23 T.C. 740 (1955)</p>

The manner in which a taxpayer sells real property, even if initially held for investment, can transform the gains from capital gains to ordinary income if the sales are conducted with the characteristics of a business.

Summary</p>

In this case, the Curtis Company, a real estate developer, sold both rental properties and undeveloped land. The Tax Court had to decide whether the gains from these sales should be taxed as ordinary income or capital gains. The Court held that gains from the rental properties were ordinary income because the company actively engaged in selling them, similar to its construction business, after deciding to liquidate. However, sales of the undeveloped land were deemed capital gains, except for those sales occurring after the company started to operate as a land dealer through frequent and substantial sales of those properties. The ruling emphasizes the importance of how the property is sold, not just the original intent in holding it.

Facts</p>

The Curtis Company was engaged in building houses for sale, renting houses and apartments, and manufacturing tools. The company decided to sell its rental properties and also sold various parcels of undeveloped land. Initially, the rental units were held for investment, and the company denied requests from tenants to purchase them. After deciding to sell, the company used its sales staff, advertised the properties, and paid commissions on sales of the former rental units. The undeveloped land was acquired for various purposes, including building shopping centers or as leftover land from housing projects. The company made no improvements to the land and did not actively promote its sale, but had a large number of sales.

Procedural History</p>

The Commissioner of Internal Revenue determined deficiencies in the Curtis Company’s income tax, asserting that gains from the sale of rental properties and undeveloped land were taxable as ordinary income rather than capital gains. The Curtis Company contested this determination in the United States Tax Court. The Tax Court consolidated the cases and rendered its decision, ruling on whether the gains from the sale of dwelling houses and apartments and undeveloped real estate were taxable as ordinary income or capital gains.

Issue(s)</p>

1. Whether the gains realized by the Curtis Company on the sale of dwelling houses and apartments constructed for rental purposes are taxable as ordinary income or capital gains.

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2. Whether the gains realized from the sale of various parcels of undeveloped real estate are taxable as ordinary income or capital gains.

Holding</p>

1. Yes, because the manner in which the rental units were sold indicated that they were held and sold by petitioner in the ordinary course of its business of holding houses for sale, thus gains are ordinary income.

2. No, as to the two sales made during the taxable year ended February 28, 1947, because these were isolated sales of property acquired for investment. Yes, with the exception of the 2 sales, the parcels in issue were held for resale whenever a satisfactory profit could be obtained, making the gains from the sales of such land ordinary income.

Court's Reasoning</p>

The Court applied the rule that gains from the sale of property held “primarily for sale to customers in the ordinary course of his trade or business” are taxed as ordinary income. The Court determined that the rental units were held for investment until the decision to sell. However, the Court focused on how the sales were conducted. The Court found that the Curtis Company’s actions, such as using its sales staff, advertising, and paying commissions, transformed its liquidation of rental properties into a business. The Court distinguished between merely liquidating an investment and engaging in a business that sells property. For the undeveloped land, the Court considered the purpose for which the land was held. The court found that the sale of the undeveloped land was an investment. However, because the company made frequent and substantial sales over several years it was deemed a dealer. “To obtain capital gains treatment under section 117 (j), a taxpayer may choose the most advantageous method of liquidating his investment in properties originally acquired and held for investment purposes, so long as such method of disposal does not constitute his entrance into the trade or business of selling such properties.”

Practical Implications</p>

This case is critical for taxpayers involved in real estate sales. The ruling emphasizes that the character of income (ordinary vs. capital gains) depends not only on the original purpose of holding property but also on how the taxpayer disposes of it. Aggressive sales tactics, the use of sales staff, and advertising can transform a liquidation of investment properties into a business, resulting in ordinary income treatment. Attorneys should advise clients to carefully structure the sales process of properties initially held for investment, to avoid actions that suggest the client has entered into the business of selling such property, and to consider the frequency, substantiality, and marketing of sales. Subsequent cases would likely distinguish this ruling based on the level of activity. The frequency and substantiality of sales

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are key elements in determining whether a taxpayer is a dealer in real estate.

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