Florida Law Review

Volume 6 | Issue 4 Article 11

December 1953

Federal Income Taxation: Taxability of Primitive Awards

Edward N. Claughton Jr.

FEDERAL INCOME TAXATION: TAXABILITY OF PUNITIVE AWARDS

William Goldman Theatres, Inc. v. Commissioner, 19 T.C. 79 (1953)

Petitioner was awarded $125,000 actual damages in an anti-trust suit.[1] The Anti-trust Law provides that an injured party shall recover threefold the actual damages sustained;[2] therefore, petitioner was awarded an additional $250,000. In his income tax return petitioner included the $125,000 but not the additional $250,000, and the commissioner determined a deficiency. On petition to the Tax Court, HELD, the $250,000 additional award is not taxable as income within the meaning of Section 22 (a) of the Internal Revenue Code.

In determining whether an award is taxable the question is, "In lieu of what were the damages awarded?"[3] If the award is punitive in nature, it is not taxable.[4] When, however, lump sum payments are received either by way of settlement or court decree and it is impossible to distinguish between the portion representing a return of lost income and that representing a return of capital or a penalty, the entire amount will be subject to taxation.[5]

Since punitive damages are not taxable[6] and the amount recovered in an anti-trust suit in excess of actual damages is punitive in nature,[7] the $250,000 award to petitioner in the instant case, which was in addition to actual damages, was properly exempt from taxation. The reason generally given for exempting punitive awards from taxation is, as stated in *Highland Farms Corp. v. Commissioner,* "A penalty imposed by law does not meet the test of taxable income set forth in *Eisner v. Macomber* . . . as 'the gain derived from capital, from labor or both combined . . . .' "[8]

---

[1]William Goldman Theatres, Inc. v. Loew's, Inc., 69 F. Supp. 103 (E.D. Pa. 1946).

[2]38 STAT. 731 (1914), 15 U.S.C. §15 (1946).

[3]Raytheon Prod. Corp. v. Commissioner, 144 F.2d 110, 113 (1st Cir. 1944).

[4]Central R.R. of New Jersey v. Commissioner, 79 F.2d 697 (3d Cir. 1935); Highland Farms Corp. v. Commissioner, 42 B.T.A. 1314 (1940).

[5]Durkee v. Commissioner, 162 F.2d 184 (6th Cir. 1947).

[6]See note 4 *supra* and text thereat.

[7]Hoskins Coal & Dock Corp. v. Truax Traer Coal Co., 191 F.2d 912 (7th Cir. 1951); United Copper Securities Co. v. Amalgamated Copper Co., 232 Fed. 574 (2d Cir. 1916); Johnson v. Joseph Schlitz Brewing Co., 33 F. Supp. 176 (E.D. Tenn. 1940); Glenshaw Glass Co. v. Commissioner, 18 T.C. 860 (1952).

[8]42 B.T.A. 1314, 1322 (1940).

In *Park and Tilford Distillers Corp. v. United States,*[9] a Court of Claims decision, the entire amount received by petitioner from one of its stockholders was held taxable. The sum in question was received pursuant to the Security Exchange Act,[10] which requires that any stockholder who owns more than ten percent of the capital stock of a corporation and "makes a profit from selling and purchasing, or purchasing and selling, shares of the corporation's stock within a six-month period" shall turn over such profit to the corporation. Petitioner based his claim of exemption upon the *Macomber* decision,[11] but the court stated that the definition of income in the *Macomber* case was not very persuasive and need only be followed in particular instances. It was implicit in the court's decision that the refund was not a penalty, and the penalty aspect was discussed only incidentally. The Tax Court in *American Investors Co. v. Commissioner,*[12] which presented issues identical to those presented by *Park and Tilford Distillers Corp.,*[13] handed down a decision directly in accord therewith. The Tax Court, however, flatly stated that the sum refunded was not a penalty.

Since such refunds could logically have been treated as penalties and this was not done in the last two cases discussed, it may be questioned whether an award similar to the one in the instant case would again be considered a penalty and therefore exempt from taxation. In *Obear-Nester Glass Co. v. Commissioner,*[14] with the same issues, the Tax Court has recently answered the query in the affirmative. But the Government has filed an appeal in the instant case, and the matter continues in litigation. The most that can be said is that the *Goldman* decision is strongly supported by reported opinions both prior and subsequent to its determination.

EDWARD N. CLAUGHTON, JR.

---

[9]107 F. Supp. 941 (Ct. Cl. 1952), *cert. denied,* 345 U.S. 917 (1953).
[10]48 STAT. 896 (1934), 15 U.S.C. §78p (b) (1946).
[11]252 U.S. 189 (1920).
[12]P-H 1953 TC REP. DEC. ¶19.73 (1952).
[13]107 F. Supp. 941 (Ct. Cl. 1952), *cert denied,* 345 U.S. 917 (1953).
[14]P-H 1953 TC REP. DEC. ¶20.152 (1953).