FOOTNOTES

[1] See generally 8 Harl, *Agricultural Law* § 58.05[2][c] (1995); Harl, *Agricultural Law Manual* § 7.02[5][d] (1995).

[2] See generally 5 Harl, *Agricultural Law* § 43.03[2] (1995); Harl, *Agricultural Law Manual* § 5.03[2] (1995).

[3] See Est. of Ford v. Comm'r, T.C. Memo. 1993-580, *aff'd*, 53 F.3d 924 (8th Cir. 1995) (20 percent discount for minority interest and 10 percent for non-marketability; net asset value methodology used); Luton v. Comm'r, T.C. Memo. 1994-539 (10, 15 and 20 -percent discounts allowed for different corporations for non-marketability; 20 percent discount allowed for one-third minority interest in one corporation in addition to 15 percent lack of marketability discount); Est. of Frank v. Comm'r, T.C. Memo. 1995-132 (discounts allowed for minority ownership and lack of marketability in closely-held family corporation). See also Est. of Berg v. Comm'r, T.C. Memo. 1991-279, *aff'd on these issues*, 976 F.2d 1163 (8th Cir. 1992) (estate entitled to 20 percent minority discount and 10 percent for lack of marketability for 26.9 percent interest in closely-held real estate holding company).

[4] Propstra v. U.S., 680 F.2d 1248) (9th Cir. 1982).

[5] See, e.g., Est. of Youle v. Comm'r, T.C. Memo. 1989-138 (discount of 12-1/2 percent allowed for tenancy in common ownership); Est. of Cervin v. Comm'r, T.C. Memo. 1994-550, *appeal docketed*, 5th Cir. August 31, 1995) (20 percent discount allowed for 50 percent interest in farm and homestead). But see Ltr. Rul. 9336002, May 28, 1993 (discount should be limited to cost of partitioning property).

[6] See, e.g., Est. of Pittsbury v. Comm'r, T.C. Memo. 1992-425 (15 percent discount allowed for undivided 77 percent and 50 percent interests in real estate).

[7] I.R.C. § 2032A(a)(2).

[8] I.R.C. § 2032A(e)(7). See 5 Harl, *supra* n. 2, § 43.03[2][b].

[9] I.R.C. § 2032A(e)(8). See 5 Harl, *supra* n. 2, § 43.03[2][c].

[10] See Hartley, "Final Regs. Under 2032A: Who, What and How to Qualify for Special Use Valuation," 53 *J. Tax.* 306, 308 (1980) (range from 29 percent to 76 percent by IRS District).

[11] Est. of Maddox v. Comm'r, 93 T.C. 228 (1989).

[12] *Id*.

[13] See Ltr. Rul. 9119008, Jan. 31, 1991.

[14] 102 T.C. 777 (1994).

[15] *Id*.

[16] Hoover v. Comm'r, 68 F.3d 1044 (10th Cir. 1995).

[17] *Supra* n. 11.

[18] *Supra* n. 16.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

AUTOMATIC STAY. The debtors farmed land leased from a related person on a 60/40 crop share basis. The land owner had a mortgage against the farm under a note co-signed by the debtors and the debtors had made all the payments on the note. The debtors' Chapter 12 plan provided for payment of the note in full. The lender initiated a foreclosure action against the land owner without first seeking relief from the automatic stay. The court held that, although it would have been prudent for the lender to first seek relief from the automatic stay, the foreclosure suit did not violate the stay because the suit was against a nondebtor and would not affect the debtors' rights under the lease. ***In re* Smith, 189 B.R. 11 (Bankr. C.D. Ill. 1995)**.

CLAIMS. A secured creditor had obtained a pre-petition judgment of foreclosure against the debtor but the foreclosure sale was stayed by the debtor's bankruptcy petition. The Bankruptcy Court set a bar date for creditors' claims and the order required all disputed claims to be filed by the bar date and made all creditors responsible for verifying the accuracy of claims filed by the debtor. The creditor obtained relief from the automatic stay and proceeded with the foreclosure sale. Once the sale was completed and the deficiency amount determined, the creditor finally filed a claim, more than one month after the claims bar date. The creditor sought approval for the late filing under Bankr. Rules 9006(b)(1) for excusable neglect or 3003(c)(3) for good cause. The Bankruptcy Court held that the late filing was allowed under Rule 3003 because the delay in filing was caused by the creditor's waiting for the foreclosure sale to be completed in order to determine the amount of the claim. The District Court reversed, holding that Rule 3003 could not be used to allow the late filing, under *Pioneer Inv. Services v. Brunswick, 507 U.S. 380 (1993)*. In addition, the District Court held that the creditor did not comply with the Rule 9006 excusable neglect standard because the creditor intentionally delayed the claim filing until after the foreclosure sale. **Agribank v. Green, 188 B.R. 982 (C.D. Ill. 1995)**.

ENVIRONMENTAL CLEANUP COSTS. The debtor had operated a trucking business at a facility leased from a creditor. The lease provided that the debtor was responsible for any costs of cleaning up environmental damage caused by the debtor during the lease. After the debtor filed for bankruptcy, the lease was rejected by the debtor and the landlord had the property inspected for environmental damage. The state (New Jersey) environmental quality agency required a number of cleanup actions and the landlord sought recovery of those costs as administrative expenses. The court held that the cleanup costs were not entitled to administrative priority because the costs were incurred post-petition and the environmental hazards were not an imminent hazard to public health and safety. ***In re* McCrory Corp., 188 B.R. 763 (Bankr. S.D. N.Y. 1995)**.

EXEMPTIONS

IRA. The debtor claimed a federal exemption for the debtor's interest in an IRA. The trustee objected to the exemption on the basis that the debtor was not entitled to current distributions from the IRA. The court held that a right to current distributions was not a requirement for claiming an exemption for an IRA. ***In re* Marsella, 188 B.R. 731 (Bankr. D. R.I. 1995)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

CLAIMS. Although the IRS received notice of the claims bar date of April 1993, the IRS did not file its priority tax claim until October 1994, but still prior to final distribution of the estate property. The Bankruptcy Court allowed the claim but subordinated the claim to the level of a general unsecured claim. The District Court reversed, holding that an untimely priority tax claim was not automatically barred from priority status. However, the court indicated that the Bankruptcy Court would have, on remand, the equitable authority to subordinate the claim based on its tardiness. The court also noted that a 1994 amendment to Section 726(a) provides for allowance of untimely filed priority tax claims if the claim is filed prior to distribution of the estate. *Pub. L. 103-394, Sec. 213, 108 Stat. 4126 (1994).* ***In re* Lee, Inc., 189 B.R. 1 (D. R.I. 1995)**.

PRIORITY. The debtors were assessed additional taxes for investment in tax shelters and were assessed interest under I.R.C. § 6621(d) for substantial underpayment of taxes attributable to tax motivated transactions. The IRS included the interest in its priority claim and the debtors objected that the interest assessed was actually a penalty and not entitled to priority status. The court held that the Section 6621 assessment was interest because the purpose of the assessment was to increase taxation of taxpayers who use tax motivated abusive tax shelters. ***In re* Hall, 96-1 U.S. Tax Cas. (CCH) ¶ 50,031 (Bankr. D. Alas. 1995)**.

CONTRACTS

TERMINATION. The plaintiff operated a farm equipment dealership under a written agreement with the defendant, a manufacturer of the equipment sold by the plaintiff. The plaintiff alleged that the defendant's agent orally promised that the relationship would continue as long as the plaintiff met the sales targets set by the defendant. However, the written agreement between the parties stated that the agreement could be terminated by either party with six months' notice and for any reason. Although the agreement was extended to one at will, the defendant eventually notified the plaintiff that the agreement would be terminated and another dealer in the area would carry the defendant's products. The plaintiff claimed the defendant breached the oral agreement and failed to compensate adequately the plaintiff for expenses incurred in reliance on the expected continuing relationship. The court held that the Michigan Farm and Utility Equipment Franchise Act applied to the agreement because the plaintiff paid for services required by the defendant to continue the dealership. The court also held that an issue of fact remained as to whether the termination of the agreement was discriminatory under the franchise law. The court agreed with the plaintiff that an issue of fact remained as to whether the termination of the contract occurred before the plaintiff had sufficient time and opportunity prior to the termination to recoup costs incurred at the requirement of the defendant. Because the plaintiff had made claims of fraud and misrepresentation by the defendant in making and terminating the contract, the court denied the defendant's motion for summary judgment as to punitive damages. **Tractor & Farm Supply v. Ford New Holland, 898 F. Supp. 1198 (W.D. Ky. 1995)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The plaintiff was a rancher who also performed cattle brokering services. The plaintiff agreed to act as a broker for another cattle owner and found a buyer for the cattle. The plaintiff negotiated the sale with the buyer's broker. The cattle were tested and 14 were found to be suspected vectors of brucellosis. Although the cattle owners were notified for the test results, the plaintiff was not. Some of the cattle were loaded for shipment and the plaintiff accompanied the trucks to a veterinarian to pick up the health certificates. The plaintiff did not look at the certificates, which were incomplete because of a failure to identify each animal by an eartag. The shipment with the incomplete certificates violated 9 C.F.R. § 78.9(b)(3)(ii). The plaintiff's involvement with the second shipment of cattle involved transporting the buyer, the buyer's broker and a veterinarian to the seller's ranch for an inspection. Some of the cattle in the second load had not been tested for brucellosis within 30 days prior to shipment, in violation of 9 C.F.R. § 78.9(b)(3)(ii). The plaintiff was cited for "moving" cattle interstate in violation of the regulations cited above. Although the Administrative Law Judge (ALJ) dismissed the case against the plaintiff, the Judicial Officer (JO) reversed, holding that the term "moved" included "indirectly aiding, inducing or otherwise causing movement" sufficient to include the plaintiff's actions involving the two shipments. The court reversed, holding that the plaintiff's involvement with the shipments was too attenuated to support liability for the violations. **Culbertson v. USDA, 69 F.3d 463 (10th Cir. 1995)**.

CHEESE. The defendant was a corporation which operated a cheese processing and distribution activity. The defendant's facility was inspected by FDA inspectors who found unsanitary conditions resulting from insects, lack of washing facilities, unsanitary employee habits, and numerous unsanitary work procedures. The inspectors found cheese contaminated with Listeria monocytogenes (L. mono.). A return inspection found L. mono. in the insects, on the floors and on equipment in the facility. Although informed about the problem, the defendant failed to take any remedial action and the FDA cited the defendant for violation of 21 U.S.C. § 331 for introduction of adulterated food into interstate commerce. The defendant argued that it did not adulterate the cheese because the L. mono. was not intentionally added and that the cheese curing process was supposed to kill the L. mono. bacteria. The court held that the adulteration for purposes of the statute could occur by the failure to maintain sanitary conditions and that the defendant's failure to apply even minimal remedies to the known unsanitary conditions and procedures causing the contamination was a clear violation of the statute. The case is remarkable for the number and extent of the unsanitary conditions and extent of the contamination. It should not be read after eating cheese. **United States v. Union Cheese Co., 902 F. Supp. 778 (N.D. Ohio 1995)**.

DISASTER ASSISTANCE. The plaintiff operated a fruit farm and suffered loss of apple trees from fire blight in 1991. The plaintiff applied for disaster relief under the Tree Assistance Program, Section 2255 of the FACT Act 1990, Pub. L. No. 101-624, 104 Stat. 3974 (1990). The ASCS (now FSA) denied the application because fire blight was not included in the tree losses covered by the Act. Section 2255 states that reimbursement of the cost of replacing trees is available for trees lost due to "freeze, earthquake, or related condition." The plaintiff argued that the definition of "related condition" found in Section 2251 also applied to Section 2255, because the Section 2251 provision states that it applied to the whole chapter of the Act. Section 2255 is in subchapter B and Section 2251 is in subchapter A, both of which are in Chapter 3 of the Act. The court noted that the references to chapter and subchapter were not consistent throughout the Act; therefore, reliance on the use of the word "chapter" in section 2251 was insufficient to demonstrate that the definition of "related condition" in Section 2251 also applied in Section 2155. Thus, the court held that the ASCS properly denied reimbursement assistance to the plaintiff for the losses from fire blight. **Teichman v. Espy, 899 F. Supp. 353 (W.D. Mich. 1995)**.

INSPECTOR GENERAL. The plaintiffs were sheep and goat ranchers who had participated in the wool and mohair price support programs for several years. The Inspector General's Office (IGO) of the USDA initiated an audit of the plaintiffs' business to determine whether the plaintiffs had complied with the program requirements, including the payment limitation provisions. The plaintiffs complied with all document requests from the IGO until the FSA also started an audit of the plaintiffs' compliance with the wool and mohair programs. The IGO issued administrative subpoenas to enforce its document requests and the plaintiffs sought a declaratory judgment that the IGO did not have the authority to conduct the audit. Although the subpoenas contained boilerplate language that the subpoenas were necessary for the performance of the IGO's responsibilities for detecting fraud in the programs and administration of the USDA operations, the court held that the IGO did not have the authority to conduct what in actuality was a compliance review of the plaintiffs, which was strictly within the authority of the FSA. **Winters Ranch Partnership v. Viadero, 901 F. Supp. 237 (W.D. Tex. 1995)**.

MILK. Vermont passed a labeling law which required milk and milk product retailers to identify through signs and stickers (i.e., no product label changes were required) the milk and milk products which were produced from cows which had been injected with recombinant bovine growth hormone (rBST). The plaintiffs were various trade associations representing retailers and milk producers. The plaintiffs alleged that the labeling law violated the First Amendment and the Commerce Clause of the U.S. Constitution and sought a preliminary injunction. The defendant, Vermont, stated that the purpose of the labeling law was to inform consumers so that the consumers could make purchases based on their concerns about rBST treatment of cows and the economic and health concerns from such treatment. The court denied the injunction because the plaintiffs failed to show irreparable harm or likelihood of success on the merits. The court found that the costs of such labeling were minimal and easily recouped from a minimal increase in the cost of milk products. The court noted that the increase of production from rBST-treated cows could decrease the cost of such milk products, thus increasing the sales and profits of retailers. The plaintiffs also alleged that even the minimal loss of First Amendment freedoms was sufficient harm to support an injunction. The court held that the labeling law does not curtail any speech but only requires truthful statements about the milk products. The court also held that the plaintiffs were not likely to succeed on the merits because the labeling law did not discriminate against out-of-state producers by favoring in-state producers, since all producers are subject to the same labeling requirements and both in-state and out-of-state producers produce both kinds of milk products. The court also noted that the state had a legitimate interest in providing its consumers with full information about retail products and that the labeling law was passed in response to a variety of public concerns over milk products from rBST treated cows. The court held that the labeling law did not violate the First Amendment because the speech involved here was commercial speech which could be restricted by a substantial governmental interest, such as truthfully informing consumers. **International Dairy Foods Ass'n v. Amestoy, 898 F. Supp. 246 (D. Vt. 1995)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT-*ALM* § 10.05[2].* The plaintiff was a licensed PACA produce dealer. A friend of the plaintiff was an officer and more than 10 percent owner in a PACA licensee which had filed to make payments in several reparations cases and which then ceased operations. The friend sought employment with the plaintiff who hired the friend to perform various tasks. The USDA informed the plaintiff that the friend was determined to be a person responsibly connected to the licensee and employment of the friend was prohibited without permission from the USDA. The USDA allowed the employment of the friend if the plaintiff first obtained a $100,000 bond. The plaintiff made several attempts to obtain a bond over several months but eventually found a bond too expensive and terminated the friend's employment instead. During the several months of bond seeking, the plaintiff continued to employ the friend even after repeated warnings from the USDA that employment of the friend without a bond violated PACA. The ALJ had imposed a 30 day suspension for the plaintiff's failure to obtain a bond within 30 days after receiving notice that employment of the friend without a bond would violate PACA. The plaintiff argued that the circumstances warranted allowing the plaintiff more time to obtain the bond. The ALJ and JO ruled that the 30 day requirement was statutory and the statute did not provide any authority for extending the period. However, the JO increased the suspension to 90 days because the employment of the friend threatened to undermine PACA's purposes. The appellate court affirmed on the ruling that the plaintiff violated PACA but reduced the suspension to the original 30 days because the plaintiff made a good faith effort to obtain a bond, the employment of the friend did not threaten the produce industry because the friend did not have sufficient authority in the plaintiff's business, the plaintiff had an exemplary business record under PACA, and the 90 day suspension would destroy the plaintiff's business. **Conforti v. U.S., 69 F.3d 897 (8th Cir. 1995), *aff'g*, 54 Agric. Dec. 649 (1995)**.

FEDERAL ESTATE AND GIFT TAX

GIFT-*ALM* § 6.01.* The taxpayer's father entered into a earnest money contract to purchase land under a joint venture. The father arranged for an agent to represent the taxpayer and another child and to hold interests in the joint venture for the children. The agent sent a letter to the mother, explaining the agency arrangement. The interests were eventually sold with the taxpayer and the other sibling receiving promissory notes for their interests in the property. The notes were eventually paid and the taxpayer endorsed the check as satisfying the note obligation. The issue was who was taxable on the note proceeds. The court held that the father had made a gift of the interests to the children when the earnest money contract was executed and the agency created. **Streber v. Comm'r, T.C. Memo. 1995-601**.

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent owned all of the stock in five corporations which owned commercial and residential rental properties. The decedent also owned a 50 percent interest in a partnership which also owned similar property. Until four years before death, when an illness incapacitated the decedent, the decedent actively participated in the management of the properties, either through personal activities or through employees. After the illness, the decedent's management duties were performed by the decedent's spouse and son. The IRS ruled that the decedent's interests in the corporations and partnership were interests in closely-held business for purposes of installment payment of estate tax. The IRS ruled that the activities of the employees,spouse and son, were attributed to the corporations and partnership. **Ltr. Rul. 9602017, Oct. 11, 1995**.

POWER OF ATTORNEY. The decedent had established a revocable trust for the benefit of the decedent with the decedent as trustee. The trust provided that the trustee had the power to revoke the trust or remove all trust property at any time. The trust also provided that the power of revocation could be exercised by the decedent only and could not be exercised by any agent or conservator. The decedent executed a power of attorney naming a daughter as attorney-in-fact. The power of attorney gave the daughter the authority to "fund a previously created living trust or create different forms of property ownership…and to do and perform…every act and thing which may be required or necessary to be done in carrying out the authority granted herein, to conduct, manage and control all my business and my property…with authority to execute and acknowledge any and all instruments necessary or power to carry out the powers enumerated herein." The decedent executed a second power of attorney authorizing the same daughter to make gifts on the decedent's behalf. The second power also included the "power and authority to perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present." The daughter then withdrew funds from the revocable trust and established irrevocable trusts for the heirs of the decedent and excluded the funds in the irrevocable trusts from the decedent's gross estate for federal estate tax purposes. The IRS ruled that under state law, the trust provision prohibiting alteration of the trust or removal of property from the trust except by the decedent personally controlled over the powers of attorney executed by the decedent; therefore, the daughter did not have the authority to remove the trust funds and establish the irrevocable trusts and the funds were included in the decedent's gross estate. **Ltr. Rul. 9601002, Sept. 22, 1995**.

FEDERAL INCOME TAXATION

IRS ON THE INTERNET. The IRS is now available on the Internet through the World Wide Web (**http://www.irs.ustreas.gov**) with its own home page. The IRS may also be accessed by direct dial up (no parity, 8 data bits, 1 stop bit) at 1-703-321-8020 and entering "guest" at the prompt. The main internet address by Telnet is **ins.irs.ustreas.gov**. Through these access points, online users can order forms, obtain plain English descriptions of treasury regulations, and find answers on over 140 topics.

ASSIGNMENT OF INCOME. The taxpayer was a lawyer employed by the State of New York. The taxpayer agreed to represent the taxpayer's sister in a malpractice suit against a hospital for personal injuries. The taxpayer also engaged an independent law firm to represent the sister and agreed to split the contingency fee with the law firm. The suit was eventually settled and the settlement included a waiver of the taxpayer's portion of the fees to the sister. The court order incorporating the settlement also referred to the waiver of the fees. The taxpayer did not include the fees in gross income and the sister also excluded from income the waived fees as a part of the recovery for personal injuries. The court held that the waiver was an assignment of income and included the fees in the gross income of the taxpayer because the fees were earned by the taxpayer for the work in the case. **Sutherland v. Comm'r, T.C. Memo. 1996-1**.

C CORPORATIONS-*ALM* § 7.02.*

REORGANIZATIONS. The taxpayer was a farm corporation owned by six shareholders. Disagreements by three shareholders over management, operation and general business philosophy caused the shareholders to split the corporation into three corporations. The reorganization was accomplished by distributing assets to the new corporations in exchange for stock and then distributing that stock to the shareholders of the original corporation. After the reorganization, each of the three disagreeing shareholders owned a controlling interest in one of the resulting corporations, with the other three shareholders having an interest in all three corporations generally equal to their interests in the original corporation. The IRS ruled that the reorganization qualified as a "Type D" reorganization under I.R.C. § 368(a)(1)(D) such that no gain or loss was recognized and the basis and holding periods of corporation property carried over to the new corporations. **Ltr. Rul. 9601045, Oct. 10, 1995**.

DISCHARGE OF INDEBTEDNESS-*ALM* § 4.02[15].* The IRS has adopted as final regulations relating to information reporting requirements of financial entities discharging $600 or more of indebtedness per year per debtor. The regulations provide that the date of discharge for information reporting purposes occurs when an identifiable event occurs after which the debt no longer need be paid. Such events include (1) a discharge in bankruptcy, (2) a cancellation or extinguishment of an indebtedness that renders a debt unenforceable in a receivership, foreclosure, or similar proceeding; (3) a cancellation or extinguishment of an indebtedness upon the expiration of a statute of limitations for collection of an indebtedness or bringing an action or claim; (4) a cancellation or extinguishment of an indebtedness pursuant to an election of foreclosure remedies that bars the collection of the indebtedness; (5) a cancellation or extinguishment of an indebtedness that renders a debt unenforceable pursuant to a probate proceeding; (6) a discharge of an indebtedness pursuant to an agreement between an applicable financial entity and a debtor for less than full consideration; (7) a discharge of indebtedness pursuant to a decision by the creditor or the application of a defined policy of the debtor not to continue collection activity; and (8) the expiration of the nonpayment testing period. The testing period referred to in item (8) is 36-months increased by the number of calender months during all or part of which the creditor was precluded from engaging in collection activity by operation of law. If a discharge of indebtedness occurs in connection with a foreclosure or abandonment of secured property reportable under I.R.C. § 6050J, only a reporting under these regulations by Form 1099-C is required. The regulations are effective for debt discharges occurring after December 21, 1996. Until that date, the temporary regulations and Notice 94-73 remain in effect. Note: A future issue of the *Digest* will publish an article by Dr. Harl on these regulations. **61 Fed. Reg. 262 (Jan. 4, 1996)**.

HOBBY LOSSES-*ALM* § 4.05[1].* The taxpayer was employed full time as an airline pilot and worked in the off hours on a wind powered ethanol plant in the taxpayer's back yard. The District Court had disallowed deductions for expenses associated with the construction of the plant because the endeavor was not entered into with the intent to make a profit. The court found that the plant had not produced any ethanol and was unlikely to do so, the taxpayer had not consulted with experts or kept informed as to developments in the field, and that the plant was merely a model. The appellate court affirmed in a decision designated as not for publication. **Piszczek v. U.S., 96-1 U.S Tax Cas. (CCH) ¶ 50,016 (7th Cir. 1995), *aff'g*, 95-1 U.S. Tax Cas. ¶ 50,185 (W.D. Wis. 1995)**.

IRA. The taxpayer was 52 years old in 1995 and began monthly distributions from an IRA. The distributions were determined using a life expectancy of 31.3 years based on Table V of Treas. Reg. § 1.72-9. The interest rate was 8.8 percent. The payments were determined as of the IRA balance on December 31, 1994 and were to be same for each month for the duration of the 31.3 years. The IRS ruled that the distributions were substantially equal periodic payment and not subject to the 10 percent additional tax of I.R.C. § 72(t), so long as the distributions meet the modification requirements of I.R.C. § 72(t)(4). **Ltr. Rul. 9601052, Oct. 12, 1995**.

INTEREST. The taxpayers were assessed a deficiency and interest after an audit of their personal and business returns. The taxpayers allocated a portion of the interest as a business interest deduction but the IRS disallowed the deduction under Temp. Treas. Reg. § 1.163-9T(b)(2)(i)(A). The court held that the regulation was invalid and allowed the deduction. Note: A future issue of the *Digest* will publish an article by Dr. Harl on this issue. **Redlark v. Comm'r, 106 T.C. No. 2 (1996)**.

INVESTMENT TAX CREDIT-*ALM* § 4.03[12].* The taxpayer was a publicly owned corporation which operated child care centers. The taxpayer claimed investment tax credit for wall panels used for writing, mansard roof systems, playground fencing, exterior lighting systems, handicap restroom accessories, grease traps in the kitchen, thermal recovery systems and split door systems. The court held that the property items were not eligible for investment tax credit because the property items were integrated into the building structures so that the property was structural components. **La Petite Academy v. U.S., 96-1 U.S. Tax Cas. (CCH) ¶ 50,020 (8th Cir. 1995), *aff'g*, 95-1 U.S. Tax Cas. (CCH) ¶ 50,193 (W.D. Mo. 1995).**

LETTER RULINGS. The IRS has issued its annual list of procedures for issuing letter rulings. **Rev. Proc. 96-1, I.R.B. 1996-1, 8**.

The IRS has issued its annual list of procedures for furnishing technical advice to District Directors and Chiefs, Appeals Offices. **Rev. Proc. 96-2, I.R.B. 1996-1, 60**.

The IRS has issued its annual list of tax issues for which the IRS will not give advance rulings or determination letters. **Rev. Proc. 96-3, I.R.B. 1996-1, 82**.

The IRS has issued procedures for issuing determination letters on the qualified status of employee plans under Sections 401(a), 403(a), 409 and 4975(e)(7). **Rev. Proc. 96-6, I.R.B. 1996-1, 151**.

The IRS has issued revised fee schedules for issuing determination letters on the qualified status of employee plans under Sections 401(a), 403(a), 409 and 4975(e)(7). **Rev. Proc. 96-8, I.R.B. 1996-1, 187**.

LIKE-KIND EXCHANGES. The taxpayer owned land used for cattle grazing and duck hunting. The taxpayer granted to the U.S. Fish and Wildlife Service (FWS) a conservation easement over the property which prevented the taxpayer from altering the character of the land and allowed the FWS rights to water on the property in maintaining the property as a seasonable waterfowl habitat. The taxpayer retained the right to hunt and operate a hunting club on the property and the right to all subsurface minerals. State law recognized the conservation easement as a right in property. The taxpayer entered into a multi-party exchange transaction under which the FWS obtained replacement property which the taxpayer would use in a trade or business. The IRS ruled that the exchange of a conservation easement for a fee interest in trade or business property was a like-kind exchange eligible for nonrecognition of gain or loss. **Ltr. Rul. 9601046, Oct. 10, 1995**.

PARTNERSHIPS-*ALM* § 7.03.*

BASIS OF PARTNER'S INTEREST. The taxpayers were equal partners in a partnership. The partnership donated partnership property to a charitable organization, with the property having a basis less than its fair market value and not subject to liabilities. The IRS ruled that the basis of each partner's interest in the partnership is reduced by the partner's share of the basis in the partnership property donated. **Rev. Rul. 96-11, I.R.B. 1996-4.**

A partnership was comprised of a 75 percent partner and a 25 percent partner. The 75 percent partner was also a 60 percent partner of another partnership, with a 40 percent partner. The first partnership sold property to the second partnership for less than its basis in the property. The loss on the sale would be disallowed because a person owned at least 50 percent of each partnership. The IRS ruled that the disallowed loss would decrease the adjusted basis of the partners' interests in the partnership which sold the property. The loss is apportioned according to the partners' respective shares of partnership losses. The second partnership later sold the same property for more than its basis in the property but the gain did not exceed the disallowed loss on the first transaction. Under I.R.C. § 707(b)(1), 267(d), only gain on the transaction in excess of the disallowed loss from the first transaction is recognized; therefore, no gain is recognized by the partnership on the second transaction. The IRS ruled that the unrecognized gain is added to the partners' basis in their partnership interests according to the partners' interest in partnership profits. **Rev. Rul. 96-10, I.R.B. 1996-2**.

DISTRIBUTIONS. The IRS has issued proposed rules governing the treatment of a distribution of marketable securities by a partnership. Under I.R.C. § 731(a)(1) a partner must recognize gain on a distribution of money from the partnership to the extent the money received exceeds the partner's basis in the partner's partnership interest. Under I.R.C. § 731(c), marketable securities are to be treated as money for purposes of Section 731(a). Under I.R.C. § 731(c)(3)(B), the amount of marketable securities that is treated as money is reduced by the excess of (1) the partner's share of the net gain of the securities of the same class and issuer over (2) the partner's share of such net gain immediately after the distribution. The proposed regulations provide that all securities held by the partnership are to be treated as the same class and issuer. The proposed regulations also provide that marketable securities include an interest in a entity of which 90 percent or more of the assets are marketable securities. In addition, marketable securities include an interest in an entity if the interest in the entity is attributable to marketable securities owned by the entity which comprise 20 percent or more but less than 90 percent of the assets of the entity. The proposed regulations provide three exceptions. (1) The marketable securities rules do not apply if the distributee partner contributed the marketable securities to the partnership. (2) The marketable securities rules do not apply if the partnership acquired the marketable securities in a nonrecognition transaction in exchange for property other than marketable securities or cash and (a) the security is actively traded and (b) the security is distributed within five years after acquisition. (3) The marketable securities rules do not apply if (a) the security was not actively traded when acquired by the partnership, (b) the security was actively traded at the time of distribution, and (c) the security became actively trade more than six months after acquisition by the partnership and (d) the security was distributed within five years after the date the security became actively traded. The marketable securities rules do not apply to investment partnerships. **61 Fed. Reg. 28 (Jan. 2, 1996), adding Prop. Treas. Reg. § 1.731-2**.

RETURNS. The IRS has issued temporary regulations governing the issuance of automatic four month extensions for filing and paying federal income tax. The regulations generally implement Notice 93-22, 1993-1 C.B. 305 but the regulations do not require that a taxpayer be unable to make the tax payments on the date of the extension. The IRS encouraged taxpayers to make as large a payment as possible by the due date in order to reduce interest and penalties. **61 Fed. Reg. 260 (Jan. 4, 1996)**.

SAFE HARBOR INTEREST RATES

January 1996

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR 5.50	5.43	5.39	5.37	
110% AFR	6.06	5.97	5.93	5.90
120% AFR	6.63	6.52	6.47	6.43
		Mid-term		
AFR 5.73	5.65	5.61	5.58	
110% AFR	6.32	6.22	6.17	6.14
120% AFR	6.89	6.78	6.72	6.69
		Long-term		
AFR 6.19	6.10	6.05	6.02	
110% AFR	6.82	6.71	6.65	6.62
120% AFR	7.45	7.32	7.25	7.21

S CORPORATIONS-*ALM* § 7.02[3][c].*

ELECTION. The taxpayer was a shareholder of a corporation which claimed to have timely filed a From 2553 Subchapter S Election for 1986. However, the IRS claimed to have not received the form. The taxpayer presented extensive testimony by the form preparer that the form was timely mailed, and the Tax Court acknowledged that this testimony was believable. However, the court held that a presumption of delivery was not available to the taxpayer and that the requirements of I.R.C. § 7502 were the only means of proving delivery of a mailing. Section 7502 requires direct evidence of a postmark on the document involved, which the court stated could only be met, in cases of lost documents, by the record of registered or certified mail. The taxpayer also presented some evidence that the IRS had later mailed forms to the taxpayer with information allegedly obtainable only from the disputed Form 2553, thus proving IRS receipt of the Form 2553. The court rejected the significance of this evidence because the taxpayer failed to demonstrate that the information was not supplied to the IRS by some other means. As the Tax Court warns at the end of the opinion, taxpayers assume the full risk of IRS's nonreceipt or loss of filings unless the filings are mailed by registered or certified mail. **Carroll v. Comm'r, 96-1 U.S. Tax Cas. (CCH) ¶ 50,010 (6th Cir. 1995), *aff'g*, T.C. Memo. 1994-229**.

INADVERTENT TERMINATION. A shareholder of an S corporation distributed shares of stock to a trust which had the shareholder's two children as co-beneficiaries, causing the corporation to no longer qualify as an S corporation. The corporation did not learn this until the corporation's income tax return was prepared. The shareholder immediately reformed the trust into two separate trusts, each with one beneficiary, and language requiring annual distribution of income to the sole beneficiary and prohibiting distribution of trust principal except to the sole beneficiary. The IRS ruled that the new trusts were QSSTs and that the termination of S corporation status was inadvertent; therefore, the corporation was allowed to continue as an S corporation so long as all parties filed income tax returns consistent with an S corporation election. **Ltr. Rul. 9552031, Sept. 29, 1995**.

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JOURNAL ARTICLES

The *San Joaquin Agricultural Law Review*, Vol. 5, No. 1 (1995) contains the following articles:

Bensing, Daniel, "The Promulgation and Implementation of Federal Marketing Orders Regulating Fruit and Vegetable Crops Under the Agricultural Marketing Agreement Act of 1937."

Leighton, Brian C., "The Socialization of Agricultural Advertising: What Peristroika Didn't Do the First Amendment Will."

Osler, Lois Bonsal, "An Overview of Federal Milk Marketing Orders."

Padberg, Daniel I. and Hall, Charles, "The Economic Rationale for Marketing Orders."

Pineles, Barry, "Marketing Orders and the Administrative Process: Fitting Round Fruit into Square Baskets."

CITATION UPDATES

Crisp v. United States, 34 Fed. Cls. 112 (1995) (distributable net income) see Vol. 6, p. 157.

Estate of Green v. United States, 68 F.3d 151 (6th Cir. 1995) (gross estate) see Vol. 6, p. 182.

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