

RECENT DEVELOPMENTS

ESTATE AND GIFT TAX BULLETIN – 5/29/98

1. Roth and IRA Gifts May Terminate Income Tax Benefits

Gift technique re: Roth IRA as the subject of a completed inter vivos gift of future interest: Would a gift terminate the account's status as a Roth IRA? If yes, the account would no longer be tax deferrable (the account would be currently taxable as any non-IRA account).

Problems with gift technique:

- ◆ Frustrates policy reason for authorizing IRA's – retirement security
- ◆ Technical provisions of IRC may be violated
- ◆ In essence, the transaction allows that which cannot be done directly, i.e., creation of retirement account for person other than the IRA creator/Taxpayer

2. IRS May Increase Examination of Gift Tax Returns, Official says.

Increase in examination of gift tax returns because as unified credit for estate taxes increases and the filing requirement for estate returns goes up, emphasis for compliance has to shift to the gift tax return area.

Special attention will be paid to:

1. Gift tax returns showing a discount claimed
2. Gift transfers related to family limited partnerships

3. Service Rules Reformed Trust Qualifies as Charitable Remainder Unitrust

Trust reformation is qualified; reformed trust is a charitable remainder unitrust; interest passing to charities is deductible under § 2055

4. Death Tax Inflation Adjustment Act of 1998

Would “provide an inflation adjustment of the unified credit against the estate and gift taxes” effective after 12/31/06.

5. IRS's Secret Law on the Web

IRS is attempting legislatively to overturn the US CT. of Apps. for the D.C. Circuit's opinion that the IRS must disclose Field Service Advice memorandums under the Freedom of Information Act.

REAL ESTATE DISCUSSION GROUP 5/26/98

1. Tax Court Applies Market Absorption Discount by Property Type

A 6.189% market absorption discount should be applied only to three similar properties and not to all real estate held directly or indirectly by the decedent's estate.

5-part analysis:

- A. Categorize the assets by type
- B. Determine the market value
- C. Compare the number of the assets in each category to the number of assets of that type that are traded in the market
- D. Determine how much longer than a reasonable time it would take to sell the assets at market value
- E. Discount the assets that can't be sold within that reasonable time.

2. Chief Taxwriters Would Kill Tax-Free Distribution of REIT Liquidations to C. Corps.

Legislation was introduced 5/22 which would treat earnings from liquidated distributions from closely held REITs and RICs as taxable dividends.

REAL ESTATE DISCUSSION GROUP, 5.19.98

1. Treasury Explains New Rules for Excluding Gain on Residence Sales

For residence sales after May 6, 1997:

- ♦ Single taxpayers – may exclude up to \$250,000.00 of gain on the sale of an eligible residence as long as they do not use the exclusion more than once every 2 years.
- ♦ Married taxpayers filing jointly – may exclude up to \$500,000.00 gain on the sale of an eligible residence as long as they use they do not use the exclusion more than once every 2 years.
- ♦ Single taxpayer that marries another taxpayer that has used the exclusion within the past 2 years may only exclude \$250,000.00 gain on the sale of any eligible residence. Once both

spouses satisfy the eligibility rule and 2 years have passed, they may exclude \$500,000.00 on their joint return.

2. ABA Tax Section: Practitioner Warns the REIT 'Nirvana' Not at Hand

Ruling re: that hotel management services rendered by a service subsidiary to a hotel lessee do not taint rental income received by the hotel lessor (subsidiary of a paired-share REIT). Holding is confined to the complex facts of this case; similar cases, even with similar facts, may not result in an identical ruling.

NRC legislative priorities for the year: reducing the lease-hold improvement depreciation period from 39 years to 10 years; repealing the at-risk rule for real estate.

REAL ESTATE DISCUSSION GROUP, 5.12.98

1. Tax Liens Can Be Foreclosed Against Fraudulently Transferred Property Subject to First Mortgage (US Dist. Ct. opinion)

RE: Howard Green – The govt may foreclose its tax lien against property that a man fraudulently transferred to himself and his wife, but the wife's mother has priority over the tax lien through a \$50,000.00 mortgage she held on the property.

BUSINESS TAX DISCUSSION GROUP, 6.4.98

1. Scarborough Bill, H.R. 3860 Would End Capital Gains Tax
HR 3860 would eliminate taxes on capital gains after 12.31.01

2. IRS Attacks Enron MIPS

Enron Corp, which has nearly 300 subsidiaries, filed a petition in Tax Court 2 months ago fighting the IRS's classification of MIPS; the IRS had made a previous determination disallowing interest deductions for payments on MIPS issued in 1993 and cumulative preferred securities issued in 1994.

3. IRS and Montana to Test Single Point Filing

Under STAWRS, the IRS and the Montana Dept. of Revenue will be testing single point filing with a small group of employers by combining into one tax return the info now contained in the IRS employment tax return, the Montana withholding return and the Montana unemployment insurance return.

Under the plan, certain employers (most of them small businesses) will file one tax form that Montana will process and then send the extracted federal data electronically to the IRS.

The 5-year demonstration project is to test the feasibility of combined quarterly employment tax returns with Montana.

THE INTERNET TAX BULLETIN

1. Senate Democrats Worry Lott is Trying to Force Clinton to Veto IRS Reform

Senate Democrats believe that Senate Majority Leader Trent Lott intends to stack the deck of Senate conferees on the IRS Reform bill with senators who want to remove the Treasury Secretary and union representative from the proposed 9-member IRS oversight board.

2. Coverdell, IRS Reform Bills in Race to President's Desk

The Senate's unanimous vote to pass fundamental IRS reform May 7 was a preview of the conference committee to come; some of the tax bills include highway funding legislation and a bill to allow tax free withdrawals from education IRAs for K-12 school costs.

3. Roth Wants to Expand Namesake IRA to Pay for IRS Reform

Roth wants to pay for package of IRS reforms by allowing more people to convert their traditional IRAs into a Roth IRA -- \$8 billion would be raised by modifying the rollover rules for people over 70 ½ years of age to make the conversions.

- ◆ Under current law – tps over 70 ½ can't make the conversion if their incomes plus their IRA minimum distribution exceeds \$100,000.00 in a year.
- ◆ Under new law – distributions for purposes of the \$100,000.00 limit would be excluded effective 1/1/05, raising \$2.5 billion annually.

Cost of Roth's HR 2726 – recalculated, actually \$1 billion less than originally thought.

4. "Use of Principal Residence" Requires Facts and Circumstances Test

Under Sec. 121, the requirement that a tp "use" the sold property "as his principal residence" for 3 of the 5 years preceding its sale do not require strict physical occupancy, as the IRS argued, but rather a "facts and circumstances" test as applied for sec. 1034.

- ◆ The 3 out of 5-years requirement in 121 "refers not to how the residence was merely 'used,' but to whether the property was used by the tp as his principal residence." "If the property is not USED for 3 out of the 5 years before the sale, it would not be the principal residence."
- ◆ The phrase "used as a principal residence" should be interpreted in the same manner as under sec. 1034. Facts and circumstances test should apply.

- ♦ A finding of ‘use’ as the ‘principal residence’ for a period of time could result even if the tp were not physically present at the home during that time.

TAX BITS INTERNATIONAL 5.11.98

1. In This Issue

- ♦ EMU and Introduction of Euro

As of 1/1/99, banking will be allowed in euros, but the actual euro notes and coins will not be issued until 1/1/02. Suggestion has been made that the IRS is leaning toward treating the introduction of the euro as a tax-neutral event (question whether the conversion will constitute a taxable event that will trigger the recognition of gain or loss). UK has stated that conversion driven costs required to adapt computer systems for the euro are likely to be tax deductible.

- ♦ Canada and transfer pricing

Views of Vincent and Freedman (slightly different than most who focus on compliance with the new transfer pricing rules to avoid transfer pricing penalties), who believe that practicing tax in the transfer pricing area should involve more than merely justifying existing transfer pricing practices. The practice should entail “(re)shaping or (re)structuring a tp’s existing circumstances and proposed transactions so as to proactively reduce the transfer pricing compliance burden and the risks of transfer pricing penalties and reassessments.”

- ♦ Court Decisions

- Australia will seek to revise its tax treaties. Capital gains article is the likely target (definition of land-rich companies)
- Australia – a buyback does not involve a transfer of rights, but an extinguishment of the rights attached to shares; they are effectively exempt from stamp duties (at least in Victoria).
- Mexico – The constitutional principle of tax equity is violated when granting tax exemption for income derived from the sale of shares and securities *in* Mexico but not to income derived from the sale of shares *outside* of Mexico.
- Paris – The abuse of law procedure, which punishes fictitious or tax-driven schemes, cannot be used when the tp has literally applied an administrative doctrine that was published and in force at the time of the transaction, even if the scheme is contrary to law.

- ♦ People’s Republic of China

Reports stated that PRC had embarked on a plan to eliminate preferential tax treatment for foreign investors; D. Liu states that there has been little to show for calls to grant “national treatment” to foreign investors.

BANKRUPTCY DISCUSSION GROUP, 5.8.98

Question #2: I had stock in a company that went bankrupt and sold its assets. Am I still limited to claiming \$3,000.00 per year in stock losses?

Question #3: I am filing my income taxes through H&R Block. They are telling me that I have to file capitol gains on my house which was foreclosed and filed in my bankruptcy. Is this possible?

Question #4: I want to know why I filed a bankruptcy and the IRS did not object and yet they will not honor my bankruptcy even though my bankruptcy attorney says it is valid. The IRS says they do not have to honor bankruptcies. What is the real answer to this? I am still making huge payments every month and it only takes care of the interest.

New Question: I'm hoping to get information on what to do with the 1099-C form I received as a result of a Chapter 7 bankruptcy that was granted through the bankruptcy courts (title 11, I think is what it is referred to). I find the instructions quite confusing. How does all this work?

REAL ESTATE DISCUSSION GROUP, 5.5.98

1. Couple Didn't Fraudulently Transfer Home to Trust; Trust is Not Sham or Nominee

In re: Eugene T. Richards: the bankrupt couple did not fraudulently convey property to a trust; the trust was not a sham; the couple's bankruptcy petition should not be dismissed for bad faith.

2. Advance Court Opinion: Federal Insolvency Statute is Subordinate to Sec. 6323; IRS Lien Lacks Priority Over Judgment Lien.

United States v. Estate of Francis J. Romani, et. al.: federal insolvency statute 31 U.S.C. section 3713(a) does not require that a federal tax claim be given preference over a judgment creditor's perfected lien on real property.

3. Couple's Loss Occurred Before They Destroyed Building; Deduction Denied

Linden Gates, et ux. V. United States: A couple is not entitled to a deduction for the loss of a building they demolished, finding that the loss occurred before the building was destroyed when the couple discovered asbestos and the building was vandalized.

4. Partnership Not Eligible for Like-Kind Exchange Treatment (TAM)

A partnership does not qualify for like-kind exchange treatment under section 1031 when it relinquishes property but has the replacement properties deeded directly to partners in liquidation of their partnership interests.

Rev. Rul. 90-34, 1990-1 C.B. 154 should not be extended to the partnership and its partners; to apply, the partners would have to be viewed as exchanging their partnership interests for replacement properties, but it is the partnership that is seeking non-recognition of gain on the

transfer of the relinquished property, not non-recognition of gain on an exchange of the partners' partnership interests.

REAL ESTATE DISCUSSION GROUP, 3.31.98

1. Tax Chairs Offer Stapled REIT Bill

Bill was introduced 3/26/98 that would curtail the growth of real estate investment trusts. Bill would treat stapled REITs as a single entity for acquisitions made after 3/36/98. According to JCT, proposal to limit stapled REIT activity would raise \$15 billion more over five years than Treasury has projected. Bill would:

- ◆ treat certain activities and gross income of a REIT regarding property held by any REIT member as activities and income of the REIT.
- ◆ Create an exception to the treatment of activities and gross income of a stapled entity as activities and gross income of the REIT for certain grandfathered properties.
- ◆ Create special rules for REITs whose members hold a mortgage that is secured by an interest in real property that would apply when a member of the REIT group engages in certain activities regarding that property.

2. Corporation Was NOT Purchaser for Value; Subsequently Filed Tax Lien Has Priority.

A&B Steel Shearing and Processing Inc. v. United States: A tax lien attached to real property purchased from a tax-delinquent estate by a corp. because the corp. wasn't a "purchaser" within the meaning of section 6323(h)(6) (A&B did not give adequate and full consideration).

SHOULD YOU CONVERT YOUR CURRENT IRA TO A ROTH IRA IN 1998? By Michael A. Kirsh.

Roth IRAs have important advantages over traditional IRAs. But should take many factors into consideration (*Is many an advertisement – they will help to determine whether a conversion makes sense by applying analytical methodology to a client's particular situation).

QUESTION RE: CREDIT SHELTER TRUST.

Q: ... "My understanding has been that a bypass trust gives the income beneficiary right to withdraw 5% of the principal over and above all other distributions.

A: An annual right to withdraw 5% is a common provision with a bypass trust but is not required in anyway. Any right to withdraw principal must be limited to an annual right to withdraw no more than 5% of the principal. 5% of the trust is included in the estate of the survivor but not more than that. A right to withdraw more than 5% would cause a failure to exercise the right to be considered to be a taxable gift to the trust. See IRC sections 2041(b)(2) and 2514(e).

ESTATE AND GIFT TAX BULLETIN, 1.16.98

1. How Expenses are Paid Shouldn't Affect Marital Deduction, Attorney Argues

Harold I. Apolinsky of Sirote & Permutt, Birmingham, Alabama, has urged the IRS (by letter dated 11.13.97) to allow estates to pay their administrative expenses with either income or principal without adversely affecting the marital deduction or charitable deduction. He argues that to do otherwise runs the risk of making estate tax law as complicated as the income tax law. He considers it 'logical and correct' to not have the payment of expenses considered an impairment of the marital deduction. "Suppose the assets are rather complex and the administrative procedure involved necessitating very significant administrative costs. Certainly you would never suggest that there be any tax paid because of the 'material limitation' on the marital deduction. The same could be said for a 100% bequest of assets to charity."

2. Reformed Trust Qualifies As Charitable Remainder Unitrust

IRS has ruled that a charitable remainder unitrust created on reformation qualifies under sec. 664 and the value of the remainder interests passing to charitable organizations under the reformed trust are eligible for estate tax charitable deductions.

Charitable interest under the testamentary trust is a reformable interest, because a charitable deduction would have been allowable for that interest 'but for the split-interest provisions' and because a timely reformation petition was filed.

The IRS said that the reformation of the trust is a qualified reformation because: (1). It meets the 5% requirement; and (2). The proposed reformation is effective as of the decedent's death. As long as the trust is valid under local law, the IRS said that it qualifies as a charitable remainder unitrust.

PHOENIX HOME LIFE INSURANCE COMPANY

Booklet regarding charitable giving techniques grid.

NASSAU LAWYER, 12.97

Changes to EPTL Make Lifetime Trusts More Effective Will Substitutes

Lifetime trusts have now acquired a greater legitimacy as a vehicle for passing assets at death, while avoiding some of the negative aspects of probate, and in larger estates their use will be preferable to other, less sophisticated, less flexible Will substitutes, such as joint bank accounts with rights of survivorship, Totten Trust accounts, and life insurance.

Goal of new law was to remedy an apparent 'paucity of law, either substantive or procedural, with respect to [lifetime trusts], especially when compared to the law governing Wills.'

Amendments to the EPTL which did survive the legislative process:

- ◆ Provisions defining exactly what a lifetime trust is (EPTL 1-2.20)
- ◆ Provisions defining who may execute one (anyone over 18 yrs. Old, EPTL 7-1.14)
- ◆ Provisions defining what it may do
- ◆ All trusts are irrevocable unless the instrument expressly states otherwise.

Most important changes regard formalities of execution, funding, and the merger doctrine.

- ◆ Execution formalized: new law codifies requirements for execution, amendment, and revocation of both revocable and irrevocable lifetime trusts created after 12.25.97. (EPTL 7-1.16, 7-1.17 – functional equivalents of 3-2.1 and 3-4.1). Trust must be in writing, signed by the grantor, and signed by at least one acting trustee if the creator is not the sole trustee. In addition, the trust must be *either* acknowledged in the same manner required for the recording of a conveyance of real prop *or* executed before 2 witnesses who must sign the trust instrument as with a will. The same applies to the amendment or revocation of a lifetime trust (unless provided otherwise in the governing instrument), however, it must be in writing regardless of the provisions of the governing instrument. Also, if the creator of a lifetime trust reserves the power to revoke or amend, revocation or amendment may also take place by 'an express direction in the creator's will which specifically refers to such lifetime trust or a particular provision thereof.' (this is similar to EPTL 7-5.2).
- ◆ Amendments and revocations take place as of the date of the change (unless provided otherwise in the instrument) BUT if the person executing the change is not the sole trustee, written notice of the amendment or revocation must be delivered to at least one other trustee within a reasonable time. (failure to do so results in liability NOT being imposed on a trustee who, prior to receiving such notice, takes reasonable action pursuant to the original terms of the trust). Statutory duty to notify doesn't exist re: executor giving notice to a trustee of a change effected by Will; but executor has a fiduciary obligation to notify the trustee of a material change effected by the Will which would enhance the rights of the beneficiaries under the will.
- ◆ Funding a lifetime trust. Traditional rules of intent and delivery will continue to govern funding of lifetime trusts administered by a trustee other than the grantor. However, to avoid problems and unnecessary litigation, there are new additional requirements:
 - Mere declaration is no longer permitted as a means of transferring assets to any trust.
 - Registration is required where the grantor and trustee is the same person. This requirement makes absolutely clear that after-acquired stocks and bonds are not part of the trust, absent further filing.
- ◆ Merger Doctrine. New law amends EPTL 7-1.1, eliminating the merger doctrine. "A trust is not merged or invalid because a person, including but not limited to the creator or the trust, is or may become the sole trustee and the sole holder of the present beneficial interest therein, provided that one or more other persons hold a beneficial interest therein..." The amendment to EPTL 7-1.1 is effective for lifetime trusts created on or after 6.25.97, a recent decision held that, "[a]lthough such language might in the abstract be read to exclude existing trusts from the effect of the new EPTL 7-1.1, a fuller analysis points to a contrary conclusion."

- ◆ Issues Left Unresolved by the New Law. Right to trial by jury to determine the validity of a lifetime trust – issue has been addressed by 5 Surrogates, with differing results. Surrogate Radigan (Nassau County) (and 2 others) held that a proceeding to set aside an inter vivos trust is equitable in nature and that no right to a jury trial exists without statutory authority such as that provided for probate contests. 2 Surrogates have found that the right to a jury trial in setting aside a Will extends to a lifetime trust because the nature of relief requested is the same.

IRS LETTER RULINGS, 12.1.97

SECOND-TO-DIE LIFE INSURANCE ISN'T INCLUDABLE IN SPOUSE'S ESTATE

The value of a trust and a second-to-die life insurance policy is not includable in a surviving spouse's estate because the spouse made no contributions to the trust and possesses no rights under sections 2036 or 2038; the spouse (who isn't a trustee) will have no incidents of ownership under section 2042 unless the spouse is later appointed trustee.

Under the terms of the Trust (facts), B does not possess any rights within the meaning of sections 2036 or 2038. Assuming B is not named as an additional trustee, B will not have any incidents of ownership in the policy by reason of section 20.2042-1(c)(4). Assuming B does not make any contributions to the Trust (either directly or indirectly), ITS concluded that the trust and insurance policy will not be included under sections 2026, 2038 and 2042(2) in B's gross estate upon her death.

JOURNAL OF ACCOUNTING

Web pages regarding tax information

- ◆ American College of Trust and Estate Council (ACTEC)
<http://www.actec.org>
- ◆ Americans for Tax Reform
<http://www.atr.org>
- ◆ Tax Analysts, Discussion Groups
<http://www.tax.org/notes/default.htm>
- ◆ Today's Tax News
<http://www.tax.org/TodaysTaxNews/default.htm>
- ◆ The World Wide Web Virtual Library: Law-Taxation
<http://www.law.indiana.edu/law/v-lib/taxes.html>
- ◆ Law and Estate Planning Sites in the Internet
<http://www.ca-probate.com/links.htm>
- ◆ Tax Resources
<http://www.best.com/%7eftmexpat/html/taxsites.html>

- ◆ The Estate Planning Links Web Site
<http://users.aol.com/dmk58.eplinks.html>

ESTATE AND GIFT TAX BULLETIN – 9.12.97

1. Arthur Andersen Report on Taxpayer Relief Act (TRA)

The TRA implements a landmark balanced-budget agreement. Includes over 100 revenue losing provisions for a net tax cut of \$96 billion. Most of the relief is concentrated in 5 areas: \$500 child credit, expanded IRAs, educational tax incentives, estate tax relief, reduction in the capital gains tax rate for individuals.

The tax cuts are partially offset by tax increases of \$56 billion over five years. $\frac{3}{4}$ of this revenue comes from a modification and extension of the excise taxes on air transportation scheduled to expire later this year. The balance comes from miscellaneous revenue increases termed “loophole closers,” which include restrictions on tax-free spin-offs under section 355, treatment of preferred stock as boot, revamping the rules on NOLs and general business credit carrybacks and carry forwards, restrictions on constructive sale transactions, new corporate tax shelter reporting requirements, an expansion of the substantial-understatement penalty.

- ◆ UNIFIED CREDIT – Effective for decedent’s dying and gifts made after 1997, the unified credit (under estate, gift and trust taxes) is gradually increased from the current effective exemption of \$600,000 to an effective exemption of \$1 million in 2006. The unified credit phase-out continues for large estates in an amended format.
- ◆ CLOSELY HELD AND FAMILY-OWNED BUSINESSES – Qualifying closely held businesses (those comprising a substantial portion of the decedent’s estate and meet other material participation and ownership requirement) may have the opportunity to exclude up to \$1.3 million in value (after certain discounts) of the businesses interests from estate tax. Amount of exclusion ranges from \$675,000 in 1998 to \$300,000 in 2006 and thereafter. Amount of exclusion decreases as the effective exemption under the unified credit increases, maintaining a consistent \$1.3 million aggregate effective exclusion. There are certain eligibility requirements to both qualify initially for the exclusion and to avoid recapture of the tax benefit obtained by use of the exclusion.
- ◆ PREFERENTIAL INTEREST RATE – The interest rate in the deferred estate tax on the first \$1 million in taxable value of the closely held business is reduced from 4% to 2%; the interest rate for deferred estate tax on the taxable value of the closely held business over \$1 million is reduced to 45% of the tax rate on tax underpayments; interest paid on estate taxes deferred under this provision is not deductible for estate or income tax purposes. These changes apply to decedents dying after 12.31.97. Transition rule applies to existing estates that previously elected to pay estate tax in installments under pre-act law.
- ◆ OTHER ESTATE AND GIFT TAX PROVISIONS –

- ◆ Revocable trusts: Effective for decedents dying after 8.5.97, can elect to treat a ‘qualified revocable trust’ as part of the decedent’s estate for income tax purposes, as long as the election is made both by the executor of the estate and the trustee of the revocable trust.
- ◆ Charitable remainder trusts: New requirements to qualify for charitable remainder trust treatment. (1). Payout rate cannot exceed 50% of the initial fair market value or 50% of the annual valuation date fair market value (applies to transfers in trust after 6.18.97). (2). All CRTs must provide a minimum charitable benefit of 10% of the initial net fair market value of property transferred to the CRT (applies to transfers in trust after 7.28.97, with special grandfathering rules for certain decedents dying before 1.1.99).
- ◆ Cost of Living Adjustments: unified credit is not indexed for inflation; the following are all indexed for inflation: annual gift tax exclusion, \$750,000 special use valuation exclusion, \$1 million generation-skipping exclusion, \$1 million interest amount for deferred estate taxes.
- ◆ Revaluation of Gifts : Statute of limitations will not run on an inadequately disclosed gift regardless of whether a gift tax return was filed for other transfers made in that same year, effective for gifts made in calendar years after 8.5.97. Also effective 8.5.97 – gift can’t be revalued in determining the applicable estate tax bracket and available unified credit of the donor-decedent if the statute of limitation has expired.
- ◆ Estate and Beneficiaries Treated as Related Parties – Effective 8.5.97 (in cases other than a sale or exchange in satisfaction of a pecuniary interest), an estate and a beneficiary of that estate are treated as related persons for purposes of certain loss-disallowance rules.
- ◆ Technical corrections and Simplification –
 - ◆ Deferred payment of estate taxes – An executor can request judicial review of an estate’s eligibility for the section 6166 election, without requiring the prepayment of the balance of the deferred tax liability.
 - ◆ Throwback rules for domestic trusts – For distributions made in tax years beginning after 8.5.97, amounts distributed by a domestic trust are exempted from the throwback rules.
 - ◆ Generation skipping tax – Pre-deceased parent exception under the generation skipping tax is extended to transfers to collateral heirs for post-1997 transfers, distribution, or terminations.
- ◆ TRUSTS AND ESTATES - clarifying and technical changes to rules for foreign trusts and estates: (1) Treasury has authority to allow long-standing non-grantor domestic trusts to elect to continue to be treated as domestic trusts despite

statutory changes made in 1966. (2) When determining whether a US person's transfer to a trust is for a fair market value consideration, disregard the obligations of any owner of the trust and certain persons who are related to any owner of the trust.

2. The Family Owned Business Exclusion – In Need of Repair (Prof. Neil E Harl, Iowa State Univ.)

TAX MATTERS – May 1998

Deductibility of Home Mortgage Interest – The Tax Court recently considered whether actual ownership of the residence also was a requirement for an itemized deduction for qualified residence interest. A home mortgage deduction for interest is allowed as long as the taxpayer is able to show that the ownership is an accommodation necessary to obtain financing and shows that all parties expect the tp ultimately to be responsible for the debt (written documentation of such is helpful). But, only the tp should claim the related deductions (not the family member who facilitated the sale). Family should consider transferring ownership of the home to the occupying tp at the first convenient opportunity. *Saffett and Ana Uslu, TC Memo 1997-551.*

Nonresidents Entitled to Deduct Alimony Payments – US Sup. Ct. has ruled that state tax laws denying a non-resident deduction for alimony payments made outside the state were unconstitutional under the privileges and immunities clause of the US Constitution. The NYS law that was challenged denied non-residents a deduction for alimony payments made outside of NY. Violation of US Constitution found, because the privileges and immunities clause protects the right of a citizen of any state to 'remove to and carry on business in another [state] without being subjected in property or person to taxes more onerous than citizens in the latter state are subjected to'. NY did not present a substantial reason for the difference in treatment of alimony deductions for non-residents. Also, the Court rejected the NY Ct. of Apps. characterization of alimony as linking to activities wholly outside the state. Alimony is an obligation of some duration that is determined mostly by a person's income, wherever earned.

TAX MATTERS – APRIL 1998

An End to Marriage Penalty? – Testimony was heard regarding elimination of the 'marriage penalty' (which results when married individuals have a greater tax liability than do similarly situated single individuals). Argument – the penalty is inequitable.

New Interest Abatement Rules – TPs no longer have to pay interest for certain past-due tax liabilities when the IRS is responsible for unreasonable errors or delays while a case is being processed. Proposed regulations – Reg-209276-87 under IRC section 6404(e)(1), IRS will abate interest resulting from delays that occur while IRS staff performs managerial acts

(including loss of records and the exercise of judgment or discretion relating to the management of personnel) or ministerial acts.

TAX MATTERS – FEBRUARY 1998

New IRS Seizure Procedures – Higher level staff is not required to approve seizures of property for nonpayment of federal taxes. Information release 97-46 – all proposed seizures must be approved by an ITS district collection division chief, and district directors must approve all seizures that involve a tp's residence, its contents or perishable goods.

Disclosure Waives Privilege – Communications between tps and attorneys are protected against forced disclosure by the doctrine of attorney/client privilege. *IBM v. United States* – IBM showed it didn't intend to waive privilege by turning over documents covered by the privilege, but didn't prove it took sufficient precautions to prevent the inadvertent disclosure.

According to rev. procedure 97-48, newly created corps. That intend to adopt S corp statue are automatically eligible for relief for certain untimely S elections. These corps. Can avoid penalties if they had reported income as though S status had existed and had received no ITS notice regarding problems with S status within 6 months of the first timely filed Form 1120S.

HOUSE APPROVES LEGISLATION TO CURB LAWS ON BANKRUPTCY – 6.10.98

The House passed leg. To tighten the bankruptcy laws in an effort to discourage the growing practice of consumers' declaring personal bankruptcy to erase their debts. The leg. Would prohibit anyone earning more than the national median income for their family size from declaring personal bankruptcy under Ch. 7 laws. Those earning more than \$50,000.00 and deemed able to repay at least 20% within 5 years would have to adhere to a payment schedule under Ch. 13. The bill would force those who file for bankruptcy to pay most debts they accumulate within 90 days of filing.

TAX BITS INTERNATIONAL

In This Issue

- ♦ Germany has issued tax regs. Implementing the 1995 Reorganization Tax Act, which introduces conversions, mergers, and spin-offs to Germany, and allowed a tax-free conversion of a corp. into a partnership & vice-versa. Conversion is presumed an abuse of law if it is executed solely to take advantage of the corp. tax profit and the tax-free step up, under the final regs. Act also provides a stepped-up basis to stock purchasers in a reorganization, and the regs. now contain a method to allocate the amount by which the purchase price of the shares exceeds the book value of the target's assets. The regs do not allow a step-up in depreciation under

Germany's trade tax. In addition, under new regs, a new company's opening balance sheet is relevant for the thin capitalization rules.

- ◆ German Entities Under Check the Box - GmbHs may be classified as associates or partnerships under the US regs, while Afs may be classified as partnerships or corps depending on the circumstances.
- ◆ Budgets – Jamaican's 1998-99 budget proposal contain hardly any income tax changes, but proposes changes to the general consumption tax, stamp duty and transfer tax. Long Term Savings Account created, designed to encourage long-term domestic savings. Would treat concessionary interest benefits received by an employee or director in the financial sector as a benefit taxable under the income tax.
 - ◆ Romania – finally passed a budget. Proposal for new economic program features macroeconomic stabilization, investments, expanding exports and imports and deeper structural reforms.

NEW YORK LAW JOURNAL, 6.2.97

Life Insurance Trusts and 'Crummey' Powers –

- ♦ Crummey Power – beneficiary's right of withdrawal which qualifies as a present-interest gift. When Grantor transfers \$ to trust, the trustee gives notice of the transfer to beneficiaries. They may withdraw certain sum (usually amount of annual gift tax exclusion, \$10,000.) each year from trust after the transfer is made. Usually the right to withdraw lasts 30 days. If the right isn't exercised, it lapses.
- ♦ Crummey powers for remaindermen – uncertainty for use of powers by remote beneficiaries. *Est. of Cristofani, 97 TC 74 (1991)* – 15 days unrestricted demand right given to each grandchild was a present interest in the corpus of the trust. IRS later acquiesced in results of this decision.
- ♦ IRS will deny exclusions for Crummey powers where the withdrawal rights are not in substance what they purport to be in form. IRS says that beneficiaries must be given notice of the transfer of property to the trust and adequate time to exercise their right of withdrawal. Beneficiaries must also have a good economic reason for not exercising their Crummey power.
- ♦ Steps to take to maximize the Crummey power – Client audit should be done. Notices should be sent to beneficiaries and receipt of notice must be acknowledged. Beneficiaries must clearly understand their rights.

TAX NOTES TODAY, 9.29.97

Trusts Qualify as Named Beneficiaries of IRA.

IRS ruled that 2 irrevocable trusts qualify as named beneficiaries when the trusts receive principal distributions from an IRA if the income distributions from the IRA are insufficient to meet the requirements of section 401(a)(9). Also ruled that the trusts' beneficiaries may be treated as 'designated beneficiaries' under prop. Reg. 1.401(a)(9)-1. Also, the wife's life expectancy (since it was the shortest life expectancy of all of the IRA's beneficiaries) was eligible to be used to determine the section 401(a)(9) distribution period. The wife was found to have a qualifying income interest for life within the meaning of section 2056(b)(7)(B)(ii). Conclusion- if the executor of the husband's estate elects to treat both the IRA and the irrevocable trust as qualified terminable interest property under section 2056(b)(7)(B)(v), then an estate tax marital deduction will be allowed for the value of the IRA on the date of the husband's death or the applicable valuation date.

TAX NOTES TODAY, 9.29.97

Partnership Reasonably Allocates Principal, Interest; Trust Qualifies –

IRS ruled that a partnership's proposed allocation of contingent, liquidating payments that will be made to a marital deduction trust is a reasonable allocation of principal and interest and will not cause the trust to fail to qualify for the estate tax marital deduction. (Current partnership agreement requires the partnership to make payments to a withdrawing partner in complete liquidation of his interest. P-ship wants to amend this provision to specify that on the death or withdrawal of a partner, the p-ship will make a fixed payment and contingent payments based on the p-ship's net profits). One of the LPs intended on executing a will or trust that would specify that the contingent payments due after his death would pass to a marital trust that qualifies for the estate tax marital deduction. Terms of the trust allocated a portion of each payment to principal and a portion to interest. IRS concluded that the proposed allocation between principal and interest doesn't conflict with state law and will be a reasonable allocation for purposes of the trust's qualification for the estate tax marital deduction.

TAX NOTES TODAY, 9.2.97

No Gain or Loss on Transfer to Trust

The grantor of a trust will not recognize any gain or loss on a transfer of assets to fund the trust. Also, the grantor of the trust will not recognize any gain or loss on the transfer of any property from the trust to the grantor in payment of annuity installments or on the substitution by the grantor of assets of the grantor for assets of the trust.

AVOIDING CAPITAL GAINS TAXES ON SALE OF BUSINESS – 8.17.97

Q: Please advise on different ways to avoid or eliminate capital gains taxes on sale of businesses and equipment in excess of \$2MM annually.

A: Contribute the asset (before sale fully negotiated) to a charitable remainder trust (which will provide an annual payout of at least 5% of the value of the trust each year to one or more persons for life, or for up to 20 years, at which time the trust will end and the balance of the trust assets will go to charity. The trust can sell the assets free of income tax. Can also replace the wealth by purchasing life insurance on the life of at least the noncharitable beneficiary. (cost of doing this is several thousand dollars, but worth it if amount involved is 2 million)

JOURNAL OF ACCOUNTANCY, 10.97

Providing Guidance to Executors and Trustees (Estate Planning)– Douglas D. Wilson

- ◆ Decedent's final income tax returns: Section 6013(a) says the surviving spouse shares responsibility for filing any tax returns the decedent would have been required to file if still living, and for paying any taxes due. Filing a joint return with the surviving spouse is an election the fiduciary must make after considering certain factors.
- ◆ Fiduciary income tax returns: Under section 6012(b)(4), an executor or trustee is responsible for filing a fiduciary income tax return and paying any tax due for each year an estate or trust exists. Estate or trust income that exceeds \$7,900 is taxed at the maximum federal rate of 39.6%. Any estate income not needed to pay estate expenses will be distributed to the beneficiaries when estate administration is completed, so the executor or trustee must consider whether to distribute income to the beneficiaries before the estate is closed.
- ◆ Federal estate tax return: If the value of the gross estate exceeds \$600,000.00, the executor must file a federal estate tax return no later than nine months from the date of death, with a possible 6-month filing extension under section 6018(a).
- ◆ Allocation of generation-skipping tax (GST) exemption: The executor or trustee can allocate the \$1 million GST exemption to any property transferred by the decedent. The allocation should take into consideration maximizing the use of the exemption to shelter future asset growth and to minimize the amount of tax to be paid.
- ◆ Administration expenses, medical expenses and casualty losses: Admin. expenses such as fees paid to attorneys, accountants, appraisers, trustees and executors can be deducted on either the estate tax return or the fiduciary income tax returns.
- ◆ Funding Marital and Credit Shelter Trusts: Pecuniary bequest is a disposition of a specific fixed dollar amount. Can be expressed as an amount to be distributed to the marital trust with the residue to the credit shelter trust or vice versa. A pecuniary bequest that uses the date of funding values (fair market values of assets at the time of funding, aka 'true worth') has the greatest flexibility. One of the principal planning objectives is to fund the credit shelter trust with assets that will appreciate over time since those assets, including any appreciation in value, will not be taxed at the death of the surviving spouse.

ESTATE AND GIFT TAX BULLETIN, 5.4.98

- ♦ Death to Crummey Proposal Isn't Crummy, Sherman Says: Author believes that the defeat of Crummey would greatly improve the fairness, as well as the simplicity, of our transfer tax system. A Crummey power is a present interest, but he maintains that it is not the sort of interest that should be excluded from the reach of the transfer tax. A trust with Crummey powers is not a routine, casual gift. While the problems caused by allowing an exclusion for income interests tend to be obscured by the very familiarity of the property-law categorization of life estates as present interests, the problems caused by allowing an exclusion for Crummey powers have become readily apparent. Congress's 'present interest' test clearly has become too crude a tool for distinguishing the casual, routine gift. An "outright gift" test, rather than a 'present interest' test, shows the most promise in turning the annual exclusion from an easily exploited loophole into a policy justified exception.
- ♦ Segregation of Unitrust Assets Won't Disqualify Its CRUT Status, Service Rules: The segregation of a unitrust's assets into a new trust, the assignment of a unitrust interest, and the distribution of some unitrust assets won't adversely affect the trust's status as a charitable remainder unitrust.
- ♦ Maude G. Furman, Donor, Deceased, and Estate of Maude G. Furman, Deceased, Robert G. Furman, Executor, petitioners, v. Comr of IRS, respondent (Tax Analysts Document Number Doc. 98-13918): Tax Court determined value of franchise stock that a couple transferred by gift to their son (cumulative fair market value \$507,000, not \$698,000 determined by IRS or \$362,000 determined by the couple). Court didn't accept the percentages of minority interest (30%) and marketability (35%) discounts that the estates' experts used, instead calculating a 40% cumulative discount for both factors. Court discounted the stock's value an additional 10% to reflect transferee's importance to corp.
- ♦ Forbes Article Asks, 'Will Gifts to Clinton Legal Fund Be Counted as Income?' If contributions to Clinton's new legal defense fund is taxable income and the fund raises the \$3.2 million Clinton now owes to his lawyers, he would owe about \$900,000 in federal taxes. Forbes cites experts who are skeptical that the contributions would be tax-free. Also, article notes a 1976 rev. ruling that held that gifts to a congressman's fund to help pay for official travel were taxable income to him.

MARITAL AGREEMENTS AS ESTATE PLANNING TOOLS – Nassau Lawyer, 9.97

- ♦ Specific Clauses Relevant to Estate Planning:

- ♦ Right of Election – Waiver or release of the right of election by each spouse in the estate of the other spouse. In absence of appropriate waiver, spouse is allowed to elect against the decedent spouse's estate the greater of \$50,000 or 1/3 of the estate according to EPTL 5-1.1A.
- ♦ General Waiver – provides protection for assets that may not be part of the probate estate or considered testamentary substitutes. Pension/profit sharing plans – A critical clause is a specific waiver of rights in pension or profit sharing plans. This waiver must conform to ERISA. It must be signed after the parties marriage (the pre-nuptial agreement should include a provision that the non-monied spouse will sign such a waiver).

THE REAL ESTATE DISCUSSION GROUP, 9.2.97

Trust is Qualified Personal Residence Trust (private letter ruling)

- ♦ A trust holding a 75% interest in property is a qualified personal residence trust and the trust property will not be included in the grantor's gross estate if the grantor survives the trust's term.
 - ♦ Grantor owns 2 parcels of residential prop. which she and her spouse use a vacation residence. Wants to create an irrevocable trust and transfer a 75% undivided interest in the parcels of property to the trust. If the grantor survives the 5-year term of the trust and leases the 75% undivided interest for fmv rental, the property that the grantor transferred to the trust will not be included in her gross estate under subsection 2036(a). (97-24711 & 97-24712)
 - ♦ Proposed trust provides that grantor will be entitled to the use and occupancy of residence to be contributed to the trust for 20 years. If grantor and spouse survive that period, the property will pass in further trust for the benefit of his spouse and children. Conclusion – if grantor survives 20 year term and pays the fmv rental for any periods during which his children own the property and he uses or possesses the property, the property will not be includable in his gross estate under section 2036(a) (97-24735).

REAL ESTATE DISCUSSION GROUP, 9/9/97

- ♦ Loss Deduction Based on Recourse Debt Isn't Allowed Until Year of Foreclosure - 10th Circuit affirmed dist. Ct. decision holding that the owner of a corp. wasn't entitled to a loss deduction on mortgaged property he leased to the corp. until the year the bank foreclosed on the property. *Robert V. George v. United States*, 97-25712).

- ♦ False-Return Convictions Upheld for Role in Fraudulent Real Estate Investment Scheme – 8th Circuit affirmed conviction for filing false tax returns against an individual who was president of a corp. that formed real estate LPs, because the defendant caused the p-ships to file false returns claiming undeserved low income housing tax credits. *United States v. Gary Lefkowitz*, 97-25718.

INTERNET TAX BULLETIN, 12.29.97

- ♦ IRS Announces Interim Guidance on Roth IRAs – (Ann. 97-122, 1997-50 IRB 1) guidance on Roth IRA's for prototype sponsors and individual contributors. When contributing to Roth IRA, must keep Roth IRA contributions in a trust, custodial account or annuity that is separate from a traditional IRA. Prototype sponsors may combine Roth IRA and traditional IRA in the same document as long as the separate trust rule is satisfied and the document clearly indicates the type of IRA being established. Prototype sponsors are advised to consider keeping qualified rollover contributions in Roth IRAs that are separate from Roth IRAs will regular contributions. They also may want to encourage individuals to keep their qualified rollover contributions separate from their regular Roth IRA contributions.

THE REAL ESTATE DISCUSSION GROUP, 9.23.97

- ♦ Fraudulently Transferred Property is to be Sold, Even Though Partially Owned by Non-Taxpayer – US Dist.Ct. reduced tax assessments to judgment and ordered the sale of property to satisfy the assessments, even though the property was jointly owned with the tp's non-delinquent sister. Court emphasized that gov't would be prejudiced if only half of the property was sold and that the sister had no legally recognized expectation that her interest would not be sold, that she wouldn't be prejudiced by the sale, and that the tp was the one with the possessory interest in the prop.

PASS THROUGH ENTITIES DISCUSSION GROUP, 12.29.97

Q 1: I'm interested in recent Rev. Proc. 97-48, where IRS will accept late S elections without applying for a PLR.

A 1(a):

Section 1362(b)(5). 97-48 grants automatic relief in certain circumstances for late S corp. elections. 2 situations allow relief to be obtained under rev. proc.

- ♦ A corp intends and is eligible to be an S corp., the corp. and its shareholders reported their income consistent with S. corp. status for the taxable year and every subsequent year, and the corp. didn't receive an IRS notice regarding any problems with the S.

corp. status within 6 months of the date on which the Form 1120S for the 1st year was timely filed. Appears as if this situation is for newly created corps where a late election was filed.

- ♦ For periods prior to 1/1/97, a corp. intends and is eligible to be an S corp, but due to a late S corp election, the corp. was not permitted to be an S corp, therefore filed as C corp. for the first taxable year specified in the election, the corp. and its shareholders treated the corp as an S corp. for all succeeding years, and all relevant taxable years for both the corp and all of its shareholders are open. Appears as if this situation is a converting C corp to an S corp where a late election was filed.

A 1(b): Client knew he missed the deadline for an S election, called the IRS, explained what he wanted to do, and they said, “okay, you’re an S corp.”

A 1(c): Just received approval of an S-election, retroactive to 1993. Had to do full blown letter ruling request, but was easily approved.

Q 2: RE: How much salary to pay to owners in order to pay out most of the sub S earnings as dividends not subject to self employment taxes. However, paying out the FUTA limit of \$8000 annually or about 25-33% of earnings has seemed in the literature and in my experience to be sufficient to satisfy all IRS auditors in this respect.

A 2(a): Owner needs to be in par with other employees. If regular employees are making 40-50K the owner can’t get away with \$8,000.

A 2(b) Any dividend that is in lieu of salary is going to be subject to FICA. Barring unusual circumstances, until a substantial portion of income is distributed as salary (try at least \$125K per stockholder/employee), all of the income of an S corp. paid to the shareholders is subject to FICA.

TAX NOTES TODAY, 12.24.97

Strawberry Challenges Loss Disallowance, Understatement Penalties. – Strawberry challenged the IRS’s disallowance of capital losses when stock in All-Pro Sports became worthless. He also asserts that, with the exception of income from autograph signing shows, his understatements of income from 1986 to 1990 were due to reasonable cause, not fraud or negligence.

TAX NOTES TODAY, 12.23.97

IRS Issues Final Regs on Reformation of Personal Residence Trusts – regs. permit reformation of personal residence trusts or qualified personal residence trusts to comply with

applicable requirements under the code. Final regs permit dispositions to the spouse, and grant the trustees of trusts created before 1/1/97 an additional 90-day period (begins after the regs become final) in which to reform the trust. Regs will be applied only to post-effective date trusts. If a pre-effective date trust violates the statutory purpose of 2702, the service can disqualify it.

Sale of Residence from Qualified Personal Residence Trust – Final regs. also provide that the governing instruments of such trusts must prohibit the sale of a residence held in the trust to the grantor of the trust, the grantor’s spouse, or an entity controlled by the grantor or the grantor’s spouse.

THE REAL ESTATE DISCUSSION GROUP, 12.23.97

Tax Lien Attached to Oregon Tenancy-by Entireties: IRS Can Sell Entire Property – a federal tax lien did attach to a debtor’s interest in property owned with his non-debtor spouse as tenants-by-the-entireties, thus the IRS can sell the entire property to satisfy the debtor’s outstanding liability. Under Oregon law, the Judge wrote, creditors of one spouse can have a lien that attaches to that spouse’s interest in land held by the entireties.

THE REAL ESTATE DISCUSSION GROUP, 3.17.98

Experts Analyze REIT Developments – voiced opposition to Clinton’s proposal (which would allow entities to continue their current treatment of income for purposes of existing activities, but would end the grandfathering for any new activity the REIT undertakes. Also, de minimis rule on impermissible services (allows up to 1% of the income from a property to be attributable to noncustomary services; amount must be at least 150% of the direct cost of providing the tenant services.) will need clarification (term ‘direct cost of providing tenant services’).

Homeless Program Will Disqualify Low-Income Units -- Low income units will cease to qualify for the section 42 tax credit if used for a homeless program in which qualifying individuals may stay for a limited period of time only if they comply with program guidelines. (Doc. 989140)

Section 1031 Contains No “Good Faith” Exception – A couple failed to receive replacement property within the time limit specified under section 1031, argued good faith attempt to meet the timing requirements. Judge stated that court lacks jurisdiction to rewrite a more equitable result for the couple.

THE REAL ESTATE DISCUSSION GROUP, 2.10.98

IRS Outlines Exception to Real Estate Reporting Requirements -- Rev. Proc. 98-20: outlines the assurances that a seller's written certification must include in order for the sale or exchange of a residence (including stock in a cooperative housing corp.) to be excepted from the reporting requirements of section 6045(e). 98-20 is effective for sales or exchanges of residences after 5/6/97. In addition, at least 1 of 3 situations must exist in order for the exception to apply: (1a). sale or exchange must be of the entire residence and (b) for \$250,000 or less; (2a). Seller must be married (b) sale or exchange must be of the entire residence and for \$250,000 or less, and (c) the gain on the sale or exchange of the entire residence must be \$250,000 or less; (3a) Seller must be married (b) sale or exchange must be of the entire residence and for \$500,000 or less, and (c) seller must intend to file a joint return for the year of the sale or exchange (d) seller's spouse also has not sold or exchanged another principal residence during the 2-yr. period ending on the date of the sale or exchange (not including any sale or exchange before 5/7/97).

Q: A leases a single family home to B. B is given an option to purchase the home within 2 yrs of the commencement of the lease. B pays A \$1000 for the option. If B exercises the option, the \$ is applied toward the purchase price. If B doesn't exercise the option, the \$ is forfeited. Income tax implications to A regarding the \$?

A: TP doesn't report income on receipt of \$ for an option, even if the option payment doesn't operate to reduce the stated purchase price of the optioned property; if the option is exercised, the option payment is added to the sales price in determining amount realized. If the option lapses, optioner includes the payment in gross income in the tax year in which the option lapses.

THE REAL ESTATE DISCUSSION GROUP, 1.20.98

White House to Push Low-Income Housing Credit Expansion – The expansion of the low income housing tax credit will provide incentives to the private sector to create quality rental housing for low-income Americans which will bring new businesses to the area (VP Gore's statement). The credit (White House contends) helps to develop 75,000 to 90,000 affordable housing units a year.

TAX ANALYSTS, 11-10-97

US Lawyer Calls for Revising Amendments to "Check-The-Box" Regs. – Dennis Ginsburg has requested that the proposed amendments to the entity classification regs be revised so that the entities owned by non-resident aliens could avoid the negative consequences of the default rules, without having to file an election form. Relief would be based on an entity's intent to liquidate its assets before becoming a US taxpayer.

TAX BITS INTERNATIONAL, 2.26.98

No Fresh Start for Some Lithuanian Businesses – Lithuania will be selective in its bailout of companies that argue they need govt assistance because they are insolvent, in part to protect the ability to collect overdue taxes.

Cuban Congress Resolves to Use Tax Code to Fix Domestic Woes – passed economic resolution which suggests that Cuba will likely turn to the tax system to address 2 concerns: country's inability to fund retiree pensions, and its inefficient use of energy.

New US-Switzerland Double Tax Treaty – effective January/February 1998. Number of very favorable changes for companies;