

Revenue Ruling 58-243 (I.R.S. 1958)

The fact that a husband and wife cannot legally be partners under state law does not necessarily prevent recognition of such a partnership for Federal Income tax purposes. Conversely, the fact that an asserted husband and wife partnership would be valid under state law does not necessarily require recognition of such partnership for Federal income tax purposes.

Hereby modified are:

- G. C. M. 450, C. B. V-2, 49 (1926) (Arkansas).
- I. T. 1744 C. B. II-2, 179 (1923) (California).
- ,S. M. 2964 C.B. IV-1, 171 (1925) (Colorado).
- G. C. M. 433. C. B. V-2, 177 (1926) (Connecticut),
- G. C. M. 3421, C. B. VII-1, 106 (1928) (District of Columbia).
- G. C. M. 2448, C. B. VI-2, 69 (1927) (Florida).
- , S. M. 5042 C. B. V-1, 68 (1926) (Georgia).
- I. T. 2321, C. B. V-2, 52 (1926) (Iowa).
- I. T. 2240, C. B. IV-2, 60 (1925) (Kansas).
- S. M. 4277, C. B. IV-2, 58 (1925) (Minnesota).
- S. R. 6998, C. B. V-1, 268 (1926) (Nebraska).
- G. C. M. 5761, C. B. VIII-1, 109 (1929) (New York).
- G. C. M. 3034, C. B. VII-1, 104 (1928) (North Carolina).
- I. T. 2022, C. B. III-1, 9 (1924) (Oregon).
- S. M. 5411, C. B. V-1, 271 (1926) (Pennsylvania).
- S. M. 3391, C. B. IV-1, 42 (1925) (South Carolina).
- I. T. 1371, S. R. 7199, C. B. I-1, 208 (1922) (Maine).
- C. B. V-1, 269 (1926) (Michigan).
- S. R. 2863, C. B. IV-1, 174 (1925) (Texas).
- S. M. 3917, C. B. IV-2, 189 (1925) (Vermont).

Advice has been requested whether the fact that a husband and wife partnership is invalid under state law would have any effect upon the recognition of the partnership for Federal income tax purposes.

In early published rulings, an attempt was made to distinguish between those states which permitted partnerships between a husband and wife and those which did not, for the purpose of recognizing or not recognizing them for Federal income tax purposes.

However, numerous court decisions have held that a bona fide partnership between a husband and wife would be recognized for Federal income tax purposes, despite provisions of state law to the contrary. See, for example, *Willis B. Anderson v. Commissioner*, 6 T. C. 956, acquiescence C. B. 1946-2, 1; *Francis A. Parker v. Commissioner*, 6 T. C. 974, acquiescence C. B. 1946-2, 4; *Felix Zukaitis v. Commissioner*, 3 T. C. 814, acquiescence C. B. 1944, 31; *R. E. Wing v. Commissioner*, 17 B. T. A. 1028, acquiescence C. B. IX-1, 59 (1930); *Alfred T. Wagner v. Commissioner*, 17 B. T. A. 1030, [*3] acquiescence C. B. IX-1, 56 (1930); and *Albert Kahn v. Commissioner*, 14 B. T. A. 125, acquiescence C. B. VIII-2, 27 (1929).

In *Commissioner v. Frances E. Tower*, 327 U. S. 280, 90 L. Ed. 670, 66 S. Ct. 532, 1946-1 C.B. 11, Ct. D. 1670, C. B. 1946-1, 11, the Supreme Court of the United States stated in part:

But Michigan cannot by its decisions and laws governing questions over which it has final say, also decide issues of Federal tax law and thus hamper the effective enforcement of a valid Federal tax levied against earned income.

While the Court was specifically concerned with the effect of Michigan law on Federal income tax matters, the principle stated is equally applicable to the law of other states. Further, in I. T. 3986, C. B. 1949-2, 108, it was also recognized that, even though a partnership is valid under state law, such "partnership" need not be recognized for Federal income tax purposes. Compare section 5 of Mimeograph 6767, C. B. 1952-1, 111, at 118, and *section 1.704-1 (e) (2) (viii)* of the Income Tax Regulations relative to the effect of state law as to the disabilities of minor children.

Although prior rulings in this area have not been specifically revoked, they have clearly [*4] been overruled by the later court decisions. Accordingly, the fact that a husband and wife could not legally become partners under state law does not necessarily prevent the recognition of the partnership for Federal income tax purposes. Conversely, following the reasoning in the *Frances E. Tower* case, *supra*, the fact that an asserted husband and wife partnership would be valid under state law does not necessarily require recognition of such partnership for Federal income tax purposes.

To the extent the following rulings are contrary to the principle herein expressed, they are modified:

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