

**Estate of Rosano v. Commissioner [I. R. C. §§2033, 2503, and
2511]
(checks written by decedent but not yet paid until after death
were not completed gifts)**

Facts. Decedent attempted to decrease the amount of money in her taxable estate by making gifts of less than \$10,000 to numerous relatives and friends. **Decedent wrote checks to relatives and friends, but the checks were not paid until after her death.** The executor did not include the amount of the checks in the value of the estate. The IRS determined that the checks should be included in the value of the estate and determined a deficiency in the estate tax liability. The District Court agreed with the IRS.

Issue. Whether checks that were written by decedent before death but paid after decedent's death were "completed gifts."

Analysis.. The Second Circuit noted that federal law provides that a gift is completed when the donor has parted completely with dominion and control over the gift. To determine whether decedent parted with dominion and control, the court turned to state law. The court found that under New York state law, decedent had the ability, at any time until the checks were paid, to order that payment on the checks be stopped. Therefore, the court concluded that she retained dominion and control over the checks at the time of her death, and the gifts were not completed.

The court then considered the estate's argument that the checks should be considered to have been paid on the date they were delivered by decedent to the donees, rather than on the date they were actually paid. Under this variation of the doctrine of "relation-back," which generally is applied in cases involving charitable donations, checks delivered to donee charities prior to a decedent's death but not paid until after the decedent's death may be considered completed on the date of delivery. *Estate of Belcher v. Commissioner*, 83 T.C. 227 (1984). In a recent case, *Metzger v. Commissioner*, 38 F.3d 118 (4th Cir. 1994), this doctrine was extended to the non-charitable donation context, to govern whether a gift was made within a year in which it would be exempt from the gift tax, but in that case the donor was alive at the time the checks were paid. The court noted that the estate has pointed to no court that has allowed payment to relate back to the date of delivery if the donor was deceased on the date of actual payment and the donee was not a charitable entity. The Second Circuit concluded that it would not apply the doctrine where gifts are made to a non-charitable donee and the donor died prior to the date of payment.

Holding. The Second Circuit affirmed the District Court's decision that **checks written by decedent before death but paid after decedent's death were not completed gifts.**

[*Estate of Rosano v. Commissioner*, 245 F.3d. 212 (2nd Cir. 2001) affirming 67 F. Supp. 2d 113 (D. NY. 1999)]