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Cases, Regulations and Statutes

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an adjustment that reverses the tax treatment accorded (under I.R.C. Section 108) to the indebtedness discharged by the write-down or buyout.\textsuperscript{14} The order of the reversal is prescribed—

"The ordering of this reversal of tax consequences operates as follows: To the extent that the amount discharged gave rise to discharge of indebtedness income that was not excluded under section 108 of the Code, a payment made under an SAA or a Recapture Agreement is first treated as a repayment of the amount discharged, and the borrower is permitted a deduction under section 162 of the Code. Then, to the extent the borrower excluded income under the qualified farm indebtedness exclusion and reduced a tax attribute or basis in property, the attribute or basis is restored. If the borrower has disposed of the property for which basis was reduced under the qualified farm indebtedness exclusion, the borrower is permitted a corresponding deduction or loss. Next, to the extent the borrower excluded income under the insolvency exclusion, but did not have to reduce basis in property because of the limitation under section 1017(b)(2), no deduction, loss, or increase in basis or attributes is permitted. Next, if the borrower excluded income under the insolvency exclusion and reduced a tax attribute or basis in property, the attribute or basis is restored. If the borrower has disposed of the property for which basis was reduced under the insolvency exclusion, the borrower is permitted a corresponding deduction or loss. Finally, if the borrower excluded an amount from income under the provisions of section 108(e)(2) because payment of the amount would have been deductible, the borrower is permitted a deduction of the same type (such as an interest deduction under section 163) for payment."\textsuperscript{15}

Assuming the reversal is carried out as prescribed, and the amount of payment under the shared appreciation agreement exceeds the amount needed to reverse the original tax consequences under the write-down or buyout, there is relatively little authority on how the additional payment is to be handled. A 1983 ruling\textsuperscript{16} allowed payments under a shared appreciation mortgage involving a residence to be deducted as interest. The ruling cautions that the conclusions may not apply to a commercial or business loan.\textsuperscript{17} Shortly thereafter, IRS announced that no rulings or determination letters would be issued on any shared appreciation arrangement.\textsuperscript{18} Legislation has been introduced (but not yet passed) to make "contingent interest on a shared appreciation mortgage on real property deductible" as interest.\textsuperscript{19}

Under the circumstances, those reporting such additional payments as interest should disclose the details on the tax return.

FOOTNOTES

2. See 7 C.F.R. § 1951.909.
4. Id.
6. Id.
7. 7 C.F.R. § 1951.914(b).
8. 7 C.F.R. § 1951.914(c)(1).
9. 7 C.F.R. § 1951.914(e)(6).
12. Id.
13. Id.
15. Id.
17. Id.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-ALM § 13.03.\textsuperscript{*}

AVOIDABLE LIENS. The debtor had borrowed money from a bank and granted the bank a security interest in any federal farm program payments to be received by the debtor. The debtor suffered crop losses in 1998 and filed for assistance under the 1998 Crop Loss Disaster Assistance Program. The funds received under that program were deposited in the debtor’s bank account and frozen by the bank. The bank sought relief from the automatic stay to collect those funds as security for the loan. The debtor argued that the bank did not have a perfected security interest because the bank had not obtained an assignment of the disaster payments under 7 C.F.R. § 1437.18. The court held that the assignment provision was intended only to protect the federal government and did not affect security interests between a debtor and creditor. The court held that the bank’s security interest was perfected and allowed the bank relief from the automatic stay. In re Endicott, 239 B.R. 529 (Bankr. E.D. Ark. 1999).

\textsuperscript{*}Agricultural Law Manual (ALM).
CHAPTER 12-ALM § 13.03.*

AUTOMATIC STAY. The debtor had obtained a divorce from a former spouse and the divorce decree required the debtor to make child support payments. A court order was issued to enforce the payment by having the county child support agency execute against the debtor’s milk checks. After the debtor filed for Chapter 12, the execution was ordered stopped as violating the automatic stay. However, the execution was restarted when the plan was confirmed, even though the child support payments were included in the plan. The county agency argued that the post-confirmation executions did not violate the automatic stay because the executions involved only income beyond that needed to make plan payments. The agency also argued that it was immune from suit under the Eleventh Amendment as a state agency. The court held that the county agency was not immune from suit but that more facts needed to be proved to determine whether the executions violated the post-confirmation automatic stay. The court noted that if the facts showed a violation of the stay, the debtor could be awarded damages, if proved. In re Durant, 239 B.R. 859 (Bankr. N.D. N.Y. 1999).

FEDERAL TAX-ALM § 13.03[7].*

DISCHARGE. The debtor failed to file and pay income taxes for 10 years, during which the debtor suffered from alcoholism. The court found that the debtor did not file for any reason to avoid payment of the taxes but that the debtor was merely indifferent to paying the taxes, a condition caused by the alcoholism. Once the debtor sought treatment for the alcoholism, the debtor fully cooperated with the IRS and filed all of the unfiled returns. The court held that the taxes were dischargeable because the debtor did not willfully attempt to evade payment of the taxes. The court reiterated the holding in In re Haas, 48 F.3d 1153 (11th Cir. 1997) that the mere failure to file and pay taxes when able to do so was not sufficient to render the taxes nondischargeable. In re Fretz, 239 B.R. 605 (Bankr. N.D. Ala. 1999).

DISMISSAL. The debtor filed for Chapter 11 with only one creditor, the IRS, and objected to the IRS claim for taxes. Apparently, the debtor claimed that the debtor received no taxable income, although the debtor was employed as a postal worker. The court dismissed the case with prejudice against refiling for one year to allow the parties to settle the matter. In re Davis, 239 B.R. 305 (Bankr. D. Md. 1999).

SECURED CLAIMS. The debtor had filed a previous Chapter 7 case. Because the trustee declared the case a no-asset case, the IRS did not file a secured claim for employment taxes owed by the debtor. The debtor received a discharge in that case. The debtor then filed the current Chapter 13 case and the IRS filed a secured claim for the same employment taxes. The debtor argued that the taxes were secured in the first case and, therefore, discharged under Section 727 because no claim was filed. The court held that, in the Chapter 7 case, the taxes were nondischargeable, whether a claim was filed or not; therefore, the tax claim remained viable in the Chapter 13 case and was still secured. In re Gust, 239 B.R. 630 (S.D. Ga. 1999), aff’d, 229 B.R. 44 (Bankr. S.D. Ga. 1998).

COOPERATIVES

SECURITIES. The Eighth Circuit Court of Appeals has affirmed a U.S. Southern District of Iowa Court decision in a case brought against Farmland Industries by Great Rivers Cooperative of Southeastern Iowa, Sawyer Cooperative Equity Exchange of Kansas, and others. The case involved allegations that the plaintiffs were forced or misled into exchanging common stock in Farmland for “capital credits,” a form of non-voting equity (which were issued to individuals and entities not eligible to be Farmland members), and that Farmland refused to redeem the capital credits and instead used their value to benefit Farmland. One of the decisions held that the capital credits were not securities and dismissed the charge that the exchange involved federal securities law. The other decision dealt with the argument that the capital credits involved a breach of fiduciary duty on the part of Farmland, the Farmland Board of Directors and certain officers. The court dismissed the charge as to Farmland on the grounds that a corporation itself does not bear a fiduciary duty to its shareholders. As for the directors, the court invoked the “business judgment” rule which affords directors the presumption that their decisions are “informed, made in good faith, and honestly believed by them to be in the best interests of the company.” The court agreed with Farmland that there was no breach of fiduciary duty on the part of the board. Most of the charges against officers were also tossed out. Great Rivers Coop. of Southeastern Iowa v. Farmland Industries, Inc., No. 98-2527 (8th Cir. 1999), aff’d, Civ. No. 4-95-70529 (S.D. Iowa 1997).

FEDERAL AGRICULTURAL PROGRAMS

NOXIOUS WEEDS. The APHIS has issued proposed regulations amending the noxious weeds regulations by adding Homeria spp. (Cape tulips) to the list of terrestrial weeds. Listed noxious weeds may be moved into or through the United States or interstate only under a written permit and under conditions that would not involve a danger of dissemination of the weeds. 64 Fed. Reg. 72293 (Dec. 27, 1999).

FEDERAL ESTATE AND GIFT TAX

ADMINISTRATIVE EXPENSES. The decedent had placed most assets, over $800,000, in an inter vivos revocable trust which provided for passing of those assets upon the decedent’s death. The probate assets were valued at only $11,000. The estate claimed deductions for various administrative expenses incurred by the successor trustees who also served as executors. The estate argued that, because the executors’ fees were much less than the statutory
maximum, the fees were reasonable. The court held that the fees should have been based only on the value of the probate assets and would be allowed as a deduction only to that extent. The court also disallowed deductions for travel expenses incurred by the trustees and executors who did not live near the decedent’s assets. The court noted that state law did not authorize executor travel expenses incurred by nonresident executors. The court also disallowed the deduction of expenses associated with the sale of real property because the sale was not necessary for payment of estate taxes. Estate of Grant, Comm’r, T.C. Memo. 1999-396.

CLAIMS. On the date of the decedent’s death, the decedent was involved in a suit filed by the lessor of an oil lease for excess royalty payments made to the decedent. The lessor received some favorable rulings soon after the decedent’s death but settled for a smaller sum than was originally sought from the decedent 15 months after the decedent’s death. The decedent’s estate valued the law suit claim as of the decedent’s death, based on the money judgment sought by the lessor. The IRS argued that the claim was to be valued at the amount that the estate eventually paid or that the estate had discharge of indebtedness income when the settlement was reached to the extent the actual amount paid was less than the claim allowed for estate tax purposes. The court held that the value of the claim was to be determined as of the date of death, based on the information available at that time. The court also held that the estate did not recognize discharge of indebtedness income when it settled for an amount less than the claim’s value as of the date of death. Estate of Smith v. Comm’r, 00-1 U.S. Tax Cas. (CCH) ¶ 60,366 (5th Cir. 1999).

The decedent had made inter vivos gifts of stock to children. The decedent filed a gift tax return and based the gift tax on a shareholder buy-sell agreement. The gift transfer provided that, if the stock value was later increased, the decedent would reimburse the donees for any additional gift tax paid. The IRS audited the decedent’s estate tax return and determined that the stock value was greater than claimed on the gift tax return but the assessment against the estate was barred as untimely. The IRS then assessed the donees for the gift tax. The state probate court allowed the donees claims against the estate for the additional gift tax paid. The estate sought a deduction for the gift tax paid under the state ruling. The court held that the deduction would be allowed as a valid claim against the estate. Estate of O’Neal v. United States, 00-1 U.S. Tax Cas. (CCH) ¶ 60,365 (N.D. Ala. 1999).

DISTRIBUTABLE NET INCOME. The IRS has adopted as final regulations that provide that substantively separate and independent shares of different beneficiaries are to be treated as separate estates for purposes of computing distributable net income. The regulations also provide that a surviving spouse’s statutory elective share of a decedent’s estate is a separate share. Further, a revocable trust that elects to be treated as part of a decedent’s estate is a separate share. Section 1307 of the Taxpayer Relief Act of 1997 amended I.R.C. § 663 by extending the separate share rules to estates. 64 Fed. Reg. 72540 (Dec. 28, 1999).

FIDUCIARY LIABILITY. The taxpayer was a friend of the decedent and had agreed to act as personal representative of the decedent’s estate as a favor to the deceased friend. The taxpayer administered the estate completely under the advice of the estate’s attorney who consistently advised the taxpayer that the estate had no income tax liability, even after the IRS filed notice of proposed tax liability. Only after the taxpayer had the estate examined by an accountant did the taxpayer receive advice that the estate owed income tax. By this time, the estate had distributed most of the property, leaving insufficient assets to pay the taxes. The IRS sought payment from the taxpayer. The court held that the taxpayer was not liable for the taxes because the taxpayer reasonably relied on the advice of legal counsel in administering the estate and had no actual notice of the tax liability until after distribution of the estate property. The court noted that the taxpayer was not a beneficiary of the estate. Little v. Comm’r, 113 T.C. No. 31 (1999).

GIFTS. A guardian was appointed for the decedent and the guardian petitioned the state court for authority to make several gifts. The court granted the authority to make the gifts but the court did not order the gifts to be made. The guardian made several gift transfers before the decedent’s death but when the decedent died, there were insufficient liquid funds in the estate to make the remaining contemplated gifts. The estate argued that the uncompleted gifts should be excluded from the gross estate because the gifts were prevented by the guardian’s poor planning in ordering the gifts. The court held that the uncompleted gifts were included in the decedent’s estate because the gifts remained revocable, either by the guardian or the decedent, until dominion and control was passed to the donees. Estate of Devlin v. Comm’r, T.C. Memo. 1999-406.

The taxpayers, husband and wife formed a family limited partnership with two children. The parents contributed marketable securities and the children contributed cash. The parents then transferred limited partnership interests to trusts for the children and filed gift tax returns, discounting the value of the limited partnerships for minority status and lack of marketability. The IRS, in a field service advice memorandum, ruled that the contributions to the partnership were gifts to the other partners in that the parents contributed assets to the partnership which were worth more than the partnership interests received. The memorandum reviews the various arguments for and against the ruling. FSA Ltr. Rul. 9950014, Sept. 15, 1999.

MARITAL DEDUCTION. The decedent’s will created a trust for the surviving spouse but the trust also provided that the trustee could distribute trust corpus to descendants other than the spouse “if advisable.” The trustee petitioned the local court to split the trust into two trusts with the same provisions. The other descendants filed disclaimers of their interests in the marital trust so that no one but the surviving spouse could receive distributions from that trust. The IRS ruled that the marital trust would be eligible for the marital deduction. Ltr. Rul. 9949023, Sept. 10, 1999.

The decedent’s estate included stock in a family corporation which passed to the surviving spouse in trust. The surviving spouse disclaimed a portion of the stock, resulting in the surviving spouse receiving a minority interest in the corporation instead of a majority interest. The IRS valued the stock at one price for including the stock in the estate for estate tax purposes
and at a lower price for purposes of determining the amount of the marital deduction. Estate of DiSanto v. Comm’r, T.C. Memo. 1999-421.

The grantor transferred stock to a trust which provided for the passing of the stock to a marital trust on the death of the grantor. The marital trust provided that the surviving spouse was to receive all income, was to serve as a co-trustee, was to vote the stock and could require the trust to sell the stock if it became unproductive and purchase productive property. If the stock was to be sold, the grantor’s children had the right of first refusal to purchase the stock at fair market value. The IRS ruled that the marital trust would qualify for the marital deduction. Ltr. Rul. 9951029, Sept. 28, 1999.

TAX LIENS. The taxpayer’s parent died with the entire estate passing to the taxpayer. The taxpayer was insolvent as of the parent’s date of death and owed the IRS $325,000 in back taxes for which the IRS had filed a tax lien. The taxpayer disclaimed any interest in the estate and had the disclaimer approved by a state court. The estate assets passed to the taxpayer’s child who placed the assets in a spendthrift trust for the child and taxpayer. The court held that the disclaimer was ineffective to remove the estate assets from the reach of the tax lien. Drye v. United States, 99-2 U.S. Tax Cas. (CCH) ¶ 51,006 (8th Cir. 1999), aff’d, ___ S.Ct. ___ (1999).

VALUATION. The taxpayer created two limited partnerships and transferred limited partnership interests to a charitable organization and a grantor retained annuity trust (GRAT). The taxpayers children received general partnership interests. The partnership agreement had a provision that the partnership was to liquidate in January 2043 unless an earlier termination was agreed to by all partners. The taxpayer argued that the partnership interests were only assigned and not fully transferred because the partners did not agree to the transfers; the value of the limited partnership interests were to be discounted for lack of liquidity; and the interests were not subject to I.R.C. § 2704 because there were no applicable restrictions on liquidations. The court held that the partnership interests were fully transferred, the interests had to be valued a fair market value and the transfers were not subject to Section 2704 because the restrictions on liquidation did not exceed the restrictions provided by state law. Kerr v. Comm’r, 113 T.C. No. 30 (1999).

FEDERAL EXCISE TAX

COTTON RETRIEVERS. The taxpayer manufactured a machine for transporting cotton from the fields to the cotton gin. The vehicle was purchased as a straight truck with a cab and chassis but no truck box. The back of the truck was modified to allow the bed to slip under a cotton module and pull the module onto the truck. The truck was modified for field transportation and could be used on public highways. The evidence showed that the trucks were difficult to maneuver on the highways, required special driving methods, and required special permits for weight and size. The jury returned a verdict for the taxpayer that the cotton retrievers were not subject to federal excise tax because the vehicles were designed for farm use and not designed for public highway transportation and that the public highway use of the vehicles was limited. The IRS sought a judgment as a matter of law to overturn the jury verdict. The court held that, although it would have held against the taxpayer, the jury had sufficient evidence to rule for the taxpayer. GLB Enter., Inc. v. United States, 99-2 U.S. Tax Cas. (CCH) ¶ 70,130 (D. S.D. 1999).

FEDERAL INCOME TAXATION

NEW LEGISLATION. The U.S. Congress has passed and the President has signed on December 17, 1999, legislation which includes (1) a five-year extension of the research and experimentation tax credit; (2) a three-year fix of the alternative minimum tax (limited to credits); (3) a two-and-a-half year extension of the work opportunity tax credit; (4) a two-year extension of the exception under Subpart F for active financing income; (5) a two-and-a-half year extension of the tax-free treatment of employer-provided education assistance; (6) a two-and-a-half year extension of the credit for electricity produced from wind and closed loop biomass, modified to include poultry waste; (7) a two-year extension of the qualified zone academy bond proposal, a school construction bond; (8) a two-and-a-half year extension of the welfare to work tax credit; and (9) a two-year extension of the suspension of income limitation on percentage depletion and a ban on installment sales by accrual method taxpayers with exceptions for time shares, residential lots and property used in a farming business. The next issue of the Digest will publish as article by Neil Harl on this last item. H.R. 1180.


The taxpayer operated a logging business and for several years reported income on the cash method and expenses on the accrual method. In one tax year, the taxpayer incurred repair expenses but paid only one-half in one tax year and the other half in the second tax year. The taxpayer argued that, because the taxpayer had used the same method of reporting income and expenses for more than two years, the hybrid accounting method was allowed. The court held that the use of cash accounting for income and accrual method for expenses was not an allowable hybrid accounting method for the taxpayer; therefore, the previous use of the method did not validate the method. The court held that the repair expense could be deducted only in the year paid. Grider v. Comm’r, T.C. Memo. 1999-417.

AMORTIZATION. Before the husband’s death, which occurred after August 10, 1993, the taxpayers owned a business as community property. On the husband’s death, the husband’s share of the business passed to the surviving spouse. The business assets included intangibles, including
goodwill, established workforce, and governmental licenses and permits. The IRS ruled that the spouse could amortize the decedent’s share of the intangibles which passed to the spouse on the decedent’s death but could not amortize the spouse’s share of the intangibles because they were not acquired after August 10, 1993. **Ltr. Rul. 9949037, Sept. 1, 1999.**

**BELOW-MARKET INTEREST LOANS.** A corporation was owned by many members of one family, none with a majority interest. The corporation made no-interest loans to several entities which were owned in part by the shareholders of the corporation and by nonshareholder family members. The IRS assessed taxes for interest income deemed earned by the taxpayers, under I.R.C. § 7872. The taxpayers argued that Section 7872 applied only for loans from a corporation to majority shareholders. The court held that the rules applied to below-market interest loans from the corporation to any shareholder or to entities owned by shareholders. **Rountree Cotton Co., Inc. v. Comm'r, 113 T.C. No. 28 (1999).**

The taxpayers were the controlling shareholders of a horse farm corporation. The taxpayers made several loans totaling $2 million to the corporation which did not pay interest to the taxpayers. The loans were recorded on the corporation’s books but no repayment terms were written. Only a portion of the loans was repaid. The taxpayers claimed that the loans were capital contributions but the court found that the loans were intended by the taxpayers to be repaid. The court held that the loans were demand loans with a below-market interest rate; therefore, the taxpayers were considered to have income for the amount of uncharged interest. **Estate of Hoffman v. Comm'r, T.C. Memo. 1999-395.**

**CASUALTY LOSS.** The IRS has revoked two revenue rulings, Rev. Rul. 66-9, 1966-1 C.B. 39 and Rev. Rul. 73-51, 1973-1 C.B. 75, in light of the decisions in **Westvaco Corp. v. United States, 639 F.2d 700 (Cl. Ct. 1980),** and **Weyerhaeuser v. United States, 92 F.3d 1148 (1996), rev'd in part and aff'd in part, 32 Fed. Cl. 80 (1994), cert. denied, 519 U.S. 1091 (1997)** (see 7 **Agricultural L. Dig. 129 (1996).** Under the cases, the owner of timberland could claim a casualty loss based on the decrease in value of a entire tract of timber as a single, identifiable property (SIP) from a casualty which affected a portion of that tract, such as from fire or volcanic eruption. Under the revoked revenue rulings, the SIP was defined as only the trees destroyed by the casualty event. The loss from partially damaged trees could be claimed only when the trees were sold for less than pre-casualty value. **Rev. Rul. 99-56, I.R.B. 1999-.**

**DISCHARGE OF INDEBTEDNESS.** The taxpayer was a partner in a partnership which had discharge of indebtedness income. The taxpayer’s return preparer listed the discharge of indebtedness income as rental income and did not advise the taxpayer of the Section 108 election to exclude discharge of indebtedness income. The IRS allowed an extension of time to file the election. **Ltr. Rul. 9950028, Sept. 14, 1999.**

**EMPLOYEE EXPENSES.** The IRS has issued revenue procedures updating Rev. Proc. 98-64, I.R.B. 1998-52, 32, which provides rules under which the amount of ordinary and necessary business expenses of an employee for lodging, meals, and incidental expenses or for meals and incidental expenses incurred while traveling away from home will be deemed substantiated under Temp. Treas. Reg. § 1.274-5T when a payor (the employer, its agent, or a third party) provides a per diem allowance under a reimbursement or other expense allowance arrangement to pay for such expenses. This revenue procedure also provides an optional method for employees and self-employed individuals to use in computing the deductible costs of business meal and incidental expenses paid or incurred while traveling away from home. Use of a method described in this revenue procedure is not mandatory and a taxpayer may use actual allowable expenses if the taxpayer maintains adequate records or other sufficient evidence for proper substantiation. This revenue procedure does not provide rules under which the amount of an employee’s lodging expenses will be deemed substantiated when a payor provides an allowance to pay for those expenses but not meals and incidental expenses. **Rev. Proc. 2000-9, I.R.B. 2000-.**

**PARTNERSHIPS—ALM § 7.03.**

**BASIS.** On October 28, 1997, the IRS issued proposed regulations under I.R.C. § 743. See 8 **Agric. L. Dig. 174 (1997).** Section 1.743-2 of the proposed regulations addressed the effect of the special basis adjustment under section 743 for partnerships that participate in section 351 exchanges. This issue was addressed in the proposed regulations issued on January 29, 1998, which contain general guidance on basis adjustments under section 743. See 9 **Agric. L. Dig. 23 (1998).** Therefore, the IRS has withdrawn Prop. Treas. Reg. § 1.743-2. **Ann. 99-113, I.R.B. 1999-.**

The IRS has announced that it intends to promulgate regulations under I.R.C. § 705 to address certain situations where gain or loss may be improperly created by adjusting the basis of a partnership interest for partnership income that is not subject to tax, or for partnership losses or deductions that are permanently denied, with respect to a partner. The proposed regulations will apply to situations where a corporation acquires an interest in a partnership that holds stock in that corporation, and a Section 754 election is not in effect with respect to the partnership for the taxable year of the acquisition. In those situations, a corporate partner may increase its basis in its partnership interest under Section 705 only by the amount of its share of Section 1032 gain that the partner would have realized had a Section 754 election been made. Rules regarding tiered-entity structures also will apply. The regulations also will apply to other situations where the price paid for a partnership interest reflects built-in gain or accrued income items that will not be subject to income tax, or built-in loss or accrued deductions that will be permanently denied, when allocated to the transferee partner, and the partnership has not made an election under Section 754. **Notice 99-57, I.R.B. 1999-.**

**CONTRIBUTIONS.** A partnership was formed as a corporation as one partner and an individual as the other partner. The corporation contributed its own stock with a zero basis and the individual contributed real property with an fair market value equal to the stock. The partnership then purchased other real property and exchanged the stock for the property, realizing gain from the transaction. The IRS ruled that, under I.R.C. § 1032, the corporation does not recognize its share of the partnership gain but is required to increase its basis in its partnership interest. **Rev. Rul. 99-57, I.R.B. 1999-.**
LIMITED PARTNERSHIPS. The IRS has announced that it will not issue rulings on whether a state law limited partnership electing under Treas. Reg. § 301.7701-3 to be classified as an association taxable as a corporation has more than one class of stock for purposes of I.R.C. § 1361(b)(1)(D). Rev. Proc. 99-51, I.R.B. 1999—

LOSSES. The taxpayer was a partner in a partnership which invested in several commercial real properties and defaulted on loans. The taxpayer claimed losses from the partnership but failed to prove the value of the partnership interest, the taxpayer’s basis in the partnership and the amount of the losses. The court disallowed any deduction for the taxpayer for losses from the partnership. Johnson v. Comm’r, T.C. Memo. 1999-412.

PARTNERSHIP BASIS. The IRS has adopted as final regulations relating to the optional adjustments to the basis of partnership property following certain transfers of partnership interests under I.R.C. § 743; the calculation of gain or loss under I.R.C. § 751(a) following the sale or exchange of a partnership interest; the allocation of basis adjustments among partnership assets under I.R.C. § 755; and the allocation of a partner’s basis in its partnership interest to properties distributed to the partner by the partnership under I.R.C. § 732(c); and the computation of a partner’s proportionate share of the adjusted basis of depreciable property (or depreciable real property) under I.R.C. § 1017. For a full discussion of the regulations, see 9 Agric. L. Dig. 21 (1998). 64 Fed. Reg. 69903 (Dec. 15, 1999).

PENSION PLANS. The IRS has published the cost-of-living adjustments (COLAs) applicable to dollar limitations on benefits paid under qualified retirement plans and to other provisions affecting such plans that took effect on Jan. 1, 2000. The maximum limitation for the I.R.C. § 415(b)(1)(A) annual benefit for defined benefit plans is increased to $135,000 and the I.R.C. § 415(c)(1)(A) limitation for defined contribution plans remains at $30,000. Notice 99-55, I.R.B. 1999—

For plans beginning in December 1999, the weighted average is 6.00 percent with the permissible range of 5.40 to 6.30 percent (90 to 106 percent permissible range) and 5.40 to 6.60 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). Notice 99-61, I.R.B. 1999—

RETURNS. The IRS has announced the release of revised Publication 51 (Revised January 2000), Circular A, Agricultural Employer’s Tax Guide. The IRS has released Publication 1212 (1999), List of Original Issue Discount Instruments. This publication is intended to assist brokers and other middlemen in identifying publicly offered original issue discount (OID) debt instruments. These documents are available at no charge (1) by calling the IRS’s toll-free telephone number, 1-800-829-3676; (2) via the internet at http://www.irs.gov/prod/cover.html; (3) through FedWorld; or (4) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

S CORPORATIONS-ALM § 7.02[3][c].*

LIMITED PARTNERSHIPS. The IRS has announced that it will not issue rulings on whether a state law limited partnership electing under Treas. Reg. § 301.7701-3 to be classified as an association taxable as a corporation has more than one class of stock for purposes of I.R.C. § 1361(b)(1)(D). Rev. Proc. 99-51, I.R.B. 1999—

SHAREHOLDER’S BASIS. The taxpayer was an equal shareholder with a brother-in-law in a farm S corporation. The taxpayer borrowed $700,000 from the other shareholder and paid off a debt to the corporation, contributing the remainder to the corporation as a loan. The IRS disallowed a portion of the taxpayer’s share of corporate losses, ruling that the amounts loaned to the corporation were not at risk under I.R.C. § 465(b)(3)(A). The taxpayer argued that the exception provided by I.R.C. § 465(b)(3)(B)(ii) allowed the amounts borrowed from another shareholder to be considered at risk when loaned to the corporation. The court held that the I.R.C. § 465(b)(3)(B)(ii) exception applied only as to whether the amounts were at risk as to the corporation, not as to the shareholder who loaned the funds to the corporation. Van Wyk v. Comm’r, 113 T.C. No. 29 (1999).

SHAREHOLDER’S SHARE. The IRS has adopted as final regulations governing the determination of an S corporation shareholder’s share of pass-through items. In the case of most items that must be separately stated by an S corporation, the provisions by which an S corporation accounts to its shareholders for tax purposes under I.R.C. § 1366 closely parallel the provisions for a partnership accounting to its partners under I.R.C. § 702. The regulations provide rules outlining this general pass-through scheme for S corporations to their shareholders. For a full discussion of the regulations, see 9 Agric. L. Dig. 130 (1998). 64 Fed. Reg. 71641 (Dec. 22, 1999).

SAFE HARBOR INTEREST RATES

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<th>January 2000</th>
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<td>AFR</td>
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<td>110 percent AFR</td>
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<td>6.33</td>
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<tr>
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<td>7.08</td>
<td>6.96</td>
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<td>AFR</td>
<td>6.21</td>
<td>6.12</td>
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<td>110 percent AFR</td>
<td>6.84</td>
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<td>Long-term</td>
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<td>AFR</td>
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<tr>
<td>120 percent AFR</td>
<td>7.77</td>
<td>7.62</td>
<td>7.55</td>
<td>7.50</td>
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</table>


SALE OF RESIDENCE. Under prior I.R.C. § 121, taxpayers had originally filed Form 2119 but had not filed a second Form 2119 within the two-year replacement period. The IRS assessed a deficiency for the gain on the sale of the first residence. More than three years after filing their original returns, but within two years after paying the deficiency, the taxpayers, who had met the qualifications for the one-time Section 121 (for taxpayers age 55 and over) election at the time of their original sale, filed refund claims based on the election. The IRS ruled that the election was timely if made at any time before the expiration of the period for making a claim for refund under Section 6511 for the year in which the sale or exchange occurred. CCA Ltr. Rul. 9950030, Sept. 20, 1999.
There is still space available at the 4th Annual

† SEMINAR IN PARADISE †

FARM ESTATE AND BUSINESS PLANNING

by Neil E. Harl and Roger A. McEowen

January 24-28, 2000

Royal Lahaina Resort, Kaanapali Beach, Island of Maui, Hawai’i

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Here are some of the major topics to be covered:

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• 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, family-owned business deduction (FOBD), 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 and medicaid trusts.
• Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.

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

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Call/fax Robert Achenbach at 1-541-302-1958 or e-mail: robert@agrilawpress.com, if you want to register.