

January 1951

Current Developments in Taxation

Albert J. Gould

Kenneth L. Smith

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Albert J. Gould & Kenneth L. Smith, Current Developments in Taxation, 28 Dicta 302 (1951).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

CURRENT DEVELOPMENTS IN TAXATION

BY ALBERT J. GOULD AND KENNETH L. SMITH

of the Denver Bar

TRACING FIRE INSURANCE PROCEEDS INTO COST OF NEW STRUCTURE

Any gain from involuntary conversion of property such as that resulting from destruction, theft, seizure or condemnation, is exempt from taxes by virtue of Section 112 (f) if the proceeds are used to acquire similar properties or to establish a replacement fund. This exemption was construed very strictly in the case of *Oviver Realty Co.*, TC. Memo. No. 25795. Taxpayer's building, destroyed by fire, had an adjusted basis of \$54,000.00 and was subject to a mortgage of \$53,000.00. The taxpayer delivered the insurance money of \$73,000.00 to the mortgagee to be held in a suspense account pending reconstruction. The estimated cost of reconstruction was in excess of the fire insurance proceeds and because the financing terms of the original mortgagee for the rebuilding were unsatisfactory, the taxpayer obtained a loan from a mortgagee other than the one with whom the insurance money was deposited. The taxpayer then authorized the original mortgagee to satisfy its mortgage out of the insurance proceeds. The Court held that since the insurance proceeds were largely used to satisfy the mortgage and since the new building was constructed principally with the proceeds of a new loan, the taxpayer's gain was taxable.

Whenever a taxpayer owns property that is involuntarily converted, full compliance with Sec. 112 (f) should be made.

SALE OF INDIVIDUAL PROPRIETORSHIP

When an individual proprietorship is sold, the valuation of certain assets placed by buyer or seller is important. For instance, a buyer should price inventory and stock in trade high because it is recoverable in cost of goods sold while the seller should price the same low as the gain is not an ordinary gain for tax purposes. Land used in the business should be priced low by the buyer since it is not depreciable and high by the seller since land is a Sec. 117 (j) asset.

Now is the time to renew your membership in the Bar Association for 1951-52. If you have not already done so, see your local Treasurer promptly.