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A COMPLETED LIST OF ALL CASES REPORTED IN "U.S. TAX CASES 80-1"  
ARRANGED ALPHABETICALLY BY NAMES OF BOTH PLAINTIFFS AND  
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All case names are followed by the reporter citation or citations, if so reported at the time of printing. Otherwise, the name of the court and the date of the decision are furnished in lieu thereof. All references are in the form of the CCH citation (USTC ¶ .....), which furnishes both the volume number and the paragraph at which the full-text opinion is printed. If a reporter citation is your only lead to a case, refer to the citation cross-reference table, at page 17, which will give you the reference to the opinion in this volume.

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[¶ 9285] John G. Sellers and Florence B. Sellers, Appellees v. United States of America, Appellant.

U. S. Court of Appeals, 4th Circuit, No. 79-1040, 3/5/80. Reversing District Court, 78-1 USTC ¶9463.

[Code Secs. 704 and 752]

**Partnerships: Losses: Allocation: Personal debts of general partner.**—The Court of Appeals affirmed the Commissioner in reducing the proportion of a partnership's losses allocable to a limited partner to 60 percent. The general partner had assigned his personal debts to the partnership in order to reduce his capital account. Because of Virginia law and the partnership agreement, this had the effect of allocating all partnership losses to the limited partners. The allocation of losses lacked economic substance and the limited partners failed to show an intention that the partnership was to be liable for the general partner's personal debts. Back references: ¶ 3916.035 and 3985.12.

William F. Burnside, for appellees. William B. Cummings, United States Attorney, James A. Oast, Jr., Assistant United States Attorney, M. Carr Ferguson, Assistant Attorney General, Jonathan S. Cohen, Gilbert E. Andrews, Stanley S. Shaw, Jr., Department of Justice, Washington, D. C. 20530, for appellant.

Before BUTZNER, Circuit Judge, FIELD, Senior Circuit Judge, and WIDENER, Circuit Judge.

BUTZNER, Circuit Judge: The United States appeals from a judgment of the district court granting John and Florence Sellers (taxpayers) a refund for taxes paid in 1965 and 1966. The issue on appeal is whether the district court properly allocated all of a limited partnership's losses to John Sellers. We reverse because we conclude that the Commissioner's allocation of 60 percent of the losses must be sustained.

I. In 1964 John Sellers agreed to form a limited partnership with his brother, Frank. The partnership agreement designated John and his wife, Florence, limited partners and Frank the general partner (for clarity we will refer to the partners by their first names). Article IX(a) of the agreement provided that the limited partners were to share profits in the same proportion as they contributed to total partnership capital. No written provision was made for the general partner's share of profits nor for the allocation of losses to anyone. John and Frank assert, however, that when they formed the partnership, they orally agreed that all losses and profits would be allocated to the limited partners, and Frank would be paid a management fee.

John contributed funds for the downpayment on rental property. Frank made substantial capital contributions in the form of rental properties which he had previously acquired. He offset these contributions with the assignment of personal, pre-existing debts. Florence made no contributions.

For the years in question, the partnership's assets were primarily encumbered rental properties that were rapidly depreciated. As a result, the partnership required a relatively small cash outlay, and it suffered heavy losses. The taxpayers, John and Florence, who had a much larger taxable income than Frank, claimed as deductions all of the partnership losses for the years in question; Frank reported none. After the Commissioner allowed the taxpayers only 60 percent of the losses, they paid the assessed deficiencies and brought this action for a refund.

The district court credited the partners' testimony that they had orally agreed to allocate all partnership profits and losses to the limited partners. The court recognized that generally a partner's share of profit and loss is determined by the partnership agreement. I. R. C. § 704(a). The court found, however, that the oral agreement lacked any business purpose and that its only objective was the avoidance of taxes. It therefore refused to give effect to the oral agreement, citing as authority I. R. C. § 704(b)(2).<sup>1</sup> The court then ruled that the written partnership agreement allocated all profits to the limited partners. In the absence of a written agreement allocating losses, the court, as required by 26 C. F. R. § 1.761-1(c) (1979), applied Va. Code Ann. § 50-18(a) (1974) which allocates partnership losses on the same basis as profits. Consequently, the court held that

<sup>1</sup> This case is governed by the Internal Revenue Code of 1954. For tax years beginning after 1976, § 704(b) was amended by § 213(d)

of the Tax Reform Act of 1976, P. L. 94-455, 90 Stat. 1520.