

4. The facts involved in this appeal are:

a. From February 26, 1965, the date of incorporation of Crothers Bros. Co., until January 3, 1977, petitioner James L. Crothers, II, was the sole shareholder of Crothers Bros. Co., a Delaware corporation.

b. From February 26, 1965, through January 3, 1977, petitioner James L. Crothers, II, was the sole director of Crothers Bros. Co.

c. From February 26, 1965, through January 3, 1977, petitioner James L. Crothers, II, was the president of Crothers Bros. Co.

d. From February 26, 1965, through January 3, 1977, petitioner James L. Crothers, II, exercised full control and direction over Crothers Bros. Co. in his capacities as an officer and director.

e. From February 26, 1965, through March 1, 1976, the principal business activity of petitioner James L. Crothers, II, was the operation of Crothers Bros. Co. In addition, Mr. Crothers devoted part of his time and activities to farming and other business and investment activities not connected with Crothers Bros. Co. Petitioner James L. Crothers, II, has estimated that during this time he devoted 25 percent to 35 percent of his time and activities to farming, business, and investment activities not connected with Crothers Bros. Co.

f. On February 7, 1976, Crothers Bros. Co. adopted a Plan of Complete Liquidation pursuant to §337 of the Internal Revenue Code of 1954, as amended.

g. Pursuant to the said Plan of Complete Liquidation, on February 23, 1976, Crothers Bros. Co. entered into a Bill of Sale and Agreement whereby it agreed to sell substantially all of its operating assets to Townsends, Inc., a Delaware corporation. Such sale was consummated on May 1, 1976.

h. Pursuant to the said Plan of Complete Liquidation, on January 3, 1977, the first business day in calendar year 1977, Crothers Bros. Co. distributed all assets then held by it, including the net proceeds of the sale to Townsends, Inc., to petitioner James L. Crothers, II, in redemption and cancellation of all of his stock in Crothers Bros. Co.

i. The amounts distributed in complete liquidation of Crothers Bros. Co. were full payment in exchange for the Crothers Bros. Co. stock owned by petitioner James L. Crothers, II.

j. On January 20, 1977, a Certificate of Dissolution of Crothers Bros. Co. was filed with the Office of the Secretary of State of Delaware.

k. After the March 1, 1976, sale of substantially all of its operating assets, Crothers Bros. Co. continued active business activities only to the extent necessary to dispose of its inventory of grain. The sale of the Crothers Bros. Co. grain inventory was completed by the end of July 1976. Petitioner James L. Crothers, II, continued to be the sole shareholder and continued to serve as president and sole director of Crothers Bros. Co. through the January 3, 1977, liquidating distribution which is the subject of the issue here in controversy, but his activities as such officer and director consisted only of arranging the sale of the company's grain inventory and supervising the investment of the company's cash assets.

l. Prior to the March 1976 sale of substantially all of its operating assets, Crothers Bros. Co. conducted its hardware and grain business almost exclusively in Delaware.

m. Negotiations and arrangements for the sale to Townsends, Inc., of substantially all of the operating assets of Crothers Bros. Co. were conducted, through its employees and agents, in Maryland and Delaware. The closing of the sale of Crothers Bros. Co. to Townsends, Inc., took place in Delaware.

n. Crothers Bros. Co. had five (5) full-time employees and between five (5) and ten (10) part-time employees (depending upon seasonal need).

o. In addition to his stock in Crothers Bros. Co., petitioner James L. Crothers, II, owned and held for investment numerous other stocks, bonds, and other types of investments. As an illustration of the diversity of the investment holdings of Mr. Crothers, see the Schedule D (Capital Gains and Losses) included within Exhibit B hereto. With the exception of Crothers Bros. Co., petitioner James L. Crothers, II, did not participate in the management of the operation of any investment holding listed on the said Schedule D.

p. The principal business activity of petitioner James L. Crothers, II, during calendar year 1977 was the operation of farms located in the State of Maryland.

q. The Delaware Individual Nonresident Income Tax Return (Form 200 NR) filed by petitioners for taxable year 1977 did not include in petitioners' gross income any part of the gain realized upon the liquidation of Crothers Bros. Co. A copy of the Form 200 NR is attached hereto as Exhibit A.

r. On the Federal Income Tax Return (Form 1040) for taxable year 1977 filed by petitioner, and on the related Income Tax Audit Changes (Form 4549) prepared by the Internal Revenue Service, the gain realized by petitioner James L. Crothers, II, as a result of receiving the liquidation distribution from Crothers Bros. Co. was treated as gain derived from the sale or exchange of a capital asset. Copies of the Form 1040 and the Form 4549 are attached hereto as Exhibits B and C, respectively.

s. Petitioners reported the gain realized upon the liquidation of Crothers Bros. Co. on their 1977 Maryland income tax return (Maryland Form 502-Resident) and paid Maryland income tax with respect to the full amount of such gain.

The parties have both agreed that the pertinent statutory section applicable to the issues herein decided is 30 Del. C. §1122(c), and that the issue before this Board is whether or not monies paid to the petitioners herein in exchange of their corporate stock of a Delaware corporation, in complete liquidation of said Delaware corporation is includable in petitioner's Delaware Income Taxes, and taxable as such, pursuant to the aforesaid §1122(c) of Title 30, Delaware Code.

The statutory section applicable to this instant appeal provides, in pertinent part as follows:

"§1122. Taxable income derived from sources within this State.

...

(c) Intangibles. Income from intangible personal property, including annuities, dividends, interest and gains from the dispositions of intangible personal property, shall constitute income derived from sources within this State only to the extent that such income is from property employed by the taxpayer in a business, trade, commerce, profession or vocation carried on in this State."

The respondent and petitioners agree that the term "taxpayer" as included in 30 Del. C. §1122(c) refer to the petitioners, but adopt the following different views in view thereof:

A. The respondent takes the position that petitioner, because of his position as sole shareholder, as director, and as president of the corporation, Crothers Bros. Co. employed his stock in said corporation in a "... business, trade, commerce, profession or vocation carried on in this State.", and thus was subject to income taxation in Delaware on the gain realized upon the sale of said stock.

B. The petitioner, on the other hand has adopted the position that in order for the gain from the sale or exchange of the stock to be taxable as income in Delaware, that the petitioners must, under the terms of the statute, have used the stock itself, as opposed to the corporation, in a "... business, trade, commerce, profession or vocation carried on in this State.", and that they, as taxpayers have not so used the stock, and thus the gain from the sale or exchange thereof is not subject to income taxation in Delaware.

It is to be noted that the corporation of which Mr. Crothers, one of the petitioners herein, was the sole shareholder, was a Delaware corporation, and as such was engaged in a "... business, trade, commerce, profession or vocation carried on in this State."

It is also to be noted that the Statutory section pertinent to this appeal requires, by its plain language, as a condition precedent for the gain from the sale of intangible personal property to be taxable as income in Delaware, that the personal property sold be used by the taxpayer in the business trade etc.

There has been no evidence submitted to the Tax Appeal Board which would show or tend to show that Mr. Crothers so used his stock in Crothers Bros. Co.

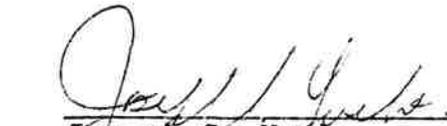
The general rule in the construction of taxing statutes is found in many authorities, but is well put in 71 Am Jur 2d, §448, at Page 748, where it is said to be:

"The provisions of an income tax statute are not to be extended by implication beyond the clear impact of the language used, and in case of doubt are to be construed against the government and in favor of the taxpayer."

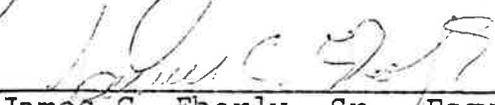
We hold that the plain language of 30 Del. C. §1122(c) does not subject the petitioners to income taxation in Delaware inasmuch as they have not employed their stock, as such, in a "... business, trade, commerce, profession or vocation carried on in this State."

We further hold that the decision should be entered for the petitioners on this instant appeal.

IT IS SO ORDERED.



 Joseph S. Yucht, Esquire
 Chairman



 James C. Eberly, Sr., Esquire
 Vice-Chairman

Cyril W. Cain
Cyril W. Cain, Jr., Member

Harry B. Roberts, Jr.
Harry B. Roberts, Jr., Member

Nettie C. Reilly
Nettie C. Reilly, Member

DATED: November 14, 1980

SYNOPSIS

DOCKET NO. 712

TAX SEGMENT: PERSONAL INCOME TAX

ISSUE: Whether Petitioners now domiciled in the State of Maryland, one of which served in the capacity of sole shareholder, director and president of a Delaware corporation is subject to income taxation under the terms of the statute relating to capital gains derived from the sale or exchange of stock owned by him; and, whether such income was employed in a business, trade, commerce, profession or vocation in this State.

TAB DECISION: The Tax Appeal Board held that no evidence had been submitted which showed or tend to show that Petitioners had so employed their stock, as such, under the terms of the statutory section (Section 1122) in a business, trade, commerce, profession or vocation carried on in this State and; therefore, were not subject to taxation in Delaware.

DECISION: For Petitioners

DECISION DATE: April 10, 1981