

ROBINSON v. COMMISSIONER
12 T.C. 246 (1949).
Aff'd 181 F.2d 17; 50-1 USTC ¶9269; 39 AFTR 197 (5th Cir. 1950),

[The opinion which follows is that of the Tax Court. The complete text of the Court of Appeals' opinion and the Editor's Summary of the case are at p. 767.]

Case Text

The respondent determined deficiencies in income tax as follows:

Petitioner	Year	Deficiency
R. G. Robinson	1943	\$3,707.27
Martha G. Robinson	1943	\$3,682.27

The deficiencies result from certain adjustments made in petitioners' income from the year 1942. Due to the forgiveness feature applicable to the years 1942 and 1943, the deficiencies relate only to the latter year. Petitioners contest only one of the adjustments made by respondent and they raise only one issue by their pleadings: Are they entitled to deduct as a loss for the year 1942 an amount of \$10,000 which they contend was lost through the purchase of certain timber rights in Florida? The returns for the period here involved were filed with the collector of internal revenue for the district of Louisiana, at New Orleans, Such returns were made on a community property basis.

Petitioner R. G. Robinson will be referred to hereinafter as the petitioner.

FINDINGS OF FACT

Petitioner, in 1939, purchased certain timber rights located in the vicinity of Destin, Florida, for the sum of \$29,000. The amount of \$29,000 was loaned to petitioner by a bank located in New Orleans. The loan was secured by a mortgage on the timber. The purchase agreement, dated January 10, 1939, provided that the petitioner had five years from January 10, 1939, in which to remove the timber from the land, except a certain tract from which the timber was to be removed within two years from December 31, 1938.

Petitioner, in 1939, made a deal with one Perry, who owned a sawmill and logging equipment, to log and convert the timber into lumber at a fixed price per thousand feet. Perry also was to receive additional compensation of 50 per cent of the net profit resulting from the operations. He was to use his own equipment for cutting the timber and converting it into lumber, which was to be done in the name of Destin Saw Mill Co.

Perry commenced his cutting and converting operation in 1939 and continued such activity until some time in 1941. In that year the Army took over a national forest near the land on which petitioner owned the timber rights, built an airfield, and used the bay and gulf adjacent to such land for practice bombing. Because of the bombing activities in this area, Perry could no longer

keep any employees to cut the timber. The operations of the Destin Saw Mill Co., therefore, came to an end in 1941.

In 1942 one Kelly, one of the former owners of the timber which petitioner had purchased in 1939, claimed that Perry had cut over the line where petitioner had no right to cut timber and had damaged roads owned by the former owners. Kelly, representing those owners, threatened to sue for damages. At that time petitioner, in exchange for a release from any claim for damages which the former owners had against him, relinquished his right to cut any remaining timber on the tract to such owners.

In 1942 petitioner paid to the bank \$10,000 which he still owed on the loan of \$29,000 made to him as above described.

In 1939 petitioner purchased 5,188,596 feet of stumpage and logs at a cost of \$30,737.40. Included in the purchases was the timber with which we are here concerned, at a cost of \$29,000. In his income tax return for 1939 petitioner took a deduction from net sales, as a cost of sales, the amount of \$16,548.76 representing the cost of 2,742,276 feet of timber so purchased. In his income tax return for 1940 petitioner took a deduction of \$14,188.65 as cost of sales of 2,446,320 feet of the timber so purchased.

In the deficiency notices the deduction of \$10,000 claimed by petitioners on the community basis in connection with the operations of the Destin Saw Mill Co. was disallowed.

OPINION

HILL, Judge: In their opening statement at the hearing and on brief petitioners contended that the determination of any deficiency in this proceeding is barred by the expiration of the period of limitation upon assessment and collection as provided by section 275 (a), Internal Revenue Code. The statute was sought to be invoked with reference to the \$10,000 deduction claimed in 1942. Since this issue was not raised in either the original petitions or the amended petitions, the statute of limitations is unavailable to petitioners as a defense against any assessment and collection herein. *United Business Corporation of America*, 19 B. T. A. 809; *affd.*, 62 Fed. (2d) 754. However, even if the question had been presented properly, we should still sustain the respondent, on the authority of *Lawrence W. Carpenter*, 10 T. C. 64; *Fred B. Snite*, 10 T. C. 523; *William W. Todd*, 10 T. C. 655.

The petitioners next contend that they are entitled to deduct the amount of \$10,000 from their gross income for 1942 as a loss under section 23 (e) of the Internal Revenue Code. Such loss, it is claimed, arose through petitioner's releasing to the owners of the land upon which the timber involved was located his right to cut any more of the timber, "in consideration for a release of all claims that Kelly [one of the owners of the land] might have against him * * *"

The respondent argues that that amount is not so deductible, pointing out, among other things, that the amount of \$29,000 which petitioner R. G. Robinson paid for the timber rights he purchased in 1939 "was deducted [from the net sales of the business involved] as cost of sales

during the years 1939, 1940 and 1941," and that by 1942 they had recovered their entire cost basis over those years. He adds that, since the basis was recovered in prior years, no further loss is allowable for the taxable year, even if it is contended and shown that previous deductions allowed did not result in a tax benefit. *Exchange State Bank*, 8 T. C. 721.

The tax returns filed by petitioner clearly show that the \$29,000 representing the cost of the timber purchased in 1939 was recovered through including such sum in the cost of sales in 1939 and 1940. A schedule attached to the 1939 return filed by petitioner shows that he purchased 5,188,596 feet of stumpage and logs in 1939 for \$30, 737.40, which included the \$29,000 above mentioned, and that in 1939 he deducted \$16,548.76, which represented the cost of 2,742, 276 feet of stumpage, from the net sales of the timber-cutting operation involved for that year. A schedule attached to petitioner's 1940 tax return shows that he deducted from net sales for 1940 the amount of \$14,188.65 representing the cost of 2,446,320 feet Of stumpage. Hence, it is apparent that by the end of the taxable year 1940 petitioner's tax return showed that he had recovered the entire amount which was expended for the purchase of the timber rights involved.

Indeed, petitioner admits that the above mentioned returns do so indicate. It is stated in petitioner's brief that "it is true that the \$29,000 representing the cost of the timber was shown as cost of goods sold," but it is argued that the returns "incorrectly reflected that the cost of \$29,000 was written off and actually such writing off was in error."

In an attempt to prove such contention petitioner has submitted in his brief statistical compilations. These have not convinced us, however, that the entries shown on the schedules attached to petitioner's tax returns were erroneous and we are of opinion that petitioner have failed to overcome the presumption of prima facie correctness attaching to the respondent's determination that the cost basis of the timber rights was previously recovered.

It follows that respondent's determination must be sustained.

Decisions will be entered for respondent.