## *Joss v. Commissioner, 56 T. C. 378 (1971)*

Income must be reported in the year it is received and controlled, even if received in error and subject to later repayment.

### Summary

In Joss v. Commissioner, Gwendolyn Joss received $23,000 from her former husband, Edward Schrader, in 1963, despite their divorce agreement stipulating payments would cease upon her remarriage. The Tax Court held that these payments were taxable to Gwendolyn in the year received, applying the principle from James v. United States that income must be reported when received, regardless of any obligation to repay. The court also denied Joss dependency exemptions for his wife's children due to insufficient evidence of support and upheld a negligence penalty for failing to report the income. The case underscores the necessity of reporting income when received, even if later deemed to be received in error.

### Facts

Gwendolyn Joss, married to Herbert Joss in 1962, continued to receive $23,000 annually from her former husband, Edward Schrader, post her remarriage, contrary to their divorce agreement. Schrader was unaware of Gwendolyn's remarriage until January 1964 and subsequently sued for repayment, securing a judgment based on unjust enrichment. Gwendolyn and Herbert filed a joint tax return for 1963, omitting the $23,000. Gwendolyn used these funds for personal expenses without Herbert's direct knowledge of the account details.

### Procedural History

The IRS issued a deficiency notice to Herbert Joss for 1963, including the $23,000 as taxable income and disallowing dependency exemptions for Gwendolyn's children. Joss contested this in the U. S. Tax Court, which ruled against him, affirming the taxability of the payments and upholding the negligence penalty. The court also considered a new issue raised by Joss regarding relief from joint liability under recently amended IRC section 6013(e).

### Issue(s)

1. Whether the $23,000 received by Gwendolyn Joss from Edward Schrader in 1963 was includable in her taxable income for that year.
2. Whether Herbert Joss and Gwendolyn Joss were entitled to dependency exemptions for her three children.
3. Whether Herbert Joss was liable for the addition to tax for negligence.
4. Whether Herbert Joss should be relieved from tax liability under IRC section 6013(e).

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## Holding

1. Yes, because the funds were received and controlled by Gwendolyn in 1963, making them taxable income under the principle established in James v. United States.
2. No, because Joss failed to prove that he and Gwendolyn provided over half of the children's support.
3. Yes, because Joss failed to show that the omission of the income was not due to negligence.
4. No, because Joss knew of the income omission when the joint return was filed, disqualifying him from relief under IRC section 6013(e).

## Court's Reasoning

The Tax Court applied the principle from James v. United States that income is taxable when received and controlled, even if subject to later repayment. The court distinguished this case from Martha K. Brown, where payments post-remarriage were not taxable as alimony under IRC section 71(a), noting that the $23,000 did not fit any exclusion under the tax code. The court rejected arguments that the funds were gifts or loans due to Schrader's lack of intent to gift and the absence of a loan agreement. The court also upheld the disallowance of dependency exemptions due to insufficient evidence of support and the negligence penalty due to Joss's failure to prove otherwise. Finally, the court denied relief under IRC section 6013(e) as Joss knew of the income omission when filing the return.

## Practical Implications

This decision emphasizes the importance of reporting all income received in the year of receipt, even if subject to future repayment claims. Taxpayers must be diligent in reporting such income and cannot rely on potential future obligations to repay as a basis for exclusion. The case also highlights the need for clear evidence of support when claiming dependency exemptions and the strict application of negligence penalties for tax return errors. For attorneys, this case serves as a reminder to advise clients on the tax implications of receiving funds they may not be entitled to keep, and the potential for joint and several liability on joint returns. Subsequent cases have continued to apply the James v. United States principle in similar contexts.