

**SMITHGALL v. UNITED STATES**  
**81-1 U.S.T.C. ¶ 9121 (1980)**  
**47 AFTR 2d 81-695 (1980)**

*Editor's Summary*

*Key Topics*

**CASUALTY LOSSES**

- Insect loss
- Non-business property

*Facts*

The taxpayers owned a 180-acre estate in Georgia, including a 35-acre tract surrounding their residence. This 35-acre tract was non-business residential property. Ornamental pine trees on this tract were killed in 1973 by the southern pine beetle. The mass attack of beetles was of epidemic proportions and unusual for the area. The trees were killed within a period of five days to two weeks. The Commissioner of Internal Revenue disallowed taxpayer's deduction Of expenses incurred for clean up of the trees killed by the beetles.

*District Court*

HELD: For the taxpayer, A mass attack of southern pine beetles in epidemic proportions is a sudden and unexpected occurrence causing an identifiable loss and is thus a "casualty" within the meaning of Section 165(a). [Readers should recognize that different rules are generally employed for ornamental trees on residential property than for commercial timber. See index for general discussion.]

*Case Text*

O'KELLEY, District Judge: Charles and Celestia Smithgall (hereinafter the "Smithgalls") brought this suit pursuant to 28 U.S.C. §1346(a)(1) for a refund of federal income taxes paid for the 1973 tax year. The Smithgalls own 180 acres of real estate in Gainesville, Georgia. This action arises out of losses sustained by the Smithgalls as a result of a tornado which struck their property on December 13, 1973, and an unrelated attack by southern pine beetles on a number of the plaintiffs' pine trees. On their joint federal income tax return for 1973, the Smithgalls claimed a combined casualty loss of \$52,017.07. The bulk of the claimed casualty loss was incurred as a result of the tornado which struck the Smithgalls' residence: \$40,000 for the decrease in the fair market value of their estate and \$10,467.97 in clean up and repair expenses. The remainder of the claimed loss, \$1,549.10, represented clean up and repair expenditures necessitated by the southern pine beetle attack. The Internal Revenue Service (hereinafter "IRS") notified the plaintiffs of a \$18,664.89 tax deficiency for the 1973 tax year. The deficiency was based principally on the disallowance of the casualty losses claimed by the Smithgalls. The IRS determined that the taxpayers had a deductible casualty loss of \$9,777.65, representing the tornado clean up expenses incurred by the Smithgalls. On January 30, 1978, the Smithgalls paid the IRS the full amount of the deficiency assessed

against them plus interest and filed a claim for a refund with the IRS. The IRS disallowed the plaintiffs' claim, and the Smithgalls commenced this suit for the overpayment of federal income taxes.

A nonjury trial of the action on its merits was held on July 2, 1980. Having carefully considered all the evidence adduced at trial, the court hereby renders the following findings of fact and conclusions of law.

### *Findings of Fact*

1. The Smithgall residence is located on 35 acres of land within a 180 acre estate.
2. The Smithgall property has been developed, landscaped, and maintained in a park-like condition.
3. The 35 acre tract surrounding the plaintiffs' home has a number of structural improvements thereon and is maintained as part of a single estate.
4. The 35 acre tract is non-business, residential property.
5. Three separate expert appraisers familiar with the Smithgall estate inspected the property after the tornado and concluded that the damage caused by the tornado, after clean up and repair, decreased the fair market value of the 35 acres surrounding the plaintiffs' home by not less than \$40,000.
6. There was no general market decline affecting both damaged and undamaged property in the vicinity of the Smithgall residence which occurred simultaneously with the tornado, or after it struck.

The IRS subsequently conceded that the plaintiffs were entitled to a deduction in the amount of \$25,000.00 for the decrease in the fair market value of the 5.3 acre tract surrounding the plaintiffs' home. At the time of trial, the issues before the court were whether the plaintiffs were entitled to a deduction for the decrease in fair market value of an additional 29.7 acre tract of land damaged by the tornado and whether a deduction should be allowed for clean up and repair expenses incurred as a result of the southern pine beetle attack.

7. The Smithgalls spent \$10,467.97 cleaning up the wreckage and repairing their property after the tornado.
8. A mass attack of southern pine beetles destroyed a number of the plaintiffs' pine trees.
9. The southern pine beetle attack was of epidemic proportions and unusual for the area.
10. The plaintiffs' ornamental pine trees were killed by the southern pine beetles within a period of five days to two weeks.

11. The Smithgalls incurred \$1,549.10 in clean up expenses because of the southern pine beetle attack.

### *Conclusions of Law*

1. The Smithgalls suffered a casualty loss within the meaning of section 165(a) of the Internal Revenue Code as a result of the tornado which struck their property on December 13, 1973.

2. The measure for a loss to real property held for Personal and non-business use is the value of the property as a whole with all improvements thereon before and after the casualty. Treas. Reg. §§ 1.165-7(b)(1)(i) and (b)(2)(ii) (1977),

3. The Smithgalls are entitled to a \$52,017.07 deduction for the 1973 tax year as a result of tornado damage to their property: \$10,467.97 in clean up and repair expenses and \$40,000 for the decrease in the fair market value of their estate. See *Cantrell v. Commissioner* [CCH Dec. 35,235(M)], 37 T. C. M. 1.022 (1978); *Tatham v. Commissioner* [CCH Dec. 36,092(M)], 38 T. C. M. 848 (1979).

4. A mass attack of southern pine beetles in epidemic proportions is a sudden and unexpected occurrence causing an identifiable loss and is thus a casualty within the meaning of section 165(a) of the Internal Revenue Code. Rev. Rul. 79-174, 1979-1 C. B. 99. See *Black v. Commissioner* [CCH Dec. 34,665(M)], 36 T. C. M. 1347 (1977); *Nelson v. Commissioner* [CCH Dec. 28,861(M)], 27 T. C. M. 158 (1968). Cf. *Kilroe v. Commissioner* [CCH Dec. 23,771], 32 T. C. 1304 (1959) (deduction for termite damage allowed).

5. The Smithgalls are entitled to a \$1,549.10 deduction for the 1973 tax year for clean up and repair expenses incurred as a result of the southern pine beetle attack on their pine trees.

Accordingly, and for the above-stated reasons, the plaintiffs are entitled to recover from the defendant, the United States of America, the amount of \$23,703.40, together with interest at the applicable rates pursuant to 28 U. S. C. §2411(a) and 26 U. S. C. §6621, plus costs. The clerk is directed to enter judgment for the plaintiffs.