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## Current Tax Problems

Albert J. Gould

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# **Current Tax Problems**

Discussed by ALBERT J. GOULD

## **The Maass Decision**

The Supreme Court, in the above case, decided in the first week of March, 1941, held that income during the year of administration is not to be included in the gross estate for the purpose of Federal estate tax when the executor or administrator elects to base the valuation of the estate upon the actual market value thereof one year from the date of death.

This decision constitutes one of the few Supreme Court decisions in favor of the taxpayer in the last fifteen months, and, no doubt, will be followed by the Colorado Income Tax Department.

Refund claims will be in order for most estates heretofore subject to Federal taxation.

## **Gift of Life Insurance Policy**

The decisions which have held that the cash surrender value is the basis for gift tax purposes where a life insurance policy is donated apparently will be overruled eventually, in view of later decisions to the effect that the cost basis of the policy is the cost basis for gift tax purposes.

The latest decision is Phipps, 43 B. T. A. No. 112, which held that the premium cost to date of gift and not the cash surrender value is the cost basis for the purpose of determining gift taxes.

## **Trust Income**

The Butterworth, 290 U. S. 365, Pardee, 290 U. S. 365, and Whitehouse, 283 U. S. 148, leading decisions present varying phases of the problems involved as to taxation of income of a trust to the trustee or to the beneficiary, depending upon the terms of the trust and the vested or other right of the beneficiary to income.

In Mallory, 44 B. T. A. No. 45, recently decided, the Board held that the income should be taxed to the trust as to the amount thereof retained by the trust and to the widow as to the amount thereof distributed to her. The trust agreement provided that the income should be distributed to the widow in the discretion of the trustees when they thought it "wise and provident" and principal also could be distributed to the beneficiaries.

Persons interested in the above problem as to taxation of income to the trust or the beneficiary should read the above cases and the Gavit

case, 268 U. S. 161, and particularly the Freuler case, 291 U. S. 35, and the Dean case, 102 Fed. 699 (10th Circ.).

Great caution must be exercised in relying upon the above decisions and all cases citing the above decisions must be studied carefully to ascertain their correct application to the factual situation at hand.

In the writer's opinion, the Mallory decision probably will be reversed.

### **Attorney's Fees**

The Supreme Court of the United States, on April 28, 1941, in *Pyne v. Commissioner*, disallowed a deduction of attorney's fees from income of a very large estate and in *Duke Trust v. Commissioner*, disallowed trustee's commissions from income of a trust, holding that the estate and the trust were not engaged in business, and, therefore, that said attorney's fees and trustee's commissions were not "business expenses."

These cases radically affect prior rules and decisions and should be studied. See IT 2751, IT 2579, and OD 877.

### **Loss Deductions**

In *Robert S. Fairall*, 44 B. T. A. No. 43, a director was permitted to take the full loss involved in payment by him of a large sum to obtain a release of his personal liability resulting from a breach of his duty as a director, in approving the declaration and payment of a dividend in violation of state law.

### **Fire Insurance Proceeds**

In *Helvering v. William Flaccus Oak Leather Co.*, decided April 28, 1941, the Supreme Court decided that gain or loss resulting from fire insurance proceeds is accountable in full, upon the theory that the receipt of such proceeds is not "a sale or exchange," and, therefore, that said gain or loss is not subject to capital asset percentages.

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### **Local Bar Association Elects Officers**

The newly created Continental Divide Bar Association selected William J. Meehan of Eagle for president, Carl Kaiser of Breckenridge for vice-president, and J. Corder Smith of Leadville for secretary-treasurer.

At the annual meeting of the San Luis Valley Bar Association held on May 12th, Charles R. Corlett of Monte Vista was elected president, Raphael J. Moses of Alamosa, vice-president, and Ralph C. Ellithorpe of Del Norte secretary-treasurer of the San Luis Valley Bar Association for the ensuing year.