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Partition & Sale – Purchase by Co-owner

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Real estate is frequently gifted or bequeathed to heirs as an “undivided interest”. This undivided interest provides for a very equitable and efficient method of sharing expenditures and receipts. However, a potential problem arises when a co-owner(s) wants to dispose of their interest in the property and a settlement cannot be agreed upon by the co-owners. An option available for the co-owner(s) wanting out is a partition and sale.

What is the tax consequence for the co-owner(s) not desiring to liquidate and planning to be the successful bidder on the sale of the entire property at its partition and sale?

Neil Harl, a respected agricultural law and economics professor at Iowa State Univ., concludes “In the event one of the co-owners of property subjected to a partition and sale action purchases the property at the partition sale, the partition proceedings constitute a nontaxable transaction for federal income tax purposes”.

Neil cites two primary authorities on this issue: Revenue Ruling 55-77 and Hunnicuttt v. Commissioner. The basic conclusion cited in these two authorities is that the purchasing co-owner(s) sold nothing since they in essence purchased what they already owned.