Currie v. Commissioner, 53 T. C. 185 (1969)

Stock held by an investment syndicate for over six months qualifies for long-term capital gains treatment if not held for sale to customers in the ordinary course of a trade or business.

Summary

In Currie v. Commissioner, the Tax Court held that stock sold by a syndicate organized to acquire and hold shares of Northwestern National Life Insurance Co. was a capital asset, qualifying for long-term capital gains treatment. The syndicate, managed by J. C. Bradford, purchased the stock below market value and sold it after over six months. The court found that the syndicate was not engaged in the business of selling securities to customers but was instead holding the stock as an investment, thus the gains were not ordinary income but capital gains.

Facts

In mid-1962, a syndicate was formed to acquire 51% of Northwestern National Life Insurance Co. 's common stock from another syndicate, which had previously obtained an option to purchase the stock. The second syndicate, managed by J. C. Bradford, exercised the option and bought the stock at a price below the current market value. Over six months later, in mid-1963, the syndicate sold a portion of the stock to a group of underwriters who then sold it in a public offering. The syndicate was subsequently liquidated.

Procedural History

The Commissioner of Internal Revenue determined that the stock was not a capital asset, asserting that it was held for sale to customers in the ordinary course of the syndicate's business, and thus the gains should be taxed as ordinary income. Petitioners contested this, claiming the stock was held as an investment. The Tax Court, after consolidation of related cases, ruled in favor of the petitioners, holding the stock to be a capital asset and the gains as long-term capital gains.

Issue(s)

1. Whether the Northwestern stock held by the syndicate was a capital asset under Section 1221 of the Internal Revenue Code of 1954.

Holding

1. Yes, because the stock was held by the syndicate as an investment and not primarily for sale to customers in the ordinary course of a trade or business.

Court's Reasoning

The court applied the legal rule from Section 1221, which excludes from the definition of capital assets "property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. " The court reasoned that the syndicate's purchase of the Northwestern stock at a price below market value and its holding for over six months indicated an intent to invest rather than to engage in the business of selling securities. The court distinguished between traders and dealers, noting that the syndicate was a trader, holding the stock for its own account and not selling to customers as a dealer would. The court also noted that the syndicate had no commitment from any prospective purchaser at the time of purchase, further supporting the investment intent. The court rejected the Commissioner's argument that the syndicate's intent to sell to underwriters constituted holding for sale to customers, emphasizing that the syndicate did not purchase on behalf of or at the order of any customer. The court's decision was influenced by the policy of allowing capital gains treatment for investments held for more than six months, as intended by the Revenue Act of 1934.

Practical Implications

This decision clarifies that investment syndicates can qualify for capital gains treatment on stock sales if the stock is held as an investment and not as inventory for sale to customers. It underscores the importance of the holding period and the intent at the time of purchase in determining whether an asset is held for investment or for sale in the ordinary course of business. For legal practitioners, this case provides guidance on structuring investment syndicates to ensure capital gains treatment. It also has implications for businesses and investors in determining how to classify gains from stock sales for tax purposes. Subsequent cases have cited Currie v. Commissioner to support the principle that the nature of the holding, rather than the eventual sale, determines capital asset status.

