28 T.C. 42 (1957)

The sale of automobiles used by a car dealership's executives and salesmen constitutes ordinary income, not capital gains, because the cars were held primarily for sale, while vehicles used for service operations qualify for capital gains treatment under IRC §117(j).

Summary

Duval Motor Company, an automobile dealer, sought capital gains treatment for profits from selling vehicles. The IRS argued these were ordinary income. The Tax Court distinguished between cars assigned to executives and salesmen, which were deemed primarily held for sale to customers, and vehicles used in service operations. The court held that the former generated ordinary income, as they were always intended for eventual sale, while the latter qualified for capital gains under IRC §117(j) as property used in the business. The case clarifies the distinction between dealer inventory and business assets regarding capital gains.

Facts

Duval Motor Company, a Ford dealer, assigned new cars to executives, salesmen, and department heads for demonstration and display. These cars were replaced with new models or after reaching 15,000 miles, and were then sold. The dealership also used pickup trucks and other vehicles in its parts and service departments for approximately 2.5 to 4 years before selling them. Duval Motor Company claimed capital gains treatment on the sale of both categories of vehicles under §117(j) of the 1939 Internal Revenue Code. The Commissioner disagreed, arguing that the vehicles assigned to executives were stock in trade and not used in the business. The Commissioner did concede that other vehicles in the company were used in its trade or business.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in Duval Motor Company's income and excess profits taxes. The Tax Court heard the case, which involved disputes over the tax treatment of car sales, the deductibility of the president's wife's salary, and the deductibility of club expenses and other contributions. The Tax Court made determinations on these issues, with the central question being whether certain automobiles were "property used in the trade or business" under IRC §117(j).

Issue(s)

1. Whether automobiles assigned to executives, new car salesmen, and department heads and then sold by Duval Motor Company constituted

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