FEDERAL TAXATION: TAX CONSEQUENCES OF DIVORCE PROPERTY SETTLEMENTS

IN RESOLVING a conflict in the Courts of Appeal and the Court of Claims,[1] the Supreme Court held in *United States v. Davis*[2] that a husband realizes a taxable gain on a transfer of appreciated stock to his former wife pursuant to a divorce property settlement agreement, to the extent that the fair market value of the stock at the date of its transfer exceeds the husband's adjusted cost basis.

A voluntary property settlement and separation agreement was executed in 1954 between the taxpayer and his wife.[3] As a "division in the settlement of their property," the taxpayer agreed to transfer to her 1000 shares of stock.[4] In accordance with this agreement, which was incorporated into the divorce decree,[5] one-half of the stock was delivered in 1955, the tax year involved. The Commissioner determined an income tax deficiency on the ground that the husband realized a gain of $7,474.63, the difference between what he paid for the shares and their market value at the date of the transfer.[6] After paying the asserted deficiency, and upon disallowance of a claim for refund, the taxpayer sued in the Court of Claims

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[1] *Compare* Commissioner v. Halliwell, 131 F.2d 642 (2d Cir. 1942) *and* Commissioner v. Mesta, 123 F.2d 986 (3d Cir. 1941), *with* Commissioner v. Marshman, 279 F.2d 27 (6th Cir. 1960) *and* Davis v. United States, 287 F.2d 168 (Ct. Cl. 1961), *rev'd*, 370 U.S. 65 (1962).

[2] 370 U.S. 65 (1962).

[3] The agreement recited that, "[T]he parties intend by this agreement to settle their respective rights and obligations against and to one another by (1) making a division of their property; (2) providing in lieu of alimony in the event of a decree of divorce for the support and maintenance of the wife; (3) making an arrangement and provision for the support and maintenance of Stephen; and (4) defining the rights of custody, maintenance, support and education of their minor child." Brief for Appellant, p. 3.

[4] The wife agreed to accept "the division of property in full settlement and satisfaction of any and all claims and rights against the husband whatsoever . . . which she ever had, now had, or might have against the husband by reason of their relationship as husband and wife or otherwise." *Id.* at 4.

[5] On January 5, 1955, the wife was granted a final decree of divorce from the taxpayer by the Second Judicial District Court of the State of Nevada. The court's decree approved the settlement of the parties and directed him to carry it out. *Id.* at 5.

[6] The cost basis of the 500 shares of duPont stock was $74,775.37. This stock had a fair market value at the date of the transfer, March 21, 1955, of $82,250, or an increase in value over the cost basis of $7,474.63. The Commissioner of Internal Revenue assessed the tax deficiency on the basis of including in the taxpayer's gross income a net long-term capital gain of one-half of $7,474.63, or $3,737.31. Davis v. United States, 287 F.2d 168, 169 (Ct. Cl. 1961).

to recover the alleged overpayment of taxes. This court overruled the Commissioner and held that no taxable gain was realized on the transfer of the appreciated property.[7]

The Supreme Court reversed,[8] holding that the appropriate occasion to tax any appreciation in the value of the stock transferred pursuant to the divorce agreement was at the time the husband transferred the shares to his wife, because this transfer amounted to a taxable "exchange" of property for the release of an independent legal obligation.[9] In determining that the tax consequences

[7] Davis v. United States, 287 F.2d 168 (Ct. Cl. 1961). The Court of Claims held that although the taxpayer may have realized economic gain, he did not realize taxable gain under the provision of § 1001 (a) of the Internal Revenue Code of 1954. The court reasoned that the statutory definition of "amount realized" calls for a determination of "fair market value of the property . . . *received*" and that there was no adequate criteria for measuring the value of the marital rights released by the wife. *Id.* at 174.

[8] United States v. Davis, 370 U.S. 65 (1962). The Supreme Court affirmed, however, the holding in Davis v. United States, 287 F.2d 168 (Ct. Cl. 1961), that the payment by the husband of the wife's legal expenses for tax advice in connection with the divorce property settlement agreement was not deductible.

[9] 370 U.S. at 68-71. The Court first decided that "there can be no doubt that Congress, as evidenced by its inclusive definition of income subject to taxation, *i.e.*, 'all income from whatever source derived, including... gains derived from dealings in property,' [INT. REV. CODE OF 1954, § 61 (a)] intended that the economic growth of this stock be taxed." *Id.* at 68. Therefore, the only problem confronting the Court was *when* the appreciation in the value of the stock should be taxed.

The Court admitted that "the controlling statutory language, which provides that gains from dealings in property are to be taxed upon 'sale or other disposition' [INT. REV. CODE OF 1954, §§ 1001-02], is too general to include or exclude conclusively the transaction presently in issue." *Id.* at 68-69. The Government argued, therefore, that the transaction amounted to a "sale or exchange" in which property is received in satisfaction of a legal obligation. Such a transfer is a taxable transaction—the debt which is satisfied constituting the property received. Peninsula Properties Co., 47 B.T.A. 84 (1942). See 2 MERTENS, FEDERAL INCOME TAXATION § 11.21 n. 50 (rev. ed. 1961) [hereinafter cited as MERTENS]; Eustice, *Cancellation of Indebtedness and the Federal Income Tax: A Problem of Creeping Confusion,* 14 TAX L. REV. 225, 234 (1959). The taxpayer contended, on the other hand, that the transaction more closely resembled a gift or a division of community property. A transfer which classifies as a gift is not a taxable event. INT. REV. CODE OF 1954, § 102. See 1 MERTENS § 7.10 (rev. ed. 1962). Also, where a specific asset of the community property is divided equally, or where there is an equal division of the entire community property no gain is taxable to either spouse. Commissioner v. Mills, 183 F.2d 32 (9th Cir. 1950) (equal division of specific asset); Osceola H. Davenport, 12 CCH Tax Ct. Mem. 856 (1953), Francis R. Walz, 32 B.T.A. 718 (1935) (equal division of the entire community property). However, if the division of the entire community property is unequal or if the division is equal, but one spouse gives his note or other obligation for all or part of the property set aside to him, then the transaction is treated as a "sale or exchange." C. C. Rouse, 6 T.C. 908, *aff'd,* 159 F.2d 706 (5th Cir. 1947) (division unequal); Jessie Lee Edwards, 22 T.C. 65 (1954) (division equal, but one spouse gave note for part of his share). See Robert K. Stephens, 38 T.C. No. 39 (1962) (citing *Davis* as authority); Brawerman, *A Practical Approach to Tax Problems in Divorce and Property Settlement Agreements,* U. So. CAL. 1960 TAX INST. 753, 759-66. How-should not be delayed until a subsequent transfer by the wife, the Court rejected the taxpayer's contention that this transfer qualified as either a gift[10] or a non-taxable division of property.[11]

The only real point of conflict in the lower courts was resolved by deciding that the husband's gain could be measured, and was therefore taxable.[12] Stating that it would be more consistent with taxing policies to make a rough approximation of the gain than to ignore entirely the tax consequences, the Court first utilized an assumption that the transfer was at "arm's length."[13] The Court then went on to presume, absent evidence of some other value,[14] that the released marital rights were equal in value to the shares of stock at the date of their transfer.[15] It was recognized that this method of valuation might seem unrealistic in the case of divorce property settlements, because of the emotions, tensions, and practical necessities of the parties that must be resolved in the preliminary negotiations.[16] Nevertheless, the Court concluded that these difficulties,

ever, the Court, by a process of elimination, accepted the Government's contention, finding it in line with the settled law in the lower courts. 370 U.S. at 71.

[10] The Court summarily dismissed this idea in a footnote stating that "any suggestion that the transaction in question was a gift is completely unrealistic." 370 U.S. at 69 n.6. For a more detailed discussion of this point, see note 40 *infra*.

[11] This contention was rejected on the ground that under the controlling Delaware law, DEL. CODE ANN. tit. 13, § 1531 (a) (1953), the wife's rights of succession and a reasonable share more closely resemble a personal obligation of the husband and a burden on his property than a property interest of the wife. 370 U.S. at 69-71. See note 41 *infra*.

[12] According to the Supreme Court, both Commissioner v. Marshman, 279 F.2d 27 (6th Cir. 1960) and Davis v. United States, 287 F.2d 168 (Ct. Cl. 1961), while holding the gain indeterminable, conceded that the transaction was otherwise a taxable event. 370 U.S. at 71. For a similar interpretation, see 109 U. PA. L. REV. 438, 439 n. 10 (1961).

[13] 370 U.S. at 72.

[14] It has been suggested that this qualification in making the "equal values" assumption implies that *Davis* has not precluded a taxpayer from showing and a court from accepting a reasonable proof of the actual value of the property, *i.e.*, relinquishment of the marital rights of the wife, received by the husband in similar exchanges. Waltber, *Can Advance Planning Avoid Harshness of Davis Rule on Appreciated Property?* 17 J. TAXATION 301, 302 (1962).

[15] "[T]he values 'of two properties exchanged in an arm's length transaction are either equal in fact, or are presumed to be equal.'" 370 U.S. at 72, quoting from Philadelphia Amusement Co. v. United States, 130 Ct. Cl. 166, 126 F. Supp. 184 (1954). *Accord*, United States v. General Shoe Corp., 282 F.2d 9 (6th Cir. 1960); International Freighting Corp. v. Commissioner, 135 F.2d 310 (2d Cir. 1943). See also 10 MERTENS § 59.28 (Supp. 1962); Greenbaum, *The Basis of Property Shall Be the Cost of Such Property: How is Cost Defined?* 3 TAX L. REV. 351, 370 (1948).

[16] The difficulty in a divorce situation is that the benefit accruing to the husband does not arise in a commercial transaction where the profit motive is compelling. Compare cases cited note 15 *supra*. Rather the benefit is received in a personal transaction where economic consequences are frequently secondary considerations.

while making an exact valuation impossible, did not preclude an approximation of the gain.[17]

The *Davis* decision has apparently settled the *time* for taxing and the *method* of measuring any gain realized on the transfer of appreciated property pursuant to a divorce property settlement agreement. The practitioner can now be reasonably certain of the Court's treatment of these two problems. As a result, he will be better able to effectuate his client's objectives in divorce negotiations.

In bringing this much needed predictability to a complex area of tax law, however, the Court indulged in some analytically weak reasoning which may lead to an inequitable and inconsistent tax consequence. If the Court can assume "that the parties acted at arm's length and that they judged the marital rights to be equal in value to the property for which they were exchanged,"[18] then the market value of the stock at the date of the agreement rather than its market value at the date of the transfer should have been used in measuring the husband's gain. It is unrealistic to expect the parties to know over four months in advance what the market value of the stock would be at the date of the transfer.[19]

Comment, 8 U.C.L.A.L. Rev. 593, 596 (1961). See Commissioner v. Marshman, 279 F.2d 27, 32 (6th Cir. 1960); Davis v. United States, 287 F.2d 168, 174 (Ct. Cl. 1961). *But see* Comment, 109 U. Pa. L. Rev. 440 (1961).

[17] One reason the Court gave for holding that the value of the released marital rights was ascertainable was that it eliminated the problem of determining the wife's basis for the property received, "for the same calculation that determines the amount received by the husband fixes the amount given up by the wife, and this figure, *i.e.*, the market value of the property transferred by the husband, will be taken by her as her tax basis for the property received." 370 U.S. at 73.

This rationale is questionable because, as the Government admitted, the collection of the tax will be less certain if the property settlement, rather than the wife's ultimate disposition of the property, is deemed the taxable event. Both the husband's gain and the wife's basis would theoretically be measured by the fair market value of the property transferred by the husband at the date of its transfer. However, in cases where it would be difficult to determine the fair market value, *e.g.*, where stock transferred is not listed on a stock exchange, it can be expected that the husband will claim a low valuation of the property transferred. It can also be expected that the wife, perhaps many years later when she disposes of the property, will claim a high valuation of the property. Brief for Appellant, p. 26.

For a discussion of the various problems connected with the tax consequences of the wife in the *Davis* situation, see Comment, 8 U.C.L.A.L. Rev. 593, 600-04 (1961).

[18] 370 U.S. at 72.

[19] The agreement was executed by the parties on November 4, 1954. The transfer did not take place until March 21, 1955. The Court's use of the market value of the stock at the date of the transfer seems especially unfair in that the husband would have realized no gain on the actual transfer to the wife if the market value of the stock at the date of the agreement had been used. At that date, the market value of the stock was $145.63 per share or $72,815 for 500 shares. Since the cost basis for the

There are two strictly technical considerations which support the Court's utilization of the market value of the stock at the transfer date in determinining the husband's gain. First, there was a provision in the agreement that the wife was not to release her marital rights until the transfer by the husband,[20] a provision which negates the contention that the husband's consideration for the transfer was received at the time of the agreement.[21] Secondly, the Internal Revenue Code provides that the net gain is to be measured by subtracting the adjusted basis from the amount "realized."[22] Such a determination would apparently require using the market value of the stock at the date of the transfer.[23]

The interaction of the *Davis* decision with Section 267 of the Internal Revenue Code produces an apparent inconsistency and may also lead to another inequitable and anomalous taxing result. Section 267 disallows deductions with respect to losses from sales or exchanges of property between "spouses" on the assumption that such transactions are not at arm's length.[24] Yet, under the *Davis* rule, a taxable gain will be realized when appreciated property is transferred by assuming just the opposite.

A close analysis reveals an explanation for the rejection of the arm's length assumption in a situation governed by Section 267. This section of the Code is based on the theory that transfers of depreciated property between "spouses" are not induced by motives

shares was $149.55 per share or $74,775 for 500 shares, the taxpayer would have suffered a loss of approximately $2000 if the agreement date value had been used. Brief for Appellee, pp. 21-22.

[20] Brief for Appellant, p. 4.

[21] Brief for Appellee, pp. 21-22. It can be argued, however, that since the agreement was executory at the date of the agreement, the wife's release of her marital rights did not occur until 1956 when Mr. Davis made the second of two installment deliveries of stock. *Id.* at 22.

[22] INT. REV. CODE OF 1954, § 1001 (a).

[23] The "amount realized" is defined in § 1001 (b) of the 1954 Code as "the sum of any money received plus the fair market value of the property (other than money) received." Since the wife was not to release her marital rights until the transfer of the stock by the husband, the measurement of the fair market value of the property "received" from the transfer would require using the market value of the stock at the date of the transfer. It was not until this time that the husband actually received anything in the nature of property.

Note that *Davis,* in effect, replaced the word "received" in § 1001 (b) with the word "transferred." However, the measurement of the fair market value of the property "transferred" apparently still requires using the market value of the stock at the date of its transfer.

[24] See Seaman v. United States, 156 F.2d 719 (7th Cir. 1946); Joseph C. Skinner, 47 B.T.A. 624 (1942), *aff'd per curiam,* 138 F.2d 418 (6th Cir. 1943); Kutz, *Transactions Between Related Taxpayers,* N.Y.U. 13TH INST. ON FED. TAX 69 (1955).

of self-interest in the pursuit of financial profit, but are prompted solely by a desire to establish deductible losses.[25] The same motivation obviously does not exist in a transfer of appreciated property.

However, as the Court acknowledged, there are other motivations present, when the transfer occurs in contemplation of a divorce, which weaken the validity of this assumption.[26] In such a situation, one party is often willing to make a substantial lump sum payment as an inducement for the other's co-operation in the negotiations, and therefore the value of the property transferred is likely to represent more than just the value of the wife's marital rights in the husband's property.[27] Thus it seems that the arm's length assumption was, in effect, a device of administrative expediency—a way to make a "taxable event" taxable—rather than a way to accord with the realities of a divorce property settlement.

Notwithstanding the explanation for the inconsistent use of the arm's length assumption in Section 267 and the *Davis* case, there still remains the anomalous and inequitable result that the husband may be denied any tax benefit from a loss incurred in transferring depreciated property for the release of the wife's marital rights, while a taxable gain will be realized when appreciated property is transferred.[28] This anomaly is speculative, however, because there is no authority to the effect that Section 267 will apply in the *Davis* situation.[29]

In view of this uncertainty, the safest course for the husband, if a transfer of appreciated property is contemplated, would be to sell

[25] See H.R. REP. No. 704, 73d Cong., 1st Sess. 23 (1935); S. REP. No. 558, 73d Cong., 2d Sess. 27 (1936). Congress sought to put an end to the right of taxpayers to choose by intrafamily and other devices the time for realizing tax losses on investments, which for most practical purposes, are continued uninterrupted. McWilliams v. Commissioner, 331 U.S. 694, 700 (1947).

Note that § 267 of the 1954 Code is not limited to sales or exchanges which are motivated by tax avoidance, but now embraces all transfers between the persons specifically listed in the statute. See 5 MERTENS § 28.49 (rev. ed. 1956).

[26] 370 U.S. at 72.

[27] See Comment, 8 U.C.L.A.L. REV. 593, 595 (1961); Walther, *supra* note 14, at 302.

[28] See Taylor & Schwartz, *Tax Aspects of Marital Property Agreements*, 7 TAX L. REV. 19, 30-31 (1951); Walther, *supra* note 14, at 301.

[29] If the relationship of the parties is determined at the *agreement* date, then § 267 would prevent the husband from claiming any tax benefit on a transfer of depreciated property, for at that date, the parties were undoubtedly still "spouses." See BAYLY, TAX MANUAL FOR DIVORCE AND SEPARATION 243 (1953); RICE, FAMILY TAX PLANNING 431-32 (1960). If, however, the relationship of the two parties is determined at the date of the *transfer*, then § 267 would not apply unless two persons legally separated under a decree of divorce are still "spouses" for purposes of this section.

the property on the open market and then distribute the net proceeds to his wife. In this way, he should be able to avoid the application of Section 267 altogether. Furthermore, since it appears that the date of the transfer is the technically correct date for determining the market value of the transferred property, it is suggested that either the actual transfer be made to the wife at the time of the agreement or that the husband agree to transfer a dollar-value rather than a specified amount of property, thereby avoiding any unforeseeable gain.

All of the adverse tax consequences which result from the application of the *Davis* holding to transfer of appreciated property may be avoided by the husband's creation of a trust, as described in Revenue Ruling 57-506,[30] which operates as a conduit for the transmission of the payments to the wife for the release of her marital rights.[31] To successfully establish this so-called "conduit" trust, the taxpayer must be certain that the trust-creating instrument neither discharges the husband's obligation to pay for the release of the wife's marital rights at the date of its execution[32] nor provides a method for terminating this obligation at some subsequent date before the wife's death or remarriage.[33] In keeping with its character as a mere conduit by which payments are made to the wife, the husband must have a continuing obligation to make these payments.[34] This requirement is satisfied if the husband guarantees in the trust instrument that his former wife will receive a specified income at each payment period.[35]

A conduit trust satisfying all of the requirements could be set up in the following fashion:[36] a husband transfers property to an irrevocable trust with the provision that a specified portion of the income will be paid to the wife for life or until her remarriage with the excess income and the corpus irrevocably dedicated to charitable purposes. If the trust income is ever insufficient to make the pay-

[30] Rev. Rul. 506, 1957-2 CUM. BULL. 65.

[31] See Walther, *supra* note 14, at 303-04, for a discussion of the "conduit" trust and its value as a means of avoiding the income tax consequences of the *Davis* decision.

[32] Rev. Rul. 506, 1957-2 CUM. BULL. 65.

[33] Rev. Rul. 507, 1957-2 CUM. BULL. 511. See also Rev. Rul. 47, 1959-1 CUM. BULL. 198.

[34] Rev. Rul. 506, 1957-2 CUM. BULL. 65.

[35] Douglas v. Willcuts, 296 U.S. 1 (1935); Weir v. Commissioner, 109 F.2d 996 (3d Cir. 1940), *cert. denied*, 310 U.S. 637 (1940). See Annot., 1 A.L.R.2d 1037, 1043 (1948).

[36] See Rev. Rul. 506, 1957-2 CUM. BULL. 65.

ments, the husband is obligated to make up the deficit from his own income.

The taxpayer must be warned, however, that even though the life interest of the wife satisfies the requirements for the "conduit" trust, it is still possible that some gain may be taxed to him on the remainder interest. This could happen because these two interests in the trust are treated separately for taxing purposes.[37] Therefore, if the entire transfer is to escape income tax consequences, the remainder interest must also satisfy no legal obligation of the husband, as is the case when the remainder beneficiary is a charity.

Besides avoiding the tax consequences of the *Davis* decision, the "conduit" trust has the advantages found in the alimony trust, and therefore is an attractive device for transferring property in connection with divorce settlement agreements.[38] Thus, if the *Davis*

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[37] *Cf.* Rev. Rul. 507, 1957-2 CUM. BULL. 511, in which the wife's life interest and the remainder interest were treated separately in determining the taxable gain realized by the husband. The appreciation in the value of the property transferred to the trust which was attributable to the wife's life estate was taxed to the husband because he could terminate his obligation before the wife's death or remarriage by transferring a specified sum to the trust. However, no gain was attributed to the remainder interest which was dedicated for educational purposes because such a transfer is exempt from the income tax. The Internal Revenue Service stated that "in arriving at the taxable gain, the excess of the fair market value of the property on the date of the transfer to the trust over the grantor's basis thereof should be reduced by the present value of the remainder interest. Thus if property valued at $20,000 with a basis of $10,000 is transferred to the trust, and at the time of the transfer the value of the life interest is 50 per cent, then the taxpayer will realize a taxable gain in an amount equal to 50 per cent of the appreciation, or $5,000." *Id.* at 512-13.

There seems to be no reason to expect a different treatment where the wife's life interest satisfies the requirements of a "conduit" trust, and the remainder interest is set up to discharge a money obligation of the husband. No gain will be attributed to the wife's interest. See Rev. Rul. 506, 1957-2 CUM. BULL. 65. However, the appreciation in the value of the property attributable to the remainder interest should be taxed since it satisfies a legal obligation. See Commissioner v. Mesta, 123 F.2d 986, 988 (3d Cir. 1941). It would seem that in such a case the excess of the fair market value of the property at the date of the transfer over the taxpayer's basis would only be reduced by the present value of the wife's life estate, and the taxpayer would realize a taxable gain on the transfer of that part of the property attributable to the remainder interest.

[38] In the first place, payments to the wife by the trust otherwise qualifying under § 71 of the 1954 Code are included in her gross income and not in the husband's. Secondly, if the remainder interest is to go to a charity, the husband will receive a charitable deduction in the year of the transfer. INT. REV. CODE OF 1954, § 170. Also, where a charity is the remainder beneficiary, the executor of the husband's estate will probably be able to claim an estate tax deduction. See INT. REV. CODE OF 1954, § 2005; Rev. Rul. 275, 1955-1 CUM. BULL. 295.

One possible disadvantage is that the use of the "conduit" trust may result in the inclusion of the corpus in the husband's estate. See INT. REV. CODE OF 1954, § 2036; Estate of Robert Manning McKeon, 25 T.C. 697 (1956). Another possible disadvantage is the requirement that the husband must guarantee the payment of a specified income decision is to be preserved, legislative enactment may be required to close this "loophole."

It is submitted, however, that any legislative consideration could be better aimed at formulating a new approach in dealing with transfers in connection with divorce property settlement agreements. The various adverse tax consequences of the *Davis* decision expose the inadequacy and inequity of existing tax provisions in handling such transfers. Accordingly, it is suggested that the Internal Revenue Code be amended so that the transfer is treated as either a gift[39] or a non-taxable division of property[40] for income tax purposes. An even better solution would be the addition of a specific provision in the Code which would handle such transfer in the following manner:[41] (1) any property received in a marital settlement is excluded from gross income; (2) no gain or loss is realized upon the transfer of property whether for support, dower, or even to induce the divorce; (3) the transferee is given the transferor's basis in the property. In any event, it is recommended that the taxing policies relating to transfers in connection with divorce property settlement agreements be submitted to an extensive analysis, since the *Davis* decision leaves much to be desired.

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to the wife. This can be minimized by an initial careful selection of the trust corpus. See Walther, *supra* note 14, at 303.

[39] This approach would seem acceptable since the government admitted that, "notwithstanding the seeming anomaly of treating as a 'gift' a transfer made under legal compulsion—*i.e.*, to satisfy a legal obligation—we acknowledge that as an original matter, that might well have been the most satisfactory treatment of such marital transfers." Brief for Appellant, pp. 29-30. See Comment, 1959 DUKE L.J. 616, advocating such a treatment of marital transfers for income tax purposes.

[40] This approach likewise seems acceptable since the Court in the *Davis* case stated that, "this is not to say that it would be completely illogical to consider the shearing off of the wife's rights in her husband's property as a division of property . . . ." 370 U.S. at 70. However, it should be noted that in the *Davis* case, even if the Court had decided to use community property principles, the transfer would have probably still been taxable. See Comment, 42 B.U.L. REV. 547, 550 (1962) and note 9 *supra*.

[41] This solution is the same as that proposed by the American Law Institute in 1954. ALI FED. INCOME TAX STAT. § X257 (Feb. 1954 Draft). It would tend to place the tax burden on the wife, but at a time when she is in a position to pay the tax. By deferring the collection of the capital gains tax on the appreciation in value of the property until such time as the wife sells the property, the tax will be imposed at a time when the wife has the cash proceeds from the sale. In any case, such a method would prevent the taxing of the husband at the very moment when he is seriously depleting his estate and receiving in return the release of the wife's marital rights which is worth nothing to anyone except himself.