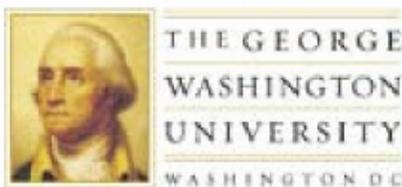


# The Burger Court Opinion Writing Database

## *Dickman v. Commissioner*

465 U.S. 330 (1984)

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: DEC 20 1983

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-1041

**ESTHER C. DICKMAN, ET AL., PETITIONERS v. COMMISSIONER OF INTERNAL REVENUE**

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

[January —, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to resolve a conflict among the Circuits as to whether intrafamily, interest-free demand loans result in taxable gifts of the value of the use of the money lent.

I  
A

Paul and Esther Dickman were husband and wife; Lyle Dickman was their son. Paul, Esther, Lyle, and Lyle's wife and children were the owners of Artesian Farm, Inc. (Artesian), a closely-held Florida corporation. Between 1971 and 1976, Paul and Esther loaned substantial sums to Lyle and Artesian. Over this five-year interval, the outstanding balances for the loans from Paul to Lyle varied from \$144,715 to \$342,915; with regard to Paul's loans to Artesian, the outstanding balances ranged from \$207,875 to \$669,733. During the same period, Esther loaned \$226,130 to Lyle and \$68,651 to Artesian. With two exceptions, all the loans were evidenced by demand notes bearing no interest.<sup>1</sup>

<sup>1</sup> One exception was a loan made to Lyle on "open account" and payable on demand; the parties have agreed that the gift tax consequences of this "open account" loan are identical to those of the loans evidenced by the demand notes. 41 TCM 620, 623 n. 4 (1980). The other exception was a loan made to Artesian and memorialized by a no-interest note having a term of

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12/20

~~W. J. ...~~  
Plan ...

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

STYLISTIC CHANGES THROUGHOUT

CHANGES AS MARKED: 2, 13

From: **The Chief Justice**

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-1041

**ESTHER C. DICKMAN, ET AL., PETITIONERS v. COMMISSIONER OF INTERNAL REVENUE**

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

[February —, 1984]

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

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JUSTICE BRENNAN

December 21, 1983

'83 DEC 21 A11:24

No. 82-1041

Dickman, et al. v. CIR

Dear Chief,

I agree.

Sincerely,

The Chief Justice

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 20, 1983

Re: 82-1041 - Dickman v. CIR

---

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

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cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 20, 1983

Re: No. 82-1041-Dickman v. Commissioner of  
Internal Revenue

Dear Chief:

Please join me.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 21, 1983

Re: No. 82-1041 - Dickman v. CIR

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

RECEIVED  
SUPREME COURT U.S.  
JUSTICE LEWIS F. POWELL, JR.

'83 DEC 21 11:24

December 21, 1983

82-1041 Dickman v. CIR

Dear Chief:

As you anticipate, I may say a few words in  
dissent.

Sincerely,



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 Rehnquist  
Justice Stevens  
Justice O'Connor

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JUSTICE

From: Justice Powell

'84 JAN 27 A9:38

Circulated: JAN 27 1984

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-1041

ESTHER C. DICKMAN, ET AL., PETITIONERS *v.*  
COMMISSIONER OF INTERNAL REVENUE

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

[January —, 1984]

JUSTICE POWELL, dissenting.

The Court's decision today rejects a longstanding principle of taxation, and creates in its stead a new and anomalous rule of law. Such action is best left to Congress."<sup>1</sup>

I

The Internal Revenue Service's attempts to assess gift taxes on interest-free demand loans is a relatively new development in the field of tax law. The gift tax provisions of the Internal Revenue Code were enacted in 1932.<sup>2</sup> For 34

<sup>1</sup>In *United States v. Byrum*, 408 U. S. 125 (1972), the Court stated: "Courts properly have been reluctant to depart from an interpretation of tax law which has been generally accepted when the departure could have potentially far-reaching consequences. When a principle of taxation requires re-examination, Congress is better equipped than a court to define precisely the type of conduct which results in tax consequences." *Id.*, at 135.

<sup>2</sup>See Revenue Act of 1932, ch. 209, 47 Stat. 169. The provisions of the gift tax code at issue in this case, 26 U. S. C. §§ 2501(a)(1) and 2511(a), have remained virtually unchanged since its original enactment in 1932. § 501 of the 1932 Act provided:

"(a) For the calendar year 1932 and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift.

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P. 1

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

From: Justice Powell

Circulated: \_\_\_\_\_

Recirculated: JAN 31 1984

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-1041

ESTHER C. DICKMAN, ET AL., PETITIONERS *v.*  
COMMISSIONER OF INTERNAL REVENUE

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

[January —, 1984]

JUSTICE POWELL, with whom JUSTICE REHNQUIST joins,  
dissenting.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 30, 1984

Re: No. 82-1041 Dickman v. CIR

Dear Lewis:

Please join me in your dissenting opinion.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

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JUSTICE JOHN PAUL STEVENS

'83 DEC 22 AIO:26

December 22, 1983

Re: 82-1041 - Dickman v. CIR

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

February 6, 1984

Re: No. 82-1041 Dickman, et al. v. Commissioner of  
Internal Revenue

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

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