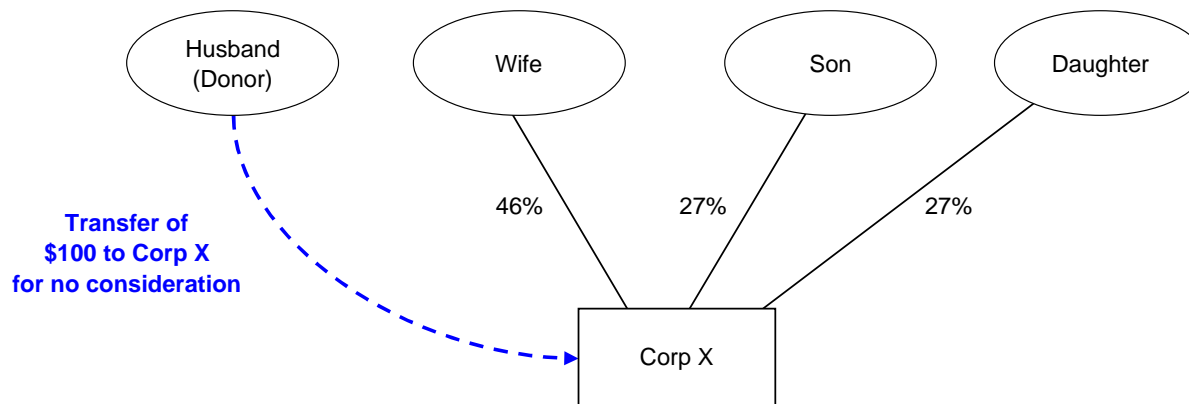


Revenue Ruling 71-443

Gift to Corp is Gift of a Future Interest to the Stockholders

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The donor transferred property valued at 100x dollars to a corporation of which 46% of the stock was owned by his wife, a director of the corporation. The remaining 54% of the stock was owned equally by the other two directors, the donor's son and daughter. The specific questions asked were whether the gift was a transfer of an interest in property that qualifies for the annual exclusion provided by section 2503(b), and for the marital deduction provided by section 2523(a).

Section 2503(b) permits the exclusion of an amount of gifts made to any one donee during the calendar year (except gifts of future interests in property). The entire value of any gift of a future interest must be included in the total amount of gifts for the calendar year in which the gift is made.

Reg. 25.2503-3(a) provides that "future interest" is a legal term and includes reversions, remainders and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, that are limited to commence in use, possession, or enjoyment at some future date or time. Reg. 25.2511-1(h)(1) provides that a transfer of property by a donor to a corporation generally represents a gift by the donor to the individual shareholders to the extent of their proportionate interests in the corporation.

Although a gift to a corporation is a gift to the stockholders, the corporation acquires title to the transferred property. Shareholders of the corporation do not have any present or immediate right to use, possess, or enjoy the donated property or the income from the property. This they can do only upon liquidation of the corporation or declaration of dividends the first of which usually requires approval by the owners of a majority of the stock and both of which usually require approval by a majority of the corporation's directors.

Accordingly, since in this case each stockholder-donee's use, possession, or enjoyment of the gift property or its proceeds are dependent upon contingencies beyond his individual control, the gifts are gifts of future interests. Therefore, the ruling held that the gifts do not qualify for the annual exclusion provided by section 2503(b). The ruling also held that the deemed gift to the wife qualified for the marital deduction.

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