

COOPER v. COMMISSIONER
42 T.C.M, 418
Tax Ct. Mem. Dec. (CCH) 38,064(M), (P-H) ¶81,369
(Timber issue only)

Editor's Summary

Key Topic

CASUALTY LOSSES

- Fire loss

Facts

A fire destroyed a stand of pine trees located On the taxpayer's farmland five years after the trees were planted. The fair market value of the trees immediately before the fire was \$5,000 and the taxpayer claimed a casualty loss deduction in the amount of \$4,000. The Government did not dispute that the taxpayer was entitled to a loss deduction but argued that the amount of the deduction was limited to the adjusted basis of the trees, \$162, which represented the cost of seedlings and planting.

Tax Court

HELD: For the Government. The deduction for a casualty loss under Section 165(c) is limited to the property's adjusted basis. However, since the property was used in a trade or business, the \$100 deductible for losses sustained with respect to nonbusiness property did not apply.

Case Text

DAWSON, Judge: These cases were assigned to and heard by Special Trial Judge Marvin F. Peterson, pursuant to the provisions of Rule 180, Tax Court Rules of Practice and Procedure.² The Court agrees with and adopts his opinion which is set forth below.

Opinion of the Special Trial Judge

PETERSON, Special Trial Judge: Respondent determined the following deficiencies in petitioners' Federal income tax:

	Taxable Year	Deficiency
Paul L. Cooper and Mary Cooper (Docket No. 2536-73)	1973	\$18,835.98
	1974	1,977.06
Paul L. Cooper Family Estate (A Trust), Mary Cooper, Trustee (Docket No. 2540-78)	1973	3,765.94
	1974	1,087.56

Concessions having been made, the issues for decision are (1) whether petitioners Paul L. Cooper and Mary Cooper or the Paul L. Cooper Family Estate (A Trust) Mary Cooper, Trustee, (Trust)

is taxable on commissions earned on insurance sales, net Profit or loss from farming, and interest income; (2) in the alternative, if the income is taxable to the Trust, whether the Trust is an association taxable as a corporation under section 7701;³ (3) in the alternative, if the income is taxable to the Trust, whether petitioners Paul L. Cooper and Mary Cooper properly valued their ending farm inventory for the year 1973; (4) whether auto expenses were incurred for the insurance sales activity in an amount greater than allowed by respondent during the years 1973 and 1974, (5) Whether travel expenses and advertising expenses were incurred in carrying on the farming activity; (6) whether an expenditure of \$900 made in 1973 for the repair of the septic sewer system was properly, capitalized by respondent; (7) whether petitioners incurred a casualty loss deduction with respect to the loss of three heifers and 2000 pine trees during 1973; and (8) in the event the farm income is taxable to the Trust whether a deduction of \$2,400 for services rendered is allowable as a deduction in 1973.

Findings of Fact

Some of the facts have been stipulated by the Parties and are found accordingly.

Petitioners Paul L Cooper and Mary Cooper resided in Mukwonago, Wisconsin, at the time of filing their petition herein. Petitioners timely filed joint Federal income tax returns for the taxable years 1973 and 1974 with the Internal Revenue service Center, Kansas City, Missouri, The Paul L. Cooper Family Estate (A Trust), Mary Cooper, Trustee, the petitioner in docket no. 2540-78, had its principal office in Mukwonago, Wisconsin, at the time of filing its petition herein. The Trust timely filed its Federal income tax returns for the taxable years 1973 and 1974 with the Internal Revenue Service Center, Kansas City, Missouri.

* * * * *

During April 1973, 2,000 pine trees located on petitioner's farm land were destroyed by fire. Petitioner purchased the trees about 1968 from the State of Wisconsin Department of Natural Resources for \$156. In addition, petitioner expended \$6 for the rental of a tree planter which was used to plant the trees. The fair market value of the pine trees immediately before the fire was \$5,000. The Trust claimed a casualty loss on its 1973 income tax return for this loss in the amount of \$4,000.

Opinion

The parties agree that a deduction is allowable as a casualty loss for the pine trees destroyed by fire, but disagree as to the amount of the loss, Respondent argues that, although the fair value of the trees was greater than the deduction allowed, a casualty loss is limited to the adjusted basis of the property involved.

We agree with respondent that the deduction for the pine trees is limited to the adjusted basis of the trees amounting to \$162, which includes the purchase price of the lost trees in the amount of \$156, and the cost of planting in the amount of \$6. Section 1.165-7, Income Tax Regs. Since the trees were a part of the property used in a trade or business the \$100 limitation set forth in section

165(c) does not apply.

To reflect the conclusions reached herein, *Decision will be entered under Rule 155.*

2 The Court granted a joint motion filed by the parties to waive the post-trial procedures set forth in Rule 182.

3 All section references are to the Internal Revenue Code of 1954, as amended, unless otherwise indicated.