Limestone Fiscal Corp. v. Commissioner, T.C. Memo. 1944-284

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A taxpayer who elects to use percentage depletion cannot claim a cost depletion deduction for net operating loss carryover purposes if the percentage depletion deduction was zero due to the net income limitation.

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Summary

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Limestone Fiscal Corp. sought to deduct cost depletion when calculating its net operating loss carryover, despite having elected to use percentage depletion and receiving a zero deduction due to the 50% net income limitation. The Tax Court held that Section 122(d)(1) is a limitation on the percentage depletion deduction, not a grant of a cost depletion deduction, and therefore the taxpayer could not deduct cost depletion in this scenario.

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Facts

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The petitioner, Limestone Fiscal Corp., a California corporation engaged in mining gold, elected to claim depletion using the percentage of income method in 1935. In 1940, the petitioner sustained a net operating loss of $32,639.57, excluding any depletion deduction. Due to having a net loss from the property, its percentage depletion deduction was zero because percentage depletion

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