[5] Rye v. U. S., *supra* N. 3.
[6] See 6 Harl, *supra* N. 2, § 49.03.
[7] Pub. L. No. 96-471, 94 Stat. 2247 (1980).
[8] See I.R.C. § 72.
[9] See, e.g., Rev. Rul. 69-74, 1969-1 C.B. 43.
[10] *Id.*
[11] See Ns. 1-2 *supra*.
[12] See N. 7 *supra*.
[13] I.R.C. § 453(b)(1).
[14] Sen. Rep. No. 96-1000, 96th Cong., 2d Sess. 23 (1980), reprinted in 1980-2 C.B. 494, 506.
[15] *Id.*
[16] *Id.*
[17] *Id.*, 12.
[18] See N. 3 *supra*.
[19] 726 F.2d 1569 (Fed. Cir.), *cert. denied*, 469 U.S. 823 (1984).
[20] *Id.*
[21] See Bell v. Comm'r, 76 T.C. 232, 237 (1981), *aff'd*, 668 F.2d 448 (8th Cir. 1982).
[22] Garvey, Inc. v. U.S., see N. 2 *supra*.
[23] See 6 Harl, *supra* N. 2, § 49.01.
[24] See 6 Harl, *supra* N. 2, § 48.03.
[25] See 6 Harl, *supra* N. 2, § 48.03[3][d].
[26] Rev. Rul. 86-72, 1986-1 C.B. 253.
[27] See Rev. Rul. 69-74, 1969-1 C.B. 43; Rev. Rul. 55-119, 1955-1 C.B. 352.

# CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

## ADVERSE POSSESSION

**PRESCRIPTIVE EASEMENT**. The plaintiffs owned two tracts of land accessible only through a private road through the defendant's farm property. The plaintiffs purchased the property in 1972 and used the property for their residence and for rental of another house on the property. The defendant claimed to have granted permission to the plaintiffs and their tenants to use the road and to have erected and locked a gate on the road in 1982 in order to prevent acquisition of the road by adverse possession over ten years. The court held that the erection of the gate and the defendant's other testimony demonstrated that the defendant was aware of the plaintiffs' adverse use of the road. The trial court did not believe the defendant's testimony that permission was granted to the plaintiffs to use the road, and the appellate court did not disagree with the finding. The court also held that the construction of a new house did not change the character of the plaintiffs' use of the road as access to their residence. The court upheld the trial court order giving the plaintiffs a prescriptive easement over the road as access to the residential properties. **Gault v. Bahm, 826 S.W.2d 875 (Mo. Ct. App. 1992)**.

## ANIMALS

**HORSES**. The plaintiff sued the defendant for injuries suffered when the plaintiff's automobile struck the defendant's horse on a road within 100 feet of the city limits of Tuscaloosa and within the police jurisdiction of that city. The plaintiff argued that the city ordinance applied which prohibited the owners of livestock from allowing the animals to run at large. The court held the ordinance applied in this case because cities have the authority to extend the jurisdiction of their ordinance outside the city limits, up to the police jurisdiction allowed by statute. **Wilkins v. Johnson, 595 So.2d 466 (Ala. 1992)**.

## BANKRUPTCY

### GENERAL

**AVOIDABLE LIENS**. The Chapter 7 debtors sought to avoid the unsecured portion of a lien against their homestead. The court applied *Dewsnup v. Timm, 112 S.Ct. 773 (1992)*, retroactively and held that liens could not be split into unsecured and secured portions, with the unsecured portion avoided under Section 506(d). ***In re* Jablonski, 139 B.R. 150 (Bankr. W.D. Pa. 1992)**.

The Chapter 13 debtor sought to have an IRS lien declared unsecured as to the amount which exceeded the value of the debtor's property securing the lien. The IRS argued that *Dewsnup v. Timm, 112 S.Ct. 773 (1992)* prevented bifurcation of the lien. The court held that the *Dewsnup* holding was limited to Chapter 7 cases and allowed the avoidance of the unsecured portion of the tax lien. ***In re* Butler, 139 B.R. 258 (Bankr. E.D. Okla. 1992)**.

**AVOIDABLE TRANSFERS**. The debtor's Chapter 12 case was converted to Chapter 7 because of fraud by the debtor in the case. The Chapter 7 trustee sought to use collateral estoppel in avoiding transfers by the debtor as fraudulent transfers. The court held that collateral estoppel would not be applied because the previous finding of fraud was more broad and did not specifically pertain to the transfers sought to be avoided in the Chapter 7 case. ***In re* Graven, 138 B.R. 587 (Bankr. W.D. Mo. 1992)**.

**DISCHARGE**. The creditors had obtained a state court judgment against the debtor for the debtor's wrongful taking of money from a joint bank account of a decedent of whom the creditors were heirs. The creditors argued that the judgment amount was nondischargeable under Section 523(a)(4) for defalcation while the debtor was in a fiduciary capacity. The court held that Section 523(a)(4) did not apply because the debtor was found, in the state action, to have taken the money before the debtor was appointed estate representative. ***In re* Brawn, 138 B.R. 327 (Bankr. D. Me. 1992)**.

The debtor was a defendant in a suit seeking damages for the debtor's wrongful trespass and removal of trees from Indian lands. The plaintiff in that suit, the United States, sought double damages as allowed by Wis. Stat. § 26.09. The debtor sought a ruling that the double damages were dischargeable under Section 523(a)(7) as compensatory damages. The court held that the double damages would be dischargeable because the damages were awardable regardless of the trespasser's intent. ***In re*** **Marvin, 139 B.R. 202 (Bankr. E.D. Wis. 1992)**.

**EXEMPTIONS**.

AVOIDABLE LIENS. The Chapter 7 debtor sought to avoid a junior judgment lien which impaired the debtor's homestead exemption. The court held that the lien would be avoided only to the extent the lien impaired the exemption, thus subordinating the judgment lien to the debtor's exemption amount in the case of a post-bankruptcy sale or exchange of the homestead. ***In re*** **Prestegaard, 139 B.R. 117 (Bankr. S.D. N.Y. 1992)**.

The debtors had purchased household furniture by two installment contracts which were secured by purchase money security interests. The two contracts were later combined into one with additional purchase of credit and life insurance and a small distribution to the debtor. The debtor sought to avoid the lien as impairing the debtor's exemption in the furniture. The court held that, under Texas law, the combination of the two contracts did not destroy the purchase money aspect of the security interest and that the purchase money portion of the contract was not avoidable. ***In re*** **Crispin, 139 B.R. 187 (Bankr. E.D. Tex. 1992)**.

After senior secured liens were subtracted, $122,000 remained in the value of the debtor's homestead for which the debtors claimed a $45,000 exemption. The homestead was also subject, in order of priority, to a judicial lien for $144,000, a consensual lien for $75,000 and various other liens. The homestead exemption was found to be senior to the judicial liens but junior to the consensual lien. The court held that the remainder of the homestead proceeds was to be allocated as follows: (1) the judicial lien of $144,000 was reduced to $122,000, (2) the judicial lien was further reduced by the exemption amount to $77,000, (3) the first consensual lien was reduced to the remaining amount, $45,000, (4) the debtors received nothing for the homestead exemption, and (5) the remaining portion of the above liens and all other liens were unsecured and avoided. ***In re*** **Paterson, 139 B.R. 229 (Bankr. 9th Cir. 1992)**.

BANK ACCOUNT. The debtor claimed the entire amount in a credit union account as exempt under Calif. Fin. Code. § 14864. The court held that the credit union account was exempt only to the extent the funds were also exempt under Calif. Code of Civil Proc. §§ 703.010-704.995. ***In re*** **Petruzzelli, 139 B.R. 241 (Bankr. E.D. Cal. 1992)**.

HOMESTEAD. The debtor claimed, under 14 Me. Rev. Stat. § 4422(1), a $60,000 exemption for a homestead as a physically disabled person. The creditors argued that the debtor was entitled to only the $7,500 exemption because the creditors claimed a judgment lien from an action involving other than ordinary negligence. The court held that the "opt-out" statute, 14 Me. Rev. Stat. § 4426, voided the exception to the greater exemption in federal bankruptcy cases. ***In re*** **Brawn, 138 B.R. 327 (Bankr. D. Me. 1992)**.

Although the debtors listed a residence as an exempt homestead and received a discharge in their Chapter 7 case, the debtors did not seek avoidance of judgment liens as impairing the homestead until over a year after the closing of the case and when the debtors sought to sell the residence. The debtors moved to reopen the case to allow them to avoid the judgment lien against their residence. The lien holder objected, arguing that the residence was not eligible for the exemption because the debtors also rented an apartment in another city where one of the debtors worked. The court held that the residence qualified for the exemption in that the apartment was only used as a temporary residence. In addition, the court allowed the reopening of the case and the avoidance of the lien, with payment of $1,000 by the debtors to compensate the lien holder for the expense of the reopening of the case. ***In re*** **Dodge, 138 B.R. 602 (Bankr. E.D. Cal. 1992)**.

LIFE INSURANCE. The debtor was allowed to exempt, under Vt. Stat. § 2740(18), the entire value of the debtors' unmatured life insurance policies. ***In re*** **Gabelhart, 138 B.R. 425 (Bankr. D. Vt. 1992)**.

PROVISIONS. The farm debtor claimed $4,200 worth of crops as six months' provisions as exempt under Neb. Rev. Stat. § 25-1556(2). The court held that crops were not provisions eligible for the exemption because the crops would not be directly eaten by the debtor and family, but would need to be sold with the proceeds used to purchase food. **First Nat'l Bank of Wahoo v. Plihal, 136 B.R. 810 (D. Neb. 1989)**.

## FEDERAL TAXATION

**ADMINISTRATIVE EXPENSE**. While the debtor corporation was doing business under a Chapter 11 plan, the corporation failed to pay all employment withholding taxes and the case was converted to Chapter 7. Two corporate officers were given notice by the IRS of their liability for the unpaid withholding taxes. The corporation argued that the unpaid taxes and interest accrued during the Chapter 11 case were not allowed administrative expense priority in the Chapter 7 case. The court held that the taxes were entitled to administrative expense priority and the interest was also allowed priority to the extent payable from estate funds. To the extent the officers remained liable for the taxes, interest continued to accrue post-petition as to their liability. In addition, the court held that the IRS was not required to allocate estate payments of taxes first to the withholding taxes. **Matter of Peter Del Grande Corp., 138 B.R. 458 (Bankr. D. N.J. 1992)**.

**CLAIMS**. The IRS filed timely claims for the debtor's 1984 and 1985 taxes and the debtor's Chapter 13 plan was confirmed. After the confirmation and over one year after the claims bar date, the IRS filed claims for 1980 and 1981 taxes. The court held that the additional claims were not allowed because the claims were new claims, involving taxable years different from the timely filed claims. ***In re*** **Rains, 139 B.R. 158 (Bankr. D. Md. 1992)**.

**DISCHARGE**. In 1978, the IRS assessed the debtor for taxes, interest and a fraud penalty. The debtor filed for Chapter 7 bankruptcy in 1988 and received a discharge. The court held that the discharge included the penalty portion of the assessment because the penalty related to taxes assessed more than three years before the bankruptcy filing. ***In re* Byrum, 92-1 U.S. Tax Cas. (CCH) ¶ 50,257 (C.D. Calif. 1992)**.

The debtors claimed to have timely filed their 1984 tax return along with a check by regular mail. The IRS had received the check but had no record of the return. The IRS did not send notice of the lack of a return because the debtors were under a criminal tax investigation. The debtors sent the IRS a copy of the 1984 return in 1990 after the criminal investigation was concluded and the IRS requested the return. The court ruled that the 1984 tax claim was not dischargeable under Section 523(a)(1) because only the evidence of the IRS receipt of the return in 1990 was sufficient proof of filing. The court, however, disallowed the IRS claim for penalties and interest because the IRS failed to give the debtors timely notice that the tax return was not received. ***In re* Clark, 138 B.R. 579 (Bankr. E.D. Ark. 1991)**.

**PLAN**. The IRS filed claims for income, FICA, and FUTA taxes, a large portion of which were secured by tax liens. The IRS filed a motion for dismissal of the debtors' Chapter 11 case because insufficient time remained under the six year payment limitation of Section 1129(a)(9)(C) for payment of the tax claims. The court held that the six year limitation applied only as to priority taxes, which included income, FICA and FUTA taxes, except to the extent the taxes were secured by a lien. Factual issues remained as to whether the debtors could pay the unsecured portion of the tax claims within the six year limit. ***In re* Reichert, 138 B.R. 522 (Bankr. W.D. Mich. 1992)**.

**SETOFF**. Within 90 days prior to the debtors' filing for bankruptcy, the IRS offset their income tax refund for the prior taxable year against the debtors' student loan debts held by the Department of Education. The Bankruptcy Court held that the debtors could recover the setoff amounts because the date of the setoff was the date the refund was authorized by the IRS and not the last day of the prior taxable year. The District Court reversed and held that the action for recovery of the setoff refund was barred by the lack of a waiver of governmental immunity where the Department of Education had not filed a claim in the case. ***In re* Hankerson, 138 B.R. 473 (E.D. Pa. 1992), *rev'g*, 133 B.R. 711 (Bankr. E.D. Pa. 1991)**.

# CONTRACTS

**BREACH**. The plaintiff operated a grain and flour mill in Missouri and sold wheat flour under two three-month contracts to the defendant pasta manufacturer located in Texas. The defendant failed to take delivery of about half of the first contract amount and took delivery of none of the second contract amount. The plaintiff sued for breach of contact in Missouri for the difference in fair market value of the flour under the contract price. The court held that personal jurisdiction over the Texas defendant in Missouri was proper because the last action binding the parties in contract occurred by the plaintiff's acceptance of the contract in Missouri. The court rejected the defendant's argument that the second contract was an extension of the first with only an increase in the amount of flour to be delivered. The court held that the contracts were separate contracts with separate delivery amounts, purchase price and expiration dates. The plaintiff was awarded the difference between the fair market value of the flour as of the last day of each contract and the contract price multiplied by the amount of flour not purchased by the defendant. **U.S. Durum Milling, Inc. v. Frescala Foods, Inc., 785 F.Supp. 1369 (E.D. Mo. 1992)**.

# CORPORATIONS

**SUCCESSOR LIABILITY**. The defendant was the parent corporation of a subsidiary which had merged with another subsidiary which had purchased the manufacturer of a grain loading auger. The plaintiff had been injured in an accident involving the auger and asserted that the defendant had assumed the manufacturer's liability for the auger. The defendant provided evidence that the purchasing subsidiary had agreed to assume liability for products made by the manufacturer, but no evidence was presented that the merging subsidiary or the defendant parent corporation agreed to assume such liability. The court held that the defendant corporation did not assume such liability either expressly or through being the parent corporation of the merged subsidiary. **Schnoor v. Deitchler, 482 N.W.2d 913 (Iowa 1992)**.

# FEDERAL AGRICULTURAL PROGRAMS

**VETERINARIANS**. The APHIS has issued proposed regulations amending the accreditation requirements for veterinarians on behalf of APHIS. The changes would establish accreditation on a national basis, require an orientation program for accredited veterinarians, and establish standards of performance for accredited veterinarians. **57 Fed. Reg. 23540 (June 4, 1992)**.

**WETLANDS**. The ASCS has adopted as final regulations implementing the Wetlands Reserve Program under which the USDA purchases easements from owners of eligible land who voluntarily agree to restore and protect farmed wetlands or converted wetlands. The WRP is available in 1992 only in California, Iowa, Louisiana, Minnesota, Mississippi, Missouri, New York, North Carolina and Wisconsin. **57 Fed. Reg. 23908 (June 4, 1992)**.

# FEDERAL ESTATE AND GIFT TAX

**CHARITABLE DEDUCTION**. The decedent established a testamentary trust, funded with $1,350x, which provided an annual annuity to the decedent's sibling of $12x. At the death of the beneficiary, the remainder passed to charitable organizations. The trust was reformed after the decedent's death to provide for $225x to be held in trust for the sibling with a set monthly annuity amount with the remainder passing to the charitable organizations. The rest of the original trust corpus was distributed directly to the charitable organizations. The IRS ruled that the trust, as amended, qualified as a charitable remainder trust and the decedent's estate could take a charitable deduction for the value of the charitable remainder and the direct distribution to the charitable organizations. **Ltr. Rul. 9221014, Feb. 18, 1992**.

**DISCLAIMERS**. At the decedent's death, the decedent's one-half share of a corporation passed to two trusts for the surviving spouse, with remainders to a charitable trust. Within nine months of the decedent's death, the surviving spouse made a written disclaimer of the interests in the trusts. The charitable trust, represented by the State Attorney General, disclaimed the remainder interests through a court order. The IRS ruled that the disclaimers were effective. Because of the disclaimers, the stock passed to the decedent's children. The IRS ruled that the basis of the stock to the children was the fair market value as of the decedent's date of death. **Ltr. Rul. 9222041, Feb. 28, 1992**.

**GENERATION SKIPPING TRANSFER TAX**. The grantor establish an irrevocable trust in 1959 which was not amended after September 25, 1985. The trust paid monthly annuities to several beneficiaries and one of the beneficiaries renounced the interest in the trust in favor of a commercial annuity purchased by the second tier trust beneficiaries. The IRS noted that the renunciation was not a qualified disclaimer because the annuitant had been receiving benefits since 1959. The IRS ruled that the renunciation of the beneficiary's interest did not cause the trust to be subject to GSTT. **Ltr. Rul. 9221005, Feb. 13, 1992**.

The decedent established two trusts by will in May 1983 and the decedent died on December 5, 1986. The surviving spouse had a nongeneral power of appointment over the corpus of both trusts which was exercised by will in 1987. The appointment did not postpone or suspend the vesting, absolute ownership or power of alienation of an interest in the trust for a period of more than 21 years after a life in being at the decedent's death. The IRS ruled that the exercise of the power of appointment did not subject the trusts to GSTT. **Ltr. Rul. 9221037, Feb. 21, 1992**.

Trusts for the grantors' children were established in 1976 with no amendments since September 25, 1985. The trusts had one corporate trustee. The trusts were amended to provide for a trustee committee, compensation for the committee members, court ordered full accounting by a trustee, and fees for administration. The IRS ruled that the amendments would not cause the trusts to be subject to GSTT. **Ltr. Rul. 9222042, Feb. 28, 1992**.

**GROSS ESTATE**. The taxpayer retired in 1979 and elected to receive annual payments from an employer's retirement fund. The taxpayer did not change the method of payment but changed the remainder beneficiary several times. The IRS ruled that under the transitional rules of TRA 1986, Sec. 525(b), because the taxpayer did not change the method of benefit payment before death, the value of the remainder interest would not be included in the taxpayer's gross estate. **Ltr. Rul. 9221030, Feb. 21, 1992**.

**INSTALLMENT PAYMENT OF ESTATE TAX**. The decedent was a partner in a partnership composed of the decedent, the decedent's three children and trusts for the children's children. The decedent's estate elected to pay federal estate tax by installments. After the decedent's share of the partnership was divided among the other partners, one child and the trusts for that child's children received distributions of business assets in exchange for their partnership interests. The remaining children and the trusts for their children then terminated the partnership and formed two separate S corporations to carry on the business of the partnership as two businesses. The IRS ruled that the termination of the partnership and formation of two S corporations did not cause acceleration of payment of estate tax. **Ltr. Rul. 9222040, Feb. 28, 1992**.

**SPECIAL USE VALUATION**. The decedent's federal estate tax return made the special use valuation election but did not contain the notice of election and the agreement of the heirs to the election. The IRS denied a request for extension of time to file the special use valuation election in order to provide the missing documents. **Ltr. Rul. 9221022, Feb. 20, 1992**.

**VALUATION**. The taxpayer/shareholder entered into a stock option agreement with the corporation under which employees could purchase voting stock of the corporation at a set price. The taxpayer granted options to nephews. The IRS ruled that the nephews were family members for purposes of Section 2703 valuation rules. **Ltr. Rul. 9222043, Feb. 28, 1992**.

# FEDERAL INCOME TAXATION

**DEPRECIATION**. The IRS has issued tables, revised for inflation, detailing the limitation on depreciation deductions for automobiles first placed in service during 1992:

| Tax Year | Amount |
|---|---|
| 1st tax year | $2,700 |
| 2d tax year | 4,400 |
| 3d tax year | 2,650 |
| Each succeeding year | 1,575 |

The IRS also issued tables providing the amounts to be included in income for automobiles first leased during 1992. **Rev. Proc. 92-43, I.R.B. 1992-23, 23**.

**COURT AWARDS AND JUDGMENTS**. The taxpayers had obtained a settlement of their Title VII sex discrimination case which provided for payment of back pay. The taxpayers sought refund of withheld income taxes arguing that the settlement payments were excludible, under Section 104(a)(2), as damages received on account of personal injuries. The lower appellate court had agreed but the U.S. Supreme Court reversed. The court reasoned that a Title VII action did not involve a personal injury tort action because Congress had limited the award in such cases to back pay and injunctive relief and had not included the usual types of damages available in personal injury tort cases, such as punitive damages and damages for pain and suffering. **U.S. v. Burke, 112 S.Ct. 1867 (1992)**.

**INSTALLMENT METHOD**. The taxpayer sold some property by installment sale and intended to report gain on the installment method but the tax return preparer mistakenly reported all of the gain in the first taxable year. The request to revoke the election out was made as soon as the mistake was discovered. The IRS allowed revocation of the election out of the installment method. **Ltr. Rul. 9221038, Feb. 21, 1992**.

**LEVY**. The taxpayer's spouse, prior to their marriage, had federal income tax liabilities. In an attempt to shield the taxpayer's assets from a levy for the spouse's taxes, the parties executed an antenuptual agreement to keep their property separate. The taxpayer argued that the antenuptial agreement prevented the IRS from levying against the taxpayer's wages as separate property. The court held that, under Nevada law, antenuptial agreements were effective only as between the spouses and were not effective against the IRS. **Jansen v. U.S., 92-1 U.S. Tax Cas. (CCH) ¶ 50,260 (D. Nev. 1992)**.

**PARTNERSHIPS**

DEFINITION. The IRS has determined that the California Revised Limited Partnership Act as amended in 1991 corresponds to the Uniform Limited Partnership Act for purposes of Treas. Reg. § 301.7701-2. **Rev. Rul. 92-41, I.R.B. 1992-23, 22**. The IRS has determined that the Delaware Revised Limited Partnership Act as amended in 1990 corresponds to the Uniform Limited Partnership Act for purposes of Treas. Reg. § 301.7701-2. **Rev. Rul. 92-42, I.R.B. 1992-23, 22**.

**S CORPORATIONS**

LIQUIDATION. All stock of an S corporation which operated a commercial building was owned by the decedent who bequeathed all of the estate to a single beneficiary. The beneficiary decided not to continue the corporation and the building was sold and the corporation liquidated under a plan of liquidation with cash distribution to the beneficiary within 12 months. The IRS ruled that no gain or loss was recognized on the distribution of the cash in complete liquidation of the corporation. The beneficiary would recognize gain or loss based on the difference between the beneficiary's stock basis and the amount received from the distribution. **Ltr. Rul. 9218019, Jan. 23, 1992**.

STOCK BASIS. The IRS has issued proposed regulations relating to adjustments to the basis of a shareholder's stock in an S corporation and the basis of a shareholder's indebtedness of an S corporation to a shareholder. The IRS also issued proposed regulations relating to the treatment of distributions to S corporation shareholders. **57 Fed. Reg. 24436 (June 9, 1992)**.

The basis of a shareholder's stock is increased, on a per share-per day basis, by the shareholder's pro rata share of (1) the corporation's separately stated items of income, (2) the corporations nonseparately stated items of income, and (3) the excess of the corporation's deductions for depletion over the basis of the property subject to depletion. **Prop. Treas. Reg. § 1.1367-1(b)**.

The basis of a shareholder's stock is decreased, on a per share-per day basis, (but not below zero) by (1) distributions that are not includible in the shareholder's income under Section 1368, (2) the shareholder's pro rata share of corporation items of loss and any expense of the corporation that is not deductible in computing its taxable income and not chargeable to a capital account, and (3) deductions for depletion to the extent that the deduction does not exceed the basis of the property subject to depletion. **Prop. Treas. Reg. § 1.1367-1(c)**.

The proposed regulations require that, if for any taxable year the shareholder's basis of an S corporation debt has been decreased, any net increase in shareholder basis for any subsequent taxable year must be used to restore the basis of the debt, as existing on the first day of the subsequent taxable year, before increasing the shareholder's basis in stock. If the shareholder holds more than one debt of the corporation, the restoration of basis is to be first applied to any debt which is repaid during the subsequent taxable year. The remaining increase is to be allocated among the remaining debts according to the amount of reduction in the previous taxable year. **Prop. Treas. Reg. § 1.1367-2(c)**.

The proposed regulations provide that a distribution by an S corporation without earnings and profits is not included in the shareholder's gross income to the extent the distribution does not exceed the adjusted basis of all the shareholder's shares of stock. **Prop. Treas. Reg. § 1.1368-1(c)**. If the amount of the distribution exceeds the adjusted basis of all of the shareholder's stock, the excess is treated as gain from the sale or exchange of property.

A distribution in excess of a corporation's accumulated adjustments account (AAA) is not included in the gross income of the shareholder to the extent the distribution is an actual distribution of money and the portion in excess of the AAA does not exceed the shareholder's net share of the corporation's previously taxed income immediately before the distribution. **Prop. Treas. Reg. § 1.1368-1(d)**.

The tax effect of a distribution to a shareholder is determined only after taking into account the adjustments to bases of the shareholder's stock under Section 1367 without regard for the distributions made during the corporation's taxable year. The determination of the source of a distribution is to be made only after the AAA has been adjusted to reflect (1) increases for taxable income items and the excess of the deductions for depletion, (2) decreases for nondeductible noncapital expenses (excluding taxes attributable to taxable years as a C corporation or to exempt income), (3) decreases from oil and gas depletion deductions, and (4) decreases for items of loss or deduction. **Prop. Treas. Reg. § 1.1368-1(e)**.

If a shareholder disposes of 20 percent or more of the shareholder's stock in a 30-day period, the corporation may elect to treat the taxable year as two taxable years, with the first ending on the date the stock was transferred, for purposes of allocating items of income and loss, adjustments to the AAA, basis and earnings and profits, and determining the tax effect of distributions. **Prop. Treas. Reg. § 1.1368-1(g)**.

If the sum of all distributions, except distributions from earnings and profits or PTI, during the taxable year exceed the AAA at the close of the taxable year, the balance of the AAA is allocated among the distributions in proportion to the amount of each distribution. **Prop. Treas. Reg. § 1.1368-2(b)**.

TRUSTS. Upon the death of the grantor a trust for the grantor's two children became irrevocable and was split into two separate shares, one for each beneficiary, with remainders to the issue of the beneficiary. The second share was to be treated as a separate trust with no possibility that corpus could be transferred to the other share. The beneficiary of the second trust transferred trust property to an S corporation. The IRS ruled that the second trust was a qualified Subchapter S trust and that only the current beneficiary needed to make the trust election. **Ltr. Rul. 9221036, Feb. 21, 1992**.

**SOCIAL SECURITY TAX**. The taxpayer was a professional corporation with a husband and wife as sole shareholders and employees. The employees had two-year employment contracts with the corporation under which compensation was to be paid bi-annually. The court held that the compensation was considered paid on the last day of the two-year contracts. Thus, the husband's compensation in 1987 was to be considered paid in May 1986 at the end of the 1984-1986 contract and the 1989 wages were considered paid in May 1988 at the end of the 1987-1988 contract. The wages then became subject to FICA tax. **Hoerl & Assoc., P.C. v. U.S., 785 F.Supp. 1430 (D. Colo. 1992)**.

# MORTGAGES

**PEANUT QUOTA**. The plaintiff had owned a farm which had a peanut quota allotment. The farm was transferred to the defendant through an agreement allowing foreclosure, with the plaintiffs leasing the land for one year. The plaintiff asserted that the plaintiff had orally reserved the peanut quota allotment from the transfer of the land. The court held that the peanut quota allotment ran with the land and was transferred with the land in the foreclosure absent proof of the plaintiff's reservation of the allotment. **Lindsey v. F.D.I.C., 960 F.2d 567 (5th Cir. 1992)**.

**GUARANTY**. The plaintiff sold a ranch to two individuals and two corporations owned by the individuals. The purchase was structured such that the two individuals would personally own a portion of the ranch, with the promissory notes given by the individuals guaranteed by one of the corporations. After the buyers defaulted on the sale, the seller sued the corporation on the guaranty. The corporation argued that a deficiency judgment was not allowed, under Calif. Code of Civil Proc. § 580b, on purchase-money obligations. The court held that the corporation was not entitled to protection under Section 580b because the guaranty did not provide any purchase money for the ranch but was only additional security for the purchase. **Paradise Land & Cattle v. McWilliams Enter., 959 F.2d 1463 (9th Cir. 1992)**.

# PRODUCTS LIABILITY

**AUGER**. The plaintiff was injured by falling into an unprotected auger while loading beans on to a truck. The plaintiff sued the land and auger owner in negligence in failing to have a guard on the loading end of the auger and failing to warn about the defect. The court held that the auger/land owner had no duty to warn of an open and obvious danger to the plaintiff who was an experienced farmer and business invitee. **Schnoor v. Deitchler, 482 N.W.2d 913 (Iowa 1992)**.

# STATE TAXATION

**AGRICULTURAL LAND**. The plaintiff purchased farm land from a finance company which had received the land by foreclosure. The land had been assessed for taxation at $139,000 but the purchase price was for $85,000. The plaintiff sought reduction in the assessment to the purchase price, arguing that because the sale was at arm's length, the assessment board was required to use the purchase price as the assessed value. The court held that the plaintiff had demonstrated that the sale was at arm's length and that the assessed value had to conform with the purchase price. **Steenberg v. Town of Oakfield, 482 N.W.2d 326 (Wis. 1992)**.

The plaintiff purchased farm land on which a hog confinement operation was situated. The purchase was made using a bill of sale for the livestock and equipment and a warranty deed for the land. The livestock and equipment were sold for $150,000 and the land for $75,000. The land, however, was assessed at $190,000 for property tax purposes. The court held that the plaintiff had produced sufficient evidence of the value of the livestock to show that the purchase price of the land was no more than $87,000 and held that the assessed value of the land would therefore be $87,000. **Dowd v. Board of Assessment, 482 N.W.2d 583 (Neb. 1992)**.

# TRESPASS

**SMOKE**. The plaintiff sued the defendant neighbor for intentional trespass from smoke from the defendant's burning of fields. The defendant argued that the trespass was so minimal as to not amount to trespass as a matter of law. The court held that the intrusion was not minimal and that a directed verdict for the defendant was reversed for trial only on the amount of damages suffered by the plaintiff. The court also held that the defendant's permit from the Department of Environmental Quality and that burning in compliance with DEQ regulations was not a defense. **Ream v. Keen, 828 P.2d 1038 (Or. Ct. App. 1992)**.

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**TIMBER**. The plaintiff had purchased unoccupied timber land from one of the defendants. The seller also owned substantial timber land around the sold land and hired an independent contractor to cut and haul timber from those areas. In the process of the timber operations, the independent contractor mistakenly cut a swath of trees on the plaintiff's land in the construction of a temporary logging road. The court reversed a jury award for treble damages in that the evidence showed that the timber cutting on the plaintiff's land was a mistake and not willfully or knowingly done. **Bonk v. McPherson, 605 A.2d 74 (Me. 1992)**.

The plaintiff sued a neighbor for the loss of six maple trees in a woods adjoining the neighbor's property. The trees were inadvertently cut over five years. The plaintiff sought damages equal to the trees' replacement cost. The court held that the damages would be limited to the difference in value of the land before and after the trees were cut because the trees were of little esthetic value to the plaintiff. Because no evidence of reduction in value was presented, the trial court's award of $350 was appropriate. **Schuyler v. Miller, 590 N.E.2d 1358 (Ohio Ct. App. 1990)**.

# JOURNAL ARTICLES

The following articles are in Vol. 2, No. 1 of the **San Joaquin Agricultural Law Review**:

Korbol, "Current Issues Involving Statutory Trusts Under the Perishable Agricultural Commodities Act."

Cummings, "The Demise of the Integrity of Oral Contracts and Promises in Lender-Borrower Relationships Under California Law."

Gmur, "Regulation of Underground Storage Tanks: A Farmer and His Money are Soon Parted."

Greaver, "Corporate Farming Restrictions in California: False Hope for the Family Farm."

Stuart, "The 1990 California Freeze: Disaster Relief Leaves Farmworkers in the Cold."

# CITATION UPDATES

**Taylor v. Freeland & Kronz, 112 S.Ct. 1644 (1992)** (objection to exemptions), see p. 83 *supra*.

**Bramblett v. Comm'r, 960 F.2d 526 (5th Cir. 1992), *rev'g*, T.C. Memo. 1990-296** (capital assets), see p. 102 *supra*.

## ISSUE INDEX