taxed as gain to the taxpayer. The debt ($43,356) would be paid off and the difference between the debt and fair market value or $11,079 would be paid to the debtor less any expenses involved. For the Campbell property, the usual outcome would be for the difference between the basis and fair market value ($106,620—$84,459) or $22,161 to be taxed as gain to the taxpayer. The debt ($88,491) would be paid off and the difference between the debt and fair market value or $18,129 would be paid to the debtor, again less any expenses involved.

The opinion in *Emmons v. Commissioner*[9] recites that indeed the mortgages were paid off on the respective properties but that the debtor did not receive the excess of fair market value over the mortgage on either property. The opinion states that "petitioners did not receive any other amounts from the sale" on either the Honore property or the Campbell property.

It is not clear from the opinion why the debtor did not receive the overplus from the foreclosure sale. Presumably, it was because other creditors laid claim to the proceeds although other explanations are possible.

The Commissioner, properly, determined that the taxpayers had long-term capital gains in the amount of $43,633, computed as the difference between the total sale price of both sales ($161,055) and the taxpayers' total adjusted basis in both properties ($117,422).[10] At the trial, the Commissioner "…conceded $29,208 of the $43,633 adjustment for capital gains, and now contends that petitioners only had gain of $14,425, which is the difference between their total adjusted basis in the two properties ($117,422) and the combined mortgage liabilities from which they were relieved ($131,847)."[11] The taxpayers continued to claim they had no gain because they did not receive any proceeds from the foreclosure sales.[12]

The Tax Court held that the taxpayers had gain of $14,425, the extent to which the mortgages exceeded their basis in the properties.[13]

Was the case correctly decided?

There is no doubt that the taxpayers had gain to the extent the mortgages exceeded their bases in the two properties. The question is why the taxpayers did not have gain of $43,633, the difference between the foreclosure sale price and the adjusted basis on each of the two properties.

• If the taxpayers' other creditors laid claim to the balance of the foreclosure proceeds, that should not affect the gain to the taxpayers of $43,633. The other debt was simply paid off with the foreclosure sale proceeds in a manner similar to the mortgages on the two rental properties.

• If the taxpayers, through inattention or otherwise, did not collect the overplus, that arguably should not affect the amount of gain, either. Depending upon the circumstances, the taxpayers might have a deduction for the amount reported into income yet not received.

The case may have been correctly decided but the decision raises questions for which answers are not provided. Most importantly, why did the Commissioner concede the gain of $29,208?

FOOTNOTES

1 Emmons v. Comm'r, T.C. Memo. 1998-173. See generally 4 Harl, *Agricultural Law* § 39.02 (1997); Harl, *Agricultural Law Manual* § 4.02[13] (1998). See also Harl, "Gain From Insolvent Taxpayers," 6 *Agric. L. Dig.* 97 (1995); Harl, "Turn Over of Assets to Creditors," 1 *Agric. L. Dig.* 69 (1990).

2 See Rev. Rul. 73-36, 1973-1 C.B. 372 (capital loss measured by difference between basis and amount of cancelled obligation).

3 See, e.g., Gehl v. Comm'r, 102 T.C. 784 (1984), *aff'd*, 95-1 U.S. Tax Cas. (CCH) ¶ 50,191 (8th Cir. 1995) (excess of fair market value of property over basis was gain for insolvent taxpayer).

4 Treas. Reg. § 1.1001-2 (c), Ex. 8. See, e.g., Bressi v. Comm'r, T.C. Memo. 1991-651.

5 *Id.* See I.R.C. § 108.

6 T.C. Memo. 1998-173.

7 *Id.*

8 *Id.*

9 T.C. Memo. 1998-173.

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

DOGS. The plaintiff's cattle were killed by a dog belonging to the defendant who admitted liability for the loss of the cattle. The issue was whether the plaintiff could be awarded double damages (limited to double the value of the livestock) under Or. Rev. Stat. § 609.140(1), since the action was brought more than three years after the loss of the cattle. The plaintiff argued that the double damage provision was compensatory and not subject to the three year statute of limitations applied to penalty damages under Or. Rev. Stat. § 12.100(2). The court examined the legislative history of the double damages provision and held that the legislature intended the double damages to be only compensatory; therefore, the plaintiff could be awarded double the value of the livestock in an action brought more than three years after the loss involved. **Diaz v. Coyle, 953 P.2d 773 (Or. Ct. App. 1998)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

FEES. Under 11 U.S.C. § 104(b)(1), various fees associated with bankruptcy filings are adjusted for inflation every three years:

11 U.S.C. Section	Before April 1, 1998	New dollar amount
Section 109(e)--allowable debt limits for filing bankruptcy under Chapter 13	$250,000	$269,250
	750,000	807,750
Section 303(b)--minimum aggregate claims needed for the commencement of an involuntary bankruptcy:		
(1)--in paragraph (1)	10,000	10,775
(2)--in paragraph (2)	10,000	10,775
Section 507(a)--priority claims:		
(1)--in paragraph (3)	4,000	4,300
(2)--in paragraph (4)(B)(i)	4,000	4,300
(3)--in paragraph (5)	4,000	4,300
(4)--in paragraph (6)	1,800	1,950
Section 522(d)--value of property exemptions allowed to the debtor:		
(1)--in paragraph (1)	15,000	16,150
(2)--in paragraph (2)	2,400	2,575
(3)--in paragraph (3)	400	425
	8,000	8,625
(4)--in paragraph (4)	1,000	1,075
(5)--in paragraph (5)	800	850
	7,500	8,075
(6)--in paragraph (6)	1,500	1,625
(7)--in paragraph (8)	8,000	8,625
(8)--in paragraph (11)(D)	15,000	16,150
Section 523(a)(2)(C)--"luxury goods and services" or cash advances obtained by the consumer debtor within 60 days before the filing of a bankruptcy petition, which are considered nondischargeable.	1,000	1,075

63 Fed. Reg. 7179 (Feb. 12, 1998).

CHAPTER 12-*ALM* § 13.03[8].*

ESTATE PROPERTY. The debtor had purchased 11 horses from a creditor on an installment basis. The debtor was to make monthly payments and the creditor would transfer one set of registration papers for each installment. The debtor made only two installments and the creditor sued in state court on the contract. The court ordered seizure of the horses by the sheriff who boarded the horses with the creditor. The horses were in this state when the debtor filed for Chapter 12 and sought return of the horses and the registration papers as estate property. The court held that, under state law, the debtor had property rights in the horses and papers because the horses had not yet been sold by the sheriff. Therefore, the horses and papers were estate property upon the bankruptcy filing and were to be returned to the estate. However, the court required the debtor to provide adequate protection of the creditor's interest in the horses and papers before the turnover was to be made. ***In re* Becker, 217 B.R. 231 (Bankr. M.D. Tenn. 1998)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

LEVY. The debtors filed for Chapter 13 and made payments to the Chapter 13 trust account. The IRS had filed a claim for unpaid taxes. The debtors voluntarily dismissed the case and the IRS filed a notice of levy with the trustee to collect taxes owed by the debtors. The debtors sought recovery of the money to them. The court found that the taxes were owing and the levy was properly filed. The Bankruptcy Court ordered the funds returned to the debtors because of Section 1362(a)(2). The District Court reversed, holding that the principle of judicial economy required the court to order payment of the money to the IRS because the IRS would be able to immediately levy the funds directly from the debtors. ***In re* Beam, 98-1 U.S. Tax Cas. (CCH) ¶ 50,469 (D. Or. 1998)**.

CONTRACTS

HEDGE-TO-ARRIVE CONTRACTS. This case is one of 50 or more cases currently pending in Iowa District courts. The plaintiff cooperative and defendant grain farmer had been doing business for many years, using many types of grain transactions, including grain forward contracts. In 1991 through 1996, the parties entered into several hedge-to-arrive (HTA) contracts for corn and soybeans, usually with no problems because the defendant used the contracts for only a small portion of the total harvest, grain prices did not fluctuate much during the contracts, and the defendant usually delivered during the first year. However, in 1995, the parties entered into large three year HTA contracts and during the contracts, the price of corn increased above the contract price. In addition, the defendant's production was insufficient to meet the contract amounts and the defendant sought to roll over the contracts to later production years. When the contract and current corn prices became too divergent, the plaintiff sent a letter to the defendant which indicated that the plaintiff wanted to terminate the contracts with delivery of the grain by the defendant. The defendant responded in writing that the defendant was repudiating the contracts unless the contracts were later found to be enforceable, in which case the defendant would continue to perform under the contracts. The plaintiff then demanded adequate assurance that the defendant would deliver the corn in the contracts. The defendant had sought clarification of the terms of the contract and refused to promise delivery until those terms were settled. However, the defendant made written assurance that, if the contracts were held to be enforceable, the defendant would perform on the contracts. The plaintiff canceled the contracts and brought suit for anticipatory breach of contract. The court held that the defendant's repudiation of the contract was reasonable grounds for insecurity sufficient to require adequate assurance but also held that, given the history of the defendant to perform on contracts, the defendant's written promise to perform was adequate assurance. Therefore, the court held that the plaintiff's cancellation of the contract was a breach of contract and precluded the plaintiff's recovery of any damages on the contract. See also Harl, "Adequate Assurance in Contracts," 9 *Agric. L. Dig.* 41 (1998). **Land O'Lakes, Inc. v. Hanig, No. EQCV056593 (Iowa D. Ct. May 29, 1998)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The FCIC has adopted as final regulations covering specific crop provisions for the insurance of stonefruit to be used in conjunction with the Common Crop Insurance Policy, Basic Provisions. The amendments restrict the effect of the current stonefruit endorsement to the 1998 and prior crop years. **63 Fed. Reg. 29933 (June 2, 1998)**.

The FCIC has adopted as final regulations which include the processing beans endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1998 and earlier crop years. **63 Fed. Reg. 31331 (June 9, 1998)**.

FARM LOANS. The FSA has adopted as final regulations which provide that a Notice of the Availability of Loan Service and Debt Settlement Programs for Delinquent Farm Borrowers will be sent after a borrower is dismissed from bankruptcy if the borrower was not previously notified and the account was not accelerated. **63 Fed. Reg. 29339 (May 29, 1998)**.

PRODUCTION LOANS. The CCC has adopted as final regulations under the production flexibility contract regulations.

The regulations add a final date for producers to designate payment shares and provide supporting documentation to be eligible to earn contract payments in a given fiscal year when payment shares have not been designated in such fiscal year. All producers sharing in the contract payment on a farm, whose payment shares have not been designated for such fiscal year, must sign a new contract designating payment shares, and provide supporting documentation no later than August 1 of such fiscal year to be eligible to earn a contract payment in such fiscal year.

The regulations change the dates a producer or owner must inform the county committee of changes in interest. A producer or owner must inform the county committee of changes in interest by August 1 of the fiscal year in which the change is made if producers on the contract remain the same but payment shares change; or no later than August 1 of such fiscal year, if a new producer is being added to the contract.

The regulations add a final date to request advance payments for fiscal year 1998 and each subsequent fiscal year. To receive the advance payment for fiscal year 1998, and each subsequent fiscal year, all producers sharing in the contract payment on the farm must, no later than 15 days prior to the final date to issue the advance payment: (1) sign the contract designating payment shares and provide supporting documentation, if applicable; and (2) request the advance payment.

The regulations clarify that a lease is a cash lease, if the lessor receives only a guaranteed sum certain cash payment, or fixed quantity of the crop. This rule also changes provisions with respect to combination leases. Combination leases are leases that contain provisions for both a guaranteed amount such as a fixed dollar amount, or quantity and a share of a crop or crop proceeds. Combination leases include those leases that provide for the greater of a guaranteed amount, or share of the crop or crop proceeds. The amendment provides that all combination leases shall be considered share leases for fiscal year 1998, and later fiscal years.

The regulations change the date by which all landowners, tenants and sharecroppers failing to reach an agreement regarding the division of contract payments for a fiscal year, must execute a contract to be eligible to receive the contract payment for such fiscal year. If the landowners, tenants and sharecroppers on a farm fail to reach an agreement regarding the division of contract payments for a fiscal year, the county committee shall make the payment at a later date if all persons eligible to receive a share of the contract payment have executed a contract no later than August 1 of that fiscal year, and subsequently agreed to the division of contract payment. **63 Fed. Reg. 31102 (June 8, 1998)**.

TUBERCULOSIS. The APHIS has issued proposed regulations amending the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Hawaii from an accredited-free (suspended) state to an accredited-free state. **63 Fed. Reg. 30582 (June 5, 1998)**.

FEDERAL ESTATE AND GIFT TAX

GENERATION-SKIPPING TRANSFERS-*ALM* § 5.02[1].* The decedent had established a trust for descendants of the decedent's spouse's parents and the descendants of unrelated persons. All of the persons who had an interest in the trust were skip persons because they were at least two generations below the decedent; therefore, the trust was a skip person under I.R.C. § 2613(a)(2) because all interests in the trust were held by skip persons. The IRS ruled that the devise from the decedent's will to the trust was a direct skip under I.R.C. § 2612(c)(1) because the devise was a transfer subject to a tax imposed by Chapter 11 of an interest in property to a skip person. For purposes of future distributions from the trust, the IRS ruled that, under I.R.C. § 2653(a), the trust would be treated as if the transferor of the property was one generation higher than the highest generation having an interest in the trust. The highest generation with an interest in the trust was the grandnephew and grandniece generation. Accordingly, for purposes of determining whether future distributions were subject to the GST, the transferor would be deemed to be a member of the niece and nephew generation. The great-grandnieces and great-grandnephews would be considered skip persons because they were at least two generations below the niece and nephew generation. The children of the decedent's unrelated friends also were skip persons because their generation assignment was three generations below the decedent and therefore, two generations below the nieces and nephews after the application of I.R.C. § 2653(a). Because the grandnieces and grandnephews were no longer members of a generation which was at least two generations below the transferor, the IRS concluded that distributions to the

******Agricultural Law Manual* **(ALM). For information about ordering the** ***Manual*, see the last page of this issue.**

grandnieces and grandnephews would not be transfers subject to GSTT. **Ltr. Rul. 9823006, Feb. 25, 1998**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* The decedent had created a trust prior to 1981 and the decedent's will provided for funding of the trust from the residuary estate an amount equal to "the maximum marital deduction allowable to my estate for federal estate tax purposes, except that this sum shall not exceed the minimum amount which…will reduce the federal estate tax payable to zero." The decedent died after 1981. The IRS ruled that the clause was not a maximum marital deduction clause and that the entire amount passing to the trust was eligible for the marital deduction. **Ltr. Rul. 9822056, Mar. 5, 1998**.

The taxpayer owned an interest in retirement plans and elected to receive an annuity from the plans after retirement. The annuity was based on the lives of the taxpayer's children and upon the death of the taxpayer, would be paid to a trust for the surviving spouse. The spouse was to receive the annuity as trust income and the trust income was not to be charged with the taxes associated with the annuity. The IRS ruled that the annuity would be included in the taxpayer's gross estate and the value of the annuity at the taxpayer's death would be eligible for the automatic QTIP election if made by the executor. **Ltr. Rul. 9822031, Feb. 25, 1998**.

SALE OF ESTATE PROPERTY. Under the decedent's will, the taxpayer was to receive one half of the proceeds of the sale of a residence. A will contest resulted in a stipulation by the heirs that the taxpayer would receive the residence. The residence was sold for an amount less than the estate tax valuation amount and the taxpayer claimed a loss as a deduction because the property was held for rental when sold. The court held that the residence was not owned by the taxpayer on the date of sale because the taxpayer provided no evidence of ownership and the closing statement for the sale listed the decedent's estate as the owner. **Hummel v. Comm'r, 98-1 U.S. Tax Cas. (CCH) ¶ 50,462 (S.D. Ind. 1998)**.

SALE OF RESIDENCE. The IRS has issued a memorandum on the estate and income tax consequences of the sale of a decedent's personal residence by the estate for a loss. The IRS stated that a loss was allowed to the estate only to the extent the residence was operated as income-producing property. In addition, a loss would not be allowed if, under state law, title to the property passed immediately to the heirs upon the decedent's death, such that the estate had no ownership interest in the property before the sale. The IRS also stated that, if a loss was allowable, the loss was reportable on the estate income tax return and included in calculating DNI. **SCA 1998-012.**

VALUATION. The issue in this case was the fair market value of three tracts of farmland included in the decedent's estate. Both the estate and the IRS used the comparables method and provided expert appraisals to support the valuation. The court found several inaccuracies in the estate expert's appraisal method, determining that the estate's appraiser first determined a value of the land and then sought comparables to match the predetermined value. The appraiser was found to have used erroneous data from the comparable sales and to have used sales more than 20 years old. Because the estate's appraiser's appraisal was completely discredited, the court upheld the IRS's valuation. **Est. of Hagerman v. U.S., 98-1 U.S.Tax Cas. (CCH) ¶ 60,312 (C.D. Ill. 1998)**.

FEDERAL INCOME TAXATION

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

COOPERATIVE. The taxpayer was an exempt agricultural cooperative. The cooperative facility included 40 acres with several storage buildings. During the winter months, the cooperative rented the space for a fee to the public for storing trailers, campers, motor homes, boats and cars. The items were placed in storage by volunteer members of the cooperative. The IRS ruled that the storage operation was an unrelated business and the volunteer involvement in the operation was insufficient to exempt the unrelated business income from taxation because the income was related primarily to the storage of the items and not the movement of the items in and out of storage. See *Rev. Rul. 78-144, 1978-1 C.B. 168*. **Ltr. Rul. 9822006, Jan. 29, 1998**.

DISCHARGE OF INDEBTEDNESS-*ALM* § 4.02[15].* The taxpayer was a corporation wholly owned by another corporation. The parent corporation sold parts to the taxpayer with the sales documented by accounts receivable. The accounts receivable were bona fide debt from the taxpayer to the parent corporation. The accounts receivable equaled the current fair market value of the parts in the taxpayer's inventory. The taxpayer had financial difficulties and the parent corporation canceled much of the accounts receivable. The IRS ruled that, under either I.R.C. § 108(e)(6) or § 108(e)(10)(A), the cancellation of the debt did not cause recognition of discharge of indebtedness income to the taxpayer and did not cause any change in the taxpayer's cost of goods sold deduction. The IRS characterized the transaction as a contribution of capital from the parent to the taxpayer. **Ltr. Rul. 9822005, Jan. 16, 1998**.

EMPLOYMENT TAXES. Under previous rules, if an employer had $500 or more of quarterly withheld employment taxes, the employer was required to make monthly deposits. The IRS has announced that the $500 amount has been increased to $1,000. If an employer has less than that amount due, the entire amount can be paid at the time of filing for the taxes. **IR-98-43**.

The taxpayer employed foreign agricultural workers to harvest seasonal crops. The workers were illegal aliens who applied for permanent resident status under the Special Agricultural Workers (SAW) program. The taxpayer did not withhold or pay federal employment taxes for the wages paid to these workers, claiming that the workers were exempt under I.R.C. § 3121(b)(1) as temporary agricultural workers. The court cited *Moorehead v. U.S., 774 F.2d 936 (9th Cir. 1985)* as establishing the requirements for temporary agricultural worker status for aliens: (1) the workers had to be lawfully admitted to the U.S. on a temporary basis and (2) the workers had to be lawfully admitted to the U.S. solely to perform agricultural labor. The court examined the SAW application process and determined that the process had three distinct stages: (1) application by the worker, (2) grant of temporary residence, and (3) grant of permanent residence. The court held that, during the first step of the process, the worker could remain in the U.S. only until a determination was made on the application and could perform only agricultural labor; therefore, during that stage of the process, the worker was exempt and the employer was not required to withhold and pay employment taxes. ***In re*** **Sun World Intern., Inc., 217 B.R. 281 (C.D. Cal. 1998)**.

FREEDOM OF RELIGION. The taxpayers were Quakers who paid only a portion of their taxes, excluding the pro rata share of taxes equal to the share of the budget spent on the Department of Defense. The taxpayers sought a ruling prohibiting the IRS from assessing penalties and interest on the unpaid taxes and requiring the IRS to separately levy for the unpaid taxes. The taxpayers believed that the separate levy would then be prohibited as against their religious beliefs. The court cited several precedents and held that religious belief was not an allowed excuse for failure to file and pay federal taxes. **Browne v. U.S.**, **98-1 U.S. Tax Cas. (CCH) ¶ 50,461 (D. Vt. 1998)**.

FUEL TAX. President Clinton on June 9 signed the Intermodal Surface Transportation Efficiency Act (ISTEA) reauthorization bill, including the following tax-related provisions:

All Highway Trust Fund excise taxes are extended through Sept. 30, 2005.

The ethanol and renewable-source methanol tax provisions are extended through Sept. 30, 2007, for the excise tax reduction and Dec. 31, 2007, for the income tax credit, respectively. The ethanol benefit is reduced from 54 cents per gallon to 53 cents per gallon for 2001-2002, 52 cents per gallon for 2003-2004, and 51 cents per gallon for 2005-2007.

The current motor fuels tax exemptions are extended generally for the period concurrent with the extension period for the taxes.

Refund procedures are combined for all taxable motor fuels, so that aggregation of quarterly amounts and filing of refund claims is allowed, once a single $750 minimum amount is reached.

The effective date of the requirement that terminals offer dyed fuel is delayed for two years, to July 1, 2000.

The 1.25-cents-per-gallon general fund excise tax on fuel used in trains that was set to expire on Sept. 30, 1999, is repealed, effective Nov. 1, 1998.

Beginning in 1998, cash compensation may be offered by employers to employees as an option in lieu of any qualified transportation benefit, or a combination of any of such benefits. No amount is includible in gross income or wages merely because the employee is offered the choice of cash and one or more qualified transportation benefits. The amount of cash offered is includible in income and wages only to the extent the employee elects cash.

The exclusion from income for transit passes and van-pooling provided by employers is increased to $100 per month, beginning after 2001. This amount is indexed for inflation, beginning after 2002. **H.R. 2400, 105th Cong., 2d Sess. (1998)**.

HOBBY LOSSES-*ALM* § 4.05[1].* The taxpayer was employed part time as an airline pilot. The taxpayer purchased a ranch on which the taxpayer bred, raised and sold cutting horses. The ranch never showed a profit and had limited receipts from sales in most years. The court held that the operation was not operated with the intent to make a profit because (1) the taxpayer did not keep complete and accurate records for the horse activity; (2) the taxpayer did not have a plan to make the activity profitable; (3) although the taxpayer had some experience with cutting horses, the taxpayer had little knowledge of the economics of the horse business; (4) the taxpayer received substantial personal pleasure from the activity; (5) the taxpayer's substantial amount of time spent at the activity primarily involved the personal pleasure aspects and not the business details; (6) the taxpayer had no reasonable expectation of a profit either from the sales or appreciation of business assets; (7) the activity produces only losses; and (8) the taxpayer had substantial income from employment which the horse activity losses offset. **Rinehart v. Comm'r, T.C. Memo. 1998-205**.

INTEREST RATE. The IRS has announced that for the period July 1, 1998 through September 30, 1998, the interest rate paid on tax overpayments is 7 percent and for underpayments is 8 percent. The interest rate for underpayments by large corporations is 10 percent. **Rev. Rul. 98-32, I.R.B. 1998-__**.

INVESTMENT TAX CREDIT. The taxpayer owned a storage facility used to warehouse clothing and other items sold through the taxpayer's mail order catalogs. The facilities had elaborate shelving systems, one of which was integrated into the structure of the building, the other existed inside and was independent of the building structure. The court held that neither shelving system was tangible personal property eligible for the investment tax credit. **L.L. Bean v. Comm'r, 98-1 U.S. Tax Cas. (CCH) ¶ 50,454 (1st Cir. 1998),** ***aff'g*****, T.C. Memo. 1997-175**.

***Agricultural Law Manual* (ALM). For information about ordering the *Manual*, see the last page of this issue.**

PARTNERSHIPS-*ALM* § 7.02[3].*

SALE OR EXCHANGE. A corporation and an individual formed a partnership. The corporation contributed its stock to the partnership through an intermediary temporary corporation and the individual contributed business assets. The corporation received an interest in the partnership and the individual received an interest in the partnership plus some of the stock of the corporation contributed to the partnership. The IRS ruled that the individual's contribution of business assets in exchange for the partnership interest and corporation stock was a sale or exchange as if between the partnership and a nonpartner. However, under I.R.C. § 1032, any gain to the partnership would not be recognized to the extent of the corporation's distributive share of partnership income. **Ltr. Rul. 9822002, Oct. 3, 1997**.

TIMBER INCOME. The taxpayer partnership operated a timber products business which makes various engineered lumber products from trees and scrap wood purchased from other companies. Under I.R.C. § 7704(d)(1)(E), partnerships which otherwise would be treated as corporations for federal income tax purposes are treated as partnerships if 90 percent of their income comes from processing or marketing of natural resources, such as wood. The IRS ruled that the partnership's income from the production and sale of engineered wood products, the marketing and sale of these wood products, and the providing of marketing services for third parties was qualifying natural resource income for purposes of I.R.C. § 7704(d)(1)(E). **Ltr. Rul. 9822034, Feb. 26, 1998**.

The taxpayer was a limited partnership which owned interests in several limited partnerships (LPs). The taxpayer owned and operated timberland properties and timber processing operations. The taxpayer's business consisted primarily of the growing of timber for sale in domestic and export markets and the processing of timber into lumber and chips. In addition to its direct timber operations, the taxpayer, through its interests in the LPs, owned and operated a wood products purchase and resale business. This business acquired wood products and poles from lumber mills, including lumber mills owned indirectly by the taxpayer through its interests in the LPs. Some of these products were treated or sealed for the account of the LPs and sold by the LPs in treated form. The taxpayer also bought and resold poles purchased in both treated and untreated form. The taxpayer also acquired untreated poles and had them treated by third parties prior to sale as treated poles. The IRS ruled that the taxpayer's income from the sale of wood products and poles would be treated as qualifying income for purposes of §7704(d)(1)(E). **Ltr. Rul. 9822035, Feb. 26, 1998**.

PENSION PLANS. For plans beginning in May 1998, the weighted average is 6.63 percent with the permissible range of 5.97 to 7.03 percent (90 to 109 percent permissable range) and 5.97 to 7.29 percent (90 to 110 percent permissable range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 98-32, I.R.B. 1998-22, 23**.

RETURNS. The IRS has ruled that it will not refuse to issue a Trust Identification Number (TIN) to a trust merely because the trust appeared to be a potentially abusive trust. The IRS will refuse to issue a TIN if Form SS-4 is not submitted or is submitted with inaccurate or incomplete information. **SCA 1998-005**.

The IRS has provided guidance relating to the waiver of penalties announced in IR-98-28 for the failure to deposit penalty under I.R.C. § 6656 for certain taxpayers first required to make federal tax deposits by electronic funds transfer beginning on or after July 1, 1997. **Notice 98-30, I.R.B. 1998-22, 9**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

PASSIVE INVESTMENT INCOME. The taxpayer S corporation was engaged in the purchase, rehabilitation, redesign, and rental of industrial buildings. The taxpayer hired an unrelated corporation to manage the properties, with both corporations providing services to the tenants, including interior and exterior maintenance, landscaping, renovation and remodeling, construction and maintenance of dock areas, and construction of fences, walls, and walkways at the request of tenants. The IRS ruled that the rental income from the properties was not passive investment income to the taxpayer. **Ltr. Rul. 9823019, March 5, 1998**.

TIMBER. The taxpayer was a private foundation to which standing timber was contributed in the form of several individual donative timber deeds with a duration of years, after which time any uncut timber will revert to the contributors. The taxpayer offered the timber for disposition in a competitive bidding process immediately following receipt of each donation. Under the sales contracts, the taxpayer authorized the buyer to cut and remove, and the buyer agreed to cut and remove, all designated merchantable timber in the contract area. The buyer paid a bid deposit to the taxpayer which was held by the taxpayer until the buyer has complied with all provisions of the contract. In addition, the buyer provided a performance bond and a payment bond. The buyer paid the taxpayer twice monthly for all timber cut and removed in the previous half-month period, based on the unit prices for each species set out in the contract, multiplied by the scaled volume of timber of that species cut and removed in that period. Title to the designated timber, including the risk of loss due to casualty, stayed with the taxpayer until the timber was severed and paid for by the buyer. The contracts' terms were for three years, with extensions of up to a year. The IRS ruled that the sales met the requirements of I.R.C. § 631(b) because the taxpayer would be considered the owner of the timber. **Ltr. Rul. 9822020, Feb. 18, 1998**.

TRUSTS. A "pure trust" is sometimes referred to as a constitutional trust or as a common law trust or as a contract trust. Certain promoters sell these arrangements as tax shelters arguing that they are merely contracts between the grantor and the trustee and thus are not taxable under the United States Constitution, Article 1, Section 10, which provides that no state shall pass any law impairing the obligations of contracts. The IRS position is that such trusts are taxed either as a separate entity required to file Form 1041 or taxed to the individual owner of the trust. In all cases, taxpayers who request an EIN have only options provided on the Form SS-4, and either the taxpayer or the entity must report and pay the tax. *Notice 97-24, 1997-16 I.R.B. 6* deals with abusive or bogus trust schemes and makes clear that the substance of the transaction controls who must report and pay the taxes due. **SCA 1998-006**.

AGRICULTURAL LAW PRESS
P.O. Box 50703 Eugene, OR 97405

3d Annual

SEMINAR IN PARADISE

FARM ESTATE AND BUSINESS PLANNING

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 exclusion (or deduction), 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 receive a brochure in the mail soon or call Robert Achenbach at 1-541-302-1958.

Printed on recycled paper using soy ink.