

The Burger Court Opinion Writing Database

Diedrich v. Commissioner

457 U.S. 191 (1982)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



To: Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **The Chief Justice**

Circulated: MAY 8 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2204

VICTOR P. DIEDRICH ET UX., PETITIONERS, *v.*
 COMMISSIONER OF INTERNAL REVENUE

UNITED MISSOURI BANK OF KANSAS *v.*
 COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE EIGHTH CIRCUIT

[May —, 1982]

CHIEF JUSTICE BURGER delivered the opinion of the
 Court.

We granted certiorari to resolve a circuit conflict as to whether a donor who makes a gift of property on condition that the donee pay the resulting gift tax receives taxable income to the extent that the gift tax paid exceeds the donor's adjusted basis in the property transferred. — U. S. — (1981). The United States Court of Appeals for the Eighth Circuit held that the donor realized income. 643 F. 2d 499 (1981). We affirm.

I

A

Diedrich v. Com'r Internal Revenue

In 1972 petitioners Victor and Frances Diedrich made gifts of 85,182 shares of stock to their three children, using both a direct transfer and a trust arrangement. The gift was subject to a condition that the donees pay the resulting federal and state gift taxes. There is no dispute concerning the amount of the gift tax paid by the donees. The donors' basis

CHANGES AS MARKED:

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: MAY 19 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2204

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I

A

Diedrich v. Com'r Internal Revenue

In 1972 petitioners Victor and Frances Diedrich made gifts of approximately 85,000 shares of stock to their three children, using both a direct transfer and a trust arrangement. The gifts were subject to a condition that the donees pay the resulting federal and state gift taxes. There is no dispute concerning the amount of the gift tax paid by the donees.

CHANGES AS MARKED:

To: Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: 5/19/82

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2204

VICTOR P. DIEDRICH ET UX., PETITIONERS *v.*
 COMMISSIONER OF INTERNAL REVENUE

UNITED MISSOURI BANK OF KANSAS *v.*
 COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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[May —, 1982]

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I

A

Diedrich v. Com'r Internal Revenue

In 1972 petitioners Victor and Frances Diedrich made gifts of approximately 85,000 shares of stock to their three children, using both a direct transfer and a trust arrangement. The gifts were subject to a condition that the donees pay the resulting federal and state gift taxes. There is no dispute concerning the amount of the gift tax paid by the donees.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 11, 1982

RE: No. 80-2204 Diedrich v. CIR

Dear Chief:

I passed in the above and I think I'll await
the dissent.

Sincerely,



The Chief Justice

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 4, 1982

RE: No. 80-2204 Diedrich v. Commissioner of
Internal Revenue

Dear Chief:

I agree.

Sincerely,



The Chief Justice
cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 10, 1982

Re: 80-2204 - Diedrich v. CIR, and
United Missouri Bank of Kansas v. CIR

Dear Chief,

I agree.

Sincerely yours,



The Chief Justice

Copies to the Conference

cpm

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 19, 1982

Re: No. 80-2204 - Diedrich v. Commissioner of
Internal Revenue

Dear Chief:

Please join me.

Sincerely,

Jm.
T.M.

The Chief Justice

cc: The Conference

February 26, 1982

Dear Chief:

I think it would be best if you did not assign to me case No. 80-2204, Diedrich v. Commissioner. My old office was in the companion case and was on the petition for certiorari. While I shall probably not recuse, I shall feel more comfortable not having the burden of the opinion.

Sincerely,

HAB

The Chief Justice

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 17, 1982

Re: No. 80-2204 - Diedrich v. CIR

Dear Chief:

Please join me.

Sincerely,

A handwritten signature in dark ink, appearing to be 'H.A.B.', written in a cursive style.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 10, 1982

80-2204 Diedrich v. Commissioner

Dear Chief:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lewis".

The Chief Justice

lfp/ss

cc: The Conference

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To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Stevens
 Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: **JUN 3 1982**

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2204

VICTOR P. DIEDRICH ET UX., PETITIONERS *v.*
 COMMISSIONER OF INTERNAL REVENUE

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 COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE EIGHTH CIRCUIT

[June —, 1982]

JUSTICE REHNQUIST, dissenting.

It is a well-settled principle today that a taxpayer realizes income when another person relieves the taxpayer of a legal obligation in connection with an otherwise taxable transaction. See *Crane v. Commissioner*, 331 U. S. 1 (1947)(sale of real property); *Old Colony Tr. Co. v. Commissioner*, 279 U. S. 716 (1929)(employment compensation). In neither *Old Colony* nor *Crane* was there any question as to the existence of a taxable transaction; the only question concerned the amount of income realized by the taxpayer as a result of the taxable transaction. The Court in this case, however, begs the question of whether a taxable transaction has taken place at all when it concludes that “[t]he principles of *Old Colony* and *Crane* control” this case. *Ante*, at 5.

In *Old Colony*, the employer agreed to pay the employee’s federal tax liability as part of his compensation. The employee provided his services to the employer in exchange for compensation. The exchange of compensation for services was undeniably a taxable transaction. The only question was whether the employee’s taxable income included the employer’s assumption of the employee’s income tax liability.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 10, 1982

Re: 80-2204 - Diedrich v. Commissioner

Dear Chief:

Although I am in substantial agreement with your opinion in this case and expect to join it, I am somewhat concerned by your reference to Crane v. Commissioner, 331 U.S. 1, in light of our recent grant of certiorari in Commissioner v. Tufts, No. 81-1536, on May 3.

You state that "In Crane the Court concluded that relief from the obligation of a nonrecourse mortgage constituted income to the taxpayer." This conclusion was compelled in Crane because, as you note, the benefit to the taxpayer was "as real and substantial as if the mortgage were discharged, or as if a personal debt in an equal amount had been assumed by another." Since the value of the property in that case was not less than the amount of the mortgage, it did not matter whether the property was transferred subject to the mortgage or whether the buyer had agreed to pay the amount of the mortgage in cash on the condition that the property would be freed from the encumbrance. In either case, the amount realized by the seller was the amount of the mortgage plus any boot that was paid.

As the Court noted in Crane, the same is not necessarily true if the value of the property at the time of the transfer is less than the amount of the mortgage. In such a case, the buyer may still be willing to take the property subject to the nonrecourse mortgage; although the mortgage exceeds the value of the property, the buyer himself is not liable for the loan and may be willing "to try to make a go at it." In such a case, however, the transfer of the property subject to the mortgage clearly is not equivalent to the buyer's payment of the amount of the mortgage in

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cash. Thus, the Court in Crane did not determine whether its holding would follow in such a case.

As I understand it, the question reserved in Crane is presented in Tufts. To avoid any reference to the question raised in Tufts, would it not be better to avoid the short characterization of the Crane opinion? I think that your opinion stands quite nicely without it.

Respectfully,



The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 12, 1982

Re: 80-2204 - Diedrich v. CIR

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

RECEIVED

May 10, 1982

No. 80-2204 - Diedrich v. CIR

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

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