

CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The “Contemplation of Justice” Dobson v. Commissioner, 320 U.S. 489 (1943)



No other branch of the law touches human

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activities at so many points. It can never be made simple, but we can try to avoid making it needlessly complex. *Emphasis added*

The Tax Court's inquiry as to past years was authorized if "necessary correctly to redetermine" the deficiency. The Tax Court thought in this case that it was necessary; the Court of Appeals apparently thought it was not. *This precipitates a question, not raised by either counsel, as to whether the court is empowered to revise the Tax Court's decision*

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as "not in accordance with law" because of such a difference of opinion.

Where no constitutional question is involved, and in the absence of a controlling statute or regulation, a determination of the Tax Court as to whether particular transactions are integrated or separated for tax purposes is no more reviewable than any other question of fact. P. 320 U. S. 502.

In determining questions of law, courts may properly attach weight to decisions of such questions by an administrative body having special competence to legal with the subject matter, and though decisions of the Tax Court may not be binding precedents for courts dealing with similar problems, uniform administration would be promoted by conforming to them where possible. P. 320 U. S. 502.

133 F.2d 732 affirmed in part, reversed in part.

The Court of Appeals concluded that the "tax benefit theory" applied by the Tax Court "seems to be an injunction into the law of an equitable principle, found neither in the statutes nor in the

Thoughts, Words and Actions for Plaintiff's Quintessential Rights of the First Amendment:
Truths that manifest Life, Liberty & Pursuit of Happiness pursuant to the Free Exercise Clause

regulations." *Because the Tax Court's reasoning was not embodied in any statutory precept*, the court held that the Tax Court was not authorized to resort to it in determining whether the recovery should be treated as income or return of capital. It held as matter of law that the recoveries were neither return of capital nor capital gain, but were ordinary income in the year received.

However, even a casual survey of decisions in tax cases, now over 5,000 in number, will demonstrate that courts including this Court have not paid the scrupulous deference to the tax laws' admonitions of finality which they have to similar provisions in statutes relating to other tribunals. [Footnote 8] *After thirty years of income tax history, the volume of tax litigation necessary merely for statutory interpretation would seem due to subside. That it shows no sign of diminution suggests that many decisions have no value as precedents, because they determine only fact questions peculiar to particular cases.* Of course, frequent amendment of the statute causes continuing uncertainty and litigation, but, all too often, amendments are themselves made necessary by court decisions. Increase of potential tax litigation due to more taxpayers and higher rates lends new importance to observance of statutory limitations on review of tax decisions. *No other branch of the law touches human*

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activities at so many points. It can never be made simple, but we can try to avoid making it needlessly complex.

The multiplicity and complexity of rules is such that often it is easier to review the whole case on the merits than to decide what part of it is reviewable, and under what rule. The reports contain many cases in which the question is passed over without mention.

Administrative machinery to give consideration to the taxpayer's contentions existed in the Bureau of Internal Revenue from about 1918, but it was subordinate to the Commissioner. [Footnote 13]

Precedents had accumulated in which courts had laid down many rules of taxation not based on statute, but upon their ideas of right accounting or tax practice. It was difficult to

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shift to a new basis.

Tax Court decisions are characterized by substantial uniformity. Appeals fan out into courts of appeal of ten circuits and the District of Columbia. This diversification of appellate authority inevitably produces conflict of decision even if review is limited to questions of law. But conflicts are multiplied by treating as questions of law what really are disputes over proper accounting. The mere number of such questions, and the mass of decisions they call forth, become a menace to the certainty and good administration of the law. [Footnote 25]

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To achieve uniformity by resolving such conflicts in the Supreme Court is, at best, slow, expensive, and unsatisfactory. Students of federal taxation agree that the tax system suffers from delay in

getting the final word in judicial review, from retroactivity of the decision when it is obtained, and from the lack of a roundly tax-informed viewpoint of judges. [Footnote 26]

Perhaps the chief difficulty in consistent and uniform compliance with the congressional limitation upon court

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review lies in the want of a certain standard for distinguishing "questions of law" from "questions of fact." This is the test Congress has directed, but its difficulties in practice are well known, and have been subject of frequent comment. *Its difficulty is reflected in our labeling some questions as "mixed questions of law and fact" [Footnote 27] and in a great number of opinions distinguishing "ultimate facts" from evidentiary facts.* [Footnote 28]

Intelligent Design Test – Religion vs. Reason?

Plaintiff [believes] U.S. Tax Court decisions are based on the oldest religious concepts of evil:



This concept supports the test Congress has directed, but its difficulties in practice are well known, and have been subject of frequent comment. Darwinian evolutionary theory in its essence, is how or relating to or denoting the process by which apes became human; but what if... or more foretelling, a human acts like an ape; with law respecting an establishment of religion v. our reason.

Plaintiff [conscience] dictates this is the precise evils the U.S Constitution was to eliminate.