
Appendix A. Summaries of Selected Revenue Rulings

This appendix provides summaries of pertinent revenue rulings (Rev. Rul.) dealing with timber. Obsolete and inconsequential rulings are not listed. Citations are given to the complete texts: Cumulative Bulletin (C.B.) published by the U.S. Department of the Treasury. The rulings are categorized by general subject and listed alphabetically within each general subject by keyword. The complete text of rulings summarized here and the text of modified, obsolete, and related rulings are available on the National Timber Tax Web site <http://www.timbertax.org/research/revenuerulings/>. This site also includes a findings list that provides the current status of each ruling. Individual rulings are additionally available on the Internal Revenue Service (IRS) Web site <http://www.irs.gov/>.

Basis and Depletion Allowance

Basis for Depletion of Long-Term Timber Contract. The fair market value (FMV) of the timber existing at the time of the execution of a long-term timber-purchase contract constitutes the basis for depletion of the timber and payments in excess of the FMV are consideration for the use of land deductible as a business expense. Rev. Rul. 75-59, 1975-1 C.B. 177, *amplified* by Rev. Rul. 78-267, 1978-2 C.B. 171; *also see* IRC §§ 162; 612; Treas. Reg. §§ 1.162-1; 1.612-1.

Christmas Trees, Capital and Operating Expenditures. In connection with the cultivation, as a trade or business, of Christmas trees for purposes of sale when they are more than 6 years old, the expenditures incurred for planting must be capitalized. Expenditures incurred for silvicultural practices such as weeding, cleaning, and noncommercial thinning are deductible as ordinary and necessary trade or business expenses. The cost of land improvements is capitalized in the land account. The cost of purchased equipment and other depreciable assets, such as culverts and fences, should be capitalized and recovered through the allowance for depreciation. Rev. Rul. 66-18, 1966-1 C.B. 59, *modified* by Rev. Rul. 71-228, 1971-1 C.B. 53, which concludes that costs incurred after May 24, 1971, for shearing and basal pruning of trees grown for the Christmas tree market are deductible expenses.

Cutting Contract, Advanced Royalties. Advanced royalties paid or accrued by a lessee under a timber-cutting contract in a tax year for timber cut during that year are not deductible under the provisions of Treasury Regulation (Treas. Reg.) sec-

tion 1.612-3(b)(3), but are to be added to the lessee's depletable basis in the timber. Rev. Rul. 77-400, 1977-2 C.B. 206; *also see* IRC §§ 612; 631; Treas. Reg. §§ 1.612-3; 1.631-2.

Depletion; Reforestation Expenditures. The expenditures for destroying undesirable hardwood trees and brush in naturally reforested stands of southern pine young-growth when related primarily to the seeding and establishment of the pine seedlings are capital expenditures recoverable through depletion. Rev. Rul. 76-290, 1976-2 C.B. 188; *also see* IRC § 611; Treas. Reg. § 1.611-3.

Logging Roads, Depreciation. Depreciation of logging-truck roads is distinguished in situations where (1) the road is expected to be useful to the taxpayer for an indefinite period and (2) the road has a determinable useful life to the taxpayer. In the first situation, where the surfacing, bridges, and culverts of a logging-truck road are expected to have a determinable useful life to the taxpayer, these assets are depreciable or amortizable. Because the roadbed of a well-maintained road has an indefinite useful life, its cost is not depreciable or amortizable. In the second situation, all components are depreciable or amortizable because all have a determinable useful life to the taxpayer. Rev. Rul. 88-99, 1988-2 C.B. 33, *clarifying* Rev. Rul. 68-281, 1968-1 C.B.

Logging Roads, Permanent vs. Temporary, Investment Credit. A taxpayer's logging-truck roads are "section 38 property" for investment credit purpose because they are an integral part of the operation of sawmills, the production of lumber and related products or other building materials, or the manufacture of paper. Rev. Rul. 68-281, 1968-1 C.B. 22, *clarified* by Rev. Rul. 88-99, 1988-2 C.B. 33, *distinguished* by Rev. Rul. 73-217, 1973-1 C.B. 36; *also see* IRC §§ 38; 48; Treas. Reg. §§ 1.46-3(e)(4),(5); 1.46-3(c)(1); 1.48-1(k); 1.48-1(b)(4); 1.48-1(d)(2),(4).

Losses; Death of Tree Seedlings; Timber Producer. A timber producer sustains no deductible loss on the death, not due to casualty, of tree seedlings planted to reforest land from which it has harvested the mature timber. Amounts paid or incurred in replanting to replace the lost seedlings must be capitalized in accordance with Treas. Reg. section 1.611-3(a). Rev. Rul. 81-2, 1981-1 C.B. 78, *distinguished and modified* by Rev. Rul. 90-61, 1990-2 C.B. 39, which concludes that greater than normally anticipated failure of planted tree seedlings because of an abnormal drought results in a deductible loss; *also see* IRC §§ 165; 611; Treas. Reg. §§ 1.611-3; 1.165-1.

“Purchaser Credit” Road Construction Contract, USDA Forest Service. The basis for cost depletion of timber does not include the “purchaser credit” earned for specified road construction under a U.S. Department of Agriculture (USDA), Forest Service contract. Furthermore, amounts expended for construction of such roads are recovered through depreciation if the roads are used for harvesting the timber or added to the depletion basis if the roads are not used for harvesting the timber. Rev. Rul. 71-354, 1971-2 C.B. 246; *also see* IRC §§ 611; 612; 631; Treas. Reg. §§ 1.611-5; 1.612-1; 1.631-1.

Reforestation. In general, direct costs of reforestation, including girdling, herbicide application, baiting of rodents, labor and tool expense, and equipment depreciation for machines used in planting and seeding, are capital expenditures recoverable through depletion allowances when the timber is cut or as adjusted basis if the timber is sold. Indirect costs, deducted in the year incurred or capitalized cumulatively under section 266 of the Internal Revenue Code (IRC), include interest paid on money borrowed or service charges on performance bonds in lieu thereof to satisfy a State law requiring a deposit to guarantee reforestation. Rev. Rul. 75-467, 1975-2 C.B. 93, *superseding* Rev. Rul. 55-252. 1955-1 C.B.319; *also see* IRC §§ 263; 611; 1011; Treas. Reg. §§ 1.263(a)-1; 1.611-3; 1.1011-1.

Reimbursements Under the Forestry Incentives Program (FIP). The excludable portion of cost-sharing payments received under the Forestry Incentives Program (FIP) is excludable from gross income, and the total costs of reforestation less the excludable portion are to be capitalized as a cost of timber. Under the election not to have IRC section 126 apply to the FIP payment, the entire payment is includible in gross income, and the total costs of reforestation (not reduced by any portion of the FIP payment) are to be capitalized as a cost of timber. Rev. Rul. 84-67, 1984-1 C.B. 28, *modifying and superseding*, Rev. Rul. 76-6, 1976-1 C.B. 176; *also see* IRC §§ 61; 126; 194; 611; Treas. Reg. §§ 1.61-1; 16A.126-1; 16A.126-2; 1.194-1; 1.611-3.

Timber Fertilization; Business Expenses. Costs incurred by a timber grower for post-establishment fertilization of an established timber stand are deductible as ordinary and necessary business expenses under IRC section 162. Such costs are similar to other deductible post-establishment costs such as the cost of fire, disease, insect and brush control in that they are performed to manage, maintain and protect the timber stand. A taxpayer changing its method of accounting to comply with this guidance must file an IRS Form 3115 in accordance with the automatic change method of accounting under Rev. Proc. 2002-9, 2002-1 C.B. 327, *modified and amplified* by Rev. Proc.

2002-19, 2002-1 C.B. 696. Under Rev. Rul. 2004-62, 2004-1 C.B. 1072, any change in a taxpayer’s treatment of post-establishment fertilization costs to conform with Rev. Rul. 2004-62 is an automatic change in method of accounting. *Also see* IRC sections 162; 446; Treas. Reg. §§ 1.162-1(a); 1.162-4; 1.263(a)-1(a); 263A(c)(5)(A).

Capital Gains

Built-In Gains Tax on S Corporations, Disposal of Timber. An S corporation’s gain recognized in certain described transactions is not recognized as built-in gain for purposes of the tax imposed by section 1374 of the Internal Revenue Code (IRC). The situations described involve an S corporation holding timber, coal or domestic iron ore property with built-in gain on the date its election to convert from a C corporation to an S corporation is effective. Rev. Rul. 2001-50, 2001-2 C.B. 343; *also see* IRC §§ 631; 1374; Treas. Reg. § 1.1374-4.

Capital Asset Defined. Under a contract for a term of 60 years granting the right to grow timber and to cut timber growing and to be grown upon a timber tract, a paper company was obligated to make yearly payments not contingent on the quantities of timber cut. Hence, the transaction is not a “disposal” of timber under IRC section 631(b). Payments equal to the fair market value (FMV) of the timber existing on the tract at the execution of the contract are proceeds of a sale of timber and any gain included in this amount is capital gain, provided the conditions of IRC sections 1221 or 1231 are met. Any excess of such payments over the FMV of the timber existing at the execution of the contract is ordinary income. Rev. Rul. 62-81, 1962-1 C.B. 153, *amplified* by Rev. Rul. 78-267, 1978-2 C.B. 171; *also see* IRC §§ 631; 1221; 1231; Treas. Reg. §§ 1.1221-1; 1.1231-1; 1.631-1.

Christmas Trees Sold on “Choose and Cut” Basis. Income realized from the sale of Christmas trees that are selected and cut on the taxpayer’s land by individual purchasers is ordinary income. The taxpayer may, however, elect to treat the cutting of trees as sales or exchanges of timber as prescribed by Treasury Regulation (Treas. Reg.) section 1.631-1. Rev. Rul. 77-229, 1977-2 C.B. 210; *also see* IRC §§ 631; 1231; Treas. Reg. §§ 1.1231-1; 1.631-1.

Cutting Contract, “Contract Right To Cut” Defined. To be entitled to the benefits of IRC section 631(a) as the holder of a “contract right to cut” timber, a taxpayer must have acquired under the contract a proprietary interest in the timber which he cuts. Rev. Rul. 58-295, 1958-1 C.B. 249; *also see* IRC § 631; Treas. Reg. § 1.631-1.

Default of Performance Bond. An amount received by the fee owner of certain timberlands from the default of a cash performance bond posted by a grantee under a contract involving the cutting and disposal of timber is not an amount realized from the disposal of timber under IRC section 631(b) and is taxable as ordinary income. Rev. Rul. 61-56, 1961-1 C.B. 243; *also see* IRC § 631; Treas. Reg. § 1.631-1.

Determination of Quantity; Timber Cutting Treated as a Sale or Exchange. A taxpayer who acquired timber-cutting rights under a USDA Forest Service cutting contract is considered to have first definitely determined the quantity of timber cut, for the purposes of the election to treat cutting of timber as a sale or exchange under IRC section 631(a), when a truck scale is made using a bureau scaler at the time the logs arrived at the taxpayer's sawmill even though a mill deck scale is made later by a USDA Forest Service scaler. Rev. Rul. 73-267, 1973-1 C.B. 306, *distinguished by* Rev. Rul. 73-489, 1973-2 C.B. 208; *also see* IRC § 631; Treas. Reg. § 1.631-1.

Determination of Quantity; Timber Cutting Treated as a Sale or Exchange. A calendar year accrual method taxpayer who owns and operates a sawmill, acquired timber-cutting rights under USDA Forest Service cutting contracts requiring that, for payment purposes, logs be scaled by a USDA Forest Service scaler and who elects to treat the cutting of timber as a sale or exchange is considered to have cut the timber for purposes of IRC section 631(a) when the logs are scaled on the mill deck by the USDA Forest Service scaler in the ordinary course of business. Rev. Rul. 73-489, 1973-2 C.B. 208, *distinguishing* Rev. Rul. 73-267, 1973-1 C.B. 306; *also see* IRC § 631; Treas. Reg. § 1.631-1.

Disposal With Economic Interest Retained. In the case of the disposal of timber, held for the requisite period of time before disposal, by the owner under any form or type of contract by virtue of which the owner retains an economic interest in such timber, pursuant to IRC section 631(b), the gain or loss on such disposal is subject to the capital gains tax treatment provided by IRC section 1231 regardless of the nature of the taxpayer's business or the purpose for which the timber is held. Rev. Rul. 57-90, 1957-1 C.B. 199; *also see* IRC §§ 631; 1231.

Gain From Timberland Sale. Gain realized by an electing small business corporation from the sale of timberland held primarily for the production of timber products and not for sale to customers is gain from the sale of real property used in a trade or business under IRC section 1231(b), subject to Treas. Reg. section 1.1375-1(d). Rev. Rul. 73-222, 1973-1 C.B. 373; *also see* IRC §§ 1231; 1375; Treas. Reg. §§ 1.1231-1; 1.1375-1(d).

Holding Period. A taxpayer who acquired timber on December 31, 1962, and still owned it at the beginning of his tax year, which began July 1, 1963, has owned such timber for a period of more than 6 months before the beginning of such tax year for purposes of IRC section 631(a). Rev. Rul. 66-6, 1966-1 C.B. 160; *also see* IRC § 631; Treas. Reg. § 1.631-1.

Holding Period of Property. A capital asset that is acquired on the last day of any calendar month, regardless of whether the month has 31 days, must not be disposed of until on or after the first day of the seventh succeeding month of the calendar to have been "held for more than 6 months" within the meaning of IRC sections 1222(3) and (4), and section 1231. Rev. Rul. 66-7, 1966-1 C.B. 188; *also see* IRC §§ 1222; 1231.

Income From the Sale of Tree Stumps. Income from the sale of tree stumps from land held by an investment company which is not in the timber or stump business, either as a buyer, seller or processor, is taxable as a capital gain where the land was acquired in a cutover state as a real estate investment and the stumps were sold in one lot. Rev. Rul. 57-9, 1957-1 C.B. 265; *also see* IRC § 1221.

Pulpwood From Tops and Limbs of Sawtimber Trees. Treating the cutting of timber as the disposal of standing trees for capital gain purposes applies only to the disposal of standing trees and not to the sale of tree tops and limbs lying on the ground. Income from the sale of the tree tops and limbs is ordinary gain or loss; however, the IRC section 631(a) benefits apply to the entire standing tree. The method of computing the FMV of such trees is specified. Rev. Rul. 56-434, 1956-2 C.B. 334; *also see* IRC § 631.

Right To Cut and Remove for Landowner. A taxpayer who acquires by contract the right to cut, remove, and sell timber from the land of another for the account of the landowner, but not the right to cut the timber for sale on his own account or for use in his trade or business, is not the holder of "a contract right to cut" such timber within the meaning of IRC section 631(a). Also, the taxpayer is not entitled to the treatment provided by IRC section 631(b), relating to a disposal by the owner. Rev. Rul. 58-579, 1958-2 C.B. 361; *also see* IRC § 631; Treas. Reg. § 1.631-1.

Timber Cutting Contract, Fair Market Value of Timber Cut. The terms of a contract under which the taxpayer acquired the unrestricted right to cut and use timber in its lumber manufacturing business are not relevant in determining the FMV of timber cut for the purposes of IRC section 631(a). Rev. Rul. 74-271, 1974-1 C.B. 151; *also see* IRC § 631; Treas. Reg. § 1.631-1.

Timber Cutting Contract, Payment for Failure To Cut.

Amounts received under a timber-cutting contract for timber cut, the quantity of which is based upon a cruise rather than scaling, qualifies for treatment under IRC section 631(b). A penalty payment received for failure to cut any portion of the “cruised” or marked trees during the term of the contract is ordinary income. Rev. Rul. 78-104, 1978-1 C.B. 194; *also see* IRC § 631; Treas. Reg. § 1.631-2.

Timber Cutting Contract; Road Credit. The amount subject to treatment under IRC section 631(b) by a corporate timberland owner that disposes of timber under a cutting contract that specifies the unit price for an estimated number of units and the amount of a “road credit” allowed the purchaser for building access roads is the actual amount realized, which is the total contract price reduced by the road credit. Rev. Rul. 75-306, 1975-2 C.B. 243; *also see* IRC § 631; Treas. Reg. § 1.631-2.

Timber Cutting Rights; Option Agreement; Holding Periods. An option on a right to cut timber that is transferred as part of an exchange of property is not an enforceable contract right to cut for IRC section 631(a) purposes, in cases where the claimed right to cut is exercisable only after a future date or occurrence or is contingent upon an election or a transfer of additional consideration by a taxpayer. The holding period in such cases commences only when the right to cut becomes exercisable. Rev. Rul. 74-529, 1974-2 C.B. 185; *also see* IRC § 631; Treas. Reg. § 1.631-1.

Timberland Tracts; Holding Period. The holding period of each of several tracts in a timber acreage purchased under a single indivisible contract with annual payments and release of deeds from escrow based on tracts selected for cutting begins on the day after the execution of the contract. Rev. Rul. 72-252, 1972-1 C.B. 193; *also see* IRC § 631; Treas. Reg. § 1.631-1.

Treatment of Expenses for Timber Disposal. Expenditures directly attributable to a disposal of timber under IRC section 631(b) are reductions of the “amount received” for purposes of computing gain or loss from such disposal. Whether expenditures are directly attributable to a disposal is determined largely on the strength or persuasiveness of the facts of each particular case and how closely related to the disposal of the timber are the activities in connection with which the expenditures are incurred. Rev. Rul. 71-334, 1971-2 C.B. 248; *also see* IRC § 631; Treas. Reg. § 1.631-2.

Unstated Interest; Long-Term Timber Contracts. The application of the unstated interest provisions of IRC section 483 to long-term timber contracts is described in situations in which the taxpayer is (1) a landowner who receives the entire consid-

eration under the contract in a lump sum on the date the contract is signed, (2) a landowner who is to receive payments over a period of 60 years under a contract for the sale of timber and lease of the land on which the timber is growing, and (3) a paper company that makes payments under a contract similar to that in situation 2. Rev. Rul. 78-267, 1978-2 C.B. 171, *amplifying* Rev. Rul. 62-81, 1962-1 C.B. 153; Rev. Rul. 62-82, 1962-1 C.B. 155; and Rev. Rul. 75-59, 1975-1 C.B. 177; *also see* IRC §§ 483; 1221; 1231; Treas. Reg. §§ 1.483-1; 1.1221-1; 1.1231-1.

Unstated Interest; Long-Term Timber Contracts. Under the terms of the long-term timber contract the landowner receives a lump sum payment on the date the contract is signed. This payment is the only payment received by the landowner. No payments are due more than 6 months after the date of the execution of the contract. IRC section 483 does not apply under the circumstances because no deferred payments are provided for under the terms of the contract. Rev. Rul. 62-82, *amplified by* Rev. Rul. 78-267; *also see* IRC §§ 631; 1221; 1231; Treas. Reg. §§ 1.631-1; 1.1221-1; 1.1231-1.

When Timber “Cut” for Determining Capital Gain or Loss Treatment. For purposes of determining capital gain or loss, timber is considered “cut” at the time when in the ordinary course of business the quantity of timber felled is first definitely determined, rather than at the time of the felling. Rev. Rul. 58-135, 1958-1 C.B. 519; *also see* IRC § 631; Treas. Reg. § 1.631-1.

Cost-Sharing Payments

Certain Cost-Sharing Payments. The USDA Conservation Reserve Program (CRP) was determined to be substantially similar to the type of programs described in section 126(a)(1) through (8) of the Internal Revenue Code (IRC). Thus, cost-sharing payments made under the program may be excluded from gross income to the extent permitted under IRC section 126. Rental payments and incentive payments made to CRP participants do not qualify as cost-sharing payments, however, and therefore are not excludable from gross income. Rev. Rul. 2003-59, 2003-1 C.B. 1014; *also see* IRC §§ 61; 126; Treas. Reg. §§ 16A.126-1; 16A.126-2.

Certain Cost-Sharing Payments. The Conservation Security Program (CSP) was determined to be substantially similar to the type of program described in IRC section 126(a)(1) through (8). Thus, cost-sharing payments made under the program may be excluded from gross income to the extent permitted under IRC section 126. Rev. Rul. 2006-46, 2006-2 C.B. 511; *also see* IRC §§ 61; 126; Treas. Reg. §§ 16A.126-1; 16A.126-2.

Certain Cost-Sharing Payments. The Wetlands Reserve Program (WRP), Wildlife Habitat Incentives Program (WHIP), and Environmental Quality Incentives Program (EQIP) were determined to be substantially similar to the type of program described in IRC section 126(a)(1) through (8). Thus, cost-sharing payments made under the programs may be excluded from gross income to the extent permitted under IRC section 126. Rev. Rul. 97-55, 1997-2 C.B. 20; *also see* IRC §§ 61; 126; Treas. Reg. §§ 16A.126-1; 16A.126-2.

Certain Cost-Sharing Payments; Forest Health Protection Program (FHPP). The Forest Health Protection Program (FHPP) was determined to be substantially similar to the type of programs described in IRC section 126(a)(1) through (8) within the meaning of IRC section 126(a)(9). Consequently, all or a portion of cost-sharing payments received under the FHPP is eligible for exclusion from gross income to the extent permitted under section 126. Rev. Rul. 2009-23, I.R.B. 2009-32; *also see* IRC §§ 61; 126; Treas. Reg. §§ 16A.126-1; 16A.126-2.

Certain Cost-Sharing Payments Under the Stewardship Incentives Program (SIP). The Stewardship Incentives Program (SIP) was determined to be substantially similar to the enumerated programs in IRC section 126, so that IRC section 126 improvements made in connection with small watersheds and under the SIP are within the scope of IRC section 126 (a)(9). Thus, SIP cost-sharing payments in connection with improvements in small watersheds may be excluded from gross income to the extent permitted under IRC section 126. Rev. Rul. 94-27, 1994-1 C.B. 26; *also see* IRC §§ 61; 126; Treas. Reg. §§ 1.61-1; 16A.126-1; 16A.126-2.

Reimbursements Under the Forestry Incentives Program (FIP). The excludable portion of cost-sharing payments received under the Forestry Incentives Program (FIP) is excludable from gross income, and the total costs of reforestation, less the excludable portion, are to be capitalized as a cost of timber. Under the election not to have IRC section 126 apply to the FIP payment, the entire payment is includible in gross income, and the total costs of reforestation (not reduced by any portion of the FIP payment) are to be capitalized as a cost of timber. Rev. Rul. 84-67, 1984-1 C.B. 28, *modifying and superseding*, Rev. Rul. 76-6, 1976-1 C.B. 176; *also see* IRC §§ 61; 126; 194; 611; Treas. Reg. §§ 1.61-1; 16A.126-1; 16A.126-2; 1.194-1; 1.611-3.

Like-Kind Exchanges

Charitable Contribution; Bargain Sale. A corporation's exchange of timberland, with the corporation reserving the

timber-cutting rights, for State-owned timberland of lesser fair market value is not a bargain sale within the meaning of IRC section 170, and the corporation is not entitled to a charitable contribution deduction; however, the exchange qualifies for nonrecognition of gain or loss under IRC section 1031(a). Rev. Rul. 76-253, 1976-2 C.B. 51; *also see* IRC §§ 170; 1031; Treas. Reg. §§ 1.170A-1; 1.1030(a)-1.

Like Kind Exchange; Bargain Sale to a State. An exchange of timberland owned by a producer of forest-related products for bare land of lesser value owned by a State, which is a bargain sale as defined in Treasury Regulation (Treas. Reg.) section 1.170A-4(c)(2)(iii), constitutes an exchange of like kind property under Internal Revenue Code (IRC) section 1031(a). The basis of the property received from the State is determined under IRC section 1031(d) as adjusted by applying IRC section 1011(b). Rev. Rul. 78-163, 1978-1 C.B. 257; *also see* IRC §§ 170; 1011; 1031; Treas. Reg. §§ 1.170A-4; 1.1011-2; 1.1031(a)-1; 1.1031(d)-1.

Like-Kind Exchange of Timberland. The taxpayer conveyed to the United States timberland containing some virgin timber and also substantial second-growth timber in exchange for timberland supporting substantial virgin timber. The exchange qualified for nonrecognition of gain or loss under IRC section 1031(a) because both the original and replacement lands were held for investment purposes. Rev. Rul. 72-515, 1972-2 C.B. 466; *also see* IRC § 1031(a); Treas. Reg. § 1.1031(a)-1(b).

Involuntary Conversions

Loss From Death of Tree Seedlings; Drought. Greater than normally anticipated failure of planted tree seedlings because of an abnormal drought results in a deductible loss under IRC section 165(a). The deductible loss, allowable for the year in which the seedlings died, is in an amount equal to previously capitalized reforestation costs that had to be duplicated on replanting and the loss is treated as a loss from an involuntary conversion of property under IRC section 1231(a)(4)(B). Rev. Rul. 90-61, 1990-2 C.B. 39; *distinguishing* Rev. Rul. 81-2, 1981-1 C.B. 78, *amplifying* Rev. Rul. 87-59, 1987-2 C.B. 59; *also see* IRC §§ 48; 165; 194; 611; 1231; Treas. Reg. §§ 1.48-1; 1.611-3; 1.194-1; 1.1231-1.

Loss From Death of Tree Seedlings; Insect Attack. Loss of timber over a 9-month period following an unexpected and unusual insect attack that killed the timber trees gives rise to an allowable noncasualty business loss deduction that must be netted with other noncasualty IRC section 1231 gains and losses. Rev. Rul. 87-59, 1987-2 C.B. 59; *distinguishing* Rev. Rul. 66-9,

1966-1 C.B. 39, and Rev. Rul. 79-174, 1979-1 C.B. 99, *amplified by* Rev. Rul. 90-61, 1990-2 C.B. 39; *also see* IRC §§ 48; 165; 194; 611; 612; 1231; Treas. Reg. §§ 1.48-1, 1.165-1, 1.165-7, 1.194-1, 1.611-3, 1.612-1, 1.1231-1.

Losses; Casualty; Trees Destroyed By Onslaught of Beetles.

The death of ornamental trees 5 to 10 days following a massive southern pine beetle attack in an area not known for such massive attacks results in an allowable casualty loss deduction to the extent provided by Internal Revenue Code (IRC) section 165(c). Rev. Rul. 79-174 modifies Rev. Rul. 57-599, which had concluded that a loss arising from death of a tree as a result of disease or attack by insects does not constitute an allowable deduction to the extent provided by Internal Revenue Code (IRC) section 165(c). Rev. Rul. 79-174, 1979-1 C.B. 99; *modifying* Rev. Rul. 57-99, 1957-2 C.B. 142; *also see* IRC § 165; Treas. Reg. § 1.165-7.

Losses; Death of Tree Seedlings; Timber Producer. A timber producer sustained no deductible loss on the death, not due to casualty, of tree seedlings planted to reforest land from which it has harvested the mature timber. Amounts paid or incurred in replanting to replace the lost seedlings must be capitalized in accordance with Treas. Reg. section 1.611-3(a). Rev. Rul. 81-2, 1981-1 C.B. 78, *distinguished and modified by* Rev. Rul. 90-61, 1990-2 C.B. 39, which concludes that greater than normally anticipated failure of planted tree seedlings because of an abnormal drought results in a deductible loss; *also see* IRC §§ 165; 611; Treas. Reg. §§ 1.611-3; 1.165-1.

Nonrecognition of Gain; Timber Damaged by Storm; Voluntary Sale. The nonrecognition of gain provisions of IRC section 1033(a) are applicable to the proceeds received from the voluntary sale of timber downed by high winds, earthquake, or a volcanic eruption when the proceeds are used to purchase other standing timber. Rev. Rul. 80-175 revokes Rev. Rul. 72-372,

which had denied nonrecognition treatment. Rev. Rul. 80-175, 1980-2 C.B. 230; *revoking* Rev. Rul. 72-372, 1972-2 C.B. 471; *also see* IRC § 1033; Treas. Reg. § 1.1033(a)-2.

Timber Casualty Losses. In *Westvaco versus United States* (639 F.2d 700, 225 Ct. Cl. 436 (Ct. Cl. 1980)), the Court of Claims decided that the single identifiable property (SIP) damaged or destroyed by storms and fires included all the taxpayer's standing timber in the district (block) directly affected by each casualty and not only 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 versus 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)), 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 the 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 Treasury Regulation (Treas. Reg.) section 1.611-3(d)(1). In light of the *Westvaco* and *Weyerhaeuser* decisions, the Internal Revenue Service (IRS) issued Revenue Rule (Rev. Rul.) 99-56, *revoking* the earlier Rev. Rul. 66-9 and 73-51, which had defined the "property involved" and the SIP destroyed in a casualty loss to timber as the quantity of timber rendered unfit for use by reason of the casualty, and defining the SIP for timber held to produce income as the block directly affected by the casualty. Rev. Rul. 99-56, 1999-2 C.B. 676, *revoking* Rev. Rul. 66-9, 1966-1 C.B. 39, and Rev. Rul. 73-51, 1973-1 C.B. 75; *also see* IRC § 165; Treas. Reg. § 1.165-7.