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Stone v. Lynch: North Carolina Takes a Different Approach to Defining Gift

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NOTES

Stone v. Lynch: North Carolina Takes a Different Approach to Defining Gift

The value of property acquired by gift is excluded from taxation by both the federal and North Carolina income tax statutes.[1] But neither statute defines the word "gift."[2] Cases interpreting "gift" as used in the federal statute are legion;[3] the leading interpretation is the United States Supreme Court's decision in *Commissioner v. Duberstein*.[4] The North Carolina Supreme Court, however, did not attempt to define the word "gift" as used in the state income taxation statute until 1985.

In *Stone v. Lynch*[5] the North Carolina Supreme Court addressed the question whether strike benefits could be excluded from taxable income as gifts under the state income tax statutes. A divided court held that the benefits were gifts.[6] The *Stone* court rejected the definition of gift established in *Duberstein*,[7] which focuses on the transferor's intent, in favor of the common-law definition of gift,

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1. Under federal law gross income is defined as "all income from whatever source derived" except as otherwise provided by statute. I.R.C. § 61 (1982). The Internal Revenue Code excludes from gross income, and thus from taxation, a number of items, including amounts received as gifts. *Id.* § 102(a). Thus, the full benefit of the exclusion depends on the taxpayer's marginal tax rate. For example, assume that a taxpayer with a marginal tax rate of 50% receives a gift of $1000. The taxpayer would owe an additional $500 in taxes if the gift were included in gross income. Because the gift is excluded from income, the taxpayer realizes an after-tax benefit of $500. A taxpayer with a marginal tax rate of 30% would realize an after-tax benefit of only $300 from the same transaction.

The Code also provides taxpayers with relief in the form of tax credits. In contrast to exclusions, tax credits provide for direct offsets against taxes owed by the taxpayer. The benefit to the taxpayer does not depend on marginal tax rates, but is the same for all taxpayers. A taxpayer who owes no taxes does not benefit from a tax credit unless the credit can be used to offset future income or to cause a rebate of taxes previously paid. An example of a tax credit available under the current Code is the credit for child care expenses. *See id.* § 44A (1982 & Supp. 1983). For a general discussion of how tax is computed, see B. BITTKER, L. STONE & W. KLEIN, FEDERAL INCOME TAXATION 39-45 (6th ed. 1984).

The North Carolina income tax statutes follow a similar pattern and contain an all-inclusive definition of gross income, N.C. GEN. STAT. § 105-141(a) (1983), and an exclusion for amounts received as gifts. *Id.* § 105-141(b)(3). As with the federal statutes, the benefit of the exclusion depends on the taxpayer's marginal tax rate. The state statutes also provide for various tax credits to be taken as direct offsets against taxes owed by the taxpayer. *Id.* §§ 105-151 to -151.16 (1983 & Supp. 1984).

2. Nor does the history of the exclusion provide an explanation or justification of its existence. A "review of the theory and legislative history of the gift exclusion clearly indicates that the exclusion is not the product of a reasoned legislative choice and does not reflect, with any reasonable degree of precision, any legitimate objective of tax policy." Klein, *An Enigma in the Federal Income Tax: The Meaning of the Word "Gift,"* 48 MINN. L. REV. 215, 260 (1963).

3. *See e.g.*, Commissioner v. Duberstein, 363 U.S. 278 (1960); Commissioner v. LoBue, 351 U.S. 243 (1956); Robertson v. United States, 343 U.S. 711 (1952); Bogardus v. Commissioner, 302 U.S. 34 (1937); Old Colony Trust Co. v. Commissioner, 279 U.S. 716 (1929).

4. 363 U.S. 278 (1960).

5. 312 N.C. 739, 325 S.E.2d 230 (1985).

6. *Id.* at 744, 325 S.E.2d at 233.

7. *Id.* at 742, 325 S.E.2d at 232-33. The *Duberstein* court rejected the idea that the word gift, as used in the income tax statutes, was to be given its common-law definition. *Duberstein*, 363 U.S. at 285.

which focuses on the presence or absence of consideration.[8]

The *Stone* court's adoption of a definition of gift that differs from the federal definition may confuse taxpayers in North Carolina. Further, the definition the court adopted raises serious equitable concerns. This Note analyzes the reasoning underlying the *Stone* decision and discusses its implications. It concludes that the *Stone* court could have reached the same result using the *Duberstein* test, thus avoiding the potential problems created by the decision.

At issue in *Stone* were strike benefits received in 1979 by plaintiff taxpayer.[9] Stone was an employee of Carolina Telephone and Telegraph (CTT). In September 1979 Stone joined Local 3685, a recently formed local of the Communication Workers of America.[10] Later that month the union voted to strike the CTT plant.[11] Stone participated in the strike by picketing and by serving as a strike counselor for the union.[12] The strike ended on November 29, 1979, and Stone subsequently returned to work.[13]

The union established a "Defense Fund" to reimburse members for expenses incurred as a result of the strike and to provide assistance in paying certain bills.[14] Members seeking assistance were required to complete an application setting forth the extent of their financial obligations. Members were also required to list the specific items for which they were seeking assistance. Decisions about assistance were based on this information, and assistance was only available for necessities such as shelter, utilities, fuel, food, and medical payments. Sixty days after the strike began assistance was also available to prevent repossession of furniture, household appliances, and automobiles. Assistance was not available for payments on "luxury items" such as color televisions and stereo sets.[15]

Stone applied for assistance and received a total of $1,879, which he used to buy food and to pay utility, household, and medical expenses.[16] He reported the money as nontaxable income on his tax return for 1979.[17] The North Carolina Department of Revenue disagreed with Stone and held him liable for additional tax on the benefits. Stone paid the additional tax and promptly filed for a re-

8. "The definition of 'gift' is broader than the definition used for federal income taxation purposes which was first enunciated in *Commissioner v. Duberstein*." *Stone*, 312 N.C. at 742, 325 S.E.2d at 232. A common-law gift is a "voluntary transfer of property to another made gratuitously and without consideration," but "[i]n tax law, a payment is a gift if it is made without condition, from detached and disinterested generosity, out of affection, respect, charity or like impulses . . . ." BLACK'S LAW DICTIONARY 350-51 (5th ed. 1979).

9. *Stone*, 312 N.C. at 739, 325 S.E.2d at 231.

10. *Id.* The union was formed in February 1979. Stone joined the union in September 1979, but did not start paying dues until the end of November 1979.

11. *Id.*

12. The record indicates that union members were not required to participate in the strike. *Id.* at 743, 325 S.E.2d at 233.

13. *Id.* at 739, 325 S.E.2d at 231.

14. *Id.*

15. *Id.* at 739-40, 325 S.E.2d at 231.

16. *Id.*

17. *Id.* at 740, 325 S.E.2d at 231.

fund.[18] The trial court, apparently applying the *Duberstein* definition of gift, found that the benefits were taxable income rather than a gift from the union.[19] The North Carolina Court of Appeals reversed the trial court on the ground that the supreme court had rejected the *Duberstein* definition in an earlier decision.[20] The supreme court subsequently affirmed, holding that the word "gift" is to be given its common-law definition under the state income tax statute.[21]

The federal and state income tax statutes use virtually identical language with respect to the taxation of gifts.[22] Both simply state that the value of property acquired by gift is excluded from taxation. As a general rule, state courts have found that decisions interpreting federal statutes are very influential in interpreting state statutes with identical language.[23] In *Blackmon v. Mazo*[24] the Georgia Court of Appeals noted that it was free to turn to federal decisions for aid in construing a state taxation statute identical to the federal statute.[25] Similarly, the California Court of Appeals in *Rihn v. Franchise Tax Board*[26] noted that interpretations given to federal statutes by federal courts were highly persuasive when interpreting identical state statutes.[27]

Although such federal decisions are persuasive, they do not control the state courts. In *Bulova Watch Co. v. Brand Distributors*[28] the North Carolina Supreme Court noted that its interpretation of the state constitution was not controlled by United States Supreme Court interpretations of an identical term in the United States Constitution.[29] By its own admission the *Stone* court did not reach the question of what weight should be given interpretations of identi-

18. Stone paid the tax plus interest and a penalty. It was only after the matter could not be resolved administratively that Stone initiated litigation to recover the funds. *Id.*

19. *Id.*

20. Stone v. Lynch, 68 N.C. App. 441, 445, 315 S.E.2d 350, 353 (1984) (citing Foreman Mfg. Co. v. Johnson, 261 N.C. 504, 507, 135 S.E.2d 205, 208 (1964)), *aff'd*, 312 N.C. 739, 315 S.E.2d 230 (1985).

21. *Stone*, 312 N.C. at 742, 325 S.E.2d at 233.

22. Except for minor differences, the language used by the federal and state income tax statutes is identical. The federal law states that "[g]ross income does not include the value of property acquired by gift, bequest, devise, or inheritance." I.R.C. § 102(a) (1982). The North Carolina statute states that "[t]he words gross income do not include . . . [t]he value of property acquired by gift, bequest, devise or descent . . . ." N.C. GEN. STAT. § 105-141(b)(3) (1983).

23. *See generally* Federal Ins. Co. v. Oakwood Steel Co., 126 Ga. App. 479, 191 S.E.2d 298 (1972) (federal cases interpreting summary judgment rule may be used to interpret state summary judgment rule); Holland v. Sanfax Corp., 106 Ga. App. 1, 126 S.E.2d 442 (1962) (federal cases interpreting summary judgment rule may be used to interpret state summary judgment rule).

North Carolina cases are in accord with this proposition. *See* Johnson v. Phoenix Mut. Life Ins. Co., 300 N.C. 247, 266 S.E.2d 610 (1980) (appropriate to look at cases interpreting Federal Trade Commission Act when interpreting similar state statute); Love v. Pressley, 34 N.C. App. 503, 239 S.E.2d 574 (1977) (federal interpretations of Federal Rules of Civil Procedure are instructive in supplementing North Carolina decisions), *cert. denied*, 294 N.C. 441, 241 S.E.2d 843 (1978).

24. 125 Ga. App. 193, 186 S.E.2d 889 (1971).

25. *Id.* at 196, 186 S.E.2d at 891.

26. 131 Cal. App. 2d 356, 280 P.2d 893 (1955).

27. *Id.* at 360, 280 P.2d at 895-96.

28. 285 N.C. 467, 206 S.E.2d 141 (1974).

29. *Id.* at 474, 206 S.E.2d at 146. The Georgia Supreme Court in Superior Pine Prods. v. Williams, 214 Ga. 485, 106 S.E.2d 6 (1958), noted that even when statutes were identical, a decision by a federal court on point, although strongly persuasive, was not binding on the Georgia courts. *Id.* at 491, 106 S.E.2d at 11.

cal federal statutes.[30] It did note, however, that "generally it is preferable that state taxation statutes be interpreted consistently with their federal counterparts."[31] Despite this observation, the *Stone* court adopted a definition of gift that directly conflicts with the definition in *Duberstein*.[32]

The United States Supreme Court's decision in *Duberstein* involved two cases, *Commissioner v. Duberstein* and *Stanton v. United States*.[33] The taxpayer in *Duberstein* was president of the Duberstein Iron and Metal Company. For a number of years the taxpayer's company did considerable business with Mohawk Metal Corporation. Over the course of time, Duberstein developed a personal relationship with Berman, the president of Mohawk. In addition, Duberstein provided Berman with information about a number of potential customers. The information proved helpful, and Berman decided to send Duberstein a Cadillac. After some resistance, Duberstein accepted the automobile.[34]

The taxpayer in *Stanton* was an employee of the Trinity Church in New York City.[35] When he resigned after ten years of employment, the directors of the Trinity Operating Corporation, a wholly-owned church subsidiary of which Stanton was president, adopted a resolution giving him a "gratuity" of $20,000.[36]

The United States Supreme Court synthesized various tests and concepts used in earlier decisions to establish a definition of gift in *Duberstein*.[37] The *Duberstein* definition requires the fact finder to focus primarily on the intent of the transferor.[38] A gift under *Duberstein* springs from a " 'detached and disin-

30. After asserting that its decision was in accord with federal and state law, the court stated, "[W]e do not reach the question of whether principles of federal taxation law must or must not be followed when a state taxation statute is identical or substantially similar to a federal taxation statute." *Stone*, 312 N.C. at 745, 325 S.E.2d at 234.

31. *Id.*

32. *See supra* notes 7-8 and accompanying text.

33. *Duberstein*, 363 U.S. at 280-81.

34. *Id.* at 281. Mohawk apparently deducted the value of the car as a business expense on its corporate income tax return. Because Mohawk considered the transfer a business expense, it was more difficult for Duberstein to argue that the transfer was a gift. If the Code permitted Mohawk to deduct the value of the car while allowing Duberstein to exclude its value, the value of the car would completely escape taxation. Taxpayers, however, may have valid business reasons for making gifts, and a deduction may be warranted. The current Code takes this possibility into account and states that business expense deductions shall be allowed for gifts made to any individual to the extent the value of the gift does not exceed $25. I.R.C. § 274(b)(1) (1982). As a result, small gifts are deductible as business expenses to the transferor and excludable as gifts to the transferee. In addition, § 274(b)(1) identifies various transfers that the transferor does not treat as gifts, including: (1) any item costing less than four dollars on which the name of the taxpayer is clearly imprinted and which is one of many identical items distributed by the taxpayer; (2) a sign or display rack to be used on the business premises of the recipient; and (3) an item of tangible personal property given to an employee in recognition of length of service, productivity, or safety achievement, but only to the extent the cost of the property does not exceed four hundred dollars.

35. *Stanton*, 363 U.S. at 281.

36. *Id.* at 281-82.

37. *See* Commissioner v. LoBue, 351 U.S. 243 (1956) (gift in the statutory sense proceeds from detached and disinterested generosity); Robertson v. United States, 343 U.S. 711 (1952) (gift proceeds out of affection, respect, admiration, charity, or like impulses); Bogardus v. Commissioner, 302 U.S. 34 (1937) (critical consideration in determining gift is transferor's intention); Old Colony Trust Co. v. Commissioner, 279 U.S. 716 (1929) (mere absence of a legal or moral obligation to make payment does not establish it as a gift).

38. " 'What controls is the intention with which payment, however voluntary, has been

terested generosity' "[39] and arises out of " 'affection, respect, admiration, charity or like impulses.' "[40] Thus, a voluntary transfer made without consideration, although a gift under the common law, may not constitute a gift under the taxation statute.[41]

The *Stone* court elected not to follow the *Duberstein* decision. Rather, the court held that under state taxation statutes a gift is defined as a " 'voluntary transfer of property by one to another without any consideration therefor.' "[42] The *Stone* court thus adopted the broader common-law definition of gift rejected by the *Duberstein* court.[43] The *Stone* court established a simple three-prong test for gifts: (1) there must be a transfer of property; (2) the transfer must be voluntary; and (3) the transfer must be made without consideration.[44] Applying the test to the facts before it, the court had little trouble finding that the benefits Stone received were a gift;[45] there was a transfer, the transfer was voluntary, and it was made without consideration. The union did not require Stone to participate in the strike,[46] and any moral obligation the union had to pay the benefits was not legal consideration.[47]

The North Carolina Supreme Court in *Stone* relied on its earlier decision in *Foreman Manufacturing Co. v. Johnson*.[48] At issue in *Foreman Manufacturing* was the cancellation of a $70,654 debt owed by the corporate taxpayer to a shareholder.[49] The court had to determine whether the cancellation of the debt was taxable income under state income tax statutes.[50] The court held that the cancellation was a contribution to capital and thus was not subject to taxation.[51]

The *Foreman Manufacturing* court had relied partly on the United States Supreme Court's decision in *Helvering v. American Dental Co.*[52] to support its decision. In *American Dental*, which was decided seventeen years before *Duber-*

made.' " *Duberstein*, 363 U.S. at 286 (quoting Bogardus v. Commissioner, 302 U.S. 34, 45 (1937) (Brandeis, J., dissenting)).

39. *Id.* at 285 (quoting Commissioner v. LoBue, 351 U.S. 243, 246 (1956)).

40. *Id.* (quoting Robertson v. United States, 343 U.S. 711, 714 (1952)).

41. *Id.* The determination whether a transfer constitutes a gift is primarily for the fact finder. On appeal, courts must give great deference to this determination and must not disturb it unless it is clearly erroneous. *Id.* at 290-91. In adopting its definition of gift, the *Duberstein* court rejected the government's argument that it should establish a definition whereby gifts would be defined as transfers of property made for personal rather than business reasons. *Id.* at 284. The government's test would have eliminated the possibility of receiving a gift from a corporation, as corporations are incapable of personal acts.

42. *Stone*, 312 N.C. at 743, 325 S.E.2d at 233 (quoting Foreman Mfg. Co. v. Johnson, 261 N.C. 504, 507, 135 S.E.2d 205, 208 (1964)).

43. *See supra* notes 7-8 and accompanying text.

44. *Stone*, 312 N.C. at 743, 325 S.E.2d at 233.

45. *Id.* at 742, 325 S.E.2d at 233.

46. "The record is clear that the union did not demand or require that Mr. Stone perform any service for it in order to be eligible to receive strike benefits." *Id.* at 743, 325 S.E.2d at 233.

47. *Id.*

48. 261 N.C. 504, 135 S.E.2d 205 (1964).

49. *Id.* at 504, 135 S.E.2d at 206.

50. *Id.* The corporation also suffered a $48,575 loss during the same year. The Department of Revenue claimed that the loss was offset by the cancellation of the debt, and thus the corporation received a taxable gain of $22,078. *Id.* at 506, 135 S.E.2d at 207.

51. *Id.* at 507, 135 S.E.2d at 208.

52. 318 U.S. 322 (1943).

stein, the Court held that the release by creditors of an obligation owed by the corporate taxpayer was a gift to the corporation.[53] Relying on *American Dental*, the *Foreman Manufacturing* court stated that when a stranger forgives a debt owed by a corporation, the resulting benefit to the corporation is a gift.[54] The court noted that the value of property acquired by gift is excluded from both state and federal tax. The court also noted that a gift is "usually defined" as a voluntary transfer of property "without any consideration therefor."[55] A contribution to capital by a stockholder increases the resources of a corporation, however, and the *Foreman Manufacturing* court reasoned that the business aspects of such a transfer remove it from the realm of gifts.[56] The court held that when a shareholder forgives a debt owed by a corporation, the shareholder has made a contribution to capital, which is not subject to taxation under the North Carolina income tax statutes.[57]

The *Stone* court reasoned that because the *Foreman Manufacturing* court had relied on *American Dental*, it had "tacitly rejected" the *Duberstein* definition of gift.[58] The *Stone* court added that the *Foreman Manufacturing* decision established that "gift" was to be given its common-law definition under state law.[59] Thus, the court reasoned that it was simply applying established precedent in reaching its decision.

Although the *Stone* court based its decision on state law, it also stated that its decision was in compliance with federal law.[60] It cited the United States Supreme Court's decision in *United States v. Kaiser*[61] to support the proposition that strike benefits need not constitute taxable income under *Duberstein*.[62] The taxpayer in *Kaiser* was employed by the Kohler Company in Wisconsin.[63] The bargaining group at the Kohler plant was Local 833 of the United Automobile, Aircraft and Agricultural Implement Workers of America.[64] Kaiser was not a member of the union but elected to picket and otherwise participate in the union's strike against Kohler. It was the policy of the union to provide financial assistance to strikers in need. Kaiser applied for and received food vouchers and rent payments totaling $565 from the union. At trial, the jury determined that the benefits were a gift, but the judge entered a judgment *non obstante verdicto* against the taxpayer. The court of appeals reversed the trial judge, and the

53. *Id.* At issue were debts owed by the corporate taxpayer, including back rent and interest owed on merchandise purchased by the corporation. Due to adjustments made in the debts, the taxpayer was the beneficiary of over $25,000 in cancelled debts. The Court, noting that the cancellations were gratuitous, held that they were gifts under the federal income tax statutes. *Id.* at 331.

54. *Foreman Mfg.*, 261 N.C. at 507, 135 S.E.2d at 208.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Stone*, 312 N.C. at 742, 325 S.E.2d at 233.

59. "*[Foreman] Manufacturing Co.* is strong precedent to apply the common-law definition of gift for income taxation purposes." *Id.*

60. *Id.* at 744, 325 S.E.2d at 233.

61. 363 U.S. 299 (1960). *Kaiser* was decided on the same day as *Duberstein*.

62. *Stone*, 312 N.C. at 744, 325 S.E.2d at 233-34.

63. *Kaiser*, 363 U.S. at 300.

64. *Id.*

Supreme Court affirmed the court of appeals.[65] The court in *Stone* concluded that because its decision was in accord with *Kaiser*, it did not have to decide how much weight to give decisions interpreting identical federal statutes.[66]

In a dissenting opinion in *Stone*, Justice Meyer argued that the majority had reached an erroneous and unwise decision due largely to its misinterpretations of *Foreman Manufacturing* and *Kaiser*.[67] He noted that *Foreman Manufacturing* stood only for the proposition that a contribution to capital was not taxable under state law and did not establish that forgiveness of the debt constituted a gift.[68] For that reason, he argued that it was inappropriate to apply the "definition" of gift in *Foreman Manufacturing* to all situations.[69]

Justice Meyer also argued that the majority read too much into *Kaiser*.[70] He argued that *Kaiser* stands only for the proposition that the determination whether a transfer constitutes a gift is for the fact finder. In *Kaiser* the facts were sufficient to permit the fact finder to find that the strike benefits were a gift.[71] In support of his position, Meyer noted that courts in every "strike benefit" case since *Kaiser* had held that the benefits were taxable income.[72]

Justice Meyer argued that "common sense" dictated that the state court adopt the *Duberstein* definition because the state statute was obviously copied from the federal statute.[73] He noted that any other decision would lead to confusion on the part of taxpayers and practitioners. In sum, Justice Meyer argued that the court was free to adopt the *Duberstein* definition and should have done so. Had it done so, it would have been obligated to affirm the trial court's determination that the strike benefits were taxable income.[74]

The dissenting opinion notwithstanding, the *Stone* court could have found the benefits to be a gift without rejecting *Duberstein*. The United States Supreme Court's decision in *Kaiser* established that strike benefits could be characterized

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65. *Id.* at 300-03.

66. *See supra* note 30. By relying on *Kaiser* to support the contention that its decision was in accord with federal law, the majority ignored the fact that *Kaiser* was decided in conjunction with *Duberstein*. The United States Supreme Court in *Kaiser* simply incorporated the *Duberstein* interpretation of gift into its decision. Thus, while the *Stone* decision may have been in compliance with respect to the tax treatment given the strike benefits, the decision was not in accord with the interpretation of gift used in *Kaiser*. Only by adopting the *Duberstein* definition of gift could the *Stone* court correctly argue that its decision was in accord with *Kaiser*.

67. *Stone*, 312 N.C. at 746, 325 S.E.2d at 235 (Meyer, J., dissenting).

68. *Id.* at 747, 325 S.E.2d at 235 (Meyer, J., dissenting).

69. *Id.* (Meyer, J., dissenting).

70. *Id.* at 748, 325 S.E.2d at 236 (Meyer, J., dissenting).

71. *Id.* (Meyer, J., dissenting). Justice Meyer noted that the facts in *Kaiser* did not *require* a jury to find that the transaction was a gift.

72. *Id.* at 749, 325 S.E.2d at 236 (Meyer, J., dissenting). Justice Meyer's opinion cited Woody v. United States, 368 F.2d 668 (9th Cir. 1966); Placko v. Commissioner, 74 T.C. 452 (1980); Colwell v. Commissioner, 64 T.C. 584 (1975); Brown v. Commissioner, 47 T.C. 399 (1967) (*acq.* 1969-1 C.B. 21), *aff'd per curiam*, 398 F.2d 832 (6th Cir. 1968), *cert. denied*, 393 U.S. 1065 (1969); and Hagar v. Commissioner, 43 T.C. 468 (1965).

73. "N.C.G.S. § 105-141(b)(3) did not spring from our General Assembly full-grown and unrelated to anything that had occurred before." *Stone*, 312 N.C. at 746, 325 S.E.2d at 235 (Meyer, J., dissenting).

74. *Id.* at 747-49, 325 S.E.2d at 235-36 (Meyer, J., dissenting).

as a gift under *Duberstein*.[75] Although it is true that courts in all of the subsequent strike benefit cases have held otherwise,[76] even these decisions recognize the possibility that strike benefits might be characterized as a gift. These decisions identify a number of factors to be considered in making such a determination, including: (1) whether the union was under a legal or a moral duty to pay the benefits; (2) whether the financial status of the recipient was considered; (3) whether the recipient was a member of the union; and (4) whether the use of the benefits was restricted.[77]

The strike benefit cases emphasize that the key factors in finding a gift are whether the union considered financial need and whether use of the benefits was restricted. In *Placko v. Commissioner*[78] the United States Tax Court held that benefits received by the taxpayer constituted taxable income. The taxpayer in *Placko* was employed as an airline pilot, and he and twenty-four other pilots were laid off in response to a strike called by the union. The union voted to assess each member fifteen dollars for six months to establish a fund to assist laid off employees. The funds were distributed to the laid off pilots, but no effort was made to determine their financial needs. Although the court recognized that the benefits technically were not strike benefits, it employed a similar form of analysis.[79] The court's determination that the benefits were taxable income was based largely on the union's lack of inquiry into the financial need of the recipients. The court noted that such benefits are generally treated as income "if calculated without regard to financial need or made with no restrictions on use."[80]

The taxpayer in *Colwell v. Commissioner*[81] was employed as a stereotyper and was a member of the International Stereotypers and Electrotypers Union. He received over $5,000 in benefits after he refused to cross the picket line during a strike called against his employer by a different union. Colwell performed no duties during the strike, and the benefits he received were not restricted as to use.[82] Further, the union paying the benefits did not inquire into Colwell's financial state. Because the union made the payments without inquiry into financial need and without restriction on use the court determined that the benefits were taxable income.[83] Courts in the other strike benefit cases reached similar conclusions.[84]

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75. Speaking about the strike benefits, the United States Supreme Court stated: "We can hardly say that, as a matter of law, the fact that these transfers were made to one having a sympathetic interest with the giver prevents them from being a gift." *Kaiser*, 363 U.S. at 304.

76. *See supra* note 72 and accompanying text.

77. Colwell v. Commissioner, 64 T.C. 584, 587 (1975).

78. 74 T.C. 452 (1980).

79. *Id.* at 457.

80. *Id.* at 455.

81. 64 T.C. 584 (1975).

82. *Id.* at 585.

83. *Id.* at 588.

84. In Woody v. United States, 368 F.2d 668 (9th Cir. 1966), the taxpayer was a member of the Stereotypers and Electrotypers International Union, and he received over $5,000 in strike benefits from the union. The taxpayer was not required to participate in strike activities to qualify for benefits, and the union made no inquiry into financial need. The court cited this lack of inquiry as a key factor in its decision not to disturb the jury's determination that the benefits were taxable income.

The *Stone* court could have relied on these cases and on *Duberstein* to support a finding that the benefits were a gift. Under *Duberstein* a trial court's characterization of strike benefits as taxable income or a gift is to be disturbed only if it is "clearly erroneous."[85] Arguably, the trial court's finding that the benefits paid in *Stone* were taxable income was clearly erroneous. *Kaiser* and the subsequent strike benefit decisions establish that such benefits can, on appropriate facts, be characterized as gifts. The facts in *Stone* presented an ideal situation for such a determination because Stone received assistance only after establishing a need, and the union benefits could be used only for necessary items.[86] The trial court apparently disregarded these facts.[87] Thus, the supreme court could have affirmed the trial court's use of *Duberstein*, but reversed the trial court's determination that the benefits were taxable income.

A finding in *Stone* based on *Duberstein* and the strike benefit cases would not have been inconsistent with the state supreme court's decision in *Foreman Manufacturing*. *Foreman Manufacturing* in no way established a definition of "gift"; indeed, that question was not even before the court. The *Foreman Manufacturing* court was asked only to determine whether the forgiveness of the debt was a contribution to capital, and if so, whether the contribution was subject to taxation under state statutes. The court's only reference to the definition of gift was dictum,[88] and the *Stone* court was incorrect in citing it as binding precedent in interpreting the word "gift." The *Stone* court was also incorrect in stating that the *Foreman Manufacturing* court, by quoting *American Dental*, had rejected the *Duberstein* definition of gift. The *Foreman Manufacturing* court relied on *American Dental* only for the proposition that the cancellation of a debt owed by a corporation to a creditor should be characterized as a gift.[89] It did not rely on *American Dental* for the purpose of defining "gift."[90]

"The jury could reasonably infer that the payments were not gifts because the amount was not determined according to personal financial need." *Id.* at 672.

In Brown v. Commissioner, 47 T.C. 399 (1967) (*acq.* 1969-1 C.B. 21), *aff'd per curiam*, 398 F.2d 832 (6th Cir. 1968), *cert. denied*, 393 U.S. 1065 (1969), a number of airline pilots sought to have strike benefits declared nontaxable gifts. The benefits received by the pilots ranged from $2,415 to $7,511. *Id.* at 405. Determining that the benefits were taxable income, the court distinguished the facts before it from those in *Kaiser*. "Here the payments were made irrespective of need and irrespective of other sources of income, and without any restrictions as to use." *Id.* at 409.

The taxpayer in Hagar v. Commissioner, 43 T.C. 468 (1965), was employed as a copy editor with the Globe-Democrat Publishing Company. He was a member of the St. Louis Newspaper Guild, Local.No. 47 of the American Newspaper Guild. *Id.* at 469. He received $436.70 in strike benefits while participating in a strike against his employer. *Id.* at 482. In denying the taxpayer's claim that the benefits were a gift, the court focused on the fact that the union did not pay benefits to individuals who did not participate in the picketing. *Id.* at 485. The court was "convinced that the motivating force behind the payments here involved proceeded from the anticipation of economic benefit both to the local guild and to the petitioner." *Id.*

85. *See* 363 U.S. at 290-91; *supra* note 41.

86. *See supra* text accompanying note 15.

87. *See supra* text accompanying notes 15 & 19.

88. The court simply noted: "A gift is *usually* defined as a voluntary transfer of property by one to another without any consideration therefor." *Foreman Mfg.*, 261 N.C. at 507, 135 S.E.2d at 208 (emphasis added).

89. *Id.* at 507, 135 S.E.2d at 208.

90. In *American Dental*, the Court was asked to determine whether cancellation of the taxpayer's debts was a gift or taxable income. In finding that the cancellation was a gift, the Court did,

Deciding that the *Stone* court was not bound to apply the common-law definition of gift to reach the result it desired does not determine what definition the court should have adopted. The obvious choice is the *Duberstein* definition, but this definition is not without its problems. As the United States Supreme Court noted, the definition "may not satisfy an academic desire for tidiness, symmetry and precision."[91] Rather, it is a vague definition that requires the fact finder to determine the transferor's intent in making the transfer. This determination is to be based on the fact finder's "experience with the mainsprings of human conduct."[92] Not surprisingly, this definition has received substantial criticism.[93]

The definition adopted by the *Stone* court is simpler and promises to be easier to apply. The question whether a transfer was made with consideration lends itself to a more objective determination than does an inquiry into the transferor's intent. Under *Stone*, the fact finder need determine only whether the transferor received legal consideration for the transfer. If not, the transfer is a gift, regardless of any moral obligation on the part of the transferor. By contrast, the fact finder in a *Duberstein* inquiry must delve into the transferor's psyche to determine if the transfer was made with "detached and disinterested generosity."

Although the *Stone* definition promises easier application than *Duberstein*, the court's rejection of *Duberstein* creates several potential problems. The *Stone* decision results in different definitions of a key term in identical statutes. Taxpayers and practitioners thus must apply different rules and standards to the same transactions, making tax planning difficult. Although the *Stone* court recognized that state income tax statutes should be interpreted consistently with their federal counterparts,[94] the majority apparently went out of its way to avoid following this "rule."[95] The court could have argued that the confusion for taxpayers and practitioners would be outweighed by the relative administrative ease of its simplified definition of gift. Instead, the majority neither considered the potential problems created by its decision nor offered compelling support for its definition of gift.

Perhaps the most troubling aspect of the decision is the court's failure to

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to a certain extent, define the word "gift" as used in the income tax statutes. First, the Court noted that the plain meaning of the word "denotes . . . the receipt of financial advantages gratuitously." *American Dental*, 318 U.S. at 330. In addition, the Court noted that "[t]he fact that the motives leading to the cancellations were those of business or even selfish . . . is not significant." *Id.* at 331. By focusing on the transferor's intent, the *Duberstein* court apparently rejected the *American Dental* definition. *Duberstein* did not, however, explicitly overrule *American Dental*.

91. *Duberstein*, 363 U.S. at 290.

92. *Id.* at 289.

93. *See, e.g.*, Klein, *supra* note 2, at 222 (noting that the aftermath of *Duberstein* is likely to be similar to the confusion created by earlier decisions); Note, *Federal Income Taxation: Non-Taxable Gift Versus Taxable Compensation*, 39 N.C.L. REV. 286, 293 (1961) (noting that even after *Duberstein* there is no clear definition for "gifts" and "compensation" as used in the Internal Revenue Code).

94. *See supra* text accompanying note 31.

95. "While paying lip service to this principle the majority has gone far out of its way to avoid following it here." *Stone*, 312 N.C. at 746, 325 S.E.2d at 235 (Meyer, J., dissenting).

consider the equities involved in adopting such a broad definition of gift. One of the primary goals of any tax system is fairness.[96] As Justice Meyer's dissent pointed out, a basic question exists about the fairness of excluding strike benefits from taxation.[97] The *Stone* majority ignored this question and focused only on the nature of the transaction.

Other troubling equity questions arise from the range of transactions that might satisfy the *Stone* definition of gift. For example, tips, employee bonuses, and similar transactions could constitute gifts under the *Stone* definition. Such transfers are voluntary, and they arguably are made without legal consideration. These transfers could be distinguished from the payments in *Stone* because they are a form of compensation, but the possibility that they might satisfy the *Stone* definition of gift is troubling.

Other transactions will be more difficult to distinguish from *Stone*. The transfer of the car in *Duberstein* is an example. By requiring the fact finder to ascertain the transferors's intent, the *Duberstein* definition makes it possible to determine that such a transfer constitutes taxable income. It is more difficult to reach the same conclusion under the *Stone* definition. This fact raises additional questions about the impact *Stone* will have on the state's tax base. As with other equity issues, the *Stone* majority did not address these questions.

Adopting the *Duberstein* definition would not have eliminated all of the problems associated with the nontaxation of gifts. The *Duberstein* definition is admittedly difficult to apply. Adopting the *Duberstein* definition, however, would have eliminated the problems associated with applying different definitions under identical statutes. The *Duberstein* definition also would have provided fact finders with greater flexibility to address the equity questions raised by such determinations by allowing them to look to the intention of the transferor. This flexibility is not available under the common-law definition, which allows the courts to determine only whether the transfer was made with legal consideration. The *Stone* majority, in a poorly reasoned and unsupported decision, adopted a much broader definition of gift. The court could and should have adopted the *Duberstein* definition of gift.

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96. "One important goal of a good system of taxation must be *fairness*. Fairness is generally divided into two sub-categories, *horizontal equity* and *vertical equity*. The principle of horizontal equity is that people similarly situated should be treated alike . . . ." B. BITTKER, L. STONE & W. KLEIN, *supra* note 1, at 12.

97. *Stone*, 312 N.C. at 749, 325 S.E.2d at 236. "Mr. Stone's right to join in the strike is an important right but the mere fact that an individual chooses to join in a strike should not provide him with a tax shelter." *Id.* The federal strike benefit cases also have not addressed this question. *See supra* note 84.