UNITED STATES TAX COURT
WASHINGTON, DC 20217

HENRY J. METZ & CHRISTIE M. METZ, ET AL.,		
Petitioner(s),		
v.	Docket No.	10346-10, 28718-10, 5991-11.
COMMISSIONER OF INTERNAL REVENUE,		
Respondent		

ORDER

The Court released the opinion in this case, *Metz v. Commissioner,* 109 TCM (CCH) 1248 (2015), in March 2015. We needed the parties to do computations under Rule 155 to enter a final decision, but the process gradually revealed that they weren't going to be able to agree. By the time they submitted competing computations -- perhaps 50 pages from the Commissioner and several hundred pages of a First through Eleventh Supplement to Computation from the Metzes -- the Court knew it needed help.

In a phone call with them on April 19, they quickly made clear that the key issue keeping them from finally getting the case into the barn is the effect of the Metzes' ownership of the real estate used by Mrs. Metz's corporation, SMF, Inc., on her basis in that corporation. Both parties agree that with some help by the Court on this issue, they should be able to agree on the rest.

Background

As explained in the opinion, the Metzes ran their business -- a well-regarded Arabian horse-breeding operation -- under the name Silver Maple Farms, Inc. They formed SMF as an S corporation while they still lived in Iowa, and Mrs. Metz was its sole shareholder. *Metz*, 155 TCM at 1253. SMF later bought a farm in Florida, but beginning in 2002 the Metzes moved SMF's operations to two properties in California. *Id.* at 1254.

Part of this move involved the sale of SMF's real property in Florida. This farm was valuable and titled to SMF. Fourth Stipulation of Facts ¶¶ 5-6. When the Metzes sold that farm

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they deposited the proceeds into their own account at J.P. Morgan. Fourth Stipulation of Fact ¶¶ 11-13. That made those proceeds a distribution from SMF. *See* I.R.C. § 1368(b); 26 C.F.R. § 1.1368-3 Example 1. *See also Feraco v. Commissioner*, 80 TCM 463, 469 (2000).

Those proceeds paid off some of the Metzes' debts, but they then used a large portion of them to pay down a loan they took out to buy and improve the two parcels of land in California. Fourth Stipulation of Facts ¶ 14. The parties stipulated that these two properties -- called Happy Canyon and Edison Street -- were *not* titled to SMF. Fourth Stipulation of Facts ¶ 16 states that Happy Canyon was titled to both Metzes; Fourth Stipulation of Facts ¶ 19 states that Edison Street was titled to Mrs. Metz. There is, however, nothing in the record even remotely suggesting that SMF had to pay rent to use these properties for its operations. Nor is there anything in the record suggesting that the Metzes in any way restricted SMF's use of the property for its operations.

Basis in SMF

The biggest dispute between the parties is the effect of these facts on the basis that Mrs. Metz had in SMF.

For the Commissioner, the answer is easy: None at all. Money flowed out of SMF to the Metzes and the Metzes bought real estate in California that SMF used. They chose not to put the money into an SMF account and have SMF buy the real estate, and are now stuck with the form they adopted.

The Metzes first argue that the Commissioner stipulated away this argument - and they are right that there are dozens of references in the stipulations to the properties as, for example, "SMF's Edison Street location." *See, e.g.*, Second Stipulation of Facts ¶¶ 65-66. We followed this in the opinion, finding for example that the "Metzes bought two properties for SMF in the Santa Ynez Valley," *Metz,* 109 TCM at 1254.

Neither works to undermine the actual stipulation as to who owned the real estate. It's common enough in English to use the possessive to signify location or use and not ownership. The Court might say, for instance, that "the McNuggets were especially tasty at the Alexandria McDonald's" without implying in any way that the restaurant owned, leased, or squatted on the real estate it used. And referring to the Metzes' having bought properties for SMF or referring to SMF's California operation identifies their location or use -- it isn't a finding of fact contrary to the stipulation about the title of those properties.

The Metzes, however, make a subtler argument. Even though they held title to the real property that SMF used, that use was of value to SMF and should increase basis in the SMF stock. They point to three cases in particular:

Selfe v. United States, 778 F.2d 769 (11th Cir. 1985);

Bolding v. Commissioner, 117 F.3d 270 (5th Cir. 1997); and

Maloof v. Commissioner, 89 TCM 1022 (2005).

In *Selfe*, a bank loaned money to a shareholder in exchange for a pledge of her corporate stock, but later converted the loans to corporate loans. *Selfe,* 778 F.2d at 770. While acknowledging as a general rule that mere guarantee of a corporate loan isn't sufficient to increase the guarantor's basis in her stock, the Court held that "a shareholder who has guaranteed a loan to a Subchapter S corporation may increase her basis where the facts demonstrate that, in substance, the shareholder has borrowed funds and subsequently advanced them to her corporation." *Id.* at 773. We don't see the analogy the Metzes urge on us: They borrowed money to help buy the Happy Canyon and Edison Street properties, but they didn't put either one in SMF's name and didn't have SMF assume liability on the loans.

In *Bolding*, a bank loaned money to a shareholder who then deposited it into his corporation's account. *Bolding,* 117 F.3d at 271-72. The loan payments were on a corporate checking account. *Id.* at 272. The Fifth Circuit held that this created additional basis for the shareholder, *Id.* at 277. In this case, we don't have any evidence that SMF was writing checks to J.P. Morgan.

In *Maloof,* a bank loan to a corporation was personally guaranteed by a shareholder who also pledged his stock. *Maloof,* 89 TCM at 1022-23. The opinion is especially helpful because it collects the many cases in this field and derives some general rules: Pledging personal assets isn't enough without their foreclosure, loan guarantees aren't enough without their being performed. *Id.* at 1024.

The Metzes proved neither here. That's not to say they had no basis -- they certainly did, but it was in the real estate, not in Mrs. Metz's SMF stock. In many situations this wouldn't make a difference, but it does illustrate again the adage of tax law that taxpayers are ordinarily bound by the form of their transaction and may not argue that its substance triggers different tax consequences. *Maloof,* 89 TCM at 1025 (collecting numerous cases).

In the hope that this allows the parties to agree on Rule 155 computations, it is

ORDERED that on or before June 16, 2016, the parties submit the computations under Rule 155 or file another joint status report describing their plans to do so.

If the parties are able to agree on computations, they are reminded to prepare separate decision documents for each case.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
April 28, 2016