17 T.C. 1532 (1952)

r
r

A surviving partner who is also the administrator of a deceased partner's estate is liable for income tax on the partnership income he controls and uses for his own benefit during the estate's administration, especially when the court determines he owns the deceased's share.

r
r

Summary

r

L.A. Westerweller, the surviving partner of Midway Motors, was appointed administrator of his deceased partner's estate. Westerweller argued that the partnership estate was a separate taxable entity and filed fiduciary returns accordingly, only reporting as personal income the amounts he withdrew. The Commissioner determined that all income from the business was taxable to Westerweller as community income, except for the share awarded to the deceased partner's estate. The Tax Court sided with the Commissioner, holding Westerweller liable for the income tax, as he controlled the income and used it for his benefit. The court emphasized that tax liability cannot depend on the individual's whim.

r
r

Facts

r

L.A. Westerweller and J. Charles Prins operated Midway Motors as equal partners. The partnership agreement stipulated that upon a partner's death, the surviving partner would purchase the deceased's interest. Prins died on May 8, 1947. Westerweller was appointed administrator of the partnership estate. Westerweller tendered a mortgage and note to Prins' executors, but they refused the tender. Westerweller petitioned the Probate Court for specific performance. The court eventually ruled in Westerweller's favor, granting the executors the option of receiving interest or a share of the net profits. Westerweller ultimately paid Prins' estate $19,445.87, and the estate conveyed the decedent's interest to Westerweller.

r
r

Procedural History

r

The Commissioner of Internal Revenue determined deficiencies in Westerweller's income tax for 1947 and 1948. Westerweller petitioned the Tax Court, arguing that the partnership estate was a separate taxable entity. The Tax Court upheld the Commissioner's determination. Both parties appealed the Probate Court's judgment, and the Supreme Court of Washington affirmed the trial court's ruling.

r
r

Issue(s)

r

Whether the income of a business operated by a surviving partner, who is also the administrator of the deceased partner's estate, is taxable to the surviving partner as community income.

r
r

Holding

r

Yes, because the surviving partner controlled the income, used it for his benefit, and ultimately was determined to own the deceased partner's share, thus solidifying his claim to the profits.

r
r

Court's Reasoning

r

The Tax Court reasoned that the income was taxable to Westerweller because he controlled the business and its income, and he personally benefited from it. The court found that Westerweller's actions indicated he considered himself the owner of more than one-half of the business's income after November 5, 1947. The court stated that

