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Edward N. Polisher

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RECENT DEVELOPMENTS IN FEDERAL GIFT TAX*

By

EDWARD N. POLISHER**

HISTORICAL BACKGROUND

The present Federal gift tax statute was enacted into law by the Revenue Act of 1932. It is contained in Chapter 4, Secs. 1000-1031, Internal Revenue Code, as amended. Prior to the 1932 Act, the 1924 Act imposed a tax upon gifts of property, but this statute was short-lived and was repealed as of January 1, 1926 by Sec. 1200 of the 1926 Act.

In contrast to the income tax and estate tax, the gift tax statute is exceedingly brief. The portions of the statute which impose and compute the tax and define its scope are to be found in the first five sections which break down into fifteen sub-sections. The remaining twenty-six sections of the statute deal with returns, assessment and collection of the tax and other procedural matters.

Regulations 108, effective as to all gifts made in 1940 or thereafter, interpret the provisions of the gift tax law. For gifts made prior to 1940, Regulations 79 control.

SCOPE OF TAX

The tax imposed by Code Secs. 1000-1031 applies only to transfers of property during the calendar year 1940 and subsequent calendar years. Gifts made during the calendar years 1932 to 1939, inclusive, are governed by the provisions of Sec. 501-532, of the 1932 Revenue Act, as amended.

The tax is an excise upon the donor's transfer of property. It is applicable only to individuals who are residents or citizens of the United States. A non-resident, not a citizen of the United States, is taxable only upon gifts of property situated within the United States. Under certain conditions, transfers by corporations are treated as gifts from its shareholders: Regulations 108, Sec. 86.8.

**Edward N. Polisher, L.L.B., Dickinson School of Law, member of the Philadelphia Bar; Author, Estate Planning and Estate Tax Saving; Lecturer, 1943-1944-1945 Institute of Federal Taxation, New York University; special lecturer, Estate, Gift and Inheritance Taxes, Dickinson Law School.

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The tax reaches every transfer by an individual of property by gift, direct or indirect, whether in trust or otherwise, and whether the property is real or personal, tangible or intangible. Special rules are prescribed for taxing gifts of community property and transfers resulting from the exercise or release of a power of appointment. Transfers subject to tax are not limited to those without a valuable consideration (commonly described as gifts), but the tax applies to sales and exchanges for less than an adequate and full consideration in money or money's worth.

LIABILITY FOR TAX

The donor, not the donee, is primarily and personally liable for the tax which is also made a lien upon all property transferred by gift for ten years after the gift is made. If the tax is not paid when due, the donee may be personally liable to the extent of the value of the gift whether the donor is solvent or not.

COMPUTATION OF TAX

The tax is cumulative. To compute the tax the aggregate sum of the net gifts made after June 6, 1932 (the date of the enactment of the present gift tax law) and the end of the taxable year must be calculated. From this figure is to be deducted the annual exclusions, where allowable, and charitable gifts; the remainder is applied to the exhaustion of the specific exemption. The balance is then subjected to tax at the rates applicable to the respective bracket of net gifts for the year in which the gift was made.

RATES

The rates are graduated and increase as the total of taxable gifts mounts. The present rates range from 21/4% on the first $5,000.00 of net taxable gifts to 57 3/4% on net taxable gifts over $10,000,000.00. Since the enactment of the gift law in 1932, the rates have been changed by four different Acts, the Revenue Acts of 1934, 1935, 1940 and 1941. The 1934 and 1935 Acts provided for rate increases, in each case to be effective beginning with the next calendar year. The 1940 Act imposed the addition of a defense tax of 10% of the tax computed under the rates enacted by the 1935 Act, and applied to all gifts made after June 25, 1940 and before 1946. The 1941 Revenue Act, however, repealed this tax, effective January 1, 1942, but increased the rates for gifts made in 1942 and subsequent years.

NET GIFTS—ANNUAL EXCLUSION

The term "net gifts" is defined as the total amount of gifts made during the calendar year less the allowable deductions. One such deduction is the annual exclusion. As to gifts (other than gifts of future interests in property)
made to any person during the calendar year 1943 and subsequent years, the first $3,000.00 of such gifts to any person during such calendar year is excluded. For the calendars years 1939 through 1942, the exclusion was $4,000.00 and was denied to gifts in trust and gifts of future interests. For the calendar year 1938 and prior calendar years, the exclusion was $5,000.00. The number of annual exclusions which may be taken is unlimited.

SPECIFIC EXEMPTION

Beginning January 1, 1943, a specific exemption of $30,000.00 is allowed against gifts made by a citizen or resident. The gifts may be of present or future interests. The donor has the option of taking this entire exemption in one year or spreading it over a period of years. Once the specific exemption has been consumed, no further exemption is allowed. A non-resident alien donor is not entitled to the exemption. For the calendar year 1935 and preceding calendar years, the specific exemption was $50,000.00; and for years 1936 through 1942, it was $40,000.00.

CHARITABLE, PUBLIC AND RELIGIOUS GIFTS

In addition to the annual exclusion and the specific exemption of $30,000.00, a resident donor is entitled to deductions for gifts to or for public, charitable, religious, scientific, literary, educational and similar purposes as defined in section 101 (6) of the Internal Revenue Code.

Such gifts by non-residents not citizens of the United States are entitled to the same deductions, if the gift is made for use within the United States or its possessions.

RETURNS

Returns must be filed by the donor with the Collector of Internal Revenue for the district where the donor resides on or before the 15th day of March following the close of the calendar year in which the gifts were made, if the gift to any person is in excess of the applicable annual exclusion. Non-resident aliens are required to file a return only when the gifts consist of property situated within the United States. If the donor has no legal residence in the United States, unless the Commissioner otherwise designates, the return is to be filed with the Collector at Baltimore, Maryland.

PAYMENT OF TAX

The tax is payable by the donor on or before the 15th day of March following the close of the calendar year in which the gift was made. The donor may pay it earlier or he may request from the Commissioner an extension of time, not to exceed six months, within which to make payment.
PENALTIES

A fine of not more than $10,000.00 or imprisonment of not more than one year, or both, may be imposed upon any person convicted of wilful failure to pay the tax or make the returns required. The penalty for a wilful attempt to evade or defeat the tax or its payment, upon conviction, is a fine of not more than $10,000.00, or imprisonment for not more than five years, or both.

ADMINISTRATIVE PROVISIONS

The administrative provisions, such as the assessment and collection of deficiencies, jeopardy assessments, refunds and credits are patterned after corresponding provisions of the income tax laws.

In drafting the Gift Tax statute, Congress framed its sections in terms of broad generalization. As a result, the interpretation of its provisions was left to be developed by administrative and judicial processes. This interpretative procedure is necessarily slow and from faltering due to the complexities of modern economic and social life and the ingenuity of taxpayers and their counsel in devising tax saving mechanisms to avoid imposition of the tax. Hence, the gift tax can be said to be in more tentative and formative condition. Those who are called upon to advise in such matters should take this factor into account in arriving at their conclusions.

TRUST FOR MINOR WHOSE INCOME AND CORPUS MAY BE USED FOR THE BENEFIT OF THE MINOR IN THE DISCRETION OF THE TRUSTEE IS A FUTURE INTEREST

Since the last session of the Institute of Federal Taxation, there have been some interesting developments in the Federal Gift Tax Law which will constitute the subject of this lecture.

In Fondren v. Commissioner, the Supreme Court on January 29, 1945 was called upon to decide whether a gift in trust for the benefit of minors whose income and corpus could be applied for the minors’ support, maintenance and welfare, in the discretion of the trustees, was a present interest or a future interest as to which the annual gift tax exclusion, then $5,000.00 would be allowed.

The gifts were made in 1937 by the donors, husband and wife, to seven irrevocable trusts for the benefit of the donors’ minor grandchildren. Income was to be accumulated, with the corpus and accumulated income to be turned over to the beneficiaries at specified times in the future. The trustee had the power to invade both income and principal for the support, maintenance and education of the beneficiary of each trust, if necessary, in the exercise of the trustee’s discretion. The final distribution of corpus and accumulated income
was to be made when the beneficiaries should attain the age of thirty-five years. The Supreme Court held that the beneficiaries did not have a right to the present enjoyment of the gifts, that their enjoyment was contingent on future events (existence of need), that they were of future interests, and that the $5,000.00 gift tax exclusions were not applicable.

It was urged that unless these gifts were to be taken as conferring the right to immediate enjoyment, no gift for the benefit of a child of tender years could be so regarded since in any such case "some competent person must be the primary judge as to the necessity and extent of reasonable requirements of the beneficiary." The Court termed the argument appealing, insofar as it sought to avoid imputing to Congress the intention to "penalize gifts to minors merely because the legal disability of their years precludes them for a time from receiving their income in hand currently;" that in view of the terms of, and the facts recited in, the trust in question which latter were that the fund would not be used because each beneficiary had other adequate means of support, and the fact that the distribution of the corpus had no relation to the beneficiary reaching his majority, neither the income nor the corpus could be applied immediately for the child's use or enjoyment.

This decision does not preclude entirely the allowance of an annual gift tax exclusion to a trust for the benefit of a minor where the circumstances indicate that the corpus and income therefrom are to be used for the present use and enjoyment of the minor. In his opinion, Justice Rutledge said significantly:

"It does not follow, as petitioners say, that if the exemption does not apply in this case it can apply in no other made for a minor's benefit. Whenever provision is made for immediate application of the fund for such a purpose, whether of income or of corpus, the exemption applies. Whether, in the case of a gift requiring such an application of the income, but providing for retention of a corpus no more than reasonably sufficient to produce the income required for this purpose and to insure its continued payment during minority, the donation would fall within the exemption, as to corpus as well as income, is a question not presented on this record and, therefore, not determined: Fondren v. Commissioner, 65 S. Ct. 499 (January 29, 1945.)

In Commissioner v. Disston, the grantor created trusts for the benefit of his three minor children. By their terms, the income was directed to be accumulated until the respective beneficiaries reached twenty-one years of age at which time it was to be paid. During their minority, however, the trustees were to apply such income as may be necessary for the education and support of the respective minors, accumulating, however, only that amount of the income which was not so needed. The trustees were also authorized to invade the corpus in an emergency. Thereafter until the beneficiaries reached forty-five years of age,
the income was to be paid in installments when a one-half of the principal was to be paid over to the beneficiaries free of the trust, the balance to be distributed upon beneficiaries death to his descendants.

The Supreme Court, citing its decision in the Fondren case, determined that the gift to the trust was a future interest. The annual exclusion was disallowed. The opinion further comments that there was no evidence to show the amount of the trust income necessary to be used for the maintenance, education and support of the minors during their minority. A taxpayer claiming an exclusion must assume the burden of showing the value of what he claims is other than a future interest. This burden was not met: Commissioner v. Disston —U. S.—, June 4, 1945.

The decisions of the Supreme Court in the Fondren and Disston cases settles for the time being the controversy which was long existed as to whether a gift in trust for the benefit of a minor represented a gift of a present interest or one of future interest. The door has not been completely shut against the recognition of a gift for a minor as a present interest where the terms of the trust make the income available for the minor beneficiary's use and enjoyment during his minority and provide for the distribution of the corpus when the minor beneficiary attains his majority. Furthermore, where the trustee is directed to use the income of the trust during the minority for the minor's benefit, he must assume the burden of establishing the amount of trust income which can reasonably be expected to be applied for the maintenance, education and support of minor during his minority. To the extent that he satisfies this burden that portion of the trust income should be treated as gift of a present interest as to which the annual exclusion should be applicable.

BACKGROUND OF PRESENT INTEREST VS. FUTURE INTEREST CONTROVERSY

Section 504 (b) of the 1932 Revenue Act allowed the annual exclusion to all gifts of present interests. In determining whether the donee received a present interest where the gift was in trust, the first question which arose was—who was entitled to the exclusion, the trust entity or the beneficiary for whom the trust was created?

The theory was early developed that the donee of a gift was the trustee. The important consideration was said to be the nature of the interest transferred by the donor. The conclusion reached was that a gift was not in the future if the trustor divested himself of all right and title to the property: Commissioner v. Wells, 88 F (2d) 339 (CCA-7, 1937); Commissioner v. Krebs, 90 F (2d) 880 (CCA-3, 1937); Noyes v. Hassett (DC Mass) 20 Fed. Supp. 31 (1937). In the Krebs case, the court went on to say that the beneficiaries received gifts of present interests where income from trusts was to be used for their mainten-
The Noyes case also found that the life beneficiaries received gifts of present interests. This opened the door for widespread tax avoidance. The donor could create an unlimited number of trusts for the same beneficiaries depositing in each an amount which did not exceed the annual exclusion.

Later, other courts determined that the beneficiaries of an irrevocable trust are in reality the donees, in accordance with the intent of the donor and the purpose of Section 504 (b) of the Revenue Act of 1932: *Welch v. Davidson*, 102 F (2d) 100 (CCA-1, 1939); *Rheinstrom v. Commissioner*, 105 F (2d) 642, (CCA-8, 1939).

Finally, in 1941, the entire field was clarified by two decisions of the Supreme Court. First, *Helvering v. Hutchings*, 312 U. S. 393 (1941), in effect overruled the doctrine that a completed transfer by the donor to the trust was the controlling element under section 504 (b). On the contrary, the court held that the beneficiaries were the donees, and that the donor was entitled to separate exclusions of $5,000.00 for each beneficiary receiving a present interest in computing his gift tax: *Fisher v. Commissioner*, 132 F (2d) 383 (CCA-9, 1942).

Second, the Supreme Court held that a gift was a future interest where the right of the beneficiary to the use, possession and enjoyment of the trust income depended upon the happening of some contingency; *Ryerson v. United States*, 312 U. S. 405 (1941); or the income was to be accumulated for minors until they arrived at twenty-one years of age: *United States v. Pelzer*, 312 U. S. 399 (1941), or the beneficiary's right of enjoyment was subject to the discretion of the Trustee: *Smith v. Commissioner*, 131 F (2d) 254 (CCA-8, 1942. See, also, Polisher, Annual Exclusion for Gifts in Trust, "Trusts and Estates, November 1944.

Section 505 (a) of the Revenue Act of 1938 denied the annual exclusion to "gifts in trust." It became effective January 1, 1939. Section 454 of the Revenue Act of 1942 eliminated the denial of the exclusion to gifts in trust but the requirements still persist that the gift must be of a present interest. This latter provision became effective January 1, 1943 and is still in force.

**GIFT OF LIFE INSURANCE POLICY IN TRUST**

A gift in trust of an insurance policy and the payment of the annual premiums thereon represented a gift of a future interest as to which the annual exclusion was not allowed where the beneficiary of the trust had no unconditional present rights to either the principal or the income of the trust: *Caudle v. Commissioner*, T. C. Memo. op CCH DEC. 14,460 (M), March 20, 1945.

On the other hand, where the income of trusts created by the donor was used for the payment of premiums of insurance policies on the lives of and
annuities for the primary benefit of the beneficiary who was given the present rights of ownership in the policies and the annuities, it was held that the gifts of income constituted a present interest as to which the gift tax exclusion was applicable but that the gifts of principal were future interests: Frank v. Commissioner, T. C. Memo. op CCH. DEC. 14, 227 (M), November 2, 1944.

VALUATION OF GIFTS

There have been a number of interesting refinements by Court decisions of the formula by which the valuation of business interests represented by stock in close corporations is determined for gift tax purposes.

VALUATION OF STOCKS FOR GIFT TAX

The general rule is that the value of gifts of stocks and bonds for gift tax purposes is the fair market value per share or per bond in the date of the gift. Where the securities are listed on a stock exchange, the mean between the highest and lowest quoted selling prices on the date of the gift is taken as the fair market value. The fact that no allowance was made by the Tax Court for the adverse effect on the value of the shares involved of World War II and labor problems was not found to be error: Zanuck v. Commissioner, (CCA-9) 45-1 USTC §10,208, May 28, 1945. Unlisted securities which are dealt in through brokers take as their fair market value the mean between the highest and lowest selling prices as of the date of the gift. Where there have been no sales the mean between the bona fide bid and asked prices on the date nearest the date of the gift is the figure used. If actual sales and bona fide bid and asked prices are not available, the value of the stock is arrived at by giving consideration to the companys net worth, earning power, dividend paying capacity, its future prospects and all other relevant factors having a bearing upon the value of the stock: Regulations 108, Section 86.19 (c); Baldwin v. Commissioner, T. C. Memo. op. CCH DEC. 14,341 (M) January 22, 1945; Havemeyer v. United States, Ct. Cls. 45-1 USTC §10,194, April 2, 1945, certiorari applied for August 31, 1945.

The valuation of stock of close corporations falls into this latter class. The process of valuation is further complicated at times by the existence of agreements which restrict the sale of such stock in the hands of their owners by giving other shareholders the right to purchase the same upon conditions stated in the agreement; and also the depressing effect, if any, upon the value of the stock where an unusually large number of shares is the subject matter of the gifts.

The material factors to be considered in determining the fair market value of stock of a close corporation were restated recently as its earning capacity,
anticipated profits, book value, dividend yields and such other facts and circumstances surrounding the corporation which would be considered by the respective buyer and seller: Baldwin v. Commissioner, supra.

In another case, the depressing effect of the death of the donor's father, ten days before the date of the gift, who was the owner of over fifty (50%) percent of the common stock and the mainstay in the business, was taken into account and the court determined that the fair market value of the stock was a figure much lower than its book value: Edwards v. Commissioner, T. C. Memo. op CCH DEC. 14,342 (M), January 23, 1945.

The past earnings and potential earning power of the close corporation whose stock was to be valued were given consideration in addition to the company's net worth, the testimony of the expert witnesses and other relevant factors in arriving at its valuation: Abrams v. Commissioner, T. C. Memo. op CCH DEC. 14,500 (M), April 14, 1945.

On the other hand, the average earnings for years prior to the gifts were rejected as not representative of the earning capacity of the business in its early formative years but the future prospects of the company were emphasized. The value of the stock was arrived at by capitalizing at 10% the anticipated earnings of the company: Parker v. Commissioner, T. C. Memo. op CCH DEC. 14,537 (M), April 18, 1945.

Stock in a family holding corporation which was never sold on the open market and was never intended to lie sold, was valued primarily on the basis of the value of the securities and other assets owned by the company: H. Smith Richardson v. Commissioner (CCA-2) 45-2 USTC §10,225, August 17, 1945.

Moreover, even if there had been sales of stock of a close corporation, the sale price will not control in establishing the value of the stock for gift tax purposes, where the transactions were among members of the stockholders immediately family and were not at arms length: Roberts v. Commissioner, T. C. Memo. op CCH DEC. 14, 714 (M), July 30, 1945.

Shares in a Massachusetts Trust which was taxable as a corporation for income tax purposes were valued on the basis of shares of stock in a corporation. The tax Court refused to treat the gift of such shares in the trust as a gift in kind of a part of the assets of the trust: Haigh v. Commissioner, T. C. Memo. op CCH DEC. 14,618 (M), June 11, 1945.

STOCKS SUBJECT TO RESTRICTIVE AGREEMENTS

The effect of restrictive agreements was considered in several decisions of the Courts. The value of stock, for gift tax purposes, transferred by the donor to his son was not limited to the prices at which each of the shareholders of the company had agreed to offer them to the others at any time he should wish
to sell, where the Commissioner had given consideration to the effect of this agreement in valuing the stock. Moreover, the court stated that the burden of proof rests on the taxpayer to show that the allowance by the Commissioner for the depressing effect of the restrictive agreement was insufficient: John v. Commissioner (CCA-2) 45-1 USTC §10,187, March 23, 1945.

In another case, "slight weight" only was given to a restrictive agreement giving the company or the executive stockholders the right to purchase the stock of a deceased stockholder or another stockholder at prices determined in accordance with the terms of the agreement which failed to place any restriction upon the disposition of the stock while in the hands of the donor: Spitzer v. Commissioner, T. C. Memo. op CCH DEC. 14,598 (M), May 31, 1945.

Where the donor, with the permission of the directors of the corporation, of which he was a majority stockholder, gave his wife shares of stock on which there was a restrictive clause permitting only employees to hold the stock and requiring the corporation to repurchase the stock at its book value at the termination of the stockholder's employment, the Tax Court fixed the value of the stock at its book value. The Second Circuit Court of Appeals reversed the Tax Court and directed it to redetermine the valuation of the stock giving consideration to all factors, including the prospective earnings, the donor's life expectancy, his power to change the by-laws or to sell to another employee with the directors consent and any other factor which would contribute to or detract from the value of the stock: Commissioner v. McCann, 146 F (2d) 385 (CCA-2, December 21, 1944).

BACKGROUND OF VALUATION OF STOCK OF CLOSE CORPORATION SUBJECT TO AGREEMENT OF SALE OR OPTION

These decisions construing the effect for gift tax purposes of a restrictive agreement covering shares of stock in a close corporation made no change in the law as it existed. Their only consequence was to make distinctions in the application of the formula of valuation without altering it.

It must be remembered that there are two other possible arrangements by which the value of shares of stock in a close corporation may be controlled. One is an agreement of sale at a specified price to take effect at the death of the stockholder; and the other, an agreement granting to another a legally binding option to purchase the stock at a fixed price upon a contingency named. The latter situation is usually designated as stock subject to "call."

Where the stock of the donor in a close corporation is subject to an agreement of sale or to another's legally binding option to purchase at a fixed price, the fair market value is limited, for Federal gift tax purposes, to such price provided the price was fair at the time it was established: Helvering v. Salvage, 297 U. S. 106 (1936); Wilson v. Bowers, 57 F (2d) 682 (1932); Commis-
si oner v. Bensel, 100 F (2d) 639 (1938). (These cases cover Estate Taxes but apply equally to Gift Tax situations). However, the terms of the agreement to be effective must prohibit the owner of the stock from disposing of his shares prior to the contingency upon which the exercise of the option or right to purchase is made to depend: Hoffman v. Commissioner, 2 T. C. 1160 (1943); Matthews v. Commissioner, 3 T. C. 525 (1944).

BLOCKAGE

The unit basis for determining the value of shares of stock and bonds sometimes does not reflect the true value of the securities on the applicable date. This may be due to the number of the shares of stock involved in the gift under the particular circumstances. It is common knowledge that sales of small lots of stock afford no reliable criterion of value per share for large lots which if disposed of rapidly are likely to flood the market and thus depress the price. Until recently the regulations attempted to outlaw the size of the lot of stock involved as a factor bearing upon stock exchange prices. Finally in 1939, the Treasury deleted from its regulations the words “the size of the gift is not a relevant factor and will not be considered in such determination.”

Before that time and since then, the Courts have universally held that where a large block of stock is involved, the principle of “blockage” will be invoked upon the theory that a large block of stock cannot be marketed and converted into cash as readily as small quantities. Under the principle of “blockage,” there is allowed and deducted from the mean price of actual sales on the exchange a deduction equal to the usual expenses of required secondary distribution in order to market the stock under a best efforts arrangement whereby the broker would take an option to be exercised as he was able to find purchasers: Groff v. Munford (CCA-2) 45-2 USTC §10,223 (July 19, 1945); Estate of Edmund H. Lunken, T. C. Memo. op CCH DEC. 14,617 (M), June 11, 1945, as amended June 21, 1945.

VALUATION OF INTEREST IN INSURANCE POLICIES

The valuation of the donor’s interest in life insurance policies as beneficiary and the owner of all the rights of ownership which he assigns, subject to a creditor’s lien which exceeded in amount the cash surrender value of the life insurance policies deposited as security, the creditor having the right to proceed against any part of the collateral including the life insurance policies was held to be less than the cash surrender value of the policies but not more than the sum which the petitioner herself alleged to be the value of the donor’s interest in the policies: (The amount of the debt was $484,814.00; the face amount of the policy was $325,000.00; the market value of the other collateral deposited was $1,118,534.00 excepting the cash surrender value of the life insurance policies) Leslie v. Commissioner, T. C. Memo. op CCH DEC. 14,404 (M), February 12, 1945.
ANTE-NUPTIAL TRANSFERS SUBJECT TO GIFT TAX

On March 5th, 1945, the Supreme Court handed down its opinions in *Commissioner v. Wemyss* and *Merrill v. Fahs*. The *Wemyss* case involved the question of whether a transfer by the taxpayer to his intended spouse, to compensate her for the loss of her personal income because of the contemplated marriage and in consideration for which she at the same time released her prospective marital rights in the taxpayer's estate, was subject to gift tax. A provision in the Will of her former husband directed the discontinuance of certain trust income payable to her after his death in the event of her remarriage. In concluding that the transfer came within the provisions of the gift tax statute, Mr. Justice Frankfurter writing the opinion for the Court based his decision upon some novel legal propositions:

1. A transfer may be a gift within the meaning of the Federal gift tax law in the absence of a "donative intent" on the donor's part—that is, that a gift in the ordinary sense was not intended.

2. A transfer to an intended spouse to indemnify her against the loss in personal income from her former husband's estate, which was to cease upon her remarriage, was not a "genuine business transaction," if it was also accompanied by her release of marital rights in the property of her prospective spouse.

3. The "consideration in money or money's worth" required to relieve a transfer from the gift tax statute must result in a "benefit to the donor." The commonly accepted legal definition of "consideration" was disregarded to the extent that it states that a valid consideration exists where there was a benefit to one party to the transaction or a detriment to the other.

4. Where the value of the property transferred was greater than that received, the excess constituted a gift subject to tax.

There is a lack of realism permeating the Court's decision. Was this not a business transaction insofar as the intended spouse is concerned where the contemplated marriage resulted in her loss of substantial income from trust funds created by her former husband? One wonders what kind of transaction the Supreme Court believes would satisfy the requirement of a "genuine business transaction," if the attempt of the intended spouse in this case to indemnify herself against the loss which she would suffer by her remarriage was not of sufficient dignity to rise to the level of a business transaction.

In *Merrill v. Fahs*, decided by the Supreme Court, the ante-nuptial agreement entered into with the prospective wife by the taxpayer at the time of his marriage required him to set up an irrevocable trust for her benefit within ninety days after their marriage. In return for the creation of this trust, the intended wife released all rights which she might have acquired in the taxpayer's pro-
property. It was affirmatively proved that the taxpayer's resources at the time were worth more than five million dollars and the transfer to the prospective wife worth three hundred thousand dollars.

This was a five to four decision with Mr. Justice Frankfurter writing the majority decision, concurred in by four other Justices. The dissenting opinion was by Mr. Justice Reed with whom three other Justices joined in their dissent.

The majority opinion turned largely on the interpretation of the phrase "transfers for other than adequate and full consideration in money and money's worth." It concluded that the Federal gift tax was supplementary to the Federal estate tax, that the two were in pari materia and must be construed together, citing Estate of Sanford v. Commissioner, 308 U. S. 39 (1939). Congress in the 1932 Act provided, for the purposes of Federal estate tax, that the relinquishment of marital rights should not constitute consideration in money or money's worth. The gift tax statute enacted by Congress at the same time omitted this provision. Nevertheless, this omission was not considered persuasive by the majority court that Congress did not intend transfers of this type to be subject to gift tax. The Court felt itself impelled to construe the same phrase (adequate and full consideration in money or money's worth) in an identical manner for both estate and gift taxes, the evident intention of Congress to the contrary, notwithstanding. Here, if ever, is a bald bit of judicial legislation which read into the gift tax statute a provision which not only did not appear in it but actually was omitted by Congress!

The principles announced in these cases by the Supreme Court were recently followed by the Tax Court: William Rosenwald v. Commissioner, T. C. Memo. op CCH DEC. 14,579 (M), May 21, 1945.

A transfer for less than adequate and full consideration was not held subject to gift tax despite the provisions of section 1002 of the gift tax statute where it resulted from a transaction in the ordinary course of business which was bona fide, at arms length and free from donative intent. This decision is in harmony with regulations section 86.8: Philip M. McKenna v. Commissioner, T. C. Memo. op CCH DEC. 14, 765 (M), September 18, 1945.

TRANSFERS FOR LESS THAN ADEQUATE CONSIDERATION—WIFE'S INTEREST IN COMMUNITY PROPERTY

The decedent and his wife domiciled in California transferred a specified number of shares of stock, which were part of the community, to each other, to be held as his and her separate estate. Prior to 1927 under the California law a wife had no vested interest in the community. Decedent's transfer to his wife was not for "adequate and fair consideration in money or money's worth" and was held to be subject to gift tax: Horst v. Commissioner (CCA-9) 45-1 USTC §10,211, June 5, 1945.
POSSIBILITY OF REVERTER

The grantor created trusts whose income was used for the payment of premiums of insurance on the lives of and annuities for the primary benefit of the beneficiaries, who were given rights of ownership in the policies. He reserved a possibility of reverter (the right to regain the policies if the beneficiaries predeceased the grantor), the value of which was indeterminable by known actuarial tables. The gifts were held to be complete. The full value of the property, without any allowance for the possibility of reverter was held subject to tax: *Frank v. Commissioner*, T. C. Memo. op CCH DEC. 14,227 (M), November 2, 1944.

It is now well settled that a possibility of reverter retained by the donor is insufficient to render a gift incomplete. In such cases, the value of the property transferred less the value of the reversionary interest determined by actuarial formulae, is subject to gift tax. If, however, the possibility of reverter retained cannot be so evaluated, no credit for it will be recognized and the entire value of the property transferred will be taxed: *Smith v. Shaughnessy*, 43-1 USTC §10,013; *Robinette v. Helvering*, 43-1 USTC §10,014.

The decisions of the Supreme Court in *Fidelity-Philadelphia Trust Company (Estate of Anna C. Stinson, deceased) v. Rothensies*, 45-1 USTC §10,168 and *Commissioner v. Estate of Lester Field, deceased*, 45-1 USTC §10,169, both handed down February 5, 1945, announced a sweeping rule which subjected to Federal estate tax, as part of the decedent’s gross estate, the entire corpus of trust property where a reversionary interest was retained in favor of the decedent at the time of death. This irrespective of the degree of remoteness of the reversionary interest. The value of the property subject to the contingency rather than the actuarial or theoretical value of the possibility of the occurrence of the contingency is the measure of tax.

When we compare these decisions in the field of estate taxes with the gift tax decisions of the Supreme Court in *Smith v. Shaughnessy* and *Robinette v. Helvering*, supra, we find an anomalous situation to exist. These latter cases involved the valuation for gift tax purposes of reversionary interests retained by a donor. They held that where the value of reversionary interests can be determined by known actuarial formulae, credit for its value should be allowed against the property transferred by gift and the gift tax should be levied upon the net amount. Where, however, the value of the possibility of reverter cannot be so determined, the entire property transferred would be subject to tax without any deduction for the possibility of reverter retained. Why should the possibility of reverter where it can be valued, be treated as an interest in property for gift tax but the identical interest ignored for estate tax? The injustice further exists in those cases where a gift tax has been paid on a transfer subject to a possibility of reverter and upon the death of donor the property is again subjected to Federal estate tax to the extent of its full valuation because of the reserved
possibility of reverter in favor of the deceased donor. While the Internal Revenue Code allows a credit against the estate tax for gift tax paid upon property transferred within five years of the date of death thus affording relief to a degree, no relief is granted in those cases where the gift tax was paid more than five years prior to death. The possibility of this conflict was adverted to long before the recent decisions were handed down: Polisher, Estate Planning and Estate Tax Saving, pages 31-34.

POWER TO REVOKE SUBJECT TO TRUSTEES' CONSENT, WHO AGREED, PRIOR TO THE TRANSFER, TO GIVE CONSENT TO REVOCATION

In 1940 taxpayer, a resident of Switzerland, transferred securities located in the United States in trust for herself for life, and thereafter for her children, reserving a power of revocation, subject to the unanimous consent of the trustees, one of whom was a beneficiary of the remainder interest. The purpose of the trust was to prevent confiscation of her property by Germany in case of invasion of Switzerland. The trustees agreed to give their consent to revocation after the emergency had passed. The Tax Court held the power of revocation with agreed consent rendered the transfer incomplete for purpose of gift tax: Schwarzenbach v. Commissioner, 4 T. C.—No. 19, October 9, 1944.

TERMINATION OF TRUST BY MUTUAL AGREEMENT AND ACCELERATION OF DISTRIBUTION TO BENEFICIARY

The relinquishment or termination of a power to change the distribution of transferred property, occurring otherwise than by death of the donor, is regarded as the event which completes the gift and causes the gift tax to apply. The receipt of the income or of other enjoyment of the transferred property by the transferee or by the beneficiary (other than by the donor himself) during the interim between the making of the initial transfer and the relinquishment or termination of the power operates to free such income or other enjoyment from the power, and constitutes a gift of such income or of such other enjoyment which is taxable as of the calendar year in which it is received. Where, however, the donor's power to control the distribution or enjoyment of the property can only be exercised in conjunction with another who has a substantial adverse interest, the gift is complete at the time the property is transferred: Regulations 108, sec. 86.3; Sanford v. Commissioner, 308 U. S. 39 (1939).

In a recent case, the donor transferred property in 1926 to herself and her three daughters as trustees for a term of twenty-one years unless sooner terminated, the daughters to receive the income during the life of the trust and the principal upon its termination. In 1939, the trust was terminated by a written agreement with the consent of the donor and all of the trustees and the principal divided equally among the three daughters. The Court held that the transfer
was completed in 1926 and that the termination in 1939 was not a taxable gift. Where the donor reserved the power to revest in herself the title to the subject matter of the gift but this power could only be exercised by her in conjunction with a person having a substantial adverse interest, a completed gift had been made for gift tax purposes: *Robnert v. Commissioner*, T. C. Memo. op CCH DEC. 14,141 (M), September 23, 1944.

**FAILURE TO EXERCISE RIGHT TO CANCEL TRUST CONSTITUTES COMPLETED GIFTS OF INCOME DURING INTERIM PRIOR TO CANCELLATION**

In 1932 the taxpayer's wife created five trusts for the benefit of their children naming the taxpayer as trustee with the discretionary power of distribution over the income. The accumulations of income were to be reinvested and distributed together with the income therefrom to the beneficiary upon their attaining the age of thirty-five years. Each trust instrument provided that the taxpayer during his lifetime could cancel and terminate the trust and receive for himself the corpus of the trust fund absolutely, free of all trusts. In 1941 the taxpayer exercised the power to cancel the trust and applied the corpus of the trust to his own use. The Court held that the accumulations of income during the years 1933-35 set aside by the taxpayer for the beneficiaries prior to the cancellation of the trusts, constituted completed gifts of the income subject to gift tax: *Richardson v. Commissioner*, (CCA-2), 45-2 USTC §10,225, August 17, 1945.

**EFFECT UPON COMPLETENESS OF GIFT OF CONTINGENT RIGHT TO NAME AFTER-BORN GRANDCHILDREN AS BENEFICIARIES**

Prior to 1939 while the Gift Tax Law was in effect, the taxpayer transferred property in trust, the corpus of which was to be divided into three equal parts, one for each of his three grandchildren then living and into additional equal parts as after-born grandchildren might be designated by him in writing during his lifetime. One after-born grandchild was designated by the taxpayer prior to his death as an additional beneficiary. On May 31, 1939, the taxpayer relinquished his contingent right to designate other after-born grandchildren. The transfers in trust were completed gifts for gift tax purposes when made according to the decision of the Tax Court: *Estate of Louis J. Kolb, deceased v. Commissioner*, 5 T. C.—No. 68, August 13, 1945.

**TERMINATION OF POWER OF REVOCATION BY CONTINGENCY BEYOND GRANTOR'S CONTROL**

In 1930, the taxpayer created two trusts transferring to trust estate “A” securities, the income from which was to be used to pay premiums on five life insurance policies of $100,000 each on the life of her husband, the policies con-
stituting trust estate "B". The excess amount of income was to be paid to grantor. She reserved the right at any time during the lifetime of her husband to revoke the trusts and after the death of her husband the right to withdraw and repossess herself of not exceeding one-half of the assets constituting trust estate "A". Her husband died on March 19, 1939, without any action being taken by the taxpayer to revoke the trusts or to relinquish her right to revoke. The Tax Court held that the taxpayer was liable to gift tax in 1939 upon the value of the trust assets with respect to which the right of revocation was terminated by the death of her husband. The fact that the termination of the right of revocation was accomplished by the happening of a contingency over which the taxpayer had no control—the death of her husband—did not relieve her of liability for gift tax: Goodman v. Commissioner, 4 T. C.—No. 21, October 12, 1944.

FOREGIVENESS OF CUMULATIVE UNPAID PREFERRED DIVIDENDS NOT A TAXABLE GIFT

No taxable gift to the corporation resulted where the sole preferred stockholder executed a document waiving her right to undeclared dividends in arrears at that time on its 6% cumulative preferred stock: Emily C. Collins, 1 T. C. 605 (1943), appeal to the Third Circuit Court of Appeals February 18, 1943 withdrawn by compromise stipulation.

A decision in this case would have been desirable. It represents a tax problem resulting from the decision of the Supreme Court in American Dental Company v. Helvering, 318 U. S. 322 (1943) which held that the gratuitous forgiveness by a creditor or stockholder of an indebtedness due from a corporation did not result in income to the corporation. The issue raised in the instant case was whether the creditor having released the corporation of its obligation effected a transfer subject to gift tax.

GRANTOR OF TRUST LIABLE FOR GIFT TAX THOUGH INCOME TAXABLE TO HIM

The taxpayer made a transfer in trust for a limited period, with provision for payment of the income to the named beneficiary during that time, and paid gift tax on the value of the right to the income for the entire period. Taxpayer was also subjected to income tax on part of the income. It was held, on the facts, that the gift tax had been correctly and lawfully determined, and was due, notwithstanding the fact that the taxpayer was also taxed under the income tax statutes: Goulder v. United States,—Fed. Supp.—(D. C., N. D., Ohio) May 17, 1945.
TRANSFEREE LIABILITY

The donee of a gift is personally liable as transferee for the unpaid gift tax on the donor's gift to the extent the total value of the gifts received by the donee irrespective of the financial ability of the donor to pay the deficiency and even though no demand was made upon the donor for payment: Moore v. Commissioner, (CCA-2) 45-1 USTC §10,167, January 18, 1945; Evans v. Commissioner, T. C. Memo. op CCH DEC. 14,392 (M), February 9, 1945; Babcock v. Commissioner, T. C. Memo. op CCH DEC. 14,397 (M), February 9, 1945.

TRANSFEREE LIABILITY—STATUTE OF LIMITATIONS

The liability of the transferee for unpaid gift tax upon the donor's gift may be asserted by the Commissioner at any time within one year after the expiration of the period of limitation for assessment against the donor which is within three years after the return was filed: Mississippi Valley Trust Company v. Commissioner, (CCA-8) 45-1 USTC §10,175 (February 6, 1945); Moore v. Commissioner, supra; Babcock v. Commissioner, supra; Springfield National Bank v. Commissioner, T. C. Memo. op CCH DEC. 14,400 (M), February 10, 1945; Third National Bank & Trust Co. v. Commissioner, T. C. Memo. op CCH DEC. 14,401 (M), February 10, 1945. These decisions extend the statute of limitations against the transferee to four years. This result has been criticized as unwarranted by Professor Irwin N. Griswold, 57 Harvard L. R. 906.

REFUND

The taxpayer made gifts in 1934, and paid a gift tax thereon on March 14, 1935, and a deficiency assessment on July 13, 1937. He made additional gifts in 1938 on which he paid a gift tax on March 15, 1939. On June 13, 1939, he filed a claim for refund based on overvaluation of certain stocks comprising a part of the 1934 gifts. The refund claimed exceeded the amount of taxes paid on the 1934 gifts within three years of the date of filing the claim but did not exceed the amount of gift taxes paid by him within three years of the date of the refund claim if the taxes on the 1938 gifts could be reached by the claim for refund on the 1934 gifts. The Tax Court held that the gift tax is an annual tax and that refunds on the 1934 tax can only be recovered to the extent that taxes on gifts for that year were actually paid within three years of the date of the filing of the claim for refund: Havemeyer v. United States, Ct. CLs. No. 45775, April 2, 1945, cert. applied for August 31, 1945.

TAX FREE RELEASES OF POWER OF APPOINTMENT

By joint resolution of Congress on June 28, 1945, approved by the President the following day, the gift-tax-free release of certain powers of appointment was extended to July 1, 1946. For persons under legal disability or in the military service, the benefit of this provision is extended to the expiration of six months after the removal of the disability or the release from military service.
This relief provision first appeared as section 452 of the Revenue Act of 1942 and amended section 1000 of the Internal Revenue Code by adding a new subsection (c) which provides that an exercise or release of a power of appointment should be termed a transfer of property by the individual possessing such power. There was excepted from the operation of this section, a power to appoint within a limited class which does not include any others than the:

1. Decedent's spouse.
2. Spouse of the creator of the power.
3. Descendants of the decedent and his spouse.
4. Descendants of the creator of the power and his spouse.
5. Spouses of the descendants (descendants include adopted children and illegitimate children).
6. Charitable organizations.

Where a power of appointment created before October 22, 1942 exists in favor of a donee of the power, the holder of such power before July 1, 1946, may release the same or reduce its scope to the limited class prescribed by the Revenue Act of 1942 without incurring any gift tax liability, and thus also escape the inclusion in his estate at death of the property subject to the power.

This tax free right to release does not apply to powers created on and after October 22, 1942, nor to powers held by the creator or donor of the power. Prior to the Revenue Act of 1942, there was includible in the gross estate for Federal Estate Tax purposes property over which the decedent held (1) a general power of appointment; (2) which was exercised by him; and (3) under which the property passed to the appointee. If the power of appointment were limited or restricted the property was not includible in the estate of the holder of the power. Since the Revenue Act of 1942, the mere existence of a power of appointment whose scope exceeds the restricted class defined under the 1942 Revenue Act will cause the property over which the power exists to be included in the estate of the holder of the power. However, a restricted power created before October 22, 1942 which could not have been exercised by the holder in his own favor or for the benefit of his estate or his creditors is not subject to estate tax.

RELEASE OF POWER TO CONTROL INCOME IN CERTAIN DISCRETIONARY TRUSTS

Congress by joint resolution of June 28, 1945, approved by the President on June 29, 1945, amended section 501 of the Revenue Act of 1932 by providing for the gift-tax-free relinquishment of the power to change the interest of a beneficiary of a trust where the release was affected at any time after June 7, 1932, the date of the enactment of the gift tax statute and before January 1,
1945. This relief provision was first inserted by section 502 of the Revenue Act of 1943, enacted February 25, 1944 over Presidential veto, and was intended to permit the gift-tax-free release of powers retained by the grantor to control the distribution of property or income of a trust, or other termination of such power, or the power to re vest the property in himself, where the power could not be exercised by the grantor alone or by the grantor in conjunction with any other person not having a substantial adverse interest in the disposition of the property or its income. The amendment when it was first appeared into the law granted the tax-free release only to releases of such powers on and after January 1, 1939, but the joint resolution extended its benefits to any transfer made on or after June 7, 1932. The tax-free release was subject to the qualification that settlement must be made for any gift tax liability that would have been incurred at the time the transfer was originally made, if at that time the transfer had been subject to gift tax.

ADDITIONAL CONTRIBUTIONS TO DISCRETIONARY TRUSTEES

Transfers to trusts for the purpose of reimbursing the trustees for income taxes paid in prior years in return for the trustees agreement not to file any claim for refund due them do not constitute gifts under Code Section 1000.

Section 134 of the Revenue Act of 1943 added a new subsection (c) to section 167 of the Internal Revenue Code, and provided that only the income of the trust actually used to discharge the grantor's obligation of support is taxable to him. This amendment, induced by the decision of the Supreme Court in Helvering v. Stuart, 317 U. S. 154 (1942) was effective as to taxable years after December 31, 1942 but was made retroactive under certain conditions to be prescribed by regulations. These regulations are contained in T. D. 5392 and provided that the grantor may elect to have subsection (c) apply retroactively if, among other things, the trustee agrees not to file or prosecute a claim for refund or credit of income tax which the trustee has paid on income of the trust for such prior years: Special letter ruling dated October 24, 1944 addressed to the Wachovia Bank and Trust Company, Winston Salem, North Carolina, CCH Federal Inheritance, Estate and Gift Tax Service, § 6010 (letter ruling 10/24/44).

NEED FOR INTEGRATION OR CORRELATION OF FEDERAL ESTATE, GIFT AND INCOME TAXES

The present gift tax law was enacted to accomplish two objectives. One purpose was to prevent or compensate for the avoidance of death taxes. The Congressional Committee Reports state that the plan of the gift tax was "to impose a tax which measurably approaches the estate tax which would have been
payable on the donor's death had the gifts not been made and the property given had constituted his estate at death. The tax will reach gifts, not reached for one reason or another, by the Estate Tax."

Its other function was to implement the income tax, by imposing a tax upon gifts of income producing property. It was hoped that the redistribution of income therefrom among persons in lesser income surtax brackets in order to avoid the higher income surtax brackets of the donor would thereby be discouraged: H. R. Rep. No. 708, 72d Cong., 1st Session, p. 28 (CB1939-1, Part 2, p. 477); Sen. Rep. No. 665, 72d Cong., 1st Session, p. 40 (CB 1939-1, Part 2, p. 525); Estate of Sanford v. Commissioner, 308 U. S. 39, 44 (1939).

This dual loyalty of the Gift Tax to the Estate Tax and the Income Tax has weakened its effectiveness and has had many unfortunate consequences. The Government has lost taxes. Taxpayers have suffered hardships while the judicial interpretation of the statute was being developed. Conflicts have arisen in the application of the income, estate and gift taxes as to the identical transfer resulting in incongruous and inequitable consequences. A recitation of such conflicts in this article is precluded by space limitations.

The Supreme Court, itself, during recent years has expressed two diametrically opposed versions as to the relationship which exists between the Federal Estate and Gift taxes. In 1939, it handed down an opinion in which it announced that the Estate and Gift taxes were mutually exclusive so that if a transfer were taxable under one of them, it must escape being taxed under the other: Estate of Sanford v. Commissioner, 308 U. S. 39. More recently this concept of the relationship was repudiated. The Supreme Court declared that the estate and gift taxes were pari materia, must be construed together, and are not mutually exclusive so that a transfer subject to gift tax might later be subject also to estate tax—the former being in effect an installment on the latter. No small wonder that those of us who are wont to scan the celestial legal firmament for portents and guidance have wandered about without adequate and dependable bearings.

The problem has not been allowed to go unnoticed. It has provoked considerable comment among our foremost tax scholars and experts which have taken the form of analytical and constructive articles published in legal and tax periodicals. In many quarters, the clamor has been raised concerning the need for an integration, correlation or coordination of the income, gift and estate taxes. Some of the suggestions which have been made include:

1. The taxpayer should be taxable on income of property transferred until he has completely divested himself of any interest in it. If any interest is reserved, he should remain taxable on the income.

The Gift Tax law should provide that the gift tax shall not be payable until the grantor ceases to be taxable on the income, except at his death.
The Estate Tax should apply wherever the grantor is taxable on the income from the property at the time of his death.

All transfers made within two years of death should be subject to estate tax with full credit allowed for any gift tax paid thereon.

The entire plan to be implemented by a set of rules which would determine when the transfer was complete. Only transfers made after the date that the new plan is adopted should be subject to tax thereunder: Griswold, 56 Harvard L. R. 337 (1942).

2. Integrate the gift and estate taxes into one cumulative tax on all transfers. Under this plan, the estate tax would be simply the final installment of the Gift Tax, falling into the rate bracket determined by the aggregate of all inter-vivos gifts with the property left at death: Altman, 16 Tax Magazine 259 (1938).

3. The income, gift and estate taxes should be integrated into one comprehensive tax on all receipts. Everything which a person received during the year, whether by way of income, or as donee or legatee or by inheritance would be treated together and taxed as a unit: Simons, Personal Income Taxation (1938); Block, "Economic Mobilization" (American Council of Public Affairs) 1940.

4. The provisions of the English, Australian and New Zealand statutes should be adopted. They provide that as to transfers in trust of life estates with remainders over a tax is imposed on the termination of the life estate, (under our system, there is no tax at termination of life estate).

5. Still another method of handling the life estate—remainder situation is the accession tax—a tax on the receipt of any property either by gift or by bequest, devise or inheritance. It would be imposed on the recipient of the property and would be in lieu of the present gift and estate taxes. It would be cumulative in applying the tax rates and would be computed on the aggregate amount of such receipts after tax went into effect. Cf Magill, the Impact of Federal Taxes (1943), 33.

6. The latest has been the suggestion that the Federal government withdraw entirely from the estate tax field and relinquish it to the individual states: A Tax Program for a Solvent America, Roswell Magill, Chairman, (1945).

To us, it seems that the most practicable solution of the problem lies in the realm of integration of the estate and gift taxes into one cumulative transfer tax, as suggested by Mr. Altman. Under this plan, gifts inter vivos and transfers at death would be classified together. The transfers during lifetime would be taxed as under the present gift tax; and the transfer at death would be treated simply as the final transfer and would be taxed at rates based upon the cumulative total of gifts made during life. This would eliminate the troublesome problems relating to transfers in contemplation of death and transfers intended to take effect at death. All other property of the decedent would be included in the gross estate as now provided under the Estate tax statute. A reasonable lifetime exemption should be continued as to transfers inter-vivos and an additional exemption should be granted, applicable to transfers taxable at death. This is especially necessary for the decedent who though prosperous during part of his life met adversity towards its latter end and was left with little property at death. Or perhaps some exemption should be allowed where the transfer at death is to the spouse of the decedent. Any unconsumed portion of the lifetime exemption should inure to the benefit of and be available to the decedent’s estate. Into this pattern could be incorporated Professor Griswold’s idea of setting forth a statement of the principles by which it could be determined when a transfer in trust or otherwise is completed for the purposes of the tax, whether during life or at death. To reduce confusion on this issue, the rules should be written into the statute with a general omnibus provision for those situations which cannot be foreseen at this time.

Moreover, the income tax could be correlated with this transfer tax. When the transfer tax is paid on a transfer, as a general rule the transferor should not be liable for income tax on the income of the transferred property.

One difficulty with the cumulative transfer tax is that it runs counter to the philosophy which has motivated the Federal Gift and Estate tax in our contemporary economics. For the past two decades with the exceptions of the war period, the Federal estate and gift tax have been employed more as instruments of social planning to bring about a redistribution of wealth, than as tax gatherers for governmental fiscal needs. Since the cumulative total of transfers during life will result in forcing the property transferred at death into the highest tax bracket attained by the cumulative treatment of inter-vivos transfers, the effect of such a transfer tax must be to deter and discourage the making of inter vivos transfers. This, because there is no tax saving incentive to stimulate the urge for redistribution of his wealth during the owner’s lifetime.

It is hoped that from all the suggested plans there will ultimately emerge, in the not too distant future, a pattern for the integration and correlation of the Federal Income, Estate and Gift Taxes which will furnish the basis for remedial Congressional action.