

U. S. 146, 159; *Southwestern Oil Co. v. Texas*, 217 U. S. 114, 121; *Brown-Forman Co. v. Kentucky*, 217 U. S. 563, 573; *State Board of Tax Commissioners v. Jackson*, 283 U. S. 527, 537.

Affirmed.

MR. JUSTICE VAN DEVANTER dissents from so much of the opinion as concerns the equal protection clause of the Fourteenth Amendment.

TEXAS & PACIFIC RY. CO. v. UNITED STATES.

CERTIORARI TO THE COURT OF CLAIMS.

No. 634. Argued April 14, 1932.—Decided May 16, 1932.

The amount paid to a railroad by the Government under § 209 of the Transportation Act to make up the minimum of operating income guaranteed for the six months next following the relinquishment of federal control, was neither a gift nor a subsidy, but was income taxable under the Sixteenth Amendment and the Revenue Act of 1918. Pp. 288-290.

72 Ct. Cls. 629; 52 F. (2d) 1040, affirmed.

CERTIORARI, 284 U. S. 616, to review a judgment rejecting a claim for refund of money collected by the Government as income tax.

Messrs. John W. Davis and Newton K. Fox, with whom *Messrs. Adrian C. Humphreys and Chester A. Gwinn* were on the brief, for petitioner.

The condition of the railroads at the termination of federal control was such that rehabilitation was necessary to insure an adequate transportation system. The purpose of the Transportation Act, 1920, was to remedy this situation. *United States v. Guaranty Trust Co.*, 280 U. S. 478.

Congress recognized the immediate need of the railroads for additional "capital." Without any obligation

on the part of the Government, the Transportation Act was passed providing for a "guaranty" payment.

The "guaranty" payment was not income from operation of the railroad. *Birmingham Trust Co. v. Atlanta, etc. Ry. Co.*, 300 Fed. 173. The payment was in fact and was intended by Congress as a subsidy.

Being a subsidy, the "guaranty" payment is not income within the meaning of the Sixteenth Amendment. *Edwards v. Cuba R. Co.*, 268 U. S. 628. Every economic advantage or receipt of money does not result in "income." Mutuality and consideration did not remove the "guaranty" payment from the category of a subsidy or convert it into "income." *Edwards v. Cuba R. Co.*, *supra*; *United States v. Supplee-Biddle Hardware Co.*, 265 U. S. 189; *Bowers v. Kerbaugh-Empire Co.*, 271 U. S. 170. The provision for payment by the railroads to the Government of any excess over the "guaranty" was a limitation or condition to eliminate carriers not in need of the subsidy. It was not inserted as a money producing provision for the Government. It was designed primarily as an administrative measure to eliminate applications by carriers not in need of financial assistance and to save auditing expenses and delay.

The nature of the "guaranty" payment, and not the manner in which it might be spent, determines whether it is "income." *United States v. Merriam*, 263 U. S. 179. The "guaranty" payment was not derived from capital or labor, or from both combined. It was not "income" within the definition which this Court has adopted and consistently followed, *Eisner v. Macomber*, 252 U. S. 189, as a limitation upon the power of Congress under the Sixteenth Amendment.

Assistant Attorney General Rugg, with whom Solicitor General Thacher, and Messrs. Joseph H. Sheppard, Bradley B. Gilman, and Erwin N. Griswold were on the brief, for the United States.

The purpose of § 209 was to reimburse railways like the petitioner's on account of a decrease in their net railway operating income because of federal control. The legislative history shows that it was the intention of Congress to extend this aid in recognition of their financial necessities and to compensate for injury through federal control.

The payments made were taxable income just as was compensation paid under the Federal Control Act. The payments were derived because of the operation of a railroad and consequently come within the definition of income as "gain derived from capital, from labor, or from both combined."

The payments here were not capital subsidies like those involved in *Edwards v. Cuba R. Co.*, 268 U. S. 628.

The payments are not exempt from the income tax as "property acquired by gift." They were based upon moral and contractual obligations. The United States received consideration for the guaranty.

Congress could hardly have contemplated that the amount paid should be exempt from income tax. Such treatment would put the railroads receiving payments under § 209 in a better position than the roads which had no such reimbursement.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

During federal control of railways that of petitioner was operated by the Director General under the act of March 21, 1918.¹ Pursuant to the Transportation Act, 1920,² the Government relinquished the property March 1, 1920; petitioner accepted the provisions of § 209³ of the act, and consequently received for the six months

¹ C. 25, 40 Stat. 451.

² Act of February 28, 1920, c. 91, 41 Stat. 456.

³ 41 Stat. 464; U. S. C., Tit. 49, § 77.

period commencing March 1, 1920, an allowance awarded by the Interstate Commerce Commission to make good the guaranty embodied in that section. The company omitted this sum from taxable income returned for the year 1920. After audit the Commissioner of Internal Revenue added the amount to the petitioner's income and assessed a resulting additional tax, which was paid under protest. Upon rejection of a claim for refund, suit was brought in the Court of Claims to recover the portion of the tax attributable to the inclusion of the guaranty payment, petitioner asserting that the amount received was a subsidy or gift and therefore not income within the Sixteenth Amendment of the Constitution or § 213 of the Revenue Act of 1918.⁴ Recovery was denied. This court granted certiorari.

By the terms of § 209 of the Transportation Act railroad companies which, like petitioner, had made contracts with the Director General for annual compensation during federal control, were guaranteed an operating income for the ensuing six months of not less than one-half the amount of such compensation. A minimum operating revenue was also assured to carriers not having such contracts, which had been under federal control or adversely affected thereby. Payment was conditioned on the carrier's acceptance of the provisions of the section, one of which was the agreement that if operating revenue for the period should exceed the guaranteed amount the excess should be paid into the Treasury. Petitioner signified its acceptance.

The statute in terms guarantees a "*minimum operating income*" for six months after relinquishment of federal control. The situation in which the railroads of the country were as a result of war-time Government opera-

⁴ 40 Stat. 1057, 1065. "That for the purposes of this title . . . the term 'gross income' . . . (b) Does not include . . . (3) The value of property acquired by gift . . ."

tion is well described in *United States v. Guaranty Trust Co.*, 280 U. S. 478, 484. During that period their expenses had risen and there had been no commensurate increase in rates. While the Government had either paid or was obligated to pay just compensation for their requisition, the amount of it was known to be insufficient for rehabilitation of the roads as privately owned and operated organizations. Until rates could be adjusted to meet increased expenses, loans be negotiated, and operating forces realigned and reintegrated, the credit of the carriers must by some means be re-established. Thus the Government had a real obligation, not readily susceptible of accurate measurement, to assist in the restoration of normal conditions. The purpose of the guaranty provision was to stabilize the credit position of the roads by assuring them a minimum operating income. They were bound to operate their properties in order to avail themselves of the Government's proffer. Under the terms of the statute no sum could be received save as a result of operation. If the fruits of the employment of a road's capital and labor should fall below a fixed minimum then the Government agreed to make up the deficiency, and if the income were to exceed that minimum the carrier bound itself to pay the excess into the federal treasury. In the latter event the carrier unquestionably would have been obligated to pay income tax measured by actual earnings; in the former, it ought not to be in a better position than if it had earned the specified minimum. Clearly, then, the amount paid to bring the yield from operation up to the required minimum was as much income from operation as were the railroad's receipts from fares and charges.

The sums received under the act were not subsidies or gifts,—that is, contributions to the capital of the railroads,—and this fact distinguishes cases such as *Edwards v. Cuba Railroad Co.*, 268 U. S. 628, where the payments

were conditioned upon construction work performed. Here they were to be measured by a deficiency in operating income, and might be used for the payment of dividends, of operating expenses, of capital charges, or for any other purpose within the corporate authority, just as any other operating revenue might be applied. The Government's payments were not in their nature bounties, but an addition to a depleted operating revenue consequent upon a federal activity.

In a proper sense these payments constituted income to the carrier not exempt from taxation under the Sixteenth Amendment or the Revenue Act of 1918. The Court of Claims was right in denying the claim and the judgment must be

Affirmed.

CONTINENTAL TIE & LUMBER CO. *v.* UNITED STATES.

CERTIORARI TO THE COURT OF CLAIMS.

No. 560. Argued April 14, 1932.—Decided May 16, 1932.

1. The payments provided by § 204 of the Transportation Act to railroads which were not under federal control but which suffered deficits of operating income in that period, were intended as reimbursements for losses consequential on government operation of other railroads; they are neither subsidies nor bonuses, but are income within the intent of the Sixteenth Amendment and § 213 of the Revenue Act of 1918. P. 293.
2. The right to such an award was fixed by the passage of the Transportation Act, 1920; the function of the Interstate Commerce Commission in ascertaining the amount is ministerial. P. 295.
3. An award under § 204 *held* taxable as income for 1920, although it was not determined by the Commission and paid until 1923, since the railroad kept its books upon the accrual basis and had data, in 1920, from which it could have made a reasonably approximate estimate in its tax return for that year, subject to future adjustment by amended return, claim for refund, or additional