

**Barham v. United States of America**  
**429 F.2d 40, 70-2 USTC ¶ 9552, 26 AFTR2d 70-5173 (5th Cir. 1970) (aff'g per curiam)**

[Code Sec. 1221]

**Capital gain v. ordinary income: Joint venture: Subdivision, development and sale of real estate: Sales in the ordinary course of business.**--The income of the taxpayer, realized as a result of his membership in a joint venture formed to purchase, develop, subdivide and sell real estate, was subject to treatment as ordinary income. BACK REFERENCES: 70FED ¶1330.7455, 70FED ¶2219.4892 and 70FED ¶4729.645.

R. Lamar Moore, P. O. 190, Moultrie, Ga., for plaintiffs-appellants. Walker P. Johnson, United States Attorney, Macon, Ga., Johnnie M. Walters, Assistant Attorney General, Lee A. Jackson, Elmer J. Kelsey, Meyer Rothwacks, Issie L. Jenkins, Department of Justice, Washington, D. C. 20530, for defendant-appellee.

Before BROWN, Chief Judge, and GOLDBERG and CLARK, Circuit Judges.

PER CURIAM:

This is a tax refund case in which taxpayers appeal from the decision below. The facts relevant to this appeal are set out fully in the opinion of the district court. *Barham v. United States*, M. D. Ga. 1969 [69-1 USTC ¶9356], 301 F. Supp. 43.

Two issues were presented to the district court. The court in its opinion denominated these issues as the "capital gains issue" and the "tree farm expense issue." Only one of these issues--the capital gains issue--is before us on this appeal.

Concluding that the district court correctly decided this issue, we affirm the judgment below on the basis of the district court's opinion.

Affirmed.