

BLOMELEY v. COMMISSIONER
23 T.C.M. 514; P-H T.C. Memo ¶ 64,084 (1964).

Editor's Summary

Key Topics

CASUALTY LOSS

- Citrus grove partially destroyed by freeze
- Burden of proof

Facts

The taxpayer, an airline pilot, owned a lime grove which was destroyed by freezing weather in 1958. The taxpayer claimed on his return a deductible loss of \$2,000, computed on the basis of 200 trees at \$10 per tree. The deduction was disallowed by the Commissioner. At the trial, the taxpayer apparently reduced his claim to \$1,800, computed on the basis of 400 trees at \$4.50 per tree.

Tax Court

It appears that the taxpayer did suffer a loss and is entitled to a deduction. The question is the amount of the loss. The allowable loss is the difference between the value of the property before and after the casualty, limited to the taxpayer's basis. There was no evidence of the value of the property before the freeze, but there was evidence that the trees cost between \$1.50 and \$2.00. Using this evidence, and the testimony of the taxpayer as to the number of trees destroyed, the Court concludes that the taxpayer had a basis of \$600, and was entitled to deduct that amount. The taxpayer failed to sustain his burden of proving a greater loss.

Case Text

[Timber Issues Only]

MEMORANDUM FINDINGS OF FACT AND OPINION

DRENNEN, Judge: Respondent determined deficiencies in petitioners' income tax and additions to tax under section 6653(a), I. R. C. 1954, ¹ as follows:

Year	Deficiency	Addition to tax, sec. 6653(a)
1958	\$2,161.79	\$108.09
1959	998.37	

The issues for decision are:

* * *

(2) Whether petitioners may deduct the amount of \$2,000, for the year 1958, as a casualty loss occasioned by frost damage to a lime grove;

FINDINGS OF FACT

Some of the facts have been stipulated and are found accordingly. Petitioners are husband and wife and, during the years 1958 and 1959, resided in Homestead, Fla. They filed joint Federal income tax returns for those taxable years with the district director of internal revenue, Jacksonville, Fla.

During the period here involved, petitioner was a commercial airline pilot employed by National Airlines, Inc. (hereinafter referred to as National), in Miami, Fla.

Petitioner also operated a farm in the south, or Redlands area, of Dade County, Fla. During 1958 he had 10-11 acres planted in cantaloupe, 15 acres in squash, 5 acres in cucumbers, about 250 Barbados cherry trees, and 24 mango trees. In addition to these crops and trees he operated two groves of lime trees covering a total of about 26 acres, 5 acres of which was land owned by him.

On February 5, 1958, there were low temperatures and a destructive freeze in Dade County. Low temperatures persisted for the following 3 weeks, and during the week of February 15-21, average temperatures were 15-20 degrees below seasonal averages. The prolonged cold spell was damaging to crops as was the freeze of February 5.

Petitioner's crops and trees were damaged or destroyed by the freeze of February 5 and the subsequent cold spell. At the date of the destructive freeze, petitioner had over 500 young lime trees on the 5-acre lime grove owned by him, which he had bought as rooted trees and replanted in 1957. A large number of these trees were killed by the freeze and cold weather of February 1958, Petitioner paid between \$1.50 and \$2 per tree for these trees in 1957. Petitioner also incurred expenses for planting, weeding, fertilizing, and irrigating these trees prior to the freeze in February 1958.

Petitioner discontinued operation of the groves in 1959; but his entire farm income for 1959, in the amount of \$107.61, was reported to be from the sale of limes.

On his return for 1958, petitioner claimed a deduction for a casualty loss in the amount of \$2,000, which he explained as "Frost damages to citrus trees, destroyed--200 trees [at] \$10.00 a tree." Respondent disallowed this deduction.

Ultimate Facts

Petitioners suffered a loss on the lime trees owned by them as a result of the freeze and cold weather in February 1958 in the amount of \$600.

OPINION

Each of the issues presented for our determination is basically factual, to be resolved on the basis of the evidence adduced, and petitioners have the burden of proving convincingly their contentions. In general, we must conclude that they have failed to sustain this burden.

That conclusion follows from a review of the entire record which is fraught with confused guesses, inconsistent claims, and unsubstantial estimates. Petitioners have presented us with practically no concrete evidence or proof as to when, where, why, and whether any of the disallowed expenses were actually incurred or paid by petitioners, except for the very general and uncorroborated testimony of petitioner himself. With one or two exceptions no written records or documents were offered in evidence to support any of petitioner's testimony or any of the claimed deductions--yet most of the claimed expenses are of a type that would have to be recorded in order to be determined at the end of the year with any degree of accuracy.

The second issue relates to petitioners' claimed deduction for a casualty loss in 1958 when a grove of lime trees was partially destroyed by an unusually severe freeze. Petitioners claimed a loss of \$2,000 on their return for the loss of 200 trees at \$10 per tree. They now appear to claim a loss of over 400 trees at about \$4.50 per tree. Despite this inconsistency, we believe petitioners did suffer a loss on their lime grove as a result of the freeze and are entitled to a deduction therefor. *Bessie Knapp*, 23 T. C. 716 (1955). The question is the amount of the loss, and this is difficult to determine from the record. The allowable loss is the difference between the value of the property before and after the casualty, limited to petitioners' basis in the property. We have no evidence as to the value of the property as a whole, but since we have held in *Bessie Knapp*, *supra*, that land and trees, if business property, may be considered separately for purposes of computing a deductible loss, we will assume that the trees killed were worth at least what petitioner paid for them before the freeze and that they had no value after the freeze. We must therefore make an effort to determine petitioners' cost basis in the trees killed.

In view of the inconsistencies in the record we have considerable doubt as to the number of trees killed by the freeze. Petitioner testified that he bought these trees in 1957 for \$1.50 to \$2 per tree. This price is supported by the testimony of petitioners' neighboring farmer, and we will accept it for purposes of this computation. We have no proof that petitioner did not expense the cost of these trees in 1957 except his own testimony and the fact that his prior years' returns were audited by respondent and there was apparently no disallowance of such an item. We have no competent evidence that petitioners did not expense the cost of planting, weeding, fertilizing, and irrigating these trees. Based on the evidence presented, and bearing most heavily on petitioners who had the burden of proof, we have concluded that petitioners had a basis of \$600 in the trees that were killed as a result of the freeze, and they are entitled to a deduction in 1958 in that amount for a casualty loss.

Decision will be entered under Rule 50.

I Statutory references hereafter are to the Internal Revenue Code of 1954.