Cornell Law Review

Volume 18
Issue 4 *June 1933*

Article 8

Deferred Payments as Taxable Income

Perlie P. Fallon

Follow this and additional works at: http://scholarship.law.cornell.edu/clr

Part of the Law Commons

Recommended Citation
Perlie P. Fallon, *Deferred Payments as Taxable Income* , 18 Cornell L. Rev. 564 (1933)
Available at: http://scholarship.law.cornell.edu/clr/vol18/iss4/8

This Article is brought to you for free and open access by the Journals at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Law Review by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

DEFERRED PAYMENTS AS TAXABLE INCOME

PERLIE P. FALLON†

Income defines something realized. The benefit is one which is realized in the sense that it has been reduced to possession. The act of taxation is the taking of a fixed part of an increment which has, in some form, been reduced to possession. The income must be possessed and by a possession which involves realization. The taxation statute does not reach unrealized gains and does not compel taxpayers to reduce uncertain future gains to immediate possession in order that a tax may presently apply.

The principle of realization is well established in taxation theory and has been declared as the law of the income tax statutes by the Supreme Court of the United States.

In applying the Federal income tax statutes to cases of sales where the purchaser takes as part payment deferred obligations, there may exist one of the following facts with respect to the deferred obligations:

1. They may be of a present and easily realizable value in established markets.
2. They may be contingent upon an event or upon income or profits from the assets sold, as in the Logan case recently decided by the Supreme Court.[1]
3. They may be of a speculative value.
4. They may be of some realizable present value but at a great discount and not saleable in the established markets.

When these variations of fact are approached with the yardstick of realization any difficulty with respect to them disappears.

The Treasury Department, the various divisions of the Internal Revenue Bureau and the Board of Tax Appeals have approached these problems with the principle of realization in mind but have failed to make a definite and clear statement of it. The result has been a line of holdings, opinions and decisions apparently inconsistent with each other and placed upon distinctions of fact sometimes relating to realization but often violating that fundamental because they treat as presently taxable, obligations which must be discounted fifty per centum to obtain any present value and this valuation has often been established upon opinion evidence.

When a sale of property is made at a profit and payment is made

†Member of the New York Bar.

[1]Commissioner of Internal Revenue v. Logan, 283 U. S. 404, 51 Sup. Ct. 550 (1930).

in cash, the profit is immediately reduced to possession and becomes taxable.

Where a future payment is definitely contingent there is no basis for present taxation under the decision in *Commissioner of Internal Revenue v. Logan.*[2]

If the seller is regularly engaged in selling goods upon an installment basis there is no difficulty because the statutes definitely defer taxation.

It is in those cases where the sale is a casual one and the securities taken by the purchaser are of a speculative value that the real difficulty under our present statutes is presented.

Let us turn now to the statutes, regulations and decisions:

The Federal Income Tax Laws expressly defer taxation in all cases where sales are *regularly* made on an installment basis;[3] and in *casual* sales of personal and real property where the price exceeds one thousand dollars and the initial payments do not exceed forty per centum of the selling price.[4]

The regulations, which are the rules adopted by the Treasury Department under the statutes, have created a further class of deferred taxes, namely, those arising from sales of *real property* where the initial payment exceeds the forty per centum named in the statute and the obligations received by the vendor have *no market value. U. S. Treasury Regulations 77, Articles 352* and *354* provide:

> "Sale of *real property* involving deferred payments.—Under section 44 deferred-payment sales of real property fall into two classes when considered with respect to the terms of sale, as follows:
>
> (1) Sales of property on the installment plan, that is, sales in which the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable year in which the sale is made do not exceed 40 per cent of the selling price.
>
> (2) Deferred-payment sales not on the installment plan, that is, sales in which the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable year in which the sale is made exceed 40 per cent of the selling price."
>
> "Deferred-payment sale of real property not on installment plan.—In transactions included in class (2) in article 352, the

[2] *Supra*, note 1.

[3] 47 Stat. § 44(a) 185, 186 (1932), 26 U.S.C.A. § 953(d) (Act of 1932).

[4] 47 Stat. § 44(b) 186 (1932), 26 U.S.C.A. § 953(d) (Act of 1932). § 212(d) (Act of 1926), 44 Stat. 23, made one-fourth of the purchase price the test. § 1208 (Act of 1926), 44 Stat. 130, made the provisions of § 212(d) of that Act retroactive for the taxes due under the Acts of 1916, 1917, 1918, 1921 and 1924. See also Article 46 of U. S. Treas. Reg. 69.

obligations of the purchaser received by the vendor are to be considered as the equivalent of cash to the amount *of their fair market value* in ascertaining the profit or loss from the transaction."

* * *

"If the obligations received by the vendor *have no fair market value*, the payments in cash or other property having a fair market value shall be applied against and reduce the basis of the property sold, and, if in excess of such basis, shall be taxable to the extent of the excess. Gain or loss is realized when the obligations are disposed of or satisfied, the amount being the difference between the reduced basis as provided above and the amount realized therefor. Only in rare and extraordinary cases does property have no fair market value."[5]

Thus the obligations in casual sales of real property are to be taxed at their fair market value and if there is no fair market value, the tax is deferred. But what is fair market value? If the obligations can by some extreme effort be disposed of at fifty per centum of their face value or contract value, is that value a fair market value or any value which gives a right of present taxation? The decisions are extremely contradictory. We find one indication of guiding principle here in the legal concept which the regulations use as a basis of approach to the problem.

The sections of the Revenue Act which these regulations governing the casual sales of real property seek to interpret, do not by any literal reading justify them. They are, in fact, motivated by the much broader principle of taxable and non-taxable income under the revenue act as a whole. Income is indicative of something received, something reduced to possession, and that is the only legal basis for taxation of such deferred payments and the fundamental ground upon which the intention of the regulations rests.

This is seen again when we turn to the method of taxation of deferred payments in casual sales of *personal* property where the initial payment exceeds the statutory limitation of forty per centum. This is not a subject covered by the regulations. It has been the subject of interpretation by the general counsel.

[5]Similar provisions are found in U. S. Treas. Reg. 74, Arts. 352, 354, also U. S. Treas. Reg. 69, Arts. 44, 46 and still earlier regulations as hereinafter mentioned. Also see Office Decisions 842 (hereinafter cited as O.D.), 4 Cum. Bull. 89; and Appeals and Review Memoranda 2698 (hereinafter cited as A.R.R.), Cum. Bull. II-2, p. 76; also O.D. 181, Cum. Bull. 1, p. 76.

The Supreme Court has recently interpreted U. S. Treas. Reg. 69, Art. 44 in an opinion which brings out several points of legislative and procedural history in David Burnet, Commissioner of Internal Revenue, petitioner v. S. and L. Building Corporation, decided by the Supreme Court on March 13th, 1933 (Internal Rev. Bulletin XII, No. 15, p. 5).

In *General Counsel's Memorandum 1387*[6] there is found the following:

> "The legal problem resolves itself into this. In the case of a taxpayer on a cash receipts and disbursements basis, what is the method of computing the profit to be reported in the case of a casual sale of personal property when the initial payment exceeds one-fourth of the purchase price and the deferred payments are not represented by any notes or other evidences of indebtedness of the purchaser, the obligation of the purchaser to make such payments being based solely on the promise to pay contained in the contract?
>
> *Such a sale is similar to a deferred payment sale of real property not on the installment plan. Article 44* of *Regulations 69*, which is applicable under the Revenue Act of 1924 as well as under the Revenue Act of 1926, defines a deferred payment sale of real property not on the installment plan as a sale in which the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable year in which the sale is made exceed one-fourth of the purchase price. The rule for computing the profit derived from such a sale is also applicable in the case of a deferred payment sale of personal property not on the installment plan. *Article 46* of *Regulations 69* provides that in deferred payment sales of real estate not on the installment plan the obligations of the purchaser received by the vendor are to be considered as the equivalent of cash to the amount of their fair market value in ascertaining the profit or loss from the transaction, but, if the obligations received by the vendor have no fair market value, the payment in cash or other property having a fair market value shall be applied against and reduce the basis of the property sold, and if in excess of such basis, shall be taxable to the extent of such excess. The term "Evidence of indebtedness of the purchaser" and "Obligations of the purchaser received by the vendor" as used in *Articles 44* and *46* respectively, clearly refer to something received by the vendor to represent the promise or promises to pay contained in the contract of sale. If, therefore, the deferred payments are not represented by notes or other like obligations of the purchaser, the cash received by a taxpayer on the cash receipts and disbursements basis should be applied against and reduce the basis of the property sold and, if it is in excess of such basis, the excess should be reported as profit. When the deferred payments are received they should be applied against the reduced basis, if the initial payment was not in excess of the basis, and the excess over the reduced basis or the total amount received, as the case may be, should be included in income for the year of receipt."[7]

[6]Cum. Bull. VI-1, p. 48.

[7]General Counsel Gregg was not the first to deal with this problem. See O.D. 715, 3 Cum. Bull. 107—Art. 42 of U. S. Treas. Reg. 45; U. S. v. Christin Oil and Gas Co., 269 Fed. 458 (D. C., La. 1920). Dicta in Bedell v. Commissioner,

This decision mentions the point of fact that no obligations or notes were received by the seller but the decision and the regulations with respect to casual sales of real property rest on the fundamental point that income to be taxable must be received. If the securities taken in part payment have a market value there exists a constructive reduction to possession of the income.[8]

This is consistent with and does not exceed the limitation set forth in *Eisner v. Macomber*[9] in which the Supreme Court, after defining income, wrote:

---

30 F. (2nd) 622 (C. C. A. 2nd 1929); Safe Deposit and Trust Co. v. Miles, 273 Fed. 822 (D. C., Md. 1921), *aff'd* 259 U. S. 247, 42 Sup. Ct. 483 (1921) (1916 Act). See also General Counsel Gregg's opinion in G. C. M. 952; Cum. Bull. VI-1, p. 191, which is in part as follows:

> "Neither the retroactive provisions of the Revenue Act of 1926, nor the regulations adopted thereunder provide expressly for the manner of determining income resulting from a casual sale of, or contract to sell personal property when the initial payment exceeds one-fourth of the purchase price and when deferred payments are not represented by obligations having a fair market value. *This office is of the opinion that there should be applied to such a transaction by analogy the principle promulgated as part of Article 46 of Regulations 69 with reference to real property.*
>
> Income resulting from the transaction here involved should be measured by the payments actually received by the taxpayer to the extent that such payment exceed the cost to the taxpayer of the property to be sold, and such income is returnable for the year in which such excess is received. (U. S. Treas. Reg. 69, Art. 46; O. D. 889, C. B. 4, 89)."

These decisions of Mr. Gregg are cited and defined, perhaps limited, in G. C. M. 3350; C. B. VII-1, p. 62, where the test of "fair market value, readily ascertainable" is taken as a basis of taxation.

The General Counsel's Memorandum 1387 refers to the taxpayer therein reporting on a cash basis. This distinction is met with in many of the cases. It furnishes no ground for a fundamental solution of the problem. Books must be kept on a cash or accrual basis. But we cannot have an interpretation of a revenue law that creates different rights and obligations according to a basis of bookkeeping: (The Aluminum Castings Co. v. Routzahn, Collector, 282 U. S. 92, 51 Sup. Ct. 11 (1930), contains an exposition of the law on the distinction between the cash and accrual basis of accounting.) Further, the principle of present taxation often accelerates, for purpose of taxation, the actual dates of accrual. In Charles C. Ruprecht v. Commissioner, 16 Board of Tax Appeals Report 919 (1929) (hereinafter cited as B. T. A.) the Board referred to "a mere account receivable" as not being a safe basis of present taxation. (*Aff'd* 39 F. (2nd) 458 (C. C. A. 5th 1930).

For a further discussion of the sources of accrual and its history in the taxation statute, see David Burnet, Commissioner of Internal Revenue, petitioner v. S. and L. Building Corp., *supra* note 6. For an application of the accounting principle see G. C. M. 11655, I. R. B. XII, No. 15, p. 3.

[8]Reynolds, Collector v. Donald McMurray, 60 F. (2nd) 843 (C. C. A. 10th 1932); see also U. S. Treas. Reg. 33 (1918 ed.) Art. 126, 180; Regulations 45, Art. 23, 1533 construed in The Massachusetts Mutual Life Insurance Co. v. United States, decided by the Supreme Court, February 6th, 1933, 53 Sup. Ct. 337.

[9]252 U. S. 189, 40 Sup. Ct. 189 (1919); Lucas v. American Code Co., 280 U. S.

> "Here we have the essential matter; *not* a gain *accruing* to capital, not a growth or *increment* of value *in* the investment, but a gain, a profit, something of exchangeable value *proceeding from* the property, *severed from the capital* however invested or employed, and *coming in*, being *'derived'*, that is, *received* or *drawn* by the recipient (the taxpayer) for his separate use, benefit, and disposal; that is income derived from property. Nothing else answers the description."

On the broad ground of *Eisner v. Macomber*, income is not taxable unless and until it is received. The rules with respect to both real and personal property are governed by this common denominator and any difference with respect to real and personal property in either regulation or interpretation becomes illogical and not warranted in law.

The Commissioner has not by the Regulations accepted the interpretation of the General Counsel's office in the memorandum cited with respect to personal property nor followed it in practice.[10] The decisions of District Courts and Courts of Appeal are not necessarily followed by the Commissioner, except in so far as they bind him by their judgments with respect to a specific case. A decision of the Supreme Court is alone decisive on the law.

The last paragraph of *Art. 354* of *Regulations 74* provides that if the obligations received by the vendor have no fair market value, then gain or loss with respect to these obligations is realized when the obligations are disposed of or satisfied. This creates a question of fact as to the existence of a fair market value. This question of fact in turn involves a question of law as to the meaning of the term "fair market value."

The Commissioner and the Board of Tax Appeals avoid the issue as to the status of deferred payments by treating the matter as a question of fact. The issue of law as to the meaning of "fair market value" has been disposed of by reductions of face values and contract values by as much as fifty per centum.[11] The total result is that "fair market

445, 449, 50 Sup. Ct. 202 (1929). "Generally speaking, the income law is concerned only with realized losses, as with realized gains."

See also Bourn v. McLoughlin, 19 F. (2nd) 148 (D. C., Calif. 1927); O'Meara v. Commissioner, 34 F. (2nd) 390 (C. C. A. 10th 1929); and Merchants Loan and Trust Co. v. Smietanka, 255 U. S. 509, 41 Sup. Ct. 386 (1920).

[10]Over the past year the Commissioner's acquiescences indicate a tendency to follow Woodmar Realty Co. v. Commissioner, 17 B. T. A. 958 (1929). Acq. IX-1 C. B. 59 which supports in principle the point of realization. This inclination is also indicated by the failure to prosecute to a conclusion the appeal in Andrew B. C. Dohrmann, 19 B. T. A. 890 (1930), 56 F. (2nd) 1081 (C. C. A. 9th 1932).

[11]Ernest P. Flint, 12 B. T. A. 20 (1928); O. L. Moon, 6 B. T. A. 385 (1927),

value" may be anything, the question of law as to whether a "fair market" must exist before the obligations are presently taxable is written out entirely and the sole point is: What are the obligations worth? The burden of proof as to the actual worth or lack of worth is upon the taxpayer and it is generally presented in the form of opinion evidence.[12]

The Federal Courts have held that the words "market value" in taxation statutes impliedly require that there must be a market for the obligations or securities involved.

In *Walter v. Duffy*[13] the Circuit Court of Appeals for the Third Circuit wrote:

> "We start, then, with the fact that we are here dealing with the existence of a market and a market price evidenced by sales in such market, so that our first and basic inquiry is whether there actually was a market for the sale of this insurance stock. Now, market implies the existence of supply and demand, for without the existence of either factor no market is shown. Standing alone, offers to sell with no takers, or offers to buy, with no sellers, show no such concurring willing action of buyer and seller as is involved where a market is made by buyers and sellers who by their respective sales and purchases make a market price which the law takes as evidence of value. Now in the case before us we have a situation where we think the existence of a fair determinative evidential market for this particular stock did not exist. That the stock of the company was not traded in generally is clear."

The Federal Courts have almost consistently maintained this position.[14] The Board of Tax Appeals after several reversals by the Federal Courts has adopted the same position with respect to issues of capital stock in exchange for assets.[15]

---

and Brinkerhoff-Faris Trust & Savings Company, 14 B. T. A. 797 (1928) are examples of numerous similar cases.

[12]Andrew B. C. Dohrmann, 19 B. T. A. 507 (1930); O'Meara v. Commissioner, *supra* note 9.

[13]287 Fed. 41, 45 (C. C. A. 3rd 1923). Followed by the Board of Tax Appeals in Wallis Tractor Co., 3 B. T. A. 981 (1926) and Commissioner acquiesced in C. B. VI-1, Page 6.

[14]Phillips v. United States, 12 F. (2nd) 598 (D. C., Pa. 1926); Heiner v. Crosby, 24 F. (2nd) 191 (C. C. A. 3rd 1928); O'Meara v. Commissioner, *supra* note 9 (all of these cases involve transfers of capital stock). But see Eldredge v. United States, 31 F. (2nd) 924 (C. C. A. 6th 1929) overruled on rehearing of Hitchcock v. Commissioner, 49 F. (2nd) 1078 (C. C. A. 6th 1931) in view of Burnett v. Logan *supra* note 1. Tsivoglou v. U. S., 27 F. (2nd) 564 (D. C. Mass. 1928), *aff'd* 31 F. (2nd) 706 (C. C. A. 1st 1929). *Contra* and in which the necessity of a market is denied as dictum, see Commissioner of Internal Revenue v. Swenson, 56 F. (2nd) 544 (C. C. A. 5th 1932).

[15]Andrew B. C. Dohrmann, 19 B. T. A. 507 (1930). This case went on appeal

The position with respect to fair market value first taken by the Commissioner was identical with that now maintained by the Federal Courts:

> "In the absence of reason to the contrary the words 'fair market value' must be given their ordinary meaning. * * * It is not however what can be obtained for the property when the owner is under peculiar compulsion to sell or the purchaser to buy nor is it a purely speculative value which an owner could not reasonably expect to obtain for the property although he might possibly be fortunate enough to do so. * * * *It implies the existence of a public of possible buyers at a fair price.*"[16]

The Board of Tax Appeals' decisions with respect to deferred payments have not followed any consistent and definite ground as to the necessity of a market or a "fair market value." It has held "fair market value" is a question of fact;[17] that the value of obligations not readily convertible into cash were not taxable until sold;[18] that obligations must have a readily realizable market value;[19] that possible sale at a great discount did not create a market value;[20] that where the security was only the contract and not an independent obligation the tax is deferred;[21] that evidence that obligations might not be sold at the equivalent of their face value rebutted the existence of market value;[22] that securities had no fair market value when they were not saleable to banks;[23] in *Woodmar Realty Co.* v. *Commissioner*,[24] the position is identical with that of the Federal Courts; on the other hand there are many cases where discounts as high as fifty per centum have either been approved or fixed by the Board on opinion evidence as fair market value.[25]

---

by the Commissioner to the Ninth Circuit Court of Appeals where it was evidently disposed of by a compromise between the parties. *See* Commissioner v. Dohrmann, 56 F. (2nd) 1081 (C. C. A. 9th 1932).

[16]A. R. R. 57; C. B. 1, p. 40.

[17]Andrew B. C. Dorhmann, 19 B. T. A. 507 (1930).

[18]Saeger v. Commissioner, 9 B. T. A. 890 (1927); Joliet Norfolk Farm Corporation, 8 B. T. A. 824 (1927), acq. VII-1 C. B. 16; Miami Beach Improvement Co., 14 B. T. A. 10 (1928) acq. VIII-1 C. B. 31.

[19]Stevenson v. Commissioner, 9 B. T. A. 552 (1927), acq. VII-1 C. B. 30.

[20]Anton M. Meyer, 3 B. T. A. 1329 (1926).

[21]Charles C. Ruprecht v. Commissioner, 16 B. T. A. 919 (1929).

[22]J. H. Johnson *et al.*, 19 B. T. A. 840 (1930), *aff'd* 56 F. (2nd) 58 (C. C. A. 5th 1932); Chicago Railway Equipment Co. v. Commissioner, 13 B. T. A. 487 (1928).

[23]Seffie Foster, 19 B. T. A. 958 (1930).

[24]17 B. T. A. 88 (1929), acq. IX-1 C. B. 59.

[25]See cases *supra* note 9. Collateral determinative of value, Geo. Antonoplos, 3 B. T. A. 1236 (1926); attitude of banks as to discount rejected as evidence of market value, Wray-Dickinson Co., 6 B. T. A. 269 (1927); occasional sales at discount

Taken together the many decisions of the Board cannot be reduced to any controlling rule and cannot be reconciled on the ground that the Act of 1926 used the term "market value" whereas the prior revenue acts used the term "readily realizable market value."[26] The decision in *Woodmar Realty Co. v. Commissioner* and its acceptance by the Commissioner establishes firm ground upon which a unity of law may be established.

The difficulty has arisen through the partial recognition of the principles defined in *Eisner v. Macomber*[27] and a failure to make a definite application of them. The attempt to reduce future obliga-

---

of 40 to 50 per centum used to fix value, Calvin Crouse, 11 B. T. A. 1327 (1928); value fixed at 25 per centum of face value, Ernest P. Flint, 12 B. T. A. 20 (1928); bonds valued at 60 per centum of face value, August Belmont Hotel Co., 18 B. T. A. 632 (1930); cases involving contingent payment, Mainard E. Crosby, 14 B. T. A. 980 (1929) and William Parris, 20 B. T. A. 320 (1930); valuation of contracts of sale; D. M. Stevenson, 9 B. T. A. 552 (1927); C. L. Starr, 9 B. T. A. 886 (1927) Gertrude H. Sweet, 8 B. T. A. 404 (1927); Woodmar Realty Co., 17 B. T. A. 88 (1929); Calvin T. Graves, 17 B. T. A. 1318 (1929); Rapid Transit Land Sales Co., 20 B. T. A. 608 (1930); Ravlin Corp., 19 B. T. A. 1112 (1930), acq. IX-2 C. B. 50.

[26]The Board of Tax Appeals, in Woodmar Realty Co., 17 B. T. A. 88 (1929), passed upon transactions in the years 1923, 1924 *and 1926* and held:

> "The sole question involved is whether the Commissioner properly computed taxable income by including in gross income, at face value, amounts to be paid in the future under contracts of sale made by the petitioner. The evidence leaves no doubt these contracts had no *fair market value or readily realizable market value* when received."

It is quite clear the Board does not make the difference in the wording of the 1921 and other revenue acts the basis of its decisions in these matters. This is shown by the case of Anton M. Meyer, 3 B.T.A. 1329 (1926) in which the Commissioner acquiesced C. B. VI-1, page 4. This case was decided under the 1921 act and is cited by the Board as an authority under the 1918 ("market value") and 1921 ("readily realizable market value") acts as well.

The following is a list of cases in which the Meyer case is cited as a precedent:

Transaction 1919 and 1920—Lawrence D. Miller, 7 B. T. A. 581 (1927), Meyer case cited at p. 583.

Transaction 1920—Joliet Norfolk Farm Corporation, 8 B. T. A. 824 (1927), Meyer case cited at p. 825.

Transaction 1920—D. M. Stevenson, 9 B. T. A. 552, (1927), Meyer case cited at p. 556.

Transaction 1922—Hugh MacRae, 9 B. T. A. 428 (1927).

Transaction 1923—C. L. Starr, 9 B. T. A. 886 (1927).

Transaction 1919—Old Farmers Oil Co., 12 B. T. A. 203 (1928), Meyer case cited at p. 218.

See also comment of U. S. C. C. A. upon these terms in Bedell v. Commissioner, *supra* note 7.

[27]*Supra* note 9. The Supreme Court has determined the nature of closed transactions in North Texas Lumber Co. v. Lucas, 281 U. S. 11, 50 Sup. Ct. 184 (1929) and Logan v. Commissioner, *supra* note 1.

tions to the status of closed transactions where there is no market to determine value is inconsistent with the holding in *Eisner v. Macomber*, is unnecessary since the actual income may be reached for taxation later and is speculative in determining value.[28] The entire record deals with a field in which the governing law is being evolved. The progress is not different from that under which the common law and equity were developed into a recognized governing code and under adverse conditions flowing from a far more complicated field of activity.

[28]Short term notes secured by mortgage bonds were treated as realized gain by the Supreme Court in Pinellas Ice & Cold Storage Co. v. Commissioner of Internal Revenue, decided by the Supreme Court, January 9th, 1933, 53 Sup. Ct. 257, but the issue was not raised and the case turned upon the interpretation of the Sections of 202-(a) and 203-(a) of the Act of 1926 which cover gains arising from the exchange of securities in reorganizations of corporations.