

## ***Estate of Dorn v. Commissioner, 54 T. C. 1651 (1970)***

Selling expenses can be offset against sales proceeds in calculating estate income tax loss, despite prior deduction on estate tax return.

### **Summary**

The Estate of Dorn sold property to fund estate administration and incurred selling expenses, which were deducted on the estate tax return. The issue was whether these expenses could also offset sales proceeds for income tax purposes. The Tax Court held that under IRC Section 642(g), which prevents double deductions, the offset of selling expenses against sales proceeds is permissible as it is not a deduction but an offset, following the precedent set in Estate of Bray. This ruling clarifies the distinction between offsets and deductions, impacting how estates calculate taxable income from property sales.

### **Facts**

Walter E. Dorn's estate sold two parcels of real estate in 1965 to finance estate administration and pay estate taxes. The estate incurred selling expenses totaling \$8,213.46, including \$8,051.11 in brokers' commissions, which were deducted as administration expenses on the estate tax return. When filing its fiduciary income tax return, the estate sought to offset these selling expenses against the sales proceeds to calculate the loss on the property sales.

### **Procedural History**

The Commissioner of Internal Revenue determined a deficiency in the estate's income tax, disallowing the offset of selling expenses against sales proceeds, citing IRC Section 642(g). The estate petitioned the Tax Court, which reviewed the case based on the fully stipulated facts.

### **Issue(s)**

1. Whether the estate can offset the sales proceeds by the selling expenses previously deducted as administration expenses on its estate tax return, in light of IRC Section 642(g).

### **Holding**

1. Yes, because IRC Section 642(g) applies to statutory deductions, not to offsets such as selling expenses against sales proceeds, following the precedent set in Estate of Bray.

### **Court's Reasoning**

The court distinguished between offsets and deductions, noting that selling

expenses are capital expenditures and thus not deductible but may be offset against sales proceeds. The court emphasized that IRC Section 642(g) specifically addresses deductions in computing taxable income and does not extend to offsets, which affect the calculation of gross income. The court reaffirmed the holding of Estate of Bray, stating that the policy of preventing double deductions does not apply to offsets. The court also rejected the Commissioner's attempt to distinguish the case based on the resulting losses rather than gains, stating that the character of selling expenses as offsets remains unchanged.

### **Practical Implications**

This decision clarifies that estates can offset selling expenses against sales proceeds for income tax purposes, even if those expenses were previously deducted on the estate tax return. This ruling impacts estate planning and administration, allowing estates to maximize tax benefits from property sales. It sets a precedent for future cases involving the interplay between estate and income tax calculations, affirming the importance of distinguishing between offsets and deductions. Practitioners should consider this ruling when advising estates on the tax treatment of property sales and related expenses.