

Cary Vs. Commissioner

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Court : US Supreme Court

Decided On : May-26-1941

Appeal No. : 313 U.S. 441

Appellant : Cary

Respondent : Commissioner

Judgement :

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U.S. Supreme Court Cary v. Commissioner, 313 U.S. 441 (1941)

Cary v. Commissioner of Internal Revenue

No. 734

Argued May 1, 1941

Decided May 26, 1941 *

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

SYLLABUS

Decided upon the authority of *Helvering v. Reynolds, ante*, p. [313 U. S. 428](#) . P. [313 U. S. 443](#) .

116 F.2d 800 affirmed.

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Certiorari, 312 U.S. 675, to review judgments which affirmed decisions of the Board of Tax Appeals sustaining income tax assessments.

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Henry M. Flagler died on May 20, 1913. Petitioners are legatees under a testamentary trust created under his will. The trust continued for a period of ten years from his death and terminated on May 20, 1923. As of that time, the trustees delivered to petitioners [[Footnote 1](#)] certain securities which were sold by them in 1934 and 1936. The question presented is whether the basis for computing gain or loss on such sales under 113(a)(5) of the Revenue Acts of 1934, 48 Stat. 680, and 1936, [[Footnote 2](#)] 49 Stat. 1648, is the value of the securities when delivered to the legatees or their value on the date of death of the decedent. Petitioners make substantially the same

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argument for application of the former criterion as did respondent in *Helvering v. Reynolds, ante*, p. [313 U. S. 428](#) . And they contend that, under Florida law, they had, at the date of death, only contingent interests. But, assuming they are correct in the latter contention, it is of no avail. For the reasons stated in *Helvering v. Reynolds, supra*, the proper basis was the value of the securities at the death of the decedent. Accordingly, the judgments of the court below (116 F.2d 800) must be affirmed.

THE CHIEF JUSTICE and MR. JUSTICE ROBERTS dissent for the reasons stated in their dissent in *Helvering v. Reynolds*, ante, p. [313 U. S. 435](#) .

* Together with No. 735, *Flagler v. Commissioner of Internal Revenue*; No. 736, *Estate of Flagler v. Commissioner of Internal Revenue*, and No. 737, *Matthews v. Commissioner of Internal Revenue*, also on writ of certiorari, 312 U.S. 675-676, to the Circuit Court of Appeal for the Second Circuit.

[[Footnote 1](#)]

Some securities had previously been delivered to Harry Harkness Flagler, petitioner in No. 735, on April 26, 1921. Annie L. Flagler, whose estate is the petitioner in No. 736, received the securities here involved as a gift from her husband, Harry Harkness Flagler. The situation therefore is the same as to both these parties, since it is stipulated that he had received the securities as indicated above.

[[Footnote 2](#)]

Sec. 113(a)(5) of the 1936 Act, is the same as 113(a)(5) of the 1934 Act. Art. 113(a)(5)-1 of Treasury Regulations 94, promulgated under the 1936 Act, contains provisions identical with those of Art. 113(a)(5)-1 of Regulations 86 under the 1934 Act. The relevant portions of that section and regulation under the 1934 Act are set forth in *Helvering v. Reynolds*, supra.