32 T.C. 631 (1959)

The basis of inherited property is its value at the date of death of the previous owner, and initial payments in an installment sale exceeding 30% of the selling price preclude installment reporting.

Summary

In *Timanus v. Commissioner*, the Tax Court addressed two main issues. First, it determined the proper basis for calculating depreciation on real estate inherited by the taxpayer, differentiating between property directly inherited and property that passed through joint tenancy. Second, it examined whether the taxpayer could use the installment method to report income from a real estate sale. The court held that the basis for depreciation depended on how the property was acquired, specifically differentiating between property inherited directly and property that passed through joint tenancy. It also ruled that the initial payments received by the taxpayer exceeded 30% of the selling price, thus preventing the use of installment sale reporting.

Facts

The taxpayer, G. Loutrell Timanus, inherited several properties. One property, 1307 Maryland Avenue, was inherited directly from his mother, who received it after Timanus's father died. The other properties, 1309 and 1311 Maryland Avenue, were held in joint tenancy with his mother, and Timanus received them upon her death. Timanus claimed depreciation deductions on these properties. Additionally, Timanus sold a tract of land, receiving initial payments in the year of sale. The Commissioner of Internal Revenue disputed both Timanus's depreciation calculations and his use of the installment method for reporting the gain from the land sale.

Procedural History

The Commissioner determined deficiencies in Timanus's income tax for the years 1950 and 1951. Timanus challenged the Commissioner's determinations in the United States Tax Court. The Tax Court considered the issues of proper basis for depreciation and the eligibility for installment sale reporting. The Tax Court issued a decision on these issues in 1959.

Issue(s)

1. Whether the taxpayer's basis of three pieces of improved real estate was fully recovered through annual depreciation allowances prior to 1950 so that no depreciation deductions are allowable for 1950 and 1951.

2. Whether the initial payments received by petitioners in 1951 upon the sale in 1951 of a tract of unimproved real estate exceeded 30 per cent of the selling price so as to preclude making return of the gain realized on an installment basis under

section 44(a) and (b) of the 1939 Code.

Holding

1. No, because the properties were fully depreciated before 1950.

2. Yes, because the initial payments received by the petitioners in 1951 exceeded 30% of the selling price.

Court’s Reasoning

The court determined the basis of the real properties by referencing the time of their acquisition. For the properties acquired through his father’s death, then held in joint tenancy with Timanus’s mother, the court stated that the basis was their fair market value at the time of the father’s death. For property inherited from the mother’s will, the basis was the fair market value at the time of the mother’s death. The court found that the taxpayer had not provided sufficient evidence to support his claimed basis. The court referred to Section 113(a)(5) of the 1939 Code to determine the adjusted basis for depreciation. The Court concluded the properties were fully depreciated prior to 1950 based on these calculations, thus disallowing any depreciation deduction in 1950 and 1951.

Regarding the installment sale, the court analyzed the agreement for the sale of the Florida real estate. Because the sale agreement specified that $560,000 would be paid to the petitioners, that amount was determined to be the selling price. The court found that the initial payments, which included the cash down payment and the assumption of a mortgage, exceeded 30% of this $560,000 selling price. The court cited Regulation 111, Section 29.44-2, stating that a mortgage assumed by a buyer is not part of initial payments.

The court distinguished this case from *Walter E. Kramer*, because the contract specifically listed the amount paid to each owner, as opposed to a lump sum.

Practical Implications

This case highlights the importance of properly determining the basis of inherited property, especially when multiple methods of acquisition are involved. It emphasizes the significance of the date of acquisition for determining basis and allowable depreciation. It also reinforces the criteria for installment sales, particularly the definition of “initial payments” and the 30% threshold. Attorneys advising clients with inherited property must carefully document the acquisition method to establish the correct basis for depreciation. When structuring real estate sales, it is essential to understand the definition of “selling price” and “initial payments” to determine if installment sale treatment is permissible. This case is a reminder that the specific terms of the sale agreement control the determination of selling price when applying the installment method, and the allocation of payments matters.

