5 T.C. 277 (1945)

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Under Louisiana law, income derived from a wife’s separate property is considered her separate income, and therefore taxable to her individually, if she administers the property separately and alone, even if the proceeds are later commingled with community funds.

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Summary

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Rosemary Herold Lazard, domiciled in Louisiana, received oil royalties from a mineral interest gifted to her by her father. Lazard endorsed the royalty checks and gave them to her husband, who deposited them into his account and used them for family expenses. The Commissioner of Internal Revenue determined that these royalties were Lazard’s separate income, not community property. The Tax Court upheld the Commissioner’s decision, finding that Lazard administered her separate property separately, thus the royalty income remained her separate property under Louisiana law.

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Facts

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In 1927, Rosemary Herold Lazard married Jules C. Lazard, and they remained married until his death in 1944.r
Prior to 1936, Rosemary’s father owned a one-fifth mineral interest in a tract of land leased for oil production.r
In 1938, her father gifted her this mineral interest, subject to the existing lease.r
During 1940 and 1941, the lessee sent monthly royalty checks directly to Rosemary.r
Rosemary endorsed these checks and gave them to her husband, who deposited them into his bank account.r
The funds were commingled with his earnings and used for general family expenses.r
Rosemary had no other separate property during these years other than the oil property in question.r

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Procedural History

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Rosemary and her husband filed separate income tax returns, treating the royalty income as community property.r
The Commissioner determined that the royalties were Rosemary’s separate income and assessed deficiencies.r
Rosemary appealed the Commissioner’s determination to the Tax Court.r

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Issue(s)

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Whether oil royalties received by a wife from her separate property in Louisiana constitute separate income or community property when the wife endorses the royalty checks to her husband for deposit into his account and use for family expenses.

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Holding

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Yes, because the wife administered her separate property separately and alone, the royalties constitute her separate income under Louisiana law, despite the subsequent commingling of funds, even though the checks were endorsed and given to her husband for deposit and family expenses.

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Court’s Reasoning

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The court relied on Louisiana Civil Code articles regarding separate and community property, particularly those related to the administration of a wife’s paraphernal

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property (separate property not part of her dowry).r
Article 2384 gives the wife the right to administer her paraphernal property personally without her husband’s assistance.r
Article 2385 states that paraphernal property not administered by the wife separately is considered under the husband’s management. However, in this case, the Commissioner’s determination that the income was separate was presumptively correct, and the burden was on the petitioner to prove otherwise. The Court found that the stipulated facts indicated that the wife, Rosemary, was in fact administering her separate property separately, even though the checks were endorsed to her husband and used for family expenses. The court distinguished this from cases where the husband actively managed the property or collected rents, noting that Rosemary’s actions of receiving and endorsing the royalty checks demonstrated sufficient administration.r
The court quoted Brougham v. Brougham, <span normalizedcite="33 La. Ann. 784“>33 La. Ann. 784 stating, “It is perfectly clear, that the paraphernal property of a married woman is not bound for the debts contracted by her husband; and, that the fruits, proceeding from such property, do not belong to the community, unless the wife permits the husband to manage it.”r
Judge Black dissented, arguing that the wife’s actions did not rebut the Louisiana presumption that the husband administered the property for the community’s benefit. He viewed the wife’s role as passive and believed that endorsing the checks and turning them over to her husband should be considered a single act indicating community administration. He cited Howard v. United States, <span normalizedcite="125 F.2d 986“>125 F.2d 986, arguing that the Louisiana presumption should have been given greater weight.r

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Practical Implications

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This case illustrates the importance of demonstrating active management by either spouse when determining whether income from separate property becomes community property in Louisiana. The wife’s endorsement of checks was sufficient to show that she

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