command over all that he needed to remain in substantially the same financial situation as before."

The general principles approved in *Blair* v. *Commissioner,* 300 U. S. 5, are applicable and controlling. The challenged judgment should be affirmed.

The CHIEF JUSTICE and MR. JUSTICE ROBERTS concur in this opinion.

HELVERING, COMMISSIONER OF INTERNAL REVENUE, *v.* EUBANK.

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

No. 205. Argued October 25, 1940.—Decided November 25, 1940.

Renewal commissions paid in 1933 by insurance companies to the assignee of an agent, pursuant to assignments made by the agent, in 1924 and 1928, of such commissions as should become payable to him for services which had been rendered in writing policies of insurance under agency contracts, *held,* under § 22 of the Revenue Act of 1932, income taxable in 1933 to the assignor. Following *Helvering* v. *Horst, ante,* p. 112. P. 124.

110 F. 2d 737, reversed.

CERTIORARI, *post,* p. 630, to review the reversal of an order of the Board of Tax Appeals, 39 B. T. A. 583, sustaining a determination of a deficiency in income tax.

Mr. Arnold Raum, with whom *Solicitor General Biddle, Assistant Attorney General Clark,* and *Messrs. J. Louis Monarch* and *Morton K. Rothschild* were on the brief, for petitioner.

Mr. Harry J. Rudick, with whom *Mr. John W. Drye, Jr.* was on the brief, for respondent.

The taxable status of assigned income depends upon ownership or control of the property which produces the

income. The respondent did not retain any such ownership or control, and is not taxable on the income.

The contract right to receive the renewal commissions, even though it may have resulted from services of the assignor, constituted a property right capable of assignment; and the disposition of that right did not correspond to an assignment of earnings. *Lucas* v. *Earl,* 281 U. S. 111, distinguished.

The commissions were not wholly the product of services personally rendered by the taxpayer. Assuming, however, that the commissions were entirely the result of respondent's individual efforts, *Lucas* v. *Earl* does not require that they be taxed to him. That case related to earnings *qua* earnings and not to a separately disposable contract right received as compensation for services.

The doctrine that earnings are always taxable to the earner produces absurd results. Suppose an agent owning a right to renewal commissions becomes bankrupt and the right to such commissions is sold by the trustee in bankruptcy to an outsider. Would the agent be taxable on the commissions paid to the purchaser because they were earned by the agent? Suppose the agent had sold his right to the future commissions, would he be subject to tax not only on the proceeds of sale, but on the larger amount of commissions as well because he had "earned" these commissions? Or suppose the agent had died owning the right to receive the renewal commissions. Application of the sweeping doctrine advocated by the Government would require him to be taxed after his death. This view was specifically rejected in *Seattle First National Bank* v. *Henricksen,* 24 F. Supp. 256, appeal dismissed, 100 F. 2d 1015.

A future commissions contract in the nature of a royalty contract, such as is here involved—the income from which is in no way dependent upon future services of the assignor, and the income from which has not yet

arisen, and will arise, if at all, by the happening of events over which the assignor has no control—may be assigned so as to relieve the assignor of the tax on the income therefrom in just the same way that the same sort of property arising from sources other than personal services may be assigned so as to relieve the assignor of tax.

The right to assign a contract of this character arising from personal services offers no more opportunity for tax avoidance than the right to assign a similar contract arising from any other source.

By leave of Court, *Mr. W. A. Sutherland* filed a brief, as *amicus curiae,* urging affirmance.

Mr. Justice Stone delivered the opinion of the Court.

This is a companion case to *Helvering* v. *Horst, ante,* p. 112, and presents issues not distinguishable from those in that case.

Respondent, a general life insurance agent, after the termination of his agency contracts and services as agent, made assignments in 1924 and 1928 respectively of renewal commissions to become payable to him for services which had been rendered in writing policies of insurance under two of his agency contracts. The Commissioner assessed the renewal commissions paid by the companies to the assignees in 1933 as income taxable to the assignor in that year under the provisions of the 1932 Revenue Act, 47 Stat. 169, § 22 of which does not differ in any respect now material from § 22 of the 1934 Revenue Act involved in the *Horst* case. The Court of Appeals for the Second Circuit reversed the order of the Board of Tax Appeals sustaining the assessment. 110 F. 2d 737; 39 B. T. A. 583. We granted certiorari October 14, 1940.

No purpose of the assignments appears other than to confer on the assignees the power to collect the commis-

sions, which they did in the taxable year. The Government and respondent have briefed and argued the case here on the assumption that the assignments were voluntary transfers to the assignees of the right to collect the commissions as and when they became payable, and the record affords no basis for any other.

For the reasons stated at length in the opinion in the *Horst* case, we hold that the commissions were taxable as income of the assignor in the year when paid. The judgment below is

Reversed.

The separate opinion of MR. JUSTICE McREYNOLDS.

The cause was decided upon stipulated facts. The following statement taken from the court's opinion discloses the issues.

"The question presented is whether renewal commissions payable to a general agent of a life insurance company after the termination of his agency and by him assigned prior to the taxable year, must be included in his income despite the assignment.

"During part of the year 1924 the petitioner was employed by the Canada Life Assurance Company as its branch manager for the state of Michigan. His compensation consisted of a salary plus certain commissions. His employment terminated on September 1, 1924. Under the terms of his contract he was entitled to renewal commissions on premiums thereafter collected by the company on policies written prior to the termination of his agency, without the obligation to perform any further services. In November 1924 he assigned his right, title, and interest in the contract as well as the renewal commissions to a corporate trustee. From September 1, 1924 to June 30, 1927, the petitioner and another, constituting the firm of Hart & Eubank, were general agents in New York City for the Aetna Life Assurance Com-

pany, and from July 1, 1927 to August 31, 1927, the petitioner individually was general agent for said Aetna Company. The Aetna contracts likewise contained terms entitling the agent to commissions on renewal premiums paid after termination of the agency, without the performance of any further services. On March 28, 1928, the petitioner assigned to the corporate trustee all commissions to become due him under the Aetna contracts. During the year 1933 the trustee collected by virtue of the assignments renewal commissions payable under the three agency contracts above mentioned, amounting to some $15,600. These commissions were taxed to the petitioner by the Commissioner, and the Board has sustained the deficiency resulting therefrom." 110 F. 2d 738.

The court below declared—

"In the case at bar the petitioner owned a right to receive money for past services; no further services were required. Such a right is assignable. At the time of assignment there was nothing contingent in the petitioner's right, although the amount collectible in future years was still uncertain and contingent. But this may be equally true where the assignment transfers a right to income from investments, as in *Blair* v. *Commissioner,* 300 U. S. 5, and *Horst* v. *Commissioner,* 107 F. 2d 906 (C. C. A. 2), or a right to patent royalties, as in *Nelson* v. *Ferguson,* 56 F. 2d 121 (C. C. A. 3), certiorari denied, 286 U. S. 565. By an assignment of future earnings a taxpayer may not escape taxation upon his compensation in the year when he earns it. But when a taxpayer who makes his income tax return on a cash basis assigns a right to money payable in the future for work already performed, we believe that he transfers a property right, and the money, when received by the assignee, is not income taxable to the assignor."

Accordingly, the Board of Tax Appeals was reversed; and this, I think, is in accord with the statute and our opinions.

The assignment in question denuded the assignor of all right to commissions thereafter to accrue under the contract with the insurance company. He could do nothing further in respect of them; they were entirely beyond his control. In no proper sense were they something either earned or received by him during the taxable year. The right to collect became the absolute property of the assignee without relation to future action by the assignor.

A mere right to collect future payments, for services already performed, is not presently taxable as "income derived" from such services. It is property which may be assigned. Whatever the assignor receives as consideration may be his income; but the statute does not undertake to impose liability upon him because of payments to another under a contract which he had transferred in good faith, under circumstances like those here disclosed.

As in *Helvering* v. *Horst,* just decided, the petitioner relies upon opinions here; but obviously they arose upon facts essentially different from those now presented. They do not support his contention. The general principles approved in *Blair* v. *Commissioner,* 300 U. S. 5, and applied in *Helvering* v. *Horst,* are controlling and call for affirmation of the judgment under review.

The CHIEF JUSTICE and MR. JUSTICE ROBERTS concur in this opinion.