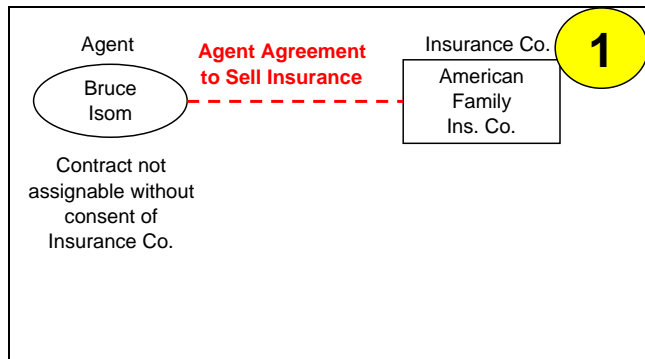


**Isom v. Commissioner
70 TCM 376 (1995)**

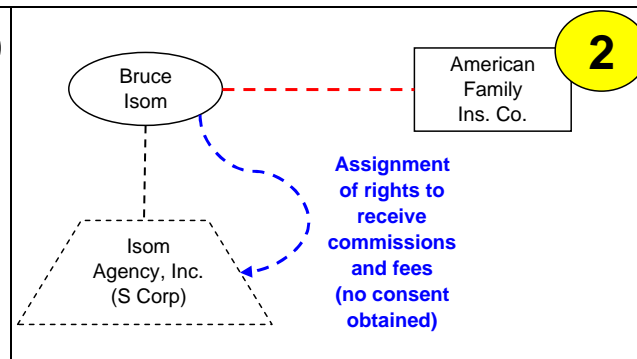
**Insurance Agent Commission
Assignment Not Respected**

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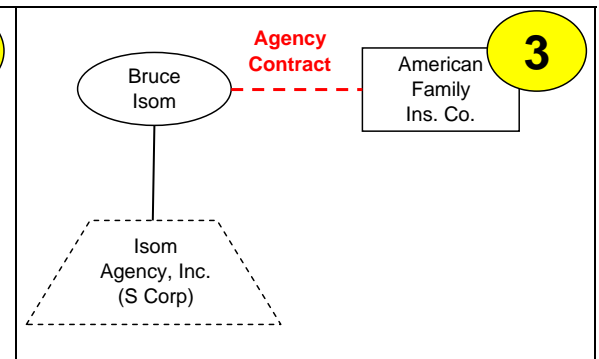
Initial Structure (1975)



Purported Contract Assignment (1980)



Ending Point



Isom has been an insurance agent since 1975. On March 28, 1975, Isom entered into a Career Agent's Agreement (the agreement) to sell the insurance policies of the American Family Insurance Co. (American Family). The agreement was executed by an authorized representative from American Family and by Isom in his individual capacity. Isom agreed to solicit and place eligible insurance applications with American Family, to deliver insurance policies, to collect premiums and other moneys due, and to represent American Family. Isom was prohibited from assigning any part of the agreement, any interest or rights therein, or any sums due or to become due, without the written consent of American Family. On October 27, 1980, Isom incorporated Isom Agency, Inc. (Isom Agency), under the laws of the State of Minnesota. Isom owned all of the stock of Isom Agency and was its president, secretary, and treasurer. Isom was the only compensated officer of Isom Agency during the years at issue. Isom made all decisions for Isom Agency. On October 24, 1980, Isom sent a memorandum to a representative of American Family which stated as follows:

Effective on 1 November 1980, I am incorporating my agency per the attached articles of incorporation. On that date, all compensation paid to me should be to Isom Agency, Inc. instead of the current method of payment.

On December 4, 1980, Isom Agency filed a Form 2553, Election by a Small Business Corporation, electing to be treated as a small business corporation for Federal income tax purposes. Section 61(a) provides that gross income includes all income from whatever source derived, including compensation for services, fees, commissions, or gains derived from dealings in property. Fundamental to this principle is that income is taxed to the person who earns it. The person or entity who earns the income is the person or entity who controls the earning of the income. The court recognized two necessary criteria for a corporation rather than the service provider to be considered the true controller and, therefore, the true earner of the income. First, the service provider must be an employee of the corporation with the corporation having the right to direct or control his activities in some meaningful way. Second, there must exist between the corporation and the entity using the services, in this case American Family, a contract or similar indicium recognizing the corporation's controlling position.

The Court found that there was no contract, or other agreement, or understanding between Isom Agency and American Family that recognized Isom Agency's controlling position in earning the commission income. The court further found that the corporation did not have control over Isom in any meaningful sense. Isom had the right, and not Isom Agency, to terminate the agreement between himself and American Family. Therefore, the earner of the income was clearly Isom and not Isom Agency. Isom was the true earner of the income from the insurance commissions paid under his employment agreement with American Family, and that Isom made no valid assignment of his agreement with American Family to Isom Agency.

