

Proceeds of a settlement are to be characterized by the "origin of the claim." Hort v. Commissioner, 313 U.S. 28 (1941); U. S. v. Gilmore, 372 U. S. 39 (1963).

In addressing the issue of what constitutes a gift for income tax purposes, the U. S. Supreme Court stated, in part:

The course of decision here makes it plain that the statute does not use the term 'gift' in the common law sense, but in a more colloquial sense. This Court has indicated that a voluntarily executed transfer of his property by one to another, without any consideration or compensation therefor, though a common law gift, is not necessarily a 'gift' within the meaning of the statute. For the Court has shown that the mere absence of a legal or moral obligation to make such a payment does not establish that it is a gift. Old Colony Trust Co. v. Commissioner, 279 U.S. 716, 730, 49 S.Ct. 499, 504, 73 L.Ed. 918. And, importantly, if the payment proceeds primarily from 'the constraining force of any moral or legal duty,' or from 'the incentive of anticipated benefit' of an economic nature, Bogardus v. Commissioner, 302 U.S. 34, 41, 58 S.Ct. 61, 65, 82 L.Ed. 32, it is not a gift. And, conversely, '(w) here the payment is in return for services rendered, it is irrelevant that the donor derives no economic benefit from it.' Robertson v. United States, 343 U.S. 711, 714, 72 S.Ct. 994, 996, 96 L.Ed. 1237. (Footnote omitted.) A gift in the statutory sense, on the other hand, proceeds from a 'detached and disinterested generosity,' Commissioner of Internal Revenue v. LoBue, 351 U.S. 243, 246, 76 S.Ct. 800, 803, 100 L.Ed. 1142; 'out of affection, respect, admiration, charity or like impulses.' Robertson v. United States, supra, 343 U.S. at page 714, 72 S.Ct. at page 996. And in this regard, the most critical consideration, as the Court was agreed in the leading case here, is the transferor's 'intention.' Bogardus v. Commissioner, 302 U.S. 34, 43, 58 S.Ct. 61, 65, 82 L.Ed. 32. 'What controls is the intention with which payment, however voluntary, has been made.' Id., 302 U.S. at page 45, 58 S.Ct. at page 66 (dissenting opinion). (Footnote omitted).

Commissioner v. Duberstein, et al, 363 U. S. 278, 285-286 (1960).

The agreement governing the payments here in question states, in part:

This Release shall put to rest and settle any and all existing or potential disputes and disagreements arising out of the claims or in any way connected with prior acts and/or conduct arising from Releasor's employment at [employer], including but not limited to Releasor's complaint filed with the Idaho Human Rights Commission and/or Equal Employment Opportunities Commission. This Release is intended to include and cover all claims of every nature and kind whatsoever Releasor may have against the Release.

Given the nature of the claims released by the petitioner, the Commission finds that the payments were not from a "detached and disinterested generosity," and therefore are not properly classified as gifts for income tax purposes.

WHEREFORE, the Notice of Deficiency Determination dated July 17, 2003, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest (calculated to February 28, 2005):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2001	\$1,399	\$350	\$154	\$1,903
2002	1,374		63	<u>1,437</u>
				<u>\$ 3,340</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[REDACTED]
[REDACTED]

Receipt No.
