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Federal Tax Liability of the Wife for Community Income Earned by the Husband

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tection to varying and inconsistent standards depending on the motives or purposes behind the particular statute. Not only is it difficult to determine the sole motivation behind a legislative enactment, but it is also futile to judicially attempt to invalidate the law because of improper legislative motives. Presumably, the law could be re-enacted for valid motives and, thus, become constitutional.[61] However, if the Court continues to rely upon the effects of the statute, the standard will remain constant and judicial inquiry will be limited to an area within its proper bounds.

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FEDERAL TAX LIABILITY OF THE WIFE FOR COMMUNITY INCOME EARNED BY THE HUSBAND

Mr. and Mrs. Mitchell lived under Louisiana's community of gains from 1946 until its termination by judicial separation from bed and board in August 1961. Later, Mrs. Mitchell renounced the community of gains leaving Mr. Mitchell responsible for all assets and liabilities contracted during the existence of the community. Although he earned taxable income from 1955 to 1959, Mr. Mitchell failed to file federal tax returns. In an attempt to collect one-half of the taxes and penalties owed on this income, the Commissioner assessed a deficiency[1] against Mrs. Mitchell. The Tax Court[2] determined that Mrs. Mitchell's tax liability was created when she became owner of the property, and that she has become the immediate owner of one-half of all community property upon its acquisition. The Fifth Circuit[3] reversed, holding that Mrs. Mitchell's renunciation avoided any tax liability on income falling into the community of gains. On

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into one composite legislative motive is at once absurd, irresponsible, and scientifically indefensible. It amounts to scientism of the worst variety." Howell, *Legislative Motive and Legislative Purpose in the Invalidation of a Civil Rights Statute*, 47 VA. L. REV. 439, 450-51 (1961).

61. *See* note 36 *supra*.

1. A deficiency is the excess of a given tax over the net amount previously reported and assessed or collected without assessment. INT. REV. CODE of 1954, § 6211. Deficiencies are formally asserted by the government through an assessment. An assessment occurs when the district director signs the assessment list, and this fixes the government's tax claim. Mim. 3229, III-2 CUM. BULL. 293, 294 (1924).

2. Mitchell v. Commissioner, 51 T.C. 641 (1969).

3. Mitchell v. Commissioner, 430 F.2d 1 (5th Cir. 1970).

appeal the United States Supreme Court[4] reaffirmed the Tax Court's decision and *held* that under existing Louisiana law, Mrs. Mitchell had an immediate ownership interest in all community property at its acquisition. Therefore, she was personally liable for federal taxes on her one-half interest in this income. Her subsequent renunciation under state law did not affect her liability as federal law exclusively determines exemptions from federal taxation. *United States v. Mitchell*, 91 S. Ct. 1763 (1971).

Mrs. Mitchell's liability in the instant case was based upon the nature of the wife's interest in community property. The two major characterizations of the wife's interest have been either that of "ownership" or of "expectancy."[5] Under the expectancy theory, the wife's interest was viewed as a mere hope which materializes into absolute ownership only at the termination of the community of gains.[6] There seems to be support for this concept in both the Civil Code and the Code of Civil Procedure. Article 2404 of the Civil Code[7] gives the husband control over community property. The corresponding article of the Digest of 1808 based the husband's control on the fact that "she [the wife] has no sort of right in them [community assets] until her husband is dead."[8] Did the omission of this phrase from the Civil Codes of 1825 and 1870 give the wife more than a mere hope, or did it only reopen the question of the wife's interest? The idea that the wife continues to enjoy only a mere hope is supported by article 686 of the Code of Civil Procedure,[9] which makes the husband the proper party in a suit involving community property. Furthermore, article 695 of the Code of Civil Procedure provides that the wife may sue only "as the agent of her husband . . . to enforce a right of . . . the marital community" when "specially authorized to do so by

4. United States v. Mitchell, 91 S. Ct. 1763 (1971).

5. Comment, 25 LA. L. REV. 159, 160 (1964).

6. Ramsey v. Beck, 151 La. 190, 91 So. 674 (1922); Jacob v. Falgoust, 150 La. 21, 90 So. 426 (1922); Succession of McCloskey, 144 La. 438, 80 So. 650 (1919); Succession of Emonot, 109 La. 359, 33 So. 368 (1902); Smith v. Reddick, 42 La. Ann. 1055 (1890); Tugwell v. Tugwell, 32 La. Ann. 848 (1880); Succession of McLean, 12 La. Ann. 222 (1857); Guice v. Lawrence, 2 La. Ann. 226 (1847).

7. LA. CIV. CODE art. 2404: "The husband is the head and master of the . . . community of gains; he administers its effects, disposes of the revenues which they produce, and may alienate them by an onerous title, without the consent . . . of his wife . . . ."

8. La. Digest of 1808, bk. III, tit. V, art. 66.

9. LA. CODE CIV. P. art. 686: "The husband is the proper plaintiff, during the existence of the marital community, to sue to enforce a right of the community . . . ."

her husband." Additionally, the wife is not provided with an action against the husband for an accounting during the existence of the community of gains.[10] Article 2410 of the Civil Code allows the wife the privilege of exonerating herself from liability to pay debts contracted during the marriage by renouncing the community of gains.[11] Clearly then, there is strong legislative support for the expectancy interest theory; the legislation seems to be contrary to the idea that the wife owns one-half of the community property.[12]

Very little direct support is found in the Civil Code to indicate that the wife owns one-half of the community property at its acquisition. Article 2399 of the Civil Code,[13] cited in support of the ownership theory, equates the community of gains with a partnership. However, Civil Code article 2807,[14] found in the title treating partnerships, expressly states that the community of gains is not a partnership. Since the Louisiana Supreme Court has interpreted article 2334 of the Civil Code as directing that the earnings of the wife are to be included in community property,[15] it is claimed that inequity would result from a holding that she has a mere expectancy interest. Thus, the lack of sound legislative support has forced the Louisiana Supreme Court to base the ownership theory on the restrictions placed upon the husband in his management of community property.[16]

The ownership theory of the wife's interest was first expressed by the Louisiana Supreme Court in 1832.[17] However,

10. LA. R.S. 9:291 (Supp. 1963). *See* Azar v. Azar, 239 La. 941, 120 So.2d 485 (1960), where the court rejected any possibility of the wife suing the husband during the existence of the community of gains because of his fraudulent acts, but allowed her to sue for a separation of property.

11. LA. CIV. CODE art. 2410: "Both the wife and her heirs or assigns have the privilege of being able to exonerate themselves from the debts contracted during the marriage, by renouncing the partnership or community of gains."

12. Comment, 25 LA. L. REV. 159, 163-67 (1964).

13. LA. CIV. CODE art. 2399: "Every marriage contracted in this State, superinduces of right partnership or community of acquets or gains . . . ." *See* Messersmith v. Messersmith, 229 La. 495, 86 So.2d 169 (1956); Succession of Wiener, 203 La. 649, 14 So.2d 475 (1943); Dixon v. Dixon's Executors, 4 La. 188 (1832).

14. *Id.* art. 2807: "The community of property, created by marriage is not a partnership . . . ."

15. Houghton v. Hall, 177 La. 237, 148 So. 37 (1933).

16. Azar v. Azar, 239 La. 941, 120 So.2d 485 (1960); Messersmith v. Messersmith, 229 La. 495, 86 So.2d 169 (1956); Succession of Helis, 226 La. 133, 75 So.2d 221 (1954); Phillips v. Phillips, 160 La. 813, 107 So. 584 (1926); Dixon v. Dixon's Executors, 4 La. 188 (1832).

17. Dixon v. Dixon's Executors, 4 La. 188 (1832).

fifteen years later the court reversed itself in *Guice v. Lawerence*[18] and held that the wife's interest in community property was a mere expectancy that became full ownership only at the end of the community. This position prevailed for more than seventy-five years, until the Louisiana Supreme Court in *Phillips v. Phillips*[19] repudiated the expectancy theory of *Guice*. The court stressed, by way of dictum, that the wife's interest in community property was one of full ownership of an undivided one-half, extant immediately upon acquisition of the property. This dictum has been heavily re-enforced since 1926 by both the United States and Louisiana Supreme Courts.[20]

The stress placed upon the ownership theory in *Phillips* must be examined in light of the parallel legal developments in the field of federal income taxation at that time. In *United States v. Robbins*[21] the United States Supreme Court decided that a wife was not entitled to report one-half the community income on her federal tax return because, under California law, the wife's interest in community property was a mere expectancy. Thus the privilege of allowing each spouse in a community property state to report separately one-half of the combined income was abolished.[22] This method of reporting income had resulted in a lower tax rate, and thus a lower amount of tax due, than if the income were reported by the acquiring spouse only. Since Louisiana law at this time heavily favored the expectancy theory, it appeared that Louisiana spouses would lose this benefit.[23] In the Louisiana test case of *Bender v. Pfaff*,[24] argued ten months after the *Phillips* decision, the United States Supreme Court cited *Phillips* as authority for the proposition that "the decisions

18. 2 La. Ann. 226 (1847).

19. 160 La. 813, 825, 107 So. 584, 588 (1926): "The wife's half interest in the community property is not a mere expectancy during the marriage; it is not transmitted to her by or in consequence of a dissolution of the community. The title for half of the community property is vested in the wife the moment it is acquired by the community . . . ." *But see* H. DAGGETT, THE COMMUNITY PROPERTY SYSTEM OF LOUISIANA 151 (1945).

20. Fernandez v. Wiener, 326 U.S. 340 (1945); Bender v. Pfaff, 282 U.S. 127 (1930); United States Fidelity & Guar. Co. v. Green, 252 La. 227, 210 So.2d 328 (1968); Gebbia v. City of New Orleans, 249 La. 409, 187 So.2d 423 (1966); Azar v. Azar, 239 La. 941, 120 So.2d 485 (1960); Succession of Wiener, 203 La. 649, 14 So.2d 475 (1943); Phillips v. Phillips, 160 La. 813, 107 So. 584 (1926); Dixon v. Dixon's Executors, 4 La. 188 (1832).

21. 269 U.S. 315 (1926).

22. O.D. 426, 2 CUM. BULL. 198 (1920); T.D. 3071, 3 CUM. BULL. 221 (1920); T.D. 3138, 4 CUM. BULL. 238 (1921); Treas. Reg. § 62-31 (1921).

23. R. MAGILL, TAXABLE INCOME 308 (rev. ed. 1945).

24. 282 U.S. 127 (1930).

of the Supreme Court of Louisiana clearly recognize the wife's ownership of one-half of all the community income."[25] *Poe v. Seaborn*,[26] a 1930 Supreme Court case, held that the federal income tax was levied upon the net income of every individual, with the state's designation of ownership of income determining tax liability. Thus, the Louisiana Supreme Court's dictum in *Phillips* became the basis for allowing Louisiana residents a tax rate lower than that borne by residents of the forty non-community property states.[27]

The decisions in *Poe* and *Bender* were the foundation for the *Mitchell* holding. The rationale was that since the Louisiana wife had an immediate ownership interest in community property (income), she was responsible personally for the income tax due on her portion of that income. There are two broad bases for criticizing the foundation of *Mitchell*. First, use of the state's determination of ownership of income has not been resorted to in other taxation areas. Rather, the United States Supreme Court determines federal tax liability on the basis of control over the income or property.[28] Second, the wife's interest in the community of gains is not adequately described by either the words "ownership" or "expectancy."[29] It is submitted, therefore, that neither of these doctrines announced earlier should be considered applicable in this situation.

Justice Holmes in *United States v. Robbins*[30] expressed the idea that the husband's control over community property was sufficient to make him alone liable for taxes upon community property. The United States Supreme Court refused to apply this reasoning in *Poe*. The Court's refusal to apply the rationale of *Robbins* should be re-examined since, "[i]n the light of other decisions, the general test of taxability under the federal revenue act would appear to be *economic control* rather than the *technical ownership* . . . here emphasized."[31] In a 1930 opinion the

25. *Id.* at 131.
26. 282 U.S. 101 (1930).
27. The Revenue Act of 1948 allowed the filing of a joint return by a husband and wife, thus removing this inequality between spouses of different states. *See* B. BITTKER, FEDERAL INCOME, ESTATE AND GIFT TAXATION 282-88 (1958).
28. R. PAUL, SELECTED STUDIES IN FEDERAL TAXATION 41 (2d series 1938).
29. *See* note 43 *infra*.
30. 269 U.S. 315, 327 (1926). "This was . . . probably the main ground of the *Robbins case*." R. MAGILL, TAXABLE INCOME 309 (rev. ed. 1945).
31. R. PAUL, SELECTED STUDIES IN FEDERAL TAXATION 41 (2d series 1938). (Emphasis in original.)

United States Supreme Court stated that "taxation is not so much concerned with the refinements of title as it is with actual command over the property taxed,"[32] and held the income of a revocable trust taxable to the settlor. Subsequently, the settlor of a trust who had retained control was held liable to be taxed for the income received by the trust even though he neither received benefits under the trust nor had technical ownership of it.[33]

In *Lucas v. Earl*,[34] involving the assignment of earnings which state law assumed to be valid, the Court stressed the fact that the Revenue Code taxes salaries to those who earned them,[35] a tax liability which "could not be escaped by anticipatory arrangements . . . however skilfully devised to prevent the salary when paid from vesting even for a second in the man who earned it."[36] No satisfactory reason was found for distinguishing between assignment by private agreement as in *Lucas v. Earl* and assignment by operation of law[37] as in *Bender v. Pfaff*.[38] The Court's holding in *Lucas* has since been upheld in several cases involving family partnerships.[39] In these situations where the other members of the partnership were non-contributing members of the husband's immediate family, he was held liable for all the taxes in spite of valid state partnership agreements; attempting to escape this liability through a corporate structure would not succeed either.[40] The idea of control as the basis for determining tax liability finds further support in *Helvering v. Horst*,[41] wherein the Court held the power to dispose of income to be the equivalent of ownership of it. Thus, the pattern of decisions in the income tax field illustrates that the United States Supreme Court has recognized the taxing power of Congress as not being limited by concepts of ownership under state law.[42]

32. Corliss v. Bowers, 281 U.S. 376, 378 (1930).
33. *See* Helvering v. Clifford, 309 U.S. 331 (1940). This position has been codified since 1954. *See* INT. REV. CODE of 1954, §§ 671-678.
34. 281 U.S. 111 (1930).
35. *Id.* at 114.
36. *Id.* at 115.
37. R. PAUL, SELECTED STUDIES & FEDERAL TAXATION 41, n.93 (2d series 1938).
38. 282 U.S. 127 (1930).
39. Lusthaus v. Commissioner, 327 U.S. 293 (1946); Commissioner v. Tower, 327 U.S. 280 (1946); Burnet v. Leininger, 285 U.S. 136 (1932).
40. INT. REV. CODE of 1954, §§ 541-547.
41. 311 U. S. 112 (1940).
42. Winstead, *Aftermath of the Herbst and Wiener Decisions*, 24 Tex. L. REV. 439, 445 (1946).

The characterization of the wife's interest in community property as one of "ownership" or "expectancy" is incomplete, as these words do not adequately describe the true nature of the wife's interests.[43] In the Spanish community of gains, after which the Louisiana community of gains is patterned, the wife has an incomplete ownership interest in community property.

> "The word commonly used by the Spanish writers to describe the common interest of the husband and wife . . . was *dominio* . . . . In addition to this the husband held *dueno de todos* during marriage which implied control or management; whereas the wife did not become *duena* until the marriage was dissolved. *Dominio* . . . is seen, therefore, to be a minimum form of ownership, not necessarily complete in itself."[44]

The wife's position in Louisiana is strikingly similar. The role of the husband is that of "head and master of the . . . community of gains."[45] He has practically absolute control over community property since his acts are binding upon such property.[46] The wife lacks the power to acquire assets or liabilities which would become community property and, therefore, binding on her and her husband, unless authorized by her husband.[47]

A determination that the wife's interest is one of ownership, making her liable for taxes upon one-half the community property, ignores the realities of the situation.[48] It is unjustified in

43. G. McKAY, COMMUNITY PROPERTY § 1184 (2d ed. 1925); R. PAUL, TAXATION IN THE UNITED STATES 494-95 (1954); Bruton, *The Taxation of Family Income*, 41 YALE L.J. 1172, 1173 (1932): "This 'vested interest' argument was based upon the common law theory of ownership embodied in the conception of legal title. It was a theory which was inept and inadequate to describe community property relations which were developed under an alien jurisprudence. It had no real connection with the tax problem involved which should have been approached from the standpoint of the taxpayer's actual relation to the income for which he was taxed." *See also* Comment, 25 LA. L. REV. 159, 186 (1964).

44. Pugh, *The Spanish Community of Gains in 1803: Sociedad de Gananciales*, 30 LA. L. REV. 1, 12, n.77 (1969).

45. LA. CIV. CODE art. 2404.

46. Comment, 25 LA. L. REV. 514, 517 (1964), and cases cited therein.

47. *Id.* at 529 and cases cited therein.

48. *See* Daggett, *The Modern Problem of the Nature of the Wife's Interest in Community Property—A Comparative Study*, 19 CALIF. L. REV. 567, 600 (1931); R. PAUL, TAXATION IN THE UNITED STATES 495 (1954): "[T]he Supreme Court chose to recognize this formal separate ownership of the wife, both for income and real estate purposes, and to ignore the realities of economic control in the husband . . . although like distinctions between vested and contingent remainders failed to save taxpayers in other areas of tax law," *citing* Helvering v. Hallock, 209 U.S. 106 (1940). H. HADEN, FUNDAMENTALS OF FEDERAL TAXATION 77-93 (1959).

light of United States Supreme Court determinations that *control* over the the property subjects one to tax liabilities arising from this property. The only suggestion by the Supreme Court of relief for the good faith spouse was an appeal to the legislature. Under a recent amendment to the Internal Revenue Code,[49] the good faith spouse may not be liable for taxes due as a result of filing a joint return.[50] For the good faith spouse to obtain relief under this law, a joint return must have been filed and other requirements met. This relief would not be available if no returns were filed, as was the case in *Mitchell*, or if the husband filed a separate return reporting only one-half of the total income. Since the Court's position regarding the wife's liability was quite firmly put forth, it is suggested that the above legislation be expanded to protect the good faith spouse in future *Mitchell*-type situations which may arise.[51]

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LIMITATIONS ON THE EFFECT OF THE EXPRESS OFFSET CLAUSE AND A SUGGESTED DUTY TO UNITIZE

Plaintiff landowners executed a mineral lease with defendant lessee, which also owned the lease on the adjoining tract. The lease contained a provision obligating the lessee to drill offset wells when producing wells were located on adjoining tracts within 150 feet of the leased premises, should the drilling of such wells prove to be economically feasible. Upon plaintiff's allegation of drainage of the leased premises through the defendant's operations on adjoining premises, defendant contended that it had not been put in default and that, in any event, its obligation to protect against drainage was limited by the express offset clause. The federal district court,[1] sitting as an *Erie* court,[2] and basing its decision on what it perceived to be the applicable

49. 84 Stat. 2063 (1971), *amending* INT. REV. CODE of 1954, §§ 6013(e), 6653(b).

50. *See* Emory, *New Law Alleviates Innocent Spouse—Joint Return Problem on Omitted Income*, 34 J. TAXATION 154 (1971).

51. It has been suggested that a concept of mismanagement of community property similar to theft, INT. REV. CODE of 1954, § 165, be applied to absolve the innocent wife of liability, Note, 49 TEX. L. REV. 562, 567 (1971).

1. Federal jurisdiction was based on diversity of citizenship, according to 28 U.S.C. § 1332 (1970).

2. Erie R.R. v. Tompkins, 304 U.S. 64 (1938). The "*Erie* Doctrine" basically requires that federal courts apply the law of the forum state in cases not involving a federal question.