***Yerito v. Commissioner, 41 T. C. 40 (1963)***

Section 337 of the Internal Revenue Code of 1954 allows for nonrecognition of gain on the sale of property during the 12-month period following the adoption of a plan of complete liquidation, including sales of securities held as temporary investments.

**Summary**

In Yerito v. Commissioner, the Tax Court ruled that gains from the sale of securities by 19 transferor corporations during their liquidation process were not taxable at the corporate level under Section 337. The corporations had sold their operating assets, planned to liquidate within 12 months, and made temporary investments in securities during the interim. The court found that these investments were not inconsistent with the liquidation plan and thus fell within the protective provisions of Section 337. This decision emphasizes the broad application of Section 337 to prevent double taxation during corporate liquidation, even when assets sold were not part of the initial liquidating sale.

**Facts**

The petitioners, Frank and William Yerito, were major stockholders and officers of 45 corporations involved in the bakery business, which were renamed Yerito Investment Corp. The corporations sold their operating assets to National Food Stores, Inc. on October 17, 1960, and adopted a plan of complete liquidation within 12 months. Nineteen of these corporations temporarily invested the proceeds in securities, which were sold between October 17, 1960, and May 31, 1961, realizing short-term and long-term capital gains. The corporations liquidated completely on May 31, 1961, and distributed the assets to shareholders.

**Procedural History**

The Commissioner of Internal Revenue determined deficiencies in income tax against the 19 transferor corporations for the taxable period ended June 2, 1961, and sought to hold the petitioners liable as transferees. The petitioners conceded their liability as transferees but argued that no tax was owed by the corporations under Section 337. The case was heard by the Tax Court, which issued its opinion in favor of the petitioners.

**Issue(s)**

1. Whether the gains realized by the transferor corporations from the sale of securities during the 12-month liquidation period should be recognized at the corporate level under Section 337 of the Internal Revenue Code of 1954.

**Holding**

1. No, because the sales of securities were part of the liquidation process and within

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the 12-month period specified in Section 337, thus falling within the protective provisions of the statute.

### Court's Reasoning

The court applied Section 337, which allows for nonrecognition of gain on property sales within 12 months of adopting a liquidation plan. The court emphasized that the purpose of Section 337 was to eliminate uncertainties in tax consequences during liquidation, as seen in prior Supreme Court cases. The court found that the temporary investments in securities were not inconsistent with the liquidation plan and thus were covered by Section 337. The court rejected the Commissioner's argument that only the initial liquidating sale should be protected, noting that the legislative history did not support such a narrow interpretation. The court also clarified that the securities were not stock in trade or inventory, thus qualifying as property under Section 337. The decision was supported by the court's interpretation of the statute's clear language and legislative intent to avoid double taxation during liquidation.

### Practical Implications

This ruling clarifies that Section 337's nonrecognition provisions extend to all property sales within the 12-month liquidation period, including temporary investments made during the process. Attorneys should advise clients that such investments do not jeopardize the tax benefits of Section 337, provided they are not part of the ordinary business operations. This decision impacts how corporations plan and execute their liquidations, ensuring they can manage their assets without fear of unexpected tax liabilities. It also influences the IRS's approach to assessing deficiencies during corporate liquidations. Subsequent cases, such as Henry C. Beck Builders, Inc. , have reinforced this interpretation, further solidifying the broad application of Section 337 in liquidation scenarios.

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