***19 T.C. 667 (1953)***

A payment received by a statutory tenant to relinquish their right to possession under emergency rent control laws constitutes a capital gain, as it represents the sale of a property right.

**Summary**

McCue Bros. & Drummond, Inc. received $22,500 from their landlord, Jamlee Hotel Corporation, to vacate premises they occupied as a statutory tenant under New York's emergency rent control laws after their lease expired. The Tax Court addressed whether this payment constituted ordinary income or a capital gain. The court held that the payment was a capital gain because McCue Bros. sold a property right—their right to possession under the rent control laws—to Jamlee. The court reasoned that this right was a capital asset held for more than six months, satisfying the requirements for capital gains treatment.

**Facts**

McCue Bros. operated a retail hat store at 1294 Broadway, New York City, from 1928 to June 30, 1946. They occupied the premises under a lease that expired on January 31, 1946. After the lease expired, McCue Bros. remained in possession as a statutory tenant under New York's emergency rent control laws. Jamlee Hotel Corporation, the new landlord, desired to include McCue Bros.' store in renovations. Jamlee paid McCue Bros. $22,500 to vacate and surrender the premises by June 30, 1946, which McCue Bros. did.

**Procedural History**

The Commissioner of Internal Revenue determined that the $22,500 received by McCue Bros. was ordinary income and assessed deficiencies in income and excess profits taxes. McCue Bros. appealed this determination to the United States Tax Court.

**Issue(s)**

1. Whether the $22,500 received by McCue Bros. from Jamlee for surrendering its store space constitutes ordinary income or a capital gain.
2. Whether McCue Bros. held the right to possession, use, and occupancy for more than six months.

**Holding**

1. Yes, the $22,500 constituted a capital gain because McCue Bros. sold a property right (their right to possession under the rent control laws) to Jamlee.
2. Yes, McCue Bros. held the right to possession, use, and occupancy for more than six months because their right existed both under the lease and under the

© 2025 SCOTUSreports.com. All rights reserved. 

emergency rent control statute, which became effective more than six months before the surrender.

**Court’s Reasoning**

The court reasoned that the statutory right of possession, use, and occupancy constituted “property” under Section 117(a)(1) of the Internal Revenue Code. It distinguished the New York Court of Appeals cases cited by the Commissioner, stating that those cases held that the tenants’ rights grew out of the emergency rent control legislation, not out of any contract. The court highlighted that those cases acknowledged that statutory tenants have certain rights and privileges under the emergency laws. The court stated that the laws extended, against the will of the landlord, the “*right of the tenant to remain in possession of the leased premises*” so long as they paid a reasonable rental for their use and occupancy. Citing precedent, the court stated,

© 2025 SCOTUSreports.com. All rights reserved. 