20 T.C. 236 (1953)

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To claim a loss deduction under U.S. tax law for property losses sustained in a foreign country, a taxpayer must prove they owned the property under that foreign jurisdiction’s laws at the time of the loss.

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Summary

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Bernhard Altmann, an Austrian refugee who became a U.S. citizen, sought a loss deduction on his 1945 U.S. income tax return for property allegedly stolen from his textile plant (Texplant) in Vienna. The plant had been confiscated by the Nazis in 1938 but was later looted in 1945. Altmann argued that he was the de facto owner of Texplant in 1945 due to the anticipated restitution. The Tax Court denied the deduction, holding that under Austrian law, Altmann did not own the property in 1945 because the legal title remained with subsequent owners until it was officially restored to him in 1949. Therefore, he could not claim a loss for property stolen before his ownership was legally re-established.

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Facts

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Altmann owned and operated Texplant in Vienna until 1938, when the Nazis confiscated it. He fled Austria. In 1945, the plant was looted. In 1947, Altmann initiated legal proceedings in Austria to reclaim Texplant. In May 1949, an Austrian Restitution Commission ordered the then-current owner to restore Texplant to Altmann in the condition it was in on July 31, 1946. Title was officially recorded in Altmann’s name in September 1949.

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Procedural History

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Altmann claimed a $150,000 loss deduction on his 1945 U.S. tax return for the theft. The Commissioner disallowed it. Altmann then claimed an increased loss of $313,838.37. The Tax Court reviewed the Commissioner's determination and Altmann's claim.

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Issue(s)

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Whether Altmann owned the Texplant property in 1945, under Austrian law, such that he could claim a loss deduction on his U.S. income tax return for property stolen from the plant that year.

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Holding

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No, because under Austrian law, the decrees of the Austrian Restitution Commission in 1949 did not retroactively restore Altmann's ownership to a point before or during 1945. Therefore, he was not the owner when the theft occurred.

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Court's Reasoning

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The Tax Court emphasized that property rights are determined by the law of the jurisdiction where the property is located (in this case, Austria). The court relied heavily on expert testimony on Austrian law, which indicated that the Nazi confiscation effectively transferred title away from Altmann in 1938. The 1947 Austrian Restitution Law made acts of dispossession voidable, not void *ab initio* (from the beginning). Until the Restitution Commission issued its decrees in 1949, and title was officially restored in the Grundbuch (Austrian land registry), Altmann did not legally own the property. The court noted that the Third Restitution Law provided that the dispossessed property shall be restored at least to the extent and in the condition in which it was on the 31st July 1946. This merely fixed that date as a criterion in determining the quantum of the estate to be restored. The court rejected Altmann's argument that the London Declaration of 1943 or Allied Ordinance No. 4 retroactively invalidated the confiscation. The court also dismissed

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the argument that he had “effective control” through his former employees, stating that he had no contact with these employees during the relevant period. The court distinguished *Rozenfeld v. Commissioner,* emphasizing the importance of both record title and effective control.

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Practical Implications

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This case illustrates the importance of proving ownership under the relevant jurisdiction’s laws when claiming tax deductions for losses of property located abroad. Taxpayers cannot rely on anticipated future restitution or

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