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Cases, Regulations and Statutes

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[7] Pig Pro Nonstock Cooperative v. Moore, 253 Neb. 72, 568 N.W. 2d 217 (1997).
[8] Iowa Code § 501.103(1) (1997).
[9] Iowa Code § 501.103(1) (1997).
[10] Neb. Const. Art. XII, § 1.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

EXEMPTIONS. The debtors claimed a homestead exemption for their residence and the 58 acres of land on which it was located. The property was located within the city limits and consisted of the house, a barn and other farm buildings, and open land used for crop production and pasturing horses. The property was not platted but was surrounded by residential properties of normal size for city dwellings. The debtors had sold a portion of the property which was converted to a residential subdivision. The property was not surrounded by residential properties when purchased 35 years ago and the debtors had used the property continuously, except for the sold portion, as a farm. The court held that, under state law, the debtors' 58 acre property retained its character as rural farm property eligible for the rural homestead exemption of up to 120 acres. ***In re*** **Becker, 212 B.R. 322 (Bankr. D. Minn. 1997)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

POST-PETITION INTEREST. The debtors filed for Chapter 11 in 1982 and the IRS filed a secured and an unsecured claim for employment taxes owed by the debtors. The proof of claim indicated that additional interest may be assessed on the claim during the bankruptcy case. However, the IRS did not file any claim for post-petition interest on the secured claim. The debtors' plan provided for full payment of the tax claim but did not include any payment for post-petition interest on the secured claim. The debtor received a discharge but after the discharge, the IRS sought to collect interest for the post-petition, pre-confirmation period. The court held that no post-petition, pre-confirmation interest was allowed where the IRS failed to file a claim or object to the plan. **United States v. Victor, 121 B.R. 1383 (10th Cir. 1997)**.

SETOFF. The debtor airline was owed a refund of excise taxes by the IRS. The debtor owed claims made by other federal governmental agencies, including the Federal Aviation Administration, the Defense Finance Accounting Service and the National Finance Center. The agencies sought to offset the IRS refund against the amounts owed to the agencies. The court held that the setoff was allowed because the agencies of the federal government were considered a governmental unit for purposes of the setoff rules. ***In re*** **HAL, Inc., 122 F.3d 851 (9th Cir. 1997), *aff'g*, 196 B.R. 159 (Bankr. 9th Cir. 1996)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE-*ALM* § 13.04.* The FCIC has adopted as final regulations which include the Canning and Processing Tomato Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 54339 (Oct. 20, 1997)**.

The FCIC has adopted as final regulations which include the Prune Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 58628 (Oct. 30, 1997)**.

The FCIC has adopted as final regulations which include the Canning and Processing Bean Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 58621 (Oct. 30, 1997)**.

MILK MARKETING ORDERS. The plaintiff milk producer association challenged as arbitrary and capricious the Class I pricing scheme of the federal milk marketing orders promulgated under the Agricultural Marketing Agreement Act, 7 U.S.C. § 608c(1). The current ruling was the third time the court had ruled on the issue of whether the USDA had sufficient evidence to make the factual findings required by the statute to support the pricing scheme. In the first two rulings, the court found that the USDA had failed to make specific factual findings as required by the statute to support the pricing system. In the current ruling, the court again found that the USDA did not make sufficient factual findings as required by the statute. The court concluded that after three attempts, the USDA had no possibility of making the required factual findings and held that the Class I pricing scheme was arbitrary and contrary to the statute. The statute required the pricing scheme to be based upon "the price of feeds, the available supply of feeds, and other economic conditions which affect market supply and demand for milk or its products in the marketing area to which the contemplated marketing agreemnt, order, or amendment relates." Instead, the court found that the current Class I pricing scheme was based solely upon the local market's distance from Eau Claire, WI. The court found that, even if the distance differential had an effect on local markets, the USDA had failed to demonstrate that effect. **Minnesota Milk Producers v. Glickman, Civil No. 4-90-31 (D. Minn. 1997)**.

RECORDS. The defendant was a farmer who had received federal farm disaster payments. In response to a

tip, the Inspector General (IG) of the USDA initiated an audit of disaster payments made in the defendant's county, including the defendant's payments. The IG sought records held by the defendant, dating more than two years before the date of the request. When the defendant failed to provide the records the IG issued a subpoena for the records and sought enforcement of the subpoena in the current case. The defendant argued that the IG subpoena exceeded the IG's subpoena authority and was too broad in that it required the production of records not required to be kept by the disaster payment program. The court held that the subpoena was a valid exercise of the IG's authority to investigate fraud in USDA programs. The court also held that, although the disaster program did not require records to be retained more than two years, the defendant could be required to produce older records still in existence as of the date of the subpoena. **Inspector General of USDA v. Glenn, 122 F.3d 1007 (11th Cir. 1997), *aff'g*, 972 F. Supp. 676 (M.D. Ga. 1997)**.

WAREHOUSES. The plaintiff operated a grain weighing, grading and inspection service for warehouses licensed under the U.S. Warehouse Act. The plaintiff also provided third party supervision for other weighers providing Class II certified weights. The Missouri legislature passed the Missouri Grain Warehouse Law (MGWL), Mo. Rev. Stat. § 411.030.2, which gave the Missouri Department of Agriculture (MDA) the exclusive authority over supervising grain weighing in the state. The MDA issued regulations stating that it had exclusive authority to provide third party supervision for Class II certified weights. The plaintiff argued that the MGWL and regulations were pre-empted by the U.S. Warehouse Act. The court held that the U.S. Warehouse Act was intended to preempt the entire field of grain weighing at federally licensed warehouses and, because the supervision of Class II certified weights involves grain weighing, the MGWL and the regulations promulgated thereunder could not restrict the plaintiff's right to provide supervision services. **Heart of America Grain v. Missouri Dept. of Agric., 123 F.3d 1098 (8th Cir. 1997)**.

FEDERAL ESTATE AND GIFT TAX

DISCLAIMER. The taxpayer's parents established a pre-1977 trust prior to the birth of the taxpayer. The trust provided for trustee discretion to pay net income and principal for the taxpayer's support, education and health until the taxpayer was age 25, at which time one-third of the trust corpus would be distributed to the taxpayer. The taxpayer did not receive any benefits from the trust before making a disclaimer of any interest in certain assets held in the trust. The taxpayer learned about the trust a few days before turning 21 and filed the disclaimer within nine months after learning about the trust. The IRS ruled that the disclaimer was qualified. **Ltr. Rul. 9745008, Aug. 6, 1997**.

The taxpayer was a remainder beneficiary of a trust established in 1936. The primary beneficiary died in 1976 and the taxpayer executed a written disclaimer of the remainder interest in the trust within nine months after the death of the primary beneficiary but more than nine months after learning about the remainder interest. The disclaimer was not filed with the probate court until several months later. The taxpayer agreed that the disclaimer was not timely for federal estate tax purposes. The issue was the effective date of the disclaimer and, therefore, the gift of the disclaimed interest. The IRS examined state law and determined that the effective date of the disclaimer was the date it was filed with the probate court. **Ltr. Rul. 9743002, July 9, 1997**.

GENERATION SKIPPING TRANSFERS. The decedent was the beneficiary of a trust established by the will of a predeceased spouse. The remainders of the trust were held by the children of the spouse and their issue. The decedent exercised a general power of appointment over the trust principal for the payment of administrative costs, funeral expenses and taxes. The remainder of the trust passed to the children and, in the case of a predeceased child, one child's issue. The trustee obtained a state court order splitting the trust into three separate trusts, one for each beneficiary, each with a pro rata share of trust assets and each maintaining the order of succession and rights to trust income and principal as the original trust. The IRS ruled that, because the decedent had a general power of appointment over the trust principal, the trust principal was included in the decedent's estate and the decedent would be considered the transferor of the trust principal for GSTT purposes. The IRS also ruled that, because the one child predeceased the decedent, the child's issue were not skip persons and their share of the trust was not subject to GSTT. The IRS also ruled that the splitting of the trust was not a taxable distribution and would not subject the trust to GSTT. **Ltr. Rul. 9744020, Aug. 4, 1997**.

IRA. The decedent owned an interest in an IRA which had a trust as the named beneficiary. The decedent's surviving spouse was the sole beneficiary and trustee of the trust upon the decedent's death. The decedent's will provided for passing to the surviving spouse of as much of the IRA as could be passed to the surviving spouse without incurring additional estate tax. The remainder of the IRA passed to another trust for the surviving spouse of which the spouse was also the sole trustee. The spouse had the power to distribute the remainder of the IRA directly to the spouse. The spouse made the distribution by transferring the funds to an IRA in the spouse's name. The IRS ruled that the remainder portion of the IRA which was distributed to the spouse was not treated as inherited by the spouse and could be rolled over to the spouse's IRA without tax. **Ltr. Rul. 9744024, Aug. 5, 1997**.

POWER OF APPOINTMENT. The decedent had created a trust for the benefit of the decedent with a remainder to the decedent's son. The trust was intended to be written so as to give the son a limited testamentary power of appointment over trust principal but a scrivener's error allowed an interpretation of the trust so as to give the son a general power of appointment. The trustee and son petitioned a state court to correct the scrivener's error to limit the power of appointment. The IRS ruled that the trust was erroneously drafted and that correction of the error

would give the son only a limited power of appointment. **Ltr. Rul. 9743033, July 25, 1997**.

STEPPED-UP BASIS. The taxpayer had owned property with a deceased spouse as tenants by the entirety. The decedent's estate had included 50 percent of the property in the gross estate, causing 50 percent of the property's basis to be increased to the estate tax value. The taxpayer later sold a portion of the property and had originally claimed taxable gain based on the step-up in basis of 50 percent of the property. The taxpayer later filed an amended estate tax return and an individual tax return for a refund by claiming that the deceased spouse's estate was entitled to include all of the property in the gross estate. The court and the parties agreed that *Patten v. U.S., 116 F.3d 1029 (4th Cir. 1997)* controlled the case to allow the amendment of the estate and individual income tax returns and the step-up of the entire basis of the property. **Wilburn v. United States, 97-2 U.S. Tax Cas. (CCH) ¶ 50,881 (D. Md. 1997)**.

TRUSTS. A parent established an irrevocable trust for a child with the spouse as trustee. The child's issue and heirs were the remainder holders. The trust provided for the child to have a testamentary power of appointment over trust corpus. The trust also provided the child with the power to withdraw new contributions within 30 days after being notified of the new contributions. The IRS ruled that the child would be considered the owner of the trust and that, upon failure of the child to withdraw new contributions, the child will be deemed to have released the power to withdraw while retaining a right to income from the contributions. The IRS also ruled that the parent's contributions to the trust would be eligible for the annual gift tax exclusion so long as there existed no express or implied agreement by the child to not make withdrawals of the new contributions. **Ltr. Rul. 9745010, Aug. 7, 1997**.

VALUATION OF STOCK. The decedent owned a 50 percent community property interest in the stock in a corporation which provided small loans. The decedent's spouse owned the other 50 percent community property interest. The court allowed a discount in the value of the stock for the decedent's minority interest and for lack of marketability. **Estate of Fleming v. Comm'r, T.C. Memo. 1997-484**.

The taxpayer owned shares of stock in an S corporation which owned one asset, a building leased to business tenants. The taxpayer made gifts of stock to family members and valued the stock gifts by first determining the value of the corporation's asset less the tax costs of built-in capital gains from a hypothetical sale and then discounting the fair market value of the stock by a 25 percent minority interest discount. The court found that no sale of the corporation's asset was contemplated or necessary and that the donees had the power to prevent recognition of the built-in gains indefinitely. The court held that neither the costs of sale or the tax costs of built-in gains could reduce the fair market value of the corporation's asset for gift tax purposes. **Eisenberg v. Comm'r, T.C. Memo. 1997-483**.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayer was employed as a pizza deliverer and was required to use his own car and cellular phone while delivering pizzas. The taxpayer claimed deductions for the automobile expenses and the cost of the cellular phone but the deductions were based on estimates because the taxpayer did not keep records of the automobile and cellular phone use. The court denied deductions in excess of the amount allowed by the IRS. **Olvera v. Comm'r, T.C. Memo. 1997-488**.

The taxpayers, husband and wife, formed a corporation for the purpose of developing and selling computer software for translating foreign languages. The taxpayers began hiring independent contractors to develop the software, purchased computers for the company, consulted with experts and made one sale of the software in 1988. The company did not have any profit in 1988. The court held that the corporation could deduct business losses as ordinary and necessary business expenses because the corporation operated an active trade or business in 1988. **Lamont v. United States, 97-2 U.S. Tax Cas. (CCH) ¶ 50,861 (Fed. Cls. 1997)**.

CAPITAL GAINS. The Tax Relief Act of 1997, see 8 *Agric. L. Digest* 103 (Aug. 8, 1997), created three capital gains tax rates for noncorporate taxpayers. The Congress has pending legislation which provides technical amendments to the new rates to coordinate the new rules with other provisions of the IRC. The IRS has provided guidance for the new coordination rules in the pending legislation.

Under prior law, certain inherited property, if disposed of within one year after the decedent's death, was deemed to have been held for more than one year under I.R.C. § 1223(11) or (12). Such property if disposed of within 18 months after the decedent's death, is now deemed to have been held for more than 18 months. A similar rule applies for certain patents described in Section 1235(a). Gain or loss from a Section 1256 contract, to the extent that it is treated as long-term capital gain or loss under Section 1256(a)(3), is now treated as attributable to property held for more than 18 months.

If a portion of the taxpayer's net Section 1231 gain for the year is recharacterized as ordinary income under Section 1231(c), the gain so recharacterized consists of any net Section 1231 gain in the 28 percent group, then any Section 1231 gain in the 25 percent group, and finally any net Section 1231 gain in the 20 percent group.

New I.R.C. § 55(b)(3) provided favorable alternative minimum tax rates for certain categories of capital gain. The amounts of these gain are determined according to the principles used for regular tax purposes, although the AMT amounts can vary from the regular tax amounts because of AMT adjustments and preferences. An article on the Notice will appear in a forthcoming issue of the *Digest*. **Notice 97-59, I.R.B. 1997-__, __**.

CASUALTY LOSSES-*ALM* § 4.05[1].* The taxpayer corporation operated several timberlands which were infested with southern pine beetles. Although the beetles were always present in the timberlands, in several tax years, the beetles caused major damage to the taxpayer's timber. The court held that because an infestation of beetles can kill a tree within days, the infestation at epidemic proportions was a deductible casualty loss. The court held, however, that the taxpayer was not entitled to any deduction because the taxpayer's records were insufficient to prove the amount of loss. The taxpayer also had several forests destroyed by fires and one tract destroyed by the eruption of Mount St. Helens. The court held that the fires and eruption were casualty events allowing the taxpayer a deduction for the loss of trees. The appellate court affirmed on these issues. The taxpayer had used the depletion block method of determining the loss from the casualties. The IRS argued that the "tree stand" method should have been used. The trial court had overruled precedent and ruled that the tree stand method should have been used. The appellate court reversed on this issue, holding that the precedent should have been followed, allowing the depletion block method for determining the amount of loss. The taxpayer began salvage logging of the affected areas and recognized gain from the income from these activities. The IRS had allowed the taxpayer to recognize these gains under I.R.C. § 1033. The trial court held that the taxpayer was not required to offset these gains against the losses. The appellate court affirmed this holding because the salvage operations were considered separate activities from the casualties. On remand of the issue of the calculation of the loss, the trial court held that the taxpayer had provided sufficient proof of loss of value using the depletion block method. **Weyerhaeuser Co. v. U.S., 97-2 U.S. Tax Cas. (CCH) ¶ 50,880 (Fed. Cl. 1997), *on rem. from*, 92 F.3d 1148 (Fed. Cir. 1996), cert. denied, 117 S.Ct. 776 (1997), *aff'g in part and rev'g in part*, 32 Fed. Cl. 80 (1994)**.

The taxpayer had established a brokerage account with a broker who used fraudulent means to make unauthorized transactions with the account. A precipitous drop in the stock market caused a large loss in the taxpayer's account and the taxpayer sued the broker and the brokerage firm for recovery of losses resulting from unauthorized trading on the account by the broker. At the end of a tax year, the case was pending and the taxpayer claimed a loss deduction. The Tax Court had denied the deduction, holding that the law suit against the broker had a reasonable chance of a recovery for the taxpayer since there was amble evidence of the broker's fraudulent use of the taxpayer's account. During the pendency of the tax case, the taxpayer received a negotiated settlement with the broker. The taxpayer argued that the Tax Court had impermissably considered the settlement as evidence that the loss was recoverable at the end of the tax year. The appellate court affirmed the Tax Court decision, although the appellate court held that the Tax Court could not consider subsequent events in determining whether a loss was recoverable at the end of a previous tax year. The appellate court found that the Tax Court had not relied on the settlement in determining that the loss recovery was reasonably possible at the end of the prior tax year. **Jeppsen v. Comm'r, 97-2 U.S. Tax Cas. (CCH) ¶ 50,878 (10th Cir. 1997), *aff'g*, T.C. Memo. 1995-342**.

EXPENSES. The estimated deductible costs for use in adjusting farm expenses to exclude the cost of producing home-consumed farm produce on 1997 income tax returns as issued by the Iowa State University Extension Service are as follows--

Pork	$33.00 per 100 lbs. liveweight
Beef	$57.25 per 100 lbs. liveweight
Lamb	$48.30 per 100 lbs. liveweight
Broilers	$1.49 per 4 pound bird
Eggs	$0.60 per dozen
Milk	$9.00 per 100 lbs. or $0.77 per gallon

The above costs include all cash costs, depreciation and deductible production costs of home-raised feed. No charge is made for the farm operator's labor. If hired labor or purchased grain and roughages are used to produce these products, or if high interest costs are incurred, the costs should be increased accordingly. In arriving at production costs, it was assumed that the young animals were raised and fed. **FM 1421, Iowa State University, November 1997**.

HOBBY LOSSES. The taxpayers were husband and wife, with the husband working at least 50 hours a week as a physician. The taxpayers also owned a farm which grew figs and pistachios. The taxpayers also started a Portuguese water dog breeding operation. The court held that the dog breeding operation was not operated with the intent to make a profit over the first three years (a relatively short period for hobby loss cases) of operation because (1) the taxpayers did not maintain separate records for the individual dogs which could be used to determine profitability of each dog, (2) the taxpayers made no attempt to minimize the major costs of the operation, (3) the taxpayers did not seek expert economic advice as to earning a profit from dog breeding, (4) the taxpayers received substantial recreational benefit from the activity, (5) the taxpayer failed to show any expected or actual appreciation in business assets, (6) the losses were not associated with normal start-up costs but were part of the normal operation of the activity, and (7) the activity had substantial losses which offset substantial income from other businesses and employment of the taxpayers. **Smith v. Comm'r, T.C. Memo. 1997-503**.

The taxpayers operated a thoroughbred breeding and racing activity which the taxpayers agreed was not operated with an intent to make a profit, for federal income tax purposes. The deductible expenses were thus limited to the income from the activity. The IRS argued that the allowed expenses under I.R.C. § 183 were miscellaneous expenses not deductible when determining the taxpayers' liability for alternative minimum tax (AMT). The court ruled that, where a business is not conducted with the intent to make a profit, deductions for business expenses were limited to those allowed under I.R.C. § 183(b) to those not exceeding the business income from the activity. Under I.R.C. § 67(a), deductions from AMT income were not allowed unless expressly allowed by Section 67(b). Because Section 67(b) did not list the deductions allowed under Section 183(b), the Section 183(b) deductions were

not allowed against AMT income. The taxpayers argued that some of the Section 183(b) deductions were allowed under I.R.C. § 162 as normal business expenses. The court held that Section 162 did not apply to allow the deductions because the taxpayers' activity was not a trade or business because it was not operated with the intent to make a profit. **Purdey v. Comm'r, 97-2 U.S. Tax Cas. (CCH) ¶ 50,894 (Fed. Cls. 1997)**.

LEGAL FEES. The taxpayer was divorced and the divorce decree included payment to the taxpayer of a portion of the ex-spouse's pension benefits. The taxpayer filed a suit to have the pension payments recalculated. The taxpayer sought to deduct the legal fees as capital expenses incurred to protect a capital asset, the taxpayer's intrerest in the pension plan. The court held that the legal fees were not incurred to protect a capital asset but only to protect the taxpayer's interest in ordinary income from the pension plan; therefore, the legal fees were deductible only as miscellaneous deductions subject to the greater than 2 percent of income limitation. **Glassman v. Comm'r, T.C. Memo. 1997-497**.

PARTNERSHIPS-*ALM* § 7.03.*

ELECTION. See summary under **S CORPORATIONS**, *infra*.

PENSION PLANS. For plans beginning in October 1997, the weighted average is 6.83 percent with the permissible range of 6.14 to 7.30 percent (90 to 109 percent permissable range) and 6.14 to 7.51 percent (90 to 110 percent permissable range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 97-56, I.R.B. 1997-43, 19**.

REPORTING. Because of changes in the Tax Relief Act of 1997, see 8 *Agric. L. Digest* 103 (Aug. 8, 1997), the IRS has announced changes in the reporting requirements for 1997 Form 1099-S, Proceeds From Real Estate Transactions. The form will be required only for transactions greater than $250,000 for single sellers and $500,000 for married sellers. **Ann. 97-106, I.R.B. 1997-__, __**.

RESEARCH AND DEVELOPMENT EXPENSES. The taxpayers were members of partnerships formed for the purpose of investing in possible jojoba growing businesses. The partnerships were on the accrual method of accounting. On the last day of a tax year, the partnerships entered into contracts for the investigation of whether it would be feasible to grow jojoba plants in a certain area in Arizona. The farms attempted to grow jojoba in the area but conducted no scientific tests or evaluation of the growing attempts. The court held that the taxpayers were not entitled to deduct the costs of the attempt to grow jojoba because the taxpayers were not in the trade or business of growing jojoba and no scientific tests or evaluations were conducted. The court found that the farms merely attempted to grow the plants as any farmer would in growing a crop. The court also noted that no records were maintained with which to evaluate the reasons for success or failure of the crop. **Cactus Wren Jojoba, Ltd. v. Comm'r, T.C. Memo. 1997-504**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

ELECTION. The IRS has issued proposed regulations describing how elective changes in an entity's classification will be treated for federal tax purposes. Under the final regulations, there are four possible changes in classification by election: (i) a partnership elects to be an association; (ii) an association elects to be a partnership; (iii) an association elects to be a disregarded entity; and (iv) a disregarded entity elects to be an association.

The proposed regulations provide a specific characterization for each of the four possible elective changes. In each case, the characterization provided in the proposed regulations attempts to minimize the tax consequences of the change in classification and achieve administrative simplicity. The proposed regulations provide that if an association elects to be classified as a partnership, the association is deemed to liquidate by distributing its assets and liabilities to its shareholders. Then, the shareholders are deemed to contribute all of the distributed assets and liabilities to the partnership. This characterization of an elective change from an association to a partnership is consistent with Rev. Rul. 63-107, 1963-1 C.B. 71.

If a partnership elects to be classified as an association, the partnership is deemed to contribute all of its assets and liabilities to the association in exchange for stock in the association. Then, the partnership is deemed to liquidate by distributing stock in the association to its partners. The proposed regulations do not affect the holdings in Rev. Rul. 84-111, 1984-2 C.B. 88, in which the IRS ruled that it would respect the particular form undertaken by the taxpayers when a partnership converts to a corporation.

If an association elects to be disregarded as an entity separate from its owner, the association is deemed to liquidate by distributing its assets and liabilities to its sole owner. Conversely, if an eligible entity that is disregarded as an entity separate from its owner elects to be classified as an association, the owner of the eligible entity is deemed to contribute all of the assets and liabilities of that entity to the association in exchange for stock of the association.

The proposed regulations also provide that the tax treatment of an elective change in classification is determined under all relevant provisions of the Internal Revenue Code and general principles of tax law, including the step transaction doctrine. This provision in the proposed regulations is intended to ensure that the tax consequences of an elective change will be identical to the consequences that would have occurred if the taxpayer had actually taken the steps described in the proposed regulations. **62 Fed. Reg. 55768 (Oct. 28, 1997)**.

ELIGIBILITY. The taxpayer was an S corporation which agreed to purchase the stock of a second corporation which was owned by a third corporation. In order to preserve the taxpayer's S corporation status, the second corporation was immediately merged into the taxpayer. The IRS noted that *Rev. Rul. 72-320, 1972-1 C.B. 270* allows the momentary ownership of another corporation's stock by an S corporation as part of a divisive reorganization. The IRS ruled that, because the taxpayer intended only the momentary ownership of the stock as

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part of the acquisition of the second corporation, the stock ownership did not terminate the S corporation status for federal income tax purposes. **Ltr. Rul. 9745004, July 30, 1997**.

SALE OF RESIDENCE. The taxpayers sold their principal residence on June 20, 1988. The taxpayers purchased a transitional townhouse while searching for a permanent residence. The taxpayers purchased a second residence and moved most of their belongings to the new residence on June 20, 1990, leaving some furniture in the townhouse for the purpose of enhancing the appearance of the property while attempting to sell it. Prior to June 21, 1990, the taxpayers also began the process of remodeling the new residence but the actual work did not commence until after June 21, 1990. Although there was some evidence that the townhouse was still used by the taxpayers after June 21, 1990, the court found that the taxpayers used the new residence as their principal residence within the two-year period requirement of I.R.C. § 1034. However, the court did not allow inclusion of the renovation costs in the purchase price of the new residence for I.R.C. § 1034 purposes because the renovations were not started prior to June 21, 1990. Note: I.R.C> § 1034 was repealed by TRA 1997. **Mitchell v. Comm'r, T.C. Memo. 1997-493**.

TRAVEL EXPENSES. The taxpayer was required by an employer to work in cities other than where the taxpayer maintained a residence. The temporary employment was intended to last only a few weeks but the taxpayer soon realized that the employment would continue for much longer and moved a recreational vehicle to the employment location for living quarters. The court ruled that the taxpayer could not claim deduction for travel and lodging expenses during the temporary employment because the employment was indefinite and the taxpayer's work residence changed to the temporary residence during the employment. The case is designated as not for publication. **Weichlein v. Comm'r, 97-2 U.S. Tax Cas. (CCH) ¶ 50,872 (9th Cir. 1997)**.

LABOR

MIGRANT AGRICULTURAL LABOR. The defendant was a grower, harvester and processor of citrus fruit. The defendant contracted with third party farm labor contractors to provide, transport and supervise the harvesters of the citrus crops. The defendant required each contractor to provide evidence of certification of the contractor and the contractor's vehicles; however, the defendant did not make periodic checks to insure that the contractors continued to comply with all MSAWPA requirements. A USDA inspection of the defendant's operation produced the discovery that several vehicles used by the defendant on site and the contractors did not comply with state and federal safety requirements and that several vehicles used to transport workers to the harvesting site were not certified at all. The defendant then disposed of the vehicles used on site. The USDA sought an injunction against the defendant which would require the defendant to periodically check each vehicle for compliance with MSAWPA. The defendant argued that such checks were unreasonable because of the expense required for inspection of each vehicle. The court denied the injunction as to the defendant's vehicles because the defendant had disposed of the vehicles and there was no evidence that the defendant intended to obtain replacement vehicles. The court granted the injunction as to the vehicles used by the contractors because the defendant could require all vehicles to display a compliance certificate on the front windshield, allowing for easy inspection by the defendant. **Metzler v. Lykes Pasco, Inc., 972 F. Supp. 1438 (S.D. Fla. 1997)**.

PRODUCTS LIABILITY

CORN HEAD. The plaintiff was injured while working with a corn head manufactured by the defendant. The corn head was purchased used by the plaintiff's employer and added to a combine manufactured by a third party. The employer also painted the corn head twice, covering the warning labels originally placed on the corn head by the defendant. The modified combine was able to harvest corn but was not equipped to harvest sorghum while moving. The employer used the modified combine in a stationary position as an in-field crop testing machine, requiring the hand harvesting of the sorghum and loading of the sorghum into the corn head. The plaintiff was injured while dumping sorghum into the corn head from the front, although the plaintiff had been orally warned by the employer not to approach the corn head from the front. The plaintiff filed for damages under strict liability, claiming that the corn head was defective for failure to have a proper guard, a shutoff clutch and adequate warnings. The court denied the defendant's motion for summary judgment on the issue of whether the plaintiff's use of the corn head was reasonably foreseeable, because the plaintiff had expert testimony as to the common practice of farmers to modify their equipment to meet special needs. The court denied the plaintiff the use of expert testimony as to the reasonableness of a guard on the corn head because the expert's testimony was unreliable in that it was not based on tests or other scientific evidence. The court noted that a video of the corn head in operation demonstrated that the dangers of the corn head were open and obvious. The court also denied the use of expert testimony as to use of raised plastic warning labels which would have remained exposed even when painted. The court noted that the expert had no tests or other reliable evidence to support the feasibility of such labels. The court granted summary judgment to the defendant on the failure to warn issue because the evidence demonstrated that the plaintiff was orally warned about the danger of injury and did not heed the warnings. The court stated that the plaintiff failed to demonstrate that any other warning method would have deterred the plaintiff from approaching the corn head from the front. **Jaurequi v. John Deere Co., 971 F. Supp. 416 (E.D. Mo. 1997)**.

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