***Johnson v. Commissioner*, 19 T.C. 93 (1952)**

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The mere rental of a small portion of a former residence does not automatically convert the entire property to business use for purposes of deducting a loss upon its sale.

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Summary

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The Johnsons sought to deduct a loss incurred from the sale of their former residence. They argued that renting out a portion of the property constituted appropriation to business use. The Tax Court disagreed, finding that the rental income was too trivial to demonstrate an intent to convert the property, and the portions rented did not destroy the ability of the owners to reoccupy the premises as a residence. Thus, the loss was not fully deductible. A separate unimproved plot owned by one of the petitioners was also sold, and the court determined its loss was a capital loss, not an ordinary business loss, due to the nominal rental income it generated.

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Facts

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The Johnsons abandoned their residence in Moorestown, New Jersey, around September 9, 1940. After abandoning the residence, they attempted to rent out the main residential building without success. However, they did receive rental income from a tenant house, a garage (starting October 1, 1940), and a barn (starting in 1944). In 1944, the total rental income was $455. The property was sold in 1945. E.R. Fenimore Johnson also owned a separate, unimproved plot of land (“Plot B”) acquired in a non-taxable exchange for speculative purposes in 1930. Plot B was rented at a nominal rate of $22.50 annually in 1943, 1944, and 1945 and was sold as a unit with the former residence.

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Procedural History

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The Commissioner of Internal Revenue denied the petitioners' claim for a fully deductible loss on the sale of their former residence. The Tax Court reviewed the Commissioner's determination.

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Issue(s)

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1. Whether the rental of portions of the former residence constituted an appropriation of the entire property to business use, entitling the petitioners to deduct the net loss in full under Section 23(e)(1) of the Internal Revenue Code.

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2. Whether the sale of Plot B resulted in a fully deductible loss, or a capital loss subject to the limitations of Section 117 of the Internal Revenue Code.

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Holding

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1. No, because the rental income was too trivial to show a real intention to devote the premises to income-producing property, and the portions rented did not destroy the ability of the owners to reoccupy the premises as a residence.

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2. The sale of Plot B resulted in a long-term capital loss, because the nominal rental income did not convert it to business use.

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Court’s Reasoning

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The court recognized that simply listing abandoned residential property for rent or sale does not constitute appropriation to business use. The court distinguished this case from *Heiner v. Tindle*, where the premises were leased for long periods, ending the owner’s possible use as a residence. Here, the rental income was considered too

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