18 T.C. 466 (1952)

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A taxpayer’s original purpose for acquiring property is not determinative of whether the property is held primarily for sale to customers in the ordinary course of business; rather, the crucial factor is the purpose for which the property is held during the period in question.

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Summary

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Victory Housing No. 2, Inc., originally formed to construct rental housing for defense workers, sold 82 of its 212 housing units after wartime restrictions were lifted. The Tax Court addressed whether the profits from these sales constituted ordinary income or capital gains. The court held that while one house sold prior to the decision to sell was a capital asset, the houses sold after the decision were held primarily for sale to customers in the ordinary course of business, and thus, the profits were taxable as ordinary income. This decision hinged on the change in the corporation’s intent and the frequency of sales.

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Facts

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Victory Housing No. 2, Inc. was formed in 1942 to build rental houses for defense workers in Wichita, Kansas. Initially, the company planned to construct apartment buildings, but at the request of government officials, they also built single-family homes. During the war, the houses were rented to defense workers under government restrictions. After the war, with restrictions lifted and a high demand for housing, the corporation decided to sell its single-family homes, primarily to returning veterans. The sales were conducted through a real estate firm, with a commission paid for each sale.

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Procedural History

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The Commissioner of Internal Revenue determined that the gains from the sale of the houses were taxable as ordinary income, not capital gains. Victory Housing No. 2, Inc. petitioned the Tax Court, contesting the Commissioner's determination. The Tax Court upheld the Commissioner's decision regarding the houses sold after the decision to sell was made, but reversed the determination on one house sold prior to the decision.

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Issue(s)

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Whether the gains realized by Victory Housing No. 2, Inc. from the sale of houses during the taxable years are taxable as ordinary income or as a long-term capital gain under Section 117(j) of the Internal Revenue Code.

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Holding

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1. No, because the one house sold in the fiscal year ending June 30, 1945, was not held primarily for sale to customers in the ordinary course of the business at the time of the sale.

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2. Yes, because the 42 houses sold in the fiscal year ending June 30, 1946, were held primarily for sale to customers in the ordinary course of business from some date early in 1946.

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Court's Reasoning

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The court relied on Section 117(j) of the Internal Revenue Code, which defines

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