Oregon Lumber Co. v. Commissioner, 20 T.C. 192 (1953)

An exchange of land for the right to cut and remove standing timber within a specified timeframe constitutes a taxable exchange of real property for personal property, not a like-kind exchange.

Summary

Oregon Lumber Company exchanged land it owned for the right to cut and remove timber from national forests. The IRS determined deficiencies in the company's income and excess profits tax, arguing the exchange was tax-free under Section 112(b)(1) as a like-kind exchange. Oregon Lumber Co. argued the exchange was taxable. The Tax Court held that the exchange was taxable, as the company exchanged real property (land) for personal property (the right to cut and remove timber), which is not considered a like-kind exchange. This decision rested on Oregon state law, which treats timber cutting rights as personalty when removal is intended within a reasonable time.

Facts

- Oregon Lumber Co. owned land within and adjacent to national forests in Oregon.
- In 1940, the company entered into three agreements with the U.S. Forest Service to exchange land for the right to cut and remove timber from designated areas within the national forests. These agreements were made under the Act of March 20, 1922.
- Each agreement specified a timeframe for the timber cutting and removal.
- The company conveyed approximately 44,661 acres of land containing 515,408 M feet of standing timber in Exchange #56.
- The Baker-Small Exchange involved 18,354 acres of cut-over land in exchange for timber rights.
- The Dee Exchange involved 920 acres of land containing 40,300 M feet of standing timber for timber rights.

Procedural History

- The Commissioner of Internal Revenue assessed deficiencies in Oregon Lumber Company's income and excess profits tax for 1940.
- Oregon Lumber Co. petitioned the Tax Court for a redetermination.

Issue(s)

1. Whether the conveyances of land by Oregon Lumber Co. to the United States in exchange for rights to cut and remove specified quantities of national forest timber constituted exchanges of property for property of like kind within the meaning of section 112 (b) (1), Internal Revenue Code.

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Holding

1. No, because under Oregon law, the right to cut and remove standing timber within a specified time is considered personal property, and an exchange of real property for personal property is not a like-kind exchange under Section 112(b)(1).

Court's Reasoning

- The court determined that the company exchanged land for the right to cut and remove standing timber.
- The court examined Oregon law to determine whether the right to cut and remove standing timber constituted realty or personalty.
- The court cited *Goodnough Mercantile & Stock Co. v. Galloway, 171 F. 940, 951*, which stated that a contract for the sale of trees, if the vendee is to have the right to the soil for a time for the purpose of further growth and profit, is a contract for an interest in land, but that where the trees are sold in the prospect of separation from the soil immediately or within a reasonable time, without any stipulation for the beneficial use of the soil, but with license to enter and take them away, it is regarded as a sale of goods only, and not within the fourth section of the statute.
- The court also cited *Reid v. Kier, 175 Or. 192, 152 P. 2d 417*, concluding that standing timber is deemed to be goods when and only when it is agreed to be severed before sale or under the contract of sale.
- Because each of the agreements specified a time limit for cutting and removing the timber, the court concluded that under Oregon law, the company acquired personalty, not realty.
- The court reasoned that an exchange of real property for personal property is not an exchange of property for property of like kind.
- The court further reasoned that even if the standing timber were considered realty, the exchange would still be taxable because the company exchanged a fee simple title for a limited right to cut and remove timber, which are intrinsically different. The court noted, "The right to cut and remove is transient and depends upon the affirmative action of the holder of that right. The fee is permanent and depends only upon the original grant. The right to cut and remove timber is more in the nature of utilization of land; the fee is ownership of the land itself."

Practical Implications

- This case clarifies that the tax treatment of exchanges involving timber rights depends on state law characterization of those rights as real or personal property.
- Attorneys must analyze the specific terms of the agreement and relevant state law to determine whether the exchange qualifies as a like-kind exchange under Section 1031 (formerly 112(b)(1)).

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- The case highlights the importance of defining the duration and scope of rights exchanged, as temporary or limited rights are less likely to be considered like-kind to fee simple interests.
- This decision informs tax planning for businesses involved in timber harvesting and land management, especially in states with similar laws regarding timber rights.
- Later cases may distinguish this ruling based on differing state laws or factual circumstances regarding the nature of the timber rights exchanged.

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