Maurice B. Greenbaum, 48 B.T.A. 44 (1943)

A taxpayer's legal right to minimize taxes through permissible means is valid, provided the transaction is bona fide, unrestricted, and not a mere sham, even if the primary motivation is tax avoidance.

Summary

The case addresses whether gains from the disposition of stock should be taxed as a partial liquidation (100% taxable) or as a capital gain (taxed at a percentage). The petitioners sold their stock to an investment firm who then resold the stock to the company for cancellation. The Board of Tax Appeals held that the initial sale was a bona fide, unrestricted sale. Because the sale was considered a completed transaction, the capital gains provisions applied and the gains were taxed at the lower percentage.

Facts

Second preference stockholders of Corning Glass Works sought to dispose of their stock.
Chas. D. Barney & Co., an investment firm, purchased 10,000 shares of Corning Glass Works stock at $100.50 per share.
Chas. D. Barney & Co. resold the shares to Guaranty Trust Co., acting as an agent for Corning Glass Works, at $101 per share on the same day.
The stockholders sought to treat the gains from the sale of stock as capital gains, subject to lower tax rates.
The Commissioner argued that the sale was a tax avoidance scheme and should be treated as a distribution in partial liquidation, which would be taxed at a higher rate.

Procedural History

The Commissioner determined that the gains from the disposition of stock should be taxed as a distribution in partial liquidation under Section 115 of the Revenue Act of 1934.
The taxpayers petitioned the Board of Tax Appeals, arguing that the sale was a bona fide transaction and should be treated as a sale of a capital asset under Section 117 of the same act.
The Board of Tax Appeals reversed the Commissioner's determination.

Issue(s)

Whether the sale of stock to Chas. D. Barney & Co. constituted a bona fide, unrestricted sale, thus qualifying the gains for capital gains treatment under Section 117 of the Revenue Act of 1934.

Holding

© 2025 SCOTUSreports.com. All rights reserved.

Yes, because the sale to Chas. D. Barney & Co. was a bona fide, unrestricted sale, the gains should be treated as capital gains under Section 117(a) of the Revenue Act of 1934, not as a distribution in partial liquidation under Section 115(c).

Court's Reasoning

The Board emphasized the taxpayer's legal right to minimize taxes through legitimate means, citing *Gregory v. Helvering*, 293 U.S. 465: "The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted."
The Board found that the sale to Chas. D. Barney & Co. was a bona fide, unrestricted sale, with no prior commitments or binding agreements to resell the stock to Corning Glass Works.
The fact that Chas. D. Barney & Co. resold the stock shortly after purchasing it did not negate the validity of the initial sale by the stockholders.
The Board distinguished the case from situations where sham transactions or entities controlled by the taxpayer were used to avoid taxes, emphasizing that Chas. D. Barney & Co. was an independent third party.
The Board relied on *John D. McKee et al., Trustees, 35 B.T.A. 239* which supported the position that a sale of bonds just before their maturity to ensure capital gains treatment was valid. The Board stated this case was not impaired by later Supreme Court decisions.

Practical Implications

This case confirms that taxpayers can structure transactions to minimize their tax liability as long as the transactions are bona fide, not shams, and comply with the law.
It highlights the importance of ensuring that sales are unrestricted and that purchasers have genuine control over the assets they acquire.
It clarifies that the IRS cannot disregard a legitimate sale solely because the taxpayer could have achieved the same economic result through a more tax-inefficient route.
This case has been cited in subsequent cases where the IRS has attempted to recharacterize transactions as tax avoidance schemes. It provides support for taxpayers who engage in legitimate tax planning.
It reinforces the principle that each transaction has its own tax consequences and should be analyzed separately, even if multiple transactions occur in close succession.

© 2025 SCOTUSreports.com. All rights reserved.