10 T.C. 413 (1948)

When a taxpayer exchanges mortgaged real estate for unencumbered properties and cash, the mortgage indebtedness is treated as 'other property or money' received for the purpose of calculating taxable gain, even if the purchaser takes the property subject to the mortgage without assuming it.

Summary

The Allen Building Co. exchanged mortgaged real estate for unencumbered properties and cash. The purchasers took the property subject to the mortgage but did not assume it. The Tax Court addressed whether the mortgage debt should be considered "other property or money" received by the Allen Building Co. for the purposes of calculating taxable gain under Section 112(c)(1) of the Internal Revenue Code. The Court held that the mortgage indebtedness is treated as "other property or money," and since its amount plus the cash received exceeded the realized gain, the entire gain was taxable.

Facts

The Allen Building Co. owned land and a building (the Allen Building) subject to a mortgage. The company entered into a contract to exchange the Allen Building for cash and seven parcels of unencumbered rental real estate. The purchasers took the Allen Building subject to the mortgage, but did not assume it. The adjusted cost basis of the Allen Building was $657,154.94, the fair market value of the seven rental properties was approximately $304,282.46, and the unpaid balance on the mortgage was $599,839.24.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in the Allen Building Co.'s income tax. The Commissioner asserted transferee liability against Gabe P. Allen, Theo. W. Pinson, and Zach. K. Brinkerhoff as transferees of the Allen Building Co.'s assets. The Tax Court was tasked with determining the amount of taxable gain to be recognized in connection with the exchange.

Issue(s)

Whether, in computing the amount of gain to be recognized under Section 112(c)(1) of the Internal Revenue Code, the amount of the mortgage indebtedness should be treated as 'other property or money' received in the exchange when the vendees take the real estate subject to the mortgage but do not assume it.

Holding

Yes, because the mortgage indebtedness is considered 'other property or money' received by the Allen Building Co. within the meaning of Section 112(c)(1) of the

Internal Revenue Code. Since this amount, plus the cash received, exceeded the realized gain, the entire gain is taxable.

Court's Reasoning

The Court relied on its prior holdings in *Brons Hotels, Inc.*, 34 B.T.A. 376, and *Estate of Theodore Ebert, Jr.*, 37 B.T.A. 186, where it held that mortgage indebtedness constituted 'other property or money' under Section 112(c)(1). The court distinguished *Commissioner v. North Shore Bus Co.*, 143 F.2d 114, where the taxpayer acted as a conduit, merely substituting one debt for another without receiving anything of value in the exchange besides the new buses. The Court stated that in the instant case, the mortgage indebtedness relieved the Allen Building Co. of a liability, thereby conferring an economic benefit equivalent to receiving cash or other property. The Court reasoned that the purchasers taking the property subject to the mortgage was economically equivalent to them paying cash to the Allen Building Co., who then used that cash to satisfy the mortgage.

Practical Implications

This case clarifies that even if a buyer does not formally assume a seller's mortgage, the seller is still considered to have received value equal to the mortgage balance for tax purposes. This impacts how real estate transactions are structured and analyzed for tax implications. Tax advisors must consider the mortgage balance as part of the consideration received by the seller when calculating taxable gain. Later cases have cited *Allen* for the principle that relief from indebtedness is equivalent to the receipt of cash or other property. This principle extends beyond real estate transactions and applies to various situations where a taxpayer is relieved of a liability.

