7 T.C. 372 (1946)

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Real property, including a former residence, that is converted to income-producing rental property is considered “used in the trade or business of the taxpayer,” allowing for full deduction of losses upon its sale as an ordinary loss rather than a capital loss.

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Summary

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Leland Hazard, an attorney, moved from his Kansas City residence to Pittsburgh for employment. He rented out his former home and later sold it at a loss. Hazard sought to deduct the entire loss as an ordinary loss. The Commissioner of Internal Revenue argued it should be treated as a capital loss, subject to limitations. The Tax Court held that because the property was converted to rental use, it was used in Hazard’s “trade or business” and the full loss was deductible as an ordinary loss under Section 23(e) of the Internal Revenue Code.

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Facts

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Leland Hazard purchased a residence in Kansas City in 1930 for $32,600. He lived there until July 1, 1939, when he moved to Pittsburgh for a job as general counsel for Pittsburgh Plate Glass Co. In February 1940, he bought stock in a Pittsburgh cooperative apartment and resided there. Around January 1, 1940, Hazard listed his Kansas City home for rent or sale, renting it out continuously until it was sold on November 1, 1943. Hazard claimed depreciation on the property for the years 1941, 1942, and 1943. He then sold the Kansas City property for $18,500, incurring a net loss of $6,844.92.

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Procedural History

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Hazard filed his tax return and claimed the full loss as an ordinary loss. The Commissioner determined that the loss should be treated as a long-term capital loss, limiting the deductible amount to $1,000. Hazard petitioned the Tax Court, contesting the Commissioner’s determination.

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Issue(s)

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Whether the loss sustained on the sale of a former residence, which was converted to rental property, is deductible in full as an ordinary loss or is limited as a long-term capital loss under Section 117 of the Internal Revenue Code.

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Holding

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No, because the property was

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