***Estate of Barney F. Wiggins, Deceased, Bonnie Maud Wiggins, Administratrix and Substitute Trustee, and Bonnie Maud Wiggins, Individually, Petitioners v. Commissioner of Internal Revenue, Respondent, 72 T. C. 701 (1979)***

Contracts for deed may lack ascertainable fair market value at the time of execution, allowing taxpayers to report gains under the cost recovery method.

**Summary**

In Estate of Wiggins v. Commissioner, the Tax Court held that contracts for deed received by a developer of a 'red flag' subdivision had no ascertainable fair market value at the time of execution, allowing the taxpayer to report gains using the cost recovery method. The court determined that the contracts lacked a market due to the absence of a payment record, no credit checks on buyers, and the ability to swap lots, among other factors. This ruling underscores the importance of evaluating the true marketability of non-cash consideration in real estate transactions and its impact on tax reporting methods.

**Facts**

Barney F. Wiggins and T. W. Elliott developed Sam Houston Lake Estates, selling lots under contracts for deed with low down payments and monthly installments. The lots were in a rural, undeveloped area with no curbs, gutters, or central sewage. Wiggins did not perform credit checks on buyers, allowed lot swaps, and gave credits for referring new buyers. The contracts for deed were not assignable without Wiggins' consent, and he did not enforce them for nonpayment. Of 1,237 contracts executed, 496 were voided due to nonpayment.

**Procedural History**

The Commissioner of Internal Revenue issued a notice of deficiency, asserting that the contracts for deed had an ascertainable fair market value and that the gains from lot sales should be reported in full in the year of sale. Wiggins contested this, arguing for the use of the cost recovery method. The Tax Court reviewed the case and held for Wiggins, ruling that the contracts for deed lacked ascertainable fair market value.

**Issue(s)**

1. Whether the contracts for deed received by Wiggins had an ascertainable fair market value at the time of execution.
2. Whether Wiggins is entitled to report the gain on lot sales under the cost recovery method.

**Holding**

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1. No, because the contracts for deed lacked a market at the time of execution due to the absence of a payment record, no credit checks, and the ability to swap lots.
2. Yes, because without an ascertainable fair market value, the transactions remain open, and the cost recovery method is appropriate.

**Court’s Reasoning**

The court applied the traditional definition of fair market value as the price at which a willing buyer and seller would agree, neither acting under compulsion and both fully informed. The court found that the contracts for deed lacked a market because no financial institutions would purchase them, and private investors required a package of seasoned contracts with clear title to the underlying lots. The court rejected the Commissioner’s valuation method, which assumed bulk sales and clear title, as impractical and inaccurate for determining the value of individual contracts at the time of execution. The court emphasized the lack of credit checks, the ability to swap lots, and the absence of a payment record as factors rendering the contracts non-marketable at the time of sale.

**Practical Implications**

This decision impacts how developers and taxpayers should analyze similar real estate transactions involving non-cash consideration. It highlights the importance of assessing the true marketability of contracts for deed at the time of execution rather than assuming a market exists. Practitioners should advise clients that in certain circumstances, particularly with ‘red flag’ subdivisions, the cost recovery method may be available for reporting gains, even if the contracts are considered part of a closed transaction. This ruling has influenced subsequent cases involving the valuation of non-cash consideration in real estate sales, emphasizing the need for a realistic assessment of market conditions at the time of the transaction.

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