

am bound to follow it in similar cases; and in principle, I think, it controls here. It is true that there are differences in matters of fact between the present case and that case, but they seem to me not to be of a character to affect the pertinence of the *Anderson* decision and call for the application of a different rule. For that reason alone I concur in the opinion of the court just announced. Were it not for the *Anderson* case I should join in the dissent.

MR. JUSTICE ROBERTS concurs in this view.

POE, COLLECTOR OF INTERNAL REVENUE, v.
SEABORN.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT.

No. 15. Argued October 21, 1930.—Decided November 24, 1930.

1. In §§ 210 (a) and 211 (a) of the Revenue Act of 1926, which lay a tax upon the "net income of every individual," the use of the word "of" denotes ownership and, in the absence of further definition by Congress, a broader significance should not be imputed to the phrase. P. 109.
2. The question whether the interest of a wife in community income amounts to ownership, and is therefore taxable and returnable under the Revenue Act of 1926 apart from the interest of the husband, is to be determined by the state law of community property. P. 110.
3. By the law of the State of Washington, the wife has a vested property right, equal to that of her husband, in the community property and in the income of the community, including salaries or wages of either husband or wife, or both. P. 111.
4. Although, by the Washington law, the husband has broad power of control with limited accountability to the wife, this power is conferred on him as agent of the community; it does not make him the owner of all the community property and income, nor negative the wife's present interest therein as equal co-owner. *Id.*
5. Section 1212 of the Revenue Act of 1926, providing that "Income from any period before January 1, 1925, of a marital community

in the income of which the wife has a vested interest as distinguished from an expectancy, shall be held to be correctly returned if returned by the spouse to whom the income belonged under the state law applicable to such marital community for such period" and that "any spouse who elected so to return such income shall not be entitled to any credit or refund on the ground that such income should have been returned by the other spouse," was not intended to open for the future the question whether in community property States other than California the wife is entitled to make return of one-half the community income, as had been decided in the affirmative by executive construction; the purpose was merely to prevent a serious situation as to resettlements, etc., that would follow if this Court should overturn that executive construction. P. 114.

6. Joint Resolution No. 88, 71st Congress (46 Stat. 589), extending the time for the assessment, refund, and credit of income taxes for 1927 and 1928, in the case of any married individual where such individual or his or her spouse filed a separate income tax return for such taxable year and included therein income which under the laws of the State upon receipt became community property, was intended to save the Government's right of settlement in the event that its test suits should be decided in favor of its contention that under the Revenue Act of 1926 community income in other community property States, as in California, is returnable as the husband's income. P. 115.
 7. Where the language of a statute is ambiguous, the Court would be constrained to follow a long and unbroken line of executive construction, applicable to words which Congress repeatedly reemployed in Acts passed subsequent to such construction and has refused to change. P. 116.
 8. The constitutional requirement of uniformity in taxation is not intrinsic, but geographic; and differences of state law, which may bring a person within or without the category designated by Congress as taxable, may not be read into the Revenue Act to spell out a lack of uniformity. P. 117.
- 32 F. (2d) 916, affirmed. *United States v. Robbins*, 269 U. S. 315; *Corliss v. Bowers*, 281 U. S. 376; and *Lucas v. Earl*, 281 U. S. 111, distinguished.

CERTIFICATE from the Circuit Court of Appeals upon an appeal from a judgment of the District Court for the taxpayer in an action to recover from the Collector of

Internal Revenue an amount paid under protest on account of income taxes for 1927. This Court ordered the entire record to be sent up. The case is one of four cases instituted by the Government to determine whether, under the Revenue Act of 1926, in the States of Washington, Arizona, Texas and Louisiana, married taxpayers are entitled each to return for income tax one-half of the community income. It was argued with the other cases (see *post*, pp. 118, 122 and 127,) and the arguments, in so far as they related to the construction of the federal statute, were the same in all.

Solicitor General Thacher, with whom *Assistant Attorney General Youngquist*, *Mr. Sewall Key* and *Miss Helen R. Carloss*, Special Assistants to the Attorney General, *Messrs. Clarence M. Charest*, General Counsel, and *T. H. Lewis, Jr.*, Special Attorney, Bureau of Internal Revenue, were on the brief, for Poe, Collector of Internal Revenue.

This Court, in the case of *United States v. Robbins*, 269 U. S. 315, held that a married man domiciled with his wife in California should be taxed upon all of their community income, basing its decision in part on the fact that the husband alone could dispose of the fund and exercise exclusive rights of management and enjoyment over it. In *Corliss v. Bowers*, 281 U. S. 376, it was again emphasized that the individual might be taxed on income which he had the right to control and enjoy irrespective of whether he held any title whatever to the fund from which it was derived.

Taxation of income to the person who controls and enjoys it, rather than to the person who holds title to the property from which it is derived, is a principle which is recognized in various provisions of the Revenue Acts. Cf. Revenue Act of 1924, § 219 (g), taxing income of revocable trusts to the grantors; Revenue Act of 1926,

§ 219, taxing the income of certain types of trusts to the trustees, of other types to the beneficiaries, and of revocable trusts to the grantors.

Sections 210 and 211 of the Revenue Act of 1926, construed as similar provisions were construed in the *Robbins* case, do not require the taxation of income to the individual having purely formal rights of ownership. Their intent is that the tax shall fall upon the person exercising substantial rights of dominion and enjoyment.

In the *Robbins* case the rights of dominion and enjoyment were measured by very practical tests as to what the husband and wife could do with respect to the community income. The possession of unimportant rights by the wife will not suffice to prove that one-half of the community income should be taxed to her, for wives in States not having the community property system also may restrict to a certain extent the husband's disposition of his property and income. The Act should, if possible, be so construed and applied as not to give married taxpayers residing in the community property States an undue advantage over married taxpayers residing in other States.

The view originally held in the Treasury Department and in the Department of Justice, T. D. 3071, I. R. Cum. Bull. No. 3, p. 221; T. D. 3138, I. R. Cum. Bull. No. 4, p. 238, 32 Op. A. G. 298, 435, that the wife has an interest in income from community property equal to that of her husband and should therefore be permitted to report one-half of it in her return, was based upon local conceptions of title to the fund rather than of dominion and control of the income therefrom. The contention that the person who has formal title to a fund, or to income therefrom, must pay the tax when the power of disposition is vested in another, finds no support in the language of the statute. Indeed the very generality of the

words employed suggests that they are to be understood in their ordinary meaning implying dominion and control, and not in any narrow, technical sense implying formal, legal, or equitable ownership.

The *Robbins* case does not hold that the principle of taxing income to the "owner" of the income is to be discarded, but rather that ownership in the statutory sense must be tested, in cases of community ownership, by the enjoyment of practical rights of ownership, and not by words describing the interests of husband or wife, or of "the community," as "vested" or "expectant," "legal" or "equitable." Cf. *Corliss v. Bowers*, *supra*; *Lucas v. Earl*, 281 U. S. 111; *Tyler v. United States*, 281 U. S. 497.

Under the laws and judicial decisions of the State of Washington the husband's interest in the community income is such that he should be required to report the entire amount in his return; the wife's interest is not such that she should be permitted to report one-half of the community income in her return. Sections 6892, 6893, Remington's Comp. Stats. of Washington, 1922; *Way v. Lyric Theater Co.*, 79 Wash. 275; *Catlin v. Mills*, 140 Wash. 1; *Bellingham Motors Corp. v. Lindberg*, 126 Wash. 684; *Maynard v. Jefferson County*, 54 Wash. 351; *Schramm v. Steele*, 97 Wash. 309; *Littell & Smythe Mfg. Co. v. Miller*, 3 Wash. 480; *Anderson v. National Bank*, 146 Wash. 520; *Pain v. Morrison*, 125 Wash. 267; *Vanderveer v. Hillman*, 122 Wash. 684; *De Phillips v. Neslin*, 139 Wash. 51; *Peacock v. Ratliff*, 62 Wash. 653; *Denis v. Metzbaum*, 124 Wash. 86; *Hammond v. Jackson*, 89 Wash. 510; *Palmer v. McBride*, 115 Wash. 404; *Marston v. Rue*, 92 Wash. 129; *Killingsworth v. Keen*, 89 Wash. 597; *Balkema v. Grolimund*, 92 Wash. 326; *Parker v. Parker*, 121 Wash. 24; *Daniel v. Daniel*, 106 Wash. 659; *Normile v. Denison*, 109 Wash. 205.

Mr. George Donworth, with whom *Messrs. Elmer E. Todd, Frank E. Holman, and Charles T. Donworth* were on the brief, for Seaborn.

The language and terms of the Revenue Act of 1926, and previous Acts, clearly authorize the filing of separate returns of community income by husband and wife, and cannot, as a matter of independent statutory construction, be interpreted as taxing the husband in community property States on the half of the community income which admittedly belongs to and is owned by the wife.

The statute taxes the income of each individual, and husbands and wives, as individuals, are authorized and permitted to make separate returns and include in such separate returns the income of each spouse. Revenue Act of 1926, §§ 210 (a), 211 (a), 223 (a), 223 (b).

There is nothing in the language of the Revenue Act of 1926, or prior Acts, expressly or impliedly indicating an intent on the part of Congress to tax an individual on income belonging to another person, on the theory of administration and control over the property and income, exercised by the individual citizen sought to be taxed.

It is well settled and fundamental that statutes will not be construed so as to levy taxes by implication.

The question as to what is property or income, and to whom it belongs, is a matter to be determined by the local state law.

The uniform and long continued executive construction recognizing the right of husband and wife in all community property States, except California, to report separately the share of community income owned by each, together with the repeated refusal of Congress to amend the law so as to avoid such construction, and the re-enactment by Congress, without change, of the provisions so construed, demonstrate that there was no intention in the Act of 1926 to tax husbands on the half of the community partnership income belonging to their wives.

United States v. Falk, 204 U. S. 143; *United States v. Cerecedo Hermanos y Compania*, 209 U. S. 339; *Copper Queen Mining Co. v. Arizona Board of Equalization*, 206 U. S. 474; *National Lead Co. v. United States*, 252 U. S. 140; *Komada & Co. v. United States*, 215 U. S. 392; *United States v. Farrar*, 281 U. S. 624.

The Government's contention that control, and not ownership, is the test of income taxation under this Act is inconsistent with and contrary to the last opinion of the Attorney General on the subject. 35 Op. A. G. 265.

The *Robbins* case deals only with the local law of California, and the underlying theory of the decision is that under the decisions and the statutes of California, the husband is in law the owner of all of the community property and income, and possesses all of the substantial attributes of ownership. *Corliss v. Bowers*, 281 U. S. 376, and *Lucas v. Earl*, 281 U. S. 111, are inapplicable.

The contention of appellant that the Revenue Acts impose income tax upon one individual as an incident to his control of the income vested in another individual, under the applicable laws of the States, must be rejected, because such construction would render the statute unconstitutional. It would be in part a direct tax not based on the income of the person taxed, and not apportioned. *Eisner v. Macomber*, 252 U. S. 189; *Pollock v. Farmers Loan & Tr. Co.*, 157 U. S. 429, 158 U. S. 601; *Brushaber v. Union Pac. R. Co.*, 240 U. S. 1. It would result in a tax not geographically equal and uniform, as required by § 8 of Art. I, of the Constitution. Such a basis would be so arbitrary and capricious as to constitute taking of property without due process. *Knowlton v. Moore*, 178 U. S. 41; *Lewellyn v. Frick*, 268 U. S. 238; *Untermeyer v. Anderson*, 276 U. S. 440; *Blodgett v. Holden*, 275 U. S. 142.

The community property system of Washington vests equally in husband and wife the ownership and enjoy-

ment of all community property, real and personal. Neither the accumulated real or personal property, nor the salary or wages of the husband, nor any other community property, can be taken or used for payment of the husband's sole obligations or for his personal torts. Citing numerous statutes and decisions, among them:

Remington's Comp. Stats., §§ 6890, 6891, 6892; *Holyoke v. Jackson*, 3 Wash. Ter. 235; *Hill v. Young*, 7 Wash. 33; *Mabie v. Whittaker*, 10 Wash. 656; *Warburton v. White*, 176 U. S. 484; *Adams v. Black*, 6 Wash. 528; *Kaufman v. Perkins*, 114 Wash. 40; *Spreitzer v. Miller*, 98 Wash. 601; *Hoover v. Chambers*, 3 Wash. Ter. 26; *Itkin v. Jeffery*, 126 Wash. 47; *Schramm v. Steele*, 97 Wash. 309; *Olive Co. v. Meek*, 103 Wash. 467; *Snyder v. Stringer*, 116 Wash. 131; *Marston v. Rue*, 92 Wash. 129; *Stewart v. Bank of Endicott*, 82 Wash. 106; *McDonough v. Craig*, 10 Wash. 239; *Allen v. Chambers*, 18 Wash. 341; *Fielding v. Ketter*, 86 Wash. 194; *Spinning v. Allen*, 10 Wash. 570; *Fidelity & Deposit Co. v. Clark*, 144 Wash. 520; *Buchser v. Buchser*, 231 U. S. 157; *Ambrose v. Moore*, 46 Wash. 463; *Brotton v. Langert*, 1 Wash. 73; *Bice v. Brown*, 98 Wash. 416; *Kies v. Wilkinson*, 114 Wash. 89; *Coles v. McNamara*, 131 Wash. 691; *Wilson v. Stone*, 90 Wash. 365; *Day v. Henry*, 81 Wash. 61; *Peterson v. Zimmerman*, 142 Wash. 385; *Spokane State Bank v. Tilton*, 132 Wash. 641; *Huyvaerts v. Roedtz*, 105 Wash. 657; *Littell Mfg. Co. v. Miller*, 3 Wash. 480.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

Seaborn and his wife, citizens and residents of the State of Washington, made for the year 1927 separate income tax returns as permitted by the Revenue Act of 1926, c. 27, § 223 (U. S. C. App., Title 26, § 964).

During and prior to 1927 they accumulated property comprising real estate, stocks, bonds and other personal

property. While the real estate stood in his name alone, it is undisputed that all of the property real and personal constituted community property and that neither owned any separate property or had any separate income.

The income comprised Seaborn's salary, interest on bank deposits and on bonds, dividends, and profits on sales of real and personal property. He and his wife each returned one-half the total community income as gross income and each deducted one-half of the community expenses to arrive at the net income returned.

The Commissioner of Internal Revenue determined that all of the income should have been reported in the husband's return, and made an additional assessment against him. Seaborn paid under protest, claimed a refund, and on its rejection, brought this suit.

The District Court rendered judgment for the plaintiff (32 Fed. (2d) 916); the Collector appealed, and the Circuit Court of Appeals certified to us the question whether the husband was bound to report for income tax the entire income, or whether the spouses were entitled each to return one-half thereof. This Court ordered the whole record to be sent up.

The case requires us to construe Sections 210 (a) and 211 (a) of the Revenue Act of 1926 (U. S. C. App., Tit. 26, §§ 951 and 952), and apply them, as construed, to the interests of husband and wife in community property under the law of Washington. These sections lay a tax upon the net income of every individual.¹ The Act goes no farther, and furnishes no other standard or definition of what constitutes an individual's income. The use of the word "of" denotes ownership. It would be a strained construction, which, in the absence of further definition by Congress, should impute a broader significance to the phrase.

¹ The language has been the same in each act since that of February 24, 1919, 40 Stat. 1057.

The Commissioner concedes that the answer to the question involved in the cause must be found in the provisions of the law of the State, as to a wife's ownership of or interest in community property. What, then, is the law of Washington as to the ownership of community property and of community income, including the earnings of the husband's and wife's labor?

The answer is found in the statutes of the State,² and the decisions interpreting them.

These statutes provide that, save for property acquired by gift, bequest, devise or inheritance, all property however acquired after marriage, by either husband or wife, or by both, is community property. On the death of either spouse his or her interest is subject to testamentary disposition, and failing that, it passes to the issue of the decedent and not to the surviving spouse. While the husband has the management and control of community personal property and like power of disposition thereof as of his separate personal property, this power is subject to restrictions which are inconsistent with denial of the wife's interest as co-owner. The wife may borrow for community purposes and bind the community property (*Fielding v. Ketler*, 86 Wash. 194). Since the husband may not discharge his separate obligation out of community property, she may, suing alone, enjoin collection of his separate debt out of community property (*Fidelity & Deposit Co. v. Clark*, 144 Wash. 520). She may prevent his making substantial gifts out of community property without her consent (*Parker v. Parker*, 121 Wash. 24). The community property is not liable for the husband's torts not committed in carrying on the business of the community (*Schramm v. Steele*, 97 Wash. 309).

² Remington's Compiled Statutes, 1922, §§ 181; 182; 570; 989; 1145; 1342; 1419; 6890 to 6896, inc.; 6900 to 6906; 6908; 7348; 7598; 10572; 10575; 10577 and 10578.

The books are full of expressions such as "the personal property is just as much hers as his" (*Marston v. Rue*, 92 Wash. 129); "her property right in it [an automobile] is as great as his" (92 Wash. 133); "the title of one spouse . . . was a legal title as well as that of the other" (*Mabie v. Whittaker*, 10 Wash. 656, 663).

Without further extending this opinion it must suffice to say that it is clear the wife has, in Washington, a vested property right in the community property, equal with that of her husband; and in the income of the community, including salaries or wages of either husband or wife, or both. A description of the community system of Washington and of the rights of the spouses, and of the powers of the husband as manager, will be found in *Warburton v. White*, 176 U. S. 484.

The taxpayer contends that if the test of taxability under Sections 210 and 211 is ownership, it is clear that income of community property is owned by the community and that husband and wife have each a present vested one-half interest therein.

The Commissioner contends, however, that we are here concerned not with mere names, nor even with mere technical legal titles; that calling the wife's interest vested is nothing to the purpose, because the husband has such broad powers of control and alienation, that while the community lasts, he is essentially the owner of the whole community property, and ought so to be considered for the purposes of Sections 210 and 211. He points out that as to personal property the husband may convey it, may make contracts affecting it, may do anything with it short of committing a fraud on his wife's rights. And though the wife must join in any sale of real estate, he asserts that the same is true, by virtue of statutes, in most States which do not have the community system. He asserts that control without accountability is indistin-

guishable from ownership, and that since the husband has this, *quoad* community property and income, the income is that "of" the husband under Sections 210-211 of the income tax law.

We think, in view of the law of Washington above stated, this contention is unsound. The community must act through an agent. This Court has said with respect to the community property system (*Warburton v. White*, 176 U. S. 494) that "property acquired during marriage with community funds became an acquêt of the community and not the sole property of the one in whose name the property was bought, although by the law existing at the time the husband was given the management, control and power of sale of such property. This right being vested in him, not because he was the exclusive owner, but because by law he was created the agent of the community."

In that case, it was held that such agency of the husband was neither a contract nor a property right vested in him, and that it was competent to the legislature which created the relation to alter it, to confer the agency on the wife alone, or to confer a joint agency on both spouses, if it saw fit,—all without infringing any property right of the husband. See, also, *Arnett v. Reade*, 220 U. S. 311 at 319.

The reasons for conferring such sweeping powers of management on the husband are not far to seek. Public policy demands that in all ordinary circumstances, litigation between wife and husband during the life of the community should be discouraged. Law-suits between them would tend to subvert the marital relation. The same policy dictates that third parties who deal with the husband respecting community property shall be assured that the wife shall not be permitted to nullify his transactions. The powers of partners, or of trustees of a spendthrift trust, furnish apt analogies.

The obligations of the husband as agent of the community are no less real because the policy of the State limits the wife's right to call him to account in a court. Power is not synonymous with right. Nor is obligation coterminous with legal remedy. The law's investiture of the husband with broad powers, by no means negatives the wife's present interest as a co-owner.

We are of opinion that under the law of Washington the entire property and income of the community can no more be said to be that of the husband, than it could rightly be termed that of the wife.

We should be content to rest our decision on these considerations. Both parties have, however, relied on executive construction and the history of the income tax legislation as supporting their respective views. We shall, therefore, deal with these matters.

The taxpayer points out that, following certain opinions of the Attorney General,³ the Decisions and Regulations of the Treasury have uniformly made the distinction that while under California law the wife's interest in community property amounts to a mere expectancy contingent on her husband's death and does not rise to the level of a present interest, her interest under the laws of Washington, Arizona, Texas and some other states is a present vested one. They have accordingly denied husband and wife the privilege of making separate returns of one-half

³ Opinion of Attorney General Palmer, September 10, 1920, (32 Op. A. G., 298); Opinion of Attorney General Palmer, February 26, 1921 (32 Op. A. G., 435).

The Opinion of Attorney General Stone, of October 9, 1924 (34 Op. A. G., 395), and his letter of January 27, 1925, referring thereto (See T. D. 3670) deal only with estate tax, and express no opinion on the question here involved.

See Opinion of Acting Attorney General Mitchell of July 16, 1927, as a result of which this and other suits were initiated (35 Op. A. G., 265).

the community income in California, but accorded that privilege to residents of such other states.⁴

He relies further upon the fact that Congress has thrice,⁵ since these Decisions and Regulations were promulgated, re-enacted the income tax law without change of the verbiage found in §§ 210 (a) and 211 (a), thus giving legislative sanction to the executive construction. He stands also on the fact that twice the Treasury has suggested the insertion of a provision,⁶ which would impose the tax on the husband in respect of the whole community income, and that Congress has not seen fit to adopt the suggestion.

On the other hand the Commissioner says that, granted the truth of these assertions, a different situation has been created as respects 1926 and subsequent years. For in the 1926 Act there was inserted a section which plainly indicated an intent to leave this question open for the future in States other than California, while closing it for past years. The section is copied in the margin.⁷

⁴ O. D. 426, April, 1920; T. D. 3071, August 24, 1920; T. D. 3138, March 3, 1921; Regulations 62, Art. 31, 1921 Revenue Act.

⁵ Act of November 23, 1921, 42 Stat. 227; Act of June 2, 1924, 43 Stat. 253; Act of February 26, 1926, 44 Stat. 9.

⁶ The provision desired by the Treasury was as follows: "Income received by any community shall be included in the gross income of the spouse having management and control of the community property." This clause was in the 1921 Act as passed by the House. It was stricken out in the Senate. When the 1924 Act was introduced it contained the same provision, which was stricken out by the Ways and Means Committee and not re-inserted.

⁷ SEC. 1212. Income from any period before January 1, 1925, of a marital community in the income of which the wife has a vested interest as distinguished from an expectancy, shall be held to be correctly returned if returned by the spouse to whom the income belonged under the State law applicable to such marital community for such period. Any spouse who elected so to return such income shall not be entitled to any credit or refund on the ground that such income should have been returned by the other spouse. (U. S. C. Supp. II. Title 26, Sec. 964a.)

We attribute no such intent to the section as is ascribed to it by the Commissioner. We think that although Congress had twice refused to change the wording of the Act, so as to tax community income to the husband in Washington and certain other states, in view of our decision in *United States v. Robbins*, 269 U. S. 315, it felt we might overturn the executive construction and assimilate the situation in Washington to that we had determined existed in California. Section 1212 therefore was merely inserted to prevent the serious situation as to resettlements, additional assessments and refunds which would follow such a decision.

The same comments apply to the Joint Resolution No. 88, 71st Congress, on which the Commissioner relies.⁸

⁸ That the three-year period of limitation provided in section 277 of the Revenue Act of 1926 upon the assessment of income taxes imposed by that Act for the taxable year 1927, and the three-year period of limitation provided in section 284 of the Revenue Act of 1926 in respect of refunds and credits of income taxes imposed by that Act for the taxable year 1927 shall be extended for a period of one year in the case of any married individual where such individual or his or her spouse filed a separate income-tax return for such taxable year and included therein income which under the laws of the State upon receipt became community property.

SEC. 2. The two-year period of limitation provided in section 275 of the Revenue Act of 1928 upon the assessment of income taxes imposed by Title I of that Act for the taxable year 1928, and the two-year period of limitation provided in section 322 of the Revenue Act of 1928 in respect of refunds and credits of income taxes imposed by that Act for the taxable year 1928 shall be extended for a period of one year in the case of any married individual where such individual or his or her spouse filed a separate income-tax return for such taxable year and included therein income which under the laws of the State upon receipt became community property.

SEC. 3. The periods of limitations extended by this joint resolution shall, as so extended, be considered to be provided in sections 277 and 284 of the Revenue Act of 1926 and sections 275 and 322 of the Revenue Act of 1928, respectively.

SEC. 4. Nothing herein shall be construed as extending any period of limitation which has expired before the enactment of this joint resolution.

It is obvious that this resolution was intended to save the Government's right of resettlement, in event that the proposed test suits, of which this is one, should be decided in favor of the Government's present contention. See the Report of the Ways and Means Committee on the resolution (Cong. Record, June 11, 1930, pp. 10923-10925).

On the whole, we feel that, were the matter less clear than we think it is, on the words of the income tax law as applied to the situation in Washington, we should be constrained to follow the long and unbroken line of executive construction, applicable to words which Congress repeatedly reëmployed in acts passed subsequent to such construction, (*New York v. Illinois*, 278 U. S. 367; *National Lead Co. v. United States*, 252 U. S. 140; *United States v. Farrar*, 281 U. S. 624), reënfined, as it is, by Congress' refusal to change the wording of the Acts to make community income in states whose law is like that of Washington returnable as the husband's income.

The Commissioner urges that we have, in principal, decided the instant question in favor of the Government. He relies on *United States v. Robbins*, 269 U. S. 315; *Corliss v. Bowers*, 281 U. S. 376, and *Lucas v. Earl*, 281 U. S. 111.

In the *Robbins* case, we found that the law of California, as construed by her own courts, gave the wife a mere expectancy and that the property rights of the husband during the life of the community were so complete that he was in fact the owner. Moreover, we there pointed out that this accorded with the executive construction of the Act as to California.

The *Corliss* case raised no issue as to the intent of Congress, but as to its power. We held that where a donor retains the power at any time to reconstitute himself with the principal of the gift, Congress may declare that he still owns the income. While he has technically parted with title, yet he in fact retains ownership, and all its incidents.

But here the husband never has ownership. That is in the community at the moment of acquisition.

In the *Earl* case a husband and wife contracted that any property they had or might thereafter acquire in any way, either by earnings (including salaries, fees, etc.), or any rights by contract or otherwise, "shall be treated and considered and hereby is declared to be received held taken and owned by us as joint tenants . . ." We held that, assuming the validity of the contract under local law, it still remained true that the husband's professional fees, earned in years subsequent to the date of the contract, were his individual income, "derived from salaries, wages, or compensation for personal services" under §§ 210, 211, 212 (a) and 213 of the Revenue Act of 1918. The very assignment in that case was bottomed on the fact that the earnings would be the husband's property, else there would have been nothing on which it could operate. That case presents quite a different question from this, because here, by law, the earnings are never the property of the husband, but that of the community.

Finally the argument is pressed upon us that the Commissioner's ruling will work uniformity of incidence and operation of the tax in the various states, while the view urged by the taxpayer will make the tax fall unevenly upon married people. This argument cuts both ways. When it is remembered that a wife's earnings are a part of the community property equally with her husband's, it may well seem to those who live in states where a wife's earnings are her own, that it would not tend to promote uniformity to tax the husband on her earnings as part of his income. The answer to such argument, however, is, that the constitutional requirement of uniformity is not intrinsic, but geographic. *Billings v. United States*, 232 U. S. 261; *Head Money Cases*, 112 U. S. 580; *Knowlton v. Moore*, 178 U. S. 41. And differences of state law, which may bring a person within or without the category

designated by Congress as taxable, may not be read into the Revenue Act to spell out a lack of uniformity. *Florida v. Mellon*, 273 U. S. 12.

The District Court was right in holding that the husband and wife were entitled to file separate returns, each treating one-half of the community income as his or her respective income, and its judgment is

Affirmed.

The CHIEF JUSTICE and MR. JUSTICE STONE took no part in the consideration or decision of this case.

GOODELL, COLLECTOR OF INTERNAL REVENUE,
v. KOCH.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.

No. 106. Argued October 22, 1930.—Decided November 24, 1930.

Under the law of the State of Arizona, the wife has such equal interest in the community income as to entitle her to treat one-half thereof as her income, and file a separate return therefor under §§ 210 (a) and 211 (a) of the Revenue Act of 1926. Following *Poe v. Seaborn*, *q. v.*, *ante*, p. 101. P. 120.

Affirmed.

CERTIFICATE from the Circuit Court of Appeals upon appeal from a judgment of the District Court for the taxpayer in an action to recover from the Collector of Internal Revenue an amount paid under protest on account of income taxes for 1927. This Court ordered up the entire record. See statement in *Poe v. Seaborn*, *ante*, p. 101.

Solicitor General Thacher, with whom *Assistant Attorney General Youngquist*, *Mr. Sewall Key*, *Miss Helen R. Carlross*, Special Assistants to the Attorney General, *Mr. Erwin N. Griswold*, and *Messrs. Clarence M. Charest*,