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Cases, Regulations and Statutes

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as long-term capital gains and losses rather than as gains and losses from the sale of capital assets. S. Rpt. No. 169, Vol. 1, 98th Cong., 2d Sess. 498, April 2, 1984.

Second, § 1231(a) prescribes capital treatment of certain gains for other purposes of the Internal Revenue Code despite the absence of the term "capital asset." For example, § 1221 generally limits the deduction of losses from the sale or exchange of capital assets to the gains from such sales or exchanges. In applying the limitation, however, taxpayers may reduce § 1231(a) gains treated as capital gains by losses from the sale of capital assets. See Form 4797 and Schedule D of Form 1040. See also Rev. Rul. 76-70, 1976-1 C.B. 225.

The difference in language between § 1231(a) and § 1222(9) may cause some confusion. The language contained in § 1231(a) refers to treating the gains and losses as long-term capital gains or long-term capital losses, while the language of § 1222(9) refers to capital gain net income as the excess of gains from the sales or exchanges of capital assets over such losses. We believe, however, that the language difference is of little consequence.

In addition, a question arises whether the purpose of the amendment made to § 32 by the 1996 Act would be fully implemented if gains treated under § 1231(a) as long-term capital gains were not included in the definition of disqualified income. The reason for adding the provision to the definition of "disqualified income" is set forth in the House Report underlying the proposed House bill. The Report states:

> "The committee believes that individuals with substantial assets could use proceeds from the sale of those assets in place of the earned income credit to support consumption in times of low income. . . (I)n order to apply a proxy for an asset-based test, the recently enacted disqualified income test concentrates on the returns generated by those assets. . .. The committee believes that net capital gains and other passive income represent other flows of income from assets that could be liquidated to support current consumption."

Accordingly, based on the above, if a dairy farmer has net gain from any taxable year from the sale of § 1231 assets, including the sale of dairy cows, held for at least 24 months, such gains are treated as long-term capital gains by operation of the legal requirements set forth in § 1231. Thus, such gains properly are taken into account in determining the dairy farmer's capital gain net income under § 1222 for the taxable year. Under § 32, if the farmer's aggregate amount of disqualified income for the taxable year, including capital gain net income, exceeds $2,200, that farmer is not eligible to receive the earned income tax credit under the amendments made to § 32 by the 1996 Act. . . .

Sincerely,

Lewis J. Fernandez
Deputy Assistant Chief Counsel
(Income Tax and Accounting)

Commentary by Neil E. Harl:

I disagree with the Treasury's analysis of the law. In their view, income from Section 1231 gain is included in the calculation because gains from Section 1231 assets are treated as capital gains. That conclusion is reached despite the clear statutory message that Section 1231 assets are not capital assets.

As noted in my article, "Farmers and the Earned Income Credit," 8 *Agricultural Law Digest* 41 (1997), "capital gain net income" was added in 1996 to "disqualified income." The statute states that "capital gain net income" is to have the meaning given the term in Section 1222 of the Internal Revenue Code. Section 1222 defines "capital gain net income" as "the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges." Section 1221 defines "capital assets" as all assets except for five enumerated categories of asset. Section 1221(2) specifically excludes from the definition of capital asset, assets used in the trade or business under I.R.C. § 1231.

I would hope that the Treasury would reconsider its interpretation of the Code section involved and reach what I believe is the correct conclusion, that gains from Section 1231 assets are not included in "disqualified income."

Unless the Treasury reconsiders, the focus will be on a statutory solution to the problem. Although I do not believe that an amendment is necessary, I.R.C. § 32 should be amended to make it absolutely crystal clear that gains from Section 1231 assets are not to be included in "capital gain net income."

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

AUTOMATIC STAY. The debtor had filed for Chapter 7 in September 1993 and in October 1993, the state of Illinois filed a complaint under the state Environmental Protection Act against the debtor as a shareholder in a agricultural chemical corporation which had made alleged violations of the Act. The state court action included requests for civil penalties, an injunction and litigation costs. The state filed claims in the debtor's

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bankruptcy case for investigation costs. The state court action was eventually dismissed because of the bankruptcy case and because the state determined that the violations had been removed. The debtor sought sanctions against the state for failure to cease prosecution of the state court case after the filing of the bankruptcy case. The court held that the state case was within the exception of Section 362(b)(4) for actions by a governmental unit to enforce its police powers. ***In re* Mateer, 205 B.R. 915 (C.D. Ill. 1997)**.

MODIFICATION OF PLAN. The debtor's Chapter 11 plan provided for full payment of a secured claim with a production credit association. At the time of the plan confirmation, the PCA provided interest rates based on alphabetic classification of the loan. The Chapter 11 plan provided for interest on the plan payments to the PCA at one of these classifications but also provided that the interest rate could change from time to time. Shortly after the plan payments began, the PCA eliminated the alphabetical loan classification. The PCA then announced an increase in the interest rate for the debtor's loan. The debtor sought a bankruptcy court determination as to the reasonableness of the interest rate under the plan. The District Court dismissed the action, holding that the Bankruptcy Court had no jurisdiction over the plan because the plan was clear and unambiguous when confirmed and provided for changes in the interest rate. The appellate court confirmed. ***In re* Heine Feedlot Co., 107 F.3d 622 (8th Cir. 1997)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

AUTOMATIC STAY. The debtor was a corporation which operated a car sales business. IRS agents visited the debtor's premises and executed against the debtor's inventory. While the execution was in progress, the debtor filed for bankruptcy but the IRS did not cease the execution.. The debtor sought damages for the IRS violation of the automatic stay, under Sections 362(h) and 105. The IRS sought a summary judgment on this issue. The court held that relief under Section 362(h) was not available to the debtor because the debtor was not an individual debtor. However, the court held that summary judgment for the IRS was not appropriate because the court had sufficient authority under Section 105 to award damages and an issue of fact remained as to whether the debtor suffered any damages from the violation of the automatic stay. ***In re* A&J Auto Sales, Inc., 205 B.R. 676 (Bankr. D. N.H. 1996)**.

During the administration of the debtor's Chapter 7 case, the IRS levied against securities owned by the debtor and included in the bankruptcy estate. The IRS was held to have violated the automatic stay and was ordered to restore the assets or their value in cash to the estate. The court also held that, because the assets were to be returned to the estate and not the debtor, the debtor did not suffer any injury and no damages were awarded. ***In re* Weisberger, 205 B.R. 727 (Bankr. M.D. Pa. 1997)**.

DISCHARGE. The debtor owed taxes for 1985-1988. The debtor did not file the returns for those years until after the IRS had made an assessment based on substitute returns constructed by the IRS. The debtor's returns used the figures from the substitute returns. The IRS argued that the discharge of taxes provision under Section 523(a)(1)(B) did not apply because the IRS had made an assessment and constructed substitute returns prior to the debtor's filing of the tax returns. The court held that Section 523(a)(1)(B) had no exception for returns filed after assessment. In addition, the court held that the returns were valid and were not affected by the substitute returns constructed by the IRS. ***In re* Hindenlang, 205 B.R. 874 (Bankr. S.D. Ohio 1997)**.

The debtor filed for Chapter 7 in February 1987. The debtor filed the 1987 tax return in October 1989 under an IRS-granted extension. The IRS made an assessment for the 1987 taxes in December 1989. The debtor received a discharge in that case in May 1993. The debtor filed a second Chapter 7 case in August 1995. The court acknowledge the weight of precedent in several Circuit Courts of Appeal that held that a bankruptcy case tolls the three year period of Section 507(a)(8)(A)(i), but held with the minority that bankruptcy cases do not toll the three year period for discharge of taxes with filed returns. The court, however, denied the debtor summary judgment on the issue because there remained issues of fact as to whether the IRS was entitled to equitable relief because of debtor misconduct or abuse of the bankruptcy process. ***In re* Nolan, 205 B.R. 885 (Bankr. M.D. Tenn. 1997)**.

The debtor had owned a company and transferred ownership of the company to a trust which then transferred company stock to an off-shore corporation with the intent to hide from the IRS the assets and their sales. The court found that the transactions were shams with no economic purpose except to obtain tax avoidance; therefore, the taxes owed on the debtor's income from the company and sales of company assets were nondischargeable. The court also reached the same conclusion based on income tax returns filed by the debtor which did not include the income from the company and asset sales. ***In re* Sommers, 97-1 U.S. Tax Cas. (CCH) ¶ 50,359 (Bankr. N.D. Ill. 1997)**.

CONTRACTS

BOARS. The plaintiff purchased seven boars from the defendant for the purpose of breeding the plaintiff's gilts. The baby pigs born had shaker pig syndrome, also known as congenital tremors. The plaintiff brought suit for breach of express and implied warranties, negligent misrepresentation and fraudulent misrepresentation. The sales contract contained language recognizing that congenital tremors could exist in the purchased boars and limited the defendant's liability to the replacement of the boars or the refund of the purchase price. The plaintiff argued that the contract was unconscionable because the warranties were illusory since the warranties amounted to only a sale “as is” which would be unacceptable to any buyer. The court held that the warranty limitation language was clear and unambiguous and that the contract was not unconscionable because the plaintiff failed to show any unfair bargaining advantage held by the defendant or excess pressure exerted on the plaintiff to agree to the language. The court noted that the limited warranty language was conspicuous and that the boars did conform to the contract provisions. The plaintiff also argued that the contract was invalid in that the remedies allowed for breach of the contract by the defendant had no relation to the possible damages that could result from a breach, as in this case where over 100 baby pigs were lost. The court held that the defendant’s liability allowed by the contract was sufficient in that it would compensate the plaintiff for the loss of the goods involved in the contract. The court granted summary judgment for the defendant on the issue of negligent misrepresentation because the contract did not involve the supplying of information but involved only the sale of goods. The court also granted summary judgment on the claim of fraudulent misrepresentation because the contract explicitly acknowledged that the boars could have the congenital tremors virus, which was undetectable by testing. **Brunsman v. DeKalb Swine Breeders, Inc., 952 F. Supp. 628 (N.D. Iowa 1996)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The FCIC has issued proposed regulations which include the macadamia nut Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 19063 (April 18, 1997)**.

The FCIC has issued proposed regulations which include the macadamia nut tree Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 19067 (April 18, 1997)**.

The FCIC has issued proposed regulations which include the potato Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 19691 (April 23, 1997)**.

The FCIC has adopted as final regulations which include the walnut Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 20089 (April 25, 1997)**.

FEDERAL ESTATE AND GIFT TAX

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent’s estate included an interest in a closely-held business, the value of which exceeded 95 percent of the decedent’s gross estate. The estate elected to pay the estate tax in installments. The estate had also claimed a credit for a prior transfer of property from a decedent which was denied by the IRS. The estate brought an action in the Tax Court to determine whether the credit was proper. During the case, the estate made installment payments based on deductions of interest which accrued on the installments, as allowed by *Rev. Proc. 81-27, 1981-2 C.B. 547*. The case is not clear on this point, but the estate apparently calculated the estate tax without the disputed credit. However, the IRS sought payments of the installments without the interest deductions and eventually threatened to file a tax lien for the disputed amount. The estate then paid the amount demanded by the IRS and filed the current case for a refund of the excess payments, although estate tax installments were still due and the excess payments would be applied to the future installments. The estate argued that *Rev. Proc. 81-27* allowed the deduction for installment tax interest. The IRS claimed that it had a policy of not allowing the interest deduction on installments when the estate was involved in litigation over the correct amount of estate tax owed. The IRS claimed that to allow the *Rev. Proc. 81-27* adjustments would be too difficult for the IRS to coordinate among the departments in the IRS involved with the Tax Court case and administration of the estate’s account. The court held that the IRS unpublished policy of disallowing the interest adjustment during pending litigation was reasonable in light of the nature of revenue procedures as non-substantive law. The court noted that the statute did not require or specifically allow the interest adjustment. **Estate of Shapiro v. Comm’r, 97-1 U.S. Tax Cas. (CCH) ¶ 60,267 (2d Cir. 1997)**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* The decedent had received an interest in trust in timberland from the decedent’s parent’s estate. The parent’s will provided that the trust was not to distribute any trust principal or income until all estate taxes were paid for the parent’s estate. The parent’s estate elected installment payment of the estate taxes. When the decedent died, there were 14 years left for payment of the estate tax installments and no income or principal had been distributed. The decedent’s will created a trust for the surviving spouse and transferred all property in the decedent’s estate to the trust. The surviving spouse’s trust provided that the trustee could not sell any interests in timberland, thus preventing the trustee from converting the trust’s interest in the decedent’s share of the parent’s trust to income producing property. The IRS ruled that the surviving spouse’s trust was not eligible for the marital deduction because the surviving spouse would not receive all the income from the trust assets. **Ltr. Rul. 9717005, Dec. 18, 1996**.

POWER OF ATTORNEY. The decedent had purchased 19 separate annuities listing the decedent as annuitant and naming the contingent beneficiaries. The

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decedent had named three persons as contingent beneficiaries of three of the annuities. These three persons also held joint power of attorney over the decedent's assets. The power included the same power to convey the decedent's property as held by the decedent. The three persons then executed gifts of the annuities to the contingent benefit holders, including themselves. The court found that the decedent had intended to make these gifts and that the power to convey the decedent's property included the power to donate the property. The court focused on the facts that the decedent intended to make the gifts and that the power of attorney did not exclude the making of gifts; therefore, the court held that the gifts were completed prior to the decedent's death and were not included in the decedent's gross estate. **Estate of Neff v. Comm'r, T.C. Memo. 1997-186**.

RETURNS. The IRS has announced that revised Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and instructions has been issued and is available from the IRS at 1-800-829-3676 or at http://www.irs.ustreas.gov/prod/.

SPECIAL USE VALUATION-*ALM* § 5.03[2].* The U.S. Supreme Court has denied certiorari in the following case: The decedent died on December 15, 1995 owning farm property. The decedent's estate attempted to make a special use valuation election on the estate's timely filed estate tax return. However, the executor failed to fill in the "yes" box after the question on the form asking if a special use valuation was elected and the return failed to include the recapture agreement of the qualified heirs. The IRS notified the estate that the election was incomplete and the estate supplied the recapture agreement within 90 days after the IRS notification. The IRS denied the election because the initial return did not substantially comply with the election requirements. The court held that the recapture agreement was an essential element of the election and the estate return did not substantially comply with the election; therefore, the estate was not entitled, under I.R.C. § 2032A(d)(3), to perfect the election. The estate also argued that Section 1421 of the Tax Reform Act of 1986 allowed the perfection of the election because the original estate tax return provided "substantially all the information" for the election. The court held that the recapture agreement was an essential part of the "information" required by Section 1421 and the failure to provide the agreement prevented the estate from perfecting the election after notice by the IRS. **Estate of Lucas v. United States, 97 F.3d 1401 (11th Cir. 1996)**.

TRANSFERS WITH RETAINED INTERESTS. The decedent had owned stock but entered into an agreement to sell the stock to an unrelated party for 10 years. The stock was exchanged for an interest bearing note for $2 million. At the end of the ten years, the decedent's children had an option to repurchase the shares for $1.00. The court found that the value of the shares on the option date would be about $1.8 million. Thus, the total consideration for the use of the stock for 10 years was $3.8 million and the court found that the value of the use of the stock for 10 years was $3.2 million. The court held that the decedent had received adequate consideration for the stock and the stock was not included in the decedent's estate. The court also held that the decedent did not retain any interest in the stock to cause the stock to be included in the gross estate. **Estate of Brown v. Comm'r, T.C. Memo. 1997-195**.

TRUSTS. The IRS has issued a revenue procedure stating that the IRS will not issue letter rulings concerning charitable unitrusts as to this issue: Whether a trust qualifies as a charitable unitrust when a grantor, trustee, beneficiary or a person related to any of these persons can control the timing of the trust's receipt of income from a partnership or a deferred annuity contract to take advantage of the difference between trust income under I.R.C. § 643(b) and income for federal income tax purposes for the benefit of the unitrust recipient. Rev. Proc. 97-23, I.R.B. 1997-__.

The IRS has issued proposed regulations amending I.R.C. §§ 664 and 2702, concerning charitable remainder trusts. The proposed amendments contain rules on the conditions under which the governing instrument may provide for a change in the method of calculating the unitrust amount, the date by which the annuity amount or the unitrust amount under the fixed percentage method must be paid to the recipient, who is required to value unmarketable assets, and when I.R.C. § 2702 applies to certain charitable remainder unitrusts. The proposed regulations clarify existing law that prohibits allocating precontribution capital gains to trust income. The proposed amendments also contain an example illustrating how the ordering rule of I.R.C. § 664(b) applies to distributions from a charitable remainder unitrust using an income exception method to calculate the unitrust amount. **62 Fed. Reg. 19072 (April 18, 1997)**.

VALUATION. The decedent had owned a 75 percent undivided interest in timberland held for the production of timber for harvest as lumber. In 1987, the decedent gave 25 percent of the interests in the timberland to three children, with each child receiving an 8.33 percent undivided interest in the land. After the gifts, each child owned a total of 16.67 percent undivided interest in the land. The issue was the value of the 25 percent interest transferred. The court held that the method of valuation to be used was the income capitalization method, because a purchaser/owner of the interests could obtain a partition of the land. The court reasoned that during the pendency of the partition action, the owner would receive the income from the property and would incur litigation costs. At the end of the action, the owner would receive either a portion of the land in fee simple or cash equivalent to the value of the separate interest. The court held that a discount rate of 10 percent was applicable. The court then determined the amount of income from the property for each year of a four year partition process, less a prorated level of costs of the partition action for each year, with the net income discounted at 10 percent per year. **Estate of Barge v. Comm'r, T.C. Memo. 1997-188**.

The taxpayers, husband and wife, owned a 26 acre tract of land. The land was divided into an 18 acre parcel which was leased to an unrelated party for farming. The remaining eight acres were used for the family residence and included a house, barn, storage buildings and a garage. The zoning ordinance for the property required all residential and agricultural parcels to be at least five acres in size. The taxpayers transferred the residential parcel to a seven year trust for the taxpayers, with the provisions designed to meet the requirements of a qualified personal residence trust under I.R.C. § 2702(a)(3)(A)(ii). The IRS ruled that the entire eight acre residential parcel trust was a qualified residence trust because the property could not be further divided under the local zoning ordinance. **Ltr. Rul. 9717017, Jan. 22, 1997**.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayer was a corporation which owned a building used by one of it's subsidiaries. The building was remodeled and as part of that remodeling, asbestos containing materials were removed. The court held that the costs of the asbestos removal had to be capitalized because they were part of the general plan of renovation of the building. **Norwest Corp. v. Comm'r, 108 T.C. No. 15 (1997)**.

CASUALTY LOSSES. The President has declared certain areas of (1) Tennessee as disaster areas from March 18, 1997 storms; (2) Washington as disaster areas from mud slides and flooding beginning on March 18, 1997; (3) South Dakota as disaster areas from storms and flooding beginning on Feb. 3, 1997; (4) North Dakota as disaster areas from storms and flooding beginning on Feb. 28, 1997; (5) Minnesota as disaster areas from storms and flooding beginning on March 21, 1997; and (6) Arkansas as disaster areas from storms and flooding beginning on April 4, 1997. Losses from these casualties may be deducted in taxpayers' 1996 returns.

COOPERATIVES-*ALM* § 14.03.* The taxpayer was a taxable farmers' cooperative which issued annual dividends in part by qualified written notices of allocation of the cooperative's taxable profit. The cooperative's patrons included the amounts in the notices in their taxable income. When a patron terminated a membership, the cooperative redeemed the notices held by the patron at a discounted amount. The IRS argued that, under the tax benefit rule, the difference between the face value of the notices and the amounts actually paid to terminated patrons were taxable income to the cooperative. The Tax Court acknowledged that the cooperative tax laws were based on a "one level" taxation, either at the cooperative level or at the patron level and that the patrons were deemed to have constructively received the amounts in the written notices of allocation. However, the Tax Court agreed with the IRS that the discounting of the redemption amount carried back that amount to increase the original taxable income; therefore, the tax benefit rule applied to include the discounted amount in the cooperative's taxable income. The appellate court reversed, holding that the amount of discount applied to the termination payments was not subject to the tax benefit rule. The court reasoned that the taxation scheme for qualified written notices considered the notices to be the actual payment of income to the patron and taxed as such. The notices then changed the form of the patron's involvement with the cooperative as to the notice amount to an investment in the cooperative; therefore, the payment of the notice amount at termination was a repayment of investment and not income and did not reinstate income to the cooperative so as to invoke the tax benefit rule. **Gold Kist, Inc. v. Comm'r, 97-1 U.S. Tax Cas. (CCH) ¶ 50,365 (11th Cir. 1997), *rev'g*, 104 T.C. 696 (1995)**.

PARTNERSHIPS-*ALM* § 7.03.*

PARTNERSHIP LOSSES. The taxpayer had invested in a tax shelter. In separate Tax Court proceedings, the court held that certain items of profit and loss were not available to the partnership because of a lack of a bona fide business purpose to the tax shelter transactions. The taxpayer sought to include the taxpayer's share of those items of income and loss in the taxpayer's personal income tax return, arguing that the taxpayer's investment in the partnership was made with a profit motive. The court held that the determination at the partnership level prevented the taxpayer's use of the disallowed partnership income and loss items. **Helton v. United States, 97-1 U.S. Tax Cas. (CCH) ¶ 50,364 (D. Alaska 1997)**.

TAX LIENS. The taxpayer was a corporation which was a general partner in a partnership. The IRS had made assessments for taxes against the partnership but not against the taxpayer. The IRS argued that, because a general partner is liable for partnership debts, the assessment was valid against the taxpayer as a general partner. The court held that a tax lien was not valid where the taxpayer did not receive separate assessment. The IRS had also failed to issue a separate notice and demand against the taxpayer for taxes owed by the partnership. The court held that a tax lien was not created against the taxpayer because the taxpayer did not receive separate notice and demand. **El Paso Refining, Inc. v. IRS, 205 B.R. 497 (W.D. Tex. 1996)**.

SALE OF RESIDENCE. The debtor owned a residence which became part of the bankruptcy estate except for a $10,000 exemption. The residence was sold by the trustee for a substantial amount of taxable gain. The trustee sought permission to exclude the gain under the one time exclusion allowed under I.R.C. § 121 because the debtor was over the age of 55. The trustee first argued that the bankruptcy estate was similar to a decedent's estate and the exclusion was allowed under *Rev. Rul. 82-1*. The court held that the analogy was not appropriate in that a decedent's estate acts in the place of the decedent and only one income tax return is filed; whereas, under a bankruptcy case, both the estate and the debtor file separate returns. The trustee argued that the eligibility for the exclusion passed from the debtor to the estate under I.R.C. § 1398(g). The court held that there was no provision in Section 1398 for transfer of the gain exclusion right to the estate. ***In re* Barden, 205 B.R. 453 (E.D. N.Y. 1996), *aff'd*, 97-1 U.S. Tax Cas. (CCH) ¶ 50,244 (2d Cir. 1997)**.

SAFE HARBOR INTEREST RATES

May 1997

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	6.23	6.14	6.09	6.06
110% AFR	6.86	6.75	6.69	6.66
120% AFR	7.51	7.37	7.30	7.26
		Mid-term		
AFR	6.85	6.74	6.68	6.65
110% AFR	7.55	7.41	7.34	7.30
120% AFR	8.25	8.09	8.01	7.96
		Long-term		
AFR	7.18	7.06	7.00	6.96
110% AFR	7.92	7.77	7.70	7.65
120% AFR	8.65	8.47	8.38	8.32

TRAVEL EXPENSES. The taxpayer was an employee of a company which required the taxpayer to drive to clients for company business. The taxpayer submitted records to the company of the mileage used for company business for reimbursement of some costs of the use of the vehicle. The taxpayer did not keep records of the personal use of the vehicle. The IRS allowed a travel deduction only for the miles claimed in the report, based on the standard mileage rate, reduced by the amount of reimbursement received from the company. The taxpayer had claimed other vehicle expenses, including auto insurance, based on a 95 percent business use of the vehicle. The court held that the IRS determination was correct because the taxpayer failed to substantiate that the vehicle was used 95 percent for business. **Kelly v. Comm'r, T.C. Memo. 1997-185**.

TRUSTS. The taxpayer was a nurse anesthetist and formed a trust to receive a share in a partnership which had another anesthetist as a partner. Although the taxpayer performed the medical services, the amounts distributed by the partnership were placed in the trust's bank account. The taxpayer, however, had control over the funds in the partnership and had control over the trust bank account. The trust did not file income tax returns or pay any tax on the partnership distributions. The court held that the taxpayer was liable for the tax on the partnership distributions because the amounts were paid to the taxpayer, the taxpayer had control over the funds at all times, and the amounts resulted from the services provided to the partnership by the taxpayer. **Estrada v. Comm'r, T.C. Memo. 1997-180**.

NEGLIGENCE

SPREAD OF PLANT VIRUS. The parties in this case were neighboring farmers. The plaintiff grew wheat in one year but the defendant left a neighboring field lie fallow and volunteer wheat grew on the land. The evidence showed that a source of wheat streak mosaic virus is volunteer wheat because no control of the virus is attempted. The plaintiff sued the defendant in negligence for failing to take steps to control the virus on the volunteer wheat. The court upheld a trial court ruling of summary judgment for the defendant, holding that there was no statutory, regulatory or common law duty to control a virus to prevent spread of the virus to a neighbor's fields. **Krug v. Koriel, __ P.2d __ (Kan. Ct. App. 1997)**.

NUISANCE

DRAINS. The plaintiff was a cranberry farmer and the plaintiff's cranberry bogs relied for drainage on ponds on land owned by the defendant town. In one crop year, the plaintiff discovered that the cranberry bogs could not be drained because a drain for one of the town's ponds was blocked. The plaintiff requested that the town unblock the drain and filed this case for nuisance when the town refused to unblock the drain. The court upheld a trial court's ruling that the town's failure to unblock the pipe was unreasonable and constituted a nuisance. **Murphy v. Town of Chatham, 676 N.E.2d 473 (Mass. Ct. App. 1996)**.

STATE REGULATION OF AGRICULTURE

MILK. A corporation owned a chain of retail grocery stores and also supplied other independent stores with milk and other grocery items. The corporation purchased raw milk which was processed by independent processors for retail and wholesale sale by the corporation. The corporation applied for a milk dealer's license which was eventually granted by the defendant state milk marketing board under a court order. The plaintiff was an association of milk dealers and challenged the grant of the milk dealer's license to the corporation, arguing that the corporation did not qualify as a milk dealer because the corporation itself did not produce or manufacture milk. The court noted initially that the challenge to the dealer's license would fail because the issue was already litigated and resulted in a court order to grant the license. In addition, the court held that the statutory definition of milk dealer included corporations which purchased milk for the purposes of processing and sale, as the corporation did in this case. The court held that the definition did not require that the licensee actually do the processing or manufacture itself. **Pennsylvania Milk Dealers Ass'n v. Marketing Bd., 685 A.2d 643 (Pa. Cmwlth. 1996)**.

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2d ANNUAL SEMINAR IN PARADISE

FARM ESTATE AND BUSINESS PLANNING by Dr. Neil E. Harl

January 5-9, 1998

Spend a week in Hawai'i in January 1998! Balmy trade winds, 70-80 degrees, palm trees, white sand beaches and the rest of paradise can be yours; plus a world-class seminar on Farm Estate and Business Planning by Dr. Neil E. Harl. The seminar is scheduled for January 5-9, 1998 at the spectacular ocean-front Hilton Waikoloa Village Resort on the Big Island, Hawai'i.

Seminar sessions run from 7:30 a.m. to 12:00 p.m. each day, Monday through Friday, with a continental breakfast and break refreshments included in the registration fee. Each participant will receive a copy of Dr. Harl's 400 page seminar manual, *Farm Estate and Business Planning: Annotated Materials* which will be updated just prior to the seminar.

Here are the major topics to be covered:

• Introduction to estate and business planning.

• Liquidity planning with emphasis on 15-year installment payment of federal estate tax.

• Co-ownership of property, including discounts, taxation and special problems.

• Federal estate tax, including alternate valuation date, special use valuation, handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.

• Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.

• Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.

• Using trusts, including funding of revocable living trusts.

• Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.

The Agricultural Law Press has made arrangements for **group discount air fares** on United Airlines, available through Sun Quest Vacations. In addition, attendees are eligible for **substantial discounts on hotel rooms at the Hilton Waikoloa Village Resort**, the site of the seminar. Early registration is important to obtain the lowest airfares and insure availability of convenient flights at a busy travel time of the year.

The seminar registration fee is $645 for current subscribers to the *Agricultural Law Digest* or the *Agricultural Law Manual*. The registration fee for nonsubscribers is $695.

Watch your mail for a registration packet or call Robert Achenbach at 1-541-302-1958.

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