Asjes v. Commissioner, 74 T. C. 1005 (1980)

Trees and shrubs growing in a nursery are part of the land and qualify for nonrecognition of gain under section 1033 when condemned with the land.

Summary

In Asjes v. Commissioner, the Tax Court ruled that trees and shrubs in a nursery, condemned along with the land, are part of the real estate and not separate property for tax purposes. The Asjes family operated Rosehill Gardens, Inc. , which was condemned by Jackson County, Missouri. The court held that the lump-sum condemnation award could not be allocated among different types of property because the nursery stock was considered part of the land. Consequently, the gain from the condemnation was not recognized under section 1033 since the family reinvested the proceeds into similar property, thereby maintaining the tax benefits intended by the statute.

Facts

The Asjes family owned Rosehill Gardens, Inc. , a nursery business in Jackson City, Missouri, since 1914. In December 1968, Jackson County notified them that their 72-acre property would be taken for a park. After failed negotiations, the county condemned the property in August 1972. The condemnation included land, improvements, and vegetation, resulting in a lump-sum award of $389,000. Rosehill reinvested $372,220. 10 in new property and improvements within the statutory period, seeking nonrecognition of gain under section 1033.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in the Asjes' 1973 federal income tax, arguing that the condemnation award should be allocated to separate the nursery stock, resulting in taxable gain. The case proceeded to the U. S. Tax Court, where the Asjes contested the allocation of the award and the recognition of gain.

Issue(s)

1. Whether a lump-sum condemnation award must be allocated to various types of property condemned for purposes of section 1033.
2. Whether the petitioners' wholly owned corporation properly reinvested the proceeds, qualifying them for nonrecognition of gain.
3. Whether, if gain must be recognized, it will be taxable to petitioners as ordinary income or capital gain.

Holding

1. No, because the trees and shrubs were part of the land and not separate property

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interests, the lump-sum award could not be allocated.
2. Yes, because the petitioners replaced the condemned property with property of a like kind, the gain was not recognized.
3. No, because any gain recognized would be capital gain under section 1231(b)(4), not ordinary income.

Court’s Reasoning

The court reasoned that under Missouri law, trees and shrubs are part of the real estate until severed. The court also considered federal tax law, classifying nursery stock as growing crops, which are part of the land for tax purposes. The court cited section 1231(b)(4), which treats unharvested crops sold with the land as property used in trade or business, not as stock in trade. The court rejected the Commissioner’s argument for allocation, stating that the condemnation award was solely for property taken, not for nonproperty interests. The court emphasized the broad construction of section 1033 to effectuate its purpose of providing relief to taxpayers whose property is condemned. The court concluded that the reinvestment in the Belton property met the “like kind” requirement of section 1033(g), thus qualifying for nonrecognition of gain.

Practical Implications

This decision clarifies that nursery stock growing on condemned land is part of the real property, preventing the allocation of condemnation awards among different property types. It supports a liberal construction of section 1033, ensuring that taxpayers can reinvest condemnation proceeds into similar property without recognizing gain. The ruling impacts how similar condemnation cases involving agricultural or nursery properties should be analyzed, emphasizing the importance of state property law and federal tax statutes in determining the nature of condemned assets. Later cases have followed this precedent, reinforcing the nonrecognition of gain when condemned property, including crops, is replaced with like-kind property.

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