
TRANSCRIPT OF RECORD

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 99

**ROBERT H. LUCAS, AS COMMISSIONER OF INTERNAL
REVENUE, PETITIONER**

vs.

GUY C. EARL

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT**

**PETITION FOR CERTIORARI FILED MAY 30, 1930
CERTIORARI GRANTED OCTOBER 14, 1930**

Service and receipt of a copy of the within is hereby admitted

.....*day of June, 1929.*

.....*Counsel for Petitioner.*

(34224)

SUPREME COURT OF THE UNITED STATES

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Before U. S. Board of Tax Appeals

Docket 7873

GUY C. EARL, 2914 McCLURE ST., OAKLAND, CALIF., PETITIONER
VS.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

For the taxpayer: H. H. Tooley, Esq.; Warren Olney, jr., Esq.;
J. M. Mannon, jr., Esq.; Henry D. Costigan, Esq.; Wm. G. Feely,
Esq.

For the commissioner: M. E. McDowell, Esq.; V. J. Hefferman,
Esq.

Docket entries

1925

Oct. 7—Petition received and filed.
Oct. 12—Copy of petition served on solicitor.
Oct. 12—Notification of receipt mailed taxpayer.
Oct. 29—Answer filed by solicitor.
Nov. 10—Copy of answer served on taxpayer. Assigned to field
calendar.

1927

2 May 6—Hearing date set July 8, 1927, at San Francisco, Calif.
July 8—Hearing had before Mr. Trammell. Briefs due Sept.
15/27.
Aug. 8—Motion for an extension to 10-15-27 to file brief filed by
taxpayer.
Aug. 9—Granted. Both sides notified.
Aug. 23—Transcript of hearing 7-8-27 filed.
Oct. 13—Brief filed by taxpayer.
Oct. 13—Brief filed by G. C.

1928

Feb. 14—Findings of fact and opinion rendered (Trammell).
Judgment will be entered for the commissioner.
Feb. 16—Order of redetermination entered.
Aug. 1—Supersedeas bond for \$9,705.16 approved and ordered filed.
Aug. 1—Notice of withdrawal of Homer H. Tooley as counsel for
taxpayer filed.
Aug. 1—Notice of appearance of Warren Olney, jr., J. M. Man-
non, jr., and Henry D. Costigan as counsel for taxpayer
filed.
Aug. 2—Petition for review by U. S. Cir. Ct. of Appeals, 9th Cir-
cuit, with assignment of errors filed by taxpayer.
Aug. 2—Statement of evidence lodged.
Aug. 2—Proof of service of petition filed.
Aug. 2—Proof of service of statement for hearing 8-13-28 filed.
Aug. 8—Objections to statement of evidence and notice of service
filed by G. C.

Aug. 9—Hearing continued to 8-21-28 on settlement of evidence.

3 Aug. 21—Hearing had before Mr. Trammell. Order rejecting settlement of evidence as proposed by petitioner.

Sept. 12—Order denying inclusion of statement of evidence entered.

Sept. 12—Exception to order denying inclusion of statement entered.

Sept. 12—Præcipe with proof of service thereon filed by taxpayer.

Sept. 13—Consent to taxpayer's præcipe filed by G. C.

Now, September 24, 1928, the foregoing docket entries certified from the record as a true copy.

[SEAL.]

B. D. GAMBLE,
Clerk, Board of Tax Appeals.

Before United States Board of Tax Appeals

Petition

Filed Oct. 7, 1925

The above-named taxpayer hereby appeals from the determination of the Commissioner of Internal Revenue set forth in his deficiency letter (IT:PA:4-GWF-406-60D) dated August 10, 1925, and as the basis of his appeal sets forth the following:

1. The taxpayer is an individual residing at 2914 McClure Street, Oakland, California.

2. The deficiency letter was dated August 10, 1925.

3. The taxes in controversy are income taxes for the calendar years 1920 and 1921 and are less than \$10,000.00.

4. The determination of tax contained in said deficiency letter is based upon the following errors:

The commissioner maintains that a joint tenancy agreement entered into between the taxpayer and his wife in 1901 does not extend to salaries, wages and commissions earned by him individually, but that such income is his separate income and should be reported on his return for income tax purposes. Any such income, the commissioner holds, assigned to his wife, partakes of the nature of a gift.

5. The facts upon which the taxpayer relies as the basis of his appeal are the following:

Under date of June 1, 1901, the taxpayer and his wife, Ella F. Earl, executed a certain contract in writing in the words and figures as follows:

OAKLAND, June 1, 1901.

It is agreed and understood between us that any property either of us now has or may hereafter acquire (of any and every kind) in any way, either by earnings (including salaries, fees, etc.) or any rights by contract or otherwise during the existence of our marriage, or which we or either of us may receive by gift, bequest, devise, or inheritance, and all the proceeds, issues, and profits of

any and all such property shall be treated and considered and hereby is declared to be received, held, taken, and owned by us as joint tenants and not otherwise with the right of survivorship.

GUY C. EARL.
ELLA F. EARL.

The said agreement has ever since the date thereof been and still is in full force and effect. There was ample consideration for the agreement. The wife, at the time the agreement was executed, had upwards of \$30,000.00 of separate property which she put under the agreement. There was also community property existing at the time and each party had an expectancy of inheritance, etc. The taxpayer had no separate property. Under the California law no consideration was necessary for the complete and absolute validity of the agreement other than the mutual consent of the parties to such agreement. Even had neither of the contracting parties any separate property, or there had been no community property in existence, it was entirely competent for the parties to make a valid agreement on their mutual consent, unsupported by any other consideration. If such an agreement amounted to a gift by one spouse to the other, it would be perfectly valid and would control with respect to present property and all future properties, whether arising by earnings or otherwise. The future earnings upon the instant of coming into being would be controlled by the agreement. There would be no instant of time when they could be considered as belonging to the husband before the agreement would take effect.

6 Such is the clear meaning of the California law. The parties were resident in California and have ever since lived in California, the earnings were made in California, and the agreement has remained in effect during the taxable years under review.

In the year 1920 the taxpayer received as salary, fees, etc., the sum of \$24,839.00, which, under the joint tenancy agreement of June 1, 1901, belonged \$12,419.50 to himself and \$12,419.50 to his wife. In the year 1921 he received from the same sources the sum of \$22,946.20, of which \$11,473.10 belonged to himself and \$11,473.10 to his wife.

6. The taxpayer in support of his appeal relies upon the following propositions of law:

(a) Section 161 of the California Civil Code, which provides that a husband and wife may hold property as joint tenants, tenants in common, or as community property.

(b) Sections 158 and 159 of the California Civil Code, which provides that a husband and wife may create the joint tenancy by contract between themselves.

(c) IT: 1744-II-2CB-179, wherein the Treasury Department held that under the laws of California a husband and wife may enter into a partnership and if there is an agreement which shows that the intention of the parties is to create in the wife a vested interest

in the partnership as her separate property, such an agreement will change their property from community to separate property, and in such a case the wife is entitled to report as her separate income all amounts earned by her under such agreement.

7 Wherefore the taxpayer respectfully prays that this board may hear and determine his appeal.

HOMER H. TOOLEY,

*Certified Public Accountant for Taxpayer,
514 Crocker Building, San Francisco, California.*

FRANK G. BUTTS,

*Certified Public Accountant for Taxpayer,
910-912 Investment Building, Washington, D. C.*

[Duly sworn to by Guy C. Earl; jurat omitted in printing.]

8

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, August 10, 1925.

IT:PA:4. GWF-406-60D.

Mr. GUY C. EARL,

2914 McClure Street, Oakland, California.

SIR: The determination of your income-tax liability for the taxable years 1920 and 1921, as set forth in office letter dated May 1, 1925, has been changed as a result of your protest to disclose an aggregate deficiency in tax amounting to \$4,852.58. The adjustments made are shown in detail in the attached statement.

In accordance with the provisions of section 274 of the revenue act of 1924, you are allowed 60 days from the date of mailing of this letter within which to file an appeal to the United States Board of Tax Appeals contesting in whole or in part the correctness of this determination.

Where a taxpayer has been given an opportunity to appeal to the United States Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has appealed and an assessment in accordance with the final decision on such appeal has been made, no claim in abatement in respect of any part of the deficiency will be entertained.

If you acquiesce in this determination and do not desire to file an appeal, you are requested to sign the inclosed agreement consenting to the assessment of the deficiency and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:PA:4-GWF-406-60D. In the event that you acquiesce in a part of the determination, the agreement should be executed with respect to the items agreed to.

Respectfully,

D. H. BLAIR, *Commissioner.*
By J. G. BRIGHT (Sgd.),
Deputy Commissioner.

STATEMENT

IT:PA-4.

GWF-406-60D.

In re Mr. Guy C. Earl, 2914 McClure St., Oakland, California.

Year	Deficiency in tax
1920	\$2,420.12
1921	2,432.46
Total	4,852.58

A reaudit of your returns for the years 1920 and 1921 has been made based on your protest and the recommendations of the conferee in a conference held in this office in June 9, 1925.

1920

10 In view of the information submitted, relative to the agreement between yourself and wife, the income received from transactions in which you were joint tenants has been eliminated from your net income and included in your wife's return.

Salaries, wages, and commissions earned by you individually are deemed to be your separate income, and such income has been included in your return. Any such income assigned to your wife is in the nature of a gift.

Tax paid at source, amounting to \$33.00, previously included in your income, has been eliminated in accordance with the provisions of Treasury Decision 3685.

Your total income adjusted is \$32,393.68. Of this amount \$5,777.34 has been included in your wife's return and \$28,616.34 in your return.

The tax on your income is \$3,492.53, and the additional tax liability is \$2,420.12.

Statement—Mr. Guy C. Earl—1921

Your total net income of \$24,124.86, previously reported, was understated by \$1,000.00, the correct amount being \$25,124.86. Of this amount \$24,035.53 has been included in your return, and \$1,089.33 eliminated and included in your wife's return, in accordance with the recommendations of the conferee.

The correct tax liability on your income of \$24,035.53 is \$2,535.41, and the additional tax liability is \$2,432.46.

11 You are advised that in determining this tax liability personal exemption allowable on your return has been increased from \$1,000.00 to \$2,000.00, inasmuch as the income of your wife for this year is nontaxable.

This assessment is in addition to all other unpaid and outstanding assessments appearing upon the collector's lists.

Payment of the deficiency in tax should not be made until a bill is received from the collector of internal revenue for your district, and remittance should then be made to him.

You will be advised of the adjustments in your wife's net income in a separate communication from this office.

Now, August 24, 1928, the foregoing petition certified from the record as a true copy.

[SEAL.]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

Before United States Board of Tax Appeals

Answer

Filed Oct. 29, 1925

Now comes the Commissioner of Internal Revenue, by his attorney, A. W. Gregg, Solicitor of Internal Revenue, and for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

(1) Admits the allegations set forth in paragraphs 1, 2, and 3 of the petition.

(2) Admits that during the year 1920 taxpayer received salaries, fees, etc., amounting to \$24,839.00.

(3) Admits that during the year 1921 taxpayer received salaries, fees, etc., amounting to \$22,946.20.

(4) Admits that in determining the deficiency tax set forth in said deficiency letter dated August 10, 1925, the commissioner treated the amounts set forth in paragraphs 2 and 3 of this answer as taxpayer's separate income.

(5) Denies that the commissioner erred in treating the said amounts of \$24,839.00 and \$22,946.20 as taxpayer's separate income.

(6) Denies generally and specifically each and every allegation contained in taxpayer's petition not hereinbefore admitted, qualified or denied.

Proposition of law: In reporting in one subject to taxation an individual may not reduce the amount of salaries, wages, fees, etc., received by him during a taxable year by an agreement or contract to pay over any amount thereof to another person.

Wherefore it is prayed that the taxpayer's appeal be denied.

A. W. GREGG,
Solicitor of Internal Revenue,
Attorney for Commissioner of Internal Revenue.

13 Of Counsel:

ARTHUR H. MURRAY,
Special Attorney,
Bureau of Internal Revenue.

[Certificate to foregoing paper omitted in printing.]

Before United States Board of Tax Appeals

Docket No. 7873. Promulgated February 14, 1928

GUY C. EARL, PETITIONER,

VS.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Findings of fact and opinion

Salary and fees of petitioner, a resident of California, are taxable to him notwithstanding the fact that he had agreed to divide them with his wife.

H. H. Tooley, Esq., for the petitioner.

M. E. McDowell, Esq., for the respondent.

This is a proceeding for the redetermination of deficiencies in income tax for the calendar years 1920 and 1921 in the amounts of \$2,420.12 and \$2,432.46, respectively. The deficiencies arise on account of the action of the respondent in including in the taxable income of the petitioner the entire amount received by him during the years involved from salaries, fees, etc.

FINDINGS OF FACT

The petitioner is a resident of California. On June 1, 1901, he entered into a contract in writing with his wife, Ella F. Earl, as follows:

"It is agreed and understood between us that any property either of us now has or may hereafter receive or acquire (of any and every kind) in any way, either by earnings (including salaries, fees, etc.) or any rights by contract or otherwise during the existence of our marriage, or which we or either of us may receive by gift, bequest, devise or inheritance, and all the proceeds, issues and profits of any and all such property shall be treated and considered and hereby is declared to be received, held, taken and owned by us as joint tenants and not otherwise with the right of survivorship.

"(Signed) GUY C. EARL.
"ELLA F. EARL."

The above agreement has been in effect since the date thereof and all amounts received by the petitioner as income from personal services, consisting of salaries, fees, etc., as well as the income from property, have been deposited in a joint bank account.

The petitioner and the said Ella F. Earl were married in 1888.

In 1901 the petitioner had accumulated considerable property, consisting of cash, bonds, lands, and other property. The petitioner's wife had about \$30,000 worth of property when they entered into the agreement above set out. At the time the petitioner was not very well and suggested to his wife that it might be