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GROSS INCOME—THE STARTING POINT IN THE PREPARATION OF ANY RETURN

BY ROBERT I. LIPTON*

The Federal Income Tax is imposed upon the taxable income of United States citizens and resident aliens¹ as well as that of every corporation.² The amount of the tax is determined by the application of the appropriate rate schedule to the taxable income of the individual and the appropriate rates for normal tax and surtax to the taxable income of the corporation. "Gross income" is the starting point in determining "taxable income" and is the total of all those items which must be reported as income. To arrive at taxable income, allowable deductions are taken from gross income. This Article concerns what constitutes "gross income."

The statutory definition of gross income in the Internal Revenue Code (IRC) is as follows:

Sec. 61: (a) General Definition.—Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

- (1) Compensation for services, including fees, commissions, and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Alimony and separate maintenance payments;
- (9) Annuities;
- (10) Income from life insurance and endowment contracts;
- (11) Pensions;
- (12) Income from discharge of indebtedness;
- (13) Distributive share of partnership gross income;
- (14) Income in respect of a decedent; and
- (15) Income from an interest in an estate or trust.

(b) Cross References

For items specifically included in gross income, see part II (sec. 71 and following).

The Treasury Department Regulations define gross income as "all income from whatever source derived, unless excluded by law. Gross income includes

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1. INT. REV. CODE OF 1954, § 1; Treas. Reg. § 1.1-1 (1956).

2. INT. REV. CODE OF 1954, § 11; Treas. Reg. § 1.11-1 (1956), as amended, T.D. 6610, 1962-2 INT. REV. BULL. 154.

income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, meals, accommodations, stock, or other property, as well as in cash."³

The Supreme Court first defined the term "income" in *Eisner v. Macomber*⁴ as "the gain derived from capital, from labor, or from both combined," including profit from sale or conversion of capital assets. It has been repeatedly held that Congress intended to tax all gains except those specifically exempted.⁵ Income in a broad sense means all wealth which comes to a taxpayer other than as a mere return of capital or as unrealized appreciation in value. The basic definition of gross income as contained in the IRC is a broad one. It includes every item which is an increment in wealth. The term may include a number of items which ordinarily might not be regarded as such to a layman, for example, cancellation of debt, bargain purchase by a stockholder,⁶ damages, reacquisition of bonds at less than issue price, or lease-purchase receipts.

COMPENSATION FOR SERVICES

All compensation for personal services regardless of the form of payment (cash, notes, stock, or other property) is included in gross income.⁷ Maintenance, food, and lodgings are included where they are compensatory in nature.⁸ The rental value of property such as a residence or an automobile furnished to an employee,⁹ marriage fees, baptismal offerings, tips,¹⁰ executors' commissions,¹¹ or assigned income¹² are usually included in gross income.

3. Treas. Reg. § 1.61-1(a) (1957).

4. 252 U.S. 189 (1920).

5. *E.g.*, Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955).

6. George S. Carter, 36 T.C. 128 (1961).

7. INT. REV. CODE OF 1954, § 61(a)(1).

8. INT. REV. CODE OF 1954, § 119 excludes the value of meals or lodging furnished to an employee for the convenience of the employer. The test for "convenience of the employer" is satisfied if quarters or meals are furnished to an employee who is required to accept such quarters and meals in order to perform properly his or her duties. 3 CCH 1944 STAND. FED. TAX REP. ¶ 6129.

9. Reynard Corp., 30 B.T.A. 451 (1934).

10. IRS News Release, No. IR-284, April 9, 1959.

11. Ream v. Bowers, 22 F.2d 465 (2d Cir. 1927) (will provided fixed amount "for acting as executors"). *But see* United States v. Merriam, 263 U.S. 69 (1923) ("ordinary bequest" to legatees afterwards named as executors, and bequests made "in lieu of commissions or compensation").

12. Amounts paid for services rendered are taxable to the individual performing the services, even though paid to a charitable organization either by agreement between the individual and the payor or by an anticipatory agreement in which the individual agrees with the organization to render services to it and the organization in turn makes his services available to a third party. If, however, an individual is under a contract of employment entered into in good faith for purposes other than avoiding the percentage limitation on contribution deductions and his employer makes his services available to a third party merely as an incident of his normal duties and if the individual does not participate directly or indirectly in the contract with the third party and has no right to

As a general rule, the basic pay for members of the armed forces must be included in gross income.¹³ Commissions are taxable in the same manner as other compensation.¹⁴

The Supreme Court has failed to prescribe any specific tests for determining for tax purposes the true character of payments or property claimed to have been received as gifts.¹⁵ Normally any Christmas bonus,¹⁶ termination payment, or other amount paid to an employee by his employer is taxable income unless the employee can prove that it was actually a gift without any consideration moving from him in the form of services or otherwise.¹⁷ An employee's income taxes,¹⁸ Social Security taxes,¹⁹ or property taxes²⁰ paid

receive or direct the use or disposition of any amounts paid, such amounts are not includible in the income of the individual. Rev. Rul. 71, 1953-1 CUM. BULL. 18.

13. The basic allowance for quarters paid by the Government is not taxable to the dependents or to the serviceman. The balance of the monthly payments received by the dependents which is charged against the serviceman's pay is taxable to the serviceman and not to the dependents. I.T. 4092, 2 CUM. BULL. 115 (1952). Amounts paid by employers during the military service of the employee are usually taxable income to the recipients. Charles E. Rieben, Jr., 8 T.C. 359 (1947); IRS Press Release No. 140, 3 CCH 1940 STAND. FED. TAX REP. ¶ 6581. Cf. Silvio Amoroso, 20 P-H Tax Ct. Mem. 176 (1951).

14. Commissions on insurance written by a broker on his own life represent taxable income rather than a reduction in the cost of the insurance. *E.g.*, Commissioner v. Minzer, 279 F.2d 338 (5th Cir. 1960); *accord*, Ostheimer v. United States, 264 F.2d 789 (3d Cir. 1959) (commissions from policies on others' lives in which agent had interest); Commissioner v. Daehler, CCH 1960 STAND. FED. TAX REP. (60-2 U.S. Tax Cas.) ¶ 9565 (5th Cir. June 30, 1960) (real estate salesman bought property from his employer at reduced price in lieu of usual commission).

The amounts of checks received by a physician from patients he has treated in the hospital where he is employed full time are not included in his gross income if he is required to endorse the checks over to the hospital. Rev. Rul. 58-220, 1958-1 CUM. BULL. 26.

Advances to salesmen on a commission basis to defray personal and traveling expenses are income to the employees in the year forgiven or charged off by the employer. I.T. 2043, III-2 CUM. BULL. 94 (1924). The full amount of commissions received by a cash-basis salesman are includible in gross income even though some portion of the amount received represents reimbursements for expenses. L. L. Moorman, 26 T.C. 666 (1956). Also, where minimum payments are made to be retained in any event and to be recovered by the employer from later commissions earned in excess of the minimum amounts, the minimum payments are income in the years paid. Kenneth Drummond, 43 B.T.A. 529 (1941).

15. See Commissioner v. Duberstein, 363 U.S. 278 (1960) (car transferred to taxpayer from business friend in exchange for names of potential customers); Mervin G. Pierpont, 35 T.C. 65, 69 (1960) ("continuation of salary" payments).

16. Christmas contributions based upon service, salary, and length of service constitute taxable income. Painter v. Campbell, 110 F. Supp. 503 (N.D. Tex. 1953). But the value of turkeys and other items of nominal value distributed to employees at Christmas or on other holidays to promote good will is not income to the employee. Rev. Rul. 59-58, 1959-1 CUM. BULL. 17.

17. See Stanton v. United States, 186 F. Supp. 393 (E.D.N.Y. 1960), *aff'd*, 287 F.2d 876 (2d Cir. 1961) (dominant reason that explains giver's action controls).

18. Old Colony Trust Co. v. Commissioner, 279 U.S. 716 (1929); John J. Bradley, 23 P-H Tax Ct. Mem. 255 (1954).

19. I.T. 3154, 1 CUM. BULL. 113 (1938).

20. Rea M. Gano, 19 B.T.A. 518 (1930).

by the employer are additional income to the employee. The salaries of officers or employees of the national or state governments or their instrumentalities are not immune from income taxation.²¹ Although premiums on group term life insurance policies paid for an employee by an employer are not income to the employee, premiums paid by an employer on regular insurance policies are income to the employee where the latter may designate the beneficiary or where the employee is not given the privilege of designating the beneficiary but the employer designates the insured's wife, his dependents, or his estate as the beneficiary.²²

GROSS INCOME DERIVED FROM BUSINESS

In a manufacturing, merchandising, or mining business, "gross income" (not "gross sales") means the total sales less the cost of goods sold plus any income from investments, from incidental or outside operations, or from other sources.²³ Cost of goods sold includes the purchase price of the article sold plus, for example, delivery costs, warehousing, direct labor, and freight in; however, selling costs, such as salesmen's salaries and expenses, rent of store, store expenses, or managerial costs are not elements in determining cost of goods sold.²⁴

The income from farming is ascertained and computed for income tax purposes in essentially the same manner as in any other business. All farm income from whatever source must be reported. This income includes receipts from the sale of any product or natural deposits, proceeds of insurance, breeding fees, rentals for hire of machines or animals, payments for products received under the Soil Bank Act, and receipts from sale of livestock.²⁵ There should also be included the value of any articles received in exchange for farm produce or animals. The Revenue Act of 1962, effective with respect to taxable years beginning after 1962, requires a co-operative patron to take into his income patronage dividends paid in money, qualified allocations, or other property, as well as nonqualified allocations which are redeemed.²⁶

INTEREST

Gross income includes interest received by or credited to a taxpayer.²⁷ Generally, the matter of applying payments received on a loan toward reduc-

21. *State Tax Comm'n v. Van Cott*, 306 U.S. 511 (1939); *Graves v. O'Keefe*, 306 U.S. 466 (1939); *Helvering v. Gerhardt*, 304 U.S. 405 (1938); *Helvering v. Therrell*, 303 U.S. 218 (1936).

22. *Commissioner v. Bonwit*, 87 F.2d 764 (2d Cir. 1937); *Canaday v. Guitteau*, 86 F.2d 303 (6th Cir. 1936); *Yuengling v. Commissioner*, 69 F.2d 971 (3d Cir. 1934).

23. *Treas. Reg. § 1.61-3* (1957).

24. *Hahn v. Commissioner*, 271 F.2d 739 (5th Cir. 1959); *Rev. Rul. 55-138*, 1955-1 CUM. BULL. 223; *Rev. Rul. 141*, 1953-2 CUM. BULL. 101.

25. *Treas. Reg. § 1.61-4* (1957).

26. *INT. REV. CODE OF 1954, §§ 1385, 1388*; *Treas. Reg. §§ 1.1385-1, 1.1388-1* (1963).

27. *Accrued interest not received is not income to a taxpayer on the cash basis.*

tion of the principal or toward interest concerns only the parties involved. Regardless of how payment is made, interest accrues ratably on the accrual basis; however, on the cash basis the parties may agree how payments are to be applied.²⁸

As a general rule, bond interest is to be reported as income when it is received or as it is accrued. An exception has been made for a taxpayer on the accrual basis when it is discovered before the close of the taxable year that the interest will not be collected;²⁹ however, where the facts disclose a reasonable expectancy that such interest will be received or could be collected, an accrual basis taxpayer is required to report the interest.³⁰ If an interest-bearing bond is purchased at less than its face value, the discount does not constitute interest income; however, upon sale, exchange, or redemption, a part of the amount received may be treated as ordinary income.³¹ When a bond is sold between interest dates and an amount for interest is added to the selling price of the bond, the seller must include in his interest income the portion of the selling price representing interest accrued to the

Maude Enella Brickell, 17 B.T.A. 711 (1929), *acq.*, 1931 CUM. BULL. 8. In such a case it makes no difference whether or not the interest is deducted by a debtor who is on the accrual basis. Daniel Shay, 9 P-H B.T.A. Mem. 338 (1940).

A note given to consolidate all the maker's obligations, including accrued interest, is not income in the year of receipt in the absence of a determination that the note is the equivalent of cash and is given or accepted as payment. Joe W. Scales, 18 T.C. 1263 (1952).

Where notes are executed under a mutual understanding that no interest will be charged or paid, it is error to accrue interest to a corporation's income on demand notes given by stockholders in payment of their withdrawals. Brandtjen & Klung, Inc., 34 T.C. 416 (1960), *acq.*, 1960-2 CUM. BULL. 4; Combs Lumber Co., 41 B.T.A. 339 (1940), *acq.*, 1940 CUM. BULL. 2. This proposition is true also where no note is given and there is no agreement as to interest or where the note provides for interest, but there is a mutual understanding that no interest shall be charged. Wilbur Security Co., 31 T.C. 938 (1959) (no note and no agreement), *acq.*, 1959-2 CUM. BULL. 7; Society Brand Clothes, Inc., 18 T.C. 304 (1952) (note provided for interest but was understood no interest to be paid).

28. Amounts received by a taxpayer specifically designated as interest under an agreement compromising a debt constitutes taxable income. Herbert S. Payson, 18 CCH Tax Ct. Mem. 686 (1959); Annie B. Smith, 22 P-H Tax Ct. Mem. 134 (1953). The taxpayer can, however, treat the payments as applying to principal rather than to interest in the absence of any directions by the payor as to the application of the payments. Clay B. Brown, 37 T.C. 461 (1961); Marvin T. Blackwell, 25 P-H Tax Ct. Mem. 770 (1956).

A payment made on indebtedness consisting of principal and interest, not applied by either party, will be applied first to interest due and then to principal. D. Buckley Estate, 37 T.C. 664 (1962); W. H. Hughes, 21 P-H Tax Ct. Mem. 704 (1952).

29. Clifton Mfg. Co. v. Commissioner, 137 F.2d 290 (4th Cir. 1943); Corn Exch. Bank v. United States, 37 F.2d 34 (2d Cir. 1930).

30. Greer-Robbins v. Commissioner, 119 F.2d 92 (9th Cir. 1941); Ford Land Co. v. Commissioner, 116 F.2d 280 (6th Cir. 1940); Union Pac. R.R., 14 T.C. 401 (1950), *rev'd on other grounds*, 188 F.2d 950 (2d Cir. 1951); New York Water Serv. Corp., 12 T.C. 780 (1949).

31. Warner A. Shattuck, 25 T.C. 416 (1955). It should be noted that there is special treatment of governmental obligations issued at a discount and having a fixed maturity date of not more than one year from date of issue.

date of the sale.³² Bonds which are in default as to principal and interest or as to which the payment of interest is contingent on earnings or other future conditions are ordinarily quoted "flat," that is, the price of the bond covers not only the principal but the right to receive interest which has accrued but which is unpaid. The general rule is that when the purchaser subsequently collects the interest which accrued *before* the purchase, he realizes no income, and an amount equal to the pre-purchase interest is treated as a return of capital, reducing the basis of the bond.³³ Amounts received for pre-purchase defaulted interest in excess of cost or basis, but less than the face of the bonds, are treated as capital gains.³⁴ Interest which accrues after bonds are purchased flat is taxable as interest income,³⁵ even though the interest factor is realized by sale to a third party.³⁶

Where a mortgagee forecloses and acquires property by bidding in the value of the mortgage and unpaid accrued interest, the interest is income to the mortgagee even though the market price of the property was less than the bid price.³⁷ Where a mortgagee, however, in lieu of foreclosure accepts from the mortgagor a conveyance of the property and releases him from liability, accrued interest income is realized only to the extent that the value of the property exceeds the principal of the loan.³⁸ If only the principal amount of the mortgage is bid in upon foreclosure, no income is received.³⁹

RENTS AND ROYALTIES

All amounts received or accrued as rents or royalties in payment for the use of property are income. Payments made by a lessee in discharge of the lessor's obligations are rental income to the lessor. Taxes paid by a tenant on behalf of his landlord are additional rent. The value of improvements made by a lessee, where the parties intend the improvements to be in lieu of rent, are also rental income; but the lessor does not realize income upon termination of a lease by reason of acquiring improvements made by the

32. Treas. Reg. § 1.61-7(d) (1957).

33. *E.g.*, National City Lines, Inc. v. United States, 197 F.2d 754 (3d Cir. 1952); Erskin Hewitt, 30 B.T.A. 962 (1934), *acq.*, 1934 CUM. BULL. 9.

34. First Kentucky Co. v. Gray, 190 F. Supp. 824 (W.D. Ky. 1960); Hamilton C. Rickaby, 27 T.C. 886 (1957), *acq.*, 1960-2 CUM. BULL. 6.

35. Allen Tobey, 26 T.C. 610 (1956).

36. Jaglom v. Commissioner, 303 F.2d 847 (2d Cir. 1962); Fisher v. Commissioner, 209 F.2d 513 (6th Cir. 1952), *cert. denied*, 347 U.S. 1014 (1954); First Kentucky Co. v. Gray, 190 F. Supp. 824 (W.D. Ky. 1960).

37. Helvering v. Midland Mut. Life Ins. Co., 300 U.S. 216 (1937); Helvering v. Missouri State Life Ins. Co., 78 F.2d 778 (8th Cir. 1934).

38. *Ibid.*; Manufacturers Life Ins. Co., 43 B.T.A. 867 (1941), *acq.*, 1941-1 CUM. BULL. 7; Manhattan Mut. Life Ins. Co., 37 B.T.A. 1041 (1938), *acq.*, 1938-1 CUM. BULL. 19.

39. John Hancock Mut. Life Ins. Co., 10 B.T.A. 736 (1928), *acq.*, 1928-2 CUM. BULL. 20.

tenant. Advance rentals, bonuses, or royalties received by a landlord upon execution of a lease are gross income to the lessor in the year received.⁴⁰ Consideration received by a lessor for cancellation of a lease is a substitute for rental payments and not a return of capital.⁴¹ Amounts received by a lessee for cancellation of a lease are considered to have been received in exchange for the lease and may be either a capital gain or ordinary income depending upon whether the lease is a capital asset or held for disposition in the ordinary course of business.⁴²

The question of whether a transaction is a lease or a sale creates a problem, insofar as the recipient of the payments is concerned, as to whether such payments are in fact rental income or sales proceeds, which may be ordinary income, capital gain, or a nontaxable return of capital. If periodic payments received by a seller are part of the purchase price, the seller will be taxed only on that portion which exceeds his basis, and he may be able to apply capital gains rates.⁴³ If the payments are rent, they will be taxed in their entirety as ordinary income.⁴⁴

DIVIDENDS

A dividend may be defined generally as a distribution by a corporation of its earnings and profits.⁴⁵ The law divides the earnings and profits into two

40. Treas. Reg. § 1.61-8 (1957). Lump sum payments are income to the lessor in the year of receipt even though no part may have been earned in the taxable year. *Kohler-Campbell Corp. v. United States*, 298 F.2d 911 (4th Cir. 1962); *Hyde Park Realty, Inc. v. Commissioner*, 211 F.2d 462 (2d Cir. 1954); *Chateau Frontenac v. Commissioner*, 147 F.2d 856 (6th Cir. 1945); *Renwick v. United States*, 87 F.2d 123 (7th Cir. 1936).

Where it is the intention of the parties that the amount paid is to stand as security for the lessee's performance, that the lessor is to account for the principal amount and interest thereon, and that whatever remains is to be applied on the last year's rent, there is no accrual in the year of receipt. *Clinton Hotel Realty Corp. v. Commissioner*, 128 F.2d 968 (5th Cir. 1941); *John Mantel*, 17 T.C. 1143 (1952), *acq.*, 1952 CUM. BULL. 3.

41. *Hort v. Commissioner*, 313 U.S. 28 (1941).

42. INT. REV. CODE OF 1954, § 1241.

43. *E.g.*, *Lemon v. United States*, 115 F. Supp. 573 (W.D. Va. 1953) (airplane "lease and option"); *George S. Lensing*, 20 CCH Tax Ct. Mem. 1399 (1961) ("lease agreement and option to purchase" plantation). A contract for leasing of equipment providing for passage of title upon the total monthly rental payments reaching a stated amount is a conditional sales contract. *Meiselman v. Commissioner*, 300 F.2d 666 (4th Cir. 1962) (theater equipment); *W. H. Hughes*, 21 P-H Tax Ct. Mem. 704 (1952) (mining equipment); *Truman Bowen*, 12 T.C. 446 (1949) (construction equipment).

For the tax problems involved in transfers of oil and gas leases, see *Fiske*, *Federal Taxation of Oil and Gas Leases*, 68 DICK. L. REV. 47 (1963).

44. *E.g.*, *Perssion v. Commissioner*, 296 F.2d 915 (7th Cir. 1961) ("sale" of business, furniture, and fixtures in connection with lease of boarding house); *Lester William Roth*, 38 T.C. 171 (1962) ("sale" of interest in partnership).

45. Personal expenses paid for a stockholder are dividends. *W. D. Gale, Inc. v. Commissioner*, 297 F.2d 270 (6th Cir. 1961); *Clarke Fashions, Inc.*, 20 CCH Tax Ct. Mem. 589 (1961); *American Properties, Inc.*, 28 T.C. 1100 (1957). In *Sam E. Wilson, Jr.*, 27 T.C. 976 (1957), cancellation of a stockholder's debt to a corporation was treated as dividend income to him.

classes: (1) those accumulated after February 28, 1913, and before the beginning of the taxable year, and (2) the earnings and profits of the taxable year. A deficit for prior years does not reduce the earnings and profits for the taxable year; likewise, earnings and profits are not reduced by reason of any distributions made during the taxable year. Every corporate distribution is deemed to be made out of earnings and profits to the extent thereof and from the most recently accumulated earnings and profits.⁴⁶

The general rule as to taxability of corporate distributions is that if the distribution is a dividend, it is taxable; the portion that is not a dividend reduces the basis of the stock; and after the basis of the stock is eliminated, the excess is gain from the sale or exchange of property except to the extent that it is out of increase in value accrued before March 1, 1913, in which case it is exempt from tax.⁴⁷ Of course, this rule applies only to corporate distributions made to a shareholder in his capacity as shareholder. If a distribution is in cash, the amount distributed is the amount of the cash. If it is in cash and in property other than cash, the amount distributed is the cash plus the fair market value of the property on the date of distribution.⁴⁸ The amount distributed is to be reduced by the amount of any liabilities assumed by the shareholder and the amount of any liabilities to which the distributed property is subject. Also, the amount of the distribution of property which exceeds the earnings and profits of the distributing corporation is not a dividend.

A redemption of stock is treated as an exchange, the gain thereon being subject to the capital gain provisions even though all or a part of it may represent accumulated earnings of the corporation;⁴⁹ however, not every cancellation or redemption of stock in a corporation is a liquidation to which capital gain treatment may be applied. If the distribution is essentially equivalent to a taxable dividend, it will be treated as such to the extent that it represents a distribution of earnings or profits. A cancellation or redemption by a corporation of a prorata portion of its stock among all shareholders will usually be considered as effecting a taxable dividend.⁵⁰ If the distribution

46. INT. REV. CODE OF 1954, § 316(a); Treas. Reg. § 1.61-9 (1957), as amended, T.D. 6598, 1962-1 INT. REV. BULL. 92; Treas. Reg. § 1.316-1 (1955), as amended, T.D. 6625, 1963-1 INT. REV. BULL. 11.

Capital gain was realized on corporate payments received under a patent assignment to a controlled corporation in *Best Lock Corp.*, 31 T.C. 1217 (1959) and in *Leonard Coplan*, 28 T.C. 1189 (1957), *acq.*, 1958-2 CUM. BULL. 4 and on the excess of royalty payments over royalties paid under a lease held by partners in *Keller Mines Inc.*, 21 CCH Tax Ct. Mem. 142 (1962).

47. *B. F. Crabbe*, 25 P-H Tax Ct. Mem. 189 (1956); T.I.R. 345, 1961-2 INT. REV. BULL. 15.

48. INT. REV. CODE OF 1954, § 301.

49. INT. REV. CODE OF 1954, § 302.

50. The general rule is that if the redemption of stock is dictated by legitimate reasons connected with the business of the corporation, the redemption is not essentially

is substantially disproportionate⁵¹ or if the shareholder's interest in the corporation is completely terminated,⁵² the distribution is an exchange for the stock and is not the equivalent of a dividend; but the redemption may result in dividend income to the remaining shareholders if the purchase by the corporation was in reality a purchase by the remaining shareholders and paid for by the corporation.⁵³ A distribution may be afforded capital gain treatment if the stock which is redeemed is included in determining the gross estate of a decedent to the extent that it does not exceed the sum of estate and succession taxes and funeral and administrative expenses.⁵⁴

A taxpayer-shareholder need not include in gross income receipt from a corporation of *its* stock or rights to acquire *its* stock which is issued with respect to stock in *that* corporation unless the distribution is made in discharge of certain preference dividends or unless the stockholder has an election to receive the distribution in "property."⁵⁵ Exchanges of stock in reorganizations or distributions in corporate split-ups are not so exempted.⁵⁶

ALIMONY AND SEPARATE MAINTENANCE PAYMENTS

Payments made by one spouse to another under a divorce decree or separation agreement which qualify as alimony or separate maintenance are taxable income to the recipient⁵⁷ and deductible by the payor.⁵⁸ Alimony and separate

equivalent to a taxable dividend. *Favrot v. Scofield*, CCH 1953 STAND. FED. TAX REP. (53-1 U.S. Tax Cas.) ¶ 9427 (2d Cir. June 4, 1953); *Commissioner v. Straub*, 76 F.2d 388 (3d Cir. 1935); *Standard Linen Serv., Inc.*, 33 T.C. 1 (1959), *acq.*, 1960-2 CUM. BULL. 7; *Sam Rosania, Sr.*, 25 P-H Tax Ct. Mem. 464 (1956); *L. M. Lockhart*, 8 T.C. 436 (1947); *Heber Scowcroft Inv. Co.*, 14 P-H Tax Ct. Mem. 774 (1945). Where there is no legitimate business purpose connected with the redemption, there is a taxable dividend. *Flanagan v. Helvering*, 116 F.2d 937 (D.C. Cir. 1940); *Stein v. United States*, 62 F. Supp. 568 (Ct. Cl. 1945); *Thomas Kerr*, 38 T.C. 723 (1962). Redemption out of excess assets not needed in business results in a taxable dividend. *Hyman v. Helvering*, 71 F.2d 342 (D.C. Cir. 1934); *Dunton v. Clauson*, 67 F. Supp. 839 (S.D. Me. 1946) (distribution was for sound business purpose). Also, the cancellation of a shareholder's indebtedness to a corporation by a transfer of stock, even for a business purpose, results in a taxable dividend. *Bradbury v. Commissioner*, 298 F.2d 111 (1st Cir. 1962); *Heman v. Commissioner*, 283 F.2d 227 (8th Cir. 1960); *Aloysius J. McGinty*, 38 T.C. 882 (1962).

51. *Estate of Arthur H. Squier*, 35 T.C. 950 (1961).

52. *Zenz v. Quinlivan*, 213 F.2d 914 (6th Cir. 1954); *Giles E. Bullock*, 26 T.C. 276 (1951).

53. *Zipp v. Commissioner*, 259 F.2d 119 (6th Cir. 1958).

54. INT. REV. CODE OF 1954, § 303.

55. INT. REV. CODE OF 1954, § 305. The term "property" as defined in the Code does not include stock or stock rights in the distributing corporation. INT. REV. CODE OF 1954, § 317.

56. It should be noted that "Sec. 306 stock" is treated differently. INT. REV. CODE OF 1954, § 306.

57. INT. REV. CODE OF 1954, § 71. A lump sum payment of alimony arrearages is includible in the taxpayer's income in the year of receipt. *Elinda W. Parker*, 20 CCH Tax Ct. Mem. 597 (1961); *Sarah Dalton*, 34 T.C. 879 (1960); *Lily R. Reighley*, 17 T.C. 344 (1951). Payment received as consideration for release of future alimony payments is not taxable. *Elinda W. Parker*, *supra*.

58. INT. REV. CODE OF 1954, § 215.

maintenance payments fall into three categories: (1) payments made under a decree of divorce or of separate maintenance or under a written agreement incident to divorce or separation;⁵⁹ (2) payments made under a written separation agreement;⁶⁰ or (3) payments made under a decree of support.⁶¹ Alimony and separate maintenance payments in order to be gross income must qualify as periodic payments as distinguished from installment payments of a principal sum.⁶² Installment payments of a principal sum will not qualify as periodic payments unless they may be made over a period ending more than ten years after the date of the decree, agreement, or instrument.⁶³ Prepayment of alimony, or payment of arrearages on alimony, are gross income in the year paid, if the original obligations were periodic payments.⁶⁴

Payments for child support are not gross income to the recipient. Where an agreement pursuant to a divorce decree does not state that a specific amount is payable only for child support, no portion of the payments made under the agreement are for child support.⁶⁵ Provision in the agreement for reduction of the payments to the wife upon the death, marriage, or majority of any child do not fix any part of the payments as being for child support. Such payments are gross income to the wife.⁶⁶

Premiums paid by a husband on a life insurance policy absolutely assigned to a former wife and in which she is the irrevocable beneficiary are

59. INT. REV. CODE OF 1954, § 71(a)(1). In order to be "incident to" a divorce, the agreement need not be mentioned in the divorce decree and the divorce need not be contemplated by the parties at the time the agreement is entered into. *Holt v. Commissioner*, 226 F.2d 757 (2d Cir. 1955), *cert. denied*, 350 U.S. 982 (1956); *Commissioner v. Miller*, 199 F.2d 597 (9th Cir. 1952); *Feinberg v. Commissioner*, 198 F.2d 260 (3d Cir. 1952); *Lerner v. Commissioner*, 195 F.2d 296 (2d Cir. 1952); *Helen Stewart Cramer*, 36 T.C. 1136 (1961).

60. INT. REV. CODE OF 1954, § 71(a)(2). Prior to the 1954 Code separation agreements were required to be "incident to" a decree of divorce or separate maintenance; however, this requirement is no longer necessary.

61. INT. REV. CODE OF 1954, § 71(a)(3).

62. In order for payments to be periodic, they do not have to be equal in amount or paid at regular intervals. Payments scheduled at a decreasing rate are not short-term installment payments. *Frederick S. Dauwalter*, 9 T.C. 580 (1947). Monthly payments for a specified period or until the spouse dies or remarries are periodic payments. *Birdwell v. Commissioner*, 235 F.2d 112 (5th Cir. 1956); *Baker v. Commissioner*, 205 F.2d 369 (2d Cir. 1953). But annual installments paying a total specified amount are not periodic payments. *Bartsch v. Commissioner*, 203 F.2d 715 (2d Cir. 1953) (four annual installments).

63. For cases involving alimony payments over a period of more than ten years, see, *e.g.*, *Blum v. Commissioner*, 187 F.2d 177 (7th Cir. 1951); *Blum v. Commissioner*, 177 F.2d 670 (7th Cir. 1949). For cases involving payments over less than a ten-year period, see, *e.g.*, *Furrow v. Commissioner*, 292 F.2d 604 (10th Cir. 1961); *Lehman v. United States*, 239 F.2d 139 (7th Cir. 1956); *Robert D. Stecker*, 31 T.C. 749 (1959); *Louis Reinheimer*, 26 P-H Tax Ct. Mem. 47 (1957).

64. *Holahan v. Commissioner*, 222 F.2d 82 (2d Cir. 1955); *Grant v. Commissioner*, 209 F.2d 430 (2d Cir. 1953); *Treas. Reg. § 171-1(a)(2)* (1957).

65. See INT. REV. CODE OF 1954, § 71(b).

66. *Commissioner v. Lester*, 366 U.S. 299 (1961).

gross income to the wife when connected with alimony payments.⁶⁷ Premiums paid by the husband on a policy which is not assigned to the wife, however, and with respect to which she is only the contingent beneficiary are not gross income to the wife.⁶⁸

ANNUITIES

Gross income includes any amount received as an annuity under an annuity, endowment, or life insurance contract excluding, however, that part of any payment received as an annuity which bears the same ratio to that payment as the investment in the contract bears to the expected return under the contract.⁶⁹ The following are the most common types of annuities :

1. Single premium immediate life annuity. These annuities are purchased by the payment of a lump sum on a refund or nonrefund basis. If on a nonrefund basis, the contract provides that the capital not already returned to an annuitant upon death is forfeited to the insurance company, and a contract on a refund basis provides for the payment of such funds to some other person.

2. Single premium deferred life annuity. These contracts provide for income after a specified future date and can be purchased on a refund or nonrefund basis.

3. Annual premium deferred life annuity. This type of annuity is characterized by an annual premium which begins at once, but the annuity begins at a specified age. These contracts are also available on a refund or non-refund basis.

4. Joint and survivorship annuity of the nonrefund type. These contracts provide for a specified annuity to be paid an annuitant for life, then to a specified person for his life.

5. Joint and survivorship annuity with term certain. This type includes a guaranty of the return of all or part of the premiums to the annuitant with the balance being paid to a beneficiary in the event that not all of the premiums are returned during the annuitant's life. These policies are always of the refund type.

Three basic annuity rules are established under the 1954 Code: (1) In the "life expectancy rule," the ratio of investment to expected recovery over the life expectancy of the annuitant is determined, and the same percentage of each payment is excluded from income. (2) In the "installment payment annuity rule," the ratio of investment to expected recovery over the period for the payments is determined, and the same percentage of each payment is

67. *Hyde v. Commissioner*, 301 F.2d 279 (2d Cir. 1962).

68. *Weil v. Commissioner*, 240 F.2d 584 (2d Cir. 1957), *cert. denied*, 353 U.S. 958 (1957); *Carl G. Ortmyer*, 28 T.C. 64 (1933).

69. INT. REV. CODE OF 1954, § 72.

excluded from income. (3) In the "catch all-cost recovery rule," the taxpayer is taxed only on the excess realized over his investment on miscellaneous payments such as dividends and lump sum payments received by surrender, redemption, or maturity of the contract. It is necessary, therefore, to determine, first of all, the "annuity starting date" which is ordinarily the first day of the first period for which an amount is received as an annuity under the contract.⁷⁰ Secondly, the "investment in the contract" must be determined. This amount is generally the aggregate amount of premiums or other consideration paid for the contract less any amounts received prior to the annuity starting date and not included in gross income.⁷¹ The third calculation must be the "expected return" which is generally equal to amounts receivable as an annuity or annuities. On a fixed period contract, the number of installments times the amount of each installment would give the expected return. Where life expectancy is involved, actuarial tables prescribed by the Commissioner must be used.⁷² Fourthly, the "exclusion ratio" is determined. This figure generally equals the same proportionate part of the annuity payment which the investment in the contract bears to the expected return under the contract as of the annuity starting date. The exclusion ratio will ordinarily not change, and where the annuity is based upon life expectancy, the annuitant may recover tax-free more than the amount he paid for the annuity.⁷³

If a part of the contributions to an exempt employee's trust has been paid by the employee, the life expectancy annuity rule applies in the case of annuity distributions from the trust to the employee; and the employee is entitled to recover his cost over his life expectancy.⁷⁴ If the plan provides for contributions by the employer only, the full amount of the annuity distributions is taxed to the employee upon receipt. The amounts received are treated as ordinary income to the employee, except where the total distributions payable are paid within a taxable year by reason of death or other separation from service, where in such instances they are treated as long-term capital gain to the extent the distribution exceeds the employee's unrecovered contributions.⁷⁵

INCOME FROM LIFE INSURANCE AND ENDOWMENT CONTRACTS

Life insurance proceeds paid by reason of death of the insured are specifically excluded from gross income.⁷⁶ The exclusion does not apply, however, to interest paid to a beneficiary where the proceeds are left at

70. INT. REV. CODE OF 1954, § 72(c) (4).

71. INT. REV. CODE OF 1954, § 72(c) (1).

72. INT. REV. CODE OF 1954, § 72(c) (3).

73. INT. REV. CODE OF 1954, § 72(b).

74. If the employee will recover his cost within the first three years that payments are made, he is taxed under a special annuity rule. INT. REV. CODE OF 1954, § 72(d).

75. Treas. Reg. § 1.72 (1956).

76. INT. REV. CODE OF 1954, § 101(a).

interest with the insurer.⁷⁷ The surviving spouse of the insured decedent is entitled to an annual exclusion of one thousand dollars with respect to this interest element.⁷⁸ As to installment payments, an amount held by the insurer, whether as an option or otherwise, under an agreement provided for in the insurance contract to pay such amount on a date or dates subsequent to the death of the insured is to be prorated over the period with respect to which payments are to be made. The prorated amounts are excluded from income. The amounts in excess of the exclusion are taxable as interest except to the extent a surviving spouse is entitled to the annual exclusion.⁷⁹

Where an option in an insurance contract provides for the payment of a specified amount, this lump sum is the amount held by an insurer for the purpose of proration. Where the option does not have a specified amount, the value to each beneficiary is to be used in computing the beneficiary's annual exclusion. This value is determined as of the date of the insured's death on the basis of the interest rate and mortality tables used by the insurer in determining the payments.⁸⁰

PENSIONS

Old age pensions granted without consideration for other than past services are treated as compensation for past services, and the entire amount is included in gross income.⁸¹ Old age pensions received under the Social Security Act⁸² or under the Railroad Retirement Act⁸³ are entirely exempt from tax. Pensions or annuities received by a teacher for past services are taxable in the same manner as pensions received by any other employee.⁸⁴ Retirement annuities provided under various state and municipal retirement systems based on the contributions of the employee are subject to tax.⁸⁵

INCOME FROM DISCHARGE OF INDEBTEDNESS

Discharge of indebtedness may result in the realization of income.⁸⁶ This effect flows where the cancellation-of-debt transaction is like a sale where

77. Treas. Reg. § 1.101-3(a) (1957), as amended, T.D. 6577, 1961-1 INT. REV. BULL. 17.

78. Treas. Reg. § 1.101-4(a) (1) (1957), as amended, T.D. 6577, 1961-1 INT. REV. BULL. 17.

79. INT. REV. CODE OF 1954, § 101(d).

80. INT. REV. CODE OF 1954, § 101(d) (2).

81. G.C.M. 14593, XIV-1 CUM. BULL. 50 (1935); Treas. Reg. § 1.61-11 (1957).

82. I.T. 3194, 1938-1 CUM. BULL. 114; I.T. 3447, 1941-1 CUM. BULL. 191.

83. I.T. 3115, 1937-2 CUM. BULL. 62.

84. Fannie Britelle, 32 T.C. 1332 (1959).

85. INT. REV. CODE OF 1954, § 72; Rev. Rul. 56-539, 1956-2 CUM. BULL. 28; I.T. 3364, 1940-1 CUM. BULL. 19; I.T. 2984, XV-1 CUM. BULL. 87 (1936).

86. Treas. Reg. § 1.61-12 (1957), as amended, T.D. 6653, 1963-1 INT. REV. BULL. 9.

there is an actual bargaining by the creditor for the best price available.⁸⁷ Voluntariness or involuntariness of the cancellation of a debt is not the criterion. Donative intent is determinative of the issue.⁸⁸ Generally, taxable income is not realized if a shareholder of a corporation cancels without consideration a debt due him by the corporation. This effect is considered in the nature of a contribution to the capital of the corporation.⁸⁹ Gratuitous cancellation of interest or salaries is considered in the same category.⁹⁰

The tax consequence of the sale by a corporation of its own bonds issued at face value is that generally no gain or loss is realized by the corporation.⁹¹ If the bonds are issued at a premium, the premium is income to be amortized over the life of the bond; and for bonds issued at a discount, the discount is deductible and amortized over the life of the bonds.⁹² The tax effect of the purchase by a corporation of its own bonds is that there is taxable income if they are repurchased at less than issue price and there is a deductible expense if the bonds are repurchased at more than the issue price.⁹³ The difference between the face amount of the obligation, increased by any amount of premium not previously reported as income or decreased by any amount of discount not previously taken as a deduction, and the price for which the bonds or obligations are reacquired, is the amount of taxable income. If the bonds were issued at a premium prior to March 1, 1913, however, the face value is not adjusted upward to reflect the unreported premium. In a lump sum purchase of bonds, the purchase price allocable to interest does not constitute taxable income.⁹⁴

The cancellation of the indebtedness of an insolvent taxpayer does not result in the realization of income where the debtor remains insolvent or has no excess of assets over liabilities,⁹⁵ and no income is realized from the discharge of an indebtedness in a bankruptcy proceeding.⁹⁶ An adjustment of an obligation representing the purchase price of physical property may result in income being realized by the debtor. Taxable income is realized to the extent

87. *Commissioner v. Jacobson*, 336 U.S. 28 (1949); *Denman Tire & Rubber Co. v. Commissioner*, 192 F.2d 261 (6th Cir. 1951).

88. *American Dental Co. v. Commissioner*, 318 U.S. 322 (1943); *Reynolds v. Boos*, 188 F.2d 322 (8th Cir. 1951).

89. *United States v. Oregon-Washington R.R. & Nav. Co.*, 251 Fed. 211 (2d Cir. 1918); *J. A. Mauer, Inc.*, 30 T.C. 1273 (1958), *acq.*, 1959-1 CUM. BULL. 4.

90. *Pondfield Realty Co.*, 1 T.C. 217 (1942).

91. *Treas. Reg. § 1.61-12(c)(1)* (1957), as amended, T.D. 6653, 1963-1 INT. REV. BULL. 9.

92. *Treas. Reg. § 1.61-12(c)(2), (3) & (4)* (1957).

93. *Treas. Reg. § 1.61-12(c)* (1957).

94. *Warner Co.*, 11 T.C. 419 (1948), *aff'd per curiam*, 181 F.2d 599 (3d Cir. 1950).

95. *E.g.*, *Conestoga Transp. Co.*, 17 T.C. 506 (1951), *acq.*, 1952 CUM. BULL. 2; *Astoria Marine Constr. Co.*, 12 T.C. 798 (1949).

96. *Treas. Reg. § 1.61-12(b)* (1957), as amended, T.D. 6653, 1963-1 INT. REV. BULL. 9.

to which the value of the obligation exceeds the amount paid by the debtor for its satisfaction;⁹⁷ however, if the market value of the property is less than the amount paid by the debtor to discharge the unpaid balance of a purchase money obligation, the courts have held that no taxable income results.⁹⁸ A discount allowed for prompt payment is distinguishable from a gratuitous cancellation of a debt and is taxable income.⁹⁹

DISTRIBUTIVE SHARE OF PARTNERSHIP GROSS INCOME

A partner's distributive share of partnership gross income constitutes gross income to him.¹⁰⁰ Each partner must take into account his distributive share of a partnership's: (1) gains and losses from sales or exchange of capital assets or property used in a trade or business, (2) charitable contributions, (3) dividends, (4) taxes, (5) tax-exempt interest, and (6) other items of income, gain, loss deduction, or credit.¹⁰¹ The partnership is not the taxable entity; the partnership income is taxed to the partners.¹⁰² A partnership, however, may elect to be treated for tax purposes as if it were a corporation.¹⁰³ The partnership agreement usually determines the distributive share of the partners, and ordinarily the same ratio that determines a partner's share of profits or losses from ordinary business operations would be used in determining the partner's share of the special items.¹⁰⁴

INCOME IN RESPECT OF A DECEDENT

In general, the term "income in respect of a decedent" refers to those amounts to which a decedent was entitled as gross income but which were not properly includible in computing his taxable income for the taxable year ending with the date of his death.¹⁰⁵ Income in respect of a decedent constitutes gross income to the recipient,¹⁰⁶ and shall be included in the taxable year when received (1) of the estate if the right to receive the amount is acquired by the estate, (2) of the person who acquires the right to receive the amount if the right is not acquired by the estate, or (3) of the person who acquires the right to receive the amount if the amount is received after

97. *L. D. Coddon & Bros., Inc.*, 37 B.T.A. 393 (1938).

98. *Hirsh v. Commissioner*, 115 F.2d 656 (7th Cir. 1940) (replacement of note by one of lesser amount); *Ralph W. Gwinn*, 13 P-H Tax Ct. Mem. 669 (1944) (transfer of realty); *Gehring Publishing Co.*, 1 T.C. 345 (1942) (compromise by cash payment).

99. *Marshall Drug Co. v. United States*, 95 F. Supp. 820 (Ct. Cl.), *cert. denied*, 341 U.S. 948 (1951); *Reliable Incubator & Brooder Co.*, 6 T.C. 919 (1946).

100. *Treas. Reg.* § 1.61-13 (1957).

101. *INT. REV. CODE OF 1954*, § 702.

102. *Treas. Reg.* § 1.701-1 (1956).

103. *INT. REV. CODE OF 1954*, § 1361.

104. *INT. REV. CODE OF 1954*, § 704.

105. *Treas. Reg.* § 1.691(a)-1(b) (1957).

106. *Treas. Reg.* § 1.61-13 (1957).

the distribution by the estate of such right.¹⁰⁷ Ordinarily, the basis of property acquired from a decedent is the fair market value at the time of death;¹⁰⁸ therefore, if the property is sold soon after death, the sale proceeds will approximate such fair market value and there will be little gain or loss, if any. The value of a right to receive income does not alter the basis of such income, and the income may not be recovered free from income tax liability. The right to receive income in respect of a decedent is considered as retaining the same character as it had in the hands of the decedent¹⁰⁹ and is treated accordingly.

INCOME FROM AN INTEREST IN AN ESTATE OR TRUST

Income from an interest in an estate or trust constitutes gross income.¹¹⁰ The estates of deceased persons and trusts are regarded as distinct and separate taxable entities.¹¹¹ The gross income of an estate or trust is determined in the same manner as that of an individual.¹¹² The distributable net income of an estate or trust is taxable to the beneficiaries since the estate or trust is only a conduit through which the income flows to the beneficiaries except where it is accumulated for future distributions. Such income retains the same character in the hands of the beneficiaries as it had in the hands of the fiduciary.¹¹³ The term "distributable net income" is the taxable income of an estate or trust computed with certain modifications.¹¹⁴

OTHER ITEMS OF GROSS INCOME

There are many other kinds of gross income as indicated in the statutory definition of gross income.¹¹⁵ Income to be reported includes almost everything, except items which are specifically excluded by law. The recovery of damages may or may not be included in gross income depending upon its nature. Damages which represent compensation for loss of profits or income are taxable;¹¹⁶ compensatory damages for personal injury are not taxable;¹¹⁷ punitive or exemplary damages are taxable income.¹¹⁸ Gains from illegal transactions, such as bootlegging, gambling, extortion or fraud, are includible in gross income, as well as profits from ultra vires acts of corporations.¹¹⁹

107. Treas. Reg. § 1.691(a)-2 (1957).

108. INT. REV. CODE OF 1954, § 1014.

109. Treas. Reg. § 1.691(a)-3 (1957).

110. Treas. Reg. § 1.61-13 (1957).

111. Treas. Reg. § 1.641(a)-1 (1956).

112. Treas. Reg. § 1.641(a)-2 (1956).

113. INT. REV. CODE OF 1954, § 652.

114. INT. REV. CODE OF 1954, § 643.

115. INT. REV. CODE OF 1954, § 61.

116. *E.g.*, Phoenix Coal Co. v. Commissioner, 231 F.2d 420 (2d Cir. 1956).

117. *E.g.*, Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955).

118. *E.g.*, C. A. Hawkins, 6 B.T.A. 1023 (1927), *acq.*, VII-1 CUM. BULL. 4 (1928).

119. James v. United States, 366 U.S. 213 (1961) (embezzlement); Rutkin v. United States, 343 U.S. 130 (1952) (extortion and fraud); United States v. Sullivan, 274 U.S.

All amounts received as prizes and awards are included in gross income, unless (1) such prize or award was made in recognition of past achievement by the recipient in religious, charitable, scientific, educational, artistic, literary, or civic fields; (2) the recipient was selected without any action on his part to enter the contest; and (3) the recipient is not required to render substantial future services.¹²⁰ Such awards as the Nobel Prize and the Pulitzer Prize are not taxable.¹²¹ Where the prize or award is made in goods or services, the fair-market value of the goods or services is the amount to be included in gross income.¹²²

It appears clear that everything of value received by a taxpayer should be included in gross income unless it is specifically excluded. Even if the item or funds are excluded, it is the better practice to attach a schedule to the taxpayer's return showing the receipt of the funds or items and giving the basis for the exclusion.

259 (1927) (gambling); *Union Stock Farms v. Commissioner*, 265 F.2d 712 (9th Cir. 1959) (overceiling prices); *Prokop v. Commissioner*, 254 F.2d 544 (7th Cir. 1958) (misappropriation); *Schira v. Commissioner*, 240 F.2d 672 (6th Cir. 1957) (sale of stolen goods); *Akers v. Scofield*, 167 F.2d 718 (5th Cir.) (swindling), *cert. denied*, 335 U.S. 823 (1947); *Farina v. McMahon*, CCH 1958 STAND. FED. TAX REP. (58-2 U.S. Tax Cas.) ¶ 9938 (S.D.N.Y. 1958) (narcotic sales); *United States v. Iozia*, 104 F. Supp. 846 (S.D.N.Y. 1952) ("shorting"); *Charles Oran Mensik*, 37 T.C. 703 (1962) (misuse of corporation); *Melancthon S. Somers*, 24 P-H Tax Ct. Mem. 664 (1955) ("kickbacks").

120. INT. REV. CODE OF 1954, § 74.

121. Treas. Reg. § 1.74-1(b) (1955).

122. Treas. Reg. § 1.74(a)(2) (1955). Various items in this category have been held to be includible in taxable income. *Robertson v. United States*, 343 U.S. 711 (1952) (proceeds from symphony contest); *Simmons v. United States*, 308 F.2d 160 (4th Cir. 1962) (winnings from fishing derby); *United States v. Amirikian*, 197 F.2d 442 (4th Cir. 1952) (essay prize); *Reynolds v. United States*, 118 F. Supp. 911 (N.D. Cal. 1954) (lottery prize); *H. Collings Downes*, 30 T.C. 396 (1958) (lottery prize); *Diane M. Soloman*, 25 T.C. 936 (1956) (lottery prize); *Reginald Turner*, 23 P-H Tax Ct. Mem. 464 (1954) (winnings from radio quiz program); *Herbert Stein*, 14 T.C. 494 (1950) (essay prize); *Frederick V. Waugh*, 19 P-H Tax Ct. Mem. 292 (1950) (essay prize); *Edwin C. Brandenburg*, 4 B.T.A. 108 (1926) (proceeds from exhibitions). Also as to essay prizes, see Rev. Rul. 58-127, 1958-1 CUM. BULL. 42; I.T. 3960, 1949-2 CUM. BULL. 13.

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