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Current Developments in Taxation

Albert J. Gould

Kenneth L. Smith

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no evidence in the record to support such statements. In many of those instances the lawyer should have known that he would have no such evidence. Such practice should not be tolerated, because the counsel involved is not behaving with candor and fairness. Undoubtedly it is true that a fact-finding body often gets confused about what it hears in the statements of counsel as distinguished from what it hears from the witness stand.

Astute trial counsel often has the Court Reporter transcribe the opening statement of the opposition. This can be of material benefit later on a closing argument where the opposing counsel has made wild assertions in his opening statement. Many Reporters do not record the opening statements unless specifically asked. Why this is true is not known, because an opening statement is a part of a trial to the same extent as any part, and cases have been reversed because of improper opening statements.

It must always be remembered that an improper opening statement, as well as any other improper conduct in a trial on the part of counsel, might lead to a mis-trial, a nullification of any verdict obtained, and in some cases disciplinary action for unethical conduct.

A good rule for an attorney to follow in making an opening statement, or in handling any other phase of a jury trial, is never to resort to any means or conduct which he would not honestly expect and desire the opposition to employ against him under the same circumstances.

CURRENT DEVELOPMENTS IN TAXATION

BY ALBERT J. GOULD AND KENNETH L. SMITH

of the Denver Bar

INVOLUNTARY CONVERSION OF PROPERTY

On August 20, H. R. 3590 was passed by the Senate amending Section 112(f) relieving owners of property involuntarily converted of the troublesome requirement of tracing the proceeds from the converted property into the replacement property. The pending bill will make it possible for taxpayers to purchase replacement property before receiving the proceeds from the converted property. The bill will also relieve the hardship caused by the holding in the *Ovider Realty Co.* (Dicta, August, 1951) in which part of the proceeds from converted property used to pay off indebtedness on the converted property was taxed.

SPLITTING A BUSINESS INTO TWO OR MORE CORPORATIONS

In view of the modern tendency of splitting a business into various corporations, resulting in an excess profit tax credit for each corporation, the application of Section 45 is significant.

Section 45 provides: "In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Commissioner is authorized to distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organization, trades, or businesses."

Even though the regulations under Section 45 state that the purpose of the Section is not to effect a result equivalent to a computation of consolidated net income under Section 141, the Commissioner has contended that Section 45 should apply where several organizations are under common control. In the case of *Grenada Industries, Inc.*, 17 T. C. No. 28, four organizations were owned or controlled directly or indirectly by the same interests, but the Court holds that the allocation of the income of one to another was arbitrary and not authorized under Section 45 (except in one instance). The Court held that despite the intertwining relationships, one company paid and received fair market prices as though its transactions had been carried on with strangers and, the Court stated, "No more could be expected of it".

The Court further stated: "The purpose of Section 45 is not to punish the mere existence of common control or ownership but to assist in preventing distortion of income and evasion of taxes through the exercise of that control or ownership. It is where there is a shift or deflection of income from one controlled unit to another that the Commissioner is authorized under Section 45 to act to right the balance and to keep tax collections unimpaired".

The proposed Revenue Act of 1951, passed by the House and now in the Senate, provides among other things that there shall be only one excess profit tax credit allotted to a group of corporations having a designated common ownership. The details of this act have not been resolved and it is not determined what percentage of ownership will apply.

NEGLIGENCE AND RESPONSIBILITY IN RESCUE CASES¹

FRANCIS K. RISKO and MAXIM E. EHRLICH *

"As a consequence of the high regard for human life which is prevalent in all civilized societies, it has become a well settled principle of our law that the rigor of the rules incident to the doctrine of contributory negligence will be relaxed in favor of one who sacrifices himself in the rescue of a fellow man in distress."²

¹ This article deals only with rescue of persons.

* Written while students at the University of Denver College of Law.

² 9 Va. Law R. 376 (1922).