14 T.C. 833 (1950)

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A sale of assets by former shareholders after a bona fide corporate liquidation is taxed to the shareholders, not the corporation, if the corporation did not arrange or negotiate the sale before liquidation.

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Summary

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Roxbury Heights Developers, Inc. dissolved in late 1942, distributing its assets (a 50% stake in a real estate joint venture) to its shareholders, Gilman and Hornstein. In early 1943, Gilman and Hornstein sold their interest to the other joint venturer, Keller-Block. The Tax Court addressed whether the sale was attributable to the corporation (triggering corporate tax liability) or to the individual shareholders. The court held the sale occurred after the liquidation, and thus the gain was taxable to the shareholders. Since the sale price didn't exceed the asset's value when distributed to them, no additional gain was realized by the shareholders beyond what they already reported from the liquidation.

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Facts

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– Roxbury Heights Developers, Inc. (Roxbury) was formed to develop a housing project.r
– Gilman and Hornstein acquired all of Roxbury's stock and entered a joint venture with Keller-Block, who had "sole and general supervision" over the project.r
– By late 1942, with the project's success assured, Gilman and Hornstein dissolved Roxbury, distributing its assets (its 50% share of the joint venture) to themselves.r
– Shortly after the dissolution, Gilman and Hornstein sold their joint venture interest to Keller-Block for $140,000. An agreement was executed in either December 1942 or January 1943. This agreement was "expressly conditioned upon the acceptance of said assignment by said Securities Mortgage Company".r
– An unfriendly relationship existed between Keller-Block and Hornstein.r
– The payment to Gilman and Hornstein from Securities Mortgage Company was made on June 12, 1943.r

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Procedural History

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– The Commissioner of Internal Revenue determined deficiencies against Gilman and Hornstein as transferees of Roxbury, arguing Roxbury itself sold the joint venture interest before dissolution.r
– Alternatively, the Commissioner argued Gilman and Hornstein realized ordinary income in 1943 from the sale of their interest.r
– Gilman and Hornstein petitioned the Tax Court, contesting the deficiencies.r

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Issue(s)

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1. Whether Roxbury sold its interest in the joint venture to Keller-Block before its dissolution, thereby incurring corporate tax liability?r
2. Whether Gilman and Hornstein realized ordinary income in 1943 from the sale of their joint venture interest, after receiving it as a liquidating distribution from Roxbury?r

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Holding

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1. No, because the sale was not consummated or even agreed upon until after Roxbury’s dissolution.r
2. No, because Gilman and Hornstein’s basis in the joint venture interest (its value when distributed) equaled the sale price, resulting in no additional gain beyond what they reported in 1942.r

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Court’s Reasoning

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– The court emphasized the factual determination of when the sale occurred. The Commissioner argued the sale was “substantially completed” before Roxbury’s dissolution, based on a tax avoidance motive.r
– However, the court found the evidence showed the sale agreement was not finalized until 1943, after the dissolution. The court noted conflicting testimony regarding the date of negotiations.r
– A key piece of evidence was a memorandum from Keller-Block’s attorney indicating that as of December 30, 1942, no agreed plan for the sale existed.r
– The court distinguished *Commissioner v. Court Holding Co.*, finding that unlike that case, the sale here wasn’t negotiated by the corporation before liquidation.r
– The court cited *United States v. Cumberland Public Service Co.*, stating,

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