Assmann v. Commissioner, 16 T.C. 624 (1951)

Inherited real property is considered a capital asset unless the taxpayer actively uses it in a trade or business at the time of sale, mere intent to sell or rent not being sufficient.

Summary

Maria Assmann inherited real property but never used it for business purposes. She immediately listed the property for sale after inheriting it and eventually sold the vacant land after demolishing the house on it. The Tax Court addressed whether the loss from the sale was a capital loss, subject to limitations, or an ordinary loss. The court held that because the property was not used in a trade or business at the time of sale, it remained a capital asset, and the loss was subject to the capital loss limitations under Section 117(d)(2) of the Internal Revenue Code.

Facts

Maria Assmann inherited real property from her husband. Shortly after his death, she moved out of the property and directed her son to either rent or sell it. The property was listed for sale, but no effort was made to rent it. Approximately seven months later, the house on the property was razed to facilitate a sale. The property remained vacant until it was sold approximately eleven years after being listed for sale. The taxpayer had no trade or business.

Procedural History

The Commissioner of Internal Revenue determined that the loss incurred by Maria Assmann upon the sale of the real property was a capital loss, limited to $1,000 under Section 117(d)(2) of the Internal Revenue Code. The taxpayer petitioned the Tax Court for a redetermination, arguing that the loss was an ordinary loss deductible under Section 23(e)(2) because the property was acquired in a transaction entered into for profit.

Issue(s)

1. Whether the inherited real property constituted a capital asset under Section 117(a)(1) of the Internal Revenue Code.

Holding

1. Yes, because the real property was not used in a trade or business at the time of sale and therefore did not fall within the exception to the definition of a capital asset.

Court’s Reasoning

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The Tax Court reasoned that Section 117(a)(1) defines capital assets broadly as "property held by the taxpayer." The property in question was held by the taxpayer and was therefore a capital asset unless it fell within a specific exception. The court determined that the only potentially applicable exception was "real property used in the trade or business of the taxpayer." Because the taxpayer had no trade or business and the property was not used in any business activity at the time of sale (it was vacant land), the court concluded that the exception did not apply. The court emphasized that the taxpayer's intent to rent or sell the property was insufficient to establish that the property was "used" in a trade or business. Furthermore, the court cited Regulations 111, section 29.117-1, which specifies that the exclusion from "capital assets" applies only to property used in trade or business "at the time of the sale." The court distinguished cases where active efforts to rent property were considered evidence of a trade or business. The court stated: "In short, the stipulation and petitioners' concessions on brief contravene all three of the elements of the statutory expression: The real property was not used, the decedent had no trade, the decedent had no business."

Practical Implications

This case clarifies that inheriting property and intending to sell it, without more, does not transform it into property used in a trade or business. Attorneys must advise clients that to avoid capital loss limitations, inherited property must be actively used in a business at the time of sale. Listing property for sale or making unsuccessful attempts to rent it are insufficient. The case underscores the importance of the "at the time of sale" requirement for determining whether real property qualifies as a non-capital asset. Later cases applying this ruling emphasize the need for demonstrable business activity related to the property at the time of sale to overcome the default classification as a capital asset. This decision reinforces the principle that tax consequences are determined by actual use, not merely intended use.

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