

**BROADHEAD ESTATE v. COMMISSIONER**  
**31 CCH Tax Ct. Mem. 951, 1972 P-H Tax Ct. Mem. ¶72,195 (1972).**  
*On motion for reconsideration, 32 CCH Tax Ct. Mem. 1047,*  
**1973 P-H Tax Ct. Mem. ¶73,222 (1973).**

*Editor's Summary*

*Key Topics*

OUTRIGHT SALE--CAPITAL GAIN v. ORDINARY INCOME

- Primarily for sale to customers in course of trade
- Intent at time of sale

*Facts*

Prior to 1961, decedent acquired timberlands on which he attempted to arrange timber cutting operations. All such attempts ceased by 1961, but decedent continued to consider the possibility of engaging in further real estate transactions. In 1961 and afterward, decedent sold several tracts and reported the gain as long-term capital gain. The Commissioner determined that the properties had been held primarily for sale to customers in the ordinary course of trade or business and that the proceeds were taxable as ordinary income.

*Tax Court*

{ opinion at 9 T.T.J. 140 }

**Held: For the Government.** The court determined that as of 1961 the properties involved, were being held principally for sale to customers in the ordinary course of trade or business, requiring the gain to be treated as ordinary income. The decision was based largely on the court's holding that the taxpayer had failed to meet the burden of proving that the tracts were not held primarily for sale.

*On motion for reconsideration*

[opinion below]

**Held: For the taxpayer.** The court, after reconsidering the evidence, concluded that its previous decision, holding that the taxpayer had failed to prove that the properties were not held primarily for sale, was incorrect. Thus, decedent's estate was entitled to treat the gain as long-term capital gain.

### *Case Text*

DAWSON, Judge: On September 7, 1972, the Court filed its Memorandum Findings of Fact and Opinion ([Dec. 31,531(M)] T.C. Memo. 1972-195) in these consolidated cases. Under Issue 4 (pages 41-45 of the opinion) the Court considered whether the petitioners were entitled to capital gain or ordinary income treatment with respect to the gains and profits realized from the following sales of real property:

- (1) Sale of lands to Ark Investments, Inc., on May 18, 1961.
- (2) Sale of Yazoo County timberland in 1963.
- (3) Sale of 40 acres of Sturgis property in 1963.
- (4) Sale of property in Avoyelles, Louisiana in 1963 to William R. Easterling on October 3, 1963.
- (5) Sale of Togo Island on October 18, 1963 to McGill Realty Co.

The Court concluded that the petitioners failed to prove that the properties were not held primarily for sale to customers in the ordinary course of their trade or business.

Petitioners have filed a motion for reconsideration of this issue on the ground that the Court's finding that gains received from these sales of timberland are ordinary income is erroneous. Respondent filed an objection to such motion.

After reviewing again the evidence in the record with respect to this factual issue, we think our prior conclusion was incorrect. Upon reconsideration Of the entire record, we now conclude that the petitioners did not hold the subject property *primarily* for sale to customers in the ordinary course of their trade or business during the years in issue. See and compare *Estate of Sam E. Broadhead* [Dec. 27,834(M)], T. C. Memo. 966-26, affirmed [68-1 USTC ¶9249] 391 F. 2d 841 (C.A. 5, 1968); *Robert L. Adam* [Dec. 32,155], 60 T. C. No. 107 (September 27, 1973). Thus, the petitioners are entitled to capital gain treatment.

Accordingly, petitioners' motion for reconsideration of this issue is granted. It follows that various motions filed by respondent for leave to file amendments to his answers will be denied.

*Decisions will be entered under Rule 50.*