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Article 28

Income--Future Assignment (Hall v. Commissioner, B.T.A. IV U.S. Daily, October 9, 1929 at 1903)

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Fink [8] the Court held that the survivor received nothing by virtue of the death of decedent which might be the subject of the tax. The instrument which created the estate gave the wife the entire estate, and, upon his death, her interest in the whole estate continues. Congress thus has no constitutional power to include for taxation property of a decedent in Pennsylvania held by the entirety.

In New York State the law with respect to the tax on an estate by the entirety depends upon when the tenancy was created and when decedent died. If the tenancy was created prior to April 26, 1916 there is no tax upon the death of either tenant regardless of when such death occurs.[9]

If the tenancy was created after April 26, 1916 and one of the tenants died prior to April 17, 1924, there is a taxable transfer of the whole property to the survivor.[10]

If one of the tenants dies after April 17, 1924 there is a taxable transfer on one-half of the property.[11]

B. H.

INCOME—FUTURE ASSIGNMENT.—Plaintiff, by virtue of a contract, became entitled to receive commissions on renewal premiums of life insurance policies. The right, under the contract, to receive part of these renewal commissions, was irrevocably assigned to his wife. The Insurance Company made a number of payments, under the assignment, to the assignee. In computing deficiencies in the plaintiff's income return the Commissioner added these payments. Against these additions the plaintiff assignor protests. *Held,* that money received under an assignment of future income is, at the time of receipt by the assignee, part of taxable gross income of the assignor. Hall v. Commissioner, B. T. A. IV U. S. Daily, October 9, 1929 at 1903.

Despite the fact that the assignor had procured the policies for the assured and had fully earned his commission there was no certainty that it would be paid or ever become due. The right to receive these sums may always be defeated by the death of the policy-holder or his refusal to pay the new premiums.[1] The right to be paid must first accrue to the assignor before the assignee may receive under

[8] 6 Erie County Law Journal, 281 (1922).

[9] Matter of Lyon, 233 N. Y. 208, 135 N. E. 247 (1922); Estate of Farrand, 126 Misc. 590, 214 N. Y. Supp. 793 (1926).

[10] New York Tax Law, L. 1915, ch. 664, and L. 1916, ch. 323, Sec. 83.

[11] Art. 10, Sec. 220 (5).

[1] Edwards v. Keith, 231 Fed. 110, 145 C. C. A. 298, L. R. A. 1918 A 498 (C. C. A. 2d, 1916), *certiorari* denied 243 U. S. 638, 37 Sup. Ct. Rep. 402, 61 L. ed. 942.

an assignment. These commissions are not taxable until they are received by the insurance agent or assignee. The act taxes income earned [2] but rendering services and charging for them is not income earned until the charges are paid. The commissions are to be included in the gross income of the agent during the period within which they come into his hands; [3] or the hands of his assignee. When under a contract for the performance of services the proceeds are to be paid to an assignee of the performing party, the receipt of payment by the assignee is *constructive receipt* for the assignor and is to be included in the gross income of the assignor.[4] May we venture to suggest that the practicability of this decision is not one which satisfies the attempt to place such a tax on a scientific basis and that the more favorable method would be to tax only that income received by the plaintiff for his assignment and hold the assignee responsible for all other income received by virtue of the assignment?

E. S.

INCOME—HUSBAND AND WIFE—OWNERSHIP OF PROFITS.—Plaintiff invested the joint savings of himself and his wife in a partnership, entered into with two associates, on the understanding that she was to have an equal share with him in the enterprise. Subsequently, the plaintiff's wife took charge of the books and accounts of the firm and a new agreement was drawn up wherein she was acknowledged to be the owner of a one-sixth interest in the business. The laws of Michigan invalidate a partnership between a husband and wife; therefore, the Commissioner determined a deficiency in the plaintiff's return for the year 1923 and included therein the amount paid to the plaintiff's wife on the ground that there being no partnership the sum paid to her was income to the husband. *Held,* where the articles of co-partnership recognize each of the spouses as a partner, although a state statute invalidates a partnership between husband and wife, the latter and not the former is taxable on her proportionate part of the income. R. E. Wing v. Commissioner, etc. (B. T. A.) IV U. S. Daily, Oct. 28, 1929 at 2108.

Persons doing business as a partnership are to include in their individual income returns their proportionate share of the net income of the partnership, whether or not distributed.[1] These profits, though

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[2] Rev. Act of 1928, Sec. 2, Pars. A and B, Subd. 1.

[3] *Supra* Note 1; Woods v. Lewellyn, 252 Fed. 106 (C. C. A. 3d, 1918). (A contingent right such as this is not "income" in the sense used in the Act.)

[4] II-I, Cum. Bull. Min. 3040, June 1923, p. 48; I-I Cum. Bull. I. T. 1339, June 1922, p. 97; *Re*: Alexander S. Browne, 3 B. T. A. 826 (1926); Mitchell v. Bowers, etc., 9 F. 2d 414 (S. D. N. Y., 1925).

[1] Rev. Act of 1918, Sec. 218 (A).