University of Minnesota Law School
Scholarship Repository

Minnesota Law Review

1964

Income Taxation: Capital Gains Treatment of Lump-Sum Qualified Trust Distribution - Change of Employers as Separation from the Service

Minn. L. Rev. Editorial Board

Follow this and additional works at: https://scholarship.law.umn.edu/mlr

Part of the Law Commons

Recommended Citation
Editorial Board, Minn. L. Rev., "Income Taxation: Capital Gains Treatment of Lump-Sum Qualified Trust Distribution - Change of Employers as Separation from the Service" (1964). *Minnesota Law Review*. 2824.
https://scholarship.law.umn.edu/mlr/2824

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

harassing and vexatious litigation.[44] Furthermore, time was a crucial factor in the *Donovan* case. The City of Dallas considered the runway a needed public project, and the city's extensive efforts to issue the bonds were within hours of consummation.[45] It can be assumed that the bond issuance had been scheduled at a time to maximize its success.[46] In view of these facts, it is difficult to justify awarding plaintiffs another hearing in a federal forum.

Congress has endeavored to provide injunctive powers allowing federal courts to protect or effectuate their judgments.[47] In view of the legislative intent set forth in the Reviser's notes,[48] the subsequent interpretation in the Tenth Circuit cases,[49] and the need for prompt and final settlement of disputes, it is probable that a federal court would have been permitted to enjoin similar relitigation in a state court. The arguments are as forceful when made in support of allowing state injunctions. Consistent with a traditional policy of mutual separation and equal independence, similar protection should be given final judgments of state courts.

Income Taxation: Capital Gains Treatment of Lump-Sum Qualified Trust Distribution— Change of Employers as "Separation From the Service"

The Waterman Corporation established a tax qualified employee trust retirement plan for the benefit of the taxpayer and its other employees. The plan did not provide for lump-sum distributions on termination of a participating employee's service but, in that event, made his accrued benefits payable as an annuity commencing on his normal retirement date.[1] However, the plan provided for lump-sum distributions at the option of the trustee upon termination of the plan. Later, the C. Lee Company, an unrelated corporation, purchased 99 per cent of the outstanding Waterman stock and caused a new Waterman board of direc-

44. 377 U.S. at 415–18.

45. Brief for Respondent, pp. 5, 31, Donovan v. City of Dallas, 377 U.S. 408 (1964).

46. See, *e.g.*, GELLHORN & BYSE, ADMINISTRATIVE LAW 654 (4th ed. 1960); LANDIS, THE ADMINISTRATIVE PROCESS 108–09 (1938).

47. 28 U.S.C. § 2283 (1958).

48. See note 31 *supra.*

49. See note 32 *supra.*

1. Thomas E. Judkins, 31 T.C. 1022, 1023 (1959), involved the same qualified retirement plan as the instant case but it gave a more complete listing of the facts.

tors to be elected, which on the same day voted to terminate the retirement plan. Distributions to beneficiaries were made in lump sums. In due course, Lee was merged into Waterman, which continued to employ the taxpayer. The Fifth Circuit *held* that the lump-sum distribution to taxpayer was not made as a result of "separation from the service" of his employer so as to qualify for capital gains treatment under section 402(a)(2) of the *Internal Revenue Code of 1954*, and therefore was taxable as ordinary income. *United States v. Johnson*, 331 F.2d 943 (5th Cir. 1964).[2]

Taxation of qualified[3] pension, profit sharing, and stock bonus plans is without prejudice to the contributing employer and favorable to the employee-beneficiaries.[4] Contributions to the trust are deductible business expenses as made by the employer;[5] yet, the employee-beneficiary is not taxed until the benefits subsequently are distributed to him.[6] Ordinarily, this deferment results in a tax saving to the employee-beneficiary.[7] In addition, as qualified

2. Four cases have arisen on the instant facts. At the trial court level in all four, lump-sum distributions were found to be "on account of separation from the service." The instant case and two others have been reversed by their respective circuit courts. Martin v. United States, 229 F. Supp. 549, 558 (D. Minn. 1963), *rev'd*, 337 F.2d 171 (8th Cir. 1964); United States v. Peebles, 208 F. Supp. 385 (S.D. Ala. 1963), *rev'd*, 331 F.2d 955 (5th Cir. 1964); United States v. Johnson, 63-1 U.S. Tax Cas. ¶ 9404 (S.D. Ala. 1963), *rev'd*, 331 F.2d 943 (5th Cir. 1964). No circuit court ruling exists on the fourth, *Thomas E. Judkins*, *supra* note 1, so the trial court's finding stands.

3. The most generally significant criterion of "qualification" is that the plan cannot discriminate with regard to either coverage or benefits in favor of employees who are officers, shareholders, supervisors, or highly compensated. INT. REV. CODE OF 1954, § 401(a)(3)-(4). See generally on "qualification" Graicken, *Qualification of Pension, Profit-sharing and Bonus Plans*, J. Accountancy, Aug. 1958, p. 42; Swietlik, *Taxation of Distributions From Qualified Pension, Profit-Sharing and Bonus Plans*, 47 MARQ. L. REV. 15-16 (1963).

4. See generally Goodman, *Taxation of Distributions from Qualified Pension or Profit-Sharing Plans*, 39 TAXES 34 (1961); Lindquist, *Pension and Profit-Sharing Trusts Under the Internal Revenue Code of 1954*, 33 TAXES 30 (1955); Rothman, *Pension and Profit-Sharing Plans*, J. Accountancy, Dec. 1961, p. 47; Strecker, *Taxation of Retirement Provision*, 27 LAW & CONTEMP. PROB. 67, 70-74 (1962); Swietlik, *supra* note 3, at 15; Young, *Miscellaneous Problems Involving Suspension and Termination of Pension Plans*, 15 W. RES. L. REV. 667 (1964); Note, 10 CLEV.-MAR. L. REV. 490 (1961); Note, 34 ST. JOHN'S L. REV. 249 (1960).

5. INT. REV. CODE OF 1954, § 404(a).

6. INT. REV. CODE OF 1954, § 402(a)(1).

7. It is likely that taxpayer will be in a lower tax bracket when he receives his distribution after retirement. Also, interest will accrue over the period of deferment on the amount which would have been taxed away had there been no deferment.

by section 402(e),[8] "lump-sum distributions" received within one taxable year "on account of the employee's death or other separation from the service," are taxed under section 402(a)(2) at the lower capital gains rates.[9]

"Separation from the service" means from the service "of *his employer*."[10] The phrase includes the situation of an employee

8.

> Certain plan terminations.—For purposes of subsection (a) (2), *distributions made* after December 31, 1953, and before January 1, 1955, *as a result of the complete termination of a* stock bonus, pension, or profit-sharing *plan* of an employer which is a corporation, if the termination of the plan is *incident to the complete liquidation,* occurring before the date of enactment of this title, *of the corporation, whether or not such liquidation is incident to the reorganization as defined in section* 368(a), shall be considered to be distributions on account of separation from service.

INT. REV. CODE OF 1954, § 402(e). (Emphasis added.) The Senate Finance Committee report on this section defined "complete liquidation" as the "disappearance of the corporate entity by reason of the merger or consolidation of such corporation with another corporation." S. REP. No. 1622, 83d Cong., 2d Sess. 289 (1954).

9.

> Capital gains treatment for certain distributions. In the case of an employees' trust described in section 401 (a), which is exempt from tax under section 501 (a), if the total distributions payable with respect to any employee are paid to the distributee within 1 taxable year of the distributee *on account of* the employee's death or other *separation from the service,* or on account of the death of the employee after his separation from the service, the amount of such distribution, the extent exceeding the amounts contributed by the employee . . . shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months . . . .

INT. REV. CODE OF 1954, § 402(a)(2). (Emphasis added.) See generally Bushman & Buchanan, *Separation From the Service,* 47 A.B.A.J. 831 (1961); Eckerman, *The Unrationalized Capital Gain Treatment of Lump-Sum Termination Distributions From Qualified Pension, Profit-Sharing and Annuity Plans,* 7 SYRACUSE L. REV. 1 (1955); Grayck, *Taxation of Distributions From Qualified Pension or Profit-Sharing Plans,* 39 TAXES 34, 36–37 (1961); Hoffman, *Capital Gains Treatment of Distributions From Qualified Pension, and Profit-Sharing Plans,* 40 TAXES 396 (1962); Sporn, *Some Proposed Revisions of the Provisions of the Internal Revenue Code Governing the Taxation of Deferred Compensation Arrangements,* 14 TAX L. REV. 289, 302–07 (1959); Swietlik, *supra* note 3, at 19–30; Young, *supra* note 4, at 721–22.

10. *E.g.,* S. REP. No. 1631, 77th Cong., 2d Sess. 138 (1942) (defining "separation from the service" in § 165(b) of 1939 Code) (Emphasis added.); United States v. Martin, 337 F.2d 171 (8th Cir. 1964); Nelson v. United States, 222 F. Supp. 712, 715 (D. Idaho 1963); Lester B. Martin, 26 T.C. 100, 106 (1956); Harry K. Oliphint, 24 T.C. 744, 749 (1955); Mary Miller, 22 T.C. 293, 301, *aff'd per curiam,* 226 F.2d 618 (6th Cir. 1954); Edward Joseph Glinske, 17 T.C. 562, 565 (1951).

terminating his employment through death, retirement, resignation, or discharge, but obviously excludes the situation of a simple termination of a qualified plan.[11] *Mary Miller*,[12] a 1954 Tax Court decision, expanded "separation from the service" to cover the situation of a mass severance of the employer-employee relationship occasioned by a *change of employers*. In that case the employees, upon sale of all the assets of the employer corporation, continued working in their same positions for the purchasing corporation; the selling (old employer) corporation was dissolved, the plan was terminated, and the employees received lump-sum distributions. The court held that there was a "separation from the service" of the employer, even though there was no termination of employment, because each worker no longer served his old corporate employer but served a new one.[13] In addition, the court held that the lump-sum distribution was made "on account

11. United States v. Martin, *supra* note 10, at 174; Nelson v. United States, *supra* note 10, at 716; Clarence F. Buckley, 29 T.C. 455, 461 (1957); Harry K. Oliphint, *supra* note 10, at 749; Mary Miller, *supra* note 10, at 302; Edward Joseph Glinske, *supra* note 10, at 565-66.

12. 22 T.C. 293, *aff'd per curiam*, 226 F.2d 618 (6th Cir. 1954).

13. Considerable authority supports the position that a change of employers constitutes a "separation from the service" if various corporate liquidations and reorganizations are involved. Thomas E. Judkins, 31 T.C. 1022 (1959) (the same as the instant facts); Lester B. Martin, 26 T.C. 100 (1956) (*X* Corporation purchased all of the stock of *Y* Corporation; *Y* was liquidated and *X* absorbed all of its assets); Mary Miller, *supra* note 12. (The *Lester Martin* and *Mary Miller* cases were interpreting "separation from the service" in Int. Rev. Code of 1939, § 165(b).)

The following revenue rulings, as summarized by the instant court, found the employee of corporation *A* to have been separated from the service in the facts indicated:

> (1) Corporation A in a Section 368 reorganization transfers for stock all of its assets and liabilities to Corporation B which in turn transfers the assets and liabilities to its wholly owned subsidiary Corporation C, the taxpayer becoming an employee of Corporation C. . . . [Rev. Rul. 58-94, 1958-1 CUM. BULL. 194.]
>
> (2) Corporation A sells all of its stock for cash to Corporation B which completely liquidates Corporation A's assets. . . . [Rev. Rul. 58-95, 1958-1 CUM. BULL. 197.]
>
> (3) Corporation A, incident to a complete liquidation, sells all of its assets to Corporation B. . . . [Rev. Rul. 58-96, 1958-1 CUM. BULL. 200.]
>
> (4) Corporation A, incident to a complete liquidation of Corporation A, sells the assets used in carrying on a division of Corporation A to unrelated Corporation B, the division employees going to work for Corporation B. . . . [Rev. Rul. 58-97, 1958-1 CUM. BULL. 201.] . . .
>
> (6) Corporation A, incident to a Section 368 reorganization involving a statutory merger, sells all of its assets to unrelated Corporation B. . . . [Rev. Rul. 58-383, 1958-2 CUM. BULL. 149.]

331 F.2d at 950.

of" this "separation from the service," even though made in the course of termination of the plan, because by the terms of the plan the employee's right to a lump-sum distribution vested upon the termination of his service of the original employer.[14] "The actions to dissolve the Corporation and to terminate the fund in no way affected . . . [the employees'] rights at that time to receive their distributive shares of the fund."[15]

The *Johnson* decision is based on the narrow ground that there was no change of employers because after the change of stock ownership and merger, the taxpayer still worked for the same employer.[16] Had the instant case involved a forward merger — Waterman into Lee, rather than vice versa — there would have been a change of employing corporate entities. The corporate formality of direction of merger seems an irrelevant and inequitable basis upon which to deny this taxpayer the favorable tax treatment he might have enjoyed had the corporate reorganization followed a different course.[17] The instant court's narrow holding seems unavoidable, however, without expanding the established interpretation of "separation from the service" to mean, from the service "of *his employer*."[18]

Dictum in the instant case, on the other hand, went even further than this narrow holding, casting doubt upon the validity of finding "separation from the service" in the change-of-employers

14. The qualified plan in *Mary Miller* provided for lump-sum distributions at the discretion of the trustee upon termination of the plan *or* upon termination of service. 22 T.C. at 300.

15. *Id.* at 301.

16. 331 F.2d at 954; *accord*, United States v. Martin, 337 F.2d 171 (8th Cir. 1964); United States v. Peebles, 331 F.2d 955 (5th Cir. 1964); Nelson v. United States, 227 F. Supp. 712 (D. Idaho 1963); Rev. Rul. 58-99, 1958-1 Cum. Bull. 202. *Contra*, Thomas E. Judkins, 21 T.C. 1022 (1959) (alternatively, capital gains treatment extended because taxpayer was actually discharged).

17.

> Why should it make any difference . . . which way the . . . directors walked around the table? The form of corporate reorganization is determined by many different factors such as a desire to utilize one corporation's good will in a name, limitation of appraisal rights, or utilization of one corporation's net-operating loss carry-over. None of these may affect the financial reality of the transaction. If we are to follow the authority holding a transfer of ownership a separation from service, we should not be put off by the form of the transaction, but make our decision on the basis of genuine transfers of ownership.

Martin v. United States, 229 F. Supp. 549, 558 (D. Minn. 1963), *rev'd*, *supra* note 16; see Sporn, *supra* note 9, at 307.

18. *Supra* note 10 and accompanying text.

situation.[19] Because section 402(a)(2) is silent as to corporate liquidations and reorganizations, the *Johnson* court surmised that it "contemplate[s] only a [lump-sum] distribution when a single employee 'dies or severs his employment'."[20] More strongly, the *Johnson* court felt that on its face section 402(e)[21] accepts for one year the *Mary Miller* doctrine that a change of employers constitutes a "separation from service" but proscribes it thereafter.[22]

The Fifth Circuit's rejection of the *Mary Miller* doctrine, which would find "separation from the service" in the change-of-employers situation, does not appear to be justified by the statute and its history. Congress apparently was aware of this interpretation of "separation from the service" under the 1939 Code,[23] and absent an express provision contra, re-enactment of the same words generally supports an inference of acquiescence in that interpretation.[24] The face of section 402(e), upon careful reading, deals with lump-sum distributions "as a result of . . . termination of a . . . plan" and not with those "on account of" a "separation from the service."[25] Moreover, the Senate Finance Committee's report[26] on section 402(e) suggests that this provision is not directed at the *Mary Miller* doctrine itself but rather at its mistaken interpretation embodied in a House bill concerning

---

19.

> In other words, after 1954 a separation from service would occur only on the employee's death, retirement, resignation, or discharge; not when he continues on the same job for a different employer as a result of a liquidation, merger, or consolidation of his former employer.

331 F.2d at 949.

20. *Ibid.*

21. Section 402(e) says merely that lump-sum termination distributions "as a result of the complete termination of a . . . plan" made incident to complete liquidations executed in 1954 would be treated as distributions on account of "separation from service." See note 8 *supra*.

22. "Apparently, Congress was willing to approve Miller for one year, for the benefit of the limited number of persons who acted in reliance on that decision." 331 F.2d at 949.

23. The 83d Congress, in preparing the 1954 Code, appears to have been concerned with defining the limits of the interpretive doctrine applied to § 165(b) of the 1939 Code finding "separation from service" upon a change of employers. See H.R. Rep. No. 1337, 83d Cong., 2d Sess. A147–49 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. 289–90 (1954).

24. *E.g.*, Hecht v. Malley, 265 U.S. 144 (1924); Latimer v. United States, 223 U.S. 501 (1912); Sessions v. Romadka, 145 U.S. 29 (1892).

25. See text accompanying notes 14 & 15 *supra*.

26. The Senate Finance Committee's amendment to the House draft of § 402 was enacted into law by the 83d Congress as Int. Rev. Code of 1954, § 402(e). This amendment was explained as follows:

> The House bill extends capital gains treatment to lump-sum distributions to employees at the termination of a plan because of a com-

section 402, and that 402(e) does not oppose the *Mary Miller* doctrine but, in fact, expands it[27] for one year to provide a grace-period for those who may have relied upon its mistaken interpretation.[28] That report's reference to "a substantial change in the make-up of employees"[29] simply clarifies Congress's intent to eliminate the possible abuse resulting from the mistaken interpretation of *Mary Miller*.[30] Because this risk of abuse does not exist if a bona fide change of ownership and control accompanies the change of employing corporate entities,[31] this

> plete liquidation of the business of the employer, such as a statutory merger, *even though there is no separation from service*. This was intended to cover, for example, the situation arising when a firm with a pension plan merges with another firm without a plan, and in the merger the pension plan of the first corporation is terminated.
>
> Your committee's bill revises this provision of the House bill to *eliminate* the possibility that reorganizations *which do not involve a substantial change in the make-up of employees* might be arranged merely to take advantage of the capital gains provision. Thus, your committee's bill would grant capital gains treatment to lump-sum distributions occurring in calendar year 1954 where the *termination of the plan is due to corporate liquidation* in a prior calendar year. The purpose of granting capital gains treatment to such distributions is to *avoid hardship* in the case of certain plans which it is understood were terminated on the basis of *mistaken assumptions regarding the application of the present law*.

S. REP. No. 1622, 83d Cong., 2d Sess. 54 (1954). (Emphasis added.) It is felt that a careful reading of the Senate Finance Committee's report justifies the interpretation set forth in the text above and in footnotes 28 & 31 *infra*.

27. Inconsistent with its view that § 402(e) merely retained the *Mary Miller* doctrine for one year is the instant court's characterization of this section as "the limited extension" of the existing law. 331. F.2d at 948.

28. The Senate Finance Committee's report seems to say that the House provision opens the door to abuse; § 402(e) closes this door; the door-closing effect is postponed, however, for one year for the benefit of those who mistakenly interpreted the present law (*Mary Miller*) to be in accord with the undesirable House provision. See note 26 *supra*.

29. Note 26 *supra*.

30. In sustaining its narrow holding, the instant court said that "substantial change in the make-up of employees" focuses upon "termination of employment." 331 F.2d at 949. However, later in its opinion the court admitted that its focus was avoidance of abuse of § 402(a)(2). *Id.* at 951–52.

31. The instant court suggested that the risk of abuse the Senate Finance Committee feared could be avoided if "separation from the service" were restricted to changes of employing corporate entities. *Ibid.*

It is apparent, however, that corporate reorganizations involving a change of employing entities can be executed so as to abuse § 402(a)(2); *e.g.*, a large corporation, without its stockholders losing control of the business, could periodically acquire a small corporation and merge into it in order to distribute compensation at capital gains rates. A requirement that a reorganization involve a bona fide change of ownership and control of the business, however, interpretation[32] of the *Mary Miller* doctrine still seems valid.

It should be noted that the taxpayer in *Johnson* would not have qualified for section 402 capital gains treatment even if the merger had resulted in a bona fide change of employing corporate entities, and the *Mary Miller* doctrine were applied. Although there would then be a "separation from the service," the separation would not have a sufficiently direct causal relationship to the lump-sum payment. The plan in the instant case,[33] unlike that in *Mary Miller*,[34] did not provide for a lump-sum distribution on termination of an employee's service; absent the termination of the plan, the taxpayer acquired only a right to annuity benefits commencing at his normal retirement age.[35] It is not enough, under *Mary Miller*, that the change of employers in fact results in the termination of the plan.[36] Such lump-sum distribution would be incident to, but not "on account of" this "separation from the service."

It does not seem likely that the dictum in the *Johnson* case will be followed; lump-sum payments "on account of" a change of corporate employers, accompanied by a bona fide change of

---

effectively eliminates the risk of abuse of § 402(a)(2) because it eliminates the incentive to abuse this provision. *Cf.* McGowan v. United States, 277 F.2d 613 (7th Cir. 1960). In this case a less than 50% change of stock ownership was held not to constitute a bona fide change of ownership for purposes of § 402(a)(2).

32. Requirement of a bona fide change of ownership to qualify lump-sum distributions made upon corporate reorganization for capital gains treatment is supported by considerable authority. The court in McGowan v. United States, *supra* note 31, at 614–15, distinguished its facts from the facts of Thomas E. Judkins, 31 T.C. 1022 (1959), on the ground that in *Judkins* there had been a bona fide change of ownership. See also Harry K. Oliphint, 24 T.C. 744, 749 (1955) (interpreting Int. Rev. Code of 1939, § 165(b)), where the court seems to dispose of the assertion that a "separation from the service" had occurred on two grounds: (1) the taxpayer still worked for the same corporate entity, and (2) no bona fide change of ownership had occurred. See Rev. Rul. 58-383, 1958-2 Cum. Bull. 149; Rev. Rul. 58-97, 1958-1 Cum. Bull. 201; Rev. Rul. 58-96, 1958-1 Cum. Bull. 200; Rev. Rul. 58-95, 1958-1 Cum. Bull. 197; Rev. Rul. 58-94, 1958-1 Cum. Bull. 194.

33. See text accompanying note 1 *supra*.

34. See note 14 *supra* and accompanying text.

35. The *Mary Miller* court distinguished another case on precisely this ground. 22 T.C. at 302.

36. Finding the requisite causal relationship on the instant facts, however, the court in Thomas E. Judkins, 31 T.C. 1022, 1027–28 (1959) said:

> No additional benefits would have accrued to him whether or not the plan was actually terminated. When 2 months later he received a lump-sum distribution of his benefits under the plan, in our opinion the payment was made on account of his separation from the service of Waterman within the meaning of section 402(a)(2), I. R. C. 1954.

ownership, will probably continue to receive capital gains treatment. It is apparent, however, that the bases upon which such treatment is extended or denied under section 402(a)(2) are most arbitrary. Congress might well re-examine this source of inequitable treatment of taxpayers.[37] In the meantime, the harsh consequences of taxing at ordinary rates lump-sum payments not meeting the *Mary Miller* test can be avoided, even though the plan has been terminated, by continuing the trust or by purchasing retirement annuities.[38]

Constitutional Law: New York Criminal Procedure Permitting Jury To Determine Voluntariness of a Confession Held Unconstitutional

Petitioner was charged with first degree murder in a New York State court. Under New York procedure the question of the voluntariness of his confession was submitted to the jury. His conviction was affirmed on appeal[1] and certiorari was denied.[2] Petitioner sought a writ of habeas corpus, challenging the constitutionality of New York's method for determining the voluntari-

37. The policies behind the capital gains provision of § 402(a)(2) provide no justification for the discriminations in tax treatment that have been made between various recipients of lump-sum distributions. "There is no doubt that the policy argument in favor of capital gains treatment of 'bunched' income is as applicable to liquidating payments of termination of a plan as it is to lump-sum payments on separation from service." Instant case at 954.

It has been noted that capital gains treatment is more favorable than is necessary to solve the "bunched" income problem. See Eckerman, *supra* note 9, at 11. An alternative solution to the "bunched" income problem is now available in the ordinary income averaging provisions of INT. REV. CODE OF 1954, § 1301–05 (§ 232 of the Revenue Act of 1964). But Congress evidently did not feel that this was an adequate substitute for capital gains treatment under § 402(a)(2) — incident to passing the new averaging provision, in Revenue Act of 1964, § 232b, 1964 U.S. CODE CONG. & ADM. NEWS 321, Congress repealed Int. Rev. Code of 1954, § 72(e)(3), ch. 1, 68A Stat. 22, which provided special treatment of lump-sum proceeds of annuity contracts, but did not repeal § 402(a)(2) providing special treatment of lump sums from qualified plans. Perhaps Congressional intent is to specially favor recipients of lump sums from qualified plans in order that they might be able to provide for themselves the retirement benefits they would have enjoyed under the plan. If so, this policy also applies which equal force to all lump-sum distributions from qualified plans.

38. Treas. Reg. § 1.402(a)–1(a)(2) (1960).

1. People v. Jackson, 10 N.Y.2d 780, 177 N.E.2d 59, 219 N.Y.S.2d 621, *remittitur amended*, 10 N.Y.2d 816, 178 N.E.2d 234, 221 N.Y.S.2d 521 (1961).

2. Jackson v. New York, 368 U.S. 949 (1961).