Conclusion

For those approaching retirement with a substantial inventory of zero basis commodities, the procedure outlined in the 1993 letter ruling may pose an attractive alternative if it is desired to benefit a favorite charitable organization and still receive an income benefit in retirement.

FOOTNOTES


4 I.R.C. § 162.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-ALM § 13.03.*

GROSS ESTATE. The debtors filed for Chapter 11 and their assets included a potato farm. The debtors had post-petition income from the farm and wage income from the debtors' employment as an airline pilot and airline hostess. The debtors expended money from the wage income for personal expenses and an unsecured creditor objected to the expenditures as use of estate property. The creditor argued that all of the debtors' income was estate property because the debtors-in-possession owed a fiduciary duty to the unsecured creditors to apply all income to payment of creditors. The creditor allowed that the debtors could receive compensation for their efforts in gathering and preserving estate assets. The court held that Section 541(a)(6) excepted post-petition personal wages from estate property where the employment was not under the business entity in bankruptcy. The court acknowledged a split of authority on the issue. The case points out one advantage of use of Chapter 11 over Chapter 12 where debtors are required to apply all disposable income to the Chapter 12 plan payments. In re Powell, 187 B.R. 642 (Bankr. D. Minn. 1995).

PREFERENTIAL TRANSFERS. The debtors were farmers who had purchased feed from a feed supplier on a line of credit established by three separate agreements. The first agreement ran from April 1993 to November 1993 and the debtors paid off all purchases on the due date in November. In November 1993, the line of credit was again established by an agreement and purchases were made through March 1994. Payment under that agreement was due in June 1994 but was not paid on time. Instead an additional line of credit was established and further purchases were made through September 1994. By September 1994, the debtors were in financial difficulty and sold their herd of cattle. The cattle proceeds were paid to the feed supplier on the November 1993 line of credit 77 days before the debtors filed for bankruptcy. The trustee sought to recover this payment as a preferential transfer. The court found that no issue of fact remained that the payment was a preferential transfer. The feed supplier argued, however, that the payment was made in the ordinary course of business. The court held that the payment was not made in the ordinary course of business in that the payment was made late, the money was obtained through the usual means of liquidating the debtors' few assets, and the payment resulted in one creditor receiving more than 50 percent of its claim when other unsecured creditors would receive nothing on their claims. In re Freeny, 187 B.R. 711 (Bankr. N.D. Okla. 1995).

SETOFF. The debtor had a checking account with a bank to which the debtor also owed money on a loan. When the debtor filed for bankruptcy, the bank placed an administrative hold on the funds in the checking account equal to the amount owed by the debtor. The bank also applied for relief from the automatic stay and for setoff of the funds. The court held that the administrative hold did not violate the automatic stay because the hold did not absolutely transfer the funds from the debtor to the bank. Citizens Bank of Maryland v. Stumpf, 116 S. Ct. 286 (1995), rev'g, 37 F.3d 155 (4th Cir. 1994), rev'g, 138 B.R. 792 (D. Md. 1993).

FEDERAL TAXATION-ALM § 13.03[7].*

AUTOMATIC STAY. The debtors had completed all Chapter 13 payments and received a discharge of their claims, including their tax claims. However, the IRS filed a post-discharge Notice of Levy against the debtors for the tax claims discharged in bankruptcy. The debtors filed a motion for finding the IRS in contempt and sought an award of attorney's fees for the cost of bringing the motion. The attorney's fee award was based on a rate of $227 per hour. The IRS argued that the hourly rate was limited to $75 under Section 106 which incorporated 28 U.S.C. § 2412(d)(2)(A). The court held that the debtors were entitled to an award of attorney's fee but required an evidentiary hearing to determine the rate, based on the base rate of $75 plus any additional amounts allowed under Section

* Agricultural Law Manual (ALM). For information about ordering the Manual, see the last page of this issue.

DISCHARGE. The IRS sought to have the debtor's taxes due for 1989 declared nondischargeable for failure to file a return for those taxes. The IRS filed a Certificate of Assessments and Payments which showed that the IRS prepared a substitute return for the debtor for 1989 and made an assessment based on that return. However, the IRS did not provide evidence of any records check to determine whether or not a return was received. The debtor filed an affidavit of the tax return preparer that the return was prepared and delivered to the debtor with a pre-addressed postage-paid envelope and instructions for filing. The debtor testified that the return was immediately mailed. The court held that the debtor provided evidence sufficient to prevent granting the IRS summary judgment on the issue. Although the court indicates that the IRS had the burden to show that the return was not filed, the court also indicated that such proof was easily provided by a records search. In re Conner, 187 B.R. 217 (Bankr. E.D. Tenn. 1995). 

NET OPERATING LOSSES. The debtor made elections to carry forward net operating losses on income tax returns filed pre- and post-bankruptcy for pre-bankruptcy taxable years. The bankruptcy trustee filed amended returns for those years with the net operating losses carried back, entitling the estate to refunds. The IRS denied the refund requests, citing the irrevocability of the elections. The trustee argued that the elections were avoidable preferential transfers. The Eighth Circuit Court of Appeals held that a trustee in bankruptcy may revoke the debtor's net operating loss carryforward election without approval from the IRS. The case was remanded to determine whether the NOL elections were avoidable under the preferential transfer rules. The District Court held that the pre-bankruptcy election was avoidable because the debtor did not receive any value for the election since the debtor had no prospects for taxable income within the next few years. Similarly, the court also held that the post-bankruptcy election was void for violating Section 549(a) because the election was not made in the ordinary course of business since the debtor's situation was the same as when the pre-petition election was made. Streetman v. United States, 187 B.R. 287 (W.D. Ark. 1995), rev'd unpub. Bankr. Ct. dec. on rem. from unpub. D. Ct. dec. aff'd & rev'd, 154 B.R. 723 (Bankr. W.D. Ark. 1992), on rem. from In re Russell, 927 F.2d 413 (8th Cir. 1991). 

NOTICE TO IRS. The debtor filed for Chapter 7 and the notice for the filing of claims was sent to the IRS service center where the debtor sent tax returns. The IRS acknowledged receipt of the notice but failed to file a claim until 11 months after the bar date for claims. The IRS did not present any reason for the delay and did not request an extension of time to file the claim. The IRS argued that the notice was not adequate because the notice was not sent to the special procedures section in Pittsburgh. The court found that the local bankruptcy rules contained no provision for notices to the IRS in Pittsburgh and held that the notice to the service center was adequate. In re Benny's Leasing, Inc., 187 B.R. 484 (W.D. Pa. 1995). 

REFUND. The debtors failed to file income tax returns for 1990 and 1991 until after filing for bankruptcy in November 1994. The returns claimed a refund for both years but the IRS rejected the claims because the returns were filed more than three years after they were due. The debtors claimed that the refunds were estate property and the IRS's failure to pay the refunds was a violation of the automatic stay. The court held that the automatic stay provisions did not apply because the debtors' claim was actually for a turnover of estate funds, governed by Section 542(a). The court also held that the turnover of funds was governed by applicable nonbankruptcy law. In this case, I.R.C. § 6513 required claims for refunds to be filed within three years after the tax return was due; therefore, no refund was required and the IRS did not have to turn over the refunds to the estate. In re Dougherty, 187 B.R. 883 (Bankr. E.D. Pa. 1995). 

CONTRACTS 

GOOD FAITH. The plaintiff operated a swine breeding operation and contracted with the defendant for the purchase of new breeding stock from 1989 through 1994. The purchase contracts contained language that the defendant did not guarantee that the breeding stock did not have any pathogens or disease and that the defendant's liability was limited to replacement of defective swine. The contract also contained language that the contract contained all agreements between the parties, either written or oral. The plaintiff discovered in 1993 that some of the swine provided by the defendant were infected with Porcine Reproductive and Respiratory Syndrome (PRRS); however, the plaintiff accepted new deliveries of the defendant's swine. The plaintiff alleged that an agent of the defendant orally warranted that the defendant's swine were free of PRRS and that this oral statement was an actionable fraud on the plaintiff. The court held that, given the clear contract language that the contract represented the sole agreement between the parties, any reliance by the plaintiff on the oral statement of the agent was not reasonable. The plaintiff also argued that the selling of PRRS infected swine violated the general duty of good faith by the defendant. The court held that the clear language of the contract specifically assigned the risk of disease to the plaintiff and limited the defendant's liability to replacement of diseased swine. Rayle Tech, Inc. v. Dekalb Swine Breeders, 897 F. Supp. 1472 (S.D. Ga. 1995). 

LIMITED WARRANTY. The plaintiff purchased a cattle feed grinder manufactured by the defendant. The grinder was sold with a warranty limited to repairing or replacing defective parts. The warranty specifically disclaimed any further warranties or liability for consequential damages. The grinder was discovered to not mix the ground feed uniformly and the plaintiff's milk cows had decreased milk production. The defendant attempted to repair the grinder but eventually left it to the plaintiff to fix. When all efforts failed, the plaintiff brought suit for lost milk production. The court held that the jury had sufficient evidence to find that the grinder failed in its essential purpose, to uniformly grind and mix feed; therefore, the limited warranty was inoperative and the defendant was liable for the standard UCC warranty provisions. The court also upheld the jury award for lost milk production based on adequate evidence of the plaintiff's milk production records. Severn v. Sperry Corp., 538 N.W.2d 50 (Mich. Ct. App. 1995).
FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The FCIC has adopted as final restrictions on the use of the crop endorsement for wheat, barley, oats, rye, corn, corn silage, soybeans, grain sorghum, flaxseed, cotton, small grain, cotton, sunflower seed, and coarse grains insurance policies. 60 Fed. Reg. 56257 (Nov. 8, 1995).

The FCIC has issued proposed regulations expanding the prevented planting benefits available under the hybrid seed, small grain, cotton, and coarse grain insurance policies. 60 Fed. Reg. 56933 (Nov. 13, 1995).

IMPORTS. The CFSA has issued proposed regulations concerning the End-Use Certificate Program under NAFTA. The proposed regulations extend the deadlines for reporting requirements and provide alternative reporting methods for imports governed by NAFTA. 60 Fed. Reg. 57198 (Nov. 14, 1995).

TOBACCO. The CCC has adopted as final regulations requiring tobacco producers to purchase crop insurance in order to be eligible for tobacco price support program benefits. 60 Fed. Reg. 57164 (Nov. 14, 1995).

FEDERAL ESTATE AND GIFT TAX

DEFICIENCY NOTICE. The decedents, husband and wife, died within a few days of each other. The decedent's daughter acted as executrix for both estates and filed estate and gift tax returns for both estates with some errors in making the split gift election. The IRS issued a notice of deficiency based on the incomplete split gift elections and increased valuation of some estate property. The executrix filed a request under I.R.C. § 7517 for a written statement explaining the property valuation. The executrix did not receive this statement. The executrix argued that the notice of deficiency was invalid because the IRS failed to make a valid determination based on an actual examination of the record and because the IRS failed to respond to the Section 7517 request. The court found that, although the IRS notice was not complete, the notice was sufficient. The court also ruled that the IRS's failure to respond to the Section 7517 request was not grounds for invalidating the notice because the statute did not provide any enforcement sanction for failure to respond. Estate of Rickman v. Comm'r, T.C. Memo. 1995-545.

GENERATION SKIPPING TRANSFERS-ALM § 5.04[6]. Prior to 1985, a decedent had established a trust under a general power of appointment. The trust provided fractional shares for each of the decedent's children and granted the beneficiaries a limited power of appointment over each share of the trust. The trustees sought a state court ruling construing the trust in four areas- (1) a beneficiary could exercise the limited power of appointment to create another power of appointment, (2) a beneficiary could exercise the limited power of appointment to create another interest in trust, (3) if a beneficiary did not exercise the power of appointment, a succeeding beneficiary also has a limited power of appointment over the share of the trust, and (4) the trustees were authorized to make discretionary distributions of principal to the beneficiaries. The IRS ruled that a judicial construction would not cause a trust to be subject to GSTT so long as the construction was consistent with how the highest court in the state would construe the trust. The IRS ruled that, because the first two constructions would be consistent with what the IRS believes the highest state court would rule, the first two constructions would not subject the trust to GSTT. Because the last two constructions were not consistent with what the IRS believes the highest state court would rule, the last two constructions would subject the trust to GSTT. Ltr. Rul. 9545009, Aug. 11, 1995.

IRA. The decedent's estate included funds in an IRA which named the decedent's estate as remainder beneficiary. The decedent's will bequeathed the residuary estate to the decedent's surviving spouse. The will also provided that the surviving spouse as executor had the discretion to choose how to fund the will bequests from estate property. In satisfaction of the residuary bequest, the surviving spouse as executor caused the IRA to be transferred to the surviving spouse's IRA by a direct trustee-to-trustee transfer. The IRS ruled that the surviving spouse did not need to include the transferred IRA funds in income because the IRA funds were not received from the estate. The IRS stated that if the IRA had passed to the estate and was transferred from the estate to the surviving spouse's IRA, the funds would be included in the surviving spouse's income under I.R.C. § 408(d)(3). Ltr. Rul. 9545010, Aug. 14, 1995.

MARITAL DEDUCTION-ALM § 5.04[3]. The decedent's will bequeathed all property to the decedent's children. The decedent's surviving spouse filed a portion of the estate under state law for a surviving spouse. Instead of pursuing costly litigation, the executor reached a settlement with the surviving spouse to transfer estate property to a trust for the surviving spouse's life. The surviving spouse was to receive all trust income at least annually and the spouse had the power to require the sale of unproductive assets and the investment in productive assets. The remainder of the trust principal passed to the decedent's children. The IRS ruled that the payments to the surviving spouse were made in satisfaction of enforceable rights and the trust qualified as QTIP. The estate would be allowed a marital deduction for the fair market value of the trust assets if the appropriate election was made. Ltr. Rul. 9546004, Aug. 11, 1995.

SPECIAL USE VALUATION-ALM § 5.03[2]. The decedent owned a 26 percent limited partnership interest in a cattle ranch. The estate elected to value the decedent’s interest in the partnership land using special use valuation. In determining the special use valuation deduction amount, the estate first determined the fair market value of all partnership property and allocated 26 percent of the decedent's estate. The decedent's share was then discounted 30 percent for a minority interest and lack of marketability. The estate then determined the special use valuation of the partnership property and allocated 26 percent of that amount to the decedent. Because the difference in values exceeded the maximum special use valuation reduction amount, the value of the decedent's interest in the partnership (including

* Agricultural Law Manual (ALM). For information about ordering the Manual, see the last page of this issue.
the 30 percent discount) was reduced by the maximum reduction amount of $750,000. Citing, Estate of Maddox v. Comm’r, 93 T.C. 228 (1989), the Tax Court held that the estate could not claim a minority discount if a special use valuation election is made. The appellate court reversed, holding that no statute or regulation prevented the use of discounting factors in determining the fair market value of interests in partnerships for purposes of the special use valuation election. Under the court’s reasoning, an estate would use the lesser of the value from special use valuation or the value after the discount for minority interest and non-marketable unless the $750,000 special use valuation limit was reached. In that event, the minority and non-marketable discount would be applied first with the $750,000 subtracted from that figure. Although not specifically discussed by either court, I.R.C. § 2032A(a)(2) places a limitation on reduction of estate tax value only as to the reduction resulting from application of the special use valuation and does not mention reductions of fair market value from other factors. Note: The Digest will publish an article by Dr. Harl on this case in the near future. Est. of Hoover v. Comm’r, 95-2 U.S. Tax Cas. (CCH) ¶ 60,217 (10th Cir. 1995), rev’g, 102 T.C. 777 (1994).

TRANSFEREE’S LIABILITY. The taxpayers received a gift of real property worth $93,300 in 1983. In the same year, the donor gave another property to the taxpayer’s brother. The IRS later determined that the second gift was undervalued for gift tax purposes. The value of the second gift was eventually determined by the Tax Court and the IRS assessed the taxpayers $93,300 for their portion of the unpaid taxes. The taxpayers argued that the resulting lien against the property decreased its value. The court rejected this argument and held that the taxpayer’s were liable for the full value of the gift when made. Ripley v. Comm’r, 105 T.C. No. 23 (1995).

FEDERAL INCOME TAXATION

BAD DEBT DEDUCTION-ALM § 4.03[7]. The taxpayers were the sole shareholders of a corporation. The corporation made a bona fide loan from the taxpayers which was outstanding at the beginning of 1987. During 1987, the corporation became insolvent and filed for bankruptcy. The taxpayers decided not to file a claim for their loan in the bankruptcy case because the claim would jeopardize the taxpayers’ chances of retaining the business. The taxpayers claimed a bad debt deduction for the outstanding balance of the loan. The court held that the taxpayers had failed to demonstrate that the debt became worthless in that if the claim had been filed in the bankruptcy case, the taxpayers would have received at least a partial recovery. In addition, the value of the claim was demonstrated by the taxpayers’ willingness to trade it for retention of the company. Cox v. Comm’r, 95-2 U.S. Tax Cas. (CCH) ¶ 50,595 (5th Cir. 1995), aff’g, T.C. Memo. 1994-189.

FORECLOSURE SALE. The taxpayers defaulted on a loan secured by property. The creditor foreclosed against the property and the property was sold. The property was purchased by another creditor of the taxpayers which held the second mortgage on the property. The taxpayers claimed that they did not receive the proceeds of the foreclosure sale and that the second creditor merely purchased the first creditor’s loan; therefore, no sale occurred to cause realization of gain by the taxpayers. The court held that the foreclosure sale event determined whether a sale occurred and that the taxpayers realized gain on the difference between their basis in the property and the sale price of the foreclosure sale. Cox v. Comm’r, 95-2 U.S. Tax Cas. (CCH) ¶ 50,595 (5th Cir. 1995), aff’g, T.C. Memo. 1994-189.

HOBBY LOSSES-ALM § 4.05[1]. The taxpayer operated a cattle ranch and was disallowed business deductions in excess of income from the activity because the court held that the taxpayer had not operated the activity for profit. The court found that the taxpayer had made little effort to reverse the years of losses, had not consulted any experts and did not keep records sufficient to operate the business profitably. Scales v. Comm’r, T.C. Memo. 1995-544.

INTEREST RATE. The IRS has announced that for the period January 1, 1996 through March 31, 1996, the interest rate paid on tax overpayments is 8 percent and for underpayments is 9 percent. The interest rate for underpayments by large corporations is 11 percent. Note: The GATT legislation reduces the interest rate on overpayments above $10,000 by 1.5 percentage points. Rev. Rul. 95-78, I.R.B. 1995-49.

PARTNERSHIPS-ALM § 7.03.* GROSS INCOME. The taxpayer was a general partnership involved in the practice of law. The taxpayer used the cash method of accounting and deducted as business expenses amounts paid for clients as part of legal representations and later included in income the amounts reimbursed by clients for those same expenses. The IRS audited the taxpayer and determined that the expenses were to be treated as loans such that the expenses were not deductible and the reimbursements were not included in income. However, because the statute of limitations had expired for tax years previous to 1989, the IRS included in income the reimbursements received in 1989 for expenses deducted prior to 1989. The taxpayer argued that such treatment of the reimbursements was inconsistent with the IRS ruling that the original expenses were loans. The Tax Court had held that the reimbursements were included in income under the consistency doctrine. The appellate court agreed in the result but held that the tax benefit rule applied. The Tax Court had rejected the use of the tax benefit rule because the original expense deduction had been improper. The appellate court rejected the “improper deduction” exception to the tax benefit rule. Hughes & Luce, L.P. v. Comm’r, 95-2 U.S. Tax Cas. (CCH) ¶ 50,614 (5th Cir. 1995), aff’g, T.C. Memo. 1995-559.

PENSION PLANS. The taxpayers were involved in several forms of business providing legal and business advice. The taxpayers included income from Schedule C and their shares of S corporation income in determining the amount of allowable deduction for contributions to a Keogh plan. The IRS disallowed the deductions attributable to the income from the S corporation. The court held that the term “self-employment income” for purposes of the Keogh deduction did not include income from an S corporation.
because I.R.C. § 401(c)(4) did not include an S corporation in the definition of "employer." The court noted that separate retirement plan provisions are available for S corporations. Durando v. Comm'r, 95-2 U.S. Tax Cas. (CCH) § 50,615 (9th Cir. 1995).

Although the taxpayer company had been treating all of its workers as employees for purposes of FICA, FUTA, income tax withholding and pension plan qualifications, one employee chose to claim business-related expenses as if the worker was an independent contractor. The worker's deductions were challenged by the IRS but the worker prevailed in the Tax Court. The taxpayer company sought three rulings as a result of the Tax Court ruling. First, the company wanted to file amended Forms W-2 with taxable wages for the worker at zero and amended Forms 1099 with self-employment income as the amount of wages originally reported plus the value of benefits made available to the worker under the company's health, medical and cafeteria plans. The IRS ruled that the company should file these forms as indicated. Second, the company asked for a ruling as to whether the worker could continue to participate in the company's 401(k) and defined benefit plans. The IRS ruled that, because the worker was not an employee, the worker should not be allowed to participate in or accrue benefits under these plans. Third, the company sought a ruling that its employee benefits plans would not be disqualified under 401(a) and 501(a) because of the Tax Court's ruling if the company returns to the worker the worker's contributions to 401(a) and 501(a) because of the Tax Court's ruling if the company returns to the worker the worker's contributions to the plans and revokes or cancels the worker's accrued benefits. The IRS ruled that the plans would not be disqualified if the company took these actions. The IRS noted that the second and third rulings are under reconsideration. Note: The Digest will publish an article by Dr. Harl on this ruling in the near future. Ltr. Rul. 9546018, Aug. 18, 1995.

For plans beginning in November 1995, the weighted average is 7.13 percent with the permissible range of 6.42 to 7.77 percent (90 to 109 percent permissible range) and 6.42 to 7.85 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). Notice 95-63, I.R.B. 1995-8, 8.

The IRS has issued proposed guidelines to be used for examining employee plans for compliance with certain purposes of determining the full funding limitation under I.R.C. § 412(c)(7). Notice 95-63, I.R.B. 1995-48, 8.

The IRS has issued proposed guidelines to be used for examining employee plans for compliance with certain purposes of determining the full funding limitation under I.R.C. § 412(c)(7). Notice 95-63, I.R.B. 1995-48, 8.

SAFE HARBOR INTEREST RATES

<table>
<thead>
<tr>
<th></th>
<th>December 1995</th>
<th>Annual</th>
<th>Semi-annual</th>
<th>Quarterly</th>
<th>Monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Short-term</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AFR 5.65</td>
<td>5.57</td>
<td>5.53</td>
<td>5.11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>110% AFR</td>
<td>6.22</td>
<td>6.13</td>
<td>6.08</td>
<td>6.05</td>
<td></td>
</tr>
<tr>
<td>120% AFR</td>
<td>6.79</td>
<td>6.68</td>
<td>6.63</td>
<td>6.59</td>
<td></td>
</tr>
<tr>
<td>Mid-term</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AFR 5.91</td>
<td>5.83</td>
<td>5.79</td>
<td>5.76</td>
<td></td>
<td></td>
</tr>
<tr>
<td>110% AFR</td>
<td>6.51</td>
<td>6.41</td>
<td>6.36</td>
<td>6.33</td>
<td></td>
</tr>
<tr>
<td>120% AFR</td>
<td>7.12</td>
<td>7.00</td>
<td>6.94</td>
<td>6.90</td>
<td></td>
</tr>
<tr>
<td>Long-term</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AFR 6.36</td>
<td>6.26</td>
<td>6.21</td>
<td>6.18</td>
<td></td>
<td></td>
</tr>
<tr>
<td>110% AFR</td>
<td>7.01</td>
<td>6.89</td>
<td>6.83</td>
<td>6.79</td>
<td></td>
</tr>
<tr>
<td>120% AFR</td>
<td>7.65</td>
<td>7.51</td>
<td>7.44</td>
<td>7.40</td>
<td></td>
</tr>
</tbody>
</table>

S CORPORATIONS-ALM § 7.02(3)(c).

INADVERTENT TERMINATION. The taxpayer was an S corporation. When one of the shareholders died, stock of the corporation was passed to a trust for one of the shareholder's heirs. Through a failure of communication among the corporation's attorney and accountants, the QSST election was not filed by the trust beneficiary until after the time for filing the election had passed. The IRS ruled that the termination was inadvertent and that the corporation would retain its S corporation status so long as all returns of shareholders were consistent with the election. Ltr. Rul. 9546023, Aug. 22, 1995.

SECURED TRANSACTIONS

BAILMENT. The debtor was a farm cooperative which processed and sold food products. In order to pay off a debt to an agent of Canadian grape growers, the debtor agreed to process and store grapes for the growers. The agreement specifically reserved title in the growers and prohibited the sale of the grape concentrate without the prior written permission of the growers. The debtor had the option to purchase some of the concentrate, again with prior written permission of the growers. However, the debtor sold some of the concentrate without prior permission and paid for it only when the sale was discovered by the growers. When the debtor filed for bankruptcy, the growers removed their inventory of grape concentrate from the debtor's premises and sold it. The debtor's secured creditors claimed that the concentrate was bankruptcy estate property because, under Pa. C.S.A. tit 13, § 2326, the concentrate was consigned goods and subject to the claims of the creditors while in the debtor's possession. The court held that because the debtor did not have the right to sell the concentrate, the processing and storage agreement was a bailment and the concentrate was not subject to the claims of the creditors. Glenshaw Glass v. Ontario Grape Growers' Marketing Bd., 67 F.3d 470 (3d Cir. 1995).

LANDLORD'S LIEN. This decision covered three bankruptcy cases involving interrelated entity and individual debtors who farmed land under leases. The landlords claimed priority security interests in crops produced by the debtors based on the statutory landlord's lien, Ill. Stat. §§ 5/9-316, 5/9-317. A creditor argued that the statutory lien did not apply because the entity debtors were not the primary tenants under the leases and that the contract relationship of the individual debtors with the primary tenants was not proved. The court held that the evidence demonstrated that the entity debtors did farm the lands governed by the leases and that some sort of assignment or sublease between the individuals and their entities was assumed; therefore, the landlord's lien attached to the crop produced on the land. Alternatively, the court held that the lien attached to the crop and did not depend upon the relationship of the person or entity which farmed the land and the tenant named in the lease. The court also held that the debtors' signing of an ASCS "Certification of Cash Lease" under the acreage reduction program did not effect a waiver of the statutory lien by the landlords. In re Kevin W. Emerick Farms, Inc., 187 B.R. 277 (Bankr. C.D. Ill. 1995).