***Huntoon, Paige and Company, Inc., 20 T.C. 317 (1953)***

When a corporation distributes assets in liquidation, and those assets include rights to future income with no ascertainable fair market value at the time of distribution, subsequent payments received pursuant to those rights are treated as part of the capital gain realized from the liquidation, not as ordinary income.

**Summary**

The case concerns the tax treatment of commissions received by stockholders after the liquidation of their corporation. The corporation, Huntoon, Paige and Company, Inc., acted as a mortgage broker and was liquidated in 1950. As part of the liquidation, the stockholders received rights to commissions on mortgage commitments the company had arranged prior to its liquidation, but which had not yet closed. Because these rights had no ascertainable fair market value at the time of distribution, the court held that the subsequent receipt of the commissions should be treated as part of the original liquidation, resulting in capital gains treatment for the stockholders, rather than ordinary income. This hinged on the principle established in *Burnet v. Logan*, which allows for an "open transaction" treatment when property received in exchange for stock has no ascertainable fair market value.

**Facts**

Huntoon, Paige and Company, Inc., a mortgage broker, was liquidated on November 15, 1950. The company's sole stockholders received contingent rights to commissions on mortgage commitments arranged before the liquidation, but which had not been completed. These rights were contingent on the completion of the mortgage transactions. The court found that the rights to future commissions had no ascertainable fair market value at the time of the liquidation. After the liquidation, the stockholders received commission payments as the mortgage transactions closed. They reported these receipts as long-term capital gains.

**Procedural History**

The case was heard before the U.S. Tax Court. The stockholders claimed capital gains treatment for the commission receipts. The Commissioner of Internal Revenue contested this, arguing for ordinary income treatment. The Tax Court sided with the stockholders, holding that the subsequent commission payments were part of the original liquidation transaction and should be treated as capital gains.

**Issue(s)**

Whether sums paid to stockholder-distributees of a liquidated corporation as commissions on mortgage commitments constituted ordinary income or capital gain when the rights to receive these commissions were contingent upon the fruition of mortgage commitments and had no ascertainable fair market value at the date of

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distribution?

## Holding

Yes, because the rights to future commissions were contingent and had no ascertainable fair market value at the time of the liquidation, the subsequent commission payments were treated as part of the liquidation, resulting in capital gains.

## Court's Reasoning

The court relied heavily on the principle established in *Burnet v. Logan*, 283 U.S. 404 (1931). In *Burnet*, the Supreme Court held that when property exchanged for stock has no ascertainable fair market value, the transaction remains "open" until the value becomes ascertainable. The court reasoned that the mortgage commissions were contingent on future events and, therefore, did not have a readily determinable fair market value at the time of the liquidation. The court stated, "It is this factor of unascertainable valuation which caused the courts to hold the liquidation transactions open until the returns were received, thus allowing an accurate monetary valuation to be affixed to the rights." The court distinguished the case from those involving fixed rights to payment or instances where the liquidation was a closed transaction under Section 112(b)(7) of the Internal Revenue Code.

## Practical Implications

This case is crucial for tax practitioners dealing with corporate liquidations. It provides guidance on how to treat liquidating distributions of assets that do not have an immediate, determinable fair market value. Lawyers should advise clients to document the lack of a market value for assets distributed in liquidation and be prepared to demonstrate the contingent nature of the right to income. This case supports the argument that, in such situations, subsequent receipts should be treated as part of the capital gain from the liquidation. The case is most applicable to situations where the corporation is on a cash basis and the income is not yet earned. The case has been cited in numerous tax court decisions to support the open transaction doctrine in cases dealing with uncertain valuation.

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