

Everson v. United States
US-DIST-CT, [95-1 USTC ¶50,150],
U.S. District Court, Dist. Mont.,

Key Topics

- Depreciation
- Farmers
- Soil conservation Expenditures
- Trees

[Code Secs. 46 and 167]

Depreciation: Farmers: Soil conservation expenditures: Trees.--A couple was not entitled to claim depreciation or investment credits for trees and bushes that were planted on their farm as a wind break because the trees did not produce revenue. The trees and bushes were planted under a soil conservation program and were intended to reduce moisture evaporation and soil erosion. The trees served a non-revenue producing purpose and, as such, were part and parcel of the farm realty rather than depreciable business assets of the farm. BACK REFERENCES: 95FED ¶4513.65 and 95FED ¶11,007.1958

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Memorandum, Order, and Judgment

SHANSTROM, District Judge:

Counsel for the respective parties appeared before the undersigned on November 3, 1994, for oral argument on cross-motions for summary judgment. Based upon arguments set forth at the hearing and in the briefs, the Court is prepared to rule.

Facts

The parties have stipulated that the issues presented on the cross-motions are: (1) whether mature trees and bushes planted in rows on parts of 3,700 acres are eligible for the depreciation allowance; and (2) whether such bushes and trees qualify for investment credit under the Internal Revenue Code in effect in 1983.

In 1983, plaintiffs ("Eversons") purchased an undivided 64% ownership interest with another individual in 3,700 acres of farm and ranch land for a total purchase price of \$1,200,000.00. Some twenty years prior to this sale, a portion of the land had been planted with parallel rows of bushes and trees. These rows are approximately 200 feet apart and cover a majority of that

portion of the acreage that is planted with crops. These trees and bushes do not produce saleable timber and have never, in and of themselves, produced any fruit, nuts, or other products that could be sold. The trees and bushes were planted as a wind break under a soil conservation program, and were intended to reduce moisture evaporation and soil erosion. The Eversons contend they were told by the sellers that there were approximately 250,000 bushes and trees planted.

For tax purposes, the Eversons allocated \$1.00 per tree and bush, or \$250,000.00 of the purchase price, to these trees and bushes, and claimed depreciation and investment credit on them. At that time, the Eversons assigned a useful life of 12 years to the trees and bushes, and began to depreciate them (with a three year loss carryback to 1980) using a straight-line method. The Internal Revenue Service ("IRS") subsequently disallowed the claimed yearly depreciation deductions and investment credit, and determined income tax deficiencies for the years 1980, 1983, and 1985-89. The Eversons paid the deficiencies and, having made an administrative claim for a refund, filed the present action seeking a refund.

Discussion

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The cross-motions now pending before the Court demonstrate the absence of a dispute over the material facts. Consequently, this matter boils down to a purely legal question, that is, whether mature trees and bushes planted in rows on parts of 3,700 acres are eligible for the depreciation allowance and investment credit under the Internal Revenue Code in effect in 1983.

The deductions sought here by the Eversons are not obtained by a matter of right, but rather are available as a matter of congressional grace. See e.g., *Deputy v. du Pont* [40-1 USTC ¶9161], 308 U.S. 488, 493, 60 S.Ct. 363, -- (1940). In order to avail themselves of such deductions, the Eversons have the burden of showing that the claimed deductions fall within the statutory provisions which allow for them. *Potts, Davis & Co. v. C.I.R.* [70-2 USTC ¶9635], 431 F.2d 1222 (9th Cir. 1970).

The parties agree that in order to qualify for investment credit, the trees and shrubs must first be property subject to depreciation. I.R.C. 38. Thus, if the Court determines the Eversons were not entitled to the depreciation allowance, then it follows that they would not be entitled to the investment credit. This being the state of the law, it naturally follows that the issue of depreciation should be addressed first.

A depreciation deduction is only allowed on property used in the trade or business. I.R.C. 167(a). Under authority from Congress, the Secretary of the Treasury is empowered to "prescribe all needful rules and regulations for the enforcement of the" code. I.R.C. 7805(a). Such regulations have the force of law. *United States v. California Portland Cement Co.* [69-2 USTC ¶9509], 413 F.2d 161 (9th Cir. 1969). The Secretary of Treasury has used this authority to put a further restriction on 167(a). See *Treas. Reg. 1.167(a)*. This regulation, 1.167(a), states that "[a] reasonable allowance for depreciation may be claimed on farm buildings (except a dwelling occupied by the owner), farm machinery and other physical property but not including land."

Treas. Reg. 1.167(a)-6(b).

In other situations the Secretary has found that "trees are part and parcel of the land in which they are rooted and, thus, realty which passes to the purchaser with the purchase of the land." Rev. Rul. 67-51, 1967-1 C.B. 68. However, trees purchased and held for the production of revenue, e.g. orange groves and the like, are depreciable. See *Id.*; see, also, *Hawkins v. Comm'r* [CCH Dec. 16,068(M)], 6 TCM 1087 (1947). Consequently, there is a distinction between those trees and other plant life that produce revenue and those that do not. Simply stated, those that produce revenue qualify for the depreciation deduction. On the contrary, those trees and plant life that do not produce revenue do not qualify for the depreciation allowance.

Here, the Eversons' trees and bushes do not produce revenue. Rather, these trees and bushes serve another, non-revenue producing purpose. Accordingly, the Eversons do not qualify for the depreciation allowance. Since the Eversons are not entitled to the depreciation allowance, neither are they entitled to an investment credit. I.R.C. 38.

Accordingly,

IT IS ORDERED:

1. Plaintiffs' motion for summary judgment is denied.
2. Defendant's motion for summary judgment is granted and judgment is hereby entered in favor of the defendant.

The Clerk of Court is directed to forthwith notify the parties of the making of this order and of the entry of judgment.

DONE