17 T.C. 318 (1951)

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A taxpayer’s loss from a real estate foreclosure is only deductible as a net operating loss carryover if it’s attributable to the operation of a trade or business regularly carried on by the taxpayer, distinguishing between investment activities and active business operations.

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Summary

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Charles Weill sought to deduct a net operating loss carryover from 1944, stemming from a real estate foreclosure, in his 1945 tax return. The Tax Court denied the deduction, finding that Weill wasn’t a real estate dealer and his activities didn’t constitute a trade or business regularly carried on by him. The court emphasized that while Weill bought properties intending to resell, his long-term holding and rental activities indicated he wasn’t primarily engaged in the business of turning over real estate, thus limiting the deductibility of the loss under Section 122(d)(5) of the Internal Revenue Code.

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Facts

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Charles Weill maintained an office from 1920 to 1950 to manage his affairs, including buying and selling real estate through brokers. He advertised properties for sale and listed them with brokers immediately after purchase, aiming to resell them for profit. He typically took back second mortgages with small cash down payments and monthly payments. He avoided personal liability by using a “dummy” to sign first mortgages. From 1919 to 1945, Weill dealt with 48 parcels of real property, with varying holding periods before resale or foreclosure. He also had interests in a meat market, a construction company, and a restaurant/bar.

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Procedural History

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The Commissioner of Internal Revenue determined a deficiency in Weill’s 1945 income tax. Weill petitioned the Tax Court, contesting the disallowance of the net operating loss carryover. The Tax Court ruled in favor of the Commissioner, denying the deduction.

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Issue(s)

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Whether the loss sustained by Weill in 1944 on the foreclosure of a mortgage on real property was attributable to the operation of a trade or business regularly carried on by him, thus qualifying for a net operating loss carryover under Section 122(d)(5) of the Internal Revenue Code.

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Holding

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No, because Weill was not a dealer in real estate, and his activities as a whole did not constitute a trade or business regularly carried on by him to which the loss on the foreclosure was attributable. Therefore, Section 122(d)(5) limits the operating loss, preventing the allowance of the deduction claimed.

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Court’s Reasoning

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The court reasoned that Section 122(d)(5) limits loss deductions to those

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