NORTH CAROLINA LAW REVIEW

Volume 52 | Number 1 Article 16

11-1-1973

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wealth should not be transferred at death tax free,[53] the Treasury's necessity requirement goes beyond any standard suggested by Congress. The rejection of the validity of the regulations by *Estate of Park* issues a challenge to the Congress aptly stated by Judge Goffe in his dissenting opinion in *Estate of Smith*:

> If additional safeguards are needed they should come from the Congress, not from the Secretary or his delegate in the form of unauthorized regulations. . . . [T]he estate tax must be safeguarded from unauthorized and unwarranted limitations imposed by regulations as well as abuses which may occur elsewhere.[54]

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Income Tax — Triumph of Form Over Substance—Private Income Averaging

Taxpayers have long attempted to avoid the payment of federal income taxes by transferring their future income to other persons and having the transferees pay the taxes on the income at a lesser rate. The Internal Revenue Service and the majority of the cases that have considered these schemes have disallowed such anticipatory assignments of income and have assessed taxes against the original recipient of the income, the assignor, in the years in which the income is received by the assignee. In the recent case of *Estate of Stranahan v. Commissioner,*[1] however, the Court of Appeals for the Sixth Circuit allowed a taxpayer-assignor to avoid paying taxes on the income in the later years; the assignee paid the taxes instead. This avoidance was accomplished by the taxpayer "selling" his rights to the future income and paying taxes on the "sale price" in the year of transfer, a maneuver which resulted in a substantial tax saving for the assignor.[2]

This decision is a poor one for two reasons. Specifically, the money received by the taxpayer from his assignee had more of the characteristics of a loan than payment for the purchase of an asset. If the transfer of the 122,820 dollars were a loan, there would have been no tax consequences at the time of the assignment of the income, and the income

[53]United States v. Stapf, 375 U.S. 118, 131 (1963).
[54]57 T.C. at 665.

[1]472 F.2d 867 (6th Cir. 1973).
[2]*Id.* at 869-70.

going to the assignee in the later years would have been viewed simply as a repayment of the loan upon which the assignor would have been taxed in those years. A more general criticism is that even if the transfer were valid sale, the decision not to tax the assignor in later years appears erroneous in light of other anticipatory assignment cases which have disallowed such shifting of the incidence of the tax.[3] As a result of this apparent break with past cases, the *Stranahan* decision could mark a major victory for taxpayers by giving them a tremendously powerful tax planning tool for averaging expected future income.[4]

The facts of the case are fairly simple. Stranahan was a cash basis taxpayer who had made a large payment in 1964 to the Internal Revenue Service pursuant to a closing agreement concerning tax deficiencies related to several personal trusts. As a result, Stranahan was entitled to such a large interest deduction in 1964 that it exceeded his income for the year. He was not eligible to carry his net operating loss forward or back because section 172 of the Internal Revenue Code[5] limits carryovers to businesses losses. In order to retain the benefit of the interest deduction, he increased his ordinary income for 1964 by "selling" his rights to future dividends on stock that he owned (but not the stock itself) to his son and accordingly reported the money received from the son as taxable ordinary income for 1964.[6]

According to the agreement reached between Stranahan and his son, beginning in 1965 the son was to receive all the dividends from certain stock in Champion Spark Plug Company until the cumulative amount of dividends paid to the son reached 122,820 dollars, at which time any further dividend income was to return to Stranahan.[7] The son paid Stranahan 115,000 dollars for the dividend rights, the present value of 122,820 dollars of future income, discounted by five per cent, the then

[3]*E.g.*, Harrison v. Schaffner, 312 U.S. 579 (1941); Helvering v. Horst, 311 U.S. 112 (1940); Burnet v. Leininger, 285 U.S. 136 (1932); Lucas v. Earl, 281 U.S. 111 (1930).

[4]Stranahan was able to reduce his overall taxes by paying the tax on the income in the earlier year rather than in subsequent years because the "sale" allowed him to take advantage of a large deduction. Such sale arrangements by taxpayers to take advantage of large deductions will likely occur so infrequently that they will not likely result in any significant revenue loss to the federal government. Taxpayers will, however, be able to reduce significantly their taxes by selling future income and paying taxes in earlier years when they are in lower tax brackets. The taxpayers will receive the same amount of income but through the "sales" procedure they can spread the income over several years and thus minimize the effect of the progressive rate structure. Thus Stranahan's acceleration plan has universal applications.

[5]INT. REV. CODE of 1954, § 172.

[6]472 F.2d at 868.

[7]*Id.*

prevailing interest rate for standard commercial loans. Although no dividends had been declared at the time of the transfer, the 122,820 dollars was expected to be paid to the son within three years. This expectation was based on the long history of regular dividend payments by Champion,[8] a fact known by both parties to the agreement as both were employees and stockholders of the firm.[9] Pursuant to the agreement Stranahan notified the transfer agents for Champion and directed them to pay the dividends directly to the son until the 122,820 dollars was accumulated.[10]

In 1965 the son received a total of 40,050 dollars in dividends as a result of the agreement. He included this amount less his basis in his ordinary income for that year and paid the taxes on it. Stranahan had not included this amount in his 1965 income, so the Commissioner filed a deficiency notice against Stranahan's estate[11] for the tax on the 40,050 dollars of dividends. The Tax Court held for the Commissioner, relying on *Helvering v. Horst*[12] and related cases, finding that the transaction between Stranahan and his son was "not a bona fide sale" and was "devoid of any substantive purpose other than tax avoidance."[13]

On appeal the Sixth Circuit reversed the Tax Court's decision[14] and determined that the father-son assignment was a valid arm's-length sale for sufficient consideration. The court distinguished *Stranahan* from *Horst* which had taxed an assignor of future income, by saying that the *Horst* principle referred only to gratuitous assignments of future income and not to sales for valid consideration.[15]

LOAN VERSUS SALE

Section 451(a) of the Code states the general rule that a cash basis

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[8]Estate of Frank D. Stranahan, 40 P-H Tax Ct. Mem. 1133, 1136 (1971). Actually the $122,820 was paid in less time than originally estimated, because Champion raised its dividend rates in 1965.

[9]*Id.*

[10]Stranahan and his son complied completely with all the formalities of a sale. The purchase price was actually paid to Stranahan, the son used his own money in the transaction, and the dividends were paid directly to the son, not through Stranahan. *Id.* at 1135.

[11]Stranahan died in November of 1965 so actually the Commissioner assessed the deficiency against Stranahan's estate for dividends declared between January and November of 1965. *Id.* at 1135.

[12]311 U.S. 112 (1940).

[13]40 P-H Tax Ct. Mem. at 1138.

[14]Estate of Stranahan v. Commissioner, 472 F.2d 867 (6th Cir. 1973).

[15]*Id.* at 870.

taxpayer is to be taxed in the year in which he receives income.[16] Clearly, however, neither this section nor section 61, the general gross income provision, considers proceeds from a loan to be taxable income. A loan in which the proceeds must be repaid by the borrower and a sale of rights to future income in which the purchase price is paid over a period of time are similar transactions in appearance, and consequently it is often difficult to discern the true nature of these transactions. Theoretically, in a sale all rights of ownership are transferred to the buyer; whereas in a loan, the lender merely relinquishes possession of the property being loaned, not ownership. In practice, however, it is difficult to determine whether all the rights have been shifted. The key used to determine whether substantially all the rights of ownership have been transferred is the allocation of risk associated with the property. In a sale the buyer assumes the risks attached to the property being sold, but with a loan arrangement the risk element normally does not change hands; the status quo is maintained.[18] When no risk-shifting occurs as in *Stranahan,* the transfer should be characterized as a loan.[19]

One major indicator that the risk was not transferred from Stranahan to his son was that the future dividend income was discounted by the standard five per cent interest factor which would have been applied to any routine commercial loan. No adjustment was made for an additional risk factor. There was no substantial danger that Stranahan's son would not receive the future dividends he had been assigned. Champion Spark Plug had a long history of profitable operations and dividend distributions, and there was no indication that this pattern would be broken in the near future.[20] Because both Stranahan and his son, as large stockholders in Champion, were in a position to exert influence over

[16]INT. REV. CODE of 1954, § 451(a).

[17]*Id.* § 61(a).

[18]For example, if a buyer purchased a horse and the animal died subsequent to the sale, then the buyer would suffer the loss since death was one of the risks that he assumed. In contrast, if one borrowed a horse from a friend for breeding purposes and the horse died during the borrowing period, the borrower would suffer no loss since the risk of death remained with the owner-friend, assuming, of course, that the borrower was not the cause of death.

[19]In 1965, in Commissioner v. Brown, 380 U.S. 563, 574 (1965), the Supreme Court stated that "risk-shifting . . . has not heretofore been considered an essential ingredient of a sale for tax purposes." *Brown* was not an ordinary sale case, however, because it concerned a "bootstrap" sale of a business by a corporation to a charitable institution with the purchase price payable out of the future earnings of the business. A sale to a charity is a narrow area of the law involving special considerations such as the tax exempt status of these institutions and their lack of capital available for investment. These factors were not present in *Stranahan.*

[20]*See* note 8 *supra* and note 21 *infra.*

corporate dividend policy, the chance that the dividend payments would cease within the three years needed to pay off the 122,820 dollars was negligible.[21]

The risk question presented in the Stranahan case is relatively novel because most cases considering prior assignment of future income were either clearly gratuitous assignments[22] or sales,[23] and the loan versus sale problem never arose. One recently decided case, *J. A. Martin,*[24] however, did involve this risk question because, like *Stranahan,* it concerned an attempted acceleration of income. In *Martin,* the cash basis taxpayer had suffered a large personal loss in 1966. In order to obtain the full benefit of the deduction, he assigned future rental income from an apartment house in return for 225,000 dollars in 1966. The assignee of the future income was to receive the rent until he received 225,000 dollars plus a seven percent "supplemental sum."[25] The taxpayer made no guarantee that the 225,000 dollars would be repaid, but he did agree to keep the apartment operating for two full years following the assignment.[26] The Tax Court and the Fifth Circuit found the transaction to be merely a loan and taxed the taxpayer not in 1966, but in 1967 when the actual rents were paid. The court said, "[a]n anticipatory assignment, such as this, no matter how ingeniously and elegantly contrived, is not to be disposed of by attenuated subtleties. We conclude that the transaction instigated by J. A. Martin was purely and simply a device to avoid the proper taxation of the petitioners."[27]

The Sixth Circuit in *Stranahan* distinguished the result in *Martin* on the fact that the borrower in *Martin* had guaranteed to keep the business operating, whereas Stranahan had made no such warranty.[28]

[21]In 1963, 64% of the stock of Champion Spark Plug Co. was owned by and for the Stranahan family and by the directors of the corporation, and both Stranahan and his son were directors. MOODY'S MANUAL 945 (F. St. Clair ed. 1963). *Moody's Manual* for 1964 only states that a majority of the stock was owned by and for the Stranahan family and by the directors. Three of the seven directors were members of the Stranahan family. MOODY'S MANUAL 1506 (F. St. Clair ed. 1964). The dividend rights from the 26,700 shares of stock in the transaction between Stranahan and his son, however, represented only approximately one-half of one per cent of the shares of Champion then outstanding.

[22]*See* cases cited notes 39-41 *infra.*

[23]*See* cases cited note 48 *infra.*

[24]56 T.C. 1255 (1971), *aff'd mem.,* 469 F.2d 1406 (5th Cir. 1973).

[25]56 T.C. at 1257. The $225,000 and the seven per cent supplement were actually repaid in the following year, 1967.

[26]*Id.*

[27]*Id.* at 1260.

[28]472 F.2d at 871.

This seems a specious distinction since there was little doubt that Champion would remain in operation for at least three years. The continuation of corporate operations was simply assumed, and neither Stranahan nor his son felt the need to insert a continuation clause into their agreement. Furthermore, unlike the taxpayer in *Martin*, Stranahan dealt with a relative, making the transaction look even more like a loan instead of an arm's-length sale. Thus it seems very difficult to distinguish the facts of *Martin* from those of *Stranahan*; both clearly appear to be transfers of money with repayment practically assured in the future, the assignee effectively accepting no risk.

The right to income from future stock dividends is recognized under Ohio law as a property right apart from ownership in the corporation which the stock represents.[29] An assignment of future dividend rights might be deemed a sale of an asset, particularly when the rights transferred are the rights to all future income, rather than income for a limited number of years.[30] Over a long period of time there is a substantial risk that the dividends would increase or decrease. On the other hand, a three-year assignment of future dividends in a financially secure corporation is not likely to involve any major risk of lost dividends.[31]

Furthermore, even if Stranahan's assignment were a valid sale of property under state law, formal compliance with local property law is not always binding in tax matters. *Gregory v. Helvering*[32] long ago established the principle that, while "[t]he legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted,"[33] the form of a transaction does not control over its substance.[34] The *Gregory* reasoning is not isolated dicta; many other courts have stressed that the substance of a transaction controls over the form[35] and have

[29]Lamkin v. Robinson, 10 Ohio N.P. (n.s.) 1,44 (Com. Pleas Ct. 1910), *aff'd*, 88 Ohio St. 603, 106 N.E. 1065 (1913) (mem.).

[30]It is likely that the transfer would not have to be of all dividend rights; an assignment of income for thirty or forty years could also be considered a piece of property. *See* Treas. Reg. § 1.1031(a)-1(c) (1956), where a thirty-year lease is deemed the equivalent of a fee. A transfer of a twenty-year lease, however, did not qualify as an assignment of property. Galt v. Commissioner, 216 F.2d 41 (7th Cir. 1954). *See also* cases cited note 42 *infra*.

[31]Moreover, Stranahan and his son were in a position to exert control over Champion's dividend policy. *See* note 21 *supra*.

[32]293 U.S. 465 (1935).

[33]*Id.* at 469.

[34]*Id.* at 470.

[35]The Supreme Court in Commissioner v. Court Holding Co., 324 U.S. 331, 334 (1945), said, "[t]o permit the true nature of a transaction to be disguised by mere formalisms, which exist solely

consequently freely delved into the underlying motives of transactions.[36] Thus the Sixth Circuit was not compelled to find that the assignment in *Stranahan* was a sale simply because it conformed to a sale of "property" under state law.

GENERAL PRINCIPLES OF ASSIGNMENT OF INCOME

The prior discussion of *Stranahan* was concerned with the particular facts of the case and the wisdom of the determination that the assignment was a sale rather than a loan. The effects of the *Stranahan* decision, however, will not be limited to the specific facts of the case, for it will likely have far reaching consequences, touching several areas of the tax law.

Two lines of cases considering assignment of future income are relevant to *Stranahan*—those cases in which the assignor transferred rights to future income for no consideration or clearly inadequate consideration,[37] and those cases in which the assignor sold for adequate consideration rights to future income and tried unsuccessfully to get capital gains treatment for the sale.[38] Where the assignor has made a gift of the future income, the Supreme Court in *Lucas v. Earl,*[39] Blair v. Commissioner,[40] *Helvering v. Horst,*[41] and related cases, has established certain basic principles. When the donor gives away only the rights to future income he will be taxed on that income in the year the donee receives the earnings;[42] when the donor gives away the property which will produce the future income as well as the rights to the future earnings, then the donor will not be taxed on the income.[43] The Court's

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to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress." In Helvering v. Clifford, 309 U.S. 331, 334-35 (1940), the Court similarly held that, "[t]echnical considerations, niceties of the law of trusts and conveyances, or the legal paraphernalia which inventive genius may construct as a refuge from surtaxes should not obscure the basic issue. . . And . . . devices which, though valid under state law, are not conclusive so far as § 22 (a) is concerned." *See also* B. BITTKER & J. EUSTICE, FEDERAL INCOME TAXATION OF CORPORATIONS AND SHAREHOLDERS ch. 14, at 99 (3d ed. 1971), for a discussion of the meaning of *Gregory.*

[36]*E.g.,* Knetsch v. United States, 364 U.S. 361 (1960). *Knetsch* is analogous to *Stranahan* since the Court in that case disallowed a scheme by the taxpayer to accelerate his interest deductions because the plan lacked a substantive purpose.

[37]*See* notes 39-41 and accompanying text *infra.*

[38]*See* notes 47-48 and accompanying text *infra.*

[39]281 U.S. 111 (1930).

[40]300 U.S. 5 (1937).

[41]311 U.S. 112 (1940).

[42]Helvering v. Eubank, 311 U.S. 122, 125 (1940); Helvering v. Horst, 311 U.S. 112, 118-19 (1940); Lucas v. Earl, 281 U.S. 111, 115 (1930).

[43]Blair v. Commissioner, 300 U.S. 5, 13-14 (1937). In *Blair* the taxpayer assigned his entire

reasoning is that the donor receives "satisfaction" income for his gift, and accordingly he is taxed on the satisfaction obtained.[44]

Stranahan as assignor agreed that he should be taxed but contended that he should be taxed in the year of the transfer (1964), rather than in the years the assignee was to receive the income (1965-67) In the gift cases, the courts have taxed the donor-taxpayer in the years in which the donees received the transferred income, not in the year of the transfer.[45] *Stranahan,* however, was not a gift case; rather the transaction in it was deemed a "sale" by the court, with the transferor receiving payment in the year of transfer. One of the pervading principles which underlies the Internal Revenue Code is that the taxpayer should be taxed at the time he has the ability to pay, which is when he has the cash income in his possession.[46] This principle provides a logical reason for taxing Stranahan in the year of the transfer, although the donors as in *Helvering v. Eubank*[47] were not taxed until the income was actually paid. Since the donor receives nothing for his gift, his ability to pay taxes on the income is not enhanced in the transfer year.

There have been numerous cases prior to *Stranahan,*[48] involving

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life estate in a trust and the Court held that this was a transfer of property, relieving the assignor of the tax burden. In Harrison v. Schaffner, 312 U.S. 579 (1941), however, the assignor was not relieved of the tax burden where she assigned a specific amount of trust income for only one year. The Court thus found that the income interest was not for a sufficient length of time to be converted to property.

[44]In Helvering v. Horst, 311 U.S. 112 (1940), the assignor detached several interest coupons from bonds he owned and gave the coupons, but not the bonds themselves, to his son. The Court, in finding the assignor taxable on the interest income received by his son, said:

> Such a use of his economic gain, the right to receive income, to procure a satisfaction which can be obtained only by the expenditure of money or property, would seem to be the enjoyment of the income whether the satisfaction is the purchase of goods at the corner grocery, the payment of his debt there, . . . or a gift to his favorite son. Even though he never receives the money, he derives money's worth from the disposition of the coupons . . . . The enjoyment of the economic benefit accruing to him by virtue of his acquisition of the coupons is realized as completely as it would have been if he [taxpayer] had collected the interest in dollars and expended them for any of the purposes named.

Id. at 117.

[45]Harrison v. Schaffner, 312 U.S. 579 (1941); Helvering v. Eubank, 311 U.S. 122 (1940); Lucas v. Earl, 281 U.S. 111 (1930); Rev. Rul. 58-275, 1958-1 CUM. BULL. 22; *see* Lyon & Eustice, *Assignment of Income: Fruit and Tree as Irrigated by the P. G. Lake Case,* 17 TAX L. REV. 295, 353-56 (1962).

[46]Cohen, *Permissible Reserves and Deferment of Income in Tax Accounting,* U. SO. CAL. 1957 TAX INST. 329, 334.

[47]311 U.S. 122 (1940). In this discussion it is assumed that the assignor has not assigned the income producing property also.

[48]*E.g.,* Commissioner v. P. G. Lake, Inc., 356 U.S. 260 (1958); Hort v. Commissioner, 313

sales of assets or rights related to future income in which the taxpayer has been taxed normally in the year of the transfer,[49] which was Stranahan's objective. Although in many of these cases the year in which the tax should be levied was not in issue, the courts and commentators have generally reasoned that the need for a parallel with the gift cases, in which the donor was taxed in the later years, must yield to the ability to pay principle.[50] *Stranahan* differs from these sale cases, however, because in those cases the taxpayers had purposes other than tax avoidance.[51] In contrast, Stranahan's sole purpose in making the assignment to his son was to reduce his tax liability.[52] The courts have long required a transaction to have a valid business purpose before it will be effective for tax purposes.[53] Since *Stranahan* failed to meet this requirement, there is a strong reason for not allowing him to be taxed in the year of the transfer, a reason which probably is superior to the ability to pay principle in light of the many exceptions in the Code to this cash basis standard.[54]

Since section 172 allows carryforwards and carrybacks of net oper-

U.S. 28 (1941); General Artists Corp. v. Commissioner, 205 F.2d 360 (2d Cir.), *cert. denied,* 345 U.S. 866 (1953).

[49]In each of these cases, the taxpayer had tried unsuccessfully to get capital gains treatment for the transfer, by labeling the right to future income a capital asset. The courts viewed the consideration for the assignment as a mere substitute for the ordinary income the taxpayer would have received if the sale had not occurred. Commissioner v. P. G. Lake, Inc., 356 U.S. 260, 265 (1958); Hort v. Commissioner, 313 U.S. 28, 31 (1941); General Artists Corp. v. Commissioner, 205 F.2d 360, 361 (2d Cir. 1953).

[50]E. Blakeney Gleason, 11 P-H Tax Ct. Mem. 1477 (1942); Zarkey, *Capital Gain Concepts,* U. So. CAL. 1959 TAX INST. 357, 370; *Income: Whose, When, and What Kind: A Panel Discussion,* N.Y.U. 24th INST. ON FED. TAX., 1319, 1324 (1966); Note, *The P. G. Lake Guides to Ordinary Income,* 14 STAN. L. REV. 551, 562 (1962). In Commissioner v. Slagter, 238 F.2d 701 (7th Cir. 1956), the court taxed the taxpayer when the transferee received the income, but the court considered the transaction more of a loan than a sale.

[51]For example, in Hort v. Commissioner, 313 U.S. 28 (1941), the tenant who leased the taxpayer's building had demanded release from his lease which still had nine years to run. In contrast, in *Stranahan* it was admitted that the only objective of the assignment was to reduce Stranahan's taxes. 472 F.2d at 869. The father did not need the $115,000 to pay the interest on his closing agreement concerning the private trusts. *Id.* 869 n.4. Nor was there an assertion that the son had idle funds and needed a good five per cent investment.

[52]*See* note 51 *supra.* There are, of course, tax considerations in almost every transaction, but this discussion refers only to those transactions in which tax avoidance is the sole purpose.

[53]Burnet v. Leininger, 285 U.S. 136, 140-41 (1932); Jones v. Commissioner, 306 F.2d 292, 296 (5th Cir. 1962); J. A. Martin, 56 T.C. 1255, 1260 (1971). *See also* notes 32-34 and accompanying text *supra.*

[54]*E.g.,* § 166 of the Internal Revenue Code of 1954 permits deductions for estimated bad debts, § 446 permits taxpayers to use the accrual method if it fairly reflects their income, § 456 permits taxpayers who receive prepaid dues to spread the income over the period of the liability.

ating losses for only business losses,[55] Stranahan could not qualify for any carryovers since his loss was caused by a large payment of nonbusiness interest. Statutorily he was allowed to take the interest deduction in 1964, a year in which he would not get the full benefit of the deduction. However, he was able to benefit fully from his nonbusiness interest deduction under a scheme for which Congress had made no provision.[56] Thus the sale by Stranahan had no purpose other than the circumvention of the unambiguous language of section 172. On many occasions the courts have stated that they will not allow the taxpayer to avoid the intent of Congress by some artful dodge.[57] Consequently, since the transaction in *Stranahan* appears to be a sale only in form but not in substance, since the transaction lacked a business purpose, and since it intentionally contradicted section 172, a strong presumption arises against allowing Stranahan to be taxed in the year of the transfer despite the ability to pay doctrine.[58] The closest case factually, *Martin*, certainly reached this result.

Conclusion

The danger of the *Stranahan* decision extends beyond the context of the case because relatively few taxpayers will need to accelerate income to cover as large a personal deduction as Stranahan. The case, however, could become a major tax avoidance tool because it seemingly will permit taxpayers to execute private income averaging schemes

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[55]INT. REV. CODE of 1954, § 172.

[56]The latest indication of Congress' intent toward acceleration of income is revealed by the case of Commissioner v. P. G. Lake, Inc., 356 U.S. 260 (1958) and its aftermath. In *Lake* the taxpayer corporation, in order to cancel a debt of $600,000, assigned the creditor oil payment rights payable out of the profits earned on oil leases owned by the corporation. The *Lake* court treated the assignment as a sale and included the $600,000 in the taxpayer's income in the year of transfer, taxable, however, at ordinary rates. In the Tax Reform Act of 1969, Pub. L. No. 91-172, § 503(a), 68A Stat. 207, Congress added § 636 of the Internal Revenue Code, which treats all such assignments of oil payment rights as mortgage loans rather than sales; now there is no tax effect in the year of sale and the assignor is taxed in subsequent years on the income assigned. It does not seem logical that Congress would want to disallow accelerations of oil income rights but allow similar accelerations of dividend income.

[57]Commissioner v. Court Holding Co., 324 U.S. 331 (1945), Helvering v. Gregory, 293 U.S. 465 (1935).

[58]One other distinguishing characteristic between *Stranahan* and the "pseudo-capital gains" cases is that in most of the latter group the assignor was transferring more than just three years of income. It normally was either all the income the taxpayer owned or the income covered larger periods of time than three years. *Contra*, Rhodes' Estate v. Commissioner, 131 F.2d 50 (6th Cir. 1942).

apart from the averaging scheme provided in the Code.[59] For example, a twenty-seven-year-old intern, anticipating that his peak income-producing years would be between his fortieth and fiftieth birthdays, could arrange to "sell" some of his expected income to a trusting individual, receive a yearly payment for the next five or six years, and report the consideration received as income in the years it was received. Since he is presently an intern in a comparatively low income bracket for the next few years, the taxes on these annual payments would be much less than the taxes would be in later years when he has moved to a higher bracket. The young doctor could save the consideration he received until he reaches forty and be in exactly the same economic position as if he were then earning the income, yet his overall tax liabilities would be much less. Since Congress has established a comprehensive income averaging scheme,[60] it is highly unlikely that it intended to leave room for any private averaging schemes such as the one hypothesized. This loop-hole may be available, however, after *Stranahan*.

E. GRAHAM MCGOOGAN, JR.

Property Law—North Carolina's Marketable Title Act—Will the Exceptions Swallow the Rule?

Shouts of jubilation from weary title examiners resounded through dusty deed vaults in courthouses across North Carolina as news spread of the enactment of a marketable title act[1] that would reduce the length of title searches to thirty years. Initial joy was supplanted by disappointment, however, when a reading of the act, effective October 1, 1973, revealed thirteen exceptions to the thirty year limitation.[2]

Marketable title acts have evolved in answer to the major shortcoming of the recording system. When the common law maxim of "first in time, first in right" yielded to the concept that he who first records an interest in real property gains primacy over a subsequent recorder of that interest,[3] a title recordation system arose that preserved indefi-

[59] INT. REV. CODE of 1954, §§ 1301-05.
[60] *Id.*

[1] N.C. GEN. STAT. Ch. 47B (1973 Advance Legislative Service, pamphlet no. 3).
[2] *Id.* § 47B-3 (1973 Advance Legislative Service, pamphlet no. 3).
[3] Payne, *The Alabama Law Institute's Land Title Acts Project: Part I*, 24 ALA. L. REV. 175, 181 (1971).