

**PHILADELPHIA PARK AMUSEMENT CO.  
V. THE UNITED STATES**  
United States Court of Claims  
130 Ct. Cl. 166  
November 30, 1954 Decided

LARAMORE, Judge, delivered the opinion of the court:

[\*\*\*\*]The taxpayer employed the accrual method of accounting and reported its income on a calendar year basis. [\*\*\*\*]The taxpayer's predecessor was granted on July 6, 1889, by the City of Philadelphia, a franchise to construct, operate, and maintain for 50 years a passenger railway in Fairmount Park at its own cost and expense [\*\*\*\*].

Pursuant to the franchise the taxpayer's predecessor constructed the bridge in question, commonly known as Strawberry Bridge, over the Schuylkill River at a cost of \$381,000. [\*\*\*\*] Early in 1934 [\*\*\*\*] taxpayer [\*\*\*\*] offered to transfer the ownership of the bridge to the City in exchange for a 10-year extension of the railway franchise. The City accepted the offer and on August 3, 1934, Strawberry Bridge was transferred to the City. [\*\*\*\*] The adjusted basis, i. e., the undepreciated or unrecovered cost of Strawberry Bridge at the time of the exchange was \$228,852.74. The taxpayer's bookkeeper took depreciation on the bridge for the part of 1934 that taxpayer owned it and promptly

**TP exchanged a bridge for a franchise extension in 1934, but did not report gain or loss on this clearly taxable event.**

wrote the asset off the books by a direct debit to surplus of \$228,852.74, **without reporting any gain or loss on the exchange or adding the undepreciated cost or fair market value of**

**the bridge to the cost of the franchise. From that time until 1946 the taxpayer's bookkeeper did not record on the taxpayer's books or claim a deduction on its returns for the amortization of this cost. He also failed to take the undisputed deduction for the amortization of the undepreciated portion, \$50,000, of the original cost of the franchise.**

In 1946 the taxpayer arranged with a bus company to give passenger service to its amusement park, ceased operation of the railway, and abandoned its franchise. In

**In 1946, TP abandoned the franchise and deducted a loss for its basis.**

its 1946 tax return the taxpayer claimed a loss due to abandonment of the railroad of \$336,380.04, \$74,445.89 of which was claimed to represent the undepreciated cost of the franchise [\*\*\*\*]

**This brings us to the question of what is the cost basis of the 10-year extension of taxpayer's franchise.** Although defendant contends that Strawberry Bridge was either worthless or not "exchanged" for the 10-year extension of the franchise, we believe that the bridge had some value, and that the contract under which the bridge was transferred to the City clearly indicates that the one was given in consideration of the other. The taxpayer, however, has failed to show that the exchange was one that falls within the nonrecognition provisions of section 112 (b) of the Code and, therefore, **it was a taxable exchange** [\*\*\*\*].

**The gain or loss, whichever the case may have been, should have been recognized, and the cost basis [\*\*\*\*] of the 10-year extension of the franchise was the cost to the taxpayer.** The succinct statement in section 113 (a) that "the basis of property shall be the cost of such property" although clear in principle, is frequently difficult in application. **One view is that the cost basis of property received in a taxable exchange is the fair market value of the property given in the exchange.<sup>1</sup> The other view is that the cost basis of property received in a taxable exchange is the fair market value of the property received in the exchange.<sup>2</sup>** As will be

<sup>1</sup> 1 Montgomery, Federal Taxes, Corporations and Partnerships (1952-53) 352; 1 P-H10, 506, 1954; *Budd International Corp. v. Commissioner*, 143 F. 2d 784; *Forstmann v. Rogers*, 128 F. 2d 126; *Champlin Refining Co. v. Commissioner*, 123 F. 2d 202; *Estate of Isadore L. Meyers v. Commissioner*, 1 T. C. 100; and the cases there cited. It should be noted that many of the statements made in the above cited authorities were made in connection with exchanges of property where the values were equal, presumed to be equal or the specific question was not disputed and therefore there would have been no difference in result.

<sup>2</sup> Moroney and Colgan, Gain or Loss on Sale or Exchange, Fundamentals of Federal Taxation, Practising Law Institute (1946); Rabkin & Johnson, Federal Income Gift and Estate Taxation, S3 Sec. 2; Greenbaum, The Basis of Property Shall Be the Cost of Such Property; How is Cost Defined?, 3 *Tax L. Rev.* 351 (1948); *Bodell v. Commissioner*, 154 F. 2d 407; *Commissioner v. LincolnBoyle Ice Co.*, 93 F. 2d 26; *Hillyer, Edwards, Fuller, Inc. v. United States*, 52 F. 2d 742 (E. D. La.); *Mary Kavanaugh Feathers v. Commissioner*, 8 T. C. 376; *Estate of Isadore L. Meyers v. Commissioner*, 1 T. C. 100 (concurring opinion); and the cases there cited.

seen from the cases and some of the Commissioner's rulings [\*\*\*\*] the Commissioner's position has not been altogether consistent on this question. The view that "cost" is the fair market value of the property given is predicated on the theory that the cost to the taxpayer is the economic value relinquished. **The view that "cost" is the fair market value of the property received is based upon the theory that the term "cost" is a tax concept and must be considered in the light of the designed interrelationship of sections 111, 112, 113, and 114, and the prime role that the basis of property plays in determining tax liability.** We believe that when the question is considered in the latter context that **the cost basis**

**Cost is FMV received in a taxable exchange.**

**of the property received in a taxable exchange is the fair market value of the property received in the exchange.**

When property is exchanged for property in a taxable exchange the taxpayer is taxed on the difference between the adjusted basis of the property given in exchange and the fair market value of the property received in exchange. For purposes of determining gain or loss the fair market value of the property received is treated as cash and taxed accordingly. **To maintain harmony with the fundamental purpose of these sections, it is necessary to consider the fair market value of the property received as the cost basis to the taxpayer.** The failure to do so would result in allowing the taxpayer a stepped-up basis, without paying a tax therefor, if the fair market value of the property received is less than the fair market value of the property given, and the taxpayer would be subjected to a double tax if the fair market value of the property received is more than the fair market value of the property given. **By holding the fair market value of the property in a taxable exchange is basis, the discrepancy is avoided and the basis of the property received will equal the adjusted basis of the property given plus any gain recognized, or that should have been recognized, or minus any loss recognized, or that should have been recognized.**

**Basis is a function of what should have been reported – not what was indeed reported.**

[\*\*\*\*]The record in this case indicates that the 1934 exchange was an arms-length transaction

and, therefore, if the value of the extended franchise cannot be determined with reasonable accuracy, it would be reasonable and fair to assume that the value of Strawberry Bridge was equal to the 10-year extension of the franchise. The fair market value of the 10-year extension of the franchise should be established but, **if that value cannot be determined with reasonable certainty, the fair market value of Strawberry Bridge should be established and that will be presumed to be the value of the extended franchise.** This value cannot be determined from the facts now before us since the case was prosecuted on a different theory.

**If you cannot value one side of an arm's length transaction, value the other side and presume the two are equal.**

The taxpayer contends that the market value of the extended franchise or Strawberry Bridge could not be ascertained and, therefore, it should be entitled to carry over the undepreciated cost basis of the bridge as the cost of the extended franchise under section 113 (b) (2). [\*\*\*\*] If the value of the extended franchise or bridge cannot be ascertained with a reasonable degree of accuracy, the taxpayer is entitled to carry over the undepreciated cost of the bridge as the cost basis of the extended franchise. *Helvering v. Tex-Penn Oil Co.*, 300 U. S. 481, 499; *Gould Securities Co. v. United States*, 96 F. 2d 780. However, **it is only in rare and extraordinary cases that the value of the property exchanged cannot be ascertained with reasonable accuracy.** We are presently of the opinion that **either** the value of the extended franchise or the bridge can be determined with a reasonable degree of accuracy.

The failure of taxpayer to properly record the transaction in 1934 and thereafter does not prevent the correction of the error, especially under the circumstances of this case. *Countway et al. v. Commissioner*, 127 F. 2d 69. The taxpayer has lost not only the depreciation deductions for the years 1935 to 1944 of the cost of its original franchise, but also the benefit of the depreciation deduction for the cost of the extended franchise, even though the basis of the former was and the latter will be reduced by the amount of depreciation that should have been taken for this period [\*\*\*\*]

**This is an issue of ERROR CORRECTION. Fix the error by doing what is correct now, not by making the same mistake twice.**