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The Story of *Murphy*: A New Front in the War on the Income Tax

“We law professors must not be doing our jobs right if three federal judges and their clerks can reach a conclusion like this one.”

George K. Yin on *Murphy v. IRS*, 460 F.3d 79 (D.C. Cir. 2006).

Joseph M. Dodge concludes his chapter on *The Story of Glenshaw Glass*¹ by applauding the decision for ending forty years of uncertainty over the nature of income subject to tax. He argues that the case set “tax jurisprudence firmly on a modern footing[,] . . . free of the clutter and distractions inherited from the nineteenth century and early twentieth century.” Indeed, *Glenshaw Glass* appeared to establish the term “gross income” as a catch-all phrase reaching all accessions to wealth, regardless of source. This principle endured for fifty years, until the D.C. Circuit shocked the tax community by returning to the “clutter and distractions” of the early twentieth century in *Murphy v. IRS*.² The D.C. Circuit panel concluded, based on the mind-set of the legislators who adopted and implemented the Sixteenth Amendment in 1913, that a personal injury award for emotional and reputational injuries could not be constitutionally taxed as income. Although the

¹ Joseph M. Dodge, *The Story of Glenshaw Glass: Towards a Modern Concept of Gross Income*, in *Tax Stories* 15 (Foundation Press, 2d ed. 2008).

² 460 F.3d 79 (D.C. Cir. 2006).

panel, in a remarkable action in response to a torrent of criticism unleashed through twenty-first century technological tools, ultimately granted rehearing and reversed its earlier decision,³ the panel could not unring the bell and undo much of the damage caused by its original decision.

³ 493 F.3d 170 (D.C. Cir. 2007).