***General Electric Co. v. Commissioner, 24 T.C. 255 (1955)***

A corporation realizes taxable gain when it sells its treasury stock at a profit if it deals in its own shares as it might in the shares of another corporation.

**Summary**

The General Electric Company (GE) sold treasury shares to its employees at a profit. The Tax Court addressed the question of whether this profit constituted taxable income under the Internal Revenue Code and its regulations. The court determined that because GE was essentially dealing in its own shares as it might in the shares of another corporation, the gain from the sale of treasury stock was subject to taxation. The court applied the principle that the “real nature of the transaction” must be examined to determine whether the transaction was a capital transaction (not taxable) or one in which the corporation dealt in its own shares like those of another (taxable). The court sided with the IRS, following a line of appellate court decisions that took a different view than the Tax Court had previously held. The court emphasized the importance of following the appellate court’s decisions when they are within the jurisdiction of the Tax Court. Dissenting judges did not agree with this reasoning.

**Facts**

General Electric (GE) acquired shares of its own stock in various transactions, including some that were purchases and sales. The shares were held as treasury stock until they were sold at a profit to employees under an employee stock purchase plan. The purchasing employees had an option to sell back the shares to GE upon termination of their employment.

**Procedural History**

The Commissioner of Internal Revenue determined that the profit from the sale of GE’s treasury stock was taxable. GE contested this determination in the U.S. Tax Court. The Tax Court initially reviewed the case. The Tax Court followed a previous line of cases, including earlier Tax Court decisions that were later reversed by Courts of Appeals. The Tax Court ruled in favor of the Commissioner of Internal Revenue.

**Issue(s)**

Whether the gain realized by General Electric from the sale of its treasury stock to employees was taxable income.

**Holding**

Yes, because GE dealt in its own shares as it might in the shares of another corporation, the gain from the sale of its treasury stock was taxable.

**Court’s Reasoning**

The court relied heavily on Treasury Regulations 111, Section 29.22(a)-15, which states that whether a corporation’s acquisition or disposition of its own stock results in taxable gain or loss depends on the “real nature of the transaction, which is to be ascertained from all its facts and circumstances.” The regulations further state that if a “corporation deals in its own shares as it might in the shares of another corporation, the resulting gain or loss is to be computed in the same manner as though the corporation were dealing in the shares of another.”

The court found that the facts of the case demonstrated that GE was acting as if it were trading in the shares of another corporation. The court reviewed its previous rulings on the topic and acknowledged that the Second, Third, and Seventh Circuits had reversed prior Tax Court decisions on similar issues. The Court of Appeals decisions focused on the fact that the transactions looked like they were “dealing” in their own shares, similar to how they would in the shares of another company. Because of the reversals, the court changed its position and ruled that gain was realized. The court noted that this conflict stemmed from differing constructions of the regulations, as highlighted by the Sixth Circuit in *Commissioner v. Landers Corp.*

The dissenting judges did not agree with the majority’s decision.

**Practical Implications**

This case provides clear guidance on the tax treatment of a corporation’s dealings in its own stock. It underscores that the substance of the transaction, not just its form, determines tax consequences. The case is important for:

- **Corporate Finance:** Corporations must carefully consider the tax implications before engaging in stock transactions, especially those involving treasury stock.
- **Employee Stock Options:** The decision has implications for the design of employee stock purchase plans and their tax treatment. It highlights that profit from selling treasury stock to employees can trigger a taxable event.
- **Legal Analysis:** The “real nature of the transaction” is a critical concept in tax law, requiring a holistic analysis of all the facts and circumstances to determine the tax consequences.
- **Tax Law:** The case emphasizes that the Tax Court, while able to make its own decisions, must follow the decisions of the Courts of Appeals.

Later cases, such as *Anderson, Clayton & Co. v. United States*, 562 F.2d 972 (5th Cir. 1977) have further explored the intricacies of transactions involving a company’s own stock. These cases tend to follow the *General Electric* approach, which analyzes the facts and circumstances to determine if a corporation has dealt in its shares as it might in the shares of another.