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counterclaim first was an abuse of discretion under Rule 42(b). That is to say, Rule 42(b) neither requires nor permits the result reached by the District Court and upheld by the Court of Appeals and the dissent in the United States Supreme Court. It logically follows that in the principal case, and like cases, the only possible way permissibly to exercise discretion under Rule 42(b) would be to order jury trial of the legal claim before court trial of the "equitable" claim, for the reverse would constitute an abuse of discretion. Since discretion implies a choice, and since in fact there is no choice in this type of case, it is submitted that in effect there is no true discretion to be exercised under 42(b) in the present case and like cases.

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USEFUL LIFE, SALVAGE VALUE, AND THE 1954 INTERNAL REVENUE CODE

The terms "useful life" and "salvage value" have long been familiar to accountants. When Congress enacted section 167 of the Internal Revenue Code of 1954,[1] the groundwork was laid for hammering out in the courts precise definitions of both of these terms, which must first be ascertained before depreciation may be computed. Should these terms have the same meaning in tax law as they have acquired in accounting? And, if so, what do they mean to the accountant?

Depreciation,[2] an important expense in the financial affairs of

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[1]"Sec. 167. DEPRECIATION.

(a) General Rule.—There shall be allowed as a depreciation deduction a a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) of property used in trade or business, or

(2) of property held for the production of income.

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(c) Limitations on Use of Certain Methods and Rates.—Paragraphs (2), (3), and (4) of subsection (b) shall apply only in the case of property (other than intangible property) described in subsection (a) with a useful life of 3 years or more—

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(2) acquired after December 31, 1953, if the original use of such property commences with the taxpayer and commences after such date." Int. Rev. Code of 1954 § 167."

[2]Depreciation, therefore, is an annual expense which represents a systematic and rational spreading of the cost of an asset over the period during which it produces income.

"The amount of allowance for depreciation is the sum which should be set aside for the taxable year, in order that, at the end of the useful life of the

modern business enterprises, is one of the principal means by which the accountant matches costs with revenues. An inconsistency between the accounting and the legal definitions of the elements of depreciation will lead to litigation because the accountant seeks to report actual income, while the attorney seeks to safeguard for his client the maximum allowed tax advantages.

The two phrases, "useful life" and "salvage value," are inseparably intertwined because the definition of one will fix the meaning of the other. For example, if useful life is found to be economic useful life, i.e., the life inherent in the asset, salvage can be no more than scrap value.[3] Conversely, when salvage value is defined as scrap value, it follows that useful life must mean economic useful life, for only upon the expiration of the physical life of an asset has its value been reduced to scrap.[4]

The problem involved grows out of the tax advantage gained by using accelerated depreciation, an example of which is the declining-balance method.[5] To illustrate, assume that a $10,000 asset with a ten-year economic useful life and no salvage value was acquired on January 1, 1954. The non-accelerated straight-line method gives a 10 per cent rate, or $1,000 depreciation expense per year. After four years, or on December 31, 1957, the adjusted basis of the asset would be $6,000 ($10,000-$4,000). On the other hand, under the declining-balance method a 20 per cent rate can be used which will result in depreciation expense of $2,000 in 1954, $1,600 in 1955, $1,280 in 1956, and $1,024 in 1957. The adjusted basis at the end of 1957 would be $4,096. If on January 1, 1958, the taxpayer sells the asset for $6,000, and he has used the straight-line method, he will have neither gain nor loss. On the other hand, if the taxpayer had used

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plant in the business, the aggregate of the sums set aside will (with the salvage value) suffice to provide an amount equal to the original cost." United States v. Ludey, 274 U.S. 295, 300-01 (1927).

[3]For the purposes of this comment, scrap value is synonomous with junk value.

[4]7 Drake L. Rev. 40, 42-43 (1957).

[5]In the declining-balance method of accelerated depreciation, the adjusted basis of an asset is reduced by a constant percentage each accounting period, usually one year. This method gives the greatest depreciation allowance in the first year of the useful life of the property and a gradually smaller allowance in each successive year. The amount of the depreciation allowance for each year is subtracted from the basis of the property (without regard to salvage value), so that each year the uniform depreciation rate is applied to a smaller, or declining-balance. For taxable years after December 31, 1953, new assets having a useful life of three years or more may be depreciated under the declining-balance method at twice the straight-line rate. This practice is known as the double declining-balance. Treas. Reg. § 1.167(b)-2 (1959).

the declining-balance method he would now have a capital gain of $1,904 (the amount realized, $6,000, less the adjusted basis, $4,096). The tax advantage from using the declining-balance method results from the $1,904 gain being taxed as a capital gain at a rate not exceeding 25 per cent,[6] even though the depreciation expense was already deducted from ordinary income during the period, 1954-1957. If instead, the taxpayer chooses to retain that asset in his trade or business his taxable income for the same period would be $1,904 less under the declining-balance method than under the straight-line method, resulting in deferral of the tax until later periods when the depreciation would be less under the accelerated method than under the straight-line method.

Only those assets with a "useful life" of three years or more may be depreciated under the accelerated method.[7] The question is, did Congress intend that those who acquired long term assets with an economic useful life of greater than three years but a useful life to the taxpayer of less than three years be allowed the advantages described above. In other words, does "useful life" in section 167 of the 1954 Internal Revenue Code mean useful life to the taxpayer or useful life inherent in the asset? To view the same problem from the standpoint of salvage value, does "salvage value" mean the same thing as scrap value, or does it denote any sum reasonably estimated to be realizable upon the sale of a long term asset (*i.e.*, a figure below which an asset may not be depreciated.)?

A recent case which points out these problems is *Hertz Corp. v. United States*.[8] The plaintiff applied for a tax refund for the fiscal years

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[6]Int. Rev. Code of 1939, § 117 (j), added by ch. 619, 56 Stat. 846 (1942), as amended, ch. 521, 65 Stat. 500 (1951) (now Int. Rev. Code of 1954 § 1231 (a)).

"If the gains to which section 1231 applies exceed the losses to which the section applies, the gains and losses are ... subject to the provisions of section 1201 through 1212, relating to capital gains and losses." Treas. Reg. § 1.1231-1 (b)(2) (1959). Duval Motor Co. v. Commissioner, 28 T.C. 42 (1957), aff'd, 264 F.2d 548 (5th Cir. 1959); Latimer-Looney Chevrolet, Inc. v. Commissioner, 19 T.C. 120 (1952).

This situation is not to be mistaken for one in which the taxpayer turns over long term assets in such a way that doing so ceases to be an incident of his regular business but becomes a steady and continuous source of recurrent income to him. In such cases, the amount realized on the sale of those assets, which represents the difference between the adjusted basis and the selling price, is treated as ordinary income.

[7]See statute cited note 1 supra.

[8]Hertz Corp. v. United States, 268 F.2d 604 (3d Cir. 1959), reversing 165 F. Supp. 261 (D. Del. 1958), cert. granted, 361 U.S. 811 (1959).

See also Evans v. Commissioner, 264 F.2d 502 (9th Cir. 1959), cert. granted, 361 U.S. 812 (1959); United States v. Massey Motors, Inc., 264 F.2d 552 (5th Cir. 1959), cert. granted, 361 U.S. 810 (1959).

ending March 31, 1954-1956, declaring that he was entitled to use the declining-balance method of depreciation for automobiles used in his car rental agency instead of the straight-line method he had used.[9] It was conceded that automobiles used for public hire have an economic useful life of four years,[10] but the facts disclosed that the plaintiff's actual holding period for automobiles used in his business was 26.17 months during the years 1954-1956 and 29.36 months for the nine year period 1946-1956. The court pointed out that in order to clarify the meaning of "useful life" and "salvage value" the Secretary of the Treasury issued Regulation section 1.167 (a)(1)(b) (1956)[11] defining "useful life" as useful life to the taxpayer. The District Court also ruled that "useful life"[12] meant useful life to the taxpayer, but held that the Hertz Corporation was entitled to the refund because this regulation could not be retroactively applied, as it represented an administrative change of a long-standing rule, both in the legal and accounting professions. The same court concluded that salvage value other than that inherent in the declining-balance method of depreciation[13] is not a factor in determining depreciation. The Court of Appeals reversed the District Court on both points. The court, after examining (1) prior judicial interpretation, (2) administrative practices, and (3) expert opinion, concluded that the disputed regulation did not change previous custom—that "useful life" has always meant useful life to the taxpayer. Salvage value was held to be a factor in determining the depreciation expense under the declining-balance method after the court examined Congressional intent based upon the report of the House of Representatives Ways and Means Committee considering the bill[14] before its passage.

In the *Hertz* case both the taxpayer and the Commissioner maintained that Congress did not intend to change the meaning of any word or words which had a long-standing custom supporting their use. The parties disagreed as to what the long-standing meaning

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[9]The petitioner was the successor by merger to the J. Frank Connors concern which had actually been the one to use the stright-line method. Therefore, the Hertz Corporation is here maintaining that J. Frank Connors made a mistake which Hertz may correct.

[10]Int. Rev. Serv. Publication No. 173 (1955), 2 CCH 1959 Stand. Fed. Tax Rep. paragraph 1777.289.

[11]See text p. 108 infra.

[12]165 F. Supp. 261 (D. Del. 1958).

[13]The declining-balance method of depreciation always leaves an undepreciated amount of the original basis because a constant percentage is applied to a positive figure before subtracting that per cent of the figure from the whole positive figure.

[14]H.R. Rep. No. 1337 83d Cong., 2d Sess. 25 (1954); 3 U.S. Code Cong. & Ad. News, 83d Cong. 2d Sess. 4049 (1954).

really was. If the taxpayer's contention that "useful life" had previously meant economic useful life was correct, a finding that the pertinent regulation[15] was in accord with Congressional intent would preclude the Commissioner from denying the taxpayer the declining-balance method of depreciation.[16] In examining previous judicial interpretation the court justifiably placed little emphasis upon the cases that used the terms "useful life" and "salvage value" since those cases did not attempt to define the terms.[17] Although trends are discernible, no definite pattern can be ascertained from a close reading of the cases.[18] Especially to be noted is *Evans v. Commissioner*,[19] wherein the Court

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[15]Treas. Reg. § 1.167(a)(1)(b) and (c) (1956).

[16]When an interpretative regulation [Treas. Reg. 118, § 39.23(l)(1956)] has become well entrenched from long-continued general acceptance, and when its underlying statute is reenacted by Congress without change, (Int. Rev. Code of 1954, § 167) the taxpayer has a right to rely on such interpretation. If changes are made through administrative channels, [Treas. Reg. § 1.167 (1957)] such changes may not be applied retroactively. Helvering v. R. J. Reynolds Tobacco Co., 306 U.S. 110, 117 (1939); Commissioner v. Clark, 202 F.2d 94 (7th Cir. 1953); Shearer v. Anderson, 16 F.2d 995 (2d Cir. 1927); St. Louis Co. v. United States, 134 F. Supp. 411 (D. Del. 1955); United Fruit Co. v. Hassett, 61 F. Supp. 1013 (D. Mass. 1945). See also Griswold, A Summary of the Regulations Problem, 54 Harv. L. Rev. 398, 411 (1941).

[17]Cohn v. United States, 259 F.2d 371 (6th Cir. 1958); Goldberg v. Commissioner, 239 F.2d 316 (5th Cir. 1956); Philber Equip. Corp. v. Commissioner, 237 F.2d 129 (3d Cir. 1956); Yellow Cab Co. v. Driscoll, 24 F. Supp. 993 (W.D. Pa. 1938); Warren H. Brown, 27 T.C. 27 (1956); Dorothy Caruso, 23 T.C. 836 (1955); Wier Long Leaf Lumber Co., 9 T.C. 990 (1947), aff'd and rev'd other grounds, 173 F.2d 549 (5th Cir. 1949); Terminal Realty Corp., 32 B.T.A. 623 (1935); American Refrigerator Transit Co., 31 B.T.A. 465 (1934); John A. Maguire Estate Ltd., 17 B.T.A. 394 (1929); Sanford Cotton Mills, 14 B.T.A. 1210 (1929); Wallace G. Kay, 10 B.T.A. 534 (1928); Max Curtz, 8 B.T.A. 679 (1927); Whitman-Douglas Co., 8 B.T.A. 694 (1927); Merkle Broom Co., 3 B.T.A. 1084 (1926); J. R. James, 2 B.T.A. 1071 (1925); West Va. & Pa. Coal & Coke Co., 1 B.T.A. 790 (1925); Pilot Freight Carriers, Inc., P-H Tax Ct. Mem. 818 (1956); Otis Beall Kent, 23 P-H Tax Ct. Mem. 53 (1954); Nat Lewis, 23 P-H Tax Ct. Mem. 1064 (1954); Transoceanic Terminal Corp., 23 P-H Tax Ct. Mem. 270 (1954); L. A. Davidson, 22 P-H Tax Ct. Mem. 983 (1953); Louis E. Whitham, 20 P-H Tax Ct. Mem. 232 (1951); W. H. Norris Lumber Co., 17 P-H Tax Ct. Mem. 651 (1948); Universal Mills, 17 P-H Tax Ct. Mem. 795 (1948); The Bolta Co., 14 P-H Tax Ct. Mem. 1175 (1945); W. N. Foster, 12 P-H Tax Ct. Mem. 1167 (1943); General Securities Co., 11 P-H Tax Ct. Mem. 219 (1942).

[18]It is interesting to note, however, that only in the cases decided in the late 1940's which referred to the 1939 Internal Revenue Code and the cases arising under the 1954 Internal Revenue Code do the concepts of "useful life" and "salvage value" begin to shift ground and uphold the contentions of the Commissioner of Internal Revenue.

[19]264 F.2d 502 (9th Cir. 1959), cert. granted, 361 U.S. 812 (1959). Here the petitioner was in the business of leasing automobiles to Evans U-Drive, Inc. which in turn leased automobiles to the public on long and short term leases. During the taxable years, 1950-51, the petitioner depreciated the automobiles used for his business assuming a four year useful life and no salvage value. In those years he

of Appeals for the Third Circuit reached a conclusion favorable to the taxpayer when faced with the same questions as the *Hertz* case. On the other hand, in *United States v. Massey Motors, Inc.*[20] the Court of Appeals for the Fifth Circuit concurred with the principal case.[21]

The second ground upon which the court based its conclusion that the regulation did not announce definitions contrary to well-entrenched practices was the previous administrative policy. It appears that there was a difference of opinion between the court and the taxpayer regarding whose contention the Treasury Department's Bulletin F (the publication used as a guide to ascertain the generally accepted useful life of property used for trade or business) supported in determining whether the new regulations were contrary to established administrative policy. The court appears to have relied strongly on Bulletin F, while admitting its ambiguity. Even though the Internal

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sold 140 and 147 automobiles respectively resulting, on the average, in the following advantage for each automobile:

YEAR	COST	DEPRECAITION CLAIMED *(straight-line method)*	SELLING PRICE	GAIN *(taxed at 25 Per cent rate)*
1950	$1,650	$515	$1,380	$245
1951	$1,495	$450	$1,395	$350

The court reached the conclusion that "useful life" meant useful life inherent in the asset and that scrap value as a factor in determining depreciation should be the estimated proceeds which might be realized upon the sale or other disposition of the asset at the end of that inherent useful life. Since the petitioner took no salvage value into account, the case was remanded to the Tax Court for a determination of the salvage value.

Thus, even before the accelerated depreciation methods were introduced, a considerable tax gain could be realized by using the conventional straight-line method if the taxpayer were to interpret "useful life" as being useful life inherent in the asset and "salvage value" as being scrap value.

[20]264 F.2d 552 (5th Cir. 1959), cert. granted, 361 U.S. 810 (1959). Appellee was a franchised Chrysler dealer in Jacksonville, Florida, who periodically withdrew automobiles from his regular stock. Half of these automobiles he assigned to his employees and executives. The other half he rented to an independent company. Regularly on the preset schdule, appellee sold all of the vehicles taken from his stock. This sale resulted in a substantial profit. In addition he depreciated those automobiles taking into account no salvage value. The gains on the sales were reported as capital gains. The Court of Appeals disallowed such treatment. "The thrust of its position is that depreciation must be figured with relation to the known useful life of the asset in the hands of the taxpayer rather than the entire useful life of the property itself; that depreciation can not be figured without considering the salvage value at the end of the useful life in the hands of the taxpayer; that it was demonstrated here that the useful life in the hands of Massey Motors, Inc. was less than a year; and that the salvage value more than equaled original cost; thus the depreciation would be zero." Id. at 554.

[21]268 F.2d 604.

Revenue Service[22] announced that the Bulletin was not authoritative, it was republished in a more up-to-date fashion in 1942, adding:

> "It contains information and statistical data relating to the determination of deductions for depreciation and obsolescence, from which taxpayers and their counsel may obtain the *best available indication of Bureau practice* and the trend and tendency of official opinion in the administration of pertinent provisions of the Internal Revenue Code and corresponding or similar provisions of prior Revenue Acts. (Emphasis added)."

The ambiguous section in the newer edition of Bulletin F is as follows:

> "The proper allowance for exhaustion, wear and tear, including obsolescence of property used in trade or business is that amount which should be set aside for the taxable year in accordance with a reasonably consistent plan (not necessarily at a uniform rate) whereby the aggregate of the amounts so set aside, plus salvage value, will, at the end of the useful life of the property, in the business, equal the cost or other basis of the property. (Emphasis added)."[23]

Until June, 1956, the administrative policy remained unchanged. section 167 of the 1954 Internal Revenue Code does not define either useful life or salvage vale.[24] The direct predecessor of Treasury Regulation section 1.167 was a proposed regulation published in the *Federal Register* in 1954[25] which used the same phraseology as Treasury Regulation section 118[26] interpreting the 1939 Code. Although never promulgated, the proposed regulation shows the administrative thinking of the times.

The first indication of a change to a more definite statement of policy is found in a letter from Laurens Williams, Assistant to the Secretary of the Treasury, to Representative Thomas B. Curtis of Missouri, which appeared in the *Congressional Record* on June 16, 1955.[27] The correspondence stressed the need for a "realistic salvage value" and illustrates that the administrative wind was shifting and that a change in policy was likely.

> "[U]seful life used in determining depreciation allowance is not the full,normally inherent useful life of the property. It is, rather, the useful life of the property determined in accordance

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[22]This agency was formerly designated as the Bureau of Internal Revenue.
[23]268 F.2d at 608.
[24]See note 1 supra.
[25]Proposed Treas. Reg. § 1.167, 19 Fed. Reg. 6229 (1954).
[26]Treas. Reg. 118, § 39.23(l)-1 (1953).
[27]101 Cong. Rec. 8570 (1955).

with the practice of the particular taxpayer in his trade or business or in the production of income."

On June 11, 1956, less than one year after this letter, the Treasury Department issued Treasury Regulation section 1.167 (a)(1)(b) and (c):

"For the purpose of section 167 the estimated useful life of an asset is not necessarily the useful life inherent in the asset but is the period over which the asset may reasonably be expected to be useful to the taxpayer in his trade or business or in the production of his income.... Salvage value is the amount (determined at the time of acquisition) which is estimated will be realizable upon the sale or other disposition of an asset when it is no longer useful to the taxpayer.... If the taxpayer's policy is to dispose of assets which are still in good operating condition, the salvage value may represent a relatively large portion of the original basis of the asset."

There appears to be little doubt that the Treasury Department's interpretative regulation was appropriate.[28] While the Secretary of the Treasury is under no legal obligation to conform his definitions of accounting terms to the meanings generally accepted by the accounting profession, his policy has been to issue regulations that are not entirely dissimilar in their definitions.

The last proposition which the court examined when ruling upon the *Hertz* case was the expert opinion relied upon by the taxpayer. The Hertz Corporation produced representatives of three of the leading accounting firms, Price Waterhouse & Co., Ernst & Ernst, and Arthur Andersen & Co., who testified that the long-standing custom of the accounting profession supported the taxpayer's contention. Those witnesses represented three of the most reputable accounting firms in the country. On the other hand, the court noted only a single treatise to the contrary, which was edited by the partners of Lybrand, Ross Bros. & Montgomery.[29] It is difficult to conceive of more competent sources than the taxpayer's witnesses to state exactly what the accounting customs are; yet the court pursued the matter of expert testimony no further than mentioning that there was a difference of opinion when it should have relied more heavily upon the taxpayer's authorities.

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[28]The defining of "useful life" and "salvage value" is analogous to the situation which arose in connection with the use of the words "reasonable allowance" in the Revenue Act of 1918 in which it was held that the terms used by Congress were ambiguous enough to warrant administrative clarification. Helvering v. R. J. Reynolds Tobacco Co., 306 U.S. 110 (1939); Morrissey v. Commissioner, 296 U.S. 344 (1935); Maryland Cas. Co. v. United States, 251 U.S. 342 (1920).

[29]Montgomery's Federal Taxes ch. 6 (37th ed. 1958).

[30]268 F.2d at 609.

Near the end of the opinion,[30] the court briefly stated that "salvage value" as used in the 1954 Code section dealing with the mechanics of the declining-balance method of depreciation did not support the plaintiff's contention that it was not a factor in determining the depreciation expense calculated by that method. This is just another way to assert that "useful life" means useful life to the taxpayer.[31] Supporting this view the court quoted from the House of Representatives committee report on the bill before its passage:[32] "The changes made by your committee's bill merely affect the timing and not the ultimate amount of depreciation deductions with respect to a property."[33] However, the court failed to point out that the Senate Finance Committee's report clearly shows that the committee was fully cognizant of the capital gains tax advantage to be derived from the use of the declining-balance method of depreciation, which was so strongly contended for by the taxpayer.

> "The liberalized declining-balance method included in the bill concentrated deductions in the early years of service and results in a timing of allowance more in accord with the actual pattern of loss of economic usefulness. With the rate limited to twice the corresponding straight-line rate based on a realistic estimate of useful life, the proposed system conforms to *sound accounting principles*. . . .
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> The use of the 200-percent declining-balance rate in the case of short lived properties would result in extremely fast writeoffs. . . . These properties would retain substantial value and could be resold subject to capital gain rates."[34]

The conflicting committee reports indicate that the true intent of Congress regarding depreciation, a concept which involves salvage value as well as useful life, is ambiguous. It, therefore, seems that the issue regarding salvage value could better have been handled by considering it along with useful life. There is no controversy as to the definition of "salvage value" as there is in the case of "useful life", but it seems that Congress intentionally omitted the requirement

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[31]"The question concerning the proper application of salvage value to the declining-balance method of depreciation need not detain us for long." Ibid. This statement is indicative of the abbreviated treatment the issue concerning salvage value received in the course of the opinion.

[32]Int. Rev. Code of 1954, 68A Stat. 3 (1954); 26 U.S.C. (1958).

[33]See note 14 supra.

[34]S. Rep. No. 1622 83d Cong., 2d Sess. 25, 29 (1954); 3 U.S. Code Cong. & Ad. News, 83d Cong. 2d Sess. 4656, 4659 (1954) (Emphasis added.)

Int. Rev. Code of 1954 § 1231 (a).

that such value be taken into account as a factor in calculating the depreciation expense under the particular method in question.

If Congress had intended for salvage value to have a particular meaning or for it to be considered at all, it would have indicated its intention in the 1954 Internal Revenue Code.

The Treasury Department's regulation was designed to deny capital gains treatment for gains resulting from the frequent sale of depreciable property used in trade or business.[35] This apparent administrative change in attitude is understandable, as there was an increasing trend to turn over long term assets in a period of high resale values. Since this practice was costing the government considerable revenues, the question arises whether the court was not influenced more by the obvious policy to close the loophole than by the affirmative evidence of the customary usage. When viewed in the light of the surrounding circumstances, the ruling of the circuit court in the *Hertz* case may have considerable merit, but from the consideration of the evidence produced the holding might well have been partially or even totally opposite.

When courts are asked to define accounting terms and then make a decision contrary to previous understandings of the accountants, the members of the accounting profession are then faced with two alternatives, neither of which is desirable. They may accept the new definition which would result in an inaccuracy, according to accounting principles, in the financial statements which they issue or may, as many larger firms require, keep two sets of records, one for taxation purposes and a more precise set for management.[36] The latter course is usually too expensive for the average sized firm.

There is, therefore, much to be said supporting the position which the accountant must maintain in his insistence that income be ascertained through the use of tenets and principles which have evolved

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[35]Int. Rev. Code of 1954, §§ 1221, 1231. The Treasury Department was attacking the loophole on three fronts which "were basically as follows: (1) asserting that the assets sold by [the] taxpayer were items of inventory, and therefore not qualified for capital gain treatment under section 1231; (2) seeking to readjust useful life and salvage value . . . so as to reduce the depreciation rate per annum or by increasing salvage so as to reduce the amount of depreciation allowable; or (3) asserting that "useful life" was meant to be that period during which the asset was in the hands of the individual taxpayer, and "salvage value" to be the estimated value of the asset at the time of disposition." 37 N.C.L. Rev. 345 (1958).

[36]"The Company has authorization to amortize for Federal income tax purposes over a 60-month period after completion (1951-1958); approximately $95,000,000 of the cost of certain electric facilities *but in its accounts* is providing for depreciation of such facilities over their estimated service life." 1950 Virginia Electric and Power Company Ann. Rep. 25. (Emphasis added.)

over a long period of time. The legal profession also has a definite interest in an exact understanding of the techniques of financial reporting. Instead of opposing each other, the two professions should seek a common means for working out this type of an inconsistency so that courts which are not expertly trained in these matters will not be called upon to render this type of decision.[37]

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[37]In recent years there has been an extensive development in the accounting profession to narrow accounting principles to a single set of tenets or conventions so that conflicting reports are not obtainable from the same set of economic facts. For several years there has been a committee of general practitioners operating under the auspices of the American Institute of Certified Public Accountants (AICPA) which acted as a sounding board for the profession generally. This arrangement did not prove satisfactory because the members of the committee gave offhand opinions without extensive research and treated their position as if it were an extracurricular activity.

On August 27, 1957 Leonard Spacek, managing partner of Arthur Andersen & Co. delivered an address before the American Accounting Association Convention held at the University of Wisconsin in which he stressed the need for an accounting court. "Now I come to the second, and I believe the preferable, way of eliminating alternative accounting principles—the establishment of a 'court of accounting principles.'

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"To do so the Institute (AIPA) should change its charter to set up a court or professional tribunal of accounting principles.... I would assume such rules would be similar to those followed in the Supreme Court of the United States or any other body where decisions are logically based on briefs and arguments.

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"Whether we like it or not, this is what we must accept. Economic results can be changed by law, but economic facts cannot. Economic results are not our business, but the reporting of economic facts is our business.

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"The court would consist of three persons elected for life with an age limitation.... The members of the court would be [employed] full time and their salaries would be set by the charter, preferably in relation to those of specific United States judges so they would automatically change as economic conditions change." Address by Leonard Spacek. The Need for an Accounting Court, American Accounting Association 1957 Convention, August 27, 1957.

Since 1957 the machinery for such an accounting court has been moving forward. Once established, a source of authoritative information will be available for anyone interested, including the judiciary, so that sound accounting will be more easily harmonized with pressing taxation issues.