CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

CHAPTER 13-*ALM* § 13.03.*

DISPOSABLE INCOME. The debtor's Chapter 13 plan provided for no payments to unsecured creditors. The debtor calculated disposable income during the plan by subtracting payments made on loans from a pension plan. The pension plan loan provisions stated that unpaid loans would be deducted from the benefits when the debtor retired. The court held that the amount owed by the debtor to the pension plan was not a debt for purposes of the bankruptcy and that the repayments could not be excluded from disposable income during the Chapter 13 plan. ***In re* Anes, 216 B.R. 514 (Bankr. M.D. Pa. 1998)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

LIENS. In September 1994, the IRS assessed the debtor for 1987 taxes and in June 1995, the IRS filed a tax lien for the taxes. The debtor filed for Chapter 13 in April 1996 and sought to avoid the lien as to the debtor's interest in an ERISA-qualified pension plan and exempt bankruptcy property. The debtor argued that state law prohibited the attachment of liens against pension plan benefits. The court held that the state law had no effect on the validity of a federal tax lien. The court also held that the exempt bankruptcy property remained subject to the lien. ***In re* Tourville, 216 B.R. 457 (Bankr. D. Mass. 1997)**.

ENVIRONMENT

CLEAN WATER ACT. An employee of the defendant oil company mistakenly pumped gasoline into a vapor monitoring well which allowed the gasoline to contaminate the groundwater. The plaintiff lived near the well and claimed that the dumping contaminated the plaintiff's drinking water well and was a violation of the Clean Water Act (CWA) because the contamination spread to nearby wetlands and a creek. The plaintiff argued that the CWA applied because the creek and wetlands were "navigable waters" under the CWA. The court held that the CWA covered any contamination which hydrologically affected navigable waters. The case may have serious implications for farmers and ranchers where a hydrologic connection can be made to runoff or groundwater which may contain pollutants from the farm or ranch operation. This case was reported to the *Digest* by Roger McEowen of Kansas State University. **Mutual Life Ins. Co. v. Mobil Corp., 1998 U.S. Dist. LEXIS 4513 (N.D. N.Y. Mar. 31, 1998)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has issued proposed regulations amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Alabama from Class A to Class Free. **63 Fed. Reg. 19169 (April 17, 1998)**.

The APHIS has issued proposed regulations amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Georgia from Class A to Class Free. **63 Fed. Reg. 19652 (April 21, 1998)**.

FARM OPTION PILOT PROGRAM. Section 335 of the Federal Agriculture Improvement and Reform Act of 1996 established the Conservation Farm Option (CFO) Pilot Programs. The CCC is requesting proposals from individuals, states or subdivisions thereof, tribes, universities, and other organizations to cooperate in the development and implementation of CFO pilot programs for producers of wheat, feed grains, upland cotton, and rice. Proposals must be received by June 1, 1998. **63 Fed. Reg. 19702 (April 21, 1998)**.

FEDERAL ESTATE AND GIFT TAX

JOINT TENANCY PROPERTY-*ALM* § 5.02[1].*

LIENS. The decedent's estate included real property which contained one building. The decedent's estate was assessed federal estate tax. The decedent's son was appointed as personal representative and sold the property to a corporation which paid cash and forgave a debt owed by a corporation controlled by the son. The contract price was $150,000 but the cash and debt forgiveness amounted to only $76,000. The higher contract price was intended to deceive the public about the true sales price. The property had a fair market value of $350,000. The IRS filed tax liens against the estate and included the transferred property in the lien. The estate argued that the property was not included in the lien because the property was sold to a "purchaser," under I.R.C. § 6623, since adequate consideration was paid for the property. The court held that the price in the contract was binding on the parties because no mistake, fraud or undue influence was shown. The estate also argued that, under I.R.C. § 6624, the property was not subject to the lien because the sales proceeds were used for estate expenses. The court held that Section 6624 did not apply because the estate failed to show that any estate expenses were paid with the proceeds. **A & B Steel Shearing & Processing, Inc. v. United States, 98-1 U.S. Tax Cas. (CCH) ¶ 60,309 (6th Cir. 1998), *aff'g*, 934 F. Supp. 254 (E.D. Mich. 1996)**.

VALUATION. The taxpayer transferred real property to an irrevocable trust for the taxpayer. The property transferred included a personal residence and a guest house. The property could not be subdivided. The guest house was rented to an unrelated third party at fair rental value. Only the taxpayer and the taxpayer's family used the personal residence as a vacation home. The trust held no other assets except cash which was needed for maintenance of the property. The taxpayer provided no services to the rented house. The IRS ruled that the property qualified as a personal residence and the trust was not subject to the valuation rules of I.R.C. § 2702. The guest house was included because the trust did not provide any services to the tenant. **Ltr. Rul. 9816003, Dec. 23, 1997**.

The taxpayer transferred real property to a 12 year trust intended to be a qualified personal residence trust (QPRT). The property contained a residence, detached garage, hot tub with changing building, pool and pumphouse, gazebo, camping house, and storage building. The taxpayer had occupied the property for over 25 years and the property was comparable in size to other properties in the area. The taxpayer held the right to occupy trust property and receive net annual income from the trust. At the end of the trust term, the trust principal was to be distributed to the taxpayer's children. If the taxpayer died before the end of the trust term, the trust principal passed to the taxpayer's estate. The trust could not transfer the trust property to the taxpayer. The IRS ruled that the trust was a QPRT. **Ltr. Rul. 9817004, Jan. 6, 1998**.

After the decedent had been diagnosed with cancer, received extensive treatment, and was in remission with a 10 percent chance of recovery, the decedent amended two family partnership agreements to allow the transfer of partnership interests and to have the decedent's son made managing partner at the decedent's death. The decedent transferred remainder interests in the decedent's partnership interests to trusts for the decedent's children in exchange for $250,000 and annuities payable over the decedent's life. The remainder interests were valued using the actuarial tables of Treas. Reg. § 25.2512-5(f) (Table A) for a person of the decedent's age. The annuity agreement had a provision that the remainder interest purchasers agreed to increase the amount to be paid if the remainder interests were revalued by the IRS or Tax Court. The Tax Court originally held that the remainder interests could not be valued using the actuarial table because of the limited life expectancy of the decedent. The savings clause was not effective to change the fact that the purchasers had paid less than fair market value for the remainder interests and that, therefore, the transfers were includible in the decedent's estate as gifts under I.R.C. § 2036 but offset by the $250,000 actually paid. The appellate court remanded the case to determine whether the holding was consistent with *Rev. Rul. 80-80, 1980-1 C.B. 194*, which required that death be "clearly imminent" before the actuarial table could not be used. On remand the Tax Court reiterated its belief that the case precedents established a clearer standard but held the decedent's death at the time of the transfer was clearly imminent since testimony demonstrated that the decedent's chance of surviving for more than one year was less than 10 percent. The appellate court reversed, holding the standards of *Rev. Rul. 80-80* had to be applied and that a 10 percent chance of survival was sufficient for use of the actuarial tables. **Est. of McLendon v. Comm'r, 135 F.3d 1017 (5th Cir. 1998), *rev'g*, T.C. Memo. 1996-307, *on remand from*, 77 F.3d 477 (5th Cir. 1995), *rev'g without op.*, T.C. Memo. 1993-459**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD-*ALM* § 4.01.* The taxpayer was a farm partnership which grew wine grapes. The owners of the partnership also established another company which produced wine from grapes purchased from the partnership and other unrelated parties. The partnership also sold grapes to other unrelated companies. The partnership used the cash method of accounting but the IRS argued that the partnership should be required to use the accrual method because the winery company often was allowed up to five years to make payments for grapes from the partnership, thus causing a material distortion of income for the partnership. The taxpayer argued that the deferral of payments was in the ordinary course of business in that the winery company needed a stable, long-term relationship with a grape supplier. The evidence also demonstrated that the winery deferred payment primarily because of cash flow needs and borrowing needs while the winery was expanding. The Tax Court held that the deferral of payments for such long periods was not a standard industry practice, especially where the grape supplier was not given any extra consideration for the deferrals. The shared ownership of the companies by the same persons also indicated that the deferrals were part of a strategy to develop the winery at the expense of the partnership. The Tax Court held that the deferral of payments for the grapes was a material distortion of income and not made in the ordinary course of business; therefore, the partnership was required to use the accrual method of accounting for income tax purposes. The appellate court noted that the partnership had strong arguments to support the use of the cash method, but the court held that the Tax Court's decision had to be upheld unless the Tax Court's decision was clearly erroneous. The appellate court affirmed in a case designated as not for publication. **Oakcross Vineyards, Ltd. v. United States, 98-1 U.S. Tax Cas. (CCH) ¶ 50,336 (9th Cir. 1998), *aff'g*, T.C. Memo. 1996-433**.

COURT AWARDS AND SETTLEMENTS. The taxpayers were husband and wife and filed a joint return for 1992. The wife was a claimant in a class action lawsuit against an insurance company for sex discrimination in employment under Title VII of the Civil Rights Act of 1964. The wife was awarded $283,395, of which $57,702

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was paid to the wife's lawyers. The court held that, as with all other claimants in the class action suit who had filed Tax Court cases, the award amount was included in the taxpayers' gross income because Title VII damages were limited to lost wages. **Westmiller v. Comm'r, T.C. Memo. 1998-140**.

IRA. The taxpayer owned several IRAs and was 49 years old. The taxpayer took annual distributions from seven of the IRAs, starting in 1997. The annual distributions were calculated by dividing the account balance by an annuity factor of the present value of one dollar per year life annuity for a person aged 49, using the UP-1984 Mortality Table and an interest rate of 7.5 percent. The future distributions would be increased by a 3 percent cost-of-living factor. The IRS ruled that the distributions conformed to one of the methods listed in Notice 89-25, 1989-1 C.B. 662, were substantially equal payments, and were not subject to the additional tax for premature distributions. **Ltr. Rul. 9816028, Jan. 21, 1998**.

LIKE-KIND EXCHANGES. The taxpayer owned a business property and wanted to sell it in a like-kind exchange. The buyers of the property agreed to participate in a three-party exchange and the property was transferred to the buyers in 1988 for no consideration. Within 45 days after the transactions, the taxpayer identified 19 properties which were suitable for an exchange and six properties were transferred through third party facilitators to the taxpayer. However, the transfers did not start until April 25, 1989 and were completed in June 1989, all after the taxpayer's filing of the 1988 federal tax return. Under I.R.C. § 1031(a)(3), the replacement property must be acquired within the earlier of the due date (including extensions) of the tax return for the year of the first transfer or 180 days after the transfer. The taxpayer argued that, because a four month automatic extension was possible, the due date determination should have been made based on the possible extension. The court held that the extension increase was available only if the taxpayer actually applied and met the requirements for the extension. The court noted that, although the extension was automatic, the extension still had some requirements to be met before the extension occurred. Therefore, the transfers were not eligible for like-kind exchange treatment. The transfers, however, were held to be eligible for installment treatment. The appellate court affirmed in a case designated as not for publication. **Christensen v. Comm'r, 98-1 U.S. Tax Cas. (CCH) ¶ 50,352 (9th Cir. 1998), *aff'g*, T.C. Memo. 1996-254**.

RETIREMENT LOSSES. In 1984, the taxpayers purchased 3.3 acres of land with an old school house. The taxpayers intended to renovate the building and lease it. In 1988 asbestos was discovered in the building and vandals caused significant damage. The taxpayers had the building demolished in 1991 after the last potential buyer decided, in 1989, not to buy the building and claimed the value of the building as a current business deduction in 1991 as an abnormal retirement loss. The taxpayers argued that *DeCou v. Comm'r, 103 T.C. 80 (1994)* applied to allow the deductions because the school house was removed from use prior to demolition. the court held that the events which caused the loss occurred in 1988 when the asbestos was discovered and the vandal damage occurred. The court held that the loss of the last potential buyer was not a tax significant event to establish the loss of the building. In addition, the loss of the buyer occurred before 1991. The court held that, under *DeCou*, a retirement loss deduction required a sudden, unexpected termination of the usefulness of the property. The *DeCou* case is discussed by Neil Harl in "Demolishing Farm Improvements," 7 *Agric. L. Dig.* 1 (Jan. 12, 1996). **Gates v. United States, 98-1 U.S. Tax Cas. (CCH) ¶ 50,353 (M.D. Pa. 1998)**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

DEFERRED COMPENSATION PLANS. An S corporation established an "unfunded" deferred compensation plan for its highly compensated employees. The employees received share units which were recorded as unsecured claims against the general assets of the corporation. The employees could not assign, alienate or encumber the share units and the units did not give the employees any rights in assets invested by the corporation to supply funds to make payments on the units. The employees' interests in the units vest on the earlier of (1) 10 years after the grant of the units or (2) the employee's 55th birthday or on the completion of five years of continuous employment, if the employee started employment after the employee's 50th birthday. The share units did not entitle any employee to vote on corporate affairs. The IRS ruled that the corporation could deduct vested amounts as ordinary and necessary business expenses. The IRS also ruled that the share units did not create a second class of stock for S corporation election purposes. **Ltr. Rul. 9817015, Jan. 20, 1998**.

SUBSIDIARIES. The IRS has issued proposed regulations relating to the treatment of corporate subsidiaries of S corporations (QSSS). The proposed regulations interpret the rules added to the Internal Revenue Code by section 1308 of the Small Business Job Protection Act of 1996 (the Act).

Prior law prohibited an S corporation from owning 80 percent or more of the stock of another corporation. The Act repealed I.R.C. § 1362(b)(2)(A), thereby allowing an S corporation to own 80 percent or more of the stock of a C corporation. The Act also added I.R.C. § 1504(b)(8) to prevent an S corporation from joining in the filing of a consolidated return with its affiliated C corporations. A C corporation subsidiary of an S corporation, however, may file a consolidated return with its affiliated C corporations.

Under the proposed regulations, an S corporation makes a QSSS election with respect to an eligible subsidiary by filing a form to be developed by the IRS prior to the time these regulations become final. This proposes to change the temporary election procedure provided in *Notice 97-4, 1997-2 I.R.B. 25*, which provided that a parent S corporation files a completed Form 966, Corporate Dissolution and Liquidation (with some modifications), to make a QSSS election. Until these proposed regulations are finalized, taxpayers should continue to use the temporary election procedure in *Notice 97-4* to make QSSS elections. The proposed regulations also provide that the effective date of a QSSS election may be up to 2 months and 15 days prior to the day the QSSS election is made. This is a slight change from the 75 day retroactive period provided in Notice 97-4, but is consistent with the general time period for making S elections. Unlike the S election, however, a QSSS election does not need to be made within 2 months and 15 days of the beginning of a taxable year. A similar retroactive period is provided for revocations of QSSS status. In addition, a taxpayer may choose a prospective effective date for a QSSS election or revocation, so long as the date selected is not more than 12 months after the date the election or revocation is made. **Prop. Treas. Reg. § 1.1361-3.**

The proposed regulations provide that, when an S corporation makes a valid QSSS election with respect to a subsidiary, the subsidiary is deemed to have liquidated into the parent. The tax treatment of this liquidation, alone or in the context of any larger transaction (for example, a transaction that also includes the acquisition of the subsidiary's stock), is generally determined under all relevant provisions of the Code and general principles of tax law, including the step transaction doctrine. However, a special transition rule applies to certain elections effective prior to the date that is 60 days after publication of final regulations in the Federal Register. The transition rule indicates the recognition of special concerns that may have arisen as a result of transactions entered into by taxpayers relying on the legislative history to the Act and without applying the step transaction doctrine to the acquisition of the subsidiary's stock followed by a QSSS election. **Prop. Treas. Reg. § 1.1361-4.**

Special rules may apply when a QSSS election is made following the transfer of one S corporation's stock to another S corporation. For example, if an S corporation acquires the stock of another S corporation in a transaction in which the acquiring S corporation's basis in the stock received is determined by reference to the transferor's basis and makes a QSSS election with respect to the other corporation effective on the day of acquisition, any losses disallowed under section 1366(d) with respect to a former shareholder of the QSSS will be available to that shareholder as a shareholder of the acquiring S corporation. Furthermore, when stock in an S corporation is transferred to another S corporation and a QSSS election is made with respect to the subsidiary effective on the day of acquisition, the S election of the former corporation terminates at the same moment as the QSSS election becomes effective. This rule ensures that the former S corporation is not treated as a C corporation for any period solely because of the transfer. Generally, the proposed regulations treat the liquidation as occurring at the close of the day before the QSSS election is effective. Under this rule, if a parent corporation makes an S election effective on the same date as a QSSS election with respect to a subsidiary, the deemed liquidation occurs at a time when the parent corporation is still a C corporation. A QSSS election satisfies the requirement of adopting a plan of liquidation under section 332. **Prop. Treas. Reg. § 1.1361-4.**

Following the deemed liquidation, the QSSS is not treated as a separate corporation (except as otherwise provided in the regulations), and all assets, liabilities, and items of income, deduction, and credit are treated as those of the S corporation. Accordingly, all such items must be reported on the S corporation's return required to be filed under section 6037. A special rule applies for the calculation of these items where either an S corporation or its QSSS is a bank (as defined in section 581). This special rule was first announced in *Notice 97-5, 1997-2 I.R.B. 25.* Until these proposed regulations are finalized, taxpayers should continue to follow *Notice 97-5*. **Prop. Treas. Reg. § 1.1361-4.**

The QSSS status of a corporation continues until it terminates. The regulations specify the date of termination for specific terminating events. Section 1361(b)(3)(D) provides that, if a QSSS election terminates, the corporation is treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) from the S corporation in exchange for stock of the new corporation immediately before the termination. The tax treatment of this transaction or of a larger transaction that includes this transaction will be determined under the Code and general principles of tax law, including the step transaction doctrine. Examples are provided to illustrate situations in which the formation of the new corporation will qualify as a nonrecognition transaction under section 351. The proposed regulations also provide that, under certain circumstances, relief may be available under the standards established under section 1362(f) for the inadvertent termination of an S election. **Prop. Treas. Reg. § 1.1361-5.**

Section 1361(b)(3)(D) provides that a corporation whose QSSS election has terminated (or a successor corporation) may not make an S election or have a QSSS election made with respect to it for five taxable years following the termination without the consent of the Secretary. The proposed regulations provide that, without requesting the Secretary's consent, a corporation may make an election to be treated as an S corporation or may have a QSSS election made with respect to it before the expiration of the five-year period under certain circumstances. Consent is not required if an otherwise valid S election or QSSS election is made for the former QSSS (or its successor corporation) effective immediately following the disposition of its stock. Thus, the proposed regulations allow corporations to move freely between QSSS and S corporation status, provided there is no intervening period for which the corporation is treated as a C corporation. **Prop. Treas. Reg. § 1.1361-5.**

The proposed regulations also provide rules relating to certain C corporation subsidiaries held by S corporations. Under section 1362(d)(3)(E), dividends received by an S corporation from a C corporation in which the S corporation has an 80 percent or greater ownership interest are not treated as passive investment income for purposes of sections 1362 and 1375 to the extent the dividends are attributable to the earnings and profits of the C corporation derived from the active conduct of a trade or business. The proposed regulations provide guidance for attributing dividends to the active conduct of a trade or business. Special rules apply to dividends distributed by the common parent of a consolidated group. **Prop. Treas. Reg. § 1.1361-2.**

Under the proposed regulations, earnings and profits of a C corporation derived from the active conduct of a trade or business are the earnings and profits of the corporation derived from activities that would not produce passive investment income under section 1362(d)(3) if the C corporation were an S corporation. The proposed regulations provide a safe harbor under which the corporation may determine the amount of the active earnings and profits by comparing the corporation's gross receipts derived from non-passive investment income-producing activities with the corporation's total gross receipts in the year the earnings and profits are produced. If less than 10 percent of the C corporation's earnings and profits for a taxable year are derived from activities that would produce passive investment income, all earnings and profits produced by the corporation during the taxable year are considered active earnings and profits. **Prop. Treas. Reg. § 1.1361-2.**

The proposed regulations also provide that a C corporation may treat all earnings and profits accumulated by the corporation prior to the time an S corporation held stock meeting the requirements of section 1504(a)(2) as active earnings and profits in the same proportion as the C corporation's active earnings and profits for the three taxable years ending prior to the time when the S corporation acquired 80 percent of the C corporation bear to the C corporation's total earnings and profits for those three taxable years. Provisions also address the allocation of distributions from current or accumulated earnings and profits. **Prop. Treas. Reg. § 1.1361-2.**

The regulations are proposed to be effective on the date that final regulations are published in the Federal Register. However, the IRS is considering whether certain provisions should be made retroactive. **63 Fed. Reg. 19864 (April 22, 1998), amending Prop. Treas. Reg. § 1.1361-0 *et seq*.**

SAFE HARBOR INTEREST RATES
May 1998

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	5.50	5.43	5.39	5.37
110% AFR	6.06	5.97	5.93	5.90
120% AFR	6.63	6.52	6.47	6.43
		Mid-term		
AFR	5.69	5.61	5.57	5.55
110% AFR	6.27	6.17	6.12	6.09
120% AFR	6.84	6.73	6.67	6.64
		Long-term		
AFR	5.94	5.85	5.81	5.78
110% AFR	6.54	6.44	6.39	6.36
120% AFR	7.14	7.02	6.96	6.92

UNDERGROUND STORAGE TANKS. The taxpayer was a corporation on the accrual method of accounting which operated a manufacturing business. The corporation placed manufacturing wastes in metal underground storage tanks. The corporation replaced the metal tanks with steel-fiberglass-reinforced plastic tanks which conformed with federal, state and local environmental laws. The new tanks were to be sealed to hold the same wastes indefinitely and had no salvage value. The new tanks were monitored for leaks. The IRS ruled that the new tanks had no useful life once the tanks were filled and sealed. The IRS also ruled that, because the tanks were installed, filled and sealed within one tax year, the associated costs were ordinary and necessary business expenses deductible in that tax year. In addition, the IRS ruled that the costs of removing the old tanks and transferring the waste to the new tanks were ordinary and necessary business expenses deductible in that tax year. The tank monitoring costs were also ordinary and necessary business expenses deductible in the tax year. The IRS added that the results would be the same if the corporation ceased the manufacturing operation in the replacement year or a previous year or if the tanks were used above ground. **Rev. Rul. 98-25, I.R.B. 1998-__, __.**

NEGLIGENCE

INTENTIONAL TORT. The defendant owned rural property at a sharp curve in a road. Over the years, many motorists ran off the road at the curve and onto the defendant's property, often causing the defendant's horses to escape a fenced area. In order to prevent vehicles from entering the defendant's property, the defendant constructed a strong barrier, painted with reflective paint, at the curve. Several vehicles hit this barrier, including a motorcycle ridden by the plaintiff. At the time of the accident, the plaintiff was speeding and was legally intoxicated. The plaintiff sued for intentional tort, arguing that the defendant either intended the barrier to cause "offensive contact" or knew that such contact was substantially certain to occur. The court upheld summary judgment for the defendant, holding that the plaintiff failed to show that the defendant intended the injury to the plaintiff. The court held that the defendant was shown only to know that the barrier could cause such injury. Although the court did not specifically state the issue as a legal point, the discussion seems to balance the legitimate purpose of the barrier as a property protection device against the necessary damage and injury which would result from the device. This case was reported to the *Digest* by Roger McEowen of Kansas State University. **Shewmaker v. Etter, 1998 WL 154679 (Ind. Ct. App. April 3, 1998)**.

SECURED TRANSACTIONS

CROP INSURANCE PROCEEDS. The debtor owed the FSA $50,618 in farm operating loans. The debtor executed a security agreement granting the FSA a security interest in after-acquired property, including the proceeds of federal crop insurance. The debtor purchased crop insurance for the 1996 crop and received proceeds from crop damage in that year. The issue was whether the anti-assignment provisions of the crop insurance regulations prevented the attachment of the FSA security interest. The statute, 7 U.S.C. § 1509, prevented attachment of crop insurance proceeds before the proceeds were given to the insured. The court held that, to the extent the regulations, 7 C.F.R. § 400.352, prohibited attachment of security interests after insurance proceeds were in the hands of the debtor, the regulations were invalid and the FSA security interest attached to the proceeds when obtained by the debtor. ***In re* Rees, 216 B.R. 551 (Bankr. N.D. Tex. 1998)**.