*14 T.C. 1202 (1950)*

A transfer of copyright is considered a sale, eligible for capital gains treatment, if all substantial rights in the copyright are transferred, regardless of payment based on sales; the holding period of a work begins when it is substantially completed, not necessarily at the time of delivery or formal transfer.

**Summary**

The petitioner, Mr. Fields, transferred rights to his book to a publisher. The Tax Court addressed whether this transfer constituted a sale or a license, and if a sale, whether it qualified for long-term capital gains treatment. The court held that the transfer was a sale because all substantial rights were conveyed to the publisher. Further, the court determined that the holding period of the asset (the book) began when it was substantially completed, which was more than six months before the sale, thus qualifying the gain as long-term capital gain.

**Facts**

Mr. Fields, the petitioner, entered into an agreement with a publisher to transfer the rights to his book. The agreement granted the publisher full rights for the term of the copyright. The publisher was to hold the copyright, control reprints, translations, and other reproductions. Mr. Fields was restricted from publishing any other material that would interfere with the sale of the book. He received compensation based on sales (royalties). The work was substantially completed by mid-1944, with final mechanical operations finished by January 1945. Formal delivery to the publisher occurred in August 1945.

**Procedural History**

The Commissioner of Internal Revenue determined that the transfer of rights was not a sale, but rather a license, and alternatively, that if it was a sale, it was a short-term capital gain because the holding period was less than six months. The Tax Court reviewed the Commissioner’s determination.

**Issue(s)**

1. Whether the transfer of rights to the book constituted a sale or a license for tax purposes.
2. If the transfer was a sale, whether the holding period of the book was less than six months, thus precluding long-term capital gains treatment.

**Holding**

1. No, the transfer was a sale because Mr. Fields transferred all substantial rights in the copyright to the publisher.
2. No, the holding period was more than six months because Mr. Fields held the

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completed manuscript for more than six months before its sale, dating from its substantial completion.

**Court's Reasoning**

The court reasoned that the transfer was a sale because Mr. Fields conveyed all rights inherent in the copyright to the publisher. The court emphasized that the publisher had the right to control reprints, translations, and other reproductions, and the copyright was to be issued in the publisher's name. Even though Mr. Fields received compensation based on sales (royalties), this did not change the nature of the transaction from a sale to a license. The court cited *Commissioner v. Wodehouse, 337 U. S. 369*, to support the premise that transferring all rights constitutes a sale. Regarding the holding period, the court found that the book was substantially completed by mid-1944 and finalized by January 1945. Since the sale occurred in August 1945, Mr. Fields held the property for more than six months. The court noted, "There was thus a period of at least six months and probably a year during which petitioner held the property while it was in existence and prior to its sale." This satisfied the holding period requirement for long-term capital gains treatment.

**Practical Implications**

This case clarifies the distinction between a sale and a license of copyright for tax purposes, focusing on whether all substantial rights have been transferred. It confirms that payments based on sales do not automatically convert a sale into a license. The case also provides guidance on when the holding period of a creative work begins for capital gains purposes. For authors and artists, this ruling emphasizes the importance of tracking the completion date of their work to determine eligibility for long-term capital gains treatment when they sell their rights. Later cases often cite *Fields* to distinguish whether a complete transfer of rights has occurred. Attorneys advising clients in the entertainment and publishing industries need to carefully analyze the terms of copyright transfer agreements to determine the tax implications.

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