18 T.C. 400 (1952)

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A loss on the sale of property is deductible in the tax year when a bona fide sale occurs that definitively fixes the fact and amount of the loss, even if payment is deferred and subject to certain conditions.

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Summary

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Wisconsin Electric Power Company (WEPCO) sold right-of-way lands in 1942, which it had leased to a railway. The sales agreements deferred most of the payment until the railway's abandonment, which was expected but delayed. WEPCO deducted a loss on the sale in 1942, which the Commissioner disallowed, arguing the sale wasn't final. The Tax Court held that the loss was deductible in 1942 because the sales were bona fide, title passed, and the amount of the loss was fixed, despite deferred payment and the railway's continued operation. The key factor was that the sale established a fixed and determinable loss for WEPCO at the time of the transaction.

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Facts

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Wisconsin Electric Power Company (WEPCO), a public service corporation, previously furnished transportation services in addition to light, power, and heat.r
In 1938, WEPCO transferred most of its transportation properties to a subsidiary, Railway, and leased the right-of-way lands to Railway.r
Railway's operation resulted in ongoing losses, making abandonment inevitable.r
On December 24 and 29, 1942, WEPCO sold the right-of-way lands to Alois Memmel and Henry W. Marx Company, respectively; these purchasers were not affiliated with WEPCO or Railway.r
The sales agreements acknowledged the likely abandonment of the railway and WEPCO's desire to salvage its investment.r
The purchasers paid a small down payment, with the remainder due within one year after abandonment of the railway.r
WEPCO reserved a purchase money lien and retained an easement for its

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transmission line. Racine County had an option to purchase part of the land from Memmel after abandonment.r
The sale prices represented the best offer WEPCO had ever received for the right-of-way lands.r

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Procedural History

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WEPCO deducted a loss from the sale of the lands on its 1942 tax return.r
The Commissioner of Internal Revenue disallowed the deduction, leading to a deficiency assessment.r
WEPCO petitioned the Tax Court for a redetermination of the deficiency.r

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Issue(s)

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Whether WEPCO sustained a deductible loss in 1942 when it executed conveyances of right-of-way lands, despite deferred payment terms tied to the future abandonment of a railway operating on the land.r

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Holding

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Yes, because the sales in 1942 were bona fide, title passed, a fixed price was established, and the fact and amount of the loss were definitively determined at the time of the sale, notwithstanding the deferred payment terms and the continued operation of the railway under a lease.r

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Court’s Reasoning

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The court emphasized that the sales were arm’s-length transactions between unrelated parties, with title passing permanently from WEPCO for a fixed price. “Neither party could retract. There was no hedge or equivocation attached.”r
The court reasoned that the deferred payment, contingent on the railway’s abandonment, did not negate the finality of the sale or the fixing of the loss. Abandonment was deemed inevitable, making the future payment reasonably certain.r
The Commissioner’s arguments that WEPCO did not change its position due to the mortgage lien, the denial of Railway’s initial abandonment application, and the option granted to Racine County were rejected. The court found that these factors did not prevent the realization of the loss in 1942.r
The court distinguished this case from those where sales were conditional, incomplete, or subject to vital uncertainties, noting,

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