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Cases, Regulations and Statutes

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of the trust may be distributed, in the discretion of the trustee, to a person who is living when the trust is created."[19] Litigation will likely be necessary to establish whether the revised Alaska rule against perpetuities applies to land located in another state. In our April 11, 1997, article,[20] we noted that trusts holding land are generally governed by the law of the state where the land is located.[21]

• Alaska is one of the few states with no state income tax which permits funds not distributed to accumulate free of state income tax.

• As we noted in the April 25, 1997, article on asset protection trusts,[22] the cost to establish an off-shore trust can run into five figures.[23] Trusts set up under the 1997 Alaska statute should be substantially less costly to establish and administer.

Disadvantages of "Alaska" trust

Although the Alaska statute offers notable advantages, trusts established and maintained under that law fall substantially short of the off-shore trusts in protecting trust assets.

Under the new Alaska provision, the statute of limitations for a fraudulent conveyance is generally four years from the later of the date the transfer is made or one year after the transfer is or reasonably could have been discovered.[24] By contrast, for trusts set up in the Cook Islands, actions must be brought by the later of two years after the creditor's cause of action accrues or one year of the transfer of the assets.[25]

While some of the off-shore jurisdictions bidding for asset protection trusts do not recognize foreign judgments,[26] a judgment from another state in the United States would be enforceable in Alaska. Moreover, a bankruptcy court would be able to assert jurisdiction over an Alaska trustee.

In conclusion

The question now is whether other states will follow the lead of Alaska in establishing more of a snug harbor for asset protection trusts than heretofore has been available in the United States.

FOOTNOTES

1 Harl, "Asset Protection Trusts," 8 *Agric. L. Dig*. 65 (1997).
2 See generally Marty-Nelson, "Offshore Asset Protection Trusts: Having Your Cake and Eating It Too," 47 *Rutgers L. Rev*. 11 (1994)
3 Alaska Stat. §§ 13.12.205, 13.36.035, 13.36.045, 13.36, 34.27.050, 34.40.010, 34.40.110, added by H.B. 101, Twentieth Alaska Legislature, First Session, 1997.
4 H.B. 101, Secs. 9, 10, Twentieth Alaska Legislature, First Session, 1997.
5 Alaska Stat. § 34.40.110.
6 *Id*.
7 *Id*.
8 Alaska Stat. § 34.40.010.
9 Alaska Stat. § 34.40.110(b).
10 Alaska Stat. § 34.40.110(b)(2).
11 See I.R.C. §§ 2036-2038.
12 See n. 9 *supra* and accompanying text.
13 Alaska Stat. § 13.36.035(c).
14 Alaska Stat. § 13.36.035(c)(1).
15 For a discussion of the reasons for setting up an off-shore trust, see Harl, *supra* n. 1.
16 See Harl, "How Long for Dynasty Trusts?" 8 *Agric. L. Dig*. 57 (1997).
17 Alaska Stat. § 34.27.050(a)(3).
18 *Id*., notes 13-17 supra and accompanying text.
19 Alaska Stat. § 34.27.050(a)(3).
20 See n. 16 supra.
21 *Id*., n. 19.
22 See n. 1 *supra*.
23 *Id*., ns. 17-18 *supra* and accompanying text.
24 Alaska Stat. § 34.40.110(d)(1)(A).
25 Harl, n. 1 *supra*, note 15.
26 Harl, n. 1 *supra*.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

PERMISSIVE USE. The predecessors in interest to the properties owned by the parties had agreed that each could use land owned by the other that was more convenient for each to use. The disputed property in the case was used by the defendant for farming and the plaintiff used an equivalent amount of the defendant's land for farming. The defendant sought to build a road on the disputed property and the plaintiff sought an injunction against trespass and quiet title to the disputed property. The defendant counter-claimed that the defendant owned the property either under the original agreement of the predecessors in interest or by adverse possession. The court held that the original agreement was a swap for use agreement since neither party ever claimed ownership of the exchanged properties. Therefore, the defendant's use of the property was permissive and no title could pass by adverse possession. **Strubberg v. Roethemeyer, 941 S.W.2d 557 (Mo. Ct. App. 1997)**.

BANKRUPTCY

FEDERAL TAXATION-*ALM* § 13.03[7].*

AUTOMATIC STAY. The debtor had filed for Chapter 13 and included anticipated federal income tax refunds in the proposed payments of creditors. However, the IRS withheld the refund for transfer to another governmental agency in an administrative setoff. The IRS had not filed a claim in the bankruptcy case, nor had the IRS been notified about the bankruptcy case. The court held that the withholding of the refund violated the automatic stay; however, because the IRS was not aware of the bankruptcy case, the violation was not willful and

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no damages would be awarded. The case does not mention whether the refunds were recoverable by the estate. ***In re* LaFanette, 208 B.R. 394 (Bankr. W.D. La. 1996)**.

DISCHARGE. The debtor had owned a one-third interest in a corporation which had qualified as a minority contractor of government services because the other two-thirds interests were owned by women. After an internal dispute, one of the other shareholders left the company. In order to maintain the minority status of the corporation, the debtor transferred the debtor's interest to the debtor's spouse. The stock had little value at the time of the transfer. The court found that the debtor then learned that the debtor's income tax liability for that year was substantially larger than expected and the debtor was unable to pay the taxes due, although the debtor filed an accurate income tax return. The debtor was in continuous contact with the IRS in negotiating payment of the tax debt but the taxes remained unpaid when the debtor filed for bankruptcy. The IRS sought to have the taxes declared nondischargeable because the debtor willfully attempted to evade payment by hiding the stock from the IRS by transferring it to the spouse. The court found that the stock transfer was not made with any intent to evade payment of the taxes because the debtor did not realize the amount of taxes owed until after the transfer and the debtor transferred the stock for a business reason. Therefore, the taxes were dischargeable in bankruptcy. ***In re* Huber, 97-2 U.S. Tax Cas. (CCH) ¶ 50,498 (Bankr. M.D. Fla. 1997)**.

ENVIRONMENT

CLEAN WATER ACT. The plaintiffs were several environmental groups and Indian tribes who sought a declaratory judgment that applicants for federal grazing permits be required to obtain certification from the state that grazing activity would not adversely impact state water quality. The plaintiffs argued that the U.S. Forest Service was violating Section 401(a) of the Clean Water Act (CWA) by issuing grazing permits without first requiring the permitee to obtain certification from the state of Oregon that the grazing would not violate state water quality standards. The court held that the plaintiffs had standing to bring the action because the plaintiffs lived and recreated in the area involved and because the plaintiffs showed that cattle grazing caused pollution of streams near the grazing. The court also held that the CWA allowed private suits to enforce permit conditions affecting water quality violations. The central issue in the case was whether the terms "any discharge into navigable waters" under Section 401 was limited to point source pollution. The court held that the pollution from cattle grazing was governed by the CWA and that the Forest Service was required to seek state certification of compliance with water quality standards before issuing grazing permits. **Oregon Natural Desert Ass'n v. Thomas, 940 F. Supp. 1534 (D. Or. 1996)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has issued a proposed regulation changing Virginia from a modified accredited state to an accredited-free state. **62 Fed. Reg. 34612 (June 27, 1997)**.

CROP INSURANCE. The FCIC announced approval for reinsurance and subsidy for the insurance of cotton, grain sorghum and spring wheat in select states and counties under the Crop Revenue Coverage plan of insurance. **62 Fed. Reg. 35118 (June 30, 1997)**.

The FCIC has adopted as final 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. 35662 (July 2, 1997)**.

The FCIC has adopted as final 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. 35666 (July 2, 1997)**.

GYPSY MOTH. The APHIS has issued proposed regulations amending the gypsy moth quarantine regulations by adding areas in Ohio and West Virginia to the list of generally infested areas, in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of gypsy moth. **62 Fed. Reg. 36645 (July 9, 1997)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT. The debtor was a corporation which operated or franchised restaurants and which had purchased perishable agricultural commodities from a supplier but had not paid for all the purchases. The supplier sought relief from the automatic stay to pursue collection of the unpaid amount from the PACA trust fund, which was excludible from the bankruptcy estate. The debtor argued that it was not a dealer, broker, or retailer of agricultural commodities subject to PACA. The court held that the debtor was not subject to PACA because the debtor was not a dealer of agricultural commodities but instead used the commodities in the production of other goods and services, restaurant meals. For a contrary holding, *see Matter of Magic Restaurants, Inc., 197 B.R. 455 (Bankr. D. Del. 1996), app. denied, 202 B.R. 24 (D. Del. 1996) p. 3 supra*. ***In re* Italian Oven, Inc., 207 B.R. 839 (Bankr. W.D. Pa. 1997)**.

SUGAR. The CCC has adopted as final regulations which redefine the crop year for the sugar loan program from the current period, July 1 through June 30, to the federal fiscal year, October 1 through September 30. The proposed rule also would extend the loan availability period to the whole fiscal year instead of ending the availability period on June 30. The restriction that the

CCC could only make loans in July, August, and September on sugar processed from sugarcane or sugar beets that are normally harvested in those months would be removed. The proposed rule would also eliminate obsolete provisions governing the 1995 crop year price support program and producer protections and revise the information collection requirements to reflect the simplified monthly data-reporting forms and the transfer of reporting items to new annual reporting forms. **62 Fed. Reg. 34611 (June 27, 1997)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The decedent had created a grantor trust which provided for passage of a remainder interest in the trust to a charitable foundation. The trust assets included paintings and furnishings in a residence. The estate could not claim a charitable deduction for the entire value of the assets passing to the charitable foundation and the heir claimed the unused charitable deduction on the heir's personal income tax returns for the three years after the decedent's death. The court held that the charitable deduction was personal to the decedent, who contributed the assets to the trust, and any unused charitable deduction expired upon the death of the decedent. **Stussy v. Comm'r, T.C. Memo. 1997-293**.

GIFT-*ALM* § 6.01.* The taxpayer issued two $100,000 checks, one to each of the taxpayer's two children and the children signed no-interest demand notes for repayment of the money. However, the taxpayer testified that the taxpayer had no intention of seeking repayment but intended to forgive the indebtedness over several years. In the subsequent years, the taxpayer sent letters to the children indicating how much of the loans was forgiven. The court held that the initial checks were gifts and not loans, based on several factors: (1) no interest was charged; (2) no security was required; (3) although the notes had fixed maturity dates, the taxpayer did not intend to enforce them; (4) no demand was made for repayment; (5) no repayments were made; (6) the taxpayer did not provide any evidence that the children had sufficient income or assets to repay the notes; (7) the "loans" were not consistently treated as such in the taxpayer's records; and (8) the taxpayer did not file gift tax returns for the loan forgiveness amounts in excess of the annual exclusion amount. The appellate decision affirming the Tax Court is designated as not for publication. **Miller v. Comm'r, 97-2 U.S. Tax Cas. (CCH) ¶ 60,277 (9th Cir. 1997), *aff'g*, T.C. Memo. 1996-3**.

JOINT TENANCY PROPERTY. The decedent's predeceased spouse had inherited real property and transferred the property to both of them as tenants by the entirety in 1955. The spouse died in July 1989 and 50 percent of the value of the property was included in the spouse's estate. The decedent sold the property in 1990 and used the estate tax value for 50 percent of the property (under the "fractional share" rule) as the basis for determining gain from the sale. The decedent's executor filed an amended income tax return for the year of the sale to use a basis of the full estate tax value of the property, under the "consideration furnished rule," removing all gain from the sale transaction. The issue was whether the ERTA 1981 amendments to I.R.C. § 2040 providing for the fractional share rule replaced the former "consideration furnished" rule for pre-1977 joint tenancy transfers. The court cited *Gallenstein v. United States, 975 F.2d 286 (6th Cir. 1992)* to support its holding that the 1981 amendment did not completely replace the previous rule and the decedent was entitled to include the entire value of the property for estate tax purposes as the property's basis in the sale. **Patten v. United States, 97-2 U.S. Tax Cdas. (CCH) ¶ 60,279 (4th Cir. 1997), *aff'g*, 96-1 U.S. Tax Cas. (CCH) ¶ 60,231 (W.D. Va. 1996)**.

POWER OF APPOINTMENT. The decedent had created a trust with the spouse as a remainder beneficiary. The trust contained a testamentary power of appointment for the spouse over the trust principal but the trust language was ambiguous as to whether the power was limited or not. After the death of the decedent, the surviving spouse petitioned the state probate court for an interpretation of the trust that only a limited power of appointment was intended by the decedent. The probate court ruled that the surviving spouse had only a limited testamentary power of appointment over trust principal. The IRS ruled that the probate court's ruling was consistent with state law and that the spouse had a limited power of appointment. **Ltr. Rul. 9725031, March 24, 1997; Ltr. Rul. 9725033, March 24, 1997**.

TRANSFERS WITH RETAINED INTERESTS. The decedent had transferred the decedent's residence, valued at $1.3 million, to the decedent's sons for a promissory note for $337,000, with a retained life estate for the decedent. The sons' income from the family corporation was insufficient to make the payments on the note until the decedent forgave one year's payment and increased the sons' compensation and bonuses from the corporation. The decedent also transferred the note to the corporation. The note was paid off by the time of the decedent's death due to large bonuses paid to the sons. The District Court had held that the value of the residence, less the amounts paid by the sons, was included in the gross estate under I.R.C. § 2036(a) because the consideration for the transfer was only 26 percent of the full value of the property. The appellate court reversed, holding that the value of the retained interest could be determined using the actuarial tables of Treas. Reg. § 25.2512(A), based on the decedent's life expectancy; therefore, the amount paid by the sons was adequate consideration. The appellate court held that the phrase "adequate and full consideration" in I.R.C. § 2036(a) is to be applied in reference to the actuarial value of the remainder interest transferred. The court determined that the transfer of the ranch was a bona fide sale for full and adequate consideration. **Wheeler v. U.S., 97-2 U.S. Tax Cas. (CCH) ¶ 60,278 (5th Cir. 1997), *rev'g*, 96-1 U.S. Tax Cas. (CCH) ¶ 60,226 (W.D. Tex. 1995)**.

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VALUATION. The decedent had been the beneficiary of a trust created by the decedent. Two months before the decedent's death and when the decedent was known to be terminally ill, the trustees transferred the trusts' assets to a new limited partnership in exchange for an 82 percent limited partnership interest. Other family members and trusts for family members purchased the remaining 18 percent interests in the partnership in exchange for cash and other assets. The estate valued the estate' partnership interest at 62 percent of the total value of partnership assets, claiming a discount for the partial interest because of the restrictions on the sale of the interest under state partnership law and the partnership agreement. The IRS ruled that the restrictions were to be disregarded for estate tax valuation purposes because family members held substantial interests in the property before and after contribution to the partnership. This and other recently reported rulings indicate that the IRS will challenge attempts to affect the valuation of estate assets by transferring them into limited partnership interests within a short period before the decedent's death. **Ltr. Rul. 9725002, March 3, 1997**.

FEDERAL INCOME TAXATION

CASUALTY LOSSES. The President has declared certain areas of Mississippi as disaster areas from Feb. 28, 1997 flooding. Losses from these casualties may be deducted in taxpayers' 1996 returns.

CORPORATIONS-*ALM* § 7.02[1].*

CONSTRUCTIVE DIVIDENDS. The taxpayer owned a livestock company which allowed an employee to cash company checks written to ficticious persons. The taxpayer claimed that the employee embezzled the money but the evidence demonstrated that the checks were cashed with the taxpayer's knowledge and consent. The evidence also showed that the employee did not keep the money; therefore, the amount of the checks was a constructive dividend to the taxpayer. **Reaves Livestock, Inc. v. Comm'r, T.C. Memo. 1997-283**.

REORGANIZATION. A farming S corporation was owned by two brothers and their families. Because of a management dispute, the shareholders agreed to divide the business assets and form two separate corporations, each owned by one brother and his family. The reorganization was accomplished by establishing a second corporation, distributing one half of the assets to the new corporation in exchange for stock and distributing the stock to the one brother and family in exchange for their stock in the original corporation. The IRS ruled that the reorganization was a qualified "type D" reorganization which did not cause recognition of gain or loss from the exchanges and did not terminate the S corporation election of the original corporation from the momentary ownership of the stock of the new corporation. **Ltr. Rul. 9726013, March 28, 1997**.

STOCK REDEMPTION. The taxpayer owned 100 percent of the stock of a corporation which operated a car dealership. The employees of the business approached the taxpayer about purchasing the business. At a time when the business was worth $735,000, the employees paid the taxpayer that amount but characterized the payments as $500,000 for the stock and $235,000 as compensation for the taxpayer's past services to the corporation. The corporation then deducted the $235,000 as wages. However, the corporation did not withhold or pay social security or income taxes on the $235,000 and gave the taxpayer a Form 1099 MISC and not a W-2 Form. The court held that the $235,000 was not deductible because the amount was actually compensation for the stock received by the employees. **Twin City Dodge-Chrysler, Inc. v. United States, 97-1 U.S. Tax Cas. (CCH) ¶ 50,483 (W.D. Mich. 1997)**.

DEPRECIATION-*ALM* § 4.03[4].* The taxpayer was a corporation which operated a horse racing and breeding activity. On December 28, 1984, the taxpayer purchased the assets of a decedent's estate which included the stock of another corporation and the personal assets of the estate. The taxpayer continued the purchased corporation as a subsidiary. On January 15, 1985, the taxpayer transferred the estate personal property, which included 353 horses, to the subsidiary retroactively, effective on the date the property was purchased from the estate, December 28, 1984. The taxpayer claimed a full year of depreciation for the horses, arguing that the temporary ownership of the horses gave the taxpayer a sufficient ownership interest to claim depreciation. The court held that the true ownership of the horses, as established by the taxpayer's own actions, was that the horses were owned by the subsidiary which was entitled to only one month of deprecation in 1984. The appellate decision is designated as not for publication. **Jack Kent Cooke, Inc. v. United States, 97-2 U.S. Tax Cas. (CCH) ¶ 50,511 (4th Cir. 1997), *aff'g*, 96-2 U.S. Tax Cas. (CCH) ¶ 50,483 (E.D. Va. 1996)**.

The IRS has issued guidance for making the general asset account election under I.R.C. § 168(I)(4) for certain property placed in service in taxable years ending before October 11, 1994. The election procedures are applicable only for changes in accounting methods occurring in taxable years ending in 1996 or 1997. **Rev. Proc. 97-30, I.R.B. 1997-25, 20**.

DISCHARGE OF INDEBTEDNESS. The taxpayer was a partnership which purchased and improved real property. The taxpayer borrowed money from a bank for the purchase and improvements. The bank agreed to refinance the project by reducing the principal on the loan to the fair market value of the property. The bank required the taxpayer to sell the property as part of the refinancing agreement. The taxpayer argued that the reduction of the principal was discharge of indebtedness income. The court held that the refinancing was considered part of a sale of the property, resulting in recognition of gain to the extent that the amount of reduced principal exceeded the taxpayer's basis in the property. **2925 Briarpark, Ltd. v. Comm'r, T.C. Memo. 1997-298**.

INVOLUNTARY CONVERSIONS. The taxpayer operated a citrus tree nursery. The trees were destroyed in 1985 as part of a state citrus canker eradication program and the taxpayer received $8,000 in compensation for the destroyed trees. The taxpayer claimed the proceeds as gain on the 1985 return but did not make the election for deferral of gain under I.R.C. § 1033. The taxpayer took part in a law suit for additional compensation. The taxpayer received $105,000 in 1991 in additional compensation for the destroyed trees. The taxpayer claimed the $105,000 as gain on the 1991 return and made the election for deferral of gain based on the purchase of new business property with the lawsuit award. The taxpayer argued that, because the gain was realized in two separate payments, the taxpayer was entitled to two separate periods in which to make the Section 1033 election. The court held that the statute did not provide for more than one two year period for purchase of replacement property; therefore, the second payment did not start a new two year replacement period. Because the replacement property was purchased more than two years after the original compensation award payment, no deferral of gain was allowed. The court noted that the taxpayer could have made the election with the first payment and sought an extension of the two year replacement period to allow the taxpayer to take advantage of the deferral when the second payment was received. **Shipes v. Comm'r, T.C. Memo. 1997-304**.

PENSION PLANS. For plans beginning in June 1997, the weighted average is 6.87 percent with the permissible range of 6.18 to 7.35 percent (90 to 109 percent permissable range) and 6.18 to 7.56 percent (90 to 110 percent permissable range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 97-35, I.R.B. 1997-25, 32**.

PREPAID EXPENSES. The taxpayer was a corporation which operated a business raising broiler chickens. In 1987, the corporation paid $20 million for feed and feed ingredients and deducted the entire amount in 1987, although only a portion of the feed was used in 1987. The IRS disallowed the deduction for the feed not used, under I.R.C. § 464(f), because the corporation was not an individual farmer. The IRS argued that the corporation was not a "qualified farm-related taxpayer" because the IRS interpreted the term "taxpayer," as defined by I.R.C. § 464(f)(3)(B), to include only individuals. The court held that the statute was ambiguous in failing to precisely define the scope of the term "taxpayer." The court examined the legislative history and concluded that the Congress allowed an exception to the prepaid expense limitations of I.R.C. § 464 to full-time farming activities and did not make any distinction between individuals and entities engaged in full-time farming activities. Therefore, the court held that the corporation was entitled to currently deduct all the prepaid feed expenses because the corporation was actively involved in full-time farming activities. Neil Harl will publish an article on this case in a future issue of the *Digest*. **Golden Rod Farms, Inc. v. United States, 97-2 U.S. Tax Cas. (CCH) ¶ 50,507 (11th Cir. 1997)**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

BASIS. The taxpayer was the sole shareholder of an S corporation which sold its interest in a project to another unrelated corporation for stock in that corporation. The S corporation used the cash method of accounting. The S corporation board of directors made a resolution to pay the taxpayer a commission on the transaction; however, the commission was not paid. The S corporation sold the stock back to the other corporation at a taxable gain and included the commission in the basis of the stock to the S corporation for purposes of computing the taxable gain passed through to the taxpayer. The court held that the commission could not be included in the S corporation's basis of the stock resold to the other corporation because the commission was not actually paid in the year of the sale. **Haymond v. Comm'r, T.C. Memo. 1997-289**.

BUILT-IN GAINS. The taxpayer was a C corporation which owned timber land. The taxpayer harvested timber from the land for use in the taxpayer's manufacturing business. The corporation planned to make an S corporation election and an election under I.R.C. § 631(a) under which timber cut under a contract can be treated as sold or exchanged in the year the timber is cut. The IRS ruled that the taxpayer's gain under I.R.C. § 631(a) during the built-in gains recognition period of I.R.C. § 1374 was not subject to the tax of Section 1374. The IRS also ruled that the taxpayer's income from processing and selling products from trees harvested during the recognition period was not subject to the tax of Section 1374. **Ltr. Rul. 9726015, March 28, 1997**.

DISCHARGE OF INDEBTEDNESS. The taxpayer was a shareholder in an S corporation which was a partner in a joint venture which realized discharge of indebtedness income in 1991. The taxpayer increased the basis of the taxpayer's S corporation stock by the taxpayer's share of the discharge of indebtedness income passed through the S corporation. At the time of the discharge of the indebtedness, the S corporation was insolvent and had net operating losses. The increase in the stock basis enabled the taxpayer to deduct the carried over losses in a later year. The IRS argued that the discharge of indebtedness income was not an item of income for purposes of determining stock basis because discharge of indebtedness income was excluded under the insolvency exclusion rule of I.R.C. § 108. The court held that, under I.R.C. § 61(a)(12), discharge of indebtedness is an item of income which increases a shareholder's basis under I.R.C. § 1367. The court did not discuss the effect of Section 108 on the stock basis, because the issue was not raised by the IRS. **Winn v. Comm'r, T.C. Memo. 1997-286**.

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SAFE HARBOR INTEREST RATES

July 1997

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	6.07	5.98	5.94	5.91
110% AFR	6.69	6.58	6.53	6.49
120% AFR	7.31	7.18	7.12	7.07
		Mid-term		
AFR	6.65	6.54	6.49	6.45
110% AFR	7.32	7.19	7.13	7.08
120% AFR	8.00	7.85	7.77	7.72
		Long-term		
AFR	6.99	6.87	6.81	6.77
110% AFR	7.70	7.56	7.49	7.44
120% AFR	8.41	8.24	8.16	8.10

TAX SHELTER. The taxpayer was a physician who invested in a sheep breeding operation where the taxpayer purported to sell sheep to the promoter of the operation. The court found that the taxpayer knew nothing about raising sheep and that the transactions involved were shams since the promoter completely controlled the operation and bore all the risk of loss. The taxpayer failed to object to the purchase of dead sheep and failed to notice that some of the the same sheep were listed in two purchases. The taxpayer's payment of substantial maintenance and interest expenses was ignored because the tax benefits were far greater than the taxpayer's costs. The court held that the deductions and credits claimed from the investment were not allowable and that the taxpayer was subject to the negligence penalty for ignoring the advice of the taxpayer's accountant, for unreasonable reliance on the tax advice of the investment promoter, and for not showing any substantial authority for the deductions claimed. The appellate decision affirming the Tax Court is designated as not for publication. **Anagnoston v. Comm'r, 97-1 U.S.Tax Cas. (CCH) ¶ 50,481 (9th Cir. 1997),** ***aff'g*****, T.C. Memo. 1994-334**.

WITHHOLDING. The taxpayer was an employee of a public corporation which withheld income and social security taxes from the taxpayer's wages. The taxpayer sought to recover the withheld taxes as improperly withheld because the withholding rules applied only to governmental employees and not private employees. The court dismissed the case as frivolous and awarded the employer double costs and attorney's fees as a sanction. The case is designated as not for publication. **Hennigen v. Taylor, 97-1 U.S. Tax Cas. (CCH) ¶ 50,487 (10th Cir. 1997)**.

LABOR

WRONGFUL DISCHARGE. The plaintiffs were agricultural workers employed by the defendant. The defendant had informed the plaintiffs that they would be paid on a piece basis instead of hourly wage. The plaintiffs met as a group with their foreman to express their dissatisfaction with the new method but agreed to try the new method for a trial period. The defendant then terminated the employment of the plaintiffs. The plaintiffs brought an action for wrongful discharge, arguing that they were discharged because of collectively discussing their grievances. The court examined Oregon law for existence of a recognized important public interest in allowing workers to collectively express their grievances. Although the court did not find a specific statute granting that right or interest, the court held that the labor laws of the state generally supported the right of workers to collectively express grievances; therefore, the plaintiffs' cause of action was allowable. **Rauda v. Oregon Roses, Inc., 935 P. 2d 469 (Or. Ct. App. 1997)**.

SECURED TRANSACTIONS

CONVERSION. The plaintiff was a livestock sales company which sold cattle to a feedlot. The feedlot paid for the cattle by check and, as arranged between the parties, the plaintiff held the checks for two weeks before cashing them. The feedlot resold some of the cattle and deposited the proceeds in a bank account. The feedlot was indebted to a bank which held security interests in the feedlot's inventory and other assets. The bank discovered that the feedlot's inventory was insufficient security for the outstanding loans and offset the bank account funds against the loan. The offset occurred before the plaintiff attempted to cash the checks but after the feedlot deposited the proceeds of the cattle purchased from the plaintiff. The plaintiff argued that the funds in the bank account were traceable to the cattle not paid for by the feedlot; therefore, the bank committed conversion when the funds were offset. The court held that the plaintiff failed to sufficiently identify any interest of the plaintiff in the funds in the account at the time of the setoff because the plaintiff could not exclusively trace the account funds to the sale of the cattle. In addition, the plaintiff's interest in the proceeds was inferior to the bank's perfected security interest in the feedlot's assets. **Meyer v. Norwest Bank Iowa, 112 F.3d 946 (8th Cir. 1997)**.

CITATION UPDATES

Estate of Cervin v. Comm'r, 111 F.3d 1252 (5th Cir. 1997), ***rev'g on another issue*****, T.C. Memo. 1994-550** (valuation) see p. 93 *supra*.

Estate of Shapiro v. Comm'r, 111 F.3d 1010 (2d Cir. 1997) (installment payment of estate tax) see p. 76 *supra*.

Estate of Tenenbaum v. Comm'r, 112 F.3d 251 (6th Cir. 1997), ***rev'g*****, T.C. Memo. 1995-48** (marital deduction) see p. 84 *supra*.

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Seminar sessions run from 8:00 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.

• Ethics (2 hours).

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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