

HARPER v. UNITED STATES
396 F.2d 223, 68-2 U.S. Tax Cas. ¶9441,
21 Am. Fed. Tax R.2d 1417 (4th Cir. 1968).
Affirming **274 F. Supp. 809, 67-2 U.S. Tax Cas. ¶9712,**
20 Am. Fed. Tax R.2d 5777 (1967).

Editor's Summary

Key Topics

CASUALTY LOSS

- Timber partially destroyed by hurricane
- Deduction limited to basis in trees destroyed
- Reduction in value of undamaged timber not shown

Facts

A hurricane partially destroyed standing timber on five timber tracts owned by the taxpayers. The taxpayers calculated their economic loss by estimating the difference in the units of marketable saw timber (expressed in thousands of board feet) and pulpwood (expressed in cords) before and after the hurricane, and multiplying the difference by the market value of such units at the date of destruction. The taxpayers deducted their entire economic loss on the theory that such losses did not exceed the total adjusted basis of the timber on the five tracts. The Commissioner limited the deduction to the taxpayer's adjusted basis in the units of saw timber and pulpwood actually destroyed. The taxpayer offered the testimony of an experienced forester that a partial casualty loss to a tract of timber can adversely affect the marketability of undamaged timber. However, the forester had not seen the particular tracts in question, and the valuation of the undamaged timber agreed upon by the taxpayer and the Government was the same before and after the casualty.

District Court

[opinion at 4 T.T.J. 207]

Held: For the Government. The taxpayers concede that had they sold the timber for which a loss is claimed their gain or loss on the sale would have been determined by reference to an "adjusted basis" for each separate measurable unit of timber sold (*i.e.*, per t m. board feet of saw timber and cords of pulpwood). They likewise concede that the proper depletion allowance is determined by reference to the "adjusted basis" of the same units. Yet, they contend that an allowable casualty loss is to be determined by reference to the "adjusted basis" of all the timber on their five tracts treated as a unit. To apply "adjusted basis" one way in calculating gain or loss and depletion and another way in fixing the allowable deduction for casualty loss would be illogical, and violative of established canons of statutory construction. Moreover, section 165(b) expressly declares that the basis for determining the amount of a loss deduction is the adjusted basis provided in section 1011 for determining the loss from the sale or other disposition of property. *Helvering v. Owens* is distinguishable as that case involved a casualty loss to a building which, unlike timber, has an indivisible basis. *Alcoma Association v. United States* is also distinguishable. In that case, involving a casualty to a citrus grove, the Commissioner did not urge that the

property's basis was divisible. Moreover, there may well be a distinction between timber, grown for resale, and a citrus grove, not developed for sale itself and not growing in value, but intended to produce products for resale. The forester's opinion that the marketability of undamaged timber may be adversely affected by a partial casualty is supported by considerable reason. However, it can have no effect in this particular case. The forester had not seen the taxpayers' tracts and an agreed valuation indicated that the measurable units of undamaged timber had not decreased in value by reason of the casualty.

Court of Appeals

[opinion not reprinted; see official report]

Held: Affirmed Per Curiam. In a brief opinion the court of appeals agreed with the district court's conclusion that the adjusted basis defined in section 1011 of the Code, for use in computing the gain on sales or in limiting the amount of casualty losses, must be the basis for those trees or portion of a timber tract actually sold or destroyed.