

### **Income--Husband and Wife--Ownership of Profits (R.E. Wing v. Commissioner, etc. (B.T.A.) IV U.S. Daily, Oct. 28, 1929 at 2108)**

St. John's Law Review

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an assignment. These commissions are not taxable until they are received by the insurance agent or assignee. The act taxes income earned<sup>2</sup> but rendering services and charging for them is not income earned until the charges are paid. The commissions are to be included in the gross income of the agent during the period within which they come into his hands;<sup>3</sup> or the hands of his assignee. When under a contract for the performance of services the proceeds are to be paid to an assignee of the performing party, the receipt of payment by the assignee is *constructive receipt* for the assignor and is to be included in the gross income of the assignor.<sup>4</sup> May we venture to suggest that the practicability of this decision is not one which satisfies the attempt to place such a tax on a scientific basis and that the more favorable method would be to tax only that income received by the plaintiff for his assignment and hold the assignee responsible for all other income received by virtue of the assignment?

E. S.

INCOME—HUSBAND AND WIFE—OWNERSHIP OF PROFITS.—Plaintiff invested the joint savings of himself and his wife in a partnership, entered into with two associates, on the understanding that she was to have an equal share with him in the enterprise. Subsequently, the plaintiff's wife took charge of the books and accounts of the firm and a new agreement was drawn up wherein she was acknowledged to be the owner of a one-sixth interest in the business. The laws of Michigan invalidate a partnership between a husband and wife; therefore, the Commissioner determined a deficiency in the plaintiff's return for the year 1923 and included therein the amount paid to the plaintiff's wife on the ground that there being no partnership the sum paid to her was income to the husband. *Held*, where the articles of co-partnership recognize each of the spouses as a partner, although a state statute invalidates a partnership between husband and wife, the latter and not the former is taxable on her proportionate part of the income. *R. E. Wing v. Commissioner, etc.* (B. T. A.) IV U. S. Daily, Oct. 28, 1929 at 2108.

Persons doing business as a partnership are to include in their individual income returns their proportionate share of the net income of the partnership, whether or not distributed.<sup>1</sup> These profits, though

<sup>2</sup> Rev. Act of 1928, Sec. 2, Pars. A and B, Subd. 1.

<sup>3</sup> *Supra* Note 1; *Woods v. Lewellyn*, 252 Fed. 106 (C. C. A. 3d, 1918). (A contingent right such as this is not "income" in the sense used in the Act.)

<sup>4</sup> II-I, Cum. Bull. Min. 3040, June 1923, p. 48; I-I Cum. Bull. I. T. 1339, June 1922, p. 97; *Re: Alexander S. Browne*, 3 B. T. A. 826 (1926); *Mitchell v. Bowers, etc.*, 9 F. 2d 414 (S. D. N. Y., 1925).

<sup>1</sup> Rev. Act of 1918, Sec. 218 (A).

disposed of by an assignment or transfer, may not be deducted from the individual tax return of the partner.<sup>2</sup> But, if the assignment or transfer of the profits includes an interest in part of the corpus of the business, the profits, whether received by the transferor or the transferee are taxable to the latter.<sup>3</sup> It has been held heretofore that where a partnership relation between husband and wife is invalidated by a state statute, the wife being the owner of one-half of the income arising out of the business, the income is properly taxable to her as owner.<sup>4</sup>

E. S.

INCOME—PARTNERSHIP—INDIVIDUAL RETURN.—Plaintiff, as administrator of the estate of A. Blanton, filed a petition with the Board of Tax Appeals to secure a redetermination of income tax payable by the estate for the calendar year 1920. Deceased had been a partner in a grocery business and the estate, after his death, continued in interest. It appears that the books of the partnership were conducted on a fiscal year basis, ending June 30, whereas a calendar year basis was employed by the plaintiff. At the close of business on June 30, 1929, a profit was realized which issued to the estate. However, during the remaining six months of that year a huge loss was sustained. Plaintiff sought to deduct this loss on the return filed for the estate but was denied such right by the Commissioner and the Board of Tax Appeals. On appeal, plaintiff puts this question in issue and further declares that items of inventory contained on the books as of June 30, 1920, were erroneously overvalued so that the apparent profit then shown on the books did not exist. *Held*, judgment affirmed. Even though a loss did occur during the period in question, yet in accordance with the Revenue Act of 1918, Section 218 a, such loss cannot be deducted until the end of the calendar year next ensuing the fiscal period in which the loss was sustained. Further, the findings of fact by the commissioner and Board of Tax Appeals is unshaken by the evidence adduced by plaintiff. *Guy, Administrator, etc. v. Commissioner, (C. C. A. 4th), IV U. S. Daily, Oct. 21, 1929 at 2008.*

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<sup>2</sup> *Mitchell v. Bowers*, 15 F. 2d (C. C. A. 2d, 1926); *J. Fred Staebler v. Commissioner, etc.*, B. T. A. Docket #28520, Oct. 25, 1929, IV U. S. Daily, Nov. 2, 1929.

<sup>3</sup> *C. R. Thomas v. Commissioner, etc.*, 8 B. T. A. 118 (1927); *William W. Parshall v. Commissioner, etc.*, 7 B. T. A. 318 (1927); *Kelley v. Commissioner, etc.*, 9 B. T. A. 832 (1927).

<sup>4</sup> *L. F. Sunlin v. Commissioner, etc.*, 6 B. T. A. 1232 (1927); *Earle L. Crossman v. Commissioner, etc.*, 10 B. T. A. 248 (1928); *Albert Kahn v. Commissioner*, 14 B. T. A. 125 (1928).