No. 21-8734

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JAMES P. & ELAINE S. DONOGHUE,

APPLICANTS / PETITIONERS,

v.

CHARLES P. RETTIG, COMMISSIONER, INTERNAL REVENUE SERVICE,

RESPONDENT et al.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Pursuant to 26 C.F.R. § 1.183, whether the lower courts' errored when framing decision under the doctrine of *general-intent;* using subjective deduction, being inconsistent in objective review, and with absence of *specific-intent.*
2. Pursuant to 18 U.S.C. § 1621 and judicial oath in objective review, whether justices of the United States Appeals Court for the First Circuit committed perjury with plagiaristic Tax Court opinion of DONOGHUE.
3. Pursuant to 28 U.S. Code § 454 and judicial regulation, whether the United States Tax Court justice violated the regulation when questioning trial witness.
4. Pursuant to judicial remand, whether a United States Supreme Court remand puts taxpayers in jeopardy for the same offence where lower court opinion has not considered all objective fact and more importantly circumstance, but has "[c]onsidered all of the arguments made by the parties and, to the extent they are not addressed herein, we find them to be moot, irrelevant, or without merit."

LIST OF PARTIES

[X] All parties do not appear in the caption of the case on the cover page.

A list of all additional parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

Respondents:

Julie Ciamporcero Avetta

Joan I. Oppenheimer

RELATED CASES

- *Donoghue v. Commissioner*, No. 19-2265, U.S. Court of Appeals for the First Circuit. Judgement entered Jun 02, 2021.

- *Donoghue v. Commissioner*, No. 3126-15, U.S. Tax Court. Judgement entered Sep. 09, 2019.

Direct Cases Reviewed

Donoghue v. Commissioner , No. 19-2265, U.S. Court of Appeals for the First Circuit.

- *Filios v. Commissioner,* 224 F.3d 16 (1st Circuit. 2000)

Donoghue v. Commissioner, No. 3126-15, U.S. Tax Court

- *Donoghue v. Commissioner,* T.C.M. 2019-71
- *Churchman v. Commissioner*, 68 T.C. 696 (1977)
- *APPENDIX C* U.S. Tax Court Direct Cases Reviewed

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TABLE OF AUTHORITIES

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals

[X] is unpublished.

The opinion of the United States tax court appears at Appendix D to the petition and

[X] is unpublished.

APPENDIX A Decision of US Court Of Appeals

U.S. Court of Appeals, First Circuit No. 19-2265

APPENDIX B Decision of US Tax Court

U.S. Tax Court No. 3126-15

APPENDIX D U.S. Tax Court Opinion

Donoghue v. Commissioner, 117 T.C.M. (CCH) 1352 (T.C.2019).

JURISDICTION

[X] For cases from federal courts:

The date in which the United States Court of Appeals decided my case was June 02, 2021.

[X] An extension of time to file the petition for a writ of certiorari was granted under Covid-19 order (ORDER LIST: 589 U.S.) to and including November 1, 2021.

On October 22, 2021, a letter from the Supreme Court of the United States Office of the Clerk (Appendix E) stipulated the above entitled petition for writ of certiorari regarding *Donoghue.v. Commissioner*; U.S.C.A1 No. 19-2265, was postmarked October 08, 2021 and received October 15, 2021, and noted papers being returned for reason.

On October 22, 2021, letter from the Office of the Clerk stated that "[U]nless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5." Sixty days being on or before December 21.2021.

The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 26 U.S.C § 1.183-2, of which the full text of 26 U.S.C § 1.183-2 is reprinted in the appendix to this petition. (APP D)
2. U.S. CONST. amend. V
3. U.S. CONST. amend. XIV

STATEMENT OF THE CASE

Beginning in 1985, Taxpayers started their search for a suitable U.S. Jockey Club (Jockey Club) registered thoroughbred broodmare with specific broodmare-sire bloodlines for breeding purposes.

In 1988, with the purchase of the broodmare LILAC DOMINO, Taxpayers entered into their thoroughbred breeding and racing business activity with *specific-intent* of breeding U.S. Jockey Club

(Jockey Club) registered thoroughbred broodmare-sire bloodline live-stock, and racing said individual live-stock in Jockey Club sanctioned races as a *Registered Owner-breeder*[1].

James P. and Elaine S. Donoghue[2] bred and raced *Registered Owner-breeder* thoroughbred horses with substantially similar business activity as *Registered Owner-breeder* Harry N. Eads[3]. Both Donoghue and Eads bred and raced significantly similar[4] Jockey Club registered broodmare-sire bloodline horses, as defined in Donoghue's 1988 business plan. (APP F)

Harry N. Eads was Elaine S. Donoghue's grandfather, and Jockey Club thoroughbred trainer Charlie Eads, was Elaine's grandfather's brother. Both Harry and Charlie educated Elaine in the thoroughbred business activity of breeding and racing Jockey Club thoroughbred horses. Harry N. Eads' broodmare-sire bloodline breeding and racing business activity was financially successful and generated substantial profits from only two horses in his business activity. Harry N. Eads (*Owner-breeder*) and his brother Charlie (*Trainer*) were widely recognized in the U.S. Thoroughbred breeding and racing industry as the *"Eads Brothers"*.

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[1] *Registered Owner-breeder* is an industry term for those U.S. Jockey Club registered thoroughbred horses and persons who are registered as both the owner and the breeder of individual registered thoroughbred live-stock, and who are both named participants in U.S. Jockey Club sanctioned thoroughbred races.

[2] Hereinafter referred to as DONOGHUE or Donoghue

[3] Hereinafter referred to as EADS or Eads

"[4] significantly similar" in the fact that the dominant Donoghue broodmare-sire breeding bloodline was substantially similar to the dominant broodmare-sire bloodline of Eads, descending from identical broodmare sires. The method for determining similarity is known as "nicking" in the line breeding industry, and in its most basic form, nicking is **the crossing of a sire with the daughters of another sire** in hopes of reproducing favorable results from earlier matings. Breeders speak of a 'nick" occurring when a sire does significantly better with the daughters of a particular sire than with his other mates.

In 1992, Elaine S. Donoghue became disabled following the diagnosis of Multiple Sclerosis, to which Elaine did received Social Security Disability Insurance payments starting thereafter and continuing through all the years at issue. (No. 3126-15 Entire Record)

On Jun 11, 2019, the Tax Court opinion held James P. and Elaine S. Donoghue in violation of Section 1.183-2 [5].

On Sep 09, 2019, the Tax Court entered its decision.

On Jun 02, 2021, citing only *Filios v. Commissioner,* 224 F.3d 16, 21 (1st Circuit. 2000), the U.S. Court of Appeals for the First Circuit affirmed the Tax Court decision.

[5] Unless otherwise indicated, all section references are to the Internal Revenue Code (U.S.C.) in effect for the years at issue, and all Rule (C.F.R.) references are to Tax Court Rules of Practice and Procedure.

REASONS FOR GRANTING THE WRIT

Reasons Related to Question #1

In General

The reason for granting certiorari on this issue is that this case presents a novel "In General." question under federal tax law 26 U.S.C. § 183, and in the plain meaning of "In General." used in the statute for both the United States Court of Appeals for the First Circuit, and the United States Tax Court.

This case tends to be a question that arises because of a gap in the Courts' subjective ***"general-intent"*** federal tax law doctrine[6] being ambiguous and inconsistent with an objective ***"specific-intent"*** rule of federal tax law doctrine[7].

Jurisprudence under a *specific-intent* doctrine as stated in § 1.183 requires the courts to observe "[T]he determination whether an activity is engaged in for profit is to be made by reference to objective standards, taking into account all of the facts and circumstances of each case. Although a reasonable expectation of profit is not required, the facts and circumstances must indicate that the taxpayer entered into the activity, or continued the activity, with the objective of making a profit. In determining whether such an objective exists, it may be sufficient that there is a small chance of making a large profit. * * * In determining whether an activity is engaged in for profit, greater weight is given to objective facts than to the * * * mere statement of * * * intent.", and requires objective jurisprudence in its proceedings when reviewing intent. In proceedings, this objective jurisprudence requirement works both ways, either for the taxpayer or for the courts.

Specifically, in section § 1.183-2 (a), the term "**In *general.***" predispositions a *general-intent* doctrine. Most importantly, this predisposition established by statute, has allowed subjective fact and

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[6] ***"general-intent"*** and subjective federal tax law legal standards hereafter referred to as *general-intent* doctrine of federal tax law, or rule of law, or doctrine.

[7] "***specific-intent"*** and object federal tax law legal standards hereafter referred to as *specific-intent* doctrine of federal tax law, or rule of law, or doctrine.

circumstance jurisprudence into the rule of federal tax law, and predisposes ambiguous and inconsistent *general-intent* proceedings.

The mere definition of *"general"* as defining by merriam-webster.com[8], predispositions an indeterminate, ambiguous, and inconsistent "many or most"[9] *general-intent* doctrine, in direct opposition to a *specific-intent* doctrine, by stating:

"Essential Meaning of *general*

1: *of, relating to, or affecting all the people or things in a group.*

With Examples

> They have issued a *general* warning/order; a *general* alarm: involving or including ***many or most*** people; The *general* mood here is optimistic. [=***most people*** here are optimistic]; The *general* consensus is that we should go ahead; It's a story with *general* interest. = It's a *general*-interest story; [=it is a story that will interest ***many or most*** people]

2: relating to the main or major parts of something *rather than the details : not specific*

With Examples

> The witness was able to provide a very *general* description of the thief; She began her talk with some *general* observations about the state of the industry; The book provides a good *general* introduction to the subject; My concerns are all *general*—nothing specific; The details of the new plan are different, but it's based on the same *general* concept/idea; My *general* impression was that things were going

3: used to indicate that a description relates to an entire person or thing *rather than a particular part*

With Example: The building was in good *general* shape."

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[8] *"General."* Merriam-Webster.com Dictionary, *Merriam-Webster, https://www.merriam-webster.com/dictionary/general. Accessed 11 Dec. 2021.*

[9] Even the definition itself is ambiguous and inconsistent, stating "all" in the first definition of "general", but giving examples of "many or most" and "rather than a particular part" in all 3 definitions of "general", and being inconsistent with the word "all".

Further predispositions arise as to whether:

1. The U.S. Court of Appeals for The First Circuit created ambiguity and inconsistency in the rule of federal tax law when subjectively "discussing and applying relevant statute and regulation", with *general-intent* towards tax court conclusion, constituting *general-intent*, and being ambiguous and inconsistent with a *specific-intent* rule of law,
2. The U.S. Tax Court created ambiguity and inconsistency in the rule of federal tax law when in subjective opinion "[W]e have considered all of the arguments made by the parties and, to the extent they are not addressed herein, we find them to be moot, irrelevant, of without merit", with "moot, irrelevant, of without merit " *general-intent* in tax court opinion, constituting *general-intent*, and being ambiguous and inconsistent with a *specific-intent* rule of law.

Additionally, as stated in tax court opinion, "[B]ut when the Commissioner raises a new matter (or raises an increase in the deficiency or pleads affirmative defenses) in the answer, he bears to burden of proof as to the new matter (or the increased deficiency or affirmative defenses)." (APP D -20-), petitioners believe the "burden of proof as to the new matter" additionally elevates court review of fact and circumstance beyond subjective review. (APP C (1))

The Petitioners further believe the Courts ignored the *specific-intent* doctrine under § 1.183-2 (c), when ignoring congressional statute which provisions illustrated example (APP D) similar to James P. and Elaine S. Donoghue business activity as follows:

Example 1, "The taxpayer inherits ownership in a farm * * * " being:

irrelevant to DONOGHUE due to farm ownership not being a requirement of horse business activity as evidenced by Harry N. Eads who never owned a farm;

Example 2, "The taxpayer is a wealthy individual * * * " being:

relevant to DONOGHUE due to stated greater than 7 years of business activity; irrelevant to DONOGHUE due to Elaine S. Donoghue *specific-intent* business activity and dedicated to the activity full-time starting in 1988; irrelevant to DONOGHUE due to not being wealthy and *specific-intent* use of substantial debt financing in the business activity;

Example 3, "The taxpayer, very successful in * * * " being:

relevant to DONOGHUE due to stated greater than 7 years of business activity; irrelevant to DONOGHUE due to single business activity with *specific-intent*; irrelevant to DONOGHUE due to missing *specific-intent* factors (i), (ii), and (iii);

Example 4, "The taxpayer inherited a farm * * * " being:

irrelevant to DONOGHUE due to farm ownership not being a requirement of horse business activity; relevant to DONOGHUE due to stated greater than 7 years of business activity; relevant to DONOGHUE due to *specific-intent* substantially similar to the manner passed on from Harry N. Eads;

*Example 5, "*A, an independent * * * operator, frequently engages in the activity of searching for * * * undeveloped and unexplored * * * not near proven " being:

relevant to DONOGHUE due to independent business activity operation "not near proven"; relevant to DONOGHUE due to repeated owner-breeder breeding and racing of live-stock capital asset[10] in the years just prior to industry recession; relevant to DONOGHUE due to activity manner substantially similar to Harry N. Eads; relevant to DONOGHUE due to financial risk substantially similar to Harry N. Eads; relevant to DONOGHUE due to financial reward substantially similar to Harry N. Eads;

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[10] live-stock capital asset according to Generally Accepted Accounting Principles (GAAP), being horses owned for more than 2 years as specified in the trial record.

Example 6, "* * * is sufficiently qualified by his background that there is some reasonable basis for his experimental activities" being:

> irrelevant to DONOGHUE due to Elaine S. Donoghue not being employed in any other business activities; relevant to DONOGHUE due to passion in developing profitable business activities significantly similar to Harry N. Eads; relevant to DONOGHUE due to U.S. Jockey Club registration activities; relevant to DONOGHUE due to thoroughbred owner-breeder development activities; relevant to DONOGHUE due to substantial financial risk; relevant to DONOGHUE due to substantial financial reward; relevant to DONOGHUE due to sufficiently qualified background of Elaine S. Donoghue; relevant to DONOGHUE due to reasonable basis for the activities; relevant to DONOGHUE due to no substantial personal or recreational aspects;

Objectiveness in the Rule of Law

Jurisprudence in the rule of law does not allow biased review.

Trial Court Opinion

> "[W]e have considered all of the arguments made by the parties and, to the extent they are not addressed herein, we find them to be moot, irrelevant, or without merit."

The most important statement in section 183 are the words "reference to objective". This does not say "reference of objective", and it does not mean "reference of objective". The contention is that "reference of objective" would allow subjective jurisprudence, and would allow one to over-look objectiveness, and would allow ambiguous and inconsistent biased review.

In this case, the rule of federal tax law is to address taxpayers object facts and circumstances. Facts by themselves do not present objectiveness. Until circumstances related to each fact are well-

understood[11], does fact in the matter avoid "clear error" objectivity. When over-looking an object fact, the remaining facts become subjective, by definition of cherry picking the facts.

Subjective fact (and related circumstance) is the essence and indispensable reality of a biased view. Subjective fact creates ambiguity and inconsistency in the law by allowing cherry picking of the facts to fit one judicial opinion over the other[12].

Subjective Factors

Regulatory code § 1.183-2(b) states; "No single factor or even a majority of the factors is controlling, and all of the facts and circumstances must be evaluated, giving greater weight to objective facts" than to the taxpayer's (or court's) "statement of intent." *Keating v. Commissioner*, 544 F.3d 900, 904 (8th Cir. 2008), aff'g T.C. Memo. 2007-309; *Evans v. Commissioner*, 908 F.2d 369, 373 (8th Cir. 1990), rev'g T.C. Memo. 1988-468; Golanty v. Commissioner, 72 T.C. 411, 426 (1979), aff'd without published opinion, 647 F.2d 170 (9th Cir. 1981); see also sec. 1.183-2(a), Income Tax Regs.

Judicial Ambiguity and Inconsistency

One of the many Tax Court Inconsistencies under § 1.183-2(b) is *Besten v. Commissioner* T.C. Memo 2019-154 versus *Donoghue v. Commissioner* T.C. Memo 2019-171, respectively Paris opinion versus Ashford opinion.

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[11] For example, water is not always a liquid; if we lower the temperature below 0 degrees Celsius, or 32 degrees Fahrenheit, water changes its phase into a solid called ice. Similarly, if we heat a volume of water above 100 degrees Celsius, or 212 degrees Fahrenheit, water changes its phase into a gas called water vapor. Changes in the phase of matter are **physical changes**, not chemical changes. A molecule of water vapor has the same chemical composition, **H2O**, as a molecule of liquid water or a molecule of ice.

[12] The issue of whether a taxpayer engages in an activity with the requisite intention of making a profit is one of fact to be resolved on the basis of all the surrounding facts and circumstances of the case (sec. 1.183-2(b), Income Tax Regs.; *Allen v. Commissioner*, supra at 34; *Dunn v. Commissioner*, supra at 720; *Jasionowski v. Commissioner*, supra at 319; *Benz v. Commissioner*, supra at 382).

The Courts and the Respondents contend that the *General-intent* to breed well-bred horses makes these cases legally similar under opinion based Skidmore deference. "In General."[13], *general-intent* similarity exists in the subjective activity of horses; but objectively they are "Snow-flake"[14] unique under *specific-intent* business activities pursuant to objective economic profit. To extend the metaphor, both cases "In General.", look like a "Snow-flake", but in reality, just as in snow-flakes, no two are "specifically"[15] alike; and therefore, considerable inconsistency is tallied in exam of a horse business or snow-flake.

Besten's *specific-intent* to profit from Out-cross Breeding[16] and horse sales versus Donoghue's *Specific-intent* to profit from Line-breeding[17] and horse racing purses is what makes these snow-flake cases inconsistent with each other. Snow-flake uniqueness or inconsistently similar difference, allows for substantial ambiguity in the rule of federal tax law, and where congressional "In General." intent was meant to clarify with exact, precise objective intent, but instead has been interpreted by the court's in exactly the opposite way using general subjective intent, which does not raise to the plain text interpretation of "In General." where specific objective intent is paramount. And, as stated in Ashford opinion "* * * [r]epeating a fallacy over and over again and ignoring contrary evidence will succeed. It does not."

Furthermore, *Besten v. Commissioner* perpetrates inconsistency in the rule of federal tax law with Skidmore opinion deference to *Donoghue v. Commissioner*.

Paris / Ashford inconsistencies under § 1.183-2(b)

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[13] "In General."; with meaning under 26 U.S.C. § 183
[14] "Snow-flake" unique; purportedly being the tenor of uniqueness
[15] "specifically"; meaning in a way that is exact, clear and precise
[16] "Out-cross Breeding" or "Mass Breeding", being the breeding of two unrelated individuals within the same breed and where in mass breeding, a number of individuals chosen
17 "Line-breeding" or "Inbreeding" is the mating of related individuals that have one or more relatives in common.

Statute states "[A] reasonable expectation of profit is not required, but the facts and circumstances must indicate that the taxpayer entered into the activity or continued the activity with the actual and honest objective of making a profit."

Backed by objective evidence, both opinions (Paris and Ashford) are defective with subjective biased review over-looking that each (Besten & Donoghue) business activity was "entered into" with the actual and honest objective of making a profit.

Besten and Donoghue, both with 20 plus years of objective "entered into" contemporaneous evidence, show that the courts defectively predicated its opinion on "continued the activity" profit expectation rather than "entered into" profit objective. (See *Dreicer v. Commissioner*, T.C. Memo. 1979-395)

Ashford opinion agrees to objective "entered into" contemporaneous evidence when stating: "[E]vidence from years outside the years at issue is relevant to the extent it creates inferences regarding the taxpayer's requisite profit objective in the subject years.", and ratifying "entered into" profit objective.

Paris / Ashford inconsistencies under § 1.183-2(b)(1) - Manner in Which the Taxpayer Carried On the Activity

Paris stating "[W]hile petitioner's plan was not formally written, it can be inferred, from his deliberate actions to achieve a narrowly focused goal, that he did have a plan. This factor favors petitioner's having a profit objective."

Ashford significantly differing from Paris, adds ambiguity and inconsistency when subjectively over-looking taxpayers' objective evidence to change business activities (2007), and 1) "wait out recession", and 2) maintain live-stock with the anticipation of Massachusetts racing industry support from "casino backed increase in race purses" in order to achieve their narrowly focused

goal, and as testified at the Massachusetts State House by industry expert Elaine S. Donoghue. Id.

Accordingly, Ashford weighing this factor "heavily in favor of respondent's position" is inconsistent again by over-looking Donoghue's *specific-intent* objective fact to profit from horse racing purses as Harry N. Eads had done. Paris did the exact opposite in observing Besten's narrowly focused actions and favoring petitioner.

Paris / Ashford inconsistencies under § 1.183-2(b)(2) - Expertise of Petitioners or Their Advisors

Paris stating "[P]etitioner has a high level of expertise in the care, training, and competing of cutting horses, including their feeding, breeding, foaling, training, competing, and selling. * * * This factor favors petitioner's having a profit objective."

Ashford significantly differs from Paris, when subjectively over-looking taxpayers' high level of expertise in the care, training, and of horses, including their feeding, breeding, foaling, training, competing, and racing by horse manager Elaine S. Donoghue. (Record) In addition Elaine S. Donoghue had a international network of trainers and owners to assist and provide advice. Id.

Accordingly, Ashford ambiguously and inconsistently with Paris, weighs this factor on whether the taxpayer "received advice from the experts", and subjectively over-looked Elaine S. Donoghue's Massachusetts State House expert level presentation covering knowledge gathered from over 45 years of education and experience, and based on horse racing purse distributions in multiple states. Paris did the exact opposite in observing Besten's narrowly focused actions and favoring petitioner. Paris favors Petitioner in this factor; and with ambiguity and defect, Ashford does not.

Paris / Ashford inconsistencies under § 1.183-2(b)(3) - Petitioners' Time and Effort Devoted to the Activity

Ashford significantly differs from Paris, when subjectively over-looking Elaine S. Donoghue's "full-time" engagement in the business activity of maintaining live-stock.

Paris favors Petitioner in this factor; and with ambiguity and defect, Ashford does not.

Paris / Ashford inconsistencies under § 1.183-2(b)(4) - Expectation That Assets Used in the Activity May Appreciate in Value

Paris opinion states

"[T]he unanticipated * * * struggles with the * * * business, coupled with * * * these unforeseen events by beginning to reduce his stock through sales and by making adjustments to * * * horse activity. * * *. It generally takes only one good horse to be successful. Consequently, this factor is neutral."

Ashford opinion inconsistently states:

"Expectation That Assets Used in the Activity May Appreciate in Value An expectation that assets used in the activity will appreciate in value and therefore may produce an overall profit may indicate a profit motive even if the taxpayer derives no operational profit. Sec. 1.183-2(b)(4), Income Tax Regs. However, a profit objective may be inferred from the expected appreciation of assets only where the appreciation exceeds operating expenses and would be sufficient to recoup accumulated losses of prior years. *Carmody v. Commissioner*, T.C. Memo. 2016-225, at *28 (and cases cited thereat). A vague and unauthenticated notion that assets are appreciating in value does not constitute a bona fide expectation that the appreciation will offset past and future losses. La - 33 - [*33] *Musga v. Commissioner*, T.C. Memo. 1982-742, 45 T.C.M. (CCH) 422, 426 (1982). Because petitioners operated Marestelle Farm as a "virtual farm", their only potential appreciable assets were their horses. There is no evidence in the record as to the values of their horses. However, petitioners had hoped to sell one of their horses, Dr. Davies, for $30,000, and there is evidence in the record that they received an offer of $15,000 for Dr. Davies (which they rejected). There is also evidence in the record that petitioners sold Seal E. Dan in 2005 for $3,500 and Sir Manatee in 2007 for $2,500. During the years at issue petitioners owned just five horses after their dream horse, Lilac Domino, died in 2011. Even assuming that petitioners had been able to sell their remaining five horses for $30,000 each in 2012 (an expectation they did not have), they would have received only $150,000. Yet Marestelle Farm had cumulative losses from 1985 to 2012 of $974,612. Therefore, even using the rather artificial aforementioned expected appreciation for their horses, petitioners would not come close to recouping the significant losses they incurred with respect to Marestelle Farm over the nearly 30 years they operated it; consequently, a profit objective cannot be inferred from any expected appreciation. Accordingly, this factor weighs in favor of respondent's position."

Firstly, Paris states that "It generally takes only one good horse to be successful." which is inconsistent with the Ashford opinion where no statement towards Donoghue's asset successfulness could generally be related to one good horse. Donoghue provided objective evidence that Harry N. Eads had one good horse, but this objective fact was subjectively omitted. Ashford opinion was also inconsistent at trial, "[M]R. DONOGHUE: So that was our goal is to put a horse on the track that was profitable for the horse expenses, number one, and, number two, allow us to breed to better horses." (Record at 39) Further, Ashford was inconsistent with DONOGHUE's evidence related to line-breeding improvements towards higher quality horses in pursuit of race purses being the primary business activity.

Secondly, Paris states "[C]onsequently, this factor is neutral.". This statement presents ambiguity in jurisprudence under § 1.183-2(b) by subjectively interpreting "In determining whether an activity is engaged in for profit, greater weight is given to objective facts" where in opposed factor (4) opinion, Ashford rules in favor of respondent.

Thirdly, both Paris and Ashford create Skidmore opinion deference outside "the intent of a reasonable expectation of profit is not required." In the horse breeding and racing industry, it is a well understood fact that "It generally takes only one good horse to be successful.", thus § 1.183-2(b)(4) expectation should favor the Taxpayer in both cases.

Fourthly, Ashford with "clear error" in § 1.183-2(b)(4) provides opinion for profit expectation and not profit objective. *Donoghue* and *Dreicer* argue that the Tax Court applied the wrong legal standard in determining whether the activity was engaged in for profit, as defined by Section 183, because the court predicated its result on profit expectation rather than to profit objective. (*Dreicer v. Commissioner*, T.C. Memo. 1979-395, *Donoghue v. Commissioner*, Record at 10)

Inconsistently and with ambiguity, both Paris and Ashford do not favor Petitioner in this factor of "Expectation".

Paris and Ashford case under § 1.183-2(b)(5) - Taxpayer's Success in Carrying On Similar or Dissimilar Activities

Ashford significantly differs from Paris, when subjectively over-looking James P. Donoghue's background in managing a successful family construction business, with James being part of the 3rd generation.

Paris favors Petitioner in this factor; and with ambiguity and defect, Ashford does not.

Paris and Ashford case under § 1.183-2(b)(6) - Petitioners' History of Income or Losses With Respect to the Activity

Paris opinion with objective *specific-intent* states; "[A]s this Court has noted before, horse breeding and performance are speculative activities which with the right horse could result in substantial income. See *Welch v. Commissioner*, T.C. Memo. 2017-229, at *37-*38

Where losses continue to be sustained beyond the period customarily necessary to bring such an operation to profitable status, the continued losses, if not explainable as due to "customary business risks or reverses" or to "unforeseen or fortuitous circumstances which are beyond the control of the taxpayer", may indicate that the activity is not being engaged in for profit. Sec. 1.183-2(b)(6), Income Tax Regs.; see *Engdahl v. Commissioner*, 72 T.C. at 669; see also *McKeever v. Commissioner*, T.C. Memo. 2000-288

As of the time of trial, the cutting horse activity had not produced a profit in any taxable year. Petitioner had reported consecutive years of losses since 1997. Thus, petitioner has a history of losses with respect to his cutting horse activity. But in comparison, when petitioner sold the seed business to his son, it had also reported nonpassive losses and suspended losses from prior years.

This history is mitigated somewhat by circumstances beyond petitioner's control. As previously discussed, petitioner's plans to devote all of his time to his cutting horses after he sold his seed business were cut short because of the floundering seed business. This unforeseen situation

required petitioner to sell the Yellow Rose to free up the capital needed to salvage the seed business. Petitioner attributed some of these losses to his decision to increase his total horse ownership in the late 1990s to early 2000s, the height of his horse activities. However, this resulted in increased losses when he sold those horses in a diminished horse market as a result of the necessary rapid reduction of the herd. This factor favors respondent "

Ashford opinion inconsistently does not go beyond obvious plain text, or address speculative activity, or acknowledge profit objectives as did Paris in that "[I]t generally takes only one good horse to be successful.", and is therefore ambiguous and inconsistent with Paris pursuant to objective *specific-intent*.

Paris and Ashford case under § 1.183-2(b)(7) - Amount of Occasional Profits

Paris opinion states "[P]etitioner arguably had the opportunity to earn a substantial profit after winning two world championships and purchasing the Yellow Rose."

Ashford states "[p]etitioners' alleged belief is not adequately supported."

Petitioner contends this legal standard is predicated on profit expectation rather than profit motive, and therefore error in jurisprudence.

Paris and Ashford case under § 1.183-2(b)(8) - Taxpayer's Financial Status

Paris states "[T]he fact that the taxpayer does not have substantial income or capital from sources other than the activity may indicate that an activity is engaged in for profit. Sec. 1.183-2(b)(8), Income Tax Regs.; see also Helmick v. Commissioner, T.C. Memo. 2009-220; *Rozzano v. Commissioner*, T.C. Memo. 2007-177; *Phillips v. Commissioner*, T.C. Memo. 1997-128. Tax benefits resulting from the activity do not compel a conclusion that a taxpayer engaged in an activity without a profit objective. See *Engdahl v. Commissioner*, 72 T.C. at 670. More

importantly, the inquiry should be focused upon whether petitioner had a genuine profit objective. See Id.

However, the Court finds that petitioner was not in a financial [*35] position that would have enabled him to continue suffering losses without a bona fide profit motive. Moreover, the Court is not persuaded that petitioner abandoned his profit motive with respect to the cutting horse activity. Petitioner had a promising champion-bred stallion in training. Petitioner genuinely believes that one good horse could turn a profit for his horse activity. Accordingly, this factor favors petitioner's having a profit objective."

Ashford opinion inconsistently does not address that "[M]ore importantly, the inquiry should be focused upon whether petitioner had a genuine profit objective" or address Paris opinion that "[t]he Court finds that petitioner was not in a financial [*35] position that would have enabled him to continue suffering losses without a bona fide profit motive. Moreover, the Court is not persuaded that petitioner abandoned his profit motive with respect to the * * * horse activity. * * * Petitioner genuinely believes that one good horse could turn a profit for his horse activity." Paris favors Petitioner in this factor; and with ambiguity and defect, Ashford does not.

Paris and Ashford case under § 1.183-2(b)(9) - Elements of Personal Pleasure and Recreation

Paris objectively states "[e]fforts went well beyond the leisurely aspects of horseback riding or the routine tasks of caring for horses. * * * Additionally, petitioner hired multiple trainers to aid in training his horses; he could not be deemed to have engaged in the * * * horse activity solely for personal enjoyment when the horses were not always in his care."

Ashford significantly differs from Paris, when subjectively over-looking a large body of evidence in having horses trained by multiple trainers or in having horses in routine task care at boarding facilities.

Paris favors Petitioner in this factor; and with ambiguity, Ashford does not.

Lastly and pursuant to § 1.183-2(b);

1. Without *Specific-intent*, Ashford with ambiguous and inconsistent defect, perpetrates Skidmore § 1.183-2(b) opinion deference using subjective "In General." fact and circumstance. (*Donoghue v. Commissioner*, Entire Record)
2. Under § 1.183-2(b)(6) and § 1.183-2(b)(7)
    a. Factor (6) - Petitioners' History of Income or Losses With Respect to the Activity, and factor (7) - Amount of Occasional Profits, are in defect with 26 U.S.C. § 1.183 where the taxpayer need only "enter into" the activity with the objective of making a profit. Petitioner contends these legal standards are predicated on profit expectation rather than profit motive, and therefore error in jurisprudence, and ambiguous and inconsistent in the rule of federal tax law.

Donoghue's Evidence

Donoghue's Evidence of *specific-intent* objective fact and circumstance as contended by Petitioners[18];

[18] This limited list provides a nonexclusive list of objective factors with *specific*-intent to consider in evaluating the taxpayer's profit objective that were in evidence but considered moot, irrelevant, or without merit at trial or in appeal.

1. "Effort"; James P. Donoghue did not participate in the horse business activity "full-time" due to outside employment elsewhere. Id.

2. "Effort"; Elaine S. Donoghue with disabilities, participated in the horse business activity "full-time" due to no outside employment elsewhere. Id.

3. "Effort"; Marestelle Farm partners James P and Elaine S. , never participated in the horse business activity together in a "full-time" capacity as had been planned in 1988. Id.

4. "Breeding"; Donoghue had one continual breeding program based on one specific broodmare-sire bloodline significantly similar to Harry N. Eads. Id.

5. "Buying horses"; Donoghue was not in the business of buying horses; with only one horse ever purchased for breeding purposes in 1988. (Record)

6. "Farm ownership"; not a requirement of this horse business activity. Donoghue's horse business activity was significantly similar to Harry N. Eads who did not own a horse farm for use in the activity. Id.

7. "Business plan"; Donoghue did prepare business plans for all years in the activity after purchasing LILAC DOMINO in 1988 highlighting significant changes starting in 2007 due to recession and specifically noting "Track Rumors of Casino coming to Suffolk Downs and increase racing days and purses." (Record)

8. "Expertise"; During the "Great Recession", and as an expert representative of the Horseman's Racing Association of Massachusetts, Elaine S. Donoghue testified in the Massachusetts State House in front of House Representatives, as a horse racing industry expert, backing the proposed Massachusetts casino bill, and recommending solutions for improving the economy of thoroughbred horse racing in Massachusetts, and what those improvements would bring to the economy. (Record)

9. "Hours per day in business activity"; Elaine S. Donoghue with disabilities, participated in the horse business activity "full-time". Id.

10. "Book-keeping"; Donoghue maintained separate bank account and segregated expenses by horse. (Record)

11. "Assets"; Donoghue kept each live-stock inventory asset for both breeding and racing potential for over 3 years, exceeding the 2 year GAAP definition for live-stock inventory asset for each horse. (Record)

12. "Equipment used"; Donoghue kept equipment for horse feeding, care, training, and transportation. (Record)

13. "Other factors"; Donoghue after preparing multiple second generation horses for racing, confronted economic "great recession" decline in the Massachusetts racing industry. Racing "Starts" at Suffolk downs had gone from 11,491 in 2001 down to 7131 in 2006 (38%). Racing "Days" at Suffolk downs had gone from 179 in 2001 down to 103 in 2006 (42%). Due to this receding economic trend starting in 2001, the last year DONOGHUE raced at Suffolk downs was in 2006. (Record)

14. "Breeding and racing schedules"; Donoghue only ever had two broodmare assets, and only one was in foal at any one time. Starting in 2006, breeding and racing expenses (Approx. $30,000+/Horse, $15,000+/Horse/Yr respectively) were reduced to zero due to the Suffolk racetrack recession which began in 2001, and inventory expenses were intently managed in anticipation of the Massachusetts casino bill which would have enhanced Suffolk racetrack purses as testified at the state house by Elaine S. Donoghue. (Record)

Defective Deference in Appeal

Petitioners contend the U.S. Appeals Court for the First Circuit deference to *Filios v. Commissioner,* similar to *Besten*, is defective and inconsistent with evidence in *Donoghue* under to § 1.183-2(b). Id.

Further, the following Tax Court citation, similar to *Besten* under § 1.183-2(b), lacks *specific-intent* objectiveness, relies on subjective *general-intent*, and is also objectively defective pursuant to judicial review of *Donoghue v. Commissioner*. Id.

- *Estate of Power v. Commissioner*
- *Brannen v. Commissioner*
- *Dreicer v. Commissioner*
- *Filios v. Commissioner*
- *Golanty v. Commissioner*
- *Green v. Commissioner*
- *Hulter v. Commissioner*
- *Smith v. Commissioner*
- *Vitale v. Commissioner*
- *Bronson v. Commissioner*
- *Engdahl v. Commissioner*
- *Judah v. Commissioner*
- *Annuzzi v. Commissioner*
- *Jackson v. Commissioner*
- *Wadlow v. Commissioner*
- *Williams v. Commissioner*
- *Betts v. Commissioner*
- *Rodriguez v. Commissioner*
- *Carmody v. Commissioner*
- *Musga v. Commissioner*
- *Dodge v. Commissioner*
- *Lundquist v. Commissioner*
- *Bessenyey v. Commissioner*
- *Giles v. Commissioner*
- *Hillman v. Commissioner*
- *Helmick v. Commissioner*
- *Sullivan v. Commissioner*

Further, this Tax Court citation ambiguity and inconsistency exists across United States Appeals 1st,4th,5th,6th,9th,11th,D.C. circuits.

Developing Body

As an important matter of federal tax law, 26 C.F.R. states in § 1.183-2 (a) that: "The determination whether an activity is engaged in for profit is to be made by reference to objective standards, taking into account all of the facts and circumstances of each case." A Tax Court burden to the doctrine of *Specific-Intent* presents a wider significance for the developing body of treasury regulation jurisprudence. This Court's ruling principle will reduce ambiguity and inconsistency pursuant to the *Specific-Intent* doctrine and will serve to guide Taxpayers, Internal Revenue Service, and Tax Courts when addressing unlawful treasury acts under 26 U.S.C. § 183 authority.

Procedural Due Process

In General, as a first impression matter of law, unbiased objective fact and circumstance with *specific-intent* is paramount to the taxpayer's "procedural due process" rule of federal tax law. The full judicial model for the determination of adjudicative facts does not relieve the courts from unbiased jurisprudence or a subjective *general-intent* doctrine. Id.

Petitioners therefore believe this case exposes federal court "In General." *general-intent* and biased rule of federal tax law, inconsistent with "procedural due process" and inconsistent with "equal protection of the laws", presenting a biased tribunal defect of the highest priority under the 14th amendment. This procedural due process issue creates a classification, and constitutes an invidious discrimination which denies DONOGHUE equal protection of the law. (U.S. CONST. amend. XIV S1.4.3.1, Judge Henry Friendly19, *Shapiro v. Thompson*,394 U.S. 618, 638 (1969))

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[19] Judge Henry Friendly – in article titled "Some Kind Of Hearing"
https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=5317&context=penn_law_review

Reasons Related to Question #2

Pursuant to judicial oath in objective review, whether justices of the United States Appeals Court for the First Circuit committed perjury with plagiaristic Tax Court opinion of DONOGHUE. Petitioners contend United States Appeals circuit justices Ojetta Rogeriee Thompson, Bruce M. Selya, and David J. Barron as a matter of written review, committed plagiarism in the representation of another author's language, thoughts, ideas, or expressions as one's own original work.

Plagiarism is not the important matter of law in this question, but the plagiaristic standard of review is what is important in this matter of law. The reason for granting certiorari on this issue is that the plagiarism standard of view should be used to show the court committed perjury, occuring when one knowingly and intentionally lies about material issue. Federal law prohibits perjury, under 18 U.S.C. § 1621, as well as other false declarations before federal courts.

Before this court and bound by judicial oath and jurisprudence, appeals justices took oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully, and not on any material matter which he does not believe to be true.

In contrary and in violation of this oath, statute, certification, declaration, and material matter, Petitioners do not believe appeals justices have certified tax court opinion with review all the objective facts and circumstances required in their jurisprudence oath, and as herein stated as *Donoghue's Evidence*. Id.

Is perjury hard to prove? Perjury is extremely difficult to prove. A prosecutor has to show not only that there was a material misstatement of fact, but also that it was done so willfully, and that the person knew it was false when they declared it.

In response to this question of proof, Petitioners will show this violation is based on: a) plagiaristic Tax Court opinion of Donoghue essentially creating a copy of tax court opinion and therefore being the tenant of this perjury, b) known violation of judicial lawful oath, c) falsely presenting "all" objective material, fact and circumstance of evidence, and d) presenting appeal declaration to the United States Supreme Court in a judicial process.

Tenant review of perjury,

a) Of the total 568 words in appeal decision, not one word fell outside opinion[20] text or simple synonym use

b) Of the total 568 words in appeal decision, no one objective fact or circumstance fell under objective fact contained in *Donoghue's Evidence* as outlined herein, or outside any subjective fact contained in tax court opinion. Id.

c) Plagiaristic review

Plagiaristic review of appeal decision

Opening Appeal Statement

> "[T]his is an appeal from the United States Tax Court, challenging a judgment that imposed tax repayment and related penalties for three consecutive tax years. See Donoghue v. Comm'r of Internal Revenue, 117 T.C.M. (CCH) 1352 (T.C. 2019).Petitioners-appellants James P. Donoghue and Elaine S. Donoghue ("the Taxpayers") are husband and wife."
>
> States the basic facts of this case.

Appeal Statement – Paraphrasing of opinion (1)

> "[I]n 1985, they started a business, named "Marestelle Farm," as a partnership, with the purpose of participating in the thoroughbred racehorse industry."

Essentially paraphrasing opinion statement:

> "[I]n 1985 (in an attempt to follow in the footsteps of Mrs. Donoghue's grandfather who had passed away by then) petitioners decided to start their horse activity. They formed an equal partnership named Marestelle Farm to breed and race world class thoroughbred horses."

[20] "outside" meaning not in tax court opinion

Appeal Statement – Paraphrasing of opinion (2)

> "[(]No actual farm was ever part of the business property. Instead, it was a "virtual farm", with other equestrian businesses providing the boarding, and most of the husbandry, for the animals.) "

Essentially paraphrasing opinion statement of:

> "[M]arestelle Farm was a "virtual farm". Petitioners never actually owned a farm or a facility where they kept and trained their horses but instead paid other farms to do so."
>
> Using Exact phrases: "[w]as a "virtual farm"", and simple plain text synonym usage of: Animals v. horses; Husbandry v. breeding; Property v. farm; "other equestrian businesses" v. "paid other farms"

Appeal Statement – Paraphrasing of opinion (3)

> "[I]n 1988, the Taxpayers purchased a broodmare that gave birth to one male horse and one female horse."
>
> Uses exact Word for Word copy from Opinion
>
> "[I]n 1988, the Taxpayers purchased a broodmare that gave birth to one male horse and one female horse."

Appeal Statement – Paraphrasing of opinion (4)

> "[T]he female offspring gave birth to six more horses, five of which would belong to Marestelle Farm."

Essentially paraphrasing opinion statement of:

> "[D]uring the years at issue petitioners owned (and Marestelle Farm consisted of) a total of six horses * * * Lilac Domino foaled Sir Manatee and Lainies Calliope * * * Lainies Calliope produced six foals for petitioners: (1) Whaleman, (2) Seal E. Dan, (3) Canajorie, (4) Dr. Davies, (5) Run the Credits, and (6) Fine Artist. * * * In 2009 Lainies Calliope foaled Fine Artist, a stallion. Petitioners, however, never owned or had any rights to Fine Artist and did not receive a fee for this breeding."

Appeal Statement – Paraphrasing of opinion (5)

> "[S]ome of the horses competed in horseraces. At least one horse earned "stud fees." At least two horses were sold inexpensively."

Essentially paraphrasing opinion statement of:

> "[P]etitioners most frequently raced their horses * * * Petitioners entered Sir Manatee in a couple of races and bred him before selling him in 2007 for $2,500. * * * There is also evidence in the record that petitioners sold Seal E. Dan in 2005 for $3,500 and Sir Manatee in 2007 for $2,500."

Appeal Statement – Paraphrasing of opinion (5)

> "[T]he Taxpayers invested liquid holdings, retirement fund withdrawals, and mortgage proceeds in Marestelle Farm. An uninterrupted series of annual losses were used as tax deductions against the earnings of Mr. Donoghue and the Social Security disability payments of Mrs. Donoghue. Marestelle Farm had lost nearly One Million Dollars by the time the Internal Revenue Service challenged the Taxpayers' use of its annual losses as deductions for the years 2010, 2011, and 2012."

Essentially paraphrasing opinion statement of:

> "[F]rom 1985 to 2012 the funding amounts included $399,176 in total cash, $337,527 from IRA distributions, and $271,600 of mortgage borrowing * * * From 1985 to 2012 Marestelle Farm incurred expenses totaling $1,008,303 but realized income totaling only $33,691, resulting in accumulated losses of $974,612. Petitioners have never earned a profit from their horse activity. On their joint Forms 1040 for 1997 to 2012 they reported the following losses attributable to Marestelle Farm * * * Marestelle Farm never produced gross income in excess of deductions"

Appeal Statement – Paraphrasing of opinion (7)

> "[W]hen the dispute came before the United States Tax Court, the government undertook to prove that the activity of Marestelle Farm was not engaged in for profit. See 26 U.S.C. § 183. The government depicted the Taxpayers as having deducted what is commonly known as 'hobby losses' against their regular income. The non-exclusive list of factors set forth in paragraphs (1) to (9) of 26 C.F.R. § 1.183–2(b) was invoked. The Tax Court concluded that the factors weighed heavily against the Taxpayers, and thus imposed payments and accuracy-related penalties for all three tax years at issue."

> Essentially paraphrasing opinion conclusion

Appeal Statement – Paraphrasing of opinion (8)

> "[T]he Taxpayers see things differently from the Tax Court. They offer an account in which the "startup" period for Marestelle Farm was prolonged by circumstances, and in which the fatal decline of the horserace industry in Massachusetts (overlapping the 2008 financial crisis) later frustrated their earnest efforts to turn a profit.

Essentially paraphrasing opinion statement of:

> "[P]etitioners attempt to justify Marestelle Farm's lack of profit by asserting that it was in a startup phase or a series of successive startup phases for each generation of foals from 1985 to 2012. * * * their plan was to wait out the Great Recession in Massachusetts during the years at issue and to wait for Massachusetts State gaming legislation to improve the State's thoroughbred racing industry economics."

Appeal Statement – Standard Of Review

> However, the Tax Court's conclusions with respect to § 183 are reviewed for "clear error," and the Taxpayers have exposed nothing to be clearly erroneous in the Tax Court's finding."

"[S]ee generally *Filios v. C.I.R.*, 224 F.3d 16 (1st Cir. 2000) (standard of review; discussing and applying relevant statute and regulation). "

Essentially paraphrasing the Court's judicial oath and jurisprudence.

Appeal Statement – Paraphrasing of opinion (9)

"[T]he Tax Court reopened the record so that the requisite written approval for accuracy related penalties could be inserted. See 26 U.S.C. § 6751(b)(1). The Taxpayers gesture towards impugning this procedural step but offer no clear legal argument in support of a different outcome."

"[T]he Taxpayers also assert that they should be shielded from the penalties because of their good faith, but the Tax Court's conclusions in this regard are supported by tenable reasoning."

Essentially paraphrasing opinion penalties

Appeal Statement – Paraphrasing of opinion (10)

"[T]he Taxpayers also have asserted that the Tax Court's exclusion from the record of an item, apparently consisting of reference notes for testimony and marked as "Exhibit 25-P," was error, but offer no particularized reason for concluding error occurred, nor do the Taxpayers explain how any error might have been prejudicial to their case. The decision of the Tax Court is affirmed."

Essentially paraphrasing more opinion conclusion

Reasons Related to Question #3

The reason for granting certiorari on this issue is that Petitioners question that this Court's "remand" to the lower court would invoke an "actual-evidence" test doctrine and preclude successive prosecutions for the same offense in the lower court. The actual-evidence test requires courts to compare the evidence that actually has been introduced during the first trial with the evidence that the prosecution seeks to introduce at the second one. The offenses are considered to be same when the evidence that is necessary to support a conviction for one offense would be sufficient to support a conviction for the other. State and federal courts have employed the "actual-evidence" test in order to preclude successive prosecutions for the same offense. Unlike *Blockburger v. United States*, 284 U.S. 299 (1931), which demands that courts examine the statutory elements of proof, the actual-evidence test

requires courts to compare the evidence that actually has been introduced during the first trial with the evidence that the prosecution seeks to introduce at the second one. The offenses are considered to be same when the evidence that is necessary to support a conviction for one offense would be sufficient to support a conviction for the other. Under U.S. CONST. amend. V, one may not for the same offense be twice put in jeopardy. In *Morey v. Commonwealth*, 108 Mass. 433, a leading case often cited by the Supreme Court, it is said: "[T]he test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offence."

2

REASON SUMMARY

Federal Statute 26 U.S.C. $ 1.183-2 (a) provides ambiguous "In General." intention guidance to the U.S. Taxpayer, the Courts, and the U.S. Internal Revenue Service.

In DONOGHUE, the cases below from which lower Courts infer, do not address the implication of a right to engage in business activity under 26 U.S.C $ 1.183 within a doctrine of specific-intent.

Therefore, the lower courts failed the imposed duty of deciding in accordance with objective facts, and failed constitutional and regulatory laws.

In concurrence with this reason summary, *Mottley v. Louisville & Nashville R.R.*, 150 F. 406 (C.C.W.D. Ky. 1907), which states, "[t]he only limitation prescribed by the Constitution is that the laws enacted by Congress to carry into execution this power shall be necessary and proper. That is a question wholly and exclusively within the province of Congress to determine. *Kentucky Bridge Co. v. L. N.R.R. Co.*, 34 Am. Eng. R. Cas. 630; *S.C.*, 37 F. 567. As to what is a vested right in the constitutional sense, see *Cooley, Const. Lim., 7th ed.*, 509; *Bradford v. Jenkins*, 41 Miss. 328, 335. Due process of law as used in U.S. CONST. amend. V includes not only the established mode of procedure in the courts, but also legislative acts within

constitutional powers. *Cooley, Const. Lim., 7th ed.*, 502; 3 Words and Phrases, 2228. Where no exception is made in terms, none will be made by mere implication or construction. *Rhode Island v. Massachusetts*, 12 Pet. 892; *Dartmouth College v. Woodward*, 4 Wheat. 494. For the court to go beyond that limitation is not to construe, but to legislate. See *Armour Packing Co. v. United States*, 209 U.S. 56; *Endlich on Statutes*, §§ 4-8; *Mottley v. L. N.R.R. Co.*, 150 F. 406; *United States v. Dickson*, 15 Pet. 141-163; *United States v. Wells-Fargo Express Co.*, 161 F. 606.", this case of lower court error, to which the United States Supreme Court can provide opinion, is an important developing body of law which presents a wider significance to rule of federal tax law raised herein. This Court's ruling principle will reduce ambiguity pursuant to *Specific-Intent* and will serve to guide Taxpayers, Internal Revenue Service, and Tax Courts when addressing unlawful treasury acts under 26 U.S.C. § 183 authority.

We pray that the full judicial model for the determination of adjudicative fact does not relieve or condone subjective and biased jurisprudence, and that this Court's opinion mitigates subjective rule and legislation outside the constitutional and statutory provisions on the United States.

We further pray this court vacate all lower court decision and dismiss the entire case for reasons other than its factual merits; and shield DONOGHUE from jeopardy review of genuine ambiguity in federal tax law for the reasons stated herein and as related to Skidmore deference.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DATE: 12/20/2021

JAMES P. DONOGHUE

ELAINE S. DONOGHUE