

Helvering Vs. Eubank

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Court : US Supreme Court

Decided On : Nov-25-1940

Appeal No. : 311 U.S. 122

Appellant : Helvering

Respondent : Eubank

Judgement :

Helvering v. Eubank - 311 U.S. 122 (1940)

U.S. Supreme Court Helvering v. Eubank, 311 U.S. 122 (1940)

Helvering v. Eubank

No. 205

Argued October 25, 1940

Decided November 25, 1940

311 U.S. 122

CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

SYLLABUS

Renewal commissions paid in 1933 by insurance companies to the assignee of an agent, pursuant to assignments made by the agent, in 1924 and 1928, of such commissions as should become payable to him for services which had been rendered in writing policies of insurance under agency contracts, *held*, under 22 of the Revenue Act of 1932, income taxable in 1933 to the assignor. Following *Helvering v. Horst, ante*, p. [311 U. S. 112](#) . P. [311 U. S. 124](#) .

110 F.2d 737 reversed.

Certiorari, *post*, p. 630, to review the reversal of an order of the Board of Tax Appeals, 39 B.T.A. 583, sustaining a determination of a deficiency in income tax.

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MR. JUSTICE STONE delivered the opinion of the Court.

This is a companion case to *Helvering v. Horst, ante*, p. [311 U. S. 112](#) , and presents issues not distinguishable from those in that case.

Respondent, a general life insurance agent, after the termination of his agency contracts and services as agent, made assignments in 1924 and 1928, respectively, of renewal commissions to become payable to him for services which had been rendered in writing policies of insurance under two of his agency contracts. The Commissioner assessed the renewal commissions paid by the companies to the assignees in 1933 as income taxable to the assignor in that year under the provisions of the 1932 Revenue Act, 47 Stat. 169, 22 of which does not differ in any respect now material from 22 of the 1934 Revenue Act, involved in the *Horst* case. The Court of Appeals for the Second Circuit reversed the order of the Board of Tax Appeals sustaining the assessment. 110 F.2d 737; 39 B.T.A. 583. We granted certiorari October 14, 1940. 311 U.S. 630.

No purpose of the assignments appears other than to confer on the assignees the power to collect the commissions,

which they did in the taxable year. The Government and respondent have briefed and argued the case here on the assumption that the assignments were voluntary transfers to the assignees of the right to collect the commissions as and when they became payable, and the record affords no basis for any other.

For the reasons stated at length in the opinion in the *Horst* case, we hold that the commissions were taxable as income of the assignor in the year when paid. The judgment below is

Reversed.

The separate opinion of MR. JUSTICE Mc REYNOLDS.

The cause was decided upon stipulated facts. The following statement taken from the court's opinion discloses the issues:

"The question presented is whether renewal commissions payable to a general agent of a life insurance company after the termination of his agency and by him assigned prior to the taxable year must be included in his income despite the assignment."

"During part of the year 1924, the petitioner was employed by The Canada Life Assurance Company as its branch manager for the state of Michigan. His compensation consisted of a salary plus certain commissions. His employment terminated on September 1, 1924. Under the terms of his contract, he was entitled to renewal commissions on premiums thereafter collected by the company on policies written prior to the termination of his agency, without the obligation to perform any further services. In November, 1924, he assigned his right, title and interest in the contract, as well as the renewal commissions, to a corporate trustee. From September 1, 1924 to June 30, 1927, the petitioner and another, constituting the firm of Hart & Eubank, were general agents in New York City for the Aetna Life Assurance Company,

and from July 1, 1927, to August 31, 1927, the petitioner individually was general agent for said Aetna Company. The Aetna contracts likewise contained terms entitling the agent to commissions on renewal premiums paid after termination of the agency, without the performance of any further services. On March 28, 1928, the petitioner assigned to the corporate trustee all commissions to become due him under the Aetna contracts. During the year 1933, the trustee collected by virtue of the assignments renewal commissions payable under the three agency contracts above mentioned amounting to some \$15,600. These commissions were taxed to the petitioner by the commissioner, and the Board has sustained the deficiency resulting therefrom."

110 F.2d 738.

The court below declared --

"In the case at bar, the petitioner owned a right to receive money for past services; no further services were required. Such a right is assignable. At the time of assignment, there was nothing contingent in the petitioner's right, although the amount collectible in future years was still uncertain and contingent. But this may be equally true where the assignment transfers a right to income from investments, as in *Blair v. Commissioner*, [300 U. S. 5](#) , and *Horst v. Commissioner*, 107 F.2d 906, or a right to patent royalties, as in *Nelson v. Ferguson*, 56 F.2d 121, *cert. denied*, "

286 U.S. 565. By an assignment of future earnings, a taxpayer may not escape taxation upon his compensation in the year when he earns it. But when a taxpayer who makes his income tax return on a cash basis assigns a right to money payable in the future for work already performed, we believe that he transfers a property right, and the money, when received by the assignee, is not income taxable to the assignor.

Accordingly, the Board of Tax Appeals was reversed, and this, I think, is in accord with the statute and our opinions.

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The assignment in question denuded the assignor of all right to commissions thereafter to accrue under the contract with the insurance company. He could do nothing further in respect of them; they were entirely beyond his control. In no proper sense were they something either earned or received by him during the taxable year. The right to collect became the absolute property of the assignee, without relation to future action by the assignor.

A mere right to collect future payments for services already performed is not presently taxable as "income derived" from such services. It is property which may be assigned. Whatever the assignor receives as consideration may be his income, but the statute does not undertake to impose liability upon him because of payments to another under a contract which he had transferred in good faith under circumstances like those here disclosed.

As in *Helvering v. Horst*, just decided, the petitioner relies upon opinions here, but obviously they arose upon facts essentially different from those now presented. They do not support his contention. The general principles approved in *Blair v. Commissioner*, [300 U. S. 5](#) , and applied in *Helvering v. Horst*, are controlling, and call for affirmation of the judgment under review.

THE CHIEF JUSTICE and MR. JUSTICE ROBERTS concur in this opinion.

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