## *Jefferson v. Commissioner, 50 T. C. 963 (1968)*

Collateral estoppel must be affirmatively pleaded to be considered as a defense in tax litigation.

### Summary

In Jefferson v. Commissioner, the U. S. Tax Court addressed whether Theodore B. Jefferson could deduct a capital loss from a real estate transaction with his mother. The court had previously denied similar deductions for prior years due to insufficient proof of a profit motive. However, in this case, the Commissioner failed to plead collateral estoppel, leading the court to consider new evidence demonstrating Jefferson's pattern of real estate investment for profit. The court found that Jefferson entered the transaction primarily for profit and allowed the deduction, emphasizing that collateral estoppel must be affirmatively pleaded to be effective.

### Facts

Theodore B. Jefferson purchased a house from his mother in 1958 for $16,500, which he sold in 1961 for $15,750, incurring a loss. He claimed a capital loss carryover deduction of $1,000 on his 1963 tax return. Jefferson had a history of real estate transactions, with most yielding profits. He improved the house and placed it on the market at a price recommended by a real estate dealer. The Commissioner had previously denied similar deductions for 1961 and 1962, citing insufficient proof of a profit motive.

### Procedural History

Jefferson's initial claim for deductions in 1961 and 1962 was denied by the Tax Court in a prior case (T. C. Memo 1967-151) due to lack of evidence showing a primary profit motive. In the current case, Jefferson again sought a deduction for 1963. The Commissioner did not raise the defense of collateral estoppel in the pleadings or by motion.

### Issue(s)

1. Whether the Commissioner's failure to plead collateral estoppel precludes its use as a defense.
2. Whether Jefferson entered into the transaction with his mother primarily for profit, allowing him to deduct the resulting loss under section 165(c)(2) of the Internal Revenue Code.

### Holding

1. Yes, because the Commissioner did not plead collateral estoppel, the defense was not available to him.
2. Yes, because Jefferson provided sufficient evidence of a primary profit motive, the

 

court allowed the deduction.

## Court's Reasoning

The court emphasized that collateral estoppel, like res judicata, is an affirmative defense that must be pleaded or it is waived. The Commissioner's failure to raise this defense allowed the court to consider new evidence presented by Jefferson. This evidence included Jefferson's history of profitable real estate transactions and improvements made to the house, which supported the finding that the transaction was entered into primarily for profit. The court distinguished this case from the prior one, noting the new evidence and the inapplicability of stare decisis to factually different cases. The court also clarified that section 1. 165-9(b) of the Income Tax Regulations, cited by the Commissioner, did not apply as Jefferson did not purchase the house for personal use.

## Practical Implications

This decision underscores the importance of properly pleading collateral estoppel in tax litigation. Practitioners should ensure that all affirmative defenses are included in their pleadings to avoid waiving them. The case also clarifies that evidence of a pattern of investment can establish a primary profit motive, even in transactions with family members. This ruling may encourage taxpayers to provide comprehensive evidence of their investment history when claiming deductions for losses. Subsequent cases have cited Jefferson v. Commissioner to support the necessity of pleading affirmative defenses, reinforcing the procedural aspect of this ruling.

 