3 T.C. 1044 (1944)

A loss sustained when stock is sold by a corporation due to unpaid stock assessments is subject to capital loss limitations under Section 117 of the Revenue Act of 1936, even if the stockholder receives no direct consideration or release from personal liability.

Summary

George Hewitt Myers owned stock in the Shamrock Gold Mining Co. that was subject to assessment. When he failed to pay an assessment of one cent per share, the company, in accordance with Nevada law, sold the stock at public auction. Because there were no outside bidders, the company bought the stock itself. Myers claimed an ordinary loss deduction of $15,500 on his tax return, but the Commissioner of Internal Revenue determined that this was a capital loss subject to limitations. The Tax Court upheld the Commissioner, reasoning that the sale constituted a "sale or exchange" under Section 117(d) of the Revenue Act of 1936, regardless of whether Myers received any consideration or release from personal liability.

Facts

In 1932 and 1933, George Hewitt Myers acquired 122,000 shares of Shamrock Gold Mining Co. stock at a cost of $15,500. The stock was assessable under Nevada law. In January 1936, Myers received notice of an assessment of one cent per share. He chose not to pay the assessment. The company notified him his shares would be sold at public auction. At the auction on March 10, 1936, there were no bids, and the company purchased the stock itself, as permitted by Nevada law.

Procedural History

Myers claimed an ordinary loss on his 1936 tax return. The Commissioner determined the loss was a capital loss and subject to limitations under Section 117(d) of the Revenue Act of 1936. Myers petitioned the Tax Court, contesting the Commissioner's determination.

Issue(s)

Whether the loss sustained by Myers when his stock was sold for unpaid assessments constitutes an ordinary loss under Section 23(e)(2) of the Revenue Act of 1936 or a capital loss subject to the limitations of Section 117(d) of the same act.

Holding

No, the loss is a capital loss because the disposition of the stock constituted a "sale or exchange" within the meaning of Section 117(d), despite the absence of direct consideration or release from personal liability for the stockholder.

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Court’s Reasoning

The court determined that the transaction constituted a sale, as it was conducted according to Nevada law, which provided for a public auction. Even though the corporation bought the stock in the absence of other bidders, it was still a sale. The court compared the situation to a foreclosure sale. The court rejected Myers’ argument that the absence of consideration or release from liability transformed the loss into an ordinary loss. Citing *Helvering v. Hammel*, the court emphasized that the sale did not need to be voluntary to qualify as a sale or exchange under Section 117. The court stated that a tax lien foreclosure where the owner had no personal obligation and received no payment was considered a capital loss. The court stated, “That there was literally a sale is unquestionable.” The court distinguished cases relied upon by the petitioner, noting they pre-dated *Helvering v. Hammel* and were no longer controlling.

Practical Implications

This case clarifies that even involuntary sales, such as those resulting from unpaid assessments, can trigger capital loss treatment for tax purposes. It emphasizes that the key factor is whether a sale or exchange occurred, not whether the taxpayer received direct consideration or a release from personal liability. Attorneys should advise clients that losses stemming from stock sales due to unpaid assessments are generally subject to capital loss limitations. The decision also reinforces the broad interpretation of “sale or exchange” established in *Helvering v. Hammel*, which extends beyond voluntary transactions. This case is often cited in disputes regarding the characterization of losses from property dispositions where the taxpayer receives little or no direct benefit from the transaction.

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