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Strike Benefits - Income or Gifts? - Kaiser v. United States

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STRIKE BENEFITS — INCOME OR GIFTS?

Kaiser v. United States[1]

Plaintiff, an employee of the Kohler Company in Wisconsin, on April 5, 1954, with other employees, went on strike. At that time he was not a member of the International Union or the local affiliate at Kohler. During the strike he did not receive benefits in cash, but in May, 1954, he began to receive from the Union maintenance assistance in the form of food, clothing and payments for rent on his house. The Union determined the needs of the employees by a questionnaire. On April 15, 1955, plaintiff filed his income tax return and claimed a refund since the amount

[1] 262 F. 2d 367 (7th Cir. 1958), cert. gr., # 858, 6/2/59. The Internal Revenue Service announced that pending review of the Kaiser case, it will continue to follow its position that strike benefits are taxable. Technical Information Release No. 148, March 25, 1959. 596 CCH Stand. Federal Tax Reports, ¶6410.

withheld exceeded the tax liability for wages he had received. On February 17, 1956, the Director increased the adjusted gross income by adding $565.54, the value of the maintenance assistance received by plaintiff. The plaintiff paid the additional tax plus interest and sued for a refund in the United States District Court.[2] Counsel for both parties informed the Court at the time of the pre-trial conference that this was a case of first impression. At the close of the plaintiff's case and at the close of all the evidence, motions for a directed verdict by the defendant were denied without prejudice, the Court feeling that if this were to be a test case, it would be reviewed by appellate courts and therefore there should be a complete record so that no new trial would be necessary if the appellate court reversed. The case was tried before a jury with only one question submitted to it for a special verdict, namely:

> " 'Were the amounts received by plaintiff, Allen Kaiser, from May 14th to December 31st, 1954, from United Automobile, Aircraft and Agricultural Implement Workers of America, a gift?' "[3]

The jury answered "yes" to this question and judgment for plaintiff was entered on the verdict. The government moved to set aside the verdict of the jury and the judgment entered thereon and to enter judgment in accordance with the government's previous motion for directed verdict, or, in the alternative, for a new trial. The District Court held that as a matter of law the payments to plaintiff constituted taxable income to him, that no jury issue was presented and that the government was entitled to have its motion for directed verdict granted. The Court of Appeals for the Seventh Circuit, reversing the District Court, *held* the strike benefits received by the plaintiff under the facts of this case were not taxable income, but were gifts, expressly excepted from taxable income by Section 102 of the Internal Revenue Code of 1954, the evidence being found to be sufficient to sustain the finding of the jury.

A dissent disagreed with the majority for two reasons: (1) the determination of the character of the strike benefits presented a question of law, for all the facts including the Union's motivation and intent, were fully disclosed by the stipulation of facts and the uncontroverted testimony;

[2] 158 F. Supp. 865 (E.D. Wis. 1958).
[3] *Ibid.*, 866.

and (2) the Union required consideration for the strike benefits, in that participation in the strike was the primary condition rather than the need of the striker.

The majority cited *United States v. Burdick*[4] as authority for holding that the question of whether the benefits were in the nature of taxable income or gifts was one of fact. In that case,[5] the court said specifically:

> ". . . whether the receipts are gifts is primarily a question of fact to be resolved upon the peculiar circumstances of the case; . . . if the payments were made without a donative intent and as compensation for services they constitute taxable income. The term 'gift' as used in the revenue statute 'denotes * * * the receipt of financial advantages gratuitously.' "[6]

The dissent was of the opinion that no factual issue remained to be presented to the jury. The facts were stipulated by both parties concerning the motivation and intent of the Union when providing such benefits both to members and non-members. The District Court had taken the same position as the dissent, saying:

> "The evidence in this case is not disputed. The question basically is one of interpretation of the statutes. Findings are held to be subject to review on this question."[7]

Whether a benefit received by a taxpayer is to be viewed as taxable income or as a gift is basically a question of statutory construction and Congressional intent. Section 61(a),[8] defining gross income, has been construed as a broad statement of purpose to tax income comprehensively.[9] In *Commissioner v. Glenshaw Glass Company*,[10] Chief Justice Warren said:

> "This Court has frequently stated that this language was used by Congress to exert in this field 'the full

[4] 214 F. 2d 768 (3rd Cir. 1954).
[5] *Ibid.*
[6] *Ibid.*, 771, quoting from Helvering v. Amer. Dental Co., 318 U.S. 322, 330 (1943).
[7] 158 F. Supp. 865, 869 (E.D. Wis. 1958).
[8] 1954 I.R.C. §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: . . . ."
[9] Commissioner v. Jacobson, 336 U.S. 28, 49 (1949).
[10] 348 U.S. 426 (1955).

> measure of its taxing power.' * * * And the Court has given a liberal construction to this broad phraseology in recognition of the intention of Congress to tax all gains except those specifically exempted."[11]

Section 102(a),[12] pertaining to gifts, on the other hand, has been construed strictly and with restraint,[13] since it is in the nature of an exemption.

The Circuit Court reasoned that the Commissioner has recognized that some receipts may be gifts without being expressly excluded from income by the statute. Public assistance relief payments[14] and disaster benefits[15] were examples cited to substantiate this view.

The District Court gave a comprehensive definition of *gift* within the meaning of Section 102(a):[16]

> "A gift, within the meaning of section 102(a), is the receipt of financial advantages gratuitously, is made from a detached and disinterested generosity, without the incentive of anticipated benefit of any kind beyond satisfaction of doing a generous act, without consideration, . . . without the compulsion of moral or legal duty, and is basically something for nothing. The voluntary character of the payment is not determinative, for a payment may constitute income to the recipient though made to him without legal obligation."[17]

Implicit in any definition of gift, as above, is the requirement there be no consideration. Although the majority in the Circuit Court said the primary qualification for receiving strike benefits was the *need* of the employee, both the District Court and the dissent felt *participation in*

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[11] *Ibid.*, 429-430. See also H.R. Rep. No. 1337, 83rd Cong., 2nd Sess. 3 U.S. Cong. & Admr. News (1954) 4155 where, in discussing §61(a) of the 1954 Code, it states:

> "This section corresponds to section 22(a) of the 1939 Code. While the language in existing section 22(a) has been simplified, the all-inclusive nature of statutory gross income has not been affected thereby. Section 61(a) is as broad in scope as section 22(a).
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> "Section 61(a) provides that gross income includes 'all income from whatever source derived.' This definition is based upon the 16th Amendment and the word 'income' is used in its constitutional sense."

[12] 1954 I.R.C. §102(a).

[13] Commissioner v. Jacobson, 336 U.S. 28, 49 (1949); Helvering v. Amer. Dental Co., 318 U.S. 322 (1943).

[14] Rev. Ruling 57-102, 1957-1 Cum. Bull. 26.

[15] Rev. Ruling 53-131, 1953-2 Cum. Bull. 112.

[16] 1954 I.R.C. §102(a).

[17] 158 F. Supp. 865, 870 (E.D. Wis. 1958).

the strike was the principal condition for receiving benefits with need secondarily important. The stipulated facts admitted the employees had to participate in the strike to receive benefits.[18] It appears therefore, that the Union received consideration for its payments, thereby eliminating the possibility of these being construed as gifts.

Strike benefits paid to a member or non-member of a union if he participates in the strike may be easily distinguished from subsistence to disaster victims by the Red Cross, held to be non-taxable,[19] or disaster benefits provided by an employer for his employees, measured solely by need and considered gratuitous.[20] Strike payments are made "in furtherance of a strike, which is a means employed to secure legitimate economic benefits for members of the union."[21] Although plaintiff was not a union member when he received these benefits, he joined the union soon thereafter.

The District Court quoted from a 1920 Revenue Ruling[22] which treated strike benefits as included in gross income as well as a 1957 Revenue Ruling[23] which treats non-members similarly, and concluded:

> "Considering the length of time the unvaried ruling and practice has been in effect, the non-technical nature of the question, and the importance of the issue in both the tax and labor fields, it must be concluded that Congress was aware of the administrative interpretation when it repeatedly re-enacted the sections. Under such circumstances, the administrative interpretation is not only entitled to great weight, but must be held to have received Congressional approval and to have assumed the force and effect of law."[24]

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[18] 262 F. 2d 367 (7th Cir. 1958), *dis. op.* 370. At 371, the stipulation is set forth:

> " 'The International Union grants strike benefits to non-members of the Union, who participate in a strike, if they do not have sufficient income to purchase food or to meet an emergency situation. The Union treats such non-members on the same basis as members of the Union, but non-members as well as members must be strikers before they may receive assistance from the Union.' "

[19] Spec. Ruling of I.R.S., 52-5 CCH ¶6196.

[20] Rev. Ruling 53-131, 1953-2 Cum. Bull. 112.

[21] Rev. Ruling 57-1, 1957-1 Cum. Bull. 15.

[22] O.D. 552, Cum. Bull. No. 2, 73 (1920). Also see, to the same effect, I.T. 1293, Cum. Bull. I-1, 63 (1922).

[23] Rev. Ruling 57-1, 1957-1 Cum. Bull. 15. Also see Rev. Ruling 58-139, 1958-1, Cum. Bull. 14, which cites the 1957 Revenue Ruling and says: "The same principles are applicable to 'lockout' benefits, which, like strike benefits, are distributed in furtherance of union objectives."

[24] 158 F. Supp. 865, 871 (E.D. Wis. 1958).

The Circuit Court placed little weight on Rulings being decisive and said:

> "It has been said the rules have 'no more binding or legal force than the opinion of any other lawyers.' "[25]

It will be noted, however, that only a few paragraphs earlier the Court was relying on Revenue Rulings to support its argument that strike benefits were analogous to public assistance and disaster benefits.[26]

The courts have voiced varying opinions on the weight to be accorded to Rulings. It is important to recognize that there are legislative as well as interpretative rulings. Legislative rules, being the product of a power to create new law, may be deemed to have the force and effect of valid statutes if the agency had the authority, procedurally and constitutionally, to promulgate them. Interpretative rules, on the other hand, merely clarify the law they interpret and theoretically do not embody new law.[27] The Supreme Court has said the latter are also entitled to considerable weight. In *Helvering v. Winmill*,[28] the Supreme Court said:

> "Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received congressional approval and have the effect of law."

In *Helvering v. R. J. Reynolds Tobacco Company*,[29] the Court had to decide whether a gain from a purchase and re-sale of a corporation's own stock constituted gross income to the corporation. The Court had to consider Section 22(a) of the Revenue Act of 1928, substantially like Section 61(a),[30] which defined gross income broadly. Finding that a Treasury Regulation had construed this transaction and treated it as capital rather than income, the Court said

[25] 262 F. 2d 367. 370 (7th Cir. 1958), quoting from United States v. Bennett, 186 F. 2d 407, 410 (5th Cir. 1951).

[26] *Ibid.*, 368-369.

[27] 1 DAVIS, ADMINISTRATIVE LAW (1st ed. 1958) §5.03.

[28] 305 U.S. 79. 83 (1938), quoted with approval in Boehm v. Commissioner, 326 U.S. 287, 292 (1945). In Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944), the Court said:

> "This Court has long given considerable and in some cases decisive weight to Treasury Decisions and to interpretative regulations of the Treasury and of other bodies that were not of adversary origin."

[29] 306 U.S. 110, 113-114 (1939).

[30] 1954 I.R.C. §61(a).

Section 22(a) is "so general in its terms as to render an interpretative regulation appropriate."[31]

In the case at hand, the majority said, in any event, the 1920 Ruling[32] did not cover benefits paid to non-members. The 1957 Ruling[33] which expressly includes strike benefits paid to non-members as taxable income was not considered, presumably, since it was promulgated after the case arose.

Whether much weight can be given to the re-enactment argument of the District Court is questionable. It would seem that before one could say with certainty that Congress has adopted an interpretative rule by the Treasury as evidence of its view by repeated re-enactment of the statute, it must be found Congress was aware of the ruling. Too often this re-enactment argument appears to be a "tool of the trade" used by the courts to get a desired result. However the District Court seemed to have made a valid point when it recognized that a ruling concerning the taxability of strike benefits certainly had a widespread effect, and therefore Congress could be presumed to have been aware of it.

Furthermore, the other reasons for calling these strike benefits income are more than sufficient. The Union seems to have received consideration for making the payments. From the standpoint of public policy, treating these benefits as gifts rather than taxable income would tend to encourage strikes. Since union dues are deductible to the union member,[34] it would seem that strike benefits should be taxable. Such arguments in favor of treating the strike benefits as income would appear to be more accurate and desirable, both technically and policy-wise.

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[31] *Supra*, n. 29.
[32] O.D. 552, Cum. Bull. No. 2, 73 (1920).
[33] Rev. Ruling 57-1, 1957-1 Cum. Bull. 15.
[34] O.D. 450, 1920-1 Cum. Bull. 105.