

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 272

September 17, 1964

PARTNERSHIP: TENANCY IN COMMON – PROPERTY PURCHASED FOR INVESTMENT

Syllabus:

Several individuals purchased unimproved land for investment purposes and not for the active conduct of a business. They held title to the property as tenants in common. Each tenant paid his own share of the taxes and mortgage payments. The land was subsequently sold in its original unimproved condition. Each of the taxpayers made a timely election to report the sale on the installment method in his individual return.

Notices of proposed assessment were issued on the grounds that a partnership was created by reason of the co-ownership of the land and that a proper and timely partnership election had not been made, consequently the taxpayers were not eligible to report on the installment method.

May property purchased for investment purposes be held by tenants in common without creating a partnership relation?

The definition of the term "partnership" in Section 17921 is the same as in Section 761, Internal Revenue Code. Similarly, the state and federal regulations pertaining to the respective code provisions are substantially the same.

Section 17921 does not define a partnership as such but does authorize the Franchise Tax Board, by regulation, to exclude certain types of partnerships from the provisions of Chapter 10 (Partners and Partnerships). One of the types of partnerships so excluded is the so-called "Investing Partnership." The regulations (Reg. 17921(a)(2)(ii)) provide that if certain requirements are met the partnership may elect to be excluded by complying with the rules set forth therein (subdivision (iv)). The existence of a partnership must, however, be established before the regulation becomes applicable. The cases uniformly hold that the ownership of property by tenants in common does not make such tenants partners in the absence of an intention to become partners. Charles E. Tibbals, 17 TCM 228; Coffen v. United States, 120 F. Supp. 9, 54-1 USTC 9323; Gilford v. Commissioner, 11 TCm 175 aff'd 201 F. 2d 735, 53-1 USTC 9201; Estate of Appleby, 41 BTA 18, aff'd 123 F. 2d 700, 41-2 USTC 9773. This is true even though the property is maintained, kept in repair and rented or leased. Estate of Appleby, supra; Regulation 17921(a)(1). The intent to assume a partnership relationship may be ascertained by an agreement between the tenants or by their conduct toward each other and third parties. Commission v. Culbertson, 337 U.S. 733; Maiatico v. Commissioner, 183 F. 2d 836, 50-1 USTC 9343.