

Income--Partnership--Individual Return (Guy, Administrator, etc. v. Commissioner, IV U.S. Daily, Oct. 21, 1929 at 2008 (4th Cir.))

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

St. John's Law Review (1929) "Income--Partnership--Individual Return (Guy, Administrator, etc. v. Commissioner, IV U.S. Daily, Oct. 21, 1929 at 2008 (4th Cir.))," *St. John's Law Review*: Vol. 4 : No. 1 , Article 30.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol4/iss1/30>

This Comment is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

disposed of by an assignment or transfer, may not be deducted from the individual tax return of the partner.² 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.³ 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.⁴

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.*

² *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.

³ *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).

⁴ *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).

Section 218a of the Revenue Act of 1918 is contained in substance in the present act.¹ It requires a partner to report profit or loss derived from the partnership, in his individual return, *only* after the close of the accounting period established by the partnership. Thus, as in the case above, where an individual return is made on a calendar year and the partnership is computed on a fiscal year, the individual return may not show a loss derived from the partnership where the return of the partnership for the fiscal period has not yet been made even though at the time the individual return is made, the partner is able to show that a loss is factual.² He must wait until the partnership return has been made or the period terminated.³

Whatever the advisability of such a procedure may be, Congress has seen fit to adopt the method and to acknowledge a partnership accounting period as the basis of determining the net profit or loss realized by the individual partner.⁴ Where the partnership is terminated or dissolved by the loss of one of the partners and a new one formed to take over the existing business, profits or losses are to be reported on an allocated basis.⁵

A. K. B.

INCOME—PROFITS—MUNICIPAL BONDS.—Plaintiff purchased certain bonds issued by counties and cities in the state of Minnesota. Thereafter the bonds were sold and plaintiff realized a profit on the sale. The Federal Government levied a tax on the profit realized. Payment of the tax was made under protest and plaintiff petitioned for relief. Defendant demurred and the District Court overruled the demurrer. Defendant then appealed to the Circuit Court of Appeals. *Held*, judgment affirmed. The tax is a direct tax on income derived solely from municipal securities and is in contravention of the long-established rule forbidding the Federal and State

¹ Rev. Act of 1928, Sec. 182A, Reg. 74, Art. 902.

² It may be well to note that the return which the partnership is obligated to file is merely an informational return and is not the basis for the levy of an income tax. It is the individual partner's return that is the subject-matter of the tax. Rev. Act 1928, Sec. 181.

³ It has been held that where a partner kept his books on a calendar year basis and the partnership kept its books on a fiscal year basis, the partner is required to report as taxable income his proportion of the net profits of a partnership for its entire accounting period ending within his calendar year, notwithstanding a portion of such profits was received by him during the first six months of the partnership accounting period falling within his preceding calendar year, *Goodby Mills et al. v. Commissioner, etc.*, 3 B. T. A. 1245 (1925). Also *in re J. E. Osbury*, 4 B. T. A. 1244 (1926); *F. E. Malm et al. v. Commissioner, etc.*, 11 B. T. A. 859 (1928); *in re Burr et al. v. Commissioner, etc.*, 11 B. T. A. 1005 (1928).

⁴ *Goodby Mills et al. v. Commissioner, etc.*, *supra* Note 3.

⁵ *In re Carl Lang et al. v. Commissioner, etc.*, 3 B. T. A. 417 (1926).