

Casualty Losses of Shade Trees and Landscape Elements



Storm damage to shade trees and landscape elements reduces property value and may require out-of-pocket expenses for repair, removal, and restoration. The federal income tax code allows some recovery of your loss and expenses through a casualty loss tax deduction. Taking the deduction is a five-step process.

Step 1. Document damage.

Keep in mind that if a landscape appraisal is necessary, the appraiser will need to know species, size, condition, location, and placement of trees. Before removing damaged trees, photograph them. Find and keep photographs of trees before the casualty event, if possible. Measure the tree stem diameter or circumference. Otherwise, measure the stump diameter and take photos before grinding.

Step 2. Claim a loss on insurance if applicable.

The amount you receive from insurance depends on the coverage in your policy. Loss that is not covered by insurance may then be deducted as a casualty loss on federal income taxes. If you are eligible to claim insurance reimbursement and fail to do so, that amount may not be claimed as a casualty loss.

Step 3. Contact your tax advisor.

Individual circumstances will determine if claiming a shade tree casualty loss deduction is beneficial. Discuss this with your tax advisor and provide receipts for out-of-pocket expenses associated with the cleanup and restoration of the landscaping. Remember, the value of a tax deduction is the deduction amount times the marginal tax rate. If you determine the loss deduction is not beneficial, stop here.

Personal casualty losses are miscellaneous itemized deductions on Schedule A. If a taxpayer takes the standard deduction, he or she will not be able to claim a personal casualty loss. For personal use property, probably only a substantial casualty loss not covered by insurance would be worth the effort. Losses are first limited by the basis of the property. The basis is typically the amount paid for the entire property plus any significant improvements. Next, personal losses must overcome 10 percent of the taxpayer's adjusted gross income plus \$100 before they can be claimed.

Businesses and income-producing property should have a separate basis account for landscaping. Losses not covered by insurance are limited by the basis in their landscaping account. If the basis in the landscaping account has been depleted to zero, there is no deductible loss.

Step 4. Determine the loss.

This can be done by using the cost of cleanup and restoration or by appraisal.

Cost of Cleanup and Restoration

The cost of restoring landscaping to its original condition after a casualty loss may indicate the decrease in fair market value (FMV). You may be able to measure your loss by what you spend on the following:

- Removing destroyed or damaged trees and shrubs, minus any salvage you receive.
- Pruning and other measures taken to preserve damaged trees and shrubs.
- Replanting necessary to restore the property to its approximate value before the casualty.

For more information, see page 5 of IRS Publication 547 *Casualties, Disasters, and Theft*.

There are restrictions on the use of restoration costs as a loss of FMV:

- Costs must be necessary to restore the property.
- The amount spent for restoration cannot be excessive.
- Costs can cover only the damage suffered.
- Restoration cannot increase the value of the property over its value before the disaster.
- Costs must be the amounts actually spent, as documented by receipts.
- Taxpayers cannot claim their own time in cleanup and restoration.
- Restoration costs cannot exceed the loss in FMV of the appropriate single identifiable property.
- If insurance covers part or all of restoration, the loss deduction must be reduced by this amount. Even if you do not claim insurance reimbursement, you must still reduce the casualty loss by the available amount.

Appraisal

Some individuals may wish to use an appraisal of landscaping/shade tree losses as their deductible loss. This is not encouraged by the IRS for personal use property and may result in an audit. Businesses with separate basis accounts for landscaping (that have not been fully depreciated) may choose this avenue for recovery.

For personal-use property, the single identifiable property (SIP) damaged is the house, land, and landscaping combined. They cannot be separated. Therefore, a real estate appraisal of FMV loss for the entire property is required. An arborist's appraisal alone is inadequate.

For income-producing property, trees and other landscaping are the single identifiable property (SIP) damaged (separate from house and land). A separate basis is needed for the landscaping. Here, an appraisal of individual tree losses may be appropriate.

Real estate appraisal. The FMV of the property immediately before and immediately after the storm, including an evaluation of the effects of the damage to landscaping, is determined by standard real estate appraisal measures. The appropriate methods of estimating the loss in real estate value are cost, sales, and income.

Arborist's appraisal. As in real estate, an arborist has three approaches to appraisal: cost, sales, and income. Income can be based on direct sales or related to benefits received. Sales focuses on sales comparisons. Cost may include repair, functional replacement, and reproduction. Estimated losses for each tree or landscape element is based on several characteristics such as species, condition, location, and placement. An appraisal that gives each tree the same value is not an adequate appraisal.

Deduction of appraisal expense. The appraisal expense is not part of the casualty loss. It is, however, part of the cost of preparing a tax return and is deductible as a miscellaneous itemized deduction. If, however, an audit shows an inappropriate appraisal was used, the IRS may deny deduction of the loss and also the cost of the appraisal.

Step 5. File IRS Form 4684.

On Form 4684, provide information about any insurance received and receipts for cleanup and replacement for personal losses. You may also need information on basis, FMV before, FMV after, FMV loss, and adjusted gross income for personal losses. The loss is then transferred to Form 1040. As always, be sure to keep copies of your supporting documents for 7 years with your other tax return information.

Special Rules

If the loss occurred as a result of a presidentially declared disaster, the taxpayer has the option of deducting the loss with the current year's return or amending last year's return and taking the deduction sooner.

Sometimes, special rules may be passed to help the victims deduct losses. These are usually well publicized, and the IRS website (www.irs.gov) will have updated materials that reflect these changes.

For More Information

IRS Publication 547 *Casualties, Disasters, and Theft* is available for download from www.irs.gov. Or you may contact the IRS helpline at (800) 829-1040.

Timbertax.org has a section that explains shade tree and landscaping losses. It also has reference materials on relevant court cases. The tax court memo for *Bowers v. Commissioner* fully explains the appropriate use of appraisals by real estate appraisers and arborists.

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