

# CATALOGUE OF LEGAL AUTHORITY ADDRESSING THE FEDERAL DEFINITION OF TAX PARTNERSHIP

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## I. INTRODUCTION

The following *Table of Legal Authority Addressing the Federal Definition of Tax Partnership* presents a summary of numerous statutes, cases, regulations, and rulings (the legal authority) that address the federal definition of tax partnership. The Table is a work-in-progress.<sup>1</sup> Nonetheless, it may serve a useful purpose in its current unfinished condition. The Table is the byproduct of a law review article entitled *The Federal Definition of Tax Partnership* published in the Houston Law Review.<sup>2</sup> In preparing to write that article, I read a significant amount of legal authority addressing the definition of tax partnership. Because of the sheer quantity of that legal authority, I had difficulty keeping track of the all the information presented. Out of necessity, I therefore created the Table to assist me in organizing the information. The Table presented the information in an accessible manner, allowing me to analyze and process the information. I present it here for others to use for similar purposes.

The following brief description of the Table omits references to primary source law. That information is discussed in the Table and in *The Federal Definition of Tax Partnership*. This discussion explains aspects of the Table to clarify the methodology I used to find and process the legal authority and to describe the terminology and descriptions I use in the Table.

## II. METHODOLOGY

I used a simple methodology to find the authority summarized in the Table. I began by reading statutes, cases, regulations, and rulings cited in articles and treatises as authority for the definition of tax partnership. The original cases and rulings I read cited other cases and rulings. Those other cases and rulings cited even more cases and rulings. I made note of all the cited legal authority and began reading the cited material. A study of the Table will reveal that the legal authority forms a web of information. So far I have recognized few, if any, patterns in that information.

The legal authority reveals that the same issues often arise, but I have not identified a pattern in the position the IRS takes with respect to a particular issue, nor have recognized a consistent use of a particular test to resolve a particular issue. Instead, I recognized that the question of whether an arrangement is a tax partnership has no independent tax significance. The tax significance of the definition of tax partnership derives from other issues. For example, the definition of tax partnership may be important to determine the character of gain on the disposition of property. Thus, the Table identifies the tax partnership question and the tax significance of the arrangement's classification in each particular situation. The Table also briefly discusses the basis for conclusions regarding the tax partnership question. The Table identifies the test the courts and other lawmaking body used to define tax partnership.

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<sup>1</sup> I welcome any contributions others have regarding the authority cited in the Table or other authority that addresses the definition of tax partnership.

<sup>2</sup> See Bradley T. Borden, *The Federal Definition of Tax Partnership*, 43 HOUS. L. REV. 925 (Winter 2006). I draw liberally from the language in *The Federal Definition of Tax Partnership* for portions of this Article, but this Article omits all citations. Readers interested in the legal support for conclusions I state in the text of this Article should refer to *The Federal Definition of Tax Partnership*.

### III. TAX PARTNERSHIP QUESTION

The tax partnership question addresses whether an arrangement is a tax partnership or something else. Because the question arises in a limited number of scenarios, the Table does not restate the facts of each case or ruling. Instead, the Table identifies the tax partnership question. By understanding the tax partnership question, one can anticipate the facts of the case or other legal authority. The legal authority in the Table presents six tax partnership questions.

1. *Partnership or Co-Ownership.* This question asks whether an arrangement is a tax partnership or a co-ownership of property. Often whether an arrangement is a tax partnership or a co-ownership turns on the type or source of services the arrangement provides. A co-ownership arrangement that provides no services should not be a tax partnership, whereas one that provides services may be a tax partnership.

2. *Partnership or Principal-Agent Arrangement.* This question asks whether a service arrangement is tax partnership or principal-agent arrangement. The question generally arises when one party provides services and shares in the profits of a business endeavor. For example, the question may consider whether an insurance salesperson working on commission is in a tax partnership with the insurance provider. The authority addressing this question indicates that sharing profits is one factor that informs the analysis.

3. *Partnership or Nothing.* This question generally asks whether a purported tax partnership is a sham. The question often arises with respect to arrangements taxpayers form with family members or persons exempt from U.S. income tax. Taxpayers often argue such arrangements are tax partnerships to qualify for the partnership tax allocation rules.

4. *Partnership or Financing.* This question considers whether the terms of certain financing arrangements create a tax partnership or a loan. As with the question that considers whether an arrangement is a tax partnership or principal-agent arrangement, whether the parties share profits is not dispositive.

5. *Partnership or Lease.* The terms of the use of property may make an arrangement look more or less like a tax partnership. Whether the parties share in the gross rental income or net profits of the arrangement may affect the outcome of this question.

6. *Other questions.* Some of the questions that the legal authority considers do not fall nicely into a separate category. For example, the question may be whether an arrangement is a tax partnership or a purchase-sale agreement or some other contract right.

These are the six general questions the legal authority addresses when considering whether an arrangement is a tax partnership. The answer to these questions is important in determining the tax consequences to the parties. Thus, each question has derivative tax significance.

### IV. TAX SIGNIFICANCE OF QUESTION

The myriad cases and rulings addressing the definition of tax partnership stand as a testimony of the significance of the definition. The definition of tax partnership can affect three general types of tax rules: (1) timing and accounting rules, (2) transactional rules, and (3) procedural rules.

#### A. *Timing and Accounting Rules*

The definition of tax partnership determines whether the rules of subchapter K apply to an arrangement. If an arrangement is a tax partnership, subchapter K generally applies to the arrangement. Alternatively, if an arrangement is not a tax partnership, subchapter K does not apply to the arrangement. Subchapter K can affect whether gross income and deductions are reported by members or whether they individually report shares of taxable income from an arrangement. In at least one case, this distinction affected the application of a limit based upon gross income.

The definition of tax partnership can be important in determining the proper tax year for recognizing gain or loss. The current partnership tax rules provide that partnerships compute taxable income on an annual basis. Partners then report income from the partnership based on the year during which the partnership's taxable year ends. Without these rules, partners would have leeway in choosing when to report partnership income. Time-value-of-money principles give timing rules significance. If a partnership does not exist, the members of an arrangement must report income from the arrangement based on their respective taxable years. Disregarding the arrangement may move the date of inclusion forward, but never back. Timing rules also could affect whether the tax year is closed with respect to an item.

The definition of tax partnership helps establish the person to whom income or loss should be allocated. If an arrangement is a tax partnership, partners can agree to allocate items of income and loss among the partners in any manner, so long as such allocations have substantial economic effect. Alternatively, if an arrangement is not a tax partnership, items of income and loss must be traced from the property and services to the members who own such property or provide such services. The ability to allocate items of income and loss, subject only to the substantial economic effect test, is one of the significant benefits of the partnership tax rules.

The tax definition of partnership also affects the method of accounting a taxpayer may use. If an arrangement is a tax partnership, the partnership items must be accounted for using the tax partnership's method of accounting, even though the partners may use a different method. Thus, if the tax partnership uses the accrual method of accounting, but an individual member uses the cash method, the accrual method will apply to partnership items. If the arrangement is not a tax partnership, the individual's cash method will apply. This can affect the year during which the partners report income from the arrangement, affecting the tax value of the item under time value of money principles.

#### *B. Transactional Rules*

The definition of tax partnership also determines whether subchapter K applies. Generally, the formation of a partnership is a tax-free event. Thus, if one person contributes real estate and another contributes cash to a tax partnership, neither person shall recognize gain or loss on the contribution. On the other hand, if one person pays another for an interest in property to become a tenant-in-common of the property, the transfer will likely be a taxable event to the person selling the interest.

The definition of tax partnership affects the nature of property transferred. Simply put, if an arrangement is treated as a tax partnership, a member's transfer will be treated as a transfer of an interest in the tax partnership, not a transfer of the underlying property. This can affect the application of other Internal Revenue Code provisions. For example, if an arrangement is treated as a tax partnership, an interest in that arrangement does not qualify for section 1031 nonrecognition. If, on the other hand, an arrangement is disregarded, a member's interest in the underlying property may qualify for section 1031 nonrecognition. Thus, the definition of tax partnership affects the applicability of section 1031 and other nonrecognition provisions.

The definition of tax partnership also determines the effect liabilities have on the basis of property owned by the members of an arrangement. If an arrangement is a tax partnership, complicated rules determine the partners' shares of partnership liabilities, which in turn determine the bases partners take in their respective partnership interests. If an arrangement is not a tax partnership, the traditional rules used to compute basis determine the members' bases in the underlying property.

The definition of tax partnership can affect the character of gain or loss a person recognizes. For example, gains and losses recognized on the sale of a partnership interest are generally treated as capital gains and losses. Gains and losses recognized on the sale of certain real property used in a trade or business for more than one year are not capital. Thus, if an arrangement that owns real property used in a trade or business is a tax partnership, gain or loss on the sale of the interest in the

arrangement will generally be treated as the gain or loss from the sale of a capital asset. If the arrangement is not treated as a partnership, loss from the sale of the interest could be treated as an ordinary loss.

The definition of tax partnership affects whether certain costs may be deducted or must be capitalized. For example, if an arrangement is a tax partnership, costs to form the partnership must be capitalized as organization costs and costs incurred before business operations begin must be capitalized as start-up expenditures. If an arrangement is not a tax partnership, costs incurred to create the arrangement may be deductible currently as expansion costs.

### C. *Procedural Rules*

Partnership classification also may affect the application of certain tax elections. If a partnership exists, the partnership generally must make tax elections, which apply to all partners. For example, section 1033 allows a property owner to elect to defer gain realized on the disposition of condemned property if the proceeds are reinvested within a certain period of time. An election made by the owner of an undivided interest in condemned property will not be effective if the arrangement in which the owner holds the interest is a tax partnership and the individual is treated as a partner.

If a tax partnership is deemed to own the property, the tax partnership must make the election. If the arrangement is not a tax partnership, the members of the arrangement make the elections individually.

The definition of tax partnership also determines whether the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) partnership audit rules apply. The TEFRA audit rules provide that “the tax treatment of any partnership item (and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item) shall be determined at the partnership level.” The period of assessing a tax deficiency of any member of a partnership is based upon when the partnership tax return is required to be filed or actually filed. Thus, even though a partner’s statute of limitations has otherwise lapsed with respect to a certain year, the IRS may assess a tax on a partner with respect to partnership items of that year.

Failure to realize that an arrangement is a tax partnership can subject parties to penalties. Partnerships are required to file information returns each year and furnish each partner with information regarding partnership operations. The penalty for failing to file such returns and furnish information to the partners can be significant.

The definition of tax partnership also affects whether certain limits apply at the arrangement level or apply separately to the arrangement’s members. For example, if an arrangement is a tax partnership, a limit on the amount of credit allowed with respect to property owned by the partnership may apply at the partnership level, and the partners would be limited to their pro rata shares of the credit. If an arrangement were not a tax partnership, however, the limit may apply to each member individually, multiplying the amount of the limit available.

The definition of tax partnership may affect whether certain parties are liable for unpaid employment taxes. In particular, if a partnership exists, each partner may be liable for any unpaid employment taxes owed by the partnership. If a tax partnership does not exist, only the employer would be liable for unpaid employment taxes. If a tax partnership exists, a general partner will owe self-employment tax on allocated partnership income, whereas the same person may not owe self-employment tax if an arrangement is not a tax partnership.

## V. TESTS USED TO DEFINE TAX PARTNERSHIP

The legal authority presents ten tests for defining tax partnership. As stated above, however, no clear pattern of use readily emerges from the legal authority. As noted in *The Federal Definition of Tax Partnership*, some of the tests appear to be subtests of the substantive-law test

or another test (*e.g.*, the degree-of-activity test and type-of-activity test are subsets of the substantive-law test, and the expense-sharing test is a subset of the joint-profit test). I list the ten tests separately, however, because the legal authority appears to apply some of the apparent subtests as separate tests. The ten tests are: (1) the substantive-law test, (2) the state-law test, (3) the joint-profit test, (4) the expense-sharing test, (5) the degree-of-activity test, (6) the type-of-activity test, (7) the source-of-activity test, (8) the business-purpose test, (9) the estoppel test, and (10) the fact-question test. At times, the authority addressing the tax partnership question identifies the test it used. Most often, however, the authority is silent as to the test used, and at times the test used is indeterminable. When the legal authority did not expressly state the test it used, or if the legal authority's analysis and conclusion did not reflect the use of a stated test, I determined the test, when possible, based on the legal authority's analysis and conclusion.

*1. The Substantive-Law Test.* Under the substantive-law test, an arrangement is a tax partnership if several factors indicate the parties' intent to form a partnership. The substantive-law test derives from the common-law definition of partnership. Early tax partnership cases looked to state law and British common law to determine whether an arrangement was a tax partnership. From that body of law, tax law developed its own substantive-law test for determining whether an arrangement is a tax partnership.

In early IRS rulings, the IRS cited substantive law and listed elements of the substantive-law definition to rule that an arrangement was not a tax partnership. Specifically, the IRS ruled that the arrangements were tenancies-in-common and not partnerships. Because tenancy-in-common (TIC) arrangements are excluded from the substantive-law definition of partnership, taxpayers establish that an arrangement is not a tax partnership by showing that it is a tenancy-in-common.

Courts focused on the parties' intent, and eventually multifactor tests became important under the substantive-law test. Decisions that have become bellwethers in defining tax partnership—*Commissioner v. Tower*, *Lusthaus v. Commissioner*, and *Commissioner v. Culbertson*—introduced intent to the definition of tax partnership. In those cases, the parties attempted to form state-law partnerships. In *Tower*, the Supreme Court acknowledged that the arrangement might have been a partnership under Michigan law. The Court held, however, that it was not bound by state law in determining whether the arrangement was a tax partnership. The Court considered whether the partnership was formed for the sole purpose of shifting income earned by a husband to his wife who was not formerly involved in the operation or management of the husband's business enterprise. Citing two substantive-law cases, the Court stated, "A partnership is generally said to be created when persons join together their money, goods, labor, or skill for the purpose of carrying on a trade, profession, or business and when there is community of interest in the profits and losses."

The Court focused on the substantive-law factor of intent to decide the case, stating that the participants' "intention in this respect is a question of fact, to be determined from testimony disclosed by their 'agreement, considered as a whole, and by their conduct in execution of its provisions.'" Although couched by the Court as federal tax law doctrine, intent is derived from substantive law. The Court concluded its opinion by stating "that while the partnership was 'clothed in the outer garment of legal respectability' its existence could not be recognized for income tax purposes." Thus, the Court rejected any form the arrangement might have had. The Court appears to provide two levels of assurance: first, the Court concluded that the arrangement was not a tax partnership under the intent element of the substantive-law definition, and second, it rejected the arrangement's form.

In *Culbertson*, the Supreme Court instructed the Tax Court to reconsider which of the family members had "a bona fide intent [to] be partners in the conduct of the cattle business, either because of services to be performed during those years, or because of contributions of capital of which they were the true owners." In oft-quoted language, the Supreme Court focused on intent:

“The question is . . . whether, considering all the facts . . . the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise.” Later, the D.C. Circuit connected intent to the business-purpose test, requiring that an arrangement have a nontax business purpose to satisfy the *Culbertson* intent requirement.

The intent question requires a definition of tax partnership. The substantive-law test attempts to define tax partnership using multifactor lists. Considering joint ventures to be equivalent to tax partnerships, courts derived several factors from state-law definitions of joint venture and other sources of substantive law. The number of factors adopted varies from three to fifteen. Before the publication of Revenue Procedure 2002-22, the lists generally included no more than eight factors, which derived from the substantive-law definition of partnership or joint venture. The IRS’s fifteen factors in Revenue Procedure 2002-22 incorporate some of these eight factors, neglect others, add new factors from other tests, and create new factors from whole cloth. Thus, as the substantive-law test now stands, it considers several factors to determine whether the parties intended to create a partnership.

*2. The State-Law Test.* The state-law test adopts the state-law classification of an arrangement. Thus, if an arrangement is a partnership under state law, it will be a tax partnership under the state-law test. Under the state-law test, any legal entity with two or more members that is not a corporation or other entity defined as a tax corporation or tax trust will be a tax partnership. Thus, under the state-law test, limited liability companies, limited partnerships, and limited liability partnerships are tax partnerships. The state-law test looks to intent and the multifactor lists only if the state-law definition of partnership relies upon intent and the factors. The state-law test does not necessarily consider tax policy. It simply includes all noncorporate state-law entities as tax partnerships, so long as they do not come within the definition of tax trust.

Many courts have shunned the state-law test, as Treasury has appeared to do in the check-the-box regulations. Nonetheless, the state-law test may still have life. Some courts have relied exclusively upon the state-law characterization of an arrangement in deciding whether an arrangement was a tax partnership. Taxpayers seeking tax partnership classification may be able to rely upon the existing case law to invoke the state-law test. The IRS, on the other hand, is bound by rules it promulgates. Since it sets forth that state law does not determine the definition of tax partnership, the IRS should not be able to invoke the state-law test. Its only recourse in such situations may be to invoke the estoppel test, which considers state-law classification. This, however, would require more than a mere showing of the existence of a state-law entity. The state-law test, at a minimum, appears to have life in practice. Competent tax advisors would hesitate to advise a client to join a state-law entity if the client wished to avoid becoming a member of a tax partnership.

*3. The Joint-Profit Test.* The joint-profit test excludes from the definition of tax partnership arrangements that lack a joint-profit motive. Joint profit is an element of the substantive-law test, but it has found special application defining qualified tax partnerships. Qualified tax partnerships are those arrangements that meet the definition of tax partnership but are not required to follow the partnership tax accounting and reporting rules. Generally, only co-owned joint-production arrangements are considered qualified tax partnerships.

Co-owned joint-production arrangements are those whose members co-own property and pool resources to produce something from the co-owned property. The arrangement distributes the product in kind to the members who dispose of it individually. Members of arrangements of this sort often co-own oil and gas property, co-produce oil and gas, and distribute it to the members who sell the oil and gas individually; co-own power plants and distribute co-produced electricity in kind to the members; or co-own and co-mine mineral or other extractive property, the product of which the arrangement distributes to its members in kind. Distributing the product

in kind raises the question of whether members of such an arrangement have a joint-profit motive and should be tax partnerships or lack a joint-profit motive and should be qualified tax partnerships or tax nothings. The IRS has ruled that members of co-owned joint-production arrangements lack a joint-profit motive, but the Tax Court and the Seventh Circuit have held that the members possess a joint-profit motive. The source of these disparate positions appears to be the respective definitions of profit that each adopts.

Following the enactment of the statutory definition of tax partnership, the IRS ruled that a co-owned joint-production arrangement that was a substantive-law joint venture was a tax partnership. The IRS stated that “ordinarily joint or coownership of property does not of itself constitute a partnership . . . [but,] when the coowners or joint owners agree to employ such property in the carrying on of a trade or business they become partners.” The statutory definition of tax partnership (which included joint ventures at the time) bound the IRS to rule that the arrangement was a tax partnership once it found that the arrangement was a substantive-law joint venture. In a subsequent ruling, the IRS ruled that the same type of tax partnership was not required to follow the partnership tax accounting and reporting rules.

This created the first qualified tax partnership. Unfortunately, the IRS left no clue at the time of the ruling about why it exempted qualified tax partnerships from the partnership tax accounting and reporting requirements.

Later the IRS articulated the joint-profit test and applied it to rule that a co-owned joint-production oil and gas arrangement was a qualified tax partnership. The primary issue was whether the arrangement was a tax corporation or a tax partnership. Nonetheless, the IRS applied the joint-profit test to rule that the arrangement was a qualified tax partnership. As articulated by the IRS, the joint-profit test provides that a co-ownership arrangement is a qualified tax partnership if it (1) is not a state-law corporation, (2) has sufficient business-like activity, and (3) does not have a joint-profit motive. Under the definition of tax corporation, a state-law corporation could not have been a tax partnership. Thus, to be considered a tax partnership, the arrangement had to be something other than a state-law corporation. The first factor of the IRS’s test addresses this. The second and third factors are elements of the substantive-law definition of partnership. Because co-owned joint-production arrangements have significant business activity, the third factor’s joint profit is the focus with such arrangements. Whether such an arrangement is a tax partnership under the joint-profit test depends upon the definition used to define profit.

The IRS originally appeared to adopt the accounting definition of profit. It ruled that a joint-profit motive exists if a product is sold through the joint efforts of two or more parties. In such cases, the joint sale of the product vests the arrangement with ownership of the product and of the revenue derived from the sale of the product. The arrangement also has expenses, which it deducts from its revenue, creating an arrangement-level profit (under the accounting definition). Dividing this profit among the members creates a joint profit. No joint-profit motive exists, however, if the arrangement distributes the product to the members who sell the product individually. In such a situation, the arrangement has no revenue, so it can have no profit under the accounting definition of profit. Such an arrangement may be a qualified tax partnership.

In *Madison Gas & Electric Co. v. Commissioner*, the Seventh Circuit later used the dictionary definition of profit to hold that if the definition of tax partnership requires a joint-profit motive, co-owned joint-production arrangements possess the requisite joint-profit motive. The Seventh Circuit adopted the Tax Court’s reasoning:

[T]he test of . . . profit motive for purposes of finding a Federal tax partnership is clearly met in the situation at hand where a group of business organizations decide to band together to produce with economies of scale a common product to be distributed to the members of the venture in kind.

Addressing the profit motive, the Tax Court stated, “To the extent a profit motive may be

required for an unincorporated organization to be a partnership for Federal tax purposes, we hold that it is present in this case with the in kind distribution of electricity produced by the nuclear power plant.” This mirrors the dictionary definition of profit, which provides that profits are the “benefit or advantages accruing from . . . the carrying on of any process of production.” Under the dictionary definition of profit, the economies of scale are the benefits accruing from carrying on the production process jointly. As this holding demonstrates, the dictionary definition of profit abolishes the joint-profit test as all arrangements that carry on business as co-owners will realize some benefit from doing so; otherwise they would not join together.

The accounting-definition-based joint-profit test is preserved in section 761(a)(2), which allows certain arrangements that co-own property and distribute production from the property in kind to its members to elect out of subchapter K. The arrangement in *Madison Gas & Electric Co.* should have satisfied the requirements in section 761(a)(2) and been able to elect out of subchapter K. Section 761(a)(2) requires that the arrangement not sell produced property to qualify for the election. Thus, the rule adopts the IRS’s joint-profit motive test. Unfortunately, section 761(a)(2) appears to be the extent of its applicability today.

4. *The Expense-Sharing Test.* The expense-sharing test is closely related to the joint-profit test. The expense-sharing test provides that “a joint undertaking merely to share expenses [is not a tax partnership].” For example, “if two or more persons jointly construct a ditch merely to drain surface water from their properties,” they are not partners. This test is similar to the joint-profit test because both tests apply to arrangements that engage in significant activity but do not market or sell a product. The expense-sharing test is, however, different from the joint-profit test because it applies only to arrangements that do not produce a product or services, whereas the joint-profit test applies to arrangements that produce a product or services.

5. *The Degree-of-Activity Test.* The degree-of-activity test provides that if two or more parties co-own property and carry on more than a certain degree of activity, they will be a tax partnership. One court has articulated the degree-of-activity test: “The regulations and relevant case law indicate that the distinction between mere coowners and coowners who are engaged in a partnership lies in the degree of business activities of the coowners or their agents.” As thus articulated, the degree-of-activity test focuses on the arrangement’s degree, or quantum, of activity. If an arrangement performs more than a specific quantum of business activity, it will be a tax partnership.

6. *The Type-of-Activity Test.* Under the type-of-activity test, two or more parties who co-own property are not a tax partnership if they hire someone to provide services that only support the income-producing function of the property. The Second Circuit appears to be one of the first appellate courts to rely upon the type-of-activity test to rule that an arrangement was not a partnership, even though the arrangement conducted some business activity. The court found that the regular and continuous activity of maintaining the property in rental condition and supplying such services for the tenants as were needed to rent the property to good advantage constituted a trade or business under section 1231. Because they satisfied the section 1231 trade or business requirement they should also satisfy the business activity requirement of the substantive-law test. Because the members of the arrangement also shared in the profit of the arrangement, the arrangement would be a tax partnership under the substantive-law test. Nonetheless, the court held that the co-ownership arrangement was not a tax partnership.

Services provided to maintain the property in rental condition are customary tenant services. Such services support the income-producing function of rental property and are thus support services. The type-of-activity test does not address arrangements that provide additional services. Nor does it address arrangements that provide only support services if a member provides the services. In fact, of the various types of services arrangements, the type-of-activity test only governs two.



*a. Pure Co-Ownership Arrangements.* Two individuals, Ali and Bill, create a pure co-ownership arrangement. They each own an equal share of a piece of raw land that they lease long-term to a rancher who grazes cattle on the land. The lease requires the lessee to maintain the property and pay all the taxes and other expenses associated with the property, so the owners provide no services to the lessee. The sole source of Ali and Bill's income from this arrangement is the rent which the property generates. In this simple economic arrangement, the property generates income without the members providing any services. The arrangement has no activity, so the arrangement would not be a tax partnership under the type-of-activity test, or the degree-of-activity test for that matter.

*b. Manager-Provided Support Services Arrangements.* Manager-provided support services are support services provided by a person other than a member of the arrangement (i.e., a manager). If the services are provided by a manager who is paid a fair market management fee, the type-of-activity test will exclude the arrangement from the definition of tax partnership. Thus, if, in the example above, Ali and Bill agreed to maintain the fences on their property merely to keep it in rental condition, the arrangement would not be a tax partnership if they hired Carol to maintain the fences and paid her market rate. The type-of-activity test does not answer whether the arrangement would be a tax partnership if either Ali or Bill provided the services. The source-of-activity test addresses that issue.

*c. Additional-Services Arrangements.* Additional-services arrangements are co-ownership arrangements that provide more than customary tenant services. For example, in addition to maintaining the fences, Ali and Bill may agree to ride herd on the tenant's cattle for a separate fee. Riding herd does not merely enhance the income-producing function of the property; it generates additional income. Therefore, the type-of-activity test would not exclude this arrangement from the definition of tax partnership. The type-of-activity test does not, however, answer whether providing additional services creates a separate tax partnership. Perhaps the property and customary tenant services should be treated as a tax partnership separate from the provision of additional services. The additional-services arrangement should be treated like a pure services arrangement.

*d. Pure Services Arrangements.* A simple two-member law firm is an example of a pure services arrangement. The attorneys' services generate income. They do not support the income-producing function of any property. Therefore, the arrangement does not satisfy the type-of-activity test, so it will not be excluded from the definition of tax partnership under that test.

*e. Dealer Arrangements.* Dealer arrangements involve both property and services, but the property supports the income-producing function of the services, which are the primary source of the arrangement's income. The classic example of this is the subdivision and disposition of real estate. For example, if Developer and Seller each pay 50% of the acquisition cost of property and Developer subdivides it and Seller sells it, income is derived from the subdivision and selling activity, not the appreciation in the investment property. Because the activity generates separate income, the arrangement would not be excluded from the definition of tax partnership under the type-of-activity test.

*7. The Source-of-Activity Test.* Under the source-of-activity test, an arrangement is a tax partnership if at least one member of the arrangement contributes services, the arrangement's property and services provide an economic benefit, and all the members of the arrangement share in that economic benefit. This test was most prominently applied in the computer-leasing cases of the 1980s and 90s. In those cases, investors borrowed money from an unrelated party—the manager—and, with additional personal money, acquired undivided interests in computer equipment. The manager arranged to triple-net lease the property to unrelated parties and performed all other activities necessary to lease the property. These activities appear to be nothing more than support services. Because a member of the arrangement contributed them to

the arrangement, however, the type-of-activity test did not apply to the computer-leasing cases.

The source-of-activity test connects the source of activity to the source of economic benefit. The Tax Court stated that “the economic benefits to the individual participants were not derivative of their coownership of the computer equipment, but rather came from their joint relationship toward a common goal.” The joint relationship consisted of the investor’s contribution of property and the manager’s contribution of services, both of which created an economic benefit that was shared by all members. The following examples demonstrate the connection between contributions and economic benefit.

An arrangement may provide services in one of three ways: (1) one or more of the members may contribute services to the arrangement, (2) the members may hire an unrelated party at fair market value to provide the services, or (3) the arrangement may pay one or more of the members fair market compensation (not a share of the profits) to perform the services.

*a. Member-Contributed Services.* Assume two individuals, Ephraim and Fran, own an apartment complex. Their standard lease agreement provides that they will perform all services needed to maintain and repair the complex. In addition, the co-owners negotiate and execute leases for the apartment units; collect rent payments from the tenants; and pay taxes, assessments, and insurance premiums with respect to the property. These are customary tenant services that merely support the property’s income-producing function. Because Ephraim and Fran provide the services instead of hiring a manager, the type-of-activities test will not exclude the arrangement from the definition of tax partnership. Instead, their providing the services brings them within the source-of-activity test and the definition of tax partnership.

*b. Third-Party-Compensated Services.* Assume, alternatively, that Ephraim and Fran hire a manager to perform the support services and pay the manager a fair market management fee. This arrangement is very similar to Bill’s and Ali’s manager-provided-support-services arrangement, which would be excluded from the definition of tax partnership under the type-of-activity test. Since the services are paid for, instead of being contributed, the source-of-activity test would not include this arrangement within the definition of tax partnership.

The distinction between this arrangement and the member-contributed-services arrangement is that although the members derive economic benefit from the manager’s services (enhanced rental income), the members and the manager do not share a common goal. The members derived their economic benefit from the apartment complex, enhanced by the manager’s services. The manager separately derived economic benefit solely from the services sold to the arrangement in exchange for the management fee.

*c. Member-Compensated Services.* An arrangement that pays a fair market fee to a member of a co-ownership arrangement to provide support services should not be a tax partnership under the source-of-activity test. If the member is compensated at fair market rates for the services, the service-providing member’s separate capacities must be distinguished for tax purposes. The member, as a service provider, individually derives economic benefit from selling services to the arrangement. The members, as co-owners, derive economic benefit from the property, enhanced by the service-providing member’s separately compensated services. This separates the provision of services for a fee from the common goal of owning the property for a profit. Thus, the arrangement would not be a tax partnership under the source-of-activity test.

*d. Profits Interest as Compensation.* The source-of-activity test does not include principal-agent relationships within the definition of tax partnership. It is not unusual for principals to compensate agents with a share of profits. The distinction between tax partnerships and principal-agent relationships is the service provider’s control. If one party retains control over the income of and the right to make withdrawals from the arrangement, the relationship is a principal-agent relationship. One party’s lack of control over the income indicates that such a party is an agent who has sold, not contributed, services to the arrangement. The agent’s lack of contributed

services keeps principal-agent relationships outside the scope of the source-of-activity test.

8. *The Business-Purpose Test.* Under the business-purpose test, courts may disregard an arrangement if the members' purpose for forming the arrangement is "not the creation and carrying on of a new joint enterprise or uniting their joint efforts or substance in a new undertaking[,] . . . [but] the[ir] real purpose . . . [is] to minimize income taxes." This test was used to deny tax partnership classification to simple family partnerships. In the family partnership context, courts were concerned that the parties were using partnerships to shift income from husbands to wives.

Courts disallow the use of tax partnerships as a device for assigning income:

[I]n considering a gift of income by assignment, the court held that the operation of the taxing statute was not controlled by attenuated subtleties, but rather by the import and reasonable construction of the Act; that the court was not so much concerned with the refinements of title as with the command over the income. Concerning attempts to avoid the effect of a taxing statute by various devices, the court held that one having the right to enjoy income could not escape the tax by any kind of anticipatory arrangement, however skillfully devised, by which he procured payment to another.

Courts have also used the business-purpose test in the shelter cases which involve taxpayers attempting to create tax losses and siphon taxable gain to tax-exempt foreign entities through the use of "elaborate partnerships." In holding that such arrangements were not tax partnerships, the D.C. Circuit focused on language in *Commissioner v. Culbertson*, which provides that the existence of a tax partnership depends on whether, "considering all the facts[,] . . . the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise." The D.C. Circuit interpreted this language to require "that a legitimate non-tax business necessity exist for the creation of the otherwise sham entity . . . in order to meet the [*Culbertson*] intent test." In one of the tax shelter cases, the court noted that the taxpayer could have purchased the assets acquired through the partnership without incurring the significant costs of creating the partnership and paying premiums to the foreign partners. This indicated that the partnership had no nontax business purpose and should be disregarded for tax purposes. Thus, the business-purpose test requires that an arrangement have a nontax business purpose to be a tax partnership. The business-purpose test thus serves as an overriding anti-abuse tool for the courts and the IRS.

9. *The Estoppel Test.* The estoppel test subjects taxpayers to the form of an arrangement they choose if they also otherwise operate in that form. Thus, if parties form a valid state-law partnership, represent the arrangement is a partnership to obtain licenses from the federal government, file a federal partnership tax return, and obtain the tax benefits of being a tax partnership for some tax years, the IRS may later prevent the parties from claiming that the arrangement is not a tax partnership. Even if the arrangement may not otherwise be a valid tax partnership, the estoppel test allows courts and the IRS to estop the parties from disclaiming the tax partnership. Thus, the estoppel test, like the business-purpose test, is an anti-abuse tool.

10. *The Fact-Question Test.* The fact-question test treats an arrangement as a tax partnership if the facts indicate that it is a tax partnership. The test does not state a legal definition of tax partnership, even though an inquiry into facts requires a legal definition of tax partnership. Nonetheless, several courts have adopted what appears to be a pure fact-question test. Other courts state that the determination of tax partnership is a question of fact, but apply some other test.

## V. TABLE OF LEGAL AUTHORITY ADDRESSING THE FEDERAL DEFINITION OF TAX PARTNERSHIP

The following Table presents legal authority addressing the federal definition of tax partnership and uses these concepts to summarize the legal authority.

TABLE OF LEGAL AUTHORITY ADDRESSING THE FEDERAL DEFINITION OF TAX PARTNERSHIP

	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
Key			<p>P/S = tax partnership  Tax = federal income tax  <u>Question</u> = the tax partnership question the legal authority addressed</p> <p>All statutory and regulatory cites are to statutes and regulations applicable at the time the question was considered.</p>	N/A = not applicable Qual'd P/S = qualified tax partnership (a P/S not subject to the P/S accounting and reporting rules)		<p>Basis for holding briefly describes the legal authority's reasoning.  <u>Test</u> = the test the legal authority used to define tax partnership</p>	<p>Cases listed in this column by name only are described in the Table. The Table does not describe cases this column lists with citations. Generally those cases do not address the tax partnership question. Re = regarding (identifies the issue the authority supports)</p>
1	Tariff Act of 1913, § II D, Ch. 16, 38 Stat. 114, 169	1913	First federal income tax act following the ratification of the Sixteenth Amendment. The act disregarded partnerships. "[A]ny person carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of the partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation, and the tax paid, under the provisions of this section."	N/A	N/A	Congress generally disregarded partnerships for tax purposes. Perhaps this stems from view at the time that partnerships were an aggregation of owners. <i>See infra, First Mechanics Bank of Trenton v. Comm'r.</i>	None
2	Revenue Act of 1917, § 1204(e), ch. 63, 40 Stat. 300, 332	1917	Recognized partnerships as entities separate from their owners for tax reporting purposes. Allowed partnerships to compute income based on their own fiscal years and established rules for applying tax rates to partnership income that straddles tax years with different tax rates.	N/A	N/A		

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	Legal Authority	Year	<u>Question.</u> Tax Significance.	IRS Position	Holding	Basis for Holding. <u>Test.</u>	Authority Cited for P/S Question
3	Revenue Act of 1918, § 218(d), ch. 18, 40 Stat. 1057, 1070	1918	First rules for computing and allocating partnership income. Congress required partnerships to compute net income in the same manner and on the same basis as individuals and required partners to include their distributive shares partnership net income in their respective individual incomes. Individuals required to include partnership income in their respective individual incomes during tax year during which partnership tax year ended.	N/A	N/A		
4	I.T. 1604, 11-1 C.B. 1 (1923)	1923	<u>P/S or co-ownership.</u> Tax issue not discussed	No P/S	N/A	Not a P/S under state law. <u>State-law test.</u>	Re state law definition of partnership: <i>Donnell v. Harshe</i> , 67 Mo. 170 (1877); <i>Doak v. Swann</i> , 8 Me. 170 (1831); <i>Moody v. Rathburn</i> , 7 Minn. 89 (1862); <i>Dunham v. Loverock</i> , 158 Pa. 197 (1893); <i>Millett v. Holt</i> , 60 Me. 169 (1872).
5	I.T. 2082, 111-2 C.B. 176 (1924)	1924	<u>P/S or co-ownership.</u> If P/S, income at P/S level.	No P/S	N/A	Tenancy-in-common, not a P/S under state law. <u>State-law test.</u>	None
6	<i>Appeal of Bartley</i> , 4 B.T.A. 874 (1926)	1926	<u>P/S or nothing.</u> If P/S, allocate income equally to husband and wife. If no P/S, allocate income to husband.	No P/S	P/S	"The partnerships contemplated by the taxing statute are 'ordinary partnership' [sic] [as opposed to joint stock companies or associations]." "The requisites of a partnership are that the parties must have joined together to carry on a trade or adventure for their common benefit, each contributing property or services, and having a community of interest in the profits." Taxpayer and wife entered into contract to share profits and losses and shared losses pursuant to the contract. P/S not being generally known is immaterial. Wife liable as a partner. <u>Substantive-law test.</u>	Re scope of statute: <i>Burk-Waggoner Oil Association v. Hopkins</i> , 269 U.S. 110 (1925). Re definition of P/S: <i>Meehan v. Valentine</i> , 145 U.S. 611 (1892); <i>Ward v. Thompson</i> , 22 How. 330 (1859).

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	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
7	<i>Kier v. Comm'r</i> , 15 B.T.A. 1114 (1929)	1929	<u>P/S or nothing.</u> If P/S, can allocate income between husbands and wives. If no P/S, allocate income to husbands.	No P/S	P/S	Court cited California definition of partnership: "Partnership is the association of two or more persons, for the purpose of carrying on a business together, and dividing its profits between them." Wives contributed capital, husbands contributed services. Parties intended to enter into partnership. Absence of accounts in wives' names and other informalities do not raise suspicion of no partnership. Not assignment of income. <u>Substantive-law test.</u>	Re definition of partnership: Civil Code of California § 2395. Re lack of partnership accounting and books: <i>Edwards</i> .
8	<i>Newell v. Comm'r</i> , 17 B.T.A. 93 (1929)	1929	<u>P/S or nothing.</u> If P/S, can allocate income between husband and wife. If no P/S, allocate income husband.	No P/S	P/S	Wife performed services for the partnership. One-half of business income was wife's and she reinvested it in the business, giving her a capital interest. "No rigid rules can be laid down as to the requirements to establish the relationship. Ordinarily where two or more persons associate themselves together for a common undertaking for profit, and share in the profits or losses, a partnership results." State allowed wife to be a partner. Failure to register the name of the partnership did not affect tax classification. No assignment of income to wife. Taxpayers have right to form an organization to reduce surtaxes. <u>Substantive-law test.</u>	Re wife being able to form P/S with husband: <i>Kelley</i> ; <i>Phelps</i> . Re assignment of income: <i>Parshall</i> ; <i>Cray</i> ; <i>Bowers</i> . Re registering name: <i>Barnes</i> ; <i>Parshall</i> ; <i>Cray</i> . Re right to change organization: <i>Bartley</i> ; <i>Wilson</i> ; <i>Loper</i> ; <i>McKnight</i> .

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9	<i>Bowe-Burke Mining Co. v. Willcuts</i> , 45 F.2d 394 (D. Minn. 1930)	1930	<u>P/S or financing arrangement.</u> If P/S, taxpayer argued that statute of limitations had run against a portion of taxes sought to be recovered. If no P/S, statute of limitations did not run.	No P/S	No P/S	Taxpayer hired company to finance the mining, render services, and market the ore produced in exchange for 50% of the mines net profits. Both parties shared losses equally. Taxpayer retained title to the mining lease and to the ore in ground. Title to the ore passed to company when delivered. Each party retained its identity with respect to the other. Both had obligations and expenses to pay. Taxpayer operated the mine; company took and sold the ore. The joint account was to secure advances from company. The contract was to secure finances on a contingent basis. <u>Fact-question test.</u>	N/A
10	<i>Osborn v. Comm'r</i> , 22 B.T.A. 935 (1931)	1931	<u>P/S or nothing.</u> If P/S, allocate income to partners. If no P/S, allocate income to taxpayer.	No P/S	P/S	"A joint venture is defined as: 'An association of two or more persons to carry out a single business enterprise for profit.'" "While under the present state of law courts do not treat a joint venture in all respects identical with a partnership, the contractual relations of the parties and the nature of their association are so similar and closely akin to a partnership that it is commonly held that their rights and liabilities are to be tested by the same rules that govern partnerships." "The requisites of a partnership are that the parties must have joined together to carry on a trade or adventure for their common benefit, each contributing property or services and having a community of interest in the profits." Parties agreed that acquisition of property was to be a joint venture. Members of the joint venture could not assign profit to others. <u>Substantive-law test.</u>	Re definition of joint venture: <i>Fletcher v. Fletcher</i> , 206 Mich. 153; <i>Alderton v. Williams</i> , 139 Mich. 296. Re treating joint venture like P/S: <i>Keismetter v. Rubenstein</i> , 235 Mich. 35. Re definition of P/S: <i>Word v. Thompson</i> , 22 How. 330; <i>Meehan v. Valentine</i> , 145 U.S. 611; <i>Keismetter</i> . Re assignment of income: <i>Sullivan</i> ; <i>Jemison</i> ; <i>Hoffman</i> ; <i>Mitchel</i> ; <i>King</i> ; <i>Ruprecht</i> ; <i>Levering</i> .



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	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
11	Regulations 74, Art. 1317 (December 1, 1931)	1931	Early regulatory definition of partnership. "Joint investment in and ownership of real and personal property not used in the operation of any trade or business and not covered by any partnership agreement does not constitute a partnership. Co-owners of oil lands engaged in developing the property through a common agent are not necessarily partners."	N/A	N/A		N/A
12	<i>Comm'r v. Olds</i> , 60 F.2d 252 (6th Cir. 1932)	1932	<u>P/S or nothing.</u> If P/S, may allocate income to family members. If not P/S, allocate income to father.	No P/S	P/S	The parties intended to form a partnership. <u>State-law test.</u>	<i>London Assurance Corp. v. Drennen</i> , 116 U.S. 461 (1886); <i>Bird v. Hamilton</i> , Walk. Ch. 361; <i>Beecher v. Bus</i> , 7 N.W. 785 (Mich.1881); <i>Canton Bridge Co. v. Eaton Rapids</i> , 65 N.W. 761 (Mich. 1895); <i>Morrison v. Meister</i> , 180 N.W. 395 (Mich. 1920); <i>Klein v. Kirschbaum</i> , 215 N.W. 289 (Mich. 1927).
13	Revenue Act of 1932, § 1111(a)(3), ch. 209, 47 Stat. 169, 289	1932	First statutory definition of partnership. "[A]ny syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this Act, a trust, or estate or a corporation."	N/A	N/A	Before the provision was enacted, taxpayers did not make partnership returns for the "income from operations of joint ventures, syndicates, pools, and similar organizations." Some taxpayers would not account for the income of those ventures on an annual bases, waiting to report income from the entire operation when it wound up. Congress was also concerned that members of such arrangements would use their own accounting periods and methods, regardless of the accounting periods and methods of the arrangements. By defining the term "partnership" broadly, Congress hoped to eliminate confusion.	H. Rept. No. 72-708, 53 (1932).

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	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
14	Revenue Act of 1932, § 189, ch. 209, 46 Stat. 223	1932	Required partnerships to make returns sworn to by any of the partners. The returns had to include the income and profits of the partnership and information about the partners.	N/A	N/A		
15	<i>Reynolds v. McMurray</i> , 60 F.2d 843 (10th Cir. 1932)	1932	<u>P/S or co-ownership.</u> If P/S, taxpayer's income includes the capital expenditures. If no P/S, taxpayer's income includes only a share of net profits from oil and gas operation.	P/S	P/S	"Where one co-owner makes advances for the benefit of the other, to be repaid from earnings from the property before any division of profits is to be made but without personal obligation on the part of the other to repay any such advances, thus making them subject to the risks of the business, the co-owners are joint adventurers in the operation of the property." If the arrangement had been a relinquishment of rights in leases for a percentage of profits, taxpayer would not be a joint venturer. Taxpayer's proportionate share of expenses were paid out of taxpayer's proportionate part of the oil and gas. The purpose of the agreement was to facilitate the development of the oil and gas property, not to transfer title. Parties were co-owners of the leases and joint adventures in the operation of such leases and income from the operations was income of all. <u>Substantive-law test.</u>	Re the definition of joint venture: <i>Nelson v. Lindsey</i> , 179 Iowa 862 (1917). Re joint venture in production: <i>Ferry Market, Inc.</i> ; <i>Dickey</i> ; <i>Glenmore Securities Corp.</i> Re assignment of income: <i>Rensselaar &amp; S.R. Co. v. Irwin</i> , 249 F. 726 (2d Cir. 1918); <i>Northern R. Co. of New Jersey v. Lowe</i> , 250 F. 856 (2d Cir. 1918); <i>Hamilton v. Kentucky &amp; I.T. R. Co.</i> , 289 F. 20 (6th Cir. 1923); <i>Leydig v. Comm'r</i> , 43 F.2d 494 (10th Cir. 1930); <i>Lucas v. Earl</i> , 281 U.S. 111 (1930); <i>Corliss v. Bowers</i> , 281 U.S. 376 (1930). Re income for debt discharge: <i>Old Colony Trust Co. v. Comm'r</i> , 279 U.S. 716 (1929); <i>United States v. Boston &amp; Maine R. Co.</i> , 279 U.S. 732 (1929); <i>Blalock v. Georgia R. &amp; E. Co.</i> , 246 F. 387 (1917); <i>Rensselaar &amp; S.R. Co. v. Irwin</i> ; <i>Washington Market Co. v. Comm'r</i> , 25 B.T.A. 576 (1932).
16	Regulations 77	1933	Removed former regulatory definition of P/S.	N/A	N/A	The 1932 statutory definition of partnership.	

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17	<i>Fisher v. Comm'r</i> , 29 B.T.A. 1041 (1934), <i>aff'd</i> , 74 F.2d 1014 (2d Cir. 1935)	1934	<u>P/S or nothing.</u> If P/S, allocate income to taxpayer and parents. If no P/S, allocate all income to taxpayer.	No P/S	No P/S	"The requisites of a partnership are that the parties must have joined together to carry on a trade or adventure for their common benefit, each contributing property or services, and having a community of interest in the profits." The parties did not contribute property or services. Taxpayer did not assign rights to property sold to the partnership. Parties' conduct did not show partnership. Mere words do not bind court to realities. Sharing of profits may be important, but "It may be merely the method adopted to pay a debt or wages." Arrangements within the family for the diversion of income deserve careful scrutiny. The arrangement was not a partnership in substance. <u>Substantive-law test.</u>	Re the definition of partnership: <i>Meehan v. Valentine</i> , 145 U.S. 611 (1892), quoted in <i>Schumacher v. Davis</i> , 1 Fed. Supp. 959 (E.D. N.Y. 1932); <i>Cohan</i> . Re assignment of income: <i>Lucas v. Earl</i> , 281 U.S. 111 (1930). Re substance over form: <i>Martin v. Peyton</i> , 246 N.Y. 213 (1927); Re family arrangements: <i>Appeal of P. B. Fouke</i> , 2 B.T.A. 219 (1925); <i>Robertson v. Comm'r</i> , 20 B.T.A. 112 (1930).
18	I.T. 2749, XIII-1 C.B. 99 (1934)	1934	<u>P/S or co-ownership.</u> Tax issue not discussed	P/S	N/A	More than joint ownership so P/S. <u>Substantive-law test/degree-of-activity test.</u>	<i>Hobart-Lee Tie Co. v. Grodsky</i> , 46 S.W.2d 859 (Mo. 1932); 47 C.J. <i>Partnership</i> ; Reg. 74 and 77
19	I.T. 2785, XIII-1 C.B. 96 (1934)	1934	<u>P/S or co-ownership.</u> If qualified P/S, not required to follow P/S accounting and reporting rules.		Qual'd P/S	No basis provided. Oil and gas arrangement. <u>No test applied.</u>	I.T. 2749.
20	<i>Johnston v. Comm'r</i> , 86 F.2d 732 (2d Cir. 1936)	1936	<u>Not a P/S question.</u> Issue dealt with character of P/S gain passed through to partner under section 23(r) (1932).	N/A	N/A	P/S treated as a separate entity.	

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21	<i>First Mechs. Bank v. Comm'r</i> , 91 F.2d 275 (3d Cir. 1937)	1937	<u>P/S or principal-agent arrangement.</u> If P/S, statute of limitations has expired because year of inclusion was earlier. If no P/S, amount at issue in income in later year.	No P/S	P/S	The arrangement was a joint venture, so it was a tax P/S. Court considered intent, contributions, control, sharing in profits, and reference to third parties. <u>State-law test.</u>	33 C.J. <i>Joint Adventures</i> (1924); 33 C.J. <i>Joint Adventures</i> § 16 (1924); <i>Reid v. Shaffer</i> , 249 F. 553 (6th Cir. 1918); 33 C.J. <i>Joint Adventures</i> § 9 (1924); 33 C.J. <i>Joint Adventures</i> § 16 (1924); 47 C.J. <i>Partnerships</i> § 64 (1929); 47 C.J. <i>Partnerships</i> § 233 (1929). Support for treating a joint venture like a partnership: <i>Dickey v. Comm'r</i> , 14 B.T.A. 1295 (1929), <i>aff'd</i> , <i>Dickey v. Burnet</i> , 56 F.2d 917 (8th Cir. 1932); <i>Reynolds v. McMurray</i> , 60 F.2d 843 (D.C. Cir. 1932); <i>Helvering v. Armstrong</i> , 69 F.2d 370 (9th Cir. 1934).
22	<i>Winmill v. Comm'r</i> , 93 F.2d 494 (2d Cir. 1937), <i>rev'd</i> , <i>Helvering v. Winmill</i> , 305 U.S. 79 (1938)	1937	<u>P/S or co-ownership.</u> If P/S, taxpayer could not offset P/S gains with personal losses under section 23(r)(1) (1932).	P/S	P/S	Arrangement was a joint venture, so it was a P/S for tax purposes. Taxpayer contributed capital and some services, other party contributed services, and both shared in the profits. <u>State-law test.</u>	<i>Johnston</i> (did not address P/S question)

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23	<i>Tompkins v. Comm'r</i> , 97 F.2d 396 (4th Cir. 1938)	1938	<u>P/S or co-ownership.</u> If P/S, taxpayer has loss on sale of P/S property and termination of P/S. If no P/S, taxpayer acquired interest in property from co-owner.	No P/S	P/S	The nature and purpose of the parties' respective businesses, lack of common ownership of the parties, the parties' entering into the single transaction for profit, show joint venture. <u>Substantive-law test.</u>	Re definition of joint venture: 33 C.J. 841, 47; <i>Dexter &amp; Carpenter v. Houston</i> , 20 F.2d 647 (4th Cir., 1927); <i>Joring v. Harris</i> , 292 F.974 (C.C.A., 1923); <i>Jackson v. Hooper</i> , 76 N.J. Eq. 185 (1909); <i>Reid v. Shaffer</i> , 249 F. 553 (C.C.A., 1918); <i>Berry v. Colborn</i> , 65 W.Va. 493 (1909); <i>Osborn</i> ; <i>Fletcher v. Fletcher</i> , 206 Mich. 153 (1919); <i>Alderton v. Williams</i> , 139 Mich. 296 (1905); <i>Clark v. Sidway</i> , 142 U.S. 682 (1892); <i>Blue v. Blue</i> , 92 W.Va. 574 (1923); <i>Cain's Adm'r v. Hubble</i> , 184 Ky. 38 (1919); <i>Crenshaw v. Crenshaw</i> , 22 Ky. Law Rep. 1782 (1901).
24	<i>Estate of Appleby v. Comm'r</i> , 41 B.T.A. 18 (1940), <i>aff'd on other grounds</i> , 123 F.2d 700 (2d Cir. 1941)	1940	<u>P/S or co-ownership.</u> If P/S amount of loss from P/S is limited.	P/S	No P/S	Arrangement tenancy-in-common under state law. Court feared extending definition of P/S to marital communities or tenancies by the entirety. <u>State-law test.</u>	I.T. 1604; I.T. 2082; <i>Poe v. Seaborn</i> , 282 U.S. 101 (1930); <i>Tyler v. United States</i> , 281 U.S. 497 (1930); <i>Champlin v. Comm'r</i> , 71 F.2d 23 (10th Cir., 1934); I.T. 2749.

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	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
25	<i>Tinkoff v. Comm'r</i> , 120 F.2d 564 (7th Cir. 1941)	1941	<u>P/S or nothing.</u> If P/S, husband may allocate income to wife and infant son. If no P/S, allocate income to husband.	No P/S	No P/S	Husband was a CPA and attorney. Wife and son contributed no capital or services. "But the income tax statutes regard substance rather than form." "Tax laws deal with realities and look at the entire transaction." "[I]t is obvious that the two partnerships had no business functions." "The partnerships were merely patent devices 'to exalt artifice above reality.'" "It is a fundamental that income is taxable to the person who earns it." "The device of a partnership was without legal effect . . . ." <u>Business-purpose test.</u>	Re substance: <i>United States v. Phellis</i> , 257 U.S. 156 (1921); <i>Helvering v. Gordon</i> , 87 F.2d 663 (8th Cir., 1937); <i>Comm'r v. Griffiths</i> , 103 F.2d 110 (7th Cir., 1939); <i>Gregory v. Helvering</i> , 293 U.S. 465 (1935); <i>Jones</i> .
26	<i>Earp v. Jones</i> , 131 F.2d 292 (10th Cir. 1942)	1942	<u>P/S or nothing.</u> If P/S, may allocate income to wife. If no P/S, allocate income to husband.	No P/S	No P/S	The court ignored that the arrangement was a partnership under Oklahoma law. "[I]n considering a gift of income by assignment, the court held that the operation of the taxing statute was not controlled by attenuated subtleties, but rather by the import and reasonable construction of the Act; that the court was not so much concerned with the refinements of title as with the command over the income. Concerning attempts to avoid the effect of a taxing statute by various devices, the court held that one having the right to enjoy income could not escape the tax by any kind of anticipatory arrangement, however skillfully devised, by which he procured payment to another." "But these rights were more fanciful than real, for while the partnership agreement gave her full rights of management and control with him, it was not intended that she should have any voice in the business." (continued below)	Re assignment of income: <i>Harrison v. Schaffner</i> , 312 U.S. 579 (1941); <i>Burnet v. Leininger</i> , 285 U.S. 136 (1932); <i>Lucas v. Earl</i> , 281 U.S. 111 (1930). Re sham transaction: <i>Gregory v. Helvering</i> , 293 U.S. 465 (1935); <i>Helvering v. Clifford</i> , 309 U.S. 331 (1940). Distinguished from <i>Ledbetter</i> .

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	Legal Authority	Year	<u>Question.</u> Tax Significance.	IRS Position	Holding	Basis for Holding. <u>Test.</u>	Authority Cited for P/S Question
	<i>Earp v. Jones</i> , 131 F.2d 292 (10th Cir. 1942) (continued from above)	1942	(see above)			"The apparent purpose of the partnership was not the creation and carrying on of a new joint enterprise or uniting their joint efforts or substance in a new undertaking. The real purpose of the partnership was to minimize income taxes." <u>Business-purpose test.</u>	(see above)
27	<i>Mead v. Comm'r</i> , 131 F.2d 323 (5th Cir. 1942)	1942	<u>P/S or nothing.</u> If P/S, husband may allocate income to wife. If no P/S, allocate income to husband.	No P/S	No P/S	Question is whether the business was in reality a genuine P/S or was operated in P/S form for the purpose of tax avoidance. Husband contributed everything to the business and no distributions were made to the wife. There was sufficient evidence for the BTA to find no P/S. All of the profits were earned by the husband and are properly taxable to him. <u>Business-purpose test.</u>	Re forming P/S for tax avoidance: <i>United States v. Phellis</i> , 257 U.S. 156 (1921); <i>Weiss v. Stearn</i> , 265 U.S. 242 (1924); <i>Gregory v. Helvering</i> , 293 U.S. 465 (1935); <i>Higgins v. Smith</i> , 308 U.S. 473 (1940); <i>Helvering v. Clifford</i> , 309 U.S. 331 (1940); <i>Tinkoff</i> . Re assignment of income: <i>Lucas v. Earl</i> , 281 U.S. 111 (1930); <i>Corliss v. Bowers</i> , 281 U.S. 376 (1930); <i>Griffiths v. Comm'r</i> , 308 U.S. 355 (1939); <i>Jones v. Page</i> , 102 F.2d 144 (5th Cir., 1939 ); <i>Covington v. Comm'r</i> , 103 F.2d 201 (5th Cir., 1939).

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	Legal Authority	Year	<u>Question.</u> Tax Significance.	IRS Position	Holding	Basis for Holding. <u>Test.</u>	Authority Cited for P/S Question
28	<i>Schroder v. Comm'r</i> , 134 F.2d 346 (5th Cir. 1943)	1943	<u>P/S or nothing.</u> If P/S, husband may allocate income to wife. If no P/S, all income is allocated to husband.	No P/S	No P/S	Wife had no drawing account on the books, no control, and did not participate in the business. All income was from husband's activities as an engineer. Even if partnership is valid under Alabama law, it may not be valid for tax purposes. "The comprehensive scope of the rule in <i>Earl's</i> case, to strike down all efforts to separate for income tax purposes future earnings from their earner, future income from the thing or person that produces it, in short, the tree from its fruits, has not been escaped by the device employed here." <u>Business-purpose test.</u>	Re form of P/S: <i>Mead</i> ; <i>Utter v. Irvin</i> , 132 F.2d 416 (5th Cir., 1942). Re assignment of income: <i>Saenger v. Comm'r</i> , 69 F.2d 631 (5th Cir., 1934);
29	<i>Comm'r v. Tower</i> , 327 U.S. 280 (1946)	1946	<u>P/S or nothing.</u> If P/S, husband may shift income to wife. If no P/S, allocate income to husband	No P/S	No P/S	Look at substantive-law intent standard. May ignore Michigan law. <u>Substantive-law test.</u>	<i>Drennen v. London Assurance Co.</i> , 113 U.S. 51 (1885); <i>Cox v. Hickman</i> , (1860) 11 Eng. Rep. 431 (H.L.).
30	<i>Lusthaus v. Comm'r</i> , 327 U.S. 293 (1946)	1946	<u>P/S or nothing.</u> If P/S husband may shift income to wife. If no P/S, allocate income to husband.	No P/S	No P/S	Relied on reasoning in <i>Tower</i> . <u>Substantive-law test.</u>	<i>Tower</i>
31	<i>Smith v. Comm'r</i> , 8 T.C. 1319 (1947)	1947	<u>P/S or co-ownership.</u> If P/S, taxpayer argues litigation was to settle P/S accounting or that amount of income should have been recognized when earned by the P/S and allocated to the taxpayer. If no P/S, amount paid to the taxpayer is income in the year received or used to satisfy the taxpayer's obligations.	No P/S	No P/S	No joint operation. <u>Substantive-law test and degree-of-activity test.</u>	40 C.J. <i>Mines and Minerals</i> (1926); 18 R.C.L. 1200; <i>Gardner v. Wesner</i> , 55 S.W.2d 1104 (Tex. Civ. App. 1932).
32	<i>United States v. Landreth</i> , 164 F.2d 340 (1947)	1947	<u>P/S or nothing.</u> If P/S, sale of partnership interest and gain is long-term capital gain. If no P/S, sale of rights to future income and proceeds are ordinary income.	No P/S	P/S	Joint undertaking both in management and capital, the legal relation created and intended to be created was that of partners, and undertaking was a joint venture. <u>Substantive-law test.</u>	<i>Tower</i> ; <i>Reynolds</i> ; <i>Graham</i> ; <i>First Nat'l Bank</i> ; <i>Beazley</i> .



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	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
33	I.T. 3930, 1948-2 C.B. 126	1948	<u>P/S or co-ownership.</u> If P/S must follow P/S accounting and reporting rules. If qual'd P/S, may file qual'd P/S return.	Qual'd P/S	Qual'd P/S	No joint profit. Oil and gas arrangement. <u>Joint-profit test.</u>	I.T. 2749; I.T. 2785.
34	<i>Olinger v. Comm'r</i> , 10 T.C. 423 (1948)	1948	<u>P/S or nothing.</u> If P/S, may allocate half the income to wife. If no P/S, allocate income to husband.	No P/S	No P/S	Wife's contribution of capital sufficient to hold wife is a partner if P/S exists. Indications that arrangement was not a P/S: no a P/S agreement, did not hold out as P/S, did not tell accountant and IRS that arrangement was a P/S. <u>Substantive-law test.</u>	Re definition of P/S: <i>Tower</i> ; <i>Lusthaus</i> . Re representing arrangement as P/S: <i>Weizer</i> . Re P/S agreement: <i>Wilson</i> ; <i>Schreiber</i> ; <i>Ewing</i> ; <i>Zukaitis</i> . Re husband being partner with others but not wife: <i>Burnet</i> .
35	<i>Comm'r v. Culbertson</i> , 337 U.S. 733 (1949)	1949	<u>P/S or nothing.</u> If P/S, may allocate income from cattle operation to family members.	No P/S	Maybe P/S	P/S requires contribution of capital and services and present intent to conduct business. Intent is a fact question. Remanded to Tax Court to reconsider intent question. <u>Substantive-law test.</u>	<i>Ward v. Thompson</i> , 63 U.S. 330 (1859); <i>Tower</i> ; <i>Drennen, supra</i> ; <i>Cox v. Hickman, supra</i> ; I.T. 3845.
36	<i>Joe Balestrieri &amp; Co. v. Comm'r</i> , 177 F.2d 867 (9th Cir. 1949)	1949	<u>P/S or financing arrangement.</u> If P/S deduct losses as P/S incurs them. If loan, deduct when shown P/S cannot repay loan.	No P/S	No P/S	Arrangement did not satisfy California definition of joint venture, which required common control and joint sharing of profits and losses. <u>State-law test.</u>	<i>Beck v. Cagle</i> , 115 P.2d 613 (Cal. Ct. App. 1941); <i>Howard v. Societa Di Unione e Beneficenza Italiana</i> , 145 P.2d 694 (Cal. Ct. App. 1944); <i>Wiltsee v. Cal. Employment Comm'n</i> , 158 P.2d 612 (Cal. Ct. App. 1945); <i>Mazzera v. Wolf</i> , 173 P.2d 44 (1946); <i>United Farmers Ass'n v. Sakiota</i> , 46 P.2d 770 (Cal. Ct. App. 1935); <i>Larson v. Lewis-Simas-Jones Co.</i> , 84 P.2d 296 (Cal. Ct. App. 1938); <i>Enos v. Picacho Gold Mining Co.</i> , 133 P.2d 633 (Cal. Ct. App. 1943); <i>Spier v. Lang</i> , 53 P.2d 138 (Cal. 1938); <i>Stoddard v. Goldenberg</i> , 119 P.2d 800 (Cal. Ct. App. 1941).

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	Legal Authority	Year	<u>Question.</u> Tax Significance.	IRS Position	Holding	Basis for Holding. <u>Test.</u>	Authority Cited for P/S Question
37	<i>Bartholomew v. Comm'r</i> , 9 T.C.M. (CCH) 302 (1950)	1950	<u>P/S or principal-agent arrangement.</u> If P/S, use P/S's accrual method and include income in 1943. If no P/S, use T/P's cash method and include income in 1944.	No P/S	No P/S	Parties did not share in control, failing the test for joint venture. Parties fail intent test. <u>Substantive-law test.</u>	<i>Chisholm v. Gilmer</i> , 81 F.2d 120 (4th Cir. 1936); 48 C.J.S. <i>Joint Adventures</i> § 1 (2004); <i>Tower</i> ; <i>Culbertson</i> ; 48 C.J.S. <i>Joint Adventurers</i> § 2 (2004); <i>Seymour v. Wildgen</i> , 137 F.2d 160 (10th Cir. 1943).
38	<i>Estate of L. O. Koen v. Comm'r</i> , 14 T.C. 1406 (1950)	1950	<u>P/S or nothing.</u> If P/S, losses incurred as sustained and allocated to partners. If no P/S, loss incurred when payments made.	P/S	P/S	Taxpayer was unsuccessful arguing that the amounts paid were for pre-operating costs of a P/S that was never formed. Court considered that the P/S filed a tax return and called the arrangement a joint venture in a letter. A joint venture is a "special combination of two or more persons where, in some specific venture, a profit is sought without an actual partnership or corporate designation." "The record as a whole convinces us that the parties intended to and did in fact conduct the business of exploiting the 'Airstyr' devices as a joint venture." <u>Substantive-law test.</u>	Re definition of joint venture: <i>Tompkins</i> ; <i>Joring</i> , <i>Aiken Mills</i> .

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	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
39	<i>Stern v. Comm'r</i> , 15 T.C. 521 (1950)	1950	<u>Whether trust is a partner.</u> If trust is a partner, may allocate P/S income to the trust, which helps taxpayer avoid the excess profits tax. If trust is not a partner, cannot allocate P/S income to the trust	No ptr.	Ptr.	Capital was an important income-producing factor. Real intent to carry on business as partners. The distributive shares of partnership income belonging to trusts did not benefit others. Insufficient reason to disregard trusts as partners. Disregard whether state law allows person to be a partner. <u>No test applied.</u>	<i>Hanson v. Birmingham</i> , 92 F.Supp. 33 ( N.D. Iowa 1950); <i>Sunlin v. Comm'r</i> , 6 B.T.A. 1232 (1927); <i>Crabb v. Comm'r</i> , 41 B.T.A. 686 (1941), <i>rev'd on other grounds</i> 121 F.2d 1015 (5th Cir. 1941); <i>Fickert v. Comm'r</i> , 15 T.C. 344 (1950); <i>Ellery v. Comm'r</i> , 4 T.C. 407 (1944); <i>Isaac W. Frank Trust of 1927 v. Comm'r</i> , 44 B.T.A. 934 (1941); <i>Thomas v. Feldman</i> , 158 F.2d 488 (5th Cir. 1946); <i>Thompson v. Riggs</i> , 175 F.2d 81 (8th Cir. 1949); <i>Scherer v. Comm'r</i> , 3 T.C. 776 (1944); <i>W. Const. Co. v. Comm'r</i> 14 T.C. 453 (1950); <i>M.A. Reeb v. Comm'r</i> , 8 B.T.A. 759 (1927); <i>Richard H. Oakley v. Comm'r</i> , 24 B.T.A. 1082 (1931); <i>Ives v. Comm'r</i> , 29 B.T.A. 822 (1934); <i>Armstrong v. Comm'r</i> , 143 F.2d 700 (10th Cir. 1944); <i>Maiaico v. Commissioner</i> , 183 F.2d 836 (D.C. Cir. 1950); <i>Greenberger v. Commissioner</i> , 177 F.2d
40	<i>Bartholomew v. Comm'r</i> , 186 F.2d 315 (8th Cir. 1951)	1951	<u>P/S or principal-agent arrangement.</u> If P/S, use P/S's accrual method and include income in 1943. If no P/S, use taxpayer's cash method and include income in 1944.	No P/S	Maybe P/S	Tax Court did not consider whether the taxpayer was a member of the partnership. Remanded to Tax Court to consider whether taxpayer was a partner. <u>Test indeterminable.</u>	<i>Tower</i> ; <i>Culbertson</i> ; <i>Stern</i>

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	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
41	<i>Estate of Langer v. Comm'r</i> , 16 T.C. 41 (1951)	1951	<u>P/S or co-ownership.</u> If P/S, taxpayer includes only allocable share of P/S taxable net income in gross income for purposes of applying section 107(d). If no P/S, taxpayer includes gross receipts (unadjusted for P/S expenses) in gross income for purposes of applying section 107(d).	No P/S	P/S	Court concluded that arrangement was a joint venture but provided no analysis to support the conclusion. The taxpayer entered into a joint venture agreement with others and operated the hotel as a joint venture. Arrangement's failure to file a P/S return is not dispositive. <u>Apparently substantive-law test or state-law test.</u>	None
42	<i>Place v. Comm'r</i> , 17 T.C. 199 (1951), <i>aff'd</i> 199 F.2d 373 (6th Cir. 1952)	1951	<u>P/S or lease.</u> If P/S, amounts paid to wife represent her share of P/S profits. If no P/S, amounts paid from husband to wife represent rent to the extent reasonable and gift to the extent in excess of reasonable rent.	No P/S	No P/S	No evidence that business was organized to carry out specific venture or that husband and wife intended to become joint venturers. Sharing of profits alone not sufficient so show P/S. Not sufficient evidence to show P/S. No mutual interest in capital or sharing of losses. Wife had no control over profits or voice in the management and was not subject to the business's liabilities. <u>Substantive-law test.</u>	Re intent: <i>Culbertson</i> ; <i>Thayer v. Augustine</i> , 55 Mich. 187. Re no evidence of P/S: <i>Fletcher v. Fletcher</i> , 206 Mich. 153 (1919); <i>Osborn</i> . Re profit-sharing: <i>Beecher v. Bush</i> , 45 Mich. 188 (1881); Michigan Statutes Annotated, Vol. 14, § 20.7. Re control, loss-sharing, and liability: <i>Gleichman v. Famous Players-Lasky Corp.</i> 241 Mich. 266 (1928).
43	<i>Levin v. Comm'r</i> , 199 F.2d 692 (2d Cir. 1952)	1952	<u>P/S or nothing.</u> If P/S, allocate income to partners. If no P/S, allocate all income to taxpayer.	No P/S	P/S	<i>Culbertson</i> does not require members to actively participate to be partners. A capital contribution justifies P/S classification but does not compel it. Non-participating member who contributes capital may be a partner. <u>Substantive-law test.</u>	<i>Culbertson</i> .

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44	<i>Maletis v. United States</i> , 200 F.2d 97 (9th Cir. 1952), <i>cert. den'd</i> 345 U.S. (1953)	1952	<u>P/S or nothing.</u> If P/S, allocate losses to all partners. If no P/S, allocate losses to taxpayer.	P/S	P/S	Taxpayer is barred from disclaiming partnership classification because the arrangement was a partnership under Oregon law, represented itself as a partnership to the federal government to obtain federal licenses, filed tax returns (after <i>Tower</i> ), and obtained tax benefit of treating arrangement as a partnership. If no such rule, "the taxpayer could commence doing business as a corporation or partnership and, if everything goes well, realize the income tax advantages therefrom; but if things do not turn out well, may turn around and disclaim the business form he created in order to realize the loss as his individual loss." "That what he created cannot be a valid family partnership for tax purposes is irrelevant, since he elected to do business as a partnership and represented it to be valid." <u>Estoppel Test.</u>	<i>Tower</i> ; <i>Higgins v. Smith</i> , 308 U.S. 473 (1940); <i>Love v. United States</i> , 96 F.Supp. 919 (Ct. Cl. 1951); <i>Culbertson</i> .
45	<i>Bentex Oil Corp. v. Comm'r</i> , 20 T.C. 565 (1953)	1953	<u>P/S or co-ownership.</u> If P/S, P/S makes election to capitalize or deduct IDC. If no P/S, members make elections individually.	P/S	P/S	Based on facts, arrangement is a P/S. P/S makes election. Taxpayer argued in prior year audit that arrangement was a P/S. <u>Test indeterminable.</u>	None
46	<i>Gilford v. Comm'r</i> , 201 F.2d 735 (2d Cir. 1953)	1953	<u>P/S or co-ownership.</u> If P/S, loss on sale of interest is capital, and taxpayer may carry forward currently disallowed portion. If no P/S, loss is ordinary.	No P/S	No P/S	Mere holding of business property by tenants-in-common without showing of intent to be partners not enough to be a partnership. <u>Substantive-law test and degree-of-activity test.</u>	None

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	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
	<i>Haley v. Comm'r</i> , 203 F.2d 815 (5th Cir. 1953)	1953	<u>P/S or financing arrangement.</u> If P/S, taxpayer recognizes some of the P/S losses. If no P/S, taxpayer has incurred liability.	No P/S	P/S	Ignore local law and the intent stated in documents and look to substance of the arrangement. "[I]f the arrangements and the conduct of the parties thereunder plainly show the existence of such relationship, and the intent to enter into it, it will nevertheless be held to exist for tax purposes." "A joint venture has been defined as a 'special combination of two or more persons, wherein some specific venture a profit is jointly sought without any actual partnership or corporate designation.'" "Substance rather than form controls in applying the federal tax statutes, and 'the realities of the taxpayer's economic interest rather than the niceties of the conveyancer's art should determine the power to tax.'" <u>Business-purpose Test.</u>	Re local law: <i>Heiner v. Mellon</i> , 304 U.S. 271 (1938); <i>Second Carey Trust v. Helvering</i> , 126 F.2d 526 (D.C. Cir. 1942); <i>Poplar Bluff Printing Co. v. Comm'r</i> , 149 F.2d 1016 (8th Cir. 1945); <i>Hogan v. Comm'r</i> , 141 F.2d 92 (5th Cir. 1944). Re intent: <i>Culbertson</i> ; <i>Benton v. Comm'r</i> , 197 F.2d 745 (5th Cir. 1952); <i>Claire Hoffman</i> . Re definition of joint venture: <i>Aiken Mills v. United States</i> , 144 F.2d 23 (4th Cir. 1944); Mertens' Law of Federal Income Taxation, Vol. 6, Sec. 35.05, p. 118; Reg. 111, § 29.3797 (1943). Regarding substance over form: <i>Landreth</i> ; <i>Helvering v. Safe Deposit &amp; Trust Co.</i> , 316 U.S. 56 (1942); <i>Helvering v. Clifford</i> , 309 U.S. 331 (1940); <i>Helvering v. F&amp;R Lazarus</i> , 308 U.S. 252 (1939); <i>Bankers Mortgage Co. v. Comm'r</i> , 141 F.2d 357 (5th Cir. 1944); <i>West v. Comm'r</i> , 150 F.2d 723 (5th Cir. 1945). Re definition of
47	<i>Coffin v. United States</i> , 120 F.Supp. 9 (S.D. Ala. 1954)	1954	<u>P/S or co-ownership.</u> If P/S, gain on sale of interest is capital. If no P/S, taxpayer is a dealer and gain is ordinary.	No P/S	No P/S	T/P did not meet burden of establishing P/S. Did not show intent. Taxpayer was dealer, so ordinary income. <u>Substantive-law test.</u>	<i>Bartholomew</i> ; <i>Gilford</i> ; <i>Estate of Appleby</i>
48	<i>Hahn v. Comm'r</i> , 22 T.C. 212 (1954)	1954	<u>P/S or co-ownership.</u> If P/S, income from property not allocated according to ownership interest. If no P/S, income allocated according to ownership interest and taxpayer had too much income to satisfy definition of dependant.	No P/S	No P/S	Tenants-in-common who rent their property are not <i>ipso facto</i> partners. Method of rental did not indicate a P/S. <u>Substantive-law test and degree-of-activity test.</u>	<i>Estate of Appleby</i> ; <i>Coffin</i> ; <i>Estate of Langer</i>

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49	<i>Lewis v. Comm'r</i> , 23 T.C. 538 (1954)	1954	<u>P/S or nothing.</u> If P/S, allocate part of income to children. If no P/S, income is community income of husband and wife.	No P/S	No P/S	Existence of a tax partnership "depends upon the intent of the parties, which is a question of fact." Facts considered: establishment of P/S and decisions about salary were made unilaterally, children's capital accounts set up after business had been operating, there was no partnership agreement, parties' conduct did not evidence understanding that P/S existed, minor children not represented, children not involved in decisions and were unaware that tax returns were being filed on their behalf, did not represent to creditors or an official body of the State that children were partners, did not notify employees that children were partners, and did not register the partnership under the Texas Assumed Name Statute. "[F]amily scheme for tax avoidance by assignment of income . . . ." <u>Substantive-law test.</u>	Re intent: <i>Culbertson</i> . Re unilateral decisions: <i>Batman</i> ; <i>Lieber</i> . Re P/S agreement and evidence of understanding of P/S: <i>Olinger</i> ; <i>Weizer</i> . Re representation to others: <i>Maxwell</i> . Re assignment of income scheme: <i>Batman</i> .
50	Rev. Rul. 54-84, 1954-1 C.B. 284	1954	<u>P/S or principal-agent arrangement.</u> If P/S, section 117(j) applied to gains and losses from sales of oil and gas leases.	P/S	P/S	Arrangement to drill wells and produce and sell oil was a joint venture. Title to property in one member's name, but the sales agreement said all would share in sales proceeds. <u>Substantive-law test.</u>	<i>Walls v. Comm'r</i> , 60 F.2d 347 (10th Cir., 1932) (holding that an interest in a working interest received in exchange for services had value); <i>Massey v. Comm'r</i> , 143 F.2d 429 (5th Cir., 1944) (considering the tax treatment of an oil and gas interest received in exchange for legal services).

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	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
51	<i>Tate v. Knox</i> , 131 F.Supp. 514 (D. Minn. 1955)	1955	<u>P/S or principal-agent arrangement.</u> If P/S, taxpayer sold P/S interest and would recognize capital gain. If no P/S, payment was a termination employment contract and ordinary income.	No P/S	No P/S	Court relied on Minnesota definition of joint venture, which it claimed is the same for determining whether an arrangement is a P/S. Factors: (1) contribution of money, property, time, or skill in a common undertaking, (2) joint proprietorship and control, (3) sharing of profits, (4) contract showing joint venture entered into. <u>State-law test.</u>	<i>Hammel v. Feigh</i> , 173 N.W. 570 (Minn. 1919); <i>Hansen v. Adent</i> , 57 N.W.2d 681 (Minn. 1953); <i>Rehnberg v. Minn. Homes, Inc.</i> , 52 N.W. 2d 454 (Minn. 1952).
52	<i>Greenspon v. Comm'r</i> , 229 F.2d 947 (8th Cir. 1956)	1956	<u>P/S or co-ownership.</u> If P/S, it is engaged in a trade or business and property is inventory, gain from the sale of which is ordinary income. If no P/S, property is capital assets and gain from sale is capital gain.	P/S	No P/S	Disregard filed P/S return. Look at the state law definition of joint venture. Definition requires a contract and intent to form a P/S. Need more than co-ownership and desire to liquidate co-owned property. <u>Substantive-law test.</u>	68 C.J.S. <i>Partnership</i> § 10 (1998); <i>Culbertson</i> .
53	<i>Linsenmeyer v. Comm'r</i> , 25 T.C. 1126 (1956)	1956	<u>Partners or non-partners.</u> If children are members of P/S, allocate income to them. If children not members of P/S, all income allocated to mother.	Not Partners	Not Partners	"The fundamental criterion in determining the existence of a valid partnership is the existence of an intent to join together in the conduct of the business." Did not treat children as partners until attorney advised them to. No intent to become partners. Status under state law is irrelevant. <u>Business-purpose test.</u>	Re intent: <i>Culbertson</i> ; <i>Tower</i> ; <i>Lusthaus</i> ; <i>Mary Frances Lewis</i> ; <i>L. C. Olinger</i> .



TABLE OF LEGAL AUTHORITY ADDRESSING THE FEDERAL DEFINITION OF TAX PARTNERSHIP

	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
54	<i>Sherman v. United States</i> , 141 F. Supp. 369 (E.D. Pa. 1956), <i>aff'd</i> , 240 F.2d 600 (3d Cir. 1957)	1956	<u>P/S or nothing.</u> If P/S, may allocate income to family members. If no P/S, allocate income to husband/father.	P/S	P/S	IRS originally took the position that the arrangement was not a P/S and sent letters of overassessment to wife and children, who protested the refund. Later, IRS and taxpayers reversed positions. "The government need not be indifferent, in the first instance, to the business form which a taxpayer selects; however, the taxpayer, having made the selection, may not subsequently disclaim its validity to avoid attendant tax disadvantages. In this case, plaintiffs elected to begin and continue business as a partnership, and they will not now be heard to disavow that partnership." Parties (1) entered into written P/S agreement, (2) received respective interests by gift, (3) accepted income credits to respective capital accounts, (4) signed tax returns, (5) paid taxes on partnership income, (6) maintained they were partners in protesting refund, and (7) received cash for their shares on dissolution of the partnership. <u>Estoppel test.</u>	Re. estoppel: <i>Maletis</i> . Re. intent: <i>Tower</i> ; <i>Lusthaus</i> ; <i>Culbertson</i> .
55	<i>United States v. U.S. Nat'l Bank of Portland</i> , 239 F.2d 475 (9th Cir. 1956)	1956	<u>P/S or co-ownership.</u> If P/S, transfer of property was a tax-free distribution from the P/S. If no P/S, transfer was for damages or loss of anticipated profits and would be ordinary income.	No P/S	P/S	Lower court found the arrangement was a joint venture. Lower court's decision included no analysis on the issue. <i>U.S. National Bank of Portland v. U. S.</i> , 51 AFTR 1303 (D. Oregon 1955). <u>Test indeterminable.</u>	None

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	Legal Authority	Year	<u>Question.</u> Tax Significance.	IRS Position	Holding	Basis for Holding. <u>Test.</u>	Authority Cited for P/S Question
56	<i>Beck Chem. Co. v. Comm'r</i> , 27 T.C. 840 (1957)	1957	<u>P/S or principal-agent arrangement.</u> If P/S, taxpayer must recognize income when P/S does. If no P/S, taxpayer recognizes income when payment received.	P/S	P/S	Substantive-law definition of joint venture: "[A] special combination of two or more persons, where in some specific venture a profit is jointly sought without any actual partnership or corporate designation,' and also as 'an association of persons to carry out a single business enterprise for profit.'" Factors considered: (1) entered into a common business arrangement, (2) agreed to divide net profits equally, (3) had mutual proprietary interest in venture's profits, (4) both parties participated as principals, (5) shared losses, (6) intended to become co-proprietors, and (7) title to manufactured goods vested in both parties. Under New York law, active participation and contribution of services not required. <u>Substantive-law test.</u>	Re substantive-law definition: 48A C.J.S. <i>Joint Adventures</i> §§ 1-2 (2004), <i>Estate of L.O. Koen</i> ; <i>Chase S. Osborn</i> ; <i>Morris Cohen</i> . Re New York law: N.Y. Partnership Law § 96. Re factors: <i>Culbertson</i> ; <i>Lucia Chase Ewing</i> ; <i>Chase S. Osborn</i> ; <i>Hutchinson v. Birdsong</i> , 207 N.Y.S. 273 (N.Y. App. Div. 1925); <i>Arthur N. Blum</i> ; <i>Roland P. Place</i> ; <i>Carl G. Dreymann</i> ; <i>Bowe-Burke Mining Co.</i> ; <i>R.A. Bartley</i> ; <i>John T. Newell</i> ; <i>E.L. Kier</i> ; <i>J.A. Riggs Tractor Co.</i> ; <i>Elihu Clement Wilson</i> ; <i>Clarence B. Ford</i> ; <i>Levin</i> ; <i>First Mechanics Bank</i>
57	<i>Copeland v. Rutterree</i> , 53 AFTR 1309 (N.D.N.Y. 1957)	1957	<u>P/S or principal-agent arrangement.</u> If P/S, payment is for interest in P/S and gain from sale could be capital. If no P/S, payment is for termination of employment contract and payment is ordinary income.	No P/S	No P/S	Agreement having been made in Vermont, it should be interpreted according to the laws of the state of Vermont. No equality of control. Sharing in profits is not important; it is similar to receiving stock options as compensation. <u>State-law test.</u>	Re relevance of state law: <i>United States v. Ogilvie Hardware Co.</i> , 330 U.S. 709 (1947); <i>Tate v. Knox</i> ; <i>Cray, McFawn &amp; Co. v. Hegarty, Conroy &amp; Co.</i> , 27 F.Supp. 93 (S.D.N.Y. 1939). Re definition of partnership: <i>Campbell v. Campbell</i> , 162 A. 379 (Vt. 1932); <i>Manatee Loan &amp; Mortgage Co. v. Manley's Estate</i> , 175 A. 14 (Vt. 1934); <i>Switow</i> .

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	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
58	<i>Flanders v. United States</i> , 172 F.Supp. 935 (N.D. Cal. 1959)	1959	<u>P/S or right to receive net proceeds.</u> If P/S, taxpayer has a beneficial interest in inventions and patents and gain from sale may be capital gain. If no P/S, taxpayer has no interest in the inventions and patents.	No P/S	P/S	Court looked to California law to determine whether arrangement was a P/S. "[T]he acts and conduct of parties engaged in the accomplishment of the apparent purposes may speak above the expressed declarations of the parties to the contrary." <u>State-law test.</u>	28 Cal. Jur. 2d 475, § 2; 28 Cal. Jur. 2d 478, § 3; 28 Cal. Jur. 2d 485, § 6; 28 Cal. Jur. 2d 485, § 6; 28 Cal. Jur. 2d 494, § 12; <i>Universal Sales Corp. v. Cal. Press Mfg. Co.</i> , 128 P.2d 665 (Cal. 1942).
59	<i>Herzberg v. United States</i> , 176 F. Supp. 440 (S.D. Ind. 1959)	1959	<u>P/S or purchase-sale agreement.</u> If P/S, taxpayer allocated only 60% of medical practice income. If no P/S, taxpayer allocated 100% of medical practice income and paid a portion of the income to acquire medical practice.	No P/S	No P/S	No analysis provided.	None
60	<i>Nichols v. Comm'r</i> , 32 T.C. 1322 (1959)	1959	<u>P/S or nothing.</u> If P/S, income included in partners' taxable year during which the P/S's taxable year ended. If no P/S, income included in taxpayers' earlier tax year.	No P/S	P/S	Husband and wife arrangement. Wife contributed services and capital to husband's radiology practice. Husband and wife "really and truly intended to conduct the radiology business as a partnership" with both parties providing services, "and that they carried out this intent." Parties consulted two accountants to set up the books for the partnership, filed applications with state and federal agencies as partners, both parties authorized to draw from partnership account, and oral partnership agreement not fatal. Business-purpose requirement does not require tax partnership to be the only form of business available. State law restriction against non-physicians being partners with physicians not determinative of tax partnership question. <u>Substantive-law test.</u>	Re intent: <i>Tower</i> ; <i>Culbertson</i> . Re oral agreement: <i>Seattle Renton Lumber Co. v. United States</i> , 135 F.2d 989 (9th Cir. 1943). Re state law: <i>Tower</i> ; Rev. Rul. 58-243. Re P/S involving professional fees: <i>Humphreys</i> ; <i>McIntyre</i> ; <i>Scherer</i> ; <i>Mead</i> ; <i>Schroder</i> ; <i>Earp</i> ; <i>Tinkoff</i> ; <i>Fisher</i> .

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	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
61	<i>Ayrton Metal Co. v. Comm'r</i> , 299 F.2d 741 (2d Cir. 1962)	1962	<u>Sale of P/S interest or income from P/S operations.</u> If sale of P/S interest, taxpayer argues capital gain. If income from P/S operations, ordinary income.	P/S	P/S	Court adopted the Tax Court's holding (34 T.C. 464 (1960)). The Tax Court held the arrangement was a joint venture because parties (1) shared in profits and losses, (2) had to agree to terms of the sales, and (3) resembled mutual agency (cited <i>Dexter &amp; Carpenter</i> and <i>Beck Chemical Equipment Corporation</i> ). Tax Court disregarded lack of formal written agreement, only one member served as manager, accounts only in one party's name, others not aware of taxpayer's involvement, and no articles of P/S or tax return filed. <u>Substantive-law test.</u>	<i>Rogers</i> ; <i>Beck</i>
62	<i>Au v. Comm'r</i> , 40 T.C. 264 (1963)	1963	<u>Partnership or nothing.</u> The taxpayer argued that the existence of a P/S would affect the basis of personal-use property contributed to the P/S.	N/A	N/A	Court ruled that the existence of a P/S would not affect the basis of the property and did not rule on the P/S question. <u>No test applied.</u>	<i>Linsenmeyer</i>
63	<i>Estate of Smith v. Comm'r</i> , 313 F.2d 724 (8th Cir. 1963)	1963	<u>P/S or principal-agent arrangement.</u> If P/S, taxpayer has capital gains from assets held in funds. If no P/S, taxpayer has ordinary income from compensation for managing the funds.	No P/S	No P/S	P/S question is a question of fact. The Tax Court had sufficient evidence to find that the arrangement was not a P/S. Principles applicable to determine existence of P/S apply to resolution of joint venture status. Evidence supported both a finding of P/S and a finding of no P/S, so upheld the Tax Court decision. Court considered evidence showing no co-ownership, taxpayer holding itself out as manager, lack of loss sharing, no intent. These factors indicate the court applied a substantive-law test, but it said question is factual and deferred to Tax Court. <u>Substantive-law test.</u>	<i>Beck Chemical Equipment Corp.</i> ; <i>Cleveland</i> ; 6 Mertens, Law of Federal Income Taxation, § 35.05; <i>Tower</i> ; <i>Culbertson</i> ; <i>Bartholomew</i> ; <i>Nelson v. Seaboard Surety Co.</i> , 269 F.2d 882 (8th Cir. 1959); 68 C.J.S. § 24(b), p. 444.

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	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
64	<i>Fishback v. United States</i> , 215 F.Supp. 621 (D.S.D. 1963)	1963	<u>P/S or principal-agent arrangement.</u> If P/S, P/S is developer and gains from sales of subdivided property are ordinary. If no P/S, gains to taxpayer are capital and developer is paid a fee for subdividing and selling lots.	P/S	P/S	Statements that arrangement is not a P/S do not control; substance determines the classification of an arrangement. Whether a joint venture exists is a question of fact. Distinction between P/S and joint venture is joint venture is usually formed for the purpose of a single business transaction. Elements of a joint venture are: (1) contract; (2) agreement to share in profits; (3) contribution of property, services, or money; (4) joint proprietorship agreement; and (5) sometimes loss sharing agreement. Equal control not required. Loss sharing not required in Minnesota, New York, or Washington. South Dakota, state of origin, had not addressed whether an express agreement to share losses was required, but agreement between parties indicated they would share losses. <u>Substantive-law test.</u>	Re substance over form: <i>Smith's Estate</i> ; <i>Haley</i> ; <i>Frazell</i> . Re question of fact: <i>Tate</i> . Re joint venture: 30 Am. Jur. Joint Adventures, § 1; <i>Blackner v. McDermott</i> 176 F.2d 498 (10th Cir. 1949); 30 Am. Jur. Joint Adventures, § 4; <i>Flanders</i> ; <i>Tate</i> . Re equal control: <i>Flanders</i> citing 28 California Jurisprudence 2d 478, § 3. Re loss sharing: <i>Tate</i> ; <i>Anderson v. National Producing Co.</i> , 253 F.2d 834 (2d Cir. 1958); <i>Eagle Star Insurance Co. v. Bean</i> , 134 F.2d 755 (9th Cir., 1943); <i>Balestrieri &amp; Co</i> ; <i>Cross v. Pasley</i> , 270 F.2d 88 (8th Cir. 1959); 30 Am. Jur. Joint Adventures, § 11; Annot. 138 A.L.R. 968.
65	<i>Luckey v. Comm'r</i> , 334 F.2d 719 (9th Cir. 1964)	1964	<u>P/S or co-ownership.</u> If P/S, section 735 applies and property is inventory in hands of distributee partner. If no P/S, property may be a capital asset.	P/S	P/S	Members pooled money and services to make a profit. Corporation wholly owned by members of the arrangement was disregarded and the members treated as performing activities. Corporation was paid nominal fee for services. Arrangement was a joint venture. Arrangement distributed developed property in kind. <u>Substantive-law test.</u>	None

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66	<i>Luna v. Comm'r</i> , 42 T.C. 1067 (1964)	1964	<u>P/S or principal-agent arrangement.</u> If P/S, capital gain from sale of P/S interest. If no P/S, compensation on contract buy-out.	No P/S	No P/S	Arrangement did not meet the definition of joint venture and parties did not intend to form a joint venture. Introduced a seven-factor test: (1) agreement and conduct executing agreement, (2) contributions made to the venture, (3) control over income and right to make withdrawals, (4) whether parties were coproprietors or principal-agent, (5) whether the parties filed a partnership tax return, (6) whether the venture maintained separate books, and (7) control and responsibilities for the enterprise. Code prescribes its own standards and supersedes local law, so local law not determinative. <u>Substantive-law test.</u>	<i>Beck Chemical Equipment Corporation; Smith's Estate; Culbertson; Nellie Russo Linsenmeyer</i>
67	<i>Arthur Venneri Co. v. United States</i> , 340 F.2d 337 (Ct. Cl. 1965)	1965	<u>P/S or financing arrangement.</u> If P/S, taxpayer is a co-employer of other party's employees and liable for withheld income and FICA taxes. If no P/S, taxpayer is not an employer and not liable for taxes.	P/S	No P/S	Arrangement did not meet the definition of joint venture. Taxpayer was a creditor and did contribute property or services. Parties shared profits but did not share losses. Taxpayer did not have equal right of control. <u>Substantive-law test.</u>	Barret and Seago, Partners and Partnership, Law and Taxation, § 10, page 98; <i>Tower</i> ; <i>Myers v. St. Louis Structural Steel Co.</i> , 65 S.W. 2d 931 (Mo. 1933); <i>Backus Plywood Corp. v. Commercial Decal, Inc.</i> , 208 F.Supp. 687 (S.D.N.Y. 1962), <i>aff'd as modified</i> , 317 F.2d (2d Cir. 1963).
68	<i>Ballou v. United States</i> , 370 F.2d 659 (6th Cir. 1966)	1966	<u>P/S or nothing.</u> If P/S, may allocate income to children's trust. If no P/S, must allocate income to husband and wife as partners.	No P/S	No P/S	The question was whether the parents had made bona fide transfers of partnership interests to the trusts. The court said that the question of bona fide transfer was a fact question and their was substantial evidence to support the jury's finding of no bona fide transfer. Language in documents not enough to show partnership. <u>No test applied.</u>	Re family partnerships: <i>Culbertson</i> ; <i>Miller v. Comm'r</i> , 203 F.2d 350 (6th Cir. 1953); <i>Miller v. Comm'r</i> , 183 F.2d 246 (6th Cir. 1950); <i>Kent v. Comm'r</i> , 170 F.2d 131 (6th Cir. 1948). Re importance of language in documents: <i>Tower</i> .

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69	<i>Bryant v. Comm'r</i> , 46 T.C. 848 (1966)	1966	<u>P/S question not an issue.</u> Issue is whether the section 48(c)(2) investment credit limit applied at the partnership level, if a valid section 761 election was in effect.	N/A	N/A	Section 761 does not exclude P/Ss from other provisions of the Code.	
70	<i>Badger Co. v. Comm'r</i> , 26 T.C.M (CCH) 869 (1967)	1967	<u>P/S or principal-agent arrangement.</u> If P/S, portion of section 901 foreign tax credit allocated to taxpayer. If no P/S, taxpayer must report compensation income with no foreign tax credit.	No P/S	No P/S	Court stated is a question of fact but relied upon the <i>Luna</i> factors. Taxpayer provided services and was remunerated for those services. Compensation stated as "an amount equal to" a percent of payments not as a share of payments. Taxpayer guaranteed minimum payments. No loss sharing. "While the elements of profit and loss are not determinative, they are significant factors to be taken into account." Taxpayer did not hold a proprietary interest. <u>Substantive-Law Test.</u>	Re list of factors: <i>Luna</i> . Re circumstances: <i>Beck Chem. Co.</i> ; <i>Lemp Brewing Co.</i> Re loss sharing: <i>Lemp Brewing Co.</i> ; <i>Beck Chem. Co.</i> ; <i>Fishback</i> . Cited generally: <i>Robinson</i> .
71	<i>Lulu Lung Powell v. Comm'r</i> , 26 T.C.M. (CCH) 161 (1967)	1967	<u>P/S or co-ownership.</u> If P/S, P/S will allocate share of property tax to taxpayer. If no P/S, taxpayer could deduct all of the property tax the taxpayer paid on the co-owned property.	P/S	No P/S	Co-owners paid insurance premiums, paid agent commission (probably to collect rent), made repairs, hired exterminator, decided to demolish walls, hired an appraiser, and filed P/S tax return. No P/S agreement. No intent to form a P/S. "We assume from these regulations that the important distinction between mere coowners and coowners who are engaged in a partnership lies in the degree of business activity of the coowners or their agents." "If we found a partnership on these few facts, we might very well destroy the separate validity for tax purposes of almost all forms of coownership." Arrangement a tenancy-in-common under state law. <u>State-law test.</u>	Treas. Reg. § 1.1761-1(a)(1); <i>Ayrton Metal Co.</i> ; <i>Gilford</i> ; <i>Greenspon</i> ; <i>Estate of R. L. Langer</i> , <i>Peterson v. Fowler</i> , 11 S.W. 534 (Tex. 1889); Vernon's Ann. Tex. Civ. Stat., Art. 2580 (Prob. Code § 46); <i>Estate of Edgar S. Appleby</i> ; <i>Hahn</i> .

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72	<i>Rothenberg v. Comm'r</i> , 48 T.C. 369 (1967)	1967	<u>P/S or co-ownership.</u> If P/S, taxpayer must use completed transaction method. If no P/S, taxpayer can use installment-sale method.	P/S	P/S	Filed certificate of conducting business under the specific name. The arrangement leased the apartments, collected the rents, and paid the bills for interest, taxes, insurance, and all other bills relating to the operation of the property. Arrangement filed P/S tax return for 15 years and reported the sale of the property as a P/S sale. P/S elected out of the installment-sale method. Deductions claimed by P/S indicate active conduct of business. Co-owners who rent property are not <i>ipso facto</i> partners. Taxpayers did not present evidence showing no P/S. <u>Estoppel Test.</u>	Re co-ownership: <i>Estate of Appleby</i> ; <i>Hahn</i> .
73	Rev. Rul 68-344, 1968-1 C.B. 569	1968	<u>P/S or co-ownership.</u> If a qual'd P/S, may make the section 761(a)(2) election.	Qual'd P/S	Qual'd P/S	Electrical co-owned joint-production arrangement. Undertaking more than mere expense-sharing arrangement because of activity carried on. No joint-profit. Individuals receive product and market it individually, so arrangement qualifies for section 761(a)(2) election. <u>Joint-profit test.</u>	Re expense-sharing: Treas. Reg. § 301.7701-3(a).



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74	<i>Baughn v. Comm'r</i> , 28 T.C.M. (CCH) 1447 (1969).	1969	<u>P/S or nothing.</u> If P/S, income allocated to taxpayer. If no P/S, income not allocated to taxpayer.	P/S	P/S	The statutory definition of P/S is considerably broader than the common law meaning of the term. P/S question is a question of fact to be determined from all the existing circumstances. Relied upon the <i>Luna</i> factors to ascertain the true intention. State law classification, not holding out as partner, and no formal P/S agreement are not determinative. Parties made contributions of services, had a voice in control, shared profits, and local law determines loss sharing. <u>Substantive-law test.</u>	Re breadth of statutory definition: Treas. Reg. §§ 1.761-1(a)(1) (1956) and 301.7701-1(c); Willis, Handbook on Partnership Taxation, p. (1957); <i>Crabb</i> ; <i>Haley</i> ; <i>Solomon</i> ; <i>Wadel</i> ; <i>Estate of L.O. Koen</i> . Re question of fact: <i>Luna</i> ; <i>Beck Chem. Co.</i> ; <i>Lemp Brewing Co.</i> Re factors: <i>Luna</i> . Re intent: <i>Culbertson</i> ; <i>Smith's Estate</i> ; <i>James</i> ; <i>Rosenberg</i> . Re P/S agreement: <i>Stoffield</i> ; <i>Weizer</i> ; <i>Felix</i> ; <i>Zack</i> ; <i>Place</i> . Re contributions: <i>Pedrick</i> ; <i>Simmons</i> ; <i>Frazell</i> . Re control: <i>Corliss v. Bowers</i> , 281 U.S. 376 (1930); <i>Griffiths v. Helvering</i> , 308 U.S. 355 (1939).
75	<i>Kelly v. Comm'r</i> , 29 T.C.M. (CCH) 1090 (1970)	1970	<u>P/S or sale of interest.</u> If P/S, allocate distributive share of P/S income to taxpayer and reduce the distributive share of other partners. If no P/S, payments are consideration for capital asset.	P/S and No P/S	No P/S	Definition of P/S is broader than state law. Court considered four factors: (1) representation of partnership status to others, (2) contribution of capital or services, (3) mutual control, and (4) sharing of profits and losses. Need equal control. Taxpayer's potential liability as partner under state law is irrelevant. <u>Substantive-law test.</u>	Re breadth of statutory definition: Willis, Handbook on Partnership Taxation, p. 3 (1957); <i>Crabb</i> ; <i>Wadel</i> . Re question of fact: <i>Luna</i> ; <i>Beck Chem. Co.</i> ; <i>Lemp Brewing Co.</i> Re factors: <i>Culbertson</i> ; <i>Smith's Estate</i> ; <i>James</i> ; <i>Rosenberg</i> ; Re representing partnership status: <i>Denison</i> ; <i>Haley</i> ; <i>Solomon</i> . Re contributions: <i>James</i> ; <i>Grant</i> . Re mutual control: <i>Brady</i> . Re profit/loss sharing: <i>Graham</i> ; <i>Lidov</i> ; <i>Place</i> .

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	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
76	<i>Podell v. Comm'r</i> , 55 T.C. 429 (1970)	1970	<u>P/S or co-ownership.</u> If P/S, P/S is a dealer and gain from the sale of property is ordinary income.	P/S	P/S	Arrangement was a joint venture, so within the definition of P/S. Joint venture is "special combination of two or more persons, where in some specific venture a profit is jointly sought without any actual partnership or corporate designation." Elements of joint venture: (1) contract showing intent to establish business venture, (2) joint control and proprietorship, (3) contributions of money, property, and/or services, and (4) sharing of profits (some jurisdictions require sharing of losses). <u>Substantive-law test.</u>	<i>Halen</i> ; <i>Aiken v. United States</i> , 144 F.2d 23 (4th Cir. 1944). Re definition of joint venture: <i>Tompkins</i> ; <i>Clark v. Sidway</i> , 142 U.S. 682 (1892); <i>Flanders v. United States</i> , 172 F. Supp. 935 (N.D. Cal. 1959); <i>Tate v. Knox</i> , 131 F. Supp. 514 (D. Minn. 1955); <i>Levine v. Personnel Inst., Inc.</i> , 138 N.Y.S.2d 243 (N.Y. Sup. Ct. 1954), <i>aff'd</i> , 158 N.Y.S.2d 740 (N.Y. App. Div. 1956); <i>Blackner v. McDermott</i> , 176 F.2d 498 (10th Cir. 1949); <i>Fishback v. United States</i> , 215 F. Supp. 621; 6 Mertens, Law of Federal Income Taxation, § 3.505, p.31
77	<i>Melbourne Ranches, Inc. v. Comm'r</i> , 30 T.C.M. (CCH) 1132 (1971)	1971	<u>P/S or nothing.</u> If P/S, allocate income to partners. If no P/S, allocate income to taxpayer.	No P/S	P/S	"The question of the existence of a joint venture is essentially factual. All of the facts and circumstances, and not just the written agreements, must be examined." Record had evidence of both P/S and no P/S position. <u>Fact-question test.</u>	Re fact question: <i>Culbertson</i> ; <i>S&amp;M Plumbing</i> ; <i>Fishback</i> ; cf. <i>Beck Chem. Co.</i> ; <i>Zack</i> ; <i>Cohen</i> ; <i>Dreymann</i> .
78	<i>S. &amp; M. Plumbing Co. v. Comm'r</i> , 55 T.C. 702 (1971)	1971	<u>P/S or contribution to corporation.</u> If no P/S, payment is return of capital from a corporation and capital gain. If P/S, payment is distribution of allocated ordinary income.	P/S	P/S	Applied the four factors from <i>Podell</i> . Also looked to New York law to see if sharing of losses required. <u>Substantive-law test.</u>	<i>Podell</i> ; <i>Fishback</i> ; <i>Anderson v. Nat'l Producing Co.</i> , 253 F.2d 834 (2d Cir. 1958).
79	<i>Baily v. United States</i> , 350 F. Supp. 1205 (E.D. Pa. 1972)	1972	<u>P/S or financing arrangement.</u> If P/S, taxpayer is jointly and severally liable for employment taxes.	P/S	P/S	Local law determines relationship for purposes of determining joint and several liability for employment taxes. Earlier state court decision determined arrangement was a P/S under local law. <u>State-law test.</u>	None

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80	<i>Demirjian v. Comm'r</i> , 457 F.2d 1 (3d Cir. 1972)	1972	<u>P/S or co-ownership.</u> If P/S, P/S had to make section 1033 election and election made by co-owner not effective.	P/S	P/S	Partners held themselves out as partners and represented that the arrangement was a partnership in documents, communication with the IRS, and in filed partnership tax return. The facts, when taken together, establish intent to form partnership. <u>Estoppel test.</u>	Treas. Reg. § 1.761-1(a)( ); <i>Rothenberg</i> ; <i>Culbertson</i> ; <i>Tower</i> ; <i>Estate of Smith's</i> ; <i>Lamb v. Smith</i> , 183 F.2d 938 (3d Cir. 1950); Re estoppel: <i>Sterno Sales Corp.v. United States</i> , 345 F.2d 552 (Ct. Cl. 1965); <i>Maletis</i> ; <i>Sherman</i> .
81	<i>Estate of Kahn v. Comm'r</i> , 499 F.2d 1186 (2d Cir. 1974)	1974	<u>P/S or principal-agent arrangement.</u> If P/S, allocate income to partners. If no P/S, allocate all income to one party; other party has compensation income.	No P/S	No P/S	Question is matter of federal, not local, law. P/S agreement but one factor. Court relied upon <i>Luna</i> factors. Employee had subordinate, contingent interest in profits. Employer had control and sent employee packing after employer's fraud discovered. Since Tax Court applied the correct legal standard, its findings on each individual factor and its overall assessment must be upheld unless clearly erroneous. <u>Substantive-law test.</u>	Re federal law: <i>Tower</i> ; <i>Burde</i> . Re factors: <i>Luna</i> ; <i>Culbertson</i> ; <i>Smith's Estate</i> . Re compensation in form of profits: <i>Schermaerhorn Oild Co.</i> ; <i>Parker</i> . Re review: <i>Burde</i> ; <i>Cleveland</i> .
82	Rev. Rul. 75-374, 1975-2 C.B. 261	1975	<u>P/S or co-ownership.</u> If P/S, P/S deemed to own underlying property. If no P/S, co-owners deemed to own underlying property.	No P/S	No P/S	Arrangement paid unrelated third party manager to provide only customary tenant services, so no P/S. Manager allowed to incur costs of providing additional services, but could not share profits with co-owners. <u>Type-of-activity test.</u>	Treas. Reg. § 1.761-1(a) (1956).
83	<i>Allison v. Comm'r</i> , 35 T.C.M. (CCH) 1069 (1976)	1976	<u>P/S or financing.</u> If P/S, payout is a P/S distribution of property. If no P/S, transfer of property is in exchange for providing and arranging for the financial requirements of the project.	No P/S	No P/S	Applied the four factors from <i>S.&amp;M. Plumbing Co.</i> Question is essentially factual with emphasis on intent. <u>Substantive-law test.</u>	<i>Hyman Podell</i> ; <i>Culbertson</i> ; <i>S.&amp;M. Plumbing</i> ; <i>Joe Balestrieri &amp; Co.</i> ; <i>Luckey</i> ; 6 Mertens, Law of Federal Income Taxation, § 35.05.
84	<i>McShain v. Comm'r</i> , 68 T.C. 154 (1977)	1977	<u>P/S or co-ownership.</u> If P/S, P/S had to make section 1033 election. If no P/S, co-owners had to make the section 1033 election.	No P/S	No P/S	Purchased property as co-owners and leased it under a net lease agreement. Co-owners had only passive obligations under the lease. <u>Degree-of-activity test.</u>	<i>Demirjian</i> ; Treas. Reg. § 301.7701-3

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85	<i>McManus v. Comm'r</i> , 583 F.2d 443 (9th Cir. 1978)	1978	<u>P/S or co-ownership.</u> If P/S, individual's section 1033 election not effective. If no P/S, individual makes section 1033 election.	P/S	P/S	Parties purchased and subdivided property, treated the arrangement as a partnership for accounting purposes, recorded draws, opened a bank account for the arrangement with all members listed as partners on the signature card, filed partnership tax returns for nine years. "Partnership for tax purposes is broader than common law partnership." "A taxpayer is estopped from later denying the status he claimed on his tax returns." <u>Estoppel test.</u>	Re breadth of definition: Treas. Reg. § 1.761-1(a). Re estoppel: <i>In re Steen</i> ; <i>Demirjian</i> ; <i>Maletis</i> .
86	<i>Wheeler v. Comm'r</i> , 37 T.C.M. (CCH) 883 (1978)	1978	<u>P/S or principal-agent arrangement.</u> If P/S, taxpayer has capital gain and transfers are distributions from the P/S. If no P/S, transfers are payment for services and ordinary income.	No P/S	P/S	Courts have not viewed the local-federal law question consistently. If classification left to state law, "problems of form over substance would abound." "When an entity must be classified for purposes of a Federal income tax statute, policy considerations of Federal income tax law should govern that classification, not policy considerations of state law." Court listed the Luna factors, which derive from substantive law, but recognized that one party contributed services and one contributed capital but both shared the economic benefit derived from each. The list of arrangements in the statute is illustrative of the concept of arrangement taxable as a partnership under federal tax law, intending to bring within the definition of P/S arrangements like those listed. "[K]ey determining using this approach would not be whether a joint venture or any other of the enumerated entities had been formed, but rather whether an entity is of the same generic class as those entities and is, therefore, taxable as a P/S." <u>Source-of-activity test.</u>	<i>Culbertson</i> ; <i>Tower</i> ; <i>Lusthaus</i> ; <i>Bartholomew</i> ; <i>Grober</i> . Cases holding federal law determinative: <i>Estate of Kahn</i> ; <i>Arthur Venneri Co.</i> ; <i>Haley</i> ; <i>First Mechanics Bank</i> ; <i>Herzberg</i> ; <i>Luna</i> ; <i>Beck Chemical Equipment Corp.</i> ; <i>Earp</i> ; <i>Kelly</i> ; <i>Baughn</i> ; <i>Badger Co.</i> Cases holding state law applies: <i>Joe Balestrieri &amp; Co.</i> ; <i>Fishback</i> ; <i>Frazell</i> ; <i>Flanders</i> ; <i>Copeland</i> ; <i>Tate</i> ; <i>Melbourne Rances, Inc.</i> Cases not identifying applicable source of law: <i>S. &amp; M. Plumbing</i> ; <i>Podell</i> ; <i>Au</i> ; <i>Smith</i>

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87	<i>Estate of Levine v. Comm'r</i> , 72 T.C. 780 (1979)	1979	<u>P/S or co-ownership.</u> If P/S, taxpayer must include P/S income in taxpayer's tax year during which P/S tax year ended. If no P/S, taxpayer must include income in taxpayer's tax year during which income is recognized.	P/S	P/S	Crucial test is whether parties "intended to create, as evidenced by their actions, a partnership, notwithstanding the lack of characterization of their relationship." Parties engaged in an active business, performed various services, and shared the gains and losses. <u>Substantive-law test and degree-of-activity test.</u>	Treas. Reg. § 1.761-1(a); <i>McShain</i> ; <i>Tower</i> ; <i>Culbertson</i> ; <i>Gilford</i> ; <i>Hahn</i>
88	<i>Madison Gas &amp; Elec. Co. v. Comm'r</i> , 633 F.2d 512 (7th Cir. 1980)	1980	<u>P/S or co-ownership.</u> If P/S, members must capitalize start-up expenses. If no P/S, members may deduct expenses as expansion costs.	P/S	P/S	Co-owners may be partners if they or their agents carry on the requisite "degree of business activities." Activity of arrangement makes it more than mere expense-sharing arrangement. Distribution in-kind creates profit motive, if required to have a partnership. <u>Degree-of-activity test and type-of-activity test.</u>	<i>Estate of Appleby</i> ; <i>Powell</i> ; <i>Hahn</i> ; H.R. Rep. No. 708, 72d Cong., 1st Sess., 53 (1932); S. Rep. No. 665, 72d Cong., 1st Sess., 59 (1932); <i>Bentex Oil Corp.</i> ; <i>Tower</i> ; <i>Ian T. Allison</i> ; <i>Luckey</i> ; <i>Bryant</i> .
89	<i>Underwriters Ins. Agency of America</i> , 40 T.C.M. (CCH) 5 (1980)	1980	<u>P/S or co-ownership.</u> If P/S, loss on sale of interest is a capital loss. If no P/S, loss on sale of property interest is a section 1231 ordinary loss.	P/S	P/S	Evidentiary factors evidencing the joint carrying on of business for profit, not form, indicate requisite intent. Members of the arrangement, either directly or through agents, equipped fishing vessels, sent them on fishing expeditions, sold the caught fish, and paid all expenses of operating the business. Filed partnership returns. <u>Type-of-activity test.</u>	Treas. Reg. § 1.761-1(a); <i>Tower</i> ; <i>Culbertson</i> ; <i>Estate of Levine</i> ; <i>McManus</i> ; <i>Demerdjian</i> ; <i>Rothenberg</i> ; <i>Luna</i> ; Uniform Partnership Act
90	I.R.S. Priv. Ltr. Rul. 8315003 (June 17, 1982)	1982	<u>P/S or co-ownership.</u> If P/S, section 761 election available.	P/S	P/S	Substantially like conduct of business. More than mere expense-sharing arrangement. <u>Degree-of-activity test and type-of-activity test.</u>	Treas. Reg. § 301.7701-3(a)

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91	<i>Leahy v. Comm'r</i> , 87 T.C. 56 (1986)	1986	<u>P/S or nothing.</u> If P/S, taxpayer may only deduct distributive share of P/S depreciation and claim distributive share of investment tax credit. If no P/S, taxpayer may deduct all depreciation and claim full investment tax credit.	P/S	P/S	Sharing of profits, sharing of losses, shared rights in the property. Arrangement permitted the taxpayer to "join the owner of a photoplay and producer of a movie to jointly own, exploit, and participate in the profits from the subject assets." Arrangement is a joint venture that falls within the definition of tax partnership. <u>Fact-question test.</u>	Re joint venture: <i>Podell</i> . Re joint venture within definition of P/S: <i>Long</i> . Cases distinguished: <i>Tolwinsky, Law</i> .
92	<i>Press v. Comm'r</i> , 52 T.C.M. (CCH) 285 (1986)	1986	<u>P/S or co-ownership.</u> If P/S, TEFRA audit rules apply and taxpayer's signing Form 872-A extends the statute of limitations for P/S items. If no P/S, Form 872-A does not apply to items in question because tax year is closed with respect to items.	P/S	P/S	Mining operation. Documents state joint venture formed to carry on a business. Members contributed capital. Claimed loss allocated among the members. Similar to arrangement in <i>Madison Gas &amp; Electric Co.</i> Court not bound by state law definitions. <u>Test indeterminable.</u>	<i>Tower</i> ; <i>Podell</i> ; <i>Madison Gas &amp; Electric Co.</i> Re joint venture is a P/S for tax purposes: <i>Rodman v. Comm'r</i> , 542 F.2d 845 (2d Cir. (1976); <i>Long v. Comm'r</i> , 77 T.C. 1045 (1981).
93	<i>Bussing v. Comm'r</i> , 88 T.C. 449 (1987)	1987	<u>P/S or co-ownership.</u> If P/S, loss from property is limited under section 465 to member's basis in P/S interest.	P/S	P/S	Definition of P/S "is broader in scope than the meaning of the term at common law." Parties joined together capital and services with the intent of conducting business and shared profits. <u>Substantive-law test.</u>	Treas. Reg. § 1.761-1(a)( ); <i>McManus</i> ; <i>Tower</i> ; <i>Culbertson</i> ; <i>Smith's Estate</i> ; W. McKee, W. Nelson, R. Whitmire, Federal Taxation of Partnerships and Partners, 113.02 (1977); <i>Leahy</i> .
94	<i>Bussing v. Comm'r</i> , 89 T.C. 1050 (1987)	1987	<u>P/S or co-ownership.</u> Court re-considered earlier decision.	P/S	P/S	Arrangement lacks chief characteristic of a tenancy-in-common. Taxpayer's economic benefits, in the property "were derivative of, and limited by, his relationship to [the manager] and other investors." Ability to sale interest also limited. State law not binding, but of interest. Under state law co-tenant may use and enjoy property as if sole owner, subject to each co-tenant's exercise of same right. Investors acted in concert, with the manager as the conductor. <u>Source-of-activity test.</u>	<i>Magneson v. Comm'r</i> , 753 F.2d 1490 (9th Cir. 1985) (interpreting California law); Treas. Reg. § 1.761-1(a); <i>Powell</i> ; <i>Tower</i> .

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95	<i>Frazell v. Comm'r</i> , 88 T.C. 1405 (1987)	1987	<u>P/S or nothing.</u> If P/S, notice of deficiency not issued timely and therefore invalid. If no P/S, notice of deficiency was timely and taxpayer's petition to Tax Court not timely.	No P/S	P/S	"A partnership is formed when the parties to a venture join together with the intent of conducting presently a business enterprise." "The existence or nonexistence of a partnership under state law is not determinative for Federal tax purposes." Even though arrangement reported no income for year, it was fully subscribed, contributed capital had been deposited in arrangement's operating account, capital had been employed in arrangement's business, and arrangement filed a P/S tax return for year. Partners had joined together with the present intent of conducting a business enterprise. Arrangement was a P/S even though arrangement had not complied with state recording requirements. <u>Substantive-law test.</u>	Re intent: <i>Sparks</i> ; <i>Culbertson</i> ; <i>Tower</i> ; <i>Torres</i> . Re state law: <i>Tower</i> ; <i>Hensel Phelps Construction Co.</i>
96	<i>Cokes v. Comm'r</i> , 91 T.C. 222 (1988)	1988	<u>P/S or co-ownership.</u> If P/S, taxpayer's distributive share of P/S trade or business income is self-employment income to the taxpayer.	P/S	P/S	Oil and gas arrangement was a P/S. <u>Test indeterminable.</u>	<i>Bentex Oil Corp.</i> ; <i>Madison Gas &amp; Elec. Co.</i> , <i>Bryant</i> .
97	<i>Marinos v. Comm'r</i> , 58 T.C.M. (CCH) 97 (1989)	1989	<u>P/S or co-ownership.</u> If P/S, TEFRA audit rules apply and taxpayer's signing Form 872-A extends the statute of limitations for P/S items. If no P/S, Form 872-A does not apply to items in question because tax year is closed with respect to items.	P/S	P/S	"Distinction between mere co-owners and co-owners who are engaged in partnership lies in the degree of business activity of the co-owners or their agents." The co-owners agreed to lease a master audio record and to contract for the production and distribution of recordings, contributed capital, shared losses, referred to arrangement as joint venture on tax returns, claimed an investment credit indicating business activity, agreed to split income and losses of the venture. <u>Degree-of-activity test or substantive-law test.</u>	H. Rept. No. 708, 72d Cong., 1st Sess. 53 (1932); S. Rept. No. 665, 72d Cong., 1st Sess. 59 (1932); Treas. Reg. § 1.761-1(a); <i>Madison Gas &amp; Elec. Co.</i> ; <i>Estate of Appleby</i> ; <i>Bentex Oil Corp.</i> ; <i>Hahn</i> ; <i>Cokes</i> .

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98	<i>Hunt v. Comm'r</i> , 59 T.C.M. (CCH) 635 (1990)	1990	<u>P/S or financing.</u> If P/S, taxpayer allowed deduction. If no P/S, taxpayer has COD income.	No P/S	P/S	<i>Luna</i> factors determine intent. Parties had a formal partnership agreement, contributed capital or services, shared profits and losses based on legal relationship, and had a business purpose for entering into the partnership. The general partner actively managed the partnership. <u>Substantive-law test and business-purpose test.</u>	Re intent: <i>Culbertson</i> . Re factors: <i>Luna</i> . Re profit-sharing: <i>Hartman</i> ; <i>Investors Insurance Agency, Inc.</i> Re business purpose: <i>Delchamps</i> ; <i>Hartz</i> ; <i>Rice's Toyota World, Inc. v. Comm'r</i> , 752 F.2d 89 (4th Cir. 1985).
99	<i>Alhouse v. Comm'r</i> , 62 T.C.M. (CCH) 1678 (1991)	1991	<u>P/S or co-ownership.</u> If P/S, TEFRA audit rules apply.	P/S	P/S	Question of fact that turns on parties' intent. Federal law controls classification for federal tax purposes. Considered several factors (citing <i>Luna</i> ): (1) agreement of parties and their conduct, (2) parties' contributions, (3) parties' control over income and capital and right of each to make withdrawals, (4) whether parties were coproprietors or employer/principal and employees/agents, (5) whether business conduct in joint names of parties, (7) whether parties filed partnership tax return, (8) whether parties exercised mutual control and assumed mutual responsibilities. After applying the factors, the court stated, "[E]conomic benefits to the individual participants were not derivative merely of their coownership of the computer equipment but rather were derivative of their joint relationship . . . [T]he individual participants here bought into a 'program,' a program by which they would take joint action toward a common goal." Manager paid fixed fee to manage property, but shared in gain on sale of property. <u>Source-of-activity test.</u>	<i>Tower</i> ; <i>Culbertson</i> ; <i>Madison Gas &amp; Electric Co.</i> ; <i>Estate of Kahn</i> ; <i>Luna</i> ; <i>Bussing</i> ; Treas. Reg. § 1.761-1(a)



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100	<i>Bergford v. Comm'r</i> , 12 F.3d 166 (9th Cir. 1993)	1993	<u>P/S or co-ownership.</u> Alhouse appeal. If P/S, TEFRA audit rules apply.	P/S	P/S	Ninth Circuit adopted the Tax Court's analysis. "A partnership for federal tax purposes is 'broader in scope than the common law meaning of partnership, and may include groups not commonly called partnerships.'" <u>Source-of-activity test.</u>	<i>Tower</i> ; <i>Culbertson</i> ; <i>Madison Gas &amp; Electric Co.</i> ; <i>Estate of Kahn</i> ; <i>Luna</i> ; <i>Bussing</i> ; <i>McManus</i> ; Treas. Reg. § 1.761-1(a)
101	<i>Gabriel v. Comm'r</i> , 66 T.C.M. (CCH) 1283 (1993)	1993	<u>P/S or co-ownership.</u> If P/S, TEFRA audit rules apply and taxpayer's signing Form 872-A extends statute of limitations for P/S items. If no P/S, Form 872-A does not apply to items in question because tax year is closed with respect to those items.	P/S	No P/S	Little or no business activity. <u>Degree-of-activity test.</u>	Treas. Reg. § 1.761-1(a); <i>Luna</i> ; <i>Tower</i> ; <i>Culbertson</i> ; <i>Marinos</i> ; <i>Estate of Appleby</i> ; <i>Powell</i> ; <i>Madison Gas &amp; Electric Co.</i> ; Rev. Rul. 75-523, 1975-2 C.B. 257.; G.C.M. 33,469; Press

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102	<i>Harlan E. Moore Charitable Trust v. United States</i> , 9 F.3d 623 (7th Cir. 1993)	1993	<u>P/S or lease.</u> If P/S, share of crops is UBTI to trust. If no P/S, share of crops is rent and not UBTI.	P/S	No P/S	Sharecropping arrangement. Landowner received one-half of all grain produced as rent and promised to maintain the buildings, to pay all taxes and insurance on the land and buildings, and to contribute half the cost of seed, herbicides, insecticides, fertilizers, soil tests, and electricity for drying the grain. Nonetheless, the landowner did not share in profits because it did not pay half of all of the costs of producing the grain. Property ownership is a spectrum from a pure cash lease to a merger of property and business activity. Somewhere along the spectrum a lease becomes a tax partnership. Landlord risk-sharing is common in leases. A store in a shopping center may pay rent with a percentage of sales revenue, landlord may pay utilities without transforming the lease into a tax partnership. <u>Joint-profit test.</u>	Re spectrum: <i>State Nat'l Bank</i> ; <i>Duff v. Baker</i> , 78 Iowa 642 (1889). Re leases: Stuart M. Saft, <i>Commercial Real Estate Leasing</i> § 3.05 (1992); John Stuart Mill, <i>Principles of Political Economy</i> , bk. 2, ch. 8 (1909 ed.); J.-C.-L. Simonde de Sismondi, <i>New Principles of Political Economy</i> 159-67 (Richard Hyse trans. 1991); Steven N.S. Cheung, <i>The Theory of Share Tenancy</i> (1969); Donald L. Winters, <i>Tenant Farming in Iowa, 1860-1900: A Study of the Terms of Rental Leases</i> , 48 Agr. Hist. 130 (1974); Douglass Allen & Dean Lueck, <i>Contract Choice in Modern Agriculture: Cash Rent versus Cropshare</i> , 35 J. Law & Econ. 397(1992); Peter Murrell, <i>The Economics of Sharing: A Transactions Cost Analysis of Contractual Choice Farming</i> , 14 Bell J. Econ. 283 (1983) (continued below)

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	<i>Harlan E. Moore Charitable Trust v. United States</i> , 9 F.3d 623 (7th Cir. 1993) (continued from above)	1993	(see above)			(see above)	(continued from above) Joseph D. Reid, Jr., <i>Sharecropping as an Understandable Market Response: The Post-Bellum South</i> , 33 J. Econ. Hist. 106 (1973); Douglas W. Allen & Dean Lueck, <i>The "Back Forty" on a Handshake: Specific Assets, Reputation, and the Structure of Farmland Contracts</i> , 8 J. Law, Econ. & Org. 366 (1992).
103	<i>Estate of Winkler v. Comm'r</i> , 73 T.C.M. (CCH) 1657 (1997)	1997	<u>P/S or sole ownership.</u> If P/S, proceeds from winning lottery ticket allocated equally to family members according to Illinois Uniform Partnership Act. If no P/S, proceeds from the winning lottery ticket are income to owner of winning ticket, who then transfers shares of winnings as gifts to family members.	No P/S	P/S	The definition of P/S is governed by federal law. Definition in Code is broader than common law definition of partnership. Family members engaged in activity of pooling money, conducted this activity on a regular and consistent basis, each contributed capital, and each contributed services by going to the store to purchase tickets. <u>Degree-of-activity test and source-of-activity test.</u>	<i>Culbertson; Lusthaus; Tower; Evans v. Comm'r</i> , 447 F.2d 547 (7th Cir. 1971) (holding that a partner transferred a P/S interest under section 704(e)); <i>Frazell; Wheeler</i> ; Treas. Reg. § 1.761-1(a); Treas. Reg. § 301.7701-3(a); <i>Luna; Madison Gas &amp; Electric Co.; Estate of Appleby; Gabriel; Marinos</i> ; section 704 and case law
104	<i>Cusick v. Comm'r</i> , 76 T.C.M. (CCH) 241 (1998)	1998	<u>P/S or co-ownership.</u> If P/S, taxpayer gets rental real estate deduction.	No P/S	P/S	"Whether a valid partnership exists for Federal income tax purposes is governed by Federal law." Question of whether parties intended to form a partnership. The degree of business activity distinguishes between mere co-owners and partners. Parties testified that they intended to form a partnership and degree of rental activity (only performed customary tenant services) performed by co-owners indicate arrangement was a P/S. <u>Source-of-activity test.</u>	<i>Culbertson; Lusthaus; Tower; Bergford; Community Bank; Frazell; Richard O. Wheeler; Luna; Gabriel; Madison Gas &amp; Electric Co.; Estate of Appleby; Hahn; Bentex; Estate of Winkler; Marinos; Powell</i> ; Treas. Reg. § 1.761-1(a)

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	Legal Authority	Year	<u>Question.</u> Tax Significance.	IRS Position	Holding	Basis for Holding. <u>Test.</u>	Authority Cited for P/S Question
105	<i>ASA Investorings P'ship v. Comm'r</i> , 201 F.3d 505 (D.C. Cir. 2000)	2000	<u>P/S or nothing.</u> If P/S, taxpayer could shift income to foreign entity not subject to U.S. tax and recognize loss on high basis distributed P/S property. If no P/S, losses disallowed.	No P/S	No P/S	<i>Culbertson</i> requires a business purpose. Treat sham entity cases same as sham transaction cases -- question is not whether there is business activity but whether there is nontax business motive. Absence of a nontax business purpose is fatal. Business activity is inadequate in the absence of nontax business purpose (unitary, not two-pronged test). "The business purpose doctrine reduces the incentive to engage in such essentially wasteful activity, and in addition helps achieve reasonable equity among taxpayers who are similarly situated -- in every respect except for differing investments in tax avoidance." Other party's participation was formal rather than substantive, it did not share in profits, and bore no more than a de minimis risk of loss. <u>Business-purpose test.</u>	Re business purpose: <i>Culbertson</i> ; <i>Moline Props., Inc. v. Comm'r</i> , 319 U.S. 436 (1943); <i>Bertoli</i> ; <i>Knetsch v. United States</i> , 364 U.S. 361 (1960); <i>Zmuda v. Comm'r</i> , 731 F.2d 1417 (9th Cir. 1984); <i>Hunt</i> .
106	<i>SABA P'ship v. Comm'r</i> , 273 F.3d 1135 (D.C. Cir. 2001)	2001	<u>P/S or nothing.</u> If P/S, taxpayer could allocate income to foreign entity not subject to U.S. tax and recognize loss on high basis distributed P/S property. If no P/S, losses disallowed.	No P/S	Remand	P/S question, although a fact-intensive inquiry, is a question of law to be answered after adequate fact findings. Tax Court to reconsider whether there was an absence of nontax business purpose. <u>Business-purpose test.</u>	<i>ASA Investorings</i>

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	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
107	Rev. Proc. 2002-22, 2002-1 C.B. 733	2002	<u>P/S or co-ownership.</u> Guidelines for submitting ruling requests on whether a tenancy-in-common (TIC) arrangement is a tax P/S.	N/A	N/A	Fifteen conditions for obtaining an advanced ruling that a TIC arrangement is not a P/S: (1) co-owners must hold title to property as a TIC; (2) 35-co-owner limit; (3) co-owners may not file an entity tax return, conduct business under a common name, execute an agreement as members of a business entity, otherwise hold themselves out as a partnership or business entity; (4) co-owners may enter into an agreement that runs with the land; (5) co-owners must retain the right to approve the hiring of a manager, the disposition of the property, any lease or lease modification, or creation of a blanket lien; (6) co-owners generally must have the right to transfer, partition, or encumber an interest; (7) TIC must distribute sale proceeds to co-owners, after satisfying blanket liens; (8) co-owners must share in revenues and expenses according to ownership interest (continued below)	Treas. Reg. § 301.7701-1(a)(1), -1(a)(2), -2(a) (1997); Treas. Reg. § 1.761-1(a); Rev. Rul. 75-374; <i>Bergford</i> ; <i>Bussing</i> ; <i>Alhouse</i> .
	Rev. Proc. 2002-22 (continued from above)	2002	(see above)			(cotinued from above) (9) co-owners must share in debt secured by blanket liens according to ownership interest; (10) co-owners may issue put options; (11) co-owner's activities must be limited to customary tenant services; (12) co-owners may hire a manager for fair market fee, but not for share of profits; (13) leases must be bona fide leases; (14) lenders cannot be related parties; (15) acquisition costs must reflect fair market value and not depend on income or profit from the property. <u>State-law test, substantive-law test, degree-of-activity test, source-of-activity test.</u>	(see above)

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	Legal Authority	Year	Question. Tax Significance.	IRS Position	Holding	Basis for Holding. Test.	Authority Cited for P/S Question
108	<i>Andantech L.L.C. v. Comm'r</i> , 331 F.3d 972 (D.C. Cir. 2003)	2003	<u>P/S or nothing.</u> If P/S, taxpayer could shift income to foreign entity not subject to U.S. tax and recognize loss on depreciation of P/S assets. If no P/S, court uncertain of outcome.	No P/S	No P/S	Evidence supports Tax Court's finding of no non-tax business purpose for partnership. <u>Business-purpose test.</u>	<i>ASA Investorings, Culbertson</i>
109	<i>Boca Investorings P'ship v. United States</i> , 314 F.3d 625 (D.C. Cir. 2003)	2003	<u>P/S or nothing.</u> If P/S, taxpayer could shift income to foreign entity not subject to U.S. tax and recognize loss on high basis distributed P/S property. If no P/S, losses disallowed.	No P/S	No P/S	In the case of an "elaborate partnership," the legal test for the <i>Culbertson</i> intent test requires the fact finder to find a non-tax business purpose for forming the partnership. The district court did not find a non-tax business purpose. Its finding that the parties "intended to, and did, organize Boca as a partnership to share the income, expenses, gains, and losses from Boca's investments" does not satisfy the test. Taxpayer could have purchased notes without incurring the significant transaction costs to form the partnership. <u>Business-purpose test.</u>	<i>Culbertson, ASA Investorings, Boca Investorings</i>
110	Rev. Rul. 2004-86, 2004-33 I.R.B. 191	2004	<u>Separate entity or co-ownership.</u> If P/S, interest in arrangement does not qualify for section 1031 exchange. If no P/S, interest qualifies.	NA	NA	IRS acknowledged that state law does not determine whether an arrangement is a separate entity. It then stated: "Generally, when participants in a venture form a state law entity and avail themselves of the benefits of that entity for a valid business purpose, such as investment or profit, and not for tax avoidance, the entity will be recognized for federal tax purposes." IRS ruled the arrangement was a separate entity. <u>State-law test.</u>	Treas. Reg. § 301.7701-1(a)(1) (as amended in 2004); <i>Moline Properties, Inc. v. Comm'r</i> , 319 U.S. 436 (1943); <i>Zmuda v. Comm'r</i> ; <i>Boca Investorings P'ship</i> ; <i>Saba P'ship</i> ; <i>ASA Investorings P'ship</i> ; <i>Markosian</i> .

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	Legal Authority	Year	<u>Question.</u> Tax Significance.	IRS Position	Holding	Basis for Holding. <u>Test.</u>	Authority Cited for P/S Question
111	<i>Comm'r v. Banks</i> , 543 U.S. 426 (2005)	2005	<u>P/S or principal-agent arrangement.</u> If P/S, taxpayer argued share of income from lawsuit allocated to attorney. If no P/S, all income to plaintiff and amount paid to attorney is compensation.	No P/S	No P/S	"Relationship . . . Is a quintessential principal-agent relationship." Client's relying on attorney's expertise does not alter relationship. "The [client] retained control over the income-producing asset, diverted some of the income produced to another party, and realized a benefit from doing so." Uncertainty of amount of income to be produced is of no consequence. Attorney acts on behalf of client. No state laws, even those purporting to give attorneys an "ownership" interest in fees, convert the attorney from an agent to a partner. <u>Substantive-law test.</u>	None
112	<i>TIFD III-E Inc. v. United States</i> , 459 F.3d 220 (2d Cir. 2006)	2006	<u>P/S or nothing.</u> If P/S, taxpayer could shift income to a foreign entity not subject to U.S. tax and recognize loss on high basis distributed P/S property. If no P/S, losses disallowed.	No P/S	No P/S	"The IRS, however, is entitled in rejecting a taxpayer's characterization of an interest to rely on a test less favorable to the taxpayer, even when the interest has economic substance. This alternative test determines the nature of the interest based on a realistic appraisal of the totality of the circumstances. We do not mean to imply that it was error to consider the sham test, as the IRS purported to rely in part on that test. The Error was failing to test the banks' interest also under <i>Culbertson</i> after finding that the taxpayer's characterization survived the sham test." "The IRS's challenge is not foreclosed merely because the taxpayer can point to the existence of some business purpose or objective reality in addition to its tax-avoidance objective." <u>Business-purpose test.</u>	<i>Culbertson</i> , ASA <i>Investerings</i>
<b>The following additional legal authority may address the definition of tax partnership. The authority discussed above cites the following cases and rulings in a manner that suggests they may address the tax partnership question.</b>							
113	<i>Joring v. Harriss</i> , 292 F. 974 (1923)	1923			171	<i>Rosenberg v. Comm'r</i> , 15 T.C. 1 (1950)	1950

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114	<i>Edwards v. Comm'r</i> , 298 F. 229 (2d Cir. 1924)	1924			172	<i>Batman v. Comm'r</i> , 189 F.2d 107 (5th Cir. 1951)	1951
115	<i>Mitchel v. Comm'r</i> , 1 B.T.A. 143 (1924)	1924			173	<i>James v. Comm'r</i> , 16 T.C. 930 (1951), <i>aff'd per curiam</i> 197 F.2d 813 (5th Cir. 1952)	1951
116	<i>Fouke v. Comm'r</i> , 2 B.T.A. 219 (1925)	1925			174	<i>Clark v. Comm'r</i> , 19 T.C. 48 (1952)	1952
117	<i>Sullivan v. Comm'r</i> , 2 B.T.A. 1012 (1925)	1925			175	<i>Ford v. Comm'r</i> , 19 T.C. 200 (1952)	1952
118	<i>Bartley v. Comm'r</i> , 4 B.T.A. 874 (1926)	1926			176	<i>Wm. J. Lemp Brewing Co. v. Comm'r</i> , 18 T.C. 586 (1952)	1952
119	<i>Hoffman v. Comm'r</i> , 3 B.T.A. 964 (1926)	1926			177	<i>Ewing v. Comm'r</i> , 20 T.C. 216 (1953)	1953
120	<i>Jemison v. Comm'r</i> , 3 B.T.A. 780 (1926)	1926			178	<i>Maxwell v. Comm'r</i> , 208 F.2d 542 (4th Cir. 1953)	1953
121	<i>Levering v. Comm'r</i> , 5 B.T.A. 616 (1926)	1926			179	1954 Act	1954
122	<i>Mitchell v. Bowers</i> , 15 F.2d 287 (2d Cir. 1926)	1926			180	<i>Lieber v. United States</i> , 128 Ct. Cl. 128 (1954)	1954
123	<i>Cray v. Comm'r</i> , 7 B.T.A. 322 (1927)	1927			181	<i>Brady v. Comm'r</i> , 25 T.C. 682 (1955)	1955
124	<i>Dexter &amp; Carpenter Inc. v. Houston</i> , 20 F.2d 647 (4th Cir. 1927)	1927			182	<i>Zack v. Comm'r</i> , 25 T.C. 676 (1955), <i>aff'd</i> 245 F.2d 235 (6th Cir. 1957)	1955
125	<i>Graham v. Comm'r</i> , 8 B.T.A. 1081 (1927)	1927			183	<i>Jahn v. Pedrick</i> , 229 F.2d 71 (2d Cir. 1956)	1956
126	<i>Kelley v. Comm'r</i> , 9 B.T.A. 834 (1927)	1927			184	<i>Switow v. Comm'r</i> , 15 T.C.M. (CCH) 291 (1956)	1956
127	<i>Lidov v. Comm'r</i> , 16 B.T.A. 1421 (1927)	1927			185	Treas. Reg. § 1.761-1(a) (1956)	1956
128	<i>Parshall v. Comm'r</i> , 7 B.T.A. 318 (1927)	1927			186	<i>Hartman v. Comm'r</i> , 17 T.C.M. (CCH) 1020 (1958)	1958



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129	<i>Cohan v. Comm'r</i> , 11 B.T.A. 743 (1928)	1928			187	Rev. Rul. 58-243, 1958-1 C.B. 255	1958
130	<i>King v. Comm'r</i> , 10 B.T.A. 698 (1928)	1928			188	<i>Grant v. Comm'r</i> , 263 F.2d 558 (6th Cir. 1959)	1959
131	<i>Loper v. Comm'r</i> , 12 B.T.A. 164 (1928)	1928			189	<i>Cleveland v. Commissioner</i> , 297 F.2d 169 (4th Cir. 1961)	1961
132	<i>McKnight v. Comm'r</i> , 13 B.T.A. 885 (1928)	1928			190	<i>Dorman v. United States</i> , 296 F.2d 27 (9th Cir. 1961)	1961
133	<i>Phelps v. Comm'r</i> , 13 B.T.A. 1248 (1928)	1928			191	<i>United States v. Stierwalt</i> , 287 F.2d 855 (10th Cir. 1961)	1961
134	<i>Wilson v. Comm'r</i> , 11 B.T.A. 963 (1928)	1928			192	<i>Stoffield v. Comm'r</i> , 203 F.2d 667 (7th Cir. 1963)	1963
135	<i>Comm'r v. Barnes</i> , 30 F.2d 289 (3d Cir. 1929)	1929			193	<i>Burde v. Comm'r</i> , 352 F.2d 995 (2d Cir. 1965), <i>cert. denied</i> 383 U.S. 966 (1966)	1965
136	<i>Ruprecht v. Comm'r</i> , 16 B.T.A. 919 (1929)	1929			194	<i>Robinson v. Comm'r</i> , 44 T.C. 20 (1965)	1965
137	<i>Robertson v. Comm'r</i> , 20 B.T.A. 112 (1930)	1930			195	<i>Stonestreet Lands Co. v. Comm'r</i> , 48 T.C. 218 (1967)	1967
138	<i>Simmons v. Comm'r</i> , 22 B.T.A. 1106 (1931)	1931			196	<i>United States v. Myra Foundation</i> , 382 F.2d 107 (8th Cir. 1967)	1967
139	<i>Burnet v. Leininger</i> , 285 U.S. 136 (1932)	1932				<i>Roubik v. Comm'r</i> , 53 T.C. 365 (1969)	1969
140	<i>Humphreys v. Comm'r</i> , 88 F.2d 430 (2d Cir. 1937)	1937			197	Rev. Rul. 72-350, 1972-2 C.B. 394	1972
141	<i>Solomon v. Comm'r</i> , 89 F.2d 569 (5th Cir. 1937)	1937			198	<i>In re Steen</i> , 509 F.2d 1398 (9th Cir. 1975)	1975

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142	<i>McIntyre v. Comm'r</i> , 37 B.T.A. 812 (1938), <i>aff'd</i> 120 F.2d 564 (7th Cir. 1941)	1938			199	Rev. Rul. 75-43, 1975-1 C.B. 383	1975
143	<i>Jones v. Page</i> , 102 F.2d 144 (5th Cir. 1939)	1939			200	<i>State Nat'l Bank v. United States</i> , 509 F.2d 832 (5th Cir. 1975)	1975
144	<i>Crabb v. Comm'r</i> , 41 B.T.A. 686 (1940)	1940			201	I.R.S. Priv. Ltr. Rul. 7826096 (Mar. 31, 1978)	1978
145	<i>Wadel v. Comm'r</i> , 44 B.T.A. 1042 (1941)	1941			202	<i>Estate of Levine v. Comm'r</i> , 72 T.C. 780 (1979)	1979
146	<i>Ledbetter v. Commissioner</i> , B.T.A. (1942)	1942			203	I.R.S. Priv. Ltr. Rul. 7919065 (Feb. 12, 1979)	1979
147	<i>Schermerhorn Oil Co.</i> , 46 B.T.A. 151 (1942)	1942			204	<i>Investors Ins. Agency, Inc. v. Comm'r</i> , 72 T.C. 1027 (1979), <i>aff'd</i> 677 F.2d 1328 (9th Cir. 1982)	1979
148	Reg. 111, § 29.3797- 1 (1943)	1943			205	<i>Markosian v. Comm'r</i> , 73 T.C. 1235 (1980)	1980
149	<i>Aiken Mills v. United States</i> , 144 F.2d 23 (4th Cir. 1944)	1944			206	<i>Long v. Comm'r</i> , 77 T.C. 1045 (1981)	1981
150	<i>Scherer v. Comm'r</i> , 3 T.C. 776 (1944)	1944			207	I.R.S. Priv. Ltr. Rul. 8225151 (Mar. 29, 1982)	1982
151	<i>Zukaitis v. Comm'r</i> , 3 T.C. 814 (1944)	1944				<i>Hensel Phelps Construction Co. v. Comm'r</i> , 74 T.C. 939, <i>aff'd</i> 703 F.2d 485 (10th Cir. 1983)	1983
152	<i>Ewing v. Comm'r</i> , 5 T.C. 1020 (1945); <i>aff'd</i> 157 F.2d 679 (6th Cir., 1946)	1945			208	<i>Brannen v. Comm'r</i> , 722 F.2d 695 (11th Cir. 1984)	1984
153	<i>Graham v. Thomas</i> , 152 F.2d 564 (5th Cir. 1945)	1945			209	<i>Zmuda v. Comm'r</i> , 731 F.2d 1417 (9th Cir. 1984)	1984
154	<i>Parker v. Comm'r</i> , 5 T.C. 1355 (1945)	1945			210	I.R.S. Priv. Ltr. Rul. 8547036 (Aug. 27, 1985)	1985

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155	<i>Allen v. Beazley</i> , 157 F.2d 970 (5th Cir. 1946)	1946			211	<i>Law v. Comm'r</i> , 86 T.C. 1065 (1986)	1986
156	<i>Allen v. First Nat'l Bank</i> , 157 F.2d 592 (5th Cir. 1946)	1946			212	<i>Sparks v. Comm'r</i> , 87 T.C. 1279 (1986)	1986
157	<i>J.A. Riggs Tractor Co. v. Comm'r</i> , 6 T.C. 889 (1946)	1946			213	<i>Tolwinsky v. Comm'r</i> , 86 T.C. 1009 (1986)	1986
158	<i>I.T.</i> 3845, 1947 C.B. 66	1947			214	<i>Torres v. Comm'r</i> , 88 T.C. 702 (1987)	1987
159	<i>Schreiber v. Comm'r</i> , 160 F.2d 108 (6th Cir., 1947)	1947			215	<i>Campbell v. Comm'r</i> , 868 F.2d 833 (1988)	1988
160	<i>Wilson v. Comm'r</i> , 161 F.2d 661 (7th Cir. 1947)	1947			216	<i>Merryman v. Comm'r</i> , 873 F.2d 879 (5th Cir. 1989)	1989
161	<i>Blum v. Comm'r</i> , 11 T.C. 101 (1948), <i>aff'd</i> , 183 F.2d 287 (3d Cir. 1949)	1948			217	<i>Form Builders, Inc. v. Comm'r</i> , 58 T.C.M. (CCH) 1415 (1990)	1990
162	<i>Denison v. Comm'r</i> , 11 T.C. 686 (1948), <i>aff'd</i> 180 F.2d 938 (6th Cir. 1950), <i>cert. den'd</i> 340 U.S. 817 (1950)	1948			218	<i>Duhon v. Comm'r</i> , 62 T.C.M. (CCH) 382 (1991)	1991
163	<i>Dreymann v. Comm'r</i> , 11 T.C. 153 (1948)	1948			219	Rev. Rul. 92-49, 1992-1 C.B. 433	1992
164	<i>Hartz v. Comm'r</i> , 170 F.2d 313 (1948), <i>cert. den'd</i> 337 U.S. 733	1948			220	<i>Moorhead v. Comm'r</i> , 66 T.C.M. (CCH) 149 (1993)	1993
165	<i>Weizer v. Comm'r</i> , 165 F.2d 772 (6th Cir. 1948)	1948			221	<i>Nat'l Commodity &amp; Barter Ass'n v. United States</i> , 843 F.Supp. 655 (D. Colo. 1993)	1993
166	<i>Delchamps v. Comm'r</i> , 12 T.C. 281 (1949)	1949			222	<i>Bertoli v. Comm'r</i> , 103 T.C. 501 (1994)	1994

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167	<i>Felix v. Comm'r</i> , 12 T.C. 933 (1949)	1949			223	<i>Perry v. Comm'r</i> , 67 T.C.M. (CCH) 2966 (1994)	1994
168	<i>Cohen v. Comm'r</i> , 15 T.C. 261 (1950)	1950			224	<i>70 Acre Recognition Equip. P'ship v. Comm'r</i> , 72 T.C.M. (CCH) 1508 (1996)	1996
169	<i>Estate of Koen v. Comm'r</i> , 14 T.C. 1406 (1950)	1950			225	Treas. Reg. § 301.7701-1 to 4	1997
170	<i>Rogers v. Comm'r</i> , 180 F.2d 720 (3d Cir. 1950)	1950					