

urged either before the Commission or in the District Court; and it accordingly will not be entertained here.

The remaining contentions of the Yards Company relate to the sufficiency of the complaint in Docket No. 9977, to the competency of the evidence upon which the amount of the reparation awarded to each complainant was determined; and to a claim that the Commission acted upon evidence not in the record. We have considered these objections; and find them to be without merit.

The judgment of the Circuit Court of Appeals is reversed; and the case is remanded to the District Court with direction to enter judgment for the amount of reparation awarded, with interest, and for reasonable attorney's fees to be fixed by it.

Reversed.

MR. JUSTICE BUTLER is of the opinion that plaintiffs are not "persons injured" within the intention of § 8 and that the assailed "practice," if it is such within the meaning of the Act, was not unreasonable and that therefore the judgment should be affirmed.

NORTH AMERICAN OIL CONSOLIDATED *v.*
BURNET, COMMISSIONER OF INTERNAL
REVENUE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.

No. 575. Argued April 20, 21, 1932.—Decided May 23, 1932.

1. Section 13 (c) of the Revenue Act of 1916, obliging receivers "operating the property and business of corporations" to make returns of net income "as and for such corporations," applied only where a receiver was in complete control of the entire properties and business of the corporation; otherwise the return must be made by the corporation. P. 422.

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2. Part of an operating property was taken over by a receiver in a suit challenging the owner's title. *Held*, that the owner need not report income as of the year when it was collected by the receiver, while the right to it was in doubt, but must report it as income of the year when the amount collected was paid over to him and the bill dismissed. P. 423.
3. The fact that appeals from the decree were not determined in his favor until a later year did not defer the time for returning the income. P. 424.

50 F. (2d) 752, affirmed.

CERTIORARI, 284 U. S. 614, to review a judgment reversing a decision of the Board of Tax Appeals, 12 B. T. A. 68.

Mr. Herbert W. Clark for petitioner.

The impounded funds should have been reported by the receiver for taxation in 1916. *Ferguson v. Forstmann*, 25 F. (2d) 47, affirming 17 F. (2d) 659.

If taxable to the company, it was 1916 income or income reportable for 1922, the year in which the litigation was terminated. *Consolidated Tea Co. v. Bowers*, 19 F. (2d) 382.

A judgment is not deductible in the year in which it is entered in the lower court where an appeal is taken, but should be deducted upon the termination of the litigation. *Farmers Nat. Bank v. Commissioner*, 6 B. T. A. 1036; *Jewell v. Commissioner*, 6 B. T. A. 1040; *Lehigh & H. R. Ry. Co. v. Commissioner*, 13 B. T. A. 1154, affirmed by the Circuit Court of Appeals in 36 F. (2d) 719, as modified by 38 F. (2d) 1015, cert. den., 281 U. S. 748. Distinguishing *Burnet v. Sanford & Brooks Co.*, 282 U. S. 359.

Unconditional right to income is not a condition precedent to the accrualability of income. *Lucas v. American Code Co.*, 280 U. S. 445; *Doyle v. Mitchell Bros. Co.*, 247 U. S. 179, 185; *Eisner v. Macomber*, 252 U. S. 189, 207;

United States v. Anderson, 269 U. S. 422; *Lucas v. North Texas Lumber Co.*, 281 U. S. 11.

The incident of the receivership should be disregarded. The receiver was a mere arm of the court, invested with no estate. *Converse v. Hamilton*, 224 U. S. 243; *Grant v. Mutual Life Ins. Co.*, 106 U. S. 429; *Obispo Oil Co. v. Welck*, 48 F. (2d) 872, 875.

There was evidence that the accounts were kept and the returns filed on the accrual basis. The burden was upon the Commissioner to prove the contrary. *Brunton v. Commissioner*, 42 F. (2d) 81, 82.

If unconditional right to income, and not claim under color of right, is at the foundation of the right to accrue, then it would seem to follow that unconditional right and not mere claim of right to income must exist to render it taxable as cash income.

Assistant Attorney General Youngquist, with whom *Solicitor General Thacher*, *Miss Helen R. Carloss*, and *Messrs. Whitney North Seymour* and *Sewall Key* were on the brief, for respondent.

The receiver was not required to file an income tax return for 1916 in behalf of the petitioner and to report therein income impounded by him during that year. Cf. *Reinecke v. Gardner*, 277 U. S. 239, 241.

Settled administrative construction of similar statutory provisions relating to the filing of returns by receivers and trustees in bankruptcy of corporations is entitled to great weight.

There is no provision in the Acts for the consolidation of the return of the receiver of part of a corporation's property or business and the return of the corporation itself. *Forstmann v. Ferguson*, 17 F. (2d) 659, 25 *id.* 47, distinguished.

If, as appears, the taxpayer was on the cash basis, the income was taxable for 1917, when it was actually re-

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ceived, and not for 1916 or 1922. *Maryland Casualty Co. v. United States*, 251 U. S. 342; *Burnet v. Sanford & Brooks Co.*, 282 U. S. 359. The theory of taxability of constructive income does not require a taxpayer to report income which it may never receive. *Burnet v. Logan*, 283 U. S. 404.

A taxpayer must report income which he has received under a claim of right, without restriction as to disposition, though others may claim it. *Board v. Commissioner*, 51 F. (2d) 73, cert. den., 284 U. S. 658. The annual period principle applies. *Burnet v. Thompson Oil & Gas Co.*, 283 U. S. 301; *Burnet v. Sanford & Brooks Co.*, 283 U. S. 359; *De Loss v. Commissioner*, 28 F. (2d) 803.

If the taxpayer had lost its appeal and been obliged to account, it would have been entitled to a deduction for a loss in that year.

Limitations that may affect the right to dispose of income do not prevent it from being taxed when received. *Cleveland Ry. Co. v. Commissioner*, 36 F. (2d) 347, cert. den., 281 U. S. 743; *Newman v. Commissioner*, 40 F. (2d) 225, cert. den., 282 U. S. 858; *Rodrigues v. Edwards*, 40 F. (2d) 408.

Had the taxpayer been on the accrual basis, the receipts were nevertheless taxable for 1917.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

The question for decision is whether the sum of \$171,-979.22 received by the North American Oil Consolidated in 1917, was taxable to it as income of that year.

The money was paid to the company under the following circumstances. Among many properties operated by it in 1916 was a section of oil land, the legal title to which stood in the name of the United States. Prior to that year, the Government, claiming also the beneficial

ownership, had instituted a suit to oust the company from possession; and on February 2, 1916, it secured the appointment of a receiver to operate the property, or supervise its operations, and to hold the net income thereof. The money paid to the company in 1917 represented the net profits which had been earned from that property in 1916 during the receivership. The money was paid to the receiver as earned. After entry by the District Court in 1917 of the final decree dismissing the bill, the money was paid, in that year, by the receiver to the company. *United States v. North American Oil Consolidated*, 242 Fed. 723. The Government took an appeal (without supersedeas) to the Circuit Court of Appeals. In 1920, that Court affirmed the decree. 264 Fed. 336. In 1922, a further appeal to this Court was dismissed by stipulation. 258 U. S. 633.

The income earned from the property in 1916 had been entered on the books of the company as its income. It had not been included in its original return of income for 1916; but it was included in an amended return for that year which was filed in 1918. Upon auditing the company's income and profits tax returns for 1917, the Commissioner of Internal Revenue determined a deficiency based on other items. The company appealed to the Board of Tax Appeals. There, in 1927 the Commissioner prayed that the deficiency already claimed should be increased so as to include a tax on the amount paid by the receiver to the company in 1917. The Board held that the profits were taxable to the receiver as income of 1916; and hence made no finding whether the company's accounts were kept on the cash receipts and disbursements basis or on the accrual basis. 12 B. T. A. 68. The Circuit Court of Appeals held that the profits were taxable to the company as income of 1917, regardless of whether the company's returns were made on the cash or on the

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accrual basis. 50 F. (2d) 752. This Court granted a writ of certiorari. 284 U. S. 614.

It is conceded that the net profits earned by the property during the receivership constituted income. The company contends that they should have been reported by the receiver for taxation in 1916; that if not returnable by him, they should have been returned by the company for 1916, because they constitute income of the company accrued in that year; and that if not taxable as income of the company for 1916, they were taxable to it as income for 1922, since the litigation was not finally terminated in its favor until 1922.

First. The income earned in 1916 and impounded by the receiver in that year was not taxable to him, because he was the receiver of only a part of the properties operated by the company. Under § 13 (c) of the Revenue Act of 1916,¹ receivers who "are operating the property or business of corporations" were obliged to make returns "of net income as and for such corporations," and "any income tax due" was to be "assessed and collected in the same manner as if assessed directly against the organization of whose business or properties they have custody and control." The phraseology of this section was adopted without change in the Revenue Act of 1918, 40 Stat. 1057, 1081, c. 18, § 239. The regulations of the Treasury Department have consistently construed

¹Act of September 8, 1916, 39 Stat. 756, 771, c. 463: "In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations . . . , subject to tax imposed by this title, such receivers, trustees, or assignees shall make returns of net income as and for such corporations . . . , in the same manner and form as such organizations are hereinbefore required to make returns, and any income tax due on the basis of such returns made by receivers, trustees, or assignees shall be assessed and collected in the same manner as if assessed directly against the organizations of whose business or properties they have custody and control."

these statutes as applying only to receivers in charge of the entire property or business of a corporation; and in all other cases have required the corporations themselves to report their income. Treas. Regs. 33, arts. 26, 209; Treas. Regs. 45, arts. 424, 622. That construction is clearly correct. The language of the section contemplates a substitution of the receiver for the corporation; and there can be such substitution only when the receiver is in complete control of the properties and business of the corporation. Moreover, there is no provision for the consolidation of the return of a receiver of part of a corporation's property or business with the return of the corporation itself. It may not be assumed that Congress intended to require the filing of two separate returns for the same year, each covering only a part of the corporate income, without making provision for consolidation so that the tax could be based upon the income as a whole.

Second. The net profits were not taxable to the company as income of 1916. For the company was not required in 1916 to report as income an amount which it might never receive. See *Burnet v. Logan*, 283 U. S. 404, 413. Compare *Lucas v. American Code Co.*, 280 U. S. 445, 452; *Burnet v. Sanford & Brooks Co.*, 282 U. S. 359, 363. There was no constructive receipt of the profits by the company in that year, because at no time during the year was there a right in the company to demand that the receiver pay over the money. Throughout 1916 it was uncertain who would be declared entitled to the profits. It was not until 1917, when the District Court entered a final decree vacating the receivership and dismissing the bill, that the company became entitled to receive the money. Nor is it material, for the purposes of this case, whether the company's return was filed on the cash receipts and disbursements basis, or on the accrual basis. In neither event was it taxable in 1916 on

account of income which it had not yet received and which it might never receive.

Third. The net profits earned by the property in 1916 were not income of the year 1922—the year in which the litigation with the Government was finally terminated. They became income of the company in 1917, when it first became entitled to them and when it actually received them. If a taxpayer receives earnings under a claim of right and without restriction as to its disposition, he has received income which he is required to return, even though it may still be claimed that he is not entitled to retain the money, and even though he may still be adjudged liable to restore its equivalent. See *Board v. Commissioner*, 51 F. (2d) 73, 75, 76. Compare *United States v. S. S. White Dental Mfg. Co.*, 274 U. S. 398, 403. If in 1922 the Government had prevailed, and the company had been obliged to refund the profits received in 1917, it would have been entitled to a deduction from the profits of 1922, not from those of any earlier year. Compare *Lucas v. American Code Co.*, *supra*.

Affirmed.

UNITED STATES *v.* KOMBST ET AL.

CERTIORARI TO THE COURT OF CLAIMS.

No. 704. Argued April 26, 27, 1932.—Decided May 23, 1932.

1. In computing the federal estate tax under the Revenue Act of 1916, state succession taxes (distinguished from transfer taxes), are not deductible from the gross estate. *Leach v. Nichols*, 285 U. S. 165. P. 426.
2. Tax imposed by California Inheritance Tax Act, as amended in 1915, held a tax on succession, following decisions of the state court. *Id.*
72 Ct. Cls. 695; 50 F. (2d) 1030, reversed.