Oestreicher v. Commissioner, 20 T.C. 12 (1953)

Amounts received upon the retirement of notes issued by a corporation in registered form qualify for capital gains treatment under Section 117(f) of the Internal Revenue Code, even if the notes replaced an earlier unregistered debt, provided the substitution was not solely for tax avoidance purposes.

Summary

The Tax Court held that payments received by the petitioner in partial retirement of corporate notes were taxable as capital gains, not ordinary income. The notes were issued in registered form, replacing an earlier bond that was not. The court found that while the corporation's principals were related and the corporation had a surplus, the substitution of notes for the bond served a legitimate business purpose beyond mere tax avoidance, entitling the petitioner to capital gains treatment under Section 117(f) of the Internal Revenue Code.

Facts

In 1927, 36th Street and 8th Avenue Corporation issued a bond to the Oestreicher brothers. The bond was extended twice, and by 1939, its ownership was divided among various Oestreicher family members and one unrelated party. In 1945, with $160,000 remaining unpaid, the corporation issued registered notes to replace the bond. The petitioner, as trustee, received a note for $22,500.17. The note stated it was registered, transferable only on the corporation's books, and required presentation for endorsement of principal payments.

Procedural History

The petitioner claimed a refund, arguing the payments received on the note should be taxed as capital gains. The Commissioner determined a deficiency, asserting the amounts constituted ordinary income. The Tax Court reviewed the Commissioner's determination.

Issue(s)

1. Whether the notes issued by the corporation were

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