12 T.C. 1083 (1949)

The holding period for capital gains purposes begins when the taxpayer acquires a beneficial interest in the asset, not necessarily when formal title or possession is received.

Summary

W.F. Marsh and associates loaned money to a corporation in exchange for promissory notes and shares of stock, with the stock certificates to be dated October 14, 1943. The certificates were actually issued on February 26, 1944, and the stock was sold on May 23, 1944. The Tax Court had to determine whether the gain from the sale was a short-term or long-term capital gain. The court held that the petitioners acquired a beneficial interest in the stock on October 14, 1943, making the capital gain a long-term gain because the holding period began when the right to receive the stock became fixed, not when the stock certificates were physically issued.

Facts

Petitioners and their associates agreed to loan $65,000 to United Tube Corporation.

In return, they were to receive promissory notes and 6,500 shares of the corporation's common stock, with the shares to be dated October 14, 1943.

The loan was made, and the corporation agreed to deliver the stock certificates dated October 14, 1943.

The corporation's charter was formally amended in February 1944 to allow for the issuance of the stock.

The stock certificates were issued on February 26, 1944, but were dated October 14, 1943, as agreed.

The petitioners sold their stock on May 23, 1944.

Procedural History

The Commissioner of Internal Revenue determined that the gain from the stock sale was a short-term capital gain because the stock was acquired less than six months before the sale.

The petitioners contested this determination, arguing that the gain was a long-term capital gain because they had held the stock for more than six months.

The case was brought before the Tax Court of the United States.

Issue(s)

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Whether the holding period for capital gains purposes began on October 14, 1943, when the petitioners' right to receive the stock became fixed, or on February 26, 1944, when the stock certificates were physically issued.

Holding

Yes, the holding period began on October 14, 1943, because the petitioners acquired a beneficial interest in the stock on that date, making the gain a long-term capital gain.

Court's Reasoning

The court relied on precedent, including *I.C. Bradbury, 23 B.T.A. 1352*, and *Commissioner v. Sporl & Co., 118 F.2d 283*, which held that the holding period begins when the taxpayer acquires a beneficial interest in the asset.

The court emphasized that the agreement between the petitioners and the corporation stipulated that the stock certificates would be dated October 14, 1943, indicating an intent to fix the rights of the petitioners as of that date. As the court stated, "No other conclusion can be drawn from the fact that the certificates were to be dated October 14, 1943, than that the parties intended…that all rights in the corporation should be established as of a stipulated date."

The court cited *McFeely v. Commissioner, 296 U.S. 102*, stating that "[i]n common understanding to hold property is to own it. In order to own or hold one must acquire. The date of acquisition is, then, that from which to compute the duration of ownership or the length of holding."

The actual issuance of the stock certificate was not determinative. The court noted, "The fact that the stock was not formally issued until February 26, 1944, is of no consequence, as a stock certificate merely constitutes evidence of ownership; it is not the stock itself or essential to the ownership thereof."

The court distinguished cases cited by the Commissioner, such as *Ethlyn L. Armstrong, 6 T.C. 1166*, where the contract was executory on both sides, meaning neither party had fully performed its obligations. In the present case, the petitioners had already loaned the money by October 14, 1943, fulfilling their obligation.

Practical Implications

This case clarifies that the holding period for capital gains tax treatment begins when a taxpayer obtains a beneficial interest in an asset, regardless of when formal title or physical possession is transferred.

Attorneys and tax professionals should consider the substance of the transaction and the intent of the parties when determining the acquisition date of an asset for capital gains purposes.

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This ruling impacts how similar transactions, especially those involving delayed issuance of stock or other securities, are analyzed for tax purposes.

The case emphasizes the importance of documenting the agreement between parties to clearly establish the date on which beneficial ownership is intended to transfer.

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