Shillinglaw v. Commissioner, 42 T.C. 933 (1964)

When calculating the holding period for capital gains purposes, the day stock is acquired through the exercise of an option is excluded; the holding period begins the following day.

Summary

The Tax Court addressed how to calculate the holding period for stock acquired through the exercise of a stock option when determining whether the sale of the stock resulted in a short-term or long-term capital gain. The court held that the day the option was exercised to acquire the stock is excluded from the holding period calculation. Therefore, the holding period begins the day after the option is exercised.

Facts

The petitioner, Shillinglaw, acquired 900 shares of stock on May 1, 1944, through the exercise of a stock option. He then sold these shares on November 1, 1944. To determine the applicable capital gains tax rate, it was necessary to ascertain whether the stock was held for more than six months (long-term capital gain) or for six months or less (short-term capital gain), as defined by Section 117 of the Internal Revenue Code.

Procedural History

The Commissioner of Internal Revenue determined that Shillinglaw realized a short-term capital gain. Shillinglaw petitioned the Tax Court for a redetermination, arguing that the holding period should include the day the stock was acquired, thus resulting in a long-term capital gain.

Issue(s)

Whether the holding period of stock acquired by the exercise of an option includes the day of acquisition of the stock, or begins the day following such acquisition, for purposes of determining long-term versus short-term capital gain.

Holding

No, because the general rule of construction is that in measuring a time period, the day of the transaction which marks the beginning of the period is excluded from the computation.

Court's Reasoning

The court reasoned that Section 117 of the Internal Revenue Code does not explicitly address how to calculate the holding period for stock acquired through options. Shillinglaw argued that Section 117(h)(6), concerning "rights to acquire such stock," should apply, including the interpretive regulations. However, the court disagreed, finding that "rights" in this context referred specifically to stock rights issued to existing shareholders, not options. The court emphasized that options are fundamentally different from stock rights, as stock rights are inherent to stock ownership, while options are not. Since the statute was silent on the specific issue of stock options, the court relied on the established rule of construction articulated in *Harriet M. Hooper, 26 B. T. A. 758*, which states that when measuring a time period, the initial day of the transaction is excluded. The court quoted *Sheets v. Selden's Lessee, 2 Wall. 190*: "The general current of the modern authorities on the interpretation of contracts, and also of statutes, where time is to be computed from a particular day or a particular event… is to exclude the day thus designated, and to include the last day of the specified period."

