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claim of exemption known to him, on the part of the judgment debtor, enabling the garnishee to protect the debtor's exempt wages without the necessity of the judgment debtor's appearance.[19] Still, it would appear from this statute that if the garnishee was ignorant of the debtor's exemption, the debtor might find himself deprived of his exemption. A more satisfactory answer to the problem, which does not place the burden on the garnishee, is found in the Missouri statutes,[20] which provide notice to the judgment debtor in wage garnishment proceedings. This type of statute places the burden of asserting the exemption on the judgment debtor and rightly relieves the garnishee of any duties in behalf of the debtor.

Until some statutory change is made in Wyoming, the opportunity of the judgment debtor to avail himself of his wage exemption is a precarious one indeed. If the debtor fails to learn of the proceedings before the garnishee has paid the wage into the court, his exemption right has been lost. Even if the Wyoming courts would adopt the holding of courts which have implied duties outside the statutory requirements, garnishment in aid of execution would still remain a rather unsatisfactory procedure in relation to exemption rights. The garnishee would be saddled with a burden which, in all fairness, should be on the debtor for whom the exemption is intended. The only solution lies in statutory amendment, which would insure the judgment debtor an opportunity to assert his exemption, without placing burdensome duties upon the garnishee.

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LOSSES DEDUCTIBLE ON THE SALE OF A PERSONAL RESIDENCE

There seems to be a common misconception among accountants and lawyers that if a personal residence is rented before it is sold and there is a loss on the sale, the entire loss is deductible. The applicable section of the Internal Revenue Code merely states that in the case of an individual a deduction will be allowed if a loss is incurred in a trade or business, in any transaction entered into for profit, though not connected with a trade or business, and loss of property not connected with a trade or business, if such losses arise from fire, storm, shipwreck, or other casualty or from theft.[1] In July of 1956 the Treasury Department promulgated a new ruling on this section of the Internal Revenue Code. The new ruling states that if property is, before its sale, rented or otherwise appropriated to income-producing purposes and is so used up to the time of its sale, that portion of the loss, if any, that occurred subsequent to the conversion date is deductible. It is further stated that the basis for the deduction is either the fair market value at the time it was appropriated to income-producing

19. Minn. Comp. Stat. § 571.49 (1949).
20. Mo. Rev. Stat. § 525.290 (1949).

1. Int. Rev. Code of 1954, § 165.

purposes (with proper adjustments for depreciation), or the adjusted basis of the property at the time it was appropriated to income-producing purposes (with proper adjustment for depreciation).[2]

The first case to arise on this question, a case which has since been cited by most lower courts in dealing with the problem, was *Heiner v. Tindle*,[3] where the plaintiff erected a house in 1892, rented the house in 1901, and sold the house, at a loss, in 1920. The Supreme Court laid down the rule that he could take the loss from the date the transaction changes into a transaction entered into for profit until the property is sold. This means that the market value of the property at the date it is rented must be ascertained. This case decides the issue of how to compute the loss, when the property has been rented prior to sale. This leaves two main problems which will be dealt with in the remainder of this article. These two problems are: (1) to ascertain when a conversion to income producing purposes occurs and (2) to ascertain when a transaction is entered into for profit.

It has been held that the conversion of property from residential to business uses does not take place when abandoned as a residence and offered for sale or rent. Such an act does not constitute a transaction entered into for profit.[4] In one case, the property has been damaged by a hurricane and was never thereafter occupied. A real estate agent was engaged to find a purchaser. It was held that such an act does not bring the loss within the situation of a transaction entered into for profit.[5] Another case, where the residence was abandoned and offered for sale or rent and minor portions of the property were actually rented, the court did not allow the loss to be taken upon sale of the entire property.[6] Where a taxpayer abandoned a residence and placed the property with an agent to rent or sell and thereafter sold the property, not having rented any part thereof, except the garage, it was held that there was no transaction for profit and that the taxpayer was not entitled to deduct the loss sustained on the sale.[7] In another case, a houseboat was placed in a broker's hands for sale or rental after several year's use as a summer residence. The houseboat was later sold at a loss and it was held that it was not a transaction entered into for profit and therefore, the loss could not be deducted.[8] The taxpayer, in one case, purchased realty for the purpose of erecting a home thereon for personal use. He later abandoned that intent and made considerable improvements thereon for the purpose of making the land more salable. The court held that the loss was not deductible as arising out of a transaction entered into for profit.[9] A court has held that where

2. Prop. Treas. Dec. § 1.165-3 (b) (1956).
3. 276 U.S. 582, 48 S.Ct. 326, 72 L.Ed. 714 (1928).
4. Cullman v. Commissioner, 16 B.T.A. 991 (1929).
5. Leslie v. Commissioner, 6 T.C. 488 (1946).
6. Johnson v. Commissioner, 19 T.C. 93 (1952).
7. Morgan v. Commissioner, 76 F.2d 390, 15 A.F.T.R. 1130 (5th Cir. 1935).
8. Rumsey v. Commissioner, 82 F.2d 158, 17 A.F.T.R. 577 (2nd Cir. 1936).
9. Jones v. Commissioner, 152 F.2d 392, 34 A.F.T.R. 64 (9th Cir. 1945).

a residence was given by a father to his son-in-law, to be used as a personal residence, and it was never used otherwise by the son-in-law, that the loss was not deductible.[10] A taxpayer, in a complicated case, let his residence go, rent free, to the Red Cross and Bundles for Britain organizations. He tried to bring his case on the theory that the money saved by him from taxes paid by the two organizations was income and that the property had been converted to income producing purposes. The court held that the loss sustained by the taxpayer, when the property was sold, could not be deducted.[11] An exclusive listing for the rent of a taxpayer's former residence, with a real estate agent, has been held not such an appropriation to business uses as to justify a deduction for any loss on a subsequent sale.[12]

Although the cases are not as numerous allowing a deduction, there are substantial decisions in this direction. A taxpayer, noted for his real estate transactions, bought land and later constructed a house on it. All the time he was building the house, he had the premises listed for sale and when he couldn't sell them, he moved in himself and lived there. The court held that where the original intent was to enter into a profit making transaction, he could deduct the loss.[13] In a very close case, it was held that the loss was not deductible, although the original intent was to enter into a profit making transaction, because the taxpayer had resided on the property for sixteen years.[14] A taxpayer bought property and constructed a house thereon, with a view toward selling it at a profit. Later, due to domestic troubles, he lived in it alone for short periods of time. The court held that the original intent was to enter into a profit making transaction and allowed the deduction for the loss sustained upon sale of the property.[15] Where a taxpayer was forced to move from one town to another, due to a change in employment, he tried to sell his original residence. When he couldn't sell the property he traded it for other property in the same town, the court held that the loss on the sale of the new property could be deducted. This decision was in view of the fact that the taxpayer had intended to sell the house when he traded for it.[16] The taxpayer, in one case, purchased two tracts of land for resale and made extensive improvements thereon. He lived on the land only for short periods of time, meanwhile keeping a permanent residence in New York. The court held that the deduction was allowable.[17] A deduction, for a loss sustained upon sale of some property, was also allowed where the taxpayer bought land and erected a model house thereon. The house was never rented, but was offered for sale for three years, when it was finally sold at

10. May v. Commissioner, 20 B.T.A. 1211 (1930).
11. Emmett v. Commissioner, 11 T.C. 90 (1948).
12. Grammer v. Commissioner, 12 T.C. 34 (1949).
13. Gordon v. Commissioner, 12 B.T.A. 1191 (1928).
14. Wilkes v. Commissioner, 17 T.C. 865 (1951).
15. Sincheimer v. Commissioner, 7 B.T.A. 1099 (1927).
16. Hughes v. Commissioner, 8 B.T.A. 206 (1927).
17. Croker v. Commissioner, 12 B.T.A. 408 (1928).

a loss. The court felt that the fact of the taxpayer's use of the property for two summers, as a residence, was immaterial.[18]

In summary, it may be stated that if it can be proved that the original purchase of the property was for the purpose of resale, the loss on the sale of the property may be deducted.[19] If the taxpayer has lived on the property for a substantial number of years, short periods of residency excepted, the loss will not be allowed even though the original intent was to enter into a profit making transaction.[20] If the property is actually rented after its use as a residence, a loss will be allowed as a basis for computation of the market value of the property at the time of rental, less the amount received as the sale price.[21] Mere listing of the property for sale or rent with a real estate agency is not sufficient to take a loss on the sale of the property as a deduction.

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SOLICITATION OF BUSINESS BY A FOREIGN RAILROAD CORPORATION

When a corporation is doing sufficient business within a state to make it amenable to courts of that state, is a question that has been decided many times, although the actual meaning of the term "doing business" is one which has never received a standard definition.[1] As a result of this omission, the courts are forced to formulate a rule on each set of facts presented.[2] They must study the type of activity engaged in by the corporation to determine: (1) whether such activity within the state is a part of that for which it was organized and not merely incidental thereto;[3] (2) whether it is a single transaction or a continuous course of business within the state;[4] and (3) whether it would be a violation of the notion of fair play and substantial justice for it to take jurisdiction.[5]

The Supreme Court of the United States laid down the general rule[6] that to support the jurisdiction of a court to render a personal

18. Campe v. Commissioner, 17 B.T.A. 575 (1929).
19. Gordon v. Commissioner, 12 B.T.A. 1191 (1928); Sincheimer v. Commissioner, 7 B.T.A. 1099 (1927); Croker v. Commissioner, 12 B.T.A. 508 (1928); Campe v. Commissioner, 17 B.T.A. 575 (1929).
20. Wilkes v. Commissioner, 17 T.C. 865 (1951).
21. Heiner v. Tindle, 276 U.S. 582, 48 S.Ct. 326, 72 L.Ed. 714 (1928).
22. Grammer v. Commissioner, 12 T.C. 34 (1949); Morgan v. Commissioner, 76 F.2d 390, 15 A.F.T.R. 1150 (5th Cir. 1935); Cullman v. Commissioner, 16 B.T.A. 991 (1929).

1. 18 Fletcher, Corporations § 8711 (perm. ed. 1955).
2. St. Louis Southern Ry. Co. v. Alexander, 227 U.S. 218, 33 S.Ct. 245, 57 L.Ed 486 (1913).
3. Rich v. Chicago B. & Q. Ry. Co., 34 Wash. 92, 74 Pac. 1008 (1904).
4. Ibid.
5. International Shoe Co. v. State of Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).
6. Philadelphia & R. Ry. Co. v. McKibbin, 234 U.S. 264, 37 S.Ct. 280, 61 L.Ed. 710 (1917).