

POPE & TALBOT, INC. v. COMMISSIONER
515 F.2d 155, 75-1 U.S.T.C. ¶9424 (1975)

Editor's Summary

Key Topics

CUTTING AS A SALE OR EXCHANGE

- Gain or loss, alternative tax
- How computed

Facts

The taxpayer was engaged in the manufacture and sale of timber products. During 1966 and 1967 the taxpayer was bound by a previous election to treat the cutting of its timber in accordance with Section 631(a). The Commissioner made a substantial upward adjustment in taxpayer's fair market valuation for 1966. The result, an equal change in both cost of sales and capital gains, produced no change in taxable income.

In computing the alternative tax pursuant to Section 1201(a), the taxpayer reduced the amount of gain resulting from the election under Section 631(a) by the corresponding loss which resulted from including the timber appreciation in cost of sales. The Commissioner refused to allow the taxpayer to offset Section 631 (a) gains by including the appreciation in the cost of sales. Without allowance for such a deduction, taxpayer's liability was lower when computed in the regular manner than it was when computed under Section 1201(a). The Commissioner consequently computed taxpayer's liability without regard to alternative tax provisions.

The taxpayer contended that, in computing the alternative tax under Section 1201(a) for both 1966 and 1967, the gain resulting from the election under Section 631 (a) should be reduced by an amount equal to the operating loss which resulted from the inclusion of the timber's appreciation in the cost of sales.

Tax Court

[Opinion at 10 T.T.J. 149]

Held: For the Commissioner. The Court rejected taxpayer's contention that gain produced by Section 631(a) election should be reduced by the net operating losses produced by that election when calculating tax liability under Section 1201(a). The Court adhered to its previously stated rule that, in computing the alternative tax under Section 1201(a), the net long-term capital gain on which the tax shall be computed is not reduced on account of any excess of deductions over other income. There is no assurance that a taxpayer who elects treatment under Section 631(a) will always be benefited by his choice. To adopt the taxpayer's argument would, the Court

explained, be tantamount to valuing the timber for purposes of Section 631(a) at an amount less than its fair market value as of the first of the year.

Court of Appeals

Held: For the Commissioner. The Court of Appeals affirmed the Tax Court's holding that, in computing the Section 1201 alternative tax, the taxpayer could not reduce the long-term timber capital gain by the excess of expenses and deductions over other income, even though the excess of expenses and deductions is attributable to the valuation of the timber pursuant to Section 631(a). If the failure to permit such reduction results in a situation in which the alternative tax is greater than the normal corporate rate of tax, then the amount of tax liability is simply the amount computed at the normal rate.

Case Text

PER CURIAM: This case involves an appeal from the Tax Court, 60 T. C. 74 (1973), and is concerned with the interaction of sections 1201 (a) and 631(a), Internal Revenue Code of 1954, as applied to a taxpayer who elected to consider his cutting of timber as a sale or exchange pursuant to section 631 (a). The taxable years in question are 1966 and 1967.

Under section 631 (a) the cutting of timber by a taxpayer who has elected its benefits and who meets the 6 months holding period is treated as capital gain to the extent of the difference between the fair market value, determined as of the first day of the taxable year in which cut, and the adjusted basis for depletion of such timber. This fair market value is also treated as the cost of such timber "for all purposes for which such cost is a necessary factor." In computing the alternative tax, made available by section 1201(a) to corporations whose net long term gains exceed net short term capital losses, capital gains derived from timber cutting may be quite large, other income quite small, and expenses and deductions (including cost of goods sold derived in substantial part from the fair market value of cut timber) quite large. Under such circumstances the issue arises whether any excess of such expenses and deductions over other income can be used to reduce the capital gains from timber cutting in computing the alternative tax. The failure to permit such reduction results in situations in which the alternative tax is greater than the normal corporate rate of tax applied to all taxable income including capital gains. When this is the case the proper tax is that computed without reference to the alternative tax. Capital gains, as a result, are treated as other income. This is the situation here. The taxpayer insists that such a reduction is required. The Commissioner thinks differently and assessed deficiencies based on his view.

The Tax Court held for the Commissioner. We affirm. The Tax Court's opinion dealt properly with all the contentions of the taxpayer and nothing would be added by our repetition of the views there expressed. We find them convincing.

Affirmed.