11 T.C. 696 (1948)

A taxpayer cannot avoid income tax liability by assigning income that he or she has a right to receive to another person, including a spouse; however, income generated by a legitimate partnership is taxable to the partners, not necessarily to the family member who may have indirectly facilitated the partnership's formation.

Summary

The Tax Court addressed whether income from two cafeteria partnerships and pinball machines was properly taxed to the petitioner. The court held that the income from the partnerships, in which the petitioner was not a member, could not be attributed to him. However, the income from the pinball machines, which the petitioner attempted to assign to his wife, was taxable to him because he retained control over the underlying income-producing activity. This case illustrates the distinction between legitimate income-generating partnerships and mere assignments of income.

Facts

The petitioner, Mr. Morrison, owned a restaurant. His wife, Nancy Allen, was involved in two cafeteria partnerships (Memphis and Sefton). Mr. Morrison was not a partner in either cafeteria business. Mr. Morrison also claimed he gave his wife the "concession" for pinball and record-playing machines in his restaurant, but he originally arranged for the owner of the machines to have the concession.

Procedural History

The Commissioner of Internal Revenue assessed deficiencies against Mr. Morrison, arguing that income from both the cafeteria partnerships and the pinball machines should be taxed to him. Mr. Morrison petitioned the Tax Court for a redetermination of the deficiencies.

Issue(s)

1. Whether the income from the Memphis and Sefton cafeteria partnerships should be taxed to the petitioner, Mr. Morrison.
2. Whether the income from the pinball and record-playing machines should be taxed to the petitioner, Mr. Morrison.

Holding

1. No, because the income was earned by partnerships in which the petitioner was not a member and from which he was not entitled to receive anything.
2. Yes, because the petitioner did not give his wife a capital asset producing income but merely allowed her to take a portion of what he was entitled to receive for permitting the machines to be in his restaurant.

Court's Reasoning

Regarding the cafeteria partnerships, the court distinguished this case from family partnership cases like *Commissioner v. Tower* and *Lusthaus v. Commissioner*, where husbands attempted to avoid taxes on income they earned. Here, Mr. Morrison did not earn the income from the partnerships, and there was no evidence that capital was a material income-producing factor attributable to him. As for the pinball machines, the court applied the assignment of income doctrine, citing *Lucas v. Earl*, stating,