



Omissions From Gross Income and Numerators and Denominators

PRACTICE AREAS

Tax

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Tax Notes

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As expected after the questioning during oral arguments, the D.C. Circuit's recent *Intermountain* decision followed the Seventh Circuit's *Beard* decision in basing its holding on the special rule defining gross income as gross receipts for sales of goods or services in a trade or business for purposes of the 25 percent omission from gross income test for extending the statute of limitations for assessments of tax. The D.C. Circuit, like the Seventh Circuit, concluded that the presence of this special rule in the current statute, and its absence from the statute at issue in the Supreme Court's 1958 *Colony* decision, means that *Colony* is not controlling on whether an overstatement of basis resulting in an understatement of gross income is an omission under the 25 percent omission test.

Like the Seventh Circuit, the D.C. Circuit was mistaken in relying on this special gross receipts rule as the basis for concluding that *Colony* is no longer controlling, because the effects of *Colony* and the special gross receipts rule are similar only in the first step of the multi-step omission from gross income test namely, in determining whether there has been an omission. In the later steps of the test, *Colony* and the special gross receipts rule are not at all similar, and these later steps cannot properly be dismissed, as by the Seventh Circuit, as mere numerators and denominators."