

REGAN v. UNITED STATES
67-2 USTC ¶9728;
20 AFTR 2(1 5759 (D. Ore. 1967)).

Editor's Summary

Key Topics

CAPITAL v. EXPENSE

- Road construction costs

Facts

The taxpayer was a member of a joint venture which sold standing timber on a stumpage basis. The cost of constructing access roads to the timber was amortized on the basis of the quantity of timber sold and deducted from ordinary income. The Government contended that the road costs should have been treated as an offset to the capital gain realized on the disposal of the timber.

District Court

Held: For the taxpayer. By enacting section 631(b), Congress gave the timber industry a tax benefit and no specific language in the Code or Regulations limits it by disallowing a deduction to which the taxpayer had previously been entitled. [NOTE: This new case, dealing as it does with access *roads*, should not be interpreted as authorizing the expensing of *permanent roads*. Generally, permanent roads are capitalized. "Timber *capital* expenditures include those for permanent improvements to the land, construction of permanent roads, bridges, trestles, etc., and for depreciation and repair of equipment used for making such improvements." * Nevertheless, this new case may be of assistance to timber owners Who build roads of more limited life, designed to achieve access to a logging area for a short-term logging operation.]

Case Text

MEMORANDUM OPINION

BELLONI, District Judge: This is a suit for the refund of income taxes.

Plaintiff is a member of a joint venture which sold standing timber on a stumpage basis during the years 1960, 1961 and 1962. The cost of constructing access roads to the timber was amortized, based upon the quantity of the timber sold. This amortization was deducted as an ordinary and necessary business expense of the plaintiff and the other members of the joint venture on their individual income tax returns. The government contends that the road costs should have been

treated as an offset to long-term capital gain realized on the disposition of the timber.

Both sides have produced convincing arguments, each based upon extensive case citations, but only one cited case, *Converse v. Earle*, 43 AFTR. 1308 (D. Or. 1951), is directly on point. In that case, Judge McColloch ruled that similar expenses were deductible as ordinary and necessary business expenses and not as part of the cost of timber sold.

The rule is applicable in the instant case because Congress granted a special tax benefit to the timber industry in 631(b) of the Internal Revenue Code of 1954, and no statute nor regulation limits this benefit in the manner suggested here by the government.

As stated in *Union-Bag Camp Paper Corp. v. United States*, 325 F. 2d 730, 744:

"Absent specific language in the statute or regulations so requiring, it should not be held that the taxing authority has with one hand granted a special tax benefit to a natural resource industry, but with the other hand has taken back part of the benefit through the medium of disallowing a deduction to which the taxpayer had previously been entitled."

Plaintiff will have judgment against the defendant in the amount of \$30,70 on her first cause of action, \$59.00 on her second cause of action, and \$59.00 on her third cause of action.

Plaintiff's counsel shall prepare appropriate judgment order in conformity with this memorandum opinion.

* Briggs, *Tax Treatment of Timber*, 4th Ed., p. 42 (1962).