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CURRENT DEVELOPMENTS IN TAXATION

BY ALBERT J. GOULD AND KENNETH L. SMITH

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A LITTLE FRAUD, A LOT OF GRIEF

A taxpayer made substantial deductions for traveling and living expenses which were plainly improper and the fraud penalty was applied to the entire deficiency although the part of the deficiency due to the fraudulent deductions was relatively small. *Imeson*, 14 T. C. No. 130.

PARTNERSHIP CONTINUITY

Every partnership agreement should contain a provision providing either that the partnership shall continue in the event of the death of a partner or that it may continue at the election of the surviving partners. With such provisions permitting a continuation of the partnership, the share of a deceased partner's income for the fiscal year in which death occurs will be determined at the end of the fiscal year and not at the date of death.

"Congress sought to cause income from partnership business to be reflected in individual returns according to a fair and convenient plan geared to the normal mechanics and accounting practices of partnership business. . . ." *Girard Trust Co. et al., Execs., v. U. S.* (C. A. 3rd)

The reason for the above is emphasized in the case of a partnership which had a fiscal year ending January 31 and a partner died December 5. If the above rule did not apply, his individual return would include his share of the income for the previous year ending January 31 and his share of the income at the date of death which would group almost two years' income in one calendar year. But if the partnership continued under either of the suggested provisions, no income would be taxable to the partnership for the share of the year immediately prior to death until the end of the succeeding fiscal year.

COMMISSIONER'S PRESUMPTION IS NOT EVIDENCE

In *A & A Tool & Supply Co.*, (C. A. 10th), the Court of Appeals reversed the Tax Court although the evidence was far from satisfactory because the Tax Court "may not arbitrarily discredit and disregard unimpeached, competent and relative testimony of a taxpayer which is uncontradicted."

In this case the witness owned the property and testified that the reasonable rental value was \$3,000 per year. The court held that since there was no evidence to the contrary, and since the presumption in favor of the Commissioner's findings is one of law only and is not evidence, there was nothing to support the Tax Court finding that the reasonable rental value was \$600 instead of \$3,000, as testified by the only witness. The foregoing rule is of utmost importance to all trial practitioners before the Tax Court.

THE INVENTORY AND FINAL REPORT

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The intent of this discussion is to cover the most overlooked details in the preparation of the inventory and closing an estate. Grace Whitcomb, Inventory Auditor and Bookkeeper, Denver County Court, states that the inventory is the most important document filed in the county court.

The inventory is the basic document: for determining sufficiency of the bond, whether property is being or has been administered upon; for determining the sufficiency of orders for sale or disposition of assets; for auditing fiduciary accounts, intermediate and final reports; for clearance with the Inheritance Tax Department upon closing; to bar creditors;¹ and for fixing docket fees.² Unless all property is inventoried, it will be necessary to reopen the estate, inventory or correct the original inventory to include the omitted property, obtain clearance from the Inheritance Tax Department, and then reclose the estate.

All property administered upon and distributable through the Colorado county court, including the property received from ancillary administration elsewhere, should be inventoried. Property which is not part of the estate and which is not to be administered upon through the Colorado county court, as well as property held in joint tenancy and life insurance policies payable to a specific beneficiary (not the personal representative or estate), should not be inventoried.

Values reported should be those at date of death of decedent and at the date of appointment of a guardian or conservator. Income accumulated to date of death of decedent and to date of appointment of a guardian or conservator should be dealt with as corpus. If property was being purchased under contract, the gross value of the property should be stated with the balance due being treated as an encumbrance. In reporting an interest in a partnership, the trial balance, net worth statements, or account-

¹ COLO. STAT. ANN., c. 176, § 207 (1935).

² COLO. STAT. ANN., c. 66, § 23 (1) (1935).