

for a tax on the aggregate net income and that the losses of one spouse might be deducted from the gains of the other; and that this applied as well to deductions for capital losses as to other deductions. This, we think, was the meaning of the provision of the Revenue Act of 1934 when it was enacted, and it was subject to change only by Congress, and not by the Department.

In No. 36, the judgment of the Circuit Court of Appeals is affirmed.

In No. 113, the judgment of the Circuit Court of Appeals is reversed and the cause is remanded for further proceedings in conformity with this opinion.

No. 36, affirmed.

No. 113, reversed.

MR. JUSTICE ROBERTS took no part in the consideration and decision of this case.

TAFT ET UX. *v.* HELVERING, COMMISSIONER OF INTERNAL REVENUE.

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

No. 183. Argued November 18, 1940.—Decided December 9, 1940.

1. A joint return by a husband and wife, under § 51 (b) of the Revenue Act of 1934, is to be treated as a return of a taxable unit and as though made by an individual. P. 197.
2. In computing the net income on a joint return of husband and wife, their combined charitable contributions are deductible from their aggregate gross income up to 15% of the aggregate net income, c. 277, 48 Stat. 690, § 23 (o). Pp. 197-198.

Article 401, Treasury Regulations 62, under the Revenue Act of 1921 is consistent with this construction.

3. Article 23 (o), Treasury Regulations 86, which sought to require a husband and wife, whether they make "a joint return or separate returns," to base their deduction for charitable contributions

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on the separate net income of the spouse making them, is inconsistent with the Act and therefore ineffective. P. 198.
111 F. 2d 145, reversed.

CERTIORARI, *post*, p. 628, to review a judgment which affirmed a ruling of the Board of Tax Appeals (40 B. T. A. 229) sustaining a deficiency assessment.

Mr. Clarence Castimore, with whom *Mr. Henry W. Taft* was on the brief, for petitioners.

Mr. Thomas E. Harris, with whom *Attorney General Jackson*, *Assistant Attorney General Clark*, and *Messrs. Sewall Key* and *Maurice J. Mahoney* were on the brief, for respondent.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

Petitioners, husband and wife, filed joint income-tax returns for the years 1934 and 1935. In computing their aggregate net income under § 51 (b) of the Revenue Act of 1934,¹ they made deductions of their combined charitable contributions.² The Commissioner ruled that the deductions on account of the wife's charitable contributions should be reduced to 15 per cent of her separate net income and deficiencies were determined accordingly. The Board of Tax Appeals sustained the Commissioner (40 B. T. A. 229) and the Circuit Court of Appeals affirmed. 111 F. 2d 145.

Because the question is cognate to that presented in the cases of *Helvering v. Janney*, *ante*, p. 189, and *Gaines v. Helvering*, *ante*, p. 189, we granted certiorari. October 14, 1940.

The provision for joint returns in § 51 (b) of the Revenue Act of 1934 was in substantially the same form as the

¹ 48 Stat. 697.

² § 23 (o), 48 Stat. 690.

corresponding provision in the prior revenue acts from 1921. The import of that provision is that in making a joint return the husband and wife should report their aggregate gross income and could combine their deductions in reporting their aggregate net income upon which the tax was to be computed. That was the construction placed upon the original provision for joint returns, in the Revenue Act of 1918, by the Solicitor of Internal Revenue. He said in his ruling: "If a single joint return is filed it is treated as the return of a taxable unit and the net income disclosed by the return is subject to both normal and surtax as though the return were that of a single individual. In cases, therefore, in which the husband or wife has allowable deductions in excess of his or her gross income, such excess may, if joint return is filed, be deducted from the net income of the other for the purpose of computing both the normal and surtax."³ We think that this was the intention of Congress in enacting the Act of 1921⁴ and the later acts containing the same provision for joint returns. We think that it was also the fair import of the Treasury Regulations under the Act of 1921 and of subsequent regulations prior to 1934.⁵

Respondent places emphasis on the phrasing of Article 401 of Regulations 62 under the Act of 1921, that "in a single joint return, the tax is computed on the aggregate income and all deductions and credits to which either is entitled shall be taken from such aggregate income." The argument stresses the words "to which either is entitled" and it is urged that each spouse is entitled only

³ Sol. Op. 90, Cum. Bull. No. 4, p. 236 (1921). See *Helvering v. Janney, ante*, p. 189.

⁴ House Rep. No. 350, 67th Cong., 1st Sess.; Sen. Rep. No. 275, 67th Cong., 1st Sess.

⁵ Treasury Regulations Nos. 65 and 69, Art. 401; Regulations Nos. 74 and 77, Art. 381.

to deduct 15 per cent of his or her separate net income. But we think that this is an inadmissible construction of the statute and is not a necessary construction of the regulation. Such a construction is inconsistent with the premise of the Solicitor's opinion, above mentioned, that a joint return "is treated as the return of a taxable unit" and the tax is to be laid as though the return were that "of a single individual." The more specific language of the provision in the Act of 1921, which for the present purpose is the same as that in the Act of 1934, affords a stronger basis for this conclusion. It provides specifically for the inclusion of the income of each spouse "in a single joint return" and in that case that "the tax shall be computed on the aggregate income." The principle that the joint return is to be treated as the return of a "taxable unit" and as though it were made by a "single individual" would be violated if in making a joint return each spouse were compelled to calculate his or her charitable contributions as if he or she were making a separate return. The principle of a joint return permitted aggregation of income and deductions and thus overrode the limitations incident to separate returns. We find no indication in Article 401 of Regulations 62 under the Act of 1921 of any intention to depart from the Solicitor's view as to the purport of the statute.

In 1935, by Article 23 (o)-1 of Treasury Regulations 86, the Department sought to require a husband and wife, whether they make "a joint return or separate returns," to base their deduction for charitable contributions on the separate net income of the spouse making them. We are of the opinion that under the Revenue Act of 1934, taken with the meaning we think it had when enacted, petitioners were entitled to the combined deductions they claimed, and that the departmental regu-

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lation to the contrary was ineffective to deprive them of that right.

The judgment of the Circuit Court of Appeals is
Reversed.

MR. JUSTICE ROBERTS took no part in the consideration and decision of this case.

KLOEB, U. S. DISTRICT JUDGE, *v.* ARMOUR & COMPANY.

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

No. 65. Submitted November 18, 1940.—Decided December 9, 1940.

1. Sections 71 and 80, Title 28 U. S. C., were designed to prevent delay over orders remanding causes. They entrust determination to the informed judicial discretion of the District Court and cut off review. P. 204.
2. A state Supreme Court, basing its determination exclusively on the allegations of a petition to remove, and concluding therefrom that the cause involved a separable controversy between citizens of different States, directed removal. The federal District Court, basing its determination on the entire record, including new facts, found that there was no separable controversy and that the plaintiff was an alien, and remanded the cause. *Held:*
 - (1) The District Court acted within its jurisdiction, pursuant to §§ 71 and 80, Title 28, U. S. C. P. 204.
 - (2) The order of remand was not reviewable by the Circuit Court of Appeals. P. 205.

109 F. 2d 72, reversed.

CERTIORARI, 310 U. S. 621, to review orders of the court below, in mandamus proceedings, which directed the District Court to set aside remands in five separate actions.