The opinion recites that neither party raised the issue of whether the value of the lodging was excluded from income on the grounds the employer was required to accept the lodging as a condition of employment.[12]

Special treatment of S corporations

It is clear from the statute[13] that S corporations cannot claim a deduction for the use of a dwelling unit used as a residence. It is also clear that a taxpayer is considered to have used a dwelling unit for personal purposes if used for personal purposes by any shareholder of the S corporation.[14]

But S corporation shareholders are not specifically precluded from excluding the value of lodging from income if the employee is required to accept the lodging on the premises as a condition of employment.[15] As noted,[16] that issue was not raised by the parties to the recent case involving an S corporation.

FOOTNOTES

1 I.R.C. § 119. See generally, 7 Harl, *Agricultural Law* § 57.03[2][b] (1997); Harl, *Agricultural Law Manual* § 7.02[4][c] (1997).

2 I.R.C. § 119(a)(2). See Ltr. Rul. 8826001, Oct. 14, 1987 (value of housing provided by employer included in employees' income where housing not provided at work site and not provided in one camp but scattered within housing generally available to public); Ltr. Rul. 9126063, March 29, 1991 (value of off-premises lodging and utilities include in gross income).

3 See Ltr. Rul. 9801023, Sept. 30, 1997.

4 *Id.*

5 Treas. Reg. § 1.119-1(e).

6 I.R.C. § 280A(b).

7 See I.R.C. § 280A(a).

8 I.R.C. § 280A(c).

9 I.R.C. § 119(a).

10 Roy v. Comm'r, T.C. Memo. 1998-125.

11 I.R.C. § 280A(c)(6).

12 I.R.C. § 119(a)(2). See Roy v. Comm'r, T.C. Memo. 1998-125.

13 I.R.C. § 280A(a).

14 I.R.C. §§ 280A(f)(2), 280A(d)(2).

15 I.R.C. § 119(a)(2).

16 See n. 12 *supra.*

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

EXEMPTIONS

HOMESTEAD. The debtors, husband and wife owned two residences, with each debtor residing in one residence after their separation. The properties were owned in joint tenancy. The debtors filed a joint bankruptcy case which was not consolidated. Each debtor claimed a homestead exemption for their residence. The court held that, because the cases were not consolidated, two bankruptcy estates were created, entitling each debtor to a homestead exemption. However, the court also held that, because the properties were held in joint tenancy, the debtors had only a one-half interest in their respective residence, with the remaining one-half interest passing to the bankruptcy trustee. Therefore, the trustee was entitled to one-half of the exemption amount in each property. ***In re* Pastrana, 216 B.R. 948 (Bankr. D. Colo. 1998)**.

CHAPTER 12-*ALM* § 13.03[8].*

PLAN. The debtor operated a dairy farm, cattle ranch, trucking company and grain farm. The debtor's Chapter 12 plan projected increased revenues and decreased expenses without changing the current operation of the businesses. The debtor did not provide any support for the change in revenues and expenses other than the debtor's own testimony. The court found that the operations had produced losses in each of the three previous years and that the projected increase in cattle prices was not based on any evidence. The court held that the plan was not confirmable because the operations would not produce revenues to pay the plan payments. The court granted the creditors' motion to terminate the automatic stay because the debtor was unable to show a reasonable possibility of a successful reorganization. **In re Tate, 217 B.R. 518 (Bankr. E.D. Tex. 1997)**.

CHAPTER 13-*ALM* § 13.03.*

DISPOSABLE INCOME. When the debtor originally filed for Chapter 13, the debtor owed alimony to a former spouse. When the spouse died the debtor amended the bankruptcy schedules to remove the monthly alimony payment and increased the debtor's other monthly expenses. The court found that some increases were allowed because the original figures were inaccurate; however, the court held that the increase of monthly costs of veterinary and feed costs for several elderly horses and dogs was not reasonable. The court allowed only a small increase in the monthly animal expenses. The court also denied the debtor's request to pay attorney's fees directly, holding that all attorney's fees had to be first approved by the court. **Matter of Wyant, 217 B.R. 585 (Bankr. D. Neb. 1998)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

AUTOMATIC STAY. The IRS had filed pre-petition tax liens against the debtor's property, including property which the debtor claimed as exempt in the bankruptcy case. The lien covered taxes owed from 1984. During the case, the IRS offset the debtor's claim for refund for 1994 against the 1984 taxes. The debtor received a discharge for the 1984 taxes in May 1995, but in April 1997, the IRS offset the debtor's claim for refund for 1995 against the taxes owed for 1984. The debtor sought removal of the tax lien against the exempt property, arguing that the avoidance powers of Section 522(h) took precedence over the prohibition of avoidance of tax liens against exempt property, as provided by Section 522(c)(2)(B). The court held that Section 522(c)(2)(B) took precedence and applied whether or not the liens were otherwise avoidable. The debtor also sought recovery of the offset refunds and damages for the IRS violation of the automatic stay. The IRS had placed the offsets in administrative freeze pending relief from the automatic stay and the court held that the administrative freeze did not violate the automatic stay. The court also held that the second offset occurred after the debtor's discharge of the 1984 taxes and was not allowed; therefore, the IRS was ordered to pay the refund plus interest. ***In re* Bearden, 216 B.R. 951 (Bankr. W.D. Okla. 1997)**.

The IRS began collection efforts against the debtor by seizing the debtor's inventory of automobiles. During the seizure process, the debtor filed for Chapter 11 and informed the IRS agents that further seizure of the automobiles would be a violation of the automatic stay. The agents contacted their superior who authorized the continued seizure. The autos were removed and placed in a secured lot until their return was ordered by the court. The debtor sought damages for violation of the automatic stay. The Bankruptcy Court held that the IRS agents acted in a good faith belief that the post-petition seizure was allowed because the levy was served on the debtor pre-petition. In addition, the Bankruptcy Court held that the debtor was not entitled to any damage award because the debtor failed to prove any actual damages from the post-petition removal of the autos. The Bankruptcy Court further held that the IRS was not entitled to any recovery for its expenses in executing the levy. On appeal, the District Court held that the debtor, as a corporation, could not sue for damages for a violation of the automatic stay. The court also refused to award damages in equity because the Bankruptcy Court had held that the agents' actions were made in good faith and because the debtor failed to prove any damages. ***In re* A & J Auto Sales, Inc., 98-1 U.S. Tax Cas. (CCH) ¶ 50,416 (D. N.H. 1998), *aff'g*, 210 B.R. 667 (Bankr. D. N.H. 1997)**.

DISCHARGE. The debtors filed for Chapter 11 and the IRS filed a claims for secured, unsecured priority and general unsecured tax claims. The debtors' plan provided for full payment of the claims over the six years of the plan with interest from the date of confirmation. The IRS then sought from the debtor directly the post-petition, preconfirmation interest on its claims. The Bankruptcy Court held that, because the plan provided for full payment of the tax claims, no post-petition, preconfirmation interest was allowed. The District Court reversed, holding that it was irrelevant whether the underlying tax claim was paid in full or not ***In re* Heisson, 217 B.R. 1 (D. Mass. 1997), *rev'g*, 192 B.R. 294 (Bankr. D. Mass. 1996)**.

The debtor failed to timely file income tax returns for 1982, 1983 and 1984. The debtor filed inaccurate W-4 forms and did not pay any income tax during those years. The IRS constructed substitute returns and assessed the taxpayer. After the assessments, the taxpayer had returns filed in November 1987. The taxpayer sought a ruling that the taxes were dischargeable. The IRS argued that the taxes were nondischargeable under Section 523(a)(1)(B) because the debtor's returns were filed after the substitute returns were constructed. The IRS claimed that the debtor's returns were a nullity once the substitute returns were constructed. The court disagreed and held that the taxes were not nondischargeable under Section 523. The IRS also argued that the taxes were nondischargeable under Section 523(a)(1)(C) because the debtor intentionally tried to evade payment of taxes. The court held that the debtor willfully attempted to evade the tax liability through the debtor's failure to accurately file W-4 forms, to timely file income tax returns and to timely pay the taxes when the debtor was aware of the duty to file and pay taxes. ***In re* McGrath, 217 B.R. 389 (Bankr. N.D. N.Y. 1997)**.

NET OPERATING LOSSES. The debtor had filed for Chapter 11 and claimed net operating losses carried over from the bankruptcy estate. The bankruptcy estate did not file any income tax returns and the debtor provided no other evidence of a net operating loss from the estate. The court held that the debtor was not allowed any NOL from the estate because of the lack of substantiation of the claim. **Schaefer v. Comm'r, T.C. Memo. 1998-163**.

POST-PETITION TAXES. The debtor filed for Chapter 13 and had the plan confirmed without objections. The plan provided for payment of all priority tax claims. At the end of the plan and before the discharge was issued, the IRS filed a claim for post-petition taxes which would have been priority taxes if accrued pre-petition. The debtor argued that the post-petition tax claim should not be allowed because payment of the tax claim would prevent completion of the plan within the 60 month limit. The court noted that the amount paid to the trustee under the plan almost equaled the taxes owed, indicating that the debtor used the tax money to make the plan payments. The court held that the post-petition taxes were allowed and dismissed the case for failure to make the tax payments. ***In re* King, 217 B.R. 623 (Bankr. S.D. Cal. 1998)**.

CONTRACTS

BOARS. The plaintiff purchased seven boars from the defendant for the purpose of breeding the plaintiff's gilts. The baby pigs born had shaker pig syndrome, also known as congenital tremors. The plaintiff brought suit for breach of express and implied warranties, negligent misrepresentation and fraudulent misrepresentation. The sales contract contained language recognizing that congenital tremors could exist in the purchased boars and limited the defendant's liability to the replacement of the boars or the refund of the purchase price. The plaintiff argued that the contract was unconscionable because the warranties were illusory since the warranties amounted to only a sale "as is" which would be unacceptable to any buyer. The court held that the warranty limitation language was clear and unambiguous and that the contract was not unconscionable because the plaintiff failed to show any unfair bargaining advantage held by the defendant or excess pressure exerted on the plaintiff to agree to the language. The court noted that the limited warranty language was conspicuous and that the boars did conform to the contract provisions. The plaintiff also argued that the contract was invalid in that the remedies allowed for breach of the contract by the defendant had no relation to the possible damages that could result from a breach, as in this case where over 100 baby pigs were lost. The court held that the defendant's liability allowed by the contract was sufficient in that it would compensate the plaintiff for the loss of the goods involved in the contract. The court granted summary judgment for the defendant on the issue of negligent misrepresentation because the contract did not involve the supplying of information but involved only the sale of goods. The court also granted summary judgment on the claim of fraudulent misrepresentation because the contract explicitly acknowledged that the boars could have the congenital tremors virus, which was undetectable by testing. The case was appealed on the unconscionability issue alone and was affirmed. **Brunsman v. DeKalb Swine Breeders, Inc., 138 F.3d 358 (8th Cir. 1998),** ***aff'g*****, 952 F. Supp. 628 (N.D. Iowa 1996)**.

HEDGE-TO-ARRIVE CONTRACTS. The plaintiff was a grain farmer which entered into several hedge-to-arrive or "flex-hedge" contracts with the defendant cooperatives. As in all of these cases, the increasing price for corn in 1995-96 reduced the profitability of these contracts to the cooperatives. The plaintiff in this case had also agreed to pay the margin costs of the contracts. Some of the contracts contained rollover provisions and in some cases, rollovers were allowed by the parties. The plaintiff rolled over all of the contracts at least once and several were rolled over several times. The plaintiff claimed that the contracts were void as illegal futures contracts under the Commodity Exchange Act. The defendants pointed to all of the reported cases which have held that such contracts were not invalid under the CEA. The plaintiff, however, argued that the rollover provisions and actual roll over of the contracts indicated that delivery was not intended. The court found, however, that the plaintiff intended to, and in some cases actually did, deliver the grain involved. The court held that a rollover provision in the grain contracts did not make the contracts invalid indeterminate contracts because the parties always intended an eventual delivery of the grain. Subscribers may order a copy of this case to be sent by mail or fax for $3.00 from the Agricultural Law Press, P.O. Box 50703, Eugene, OR 97405; (541) 302-1958. **Oeltjenbrun v. CSA Investors, Inc., No. C 96-3136-MWB (N.D. Ia. 1998)**.

CORPORATIONS

PIERCING THE VEIL. The defendant was the sole shareholder in a family farm corporation which was also named as a defendant. The plaintiffs were two farm laborers employed by the defendants. The plaintiffs sued for back wages after employment was terminated. The defendant shareholder was found personally liable for the back wages awarded to the plaintiffs and the defendant appealed. The court found that the corporate form was properly disregarded to make the shareholder personally liable because (1) the shareholder was in complete control of the corporation, (2) the shareholder was held out as the owner of the farm business, (3) there was no indication that the corporation was represented to the community as a separate entity from the shareholder, (4) the corporation did not keep full records or meet all formalities of the corporate form, and (5) the corporation was undercapitalized. The court noted that the last element would have produced an inequitable result if the corporate form was upheld in this case. **Hutchinson v. Anderson, 950 P.2d 1275 (Idaho Ct. App. 1997)**.

FEDERAL AGRICULTURAL PROGRAMS

CONSERVATION. The CCC has announced an invitation to State governments to propose Conservation Reserve Enhancement Program (CREP) projects under the general Conservation Reserve Program, which is governed by regulations under 7 CFR Part 1410. CREP is an opportunity for the joining of resources of the Federal and State governments to address critical environmental issues such as soil erosion, water quality degradation and wildlife habitat loss associated with agricultural activities. This action is also part of the National Performance Review Initiative to deliver better service and foster partnership and community solutions. **63 Fed. Reg. 28965 (May 27, 1998)**.

EGGS. The Food Safety and Inspection Service and Food and Drug Administration have announced advanced notice of proposed rule making concerning a farm-to-table food safety system for shell eggs. Interested persons are requested to comment on the alternatives discussed in the advance notice of proposed rulemaking, suggest other possible approaches, and provide information that will help the agencies weigh the merits of all alternatives. In addition to the actions contemplated in this ANPR, both agencies are planning to take actions that address adoption of refrigeration and labeling requirements that are designed to reduce the risk of foodborne illness. **63 Fed. Reg. 27502 (May 19, 1998)**.

MILK. The AMS has issued proposed regulations amending the Fluid Milk Promotion Order. The proposed amendments, requested by the National Fluid Milk Processor Promotion Board, which administers the Order, would modify the membership status and term of office of Board members. The proposed rule would also amend order language pertaining to committees and intellectual property rights (patents, copyrights, inventions, and publications). The Board believes that the proposed amendments are necessary to maintain Board membership continuity. **63 Fed. Reg. 28292 (May 22, 1998)**.

WAREHOUSES. The FSA has announced that, as a result of two Federal District Court Orders and the cotton industry's continued encouragement, it is presently contemplating the issuance of a proposed rule that would address the statutory phrase ``without unnecessary delay'' contained in sections 17 and 21 of the United States Warehouse Act, 7 U.S.C. §§ 259, 262. In developing the proposed rule, FSA will consider all distinct options that would satisfy and complement the cotton industry's diverse segments in forging a national weekly minimum cotton flow standard. Upon receipt and review of all comments timely received in response to this advance notice of proposed rulemaking, FSA will develop a proposed rule regarding the implementation and administration of a national cotton flow standard, which provides yet another opportunity for the public to comment before the USDA would implement a final cotton flow standard. **63 Fed. Reg. 28488 (May 26, 1998)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The taxpayer established a tax-exempt private foundation and named the foundation as beneficiary of several IRAs owned by the taxpayer. The IRS ruled that the value of the IRAs at the time of the taxpayer's death would be included in the taxpayer's gross estate and that the estate would be entitled to a charitable deduction for the value of the IRAs passing to the private foundation. The IRS also ruled that income earned by the IRAs after the death of the taxpayer would be income in respect of decedent as to the foundation. **Ltr. Rul. 9818009, Jan. 8, 1998**.

DISCLAIMERS. The taxpayer was the beneficiary of an irrevocable trust created before 1935. The taxpayer had a testamentary power of appointment over trust principal but disclaimed that power. The taxpayer's spouse was a remainder beneficiary of the trust and also disclaimed any power of appointment. Within nine months of the taxpayer's disclaimer, the spouse disclaimed any interest in trust income or principal. The IRS ruled that the spouse's disclaimer was effective for estate tax purposes and would not result in any gift or generation skipping-transfer tax. **Ltr. Rul. 9818053, Feb. 2, 1998**.

POWER OF APPOINTMENT. The taxpayer was a beneficiary of a trust, created in 1935, which provided for a corporate trustee. The taxpayer had the power to request distribution of trust corpus but only with the consent and approval of the trustee. The taxpayer also had the power to remove the corporate trustee and replace it with another corporate trustee. The IRS ruled that neither power of the taxpayer was a general power of appointment. **Ltr. Rul. 9818054, Feb. 2, 1998**.

VALUATION. The decedent owned stock in two corporations. The corporation owned real property with built-in capital gains liability. At the time of the decedent's death, the property was subject to possible condemnation sale to a governmental unit, and after the decedent's death the property was sold to the governmental unit. The corporation made an election, under I.R.C. 1033, not to recognize gain from the sale and to obtain replacement property. Also, a year after the decedent's death, the decedent's stock was purchased by a related person. The estate valued the decedent's stock using the purchase price of the stock sale and reduced that value by the stock's share of the amount of built-in gains in the property. The IRS argued that no discount for built-in gains was allowed because the corporation had no plan of liquidation or sale of the property which would produce recognized gain. The court agreed, noting that the Section 1033 election also demonstrated that no gain would be recognized by the corporation from the sale. The deferral of the gain made recognition of the gain too speculative to include the gain as a discount of the property value for estate tax purposes. **Estate of Welch v. Comm'r, T.C. Memo. 1998-167**.

The taxpayers established two 15-year, irrevocable trusts and each trust received a one-half interest in the taxpayers' personal residence. The residence consisted of a house, guest cottage, swimming pool, pump house, garage with three room apartment, and two barns. The trust provided that the property could not be sold to the taxpayers or an entity controlled by the taxpayers. The IRS ruled that the trust was a qualified personal residence trust. **Ltr. Rul. 9818014, Jan. 21, 1998**.

CCH has reported that the director of the IRS Estate and Gift Tax Administration stated that family limited partnership interests are evaluated in a fact and circumstances approach to determining whether the partnerships are established for bona fide business or estate planning purposes or improperly only for purposes of evading estate and gift tax. **CCH News-Federal, 98Taxday, Item #M. 1, May 18, 1998**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued proposed revenue procedures providing guidance for IRS-initiated accounting method changes. The proposal also provides procedures the IRS would use for accounting method issues raised and resolved on a nonaccounting-method-change basis. **Notice 98-31, I.R.B. 1998-22**.

BAD DEBT DEDUCTION. The taxpayers, husband and wife, purchased real property as part of investments in real property. The taxpayers sold the real property to third parties in cash and a second deed of trust for the balance which was due in one year. The third parties borrowed the cash payment and sued the creditor for fraud, an action in which the taxpayers participated and incurred legal fees. The third parties never paid the balance due on the deed of trust to the taxpayers and they claimed the unpaid amount as a business bad debt. The legal fees were also claimed as business expenses. The taxpayers claimed that they were in the real estate selling business but the court found that the taxpayers did not sell enough real estate on a regular basis to qualify as a business; instead, the court held that the taxpayers' purchase of the real estate was for investment purposes. The court held that the unpaid portion of the sale price of the real estate was not eligible for a bad debt deduction because the taxpayers had no basis in the loan amount. The legal fees were allowed only as miscellaneous deductions because the fees were not incurred as part of a business. **Douglas v. Comm'r, T.C. Memo. 1998-195**.

COMPUTERS. The taxpayer operated a consulting business and purchased a computer used in that business. The taxpayer claimed the computer expense as a current business expense but did not file Form 4562 to make the expense method depreciation election under I.R.C. § 179 to deduct currently the cost of the computer. The court held that the expense method deduction of the computer cost was not allowed because of the taxpayer's failure to timely file the election. **Shores v. Comm'r, T.C. Memo. 1998-193**.

DEPRECIATION-*ALM* § 4.03[4].* The taxpayer operated a trucking business and purchased a truck for $14,000, plus $500 for a warranty. The taxpayer calculated depreciation on the truck by using a $14,500 basis. Although the court acknowledged that a warranty could enhance the value of a capital asset and could be included in the basis for depreciation, the court held that the value of the warranty could not be included in the truck basis because the taxpayer did not present the warranty to the court for determination of whether the warranty enhanced the value of the truck sufficient to create an asset with a useful life. **Novoa v. Comm'r, T.C. Memo. 1998-192**.

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 a farming business. 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. 2078**.

FORECLOSURE. The taxpayers owned two rental properties for more than one year. The first property had a basis of $32,000 and a recourse mortgage of $43,000 and was sold at foreclosure for $54,000. The second property had a basis of $84,000, a recourse mortgage of $88,000 and was sold at foreclosure for $106,000. The taxpayers claimed an ordinary loss of $13,000 from the sales, calculated as the loss of equity less depreciation. The IRS disallowed the ordinary losses and determined that the taxpayers had $14,000 in long-term capital gain, calculated as the difference between the total mortgage liability relieved and the total adjusted basis in both properties. The taxpayers argued that no gain was realized because they did not receive any money from the sales. The court held that the transaction was to be treated as if the taxpayers received the sale proceeds and then paid off the mortgages. The taxpayers were assessed an accuracy-related penalty because their accountant had informed them that gain and not loss was recognized from the sales. Query: Should not the realized gain be the difference between fair market value and adjusted basis, with discharge of indebtedness income to the extent the indebtedness relieved exceeded fair market value? The court does not discuss the fair market value of the properties involved, although the sale proceeds would be one indication of that value. Neil Harl will publish an article on this case in the next issue of the *Digest*. **Emmons v. Comm'r, T.C. Memo. 1998-173**.

INSTALLMENT REPORTING-*ALM* § 6.03[1].* The taxpayers were beneficiaries of liquidating trusts established to liquidate the assets of corporations owned by the taxpayers. Some of the assets held by the trusts were installment notes held by parties related to the corporations, including shareholders who were individuals, partnerships and other corporations. The notes were modified to allow the obligors to make some installment payments by transferring real and personal property with fair market values equal to the installments. The notes were also modified by exchanging the notes for other additional notes with pro rata shares of the obligation of the original notes. The IRS ruled that neither of the modifications caused recognition of gain or loss because the modifications did not alter the rights and obligations of the original notes. **Ltr. Rul. 9819043, Feb. 11, 1998**.

RESEARCH AND DEVELOPMENT EXPENSES. The taxpayers invested $50,000 each in a partnership company formed to "further research and development of technology involved in" reusable and recyclable plastic containers. The taxpayers claimed to materially participate in the company and claimed the $50,000 contributions as research and development expenses. However, the taxpayers provided no evidence of the use of the funds by the company nor of the activities performed by the taxpayers in the company. The court held that the contributions were not deductible because the taxpayers failed to substantiate the use the funds or their activities in the company. The court rejected the argument that the mere investing of the $50,000 was sufficient participation. **Sheehy v. Comm'r, T.C. Memo. 1998-183**.

SAFE HARBOR INTEREST RATES
June 1998

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	5.58	5.50	5.46	5.44
110% AFR	6.14	6.05	6.00	5.98
120% AFR	6.71	6.60	6.55	6.51
		Mid-term		
AFR	5.77	5.69	5.65	5.62
110% AFR	6.36	6.26	6.21	6.18
120% AFR	6.95	6.83	6.77	6.73
		Long-term		
AFR	6.02	5.93	5.89	5.86
110% AFR	6.63	6.52	6.47	6.43
120% AFR	7.25	7.12	7.06	7.02

S CORPORATIONS-*ALM* § 7.02[3][c].*

SHAREHOLDER BASIS. The taxpayers were shareholders in an S corporation which manufactured coated steel products. The corporation encountered financial troubles and was forced into involuntary Chapter 7 bankruptcy in 1992. The case continued for four years and included interim payments to creditors and negotiations with various parties. A discharge was granted in 1996. The taxpayers claimed discharge of indebtedness income from the S corporation in 1992 because the corporation was in bankruptcy, insolvent and was not able to pay the claims against it. The court held that no discharge of indebtedness occurred in 1992 because the bankruptcy proceeding was

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

still active and no discharge was granted in that year; therefore, no identifiable event occurred which discharged any debt. The court also held that, even if discharge of indebtedness income was realized in 1992, the income could not be used to increase the shareholders' basis in the corporation. **Friedman v. Comm'r, T.C. Memo. 1998-196**.

SOCIAL SECURITY BENEFITS. The taxpayers had reached retirement age and was receiving social security benefits. Because the taxpayer had substantial adjusted gross income, 85 percent of the social security benefits were included in income under I.R.C. § 86. The taxpayers argued that the taxation of the social security benefits was unfair in that the taxation was different from the taxation of private pension benefits. The court held that the tax of Section 86 had a rational basis in taxing only those individuals with substantial income from other sources. **Roberts v. Comm'r, T.C. Memo. 1998-172**.

TRUSTS. The taxpayers were self-employed as salespersons in a network marketing business. The taxpayers established a trust for their benefit and had all income contributed to the trust. The taxpayers did not file personal income tax returns for the income contributed to the trust, nor did the taxpayers file an income tax return for the trust. The IRS disallowed the trust as a sham for income tax purposes. The taxpayers claimed that the trust was bona fide because it was intended to serve their estate tax planning needs. The court held for the IRS because the taxpayers failed to demonstrate that they had no control over the income after it was contributed to the trust. **Prindle International Marketing v. Comm'r, T.C. Memo. 1998-164**.

NUISANCE

FEED LOT-*ALM* § 13.08.* The plaintiff operated a farm on land purchased prior to the defendant's purchase of the neighboring land. The defendants first operated a small feedlot on the land but eventually enlarged the operation to over 40,000 head of livestock and a beef processing operation. The plaintiffs sued in federal court to enjoin the operation of the feedlot and processing plant and sought damages. The federal court certified a question to the Washington Supreme Court as to whether the provision in the Washington right-to-farm act allowing damages included damages for an action in nuisance. The Washington act provided that pre-existing agricultural operations were not deemed to be a nuisance and then added a provision that the act did not prevent any right to sue for damages. The Washington court held that the damage provision did not apply to nuisance actions where the agricultural operation was not deemed to be a nuisance under the act. In reaching this decision, the court also stated that the act was not applicable where the agricultural operation started after the complaining party acquired its land. The court also stated that the act did not apply as between two agricultural operations. The dissent noted that these statements by the court were not part of the certified question. **Buchanan v. Simplot Feeders, L.P., 952 P.2d 610 (Wash. 1998)**.

PRODUCT LIABILITY

HAY BALER-*ALM* § 2.04.* The plaintiff's decedent was killed when the decedent became entangled in a round hay baler manufactured by the defendant. The plaintiff sued for negligence, strict liability and breach of implied warranty. The defendant sought summary judgment, arguing that the baler was not defectively designed and the plaintiff failed to show causation. The defendant claimed that there was no evidence that alternative designs were available and feasible. The plaintiff had provided evidence that other manufacturers were producing balers with additional safety features. The court held the plaintiff's evidence was sufficient to raise a jury question as to negligent design. The court also denied summary judgment on the causation issue because the plaintiff's experts would testify as to the defects in the baler which could have caused the injury, creating a jury question as to causation. **Kinser v. Gehl Co., 989 F. Supp. 1144 (D. Kan. 1997)**.

STATE REGULATION OF AGRICULTURE

WEEDS. The plaintiff was a conservation society which purchased 21 lots in a subdivision on the Louisiana shores of the Gulf of Mexico. The land was purchased to restore and preserve the natural vegetation on the land. The remaining lots were used for residences and other private uses. The residence owners complained to the parish authorities who added the subdivision to the list of subdivisions covered by the grass and weed ordinance. The parish police jury determined that the vegetation on the plaintiff's lots was weeds and ordered the removal of the vegetation. The neighbors complained that the vegetation encouraged the growth of insects and small animals, although the defendants presented no evidence of any increase of pests. The court found that the vegetation growing on the plaintiff's land was not weeds because the vegetation furthered the purpose of the ownership of the lands, the preservation of natural flora and fauna. Therefore, the court held that the enforcement of the grass and weeds ordinance was arbitrary and capricious and upheld the injunction against enforcement of the ordinance against the plaintiff's property. **Baton Rouge Audubon Society v. Sandifer, 702 S.2d 997 (La. Ct. App. 1997)**.

CITATION UPDATES

Goodell v. Humboldt County, 575 N.W.2d 486 (Iowa 1998) (livestock confinement facilities) see p. 39 *supra*.

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.