

BROWN v. COMMISSIONER
40 T.C. 861 (1963).

Editor's Summary

Key Topics

EXPENSE OF TIMBER CRUISE

- Deduction disallowed where purchase not consummated

Facts

The taxpayer, not otherwise engaged in the timber business, considered the purchase of a tract of timberland: After incurring the expense of a timber cruise, he decided not to buy the property. He claimed that the cost of the cruise was deductible under section 165(c)(2) as a loss incurred in a transaction entered into for profit. The Commissioner disallowed the deduction.

Tax Court

Held: For the Commissioner. The cost of the cruise was not deductible. Since the timberland was not purchased, the taxpayer did not actually enter into a transaction for profit. This situation is distinguishable from that in which a taxpayer enters into a contemplated transaction before abandoning it.

Case Text

[Timber Issues Only]

ARUNDELL, Judge: Respondent determined a deficiency in income tax for the calendar year 1957 in the amount of \$9,142.84.

Petitioners assign three errors, namely, * * * (3) the disallowance of \$343.94 expended by petitioner Joseph W. Brown to have the timber cruised on a tract of land which petitioner contemplated purchasing but which contemplated transaction was subsequently abandoned by him upon its proving unprofitable.

FINDINGS OF FACT

Petitioner spent \$343.94 in the year 1957 for the purpose of obtaining a timber cruise of a piece of land. This expenditure was not claimed as a deduction on petitioner's return filed for the taxable year 1957 but was claimed in the petition herein filed. The cost of the cruise was incurred by petitioner in anticipation of purchasing a tract of land and going into a new business venture. The tract of land cruised was never in fact purchased, and petitioner never entered into the contemplated new business venture.

ULTIMATE FINDINGS OF FACT

The cost incurred by petitioner for the timber cruise did not constitute a loss incurred in a transaction entered into for profit.

OPINION

As to the third issue, petitioner contends he is entitled to deduct the \$343.94 paid for cruising a piece of timberland under section 165(c)(2) of the 1954 Code.³

At the hearing, petitioner testified that in 1957 he contacted the owner of a tract of timberland of about 1,050 acres on which there was also a house and other buildings; that the owner made petitioner an offer to sell him the property at a stated price; that petitioner was given time to secure a timber cruise of the land; that petitioner had the cruise made at a cost to him of \$343.94; that before and after the cruise he contacted a third party about taking over the management of the timber or actually buying it from petitioner in case petitioner should purchase the 1,050 acres; but--

We couldn't get together on a price that they wanted to pay for the timber and the land, and I had the buildings and the remainder of the land, about a 100 acres around the house appraised, and the appraisal didn't come up to a satisfactory figure to be feasible for me to buy any part of it, so I abandoned the project.

We do not think the cost of cruising the timberland petitioner was contemplating buying is deductible as a loss under section 165(c) (2), *supra*. It was not incurred in a transaction "entered into" for profit. *Robert Lyons Hague*, 24 B.T.A. 288; *Morton Frank*, 20 T.C. 511, 514. Petitioner did not enter into the contemplated transaction. As we said in the *Hague* case, where the taxpayer there was contending that certain legal fees paid for investigating a contemplated business proposition that never matured were deductible as losses incurred in a transaction entered into for profit:

The simple answer to this contention is that petitioner did not enter into these transactions but, on the contrary, stayed out of them.

The facts in the instant case are distinguishable from those in *Charles T. Parker*, 1 T.C. 709, relied upon by petitioner, in that Parker actually entered into the contemplated transaction before the abandonment took place.

We hold for the respondent on this issue.

Decision will be entered for the respondent.

(a) GENERAL RULE.--There shall be allowed as a deduction, any loss sustained during the taxable year and not compensated for by insurance or otherwise.

(C) LIMITATION ON LOSS OF INDIVIDUALS.--In the case of an individual, the deduction under subsection (a) shall be limited to--

(2) losses incurred in any transaction entered into for profit, though not connected with a trade or business; ***