

Reexamining Underwater Lease Assumption Transactions

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Tax Notes

Although it has been 70 years since *Oxford Paper* was decided by the Second Circuit, the case continues to be a focus of questions about the tax law's treatment of obligations that are assumed as consideration in transactions, and the decision continues to serve as a guidepost for inventive practitioners seeking to structure transactions involving those assumptions. *Oxford Paper* is cited for the proposition that a taxpayer who receives consideration for assuming a lease that obligates the lessee to pay above-market rent (in other words, a transaction in which the buyer receives — rather than pays — consideration) does not have taxable income. Since *Oxford Paper* was decided, several other authorities have addressed the scope of its rule, limiting it in several respects to the point that many practitioners today are unfamiliar with the case or its ramifications.

What are "underwater" leases? Is the Oxford Paper doctrine still a good law that has not been adversely affected by the enactment of the economic performance?

Attorneys Abraham Leitner and Leah Segal outline their thoughts for *Tax Notes*.

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Director Abraham Leitner appears on the *Tax Notes Talk* podcast to discuss the article he co-authored alongside associate Leah Segal, "Reexamining Underwater Lease Assumption Transactions."

Abraham's segment begins at the 18:55 mark.

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