THE EIGHTH CIRCUIT IMPROPERLY DEFERS TO A STATUTORY INTERPRETATION PUT FORTH BY THE INTERNAL REVENUE SERVICE IN THOM V. UNITED STATES

"When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean— neither more nor less."
"The question is," said Alice, "whether you can make words mean so many different things."
"The question is," said Humpty Dumpty, "which is to be master — that's all.”1

INTRODUCTION

In 1934, Judge Learned Hand expressed an important principle in regard to the United States income tax when he stated:

A transaction, otherwise within an exception of the tax law, does not lose its immunity, because it is actuated by a desire to avoid, or, if one choose, to evade, taxation. Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one’s taxes.2

As Judge Hand made clear, United States taxpayers owe no duty to pay even one penny more than they actually owe.3 In contrast, the Internal Revenue Service (“IRS”), with the assistance of a judiciary that often gives great deference to IRS regulatory interpretations, works to zealously guard the government’s “rightful” share of taxpayers’ incomes.4 These two competing motives often give rise to litigation concerning the amount of income that taxpayers must share with the government.5

In Thom v. United States,6 the United States Court of Appeals for the Eighth Circuit reviewed the IRS’s interpretation of 26 U.S.C.

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3. Helvering, 69 F.2d at 810.
5. See supra notes 3-4 and accompanying text.
6. 283 F.3d 939 (8th Cir. 2002).
§ 453(l)(2)(A)\textsuperscript{7} in the United States Tax Code; specifically, the court reviewed the phrase “used or produced in the trade or business of farming” as it relates to sales of property qualifying for the installment method of accounting (“installment method”).\textsuperscript{8} In Thom, the taxpayers’ subchapter ‘S’ corporation, T-L Irrigation (“T-L”), used the installment method to report its sales of center pivot irrigation systems made directly to farmers where the farmers had paid for the systems over a period of time lasting two years or more.\textsuperscript{9} T-L had elected to use the installment method based on its belief that under the plain meaning of § 453(l)(2)(A), center pivot irrigation systems clearly qualified as equipment used in the business of farming.\textsuperscript{10} The IRS denied use of the installment method to T-L regarding its direct sales of the irrigation systems to farmers, resulting in an increased income tax burden to the shareholders of T-L.\textsuperscript{11} The Eighth Circuit in Thom determined that the plain language of § 453(l)(2)(A) did not support T-L’s interpretation of the statute.\textsuperscript{12} Rather, the court stated that the word “used” as it appeared in the statute must be read in the past tense.\textsuperscript{13} Thus, where T-L did not show that the equipment sold had previously been used in farming, its direct sales to farmers did not qualify for the § 453(l)(2)(A) exception allowing for use of the installment method.\textsuperscript{14}

This Note will discuss the Eighth Circuit’s holding in Thom, which stated that an exception allowing a taxpayer to elect the installment method for sales of personal property did not apply to dealers’ direct sales of farm equipment to farmers for use in farming.\textsuperscript{15} Then, this Note will review federal statutory law as well as case law discussing the manner in which federal courts should interpret those statutes.\textsuperscript{16} Next, this Note will analyze the Eighth Circuit’s holding in Thom by first exploring the Eighth Circuit’s correct decision to begin statutory analysis by looking to the plain language of the statute.\textsuperscript{17}

\textsuperscript{7} 26 U.S.C. § 453(l)(2)(A)(2000). The text of Section 453(l)(2)(A) states in full: “Dealer dispositions. Exceptions. The term ‘dealer disposition’ does not include-Farm Property. The disposition on the installment plan of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).” Id.

\textsuperscript{8} Thom v. United States, 283 F.3d 939, 941 (8th Cir. 2002) reh’g denied, 2002 U.S. App. LEXIS 14378 (8th Cir. July 12, 2002).

\textsuperscript{9} Thom, 283 F.3d at 941.

\textsuperscript{10} Thom v. United States, 134 F. Supp. 2d 1093, 1099 (D. Neb. 2001), aff’d, 283 F.3d 939 (8th Cir. 2002), and reh’g denied, 2002 U.S. App. LEXIS 14378 (8th Cir. July 12, 2002).

\textsuperscript{11} Thom, 134 F. Supp. 2d at 1096, 1098.

\textsuperscript{12} Thom, 283 F.3d at 943.

\textsuperscript{13} Id.

\textsuperscript{14} Id.

\textsuperscript{15} See infra notes 23-70 and accompanying text.

\textsuperscript{16} See infra notes 71-259 and accompanying text.

\textsuperscript{17} See infra notes 286-307 and accompanying text.
Then, this Note will explore the Eighth Circuit's erroneous decision to adopt the IRS's interpretation of the statute, which determined the statutory language in § 453(l)(2)(A) did not allow T-L to elect use of the installment treatment. Next, this Note will demonstrate that even if the Eighth Circuit in Thom had found the language of the statute to be ambiguous, it should have looked to the statutory history of the installment method for guidance in interpreting § 453 before deferring to the IRS's interpretation. Then, this Note will argue that the Eighth Circuit incorrectly cited administrative burdens as a basis for its decision denying T-L the use of the installment method. Finally, this Note will argue that the Eighth Circuit's decision failed to assist farmers in contravention of a public policy that favors farmers. Thus, this Note will argue that the Eighth Circuit's decision denying use of the installment method to T-L could not survive proper statutory construction.

FACTS AND HOLDING

In Thom v. United States, the United States Court of Appeals for the Eighth Circuit determined that a direct seller of center pivot irrigation systems to farmers could not use the installment method of accounting ("installment method") to report income under an exception that made the installment method available to sellers of farm equipment. T-L Irrigation ("T-L"), a Nebraska subchapter S Corporation, manufactured, sold and leased farm equipment, including center pivot irrigation systems. The Thom family, comprised of four pairs of husbands and wives, owned all of T-L's stock. In 1994 and 1995, T-L leased and sold center pivot irrigation systems directly to farmers, as well as through a network of dealers. To facilitate sales, T-L also provided financing assistance to farmers who bypassed the dealers and bought the irrigation systems directly from T-L.

For the taxable years ending on December 31 in 1994 and 1995, T-L used the installment method to report financed sales of center pivot

18. See infra notes 308-29 and accompanying text.
19. See infra notes 330-55 and accompanying text.
20. See infra notes 356-78 and accompanying text.
21. See infra notes 379-401 and accompanying text.
22. See infra notes 260-401 and accompanying text.
23. 283 F.3d 939 (8th Cir. 2002).
24. Thom v. United States, 283 F.3d 939, 945 (8th Cir. 2002).
26. Thom, 283 F.3d at 940. The four couples are James L. and Jean M. Thom, LeRoy W. and Jean E. Thom, David W. and Janis Thom and Tom and Ladena Thom. Id.
27. Thom, 134 F. Supp. 2d at 1095.
28. Id.
irrigation systems sold directly to farmers.\textsuperscript{29} The installment method delayed reporting of the income until T-L actually received the payments for the sale.\textsuperscript{30} T-L reported ordinary taxable income of $5,517,638 for 1994, and $5,565,679 for 1995, on its corporate income tax returns.\textsuperscript{31}

After auditing T-L's 1994 and 1995 corporate income tax returns, the Commissioner of the Internal Revenue Service ("Commissioner") disallowed T-L's use of the installment method in reporting gains on direct sales of center pivot irrigation systems to farmers.\textsuperscript{32} The Commissioner's disallowance of the installment treatment increased T-L's taxable income for 1994 and 1995 by $482,296 and $409,280, respectively.\textsuperscript{33} The increase represented the accrued gain deferred by T-L for the 1994 and 1995 tax years from farm equipment sales.\textsuperscript{34} T-L's increased taxable income passed through to the Thoms' individual federal income tax returns.\textsuperscript{35} Thus, the Commissioner's disallowance of T-L's use of the installment method as a business increased the taxable income of T-L's individual stockholders.\textsuperscript{36}

On February 5, 1999, the Internal Revenue Service ("IRS") issued deficiency notices to the Thoms for the additional personal income taxes due after the income adjustment.\textsuperscript{37} On or about June 4, 1997, the Thoms paid the tax deficiencies determined by the IRS for 1994 and 1995.\textsuperscript{38} The four couples then filed requests for refunds of additional taxes paid pursuant to the audit on August 17, 1999.\textsuperscript{39}

\textsuperscript{29} \textit{Id.} at 1096.
\textsuperscript{30} \textit{Thom}, 283 F.3d at 942.
\textsuperscript{31} \textit{Thom}, 134 F. Supp. 2d at 1096.
\textsuperscript{32} \textit{Id.}
\textsuperscript{33} \textit{Thom}, 283 F.3d at 941.
\textsuperscript{34} \textit{Thom}, 134 F. Supp. 2d at 1096.
\textsuperscript{35} \textit{Id.} Because gains or losses from a subchapter S corporation pass through directly to the individual shareholders' tax returns. David F. Bradford, Untangling the Income Tax, 101 (Harvard University Press, 1986).
\textsuperscript{36} \textit{Thom}, 134 F. Supp. 2d at 1097.
\textsuperscript{38} \textit{Thom}, 134 F. Supp. 2d at 1097-98. The June 4, 1997 date appears to incorrectly use the year 1997 when 1999 would appear to be correct, but both the Joint Stipulation of Facts and the case refer to June 4, 1997 as the date when tax deficiencies were paid by the Thoms. \textit{Id.}
\textsuperscript{39} \textit{Thom}, 134 F. Supp. 2d at 1096, 1098.
On January 26, 2000, the Commissioner denied the Thoms' refund claims.\textsuperscript{40} On May 11, 2000, all four couples commenced timely suits in the United States District Court for the District of Nebraska to obtain refunds of the additional 1994 and 1995 federal income taxes paid and statutory interest that had accrued.\textsuperscript{41} The Thoms relied on the farm property exception language in 26 U.S.C. § 453(l)(2)(A), in which the definition of “dealer disposition” as it related to qualification for use of the installment method did not include “the disposition of any property used or produced in the trade or business of farming.”\textsuperscript{42} The Thoms further claimed the words “used or produced in the trade or business of farming” indicated that a merchant who sold equipment “used in the business of farming,” such as a center pivot irrigation system, could report a sale pursuant to the statute.\textsuperscript{43} Thus, the Thoms claimed that T-L’s sales of center pivot irrigation systems qualified for the installment method under the farm property exception because the payments occurred in at least two different taxable years.\textsuperscript{44}

The IRS, however, argued that the plain meaning of the statute required T-L be engaged in “the trade or business of farming” to qualify for the § 453(l)(2)(A) exception allowing use of the installment method.\textsuperscript{45} The Thoms, as taxpayers, had previously admitted T-L was not currently nor had it ever been actively engaged in farming.\textsuperscript{46} Therefore, the government argued T-L did not qualify for the § 453(l)(2)(A) exception.\textsuperscript{47}

Judge Richard G. Kopf, writing for the court, granted the United States’ motion for summary judgment, dismissing the Thoms’ case with prejudice.\textsuperscript{48} In doing so, the court adopted the IRS’s interpretation of the exception under § 453(l)(2)(A) from Private Letter Ruling 9616012 (“PLR 9616012”).\textsuperscript{49} The district court noted that PLR 9616012 stated that the installment method was only available to farmers, not to dealers selling personal property to farmers.\textsuperscript{50} Accord-

\textsuperscript{40} Id. at 1098. James and Jean Thom failed to receive a statutory notice of their disallowance of refund, but when more than six months expired after the filing of their refund claim they were able to commence a tax refund suit. Id.

\textsuperscript{41} Thom, 134 F. Supp. 2d at 1098.

\textsuperscript{42} Thom, 283 F.3d at 942 (quoting 26 U.S.C. § 453(l)(2)(A)(2000)).

\textsuperscript{43} Thom, 134 F. Supp. 2d at 1099.

\textsuperscript{44} Thom, 283 F.3d at 941-42.

\textsuperscript{45} Id. at 942-43.

\textsuperscript{46} Thom, 134 F. Supp. 2d at 1094.

\textsuperscript{47} Thom, 283 F.3d at 942.

\textsuperscript{48} Thom, 134 F. Supp. 2d at 1094, 1102.

\textsuperscript{49} Id. at 1099. P.L.R. 9616012 was dated January 5, 1996. Id. at 943 n.6.

\textsuperscript{50} Id.
ing to the court, the Thoms were dealers in personal property and were therefore not eligible to use the installment method.\textsuperscript{51}

The Thoms appealed the district court’s decision to the United States Court of Appeals for the Eighth Circuit.\textsuperscript{52} In a case of first impression for any circuit court, a three-judge panel heard the appeal.\textsuperscript{53} In a 2-1 vote, the Eighth Circuit, in an opinion written by Circuit Judge Frank J. Magill, affirmed the district court’s ruling by stating that T-L could not use the installment method to account for direct sales of center pivot irrigation systems to farmers.\textsuperscript{54}

In reaching its decision, the Eighth Circuit first looked to the plain language of § 453(l) to determine whether the § 453(l)(2)(A) exception for reporting dealer dispositions applied to T-L.\textsuperscript{55} The exception in § 453(l)(2)(A) allows for use of the installment method in dealer dispositions by stating the following:

(1) Dealer dispositions.
(2) Exceptions. The term “dealer disposition” does not include—

Farm Property. The disposition on the installment plan of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).\textsuperscript{56}

The Eighth Circuit then stated that if the statutory language was clear and if congressional intent was not clearly contrary to the statutory language, then the court must regard the statutory language as conclusively expressing congressional intent.\textsuperscript{57}

The Eighth Circuit determined that the case turned on the definition of the word “used” as it appeared in the statute.\textsuperscript{58} The Eighth Circuit opined that because the word “produced” appeared in the past tense, the word “used” must also be read in the past tense, indicating that the equipment must have been used in the farming process prior to use of the installment method.\textsuperscript{59} Because T-L did not argue that its equipment had been previously used in farming, the Eighth Circuit determined that T-L’s sales did not fit within the court’s construction of the word “used.”\textsuperscript{60} The Eighth Circuit found support for its decision

\begin{itemize}
  \item \textsuperscript{51} Id.
  \item \textsuperscript{52} Thom, 283 F.3d at 939, 941-42.
  \item \textsuperscript{53} Id. at 939, 943. Judge Roger L. Wollman presided before he stepped down from the bench on January 31, 2002. Id. at 940.
  \item \textsuperscript{54} Thom, 283 F.3d at 939-40.
  \item \textsuperscript{55} Id. at 943.
  \item \textsuperscript{57} Thom, 283 F.3d at 943 (citing Reves v. Ernst & Young, 507 U.S. 170, 177 (1993)).
  \item \textsuperscript{58} Id.
  \item \textsuperscript{59} Id. (citing Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 479 (1992)).
  \item \textsuperscript{60} Id.
\end{itemize}
in the plain language of § 453(l)(2)(A), determining that the court would have to insert the words "to be" in front of "used" in order to interpret the statute as the Thoms suggested. Thus, the Eighth Circuit rejected the Thoms' interpretation of the statute, stating that the interpretation would impose administrative burdens on both taxpayers and the IRS. As such, the Eighth Circuit affirmed the district court's decision to grant summary judgment for the government.

Judge John R. Gibson dissented, suggesting the court based its decision on a faulty grammatical analysis. The dissent stated that the majority incorrectly concluded that the word "used" in the statute was the past tense of the word "use," thereby limiting its application solely to equipment that had already been used in farming. The dissent further stated that under the majority's reasoning, no new equipment could ever qualify for use of the installment method because it would not have been "used in farming." The better reading of the statute, according to the dissent, would have considered the phrase "property used in farming" as one that identified a property type, as opposed to the actual history of a specific piece of equipment. The dissent noted that the court's interpretation would lead to an anomalous result whereby a combine owned by a farmer would not qualify for the exception under 26 U.S.C. § 453(l)(2)(A) until the farmer actually used the combine to harvest crops. On the contrary, the dissent pointed out that even a Jaguar convertible used to haul hay would qualify as farm equipment and would become property qualified for installment sale treatment. The dissent emphasized that the court's analytical focus should have been on the property type rather than its history of past usage, so equipment generally used in farming, like a tractor or center-pivot irrigation system, would qualify under the § 453(l)(2)(A) exception.

61. Id.
62. Id. at 943-44. On audit a dealer would need to prove that the buyer actually used the property purchased in farming to justify the use of the installment method. Id. at 943.
63. Thom, 283 F.3d at 945.
64. Id. at 945. (Gibson, J., dissenting).
65. Id. (Gibson, J. dissenting).
66. Id. at 945-46 (Gibson, J. dissenting).
67. Id. at 946 (Gibson J. dissenting). Judge Gibson suggested that "used" in the statute is "a past participle, which is part of a subordinate clause modifying the word property." Id. at 945 (Gibson, J. dissenting).
68. Thom, 283 F.3d at 946 (Gibson, J. dissenting).
69. Id. (Gibson, J. dissenting).
70. Id. (Gibson, J. dissenting). This interpretation would involve differentiating between types of property that would qualify for the installment sale treatment. Id. (Gibson, J. dissenting). The Thoms' petitioned for a rehearing by the Eighth Circuit Court of Appeals, either by the full panel or en banc. Thom v. United States, 2002 LEXIS 14378 (8th Cir. July 12, 2002) (Gibson, J. dissenting). The panel denied the
BACKGROUND

A. AVAILABILITY OF THE INSTALLMENT METHOD UNDER 26 U.S.C. § 453 TO DEALERS SELLING PERSONAL PROPERTY TO FARMERS

The United States adopted the first income tax in 1913. From its inception, the tax code required that all businesses, except farming operations, use the accrual method of accounting. Under the accrual method, a taxpayer must report income when the taxpayer can reasonably calculate the income and can reasonably ascertain the right to receive the income calculated. Farmers, however, may utilize the cash basis accounting method ("cash method"). Under the cash method, a taxpayer reports income when the income is received.

In 1918, tax rates increased dramatically. At this time, the Treasury Department developed regulations allowing use of the installment method of accounting ("installment method") for the first time. These regulations were similar to those currently available under 26 U.S.C. § 453, which defines the installment method as a process by which income is realized in the year it is received. The statute also establishes the general rules regarding the time at which a taxpayer can elect to use the installment method. Furthermore, the statute identifies exceptions for dealer dispositions and inventories of personal property, stating that the installment method is available for use by dealers of property "used or produced in the trade or business of farming."

Later, in In re BB Todd, Inc., the United States Board of Tax Appeals (the "Board") examined the availability of the installment method for dealers selling personal property to farmers. The Board concluded that the installment method was available under the circumstances presented in the case. Further, the full court of appeals also denied Thoms' petition for rehearing. Id. (Gibson, J. dissenting). Further, the full court of appeals also denied Thoms' petition for a hearing en banc. Id. (Gibson, J. dissenting).

71. David F. Shores, Closing the Open Transaction Loophole: Mandatory Installment Reporting, 10 VA. TAX REV. 311, 312 (1990) (citation omitted).
72. Shores, 10 VA. TAX REV. at 312.
73. Id.
74. Id.
76. Shores, 10 VA. TAX REV. at 312 (citing Patricia A. Cain, Installment Sales by Retailers: A Case for Repeal of Section 453(a) of the Internal Revenue Code, 1978 Wis. L. Rev. 1, 3 n.11).
77. Id.
80. 26 U.S.C. § 453(b)(2) (2000) (denying use of the installment method for dealer dispositions of real or personal property with exceptions allowing installment method use for certain dispositions of personal property used or produced in farming and certain real property consisting of time shares and residential lots).
81. 1 B.T.A. 762 (1925).
method to taxpayers as well as the validity of the 1918 regulations. In *Todd*, the Commissioner of the IRS had denied use of the installment method to *Todd* who appealed the decision to the Board. The Board determined that installment method sales produced mixed results. In doing so, the Board recognized that installment method sales generally produced higher loss rates and took longer to collect than comparable cash sales. At the same time, the United States Federal Trade Commission reported that the average profit and sales price per transaction was higher for businesses using the installment method. The Board found that inconclusive evidence did not justify such a favorable tax treatment under the installment method. Therefore, the Board ruled the regulation invalid as inconsistent with the statute, which at that time, only authorized use of the cash or accrual methods for reporting income.

In response to these inconsistencies, Congress passed the Revenue Act of 1926 ("1926 Act"), which included § 212(d) of the tax code. Section 212(d) allowed taxpayers to utilize the installment method to report income from sales or dispositions of personal property on an installment plan. The installment method also allowed taxpayers to recognize gains in the year they received payment in proportion to the total purchase price. The 1926 Act mandated that a seller could receive no more than 25% of the sales price as a down payment at the time of sale in order for the seller to qualify for use of the installment method.

From 1926 to 1980, the installment sales provisions remained a part of the tax code and Congress left the provisions largely unchanged. During that time, the maximum cash down-payment under a valid installment method sale varied between 25% and 40% but remained fixed at 30% from 1954 to 1980. Congress then passed the Installment Sales Revision Act of 1980 (the "1980 Act") to simplify

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82. *In re BB Todd, Inc.*, 1 B.T.A. 762, 763-64 (1925).
83. *Todd*, 1 B.T.A. at 762. The Revenue Act of 1924 created the Board of Tax Appeals and gave taxpayers the right to appeal decisions by the Commissioner. *In re Everett Knitting Works*, 1 B.T.A. at 6.
84. *Todd*, 1 B.T.A. at 766.
85. Id.
86. Id.
87. Id. at 767.
88. Id.
89. Shores, 10 VA. TAX REV. at 313 (citation omitted).
91. Shores, 10 VA. TAX REV. at 313.
93. Shores, 10 VA. TAX REV. at 314.
94. Id.
the provisions and increase installment method availability. The 1980 Act divided installment sales into the following three categories, each with its own set of rules: real estate and casual sales, dealer dispositions of personal property, and installment sales obligations.

Section 453, which defined the installment method as part of the 1980 Act, relaxed restrictions on casual sales and removed the 30% limitation on cash down-payments, as well as the requirement of a $1,000 minimum sales price. In addition, § 453 provided that the installment method automatically applied to an installment sale unless the taxpayer elected otherwise. Section 453A, specifically, addressed dealer dispositions of personal property. That section specified that dealers in personal property could elect to use the installment method if they regularly sold personal property under the installment method.

The 1980s as a decade proved to be a decade of change for the tax code as well as the installment method. In the years 1984, 1986, 1987, and 1988, Congress changed the tax regulations addressing the installment method. Each of the changes restricted the availability of installment reporting, but none of the changes eliminated installment reporting for dealer dispositions of farm equipment.

The Tax Reform Act of 1986 imposed further restrictions on installment method availability by treating any indebtedness by a buyer as a payment on an installment obligation. Under that Act, the buyer's indebtedness triggered immediate recognition of any gain on a sale. Any debt, even if unrelated to the installment obligation,
triggered immediate recognition, thereby nullifying the installment method’s deferral advantage.\(^\text{107}\)

Further changes occurred in 1987 when Congress passed The Omnibus Budget Reconciliation Act of 1987\(^\text{108}\) ("OBRA"), which repealed installment treatment for dealer dispositions of personal and real property but specifically retained exemptions for dealer sales of both farm property and certain residential property.\(^\text{109}\) OBRA treated dispositions of farm equipment differently than dispositions of real estate lots and timeshares; the exemption for sales of real estate lots and timeshares required dealers to pay interest on the deferral, while the farm equipment provision did not require any interest charges.\(^\text{110}\) Congress made this change because secondary markets existed to convert installment sales contracts into immediate cash, thereby alleviating the cash-flow concerns that prompted use of the installment method.\(^\text{111}\)

Prior to the Revenue Act of 1987 (the “1987 Act”), the installment method had become available for use by dealers.\(^\text{112}\) Congress then eliminated the installment method for most dealer dispositions in the 1987 Act, but included exceptions that allowed installment sales treatment to continue for dealer dispositions of certain residential lots, timeshare properties and farm property.\(^\text{113}\) If a taxpayer used or produced property in the trade or business of farming, the sale of such property qualified the taxpayer for use of the installment method under 26 U.S.C. § 453A, which provided for use of the installment method by dealers of personal property.\(^\text{114}\)

Under § 453, dealer dispositions include dispositions of personal or real property.\(^\text{115}\) Section 453(l)(1)(A) defines a dealer disposition of personal property as “any disposition of personal property by a person who regularly sells or otherwise disposes of personal property of the same type on the installment plan.”\(^\text{116}\) Section 453(l)(2)(A) then excludes “the disposition on the installment plan of any property used or produced in the trade or business of farming (within the meaning of

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\(^{107}\) Id.

\(^{108}\) Id.

\(^{109}\) Id.

\(^{110}\) Id.

\(^{111}\) Id.

\(^{112}\) Id.

\(^{113}\) Id.

\(^{114}\) Id.

\(^{115}\) Id.

\(^{116}\) Id.
Section 2032A(e)(4) or (5))” from that definition.\textsuperscript{117} Section 2032A(e)(4) defined a farm as follows:

[Farms] includ[ing] stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards and woodlands.\textsuperscript{118}

Section 2032A(e)(5)(A)-(C)(i)(ii) defined farming purposes as:

cultivating the soil or raising or harvesting any agricultural or horticultural commodity . . . on a farm;  
handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and the planting, cultivating, caring for, or cutting of trees, or the preparation . . . of trees for market.\textsuperscript{119}

Casual sales of farm equipment by farmers do not qualify as “dealer dispositions” because by definition, casual sales are occasional sales by farmers who do not include the equipment in inventory or regularly sell or otherwise dispose of the farm equipment on the installment plan.\textsuperscript{120} Farmers could still sell their equipment on the installment basis pursuant to the 1987 Act without qualifying for the exception provided by 26 U.S.C. § 453(l)(2)(A) because they were not considered dealers disposing of inventory.\textsuperscript{121}

In 1996, the Internal Revenue Service (“IRS”) interpreted § 453(l)(2)(A) and its application to dealers of personal property used in farming in Private Letter Ruling 9616012 (“PLR 9616012”).\textsuperscript{122} In PLR 9616012, the IRS responded to a taxpayer’s inquiry regarding his decision to elect to use the installment method to account for sales of poultry drinking water systems to farmers.\textsuperscript{123} The IRS acknowledged

\textsuperscript{121} Id.
\textsuperscript{123} Id. (asking that sales to farmers not be characterized as dealer dispositions).
that these drinking water systems were clearly agricultural equipment and did not have any other use beyond the farming process.\textsuperscript{124} As such, the IRS ruled that the taxpayer/seller could not utilize the installment method to account for the system sales because the seller was not engaged in farming.\textsuperscript{125} The IRS's ruling suggested its statutory interpretation of \$ 453(l)(2)(A) required a seller to be a farmer in order to elect the installment method.\textsuperscript{126}

Finally, the Tax Relief Extension Act of 1999\textsuperscript{127} amended \$ 453 by adding \$ 453(a)(2), which denied accrual method taxpayers any opportunity to use installment reporting for any sales of property.\textsuperscript{128} This change was short-lived, as the Installment Tax Correction Act of 2000\textsuperscript{129} retroactively repealed the 1999 amendment and restored the availability of \$ 453 to accrual method taxpayers on the same basis that it had been available prior to the 1999 legislation.\textsuperscript{130} In its present form, the installment method is found at 26 U.S.C. \$ 453(a), which states that “except as otherwise provided in this section, income from an installment sale shall be taken into account for purposes of this title under the installment method.”\textsuperscript{131} Section 453(b)(2) defines two exceptions to the applicability of the installment method as follows:

- **Dealer dispositions**—any dealer disposition (as defined in subsection (l))
- **Inventories of personal property** — A disposition of personal property of a kind which is required to be included in the inventory of the taxpayer if on hand at the close of the taxable year.\textsuperscript{132}

Thus, the installment method is available to the taxpayers unless one of these two exceptions from \$ 453(b)(2) applies.\textsuperscript{133}

\begin{footnotesize}
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\item \textsuperscript{124} Id. (stating that taxpayer's poultry water drinking systems had no alternative use).
\item \textsuperscript{125} Id. (noting that taxpayer manufactured, distributed and sold poultry water drinking systems).
\item \textsuperscript{126} Id. (stating that taxpayer's sales were sealer dispositions under \$ 453(l)(2)(A)).
\item \textsuperscript{127} The Tax Relief Extension Act of 1999, Pub. L. No. 106-170.
\item \textsuperscript{129} The Installment Tax Correction Act of 2000, 26 U.S.C. \$ 453 (2002).
\item \textsuperscript{130} Id.
\item \textsuperscript{131} Id.
\item \textsuperscript{132} 26 U.S.C. \$ 453(b)(2) (2000).
\item \textsuperscript{133} Id.
\end{enumerate}
\end{footnotesize}
B. JUDICIAL INTERPRETATIONS OF FEDERAL TAXATION STATUTES

In the earliest cases interpreting federal tax statutes, courts resolved ambiguities in favor of the taxpayer. In *Old Colony Railroad Co. v. Commissioner*, the United States Supreme Court stated that if the connotation of a provision in a tax statute was in doubt, the preferred interpretation of that provision should favor the taxpayer. In *Old Colony*, the term "interest" was in question as the IRS challenged the appropriate amount of interest that the Old Colony Railroad Company ("Old Colony") could deduct as payments on bonds sold prior to the inception of the federal income tax. Old Colony had sold bonds at a premium from 1895 to 1904. Old Colony's annual interest payments were proportionately higher than the payments would have been if the bonds had only paid interest at prevailing market rates, reflecting the bond's higher coupon interest rates. The Court noted that because the bonds had been sold at a premium, Old Colony had booked additional income prior to the inception of the federal income tax.

The IRS determined that Old Colony should have realized a portion of the income resulting from selling bonds at a premium over the life of the bonds, thereby offsetting the income tax deduction taken for the annual interest payments. Furthermore, the IRS reviewed Old Colony's 1921 tax return and claimed Old Colony must also report a pro-rated portion of the premiums received prior to 1905 as income. Old Colony challenged the IRS's administrative decision in an appeal to the Board of Tax Appeals ("Tax Board"). The Tax Board held that Old Colony did not need to include any portion of the bond premium income received prior to 1905 in its 1921 taxable income because the income was not earned and received in 1921. The Commissioner of the IRS appealed the Tax Board's decision to the

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135. 284 U.S. 552 (1932).


137. *Old Colony*, 284 U.S. at 554-56.

138. *Id.* at 555.

139. *Id.*

140. *Id.*

141. *Id.* at 555-56.

142. *Id.*

143. *Id.* at 556.

United States Court of Appeals for the First Circuit, arguing that Old Colony must reduce its deduction for interest paid on bonds that had been sold at a premium to reflect the amortization of the bond premium received when the bonds were sold.145

The First Circuit reversed and remanded the decision of the Tax Board.146 The First Circuit, in an opinion written by Judge James Arnold Lowell, determined that Old Colony must include a pro-rated portion of the bond premiums in its current yearly income, thereby increasing its taxable income for the current year.147 The First Circuit found that Old Colony's current interest expense was inflated because it resulted from the sale of bonds with above market coupon interest rates; these bonds sold for more than face value in reflection of their higher coupon interest rate.148 In addition, the First Circuit noted that the premium received by Old Colony when it sold the bonds was never taxed, thus allowing Old Colony an inflated current tax deduction that is not offset in any way by earlier taxable income.149 In doing so, the First Circuit cited converse circuit precedent wherein a railroad that had sold bonds at a discount was allowed to show a proportionate share of the discount as an expense.150 Old Colony filed a writ of certiorari to the United States Supreme Court, which granted certiorari to address the issue of whether income from bond sales occurring prior to adoption of the income tax should be taxed in a later year to offset income tax deductions taken for interest payments related to the bond sales.151

The Supreme Court reversed the First Circuit's decision by finding that premiums received from corporate bond sales were only taxable in the year in which the taxpayer received the premiums.152 Justice Owen J. Roberts delivered the opinion for the Court, finding that Treasury regulations clearly considered the premiums received from the sale of bonds to be income.153 The Court stated that the premiums constituted income in the year received.154 The Court then stated that the general rule used to interpret statutes presumed that the legislature enacting such statutes had intended for words to be

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146. Old Colony, 50 F.2d at 897.
147. Id. at 896-97.
148. Id. at 896.
149. Id. at 897.
150. Id. at 896-97 (citing Western Maryland Ry. Co. v. Comm'r., 33 F.2d 695 (1st Cir. 1929)).
151. Old Colony, 284 U.S. at 552-53.
152. Id. at 557, 562-63.
153. Id. at 557. The court never specifies which "Treasury Regulation" it is referring to in its decision. Id.
154. Old Colony, 284 U.S. at 557.
construed through application of their known and ordinary meaning.\textsuperscript{155} Further, the Court found that the plain, rational and obvious meaning of statutory language was to be applied in construction of tax statutes.\textsuperscript{156} As such, the Court held that bond premium income was only taxable in the year in which it was received because the statutory language was ambiguous and according to the court, any ambiguities must be interpreted in favor of the taxpayer.\textsuperscript{157}

Federal courts have sustained Treasury regulations as valid unless the regulations appear unreasonable or plainly inconsistent with federal revenue statutes.\textsuperscript{158} In \textit{Skidmore v. Swift},\textsuperscript{159} the United States Supreme Court stated that the rulings, opinions and interpretations of a federal agency constituted “a body of experience and informed judgment” that the courts could look to for guidance, though they were not controlling.\textsuperscript{160} In \textit{Skidmore}, seven packing plant employees of Swift & Co. (“Swift”) brought an action in the United States District Court for the Northern District of Texas under the Fair Labor Standards Act (“FLSA”), seeking to recover overtime, attorney’s fees and liquidated damages of approximately $77,000.\textsuperscript{161} The FLSA was administered by the Wage and Hour Division (“Division”) which had previously ruled that time spent by the employees on call in a fire hall was not considered work and therefore did not require compensation.\textsuperscript{162} The employees had agreed orally to remain on company property for three and one-half to four nights per week to answer fire alarms.\textsuperscript{163} During the period in question, no fires occurred and alarms rarely sounded.\textsuperscript{164} Swift paid the employees a fixed amount for each alarm answered.\textsuperscript{165} The district court agreed with the interpretation of the administrators of the Division, which stated that the fact an employee lived at his worksite did not mean the employee worked twenty-four hours per day.\textsuperscript{166} The district court stated that overtime pay was therefore not owed to the employees by Swift be-

\begin{itemize}
\item \textsuperscript{155} \textit{Id.} at 560 (citing Levy’s Lessee v. McCartee, 6 Pet. 102 (1832)).
\item \textsuperscript{156} \textit{Id.} (quoting Lynch v. Alworth-Stephens Co., 267 U.S. 364 (1924)).
\item \textsuperscript{157} \textit{Id.} at 561-63.
\item \textsuperscript{158} Comm’r v. South Texas Lumber Co., 333 U.S. 496, 501 (1948) reh’g denied, 334 U.S. 813 (1948).
\item \textsuperscript{159} 323 U.S. 134 (1944) (Skidmore II).
\item \textsuperscript{160} Skidmore v. Swift, 53 F.Supp. 1020, 1020 (N.D. Tex. 1942), aff’d, 136 F.2d 112 (5th Cir. 1943), and rev’d, 323 U.S. 134 (1944).
\item \textsuperscript{161} Skidmore v. Swift, 323 U.S. 134, 135 (1944) (noting the damages sought under the FLSA); \textit{Skidmore II}, 53 F.Supp. at 1020 (noting that the action originated in the district Court for the Northern District of Texas).
\item \textsuperscript{162} \textit{Skidmore II}, 53 F.Sup. at 1021.
\item \textsuperscript{163} \textit{Skidmore}, 323 U.S. at 135.
\item \textsuperscript{164} \textit{Id.}
\item \textsuperscript{165} \textit{Id.} at 135-36.
\item \textsuperscript{166} \textit{Id.}
cause even though the employee's were available while on-site, they were rarely called to perform work-related duties.167

The employees appealed the district court's decision to the United States Court of Appeals for the Fifth Circuit, which affirmed the district court's decision that had deferred to the Division's interpretation of the term "work."168 The Fifth Circuit, in an opinion written by Judge Curtis L. Waller, found that the FLSA did not require employers to pay wages to an employee simply because the employee was away from home.169 The Fifth Circuit differentiated between an employee's working time and the time an employee was not working but was available to work.170 The Fifth Circuit stated that employees were not entitled to pay for time spent sleeping.171 The employees filed a petition for certiorari with the United States Supreme Court.172 The Supreme Court granted certiorari to review the Fifth Circuit's judgment, which had denied the employees of any recovery under the FLSA for overtime, attorneys' fees and liquidated damages.173

The Supreme Court reversed the decision of the Fifth Circuit, finding that under the FLSA, waiting time constituted "work."174 The Court, in an opinion written by Justice Robert H. Jackson, opined that Congress had created the Wage and Hour Division to investigate industries and employers subject to the FLSA in order to bring injunctions and restrain FLSA violations.175 According to the Court, the Division had accumulated considerable experience in resolving wage and hour problems that involved periods of inactivity through its investigatory activities as well as its knowledge of prevailing customs in distinct industries.176 The Court stated that the Division's knowledge and experience constituted a body of informed judgment and experience to which courts may appropriately look for guidance.177 The Court clarified that administrative rulings, opinions and interpretations were proper sources of guidance for federal courts but were not controlling.178 The Court stated that administrative opinions de-

167. Id.
168. Skidmore v. Swift, 136 F.2d 112, 112, 113 (5th Cir. 1943), rev'd, 323 U.S. 134 (1944) (affirming the district court's decision); (Skidmore II), 53 F.Supp. at 1020 (noting that that court deferred to the Wage and Hour Division's interpretation of work).
170. Id. at 113.
171. Id.
172. Skidmore, 323 U.S. at 134.
173. Id.
174. Id. at 140.
175. Id. at 137.
176. Id.
177. Id. at 140.
178. Id. at 135, 140.
erved respect from the federal courts because they represented a body of experience and informed judgment. The Court then specifically recognized its long history of giving considerable weight, sometimes even decisive weight, to Treasury Department interpretative regulations and decisions when construing federal statutes.

By the 1940s, courts had begun giving greater deference to rulings and opinions of administrative agencies. In Commissioner v. South Texas Lumber Co., the United States Supreme Court determined that an accrual basis taxpayer using the installment method under 26 U.S.C. § 44(b) to account for income from installment sales could not include unreported and unrealized profits from the installment sales in invested capital for purposes of computing excess profit taxes. In South Texas Lumber, South Texas Lumber Company ("STL") recorded unreported profits on its installment sales contracts as "accumulated earnings and profits" when calculating its amount of invested capital on its financial statements. The IRS determined STL had underpaid its excess profits tax on its 1943 tax return. STL appealed the IRS determination to the United States Tax Court.

The tax court entered judgment in favor of the Commissioner of the IRS, holding that the same accounting rules applied in calculating income taxes should have also been applied in calculating excess profits taxes. Judge Byron B. Harlan's opinion reasoned that approving STL's treatment of unreported and anticipated profits from installment sales under § 44(b) would have allowed different accounting rules to apply to the computation of accumulated profits and earnings for excess profits purposes than for income tax purposes. The tax court's decision followed a prior ruling in which the tax court found that Congress had clearly intended that calculations for determining excess profits taxes and income taxes should be interre-

179. Id. at 140.
180. Id.
182. 333 U.S. 496 (1948).
183. Comm'r v. South Texas Co., 333 U.S. at 496, 496, 506 (1948). Section 44 addressed the installment method in the Internal Revenue Code of 1934, which was superseded by the Internal Revenue Code of 1954, which incorporated the language from § 44 at the revised § 453. 26 U.S.C. § 44 Revised Title Table (revised August 16, 1954). Id.
184. South Texas Lumber Co. v. Comm'r, 7 T.C. 669, 671 (1946), rev'd, 162 F.2d 866 (5th Cir. 1947), and rev'd, 333 U.S. 496 (1948).
185. South Texas Lumber, 7 T.C. at 669.
186. Id. at 669, 672.
187. Id. at 672.
188. Id.
Thus, the Court determined STL had miscalculated its excess profits tax, which resulted in STL’s failure to pay a portion of its excess profits tax. STL appealed the tax court’s decision to the United States Court of Appeals for the Fifth Circuit, arguing that the plain language of the tax code allowed income to be calculated differently for income tax purposes than for excess profits tax purposes.

The Fifth Circuit reversed the tax court’s decision. Judge Curtis L. Waller reasoned that if Congress had intended § 718(a)(4) of the tax code, which established the calculations for the new accumulated earnings and profits tax, to be interpreted as the IRS suggested, then the plain language of the statute would have explicitly stated that intention. Because Congress did not clearly restrict the definition of accumulated earnings and profits in § 718(a)(4) to exclude unrealized profits from installment method sales under § 44, the Fifth Circuit determined that the IRS Commissioner could not restrict earnings because doing so would be in contravention of Congress’ intent. The Commissioner of the IRS filed a writ of certiorari with the United States Supreme Court. The Court granted certiorari to review the issue of whether a taxpayer could report taxable income under one accounting basis while reporting income adjustments on a different basis.

The Supreme Court subsequently reversed the decision of the Fifth Circuit, finding § 44 required that a corporation include only those profits actually received and taxed when calculating its equity invested capital. Justice Hugo L. Black, writing for the majority, opined that longstanding congressional policy prohibited taxpayers from computing income taxes by using a cash basis for income and determining deductions on an accrual basis. In doing so, the Court noted that 26 C.F.R. § 112 provided that accumulated earnings and profits for excess profits tax should be computed on the same basis as they would be computed under the income tax. The Court further stated that “[t]reasury regulations must be sustained unless unreasonable and plainly inconsistent with the revenue statutes and that
they constitute contemporaneous constructions by those charged with administration of these statutes which should not be overruled except for weighty reasons." The Court ruled § 112 was consistent with congressional policy and with statutes imposing excess profits tax on incomes. Furthermore, the Court found regulatory support in the prior administrative and legislative history of a similar provision enacted in 1918, which imposed a "War-Profits and Excess-Profits Tax" ("War Tax"). The Court noted that pursuant to the War Tax, the Tax Board and the courts uniformly held that uncollected installment obligations could not be counted as invested capital.

The Court determined Congress had granted the Commissioner broad rule-making powers in the 1926 Revenue Act, which allowed the Commissioner to control implementation of the installment method. The Court noted that the 1926 Revenue Act specifically permitted taxpayers to utilize the installment method only "under regulations prescribed by the Commissioner with the approval of the Secretary." Moreover, the Court noted that the words "under regulations prescribed by the Commissioner with the approval of the Secretary" still appeared in § 44 in 1948, just as they had appeared in the 1926 Revenue Act; thus the Court commented that courts should only overrule the 1926 Tax Act and its underlying regulations if the Act and the regulations were clearly contrary to congressional intent. The Court reasoned that the regulation put forth by the Commissioner was reasonable and therefore valid and controlling. The Court ruled in favor of the Commissioner thus ruling that the taxpayer in South Texas Lumber could only include in its equity invested capital profits already taxed and actually received by the taxpayer.

Nearly thirty years later, in National Muffler Dealers Ass'n. v. United States, the United States Supreme Court stated that courts must use a reasonableness standard to determine whether a regulation harmonized with a related statute's plain language, purpose and origin. In National Muffler, the National Muffler Dealers Association ("Association") sought federal tax-exempt status as a "business league" under 26 U.S.C. § 501(c)(6) but the IRS denied the exemp-

200. Id. at 501 (citing Fawcus Machine Co. v. United States, 282 U.S. 375 (1931)).
201. Id.
202. Id.
203. Id.
204. Id. at 502-03.
205. Id.
206. Id. at 503.
207. Id. at 501, 506.
208. Id. at 506.
The IRS stated that § 501(c)(6) only applied to industry-wide organizations; the Association, however, only represented Midas Muffler franchisees. In 1974, after the IRS finally rejected the Association's application for exemption, the Association filed income tax forms for the 1971, 1972 and 1973 fiscal years but subsequently filed refund claims for the taxes paid in those three years. After the IRS denied the 1972 refund claim, and once six months had passed with no IRS response to the Association's 1971 and 1973 refund claims, the Association filed a lawsuit in the United States District Court for the Southern District of New York. The Association asserted it had a right to the refunds of the federal taxes paid based on its alleged federal tax-exempt status.

Judge Lawrence W. Pierce, writing for the district court, determined that the Association was not entitled to the claimed refund because it did not qualify under § 501(c)(6) of the Tax Code as a "business league." The district court found no evidence indicating that the Association had conferred any benefits on muffler franchisees specifically or the entire muffler industry as a whole. As such, the court reasoned that the Association was not a business league because it was comprised solely of Midas Muffler dealers and therefore did not benefit the entire muffler industry.

The Association appealed the district court's decision to the United States Court of Appeals for the Second Circuit, arguing that the Association qualified under § 501(c)(6) as a business league. The Second Circuit, in an opinion written by Chief Judge Irving R. Kaufman, affirmed the district court's decision by holding that the Association did not benefit an entire "line of business" as was required by the regulations. The Association contended that the "line of business" language used in the applicable regulation, 26 C.F.R. § 1.501(c)(6)-1, was not a separate requirement for tax-exempt status, but instead illustrated the type of organization to which the IRS should grant an exemption. The Second Circuit examined the general characteristics of chambers of commerce and boards of trade, not-

211. Nat'l Muffler, 440 U.S. at 474.
212. Id.
213. Id. at 475.
214. Id.
215. Id. at 473, 475.
218. Id. at 475.
220. Nat'l Muffler, 440 U.S. at 484, 487.
221. Nat'l Muffler, 440 U.S. at 484 (citing 26 C.F.R. § 1.501(c)(6)-1 (1978)).
ing that those were the types of organizations grouped as "business leagues" under the statute.\textsuperscript{222} After examining the other organizations under the statute, the Second Circuit determined that Congress had intended to provide an exemption for organizations promoting general economic welfare rather than specific private business interests.\textsuperscript{223} Thus, the Second Circuit concluded the regulation's "line of business" requirement was "well suited to assuring that an organization's efforts do indeed benefit a sufficiently broad segment of the business community."\textsuperscript{224} The Second Circuit explicitly refused to follow a previous Seventh Circuit decision which found that the "line of business" requirement narrowed § 501(c)(6) unreasonably.\textsuperscript{225} The Association filed a writ of certiorari with the United States Supreme Court, which granted certiorari to resolve the conflict between the Second Circuit's and Seventh Circuit's holdings.\textsuperscript{226}

The Supreme Court affirmed the decision of the Second Circuit "because the Association ha[d] not shown that either the regulation or the Commissioner's interpretation fail[ed] to implement the congressional mandate in some reasonable manner."\textsuperscript{227} Justice Harry A. Blackmun, writing for the majority, stated that in determining whether a specific regulation properly carried out a congressional mandate, a court must determine whether the regulation was in harmony with the plain language of the statute, its purpose and its origin.\textsuperscript{228} The Court commented that courts could grant a regulation particular force if the regulation was a "substantially contemporaneous construction of the statute" because of a presumption that contemporaries would be more aware of congressional intent.\textsuperscript{229} The Court stated that if a regulation occurred at a later date, courts should examine the regulation's evolution.\textsuperscript{230} According to the Court, other relevant considerations in determining whether a regulation properly carried out a congressional mandate included how long the regulation had been in effect, reliance on the regulation, the level of scrutiny given by Congress to subsequent statutory re-enactments, and the consistency of the Commissioner's interpretations.\textsuperscript{231}

\begin{itemize}
\item \textsuperscript{222} \textit{Id.} at 475-83.
\item \textsuperscript{223} \textit{Id.} at 476 (quoting 26 C.F.R. § 1.501(c)(6)-1 (1978)).
\item \textsuperscript{224} \textit{Id.} at 476 (quoting \textit{Nat'l Muffler Dealers}, 565 F.2d at 847).
\item \textsuperscript{225} \textit{Nat'l Muffler}, 440 U.S. at 476 (referencing Pepsi-Cola Bottlers' Ass'n v. United States, 369 F.2d 250 (7th Cir. 1966)).
\item \textsuperscript{226} \textit{Id.}
\item \textsuperscript{227} \textit{Id.} at 488-89 (quoting United States v. Correll, 389 U.S. 299 (1967)).
\item \textsuperscript{228} \textit{Id.} at 473, 477.
\item \textsuperscript{229} \textit{Id.} at 477.
\item \textsuperscript{230} \textit{Id.}
\item \textsuperscript{231} \textit{Id.}
\end{itemize}
While the Court established several criteria for evaluating an administrative interpretation in *National Muffler*, the United States Supreme Court adopted a more specific two-part test in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*\(^2\) for courts to use in reviewing the appropriateness of an administrative agency's statutory interpretation.\(^3\) According to the *Chevron* court, a court's first step in a statutory analysis involves determining whether congressional intent is clear within the language of the statute.\(^4\) The Court noted that if the language clearly states congress' intent, both courts and administrative agencies must give effect to Congress' clear intent when construing a statute.\(^5\) However, if congressional intent is not clear, the Court noted that courts must then determine whether the agency's interpretation of the statute constitutes permissible statutory construction.\(^6\) Under *Chevron*, an agency's interpretation is permissible if the court finds the interpretation reasonable.\(^7\)

*Chevron* originated as an action entitled *Natural Resources Defense Council, Inc. v. E.P.A.*,\(^8\) where several environmental agencies appealed an Environmental Protection Agency ("EPA") ruling to the United States Court of Appeals for the District of Columbia.\(^9\) The October 14, 1981 decision handed down by the EPA, implemented a provision of the Clean Air Act that prohibited modifications of "stationary sources."\(^10\) The EPA defined "stationary source" as a single entity encompassing all of the pollution-emitting devices at a single plant using the "bubble approach," which treated an entire plant as if it operated within a single, self-contained entity.\(^11\) The EPA then implemented the bubble approach by interpreting the statutory term "stationary source" of pollution to include an entire industrial grouping of pollution-emitting devices.\(^12\) Under this interpretation, an entire factory encompassing several pollution-emitting devices could make modifications to individual pollution emitting devices that re-

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235. Id. at 842-43.
236. Id. at 843.
237. Id. at 844.
238. 685 F.2d 718 (D.C. Cir. 1982).
240. Id. at 840-41.
241. Id. at 840.
242. Id.
sulted in greater pollution emissions so long as all of the changes taken together reduced total plant pollution emissions.\textsuperscript{243} Several environmental agencies disagreed with the EPA's implementation of the bubble approach arguing that the EPA's regulations failed to accurately implement the clean air act.\textsuperscript{244}

Several environmental organizations, including the Natural Resources Defense Council, Citizens for a Better Environment, and the Northwestern Ohio Lung Association, appealed the EPA's regulations to the United States Court of Appeals for the District of Columbia, arguing that the bubble concept did not allow for accurate implementation of the Clean Air Act.\textsuperscript{245} The D.C. Circuit, in an opinion authored by Judge Ruth Bader Ginsburg, vacated the EPA's regulation, effectively denying the EPA use of the bubble concept as a means of implementing the Clean Air Act.\textsuperscript{246} The D.C. Circuit reasoned that the congressional intent in drafting the Clean Air Act was to improve air quality.\textsuperscript{247} The D.C. Circuit determined that precedent required finding the EPA's interpretation of the regulation impermissible where the congressional objective was to improve, rather than maintain, air quality.\textsuperscript{248} Chevron and the EPA filed the writ of certiorari with the United States Supreme Court, which granted certiorari to determine whether Congress envisioned implementation of the EPA's plant-wide definition when it enacted the Clean Air Act.\textsuperscript{249}

The Supreme Court reversed the judgment of the Court of Appeals for the District of Columbia, holding that the EPA's interpretation of the Clean Air Act was permissible and deserving of deference where the history of the statute was silent.\textsuperscript{250} Justice John Paul Stevens, writing for the majority, established a two-step methodology for statutory interpretation to review the EPA's interpretation.\textsuperscript{251} The Court's first step involved determining whether Congress had expressed a clear intention regarding the precise issue at hand.\textsuperscript{252} If a court found that Congress had expressed a clear intent, Justice Stevens stated the court and the administrative agency must give effect

\begin{itemize}
\item \textsuperscript{243} \textit{Id.}
\item \textsuperscript{244} \textit{Natural Resources}, 685 F.2d at 718, 724.
\item \textsuperscript{245} \textit{Id.}
\item \textsuperscript{246} \textit{Id.} at 718-20, 728.
\item \textsuperscript{247} \textit{Id.} at 718, 721.
\item \textsuperscript{248} \textit{Id.} at 720.
\item \textsuperscript{249} \textit{Chevron}, 467 U.S. at 837, 840-42.
\item \textsuperscript{250} \textit{Id.} at 862, 864-65.
\item \textsuperscript{251} \textit{Id.} at 839, 842. The opinion was joined by all other members except Justice Thurgood Marshall and Justice William H. Rehnquist who took no part in the decision or consideration and Justice Sandra Day O'Connor who also did not participate in the decision. \textit{Id.} at 839.
\item \textsuperscript{252} \textit{Chevron}, 467 U.S. at 842-43.
\end{itemize}
to Congress' intent. In *Chevron*, the Court determined that Congress, in drafting the Clean Air Act, had not expressed its clear intent as to the applicability of the bubble concept because Congress was silent having never mentioned this concept in its legislation. As such, the Court proceeded to the next step to determine whether the EPA's interpretation was permissible.

In analyzing the second step, the Court determined that because the statute was silent regarding the intent of Congress, the Court must defer to the administrative agency's interpretation unless it found the interpretation impermissible. The Court's decision explored the constitutional separation of powers, which vested policymaking discretion to the elected, representative and more expert executive agencies, whereby the President and the Executive branch resolved statutory ambiguities and filled in statutory gaps. The Court found that Congress' intent was not clear, and therefore it deferred to the EPA's interpretation of statutory construction, which permitted use of the bubble approach. The Court therefore reversed the holding of the D.C. Circuit and upheld the EPA's regulation permitting the bubble approach to define "stationary source" as an entire industrial grouping of pollution-emitting devices.

**ANALYSIS**

In *Thom v. United States*, the United States Court of Appeals for the Eighth Circuit reviewed the Internal Revenue Service's ("IRS's") interpretation of 26 U.S.C. § 453(l)(2)(A); specifically, the court addressed the phrase "used or produced in the trade or business of farming." In *Thom*, the taxpayers' sub-chapter S corporation, T-L Irrigation ("T-L"), used the installment method of accounting ("installment method") to report sales of center pivot irrigation systems made directly to farmers who paid for the systems over two or more years. T-L asserted its election of the installment method was proper because under the plain meaning of § 453(l)(2)(A), center

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253. Id.
254. Id. at 842 n.5, 861-62.
255. Id. at 843.
256. Id.
257. Id. at 843-44, 865-66.
258. Id. at 843, 865.
259. Id. at 841, 866.
260. 283 F.3d 939 (8th Cir. 2002).
pivot irrigation systems qualified as equipment used in the business of farming.\textsuperscript{263} The IRS denied the use of the installment method to T-L for its direct sales to farmers of the irrigation systems because it determined T-L was not in the business of farming.\textsuperscript{264} The Eighth Circuit found that the plain language of § 453(l)(2)(A) did not support T-L’s interpretation.\textsuperscript{265} The Eighth Circuit determined that the word “used” should have been read in the past tense to allow use of the installment method only to report sales of equipment previously used in farming.\textsuperscript{266} The Eighth Circuit therefore reasoned that where T-L did not show that the equipment sold had previously been used in farming, T-L’s direct sales to farmers did not qualify for the § 453(l)(2)(A) exception.\textsuperscript{267}

The Eighth Circuit in \textit{Thom} incorrectly determined the installment method did not apply to equipment sold directly to farmers by a dealer.\textsuperscript{268} This Analysis will argue that the Eighth Circuit in \textit{Thom} correctly began its analysis by looking to the plain meaning of the statute as required under both \textit{Chevron} and \textit{National Muffler} because when congressional intent is plainly understood by the reviewing court, both administrative agencies and the courts must give effect to the congressional intent.\textsuperscript{269} However, this Analysis will argue the Eighth Circuit incorrectly construed the plain language of § 453(l)(2)(A), in failing to give proper deference to the statute’s long history through which Congress had explicitly made the installment method available to taxpayers because the Eighth Circuit inappropriately relied on the IRS’s statutory interpretation adopted in Private Letter Ruling 9606012 (“PLR 9606012”).\textsuperscript{270} Furthermore, this Analysis will argue that the Eighth Circuit erred in citing administrative burdens on the IRS and on taxpayers to support its decision because the IRS routinely imposed recordkeeping burdens on taxpayers claiming tax deductions.\textsuperscript{271} Finally, this Analysis will argue the court’s decision in \textit{Thom} was contrary to public policy, which calls for giving greater assistance to farmers, because disallowing use of the installment method to dealers in farm equipment will increase the cost of financing, thereby increasing costs to farmers.\textsuperscript{272}

\textsuperscript{263} \textit{Id.} at 1099.
\textsuperscript{264} \textit{Id.} at 1098. T-L and T-L’s stockholders commenced a suit for return of additional taxes paid. \textit{Id.}
\textsuperscript{265} \textit{Thom}, 283 F.3d at 939, 943.
\textsuperscript{266} \textit{Id.} at 943.
\textsuperscript{267} \textit{Id.} at 941, 943.
\textsuperscript{268} \textit{See infra} notes 273-401 and accompanying text.
\textsuperscript{269} \textit{See infra} notes 273-307 and accompanying text.
\textsuperscript{270} \textit{See infra} notes 308-57 and accompanying text.
\textsuperscript{271} \textit{See infra} notes 358-80 and accompanying text.
\textsuperscript{272} \textit{See infra} notes 381-401 and accompanying text.
I. THE EIGHTH CIRCUIT CORRECTLY BEGAN ITS ANALYSIS BY LOOKING TO THE PLAIN LANGUAGE OF THE STATUTE

As required under both *Chevron U.S.A., Inc. v. National Resources Defense Council, Inc.*\(^ {273}\) and *National Muffler Dealers Ass'n v. United States*,\(^ {274}\) the Eighth Circuit in *Thom* correctly looked to the plain language of § 453(l)(2)(A) to begin its analysis.\(^ {275}\) However, the Eighth Circuit then mistakenly followed the *Chevron* court's analytical path and failed to give proper deference to the history and evolution of the tax code.\(^ {276}\) Thus, the court in *Thom* failed to acknowledge that Congress originally made the installment method applicable to sales of personal property and that the installment method should remain available to taxpayers until Congress explicitly revokes the right to use the installment method.\(^ {277}\)

A. NATIONAL MUFFLER AND CHEVRON BOTH INDICATE THAT A COURT SHOULD FIRST LOOK TO THE PLAIN MEANING OF THE STATUTE

The United States Supreme Court has traditionally utilized two different approaches to statutory interpretation.\(^ {278}\) Under *Chevron*, if a statute can be clearly and unambiguously understood by a court, the court's inquiry should end.\(^ {279}\) Furthermore, the *Chevron* court indicated that if a court cannot find clear and unambiguous congressional intent in the language of the statute, a court should determine whether the proffered regulation is reasonable.\(^ {280}\) Under *Chevron* and *Commissioner v. South Texas Lumber*,\(^ {281}\) if a court determines that the regulation is reasonable, the court should defer to the reviewing agency for construction of the statute.\(^ {282}\) Contrastingly, the Supreme Court in *National Muffler* urged courts to give great weight to the tax code's legislative history to treat the entire code as a single

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275. See infra notes 278-307 and accompanying text.
276. See infra notes 308-57 and accompanying text.
277. See infra notes 278-357 and accompanying text.
280. *Id.* at 843.
281. 333 U.S. 496 (1948).
282. *Chevron*, 467 U.S. at 844 (stating that courts must adopt an agency's reasonable interpretation); *Comm'r v. South Texas Lumber Co.*, 333 U.S. 496 (1948) reh'g denied, 334 U.S. 813 (1948) (stating that treasury regulation must be sustained unless unreasonable).
unit rather than a disparate collection of odds and ends. Courts should not apply *Chevron* strictly in tax cases. Instead, substantial weight should be given to the tax code because it presents a rich, detailed and contemporaneous resource for divining congressional intent based on the relatively recent history the tax code represents.

B. **The Eighth Circuit Correctly Began Its Analysis With the Plain Meaning of the Statute**

In *Thom*, the Eighth Circuit correctly began its analysis by looking to the plain meaning of the language in § 453(l)(2)(A), as case law indicates that a court should look to statutory language first to correctly interpret a statute. Statutory text should provide the initial and primary basis for resolving tax controversies. Courts should look to additional sources such as case law, administrative authority, regulations, and tax-policy only after they have exhausted all statutory-based possibilities of resolution. The tax code, when compared to other sources of law, is relatively new and the text is continuously updated. Thus, the tax code requires less liberal construction because the language has become more contemporary, with the drafters always aware of current conditions and language usages. Courts should not arbitrarily declare the tax code ambiguous, nor should they declare its specific language unreasonable, because such declarations displace the statute adopted by elected officials who are ultimately responsible for the tax law.

The United States Supreme Court ruled in *Chevron* that courts should begin any review of an agency’s statutory interpretation by first determining whether Congress’ intent was clear. According to *Chevron*, if the intent is clear, the court’s review of that statute’s lan-

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283. *Natl Muffler*, 440 U.S. at 477 (urging that great weight be given to legislative history); JOHN HONNOLD ET AL, SECURITY INTERESTS IN PERSONAL PROPERTY, 10 (3d ed. 2001) (stating that codes must be treated as a single unit).


289. Id.

290. Id.

291. Id.

292. *Chevron*, 467 U.S. at 842.
language must end. Under *Chevron*, the court and the agency must implement the clearly expressed intent of Congress. In *Chevron*, the Court did not find a clearly expressed intent by Congress. The Court therefore undertook a second step in its analysis whereby it deferred to the administrative agency's construction of the relevant statute to determine whether the agency permissibly interpreted the statute.

Similarly, the Supreme Court in *National Muffler* stated that statutory interpretation must begin with an examination of the plain meaning of a statute's language. The *National Muffler* Court stated that reviewing courts must begin statutory analyses by first determining whether the agency's regulation harmonized with the statute's plain language. In *National Muffler*, the Court determined an agency's regulation that interpreted a statute did not harmonize with the statute's plain language because the statutory language was too ambiguous. Upon that finding of ambiguity, the Court then looked further to the legislative and regulatory history of the regulation to ascertain whether the agency's regulation was in harmony with congressional intent. Ultimately, the *National Muffler* Court found the regulation to reasonably carry out the congressional mandate to only grant non-profit status to an association if it qualified as a business league.

Like the Court in *Chevron* and *National Muffler*, the Eighth Circuit in *Thom* began its analysis of § 453(l)(2)(A) by looking to the plain meaning of that statute. The *Thom* court opined that a court must look to the plain meaning of a statute when determining whether a statutory exception applied. In *Thom*, as in *Chevron* and *National Muffler*, the court stated that if a statute's language was unambiguous and if the intent of Congress was not clearly contrary to the statutory language, then the Court must regard the statutory language as conclusive. In applying that theory, the *Thom* court looked to the plain

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293. *Id.* at 842-43.
294. *Id.*
295. *Id.* at 842 (referring to Congress' silence in regards to the bubble concept and its application to the enforcement of The Clean Air Act).
296. *Id.* at 843.
298. *Id.* at 477.
299. *Id.* at 476-77, 484.
300. *Id.* at 484.
301. *Id.* at 488-89.
302. *Compare Thom*, 283 F.3d at 943 (beginning its analysis by addressing the plain language of the statute); *with Chevron* 467 U.S. at 842 (beginning with the statute); and *National Muffler*, 440 U.S. at 477 (beginning with the statute).
303. *Thom*, 283 F.3d at 943.
304. *Id.*
meaning of the word “used” which appeared in § 453(l)(2)(A) in the past tense, just as the Courts in Chevron and National Muffler looked to the plain meaning of statutory language.\textsuperscript{305} As a result, the court in Thom determined that equipment must have been used by taxpayers before the taxpayer could apply the installment method to account for certain farming equipment.\textsuperscript{306} Thus, in following the Chevron and National Muffler Courts, the court in Thom correctly began its analysis by looking to the plain meaning of the § 453(l)(2)(A) statutory language.\textsuperscript{307}

C. THE EIGHTH CIRCUIT INCORRECTLY DETERMINED THE PLAIN LANGUAGE OF § 453(l)(2)(A) UNAMBIGUOUSLY SUPPORTED THE IRS’S INTERPRETATION

Based upon both Chevron and National Muffler, the Eighth Circuit in Thom correctly noted that the district court should have looked to the plain meaning of the statute in reaching its decision.\textsuperscript{308} However, the court in Thom incorrectly determined that the plain language of § 453(l)(2)(A) unambiguously supported the IRS’s interpretation of the statute, which maintained that the exception allowing use of the installment method was limited to farmers.\textsuperscript{309} The Eighth Circuit’s incorrect reading of the statute resulted because the court gave too much deference to the IRS’s interpretation in formulating its § 453(l)(2)(A) construction.\textsuperscript{310} The Thom court relied on PLR 9616012 as the basis for finding that the plain meaning of the statutory language supported its interpretation and thereby demonstrated the court’s deference to the IRS.\textsuperscript{311} In deferring to the IRS’s interpretation, the Eighth Circuit in Thom failed to properly follow the general rules of statutory construction under which deference to an administrative agency’s interpretation can occur only after first looking to the plain meaning of the statutory language, and then to congressional intent and legislative history.\textsuperscript{312}

In Thom, the court deferred to the PLR 9616012’s construction of § 453(l)(2)(A).\textsuperscript{313} In PLR 9616012, a taxpayer sought guidance from the IRS regarding the taxpayer’s use of the installment method to ac-

\textsuperscript{305} Compare id. (beginning its analysis by addressing the plain language of the statute); with Chevron 467 U.S. at 842 (beginning with the statute); and Nat’l Muffler, 440 U.S. at 477 (beginning with the statute).
\textsuperscript{306} Id.
\textsuperscript{307} See supra notes 278-306 and accompanying text.
\textsuperscript{308} See supra notes 278-306 and accompanying text.
\textsuperscript{309} See infra notes 310-29 and accompanying text.
\textsuperscript{310} See infra notes 311-29 and accompanying text.
\textsuperscript{311} See infra notes 313-20 and accompanying text.
\textsuperscript{312} See supra notes 273-307 and accompanying text.
\textsuperscript{313} Thom, 283 F.3d at 943.
count for installment contract sales of watering systems used in poultry operations. The poultry operations were clearly farming operations, and the watering systems thus were clearly intended for use in farming, as § 453 specifically required. Nevertheless, the IRS's response in PLR 9616012 directed the taxpayer that he could not elect to use the installment method because he was in the business of selling personal property that farmers would then use in farming subsequent to the taxpayer's sale of such equipment. Thus, PLR 9616012 indicates that statutory interpretations should focus on the type of property to be reported by a taxpayer.

Under the proposition advanced in PLR 9616012, the word “used” identified a type of property rather than the actual history of a specific piece of property or equipment; specifically the word “used” referred to equipment utilized in the actual farming process, not just sold to those who would later use the equipment to farm land. According to PLR 9616012, the proper determination of the meaning behind the word “used” should be based upon the equipment type rather than its past usage. Therefore, equipment such as center pivot irrigation systems or tractors, which are utilized during the farming process, should qualify for application of the installment method under § 453(l)(2)(A) because they can be classified as a type of equipment used in the farming process, as required by PLR 9616012.

In Thom, the court misread the plain language of the statute when it concluded that the words “used” and “produced” must both be read in the past tense because “used” is a “past participle within a subordinate clause modifying the word ‘property.’” The Thom court erred by reading § 453(l)(2)(A) so narrowly that it applied the statute only to equipment previously used in the farming process by farmers. The Thom court did not look at the type of equipment, but only looked at the past usage by looking at the word “used” in the past tense. The Thom court's interpretation of § 453(l)(2)(A) further indicated that a farmer cannot sell even a combine, a specific type of equipment used in farming, under the installment method if it had never been used for harvest because it had not yet actually been “used

315. Id. (stating that poultry water drinking systems had no alternative use).
316. Id. (noting that taxpayer's sales qualified as dealer dispositions).
317. Id. (noting that interpretations should focus on the type of property).
318. Thom, 283 F.3d at 946 (Gibson J. dissenting).
319. Id. (Gibson J. dissenting).
320. Id. (Gibson J. dissenting).
321. Id. at 945 (Gibson J. dissenting).
322. Id. (Gibson J. dissenting).
323. Id. at 943.
in farming." 324 Thus, although the Eighth Circuit in Thom purportedly grounded its decision in the plain language interpretation of § 453(l)(2)(A), it actually failed to acknowledge the purely plain meaning of statutory language as articulated under Chevron and National Muffler. 325

The court's interpretation ultimately rendered the tax code's definition of "dealer" as superfluous because dealers, unlike farmers, cannot even claim that they previously used farming equipment in the farming process; qualification as a "dealer" is therefore meaningless because no entity claiming to be a dealer rather than a farmer could ever escape the Thom court's § 453(l)(2)(A) restrictions. 326 This erroneous interpretation resulted from the Thom court's deference to the IRS's interpretation in PLR 9616012 before it had correctly looked to the plain meaning of the language of § 453(l)(2)(A) and the history of the installment method under the tax code. 327

The Thom court's interpretation of the plain meaning of the word "used" within § 453(l)(2)(A), by rendering the statute's definition of the word "dealers" superfluous, also rendered § 453 superfluous because § 453 provides an accounting exception for "dealers" of farm equipment; the exception does not apply to farmers, who could apply the installment method for proceeds pursuant to traditional tax laws without relying on the § 453 exception for dealers. 328 Thus, § 453(l)(2)(A) lost all utility after Thom when the congressional action that enacted the language became meaningless, which contradicted generally accepted rules of statutory construction that favor acknowledgement of congressional intent. 329

D. **Even if the Statutory Language Was Ambiguous, the Eighth Circuit Should Have Looked to the Legislative History Before Looking to the IRS Interpretation.**

Even if the Eighth Circuit in Thom had found the statutory language of § 453(l)(2)(A) to be ambiguous, the court should have next looked to the legislative history of the installment method's availability to taxpayers before deferring to the IRS's interpretation of § 453(l)(2)(A), which indicated the Thoms must be engaged in the farming process to use the installment method. 330 By looking to the IRS's interpretation of § 453(l)(2)(A) without first looking at the his-

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324. Id. at 946 (Gibson, J. dissenting).
325. See supra notes 273-324 and accompanying text.
326. See infra notes 327-45 and accompanying text.
327. See infra notes 328-45 and accompanying text.
328. See infra notes 330-57 and accompanying text.
330. See infra notes 331-57 and accompanying text.
tory of the installment method within the tax code, the Eighth Circuit showed greater deference to the statutory construction put forth by an administrative agency. In so doing, the court in Thom failed to give appropriate attention to the history of the tax code, as it should have followed the reasoning in National Muffler and given more weight to other factors, such as the history of the installment method under the tax code.

In Thom, the legislative history of § 453 buttressed T-L's argument, which asked the court to look to the "true" plain language of the statute by interpreting words as they were generally understood in the text. The tax code is both comparatively new and regularly revisited by Congress; careful readings of the many changes made to the language of the tax code over the years provide a clear understanding of what Congress intended when enacting the tax code. Specifically, the legislative history of the installment method reflects that the installment method has been available generally to dealers of personal property — particularly to dealers of farm equipment since the inception of the income tax in America.

Seven major tax acts in the 1980s alone exemplify how frequently the tax code is revisited. Frequent changes to the tax code demonstrate Congress's constant and close attention to the language of the code. Regarding the installment method, Congress has amended § 453 of the income tax code several times through the years, with the changes greatly restricting the installment method's availability to certain taxpayers. Because Congress has modified § 453 so frequently and because those modifications have consistently restricted the availability of the installment method to taxpayers but have retained availability of such use for dealers, Congress must not have explicitly intended to take away installment treatment for dealer dispositions of farm equipment. By crafting a specific exception that allows the installment method to be utilized for "sales of equipment used or produced in farming," Congress plainly and unambiguously

331. See infra notes 341-45 and accompanying text.
332. See infra notes 346-57 and accompanying text.
333. Brief in support of Plaintiff's Claim for Refund, at 6, Thom v. United States, 134 F. Supp. 2d 1093 (D. Neb. 2001) (No. 4:00CV3121) (citing Perrin v. United States, 444 U.S. 37, 37, 42 (1979)).
336. Livingston, 69 Tex. L. Rev. at 827.
337. Id.
338. See supra notes 71-133 and accompanying text.
elected to allow installment method treatment to remain available to dealers of farm equipment.  

In *Thom*, the United States took the position that § 453(l)(2)(A) existed for use solely by farmers and not for dealers of farm equipment.  

After correctly beginning its analysis with an examination of statutory language in § 453(l)(2)(A), the *Thom* court mistakenly failed to give sufficient attention and deference to the historical situations where the tax code has allowed dealers to utilize the installment method of accounting. By failing to give proper attention to the history of the installment method's availability to dealers as taxpayers, the *Thom* court skipped a necessary step in its statutory analysis. Furthermore, by failing to look to the legislative history of § 453(l)(2)(A), the court prematurely deferred to the IRS's administrative interpretation of the statute; pursuant to *Chevron*, such deference should occur only after an analysis of a statute's plain meaning and/or legislative history. Thus, the *Thom* court misapplied the *Chevron* test by deferring to the IRS's interpretation of § 453(l)(2)(A) without first properly acknowledging the legislative history of § 453.  

Historically, when courts interpreted or construed a statute of the tax code, they were inclined to construe the statute against the government and in favor of the taxpayer. In *Old Colony Railroad Company v. Commissioner*, for example, the United States Supreme Court stated that "if there were doubt as to the construction of a term and another meaning might be adopted, the fact of its use in a tax statute would incline the scale to the construction most favorable to the taxpayer." The Court in *Old Colony* stated that if the meanings of certain statutory words were doubtful, courts should resolve all doubt in favor of the taxpayer and against the government.  

The Supreme Court later moved away from that position taken in *Old Colony* and began sustaining Treasury regulations unless they were inconsistent with federal revenue statutes or were deemed un-

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341. *Thom*, 283 F.3d at 943.
342. *See supra* notes 273-340 and accompanying text.
343. *See supra* notes 273-340 and accompanying text.
344. *See supra* notes 273-340 and accompanying text.
345. *See supra* notes 273-340 and accompanying text.
347. 284 U.S. 552 (1932).
349. *Id.* at 561-62.
reasonable by the court. Generally, courts have justified this movement by referring to the perceived competence of the governmental agency interpreting the statute. In the tax code arena, this preferred deference to an agency has resulted in courts adopting a generally skeptical attitude when considering the meanings of certain tax code provisions as urged by taxpayers; that skepticism that results from the courts' deference to the IRS's view that statutory provisions are not intended to protect taxpayers who seek to avoid the burdens imposed by the provisions to be reviewed by courts.

In Thom, the court erroneously strayed from Old Colony by deferring to the IRS and construing § 453(l)(2)(A) against the taxpayer. If the Thom court had followed the historical rules laid down in Old Colony, the Eighth Circuit would have reached a decision favoring T-L as taxpayer. By following the more recent trend that presumes agency competence, the Thom court adopted a skeptical attitude toward the taxpayer's interpretation of § 453, assuming that the Thoms used the installment method to avoid imposed income taxes. This skepticism was misplaced, as T-L did not look to avoid taxes but only looked to defer the tax to the year in which T-L realized the income; T-L did not therefore plan to engage in any acts which merited skepticism by the reviewing court. Thus, by failing to apply the theories presented in Old Colony, the Thom court incorrectly presumed competence by the IRS and therefore improperly deferred to the IRS's interpretation of § 453 before analyzing the legislative history of the statute in a light most favorable to the taxpayer.

II. THE EIGHTH CIRCUIT INCORRECTLY CITED ADMINISTRATIVE BURDENS AS A BASIS FOR DENYING T-L THE USE OF THE INSTALLMENT METHOD

The Eighth Circuit incorrectly cited administrative burdens as a basis for denying T-L the use of the installment method. In Thom, the United States government argued that its interpretation of § 453(l)(2)(A) avoided imposing an administrative burden on both the

351. Morse, 8 CORNELL J.L. & PUB. POL'Y at 484.
352. Id. (citation omitted).
353. See supra notes 273-352 and accompanying text.
354. See supra notes 273-352 and accompanying text.
355. See supra notes 273-352 and accompanying text.
356. See supra notes 273-352 and accompanying text.
357. See supra notes 273-352 and accompanying text.
358. See infra notes 359-80 and accompanying text.
IRS and T-L as the taxpayer in determining whether the buyer would subsequently use the equipment in farming.\footnote{359} In doing so, the \textit{Thom} court commented on the taxpayer’s burden in maintaining the necessary records to substantiate that farmers were actually using the equipment sold in farming.\footnote{360} However, the \textit{Thom} court failed to note that taxpayers generally choose to take on that burden but may avoid the burden by simply choosing not to elect to use the installment method.\footnote{361} In \textit{Thom}, T-L specifically elected to undertake the administrative burden of substantiating that farmers who purchased the center pivot irrigation systems sold by T-L were using the equipment in the farming process.\footnote{362} T-L elected to use the installment method to report its direct sales to farmers and met the substantiation burden allowing use of the installment method by maintaining a database of its direct purchase customers with proof that the customers actually did use the equipment in farming.\footnote{363}

In \textit{Thom}, the government argued that if the court followed T-L’s interpretation of § 453(l)(2)(A), dealers of other products like pick-up trucks would follow T-L’s reasoning and the resulting use of the installment method would increase the administrative burden on the IRS in enforcing appropriate utilization of the installment method.\footnote{364} The Eighth Circuit court in \textit{Thom} discussed the necessity of requiring dealers selling farm equipment on the installment basis to maintain evidence that the buyer was engaged in farming and that the equipment was actually used in farming in order to satisfy the IRS on audit.\footnote{365} However, contrary to the \textit{Thom} court’s discussion, the burden of substantiation actually remains with the taxpayer throughout the tax code.\footnote{366}

\begin{itemize}
\item \footnote{359}{Appellants’ Brief at 19, Thom v. United States, 283 F.3d 939 (8th Cir. 2002) (No. 01-2014).}
\item \footnote{360}{Thom, 283 F.3d at 943-44. On audit a dealer would need to prove that the buyer actually used the property purchased in farming to justify the use of the installment method. \textit{Id.}}
\item \footnote{361}{\textit{Id.} (stating that upon audit, a dealer would have to satisfy the IRS that the buyer actually used the equipment in farming); See \textit{infra} notes 362-80 and accompanying text (noting that taxpayers bear the burden of substantiating all claimed tax deductions).}
\item \footnote{362}{\textit{Thom}, 283 F.3d at 943-44 (noting that direct sales were to farmers); Joint Stipulation of Facts at 4 §10, Thom v. United States, 134 F. Supp. 2d 1093 (D. Neb. 2001) (No. 4:00CV3121) (stating that T-L only elected the installment method for direct sales to farmers).}
\item \footnote{363}{\textit{Thom}, 283 F.3d at 943-44.}
\item \footnote{364}{Defendants’ Brief in Support of Motion for Summary Judgment at 23, Thom v. United States, 134 F. Supp. 2d 1093 (D. Neb. 2001) (No. 4:00CV3121).}
\item \footnote{365}{\textit{Thom}, 283 F.3d at 943.}
\item \footnote{366}{Appellants’ Brief at 19, Thom v. United States, 283 F.3d 939 (8th Cir. 2002) (No. 01-2014).}
\end{itemize}
For example, 26 U.S.C. § 170(f)(8)(A) requires taxpayers to substantiate donations to charitable organizations with written receipts for any donation of two hundred fifty dollars or more.\textsuperscript{367} Furthermore, § 170(f)(8)(D) also requires charities to provide accurate and valid receipts to donors that meet certain requirements.\textsuperscript{368} Though the IRS allows charities to file a report directly to the IRS containing substantiating information for all people donating two hundred fifty dollars or more, the burden of substantiation remains on the donor/taxpayer.\textsuperscript{369} As such, the IRS, through other provisions of the tax code, often imposes a burden on taxpayers that requires taxpayers to undertake the administrative burden of substantiation or forego the potential deduction.\textsuperscript{370} Thus, in \textit{Thom} the court incorrectly determined that adopting the interpretation recommended by the taxpayers would impose an impermissible administrative burden on taxpayers because the burden is similar to that imposed on taxpayers itemizing their charitable contributions in order to take an income tax deduction.\textsuperscript{371}

Another example of IRS administration of a statutory provision that depended upon a buyer's substantiation of use of a product appears in 26 C.F.R. § 48.0-3, which requires a manufacturer or retailer to obtain a certificate of exemption from a buyer to substantiate an exempt sale.\textsuperscript{372} Both the charitable receipt and tax-exempt certificate requirements demonstrate that the IRS can and does implement policies that allow a taxpayer to receive a benefit only if that taxpayer undertakes a substantiation burden to document his or her eligibility to receive benefits.\textsuperscript{373} Applying a similar requirement to dealers selling farm equipment would therefore be consistent with existing IRS administrative policy in other areas of the tax code.\textsuperscript{374}

In \textit{Thom}, T-L accepted a burden similar to that faced by taxpayers seeking deductions for charitable contributions or relief from excise taxes.\textsuperscript{375} The administrative burden on T-L in \textit{Thom} was no greater than that imposed by 1 U.S.C. § 1-170A.13(ii) for donations to charities or under § 48.0-3 for excise taxes because dealers need only

\textsuperscript{368} Id. Taxpayers must have receipts that denote the amount given, any tangible benefits received in exchange for the gift. \textit{Id}.
\textsuperscript{370} \textit{Compare Thom} 283 F.3d at 943 (requiring dealers to substantiate that purchasers were engaged in farming) \textit{with} 26 U.S.C. § 170(f)(8) (requiring taxpayers to substantiate charitable contributions), \textit{and} Treas. Reg. § 48.0-3 (2001) (requiring manufacturers to obtain a certificate of exemption from buyers).
\textsuperscript{371} \textit{See supra} note 359-64 and accompanying text.
\textsuperscript{373} \textit{See supra} notes 359-72 and accompanying text.
\textsuperscript{374} \textit{See supra} notes 359-73 and accompanying text.
\textsuperscript{375} \textit{See supra} notes 359-62 and accompanying text.
maintain a list of customers and evidence that they are farmers.\textsuperscript{376} Under § 170(f)(8) and § 48.0-3 taxpayers had to maintain records to substantiate their charitable donation deductions and their deductions for excise taxes already paid.\textsuperscript{377} Similarly, the taxpayers in \textit{Thom} shouldered the administrative burden involved in substantiating that the taxpayers sold the center pivot irrigation systems directly to farmers and that the farmers used the systems in farming.\textsuperscript{378} This burden was no greater than that imposed on taxpayers electing to deduct charitable donations or excise taxes.\textsuperscript{379} Therefore, because the IRS imposes a similar substantiation burden on taxpayers seeking favorable tax treatment for charitable donations and excise taxes, the \textit{Thom} court incorrectly determined that an administrative burden involved with substantiating sales of equipment to farmers would be too onerous.\textsuperscript{380}

III. THE EIGHTH CIRCUIT FAILED TO ASSIST FARMERS, WHICH IS CONTRARY TO PUBLIC POLICY THAT FAVORS FARMERS

For public policy reasons, the court in \textit{Thom} incorrectly failed to provide favorable treatment to dealers selling equipment to farmers for use in farming.\textsuperscript{381} Granting favorable tax treatment for sales of farm equipment to farmers is in accord with the long history of favorable treatment for such transactions.\textsuperscript{382} Thus, by denying use of the installment method in sales of center pivot irrigation systems directly to farmers, the Eighth Circuit violated public policy.\textsuperscript{383}

Public policy supports the notion of allowing dealers of farm equipment to use the installment method because use of the installment method would permit dealers to offer better financing terms to farmers, thereby making expensive equipment more accessible to farmers.\textsuperscript{384} The federal government has supported farmers finan-

\textsuperscript{376} Compare \textit{Thom} 283 F.3d at 943 (requiring dealers to substantiate that purchasers were engaged in farming) with 26 U.S.C. § 170(f)(8) (requiring taxpayers to substantiate charitable contributions), and Treas. Reg. § 48.0-3 (2001) (requiring manufacturers to obtain a certificate of exemption from buyers).

\textsuperscript{377} See supra notes 367-74 and accompanying text.

\textsuperscript{378} Compare \textit{Thom} 283 F.3d at 943 (requiring dealers to substantiate that purchasers were engaged in farming) with 26 U.S.C. § 170(f)(8) (requiring taxpayers to substantiate charitable contributions), and Treas. Reg. § 48.0-3 (2001) (requiring manufacturers to obtain a certificate of exemption from buyers).

\textsuperscript{379} See supra notes 358-79 and accompanying text.

\textsuperscript{380} See infra notes 383-401 and accompanying text.

\textsuperscript{381} See infra notes 384-401 and accompanying text.

\textsuperscript{382} See supra notes 382-401 and accompanying text.

\textsuperscript{383} Brief of Appellants at 23, \textit{Thom} v. United States, 283 F.3d 939 (8th Cir. 2002) (No. 01-2014).
cially through various programs for over two hundred years. The federal government has used its resources through the years to support and encourage the expansion of the family farm. Specifically, Congress has treated farmers differently than other taxpayers since the inception of the original income tax law. For example, from 1913 until the present day, the tax code has allowed farmers to use the cash method of accounting rather than the accrual method. Thus, interpreting § 453(l)(2)(A) to include sales of farm equipment by dealers directly to farmers would be consistent with this policy.

In Thom, T-L's use of installment contracts allowed farmers to purchase center pivot irrigation systems because the installment contracts alleviated the farmer's lack of liquidity. In Thom, T-L was likely able to offer favorable payment terms and interest rates to farmers because the installment method of reporting allowed T-L to report income only when it actually received the cash from sales of the equipment. Without the related tax benefits of installment contracts, many farmers could not have purchased farm machinery and equipment such as the center pivot irrigation systems sold by T-L in Thom. Thus, the Eighth Circuit's decision in Thom, which denies use of the installment method to dealers, thereby accelerating the inclusion of income and increasing financing costs for farmers, will hurt farmers.

Further, the court's decision in Thom hurts farmers by making financing of farm equipment more expensive for dealers like T-L who finance equipment sales to farmers. The prohibition of the installment method removed a potential tax advantage for dealers who provided financing to farmers, thereby removing an incentive that

387. Shores, 10 VA. TAX REV. at 312.
388. Id.
390. Joint Stipulation of Facts at 4 ¶ 10, Thom v. United States, 134 F. Supp. 2d 1093 (D. Neb. 2001) (No. 4:00CV3121) (stipulating that T-L maintained a list of the names of farmers who bought center pivot irrigation systems directly from T-L where T-L provided the financing and at least one payment was to be received after the close of the taxable year in which the sale occurred); Frank J. Slagle, A Practical Guide for Counseling Farmers and Ranchers: A Review of the Farming and Ranching Industries, 39 S.D. L. Rev. 455, 455 (1994) (stating that liquidity and access to financing is an ongoing concern of farmers).
393. See supra notes 384-92 and accompanying text.
394. See supra notes 384-92 and accompanying text.
encouraged dealers to provide financing for its customers engaged in farming. The IRS in Thom argued that other markets existed for center pivots beyond farmers but produced no evidence to that effect. In addition, the Eighth Circuit's opinion in Thom did not discuss that T-L only used the installment method for its sales made directly to farmers. By only using the installment method for its direct sales to farmers, T-L endeavored to qualify for the exception under § 453(l)(2)(A) by assuring that T-L only used the installment method for sales of equipment that would be "used" in farming by farmers. As such, the advantage the installment method provided T-L accrued only to the farmers receiving financing from T-L because only these contracts involved installment method elections. Therefore, the Eighth Circuit in Thom incorrectly violated the well-established public policy of the United States in support of the family farmer. As a result, public policy also supports a conclusion that the Eighth Circuit erred by misconstruing the plain language of § 453(l)(2)(A) and failing to give proper attention to the history of the installment method availability to taxpayers, which provided a special exception for dealer dispositions of equipment "used or produced" in farming.

CONCLUSION

In Thom v. United States, the United States Court of Appeals for the Eighth Circuit rejected T-L Irrigation's ("T-L") claim that 26 U.S.C. § 453(l)(2)(A) of the United States Tax Code entitled dealers selling farm equipment to use the installment method to account for equipment sales made directly to farmers where payments occurred in at least two subsequent years following the sale. The court examined the language of § 453(l)(2)(A) and found support for its decision in the plain language of the statute by deferring to the IRS's interpretation that the word "used" must be read in the past tense so that equipment must already have been used in farming for an equipment sale to qualify for use of the installment method. Further, the

395. See supra notes 384-92 and accompanying text.
396. Thom, 283 F.3d at 944 n.7.
397. Id. at 939-46.
398. Id. (stating that T-L only used the installment method for its direct sales to farmers); 26 U.S.C. § 453(l)(2)(A) (2000) (defining an exception allowing use of the installment method for sales of equipment used or produced in farming).
399. See supra notes 389-98 and accompanying text.
400. See supra notes 389-99 and accompanying text.
401. See supra notes 266-337 and accompanying text.
402. 283 F.3d 939 (8th Cir. 2002).
403. Thom v. United States, 283 F.3d 939, 941, 945 (8th Cir. 2002).
404. Thom, 283 F.3d at 943.
court stated that the administrative burdens that would be imposed on both taxpayers and the IRS by adopting T-L’s interpretation provided additional support for its decision.405

The Thom court correctly began its analysis of the statute in question by looking to the plain language of § 453 to determine whether T-L could elect installment treatment for its direct sales of irrigation systems to farmers.406 The Eighth Circuit erred, however, when it adopted the IRS’s interpretation of the statutory language from a prior Private Letter Ruling and found that the statute did not allow T-L to elect use of the installment method for its direct sales because the irrigation systems had not yet been used in farming.407 Even if the Thom court had found the language of § 453 ambiguous, it should have looked to the statutory history of the installment method for guidance in interpreting § 453 before deferring to the IRS’s interpretation.408 The court’s decision denying use of the installment method to T-L could not survive a correct application of the steps of statutory construction whereby the court would look to the legislative history of the installment method in the context of the tax code before looking to the IRS’s § 453 interpretation.409 Furthermore, the inclusion of installment sales by farm equipment dealers under § 453 is consistent with the longstanding congressional policy of assisting farmers.410 Therefore, the Eighth Circuit erred in upholding the district court’s ruling, which denied the use of the installment method to dealers selling farm equipment directly to farmers.411

Humpty Dumpty may be able to make words mean what he wants them to mean, but the judicial branch of the United State government should not grant the IRS the same privilege. In Thom, the IRS played the role of Humpty Dumpty, insisting words as plain as “used” or “farm” or “equipment” meant just what the IRS chose them to mean, neither more nor less. By having words mean only what they chose them to mean, neither more nor less, the IRS, like Humpty Dumpty may be setting up for a big fall.

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405. Id. at 943-44.
406. See supra notes 273-307 and accompanying text.
407. See supra notes 308-57 and accompanying text.
408. See supra notes 330-57 and accompanying text.
409. See supra notes 358 and accompanying text.
410. See supra notes 381-401 and accompanying text.
411. See supra notes 273-401 and accompanying text.