Washington Law Review

Volume 48 | Issue 2

2-1-1973

Income Tax—Section 482 of the Internal Revenue Act: Commissioner's Authority to Allocate Income Is Limited by Taxpayer Legal Disability—Commissioner of Internal Revenue v. First Security Bank of Utah, N.A., 405 U.S. 394 (1972)

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Recommended Citation

J. P. H., Recent Developments, *Income Tax—Section 482 of the Internal Revenue Act: Commissioner's Authority to Allocate Income Is Limited by Taxpayer Legal Disability—Commissioner of Internal Revenue v. First Security Bank of Utah, N.A., 405 U.S. 394 (1972)*, 48 Wash. L. & Rev. 492 (1973).
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INCOME TAX—SECTION 482 OF THE INTERNAL REVENUE ACT: COMMISSIONER'S AUTHORITY TO ALLOCATE INCOME IS LIMITED BY TAXPAYER LEGAL DISABILITY—*Commissioner of Internal Revenue v. First Security Bank of Utah, N.A.*, 405 U.S. 394 (1972).

First Security Bank, a wholly owned subsidiary of Holding Company, referred its borrowers to Security Life, a sister subsidiary, for the purpose of obtaining credit insurance.[1] Security Life paid no commissions to First Security, but it did pay substantial dividends to Holding Company.[2] By funneling all of the premium income through Security Life, which qualifed for preferential treatment as a life insurance company, Holding Company enjoyed a substantial tax advantage.[3] The Commissioner of Internal Revenue, acting pursuant to section 482 of the Internal Revenue Code,[4] sent notice of deficiencies to First Security based on an allocation to that subsidiary of approximately 40 percent of Security Life's premium income. The Commis-

1. Credit insurance is an arrangement between an insurance company and a second party in which the second party as the insured is relieved of the responsibility of payment in the event of disability. The arrangement in the present case involves the more specialized field of consumer credit insurance. Using this device in the context of a bank loan, the insurer pays the insured's debt to the bank upon the debtor's death or disability. Either the premiums are paid by the borrower at the acquisition of the policy or the bank pays the premiums and adds the amount to the principal of the loan. The respondent bank did not require borrowers to purchase credit insurance, and less than 50 percent actually did so.

Credit insurance is a relative newcomer to the field of insurance. For a discussion of the various types of credit insurance and their functions, *see* C. PHELPS, COMMERCIAL CREDIT INSURANCE AS A MANAGEMENT TOOL (1961).

2. In 1959, the total dividends paid to Holding Company amounted to $389,821.61. Brief for Petitioner at 18 n.7, Comm'r of Internal Revenue v. First Security Bank of Utah, N.A., 405 U.S. 394 (1972).

3. Life insurance companies are given preferential tax treatment under the Life Insurance Company Income Tax Act of 1959, 73 Stat. 112. *See also* United States v. Atlas Life Ins. Co., 381 U.S. 233 (1965). Holding Company benefits from greater dividends from its subsidiaries if the income is channeled through the insurance company than if it is channeled either through the respondent banks or Management Company.

4. 26 U.S.C. § 482 (1970) provides:

> In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary or his delegate may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment or allocation is necessary to prevent evasion of taxes or clearly to reflect the income of any such organizations, trades or businesses.

For an extensive treatment of related problems in the application of section 482, *see* B. WOLFMAN, FEDERAL INCOME TAXATION OF BUSINESS ENTERPRISE 827-58 (1969).

sioner concluded that such an allocation was necessary to correctly reflect the actual income of the related organizations, and that the restraints in section 92 of the National Banking Act[5] upon First Security's receiving commissions for insurance referrals did not preclude application of the tax laws.

The Tax Court upheld the Commissioner's allocation of income to First Security.[6] The Tenth Circuit reversed the Tax Court, and the Supreme Court granted the Commissioner's petition for certiorari. *Held:* Affirmed. Since First Security did not receive any part of the premiums and was prohibited by section 92 of the National Banking

5. First Security, as a national bank operating in a place with a population in excess of 5,000 inhabitants, was prohibited by 12 U.S.C. § 92 (1916) from receiving any commissions for referring borrowers to credit insurance companies. Section 92 was omitted from the 1918 reenactment of the Banking Act, but the Comptroller of the Currency incorporated it into his regulations and it was considered to be in effect at the time of the transactions between First Security and Security Life. *See* 12 C.F.R. § 2.1-.5 (1971). In November, 1971, however, the Comptroller of the Currency rescinded those sections of the regulations, finding them to be "obsolete [and] not required to implement the powers conferred by statute upon the national banks . . . ." 36 Fed. Reg. 22979 (1971). While the Comptroller's action prevents the recurrence of the precise issues presented in *First Security,* the Court's analysis is equally applicable to other instances of legal disability and the impact of the decision on the Commissioner's authority to allocate is no less significant.

Section 92, as in effect at the time of the transactions between First Security and Security Life, provided:

> [That] in addition to the powers now vested by law in national banking associations organized under the laws of the United States any such association located and doing business in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, may, under such rules and regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which such bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said association and the insurance company for which it may act as agent; and may also act as the broker or agent for others in making or procuring loans on real estate located within one hundred miles of the place in which said bank may be located, receiving for such services a reasonable fee or commission . . . .

Although section 92 did not expressly prohibit national banks in places with a population in excess of 5,000 from acting as insurance agents, later cases indicated that it did so impliedly. *See* Saxon v. Georgia Ass'n of Independent Ins. Agents, Inc., 399 F.2d 1010 (5th Cir. 1968); Comm'r of Internal Revenue v. Morris Trust, 367 F.2d 794 (4th Cir. 1966).

6. The Tax Court denied the Commissioner's alternative allocation to Management Company, another wholly owned subsidiary of Holding Company, which processed the insurance policies. Management Company kept records of the insurance policies, transferred the insurance premiums and processed the claims. The costs to First Security in explaining the credit insurance and making referrals, and the costs to Management Company in processing the policies were described by the Tax Court as "negligible."

Act from receiving referral commissions, section 482 does not authorize the allocation of insurance premium income to First Security. *Commissioner of Internal Revenue v. First Security Bank of Utah, N.A.*, 405 U.S. 394 (1972) (Marshall, Blackmun and White, JJ., dissenting).[7]

Section 482 was enacted to provide vital integrity to the Internal Revenue Code. It authorizes the Commissioner to allocate income among commonly controlled organizations for tax purposes to prevent such organizations from arbitrarily shifting gross income to minimize taxes.[8] Without the flexibility added to the Code by section 482, businesses would have considerable discretion to restructure their activities and thus alter their true taxable income so as to defeat the purposes of the Code.[9] While the one sentence mandate of section 482 seems coherent and easily defined, several factors militate against a simplistic application of the provision.[10] For example, implicitly ambiguous wording which seems to expand the application of section 482 beyond cases in which there has been actual evasion of taxes[11] has caused problems of interpretation. Although earlier cases upheld allocations under section 482 only where there was no business pur-

7. During the last term, the Supreme Court also decided United States v. Byrum, 408 U.S. 125 (1972), another significant tax case. In *Byrum*, the Court held that a grantor's retention of voting rights in stock in a trust and other management powers over the trust did not subject an *inter vivos* trust to federal estate taxation. Both decisions were written by Justice Powell, and each adopted a position favorable to the taxpayer, thus suggesting that Justice Powell might be recognized by the other Justices as the Court's tax authority, and creating speculation as to a possible shift in the Court's position concerning tax policy.

8. R. Dailey & L. Warble, Items of Gross Income 68-69 (1967). Allocations under section 482 are proper to achieve either of two desired results: to clearly reflect the income of the organizations, or to prevent the evasion of taxes. But the result of preventing the evasion of taxes is closely related to reflecting the income of the organizations. *See* B. Forman Co. v. Comm'r of Internal Revenue, 453 F.2d 1144 (2nd Cir. 1972).

9. This discretion is minimized by the existence of a possible allocation under section 482. But one author asserts that the amorphous quality of treasury regulations does more to create confusion than to limit corporate structuring directed at distorting true taxable income. Eustice, *Affiliated Corporations Revisited: Recent Developments under Sections 482 and 367*, 24 Tax L. Rev. 101 (1968)

10. For a discussion of some of these factors, including the problem of correlative adjustment, see Jenks, *Treasury Regulations under Section 482*, 23 A.B.A Tax Lawyer 279 (1969).

11. This equivocation is exemplified by the phrase "clearly to reflect the income . . . ." 26 U.S.C. § 482 (1970).

pose for the transfer or reorganization,[12] the Treasury Department has established new regulations defining the application of section 482 which clearly demonstrate that allocation is not so limited:[13]

> Transactions between one controlled taxpayer and another will be subjected to special scrutiny to ascertain whether the common control is being used to reduce, avoid, or escape taxes. In determining the true taxable income of a controlled taxpayer, the district director is not restricted to the case of improper accounting, to the case of a fraudulent, colorable, or sham transaction, or to the case of a device designed to reduce or avoid taxes by shifting or distorting income, deductions, credits, or allowances. *The authority to determine true taxable income extends to any case in which either by inadvertence or design the taxable income, in whole or in part, of a controlled taxpayer, is other than it would have been had the taxpayer in the conduct of his affairs been an uncontrolled taxpayer dealing at arm's length with another uncontrolled taxpayer.*

Thus, the current regulatory standard for application of section 482 is a completely objective one: the controlled parties must have dealt with each other in the same manner as independent parties dealing at arm's length.[14] Several decisions have applied this standard to sustain the application of section 482 where there was an absence of "arm's length" negotiation, even though the transaction in question did not amount to an evasion of taxes.[15]

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12. *See* Sun Properties v. United States, 22 F.2d 171 (5th Cir. 1955) (Commissioner's refusal to recognize a transfer of a warehouse owned by the sole stockholder in a company to that company at a fair market price held improper on the theory that such a transaction cannot be disregarded solely because of the lack of arm's length negotiation); Tennessee-Arkansas Gravel Co. v. Comm'r of Internal Revenue, 112 F.2d 508 (6th Cir. 1940) (allocation of rental income to parent corporation held improper where the parent permitted its subsidiary to use the parent's equipment without a rental charge); Columbian Rope Co. v. Comm'r of Internal Revenue, 42 T.C. 800 (1964) (domestic parent does not realize income as a result of a bargain transfer between foreign subsidiaries if there is a business purpose for the transfer and the parent receives no direct benefit).

13. Treasury Regulations on Income Tax (1954), 26 C.F.R. 1.482-1(c) (1962) (emphasis added). The regulations would seem to allow an allocation under section 482 even where the corporate organization served an identifiable business function and the taxpayer had no intent to minimize his total tax liability. Mansfield, *The 482 Proposed Regs: The Problems with Which Practitioners Will Have to Contend,* 28 J. TAXATION 66 (1968).

14. Spaeth, *Section 482—Past and Future,* 47 TAXES 45, 50 (1969).

15. *See* Borge v. Comm'r of Internal Revenue, 405 F.2d 673 (2d Cir. 1968) (Commissioner's allocation of a corporation's income to its controlling shareholder upheld where the shareholder, by use of an exclusive service contract, diverted his own income

Although the arm's length standard has been universally adopted as the proper test for making section 482 allocations, there was substantial uncertainty prior to the *First Security* decision as to the effect taxpayer legal disability should have in applying the arm's length standard. Simply stated, the issue was whether the Commissioner should be precluded from allocating income to a taxpayer under section 482 in order to clearly reflect its income if the taxpayer was legally prohibited from receiving the income. There are two leading cases which confronted this issue prior to *First Security*. In *L.E. Shunk Latex Products, Inc. v. Commissioner of Internal Revenue,*[16] the Tax Court held that an allocation under the predecessor provision of section 482 was improper because the price charged by the taxpayer for products sold to its controlled partnership was fixed by the Office of Price Administration regulations and legally could not have been raised by the parties to the amount required in the Commissioner's allocation.[17] The court emphasized that the existence of common control was not in itself a basis for income reallocation; there must be evidence that common control created an unnatural distribution of income. In *Local Finance Corp. v. Commissioner of Internal Revenue,*[18] the Seventh Circuit encountered a factual situation nearly identical to that in the instant case and held that an allocation under section 482 was proper. The Seventh Circuit distinguished *Shunk* on grounds that the O.P.A. price regulations in *Shunk* prevented the *generation* of income

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to the controlled corporation in an attempt to benefit from the corporation's operating loss); Ach v. Comm'r of Internal Revenue, 358 F.2d 342 (6th Cir. 1966) (allocation held proper where court found an absence of an arm's length transaction in the transfer of petitioner's profitable business to an insolvent family corporation to take advantage of the net operating loss carryover from the family corporation); Eli Lilly & Co. v. United States, 372 F.2d 990 (Ct. Cl. 1967) (allocation of profit to parent from sale of property by subsidiary where parent previously transferred the property to the subsidiary at a bargain price). *But see* Huber Homes, Inc. v. Comm'r of Internal Revenue, 55 T.C. 598 (1971) (allocation to parent company of the difference in price between the fair market value and the actual selling price of bargain property transferred from parent to a wholly owned subsidiary held improper because the Treasury Regulations contemplate allocation under section 482 only when the bargain property is to be resold by the bargain vendee).

16. 18 T.C. 940 (1952).

17. As the Court in *Shunk* reasoned:

> We would therefore regard this diversion of income as an appropriate occasion [for applying section 482] . . . were it not for certain wartime price regulations issued by the Office of Price Administration.

Id. at 959. The Court concluded, "We think that the Commissioner had no authority to attribute to petitioners income which they could not have received." *Id.* at 961.

18. 407 F.2d 629 (7th Cir. 1969).

between commonly controlled taxpayers and that an allocation under section 482 in *Shunk* was not necessary to put the controlled corporation on a tax parity with an uncontrolled one.

In applying the arm's length standard, the *First Security* Court resolved the legal disability issue by stating that *Local Finance* was "erroneously decided." The Court concluded that the Commissioner's allocation to First Security Bank was improper since even in the absence of common control the income would have been distributed in the same manner due to prohibitions in the banking laws.[19] In refusing to extend the Commissioner's authority to make allocations under section 482 to instances where the taxpayer would be forbidden from receiving the income, the Court reasoned that allocation is proper only when the controlling corporation has a "complete power" to shift the income among its subsidiaries:[20]

> It is only where this [complete] power exists and has been exercised in such a way that the "true taxable income" of a subsidiary has been understated, that the Commissioner is authorized to reallocate under § 482. But Holding Company had no such power unless it acted in violation of federal banking laws. The "complete power" referred to in the regulations hardly includes the power to force a subsidiary to violate the law.

By continually referring to the illegality of First Security's actually receiving compensation for the services it performed, the majority opinion strongly implies that the allocation to First Security Bank would have been proper but for that factor.

The *First Security* opinion indicates that the Court was hesitant to overrule the *Shunk* decision.[21] But reaching the opposite result in the present case would not have been inconsistent with the ruling in *Shunk;* the two cases can be distinguished. *Shunk* stands for the prop-

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19. It is important to note that Management Company and Security Life are not sham corporations because they have separate identifiable business functions. If they were sham corporations, regardless of the applicability of section 482, the Commissioner could have disregarded their juridical form and taxed them as one entity under section 61(a) of the Code. Gregory v. Helvering, 293 U.S. 465 (1935). In contrast to disregarding the corporate fiction, a section 482 allocation respects the identity of the corporate structure. *See* Ach v. Comm'r of Internal Revenue, 358 F.2d 342 (6th Cir. 1966), where the court noted that allocation was proper under section 482 even though the corporation had a separate legal existence.
20. 405 U.S. at 407.
21. *See* note 16 and accompanying text *supra*.

osition that a section 482 allocation cannot be used to generate income where none existed prior to the allocation.[22] Thus, controls limiting the price which can be charged to independent parties should also control the price which can be charged to a commonly controlled corporation; an opposite result would require the Commissioner to create income for the purpose of allocating under section 482. An opposite result in *Shunk* would also distort the arm's length standard because it would result in the commonly controlled corporation's being placed at a tax disadvantage in relation to the uncontrolled taxpayer for the same transaction.

The contrary is true of *Local Finance* and *First Security*. There is no requirement that income be created for purposes of allocation where no income existed previously, because in both situations income entered the corporate structures from an outside source; the only problem was in how to allocate it between the controlled parties. In both *Local Finance* and *First Security* there was no need to generate income between the controlled parties; thus, there was no possibility that an allocation would result in uncontrolled businesses obtaining a tax advantage over commonly controlled businesses, as would have occurred had an allocation been made in *Shunk*.

The Court's conclusion that a taxpayer's legal disability to receive certain income precludes allocation of that income is crucial to the fate of section 482. In applying section 482's arm's length standard to a situation in which the taxpayer was prohibited by banking law from receiving the income, the Court addressed the question of whether a national bank which deals at arm's length with an independent insurance company in the manner in which First Security dealt with its sister corporation *could* receive compensation for its services. The Court's formulation of its inquiry led it to hold that since an uncon-

22. One of the most controversial areas of section 482 is whether it can "create income" which was not present in the transaction between the parties. The earlier view was that section 482 could be used only to allocate income and could not be used to create income between controlled corporations. Tennessee-Arkansas Gravel Co. v. Comm'r of Internal Revenue, 112 F.2d 508 (6th Cir. 1940); Epsen Lithographers v. O'Malley, 67 F. Supp. 181 (D. Neb. 1946). *But see* the more recent decision in B. Forman Co. v. Comm'r of Internal Revenue, 453 F.2d 1144 (2nd Cir. 1972), which indicates that the Second Circuit permits application of section 482 to create income. The Treasury adheres to the position that income can be created by a section 482 allocation even though the parties intended a gratuitous transfer of economic benefits. Mansfield, *The 482 Proposed Regs: The Problems with Which Practitioners Will Have to Contend*, 28 J. TAXATION 66 (1968). Mansfield points out that the use of section 482 to create income could be carried to an extreme. *See* note 13 *supra*.

trolled national bank could not *legally* receive the compensation, the arm's length standard precluded allocation of income.[23] It is submitted that the Court's decision produced unfortunate results that could have been avoided either by ignoring the presence of legal disability in resolving the issue addressed by the Court, or by formulating the issue differently, asking instead the more pertinent question of whether a national bank dealing at arm's length with an independent insurer *would* gratuitously perform the services First Security performed.

The undesirable results of the Court's decision are manifest. One such result is the incongruous treatment it would have afforded three different types of national banks seeking to make credit insurance available to their banking customers under the then current banking regulations. A national bank in a community with a population of less than 5,000 inhabitants was permitted to receive commissions for insurance referrals, because Congress intended to permit it to act as an insurance agent.[24] However, it could and probably would have been allocated part of the income from any referrals it made to a commonly controlled insurance carrier. A second type was the national bank in a community with a population in excess of 5,000, which differed from First Security in that it was not a member of a multi-corporate structure. Since it was prohibited by statute from receiving any commissions for insurance referrals it would have either continued to refer on a wholly gratuitous basis or abstained from referring entirely, allowing customers to use their own judgment about the propriety of credit insurance. In either event, it would not have received benefit from any credit transactions. In contrast, a national bank in the position of First Security not only was able to make referrals and cause the benefit to accrue to the controlling corporation, but also was permitted to obtain a tax advantage which was not available to either of the other two types of banks.[25] Since section 92 of the National Banking Act was

23. The Court concluded:

> If these Banks had been independent of any such control—as most banks are—no commissions or premiums could have been received lawfully and there would have been no taxable income.

405 U.S. at 407.

24. Saxon v. Georgia Ass'n of Independent Ins. Agents, Inc., 399 F.2d 1010 (5th Cir. 1968).

25. The national bank in the smaller community receives income for its referrals, but since it is taxed at the regular rate for the commissions it receives, it does not benefit

designed to prevent the national bank in the larger community from either receiving an additional source of income from insurance transactions or engaging its already occupied staff in the insurance business,[26] the *First Security* decision thwarts the objectives of both the National Banking Act and section 482.

Even while adopting the question of whether parties dealing at arm's length could receive commissions as its test for section 482 allocations, the Court could have avoided engendering the inconsistency discussed above by ignoring legal disability in answering the question. There is precedent for ignoring legal disability in tax cases. The history of the claim of right doctrine demonstrates that the issue of taxability should not be determined by laws outside the Internal Revenue Code.[27] The Court noted in *James v. United States*:[28]

> It has been a well established principle . . . that unlawful as well as lawful gains are comprehended within the term "gross income". . . [T]he obvious intent of that Congress [is] to tax income derived from legal and illegal sources . . . .

By distinguishing *James* and its progeny on the ground that in those cases the taxpayer had unlawfully received money whereas in the in-

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from the tax advantage applicable to insurance carriers. The national bank in the larger community which is not a member of a larger corporate structure cannot receive any benefit from referrals it makes. Only a national bank in the position of First Security can allow its parent to take advantage of the lower tax rate applicable to insurance carriers.

This benefit to the controlled corporate structure might not occur in the present case, since the Commissioner's alternative allocation to Management Company was remanded for further consideration. If the allocation to Management Company is finally upheld, Holding Company will lose some of the benefit from the lower tax liability to which Security Life's income would be subjected, although its total tax liability would still be less than if the allocation to respondents had been allowed.

26. *Saxon, supra* note 5, at 1015. *See also* the letter to the Senate Banking and Currency Committee from the Comptroller of the Currency, 53 CONG. REC. 11001 (1916):

> I think it would be unwise and therefore undesirable to confer this privilege generally upon banks in large cities where the legitimate business of banking affords ample scope for the energies of trained and expert bankers . . . . The business is one requiring training, skill, and application, and I think that the profession of banking would suffer if there is a departure from the principles which should govern and have heretofore governed.

27. The earlier approach to illegal income under the claim of right doctrine was that it was not taxable to the person receiving the income. In Comm'r of Internal Revenue v. Wilcox, 327 U.S. 404 (1946), the Court held that embezzled funds could not be taxed to the embezzler. The modern view, expressed in James v. United States, 366 U.S. 213 (1961), is that such income is taxable to the wrongdoer to the same extent as legal income.

28. 366 U.S. 213, 218 (1961).

stant case the Commissioner was seeking to allocate income which could not lawfully be received,[29] the *First Security* Court noted a distinction without a difference. The Court ignored the primary lesson of *James*—that taxability should not turn on statutory provisions which are designed to further policies and promote objectives unrelated to those of the Internal Revenue Code. Whereas the policies of the banking law may have been furthered by prohibiting banks in localities with populations in excess of 5,000 from receiving referral commissions, the policies underlying section 482 are actually thwarted by requiring that the Commissioner's power to allocate turn on the size of the community in which the taxpayer is situated.

An entirely different formulation of the test for allocations under section 482 constitutes a preferable solution to the legal disability issue. By addressing the more relevant question of whether a national bank dealing at arm's length with an uncontrolled insurer *would* perform such referral services without compensation, the Court could have avoided the problems inherent in its resolution of the issue. Such a question would more directly focus on section 482's primary purpose, the allocation of income for services performed between controlled parties where the parties would not have performed such services for the compensation actually received absent common control. This question would be superior to that asked by the Court because it hinges on whether common control was responsible for the transaction. In contrast, by making the unwarranted assumption that such a transaction would occur in arm's length negotiation, the Court's inquiry hinges on whether compensation would be given, a determination rendered artificial by the Court's assumption. The Court's test, based on the supposition that uncontrolled corporations would continue to make referrals even though they could not legally receive compensation, assumes too much.

The suggested test would permit allocation only when the Commissioner could verify that in an arm's length transaction an uncontrolled taxpayer would not perform such a service for another for the commission actually received. This test would appropriately restrict section 482 allocations to circumstances where the transaction in question occurred solely because of common control.

29. 405 U.S. at 405.

In the present case, it appears that absent common control First Security probably would not have made gratuitous referrals solely to Security Life. Although the Court never resolved the issue, it is apparent that First Security would have had no reason to provide such exclusive services unless it did so solely for the benefit of its customers with an honest belief that Security Life's policy best accommodated their needs. Since the referrals in the instant case were apparently made for the benefit of Holding Company and not First Security's customers,[30] it is likely that absent common control First Security would have substantially altered its referral pattern. Viewing the transaction between Security Life and First Security in this light, it makes little sense to ask whether a party could receive compensation for services it performed at arm's length in instances where such party never would gratuitously perform the service on a true arm's length basis.

Undoubtedly, other conglomerates and holding companies will benefit from such a restrictive interpretation of section 482. While *First Security* has been heralded by one author as showing humanity for the taxpayer and giving the taxpayer the equivalent of a "bill of rights,"[31] the decision appears to be an unfortunate example of the Court's exaltation of form over substance.

J.P.H.

30. If First Security had been making referrals without compensation for the benefit of its customers, rather than for the benefit of its parent company, it would have arranged for Security Life to deduct from the premiums the amount normally paid in referral commissions. Instead, Security Life paid dividends of almost $400,000 to its parent company. Brief for Petitioner at 18 n.7, Comm'r of Internal Revenue v. First Security Bank of Utah, N.A., 405 U.S. 394 (1972).

31. Teschner, *First Security Bank of Utah Taxpayer Disability and the Supreme Court*, 50 TAXES 260 (1972).