***30 T.C. 1306 (1958)***

The sale of real property by a trust, even if subdivided into lots, is entitled to capital gains treatment if the sales are part of a passive liquidation strategy rather than an active business pursuit.

**Summary**

In *Moore v. Commissioner*, the U.S. Tax Court addressed whether gains from the sale of building lots by a trust were taxable as ordinary income or long-term capital gains. The trust was created by the Moore family to liquidate a large tract of land received as a gift. Although the land was subdivided and lots were sold over several years, the court held that the gains should be treated as capital gains. This was because the sales were conducted to passively liquidate the asset rather than in the ordinary course of a real estate business. The court emphasized that the Moores' primary intent was not to engage in real estate sales but to distribute the inherited property among themselves.

**Facts**

E.A. Moore gifted his children an undivided interest in a farm. To facilitate the sale and division of this land, the Mooreland Hill Trust was created, with the male petitioners as trustees. The trust subdivided the land into lots, constructed roads and water mains, and sold lots over an eleven-year period. No more than six lots were ever sold in any one year. The trustees were selective in their sales, marketing to family, friends, and others they believed would be desirable neighbors. They engaged in minimal promotional activity, and they rarely engaged the services of a real estate agent. The IRS determined the gains from the sale of lots were ordinary income, arguing the trust was engaged in the real estate business. The petitioners claimed long-term capital gains treatment.

**Procedural History**

The Commissioner determined deficiencies in the petitioners' income tax, arguing that the profits from the sale of land by the trust constituted ordinary income, not capital gains. The petitioners contested the Commissioner's ruling, leading to a hearing in the U.S. Tax Court. The Tax Court sided with the petitioners, holding the profits were long-term capital gains.

**Issue(s)**

1. Whether the profits realized by the Mooreland Hill Trust from the sale of building lots constituted ordinary income or long-term capital gain.

**Holding**

1. No, because the trust was engaged in a passive liquidation and the lots were not

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held primarily for sale to customers in the ordinary course of a trade or business.

**Court's Reasoning**

The court examined whether the trust's activities constituted a trade or business. The Court referenced various factors, including the purpose of the property's acquisition, the frequency and substantiality of sales, and the level of sales activities. The court cited *W.T. Thrift, Sr., 15 T.C. 366*, which enumerated some of the important factors: "The governing considerations have been the purpose or reason for the taxpayer's acquisition of the property and in disposing of it, the continuity of sales or sales related activity over a period of time; the number, frequency, and substantiality of sales, and the extent to which the owner or his agents engaged in sales activities by developing or improving the property, soliciting customers, and advertising." The court focused on the fact that the property was inherited, and the trust was created primarily to liquidate the asset. The court found that the Moore family's intention was to passively liquidate the property, not to engage in the real estate business. The court also noted the infrequent sales, lack of advertising, and the trustees' focus on selling to family and friends. The court concluded that the trust's actions were more consistent with a passive liquidation than with the active conduct of a real estate business. The court referenced *Farley*, emphasizing the absence of business activity.

**Practical Implications**

This case is vital for attorneys and taxpayers dealing with the sale of subdivided real estate. It emphasizes the importance of distinguishing between passive liquidation of an asset and the active conduct of a real estate business. To obtain capital gains treatment, the taxpayer must demonstrate that their actions were primarily aimed at liquidating the asset in an orderly manner, rather than engaging in activities characteristic of a real estate business. This involves careful consideration of the original intent for acquiring the property, the degree of sales activity, and the nature of any improvements or marketing efforts. The Court emphasizes, "One may, of course, liquidate a capital asset. To do so it is necessary to sell. The sale may be conducted in the most advantageous manner to the seller and he will not lose the benefits of the capital gain provision of the statute, unless he enters the real estate business and carries on the sale in the manner in which such a business is ordinarily conducted." This case provides useful precedent for taxpayers seeking capital gains treatment in similar situations, while the IRS may apply it to cases where a taxpayer may be inappropriately claiming capital gains treatment.

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