16 T.C. 1378 (1951)

A loss sustained from the sale of a personal residence is not deductible for income tax purposes and cannot be used to offset gains from the sale of other capital assets.

Summary

Richard Koehn sold two personal residences in 1947, one in Milwaukee at a gain and another in St. Louis at a loss. The Tax Court addressed whether Koehn could offset the loss from the St. Louis residence against the gain from the Milwaukee residence when calculating his net long-term capital gain. The court held that the loss on the sale of a personal residence is not deductible under sections 23(e) and 24(a)(1) of the Internal Revenue Code and relevant Treasury Regulations, and thus cannot offset the gain from the sale of the other residence. The court emphasized that each sale must be treated separately, and only losses recognized as deductions by statute can offset gains.

Facts

Richard Koehn was transferred by his employer from Milwaukee, Wisconsin, to St. Louis, Missouri, in January 1947.

On January 20, 1947, Koehn sold his personal residence in Milwaukee, which he had purchased on April 10, 1945, for $14,123.76. The sale price was $18,000.00, with $72.80 in expenses, resulting in a gain of $3,803.44.

On January 24, 1947, Koehn purchased a personal residence in St. Louis for $21,211.33. He lived there until November 18, 1947, when he sold it for $20,000.00, with $1,010.35 in expenses, resulting in a loss of $2,221.68.

Koehn moved to Dallas, Texas, after selling the St. Louis residence.

Procedural History

Koehn reported the gain from the Milwaukee sale and offset it by the loss from the St. Louis sale on his 1947 income tax return.

The Commissioner of Internal Revenue disallowed the loss claimed on the sale of the St. Louis residence, leading to a deficiency assessment.

Koehn petitioned the Tax Court for a redetermination of the deficiency.

Issue(s)

Whether a taxpayer who successively sold two personal residences in a single tax year, one at a gain and the other at a loss, may offset the loss against the gain in determining net long-term capital gain.

Holding

No, because the loss from the sale of a personal residence is not a deductible loss under the Internal Revenue Code and related regulations, and therefore cannot offset the gain from the sale of the other residence.

Court's Reasoning

The court relied on Section 23(e) of the Internal Revenue Code, which allows deductions for losses incurred in a trade or business, in a transaction entered into for profit, or from casualty or theft. The court found that the loss from the sale of Koehn's St. Louis residence did not fall into any of these categories.

The court also cited Treasury Regulations 111, section 29.23(e)-1, which specifically states, "A loss on the sale of residential property purchased or constructed by the taxpayer for use as his personal residence and so used by him up to the time of the sale is not deductible."

Furthermore, the court referenced Section 24(a)(1) of the Code, which disallows deductions for personal, living, or family expenses.

The court rejected Koehn's argument that section 23 is inapplicable because the transactions as a whole resulted in a gain, holding that each sale must be treated as a separate transaction. It cited *Morris Investment Corporation, 5 T.C. 583*, as precedent. The court stated, "The two sales were separate transactions and the question of statutory gain or loss must be considered separately as to each transaction."

The court distinguished the cases cited by Koehn involving gambling losses, stating that those cases did not control the determination of gains and losses from separate sales of capital assets, which are governed by specific statutory provisions and regulations.

Practical Implications

This case reinforces the well-established principle that losses incurred from the sale of a personal residence are generally not tax-deductible. Taxpayers should be aware that such losses cannot be used to offset gains from other capital asset sales.

The decision highlights the importance of considering each transaction separately when determining taxable gains or losses. Taxpayers cannot combine gains and losses from distinct transactions involving personal-use property to arrive at a net gain or loss for tax purposes.

This ruling is still relevant today and informs how tax professionals advise clients on the tax implications of selling personal residences. While subsequent legislation has introduced specific rules for excluding gains from the sale of a primary residence (e.g., Section 121 of the Internal Revenue Code), the general principle regarding the non-deductibility of losses on personal residences remains in effect.

