CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 156

April 21, 1955

PARTNERSHIP INCOME: DEATH OF A PARTNER: DECEDENT’S SHARE OF INCOME

Syllabus:

The death of a partner does not terminate a partnership for tax purposes where the partnership agreement provides that it is to continue. Income becoming distributable subsequent to decedent's death is taxable to the person who succeeds to the decedent's right to income.

Decedent and his two sons were partners in a partnership which reported on a January 31 fiscal year basis. The partnership agreement specifically provided that in the event of decedent's death the partnership would not be dissolved but that his wife would continue in his place. On May 20, 1953 decedent died and his wife succeeded to his interest. Advice is requested as to whether, for tax purposes, the death of the partner terminated the partnership.

The courts in construing Section 126 of the Internal Revenue Code subsequent to 1942 (Section 17831-17837 of the Personal Income Tax Law) recognized that Section 126 would prevent the "bunching" of income in the period ending with death. They generally concluded that although a technical dissolution would occur, the partnership accounting period would not terminate where the agreement so provided and income subsequently becoming distributable to the decedent would be taxable under Section 126 to the person who acquired the right to the income. Girard Trust Company v US., 182 F2d, 921; Comm. v Estate of Samuel Mnookin, 188 F2d 89; Comm. v Tyree's Estate, 20 TC 675, aff'd 215 F2d 78; Northern Trust Co. v Jarecki, 123 F Supp 623. Section 15031 of the California Corporation Code provides that the death of a partner causes a dissolution of the partnership. Section 15030 provides on dissolution that the partnership is not terminated but continues until the windup of partnership affairs. In Ransohoff's Inc., 9 TC 376, the court concluded that the California statutes (supra) did not render ineffective a specific agreement between partners to continue the partnership. In Wood v Gunther, 89 CA2d 718, the court held that partners may agree in the partnership agreement, or by subsequent agreement, that the firm shall not be dissolved by the death of a partner. Under the circumstances it was concluded that Section 15030 and Section 15031 of the Corporation Code were not applicable. Consequently, partnership income earned prior to the decedent's death is taxable to the person who succeeds to the decedent's right to income in the period of distribution by the partnership. The partnership earnings for the period subsequent to the decedent's death are taxable to the wife as under the partnership agreement she succeeded to her husband's interest upon his death.