

Finders Keepers Losers Weepers

04.02.14 01.07.26

A California couple was recently walking their dog when they noticed a rusty tin container protruding from the soil next to a tree in their garden. Upon investigating the matter, they discovered several tin cans buried in the soil. The cans contained 1,400 gold coins. The coins, which are said to be in mint condition, date back to the 19th century. Experts have placed a preliminary value on the coins of more than \$10 million. For obvious reasons, the couple is keeping their identity and the location of their home out of the media.

It appears the couple is legally entitled to retain the treasure trove. A law professor from the University of North Carolina, John Orth, recently told *TIME Magazine*, because the coins were found on the couple's own property, they will likely be able to retain them.

Like the winner of a lottery, the California couple will be required to declare their new fortune as gross income for income tax purposes. This is not the first time a person has been faced with good fortune and a corresponding tax bill.

In ***Cesarini v. U.S.***, 23 AFTR 2d 69-997 (Northern District of Ohio, 1969), a couple purchased a piano in 1957 for \$15. In 1964, while cleaning the piano, they discovered almost \$4,500 in U.S. currency.

On the Cesarinis' 1964 joint income tax return, they reported the money found in the piano as ordinary income from other sources. About six months later, however, they had a change of heart. Consequently, they filed an amended return, seeking a refund of the tax paid on the treasure trove, claiming it was excludable from income. The Internal Revenue Service reviewed the claim for refund, but eventually denied it. So, the Cesarinis filed a refund lawsuit in the U.S. District Court for the Northern District of Ohio.

The taxpayers asserted three arguments (without offering legal support):

- IRC § 61 does not include money found in a piano;
- If the money found in the piano is includible in income, it should be included in the year the piano was purchased (i.e., 1957), rather than the year of discovery (i.e., 1964). Since tax year 1957 was closed, the Internal Revenue Service is out of luck; and
- If the money found in the piano is includible income, it is capital gain rather than ordinary income.

The Internal Revenue Service's position was equally simple and, in some respects, lacking proper legal support. It asserted:

- IRC § 61 is broad sweeping-it includes income from all sources. Consequently, unless specific provisions of the Code exclude an item of income, it is includable. Since no provision of the Code specifically excludes treasure trove, the money found in the Cesarinis' piano is includable in their gross income;
- It is ordinary income; and
- It is includable in income in the year of discovery.

Section 61 of the Code provides: "Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following..."

Both the Cesarinis and the Internal Revenue Service appear to have failed to review the applicable Treasury Regulations. Treasury Regulation Section 1.61-14(a) specifically provides:

"Treasure trove, to the extent of its value in United States currency, constitutes gross income for the taxable year in which it is reduced to undisputed possession."

Judge Young, however, did review the Treasury Regulations. Based upon this regulation, he held the Cesarinis had income in the year of discovery. As there was no sale or exchange of a capital asset, the income is properly characterized as ordinary income. Consequently, their request for refund was properly denied.

In the present case, assuming the value of the gold coins is \$10 million, and further assuming the California couple has an undisputed right to the gold coins, they will have a combined federal and state income tax liability of approximately \$5 million. Despite the Cesarinis' argument, the income to the California couple is ordinary income. It is hard to debate this result. The California couple reportedly had an increase in wealth by \$10 million. Good fortune found them!

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