## *Cooper Foundation v. Commissioner, 7 T.C. 387 (1946)*

When a sale is negotiated by a stockholder acting in their own interest, and the purchaser intends to buy only from that stockholder after liquidation, the sale is attributed to the stockholder, not the corporation, for tax purposes.

### Summary

Cooper Foundation, a minority stockholder in Peerless, negotiated a sale of a lease and improvements to Miller. Miller only wanted to buy the lease from Cooper Foundation after Cooper acquired it via liquidation of Peerless. The Tax Court had to determine whether the sale was made by Peerless, making it liable for taxes, or by Cooper Foundation, which would absolve Peerless. The court held that the sale was made by Cooper Foundation because Miller only agreed to purchase the lease from Cooper Foundation after it acquired the lease through liquidation and Cooper acted in its own interest.

### Facts

Peerless owned a lease and improvements on a property. Cooper Foundation was a minority stockholder in Peerless. Cooper Foundation planned to build a competing theater near Miller's theater in Wichita. To avoid this competition, Kent, president of Fox Films (Miller's parent company), agreed to purchase the lease and improvements from Cooper Foundation if Cooper Foundation could acquire and transfer them. The agreement was contingent on Cooper Foundation acquiring the lease first. Miller had no interest in dealing directly with Peerless. Cooper Foundation negotiated the deal exclusively in its own interest, not on behalf of Peerless.

### Procedural History

The Commissioner determined a tax deficiency against Peerless, arguing that Peerless sold the lease and improvements. The Commissioner also determined transferee liability against Cooper Foundation. Cooper Foundation petitioned the Tax Court for a redetermination, arguing that the sale was made by Cooper Foundation, not Peerless.

### Issue(s)

Whether the sale of the Naftzger-Peerless lease and improvements to Miller was made by Peerless or by Cooper Foundation for federal tax purposes.

### Holding

No, the sale was made by Cooper Foundation because the negotiations were carried out exclusively by Cooper Foundation in its own interest, and Miller only agreed to purchase the lease from Cooper Foundation after the latter acquired it.

 

## Court's Reasoning

The court emphasized that the "actualities of the sale must govern." It distinguished this case from situations where stockholders are merely a "conduit of title" for a sale negotiated and effectively made by the corporation. The court highlighted that Miller had no desire to deal with Peerless directly and only agreed to purchase the lease from Cooper Foundation after it had been acquired. The court noted that Cooper Foundation acted exclusively in its own interest to prevent competition from Miller's theater. The court cited *George T. Williams, 3 T. C. 1002*, stating that "a stockholder can in no circumstances contract as an individual to sell property which he expects to acquire from the corporation." Unlike *Howell Turpentine Co.*, where the purchaser was indifferent as to whether the corporation or the stockholders made the sale, in this case, Miller's offer was specifically made to Cooper Foundation as a stockholder and was contingent on Cooper Foundation acquiring the property first.

## Practical Implications

This case provides a practical illustration of when a sale is attributed to a stockholder rather than the corporation. It clarifies that the key inquiry is whether the purchaser intended to deal directly with the corporation or only with the stockholder after liquidation. Attorneys advising clients on corporate liquidations and sales of assets must carefully document the intent of the parties and the sequence of events. The case emphasizes that negotiations conducted by a stockholder acting solely in their own interest, coupled with a purchaser's intent to buy only from the stockholder after liquidation, will support attributing the sale to the stockholder. This decision impacts tax planning strategies for corporate liquidations and asset sales, particularly where there are significant tax advantages to structuring the transaction as a sale by the stockholder rather than the corporation.