16 T.C. 213 (1951)

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A taxpayer trading in whiskey warehouse receipts for their own account is entitled to capital gains treatment under Section 117(a) of the Internal Revenue Code, as is a taxpayer selling real estate lots acquired in exchange for corporate stock, provided the lots were not held primarily for sale to customers in the ordinary course of business.

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Summary

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Thomas E. Wood, primarily engaged in the insurance business, sought capital gains treatment for profits from selling whiskey warehouse receipts in 1944 and real estate lots in 1945. The Commissioner of Internal Revenue argued these were ordinary income. The Tax Court held that Wood's activities in whiskey receipts constituted trading, not dealing, entitling him to capital gains treatment. The court also found the real estate lots were not held primarily for sale in the ordinary course of business, as Wood was liquidating an investment, also qualifying for capital gains treatment. This case clarifies the distinction between a trader and a dealer for tax purposes.

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Facts

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Thomas E. Wood was primarily engaged in the insurance business. He was previously involved in partnerships and a corporation dealing in whiskey warehouse receipts and distillery financing, but these entities dissolved by 1942.r
In 1944, Wood sold whiskey warehouse receipts. In 1945, he sold real estate lots he'd acquired in 1940 in exchange for stock in a real estate development company (Lakewood Development Company) from which he was trying to disengage.r
Wood filed "Special-Tax Returns" as a wholesale liquor dealer. He did not advertise himself as a whiskey broker nor was a member of the Association of Whiskey Brokers of America.r

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Procedural History

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The Commissioner determined deficiencies in Wood's income tax for 1944 and 1945, arguing that the gains from the whiskey and real estate sales were ordinary income. Wood petitioned the Tax Court, arguing for capital gains treatment under Section 117(a) of the Internal Revenue Code. The Tax Court ruled in favor of Wood.r

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Issue(s)

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1. Whether the gains from the sale of whiskey warehouse receipts in 1944 should be treated as ordinary income or capital gains under Section 117(a) of the Internal Revenue Code.r
2. Whether the gains from the sale of real estate lots in 1945 should be treated as ordinary income or capital gains under Section 117(a) of the Internal Revenue Code.r

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Holding

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1. No, because Wood was trading in whiskey warehouse receipts for his own account, not holding them primarily for sale to customers in the ordinary course of his trade or business.r
2. No, because the real estate lots were not held primarily for sale to customers in the ordinary course of Wood's trade or business; he was liquidating an investment.r

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Court's Reasoning

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Regarding the whiskey warehouse receipts, the court distinguished between a

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