

activities in which an individual actively participates, up to \$25,000 of losses (and credits, in a deduction-equivalent sense) from all such activities may be taken in each year against non-passive income of the taxpayer.⁸³ This amount is phased out ratably between \$100,000 and \$150,000 of adjusted gross income (determined without regard to passive losses).⁸⁴

The rehabilitation and low income housing credits may be used to offset tax on up to \$25,000 of

non-passive income regardless of whether the taxpayer actively participates, subject to a special phase-out of the exemption applicable to the rehabilitation credit.⁸⁵ Transition relief is provided to investors in the case of losses from low-income housing.⁸⁶

Special rules apply to taxpayers in the real property business.⁸⁷ Rental real estate activity of such a taxpayer generally is not automatically treated as being passive.⁸⁸

C. INCOMES TAXABLE IN GENERAL

1. In General

§ 56. Nature and Necessity of Income in General

Generally, all forms of economic gain which a taxpayer has received are includable in gross income.

Research Note

The taxable year of inclusion of income is discussed supra §§ 40 et seq.

Library References

Internal Revenue ☞ 3110, 3113, 3114.

The Internal Revenue Code⁸⁹ defines gross income as all income from whatever source derived,⁹⁰ except as otherwise provided in the income tax law.⁹¹ The congressional purpose in so defining gross income is to tax income comprehensively,⁹² and to exert the full measure of the taxing power of Congress over all realized gains,⁹³ except as Con-

83. 26 U.S.C.A. § 469(i) as amended by P.L. 100-647, § 1005(a)(6).

Active participation

An individual may not be treated as actively participating with respect to any interest in any rental real estate activity for any period if, at any time during such period, such interest (including any interest of the spouse of the individual) is less than 10 percent (by value) of all interests in such activity; and no interest as a limited partner in a limited partnership may be treated as an interest with respect to which the taxpayer actively participates.

26 U.S.C.A. § 469(i)(6).

84. 26 U.S.C.A. § 469(i)(3) as amended by P.L. 100-647, § 1005(a).

85. 26 U.S.C.A. §§ 469(i)(3), 469(i)(6) as amended by P.L. 101, 239, § 7109(a).

When property placed in service

The exceptions under the passive loss rule for the low income housing credit apply only (for the original credit compliance period) to property placed in service before 1990, except if the property is placed in service before 1991 and 10 percent or more of the total project costs are incurred before 1989.

P.L. 99-514, § 501(c)(3).

86. P.L. 99-514, § 502.

Investments after 1983

Losses from certain investments after 1983 in low-income housing are not treated as from a passive activity, applicable for a period of up to seven years from the taxpayer's original investment.

House Conference Report No. 99-841, p. II-150.

87. 26 U.S.C.A. § 469(c)(7), as added by P.L. 103-66, § 13143(a), (c), effective after 1993.

88. 26 U.S.C.A. § 469(c)(7)(A), as added by P.L. 103-66, § 13143(a), (c), effective after 1993.

89. 26 U.S.C.A. § 61 and Reg. § 1.61-1(a).

90. *Cameron v. I.R.S.*, 773 F.2d 126, 85-2 U.S. Tax Cas. (CCH) ¶ 9661, 56 A.F.T.R.2d (P-H) ¶ 85-5851 (7th Cir. 1985); *Heard v. C.I.R.*, 326 F.2d 962, 64-1 U.S. Tax Cas. (CCH) ¶ 9227, 13 A.F.T.R.2d (P-H) ¶ 535 (8th Cir. 1964).

91. *Smith v. C.I.R.*, 370 F.2d 178, 67-1 U.S. Tax Cas. (CCH) ¶ 9109, 18 A.F.T.R.2d (P-H) ¶ 6092 (6th Cir. 1966).

Gardiner v. U.S., 391 F. Supp. 1202, 75-1 U.S. Tax Cas. (CCH) ¶ 9331, 35 A.F.T.R.2d (P-H) ¶ 75-1112 (D. Utah 1975), judgment aff'd, 536 F.2d 903, 76-1 U.S. Tax Cas. (CCH) ¶ 9454, 38 A.F.T.R.2d (P-H) ¶ 76-5107 (10th Cir. 1976).

92. *Wolder v. C. I. R.*, 493 F.2d 608, 74-1 U.S. Tax Cas. (CCH) ¶ 9266, 74-1 U.S. Tax Cas. (CCH) ¶ 12982, 33 A.F.T.R.2d (P-H) ¶ 74-813 (2d Cir. 1974); *Smith v. C.I.R.*, 370 F.2d 178, 67-1 U.S. Tax Cas. (CCH) ¶ 9109, 18 A.F.T.R.2d (P-H) ¶ 6092 (6th Cir. 1966).

Lee v. U.S., 219 F. Supp. 225, 63-2 U.S. Tax Cas. (CCH) ¶ 9636, 12 A.F.T.R.2d (P-H) ¶ 5468 (W.D.S.C. 1963).

93. *U.S. v. Parr*, 509 F.2d 1381, 75-1 U.S. Tax Cas. (CCH) ¶ 9349, 35 A.F.T.R.2d (P-H) ¶ 75-1125 (5th Cir. 1975); *Blassie v. C.I.R.*, 394 F.2d 628, 68-1 U.S. Tax Cas. (CCH) ¶ 9390, 21 A.F.T.R.2d (P-H) ¶ 1368 (8th Cir. 1968).

Wilson v. U.S., 292 F. Supp. 200, 69-1 U.S. Tax Cas. (CCH) ¶ 9101, 22 A.F.T.R.2d (P-H) ¶ 5907 (D.N.H. 1968), judgment aff'd, 412 F.2d 694, 69-2 U.S. Tax Cas. (CCH) ¶ 9490, 24 A.F.T.R.2d (P-H) ¶ 69-5011 (1st Cir. 1969); *Arnold v. U.S.*, 289 F. Supp. 206, 68-2 U.S. Tax Cas. (CCH) ¶ 9590, 22 A.F.T.R.2d (P-H) ¶ 5661 (E.D.N.Y. 1968).

Accessions to wealth

All realized accessions to wealth are presumed to be taxable income, unless taxpayer can demonstrate that an acquisition is specifically exempted from taxation.

Roemer v. C.I.R., 716 F.2d 693, 9 Media L. Rep. (BNA) 2407, 83-2 U.S. Tax Cas. (CCH) ¶ 9600, 52 A.F.T.R.2d (P-H) ¶ 83-5954 (9th Cir. 1983).

gress has specifically excluded certain items of income from tax.⁹⁴

It should be noted that beyond the statutory exclusions from tax, various rulings of the Commissioner of Internal Revenue reflect a broad exercise of discretion in eliminating tax on certain receipts of income which are not excludable under the express provisions of the Code.⁹⁵ The Internal Revenue Service, for example, has apparently made an administrative decision to be concerned with the taxation of unsolicited samples, such as books received by book reviewers from publishers, only when failure to tax those samples would provide taxpayers with double benefits, as where the samples are donated to charity and a deduction is taken therefor.⁹⁶ However, such administrative exceptions do not justify further judicial exceptions,⁹⁷ and

statutory exclusions from gross income, being acts of grace, are to be narrowly construed.⁹⁸

§ 57. Meaning of Income and Taxable Income

The term "income" has the same meaning in the revenue laws as it has in the Constitution and that is, the meaning given it in common, ordinary, every day speech, and the controlling requirement is the receipt of economic benefit. Taxable income is gross income minus allowable deductions.

Library References

Internal Revenue § 3110.

While the question of what constitutes "income" within the meaning of the Sixteenth Amendment to the Constitution cannot be concluded by any definition which Congress may adopt,⁹⁹ in general, the term has the same meaning in the revenue laws as it has in the Constitution,¹ and that is, the meaning

94. *Smith v. C.I.R.*, 370 F.2d 178, 67-1 U.S. Tax Cas. (CCH) ¶ 9109, 18 A.F.T.R.2d (P-H) ¶ 6092 (6th Cir. 1966); *U.S. v. James*, 333 F.2d 748, 64-2 U.S. Tax Cas. (CCH) ¶ 9576, 14 A.F.T.R.2d (P-H) ¶ 5017 (9th Cir. 1964).

Ricketts v. U.S., 186 Ct. Cl. 513, 405 F.2d 1293, 69-1 U.S. Tax Cas. (CCH) ¶ 9193, 23 A.F.T.R.2d (P-H) ¶ 69-524 (1969).

Jones v. U.S., 551 F. Supp. 578, 83-1 U.S. Tax Cas. (CCH) ¶ 9118, 51 A.F.T.R.2d (P-H) ¶ 83-428 (N.D.N.Y. 1982); *Gardiner v. U.S.*, 391 F. Supp. 1202, 75-1 U.S. Tax Cas. (CCH) ¶ 9331, 35 A.F.T.R.2d (P-H) ¶ 75-1112 (D. Utah 1975), judgment aff'd, 536 F.2d 903, 76-1 U.S. Tax Cas. (CCH) ¶ 9454, 38 A.F.T.R.2d (P-H) ¶ 76-5107 (10th Cir. 1976).

Exclusion must be clear

A claim for tax exemption must rest upon language in regard to which there can be no doubt as to its meaning and exemption must be granted in terms too plain to be mistaken.

Matthews v. C.I.R., 907 F.2d 1173, 90-2 U.S. Tax Cas. (CCH) ¶ 50363, 66 A.F.T.R.2d (P-H) ¶ 90-5282 (D.C. Cir. 1990).

Change

Deductions and exclusions from gross income can be and are changed from time to time by Congress, and there is nothing, per se, illegal, or discriminatory in such changes.

Fortune v. U.S., 4 Cl. Ct. 670, 84-1 U.S. Tax Cas. (CCH) ¶ 9328, 54 A.F.T.R.2d (P-H) ¶ 84-5088 (1984).

Invalidity of executive agreement

International executive agreement, exempting from United States taxation that income derived by employees of the Panama Canal Commission as result of their work for the Commission, was void as conflicting with Internal Revenue Code section providing for taxing of all income from whatever source derived.

Swearingen v. U.S., 565 F. Supp. 1019, 83-2 U.S. Tax Cas. (CCH) ¶ 9482, 52 A.F.T.R.2d (P-H) ¶ 83-5775 (D. Colo. 1983).

95. Rulings are untested

Whether these various rulings are valid exercises of discretion cannot be tested by judicial review since there is no review of protaxpayer rulings; Congress alone by statutory amendment may review.

Arnold v. U.S., 289 F. Supp. 206, 68-2 U.S. Tax Cas. (CCH) ¶ 9590, 22 A.F.T.R.2d (P-H) ¶ 5661 (E.D.N.Y. 1968).

96. Revenue Ruling. 1970-2 C.B. 6. Rev. Rul. 70-498, 1970 WL 21179 (1970).

Judicial support

It is not for the courts to quarrel with this administrative decision making a rational allocation of the Service's administrative resources.

Haverly v. U.S., 513 F.2d 224, 75-1 U.S. Tax Cas. (CCH) ¶ 9326, 35 A.F.T.R.2d (P-H) ¶ 75-1082 (7th Cir. 1975).

97. *Arnold v. U.S.*, 289 F. Supp. 206, 68-2 U.S. Tax Cas. (CCH) ¶ 9590, 22 A.F.T.R.2d (P-H) ¶ 5661 (E.D.N.Y. 1968).

Fortune v. U.S., 4 Cl. Ct. 670, 84-1 U.S. Tax Cas. (CCH) ¶ 9328, 54 A.F.T.R.2d (P-H) ¶ 84-5088 (1984).

98. *C.I.R. v. Schleier*, 515 U.S. 323, 115 S. Ct. 2159, 132 L. Ed. 2d 294, 19 Employee Benefits Cas. (BNA) 1377, 67 Fair Empl. Prac. Cas. (BNA) 1745, 66 Empl. Prac. Dec. (CCH) ¶ 43557, 95-1 U.S. Tax Cas. (CCH) ¶ 50309, 75 A.F.T.R.2d (P-H) ¶ 95-2675 (1995).

Wilson v. U.S., 412 F.2d 694, 69-2 U.S. Tax Cas. (CCH) ¶ 9490, 24 A.F.T.R.2d (P-H) ¶ 69-5011 (1st Cir. 1969).

Ritter v. U.S., 183 Ct. Cl. 875, 393 F.2d 823, 68-1 U.S. Tax Cas. (CCH) ¶ 9330, 21 A.F.T.R.2d (P-H) ¶ 1107 (1968).

Shimota v. U.S., 943 F.2d 1312, 91-2 U.S. Tax Cas. (CCH) ¶ 50477, 68 A.F.T.R.2d (P-H) ¶ 91-5706 (Fed. Cir. 1991).

Policy

Exemptions from definition of "income" are specifically stated and should be viewed with restraint in light of policy of taxing income comprehensively.

Peterson v. U.S., 625 F. Supp. 185, 85-2 U.S. Tax Cas. (CCH) ¶ 9848, 57 A.F.T.R.2d (P-H) ¶ 86-357 (E.D. Ark. 1985).

99. *Bowers v. Kerbaugh-Empire Co.*, 271 U.S. 170, 46 S. Ct. 449, 70 L. Ed. 886, 1 U.S. Tax Cas. (CCH) ¶ 174, 5 A.F.T.R. (P-H) ¶ 6014 (1926) (overruling on other grounds recognized by, *Colonial Sav. Ass'n. & Subsidiaries v. C.I.R.*, 85 T.C. 855, Tax Ct. Rep. (CCH) 42497, 1985 WL 15416 (1985)).

1. *Bowers v. Kerbaugh-Empire Co.*, 271 U.S. 170, 46 S. Ct. 449, 70 L. Ed. 886, 1 U.S. Tax Cas. (CCH) ¶ 174, 5 A.F.T.R. (P-H) ¶ 6014 (1926) (overruling on other grounds recognized by, *Colonial Sav. Ass'n. & Subsidiaries v. C.I.R.*, 85 T.C. 855, Tax Ct. Rep. (CCH) 42497, 1985 WL 15416 (1985)).

Vagueness

Term "income" as used in taxing statutes was not unconstitutionally vague and indefinite.

Charczuk v. C.I.R., 771 F.2d 471, 85-2 U.S. Tax Cas. (CCH) ¶ 9656, 56 A.F.T.R.2d (P-H) ¶ 85-5740 (10th Cir. 1985).

given in it common, ordinary, everyday speech,² which may be defined as gain derived from capital, from labor, or from both combined,³ including profit gained through the sale or conversion of capital assets.⁴

However, even this broad definition does not provide a touchstone to all questions as to what constitutes income for tax purposes.⁵ It does not cover, for example, other accessions to wealth, which must be regarded as income,⁶ even though not derived from capital or labor,⁷ such as exemplary damages.⁸ Under the system of federal income taxation, every element of gross income of a person, corporate or individual, is subject to tax unless there is a statute or some rule of law that exempts that person or element.⁹

Fair market value of services

Taxpayer cannot deduct fair market value of his services from wages and other compensation received in exchange for the services since Code Section 83, which provides rules applying to transfer of property in connection with performance of services does not authorize an exclusion from gross income for compensation received for services rendered.

Bumgarner v. C.I.R., T.C. Memo. 1997-48, T.C.M. (RIA) ¶197048, 73 T.C.M. (CCH) 1841 (1997).

2. U.S. v. Safety Car Heating & Lighting Co., 297 U.S. 88, 56 S. Ct. 353, 80 L. Ed. 500, 36-1 U.S. Tax Cas. (CCH) ¶19042, 16 A.F.T.R. (P-H) ¶1311 (1936).

U.S. v. James, 333 F.2d 748, 64-2 U.S. Tax Cas. (CCH) ¶19576, 14 A.F.T.R.2d (P-H) ¶5017 (9th Cir. 1964); Helvering v. Edison Bros. Stores, 133 F.2d 575, 43-1 U.S. Tax Cas. (CCH) ¶19273, 30 A.F.T.R. (P-H) ¶940 (C.C.A. 8th Cir. 1943).

Economic meaning

The meaning in accounting or economics is not controlling.

Helvering v. Edison Bros. Stores, 133 F.2d 575, 43-1 U.S. Tax Cas. (CCH) ¶19273, 30 A.F.T.R. (P-H) ¶940 (C.C.A. 8th Cir. 1943).

Cash

Legal nature of cash does not itself change fact that cash should be reported as income.

U.S. v. Toushin, 899 F.2d 617, 90-1 U.S. Tax Cas. (CCH) ¶150201, 29 Fed. R. Evid. Serv. (LCP) 1335, 65 A.F.T.R.2d (P-H) ¶90-786 (7th Cir. 1990).

3. Eisner v. Macomber, 252 U.S. 189, 40 S. Ct. 189, 64 L. Ed. 521, 1 U.S. Tax Cas. (CCH) ¶32, 3 A.F.T.R. (P-H) ¶3020, 9 A.L.R. 1570 (1920) (overruling on other grounds recognized by, Prescott v. C. I. R., 561 F.2d 1287, 77-2 U.S. Tax Cas. (CCH) ¶19639, 40 A.F.T.R.2d (P-H) ¶77-5716 (8th Cir. 1977)).

Meyer v. C.I.R., 383 F.2d 883, 67-2 U.S. Tax Cas. (CCH) ¶19671, 20 A.F.T.R.2d (P-H) ¶5603 (8th Cir. 1967).

4. Eisner v. Macomber, 252 U.S. 189, 40 S. Ct. 189, 64 L. Ed. 521, 1 U.S. Tax Cas. (CCH) ¶32, 3 A.F.T.R. (P-H) ¶3020, 9 A.L.R. 1570 (1920) (overruling on other grounds recognized by, Prescott v. C. I. R., 561 F.2d 1287, 77-2 U.S. Tax Cas. (CCH) ¶19639, 40 A.F.T.R.2d (P-H) ¶77-5716 (8th Cir. 1977)).

Mining of ore

Under tax law, mining of ore is treated as income-producing operation and not as conversion of capital asset.

Congress has provided a nonexclusive listing of specified categories of income, to wit compensation for services, income derived from business, gains from dealings in property, interest, rents, royalties, dividends, alimony and separate maintenance payments, annuities, income from life insurance and endowment contracts, pensions, income from the discharge of indebtedness, the distributive share of partnership gross income, income in respect to a decedent, and income from an interest in an estate or trust,¹⁰ each of which is discussed in appropriate sections of this title.

Various other items specifically included in gross income, subject to certain limitations, are detailed in the Code,¹¹ including the value of property transferred in connection with the performance of services,¹² and the amount of alcohol fuel credit allow-

Saviano v. C.I.R., 765 F.2d 643, 85-2 U.S. Tax Cas. (CCH) ¶19475, 56 A.F.T.R.2d (P-H) ¶85-5337 (7th Cir. 1985).

5. C.I.R. v. Glenshaw Glass Co., 348 U.S. 426, 75 S. Ct. 473, 99 L. Ed. 483, 55-1 U.S. Tax Cas. (CCH) ¶9308, 47 A.F.T.R. (P-H) ¶162 (1955).

6. C.I.R. v. Glenshaw Glass Co., 348 U.S. 426, 75 S. Ct. 473, 99 L. Ed. 483, 55-1 U.S. Tax Cas. (CCH) ¶9308, 47 A.F.T.R. (P-H) ¶162 (1955).

John B. White, Inc. v. Commissioner of Internal Revenue, 55 T.C. 729, 1971 WL 2629 (1971), aff'd, 458 F.2d 989, 72-1 U.S. Tax Cas. (CCH) ¶19368, 29 A.F.T.R.2d (P-H) ¶72-988 (3d Cir. 1972).

State distribution

Even if Alaskan citizens owned state's natural resources, dividends paid to citizens from permanent fund as share of wealth of state's energy resources would constitute gross income and thus would be subject to taxation.

Greisen By and Through Greisen v. U.S., 831 F.2d 916, 87-2 U.S. Tax Cas. (CCH) ¶19608, 60 A.F.T.R.2d (P-H) ¶87-5956 (9th Cir. 1987).

7. U.S. v. Gotcher, 401 F.2d 118, 68-2 U.S. Tax Cas. (CCH) ¶19546, 22 A.F.T.R.2d (P-H) ¶5460 (5th Cir. 1968); Starrels v. C.I.R., 304 F.2d 574, 62-2 U.S. Tax Cas. (CCH) ¶19526, 9 A.F.T.R.2d (P-H) ¶11791 (9th Cir. 1962).

8. C.I.R. v. Glenshaw Glass Co., 348 U.S. 426, 75 S. Ct. 473, 99 L. Ed. 483, 55-1 U.S. Tax Cas. (CCH) ¶9308, 47 A.F.T.R. (P-H) ¶162 (1955).

9. HCS- Laundry v. U.S., 450 U.S. 1, 101 S. Ct. 836, 67 L. Ed. 2d 1, 81-1 U.S. Tax Cas. (CCH) ¶19202, 47 A.F.T.R.2d (P-H) ¶81-797 (1981).

Farm income

Martin v. C.I.R., 756 F.2d 38, 85-1 U.S. Tax Cas. (CCH) ¶19238, 55 A.F.T.R.2d (P-H) ¶85-1002 (6th Cir. 1985).

10. 26 U.S.C.A. § 61(a).

11. 26 U.S.C.A. §§ 71 et seq.

Particular acts or transactions, see infra §§ 61 et seq.

12. 26 U.S.C.A. § 83.

Stock options and restricted stock as gross income, see infra §§ 290, 292.

Corporations

Statute explaining how property received in exchange for services is taxed did not apply only to natural persons, but applied to corporations as well.

able to the taxpayer under section 44B of the Code.¹³

It has been observed, however, that Congress has not attempted to define "income" with any greater specificity, and has left this to the courts, administrative rules, and regulations.¹⁴

Montelepre Systemed, Inc. v. C.I.R., 956 F.2d 496, 92-1 U.S. Tax Cas. (CCH) ¶ 50196, 69 A.F.T.R.2d (P-H) ¶ 92-958 (5th Cir. 1992).

Deferred compensation plan

Plan participant's benefits did not constitute "property" where deferred compensation plan was unsecured from corporations' creditors and therefore incapable of valuation.

Minor v. U.S., 772 F.2d 1472, 6 Employee Benefits Cas. (BNA) 2473, 85-2 U.S. Tax Cas. (CCH) ¶ 9717, 56 A.F.T.R.2d (P-H) ¶ 85-6037 (9th Cir. 1985).

Obligation to acquire stock

Contractual obligation to acquire stock, as well as acquisition of stock itself, is "property."

Theophilos v. C.I.R., 85 F.3d 440, 96-1 U.S. Tax Cas. (CCH) ¶ 50293, 29 U.C.C. Rep. Serv. 2d (CBC) 977, 77 A.F.T.R.2d (P-H) ¶ 96-2329 (9th Cir. 1996).

Fair market value

(1) Taxpayers were required to include in income their share of normal retail price of goods and services received by partnership, since objective measure of fair market value must be employed to measure compensation received in goods or services.

Rooney v. C.I.R., 88 T.C. 523, Tax Ct. Rep. (CCH) 43748, 1987 WL 39953 (1987).

(2) Control of business, for purpose of determining "fair market value" of stock, means that, because of interest owned, shareholder can unilaterally direct corporate action, select management, decide amount of distribution, rearrange corporation's capital structure, and decide whether to liquidate, merge, or sell assets.

Theophilos v. C.I.R., 85 F.3d 440, 96-1 U.S. Tax Cas. (CCH) ¶ 50293, 29 U.C.C. Rep. Serv. 2d (CBC) 977, 77 A.F.T.R.2d (P-H) ¶ 96-2329 (9th Cir. 1996).

(3) In determining "fair market value" of stock of closely held corporation, stock is ordinarily discounted to reflect lack of control exercised by minority shareholders, especially when minority shareholders lack voting rights.

Theophilos v. C.I.R., 85 F.3d 440, 96-1 U.S. Tax Cas. (CCH) ¶ 50293, 29 U.C.C. Rep. Serv. 2d (CBC) 977, 77 A.F.T.R.2d (P-H) ¶ 96-2329 (9th Cir. 1996).

13. 26 U.S.C.A. § 87 as renumbered by P.L. 98-21 § 121(a).

14. Conner v. U.S., 303 F. Supp. 1187, 69-2 U.S. Tax Cas. (CCH) ¶ 9662, 24 A.F.T.R.2d (P-H) ¶ 69-5638 (S.D. Tex. 1969), judgment aff'd in part, rev'd in part on other grounds, 439 F.2d 974, 71-1 U.S. Tax Cas. (CCH) ¶ 9271, 27 A.F.T.R.2d (P-H) ¶ 71-858 (5th Cir. 1971), opinion supplemented, 442 F.2d 1349, 71-1 U.S. Tax Cas. (CCH) ¶ 9417, 27 A.F.T.R.2d (P-H) ¶ 71-1413 (5th Cir. 1971).

Amplification of Code

Absent a well-established judge-made exception, the Internal Revenue Code itself, as amplified by its regulations, determines what is taxable income.

Home Mut. Ins. Co. v. C. I. R., 639 F.2d 333, 80-1 U.S. Tax Cas. (CCH) ¶ 9392, 81-1 U.S. Tax Cas. (CCH) ¶ 9127, 45 A.F.T.R.2d (P-H) ¶ 80-1608, 47 A.F.T.R.2d (P-H) ¶ 81-503 (7th Cir. 1980).

15. U.S. v. Gotcher, 401 F.2d 118, 68-2 U.S. Tax Cas. (CCH) ¶ 9546, 22 A.F.T.R.2d (P-H) ¶ 5460 (5th Cir. 1968); U.S. v. Rochelle, 384 F.2d 748, 67-2 U.S. Tax Cas. (CCH) ¶ 9694, 20 A.F.T.R.2d (P-H)

In this respect, it has come to be recognized that the controlling factor is the receipt of economic benefit.¹⁵ This concept has two distinct requirements: there must be an economic gain, and this gain must primarily benefit the taxpayer personally.¹⁶ However, literal application of this "economic

¶ 5630 (5th Cir. 1967); C.I.R. v. Riss, 374 F.2d 161, 67-1 U.S. Tax Cas. (CCH) ¶ 9292, 19 A.F.T.R.2d (P-H) ¶ 880 (8th Cir. 1967); Buder v. U.S., 354 F.2d 941, 66-1 U.S. Tax Cas. (CCH) ¶ 9155, 17 A.F.T.R.2d (P-H) ¶ 66 (8th Cir. 1966).

Ritter v. U.S., 183 Ct. Cl. 875, 393 F.2d 823, 68-1 U.S. Tax Cas. (CCH) ¶ 9330, 21 A.F.T.R.2d (P-H) ¶ 1107 (1968).

Rhodes v. U.S., 243 F. Supp. 894, 65-2 U.S. Tax Cas. (CCH) ¶ 9617, 16 A.F.T.R.2d (P-H) ¶ 5565 (W.D.S.C. 1965).

Borrowed funds

Borrowed funds are excluded from income in the first instance because taxpayer's obligation to repay funds offsets any increase in taxpayer's assets.

U.S. v. Centennial Sav. Bank FSB, 499 U.S. 573, 111 S. Ct. 1512, 113 L. Ed. 2d 608, 91-1 U.S. Tax Cas. (CCH) ¶ 50188, 67 A.F.T.R.2d (P-H) ¶ 91-816 (1991).

Education benefits for children

Amounts paid for college education of taxpayers' children by educational benefits trust established by taxpayers' employer constituted taxable compensation to taxpayers, notwithstanding that payments went directly to children; payments conferred economic benefit upon taxpayers by providing some financial support for children which parents would otherwise have had to furnish.

Wheeler v. U.S., 768 F.2d 1333, 6 Employee Benefits Cas. (BNA) 2105, 85-2 U.S. Tax Cas. (CCH) ¶ 9571, 56 A.F.T.R.2d (P-H) ¶ 85-5577 (Fed. Cir. 1985).

16. U.S. v. Gotcher, 401 F.2d 118, 68-2 U.S. Tax Cas. (CCH) ¶ 9546, 22 A.F.T.R.2d (P-H) ¶ 5460 (5th Cir. 1968).

U.S. v. Hawryluk, 658 F. Supp. 112, 60 A.F.T.R.2d (P-H) ¶ 87-5597 (E.D. Pa. 1987).

Expense-paid trip benefiting payor

Where it appeared that Volkswagen provided an expense-paid trip to Germany for an American dealer primarily for the benefit of Volkswagen to get dealers to invest more time and money in their dealerships, the personal benefits and pleasure of the dealer were incidental and not taxable, but the expenses paid for the dealer's wife were taxable to him since as far as she was concerned, the trip was primarily a vacation, and he was relieved of her expenses.

U.S. v. Gotcher, 401 F.2d 118, 68-2 U.S. Tax Cas. (CCH) ¶ 9546, 22 A.F.T.R.2d (P-H) ¶ 5460 (5th Cir. 1968).

Campaign funds

(1) Although campaign funds were not income when received, they became income when converted to defendant's personal use.

U.S. v. Scott, 660 F.2d 1145, 81-2 U.S. Tax Cas. (CCH) ¶ 9663, 49 A.F.T.R.2d (P-H) ¶ 82-1279 (7th Cir. 1981).

(2) It has also been held, however, that funds contributed to a recipient's political campaign and then diverted to recipient's personal use are not necessarily "income" taxable to recipient under 26 U.S.C.A. § 61 but, instead, may be excluded as "gifts" from gross income under § 102(a) if donor intended funds for unrestricted personal use of recipient; declining to follow U.S. v. Miriani, 422 F.2d 150, 70-1 U.S. Tax Cas. (CCH) ¶ 9248, 25 A.F.T.R.2d (P-H) ¶ 70-687 (6th Cir. 1970); U.S. v. Jett, 352 F.2d 179, 65-2 U.S. Tax Cas. (CCH) ¶ 9706, 16 A.F.T.R.2d (P-H) ¶ 5829 (6th Cir. 1965); O'Dwyer v. C.I.R., 266 F.2d

benefit" concept proves to be illusory, since not every realizable economic benefit is taxable.¹⁷ So, disbursements from a general welfare fund made under a legislatively provided social benefit program for the promotion of general welfare are not included in the recipient's gross income;¹⁸ but this rule does not extend to relocation assistance benefits required to be paid to tenants by landlords under a municipal ordinance,¹⁹ and "dividends" paid under a state program to distribute the state's mineral income to its residents.²⁰

Apart from exceptions such as these, generally speaking, the form or mode in which the economic benefit is effected is of no real consequence.²¹ Stated differently, gross income includes gain realized in any form,²² whether in money, property or services,²³ so long as the form or interest is one that can be valued in terms of money.²⁴

"Taxable income" and "adjusted gross income."

Related provisions define the term "taxable income," for taxpayers who elect to itemize their

575, 59-1 U.S. Tax Cas. (CCH) ¶ 9441, 3 A.F.T.R.2d (P-H) ¶ 1386 (4th Cir. 1959).

U.S. v. Pisani, 773 F.2d 397, 85-2 U.S. Tax Cas. (CCH) ¶ 9676, 56 A.F.T.R.2d (P-H) ¶ 85-5899 (2d Cir. 1985).

17. In re Diversified Brokers Co., Inc., 487 F.2d 355, 73-2 U.S. Tax Cas. (CCH) ¶ 9782, 32 A.F.T.R.2d (P-H) ¶ 73-6137 (8th Cir. 1973).

Utility rate reductions

Rate reductions or nonrefundable credits received by a customer of an electric utility company who agrees to participate in energy conservation programs are not includible in the customer's gross income under section 61 of the Code.

Rate Reductions and Nonrefundable Credits, 1991-2 C.B. 17, Rev. Rul. 91-36, 1991 WL 735176 (1991).

18. Replacement Housing Payments, 1974-1 C.B. 21, Rev. Rul. 74-205, 1974 WL 34526 (1974).

19. Rev Rul 82-106, Rev. Rul. 82-106 (1982).

Relocation payments received by victims of a national disaster such as a hurricane or flood may be tax-free.

Relocation payments; housing and community development act, Rev. Rul. 98-19, 1998 WL 134335 (1998).

20. Rev.Rul. 85-39, 1985-1 C.B. 21.

21. Rhodes v. U.S., 243 F. Supp. 894, 65-2 U.S. Tax Cas. (CCH) ¶ 9617, 16 A.F.T.R.2d (P-H) ¶ 5565 (W.D.S.C. 1965).

Profit in usual sense not required

"Economic gain" does not necessarily require profit in its usual sense in order to make it taxable income.

Ritter v. U.S., 183 Ct. Cl. 875, 393 F.2d 823, 68-1 U.S. Tax Cas. (CCH) ¶ 9330, 21 A.F.T.R.2d (P-H) ¶ 1107 (1968).

22. Reg. § 1.61-1(a).

It need not be in money

U.S. v. Parr, 509 F.2d 1381, 75-1 U.S. Tax Cas. (CCH) ¶ 9349, 35 A.F.T.R.2d (P-H) ¶ 75-1125 (5th Cir. 1975); Patterson v. Thomas, 289 F.2d 108, 61-1 U.S. Tax Cas. (CCH) ¶ 9310, 7 A.F.T.R.2d (P-H) ¶ 862 (5th Cir. 1961).

Rhodes v. U.S., 243 F. Supp. 894, 65-2 U.S. Tax Cas. (CCH) ¶ 9617, 16 A.F.T.R.2d (P-H) ¶ 5565 (W.D.S.C. 1965); Moreell v. U.S., 221 F. Supp. 864, 63-2 U.S. Tax Cas. (CCH) ¶ 9728, 12 A.F.T.R.2d (P-H) ¶ 5777 (W.D. Pa. 1963).

Actual receipt

"Income" for federal income tax purposes is not limited to money actually received by taxpayer.

Rhude v. U.S., 771 F.2d 1176, 85-2 U.S. Tax Cas. (CCH) ¶ 9674, 56 A.F.T.R.2d (P-H) ¶ 85-5850 (8th Cir. 1985).

Access to funds on deposit

Deposits taxpayer, a registered broker, received from investors under investment program were "income" to taxpayer, as he had unfettered

physical access to the funds on deposit, he, or persons controlled by him, had authority to make trades on behalf of the accounts, he had the complete ability to manipulate the trades to derive personal profit at expense of depositors, he had ability to, and actually did, divert funds to his own use, and he failed to observe federal regulations which required him to deposit investors' funds with a financial institution in accounts clearly reflecting ownership of amounts therein and instead deposited the sums and purchased investments in his own name.

Stovall v. C.I.R., 762 F.2d 891, 85-2 U.S. Tax Cas. (CCH) ¶ 9450, 56 A.F.T.R.2d (P-H) ¶ 85-5233 (11th Cir. 1985).

23. Reg. § 1.61-1(a).

Levrio v. U.S., 644 F. Supp. 70, 86-2 U.S. Tax Cas. (CCH) ¶ 9583, 58 A.F.T.R.2d (P-H) ¶ 86-5514 (W.D. Pa. 1986) (cocaine seized from taxpayer's residence).

Property

Joslin v. U.S., 666 F.2d 1306, 81-2 U.S. Tax Cas. (CCH) ¶ 9813, 49 A.F.T.R.2d (P-H) ¶ 82-379 (10th Cir. 1981).

Repair and renovation of house

White v. C. I. R., 537 F. Supp. 679, 83-1 U.S. Tax Cas. (CCH) ¶ 9105, 50 A.F.T.R.2d (P-H) ¶ 82-6004 (D. Colo. 1982).

24. U.S. v. Parr, 509 F.2d 1381, 75-1 U.S. Tax Cas. (CCH) ¶ 9349, 35 A.F.T.R.2d (P-H) ¶ 75-1125 (5th Cir. 1975).

Nonstatutory stock options

Nonstatutory options to acquire stock of X and Y corporations, were not taxable in year of grant, since options had no readily ascertainable fair market value at that time.

Frank v. Commissioner of Internal Revenue, 54 T.C. 75, 1970 WL 2221 (1970), aff'd, 447 F.2d 552, 71-1 U.S. Tax Cas. (CCH) ¶ 9481, 27 A.F.T.R.2d (P-H) ¶ 71-1574 (7th Cir. 1971).

Claims to receive indefinite amounts

(1) Generally, contracts and claims to indefinite amounts must be valued for federal income tax purposes, except in rare and extraordinary instances:

Estate of Bird, 534 F.2d 1214, 76-1 U.S. Tax Cas. (CCH) ¶ 9384, 37 A.F.T.R.2d (P-H) ¶ 76-1336 (6th Cir. 1976).

Revenue Ruling, 1958-2 C.B. 15, Rev. Rul. 58-402, 1958 WL 10389 (1958).

(2) Where a contract calls for future payments based on unmet conditions, contingencies, or speculation, the courts are loath to assess any present tax consequences to the transaction and thus to require the beneficiary of the contract to pay an income tax upon a potential as distinguished from a guaranteed receipt of those funds.

Vestal v. U.S., 498 F.2d 487, 74-1 U.S. Tax Cas. (CCH) ¶ 9407, 74-2 U.S. Tax Cas. (CCH) ¶ 9501, 33 A.F.T.R.2d (P-H) ¶ 74-1240, 34 A.F.T.R.2d (P-H) ¶ 74-5171 (8th Cir. 1974).

deductions, as gross income minus allowable deductions, (other than the standard deduction).²⁵ For individuals who do not itemize their deductions, the term "taxable income" means adjusted gross income minus the standard deduction and the deduction for personal exemptions.²⁶ "Adjusted gross income" in this connection means gross income minus certain specific deductions,²⁷ such as trade and business deductions.²⁸

Taxpayers ordinarily do not state "gross income" at any place on their returns; generally it must be determined by considering other attached documents.²⁹ It has generally been accepted that determining the gross income of an individual taxpayer requires consideration of the information returns of passthrough entities of which the taxpayer is a member—such as partnerships and S corporations—even though those items are not themselves attached or filed with the taxpayer's return.³⁰ The Tax Court has ruled that the Service has the

burden of proof to establish what the taxpayer's "gross income" is.³¹

These matters are discussed in detail in portions of this title dealing with deductions, *infra* §§ 130 et seq. and the computation of taxes, *infra* §§ 299 et seq.

§ 58. Realization of Income

The income tax law is concerned only with income which has been realized by the taxpayer.

Library References

Internal Revenue ☞ § 3115.

The income tax law is concerned only with income which has been realized by the taxpayer.³² While income is realized when it is actually or constructively received,³³ it is not actually or constructively received until the taxpayer has an unconditional claim of right to it and the amount is

25. 26 U.S.C.A. § 63(a).

26. 26 U.S.C.A. § 63(b).

27. 26 U.S.C.A. § 62.

Jury pay remitted to employer

Any deduction allowable by reason of an individual remitting any portion of any jury pay to his employer in exchange for compensation for the period of jury duty is deducted in calculating adjusted gross income.

26 U.S.C.A. § 62(a)(13).

28. 26 U.S.C.A. § 62(a)(1).

C.I.R. v. Groetzing, 480 U.S. 23, 107 S. Ct. 980, 94 L. Ed. 2d 25, 87-1 U.S. Tax Cas. (CCH) ¶ 9191, 59 A.F.T.R.2d (P-H) ¶ 87-532 (1987) (resolution of issue of whether taxpayer's activity constitutes a "trade or business," for purposes of Internal Revenue Code, requires an examination of the facts in each case).

Employee business expenses

Employee business expenses paid or incurred with respect to services performed by an official as an employee of a state or political subdivision of a state in a position compensated in whole or in part on a fee basis are deductible in computing adjusted gross income (AGI), and are therefore also deductible in computing alternative minimum tax (AMT).

26 U.S.C.A. § 62(a)(2)(C).

29. See Harlan v. C.I.R., 116 T.C. 31, Tax Ct. Rep. Dec. (RIA) 116.4, 2001 WL 40098 (2001), citing Estate of Klein v. Commissioner of Internal Revenue, 63 T.C. 585, 1975 WL 3078 (1975), *aff'd*, 537 F.2d 701, 76-2 U.S. Tax Cas. (CCH) ¶ 9521, 38 A.F.T.R.2d 76-5362 (2d Cir. 1976).

30. See Harlan v. C.I.R., 116 T.C. 31, Tax Ct. Rep. Dec. (RIA) 116.4, 2001 WL 40098 (2001), and cases reviewed therein.

31. See Harlan v. C.I.R., 116 T.C. 31, Tax Ct. Rep. Dec. (RIA) 116.4, 2001 WL 40098 (2001), citing Davenport v. C.I.R., 48 T.C. 921, 1967 WL 1000 (T.C. 1967), *acq.* 1968-2 C.B. and *acq.* 1968-1 C.B.

32. *Blassie v. C.I.R.*, 394 F.2d 628, 68-1 U.S. Tax Cas. (CCH) ¶ 9390, 21 A.F.T.R.2d (P-H) ¶ 1368 (8th Cir. 1968).

Barnes v. U.S., 253 F. Supp. 116, 66-1 U.S. Tax Cas. (CCH) ¶ 9275, 17 A.F.T.R.2d (P-H) ¶ 639 (S.D. Ill. 1966).

Income actually and substantially derived

To be taxable, "income" must be actually and substantially derived.

Fellows Sales Co. v. U.S., 200 F. Supp. 347, 62-1 U.S. Tax Cas. (CCH) ¶ 9204, 9 A.F.T.R.2d (P-H) ¶ 705 (D. S.D. 1961).

Beneficial enjoyment

Taxpayer is taxable upon income which it beneficially enjoys.

Title & Trust Co. of Fla. v. U.S., 243 F. Supp. 42, 65-1 U.S. Tax Cas. (CCH) ¶ 9415, 15 A.F.T.R.2d (P-H) ¶ 1041 (M.D. Fla. 1965), judgment *aff'd*, 360 F.2d 285, 66-1 U.S. Tax Cas. (CCH) ¶ 9409, 17 A.F.T.R.2d (P-H) ¶ 959 (5th Cir. 1966).

Realization of income on farm products

(1) Crop shares (whether or not considered rent under state law) are includable in income only when they are reduced to money or the equivalent of money.

Regs. §§ 1.61-4(a), 1.61-4(b).

(2) However, it has been held that crop shares are potential income assets, not property, and that a landlord may not avoid taxation by assigning his rights to the income prior to reduction of the crop shares to money or its equivalent, as where he makes a gift to charity.

Tatum v. C.I.R., 400 F.2d 242, 68-2 U.S. Tax Cas. (CCH) ¶ 9563, 22 A.F.T.R.2d (P-H) ¶ 5521 (5th Cir. 1968).

(3) On the other hand, crops in the hands of a farmer are appreciated property items not taxable if assigned to a third party prior to the realization of any income.

Tatum v. C.I.R., 400 F.2d 242, 68-2 U.S. Tax Cas. (CCH) ¶ 9563, 22 A.F.T.R.2d (P-H) ¶ 5521 (5th Cir. 1968).

33. *Driscoll v. Exxon Corp.*, 366 F. Supp. 992, 85 L.R.R.M. (BNA) 2240, 73 Lab. Cas. (CCH) ¶ 14333, 74-1 U.S. Tax Cas. (CCH) ¶ 9440, 33 A.F.T.R.2d (P-H) ¶ 74-901 (S.D.N.Y. 1973).

Actual receipt not required

A person may be taxable on income he has not received.

Helvering v. Horst, 311 U.S. 112, 61 S. Ct. 144, 85 L. Ed. 75, 40-2 U.S. Tax Cas. (CCH) ¶ 9787, 24 A.F.T.R. (P-H) ¶ 1058, 131 A.L.R. 655 (1940).

Kimbrell v. C.I.R., 371 F.2d 897, 67-1 U.S. Tax Cas. (CCH) ¶ 9179, 19 A.F.T.R.2d (P-H) ¶ 388 (5th Cir. 1967).

available to him without restriction³⁴ or is subject to his control,³⁵ and it is possible to calculate the amount.³⁶ However, the claim of right doctrine,

implicit in this formulation, cannot convert that which is not income into income.³⁷ Whether a

34. *U.S. v. Toushin*, 899 F.2d 617, 90-1 U.S. Tax Cas. (CCH) ¶ 50201, 29 Fed. R. Evid. Serv. (LCP) 1335, 65 A.F.T.R.2d (P-H) ¶ 90-786 (7th Cir. 1990); *Blassie v. C.I.R.*, 394 F.2d 628, 68-1 U.S. Tax Cas. (CCH) ¶ 9390, 21 A.F.T.R.2d (P-H) ¶ 1368 (8th Cir. 1968).

U.S. v. Hawryluk, 658 F. Supp. 112, 60 A.F.T.R.2d (P-H) ¶ 87-5597 (E.D. Pa. 1987); *Driscoll v. Exxon Corp.*, 366 F. Supp. 992, 85 L.R.R.M. (BNA) 2240, 73 Lab. Cas. (CCH) ¶ 14333, 74-1 U.S. Tax Cas. (CCH) ¶ 9440, 33 A.F.T.R.2d (P-H) ¶ 74-901 (S.D.N.Y. 1973).

Events fixing right

Northern Life Ins. Co. v. U.S., 685 F.2d 277, 82-2 U.S. Tax Cas. (CCH) ¶ 9560, 50 A.F.T.R.2d (P-H) ¶ 82-5757 (9th Cir. 1982); *Lark Sales Co. v. C. I. R.*, 437 F.2d 1067, 71-1 U.S. Tax Cas. (CCH) ¶ 9101, 71-1 U.S. Tax Cas. (CCH) ¶ 9178, 26 A.F.T.R.2d (P-H) ¶ 70-5909, 27 A.F.T.R.2d (P-H) ¶ 71-481 (7th Cir. 1970).

Restrictions permitting beneficial use

So-called restrictions on the use of money in a taxpayer's hands which in fact allow him to make maximum beneficial use of the funds at once, such as payment of the taxpayer's own debt, will not prevent taxation.

Kohler-Campbell Corp. v. U.S., 298 F.2d 911, 62-1 U.S. Tax Cas. (CCH) ¶ 9237, 9 A.F.T.R.2d (P-H) ¶ 587 (4th Cir. 1962).

Stolen checks

Income is only taxable to cash-basis taxpayer when it is received, and taxpayer would not be liable for taxes on income from checks which are stolen and cashed with forged signatures.

U.S. v. Hawryluk, 658 F. Supp. 112, 60 A.F.T.R.2d (P-H) ¶ 87-5597 (E.D. Pa. 1987).

Later denial of claim of right

The fact that it is later determined that the recipient was not entitled to the amount received does not preclude its being includable in his income in the year received.

Teitelbaum v. C.I.R., 346 F.2d 266, 65-1 U.S. Tax Cas. (CCH) ¶ 9440, 15 A.F.T.R.2d (P-H) ¶ 1080 (7th Cir. 1965).

Liability for return

Taxpayer, who receives monies under claim of right and without restrictions as to disposition, must include such monies in gross income, even though taxpayer may be liable for return of such monies; only if taxpayer can show that he has no claim of right by reason of requirement to make prompt payments of amounts received, even if such payments are made in absence of enforceable obligation, or that taxpayer is acting as mere agent or conduit, is receipt of monies not deemed gross income.

Liddy v. C.I.R., 808 F.2d 312, 87-1 U.S. Tax Cas. (CCH) ¶ 9102, 59 A.F.T.R.2d (P-H) ¶ 87-387 (4th Cir. 1986).

Utility surcharges

(1) Surcharges, which public utility added to cost of electrical services to defray expenses for construction of new power plant, were "gross income" and were not loan, even though surcharges were to be unconditionally repaid and were treated as liability for accounting purposes, and even though taxpayer did not include unrefunded surcharges in rate base, where no documents established loan agreement, and where only reason for utility to adopt surcharge plan was to receive benefit.

Iowa Southern Utilities Co. v. U.S., 841 F.2d 1108, 88-1 U.S. Tax Cas. (CCH) ¶ 9228, 61 A.F.T.R.2d (P-H) ¶ 88-851 (Fed. Cir. 1988).

(2) Surcharge paid by customer of utility was not taxable as gross income, as utility in receiving surcharge was acting as conduit for reimbursements to its sponsoring companies for costs that had been incurred as result of customer's cancellation and subsequent restoration

of power agreement; although utility initially received surcharge from customer, it was obligated to credit sponsoring companies full amount of surcharge.

Electric Energy, Inc. v. U.S., 13 Cl. Ct. 644, 87-2 U.S. Tax Cas. (CCH) ¶ 9587, 60 A.F.T.R.2d (P-H) ¶ 87-5933, 1987 WL 4092 (1987).

35. *U.S. v. Allen*, 551 F.2d 208, 77-1 U.S. Tax Cas. (CCH) ¶ 9285, 39 A.F.T.R.2d (P-H) ¶ 77-975 (8th Cir. 1977); *Sammons v. U.S.*, 433 F.2d 728, 70-2 U.S. Tax Cas. (CCH) ¶ 9678, 26 A.F.T.R.2d (P-H) ¶ 70-5746 (5th Cir. 1970); *Chernoff v. U.S.*, 412 F.2d 781, 69-2 U.S. Tax Cas. (CCH) ¶ 9480, 24 A.F.T.R.2d (P-H) ¶ 69-5003 (5th Cir. 1969); *Blassie v. C.I.R.*, 394 F.2d 628, 68-1 U.S. Tax Cas. (CCH) ¶ 9390, 21 A.F.T.R.2d (P-H) ¶ 1368 (8th Cir. 1968).

Driscoll v. Exxon Corp., 366 F. Supp. 992, 85 L.R.R.M. (BNA) 2240, 73 Lab. Cas. (CCH) ¶ 14333, 74-1 U.S. Tax Cas. (CCH) ¶ 9440, 33 A.F.T.R.2d (P-H) ¶ 74-901 (S.D.N.Y. 1973).

Iowa Southern Utilities Co. v. U.S., 841 F.2d 1108, 88-1 U.S. Tax Cas. (CCH) ¶ 9228, 61 A.F.T.R.2d (P-H) ¶ 88-851 (Fed. Cir. 1988) (taxpayers who do not act as disinterested conduits for funds received, but rather, exercise control over funds for their own benefit, receive income).

Amounts paid to corporation in process of dissolution

Where proceeds of settlement of corporation's law suit were paid to the corporation and after adoption of a resolution to dissolve the corporation the proceeds, after payment of some corporate debts, were distributed to the shareholders, the proceeds could not be deemed to have been paid to the shareholders merely because the release document was executed not only by corporation but also by the shareholders, and proceeds of settlement were taxable to corporation as ordinary income.

Paul v. U.S., 334 F. Supp. 1138, 72-1 U.S. Tax Cas. (CCH) ¶ 9461, 29 A.F.T.R.2d (P-H) ¶ 72-1087 (S.D. Ill. 1971).

Funds received by "welfare plan"

American Ass'n of Christian Schools Voluntary Employees Beneficiary Ass'n Welfare Plan Trust v. U.S., 663 F. Supp. 275, 9 Employee Benefits Cas. (BNA) 1523, 87-1 U.S. Tax Cas. (CCH) ¶ 9328, 60 A.F.T.R.2d (P-H) ¶ 87-5148 (M.D. Ala. 1987), judgment aff'd, 850 F.2d 1510, 10 Employee Benefits Cas. (BNA) 1006, 88-2 U.S. Tax Cas. (CCH) ¶ 9452, 62 A.F.T.R.2d (P-H) ¶ 88-5366 (11th Cir. 1988).

Regulatory agreements

Receipts placed into accounts required by Virginia Housing Development Authority regulatory agreements to secure maintenance and operation of apartment complex constituted income to accrual basis taxpayers in years of their deposit, despite VHDA's temporary control over disposition of the funds.

Stendig v. U.S., 843 F.2d 163, 88-1 U.S. Tax Cas. (CCH) ¶ 9268, 61 A.F.T.R.2d (P-H) ¶ 88-969 (4th Cir. 1988).

36. *Lark Sales Co. v. C. I. R.*, 437 F.2d 1067, 71-1 U.S. Tax Cas. (CCH) ¶ 9101, 71-1 U.S. Tax Cas. (CCH) ¶ 9178, 26 A.F.T.R.2d (P-H) ¶ 70-5909, 27 A.F.T.R.2d (P-H) ¶ 71-481 (7th Cir. 1970).

37. *Bohan v. U.S.*, 456 F.2d 851, 72-1 U.S. Tax Cas. (CCH) ¶ 9286, 29 A.F.T.R.2d (P-H) ¶ 72-739 (8th Cir. 1972).

When income is taxable

"Claim of right" doctrine is designed to further federal policy that income is to be returned and taxes paid thereon on basis of annual accounting period, and is used to determine when income is taxable rather than whether receipt is taxable income and if so to whom it is taxable.

taxpayer enjoys complete dominion over a sum so that it has been realized depends upon whether the taxpayer has some guarantee that he will be allowed to keep the money,³⁸ and upon the rights and obligations of the parties at the time the payment to the taxpayer is made.³⁹ A refundable security deposit does not become realized income upon receipt,⁴⁰ and funds received by a taxpayer as an agent or trustee for others and to be used solely for their benefit are not includable in the taxpayer's gross income.⁴¹

With respect to the question of when income from property can be considered realized, it has been stated that no more can be said in general

than that all relevant facts and circumstances must be considered.⁴² Realization does not require actual severance of gain from income-producing property.⁴³ However, at least one specific requirement may be stated and that is that there must be some event which fixes the gain with sufficient certainty so that it is reasonable to tax it.⁴⁴ Thus, a mere increase in the value of property is simply an unrealized increase in capital and is not recognized as a gain for tax purposes, until closed and completed transactions, fixed by identifiable events occur,⁴⁵ as by a sale or a disposition in which an income tax deduction is achieved⁴⁶ or the transferor receives intangible benefits of value to him.⁴⁷

Bohan v. U.S., 456 F.2d 851, 72-1 U.S. Tax Cas. (CCH) ¶ 9286, 29 A.F.T.R.2d (P-H) ¶ 72-739 (8th Cir. 1972).

38. C.I.R. v. Indianapolis Power & Light Co., 493 U.S. 203, 110 S. Ct. 589, 107 L. Ed. 2d 591, 90-1 U.S. Tax Cas. (CCH) ¶ 50007, 65 A.F.T.R.2d (P-H) ¶ 90-394 (1990).

Sum in escrow not realized income

Ware v. C.I.R., 906 F.2d 62, 90-2 U.S. Tax Cas. (CCH) ¶ 50342, 66 A.F.T.R.2d (P-H) ¶ 90-5196 (2d Cir. 1990).

39. C.I.R. v. Indianapolis Power & Light Co., 493 U.S. 203, 110 S. Ct. 589, 107 L. Ed. 2d 591, 90-1 U.S. Tax Cas. (CCH) ¶ 50007, 65 A.F.T.R.2d (P-H) ¶ 90-394 (1990).

40. C.I.R. v. Indianapolis Power & Light Co., 493 U.S. 203, 110 S. Ct. 589, 107 L. Ed. 2d 591, 90-1 U.S. Tax Cas. (CCH) ¶ 50007, 65 A.F.T.R.2d (P-H) ¶ 90-394 (1990).

41. Condominium Management Assessments; Realty Improvements, 1975-2 C.B. 25, Rev. Rul. 75-370, 1975 WL 34523 (1975).

Reservation of interest in business receipts

Where the owner of a sole proprietorship bequeathed his entire interest in the business to his wife, who entered into an agreement with her sons under which they were to operate the business and she was to retain an interest in the business represented by 5 percent of the gross receipts therefrom, and the sons did operate the business in corporate form, the corporation, under the evidence presented, merely acted as a trustee in collecting those receipts for her benefit and neither the corporation or its shareholders received "income". This result is to be contrasted with the situation that would have existed if the sons had simply assigned the income to their mother: the corporation and each as shareholders would then have been taxable thereon.

Fellows Sales Co. v. U.S., 200 F. Supp. 347, 62-1 U.S. Tax Cas. (CCH) ¶ 9204, 9 A.F.T.R.2d (P-H) ¶ 705 (D. S.C. 1961).

42. C.I.R. v. Wilcox, 327 U.S. 404, 66 S. Ct. 546, 90 L. Ed. 752, 46-1 U.S. Tax Cas. (CCH) ¶ 9188, 34 A.F.T.R. (P-H) ¶ 811, 166 A.L.R. 884 (1946) (overruled on other grounds in part by, James v. U.S., 366 U.S. 213, 81 S. Ct. 1052, 6 L. Ed. 2d 246, 61-1 U.S. Tax Cas. (CCH) ¶ 9449, 7 A.F.T.R.2d (P-H) ¶ 1361 (1961)) and (overruling on other grounds recognized by, Buff v. Commissioner of Internal Revenue, 58 T.C. 224, 1972 WL 2505 (1972)) and (overruling on other grounds recognized by, Shideler v. C. I. R., T.C. Memo. 1973-42, T.C.M. (P-H) ¶ 73042, 32 T.C.M. (CCH) 188, 1973 WL 2247 (1973)) and (overruling on other grounds recognized by, McGee v. Commissioner of Internal Revenue, 61 T.C. 249, 1973 WL 2598 (1973)) and (overruling on other grounds recognized by, Myers v. C.I.R., T.C. Memo. 1980-262, T.C.M. (P-H) ¶ 80262, 40 T.C.M. (CCH) 698, 1980 WL 4107 (1980)) and (overruling on other grounds recognized by, Afshar v. C.I.R., T.C. Memo. 1981-241, T.C.M. (P-H) ¶ 81241, 41 T.C.M. (CCH) 1489, 1981 WL 10547 (1981)) and (overruling on other grounds recognized by, Brunskill v. C.I.R., T.C. Memo. 1982-645, T.C.M. (P-H) ¶ 82645, 45 T.C.M. (CCH) 54, 1982

WL 10938 (1982)) and (overruling on other grounds recognized by, Huff v. Commissioner of Internal Revenue, 80 T.C. 804, Tax Ct. Rep. (CCH) 40068, 1983 WL 14824 (1983)) and (overruling on other grounds recognized by, Kreimer v. C.I.R., T.C. Memo. 1983-672, T.C.M. (P-H) ¶ 83672, 47 T.C.M. (CCH) 260, 1983 WL 14660 (1983)) and (overruling on other grounds recognized by, McCormack v. C.I.R., T.C. Memo. 1987-11, T.C.M. (P-H) ¶ 87011, 52 T.C.M. (CCH) 1321, 1987 WL 40089 (1987)) and (overruling on other grounds recognized by, Truesdell v. C.I.R., 89 T.C. 1280, Tax Ct. Rep. (CCH) 44500, 1987 WL 258105 (1987)) and (overruling on other grounds recognized by, Wood v. U.S., 863 F.2d 417, 89-1 U.S. Tax Cas. (CCH) ¶ 9143, 63 A.F.T.R.2d (P-H) ¶ 89-709 (5th Cir. 1989)) and (overruling on other grounds recognized by, Leonard v. C.I.R., T.C. Memo. 1989-423, T.C.M. (P-H) ¶ 89423, 57 T.C.M. (CCH) 1275, 1989 WL 90811 (1989)) and (overruling on other grounds recognized by, U.S. v. Harris, 942 F.2d 1125, 91-2 U.S. Tax Cas. (CCH) ¶ 50433, 33 Fed. R. Evid. Serv. (LCP) 967, 68 A.F.T.R.2d (P-H) ¶ 91-5482 (7th Cir. 1991)) and (overruling on other grounds recognized by, Alaska Public Service Employees Local 71 v. C. I. R., T.C. Memo. 1991-650, T.C.M. ¶ 91650, 62 T.C.M. (CCH) 1664, 1991 WL 276053 (1991)) and (overruling on other grounds recognized by, Wheadon v. C. I. R., T.C. Memo. 1992-633, T.C.M. (RIA) ¶ 92633, 64 T.C.M. (CCH) 1172 (1992)) and (overruling on other grounds recognized by, Krakowski v. C.I.R., T.C. Memo. 1993-266, T.C.M. (RIA) ¶ 93266, 65 T.C.M. (CCH) 2969 (1993)) and (overruling on other grounds recognized by, Dotson v. Shalala, 1 F.3d 571, 42 Soc. Sec. Rep. Serv. 17, Unempl. Ins. Rep. (CCH) ¶ 17453A (7th Cir. 1993)).

43. Helvering v. Bruun, 309 U.S. 461, 60 S. Ct. 631, 84 L. Ed. 864, 40-1 U.S. Tax Cas. (CCH) ¶ 9337, 24 A.F.T.R. (P-H) ¶ 652 (1940).

44. Helvering v. Bruun, 309 U.S. 461, 60 S. Ct. 631, 84 L. Ed. 864, 40-1 U.S. Tax Cas. (CCH) ¶ 9337, 24 A.F.T.R. (P-H) ¶ 652 (1940).

45. John R. Thompson Co. v. U.S., 477 F.2d 164, 73-1 U.S. Tax Cas. (CCH) ¶ 9369, 31 A.F.T.R.2d (P-H) ¶ 73-1207 (7th Cir. 1973).

46. Transfer to pension trust

Where corporation contributed appreciated real estate to its pension trust and deducted the fair market value thereof, it was taxable on the difference between the fair market value of the property when contributed and its adjusted basis.

U.S. v. General Shoe Corp., 282 F.2d 9, 60-2 U.S. Tax Cas. (CCH) ¶ 9678, 6 A.F.T.R.2d (P-H) ¶ 5469 (6th Cir. 1960).

47. Transfer to pension trust

An individual taxpayer realized gain on a contribution of appreciated securities to a pension plan established for the benefit of his employees to the extent that the fair market value of the securities exceeded his adjusted basis therefor, as having received in exchange for the contribution the intangible value of the employees past, present, and expect-

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