

IT 2316 - Income tax: distribution of partnership profits and losses

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TAXATION RULING NO. IT 2316

INCOME TAX: DISTRIBUTION OF PARTNERSHIP PROFITS AND
LOSSES

F.O.I. EMBARGO: May be released

REF H.O. REF: 86/4351-2 DATE OF EFFECT: IMMEDIATE
B.O. REF: DATE ORIG.
MEMO ISSUED: 11 JUNE 1986

F.O.I. INDEX DETAIL

| REFERENCE NO: | SUBJECT REFS: | LEGISLAT. REFS: |
|---------------|------------------------|-----------------|
| I 1209460 | PARTNERSHIPS | 90 |
| | DISTRIBUTION OF LOSSES | 92 |

OTHER RULINGS ON TOPIC: IT 2218

PREAMBLE In a recent unreported decision Taxation Board of Review No.1 had to determine to what extent partners of a partnership were entitled to share profits and losses of the partnership.

FACTS 2. The partners were husband and wife and the partnership had incurred losses from the rental of three separate properties. One property was held by the husband and wife as tenants in common in equal shares and the other two properties were held as joint tenants. The written partnership agreement provided that profits and losses were to be distributed in accordance with each partner's share of the capital account. The amount standing to credit in the capital account had not altered since formation and was held in the proportions of - 96% husband, 4% wife.

3. The partners had attempted to distribute the rental property losses according to the partnership agreement but the Commissioner treated the losses as being distributable on a 50:50 basis, i.e. in accordance with their respective registered interests in the properties.

4. At the hearing the Commissioner argued that, although a partnership existed for income tax purposes, there was not a partnership at general law. In rejecting this the Board held that a partnership existed at general law and that the distribution of rental losses must be regulated by the terms of the written partnership agreement. The Board considered that the evidence adduced established that it had always been the intention of the parties to purchase the rental properties as partnership assets subject to the terms of the partnership agreement.

RULING 5. It is considered that the finding of the Board was open to it on the facts. The decision is seen as being consistent

with the previously stated policy that net income of a partnership should be distributed according to the basic agreement between the partners for the sharing of profits and losses (IT 2218 - paragraph 6).

6. Situations may arise, however, where it is apparent that the partnership agreement is merely a device to enable distributions to be made which are completely out of proportion to either the partners' true interests in the partnership assets or their participation in the partnership business. Such cases will continue to require assessment on their own merits.

COMMISSIONER OF TAXATION

17 June 1986

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