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Income--Profits--Municipal Bonds (Willcuts, etc. v. Bunn, IV U.S. Daily 1804, Sept. 28th, 1929 (8th Cir.))

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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).

Governments from taxing the instrumentalities of each other. Willcuts etc. v. Bunn, (C. C. A. 8th), IV U. S. Daily 1804, Sept. 28th, 1929.

It is well settled that the Federal Government may not tax the income arising from the obligation of a state or any of its governmental subdivisions.[1] The question presented by this case, however, is whether the Federal Government may tax income derived by a tax-payer from the *resale* of securities issued by a State Government, or any of its subdivisions. It will be noted that such income (*i.e.*, income from resale of governmental securities) is not paid by the state. Hence the argument that the taxation of such income will virtually be taxing governmental instrumentalities, for the support of government, should not avail. But, the decision holds that inasmuch as a profit from a resale on governmental securities is income, that income is derived from such governmental securities even though it is not paid by the state, as would be interest income, on these obligations.

E. S.

INCOME—RECOUPMENT OF LOSSES—LONG TERM CONTRACTS.—Plaintiff was engaged, under a long term contract, to do dredging work for the United States. After expenditures had been made during the years 1913, 1914 and 1915, plaintiff learned that certain vital representations on the faith of which the contract had been accepted, were untrue, whereupon it brought suit against the United States and in 1920 was awarded and collected damages, compensatory only, to reimburse for actual expenditures made and, in addition, interest for the elapsed period. In its returns for the years 1913 to 1916 it had made deductions for losses which consisted of the excess of expenditures over receipts under the contract. When in 1920 plaintiff was reimbursed for his losses, he sought to amend his former returns and apply the amount recovered by the judgment against the losses for which deductions had already been taken. The Commissioner denied plaintiff this right, ruling instead that the sum thus realized should be included as income received during the taxable year 1920. This decision was upheld by the Board of Tax Appeals. Plaintiff appeals. *Held,* judgment reversed. Recoupment of losses under a long term contract is not income taxable in the year in which recovered. Proper allocation of the realized judgment should be effected to offset the losses indicated on the returns of the years in question. Sanford and Brooks Co. v. Commissioner, IV U. S. Daily, Oct. 24, 1929 at 2056.

[1] Collector v. Day, 78 U. S. 113, 124-5, 20 L. ed. 122 (1870); Pollock v. Farmers Loan and Trust Co., 157 U. S. 429, 583, 588, 15 Sup. Ct. Rep. 673, 39 L. ed. 759 (1895).