

MEMO# 2409

December 21, 1990

THIRD CIRCUIT AFFIRMS TAX COURT DECISION THAT EXPENSES OF A FRIENDLY REORGANIZATION ARE NONDEDUCTIBLE

December 21, 1990 TO: TAX MEMBERS NO. 59-90 RE: THIRD CIRCUIT AFFIRMS TAX COURT
DECISION THAT EXPENSES OF A FRIENDLY REORGANIZATION ARE NONDEDUCTIBLE

The attached decision of the Third Circuit Court of Appeals affirms a Tax Court decision that the investment banking fees, legal fees and other expenses of a friendly reorganization are capital expenditures under section 263 of the Internal Revenue Code and thus not deductible under section 162 as ordinary and necessary business expenses. The Tax Court had ruled that the costs were capital in nature because they were incident to a change in ownership leading to benefits that would produce results for many years. National Starch had appealed, arguing that expenses were not to be capitalized unless they result in the creation or enhancement of a separate and distinct asset. The Third Circuit noted that other Circuits accept National Starch's interpretation of the law, and that the Third Circuit's opinion is in conflict with those Circuits. David J. Mangefrida, Jr. Assistant General Counsel Attachment

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