***Miller v. Commissioner*, 35 T.C. 631 (1961)**

Payments received for the release of privacy rights, personal services related to a motion picture, and potential claims regarding a deceased celebrity's life story constitute ordinary income, not capital gains, for tax purposes.

Summary

Helen Miller, widow of bandleader Glenn Miller, received payments from Universal Pictures for rights to produce a movie about Glenn Miller's life. The Tax Court addressed whether these payments should be taxed as ordinary income or capital gains. The court held that the income was ordinary because it compensated Miller for her right of privacy, her services in facilitating the film, and releasing potential claims against Universal. The court reasoned that Miller did not sell a capital asset, as she did not demonstrate ownership of a transferable property right to her deceased husband's life story.

Facts

Glenn Miller, a famous bandleader, died in 1944, leaving his estate to his widow, Helen Miller. In 1952, Helen Miller entered into an agreement with Universal Pictures for a motion picture based on Glenn Miller's life. Universal agreed to pay Miller a percentage of the gross proceeds. The agreement included clauses where Miller granted rights to depict Glenn Miller, herself, and her family, and released Universal from privacy claims. Miller also agreed to assist in obtaining consents from family members. In 1954, Miller received $409,336.34 from Universal.

Procedural History

The Commissioner of Internal Revenue determined that the $409,336.34 received by Miller was ordinary income and assessed a deficiency. Miller initially argued part of the income was non-taxable as a privacy right release and part taxable as service income. She later amended her petition, claiming the entire amount was capital gain from the sale of a capital asset. The Tax Court reviewed the Commissioner's determination.

Issue(s)

1. Whether the payments received by Helen Miller from Universal Pictures for the motion picture about Glenn Miller's life constituted ordinary income or capital gains for federal income tax purposes?
2. Whether Helen Miller sold a capital asset to Universal Pictures?

Holding

1. Yes, the payments constituted ordinary income because they were compensation for the release of privacy rights, personal services, and potential

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claims, not the sale of a capital asset.
2. No, Helen Miller did not sell a capital asset because she failed to prove she owned a transferable property right to her deceased husband's life story that could be considered a capital asset.

Court's Reasoning

The Tax Court reasoned that the agreement between Miller and Universal encompassed more than just rights to Glenn Miller's life story. It included Miller's consent to portray her and her family, her cooperation in providing information, and a release of privacy claims. The court emphasized paragraph 5 of the agreement, which specifically released Universal from privacy claims, stating, "In our judgment payments made by Universal under the contract reflected to a substantial degree consideration in relation to the right of privacy." The court also highlighted Miller's obligation to secure consents from other family members as a service rendered. Regarding the capital asset argument, the court found Miller did not demonstrate ownership of a property right to her deceased husband's life story that she could sell. The court noted, "Plainly, Glenn Miller having been a celebrity, and the facts relating to his life being in the public domain, neither he, if alive, nor anyone purporting to represent him thereafter could prevent the publication of a biography about him." The court concluded that the payments were primarily for granting Universal a "free hand" to produce the movie without legal challenges, which is characteristic of ordinary income, not capital gains from the sale of property.

Practical Implications

Miller v. Commissioner clarifies that payments related to biographical works, especially those involving living individuals or their estates, are likely to be treated as ordinary income. Legal professionals should advise clients that income from agreements involving privacy releases, personal services like cooperation on a film, and waivers of potential claims will generally be taxed as ordinary income. This case underscores the difficulty in establishing a transferable property right in a deceased person's life story for capital gains treatment. It highlights that even when agreements are framed as grants of rights, the substance of the transaction, including compensation for services and release of liabilities, will dictate the tax treatment. Later cases distinguish *Miller* based on the specific nature of the rights transferred and the presence of established property rights, but the core principle regarding privacy and service income remains relevant.

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