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Income Tax—Treasury Stock Dividends Held to Be Taxable

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deductible. INT. REV. CODE § 24 (a) (1). In order to conform to the *Hill* case, he modified O. D. 892, *supra*, but interpreted this case in an attempt to limit its implications. I. T. 4044, 1951—1 CUM. BULL. 16. This ruling emphasized that the court stressed the fact that the taxpayer incurred the expenses to maintain her position; to preserve, not to expand or increase; to carry on, not to commence.

In the instant case the court used the *Hill* case as the basis for its decision. Coughlin did considerable work which required him to be skilled in federal taxation. Therefore, a knowledge of recent developments was necessary to maintain his position.

It appears that the opinion in the *Coughlin* case may leave room for a contention that such expenses might not be deductible to a lawyer not particularly engaged in the practice of tax law. But since current tax law permeates all fields of law, and knowledge of it is a necessity for all lawyers, this view would be highly unrealistic and unfortunate. The Tax Court should be first to realize this.

Hubert J. Holler

INCOME TAX—TREASURY STOCK DIVIDENDS HELD TO BE TAXABLE

A corporation with only common stock agreed to repurchase the interest of its majority stockholder after three contracts for the purchase of this interest by the taxpayer-stockholders individually had been cancelled. A lease of the corporation's premises was executed as part of the consideration in all these contracts. Previously, the taxpayers had been instrumental in the corporation's repurchase of the interest of two minority stockholders pursuant to an agreement to resell to them after the acquisition of the majority interest. Upon the acquisition of the majority interest a pro-rata distribution of this newly purchased treasury stock was made to the shareholders of record. Subsequently, the two minority stockholders repurchased their shares. *Held:* The distribution was a taxable stock dividend. *Schmitt v. Commissioner*, 20 T. C. No. 44 (May 14, 1953).

A common stock dividend to common shareholders was held to be a non-taxable stock dividend where there was no change in the stockholder's proportionate interest. *Eisner v. Macomber*, 252 U. S. 189 (1919); *Helvering v. Griffiths*, 318 U. S. 371 (1942). However, a common stock dividend to preferred stockholders is a taxable stock dividend because it either changes the proportionate interest or the character of the stockholder's ownership.

Koshland v. Helvering, 298 U. S. 441 (1935). But a dividend of a different class of stock is non-taxable to a sole owner of a corporation even though there is a change in the character of the ownership since there is no change in the proportionate interest. *Strassburger v. Commissioner,* 318 U. S. 604 (1942).

When the question of a treasury stock dividend of common stock to common stockholders arose, the court held that it was a non-taxable stock dividend following *Eisner v. Macomber, supra. Bruckheimer v. Commissioner,* 46 B. T. A. 234 (1942); accord, I. T. 2449, VIII-1 CUM. BULL. 101 (1929). The court saw no difference in the fact that this was treasury stock since the latter is not an asset and therefore a distribution of it is not a dividend paid out of property as the Commissioner contended. A treasury stock dividend, resulting in a change to the stockholders' proportionate interest, is taxable, *e. g.,* preferred treasury stock to a preferred stockholder. *Messer v. Commissioner,* 20 T. C. No. 31 (April 30, 1953).

After the *Bruckheimer* case there was dictum to the effect that a true stock dividend always involves a transfer of surplus or profit to capital. *Bass v. Commissioner,* 129 F. 2d 300, 304 (1st Cir. 1942). However, in a subsequent decision the Tax Court held a treasury stock dividend non-taxable without mentioning the *Bass* case. *Woodward v. Commissioner,* 1 T. C. M. 957 (1943).

Although the *Schmitt* case cited the *Bass* dictum with approval, it should be pointed out that the instant case was really decided on the ground that the various acts constituted an overall plan to transfer the stock to the taxpayers and was not a bona fide stock dividend. The court apparently based its decision upon three factors:

(1) The previous attempts of the taxpayers to acquire the majority interest.
(2) The interest of the majority stockholder in perpetuating control in the taxpayers so that she could retain the corporation as lessee.
(3) The corporation's failure to resell to the minority stockholders prior to the distribution brought to light that the various acts comprised a plan to transfer the stock to the taxpayers.

It is submitted that the *Schmitt* case ought not to be authority for the proposition that treasury stock dividends are taxable, but rather the case should be restricted to its facts. A treasury stock dividend which does not change the stockholder's proportionate interest or the character of their former holdings should not be placed on a plane other than any ordinary non-taxable stock dividend.

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