

RUTLAND v. TOMLINSON
63-1 USTC ¶9173; 11 AFTR 2d 500 (M.D. Fla. 1962).
Aff'd per curiam 327 F.2d 668; **64-1 USTC ¶ 9267;**
13 AFTR 2d 744 (5th Cir. 1964).

Editor's Summary

Key Topics

OUTRIGHT SALE - CAPITAL GAIN v. ORDINARY INCOME

- Substantial continued sales by person of varied occupations

Facts

The taxpayer, whose business activities included men's clothing, ranching, citrus growing and banking, purchased real estate on which there was a substantial stand of timber. He did not advertise the timber for sale, list it with a broker or sales agent, or devote more than a small amount of time to his timber activities, but he did make continued and repeated sales of timber over a period of years, the proceeds from which exceeded \$100,000. The taxpayer treated this income as capital gain. The Commissioner contended that it was instead *ordinary* income on the ground that the taxpayer held the timber for sale to customers in the ordinary course of his trade or business.

District Court

Held: For the Commissioner. When the taxpayer acquired the real estate, he did so with full knowledge that substantial stands of timber were on the land. The timber was manifestly a valuable asset to be sold on such terms as would result in substantial profits. Since sales were made over a period of four years and the proceeds received in each year were substantial, the court is of the opinion that the facts reflect an orderly continuity of effort consistent only with the conclusion that such sales were regarded as being made in the ordinary course of the taxpayer's business.

Court of Appeals

Held: Affirmed per curiam. [Court of Appeals' opinion is not reprinted.]

Case Text

FINDINGS OF FACT

McRAE, JR., District Judge: After pre-trial of this case it was apparent to the Court and to counsel for the respective parties that there was no dispute as to any material fact, and that final hearing could properly be held upon an agreed statement of facts. The Court accordingly finds that the Stipulation entered into by counsel for the parties incorporates all facts required for

disposition of this case. No further findings of fact are required, apart from the facts as they affirmatively appear in the undisputed record in this case. In the opinion of the Court, it would be helpful, however, to comment upon certain of the facts relating to the sales of timber.

Plaintiff was not engaged in a single business, occupation or profession. His activities were diversified during the times involved in this case and included, among other things, the operation of a men's clothing business, ranching, citrus growing and banking. The sale of timber from the property located in the Manatee Valley Drainage District is regarded by the Court as being just as truly a "business" of Plaintiff as any one of the other activities in which he engaged. It would be impossible to single out any one business as constituting *the* business of Plaintiff. When Plaintiff acquired the real estate in the Manatee Valley Drainage District, he did so with full knowledge that substantial stands of timber were on this land. This timber was manifestly a valuable asset to be sold by him on such terms as would result in substantial profits. The Court regards this timber as property held by Plaintiff taxpayer primarily for sale to customers in the ordinary course of his trade or business. Since sales were made over a period of four years and the proceeds received from these sales were in each year substantial, the Court is of the opinion that these facts reflect an orderly continuity of effort on the part of Plaintiff, which effort can be consistent only with the conclusion that such sales were regarded as being made in the ordinary course of Plaintiff's business.

Although there was no advertising, it is apparent that advertising was not necessary in order to effect the sale of this timber. The Court considers that the sale of the timber over a period of time was just as truly an intent of the taxpayer at the time of the purchase of the land as was the use of the land for other and different purposes. Little importance can be attached to the fact that Plaintiff devoted a relatively small amount of time to his timber activities. The growth and sale of timber requires less time than the cultivation of annual crops, the production of citrus, or the running of a ranch.

The fact that the timber was not listed with a broker or a sales agent is of no importance, as it is clear that the Plaintiff himself was a good business man and had no difficulty in making arrangements for the sale of the timber. There is no dispute that the sales were continued and repeated over a substantial period of time, and that the proceeds from these sales, in the aggregate, exceeded \$100,000.00.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and the subject matter of this case.
2. A taxpayer who owns all of the outstanding bonds issued by a drainage district and approximately ninety-five per cent of the land located within the district, on the facts as they appear in the present case, is entitled to deduct taxes paid by him to the district and levied for the purpose of defraying maintenance charges and interest upon said bonds.
3. The Manatee Valley Drainage District, created under the provisions of Chapter 10894, Special Acts of Florida, 1925, was and is a validly created political subdivision of the sovereign State of

Florida, with authority to issue bonds, to levy special assessments against benefited lands within the district for maintenance charges, and to pay the principal and interest of bonds issued by such district. Plaintiff had nothing to do with the establishment of the district and came into the picture many years after its creation.

4. The contention of Defendant that Plaintiff, as owner of all the bonds and approximately ninety-five per cent of the lands of the district, is in reality the district is not supported by the facts of this case or by the applicable law. The Court feels bound by the decision of *Commissioner of Internal Revenue v. The Birch Ranch and Oil Co.* 13 T. C. 930, affirmed, C. A. 9, 192 F.2d 924. *Birch* appears to the Court to be a well-reasoned case properly applying the provisions of 26 U. S. C. A. 164, and to be indistinguishable on any real or substantial grounds from the facts in the present case.

5. The facts of the present case are in harmony with the holdings in *Prudence Securities Corp. v. Commissioner*, C.C.A. (2) 135 F.2d 340, and *Knetsch v. U. S.*, 364 U. S. 361, 5 L. Ed. 2d 128, 81 Sup. Ct. 132. It is the opinion of the Court that neither of these cases casts any shadow on or raises any doubt as to the holdings in *Birch*.

6. Section 298.50, Florida Statutes, 1961 (Chapter 298, Florida Statutes, contains the present provisions applying to the Manatee Valley Drainage District) imposes upon the board of supervisors of a drainage district the obligation to make an annual tax levy in such a way as to take into account the maturing bonds and interest on all bonds, and the further obligation to make provision in advance for the payment thereof. The Defendant in this case urges that failure of Plaintiff to provide for a sinking fund or to take any other steps directed toward the retirement of the bonds is proof of economic identity between Plaintiff and the Drainage District, or at least effectual control by Plaintiff of the Drainage District; Defendant further contends that this failure reflects a calculated purpose on the part of the Plaintiff to perpetuate a substantial tax advantage. The Court expresses concern that the provisions of the Florida statute have apparently not been followed, but this failure cannot override the basic applicable provisions of the Internal Revenue Code or the logic of *Birch*. If remedial action is required, the Congress is the appropriate Place to seek it. The Court further observes that a continuation of the present situation for an indefinite period might suggest a reevaluation of plaintiff's Position'. The plain provision of the Code and the holding in *Birch*, however, preclude the Court at this time from accepting the Defendant's contention on this point.

7. The Plaintiff held the timber for sale in the ordinary course of his business, and the timber would thus be neither a capital asset within the meaning of Section 1221 of the Internal Revenue Code of 1954, nor an asset entitled to capital gains treatment under Section 1231 of the Internal Revenue Code of 1954. From the facts as they appear in the record, the taxpayer was in the business of selling timber in the ordinary course of his trade or business.

8. Judgment will be entered in accordance with the foregoing Findings of Fact and Conclusions of Law.