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Individual's Deductions for Business Bad Debts Under the Internal Revenue Code

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INDIVIDUAL'S DEDUCTION FOR BUSINESS BAD DEBTS UNDER THE INTERNAL REVENUE CODE

Section 166[1](a) and (d) of the Internal Revenue Code permits both corporations and individuals to deduct from their gross income any debt, other than a nonbusiness debt, which becomes worthless during the taxable year. A nonbusiness debt is defined in section 166(d)(2) as any debt other than "(A) a debt created or acquired . . . in connection with a trade or business of the taxpayer; or (B) a debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business."[2] The regulations elaborate on the statute by providing that the deduction eligibility of the loss is to be "determined by the relation which the loss resulting from the debt's becoming worthless bears to the trade or business of the taxpayer. If that relation is a *proximate* one in the conduct of the trade or business in which the taxpayer is engaged at the time the debt becomes worthless . . ." the debt is deductible as other than a nonbusiness debt.[3] (Emphasis added.)

A taxpayer other than a corporation may also secure a deduction for nonbusiness debts which become worthless within the taxable year, but these losses must be considered as short-term capital losses.[4] Such losses, unlike ordinary business losses, are not fully deductible. Capital losses must first be offset by capital gains before any net loss is deductible from ordinary income, and, in the case of an individual, there is an upper limit placed upon the net capital loss deductible against ordinary income in any one year.[5]

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1 Int. Rev. Code of 1954, § 166, states in part:

(a) General rule.—

(1) Wholly worthless debts.—There shall be allowed as a deduction any debt which becomes worthless within the taxable year.

. . . .

(d) Nonbusiness debts.—

(1) General rule.—In the case of a taxpayer other than a corporation—

(A) subsections (a) and (c) shall not apply to any nonbusiness debt; and

(B) where any nonbusiness debt becomes worthless within the taxable year, the loss resulting therefrom shall be considered a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than 6 months.

(2) Nonbusiness debt defined.—For purposes of paragraph (1), the term "nonbusiness debt" means a debt other than—

(A) A debt created or acquired (as the case may be) in connection with a trade or business of the taxpayer; or

(B) a debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business.

2 Id.

3 Treas. Reg. § 1.166-5(b)(2) (1959).

4 Int. Rev. Code of 1954, § 166(d)(1)(B).

5 Int. Rev. Code of 1954, § 1211, which states in part:

(1) In general.—In the case of a taxpayer other than a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus (if such losses exceed such gains) which ever of the following is smallest:

(A) the taxable income for the taxable year, Thus, it is to a taxpayer's advantage to be allowed to treat losses from bad debts as other than nonbusiness losses and thereby fully deduct them from gross income in the year incurred. The test used to determine whether there is a proximate relationship between the loss and the trade or business of the taxpayer, and the factors considered in deciding whether the test has been satisfied thus become highly significant. For example, the test of proximateness is of great importance to a stockholder-employee of a closely held corporation who, having made loans to the corporation or having been the guarantor of certain of the corporation's obligations, experiences bad debt losses due to the corporation's financial difficulties. The taxpayer in this situation might seek a business bad debt deduction from his gross income, relying on the theory that the losses are proximately related to his trade or business of being an employee of the corporation.[6]

The test for determining a proximate relationship has not been precisely established by the Supreme Court, and there is a conflict among the cases decided by the courts of appeal. It has been held that a debt is proximately related to the taxpayer's trade or business when its creation was significantly motivated, as distinguished from primarily motivated, by the trade or business. This standard is generally referred to as the "significant motivation" test. On the other hand, several opinions have applied what is called the "dominant and primary motivation" test. To satisfy this test, a taxpayer must prove that his trade or business was the "dominant and primary motivation" behind the creation of the debt. This comment will evaluate these two tests in the context of several recent decisions involving the application of section 166 to investor-employee taxpayers.

I. Whipple v. Commissioner

Any examination of the relationship of section 166 to an investor-employee taxpayer must begin with *Whipple v. Commissioner.*[7] In *Whipple*, the Supreme Court stressed the basic dichotomy of investing versus trade or business, and approved the regulation that a worthless debt is deductible as a business bad debt only if there is a proximate relation between the loss and the taxpayer's trade or business.[8] Tax-

(B) $1,000 or

(C) the sum of

(i) the excess of the net short-term capital loss over the net long-term capital gain, and

(ii) one-half of the excess of the net long-term capital loss over the net short-term capital gain.

6 Trent v. Commissioner, 291 F.2d 669 (2d Cir. 1961), held that a corporate employee who makes loans to the corporation in order to hold his job may deduct for a business bad debt if the loans become worthless.

7 373 U.S. 193 (1963).

8 At the time the issue in *Whipple* arose, in 1953, the applicable statute was the Internal Revenue Code of 1939, as amended in 1942. Int. Rev. Code of 1939, § 23(k)(4) was substantially identical to the 1954 Code provision, § 166. Treas. Reg. 118, § 39.23(k)-6(b) was substantially identical to Treas. Reg. § 1.166-5(b), presently in effect.

payer Whipple owned approximately 80 percent of the outstanding stock in a soft drink bottling corporation. In 1952, he purchased land and erected thereon a bottling plant which he leased to the corporation. During 1952 and 1953, he made sizable cash advances to the corporation, the net amount ultimately owing to him reaching $56,975. This debt became worthless in 1953, and taxpayer deducted the loss as a business bad debt in computing his 1953 taxable income. The Commissioner, however, classified the debt as nonbusiness and assessed a deficiency. The Tax Court, after determining that in 1953 Whipple was not in the business of organizing, promoting, managing or financing corporations, or of bottling soft drinks, or of general financing and money lending, sustained the deficiency.[9]

The Supreme Court held that taxpayer-petitioner was not entitled to take a business deduction for the worthless loan to the corporation since "furnishing management and other services to corporations for a reward not different from that flowing to an investor in those corporations is not a trade or business . . . ."[10] The Court stated:

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9 19 CCH Tax Ct. Mem. 187 (1960).

10 373 U.S. at 203. In reaching the decision the court relied on the following cases: Dalton v. Bowers, 287 U.S. 404 (1932), involved a taxpayer owning all of the stock of the debtor corporation, who argued that his trade or business was carrying on a comprehensive enterprise of exploiting his own inventions through corporations organized for limited purposes, and that these personal activities transcended the separate corporate entities. These contentions were rejected by the Supreme Court because generally he treated the corporation as an entity apart from himself and not as his agent. Burnet v. Clark, 287 U.S. 410 (1932), involved a long-time president and principal stockholder of a corporation who had to make payment on certain notes he endorsed for the company. These amounts were deductible by him in the current year under the then existing law, but to carry over the loss to later years it was necessary for it to have resulted from the operation of a trade or business regularly carried on by the taxpayer. The Board of Tax Appeals denied the carry over. The Supreme Court, in approving the denial, stated that the unfortunate endorsements were no part of respondent's ordinary business, but occasional transactions intended to preserve the value of his investment in capital shares. Deputy v. DuPont, 308 U.S. 488 (1940), involved taxpayer with large and diversified investment holdings, including a substantial but not controlling interest in the DuPont Company, who obtained a block of stock of that corporation for distribution to its officers in order to increase their management efficiency. Taxpayer, as a result, became obligated to refund the annual dividends and taxes thereon, and he sought to deduct these amounts as ordinary and necessary expenses paid or incurred in the carrying on of a trade or business. The Court denied the deduction because the transactions "had their origin in an effort by that company to increase the efficiency of its management," and "arose out of transactions which were intended to preserve his investment in the corporation. . . ." Higgins v. Commissioner, 312 U.S. 212 (1941), concerned a taxpayer who devoted his time and energies to managing a sizable portfolio of securities, and sought to deduct his expenses incident thereto as incurred in a trade or business. The Court held that the evidence was insufficient to establish taxpayer's activities as those of carrying on a trade or business.

In response to the *Higgins* case and to give relief to Higgins-type taxpayers, Congress in 1942, amended § 23(a) of the Internal Revenue Code. The amendment did not disturb the Court's definition of "trade of business," but enlarged the category of incomes in the production of which expenses were deductible.

> When the only return is that of an investor, the taxpayer has not satisfied his burden of demonstrating that he is engaged in a trade or business since investing is not a trade or business and the return to the taxpayer, though substantially the product of his services, legally arises not from his own trade or business but from that of the corporation. Even if the taxpayer demonstrates an independent trade or business of his own, care must be taken to distinguish bad debt losses arising from his own business and those actually arising from activities peculiar to an investor concerned with, and participating in the conduct of the corporate business.[11]

The Court did not disturb the Tax Court's determinations since it could not say that they were clearly erroneous.[12] The Court was concerned, however, with the evidence as to petitioner's position as the owner and lessor of the real estate and bottling plant in which the corporation did business. The possibility that the loan was incurred in petitioner's business of being a landlord was not considered in the proceedings below, and the case was therefore remanded to the Tax Court.

Regarding the possibility that petitioner's loss might have been incurred in his trade or business of being an employee of the corporation, the Court noted that:

> Moreover, there is no proof (which might be difficult to furnish where the taxpayer is the sole or dominant stockholder) that the loan was necessary to keep his job or was otherwise proximately related to maintaining his trade or business as an employee.[13]

Thus, the Court indirectly approved of the proximate relationship requirement. It did not, however, give its explicit approval to either the significant motivation test or the dominant and primary motivation test. It merely suggested that it might be difficult for a sole or dominant stockholder to furnish proof that a loan was proximately related to his business of being an employee, as distinguished from his status as an investor. In the absence of explicit guidelines from the Court, a conflict subsequently developed among the circuits.

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11 373 U.S. at 202.

12 By virtue of § 7482(a) of the Int. Rev. Code of 1954 decisions of the Tax Court are subject to the same review as the district courts as contained in 28 U.S.C.—Appendix, Rule 52(a) decisions of the Federal Rules of Civil Procedure which states in part: "In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon . . . . Findings of fact shall not be set aside unless clearly erroneous. . . ." The Supreme Court has ruled that this rule applies not only to evidentiary facts but "to factual inferences from undisputed basic facts." Commissioner v. Duberstein, 363 U.S. 278, 291 (1960).

13 373 U.S. at 204.

II. Significant Motivation vs. Dominant and Primary Motivation

The significant motivation test was first used by the Second Circuit in deciding the 1963 case of *Weddle v. Commissioner.*[14] Upon her husband's death petitioner inherited 60 percent of the shares of the family corporation and assumed the presidency of the company. Two daughters each inherited 20 percent of the shares. In order to obtain a line of credit for the corporation, petitioner agreed to endorse and guarantee all loans made to it by a bank. Subsequently, the corporation went into bankruptcy, and petitioner was personally compelled to pay $34,191 to the bank. Petitioner deducted this amount on her 1955 income tax return. The Commissioner disallowed the deduction on the grounds that the loss arose out of a nonbusiness bad debt and, therefore, was to be treated only as a short-term capital loss. The Tax Court affirmed the ruling on the basis that petitioner had failed to sustain her burden of showing that the protection of her employment had been a significant motivation for endorsing the note.[15]

In affirming the lower court, the Second Circuit applied the significant motivation test. In support of this test, the court made reference to the tort principle whereby a cause contributing to a harm may be found to be "proximate" despite the fact that it might have been secondary to another contributing cause.[16] The court therefore concluded that particularly in view of the obtuse wording of section 166, it sufficed for a deduction that the creation of the debt was significantly motivated by the taxpayer's trade or business, even though there was a non-qualifying investment motivation as well.[17]

Several evidentiary factors were considered in determining whether petitioner satisfied the test. The court indicated that it was not impressed by the point that a comparison of petitioner's salary with her share of the net worth showed that her only significant motivation was to protect her investment.[18] On the contrary, the court suggested that a significant motivation may very well have been the protection of her employment, for she would certainly have been discharged if the company had ceased operations through an inability to obtain credit, as she in fact was when it ultimately failed.[19] However, the court found the controlling evidence to be petitioner's testimony that

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14 325 F.2d 849 (2d Cir. 1963).

15 39 T.C. 493 (1962).

16 325 F.2d at 851. The court cited the following authorities: 2 F. Harper & F. James, The Law of Torts, §§ 20.2, 20.3 (1956); Restatement of Torts §§ 432(2), 433, 439, 875, 879 (1939); Restatement (Second) of Torts § 443A at 54 (Tent. Draft No. 7, 1962), § 442B at 29 (Tent. Draft No. 9, 1963).

17 325 F.2d at 851.

18 In the same year that petitioner's endorsement was given, the corporation purchased from one daughter 20% of the outstanding stock for $65,000. On this basis, petitioner's 60% interest was worth $195,000. Her salary at this time was about $18,500.

19 325 F.2d at 851.

as owner of the business it was up to her to guarantee the security of the loan.[20] Petitioner's own testimony thus emphasized that her endorsement was motivated by her role as owner and investor rather than by her role as employee. In addition, there was the fact that at the time the corporation was in need of the loan it purchased one daughter's stock. This evidence tended to show that the motivation for the endorsement was not for the protection of petitioner's employment but rather the enhancement of her investment value. In the absence of this damaging evidence, the court might have held in favor of petitioner on the basis that a comparison of her salary with the value of her investment would support a finding that a significant motivation was the protection of her salary and employment. With petitioner's testimony, however, the court could reach only one conclusion, regardless of the test applied.

A concurring opinion suggested that the significant motivation test applied to the salary-investment relationship would invariably result in a decision favorable to the taxpayer because the salary interest, unless so small as to be negligible, will surely weigh in the mind of the taxpayer in advancing monies to the corporation.[21] The concurring judge therefore applied the dominant and primary motivation test and concluded that the substantial disparity between petitioner's salary interest and the value of her investment was sufficient to support a finding that the protection of her investment was the dominant and primary motivation behind the endorsement.[22] The concurring opinion found further support for this conclusion by pointing out that petitioner herself had control over the hiring and firing of corporate employees.

The majority in *Weddle* analogized from the tort law's concept of proximate cause in deciding to apply the significant motivation test. It is understandable to look to tort law for guidance in arriving at a definition of "proximate" as used in the Internal Revenue Code. However, the interpretation of the Code presents problems which are unlike those encountered in tort situations. For example, "proximate" as it is used in the Code involves a consideration of motivation, whereas "proximate" as used in tort law is concerned with a consideration of causation in fact.[23] Thus, it would seem desirable for a test of "proximate cause" applicable to the Revenue Code to be defined by an analysis of those factors unique to the taxpayer's motivation and to the administration of the revenue law.

The *Weddle* majority also implied that in the absence of petitioner's testimony, it might have compared petitioner's salary as an employee with the value of her investment as a stockholder in deciding whether the protection of her employment was a significant motivation. However, this comparison could prove misleading. A relatively small

20 Id. at 852.

21 Id.

22 Id. at 853.

23 W. Prosser, Law of Torts § 41 (3rd ed. 1964).

but steady salary might very well be a significant motivating factor in encouraging a taxpayer to advance monies to a corporation. On the other hand, a small investment could provide a significant motivation for loans if the money were required at a particularly strategic time or for an especially attractive undertaking. A small investment thus might have the potential for becoming a large investment.

The concurring opinion contended that the application of the significant motivation test to the salary-investment relationship would invariably result in a decision in favor of the taxpayer. It was argued that this result would follow because the salary interest, unless so small as to be of negligible value, would surely "weigh in the mind"[24] of the taxpayer in advancing monies to the corporation. However, decisions favorable to the taxpayer would not necessarily follow, for it is possible that the weighing in the mind of the taxpayer could be something less than a significant motivation. It is worth pointing out that the application of the dominant and primary motivation test might very well result in most decisions being adverse to the taxpayer, except, perhaps, in those few cases where the taxpayer's salary substantially exceeds his investment. The salary-investment relationship, although certainly a factor for consideration in determining the taxpayer's motivation, is, nevertheless, only one factor. It should be weighed in the entire context of the loan transaction rather than being the determinative factor.

By considering taxpayer's control over corporate hiring and firing as evidence that the guarantee was not needed to protect her employment, the concurring opinion injected a second factor that would preclude virtually any chance of success by the taxpayer. If the taxpayer is either the president of the corporation or in control of the board of directors, he or she must have the power to hire and fire. Since the taxpayer in the circumstances under discussion will invariably hold one of these power positions, the use of this rationale must invariably result in a decision adverse to the taxpayer.

A conflict among the circuits was created in 1969 when the Seventh Circuit applied the dominant and primary motivation test in deciding *Niblock v. Commissioner.*[25] Petitioner, on three occasions, had sold his ownership interest in corporations. On the third occasion he continued as president of the corporation but resigned after a short time. He and another person then formed a fourth corporation. Petitioner was an officer of this corporation and guaranteed certain corporate obligations. As a result of these guarantees he suffered a loss which he was originally allowed to deduct as a business loss. Subsequently, however, the Commissioner determined the loss to be a capital loss and assessed a deficiency.

The Tax Court held that petitioner's loss from the guarantees resulted from nonbusiness bad debts and was to be treated as a capital

[24] 325 F.2d at 852.
[25] 417 F.2d 1185 (7th Cir. 1969).

loss.[26] On review, the court applied the dominant and primary motivation test to petitioner's activities and held that petitioner did not prove that his status as an employee was the dominant and primary motivation behind the guarantees. Therefore, the requisite proximate relationship did not exist. Indeed, the court felt that the guarantees were made to build up the value of the corporation's stock and not to satisfy petitioner's need for independent employment. In reaching this conclusion, the court considered, among other facts,[27] evidence which concerned petitioner's somewhat unusual contention that his need for self-employment was the motivation behind his guarantees of corporate obligations and that the loss was therefore a consequence of and proximately related to his trade or business of being a corporate employee. In rejecting the contention, the court stated that on several occasions petitioner had relinquished opportunities to be in complete control of his own business,[28] that the Tax Court had found no extraordinary circumstances indicating that his personality would make future employment problematical,[29] and that the record failed to show that petitioner would have been discharged if he had failed to make the guarantees.[30]

The *Niblock* court adopted the dominant and primary motivation test because it felt that this test was the only one which would inject sufficient certainty into the interpretation of section 166. The court found support for this belief in the language of *Whipple* admonishing that bad debt losses arising from a taxpayer's trade or business must be distinguished from those arising from the taxpayer's activities peculiar to an investor participating in the conduct of a corporate business.[31] However, it is not clear that the language of *Whipple* favors the dominant and primary motivation test over the significant motivation test. *Whipple* spoke only of the problem of proving a proximate relationship, not the test to be used. However, the inference could be made from *Whipple's* statement on the difficulty of proof[32] that the proper test is the one which would be the more difficult to satisfy. A sole or dominant stockholder would find it very difficult indeed to satisfy the dominant and primary motivation test. Therefore, this test would further accentuate the difficulty in proof that any stockholder-employee would face, which could be the implicit reasoning of the *Niblock* court that the dominant and primary motivation test would inject more certainty into the administration of section 166.

26 27 CCH Tax Ct. Mem. 1381 (1968).

27 The court also considered that petitioner had established a practice of selling at a profit stock in corporations in which he was financially interested and employed, that his salary was less than half the amount he received from a corporation formerly owned by him, and that there were no indications that the guarantees were made to obtain additional salary benefits. 417 F.2d at 1187-188.

28 417 F.2d at 1187.

29 Id.

30 Id. at 1188.

31 Id. at 1187, citing Whipple v. Commissioner, 373 U.S. at 202.

32 See p. 481 supra.

In 1970, the Fifth Circuit entered the controversy when it decided the case of *United States v. Generes.*[83] Taxpayer's construction company had evolved out of a family partnership. Although he did not exercise control over the day to day operations of the business, he did act as president. He also was required to sign a blanket indemnity agreement for performance and payment bonds. When the company failed, taxpayer was compelled to indemnify the insurance company for its losses. He therefore deducted on his tax return a business bad debt. After an initial approval, the Internal Revenue Service later ruled that the payment to the casualty company did not constitute a business bad debt. Taxpayer paid an assessment and filed a refund suit in the district court. The trial was held before a jury, which returned a verdict for taxpayer.

The district court's sole interrogatory to the jury, answered in the affirmative, was:

> Do you find from a preponderance of the evidence that the signing of the blanket indemnity agreement by [taxpayer] was proximately related to his trade or business of being an employee of the [corporation]?[84]

The court instructed the jury:

> A debt is proximately related to the taxpayer's trade or business when its creation was *significantly* motivated by the taxpayer's trade or business, and it is not rendered a non-business debt merely because there was a non-qualifying motivation as well, even though the non-qualifying motivation was the primary one.[85] (Emphasis added.)

As the Seventh Circuit in *Niblock* found justification for the dominant and primary motivation test in *Whipple,* the Fifth Circuit in *Generes* found in *Whipple* justification for applying the significant motivation test. The *Generes* court concluded that the language in *Whipple* which impliedly required proof only that a loan be *proximately related* to the maintenance of a taxpayer's trade or business in order for a business deduction to be allowed precluded the imposition of the dominant and primary motivation test.[86] It is possible to support this conclusion by recognizing that under the dominant and primary motivation test there exists the possibility that in most cases the decision will be adverse to the taxpayer.[87] Consequently, the significant motivation test is the only one which can effectuate the proximate relationship requirement approved in *Whipple.* Otherwise, virtually no stockholder-employee could hope to have a bad debt deduction allowed.

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[83] 427 F.2d 279 (5th Cir. 1970).
[84] Id. at 282.
[85] Id.
[86] Id., referring to *Whipple,* 373 U.S. at 204.
[87] See supra p. 485.

The court also indicated that it was impressed with the majority holding in *Weddle* and its use of proximate cause of tort law to support the significant motivation test.[38]

The court therefore phrased the ultimate question as whether the evidence formed a sufficient basis to justify the submission of the case to the jury.[39] The record included taxpayer's repeated testimony that he signed the indemnity agreement in order to protect his employment,[40] and the uncontradicted testimony of other witnesses from which the jury could have inferred that taxpayer's motivation was the protection of his employment and salary. The record also showed that no performance bonds would have been issued to the corporation without taxpayer's personal endorsement, and that without the bonds the corporation would have gone out of business.[41] The verdict in favor of taxpayer was affirmed.

The dissent in *Generes* supported the application of the dominant and primary motivation test as the only test that would inject sufficient certainty into the interpretation of section 166. The dissent also took the position that if the dominant and primary motivation test had been applied, taxpayer's testimony as self-serving in nature would have been insufficient to take the case to the jury in the face of the evidence that taxpayer was required to sign the indemnity agreement in order for the corporation to remain in business.[42] The opinion suggested that this problem of proof was forecast by *Whipple's* admonishment that it might be difficult for a sole or dominant stockholder to furnish proof that a loan was necessary to keep his job or was otherwise proximately related to his employment.[43] This language of *Whipple* gives support to a requirement that a taxpayer present more evidence concerning his motivation than his own testimony. In this regard, it should be noted from the majority's opinion that there was other evidence from which the jury could have inferred taxpayer's motivation.[44] Thus, even if the dominant and primary motivation test had been applied, the evidence might have been sufficient to take the case to the jury.

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38 427 F.2d at 283.

39 The court applied the standard set down in Boeing Co. v. Shipman, 411 F.2d 365 (5th Cir. 1969), from which it quoted:

> On motions for directed verdict and for judgment notwithstanding the verdict the Court should consider all of the evidence . . . [I]f there is substantial evidence opposed to the motions, that is, evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions, the motions should be denied, and the case submitted to the jury . . . . There must be a conflict in substantial evidence to create a jury question. However, it is the function of the jury as the traditional finder of the facts, and not the Court, to weigh conflicting evidence and inferences, and determine the credibility of witnesses.

427 F.2d at 284, quoting 411 F.2d at 374-75.

40 427 F.2d at 283.

41 Id.

42 Id.

43 Id.

44 See supra p. 481.

III. Conclusion

The Seventh Circuit in *Niblock* found justification in *Whipple* for the dominant and primary motivation test;[45] the Fifth Circuit in *Generes* found justification in *Whipple* for the significant motivation test.[46] Such a situation indicates that *Whipple* does not offer a firm basis of support for either test.

In the dominant stockholder-employee situation, the kinds of evidence that will generally be weighed by the trier of fact in determining either degree of motivation will be taxpayer's testimony, the relationship between taxpayer's salary and the value of his investment, the possibility that the corporation would have gone out of business without taxpayer's advances, and the degree of control that taxpayer had over the hiring and firing of corporate employees. With these kinds of evidence, it would be difficult for taxpayer to prove that his dominant and primary motivation in advancing monies was the protection of his employment.

On the other hand, the significant motivation test is so much more easily satisfied with these kinds of evidence that, as was pointed out in the concurring opinion in *Weddle*,[47] there is a danger that the results will invariably be in favor of taxpayer. However, this test would seem to be the more appropriate in light of the fact that section 166 does not demand more of a business debt than that it be created or acquired *in connection with* a trade or business of the taxpayer,[48] or that the loss from its worthlessness be *incurred* in the taxpayer's trade or business.[49]

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[45] 417 F.2d at 1187.
[46] 427 F.2d at 282.
[47] 325 F.2d at 852.
[48] Int. Rev. Code of 1954, § 166(d)(2)(A).
[49] Int. Rev. Code of 1954, § 166(d)(2)(B).