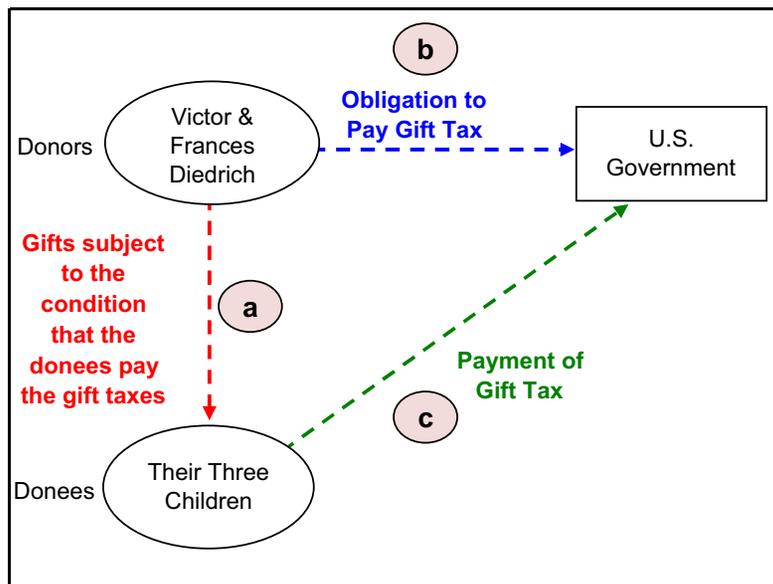


Diedrich v. Commissioner
457 U.S. 191 (1982)

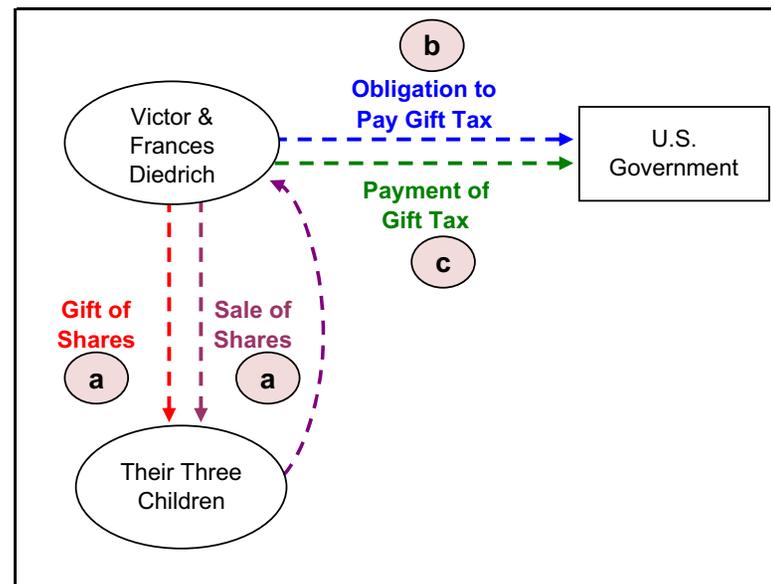
**Conditional Gift with Donee
Payment of Gift Tax**

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Facts



Recharacterization (Part Gift & Part Sale)



The Court in *Diedrich* held that:

[w]hen a donor makes a gift to a donee, a 'debt' to the United States for the amount of the gift tax is incurred by the donor. Those taxes are as much the legal obligation of the donor as the donor's income taxes. . . .

[W]hen a donee agrees to discharge an indebtedness in consideration of the gift, the person relieved of the tax liability realizes an economic benefit.

In *Old Colony Trust Co.*, the Supreme Court held that when an employer pays an employee's income taxes, the payment of the taxes constitutes income to the employee. Similarly, in *Diedrich* the Court held that when a donor of a gift of property conditions the gift on the donee's paying the gift tax owed by the donor on the gift, the donee's payment of the donor's gift tax obligation constituted income to the donor. The conditional gifts are treated as a part gift and part sale of the gift property transferred. The transfer is treated as if the donor sells the property to the donee for less than fair market value. The "sale" price is the amount necessary to discharge the gift tax indebtedness; the balance of the value of the transferred property is treated as a gift.

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