

No. 11686

United States
Circuit Court of Appeals
For the Ninth Circuit.

ESTATE OF HOMER LAUGHLIN, Deceased,
BEACH D. LYON, Administrator with the
will annexed,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petitions to Review a Decision of the Tax Court
of the United States

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

JOSEPH D. BRADY
WALTER L. NOSSAMAN
JOHN O. PALSTINE
STANLEY C. ANDERSON

For Commissioner:

E. A. TONJES
R. TRANSUE

Docket No. 5891

ESTATE OF HOMER LAUGHLIN, Deceased,
 BEACH D. LYON, Administrator with Will
 Annexed,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
 Respondent.

DOCKET ENTRIES

1944

Aug. 25—Petition received and filed. Taxpayer notified. Fee paid.

26—Copy of petition served on General Counsel.

25—Request for Circuit hearing in Los Angeles filed by taxpayer. 8/28/44 Granted.

Sept. 23—Answer filed by General Counsel.

29—Copy of answer served on taxpayer, Los Angeles, Calif. calendar.

1946

Apr. 16—Hearing set June 10, 1946, Los Angeles.

June 10—Hearing had before Judge Black on merits. Stipulation of facts and exhibits attached thereto filed at hearing. Petitioner's brief due 7/25/46; respondent's brief due 8/25/46; petitioner's reply due 9/15/46.

July 5—Brief filed by taxpayer. 7/8/46 copy served.

1946

July 8—Transcript of hearing 6/10/46 filed.

Aug. 26—Reply brief filed by General Counsel.
Served 8/27/46.

Sept. 13—Reply brief filed by taxpayer. 9/16/46
copy served.

1947

Jan. 16—Opinion rendered, Judge Black. Deci-
sion will be entered under Rule 50.
Copy served.

Feb. 17—Respondent's computation for entry of
decision filed.

18—Hearing set March 26, 1947 on Rule 50,
Washington, D. C.

Mar. 26—Hearing had before Judge Turner on set-
tlement. Ordered referred to Judge
Black.

26—Decision entered, Judge Black, Div. 15.

June 20—Petition for review by U. S. Circuit Court
of Appeals for the Ninth Circuit with
assignments of error filed by taxpayer.

20—Proof of service of petition for review
filed by taxpayer.

20—Statement of points on which petitioner
on review intends to rely with proof of
service filed by taxpayer.

20—Designation of contents of record with
proof of service thereon filed by tax-
payer. [1*]

* Page numbering appearing at top of page of original certified
Transcript.

The Tax Court of the United States

Docket No. 5891

ESTATE OF HOMER LAUGHLIN, Deceased,
BEACH D. LYON, Administrator with the
Will Annexed,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency determined by the Commissioner of Internal Revenue and set forth in his notice of deficiency (LA:IT:90D;PB) dated June 6, 1944, and as a basis on this proceeding alleges:

1. Petitioner is a probate estate in process of administration under the jurisdiction of the Superior Court of the State of California, in and for the County of Los Angeles, Probate Cause No. 132875 therein. The return of said estate for the taxable period here involved was filed with the Collector for the Sixth District of California on or before March 15, 1943.

2. The notice of deficiency, copy of which, [2] with accompanying statement, is attached hereto as Exhibit A, was mailed to the petitioner on June 6, 1944.

3. The taxes in controversy are income taxes for the calendar year 1942 in the sum of \$7,977.09.

4. In the determination of the deficiency, respondent committed the following errors:

a. Respondent erred in determining and holding that the taxpayer was not entitled to a deduction of the sum of \$1,200 paid to Ella West during the calendar year 1942.

b. Respondent erred in determining and holding that the taxpayer was not entitled to a deduction of \$9,600 paid to Ada Edwards Laughlin during the calendar year 1942.

5. The facts upon which petitioner relies as the basis for this proceeding in so far as the sum of \$1,200 paid to Ella West is concerned are as follows:

a. Homer Laughlin, Sr., father of Homer Laughlin, Jr., died on or about January 10, 1913, leaving a [3] last will and testament dated August 30, 1909, duly admitted to probate on January 29, 1913, in the Superior Court of the State of California in and for the County of Los Angeles, No. 22,692, which will contained among other provisions the following:

“Second: I give, devise and bequeath unto my nieces, Ella West and Nancy McIntosh, each the sum of One hundred dollars (\$100) per month, payable quarterly to each of them during their natural life.”

b. On August 1, 1921, Homer Laughlin, Jr., and Ella West entered into a written agreement, a copy of which is hereto annexed as Exhibit B and made part hereof.

c. The condition mentioned in the second paragraph of the August 1, 1921 agreement (Exhibit B) was duly complied with. About the day of September, Ella West duly executed and delivered to Homer Laughlin, Jr. the release, copy of which appears in Exhibit B following the agreement therein set forth.

d. The Laughlin Building, mentioned in Exhibit B, is a building situated at No. 315 South Broadway, Los Angeles. At all times subsequent to about August 1, 1921, it was the property of Homer Laughlin, Jr. The latter died on or about December 27, 1932. The Laughlin Building was and is a part of his estate, which has been in process of administration in the Superior Court of the State of California in and for the County of Los Angeles since about [4] February 4, 1933, on which date the will of Homer Laughlin, Jr. was duly admitted to probate and Beach D. Lyon was appointed, and at all times since has been and is now, the duly appointed, qualified and acting administrator with the will annexed of said estate.

e. In May, 1933, a dispute having arisen between Ella West on the one hand and the Estate of Homer Laughlin, Jr., deceased, on the other, as to her rights under the contract and assignment of August 1, 1921, a suit for declaratory relief was brought by Ella West in the Superior Court of the State of California in and for the County of Los Angeles, Ella West vs. Beach D. Lyon, et al, No. 356,776, that court having jurisdiction of the parties and of the subject matter, to which suit all

persons having any interest in the subject matter were made parties. On the day of June, 1933, the Court, in the declaratory relief suit, made its judgment, which judgment, omitting formal parts, reads as follows:

“Now, Therefore, by Virtue of the Premises It Is Hereby Ordered, Adjudged, and Decreed that on the 1st day of August, 1921, Homer Laughlin assigned to the plaintiff Ella West One Hundred (\$100) Dollars of the monthly rental due or to become due from the lessee of the ground floor of the Laughlin Building, which sum was to be paid to the plaintiff Ella West each month during the remainder of her natural life; that from and after said 1st day of August, 1921, Homer Laughlin had no right, title or interest in and to said sum of One Hundred (\$100) Dollars so assigned to this plaintiff; that the defendants Beach D. Lyon, and Beach D. Lyon as Administrator with the Will annexed of the estate of Homer Laughlin, have no right, title or interest in and to the said sum of One Hundred (\$100) Dollars of the monthly rental due or to become due from the lessee of the ground floor of the Laughlin Building, which sum of One Hundred (\$100) Dollars was to be paid to the plaintiff, Ella West, each month during the remainder of her natural life, and which sum was assigned by Homer Laughlin to plaintiff.”

This judgment has never been appealed from, reversed or modified. It remains at this present date in full force and effect.

f. By reason of the judgment, based on the August 1, 1921 assignment, and determining the rights of Ella West in respect of the matters mentioned in the judgment, Ella West was given and at all times since that date, and during the year 1942, owned and held a property interest in the Laughlin Building to the extent of \$100 per month of the monthly rental arising from the ground floor thereof; that by reason of such facts the \$100 per month payments to Ella West were and are excludible or deductible from the gross income of the taxpayer arising from the ground floor of the Laughlin Building for the year 1942; that the gross and net income derived from the source just mentioned exceeded during the year 1942 the \$1,200 from the rentals thereof so paid to Ella West.

6. The facts upon which petitioner relies as a basis for this proceeding, in so far as the sum of \$9,600 paid to Ada Edwards Laughlin is concerned are as follows:

a. On or about April 1, 1924, Homer Laughlin and his then wife, Ada Edwards Laughlin, entered into a property settlement agreement, which agreement was approved and confirmed in an interlocutory decree of divorce between those parties dated September 24, 1924, in Cause No. D28768 in the Superior Court of the State of California in and for the County of Los Angeles, and in a final decree duly made September 29, 1925, pursuant thereto.

The property settlement agreement of April 1, 1924, contained among other provisions the following:

“1. The party of the first part covenants and agrees to pay to the party of the second part for her support and maintenance the sum of Eight Hundred Dollars (\$800) per month during the term of her natural life; provided, however, that if the parties hereto should be divorced at any time in the future, and in such event the party of the second part should remarry, said monthly payments shall be reduced to the sum of Three Hundred Dollars (\$300) per month. The said payments shall be made in cash, lawful money of the United States, beginning on the first day of May, 1924, and shall be made each month thereafter at the city of Los Angeles, California, on or before the 15th day of each succeeding month.”

The parties of the first and second part referred to in the foregoing excerpt are respectively Homer Laughlin and Ada Edwards Laughlin. The latter is still living and has never remarried. Later provisions of the Agreement (paragraphs 9 and 10) provide for hypothecating the Laughlin Building to secure to Ada Edwards Laughlin the faithful performance of the contract by Homer Laughlin, Jr. Paragraph 10 provides in part: “The payments herein provided to be made by the party of the first part to the party of the second part shall survive [7] the death of the party of the first part and shall be binding upon his estate.” A copy of

the decrees of divorce (interlocutory and final) in Cause No. D28768 in so far as they pertain to the matters and things hereinabove mentioned, is attached hereto as Exhibit C and made part hereof.

b. As to the \$9,600 paid to Ada Edwards Laughlin during the year 1942 by petitioner, the estate of her deceased former husband, Homer Laughlin, pursuant to the property settlement agreement and the decree of divorce above referred to, petitioner contends that this sum is deductible by the Estate of Homer Laughlin, deceased, pursuant to the provisions of Sections 22(k), 23(u), 161, 162, 163 and 171 of the Internal Revenue Code.

Wherefore, petitioner prays that The Tax Court of the United States hear this proceeding and determine that there is no deficiency in income taxes for the taxable year 1942, and grant such other and further relief as may be equitable in the premises.

/s/ JOSEPH D. BRADY,
/s/ WALTER L. NOSSAMAN,
/s/ JOHN O. PALSTINE,
/s/ STANLEY C. ANDERSON,
433 South Spring Street,
Los Angeles 13, California,
Counsel for Petitioner.

State of California,
County of Los Angeles—ss.

Beach D. Lyon, being first duly sworn, says that he is Administrator with the Will Annexed of the Estate of Homer Laughlin, and that affiant is duly authorized to verify the foregoing petition; that as such Administrator he has authority to act for the estate which is the petitioner herein; that he has read the foregoing petition, is familiar with the statements contained therein, and that the facts stated are true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

/s/ BEACH D. LYON.

Subscribed and sworn to before me this 17th day of August, 1944.

[Seal] JULIA M. FITZSIMMONS,
Notary Public in and for the County of Los
Angeles, State of California.

My Commission Expires February 17, 1948.

EXHIBIT A

Treasury Department, Internal Revenue Service,
417 South Hill Street, Los Angeles, 13, California

Office of Internal Revenue Agent in Charge Los
Angeles Division. LA:IT:90D:PB

Jun 6 1944

Estate of Homer Laughlin, Deceased
Mr. Beach D. Lyon, Administrator
315 South Broadway
Los Angeles, 13, California

Dear Mr. Lyon:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1941 and 1942, discloses a deficiency of \$8,647.89 for the taxable year ended December 31, 1942, and an overassessment of \$2,280.00 for the taxable year ended December 31, 1941, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are

requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA; Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, Jr.

Commissioner,

By /s/ GEORGE D. MARTIN

Internal Revenue in Charge

PB:vmc

Enclosures:

Statement

Form of waiver

Form 843 [10]

Statement

LA:IT:90D:PB

Estate of Homer Laughlin, Deceased

Mr. Beach D. Lyon, Administrator

315 South Broadway

Los Angeles, 13, California

Tax Liability for the Taxable Years Ended

December 31, 1941 and 1942

INCOME TAX

Year	Liability	Assessed	Overassessment	Deficiency
1941	\$15,410.46	\$17,690.46	\$2,280.00	
1942	38,467.38	29,819.49		\$8,647.89
Total	\$53,877.84	\$47,509.95	\$2,280.00	\$8,647.89

In making this determination of your income tax liability careful consideration has been given to the report of examination dated October 30, 1943, to your protest dated February 5, 1944, and to the statements made at the conference held on February 21, 1944.

The overassessment shown herein will be made the subject of a certificate of overassessment which will reach you in due course through the office of the collector of Internal Revenue for your district, and will be applied by that official in accordance with section 322 (a) of the Internal Revenue Code, provided that you fully protect yourself against the running of the statute of limitations with respect to the apparent overassessment referred to in this letter, by filing with the collector of internal revenue for your district, a claim for refund on form 843, a copy of which is enclosed, the basis of which may be as set forth herein.

A copy of this letter and statement has been mailed to your representative, Mr. Walter L. Nosaman, 433 South Spring Street, Los Angeles, 13, California, in accordance with the authority contained in the power of attorney executed by you.

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1941

Net income as disclosed by return.....	\$44,487.64
Additional deduction: Legal expense.....	4,000.00
	<hr/>
Net income adjusted	\$40,487.64

Explanation of Adjustment

Legal expense accrued in this year, but paid and claimed as a deduction in the succeeding year, is allowed for this year since your return was rendered on the accrual basis.

COMPUTATION OF TAX

Taxable Year Ended December 31, 1941

Net Income Adjusted	\$40,487.64
Less: Personal exemption	750.00
	<hr/>
Balance (surtax net income).....	\$39,737.64
Net income subject to normal tax.....	\$39,737.64
Normal tax at 4% on \$39,737.64.....	\$ 1,589.51
Surtax on \$39,737.64.....	13,820.95
	<hr/>
Total income tax	\$15,410.46
Correct income tax liability	\$15,410.46
Income tax assessed:	
Original, account No. 185776	17,690.46
	<hr/>
Deficiency of income tax	\$ 2,280.00

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1942

Net income as disclosed by return.....		\$55,471.51
Additional income and unallowable deductions:		
(a) Gross income from rents.....	\$1,200.00	
(b) Legal expense disallowed	4,000.00	
(c) Equipment costs disallowance.....	740.00	
(d) Payment to Ada Edwards		
Laughlin disallowed	9,600.00	15,540.00
		<hr/>
Total		\$71,011.51
Additional deductions:		
(e) Legal expense	\$3,500.00	
(f) Depreciation	308.33	
		<hr/>
Net income adjusted		\$67,203.18

Explanation of Adjustments

(a) There is restored to gross income, or disallowed as a deduction therefrom, under the applicable provisions of the Internal Revenue Code, the exclusion or deduction of \$1,200.00 shown in Schedule C of your return as "Less assignment of rent to Ella West."

(b) Legal expense accrued in the preceding year, but paid and claimed as a deduction in this year, is disallowed for this year since your return was rendered on the accrual basis. This expense has been allowed as a deduction for the preceding year herein.

(c) The cost of equipment claimed as a deduction is disallowed; sections 24(a)(2) and (3) of the Internal Revenue Code. See also adjustment (f) below.

(d) The deduction of \$9,600.00 claimed for pay-

ment to Ada Edwards Laughlin on account of "property settlement agreement with [13] Homer Laughlin—\$800.00 per month for life" is not allowable under the Internal Revenue Code.

(e) Legal expense accrued in this year, but paid and claimed as a deduction in the succeeding year, is allowed for this year since your return was rendered on the accrual basis.

(f) Depreciation for ten months is allowed at the rate of 50 per cent per annum on the cost of equipment disallowed under adjustment (c) above.

COMPUTATION OF TAX

Taxable Year Ended December 31, 1942

Net Income Adjusted	\$67,203.18
Less: Personal exemption	500.00
	<hr/>
Balance (surtax net income).....	\$66,703.18
Net income subject to normal tax.....	\$66,703.18
Normal tax at 6% on \$66,703.18.....	\$ 4,002.19
Surtax on \$66,703.18.....	34,465.19
Total income tax	\$38,467.38
Correct income tax liability	\$38,467.38
Income tax assessed: Original account No. 37359.....	29,819.49
	<hr/>
Deficiency of income tax	\$ 8,647.89

EXHIBIT B

I, Ella West, in consideration of Five Hundred Dollars (\$500.00) in hand paid to me, and in further consideration of an assignment of One Hundred Dollars (\$100.00) per month of the rent to be paid by the lessee of the ground floor of the Laughlin Building, and in further consideration of the assumption of Homer Laughlin, Jr. to pay me the

said sum of One Hundred Dollars (\$100.00) per month during the remainder of my natural life, do hereby release the said Homer Laughlin, Jr., as Trustee, Guendolen V. Laughlin, and all of the property comprising the estate of Homer Laughlin, deceased, late of Los Angeles, California, from the payment of the annuity provided for in the will and decree of distribution in the estate of said Homer Laughlin, hereby releasing absolutely any claim of every character either against said persons or the property of said estate, the said lessee having recognized the said assignment and having agreed to pay to me the said sum monthly of the rent due and payable to the said Laughlin for the said ground floor of said building.

This agreement is to be placed in escrow and carried into effect and the said sum in cash to be paid to me by the Title Insurance & Trust Company in connection with the escrow under which said Laughlin is purchasing from the said Guendolen V. Laughlin all of her interest in said Laughlin Building and making a loan in order to complete [15] said purchase, and is contingent upon the consummation of the said deal through the Title Insurance & Trust Company.

(Notarial acknowledgment dated August 1, 1921.)

ELLA WEST

I, Ella West, for value received from Homer Laughlin, Jr., do hereby release the said Homer Laughlin Jr., as Trustee, Guendolen V. Laughlin, and all of the property comprising the estate of Homer Laughlin, deceased, late of Los Angeles, California, from the payment of the annuity provided for in the will and decree of distribution in the estate of said Homer Laughlin, hereby releasing absolutely any claim of every character either against said persons or the property of said estate.

In Witness Whereof I have hereunto set my hand this day of September, 1921.

ELLA L. WEST. [16]

EXHIBIT C

Laughlin vs. Laughlin

D 28,768

Filed 1924 April 15, 1924

Order of default May 9, 1924

Interlocutory—September 24, 1924.

* * * That on the first of April 1924, plaintiff and defendant entered into a property settlement agreement, by the terms of which all property rights, and maintenance of the plaintiff were determined and agreed upon,

Wherefore, it is hereby Ordered, Adjudged and

Decreed that the plaintiff is entitled to a divorce from the defendant; that when one year shall have expired, after the entry of this interlocutory judgment, a final judgment and decree shall be entered, granting a divorce herein, wherein and whereby the bonds of matrimony heretofore existing between said plaintiff and said defendant shall be dissolved;

And it is further ordered, adjudged and decreed that the said property settlement agreement be, and the same hereby is, ratified, approved and confirmed, and is hereby made a part of this decree by reference, and that the same shall be made a part of and incorporated in the final decree in this matter. [17]

Final Judgment of Divorce

It is further ordered, adjudged and decreed that that certain property settlement agreement, referred to in the interlocutory decree in this action and by reference made a part thereof, is hereby ratified, approved and confirmed, and the property of the parties hereto is hereby assigned in accordance with the terms of said agreement and the other rights and obligations of the parties hereto are assigned, determined and adjudged in accordance with the terms of said agreement, which agreement is hereby made a part of this judgment and is in words and figures as follows, to wit:

* * *

[Endorsed]: Received and filed Aug. 25, 1944.

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

- 1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.
3. Admits that the taxes in controversy are income taxes for the calendar year 1942; denies the remaining allegations contained in paragraph 3 of the petition.
4. Denies the allegations of error contained in subparagraphs (a) and (b) of paragraph 4 of the petition.
5. Denies the statements in subparagraphs (a) to (f), inclusive, of paragraph 5 of the petition for the reason that respondent lacks sufficient information from which to form a belief as to the truth or correctness thereof.
6. Denies the statements in subparagraphs (a) and (b) of paragraph 6 of the petition for the reason that respondent lacks sufficient information from which to form a belief as to the truth or correctness thereof.
7. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL ECC
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

EARL C. CROUTER,

B. M. COON,

Special Attorneys,
Bureau of Internal Revenue.

BMC/vc 9/18/44.

[Endorsed]: Received and filed Sep. 23, 1944.

Before the Tax Court of the United States

Docket No. 5891

In the Matter of:

ESTATE OF HOMER LAUGHLIN, Deceased,
BEACH D. LYON, Administrator With the
Will Annexed,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Room 229, Post Office and Federal Bldg., Spring,
Temple and Main Streets, Los Angeles, Cali-
fornia, Monday, June 10, 1946—11:15 a. m.

(Met pursuant to notice.)

Before: Honorable Eugene Black,
Judge.

Appearances:

Walter L. Nossaman, Esq., 631 Title Insurance
Bldg., Los Angeles, California, appearing on behalf
of Estate of Homer Laughlin, Deceased, Beach D.
Lyon, Administrator with the Will annexed, Peti-
tioner.

E. A. Tonjes, Esq., (Honorable J. P. Wenchel,
Chief Counsel, Bureau of Internal Revenue), ap-
pearing on behalf of the Commissioner of Internal
Revenue, Respondent.

PROCEEDINGS

The Clerk: 5891, Estate of Homer Laughlin.

Mr. Nossaman: Walter L. Nossaman for the petitioner.

Mr. Tonjes: E. A. Tonjes for the respondent.

Mr. Nossaman: The facts have been stipulated. We are ready to submit it upon the stipulation, if that is agreeable with the Court.

The Court: Very well. We will receive your stipulation at this time and your submission of the case.

Mr. Nossaman: What about briefs, your Honor?

The Court: Do you wish to make a brief statement of the issues in this case before you file the stipulation?

Mr. Nossaman: I should be glad to if your Honor wishes to take the time.

The Court: Yes.

Mr. Nossaman: I question whether it is necessary but if the Court prefers——

The Court: I would like to have a brief statement.

Opening Statement

On Behalf of the Petitioner

Mr. Nossaman: It involves two items of deduction for the year 1942. The Petitioner is a Probate Estate. It is the Estate of Homer Laughlin, deceased, which is in the course of the administration in the Superior Court for Los Angeles County.

The controversy involves two items, both of them items of deduction or of exclusion.

The first item is \$1200.00 in amount and consists of a so-called annuity paid by the Estate to one Ella West during the year in question. The circumstances surrounding that I will briefly state as follows:

Homer Laughlin, whom I will designate as Homer Laughlin, Jr., to differentiate him from his father Homer Laughlin, Sr., who died in 1913, was, with his sister Gwendolyn, heir and legatee of his father's estate of a substantial amount.

Under his father's will, which was probated in 1913, as I recall it, one Ella West, designated as a niece in the will, was given the sum of \$100.00 per month during her life. Upon the death of Homer Laughlin, Sr. in 1913 his estate was probated and Homer Laughlin, Jr. was not only with his sister the legatee and heir of the estate, but was with her the executor. It was impossible, of course, to close the estate until some disposition had been made of this Ella West claim.

It was taken care of in the following manner: He entered into a contract with Ella West whereby he assigned to her \$1200.00 per year, \$100.00 per month, out of the rents to be received from the ground floor of the Laughlin Building, a building here in this city, which payments were to continue during the life of Ella West.

He obligated himself to make those payments, but the crux of it is that he assigned to her that sum out of the rentals to be received from the ground floor of that building. The estate was distributed in due course to Homer Laughlin, Jr. and his sister.

At about the time this contract was made with Ella West, Homer Laughlin purchased from his sister her interest in the Laughlin Building, so that from that time on he was the sole owner of the Laughlin Building.

Homer Laughlin died in 1932 and in the course of administration of his estate, of which Mr. Beach D. Lyon was and is the administrator with will annexed, a controversy arose between Ella West and the Estate as to what her rights were under this contract of August 1, 1921. She brought a suit for declaratory relief, making the estate and certain other parties, including the then lessee of the ground floor, parties defendant. The Court, in a judgment entered in 1933, decreed that she was entitled to \$100.00 per month out of the rentals to be received from the ground floor of the Laughlin Building during her life time. That is the status of the matter at the present time.

These sums were duly paid during the year 1942 as they have been throughout the period of administration of the estate. A deduction or an exclusion was claimed for these [26] payments upon the ground that Ella West had something in the nature of a rent charge or at any rate it is a property interest, property right in the ground floor of the Laughlin Building, represented by the amount of these agreed payments. And to that extent the payments do not belong to the Estate. On that theory they would be an exclusion, rather than a deduction.

We contend, however, if they are not an exclusion they are, under the circumstances, a proper deduc-

tion. The rents were collected by the Estate and it is shown by the stipulation that the rentals during the year 1944, from the ground floor of the Laughlin Building, the gross and net rentals were more than sufficient to pay this sum. That is the first item.

The other item is the sum of \$9600.00, which was paid to Ada Edwards Laughlin, a divorced wife of this decedent, Homer Laughlin, Jr., under the following circumstances:

On April 1, 1924, Homer Laughlin, Jr. entered into an agreement with his wife whereby he agreed to pay her the sum of \$800.00 per month during her life, for her support and maintenance. It was to be reduced to \$300.00 if she ever married, but that has not occurred.

That agreement was approved and confirmed by the Superior Court for this County in a suit for divorce which was instituted at almost that same time by Mrs. Laughlin [27] against Homer Laughlin.

Your Honor will recall that in the year 1942 Congress came to the relief of husbands who had been paying alimony and in Section 23-U of the Internal Revenue Code provided that sums paid under the circumstances of this case—I think I am perfectly justified in stating that—would be deductible by the husband and would be considered as income to the wife, upon which she would pay an income tax.

There could be no possible question of the deductibility of excludability—it makes no difference which—of these items on behalf of Homer Laughlin

if he were living. The sole question arises under a regulation which the Commissioner has seen fit to adopt and which we consider erroneous, to the effect the deduction or exclusion cannot be allowed to an estate; that is the question involved as to the \$9600.00 item.

The Court: Very well. Do you have any statement to make, Mr. Tonjes?

Mr. Tonjes: A brief one, your Honor.

Opening Statement
On Behalf of the Respondent
(By Mr. Tonjes)

Mr. Tonjes: Your Honor, I will state generally the position of the Respondent is, with respect to both the \$100.00 and the \$9600.00 payments, that neither one of them constitute proper exclusions from income and neither one of [28] them constitute a deduction from income because they don't constitute deductions because they are payments in satisfaction of an obligation of the Estate and therefore are not deductible from the income of the Estate.

The parties have signed a stipulation, your Honor, which sets forth all the facts upon which they both rely. I will file a copy of that with the Court and might I ask your Honor at this time that one of the exhibits, being a copy of the income tax return of the Trustee, that I have the privilege of withdrawing that and substituting a photostat copy for it?

The Court: That permission will be granted.

And the stipulation of facts will be received as the evidence in the case.

Do you wish to submit briefs under the rules? The rules permit either party to file their briefs within 45 days.

Mr. Tonjes: I think, your Honor, if it is acceptable to the Court, I would like the privilege of filing a reply brief. I think it might sharpen the issues a little bit if the petitioner files his opening brief and I reply to it. However, if the Court feels——

The Court: Usually where the facts are all stipulated we make the time for filing briefs, to file them simultaneously. If you desire the other method the Court has no objection.

Mr. Nossaman: It is immaterial to me, except I assume in that case I have the privilege of reply.

The Court: Yes, you will.

Mr. Nossaman: Very well. That is satisfactory.

The Court: The 45 days, I suppose, will be sufficient time for the petitioner to file his opening brief?

Mr. Nossaman: That will be ample.

The Court: Which will be July 25th, I believe. That will be 20 more days in June and 25 in July.

The respondent may have until August 25th in which to file his brief, and then you may have until September 15th in which to file an answering brief to the respondent's reply.

Mr. Nossaman: That will give us 20 days, your Honor?

The Court: Yes.

Mr. Nossaman: That will be satisfactory.

The Court: I had better give you 20. It is usually 15 in nearby points.

Mr. Nossaman: The transmission takes so long.

The Court: Yes. Very well. The time for filing briefs will be fixed as I have stated.

(Whereupon, at 11:30 o'clock a.m., Monday, June 10, 1946, the hearing in the above-entitled matter was colsed.)

[Endorsed]: Filed July 3, 1946. [30]

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated between the parties hereto, by their respective counsel, that the following facts shall be taken as true, without prejudice to the right of either party to introduce other evidence not inconsistent therewith:

(1) Petitioner is a probate estate in process of administration under the jurisdiction of the Superior Court of the State of California in and for the County of Los Angeles, being Probate Cause No. 132875 therein. The return of said estate for the taxable period here involved was filed with the Collector for the Sixth District of California on or before March 15, 1943.

(2) A copy of the notice of deficiency which occasioned the present proceeding is attached to the

petition [31] herein as Exhibit A and is hereby made part of this stipulation as Exhibit A.

(3) Homer Laughlin, Sr., father of Homer Laughlin, Jr., died on or about January 10, 1913, leaving a last will and testament dated August 30, 1909, duly admitted to probate on January 29, 1913, in the Superior Court of the State of California in and for the County of Los Angeles, in Probate Cause No. 22,692, which will contained among other provisions the following:

“Second: I give, devise and bequeath unto my nieces, Ella West and Nancy McIntosh, each the sum of one hundred dollars (\$100) per month, payable quarterly to each of them during their natural life.”

After certain other legacies, bequests and devises, the will gave the residue of the estate equally to decedent's son and daughter, Homer Laughlin, Jr. and Guendolyn Virginia Laughlin, further providing that Homer Laughlin, Jr. should hold Guendolyn's share in trust for her, distributing it to her, one-half at thirty years of age, one-half at forty, with remainders over if she died before distribution of her share. The will appointed Homer, Jr. and Guendolyn as executor and executrix without bond.

(4) On August 1, 1921, Homer Laughlin, Jr. and Ella West entered into a written agreement, a copy of which, omitting notarial acknowledgment, is attached to the petition herein as Exhibit B and is hereby made part of this stipulation [32] as Exhibit

B. The transaction evidenced by Exhibit B was entered into by Homer Laughlin, Jr. for the purpose of obtaining, and he did thereby obtain, her consent to distribution of the estate, which was made thereafter in due course, pursuant to court decree.

(5) The condition mentioned in the second paragraph of the August 1, 1921, agreement (Exhibit B) was duly complied with. In September, 1921, Ella West duly executed and delivered to Homer Laughlin, Jr. the release of the estate and the residuary legatees, copy of which release appears in Exhibit B, following the agreement therein set forth.

(6) The Laughlin Building, mentioned in Exhibit B, is a building situated at No. 315 South Broadway, Los Angeles, California. From about August 1, 1921, it was at all times the property of Homer Laughlin, Jr. He acquired a one-half interest in said building as a devisee under his father's will, and purchase the other half from his sister, Guendolyn, the funds for such purchase being obtained by the mortgage on said building to Metropolitan Life Insurance Company, which mortgage is referred to in Exhibit F. Homer Laughlin, Jr. died on or about December 27, 1932. The Laughlin Building was and is a part of his estate, the petitioner, which has been in process of administration in the Superior Court of the State of California in and for the County of Los Angeles since about February 4, 1933, on which date the will of Homer Laughlin, Jr. was duly admitted to probate, and Beach D. [33] Lyon was appointed, and at all times

since has been and is now, the duly appointed, qualified and acting administrator with the will annexed of said estate.

(7) In May, 1933, a dispute having arisen between Ella West on the one hand and the Estate of Homer Laughlin, Jr., deceased, on the other, as to her rights under the contract and assignment of August 1, 1921, a suit for declaratory relief was brought by Ella West in the Superior Court of the State of California in and for the County of Los Angeles, Ella West vs. Beach D. Lyon, et al, No. 356,776, that court having jurisdiction of the parties and of the subject matter, to which suit all persons having any interest in the subject matter were made parties. Copy of the complaint in said action (except that the verification, also the August 1, 1921 agreement, Exhibit B hereto, is omitted as indicated in the attached copy) is hereto attached marked Exhibit C. Copy (omitting verification) of the defendant Administrator's answer in said suit is hereto annexed, marked Exhibit D. On the 28th day of June, 1933, the Court in the declaratory relief suit, made its judgment determining the issues between plaintiff and certain defendants. Copy of this judgment is hereto attached, marked Exhibit E. On July 7, 1933, the court made a further judgment in said suit, determining the issues between plaintiff and the remaining defendants. Copy of this judgment is hereto attached, marked Exhibit E-1. Neither of said judgments has ever been appealed from, [34] reversed or modified, and both judg-

ments remain at date hereof in full force and effect.

(8) During the taxable year 1942, petitioner paid to Ella West the sum of \$1,200, pursuant to the agreement of August 1, 1921, between Homer Laughlin, Jr. and Ella West (Exhibit B) and the Superior Court judgment of June 28, 1933 (Exhibit E). This sum was paid out of rentals received by petitioner from the ground floor of the Laughlin Building during that year. The gross and net rentals received by petitioner from that source for and during the taxable year 1942 were greatly in excess of the sum of \$1,200. The lease to Grand Central Public Market, Inc., referred to in Exhibit E-1, had terminated on October 31, 1939, and said corporation was not in possession of the ground floor of the Laughlin Building after about that date. After the termination of said lease on October 31, 1939, and at all times subsequent thereto until after December 31, 1942, petitioner as lessor from time to time leased the ground floor of the Laughlin Building, formerly leased to Grand Central Public Market, Inc., to various persons who conducted the business of a public market therein. In negotiating and executing said leases, Ella West was not consulted, nor did she in any manner participate therein.

(9) In the federal estate tax return, Form 706, filed by the Estate of Homer Laughlin, the petitioner's [35] decedent, there was claimed under Schedule I, entitled "Debts of Decedent," the following item:

“Ella West (\$100 per mo. Expectancy 11 years.) \$16,610.00” In the final determination of decedant’s estate tax liability the Ella West claim was allowed as a deduction in the total amount of \$9,194.05, such amount being the present value at the date of decedent’s death of an annuity of \$100 per month payable during the expected life of Ella West, who was then sixty-six years of age.

(10) On or about April 1, 1924, Homer Laughlin and his then wife, Ada Edwards Laughlin, entered into a property settlement agreement, which agreement was approved and confirmed in an interlocutory decree of divorce between those parties dated September 24, 1924, in Cause No. D28768 in the Superior Court of the State of California in and for the County of Los Angeles, and in a final decree duly made September 29, 1925, pursuant thereto. Copy of the property settlement agreement of April 1, 1924, is hereto attached, marked Exhibit F. A copy of the decrees of divorce (interlocutory and final) in Cause No. D28768 in so far as they pertain to the matters and things hereinabove mentioned, is hereto attached as Exhibit G. During his lifetime, Homer Laughlin made to Ada Edwards Laughlin the payments of \$800 per month which he agreed to make in the agreement of April 1, 1924.

(11) Ada Edwards Laughlin is living at date hereof and has never remarried. The Homer Laughlin Building, referred to in Exhibit F (referred to in Exhibit B as the Laughlin Building) was not sold by Homer Laughlin, Jr., nor has it been sold

by his estate. The trust fund referred to in Paragraph (9) of Exhibit F has never been established, nor has the insurance policy therein referred to, guaranteeing Homer Laughlin, Jr.'s performance of the terms of the April 1, 1924, agreement (Exhibit F), ever been furnished.

(12) During the taxable year 1942, petitioner paid to Ada Edwards Laughlin the sum of \$9,600 (\$800 per month) pursuant to the agreement of April 1, 1924, between Homer Laughlin, Jr. and Ada Edwards Laughlin (Exhibit F) and the court decrees (interlocutory and final) in the divorce action of Laughlin v. Laughlin (Exhibit G).

(13) In Schedule I, "Debts of Decedent," of the federal estate tax return of the Estate of Homer Laughlin, Jr., deceased, the following item was claimed as a deduction:

"Indebtedness in favor of Ada Edwards Laughlin, in pursuance of Property Settlement, dated April 1, 1924, approved by Decree of Superior Court of the State of California, in and for the County of Los Angeles, and secured as a lien on the building, subject to Trust Deed in favor of Metropolitan Life Insurance Co. (To return \$9600.00) Expectancy 16 years, \$152,480.00."

In the first audit of the return, this item was reduced by the Commissioner to \$101,259.35. It was later [37] eliminated by the Commissioner as a deduction in the manner hereinafter set forth.

In said return, certain expenses were claimed as deductions, as follows: Attorneys' fees, \$12,026.36; miscellaneous administration expenses, \$23.55. These items were allowed by the Commissioner, in his first examination of the return, in the respective amounts of \$11,152.59 and \$790.55. Certain items of expense, namely, attorneys' fees and miscellaneous administration expenses, were incurred after the first examination of the return.

Petitioner on October 22, 1938, filed claim for refund in the amount of \$2,500 on account of such omitted expense items. The Commissioner adjusted the amounts theretofore claimed and allowed on account of attorneys' fees and miscellaneous administration expenses the respective amounts of \$18,027.48 and \$1,065.66, and made an adjustment for additional debts shown to have been owing by the decedent, but rejected the claim for refund for the assigned reason that the above amount, \$101,259.35, representing decedent's liability on the separation agreement of April 1, 1924 (Exhibit F) had been erroneously included as a deduction in the prior determination of the estate tax liability. Copy of the Commissioner's letter of October 25, 1939, rejecting the refund claim, is hereto attached, marked Exhibit H. Petitioner has begun no action to recover on the rejected [38] claim, and any such action is now barred by the statute of limitations. Respondent has not made or attempted to make any additional assessment in respect of the claimed erroneous allowance of the deduction based on the April 1, 1924, agreement.

(14) Attached hereto as Exhibit I is copy of petitioner's 1942 income tax return.

(15) Homer Laughlin, Jr. did not possess on April 1, 1924, or at any time thereafter during the continuance of the marriage between him and Ada Edwards Laughlin, any substantial amount of community property, his property consisting of property given to him by or inherited by him from his father, Homer Laughlin, Sr.

Dated: June 5, 1946.

/s/ W. L. NOSSAMAN,
Counsel for Petitioner.

/s/ J. P. WENCHELL, ECC
Chief Counsel, Bureau of
Internal Revenue, Counsel
for Respondent. [39]

EXHIBIT C

In the Superior Court of the State of California
in and for the County of Los Angeles

No. 356776

ELLA WEST,

Plaintiff,

vs.

BEACH D. LYON, BEACH D. LYON as Administrator with the Will Annexed of the Estate of Homer Laughlin, Deceased, GRAND CENTRAL PUBLIC MARKET, INC., a California corporation, JOHN DOE ONE, JOHN DOE TWO, CITIZENS NATIONAL TRUST AND SAVINGS BANK OF LOS ANGELES, a national banking association, as Trustee, JOHN CORPORATION, a corporation, JANE DOE ONE, JANE DOE TWO, JOHN ROE CORPORATION, a corporation. as Trustee,

Defendants.

COMPLAINT FOR DECLARATORY RELIEF

Comes now the plaintiff above named and for cause of action against the defendants alleges as follows:

I.

That the defendant Grand Central Market, Inc., is now and at all times mentioned herein was a corporation duly organized and existing under and by virtue of the laws of the State of California;

that the defendant Citizens National Trust and Savings Bank of Los Angeles is a national banking association duly organized and existing under and by virtue of the laws of the United States of America; that the defendants John Corporation, a corporation, and John Roe Corporation, a corporation, are corporations [40] duly organized and existing; and that Homer Laughlin, also known as Homer Laughlin, Jr., who were one and the same persons, died testate on or about the 27th day of December, 1932, in the County of Los Angeles, State of California, and that at the time of his death he was a resident of the County of Los Angeles, State of California, and left an estate therein; that the will of Homer Laughlin was thereafter duly and regularly admitted to probate by order of the Superior Court of said Los Angeles County, and that on or about the 4th day of February, 1933, the defendant Beach D. Lyon was duly and regularly appointed as Administrator with the Will Annexed of his estate; that thereafter said Beach D. Lyon duly qualified as such Administrator with the Will Annexed, and that the defendant Beach D. Lyon is now the duly appointed, qualified and acting Administrator with the Will Annexed of the Estate of said Homer Laughlin, Deceased, and that his letters have not been revoked.

II.

That on or about the 1st day of August, 1921, and for a considerable period of time theretofore, Homer Laughlin, Jr., was the owner of the building

known as the Laughlin Building, and the owner of the Lessor's interest in a lease of the Ground Floor of said Laughlin Building, wherein the defendant Grand Central Public Market, Inc., was named the Lessee. That said lease is still in existence, and, according to its terms and the terms [41] of a renewal thereof, will continue until the first day of November, 1939. That the rents specified and reserved in said lease to be paid by Lessee to the Lessor exceeds the sum of One Hundred Dollars (\$100.00) per month.

III.

That on or about the 1st day of August, 1921, the plaintiff, Ella West, released the said Homer Laughlin, Jr., as Trustee, and all of the property comprising the estate of Homer Laughlin, Sr., deceased, from the payment of an annuity provided for in the will and in the decree of distribution entered in the estate of said Homer Laughlin, Sr., deceased, in consideration of said Homer Laughlin, Jr., assigning to this plaintiff the sum of \$100.00 per month of the rental to be paid by the Lessee of the Ground Floor of the Laughlin Building, and in consideration of said Homer Laughlin, Jr., agreeing to pay said sum of \$100.00 per month during the remainder of the natural life of this plaintiff, a copy of which agreement is in the following words and figures, to wit:

[Here is inserted agreement of August 1, 1921, between Homer Laughlin, Jr., and Ella West, which agreement is Exhibit B.]

IV.

That thereafter and on or about the 26th day of August, 1921, Homer Laughlin, Jr., made, executed and delivered to the Grand Central Public Market, Inc., an order to pay \$100.00 per [42] month to Ella West during her natural life, from the rent reserved in the lease heretofore referred to, a copy of which order is in the following words and figures, to wit:

“Los Angeles, California.

August 26th, 1921.

Grand Central Public Market, Inc.

You are hereby authorized and directed to pay, as long as your lease on the premises Lots A and B Homer Laughlin Subdivision of Block 8, Ord's Survey, is in force, to Nancy L. West the sum of \$150.00 per month during her natural life, and to Ella West the sum of \$100.00 per month during her natural life, the said payments to be made from the rents due me and are to be deducted by you from the lease moneys monthly, said payment to begin on the 1st day of October, 1921.

HOMER LAUGHLIN, JR.

Duplicate

Accepted:

GRAND CENTRAL PUBLIC
MARKET, INC.

By E. E. SELLERS

President

By U. G. PURINTON

Secretary

(Corporation Seal)''

and that thereafter the defendant Grand Central Public Market, Inc., accepted said order and agreed to pay said sum of \$100.00 per month from the rental due to Homer Laughlin, or his assignee or successors in interest, to this plaintiff, and that thereafter and up to and including the 1st day of December, 1932, [43] the defendant Grand Central Public Market, Inc., paid or caused to be paid to this plaintiff the sum of \$100.00 per month, said sum of \$100.00 being part of the rental due the Lessor under said lease for the use of the ground floor of the Homer Laughlin Building; that from and after the first day of December, 1932, the defendants and each of them refused to pay this plaintiff the said sum of \$100.00 per month, in accordance with the terms of the said agreements hereinbefore set forth.

V.

That an actual controversy relating to the legal rights and duties of the respective parties in interest to the agreements hereinbefore set forth and in and to the payment of said sum of \$100.00 per month assigned by said Homer Laughlin to this plaintiff has arisen in the following particulars, to wit: That the defendant Grand Central Public Market, Inc., has refused and still refuses to pay the said sum of \$100.00 per month so assigned to this plaintiff in accordance with the second agreement set forth in paragraph IV hereof. That the defendant Beach D. Lyon and the defendant Beach D. Lyon as Administrator with the Will Annexed

of the Estate of Homer Laughlin, Deceased, claims that said sum of \$100.00 per month so assigned by said Homer Laughlin from the tenant in possession of the Ground Floor of the Laughlin Building constitutes an asset of the estate of Homer Laughlin, Jr., and that he as Administrator with the Will Annexed of the Estate of Homer Laughlin, Deceased, is entitled to collect all of the rent [44] due from the Grand Central Public Market, Inc., the tenant of the Ground Floor of the Laughlin Building. That the defendants, John Doe One, John Doe Two, Citizens National Trust and Savings Bank of Los Angeles, a national banking association, as Trustee, John Corporation, a corporation, Jane Doe One, Jane Doe Two, and John Roe Corporation, a corporation, as Trustee, claim some right, title or interest in or to said sum of \$100.00 per month so assigned by Homer Laughlin to this plaintiff from the tenant in possession of the Ground Floor of the Laughlin Building.

Wherefore, Plaintiff prays that she may have a judgment declaring that on or about the 26th day of August, 1921, Homer Laughlin, also known as Homer Laughlin, Jr., assigned to this plaintiff \$100.00 per month during the remainder of her natural life from the rentals due from the tenant in possession of the Ground Floor of the Laughlin Building, and that it be further decreed that the defendant Grand Central Public Market, Inc., be compelled to pay to this plaintiff the sum of \$100.00 per month during her natural life as long as it remains in possession of the Ground Floor of the

Laughlin Building, and that it be further decreed that the defendants Beach D. Lyon and Beach D. Lyon as Administrator with the Will Annexed of the Estate of Homer Laughlin, Deceased, and Citizens National Trust and Savings Bank of Los Angeles, a national banking association, as Trustee, have no right, title or interest in or to said sum of \$100.00 per month so assigned to this plaintiff, and for her costs of suit [45] incurred herein and for such other and further relief as the Court may deem just and equitable.

SALISBURY & ROBINSON

By W. B. DENNIS

Attorneys for Plaintiff

[Verification by Ella West] [46]

EXHIBIT D

In the Superior Court of the State of California,
in and for the County of Los Angeles

No. 356776

ELLA WEST,

Plaintiff,

vs.

BEACH D. LYON, BEACH D. LYON as Administrator with the Will Annexed of the Estate of Homer Laughlin, Deceased, GRAND CENTRAL PUBLIC MARKET, INC., a California Corporation, JOHN DOE ONE, JOHN DOE TWO, CITIZENS NATIONAL TRUST AND SAVINGS BANK OF LOS ANGELES, a national banking association, as Trustee, JOHN CORPORATION, a corporation, JANE DOE ONE, JANE DOE TWO, JOHN ROE CORPORATION, a corporation, as Trustee,

Defendants.

ANSWER OF DEFENDANT BEACH D. LYON,
AND BEACH D. LYON AS ADMINISTRATOR
WITH THE WILL ANNEXED OF
THE ESTATE OF HOMER LAUGHLIN,
DECEASED.

Comes now the defendant Beach D. Lyon, and Beach D. Lyon as Administrator with the Will

Annexed of the Estate of Homer Laughlin, Deceased, and answering the complaint herein, admits, denies and alleges as follows:

I.

This defendant admits the truth of the allegations contained in Paragraphs I, II, III, IV and V of said complaint.

II.

This defendant alleges that no claim has been presented by the plaintiff as a creditor of said estate, and the time for presenting [47] claims has not expired and will not expire until on or about August 6, 1933.

III.

That various creditors have presented claims against said estate aggregating a large amount, and one of said claims is a preferred claim in a large sum, and has priority over claims of ordinary creditors.

That this defendant, as administrator with the will annexed of said estate, cannot pay any of said claims until an order of the Superior Court of the State of California, in and for the County of Los Angeles, having jurisdiction of said estate, shall, in the due course of administration of said estate, determine the priority of said claims and the proportions or amounts to which the creditors may be

entitled, and authorize this administrator to make payments in accordance with such order that may be so given.

Wherefore, this defendant prays that no costs be recovered by plaintiff against this defendant, either personally or as administrator with the will annexed of the Estate of Homer Laughlin, Deceased, and that the controversy existing between plaintiff and defendant may be determined by decree of this Court.

RUSS AVERY

Attorney for Defendant Beach D. Lyon, Individually, and Beach D. Lyon, as Administrator with the Will Annexed of the Estate of Homer Laughlin, Deceased.

[Verification by Beach D. Lyon.] [48]

EXHIBIT E

In the Superior Court of the State of California
in and for the County of Los Angeles

No. 356,776

ELLA WEST,

Plaintiff,

vs.

BEACH D. LYON, BEACH D. LYON, as Ad-
ministrator with the Will annexed of the estate
of Homer Laughlin, deceased, et al.,

Defendants.

JUDGMENT

This cause came on regularly for trial on the 26th day of May, 1933, in Department 17 of the above entitled Court, Salisbury & Robinson, by W. B. Dennis, Esq., appearing as counsel for the plaintiff, and Russ Avery, Esq., appearing as counsel for the defendants, Beach D. Lyon, and Beach D. Lyon as Administrator with the Will annexed of the estate of Homer Laughlin, before the Court sitting without a jury, and it appearing that the defendants admitted all of the facts set forth in plaintiff's complaint, the cause was argued by counsel for the respective parties, and after due deliberation thereon the Court ordered that judgment be entered accordingly in favor of the plaintiff, Ella West.

Whereupon, the defendants waived notice of written findings of fact and conclusions of law. [49]

Now, Therefore, by Virtue of the Premises It Is Hereby Ordered, Adjudged, and Decreed that on the 1st day of August, 1921, Homer Laughlin assigned to the plaintiff Ella West One Hundred (\$100) Dollars of the monthly rental due or to become due from the lessee of the ground floor of the Laughlin Building, which sum was to be paid to the plaintiff Ella West each month during the remainder of her natural life; that from and after said 1st day of August, 1921, Homer Laughlin had no right, title, or interest in and to said sum of One Hundred (\$100) Dollars so assigned to this plaintiff; that the defendants Beach D. Lyon, and Beach D. Lyon as Administrator with the Will annexed of the estate of Homer Laughlin, have no right, title, or interest in and to the said sum of One Hundred (\$100) Dollars of the monthly rental due or to become due from the lessee of the ground floor of the Laughlin Building, which sum of One Hundred (\$100) Dollars was to be paid to the plaintiff, Ella West, each month during the remainder of her natural life, and which sum was assigned by Homer Laughlin to plaintiff.

Dated this 28th day of June, 1933.

LEONARD SLOSSOM

Judge of the Superior Court.

EXHIBIT E-1

In the Superior Court of the State of California
in and for the County of Los Angeles

No. 356,776

ELLA WEST,

Plaintiff,

vs.

BEACH D. LYON, BEACH D. LYON, as Ad-
ministrator with the Will Annexed of the
Estate of Homer Laughlin, Deceased, Grand
Central Public Market, Inc., a California cor-
poration, Citizens National Trust and Savings
Bank of Los Angeles, a national banking asso-
ciation, as Trustee, et al.,

Defendants.

JUDGMENT

It appearing from the records that the defend-
ants Grand Central Public Market, Inc., a Cali-
fornia corporation, and Citizens National Trust and
Savings Bank of Los Angeles, a national banking
association, as Trustee, were duly served with a
copy of the Summons and Complaint in the above
entitled action, and having failed to appear or plead
in this cause within the time allowed by law, and
the default of said defendants, Grand Central Pub-
lic Market, Inc., a California corporation, and Citi-
zens National Trust and Savings Bank of Los An-
geles, a National banking association, as Trustee,
having been duly and regularly entered, the above

entitled action came on for hearing on the 7th day of July, 1933, at the hour of 2:00 o'clock p.m., before the Court, sitting without a jury, plaintiff appearing by the firm of Salisbury & Robinson, her attorneys, and no one appearing for the defendants; and the testimony of witnesses and documentary evidence having been offered on the part of the plaintiff, and the Court having entered judgment in favor of the plaintiff and against the defendants, Grand Central Public Market, Inc., a California corporation, and Citizens National Trust and [51] Savings Bank of Los Angeles, a national banking association, as Trustee;

Now, Therefore, by virtue of the premises aforesaid and the law,

It Is Ordered, Adjudged and Decreed that on the 1st day of August, 1921, Homer Laughlin for valuable consideration assigned to the plaintiff herein, Ella West, for the remainder of her natural life, the sum of \$100.00 per month, said sum to be paid from the rent due from the tenant in possession of the ground floor of the Laughlin Building;

And It Is Further Ordered, Adjudged and Decreed that defendant Grand Central Public Market, Inc., be and it is hereby ordered and authorized to pay to this plaintiff the sum of \$100.00 per month during the natural life of said plaintiff so long as said Grand Central Public Market, Inc., remains in possession of the ground floor of the Laughlin Building, or so long as it is obligated on any lease of the ground floor of the Laughlin Building.

And It Is Further Ordered, Adjudged and Decreed that the defendant Citizens National Trust

and Savings Bank of Los Angeles, a national banking association, as Trustee, and the defendant Grand Central Public Market, Inc., a corporation, have no right, title or interest in or to said sum of \$100.00 per month so assigned by Homer Laughlin to Ella West.

And It Is Further Ordered, Adjudged and Decreed that the defendant Citizens National Trust and Savings Bank of Los Angeles, a national banking association, as Trustee, be and it is hereby ordered to pay over to plaintiff any and all sums of money collected by said Bank from the tenant in possession of the ground floor of the Laughlin Building which were so assigned to this plaintiff.

Dated this 7th day of July, 1933.

/s/ MARSHALL F. McCOMB

Judge of the Superior Court.

EXHIBIT F

AGREEMENT HOMER LAUGHLIN and
ADA EDWARDS LAUGHLIN

[Stamped]: Received for record Jan. 21, 1925, 10 a.m. Received of Homer Laughlin. Copied in Book 625 of Deeds, Page 462, Records of Riverside County, California, F. E. Dinomore, Recorder. Fee \$4.00 —36. Compared J. W. Keterick, Reimer, Deputy.

[Pencil notation]: Return to Homer Laughlin, 602 Homer Laughlin Bldg., Los Angeles, Cal.

This Agreement made and entered into this 1st

day of April, 1924, by, and between Homer Laughlin, the party of the first part, and Ada Edwards Laughlin, his wife, party of the second part, both of the City of Los Angeles, California,

Witnesseth:

Whereas, the parties to this agreement have been living separate and apart since on or about the 25th day of February, 1923, and desire to settle their property rights by this agreement, and it being their purpose by said agreement to determine all the rights of property existing between themselves, and to define the terms and conditions upon which each releases all right, title, interest and claim in, to or against property of the other, whether such property now exists or may hereafter be acquired;

Now Therefore, it is agreed by and between the parties hereto as follows:

1. The party of the first part covenants and agrees to pay to the party of the second part for her support and maintenance the sum of Eight Hundred Dollars (\$800) per month during the term of her natural life; provided, however, that if the parties hereto should be divorced at any time in the future, and in such event the party of the second part should remarry, said monthly payments shall be reduced to the sum of Three Hundred Dollars (\$300) per month. The said payments shall be made in cash, lawful money of the United States, beginning on the first day of May, 1924, and shall be made each month thereafter at the city of Los Angeles, California, on or before the 15th day of each succeeding month.

2. The party of the first part agrees also to transfer all his right, title and interest in and to that certain Stearns-Knight Brougham automobile heretofore purchased by the party of the first part for the party of the second part, and now in the possession of the party of the second part, and that he will pay or cause to be paid the entire purchase price for the said automobile, so that the title, free and clear of all encumbrances, may be vested in the party of the second part, as her separate property.

3. The party of the first part covenants and agrees to immediately execute and deliver to the party of the second part a quit-claim deed, quit-claiming to the second party, as her separate estate, all his right, title [54] and interest in and to the residence property located at No. 666 West Twenty-eighth Street in the city of Los Angeles, state of California, and more particularly described as follows, to-wit:

The southeasterly 39 feet of lot 30, all of lot 31 and the northwesterly 5 feet of lot 32, all in block "B" of the Wheeler Tract, as per map record in Book 10 at page 25 of Miscellaneous Records of said Los Angeles County.

The party of the first part further covenants and agrees to pay, or cause to be paid, on or before maturity, that certain promissory note for the sum of Eighteen Thousand Dollars, executed by the parties hereto, in favor of Flora Griffin, and secured by a mortgage on the last described property, which mortgage is recorded in Book 254 at Page 106 of

Official Records, records of Los Angeles County, and to fully discharge and satisfy said mortgage; and until the satisfaction of said mortgage, the party of the first part covenants and agrees to pay all interest when and as it becomes due upon said last named indebtedness, and to prevent any foreclosure of said mortgage; and he further covenants and agrees that until the satisfaction of said mortgage he will pay all of the taxes levied upon said last named property and all fire insurance on said premises, but when said mortgage shall have been fully satisfied of record, his obligation to pay said taxes and insurance shall thereupon cease.

4. All of the furniture, paintings, bric-a-brac, books, gardening tools, ornaments, automobile supplies, and other articles of personal property now in or about the residence and surrounding premises of the second party at No. 666 West Twenty-eighth Street, Los Angeles, California, excepting the Chinese porcelains and all other works of art purchased in the Orient, shall be and remain the property of the second part, excepting also the following articles which shall be and remain the property of the first party, viz.:

Paintings:

- 1 Norini (Subject)
- 1 Wachtel (Subject)
- 1 Wachtel (Subject)
- 1 portrait of the father and mother of first party;
- The jewelry of the first party;

- 1 table lamp standard, formerly in the residence of the father of the first party;
- The technical books of the first party;
- 1 brass sun dial;
- Books containing the messages of the Presidents of the United States. [55]

As to the Chinese porcelains and said works of art purchased in the Orient, each party shall first choose one of said porcelains or works of art, the first choice to be determined by lot; thereafter the first party shall choose two, then the second party shall choose one, and so on, the first party choosing two and the second party one, until they are all chosen. Those chosen by each party shall be and remain his or her separate property. Each party agrees to immediately execute and deliver to the other a bill of sale for his or her respective personal property as above designated, or, as to the Chinese porcelains and the said works of art, as they may be chosen. The party of the first part agrees to transfer to the second party all unexpired policies of insurance on said property designated as hers or to be hers, also on said Stearns-Knight Brougham, in such manner that in case of the happening of fire or other peril insured against, the benefits of said policies will accrue to the second party.

5. In consideration of the performance of all the terms and conditions of this agreement by the party of the first part, and especially the payment of said monthly sum of \$800.00, the party of the second part covenants and agrees that she will hold the

first party free and clear of any and all liabilities for debts or obligations incurred by her from and after the date hereof, and will pay all bills and indebtedness which may be incurred by her since said 25th day of February, 1923, of all kinds and description, except the following, which the party of the first part agrees to pay, viz.: The sum of \$150.00, balance due on membership in the Women's Athletic Club, and \$100.00 due for dentistry to Dr. E. E. Kirtlan; also the sum of \$1,500.00 to Overton, Lyman & Plumb on account of their legal services to the second party in connection with the effecting of this property settlement.

6. The party of the first part hereby remises, releases and relinquishes and forever quitclaims to the said party of the second part, all right, title and interest which he has or might claim in and to all of the property, real and personal, held or owned by her, or in which she may have any interest, vested or contingent, and wheresoever situated, and all such property, both real and personal, as she may hereafter in any manner acquire, [56] and also renounces and releases any and all right to inherit any portion of her estate in case of her death, and any right to administer upon her estate in that event or to claim an allowance from her estate or a probate interest therein; also all right and claim of right to receive her earnings, if any, hereafter to accrue; and all right to support by her in any contingency under the provisions of Section 176 of the Civil Code of California, or any other law of this state or other state or country.

7. The said party of the second part does hereby release, remise and forever quit-claim unto the said party of the first part any and all right, title and interest which she has or might or could claim or assert as his wife, or otherwise, in and to all or any of his property, real or personal, held or owned by him or in which he has any interest, either vested or contingent, and including all or any property he may hereafter in any manner acquire, and where-soever situated, and whether the same be separate or community property, and including also the earnings and income of the said party of the first part now accrued or hereafter to accrue to him, except the rights and interests reserved and expressly provided for by the terms and conditions of this contract, which rights are hereby expressly reserved; and the said party of the second part does also relinquish and release to the party of the first part any and all rights and claims which she has or might or could assert to support and maintenance or alimony of any nature, and for any time, whether in the course of judicial proceedings between the said parties, or otherwise, including the items of attorneys' fees and costs in any such judicial proceeding; and she renounces, quit-claims and relinquishes all rights which she has, or could assert against the party of the first part for support as his wife, other than or in addition to the payments to be made to her by him, as above provided, and the property to be conveyed by him to or for her, as above provided. The party of the second part also releases, renounces and relinquishes all right and claim

which she has or might have to any share in the estate of the said party of the first part in case of his decease, and to inherit from him in the state of California, or elsewhere, including her community property rights, if any, and the right to dower in any property of the said party of the first part; and also renounces and relinquishes all right to administer upon his estate in case of his death, and her right to an allowance from his estate of any kind or nature whatsoever, excepting the payments and the property rights herein provided for.

8. The parties hereto mutually agree that each of them, respectively, will execute all such deeds, assignments, transfers, documents or instruments as may be presented to him or her by the other and which may be reasonably necessary or convenient to enable either of them to alienate, transfer, mortgage or hypothecate his or her property, respectively, in accordance with the terms and conditions of this agreement; provided, however, that nothing in this paragraph shall be construed as obligating the party of the second part to execute any document or instrument which may have the effect of depriving her of any rights or property which by this agreement she is entitled to; provided, further, that neither of the parties hereto shall be required by the other to sign any instrument not provided for in this contract which will in any manner render the one so required to sign liable for the payment of any money or the performance of any act, or the incurring of any liability in the nature of a warranty, or otherwise.

9. In order to secure the faithful performance of the terms and conditions of this agreement, the party of the first part covenants and agrees that that certain real estate, together with the improvements thereon, known as the "Homer Laughlin Building," located between Third and Fourth Streets, on the west side of Broadway, in the city of Los Angeles, state of California, shall be and is hereby hypothecated as security for the faithful performance of all of the terms and conditions of this agreement, and especially for the payment of the said monthly installments of \$800 each, and of the mortgage lien now existing upon the residence located at No. 666 West 28th Street above described, which said Homer Laughlin Building is more particularly described as follows, to-wit: [58]

Lots "A" and "B" of Homer Laughlin Sub-division of Block Eight (8), Ord's Survey, in the city of Los Angeles, county of Los Angeles, state of California, as per map thereof recorded in Book 83 at Page 41 of Miscellaneous Records in the office of the County Recorder of said county.

And the said party of the first part covenants and agrees that if at any time while this contract is in force he shall sell the said Homer Laughlin Building, he will, coincident with said sale, deposit with a trust company, mutually satisfactory to the parties to this agreement, doing business in the city of Los Angeles, California, the sum of One Hundred Fifty Thousand Dollars (\$150,000) which shall be invested in securities mutually satisfactory to the

parties to this agreement, which trust fund shall stand as security for the faithful performance of all the terms and conditions of this agreement in lieu of the said Homer Laughlin Building; the said trust fund and the income therefrom to be subject to the disposition of the party of the first part, provided he is not in default under the terms hereof, subject, however, to the right of the party of the second part to have said trust fund at all times to remain intact and of the actual market value of the sum of \$150,000.00, as security for the faithful performance of the terms and conditions of this agreement by the party of the first part to be done and performed; and the said party of the first part covenants and agrees at all times during the existence of this agreement to keep said trust fund of the actual market value of the sum of \$150,000 for the purposes herein stated. The said trust shall provide that should the party of the first part be in default at any time or times in the payment or payments to be made to the second party under the terms hereof, the trustee of said fund shall immediately upon such default, pay out of the interest of the said trust fund, if the interest is sufficient, but if not, then out of the principal thereof, such sum as may be necessary to cure said default, or defaults, it being the intention of the parties hereto that said trust shall be so created that the party of the second part shall always be assured of receiving the monthly payments herein provided for. If, without the sale of the said Homer Laughlin Building property, the party of the first part shall, at any time, create a trust fund of \$150,000.00, in cash, or shall deposit

approved securities with said trustee, of the actual market value of \$150,000.00, and thereby create a trust upon the same terms and conditions as above set forth, or shall furnish to the party of the [59] second part an insurance policy, issued by a responsible corporation mutually satisfactory to the parties to this agreement, guaranteeing the performance of the terms of this agreement by the party of the first part, the party of the second part covenants and agrees to release the said Homer Laughlin Building property from the lien or obligation of this contract.

10. It is understood and agreed by and between the parties hereto that the said Homer Laughlin Building is now subject to a first mortgage to secure an indebtedness of \$600,000.00 in favor of the Metropolitan Life Insurance Company, and the hypothecation of said building as security for the faithful performance of the terms and conditions of this agreement is subject to said prior indebtedness.

It is further covenanted and agreed by and between the parties hereto that if it becomes necessary at any time during the existence of this agreement to increase the indebtedness upon the said Homer Laughlin Building property, the said prior indebtedness may be increased to a sum not to exceed an aggregate of \$650,000.00, and the party of the second part covenants and agrees that if the party of the first part should desire to increase said prior indebtedness to a sum not to exceed the said amount of \$650,000.00, she consents that he may do so, hereby consenting thereto, and will execute and

deliver to the party of the first part or to any person or corporation named by him, any document necessary or proper in order to consent to the increase of said prior indebtedness upon the said Homer Laughlin Building property to an amount not exceeding at any one time the sum of \$650,000.00, and bearing interest at a rate not to exceed seven per cent per annum.

It is covenanted and agreed by and between the parties hereto that if a divorce should be granted upon the complaint of either party to this agreement, and thereafter the party of the second part should marry some person other than the party of the first part, the obligation herein contained to pay to her the monthly installment of \$800.00 during the term of her natural life shall immediately terminate as to \$500.00 thereof, and upon such contingency, but not otherwise, the party of the second part covenants and agrees to release the party of the first part from all further obligations to make any monthly payment in excess of \$300.00, and will [60] execute any and all documents that may be necessary to release any of the property of the party of the first part, and especially the Homer Laughlin Building property from the lien created by this agreement, to secure the faithful performance of the terms and conditions thereof by the party of the first part; it being particularly understood that the monthly payments of \$300.00 per month, after the remarriage of the said second party, shall not be secured by any lien on the property of the first party, but shall remain only a personal obligation as to said \$300 per month. The

payments herein provided to be made by the party of the first part to the party of the second part shall survive the death of the party of the first part and shall be binding upon his estate.

11. In the event a divorce should be granted to either party to this agreement, it is stipulated and agreed that the terms of this contract may be, at the option of either party, included in any interlocutory or final decree that may be entered in such action, if any such action is commenced or prosecuted.

In Witness Whereof the parties hereto have executed this agreement, in duplicate, the day and year first above written.

/s/ HOMER LAUGHLIN,
Party of the First Part.

/s/ ADA EDWARDS LAUGHLIN,
Party of the Second Part.

State of California,
County of Los Angeles—ss.

On the 20th day of January in the year 1925 before me, J. C. Laderize, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared Homer Laughlin, personally known to me as the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same. In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

J. C. LEDERIZE.

State of California,
County of Los Angeles—ss.

On this 8th day of April, 1924, before me, Jessie McDill, a Notary Public in and for said county and state, residing therein, duly commissioned and sworn, personally appeared Homer Laughlin, known to me to be the person whose name is subscribed to the foregoing agreement, and acknowledged to me that he executed the same.

[Seal] JESSIE McDILL,

Notary Public in and for the County of Los Angeles,
State of California.

State of California,
County of Los Angeles—ss.

On this 10th day of April in the year one thousand, nine hundred and twenty-four, A.D., before me, John DeFerie, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared Ada Edwards Laughlin, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] /s/ JOHN DeFERIE,

Notary Public in and for the County of Los Angeles,
State of California.

My commission expires April 11, 1927.

EXHIBIT G

Ada E. Laughlin vs. Homer Laughlin

D 28,768

Filed 1924. April 15, 1924.

Order of default May 9, 1924

Interlocutory Judgment of Divorce, made September 24, 1924, entered September 26, 1924:

After preliminary recitals:

“The Court finds that all of the allegations contained in the complaint are true, and that a divorce ought to be granted as prayed for in said complaint. That on the first of April, 1924, plaintiff and defendant entered into a property settlement agreement, by the terms of which all property rights, and maintenance of the plaintiff were determined and agreed upon,

“Wherefore, it is hereby Ordered, Adjudged and Decreed that the plaintiff is entitled to a divorce from the defendant; that when one year shall have expired, after the entry of this interlocutory judgment, a final decree shall be entered, granting a divorce herein, wherein and whereby the bonds of matrimony heretofore existing between said plaintiff and said defendant shall be dissolved;

“And it is further Ordered, Adjudged and Decreed that the said property settlement agreement be, and the same hereby is, ratified, ap-

proved and confirmed, and is hereby made a part of this decree by reference, and that the same shall be made a part of [63] and incorporated in the final decree in this matter.”

Final Judgment of Divorce, made and entered September 29, 1925:

After preliminary recitals as to interlocutory judgment entered September 26, 1924, and granting plaintiff a final judgment of divorce, the decree continues:

“It is further ordered, adjudged and decreed that that certain property settlement agreement, referred to in the interlocutory decree in this action and by reference made a part thereof, is hereby ratified, approved and confirmed, and the property of the parties hereto is hereby assigned in accordance with the terms of said agreement and the other rights and obligations of the parties hereto are assigned, determined and adjudged in accordance with the terms of said agreement, which agreement is hereby made a part of this judgment and is in words and figures as follows: to-wit:

[Here follows the April 1, 1924, agreement in full.]” [64]

EXHIBIT H

Treasury Department, Washington

MT-ET-6305-6th California. Estate of Homer Laughlin. Date of death—December 27, 1932

Oct. 25, 1939

Beach D. Lyon, Administrator,
R602—315 South Broadway,
Los Angeles, California.

Sir:

Reference is made to your claim for refund of Federal estate tax in the amount of \$2,500.00, filed on behalf of the estate of Homer Laughlin, Jr., on October 22, 1938.

This claim is based upon the contention that the estate is entitled to additional deductions for attorney's fees, miscellaneous administration expenses and debts of decedent, as set forth in the statement attached to the claim for refund.

Consideration has been given to the claim and on the basis of the evidence now of record the following statement is submitted:

DEDUCTIONS

	Returned	Determined	Adjusted
Attorney's fees	\$12,026.36	\$ 11,152.59	\$18,027.48
Miscellaneous adminis- tration expenses	23.55	790.55	1,065.66
Debts of decedent (in- come tax and inter- est, 1931 and 1932)	259,899.31	168,430.10	77,045.88

Attorney's fees are deducted in the amount which it appears has been paid and will be paid for services rendered in the administration of the estate.

Miscellaneous administration expenses are deducted in the amount which the evidence now of record indicates is a proper deduction under this heading.

Deduction is made for debts of decedent in the amount which [65] it appears was the personal obligation of the decedent on the date of his death, including \$1,659.47 for additional Federal income taxes for the years 1931 and 1932 and excluding \$101,259.35 representing decedent's liability in a separation agreement with his wife which was erroneously included as a deduction in the prior determination of the tax liability of the estate. This amount is not a proper deduction under section 812(b)(5) Internal Revenue Code. See also *Lewis v. Reynolds*, 51 Supreme Court 145; *Roby-Somers Coal Company v. Routzan*, 100 Fed. (2d) 228; *William T. Fitzpatrick estate*, 39 B.T.A. 162; *Eben Phillips estate*, 36 B.T.A. 752; *Empire Trust Company v. Commissioner*, 94 Fed. (2d) 307, affirming 35 B.T.A. 866.

The following summary is submitted:

Gross estate		\$1,011,440.81
Deductions, 1926 Act		851,306.71
		<hr/>
Net estate, 1926 Act		160,134.10
Net estate, 1932 Act		210,134.10
Gross tax, 1926 Act	\$ 3,304.02	
Credit for estate or inheritance taxes	2,643.22	
		<hr/>
Net tax, 1926 Act		660.80
Total gross taxes, 1926 and 1932 Acts	15,114.75	
Gross tax, 1926 Act	3,304.02	
		<hr/>
Additional tax		11,810.73
		<hr/>
Total net tax		12,471.53
Amount assessed pursuant to waiver.....		6,516.59
		<hr/>
Deficiency	\$	5,954.94

You will observe that the audit review of the return results in a deficiency of \$5,954.94 instead of a refund of \$2,500.00, indicated in the claim.

In view of the foregoing, your claim for refund of Federal estate tax in the amount of \$2,500.00 is rejected in its entirety.

Respectfully,

GUY T. HELVERING,
Commissioner.

By: /s/ D. S. BLISS,

Deputy Commissioner. [66]

EXHIBIT I

Form 1041
Treasury Department
Internal Revenue Service

Page 1
1942

UNITED STATES FIDUCIARY INCOME TAX RETURN

(FOR ESTATES AND TRUSTS)
For Calendar Year 1942

or fiscal year beginning _____, 1942, and ending _____, 1943

File this return not later than the 15th day of the third month following the close of the taxable year.

(PRINT NAMES AND ADDRESS PLAINLY BELOW)

Name of Estate or Trust ESTATE OF HOMER LAUGHLIN, DECEASED

Name and Address of Fiduciary
604 Homer Laughlin Building
Los Angeles California

(Do Not Use These Spaces)

File Code 24410007

Serial No. _____

District _____
(Cashier's Stamp)

Cash _____ Check _____ M. O. _____
FIRST PAYMENT

Item and Instruction No.

INCOME

1. Dividends.....					
2. Interest on bank deposits, notes, etc.					
3. Interest on corporation bonds, etc., (except interest to be reported in item 4).....	\$.....	Less amortizable bond premium	\$.....		
4. Interest on tax-free covenant bonds upon which a Federal tax was paid at source.....	\$.....		\$.....		
5. Interest on Government obligations, etc.:					
(a) From lines (e), (f), and (g), column 3 (a), Schedule B.....	\$.....		\$.....		
(b) From line (h) Schedule B.....	\$.....		\$.....		
(c) From line (i) Schedule B.....	\$.....		\$.....		
6. Income (or loss) from partnerships, syndicates, pools, etc., and income from other fiduciaries (Name and address).....					
7. Rents and royalties (from Schedule C).....				64,996.01	
8. (a) Net gain (or loss) from sale or exchange of capital assets (from Schedule E).....					
(b) Net gain (or loss) from sale or exchange of property other than capital assets (from Schedule F).....					
9. Net profit (or loss) from trade or business (attach statement).....					
10. Other income (state nature of income)..... Schedule attached				54,661.05	
11. Total income in items 1 to 10 (enter nontaxable income in Schedules B and F).....					\$ 119,657.06

DEDUCTIONS

12. Interest (explain in Schedule G).....					
13. Taxes (explain in Schedule G).....				27,603.12	
14. Other deductions authorized by law (explain in Schedule G).....				26,405.43	
15. Total deductions in items 12 to 14.....				10,177.00	64,185.55
16. Balance (item 11 minus item 15).....					\$ 55,471.51
17. Less amount distributable to beneficiaries (item 5 (a), above, plus total of column 2, Schedule A).....					
18. Net income (taxable to fiduciary) (item 16 minus item 17).....					\$ 55,471.51

COMPUTATION OF TAX

19. Net income (item 18 above).....					
20. Less: Personal exemption.....	\$ 55,471.51	500.00			
21. Balance (surtax net income).....	\$ 54,971.51				
22. Less: Interest on Government obligations, etc. (item 5 (b), above).....					
23. Balance subject to normal tax.....	\$ 54,971.51				
24. Normal tax (6% of item 23).....	\$ 3,298.29				
25. Surtax on item 21.....	26,521.20				
26. Total (item 24 plus item 25).....	\$ 29,819.49				
27. Total tax (item 26 or line 14, Schedule E).....					\$ 29,819.49
28. Less: Fiduciary's share of income tax paid at source.....					
29. Fiduciary's share of income tax paid to a foreign country or United States possession (Attach Form 1116).....					
30. Balance of tax (item 27 minus items 28 and 29).....					\$ 29,819.49

Schedule A.—BENEFICIARIES' SHARES OF INCOME AND CREDITS. (Include as beneficiaries persons to whom amounts were paid or set aside for religious, charitable, etc., purposes.) (See Instructions 5 and 17)

1. Name and address of each beneficiary (Designate nonresident aliens)	2. Taxable income exclusive of interest on Government obligations subject to surtax only, and dividends to be reported in column 9	3. Federal income tax paid at source (2% of gross amount in item 4, page 1, minus item 28, page 1)	4. Income and profits taxes paid to a foreign country or United States possession
(a)	\$	\$	\$
(b)	\$	\$	\$
(c)	\$	\$	\$
(d)	\$	\$	\$
(e)	\$	\$	\$
(f)	\$	\$	\$
(g)	\$	\$	\$
Total of beneficiaries' shares	\$	\$	\$

CONTINUATION OF SCHEDULE A.—BENEFICIARIES' SHARES OF INCOME AND CREDITS

5. Use letter corresponding to above to identify beneficiary	6. Wholly tax-exempt obligations (shares of the sum of lines (a), (b), (c), and (d) of Schedule B)		Partially tax-exempt				9. Dividends on share accounts of Federal savings and loan associations (shares of line (j), column 3 (e), Schedule B)
			7. United States Savings Bonds and Treasury Bonds (shares of line (c), columns 2 and 3a, Schedule B)		8. Obligations of certain instrumentalities of the United States (shares of line (f), columns 2 and 3a, Schedule B)		
	a. Principal	b. Interest	a. Principal	b. Interest less amortizable bond premium	a. Principal	b. Interest less amortizable bond premium	
.....	\$	\$	\$	\$	\$	\$	\$
.....	\$	\$	\$	\$	\$	\$	\$
.....	\$	\$	\$	\$	\$	\$	\$
.....	\$	\$	\$	\$	\$	\$	\$
.....	\$	\$	\$	\$	\$	\$	\$
Totals	\$	\$	\$	\$	\$	\$	\$

Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction 5)

1. Obligations or securities	2. Amount owned at end of year	3. Interest (and dividends subject to surtax only) received or accrued during the year		4. Fiduciary's share of interest exempt from taxation	5. Fiduciary's share of interest on amount in excess of exemption, and dividends subject to surtax only
		a. Beneficiary's share	b. Fiduciary's share		
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	\$	\$	\$	All	x x x x x x x x
(b) Obligations issued prior to March 1, 1941, under Federal Farm Loan Act, or under such Act as amended	\$	\$	\$	All	x x x x x x x x
(c) Obligations of United States issued on or before September 1, 1917	\$	\$	\$	All	x x x x x x x x
(d) Treasury Notes issued prior to December 1, 1940, Treasury Bills and Treasury Certificates of Indebtedness issued prior to March 1, 1941	\$	\$	\$	All	x x x x x x x x
(e) United States Savings Bonds and Treasury Bonds issued prior to March 1, 1941	\$	\$	\$	\$	\$
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above) issued prior to March 1, 1941	\$	\$	\$	None	x x x x x x x x
(g) Dividends on share accounts in Federal savings and loan associations in case of shares issued prior to March 28, 1942	x x x x x x x x	x x	\$	\$	\$
(h) Total (include in item 5 (b), page 1)	\$	\$	\$	\$	\$
(i) Treasury Notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof (enter amount of interest as item 5 (c), page 1)	\$	\$	\$	\$	\$

Schedule C.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 7)

1. Kind of property	2. Amount	3. Depreciation (explain in Schedule D)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (enter as item 7, page 1)
Rentals from tenants of Homer Laughlin Building and Grand Central Public Market	217,218.28	\$	\$	\$	\$
Less assignment of rent to Ella West	1,200.00	\$	\$	\$	\$
.....	216,018.28	7,887.51	9,760.74	113,374.02	64,996.01

Explanation of deductions claimed in columns 4 and 5: Depreciation and other schedules attached.

SCHEDULE C

Item 4

Repairs

Hardware, locks and glass	\$	41.27	
Carpenter—Woodwork		123.63	
Plaster		81.57	
Painting		806.83	
Plumbing		317.16	
Roof and Skylights		278.10	
Miscellaneous		99.76	\$ 1,748.32
<hr/>			
Grand Central Public Market—Repairs.....			8,012.42
<hr/>			
			\$ 9,760.74
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Item 10

Other Income

Service and Miscellaneous revenues building.....	\$		82.00
Grand Central Public Market			
Light and Power revenue.....	\$22,390.14		
Information Department Income.....	7,765.77		
Advertising	1,749.34		
Miscellaneous	1,693.71		
Water	3,380.02		
Garbage and Rubbish	5,364.82		
Storage Revenue	8,599.15		
Janitor Service revenue	3,636.10		54,579.05
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			\$ 54,661.05
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Item 13

Taxes Paid

Federal excise taxes	\$	18.32
Los Angeles City and County—real estate and personal property		20,695.17
Los Angeles City and County—solvent credits.....		21.47
Riverside County—real estate.....		2.53
San Bernardino County—real estate		3.20
Federal unemployment taxes		178.86
California State Unemployment taxes		603.90
Federal Old Age benefit taxes		596.26
		<hr/>
		22,119.71
California State income tax 1942.....		4,285.72
		<hr/>
	\$	26,405.43
		<hr/> <hr/>

SCHEDULE G

Item 14

Other Deductions

Contributions

Little Sisters of the Poor.....	\$	15.00
Y.M.C.A.		50.00
Los Angeles Community Chest.....		425.00
7th Day Adventist Church.....		20.00
Tuberculoses Assn.		2.00
L. A. Visiting Nurses Ass'n.		10.00
United China Relief		10.00
United Service Organizations		25.00
Women's Ambulance Defense Corp.	20.00	\$ 577.00
		<hr/>

Ada Edwards Laughlin—Property settlement agreement with Homer Laughlin—\$800.00 per month for life		9,600.00
		<hr/>
	\$	10,177.00
		<hr/> <hr/>

SCHEDULE C

Item 5

Other Expenses

Management Expenses:

Salaries—Office and Management....	\$25,657.52	
Office stationery, supplies and expenses	393.65	\$ 26,051.17

Homer Laughlin Building Expense:

Leasing expense	\$	5.00
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Janitor Service

Salaries	\$8,854.10	
Supplies	369.91	
Window cleaning	500.00	
Toilet supplies	319.90	10,043.91

Electric Lighting

Current	342.50	
Lamps	46.66	
Miscellaneous	11.69	400.85

Heat and Ventilating

Heat	1,512.00	
Gas	9.66	1,521.66

Plumbing

Water	299.20	
Hot Water	300.00	599.20

Elevator Service

Salaries	3,481.63	
Power	1,353.96	
Liability Insurance	129.96	
Inspection, repairs & Misc.	513.81	5,479.36

General Operating Expenses:

Salaries—Watchmen ..	301.94
Rubbish removal	96.00
Directory board	28.22
Compensation Insurance	168.96

SCHEDULE C (Continued)

Item 5—General Operating Expenses—(Continued)

Water for Fire Hose	\$ 50.96	
Air Raid Protection...	178.51	
Miscellaneous	4.00	\$ 828.59
<hr/>		
Alterations for tenants	67.07	
Miscellaneous service costs	1.86	
Street Lighting assessment	103.18	
Insurance	633.88	
Legal and Auditing	5,286.84	
Dues and Subscriptions, etc.....	1,048.96	
Loss on bad accounts—tenants.....	360.00	26,380.36
<hr/>		
Grand Central Public Market Expense		
Office Salaries	\$ 4,144.89	
Office Supplies and expense.....	1,211.70	
Miscellaneous Administrative ex- pense	652.28	
Salaries and Wages	30,763.68	
Insurance	2,718.68	
Market Expenses, etc.	4,507.87	
Janitor Service	2,995.01	
Water	3,743.88	
Garbage and Rubbish disposal.....	11,069.80	
Light and Power	12,559.39	
Bags and Information expense.....	5,287.81	
Advertising	1,287.50	80,942.49
<hr/>		
		<u>\$133,374.02</u>

SCHEDULE D
Grand Central Public Market
Furniture, Fixtures, Equipment and Related Reserves
Year Ended December 31, 1942

Description	Date Acquired	Depreciation Rate	Balance 12-31-41	1942 Additions	Balance 12-31-42	Reserve Balance 12-31-41	1942 Depreciation	Reserve Balance 12-31-42
Market Fixtures and Equipment—Old								
22 Ceiling Fans—2nd hand	1 1/40	20%	\$ 330.00		\$ 330.00	\$ 132.00	\$ 66.00	\$ 198.00
3 Exhaust Fans—2nd hand	do	20	300.00		300.00	120.00	60.00	180.00
2 Neon Street signs—2nd hand	do	20	175.00		175.00	70.00	35.00	105.00
3 Electric Clocks—2nd hand	do	20	25.00		25.00	10.00	5.00	15.00
3 Electric panel switch-boards	do	10	3,932.00		3,932.00	786.40	393.20	1,179.60
Total—Old			4,762.00		4,762.00	1,118.40	559.20	1,677.60
Market Fixtures and Equipment—New								
2 Ladders	1 22/40	20%	16.56		16.56	6.17	3.31	9.48
1 Wheel Barrow	5/27/40	"	18.69		18.69	6.16	3.74	9.90
1 Eureka Vacuum Cleaner	10 16/40	"	41.53		41.53	9.69	8.31	18.00
1 Used Simplex Time Recorder	10 24/40	"	93.54		93.54	21.82	18.71	40.53
1 Platform Truck—SPT 18283	4 11/40	"	56.91		56.91	18.98	11.38	30.36
12 Gar Bro Warehouse Trucks	5/27/40	"	702.96		702.96	222.59	140.69	363.18
12 Gar Bro Warehouse Trucks	7/27/40	"	702.54		702.54	199.06	140.51	339.57
New Elevator Gates installed	2/28/40	10	350.00		350.00	64.20	35.00	99.20
New Elevator Enclosure	2 17/40	"	158.38		158.38	29.04	15.84	44.88
do Rear Enclosure	3/ 3/40	"	12.04		12.04	2.20	1.20	3.40
Elevator Fire door and safety gates	1/ 8/40	"	528.00		528.00	105.60	52.80	158.40
do Special folding gate	2/ 8/40	"	71.50		71.50	13.75	7.15	20.90
do Automatic gates and fire doors	12 5/40	"	536.00		536.00	58.07	53.60	111.67
do Enclosure	11/ 9/40	"	92.60		92.60	10.03	9.26	19.29
1 New Toledo scale	12/31/40	"	206.50		206.50	20.65	20.65	41.30
1 Beam for elevator shaft	1/31/41	"	24.51		24.51	2.45	2.45	4.90
Enclosure constructed	1/31/41	"	251.85		251.85	25.18	25.19	50.37
Bell system on elevator	1/31/41	"	10.02		10.02	1.00	1.00	2.00
Electric installation for light & bell system—elev.	1/31/41	"	78.34		78.34	7.15	7.83	14.98
Push button system—Info. Desk	1/31/41	"	42.94		42.94	3.57	4.29	7.86
Information booth	1 31/41	"	974.57		974.57	88.54	97.46	186.00
New elevator and 3 fire doors	2/28/41	"	1,236.00		1,236.00	113.30	123.60	236.90
4 52" Fans and 1 18" Fan	5/31/41	"	192.56		192.56	10.86	19.26	30.12
1 Brown Thermador heater—Fan type	10/41/41	"	9.43		9.43		.94	.94
2 Water Meters	10/31/41	"	20.00		20.00	.33	2.00	2.33
2 Step Ladders	12/31/41	"	10.20		10.20		1.02	1.02
Neon Sign (Info Desk)	6/30/42	"		\$ 65.00	65.00		3.24	3.24
Locker Cabinet	3/ 1/42	"		35.46	35.46		3.00	3.00
do	6/ 1/42	"		21.10	21.10		1.26	1.26
Second Hand fixtures	6/30/42	"		927.00	927.00		46.38	46.38
Doughnut Machine	4/ 1/42	20		382.00	382.00		57.33	57.33
Stretcher and blankets	3/ 1/42	"		14.13	14.13		2.40	2.40
Scrubbing machine & vacuum cleaner	3/ 1/42	"		897.80	897.80		149.60	149.60
Attachment for scrubbing machine	6/ 1/42	"		8.75	8.75		1.05	1.05
Tables, Chairs and Settees	5/31/42	10		70.20	70.20		4.20	4.20
do	6/30/42	"		9.70	9.70		.48	.48
3 Chairs	8/31/42	"		28.88	28.88		1.00	1.00
Total Old			6,438.17	2,460.02	8,898.19	1,040.39	1,077.03	2,117.42
Total Market fixtures and equipment			11,200.17	2,460.02	13,660.19	2,158.79	1,636.23	3,795.02
Market Furniture and Equipment—Office—Old								
1 Steel safe—2nd hand	1 1/40	20	100.00		100.00	40.00	20.00	60.00
1 Steel Filing Cabinet—2nd hand	do	20	35.00		35.00	14.00	7.00	21.00
4 Desks	do	20	115.00		115.00	46.00	23.00	69.00
1 Typewriter Desk	do	20	10.00		10.00	4.00	2.00	6.00
10 Chairs	do	20	47.00		47.00	18.80	9.40	28.20
1 Victor Add. Machine—2nd hand	do	20	75.00		75.00	30.00	15.00	45.00
1 Electric Wagner Fan	do	20	15.00		15.00	6.00	3.00	9.00
1 Electric Wall Clock—2nd hand	do	20	5.00		5.00	2.00	1.00	3.00
Used waste baskets etc.—2nd hand	do	20	13.00		13.00	5.20	2.60	7.80
Total Old			415.00		415.00	166.00	83.00	249.00
Market Furniture and Equipment—Office—New								
New Remington Band	3 19/40	20%	135.34		135.34	47.37	27.07	74.44
Wagner Osc Electric Fan	7 18/40	"	26.50		26.50	7.50	5.30	12.80
Total New			161.84		161.84	54.87	32.37	87.24
Total Furniture & Equipment—Office			576.84		576.84	220.87	115.37	336.24
Total			\$11,777.01	\$2,460.02	\$14,237.03	\$2,379.66	\$1,751.60	\$4,131.26

SCHEDULE J

Depreciation

Homer Laughlin Building:

Treasury Department in Washington fixed the value of the Homer Laughlin Building property at \$900,000.00 for estate tax purposes. As a separate value the land and building was not shown, the value of the building has been determined by using the percentages of the assessed valuation of the building to the total assessed valuation as shown on the 1932-33 tax bill. These values were as follows:

Land	\$404,650.00	81%
Building	95,240.00	19%
	<hr/>	<hr/>
	\$499,890.00	100%
	<hr/> <hr/>	<hr/> <hr/>
Building (19% of \$900,000.00).....	\$171,000.00	
Additions to December 31, 1940.....	11,826.60	
	<hr/>	
	\$182,826.60	
	<hr/> <hr/>	
Depreciation— $3\frac{1}{3}\%$ of \$182,826.60		\$6,093.61
Equipment per Federal Estate Tax return	300.00	
Additions to 12/31/42	1,819.10	
	<hr/>	
	\$ 2,119.10	
	<hr/> <hr/>	
Depreciation as 12/31/41 balance— (15% of \$1,494.08)	224.11	
Less: Depreciation fully depreciated assets	197.44	
	<hr/>	
	26.67	
Add: Depreciation on 1942 additions	15.63	42.30
	<hr/>	<hr/>
		\$6,135.91

SCHEDULE J (Continued)

Grand Central Public Market Depreciation (Schedule attached)	1,751.60
	<hr/>
Total 1942 Depreciation	\$7,887.51
	<hr/> <hr/>

Analysis of Reserve for Depreciation

	Building	Equipment	Total
1932 and 1933.....	\$ 5,847.00	\$ 79.42	\$ 5,926.42
1934.....	5,982.00	153.74	6,135.74
1935.....	6,093.60	166.05	6,259.65
1936.....	6,093.60	173.41	6,267.01
1937.....	6,093.60	196.28	6,289.88
1938.....	6,093.60	214.80	6,308.40
1939.....	6,093.60	177.65	6,271.25
1940.....	6,093.61	56.94	6,150.55
1941.....	6,093.61	21.77	6,115.38
1942.....	6,093.61	42.30	6,135.91
	<hr/>	<hr/>	<hr/>
	\$60,577.83	\$1,282.36	\$61,860.19

1943. Filed September 10, 1943

[Title of Tax Court and Cause.]

SUPPLEMENTAL STIPULATION OF FACTS

It is hereby stipulated between the parties hereto, by their respective counsel, that certain proceedings have been had in the matter of the Estate of Homer Laughlin, deceased, Superior Court, Los Angeles County, California, as shown by the attached excerpts from the Fifth Account Current of the Administrator with the Will Annexed and the Order of the Superior Court thereon.

Dated: June 5, 1946.

/s/ W. L. NOSSAMAN,
Counsel for Petitioner.

/s/ J. P. WENCHEL, ECC
Chief Counsel, Bureau of
Internal Revenue, Counsel
for Respondent. [76]

Excerpts from Fifth Account Current and Report of Administrator with the Will Annexed Covering the Period September 1, 1941, to June 30, 1943. Filed September 10, 1943.

In the Superior Court of the State of California

In and for the County of Los Angeles

No. 132875

In the Matter of the Estate of

HOMER LAUGHLIN,

Deceased.

FIFTH ACCOUNT CURRENT AND REPORT
OF ADMINISTRATOR WITH THE WILL
ANNEXED

Beach D. Lyon, as Administrator With the Will

Annexed of the Estate of Homer Laughlin, deceased, renders to the Court his Fifth Account Current and Report of his administration of said estate up to and including the 30th day of June, 1943, as follows, to wit:

Said Administrator With the Will Annexed is charged as follows:

Balance at date of Fourth Account Current.....	\$1,031,472.36
Received as rents, etc., from operation of Homer Laughlin Building, September 1, 1941, to June 30, 1943	559,492.15
Received from Department of Water and Power account alterations to office portion of Homer Laughlin Building	1,673.28
Received from Clark Rynders balance on loans of July 28, 1941, and April 1, 1942.....	325.00
	<hr/>
Total Charges	\$1,592,962.79

And he is entitled to credits as follows:

1942	
Jan. 2—Ella West Buell, Annuity.....	\$100.00
Feb. 5—Ella West Buell, Annuity.....	100.00
March 2—Ella West Buell, Annuity.....	100.00
April 1—Ella West Buell, Annuity.....	100.00
May 1—Ella West Buell, Annuity.....	100.00
June 1—Ella West Buell, Annuity.....	100.00
July 1—Ella West Buell, Annuity.....	100.00
Aug. 1—Ella West Buell, Annuity.....	100.00
Sept. 1—Ella West Buell, Annuity.....	100.00
Oct. 1—Ella West Buell, Annuity.....	100.00
Nov. 3—Ella West Buell, Annuity.....	100.00
Dec. 2—Ella West Buell, Annuity.....	100.00
Total Credits	\$524,087.43
Total Charges	\$1,592,962.79
Total Credits	524,087.43
	<hr/>
Chargeable to Next Account.....	\$1,068,875.36

[Verified by Beach D. Lyon, Administrator With
the Will Annexed, August 23, 1943.] [78]

C-TS:PD

LA:DLR

On October 1, 1943, the Court made the following
order (certified copy hereto attached as Exhibit J):

“The report and fifth account current herein
of Beach D. Lyon, as administrator with-will-
annexed of the estate of said deceased, by Russ
Avery, his attorney, coming on this 1st day of
October, 1943, for hearing and settlement by the
Court, all notices of said hearing having been
given as required by law, showing, after de-
ducting the credits to which said administrator
with-will-annexed is entitled, a balance of
\$1,068,875.36, of which \$47,586.86 is in cash,
belonging to said estate, and the evidence hav-
ing been heard,

“It Is Ordered, Adjudged and Decreed by
the Court that said account and report is
hereby allowed, settled and approved.” [79]

EXHIBIT J

On Oct. 1, 1943, in Department 25 of the Superior Court of the State of California in and for the County of Los Angeles, Hon. William R. McKay, judge, presiding, the following proceedings were had, to wit:

Order Settling Fifth Account Current And Report
Of Administrator With Will-Annexed

631/288

No. 132875

In the Matter of the Estate of

HOMER LAUGHLIN,

Deceased.

The report and fifth account current herein of Beach D. Lyon, as administrator with-will-annexed of the estate of said deceased, by Russ Avery, his attorney, coming on this 1st day of October, 1943, for hearing and settlement by the Court, all notices of said hearing having been given as required by law, showing, after deducting the credits to which said administrator with-will-annexed is entitled, a balance of \$1,068,875.36, of which \$47,586.86 is in cash, belonging to said estate, and the evidence having been heard,

It Is Ordered, Adjudged and Decreed by the Court that said account and report is hereby allowed, settled and approved.

The foregoing instrument is a correct copy of the original as the same appears of record.

Attest June 5, 1946.

J. F. MORONEY,

County Clerk and Clerk of the Superior Court of
the State of California in and for the County
of Los Angeles.

By /s/ Y. NISHIHAWA,

Deputy.

[Endorsed]: Filed June 10, 1946. [80]

[Title of Tax Court and Cause.]

1. Decedent entered into an agreement with a beneficiary of a life annuity under his father's will whereby the beneficiary released her interest in that estate so the estate could be distributed to the residuary legatees of which the decedent was one upon the assignment to her of \$100 per month for life of the rentals from a building owned by decedent. Held, that petitioner was not the owner of this \$100 per month paid out of such rentals to the annuitant and it should not be included in petitioner's gross income. *Blair v. Commissioner*, 300 U. S. 5.

2. Several years prior to his death decedent entered into an agreement with his wife wherein he agreed to make certain monthly payments for life for her support and maintenance which was incorporated in a divorce decree. Held, the payments

were not deductible from gross income of decedent's estate. [81]

OPINION

Black, Judge:

This proceeding involves a deficiency in income tax for the calendar year 1942 in the amount of \$8,647.89. The deficiency is due to several adjustments to the net income of the estate of Homer Laughlin as disclosed by its return for the year 1942. Petitioner, by appropriate assignments of error, contests two of these adjustments in the respective amounts of \$1,200 and \$9,600. These adjustments were explained by the respondent in a statement attached to the deficiency notice as follows:

(a) There is restored to gross income, or disallowed as a deduction therefrom, under the applicable provisions of the Internal Revenue Code, the exclusion or deduction of \$1,200.00 shown in Schedule C of your return as "Less assignment of rent to Ella West."

(d) The deduction of \$9,600.00 claimed for payment to Ada Edwards Laughlin on account of "property settlement agreement with Homer Laughlin—\$800.00 per month for life" is not allowable under the Internal Revenue Code.

There are, therefore, two issues in this proceeding, namely, (1) whether the amount of \$1,200 paid to Ella West under the facts hereinafter set forth is excludible or deductible from the gross income

of decedent's estate for the calendar year 1942; and (2) whether the amount of \$9,600 provided for in an agreement entered into between decedent and his wife, Ada Edwards Laughlin, and incorporated in a decree of divorce, is deductible from the gross income of decedent's estate for the calendar year 1942. [82]

All the facts are stipulated. The stipulation is incorporated herein by reference and adopted as our findings of fact. Such facts as are deemed necessary to an understanding of the issues decided are summarized below:

Issue 1. Petitioner is the administrator with the will annexed of the estate of Homer Laughlin who died on December 27, 1932, a resident of Los Angeles, California. The estate is still in the process of administration. The income tax return of the estate for the taxable period involved was filed with the collector for the sixth district of California on or before March 15, 1943. Homer Laughlin, Sr., father of Homer Laughlin, died on or about January 10, 1913, leaving a last will and testament dated August 30, 1909, duly admitted to probate on January 29, 1913, in the Superior Court of the State of California in and for the County of Los Angeles, which will contained, among other provisions, the following:

Second: I give, devise and bequeath unto my nieces, Ella West and Nancy McIntosh, each the sum of One Hundred dollars (\$100) per month, payable quarterly to each of them during their natural life.

After certain other legacies, bequests, and devises, the will gave the residue of the estate equally to decedent's son and daughter, Homer Laughlin and Guendolyn (or Guendolen) Virginia Laughlin. On August 1, 1921, Homer Laughlin and Ella West entered into a written agreement providing in part as follows:

I, Ella West, in consideration of Five Hundred Dollars (\$500.00) in hand paid to me, and in further consideration of an assignment of One Hundred Dollars (\$100.00) per month of the rent to be paid by the lessee of the ground floor of the Laughlin Building, and in further consideration of the assumption of Homer Laughlin, Jr. to pay me the said sum of One Hundred Dollars (\$100.00) per month during the remainder of my natural life, do hereby release the said Homer Laughlin, Jr., as Trustee, Guendolen V. Laughlin, and all of the property [83] comprising the estate of Homer Laughlin, deceased, late of Los Angeles, California, from the payment of the annuity provided for in the will and decree of distribution in the estate of said Homer Laughlin, hereby releasing absolutely any claim of every character either against said persons or the property of said estate, the said lessee having recognized the said assignment and having agreed to pay to me the said sum monthly of the rent due and payable to the said Laughlin for the said ground floor of said building.

The purpose of this agreement was to obtain her consent to the distribution of the estate which was made thereafter in due course, pursuant to the court decree.

The above-mentioned Laughlin Building is located at No. 315 South Broadway, Los Angeles, California. From about August 1, 1921, it was the property of Homer Laughlin. He acquired a one-half interest in the building as a devisee under his father's will and purchased the other half from his sister, Guendolyn, the funds for such purpose being obtained by the mortgage on such building to the Metropolitan Life Insurance Company. The Laughlin Building is a part of Homer Laughlin's estate which has been in process of administration in the Superior Court of the State of California in and for the County of Los Angeles since about February 4, 1933, on which date the will was duly admitted to probate. In May, 1933, a dispute having arisen between Ella West and the estate of Homer Laughlin as to her rights under the agreement of August 1, 1921, a suit for declaratory relief was brought in the Superior Court of the State of California in and for the County of Los Angeles. On June 28, 1933, the court rendered its judgment against Beach D. Lyon and Beach D. Lyon, as Administrator with the will annexed of the estate of Homer Laughlin, deceased, which judgment provided in part as follows: [84]

* * * on the 1st day of August, 1921, Homer Laughlin assigned to the plaintiff Ella West

One Hundred (\$100) Dollars of the monthly rental due or to become due from the lessee of the ground floor of the Laughlin Building, which sum was to be paid to the plaintiff Ella West each month during the remainder of her natural life; that from and after said 1st day of August, 1921, Homer Laughlin had no right, title, or interest in and to said sum of One Hundred (\$100) Dollars so assigned to this plaintiff; that the defendants Beach D. Lyon, and Beach D. Lyon as Administrator with the Will annexed of the estate of Homer Laughlin, have no right, title, or interest in and to the said sum of One Hundred (\$100) Dollars of the monthly rental due or to become due from the lessee of the ground floor of the Laughlin Building, * * *.

On July 7, 1933, the court made a further judgment in this suit determining the issues between plaintiff and the remaining defendants and reciting in part as follows:

It Is Ordered, Adjudged and Decreed that on the 1st day of August, 1921, Homer Laughlin for valuable consideration assigned to the plaintiff herein, Ella West, for the remainder of her natural life, the sum of \$100.00 per month, said sum to be paid from the rent due from the tenant in possession of the ground floor of the Laughlin Building;

And It Is Further Ordered, Adjudged and Decreed that defendant Grand Central Public

Market, Inc., be and it is hereby ordered and authorized to pay to this plaintiff the sum of \$100.00 per month during the natural life of said plaintiff so long as said Grand Central Public Market, Inc., remains in possession of the ground floor of the Laughlin Building, or so long as it is obligated on any lease of the ground floor of the Laughlin Building.

And It is Further Ordered, Adjudged and Decreed that the defendant Citizens National Trust and Savings Bank of Los Angeles, a national banking association, as Trustee, and the defendant Grand Central Public Market, Inc., a corporation, have no right, title or interest in or to said sum of \$100.00 per month so assigned by Homer Laughlin to Ella West.

The lessee of the ground floor of the Laughlin Building was the Grand Central Public Market, Inc. which terminated on October 31, 1939, and petitioner leased the ground floor of the building to other tenants, negotiating and executing these leases. Ella West was not consulted nor did she in any manner participate therein. [85]

During the taxable year 1942 petitioner paid to Ella West the sum of \$1,200 pursuant to the agreement of August 1, 1921, between Homer Laughlin and Ella West and the Superior Court judgment of June 28, 1933. This sum was paid out of rentals received by petitioner from the ground floor of the Laughlin Building during that year. The gross and net rentals received by petitioner from that source

for and during the taxable year 1942 were greatly in excess of the sum of \$1,200.

In the federal estate tax return filed by the estate of Homer Laughlin there was claimed under schedule entitled "Debts of Decedent" the following item: "Ella West (\$100 per mo. Expectancy 11 years. \$16,610.00." In the final determination of decedent's estate tax liability the Ella West claim was allowed as a deduction in the total amount of \$9,194.05, such amount being the present value at the date of decedent's death of an annuity of \$100 per month payable during the expected life of Ella West, who was then 66 years of age.

The first issue we have to decide is whether the \$1,200 paid to Ella West during the year 1942 is either excludible or deductible from the gross income of the decedent's estate. Petitioner contends that the sums paid to Ella West were paid pursuant to an assignment or transfer of a corresponding interest by the decedent, Homer Laughlin, in the real property designated as the ground floor of the Laughlin Building; that to the extent mentioned Ella West had an interest in that property, and that as to the sums received and paid over to her the estate acted as a mere conduit; that for these reasons the \$1,200 paid to Ella West is excludible from the gross income of the estate for 1942. In the alternative petitioner claims that the payments in question were required to be made and were made out of the income of the estate; that the \$1,200 represented income which was distributable [86] and was actually distributed during the taxable year

to Ella West as a legatee, heir, or beneficiary and is deductible under the provisions of section 162(b) of the Internal Revenue Code.

Respondent contends that the sum of \$1,200 paid by petitioner to Ella West during the year 1942 was for the satisfaction of a debt of Homer Laughlin, incurred during his lifetime in a capital transaction, and is not a distribution of income within the meaning of section 162(b). He further argues that in the federal estate tax return filed by the estate of Homer Laughlin, there was claimed as debts of the decedent the following item: "Ella West (\$100 per mo. Expectancy 11 years. \$16,610.00"; that in the final determination of decedent's estate tax liability the Ella West claim was allowed as a deduction in the amount of \$9,194.05, such amount being the present value at the date of the decedent's death of an annuity of \$100 per month payable during the expected life of Ella West who was then 66 years of age. He maintains that decedent's estate having had the benefit of a deduction of \$9,194.05 as above set out, there has been a recognition that the sum represented a debt of the decedent, and it is, therefore, not deductible from the gross income of the estate.

In deciding the issue which we have here to decide, it is not necessary for us to say whether the respondent acted properly in allowing to the estate of decedent for estate tax purposes a deduction of the commuted value of the annuity payments due to Ella West, based on her life expectancy at the time of decedent's death. We do not have the estate

tax case before us and therefore have nothing to decide with respect to it. [87]

What we have to decide is the legal effect of the agreement which Homer Laughlin made with Ella West on August 1, 1921. It is necessary to examine that document and the circumstances attending its execution to determine its force and effect. In the last will and testament of the father of Homer Laughlin, he bequeathed to Ella West an annuity of \$100 a month for life. This annuity was payable in all events, whether the estate had income or not. It required no citation of authorities to support the proposition that it was a charge against all the property in Homer Laughlin, Sr.'s residuary estate. Homer Laughlin, Jr., and his sister were the equal beneficiaries of this residuary estate. One of the valuable assets of the residuary estate was the Laughlin Building situated in Los Angeles. Homer purchased his sister's one-half interest in this building and in order to secure the release of Ella West from her claim against the estate of Homer Laughlin, Sr., for the payment of a life annuity of \$100 a month, Homer Jr. assigned to her irrevocably \$100 a month for life out of the rents from the ground floor of the Laughlin Building. This, it seems to us, was more than a mere assignment of future income as that term is commonly understood, but was an assignment of a property interest to Ella West in the rentals from the ground floor of the Laughlin Building. This is the effect of the judgment of the Superior Court of California in and for the County of Los Angeles in Cause No.

356,776 in which Ella West was plaintiff and Beach D. Lyon, individually and Beach D. Lyon, as administrator were defendants. The judgement in that cause has been set out above. It seems to us there can be no question but that the Superior Court has correctly interpreted the terms of the agreement between Ella and Homer. We shall so regard it in deciding issue 1. [88]

Petitioner relies chiefly on *Blair v. Commissioner*, 300 U. S. 5. In that case the life beneficiary of a testamentary trust assigned to his children "an interest amounting to \$6,000 for the remainder of that calendar year, and to \$9,000 in each calendar year thereafter, in the net income which the petitioner was then or might thereafter be entitled to receive during his life." The Court held that where the life beneficiary of a trust assigned a share of the income to another for life without retaining any form of control over the interest assigned, the assignment was a transfer in praesenti to the donee of a life interest in the corpus of the trust property and the income paid to the donee was taxable to him and not the donor. We think the *Blair* case is applicable and controlling here. In the *Blair* case, the Court in speaking of the nature and effect of the irrevocable assignment which had been made said:

* * * The assignment of the beneficial interest is not the assignment of a chose in action but of the "right, title, and estate in and to property." [Citing authorities.]

We conclude that the assignments were valid, that the assignees thereby became the owners of the specified beneficial interests in the income, and that as to these interests they and not the petitioner were taxable for the tax years in question. * * *

In the instant case Homer Laughlin was not only the beneficial owner of the Laughlin Building, he was the actual owner in fee simple of the building and unquestionably had the right to convey the interest which he did convey to Ella West. Therefore, in view of what the Supreme Court said in the Blair case, we hold that the \$1,200 in question should be excluded from the income of petitioner. It did not belong to him—it was the property of Ella West. See Herbert R. Graf, 45 B.T.A. 386, which we also think is an applicable authority which supports our decision here. [89]

Having held that such amount is to be excluded from petitioner's income, it becomes unnecessary to pass upon petitioner's alternative contention that if the estate is not entitled to have such amount excluded from gross income, it is entitled to have such payment allowed as a deduction in computing net income.

We think the facts of the instant case distinguish it from such cases as Corbett Investment Co. v. Helvering, 75 Fed. (2d) 525, 15 AFTR 234, affirming Memorandum Opinion of the Board. The Corbett case was a case where a decedent bequeathed to his widow an annual sum payable monthly from

income of realty devised to grandsons, and the widow released the realty from this obligation and accepted the personal undertaking of the grandsons to continue the payment of the annuity and subsequently the grandsons conveyed the realty to a corporation which assumed liability for the monthly payments. On these facts the court held that the transactions between the widow and grandsons and between the grandsons and the corporation were in the nature of a purchase and that the annual payments made to the widow were capital expenditures and not deductible by the corporation even though the payments were taxable to the widow. In thus holding the court said:

* * * In this case, from the time of the transfer of the real estate to petitioner from the grandsons, petitioner received all the rents in its own right and so far as we are told by anything in the record, it had the right and the power to use them without accountability to the widow or any one else, and the widow's only right was to demand and receive from petitioner a thousand dollars monthly, regardless of the source from which it came. The payments to her, therefore, were clearly taxable to petitioner, even though they were also taxable to her. * * * [Underscoring supplied.] [90]

As we have already pointed out in the agreement of August 1, 1921, between Homer and Ella, Homer definitely assigned to her \$100 of the rent from the Laughlin Building for the remainder of her natural life. It was under these facts that the Superior

Court of Los Angeles held that Ella was the owner of this income right to receive \$100 a month from the Laughlin Building and that:

* * * Homer Laughlin had no right, title, or interest in and to said sum of One Hundred (\$100) Dollars so assigned to this plaintiff; that the defendants Beach D. Lyon, and Beach D. Lyon as Administrator with the Will annexed of the estate of Homer Laughlin, have no right, title or interest in and to the said sum of One Hundred (\$100) Dollars of the monthly rental due or to become due from the lessee of the ground floor of the Laughlin Building, * * *.

It is because of the foregoing facts that we think the instant case is distinguishable from *Corbett Investment Co. v. Helvering*, *supra*, and other cases of that kind which have followed it.

Issue 2. On or about April 1, 1924, Homer Laughlin and his then wife, Ada Edwards Laughlin, entered into a property and support and maintenance settlement agreement which was approved and affirmed in an interlocutory decree of divorce dated September 24, 1924, in the Superior Court of the State of California in and for the County of Los Angeles and in a final decree dated September 29, 1925, pursuant thereto. The agreement provided that Homer Laughlin pay his wife a life income of \$800 per month provided, however, that if the parties should be divorced and his wife should remarry then these payments should be reduced to

\$300 monthly. It also provided that, in order to secure the faithful performance of the terms and conditions of this agreement, it was agreed that the Homer Laughlin Building should be hypothecated as security for the faithful performance of the terms and conditions of the agreement. The agreement provided in part as follows:

9. In order to secure the faithful performance of the terms and conditions of this agreement, the party of the first part covenants and agrees that that certain real estate, together with the improvements thereon, known as the "Homer Laughlin Building," located between Third and Fourth Streets, on the west side of Broadway, in the city of Los Angeles, state of California, shall be and is hereby hypothecated as security for the faithful performance of all of the terms and conditions of this agreement, and especially for the payment of the said monthly installments of \$800 each, * * *

It was also agreed that if the Homer Laughlin Building should be sold, Homer Laughlin should deposit with a trust company the sum of \$150,000, which trust fund should stand as security for the faithful performance of all the terms and conditions of this agreement in lieu of the Homer Laughlin Building. It was further agreed that if Homer Laughlin should at any time create a trust fund of \$150,000 or shall furnish the wife an insurance policy guaranteeing the performance of the terms of this agreement by Homer Laughlin,

the wife agreed to release the Homer Laughlin Building from the lien or obligation of the contract. It was provided that these payments shall survive the death of Homer Laughlin and shall be binding upon his estate.

The final judgment of divorce made and entered September 29, 1925, decreed in part that: [92]

* * * the property settlement agreement, referred to in the interlocutory decree in this action and by reference made a part thereof, is hereby ratified, approved and confirmed, and the property of the parties hereto is hereby assigned in accordance with the terms of said agreement and the other rights and obligations of the parties hereto are assigned, determined and adjudged in accordance with the terms of said agreement, which agreement is hereby made a part of this judgment and is in words and figures as follows, to wit: * * *.

During his lifetime Homer Laughlin paid to Ada Edwards Laughlin \$800 per month as provided in the settlement agreement. Ada Edwards Laughlin is living at the date hereof and has never remarried. The Homer Laughlin Building was not sold by Homer Laughlin nor by his estate. The trust fund above referred to has never been established nor has the insurance policy been furnished guaranteeing Homer Laughlin's performance of the terms of the settlement agreement.

During the taxable year 1942, petitioner paid to Ada Edwards Laughlin the sum of \$9,600 pursuant

to the April 1, 1924 agreement and the court decrees in the divorce action.

In Schedule 1 "Debts of Decedent" of the federal estate tax return of the estate of Homer Laughlin, the following item was claimed as a deduction:

Indebtedness in favor of Ada Edwards Laughlin, in pursuance of Property Settlement Agreement, dated April 1, 1924, approved by Decree of Superior Court of the State of California, in and for the County of Los Angeles, and secured as a lien on the building, subject to Trust Deed in favor of Metropolitan Life Insurance Co. (To return \$9600.00) Expectancy 16 years\$152,480.00.

In the first audit of the return this item was reduced by the Commissioner to \$101,259.35 but was later eliminated by the Commissioner in the manner hereinafter set forth. On October 22, 1938 petitioner filed a claim for refund in the amount of \$2,500 on account of certain omitted expense items such as attorneys fees and miscellaneous administrative expenses. These expenses were later adjudged and determined and an adjustment made for [93] additional debts owing by the decedent but the claim for refund was rejected for the reason that the above amount of \$101,259.35, representing decedent's liability on the separation agreement of April 1, 1924, had been erroneously included as a deduction in the prior determination of the estate tax liability. The Commissioner's letter dated October 25, 1939, stated that this amount was

not a proper deduction under section 812(b) of the Internal Revenue Code. Petitioner has taken no action with regard to said claim and the same is now barred by the statute of limitations.

The gist of petitioner's argument that decedent's estate is entitled to a deduction of the \$9,600 paid to Ada Edwards Laughlin is that it is clear that if Homer Laughlin were living he would be entitled to the benefit of section 23(u), I.R.C.¹ Petitioner further argues that the payment of the \$9,600 in question is taxable to Ada E. Laughlin under the provisions of section 22(k), I.R.C.²

¹Sec. 23. Deductions from Gross Income.

In computing net income there shall be allowed as deductions:

* * * * * *

(u) Alimony, etc., Payments.—In the case of a husband described in section 22(k), amounts includible under section 22(k) in the gross income of his wife, payment of which is made within the husband's taxable year. If the amount of any such payment is, under section 22(k), or section 171, stated to be not includible in such husband's gross income, no deduction shall be allowed with respect to such payment under this subsection.

²Sec. 22. Gross Income.

* * * * * *

(k) Alimony, etc., Income.—In the case of a wife who is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, periodic payments (whether or not made at regular intervals) received subsequent to such decree in discharge of, or attributable to property transferred (in trust or otherwise) in discharge of, a legal obligation which, because of the marital or family relationship, is imposed upon or

Homer Laughlin, the husband, is now dead and his estate is in process of administration and therefore section 23(u) is not applicable.

Is the estate of Homer Laughlin entitled to the deduction of the \$9,600 the same as Homer would be entitled were he still living? Respondent contends the question should be answered no. He argues that inasmuch as the recent decisions allow as a deduction from a decedent husband's estate the commuted value of the claim for monthly payments to a wife for life under a decree of divorce for estate tax purposes, cf. *Estate of Pomeo M. Maresi*, 6 T. C. 583, affirmed Fed. (2d), such payments should not be allowed the estate as a deduction for income tax purposes. Respondent contends that if our Court should allow the petitioner's claim in this case it will be contrary to Regulations 111, section 29.162-1, printed in the margin.³ He

incurred by such husband under such decree or under a written instrument incident to such divorce or separation shall be includible in the gross income of such wife, and such amounts received as are attributable to property so transferred shall not be includible in the gross income of such husband. * * *

³Regulations 111.

Sec. 29.162-1. Income of Estates and Trusts.—In ascertaining the tax liability of the estate of a deceased person or of a trust, there are deductible from the gross income, subject to exceptions, the same deductions which are allowed to individual taxpayers. See generally section 23, and the provisions thereof governing the right of deduction for depreciation and depletion in the case of property

says that under the Maresi case the commuted value of the future payments to Homer Laughlin's divorced wife was deductible as an indebtedness of the estate. "Ordinarily" continues respondent, "the payment of a debt of a decedent does not furnish a foundation for an income tax deduction." At this point it may be remarked that although the estate of Homer Laughlin claimed as a deduction on the estate tax return the commuted value of the payments to be made to Ada Edwards Laughlin based on her life expectancy of 16 years, \$152,480, the Commissioner disallowed such deduction. The stipulated facts with reference to the course of that claimed deduction are given above. Petitioner does not claim, however, that the Commissioner is estopped from making his present contention because of any disallowance which he may have made of the claimed deduction for estate tax purposes. It seems plain there is no estoppel. Petitioner concedes that ordinarily the payment of a debt of a

held in trust. Amounts allowable under section 812(b) as a deduction in computing the net estate of a decedent are not allowed as a deduction under section 23, except subsection (w), in computing the net income of the estate unless there is filed in duplicate with the return in which the item is claimed as a deduction a statement to the effect that the items have not been claimed or allowed as deductions from the gross estate of the decedent under section 812(b) and a waiver of any and all right to have such item allowed at any time as a deduction under section 812(b). For items not deductible, see section 24. Against the net income of the estate or trust there are allowable certain credits, for which see sections 25 and 163.

decedent by his estate does not furnish a foundation for an income tax deduction. Petitioner claims, however, that the estate of Homer Laughlin is entitled to deduct the \$9,600 in question because of certain definite statutory provisions to which we shall presently refer. Petitioner's argument on this phase of the issue is somewhat involved but we think we state it with substantial accuracy as follows:

Section 162, I.R.C. is applicable to the estates of decedents. Section 162(b) provides that there shall be allowed as a deduction in computing the net income of the estate the amount of the income for the taxable year which is to be distributed currently by the fiduciary to the legatee, heirs or beneficiaries, but the amount so allowed as a deduction shall be included in computing the net income of the legatees, heirs or beneficiaries whether [96] distributed to them or not. Section 171(b) of the Internal Revenue Code⁴ provides that "for the purposes of computing the net income of the estate or

⁴Sec. 171. Income of an Estate or Trust in Case of Divorce, etc. [Added by § 120, 1942 Act.]

* * * * *

(b) *Wife Considered a Beneficiary.*—For the purposes of computing the net income of the estate or trust and the net income of the wife described in section 22(k) or subsection (a) of this section, such wife shall be considered as the beneficiary specified in this supplement. A periodic payment under section 22(k) to any part of which the provisions of this supplement are applicable shall be included in the gross income of the beneficiary in the taxable year in which under this supplement such part is required to be included.

trust and the net income of the wife described in section 22(k) or subsection (a) of this section, such wife shall be considered as the beneficiary specified in this supplement.” Under section 22(k) a “wife” is an ex-wife “divorced * * * from her husband” who is receiving periodic payments “in discharge of * * * a legal obligation which * * * is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce * * *.” Ada Edwards Laughlin is therefore a “wife” described in section 22(k). Being such a wife she is the “beneficiary” specified in section 171(b) and as such the periodic payments to her are includible in her income and these payments are deductible by the estate under section 162(b). Such is petitioner’s argument.

Although respondent does not argue the meaning of section 171(b) in his brief, the Treasury Regulations are apparently in conflict with what the petitioner contends. Regulations 111, section 29.23(u)-1 provides in part: [97]

The deduction under section 23(u) is allowed only to the obligor spouse. It is not allowed to an estate, trust, corporation, or any other person who may pay the alimony obligation of such obligor spouse. * * *

The legislative history of section 171(b) does not disclose that it was enacted to accomplish the purpose claimed by petitioner. In the Senate Finance Committee Report which accompanied the Revenue

Bill of 1942 it is said, among other things, with reference to section 171 included in that bill:

* * * For the purpose of clarity, this section provides that the wife entitled to receive the payment is considered as the beneficiary of the trust. If these provisions of section 171(b) apply to any part of a periodic payment required under section 22(k) to be included in income of the beneficiary, the whole of such periodic payment shall be included in gross income of the beneficiary in the taxable year in which under the above provisions of section 171(b) such part is required to be included in her income. It is contemplated under these provisions that the trust or estate will be entitled to a deduction in computing its net income for amounts required to be included in the wife's income under section 22(k) or section 171 to the extent that such amounts are paid, credited, or to be distributed out of income of the estate or trust for its taxable year.

[Emphasis supplied.]

By a reference to the facts which we have given under this issue 2, it will be seen that the \$800 monthly which Homer Laughlin was to pay his divorced wife for her support and maintenance was to be paid in all events. If he had sufficient income with which to pay it, well and good. If on the contrary in any particular year he had no net income, the \$800 per month nevertheless had to be paid. Under these circumstances when Homer

Laughlin died and his estate had to continue to make the payments we do not think that it can be said that his divorced wife, Ada, was an income beneficiary of his estate to whom \$800 per month was currently distributable under section 162(b).

We think a reading of section 162(b) will disclose that petitioner's construction of the meaning of 171(b) is not correct. Section 162(b), I.R.C., as amended by the Revenue Act of 1942, reads as follows:

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the legatees, heirs, or beneficiaries, but the amount so allowed as a deduction shall be included in computing the net income of the legatees, heirs, or beneficiaries whether distributed to them or not. As used in this subsection "income which is to be distributed currently" includes income for the taxable year of the estate or trust which, within the taxable year, becomes payable to the legatee, heir, or beneficiary. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding taxable year;

As we have already indicated, if decedent's divorced wife Ada had been one to whom income was currently distributable by the estate, then it is

reasonable to believe that she would be a "beneficiary" of the estate as provided by section 171(b), upon which petitioner relies. However, there was no condition in the divorce settlement that the \$9,600 annually was to be paid to her out of income. Therefore, it seems to us that section 171(b) is not applicable to a situation such as we have here. When decedent died his estate was entitled to deduct for estate tax purposes, as indebtedness owing to Ada Edwards Laughlin the commuted value of the payments to be made to her for life. Cf. *Pomeo M. Maresi, supra*. Petitioner, the estate of Homer Laughlin, deceased, is not entitled by virtue of section 171(b), I.R.C. carried in the Revenue Act of 1942 to deduct from its net income the \$9,600 paid in the taxable year to Ada Edwards Laughlin. On this issue the respondent is sustained.

Reviewed by the Court.

Decision will be entered under Rule 50.

Disney, J., concurs only in the result.

[Seal] [99]

Opper, J., concurring:

The conclusion reached here seems to me entirely sound, but I am doubtful whether the first point is properly founded on *Blair v. Commissioner*, 300 U. S. 5. The scope of that opinion has been radically narrowed by *Harrison v. Schaffner*, 312 U. S. 579. Those two cases, as well as such decisions as *Helvering v. Horst*, 311 U. S. 112, deal with the vexatious and intricate question of the validity for

tax purposes of anticipatory and gratuitous transfers of future income. If decedent's assignment of the prospective rents without a conveyance of the property which produced them had been a gift, I think we should have had to deal with the question left open in *Harrison v. Schaffner*, since decedent concededly failed to part with the income for the full term of his estate, as in the *Blair* case. In the *Schaffner* case the Supreme Court said:

* * * Even though the gift of income be in form accomplished by the temporary disposition of the donor's property which produces the income, the donor retaining every other substantial interest in it, we have not allowed the form to obscure the reality. * * *

And as we pointed out in *Herbert R. Graf*, 45 B.T.A. 386:

* * * The Court said in the last paragraph of the *Schaffner* opinion that future decisions will have to determine precisely where the line shall be drawn between gifts of income-producing property and gifts of income from property of which the donor remains the owner * * *

When, however, we come to deal with transfers for a valuable consideration as in this case and in *Herbert R. Graf*, *supra*, a different situation arises. It is then "unnecessary to determine just exactly how many incidents of ownership * * * were acquired * * * since the taxing acts are not so much concerned with the refinements of title as with the

actual command over the income which is taxed and the actual benefit for which the tax is paid." Herbert R. Graf, *supra*. [100]

A more satisfactory ground for the decision in the present proceeding would seem to me, by viewing the transaction as a whole, to recognize that the decedent had acquired a wasting asset for which he and his estate were entitled to take deductions for depreciation. In such a situation the payments received and the deductions allowed, being both for the life of the annuitant, would offset each other. *H. Edward Wolff*, 7 T. C. 717. And even though the petitioner estate happens to have been permitted a deduction based upon the annuitant's claim, any basis thereby acquired for the estate is shown here to have been exhausted. The facts show that the amount allowed as a deduction for the annuitant's claim was \$9,194.05. Making the reasonable assumption that the estate has paid the required \$1,200 each year for the nine years following decedent's death, the total paid to the end of the year 1941 was \$10,800. Any benefit conferred upon the estate by the permitted deduction had thus been used up before the beginning of the present tax year, with the consequence that the process of exhaustion is continuing beyond the period for which any claim has been allowed. If the proposed deficiency were disapproved on that ground, the depreciation being exactly equal to the proposed addition to income, *H. Edward Wolff*, *supra*, there would have been no necessity for mentioning the compli-

cated question lurking in the Court's disposition of the first issue.

Murdock and Kern, JJ., agree with the above.

[Seal] [101]

[Title of Tax Court and Cause.]

RESPONDENT'S COMPUTATION FOR
ENTRY OF DECISION

The attached proposed computation is submitted, on behalf of the respondent, to The Tax Court of the United States, in compliance with its opinion determining the issues in this proceeding.

This computation is submitted in accordance with the opinion of the Court, without prejudice to the respondent's right to contest the correctness of the decision entered herein by the Court, pursuant to the statutes in such cases made and provided.

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel :

B. H. NEBLETT,
Division Counsel.

E. C. CROUTER,
E. A. TONJES,
Special Attorneys,

Bureau of Internal Revenue.

RECOMPUTATION STATEMENT

Feb. 3, 1947

In re: Estate of Homer Laughlin, Deceased

Mr. Beach D. Lyon, Administrator

315 South Broadway

Los Angeles 13, California

Docket No. 5891

Income Tax Liability

Year	Tax Liability	Tax Assessed	Deficiency
1942	\$35,567.38	\$29,819.49	\$7,747.89

The following recomputation has been made under Rule 50 pursuant to the findings of The Tax Court of the United States, promulgated January 16, 1947.

1942 Net Income

Net income per statutory notice dated 6/6/44.....	\$67,203.18
As adjusted in accordance with Tax Court decision	66,003.18
	<hr/>
Difference (decrease)	\$ 1,200.00
	<hr/> <hr/>

Explanation of Adjustment

The Tax Court holds that the \$1,200.00, rent from the Laughlin Building which was paid to Ella West in accordance with written agreement between Homer Laughlin and Ella West, should be excluded from the income of petitioner.

Computation of Tax

Adjusted net income	\$66,003.18
Less: Personal exemption	500.00
	<hr/>
Normal tax and surtax net income.....	\$65,503.18
	<hr/> <hr/>
Normal tax at 6% on \$65,503.18.....	\$ 3,930.19
Surtax on \$65,503.18	33,637.19
	<hr/>
Total income tax	\$37,567.38
Assessed, account number 37359	29,819.49
	<hr/>
Deficiency	\$ 7,747.89
	<hr/> <hr/>

HCLynn/bc

1/28/47

[Endorsed]: Received and filed Feb. 17, 1947.

The Tax Court of the United States
Washington

Docket No. 5891.

ESTATE OF HOMER LAUGHLIN, Deceased,
BEACH D. LYON, Administrator with the
will annexed,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court as set forth in its Opinion promulgated January 16, 1947, the respondent herein filed a proposed recomputation on February 17, 1947, which was not contested by the petitioner when called for hearing March 26, 1947, now therefore, it is

Ordered and Decided: That there is a deficiency in income tax for the calendar year 1942 in the amount of \$7,747.89.

[Seal] /s/ EUGENE BLACK,
 Judge.

Enter:

Entered Mar. 26, 1947. [104]

In the United States Circuit Court of Appeals for
the Ninth Circuit

Tax Court Docket No. 5891.

ESTATE OF HOMER LAUGHLIN, Deceased,
BEACH D. LYON, Administrator with will
annexed,

Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

PETITION FOR REVIEW AND ASSIGN-
MENTS OF ERROR

To the Honorable Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Now comes the Estate of Homer Laughlin,
Deceased, Beach D. Lyon, Administrator with the
will annexed, by its attorneys Joseph D. Brady and
Walter L. Nossaman, and respectfully shows:

I.

Jurisdiction

That the petitioner on review (hereinafter some-
times referred to as the petitioner) is a probate
estate in course of administration in the Superior
Court of the State of California, in and for the
County of Los Angeles, being Probate Cause No.
132875 therein, and Beach D. Lyon is the duly ap-
pointed, qualified and acting administrator with
will annexed of said estate; the respondent on re-

view is the duly [105] appointed, qualified and acting Commissioner of Internal Revenue; the federal income tax return of the Estate of Homer Laughlin, deceased, for the taxable year 1942 was filed with the Collector of Internal Revenue for the Sixth District of California, located at Los Angeles, which collection district is within the jurisdiction of the Circuit Court of Appeals for the Ninth Circuit, wherein this review is sought. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

II.

Prior Proceedings

On June 6, 1944, respondent advised petitioner that the determination of its income tax liability for the taxable year 1942 disclosed a deficiency in tax in the sum of \$7,977.09. Thereafter on August 28, 1944, petitioner filed a petition with The Tax Court of the United States for a redetermination of the proposed deficiency. Respondent, thereafter in due course, filed his answer to the petition and the case was heard before the Tax Court on June 10, 1946, at Los Angeles, California. On January 16, 1947, the Tax Court promulgated its opinion and on March 26, 1947, it rendered its decision ordering and deciding that there is a deficiency in payment of the income tax of the Estate of Homer Laughlin, deceased, for the taxable year 1942 in the amount of \$7,747.89. [106]

III.

Nature of Controversy

The decedent, Homer Laughlin, who died December 27, 1932, had on April 1, 1924, entered into a property settlement agreement with his wife, Ada Edwards Laughlin, under the terms of which the decedent was required to pay to his wife \$800 per month during her life for her support and maintenance, the stipulated payments being expressly made the obligation of Homer Laughlin's estate if he should predecease Ada Edwards Laughlin. The property settlement agreement was approved and confirmed by interlocutory and final decrees thereafter made on September 24, 1924, and September 29, 1925, respectively, in a divorce suit brought by Ada Edwards Laughlin against Homer Laughlin.

In the taxable year 1942, petitioner paid Ada Edwards Laughlin \$9600 in accordance with the property settlement agreement and court decrees above mentioned. Petitioner contends that the \$9600 so paid by it to Ada Edwards Laughlin was deductible from its income for the year 1942. The right to this deduction was denied by the Tax Court.

IV.

Assignments of Error

The petitioner being aggrieved by the opinion and decision of The Tax Court of the United States in this proceeding, hereby petitions for a review of said opinion and [107] decision and for the correction of the errors which, as petitioner believes and alleges, occurred therein to the prejudice of peti-

tioner. The errors relied upon by the petitioner as the basis for this petition for review are as follows:

The Tax Court of the United States erred:

1. In holding and deciding that the sum of \$9600 paid by the petitioner to Ada Edwards Laughlin during the taxable year 1942 was not deductible for federal income tax purposes from the income of the petitioner for that year.

2. In holding and deciding that there was any deficiency in any sum whatever in the payment of the petitioner's federal income tax for the taxable year 1942.

3. In rendering an opinion and decision which, in the respects above enumerated, are contrary to the law and the regulations, and not supported by the evidence in the case.

Wherefore, petitioner prays that the findings of fact and opinion and decision of The Tax Court of the United States be reviewed by the Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with the law and the rules of said Court and be transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors herein complained of may be reviewed and corrected by said Court.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAMAN,

Counsel for Petitioner on
Review.

[Endorsed]: Filed T.C.U.S., June 10, 1947.

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION
FOR REVIEW

To the Honorable Joseph D. Nunan, Jr.,
Commissioner of Internal Revenue.

You are hereby notified that the Estate of Homer Laughlin, deceased, Beach D. Lyon, Administrator, with will annexed, did, on the 20th day of June, 1947, file with the Clerk of The Tax Court of the United States, at Washington, D.C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review and the assignments of error filed therewith is hereto attached and served upon you.

Dated this 20th day of June, 1947.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAMAN,

Counsel for Petitioner on
Review.

Service of the foregoing notice, together with a copy of the petition for review and assignments of

error mentioned therein is acknowledged this 20th day of June, 1947.

JOSEPH D. NUNAN, JR.,
Commissioner of Internal
Revenue,
Respondent on Review.

By J. P. WENCHEL, CAR
Counsel.

[Endorsed]: Filed T.C.U.S. June 20, 1947. [110]

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH PETITIONER ON REVIEW INTENDS TO RELY

To Commissioner of Internal Revenue and to J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and E. A. Tonjes, Esq.:

Please take notice that the Estate of Homer Laughlin, deceased, Beach D. Lyon, Administrator with will annexed, petitioner on review in the above-entitled cause, intends to rely on the review on the following points:

That the Tax Court of the United States erred:

1. In holding and deciding that the sum of \$9600 paid by the petitioner to Ada Edwards Laughlin during the taxable year 1942 was not deductible for federal income tax purposes from the income of the petitioner for that year.

2. In holding and deciding that there was any deficiency in any sum whatever in the payment of the petitioner's federal income tax for the taxable year 1942.

3. In rendering an opinion and decision [111] which, in the respects above enumerated, are contrary to the law and the regulations, and not supported by the evidence in the case.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAMAN,

Attorneys for Petitioner on
Review.

Service of the foregoing is hereby acknowledged this 20th day of June, 1947.

COMMISSIONER OF INTER-
NAL REVENUE,

Respondent on Review.

[Endorsed]: Filed T.C.U.S. June 20, 1947. [112]
By J. P. WENCHEL, CAR,

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF THE PORTIONS OF THE
RECORD, PROCEEDINGS AND EVIDENCE
TO BE CONTAINED IN THE
RECORD ON REVIEW

To the Clerk of the United States Circuit Court
of Appeals for the Ninth Circuit:

Please take notice that the Estate of Homer Laughlin, deceased, Beach D. Lyon, Administrator with will annexed, petitioner on review, hereby designates the entire record in the above-entitled proceeding which the petitioner on review thinks necessary for the consideration of the United States Circuit Court of Appeals for the Ninth Circuit on review of the decision of the Tax Court of the United States in said proceeding entered on March 26, 1947. Said record consists of the following documents and records:

1. Docket entries of the proceeding.
2. Pleadings:
 - (a) Petition, including annexed Exhibit A (copy of deficiency [113] notice with statement attached); also Exhibits B and C.
 - (b) Answer.
3. Opinion.
4. Commissioner's Rule 50 Computation filed February 17, 1947.

