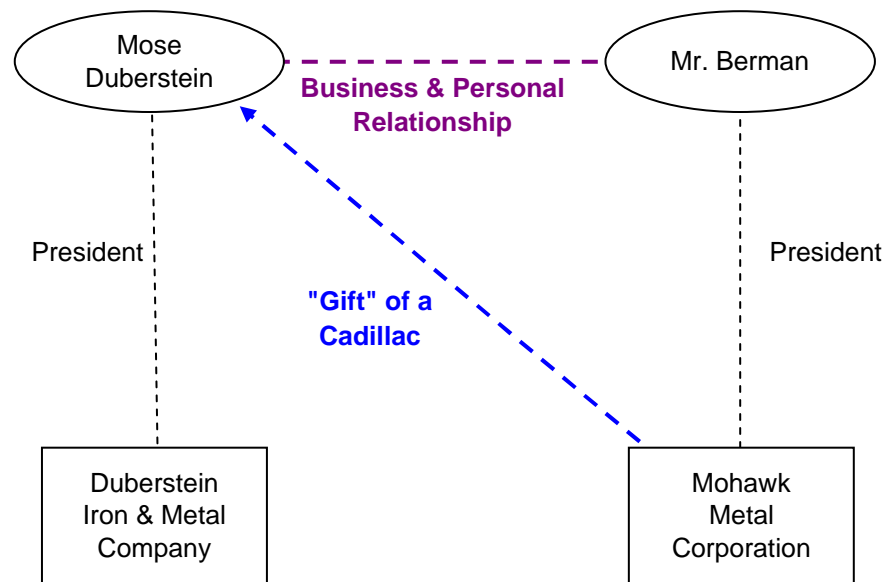


Commissioner v. Duberstein 363 U.S. 278 (1960)

Gift Defined: Detached & Disinterested Generosity

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The taxpayer, Duberstein, was president of the Duberstein Iron & Metal Company, a corporation with headquarters in Dayton, Ohio. For some years the taxpayer's company had done business with Mohawk Metal Corporation, whose headquarters were in New York City. The president of Mohawk was one Berman. The taxpayer and Berman had generally used the telephone to transact their companies' business with each other, which consisted of buying and selling metals. The taxpayer testified, without elaboration, that he knew Berman "personally" and had known him for about seven years. From time to time in their telephone conversations, Berman would ask Duberstein whether the latter knew of potential customers for some of Mohawk's products in which Duberstein's company itself was not interested. Duberstein provided the names of potential customers for these items.



One day in 1951 Berman telephoned Duberstein and said that the information Duberstein had given him had proved so helpful that he wanted to give the latter a present. Duberstein stated that Berman owed him nothing. Berman said that he had a Cadillac as a gift for Duberstein, and that the latter should send to New York for it; Berman insisted that Duberstein accept the car, and the latter finally did so, protesting however that he had not intended to be compensated for the information. At the time Duberstein already had a Cadillac and an Oldsmobile, and felt that he did not need another car. Duberstein testified that he did not think Berman would have sent him the Cadillac if he had not furnished him with information about the customers. It appeared that Mohawk later deducted the value of the Cadillac as a business expense on its corporate income tax return. Duberstein did not include the value of the Cadillac in gross income for 1951, deeming it a gift.

A gift in the statutory sense, proceeds from a "detached and disinterested generosity," "out of affection, respect, admiration, charity or like impulses." The most critical consideration is the transferor's intentions. However, the donor's characterization of his action is not determinative -- there must be an objective inquiry as to whether what is called a gift amounts to it in reality. The court must determine what the basic reason for the donor's conduct was in fact -- the dominant reason that explains the donor's action in making the transfer.

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