

Endnotes

- 1 *Fin Hay Realty Co. v. United States*, 398 F.2d 694, 694 (3d Cir. 1968)
- 2 Curtis Dubay, *Taxation of Debt and Equity: Setting the Record Straight*, The Heritage Foundation (September 30, 2015), <https://www.heritage.org/taxes/report/taxation-debt-and-equity-setting-the-record-straight>.
- 3 For “qualified dividends”, defined as dividend income from a company is domiciled in the U.S. or in a country that has a double-taxation treaty with the U.S. See I.R.S. Pub. No. 500, Cat. No. 15093R, 19 (Mar 28, 2019), <https://www.irs.gov/pub/irs-pdf/p550.pdf>.
- 4 Neil O’Hara, *Investment Tax Basics For All Investors*, Investopedia (last updated Jun 25, 2019), <https://www.investopedia.com/articles/investing/072313/investment-tax-basics-all-investors.asp>.
- 5 *Litton Business Systems, Inc. v. Commissioner*, 61 T.C. 367, 376-377 (1973) (“In view of the many decided cases in this area, we think the determinative question, to which an evaluation of the various independent factors should ultimately point, is as follows: Was there a genuine intention to create a debt, with a reasonable expectation of repayment, and did that intention comport with the economic reality of creating a debtor-creditor relationship?”).
- 6 IRS Clarification | Corporate Debt Versus Equity, Wallace, Plese + Dreher, L.L.P. (December 27, 2016) <https://www.wpdcpa.com/irs-clarification-corporate-debt-versus-equity/>
- 7 I.R.S. Notice 94-47, 1994-1 C.B. 357.
- 8 *PepsiCo Puerto Rico, Inc. v. Commissioner*, 104 T.C.M. (CCH) 322, n.50 (2012).
- 9 Thomas D. Greenaway & Michelle L. Marion, *A Simpler Debt-Equity Test*, 66 Tax Law. 73, 78 (2012).
- 10 *Id.* at 75.
- 11 *Fin Hay Realty*, 398 F.2d at 697.
- 12 *Estate of Mixon v. United States*, 464 F.2d 394, 403 (5th Cir. 1972).
- 13 *Dixie Dairies Corp. v. Commissioner*, 74 T.C. 476, 493 (1980).
- 14 *Id.* See also *John Kelley Co. v. Commissioner*, 326 US 521 (1946).
- 15 *Estate of Mixon*, 464 F.2d at 403.
- 16 *A Simpler Debt-Equity Test*, 66 Tax Law. at 82.
- 17 *Fin Hay Realty*, 398 F.2d at 697.
- 18 *Estate of Mixon*, 464 F.2d at 404.
- 19 *A Simpler Debt-Equity Test*, 66 Tax Law. at 84.
- 20 *Estate of Mixon*, 464 F.2d at 405.
- 21 *Id.*
- 22 *A.R. Lantz Co. v. United States*, 424 F.2d 1330, 1334 (9th Cir. 1970)
- 23 *Hardman v. United States*, 827 F.2d 1409, 1413 (9th Cir. 1987).
- 24 *Estate of Mixon*, 464 F.2d at 406.
- 25 *A Simpler Debt-Equity Test*, 66 Tax Law. at 86.
- 26 *Bauer v. Commissioner*, 748 F.2d 1365, 1367-1368 (9th Cir. 1984), rev’g T.C. Memo. 1983-120; *A.R. Lantz Co.*, 424 F.2d, 1333.
- 27 *Monon Railroad v. Commissioner*, 55 T.C. 345, 357 (1970).
- 28 *Id.* at 409.
- 29 *Litton Business Systems*, 61 T.C. at 380 (“[I]t is just as clear that where such scrutiny has been exercised, the fact of proportional identity of interest between stockholders and creditors, particularly where a sole stockholder is involved, does not preclude the existence of a valid debt.”).
- 30 *Monon Railroad*, 55 T.C. at 408.
- 31 *Kraft Foods Co. v. Commissioner*, 232 F.2d 118, 127 (2d Cir. 1956).
- 32 *In re: Dornier Aviation (North America), Incorporated*, 453 F.3d 225, 234 (4th Cir. 2006).
- 33 *Monon Railroad*, 55 T.C. at 410.
- 34 Wayne M. Gazur, *An Arm’s Length Solution to the Shareholder Loan Tax Puzzle*, 40 Seton Hall L. Rev. 407, 418 (2010).
- 35 *Laidlaw Transportation, Inc. v. Commissioner*, T.C. Memo 1998-232, 79 (1998).
- 36 *Stinnett’s Pontiac Service, Inc. v. Commissioner*, 730 F.2d 634, 640 (11th Cir. 1984).
- 37 *Laidlaw*, T.C. Memo 1998-232 at 80.
- 38 *Bordo Products Co. v. United States*, 201 Ct. Cl. 482, 503 (1973) (“[I]ntent at the time the advances were made is an important consideration, and subsequent unexpected developments may well explain the fact of forbearance.”).
- 39 *Laidlaw*, T.C. Memo 1998-232 at 82.
- 40 *PepsiCo Puerto Rico*, 104 T.C.M. (CCH) 322 at 33.
- 41 *Davis v. Commissioner*, 69 T.C. 814, 835-836 (1978).
- 42 *Estate of Reynolds v. Commissioner*, 55 T.C. 172, 201-202 (1970).
- 43 Christina Majaski, *The Difference Between an Operating Expense vs. a Capital Expense*, Investopedia (last updated Apr 14, 2019), <https://www.investopedia.com/ask/answers/042415/what-difference-between-operating-expense-and-capital-expense.asp>.
- 44 This is based on the structure of analysis found in the Tax Foresight’s Debt vs. Equity classifier.