Stolk v. Commissioner, 47 T. C. 1069 (1967)

The sale of land alone, without the dwelling, does not qualify for nonrecognition of gain under Section 1034 when the taxpayer retains and converts the dwelling to rental property.

Summary

In Stolk v. Commissioner, the taxpayers sold the land on which their principal residence stood but retained and moved the dwelling to another lot for rental purposes. They argued that the sale of the land should qualify for nonrecognition of gain under Section 1034. The Tax Court held that selling the land without the dwelling did not qualify for nonrecognition because the statute requires the sale of the entire residence, including the dwelling. Additionally, the court ruled that the cost of moving the dwelling could not be added to the basis of the sold land, as it was considered an improvement to the dwelling itself.

Facts

In September 1961, petitioners agreed to sell the land (premises A) on which their principal residence was located to WRI for $20,000 in cash and a life estate in another residential property (premises B). They moved their dwelling from premises A to another purchased lot (premises C), converting it into income-producing rental property. The petitioners then moved into premises B as their new residence.

Procedural History

The taxpayers filed a petition with the Tax Court challenging the Commissioner's determination that the gain from the sale of premises A's land did not qualify for nonrecognition under Section 1034. They also contested the treatment of the moving costs of the dwelling as a capital expenditure to be added to the basis of the dwelling rather than the land.

Issue(s)

1. Whether the sale of the land alone, without the dwelling, qualifies for nonrecognition of gain under Section 1034?
2. Whether the cost of moving the dwelling from premises A to premises C should be added to the basis of the land sold?

Holding

1. No, because the sale of land alone, without the dwelling, does not meet the statutory requirement of selling the entire residence.
2. No, because the moving cost represents an improvement to the dwelling and not to the land sold.

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Court’s Reasoning

The court applied Section 1034, which requires the sale of the entire old residence, including the dwelling, to qualify for nonrecognition of gain. The court cited Benjamin A. O’Barr, where it was held that adjacent land alone cannot be considered a residence under Section 1034. The court distinguished Bogley v. Commissioner, noting that the taxpayers in that case had sold their entire residence, not just the land. The court also rejected the petitioners’ reliance on Rev. Rul. 54-156, as it pertains to situations where the dwelling is moved to a new lot and used as the taxpayer’s principal residence, not converted to rental property. On the second issue, the court ruled that the cost of moving the dwelling was a capital expenditure improving the dwelling, not the land, based on precedents like Hoyt B. Wooten and Rev. Rul. 79. The court noted the lack of evidence showing that the moving cost was essential to the sale of the land or that it represented a benefit to the land sold.

Practical Implications

This decision clarifies that for Section 1034 to apply, taxpayers must sell or dispose of their entire old residence, including the dwelling. It impacts how taxpayers structure the sale of their principal residence, especially when they wish to retain the dwelling. Legal practitioners must advise clients that retaining and converting the dwelling to rental property disqualifies the sale of the land from nonrecognition of gain. Additionally, this case affects how moving costs are treated for tax purposes, emphasizing that such costs are improvements to the dwelling, not the land, unless proven otherwise. Subsequent cases involving Section 1034 should carefully consider this ruling when determining eligibility for nonrecognition of gain.

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