

Also, a taxpayer who erected a \$3,000,000 office building on land, the unimproved worth of which was \$660,000, and who subsequently purchased the lease on the latter for \$2,100,000 is entitled to compute depreciation over the remaining useful life of the building on that portion of \$1,440,000, representing the difference between the price and the unimproved value, as may be allocated to the building; but he cannot deduct the \$1,440,000 as a business expense incurred in eliminating the cost of allegedly excessive rentals under the lease, nor can he treat that sum as a prepayment of rent to be amortized over the 21-year period that the lease was to run.⁵⁴

Diminution of Loss.—Mere diminution of loss is neither gain, profit, nor income. Accordingly, one who in 1913 borrowed a sum of money to be repaid in German marks and who subsequently lost the money in a business transaction cannot be taxed on the curtailment of debt effected by using depreciated marks in 1921 to settle a liability of \$798,144 for \$113,688, the “saving” having been exceeded by a loss on the entire operation.⁵⁵

merely represents a return of expenditures made in performing the contract and resulting in a loss. The gain or profit subject to tax under the Sixteenth Amendment is the excess of receipts over allowable deductions during the accounting period, without regard to whether or not such excess represents a profit ascertained on the basis of particular transactions of the taxpayer when they are brought to a conclusion. *Burnet v. Sanford & Brooks Co.*, 282 U.S. 359 (1931).

The grant on denial of deductions is not based on the taxpayers' engagement in constitutionally protected activities, and, accordingly, no deduction is granted for sums expended in combating legislation, enactment of which would destroy taxpayer's business. *Cammarano v. United States*, 358 U.S. 498 (1959).

Likewise, when tank truck owners, either intentionally for business reasons or unintentionally, violate state maximum weight laws, and incur fines, the latter are not deductible, for fines are penalties rather than tolls for the use of highways, and Congress is not to be viewed as having intended to encourage enterprises to violate state policy. *Tank Truck Rentals v. Commissioner*, 356 U.S. 30 (1958); *Hoover Express Co. v. United States*, 356 U.S. 38 (1958).

⁵⁴ *Millinery Corp. v. Commissioner*, 350 U.S. 456 (1956).

⁵⁵ *Bowers v. Kerbaugh-Empire Co.*, 271 U.S. 170 (1926).