16 T.C. 395 (1951)

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Contracts for the delivery of corn at a future date are not “securities” within the meaning of Section 118 of the Internal Revenue Code (wash sale rules), and therefore, the wash sale provisions do not apply to transactions in corn futures contracts.

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Summary

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Corn Products Refining Co. bought and sold corn futures contracts as part of its corn-buying program to ensure an adequate supply of raw corn. The Tax Court addressed whether these corn futures contracts were capital assets under Section 117 of the Internal Revenue Code, and whether the wash sale provisions of Section 118 applied. The Court held that corn futures contracts are not “securities” under Section 118, and the wash sale rules do not apply. Therefore, losses on the sale of futures contracts could not be disallowed.

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Facts

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The petitioner, Corn Products Refining Co., manufactured and sold corn products. Its storage capacity for raw corn was limited to about three weeks’ worth of supply. To maintain an adequate corn supply and minimize losses from price fluctuations, the petitioner bought and sold corn futures contracts. It took delivery of corn under some contracts, but usually sold them based on crop conditions. The company accounted for profits/losses on futures in a “Corn Miscellaneous” account, adjusting the cost of goods sold. In 1940, it realized a profit of $680,587.39 from these transactions.r

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Procedural History

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The Commissioner determined a deficiency in the petitioner’s income tax for 1940. The Commissioner did not change the taxpayer’s treatment of the futures transactions. The petitioner challenged this, seeking to treat the transactions as capital gains/losses under Section 117. The Tax Court reviewed the Commissioner’s determination.r

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Issue(s)

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Whether contracts for the future delivery of corn are “securities” as contemplated in Section 118 of the Internal Revenue Code, such that the wash sale provisions apply to disallow losses from the sale of such contracts.r

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Holding

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No, because contracts for the delivery of corn for a stated price at a stated future time are not securities within the meaning of Section 118 of the Internal Revenue Code. Also, one such contract is not substantially identical to another if the delivery date differs and the contract price or contracting party may be different.r

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Court’s Reasoning

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The Court reasoned that Section 118 was enacted to prevent deducting losses from wash sales of securities where the taxpayer acquires identical or substantially identical securities around the time of the sale. The Court disagreed with the appellate court’s holding in *Trenton Cotton Oil Co. v. Commissioner*, which stated that “stocks and securities” in Section 118 include commodity futures and a new

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future contract is

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