THE CURRENT TAX PAYMENT ACT

MERLE H. MILLER*

When they write the history of this period, 1943 will go down as the year in which there was the most individual tax litigation of any year in the history of the country. Of course, you know why that is—all because a man over at Macy's, an idea man, Beardsley Ruml, Treasurer of Macy's, who has no duties, gets paid for coming and sitting with his feet on the desk and thinking up ideas for Macy's, thought up ideas for not only Macy's but for other people. He became obsessed with the idea that there was something wrong with our method of collecting taxes. He was confirmed in that when one of Macy's executives came back to them after he had been retired—they retired him and had a big send-off party for him, gave him a pension for the rest of his life—and then at the end of February, at their February meeting, this man came back to the board of directors and said, "You have done a big thing. I can't tell you how much I appreciate the pension you have given me, but the fact of the matter is I haven't the money to pay my tax on my income for last year."

Macy's thought there was only one way to retire a man and that was to retire him, and if he has to ask for someone else to pay his tax, he isn't retired, so the directors voted money to pay his tax for the preceding year.

According to Beardsley Ruml that was wrong. He was confirmed in that opinion the following year when the same man came back and said, "This time I am embarrassed. I haven't the money to pay the tax on the money you gave me last year to pay the tax on my income the year before."

That is the origin of the famous Ruml pay-as-you-go plan. Actually two things needed to be done: one was to withhold money from a lot of people who were in the income tax brackets who had never been there before, to keep them from spending that money. Those people had been raised in an economy where they were not taught to save, but to buy on the installment plan, so how could you expect people, all at once to reverse and start saving money for next March 15?

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* Of the Indiana Bar, Indianapolis. An address at the mid-winter meeting.

I remember one of the elevator boys in our building asked me how much his tax would be. He told me he made around $20 a week, and he was single, with no dependents. When I told him his tax was $80, he almost dropped out of the elevator. He said he had never seen $80 in his life.

That was multiplied millions of times over the country, so there was a real need for withholding from these people who weren't educated for saving for March 15. We got the idea from Mr. Ruml that in order to have the withholding, we also had to be current. That doesn't follow. We could have the withholding to pay last year's taxes payable this year, as well as anything else, but the great movement got started to have it current, and from there on it was a political fight.

The outcome of that discussion and fight is the same as the outcome of most things when they become political controversies. We have a bill that no one is satisfied with. We have a bill that is very complicated, and of course, any bill that tried to accomplish what this bill tried to accomplish would necessarily be complicted because of any rule, the simplest rule, when applied to a complicated rule of economy becomes complicated.

Well, we have, then, the new current tax payment act. I say it became a political matter, and that accounts for the twenty-five per cent carry-over that wasn't forgiven. There isn't any justification for that.

The question at the time of the passage of the act wasn't whose idea was best, but whose idea was going to pass. At that time they thought there was a lot of political advantage in having one party or the other sponsor and get through this pay-as-you-go plan. I doubt whether they still feel that way. I doubt whether in the coming campaign any party is going to jump up and claim the sponsorship of our present current tax payment act.

That is the background. That is what they were trying to do. They were trying to bring us all current and have everybody pay their tax as they go. The way they tried to accomplish that was this. They decided that it would be manifestly unfair to forgive everybody's tax for a single year. You can see that very easily. Here is A who has a big income for 1942, a little income in 1943. Here is B who has a little income in 1942 and a big income in 1943.

If you select either of those years to forgive, you have done an injustice to A or B. So they forgave one year all right, but said as between those two years, we are going to just forgive the smaller year. Then they went ahead and the rest of it was very illogical. The rest is the political compromise. They decided to forgive 75% and carry over the 25%. All that amounts to is an increase in tax for 1943. If you are going to increase taxes in 1943-44 the simplest way is to increase the rates for those years, instead of making it depend back on something that happened in 1942.

Actually what they have done, they have increased your 1943-44 taxes, but the increase is measured by something that happened back in 1942, or some time in 1943.

It is important to know what was the consideration behind this, but more important to know the mechanics used to accomplish this because in the accomplishment of this, they have created situations which will cause more litigation with respect to 1943 than any other tax year in our history, and I expect any other tax year in the future.

Let me give you one instance of how litigation will be increased. Normally the question of whether income is received on December 31, 1942, or January 2, 1943, might be important. Maybe one year is in a higher tax bracket than another, but let's take a man who had $50,000 income in 1942 and $45,000 in 1943, and of that $45,000, $20,000 is this item that could be shifted from one to the other. In normal times, shifting of $20,000 back to 1942 would merely increase the rates applicable to that income. But now, if you throw that back into 1942, he loses the advantage of three-fourths of the forgiveness on that amount, and it will make four or five times the difference in tax that it would have in other years. There is just one instance of where the shift, that ever-present problem of shifting of income from one year to another, is going to make many times the difference with respect to the years 1942-1943 that it has in other years.

So the mechanics of how they went about this becomes mighty, mighty important. The first thing they did was to forgive all income tax liability for the year 1942. That is just all wiped off, as far as the act is concerned. All these increases that we are going to speak of are liability for the year 1943, but they may be measured by events and things that happened outside the year 1943.

1. We have 1942 lopped off; 1943 tax is then increased in two ways: first, if 1943 tax is greater than the tax for 1942, then we don't pay any attention as far as this first category is concerned. If 1943 tax is less than the tax for 1942, then they move enough over from 1942 to 1943 to make it equal to the 1942 tax.

I am talking about the mechanics of the thing now. That is just the way it works. They increase your 1943 tax to such an amount as will equal your 1942 tax, computed on the 1942 rates, and all the rules of 1942.

That, of course, does not include the Victory Tax, which is applicable in 1943, not applicable in 1942.

I am going to skim over this. That is the first increase in your 1943 tax, the amount by which 1942 exceeds 1943.

2. They increase your 1943 tax by one-fourth of the amount of your tax for 1942, or 1943, whichever is the lesser tax. That is the part that is not forgiven, and one-half of that amount is payable this next March 15, and the other half is payable March 15, 1945.

There is one other thing that we have to take up, and then we will take these up item by item. That is the windfall tax. They wanted to catch the war profiteers so they decided that anyone who was making more than $20,000 in excess of his best year for the period 1937 through 1940, should not have his tax liability forgiven with respect to the tax on that excess amount. In effect they said that a taxpayer should take his best income for the base period, add $20,000 to that income, and then compute the tax on that amount under the 1942 or 1943 rate, depending upon which year was forgiven. If the seventy-five per cent of the lesser year's tax which was forgiven amounts to more than the tax computed on the income for the best year in the base period plus $20,000, then that excess is the windfall tax which is to be added to the regular 1943 tax.

That all sounds like a great maze, but I have some examples here that I want to go through, and I think that as we go through these examples that will clear up. You will find a summary of these general rules on the cover page of the pamphlet you have received. (See Appendix A)

Following this there is supposed to be a discussion period and questions. If you have any general questions, if you will save those for the discussion period, as we take each of these items down, I will stop at the end of each item and make sure you understand as far as we have gone.

The easiest way of helping a client who comes to you with one of these problems is to fix out the columns just the way we have here, and to set down the tax and then just run right through it. There isn't any shortcut way you can advise a client what to do without going through this painful process that we are going to do here. Here are four examples that will illustrate the adjustments to be made in the average case.

ADJUSTMENTS APPLICABLE TO EVERYONE

Civilians

	1 1942 Tax	2 1943 Tax (including Victory Tax)	3 Add excess of 1942 over 1943	4 Add 25% of lesser year's tax, or excess of lesser year over $50 if less	5 Total Tax for 1943 (except for Windfall Tax)
A	60	80	000	10	90
B	600	200	400	50	650
C	14,000	15,000	000	3,500	18,500
D	15,000	14,000	1,000	3,500	18,500

Now, Client A up there—I am sorry I put him in because he illustrates a principle that it is difficult to understand, and is not very important. If you don't understand it, don't worry too much.[1]

Client A comes in, and he had a tax—remember, we are talking all the time about taxes. We are not talking about income, but taxes. Every figure along here is the tax that is shown on his return.

For 1942 he had a tax of $60; for 1943, including Victory Tax, he had a tax of $80, and he wants to know what to do about all this stuff.

Well, the first thing is to add the excess of 1942 over 1943, and that is 0. Next column, add 25% of the lesser year, and that would normally be $15. The lesser year is $60; 25% of that would be $15. There is a provision in the act, however, that whenever the 25% is greater than the difference between the amount of tax and $50, you just subtract $50 from the amount of tax, and away you go.

1. This and succeeding illustrative problems are set forth in Appendix A, p. —.

The reason for that was this: a lot of folks filed returns with $5, $10, $20, tax owing, and when you went back and tried to compute 25% of all that, they decided it was too much trouble. So Congress said the first $50 of tax is forgiven, off it goes, don't worry about that.

Then came this situation: What if a man has $51 of tax. You have forgiven everybody with $50 of tax. Because he has one dollar more, are you going to take one-fourth of $51? Congress said no. Just include that one dollar. That is what they have done. Here is a man with a tax of $60, but since all his neighbors are forgiven $50, they forgive him $50, and in Column 4 we add the difference between $50 and $60. I am sorry but it is in the law. I don't think you will have any trouble. To get the total tax, you add these columns across. The total tax is 1943 tax of $80, and column 4 of $10, giving a total tax of $90. Of that $90, $80 has been paid, or the remainder is due March 15, plus one half of column 4, $5 is due March 15; the other $5 is due March 15, 1945.

Let's leave A and go to B. B had a tax in 1942 of $600. His tax in 1943 was $200. Well, we go right across, add the excess of 1942 over 1943. That is $400. Add 25% of the lesser year, the lesser year being $200, 25% of that, $50, will give a total tax of $650. Just as simple as anything can be.

C there had a tax of $14,000 in 1942, a tax of $15,000 in 1943. When you add the excess of 1942 over 1943 that is nothing, because $14,000 is not greater than $15,000. 25% of the lesser year, that is $14,000, a fourth of $14,000 is $3,500. You get a total tax of $18,500. Of that amount, of course, $15,000 has to be paid March 15, plus one half of the $3500, $1750, March 15; the other $1750, March 15, 1945.

D is just the reverse of that, and illustrates that you come out the same whether your higher tax is for 1942 or 1943. D had a tax of $15,000 in 1942; $14,000 in 1943. We are always working with the 1943 tax. We add the excess of 1942 over 1943, which is $1,000. We add 25% of the lesser year; $3500, and come out with the same figures $18,500. That is the elementary working of this thing, and it is simple so far, I take it.

Now, are there any questions before we go into the other adjustments?

QUESTION: Does that represent the tax for the two years?

MR. MILLER: That is right. A, B, C, and D—their liabilities are their total liabilities up to December 31, 1943. They may pay it later on, but if they die today, what they owe their government is this amount plus the tax on income received so far this year. Under the old law, if they died today, they would owe for last year. This is their total liability right to the end of 1943. This is the total liability.

QUESTION: What becomes of the payments that were made in 1943 and 1942?

MR. MILLER: 1942 tax liability was wiped off the books, all payments for 1942 tax liability made in 1943, or made any time, are applied to the 1943 tax liability. That is automatic. You men will receive in the mail statements from the collector telling you what you have already paid on your 1942 tax, and you merely attach that to your final 1943 return and take credit for that against your 1943 tax liability.

MR. BAMBERGER: It might be proper at this stage to point out that there were three or four instances where what was shown on the slip was not correct.

MR. MILLER: The act provides any payments made up to June 15 are payments on the 1943 tax liability. This slip shows the payments made up to June 15, 1943. They tell you how much you paid on the 1942 tax, and you apply it on the 1943 liability.

Any other questions?

MR. IRWIN: Can we say that the form 1125 is merely a record of what tax liability for 1942 you paid before the change in the law?

MR. MILLER: That is right. It is just a memorandum. Anything paid after that goes on 1943, automatically. You are supposed to keep track of that yourself.

MR. MILLER: Now, you can see that Congress was hard put when it came to deal with joint returns, because husband

and wife have the option from one year to another, to elect whether to file joint or separate returns. If they file joint returns one year, they can file separate returns the next. Then the problem arose as to how to compute the forgiveness of tax where the husband and wife have changed from separate to joint or joint to separate.

Congress said that the easy way to do it is where they file separate returns, add it up, take the total and compare that with the joint returns. It is very simple, but makes a difference which you do, and that is what I want to illustrate with these examples.

I want to note here that this act that we are talking about is not a part of the internal revenue code which is unfortunate, but it isn't. It is a separate act, and applies only to the year 1943, so they didn't put it in as a part of the code.

Everything we are talking about here is found in Section 6 of the Current Tax Payment Act, so when you start looking for the law on this thing, you can't look in the code. In the code you will find all the stuff about current withholding and declaration of your estimated tax. That goes on from year to year. But the forgiveness of tax, and adjustments to 1943 tax, just applies to one year, and they left that out of the code. I think you will find in your services, however ,that the Current Tax Payment Act is generally put right after Section 58 of the code, relating to declarations of estimated tax. But if you are citing this, it is all Section 6—a, b, c, d, etc., of the Current Tax Payment Act.

Now, as to joint returns; let's look at husband and wife there under E, in the schedule of examples. Wherever you find a single entry for husband and wife, it is an indication that husband and wife combined and filed joint returns. See table on page 107.

For the year 1942 husband and wife filed separate returns. Husband had $100 tax, and the wife $60. But the year 1943, they had a blessed event, and the wife stopped work; husband got a raise in salary. (You can believe the blessed event—the raise in salary may be more difficult to swallow.) The total tax on the joint return for 1943 was $120.

Now, for making these adjustments in 1943, the act provides that you add the two taxes together in 1942 for a total of $160, and you compare that $160 with the $120

Joint Returns

	1 1942 Tax	2 1943 Tax (including Victory Tax)	3 Add excess of 1942 over 1943	4 Add 25% of lesser year's tax, or excess of lesser year over $50 if less	5 Total Tax for 1943 (except for Windfall Tax)
Husband	100				
E		120	40	30	190
Wife	60				
Husband	100	120	—0—	25	145
F					
Wife	60	-0-	60	-0-	60
Husband		1,200			
G	1,000		-0-	250	1,650
Wife		200			
Husband	800				
H		1,400	-0-	250	1,650
Wife	200				

shown on the joint return. When we do that in column 3, we add the excess of 1942 over 1943, that is $40, $160 for 1942 and $120 for 1943; then you add 25% of the lesser year, that lesser year being 1943, $120, you add the $30 there, total tax of $120, plus $40 plus $30, $190.

Now, the next is the same husband and wife, but they decided to continue filing separate returns, and in this one case it made a difference. The husband paid $100 for 1942, the wife paid $60. The wife quit work in 1943, the husband got an increase in salary, raised him to $120. He just filed a separate return, so we go through and figure the husband's tax just as though they weren't husband and wife. The excess of 1942 over 1943 for the husband was 0, 25% of the lesser year, 25% of $100 was $25, making the husband's total tax $145. For the wife, the excess of 1942 over 1943, was $60, because she didn't make anything in 1943. If you didn't make anything in 1943, the effect is you don't have anything to be forgiven because the 1942 tax becomes the 1943 tax.

The 25% of the lesser year's tax is 0, the lesser year was 0, so the wife's tax there was $60. By filing separate returns, the family paid $205 on the same income that family E paid $190 on. It merely illustrates that where husband and wife have fluctuating incomes you have to go through and figure each way to decide whether they should file joint or separate returns. As we see later on under the windfall tax, that becomes more important, and it may well be by paying more income tax by filing a joint return, you will ultimately save a great deal of tax.

Is there any question on that?

QUESTION: That will never happen again after that?

MR. MILLER: That's right, and the reason that is important right now is that although husband and wife may have filed joint or individual declarations, they still have the option on March 15 of filing either a joint or separate return. Nothing they have done up to now precludes them from making the final election, March 15. If someone comes in and wants to know which to do, the only thing to do is figure it out. There is no shortcut but there is this indication where either husband and wife have fluctuating incomes, either because one stops work or one enters the armed service, or one inherits property or what not, then it will pay you to go through and compute the tax both ways and figure out what way is best for them to file their returns. Is there any question?

QUESTION: How about where the wife does not work in 1943? Is there anything to keep her from filing joint returns in 1943?

MR. MILLER: No.

QUESTION: Can a married man's exemption of $1200 be segregated $800 and $400 if they so desire?

MR. MILLER: In their separate returns under present regulations, they can allocate that any way they want to.

Is there any further question before we go on?

MR. SHAFER: Is the same thing true relative to filing proper estimate for husband and wife jointly?

Do they still have the same?

MR. MILLER: Your penalties for failure to file returns is ten per cent plus two and a half per cent of each installment that you should have paid in September, and also in December, plus 6% of the amount by which you fail to estimate your tax within 80%.

Do you all follow me? Of course, that estimated tax fits in here, but it is a little separate thing. Suppose we take that up during the question period.

MEMBERS OF THE ARMED FORCES.

Congress has been kind to members of the armed forces. In the first place, the pay they receive from the government, up to $1500, is excluded in their computation of taxable income.

The first $1500 they receive from the government goes out. However, if a man is a private and gets $600 a year, and has a thousand dollar income from other sources, it is only that which he receives from the government that goes out. He can't carry over any of that exclusion against his other income.

In addition you still have a $500 exemption if single, $1200 if married. This exclusion keeps that off the return, and then you compute the return like everybody else does.

Now, they also gave them this additional benefit when computing their liability on forgiveness of one year's tax: Let's take the case of a man who did not enter the armed forces and his tax was $800 for 1942 and $800 for 1943. In effect he would have three-fourths or $600 of his tax for 1942 forgiven. His neighbor had $800 tax in 1942, and then joined the armed forces in 1943, and didn't have any income to report. If we just followed the straight rule, the man who joined the armed forces would have to carry his 1942 tax over to 1943, and he would not have anything forgiven. Congress thought that that wasn't a fair way to treat those who joined the armed forces. So they said this:

In computing the amount by which 1942 exceeds 1943, the amount of tax which you carry over, a member of the armed forces will exclude earned income in computing the 1942 tax liability to compare against 1943.

In this one exception only, made for members of the armed forces, they said, "When you compare 1942 to 1943, to determine which is the greater tax, you will exclude earned income in 1942." That applies to everybody who joined the armed forces, up to and including December 31, 1943. There is no allocation or anything else, the fellow who slipped in the last day is as much entitled to it as anyone else.

MR. IRWIN: If I understand your former statement, that former tax is fully forgiven. If a man is a physician, had a large income in 1942, entered the service in 1943, make it on the first of January, if you want, you would only compute his 1943 taxes liable actually, but 1942, would be entirely forgiven and I am assuming his entire income is from his practice.

MR. MILLER: It would be entirely forgiven. It is forgiven as far as the comparison between the two years but you still would have the 25% to carry over. In his case, 25% of zero for 1943 would be zero, so he would have no tax for 1942 or 1943.

Let's go through the illustration. Look under Members of Armed Forces. That is Section 6-D, 1, of the Current Payment Act.

Members of Armed Forces

	(a) 1942 Tax after deducting earned income	1 1942 Tax	2 1943 Tax (including Victory Tax)	3 Add excess of 1942 over 1943	4 Add 25% of lesser year's tax, or excess of lesser year over $50 if less	5 Total Tax for 1943 (except for Windfall Tax)
B	100	600	200	-0-	50	250
C	13,500	14,000	15,000	-0-	3,500	18,500
D	14,500	15,000	14,000	500	3,500	18,000

Now we are going to take up Member B under the Armed Forces. When we had him he had $600 in 1942, and in 1943 he dropped to $200. The reason he dropped is because he entered the armed forces. Now, we are going to take B, and compute his tax.

I have assumed there that of the $600 tax for 1942, that if you excluded his earned income in that year, he would have only $100 tax. Each member of the armed forces is to take his 1942 tax return and exclude all earned income and compute the tax on the income that remains.

Now, the tax on B after we exclude earned income was one hundred dollars. That is in that first column. Then we go right on through with the rest as we did before. His tax for 1942 in that column is $600. Tax for 1943 is $200.

When we come to add the excess in Column 3 there, excess of 1942, over 1943, we compare the $100, with the

$200, the $100 which is tax after excluding earned income, and the excess of 1942 over 1943, for B in the armed forces is 0. We add 25% of the lesser year's tax, and in selecting the lesser year, we go back to the old camparisons—he is entitled to compare his actual tax in 1942 with the actual tax in 1943. The lesser year becomes 1943 for $200. We add the 25% there, $50, and B in the armed forces has a total tax for 1943 of $250, as compared with B up above, who is not in the armed forces, of $650.

Now, C and D go right along. I have taken C and D from up above there, to show how they would compute their tax if they were in the armed forces. I have assumed C to have a tax of $13,500 on his income after he excluded earned income.

Let me say right here that earned income is a technical term in the act, and it is defined in Section 25. It is the same item that you have been putting down there on your return where you take your ten per cent credit for earned income. You are presumed to earn $3,000 if that much comes in, whether from dividends or what not. Your earned income can never be more than $14,000. If you are in a business, involving the use of capital, it is presumed you don't earn more than 20% of the return on that business. When we apply that test to C, we find that his income after excluding his earned income is $13,500 for 1942, whereas his actual tax we recall was $14,000 for 1942.

His tax for 1943 was $15,000, and when we add the excess of 1942 over 1943, that is 0, one-fourth of the lesser year is $3500—gives a tax of $18,500, illustrating that for members of the armed forces who have income for 1943, in excess of their income for 1942, this special benefit provision has no application. It only applies where their 1943 tax is less than 1942.

That is brought out here by D. D had an income of $14,500 after we exclude the earned income tax, actual tax of $15,000 for 1942. Then for 1943, he had a tax of $14,000. This is the same as the D we had up above.

When we add the excess of 1942 over 1943, we look to the tax computed without the earned income in it, and that is $14,500 over $14,000, so the excess for column 3 is only $500, whereas up above there, the excess had been $1000. 25% of the lesser year is $3500, and his total tax is $18,000 because of this special provision for those in the armed forces.

MR. MCCRACKEN: The man with the $800 tax in 1942 and no tax due in 1943 because he is a member of the armed forces, but who had paid the entire $800, can he be entitled to a refund?

MR. MILLER: Yes, he can get a refund, of the $800 so he would pay no tax in 1943, in the case you give, because the lesser year being 0, we can go through and take a particular year and find his tax would be 0.

MR. ALSOP: You mention the man going to the armed forces December 31, 1943, assuming his income is entirely earned, his tax for 1942 is $400, his tax for 1943, his earned income, $600.

MR. MILLER: Here is a man who joined in December 31, 1943. His tax after deducting earned income for 1942 is $400, for 1943 is $600. This man has no excess of 1942 over 1943 so he gets no benefit from this provision. His tax, total tax, is $700. If he had stayed out of the armed forces, his tax would still be the same.

MR. ALSOP: I understood you to state that man in civilian life in 1942 had a tax liability of $800. He then joined the army in 1943 and had no tax liability in 1943. He paid his $800 tax on 1942. Is that correct?

MR. MILLER: Let's get our case. Let's take our physician here. Here is a physician who had a tax of $800 on his earned income in 1942. He joined the armed forces January 1, 1943, had no taxable income in 1943. His tax for 1943 becomes zero.

QUESTION: Would he not have to pay the greater of the two years, the $800 for 1942?

MR. MILLER: No, that is the one thing where this works. You don't have to do that. The only thing he has to pay here would be the one-fourth of the lesser year which being 0 would be 0. How about that, Mr. Sanders?

MR. SANDERS: The only calculation they have for 1942 is for 1942. No recalculation for 1943. They only recalculate 1942 to determine which tax is the greater.

MR. MILLER: That is right.

MR. SANDERS: So if he goes into the armed forces December 31, 1943, he would figure 1942 taxes only, no tax for 1943.

MR. MILLER: This man had gone in December 31.

MR. SANDERS: You would have no recalculation. You only determine 1942 to figure which tax is the lesser. Then he gets the credit on his 1943 taxes.

MR. ALSOP: I must be considerably muddled. My thought is this: a hypothetical situation. In 1942 a civilian lawyer or physician or what not, has earned income upon which there is a tax of $800. He then joins the service some time in 1943, and my thought was this: that he had—well, say he had no taxable income for 1943, he then had a tax liability of $800, tentatively at least, for 1942—my thought was that he would still have to pay that $800 for 1942 on his civilian income.

MR. MILLER: I think we are all sure of this one thing. He does not have to pay the $800. That is not carried over because when you exclude his earned income for 1942, his liability is 0, and there is nothing to carry over.

Now, when you come to the 25% of the lesser of the two years, then you have $800 for 1942, and nothing for 1943, and 25% of the lesser amount is still 0. Apparently he is scot free.

MR. ALSOP: Then his entire $800 is, although he has paid the tax, to be refunded or credited on future tax.

MR. JOHNSON: My impression is that we are discussing two different things. It seems to me you are discussing the carryover, the 25%, and the soldier's provision, whereas these other speakers are discussing the question of the excess, which of the smaller years is the year for which the tax liability shall be asserted for 1943.

MR. MILLER: That is right; we are discussing two different things.

MR. HAMILTON: I am kind of in a fog on that thing.

MR. MILLER: You come up here, then. (Laughter)

MR. HAMILTON: Do I understand from you that if a man has a tax of $800 in 1942 and no tax in 1943, that he still has to pay a fourth of his 1942 tax for 1943?

MR. MILLER: Let's take the man you have given there. Your man is or is not in the armed forces?

MR. HAMILTON: He is not in the armed forces, a civilian.

MR. MILLER: Civilian tax, $100 in 1942, no tax in 1943, his tax for 1942 is forgiven, his tax for 1943 is $100.

MR. HAMILTON: He has to pay tax whether he has an income or not?

MR. MILLER: That is on the back here. Now, A, a civilian, has a tax of $100 in 1942, no income in 1943, decides to join the armed forces December 31, 1943. The way we have entered it, his tax for 1943 becomes 0, he gets the whole $100 forgiven.

MR. DIX: If it is earned income?

MR. MILLER: Yes. Are we sufficiently muddled on that?

MR. SAVAGE: In the computation for services, for 1942 or 1943, your higher year of tax, is victory tax included?

MR. MILLER: Your victory tax is included for everyone for the year 1943.

JUDGE HUFF: I have a problem. A man drawing a salary of $1500 a year, 1942, joining the armed forces in 1942, and served until in March, 1943, when he received a medical discharge—what sort of a shape is he in? (Laughter)

MR. MILLER: Apparently in bad shape.

JUDGE HUFF: What shape is he in when he goes back to work at that time, and finishes the nine months of the year at his old salary?

MR. MILLER: That is a nice question.

JUDGE HUFF: I told him he didn't have to pay any tax at all. (Laughter) That was partially psychological because

I thought if I told him he didn't have to pay any tax at all, he would get well a great deal faster. (Laughter)

Now, then, of course, there is another angle to that. He didn't have any exemption at all when he made his 1942 income, because his wife was working as an operator in a telephone company, who earned about twice as much as her husband did, and she claimed all of the exemption.

Now, then, he paid in 1941 $130 in tax. Now he is undecided what to do on the 15th of March. He has gone to the representative of the Internal Revenue Department who has an office in Springfield, and asked him what to do. The man figured for two days on it and sent in an estimated tax for him to pay, but when it got into the Internal Revenue Department, they sent it back because he hadn't sent the thing in in triplicate. (Laughter)

On the problem now, in all seriousness, what is this young man to do?

MR. MILLER: Well, Judge, proposition No. 1 is that anyone who has been in the service during 1942 and 1943, regardless of how long he stays, is entitled to this special provision relating to servicemen, so if you take your little formula with you and follow column by column, you will be able to figure out his tax.

For 1942 you say he had an income of $1500. You would compute the tax on that, the $1500 and then you would compute his tax on unearned income which would probably be 0; then for 1943 he has been working and has an income for 1943. You compute his tax for 1943, and then go right on through with the calculation. You will probably find that his tax for 1942 is forgiven entirely, and his tax is whatever the tax would be on the income earned in the nine months, 1943. So you are probably right, Judge. He will probably recover.

MR. IRWIN: If I understand you rightly, you go back to 1942, income, you exclude that portion earned under the definition up to $14,000, and then you have to go back and completely recompute the tax.

MR. MILLER: Right. That is, for purposes of determining which is the larger year's tax for members of the armed forces.

Are we ready to take up the married soldiers? Joint returns of members in the Armed Forces are treated the same as those outside the armed forces excepting that this unusual credit may help in some instances. The wife is not entitled to exclude her earned income, but as you will see in these examples, she can get some benefit on filing joint returns.

Joint Returns

	(a) 1942 Tax after deducting earned income	1 1942 Tax	2 1943 Tax (including Victory Tax)	3 Add excess of 1942 over 1943	4 Add 25% of lesser year's tax, or excess of lesser year over \$50 if less	5 Total Tax for 1943 (except for Windfall Tax)
Husband	100	600	200	-0-	50	250
B						
Wife	-0-	200	100	100	25	225
Husband	100	600				
B			300	-0-	75	375
Wife	-0-	200				

B husband and wife is B from our original example who got married. We are taking B and marrying him retroactively. You remember B had a 1942 tax of \$600 and had a tax of \$100 after excluding earned income, 1943 tax of \$200, and he went ahead and filed separate returns. He got his \$250 the same as before.

His wife had a \$200 tax for 1942, \$100 tax for 1943. She does not get to recompute her 1942 tax by excluding her earned income, even though the wife of a service man. She goes through, adds excess of 1942 over 1943; adds 25% of the lesser year, \$25, her total tax is \$225. The total tax of the two who file separate returns is \$475.

Now, here is another husband and wife, who had separate incomes, but they decided to file joint returns in 1943. Let's run through the computation. Remember, on joint returns, add the two returns, that are not filed jointly, and compare the total with the total on the joint return.

Well, B, you remember, had his \$100 tax after excluding earned income, \$600 otherwise, and their joint tax was \$300 in 1943. Well, when we add the excess of 1942 over 1943, we add the husband's \$100, to the wife's \$200 you see there because the husband gets to exclude his earned income which gives us \$300 so there is no excess of earned income in 1942 over 1943. We add 25% of the lesser year's tax, the lesser year is 1943, \$300, 25% is \$75, the tax shown, on the joint return of husband and wife is \$375, or \$100 less than it was when husband and wife filed separate returns. The reason for that, of course, is that the wife is indirectly getting some of the benefit of this exclusion of the husband. She isn't allowed to apply that against her income, but when they file joint returns, the thing just works out that way.

Are we all clear on that?

MR. COLEMAN: Is there any special form for computing the income in case of soldiers in circumstances like that?

MR. MILLER: No, no separate forms for soldiers. They have to use the standard forms.

Are we ready to take up the question of windfall tax? That is what catches the lawyers, is this windfall tax. All the lawyers that made more than \$20,000 in 1942 or 1943 than they made back in 1937, '38, '39 or '40 are going to get caught.

I will explain something about the windfall tax.

I have told you the purpose of it, and this is the way the thing works. Let me explain once more what we do on the windfall tax.

Here is a man, we will say, in the machine tool business, and this example could be multiplied hundreds of times—back during the base period which is 1937 to '40, the most he ever made was \$6,000 a year. For the year 1942 he made \$100,000; 1943, \$130,000. That is a conservative example, too, I can tell you. Well, if the Act didn't have the windfall provision in it, he would be forgiven three fourths of one of those years. Instead of giving you the income, let's say the tax one year is \$50,000, the other year \$60,000. He would be forgiven three-fourths of the \$50,000.

Congress says here is a man that is profiting out of the war effort. He has made more. We are not going to let him get by. We are going to go back to base years. He takes one, \$6,000. Let him add \$20,000. That gives him an income of \$26,000. Then have him compute the tax on that \$26,000, under the same rates, and under the same rules that are applicable to the same year, 1942, let's say 1942, and using 1942 rates to compute the tax on that, \$26,000.

Now, the amount by which the forgiven tax exceeds the tax on that $26,000, is stuck onto his 1943 tax liability. It is a pretty clever way of getting at it.

Windfall Taxes

Additional adjustment for those whose income for forgiven year exceeds best year of the period 1937–40 by more than $20,000.

	1 Tax Forgiven (75% of lesser year 1942 or 1943)	2 Surtax income for best year 1937-40	3 Add $20,000	4 Tentative Tax computed at same rates use for column 1	5 Windfall Tax Excess of Tax Forgiven over Tentative Tax
C (1942 lesser year)	10,500	4,000	24,000	9,420	1,080
D (1943 lesser year)	10,500	4,000	24,000	10,128.28	378.72

Let's run through this: Here is C, a war profiteer. Let me say this catches people other than war profiteers. Here is an example of a daughter whose father died—this is an actual case—the daughter was in school during the base years, and let's say she had a trust income of a thousand dollars a year. Her father died, she gets the whole estate. Her income for these two years is $50,000. She, of course, is caught by the windfall tax. It doesn't make any difference how the increase comes about, the taxpayer is caught.

That is the thing they were driving at, but it catches everybody, whether they are war profiteers or not.

C up there, who is the same as the C we have been working with over here on the other page, had a tax of $14,000, and the part that was forgiven for C was $10,500. That is, three-fourths of the lesser year was forgiven. C's surtax income for the best year during the period, '37 to '40, was $4,000. We add $20,000 to that $4,000. Then we compute the tax on $24,000 under the same rates, same rules as that used for the forgiven year. That is $9,420. The windfall tax on C, then, is the amount by which $10,500 exceeds the tentative tax of $9,420. His windfall tax is $1,080. That is payable over a period of four years; one-fourth this March 15, and one-fourth each March 15 for the next three years.

D, you remember, was about in the same position as C excepting his position was reversed. He was forgiven, $10,-

500, but it was forgiven for the year 1943. His best income for the base period was $4,000. We add $20,000 to that, but when we compute the tax on $24,000 on the 1943 rates, we have to add the Victory tax and that makes his tentative tax $10,128.28. His windfall tax is the difference between that tentative tax and the tax forgiven, or a windfall tax of $378.72.

Are we all clear on that?

It is complicated if you think of it as a whole. It is simple if you get it on paper and follow step by step. Any question on our windfall tax?

QUESTION: One on theory. Why is the $20,000 arbitrarily added as an exemption?

MR. MILLER: That was to keep millions of taxpayers from having to go through all this calculation. Lots of people have had increases that came normally. Fellows get out of law school and are making more than they did when they got out of school.

QUESTION: Did they think everybody was entitled to make $20,000 more out of the war?

MR. MILLER: They didn't want to get involved in the complications of calculating a windfall tax for everyone.

QUESTION: Didn't want to pay the bookkeeping expenses in the treasury?

MR. MILLER: And it would have been tough, but as long as you put it fairly high, those few people that squawked are the rich tories, they don't matter.

QUESTION: The reason I raised the question—I don't think any of these laborers—talking about war plant workers —are making more. The fellows we are really interested in are the fellows who never paid a tax before in their lives. It is hard to get them to save a dime to pay tax. None of them are making $20,000 more a year.

MR. MILLER: That is right. So this is just aimed, I think, at the glaring examples, and as a matter of morale or something or other.

QUESTION: Is that windfall tax figured on every return?

MR. MILLER: Just to help you out, my recollection is that the tax on $20,000 is $8,000. Figured at present rates or '42 rates, either one, so that if you have a return that shows a tax of less than $8,000 just forget about the windfall tax. If you have one that shows more than that, then you are going to have to go back and at least look at the difference between the taxes. All taxpayers with less than $8,000 tax don't have to worry about the windfall tax. That is because the tax on $20,000 is slightly in excess of $8,000, so you could not possibly be caught in the windfall tax.

Are you able to take on joint returns in addition to all this, and then we will be through.

THE AUDIENCE: Go ahead.

MR. MILLERS Joint Returns is where you are going to make some money if you ever get a windfall client.

Congress has extended its principle of combining individual returns wherever joint returns are filed, clear back to the base period in computing the windfall tax. Here is a husband and wife married in 1942, we will say, filed joint returns. They were not married back in 1939, the year which they picked for their windfall tax. Neverthless they combined those two returns—maybe the husband and wife hadn't seen each other then.

Take those two returns and combine them, add them together for the purposes of computing the windfall tax, if husband and wife have filed joint returns for the year which was given.

Now, I find that I have a lot more trouble explaining stuff than I have by following examples, and showing how this works out. Let's run through C, D, X and Y. Those are examples of when they should file joint returns, and when they should not file joint returns.

C is still our old fellow C up there, only we find out that was a joint return he filed. The tax forgiven for C was $10,500. That best year that he had back there, between 1937 and 1940, was an income of $3,000. His wife had an income of $1,000.

QUESTION: Tax liability?

MR. MILLER: No, that is income. We are not comparing incomes, but have to go back to get the income. That gives

Joint Returns

	1 Tax Forgiven (75% of lesser year 1942 or 1943)	2 Surtax income for best year 1937-40	3 Add $20,000	4 Tentative Tax computed at same rates use for column 1	5 Windfall Tax Excess of Tax Forgiven over Tentative Tax
C					
Husband		3,000			
(1942 lesser year)	10,500		24,000	9,420	1,080
Wife		1,000			
D					
Husband	8,000		23,000	9,540	-0-
(1943 lesser year)		4,000			-0-
Wife	2,500		21,000	8,340	-0-
X					
Husband	1,140	40,000	60,000	35,240	-0-
(1943 lesser year)					
Wife	20,940	4,000	24,000	10,128.28	10,811.72
Y					
Husband		40,000			
(1943 lesser year)	24,180		64,000	38,240	-0-
Wife		4,000			

us $4,000. We add those two together, and stick on your $20,000 and compute your tax on that $24,000 and the winfall tax on C, husband and wife, who filed joint returns, is $1,080, just the same as C up there when we computed his as an individual.

JUDGE LOWE: On what year would this 1942 be computed?

MR. MILLER: The tax of $9,420 is computed at the same rates as the tax which is forgiven. If it is three-fourths of the 1942 liability, which is forgiven, then use the 1942 rates, and all the 1942 rules. If it is the 1943 tax that is forgiven, use the 1943 rates, including the Victory Tax. That is the reason C and D in the example before this one, came out with a different windfall tax, although the same amount of tax was forgiven. One's tax for 1942 is forgiven and the other for 1943, and the different rates applied to the tentative tax made the different amounts of windfall tax.

D down here, husband and wife, filed separate returns; the husband's tax, which was forgiven was $8,000; the wife's tax, which was forgiven, was $2,500, making a total of $10,500, the same as C up there.

They had filed joint returns back in the base period years; the Act provides where you file separate returns for the year that was forgiven, when you had filed joint returns back in the base year you are looking to, you go back and unscramble that joint return and allocate it to the two people for the purpose of getting their separate incomes for 1942. So unscramble that and you find $3,000 was income of the husband, and $2,000 the wife's.

Now, where husband and wife file separate returns, each is entitled to the $20,000 exemption, whatever you want to call it, for this windfall tax, so the husband gets to add $20,000 to his $3,000 which he had earnd back in 1940, which gives him windfall exclusion of $23,000. The wife gets to add $20,000 to $1,000, which gives $21,000. We compute the tax on $23,000, find at these rates it is $9,540; the tax on the $21,000 is $8,340. When we compare that tentative tax with the amount of tax of each individual which was forgiven, we get no windfall tax.

So in this particular case, the husband and wife for windfall tax purposes are way ahead by filing separate returns because each one of them got the benefit of $20,000 added on for computing windfall tax.

X and Y shows an example where it was to the benefit of the husband and wife to file joint returns. X and Y was the case where the husband entered the services of the government in 1943 and therefore his income dropped way down in 1943. The wife had a small income in 1937, 1938, 1939 and 1940, but in 1943, her income jumped way up. She is the one I told you about who inherited all the property from her father.

Let's follow this through and we will see in this particular case it is to their benefit to file joint returns instead of separate.

Let's take the husband. His tax is $1,140.

His surtax for his best base year, he was making good money you remember before he went with the government—was $40,000. You add $20,000 on to that, giving us tentatively $64,000. He has no windfall tax. The wife, however, is being taxed on this $50,000 income that she inherited from her father, and the tax that was forgiven for her was $20,940. Before she inherited this from her father, she only had $4,000 a year income, so her best year for base period was $4,000.

We add the $20,000 to that, get a tentative tax of $10,128.28. Her windfall tax and the tax that is forgiven, of $20,940. Her windfall tax is $10,811.72.

Now, Y is exactly the same family excepting they file joint returns, and you will see that they had no windfall tax. Let's run through that and see how that happens. They file joint returns, and their tax that was forgiven was $24,180. Now, when they go back, even though they file joint returns, you can go to the base period and select the individual income of each one, and select the year.

QUESTION: That must be the same year?

MR. MILLER: Yes. They selected the year 1940, $40,000 was the husband's income in that year, the wife's income was $4,000. That is the same as X up there. Then when you add $20,000 to that, they get a credit for the tentative tax of $64,000 and the tax is $38,240, which exceeds the tax forgiven so they have no windfall tax. If this person happens to come to you, you pull out this slip of paper and say, "Look here, I can save you $10,000."

I predict that someone in this room will find cases in the next two months where it is going to make one great difference whether joint or separate returns are filed.

The way you find out that difference is not by remembering anything you have heard here, nor by remembering anything you have read out of the books or anything else—the way you find that difference is setting up these columns and going through and calculating each separate way. There is no shortcut method.

APPENDIX A

COMPUTING ADDITIONS TO 1943 TAX IMPOSED BY CURRENT TAX PAYMENT ACT

General Rules

1. All 1942 individual income tax liability is cancelled (as a matter of mechanics). The Act does not apply to estates or trusts.
2. The 1943 tax liability is computed as in other years (including Victory Tax) and is then increased by:—
   (a) The excess of the 1942 tax over the 1943 tax. If the taxpayer is in the armed forces, he only adds the excess of the 1942 tax computed after deducting his "earned income" for that year. This amount is to be included in declarations of tax filed for 1943.

(b) Twenty-five percent of the lesser tax for 1942 or 1943. If the tax for the lesser year is $50 or less, the entire amount is forgiven. If the excess of the tax over $50 is less than 25% of the entire tax, only the lesser amount is added. The amount added is payable one-half March 1944, and the remainder March 15, 1945.

(c) The excess of the tax forgiven (75% of the lesser tax for 1942 or 1943) over a tentative tax computed at same rates on the surtax net income for any year in the period 1937-1940 plus $20,000. Payable in four equal yearly installments beginning March 15, 1944.

3. If husband and wife file a joint return for either 1942 or 1943, the tax of both spouses is aggregated for the year in which separate returns are filed for the purposes of comparison above, and the liability of each spouse is joint and several for (a), (b) and (c) above, even though separate returns are filed for 1943.
4. If the taxpayer died in 1942, the Act does not apply. If he died in 1943, the tax shown on the return filed for him for the fractional part of the year is the 1943 tax for purposes of the Act, without reference to income of the estate after his death.
5. There is no forgiveness where taxpayer is guilty of fraud or any criminal offense with respect to the tax of 1942.

APPENDIX B

CORPORATION vs. PARTNERSHIP

I

Corporate Tax

Corporations are taxed as entities and may be subject to the following taxes on incomes:

Normal Tax (Secs. 13, 14)	(Not over 5,000 —15%	
	(5,000 to 20,000 —17%	
	(20,000 to 25,000—19%	
	(25,000 to 50,000—31%	
	(Over 50,000	24%

Imposed on net income, accelerated rate from 25,000 to 50,000 serves to make tax at 50,000 and over equal 24% of total income.

Surtax (Sec. 15)	(Not over 25,000—10%
	(25,000 to 50,000—22%
	(Over 50,000 —16%

Imposed generally on net income, with credit to Public Utility Companies for dividends paid on preferred stock, and to Western Hemisphere Trade Corporations. Accelerated rate from 25,000 to 50,000 makes tax on 50,000 and over equal to 16% of total income. For all ordinary purposes the normal tax and surtax apply to the same income, combining to make corporate rates from 25%to 40%.

Excess Profits Tax (Sec. 710) —90%

Imposed on net income in excess of credit for 95% of average earnings 1936-39, or for a return of 8% to 5% on invested capital depending upon amount. Income subject to this tax is not subject to Normal Tax, and there is a provision that this tax shall never equal an amount which with the Normal Tax would impose a tax greater than 80% of total income (Sec. 710). There is also a provision for refund within six months of end of the war of 10% of the Excess Profits Tax paid (Sec. 780).

Declared Value Excess Profits Tax (Sec. 600)
—6-6/10%—13-2/10%

Imposed on net income in excess of 10% of Declared Value of Capital Stock, income in excess of 15% of declared value taxes at 13-2/10%. A tax is imposed on the "declared value" of the capital stock at the rate of $1.25 per thousand dollars.

Improper Accumulation of Surplus (Sec. 102)
First 100,000—27½%
Over 100,000—38½%

Imposed on income not distributed as dividends when it is found that earnings are accumulated beyond the reasonable needs of the business.

Personal Holding Companies (Sec. 500)
First 2,000—75%
Over 2,000—85%

Imposed on income not distributed as dividends, where at least 80% of the gross income is non-operating income, such as dividends, interest, etc., if more than half the corporate stock is not owned by more than five individuals. (An individual is regarded as owning any stock owned by his family). Personal holding companies are not subject to excess profits tax (Sec. 727) or the tax on unwarranted accumulation of surplus (Sec. 102).

II

Although partnerships are separate entities for many purposes, the income is taxed to the individual partners as their personal income. The partnership must file a return, but the income allocable to each partner must be reported by him, whether distributed or not, in his tax return for the year in which the tax year of the partnership ends. Individuals are subject to the following taxes:

Normal Tax	—	6%
Surtax	—	13% to 82%
Victory Tax	—	3%
Combined Rates	—	22% to 91%

III

What is a corporation.

For federal income tax purposes, any organization which has attributes of a corporation is subject to all corporate taxes even though not incorporated. In the case of Morrisey v. Commr., 296 U. S. 344 (1936), the Court listed the following as distinctive attributes of a corporation:

1. Separate entity.
2. Centralized management.
3. Continuity of succession, uninterrupted by death.
4. Transfer of interests without affecting continuity.
5. Limitation of personal liability.

Whenever one or more of these advantages are obtained through the form of organization established, there is danger of corporate tax liability. Limited partnerships of some states are taxable as corporations, query as to Indiana. Representative cases determining the status of associations are set out below:

Held taxable as a corporation:

Commr. v. Fortney Oil Co., 125 Fed. (2d) 995 (CCA 6th 1942) (Share in oil lease sold to individuals)

Ross Lewis Trust v. Commr., 110 Fed. (2d) 937 (CCA 10th 1940) (Trust operating ranch and rental properties)

Jackson, et al. v. U. S., 110 Fed. (2d) 574 (CCA 9th 1940) Bondholders Committee acquired and operated real estate on foreclosure)

Held NOT taxable as a corporation:

Cleveland Trust Co., Tee. v. Commr., 115 Fed. (2d) 481 (CCA 6th 1940)

(Ohio land trust, to collect rents and distribute to certificate holders)

Commissioner v. Rector, 111 Fed. (2d) 332 (CCA 5th 1940) (Owners of mineral lease selected agent and gave wide management powers)

Sears, Trustee v. Hassett, 45 Fed. Supp. 772 (1942)
(Trust held one parcel of real estate and activities limited to receipt and disbursement of income)

IV

Considerations on forming and dissolving a corporation:

1. There is no tax on transfer of property to a corporation if transferor is owner of 80% of all stock after the transfer Sec. 112 (b) (5).
2. There is a tax on dissolution on the excess of the value of the property received over the cost basis of the stock (Sec. 115 c). This value may include goodwill in addition to physical property where the enterprise is to be continued as a going business.
3. It is easier to distribute dividend income among members of family by gifts of stock, than by gifts of partnership interests.
4. The normal and surtax corporate rates are still less than the individual rates. Even with Excess Profits tax, the net tax liability will be less on corporate income of $300,000 than on individual income of same amount, due to the 80% limitation on corporate tax (Sec. 710) and the 10% refund (Sec. 780).
5. Corporations are not on the pay-as-you-go basis, and so have the use of their tax money as working capital until the following year when the tax may be paid quarterly.

V

Family Partnerships

There is nothing in substantive law, nor Income Tax Law, which prevents the forming of a valid partnership between members of a family. It is a well recognized rule, however, that assigned income will be taxed to the assignor. Helvering v. Horst, 311 U.S. 112 (1940); Helvering v. Eubank, 311 U. S. 122 (1940); Burnet v. Leininger, 285 U. S. 136 (1932), and that rule is not rendered inoperative merely because the contract of assignment takes the form of a partnership agreement.

The question presented in this type of case is not whether the partnership is valid, but whether its provisions effect an assignment of income from one of the partners who has really earned that income. If capital is an income producing factor and the wife furnishes capital, a fair allocation of earnings based on that capital will be upheld. If services are the main source of income and the wife contributes her services, a fair allocation of income will be upheld. But income allocated to the wife beyond the value of her contribution to the partnership, is merely an assisgnment of income to her and will not be permitted to affect the taxing of that income to its source.

The following cases, decided during the past ten years, illustrate the factors the courts have regarded as important in determining the true taxpayer with respect to partnership income:

Income taxed according to partnership agreement:

Justin Potter, 47 B.T.A. 607.
(Parents gave interest in coal business to minor children.)

Sidney Nathan, T. C. Memo. Dkt. 102726, May 14, 1943.
(Limited partnership formed in New York, and Trustees for minor children made limited partners.)

Benjamin Shander, T. C. Memo. Dkt. 111788, Mar. 11, 1943.
(Sons, age 25 and 29, were given equal interest in business by father who contributed all the capital. Sons gave full time to business and let profits accrue to their account to build up capital investment.)

E. R. Ledbetter, B.T.A. Memo. Dkt. 104852, Jan. 19, 1942.
(Wife borrowed capital from her father and thereafter handled advertising.)

James O. Peterson, T. C. Memo. Dkt. 251, Nov. 30, 1943.
(Wife held partner although partnership not valid under state law.)

Humphreys v. Comm'r., 88 Fed. 2d (CCA 2d, 1937)
(Wives contributed capital to partnership of accountants.)

Partnership agreement ignored in taxing income:

Villere v. Comm'r., 133 Fed. 2d 905 (CCA 5th, 1943)
(Brothers entered into an agreement to pool earnings and share equally. Earnings were salary and dividends.)

Schroder v. Comm's., 134 F. 2d 346 (CCA 5th, 1943)
(Husband was mechanical and electrical engineer, and business employed little capital. Wife did not participate in the business and supplied no capital.)

Tinkoff v. Comm'r., 120 F. 2d 564 (CCA 7th, 1941)
(Wife held not partner with husband, attorney and accountant.)

Rossmore v. Comm'r., 76 F. 2d 520 (CCA 2d, 1935)
(Wife held not a member of firm of accountants.)

A. M. Mead v. Comm'r., 131 F. 2d 323 (CCA 5th, 1942)
(Corporation engaged in insurance and real estate business dissolved and wife given one-half the assets and a partnership formed.)

Earp v. Jones, 131 F. 2d 292 (CCA 10th, 1942)
Assignment of one-half interest in insurance business, wife contributing neither services nor capital.)

Robert S. Eaton v. Comm'r., 100 F. 2d 1013 (CCA 2d, 1939)
C.D. 307 U. S. 636, 37 B.T.A. 283.
(Investment partnership to which wife contributed no capital or services.)

Fisher v. Comm'r., 29 B.T.A. 1041, 74 Fed. 2d 1014 (CCA 2d, 1935)
(Bud Fisher formed partnership with his father and mother, and assigned his contracts and copyrights to it. None of the parties performed any services thereafter, including Bud.)

Kasch v. Comm'r., 63 F. 2d 466 (CCA 5th, 1933) C. C. 290 U.S. 644.
(Son sixteen years of age was taken into seed-selling business and worked when not in school.)

George M. Cohan v. Comm'r., 39 F. 2d 540 (CCA 2d, 1930)
(Cohan and his father were partners in the play production business, at his father's death he took his mother as partner, but she contributed no services.)

Francis Doll, 2 T.C. 276 (June 25, 1943)
(Husband-wife partnership in shoe commission business. Held local court decree upholding validity of partnership was not binding on Tax Court.)

Max German, 2 T. C. No. 57.
(50% partnership interest ignored, but 25% of earnings taxed to wife because of past services and capital contributed by her.)