

**GUY C. EARL, PETITIONER, v. COMMISSIONER OF INTERNAL
REVENUE, RESPONDENT.**

Docket No. 7873.

United States Board of Tax Appeals

10 B.T.A. 723

February 14, 1928, Promulgated

SYLLABUS:

Salary and fees of petitioner, a resident of California, are taxable to him notwithstanding the fact that he had agreed to divide them with his wife.

COUNSEL:

H. H. Tooley, Esq., for the petitioner.

M. E. McDowell, Esq., for the respondent.

OPINIONBY:

TRAMMELL

OPINION:

[*723] This is a proceeding for the redetermination of deficiencies in income tax for the calendar years 1920 and 1921, in the amounts of \$2,420.12 and \$2,432.46, respectively. The deficiencies arise on account of the action of the respondent in including in the taxable income of the petitioner the entire amount received by him during the years involved from salaries, fees, etc.

FINDINGS OF FACT

The petitioner is a resident of California. On June 1, 1901, he entered into a contract in writing with his wife, Ella F. Earl, as follows:

It is agreed and understood between us that any property either of us now has or may hereafter receive or acquire (of any and every kind) in any way, either by earnings (including salaries, fees, etc.) or any rights by contract or otherwise during the existence of our marriage, or which we or either of us may receive by gift, bequest, devise or inheritance, and all the proceeds, issues and profits of any and all such property shall be treated and considered and hereby is declared to be received, held, taken and owned by us as joint tenants and not otherwise with the right of survivorship.

(Signed) GUY C. EARL

ELLA F. EARL.

The above agreement has been in effect since the date thereof, and all amounts received by the petitioner as income from personal services, consisting of salaries, fees, etc., as well as the income from property, have been deposited in a joint bank account.

The petitioner and the said Ella F. Earl were married in 1888. In 1901 the petitioner had accumulated considerable property, consisting of cash, bonds, lands and other property. The petitioner's wife had about \$30,000 worth of property when they entered into the agreement above set out. At the time the petitioner was not very well and suggested to his wife that it might be wise for them to enter into such an agreement, which would simplify affairs in case he died during her lifetime, and that "it would take care of her and leave the matter for her administration."

[*724] At approximately the same time the contract was entered into the joint bank accounts were made.

The petitioner's salary as an officer of the Great Western Power Co. and fees received as an attorney were deposited in these joint accounts immediately upon receipt thereof. Mrs. Earl has at all times had the right to draw against the accounts at will.

In the year 1920 the petitioner received as salary, fees, etc., the sum of \$24,839.00, and in the year 1921 he received from the same sources \$22,946.20.

The petitioner included only one-half of the above amounts as being his taxable income in his income-tax returns for the years involved. The respondent determined that the entire amount of such income was taxable to the petitioner and that no part thereof was taxable to the wife.

OPINION.

TRAMMELL: In determining the deficiencies here involved the respondent gave effect to the agreement set out in the findings of fact in so far as income from property was concerned, holding that one-half of the amounts received from such sources was taxable to the petitioner's wife, but held that the entire amounts of \$24,839 and \$22,946.20 received in 1920 and 1921, respectively, as salary, fees, etc., were taxable to the petitioner.

It was contended, in view of the contract entered into in 1901, that one-half of the above amounts should be taxable to the petitioner's wife upon the ground that it became her income upon its receipt by the petitioner.

The petitioner in his brief cites many cases to the effect that husband and wife may by contract change the character of their property from community to separate property. That is, the husband and wife may enter into an agreement that the earnings of the wife may be her separate property. Authorities are also cited to the effect that under the California law a contract such as set out above constituted an equitable assignment of future earnings.

We have no disagreement with the authorities cited by the petitioner. It may be conceded that under the law of California the petitioner's wife had a right under the contract to receive one-half of her husband's earnings, but this was at most an assignment of a portion of the petitioner's earnings. As between the parties the contract may be perfectly legal and enforceable. He might have been compelled to turn over to his wife one-half of the earnings, but the salary and fees involved here first became his earnings. In the case of *Blair v. Roth*, decided by the Circuit Court of Appeals, Ninth Circuit (not yet reported), the court held that an agreement such as [*725] this did not have the effect of preventing the earnings from becoming community property. The earnings are taxable to the petitioner when received. *United States v. Robbins*, 269 U.S. 315.

In view of the foregoing, it is our opinion that the amounts received by the petitioner as salary, fees, etc., should be taxable to him.

Reviewed by the Board.

Judgment will be entered for the respondent.

MILLIKEN concurs in the result.