UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-5240

(Summary Calendar)

CHAPMAN L. SANFORD,

Petitioner-Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Appeal from the United States Tax Court
(13088 92)

July 3, 1995

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:[*]

Chapman L. Sanford appeals from the Tax Court's affirmance of the Commissioner of Internal Revenue's assessment of a deficiency in his 1989 federal income tax payment. We affirm.

Sanford sold property in 1986. Because the buyer paid Sanford in installments, he reported the income from that sale in each taxable year during which he had received a portion of that

[*] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

income.[1] In 1986, he claimed a capital-gains deduction permitted under 26 U.S.C. § 1202 (1982)[2] and reported as income only forty percent of the gain received that year. He did not claim the § 1202 deduction in 1987 or 1988. In 1989, Sanford again claimed the § 1202 deduction for the final payment.

Because Congress had repealed § 1202 for taxable years commencing after December 31, 1986,[3] the Commissioner determined that Sanford was not entitled to a deduction in 1989 and assessed a deficiency of $193,361.[4] The Tax Court affirmed the deficiency assessment. Sanford now appeals the decision of the Tax Court.

Sanford argues that although he chose to use the installment method of reporting his gain, he should reap the benefit of the § 1202 deduction because it was still in effect in 1986 when he sold the property. Section 1001(c) of the Internal Revenue Code provides that, "[e]xcept as otherwise provided in this subtitle, the entire amount of the gain or loss, determined under this section, on the sale or exchange of property shall be recognized." 26 U.S.C. § 1001(c) (1988). "The general rule in tax law is that the entire amount of gain from the sale of property is taxed in the year of sale." *Lustgarten v. Commissioner*, 639 F.2d 1208, 1210

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[1] Sanford received payments from the buyer in installments in the taxable years 1986, 1987, 1988, and 1989.

[2] Prior to its repeal, this section allowed noncorporate taxpayers to claim a sixty-percent deduction of their net capital gains.

[3] *See* Pub. L. No. 99-514, § 301(a), 100 Stat. 2216 (1986) (repealing 26 U.S.C. § 1202).

[4] The deficiency was the difference between the tax owed under the laws in effect in 1989 and the tax owed as reported by Sanford.

(5th Cir. 1981). However, § 1001(d) states that, "[n]othing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received." 26 U.S.C. § 1001(d) (1988).

Sanford contends that § 1001(d) does not operate as an exception to § 1001(c) because it only defers the taxation of his gain, not its recognition. In *Commissioner v. South Texas Lumber Co.*,[5] however, the Supreme Court rejected this view. *See* 333 U.S. at 504-05, 68 S. Ct. at 700-01 (rejecting taxpayer's argument that gains from installment sales should be recognized in year of sale even though not taxed until year of receipt of payment); *cf. Supreme Investment Corp. v. United States*, 468 F.2d 370, 380 (5th Cir. 1972) (noting that § 1001(d) "makes an exception to the general rule of § 1001 that gain is taxable in the year of sale"). Moreover, § 453(c) explicitly states that under the installment method,[6] "the income *recognized* for any taxable year from a disposition is that proportion of the payments *received in that year* . . . ." 26 U.S.C. § 453(c) (1988) (emphasis added); *see also In re Steen*, 509 F.2d 1398, 1404 (9th Cir. 1975) (stating that in § 453, "Congress provided an exception to the general rule that the gain realized on the sale or other disposition of an asset is recognized in the year of sale" (citing *South Texas Lumber Co.*, 333

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[5] 333 U.S. 496, 504-05, 68 S. Ct. 695, 700-01, 92 L. Ed. 831 (1948).

[6] This section defines the "installment method."

U.S. at 503, 678 S. Ct. at 700)).

We therefore hold that Sanford recognized his gain not at the time of the sale, but at the time he received each installment payment. Accordingly, he is subject to the tax laws in effect at the time of each payment, and the gain received in each of those years is taxable under the laws in effect during that year. *See Snell v. Commissioner*, 97 F.2d 891, 893 (5th Cir. 1938) (holding that where a taxpayer "chose to defer realization of the profits on the deferred installments," the deferred profits were taxable "under such provisions of the law as might be of force at their maturity"). Because the § 1202 deduction no longer existed in 1989, Sanford cannot apply it to the installment payment he received in that year. "That the law might be changed, not only in the tax rate but in any other of its provisions, was a risk the taxpayer took in deferring the realization of his gains." *Snell*, 97 F.2d at 893.

For the foregoing reasons, we AFFIRM the decision of the Tax Court and uphold the Commissioner's assessment of a deficiency against Sanford.