

# Statement given by Abdilatif Abdalla, chief co-ordinator of the United Movement for Democracy in Kenya, to the 7th Pan-African Congress, Kampala, Uganda on 3-8 April, 1994.

[s.n.] - ABDALLA v. C. I. R



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## United States of America, Plaintiff

Because the dominant motivation of the taxpayer in extending credit to Furniture was not to protect his trade or business of being an employee thereof but was, instead, to protect his capital investment, the loss was characterized as a nonbusiness bad debt and treated under § 166 d as a short term capital loss. Since Putnam, § 163 a is interpreted to allow an interest deduction where the taxpayer is secondarily liable only if the interest is paid in connection with a real estate mortgage and the taxpayer is the legal or equitable owner of the property.

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The taxpayer, having failed to secure a deduction on the first prong of the test described in Nelson, urges that he has satisfied the second prong of that test and is entitled to a deduction for the interest he paid on the note of Furniture secured indirectly by property of Park and Vista. The Tax Court further held that under § 1374 c 2 the limit on the amount of net operating loss of each corporation which the taxpayer was entitled to deduct was his adjusted bases in the stock and debt of such corporation as of October 25, 1966. The crucial factor we cited in rejecting that argument was that the loans were repaid in full each spring, bringing the balance in the notes payable account to zero.

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It is thus the defendant's lack of evidence regarding the lawfulness of those proceeds that precludes their satisfaction of condition C. Those conditions of § 2S1.

## United States of America, Plaintiff

GOODWIN, United States District Judge for the Southern District of West Virginia, sitting by designation. Since she believes Congress to have preferred the net operating loss deduction, she argues that that deduction should be taken first. First, we could require, in accordance with Boehm v.

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For these reasons they assert that they satisfied conditions § 2S1. Before NIEMEYER and MOTZ, Circuit Judges, and Joseph R. On its cross-appeal, the government contends that the district court erred in determining the defendants' base offense level under U.

#### **United States of America, Plaintiff**

The approach adopted by the Tax Court would in that case, as in the case of coinciding years, allow only a prorated portion of net operating losses where bankruptcy occurs during the taxpayer's taxable year, despite the fact that the corporation's taxable year having ended during the taxpayer's taxable year would seem by virtue of § 1374 b to entitle the taxpayer to deduct the full amount.

#### **United States of America, Plaintiff**

The Tax Court ruled that this relationship was too remote to support the further expansion of § 163 a that would be necessary to encompass the situation.

#### **United States of America, Plaintiff**

What the Tax Court failed to consider was the operation of the rule in what is undoubtedly a common situation — that in which the taxpayer's taxable year ended December 31 exactly coincides with that of his Subchapter S corporation. Judge Hall urged that if this provision is applicable, as the Tax Court held, then the taxpayer's share of each corporation's net operating loss should be prorated to December 31, the last day of his taxable year, and not simply to the date of the bankruptcy. The legislative scheme unambiguously puts a limit on the taxpayer's deduction of Subchapter S net operating losses, and that limit certainly comes into play in any taxable year of the taxpayer following a year in which the taxpayer's stock and debt is rendered worthless.

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