

## LYSEK v. COMMISSIONER

### *Editor's Summary*

#### *Key Topics*

##### VALUATION

- Fair market value of timber
- How determined

#### *Facts*

In 1966, the taxpayer reported a long-term capital gain under Section 631(a). He claimed that approximately 660,000 gross board feet of timber was cut on his property during 1966, and that the timber had a value of about \$30 per thousand board feet. The Commissioner contended that the standing timber had a value of \$17 per thousand board feet and this value applied only to the extent of 491,620 board feet of net merchantable logs obtained from the timber cut. The taxpayer based his valuation on (a) the average price offered for timber on a contiguous property (b) upon two timber trespass awards one awarded to him and the other assessed and (c) taxpayer's personal opinion and the opinion of his tax adviser, neither of whom qualified as timber valuation experts. The commissioner presented two qualified timber valuation experts, one of whom used the "conversion return" approach, and the other who had inspected and appraised the timber on the contiguous property. In addition, both experts presented photographs and testified concerning sales prices for five comparable timber sales.

#### *Tax Court*

[opinion at 12 T.T.J. 85]

**Held:** For the Commissioner. The Commissioner's evaluation of the timber was held correct. The Court rejected taxpayer's valuation since the taxpayer and the professional tax adviser were not qualified timber valuation experts and the value of the timber sold on adjacent lands was based on higher grade timber. In addition, timber trespass awards under California law are presumptively greater than fair market value since they are punitive and not remedial. The Court also held that the Commissioner's finding on the amount of timber in question was correct since 168,380 board feet of defective timber cut but left in the field was not "sold or exchange" within the meaning of Section 1.631 - 1(d) of the Treasury Regulations.

#### *Court of Appeals*

Held: For the Commissioner. The Court of Appeals for the 9th Circuit affirmed the decision of the Tax Court in an unpublished decision on July 22, 1976.