

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 4281] (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, A7 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

Appeal of Richard and Barbara L. Knowdell

to support the \$25,000 casualty loss deduction on basis of advice allegedly from the National Forest Service that eucalyptus trees were worth \$500 per tree, and from real estate people that their property had been reduced in value by \$3,000 per acre. The valuation methods employed by appellants not only fail to meet the requirement of ascertaining immediate pre-casualty and post-casualty fair market value, but also fall short of substantiating either that the decline is totally attributable to actual physical damage arising from the casualty, or that the decrease in fair market value of the entire property is accurately reflected to the extent claimed on appellants' return.

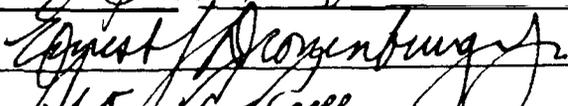
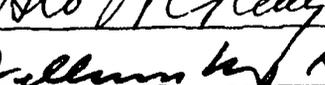
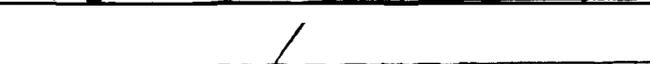
In the absence of clear evidence establishing the amount appellants' property decreased in value, we must sustain respondent's partial disallowance of the casualty loss deduction which was claimed in the amount of \$25,000.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that 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, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of May, 1980, by the State Board of Equalization.

  
\_\_\_\_\_, Chairman  
  
\_\_\_\_\_, Member  
  
\_\_\_\_\_, Member  
  
\_\_\_\_\_, Member  
\_\_\_\_\_, Member