

asset within the meaning of § 1221 of the Code, and its cost is nondeductible. Cf. *Commissioner v. Lincoln Savings & Loan Assn.*, 403 U.S. 345 (1971) [Ct. D. 1948, C.B. 1971-2, 116]; *Old Colony R. Co. v. United States*, 284 U.S. 552 (1932); 26 CFR § 1.461-1.

We reject the contention that while the Class "C" stock may be a capital asset, it is worth only \$1,<sup>15</sup> and that the additional \$99 paid for each share must represent interest. Were we dealing with the traditional corporate structure in this case, the taxpayers' argument would have strength. But, as we have pointed out previously, the essential nature of cooperatives and corporations differs. The value of the Class "C" stock derives primarily from attributes other than marketability. The stock has value because it is the foundation of the cooperative scheme; it insures stability and continuity. The stock also has value because it enables the farmers to work together toward common goals. It enables them to share in a venture of common concerns and to reap the rewards of knowing that they can finance themselves without the assistance of the Federal Government. It is perhaps debatable whether these attributes should properly be valued at \$100 per share, but we are not called upon merely to resolve a question of valuation. Rather, we must decide whether it is artificial to characterize these unique expenditures as payments for a capital asset. We find that it is not.

The taxpayers and the Government each allege that the other is looking at form rather than substance. At

<sup>15</sup> It is by no means clear that the Class "C" stock is worth only \$1 even under a traditional market value analysis. The lower courts failed to include the value of the patronage and surplus dividends in computing the value of the quarterly purchases. The Class "C" stock may, therefore, be worth considerably more than \$1, although the Government concedes that it is not worth \$100. Because of the result we reach in this case, we have no occasion to make a final determination as to what value the stock would have under a market value analysis.

some point, however, the form in which a transaction is cast must have considerable impact. *Guterman, Substance v. Form in the Taxation of Personal and Business Transactions*, 20 N.Y.U. Inst. Fed. Tax 951 (1962). Congress chose to make the taxpayers buy stock; Congress determined that the stock was worth \$100 a share; and this stock was endowed with a long-term value. While Congress may have been able to achieve the same ends through additional interest payments, it chose the form of stock purchases. This form assures long-term commitment and has bearing on the tax consequences of the purchases.

Accordingly, the decision of the Court of Appeals is reversed and the case is remanded with direction that judgment be entered for the United States.

*It is so ordered.*

MR. JUSTICE BLACKMUN took no part in the consideration or decision of this case.

**26 CFR 1.1221-1: Meaning of terms.**

Treatment of certain leaseholds as capital assets or other than capital assets. See Rev. Rul. 72-85, page 234.

**Section 1222.—Other Terms Relating to Capital Gains and Losses**

*26 CFR 1.1222-1: Other terms relating to capital gains and losses. (Also Sections 1001, 1014; 1.1001-1, 1.1014-5.)*

The Revenue Service will follow the holding in *Beulah Eaton McAllister* that the life tenant's sale of her entire interest in a testamentary trust to the remainderman is a sale of a capital asset.

**Rev. Rul. 72-243**

The Internal Revenue Service will follow the decision of the United States Court of Appeals for the Second Circuit in the case of *Beulah Eaton McAllister v. Commissioner*, 157 F. 2d 235 (1946), certiorari denied, 330 U.S. 826 (1946), which held that the pro-

ceeds received by the life tenant of a testamentary trust in consideration for the transfer of her entire interest in the trust to the remainderman, are to be treated as an amount realized from the sale or exchange of a capital asset under section 1222 of the Internal Revenue Code of 1954.

With respect to such sales made on or before October 9, 1969, the selling life tenant's basis attributable to his life interest at the time of the sale is determined pursuant to the rules provided in section 1.1014-5 of the Income Tax Regulations (or the corresponding provision of prior regulations) in effect on the date of the sale.

With respect to such sales made after October 9, 1969, the life tenant's basis attributable to his life interest at the time of the sale is considered to be zero, pursuant to section 1001(e) of the Internal Revenue Code of 1954 as added by the Tax Reform Act of 1969. See section 1.1001-1(f) of the regulations.

**26 CFR 1.1222-1: Other terms relating to capital gains and losses.**

Holding period of a capital asset acquired as a result of a Federal tax sale. See Rev. Rul. 72-200, below.

**Section 1223.—Holding Period of Property**

*26 CFR 1.1223-1: Determination of period for which capital assets are held. (Also Section 1222; 1.1222-1.)*

The purchaser's holding period of real property acquired at a Federal tax sale commences upon the expiration of the owner's redemption period and the execution of a deed to the purchaser.

**Rev. Rul. 72-200**

Advice has been requested as to the commencement date of the holding period of a capital asset, for capital gain or loss purposes, in the hands of a person who acquired the asset under the circumstances described below.

The Internal Revenue Service seized and levied upon certain real property,