

Rutland v. Tomlison
327 F.2d 668, 64-1 USTC ¶ 9267, 13 AFTR2d 744 (5th Cir. 1964)
Affirming District Court, 63-1 USTC ¶ 9173

[1954 Code Sec. 164]

Deduction: Taxes paid to drainage district: Sole bondholder of district.--A taxpayer who owned all of the outstanding bonds issued by a drainage district and approximately 95% of the land located within the district was entitled to deduct taxes paid to the district which were levied for the purpose of defraying maintenance charges and interest upon the bonds. The district was a validly created political subdivision of the state, the taxpayer had had nothing to do with establishment of the district and the taxpayer and the district were not one in the same person. *The Birch Ranch and Oil Co.*, (CA-9) 51-2 USTC ¶9506, 192 F. 2d 924, followed. District Court affirmed. BACK REFERENCES: 64FED ¶1456.095.

[1954 Code Secs. 1221 and 1231]

Ordinary income v. capital gain: Sales in the ordinary course of business: Timber.--The taxpayer was in the business of selling timber, although he engaged in other businesses, and timber on his land was held for sale in the ordinary course of business. The timber was not a capital asset under Code Sec. 1221 or entitled to capital gain treatment under Code Sec. 1231. District Court affirmed. BACK REFERENCES: 64FED ¶4717.6972.

James H. Walsh, Assistant United States Attorney, Jacksonville, Fla., Edith House, Assistant United States Attorney, Miami, Fla., Louis F. Oberdorfer, Assistant Attorney General, Lee A. Jackson, Harry Baum, Timothy Dyk, Tax Division, Department of Justice, Washington, D. C. 20530, for appellant. S. E. Simmons, 201 Rutland Bldg., St. Petersburg, Fla., for appellee.

Before TUTTLE, Chief Judge, and PHILLIPS * and JONES, Circuit Judges.

PER CURIAM:

The facts here presented are different only in detail from those in *Birch Ranch and Oil Co. v. Commissioner*, 9th Cir. 1951, [51-2 USTC ¶9506] 192 F. 2d 924, affirming *Commissioner v. Birch Ranch and Oil Co.* [CCH Dec. 17,309], 13 T. C. 930. The principles there stated are sound and require the affirmance of the district court.

Affirmed.

* Of the Tenth Circuit, sitting by designation.