

DRAPER v. UNITED STATES
60-1 USTC ¶ 9284,5 AFTR 2d 842 (E.D. Wash. 1960).

Editor's Summary

Key Topics

FAIR MARKET VALUE OF TIMBER

Facts

The taxpayer elected to treat his cutting of timber as a sale or exchange pursuant to section 117(k)(1). However, the fair market value assigned by the taxpayer to the cut timber was contested by the Commissioner.

District Court

Held: The Court finds without discussion the fair market value of the cut timber.

Case Text

FINDINGS OF FACT AND CONCLUSIONS OF LAW

POWELL, District Judge: The above entitled case was heard before the Honorable Judge Charles L. Powell for the United States District Court for the Eastern District of Washington, sitting in Spokane, Washington, on the 8th day of January, 1960, the plaintiffs being represented by Francis J. Buffer of Castoldi & Buffer, .and the defendant being represented by Patrick H. Shelledy, Assistant United States Attorney for the Eastern District of Washington,. and the Judge having heard the testimony, examined the exhibits, stipulated facts and the briefs submitted on behalf of both parties and being fully advised in the premises, finds as follows:

FINDINGS OF FACT

I. That this action was brought under Title 28 U. S. Code, Section 1346(a)(1) and under, the Internal Revenue Code of 1954.

II. That the plaintiffs herein are and at all times material hereto were husband and wife, citizens of the United States, over the age of :twenty-one years, and are and have been residing in the City of Colville, County of Stevens, State of Washington.

III. That the plaintiffs herein filed a Federal Income Tax Return :for the taxable year 1950 with the Collector of Internal Revenue, "Tacoma, Washington, and paid the tax shown on the return of \$92,144.80.

IV. That subsequent to the time that plaintiffs filed their Federal Income Tax Return for the taxable year 1950 as set out above, the Commissioner of Internal Revenue, by and through his agents, conducted an audit and investigation of the said income tax return. That on May 31, 1956, the Commissioner of Internal Revenue mailed a statutory Notice of Deficiency to the plaintiffs, asserting that the said plaintiffs owed additional income tax for the taxable year 1950 in the amount of \$21,167.88, plus interest.

V. That said additional tax of \$21,167.88 was predicated upon the following assertions by the Commissioner of Internal Revenue:

1. That the plaintiffs overstated depletion on timber in the amount of \$31,997.14.
2. That the plaintiffs' farm loss for the taxable year 1950 was \$15,199.85, rather than \$15,289.81.
3. That the plaintiffs erroneously deducted \$230.00 during the year 1950 as a cruising expense.
4. That the plaintiffs could not deduct as a charitable contribution the sum of \$6,000.00 paid by them during the taxable year to the Fred Draper Trust, a charitable organization.

VI. That in response to the statutory Notice of Deficiency as set out above, plaintiffs on the 31st day of August, 1956, executed a Treasury Form 870 and thereby waived the restrictions on assessment and collection imposed upon the government by the provisions of the Internal Revenue Code of 1939 and/or 1954. That on or about the 29th day of October, 1956, plaintiffs paid the United States Treasury the sum of \$28,430.80, representing the income tax deficiency referred to above, plus interest at the rate of 6% per annum from the time the return was filed to the time the additional tax was paid.

VII. That on or about the 17th day of April, 1957, plaintiffs filed with the District Director of Internal Revenue at Tacoma, Washington, a claim for refund of the federal tax for the taxable year 1950 in the total amount of \$28,430.80, plus interest.

VIII. That the plaintiffs' claim for refund had not been formally rejected by the Commissioner of Internal Revenue and that at least six months had expired prior to the time that the complaint in the above-entitled action was filed.

IX. That during the taxable years 1948, 1949 and 1950 the petitioners paid the following amounts to the Draper Trust:

Year	Amount
1948	\$36,000.00
1949	12,000.00
1950	6,000.00

That the plaintiffs in each of these said taxable years deducted the above amounts as charitable contributions on their income tax returns as filed for the said years.

X. That on December 30, 1948, petitioners formed the Draper Trust. The original trust

instrument provided in part as follows:

The said trustees are to use said trust fund for the purpose of constructing, maintaining and operating a building in the City of Colville, Washington, to be used exclusively by domestic, fraternal societies operating under the lodge system and used exclusively for religious, charitable, scientific, literary or educational purposes... All questions arising in connection with the administration of this trust are to be determined by a majority, of the said trustees and the action of the majority on all questions connected therewith shall be final.

The Draper Trust was a charitable organization to which contributions were deductible in the taxable year 1950 by the plaintiffs in arriving at taxable income for the said taxable year. This holding is in accordance with the decision of the Tax Court of the United States involving contributions to the said Draper Trust for the taxable years 1948 and 1949, which said decision, dated May 29, 1959, is reported at 32 Tax Court, No. 49.

XI. The parties hereto stipulated that during the taxable year 1950 plaintiffs cut the following timber from the following tracts, which qualified for the election which they timely made under Section 117 (k) (1) of the Internal Revenue Code of 1939, to-wit:

Name of Tract	Reported Volume Cut	
	Ponderosa Pine	Douglas Fir
Chewelah Creek	1,104,266	310,694
Jones Timber	920,712	506,639
Kitt Timber	92,976	93,405
Willis & Clifton Hills	7,400	208,542
L. R. Hills	68,376	2,357,345
Chollett	76,684	35,744
McLean Timber	472,436	102,580
Deer Creek	<u>144,300</u>	<u>392,389</u>
	2,887,150	4,007,338

XII. That the fair market value as found by the Court of the timber cut by plaintiffs herein during the taxable year 1950 which qualified under the provisions of Section 117(k)(1) of the Internal Revenue Code of 1939 was as follows:

Ponderosa Pine	\$12.50 per M board feet
Fir and Larch	5.00 per M board feet

XIII. That the parties hereto have stipulated and agreed in open court that the following issues involved herein should be disposed of as follows:

1. That the defendant's determination of plaintiffs' farm loss for the taxable year 1950 should be sustained in full.
2. That the plaintiffs should reduce depletion for the taxable year 1950 by the amount of \$1,016.03.
3. That the plaintiffs should be allowed as a deduction in the taxable year 1950 the amount of

\$115.00 as a cruising expense.

CONCLUSIONS OF LAW

1. That this Court has jurisdiction of the controversy and the plaintiffs thereto.
2. That the contribution of \$6,000.00 made by plaintiffs during the taxable year 1950 to the Draper Trust should be allowed as deductions by the said plaintiffs in arriving at the taxable income for the taxable year 1950.
3. That the plaintiffs should use the following fair market values in determining its capital gain under the provisions of Section 117(k)(1) of the Internal Revenue Code of 1939 for the taxable year 1950:

Ponderosa Pine	\$12.50
Douglas Fir	5.00

That therefore plaintiffs are entitled to judgment against the defendant for \$15,336.00, plus interest as provided by law.