

Part I

Section 611.--Allowance of Deduction for Depletion

26 CFR 1.611-3: Rules applicable to timber.

(Also § 165; 1.165-7.)

Rev. Rul. 99-56

ISSUE

The Internal Revenue Service has reconsidered Rev. Rul. 66-9, 1966-1 C.B. 39, and Rev. Rul. 73-51, 1973-1 C.B. 75, in light of the decisions in Westvaco Corp. v. United States, 639 F.2d 700 (Ct. Cl. 1980), and Weyerhaeuser v. United States, 92 F.3d 1148 (1996), rev'g in part and aff'g in part, 32 Fed. Cl. 80 (1994), cert. denied, 519 U.S. 1091 (1997).

LAW AND ANALYSIS

Section 1.165-7(b)(2) of the Income Tax Regulations provides that a casualty loss must be determined by reference to a single, identifiable property (SIP) damaged or destroyed by casualty. Rev. Rul. 66-9 holds that, in the case of a casualty loss to timber, the SIP damaged or destroyed by casualty is the quantity of timber--the units (board feet, log scale, cords, or other units) of wood in standing trees that are available and suitable for exploitation and use by forest industries--rendered unfit for use by casualty (in that case, a hurricane). Rev. Rul. 66-9 articulates two interrelated concepts. One is the definition of SIP; the other is the sufficiency of damage giving rise to a casualty loss. It defines SIP to be the quantity of timber destroyed by the casualty. It regards only total destruction of the timber to be legally sufficient to trigger a casualty

loss. The revenue ruling holds that the loss from the sale or other disposition of the timber that was not destroyed by the hurricane should be determined at the time of sale or other disposition by subtracting the adjusted basis of the quantity of timber disposed of from the amount received for that timber.

Rev. Rul. 73-51, in considering the allowance of a § 165 casualty loss on account of an ice storm, repeats the SIP definition of Rev. Rul. 66-9 and holds that the physical damage (in that case, broken crowns or root damage that stunted tree growth) to the merchantable trees did not result in any of the existing timber being rendered unfit for use.

The Court of Claims, in Westvaco, decided that the SIP damaged or destroyed by storms and fires included all of the taxpayer's standing timber in the district (block) directly affected by each casualty and not just the units of timber contained in the trees suffering mortal injury. The court enunciated the standard that the appropriate SIP is any unit of property that has an identifiable adjusted basis and that is reasonable and logical and identifiable in relation to the area affected by the casualty. The court also held that the allowable loss for casualty is not limited to merchantable units of timber totally destroyed.

In Weyerhaeuser, the United States Court of Appeals for the Federal Circuit held that the SIP damaged or destroyed by several forest fires and a volcanic eruption affecting taxpayer's timber property was the block, that subdivision of a taxpayer's forest holdings selected by the taxpayer as a means of tracking the adjusted basis in the timber pursuant to § 1.611-(3)(d)(1). Consistent with Westvaco, a casualty loss was allowed for trees that were damaged but not rendered worthless.

HOLDING

In light of the court decisions in Westvaco and Weyerhaeuser the Service is revoking Rev. Rul. 66-9 and Rev. Rul. 73-51.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 66-9, 1966-1 C.B. 39, and Rev. Rul. 73-51, 1973-1 C.B. 75, are revoked.

DRAFTING INFORMATION

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