MPT 1 - Sample Answer # 1

To: Della Gregson, Partner
From: Examinee
Date: July 26, 2016
Re: Barbara Whirley Matter

Memorandum In re Whirley

Barbara Whirley (BW) is a tenant of a three bedroom house at 1254 Longwood Drive, Franklin City, Franklin 33015 belonging to Sean Spears (SS). She has been experiencing problems since late February, and she is looking for options for how to resolve them. Each problem she is experiencing is noted below with a discussion of her options.

In order for her to be able to receive any remedies for the damages, BW must show that the damage renders the property untenable. There is an implied warranty of tenability in lease contracts established in Gordon v. Centralia Properties Inc. as well as a statutory duty of landlords to repair conditions that render property untenable in Franklin Civil Code (FCC) § 540. If a property is rendered untenable, then SS would be responsible for repairs of the conditions.

1. The Leaking Toilet

First, BW will need to establish that a leaking toilet renders the property untenable. A leaking toilet is likely to be determined to be an untenable condition. FCC § 541 lists lacking "plumbing and gas facilities...maintained in good working order" as an untenable dwelling. The tenant in Burk v. Harris had a leaking shower, which was deemed untenable as well. This shows generally that a leaking plumbing system (i.e. sinks, showers, toilets) can render a property untenable. Maybe at the beginning of the leak it was not untenable with just a little water on the floor and an unsurety if there even was a leak. However, it became apparent rather quickly that it was indeed leaking and worsened as the problem was not resolved. BW now has to put a bucket underneath the leak to catch the water and empty it a couple times a day. There is also no evidence that BW caused these damages. This should be deemed an untenable condition.

Second, BW will need to establish that she notified SS of the leak and it was not addressed within a reasonable time. BW first notified SS of the leak on Feb. 19th. She notified him again on March 4, March 31, and May 26. These are all by email. She also alludes to calling the office in her emails a few times, so she might have left messages there notifying him even more times. A tenant is presumed to act within a reasonable time if he makes repairs after 30 days of notifying the landlord pursuant to FCC § 542©, so SS has had plenty of time to repair the damage. BW should be able to make the repairs herself if she so wishes.

BW's options include: she may make the repairs herself and deduct the cost from the next month's rent, paying $1000 since the cost of fixing the leak is $200 and her rent is $1200.

The advantage to this solution is that she may have her toilet fixed now instead of waiting for an indefinite time for SS to fix it. It will end up being deducted from her rent, so her costs do not change. If SS decides to start eviction proceedings, she may use this justifiable reduction in rent as an affirmative defense because she did not cause the violation.

BW may vacate the premises and be discharged from paying further rent after vacating. This has the disadvantage of the fact that she would have to move, which she explicitly does not want to do. It has the advantage that she might be able to find lodging elsewhere in better condition or even lower rent if she opted for a two bedroom.

BW may withhold a portion of her rent until SS makes the relevant repairs if the conditions substantially threaten her health and safety. This is unlikely to be an option here because a leaking toilet is unlikely to affect her health and safety unless it was maybe causing mold. There is another bathroom as well that she may use in her house, so it does not seem likely that she would be able to do this.

2. The Broken Sprinkler System

BW will again need to establish that the broken sprinkler system renders the property untenable. In this case, there is nothing in the FCC that statutorily establishes a broken sprinkler system as untenable. It does not seem to fall under plumbing, which would be the closes possible thing under the statute. Under the lease, it seems that Yard Maintenance is under the responsibility of the tenant (BW) and that it is done at tenant's expense. Both of these facts lead to a conclusion that BW will likely have a hard time showing that a broken sprinkler system that causes her 15-20 minutes of inconvenience a couple times a week will not be deemed untenable. Unless there is other evidence that during these phone calls and voice mails SS agreed to repair the sprinkler system and a valid contract was formed she will have to pay for it herself or leave it broken.

BW's option here is to repair the sprinkler system herself at a personal cost of $300. BW may not force SS to cover this cost. She may also leave it broken as it does not appear to affect her ability to keep the yard maintained, but she will need to continue to maintain the yard appropriately.

3. The Damp Carpet, Broken Door, and Mold

BW will need to establish that these conditions render the property untenable. It seems fairly obvious that these conditions would render the property untenable because the room itself is not even usable due to the mold. Also, FCC § 541 lists lack of "effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors" as an untenable feature. Something is wrong with the door or wall to allow water inside the house like it is, which would put this issue easily within this category. The tenant in Burk also had a leaking roof and windows, which are similar enough here that the establishment of untentability should not be a problem.

BW notified SS of this problem on May 26. It has now been more than 30 days since that notice, so she should be able to repair it herself. The problem is that she must show that she did not cause this issue herself. A tenant is not able to recover if she does not show that she was not at fault for the damages as established in Shea v. Willowbrook Properties LP. There could be evidence here that either a guest or maybe even her dog caused the damage to the door that is letting water in. Even if BW does establish that she was not at fault for the damage, she did not notify SS until May 26 after the room had already gotten smelly and mold started to grow. Tenants have a duty to mitigate by notifying the seller promptly upon discovery of the damage, and BW did not do so. BW might be relieved of this if it is shown that she reasonably believed that SS would not respond due to the nature of their relationship so far, but it seems unlikely. It is a major problem that has just gotten worse that she did not notify about until it entered into the worst state.

If (a big if) BW can establish a right to recover something under this section, she would be able to recover $1800 from the landlord because it is more than a month's rent (assuming she pays this and not SS). She would also be able to vacate (although that is not her wishes apparently). And, unlike in leaking toilet situation, she should be able to withhold a portion of her rent until the landlord makes the repairs because these conditions should show that the mold threatens her health and safety pursuant to FCC § 542(a)(4).

4. The Chewed Baseboards

The chewed baseboards are likely to be deemed untenable under FCC § 8 because floors should be kept in good repair, assuming baseboards are considered part of the floor. The problem here mostly arises from the fact that her dog did the damage. It would not matter whether she was allowed a dog or not because it was her dog (similar to if it were herself, a guest, a child) that did the damage, so she will be liable for it herself. Furthermore, unless it can be established that she did have a separate written Pet Addendum for her golden retriever, she might be liable under her lease's Pet section to her landlord for keeping her dog there. Lastly, she did not notify her landlord of this problem, so at the moment she would not be able to pursue any remedies under FCC § 542 until a reasonable time has passed after notification IF she was even able to recover generally (which she is not).

MPT 1 - Sample Answer # 2

Memorandum
To: Della Gregson, Partner
From: Examinee
Date: July 26, 2016
Re: Barbara Whirley Matter

Please find below a memorandum analyzing Whirley's options regarding the unrepaired conditions in her home and the potential advantages and disadvantages of each option.

I. Unrepaired Condition 1: Leaking Toilet

Regarding the leaking toilet condition, Whirley is entitled to make repairs and deduct the cost of repairs from rent when due, vacate the premises or withhold a portion or all of the rent until the landlord makes the relevant repairs.

Pursuant to a controlling decision by the Franklin Supreme Court in Gordon v. Centralia Properties Inc. (Fr. Sup. Ct. 1975) and the Franklin Civil Code (Section 540) which codified such decision, in every residential lease, there is an implied warranty of tenantability. Section 541 of the Franklin Civil Code sets forth what conditions will make a dwelling deemed untenantable. Under Section 541, a dwelling shall be deemed untenantable for purposes of Section 540 if it lacks, among other things, "plumbing or gas facilities...maintained in good working order." Here, the leaking toilet would qualify as plumbing facilities that are not being maintained in good working order. Whirley has had to put a plastic bucket behind the toilet to catch the dripping water. The leak has become so bad that she must now empty the plastic bucket twice a day and sometimes the toilet will not flush.

Section 542 provides that if the landlord neglects to repair conditions that render a premises untenantable within a reasonable time after receiving written notice from the tenant of the conditions, the tenant has a number of options for each condition. Here, Whirley provided written notice to the landlord of the leaking toilet condition by emailing him on February 19, 2016. The landlord acknowledged receipt of the notice on February 27, 2016. Despite several follow up emails over the next 3 months, the landlord failed to repair the leaking toilet. One option for Whirley is to make repairs and deduct the cost of repairs from the rent when due if the cost of such repairs does not exceed one month's rent of the premises. The estimated repair cost for the leaking toilet condition is $200, which is less than her monthly rent of $1200. Section 542© provides that if a tenant makes repairs more than 30 days after giving notice to the landlord, the tenant is presumed to have acted after a reasonable time. Here, it has been over 5 months so she will be presumed to have acted after giving the landlord reasonable time. The advantage with this approach is that Whirley can have the condition repaired immediately and remain in the house. The disadvantage is that the landlord could bring an eviction action for breaching the lease agreement by not paying the full monthly rent. However, Whirley can raise the breach of warranty of tenantability as a defense in an eviction case. [Burk v. Harris, 2002] Pursuant to the

controlling decision in Gordon v. Centralia Properties, if such a breach of warranty defense is raised, the trial court must determine whether a substantial breach occurred. A substantial breach is one where the landlord fails to maintain the premises with respect to those conditions that materially affect a tenant's health and safety. [Franklin Code, 550(d)] The Franklin Court of Appeals in Burk v. Harris (2002) found that a leaking shower was not merely a cosmetic defect or matter of convenience but affected tenant's health and safety. Here, a leaking toilet would be even more likely to be considered as more than a cosmetic defect and instead as a condition that affects health and safety since it deals with waste and can pose a bio-hazard.

Another option is to vacate the premises, in which case she would be discharged from further payment of rent or performance of other conditions. [Section 542(a)(3)]. The advantage to vacating the premises is that she can find a new house in which all the plumbing is in good working order. However, given that Whirley would like to remain in the house, this is probably an option that Whirley would not want to exercise.

A third option is to withhold a portion or all of the rent until the landlord makes the relevant repairs if the conditions substantially threaten the tenant's health and safety. As noted above, the leaking toilet would likely be deemed as substantially threatening the tenants's health and safety. She may only withhold an appropriate portion of the rent. The court in Burk v. Harris found that a court may either measure the difference between the fair rental value of the premises if they had been as warranted and the fair rental value as they were during occupancy in unsafe or unsanitary conditions or reduce a tenant's rental obligation by the percentage corresponding to the relative reduction of use of the leased premises caused by the landlord's breach. The advantage with this option is that Whirley could remain in the house. The disadvantage is that she would have to wait for the landlord to make repairs. Given that it has already been 3 months and the landlord has failed to do so, her better option would be to go with option 1 and do the repairs herself immediately. This option also raises the risk of an eviction action as in Option 1 but as described above, she will have a good defense based on breach of warranty of tenantability.

The option to make repairs and sue the landlord for the cost of repairs would not be available because the cost of repairs does not exceed one month's rent.

II. Unrepaired Condition 2: sprinkler system

Whirley will not have any options against the landlord regarding the broken sprinkler system. Her residential lease agreement provides that the tenant must water the yard and maintain the yard at her expense. Additionally, the Franklin Civil Code would not deem a broken sprinkler system as one of the conditions that would make a dwelling be deemed untenantable in violation of the requirement of tentability. It does not fit into one Section 541's categories. Whirley will be responsible for fixing the sprinkler system. If she does not and the yard is not maintained, she will be found in violation of the residential lease agreement and the landlord could sue for breach of the lease agreement.

III. Unrepaired Condition 3: guest bedroom sliding door and carpet

Under Section 541, a dwelling shall be deemed untenantable for purposes of Section 540 if it lacks, among other things, "effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors." Here, there is a gap between the door and the door frame causing rain and other water to come into the guest bedroom, which has caused mold to grow around the door and the carpet to become increasingly discolored and moldy. The gap between the door and door frame does not provide effective waterproofing and weather protection and would fall within Section 541.

Section 542 provides that if the landlord neglects to repair conditions that render a premises untenantable within a reasonable time after receiving written notice from the tenant of the conditions, the tenant may exercise certain options. Here, Whirley provided written notice to the landlord of the leaking door and carpet condition by emailing the landlord on May 26, 2016. One option for Whirley is to make repairs and sue the landlord for the cost of repairs if the cost of repairs exceeds one month's rent. The estimated repair cost to replace the door, door frame and insulation and replace the carpet is $1800, which is more than her monthly rent of $1200. Section 542© provides that if a tenant makes repairs more than 30 days after giving notice to the landlord, the tenant is presumed to have acted after a reasonable time. Here, it has been over 2 months since she provided notice so she will be presumed to have acted after giving the landlord reasonable time. The advantage with this approach is that Whirley can have the condition repaired immediately and remain in the house. The disadvantage is that she will have to bring an action against the landlord which will cost her time and money.

Another option is to vacate the premises, in which case she would be discharged from further payment of rent or performance of other conditions. [Section 542(a)(3)]. The advantage to vacating the premises is that she can find a new house in which all the plumbing is in good working order. However, given that Whirley would like to remain in the house, this is probably an option that Whirley would not want to exercise.

A third option is to withhold a portion or all of the rent until the landlord makes the relevant repairs if the conditions substantially threaten the tenant's health and safety. The mold caused by the leaking door and the damp carpet would be a health hazard. Furthermore, the court in Burk v. Harris found that when premises were not properly waterproofed from the outside elements, it affected tenant's health and safety. She may only withhold an appropriate portion of the rent. Based upon the standard described in Burk v. Harris described above, she could withhold $200 since that is the difference between the average fair rental value of a three bedroom house and two bedroom house in the same area. The mold and smell have rendered one of the bedrooms useless so she effectively only has use of two bedrooms not three bedrooms. The advantage with this option is that Whirley could remain in the house and not have to expend any initial up front costs. The disadvantage is that she would have to wait for the landlord to make repairs. Given that it has already been 2 months and the landlord has failed to repair, her better option would be to go with option 1 and do the repairs herself immediately. This third option also raises the risk of an eviction action but given that the mold and smell would constitute material

health and safety risks, she will have a good defense based on breach of warranty of tenantability.

IV. Unrepaired Condition 4: laundry room wall and baseboard

Whirley will not have any options against the landlord regarding the laundry room wall and baseboard and will have to pay for the repairs herself. The Franklin Civil Code would not deem a chewed through wall and baseboard as one of the conditions that would make a dwelling be deemed untenantable in violation of the requirement of tentability. It does not fit into one Section 541's categories. Furthermore, Section 543 provides that no duty on the part of the landlord to repair shall arise if the tenant is in violation of the affirmative obligation not to permit any person or animal on the premises to destroy, deface, damage, impair or remove any part of the dwelling unit. Here, the tenant permitted her dog to be in the laundry room. Though she did move the washer farther back to prevent further damage, by allowing her dog to remain in the laundry room, she permitted it to destroy or damage the premises. Unless her pet addendum to the lease provides that the landlord will repair and pay for the costs of damages caused by the animal, Whirley will be liable for the repairs herself or risk a deduction from her security deposit.

MPT 1 - Sample Answer # 3

Memorandum

TO: Ms. Della Gregson
FROM: Examinee
DATE: July 26, 2016
RE: Barbara Whirley Matter

Barbara Whirley has a one year residential lease for a three bedroom home from Mr. Sean Spears. This memorandum addresses her options regarding four unrepaired conditions on her premises. Some of the unrepaired conditions in Ms. Whirley's rental home are subject to Franklin Civil Code §540, which provides an implied warranty of tenantability in every residential lease. This warranty was originally set forth in Gordon v. Centralia Properties Inc. by the Franklin Supreme Court and was later codified in the Franklin Civil Code. When a landlord breaches this warranty of tenantability, a tenant may maintain possession of the premises and is also entitled to an appropriate reduction in rent that is proportional to the reduced value of the premises (Burk v. Harris). However, a tenant is only entitled to this reduction in rent if the violations are substantial. Violations are substantial if they materially affect the tenant's health and safety. When a court finds that a substantial breach has occurred, it must order the landlord to make repairs to correct the breach, reduce the tenant's monthly rent by an appropriate amount, and award the tenant possession of the premises. To determine the reduction of rent, a court may measure the difference between the fair rental value of the dwelling as warranted and the fair rental value of the dwelling as it actually was during the occupancy or may reduce the tenant's rental obligation by a percentage that is proportional ro the reduction of the use of the premises due to the landlord's breach. As discussed below, Ms. Whirley has several options under this implied warranty for the unrepaired conditions of her toilet and the glass door.

I. Options Regarding Ms. Whirley's Unrepaired Toilet

Ms. Whirley 's toilet in her second bathroom began leaking two months after she moved into her rental house. The condition of the unrepaired toilet is a substantial violation of the implied warranty of tenantability. Franklin Civil Code §541 states that a residence is untenantable if it lacks plumbing facilities in good working order. Here, Ms. Whirley's toilet is not in good working order and has been leaking since February. By March, the leak was so bad that she had to empty a plastic bucket catching the leak twice a day. She also noted that the toilet sometimes did not flush. Under Franklin code §542, a landlord must repair conditions that make the premises untenantable within a reasonable time after receiving written notice from the tenant. The Franklin Court of Appeal also noted in Shea v. Willowbrook Properties LP that a tenant must mitigate his damages by promptly notifying the landlord to give him an opportunity to resolve the problem. Here, Ms. Whirley notified Ms. Spears on February 19, 2016 of the toilet, and again provided notice on March 31 and May 26. The toilet remains unrepaired. Franklin Code §542 also provides that a tenant is presumed to have waited a reasonable time to make repairs if the tenant makes repairs more than 30 days after giving notice. Since Ms Whirley gave Mr. Spears notice more than

30 days ago, she may now make repairs to the premises. Franklin Code §543 also provides that the landlord will have no duty to repair an untenantable condition if the tenant does not keep the premises clean and properly use and operate all plumbing fixtures, Here, there is no indication that Ms. Whirley misused the toilet or did not keep the bathroom clean. Ms. Whirley has four potential remedies when an unrepaired condition in her home is untenatable. She may 1) repair and deduct the cost of repairs if the costs is less than one month's rent; 2) repair and sue if the cost of repairs exceeds one month's rent; vacate the premises and be discharged of the duty to pay rent; or 4) withhold some of the rent if the landlord does not make the repairs, but only if the conditions substantially threaten the tenant's health and safety.

A. Repair and Deduct

Ms. Whirley may repair and deduct the cost of repairs if the costs is less than one month's rent. The estimate for the repair of Ms. Whirley's toilet is $200. Since $200 is less than Ms. Whirley's rent of $1,200 per month, she may go ahead and hire JBHandyman Services to repair the toilet and deduct $200 from her rent. This is a good option for Ms. Whirley since she does not want to vacate the premises and has already considered making repair arrangements herself. If Mr. Spears attempts to evict her for not paying all of her rent, she may raise the implied warranty of tenantability as an affirmative defense to avoid eviction. Ms. Whirley also gave Mr. Spears proper notice of the broken toilet, and now may make repairs.

B. Repair and Sue

Ms Whirley may not repair and sue in these circumstances, since the cost of the toilet repair is not more than $1,200.

C. Vacate the Premises

Ms. Whirley may vacate the premises and be discharged from further rent. This is true despite the clause in her Residential Lease Agreement holding her liable for rent if she vacates before the end of the lease. However, Ms. Whirley has indicated that she would like to stay in the home because it is close to her workplace, and there are limited rental options. Therefore, this would not be a good option for her.

D. Withhold Some Rent Until Mr. Spears Repairs

Ms. Whirley may withhold some or all of her rent until Mr. Spears makes repairs. She may only do so under Franklin Code §542 if the unrepaired conditions substantially threaten her health and safety. Because plumbing is specifically mentioned the code as making the premises untenantable, the toilet defect is substantial and affects Ms. Whirley's health and safety. The Franklin Court of Appeal in Burk v. Harris determined that a dwelling that lacked sufficient waterproofing, which is also specifically mentioned the code, was a substantial breach of the implied warranty. Therefore, Ms. Whirley may withhold a portion of rent . Under Burk, she may either withhold the difference between the fair rental value

of the dwelling as warranted and the fair rental value of the dwelling as it actually was during the occupancy or may reduce the tenant's rental obligation by a percentage that is proportional to the reduction of the use of the premises due to the landlord's breach. Because the toilet is unusable, she may therefore withhold the amount proportional to the second bathroom. This is not as good of an option as her option to repair and withhold, since it is much more complicated to figure out the amount of withholding, and repair would be relatively simple.

II. Options Regarding Ms. Whirley's Unrepaired Glass Door

The leaking glass door also renders Ms. Whirley's home untenantable, and is also a substantial violation. Franklin Code §541 states that a home is untenantable if is lacks effective waterproofing and weather protection of "unbroken windows and doors." The issue here is whether the door is broken or just leaking. The door will not open, and there is a half inch gap between the bottom of the door and the door frame. This indicates that the door may be broken. Furthermore, Ms. Whirley indicated that she did not know if a guest had used the door and perhaps broken it. Franklin civil Code §543 and Shea v. Willowbrook Properties LP make it clear that a tenant will be liable if he permits any person on the premises to destroy a part of the dwelling. Therefore, if a guest broke the door, Ms. Whirley will be liable, not Mr. Spears.

If Ms. Whirley is not responsible and the door is not broken, but merely lacking waterproofing, Mr. Spears will be liable under the implied warranty. This is a substantial violation because it clearly affects Ms. Whirley's health and safety, since there is mold growing in the room and the carpet is damp. Furthermore, she notified Mr. Spears of the problem on May 26, 2016. Since it has been more than 30 days since she notified him, she has waited a reasonable time for him to repair. Ms. Whirley has the following options.

A. Repair and Sue

Because the cost of the repair is $1,800, which is more than her $1,200 rent, she may repair the door herself and sue Mr. Spears for the cost of the repair. This is a good option since Ms Whirley wants to stay in the home and has already received an estimate for repairs.

B. Withhold Some or All of the Rent Until Mr. Spears Repairs.

Ms. Whirley may withhold the rent since the condition materially affects her health and safety. She may reduce her rent to $1000, the average cost of a two bedroom home in the area, since the bedroom where the door is located is unusable.

C. Vacating the Premises and Repair and Deduct

Ms. Whirley has indicated that she does not want to vacate. She may not repair and deduct. This option is not available since the cost of repair exceeds one month of her rent.

III. Options Regarding the Sprinkler and Damage Caused by Bentley

Ms. Whirley will likely not be able to invoke the remedies under the implied covenant for tenantability for the broken sprinkler and the damage to her walls and baseboards. She may be able to argue that the sprinkler invokes the remedies under the warranty since it is a plumbing facility, but the condition will not be a substantial breach because the lack of the sprinkler does not threaten her health and safety. Under Franklin Code §550, if Mr. Spears instituted an eviction proceeding because Ms. Whirley availed herself of the remedies of the implied warranty, judgement would be entered for him because there is no substantial breach and Ms. Whirley's health and safety are not affected. Ms. Whirley may hold Mr. Spears liable under the Lease Agreement since she notified him in writing of the needed repair in accordance with Section 14. She is responsible for maintaining the yard, "at Tenant's expense," so Mr. Spears may argue that she will be responsible for the sprinkler system.

As for the damage to the baseboards, Ms. Whirley had an affirmative obligation not to permit an animal to destroy any part of the dwelling. Therefore, Mr. Spears does not have a duty to repair since Ms. Whirley violated this obligation. Under the lease, however, Ms Whirley may still be able to hold Mr. Spears liable since she has a separate Pet Addendum. The lease only holds the tenant liable for damage caused by unauthorized animals. Since Bentley is authorized, Mr. Spears may be liable as long as she notifies him of the needed repairs. However, this repair may come out of her $1,200 security deposit.

Conclusion

Ms. Whirley may exercise the remedies set forth under the implied warranty for her toilet and glass door, but probably not for the sprinkler system and the baseboards since those conditions are not substantial breaches under Franklin law.

MPT 2 - Sample Answer # 1

Orders of the FDR are presumed correct and valid, and the burden of proof is on the taxpayer to demonstrate that the challenged order is incorrect. *Nelson*. The applicable law in Franklin is the IRC and CFR for determining taxable income. *Stone*. The arguments here demonstrate that the FDR's order was factually and legally invalid in regards to the denial of both deductions, and that the order should be reversed.

I. Under CFR § 1.183-2, a majority of the factors weigh in favor of the Nash's, and therefore they should be found to have the objective of making a profit.

The FDR limited the Nash's business deduction from their Christmas tree business to the amount of income they received from purely that Christmas tree business over the past five years on the grounds that the Nash's allegedly lacked a profit motive. Under IRC § 162, deductions are permitted for any ordinary and necessary business expense incurred in the taxable year. IRC § 183 clarifies that if any "activity is not engaged in for profit, no deduction" will be allowed generally, but rather limited to the income earned by that activity. The nine factors outlined in CFR § 1.183-2 are used to objectively determine what activities may be considered "for profit." *Cf. Stone*. These factors are not exclusive, nor is one factor or a combination of factors determinative of the issue of profit motive. *See Stone*.

The FDR's conclusion in applying these factors was driven by conclusions that the Nash's had "no profit in the tax years in question; a regular history of losses; no plan to recoup those losses; a history of similar activity without any deductions; and no evidence of operations in a businesslike manner." These conclusions were reached incorrectly, and to the extent that some parts are true, are outweighed by the totality of the circumstances here. Each factor is presented below in order that the CFR presents them. A majority of the factors weigh in favor of the Nash's.

1. Manner in which the taxpayer carries on the activity - For the past five years, the Nash's manner of operations have been professional and businesslike. Although their operation was a mere hobby earlier, their conduct shows a marked shift in approach. In the past five years, they have maintained scrupulous records of their business activities, modeling other Christmas tree operations. Mr. Nash researched raising trees, spent time observing other operations, replanted his trees in a professional manner, and had another farmer walk him through how to run a larger operation. Further, the Nash's invested in specialized equipment, expanded their operations, and dedicated an area for the business records and activities in their home office. They also reached to a previous operation that was closing down customers in order to bolster their commercial sales. They also insured their equipment and kept records on the trees. In contrast in *Stone*, the appellant could not produce any business records, lacked a business plan, conducted limited advertising only at horse shows, and did not insure any assets. The Nash's conduct went far beyond this in gaining expertise, maintaining scrupulous records in a dedicated space, investing in equipment and insuring it, and reaching out to a targeted customer base that needed a new supplier (much more than attending a mere show). Although it is true that the trees themselves were not insured, on balance, this evidence is persuasive and therefore this

factor should be viewed in their favor.

2. Expertise of the taxpayer or his advisors - The Nash's had some existing expertise before starting their business, but undertook significant steps to bolster it when starting the business. Mr. Nash read books on raising these particular types of trees, took a series of classes on forest management, observed another tree farm for a significant amount of time, and was advised by another tree farmer closing his business on how such an operation should be run. In contrast in *Stone*, the appellants had no formal education or expertise, but merely recreational experience - they merely consulted with others on a few small issues, none of which had to do with profitability. The Nash's conduct went far beyond this in gaining educational and business expertise and therefore this factor should be viewed in their favor.

3. Time and effort expended by the taxpayer in carrying on the activity - As detailed above, Mr. Nash has spent significant time and effort crafting this operation into a professional business. Mr. Nash spends full-time on the business in summers, and weekends year round. Mrs. Nash works full-time year round on the operation. This is far above the time and effort expended in *Stone*, where only 30-40 hours per week without records were viewed as "neutral." Mrs. Nash works full-time and is supplemented by weekend help and seasonal full-time support from Mr. Nash. Withdrawal from another occupation is specifically described in the CFR as indicative of profit motive. This factor should be viewed in the Nash's' favor.

4. Expectation that assets used in activity may appreciate in value - The Nash's expected their assets would appreciate in value, and insured their equipment as evidence of such intent. They replanted their trees in a manner to ensure better growth and consistency. Their newly planted trees are growing currently, and will soon be large enough for harvesting -- a clear appreciation of invested value. In contrast in *Stone,* the appellants conceded no assets would appreciate in their favor. Therefore, this factor should be viewed in the Nash's' favor.

5. Success of the taxpayer in carrying on other similar or dissimilar activities - This is admittedly the Nash's' first attempt at such a business and this factor is conceded.

6. Taxpayer's history of income or losses with respect to the activity - There is admittedly so far no history of profitability with this venture. However, it is a startup business that is quite literally growing its assets in anticipation of future profits. New businesses of this sort take time to turn profitable, and the Nash's have manifested intent to become profitable in the future. This factor should be viewed neutrally in light of its being explainable due to customary business risk, and the downturn in the economy that was beyond Nash's' control as recognized by the CFR.

7. Amount of occasional profits, if any, which are earned - As stated in (6), not profits have been earned. This factor is conceded.

8. Financial status of the taxpayer - Mrs. Nash retired to take on this business full-time. Part of her retirement includes a pension, but retirement benefits should not be held against the taxpayer in this case. Mr. Nash works as a teacher, but spends significant time on the business. In contrast to *Stone*, the appellants both worked full-time for other businesses outside of their home. Therefore, this factor should be viewed in favor of the Nash's, or at least neutrally due to Mrs. Nash's full-time commitment and Mr. Nash's partial commitment.

9. Elements of personal pleasure or recreation - The Nash's do not hide a love for their farming of Christmas trees, however, their passion should not be conflated with recreational purpose. As the CFR states, deriving "personal pleasure" from the activity is *not* sufficient to classify it as lacking in a profit motive. The intention reflected in the Nash's' actions clearly reflect an intent to profit. In contrast to *Stone*, the appellants operated a horse farm recreationally for their own pleasure of using the horses. Here, the Nash's operated the tree farm not for their own recreational use, but to produce a product they hoped to sell. Although they enjoyed producing such a product, it was produced commercially. Therefore, this factor should be viewed in favor of the Nash's.

For aforementioned reasons, 5 factors should be viewed in favor, 2 against, and, at best, 2 neutrally. Such a balance of factors - a majority of which are in favor of the Nash's' conduct being viewed as in pursuit of profit in regards to this venture - as well as these facts considered in their entirety, as no factor or combination thereof is conclusive, indicate that the FDR's determination should be reversed and the deduction allowed.

II. Under IRC § 280A, the Nash's' home office was exclusively used on a regular basis as the principal place of business for their business and therefore deduction should be permitted.

IRC § 280A allows a deduction for business use of the home when it is exclusively used on a regular basis as the principal place of business for any trade or business of the taxpayer. Exclusive use is an "all or nothing" standard, and the claimed area must be sued solely for business. *Cf. McBride*; *Lynn*.

The Nash's indeed used this area of their home exclusively as the principal place of business for their tree farming business. They set aside a room of their home exclusively for this purpose. They keep all business records there; they keep their tree catalogues there; and they keep their books they consult for running the business there. The room is not designed for personal use, but rather has only a desk and two chairs - the bed in the room was removed. There is no indication that anything but business is conducted in the room.

The FDR will likely argue that the office was not exclusively used for business purposes for several reasons, all of which fail. First, there is a TV in the room. However, this TV is tuned exclusively to the Weather Channel, and provides live updates that are quite necessary for maintaining a weather-dependent business like a tree farm. Second, the computer in the room is connected to the Internet. However, this would be preposterous

to use against the Nash's - an Internet connection is absolutely essential to running a modern business in order to maintain records, communicate with clients, and communicate to receive and send business supplies. Third, there is a fireplace and one of the chairs is a recliner. Although these fixtures and furniture may make the room more comfortable, there is no indication that they remove the exclusive business use from the room. Lastly, the FDR may argue that sometimes the Nash's' dogs lie in the room with them. A dog's presence does not indicate that the room is not used for business though; the Nash's are merely being responsible pet owners. The room is not designed for the dogs and it has no furniture for the dogs or feeding areas. Indeed, many offices throughout the country have various owners' pets make appearances in them from time to time in order to raise business morale. This should not be construed against the purpose of the room, particularly in light of the other evidence.

This conclusion is bolstered in comparison to *Lynn*. In *Lynn*, the Franklin Tax Court found that an area's physical separation and its physical conversion was informative to finding it as an exclusive area that was the principal place of business. Similarly here, the Nash's converted the room to an office, removing the bed, and separated its contents and use from the rest of the home. Although it does not have a separate entrance, it seems sufficiently separated from the rest of the house both physically and in its use. In *Lynn*, the our also found that another purported home office did not qualify for deduction because it lacked details and was used for personal tasks including watching his daughter and letting her watch TV. In contrast, the Nash's had their dogs accompany them - a far cry from babysitting as any parent could attest to - and did not have the TV for the dogs' use. Rather, the TV's use was clearly explained as a business purpose for live weather updates, again in contrast to *Lynn* where the appellant could offer no details of business use to convince the court.

Therefore, the FDR's determination that the Nash's' home office was not used exclusively for business purposes should be reversed, and the deduction awarded to the Nash's.

MPT 2 - Sample Answer # 2

To: Sara Carter
From: Examinee
Date: July 26, 2016
Re: Tax Appeal of Joseph and Ellen Nash - Legal Argument Portion of Brief

I. Under the Internal Revenue Code and Regulations, the appellants may deduct the full amount of losses incurred while carrying on the trade or business of Christmas tree farming.

"[O]ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business" are deductible by the taxpayer. IRC § 162. These deductions are not allowed if the activity is not engaged in for profit. An objective standard is used to determine whether "the taxpayer entered into the activity, or continued the activity, with the objective of making a profit." 26 C.F.R. § 1.183-2(a). While the Regulation delineates nine relevant factors to consider, they are not exclusive, nor is any one factor or combination of factors determinative. Stone v. Franklin Department of Revenue. "[A]ll the facts and circumstances of each case" must be considered. The facts and circumstances of the appellants' activity of selling Christmas trees indicates that they had a profit motive. They are therefore entitled to deduct the full amount of their business losses, offsetting their other income.

A. The Appellants carried on the activity in a businesslike manner by maintaining a business plan with a plan to recover losses.

Nash's testimony provides evidence that the Christmas tree farm was run like a business. He knew details about the money spent on the property planting trees and purchasing and maintaining equipment. They met with another commercial Christmas tree farmer to discuss a business plan and what they would need to do to convert from a hobby farm to a commercial farm. The appellants have not yet drawn a salary from the business, but this is typical when a business is first starting up. Although they have not commercially advertised, they have no need; personal consumers hear of them through word of mouth, and commercial customers were obtained via business contacts obtained from a former commercial Christmas tree farmer. Although they had substantial losses in the first five years of the business, they had a plan to recoup those losses. The trees first planted five years ago when they decided to convert to a business have not yet reached maturity; once they do, the appellants will have a greater stock to sell and an ability to recover their losses incurred starting up their business.

In Stone v. Franklin Department of Revenue, the appellant's horse farm was deemed to be recreational only, but it was run in a manner differently from Appellants' farm here. Although neither advertised commercially, the business contacts maintained here made advertising unnecessary. Neither insured nor drew a salary, but unlike in Stone, the Appellants here have a business plan and a plan to recoup their losses. Thus, this factor is in favor of the Appellants.

B. The Appellants obtained expertise through research and training.

Evidence of a profit motive can be shown by "extensive study of its accepted business, economic, and scientific practices, or consultation with those who are expert therein...where the taxpayer carries on the activity in accordance with such practices." 26 C.F.R. § 1.183-2(b)(2). Nash's testimony indicates that he read many books on raising Christmas trees, took a series of classes on forest management, and met with a Christmas tree farmer and spent time on that farm learning the trade. When the farmer indicated an intent to go out of business, the Appellants again met with the farmer, who instructed them on how to expand to a commercial farm, including keeping records and books. The Appellants have continuously followed his advice. This is unlike the appellants in Stone; while they did consult with others on raising horses, they never consulted on the business aspects of a horse farm. Since Appellants obtained expertise by study and meeting with the farmer, an expert, this factor is in favor of Appellants.

C. The Appellants have spent substantial time and effort in carrying on the Christmas tree farm.

While the Appellants have spent a lot of time on this business (Mrs. Nash treats it as a full time job, and Mr. Nash spends holidays and weekends working on it), it does also have a recreational aspect since they enjoy the work that they do. Additionally, neither Appellant withdrew from another occupation to devote most of their energy to the activity. Mrs. Nash was already retiring, and Mr. Nash is still employed. However, Mrs. Nash's retirement did mean that she had the ability to devote all of her time to the business. Thus, this factor is neutral.

D. The Appellants expect that the assets used in their farm will appreciate in value.

When Appellants decided to convert their farm into a business, they cut down several acres of forest for additional fields. The Christmas trees planted in these fields five years ago have not yet matured enough for sale. Once they do, they will have appreciated in value. Unlike in Stone, where the farm was passively kept, Appellants have actively worked to improve more and more of their land ech year, causing the farm to appreciate. This factor is thus in Appellants favor.

E. This is the Appellants first attempt at carrying on this type of activity.

Although prior engagement in similar activities in a profitable manner indicates a motive for profit despite the current activity being presently unprofitable, the Appellants have never before attempted to commercially farm their land. They are teachers by trade who saw an opportunity to convert their property to a profitable use and have been working diligently to make that a reality.

F. The Appellants have experienced a series of losses in the past five years, but these occurred during the initial start-up stage of the business.

Although Appellants have not had a profit in the last five years, the losses during this time were during the initial stages of the converting the Christmas tree farm into a business. Losses in the first year amounted to $35,000, which included cutting down several acres of forest, planting a larger number of trees than usual, and purchasing equipment. Losses in subsequent years were less; they were incurred while maintain equipment, planting even more Christmas trees, and hiring additional hands to help with the influx of labor required by the expanded farm. Additionally, the economy has been unexpectedly poor during these five years. As the regulations state, "[i]f losses are sustained because of unforeseen or fortuitous circumstances which are beyond the control of the taxpayer, such as...depressed market conditions," the losses are not an indication the activity is not engaged in for profit. In Stone, the appellants incurred losses of $132,751 over seven years with a profit of only $4000. In contrast, Appellants' profit to loss ratio is very reasonable for the initial years of a business. Losses have ranged between $7500 and $5000 per year, discounting the first year with start up costs. This is much more in line with the initial years of a business than the $33,901 in losses in a single year in Stone. Since losses have occurred during the initial years of the business and due to unforeseen market forces, this factor is in favor of Appellants.

G. The Appellants have not yet made a profit on the Christmas tree farm.

The Christmas tree farm has not yet created a profit for the Appellants since it is in its initial years. However, profits have increased each year from an initial $1500 to $5000 in 2015. Although the horse farm in Stone also never showed a profit, it did not show any opportunity to generate a profit either. In contrast, the Christmas tree farm's yearly increase in profits suggests that it will soon become profitable.

H. Although Mr. Nash still received a salary, Mrs. Nash only received a pension.

Substantial income from sources other than the activity may indicate that the activity is purely recreational. Although Mr. Nash is still employed as an assistant principle, Mrs. Nash only receives a pension since she has retired. While this factor is in favor of the Department, it is substantially outweighed by factors favoring Appellants.

I. Although Appellants enjoy working on the Christmas tree farm, this is insufficient to classify the activity as recreational.

When an activity is not enjoyable, it suggests that it will only be engaged in for profit. However, "personal pleasure from engaging in the activity is not sufficient to cause the activity to be classified as not engaged in for profit" when the other factors show that it was engaged in for profit. Mr. Nash has described the pleasure he gets from working outside on the land in this business, but this is merely an example of a entrepreneurial man who has found away to turn something he loves into a business. His love and fascination means he works harder to make the farm a success. This factor thus does not count against Appellants.

In conclusion, the nine factors, considered together with all the circumstances, show that the Christmas tree farm is an actiivity for profit. Appellants should therefore be allowed to take deductions for all the expenses incurred for the business, even those that exceed profit earned.

II. Under the Internal Revenue Code, the appellants may deduct for the use of their home office used as the principle place of business for their Christmas tree farm.

Although generally a residence may not be deducted by a taxpayer (IRC § 280A(a)), a portion "exclusively used on a regular basis (A) as the principal place of business for any trade or business of the taxpayer" may be so deducted. IRC 280A(c)(1). This is an all or nothing standard. Lynn v. Franklin Department of Revenue. Appellants have used their home office exclusively and on a regular basis as the principal place of business for their Christams tree farm. They should therefore be allowed to deduct for its use.
In Lynn, the taxpayer's use of the first floor of his home met this standard because it was physically separated from the living areas, he had physically converted it from a mother-in-law suite to an office, and it had a separate entrance. His "computer room," however, did not meet the standard. Although he testified he kept files and books there, he testified as to no details about what was in the room and he used the room to watch his infant daughter by entertaining her with the TV.

Here, the home office is more like the first floor of the Lynn taxpayer's home. Initially, the home office was a guest bedroom. At the start of the business, Appellants removed the bed and put a desk and chairs in the room. The room also contained a computer, books, and files relevant to the business. Although the computer room in Lynn having a computer was insufficient, there the computer was used for both personal and business tasks. Here, the computer was exclusively used for business purposes. Additionally, the TV in Lynn was problematic. Here, however, the TV was kept on the Weather Channel. Since Appellants run a farm, the weather is highly relevant to their business, and this information is necessary for its success. Although Appellants' dog will come into the home office while they were there, its passive presence is different from Lynn where the taxpayer had to actively watch his infant to ensure her safety. While the home office here is not physically separated from the living areas of the house, the lack of physical separation in Lynn was not the deciding factor; it was instead his mixed use of the room for personal and business reasons and his lack of testimony as to its contents. Here, Nash testified as to the contents of the room, which are all for business purposes. He and his wife designed the room purely for a business use, and they only conduct business within. Thus, Appellants meet this all-or-nothing standard, and they should be permitted to deduct for the room.

MPT 2 - Sample Answer # 3

Memorandum
To: Sara Carter
From: Examinee
Date: July 26, 2016
Re: Nash Tax Appeal

I. The deductions for operating expenses should be allowed, as the Nash's' tree farm was operated with a profit motive in mind

Internal Revenue Code §183 bars tax deductions for activities not engaged in with a profit motive in mind. In making its determination that the Nash's' tree farm was not a for-profit operation, the FDR found that the Nash's' had failed to meet the standards set forth in several sections of federal tax regulation 26 C.F.R. §1.183-2(b)(1-9), which controls determination as to an enterprise's profit motive, or lack thereof. An examination of these requirements, and the Nash's' management of their tree-farming operation, will indicate that they have engaged in tree farming with a profit motive in mind.
26 CFR§1.183-2(1) states that "the fact that the taxpayer carries on the activity in a businesslike manner...may indicate that the activity is engaged in for profit...where an activity is carried on in a manner substantially similar...to other activities of the same nature which are profitable...a profit motive may be indicated." The FDR cited this element in particular as evidence that the Nash's' operation was not run for profit; we argue that this finding was in error. In the present case, the Nash family maintained a businesslike collection of records and books, in a manner which had been recommended by another farmer, who told Mr. Nash "how to keep the records and to keep good books." Mr. Nash's habit of keeping records for his farm, as well as his adoption of methods learned from a successful tree farmer, indicate a profit motive for the Nash's' farm. Mr. Nash also substantially altered the nature of his prior tree-growing operation to accommodate the requirements of a more extensive tree-farming business.

Subsection (2) states that "preparation...by extensive study of...accepted business...practices, or consultation with those who are expert therein...may indicate...a profit motive. In the present case, Mr. Nash testified that he had devoted considerable time and effort to the study of tree farming, including taking classes on forest management, the reading of related texts, and extensive consultation with a successful tree farmer. Mr. Nash's efforts here should be contrasted to the efforts of a similar party in the Franklin Tax Court case Stone v. FDR, wherein taxpayer Stone's attempts to claim deductions for his horse farm failed, in part due to his lack of formal education in horse husbandry, and his failure to consult with experts as to how to make his farm profitable. Mr. Nash, in this case, undertook formal forestry education and consulted about the nature of a "bigger" operation, and its attendant management, with an experienced farmer.

Subsection (3) states that "the fact that the taxpayer...devotes much of his personal time and effort to...an activity...may indicate an intention to derive a profit." Mr. Nash testifies that his wife has worked "pretty much full time year-round" on the farm, and that he has

spent summers, weekends, and "a lot more time during the harvest" working on the farm. Compare this, again to the Stone case, where the Stone family claimed to work "30 to 40 hours" a week on their farm, while still keeping full-time jobs. The fact that Mrs. Nash is retired makes her alleged full time contribution to the Nash's' tree farm much more believable, and Mr. Nash has specified that he devotes much of what would otherwise be his leisure time on weekends and over holidays to maintenance of the farm.
Subsection (4) states that a profit motive may be indicated when there is "an expectation that assets used in activity may appreciate in value." The trees that will form the backbone of the Nash's' tree crop have been growing for five years. A tree field of mature trees will likely have a greater associated value than a field of saplings. As a result, it could be argued that the land used to grow the trees has appreciated in value throughout the duration of the Nash's operation.

Subsection (5) states that "the fact that a taxpayer...has engaged in similar activities in the past and converted them...to profitable enterprises...may indicated that he is engaged...for profit." This is the first attempt by the Nash's' to run a commercial tree-growing operation for profit. The fact that they do not have any prior history of attempting to run a for-profit tree farm, however, should not be considered a substantial bar to their claims for tax deductions, considering their meeting the requirements of multiple other subsections.
Subsection (6) states that "a series of losses during the initial...stage of an activity may not necessarily be an indication that the activity is not...for profit. However, where losses continue...beyond the period which customarily is necessary...[this] may be indicative the activity is not...for profit." The FDR argues that the Nash's' lack of a demonstrable profit during the first five years of their farm's operation is proof-positive that this is not a for-profit operation at all. However, Mr. Nash has testified that the "crop" of trees that was planted at the beginning of operation is only now beginning to mature, and that the maturation of this crop of trees will be conducive to a more profitable enterprise. This is a classic example, then of a startup period: the period which is required for a crop to mature. The Stone case again provides a useful contrast: in the seven years of the Stones' horse farming operation, income only amounted to $4,000, set against an aggregate loss of $132,751. The Stones' income, furthermore, was irregular (consisting only of a single sale), despite the fact that the horse farm had not apparently undergone any major changes or transition during the 13 years that the Stones' had operated their farm without claiming deductions. The Nash's, in contrast, can claim a regular and increasing amount of income from year to year, and can explain an initial lack of income as the result of the customary "starting up" phase of agricultural activity as they transitioned a more organized and commercial farm.

Subsection (7) states that "[the] amount of profits in relation to the amount of losses incurred, and in relation to the...investment and value of assets used in the activity, may provide useful criteria in determining...intent." The FDR holds that the Nash's' lack of profit during any year in which they have claimed a deduction demonstrates that they are not operating with an intent to make a profit. As discussed above, however, Mr. Nash has stated that the maturation of the planned tree crop planted five years ago will lead to the farm becoming profitable. Mr. Nash has also indicated that he has learned how to "keep costs down", which is evidenced by a subsequent stabilization of deducted expenses after

the initial year of operation. The large deduction in year one of the farm's operation can be attributed to a substantial investment in tree-farming equipment by the Nash's. In contrast to Stone, where the court determined that it seemed "unlikely" that the Stone's horse farm "ever had the opportunity to generate a profit", the incoming crop on the Nash's' farm will likely demonstrate the profit potential thereof.

Subsection (8) states that "the fact that the taxpayer...does not have substantial income or capital from sources other than the activity may indicate that an activity is engaged in for profit." Mr. Nash continues to be employed during the school year as an associate principal, but contributes to the management of the farm during weekends and holidays. Mrs. Nash, who is retired, works on the farm full-time, but receives a pension from prior employment. The Nash's do not rely upon their farm financially, and do not draw a salary from the management thereof. This alone should not be dispositive as to the existence of a profit motive however, and it is possible that, as the farm grows more profitable through incoming crops, the Nash's may rely more heavily on the income provided by their farm. Finally, subsection (9) states that "the presence of personal motives in carrying on of an activity may indicate that the activity is not...for profit, especially where there are recreational...elements involved...[it] is not, however, necessary that an activity be engaged in with the exclusive intention of deriving a profit." The FDR asserts that the Nash's' prior history of selling Christmas trees without claiming deductions, along with Mr. Nash's professed enjoyment of tree farming, indicate the lack of a profit motive for their recent activities. This, however, ignores the substantial changes made by the Nash's in the nature of their operation. While the sale of trees already on their property and the small-scale cultivation of those trees that existed before deductions were claimed may be indicative of the activities of a mere hobbyist, the drastically increased scale of the Nash's' farming activity indicates a substantial change in the nature of their motivation. The Nash's may enjoy farming, but that enjoyment is not "sufficient to cause the activity to be classified as not...for profit" considering that their enterprise has clearly demonstrated a profit motive by the substantial change in their operating methods.

For the above reasons, we argue that the FDR's finding that the Nash's' farm was not a for-profit operation to be in error, and that the Nash's' deductions should be applied as claimed.

II. The Nash's' deduction for the business use of a room should be permitted, as the room was exclusively used for business purposes per the Internal Revenue Code

The Internal Revenue Code §280A© provides that certain deductions can be made for use of a portion of a "dwelling unit" pursuant to the "exclusive" use of that portion on a "regular basis" as the principal place of a taxpayer's business. In this case, the Nash's have set aside an old guest bedroom, removed the furniture that the room contained, and kept business records, various books and catalogues related to agriculture, and a computer used exclusively for business in the room. The room also contained a television, which Mr. Nash maintains was kept on the Weather Channel, "for business reasons." We argue that the FDR erred in its determination that this room was not used exclusively by the Nash's for business.

It is useful to compare the Nash's' case with that of the Tax Court case Lynn v. FDR. In Lynn, taxpayer Lynn claimed a deduction for the use of both a floor of his home and a room of an apartment as a principal place of business. The court, specifying that such determinations are made by an "all or nothing" standard, granted Lynn the deduction with regards to the floor of the house, but not with the room of his apartment. In making this determination, the court noted that the successfully claimed deduction was made for a floor which was "separated from...living areas", and that it had been "physically converted" from a guest suite to an office. In finding that expenses for the apartment room could not be deducted, the court noted that Lynn offered few details about the business uses room, and that he would occasionally let his daughter watch TV in the room. The Nash's have physically converted a guest suite to an office, setting the room aside from the living areas of the house. Mr. Nash also testified that the TV in the office was only used for business purposes, the weather being substantially related to an agricultural enterprise. Mr. Nash also specified the nature of the records and other materials that he kept in the room. A fireplace is in the room, but it is not used; the dogs do not impede business. The details that Mr. Nash provided regarding the room's use, as well as the lack of any attested non-business uses, mean that the Nash's should be able to successfully claim a deduction for the room's use as a place of business.