STATE OF MINNESOTA | TAX COURT

COUNTY OF WASHINGTON | REGULAR DIVISION

Deandra Purcell and Timothy J. Purcell,

Appellants,

vs.

Commissioner of Revenue,

Appellee.

ORDER ON THE PARTIES' CROSS MOTIONS FOR SUMMARY JUDGMENT

Docket No.: 9694-R

This matter came before the Honorable Jane N. Bowman, Chief Judge of the Minnesota Tax Court, on the parties' cross-motions for summary judgment.

Julie N. Nagorski, DeWitt LLP, represents Appellants Deandra Purcell and Timothy J. Purcell.

Jennifer A. Kitchak, Assistant Minnesota Attorney General, represents Appellee Commissioner of Revenue.

Appellants Deandra Purcell and Timothy J. Purcell challenge the Commissioner of Revenue's Notice of Determination on Appeal assessing them $81,913.02 in Minnesota individual tax, penalty, and interest. In so determining, for tax years 2019 and 2020, the Commissioner reclassified loans Purcell Quality, Inc. made to Mr. Purcell as taxable shareholder distributions. The Commissioner asks us to confirm his reclassifications. The Purcells oppose the Commissioner's motion and ask us to classify the disputed funds as bona fide loans and, thus, not as taxable distributions. We grant the Commissioner's motion for summary judgment as—although the parties disagree on how the operative facts inform the legal analysis—there are no

disputed facts, and those facts demonstrate PQI's advances to Mr. Purcell were income (taxable distributions) and not bona fide loans.

FINDINGS OF FACT[1]

1. The advances made by PQI to Mr. Purcell in 2019, totaling $375,700, were not bona fide loans.

2. The advances made by PQI to Mr. Purcell in 2019 were shareholder distributions.

3. The advances made by PQI to Mr. Purcell in 2020, totaling $212,230.14, were not bona fide loans.

4. The advances made by PQI to Mr. Purcell in 2020 were shareholder distributions.

CONCLUSIONS OF LAW

1. The $375,700 shareholder distributions made by PQI to Mr. Purcell in 2019 were taxable.

2. The $212,230.14 shareholder distributions made by PQI to Mr. Purcell in 2020 were taxable.

ORDER FOR JUDGMENT

1. The Commissioner's motion for summary judgment is granted.

2. The Commissioner's conclusion that the money advances Mr. Purcell took from Purcell Quality, Inc. in 2019 and 2020 are shareholder distributions and not bona fide loans, as outlined in his Notice of Determination on Appeal dated September 30, 2024, is affirmed.

3. The Purcells' motion for summary judgment is denied.

IT IS SO ORDERED. THIS IS A FINAL ORDER. LET JUDGMENT BE ENTERED ACCORDINGLY.

[1] *See infra* pp. 13-15.

BY THE COURT:

Jane N. Bowman

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Jane N. Bowman, Chief Judge
MINNESOTA TAX COURT

Dated: April 24, 2026

MEMORANDUM

I. FACTS AND PROCEDURAL HISTORY

A. Appellants Deandra and Timothy J. Purcell and their S Corporation, Purcell Quality, Inc.

Appellants Deandra and Timothy Purcell are owners of Purcell Quality, Inc. ("PQI"), a residential general contractor business offering design and remodeling services to the high-end market formed in 2008, with clients predominately in Minnesota.[2] Timothy Purcell owns 26% of the shares of PQI, while Deandra Purcell owns the remaining 74%; thus, the Purcells collectively own 100% of PQI's shares.[3] As part owner, Mr. Purcell also works full time as the President and Chief Executive Officer of PQI.[4] Mr. Purcell has the authority to direct corporate affairs, preside over shareholder and board meetings, manage operations, execute contracts, and appoint or discharge employees.[5]

PQI, as an S corporation, elected to be taxed as a pass-through entity, meaning that entity profits and losses are passed through to the owners' personal income tax return and any tax liability

[2] Decl. Darren Braun (signed Dec. 19, 2025) ¶ 5, Ex. N; Decl. Timothy J. Purcell (signed Dec. 22, 2025) ¶¶ 1, 2.

[3] Braun Decl. ¶ 5, Ex. N; Purcell Decl. ¶ 2.

[4] Braun Decl. ¶ 5, Ex. N; Purcell Decl. ¶¶ 1, 3.

[5] Purcell Decl. ¶ 3.

is paid at the individual level.[6] Distributions from S corporations that exceed a shareholder's stock basis in the company are taxed as capital gains. *See* I.R.C. § 1368(a). From 2012 through 2018, the years prior to the tax years at issue, PQI made shareholder distributions to the Purcells.[7] The median distribution for this period was $142,725.[8] PQI did not make any loans to the Purcells during this period or pay them any wages.[9]

In 2018, the Purcells were in the process of purchasing and remodeling a home.[10] They needed additional funds for the remodeling project.[11] Seeking to avoid the high interest rates of a private, commercial loan, the Purcells explored taking a loan from PQI.[12] The Purcells explained to their tax accountant, a certified public accountant, that they needed additional funds in 2019 as compared to the distributions they took in recent years.[13] Their tax accountant suggested that PQI loan funds to Mr. Purcell and that they use a promissory note to document the loans.[14] After further analysis, the Purcells determined that PQI had the financial means to properly fund shareholder loans in the amounts the Purcells sought.[15]

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[6] Decl. Wendy Xiong (signed Dec. 18, 2025) ¶ 3.

[7] Xiong Decl. ¶ 17, Ex. M, at 3.

[8] *See* Xiong Decl. ¶ 17, Ex. M, at 3.

[9] Xiong Decl. ¶ 17, Ex. M, at 3.

[10] Purcell Decl. ¶ 5.

[11] Purcell Decl. ¶ 5.

[12] Purcell Decl. ¶ 5.

[13] Braun Decl. ¶ 6, Ex. O, at 3.

[14] Braun Decl. ¶ 6, Ex. O, at 3.

[15] Purcell Decl. ¶ 7.

Thus, in 2019, PQI stopped making shareholder distributions to the Purcells. Instead, Mr. Purcell took advances and W-2 income from PQI,[16] using them to pay for a $250,000 legal settlement of which Mr. Purcell was a defendant, to make option payments on a new home, and to pay to remodel the new home, among other things.[17] Between January 7 and December 30, 2019, Mr. Purcell took advances from PQI on 29 occasions, in amounts ranging from $500 to $150,000.[18] The advances in 2019 totaled $375,700.[19] At the end of 2019, the Purcells authorized PQI to take corporate action characterizing the advances as loans to Mr. Purcell, and Mr. Purcell executed a Promissory Note in favor of PQI for $375,700.[20]

In 2020, the Purcells continued to take advances from PQI on 20 occasions, with the amounts ranging from $2,500 to $45,000 per advance.[21] The advances were used to continue funding their home remodeling projects and to make option payments on the purchase.[22] In 2020, the advances totaled $212,230.14.[23] At the end of 2020, the Purcells authorized PQI to take corporate action characterizing the advances as loans to Mr. Purcell, and Mr. Purcell executed a

[16] Decl. Jennifer Kitchak (signed Dec. 19, 2025) ¶ 2, Ex. A; Xiong Decl. ¶¶ 17-19, Ex. M, at 3.

[17] Kitchak Decl. ¶ 3, Ex. B, at Answer to Interrog. No. 4; Purcell Decl. ¶ 15.

[18] Kitchak Decl. ¶¶ 3, 6, 7, Ex. B, at Answer to Interrog. No. 2, Ex. E, Ex. F.

[19] Kitchak Decl. ¶¶ 3, 6, 7, Ex. B, at Answer to Interrog. No. 2, Ex. E, Ex. F.

[20] Kitchak Decl. ¶ 4, Ex. C; Purcell Decl. ¶ 8, Ex. 1.

[21] Kitchak Decl. ¶¶ 3, 8, 9, Ex. B, at Answer to Interrog. No. 6, Ex. G, Ex. H.

[22] Kitchak Decl. ¶ 3, Ex. B, at Answer to Interrog. No. 8.

[23] Kitchak Decl. ¶¶ 3, 8, 9, Ex. B, at Answer to Interrog. No. 6, Ex. G, Ex. H.

Promissory Note in favor of PQI for $195,089.79.[24] Subsequent to these tax years, PQI continued to make advances to Mr. Purcell through 2022.[25]

Below is a breakdown of distributions, W-2 income, and advanced funds[26]:

Tax Year	Distributions	W-2 income to Tim Purcell	Advances to Tim Purcell
2012	$55,172		
2013	$106,950		
2014	$146,262		
2015	$167,900		
2016	$142,725		
2017	$147,110		
2018	$4,500	$100,000	$55,900
2019		$100,000	$375,700
2020		$100,000	$195,099
2021		$132,000	$139,150
2022		$150,000	$58,877

B. The Promissory Notes

At special meetings, the PQI Shareholders and Board of Directors (i.e., Mr. and Ms. Purcell) approved each Promissory Note.[27] For both 2019 and 2020, the Promissory Notes were executed at the end of each calendar year, presumably to allow Mr. Purcell to retroactively cover the entirety of the amounts he had taken as advances (as opposed to executing numerous promissory notes over the course of the year).[28] The two Promissory Notes are identical except for the date and amount; both contain a promise to pay PQI the stated amount with interest.[29] They do

[24] Kitchak Decl. ¶ 5, Ex. D. The Promissory Note for 2020 reflected a net amount after credit adjustments to the account ledger. *See* Kitchak Decl. ¶ 8, Ex. G; Purcell Decl. ¶ 8, Ex. 1.

[25] Purcell Decl. ¶¶ 8, 15.

[26] Xiong Decl. ¶¶ 17-19, Ex. M, at 3. This chart demonstrates that PQI generally shifted away from distributions in lieu of W-2 income and advances. *Id.*

[27] Purcell Decl. ¶ 16, Ex. 1.

[28] Kitchak Decl. ¶¶ 4, 5, Ex. C, Ex. D.

[29] Kitchak Decl. ¶¶ 4, 5, Ex. C, Ex. D; Purcell Decl. ¶¶ 8, 9, Ex. 1.

not, however, require Mr. Purcell to make any payments of principal or interest by any specific date, nor on any consistent schedule.[30] There is no fixed date of maturity, and PQI may not call the notes due for at least a decade.[31] Because of the provision limiting PQI from calling the notes due for at least a decade, PQI has neither called for repayment, nor has Mr. Purcell made any payments on the debt.[32]

There is no language that limits PQI's discretion to call or not call the notes due, except for the aforementioned ten-year period.[33] The Promissory Notes provide, in relevant part:

> **FOR VALUE RECEIVED,** the undersigned Timothy Purcell Jr. ("Borrower")… hereby promises to pay Purcell Quality, Inc. ("Lender")… the principal sum of $375,700.00 (the "Principal Balance") or, if less, the amount of all advances made by Lender to Borrower under this Note, due and payable, together with accrued, unpaid interest, if any, as herein specified. The Principal Balance of this Note … shall bear four percent (4%) simple interest, from the date funds are actually advanced to Borrower ….
>
> Lender may call this note due by providing written notice of such call to Borrower at any time after ten years from the date of the Note, at which said time the outstanding Principal Balance and any outstanding Interest shall be immediately due and payable. Such payment is a balloon payment of all outstanding Principal Balance and Interest.[34]

The Promissory Notes permit pre-payment without penalty.[35]

The Promissory Notes were not secured by collateral, and Mr. Purcell submitted a declaration to this court stating his salary—$140,130 in 2021—was sufficient to ensure

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[30] Kitchak Decl. ¶¶ 4, 5, Ex. C, Ex. D; Purcell Decl. ¶¶ 8, 9, Ex. 1.

[31] Kitchak Decl. ¶¶ 4, 5, Ex. C, Ex. D; Purcell Decl. ¶¶ 8, 9, Ex. 1.

[32] Kitchak Decl. ¶ 3, Ex. B, at Answers to Interrog. Nos. 5, 9.

[33] Kitchak Decl. ¶¶ 4, 5, Ex. C, Ex. D; Purcell Decl. ¶¶ 8, 9, Ex. 1.

[34] Kitchak Decl. ¶¶ 4, 5, Ex. C, Ex. D; Purcell Decl. ¶¶ 8, 9, Ex. 1.

[35] Kitchak Decl. ¶¶ 4, 5, Ex. C, Ex. D; Purcell Decl. ¶¶ 8, 9, Ex. 1.

repayment.[36] Mr. Purcell's declaration further states that at no time was PQI at risk of insolvency because of the advances and that PQI continued to profit each year from 2019 to 2021.[37] Finally, Mr. Purcell's declaration states he has both the intent and ability to repay the advances.[38] Notably, the evidence in the record, including Mr. Purcell's declaration, is silent as to PQI's intent to collect on the note, aside from the language of the note itself ("Lender may call this note due ….").

C. The Commissioner Audits PQI and the Purcells; the Purcells' Appeal

In 2022, the Commissioner began an audit of PQI and the Purcells' 2019 and 2020 tax returns.[39] Pursuant to the audit, the Commissioner determined the advances Mr. Purcell took from PQI should have been classified as distributions to a shareholder, and not as bona fide loans.[40] The resulting adjustment to the Purcells' Minnesota Individual Income Tax liability for 2019-2020 was a $76,337.19 assessment.[41] The Purcells administratively appealed this tax order, which was affirmed in full.[42] On September 30, 2024, the Commissioner issued a Notice of Determination on Appeal, confirming the Commissioner's classification of the advances as taxable shareholder distributions and assessing $81,913,02 in tax, penalty, and interest.[43] The Purcells then timely filed this appeal to our court.[44]

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[36] Purcell Decl. ¶¶ 4, 12.

[37] Purcell Decl. ¶ 14.

[38] Purcell Decl. ¶ 13.

[39] Xiong Decl. ¶¶ 2-4; Purcell Decl. ¶ 17.

[40] Xiong Decl. ¶¶ 5-8. The tax order also made other adjustments that the Purcells did not challenge on administrative appeal and do not challenge here. *See* Xiong Decl. ¶ 9; Braun Decl. ¶ 5, Ex. N; Kitchak Decl. ¶ 3, Ex. B, at Answer to Interrog. No. 1.

[41] Purcell Decl. ¶ 17, Ex. 2.

[42] Braun Decl. ¶ 5, Ex. N; Kitchak Decl. ¶ 2, Ex. A; Purcell Decl. ¶ 18, Ex. 3.

[43] Kitchak Decl. ¶ 2, Ex. A, at 1.

[44] Not. Appeal (filed Nov. 25, 2024).

II. GOVERNING LAW

A. Summary Judgment

A party is entitled to summary judgment if "the movant shows that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. Summary judgment motions "permit[] the court to make a prompt disposition of an action on the merits if there is no genuine dispute regarding the material facts, and a party is entitled to judgment under the law applicable to such established facts." *Humana MarketPoint, Inc. v. Comm'r of Revenue*, No. 9570-R, 2024 WL 4997432, at *6 (Minn. T.C. Nov. 21, 2024) (citing *In re Bush's Est.*, 224 N.W.2d 489, 503 (Minn. 1974)).

A party asserting no genuine issue exists can do so by citing to the record or by showing the adverse party "cannot produce admissible evidence to support the fact [at issue]." Minn. R. Civ. P. 56.03(a)(1)-(2). "A genuine issue of material fact exists when reasonable minds can draw different conclusions from the evidence presented." *Rygwall, as Tr. for Rygwall v. ACR Homes, Inc.*, 6 N.W.3d 416, 427 (Minn. 2024) (citation omitted). "Summary judgment is appropriate when the record shows a complete lack of proof on any essential element of [a party's] claim." *Hous. & Redevelopment Auth. of St. Paul v. Lambrecht*, 663 N.W.2d 541, 547 (Minn. 2003) (citation omitted). A "party resisting summary judgment must do more than rest on mere averments." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). However, a court views the facts in the light most favorable to the nonmoving party. *Buskey v. Am. Legion Post #270*, 910 N.W.2d 9, 11 (Minn. 2018).

When parties file cross-motions for summary judgment, they proceed on the premise that only a question of law is involved and invite the court to decide the issues based on the record. *See Am. Fam. Mut. Ins. Co. v. Thiem*, 503 N.W.2d 789, 790 (Minn. 1993) (observing that, where "parties themselves, in their cross-motions for summary judgment, have tacitly agreed that there

exist no genuine issues of material fact," the matter could be resolved by reference to the record). Indeed, after a taxpayer appealed an order stemming from stipulated facts, the Third Circuit Court of Appeals noted "it is the duty of the Tax Court, in the first instance, to determine the credibility of the witnesses, to weigh the evidence, draw inferences from undisputed facts or facts found by it to exist, and to choose between conflicting inferences in reaching its ultimate findings." *Diamond Bros. Co. v. Comm'r*, 322 F.2d 725, 730 (3d Cir. 1963). Because the parties want the court to draw different conclusions based on uncontested facts, the issue is suitable for resolution on cross-motions for summary judgment.

B. Bona Fide Loans

Minnesota law imposes income tax on the "taxable income" of resident and nonresident individuals. Minn. Stat. § 290.03(1) (2024). The amount of income tax owed is based partly on an individual's federal adjusted gross income. *Wendell v. Comm'r of Revenue*, 7 N.W.3d 405, 411 (Minn. 2024). Federal gross income includes all income from whatever source derived. *Id.* (citing I.R.C. § 61). "It is well settled that where funds of a corporation are disbursed for the personal use or economic benefit of a shareholder or his immediate family, with no intention of repayment, the amount disbursed is taxable to the recipient shareholder." *Williams v. Comm'r*, 68 T.C.M. (CCH) 1172, 1176 (1994).

A loan, however, does not qualify as income because loans carry a repayment obligation. *Comm'r v. Indianapolis Power & Light Co.*, 493 U.S. 203, 207-08 (1990). This court has previously reviewed the facts of a case to determine whether advances were loans or taxable income. *Dahl v. Comm'r of Revenue*, No. 4949, 1989 WL 57690, at *8 (Minn. T.C. May 10, 1989). In so doing, this court looked to federal tax law for guidance. *Id.*; *see also Klaphake v. Comm'r of Revenue*, No. 8249 R, 2012 WL 3642278, at *7 (Minn. T.C. Aug. 20, 2012).

"Whether a withdrawal of funds by a shareholder from a corporation … creates a true debtor-creditor relationship is a factual question to be decided based on all relevant facts and circumstances." *Haag v. Comm'r*, 88 T.C. 604, 615 (1987). However, if the individual withdrawing funds substantially controls the corporation, special scrutiny should be invited. *Haber v. Comm'r*, 52 T.C. 255, 266 (1969); *Jones v. Comm'r*, 74 T.C.M. (CCH) 473, 479 (1997); *Dynamo Holdings Ltd. P'ship v. Comm'r*, 115 T.C.M. (CCH) 1293, 2018 WL 2107977, at *17 (2018) ("We apply special scrutiny to intrafamily transfers and transactions between entities in the same corporate family or with shared ownership."). When corporations are closely held, courts look to "the objective criteria surrounding the transaction." *Williams*, 68 T.C.M. (CCH) at 1176.

"To determine whether a given transaction constitutes a loan, the substance, rather than the form, of the transaction is controlling." *Karns Prime & Fancy Food, Ltd. v. Comm'r*, 494 F.3d 404, 408 (3d Cir. 2007) (citing *Knetsch v. United States*, 364 U.S. 361, 365-66 (1960)). Advances from a corporation to its shareholder constitute a debtor-creditor relationship if, at the time the advances occurred, the shareholder intended to repay the advances and the corporation intended on enforcing the obligations. *Haber*, 52 T.C. at 266; *Jones v. Comm'r*, T.C.M. (RIA) 2025-025, 2025 WL 1924077, at *29 (2025); *Jacques v. Comm'r*, 58 T.C.M. (CCH) 1026, 1028 (1989). "In Minnesota, questions of intent are questions of fact." *Larson v. Caron*, No. A12-1822, 2013 WL 2302048, at *5 (Minn. App. May 28, 2013) (internal quotation and citation omitted).

Importantly, for "disbursements to constitute true loans there must have been, at the time the funds were transferred, an unconditional obligation on the part of the transferee to repay the money, and an unconditional intention on the part of the transferor to secure repayment." *Haag*, 88 T.C. at 615-16; *Dynamo*, 2018 WL 2107977, at *17. Finally, "[i]t is firmly established that a

contingent intent to repay … is legally insufficient to render advances to shareholders bona fide loans." *Alterman Foods, Inc. v. United States*, 611 F.2d 866, 872 (Ct. Cl. 1979) ("*Alterman II*").

Courts have looked at a variety of factors to determine whether an advance to a shareholder is a dividend or loan, such as:

> (1) the extent to which the shareholder controls the corporation;
> (2) the earnings and dividend history of the corporation;
> (3) the magnitude of the advances;
> (4) whether a ceiling existed to limit the amount the corporation advanced;
> (5) whether or not security was given for the loan;
> (6) whether there was a set maturity date;
> (7) whether the corporation ever undertook to force repayment;
> (8) whether the shareholder was in a position to repay the advances; and
> (9) whether there was any indication the shareholder attempted to repay the advances.

Alterman Foods, Inc. v. United States, 505 F.2d 873, 877 n.7 (5th Cir. 1974) ("*Alterman I*") (cleaned up);[45] *see also Jones*, 74 T.C.M. (CCH) at 479 (similarly finding).[46] The *Jones* court identified additional factors used to determine if the parties intended on creating a debtor-creditor relationship, which include whether:

> (1) there was a promissory note or other evidence of indebtedness,
> (2) interest was charged,
> (3) any records maintained by the transferor and/or the transferee reflected the transaction as a loan, and
> (4) the manner in which the transaction was reported for … tax is consistent with a loan.

[45] The *Alterman I* court noted in its decision that some factors considered in debt-equity cases may be dissimilar to those used in corporate advance cases. *Alterman I*, 505 F.2d at 876-77. The factors deemed irrelevant, and therefore not included in the lists above, look to (i) the effect of the stockholder's participation in the management of the corporation, and (ii) the extent to which the corporation is thinly capitalized. *Id.* at 877 n.7.

[46] "Although these factors traditionally have been used in deciding whether distributions to a shareholder of a C corporation are loans or dividends, … the factors are equally applicable to decide whether withdrawals by a shareholder of an S corporation are loans or distributions that must be included in gross income." *Jones*, 74 T.C.M. (CCH) at 479-80.

Jones, 74 T.C.M. (CCH) at 482; *see also Dynamo*, 2018 WL 2107977, at *18 (noting these factors generally fall into two categories: formal indicia of debt and economic indicia of debt). These factors are not exclusive, and no one factor controls. *Jones*, 74 T.C.M. (CCH) at 479.

Several different factors exist because "mere declarations by the parties that they intend a certain transaction to constitute a loan is insufficient if it fails to meet more reliable indicia of debt." *Alterman I*, 505 F.2d at 877; *see also Jacques*, 58 T.C.M. (CCH) at 1029 (citing *Berthold v. Comm'r*, 404 F.2d 119, 122 (6th Cir. 1968)) (finding that subjective testimony relating to the intent of transactions between a taxpayer and his alter ego are viewed with diffidence if not supported by other facts). Ultimately, appellants "bear the burden of proving the existence of the purported loans." *Stoeckmann v. Comm'r of Revenue*, Nos. 7439 & 7438, 2004 WL 1936302, at *3 (Minn. T.C. Aug. 18, 2004) (citing *Alterman I*, 505 F.2d at 879).

III. ANALYSIS

We begin our analysis by acknowledging the tricky legal question we are called upon to answer, drawing an ultimate factual conclusion from multi-part factors within a heightened review standard. First, the parties have no disagreement over the relevant historical facts.[47] They do, however, disagree about whether those facts indicate the existence of a true debtor-creditor

[47] There is one immaterial factual disagreement. The Commissioner alleges Mr. Purcell used some advances to pay for airline tickets and resort fees. Comm'r's Mem. Law Supp. Comm'r's Mot. Summ. J. 3 n.1 (filed Dec. 19, 2025) (citing Xiong Decl., Ex. K, at 3-4 and Kitchak Decl., Ex. G (showing $5,260.80 in Delta airline purchases on February 27, 2020, which correspond to the amount recorded as "Loan to Tim" on February 27, 2020); Xiong Decl., Ex. K, at 9 and Kitchak Decl., Ex. G (showing two payments on March 16, 2020, to Don Cesar Resort totaling $6,459.34 that correspond to an advance in the same amount recorded as a loan on the general ledger on March 16, 2020)). Citing no evidence in the record, the Purcells dispute the Commissioner's allegations. Appellants' Mem. Law Opp'n Comm'r's Mot. Summ. J. 1-2 (filed Jan. 14, 2026). As an initial matter, how the money was spent is not material. Even if it were, the Commissioner presented the court with reliable evidence to conclude PQI advanced funds to the Purcells to cover a trip; the Purcells present no contrary evidence.

relationship between PQI and Mr. Purcell, which is a question of ultimate fact. *See Ultimate Fact*, *Black's Law Dictionary* (11th ed. 2019) ("A fact that is found by making an inference or deduction from findings of other facts; specif., a factual conclusion derived from intermediate facts."); *Joseph Lupowitz Sons, Inc. v. Comm'r*, 497 F.2d 862, 865 (3d Cir. 1974) (noting a tax court made an "ultimate finding of fact, which represents an inference drawn from the basic facts"). In the Commissioner's brief, he describes how the intermediate facts establish there was no true debtor-creditor relationship, while the Purcells used the same intermediate facts to argue PQI loaned money to Mr. Purcell.

Jurisdictions are split on whether a court tasked with determining if a distribution is a bona fide loan is a question of fact or law (or a mixed question of law and fact). Most federal jurisdictions hold that the determination whether related parties to a transaction intended a loan or a dividend presents an issue of fact. *Crowley v. Comm'r*, 962 F.2d 1077, 1080 (1st Cir. 1992); *Tollefsen v. Comm'r*, 431 F.2d 511, 513 (2d Cir. 1970); *Diamond Bros. Co. v. Comm'r*, 322 F.2d 725, 730 (3d Cir. 1963); *Wood Preserving Corp. of Baltimore v. United States*, 347 F.2d 117, 118 (4th Cir. 1965); *Berthold v. Comm'r*, 404 F.2d 119, 121 (6th Cir. 1968) (holding that—after trial—the tax court "was entitled to draw reasonable inferences from the basic facts"); *Busch v. Comm'r*, 728 F.2d 945, 949 (7th Cir. 1984); *Chism's Est. v. Comm'r*, 322 F.2d 956, 959-60 (9th Cir. 1963). Other jurisdictions see this as a question of law. *See Alterman I*, 505 F.2d 873, 876 (5th Cir. 1974) (determining whether funds constituted debt or equity were questions of law); *In re Lane*, 742 F.2d 1311, 1315 (11th Cir. 1984) (evaluating a debt or equity case).

In concluding this is a mixed question, the Eighth Circuit stated:

> [S]ince the Commissioner has made the assessment the taxpayer has the burden of proving the transaction in question was a bona fide loan. We do not think, however, that the issue presented is solely or even essentially a factual one but is a mixed question of law and fact. The factual question is intertwined with the applicable

> principles of law that should be accorded recognition in making the factual determination.

J.S. Biritz Constr. Co. v. Comm'r, 387 F.2d 451, 455 (8th Cir. 1967). Similarly, the Tenth Circuit stated: "The question of whether payments to stockholders of a closely held company are loans or constructive dividends is normally a fact issue but, when there is no dispute in the evidence, it is a question of law whether the facts add up to debt or dividend." *Williams v. Comm'r*, 627 F.2d 1032, 1034 (10th Cir. 1980) (internal quotation omitted).

Second, the analysis is made more complicated by the procedural posture. On summary judgment, we are to evaluate the evidence in the light most favorable to the non-moving party. *Buskey*, 910 N.W.2d at 11. However, insofar as we are reviewing historical facts pertaining to related party transfers—here, the actions of the Purcells and their wholly owned entity, PQI—we must evaluate relevant circumstances with "special scrutiny." *Haber*, 52 T.C. at 266; *Jones*, 74 T.C.M. (CCH) at 479; *Dynamo*, 2018 WL 2107977, at *18. For the following reasons, we agree with the Commissioner that the historical facts fail to demonstrate the arrangement the Purcells created established a true debtor-creditor relationship. Rather, the evidence demonstrates the advances from PQI to Mr. Purcell amount to taxable distributions.

A. Formal indicia of indebtedness do not demonstrate an unconditional intent to collect on the funds.

Rather than review each factor individually, we adopt the *Dynamo* court's categories: formal indicia of debt and economic indicia of debt. *Dynamo*, 2018 WL 2107977, at *18. Looking first to the formal indicia of debt, we evaluate factors such as whether there was a promissory note, and if so, if interest was charged or a maturity date set, if the note was secured, or if any records maintained by the Purcells reflected the transaction as a loan, and the manner in which the

transaction was reported for tax purposes is consistent with a loan. *Jones*, 74 T.C.M. (CCH) at 482; *Dynamo*, 2018 WL 2107977, at *18.

We recognize at the outset that some formal indicia of indebtedness are present. First, there are interest-bearing notes, reflected as such in PQI's records.[48] Given that the Purcells were creating related-party loan arrangements destined to garner "special scrutiny" however, *see Haber*, 52 T.C. at 266; *Jones*, 74 T.C.M. (CCH) at 479; *Dynamo*, 2018 WL 2107977, at *17, we highlight that the notes were not in existence when Mr. Purcell took the advances. Under *Dynamo*, to "find a bona fide creditor-debtor relationship, we must determine *at the time the advances were made* there was an unconditional obligation on the part of the transferee to repay the money." *Dynamo*, 2018 WL 2107977, at *17 (emphasis added) (internal quotation omitted). Here, on each occasion Mr. Purcell took an advance from PQI, there was in existence no note evidencing any obligation to repay—unconditional or otherwise. Instead, the historical facts reveal that the notes were not created until the end of each calendar year.[49] At best, this fact is neutral.

We also recognize that the Purcells treated the advances as loans for tax purposes, highlighting the parties' central dispute. *Dynamo*, however, further requires that, at the time funds are transferred, there be "an unconditional intention on the part of the transferor to secure repayment." *Id.* We agree with the Commissioner that the Purcells have not presented any evidence demonstrating PQI's unconditional intention to collect the funds. *See also Alterman II*, 611 F.2d

[48] Kitchak Decl. ¶¶ 4, 5, Ex. C, Ex. D; Purcell Decl. ¶¶ 8-10, Ex. 1.

[49] The standard emphasizes that *at the time* the transfer is made, there must be an intent to collect on the loan. Here, the notes were created at the end of the year and not contemporaneously with dispersal. The Commissioner does not argue this temporal difference impacts the outcome, likely because courts "have previously found that after-the-fact consolidation of advances and execution of promissory notes can [still] indicate that the advances were debt." *Dynamo*, 2018 WL 2107977, at *20; *see* Comm'r's Mem. Law Supp. Comm'r's Mot. Summ. J. 4 (discussing the lookback period).

at 869 (the creation of "a creditor-debtor relationship[] depends on whether the parties definitely intended that the sums advanced would be repaid")[50]; *Haag*, 88 T.C. at 615-16 ("For disbursements to constitute true loans there must have been … an unconditional intention on the part of the transferor to secure repayment."). Here, the specific language of the notes state:

> Lender *may* call this note due by providing written notice of such call to Borrower at any time after ten years from the date of the Note, at which said time the outstanding Principal Balance and any outstanding Interest shall be immediately due and payable. Such payment is a balloon payment of all outstanding Principal Balance and Interest. [51]

Specifically, PQI's use of "may" does not manifest "an unconditional intention on the part of the transferor to secure repayment." *Haag*, 88 T.C. at 616. Further driving home this point is that PQI is controlled by the Purcells, meaning they control when—and *whether*—the funds will ever be called for collection. Even Mr. Purcell's declaration does not address PQI's intent to collect on the loan. Although the declaration specifically asserts that Mr. Purcell has "both the intent and the ability to repay the loans,"[52] it is entirely silent concerning the Purcells' intention to have PQI demand repayment from the Purcells. The absence of any evidence demonstrating an intent to collect (unconditional or otherwise)—on its own—compels us to grant the Commissioner's motion.[53] *See Dynamo*, 2018 WL 2107977, at *17 (noting the presumption that intrafamily

[50] *Alterman II* discusses whether advances were loans or taxable dividends. 611 F.2d at 869-70. A dividend from a C corporation is like a distribution from an S corporation, like PQI. *See* I.R.C. § 316 (defining dividends of C corporations); I.R.C. § 1368(a) (concerning S corporation distributions).

[51] Kitchak Decl. ¶¶ 4, 5, Ex. C, Ex. D; Purcell Decl. ¶¶ 8, 9, Ex. 1 (emphasis added).

[52] Purcell Decl. ¶ 13. Even if his declaration stated PQI intended to collect, this would be a "mere averment" not sufficient to create a genuine issue of material fact as the note maintains PQI "may" collect the debt. *DLH*, 566 N.W.2d at 71.

[53] At oral argument, counsel for the Purcells stated PQI's corporate records contain an obligation to demand repayment of loans. Tr. 25 (Jan. 28, 2026). Counsel conceded these corporate records are not in evidence. *Id.* Thus, with the record presented, PQI has no obligation to collect.

transfers are gifts can be rebutted by "an affirmative showing that there existed a real expectation of repayment and intent to enforce the collection of the indebtedness").

The Purcells claim requiring a "fixed maturity date," which is also lacking in the promissory notes here, amounts to "a difference without distinction" as they are valid notes.[54] But we are not called upon to determine whether the notes are "valid"; instead, we must determine whether the advances in question are bona fide loan transactions for tax purposes, relying on the standard set forth above. Again, considering that related-party loans are subject to "special scrutiny," the absence of fixed maturity dates militates against concluding that the notes evidence true loans because the Purcells themselves controlled the maturity date, which was set at a time to benefit themselves.

The Purcells further argue the promissory notes offer *less* protection to the Purcells as borrowers because the notes contain no advance notice requirement, nor is there a cure period.[55] This argument might be persuasive in a scenario where Mr. Purcell is a borrower unrelated to the lender. However, the Purcells' argument ignores the related-party nature of the transaction; the Purcells are PQI and PQI is the Purcells. When the Purcells control when to call the loans due, they cannot also argue Mr. Purcell's lack of advance notice or a cure period puts him at a disadvantage.

Additionally, particularly because the Purcells caused the notes to be drawn up only at the end of each calendar year—after Mr. Purcell had taken the advances he desired—there was no ceiling on the amount Mr. Purcell could borrow during each tax year in issue. *See Alterman I*, 505 F.2d at 877 n.7 (one factor is "whether a ceiling existed to limit the amount the corporation

[54] Appellants' Mem. Law Opp'n to Comm'r's Mot. Summ. J. 5-6 (citing *Instrument*, *Black's Law Dictionary* (12th ed. 2024)).

[55] Appellants' Mem. Law Opp'n to Comm'r's Mot. Summ. J. 5-6.

advanced"). The Commissioner notes the two tax years at issue represent $570,000 in unsecured advances with the balance rising to $824,726 by 2022.[56] As such, the Commissioner argues this "kind of continued lending, without any apparent ceiling, suggests that the advances would continue regardless of the size of the balance."[57] In response, after stating loan limits are not relevant, the Purcells claim that the loans were used to "pay for two discrete expenses," (remodeling and a litigation expense), and thus "both Mr. Purcell and PQI understood that a ceiling sufficient to cover the two expenses existed."[58] First, law clearly compels us to consider loan limits. *Alterman I*, 505 F.2d at 877 n.7. Even if this "understanding" could be considered a limitation on the amounts, it is not derived from the record. Indeed, the record demonstrates that Mr. Purcell continued taking advances in the tax years subsequent to those at issue.[59] Considering all facts of formal indicia of a loan, we are not persuaded they demonstrate the advances are bona fide loans.

B. Economic indicia are not met

We next look to the economic indicia, namely the extent to which the shareholder controls the corporation, the earnings and dividend history of the corporation, the magnitude of the advances, whether the corporation ever undertook to force repayment, whether the shareholder was in a position to repay the advances, and whether there was any indication the shareholder attempted to repay the advances. *Alterman I*, 505 F.2d at 877 n.7. As to the first economic

[56] Comm'r's Mem. Law Supp. Comm'r's Mot. Summ. J. 12; Xiong Decl. ¶¶ 17-19, Ex. M, at 3.

[57] Comm'r's Mem. Law Supp. Comm'r's Mot. Summ. J. 12 (citing *Electric & Neon, Inc. v. Comm'r*, 56 T.C. 1324, 1339-40 (1971)).

[58] Appellants' Mem. Law Opp'n to Comm'r's Mot. Summ. J. 2.

[59] Xiong Decl. ¶¶ 17-19, Ex. M, at 3.

indicium, the Purcells, as shareholders, control PQI entirely.[60] Although the Purcells' arguments imply the Purcells are separate from PQI and PQI is autonomous from the Purcells, the facts demonstrate otherwise. This fact cuts against the Purcells' claim that the advances were loans.

Mr. Purcell's earnings and loan history, and their magnitude, also shed light on the arrangement. *Alterman I*, 505 F.2d at 877 n.7. The record demonstrates that—at Mr. Purcell's behest—PQI shifted away from shareholder distributions in 2018 and, instead, paid Mr. Purcell W-2 income and advances. The relevant years were:[61]

Tax Year	Distributions	W-2 income to Tim Purcell	Advances to Tim Purcell
2019	-	$100,000	$375,700
2020	-	$100,000	$195,099

If the advances were loans, as claimed by Mr. Purcell, PQI might not have reduced his compensation (from about $150,000 in 2015-2017 to $100,000 in 2019 and 2020). We cannot conclude the advances were loans when—at the same time—Mr. Purcell's W-2 compensation was reduced by one third. *See Haag*, 88 T.C. at 616 (in recharacterizing loans as compensation for services, the court noted the taxpayer "would not have agreed to work for no compensation if he had bargained at arm's length with an uncontrolled entity, and we do not believe that he agreed to do so here").

Finally, we look at whether PQI ever undertook to force repayment, whether Mr. Purcell was able to repay the advances, and whether there was any indication the shareholder attempted to repay the advances. *Alterman I*, 505 F.2d at 877 n.7. Here, the parties agree PQI never demanded

[60] Purcell Decl. ¶¶ 1-3.

[61] Xiong Decl. ¶¶ 17-19, Ex. M, at 3.

payment—and thus Mr. Purcell never attempted to repay—because, per the terms of the notes, payment is only due after ten years (and only if PQI decides to demand payment).[62]

As to Mr. Purcell's ability to repay the advances, the record does not demonstrate he would be able to make a lump sum payment of $526,000 in 2029 and $273,000 in 2030.[63] The Commissioner notes the $375,700 advance in 2019 is more than three times his annual wages from PQI, and his $195,098.79 in 2020 is almost twice his annual wages.[64] Mr. Purcell's declaration states he earned a "significant salary" in his position, "including $140,130" in 2021.[65] Without introducing supporting documents, Mr. Purcell further states that "PQI's books and records reflect that I receive a salary sufficient to allow me to make repayment when the loans come due."[66] Mr. Purcell does not identify any other monetary source that would allow him to make balloon payments if and when they are called. As an initial matter, Purcell's statement that he has a sufficient salary to repay the loans are "mere averments" that do not place a fact in dispute. *See*

[62] Purcell Decl. ¶¶ 9-11. The Purcells further argue Mr. Purcell did make payments "from his personal funds for PQI corporate expenses." Appellants' Reply Mem. Law Supp. Appellants' Mot. Summ. J. 5-6 (filed Jan. 21, 2026) (citing Kitchak Decl. ¶ 8, Ex. G). The record does not support the Purcells' claims. Exhibit G is a portion of a general ledger, which does list debits and three adjustments. Kitchak Decl. ¶ 8, Ex. G. The record does not demonstrate these adjustments came from Mr. Purcell's personal funds.

[63] The 2029 payment was calculated: $375,700 (principal) × 0.04 (interest rate) × 10 (years) = $150,280. $375,700 (principal) + $150,280 (interest) = $525,980. The 2030 payment was calculated: $195,098.79 (principal) × 0.04 (interest) × 10 (years) = $78,039.52. $195,098.79 (principal) + $78,039.52 (interest) = $273,138.31.

[64] Comm'r's Mem. Law Supp. Comm'r's Mot. Summ. J. 11; Xiong Decl. ¶¶ 17-19, Ex. M, at 3.

[65] Purcell Decl. ¶ 4. The Commissioner notes whether "a transfer of funds is a bona fide loan is determined as of the time the funds are transferred." Comm'r's Mem. Law Opp'n Appellants' Mot. Summ. J. 8 (filed Jan. 14, 2026) (citing *Haag*, 88 T.C. at 616). Mr. Purcell's salary in 2019 and 2020 was $100,000 (and not his 2021 $140,130 salary). Since using his 2021 salary does not demonstrate an ability to repay the notes, his lower 2019 salary also does not.

[66] Purcell Decl. ¶ 13.

DLH, 566 N.W.2d at 71 ("[T]he party resisting summary judgment must do more than rest on mere averments."). In this context, which includes the fact that Mr. Purcell continued taking advances from PQI beyond the tax years at issue, the record does not reflect resources that would be able to repay the balloon payments when they are due.

The Purcells also argue that because the loans comply with common law and statute, they are per se bona fide loans.[67] However, PQI's ability to lend money and the promissory notes' legality is not a factor to consider. Thus, the fact that the loans may not violate state law is not a consideration here.

C. The Purcells' returns substantially understated the amount of tax owed and was in disregard to applicable law.

Lastly, the Commissioner asks us to confirm his imposition of a 20% penalty for substantial understatement of the tax owed and an additional penalty for negligence or intentional disregard of applicable law.[68] State statute mandates the Commissioner "shall impose a penalty for substantial understatement of any tax," when the understated tax amount exceeds "ten percent of the tax required to be shown on the return for the period." Minn. Stat. § 289A.60, subd. 4 (2024). Additionally, the Commissioner must add a penalty if underreported taxes was owing "to negligence or intentional disregard of the provisions of the applicable tax laws." Minn. Stat. § 289A.60, subd. 5 (2024). Because the Purcells argue the advances should be characterized as loans, they ask us to adjust their tax liability, "with all interest adjusted and penalties abated therewith."[69] As addressed above, we conclude the Purcells incorrectly reported PQI's advances to Mr. Purcell as loans, rather than income. Because this adjustment reflects negligence when

[67] Appellants' Mem. Law Supp. Appellants' Mot. Summ. J. 21-22 (filed Dec. 22, 2025).

[68] Comm'r's Mem. Law Supp. Comm'r's Mot. Summ. J. 13.

[69] Appellants' Mem. Law Supp. Appellants' Mot. Summ. J. 23.

following the applicable tax laws, resulting in a greater than 10% understatement of tax, we conclude the Commissioner correctly included these penalties.

For the forgoing reasons, the Commissioner's adjustments to the Purcells' 2019 and 2020 tax returns are supported by undisputed facts; we grant the Commissioner's motion for summary judgment and deny the Purcells' motion.

J.N.B.H.