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THE LATEST ON AMT AND COMMODITY SALES

— by Neil E. Harl*

In three articles during 1996¹ we examined in some detail the potential liability for alternative minimum tax² for deferred payment sales³ and installment sales⁴ of farm commodities.⁵ Under pressure from Congress, taxpayers and practitioners, the Internal Revenue Service on January 28, 1997 announced transitional relief through 1996.⁶

Notice 97-13

After resisting transitional relief for several weeks, the Internal Revenue Service in an abrupt about face announced on January 28 that the position announced in a late 1995 technical advice memorandum⁷ and confirmed in a 1996 federal district court case⁸ would not be applied to 1996 and earlier years.⁹

However, rather than announce straightforward relief for taxpayers, the notice states

"Farmers currently using an impermissible method of accounting for [commodity] sales should continue to use that method in computing AMT for taxable years ending prior to January 1, 1997."¹⁰

The notice then proceeds to lay out a procedure for automatic change in method of accounting for taxable years after 1996 to be applicable if Congress does not act to amend the statute in 1997.¹¹ Under the procedure, the details of which are apparently to be announced later, authorization is given to

"... farmers currently using an impermissible method of accounting for income from the sale of farm products under deferred payment sales contracts for AMT purposes to automatically [sic] change to a permissible method of accounting."¹²

Taxpayers are to request the change in method of accounting by attaching Form 3115 to their timely filed 1997 federal income tax return filed in 1998¹³ (assuming, of course, that Congress does not act by that time). Although user fees are normally imposed on requests for change in accounting method (ranging from \$500 to \$900), no user fee will be required for this automatic change in accounting method.¹⁴

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The notice goes on to state that the method change prescribed "will result in audit protection for all prior taxable years with respect to the impermissible method of accounting."¹⁵

The notice specifies that the automatic change procedure will not be available to farmers - (1) who have received written notice from an examining agent (e.g., by examination plan, information document requests, notification of proposed adjustments or income tax examination changes) prior to January 28, 1997, specifically citing as an issue under consideration the farmer's method of accounting for income from sales of farm products under deferred payment sales contracts for AMT purposes or (2) where a farmer's method of accounting for AMT income from commodity sales "is an issue under consideration by an appeals office or a federal court."¹⁶

Chances for Legislation

The important question now is whether Congress will act in 1997 to eliminate AMT from deferred payment sales and installment sales of farm commodities.

Legislation first introduced in 1995 (S. 368) and 1996 (H.R. 4072) was reintroduced in the 105th Congress as H.R. 426¹⁷ and H.R. 396.¹⁸ The legislation, if enacted, would be retroactive to 1986. The latter bill would waive the statute of limitations for refunds.¹⁹

Repeal of the AMT provision has been endorsed by more than half of the Senators and nearly 100 members of the House of Representatives. On December 16, 1996, in a letter to Sen. Thomas Daschle, Secretary of the Treasury, Robert Rubin, while expressing confidence in the IRS position on the AMT issue, indicated support of the legislative action to repeal the AMT provision²⁰ It now appears that the legislation will be moved through Congress as a separate bill rather than being attached to another item of legislation. Moreover, indications are that the bill will be advanced in an expeditious manner.

In Conclusion

Hopefully, the Congress will act to bring the saga of AMT and farm commodity sales to an expeditious end. If not, those entering into contracts in 1997 and later years should be aware that such contracts will be subject to alternative minimum tax.

FOOTNOTES

- ¹ Harl, "Installment Sales of Commodities and AMT," 7 *Agr. L. Dig.* 93 (1996); Harl, "More on Installment Sales of Commodities and AMT," 7 *Agr. L. Dig.* 173 (1996); Harl "Accounting Adjustments for AMT with Commodity Sales," 7 *Agr. L. Dig.* 189 (1996).
- ² I.R.C. § 55(a).
- ³ See Rev. Rul. 58-162, 1958-1 C.B. 234.
- ⁴ I.R.C. § 453(b)(2)(B).
- ⁵ See generally 4 Harl, *Agricultural Law* § 25.03[2] (1996); Harl, *Agricultural Law Manual* § 4.01[1][b][ii] (1996).
- ⁶ Notice 97-13, I.R.B. 1997 - __, __.
- ⁷ TAM 9640003, Dec. 21, 1995.
- ⁸ *Coohey v. United States*, 97-1 U.S. Tax Cas. (CCH) ¶ 50,113 (N.D. Iowa 1996).
- ⁹ Notice 97-13, *supra* n. 6.
- ¹⁰ *Id.*
- ¹¹ *Id.*
- ¹² *Id.*
- ¹³ *Id.*
- ¹⁴ *Id.*
- ¹⁵ *Id.*
- ¹⁶ *Id.*
- ¹⁷ See 8 *Agric. L. Dig.* 12 (1997).
- ¹⁸ 105th Cong., 1st Sess. (1997).
- ¹⁹ *Id.*, Sec. 1(b)(3).
- ²⁰ See 8 *Agric. L. Dig.* 5 (1997).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-ALM § 13.03.*

EXEMPTIONS

AVOIDABLE LIENS. The debtors, husband and wife, each claimed farm implements as exempt under the Wisconsin tools of the trade exemption, Wis. Stat. § 815.18(3)(b), which allowed up to \$7,500 in value as exempt. The debtors then sought to avoid nonpossessory, nonpurchase money security interests in the implements. The secured lender, the FSA, objected to allowing any avoidance in excess of \$10,000, arguing that Section 522(f)(3) limited the avoidance to the maximum exemption allowed by the federal exemptions. The court held Section 522(f)(3) to be ambiguous as to exemption statutes such as the one in Wisconsin and found that the limitation of Section 522(f)(3) did not apply where the state exemption was not unlimited but was higher than the federal exemption. The court held that the debtors were entitled to avoid the security interest to the full extent of the allowed state exemption amount. *In re Ehlen*, 202 B.R. 742 (Bankr. W.D. Wis. 1996).

EARNED INCOME TAX CREDIT. The debtor filed for Chapter 7 and claimed an exemption, under Mo. Rev. Stat. § 513.430(10)(a), for a tax refund to the extent that the refund resulted from an earned income tax credit claimed by the debtor. The court held that the earned income tax credit could not be claimed under the exemption because the credit was not a local public assistance benefit as required by the statute. *In re Goertz*, 202 B.R. 614 (Bankr. W.D. Mo. 1996).

TOOLS OF THE TRADE. The debtor owned a 113 acre farm which was rented to a third party and 12 acres of rural land which were sold subject to a land contract. The debtor had sold most of the debtor's farm machinery several years before filing for bankruptcy and was employed full time with a corporation which operated a used machine business owned by the debtor's children. The debtor claimed several pieces of farm machinery as exempt tools of the trade. The

debtor listed about one seventh of the debtor's annual income as from the farm but presented no evidence of any participation in the farm operation. The court held that the debtor was not entitled to the exemption for the farm machinery because the debtor was not actively engaged in farming. *In re Hoppes*, 202 B.R. 595 (Bankr. N.D. Ohio 1996).

PREFERENTIAL TRANSFERS. The debtor corporation operated a grain elevator and was owned by individuals who also owned a partnership and another company. All three businesses did business among themselves. The Chapter 7 trustee sought to avoid and recover payments made by the debtor to a bank on a loan. The trustee presented evidence in the form of expert testimony of a certified public accountant that the debtor was insolvent at the time of the loan payments involved. The CPA testified that some of the accounts receivable held by the debtor were worthless because the receivables were amounts owed to the debtor by the other business which was owed money by the partnership. The CPA reasoned that because the partnership could not afford to pay the other business, the other business could not afford to pay the debtor. If the receivables were worthless, the debtor was insolvent at the time of the loan payments. The court held that the CPA's testimony and logic were flawed because the CPA did not consider whether the partners' assets were included in the assets of the partnership. The partners were general partners and their assets were subject to liability for the partnership's debts. Because the CPA's data were incomplete, the trustee failed to demonstrate the debtor's insolvency. *In re Onieda Grain Co.*, 202 B.R. 606 (Bankr. C.D. Ill. 1996).

CHAPTER 12-ALM § 13.03[8].*

DISCHARGE. The debtor had granted a second mortgage to the FmHA (now FSA) on real property. The FmHA's lien was divided into a secured claim and unsecured claim in the bankruptcy case, based on the fair market value of the property at the confirmation of the plan. After the plan payments were completed, FmHA objected to the payments on the unsecured claim and received