Shanis v. Commissioner, 19 T.C. 641 (1953)

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When buy and sell contracts of ‘when issued’ securities are retained until the settlement date and cleared through the Stock Clearing Corporation, a sale and exchange of the securities involved occurs on the settlement date, resulting in a short-term capital transaction.

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Summary

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The Shanis partnership entered into contracts to both buy and sell “when issued” securities. The Tax Court addressed two issues: first, whether new securities received in exchange for old bonds should have a portion allocated to accrued interest. Second, whether the settlement of “when issued” securities contracts resulted in a short-term or long-term capital gain. The court held that no portion of the new securities should be allocated to accrued interest, adhering to its prior holding in *Carman*. Regarding the “when issued” contracts, the court ruled that because the contracts were cleared through the Stock Clearing Corporation on the settlement date, the transaction constituted a sale and exchange of the securities themselves, resulting in a short-term capital gain, consistent with IRS guidance.

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Facts

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On May 1, 1945, the Shanis partnership entered into 51 contracts to sell new securities of the St. Louis-San Francisco Railway Company on a “when, as and if issued” basis.r
On September 20, 1946, the partnership entered into 9 contracts to buy the same securities on a “when, as and if issued” basis.r
These contracts were over-the-counter transactions and unrelated to the bond exchange issue.r
All brokers involved were members of the New York Stock Exchange, the New York Stock Clearing Corporation, and the National Association of Securities Dealers.r
On January 1, 1947, the National Association of Securities Dealers announced recognition of the securities under the reorganization plan.r

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The securities were issued on January 24, 1947, and all contracts were settled through the Stock Clearing Corporation on that date.r

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Procedural History

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The Commissioner of Internal Revenue determined that the partnership realized a net short-term capital gain from the settlement of the ‘when issued’ contracts and also increased the partnership’s income by allocating a portion of new securities received for old bonds to accrued interest. The Shanis partnership petitioned the Tax Court for a redetermination.r

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Issue(s)

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Whether the respondent properly increased the income of the partnership by allocating a portion of the new securities received for old bonds to interest accrued on the old bonds subsequent to their acquisition by the partnership.r
Whether the partnership realized a net short-term capital gain or a long-term capital gain and a short-term capital loss on the settlement of certain sell and buy contracts on a

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