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Revenue Ruling 74-209

The purpose of this Revenue Ruling is to update and restate, under the current statute and regulations, the position set forth in I.T. 3901, 1948-1 C.B. 30.

A husband and wife, each using the cash receipts and disbursements method of accounting, held Wisconsin real estate as joint tenants, and the husband used the property in his business. As payment for the use of his wife's share of the property, the husband paid to her one-half of the fair rental value of the property. The husband and wife reported their income from the property in separate Federal income tax returns, and the question raised is whether the husband is entitled to deduct as a business expense on his return the rent paid to his wife.

On the basis of the provisions of sections 234.21, 246.01 and 246.03 of the current Wisconsin Statutes, a husband and wife holding Wisconsin real estate as joint tenants may each report one-half of the net income from such property for Federal income tax purposes.

Sections 234.21, 246.01 and 246.03 of the current Wisconsin Statutes provide as follows:

234.21. Actions Between Cotenants. -One joint tenant or tenant in common and his executors or administrators may maintain an action for money had and received against his cotenant for receiving more than his just proportion of the rents or profits of the estate owned by them as joint tenants or tenants in common.

246.01. Realty of. -The real estate of every description, including all held in joint tenancy with her husband, and the rents, issues and profits thereof of any female now married shall not just be subject to the disposal of her husband, but shall be her sole and separate property as if she were unmarried.

246.03. May Receive, Hold and Convey Property.-Any married female may receive by inheritance or by gift, grant, devise or bequest from any person, hold to her sole and separate use, convey and devise real and personal property and any interest or estate therein of any description, including all held in joint tenancy with her husband, and the rents, issues and profits thereof in the same manner and with like effect as if she were unmarried, and the same shall not be subject to the disposal of her husband nor be liable for his debts. Any conveyance, transfer or lien executed by either husband or wife to or in favor of the other shall be valid to the same extent as between other persons.

On the basis of the above quoted provisions of law, there is a definite obligation on the part of the taxpayer to pay to his wife one-half of the fair rental value of the real estate held by them as joint tenants which is used by him in his business. To deny the taxpayer the right to deduct fair rent paid to his wife would, in effect, disregard the wife's right of participation in possession and use of the property, and would conflict with the long-standing position of the Service that income

from property held in joint tenancy is taxable to the tenants in proportion to their respective interests in the property.

Accordingly, in the instant case, the husband is entitled to deduct as a business expense in his separately filed income tax return the rent he paid to his wife for his use of the Wisconsin real estate owned by them as joint tenants.

I.T. 3901 is hereby superseded since the position stated therein is set forth under the current law in this Revenue Ruling.

1 ¶ Prepared pursuant to Rev. Proc. 67-6, 1967-1 C.B. 576.