

A transaction stands the greatest chance of being treated as a sale if initially characterized as a sale, reported as a sale transaction and handled in good faith and if it represents a valid business obligation.¹⁵ Any cancellation or forgiveness of a contract or mortgage payment should be carefully established with evidence in writing to prove the cancellation.¹⁶

Because forgiven payments must basically be reported as though received, for income tax purposes,¹⁷ the best strategy may be to collect all payments, pay the income tax due and give back in a separate transaction part or all of the remaining amount.

Below market interest rate. For bargain purchase transactions on an installment sale basis, the Tax Court and the IRS maintain that the present value of the difference between the interest rate used and the market rate of interest

at the time is a gift.¹⁸ The Seventh Circuit Court of Appeal disagrees and has held that an installment obligation using an interest rate acceptable under the income tax rules does not involve a gift.¹⁹ The latest Tax Court decision, *Krabbenhoft v. Comm'r*,²⁰ is on appeal to the Eighth Circuit Court of Appeal. At present, except for the Seventh Circuit states of Illinois, Indiana and Wisconsin, the *Krabbenhoft* decision should be examined carefully from a perspective of potential gift tax liability.

Example: Parents sell land for \$402,000 on a 20-year installment contract at 6 percent interest to their son. At the time, the market rate of interest is determined to be 11 percent. Figured at 11 percent, the value of the contract is only \$252,000. Thus, the difference or \$150,000 is a gift from the parents to the son.

FOOTNOTES

¹ See generally 7 Harl, **Agricultural Law** § 46.09 (1990).

² Treas. Reg. § 1.1015-4(a).

³ I.R.C. § 453B(f).

⁴ I.R.C. § 453B(f)(2).

⁵ I.R.C. §§ 453B(f)(1), 453B(a)(2).

⁶ Ltr. Rul. 8739045, June 30, 1987 (no income to seller in cancelling indebtedness as part of restructuring of installment contract; no recognition of 1980 enactment of I.R.C. § 453B(f)). See 2 *Agric. L. Digest* 1 (1991).

⁷ See I.R.C. § 2512.

⁸ 29 T.C. 730 (1958).

⁹ See I.R.C. § 2503(b).

¹⁰ See note 8 *supra*.

¹¹ 42 T.C. 936 (1964), *non acq.*, 1977-2 C.B. 2.

¹² 63 T.C. 321 (1974), *non acq.*, 1977-2 C.B. 2.

¹³ 1977-2 C.B. 343.

¹⁴ See note 8 *supra*.

¹⁵ See *Ogle v. Comm'r*, 1937 P-H B.T.A. Mem. 384.

¹⁶ See *Hudspeth v. Comm'r*, 509 F.2d 1224 (9th Cir. 1975).

¹⁷ See I.R.C. § 453B(f).

¹⁸ *Krabbenhoft v. Comm'r*, 94 T.C. No. 56 (1990). See Ltr. Rul. 8804002, Sept. 3, 1987 (installment sale of stock to shareholder's children at below market rate was gift unless and to extent purchase price included premium sufficient to increase effective interest rate); Ltr. Rul. 8512002, Nov. 28, 1984 (promissory notes for purchase of stock with interest rate 2.355 percentage points below interest rate of equivalent U.S.

Treasury obligations constituted gift unless purchase price of stock contained premium for reduced interest rate). See *Fox v. U.S.*, 88-1 U.S. Tax Cas. (CCH) ¶ 13,770 (W.D. Va. 1988) (transfer of real property in exchange for promissory note was gift to extent fair market value of property exceeded amount of note).

¹⁹ *Comm'r v. Ballard*, 854 F.2d 185 (7th Cir. 1988) (sale of property at below market interest rate was not gift to extent interest rate below market rate; for federal gift tax purposes, market rate of interest equal to interest rate established in regulations under I.R.C. § 483 which applied to tax treatment of installment sales).

²⁰ *Supra* note 18.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

CONTINUOUS POSSESSION. The plaintiff asserted ownership of a one acre strip of land by adverse possession. The court held that the plaintiff's occasional use of the property to maintain a fence and to pick blackberries was not sufficiently continuous possession for title to be acquired by adverse possession. **Harmon v. Ingram**, 572 So.2d 411 (Ala. 1990).

FENCE. When the defendant acquired a tract of farm land bordering the plaintiff's land, a fence was placed around the tract. More than 20 years later the plaintiff was awarded neighboring land in a court judgment, and after a survey of

the land, the fence was discovered to encroach upon the land awarded in the judgment. The court held that the more than 20 year open, continuous, hostile, exclusive and notorious possession of the land by the defendant established ownership by adverse possession before the court judgment; therefore, the court judgment could not grant the disputed land to the plaintiff. **Sashinger v. Wynn**, 571 So.2d 1065 (Ala. 1990).

HOSTILE POSSESSION. The plaintiff's and defendant's lands had been separated by a fence for over 70 years, including the more than 20 years that the parties owned their lands. The plaintiff alleged that when the defendant rebuilt the fence, the defendant had asked

permission to replace the fence in the same location and that the plaintiff's permission to do so negated the defendant's hostile possession of the land between the fence and the true boundary. The court held that the defendant's use of the disputed land for grazing cattle and cutting hay was a hostile possession not overcome by the plaintiff's alleged permission. **Tillison v. Taylor**, 572 So.2d 429 (Ala. 1990).

BANKING

CONTRACTS. As part of an attempt to refinance their farming debt, the plaintiffs negotiated with the defendant bank for a three to five year loan; however, the loan agreement signed by the parties required full repayment of the loan less than seven months later. The court held that the loan agreement was full and complete as written and extrinsic evidence of the negotiations was not admissible. The court also held that the signed loan agreement was not an adhesion contract where the parties bargained for the agreement. The court also held that the bank was not liable as a fiduciary resulting from a joint adventure between the parties because the bank did not receive a share of the profits but, under the loan agreement, was to receive a fixed amount independent of the profits of the plaintiffs' operations. **Batterman v. Wells Fargo Agric. Credit Corp.**, 802 P.2d 1112 (Colo. Ct. App. 1990).

BANKRUPTCY

GENERAL

AUTOMATIC STAY. The debtors had entered into a one year lease of farm land which expired during the Chapter 11 case. The lessor had informed the debtor of the termination of the lease and posted no trespassing signs on the property after the lease terminated. The court held that the notification and termination of the lease did not violate the automatic stay as provided by Section 362(b)(10). **Erickson v. Polk**, 921 F.2d 200 (8th Cir. 1990).

DISCHARGE. A creditor obtained a jury verdict of fraud against the debtor and argued that the judgment was nondischargeable under Section 523. In instructions to the jury, the trial court instructed the jury to use a preponderance of the evidence standard. The debtor argued that the fraud judgment was not entitled to collateral estoppel because the dischargeability of a claim for fraud requires a clear and convincing standard of proof in bankruptcy. The Supreme Court held that the preponderance of the evidence standard applied in bankruptcy cases for determining fraud for purposes of Section 523 and the fraud judgment was not dischargeable. **Grogan v. Garner**, 111 S.Ct. 654 (1991), rev'g 881 F.2d 579 (8th Cir. 1989), rev'g unrep. D. Ct. dec. aff'g 73 B.R. 26 (Bankr. W.D. Mo. 1987).

ESTATE PROPERTY. The debtor's interest in an ERISA qualified employee benefit plan was held included in bankruptcy estate property because the Section 541(c)(2) exclusion for property subject to alienation restrictions does not apply to employee benefit plans eligible for exemption

under Section 522. **In re Nadler**, 122 B.R. 162 (Bankr. D. Mass. 1990).

EXEMPTIONS. The debtor owned a residence with a nondebtor spouse as tenants by the entirety. The residence was claimed as an exemption. The debtor received a discharge in Chapter 7 and a creditor of both spouses sought relief from the injunction against the residence. Under Ind. Code § 34-2-28-1(a)(5), a debtor's interest in property owned as tenants by the entirety is exempt as to a joint creditor unless the other tenant is a joint debtor in the bankruptcy case. The court held that the debtor's discharge extinguished the debtor's obligation as to the creditor's claim against the residence thus preventing the creditor from satisfying the claim from the residence. **Matter of Hunter**, 122 B.R. 349 (Bankr. N.D. Ind. 1990).

The debtor's interest in an ERISA qualified retirement plan was held to be estate property and not eligible for an exemption under Fla. Stat. § 222.21(2)(a) because the statute was pre-empted by ERISA. **In re Pruner**, 122 B.R. 459 (Bankr. M.D. Fla. 1990).

The debtors claimed a homestead exemption in their residence which was built on land owned by a third party. The trustee failed to object to the exemption until 34 days later, 4 days after the Rule 4003(b) limit. The trustee argued that the exemption was invalid because the debtors could not exempt property recovered after a voluntary transfer and that a timely objection was not needed to deny the exemption. The court held that the exemption would be allowed because the debtors had a good faith statutory basis for claiming the exemption, even though that basis may be incorrect if litigated. **In re Peterson**, 920 F.2d 1389 (8th Cir. 1990).

MARSHALLING. After the debtor defaulted on lumber contracts, the bond holder paid on the performance bond and sought marshalling of assets, logs, held by another creditor. The court held that the bond holder could not petition for marshalling because the bond payment was not made to a holder of a lien against the logs. **In re Brazier Forest Products, Inc.**, 921 F.2d 221 (9th Cir. 1990).

CHAPTER 7

DISCHARGE. The debtors had transferred horses and several pieces of farm equipment to their children for less than adequate consideration more than one year before filing Chapter 7 bankruptcy. After the transfers, the property was kept on the debtors' property and the debtors claimed income tax deductions for expenses related to the horses. The debtors' children live with them. The debtors were denied discharge under Section 727(a)(2)(A) for transfer of the property with intent to defraud creditors. Under the doctrine of continuing concealment, the retention by the debtors of the benefits of the property carried the date of the transfer into the period within one year before the bankruptcy filing. **In re Essres**, 122 B.R. 422 (Bankr. D. Colo. 1990).

CHAPTER 12

AUTOMATIC STAY. In a federal nonbankruptcy case, the debtors filed a counterclaim against the plaintiff creditor and two days before trial filed Chapter 12 bankruptcy. The debtors argued that the automatic stay prevented their pursuance of the counterclaim except in bankruptcy. The court held that because the counterclaim was initiated by the debtors pre-bankruptcy and the debtors as debtors-in-possession had the power to pursue the counterclaim, the debtors' failure to do so warranted dismissal of the counterclaim. **Merchants & Farmers Bank of Dumas v. Hill**, 122 B.R. 539 (E.D. Ark. 1990).

ELIGIBILITY. The debtors operated a traditional farm and a sawmill in which they cut lumber from trees they harvested from their land. The debtors owed an amount to the Small Business Administration for the logging and sawmill operations in excess of 20 percent of all claims filed in the Chapter 12 bankruptcy case. The court held that the logging and sawmill operations were not farming and the debtors were not eligible for Chapter 12. In the alternative, the court dismissed the Chapter 12 case for bad faith filing where the debtors had received a discharge in a previous Chapter 11 case in which the debtors had negotiated a confirmed plan with creditors and the debtors had not applied unexpected income to make payments under that plan. **In re Miller**, 122 B.R. 360 (Bankr. N.D. Iowa 1990).

PLAN MODIFICATION. The debtors proposed to modify their Chapter 12 plan to skip one annual payment and to add the skipped payment as an additional payment at the end of the plan. In denying the modification, the court held that although the feasibility of the initial plan was not raised in the confirmation process, the proposed modification and inability of the debtors to meet projected income and expenses demonstrated that the debtors' plan was not feasible, even with the proposed modifications. **In re Larson**, 122 B.R. 417 (Bankr. D. Idaho 1991).

CHAPTER 13

PLAN. Under the debtors' Chapter 13 plan, the debtors would transfer collateral equivalent to a secured creditor's claim to the creditor in satisfaction of the claim. The value of the collateral was to be the value stated by the creditor before the plan was proposed. The creditor objected, arguing that the creditor should be allowed to sell the collateral and have the right to assert a deficiency claim if the collateral proceeds do not satisfy the claim. The court agreed with the creditor and held that the creditor would have an unsecured claim for any deficiency. **In re Claypool**, 122 B. . 371 (Bankr. W.D. Mo. 1991).

FEDERAL TAXATION

ALLOCATION OF PLAN PAYMENTS FOR TAXES. The court held that the Chapter 11 plan could not allocate plan payments for federal taxes where the allocation was not necessary for a successful reorganization. **In re GLK, Inc.**, 921 F.2d 967 (9th Cir. 1990).

AVOIDABLE LIENS. A federal tax lien was not avoidable under Section 506(d). **In re McCullough**, 122 B.R. 251 (Bankr. W.D. Pa. 1990).

CONFIRMATION OF PLAN. The IRS moved for modification of the debtor's confirmed plan because the IRS had approved the plan when the IRS mistakenly believed that the plan would contain different terms. The court denied the modification because the plan provided for full payment of the IRS claim, albeit at a lesser interest rate and longer term than the IRS wanted. **In re Poteet Const. Co., Inc.**, 122 B.R. 616 (Bankr. S.D. Ga. 1990).

DISCHARGE. The debtor's income tax liability was held nondischargeable where the liability arose from the debtor's false W-4 forms claiming excessive deductions. **In re Gilder**, 122 B.R. 593 (Bankr. M.D. Fla. 1990).

PRIORITY. The debtor, a general partner, was held to be a responsible person liable for the employee withholding taxes of the partnership. The partner's liability for such taxes was held nondischargeable as priority taxes under Section 523(a)(1). **In re Ross**, 122 B.R. 462 (Bankr. M.D. Fla. 1990).

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has affirmed an interim rule adding North Carolina and New Jersey to the list of validated brucellosis-free states. **56 Fed. Reg. 4936-37 (Feb. 7, 1991)**. The APHIS has affirmed an interim rule changing the classification of Arkansas from Class B to Class A. **56 Fed. Reg. 4937 (Feb. 7, 1991)**.

FARMER OWNED RESERVE. The CCC has adopted as final changes to the FOR regulations implementing the changes made by the 1990 farm bill. **56 Fed. Reg. 5745 (Feb. 13, 1991)**.

FARM LOANS. The FmHA has issued proposed regulations requiring FmHA insured loan borrowers to grant to the FmHA a security interest in all of the borrower's property. **56 Fed. Reg. 6315 (Feb. 15, 1991)**.

PRICE SUPPORT-PROGRAM CROPS. The CCC has issued proposed determinations for 1991-1995 price support and production adjustment programs for wheat, feed grains, cotton, rice and oilseeds: (1) what crops may be planted on "flexible acreage", (2) what crops are permitted on "0/92 and 50/92" permitted acreage, and (3) what oilseed crops are eligible to be pledged as collateral for price support loans. **56 Fed. Reg. 6366 (Feb. 15, 1991)**.

FEDERAL ESTATE AND GIFT TAX

ADMINISTRATIVE EXPENSES. Prior to death, the decedent entered into a foal-sharing contract under which the decedent granted to the stud owner a one-half interest in any foal in exchange for stud services. Under the contract in the case of the decedent's death, the stud owner was to receive cash payment for the one-half interest in the foal. The decedent's mare was not impregnated until after the decedent's death. After the decedent's death, the estate paid the stud owner the contracted amount in cash and claimed the payment as an administrative expense deduction on the estate return. The court held that federal law applied to determine whether the payment was an administrative expense. The court also held that the expense was not a deductible administrative expense because the payment was not of the nature of a payment to persons for helping administer the estate but was only a payment for acquisition of an asset. **Est. of Love v. Comm'r, 91-1 U.S. Tax Cas. (CCH) ¶ 60,056 (4th Cir. 1991).**

CHARITABLE DEDUCTION. The decedent's will bequeathed property in trust to a brother with split remainder interests to a nephew and a church. After the IRS disallowed a charitable deduction for the present value of the remainder interest to the church under I.R.C. § 2055(e)(2)(A), the estate made a cash gift to the church equal to the present value of the remainder interest. The court held that the cash gift was also nondeductible as an attempt to bypass the requirements of Section 2055(e)(2)(A). **Est. of Perrin v. Comm'r, 96 T.C. No. 8 (1991).**

CLAIM FOR REFUND. In 1980 in a negotiated settlement with the IRS on the decedent's estate tax liability, the executrix and IRS agent included a provision allowing the estate to file for a refund resulting from any future audit of the decedent's last personal income tax return. After an audit of the decedent's personal income tax return in 1984 which resulted in additional taxes paid, the estate filed for a refund. The court held that the statute of limitations had run for filing a refund request and that the doctrine of equitable recoupment could not be used because the IRS was not asserting any additional taxes in the refund claim. In addition, the doctrine of equitable estoppel was not available because the estate settlement agreement did not specifically extend the limitations period for filing a refund. **Bedell v. U.S., 91-1 U.S. Tax Cas. (CCH) ¶ 60,057 (S.D. N.Y. 1991).**

DISCLAIMER. Within nine months after the decedent's death, the surviving spouse made a disclaimer of any survivorship interest in property owned by the decedent and the surviving spouse as tenants by the entireties. The IRS ruled that the disclaimer was timely. **Ltr. Rul. 9106015, Nov. 8, 1990.**

GENERATION SKIPPING TRANSFER TAX. The decedent devised property to a trust with a friend, 40 years younger than the decedent, having a lifetime interest in trust income with the remainder to pass to the decedent's daughter. The IRS ruled that the friend was a skip person and the daughter was a non-skip person. Under Section 2652(c)(1)(A), the friend was considered to have a present interest in the trust property such that the entire value of the property was subject to GSTT and not just the value of the

income interest transferred to the friend. **Ltr. Rul. 9105006, Oct. 12, 1990.**

An irrevocable trust had been established prior to September 25, 1985 and the trustee proposed to reform several provisions of the trust, including restricting the types of investments and changing the provisions for successor trustees. The beneficiary also released the power to appoint trust property to descendants of the grantor. The IRS ruled that none of the changes would subject the trust to GSTT. **Ltr. Rul. 9106014, Nov. 8, 1990.**

The taxpayer proposed to bequeath property by will to a grandchild whose parent, the taxpayer's child, had died. The grandchild was adopted by the surviving parent's second spouse. The IRS ruled that the grandchild was not a skip person because the adoption did not negate the effect of Section 2612(c)(2) at the death of the taxpayer's child, the grandchild's parent. **Ltr. Rul. 9106034, Nov. 13, 1990.**

GIFT. The taxpayer established a ten-year trust funded with S corporation stock and with the taxpayer as income beneficiary. If the taxpayer died before the ten-year period ended, the trust property passed as appointed by the taxpayer by will. At the end of the ten years, if the taxpayer survived the trust, the trust property passed to the taxpayer's living children. If a child beneficiary was not over the age of 30, the child's interest passed to a trust until the child reached 30 with the child receiving quarterly income payments until reaching age 30 when the trust corpus was to be distributed. The IRS ruled that the transfer of the stock to the trust was a completed gift valued using the actuarial tables under the taxpayer's age. **Ltr. Rul. 9105030, Nov. 6, 1990.**

The taxpayer was a controlling shareholder in a closely-held corporation and had endorsed a note given by the corporation on a loan. The taxpayer transferred stock in another corporation to the closely-held corporation without receiving a note or stock from the corporation in consideration for the stock. The taxpayer argued that the stock transfer was in satisfaction of the taxpayer's liability on the note, but the court held that the stock transfer was a gift to the closely-held corporation shareholders, most of whom were members of the taxpayer's family, and an attempt to avoid recognition of gain on the stock by the taxpayer. **Est. of Higgins v. Comm'r, T.C. Memo. 1991-47.**

MARITAL DEDUCTION. The decedent's 1980 will devised residuary estate property to a marital trust with the limitation that the amount was not to exceed the maximum required to reduce the estate tax to zero after application of available credits. The court held that the devise was not a maximum marital deduction formula clause subject to the ERTA transitional rule and the estate was allowed an unlimited marital deduction. **Est. of Higgins v. Comm'r, T.C. Memo. 1991-47.**

RETURNS. The decedent's estate had two co-executors who filed a Form 706 for the estate in August 1988 but one of the co-executors failed to sign the return. The IRS sent a form letter asking for the missing signature on the letter. After the co-executor signed and returned the form letter, the co-executors filed another Form 706 in November

1988, claiming that the first return was incomplete because the co-executor signed the form letter only as an individual. The IRS ruled that the form letter requested the co-executor's signature as a co-executor of the estate; therefore, the form letter perfected the first Form 706 which was the estate's return. **Ltr. Rul. 9105003, Oct. 12, 1990.**

The IRS has announced that Form 2848, Power of Attorney and Declaration of Representative, and Form 2848-D, Tax Information Authorization and Declaration of Representative, have been extended to March 31, 1991. New forms will be issued in April 1991. **Ann. 91-14, I.R.B. 1991-5, 6.**

FEDERAL INCOME TAXATION

COURT AWARDS AND SETTLEMENTS.

The taxpayer was awarded actual and punitive damages in a personal injury action for employment-related exposure to asbestos. The IRS ruled that the punitive damages award is includible in the taxpayer's income. The award was received prior to the effective date of the 1989 amendment to I.R.C. § 104(a). **Ltr. Rul. 9106013, Nov. 7, 1990.**

DISASTER LOSSES. The IRS has issued a list of areas determined by the President to be disaster areas in 1990 in which taxpayers may elect to take a loss deduction in the return for the taxable year immediately preceding the taxable year in which the disaster occurred. **Rev. Rul. 91-10, I.R.B. 1991-7, 6.**

EVASION. After attending tax seminars, the taxpayer believed that the federal income tax on wages was unconstitutional and stopped filing income tax returns and declared excessive dependents on Form W-2. The taxpayer participated in or witnessed several court cases involving these issues which consistently upheld the constitutionality of the federal income tax. The trial court instructed the jury that the jury could disregard the taxpayer's evidence of the taxpayer's understanding of the tax laws in determining whether the taxpayer's failure to file tax returns was willful. The appellate court affirmed the jury verdict against the taxpayer and held that the taxpayer must have a good-faith belief as to the taxpayer's interpretation of the tax laws that is objectively reasonable. The Supreme Court reversed, holding that the jury should be allowed to consider the evidence of the taxpayer's beliefs in determining whether the taxpayer's failure to file tax returns was willful. The jury should not be allowed to consider, however, the taxpayer's claims that the tax laws were unconstitutional, given the taxpayer's statutory rights to challenge the tax laws through petitions for refunds. **Cheek v. U.S., 111 S.Ct. 604 (1991), rev'g and rem'g 882 F.2d 1263 (7th Cir. 1989).**

INTEREST. The IRS has ruled that interest earned on dividends accumulated on a converted U.S. Government Life Insurance policy or on a National Service Life Insurance policy is not subject to federal income tax. **Rev. Rul. 91-14, I.R.B. 1991-9, 10.**

LETTER RULINGS. The IRS has issued a checklist of requirements for ruling requests involving the issue of classification of an entity as a limited partnership under Treas. Reg. § 301.7701-2. **Rev. Proc. 91-13, I.R.B. 1991-6, 16.** The IRS has issued a checklist of requirements for ruling requests involving the issue of classification of an entity as a liquidating trust under Treas. Reg. § 301.7701-4. **Rev. Proc. 91-15, I.R.B. 1991-6, 23.**

PARTNERSHIPS.

ADMINISTRATIVE ADJUSTMENTS. The court held that a final partnership administrative adjustment (FPAA) was valid when sent to a limited partner where the designated tax matters partner had died and no new TMP had been designated. The partnership was allowed to file an amended petition where the original petition was filed by the son of the deceased TMP but the son was not a partner. **Starlight Mine v. Comm'r, T.C. Memo. 1991-59.**

QUALIFIED DEBT INSTRUMENTS. The IRS has announced the 1990 and 1991 inflation adjusted amounts of debt instruments which qualify for the 9 percent discount rate limitation under I.R.C. §§ 483 and 1274:

Year of Sale or Exchange	1274A(b) Amount	1274A(c)(2)(A) Amount
1990	\$2,933,200	\$2,095,100
1991	\$3,079,600	\$2,199,700

Rev. Rul. 91-11, I.R.B. 1991-6, 7.

RETIREMENT PLANS. The IRS announced the January 1991 weighted average interest rate of 8.63 percent and the permissible range of interest rates, 7.77 to 9.49 percent, for use in calculating liability for purposes of the full funding limitation under section 412(c)(7). **Notice 91-5, I.R.B. 1991-7, 23.**

SAFE HARBOR INTEREST RATES MARCH 1991

	Annual	Semi-annual	Quarterly	Monthly
Short-term				
AFR	6.85	6.74	6.68	6.65
110% AFR	7.55	7.41	7.34	7.30
120% AFR	8.25	8.09	8.01	7.96
Mid-term				
AFR	7.82	7.67	7.60	7.55
110% AFR	8.62	8.44	8.35	8.30
120% AFR	9.41	9.20	9.10	9.03
Long-term				
AFR	8.21	8.05	7.97	7.92
110% AFR	9.06	8.86	8.76	8.70
120% AFR	9.89	9.66	9.55	9.47

S CORPORATIONS

ACCOUNTING METHOD. A family farm C corporation was required to change to accrual accounting and maintain a suspense account under I.R.C. § 447. The IRS ruled that if the corporation elects S corporation status, the corporation will be required to maintain the suspense account but will not recognize gain or income from the election unless or until any reduction or recapture of amounts in the account. Any reduction or recapture of the suspense account during the ten years after the S corporation election will be

treated as built-in gain under I.R.C. § 1374. **Ltr. Rul. 9106009, Nov. 6, 1990.**

ONE CLASS OF STOCK. Proposed regulations involving the one class of stock requirement for S corporations have been revised to be effective prospectively. See 1 *Agric. Law Digest* 205. **IR-91-25, Feb. 12, 1991.**

TERMINATION. The termination of an S corporation's status was ruled inadvertent where the corporation formed a wholly-owned subsidiary using an attorney who was not aware that the corporation had elected S corporation status. **Ltr. Rul. 9105013, Oct. 31, 1990.**

TRUSTS. The taxpayer established a ten-year trust funded with S corporation stock and with the taxpayer as beneficiary. At the end of the ten years, if the taxpayer survives the trust, the trust property would pass to the taxpayer's living children. If a child was not over the age of 30, the child's interest would pass to a trust until the child reaches 30 with the child receiving quarterly income payments until reaching age 30 when the trust corpus was to be distributed. The IRS ruled that the trusts for the children would qualify as subchapter S trusts. **Ltr. Rul. 9105030, Nov. 6, 1990.**

MORTGAGES

TIMBER. The defendant lumber companies entered into contracts to cut timber on land owned by the debtor which was subject to a mortgage held by the plaintiff. The plaintiff alleged that the timber was cut and removed without the written consent of the plaintiff. The court held that the plaintiff had only the rights of the debtor to recover for collateral removed without written consent. The plaintiff was denied recovery because the debtor had granted the defendants the right to remove the timber in a written contract. **First South Prod. Credit Ass'n v. Georgia-Pacific Corp., 572 So.2d 218 (La. Ct. App. 1990).**

PRODUCTS LIABILITY

HAY BALER. The plaintiff was injured when an arm was entangled in the power-fed compression rollers of a hay baler manufactured by the defendant. The plaintiff also sued, under Restatement (Second) of the Law of Torts § 324A, the liability insurer of the defendant because the insurer provided safety inspections of the hay baler for the defendant. The court held that the insurer was not liable to the plaintiff under Section 324A(a) because of the inspections because the plaintiff failed to show that the inspections changed the hay baler so as to make it dangerous to the plaintiff. However, the court held that summary judgment for the insurer was denied under Section 324A(b) because the insurer undertook part of the manufacturer's duty to warn and to design reasonably safe products. In addition, the insurer was liable under Section 324(c) because the manufacturer relied on the insurer's inspections to produce a safe product. A contract provision negating the insurer's duty to the manufacturer's customers was void as contrary to public policy. **Deines v. Vermeer Mfg. Co., 752 F.Supp. 989 (D. Kan. 1990).**

SECURED TRANSACTIONS

FEDERAL FARM PRODUCTS RULE. The debtor sold cattle to the defendant which were subject to a security interest granted to the plaintiff bank. The bank had filed its security interest under the state U.C.C. but had not filed with the Nebraska central filing system under the federal farm products rule, 7 U.S.C. § 1631(e). The bank claimed that the defendant paid substantially less for the cattle than their fair market value and sued for the balance. The bank argued that the defendant did not purchase the cattle free of the security interest under the federal farm products rule because the defendant had actual knowledge of the security interest when informed by the debtor at the sale. The defendant had paid for the cattle with a joint check to the debtor and the bank. The bank also claimed that the federal farm products rule filing requirements did not apply because the debtor's refusal to sign a new financing statement prevented the filing of the security interest with the Nebraska central filing system. The court held that the bank had sufficient documents, including the U.C.C. financing statement signed by the debtor, to attempt a filing with the central filing system. The bank also failed to meet the alternative federal requirements of giving the buyer direct written notice of its security interest. Therefore, the defendant purchased the cattle free of the security interest. The court noted that the federal rule had no good faith buyer requirement. **Lisco State Bank v. McCombs Ranches, Inc., 752 F.Supp. 329 (D. Neb. 1990).**

STATE TAXATION

AGRICULTURAL USE. The plaintiffs owned 20 acre and one acre parcels of land contiguous to a 500 acre tract owned by a third party and leased as cattle pasture. The plaintiffs argued that their land should have been assessed as agricultural because the land was included in the pasture lease. The court held that Colo. Rev. Stat. § 13-1-102 did not require that owners use their land for grazing their own cattle in order to classify the land as agricultural. In addition, the consideration of the purchase price of the land was not a factor which may be considered in determining whether land was agricultural. The court also held that residential improvements on the land were not required to be related to the agricultural use. The case was remanded for the above errors and for a determination as to whether the land involved was included in the pasture lease. **Staack v. Bd. of County Comm'rs, 802 P.2d 1191 (Colo. Ct. App. 1990).**

TRESPASS

DAMAGES. In clearing a road through timber property, the defendants mistakenly cut down several trees on the plaintiff's property. The plaintiff testified as to the value of the cut trees as to the plaintiff's "use or aesthetic use of the property." The court held that such evidence was insufficient to award damages for the loss of the trees. The case was remanded to show the fair market value of the trees; however, if the trees were shown to have no substantial fair market value, the damages were to be based on the loss of fair market value of the land from the cutting. **Breiding v. Wells**, 800 S.W.2d 789 (Mo. Ct. App. 1990).

VETERINARIANS

ASSUMPTION OF RISK. The plaintiff veterinarian was bitten by the defendant's dog during a pre-neutering examination. Within five minutes after the examination began, the dog snapped at the plaintiff who refused to proceed with the exam until the dog was muzzled. The exam proceeded after the dog was muzzled but after the exam the plaintiff removed the muzzle and the dog bit him. The court ruled that the veterinarian assumed the risk of injury by removing the muzzle after being shown the dog's propensity to bite. **Cohen v. McIntyre**, 277 Cal. Rptr. 91 (Cal. Ct. App. 1991).

CITATION UPDATES

First Nat'l Bank in Albuquerque v. Comm'r, 921 F.2d 1081 (10th Cir. 1990), *aff'g* T.C. Memo. 1989-264 (installment reporting of gain) see p. 43 *supra*.

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