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# Taxation--Federal Tax on Income from Alimony Trusts (Helvering v. Fuller, 310 U.S. 69 (1940))

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In the instant case it was found that the wrong alleged to be done to the complainant was no different from the wrong suffered by the corporation in the gift, salary or bonus cases, and the court could not "distinguish the sale of stock by directors at a price in excess of the market value from the sale of a factory to a corporation under similar conditions". However, it should be noted that the stock sale case, being a decision of the same court, lacks the force it would have had if it had been a Court of Appeals case to settle in New York the issue raised in the present case.

A. G.

TAXATION—FEDERAL TAX ON INCOME FROM ALIMONY TRUSTS. —In July, 1930, respondent and his wife, residents of Connecticut, entered into an agreement in contemplation of divorce. This provided for the creation of an irrevocable trust by respondent; the income to be used for the support of his wife and children or, if they should die, for the heirs of his wife or as she provided in her will. After ten years the stock was to be hers outright. The wife obtained a divorce in Reno, in November, 1930. The decree approved the agreement; accordingly, in December, 1930, the trust was created. The trustee received the dividends for 1931, 1932 and 1933 and used them for the wife, but upon respondent's failure to include them in his income tax returns deficiencies were assessed against him. The action by the Commissioner was sustained by the Board of Tax Appeals and reversed by the Circuit Court of Appeals. *Held,* one judge dissenting, affirmed. The Nevada law and the trust have given the husband *pro tanto* a full discharge from his duty to support his divorced wife and leave no continuing obligation on his part, hence the income to the wife from the trust is not taxable to the husband, but it is to be treated the same as income from property after a debtor has transferred that property to his creditor in full satisfaction of his obligation. *Helvering* v. *Fuller,* 310 U. S. 69, 60 Sup. Ct. 784 (1940).

Alimony is a personal or family expense and as such is not deductible in computing net income.[1] However, by statute,[2] income from an irrevocable trust is taxable to the beneficiary or, if so provided in the trust agreement, to the trustee but never to the grantor. It has been held by the Board of Tax Appeals that the grantor should not be taxed on income from an irrevocable trust created for the support of

[1] FEDERAL REVENUE ACT OF 1928, § 24 (a) (1) ("In computing net income no deduction shall in any case be allowed in respect of personal, living or family expenses."). TREASURY REG. 74, arts. 83, 281 (promulgated under the 1928 act defines alimony as a personal or family expense).

[2] REVENUE ACT OF 1928, §§ 166, 167. *Cf.* REVENUE ACT OF 1932.

his wife or children [3] or to meet payments in lieu of alimony.[4] But, in *Willcuts* v. *Douglas*,[5] the first case on this subject to reach a court decision, it was decided to the contrary on the ground that the discharge of a legal obligation may constitute taxable income to the person relieved of the duty. This was apparently the first time the question arose with respect to trust income, but the court followed the rule laid down in other cases, holding that the discharge of a legal duty constituted taxable income.[6] On appeal of the *Willcuts* case by *certiorari* to the United States Supreme Court, the lower court was sustained, resulting in the general rule that income from an irrevocable trust is taxable to the grantor, if such a trust results in the inuring of benefits to the grantor from the application of the income in satisfaction of his legal obligation.[7] Whether or not the obligation to support a wife can be discharged depends on state law, and the Nevada cases [8] hold that, under such a decree as was entered in the instant case, the obligation to support was discharged *pro tanto* and ended. Therefore, in the case at bar the respondent's obligation is not a continuing one, and the trust involved is analogous to a situation where a debtor has transferred his property to his creditor in full satisfaction of his obligation.[9] It is now clear that, where the obligation to support is a continuing one, it falls within the rule of the *Willcuts* case, and the income, even though from an irrevocable trust, is taxable to the grantor; but, where the obligation is discharged, as in the present case, the income follows the statutory provisions with respect to an irrevocable trust and is taxable to the beneficiary. This might be held to be contrary to the decision in *Gould* v. *Gould* [10] but it is not unfair, as against the wife who is receiving the immediate economic benefit of the income, to

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[3] Irene O'D. Ferrer, 20 B. T. A. 811 (1930); Lilian K. Blake, 23 B. T. A. 554 (1931); Emil Frank, 27 B. T. A. 1158 (1933).

[4] S. A. Lynch, 23 B. T. A. 435 (1931).

[5] 73 F. (2d) 130 (C. C. A. 8th, 1934).

[6] Old Colony Trust Co. v. Commissioner, 279 U. S. 716, 49 Sup. Ct. 499 (1929) (Payment by an employer of income taxes assessed against an employee was held to constitute additional income to the employee and therefore taxable to the latter); United States v. Boston & Maine R. R., 279 U. S. 732, 49 Sup. Ct. 505 (1929) (Payment by a lessee of net income taxes assessed against a lessor according to provisions of a lease was held to constitute additional income taxable to lessor); Note (1934) 48 HARV. L. REV. 815. *Contra:* Schweitzer v. Commissioner, 75 F. (2d) 702 (C. C. A. 7th, 1935), *rev'd*, 296 U. S. 551, 56 Sup. Ct. 308 (1935), *rehearing denied*, 296 U. S. 665, 56 Sup. Ct. 379 (1935) (Income from trust for support and education of three children held not taxable to the grantor even though it satisfied his legal obligation).

[7] Douglas v. Willcuts, 296 U. S. 1, 56 Sup. Ct. 59 (1935) (Does not mean that for the purpose of federal income tax the obligation to support the wife cannot be discharged under any circumstances).

[8] NEV. COMP. LAWS (1929) §§ 9463, 9465; Sweeney v. Sweeney, 42 Nev. 431, 179 Pac. 638 (1919); Lewis v. Lewis, 53 Nev. 398, 2 P. (2d) 131 (1931); Aseltine v. Second Judicial District Court, 57 Nev. 269, 62 P. (2d) 701 (1937).

[9] Paul, *Five Years with Douglas v. Willcuts* (1939) 53 HARV. L. REV. 1.

[10] Gould v. Gould, 245 U. S. 151, 38 Sup. Ct. 53 (1917) (Alimony paid to wife is not taxable to wife as beneficiary).

treat the tax obligation as attaching to the income itself in her hands.[11]

The problem may be clarified by the following formula derived from the decisions: firstly, if the obligation to support is a continuing one imposed by the laws of a particular jurisdiction, income from a trust is taxable to the grantor;[12] secondly, if the obligation is contractual and it is personally assumed by the grantor when the trust is created, income from that trust is taxable to the grantor;[13] lastly, if the obligation to support is discharged *pro tanto* by virtue of local law, and there is no contractual liability, income from the trust is *not* taxable to the grantor.[14] None of these decisions, however, imply that Congress lacks the authority to design a different statutory scheme applying uniform standards for the taxation of income from the so-called "Alimony Trusts". If this is desired, recourse must be had to appropriate legislation to attain that end.

F. D. M.

TORTS—NEGLIGENCE—CAUSATION.—On January 9, 1934, defendant's employee, a barber, applied an electric vibrator to plaintiff's scalp, bringing it down over his left eye to his neck. The plaintiff felt merely a jarring sensation and no pain. Later in the day the vision in his left eye began to be impaired. The medical testimony was that the retina had been torn or detached, a condition in the manifestation of which there may be some delay. Plaintiff consulted an ophthalmologist on January 15 who found that the vision of the left eye was reduced to ten per cent of normal. The plaintiff now seeks to recover damages for his injury which, he alleges, was the result of the negligent operation of the electric vibrator by the barber in defendant's employ. Experts called by the plaintiff testified that in their opinion the use of the vibrator upon the plaintiff's eye was a competent producing cause of the harm he sustained. Defendant contends that the injury might have been caused by a jar or jolt received by a ride upon such conveyances as a subway train, a taxicab and a bus, upon which plaintiff had ridden, and that plaintiff had failed to prove a cause of action against it because the chain of causation between the act of the barber and the damage to the eye was not shown to be unbroken. The Appellate Division reversed a judgment in favor of plaintiff and directed that the complaint be dismissed. *Held,* the judgment at Trial Term affirmed. The Court of Appeals found sufficient evidence to present two questions of fact upon which it was necessary for the jury to pass: whether the defendant's employee was negligent in his application of the electric vibrator and, if so, whether his negligence

[11] Note (1934) 48 HARV. L. REV. 815.
[12] Douglas v. Willcuts, 296 U. S. 1, 56 Sup. Ct. 59 (1935).
[13] Helvering v. Leonard, 310 U. S. 180, 60 Sup. Ct. 780 (1940).
[14] Helvering v. Fuller, 310 U. S. 69, 60 Sup. Ct. 784 (1940).