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Taxation - Clifford Regulations Ten Year Period Unconstitutional

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TAXATION—CLIFFORD REGULATIONS TEN YEAR PERIOD UNCONSTITUTIONAL

Respondents Clark and Rutherford each transferred fifteen-thousand (15,000) shares of common stock of the Keystone Steel and Wire Company of Peoria, Illinois, to a charitable institution known as the Forest Park Home Foundation on December 1, 1941, for the purpose of creating two identical trusts. According to the trust agreement the Foundation was the trustee and the beneficiary. Each trust was for the period of five years and although the time could not be shortened, it could be extended. The trusts were irrevocable and under no conditions could the corpus be returned to the grantors at any time sooner than that specified in the agreement. All income was to go to the Foundation for charitable purposes and no part of such was to be returned to the grantors. Full and complete control over the trust corpus and income was vested in the trustee. On December 1, 1942 because of the declining value of the dollar caused by World War II, the trusts were extended an additional five (5) years, to December 1, 1951. For the year 1946 the Commissioner assessed a deficiency against the Respondents. The Commissioner's position was that the income of the trusts was income to the grantors, applying the ten year dateline set forth by the Clifford Regulations.[1] The Tax Court of the United States disagreed with the commissioner and held that the Regulations were inapplicable in the circumstances. On appeal to the United States Court of Appeals, *held,* affirmed. *Commissioner of Internal Revenue v. Clark and Commissioner of Internal Revenue v. Rutherford,*[2] 202 F.2d 94 (7th Cir. 1953).

The Court of Appeals, in affirming, said that each trust had a duration of ten (10) years. Even if the trusts had been for nine (9) instead of ten (10) years, there would not have been any economic interest in the grantors.

The irrebutable or conclusive presumption which the Clifford Regulations sought to create, that the income from a trust set up for less than ten (10) years was to be treated as income of the grantor, was void as it "violates the due process clause of the Constitution, conflicted with congressional enactment on the subject, and

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1. Regs 111, § 29.22(a)-21.
2. Note that both cases were heard together and only one opinion given as the facts of the two cases were identical.

was arbitrary and unreasonable." Regulations are to carry out the intent of Congress and not to make law.

Prior to the *Clifford Regulations* the Supreme Court said in *Harrison v. Schaffner* [3] that " 'drawing the line' is a recurrent difficulty in those fields of the law where differences in degree produce ultimate differences in kind. Unless in the meantime the difficulty be resolved by statute or *treasury* [Italices added] regulations, we leave it to future judicial decisions to determine precisely where the line shall be drawn between gifts of income-producing property and gifts of income from property of which the donor remains the owner, for all substantial and practical purposes."

The Treasury attempted to draw the line at ten (10) years. Is the next move up to Congress? Not according to the Court as "it thus appears that even Congress would be without power to create the conclusive presumption which the Treasury has done in the regulation."[4] It would seem, therefore, that unless certiorari is granted and this decision reversed, it is to be left "to the future judicial decisions to determine precisely where the line shall be drawn."

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3. 312 U.S. 579 (1941).
4. Commissioner v. Clark, 202 F.2d 94, 100 (7th Cir. 1953).