

**KDI NAVCOR, INC. v. COMMISSIONER**  
**35 CCH Tax Ct. Memo. 341, 1976 P-H Tax Ct. Memo. 76,077 (1976)**

*Editor's Summary*

*Key Topics*

CUTTING AS A SALE OR EXCHANGE

- Gain or loss, alternative tax
- How computed

LOSSES

- Business losses
- Do not reduce Sec: 631(a) gain
- Carryback of net operating losses

*Facts*

The taxpayer is the surviving corporation following the merger of four corporations, including the Yamhill Lumber Company. In 1969, Yamhill had Section 631(a) gains of \$484,489. During the same year, Yamhill's expenses exceeded ordinary income by \$162,867.

In computing the alternative tax under Section 1201, Yamhill reduced the amount of gain resulting from the election under Section 631(a) by the excess of expenses over ordinary income. Taxpayer contended that the capital gains should be offset by the operating loss. Alternatively, the taxpayer sought to treat the excess of expenses over ordinary income as a net operating loss for taxable year 1969. The Commissioner disallowed the reduction of Section 631(a) gain by the excess of expenses over ordinary income in computing the alternative tax and sought to hold the taxpayer liable for the resulting deficiency as a transferee of assets without consideration within the meaning of Section 6901.

*Tax Court*

**Held:** For the Commissioner. The Court rejected the taxpayer's contention that gain produced by a Section 631(a) election should be offset by the operating loss when calculating tax liability under the alternative tax. The Court reaffirmed its well settled rule that, in computing the alternative tax under Section 1201, the net long-term gain on which the tax is computed may not be reduced on account of an excess of deductions over other income. The court also rejected taxpayer's contention that the excess of expenses over ordinary income should be treated as a net operating loss deduction for taxable year 1969, The fact that a net operating loss occurs in a taxable year does not, of itself, establish that the taxpayer is entitled to a net operating loss deduction since the loss would be carried back or forward to other tax years, not before the Court in this case. As a

transferee of assets with no consideration, taxpayer was liable for the tax deficiency.

### *Case Text*

FORRESTER, Judge: Respondent has determined a deficiency in Yamhill Lumber Company's (Yamhill) income tax in the amount of \$44,788 for its taxable year ended September 30, 1969. Respondent seeks to hold petitioner KDI Navcor, Inc. (KDI), liable for the deficiency as a transferee of Yamhill's assets. The first issue before us is whether, in computing the section 1201(a) alternative tax, the excess of operating expenses over ordinary income can offset Yamhill's capital gains resulting from a section 63 l(a) election. The second issue is whether Yamhill incurred a net operating loss for its taxable year 1969,

### *Findings of Fact*

All of the facts have been stipulated and are so found.

Yamhill was a corporation formed under the laws of Montana having its principal office in White Sulphur Springs, Montana. Yamhill filed its Federal income tax return on an accrual basis for its taxable year ended September 30, 1969, with the Internal Revenue Service Center, Ogden, Utah.

Petitioner is a corporation formed under the laws of Delaware having its principal office at Cincinnati, Ohio.

On or about October 23, 1969, Yamhill, two other Montana corporations and KDI merged into one corporation, petitioner being the surviving corporation. The merger agreement provided that the surviving corporation would be governed by the laws of Delaware. The merger agreement also provided that Yamhill would transfer all its assets to petitioner for no consideration.

Because of Yamhill's transfer of its assets for no consideration, petitioner is a transferee of those assets within the meaning of section 6901, and petitioner has so stipulated.

During its taxable year 1969, Yamhill was engaged in the lumber business and, pursuant to an election under section 631(a), Yamhill had capital gains of \$485,489. During 1969 Yamhill's expenses exceeded ordinary income by \$162,867.

### *Opinion*

The first issue for our decision has been long settled in this Court. Petitioner may not offset capital gains by the excess of expenses over ordinary income when computing its tax liability under section 1201(a). *Walter M. Weil* [Dec. 20,682], 23 T. C. 424 (1954), *affd.* [56-1 USTC ¶9257] 229 F. 2d 593 (6th Cir. 1956); *Chattier Real Estate Co.* [Dec. 29,601], 52 T. C. 346 (1969), *affd per curiam* [70-1 USTC ¶9429] 428 F. 2d 474 (1st Cir. 1970); *Pope & Talbot, Inc.* [Dec. 31,924], 60T. C. 74 (1973), *affd per curiam* [75-1 USTC ¶9424] 515 F. 2d 155 (9th Cir. 1975). The authorities are strong and explicit; we see no reason to reiterate our position. As to the second issue, the only year before us is fiscal 1969. Petitioner's position is that Yamhill

incurred a net operating loss in 1969 because its operating expenses exceeded its ordinary income. However, even if so, that loss would not affect 1969 but would be carried forward or back to other years not before us. Sec. 172: It follows that this issue must also be decided for respondent Cf. *LTV Corp.*, 64 T. C. 589 (1975).

*Decision will be entered for the respondent.*

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1 Unless otherwise indicated, all statutory references are to the Internal Revenue Code of 1954.