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Current Developments in Taxation

CURRENT DEVELOPMENTS IN TAXATION

BY ALBERT J. GOULD AND KENNETH L. SMITH

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PENALTY FOR UNDERESTIMATING TAX

In *Wall*, T.C. Memo 4/18/50, the Tax Court approved the 6% penalty of the difference between the amount paid on the declaration and the increased tax as finally determined by the Commissioner. This case in effect holds that the penalty will apply even though the tax payer in good faith paid more than 80% (66 $\frac{2}{3}$ % for farmers) of the tax computed by him.

ALIMONY DEDUCTIONS

Without citing cases it is plain at this time that the property settlement agreement should be incorporated in the interlocutory decree verbatim. Briefly, an alimony agreement must be incident to the *decree* of divorce, not merely incident to the divorce.

PARTNERSHIP INTEREST A CAPITAL ASSET

In GCM 26379, IRB 1950-10, the Commissioner finally recognized that the sale of a partner's interest is a sale of a capital asset rather than a sale of an undivided interest in each specific partnership asset.

The selling partner's share of income for the current year to the date of sale is taxable income to the selling partner but is added to the capital contribution of the selling partner in determining the cost basis of his interest in the partnership. The amount of the selling price in excess thereof is a capital gain.

RENTAL DEPOSIT

In *Lyon*, 97 F. 2d 70, the tenants paid a deposit of \$75,000 to the landlord upon which the landlord paid 6% interest during the term of the lease and applied the \$75,000 to the payment of rental for the last year of the term. There were no other restrictions on the landlord's use of said sum and said deposit was held to be income to the landlord in the year when received. If the lease had provided that the \$75,000 was to be returned to the tenant at the end of the next to the last year of the term, said sum would not have been income to the landlord in the year when received. Anyone interested in this problem should check the late decisions.