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Cases, Regulations and Statutes

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Qualified personal residence trust (QPRT)

A qualified personal residence trust (QPRT) offers additional flexibility. A QPRT is similar to personal residence trusts with the same definition of personal residence.

A QPRT is permitted to hold assets other than the personal residence for certain time periods — (1) cash needed for payment of trust expenses, including mortgage payments, incurred or reasonably expected to be paid within six months from the date the cash is contributed to the trust; (2) amounts for improvements to be paid within six months from the date of contribution to the trust; (3) amounts for purchase of an initial residence within three months of the date of the contribution if the trustee has previously entered into a contract for the purchase; and (4) amounts for purchase of a replacement residence within three months from the date of the contribution provided the trustee has previously entered into a contract for the purchase. Any excess cash must be distributed to the term holder on a quarterly basis and, on termination of the term interest, must be distributed to the term holder within 30 days. A QPRT is also permitted to hold improvements to the residence, proceeds from sale of the residence and insurance policies and insurance proceeds payable as a result of damage to the residence.

FOOTNOTES
4 Id.
5 Id.
7 I.R.C. § 2001(b).
8 Ltr. Rul. 9425028, March 28, 1994 (provision permitting grantors to rent residence from remainder beneficiaries for fair market value rent or to purchase residence for fair market price after termination of trust (30 years)); Ltr. Rul. 9349014, September 4, 1992 (grantor would be required to pay "fair market value rent" after termination of 10-year term of trust to avoid being included in grantor's gross estate as rent-free occupancy; result not affected by female "friend" who also resided in residence).
10 See Estate of Nicol v. Comm'r, 56 T.C. 179 (1971) (farmland rented to daughter and son-in-law under five year crop share lease included in donor-lessee's gross estate).
12 Id.
15 Treas. Reg. § 25.2702-5(e). See Ltr. Rul. 9340009, June 29, 1993 (taxpayer could occupy residence rent-free for five years; if death occurs during that period, assets distributed to estate); Ltr. Rul. 9402011, October 8, 1993 (taxpayer could occupy residence as personal residence for three years; if death occurs during that time, assets distributed to revocable living trust or estate).
17 Treas. Reg. § 25.2702-5(c)(5).
18 Id.

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr.

BANKRUPTCY
GENERAL-ALM § 13.03.9

DISCHARGE. The debtor was an officer, director and 50 percent shareholder of a corporation which was licensed under the Perishable Agricultural Commodities Act (PACA). The corporation purchased, but did not pay for, produce from a creditor. The creditor claimed that the debtor was liable for payment for the produce and that the debt was nondischargeable because of defalcation as a fiduciary by the debtor since the debtor failed to preserve the PACA trust to pay for the produce. The Bankruptcy Court held that for the nondischarge of a debt for defalcation as a fiduciary in a trust, an express or constructive trust must exist between the debtor and creditor. The Bankruptcy Court held that an express or constructive trust was not created by PACA because (1) no identifiable trust res existed since PACA allows trust assets to be commingled with the produce buyer’s other assets, (2) PACA does not impose fiduciary obligations on produce buyers, and (3) the PACA trust provisions act as a super lien on the produce buyer’s assets. The Bankruptcy Court also noted that an issue of fact remained as to whether the creditor complied with the PACA notice procedures and as to whether the sales involved contained payment provisions of 30 days or less and were, therefore, protected by PACA. The District Court reversed on the discharge issue, holding that a PACA trust does satisfy the three requirements identified by the Bankruptcy Court. The District Court noted that the trust res need not be separate from other assets, but the res needed to be identifiable. In re Snyder, 184 B.R. 473 (D. Md. 1995), aff'd, 171 B.R. 532 (Bankr. D. Md. 1994).

PREFERENTIAL TRANSFERS. The debtor was involved in an automobile accident and the debtor filed a declaration of homestead for the debtor’s residence ten days later. A personal injury lawsuit was subsequently filed

*Agricultural Law Manual (ALM). For information about ordering the Manual, see the last page of this issue.
against the debtor and the debtor filed for bankruptcy before a judgment was reached in that suit. The trustee sought to void the homestead declaration as a preferential transfer. The court held that the declaration was not avoidable because the declaration was not a transfer since title to the property was not transferred to a third party. The court also held that the declaration was not avoidable under state fraudulent transfer law, again because no transfer occurred. In re Messi, 184 B.R. 176 (Bankr. D. Mass. 1995).

The debtor was a grain storage facility which had purchased and stored grain from producers on deferred pricing contracts. The Ohio Department of Agriculture had revoked the debtor’s grain handling license and forced the sale of all stored grain for compensation of unpaid Ohio producers. Within 90 days of that sale and distribution, the debtor filed for bankruptcy. The trustee sought recovery of the amounts paid as preferential transfers so that producers from other states could recover from the grain proceeds. Recovery of the proceeds for distribution in the bankruptcy estate would mean that full compensation of the Ohio producers would require payment from the Ohio Agricultural Commodity Depositors Fund. The Ohio Department of Agriculture argued that it was protected from suit by governmental immunity under the Eleventh Amendment. The court agreed that the Commission was a state agency eligible for governmental immunity but the 1994 amendment to the Bankruptcy Code of Section 106 waived governmental immunity in preferential transfer actions. The court also held that the Bankruptcy Code change was a constitutional exercise of Congress’ plenary powers under Article I of the U.S. Constitution. Matter of Merchants Grain, Inc., 59 F.3d 630 (7th Cir. 1995).

The debtors had owed money to the SBA. After that debt was due, the debtors contracted with the ASCS (now CFSA) for conservation programs under which the debtors would receive annual deficiency payments. The SBA instituted an administrative setoff which was properly approved by the ASCS. Some payments were made within 90 days before the debtors filed for bankruptcy and the trustee sought recovery of the setoff payments as preferential transfers. The court held that the ASCS and SBA lacked mutuality so that the setoff was not binding in the bankruptcy case and ordered recovery of the payments. In re Turner, 59 F.3d 1041 (10th Cir. 1995).

CHAPTER 12-ALM § 13.03[8].

DISCHARGE. The debtor had granted a second mortgage to the FmHA (now CFSA) on real property. The FmHA’s lien was divided into a secured claim and unsecured claim in the bankruptcy case, based on the fair market value of the property at the confirmation of the plan. After the plan payments were completed, the FmHA objected to the payments on the unsecured claim and received additional payments in settlement of that claim. The debtor was granted a discharge and the case was closed. The debtor later died and the debtor’s estate sold the property for substantially more than the value used in the bankruptcy case. The FmHA argued that it retained a lien against the property for the portion of the unsecured claim not paid in the bankruptcy case. The FmHA cited Dewsnup v. Timm, 502 U.S. 410 (1992) in support of its argument that its lien was not “stripped” as to the unsecured portion. The court held that Dewsnup did not apply to Chapter 12 cases where the “stripping” of liens was allowed by Section 1222(b)(2); therefore, at the discharge of the debtor, the FmHA lien was extinguished. Harmon v. U.S., 184 B.R. 352 (D. S.D. 1995).

FEDERAL TAXATION-ALM § 13.03[7].

AUTOMATIC STAY. The debtors received a discharge in their Chapter 7 case which included IRS tax claims. The case involved abandoned assets and the IRS sought to levy against those assets when they were sold. However, in the IRS notices sent to the debtors after the discharge, the notice did not clearly limit themselves to the abandoned property and the IRS levied against other property owned by the debtors and seized their tax refunds for post-discharge tax years, even though the IRS was contacted repeatedly about the bankruptcy discharge. The court held that the IRS notices violated the automatic stay and awarded the debtors $3,000 for mental anguish but no court costs or attorney’s fees. In re Matthews, 184 B.R. 594 (Bankr. S.D. Ala. 1995).

CLAIMS. The IRS filed its claim for taxes after the claims bar date even though it had received notice of the bankruptcy filing. The IRS provided no excuse for the untimely filing other than administrative delay; therefore, the Bankruptcy Court held that the untimely claim would be subordinated to other claims. The District Court reversed, holding that, under United States v. Chavis, 47 F.3d 818 (6th Cir. 1995), priority tax claims retain their priority even if filed late after notice of the bar date. In re Worthington Investments, Inc., 184 B.R. 538 (S.D. Ohio 1995), rev’g, 170 B.R. 123 (Bankr. S.D. Ohio 1994).

The IRS filed claims for taxes owed by the debtor for which the tax returns were filed more than three years before the petition and were assessed less than 240 days before the petition but more than three years after the returns were filed. The debtor had previously filed a Chapter 7 case and a tax matters partner had signed a consent to extend the assessment period for partnership tax items which was the basis for one of the claims against the debtor. The court held that the intervening Chapter 7 case tolled the limitations period in Section 507(a)(7)(A) for priority status of the claim and that the extension filed by the tax matters partner was valid to the debtor. In re Acosta, 184 B.R. 544 (W.D. Tenn. 1995), aff’g, 170 B.R. 124 (Bankr. W.D. Tenn. 1994).

The debtor had filed a previous Chapter 13 case in which the IRS had filed priority claims for taxes, interest and penalties. The debtor received a hardship discharge in that case which did not discharge the unpaid portion of the tax claims. The debtor filed a second Chapter 13 case and sought to have the tax claims declared dischargeable as over three years old. The court held that the three year period of Section 507(a)(7)(A)(i) was tolled during the first case and listed the IRS as a secured creditor for income.
taxes owed by the debtors. The IRS filed a claim for the taxes and the plan was confirmed. After the confirmation and after the date for filing claims had passed, the IRS requested the debtors to include in the plan payments for additional taxes resulting from assessment of a penalty under I.R.C. § 6672 as responsible persons in the corporation which failed to pay withholding taxes for employees. The debtors refused, completed the plan payments and received a discharge in the case. The IRS argued that the Section 6672 penalty was not discharged because the taxes arose post-petition and were a priority debt. The court held that the penalty arose pre-petition when the corporation failed to pay the withholding taxes when due. The court noted that in *In re Friesenhahn*, 169 B.R. 615 (Bankr. W.D. Tex. 1994), the IRS position was that the penalty arose when the corporation failed to pay the taxes when due. *I.R.S. v. Lee*, 184 B.R. 257 (W.D. Va. 1995).

The debtors owed taxes for several years and the IRS sought to have the taxes ruled to be nondischargeable for the debtors’ willful attempt to evade or defeat taxes under Section 523(a)(1)(C). During the years involved, the IRS made several attempts to assess and collect the taxes but the debtors filed several bankruptcy cases and other frivolous lawsuits and filed common law liens against IRS agents. The debtors also failed to pay any property taxes in an effort to remove any equity in their real property and transferred title to the real property to trusts for their children. The debtors made some payments on the taxes. The court held that the activities of the debtors amounted to a willful attempt to evade payment of the taxes and held that the taxes were nondischargeable. *In re Pierce*, 184 B.R. 338 (Bankr. N.D. Iowa 1995).

**DISMISSAL.** The debtor had been assessed a tax deficiency resulting from the sale of a company owned by the debtor. The debtor appealed the deficiency to the Tax Court which required a bond in order to stay further assessment and levy of the tax deficiency during the appeal. Instead of posting a bond, the debtor filed for Chapter 11 which had the same effect as posting a bond. The IRS moved to dismiss the bankruptcy case as filed in bad faith in that the only purpose of the filing was to avoid the posting of the bond. The court dismissed the case as not filed in good faith. The court noted that the bankruptcy case was used solely to allow the debtor to retain assets which could be used to appeal the tax deficiency, resulting in loss of assets against which the IRS could levy if the Tax Court case goes against the debtor. *In re Boynton*, 184 B.R. 580 (Bankr. S.D. Cal. 1995).

**NET OPERATING LOSSES.** The debtor had suffered large net operating losses in the tax year prior to filing for bankruptcy and during the first year of bankruptcy when the debtor was debtor-in-possession. In both years, the debtor elected to carry forward the net operating losses. The bankruptcy case was turned over to trustees who filed amended pre-bankruptcy income tax returns for refunds based on carrying the NOLs back to those years when the debtor had income. The trustees argued that the debtor’s first NOL election were avoidable under Section 548 as a preferential transfer and the second was avoidable under Section 549 as a post-petition transfer. The court held that both transfers were avoidable by the trustee because the debtor did not receive any value for the election in that the use of the NOLs in the future was too contingent to have any value. *Streetman v. U.S.*, 95-2 U.S. Tax Cas. (CCH) ¶ 50,453 (W.D. Ark. 1995).

**PLAN.** The debtor’s plan provided for 20 quarterly payments of the IRS priority tax claim. The IRS sent a letter to the debtor stating the amount of the quarterly payments; however, the payment amount was too low because the IRS calculated the payments based on 24 quarterly payments. The IRS sought to recover the deficiency and the debtor argued that the IRS should be held estopped from further collection since the payments were determined by the IRS. The court held that no estoppel was warranted because the debtor’s plan provided for a total payment amount and the debtor benefitted from the lower installments since the debtor had the use of the deficiency amount during the plan period. *Matter of Anchor Steel, Inc.*, 184 B.R. 607 (Bankr. M.D. Fla. 1995).

**POST-CONFIRMATION INTEREST.** The IRS had filed a secured claim in the debtor’s bankruptcy case and the debtor’s plan provided for payment of the claim “plus interest.” The plan also provided that no interest would be paid on plan payments. The IRS objected that the failure of the debtor to pay post-confirmation interest on the secured priority tax claim violated Section 1129(a)(9)(C). The debtor argued that the IRS was bound by the confirmed plan provisions which did not allow for post-confirmation interest. The court held that the plan was ambiguous as to whether post-confirmation interest was to be paid under the plan; therefore, the plan was to be construed as to comply with the Bankruptcy Code and post-confirmation interest was to be paid by the debtor. *In re Jankins*, 184 B.R. 488 (Bankr. E.D. Va. 1995).

**TAX LIEN.** The IRS had filed a pre-petition tax lien against the debtor, and the lien attached to real property owned by the debtor. The real property was insured by the debtor. After the debtor filed for Chapter 7, the property was vandalized and the trustee eventually recovered $750,000 from the insurance company. The IRS claimed that its tax lien extended to the insurance proceeds as a payment for the original property covered by the lien. The court held that under Pennsylvania law, a contract for insurance was a personal contract of indemnity protecting the insured’s interest and not an indemnity on the property; therefore, the debtor’s interest in the proceeds did not arise and could not be subject to the tax lien until the vandalism occurred. The court held that because the vandalism occurred post-petition, the tax lien did not attach to the proceeds. *In re CS Associates*, 184 B.R. 458 (E.D. Pa. 1995), aff’d, 161 B.R. 144 (Bankr. E.D. Pa. 1993).

**FEDERAL AGRICULTURAL PROGRAMS**

**BRUCELLOSIS.** The APHIS has adopted as final regulations changing the classification of Nebraska from Class A to Class Free. 60 Fed. Reg. 44416 (Aug. 28, 1995).

CROP INSURANCE-ALM § 13.04.* The FCIC has adopted as final regulations adding popcorn to the list of crops for which the late planting agreement option will apply. 60 Fed. Reg. 40054 (Aug. 7, 1995).

FARM LOANS. The CCC has adopted as final regulations amending the debt settlement policies and procedures to remove references to the Internal Revenue Service Notice of Levy except to exempt the notices from coverage. The proposed regulations also amend the interest rate charged on delinquent loans to the higher of the Prompt Payment Act rate or the Treasury Department’s current value of funds rate. The proposed regulations also amend the ASCS and CCC debt settlement policies and procedures to provide for offset of a debtor’s pro rata share of payments due any entity in which the debtor participates. 60 Fed. Reg. 43705 (Aug. 23, 1995).

HERBICIDES-ALM § 2.04.* The plaintiffs were farmers who used a mixture of herbicides manufactured by the defendants on the plaintiffs’ corn crops, resulting in damage to the crops. The plaintiffs brought an action alleging that (1) the herbicides were defective and unreasonably dangerous, (2) the defendants breached implied and express warranties, and the herbicides were negligently tested. The court held that the first two claims were preempted by FIFRA as involving “factual matters within the exclusive dominion of the EPA.” The negligent testing claim was not preempted by FIFRA, but the court held that the plaintiff failed to provide any evidence of negligent testing. Clubine v. American Cyanamid Co., 534 N.W.2d 385 (Iowa 1995).

PERISHABLE AGRICULTURAL COMMODITIES ACT-ALM § 10.05[2].* The plaintiffs were unpaid sellers of produce to a PACA licensed produce dealer. The dealer had assigned its accounts receivable to the defendant who paid the dealer advances on the invoices and then the remainder upon payment of the invoice, less the cost of the collection. The defendant had become aware that the dealer was having financial troubles but did not contact any of the plaintiffs who sold produce to the dealer during this time. The defendant had made additional excess advance payments during the time the plaintiff made sales to the dealer and the plaintiffs sought recovery of the payment for those sales from the defendant. The defendant argued that the advances qualified as bona fide purchases for value and were not subject to the PACA trust. The court held that the defendant was not a bona fide purchaser because the defendant had actual knowledge that the dealer was in financial trouble and that the proceeds of the invoices could be part of a PACA trust. E. Armata, Inc. v. Platinum Funding Corp., 887 F. Supp. 590 (S.D. N.Y. 1995).

POULTRY PRODUCTS. The FSIS has adopted as final regulations amending the definition of “fresh” poultry products to include products whose internal temperature has not been below 26 degrees Fahrenheit. 60 Fed. Reg. 44396 (Aug. 25, 1995).

RICE. The CCC has adopted as final regulations establishing the acreage reduction for 1995 crop of rice at 5 percent. 60 Fed. Reg. 43001 (Aug. 18, 1995).

TUBERCULOSIS. The APHIS has adopted as final regulations changing the designation of North Carolina from a modified accredited state to an accredited-free state. 60 Fed. Reg. 44416 (Aug. 28, 1995).

WETLANDS. The plaintiff owned wetlands which the plaintiff wanted to drain for crop production. The plaintiff started the draining in 1984 and filed in 1986 for a commenced conversion determination under the Swampbuster provisions to allow the draining to continue. The conversion plan was approved but did not include any alteration to culverts under a road bordering the wetlands. The plaintiff found that the draining would not occur unless these culverts were lowered. The plaintiff had the culverts lowered and the ASCS ruled that existing work would be considered as part of the previous commenced conversion determination but the plaintiff could not do any more conversion work on the wetlands. The plaintiff argued that without the lowering of the culverts, the original conversion plan could not have been realized and that the road was a man-made barrier which could be altered without violation of the conversion plan. The court held that the road was not shown to be a cause of the wetlands; therefore, the altering of the culverts was part of the conversion and was subject to the Swampbuster provisions. The court also held that the conversion exception was strictly construed and did not provide any provision for the converter’s intent in commencing the conversion to allow additional work to meet the conversion exception without prior approval of the ASCS. Finally, the court held that the plaintiff failed to show any financial hardship from denial of the further conversion work since the plaintiff had not contracted to have the additional work done or otherwise expended money to have the work done. Von Eye v. U.S., 887 F. Supp. 1287 (D. S.D. 1995).

FEDERAL ESTATE AND GIFT TAX

LOANS WITH BELOW MARKET INTEREST RATES-ALM § 6.01[1][a].* In 1980, the taxpayers transferred stock to trusts for the taxpayers’ children in exchange for promissory notes with 6 percent interest. In 1981, the taxpayers made loans to two of the trusts with no interest charged. The IRS considered the first transactions as gifts to the extent the interest rate was less than 11.5 percent and the second transactions as gifts to the extent the interest rate was less than 12 percent in 1981, 10.6 in 1982 and 8.6 percent in 1983. The taxpayers argued that the test rate for both transactions was the 6 percent safe harbor rate of I.R.C. § 483. The trial and appellate courts agreed with the holding of Krabbenhoft v. Comm’r, 939 F.2d 529 (8th Cir. 1991) and held that I.R.C. § 483 applies to the entire tax code but did not apply to valuation of gifts with interest rates below the market rate. As to the second transaction, the taxpayers argued that the IRS’s retroactive application of News Release 84-60 for gifts made before 1984 was improper. The District Court cited Cohen v. Comm’r, 910 F.2d 422.
(7th Cir. 1990) in support of its holding that the retroactive application of the 1984 method of valuing gifts made before 1984 was proper in that the method was consistent with the valuation rules passed by Congress for gifts after 1984. Schusterman v. U.S., 95-2 U.S. Tax Cas. (CCH) ¶ 60,206 (10th Cir. 1995), aff'g, 94-1 U.S. Tax Cas. (CCH) ¶ 60,161 (N.D. Okla. 1994).

MARITAL DEDUCTION-ALM § 5.04[3]." The IRS has adopted as final regulations involving qualification of a surviving or donee spouse’s interest in a trust for the marital deduction where the beneficiary is not a citizen of the United States. 60 Fed. Reg. 43531 (Aug. 22, 1995).

FEDERAL INCOME TAXATION

C CORPORATIONS-ALM § 7.02.* CONSTRUCTIVE DIVIDENDS. The taxpayers owned a corporation and borrowed money from the corporation. The "loans" included all the usual indicia of loans but the evidence demonstrated that the taxpayers did not intend to repay the loans. The taxpayers caused the corporation to declare dividends only for the stock held by foreign resident employees since the amounts would not be taxed to the employees. The court held that the loans were not bona fide and were constructive dividends to the taxpayers. Bergeersen v. Comm’r, T.C. Memo. 1995-424.

LOSSES. The taxpayer was a corporation which had made an S corporation election which was denied (see case below). The corporation had losses during its first years of operation of a business which sold automated transportation systems. The corporation was unsuccessful in selling any systems and the IRS denied the loss deductions on the basis that the corporation had not entered into a trade or business. The court held that the selling operation was a bona fide business and that the failure to succeed did not negate the business nature of its operations. Cabintaxi Corp. v. Comm’r, 95-2 U.S. Tax Cas. (CCH) ¶ 50,445 (7th Cir. 1995), rev’g on point, T.C. Memo. 1995-316.

STOCK BASIS. The taxpayers were sole shareholders in a corporation which had I.R.C. § 1244 stock. The taxpayers included in the stock basis the value of personal property pledged as security for corporate obligations. The court held that the amount of the taxpayers’ basis in the stock did not include the pledged property because the pledge was an open transaction since the taxpayers did not receive any stock in exchange for the pledge. Schwartz v. Comm’r, T.C. Memo. 1995-415.

CHARITABLE DEDUCTION. The taxpayers donated land to the National Park Service and claimed a charitable deduction for an amount 91 times the price paid for the land two years prior to the donation. The deduction was determined to be excessive and the taxpayers were assessed overstatement penalties, negligence penalties and additional interest penalties for a tax motivated transaction. Van Zelst v. Comm’r, T.C. Memo. 1995-396.

HOBBY LOSSES-ALM § 4.05[1]." The taxpayers operated a dog breeding activity in addition to other employment. The taxpayers were denied deductions relating to the activity because the taxpayers did not keep separate records, advertise the dogs for sale, seek expert assistance or maintain a separate bank account for the business. In addition, the taxpayers had listed the activity as a hobby on a local zoning use exception application. Glenn v. Comm’r, T.C. Memo. 1995-399.

PARTNERSHIPS-ALM § 7.03[2]." DISTRIBUTIVE SHARE. The taxpayer and siblings inherited a furniture store from their parent and operated the store as a partnership. The taxpayer did not include in personal income, the taxpayer’s share of partnership income, based on the taxpayer’s share in the partnership. The taxpayer argued that no distribution was received from the partnership; therefore, no taxable income was received from the partnership. The court held that the taxpayer’s gross income had to include the taxpayer’s share of partnership income, whether received or not. Brooks v. Comm’r, T.C. Memo. 1995-400.

TERMINATION. The taxpayer was a partner in a partnership which owned an apartment building. The building was sold in 1980 at foreclosure, resulting in ordinary gain and long-term capital gain to the partnership which passed to the partners in 1980. The partnership terminated in 1980 with the sale of the building; however, the partnership retained sufficient funds to pay some possible remaining obligations in 1981. The taxpayer argued that the partnership terminated in 1980 and that the partner’s loss from the liquidation of the partnership interest could be used to offset the gain recognized from the foreclosure sale. The taxpayer pointed to a stipulation agreement with the IRS that the partnership business activity had ceased in 1980. The District Court held that the partnership terminated in 1981 when all remaining assets were either paid or distributed. The appellate court reversed, holding that the partnership terminated when the operation of the partnership ceased and that the retention of a small amount of funds to cover possible leftover obligations did not amount to a continuation of the partnership business. Goulder v. U.S., 95-2 U.S. Tax Cas. (CCH) ¶ 50,464 (6th Cir. 1995), rev’g, 93-2 U.S. Tax Cas. (CCH) ¶ 50,421 (N.D. Ohio 1993).

PENSION PLANS. For plans beginning in August 1995, the weighted average is 7.20 percent with the permissible range of 6.48 to 7.85 percent (90 to 109 percent permissible range) and 6.48 to 7.92 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). Notice 95-48, I.R.B. 1995-36, 21.

RETURNS. The IRS has announced that persons with household employees must provide the employer’s identification number (EIN) on all forms they file for their employees. An EIN can be obtained by filing Form SS-4. Ann. 95-71, I.R.B. 1995-35, 22.

S CORPORATIONS-ALM § 7.02[3][c]." ELECTION. On the date the corporation made the S corporation election, the corporation had one shareholder who had received stock in exchange for contributed property. The corporation had also entered into oral agreements with five other investors to allow them to purchase stock by installment payments. These prospective
shareholders did not sign the S corporation election. The court held that the election was not properly made because the corporation failed to demonstrate that it did not treat the investors as full shareholders on the date of the election. Cabintaxi Corp. v. Comm’r, 95-2 U.S. Tax Cas. (CCH) ¶ 50,445 (7th Cir. 1995), aff’d on point, T.C. Memo. 1995-316.

SAFE HARBOR INTEREST RATES
September 1995

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SALE OF RESIDENCE. The taxpayers sold their residence and purchased a new residence in the U.S. and one in a foreign country. The foreign residence was the taxpayers’ intended permanent residence and the court held that the deferral of gain could be based on the foreign residence. Bergersen v. Comm’r, T.C. Memo. 1995-424.

INSURANCE

COVERED LOSS. The plaintiff had a new grain bin constructed which had a latent construction fault. The fault caused damage only when one of the discharge systems was operated and the damage was not noticeable for several years. While the damage was being done, the plaintiff had property insurance with the defendant but the damage was not discovered until after the policy had terminated and the plaintiff had obtained insurance from another company. The defendant’s insurance policy stated that it covered losses incurred only during the time a policy was in force. The defendant argued that the damage occurrence happened when the damage was discovered; therefore, the damage was not covered by the policy which had already terminated. The court held that the policy language was ambiguous and looked to other language in the policy. The court found that the policy had other provisions that limited coverage to damage discovered during the policy period; therefore, because the provision involved here did not have such language, the coverage was not limited to damage discovered during the policy period. Kief Farmers Co-op. Elevator v. Farmland, 534 N.W.2d 28 (N.D. 1995).

NEGLIGENCE

DAMAGES. The plaintiff was a tomato grower who applied on the tomatoes a fungicide manufactured by the defendant. The plaintiff sued in negligence and strict liability for the damage to the tomatoes resulting from contamination of the fungicide with a herbicide. The defendant argued that the plaintiff could not recover economic damages in a tort action because only the fungicide was damaged by the contamination. The court held that damages were recoverable because property, the tomatoes, other than the fungicide was damaged by the contamination. E.I. Du Pont De Nemours v. Finks Farms, 656 S.2d 171 (Fla. Ct. App. 1995).

EMPLOYEE INJURY. The plaintiff worked as a farm hand on the defendant’s farm. The plaintiff was injured in two accidents, with the second the subject of the current case. The plaintiff slipped in a deep tire rut and was injured. The defendant argued that the tire rut was open and obvious danger. The court held that an employer was not relieved of liability for an open and obvious danger if the employer was aware of the danger. The evidence showed that the defendant had been informed about the tire ruts and similar accidents of other employees and had taken action to reduce the risk in the past by filling in other ruts. The court held that a reasonable jury could find that the defendant had been negligent in failing to warn about the tire ruts and to fill in the ruts. Baumler v. Hemesath, 534 N.W.2d 650 (Iowa 1995).

SECURED TRANSACTIONS

CONVERSION. The plaintiff owned a tractor which was repaired by the defendant. A dispute arose as to whether the defendant charged for excess repairs and the plaintiff offered to sell the tractor to the defendant in settlement of the dispute. The tractor was located on land which the plaintiff had contracted to sell to a third party. The defendant went to the property to inspect the tractor and the third party claimed ownership of the tractor under the contract of sale of the land. The defendant agreed to purchase the tractor but sent a letter to the plaintiff requesting clarification of the ownership of the tractor. However, before the letter would have reached the plaintiff, the defendant paid the third party for the tractor. The plaintiff sued for conversion and the defendant argued that it was a good faith purchaser. The court held that there were sufficient issues of fact to deny summary judgment for the defendant, including whether the defendant exercised good faith in purchasing the tractor. Hipsh v. Escambia Farm Equipment Co., 656 S.2d 852 (Ala. Ct. App. 1995).

STATE TAXATION

PERSONAL PROPERTY. The taxpayer grew carrots, onions and corn and owned machinery used to prepare the vegetables for market. The taxpayer also used the machinery to process vegetables grown by other area farmers but most of the processing was of the taxpayer’s crops. The court held that the machinery was eligible for exclusion from the personal property tax because the machinery was used in the taxpayer’s agricultural operations. Bolthouse Farms v. Newaygo County, 534 N.W.2d 158 (Mich. Ct. App. 1995).

CITATION UPDATES

Est. of Hudgins v. Comm’r, 57 F.3d 1393 (5th Cir. 1995) (special use valuation) see p. 117 supra.

RLC Industries Co. v. Comm’r, 58 F.3d 413 (9th Cir. 1995), aff’d, 98 T.C. 457 (1993) (depletion) see p. 118 supra.
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