

Burns v. United States
284 F.2d 436, 61-1 USTC ¶ 9127,
6 AFTR2d 6036 (6th Cir. 1960)

[1939 Code Sec. 23(e)(3)--similar to 1954 Code Sec. 165(e)(3)]

Casualty losses: Trees: Dutch Elm disease. The removal and destruction of an elm tree, because it had become infected with Dutch Elm disease, did not in a casualty loss. The decision of the District Court, which had held that a occasioned by a disease is not a casualty loss, affirmed *per curiam*. Back references ¶1566.675 and 1566.81.

James C. Davis, 1857 Union Commerce Bldg., Cleveland 14, Ohio (James C. Davis, E. Hacker, Squire, Sanders & Dempsey, 1857 Union Commerce Bldg., Cleveland Ohio, on brief), for appellant. Louise Foster, Department of Justice, Washington 25, C. (Charles K. Rice, Assistant Attorney General, Lee A. Jackson, Robert N. Anderson, Hauser, Department of Justice, Washington 25, D. C., on brief), for appellee.

Before SIMONS, Senior Circuit Judge, Holland, Senior District Judge, and O'Sullivan, Circuit Judge.

Per Curiam: In the tax year 1948, an elm tree in the yard of Plaintiffs' home became infected with Dutch Elm disease. To prevent the spread of the disease to other trees on plaintiffs' premises and in the neighborhood and in obedience to a municipal ordinance, the diseased tree was removed and destroyed. Plaintiffs, claiming they had thus suffered a casualty loss within the meaning of Section 23(e)(3) of the Internal Revenue Code of 1939 deducted the amount of their loss in computing their income for the tax year.

This action was brought to recover the amount paid by plaintiff taxpayers upon assessment of a deficiency equal to the amount so deducted. The sole question here involved is whether or not the taxpayers did, in fact and law, experience the casualty claimed.

The evidence offered to sustain the plaintiffs' claim is adequately recited and reviewed in the opinion of the District Judge who held against the taxpayers, concluding that the loss of taxpayers' tree through Dutch Elm disease was not a casualty as claimed. We agree with the conclusion of the District Judge, and are satisfied that his comprehensive opinion adequately discloses the questions involved and expresses the correct legal conclusion.

The opinion of then District Judge Paul C. Weick is reported as *Burns v. United States* [59-2 USTC ¶ 9514], 174 F. Supp. 203 (1959). For the reasons set forth in that opinion, the judgment of the District Court is hereby affirmed.