Recent Developments in the Taxation of Corporations and Shareholders

Peter P. Weidenbruch Jr.
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OF CORPORATIONS AND SHAREHOLDERS

WILLIAM AND MARY TAX CONFERENCE

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1. **Accumulated Earnings Tax**

   **A.** *Peterson Brothers Steel Erection Co. v. Commissioner* (T.C. Memo 1988-381, August 16, 1988). Inability to predict amount of equipment that would be needed for performance of future contracts justified accumulation to enable purchase when uncertainty was resolved.

   **b.** *Hughes, Inc. v. Commissioner* (90 T.C. No. 1, January 4, 1988). Investments made to prevent hostile takeover of related corporation (a lessee of some of taxpayer's assets) and to assist diversification of the business of a "one-customer" corporation were reasonable accumulations. Accordingly, imposition of accumulated earnings tax is not warranted.

2. **Alternative Minimum Tax**

   **A.** *First Chicago Corporation v. Commissioner* (7th Cir., March 16, 1988). Minimum tax is not due for the years in which the tax preference items arose if such items were of no immediate tax benefit because of the availability of credits, and where the credits freed up by the preference items were of no benefit in carryback years and any prospective benefit in carryover years was purely conjectural.

   **B.** L.R. 8821076. The tax preference status of the bargain purchase element arising from the exercise of an incentive stock option is not negated simply because a premature disposition subsequently occurs, thus forfeiting the major benefits inhering in such options.

3. **Asset Acquisitions: Allocation Rules**

   T.D. 8215 (July 15, 1988). IRS issues proposed and temporary regulations under Section 1060, providing rules governing the allocation of the consideration paid among the various assets acquired.

4. **Assignment of Income**

   *Caruth v. U.S.* (N.D. Texas, October 20, 1987). Taxpayer's contribution to charity of closely held stock, and repurchase eleven months later, were bona fide transactions. Extraordinary dividends paid during period of charity's ownership were not properly attributable to taxpayer.
5. **Business Expenses**

A. **Federal Paper Board Company, Inc. v. Commissioner** (90 T.C. No. 67, May 16, 1988). The court allocates payments made to settle antitrust litigation under Section 4 of the Clayton Act between fully deductible portion and Section 162(g) limited-deduction portion in accordance with the (non-tax motivated) agreement among the settling defendants.

B. **Rev. Rul. 88-46** (1988-24 I.R.B. 5). A nonconformance penalty paid to EPA because of failure to meet the emission standards of the Clean Air Act is not a "fine or similar penalty" and therefore is not precluded from deductibility under Section 162(a).

C. **Southern Pacific Transportation Co. v. Commissioner** (90 T.C. No. 51, April 21, 1988). Taxpayer is not entitled to a business expense deduction for expenditures made in connection with its support of, or opposition to, ballot propositions in Arizona and California, by reason of Section 162(e).

D. **United Title Insurance Co. v. Commissioner** (T.C. Memo 1988-38, February 4, 1988). North Carolina title insurance company is entitled to deduct the expenses of four-day trips to resorts in Las Vegas, New Orleans, and Puerto Rico to entertain attorneys, developers, realtors, bankers and lenders who might refer business to them. One-half of one day was devoted to business. Expenses incurred for the spouses of the entertained attorneys were disallowed.

E. **Thomas O. Elliott v. Commissioner** (90 T.C. No. 63, May 11, 1988). Taxpayer and spouse, who owned an Amway distributorship which they operated during their spare time (both being employed on a full-time basis), were not allowed to deduct their 1981 expenses of $14,911 because they were unable to show an actual and honest objective of making a profit.


G. **Love Box Company, Inc. v. Commissioner** (10th Cir., March 28, 1988). A divided court upholds IRS' disallowance of the cost of seminars presented by the corporation for its employees, customers, prospective
customers, and members of the general public. The seminars sought to promote its philosophy concerning economics, finances, societal interests and other subjects of a general nature. An insufficient linkage to the corporation's business was shown.

6. Cancellation of Indebtedness

A. **U.S. Steel Corporation v. U.S.** (Fed. Cir., June 10, 1988). Repurchase at $118 of debentures issued in exchange for preferred stock worth $165 produces no income where the stock had originally been issued at $100. Corporate assets were neither increased nor diminished at the time the debentures were issued.


7. Capital Gain vs. Ordinary Income

A. **Herbert S. Lehman v. Commissioner** (2nd Cir., December 15, 1987). A corporate award made under IBM's incentive award program to an employee who, pursuant to his employment obligation, had assigned to the corporation his rights to an invention, is not eligible for capital gain treatment.

B. **Robert Rothstein** (90 T.C. No. 34, March 30, 1988). Executive employed under agreement entitling him to a salary, a profit-share, and one-eighth of the proceeds if the business assets were sold for a price in excess of $825,000 is not entitled to capital gain treatment with respect to the third element. His was not an equity interest, but merely additional compensation.

C. **Miller v. U.S.** (W.D. Texas, December 7, 1987). There is no "separation from the service," and therefore no capital gain entitlement, where an insolvent bank is reorganized under new ownership which chooses to discontinue its predecessor's pension plan and therefore makes full distribution of their account balances to all participants.

8. Charitable Contributions: Section 306 Stock

**Carl A. Pescosolido v. Commissioner** (91 T.C. No. 6, July 18, 1988). Sole shareholder's contribution of Section 306 stock results in deduction only to extent of $16 per share.
adjusted basis, not $100 fair market value. While rejecting IRS' contentions that Section 306(b)(4) cannot apply to a majority shareholder, the Tax Court finds that taxpayer did not establish that transaction was not pursuant to a tax-avoidance plan.

9. Collapsible Corporations

**Barbara Coal Co. v. Commissioner** (3rd Cir., June 15, 1988). A corporation formed to engage in the coal reclamation business but which sold most of its assets when it determined that it could not feasibly complete its contractual commitments was a collapsible corporation and, as such, not entitled to the benefit of (prior law) § 337 upon its liquidation.

10. Collection of Tax: Insolvent Banks

**Rev. Rul. 88-18** (1988-11 I.R.B. 17). The protection of Section 7507, barring assessment or collection of tax from any "bank or trust company" that is bankrupt or insolvent, is applicable as well to savings and loan associations and building and loan associations. Their depositors are only nominal "owners"; they are essentially depositors and entitled to protection as such.

11. Consolidated Returns

A. **T.D. 8188** (March 14, 1988). IRS issues proposed and temporary regulations (§ 1.1502-32T) providing that members of a consolidated group are no longer required to make an immediate downward basis adjustment when a subsidiary or group member owning the subsidiary’s stock leaves the group.

B. **T.D. 8196** (April 4, 1988). IRS issues temporary and proposed and final regulations explaining how gain or loss recognized in complete liquidations of subsidiaries may be deferred by the distributing corporation.

12. Constructive Dividends

A. **Chandrakant B. Patel v. Commissioner** (T.C. Memo 1988-33, February 1, 1988). Shareholders received constructive dividends equal to the value of an apartment furnished to them by their corporation.
B. James V. Truesdale v. Commissioner (89 T.C. No. 88, December 30, 1987). Funds diverted by taxpayer from his wholly-owned corporation are distributions to be tested under Section 301(c) as to their potential dividend consequences, and not simply income taxable under Section 61. The Tax Court will no longer follow its 1964 Benes decision, 42 T.C. 358, affirmed (6th Cir. 1966); cert. denied (1966).

13. Controlled Corporations

T.C. 8204 (June 20, 1985). IRS issues final regulations relating to safe-haven interest rates and rental charges for loans and leases between commonly controlled corporations.

14. Controlled Foreign Corporations

A. T.D. 8209 (June 13, 1988). IRS issues temporary and proposed and final regulations relating to controlled foreign corporations and, specifically, to related-party factoring income and determination of earnings, accounts receivable, and evidences of indebtedness.


15. Cooperatives: Consent Dividends

T.D. 8166 (December 11, 1987). IRS issues proposed and temporary regulations clarifying the scope of the consent dividend provisions of Section 565.

16. Corporate Divisions

A. Rev. Rul. 88-19 (1988-13 I.R.B. 5). IRS revoke five prior revenue rulings (58-164; 57-334; 56-554; 56-555; 56-557) because they do not provide a sufficient factual premise to support the conclusion that the active business test was met. IRS requires that substantial managerial and operational activities be directly carried on by the corporation seeking to satisfy the test.

business purpose requirement for spin-offs is deemed to be satisfied. In one, an essential executive of the subsidiary demands an equity interest in a corporation that is no longer controlled by parent; in the other, burdensome state regulatory requirements are significantly eased by reason of the subsidiary's being spun off.

17. Deferred Compensation

A. **L.R. 8817018.** Directors are not subject to immediate taxation on amounts placed into a trust for them under a nonqualified deferred compensation plan where an election to defer must be made prior to the beginning of the current taxable year.

B. **H.L. Grant v. U.S.** (Cl. Ct., June 23, 1988). Unregistered shares of stock, restricted for two years by reason of the Securities Act of 1933, are valued at full fair market value without regard to temporary diminution in value resulting from the Securities Act limitations.

18. Depreciation

A. **Emil Panichi v. U.S.** (2nd Cir., December 4, 1987). Amount paid for customer list is amortizable by buyer, where acquired by purchase of another's going business. The buyer was able to demonstrate that the list had a separate value and useful life.

B. **Rev. Rul. 88-24** (1988-15 I.R.B. 6). Transferee of franchise is entitled to amortize the acquisition cost allocable to the franchise rights under Section 1253(d)(2), even though transferor (not the original franchisor) is entitled to capital gain treatment.

19. Dividend vs. Sale Proceeds

**Litton Industries, Inc. v. Commissioner** (89 T.C. No. 75, December 3, 1987). Dividend declared by wholly-owned subsidiary and paid prior to efforts by parent corporation to sell the stock of the subsidiary is not treated as part of the selling price; dividends-received deduction is available.

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20. **Dividends: Waiver of**
L.R. 8817071. Waiver of dividends by majority shareholders, so as to enhance return to minority shareholders and make stock more attractive to general public, does not result in constructive dividend to waiving shareholders.

21. Dividends-Received Deduction

Rev. Rul. 88-66 (1988-32 I.R.B. 7). IRS illustrates the application of Section 246A as to whether indebtedness is "directly attributable" to an investment in portfolio stock.

22. Employee Benefit Plan


H. Estate of Stanton A. Levin v. Commissioner (90 T.C. No. 46, April 19, 1988). The commuted value of an annuity payable after a corporate officer's death is includible in his gross estate under Section 2038.
23. **Estimated Tax**


24. **Fringe Benefits**


25. **General Utilities Repeal: "Mirror Subsidiaries"**

*Rev. Proc. 88-34* (1988-26 I.R.B. 5). IRS will now issue advance rulings on "mirror subsidiary" transactions; the issue is no longer under study.

26. **Goodwill: Sales of**

*Announcement 88-53* (1988-13 I.R.B. 35). IRS announces that, pursuant to Section 1060, Form 8594 will be required as an attachment to the return where assets of a going business have been sold (but not until after regulations have been published).

27. **Gross Income: Customer Deposits**

A. *American Telephone & Telegraph Co. v. Commissioner* (T.C. Memo 1988-35, February 3, 1988). Refundable security deposits collected by telephone companies from customers who did not meet credit-worthiness criteria were not advance payments and therefore were not includable in the companies' gross income.

B. *Colonial Wholesale Beverage Corp. v. Commissioner* (T.C. Memo 1988-45, August 31, 1988). Bottle deposits received by a beer distributor pursuant to state law imposing a 5 cents-per-bottle refundable deposit are required to be included in income in the year of receipt. No deduction is allowable for estimated offsetting refund liability, because the "all events"
test of §§ 1.446-1(c)(1)(ii) and 1.461-(a)(2) is not satisfied.

28. **Investment Tax Credit**

A. **Steve Glenn v. Commissioner** (T.C. Memo 1988-301, July 20, 1988). Investment credit is recaptured where partner who claimed the credit subsequently incorporates the partnership business and then sells his stock in the corporation. The fact that the former shareholder remains liable as a guarantor of the corporation's liabilities does not constitute retention of a substantial interest in the corporation.

B. **Friendship Dairies, Inc. v. Commissioner** (90 T.C. No. 70, May 23, 1988). Purchase of equipment followed by immediate leaseback to seller, under terms leaving no possibility of economic profit unless investment tax credit is taken into account, was not undertaken for profit and, accordingly, investment tax credit is disallowed.

29. **Legislation: Miscellaneous Revenue Act of 1988 (H.R. 4333; S. 2238)**

A. **Technical Corrections to TRA 86 and RA 87.**

B. **Extension of Expiring Provisions**
   1. Employer-provided education assistance
   2. Low-income rental housing tax credit
   3. Qualified mortgage bonds
   4. Pooled financing issues
   5. Research tax credit
   6. Targeted jobs credit
   7. Mutual fund expenses
   8. Excise tax on diesel fuels

C. **Revenue Increases**
   1. Dividends-received deduction
   2. Long-term contracts
3. Modified endowment contracts
4. Corporate estimated tax payments
5. Statutory employee benefit plans
6. Uniform capitalization rules: farm animals
7. Personal service corporations: cash method
8. Nondiscrimination requirements for Section 403(b) plans
9. Alaska Native Corporations
10. Deferral of fees by corporate directors
11. Incentive stock options: alternative minimum tax
12. Accumulated earnings tax rate

30. Legislation: Revenue Act of 1987 (P.L. 100-203)
A. Corporate Estimated Tax Payments
B. Denial of Graduated Rates for Personal Service Corporations
C. Anti-Mirror Provisions
D. Dividends-Received Deduction
E. Hostile Takeover Attempts: "Greenmail" Payments
F. Woods Investment Adjustments
G. Section 382 Built-in Losses to Include Depreciation
H. Section 382 Change of Ownership Rule Expanded to Include Certain Worthless Stock Write-offs
I. Proscription on Use of NOL's to Offset Certain Built-in Gains
J. Corporate Estate Freezes
K. LIFO Recapture upon Subchapter S Election
L. Master Limited Partnerships to be Taxed as Corporations
M. **S Corporations: Permitted Taxable Year**

N. **Long-Term Contracts**

O. **Installment Sales**

P. **User Fees for Letter Rulings**

Q. **FICA Now Covers Group Insurance Premiums**

31. **Liquidations**

   **L.R. 8812049.** Conversion of a real estate cooperative housing corporation into a condominium will trigger corporate-level recognition of gain or loss.

32. **Losses: Capital vs. Ordinary**

   **Arkansas Best Corp. v. Commissioner** (U.S. Sup. Ct., March 7, 1988). The Supreme Court finds no basis for a business-motive exception to the Code definition of "capital asset." The Court's 1955 *Corn Products* decision is considerably narrowed in scope.

33. **Losses: Worthless Securities**

   **Rev. Rul. 88-65** (1988-32 I.R.B. 6). Where a subsidiary corporation performed significant services in connection with the leasing of automobiles and trucks, the amounts it received in return were not "rents" within Section 165(g)(3)(B). Accordingly, its parent corporation is entitled to an ordinary loss deduction for its investment in the worthless stock of the subsidiary.

34. **Net Operating Losses**

   **Notice 87-79** (December 15, 1987). Until regulations are issued under new Section 382, dealing with the allowability of net operating losses after ownership changes, allocation of income between pre-and post-change segments of the taxable year must be made on the basis of a ratable allocation of the entire year's income unless a private letter ruling is obtained allowing a different method.

35. **Nominee Corporations**
Commissioner v. Bollinger (U.S. Sup. Ct., March 22, 1988). Partners were entitled to deduct losses on their individual returns. Corporation, as nominal owner of depreciable property, was acting simply as the partners' agent.

36. Penalties

Guido J. Pallottini v. Commissioner (90 T.C. No. 35, March 30, 1988). The Tax Court supports the IRS in applying the 25% penalty of Section 6651(a) as amended by OBRA 86, passed on October 17, 1986, and signed into law on October 21, and not the 20% penalty enacted by TRA 86, passed in September and signed into law on October 22, 1986.

37. Real Estate Mortgage Investment Conduits


38. Reallocation of Income

A. Rev. Rul. 88-38 (1988-21 I.R.B. 11). IRS will not follow Foglesong (7th Cir., 1982), which rejected the application of Section 482 to cases where an individual works exclusively for his personal service corporation.

B. Central Bank of the South v. U.S. (11th Cir., December 31, 1987). IRS properly invoked Section 482 to allocate to taxpayer unpaid rental income for the use of his property by a company owned by his wife and children.

C. Likins-Foster Honolulu Corp. v. Commissioner (9th Cir., February 17, 1988). Interest-free loan by parent corporation to its wholly-owned subsidiary resulted in imputed interest income to parent under Section 482.


39. Redemptions of Stock

A. Esmark, Inc. v. Commissioner (90 T.C. No. 14, February 2, 1988). Esmark is not required to recognize gain
upon the redemption of 54% of its stock held by Mobil Corporation in exchange for stock of one of Esmark’s subsidiaries (in a pre-TRA86 transaction).

B. Rodlin E. Bunney v. Commissioner (T.C. Memo 1988-112, March 15, 1988). Taxpayer, a continuing shareholder in the corporation, was not in receipt of a constructive dividend where, although his name was listed on a stock purchase agreement as the purchaser, he was not the primary obligor.

C. Rev. Rul. 87-132 (1987-2 C.B. 82). IRS approves, under Section 303, the issuance of a new class of nonvoting stock (as a tax-free stock dividend) after the death of a shareholder and the subsequent redemption of a portion of those shares from the estate of the deceased shareholder so as to preserve the relative pre-death voting interests of the shareholders.

D. L.R. 8827041. Transfer of eighteen subsidiaries to a new holding company, with some stock being transferred in exchange for holding company stock and other stock being transferred for cash, will be treated as a redemption under Section 304 and not as a transfer under Section 351.

E. Deluxe Check Printers, Inc. v. U.S. (Cl. Ct., July 14, 1988). Corporation is liable for self-dealing excise tax under Section 4941 by reason of its redemption of its stock from a private foundation to which it was a substantial contributor.

F. L.R. 8823086. Former shareholder’s sale of insurance to the redeeming corporation and receipt of commissions or other compensation from such sales does not constitute a prohibited interest in the corporation within the meaning of Section 302(c)(2)(A)(iii) relating to waiver of family attribution.

G. Rev. Rul. 88-55 (1988-27 I.R.B. 5). A redeemed shareholder of corporation X who subsequently sells stock of related corporation Y to corporation X is not deemed to have violated his Section 302(c)(2) agreement, notwithstanding Sections 304(a)(1) and 318 which treat him as a continuing shareholder of corporation X.

40. Reorganizations

corporation to a domestic corporation pursuant to a state domestication statute will be treated as an (F) reorganization. In certain cases, however, such treatment will be contingent upon compliance with Sections 367(b) or 897(d) or (e).

B. **Commissioner v. Donald E. Clark** (4th Cir., September 4, 1987; cert. granted March 7, 1988). Dividend equivalence of "boot" received in a reorganization is to be determined by treating the boot as if it had been received in a post-reorganization redemption of a portion of the shareholder's stock interest in the acquiring corporation.

C. **Rev. Rul. 88-48** (1988-24 I.R.B. 10). The "substantially all" requirement for a (C) reorganization is not violated where, prior to its acquisition, the target corporation sells one of its two equally-sized businesses to a third party, with the acquiring corporation then acquiring all of the target assets including the proceeds from the sale of the business.

D. **Rev. Proc. 88-25** (1988-21 I.R.B. 30). IRS liberalizes its procedural rules: it will issue advance rulings with respect to (E) reorganizations if the reorganization is integral to a larger transaction's tax results or if the corporation is not closely-held unless certain specified types of issue are presented.

41. **Restricted Stock**

**Pagel, Inc. v. Commissioner** (91 T.C. No. 18, August 8, 1988). Nonforfeitable warrants, granted to an underwriter and subject to restrictions for an initial period of time, were not transferable and did not have a readily ascertainable fair market value at the time they were received. Therefore, under § 1.83-7, ordinary income is realized from the warrants at the time of their sale, not at the time of their receipt.

42. **Stock Purchase Treated as Asset Acquisition: Section 338**

**L.R. 8826016.** IRS applies § 1.9100-1, finding good cause to grant an extension of time to make a Section 338 election. (Taxpayer's accountant had incorrectly advised filing the original election at the IRS Service Center rather than at the office of the District Director.)
43. **Subchapter C**

**Treasury Department Study.** It is now estimated that this study, originally due on the first day of 1988, will be released closer to the first day of next year instead.

44. **Subchapter S**

**A. Basis Adjustments.** The American Bar Association has authorized its Tax Section to urge amendment of the Code to eliminate potential double taxation that may presently result because of the ordering rules governing basis adjustments for current year losses and distributions.

**B. William D. Coldiron v. Commissioner** (T.C. Memo 1987-569, November 16, 1987). Where taxpayer in a prior taxable year improperly deducted his share of the losses of a corporation incorrectly assumed to be a qualified S corporation, and IRS adjustments to that taxable year are now barred by the statute of limitations, taxpayer must reduce his stock basis by the amount of the improperly deducted loss under a "duty of consistency."

**C. L.R. 8826015.** Spin-off by S corporation of newly formed subsidiary, which in turn elects under Subchapter S, has no effect upon election of either corporation because P’s control of S was only momentary. The assets transferred to S will not be subject to 1374.

**D. Blanco Investments & Land, Ltd. v. Commissioner** (89 T.C. No. 82, December 10, 1987). The corporate-level audit and litigation procedures do not apply to "small" S corporations; a one-shareholder S corporation falls within that exception.

**E. L.R. 8822046.** Filing an incorrect and incomplete Form 2553 does not invalidate a Subchapter S election.

**F. Jon P. Smith v. Commissioner** (T.C. Memo 1988-18, January 13, 1988). Filing an unsigned Form 2553 is insufficient to constitute a valid Subchapter S election. A subsequent signing, after the expiration of the statutory period for that taxable year, is ineffective.

**G. L.R. 8827014; L.R. 8827015; L.R. 8827049.** Three S corporations were granted relief under Section 1362(f)
from inadvertent terminations caused by failure to file Section 1361(d)(2) elections.

H. Announcement 88-60 (1988-15 I.R.B. 47). IRS sets forth the procedure for determining the tax due under Section 1363 in the case of C corporations utilizing the LIFO inventory method that then elect under Subchapter S.


J. Phyllis Ranier v. U.S. (E.D. Ky., March 24, 1988). Subchapter S shareholders who had claimed the investment tax credit on the corporation’s purchase of Section 38 property are subject to recapture when they subsequently sell their stock notwithstanding buyer’s agreement to assume responsibility for the recapture tax.

K. Estate of Daniel Leavitt (90 T.C. No. 16, February 10, 1988). Shareholder’s guarantee of bank loan to S corporation does not increase his basis in stock. The fact that the lender would not have made the loan to the corporation without the shareholder’s guarantee does not alter this result.

L. T.D. 8167 (1988-4 I.R.B. 5). Temporary and proposed regulations under Section 441, relating to the requirement that S corporations conform their taxable years to those of their shareholders.

M. L.R. 8827023 Trusts with Crummey withdrawal powers qualify as permitted S corporation shareholders under Section 1361(c)(2)(A)(i).

N. Rev. Proc. 88-13 (1988-7 I.R.B. 7). IRS amends Rev. Proc. 88-8 (setting fee schedules for rulings) to provide for a $150 fee for a newly electing S corporation filing Form 2553 and requesting permission to use a fiscal year.

45. Tax Accounting

A. Burnham Corporation v. Commissioner (90 T.C. No. 62, May 11, 1988). Accrual method taxpayer is entitled to deduct, in the (pre-Section 461(h)) year the obligation to pay was incurred, the sum of all of the payments to be made during the life of the payee.
B. **Challenge Publications, Inc. v. Commissioner** (9th Cir., May 6, 1988). Accrual basis magazine publisher is not entitled to deduct the estimated amount of credit it will be required to give its distributors for unsold magazines. The "all events" test of Section 461(a) was not yet satisfied.

C. **Hallmark Cards, Inc. v. Commissioner** (90 T.C. No. 2, January 4, 1988). Accrual method greeting card manufacturer need not accrue income from advance shipments of holiday cards; under the contract between the parties, taxpayer's rights did not accrue until January 1 of the year in which the holiday occurs.

D. **Notice 88-99** (August 16, 1988). IRS provides guidance to taxpayers regarding the forthcoming regulations interpreting the interest-capitalization requirements under the uniform capitalization rules and the rules prescribed for long-term contracts (Sections 263A and 460).

E. **L.R. 8748049**. Discounts on its products offered by corporation to its shareholders are taxable only to those shareholders who take advantage of them. A shareholder who waives his right to receive a discount voucher is not in constructive receipt of the discount amount he otherwise would have been entitled to receive.

F. **Richard M. Evans v. Commissioner** (T.C. Memo 1988-228, May 19, 1988). Corporate bonus, declared in November in favor of majority shareholder-employee but paid in February, is not taxable to recipient until actual payment because payment was expressly conditioned upon company's financial condition at year-end.

G. **Clark Equipment Co. v. Commissioner** (T.C. Memo 1988-111, March 14, 1988). Sales of excess inventory to a warehousing company were not bona fide sales for federal tax purposes because taxpayer-seller retained dominion and control.

H. **Paccar, Inc. v. Commissioner**, (9th Cir., June 9, 1988). Truck manufacturer is not entitled to inventory loss deduction upon sale of inventory to an unrelated warehouse company; seller retained control over the inventory.

I. **Joseph L. Stendig v. U.S.** (4th Cir., April 5, 1988). Receipts that an accrual method taxpayer was required to deposit into a reserve account are includible in
its gross income. Taxpayer had a "fixed right" to receive these funds; deferral to date of actual receipt out of the fund is not warranted.

J. Notice 88-86 (1988-34 I.R.B. 10). IRS provides guidance regarding the forthcoming regulations interpreting the uniform capitalization rules under Section 263A.

46. Tax Benefit Rule

Dorothy S. Rojas v. Commissioner (90 T.C. No. 73, May 25, 1988). The tax benefit rule is not applicable where an expensed item has been consumed in the business, even though the income to be derived from expensed items has not yet been realized. Bliss Dairy (U.S. Sup. Ct., 1983) is distinguished. Eight judges dissent.

47. Tax Procedure

A. Rev. Proc. 88-11 (1988-4 I.R.B. 30). IRS specifies procedures for requesting background file documents (e.g., trust agreement, will, partnership agreement, plan of reorganization, etc., or perhaps the entire file) covering private letter rulings and technical advice memoranda.

B. Donald A. Peck v. Commissioner (90 T.C. No. 13, January 28, 1988). Taxpayer-shareholders, in an earlier case, litigated the issue of the reasonableness of their rental payments for property transferred by them to the corporation and then leased back from it. Where the same 5-year lease agreement is involved in a subsequent taxable year, collateral estoppel bars re-litigation of that issue.


D. Rev. Proc. 88-3 (1988-1 I.R.B. 29). IRS revises the list of those areas of the Internal Revenue Code in which it will not issue advance rulings or determination letters.


G. Clemens v. USV Pharmaceutical (5th Cir., March 7, 1988). Retired employee is entitled to recover damages from former employer as a result of erroneous Form W-2, uncorrected after several requests, resulting in unnecessary controversy with IRS.

48. Valuation of Stock

Citizens Bank & Trust Co. v. Commissioner (7th Cir., February 16, 1988). Terms of trust to which siblings transferred stock in a family-owned corporation, as a means of perpetuating family control, are disregarded in valuing the stock for estate and gift tax purposes, in the same manner that restrictions imposed in the instrument of transfer are disregarded.