

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

STEPHEN M. GAGGERO,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 21378-03.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	
	)	

**ORDER**

We have already released an opinion in this case. Petitioner moved for reconsideration under Rule 161. The Court assumes the parties know the background facts of the case and motion.

The key “substantial error” in the Court’s original opinion was our failure to understand that the \$3 million that Gaggero paid Blanchard Construction Company (BCC) for improvements on the property had to be reflected in his adjusted basis on the subsequent sale of that property to a third party, Monticello Properties, S.A. (Monticello).

We realized that mistake only after the opinion came out and called the parties to review its consequences. The parties were unable to agree on those consequences, and, instead of Rule 155 computations, we have to redecide this part of the case on this motion.

The Court must grant the motion, but with what consequences on Gaggero’s basis?

Here's where it gets complicated, since there were two sales, one right after the other. The first was from Gaggero to BCC, and was a sale of a share in the property in exchange for BCC's services. The Court found that this value equaled \$3 million, and that, after BCC received this portion, the value of the property was \$9.6 million. The second sale -- very soon thereafter -- was of the property from BCC and Gaggero to Monticello. This sales price was \$9.6 million. The parties stipulated that Gaggero's adjusted basis before the first sale was \$2.167 million.

The closest analogous case is *Hall v. Commissioner*, 65 T.C.M. 2575 (1993), where a carpenter received a 30% interest in a property upon completion of his services. *Id.* at 2579. We needed to determine the Halls' basis in their remaining 70% interest in order to calculate depreciation on that portion. *See id.* at 2580.

We held in *Hall* that the transfer of a part interest to the carpenter was a disposition, in which the amount the seller received was 30% of the fair market value at the time of the transfer. *Id.* at 2579. The value of the carpenter's services did NOT increase the sellers' basis in the property for the sale to the carpenter but WOULD increase the basis in their remaining share of the property on any later sale to a third party. *See id.* at 2580.

Gaggero and the Commissioner continue to disagree about how to apply this rule to this case. Gaggero argues that the \$3 million BCC received should increase his adjusted basis on *both* the sale to BCC *and* the sale to Monticello. The Commissioner argues that *Hall* plainly holds that any increase in adjusted basis applies only to the sale to Monticello.

The Commissioner is right -- *Hall* stands for the proposition that BCC received \$3 million in basis when it received its part of the property. That \$3 million doesn't multiply and go into the basis Gaggero uses to calculate his gain on *that* sale. It instead becomes part of his cost of the remaining 70% that he then sold to Monticello.

That means that the Court did get the math wrong in its original opinion.

Here are the right numbers:

Gaggero's original adjusted basis: \$2,167,000 (stipulated)

The value of the property at the time of the disposition to BCC: \$9,600,000  
(finding not challenged in this motion)

Amount received on disposition to BCC: \$3,000,000 (finding not challenged)

Adjusted sales price for Gaggero of sale to Monticello: \$6,600,000 (finding not challenged)

BCC's share of the property received for its services: 31.25% (31.25% =  $3,000,000 \div 9,600,000$ )

Gaggero's share of the property retained: 68.75% (68.75% = 100% - 31.25%)

Gaggero's portion of original adjusted basis on the disposition to BCC: \$677,187.50 ( $\$677,187.50 = 31.25\% \times \$2,167,000$ )

Gaggero's portion of original adjusted basis on the sale to Monticello: \$1,489,812.50 ( $\$1,489,812.50 = 68.75\% \times \$2,167,000$ )

Gaggero's basis on the sale to Monticello: \$4,489,812.50 ( $\$4,489,812.50 = \$1,489,812.50$  (original adjusted basis) + \$3,000,000 (paid to BCC in first disposition) (correction of error in opinion))

Gaggero's capital gain on the disposition to BCC: \$2,322,812.50 ( $\$2,322,812.50 = \$3,000,000 - \$677,187.50$ )

Gaggero's capital gain on the sale to Monticello: \$2,110,187.50 ( $\$2,110,187.50 = \$6,600,000 - \$4,489,812.50$ )

The other findings and holdings in the original opinion remain unchanged, but will require another attempt at 155 computations.

It is therefore

ORDERED that petitioner's motion for reconsideration is granted in part. It is also

ORDERED that on or before February 21, 2018 the parties submit the computations under Rule 155 or file a joint status report describing their progress.

**(Signed) Mark V. Holmes**  
**Judge**

Dated: Washington, D.C.  
December 19, 2017