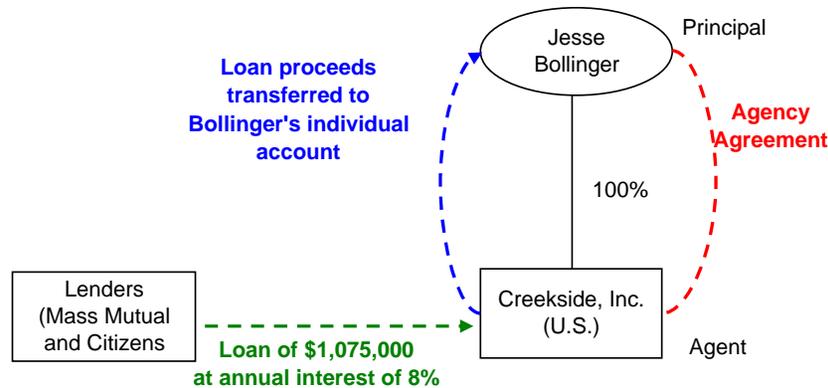


Commissioner v. Bollinger
485 U.S. 340 (1988)

**Corporation as Agent
of Its Owner**

Copyright © 2007 Andrew Mitchel LLC
International Tax Services
www.andrewmitchel.com



Jesse C. Bollinger, Jr. developed apartment complexes in Lexington, Kentucky. The Massachusetts Mutual Life Insurance Company agreed to provide permanent financing by lending \$1,075,000 to "the corporate nominee of Jesse C. Bollinger, Jr." at an annual interest rate of eight percent. The loan commitment was structured in this fashion because Kentucky's usury law at the time limited the annual interest rate for noncorporate borrowers to seven percent. Lenders willing to provide money only at higher rates required the nominal debtor and record title holder of mortgaged property to be a corporate nominee of the true owner and borrower. On October 14, 1968, Bollinger incorporated Creekside, Inc. The next day, Bollinger and Creekside, Inc., entered into a written agreement which provided that the corporation would hold title to the apartment complex as Bollinger's agent for the sole purpose of securing financing, and would convey, assign, or encumber the property and disburse the proceeds thereof only as directed by Bollinger; that Creekside, Inc., had no obligation to maintain the property or assume any liability by reason of the execution of promissory notes or otherwise; and that Bollinger would indemnify and hold the corporation harmless from any liability it might sustain as his agent and nominee.

Creekside, Inc., executed all necessary loan documents including the promissory note and mortgage, and transferred all loan proceeds to Bollinger's individual construction account. Bollinger acted as general contractor for the construction, hired the necessary employees, and paid the expenses out of the construction account. The principle of *Moline Properties v. Commissioner*, 319 U.S. 436 (1943), held that a corporation is a separate taxable entity even if it has only one shareholder who exercises total control over its affairs.

In *National Carbide* six factors were discussed, including: [1] Whether the corporation operates in the name and for the account of the principal, [2] binds the principal by its actions, [3] transmits money received to the principal, and [4] whether receipt of income is attributable to the services of employees of the principal and to assets belonging to the principal are some of the relevant considerations in determining whether a true agency exists. [5] If the corporation is a true agent, its relations with its principal must not be dependent upon the fact that it is owned by the principal, if such is the case. [6] Its business purpose must be the carrying on of the normal duties of an agent. The fifth factor--so much more abstract than the others--was a generalized statement of the concern that the separate-entity doctrine of *Moline* not be subverted.

The genuineness of the agency relationship is adequately assured, and tax-avoiding manipulation adequately avoided, when the fact that the corporation is acting as agent for its shareholders with respect to a particular asset is set forth in a written agreement at the time the asset is acquired, the corporation functions as agent and not principal with respect to the asset for all purposes, and the corporation is held out as the agent and not principal in all dealings with third parties relating to the asset.

[HUNDREDS of additional charts at www.andrewmitchel.com](http://www.andrewmitchel.com)