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Tax Consequences of Transfer of Appreciated Property in Divorce Settlement

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Since the government has unsuccessfully sought review by the Supreme Court to settle the conflict among circuits (as to results),[18] new legislation would appear to be the best solution.[19]

One approach would be to tax the widow when the payment:

1. Is based on services rendered by the deceased,
2. Would not have arisen had there not been the employer-employee relationship, and
3. Is claimed by the employer as a business expense.[20]

Where these requirements are not met, the payment should be tax-free.

CLAUDE L. EICHEL

TAX CONSEQUENCES OF TRANSFER OF APPRECIATED PROPERTY IN DIVORCE SETTLEMENT

In 1954, the taxpayer and his then spouse entered into a voluntary property settlement and separation agreement. The agreement provided for support payments and the transfer of certain personal property to the wife, and was later incorporated into the divorce decree. One-half of the property involved in the settlement, represented by five hundred shares

trial court merely had found "gift" without stating the determining facts or legal standard involved in its decision. 363 U.S. 278, 292. Upon remand, the trial court found a gift again, this time setting forth in detail the reasons for its conclusions. 186 F. Supp. 393 (E.D.N.Y. 1960). The circuit affirmed finding the verdict not "clearly erroneous." 287 F.2d 876, 877 (2d Cir. 1961).

18. The Supreme Court denied writs of certiorari simultaneously in the instant case, and the *Olsen, Frankel, Smith,* and *Martin* cases (*supra* note 15). Chief Justice Warren was of the opinion that certiorari should have been granted. 31 U.S.L. Week 4116 (U.S. Nov. 8, 1962).

19. The Supreme Court in Commissioner v. Duberstein, 363 U.S. 278, 290 (1960), suggested: "If there is fear of undue uncertainty or overmuch litigation, Congress may make more precise its treatment of the matter by singling out certain factors and making them determinative of the matter."

20. The Revenue Act of 1962 added § 274(b) to the Internal Revenue Code of 1954. This section provides that no deduction shall be allowed (as a business expense) for gifts in excess of $25 to any individual during a taxable year. For purposes of the section, "gift" means any item excludable from the gross income of the recipient under § 102.

Applying this new section to the "gifts to widows" area would seem to limit the employer's deduction to $5,025, since $5000 would be excludable to the widow under § 101(b) (to which § 274(b) does not apply), and the balance would fall within the $25 limitation.

Of course, the employer could take the position of the Internal Revenue Service in Rev. Rul. 62-102, 1962-2 CUM. BULL.—that payments to widows are generally not gifts, and that the payment is not excludable to the widow under § 102.

Where the employer can establish an intent *not* to make a gift to the widow in order to obtain a deduction for the payment, it would seem that the widow is out of luck as far as the possibility of excluding the payment from her income under § 102, since the law is that the intent of the payor determines the character of the payment. Commissioner v. Duberstein, 363 U.S. 278 (1960).

of stock, was delivered by the taxpayer in 1955, pursuant to the agreement. The Commissioner determined that there was a taxable gain on the transfer. The Court of Claims reversed and held that the transfer was non-taxable.[1] On certiorari to the Supreme Court, *held*, reversed: the transferor of appreciated property in divorce proceedings, in exchange for the relinquishment of a spouse's marital rights, realizes taxable gain on the transfer, notwithstanding the difficulty of establishing a valuation for the property. *United States v. Davis*, 370 U.S. 65 (1962).[2]

For a number of years there has been a conflict in the federal courts as to the taxability of transfers of appreciated property in divorce settlements. The basis of the conflict has been the controlling statutory language of section 1001 of the Internal Revenue Code of 1954, which provides that the gain from the disposition of property "shall be the excess of the amount realized therefrom over the adjusted basis."[3] The statute further provides that the "amount realized" is "the sum of any money *received* plus the fair market value of the property (other than money) *received*."[4] It has not been clear from the terms of the statute whether it was permissible to measure gain by reference to the fair market value of the property *transferred*. And, if the amount realized could be measured by the property transferred in some situations, could the gain be so measured in the tense atmosphere of a marital settlement?

The *nature* of this type of income has never created an issue as to its taxability.[5] Originally, the Tax Court (at that time the Board of Tax Appeals) held that the accretion to property transferred pursuant to a divorce settlement could not be taxed as capital gain to the transferor because the amount realized by the satisfaction of the husband's marital obligations was indeterminable and because, even if such benefit were ascertainable, the transaction represented a non-taxable division of property.[6] However, upon being reversed in quick succession by the Courts of Appeals of the Second and Third Circuits,[7] the Tax Court accepted the position of these courts and has continued to apply these

1. Davis v. United States, 287 F.2d 168 (Ct. Cl. 1961), *rev'd*, 370 U.S. 65 (1962).

2. The Court also resolved another question, which is not elaborated upon here, in favor of the Commissioner. It was held that a husband was not entitled to a deduction for fees paid to his wife's attorney for tax advice given her in relation to a property settlement agreement, since the expense was not paid "in connection with the determination, collection, or refund of any tax" of the taxpayer *himself*, as required by INT. REV. CODE OF 1954, § 212(3).

3. INT. REV. CODE OF 1954, § 1001(a).

4. INT. REV. CODE OF 1954, § 1001(b). (Emphasis added.)

5. The Court found the "shotgun" clause, "all income from whatever source derived, including . . . gains derived from dealings in property," in the statutory definition of gross income applicable. INT. REV. CODE OF 1954, § 61(a).

6. Walter S. Halliwell, 44 B.T.A. 740 (1941); L. W. Mesta, 42 B.T.A. 933 (1940).

7. Commissioner v. Halliwell, 131 F.2d 642 (2d Cir. 1942); Commissioner v. Mesta, 123 F.2d 986 (3d Cir. 1941). (Hereinafter, all reference to "circuits" will refer to United States Courts of Appeals.)

views in appropriate cases since that time.[8] In *Commissioner v. Mesta*[9] and *Commissioner v. Halliwell*,[10] the courts reasoned that the accretion to the property was "realized" by the transfer, and that this gain could be measured on the assumption that the relinquished marital rights were equal in value to the property transferred. The matter was considered settled until the Sixth Circuit, in reversing the Tax Court's holding in *Commissioner v. Marshman*,[11] ruled that although such a transfer might be a taxable event, the gain realized thereby could not be determined because of the impossibility of evaluating the fair market value of the wife's marital rights. This was essentially the position taken by the Court of Claims in the instant case.

Although there has been no difficulty in finding the transaction to be a taxable event to the transferor, *measuring* such gain has presented a more difficult problem. *Mesta* and *Halliwell*, on the one hand, stood for the position that gain could be realized for income tax purposes, although reference to the value of property "received" must be indirectly measured by the value of property transferred. The Sixth Circuit had already reversed itself on this particular point in *United States v. General Shoe Corp.*,[12] but distinguished its earlier decision in *Marshman*[13] as merely holding that gain realized *in marital property settlements* is not susceptible of fair market valuation. Accordingly, there was no conflict between circuit courts on the question of whether section 1001 of the Internal Revenue Code of 1954 precluded a finding of taxable gain merely because the gain on the transfer must be measured by the fair market value of what is transferred. However, the language of the Court of Claims,[14] in the instant case, expressly conflicted with the circuit courts, and narrowly construed the statute to limit measurement of gain by the value of property *received*.[15]

8. Homer H. Marshman, 31 T.C. 269 (1958); E. Eugene King, 31 T.C. 108 (1958); Estate of Gordon A. Stouffer, 30 T.C. 1244 (1958); Cristina De Bourbon Patino, 13 T.C. 816 (1949); Aleda N. Hall, 9 T.C. 53 (1947).

9. 123 F.2d 986 (3d Cir. 1941).

10. 131 F.2d 642 (2d Cir. 1942).

11. 279 F.2d 27 (6th Cir.), *cert. denied,* 364 U.S. 918 (1960).

12. 282 F.2d 9 (6th Cir. 1960), *cert. denied,* 365 U.S. 843 (1961). The Sixth Circuit approved the idea that, in some instances, gain can be realized for tax purposes, although reference to the value of property "received" must be measured by the value of property transferred. Other decisions, which have in substance held that taxable income is realized on dispositions which give the taxpayer his "money's worth," include International Freighting Corp. v. Commissioner, 135 F.2d 310 (2d Cir. 1943), and Helvering v. Horst, 311 U.S. 112 (1940).

13. Commissioner v. Marshman, 279 F.2d 27 (6th Cir. 1960).

14. The Court of Claims perpetuated the section 1001 issue, discussed in notes 4 and 5 *supra*. In holding that Davis realized no taxable gain, the court said: "We say this because the statute, Section 1001(b), expressly states that the amount realized from the sale or other disposition of property shall be the sum of any money *received* plus the fair market value of the property *received.* We think . . . that the measurement of gain cannot be the fair market value of the property transferred." Davis v. United States, 287 F.2d 168, 174 (Ct. Cl. 1961).

15. The Court of Claims stated: "If the 'property' received by Davis had no fair

The issue confronting the court was: When did Congress intend for the accretion from the economic growth of stock to be taxed? Even though the lower courts were in accord in deciding that the actual transfer might be a taxable event, they could not agree upon the method or even the feasibility of measuring the gain. Thus the Court undertook the problem of deciding whether the transfer to the wife was a taxable event to the taxpaper husband,[16] and if so, whether the taxpayer's gain was susceptible of measurement.

The Court first decided that the Commissioner was correct in his determination that the disposition of the stock involved a taxable transfer of property in exchange for the release of an independent legal obligation.[17] The taxpayer's argument that the disposition was comparable to a non-taxable division of property between two co-owners was rejected.[18] The taxpayer was a resident of Delaware,[19] a common law jurisdiction, and the Court refused to equate the status of the property interests with those rights found in community property jurisdictions. Although recognizing the disparity created by the differing effects on the federal taxing scheme of substantive differences between community property and common law systems, the Court decided that it was the responsibility of Congress to alleviate the disparity.[20]

market value, or if none has been shown, it may be economic gain but it is not taxable gain by reason of the express provision of section 1001(b). Champlin v. Commissioner, 10th Cir., 71 F.2d 23, 29." Davis v. United States, *supra* note 14.

16. Since there was no conflict between any of the lower courts on the issue of the transfer being a taxable event, the Court apparently considered the question on its own prerogative.

17. Taxability in both Commissioner v. Mesta, 123 F.2d 986 (3d Cir. 1941), and Commissioner v. Marshman, 279 F.2d 27 (6th Cir. 1960), was predicated upon the theory that the contractual obligation imposed by a property settlement agreement was in substitution for the legal obligation of support imposed by applicable state laws. The courts concluded that the discharge of a legal obligation could neither be treated as a gift nor as a division of property.

18. In support of his argument, the taxpayer pointed out that the division of property was contained in one paragraph of the separation agreement, whereas certain cash payments in lieu of alimony were in another paragraph. Davis v. United States, 287 F.2d 168, 173 (Ct. Cl. 1961).

19. Under Delaware law, the inchoate rights granted a wife in her husband's property are far removed from co-ownership. The wife has no interest whatsoever over the management or disposition of her husband's personal property; her rights are not descendable, and she must survive him to share in his intestate estate. Upon dissolution of the marriage she shares in the property only to the extent the court deems "reasonable." 13 DEL. CODE ANN. § 1531(a) (1953). What is "reasonable" depends upon the facts and circumstances of the individual case. Beres v. Beres, 52 Del. 133, 154 A.2d 384 (1959). Thus, Delaware seems only to place a burden on the husband's property, rather than to make a wife a part owner thereof. The rights of succession and "reasonable share" more closely approach the husband's obligations of support and alimony, than a division of property by co-owners.

20. In recognizing this disparity, the Court pointed out that in the past it "has not ignored the differing effects on the federal taxing scheme of substantive differences between community property and common-law systems. *E.g.*, Poe v. Seaborn, 282 U.S. 101 (1930) . . . ." The Court also noted that "Congress has seen fit to alleviate this disparity in many areas, *e.g.*, Revenue Act of 1948, 62 Stat. 110, but in other areas the facts of life are still with us." United States v. Davis, 370 U.S. 65 (1962).

In further justification of its position that the transaction was a taxable event, the Court noted that its interpretation of the general statutory language was "fortified by the long-standing administrative practice, as sounded and formalized by the settled state of law in the lower courts."[21]

Having thus determined that the transaction was a taxable event, the Court turned to the more difficult problem of measuring the gain realized by the taxpayer. A presumptive yardstick was used to measure the gain, and the Court quoted an earlier decision of the Court of Claims itself, that the values "of the two properties exchanged in an arms-length transaction are either equal in fact, or are presumed to be equal."[22] Although recognizing that the arm's length nature of the exchange was weakened by the emotion, tension and practical necessities involved in divorce negotiations, the Court nonetheless overruled the conflicting theory adopted by the Court of Claims in this case.[23] In so holding, the Court reasoned that it was being "more consistent with [the] general purpose and scheme of the taxing statutes to make a rough approximation of the gain realized . . . [rather] than to ignore altogether its tax consequences."[24]

The Court realized that its decision was likely to cause other problems to arise in the future. However, inasmuch as it was not confronted with these problems in the instant case, it disposed of them by dicta and through footnotes. In the author's opinion, the dicta in the case may have consequences almost as important and far reaching as the holding itself.[25]

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21. The Court of Claims and the Courts of Appeals were all in accord with the proposition that the transfer represented a taxable event. In choosing not to disturb such a settled rule, the Court went on to add: "Such unanimity of views in support of a position representing a reasonable construction of an ambiguous statute will not lightly be put aside." United States v. Davis, *supra* note 20.

22. Philadelphia Park Amusement Co. v. United States, 130 Ct. Cl. 166, 172, 126 F. Supp. 184, 189 (Ct. Cl. 1954). *Accord,* United States v. General Shoe Corp., 282 F.2d 9 (6th Cir. 1960); International Freighting Corp. v. Commissioner, 135 F.2d 310 (2d Cir. 1943).

23. In deciding Davis v. United States, 287 F.2d 168 (Ct. Cl. 1961), the Court of Claims had followed the holding in Commissioner v. Marshman, 279 F.2d 27 (6th Cir. 1960), that the determination of a fair market value requires a willing buyer and a willing seller, neither being under any compulsion to buy or sell. It reasoned that this element was necessarily lacking in a transaction involving the emotion, tension, and practical necessities involved in a divorce proceeding.

24. Helvering v. Safe Deposit & Trust Co., 316 U.S. 56, 67 (1942).

25. In stating that, in deciding the particular income tax question involved, it did not find itself fettered by the language and considerations of the estate and gift tax statutes, the Court was following the reasoning of Farid-Es-Sultaneh v. Commissioner, 160 F.2d 812 (2d Cir. 1947). The particular language that the Court was referring to was the language of the Internal Revenue Code of 1954, § 2512 and § 2043, as follows:

> Section 2512. VALUATION OF GIFTS (a) If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.
>
> (b) Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift . . . .

The holding with regard to the taxability of the husband, and the method of measuring his gain is structurally sound. It serves to promote

Section 2043. TRANSFERS FOR INSUFFICIENT CONSIDERATION (a) . . . any . . . transfers, . . . not a bona fide sale for an adequate and full consideration in money or money's worth, . . . shall be included in the gross estate . . . at the time of death . . . .

(b) . . . For purposes of this chapter, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of any other marital rights . . . shall not be considered to any extent a consideration "in money or money's worth."

The Court discussed the possibility of and reasons for not asserting the gift tax on the transfer. United States v. Davis, 82 Sup. Ct. 1190, 1192 n.6 (1962). The possibility of gift tax arose because of the fact that the taxpayer husband transferred property to another "for less than an adequate and full consideration in money or money's worth." *Cf.* INT. REV. CODE OF 1954, § 2512, *supra.* Although the Court correctly found the gift tax inapplicable to the instant situation, the discussion did not make mention of section 2516 of the Internal Revenue Code of 1954, which provides that: "Where husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within 2 years thereafter (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement—(1) to either spouse in settlement of his or her marital or property rights . . . shall be deemed to be transfers made for a full and adequate consideration in money or money's worth." This section, by itself, would have rendered inapplicable in this case (so far as the gift tax was concerned) the decisions cited by the Court, all of which were rendered prior to the enactment of this section. Merrill v. Fahs, 324 U.S. 308 (1945); Commissioner v. Wemyss, 324 U.S. 303 (1945); see Harris v. Commissioner, 340 U.S. 106 (1950), which has been abrogated in part by INT. REV. CODE of 1954, § 2516, so that it is no longer necessary to have a property settlement agreement incorporated into a divorce decree if divorce actually occurs within 2 years after the written agreement was entered into. The decisions cited were cases in which the Court had held transfers of property in exchange for the release of marital rights subject to the gift tax, and the Court noted here that these decisions were not based on the premise that the transactions were inherently gifts, but rather on the concept that in the contemplation of the gift tax statute they are to be taxed as gifts. However, since there is no estate tax counterpart of section 2516, it is arguable that the value of property transferred in exchange for marital rights, pursuant to a divorce or separation agreement which was never actually incorporated in a decree of divorce, should be included in the transferor's gross estate for estate tax purposes. Conversely, it is also arguable that section 2516 should be applied to the estate tax sections. Both of these conflicting arguments are supported by the doctrine that the federal estate and gift taxes are construed *in pari materia,* since the purpose of the gift tax is to complement the estate tax by preventing tax-free depletion of the transferor's estate during his lifetime. Commissioner v. Wemyss, *supra;* Merrill v. Fahs, *supra;* Harris v. Commissioner, *supra.*

A second problem disposed of by dicta was that of the wife's basis in the property. Although she realized no taxable income on the exchange, she was given a cost basis in the stock received, determined by reference to its fair market value in the hands of the transferor, because INT. REV. CODE of 1954, § 1012 provides that: "The basis of property shall be the cost of such property, except as otherwise provided in this subchapter . . . ." The Court reasoned that if the Court of Claims' position was followed with regard to the husband, the wife's "cost" for the property, *i.e.,* the value of the marital rights relinquished therefor, would be indeterminable, and if she subsequently disposed of the property she might suffer inordinately over the Commissioner's assessment which she would have the burden of proving erroneous. Commissioner v. Hansen, 360 U.S. 446, 468 (1959) was cited by the Court. Further by way of dicta, the Court stated: "Under the present administrative practice, the release of marital rights in exchange for [*sic*] property or other consideration is not considered a taxable event as to the wife." United States v. Davis, 82 Sup. Ct. 1190, 1194 n.7 (1962). Although the holding with regard to the taxability of the husband is sound, it is the author's opinion that there is no basis, other than administrative practice, for not treating the release as a taxable event to the wife. For a the intent of Congress in enacting the taxing statutes,[26] and to solidify the position of numerous taxpayers who must have relied on the earlier

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discussion of the aspects of considering the exchange a taxable event as to the wife, see Taylor & Schwartz, *Tax Aspects of Marital Property Agreements*, 7 TAX L. REV. 19, 30 (1951); Comment, *The Lump Sum Divorce Settlement as a Taxable Exchange*, 8 U.C.L.A. L. REV. 593, 601-02 (1961).

The Court stated that the wife's "cost" basis for the property received would be the value of the marital rights relinquished therefor. But it appears that the Court, in giving the wife a "substitute" basis, applied the concept of nonrecognition of gain to a situation which involved neither business property, nor the exchange of "like for like." Section 1031(d) of the Internal Revenue Code of 1954 provides for a basis for property received in a nontaxable exchange, as described in section 1031(a), measured by the value of the property given up. Section 1031(a) provides that no gain or loss shall be recognized if property held for productive use in a trade or business, or for investment (not including stocks, bonds, notes, or similar evidences of interest or indebtedness) are exchanged solely for property of a like kind. In this case the wife exchanged her marital rights for her husband's shares of stock, thus placing the transaction outside the purview of section 1031. Nor do any of the other common nontaxable exchange provisions apply, *e.g.*, section 1032, exchanges by a corporation of its stock for property; section 1033, involuntary conversions; section 1034, sale or exchange of a residence; section 1035, certain exchanges of insurance policies; section 1036, stock for stock of the same corporation; and section 1037, certain exchanges of United States obligations.

The Court has never hesitated to tax, as ordinary income, the relinquishment of similar intangible personal property rights, in situations somewhat analogous to the situation in the instant case.

A covenant not to engage in a competitive business is a valuable intangible property right. Commissioner v. Ray, 210 F.2d 390 (5th Cir.), *cert. denied*, 348 U.S. 829 (1954). The relinquishment thereof is a taxable event, gain being measured by the value of the property bargained and received therefor. Estate of Beals v. Commissioner, 86 F.2d 268 (2d Cir. 1936). See also Salvage v. Commissioner, 76 F.2d 112 (2d Cir. 1935), *aff'd*, 297 U.S. 106 (1936); Cox v. Helvering, 71 F.2d 987 (D.C. Cir. 1934). There are other instances where taxable income was found to result from the relinquishment of personal rights pursuant to a contract or agreement: The release of a fiancé from a promise to marry in exchange for a valuable consideration would result in taxable income. Ehrlich v. Higgins, 52 F. Supp. 805 (S.D.N.Y. 1943). Monies paid to a baseball player to secure his consent to the production of a motion picture which might have been regarded as invading his privacy were held to be taxable. Meyer v. United States, 173 F. Supp. 920 (E. D. Tenn. 1959). Amounts paid to obtain the taxpayer's consent to a motion picture portraying his deceased father and himself were held taxable, even though the right of privacy was not a property right under applicable state law. Runyon v. United States, 281 F.2d 590 (5th Cir. 1960).

In the instant case, the wife has merely relinquished a valuable intangible personal property right in exchange for other valuable property with a readily ascertainable fair market value.

It is further the author's opinion that, since she is to be given a "cost" basis equal to the value of the property received, thus reducing her gain on ultimate disposition, she should be held to have realized taxable income to the extent that the value of the property received exceeded the "cost or other basis" of the property given up—namely the zero basis of her promise. INT. REV. CODE OF 1954, § 1031(b) provides that: "Gain From Exchanges Not Solely in Kind . . . shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property." To hold otherwise only serves to provide the spouse receiving the marketable property with an unwarranted windfall.

26. *Cf.* notes 20 and 24 *supra*. The Court also noted the possibility that "this notorious construction was relied upon by . . . the Congress itself, which not only refrained from making any changes in the statutory language during more than a score of years but reenacted this same language in 1954." United States v. Davis, 82 Sup. Ct. 1190, 1194 (1962).

decisions. It will also eliminate the uncertainties which previously existed in the negotiation of property settlements by parties to a divorce. On the other hand, it does not seem quite fair to assert income tax on one party upon what amounts to a division of his property, while ignoring the tax consequences to the other party.[27] The far reaching effects of this decision on everyday transactions in lawyers' offices can only be suggested by reference to the number of divorce settlements handled in the United States each year.[28] Unless Congress sees fit to enact legislation to alter the effect of this decision in the future,[29] it appears that the question of realization and measurement of the transferor's gain is finally settled.

CHARLES L. RUFFNER

CONSTITUTIONAL LAW—MEMBERSHIP CLAUSE OF THE SMITH ACT

The petitioners were convicted of violating the membership clause of the Smith Act,[1] and their convictions were upheld by the respective courts of appeals.[2] Each petitioner had been a long-term member of the Communist Party, recruiting new personnel and instructing them in basic Party doctrine. Each petitioner had also been a lecturer and an organizer, holding offices high in the Party hierarchy. On certiorari, the petitioners contended that the evidence was insufficient to sustain the verdicts.[3] *Held*: affirmed as to petitioner Scales, reversed as to petitioner Noto. *Scales v. United States*, 367 U.S. 203 (1961). *Noto v. United States*, 367 U.S. 290 (1961).

These were the first prosecutions initiated by the Government under the *membership* clause[4] of the Smith Act, although previous prosecutions

27. Note 25 *supra*.

28. There were 395,000 divorces in the United States in 1959; 19,550 of them were obtained in the State of Florida. WORLD ALMANAC AND BOOK OF FACTS 302, 309 (77th ed. 1962).

29. Any prospect of contrary legislation seems remote; see note 26 *supra*.

1. "Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof . . . shall be fined . . . or imprisoned . . . ." 18 U.S.C. § 2385 (1958).

2. Scales v. United States, 260 F.2d 21 (4th Cir. 1958); Noto v. United States, 262 F.2d 501 (2d Cir. 1958).

3. Other contentions of petitioners were directed towards: (1) an alleged immunity from prosecution granted by section 4(f) of the Internal Security Act of 1950, 50 U.S.C. § 783(f) (1958); and (2) the alleged unconstitutionality of the Smith Act, for violating the First and Fifth Amendments. A minority of the Court in each case voted to reverse the conviction on the above grounds.

4. 18 U.S.C. § 2385 (1958).