M. (CCH) 433 (1979), *rev'd*, 643 F.2d 499 (8th Cir. 1981), *aff'd,* 457 U.S. 191 (1982); Evangelista v. Commissioner, 71 T.C. 1057 (1979), *aff'd,* 629 F.2d 1218 (7th Cir. 1980).
7. Adjusted basis is the cost (or other basis) of property adjusted for certain additions or reductions to capital during a period of ownership. I.R.C. § 1016 (1976); Treas. Reg. § 1.1016 (1976).
8. Diedrich v. Commissioner, 457 U.S. 191, 199 (1982).
9. *Id.* at 191.
10. *Id.* at 198.

agreement to pay the resulting gift taxes. From the donor's perspective, two types of tax liability may arise from such a gift: (1) gift tax liability;[11] and (2) income tax liability.[12] Under federal law, a donor incurs gift tax liability for a conditional gift based on the "net amount" of the transfer.[13] Whether a donor incurs income tax liability for a conditional gift, however, is an issue that has been frequently litigated.[14]

Prior to the Supreme Court's decision in *Diedrich*, two lines of cases reflected a split in the circuits on the issue of the donor's income tax liability for net gifts to an individual. One line of cases, beginning with *Turner v. Commissioner*,[15] stressed *donative intent* as the dispositive factor in holding that the donor did not receive taxable income as a result of a net gift.[16] The other line of cases, originating with *Johnson v. Commissioner*,[17] emphasized that a net gift results in an *economic benefit* to the donor requiring the imposition of income tax liability.[18]

Turner was the first case to consider the tax consequences of net gifts to individuals.[19] In *Turner*, a donor made nine separate gifts of

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11. All gratuitous transfers are subject to a federal gift tax. I.R.C. § 2501(a)(1) (1976). Although a state may also impose a gift tax, this discussion is limited to the federal gift tax. A gift tax is an excise tax on the act of transfer. Treas. Reg. § 25.2511-1(a) (1976).
12. The *Diedrich* Court relied upon the broad definition of income given by Congress ("gross income means all income from whatever source derived, including . . . (12) Income from discharge of indebtedness. . . ." I.R.C. § 61 (1976)) to find that a conditional gift may result in income to the donor. *Diedrich*, 457 U.S. at 194-95.
13. I.R.C. § 2511 (1976); Treas. Reg. § 25.2511-1(e) (1976); *see, e.g.,* Lingo v. Commissioner, 13 T.C.M. (CCH) 436, 441 (1954) (when gift is conditioned on donee's payment of the gift tax, the amount of the gift tax paid by the donee is excluded from the gross value of the property transferred); Harrison v. Commissioner, 17 T.C. 1350 (1952) (when donee assumed donor's gift tax liability for payment of the gift tax, the amount of the gift tax is a retained interest by the donor and may be excluded from the gross value of the gift). Since *Lingo* and *Harrison* dealt with the gift tax consequences of a conditional gift, their holdings are not relevant to the determination of income tax consequences.
14. *See supra* note 6. *See generally* Kwall, *The Income Tax Consequence of a Gratuitous Transfer of Appreciated Property Contingent Upon the Donee's Promise to Pay the Gift Tax,* 31 DEPAUL L. REV. 45 (1981) (gift of appreciated property made pursuant to donee's agreement to pay the gift tax should result in income to the donor regardless of how net gifts are justified for gift tax purposes); Note, *Taxation: Net Gifts—Let the Donor Beware,* 34 OKLA. L. REV. 887 (1981) (describes split in circuits on income tax consequences of net gifts of appreciated property and recommends that donor at a minimum should realize income to the extent that the gift tax paid by the donee exceeds the donor's adjusted basis in the property transferred); *Recent Developments—Gifts—The Income Tax Treatment of Net Gifts*, 57 NOTRE DAME LAW. 420 (1981) (suggests that economic benefit test should resolve income tax treatment on gifts conditioned on donee's payment of the resulting gift tax).
15. 49 T.C. 356 (1968), *aff'd per curiam,* 410 F.2d 752 (6th Cir. 1969).
16. *See* cases listed for the Fourth, Fifth, and Sixth Circuits, *supra* note 6.
17. 495 F.2d 1079 (6th Cir.), *cert. denied,* 419 U.S. 1040 (1974).
18. *See* cases listed for the Second, Seventh, and Eighth Circuits, *supra* note 6.
19. Prior case law had established that when trust income was used to pay the donor's gift tax, this income was taxable to the donor on the theory that the income had, in effect, been retained for the benefit of the donor. Estate of Sheaffer v. Commis-

low basis securities, three to her children outright and six to trusts for the benefit of her grandchildren. Each transfer was made on the condition that the recipient pay the resulting gift tax. The Commissioner argued that the transfers were in substance part sales and part gifts, and that income resulted to the donor to the extent that the gift taxes paid by the donees exceeded the donor's adjusted basis in the securities.[20] The Tax Court, however, found this approach inconsistent with prior decisional law,[21] and thus agreed with the taxpayer that the donor did not intend a sale.[22] In short, the Tax Court held that a net gift precluded a finding of any taxable gain to the donor since the donor had a gratuitous motive in making the gift.[23]

Although the Tax Court followed the donative intent analysis in two subsequent cases involving net gifts,[24] the Sixth Circuit abandoned *Turner* five years later in *Johnson v. Commissioner.*[25] *Johnson* represents the origin of a second line of cases involving net gifts which reject the *Turner* reasoning and emphasize that a net gift results in an economic benefit to the donor requiring the imposition of income tax liability.[26]

The donors[27] in *Johnson*, after borrowing against low basis, highly appreciated securities, transferred stock to several trusts for the benefit of their children. The donors used part of the borrowed funds to pay

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sioner, 37 T.C. 99 (1961), *aff'd,* 313 F.2d 738 (8th Cir.) (income taxable to donor when gift tax is paid from current trust income), *cert. denied,* 375 U.S. 818 (1963); Estate of Staley v. Commissioner, 47 B.T.A. 260 (1942), *aff'd,* 136 F.2d 368 (5th Cir.) (income taxable to a donor when he receives a fixed amount of trust income with which to pay gift tax), *cert. denied,* 320 U.S. 786 (1943). These cases, which primarily interpreted I.R.C. § 677, focused on the degree of interest *retained by the donor* when the trust instrument provided that the trust would pay the gift tax. I.R.C. § 677 (1976).

20. Because only a small amount of the trust income was used to pay the gift tax, the Commissioner in *Turner* was unable to argue that the donor had retained an interest in the transferred property. Since there was no basis for invoking I.R.C. §§ 671 and 677, which deal only with income from trusts, the Commissioner conceded that the transfers to the donees were not sales. The court's opinion thus focused on whether the transfer to the three individuals should be classified as a part gift, part sale, thereby resulting in taxable gain to the donor. Turner v. Commissioner, 49 T.C. 356, 362-63 (1968), *aff'd per curiam,* 410 F.2d 752 (6th Cir. 1969).
21. *Turner,* 49 T.C. at 360-62. The court based its reasoning on an analogy to prior decisional law involving conditional gifts to trusts. *See supra* notes 13-14.
22. *Id.* at 362. The *Turner* court emphasized the intent of the parties to make a gift.
23. *Id.* at 363.
24. Krause v. Commissioner, 56 T.C. 1242 (1971) (follows *Turner,* which held that the donor's intent governs and the donor intended to make a gift, not a sale); Estate of Davis v. Commissioner, 30 T.C.M. (CCH) 1363 (1971), *aff'd per curiam,* 469 F.2d 694 (5th Cir. 1972) (adopts *Turner* rationale that a net gift constitutes a gift and not a sale).
25. 495 F.2d 1079 (6th Cir.), *cert. denied,* 419 U.S. 1040 (1974).
26. *See* cases listed for the Second, Seventh, and Eighth Circuits, *supra* note 6.
27. Johnson v. Commissioner, 495 F.2d 1079, 1080 (6th Cir.), *cert. denied,* 419 U.S. 1040 (1974). The donors in *Johnson* were three brothers who had entered into similar transactions.

gift taxes which resulted from the transfers.[28] The trustees released the donors from any obligation to repay the loans by substituting their notes for the notes of the donors.[29] The Tax Court held that the transfers were actually part sales and part gifts.[30] On appeal, the Sixth Circuit affirmed the Tax Court's decision but replaced the part sale, part gift rationale with an economic benefit test.[31] Under this test, the discharge of a debt by a third party is considered a taxable event since the donor receives something of value. The court of appeals looked to the substance of the transaction and found three reasons to support the finding of an economic benefit. First, the funds which the taxpayers received free from any replacement obligation constituted gross income regardless of their use.[32] Second, the donors realized income to the extent of the discharge of their legal obligation.[33] Third, the court reasoned that the donors realized income when they disposed of the debt by transferring the encumbered property into trust.[34]

Johnson's reliance on an economic benefit approach to net gifts was a clear departure from *Turner*'s donative intent doctrine.[35] Despite this departure, the Sixth Circuit distinguished the cases and thus declined to overrule *Turner*, stating: "*Turner* has no precedential value

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28. *Johnson,* 495 F.2d at 1080. The taxpayers borrowed $200,000 from a bank on a nonrecourse note pledging 50,000 shares of stock as collateral. The shares had a fair market value in excess of $500,000 and a basis of only $10,812.50. The gift tax of approximately $150,000, figured on the net amount of the gift, was paid out of the proceeds on the loan, leaving the taxpayers with a balance of $50,000. *Id.*
29. *Id.* The bank cancelled the taxpayer's note and in its place accepted the trustee's note, which was secured by the same collateral.
30. Johnson v. Commissioner, 59 T.C. 791, 812-13 (1973).
31. Johnson v. Commissioner, 495 F.2d 1079, 1082-83 (6th Cir.), *cert. denied,* 419 U.S. 1040 (1974).
32. *Johnson,* 495 F.2d at 1083. The money the donors received was "income from whatever source," no matter to what use it was put. *Id.* (quoting I.R.C. § 61 (1976)).
33. *Johnson,* 495 F.2d at 1083. The court stated that the gift tax liability was the donor's legal obligation under I.R.C. § 2502(d) (1976), and found that the discharge of that liability by a third party resulted in income to the donor. *See also* Old Colony Trust v. Commissioner, 279 U.S. 716 (1929) (employer's payment of employee's income taxes is taxable income to the employee).
34. *Johnson*, 495 F.2d at 1083. The *Johnson* court, viewing the transaction as the satisfaction of a debt by the transfer of the encumbered stock into trust, found that the taxpayers realized income in the amount of the encumbrance although they were not personally liable on the debt. *See also* Crane v. Commissioner, 331 U.S. 1 (1947) (non-recourse mortgage is included in the basis of property and must be included in the amount realized upon sale).
35. *Johnson,* 495 F.2d at 1083. The *Johnson* court implicitly overruled *Turner* when it stated that:

> The same result would be reached if we describe the [money] used to pay the gift taxes on the transfer into trust as equivalent to what happened in *Turner* (donees' assumption of donor's gift tax liability). . . . The payment of a donor's gift tax liability by the donee constitutes income to the donor.

Id.

beyond its peculiar factual situation. . . ."[36] As a result, the *Johnson* court left unresolved the issue of income tax liability for net gifts to individuals.[37]

The Supreme Court in *Diedrich v. Commissioner*[38] resolved the inter-circuit conflict and held that a donor who makes a gift of appreciated property on the condition that the donee pay the resulting gift tax realizes taxable income to the extent that the gift tax paid exceeds the donor's adjusted basis in the property.[39] Although *Diedrich* was factually analogous to *Turner*, the Court rejected the subjective donative intent test and instead adopted the objective economic benefit test as first presented in *Johnson.*[40]

The key to the Court's analysis was a recognition that the congressional definition of gross income in section 61 of the Internal Revenue Code (I.R.C.) refers to income derived from a variety of means, including the discharge of indebtedness.[41] The discharge of a legal obligation by a third person is thus equivalent to the receipt of income by the taxpayer.[42] Using this analysis, the *Diedrich* Court characterized the gift tax imposed on a gift transaction as the primary legal obligation of the donor,[43] that is, when a donor makes a gift he incurs a debt to the federal government for the amount of the gift tax. Accordingly, a donee's agreement to pay gift taxes on a transfer constitutes a release of the donor's gift tax liability. The donee's discharge of the donor's legal obligation to pay the gift tax is thus an economic benefit to the donor.[44]

The Court in *Diedrich* found additional support for an economic benefit analysis by analogizing the net gift transaction to the holding in *Crane v. Commissioner.*[45] In *Crane*, the Court held that the amount realized on a sale of encumbered property includes the amount of the

36. *Id.* at 1086. *Johnson* based *Turner*'s lack of precedential value on the Commissioner's concessions in *Turner. Id.* These concessions, however, were limited to gifts in *trust.* Turner v. Commissioner, 49 T.C. 356, 363 (1968), *aff'd per curiam*, 410 F.2d 752 (6th Cir. 1969). There was no concession in *Turner* regarding the taxable gain resulting from the gifts to individual donees. *Turner,* 49 T.C. at 363-64.

37. Although *Turner* was placed in doubt by *Johnson,* the Fourth, Fifth, and Sixth Circuits continued to adhere to *Turner* as a viable precedent on the basis of stare decisis. The Second, Seventh, and Eighth Circuits, however, followed *Johnson* and held that taxation should result in a net gift transaction when there is an economic benefit to the donor. *See supra* note 6.

38. 457 U.S. 191 (1982).

39. *Id.* at 199-200.

40. *Id.* at 197-98.

41. *Id.* at 194 (quoting I.R.C. § 61 (1976)).

42. *Diedrich,* 457 U.S. at 195. The Court relied on a 1929 decision which held that an employer's payment of an employee's income tax is treated as income to the employee. Old Colony Trust Co. v. Commissioner, 279 U.S. 716 (1929).

43. *Diedrich,* 457 U.S. at 197 (quoted I.R.C. § 2501 (1976) and noted that secondary liability is placed on the donee under I.R.C. § 6324(b) (1976)).

44. *Diedrich,* 457 U.S. at 197.

45. *Id.* at 195-96 (citing Crane v. Commissioner, 331 U.S. 1 (1946)).

debt assumed as well as any cash received.[46] Similarly, the *Diedrich* Court concluded that a donor may realize income when a transfer of property is conditioned on the donee's discharge of the donor's gift tax obligation. Although liability for the gift tax arises during the course of the donative transfer, as opposed to the pre-existing liability that was at issue in *Crane*, the Court found an economic benefit to the person relieved of the liability.[47]

Diedrich is soundly based on an objective analysis of the net gift transaction. The subjective intent analysis, followed in *Turner* and its progeny, failed to consider that the gift tax liability is the primary legal obligation of the donor.[48] Although a net gift is based on a gratuitous motive, clearly the decision to have the donee assume responsibility for the gift tax is prompted by the donor's self-serving desire to avoid paying the gift tax. Therefore, the donee's assumption of the donor's legal obligation is of economic benefit to the donor.

The use of the economic benefit analysis correctly reflects basic income tax principles. Under federal law gross income includes "income from whatever source derived."[49] In addition, the discharge of a taxpayer's liability is ordinarily regarded as conferring a benefit which may result in income to the taxpayer.[50] The effect of the donee's payment of the donor's gift tax is the same as if the donee had paid the money directly to the donor, and the donor had used it to discharge his gift tax liability. The form of the benefit is irrelevant. Indeed, a donor can receive income in the form of relief from tax liability.[51]

The decision in *Diedrich* is consistent with previous decisions which have recognized that the receipt of a real and substantial benefit upon the transfer of property results in a taxable gain to the donor.[52] Likewise, the discharge of the donor's gift tax liability may result in

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46. Crane v. Commissioner, 331 U.S. 1, 12-14 (1946).
47. *Diedrich,* 457 U.S. at 198.
48. I.R.C. § 2502(d) (1976).
49. I.R.C. § 61 (1976).
50. I.R.C. § 61 (12) (1976); *see* Old Colony Trust Co. v. Commissioner, 279 U.S. 716 (1929).
51. *See supra* note 47.
52. *See, e.g.*, Malone v. United States, 326 F. Supp. 106, 112 (N.D. Miss. 1971), *aff'd per curiam,* 455 F.2d 502 (5th Cir. 1972) (when taxpayer transferred mortgaged property to trust upon the condition that the trustee pay the indebtedness, taxpayer realized income to the extent that the value of the property exceeded the mortgage); First Nat'l Indus. v. Commissioner, 26 T.C.M. (CCH) 608, 618 (1967), *aff'd,* 404 F.2d 1182 (6th Cir. 1968) (when taxpayer gave appreciated stock subject to the condition that the donee sell the stock and use the proceeds to pay the indebtedness, taxpayer realized income to the extent the obligation discharged exceeded its adjusted basis), *cert. denied,* 394 U.S. 1014 (1969); Simon v. Commissioner, 32 T.C. 935, 940-41 (1959), *aff'd,* 285 F.2d 422 (3d Cir. 1960) (when taxpayer transferred mortgaged building to corporation contending that he had made a contribution to capital, taxpayer realized gain to the extent that the mortgage exceeded his adjusted basis).

taxable income to the donor.[53] The crucial factor, as evidenced by these decisions, is the receipt of an economic benefit.[54]

Application of the economic benefit test will provide greater certainty of result and consistency of treatment under the I.R.C. The economic benefit test involves an objective determination of whether the taxpayer has received a financial gain. The objective test, not influenced by a subjective assurance of donative intent, will provide a calculated result to gifts which are conditioned on the donee's payment of the resulting gift tax liability. The objective determination of an economic benefit further ensures that consistent treatment is provided to similarly situated taxpayers.

Diedrich properly recognizes that the gift tax and income tax statutes are subject to independent interpretation. Although donative intent is determinative of whether there has been a gift, it is irrelevant in deciding whether the donor has realized income.[55] When a taxpayer constructively receives income he may subject himself to income tax liability.[56] Thus, characterizing a transaction as a net gift for gift tax purposes does not preclude treating the net gift as a taxable event for income tax purposes.

In rejecting the donative intent analysis first presented in *Turner*, the *Diedrich* Court recognized that the congressional intent, not the intent of the parties, controls the income tax consequences of a net gift transaction.[57] Although Congress has given favorable treatment to gifts by excluding them from the taxable income of the donee,[58] there is no similar provision excluding net gifts from the income of the donor. Until Congress provides this exclusion, courts must follow the broad mandate of section 61 of the I.R.C., which defines gross income as "income from whatever source derived."[59] Consequently, the discharge of a legal obligation to pay gift taxes by a third party donee may result in taxable income to a donor.

In addition to approving the economic benefit test developed in *Johnson*, the Court adopted the Internal Revenue Service's part sale, part gift analysis to measure the economic benefit received by the donor in a net gift transaction.[60] Under this approach, the property in a

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53. *Diedrich,* 457 U.S. at 197.
54. *Id.* at 197-98.
55. *Id.* at 197.
56. *See supra* note 50 and accompanying text.
57. *Diedrich,* 457 U.S. at 199. Justice Rehnquist dissented on the ground that the current tax statute did not reveal that Congress intended to characterize a gift as a part sale whenever a donee agreed to pay the gift tax. *Id.* at 201 (Rehnquist, J., dissenting).
58. I.R.C. § 102 (1976).
59. *Diedrich,* 457 U.S. at 199 (quoting I.R.C. § 61 (1976)).
60. *Diedrich,* 457 U.S. at 198-99. In general, computation of gain or loss for income tax purposes is calculated through I.R.C. § 1001, which provides:

> (a) *Computation of gain or loss.* — The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom

net gift transaction is viewed as a bargain sale. In effect, the donor is considered as having "sold" the property to the donee for the amount needed to pay the gift tax. If the fair market value of the property transferred is greater than the amount of the gift tax, that amount is treated as a net gift. Thus, to the extent that the gift tax paid by the donee is greater than the donor's adjusted basis in the property transferred, the donor is held to realize taxable income.[61]

The part sale and part gift analogy is consistent with the Court's finding that the donative intent of the transferor does not negate the possibility of the donor realizing income.[62] This analysis is based on the Court's finding that the discharge of the gift tax liability is an economic benefit to the donor.[63] As such, the part sale, part gift analysis provides a formula for determining the amount of the gift tax included in the donor's income.

The Supreme Court in *Diedrich* focused on the substance of the net gift transaction rather than its form to determine the income tax consequence to the donor. Income tax liability, reduced to its basic concept, depends on whether the taxpayer has received something of value. The donee's assumption of the donor's gift tax liability cannot disguise the economic benefit which accrues to the donor. By adopting the economic benefit theory and the part sale, part gift analysis, the *Diedrich* Court has applied a test which makes an objective determination of the benefit conferred on the taxpayer and has ended the uncertainty regarding the income tax consequence of a net gift.

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> over the adjusted basis provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.
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> (b) *Amount realized.* — The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

I.R.C. § 1001 (1976).

Computation of gain or loss in a part sale, part gift transaction is described under federal regulations as:

> (e) *Transfers in part a sale and in part a gift.* (1) Where a transfer of property is in part a sale and in part a gift, the transferor has a gain to the extent that the amount realized by him exceeds his adjusted basis in the property. However, no loss is sustained on such a transfer if the amount realized is less than the adjusted basis. For the determination of basis of property in the hands of the transferee, see § 1.1015-4. For the allocation of the adjusted basis of property in the case of a bargain sale to a charitable organization, see § 1.1011-2.

Treas. Reg. § 1.1001-1(e) (1976).

61. *Diedrich,* 457 U.S. at 199.
62. *Id.* at 197-98.
63. *Id.* at 197.