Boston College Law Review

Volume 12
Issue 6 *Number 6*

Article 11

6-1-1971

Gift Tax -- Valuation -- Political Contributions -- Stern v. United States

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mitted that the Court's refusal to overturn *Denver* and to treat all of the contractors at the jobsite as allies indicates a continuing judicial disregard for the peculiarities of the construction industry.

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Gift Tax—Valuation—Political Contributions—*Stern v. United States*.[1]—Mrs. Stern, a resident of Louisiana, concerned about her state's lag in economic growth in comparison with other southern states[2] and about the effect upon her property and personal interests, and believing that this economic climate was caused by an adverse political situation, joined certain other Louisiana citizens to support the institution of a reform government within the state and the city of New Orleans. In pursuit of this objective, these individuals established an informal finance committee, chose one of its members to be "Treasurer," and made contributions to the Treasurer's bank account. The plaintiff's contributions were $44,600 in 1959 and 1960, and $16,250 in 1961.[3] These funds were spent by the Treasurer for handbills, posters and magazine and television advertising in accordance with the desires of the contributors, but at no time were funds given to the political candidates for their direct use or control.

In 1959, 1960 and 1961, the plaintiff, although filing federal gift tax returns, did not report these "contributions" as gifts. Instead, she attached to her tax return a note stating that these were not gifts but "expenditures which I made to protect my property and personal interests by promoting efficiency in Government,"[4] and that the disbursements were made by individuals acting in her behalf. Thereafter, the Commissioner of Internal Revenue determined that the contributions were gifts and assessed gift taxes accordingly. Upon paying these taxes, Mrs. Stern brought suit in district court seeking a refund of the amount paid. The court found that these expenditures were made "in the ordinary course of business" as defined in Treasury Regulation Section 25.-2512-8,[5] that there was no transfer of cash or property to any candidate

[1] 436 F.2d 1327 (5th Cir. 1971).

[2] The court noted that Louisiana's per capita income, which was 73% of the national average in 1950, had slipped to 71.7% in 1961, and placed 44th nationally; and that from 1950-1960, while Texas, North Carolina and Mississippi gained a total of 275,000 manufacturing jobs, Louisiana lost 2500 manufacturing jobs. Id. at 1328.

[3] The gift tax does not apply to the first $3,000 given to a donee per year, Int. Rev. Code of 1954, § 2503(b), nor to the first $30,000 given during the donor's lifetime. Int. Rev. Code of 1954, § 2521.

[4] 436 F.2d at 1329.

[5] Treas. Reg. § 25.2512-8 (1958) reads in part:

> Transfers reached by the gift tax are not confined to those only which, being without a valuable consideration, accord with the common law concept of gifts, but embrace as well sales, exchanges, and other dispositions of property for a consideration to the extent that the value of the property transferred by the donor exceeds the value in money or money's worth of the consideration given therefor. However, a sale, exchange, or other transfer of property made

or political party, and that she received full and adequate consideration for these political expenditures.[6] On appeal, the Fifth Circuit HELD: that the district court did not err in determining that these expenditures were made in the ordinary course of business and affirmed for this reason without considering the other bases upon which the trial court relied.

Since the government did not appeal the district court's finding that the transaction was "bona fide, at arm's length, and free from any donative intent," the court of appeals limited itself to the question of the construction of that part of Treasury Regulation section 25.2512-8 which provides an exception to the full and adequate consideration requirement for a "transfer of property made in the ordinary course of business."[7] Citing several cases[8] which extend the "in the ordinary course of business" requirement beyond the area of *commercial* transactions, and which do not restrict its application to "ordinary and necessary"[9] business expenses, the Fifth Circuit rejected the appellant's narrow construction of the regulation that the transfer had to be made in the course of an actual business carried on by Mrs. Stern. In concluding that the transactions were exempt from the gift tax, the court also noted, by way of dicta, that the taxpayer's control over the distribution of the funds, and the existing economic factors were significant additional elements allowing the exemption.[10]

Although the Internal Revenue Service has indicated[11] that individuals making contributions or gifts to a political party or to a candidate for public office are liable for the gift tax, the court in *Stern* did not reach this issue due to its resolution of the meaning of "in the ordinary course of business." The court's decision repudiating the appellant's interpretation of the Treasury Regulation appears correct, yet the implications arising therefrom, and the court's dicta that political contributions in any form qualify as transfers in the ordinary course of business, appear to be unsupportable. Commencing from the proposition that most gift tax cases must be decided on their own facts,[12] this note will analyze the merits of the court's opinion that

in the ordinary course of business (a transaction which is bona fide, at arm's length and free from any donative intent), will be considered as made for an adequate and full consideration in money or money's worth. A consideration not reducible to a value in money or moneey's worth, as love and affection, promise of marriage, etc., is to be wholly disregarded, and the entire value of the property transferred constitutes the amount of the gift. . . .

6 304 F. Supp. 376 (E.D. La. 1969).

7 The two requirements essential for the gift tax to be applicable are a transfer of property and less than full and adequate consideration. Lowndes, An Introduction to the Federal Estate and Gift Taxes, 44 N.C.L. Rev. 1, 51 (1965).

8 Harris v. Commissioner, 340 U.S. 106 (1950); Rosenthal v. Commissioner, 205 F.2d 505 (2d Cir. 1953); Estate of Monroe D. Anderson, 8 T.C. 706 (1947); Carl E. Weller, 38 T.C. 790 (1962); Shelton v. Lockhart, 154 F. Supp. 244 (W.D. Mo. 1957).

9 Int. Rev. Code of 1954, § 162(a).

10 436 F.2d at 1330.

11 Rev. Rul. 59-57, 1959-1 Cum. Bull. 626.

12 Eleanor A. Bradford, 34 T.C. 1059, 1063 (1960).

Mrs. Stern's contributions were made "in the ordinary course of business," and will evaluate the effect of *Stern* upon future contributors to political parties who might employ similar arrangements in order to escape the gift tax.[13]

The Internal Revenue Code provides that the gift tax shall be applied to transfers of property which involve "less than an adequate and full consideration in money or money's worth. . . ."[14] This requirement attempts to prevent depletion of one's taxable estate through transfers which return only nominal consideration, but which consideration is adequate for contractual purposes.[15] Most easily discernible of such taxable transfers is the transfer of property for money consideration less than the value of the property transferred, with the excess value subject to a gift tax.[16] In non-monetary exchanges the fact that the consideration is sufficient to support a contract at common law would not fulfill the statutory requirement, since the consideration in some cases need only be nominal for contractual purposes.[17]

Judicial finding of adequate consideration in a transfer is even less likely when the contested consideration probably would not be sufficient at common law. In *DuPont v. United States*,[18] which presented a fact situation similar to *Stern*, but which was not brought under the "in the ordinary course of business" exception, the petitioner contributed $6,000 to the National Economic Council (N.E.C.), an organization created to preserve private enterprise and private property by maintaining a speaker's bureau, publishing articles and making appearances before Congress. The taxpayer originally deducted the contribution as a gift, but after the Commissioner of Internal Revenue determined that the N.E.C. did not qualify so as to permit the deduction, the taxpayer claimed the payment was not a gift but a payment for services "to be performed by them as experts in the field of mone-

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13 A recent report on campaign contributions indicates that at least 15 Americans each gave more than $50,000 to national political campaigns in 1968. The report admitted that much information remained hidden due to the absence of, or lack of utilization of, laws requiring strict disclosure of funds received by politicians, and emphasized the difficulties involved in determining the actual donor of property. See N.Y. Times, Jan. 31, 1971, at 43, col. 5.

14 Int. Rev. Code of 1954, § 2512(b).

15 Lowndes, Consideration and the Federal Estate and Gift Taxes: Transfers for Partial Consideration, Relinquishment of Marital Rights, Family Annuities, the Widow's Election, and Reciprocal Trusts. 35 Geo. Wash. L. Rev. 50, 51 (1966) [hereinafter cited as Lowndes]; Commissioner v. Bristol, 121 F.2d 129, 134 (1st Cir. 1941).

16 Estate of Koert Bartman, 10 T.C. 1073 (1948); William H. Gross, 7 T.C. 837 (1946).

17 The First Circuit, in Commissioner v. Bristol, 121 F.2d 129 (1st Cir. 1941), held that although a relinquishment of a wife's statutory rights pursuant to an antenuptial agreement under which property was transferred by the husband was sufficient consideration to support a contract, it was not sufficient to satisfy the gift tax requirement since the transferor did not receive an adequate and full equivalent in money or something which could be valued in money. Cf. Catherine S. Beveridge, 10 T.C. 915 (1948), acquiesced in 1949-1, Cum. Bull. 1; Estate of Gertrude Friedman, 40 T.C. 714 (1963).

18 97 F. Supp. 944 (D. Del. 1951).

tary, business and political conditions in the United States and elsewhere . . . ."[19] DuPont, a man of large investments, contended that the economic trends of the country directly affected the security of his investments. The court, concerned only with the petitioner's liability for the gift tax, noted that the consideration he purportedly received must be reducible to a money value if the taxpayer were to avoid a gift tax. The court held that it was impossible to determine to what extent, if any, an improved economy, leading to increased investments of a value greater than that of the property transferred, could be attributed solely to the action of the N.E.C.[20] Furthermore, the court found that these payments were not ordinary business expenses, nor were they payments for services which elicit a recognizable return. By way of dicta, the court noted that this situation is somewhat analogous to a transfer of property to a political party having the same economic views as the prospective transferor.[21] Certainly the position of the court was valid, since the taxpayer had not shown full and adequate consideration received in money or money's worth attributable solely to his contribution to the N.E.C. A two-pronged test proving the N.E.C.'s direct effect on the economy, and proving the extent to which the donor's contribution to the N.E.C. enabled it to advance the economy, had to be met before exempting the donor from a gift tax.

An exception to the "full and adequate consideration" requirement is available to the taxpayer if the transfer is made "in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent)."[22] But even with these three criteria the courts have had difficulty in developing a well-defined test for transfers which are "in the ordinary course of business."[23] Initial inquiry into the "in the ordinary course of business" exception requires a determination of whether this test applies only to actual commercial transactions or whether it also applies to transactions which are merely business related, or which are gratuitous.[24] In *Commissioner v. Wemyss*,[25] the Supreme Court held that the transfer of property subject to an antenuptial agreement was not within the ordinary course of business since the transfer was not made at arm's length, and hence was taxable. Furthermore,

> to reinforce the evident desire of Congress to hit all the protean arrangements which the wit of man can devise that are not business transactions within the meaning of ordinary speech, the Treasury Regulations make clear that no genuine business transaction comes within the purport of the gift tax

19 Id. at 946.
20 Id. at 947.
21 Id.
22 Treas. Reg. § 25.2512-8.
23 Merten's Law of Federal Gift and Estate Taxation, § 34.19 (1959).
24 See R. Paul, 2 Federal Estate and Gift Taxation 1113 (1942).
25 324 U.S. 303 (1945).

> by excluding "a sale, exchange, or other transfer of property made in the ordinary course of business . . . ."[26]

The Court's use of "genuine" connotes a limitation of "business transactions" to actual commercial activities rather than to gratuitous transfers.

Such an approach was subsequently considered in *Estate of Monroe D. Anderson*,[27] a case in which the decedent taxpayer was an executive in a cotton merchandising business. In an attempt to relieve himself of some of the company's responsibilities, and to increase the efficiency of the management of the company, which in turn would serve to protect his investments, Anderson had transferred some of his stock, at a nominal fee, to the younger executives of his company. The Tax Court found that

> the pertinent inquiry for gift tax purposes is whether the transaction is a *genuine business* transaction . . . . Surely it will not be said that there may not be a genuine business transaction not directly connected with the taxpayer's trade or business or even though the taxpayer be not engaged in "carrying on any trade or business," within the scope of that term as limited by Higgins v. Commissioner. . . . Bad bargains, sales for less than market, sales for less than adequate consideration in money or money's worth are made every day in the business world, for one reason or another; but no one would think for a moment that any gift is involved, even in the broadest possible sense of the term "gift."[28]

Since these sales were bona fide, at arm's length, and in the ordinary course of business, they were not subject to the gift tax.[29] The decision is significant in indicating that the purpose behind the exception was directed at actual commercial transactions which result in bad bargains or losses but which could not be considered gifts.[30]

The courts, however, have not felt constrained to limit the application of the exception to commercial transactions, applying it to certain family agreements as well. In *Harris v. Commissioner*,[31] the petitioner and her husband, anticipating a divorce, reached an agreement as to their property interests designed to survive any decree which the court might enter. Under Nevada law,[32] a divorce decree must include an equitable disposition of the parties' property. A Nevada divorce

26 Id. at 306.

27 8 T.C. 706 (1947).

28 Id. at 720; See also R. Townsend, Up the Organization 178 (1970).

29 See William H. Gross, 7 T.C. 837 (1946), where a "business" transaction involving members of a family was subject to a gift tax because of a presumption of donative intent.

30 See Eva B. Hull, 21 CCH Tax Ct. Mem. 1076 (1962); Carl E. Weller, 38 T.C. 790 (1962).

31 340 U.S. 106 (1950); see Lowndes, supra note 15, at 63.

32 Nev. C.L. (Supp. 1931-1941) § 9463, now Nev. C.L. 125.150 (1967).

court subsequently upheld this agreement as a just settlement in granting an absolute divorce. The Supreme Court, with four Justices dissenting, denied the government's contention that the transfer was subject to a gift tax. The Court noted that transactions between husband and wife should be within the scope of "ordinary course of business" when enforceable under the law. The Court indicated, however, that a voluntary unraveling of business interests is subject to a gift tax.[33] Hence, although *Stern* cites this case to demonstrate the broad scope of transactions covered by Treasury Regulation Section 25.2512-8, *Harris* on its facts indicates that the transfer must be more than simply an informal agreement concerning the division of property interests. Rather, it must be a judicially approved settlement of property interests in order to be considered as made within "the ordinary course of business."[34]

Apart from cases involving familial transfers of property, the Fifth Circuit also cited *Shelton v. Lockhart*.[35] In *Shelton*, the petitioner was an Indian Princess considered legally incompetent due to her Indian blood. During the period of her incompetence, the United States held tribal property in trust for her. Wishing to be declared legally competent, thus releasing the property from the trust, she negotiated with the Bureau of Indian Affairs which agreed to declare her competent only if she executed an instrument placing $300,000 in trust for her children. The Bureau and petitioner compromised at $200,000, and she was declared competent. Although the Commissioner assessed a gift tax on the value of the trust, the district court held that the transfer in trust was not subject to the tax. Specifically not basing its decision on the question of whether the price of freedom would suffice as full and adequate consideration, the court found that the transaction represented a business venture between the plaintiff and the Bureau of Indian Affairs. The court found that the requisite criteria of an ordinary course of business transfer were met, that is, the transfer was the result of negotiation and compromise free from a direct intent to give a gift to her children,[36] even though not connected with a continuing business or trade.[37]

33 340 U.S. at 109. Justice Frankfurter, dissenting, noted that since the parties stipulated that this agreement would be binding upon divorce regardless of a separate property settlement by the court, their agreement was not subject to approval by court decree and should have been taxable. 340 U.S. at 112. This problem of full and adequate consideration in divorce property settlements has largely been remedied by § 2516 of the Internal Revenue Code of 1954.

34 See Rosenthal v. Commissioner, 205 F.2d 505 (2d Cir. 1953), which, although supporting the proposition that family transactions could be treated as made "in the ordinary course of business," was remanded for a determination of whether the three criteria were present. See also Commissioner v. Barnard's Estate 176 F.2d 233 (2d Cir. 1949); Estate of Gertrude Friedman, 40 T.C. 714 (1963).

35 154 F. Supp. 244 (W.D. Mo. 1957).

36 See Robinette v. Helvering, 318 U.S. 184 (1943), where the Court stated that a desire to pass on the family fortune was not within the meaning of "in the ordinary course of business."

37 The Fifth Circuit also relied upon a Revenue Ruling involving citizens who had

The cases thus indicate that although a transaction might not be made in a commercial sense, there is still required a bargaining aspect that would be legally enforceable in order to satisfy the regulation's requirement that the transaction be at "arm's length, bona fide, and free from donative intent." Neither the Internal Revenue Code nor the Treasury Regulations specifically define these three separate elements, a fact probably attributable to the overlapping qualities of the elements and, consequently, to the difficulty of determining precise definitions. Although the majority of cases brought under the "in the ordinary course of business" exception do not attempt to distinguish the individual elements within the facts of the case, several courts have commented upon the presence or absence of the criteria.

The "bona fide" element at common law refers to "a thing done really, with a good faith, without fraud or deceit. . . ."[38] Under contract law, the term "good faith" is without a general meaning and serves to exclude a wide range of forms of bad faith[39] which a judge might decide to prohibit. This concept was applied in a gift tax case[40] in which property was sold at less than fair market value for the purpose of delegating managerial tasks to the vendee, a transaction which disclosed no acts of bad faith. The absence in *Stern* of any indication that Mrs. Stern acted in bad faith, as shown by her open admission of the purpose and the form of the transfer, supports the existence of the "bona fide" element. Her belief that the transaction was not subject to the gift tax should not denote an act of bad faith.

The element of "donative intent" lends itself to a more explicit analysis. In determining whether the transferor intended to pass property without receiving anything in exchange,[41] an examination of the recipient of the transfer, and the purpose for which the gift was given are essential. Where the recipient of the transfer is a party to whom a person would be more likely to make a gift than to make a contract, such as a transfer to a family member,[42] the element of donative intent is present. This theory should be presumed to apply to transfers to a

contributed money to a bank as trustee to purchase land. The bank delivered possession of the land to a manufacturing company, and, in consideration, the company agreed to make 10 annual payments to the trustee, pay all taxes, insure the building, and operate the company for 10 years. In default thereof the trustee could take possession. The trustee agreed to deed the property in fee simple to the company if the aggregate annual payroll reached a certain amount. The Internal Revenue Service ruled that the transfers by the citizens were at arm's length, bona fide, and free from any donative intent, and hence not subject to the gift tax. But clearly there, unlike in *Stern*, the parties negotiated at arm's length as to the benefits the donee would provide in return, such as money, jobs, maintenance of property and prosperity for the town. The fact that the value of what the donors were receiving in return might not be equivalent to the property transferred was unimportant. Rev. Rul. 68-558, 1968-2 Cum. Bull. 415.

38 Ware v. Hylton, 3 U.S. (4 Dall.) 199, 240 (1796).

39 Summers, "Good Faith" In General Contract Law and the Sales Provisions of the Uniform Commercial Code, 54 Va. L. Rev. 195, 201 (1968).

40 Eva B. Hull, 21 CCH Tax Ct. Mem. 1076 (1962).

41 J. Beveridge, Law of Federal Gift Taxation § 3.02 (1958).

42 William H. Gross, 7 T.C. 837 (1946).

political candidate since such a person is typically the recipient of gifts. Furthermore, a lack of donative intent is frequently established where the transferor's purpose is to receive a direct benefit in return for his transfer, such as the relinquishment of managerial duties[43] or the settlement of a property interest.[44] The facts in *Stern* indicate the presence of donative intent, since there was no evidence that Mrs. Stern received or would receive a direct benefit from the political candidates who profited from her contributions.[45]

The requirement of "arm's length" is satisfied when parties, bargaining with their own interests at stake, compromise on an agreement which confers benefits upon both parties. Where one party has "bargained" but has not protected his own interests, the resulting transfer would not be considered to have been made at arm's length.[46] The transfer in *Stern* was not the product of arm's length bargaining between the transferor and political party because there was no direct proof that her interests in fact benefited from the transfer. Indeed, any return received by Mrs. Stern on her gift would be the return received by all citizens, whether contributors or not. Following the *DuPont* rationale, a bargain could not be reached where an organization's effectiveness could not be attributable solely to the contribution of the transferor.[47] No case cited in *Stern* involved a transaction wherein the parties did not specifically agree to terms which included the relinquishment of rights by, or the conferral of benefits directly upon, the adverse party.

The Fifth Circuit, although appropriately rejecting the government's limited interpretation of Treasury Regulation Section 25.2512-8, has implied that the "in the ordinary course of business" exception could be extended beyond its existing bounds.[48] This exception has seldom been applied to situations not involving genuine commercial transactions, and where it has been so applied, the transactions encompassed situations where property was not gratuitously transferred. To suggest that the purpose of the gift tax—the prevention of depletions of the taxpayer's estate without subjecting the property to the federal taxing power—could be defeated in the area of political contributions by the tenuous argument that the expenditures were made at arm's length, bona fide, and free from donative intent, is without support in the case law. Yet, although the Fifth Circuit affirmed the district court's interpretation of the Treasury Regulation, in its concluding paragraph it

43 Estate of Monroe D. Anderson, 8 T.C. 706 (1947).

44 Harris v. Commissioner, 340 U.S. 106 (1950).

45 See text at note 18.

46 See Commissioner v. Wemyss, 324 U.S. 303 (1945).

47 See p. 1271 supra.

48 Cf. "It is difficult to see why any transfer which is actuated exclusively by a desire to better the transferor's economic situation, as distinguished from a donative intent, should be taxed as a gift, even though the transfer is not connected with any business." C. Lowndes & R. Kramer, Estate and Gift Taxes, § 32.9 (2d ed. 1962).

submitted two other bases which alternatively would have supported its decision.

The court concluded that the commercial and economic overtones of the transactions suggested that Mrs. Stern was making an economic investment. Apart from the "in the ordinary course of business" exception, the court indicated that the appellee could claim that she would receive services and goods in return for her transfer; hence, this was not a gift. Applying the rationale of the *DuPont* case,[49] however, such argument would necessarily fail. The *DuPont* court, under the facts in *Stern*, would reject the purely speculative return on the money the transferor might receive without proof of a clearer causal connection between the contribution and the alleged returned consideration. The mere statement that transactions are "permeated with commercial and economic factors"[50] does not force the conclusion that they constitute an economic investment rather than a gift. The word "gift" would become meaningless under such a standard, and would disregard the intent of Congress that "gift" be defined in the broadest and most comprehensive sense.[51] The Code specifically exempts from the gift tax transfers to charitable, scientific and educational institutions.[52] Yet, such transfers could be considered "economic investments" since they are indirectly "permeated" with economic factors. By specifically exempting those contributions, however, Congress implied that they would otherwise be subject to the tax. It would thus be incongruous for the courts to exempt a contribution which is no more of an economic investment than those contributions specifically exempted by the Congress. Such a judicial approach would render provisions under the Code superfluous, and, accordingly, the exemption of political contributions from the gift tax should be left to Congress.

The second factor noted in dicta in *Stern* was the control exercised by the donor over the disbursement of the funds. The existence of a *transfer* of property is essential to the imposition of a gift tax.[53] However, the Code and the courts have not looked to an accentuated form in the area of transfers and have recognized numerous disguised "transfer" arrangements under several theories. The Code applies the gift tax "whether the transfer is in trust or otherwise, whether the gift is direct or indirect. . . ."[54] In reference to "indirect gifts" the Treasury Regulations[55] stress the substance over the form of the transfer by announcing that any transaction whereby property is conferred upon another, regardless of the means or device employed, would con-

[49] See p. 1270 supra.

[50] 436 F.2d at 1330.

[51] H.R. Rep. No. 708, 72d Cong., 1st Sess. 27 (1931), S. Rep. No. 665, 72d Cong., 1st Sess. 39 (1931).

[52] Int. Rev. Code of 1954, § 2522(a)(2) (1964).

[53] Lowndes, An Introduction to the Federal Estate and Gift Taxes, 44 N.C.L. Rev. 1, 51 (1965).

[54] Int. Rev. Code of 1954, § 2511(a).

[55] Treas. Reg. § 25.2511-1(c) and (h)(3) (1958).

stitute a gift subject to the gift tax. This approach might be applicable in *Stern* where the contributors acted to benefit the political candidates through the facade of having the Treasurer retain control of the funds to pay for the donee's political campaign expenses.

An alternative approach to the determination of taxable transfers requires the ascertainment of the cessation of the donor's dominion and control over the property.[56] One possible criterion by which to determine whether the donor has relinquished control over the property is whether the person in possession has a "substantial adverse interest"[57] in the disposition of the property. However, judicial interpretation[58] of this phrase suggests that under the fact situation in *Stern*, the Treasurer did not have a "substantial adverse interest" due to the close relationship between, and the similarity of interests among Mrs. Stern, the Treasurer, and the informal finance committee. In addition to this approach, courts have faced the question of retention of control in the area of transfers in trust. Decisions[59] have stressed, as a significant indication of a transfer, the change of economic benefits resulting from the relinquishment of the power to revoke a trust. Analogously, in *Stern*, although the Treasurer retained physical possession of the contributions, the respondent had not yet relinquished control of the property. But when the money was paid for the campaign expenses, dominion and control were relinquished and the transfers became complete.[60] Such an analogy must be permitted if the intent of Congress "to close tax loopholes against ingenious trust instruments"[61] is to be effectuated. The arrangement in *Stern* exemplified the type of ingenious transactions which were intended to be included within the scope of the gift tax. The form of the transfer should not disguise the fact that Mrs. Stern gave property for the benefit of political candidates.

Although the Fifth Circuit did not directly deny the application of the gift tax on the theories that the transfers were made "in the ordinary course of business," that they were economic investments, or that there had not been transfers of property, it implied such conclusions by affirming the district court finding that the transaction was bona fide, at arm's length, and free from donative intent. Clearly these findings disregard the congressional purpose of the gift tax and the case law under it. The recognition of transfers for the benefit of political candidates as being outside the scope of the gift tax should be left to Congress and not to the courts.

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56 Treas. Reg. § 25.2511-2(b) (1958).

57 Treas. Reg. § 25.2511-2(e) (1958).

58 Latta v. Commissioner, 212 F.2d 164 (3d Cir. 1954); Commissioner v. Prouty, 115 F.2d 331 (1st Cir. 1940).

59 Burnet v. Guggenheim, 288 U.S. 280 (1933); Smith v. Shaughnessy, 318 U.S. 176 (1943).

60 Higgins v. Commissioner, 129 F.2d 237 (1st Cir.), cert. denied, 317 U.S. 658 (1942); Estate of Sanford v. Commissioner, 308 U.S. 39 (1939).

61 Smith v. Shaughnessy, 318 U.S. at 180.