eJournal of Tax Research

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%LQK 7UDQ 1RODQ 6KDUNH\

7KH GHYHORSLQJ LQWHUQDWLRQDO IU
H[FKDQJH RI WD[UHODWHG LQIRUPDW

0LFKDHO 'LUNLV DQG %UHWW %RQGIL

,QWHUSUHWLQJ WD[VWDWXWHV LPSR

$WWLWXGHV WRZDUG PXQLFLSDO LQF
'R SHRSOH YRWH ZLWK WKHLU IHHW"

1LNOD DNREVVRQ

6WUHQJWKHQLQJ WKH YDOLGLW\ DQG
PHWKRG LQ WD[UHVHDUFK

9LQFH 0DQJLRQL DQG 0DUJDUHW 0F.H

7D[LQJ FDS LWDOLVP $XVWUDOLD
8QLWHG 6WDWHV

-RKQ 0LQDV DQG <RXQJHRN /LP

7D[H[SHULPHQWV LQ WKH UHDO ZRU

/LVD 0DUULRWW -RKQ 5DQGDO DQ

‹ 6FKRRO RI 7D[DWLRQ DQG %XVLQHVV /DZ $WD[
7KH 8QLYHUVLW\ RI 1HZ 6RXWK :DOHV

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H-RUXQDO RI 7D[5HVHDUFK

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7KH 6FKRRO RI 7D[DWLRQ DQG %XVLQHVV DW WKH $XVWUDOLDQ 6FKRR
8QLYHUVLW\ RI 1HZ 6RXWK :DOHV :H DUH WKH ODUJHVW WD[V
WRJHWKHU D WHDP RI H[SHUW DFDGHPLF VWDII ZLWK EDFNJU
HFRQRPLFV $W $WD[ZH¶UH ZRUNLQJ WRZDUGV EXLOGLQJ H[
IURP ERWK D WKHRUHWLFDO DQG SUDFWLFDO SHUVSHFWLYH

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7KHJournal of Tax ResearchLV D UHIHUHHG MRXUQDO WKDW SXEOLVKHV
DVSHFWV RI WD[DWLRQ ,W DLPV WR SURPRWH WLPHO\ GLVVH
UHODWHG LVVXHV IURP ERWK WKHRUHWLFDO DQG SUDFWLFD
UHVHDUFKHUV SUDFWLWLRQHUV DGPLQLVWUDWRUV MXGJHV
NQRZOHGJH JH J V`V XDQU \ 0 Q €WFf`pHU%¢

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Abstract
7KH JHQHUDO DQWL DEXVH SURYLVLRQV LQ 3DUW ,9$ LQFOXGH VSHFLILF SURYLV
VFKHPHV ZKLFK DUH E\ ZD\ RI RU LQ WKH QDWXUH RI GLYLGHQG VWULSSLQJ
VWULSSLQJ VFKHPH -XGLFLDO LQWHUSUHWDWLRQ RI WKH DSSOLFDWLRQ RI
LPSOHPHQW HDVHPHQW LQ WKH SRVWDWLRQV RDOWKRXJK WKHUH LV QR OHJLVODW

7KLV SDSHU FULWLFDOO\ H[DPLQHV DQG HYDOXDWHV WKLV MXGLFLDO FRQ
ZRXOG VXJJHVW WKDW WKH WHVW LQ UHODWLRQ WR LGHQWLI\LQJ VFKHPHV
EDVHG RQ WKH HIIHFW RU RXWFRPH RI WKH VFKHPH DQG DV VXFK SXUSRVH
WKH DGGLWLRQDO UHTXLUHPHQW IRU SXUSRVH FKDQJHV WKH WKUHVKROG

7KLV SDSHU LV FRQFHUQHG ZLWK DQ H[DPLQDWLRQ
DOWHUQDWLYH OLPEV LQ WKH WKUHVKROG FRQGLWLR
LQ WKH QDWXUH RI GLYLGHQG VWULSSLQJ¶ RU D VFK
D VFKHPH E\ ZD\ RI RU LQ WKH QDWXUH RI D GLY
FRQFHUQHG ZLWK DQ DQDO\VLV RI WKH MXGLFLDO DS
WHVWV RI D WD[EHQHILW DQG D GRPLQDQW DYRLGD
VWDWXWH VSHFLILFDOO\ H[FOXGHV WKHVH DGGLWLRQD

7KH DSSURDFK WDNHQ LV WR RXWOLQH WKH OHJLVOD
VWDWXWRU\ DSSURDFK WDNHQ DV H[SODLQHG LQ
DFFRPSDQ\LQJ WKH ELOO DSSO\LQJ SULQFLSOHV RI V
KRZ WKH YLVSURQ PD\ RSHUDWH 7KH DQDO\VLV WKHQ F
LQWHUSUHWDWLRQ RI WKH SURYLVLRQ LQ WKH OLJKW
([SODQDWRU\ 0HPRUDQGXP DQG DSSO\LQJ SULQFLSOH

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$XVWUDOLDQ IHGHUDO LQFRPH WD[OHJLVODWLRQ KD
JHQHUDO DQWL DYRLGDQFH SURYLVLRQ WR FXUE ZKDW ZHUH V
E\ WD[SD\HUV VHHNLQJ WR PLQLPLVH WKHLU LQFRP
XQFKDQJHG IRUP IURP Income Tax Assessment Act RQ WKH WKH
HDUO\ V ZDV WKH ZDV D ZLGHO\ GUDIWHG SURYLVL
PDNJ FHUWDLQ WUDQVDFWLRQV YRLG DV DJDLQVW
VLPLODUO\ ZRUGHG &RPPRQZHDOWK OHJLVODWLR

+RZHYHU IURP DV HDUO\ DV FRXUWV KDG VWDUWH
WKH RSHUDWLRQ RI WKHVH DQWL DYRLGDQFH SURYLVLRQV
ODWH V WKHUH KDG GHYHORSHG D VWDUN FRQWU
VWDWXWRU\ ODQJXDJH DQG WKH OLPLWHG DQG UHVW
VWDWXWRU\ SURYLVLRQV $ VLJQLILFDQW FRQWULEXV
HPDVFXODWHG DQWL DYRLGDQFH SURYLVLRQ LQ V DQG
WKH UHSODFHG DQWL DYRLGDQFH SURYLVLRQ LQ 3DUW ,9$ ZDV
DSSURDFK WR VWDWXWRU\ LQWHUSUHWDWLRQ RI WD

- D VFKHPH E\ ZD\ RI RU LQ WKH QDWXUH RI GL VXEVWDQWLDOO\ WKH VDPH HIIHFW DV D VFKHP GLYLGHQG VWULSSLQJ
- WKH &RPPLVVLRQHU IRUPV WKH RSLQLRQ WKDW W GLVWULEXWLRQ RI SURILWV RI WKH FRPSDQ\
- LI WKH FRPSDQ\ KDG SDLG D GLYLGHQG RXW RI VFKHPH ZDV HQWHUHG LQWR WKH DPRXQW PLJK LQFOXGHG LQ DVVHVVDEOH LQFRPH DQG
- WKH VFKHPH ZDV HQWHUHG LQWR DIWHU 0D\

,Q FLUFXPVWDQFHV ZKHUH WKH DOH VRXUL WKH VKRG SW WKUHH FRQVHTXHQFHV EURDGO\ EHLQJ

- WKH VFKHPH LV D VFKHPH WR ZKLFK WKH 3DUW ,9
- WKH WD[SD\HU LV WDNHQ WR KDYH UHFHLYHG D W FRQGLWLRQ IRU WKH JHQHUDO 3DUW ,9$ SURYLVL
- WKH DPRXQW RI WKH WD[EHQHILW LV WKH QRWLR EHHQ LQFOXGHG LQ DVVHVVDEOH LQFRPH

,W LV VLJQLILFDQW WKDW XQOLNH WKH JHQHUDO 3 OHJLVODWLYH WKUHVKROG GHSHQGHQF\ RQ HLWKHU WD[SD\HU RU WKH VFKHPH 2Q PHHWLQJ WKH WKUHV DXWRPDWLFDOO\ DSSO\ ZLWK WKH VFKHPH EHLQJ RQ WD[SD\HU EHLQJ GHHPHG WR REWDLQ D WD[EHQHILW

7KH FRQVHTXHQFH RI PDNLQJ D GLYLGHQG VWULSSLQ DSSOLHV ZDV WKDW WKH &RPPLVVLRQHU FRXOG WK FRPSHQVDWLQJ DGMXVWPHQWV WR DVVHVVPHQWV RI

,Q H[SODLQLQJ WKH QHHG IRU D VHSDUDWH SURYLVL DFFRPSDQ\LQJ WKH %LOO H[SODLQHG WKDW ZKOH ZLWKLQ WKH JHQHUDO SURYLVLRQV RI 3DUW ,9$ LW ZLWKRXW WKH VFKHPH WKH UHOHYDQW GLYLGHQG PL LQFOXGHG LQ DVVHVVDEOH LQFRPH LQ ZKLFK FDVH W ZKLFK FRXOG DWWUDFW WKH RSHUDWLRQ RI WKH JHQ GLIILFXOW\ V (SURYLGHG WR D VHSDUDWH ZLWKLQ WKH GLYL VFKHPHV DQG YDULDWLRQ RQ WKHVH VFKHPHV WKH FRPSDQ\ SURILWV LQ D WD[IUHH PDQQHU LQ VXEVWL

7KH ([SODQDWRU\ 0HPRUDQGXP (0 DFFRPSDQ\LQJ W (ZDV LQWHQGHG WR DSSO\ WR VFKHPHV ZKLFK HIIHFWLYHO\ SODFHG FRPSDQ\ SURIL WD[IUHH LQFRPH LW ZDV QRW FOHDU IURP WKH OHJLV

LQWHQGHG WR EH DQ H[FOXVLYH FRGH LQ UHODWLR
ZRXOG EH H[SHFWHG WKDW DV D PDWWHU RI VWDWXV
SURYLVLRQ ZRXOG SUHYDLO RYHU WKH PRUH JHQHUDO

,W LV VXJJHVWHG WKDW E\ SODFLQJ WKH SURYLVLRQ
RXWVLGH RI WKH JHQHUDO 3DUW ,9$ WKUHVKROG SUR
V (ZDV LQWHQGHG WR EH GHVWUXFWLYH RI GHGXFWHU ZHUH
PDQLIHVW LQWHQWLRQ WKDW WKH WKUHVKROG FRQ
ZRXOG EH VHSDUDWH DQG GLVWLQFW IURP WKH WKU
,9$ UXOHV ,I WKLV LV WKH LQWHQWLRQ WKHQ LW GRHV QRW DSSHDU WKDW WK
IRU V (VKRXOG VWDQG DORQH DQG QRW EH UHDG
WR DWWUDFW WKH JHQHUDO 3DUW ,9$ RSHUDWLRQ

7KH FULWLFDO WKUHVKROG FRQGLWLRQ WR DWWUD
LGHQWLILFDWLRQ RI D VHSDUDWH µWKUHVKROG¶ RU
VFKHPH µKDYLQJ VXEVWDQWLDOO\ WKH HIIHFW RI D
GLYLGHQG VWULSSLQJ¶

,Q LGHQWLI\LQJ VFKHPHV µE\ ZD\ RI RU LQ WKH QDWX
(0 RXWOLQHG GLVDGYDQWDJHV RQ DUULSSLQJ VFKHPH DV LQ
ZKLFK SXUFKDVHG VKDUHV LQ D WDUJHW FRPSDQ\ Z
VWULSSLQJ HQWLW\ WKHQ SD\LQJ IRUPHU VKDUHKRO
DFFXPXODWHG SURILWV RI D QHZ VXEVLGLDU\ DQG
ZRXOG DSSHDU WKDW WKH XVH RI WKH ZLGHU WHUPL
JUDQW D ZLGHU SXUYLHZ WR DWWUDFW WKH RSHUDW
VFKHPHV ZKLFK DUH LQWHQGHG VWULSSLQJ RSH

7KH XVH LQ WKH OHJLVODWLYH SURYLVLRQ RI WK
VXEVWDQWLDOO\ WKH HIIHFW¶ RI D GLYLGHQG VWULS
SRWHQWLDOO\ YHU\ ZLGH DPELWV EH
SUHFOXGH WKH XVH RI YDULDWLRQV RQ D WKHPH WR
RU WKH JHQHUDO SURYLVLRQV LQ 3DUW ,9$ 7R LGHQ
HIIHFW¶ RI D GLYLGHQG VWULSSLQJ VFKHPH ZKDWVRHY
GLYLGHQG VWULSSLQJ VFKHPH DQG WKH LQWHQW RI
WKH HIIHFW « LV WR SODFH FRPSDQ\ SURILWDELOLW
IRUP LQ VXEVWLWXWLRQ IRU WD[DEOH GLYLGHQGV´

,Q UHODWLRQ WR VFKHPHV KDYLQJ VXEVWDQWLDOO\
WKH QDWXUH RI D GLYLGHQG VWULSSLQJ WKH (0 SUP
WKH WDUJHW FRPSDQ\ DUH QRW VWULSSHG E\ ZD\ RI
VXFK DV PDNLQJ LUUHYRFDEOH ORDQV WR DVVRFLDW
SXUFKDVHU RU QRPLQHH DVVHWV %\ RI FRQWULEXWLRQ
VDPH UHVXOW LV DFKLHYHG QDPHO\ WR SODFH FRPS
LQ DIWHU IRUP LQ VXEVWLWXWLRQ IRU WD[DEOH GLYL

7D[5XOLQJ ,7 VXJJHVWV D ZLGHU LQWHUSUHWDWL
GLYLGHQG VWULSSLQJ VFKHPH ZLWK D VFKHPH KDY
VWULSSLQJ VFKHPH DUH FRQVLGHUHG RQO\ WR D V
DVVRFLDWH RU XQGHUWDNHU SDUWLFLSDWHV VHFRQG OLPE RI WKH W
UHVXOW RU HIIHFW RI WKH VFKHPH UDWKHU WKDQ W
LV RI D FRPSDQ\ ZLWK VXEVWDQWLDO GLVWULEXWDEOH SURFHHGV Qp • SSH

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H[FOXGHG DOVR LQGLFDWHV D OHJLVODWLYH LQWHQ
RI VFKHPH RU WKH UHVXOW RI WKH VFKHPH LQ WKHVH
DGGLWLRQDO UHTXLUHPHQWV ZKLFK WKH OHJLVODWX
SURYLVLRQ V (EXW KDG LQFOXGHG LQ WKH JHQ

,Q VHHNLQJ WR LGHQWLI\ WKLV HVVHQFH RI VXFK D
VFKHPH ZLOO EH D GLYLGHQG VFKHPH RQ WKH
UHDVRQDEOH REVHUYHU ORRNLQJ DW WKH WUDQVDF
FKDUDFWHU LV GLYLGHQG RQ WKH WUDQVDFWLRQ
LQYROYLQJ D QXPEHU RI HOHPHQWV LQFOXGLQJ

- D FRPSDQ\ ZLWK HSOR\HH VKDUHKROGHUV
- RXW RI ZKLFK D GLYLGHQG LV UHDVRQDEO\ OLNHO
- VKDUHKROGHUV ZRXOG EH OLDEOH WR SD\ WD[RQ
- VKDUHV DUH VROG RU DOORWWHG LQ WKH WDUJHW
- VXEVHTXHQW SD\PHQW RI GLYLGHQGV WR WKH HPS
  UHFRXS WKH RXWOD\ IRU WKH VKDUHV

:KLOH TXHVWLRQLQJ ZKHWKHU D GLYLGHQG VWUXFWL
WKLQJ IURP D VFKHPH LQ WKH +LJKHVW &RXUW RI
WUDQVDFWLRQV IHDWXUHV ZRXOG FRQVWLWXWH GLY
LGHQGLILHG DV D FULWLFDO IDFWRU LQ WKH FKDUDF
REVHUYHU ZRXOG UHDFK DV WR ZK\ WKH VFKHPH KDG
HOHPHQW LQ FDWHJRUL]LQJ VFKHPHV DV GLYLGHQG V
RU LQ WKH QDWXUH RI GLYLGHQG VWUXFWLQJ

+LV +RQRXU FRQVLGHUHG SXUSRVH WR EH D GHILQL
FRQVLGHUHG WKDW

> « D VFKHPH ZLOO RQO\ EH D GLUHFWLRQ
> RI LW WKDW LW ZRXOG RQO\ KDYH WDNHQ SODFH
> FRPSDQ\ EHFRPLQJ OLDEOH WR SD\ WD[RQ GLYLGH
> RI WKH WDUJHW FRPSDQ\ ,W LV WKDW
> VFKHPH IURP D PHUH UHRUJDQLVDWLRQ

7KH UHTXLUHPHQW WR LGHQWLI\ D SXUSRVH IRU WKH
OHJLVODWLYH SURYLVLRQ DQG +LOO - KDG UHFRJQL
ORRNLQJ WR WKH HVVHQWLDO EHKDYLRXUDO FKDUDF
LQ WKH QDWXUH RI GLYLGHQG VWUXFWLQJ KLV +RQR
VWDWXWRU\ UHTXLUHPHQW E\ VXJJHVWLQJ WKDW WKH
SXUSRVH EXW WKDW WKLV SXUSRVH HOHPHQW ZDV
VFKHPH LQ WKH QDWXUH RI GLYLGHQG VWUXFWLQJ IUR

2Q DSSHDO WR WKH)HGHUDO &RXUW RI $XVWUDOLD
FRQVLGHUHG WKH RSHUDWLRQ RI V (QRWLQJ WKD
WHVWV EH PHW UHVXOWLQJ LQ WKH FRQVHTXHQFH
SURYLVLRQV RI 3DUW ,9$ ZLWKRXW DQ\WKLQJ IXUWK
QRWHG WKDW ³7KH HIIHFW RI VXEVHFWLRQ GRHV QRW LQGHSHQGHQWO\ VDWLVI\
GRZQ LQ V G(QHDHG QRW LQGHSHQGHQWO\ VDWLVI\
LGHQWLILHV WKH FKDUDFWHULVWLFV RI D VFKHPH W

QHFHVVDU\ SXUSRVH RI µHQDEOLQJDWWKDW[UHHQHHYDVQW
FRQQHFWLRQ ZLWK WKH VFKHPH¶ ´

7KLV ZRXOG DSSHDU WR EH DQ UHFRJQLWLRQ E\
LQGHSHQGHQWO\ DV D VHSDUDWH FRGH LQ WHUPV RI

IUDPLQJ(VWKH OHJLVODWXUH KDV DGRSWHG WKH
LW KDV SODFHG V (LQ 3DUW ,9$ IRU D UHDV
VXSSOHPHQW LQ D SDUWLFXODU GHSDUWPHQW
QRW DQ H[DPSOH RI D VWDWXWRU\ SURYLVLRQ
FRQVWUXFWLRQ LV PHUHO\ DQ DYDLODEOH FKRLFH

%HFDXVH V (VWDQGV DSDUW IURP EXW H[WHQGV
VXJJHVWLRQ LV WKDW WKH 9HSDUWPHQW WKH
EHQHILW DQG UHOHYDQW SXUSRVH LQ VV $ &
HOHPHQWV WR DWWULEXWH WKH SDUWQHUV
ZKHQ WKH VHSDUDWH WKUHVKROG GHWHUPLQH
WULJJHULQJ WKH RSHUDWLRQ RI WKH VHFWLRQ
ZKLFK WKH JHQHUDO 3DUW ,9$ RXWFRPHV DSSO
EHQHILW DQG FRPSHQVDWLQJ DPHQGPHQWV LQ

$FFRUGLQJO\ WKHUH LV QR VWDWXWRU\ UHTXLUHPH
EHQHILW WHVW RU WKH GRPLQDQW SXUSRVH WHVW

+RZHYHU LQ UHODWLRQ WR WKH ILUVW OLPE RI V
IURP WKH)HGHUDO &RXUW DW ILUVW LQVWDQFH WR
VXEVHTXHQWO\ WKH +LJK &RXUW ZDV WKDW LQ LGHQ
QDWXUH RI GLYLGHQG VWULSSLQJ¶ RQH RI WKH FRU
VWULSSLQJ VFKHPH ZRXOG EH LGHQWLI\LQJ D WD[DYR

,W LV FRQVLGHUHG WKDW EDVHG RQ MXGLFLDO UHDVL
SRVVLEO\ EHVW HOXFLGDWHG E\ +LOO - DW ILUVW LQ
GLYLGHQG VWULSSLQJ VFKHPH RU D VFKHPH µE\ ZD
VWULSSLQJ¶ LQ V (D PXVW FDUU\ ZLWK LW WKH
HOHPHQWV RI VXFK D VFKHPH PXVW EH D WD[DYRLGD
ZDV RQO\ E\ LPSRUWLQJ WKLV HOHPHQW RI DXWSRVH
WKH RSHUDWLRQ RI V (PD\ EH GLVWLQJXLVKHG
UHRUJDQLVDWLRQV¶

:KHWKHU WKH VDPH UHDVRQLQJ DSSOLHV LQ UHODWI
FRQWHQWLRXV LVVXH DV WKLV WKUHVKROG WHVW OR
WKH HIIHFW RU UHVXOW RI D VFKHPH

6HFRQG6FKHPHV KDYLQJ WKH HIIHFW RI D GLYLGHQG VWULS

7KHUH DUH WZR OLPEV RI WKH WKUHVKROG WHVW WR
DQG LI D VFKHPH LV QRW IRXQG WR EH D VFKHPH E\
VWULSSLQJ WKH SURYLVLRQ FDQ VWLOO EH DFWLYDW
RI D VFKHPH E\ ZD\ RI RU LQ WKH QDWXUH RI GLYLGH
WKH VWDWXWH WKH OHJLVODWXUH LQWHQGV WKDW WKH
WKDW WKH WHVW EH DQ RXWFRPH RU UHVXOWV EDVH
VXEVWDQWLDOO\ WKH VDPH UHVXOW DV ZRXOG EH DV
WKHQ LW PLJKW EH H[SHFWHG WKDW WKLV WKUHVKRO

VDPH LQDVXDE LL 7KH UHDVRQLQJ WRHVWDEOLVKHG GRHV
HOHPHQW RI SXUSRVH WR EH GLVFDUGHG ,Q SDU
VFKHPH ZKLFK SURGXFHV D VRQVHTXHQFH ZKLFK
VDPH DV D FRQVHTXHQFH RI V GLYLGHQG VWULS
SDUDJUDSK

,W LV VXJJHVWHG WKDW E\ LPSRUWLQJ WKH GRPLQD
OHJLVODWHG DV HIIHFWLYHO\ WKHUHXQGHU XQGHUVWDQG EH
VFRSH RI V (LQ D VLPLODU ZD\ WR WKH PDQQHU L
UHTXLUHPHQWV RSHUDWHG WR OLPLW WKH VFRSH R
DGGLWLRQDO WHVW DV DW KHUH WKHUHVKROG UHFRQVWH
OHJLVODWLYH SURYLVLRQ WKHUH LV WKHQ DQ D
RSHUDWLRQ RI V (WKXV DFWLQJ WR UDLVH V
XQOLNHO\ WKDW WKH SURYLVLRQ ZRXOG EH WULJ

7KH RSHUDWLRQ RI V (DGDLQ DURVH IRU MXGLFLD
FDVH Lawrence v FCT ZKLFK ZHQW RQ DSSHDO WR WKH)X
Lawrence v FCT :KLOH WKH FDVHV GHDOW ZLWK WUDQVDF
UHDVRQDEO\ EH FKDUDFWHULVHG DV QRW EHLQJ DQ
LQ WKH (0 WR LGHQWLI\ VFKHPHV WR ZKLFK 3DUW ,9
VRPH QRWHZRUWK\ FRPPHQWDU\ RQ WKH)XOO&RXUW¶V

:KLOH DJUHHLQJ ZLWK WKH MXGJPHQW RI WKH 9LFH
IHOW FRPSHOOHG WR PDNH VRPH REVHUYDWLRQV RQ
WKH Consolidated Press FDVHV ,Q SDUWLFXODU WKHLU +R
WKH FRPPHQWV LQ UHODWLRQ WR WKH WHVW WR EH
LQ DSSO\LQJ WKH VHFRQG OLPE RI WKH WKUHVKROG
UHODWLRQ WR WKH SULPDU\ MXGJH WKH FRXUW FRQV
+RQRXU KDG GHFLGHG WKH FDVH RQ WKH EDVLV RI
(E KDYLQJ PLVFDUULHG 7KH FRPPHQWV RI WKH
&RXUW ZHUH RELWHU DV WKH FDVH KDG EHHQ GHFLG
OLPE RI V (D DQG WKH RQO\ UHDVRQ WKDW WK
UHODWLRQ WR WKH VHFRQG OLPE ZDV EHFDXVH +LOO
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7KHLU +RQRXUV QRWHG WKDW

7KH ILUVW OLPE LV FRQFHUQHG ZLWK WKH FRQGXFW
RI GLYLGHQG VWULSSLQJ WKH VHFRQG OLPE LV F
VFKHPHV WKDW DUH QRW E\ ZD\ RI RU LQ WKH QDV
DUH VFKHPHV KDYLQJ VXEVWDQWLDOO\ WKH VDPH
VHFRQG OLPE PD\ QRW DV LQ WKLV FDVH IDOO ZLWK

KDQG D VFKHPH IDOOLQJ ZLWKLQ WKH ILUVW OLP
OLPE

$V QRWHG HDUOLHU WKHUH LV QR VWDWXWRU\ UHTX
EHQRLW GRPLQDQW WD[DYRLGDQFH VFKHPH SXUSRV
WKH FRXUWV KDYH H[SUHVVHG WKH YLHZ WKDW WKH
RI V (D GHVSLWH WKH WHVW EHLQJ D WHVW RI

,Q UHODWLRQ WR WKH VHFRQG OLPE RI V (
UHVSHFW WKDW WKH DSSURDFK WDNHQ E\ WKH)XO
LPSO\LQJ DSSHXUV WR WKH VHFRQG OLPE LV DSSO
LQWHUSUHWDWLRQ DUJXDEO\ DW RGGV ZLWK WKI

7KH HDUOLHU GLVFXVVLRQ KDV UHFRJQLVHG WKDW ZI
SXUSRVH WHVW LQ DSSO\LQJ WKH ILUVW OLPE RI V
VWDWXWRU\ LQWHUSUHWDWLRQ ZLWKLQ WKH FRQWH[W
VFKHPHV ZLWKLQ WKH ILUVW OLPE WKDW LV VFKHPH
VWULSSLQJ ¶ ,W LV VXJJHVWHG WKDW VXFK DQ LQWHU
WR LGHQWLI\ D VFKHPH WKH HVVHQWLDO FKDUDFWHU RI GLYLGHQG VWU
GLVWLO WKH HVVHQWLDO FRUH HOHPHQWV WKDW FRQ
DYRLGDQFH SXUSRVH LV DUJXDEO\ RQH RI WKHVH HVV

+RZHYHU LW LV VXJJHVWHG WKDW WKH DSSURDFK WDNHQ LQ
DSSURDFK WDNHQ E\ WKH FRXUWV LV DUJXDEO\ QRW
LQWHUSUHWDWLRQ DQG ZLWK WKH OHJLVODWLYH L
VWDWXWRU\ LQWHUSUHWDWLRQ ,Q SDUWLFXODU WKH
GLVWLQFW DQG VHSDUDWH DOWHUQDWLYH WHVWV W
WKH QDWXUH RI GLYLGHQG VWULSSLQJ VFKHPH RU D
VXFK D VFKHPH

7KH SULQFLSOH RQ WHUPLQDWLRQ LW LV VXJJHVW
DV UHODWLQJ WR D VFKHPH ZLWK FHUWDLQ FKDUDFW
LGHQWLILDEOH LQ D VFKHPH LQ WKH QDWXUH RI D GL
LW LV WKDW JHLW QRW UHODWHG WR WKH FKDUDFWHU RU
WR WKH RXWFRPH RU HIIHFW RI WKH VFKHPH EHLQJ
VXJJHVWHG WKLV PXFK LV PDGH FOHDU LQ WKH (0 Z
E\ ZD\ RU LQ WKH QDWXUH RI D GLYLGHQG VWULSSL
SURYLGLQJ WKDW D VFKHPH ZKLFK KDV WKLV HIIHFW
WKUHVKROG WHVWV LQ V (

:KLOH WKH (0 SURYLGHV H[DPSOHV RI VFKHPHV ZKLFK
PD\ VDWLVI\ WKH VHFRQG OLPE LW LV VXJJHVWHG
H[KDXVWLYH HQXPHUDWLRQ RI SRVVLEOH DOWHUQDW
SDUWLFXODU DSSURDFK ZDV WDNHQ DV WKH GUDIWH
SRVVLEOH VFKHPH WKDW PD\ EH GHVLJQHG WR SURG
WKH VDPH DV ZRXOG EH JHQHUDWHG E\ D GLYLGHQG V
FODVVLILHG DV D VFKHPH E\ ZD\ RI RU LQ WKH QDWX

Lawrence))& DW SDUD

WDNLQJ D EURDG DSSURDFK WR HQOLYHQ WKH VHFRQ
RU HIIHFW VXEVWDQWLDOO\ WKH VDPH DV ZRXOG EH
VFKHPH

)XUWKHU LW LV VXJJHVWHG WKDW E\ LQFRUSRUDWLQ
HOHPHQW LQ WKH VHFRQG OLPE WKDW LV E\ VWDW
µVFKHPHV E\ ZD\ RI RU LQ WKH QDWXUH RI GLYLGHQG
HIIHFW VXEVWDQWLDOO\ WKH VDPH DV D VFKHPH E\
VWULSSLQJ VFKHPH LW LV DUJXDEOH WKDW WKH FRX
RI WKH VHFRQG OLPE LQ D ZD\ QRW LQWHQGHG E\ W
VXJJHVWHG WKDW SULQFLSOHV RI VWDWXWRU\ LQWH
DOWHUQDWLYH LQGHSHQGHQW RSHUDWLRQ EDVHG R
ZKHWKHU RU QRW WKH VFKHPH ZDV D VFKHPH E\ ZD
VWULSSLQJ VFKHPH

%\ LPSO\LQJ WKH ILFWLRQV GLVUHJDUGLQJ QDWXUH VHFRQG OLP
ZRXOG RQO\ DSSO\ WR VFKHPHV E\ ZD\ RI RU LQ WKH
ZKLFK KDYH WKH HIIHFW VXEVWDQWLDOO\ RI D VFKHP
VWULSSLQJ 2Q WKLV EDVLV LW PD\ EH DUJXHG WKDW WKH
WKH VHFRQG OLPE FDQ RQO\ DSSO\ WR D VFKHPH E\ Z
VWULSSLQJ VFKHPH WKHQ WKH VFKHPH PXVW RI QHF
VFKHPH LV D VFKHPH E\ ZD\ RI RU LQ WKH QDWXUH
DUJXDEO\ QRWKLQJ LV DGGHG E\ WKH UHTXLUHPHQW
DV D GLYLGHQG VWULSSLQJ VFKHPH DV LW PXVW EH
ZD\ RI RU LQ WKH QDWXUH RI D GLYLGHQG QRW VWULSSLQ
VXEVWDQWLDOO\ WKH VDPH DV D VFKHPH E\ ZD\ RI RU
VFKHPH

$ FRQVHTXHQFH RI LPSRUWLQJ WKH ILUVW OLPE DV D
WKDW WKH SXUSRVH WHVW DSSOLFDEOH WR WKH ILUV
VHFRQG OLPE $V QRWHG HDUOLHU LW LV VXJJHVWHG
ZRXOG HQYLVDJH WKDW WKH ILUVW DQG VHFRQG OLP
DQG DOWHUQDWLYH RSHUDWLRQ :KLOH WKH HIIHFW RI
SDUWLFXODU QDWXUH ZLWK SDUWLFXODU IHDWXUHV
UHVXOW RI D VFKHPH 7KLV ZRXOG DSSHDU WR VXJJ
UHVXOWV EDVHG WHVW WKHUH LV QR EDVLV RQ ZKLFK
UHTXLUHPHQW HOHPHQW RI SXUSRVH 7KH LQWHQW
FRQVLGHUDWLRQ EH JLYHQ WR WKH HIIHFW RI WKH VF
(0 KDG EHHQ VDWLVILHG WKH WKUHVKROG WHVW ZRX

,W LV VXJJHVWHG WKDW WKH DSSURDFK WDNHQ E\ W
RSHUDWLRQ RI WKH WKUHVKROG WHVW LQ V (D
HVWDEOLVKPHQW RI D WD[DYRLGDQFH SXUSRVH XQGH
LWVHOI ORRW KRQ HOHPHQW RI WKH VFKHPH ZLWK QR VX
SXUSRVH QHHG EH HVWDEOLVKHG

,W VKRXOG EH QRWHG WKDW LW LV VXJJHVWHG WKD
RSHUDWLRQ RI WKH VHFRQG OLPE RI V (WKHD ZRX
RSHUDWLRQ RI V (DQG WKXV 3DUW ,9$ LQ LQDSSU
WHVWV LQ WKH WZR OLPEV RI V (D DUH QRW V