CAMP, R. J. v. UNITED STATES
74-2 U.S. Tax Cas. ¶9596, 34 Am. Fed. Tax R.2d 74-5575 (1974).

CAMP, JOHN C. v. UNITED STATES
74-2 U.s. Tax Cas. ~9597, 34 Am. Fed. Tax R.2d 74-5573 (1974).

CAMP, SALLIE P. v. UNITED STATES
74-2 U.S. Tax Cas. ¶9598, 34 Am. Fed. Tax R.2d 74-5571 (1974).

Editor's Summary

Key Topics

LEASE v. CUTTING CONTRACT
· Proceeds under sale by contract not exceeding fair market value

Facts

Taxpayers entered into two 66-year timber contracts in 1959. For trial purposes they stipulated that they retained no economic interest in the timber sold. At the time the contracts were executed, the fair market value of the timber was not considered, since Revenue Ruling 62-81, governing tax treatment of such contract sales, had not yet been issued. Each year thereafter, taxpayers claimed the proceeds received under the contracts as long-term capital gains. They were assessed deficiencies for the taxable years 1967 through 1971, on the ground that the proceeds from the contracts received in those years had exceeded the fair market value of the timber at the time the contracts were entered into, this being the test, under Revenue Ruling 62-81, for whether capital gain or ordinary income treatment should be accorded to sale proceeds. Taxpayers timely filed for refunds, which were denied.

District Court

Held: For the taxpayers. The court determined the fair market value of the timber at the time the contracts were executed. The proceeds received under the contracts were found not to exceed this fair market value so that, under Revenue Ruling 62-81, they were taxable as capital gains rather than ordinary income.

Case Text

[R. J. Camp]

Findings of Fact and Conclusions of Law

SCOTT, District Judge: 1. This is an action by Plaintiffs for refund of federal income taxes and interest paid by the Plaintiffs to the Internal Revenue Service. Specifically Plaintiffs seek recovery of $9,359.28, plus interest, for the calendar years 1967 through 1971.

2. The Plaintiffs are husband and wife residing in Jasper, Hamilton County, Florida, and timely filed their income tax returns, Form 1040, for the taxable years involved, and paid the tax shown thereon to be due. The Internal Revenue Service, upon audit of the Plaintiffs' tax returns for said years, determined deficiencies in tax, including interest as follows:

1967	$ 487.55
1968	1,292.80
1969	1,624.02
1970	3,293.93
1971	2,660.98
Total	$9,359.28

Plaintiffs paid the deficiencies for 1967, 1968 and 1969 on January 27, 1972; for 1970, on November 9, 1972; and for 1971, on February 22, 1973. On March 12, 1973, Plaintiffs timely filed claims for refund for 1967 through 1971. A notice disallowing the claims was sent to Plaintiffs on August 27, 1973. Such claims for refund are the basis of this action.

3. In their joint income tax returns for said years Plaintiffs reported as long term capital gains proceeds received by them in those years from Owens-Illinois, Inc., (Owens-Illinois) under a 66-year timber contract entered into on December 29, 1959, by Plaintiffs and other members of the Camp family who were joint owners of 10,416 acres of timber lands located in Hamilton County, Florida, and under a 66-year timber contract entered into on June 12, 1959 by Plaintiffs and Owens-Illinois covering 1,557 acres of Hamilton County lands owned by Plaintiff, Jim C. Camp. Upon audit of said returns by the Internal Revenue Service it was determined that timber sale proceeds under said contracts for the taxable years in question were taxable as ordinary income and not as capital gains. The Internal Revenue Service determined that such timber sale proceeds were in excess of the fair market value of the timber on the lands when the contracts were entered into and, therefore, not entitled to capital gain tax treatment under *Revenue Ruling 62-81*, 1962-1 Cum. Bull. 153.

4. Prior to entering into the contracts on June 12, 1959 and December 29, 1959, Owens-Illinois and the owners of the timber and timber lands had Southern Timber Management Service, Inc., a timber cruising firm, to cruise the timber on the contract lands for the sole purpose of determining the volume of merchantable timber on the lands, and on the respective dates of the contracts the owners sold and Owens-Illinois purchased from the lands under the June 12, 1959 contract 301,510 board feet of sawtimber for the price of $30 MBF and 12,541,110 board feet of sawtimber measuring 11.1 inches and over in diameter, 4½ feet from the ground for the contract price of $30 MBF, and the owners agreed to sell annually from the respective dates of the contracts for the 66-year terms of the contracts and Owens-Illinois agreed to purchase annually one cord of pulpwood per acre at the price of $4.25 per cord under the terms of the contract of December 29, 1959, and the price of $4.50 per cord under the June 12, 1959 contract.

5. The cruise of the merchantable timber on the lands was to determine the amount of sawtimber measuring 11.1 inches and over in diameter, 4½ feet from the ground on the lands covered by the December 29, 1959 contract and the volume of sawtimber on the lands covered by the June 12, 1959 contract, and the balance of the merchantable timber on the lands under the two contracts was to serve as a basis for determining the amount of merchantable timber to be left on the lands at the end of each of the 66-year contract terms. Fair market value of the timber was not considered and did not become important until *Revenue Ruling 62.81* was issued more than two years after the contracts were entered into.

6. By the terms of the timber contracts Owens-Illinois was required to pay annually the ad valorem taxes assessed against the lands and timber, and in addition, it assumed the full responsibility, liability and expenses in the management and protection of the lands and timber in accordance with good and recognized forestry practices; and for an additional payment of twenty-five (25) cents per acre per year rent under the December 29, 1959 contract the owners granted to Owens-Illinois the full and complete use of the lands other than those granted for the purpose of growing and harvesting timber. These additional rights were granted under the June 12, 1959 contract in consideration of Owens-Illinois paying taxes on the lands and timber. This rent was reported by Plaintiffs and the other joint owners of the lands on their respective income tax returns as ordinary income.

7. The Court sitting without a jury, based on expert testimony, determined that the fair market value of the timber, merchantable and pre-merchantable, on the lands covered by the December 29, 1959 contract was $1,912,100.32, and that on the lands covered by the June 12, 1959 contract was $187,927.52. Through the taxable year 1971 the joint owners of the timber lands under the contract of December 29, 1959, had received proceeds from the sale of timber under the contract in the total sum of $926,560.58, thus leaving at that time fair market value of such timber not yet received in the amount of $985,539.74. The owner of the timber lands under the June 12, 1959 contract had received proceeds from the sale of timber under that contract in the total sum of $103,627.06 thus leaving fair market value of such timber not yet received in the amount of $84,300.46.

8. In their claims for refund and in this suit Plaintiffs claimed that payments made to them by Owens-Illinois under the timber contract aforementioned were entitled to capital gains tax treatment under the provisions of Section 63 l(b) of the Internal Revenue Code, contending that they had retained an economic interest in the timber; and also under claim that the timber contract was in fact an executory contract *to buy* and *to sell* timber annually, which ripened into a contract *of sale* annually as payments were made. However, the claim under Section 631(b) and under the executory contract theory were abandoned for purposes of this suit in pretrial stipulation filed herein; and Plaintiffs rely altogether in this suit on the provisions of *Revenue Ruling 62-81* which is based on the fair market value of the timber on the lands when the contracts were entered into.

Conclusions of Law

1. This Court has jurisdiction over the parties and of the subject matter of this action under Title

28, United States Code, Section 1346(a).

2. The Internal Revenue Service incorrectly determined that Plaintiffs had received proceeds under the long term timber contract with Owens-Illinois in excess of the fair market value of the timber on the lands when the contract was entered into.

3. Under *Revenue Ruling 62-81,* 1962-1 Cum. Bull. 153, Plaintiffs are allowed long term capital gains tax treatment on proceeds received under the long term timber contract to the extent of the fair market value of the timber on the lands when the contract was entered into.

4. Plaintiffs had not received in the years herein involved proceeds under the timber contracts in excess Of the fair market value of the timber on the lands when the contracts were entered into, and therefore did not owe the additional taxes assessed by the internal Revenue Service for the taxable years herein involved, and are entitled to a judgment against the Defendant for the amount of $9,359.28, plus interest thereon, and costs, as provided by law.

[John C. Camp]

Findings of Fact and Conclusions of Law

SCOTT, District Judge: 1. This is an action by Plaintiffs for refund of federal income taxes and interest paid by the Plaintiffs to the Internal Revenue Service. Specifically, Plaintiffs seek recovery of $3,962.80, plus interest, for the calendar years 1970 and 1971.

2. The Plaintiffs are husband and wife residing in Jasper, Hamilton County, Florida, and timely filed their income tax returns, Forms 1040, for the taxable years involved, and paid the tax shown thereon to be due. The Internal Revenue Service, upon audit of the Plaintiffs' tax returns for said years, determined deficiencies in tax, including interest, in the amount of $1,833.95 for 1970 and $2,128.85 for 1971. This additional tax with interest was paid by Plaintiffs on February 23, 1973. On March 12, 1973, Plaintiffs properly filed claims for refund on Form 843 for the said additional tax and interest. The claims for refund were disallowed on August 27, 1973. Such claims for refund are the basis of this action.

3. In their tax returns for said years Plaintiffs reported as long term capital gains proceeds received by them in those years from Owens-Illinois, inc., (Owens-Illinois) under a 66-year timber contract entered into on December 29, 1959, by Plaintiffs and other members of the Camp family who were joint Owners of 10,416 acres of timber lands located in Hamilton County, Florida. Upon audit of said returns by the Internal Revenue Service it was determined by the Service that timber sale proceeds under said contract for the taxable years in question were taxable as ordinary income and not as capital gains. The Internal Revenue Service determined that such timber sale proceeds were in excess of the fair market value of the timber on the lands when the contract was entered into and, therefore, not entitled to long term capital gain tax treatment under *Revenue Ruling 62-81,* 1962-1 Cum. Bull. 153.

4. Prior to entering into the contract on December 29, 1959, Owens-Illinois and the joint owners

of the timber lands and timber had Southern Timber Management Service, Inc., a timber cruising firm, to cruise the timber for the sole purpose of determining the volume of merchantable timber on the lands, and on the date of the contract the owners collectively sold and Owens-Illinois purchased 12,541,1 t0 board feet of sawtimber measuring I 1.I inches and over in diameter, 4½ feet from the ground for the contract price of $30 MBF, and the owners agreed to sell annually thereafter for the term of the contract and Owens-Illinois agreed to purchase annually one cord of pulpwood per acre at the price of $4.25 per cord under the terms of the contract.

5. The cruise of merchantable timber on the lands was to determine the. amount of sawtimber measuring 11.1 inches and over in diameter, 4½ feet from the ground and the balance of the merchantable timber was to serve as a basis for determining the amount of merchantable timber to be left on the lands at the end of the 66-year contract term. Value of such timber was not considered in the cruise and did not become important until *Revenue Ruling 62-81* was issued more than two years later.

6. By the terms of the timber contract Owens-Illinois was required to pay annually the ad valorem taxes assessed against the lands and timber, and in addition, it assumed the full responsibility, liability and expense in the management and protection of the lands and timber in accordance with good and recognized forestry practices; and for an additional payment of twenty-five (25) cents per acre per year rent, the owners granted to Owens-Illinois the full and complete use of the lands other than those granted for the purpose of growing and harvesting timber. This rent was reported by Plaintiffs and the other joint owners of the lands on their respective income tax returns as ordinary income.

7. The Court sitting without a jury based on expert testimony determines that the fair market value of the timber, merchantable and pre-merchantable, on the lands when the contract was entered into on December 29, 1959 was $1,912,100.32. Through the taxable year 1971 the joint owners of the timber lands under the contract had received proceeds from the sale of timber under the contract in the total sum of $926,560.58, thus leaving at that time fair market value of such timber not yet received in the amount of $985,539.74.

8. In their claims for refund and in this suit Plaintiffs claimed that payments made to them by Owens-Illinois under the timber contract aforementioned were entitled to capital gains tax treatment under the provisions of Section 631(b) of the Internal Revenue Code, contending that they had retained an economic interest in the timber; and also under claim that the timber contract was in fact an executory contract *to buy* and *to sell* timber annually, which ripened into a contract of *sale* annually as payments were made, However, the claim under Section 631 (b) and under the executory contract theory were abandoned for purposes of this suit in pre-trial stipulation filed herein; and Plaintiffs rely altogether in this suit on the provisions of *Revenue Ruling 62-81* which is based on fair market value of the timber on the lands when the contract was entered into.

Conclusions of Law

1. This Court has jurisdiction over the parties and of the subject matter of this action under Title 28, United States Code, Section 1346(a).

2. The Internal Revenue Service incorrectly determined that Plaintiffs had received proceeds under the long term timber contract with Owens-Illinois in excess of the fair market value of the timber on the lands when the contract was entered into.

3. Under *Revenue Ruling 62-81,* 1962-1 Cum. Bull. 153, Plaintiffs are allowed long term capital gains tax treatment on proceeds received under the long term timber contract to the extent of the fair market value of the timber on the lands when the contract was entered into.

4. Plaintiffs had not received in the years in question, proceeds under the timber contract in excess of the fair market value of the timber on the lands when the contract was entered into, and therefore did not owe the additional taxes assessed by the Internal Revenue Service for the taxable years herein involved, and are entitled to a judgment against the Defendant for the total amount of $3,962.80, plus interest thereon, and costs, as provided by law.

[Sallie P. Camp]

Findings of Fact and Conclusions of Law

SCOTT, District Judge: 1. This is an action by Plaintiff for refund of federal income taxes and interest paid by the Plaintiff to the Internal Revenue Service. Specifically, Plaintiff seeks recovery of $2,300.31, plus interest, for the calendar years 1970 and 1971.

2. The Plaintiff resides in Jasper, Hamilton County, Florida, and timely filed her income tax returns, Forms 1040, for the taxable years involved, and paid the tax shown thereon to be due. The Internal Revenue Service, upon audit of the Plaintiff's tax returns for said years, determined deficiencies in tax, including interest, in the amount of $918.50 for 1970 and $1,381.81 for 1971. This additional tax with interest was paid by Plaintiff on February 23, 1973. On March 12, 1973. Plaintiff properly filed claims for refund on Form 843 for the said additional tax and interest. The claims for refund were disallowed on August 27, 1973. Such claims for refund are the basis of this action.

3. In her tax returns for said years Plaintiff reported as long term capital˙ gains proceeds received by her in those years from Owens-Illinois, Inc., (Owens-Illinois) under a 66-year timber contract entered into on December 29, 1959, by Plaintiff and other members of the Camp family who were joint owners of 10,416 acres of timber lands located in Hamilton County, Florida. Upon audit of said returns by the Internal Revenue Service it was determined by the Service that timber sale proceeds under said contract for the taxable years in question were taxable as ordinary income and not as capital gains. The Internal Revenue Service determined that such timber sale proceeds were in excess of the fair market value of the timber on the lands when the contract was entered into and, therefore, not entitled to long term capital gain tax treatment under *Revenue Ruling 62-81,* 1962-1 Cum. Bull. 153.

4. Prior to entering into the contract on December 29, *1959,* Owens-Illinois and the joint owners of the timber lands and timber had Southern Timber Management Service, Inc., a timber cruising

firm, to cruise the timber for the sole purpose of determining the volume of merchantable timber on the lands, and on the date of the contract the owners collectively sold and Owens-Illinois purchased 12,541,110 board feet of sawtimber measuring 11.1 inches and over in diameter, 4 1/2 feet from the ground for the contract price of $30 MBF, and the owners agreed to sell annually thereafter for the term of the contract and Owens-Illinois agreed to purchase annually one cord of pulpwood per acre at the price of $4.25 per cord under the terms of the contract.

5. The cruise of merchantable timber on the lands was to determine the amount of sawtimber measuring 11.1 inches and over in diameter, 4½ feet from the ground and the balance of the merchantable timber was to serve as a basis for determining the amount of merchantable timber to be left on the lands at the end of the 66-year contract term. Value of such timber was not considered in the cruise and did not become important until *Revenue Ruling 62-8I* was issued more than two years later.

6. By the terms of the timber contract Owens-Illinois was required to pay annually the ad valorem taxes assessed against the lands and timber, and in addition, it assumed the full responsibility, liability and expense in the management and protection of the lands and timber in accordance with good and recognized forestry practices; and for an additional payment of twenty-five (25) cents per acre per year rent, the owners granted to Owens-Illinois the full and complete use of the lands other than those granted for the purpose of growing and harvesting timber. This rent was reported by Plaintiff and the other joint owners of the lands on their respective income tax returns as ordinary income.

7. The Court sitting without a jury based on expert testimony determines that the fair market value of the timber, merchantable and pre-merchantable, on the lands when the contract was entered into on December 29, 1959 was $1,912,100.32. Through the taxable year 1971 the joint owners of the timber lands under the contract had received proceeds from the sale of timber under the contract in the total sum of $926,560.58, thus leaving at that time fair market value of such timber not yet received in the amount of $985,539.74.

8. In her claims for refund and in this suit Plaintiff claimed that payments made to her by Owens-Illinois under the timber contract aforementioned were entitled to capital gains tax treatment under the provisions of Section 63 l(b) of the Internal Revenue Code, contending that she had retained an economic interest in the timber; and also under claim that the timber contract was in fact an executory contract *to buy* and *to sell* timber annually, which ripened into a contract *of sale* annually as payments were made. However, the claim under Section 63 l(b) and under the executory contract theory were abandoned for purposes of this suit in pre-trial stipulation filed herein; and Plaintiff relies altogether in this suit on the provisions of *Revenue Ruling 62-81*, which is based on the fair market value of the timber on the lands when the contract was entered into.

Conclusions of Law

1. This Court has jurisdiction over the parties and of the subject matter of this action under Title 28, United States Code, Section 1346(a).

2. The Internal Revenue Service incorrectly determined that Plaintiff had received proceeds under the long term timber contract with Owens-Illinois in excess of the fair market value of the timber on the lands when the contract was entered into.

3. Under *Revenue Ruling 62-81,* 1962-1 Cum. Bull. 153, Plaintiff is allowed long term capital gains tax treatment on proceeds received under the long term timber contract to the extent of the fair market value of the timber on the lands when the contract was entered into.

4. Plaintiff had not received in the years in question proceeds under the timber contract in excess of the fair market value of the timber on the]ands when the contract was entered into, and therefore did not owe the additional taxes assessed by the Internal Revenue Service for the taxable years herein involved, and are entitled
to a judgment against the Defendant for the total amount of $2,300.31, plus interest thereon, and costs, as provided by law.