11 T.C. 79 (1948)

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The orderly requisition of property by the government, where the owner is entitled to fair compensation, is not considered a war loss under Section 127 of the Internal Revenue Code, even if the property is damaged while in government use.

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Summary

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James and Josephine Moore sought to deduct the depreciated value of their airplane as a war loss under Section 127 of the Internal Revenue Code after it crashed while being used by the Civil Air Patrol (CAP). The Tax Court held that the Moores could not claim a war loss deduction. The court reasoned that the transfer of the plane to the CAP was an orderly requisition of property for which the Moores were entitled to fair compensation. The subsequent damage to the plane did not transform the transaction into a war loss. The court emphasized the distinction between a requisition and a seizure or destruction in the course of military operations.

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Facts

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The Moores owned a Stinson aircraft purchased in 1941 for $5,241.

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In October 1942, they received a telegram from the Civil Air Patrol (CAP) assigning the aircraft to active service in Coastal Patrol No. 18.

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Pursuant to the telegram, the Moores delivered the aircraft to the CAP.

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While in the exclusive possession of the CAP and used for anti-submarine operations, the aircraft crashed in December 1942 and was rendered unairworthy.

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In 1943, the Moores spent $1,377.66 to restore the aircraft to airworthiness, recovering $525.88 from insurance and $432 from the salvage of the engine.

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In June 1943, the aircraft was returned to the Moores.

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Shortly thereafter, the Department of Commerce requisitioned the aircraft for $4,369.64, which was paid to the Moores.

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Procedural History

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The Moores deducted the depreciated value of the aircraft ($3,481) as a war loss on their 1942 tax return, relying on Section 127(a)(1) of the Internal Revenue Code.

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They reported the sale of the airplane in 1943, adding $4,225.66 to their income (sale price less repairs).

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The Commissioner of Internal Revenue determined that the Moores had incurred a deductible loss of $419.78 in 1942 and realized a capital gain of $888.64 in 1943. The Commissioner assessed a deficiency, which the Moores challenged in Tax Court.

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Issue(s)

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Whether the taking of the airplane by the Civil Air Patrol and its subsequent damage constituted a “war loss” under Section 127(a)(1) of the Internal Revenue Code, entitling the taxpayers to a deduction in 1942.

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Holding

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No, because the transfer of the plane to the CAP was an orderly requisition of property for which the taxpayers were entitled to fair compensation, and the subsequent damage did not transform the transaction into a war loss.

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Court’s Reasoning

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The court emphasized that Section 127(a)(1) applies to property