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Taxation--Family Partnership (Commissioner of Internal Revenue v. Culbertson, 337 U.S. 733 (1949))

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out earlier the *Townsend* case relied upon two cases for its authority, one containing no opinion and the other, although it had an opinion, antedated the passage of subdivision 6 of Section 4 of the Tax Law. This latter case while pivoting upon the interpretation of a private statute incorporating the hospital, did establish clearly the distinction between taxes and special assessments.[15] However, it limited the distinction to what would clearly be special purpose assessments. A fair reading of the case would never support the *Townsend* decision in so far as it validated special assessments which, while for a local improvement, were collected as general taxes and not apportioned directly to the benefit received.

In conclusion it is recommended that a new evaluation and declaration of policy be made upon this problem. For the first time the purpose of the legislature should be fully and openly considered with respect to the entire purpose of charitable exemptions because at present it is not at all clear that the legislature did not intend a full exemption.

The entire line of decisions should also be reconsidered towards the purpose of more clearly categorizing them since many of them can be distinguished. For example public school district cases should not be lumped with charitable institutions since they are tax supported anyway and the problems of both are leagues apart. Secondly, exemptions sought under specific statutes should not be confused with exemptions sought under the general tax exemption of Section 4 of the Tax Law. Finally and above all, a definite answer must be made to the question, is the burden of the special assessment to be levied in direct proportion to the benefit received. In considering this last, further clarification must be made as to the method of collection and the remoteness as to time of the possible benefit.

H. V. M.
A. P. D.

TAXATION—FAMILY PARTNERSHIP.—Respondent, a rancher in Texas, sold an undivided one-half interest in a herd of cattle to his four sons taking their promissory notes therefor. A family partnership was formed by the father and his sons, and the boys repaid the note from their share of the partnership profits. The Commissioner of Internal Revenue ruled that the entire income from the partnership must be taxed to respondent. The Tax Court sustained the Commissioner on the grounds that the taxpayer had not satisfied the requirements for recognition of family partnerships set out by the United States Supreme Court in the *Tower*[1] and *Lusthaus*[2] cases.

[15] Roosevelt Hospital v. Mayor, note 4 *supra*.
[1] Commissioner of Internal Revenue v. Tower, 327 U. S. 280 (1946).
[2] Lusthaus v. Commissioner of Internal Revenue, 327 U. S. 293 (1946).

The Tax Court stated that these requirements were contribution by each partner of vital services or of capital originating with that partner. The Court of Appeals reversed [3] on the ground that ". . . the partnership here was actual, real, bona fide, and entered into for the benefit of the partnership with no thought of income taxes and no purpose to evade, divide, or defeat their collection." [4]

Held, reversed and remanded. Both the Tax Court and the Court of Appeals erred in their application of the rules laid down in the *Tower* [5] and *Lusthaus* [6] cases.

The court stated, "The question is not whether the services or capital contributed by a partner are of sufficient importance to meet some objective standard supposedly established by the *Tower* case, but whether, considering all the facts—the agreement, the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital contribution, the actual control of income and the purposes for which it is used, and any other facts throwing light on their true intent—the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise." [7] *Commissioner of Internal Revenue v. Culbertson,* 337 U. S. 733 (1949).

Prior to the decision in this case, the Tax Court of the United States had decided many family partnership questions solely on the questions of original capital or vital services. The circumstances in those cases varied. The court held that a personal service business where capital was not an important income producing factor was not a bona fide partnership just because of the contribution by the wife and son of some capital but no vital services.[8] Where services and capital both were contributed by the wife the court upheld the partnership.[9] Where a father entered into agreements with his wife and children, the latter investing neither capital nor services, the court found no partnership existed.[10] Where a husband transferred to his wife, one-half interest in assets received by him in the dissolution of a corporation and they agreed to leave these assets in a partnership to be formed, the wife taking no active part in the business, the court found no partnership existed.[11] A partnership of father and son wherein the father alone invested capital but both performed vital

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[3] Culbertson v. Commissioner of Internal Revenue, 168 F. 2d 979 (5th Cir. 1948).

[4] *Ibid.* at 984.

[5] See note 2 *supra.*

[6] See note 3 *supra.*

[7] 337 U. S. 733, 742 (1949).

[8] Harvey v. Commissioner, 6 T. C. 653 (1946).

[9] Marks v. Commissioner, 6 T. C. 659 (1946).

[10] Durweed v. Commissioner, 6 T. C. 682 (1946).

[11] Akers v. Commissioner, 6 T. C. 693 (1946).

services was upheld for income tax purposes.[12] A bona fide gift to a wife which she invested in a partnership without services on her part was held not enough to support a partnership.[13]

Since the decision by the Supreme Court in this case, the Tax Court has been applying this test: "If . . . it is found that the partners joined together in good faith to conduct a business, having agreed that the services or capital to be contributed presently by each is of such value to the partnership that the contributor should participate in the distribution of profits, that is sufficient." [14] So that even where capital invested had been withdrawn, the court found a bona fide intent to continue the partnership.[15] Minor capital invested and unessential services rendered by the wife were considered along with the method of distribution of profit in determining the bona fides of a family partnership.[16] Even where the wife worked conscientiously and for long hours, and her services were vital, the partnership was not recognized since the court found no bona fide *intent* on her part to become a partner.[17] No formal agreement is necessary, if there is a bona fide *intent* to form the partnership.[18] Where the wives of the present partners were brought into the partnership to bolster the credit standing and the wives performed no services and contributed no capital, the court held that there was a valid partnership because the intent to form the partnership was present.[19]

The trend appears to require an *intent* of the parties to render present service to, or investment in, the alleged partnership. The factors of capital and services are part of the yardstick and no longer the major consideration in accepting or rejecting the partnership for income tax purposes.

P. H., Jr.

Torts—Liability for Prenatal Injuries.—The personal representative of an unborn viable child brought an action for the wrongful death [1] of such child caused by the alleged negligence of defendant hospital. The complaint stated that while the infant's mother was in

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[12] Runyon v. Commissioner, 8 T. C. 350 (1947).
[13] Sandberg v. Commissioner, 8 T. C. 423 (1947).
[14] Commissioner v. Culbertson, 337 U. S. 744, 745 (1949).
[15] Wilson v. Commissioner, 13 T. C. — #57 (1949).
[16] Cobb v. Commissioner, 13 T. C. — #66 (1949).
[17] Funai v. Commissioner, 13 T. C. — #90 (1949).
[18] Matuszewski v. Commissioner, 13 T. C. — #96 (1949).
[19] Delchamps v. Commissioner, 13 T. C. 281 (1949).

[1] Minn. Stat. Ann. § 573.02. "When death is caused by the wrongful act or omission of any person or corporation, the personal representative of the decedent may maintain an action therefor if he might have maintained an action, had he lived, for an injury caused by the same act of omission."