STRUCTURING ATTORNEY FEES: KINGDOM OF HEAVEN?

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PREVIOUSLY PUBLISHED UNDER SAME TITLE:
Vol.108, No.6, Tax Notes (Aug. 1, 2005), p.539

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Plaintiffs' lawyers aren't very popular in Washington these days (witness the enactment of the recent class action legislation).[1] Good climate or bad, plaintiffs' lawyers have traditionally faced boom and bust years, enjoying the peaks — and suffering through the valleys — of fluctuating income. Yet, particularly in today's climate, it may actually surprise many plaintiffs' lawyers as well as their tax advisers that they can ameliorate the peaks and valleys, morphing them into a high plateau, or at least gently rolling hills.

The problem, of course, is that our federal and state tax systems are all rigidly annual. In fact, annual accounting is one of the pillars of our tax system. Income averaging was eliminated many years ago, so taxpayers have to devise some other way of spreading out payments. For plaintiffs' lawyers litigating increasingly big and increasingly complex cases (with increasingly recalcitrant defendants), the "big pop" of resolving a multiyear case may generate a huge tax bill for the lawyer.

When you combine that with the fact that the lawyer's after-tax proceeds will go into taxable investments that *themselves* will throw off additional taxable income, the "successful" lawyer receives an ever-shrinking piece of the pie. In contrast, a lawyer who structures his fees is effectively able to invest pretax, locking his share of the settlement proceeds into the equivalent of a guaranteed higher yielding, tax-deferred obligation (typically an annuity).

Structured settlement brokers are often the first to see the attorneys' interest in deferring fees, because the structure brokers are often talking to the plaintiff's counsel about a structure for the clients. A structure for the clients (if it is a true personal physical injury case) involves a qualified assignment under section 130. The attorney's fees do not qualify for a physical injury structure, but many of the same principles are being huckstered by settlement brokers to the lawyers.

According to B.J. Etscheid of Bradford Settlements in Chicago, "We place many of our attorney clients into periodic payment plans to defer fees, similar to a structured settlement in order to create future income streams to regularize income, as well as serve retirement and personal goals. I liken this to a 401(k) plan, but without the significant limitations and restrictions on deferral normally associated with such plans." Because of the traditional strengths of the life insurance companies and their enormous lobbying strength in Washington, that pretax cash value buildup has never been taxed.

FEE BONANZA?

To put it simply, a plaintiff's lawyer can not only defer receipt of (and tax on) his fees until he receives them, but he can have the deferred fees invested, and have the income produced from it also taxable over time. Those structures have been around for years, emanating primarily from *Childs v. Commissioner*.[2] Today, those attorney fee structures are becoming increasingly prominent in the marketplace, with more competition among life insurance companies for that kind of business, and more interest from lawyers in taking their fees over time.

Lawyers may want to structure their fees as part of their own income tax planning, financial planning, and estate planning, and even succession planning within their firms. Moreover, some lawyers are interested in structuring their fees to help their clients avoid tax problems, because plaintiffs continue to have tax problems associated with contingent attorney fees. The U.S. Supreme Court recently decided *Banks v. Commissioner*,[3] holding that plaintiffs have gross income even on the fees paid directly to their lawyers.[4]

That was a blow to plaintiffs, who often have no way to deduct the fees given miscellaneous itemized deduction thresholds, phaseouts, and the alternative minimum tax. In fact, largely because of the dreaded AMT, a plaintiff can even end up in a net loss situation after taxes.[5] Losing money (after tax) by "winning" a case is the ultimate Pyrrhic victory.

MARKETPLACE FOR ATTORNEYS' STRUCTURES

Some insurance companies will write annuities for structured attorney fees when the attorney is the only one structuring payments. In other words, even if the client chooses to take all of his money in cash, the attorney can still structure the attorney fees. Other insurance companies will write structures for attorneys only when the client is also structuring his recovery.

Why certain insurance markets jump one way or the other on this issue (structuring attorney fees alone vs. structuring attorney fees only when the client structures) is a fairly technical issue related to how each company perceives the mechanics of structured settlements and their tax qualification.

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What is important for lawyers to know is simply that in either case, there are financial professionals and insurance companies who offer structured settlements of attorney fees.

TECHNICAL REQUIREMENTS

As you might expect, there are some technical requirements that must be met for an attorney fee structure to be successful for income tax purposes. "Success" here simply means having the income taxed only as it is disbursed to the lawyer. As we'll see, there are several statutory and case law doctrines that may apply to structures. If you misstep, the IRS can use those doctrines against you to try to tax all of your attorney fees as if you didn't put a structure in place. Fear of that constructive (for tax purposes) receipt causes some lawyers not to do fee structures. That, in my judgment, is a significant overreaction.

Of course, observing the technical requirements is important. Yet if you follow a few simple steps, you are quite unlikely to have a tax problem. Although structures of attorney fees are somewhat different from traditional structured settlements of personal injury recoveries, the same structured settlement brokers you use to structure plaintiffs' recoveries in personal physical injury cases usually handle structured settlements of attorney fees.

CHILDS: THE MOTHER OF ALL CASES

It's impossible to discuss structures of attorney fees without mentioning *Childs*. In *Childs v. Commissioner*,[6] the IRS unsuccessfully challenged a transaction that paid three attorneys fees on a structured basis. The IRS asserted that the attorneys were entitled to all the fees at settlement, so had "constructively" received the whole stream of fees for tax purposes. The Tax Court rejected the IRS's argument, as did the Eleventh Circuit Court of Appeals, holding that the value of the attorneys' rights to receive deferred installment payments of fees was not includable in gross income in the year of the settlement. The structured settlement broker in *Childs* was Charlie Bradford of Bradford Settlements.

The three *Childs* lawyers were quite careful. They would not accept a promise from the defendant (or from their own client) to pay their fees in installments. They wanted an annuity that provided a guaranteed stream of payments issued by a top life insurance company.

Although the settlement agreement provided for the purchase of annuities to satisfy the installment payments of the attorney fees, the settlement agreement stipulated that the attorneys' rights under the annuity policies were no greater than those of a general creditor. Each attorney's structure was slightly different (there were three lawyers and three structures in *Childs*), but there were common themes. Before settlement documents were signed, the parties agreed that all the legal fees would be paid in structured payments.

The insurance companies (that were originally liable to pay a portion of the settlement) purchased an annuity to fund the settlement payments, issuing the annuities to a third-party assignment company that was to hold the annuities. The attorneys were each named annuitants under the annuity contracts and their estates were designated as the primary beneficiaries. The annuity was subject to the rights of general creditors of the structured settlement company. However, the insurance companies guaranteed to pay the annuity payments if the structured settlement company ever failed to pay the attorneys. Thus, the insurance company was still liable to pay the attorney fees if the structured settlement company ever failed to pay any installment.

The *Childs* attorneys had no right to accelerate the payments or reduce them to their present value. In fact, once the attorneys agreed to structure their fees, the attorneys were bound to the installment schedule. The attorneys agreed in the documents that they would have no rights against the structured settlement company greater than that of a general creditor. The Tax Court and the Eleventh Circuit held that the attorneys did not constructively receive the fees in the year the settlement documents were signed.

CONSTRUCTIVE RECEIPT

The constructive receipt doctrine prohibits taxpayers from deliberately turning their backs on income, thereby opportunistically selecting the year in which they want to receive (and report) the income.[7] That may sound ominous, perhaps so much so that there may appear to be no room to plan. Nothing could be further from the truth.

Basically, the constructive receipt doctrine all comes down to control and legal rights. If the taxpayer has access to the income but chooses not to take it, he's taxable. The classic example is the worker who refuses a paycheck at year-end, asking for payment in January. Here, the check is clearly income in December, because he clearly was entitled to it then.

On the other hand, a taxpayer can condition his willingness to sign documents on receiving money over time rather than a lump sum. Thus, there is no constructive receipt when a taxpayer insists he will sell his house only on the installment method. Likewise, there is no constructive receipt if a plaintiff won't sign a release unless the damages are structured.

The same principles apply to plaintiffs' lawyers. Of course, some precautions are necessary. The attorneys must be specifically precluded from withdrawing their attorney fees earlier than the scheduled payment dates. The documents must prevent the attorneys (or their beneficiaries) from accelerating, deferring, increasing, or decreasing their scheduled payments. The attorneys should have no right or power to receive any payment before the scheduled payments are made.

But that doesn't mean one can't structure the arrangement to provide security. Actually, the security can be ironclad without running afoul of constructive receipt. The fact that an annuity is the asset from which the installment payments will be made to the lawyer doesn't change that. However, the annuity contract should not be owned or controlled by the attorney. Instead, the annuity should be owned by, and issued in the name of, an assignment company. That makes it difficult for the IRS to argue that the annuity contract is somehow "set aside for" or "otherwise made available to" the attorney.[8] The annuity contracts in Childs were owned by, and in the name of, the structured settlement company.

DEFERRED COMPENSATION AUTHORITIES

Since we've knocked down "constructive receipt" concerns, let's go to the next argument the IRS might make. A defendant's assignment of its obligation to pay the claimants' attorney fees (as part of the settlement award) is a deferred compensation arrangement. The IRS has often scrutinized deferred compensation arrangements, so it's appropriate to look at those authorities, too.

Most legal authorities considering deferred compensation arrangements involve an employer/employee relationship, with the employer agreeing to defer payments of future compensation for the employee. In a traditional deferred compensation arrangement, before the compensation is earned by the employee, the employer can agree to pay the compensation in the future. In an attorney fee structure, the attorney will elect to enter into a deferred compensation arrangement *before* the settlement discussions have concluded, and *before* the settlement documents are signed.

A solid line of case law supports deferred compensation arrangements in which an employee makes an irrevocable election to defer compensation (such as bonuses, stock, commissions, and so on) before the amounts are determined or earned.[9] If the attorney agrees to the structured payment of attorney fees in the contingency fee contract, the attorney has clearly agreed to a deferred payment arrangement before his fees were earned. Of course, the contingency fee agreement will usually be silent as to whether the attorney agreed to structure his fees. In that case, the settlement agreement should include language stating that the attorney's election to receive his fees in structured installments is irrevocable.

Plus, it is a good idea to amend the contingency fee agreement to call for an attorney fee structure before settlement just to be clear on that point, even if that amendment is made shortly before the case settles.

The fee agreement and settlement agreement language is short and simple. I use something like the following language in the settlement agreement:

Attorney acknowledges and agrees that the election to receive Periodic Payments was made by Attorney prior to the execution of this Settlement Agreement. This election by Attorney is irrevocable and cannot be rescinded under any circumstances.

CONTINUING RELEVANCE OF *CHILDS*

As noted above, the IRS lost *Childs*,[10] both in the Tax Court and on appeal. Even so, the *Childs* holding might be enforceable against the IRS only by taxpayers residing in the Eleventh Circuit. No one has yet to fight a *Childs*-like battle elsewhere in the country. Technically, the Tax Court is bound by *Childs* only in the Eleventh Circuit,[11] and the IRS could take a position contrary to *Childs* outside the Eleventh Circuit.

However, even the Tax Court will typically follow published authority from another circuit when no other published guidance exists. That's certainly the case here. Moreover, although the IRS has not formally acquiesced in *Childs*, the IRS now seems to follow *Childs*-like principles (pun intended). For example, the IRS recently indicated that there should be no constructive receipt when a taxpayer makes an irrevocable election to receive periodic payments, as long as the taxpayer's control of the payments was subject to substantial limitations or restrictions.[12]

Plus, the IRS has even begun citing *Childs* as authority. For example, in FSA 200151003,[13] the IRS cites *Childs* for the proposition that when attorneys enter a structured settlement arrangement calling for deferred payments of their attorney fees, there is no constructive receipt as long as the settlement is entered into before the attorneys obtain an unconditional right to compensation for their services. That suggests that the IRS has seen the writing on the wall and that properly implemented attorney fee structures are unassailable.

ECONOMIC BENEFIT DOCTRINE

Another judicially created tax doctrine relevant to attorney fee structures is the economic benefit doctrine. The economic benefit doctrine rests on a fundamental principle. If a promise to pay an amount is funded and secured by the payor, and the payee needs only to wait for unconditional payments, the payee has a current economic benefit. In such a case, the payee must recognize income on the full value of the payments in the year the contract is signed.[14]

The economic benefit doctrine is based on the theory that a promise to pay deferred compensation in the future — in and of itself — can constitute income. The amounttaxed would be the amount of that obligation, discounted to present value. A payee will be treated as receiving the current economic benefit of future payments when a separate fund or trust is established that is unconditionally and irrevocably dedicated to the payee.

For example, in *Sproull v. Commissioner*,[15] the court found that an economic benefit had been conferred on a taxpayer when the taxpayer's employer established a trust to compensate the taxpayer for past services. The employer established a trust in 1945 to be paid to the taxpayer in 1946 and 1947. The court held that the taxpayer received current compensation equal to the value of the money transferred to the trust, because the transfer to the trust provided the taxpayer with an economic benefit.[16]

However, not all rights to receive periodic payments trigger the economic benefit doctrine. For example, in Rev. Rul. 79-220,[17] the IRS concluded that a right to receive certain periodic payments did not confer an economic benefit on the recipient. The taxpayer entered into a settlement with an insurance company for periodic payments over an agreed period. The taxpayer had no immediate right to a lump sum amount, and no control of the insurance company's investment fund, which had been set aside to pay the obligation.

The insurance company was the owner of the annuity, and it (rather than the taxpayer) owned all rights to the annuity. The insurance company's general creditors could pursue a claim against the annuity to satisfy their claims (while the taxpayer's creditors could not pursue a claim against the annuity). The ruling concluded that the taxpayer's right to receive the monthly settlement payments did not impute actual (or constructive) receipt to the taxpayer. Likewise, Rev. Rul. 79-220 concluded that no economic benefit was conferred on the taxpayer for the lump sum amount invested by the insurance company to fund the settlement payments.

PROPER STRUCTURE AVOIDS WORRIES

Properly implemented attorney fee structures avoid that problem. However, it's useful to see what does *not* work, and where lawyers might misstep. The economic benefit doctrine *would* be triggered if the annuity contract names the *attorney* as the irrevocable payee.[18] That's why an annuity contract purchased to fund an obligation to pay structured attorney fees will be in the name of an assignment company, *not* in the name of the attorney.

The assignment company will purchase the annuity to fund its obligation without making the attorney the irrevocable beneficiary of the annuity. In such a properly structured attorney fee arrangement, the economic benefit doctrine simply should not apply. In fact, in Rev. Rul. 72-25,[19] the IRS ruled that no economic benefit occurred when an employer purchased an annuity to fund payments and the employer (not the employee) was the named beneficiary of the annuity contract.[20]

The attorney will not be the applicant or owner of the annuity contract in a properly documented attorney fee structure. Once issued, that policy will remain an asset of the assignment company, subject to its creditors' claims. That avoids the economic benefit doctrine.

SECTION 83

Up to now we've addressed non-statutory doctrines the IRS might pursue. Now we need to address section 83. The IRS argued section 83 in *Childs* and lost. Basically, section 83 codifies the economic benefit doctrine related to compensation for services.

Clearly, attorney fees in a contingent fee case are compensation for the attorney's services. Yet the attorney fees are not taxable until those fees are "vested" or are no longer "subject to a substantial risk of forfeiture." There are strong arguments that the defendant or defendant's insurer has not transferred property to the attorney constituting funded or secured promises to pay, triggering taxation on the present value of the attorney fees under section 83.

Section 83 states that if property is transferred to any person in connection with the performance of services, the person who performed the services must include the fair market value of the property in his income in the first year in which the property becomes transferable or is not subject to a substantial risk of forfeiture (whichever comes first). The term "property" includes real and personal property other than money, or an unfunded and unsecured promise to pay in the future.[21] Property also includes a beneficial interest in assets transferred or otherwise "set aside from the claims of creditors of the transferrer, for example, in a trust or escrow account."[22]

Under section 83, property is taxed when it is transferred to an attorney unless it is both nontransferable and subject to a substantial risk of forfeiture.[23] A transfer occurs when the attorney acquires a beneficial interest in the property.[24] That is why in an attorney fee structure the annuity will be "owned" by the assignment company.

If the right to full enjoyment of the property is conditioned on the future performance of substantial services, a "substantial risk of forfeiture" will exist.[25]

The statute and the regulations do not define when a promise to pay is "funded." There is case law suggesting that funding occurs when the obligor is not required to do anything for there to be a distribution of the proceeds to the beneficiary.[26] When the beneficiary realizes a non-forfeitable economic financial benefit, the payments become "funded," or secured. In contrast, when a trust or insurance proceeds are subject to the general creditors of the obligor, no funding has occurred.[27]

If an annuity company guarantees payment of the attorney fees should the assignment company ever fail to pay those fees, that mere guarantee does not fund or secure the attorney's right to receive payments under the structure. Indeed, the IRS argued precisely that point — and lost — in *Childs*. The *Childs* court stated, "It is well settled that a simple guarantee does not make a promise secured, since by definition a guarantee is merely itself a promise to pay."[28]

The *Childs* court was satisfied that the owner of the annuity was the structured settlement company, not the attorneys. Indeed, the structured settlement company retained all rights incident to ownership, including the right to change the beneficiary (the attorney) while the beneficiary was still living. Furthermore, the attorneys could not accelerate, defer, increase, or decrease their attorney fees (once structured) during the term of the payment period. As long as the assignment company remains the sole owner of the annuity, and the attorneys have no rights under the policy greater than those of a general creditor, the attorneys should not realize the present value of the structured fees.

ASSIGNMENT OF INCOME

The assignment of income doctrine is a kind of last gasp of the IRS. When all else fails, they trot out that old saw. The assignment of income doctrine is usually asserted when a taxpayer transfers his right to receive future income to another (usually a spouse, child, or other relative). That judicially created doctrine requires the taxpayer to recognize income when amounts are paid to the assignee, in effect disregarding the taxpayer's attempt to assign the income to someone else. Conceivably, the IRS might argue that a defendant's assignment of its obligation to pay its claimants' attorneys somehow is an assignment of income to the attorneys. Yet, as we'll see, that is a lost cause by the IRS. The assignment of income doctrine is practically an artifact, hailing from a 1930 Supreme Court decision, *Lucas v. Earl*.[29] The assignment of income doctrine was created by the courts to deal with taxpayers who turn their back on income and who try to shift the receipt and tax liability to someone else.[30] In *United States v. Basye*,[31] faced with a deferred compensation arrangement, the Supreme Court found that the arrangement outlined in *Basye* violated the assignment of income doctrine.

In *Basye*, Kaiser Permanente and Kaiser Foundation made an arm's-length agreement to contract for medical services. A partnership of physicians (Kaiser Foundation) agreed to transfer funds to a trust that would pay future retirement benefits for both nonpartner and partner physicians who provided services to Kaiser Foundation. The partnership never reported the income transferred on behalf of the physicians in its gross income in any year. The physicians merely intended to report the income they received from the retirement plans when it was distributed to them.

The Supreme Court upheld the IRS's assertion of the assignment of income doctrine. Because the partners of the partnership would have been taxed on their distributive share of the partnership income (regardless of whether the partnership made any distributions), the partners had attempted to avoid taxation by the purported transfer to the trust.[32]

Of course, in an attorney fee structure, the defendant assigns its obligation to pay its claimants' attorney fees to the assignment company to be paid on a structured basis. That is quite unlike the "traditional" assignment of income situation, in which the taxpayer assigns income he is about to earn to another, typically a family member or an entity owned and controlled by the taxpayer.

As long as the attorneys enter into a structured attorney fee arrangement and make their election in writing before their fees are actually earned (that is, before the settlement documents are signed), there should be no assignment of income. Ideally, that election by the attorneys should be made before the attorneys' precise share of the settlement is determined, and the election should be irrevocable to all parties in the transaction.

HAIL-MARY PASSES

Technically speaking, there are a few other tax arguments the IRS could make, but they don't present problems. One of those arguments is the "cash equivalency doctrine." Essentially, it states that if a promise to pay a benefit to an individual (even though it is unfunded) is unconditional and exchangeable for cash, that promise is the same as cash and will be currently taxable.

Admittedly, that tax law concept sounds a lot like the economic benefit doctrine and its application to an attorney fee structure would be similar. Fortunately, there are strong arguments against a successful application of the cash equivalency doctrine to attorney fee structures.[33] The case law exploring the cash equivalency doctrine focuses primarily on deferred payment obligations that the taxpayer can readily discount. When a payee's rights cannot be assigned, transferred, pledged, or encumbered, the cash equivalency doctrine has not been applied.[34]

In a properly structured attorney fee arrangement, the documents will forbid the attorneys from transferring, assigning, selling, or encumbering their rights to receive future payments. Mostly, then, this is yet another argument for ensuring that the documents are properly written. Any attempt by an attorney to sell, transfer, or assign his or her rights to fees is void, thus precluding application of the cash equivalency doctrine.

THE IMPORTANCE OF FORM

Even though I believe it is not too difficult to successfully knock down the various tax arguments the IRS could raise about attorney fee structures, I must stress the importance of form. Tax law, after all, is an archaic and regimented thing. A busy trial lawyer will clearly not understand all of this, and actually doesn't need to. However, all parties involved need to ensure that the documents work.

There are really only a few golden rules here:

- The attorney should not own or hold the annuity contract. The assignment company should, even though the attorney is designated to receive all of the payments.
- All of the documents (the annuity contract, the settlement agreement, the fee agreement, and so forth) should be clear that the attorney has no right to accelerate any of the payments. The attorney may not need to include that magic language in every single document, but repetition in tax law is usually a good thing.
- The attorney must agree to a fee structure *before* the case is resolved. That means that before the client signs any settlement documents, the structure must be in place.
- The contingent fee agreement with the client should specify that the attorney is taking fees in periodic payments, or at least that he has the right to elect to take them in that way before the conclusion of the case. I recommend including the latter type of provision in every fee contract. If an attorney does not have it in existing contract, it is a good idea to amend the fee agreement before resolving the case and arranging for the structure.

CONCLUSION

Properly constructed attorney fee structures are unlikely to be struck down. Not only do they serve many tax and financial goals, they offer the beauty of tax-deferred investing, the tax and non-tax benefits of income averaging, and even serve asset protection goals. Most plaintiffs' lawyers understand the dynamics of a structured personal physical injury settlement for a client. It's not a big leap from that kind of structure to an attorney fee structure.

I believe there will still be cases dealing with IRS assertions of constructive receipt and economic benefit arising out of attorney fee structures. However, I think they will probably be the marginal cases in which documents are poorly done or in which the realities of the arrangement are not respected.

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[1] *See* Class Action Fairness Act of 2005, P.L. 109-2. *See also* Morgensen and Justice, "Taking Care of Business, His Way," *The New York Times*, Feb. 20, 2005, section 3, p. 1.
[2] 103 T.C. 634, 94 TNT 223-15 (1994), *aff'd without opinion* 89 F.3d 856, *Doc* 96-19540, 96 TNT 133-7 (11th Cir. 1996).
[3] 2005 U.S. Lexis 1370, 125 S.Ct. 826, *Doc* 2005-1418, 2005 TNT 15-10 (U.S. Jan. 24, 2005).
[4] For further discussion on *Banks*, see Wood, "Supreme Court Attorney Fees Decision Leaves Much Unresolved," *Tax Notes*, Feb. 14, 2005, p. 792.
[5] *See Spina v. Forest Preserve District of Cook County*, 207 F. Supp.2d 764 (N.D. Ill. 2002) *as reported in 2002 National Taxpayer Advocate Report to Congress* at 166. *See* Adam Liptak, "Tax Bill Exceeds Award to Officer in Sex Bias Case," *The New York Times*, Aug. 11, 2002, section 1, p. 18.
[6] *Supra* note 2.
[7] Treas. reg. section 1.451-1(a) and 2(a).
[8] *See id.*
[9] *See Veit v. Commissioner*, 8 T.C. 809 (1947); *Commissioner v. Oates*, 207 F.2d 711 (7th Cir. 1953); *Robinson v. Commissioner*, 44 T.C. 20 (1965); *Martin v. Commissioner*, 96 T.C. 814 (1991).
[10] *Supra* note 2.
[11] *See Golsen v. Commissioner*, 54 T.C. 742 (1970), *aff'd on another issue* 445 F.2d 985 (10th Cir.), *cert. denied* 404 U.S. 940 (1971).
[12] Rev. Rul. 2003-115, 2003-46 IRB 1052, *Doc* 2003-23359, 2003 TNT 209-15.
[13] 2001 FSA LEXIS 173, *Doc* 2001-31373, 2001 TNT 247-70 (Dec. 21, 2001).
[14] *Commissioner v. Smith* 324 U.S. 177 (1945); *Drysdale v. Commissioner,* 277 F.2d 413 (6th Cir. 1960), *rev'g* 32 T.C. 378 (1959).
[15] 16 T.C. 244 (1951), *aff'd per curiam* 194 F.2d 541 (6th Cir. 1952).
[16] *Id.*
[17] 1979-2 C.B. 74.
[18] *See Brodie v. Commissioner*, 1 T.C. 275 (1942); *Oberwinder v. Commissioner*, 35 T.C. 429 (1960), *aff'd* 304 F.2d 16 (8th Cir. 1962).
[19] 1972-1 C.B. 127.
[20] *See also Childs v. Commissioner*, 103 T.C. 634 (1994), *aff'd* 89 F.3d 856 (11th Cir. 1996).
[21] Treas. reg. section 1.83-3(e).
[22] *Id.*
[23] Section 83(a); Treas. reg. section 1.83-1.
[24] Treas. reg. section 1.83-3(a).
[25] Section 83(c)(1); Treas. reg. section 1.83-3(d).
[26] *See Sproull v. Commissioner*, 16 T. C. 244 (1951), *aff'd* 194 F.2d 541 (6th Cir. 1952); *Centre v. Commissioner*, 55 T.C. 16 (1970); Minor v. United States, 772 F.2d 1472 (9th Cir. 1985).
[27] *Childs v. Commissioner*, *supra* note 2.
[28] *Childs v. Commissioner*, *supra* note 20 at 652, *citing Berry v. United States*, 760 F.2d 85 (4th Cir. 1985), *aff'g per curiam* 593 F. Supp. 80, 85 (M.D.N.C. 1984).
[29] 281 U.S. 111 (1930).
[30] *Lucas v. Earl, supra* note 29 (taxpayer-husband assigned to his wife half of his salary and fees that he earned; the Court treated the assigned amounts as his income); *Helvering v. Eubank*, 311 U.S. 122 (1940) (taxpayer assigned to corporate trustees his insurance renewal commissions; the Court concluded that he remained taxable on the insurance renewal commissions he earned); *Helvering v. Horst*, 311 U.S. 112 (1940) (taxpayer assigned to his son his negotiable bond interest coupons; the Court found he should include the amount of bond interest he would have earned from the bonds but for the transfer).
[31] 410 U.S. 441 (1973), *rev'g* 450 F.2d 109 (9th Cir. 1971), *aff'g* 295 F. Supp. 1289 (N.D. Cal. 1968).
[32] *Id.*
[33] *See Cowden v. Commissioner*, 289 F.2d 20 (5th Cir. 1961), *rev'g and remanding* 32 T.C. 853 (1959), *opinion on remand* T.C. Memo. 1961-229.
[34] *See Reed v. Commissioner*, 723 F.2d 138 (1st Cir. 1983); *Johnston v. Commissioner*, 14 T.C. 560 (1950).

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