

KINLEY v. COMMISSIONER
70-2 USTC ¶ 9462 (2d Cir. 1970); 26 AFTR 2d 5127
Affirming, 51 T.C. 1000 (1969)

Editor's Summary

Key Topics

CAPITAL v. EXPENSE

- Christmas trees
- Cost of annual shearings deductible

The Court of Appeals affirmed without opinion the decision of the Tax Court holding that the cost of shearing scotch pine trees, undertaken to improve their shape and make them more desirable as Christmas trees, was deductible as an ordinary and necessary business expense since such shearing did not prolong the life of the trees and did not of itself create marketable trees.

The full opinion of the Tax Court, with a complete statement of facts, is reported at 6 Timber Tax Journal 168 (1970).*

* Readers should note that the Internal Revenue Service acquiesced in the *Kinley* decision in Rev. Rul. 71-228, 1971 Int. Rev. Bull. No. 13, at 5. This ruling reconsidered Rev. Rul. 1966-1 Cum, Bull. 59, in which the Service had maintained that the costs incurred in the shearing and pruning of trees grown for the Christmas tree market represented capital expenditures under Section 263(a) of the I.R.C. The full text of Rev. Rul. 71-228 will be published in Volume 8 of the Timber Tax Journal.