

10-1928

Income-tax Department

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Income-tax Department

EDITED BY STEPHEN G. RUSK

SUMMARY OF RECENT RULINGS

Collection of 1917 and 1918 taxes, assessed prior to the enactment of the 1924 act, is barred under sec. 277 (a) (2), act of 1924, where proceedings were begun more than five years after the returns were filed, the time for beginning such proceedings not being extended by sec. 278 (e) (2), act of 1924. (U. S. circuit court of appeals, third circuit, *United States v. Harry and George Whyel et al.*)

The portion of the proceeds from the sale of cemetery lots paid by a cemetery association to a trustee under an irrevocable agreement of trust and pursuant to Kansas statutes, the income of which was to be used for the perpetual care of such lots, is not taxable income to the association. (U. S. district court, Kansas, second division, *American Cemetery Company v. United States.*)

A district court has jurisdiction of a suit for refund of taxes for a year involved in a proceeding before the board of tax appeals where the proceeding before the board was filed prior to the date of the enactment of the 1926 act, and heard after such date. (U. S. district court of Massachusetts, *Old Colony Railroad Company v. United States.*)

A taxpayer may sue for the recovery of taxes illegally collected upon rejection in 1925 of a claim for refund therefor, where, prior to the enactment of the 1926 act, it had appealed to the board from a deficiency asserted for the same year by the commissioner involving a different issue, and, after the enactment of such act, hearings were had and the decision of the board in which the claim for refund was not considered, was rendered, and such decision of the board on an unrelated issue may not be pleaded as res adjudicata in a suit to enforce the claim for refund. (U. S. district court, Massachusetts, *Old Colony Railroad Company v. United States.*)

Amount paid in 1921 as a bonus for a lease by a taxpayer on the cash-receipts-and-disbursements basis who was not to take possession of the property until January 1, 1922, is not deductible in 1921 as a payment required to be made as a condition to the continued use or possession of property within the meaning of sec. 234 (a) (1), act of 1921. (U. S. district court, Massachusetts, *J. Alland & Brother, Inc., v. United States.*)

An annuity payable first out of income but if necessary out of principal of a trust fund created by will acquired by a widow solely in lieu of and in consideration for the relinquishment of statutory rights in the estate is a purchased annuity and exempt from income tax until the purchase price is returned. (U. S. district court, Connecticut, *Eva F. Warner v. James J. Walsh, collector.*)

A taxpayer is not limited in a suit for recovery of taxes to the reasons for relief sought advanced in the claim for refund made to the commissioner. (U. S. district court, Connecticut, *Eva F. Warner v. James J. Walsh, collector.*)

Taxes for the years 1919 and 1920 voluntarily paid and without protest may not be recovered by suit against the collector begun after the enactment of the 1924 act, sec. 1014 (a) of that act, applying to suits begun after the passage of the act as a result of transactions which arose after its passage and as to payments made and penalties or sums exacted and collected after its passage. (U. S. district court, Connecticut, *Eva F. Warner v. James J. Walsh, collector.*)

Action commenced after the passage of the 1921 act for the recovery of internal-revenue taxes erroneously paid will lie against the collector, individually, to whom the tax was paid, though no longer in office. (U. S. district court, Connecticut, *Eva F. Warner v. James J. Walsh, collector.*)

A taxpayer is entitled to the benefit of the general order of the commissioner issued April 11, 1923, fixing April 1, 1924, as the date of the expiration for unlimited waivers for 1917 income taxes where an unlimited waiver for 1917 taxes was signed by the taxpayer on April 30, 1923, mailed April 10, 1923, and received by the commissioner April 13, 1923, the date of signing and mailing of

the waiver controlling. (U. S. district court, N. D. Ohio, E. D., *National Tool Company v. Carl F. Routzahn, collector.*)

A taxpayer's claim for credit against taxes due for the years 1916 and 1917 of an overpayment of taxes for 1918 as an inducement to the collector not to restrain, does not constitute a waiver of the statute of limitations nor an estoppel from claiming the benefit of such statute, such claim creating neither an express nor implied waiver of the statute. (U. S. district court, N. D., Ohio E. D., *National Tool Company v. Carl F. Routzahn, collector.*)

The obligor on tax-free covenant bonds is not entitled to the 25% reduction of 1923 taxes provided in sec. 1200, act of 1924, on its tax liability, on such tax-free covenant interest, such obligor not being the taxpayer. (U. S. district court, S. D. New York, *Union Pacific Railroad Company v. Frank K. Bowers.*)

An injunction was refused in a suit filed against an internal-revenue agent and a bank to restrain the bank only from producing its records showing the details of the deposits and withdrawals of the taxpayer for a stated period pursuant to a summons issued under sec. 1104, act of 1926, to such bank by the revenue agent, until the court had determined what of such records, if any, the bank may be required to submit according to the terms of the summons, the court refusing to proceed on the assumption that the bank will fail to act with due regard to the taxpayer's rights, and the evidence not showing that irreparable injury will result to the taxpayer if the bank responds to the summons. (U. S. district court, Massachusetts, *Robert C. Cooley v. Frank E. Bergin et al.*)

A taxpayer may recover, in a suit pending at the time of the enactment of the 1928 act, 1917 taxes assessed prior to June 2, 1924, within the statutory period and collected after the expiration of the statute of limitations on collection upon the rejection of a claim in abatement, sec. 607 and 611 of the 1928 act not being designed to deprive the taxpayer of a vested right of action to recover a tax forcibly collected after the expiration of the statute of limitations. (U. S. district court, Oregon, *H. S. Gile and Company v. Clyde G. Huntley, collector.*)

A corporation engaged in the wholesale grocery brokerage business, about 18% of whose total gross sales during the year were made in trading on its own account, with an invested capital found by the court to be not less than \$34,572.73, and using \$88,000 of borrowed money was held to be entitled to the benefit of sec. 209, act of 1917, as a corporation having not more than a nominal capital, where the capital employed in the business was almost wholly used not to produce income but as a fund from which to advance salaries and wages and to maintain the organization during the interval between the performance of services and the receipt of commissions earned thereby. (U. S. district court, W. D. western district of Missouri, *McManus-Heryer Brokerage Company v. Noah Crooks, collector.*)