Bostedt v. Commissioner, 70 T. C. 487 (1978)

The assumption of a seller's commission liability by the buyer in a property sale is treated as a payment in the year of sale for purposes of the 30-percent limitation under the installment method of reporting gain.

Summary

In Bostedt v. Commissioner, the Tax Court held that when a buyer assumes the seller's real estate commission liability as part of the purchase agreement, this assumption must be treated as a payment received by the seller in the year of sale. The case involved Earl C. Bostedt, who sold his motel and elected to report the gain using the installment method under section 453 of the Internal Revenue Code. The key issue was whether the buyer's assumption of the seller's $12,750 commission to the broker should be considered part of the initial payment, which would affect the seller's ability to use the installment method due to the 30-percent limitation rule. The court found that such an assumption is indeed part of the payment, thereby disqualifying Bostedt from using the installment method.

Facts

Earl C. Bostedt sold his motel, the Casa Blanca, on February 2, 1971, for approximately $282,000, electing the installment method of reporting the gain under section 453 of the Internal Revenue Code. The sale included $6,500 for personal property, $250 for goodwill, $56,250 for real property, and $219,000 for improvements. Bostedt incurred selling expenses of $13,408, including a $12,750 commission to Carbray & Co. The buyer assumed two existing mortgages totaling $188,885. 50 and paid $36,318 in cash. Additionally, the buyer took on a $12,750 liability to pay the commission directly to Carbray & Co.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Bostedt's 1971 federal income taxes and challenged his use of the installment method. Bostedt petitioned the U. S. Tax Court, which ruled that the assumption of the commission liability by the buyer was to be treated as a payment in the year of sale, thereby affirming the deficiency as computed by the Commissioner.

Issue(s)

1. Whether the buyer's assumption of the seller's commission liability constitutes a payment received by the seller in the year of sale for purposes of section 453(b)(2)(A) of the Internal Revenue Code.

Holding

1. Yes, because the assumption and payment of the seller's commission liability by

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the buyer is considered part of the payment received by the seller in the year of sale, as per the precedent set in Wagegro Corp. v. Commissioner.

Court's Reasoning

The Tax Court relied on the precedent established in Wagegro Corp. v. Commissioner, where the payment of a seller's legal fee by the buyer was treated as part of the purchase price. The court distinguished this case from others (like Irwin, Marshall, and Horneff) where the liabilities assumed were ordinary business liabilities not directly part of the purchase price. The court emphasized that in Bostedt's case, the assumption of the commission was a prescribed part of the consideration for the sale and thus should be treated as a payment in the year of sale. The court quoted from Wagegro Corp. , stating that the payment to discharge the seller's obligation to the broker was tantamount to a payment to the seller. The court also noted that under the Golsen rule, it was bound to follow the Ninth Circuit's decision in Marshall but found Bostedt's case distinguishable on factual grounds.

Practical Implications

This decision clarifies that for the purposes of the 30-percent limitation under section 453(b)(2)(A), any liability of the seller assumed by the buyer as part of the purchase agreement must be included in the initial payment calculation. This ruling affects how taxpayers structure sales agreements and elect to use the installment method. It requires sellers to consider all forms of payment, including assumed liabilities, when calculating whether they meet the 30-percent threshold. Legal practitioners advising on real estate transactions must now carefully account for such liabilities in their clients' tax planning. Subsequent cases have cited Bostedt to determine the applicability of the installment method, and it serves as a reminder to consider all aspects of the transaction when assessing tax consequences.

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