Assignment of Income: Gifts Of Stock and Dividend Income

By JANET A. MEADE

According to the author, the 1989 decision of the Fifth Circuit in *Caruth Corp. v. Commissioner*, which appears to allow taxpayers to avoid the recognition of income on gifts of stock taking place between the dividend declaration date and the record date, should be interpreted cautiously. Analysis of *Caruth* in light of the long-established rule in *Estate of Smith* and in light of several related cases suggests that controlling stockholders may be placed in a more tenuous position in this situation than minority stockholders.

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It is a fundamental principle of income tax law that a taxpayer cannot escape tax liability on part of his income merely by assigning his right to receive the income to another party.[1] But it is equally well established that he can avoid tax liability if he assigns the income-producing property, rather than the income itself.[2] Applying this principle to the receipt of dividends on stock, Reg. § 1.61-9(c) specifies that when stock is sold between the dividend declaration date and the record date, the dividend ordinarily is taxable to the purchaser. The Third Circuit Court of Appeals, however, has stated in *Estate of Smith*[3] that if a gift of stock occurs after a dividend has been declared, but before the record date, the dividend is taxable to the donor of the stock.

[1] See, e.g., *Lucas v. Earl*, 2 USTC ¶ 496, 281 U. S. 111 (1930), rev'g 1929 CCH D-9120, 30 F.2d 898 (CA-9), rev'g CCH Dec. 3555, 10 BTA 723 (1928); *Helvering v. Horst*, 40-2 USTC ¶ 9787, 311 U. S. 112 (1940), rev'g 39-2 USTC ¶ 9766, 107 F.2d 906 (CA-2), rev'g CCH Dec. 10,664, 39 BTA 757 (1939).

[2] See, e.g., *Blair v. Comm'r*, 37-1 USTC ¶ 9083, 300 U. S. 5 (1937), rev'g 36-1 USTC ¶ 9231, 83 F.2d 655 (CA-7), rev'g CCH Dec. 8874, 31 BTA 1192 (1935); *Heim v. Fitzpatrick*, 59-1 USTC ¶ 9251, 262 F.2d 887 (CA-2), rev'g 57-1 USTC ¶ 9682, 151 F. Supp. 574 (D. C. Conn.); Rev. Rul. 72-312, 1972-1 CB 22.

[3] *Estate of Smith v. Comm'r*, 61-2 USTC ¶ 9543, 292 F.2d 478 (CA-3), cert. denied, 368 U. S. 967 (1962), aff'g *Anton v. Comm'r*, CCH Dec. 24,305, 34 TC 842 (1960).

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The recent decision in *Caruth*[4] provides additional insight into the taxation of dividends under the assignment of income doctrine. In this case, the Fifth Circuit has held that the transfer of stock to a charity after the dividend declaration date, but before the record date, is not an assignment of income and, hence, does not require the donor to recognize dividend income.

Because the decision in *Caruth* is seemingly inconsistent with the long-standing rule established in *Smith,* this article examines the judicial rationale of these two cases and identifies the key factors used by the courts in reaching their decisions. Also included in this article is a brief review of the principles underlying the assignment of income doctrine, as well as planning suggestions for taxpayers who are contemplating gifts of stock and dividend income.

The Facts in Caruth

In April of 1978, W. W. and Mabel Caruth were the majority stockholders of North Park Inn, Inc., owning 75 percent of the voting and nonvoting common stock and all of the nonvoting preferred stock. Caruth's two nephews owned the remainder of the stock. The preferred stock enjoyed a pro rata right to any dividend issued to North Park stockholders and was callable at $100 per share with 30 days' notice. The Caruths also owned 100 percent of the stock of the Caruth Corporation.

Because Caruth was in the process of winding down the operations of North Park, he decided to have the corporation pay a one-time dividend. His objective in having the corporation pay this dividend was threefold. First, he wanted to use the dividend as a means of transferring capital from North Park to the Caruth Corporation. Second, he hoped the dividend would induce the nephews to sell their shares of North Park. Third, he believed the dividend would allow him to make a tax-favored gift to the Dallas Community Chest Trust Fund, a qualified charity.

On May 5, 1978, the Caruths transferred their nonvoting common stock in North Park to the Caruth Corporation. Shortly thereafter, on May 8, North Park declared a dividend of $1,500 per share, payable on May 17 to stockholders of record on May 15. On May 9, the Caruths donated their 1,000 shares of North Park preferred stock to the Community Chest so that on May 15 the Community Chest was the record owner of the stock. Finally, on May 17, North Park paid dividends to the stockholders in the amounts of $1.5 million to the Community Chest, $506,250 to the Caruth Corporation, $56,250 to the Caruths and $187,500 to the nephews, who had not sold their shares.

Approximately two months later, on July 26, 1978, the Community Chest sent a letter to Caruth asking if he knew of someone who might buy the 1,000 shares of North Park preferred stock for the call price of $100 per share. Caruth responded by repurchasing the stock himself for $100,000. No prior agreement existed between Caruth and the Community Chest regarding the repurchase of the stock.

On the Caruths' 1978 income tax return, the North Park preferred stock donated to the Community Chest was valued at $1.6 million. This treatment, under pre-1987 law, allowed the Caruths to claim a charitable contribution deduction for the appreciated value of the stock without ever having taken the stock's appreciation into income.[5] The Internal Revenue Service, however, contested this treatment, arguing that the dividend income on the North Park stock should be attributed to the Caruths because of the "assignment of income" doctrine.[6]

The Assignment of Income Doctrine

The assignment of income doctrine took root in *Lucas v. Earl* and was extended in *Blair* and *Helvering v. Horst.*[7] Under this doctrine, the assignment of the right to receive future income, without an accompanying transfer of the underlying asset, will not shift taxability of the income to the transferee. When a taxpayer gives away earnings derived from an income-producing asset, therefore, the crucial question is whether the asset itself, or merely the income from the asset, has been transferred. If the taxpayer gives away the entire asset, with accrued earnings, the as-

[4] *Caruth Corp. v. Comm'r,* 89-1 USTC ¶ 9514, 865 F.2d 644 (CA-5), aff'g *Caruth v. United States,* 88-2 USTC ¶ 9514, 688 F. Supp. 1129 (N. D. Tex.).

[5] As amended by the Tax Reform Act of 1986, Section 57(a)(6) now treats the appreciation on charitable contributions of long-term capital gain property as a tax preference for purposes of the alternative minimum tax.

[6] The IRS also argued that the economic reality of the transaction was such that the formal declaration of the dividend, its timing, the contribution of the preferred stock to the Community Chest, and the subsequent payment of the dividend constituted a "sham." The courts, however, found no merit in this argument.

[7] See supra notes 1 and 2.

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signment of income doctrine does not apply.[8] However, if the taxpayer carves income or a partial interest out of the asset, and retains something for himself, the doctrine applies.[9] Likewise, where the taxpayer has already disposed of the appreciated asset and is entitled only to its proceeds, or where his rights to its proceeds have so "matured" that he has a right to the gain, he is taxable on the gain even though he purports to transfer the asset to someone else.[10]

In *Caruth,* the IRS argued that because the taxpayers were the directors and majority stockholders of North Park, they controlled the declaration and payment of dividends and, thus, had a matured right to the dividend income on May 8, the date of declaration. Their subsequent gift of this right to the Community Chest on the following day was, according to the IRS, an assignment of income taxable to the Caruths. The District and Fifth Circuit courts disagreed, however, and concluded that because the Caruths had no legally enforceable right to the dividend until the record date, the gift constituted a transfer of an appreciated income-producing asset rather than an asset plus a right to receive future income. The courts held, therefore, that the assignment of income doctrine was not applicable.

In reaching this decision, the courts primarily relied upon *Estate of Putnam.*[11] There, the decedent owned stock in several corporations which had declared dividends before his death, but which had set the record date for determining the recipient of the dividends for a date after his death. The issue was whether the dividends had "accrued" to the decedent prior to his death so that they should be included in his gross income for the year in which he died.[12] The Supreme Court held that the dividends did not accrue on the date of declaration because such a date fixed only the amount to be paid and not the identity of the recipient.

Under the *Putnam* rationale, the courts reasoned that the Caruths could not realize income from the dividend until both the amount and the identity of the stockholder of record on May 15 were determined. The declaration of the dividend on May 8, therefore, merely created an appreciated value in the stock and not an enforceable right to income. Only on the date of record was such a right created. Thus, the dividend received by the Community Chest was held not to be taxable to the Caruths.

The Facts in Estate of Smith

Seemingly inconsistent with the decision in *Caruth* is that in one of the leading cases concerning a gratuitous assignment of dividend income, *Estate of Smith.* In this case, a personal holding corporation controlled by Sylvester Smith and Mark Anton declared a dividend on April 17, 1953, payable on May 10 to stockholders then of record. On May 9, one day before the record date, Smith and Anton gave a portion of their stock to their children. The children subsequently reported the dividend income received on these gifted shares on their 1953 tax returns.

In determining whether Smith and Anton or the children were properly taxable on the dividend income, the Tax Court and Third Circuit relied to a large extent upon *Helvering v. Horst.* There, the taxpayer attempted to divest himself of interest income by transferring unmatured interest coupons to his son while he retained the bonds. The Supreme Court held that the taxpayer was taxable on the interest since he owned and controlled the source of the income (i. e., the bonds). As stated by the Court, "The power to dispose of income is the equivalent of ownership of it. The exercise of that power to procure the

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[8] See, e.g., *Blair,* supra note 2; *Jones v. Comm'r,* 62-2 USTC ¶ 9629, 306 F.2d 292 (CA-5), rev'g CCH Dec. 24,209(M), 19 TCM 611 (1960); *Humacid Co. v. Comm'r,* CCH Dec. 26,927, 42 TC 894 (1964).

[9] See, e. g., *Lum v. Comm'r,* 45-1 USTC ¶ 9155, 147 F.2d 356 (CA-3), aff'g and rev'g in part CCH Dec. 13,772(M), 3 TCM 173 (1944); *Comm'r v. P. G. Lake, Inc.,* 58-1 USTC ¶ 9428, 356 U. S. 260 (1958), rev'g 57-1 USTC ¶ 9364, 241 F.2d 71 (CA-5), aff'g CCH Dec. 21,233, 24 TC 1016 (1955); *Iber v. United States,* 69-1 USTC ¶ 9293, 409 F.2d 1273 (CA-7), aff'g 68-2 USTC ¶ 9457, 286 F. Supp. 114 (S. D. Ill.).

[10] See, e.g., *Comm'r v. Court Holding Co.,* 45-1 USTC ¶ 9215, 324 U. S. 331 (1945), rev'g 44-2 USTC ¶ 9404, 143 F.2d 823 (CA-5), rev'g CCH Dec. 13,412, 2 TC 531 (1943); *Salvatore v. Comm'r,* 70-2 USTC ¶ 9724, 434 F.2d 600 (CA-2), aff'g CCH Dec. 29,941(M), 29 TCM 89 (1970); *Estate of Applestein v. Comm'r,* CCH Dec. 39,871, 80 TC 331 (1983).

[11] *Estate of Putnam v. Comm'r,* 45-1 USTC ¶ 9234, 324 U. S. 393 (1945), rev'g *Comm'r v. Guaranty Trust Co. of New York, Exr.,* 44-2 USTC ¶ 9435, 144 F.2d 756 (CA-2), rev'g CCH Dec. 12,137, 45 BTA 517 (1941).

[12] *Putnam,* supra note 11, dealt with a cash-basis taxpayer and was decided under Sec. 42 of the Revenue Act of 1938, which states that "in the case of the death of a taxpayer, there shall be included in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect of such period or prior period." Under current law, Code Sections 451(b) and 691(a)(1) provide for similar treatment in that only amounts properly includible under the method of accounting used by a decedent and which fall within the taxable year ending on the date of his death are to be included in gross income for the year. Also see Reg. §§ 1.451-1(b) and 1.691(a).

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payment of income to another is the enjoyment and hence the realization of the income by him who exercises it." [13]

Applying this rationale to the gifts of stock in *Smith,* the courts determined that the declaration of the dividend created a debtor-creditor relationship between the corporation and its then stockholders. Smith and Anton, as stockholders on the date of declaration, consequently had a vested right in the dividend at that time and their subsequent transfer of that right to their children constituted an assignment of income. Accordingly, the courts held that the dividend income was taxable to Smith and Anton rather than the children.

The decision in *Smith* was distinguished from that in *Putnam* by Judge Hastie of the Third Circuit, who stated that the latter case merely involved a determination of the proper time of accounting and did not address the problem of whether the donor or donee of a right to dividend income was the person legally required to pay the tax upon it. Judge Hastie also contended that the decision in *Smith* could not be determined under the general rules governing the taxation of dividends on stock sold between the declaration and payment dates because the case dealt with intrafamily gifts and, hence, did not involve the complexities associated with sales of stock.

Analysis of the Decisions in Caruth *and* Estate of Smith

As illuminated by the decisions in *Caruth* and *Smith,* the assignment of income doctrine applies only when a taxpayer gives away income to which he has an unqualified right of receipt. The determination of when that right arises, however, is contradictory in the two cases. In *Caruth,* the courts held that the right to a dividend vests as of the record date because the identity of the recipient stockholder cannot be determined with certainty until that time. However, in *Smith,* the courts found that the right to a dividend vests as of the declaration date because at that time each stockholder becomes a creditor of the corporation with an enforceable right to be paid a specified sum at some future date.

Judge Buchmeyer of the District Court distinguished the decision in *Caruth* from that in *Smith* by asserting that "the result in *Smith* depended on the court's determination that the taxpayer had acquired an unqualified right to the dividend at the time of its declaration. This result is not inconsistent with *Estate of Putnam,* as the *Putnam* Court specifically stated that it was not addressing the set of facts present in *Smith.*" [14] Likewise, Judge Higginbotham of the Fifth Circuit distinguished the *Caruth* decision by arguing that in *Smith* "New Jersey law governed the rights of the shareholders, and the court construed New Jersey law to recognize vested rights at the declaration date for the dividend." [15] These distinctions, however, ignore the fact that both *Putnam* and *Smith* involved dividends on stock of New Jersey corporations and that the courts in both cases concluded that federal law controlled the taxation of the dividend income.

A more fundamental distinction than state law is the issue of control, both in terms of control over the identity of the recipient of the dividends and control over the amount and dates on which the dividends are declared, recorded, and paid. With respect to the first aspect of control, *Caruth* holds that until the identity of the stockholder entitled to receive a declared dividend is known with certainty there can be no realization of income since the dividend is not yet severable from the shares of stock. Accordingly, a declared dividend is not controllable until the date of record. *Smith,* however, holds that the specific identity of the stockholder of record is unimportant since on the date of declaration each stockholder acquires a right to determine the recipient of the dividend income. It is this right to control the recipient's identity, therefore, that is considered to be equivalent to the receipt of the income.

Support for the positions in both *Caruth* and *Smith* can be found in several cases. For example, the decisions in *Simmons* [16] and *Bishop* [17] generally are consistent with the rationale of *Caruth.* In *Simmons,* the taxpayer transferred a portion of her stock to an irrevocable trust after the date on which the corporation adopted a plan of complete liquidation and declared a liquidating dividend, but before the date of record and payment of the dividend. The District Court held that because the taxpayer transferred not only the right to income but also the underlying asset that produced the income (i. e., the stock), she was not taxable on the dividend income received by the

[13] *Helvering v. Horst,* supra note 1, 40-2 USTC at 10,959.

[14] *Caruth v. United States,* supra note 4, 88-2 USTC at 85,516.

[15] *Caruth Corp. v. Comm'r,* supra note 4, 89-1 USTC at 87,273.

[16] *Simmons v. United States,* 72-1 USTC ¶9296, 341 F. Supp. 947 (M. D. Ga.).

[17] *Bishop v. Shaughnessy,* 52-1 USTC ¶9270, 195 F.2d 683 (CA-2), aff'g 50-2 USTC ¶9442, 95 F. Supp. 759 (N. D. N. Y.).

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trust. The court further concluded that the dividend income did not accrue to her before the gift was made since the identity of the stockholder entitled to receive such income was not known until the record date.

In *Bishop,* the directors of a closely-held corporation authorized the taxpayer, who was also the corporation's treasurer and a minority stockholder, to pay off back dividends on its preferred stock at his discretion and as the condition of the company warranted. Subsequent to this authorization, but before the payment of the dividends, the taxpayer gave all of his preferred stock in the corporation to his wife and son. The District and Second Circuit courts held that because the resolution did not set the time for payment of the dividends or the date of record for determining the recipient stockholders, no enforceable rights accrued to the taxpayer by means of the dividend authorization. The subsequent gifts of stock, therefore, did not constitute assignments of income.

In contrast to these decisions are those in *Hudspeth,*[18] *Kinsey,*[19] *Allen*[20] and *Jones.*[21] At issue in each of these cases was whether the taxpayer could exclude from gross income the liquidation dividends on stock donated to qualified charities before the receipt of the dividends, but after the adoption of a plan of complete liquidation and the sale of the corporation's principal assets. In each case, the courts determined that because the liquidation plan was practically certain to be completed, the taxpayer acquired a right to the dividends on the date the plan was adopted. The transfer of the stock to the charities after this date consequently constituted an assignment of income, and the dividends were held to be includible in the taxpayer's income.

Also consistent with the rationale of *Smith* is Rev. Rul. 74-562.[22] In this ruling, a life income beneficiary assigned all her rights in the residuary estate, including her interest in declared but unpaid dividends on stock owned by the estate, to a qualified charity. The IRS determined that because the assignment took place after the dividend declaration date, the beneficiary had an unqualified right to the dividend income at the time of the assignment. Accordingly, the IRS concluded that the dividend income was taxable to the beneficiary.

With respect to the second aspect of control, several of the courts have placed considerable weight on the relationship between the taxpayer and the corporation. In *Hudspeth,* for example, the Eighth Circuit held that because the taxpayer was the president, treasurer, director and 81.5 percent controlling stockholder, he was able to insure that the liquidation of the corporation and distribution of the dividends would proceed unhampered. Similarly, in *Kinsey* and *Allen,* the Second Circuit and Tax Court, respectively, concluded that because the taxpayers owned controlling interests in the corporations (74.3 percent in *Kinsey* and 100 percent in *Allen*), it was unlikely that the plans of liquidation would be abandoned. And while the taxpayer in *Jones* owned less than 10 percent of the corporation's stock directly, other members of her family were substantial stockholders and her husband presided over the meeting of the board of directors at which the plan of liquidation was adopted. Accordingly, the Sixth Circuit determined that the corporate liquidation and dividend distribution were practically certain to occur.[23]

In comparison, neither taxpayer in *Simmons* or *Bishop* was a controlling stockholder. The taxpayer in *Simmons,* for instance, owned only 4,600 voting shares out of a total of 11,992,360, or less than 1 percent. Likewise, the taxpayer in *Bishop* owned only 1,616 voting shares out of a total of 4,000, or approximately 40 percent. In both of these cases, therefore, the courts concluded that the taxpayers lacked the ability to control the corporations' dividend policies. This lack of control distinguishes these cases from *Caruth,* where the taxpayers owned 75 percent of the voting shares of North Park and, hence, were able to control the amount and dates on which the dividends were declared, recorded, and paid.

Caruth also differs from the earlier cases in that the District and Fifth Circuit courts in this case attempted to conform their decisions regarding the taxation of dividends on donated stock with the provisions of Reg. § 1.61-9(c). Under Reg. § 1.61-9(c), a dividend on stock sold after the declaration date, but before the record date, is taxable to the purchaser. The courts in *Caruth,*

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[18] *Hudspeth v. United States,* 73-1 USTC ¶ 9136, 471 F.2d 275 (CA-8), rev'g 72-1 USTC ¶ 9161, 335 F. Supp. 1401 (E. D. Mo.).

[19] *Kinsey v. Comm'r,* 73-1 USTC ¶ 9429, 477 F.2d 1058 (CA-2), aff'g CCH Dec. 31,379, 58 TC 259 (1972).

[20] *Allen v. Comm'r,* CCH Dec. 33,837, 66 TC 340 (1976).

[21] *Jones v. United States,* 76-1 USTC ¶ 9247, 531 F.2d 1343 (CA-6), rev'g 75-1 USTC ¶ 9293 (S. D. Ohio).

[22] Rev. Rul. 74-562, 1974-2 CB 28.

[23] In *Jones,* supra note 21, the Sixth Circuit overruled its earlier decision in *Jacobs v. United States,* 68-1 USTC ¶ 9271, 390 F.2d 877 (CA-6), aff'g 66-2 USTC ¶ 9669, 280 F. Supp. 437 (S. D. Ohio), and instead followed the Eighth and Second Circuit decisions in *Hudspeth* and *Kinsey,* supra notes 18 and 19.

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therefore, specifically noted that an anomaly would result if the assignment of income doctrine operated in such a manner as to cause a dividend to become taxable to a stockholder on the date of declaration when the same stockholder could have sold the stock and avoided recognizing the dividend income.

What the courts in *Caruth* overlooked was the fact that the price of a stock rises in anticipation of a dividend. Thus, while a taxpayer who sells stock between the declaration and record dates is not taxed directly on the declared dividend, his gain on the sale is increased by an amount equal to the dividend. Because the courts in *Smith* recognized this appreciation in the price of a stock resulting from a declared dividend, they concluded that the principles involved in the taxation of a dividend on gifted stock were not the same as those governing the taxation of a dividend on stock sold after the declaration date, but before the record date, or those paid after the death of a stockholder.

One additional distinction between *Caruth* and the earlier cases involves the motive of the taxpayer for selecting a record date different from the declaration date. In *Caruth,* the taxpayers wanted to buy the North Park stock held by the two nephews. The lag between the declaration and record dates, therefore, was needed in order to give the nephews an opportunity to sell their stock and realize capital gain rather than ordinary income. Even though the plan failed and the nephews continued to hold their shares, the use of two different dates served a legitimate business purpose. Conversely, in *Smith,* the utilization of different declaration and record dates was a mere convenience for the benefit of Smith, Anton and the corporation. Likewise, the dates selected by the taxpayers in *Hudspeth, Kinsey, Allen* and *Jones* were based more on personal considerations than business motives.

Planning Considerations

As indicated by the decisions in *Caruth* and *Smith,* as well as by those in the earlier cases dealing with assignments of income, uncertainty exists regarding the tax consequences of gifts of stock taking place between the dividend declaration and record dates. While *Caruth* holds that a declared but unrecorded dividend is not taxable to the donor, *Smith* holds to the contrary. Prudent tax planning, therefore, appears to be warranted by taxpayers who are contemplating gifts of stock and dividend income in order to assure that they receive the maximum tax benefits from such transfers.

It is clear from the principles established in *Helvering v. Horst* that if the owner of stock attempts to give away future dividend income without an accompanying gift of the underlying stock, the donor will be deemed to have made an assignment of the income and will be taxable on it. Similarly, it is also clear from the general rules governing the taxation of dividend income that if the donor only relinquishes ownership of the stock after the record date of the dividend, he once again will be taxable on the dividend since he is the legal owner and recipient of the income.[24] If, however, he makes a completed gift of the stock prior to the declaration of a dividend, any future dividend income will be fully taxable to the donee.[25]

Where the uncertainty regarding the taxation of future dividend income arises, therefore, is in the situation of a donor who transfers stock between the dividend declaration and record dates. In such a situation, the donor may or may not be deemed to have made an assignment of the dividend income depending upon two key factors. The first of these factors is whether the donor has control over the corporation's dividend policy. The decisions in *Simmons* and *Bishop* suggest that when the taxpayer has little or no control over the amount and timing of the dividend and the gift of the underlying stock is completed prior to the record date, the assignment of income doctrine will not apply.

Based on this analysis, most owners of widely traded stocks and mutual funds would appear to be in a position to maximize the tax benefits from gifts of these assets by waiting until after a dividend has been declared. By postponing the gift until this time, a donor who transfers long-term capital gain stock to a charity and who is not subject to the alternative minimum tax[26] would be entitled to a larger charitable deduction since the fair market value of the donated stock would include the anticipated, but unrecorded, dividend. Likewise, a donor who makes an intrafamily gift of stock would be able to avoid income tax on the declared dividend by shifting the income to a lower bracket family member. Before doing so, however, the tax benefits from such a

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[24] Reg. § 1.61-9; *Newman v. Comm'r,* CCH Dec. 13,102, 1 TC 921 (1943).

[25] Reg. § 1.61-9.

[26] See supra note 5 regarding the alternative minimum tax consequences associated with donations of long-term capital gain property.

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transfer would need to be evaluated against any additional gift tax that might result from the increased value of the stock.[27] In addition, the applicability of special taxes, such as the "kiddie tax" on unearned income of minors under the age of 14,[28] would need to be considered.

The second factor affecting the taxation of a gift of stock and dividend income is whether the use of different declaration and record dates serves a legitimate business purpose. If a taxpayer has control over a corporation's dividend policy and he selects different declaration and record dates based on personal considerations, the decisions in *Smith, Hudspeth, Kinsey, Allen* and *Jones* indicate that the assignment of income doctrine will apply to make a declared but unrecorded dividend taxable to the donor. On the other hand, if a taxpayer can show that the use of different declaration and record dates serves a business function, then the principles governing the decision in *Caruth* should apply, and any declared but unrecorded dividend should be taxable to the recipient stockholder rather than the donor.

Conclusion

Although the recent decision of the Fifth Circuit in *Caruth* appears to allow taxpayers to avoid the recognition of income on gifts of stock taking place between the dividend declaration date and the record date, this decision must be interpreted cautiously in light of the long-standing rule established in *Estate of Smith.* Analysis of these two decisions, as well as those of several related cases, suggests that controlling stockholders of closely-held corporations may be placed in a more tenuous position regarding the tax consequences of charitable or intrafamily gifts of stock and dividend income than minority stockholders. Greater care, therefore, must be exercised by these taxpayers when timing their gifts in order to achieve the maximum tax benefits from such stock transfers. For example, these taxpayers may need to document the underlying economic substance of the transaction and to justify the use of different declaration and record dates in order to insure that their gifts pass the scrutiny of the courts. ●

[27] Section 2505(a) provides for a unified credit against the gift tax of $192,800. In addition, Section 2503(b) permits an annual gift tax exclusion of the first $10,000 of gifts made to any donee during the year, with Section 2513 effectively increasing the amount of the exclusion to $20,000 per donee in the case of a married taxpayer who elects to gift split.

[28] Section 1(i).

Refund Offset Program Proceeds Have Increased

A report prepared by the Congressional Research Service for the House Ways and Means Committee Human Resources Subcommittee states that "collections made through the federal income tax refund offset program have increased significantly since it began in 1982." Collections under the federal program increased from $205 million in 1984 to $402 million in 1988.

Subcommittee Chairman Thomas Downey stated that he expects these collections will continue to grow "as mandatory income withholding goes into effect for newly issued or modified child support orders obtained by the program as of November 1990."

Federal offset collections have increased "despite the expectation of the IRS that, once noncustodial parents became aware of how the program worked, they would change their finances so as not to receive an income tax refund," the CRS explained in the report.

At the state level, tax intercept programs collected $64 million in fiscal year 1988, the report stated.—CCH FEDERAL TAX GUIDE REPORTS, No. 11, December 15, 1989.

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