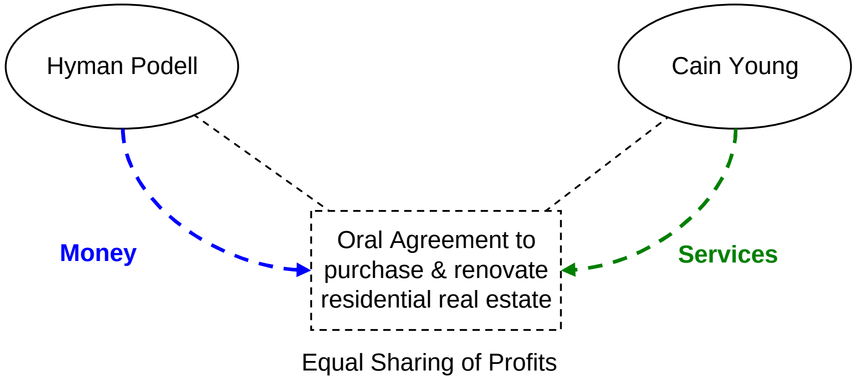
Podell v. Commissioner
55 T.C. 429 (1970)

Real Estate Joint Venture Was A Partnership



Podell entered into an oral agreement with Young, a real estate operator located in Brooklyn, New York, whereby Podell advanced various amounts of money to Young to be used for the purchase and renovation of certain residential real estate. Young was to provide the actual management for the project. In 1964, Podell and Young purchased, renovated, and sold nine buildings. In 1965, Podell and Young purchased, renovated, and sold five buildings. Young held the aforementioned buildings for sale in the ordinary course of business. Podell and Young shared equally in the profit or loss on the sale of each of the buildings.

A joint venture has been defined as 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."   The elements of a joint venture are: (a) a contract (express or implied) showing that it was the intent of the parties that a business venture be established; (b) an agreement for joint control and proprietorship; (c) a contribution of money, property, and/or services by the prospective joint venturers; and (d) a sharing of profits, but not necessarily of losses (although some jurisdictions require that there be a sharing of losses). In many respects, the concept of joint venture is similar to the concept of partnership, and many of the principles of partnership law are applicable to joint ventures. A primary distinction between the two concepts is that a joint venture is generally established for a single business venture (even though the business of managing the venture to a successful conclusion may continue for a number of years) while a partnership is formed to carry on a business for profit over a long period of time.

The fact that Podell did not exercise as much managerial control over the day-to-day activities relating to the purchase, renovation, and sale of the real estate as Young is not sufficient reason to find against the existence of a joint venture. While Podell gave Young discretion with respect to all aspects of the purchase, renovation, and sale of the real estate in question, Podell retained the power to approve of the steps undertaken by Young to execute their agreement through his control over his continued contributions of funds to the venture. Podell was engaged in a joint venture, and the character of the income in his hands is determined by the character it would have had if it had remained with the joint venture. Since it would be ordinary income to the joint venture, it is ordinary income to Podell.