***17 T.C. 1085 (1952)***

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When property is condemned, payments received are generally considered proceeds from the sale of the property, not rental income, unless the settlement agreement explicitly allocates a portion as rent; furthermore, to defer recognition of gain from an involuntary conversion under Section 112(f) of the Internal Revenue Code, the proceeds must be actually reinvested in similar property by the taxpayer before their death.

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**Summary**

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The Tax Court addressed whether condemnation awards received by Jacob Resler's partnerships were taxable as capital gains or ordinary income (rent), and whether Resler could defer recognition of gain from involuntary conversions of property when he intended to reinvest the proceeds but died before completing the reinvestment. The court held that the full amount of the condemnation award was for the property and taxable as a capital gain, not ordinary income. Further, the court held that since Resler did not fully reinvest the proceeds before his death, he could not defer recognition of the gain under Section 112(f) except for the $50,000 actually reinvested.

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**Facts**

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Jacob Resler was a partner in two partnerships that owned the Hotel Oakland and a loft building. The U.S. Government condemned both properties. In 1946, the government took possession of the Hotel Oakland, paying $750,000. The partnership disputed this amount, leading to further litigation resolved in 1948, increasing the total award. The 49 Fourth Street Building Company property was also condemned. The partnership claimed rent for the period between the start of condemnation proceedings and the actual taking of the property. Resler intended to reinvest the condemnation proceeds in similar properties but only completed one purchase for $50,000 before his death.

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**Procedural History**

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The Commissioner of Internal Revenue assessed deficiencies against Resler's estate and his widow, Fay Resler, arguing that the condemnation proceeds resulted in taxable gain and that a portion of one award constituted rental income. The taxpayers petitioned the Tax Court for review, contesting the deficiencies and claiming overpayment for 1947.

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**Issue(s)**

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1. Whether the portion of the condemnation award received in 1946 for the Hotel Oakland property was taxable in that year, even though the final award amount was not determined until 1948?

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2. Whether the condemnation award for the 49 Fourth Street Building Company included rental income?

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3. Whether the gain realized from the involuntary conversion of the properties was non-recognizable under Section 112(f) of the Internal Revenue Code, given Resler's efforts to reinvest the proceeds?

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**Holding**

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1. Yes, because the $750,000 received in 1946 for the Hotel Oakland property constituted a closed transaction in that year, and the gain was taxable then.

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2. No, because the full amount paid by the government for the 49 Fourth Street Building Company represented consideration for the property taken, and no part of

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the payment was rent.

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3. No, because Resler did not fully reinvest the proceeds from the involuntary conversion before his death, and therefore the gain is recognized, except for the amount already reinvested.

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**Court’s Reasoning**

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The Tax Court reasoned that the $750,000 received in 1946 for the Hotel Oakland was a closed transaction because the government admitted liability for that amount and paid it to the partnership. The court cited *North American Oil Consolidated v. Burnet, 286 U.S. 417 (1932)*, noting that the partners received the money as their own under a claim of right. Regarding the 49 Fourth Street Building Company, the court emphasized that the settlement agreement stipulated the payment as

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