

VIEWPOINT OF IRS AND INSURANCE AGENCIES ON SHADE TREE VALUES¹

By Gay Gustin, Jr.

The International Shade Tree Conference, together with the National Arborist Association and similar groups, have done more to promote shade tree values than any other group. The Shade Tree Evaluation booklet has served as a guide in establishing monetary values of trees and, while it is far from perfect and needs revision from time to time, yet it is the best available authority of its kind and has had wide acceptance throughout the country.

There are, however, two regulatory agencies that deal with casualty losses to trees that do not accept our appraisal of tree values. These are the insurance companies and the Internal Revenue Service. I shall try to explain their viewpoint and to point out what we consider as inequities that we believe should be corrected.

What is a casualty? As stated in the insurance regulations, "A casualty is the complete or partial destruction of property resulting from an identifiable event of unexpected or unusual nature." An elm killed by Dutch elm disease is just as dead as one struck by lightning and it would seem as great a loss to the property but it is not considered a casualty because it didn't happen suddenly. The same is true of all diseases, insect attacks, termite damage, etc.

The insurance company's viewpoint is quite direct and quite simple. I personally have three homeowner policies in my file covering three different properties. They are written by three different companies and it is quite likely yours will read the same. In all three under the heading 'Additional Conditions' there is a clause that reads:

This Company shall be liable for loss to trees, shrubs, plants, and lawns (except those grown for business purposes) only when the loss is caused by fire, lightning, explosion, riot, civil commotion, malicious mischief, theft, aircraft or vehicle not operated by an occupant of the premises. The Company's liability in any one occurrence

under this provision shall not exceed in the aggregate for all such property 5% of the limit of liability of Coverage A nor more than \$250, on any one tree, shrub or plant including expense incurred in removing the debris.

The reason all the policies read alike is because they were all written by the same agency. We found that the insurance carriers do not dictate the terms of their policies, nor do the various state insurance commissions. There are perhaps as few as three or four large insurance service organizations that write the policies. One such organization, the Insurance Service Organization with offices in New York, writes the policies for perhaps 50% of all the companies in the country.

Their claims for casualty losses to trees are very few. A speaker at the ASCA meeting in Tampa last winter told us that out of 4000 claims last year only six involved trees. So tree losses are a small concern to them. The Board of Directors of the Insurance Service Organization meets only once every six years and policy changes are considered at that time. The limit of \$250 was established in 1954 and has stayed right there for 20 years.

Most policies have a \$50-deductible clause, so actually the owner of a fine and valuable tree can only collect \$200 and it might cost several times that amount to clean up the debris. The variety of the tree, the size, no matter whether it is in Little Rock, Arkansas or Big Rock, Minnesota doesn't matter, the limit is still \$250. We have known this for years and have realized the inequity of it, but so far as I know, we, as arborists have done nothing to change it.

The casualty loss situation under IRS is not quite that simple. Income tax regulations are printed in the Internal Revenue Code. It is a book about three inches thick. Using this Code, people have expressed their judgment in various

1. Presented at the 50th International Shade Tree Conference in Atlanta, Georgia in August, 1974.

forms. Rulings are largely influenced by someone's opinion or judgment. In computing casualty losses the term *fair market value* stands out. A judicial definition of fair market value is the price which property will bring when offered by a willing seller to a willing buyer neither being obligated to buy or sell. The IRS regulations specify that the amount of a casualty loss deduction shall be the lesser of (1) the fair market value of the property immediately before and immediately after the casualty, and (2) the adjusted basis.

What then is the adjusted basis? The regulation states that most property is acquired by purchase and the basis is its cost. But if the property has been subject to depreciation, previous casualty losses or other recovery adjustments, the basis of the property must be reduced to reflect these amounts. Any expenditures for capital improvements should be added to the basis. The result of these increases and decreases is the adjusted basis of the property.

It should be noted that the regulations treat business property and nonbusiness or residential property differently. With business property the fair market value to be considered is that of individual items of property destroyed whereas with nonbusiness property it is the difference of the entire estate immediately before and immediately after the casualty. For a loss incurred in a trade or business or in any transaction entered into for profit the amount of loss is determined to the single identifiable property destroyed. Thus, if a business property loses ornamental plants or trees the amount of the deduction will be determined by reference to the lost value of the plants without regard to any change in the value of the entire property. Whereas, in the case of a casualty involving residential property and improvements thereon ornamental trees and plants are considered an integral part of the property with no determination of the fair market value of the land, house, and trees.

The problem of measuring the casualty loss for residential property is the difficulty and expense of establishing the fair market value of

the entire property before and after the casualty. The regulations plainly state that these values shall be ascertained by "competent appraisal". Of course, the average arborist would not be regarded as competent to appraise real estate values.

The IRS regulations specifically reject the use of the shade tree evaluation formula for determining the loss or damage to shade and ornamental trees on residential property stating that such a formula is a hypothetical consideration of individual trees and is not necessarily related to the fair market value of the property as a whole. It follows then that if you, as a professional arborist, are called into court to testify as to the value of trees in a case involving casualty loss if the opposing attorney has done his homework you could not hope to use the shade tree evaluation formula and make it stick.

All casualty losses on residential properties are subject to a deduction of \$100 for each casualty just like the insurance company. If you have a series of casualties in any year you are subject to the \$100-deductible on each one. This deduction does not apply to business property. If you have received compensation from your insurance company for casualty losses this must be reported and will be deducted from the amount you receive from IRS.

There seems to be one bright spot in an otherwise hopeless situation. The IRS has ruled that while the cost of replacing trees and shrubs is not dispositive in determining the amount of the allowable loss it may be acceptable as evidence of the decrease in value. Thus, where trees and shrubs are damaged by casualty the cost of restoration may be used to ascertain the amount of the casualty loss deduction without appraisal of the entire property.

This, then seems to be the viewpoint of the IRS and insurance companies. Needless to say, we believe they represent many inequities. For example, we believe that the \$250 limit the insurance companies place on tree damage to be entirely too low. We believe that the shade tree evaluation formula, as published by the

International Shade Tree Conference is a good and useful tool in appraising tree values and that it is not a hypothetical formula. We believe that trees should be considered as having individual value and that real estate appraisers are no more qualified to appraise tree values than an arborist is qualified to appraise real estate.

These regulations are not new. They have been in existence for many years and I know of no concentrated effort on the part of this or any other organization to try to correct these inequities. It would seem then that we are not

totally without blame.

At the meeting in Tampa last winter, the ASCA appointed a committee, under the able direction of Dr. L. S. Chadwick, to see if something could be done to correct this situation. It is too early to tell just how successful this committee will be but I can tell you that progress is being made and it looks very hopeful. I feel sure we shall have a favorable report to make at a later date.

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ABSTRACT

Bell, D. T., and F. L. Johnson. 1974. **Flood-caused mortality around Illinois reservoirs.** Trans. Ill. Acad. Sci. 67(1): 28-37.

The impoundment of rivers and streams imposes stresses on the streamside forest community which were never experienced under natural conditions. The streamside plant associations develop in response to the complex of environmental factors which sorts out species that are intolerant of the existing conditions. The spring and early summer floods of 1973 produced abnormally high water conditions in the Lake Shelbyville and Rend Lake reservoirs in south central and southern Illinois, respectively. Floods along the Mississippi River system prevented the reservoir managers from employing release rates sufficient to alleviate flooding conditions above the dam. Thus, many uncleared areas above these reservoir dams were inundated for most of the 1973 growing season. The objective of the current study was to determine relationships between tree mortality and the period of inundation to better understand the ecological limits of tree species in the Midwest to flood conditions.

The effects of high reservoir levels in Rend Lake and Lake Shelbyville on species of the streamside forest are described. Tolerances to growing season inundation for 24 tree species were determined from data on tree elevation and duration of flooding. A limit of 30 days of flooding during spring and summer months is suggested to insure survival of tree vegetation around reservoir margins. Inundation of trees for less than 30 days during the growing season of one year was insufficient to kill any established tree. When flood durations reached 50 days, one of three *Quercus velutina* (black oak) observed had not survived the flood conditions. Mortality among the predominately upland species became apparent when flood conditions extended to more than two months. When the period of inundation reached 110 days, marked mortality was observed in the tree species normally associated with upland areas. Increased flood duration resulted in increased mortality among upland species. Species of the flood plain, however, were found to be completely tolerant of the conditions imposed by the high water. Many trees of these species completed their annual growth cycle despite existing flood conditions throughout the growing season. At the time of the sample in late September, the bases of many of the trees were still under water.