Rev. Rul. 62-48, 1962-1 C.B. 131, 1962 WL 13480 (IRS RRU)

Internal Revenue Service (I.R.S.)

Revenue Ruling

Published: 1962

26 CFR 1.1015-3: Gift or transfer in trust before January 1, 1921.

(Also 1.1015-2.)

(Also Section 1014; 1.1014-1.)

The basis, for determining gain for Federal income tax purposes, of an Indian allottee's fee simple allotment where the land had previously been held in trust for him by the United States under section 5 of the General Allotment Act of 1887, as amended, is the market value as of the date the fee simple patent is received, except that if such value is less than the basis computed under the rules set forth in Revenue Ruling 58-341, C.B. 1958-2, 400, the latter basis shall apply.

Revenue Ruling 58-341, C.B. 1958-2, 400, modified.

Reconsideration has been given to Revenue Ruling 58-341, C.B. 1958-2, 400, in the light of the decision in *James Shepard et ux.* v. *United States*, 162 Fed.Supp. 313 (1958).

Revenue Ruling 58-341, holds that the basis for determining an original Indian allottee's gain from the sale or exchange of his fee simple allotment, where the land had previously been held in trust for him by the United States under section 5 of the General Allotment Act of 1887, as amended, 25 U.S.C. 348, is its market value as of the date he had received his trust allotment if he had received it prior to January 1, 1921, but not less than the March 1, 1913, value if he had received his trust allotment prior to that date. If the original Indian allottee had received his trust allotment subsequent to December 31, 1920, his basis for determining gain after he has been issued fee simple patent is the March 1, 1913, value.

The Revenue Ruling holds further that if an Indian had inherited such a trust allotment and sold or exchanged the land after he had received fee simple patent, his basis for determining gain is the fair market value as of the decedent's death, but if the decedent had died before March 1, 1913, it was not less than its fair market value as of that date.

The foregoing rules are not applicable in those situations where Congress had provided otherwise in statutes dealing with particular tribes.

In the *Shepard* case the taxpayer, a Potawatomi Indian, was allotted 80 acres of land in trust in 1905 by a certificate of allotment pursuant to the General Allotment Act of 1887. In 1952, the taxpayer informed the Indian agent that he desired to sell the land to enable him to buy a home in another part of the country. Accordingly, the Federal Government issued the taxpayer a fee simple patent on September 23, 1952, immediately following which the latter sold the land for $5,200. In March 1953, the taxpayer filed an income tax return reporting the sale and showing a basis as of March 1, 1913, of $2,800. A timely claim for refund was filed alleging that the basis should have been the value of the land as of September 23, 1952, which the court found was equal to the sale price.

The court held that in order to carry out the language and purposes of the General Allotment Act of 1887, it is necessary that land transferred in fee under the Act after its period of trust carry a basis for tax purposes immediately after the transfer no lower than the fair market value of the land at the time of transfer in fee.

In *Squire* v. *Capoeman, et ux.*, 351 U.S. 1, Ct. D. 1796, C.B. 1956-1, 605, the Supreme Court of the United States held that proceeds from the sale of timber grown on allotted lands while such lands were held in trust by the United States under section 5 of the General Allotment Act were exempt from tax. Under sections 5 and 6 of that Act, the United States was required at the conclusion of the trust period to convey the allotted lands in fee, 'free of all charge or incumbrance whatsoever' with 'all restrictions as to * * * taxation * * * removed.' On the basis of these provisions, the Court found that allotments under the General Allotment Act were exempt from taxation while held in trust and continued to hold that the purposes of the Act required that during that period not only the trust corpus but also the income derived directly therefrom should be preserved free from taxation.

Since imposition of a capital-gains tax upon the appreciation during the trust period of such an allotment would also appear to be at variance with the tax exemption and the purposes of the Act, as construed in the *Capoeman* decision, the Internal Revenue Service will follow the holding of the *Shepard* case in determining an Indian's basis in his fee simple allotment. Insofar, however, as language in the latter case may indicate that the court considered the right of an Indian to receive an allotment 'free of all charge or incumbrance' in itself sufficient to confer an exemption upon income from the land, such language will not be followed.

Accordingly, the basis for determining an Indian allottee's gain from the sale or exchange of his fee simple allotment, where the land had previously been held in trust for him by the United States under section 5 of the General Allotment Act of 1887, as amended, is its market value as of the date he received his fee simple patent. However, in those instances where, for purposes of determining gain upon the sale by an Indian of his fee simple allotment, his basis under the foregoing rule would be less than under the applicable method of computing basis set forth in Revenue Ruling 58-341, basis will be computed in accordance with that Revenue Ruling.

In addition, in any instance in which the taxpayer obtained his trust interest through an arm's length purchase rather than, for example, through allotment, gift, devise or inheritance, the *Shepard* case will not be deemed applicable and under Revenue Ruling 58-341 the taxpayer's cost will be his basis.

Revenue Ruling 58-341 is modified accordingly.

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