University of Arkansas at Little Rock Law Review

Volume 11 | Issue 2 Article 5

1988

Federal Income Tax—Exceptions to Definition of Capital Asset Are Narrowed. Arkansas Best Corp. v. Commissioner, 108 S. Ct. 971 (1988).

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FEDERAL INCOME TAX—EXCEPTIONS TO DEFINITION OF CAPITAL ASSET ARE NARROWED. *Arkansas Best Corp. v. Commissioner*, 108 S. Ct. 971 (1988).

Arkansas Best is a diversified holding company. In 1968 it acquired approximately sixty-five percent of the stock of National Bank of Commerce (NBC) in Dallas, Texas. It continued to acquire additional shares through 1974. Until 1972, the bank was growing and prosperous. In 1972, as a result of the collapse of the real estate market in Dallas, federal examiners classified NBC as a problem bank.[1] Arkansas Best's stock acquisitions after 1972 were attempts to prevent the failure of the bank and preserve Arkansas Best's business reputation. Arkansas Best sold the bulk of its investment in NBC in 1975 at a loss of almost ten million dollars. It treated the loss as an ordinary loss,[2] rather than a capital loss,[3] for income tax purposes. The Commissioner of the Internal Revenue Service disallowed the ordinary loss deduction and treated the loss as a capital loss. Capital loss treatment limited the amount of the immediate deduction to Arkansas Best.[4] The tax court, relying on principles set forth in *Corn Products Refining Co. v. Commissioner*,[5] held that the stock purchased before 1972 was purchased with an investment purpose and therefore the loss on those shares was a capital loss. The shares purchased after 1972, however, were purchased with the "business purpose" of protecting Arkansas Best's business reputation and the sale of those shares gave rise to ordinary loss treatment. The United States Court of Appeals for the Eighth Circuit held that all of the loss was a capital loss because the NBC stock did not fall within any of the exceptions to the definition of a capital asset.[6] The United States Supreme Court

1. "When a bank has more than [fifty] percent of its loan portfolio classified as weak loans, the bank is considered a problem bank." Arkansas Best Corp. v. Comm'r, 83 T.C. 640, 647 (1984).

2. The Internal Revenue Code states that "the term 'ordinary loss' includes any loss from the sale or exchange of property which is not a capital asset." 26 U.S.C. § 65 (1982).

3. A capital loss is a loss from the sale or exchange of a capital asset. 26 U.S.C. § 1211 (1982).

4. For corporations, capital losses may be deducted only to the extent of capital gains. 26 U.S.C. § 1211(a) (1982).

5. 350 U.S. 46 (1955).

6. Arkansas Best Corp. v. Comm'r, 800 F.2d 215 (8th Cir. 1986). 26 U.S.C. § 1221 (1982) provides:

For purposes of this subtitle, the term "capital asset" means property held by the affirmed the Eighth Circuit's finding and rejected the business-motive test[7] as an exception to the statutory definition of a capital asset. *Arkansas Best Corp. v. Commissioner*, 108 S. Ct. 971 (1988).

The 1921 Revenue Act[8] was the first income tax act to tax gains from the sale of capital assets at rates lower than those for other income. At that time, this preferential treatment applied only to individuals, not to corporations.[9] A corporation's capital gains remained taxable as ordinary income until 1942.[10] The 1934 Revenue Act[11] placed a limitation on the amount of capital losses that could offset ordinary income. This provision applied to both individuals and corporations.[12] Because of these provisions, taxpayers preferred to have

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taxpayer (whether or not connected with his trade or business), but does not include—

(1) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

(2) property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or real property used in his trade or business;

(3) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by—

(A) a taxpayer whose personal efforts created such property,

(B) in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced, or

(C) a taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or in part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) or (B);

(4) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in paragraph (1);

(5) a publication of the United States Government (including the Congressional Record) which is received from the United States Government or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by—

(A) a taxpayer who so received such publication, or

(B) a taxpayer in whose hands the basis of such publication is determined, for purposes of determining gain from a sale or exchange, in whole or in part by reference to the basis of such publication in the hands of a taxpayer described in subparagraph (A).

7. The Eighth Circuit, in applying the business motive test, stated that "capital stock acquired for business purposes is classified as an ordinary asset, and capital stock acquired for investment purposes is classified as a capital asset." *Arkansas Best Corp.*, 800 F.2d at 220 (citing Dearborn Co. v. United States, 444 F.2d 1145, 1166 (Ct. Cl. 1971)).

8. Revenue Act of 1921, Pub. L. No. 67-98, 42 Stat. 227.

9. J. MERTENS, LAW OF FEDERAL INCOME TAXATION § 22.02, at 13 n.1 (1986).

10. *Id.*

11. Revenue Act of 1934, Pub. L. No. 73-216, 48 Stat. 680.

12. J. MERTENS, *supra* note 9, at 10.

gains classified as capital gains (to obtain lower tax rates) and losses classified as ordinary losses (to avoid the limitation on the amount of capital loss deductible).

The Internal Revenue Code defines capital assets by exclusion.[13] Capital assets include all property except (1) inventory, (2) depreciable or real property used in a trade or business, (3) copyrights, other artistic creations, or letters, (4) trade receivables, or (5) certain United States government publications.[14] Any property *not* falling in one of these classifications is a capital asset.

The courts, however, carved out some non-statutory exceptions to the definition of a capital asset. In a 1941 case,[15] the Supreme Court held that a payment for cancellation of a lease was not a capital transaction. The Court assumed that the lease was "property," but nevertheless held that payment for the cancellation of the lease was not a return of capital. The payment was a substitute for rental payments and it was "immaterial that for some purposes the contract creating the rights to such payments may be treated as 'property' or 'capital.' "[16]

The 1955 *Corn Products* case[17] also involved a property transaction where the property did not fall in any of the statutory exclusions in the definition of a capital asset. Corn Products used corn in its manufacturing process. To assure an adequate supply of corn, the company would regularly purchase corn futures.[18] If shortages of corn occurred, it would sell the futures contracts only after acquiring corn directly in the market. If no shortage occurred, the company would take delivery on enough of the futures contracts to supply its manufacturing needs and sell the remaining contracts.[19] In 1940, the company had profits on its futures transactions of $680,000. Corn Products reported this as ordinary income, but later contended that the futures were capital assets.[20]

The Supreme Court held that the futures transactions were an integral part of Corn Products' manufacturing operation and therefore not entitled to capital asset treatment.[21] The Court admitted that

13. 26 U.S.C. § 1221 (1982).

14. *Id.* *See supra* note 6.

15. Hort v. Comm'r, 313 U.S. 28 (1941).

16. *Id.* at 31.

17. Corn Prods. Ref. Co. v. Comm'r, 350 U.S. 46 (1955).

18. "A commodity future is a contract to purchase some fixed amount of a commodity at a future date for a fixed price." *Id.* at 47 n.1.

19. *Id.* at 48-49.

20. *Id.* at 49.

21. *Id.* at 50.

the futures did not fall within the literal language of any of the exclusions to the definition of a capital asset[22] but held that Congress intended that transactions from the everyday operation of a business be considered ordinary income or loss.[23] The Court stated that "[t]he preferential treatment [of capital gains] applies to transactions in property which are not the normal source of business income."[24]

Subsequently, the Internal Revenue Service (IRS) officially indicated situations in which ordinary income or loss would result from transactions that might appear to involve capital assets.[25] First, a taxpayer might purchase a minority interest in a corporation to assure availability of inventory if the right to purchase inventory vested in the owner of the corporate stock. Second, a taxpayer might purchase government bonds that are placed in escrow to guarantee performance on a contract. Finally, a taxpayer might purchase debentures of a supplier if the debenture assured the taxpayer a specific proportion of the supplier's production of an inventory item temporarily in short supply.[26] The IRS contemplated that these situations involved short-term arrangements and that the stock or securities involved would be disposed of within a relatively short period of time.[27]

In later cases, however, purchases of stock in another corporation often involved a majority interest and/or were often for relatively long periods of time.[28] *Electrical Fittings Corp. v. Commissioner*[29] involved the building of a foundry by the taxpayer and two other companies to insure a supply of a certain type of iron during the Korean War. The taxpayer received iron from the foundry for twenty-one months and held its stock for an additional six months.[30] Upon the sale of the foundry's stock, Electrical Fittings claimed an ordinary loss while the IRS contended the loss should be a capital loss.[31] The tax court stated that the tax treatment of the loss depended upon the purpose for which the taxpayer acquired it.[32] The court stated that

22. *Id.* at 51.
23. *Id.* at 52.
24. *Id.*
25. Rev. Rul. 58-40, 1958-1 C.B. 275.
26. *Id.*
27. *Id.* at 276.
28. *See, e.g.*, Booth Newspapers, Inc. v. United States, 303 F.2d 916 (Ct. Cl. 1962) (two taxpayers each owned one-half of a supplier subsidiary); W.W. Windle Co. v. Comm'r, 65 T.C. 694 (1976) (involved a 72% ownership interest that lasted eight years), *appeal dismissed*, 550 F.2d 43 (1st Cir.), *cert. denied*, 431 U.S. 966 (1977).
29. 33 T.C. 1026 (1960).
30. *Id.* at 1027-29.
31. *Id.* at 1030.
32. *Id.* at 1031.

"stock purchased in the ordinary course of business where the only purpose is to insure a vital source of inventory is not a capital asset, and the loss upon its sale is deductible from ordinary income."[33] The court noted that no investment motive was present since the taxpayer owned no other securities, all of the foundry's output was sold to its stockholders, the taxpayer would have been unable to obtain the inventory but for the ownership in the foundry, and "[t]he stock was held by the [taxpayer] only as long as reasonably necessary under the practical considerations involved."[34]

In *Booth Newspapers, Inc. v. United States*[35] the Court of Claims established the test that would apply in many future cases. Booth and another company purchased stock in a paper mill to insure an adequate supply of newsprint.[36] A severe shortage of newsprint existed in the newspaper industry.[37] The companies held their stock from late 1947 until early 1954 when they were able to assure themselves of a supply of newsprint through long-term contracts with one of their regular suppliers.[38] Booth sold the stock of the paper mill at a loss of $620,000 and deducted that amount on its 1954 tax return, but the IRS contended the loss was a capital loss.[39] The court stated that securities purchased and held until their sale as an "integral and necessary" act in the conduct of business would create a business expense or ordinary loss if sold at a loss.[40] However, if "an investment purpose [is] found to have motivated the purchase or holding of the securities, any loss . . . must be treated in accord with the capital asset provisions of the Code."[41]

The court noted that the intentions of the taxpayer both at the time of the original purchase and at the time the taxpayer disposed of the securities were critical.[42] The court also stated that "[t]he fact that securities are 'property,' in the broad sense of the term, is not conclusive."[43] In Booth's circumstances, the court held that a business motivation, rather than an investment motivation, existed and therefore allowed a deduction in the year of sale as either a business

33. *Id.*
34. *Id.*
35. 303 F.2d 916 (Ct. Cl. 1962).
36. *Id.* at 918.
37. *Id.* at 917.
38. *Id.* at 918-19.
39. *Id.* at 919.
40. *Id.* at 921.
41. *Id.*
42. *Id.*
43. *Id.*

expense or an ordinary loss.[44]

The Court of Claims clarified the business versus investment test in *Dearborn Co. v. United States.*[45] Dearborn, a furniture company, acquired stock in a woodworking company, Munising, to secure control of Munising's production facilities and because Munising had a four and one-half year contract for supplies of hardwood timber. Hardwood was in short supply at the time.[46] However, the court found that Dearborn was also motivated by (1) its desire to operate Munising as a permanent, profitable business, (2) the opportunity of dividend income from Munising, and (3) the desire to earn income from management fees to be paid by Munising.[47] The court held that, while the principal reason for the acquisition may have been a business purpose, substantial investment purposes were also present and "the presence of substantial investment purpose and intent is fatal to [the taxpayer's] case."[48]

The IRS, in a 1975 ruling,[49] stated that the determination as to whether the sale of stock results in ordinary, as opposed to capital, gain or loss "depends upon whether the taxpayer purchased and held the stock with a predominant business motive as distinguished from a predominant investment motive."[50] The IRS had thus taken a position that differed from the holding in *Dearborn* that any substantial investment motive controlled even if the principal (or predominant) reason was business motivated.

In *W.W. Windle Co. v. Commissioner*,[51] the tax court followed the Court of Claims' reasoning. Windle processed and sold wool materials used by manufacturers of woolen cloth. Because many of the mills that were Windle's customers had gone out of business, Windle agreed to organize a company to operate a woolen mill.[52] Windle viewed the mill as a captive customer but also expected that the value of its investment would increase over time.[53] When the stock became worthless, Windle claimed an ordinary deduction for the loss.[54]

44. *Id.* at 921-22.
45. 444 F.2d 1145 (Ct. Cl. 1971).
46. *Id.* at 1147.
47. *Id.* at 1148.
48. *Id.*
49. Rev. Rul. 75-13, 1975-1 C.B. 67.
50. *Id.* at 68.
51. W.W. Windle Co. v. Comm'r, 65 T.C. 694 (1976), *appeal dismissed*, 550 F.2d 43 (1st Cir.), *cert. denied*, 431 U.S. 966 (1977).
52. *Id.* at 695-96.
53. *Id.* at 697.
54. *Id.* at 704.

Noting the cases where losses on sale of stock had been afforded ordinary loss treatment, the court stated, "we deal here with a judge-made addition to the statutory categories of noncapital assets, and we are not compelled by the case law to broaden such categories more than is required under a fair reading of *Corn Products* and other precedents."[55] The court then stated that it was "persuaded to hold that stock purchased with a substantial investment purpose is a capital asset even if there is a more substantial business motive for the purchase."[56] The court held that Windle's loss was a capital loss because while its "principal motive was to acquire a captive customer, it had a substantial subsidiary investment motive, which prevented it from being entitled to an ordinary loss."[57] While the IRS argued and won in *W. W. Windle* on the basis of the substantial investment motive test, the tax court noted that the IRS's position was inconsistent with its opinion in Revenue Ruling 75-13[58] which had supported the predominant motive test.[59]

Bell Fibre Products Corp.[60] saw a reversal of what had been the usual role of the IRS and taxpayers. In *Bell Fibre*, the company sold its investments in a materials supplier and a transportation supplier at a substantial gain. The taxpayer wanted the gain treated as capital gain while the IRS argued that ordinary income resulted.[61] The tax court found that the predominant motive for the investment was to acquire a dependable source of supply. However, a secondary, but substantial motive was to realize a profit on the investment.[62] The IRS argued that Revenue Ruling 75-13 should control and that the predominant motive test should apply. The tax court noted that the IRS was now trying to take a position inconsistent with the *Windle* case.[63] The court stated that the predominant motive was not the standard but that "[t]he test is whether [the taxpayer] had a 'substantial investment motive.' "[64] Since a substantial investment motive did exist, the court held for the taxpayer that a capital gain resulted.[65] The tax court continued its criticism of the IRS by stating that "[i]f

55. *Id.* at 712.
56. *Id.*
57. *Id.* at 704.
58. 1975-1 C.B. 67.
59. *W. W. Windle Co.*, 65 T.C. at 709 n.14.
60. 46 T.C.M. (P-H) ¶ 77,042 (1977).
61. *Id.* at 77-186.
62. *Id.*
63. *Id.* at 77-187, n.9.
64. *Id.* at 77-187.
65. *Id.* at 77-188.

there is any uncertainty or whipsawing in the current status of transactions such as are involved herein, it is in no small measure due to [the IRS's] apparent inability to delineate a consistent position."[66]

The IRS officially changed its position in 1978.[67] Noting the decisions in *W. W. Windle*[68] and *Bell Fibre*,[69] the IRS revoked Revenue Ruling 75-13[70] and took the position that "even a predominant business motive cannot preclude the stock from capital gain or loss treatment, as long as there was a substantial investment motive for acquiring or holding the stock."[71] The IRS officially maintained this position until the Supreme Court agreed to hear the *Arkansas Best* case.[72]

In *Campbell Taggart, Inc. v. United States*[73] the Fifth Circuit considered the issue of whether a holding company could treat a loss on the sale of stock as an ordinary loss. The IRS argued that a holding or investment company, because it was not directly involved in business operations, could never have a "business purpose."[74] The court stated that it did "not think that . . . a pure holding company can never avail itself of the *Corn Products* doctrine."[75] It held "that *Corn Products* can apply, if the trier of fact is convinced that there was no investment purpose, when a holding company acquires an asset as an indirect means of incurring what would otherwise be a deductible business expense."[76] Because the stock was acquired to protect Campbell-Taggart's business reputation, the court affirmed the district court's holding of ordinary loss treatment.[77]

In *Arkansas Best Corp. v. Commissioner*[78] the taxpayer argued to the Supreme Court that *Corn Products* stood for the proposition that assets acquired for ordinary business purposes should be given ordi-

66. *Id.*

67. Rev. Rul. 78-94, 1978-1 C.B. 58.

68. W.W. Windle Co. v. Comm'r, 65 T.C. 694 (1976), *appeal dismissed*, 550 F.2d 43 (1st Cir.), *cert. denied*, 431 U.S. 966 (1977).

69. 46 T.C.M. (P-H) ¶ 77,042 (1977).

70. Rev. Rul. 75-13, 1975-1 C.B. 67.

71. Rev. Rul. 78-94, 1978-1 C.B. 58.

72. The IRS suspended its prior Revenue Rulings applying *Corn Products* in Notice 87-68, 1987-2 C.B. 378. This notice was issued after the Supreme Court granted certiorari in *Arkansas Best*.

73. 744 F.2d 442 (5th Cir. 1984).

74. *Id.* at 451.

75. *Id.*

76. *Id.*

77. *Id.* at 446, 460.

78. 108 S. Ct. 971 (1988).

nary gain or loss treatment.[79] Admitting that there was much support for that interpretation in both court cases and academic literature, the Supreme Court then observed that "[u]nfortunately . . . this broad reading finds no support in the language of [section] 1221."[80] The Court rejected the view that the motivation for the acquisition of an asset determines its status. Using the business motive test, the Court observed, would be "in direct conflict with the parenthetical phrase 'whether or not connected with his trade or business' "[81] contained in section 1221. That broad definition makes irrelevant the connection of the property with a taxpayer's trade or business while the business purpose test "would make this factor dispositive."[82] The Court distinguished cases involving lease payments and other accretions to the value of a capital asset being treated as ordinary income on the premise that section 1221 "property" does not include claims or rights to ordinary income.[83] Thus, those cases did not involve an expansion of the statutory exceptions to the definition of a capital asset.

The Court stated that the five exceptions to the general definition of capital assets were exclusive rather than illustrative.[84] It observed that both the legislative history and the applicable Treasury regulation supported that interpretation.[85]

Turning to the decision in *Corn Products*,[86] the *Arkansas Best* Court said that it was convinced that the earlier Court had treated the corn futures as substitutes for the corn inventory.[87] Therefore, while not part of the "actual inventory," their use as an integral part of the inventory-purchase system justified their treatment as "property of a kind which would properly be included in the inventory of the taxpayer" under section 1221.[88] The Court concluded that "*Corn Products* is properly interpreted as standing for the narrow proposition that hedging transactions that are an integral part of a business' inventory-purchase system fall within the inventory exclusion of Section 1221."[89]

The Court noted the abuse that could exist under the business

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79. *Id.* at 974.
80. *Id.*
81. *Id.*
82. *Id.*
83. *Id.* at 974-75 n.5.
84. *Id.* at 975.
85. *Id.*
86. Corn Prods. Ref. Co. v. Comm'r, 350 U.S. 46 (1955).
87. 108 S. Ct. at 977.
88. *Id.* at 976-77.
89. *Id.* at 977.

purpose versus investment motive standard.[90] If the stock transaction resulted in a gain, the taxpayer would claim an investment motive and claim capital gain treatment.[91] If a loss resulted, the taxpayer would claim no investment motive and claim an ordinary loss.[92] Arkansas Best even admitted that had the stock sold at a gain, it planned to claim capital gain treatment.[93] Since the Court was now holding that "a taxpayer's motivation in purchasing an asset is irrelevant" in determining whether the asset was a capital asset,[94] the possibility of abuse would be limited.[95]

The Tax Reform Act of 1986[96] effectively repealed the preferential treatment of long-term capital gains.[97] As a result, there generally would be no dispute currently between the IRS and a taxpayer that had a gain resulting from the sale of an asset.[98] In a case such as *Bell Fibre*,[99] the results would not differ if the gain was ordinary income or capital gain.

However, the 1986 Act established maximum rates on net capital gains for both individuals[100] and corporations.[101] If tax rates were increased by future legislation (and these provisions were not amended at the same time), preferential treatment for net capital gains (and potential for disputes as to the nature of gains on the sale of assets) would again exist.

Perhaps more importantly, limits still exist on the deductibility of capital losses. Individuals can generally deduct capital losses only to the extent of capital gains plus $3,000 per year.[102] Corporations

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90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* at 977-78. *See* Arkansas Best Corp. v. Comm'r, 83 T.C. 640, 647-48 (1984).

94. 108 S. Ct. at 978.

95. *Id.* at 977.

96. Act of Oct. 22, 1986, Pub. L. No. 99-514, 100 Stat. 2085.

97. *Id.* Section 301(a) repealed § 1202 (26 U.S.C. § 1202 (1982)) which had allowed an individual taxpayer a deduction of 60% of the amount of net capital gain. Section 311(a) changed the alternate capital gain rate for corporations from 28% to 34%. Since this is equal to a corporation's highest tax rate (excluding a 5% surtax), no tax advantage to capital gains is provided. 26 U.S.C. § 1201 (Supp. IV 1986).

98. However, if a taxpayer already has a capital loss for the year, a capital gain would be preferable over an ordinary gain since the taxpayer could use the existing capital loss to offset the capital gain.

99. 46 T.C.M. (P-H) ¶ 77,042 (1977).

100. Act of Oct. 22, 1986, Pub. L. No. 99-514, 100 Stat. 2085, § 302(a) added § 1(j). 26 U.S.C. § 1(j) (Supp. IV 1986).

101. *Id.* § 311(a), amended § 1201(a). 26 U.S.C. § 1201(a) (Supp. IV 1986).

102. 26 U.S.C. § 1211(b) (1982). Non-corporate taxpayers are allowed a carryforward of unused capital losses for an indefinite period. 26 U.S.C. § 1212(b) (1982).

can deduct capital losses only to the extent of capital gains.[103] In those cases involving the sale of assets at a loss, a great deal could be at stake in the determination as to whether those losses were ordinary or capital in nature. The cases involving this dispute and invoking the *Corn Products*[104] doctrine on the taxpayer's behalf have involved substantial losses.

The holding in *Arkansas Best* will effectively preclude taxpayers from claiming ordinary loss deductions from the sale of corporate stock or other investment assets. *Arkansas Best* eliminates what might have been called the "business purpose with no substantial investment motivation" exception to the statutory definition of capital assets.

The courts have been concerned with the uncertainty that is created by the exception that seemed to have been established by *Corn Products*.[105] The tax court in *W. W. Windle*,[106] for example, refused to adopt the predominant motive test because it "would thereby be even more greatly expanding the 'gray area' of uncertainty and controversy."[107] The Fifth Circuit noted that legislative solutions to the problem had been suggested, one of them being that taxpayers, at the time of acquisition, be required to declare their purpose in holding stock.[108] The Supreme Court both in *Corn Products*[109] and *Arkansas Best*[110] expressed concern about the ability of a taxpayer to determine the tax treatment after gain or loss had been established.

Arkansas Best establishes that the sale of stock or other investment assets at a loss results in a capital loss (with the exception of the inventory of a securities dealer).[111] The rule is clear, and neither the IRS nor the courts will have to inquire as to the motivation of the taxpayer in acquiring and/or holding the asset. The decision means that a number of taxpayers who won earlier cases based on the motivation test would have clearly lost under the *Arkansas Best* standard.

103. 26 U.S.C. § 1211(a) (1982). Corporations are allowed to carry unused capital losses back three years and forward five years. 26 U.S.C. § 1212(a) (1982).

104. Corn Prods. Ref. Co. v. Comm'r, 350 U.S. 46 (1955).

105. *Id.*

106. W.W. Windle Co. v. Comm'r, 65 T.C. 694 (1976).

107. *Id.* at 713.

108. Campbell Taggart, Inc. v. United States, 744 F.2d 442, 458 n.50. I.R.C. § 1236 requires securities dealers to identify clearly in their records and on the day it was acquired any security intended as an investment. 26 U.S.C. § 1236(a) and (b) (1982).

109. 350 U.S. at 53-54.

110. *See supra* text accompanying notes 91-92.

111. 26 U.S.C. § 1236(a), (b) (1982).

But just as clearly, the Court has provided a simple, straightforward rule to both taxpayers and the IRS.

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