



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
RICHARD AND BARBARA L. KNOWDELL)

For Appellants: Leland E. Olwell  
Certified Public Accountant

For Respondent: Jacqueline W. Martins  
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Richard and Barbara L. Knowdell for refund of personal income tax in the amount of \$1,274.58 for the year 1972.

Appeal of Richard and Barbara L. Knowdell

The issue for determination is whether appellants have satisfactorily substantiated the amount of their claimed casualty loss.

In May 1972, appellants purchased approximately 8.1 acres of land in Santa Clara County, California, for \$30,461.00. This property, contained a grove of an undetermined number of eucalyptus trees. At a cost of \$13,000, appellants built a dome-shaped house within the grove of trees. In December 1972, frost killed about 170 eucalyptus trees, leaving few trees around appellants' house. Appellants did not remove or replace the dead trees.

Upon audit of appellants' return, respondent disallowed the \$25,000 claimed casualty loss deduction to the extent of \$23,000. An assessment of additional personal income tax was then proposed based upon the partial disallowance of the casualty loss deduction and the disallowance of a depreciation deduction. Appellants conceded the propriety of disallowing the depreciation deduction, but contended that all of their claimed casualty loss deduction was proper. Their contention was based upon the employment of various valuation methods. Respondent concluded that none of the methods were valid, and appellants paid the assessment under protest. This appeal results from respondent's denial of appellants' claim for refund of the paid assessment.

Revenue and Taxation Code section 17206 grants a deduction for "any loss sustained during the taxable year and not compensated for by insurance or otherwise." Respondent's regulations provide for determining the amount of loss generally by ascertaining through a competent appraisal, the fair market value of the property immediately before and after the casualty.

The measure of a casualty loss to nonbusiness property and property not held for profit is the difference between the immediate pre-casualty and post-casualty fair market value, but not in excess of the adjusted basis of the property. (Helvering v. Owens, 305 U.S. 468 [83 L. Ed. 2921 (1939)]; see Cal. Admin. Code, tit. 18, reg. 17206(g), subd. (2) (A).) <sup>1/</sup>

<sup>1/</sup> Repealer filed Feb. 21, 1979, effective 30th day thereafter (Register 79, No. 7).

Appeal of Richard and Barbara L. Knowdell

The above statute and regulatory provisions are similar to their federal counterparts. (Int. Rev. Code of 1954, § 165 and Treas. Reg. § 1.165-7.) Therefore, cases interpreting section 165 are highly persuasive as to proper application of section 17206. (Meanley v. McColgan, 49 Cal. App. 2d 203 [121 P.2d 45] (1942); Holmes v. McColgan, 17 Cal. 2d 426 [110 P.2d 428] (1941); Union Oil Associates v. Johnson, 2 Cal. 2d 727 [43 P.2d 291] (1935).)

The case of Appeal of John A. and Elizabeth J. Moore, decided by this board March 8, 1976, established that when ornamental, shade or fruit trees are involved in a casualty loss, the loss is measured by the decrease in fair market value of the entire property. The case pointed out that the injury to such property logically goes beyond mere tree destruction because the value of the trees is principally as standing trees; thus, the injury is to the realty as a unit, since its value is usually diminished more than lost timber value. (See Mary Cheney Davis, 16 B.T.A. 65 (1929).) According to Moore, supra, the loss suffered is to be composed of an amount representing the permanent decrement in **value** of the property plus the cost of removing the debris and cleaning up the storm damage. (Ralph Walton, ¶ 61,130 P-H Memo. T.C. (1961).)

It is with this background that we consider the alleged \$25,000 casualty loss with respect to the eucalyptus trees. We must also bear in mind that deductions are a matter of legislative grace and the burden is upon the taxpayer to show that he is entitled to the deduction. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348] (1934); Joe B. Thornton, 47 T.C. 1 (1966); Appeal of Felix and Annabelle Chappellet, Cal. St. Bd. of Equal., June 2, 1969.) Respondent concedes that appellants have sustained a casualty loss, but maintains that the \$25,000 claimed is not an accurate measure of the amount suffered, and instead estimates \$2,000 to be a more reasonable calculation. Appellants have employed several valuation methods in attempting to compute their casualty loss. No formal appraisal was procured, and we must agree with respondent that none of the methods used accurately computed the loss by measuring the value of the property immediately before and after the casualty. Specifically, one method used by appellants to compute their casualty loss was to subtract the March 1, 1973, county property tax appraisal value of the land and house (\$8,440 + \$10,000) from the cost of the land and house, which amounted to \$43,461. They also attempted

