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Current Developments in Taxation

Albert J. Gould

Kenneth L. Smith

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Current Developments in Taxation

CURRENT DEVELOPMENTS IN TAXATION

BY ALBERT J. GOULD AND KENNETH L. SMITH

of the Denver Bar

FAMILY PARTNERSHIP

While the community property law has eliminated the family partnership issue so far as the Federal Government is concerned from the beginning of the year 1948, family partnership law is important from the standpoint of the State of Colorado which, however, follows for the most part the federal decisions. For these reasons we shall continue to cite family partnership cases.

In *Crosley v. Campbell*, U.S.D.C., N.D. of Ill., 11/17/49, where a son was involved, and in *Green v. Arnold*, U.S.D.C., N.D. of Tex., 10/11/49, where two minor daughters were involved, and in *Trapp v. Jones*, U.S.D.C., W.D. Okla., 12/2/49, where a son was involved, each of these courts held the partnership valid because all partners in each case controlled their share of the profits and there was evidence of a bona fide intent to form a partnership.

In *Morris*, 13 T.C. 127, a wife contributed her capital as a limited partner from funds given to her by the husband without any restrictions upon her use thereof. Although, being a limited partner, she performed no services, the partnership was upheld following the *Culbertson* case. Apparently, we may conclude now that the capital contribution of the wife may be made from funds given to her by the husband without restriction as to her use thereof, provided the husband retains no control of her share of the partnership profits and the facts indicate an intent to form a bona fide partnership.

SELLING APPRECIATED CORPORATE ASSETS

In *U.S. v. Cumberland Public Service*, 1/9/50, the U.S. Supreme Court in effect held that a sale of assets by stockholders after liquidation will be imputed to the corporation only if in fact they act as the corporation's agent in making the sale or if the sale plainly is a sham and actually constitutes a sale by the corporation. Anyone having this problem should compare this case with *Court Holding Company* case, 324 U. S. 331, where the court ruled that a sale by stockholders was a sale by the corporation.

EDITOR'S NOTE: Inasmuch as the Board of Governors of the Colorado Bar Association decided as an economy measure, to discontinue the loose leaf service, the monthly comments of Messrs. Gould and Smith will henceforth be carried as a regular department of Dicta.