2 T.C. 175 (1943)

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When a corporation redeems its stock with the intent to cancel or retire it as part of a corporate restructuring, the transaction is treated as a distribution in partial liquidation, and the gain is taxed accordingly under Section 115(c) of the Internal Revenue Code, regardless of whether the stockholder was aware of the corporation's intent.

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Summary

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James Gosman, a stockholder in Billings Dental Supply Co., sold his stock back to the corporation amidst a corporate restructuring involving the sale of the company's supply business. The Tax Court addressed whether the gains from the stock disposition should be taxed as a distribution in partial liquidation or as a gain from the sale of capital assets. The court determined that because Billings intended to cancel and retire the stock as part of the restructuring, the transaction constituted a partial liquidation. Therefore, the gain was taxable under Section 115(c) of the Internal Revenue Code, irrespective of Gosman's knowledge of the corporation's intent.

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Facts

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Gosman owned 367 shares of Billings Dental Supply Co. In January 1940, he surrendered 36 shares to Billings for $3,600. In October 1940, Billings contracted to sell its supply business to S.S. White Dental Co. Gosman, desiring to withdraw from the corporation, agreed to sell his remaining 331 shares back to Billings. On October 21, 1940, Gosman sold his shares to Billings for $110 per share. Billings then canceled the shares. Following the sale of the supply business, Billings changed its name to Billings Dental Laboratory and continued operating dental laboratories. A stockholders meeting approved the purchase and retirement of the 486 shares, including those from Gosman.

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Procedural History

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The Commissioner of Internal Revenue determined a deficiency in Gosman's income tax for 1940. Gosman contested this deficiency in the Tax Court, arguing that the gain from the stock sale should be treated as a capital gain under Section 117 of the Internal Revenue Code, rather than as a distribution in partial liquidation under Section 115(c).

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Issue(s)

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1. Whether the gain realized by Gosman from the disposition of his shares of corporate stock is taxable under Section 115(c) of the Internal Revenue Code as a distribution in partial liquidation or under Section 117 as a gain from the sale of capital assets.

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2. What is the appropriate basis of the stock for calculating the gain?

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Holding

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1. No, because the controlling factor is the intent of the corporation in reacquiring its stock. If stock is purchased to be canceled and retired, the seller receives a distribution in partial liquidation, and the fact that he may not know it was purchased with this intention is immaterial.

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2. The Commissioner used the correct basis for the stock in determining the gain realized by petitioner upon its retirement.

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Court's Reasoning

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The court reasoned that the use of the terms

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