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TAXATION — SALE OF LAND WITH FRUIT ON TREES — GAIN OR PROFITS FROM SALE OR EXCHANGE

Plaintiff sold an orange grove with an immature crop growing thereon and reported the sale on her income tax return as a gain from the sale of a capital asset held for more than six months. The Commissioner of Internal Revenue disallowed a portion of the claim, holding that since crops are produced with the primary purpose of selling them to customers in the ordinary course of business or trade they are to be taxed as ordinary income. This suit was instituted to recover the sum paid in accordance with the Commissioner's orders. Held, that citrus fruits follow the land until separated therefrom; and, when sold as a package with land and trees, profits from the sale thereof may be considered as a gain from the sale of a capital asset. *Irrogan v. Fahs*, 94 F. Supp. 206 (S.D. Fla. 1950).

The question whether gain from unpicked citrus fruit sold with land and trees is taxable as a capital gain or as ordinary income is determined by Section 117(j) of the Internal Revenue Code.¹ Gains and losses under Section 117(j)² may result from the sale or exchange of depreciable business property (held more than six months), or from the sale or exchange of real property (held more than six months) used in the trade or business — excluding inventory property and property held primarily for sale to customers in the ordinary course of business. In the main requirements of Section 117(j), as applied to the sale of fruit from groves,³ are generally well settled: that production of fruit from groves constitutes a trade or business;⁴ that groves are subject to depreciation⁵ but that growing fruit is considered as not subject to depreciation;⁶ and that growing crops are not considered inventory property.⁷

However, the major problem in applying Section 117(j) is to determine what is "property held primarily for sale to customers in the ordinary course of business." One difficulty seems to be in construing what is meant by "primarily" — does it mean the purpose for which property is held at the time of sale (thereby bringing the sale within the section and creating a capital gain) — or does it mean the purpose for which it is originally acquired (thereby making the sale taxable as ordinary income)? In an admin-

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² In general the section applies to three different types of transaction in all of which, assets must have been held more than six months: (1) sales and exchanges (2) involuntary conversions (3) sales of timber as in Section 117(k).
³ *Hill, Ordinary Income or Capital Gain on the Sale of an Orange Grove*, 4 MIAMI L.Q. 145 (1950).
⁶ See note 3 supra.
CASES NOTED

ISTRATIVE RULING the Bureau of Internal Revenue felt the latter to be the better view, whether the fruit is severed from the realty or not. The Bureau's failure to treat the unsevered crop as part of the realty raises the second difficulty: whether "realty" should be given equal weight with the other requirements of Section 117(j). Since a sale or exchange of property must be characterized as a sale of real, or depreciable, property held for six months, and then considered in the light of the Code's negative requirements, it is obvious that all portions of the section must be given equal consideration before the sale can be considered as a capital gain or loss. Once accepted as of equal weight, the definition of real property must be sought in the general law, since the Internal Revenue Code does not define it. The general rule, with which Florida is in accord, is that unsevered fruit is part of, and passes with, the realty.

The instant case follows the general rule regarding unsevered fruit on realty, thus supporting the "purpose for which held" interpretation of the word "primarily." However, the court reinforces its characterization of real property, by viewing real property as a state-created right which the Federal Government may tax. It is on this basis that the court specifically refuses to enforce I.T. 3815, and holds that a single sale of land and fruit trees with immature, unsevered fruit is not such a sale of "property held primarily for sale" in the ordinary course of business. There is left, however, for future determination, the problem of whether mature, unsevered fruit, sold as a package with land and trees, is also to be considered a single sale, a problem which could be of considerable interest to citizens of Florida.

TORTS—LIABILITY OF CHARITABLE INSTITUTIONS FOR NEGLIGENCE

Plaintiff, a paying patient in defendant corporation's non-profit hospital was injured through the negligence of nurses employed by the hospital. Plaintiff brought an action for damages. Held, that an incorporated charity

8. I.T. 3815, 1946-2 COM. BULL. 30. Administrative rulings are interpretations by the Bureau or the Treasury Department of tax law in the United States Code and Treasury Regulations. Of these rulings, only Treasury Decisions (T.D.) are binding as precedent. Treasury Regulations, and the Instructions on the tax blanks, are the only legally binding constructions of tax law interpreted by the Treasury Department.
9. See Crane v. Comm'r, 331 U.S. 1, 6 (1946).
10. 1 WILLOWTON, LAW GOVERNING SALE OF GOODS, § 61 (Rev. ed. 1948).
11. Adams v. Adams, 158 Fla. 173, 28 So.2d 254 (1946) (fruit on the trees of homestead land went to widow as part of the realty).
12. The Commissioner may appeal to the United States Supreme Court or file a notice of acquiescence or non-acquiescence. Further than that, the Treasury Department is not required to adhere to other than United States Supreme Court decisions. However, within each district, federal court decisions are precedent.
13. Supra note 8.
14. This court found that petitioner's business was that of growing fruit to maturity and selling such fruit as distinguished from buying and selling groves. 94 F. Supp. 206.