

# Eight-Penny News

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## Cape Cod Commission Goes Forward

The controversial Cape Cod Commission Act, which created a regional planning commission with broad growth-control powers, is now a reality. The act was approved last year by the Massachusetts legislature and ratified by Cape voters in a county-wide

vote on March 27. It took effect the same day. The act greatly expands the powers of the Cape Cod Planning and Economic Development Commission.

The new Commission consists of appointees from each of Barnstable County's 15 towns, one

county commissioner, two members of minority groups, and one gubernatorial appointee (also a minority), who will vote only in the case of ties.

Few were surprised that Cape voters ratified the act, even though it will add to property taxes (about \$7 or \$8 a year to the property tax bill of a \$100,000 house). Cape voters had previously voiced their support of the act by a more than 3-to-1 margin in a nonbinding referendum in November 1988 (see "Miscellany," JLC/NEB, 12/88). Traffic congestion, the threat of water supply contamination, and the loss of open space have made growth a hot issue on Cape Cod for several years.

The new Commission will hold broad regional planning powers. Its regulations, which are subject to approval by the county Assembly of Delegates, will largely supersede local planning and zoning regulations. If all the regulations proposed in the act are approved, the Commission will have authority to:

- Establish a regional land-use policy to protect the environmental, cultural, aesthetic, and economic values associated with the Cape. Other county planning regulations would have to conform to this policy.
- Establish guidelines designating some construction projects as "Development of Regional Impact" (DRI) and subjecting them to review by the Commission. A set of development "thresholds" similar to those of Vermont's Act 250 will be used to identify such developments—any subdivision over 50 acres, any development of more than 30 units, any business development larger than 10,000 square feet of floor area, or any remodeling job that adds more than 25% of the existing building's floor space will fall under the Commission's review.

- Nominate certain areas as "Districts of Critical Planning Concern" (DCPCs). DCPCs will be subject to strict, custom-made development regulations.

- Set and enforce guidelines for ensuring affordable housing construction in new or expanding developments.
- Set guidelines for towns' own comprehensive plans, rewarding town compliance with the authority to levy impact fees on new developments.

The act will also "de-grandfather" most zoning and subdivision laws affecting the Cape, making virtually all new development subject to the new regulations.

Finally, the act allows towns to enter into "development agreements" with developers, based upon certain guidelines. Such "contract zoning," says Cape Cod Commission executive director

Armando Carbonell, will enable developers to work with towns on a case-by-case basis in forging creative exceptions to existing zoning regulations. One example would be setting aside the minimum acreage requirement to allow cluster development alongside preserved open space.

Most residential remodeling and individual single-family-home projects will be unaffected, according to Carbonell. "We've looked at [individual] single-family houses as an exception in general. There's a lot of development that will be below thresholds and will go ahead."

Builder reaction to the act ranges from the cool to the accommodating.

Garen Bresnick, executive vice-president of the Massachusetts Home Builders Association, for example, feels the act is much too restrictive. In particular, Bresnick feels the thresholds for Development of Regional Impact designation are too low. "We've got neighborhood subdivisions being treated as regional developments," he says. "If those thresholds stay, they'll catch about 75% of the development that goes on at the Cape. And that will lead to long delays. It could cripple us pretty seriously."

The prospect of delays also worries Joe Polcaro, a Cape builder and former president of the Home Builders Association of Cape Cod. Like Bresnick, Polcaro worries that the act might mean long delays for projects that trigger regional review. The time limit for regional review presently being discussed is seven months, he says, which means "it could take a year to get the permit" on such projects when local review is included.

Polcaro also fears that vague language in some of the act's provisions may affect some smaller building and remodeling jobs. The details of District of Critical Planning Concern (DCPC) regulation have yet to be worked out, for instance; the final rules could conceivably prohibit additions or new houses in such districts.

Polcaro thinks the impact fees are a good idea. "Impact fees are inevitable," he says. "If towns have money to build roads or put in sewer and water lines, they're going to make it impossible for us to build. But if we're paying our fair share—and I emphasize the word 'fair'—then people will be thinking from the frame of mind of 'What can we do to accommodate growth?' rather than 'How can we stop growth?' You're suddenly into a different ball game. I think we do ourselves a real service to support that kind of planning and the idea of paying our own share."

—David Dobbs

## IN BRIEF

### Ozone Friendly Foam

**CFC Phaseout:** If you've been searching for an ozone-friendly foundation insulation, the wait may soon be over. The phase out of CFCs in the manufacture of extruded polystyrene appears to be proceeding at a faster rate than previously expected. Dow (Styrofoam "Blue Board"), Amoco Foam (Amofam "Green Board"), and UCI (Formular "Pink Board") have all announced phase-out schedules that are way ahead of the 1987 Montreal Protocol. The Montreal Protocol called for a 20% reduction in the use of CFCs by the end of 1992. But a complete phase-out by these manufacturers will be complete by the end of 1990. ■

### R-2000

According to a Canadian homebuilders survey, owners of energy-efficient R-2000 homes have found many non-energy-related benefits, such as quietness, a regulated supply of fresh air, no drafts, a constant temperature, less dust, and humidity control. Though dry air and noise from the heat recovery ventilator were cited as disadvantages, builders are taking note of the wide range of marketable advantages to these homes. Source: *Housing Today*. ■

### Lumber Shipped South For Processing

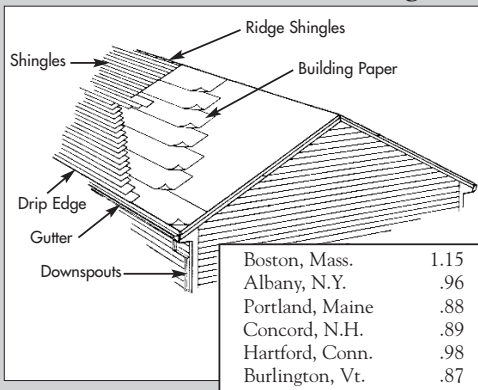
Against a backdrop of controversy over exported lumber and wide-spread mill closings, Portland-based Louisiana-Pacific has announced the opening of a new remanufacturing plant in Ensenada, Mexico.

While the new plant has sparked anger in Oregon, where survival depends on forest-product jobs, exporting rough-cut timber for finishing is not new. More lumber is already milled and surfaced in Southern California plants than in Northern California and Oregon where the lumber is harvested. ■

### New Members From Down Under

In November, 1989, the National Kitchen and Bath Association (NKBA) signed an agreement with the Kitchen Industry Association of Australia (KIAA), making the Aussie organization an affiliate NKBA member. The merger lets NKBA Australia members take advantage of the many programs, services, and materials offered through the NKBA as well as use of the NKBA logo and trade names. For the NKBA, the merger increases membership in a growing international market. ■

### R.S. Means Report Gable End Roof Covering



Description	Worker hrs/s.f.	Cost per s.f. (dollars)		
		Mat	Labor	Total
<b>Asphalt</b>				
Shingles: Inorganic class A, 210-235 lb/sq., 4/12 pitch.	.017	.42	.41	.83
Drip edge: metal, 5-inch wide.	.003	.03	.08	.11
Building paper: #15 felt.	.001	.04	.04	.08
Ridge shingles.	.001	.03	.02	.05
Soffit and fascia: white painted aluminum, 1-foot overhang.	.012	.12	.29	.41
Rake trim: painted 1x6 #2 pine	.002	.02	.07	.09
Gutter: seamless, painted aluminum	.005	.08	.15	.23
Downspouts: painted aluminum	.001	.02	.04	.06
<i>Total</i>	.042	1.96	1.50	3.46
<b>Wood</b>				
Shingles: No. 1 cedar, 4/12 pitch	.034	1.60	.80	2.40
Drip edge: metal, 5-inch wide.	.003	.03	.08	.11
Building paper: #15 felt.	.001	.04	.04	.08
Ridge shingles.	.001	.03	.02	.05
Soffit and fascia: white painted aluminum, 1-foot overhang.	.012	.12	.29	.41
Rake trim: painted 1x6 #2 pine	.002	.02	.07	.09
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Downspouts: painted aluminum	.001	.02	.04	.06
<i>Total</i>	.059	1.96	1.50	3.46

The above costs are based on a national average of unit price costs for residential construction. The prices are based on a square foot of floor plan area for a 4/12 pitch roof. Steeper roofs will be more expensive as there's more square foot per square foot of plan. Labor costs are a base rate roofer including fringes of \$12.90/hr. and a full rate including overhead and profit of \$23.00. All costs shown here will vary significantly from project to project due to quality, complexity, and local economics.

This report is adapted from the 1990 edition of *Means Residential Cost Data*, published by the R.S. Means Company. Means publishes a wide range of estimating data and related guides for the construction industry. For more information, contact R.S. Means Company, Inc., 100 Construction Plaza, Kingston, MA 02364; 617/585-7880.

## Sprinkler Issue Smolders

The National Association of Home Builders (NAHB) has formed a task force with the International Association of Fire Chiefs to study the issue of fire sprinklers in residences. The joint task force resulted from the Fire Chiefs' proposals to require sprinklers in homes—proposals that the NAHB vehemently resisted. The NAHB claims that it supports cost-effective fire-safety construction, but it doesn't want to see sprinklers in every home. The two organizations agree that most fire deaths occur in older, single-family homes and are the result of careless smoking.

Dick Morris of NAHB explains that to address the issue, an agreement between the two associations, yet to be ratified, highlights four ways to improve fire safety without mandatory sprinkling in residences:

- Develop a program of public fire safety education.
- Champion legislation requiring hard-wired smoke detectors in new and existing homes.
- Recommend that Congress enact effective legislation that would require fire safe cigarettes.
- Work together to eliminate unnecessary and redundant building code requirements governing fire protection.

The Executive Boards of both associations hope to have a decision on the four issues soon. If the proposal is accepted, the task force will work with building code officials, lobby for legislation, and seek funding for the safety program.—Keith Gimmodo

# Innovative Wall Works, But Builders Shy Away

Homeowner Jerry Kamphaus believes his 3,700-square-foot home is proof that a building system called the Sherman Wall works.

Kamphaus heats and cools his 3,700-square-foot home near Cincinnati, Ohio, with a heat pump for \$70 a month—about one third of what it would cost to heat with conventional construction. When he had the home built, he specified Con-Tane's Sherman Wall, a system of foam and concrete wall panels that makes it superinsulated.

And yet, for all its energy efficiency, the Sherman Wall attracts few builders.

Jess Smith of McGill Smith Punshon, an engineer who helped design the wall over four years ago, explains how the system works: "The concrete is poured after the panels are erected. We form a concrete construction frame, with a bond beam at the top and bottom [see illustration]. It's all tied together with reinforcing rods top and bottom. Bond beams also act as lintels for the windows and doors." The 4x4 concrete members act not only as structural members, but also for thermal storage, Smith says.

Kamphaus found one other effect from the panel system besides good energy efficiency. "It's much quieter," he says. "You don't get a lot of outside noise." He sees the difference when he goes to his office, which is made with simple frame construction and is near a noisy highway. "If I had it to do over," he says, "I'd

have used it for my office, too."

Before he decided to go with the Sherman Wall, Kamphaus had builders bid the house both ways. The Sherman Wall came in \$10,000 higher. He went for it. "I figured it was a three-year pay-back," he says. "We should be paying \$300 to \$350 per month for heating and cooling, and we're under \$100."

It takes a four-man crew about three days to erect a one-story, 1,500-square-foot home or a floor the same size. The panels rest on the foundation, which may or may not be made of similar panels. Floor joists, which are 2x8 or 2x10 lumber, rest on a stringer, which is supported by bolts extending from the concrete. First-floor walls are 13 inches thick; second-floor walls are 9 inches thick.

Each 4-foot-wide panel has three chases to accommodate wiring, which is installed from the top down. Conduit is placed in the concrete as specified in the plans. Plumbing is no problem, since the exterior walls only are Sherman walls; pipes are placed in conventionally studded interior walls.

Still, Kamphaus' builder, Mark Mullen of MJM Construction, Inc., says of the building process, "It's time consuming. It's real tough for the builder." It's not a one-of-a-kind plan that bothers him; as a custom builder, he's used to that. Setting the panels and pouring the concrete is difficult, he says.

"Most builders are carpenters," says Con-Tane president John

Gee. "They grew up with hammers in their hands. They're not used to working with concrete." Con-Tane will supply Sherman Wall erection crews or will teach a builder's framing crew to handle the system.

After some experience with the system, builder Mullen questions the financial soundness for the buyer. He thinks the pay-back would be more like 10 years. "We just finished a house of 5,000 square feet," Mullen says. "We pay a lot of attention to air infiltration." He makes sure cavities are free of debris and obstructions before insulation goes in, and he seals around openings for wiring. Mullen uses 2x6 wall construction with R-19 insulation and blown-in R-38 ceiling insulation. "He's heating and cooling for \$225," he says of the buyer of his stick-built home. That leaves Mullen wondering whether an extra \$10,000

for the innovative Sherman Wall is justifiable.

Smith and Gee remain enthusiastic. Gee says, "By the time we get into another energy crunch, we'll be off the ground." Although Con-Tane is beginning to push the Sherman Wall as a feature for custom homes, Gee believes its strength may be in affordable housing. While it adds 8% to 10% to the cost of a home over conventional stud-frame construction, the wall cuts utility costs. "Low-income buyers can't afford to pay for the house and the heating bills," he says.

Smith says costs would come down in a large-scale project.

"The biggest we've worked on so far has been four duplex buildings—eight units," he says. The panels have been used to build 11,500-square-foot homes for low-income buyers. That developer prizes them for their energy efficiency. ■

## Vinyl Siding Institute Offers New Manual

The Vinyl Siding Institute recently released a 32-page "Rigid Vinyl Siding Application Instructions" manual to guide installers through the selection and application of vinyl siding and accessories. Special sections explain necessary tools and equipment, preparation, and proper application procedures.

Application of soffit and fascia systems, replacement of damaged panels, and cleaning and maintenance are also covered.

The manual costs \$3. To order one or get more information, contact the Vinyl Siding Institute, 355 Lexington Ave., New York, NY 10017; 212/370-7340. ■

## Banks Curtail Loans Popular for Remodeling

Home-equity loans, a prime source of remodeling money for many homeowners, are getting tougher to find, and they're getting more expensive.

With home-equity loans, homeowners are able to fully deduct the interest if the money is used for home improvements. Typically, increased equity in the home is used as collateral.

The tightening of home-equity credit, which is really a second mortgage, falls along the same lines as adjustable rate mortgages (ARMs). Interest rates for ARMs, which typically had been discounted more than 2% in their first couple of years, have become less attractive for borrowers. Home-equity loans have become likewise less favorable.

Lenders are just getting more cautious, explains Paul Havemann, vice president of HSH Associates of Butler, N.J., the nation's largest publisher of mortgage information. Caution is widespread in the wake of billions of dollars of bad real estate loans that caused hundreds of savings and loans to go out of business, merge with other thrifts, or fall under federal control.

"Some lenders are offering home-equity loans, but without the reduced interest rate," Havemann says. "Home-equity loans without points and application fees are just about extinct."

HSH discovered the trend indirectly. "We do a monthly survey of mortgage rates for *Money Magazine*," Havemann says. "It became

obvious a few months ago that we had to call more and more banks to get the list of 20 we needed." Along the way, HSH discovered, lenders had begun to drop the loans.

In its latest figures, published in February, HSH listed the average interest rate for home-equity loans at 11.68%. That's 0.1% lower than a year ago, but 1.26% higher than in February 1988 and 1.58% higher than in February 1987.

### The loans are less of a bargain for banks, and therefore less of a bargain for borrowers.

February 1988 and February 1989 were the only months in the previous 14 in which the rate had dropped below 12%.

One reason banks are concerned is the flattening real estate prices in many markets. It used to be that if a homeowner got into trouble, he could sell the house and pay off the first mortgage, the home-equity loan, and the broker's fee, and still walk away with money. For that to happen now, inflation in the market must return to double-digit levels. Instead, homeowners in dozens of markets, particularly in the East and Northeast, have seen the rate

of housing inflation shrink or even reverse in some price ranges.

Since primary mortgages get paid off first in the event of foreclosure or sale, lenders who hold home-equity loans are concerned about the security of their investments. If a borrower's credit line suddenly turns up problems, Havemann says, lenders may call in home-equity loans.

One non-economic factor weighing in against home-equity loans is the 1988 Consumer Home Equity Protection Act. This federal law is intended to force full disclosure of the costs and details of home-equity borrowing. The paperwork the law requires has added to the cost of the loans.

Havemann says home-equity loans used to be low-documentation loans—loans made with little paperwork. Often, an appraisal wasn't even needed. Now that the situation has changed, the loans are less of a bargain for banks, and therefore less of a bargain for borrowers.

Other low-paperwork loans also are disappearing from the market, Havemann says. These fast-approval loans originally were intended to speed professional-level home buyers through the loan process. The loans relied heavily on carry-over equity from a previous home and somewhat higher fees paid by borrowers who had more money than time. Eventually, the fast-approval loans spread through the mortgage market, increasing lenders' risks. ■

## Tax Talk:

### Auto Expense Deductions Get Big Lift

By Irving Blackman

It's not often that I applaud the IRS or a new law. But now there is a reason for applause. The IRS finally did something intelligent about deducting auto expenses. For many years, a taxpayer could figure his or her potential auto deduction two ways and then use the method that gave the largest deduction. One way—the regular method—was, and still is, to keep track of actual auto expenses, including depreciation. The second way is known as the "optional mileage method." It's much easier to figure your automobile deduction using this optional mileage method. But there has always been one problem: The amount you actually deducted was usually significantly lower than the amount the regular method gave you.

Well, here's the good news. New rules. As of January 1, 1990, the optional mileage is 26¢ per mile for every mile of

business use. Under the old rules, the rates were 25½¢ for the first 15,000 business miles driven, and 11¢ per mile after that. A big difference. See Revenue Procedure 89-66.

What do you have to do to take advantage of the optional method? Just keep track of the business miles you travel—the miles, purpose, and date of each trip. Simply add them up and multiply by 26¢. And there are two more expenses you can add to increase your deduction—the cost of parking and tolls. (As a rule of thumb, if you drive more than 20,000 miles per year, you should make the computation using the optional method.) Then, use the method, regular or optional, that gives you the largest deduction. ■

Irving Blackman, CPA., J.D., is with Blackman, Kallick, and Bartelstein, 300 South Riverside Plaza, Chicago, IL 60606.

## Single-Family Homes Grow, Census Reports

Single-family homes continued to grow in 1988, the latest year for which figures are available from the U.S. Census Bureau.

In "Characteristics of New Home Sales: 1988," the Census Bureau reports that the median size for new homes was 1,810 square feet, a sizable 19% increase over the 1,520-square-foot median size in 1982. Homes tended to be smaller in 1982 to increase their affordability at the height of the recession.

While homes grew more expensive in 1988, the price increase per square foot was just 2.4%, which was smaller than the 4.1% general inflation rate. The Northeast continues to lead in square-footage cost at \$63.05, followed by the Midwest, \$50.60; the West, \$48.05; and the South, \$41.65.

The additional square footage appears to be going into bedrooms in some markets. Homes with four bedrooms or more accounted for 26% of homes built in 1988, compared with just 18% in the mid-1980s.

In 1988, homes had 9% more central air systems than in 1982. The same six-year period saw 20% more homes with 2½ baths, and 11% more with fireplaces.

As in 1982, when lots shrunk somewhat in size, the median building lot in 1988 was down 70 square feet to a median of 9,225 square feet. ■

## Five New England States Among Priciest

Every New England state but Vermont made the top-ten list of least affordable housing markets, according to a recent DRI/McGraw Hill report. The report compared the median home price with the average annual wages within each state. The resulting "affordability index" indicates the portion of the typical wage-earner's income that would be required to carry mortgage payments for the median-priced home. In New Hampshire, for instance, a typical wage-earner would have to spend 53% of his or her income on mortgage payments for such a

**The report also concluded affordability would continue to worsen through the rest of the country through 1991, though it said softening prices might make it somewhat easier to buy a home in the Northeast over that period.**

house.

Only California and Hawaii outranked most New England states for affordability. The list ran as follows:

The report also concluded affordability would continue to worsen through the rest of the country through 1991, though it said softening prices might make it somewhat easier to buy a home in the Northeast over that period.

Come 1991, however, the report sees both prices and mortgage rates rising again across the country. ■

State	Median Home Price	Affordability Avg. Salary	Index
California	\$200,960	\$28,240	.60
Hawaii	183,710	26,302	.59
New Hampshire	144,760	23,112	.53
Massachusetts	159,590	26,645	.51
Rhode Island	133,860	23,028	.49
Connecticut	170,410	29,563	.49
New Jersey	162,610	13,789	.48
New York	146,640	29,121	.43
Virginia	123,810	24,732	.42
Maine	99,200	20,808	.40
U.S.	94,190	24,450	.33

## Connecticut Requires Licenses for Appraisers

From now on, private real estate appraisers in Connecticut will have to carry a license for the privilege of breaking the hearts of buyers and sellers with their evaluations of property values. Connecticut Public Act 88-329,

**Beginning July 1, 1990, appraisers will have to pass a test to get their licenses.**

passed in 1989, requires the state licensing of all appraisers as of October 1, 1989. Appraisers must get either a residential appraisers license, which qualifies them to appraise only residential properties, or a "real estate appraisers" license authorizing them to appraise both residential and commercial properties.

Beginning July 1, 1990, appraisers will have to pass a test to get their licenses. Until then, an appraiser need only pay the application and licensing fees (which range from a total of \$265 to \$510) and meet certain classroom and experience requirements.

Buyers or sellers paying for the services of a Connecticut appraiser should check to see that he or she is licensed. ■

## NRCA Roofing Workshops

Since 1979, the National Roofing Contractors Association (NRCA) has sponsored a yearly roofing workshop series. Their day-long event, "Conference on Roof Problem Analysis and Roofing Operations," offers seven presentations that walk you through the discovery of a roofing problem, the decision about what to do about the problem (reroof or not), and the choices available to you. Focusing on commercial roofing performance and design, the program is aimed at general contractors, roofing contractors, architects, and engineers. Even if

you do mainly residential construction, the seminars are still worthwhile because of their problem-solving approach.

The seven-part session opens with "Roof Problem Analysis: The Repair or Reroof Decision," and then moves to successive presentations on "Roof Maintenance and Repair," "Roof Insulation and Energy Payback," "Roof Options: Built-up and Modified Bitumen Roof Systems," "Roofing Options: Single-Ply Roof Systems," "Roof Details," and concludes with "Metal Roof Systems."

Beginning in November 1990 and running through April 1991, the NRCA Roofing Conference series will be conducted in cities throughout the U.S. The registration fee is \$195. This includes two meals, and the conference packet, which contains the *Roof Problem Analysis Conference Manual*, a collection of abstracts of each presentation; the *Roofing Materials Guide*, which offers extensive data on roof membranes and roof board insulation products, product warranties, and roof fasteners; and *NRCA Energy Manual*, which discusses energy conservation considerations and potential energy savings by improving insulation levels.

To request a registration form and further details, contact Jan Lippman, Manager of Education, NRCA Education Department, Rosemont, IL 60018; 708/318-6722.—Jan Colarusso Seeley



Commercial roofing often means uncovering hidden problems in the deck. The NRCA seminar helps you evaluate existing roofs and decide when reroofing is necessary.

## Tax Law Changes May Increase Renovation Spending

Changes in the tax law as a result of the Tax Reform Act of 1986 have been the major cause for a decline in use of the historic rehabilitation tax credit. These tax-law changes have cut into the business that was just beginning to develop for restoration contractors. Now, changes proposed for 1990 would loosen the requirements and attract more dollars to historic rehabilitation.

Use of the credit declined 43% in 1988 from the 1987 level. That figure represents the lowest level of historic rehab activity in over seven years, and that activity is one third of the 1985 high of over \$2.4 billion.

A report by the Preservation Assistance Division of the National Park Service cites the reduced benefits of investing in historic projects and the limited

pool of investors who can use the tax credits as the major causes for the decline. Smaller projects (less than \$250,000) are now more common, with individuals or corporations controlling ownership. Housing continues to be the most popular use for Tax Act projects; it accounts for about half of all projects.

In addition, construction of low-income housing has also

been significantly reduced as a result of the Tax Reform Act of 1986. The rule changes have led to a sharp decrease in the availability of equity capital for low-income housing projects.

The current tax law only permits investors to take a maximum \$7,000 credit. If you're investing a million or so in a historic building, the \$7,000 credit is peanuts. Also, under the current law, investors with incomes over \$200,000 can't use the credits at all.

Bills with bipartisan support in the House and Senate propose changes in the tax law to make historic rehab and low-income-

housing tax credits attractive to more investors. The Community Revitalization Tax Act would give investors a \$25,000 income tax credit and offset 20% of their remaining tax liability. And, it would remove income caps that have kept high-salaried professionals from investing in rehab projects. If the bill passes, it could pump some money into the sagging rehab construction industry. For further information on historic preservation legislation contact either Preservation Action at 202/659-0915 or the National Trust for Historic Preservation Hotline at 800/765-NTHP.

—Karen Lang Kummer

# The End of an Ice Age

In December, 1987, a new Section 2036(c) was added to the Internal Revenue Code without fanfare. Although little known, this complex piece of legislation promises to have an enormous impact on successful family businesses.

The congressional intent in enacting 2036(c) was to close a loophole in the tax code that allowed owners of family businesses to transfer the company to the younger generation without payment of crippling estate taxes.

With the lowering of income tax rates in 1986, gift and estate tax rates—which are uniform—are the highest rates taxpayers grapple with. For individuals with a net worth of \$600,000, the rates begin at 37%. They soar to 55% on estates that have grown to \$3,000,000 or more. With some limited exceptions, this tax must be paid no later than nine months after death. When dealing with a liquid asset such as a family business, often the only way to raise the cash necessary to pay the tax was to sell the business to outsiders, usually at fire sale prices.

In response to this problem, tax advisers to family-owned businesses invented the "estate freeze." The basic thrust of this technique was to split an asset, such as a family business, into two parts. The first, composed of the income

stream and management control, was retained by the elder generation for life. The second component, consisting of any future appreciation in the value of the business, was gifted to the younger generation. Since, at the time of the gift, the business had little if any value in excess of the income stream, the gift to the children was not taxed.

Future appreciation of the business, furthermore, escaped estate taxation altogether. And, at the parents' death, all of the business, income, and management alike, wound up in the younger generation's hands at a greatly reduced estate tax cost.

These estate freeze techniques became enormously popular. But there was also a Congressional perception that they were being abused and that they allowed the older generation to transfer the business to the kids by giving away no more than the "sleeve off their vest." Under these circumstances, it was only a matter of time before Congress did something.

The something turned out to be 2036(c), popularly known as the "antifreeze" section of the tax code. In essence, 2036(c) says that if a parent gives a child the appreciation component of an asset (such as a business) while retaining income, management, or other rights, the transfer will be ineffec-

tive to remove the appreciation from the parents' estate. With the freeze defrosted, the entire value of the business passes through the parent's estate. And, after paying up to 55% in estate taxes, very few family businesses are likely to make it to the second generation alive and kicking.

Tax planners were able to use a wide variety of legal forms to achieve the estate freeze effect—corporations, family partnerships and trusts, to name a few. Recognizing the multiplicity of legal guises that estate freezes can take, Congress used the shotgun approach in attempting to wipe them out. Broad language was used. Anything remotely resembling an estate freeze was covered, and, it appears, some perfectly legitimate, non-abusive techniques as well.

Nonetheless, Congress did carve out a few safe-harbor exceptions that can be useful in minimizing the tax bite of transferring the business from one generation to the next. One strategy that should remain popular is a GRIT, or a grantor retained income trust.

In a GRIT, a business owner transfers all or part of a business to an irrevocable trust. The owner retains the income generated by the property in the trust for up to ten years. At the end of that period, the property in the trust—that is, the business—goes to designated beneficiaries, usually the younger generation.

When the property is transferred to the trust, a gift tax must be paid, but only on the discounted, present value of the property

that will ultimately go to the kids. (Present value discounts are determined by using tables written into the tax code.) Thus, a gift tax is paid on only 38.55% of the value of the property transferred to a ten year GRIT. In addition, no further estate or gift tax is paid even if the asset is worth more when the trust terminates and the property goes to the kids.

The one catch? If the business owner doesn't outlive his income interest in the trust, all of the assets in the trust are considered to be his for estate tax purposes.

—Spencer Swalm

Swalm is a Denver attorney who specializes in estate planning and small business concerns.



## Computer Bytes:

**MacNail Estimating fans** can get version 3.0 of that product, which Turtle Creek Software is now shipping. Contact Turtle Creek Software, 651 Halsey Valley Rd., Spencer, NY 14883; 607/589-6858.

**Cut lists, estimating required yards of concrete,** and figuring rise and run for stairs are just some features of a simple software program, Carpenter's Dream, for IBM PCs or clones. Contact Dan Heilman, Workhorses, Inc., 1211 Cheyenne St., Golden, CO 80401; 800/777-2477.

**Those who have trouble interviewing** potential employees can check out ProSelect, a customizable interview guide program. Contact Careerworks, 105 Chestnut St. Ste 34, Needham, MA 02192-2520; 617/449-8200.

**R.S. Means DataSource has been revised:** Release 1.2 is the updated version of its stand-alone cost-database software. Contact R.S. Means Company, Inc., 100 Construction Plaza, Kingston, MA 02364; 617/585-7880.