"targeted area" at or on which there has been a release or threat of release of a hazardous substance.

The taxpayer must obtain a statement of compliance with the appropriate state environmental agency. **Act § 941(a), adding I.R.C. § 198**. The provision is effective for expenditures paid or incurred after the date of enactment, in taxable years ending after that date. **Act § 941(c)**.

Revocable Trusts As Part of Estate. If both the executor and the trustee of a revocable trust elect, the trust is to be treated and taxed as part of the estate and not as a separate trust for all taxable years ending after the date of the decedent's death and before six months after the final determination of liability if a federal estate tax return is required to be filed or two years after death if no federal estate tax return is required to be filed. **Act § 1305(a), amending I.R.C. § 646**. The provision is effective for estates of decedents dying after the date of enactment. **Act § 1305(d)**.

Distributions During First 65 Days of Taxable Year of Estate. The legislation specifies that distributions from an estate can be made within 65 days of the next taxable year of an estate and be considered made on the last day of the preceding taxable year. This opportunity has been available to trusts for some time. **Act § 1306(a), amending I.R.C. § 663(b)**. The provision is effective for taxable years beginning after the date of enactment. **Act § 1306(c)**.

Home Office Deduction. The legislation provides that, for purposes of the home office deduction, "principal place of business" includes a business which is used by the taxpayer "for the administrative or management activities of any trade or business of the taxpayer if there is no other fixed location of such trade or business where the taxpayer conducts substantial administrative or management activities of such trade or business." Under the statute, home office expenses are deductible if it represents "the principal place of business for any trade or business of the taxpayer." *I.R.C. § 280A(c)(1)(A)*. **Act § 932(a), amending I.R.C. § 280A(c)(1)**. The provision is effective for taxable years beginning after December 31, 1998. **Act § 932(b)**.

Repeal of Excess Distribution and Excess Retirement Accumulation Tax. The legislation repeals the excess distribution and excess retirement accumulation taxes. Both taxes have been imposed at a 15 percent rate. **Act § 1073(a), repealing I.R.C. § 4980A**. The provisions is effective for excess distributions received after December 31, 1996, and for excess accumulations as of deaths after December 31, 1996. **Act § 1073(a)**.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

AUTOMATIC STAY. A secured creditor had obtained a foreclosure and replevin judgment against the debtor in September 1996. At 9:20 a.m. on November 6, 1996, the debtor informed the creditor of an impending bankruptcy filing. Earlier on that day, the creditor had repossessed cattle on the debtor's farm. The debtor filed for bankruptcy at 11:51 a.m. on November 6, 1996 and notified the creditor by phone of the filing at 1:40 p.m. on that day. The cattle were sold at auction at 3:00 p.m. that same day. The debtors argued that the sale of the cattle violated the automatic stay and sought damages. The court held that upon repossession of the cattle, the debtor no longer had any rights in the cattle to make them estate property upon the bankruptcy filing; therefore, the sale of the cattle did not violate the automatic stay. ***In re* Karis, 208 B.R. 913 (Bankr. W.D. Wis. 1997)**.

DISCHARGE. The debtor operated a cow-calf operation and secured a loan from a bank with the cattle. The loan was to be used for buying down other debt secured by the cattle but the debtor used the proceeds to pay unsecured creditors. The loan agreement required prior consent for the sale of collateral and payment for the cattle by checks made out to the debtor and bank jointly. The debtor sold much of the cattle herd without remitting the proceeds to the bank, leaving a substantial amount of the loan unpaid and unsecured when the debtor filed for bankruptcy. The bank sought to have the remaining debt declared nondischargeable under Section 523(a)(6) for willful and malicious injury to the creditor. The Bankruptcy Court found that the debtor had knowledge of the security interest and the terms of the loan agreement; therefore, the sale of the cattle without remitting the proceeds to the bank was willful and malicious and caused injury to the bank's security interest in the cattle. The appellate court agreed and held the remaining balance of the debt to be nondischargeable. ***In re* Cantrell, 208 B.R. 498 (Bankr. 10th Cir. 1997)**.

PREFERENTIAL TRANSFER. Under an oral agreement the debtor received cattle in exchange for several promissory notes, each with a separate amount due on a specific date. One of the notes was paid just before the debtor filed for bankruptcy. The payment was made by the debtor transferring the amount to a corporation wholly-owned by the debtor and payment of the amount to the cattle seller by check from the corporation. The trustee argued that the last payment was an avoidable preferential transfer. The debtor argued that the cattle were transferred under a bailment contract with an option to purchase a few cattle with each promissory note. The court held that, based on the nature of the promissory notes and the debtor's testimony, the transaction was an installment sale and that the last payment was made on an antecedent debt. The court discussed the trustee's argument that the payment from the debtor to the corporation should be disregarded as in reality a payment from the debtor to the seller. The court found that the corporation could not be disregarded because the corporation was adequately funded and kept separate books and accounts. However, the court held that the payment from the debtor to the corporation was the preferential transfer requiring return of the payment into the bankruptcy estate. ***In re* Buening, 113 F.3d 838 (8th Cir. 1997)**.

COOPERATIVES

SECURITIES. A U.S. District Court in Iowa has handed down two decisions in a case brought against Farmland Industries by Great Rivers Cooperative of Southeastern Iowa, Sawyer Cooperative Equity Exchange of Kansas, and others. The case involved allegations that the plaintiffs were forced or misled into exchanging common stock in Farmland for "capital credits," a

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

form of non-voting equity (which were issued to individuals and entities not eligible to be Farmland members), and that Farmland refused to redeem the capital credits and instead used their value to benefit Farmland. One of the decisions held that the capital credits were not securities and dismissed the charge that the exchange involved federal securities law. The other decision dealt with the argument that the capital credits involved a breach of fiduciary duty on the part of Farmland, the Farmland Board of Directors and certain officers. The court dismissed the charge as to Farmland on the grounds that a corporation itself does not bear a fiduciary duty to its shareholders. As for the directors, the court invoked the "business judgment" rule which affords directors the presumption that their decisions are "informed, made in good faith, and honestly believed by them to be in the best interests of the company." The court agreed with Farmland that there was no breach of fiduciary duty on the part of the board. Most of the charges against officers were also tossed out. **Great Rivers Coop. of Southeastern Iowa v. Farmland Industries, Inc., Civ. No. 4-95-70529 (S.D. Iowa 1997)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The decedent's will provided for a trust for the surviving spouse, the income and principal of which was to be used solely for the spouse's health, safety and well being in excess of the needs provided for by governmental benefits. At the spouse's death, the remainder passed to the decedent's children in specific monetary bequests and any remainder to several charities. The decedent's estate requested and received a six month extension to file the estate tax return. The surviving spouse died before the estate tax was timely filed. The IRS ruled that the spouse's death prior to the timely filing of the estate tax return was a termination of the trustee's power to invade the trust corpus under Treas. Reg. § 20.2055-2(c)(1), making the bequests to the charitable organizations ascertainable, sufficient for a charitable deduction. **Ltr. Rul. 9728026, April 11, 1997**.

FEDERAL INCOME TAXATION

CHARITABLE DEDUCTION. The taxpayer owned 118 acres used in farming but intended for residential development. The land was donated to a new charitable trust for sale by the trust which would use the proceeds for the support of a charitable organization. The land was zoned for agricultural use, although the property was surrounded by industrial and residential property. The taxpayer had applied for rezoning of the land in order to obtain a higher price for the property. The taxpayer also owned a residence on land next to the 118 acres. The residential property was also to be transferred to the trust for the preservation of the residence. The taxpayer reserved an easement over a portion of the 118 acres for access to the residence. The taxpayer also reserved a life estate in the residence for the lives of the taxpayer and spouse. The IRS ruled that the farm parcel, exclusive of the easement, was eligible for the charitable deduction. **Ltr. Rul. 9728016, April 10, 1997**.

COURT AWARDS AND SETTLEMENTS. The taxpayers were dairy farmers. The farmers had contracts with a large dairy processor which had obtained loans from several banks. The taxpayers had supplied milk to the diary in reliance on statements from the banks that the dairy was financially secure, even though the banks knew that the dairy was in financial trouble. The dairy missed several payments for milk to the taxpayers before resuming normal payments and finally filing for bankruptcy. The taxpayers filed claims in the bankruptcy case for the unpaid milk invoices and sued the banks in tort for personal injuries caused by the banks' actions. The taxpayers and banks reached a $20 million settlement, with a major portion for payment for the negligent infliction of emotional distress and a minor portion for negligent interference with contractual relationship. The settlement was divided among the taxpayers generally according to the percent of milk unpaid for by the dairy, although the division was not required by the settlement. The settlement did not apply to the contractual causes of action against the dairy nor to the bankruptcy claims filed by the taxpayers. The IRS argued that the settlement was included in the taxpayers' income because the settlement was actually in compensation for the lost milk payments, since the settlement was distributed according to the percentage of each taxpayer's share of unpaid for milk and no evidence was presented in the lawsuit of doctors' bills or other medical costs. The court held that the settlement was excludible from income as compensation for personal injuries because the settlement affected only the tort claims of the lawsuit and the taxpayers presented evidence of emotional stress caused by the banks' actions. The court held that the allocation of the settlement was reasonable because the lawsuit involved over 1,000 plaintiffs, making an allocation based on the individual circumstances too difficult. **Knevelbaard v. Comm'r, T.C. Memo. 1997-330**.

FIELD SERVICE ADVICE MEMORANDA. IRS field personnel obtain, from the IRS Office of Chief Counsel, Field Service Advice memoranda (FSA) providing legal guidance on tax law as applied to a taxpayer's specific situation. The FSAs were not published and the plaintiff was denied an FOIA request to see the FSAs. The FSA differs from a technical advice memorandum in that the taxpayer does not participate in the presentation of information or legal argument. The court ordered the IRS to disclose FSAs, subject to redaction for attorney-client privilege matters, under the FOIA. The case was remanded for determination of other possible redaction situations. **Tax Analysts, Inc. v. IRS, 97-2 U.S. Tax Cas. (CCH) ¶ 50,529 D.C. Cir. 1997), *aff'g in part* 96-1 U.S. Tax Cas. (CCH) ¶ 50,205 (D. D.C. 1996)**.

SAFE HARBOR INTEREST RATES
August 1997

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	5.87	5.79	5.75	5.72
110% AFR	6.47	6.37	6.32	6.29
120% AFR	7.07	6.95	6.89	6.85
		Mid-term		
AFR	6.39	6.29	6.24	6.21
110% AFR	7.04	6.92	6.86	6.82
120% AFR	7.69	7.55	7.48	7.43
		Long-term		
AFR	6.73	6.62	6.57	6.53
110% AFR	7.41	7.28	7.21	7.17
120% AFR	8.10	7.94	7.86	7.81

S CORPORATIONS-*ALM* § 7.02[3].*

BUILT-IN GAINS. The taxpayer corporation was previously a C corporation which had made two adjustments to its accounting method which required recognition of income over three tax years. During that period, the corporation elected to be taxed as an S corporation. The court held that the income recognized because of the accounting change was built-in gains when the corporation elected S corporation status. **Rondy, Inc. v. Comm'r, 97-2 U.S. Tax Cas. (CCH) ¶ 50,546 (6th Cir. 1997), *aff'g* T.C. Memo. 1995-372**.

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

2d ANNUAL SEMINAR IN PARADISE

FARM ESTATE AND BUSINESS PLANNING by Dr. Neil E. Harl
January 5-9, 1998

Spend a week in Hawai'i in January 1998! 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. The seminar is scheduled for January 5-9, 1998 at the spectacular ocean-front Hilton Waikoloa Village 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 400 page seminar manual, *Farm Estate and Business Planning: Annotated Materials* which will be updated just prior to the seminar.

Here are 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, 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.

• Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.

• New legislation, including the family-owned business exclusion.

• Ethics (2 hours).

The Agricultural Law Press has made arrangements for **group discount air fares** on United Airlines, available through Sun Quest Vacations. In addition, attendees are eligible for **substantial discounts on hotel rooms at the Hilton Waikoloa Village Resort**, the site of the seminar. Early registration is important to obtain the lowest airfares and insure availability of convenient flights at a busy travel time of the year.

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

Watch your mail for a registration packet or call Robert Achenbach at 1-541-302-1958.

ISSUE INDEX

Bankruptcy
General
Automatic stay **118**
Discharge **118**
Preferential transfer **118**
Cooperatives
Securities **118**
Federal Estate and Gift Tax
Charitable deduction **119**
Federal Income Taxation
Charitable deduction **119**
Court awards and settlements **119**
Field service advice memoranda **119**
Safe harbor interest rates
August 1997 **119**
S corporaitons
Built-in gains **119**