and "1 other residence" selected by the taxpayer and used as a residence.[19]

• The term "principal residence" is defined as it is for purposes of the sale and reinvestment provision[20] which was repealed in 1997.[21] The regulations state that a principal residence can include "a houseboat, a housetrailer, or stock held by a tenant-stockholder in a cooperative housing corporation."[22]

• The term "1 other residence" is defined in terms of the I.R.C. § 280A(d)(1) requirements for use as a residence.[23] That provision specifies that "use as a residence" means use of a "dwelling unit" by the taxpayer for personal purposes for a number of days per year which exceeds the greater of—(1) 14 days or (2) 10 percent of the number of days during the year for which the unit is rented at a fair rental.[24]

Meaning of "dwelling unit"

The statute defines "dwelling unit" as a "house, apartment, condominium, mobile home, boat, or similar property and all structures or other property appurtenant to such dwelling unit."[25] The term does *not* include that part of a unit used exclusively as a hotel, motel, inn, or similar establishment.[26]

The regulations further specify that a "dwelling unit" must provide basic living accommodations such as "sleeping space, toilet, and cooking facilities."[27] Moreover, a single structure may contain more than one dwelling unit.[28]

In conclusion

Provided the second residence is within the dollar limitations, secures the loan, and meets the occupancy requirements, a dwelling providing basic living accommodations should be eligible for an interest deduction even if the dwelling is in the form of a boat or mobile home.

FOOTNOTES

1 See generally 4 Harl, *Agricultural Law* § 28.05[3][a] (1998).
2 I.R.C. § 163(h)(5)(A)(i)(I).
3 I.R.C. § 163(h)(5)(A)(i)(II).
4 Pub. L. No. 99-514, Sec. 511(b), 100 Stat. 2244 (1986).
5 *Id*.
6 I.R.C. § 163(h)(5)(A)(i).
7 I.R.C. § 163(h)(2)(D).
8 I.R.C. § 163(h)(3)(A)(i).
9 I.R.C. § 163(h)(3)(A)(ii).
10 I.R.C. § 163(h)(3)(B)(i)(I.).
11 I.R.C. § 163(h)(3)(B)(i)(II).
12 Temp. Treas. Reg. § 1.163-10T(0).
13 *Id*.
14 Ltr. Rul. 8906031, Nov. 10, 1988.
15 I.R.C. § 163(h)(3)(B)(ii).
16 I.R.C. § 163(h)(3)(C)(i).
17 I.R.C. § 163(h)(3)(C)(ii).
18 I.R.C. § 163(h)(5)(A)(i)(I).
19 I.R.C. § 163(h)(5)(A)(i)(II).
20 I.R.C. § 1034.
21 TRA-97, Sec. 312(b), repealing I.R.C. § 1034.
22 Treas. Reg. § 1.1034-1(c)(3)(i).
23 I.R.C. § 163(h)(5)(A)(i)(II).
24 I.R.C. § 280A(d)(1).
25 I.R.C. § 280A(f)(1)(A).
26 I.R.C. § 280A(f)(1)(B).
27 Prop. Treas. Reg. § 1.280A-1(c)(1).
28 *Id*.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

FENCE. The disputed strip of land was bordered by the remnants of a fence which was situated on the plaintiff's land. The land was suitable for timber production. The defendant had acquired the property from the defendant's grandfather and had walked the fence with the grandfather who identified the fence as the boundary line of the property. The defendant managed the strip as part of forest land, pruning existing trees, thinning undesirable trees and brush and planting new trees. The defendant also used the property for horseback riding and other recreational activities. The plaintiff argued that the defendant could not acquire title to the disputed strip because the defendant did not engage in activities on the land often enough to make continuous use of the property. The court held that the occasional use of the land for timber management and recreation was sufficient for a rural property. The plaintiff also argued that the defendant could not claim any ownership of the property where the fence was not maintained in good repair. The court held that the fence was not required to be maintained in good repair where the land was not used for activities which required a good fence, such as for cattle pasture. The court held that the remnants of the fence were sufficient to mark the existence of the claimed boundary. **Nooteboom v. Bulson, 956 P.2d 1042 (Or. Ct. App. 1998)**.

ANIMALS

EXPERTS. The plaintiff had boarded a horse with the defendant stables. The horse escaped and in the process of capturing the horse, the defendant's employees caused the horse to fall. The injury was treated with no notice of any bone fracture. However, the horse later showed signs of lameness and the plaintiff sued for injury to the horse. The horse, however, had a history of chronic lameness in the leg affected and a major issue in the case was whether the fall contributed to the lameness which occurred after the fall. The defendant had four expert witnesses who denied any causation link with the fall. The plaintiff presented the testimony of a witness with degrees in other sciences but no study in veterinary science. The witness had no experience in treating horse lameness and only had experience with lameness in a horse the witness owned. The witness had knowledge of horses in general. The court held that expert witness testimony was required to show causation between the fall and the injury and that the plaintiff's witness was not sufficiently qualified to be an expert witness on horse lameness. **Gross v. Victoria Station Farms, Inc., 578 N.W.2d 757 (Minn. 1998)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

DISMISSAL. In attempting to avoid foreclosure against the debtors' farmland, the debtors transferred the land to a buyer and retained a right to repurchase the land at a later date. The debtors were unable to obtain financing or another buyer and the option expired. The buyer filed suit to evict the debtors who prevented that action by filing for bankruptcy. The debtors argued that the sale was actually a loan transaction and had litigated that issue in the state courts without success. The Bankruptcy Court held that it was barred from relitigating the issue and that the filing for bankruptcy was made in bad faith in that the debtors were attempting to circumvent the state courts' judgments. The court held that the case would be dismissed for bad faith. ***In re* Hatcher, 218 B.R. 441 (Bankr. 8th Cir. 1998)**.

EXECUTORY CONTRACTS. A corporation sold a ranch to a limited partnership and retained an option to repurchase a portion of the ranch. The corporation filed for bankruptcy and as part of that case, the debtor filed a Notice of Assumption which assumed some executory contracts and rejected all executory contracts not expressly assumed. The option was not mentioned as one of the assumed executory contracts. The limited partnership also filed for bankruptcy and sought to sell the ranch to a second limited partnership free and clear of the option. The issue was whether the option was an executory contract, rejected as part of the Notice of Assumption. The lower courts had followed *In re Easebe Enters., 900 F.2d 1417 (9th Cir. 1990),* which they interpreted as holding that all option contracts were executory. The appellate court, *en banc*, held that interpretation was too broad and held that an option contract was executory only when there remained performance required by both parties at the time of the bankruptcy petition. If the option had not been exercised by some act of the option holder, the option contract is not executory. ***In re* Robert L. Helms Const. & Dev. Co., Inc., 139 F.3d 702 (9th Cir. 1998), *rev'g and rem'g*., 110 F.3d 1470 (9th Cir. 1997)**.

EXEMPTIONS

HOMESTEAD. The debtor was of advanced age and living in a retirement community when the debtor caused an automobile accident. The injured party sued the debtor for an amount in excess of the insurance carried by the debtor. The debtor's family members worked with the debtor to convert most of the debtor's liquid, non-exempt assets into the purchase of a residence, effectively removing the assets from the reach of the injured party who was a creditor in the bankruptcy case. In order to move to the residence, the debtor had to hire a live-in nurse. The residence was clearly larger than needed by the debtor and was expanded in order to use up all of the liquid assets. The court held that the debtor was not entitled to an exemption for the residence because the residence was purchased as part of a fraudulent transfer. ***In re* Sholdan, 218 B.R. 475 (Bankr. D. Minn. 1998), *on rem. from,* 108 F.3d 886 (8th Cir. 1997)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

PREFERENTIAL TRANSFERS. In June 1992, the IRS assessed the debtor for unpaid taxes for 1984 through 1986 and in April 1993, the IRS filed a tax lien notice. The IRS levied against the debtor's social security benefits, including levies made within 90 days before the debtor filed for bankruptcy. The debtor sought recovery of the amounts levied within 90 days before the petition filing. The central issue was whether the IRS received more from the levies than it would have received in the bankruptcy case. The debtor argued that, if the benefits were not levied, the debtor might have spent the proceeds and the proceeds would not have been available for distribution to the IRS. The IRS noted that the benefits were exempt as to all other claims except the tax claims; therefore, it was entitled to the proceeds in any case. The court held that the debtor's right to receive the social security benefits was an interest in property attachable by a tax lien and the transfer of the benefits occurred when the tax lien became effective, the date of the assessment of the taxes. The effective date as to third parties would be the date of the filing of the tax lien notice. Because the tax lien became effective more than 90 days before the filing of the bankruptcy petition, the transfer of the benefits occurred more than 90 days before the petition and was not preferential. ***In re* Roberts, 219 B.R. 573 (Bankr. D. Or. 1997)**.

CONTRACTS

EXCUSED PERFORMANCE. The plaintiff entered into contracts to sell 1.2 million pounds of rice directly to a processor, the defendant. The processor needed the rice solely to meet a contract with a processed foods retailer who was marketing a brand of ready-to-eat rice products. The sale contract provided that if the market conditions made the processing of rice uneconomical, the defendant was excused from performance on the contract. The retailer backed out of its contract with the defendant when the rice product did not sell as anticipated. The defendant then refused any additional shipments of rice from the plaintiff but helped the plaintiff locate another buyer. That buyer decided against purchasing the remaining rice when the plaintiff could not provide proof of ownership of the rice. The plaintiff then sued for breach of contract and asked for damages equal to lost profits. The court held that the defendant was excused from performance because (1) the plaintiff could not demonstrate ownership of the remaining rice due under the contract and (2) the market condition provision in the contract allowed the defendant to refuse shipments when its buyer stopped buying rice. **Guillory Farms, Inc. v. Amigos Canning Co., 966 S.W.2d 830 (Tex. Ct. App. 1998)**.

HEDGE-TO-ARRIVE CONTRACTS. An Illinois jury awarded a grain producer over $200,000 in punitive and other damages for breach of contract and fiduciary duty by a grain elevator resulting from a hedge-to-arrive contract. The producer had apparently attempted to buy out the contract or roll over the commitment under the contract but the elevator had refused and demanded payment of the margin, which exceeded the value of the grain. Information on this case was submitted by Scott Buchanan of Algona, IA and Nicholas Iavarone of Chicago.

SEED GROWING CONTRACT. The plaintiff grew seed corn for the defendant. The growing contract provided that the defendant supplied the seed for the crop and that the plaintiff had the responsibility for any damage to the crop from application of herbicides. The contract required the plaintiff to notify the defendant before applying any herbicides to the crop and gave the defendant the right to prohibit the use of any herbicide. The plaintiff had noticed a large amount of grass in the field and asked the defendant for recommendation of a herbicide to use. The defendant recommended a specific herbicide which the plaintiff applied. The plaintiff testified that the plaintiff thought it was required to use the herbicide. The seed crop was apparently damaged by the herbicide and the plaintiff sued for breach of contract for the loss of crop. The defendant counterclaimed for the same loss based on the contract provision that made the plaintiff responsible for any herbicide damage. The plaintiff argued that the contract was ambiguous where the defendant requested the use of a herbicide because the contract also allowed the defendant to enter the fields to determine whether the plaintiff was growing the crop properly. The court held that the contract was not ambiguous in assigning responsibility for crop damage from herbicides to the plaintiff. The court noted that the same provision gave the plaintiff the authority whether to use a herbicide and that the provision gave the defendant only the authority to prohibit the use of a herbicide and not any authority to require the use of a herbicide. **Seegers v. Pioneer Hi-Bred Intern., Inc., 997 F. Supp. 1124 (N.D. Ind. 1998)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The FCIC has issued interim regulations amending the Catastrophic Risk Protection (CAT) endorsement regulations to (1) delete the provisions regarding the termination of the policy for failure to pay CAT administrative fees since those provisions have been incorporated into the Basic Provisions; (2) specify that the administrative fee for CAT coverage for each crop in the county will be $10 plus the greater of either $50 or 10 percent of the premium under the CAT policy; and (3) revise the date CAT fees will be due to coincide, with when the premium is due for additional coverage. This last rule eliminates all references to refunding administrative fees in the event that the producer decided to change coverage levels prior to the sales closing date since fees would not have been paid. Also, this rule makes the provisions concerning the payment of administrative fees in the year of application consistent with the payment of administrative fees for limited coverage. This rule also eliminates the termination provisions since they have been incorporated into the Basic Provisions. **63 Fed. Reg. 40630 (July 30, 1998)**.

PEANUTS. The CCC has issued interim regulations amending the regulations for the peanut price support program to ease conditions for marketing Segregation 3 peanuts by allowing the peanuts to be reconditioned and regraded in certain limited instances. Peanuts are graded as ``Segregation 3'' peanuts when they are found by visual inspection to have Aspergillus flavus (A. flavus) mold. This rule would allow a farmer whose peanuts were found at a buying point inspection to have the mold to reclean those peanuts at the buying point and have them visually reinspected within 24 hours. The farmer could obtain such a re-inspection only once for any given lot. This rule was issued as an interim rule to allow relief with respect to the 1998 crop which should come to market shortly. **63 Fed. Reg. 41711 (Aug. 5, 1998)**.

POULTRY AND RABBITS. The AMS has adopted as final amendments to regulations governing the voluntary poultry and rabbit grading programs. The revisions simplify the definition about feathers on poultry, provide an alternative grademark for poultry and rabbit products, provide for the use of a “Prepared From” grademark to officially identify specialized products that originate from officially graded poultry, change the sample plan used by graders, and increase the lighting intensity required at grading stations. **63 Fed. Reg. 40627 (July 30, 1998)**.

FEDERAL ESTATE AND GIFT TAX

REVOCABLE TRANSFERS. Before the decedent died the decedent executed a durable power of attorney in favor of an heir. Before the decedent died the heir issued several checks on the decedent’s checking account to various heirs but the checks were not delivered or cashed until after the decedent died. The estate argued that, under the relation-back doctrine, the date of the gifts related back to the date the checks were executed, removing the gifts from the decedent’s gross estate. The estate claimed that the decedent could not revoke the gifts because the decedent was too ill. The estate cited *Estate of Metzger v. Commissioner, 100 T.C. 204 (1993), aff’d, 38 F.3d 118 (4th Cir. 1994)* as allowing use of the relation-back doctrine to treat the checks as gifts on the date of execution, instead of the date the check is cashed. The court distinguished *Metzger* as applying only to charitable gifts and held that noncharitable gifts remain revocable until the decedent's death if not cashed before the decedent's death. **Estate of Newman v. Comm'r, 111 T.C. No. 3 (1998)**.

FEDERAL INCOME TAXATION

ACCRUAL METHOD. The taxpayer was a manufacturer on the accrual method of accounting. The taxpayer offered retailers a cooperative advertising agreement under which the taxpayer would reimburse retailers a portion of expenses incurred to advertise the taxpayer's product. The retailer would obtain reimbursement by submitting evidence of the advertising and a statement of expenses. The IRS ruled that the taxpayer could deduct the costs of the advertising in the tax year the advertising was performed because the manufacturer's liability to pay a retailer for cooperative advertising services was incurred the year in which the services were performed, provided the taxpayer was able to reasonably estimate this liability, and even though the retailer did not submit the required claim form until a later tax year. **Rev. Rul. 98-39, I.R.B. 1998-__, __**.

DEPRECIATION-*ALM* § 4.03[4].* The taxpayer operated an automobile leasing business, including sales of previously leased automobiles. During the lease periods, the debtor carried insurance on the residual value of the automobiles at the end of the leasing period. The issue was the depreciation method allowed for the insurance costs. The IRS ruled that the insurance premiums were to be depreciated using the straight line depreciation method over the leasing period of each automobile. **Ltr. Rul. 9830001, March 3, 1998**.

FARM AND RANCH RISK MANAGEMENT ACCOUNTS. Legislation has been introduced in the U.S. Senate to create a deduction for contributions made to a "farm or ranch risk management account" (FARRM account). The deduction would be limited to 20 percent of the taxpayer's taxable income from an eligible farming business. An eligible farming business is defined as "any farming business (as defined in [I.R.C.] section 263A(e)(4)) which is not a passive activity (within the meaning of [I.R.C.] section 469(c)) of the taxpayer." The contributions are to be invested in cash or other interest bearing obligations with trust income taxable to the trust. The FARRM account is to be a grantor trust for the benefit of the taxpayer and contributions are to be redistributed to the grantor within five years, with distributions included in income. **S. 2371, § 201, 105th Cong., 2d Sess. (1998)**.

INCOME. The taxpayer operated a small Belgian cattle breeding operation in which the taxpayer bred cattle for the taxpayer's own business and acted as an agent for two other breeders. The taxpayer did not keep accurate records of the income and expenses of the business and did not file income tax returns for three tax years. The IRS made assessments determined by reconstruction of income based on the taxpayer's personal records. The taxpayer claimed that some of the amounts received for cattle were actually amounts received as agent for the other breeders and that those amounts were paid by cash to the other breeders. However, neither of the other breeders could substantiate those cash payments. The taxpayer also claimed feed expenses greater than those allowed by the IRS. The taxpayer presented testimony from the feed dealers as to the amount of feed purchased by cash. The court held that the IRS determination of income was not disproved by the taxpayer but that the additional expenses were sufficiently proved by the taxpayer. The taxpayer was also not allowed a deduction for travel expenses because the taxpayer had no records to prove the expenses. **Johnson v. Comm'r, T.C. Memo. 1998-275**.

INCOME AVERAGING. Legislation has been introduced in the U.S. Senate to make the income averaging for farmers provision permanent. TRA 1997, § 933(a) (1997), adding I.R.C. § 1301. See Harl, "Income Averaging," 8 *Agric. L. Dig.* 117 (1997). **S. 2371, § 202, 105th Cong., 2d Sess. (1998)**.

INTEREST. The taxpayers operated a dairy farm and were found to have improperly underreported business income by transferring assets and income to a corporation. The taxpayer claimed that additional interest expense incurred by the corporation should have also been reallocated to them. However, the taxpayers presented no evidence of a loan, a promissory note, the identity of a creditor, or the amount of interest paid. The court held that no interest deduction would be allowed. See also *Scherping v. Comm'r, T.C. Memo. 1991-384 and T.C. Memo. 1991-388*. **Scherping v. Comm'r, T.C. Memo. 1998-288**.

NET OPERATING LOSSES. The taxpayer corporation acquired a contract oil drilling corporation. The acquired corporation had unused net operating loss (NOL) carryovers and claimed deductions for NOLs in tax years after the acquisition by the taxpayer. The court found that the acquired corporation continued in the same business as before the acquisition and actively carried on that business, even though no business was transacted for a couple of years before the acquisition. The court noted that the oil drilling business was at a standstill during this time and that the acquired corporation was fully able and ready to perform drilling services once the market for oil improved. The court held that the unused net operating losses could be carried forward to tax years after the acquisition. **Samson Invest. Co. v. Comm'r, T.C. Memo. 1998-271**.

PARTNERSHIPS-*ALM* § 7.03.*

ADMINISTRATIVE ADJUSTMENTS. The taxpayer was the sole shareholder of an S corporation and one of two partners in a partnership. The IRS disallowed several deductions on the taxpayer's individual return which the taxpayer claimed had passed through from the corporation and partnership. The taxpayer's individual return did not include several items of income from the partnership's K-1 forms. The court held that the IRS was not required to first bring administrative adjustment proceedings against the corporation and partnership because both entities had fewer shareholders or partners than required by the administrative adjustment provisions. The court also held that, as to the partnership, the IRS was not required to file a FPAA because the taxpayer's individual return was not consistent with the partnership K-1s and the taxpayer did not notify the IRS about the inconsistency. The decision is designated as not for publication. **Davis v. Comm'r, 98-2 U.S. Tax Cas. (CCH) ¶ 50,600 (10th Cir. 1998)**.

DEFINITION. The taxpayer and another person each contributed 50 percent of the purchase price of two commercial properties. One property was rented to third parties for office space and the second property was rented to a grocery store. The taxpayer agreed to share all income and expenses equally with the other purchaser and the two parties provided services to the tenants. No written partnership agreement was executed and, on the advice of an accountant, no partnership return was filed; however, the taxpayer reported one-half of the profit and one-half of the expenses on the taxpayer's individual return. The court held that the taxpayer and other party intended to operate the properties as a partnership, holding that the parties demonstrated sufficient intent to operate the business of renting the properties as a partnership. **Cusick v. Comm'r, T.C. Memo. 1998-286**.

PARTNER'S BASIS. The IRS has adopted as final amendments to the regulations under I.R.C. § 465(b)(6) governing the definition of qualified nonrecourse financing which may be included in a partner's basis in an interest in a partnership. Section 465(b)(6) defines qualified nonrecourse financing as any financing that (1) is borrowed by the taxpayer for the activity of holding real property; (2) is borrowed by the taxpayer from a qualified person or represents a loan from any federal, state, or local government or instrumentality thereof, or is guaranteed by any federal, state, or local government; (3) is debt for which, except to the extent provided in regulations, no person is personally liable for repayment; and (4) is not convertible debt. Section 465(b)(6)(A) provides that qualified nonrecourse financing must be secured by real property used in the activity of holding real property. Section 465(b)(6)(E), however, provides that the activity of holding real property includes the holding of personal property that is incidental to making real property available as living accommodations. The regulations provide that financing can qualify as qualified nonrecourse financing if, in addition to the real property used in the activity of holding real property, the financing is secured by both real property and other property that is incidental to the activity of holding real property.

Section 465(b)(6)(B)(iii) provides that, except to the extent provided in regulations, no person may be personally liable for repayment of qualified nonrecourse financing. A partnership is generally treated as a person under the IRC. Thus, any financing for which a partnership is personally liable is not qualified nonrecourse financing under section 465(b)(6)(B)(iii), even if no partner is personally liable for the financing. The regulations provide that the personal liability of a partnership (including an LLC that is treated as a partnership) is disregarded in determining whether a financing is qualified nonrecourse financing if the entity's only assets are real property used in the activity of holding real property or both real property and other property that is incidental to the activity of holding real property, and no other person is liable for the financing. In addition, the regulations provide that the portion of nonrecourse financing for which no person is personally liable can qualify as qualified nonrecourse financing. **63 Fed. Reg. 41420 (Aug. 4, 1998), *adding* Treas. Reg. § 1.465-27**.

PENSION PLANS. For plans beginning in July 1998, the weighted average is 6.55 percent with the permissible range of 5.90 to 6.95 percent (90 to 106 percent permissable range) and 5.90 to 7.21 percent (90 to 110 percent permissable range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 98-37, I.R.B. 1998-__, __**.

REFUND. The taxpayer had filed for an automatic extension for filing 1986 taxes and had paid $25,000 with the extension request. The taxpayer did not file the 1986 return until 1993 and that return claimed a refund of $10,000. The IRS refused to pay the refund as time barred under I.R.C. § 6511 because the refund request was not made within two years after the taxes were paid. The taxpayer argued that the $25,000 extension payment was not a payment of the taxes but only a deposit and that the taxes were not paid until the return was filed. The court held that the extension payment was a payment of taxes for purposes of I.R.C. § 6511 and that the refund claim was time barred by the three year limitation period of I.R.C. § 6511(a). **Ott v. United States, 141 F.3d 1306 (9th Cir. 1998)**.

RENT. The taxpayer was a corporation owned by two dentists. The corporation leased a building from one of the shareholders. The rent charged was based on research done by the shareholders and was similar to the rent charged for another building owned by the shareholder, except that the other building's rent was lower because the building was unimproved. The rent was much higher, however, than was charged to another dentist who rented a portion of the first floor for one day per week. The court found that the rent charged was the fair market rental for the space and was fully deductible by the corporation. The court found that the lower rent charged for space in the same building resulted from the short usage limitation and other factors. **Associated Dentists of River Falls v. Comm'r, T.C. Memo. 1998-287**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

SHAREHOLDER. The taxpayer was a member of a law firm which was an S corporation. In August 1989, the corporation agreed to sell 1,000 shares of stock to the taxpayer and the taxpayer was made president, managing partner and chief financial officer of the corporation. The corporation changed its name to include the taxpayer's name and filed form K-1 for 1989 and 1990 for the taxpayer as a shareholder. The price for the shares was to be paid in the future but the taxpayer did not make the payment and in June 1990 left the firm. The court held that actual issuance of the shares was not necessary for the taxpayer to be treated as a shareholder. The court held that the actions of the parties indicated that the taxpayer was a shareholder as of the date of the agreement and should have included the taxpayer's share of the corporation income in the taxpayer's gross income for 1990. **Pahl v. Comm'r,**

98-2 U.S. Tax Cas. (CCH) ¶ 50,602 (9th Cir. 1998), *aff'g*, T.C. Memo. 1996-176.

SALE OF FARM PROPERTY. Legislation has been introduced in the U.S. Senate which would allow natural persons to exclude from income up to $500,000 ($250,000 for married persons filing separately) of gain from the sale of qualified farm property, including land, during the person's lifetime. The provision is similar to the exclusion of gain provision for the sale of a personal residence enacted in 1997. Qualified farm property includes property used for farming purposes by the taxpayer or a member of the taxpayer's family in which the taxpayer or a member of the taxpayer's family materially participates in the farming operation. **S. 2388, 105th Cong., 2d Sess. (1998), adding I.R.C. § 121A**.

SELF-EMPLOYMENT TAX. Although the taxpayer had self-employment income, the taxpayer did not pay any self-employment taxes with the taxpayer individual income tax return. The taxpayer argued that the tax was unconstitutional because the social security fund would not be able to pay any benefits to the taxpayer when the taxpayer retired. The court held that the self-employment tax was constitutional. **Secretario v. Comm'r, T.C. Memo. 1998-283**.

TIMBER. The taxpayer was engaged in forest management, logging, and the production of various wood and paper products. Prior to 1978, the taxpayer elected to treat the cutting of timber by it as a sale or exchange under I.R.C. § 631(a). The IRS determined deficiencies against the taxpayer after determining that the taxpayer incorrectly valued the timber harvested during several years. The court held that the best indicia of the timber's fair market value were contemporaneous sales of comparable timber. Once selected, the comparable sales must be adjusted to reflect equivalent quality, quantity, accessibility, and location to the eligible timber. Furthermore, economic trends must be considered and adjustments made for those trends. The adjustments to the comparable sales considered included logging road cost adjustment; discount to current cash value of long-term, deferred payment contracts; inclusion of export sales in the comparable sales data base; scale conversion; growth adjustment; adjustment for price trends over time; logging costs; Oregon severance tax; reallocation of bid price; utility grade timber; adjustment for Doyle Scale; and adjustment for risk of loss. See also *Willamette Industries, Inc. v. Comm'r, T.C. Memo. 1980-577 and T.C. Memo. 1987-479, as supplemented by T.C. Memo. 1990-339 and T.C. Memo. 1991-389*. **Willamette Industries, Inc. v. Comm'r, 98-2 U.S. Tax Cas. (CCH) ¶ 50,597 (9th Cir. 1998), *aff'g*, T.C. Memo. 1992-407**.

LANDLORD AND TENANT

BREACH OF CONTRACT. The plaintiff leased wheat crop land to the defendant. The lease provided for a minimum rent of $40,000 plus one third of the crop over $120,000. The defendant paid a rent of $43,000 based on a claimed $125,000 wheat crop during the year. The plaintiff sued for additional rent, claiming that the defendant actually harvested more wheat and should have produced more wheat. The plaintiff produced federal crop insurance records and the testimony of neighbor farmers as to the production capabilities of the land and the harvest from the land. The plaintiff argued that the lease had an implied agreement that the defendant would farm the land in a workmanlike manner and that the failure of the defendant to produce more wheat was a breach of this agreement. The jury held for the defendant. The court found that the lease did contain a provision for the lessee to farm the land with diligence and the lessee's best skill and judgment. The court held that there was no implied covenant to farm the land in a workmanlike manner because the lease had a provision governing the standard of conduct of the lessee. Because the jury was presented the lease, the jury verdict was based on knowledge of the lease provisions; therefore, the court upheld the jury verdict for the defendant. **Schumacher v. Stephens, 956 P.2d 76 (Mont. 1998)**.

SECURED TRANSACTIONS

PRODUCER'S LIEN. The debtor was a walnut processor which purchased walnuts from a grower. The debtor did not pay for any of the walnuts delivered but sold all the walnuts and deposited the proceeds in a separate bank account. A bank had a perfected security interest in the debtor's inventory, accounts receivable and proceeds and claimed a priority security interest in the walnut proceeds. The grower sought to extend the producer's lien, Cal. Food & Agric. Code § 55631, to the proceeds of the walnuts. The court held that the producer's lien statute had no provision for extending the lien to the proceeds of the walnuts, but was limited to recovery of the walnuts in inventory. The grower argued that criminal penalties provided in the statute for the sale of commodities without paying the producer indicated that the grower had an interest in the proceeds of the commodity. The court refused to extend such an interpretation without express language in the statute that the producer's lien extended to the proceeds of the commodity. Thus, the court held that the grower did not have any security interest in the proceeds of the walnuts and that the bank's security interest had priority. The court did not discuss the issue that the holding in this case would effectively allow the bankruptcy estate to circumvent the criminal penalties provision since the payment of the walnut proceeds to the bank without payment to the producer would be a misdemeanor if done by the debtor. In addition, the court failed to discuss the validity of the bank's security interest in proceeds of commodities which the debtor was prohibited by law from distributing to the bank or anyone other than the producer. The California legislature clearly wanted to protect producers and that intent was circumvented in this case. ***In re* Sargent Walnut Ranches, Inc., 219 B.R. 880 (Bankr. E.D. Cal. 1998)**.

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by Neil E. Harl and Roger A. McEowen

January 4-8, 1999

Spend a week in Hawai'i in January 1999! Balmy trade winds, 70-80 degrees, palm trees, white sand beaches and the rest of paradise can be yours; plus a world-class seminar on Farm Estate and Business Planning by Dr. Neil E. Harl and Prof. Roger A. McEowen. The seminar is scheduled for January 4-8, 1999 at the spectacular ocean-front Royal Waikoloan Resort on the Big Island, Hawai'i.

Seminar sessions run from 8:00 a.m. to 12:00 p.m. each day, Monday through Friday, with a continental breakfast and break refreshments included in the registration fee. Each participant will receive a copy of Dr. Harl's 430 page seminar manual, *Farm Estate and Business Planning: Annotated Materials* which will be updated just prior to the seminar.

Here are some of the major topics to be covered:

• Introduction to estate and business planning.

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

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

• Federal estate tax, including alternate valuation date, special use valuation, 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.

Early registration is important to obtain the lowest airfares and insure availability of convenient flights at a busy travel time of the year. Attendees are eligible for **substantial discounts on hotel rooms at the Royal Waikoloan Resort**, the site of the seminar.

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.

Subscribers should have received a brochure in the mail.

Call/fax Robert Achenbach at 1-541-302-1958 if you would like a brochure.