

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No.00-60865

JOE C BOYD; DOROTHY J BOYD
Petitioners - Appellants

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent - Appellee

Appeal from the United States Tax Court
(18922-97)

September 26, 2001

Before KING, Chief Judge, and DUHÉ and BENAVIDES, Circuit Judges.

PER CURIAM:*

The taxpayers have failed to persuade us that the settlement agreement is ambiguous. The language that they point to is clear and unambiguous, and giving that language its obvious meaning does not lead to any unacceptable conflict with other terms of the agreement. As the Tax Court pointed out, the agreement provides that pre-opening or start-up expenses associated with Melody Woods will be deductible under Section 162, which allows as a deduction the ordinary and necessary expenses paid or incurred "in carrying on any trade or business." There is, therefore, no inconsistency within the agreement in providing that the gain on the sale of Melody Woods will be treated as

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

long-term gain under Section 1231. What the taxpayers are actually arguing for is reformation to deal with a unilateral mistake, but as the Commissioner points out, only a mutual mistake can lead to reformation.

The judgment of the Tax Court is AFFIRMED.