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Revenue Ruling 57-565

SECTION 1221. CAPITAL ASSET DEFINED

July 1957

A taxpayer who sells the unsubdivided part of a tract of land, a part of which has been subdivided into lots for sale, is not in the business of selling real estate as to the unsubdivided part and the sale thereof constitutes the sale of a capital asset within the meaning of section 1221 of the Internal Revenue Code of 1954. In determining the purchase price, all payments assumed by the purchaser relating to the purchase should be included.

Advice has been requested with respect to the treatment of a sale of the unsubdivided part of a tract of land, a part of which was subdivided into lots for sale. Advice has also been requested as to the amount of the purchase price where taxes and certain fees are involved.

In 1945, the taxpayer, with the following specific purposes in mind, purchased a tract comprised of 300 acres of undeveloped land. On a 50-acre parcel of the land, he established a nursery; he held a 45-acre wooded section for speculation; he subdivided 140 acres having water frontage into lots for sale, most of which he has sold; and he held the remaining 65 acres of unimproved land as an investment. In 1956, he entered into an agreement to sell the 65 acres of unimproved land for a stipulated amount. The purchaser also agreed to pay an amount equal to any taxes which the taxpayer may become liable for as a result of the sale. In addition, the purchaser will pay all of the legal and accounting fees incident to the sale.

Under section 1221 of the Internal Revenue Code of 1954, a capital asset is defined as property held by the taxpayer, whether or not connected with his trade or business, but not including property held by the taxpayer primarily for sale to customers in the ordinary course of business.

The facts here under consideration are substantially similar to those present in *J. O. Chapman et ux. v. Commissioner*, Tax Court Memorandum Opinion, entered May 4, 1944, and *Alexander Weil et al. v. Commissioner*, Tax Court Memorandum Opinion, entered June 3, 1944, in each of which cases the taxpayers had subdivided a portion of a larger tract of land for the purposes of sale and in the taxable years in question had made sales of lots from the subdivided portion and sales from the remaining unsubdivided portion. The court held that the sales of subdivided lots were in the regular course of business while the sales from the unsubdivided portion were sales of capital assets. The following opinion was expressed by the court in the Weil case:

We do not think, however, that the balance of the Kington tract exclusive of Ebony Acres was property held by petitioners primarily for sale to customers in the ordinary course of any trade or business. They had not subdivided any of this property. They were not

advertising it for sale. They merely continued to hold it as they had held it from the beginning.

In *Wagegro Corporation v. Commissioner*, 38 B. T. A. 1225, acquiescence, C. B. 1939-1 (Part 1) 36, it was held that a fee of \$750 paid by the purchaser of common stock in discharge of an obligation to a law firm must be regarded as part of the purchase price of such stock, for as provided in the original offer and acceptance the purchaser paid the fee in discharge not of its own obligation, but in discharge of petitioner's obligation to the law firm. This was tantamount to a payment from the purchaser to the seller and should be so treated.

Accordingly, it is held that a taxpayer who sells the unsubdivided part of a tract of land, a part of which has been subdivided into lots for sale, is not in the business of selling real estate as to the unsubdivided part and the sale thereof constitutes the sale of a capital asset within the meaning of section 1221 of the Code. In determining the purchase price, all payments assumed by the purchaser relating to the purchase should be included.