*15 T.C. 366 (1950)*

Activities related to subdividing and improving land do not automatically constitute a trade or business, and profits from selling lots to contractors can be treated as capital gains if the land wasn't held primarily for sale to customers in the ordinary course of business.

**Summary**

W.T. Thrift purchased land in 1941. In 1945, he negotiated with home builders, subdivided the land, and installed improvements. He then sold lots to these builders in 1946. The Tax Court had to determine whether the profits from these sales should be taxed as ordinary income (property held primarily for sale to customers) or as capital gains. The court held that the profits were capital gains because Thrift's actions were aimed at facilitating the sale to a specific group, not engaging in a real estate business. Furthermore, the court ruled that Thrift could not retroactively elect installment sale treatment, since that election was not properly made on the original return.

**Facts**

W.T. Thrift purchased approximately 62 acres of unimproved land near San Antonio in 1941. In 1944 and 1945, he entertained offers from parties interested in purchasing the entire tract. In 1945, he began negotiations with a group of home builders who lacked the capital to install necessary infrastructure. Thrift agreed to subdivide and improve the land, and the builders informally agreed to purchase specific lots. Thrift subdivided the land into 238 lots (Olmos Place) and installed streets, sewers, and water lines. He did not advertise the lots, list them with real estate agents, or offer them to the general public. He only sold to the builders he had negotiated with, with one exception. The builders also bought materials from Thrift Lumber Co., of which Thrift was president and majority owner, but there was no requirement that they do so.

**Procedural History**

The Commissioner of Internal Revenue determined a deficiency in Thrift's income tax for 1946, arguing that the profits from the sale of the lots constituted ordinary income. Thrift petitioned the Tax Court, arguing that the profits were capital gains. The cases of W.T. Thrift, Sr. and Lucille B. Thrift were consolidated for trial and opinion.

**Issue(s)**

1. Whether the gain realized from the sale of the lots was derived from the sale of a capital asset and therefore taxable as capital gain, or whether it was derived from property held primarily for sale to customers in the ordinary course of the husband's trade or business and therefore taxable as ordinary income.

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2. Whether the petitioners made a proper and effective election to report the gain from the sale of 24 lots to their son in 1946 on the installment basis.

**Holding**

1. No, because the lots sold were capital assets, not property held primarily for sale to customers in the ordinary course of Thrift's trade or business.

2. No, because the petitioners' 1946 returns did not contain any indication of an intention to claim the benefit of reporting the total gain from the sale of the 24 lots to their son under the installment basis.

**Court's Reasoning**

The court stated that whether property constitutes a capital asset or is held primarily for sale to customers is a question of fact. They considered several factors, including the purpose of acquiring and disposing of the property, the continuity of sales, the number and frequency of sales, and the extent of sales activities. The court emphasized that no single factor is determinative. The court noted that Thrift originally acquired the property as an investment and was not initially engaged in the real estate business. His activities in subdividing and improving the land were undertaken only because the builders lacked the capital to do so themselves. The court found that Thrift's activities did not constitute a

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