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Revenue Rulings

Rev. Rul. 59-171, 1959-1 CB 65, IRC Sec(s). 267

Headnote:

Rev. Rul. 59-171, 1959-1 CB 65 -- IRC Sec. 267

Reference(s): **Code Sec. 267; Reg § 1.267(b)-1**

Where two persons are trustees of separate trusts of a common grantor, deductions for losses sustained on the purchase and sale of securities between the trustees in their capacity as individuals rather than in their capacity as fiduciaries, are not prohibited by  section 267 of the Internal Revenue Code of 1954.

Full Text:

Advice has been requested whether  section 267(b)(5) of the Internal Revenue Code of 1954 prohibits a deduction of a loss sustained as a result of a sale of personally owned securities between individuals who are fiduciaries of trusts established by the same grantor.

B and *C* are trustees of separate trusts created by the same grantor. Solely for his own account, *B* sold at a loss certain securities owned by him personally to *C*. *C* made the purchase for his own account, and not as a fiduciary.

 Section 267 of the Code provides, in part, that in computing taxable income no deduction shall be

allowed in respect of losses from sales or exchanges of property, directly or indirectly, between a fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts.

The legislative history of this section of the Code clearly shows that Congress intended to prevent the original grantor of certain funds from creating artificial deductions for tax avoidance purposes, choosing by artificial means the time for realizing tax losses, or otherwise exercising control over certain trust assets for such Federal tax purpose. To the same effect, Congress intended to prohibit transactions between fiduciaries acting in their capacity as fiduciaries. See House of Representatives Report No. 1546, C.B. 1939-1 (Part 2), 723. However, so long as the trustees of the common grantor are dealing with personal funds, or property not derived from the original grantor, deductions for any losses so sustained are not prohibited by  section 267 of the Code.

Accordingly, the deduction of the loss sustained by taxpayer *B* upon the sale of securities owned by him solely for his own account to the personal account of *C* is not prohibited by  section 267 of the Code.