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Income-tax Department

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Income-tax Department

EDITED BY STEPHEN G. RUSK

“Death and taxes” are inevitable with mankind. The contemplation of both or either one of them is not listed among mankind’s pleasurable pursuits. Consequently it is not astonishing that so little is said in appreciation of the really wonderful constructive work performed by the commissioner of internal revenue and the bureau over which he reigns. To them falls the difficult work of solving the problem of interpreting and applying the law enacted by a more or less intelligent congress. The law as given by the law-makers is in many instances vague as to its purport; it may be sometimes unconstitutional; at other times it is the expression of a feeling that certain portions of our citizenry must be at least handicapped in the interests of some other portion; quite frequently some of its provisions are illogical and uneconomic; and in any event it deals with taxes, and taxes are not popular.

The commissioner, however, takes the rough product and always hewing to the line supplies the amplifying language and the administrative machinery; he clears up the complexities as well as may be done, so that the taxpayer may know what is expected of him. That this is a monumental task is impressed upon us at this particular time, when a new law is in the process of being formed within a few days of the time that it is to be applied, and as this thought is being considered, another presents itself: the problems heretofore confronting the commissioner in endeavoring to apply certain unworkable features of former laws.

One of the particularly aggravating problems of the past had to do with the section of the laws wherein congress, in its wisdom, sought to tax stockholders with the undistributed profits of corporations. Another is the problem of obtaining information at the source of income of taxpayers. A number of others could be cited, but the foregoing are sufficient to fortify the contention that the commissioner’s lot is not a happy one.

If the bureau of internal revenue collects data from the source of every payment to an individual of salary, rent, commission, royalty or other form of compensation, in excess of \$800 per annum, it must have a tremendous accumulation of papers. If this information is made available to the department of the bureau upon which devolves the task of auditing the returns, and if the information so collected and distributed is used in verifying some seven or eight million taxable incomes, it is fair to say that the commissioner should have our unbounded appreciation. Washington is a beautiful city with many monumental buildings, and it is a pleasure to visit them. A curious person some time is going to hunt up the large building in which are kept the papers containing the “information at the source” and we believe that he will be astounded at the ingenious mechanics of sorting, distributing, verifying and comparing this information with the taxpayers’ returns. If and when he does view this work, our curious one is going to be thankful that he is just a taxpayer and has not the responsibility of the commissioner.

If the recommendation of the representatives of the American Institute of Accountants to the ways and means committee that withholding and payment

of taxes at the source be abolished is adopted, it is to be hoped that congress also will see the error of its ways and abolish the collection of information at the source.

In its endeavor to close the door to the relatively small portion of the tax-paying public that seeks to evade taxes, congress has adopted some cumbersome, awkward and, at times, unworkable methods, but in the matter of collecting information at the source, the task put upon the commissioner seems one beyond possibility of performance. If he should consider the particular provisions appertaining to this as a "dead letter", who would blame him? There must have been instances where this information has not been supplied by the taxpayer, but we know of none where notice of the lack of it has been taken.

When one recalls the work performed by the last two commissioners and their assistants in administering the new laws; the vagueness and complexities of these laws; the huge amounts of the taxes collected by the commissioner's agencies with comparatively little friction, one must be impressed by the accomplishments of the department and its officers. If taxes were more esteemed by the public, those who administer tax laws would probably receive more adequate public recognition.

SUMMARY OF RECENT RULINGS

A municipal office, the income of which is exempt from tax, is a public station created by law, permanent in character, and the incidents and duties of which are prescribed by law. A municipal employee whose income is exempt is one over whom the employer has the right of control as distinguished from employment of an independent character.

Those agencies through which the federal or state government exercises its sovereign power are immune from the taxing power of the other, but a person is not exempt on the sole ground that his income is compensation for services rendered the state. (United States supreme court, *Metcalf & Eddy, copartners, v. Mitchell, collector.*)

The word "debts" in section 3466, R. S., includes taxes, and the government is given priority therefor in voluntary assignments, though the pleadings alleged taxpayer was solvent, the facts being otherwise. (United States supreme court, *Leo Price, receiver, v. United States.*)

A corporation distribution occurs when a dividend is declared, not when paid, and the 1916 rates apply to dividends declared in 1916 and in January, 1917, when no profits were earned in said month and the existing undivided profits or surplus were adequate.

Fair market value of stock may not be determined from exchange prices when

1. The corporation control remained with the original stockholders,
2. It owned valuable contracts and goodwill,
3. Bona fide offers in excess of such stock-exchange prices had been received for the controlling interest, and
4. A trust agreement limited the sales of the stock.

(United States district court, W. D., Pennsylvania, *B. D. Phillips v. United States.*)

Bad debts were held to be deductible where the amounts which may be received from the debtors about equal taxpayer's indebtedness as surety for them, although (1) worthlessness has not been determined by legal action, (2) debtors are corporations controlled by taxpayer, and (3) only a part of such debts is claimed as a deduction. (United States district court, W.D., Pennsylvania, *Selden v. Heiner.*)

A net loss deductible for the income of the preceding year under the 1918 act is not sustained by one who suffers a loss on sale of property not contributing to the prosecution of the war. (United States court of claims, *Auburn & Alton Coal Co. v. United States.*)

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A federal court receiver is not an officer or employee of the United States whose income is exempt from tax under section 201 (a) of the 1917 act, and his services may constitute a trade or business within the meaning of section 200 of the act, depending upon the amount of time and attention required. (United States district court, S.D., New York, *Fleming v. Bower*.)

Amount paid to an accountant for preparing an individual federal tax return not deductible. (B. T. A. decision 1099, docket 2116, Charles H. Matlage.)

The commissioner has five years from the date of filing a delinquent return due under the 1918 act within which to assess the tax. (B. T. A. decision 1101, docket 4566, J. P. Bell.)

Cost of transporting serviceable vessels purchased to another port for repairs and changes and to be placed in service there, was held to be a business expense. (B. T. A. decision 1102, docket 3168, Northern Michigan Transportation Co.)

Proceeds of "use and occupancy" insurance is income in the year for which it is compensation, where taxpayer is on accrual basis, though received in subsequent year.

Proceeds of "use and occupancy" insurance not proceeds of involuntary conversion under section 214 (a) (14), act of 1921.

Where separate properties are separately insured, taxpayer may treat the gain on one policy as subject to involuntary conversion provisions and deduct the loss on another.

Invested capital is properly reduced where an amortization deduction is made. (B. T. A. decision 1108, docket 2322, International Boiler Works Company.)

Litigation expenses incurred by a husband in defending a post-nuptial property agreement is a personal expense, though his sole business was the management of his estate. (B. T. A. decision 1139, docket 476, David G. Joyce.)

Where one corporation owned all the common stock and approximately 67 per cent of the preferred stock of another corporation, they were affiliated under the act of 1918. (B. T. A. decision 1146, docket 3346.)

TREASURY RULINGS

(T. D. 3791, December 21, 1925)

ARTICLE 1351: Suits for recovery of tax erroneously collected.

Income Tax—Suit to Restrain Payment—Decision of Court

INJUNCTION—DISTRRAINT—HOMESTEAD—SECTION 3224, REVISED STATUTES.

Under the provisions of section 3224, *Revised Statutes*, an injunction will not lie against a collector of internal revenue to restrain the collection of an income tax legally assessed, although warrant of distrainment was levied against a homestead.

The following decision of the United States district court for the northern district of Texas, in the case of *Staley v. Hopkins et al.*, is published for the information of internal-revenue officers and others concerned.

DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF
TEXAS, AT DALLAS. IN EQUITY.

C. R. Staley, plaintiff, v. George C. Hopkins and B. F. Crews, defendants.
[November 25, 1925.]

MEEK, district judge: The plaintiff, C. R. Staley, filed his bill of complaint against George C. Hopkins and B. F. Crews, seeking to have the defendants restrained and enjoined from selling his homestead, which is occupied by himself and family, in Vernon, Wilbarger county, Texas.

Upon reading the plaintiff's bill I granted a restraining order, directing the defendants, George C. Hopkins and B. F. Crews, not to sell plaintiff's homestead, as it had been advertised for sale, but instead to appear before the

court and show cause why the temporary injunction and the permanent injunction prayed for should not be granted.

Mr. George C. Hopkins, collector of internal revenue, and B. F. Crews, his assistant, have appeared and filed their answer to the bill of plaintiff and asking that such bill be dismissed.

The plaintiff and the defendants have appeared and their counsel have made arguments in support of their respective contentions.

After duly considering their arguments in connection with the briefs submitted by them, I have decided that because the sale of this homestead is for the purpose of paying an income tax levied against Mrs. Staley, wife of the plaintiff, and because of the provisions of section 3224 of the *Revised Statutes* of the United States, which is as follows: "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court," and in view of the rulings of the United States supreme court upon this section of the *Revised Statutes*, I have decided that plaintiff has not the right to maintain this bill and is not entitled to the relief prayed for therein. Therefore this bill is dismissed and the costs of this proceeding shall be taxed against him.