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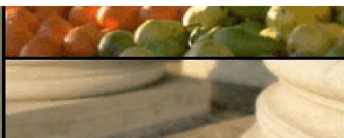

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An Agricultural Law Research Article

Income Taxation—Investment Tax Credit Recapture—Taxpayer's Transfer of All Farm Assets Except Farmland to Wholly Owned Corporation did not Cause Recapture when State Law Made Questionable Corporate Ownership of Farm Land—*Loewen v. Commissioner*.—(Tax Court 1981)

by

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CASE NOTES

INCOME TAXATION—INVESTMENT TAX CREDIT RECAPTURE—TAXPAYER'S TRANSFER OF ALL FARM ASSETS EXCEPT FARMLAND TO WHOLLY OWNED CORPORATION DID NOT CAUSE RECAPTURE WHEN STATE LAW MADE QUESTIONABLE CORPORATE OWNERSHIP OF FARM LAND—*Loewen v. Commissioner.*—(Tax Court 1981).

The petitioners, George and Selma Loewen, operators of an unincorporated farm and cattle-feeding business,[1] had received investment tax credits[2] on certain farm machinery and equipment purchased prior to 1976.[3] In January of 1976, the Loewens' formed a corporation under Kansas law, their place of residence.[4] Since 1931, Kansas law has recognized certain restrictions on corporate ownership of farmland.[5] In particular, during the time immediately prior to the incorporation, the Kansas legislature considered various proposals that could have meant divestiture of land owned by corporations.[6]

The Loewens transferred all of their farm and business assets[7] to the corporation, with the exception of approximately 160 acres of farmland.[8] That farmland was orally leased to the corporation on a year-to-year basis.[9]

The Loewens received all the stock in the newly formed corporation which continued to operate the cattle-feeding business and farm.[10] The Commissioner of Internal Revenue subsequently assessed a deficiency based

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1. Loewen v. Commissioner, 76 T.C. No. 5, TAX CT. REP. (CCH) Dec. 37,619, 2666, 2667 (1981).

2. *Id.* The investment tax credit is a credit against income tax liabilty for the purchasers of productive equipment. I.R.C. § 46. It was first enacted into the tax code in 1962 as part of President Kennedy's economic stimulation package. H. R. REP. No. 1447, 87th Cong., 2d Sess. 7 (1962). As President Kennedy stated in his Economic Report of that year, "[t]he tax credit increases the profitability of productive investment by reducing the net cost of acquiring new equipment. It will stimulate investment in capacity expansion and modernization, contribute to growth of our productivity and output, and increase the competitiveness of American exports in world markets." *Id.*

3. Loewen v. Commissioner, 76 T.C. No. 5, TAX CT. REP. at 2667.

4. *Id.*

5. *Id. See* KAN. STAT. ANN. § 17-5901 (1975).

6. Loewen v. Commissioner, 76 T.C. No. 5, TAX CT. REP. at 2667-68.

7. *Id.* at 2667. The transferred assets included certain oral leaseholds for farmland used in the business but owned by others. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* at 2668.

on recapture of investment tax credit since the farmland had not been transferred to the corporation.[11] The petitioners brought suit to have the Commissioner's assessment set aside.[12] The Tax Court held that the taxpayers' transfer of all farm assets other than farmland to a wholly owned corporation did not cause investment tax credit recapture when state law made corporate ownership of farmland questionable. *Loewen v. Commissioner,* 76 T.C. No. 5, TAX CT. REP. (CCH) Dec. 37,619 (1981).

The Internal Revenue Code allows a tax credit for certain property[13] purchased by a taxpayer.[14] Such property is termed "section 38 property," corresponding to that section of the code which specifically delineates which types of property qualify for favored tax treatment.[15] Section 47 of the code provides that if the property is disposed of before its estimated life for investment credit purposes, or ceases to be section 38 property, then a portion of the credit is recaptured.[16] This section also provides that

> property shall not be treated as ceasing to be section 38 property with respect to the taxpayer by reason of a mere change in the form of con-

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11. *Id.*
12. *Id.* at 2667.
13. A definition of property eligible for the investment credit, called "section 38 property," is contained in Treasury Regulation 1.48-1(a) which provides:

> Property which qualifes for the credit allowed by section 38 is known as "section 38 property". Except as otherwise provided in this section, the term "section 38 property" means property (1) with respect to which depreciation (or amortization in lieu of depriciation) is allowable to the taxpayer, (2) which has an estimated useful life of 3 years or more (determined as of the time such property is placed in service), and (3) which is either (i) tangible personal property, (ii) other tangible property (not including a building and its structural components) but only if such other property is used as an integral part of manufacturing, production, or extraction, or as an integral part of furnishing transportation, communications, electrical energy, gas, water or sewage disposal services by a person engaged in a trade or business of furnishing any such service, or is a research or storage facility used in connection with any of the foregoing activities, or (iii) an elevator or escalator which satisfies the conditions of section 48(a)(1)(c).

Treas. Reg. § 1.48-1(a) (1964).

14. I.R.C. § 38.
15. *See id.*
16. I.R.C. § 47(a). This section provides:

> General Rule.—Under regulations prescribed by the Secretary—(1) Early Disposition, etc.—If during any taxable year any property is disposed of, or otherwise ceases to be section 38 property with respect to the taxpayer, before the close of the useful life which was taken into account in computing the credit under section 38, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from substituting, in determining qualified investment, for such useful life the period beginning with the time such property was placed in service by the taxpayer and ending with the time such property ceased to be section 38 property.

Id.

> ducting the trade or business so long as the property is retained in such trade or business as section 38 property and the taxpayer retains a substantial interest in such trade or business.[17]

Since neither party in *Loewen* contended that a disposition or cessation as required by section 47(a) of the Internal Revenue Code had not occurred,[18] the focus of the Tax Court's inquiry was whether the requirements of Internal Revenue Code section 47(b) relating to a mere change in form had been fulfilled.[19]

The Secretary of the Treasury has issued regulations attempting to specifically define what a "mere change in the form" of conducting business requires in order to avoid recapture.[20] Treasury regulations are given the effect and force of the law unless they are inconsistent with the statute, are unreasonable or are outside the authority of the Secretary to issue them.[21] Neither party in *Loewen* alleged the regulations were invalid.[22]

Accordingly, the Tax Court examined the regulation in detail to assess whether recapture had been avoided.[23] Under the regulation, the first requirement is that "[t]he section 38 property . . . [be] retained as section 38 property in the same trade or business."[24] In *Ramm v. Commissioner*,[25] the Tax Court held that a liquidated corporation's assets distributed equally to the only two shareholders were not subject to the Internal Revenue Code section 47(b) exception from recapture because the two shareholders each used the assets to operate independent activities, rather than continue their combined business.[26] The court held that the regulation required that not only the type, but also the scope of the trade or business must be continued with only a change in form.[27] Thus, the trade or business itself must be the subject of the transfer.[28] The court in *Loewen* was not confronted with this

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17. I.R.C. § 47(b).

18. Loewen v. Commissioner, 76 T.C. No. 5, TAX CT. REP. at 2667. "In general, property will be considered disposed of whenever it is sold, exchanged, transferred, distributed, involuntarily converted, or disposed of by gift. Thus, a cessation will occur when property is contributed to a partnership or a corporation." S. REP. No. 1881, 87th Cong., 2d Sess. 148-49, *reprinted in* 1962 U.S. CODE CONG. & AD. NEWS 3304, 3450.

19. *See* text accompanying note 17 *supra.*

20. *See* Treas. Reg. § 1.47-1 to -6 (1967).

21. Fulman v. United States, 434 U.S. 528, 533 (1978).

22. Loewen v. Commissioner, 76 T.C. No. 5, TAX CT. REP. at 2667.

23. *See* text accompanying notes 24, 30, 44, 48 *infra.*

24. Treas. Reg. § 1.47-3(f)(1)(ii)(a) (1967).

25. 72 T.C. 671 (1979).

26. *Id.* at 675. *But see* Baker v. United States, 398 F. Supp. 1143 (W.D. Tex. 1975) (no recapture when three businesses held as a single partnership were transferred to three corporations).

27. Ramm v. Commissioner, 72 T.C. at 675.

28. S. REP. No. 1881, 87th Cong., 2d Sess. 152, *reprinted in* 1962 U.S. CODE CONG. & AD. NEWS 3304, 3453. This provision states:

> The phrase "a mere change in the form of conducting the trade or business" (whether

issue, however, because the farming and cattle-raising business continued to operate in the same manner after incorporation as it had prior to incorporation.[29]

A further requirement of the regulation is that "[t]he transferor (or in a case where the transferor is a partnership, estate, trust, or electing small business corporation, the partner, beneficiary, or shareholder) of such section 38 property retains a substantial interest in such trade or business."[30] This language has been the subject of more litigation and comment than any other portion of this regulation.[31]

"Substantial interest" has been interpreted both by the courts[32] and by the Internal Revenue Service.[33] In *Blevins v. Commissioner*,[34] the Tax Court held that when a taxpayer with a 45% interest in a partnership reorganized the business into a corporation in which he owned a 45% interest, the substantial interest test was met.[35] Likewise, in Revenue Ruling 77-458,[36] the Service asserted that when a taxpayer had a 50% interest in ten separate partnerships that were combined into a single partnership in which he retained a 50% interest, there was no recapture event.[37] When, however, a taxpayer with a 48% interest in a partnership transfers all the partnership assets to a corporation in which he retains a 7.22% interest after the reorganization, a recapture event occurs.[38] Recapture is also triggered when a partner reduces his interest from 50% to 25%.[39]

> through incorporation, the formation of a partnership, or otherwise) applies only to cases where the properties of a trade or business are transferred. Thus, the transfer of section 38 assets to a newly formed corporation in a transaction to which section 351 applies will not fall within the scope of the exemption unless the transaction involves the transfer of the trade or business in which such assets were used.

Id.

29. Loewen v. Commissioner, 76 T.C. No. 5, TAX CT. REP. at 2668.

30. Treas. Reg. § 1.47-3(f)(1)(ii)(b) (1967).

31. *See* notes 32-39 *infra.*

32. *See, e.g.*, Blevins v. Commissioner, 61 T.C. 547, 550 (1974).

33. *See, e.g.*, Treas. Reg. § 1.47-3(f)(2); Rev. Rul. 77-458, 1977-2 C.B. 220, 221. Treasury Regulation section 1.47-3(f)(2) provides:

> Substantial Interest. For purposes of this paragraph, a transferor (or in a case where the transferor is a partnership, estate, trust, or electing small business corporation, the partner, beneficiary, or shareholder) shall be considered as having retained a substantial interest in the trade or business only if, after the change in form, his interest in such trade or business—(i) Is substantial in relation to the total interest of all persons, or(ii) Is equal to or greater than his interest prior to the change in form.

Treas. Reg. § 1.47-3(f)(2).

34. 61 T.C. 547 (1974).

35. *Id.* at 550.

36. Rev. Rul. 77-458, 1977-2 C.B. 220, 221.

37. *Id.*

38. Soares v. Commissioner, 50 T.C. 909, 913 (1968). *See also* Rev. Rul. 77-361, 1977-2 C.B. 6, 7.

39. Rev. Rul. 74-64, 1974-1 C.B. 12, 13.

It is also apparent that the interest involved must be an ownership interest.[40] In *Purvis v. United States,*[41] the Federal District Court for the Northern District of Georgia held administrative control in the form of contract rights not to be a substantial interest after the stockholders had disposed of their stock.[42] The "substantial interest" provision of the regulations was not in controversy in *Loewen,* since the petitioners retained 100% of the stock of the corporation, the same interest they had held prior to incorporation.[43]

Treasury Regulation 1.47-3(f) further provides that "[t]he basis of such section 38 property in the hands of the transferee is determined in whole or in part by reference to the basis of such section 38 property in the hands of the transferor."[44] Although this particular requirement was not at issue in *Loewen,*[45] the need for compliance has been the subject of controversy.[46]

The real controversy in *Loewen* turned on whether the requirements of the third portion of the regulation were met.[47] This provision states that "substantially all the assets (whether or not section 38 property) necessary to operate such trade or business are transferred to the transferee to whom such section 38 property is transferred."[48] The position taken by the Internal Revenue Service in *Loewen,* in regard to the phrase "substantially all the assets," is similar to their interpretation of that phrase in Revenue Ruling 76-514.[49]

In that ruling, advice had been requested regarding whether a dentist qualified under Internal Revenue Code section 47(b) in order to avoid recapture.[50] The dentist was engaged in the business of dentistry, and owned his own equipment and the building that contained his practice.[51] In 1973, the business was incorporated[52] and all of the equipment transferred to the corporation.[53] The building, however, was retained by the dentist and leased to the corporation.[54] The value of the equipment was approximately 70% of the total, with the value of the building constituting the remainder.[55] The

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40. Purvis v. United States, 73-1 U.S. TAX CAS. (CCH) ¶9157 (N.D. Ga. 1972).
41. *Id.*
42. *Id.*
43. Loewen v. Commissioner, 76 T.C. No. 5, TAX CT. REP. at 2668.
44. Treas. Reg. § 1.47-3(f)(1)(ii)(d) (1967).
45. Loewen v. Commissioner, 76 T.C. No. 5, TAX CT. REP. at 2668.
46. *See* Long v. United States, 79-2 U.S. TAX CAS. (CCH) ¶ 9612 (W.D. Tenn. 1979); *rev'd*, 81-2 U.S. TAX CAS. (CCH) ¶ 9537 (6th Cir. 1981).
47. Loewen v. Commissioner, 76 T.C. No. 5, TAX CT. REP. at 2668.
48. Teas. Reg. § 1.47-3(f)(1)(ii)(c) (1967).
49. Rev. Rul. 76-514, 1976-2 C.B. 11.
50. *Id.* at 12.
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.*

Internal Revenue Service concluded that 30% of the assets of a business was more than an insubstantial amount.[56] Further, since the dentist had previously owned the building, the Service concluded that for the incorporated business to operate in the same manner, it too must own the building.[57] The Service thus expressed the opinion that a mere change of form had not occurred and that recapture had not been avoided.[58]

In *Loewen*, the Tax Court attempted to define the phrase "substantially all the assets" by referring to decisions construing those words as they appeared in other sections of the code.[59] The court examined its decision in *R. & J. Furniture Co. v. Commissioner*,[60] a case concerning an acquiring corporation that had received all assets owned by an acquired partnership with the exception of certain real property.[61] The real property was leased to the corporation for a period of fifty-five years.[62] The court in *R. & J. Furniture Co.* held that the acquiring corporation had received "substantially all the properties of a partnership."[63] The Tax Court also cited *James Armour, Inc. v. Commissioner*,[64] a case construing the phrase "substantially all the assets" contained in Internal Revenue Code section 368.[65] In *James Armour, Inc.*, the acquiring corporation received all business assets of the acquired corporation except for a piece of real property which was leased to the acquiring corporation.[66] The court held that substantially all of the assets had been transferred,[67] since the corporation had either "acquired title to, or the use of, all the assets essential to the conduct of the enterprise."[68]

Although the Tax Court recognized that the short term lease in *Loewen* was not equivalent to a fee interest,[69] the court distinguished the facts in *Loewen* from those in *James Armour, Inc.* and *R. & J. Furniture Co.*[70] Initially, the limitations on land ownership contained in Kansas law provided a reason for the Loewens' decision not to transfer their land to the corporation.[71] Secondly, since the Loewens owned both the corporation and the

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56. *Id.*
57. *Id.*
58. *Id.*
59. 76 T.C. No. 5, TAX CT. REP. at 2669.
60. 20 T.C. 857 (1953), *rev'd on other grounds*, 221 F.2d 795 (6th Cir. 1955).
61. 20 T.C. at 865.
62. *Id.*
63. *Id.*
64. 43 T.C. 295 (1964).
65. *Id.* at 309.
66. *Id.*
67. *Id.*
68. *Id.*
69. Loewen v. Commissioner, 76 T.C. No. 5, TAX CT. REP. at 2669 (citing Dixie Portland Flour Co. v. Commissioner, 31 T.C. 641 (1958); Daniels Buick, Inc. v. Commissioner, 26 T.C. 894 (1956), *aff'd per curiam*, 251 F.2d 528 (6th Cir. 1958)).
70. *See* text accompanying notes 71, 72 *infra*.
71. 76 T.C. No. 5, TAX CT. REP. at 2669.

land, they could have modified any lease agreement, whether long or short term, at will.[72] The court then concluded that the congressional intent would be furthered by not mandating recapture,[73] since the objective of the recapture provision was to prevent a quick turnover of assets by a taxpayer trying to gain multiple credits.[74] That was obviously not the motivation of the taxpayer in *Loewen*.[75] The court therefore upheld the Loewens' transaction as a mere change in form of doing business.[76]

The Loewen court's reference to language contained in other sections in the code similar to "substantially all the assets" suggests guidelines for practitioners in dealing with this phrase in the section 47 regulations.[77] In Revenue Procedure 77-37,[78] the Internal Revenue Service issued guidelines to its personnel for issuing letter rulings concerning these sections.[79] The Service's position in that revenue procedure is that the "substantially all" requirement is met if, "there is a transfer . . . of assets representing at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by the corporation immediately prior to the transfer."[80]

The percentages outlined above seem to be an interpretation of the applicable case law. In *American Foundation Co. v. United States*,[81] a transfer of 92.6% of a corporation's assets constituted a transfer of "substantially all the properties."[82] While such transfers of over 90% of the assets have been generally held acceptable,[83] transfers as low as 85.2% of assets have also been accepted.[84] On the other hand, a transfer of 66% of the assets has been held not to equal "substantially all of the assets."[85]

Besides simply looking at the raw percentages, other factors are often examined by the courts.[86] Courts have often examined the nature of the assets transferred.[87] If some assets are of a liquid nature, such as cash or ac-

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72. *Id.* at 2670.
73. *Id.*
74. H.R. REP. No. 1447, 87th Cong., 2d Sess. 13 (1962).
75. 76 T.C. No. 5, TAX CT. REP. at 2670.
76. *Id.*
77. *See* I.R.C. §§ 354(b)(1)(A), 368(a)(1)(C), 368(a)(2)(B)(i), 368(a)(2)(D), 368(a)(2)(E)(i).
78. 1977-2 C.B. 568.
79. *Id.*
80. *Id.* at 569.
81. 41-2 U.S. TAX CAS. (CCH) ¶ 9613 (9th Cir. 1941) (cited source contains facts of the case. Per curiam opinion at 120 F.2d 807).
82. *Id.*
83. *See* Britt v. Commissioner, 114 F.2d 10, 12 (4th Cir. 1940); Cortland Specialty Co. v. Commissioner, 60 F.2d 937, 938 (2d Cir. 1932).
84. Western Indus. Co. v. Helvering, 82 F.2d 461, 464 (D.C. Cir. 1936).
85. Pillar Rock Packing Co. v. United States, 90 F.2d 949, 950 (9th Cir. 1937).
86. Moffatt v. Commissioner, 363 F.2d 262, 267 (9th Cir. 1966), *cert. denied*, 386 U.S. 1016 (1967).
87. *Id.*

counts receivable, and are not required in operating the business, they may not be included in the percentage test.[88] Although the rules in Revenue Procedure 77-37 can be considered a guideline as to what the Internal Revenue Service will accept, the courts may take a more liberal view of the phrase "substantially all the assets."[89] While the application of phrases similar to "substantially all the assets" by the *Loewen* court represents persuasive reasoning, it raises uncertainties as to the precedential value of the decision itself. It is uncertain whether the court has adopted a definition of "substantially all" relatively dependent on the facts in a given situation. It is also uncertain whether the court in *Loewen* has rejected the Service's position in Revenue Ruling 76-514,[90] or has distinguished that ruling on the basis of the presence of hostile Kansas law making it difficult for a corporation to acquire land.

These uncertainties may have been resolved by post-*Loewen* decisions by a federal district court in the state of Washington.[91] In *Ostheller v. United States*,[92] a taxpayer incorporated his farm and business and transferred all operating assets, with the exception of a parcel of real property, to the corporation.[93] Relying on *Loewen*, the district court held that the requirement of Treasury Regulation 1.47-3(f)(1)(i)(c), that the transfer include "substantially all the assets," was met by the taxpayer.[94] This case is of particular importance since the court did not rely on any state restrictions on transfer, but instead relied solely on the taxpayer's leasing of the property to the corporation as well as the purpose of the recapture provision.[95]

The *Ostheller* court ignored the percentage tests suggested in Revenue Procedure 77-37; rather it based its decision on the factual context of the leasing of the realty to the corporation.[96] This would either indicate that the "substantially all" percentage tests do not apply in regard to investment credit recapture, or that the courts will apply the percentages only after considering the factual nature of the transfer.[97] The latter approach is the one used by courts applying the "substantially all" condition contained in other

88. *Id.*

89. *See* text accompanying notes 80-88 *supra.*

90. 1976-2 C.B. 11.

91. *See* note 92 *infra.*

92. 81-2 U.S. TAX CAS. (CCH) ¶ 9531 (E. D. Wash. 1981). A similar case was decided by the same judge at the same time. Felgenhauer v. United States, 81-2 U.S. TAX CAS. (CCH) ¶ 9532 (E. D. Wash. 1981). The facts in *Felgenhauer* are virtually identical with those in *Ostheller*, except the term of the lease of the property to the corporation was five years rather than three. *Id.*

93. 81-2 U.S. TAX CAS. (CCH) ¶ 9531 (E.D. Wash. 1981).

94. *Id.*

95. *Id.*

96. *Id.*

97. *See* text accompanying notes 86-88 *supra.*

portions of the code.[98]

The court in *Ostheller,* by not relying on local law limiting corporate ownership of farmland, apparently allowed taxpayers to take advantage of the change in business form exception to recapture without necessarily transferring owned real property to the new business.[99] The *Ostheller* holding is particularly helpful in states where corporate ownersip of land is partially restricted,[100] but is still allowed under certain circumstances.[101]

The inquiry into recapture does not end, however, when the requirements of Regulation section 1.47-3(f) have been met.[102] The taxpayer must continue to operate the same trade or business and retain a "substantial interest" therein until the asset lives have passed the recapture point, otherwise a recapture event will be triggered.[103] Thus, a shareholder who initially passed the requirements at the time of the change in business form is liable for recapture when his interest falls from 48% to 21% because of a gift of stock.[104]

If the above tests are met, the *Loewen* and *Ostheller* cases would seem to allow the incorporation of a farm with the title to the real property being retained by the farmers, without recapture of investment tax credit.[105] Accordingly, there are certain situations in which the tax planner may wish to consider leaving the title to farmland in the hands of the farmer rather than transferring it to the corporation.[106]

Formerly, one of these situations occured when the real property was held either in joint tenancy, or tenancy by the entirety, by the farmer and his spouse.[107] In such a situation, a transfer of the farmland to the corporation could have resulted in a taxable gift by one spouse to the other.[108] This problem was eliminated by the Economic Recovery Tax Act of 1981.[109]

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98. *See, e.g.,* Moffatt v. Commissioner, 363 F.2d at 267 (interpreting I.R.C. § 368).

99. *See* text accompanying notes 100-02 *infra.*

100. *See, e.g.,* IOWA CODE § 172C.4 (1981).

101. *Id. See also* IOWA CODE § 491.3(6) (1981).

102. "The determination of whether the taxpayer has retained a substantial interest in the trade or business is to be made immediately after the change in form of conducting the business, as well as after each time the taxpayer disposes of a portion of his interest in the new enterprise." S. REP. No. 152, 87th Cong., 2d Sess. 152, *reprinted in* 1962 U.S. CODE CONG. & AD. NEWS 3304, 3453.

103. Blevins v. Commissioner, 61 T.C. 547, 551 (1974).

104. *Id.* at 554.

105. *See* text accompanying notes 92-96 *supra.*

106. *See* text accompanying notes 107-11 *infra.*

107. *See* text accompanying notes 108-09 *infra.*

108. The termination of a joint tenancy in which the tenants had not elected to treat the creation of the tenancy as a gift, was treated as a gift from one spouse to the other. I.R.C. § 2515(b) (repealed by Economic Recovery Tax Act of 1981, § 403(c)(3)(B), Pub. L. No. 97-34, ___ Stat. ___ (codified as amended in scattered sections of 26 U.S.C.)). The amount of such gift was determined by the amount of consideration furnished by each spouse. *Id.*

109. Economic Recovery Tax Act of 1981, § 403(c)(3)(B).

Another problem area could occur when the value of the outstanding mortgage exceeds the taxpayer's total bases of the farmland and other assests transferred to the corporation.[110] In such a case, a transfer to the corporation could result in taxable income to the taxpayer.[111] In addition, the family arrangements of the taxpayer might make incorporation of only the machinery and other operating assets of the farm desirable.[112] In all cases, the tax planner should carefully consider the various income, estate and gift tax ramifications involved.

The ability to incorporate a farm while leaving the title to the land in the hands of the farmer represents another arrow in the quiver of the resourceful tax planner.

Steven J. Roy

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110. *See* I.R.C. § 357(c). This section provides for capital gain treatment to the extent that the sum of liabilities assumed exceed the total adjusted bases of property transferred in a tax-free incorporation under section 351. *Id.*

111. *Id.*

112. For example, this business arrangement might be desirable in a situation where the farmer wishes one child to eventually have the operating assets of the farm, while others are to receive the land.