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TAXATION — INCOME TAXES — DEDUCTION FOR UNCOMPENSATED DAMAGES TO NON-BUSINESS PROPERTY — Several years prior to 1934, the taxpayer purchased a pleasure automobile for $1,825. Its value in 1934 was $225; after a collision its value was $190. The Circuit Court of Appeals for the Second Circuit upheld the taxpayer's contention that inasmuch as a taxpayer is not allowed an annual deduction for depreciation on non-business property, the original cost of such property constituted the basis for measuring the "uncompensated loss" allowed as a deduction for income tax purposes under section 113 (b) (1) (B) of the Revenue Act of 1934.[1] *Held*, the decision of the Circuit Court of Appeals should be reversed and only the actual damages of $35 allowed as a deduction. *Helvering v. Owens*, (U. S. 1939) 59 S. Ct. 260.

Several early cases denied deduction for uncompensated losses resulting from accidents to pleasure automobiles.[2] In 1927, however, *Shearer v. Anderson*[3]

[1] Helvering v. Owens, (C. C. A. 2d, 1938) 95 F. (2d) 318.

[2] On the theory that such losses were not the result of casualty. Clinton Graham, 1 B. T. A. 775 (1925); Charles N. Burch, 4 B. T. A. 604 (1926). See Treasury Department rulings to same effect, Bureau of Internal Revenue O. D. 629, 3 CUM. BULL. 158 (1920); O. D. 857, 4 CUM. BULL. 160 (1921), last sentence.

[3] (C. C. A. 2d, 1927) 16 F. (2d) 995, decided under section 214 (a) (6), Revenue Act of 1918, 40 Stat. L. 1067, which is the equivalent of section 23 (e)

reversed these decisions on the theory that such losses were properly deductible as losses resulting from "casualty." But since the Revenue Act of 1918, under which it was decided, failed to provide a measuring basis, the deduction was limited to the actual damages as measured by the cost of repairs.[4] During the same year a similar case was decided under the 1924 act with the same result.[5] The Revenue Act of 1926 was expressly amended to the effect that as to property acquired after 1913, its original cost was to be the measuring basis to determine deductible losses.[6] While this provision appeared to remove all doubt as to the exact formula to be followed, in *Grant v. Commissioner*[7] the full difference between the original cost and the value after the casualty was not deducted. The taxpayer requested, and the board allowed, that proportion of the original cost measured by the ratio of actual damages to value immediately before the casualty.[8] Thus for the first time an amount greater than the actual damages was allowed. The board recognized that the act distinguished loss from deduction and that the deduction was not limited to the extent of the actual damages.[9] The 1934 act provides that the adjusted basis of property shall be the basis for determining such deductions.[10] But since no annual deduction is allowed the taxpayer for depreciation of his pleasure automobile,[11] the taxpayer argued that the "adjusted basis" as to this property should be its original cost. In refusing to follow this theory the Court, no doubt, arrived at an appar-

(3), Revenue Act of 1936, 49 Stat. L. 1659, allowing a reduction for uncompensated losses resulting from fire, storm, shipwreck "or other casualty." In accordance with the decision, the Treasury Department promptly withdrew its rulings to the contrary. G. C. M. 1802, VI-1 CUM. BULL. 219 (1927).

[4] Apparently more than actual damages was not requested. G. C. M. 1802, VI-1 CUM. BULL. 219 (1927), provided merely that cost of repairs incident to injury to a pleasure auto were deductible.

[5] Bronson v. Commissioner, 9 B. T. A. 1008 (1927). In the Revenue Act of 1926, section 214 (a) (6) was amended to the effect that as to property acquired after March 1, 1913, the basis for determining the deductible losses was to be the fair value of such property on March 1, 1913. It was silent as to the basis for property acquired after 1913 which property was not in existence in 1913. Apparently for this reason, taxpayer did not request original cost as the basis.

[6] Revenue Act of 1926, sec. 214 (a) (6) 44 Stat. L. 27: "The basis for determining the amount of the deduction . . . shall be the same as provided in section 204." Section 204: "The basis for determining gain or loss from the sale or other disposition of property acquired after Feb. 28, 1913, shall be the cost of such property."

[7] 30 B. T. A. 1028 (1934).

[8] The formula adopted was: $\frac{\text{value before casualty less value after casualty}}{\text{value before casualty}} \times \text{original cost} = \text{permissible deduction for loss.}$ See also O'Reare v. Commissioner, 28 B. T. A. 698 (1933), decided under Revenue Act of 1921.

[9] Grant v. Commissioner, 30 B. T. A. 1028 at 1036 (1934).

[10] Sec. 23 (e) (3) in the Act of 1934 and later acts is the equivalent of § 214 (a) (6) in the earlier acts. Sec. 23 (h) refers to § 113 (b) as the basis upon which to determine deductions, which concerns the adjusted basis of property, but is silent as to property without such basis.

[11] Revenue Act of 1934, § 23(l), 48 Stat. L. 689, provides for depreciation on property used in one's business, which does not include a pleasure automobile.

ently fair conclusion. However, it is submitted that in view of the history of this problem, more consideration should have been given to the earlier cases, which, in connection with the theory that tax statutes are to be construed in favor of the taxpayer, may have warranted a different result.

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