FOOTNOTES

[1] I.R.C. § 3121(a)(8).

[2] I.R.C. § 3306(b)(11).

[3] I.R.C. § 3401(a)(2).

[4] See I.R.C. § 3121(a).

[5] I.R.C. § 3121(a)(8).

[6] See Ltr. Rul. 9202003, no date given.

[7] *Id.*

[8] *Id.*

[9] Treas. Reg. § 1.83-6(a)(2).

[10] See I.R.C. §§ 3401(a)(2), 3121(a), 3121(a)(8).

[11] Rev. Rul. 79-207,1979-2 C.B. 351.

[12] Ltr. Rul. 8252018, Sept. 17, 1982.

[13] *Id.*

[14] Ltr. Rul. 9136001, May 14, 1991.

[15] *Id.*

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL

AVOIDABLE TRANSFERS. The debtor made payment of a bona fide debt by a check mailed on November 18, dated November 19 and honored by the bank on November 20. For purposes of Section 547, the payment was not an avoidable transfer if made before November 20. The court held that the date of a payment for preferential transfer purposes was the date the check was honored by the bank; therefore, the payment was avoidable. **Barnhill v. Johnson, 112 S.Ct. 1386 (1992),** ***aff'g*****, 931 F.2d 689 (10th Cir. 1991)**.

ESTATE PROPERTY. The IRS filed a pre-petition tax lien and notice of levy against an account receivable of the debtor. The debtor sought use of the account receivable as cash collateral during the bankruptcy case but the IRS argued that the levy removed any interest of the debtor in the property. The court held that the account receivable was estate property subject to use as cash collateral until the property was sold at a tax sale. ***In re*** **Anaheim Elec. Motor, Inc., 137 B.R. 791 (Bankr. C.D. Cal. 1992)**.

EXECUTORY CONTRACTS. The debtor, an agricultural equipment dealer sought to assume dealership contracts with the equipment manufacturer, under which the manufacturer provided floor plan financing and financing of purchases by customers. The manufacturer argued that Section 365(c)(2) prevented assumption of the contracts because the contracts involved financial accommodation of the debtor. The court held that the financing arrangements were only incidental to what were primarily business arrangement contracts and the debtor was allowed to assume the contracts. ***In re*** **Cole Bros., Inc., 137 B.R. 647 (Bankr. W.D. Mich. 1992)**.

EXEMPTIONS.

EARNINGS. As part of its efforts to collect on a judgment, the plaintiff attached the proceeds of the sale of milk by the debtor to a dairy. The debtor objected, arguing that the milk proceeds were exempt from attachment as earnings under Ky. Rev. Stat. § 427.010. The court held that the proceeds of the sale of milk were not earnings eligible for the exemption. **Rice, Seiller, et al. v. Fitzgerald, 824 S.W.2d 435 (Ky. Ct. App. 1992)**.

HOMESTEAD. The debtor claimed a residence as a homestead. The debtor had once lived in the residence fulltime but moved to two other houses which the debtor built in attempts to sell the houses. After the other houses were sold, the debtor moved back to the residence which was rented out during the debtor's absence. The court held that the debtor could claim the residence as an exempt homestead. The debtor did not abandon the residence as a homestead because the debtor always intended to move back once the other houses were sold. ***In re*** **Inmom, 137 B.R. 757 (Bankr. E.D. Ark. 1992)**.

The debtors sold their Oregon homestead after moving to Colorado to obtain work. The debtors sought exemption of the proceeds under Colo. Rev. Stat. § 38-41-201 which provided for an exemption of proceeds of a homestead located in Colorado. Notwithstanding the literal language of the exemption statute, the court held that the proceeds would be exempt as fullfilling the purposes of the homestead exemption. ***In re*** **Bloedon, 137 B.R. 824 (Bankr. D. Colo. 1992)**.

LIEN AVOIDANCE. The farm debtors sought to avoid a lien against the proceeds of farm machinery because the lien impaired their exemption in the farm machinery. The lien creditor argued that the exemption, under Wis. Stat. § 815.18(2)(h), was not allowed because the debtors had no equity in the machinery and the lien was consensual. The creditor also argued that because Wisconsin had not "opted out" of the federal exemptions, the Wisconsin limitations on the exemption were permissable because the debtors could elect to use the federal exemptions for lien avoidance purposes. The court held that under *Owen v. Owen, 111 S.Ct. 1833 (1991)*, a state limitation on an exemption did not affect the lien avoidance provisions of federal bankruptcy law; therefore, the lien could be avoided. ***In re*** **Wink, 137 B.R. 297 (Bankr. W.D. Wis. 1992)**.

In divorce proceedings, the debtor's former husband's attorney obtained a charging interest against the former husband's interest in the marital residence. Under the divorce settlement, the debtor obtained the former husband's interest in the property subject to the charging lien. The court held that the debtor could not avoid the lien as impairing the homestead exemption because the lien attached before the debtor obtained an interest in the property. ***In re*** **Donovan, 137 B.R. 547 (Bankr. S.D. Fla. 1992)**.

The debtor sought to avoid liens against the debtor's firearms as exempt household goods. The court held that firearms were not household goods for purposes of lien avoidance. ***In re*** **McGreevy, 955 F.2d 957 (4th Cir. 1992), aff'g, 130 B.R. 200 (D. Me. 1991)**.

The debtor sought to avoid a judicial lien as impairing the debtor's homestead exemption. The court held that the lien could be avoided only to the extent of the homestead exemption. In addition, the court held that because, under Illinois law, a judicial lien could not attach to a debtor's homestead exemption, the judicial lien in this case did not impair the exemption; therefore, the lien could not be avoided in any amount. ***In re*** **Cerniglia, 137 B.R. 722 (Bankr. S.D. Ill. 1992)**.

OBJECTIONS. The debtor listed as exempt an unknown amount of an award from a pending job discrimination suit. The trustee did not object to the exemption because the trustee did not think the suit had any value. After the suit brought a substantial award, the trustee filed a late objection of the exemption as not allowed under state law and sought recovery of an amount sufficient to pay all unsecured creditors. The court held that an exemption would be allowed if no timely objection was made, even if the exemption did not have a good faith basis in law. **Taylor v. Freeland & Kronz, 137 B.R. 14 (yellow), 1992 W.L. 77247 (S. Ct. 1992)**.

PREFERENTIAL TRANSFERS. Within 90 days prior to the debtor's filing for bankruptcy, the SBA applied to the IRS for administrative setoff, under 31 U.S.C. § 3720A, of a tax refund due to the debtor. The court held that payment of the tax refund amount to the SBA was an avoidable preferential transfer because the set off debt lacked mutuality of obligation in that the IRS and SBA were not the same governmental unit. ***In re*** **Hancock, 137 B.R. 835 (Bankr. N.D. Okla. 1992)**.

CHAPTER 12

CASH COLLATERAL. The debtors operated a cattle feedlot operation in which the debtors fed cattle owned by others in exchange for a per head per day fee plus feed costs. Much of the feed was produced by the debtors on the farm. The debtors also rented to others a second residence on the property. A creditor held a security interest in the farm, equipment, crops and proceeds. The farm mortgage provided for payment of rents and profits in case of default. The debtor sought use of the collateral in the operation of the feedlot during the bankruptcy case. The court held that the income from the feedlot per head per day fees was not cash collateral under the farm mortgage because the cattle owners obtained no interest in the farm realty from the fees. The court also held that the cattle fees were not subject to the U.C.C. security interest because the fees were generated by the efforts of the debtors and not the sale of the collateral. The debtor used hay and silage grown on the farm in the feedlot operation and the court held that the crops were cash collateral and that the debtors were required to pay the fair market value of the crops to the creditor as the crops were used in the operation. The court held that the rent from the second residence was cash collateral to the extent of the net proceeds. The court also held that the creditor was not entitled to other adequate protection payments because the value of the collateral was not declining. ***In re*** **Anderson, 137 B.R. 819 (Bankr. D. Colo. 1992)**.

PLAN. A creditor objected to the debtor's Chapter 12 plan as failing to provide unsecured creditors with as much payment as would be received under a Chapter 7 liquidation. The creditor argued that because the trustee would abandon certain oversecured property to the debtor, the tax recognized from the sale of the property would be a liability of the debtor and not the estate; therefore, the Chapter 12 plan had to provide for that reduced tax liability of the estate. The court held that the tax consequences of abandonment of estate property had to be included in the Chapter 12 plan, if the property would be abandoned in Chapter 7; however, the court allowed the debtor to provide rebuttal as to whether the property would be subject to abandonment. Comment: As the court noted, the only reason this issue arose was because the debtor improperly included in the Chapter 12 plan Section 1225(a)(4) liquidation analysis, the tax liability of the estate for the sale of the overencumbered property; whereas, the only property which should have been included was unencumbered, non-exempt assets. Query whether the court was just as much in error in allowing a creditor to also improperly increase the unsecured creditors' recovery under the Chapter 7 liquidation analysis by excluding the tax liability from the sale of oversecured property? ***In re*** **Ayers, 137 B.R. 397 (Bankr. D. Mont. 1992)**.

CHAPTER 13

ARREARAGES. The Chapter 13 debtor's plan provided for curing arrearages on an FmHA mortgage but did not provide for payment of any accrued interest on the arrearages because the mortgage agreement did not require interest on any arrearages. The court held that neither Section 1322(b) nor § 1325(a)(5) required payment of interest on arrearages on secured claims where the security agreement did not contain any provision for payment of interest. ***In re*** **Sanchez, 137 B.R. 214 (Bankr. E.D. Tex. 1992)**.

FEDERAL TAXATION

AUTOMATIC STAY. After the IRS had notice of the debtor's bankruptcy filing and had filed claims in the case, the IRS filed two notices of levy. The court held that under 11 U.S.C. § 106, the IRS had waived governmental immunity and was subject to liability for the debtor's attorney's fees and costs which would be offset against the IRS claims. ***In re*** **Solis, 137 B.R. 121 (Bankr. S.D. N.Y. 1992)**.

DISCHARGE. The IRS had filed claims for taxes, interest and penalties owed by the debtor. The taxes and interest were not dischargeable because the tax returns were not filed more than three years before the bankruptcy filing; however, some of the penalties were assessed against taxes due more than three years before the bankruptcy filing. The court followed decisions in the Eleventh and Tenth Circuits and held that Sections 523(a)(7)(A), (B) allow the discharge of penalties assessed against taxes due more than three years

before the bankruptcy filing. ***In re* Henderson, 137 B.R. 239 (Bankr. E.D. Ky. 1991)**.

The debtor was assessed in 1987 for taxes owed for 1985 and the assessed amount was eventually paid. Within 240 days before the debtor filed for bankruptcy, the IRS assessed additional taxes for 1985 after an audit. The debtor argued that the second assessment related back to the first assessment and was, therefore, dischargeable under Section 523(a)(1)(A). The court held that the second assessment did not relate back to the first assessment because the assessment was for additional taxes. ***In re* Blank, 137 Bankr. 671 (Bankr. N.D. Ohio 1992)**.

The debtor failed to timely pay federal income taxes for several years and was assessed for the taxes, interest and penalties prior to filing for bankruptcy. The debtor had also claimed many more exemptions on W-4 forms than were allowed and were eventually claimed on income tax returns. The IRS argued that the false W-4 form filing was sufficient to declare the taxes nondischargeable, but the court held that the false W-4 form in itself was insufficient without evidence of the debtor's willing and knowing violation of the law. In addition, the court held that the taxes were not nondischargeable simply because the debtor did not make full payment of the taxes and filed bankruptcy as soon as the taxes became dischargeable. ***In re* Peterson, 92-1 U.S. Tax Cas. (CCH) ¶ 50,216 (Bankr. D. Wyo. 1991)**.

FEDERAL AGRICULTURAL PROGRAMS

BORROWER'S RIGHTS. The defendants defaulted on a farm credit bank mortgage on their farm. The farm was eventually sold at auction with the homestead sold separately and the remaining farm land sold as one parcel. The mortgage included a waiver by the defendants of their right to have the farm land sold in separate parcels. The defendants argued that the federal land bank could not bring a state foreclosure suit because the bank was not registered with the Secretary of State. The court held that the bank was a federally chartered corporation which was not considered a foreign corporation in the state under N.D. Cent. Code § 10-22-19. The court also held as valid the mortgage waiver of the defendant's right to have the farm land sold in separate parcels. **Farm Credit Bank of St. Paul v. Rub, 481 N.W.2d 451 (N.D. 1992)**.

The FmHA has announced interim regulations amending the notices to delinquent Farmer Program borrowers to include information about the Debt Settlement Programs and changes to the Primary and Preservation Programs under FACTA 1990. **57 Fed. Reg. 18612 (April 30, 1992)**.

BRUCELLOSIS. The APHIS has issued an interim rule changing the classification of Florida from Class B to Class A status under the brucellosis regulations. **57 Fed. Reg. 15219 (April 27, 1992)**.

EMPLOYEES. The plaintiffs were cotton farmers whose fields were sprayed for boll weevils by a regional agency participating in the federal boll weevil eradication program. The plaintiff brought suit for damages caused to their cotton crops by employees of the regional agency. The agency employees claimed to be *de facto* federal employees because the whole program was created by a federal statute. The court held that if the employees were federal employees, the suit could be prevented only if the employees obtained certification of federal employment from the United States Attorney General. The court also held that the USDA and APHIS were not indispensable parties because the local agency had the authority to implement the program independent of the federal agencies. **Stewart v. State Crop Pest Comm'n, 414 S.E.2d 121 (S.C. 1992)**.

FARM CREDIT SYSTEM. Two Federal Land Bank Associations applied for merger into an Agriculture Credit Association covering ten counties, two of which were also served by another FLB association. The merging FLB associations amended the proposed charter to allow only short term lending in the counties served by the other FLB association, but the Farm Credit Administration denied the merger. The court held that the denial was proper given the FCA's identification of administrative, regulatory, examination, supervisory and practical problems which would have been created by a charter with bifurcated lending practices. **Production Credit Ass'n v. Farm Credit Admin., 783 F.Supp. 416 (D. Minn. 1991)**.

FARM LOANS. The FmHA has adopted as final regulations requiring a lien on all property owned by an FmHA borrower when the borrower makes an FmHA insured loan. **57 Fed. Reg. 18674 (April 20, 1992)**.

MEAT AND POULTRY PRODUCTS. The FSIS has issued proposed regulations permitting the use of ionizing radiation sources, i.e. irradiation, under FDA regulations to treat (1) fresh or frozen uncooked whole poultry carcasses or parts known as "ready to cook poultry" and (2) mechanically separated poultry products. **57 Fed. Reg. 19460 (May 6, 1992)**.

MILK MARKETING ORDERS. The plaintiffs were milk producers who challenged several milk marketing orders as invalid because the effects of the orders were contrary to the intent of the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. §§ 601 et seq. The USDA argued that the AMAA by implication prohibits judicial review of complaints by milk producers. The court held that milk producers as well as handlers have a right to judicial review of milk marketing orders and that these milk producers had demonstrated sufficient injury to have standing to challenge the orders. **Minnesota Milk Producers Ass'n v. Madigan, 956 F.2d 816 (8th Cir. 1992)**.

NATIONAL FORESTS. As a result of the economic downturn of the 1980's, timber companies which had long term, high price timber cutting contracts with the Forest Service were granted extensions on their contracts, with a cutoff date for submission of amended contracts. The plaintiffs had such contracts but did not submit amended plans before the deadline. The Forest Service regulations governing the extended contract program were enjoined by

an injunction which was later overturned, but while the injunction was in force, the plaintiffs submitted amended contracts. The plaintiffs argued that the Forest Service's denial of the amended contracts as untimely submitted violated the injunction. The court held that the invalidation of the injunction reinstated the original deadline, thus making the amended contracts subject to rejection as untimely. **Hampton Tree Farm, Inc. v. Yeutter, 956 F.2d 869 (9th Cir. 1992)**.

PAYMENT LIMITATIONS. The plaintiffs were three joint venture farms which established 51 irrevocable trusts in order to increase the number of "persons" eligible for the $50,000 payment limitation on federal farm programs. The plaintiffs were allowed by the county ASCS office to claim each trust as a separate person. The USDA investigated the plaintiff's case and issued a report to Congress. The chairman of the house agriculture committee wrote a letter to the USDA expressing concern over the plaintiffs' case as an abuse of the payment limitations requirements. The USDA then issued a ruling denying the plaintiffs' status as separate persons as a scheme or device to evade the payment limitations program. The plaintiffs brought suit prior to exhaustion of administrative appeals, alleging improper Congressional interference in the administrative procedures. The court held that the standard in such cases was whether the Congressional communication actually influenced the agency decision and that the facts of this case did not amount to actual influence but only Congressional comment and advice. **DCP Farms v. Yeutter, 957 F.2d 1183 (5th Cir. 1992)**.

PRICE SUPPORT PROGRAMS. The plaintiffs had been sued by the USDA for violations of the upland cotton price support program and the plaintiff counter-claimed for removal of their names from the federal debt register and release of impounded money. The USDA's suit was dismissed because of the lapse of the statute of limitations and the dismissal was upheld on appeal to the Fifth Circuit Court of Appeals. The cotton producers brought suit in the Claims Court to have their names removed from the debt roll and to have later subsidy payments made to them which had been offset against the original debt for violation of the price support program. The court ruled that the dismissal of the USDA claim was res judicata as to whether the plaintiffs violated the price support program provisions and ordered removal of the plaintiffs' names from the debt register and release of the plaintiffs' funds. The appellate court held that the dismissal was not res judicata as to the propriety of the USDA to offset the later subsidy payments against the amounts owed for the alleged price support program violations and remanded the case for adjudication on the merits. **Doko Farms v. U.S., 956 F.2d 1136 (Fed. Cir. 1992), *rev'g and rem'g*, 21 Ct. Cl. 696 (1990)**.

RICE. The CCC has adopted as final the acreage reduction from 1992 crop of rice at 10 percent. **57 Fed. Reg. 15001 (April 24, 1992)**.

SALMONELLA. The plaintiff was an egg producer in whose flocks USDA inspectors found salmonella infected chickens. In accord with final regulations, the plaintiff was banned from selling eggs produced on the farm as table eggs, causing a loss from the lower price of eggs sold as "breakers." The plaintiff challenged the regulations as violating the constitutional prohibition on governmental takings without compensation and as arbitrary. The District Court held that the regulations were invalid because no compensation was provided for the loss of value of a quarantined farm and because the District Court did not have jurisdiction to grant a compensation award. The appellate court reversed, holding that although the regulations did not provide for compensation, the plaintiff could have sought compensation through the Tucker Act and the Claims Court. Therefore, the lack of compensation was not a valid reason for striking the regulations. The court also upheld the testing and tracing procedures of the regulations as reasonable means to detect and control the disease. **Rose Acre Farms, Inc. v. Madigan, 956 F.2d 670 (7th Cir. 1992)**.

FEDERAL ESTATE AND GIFT TAX

GIFT. The taxpayers lived together and pooled their funds in cash in one person's purse. A winning lottery ticket was purchased with these pooled funds and the persons agreed to split the prize. The IRS ruled that the split of the prize was not a gift from the purchaser to the other party. **Ltr. Rul. 9217004, date not given**.

GROSS ESTATE. In partial consideration for the decedent's sister's care of the decedent's children, the decedent helped the sister purchase a larger house until the sister's previous house could be sold. The sister repaid the decedent for the amount the decedent provided. The court held that the house was not included in the decedent's gross estate because the decedent had no control over possession under an actual or implied agreement. **Est. of Stavarkis v. Comm'r, T.C. Memo. 1992-229**.

MARITAL DEDUCTION. The decedent's will bequeathed as much property in trust to the surviving spouse as would decrease the federal estate tax on the remainder of estate property to the lowest amount possible. The executor returned on Schedule M, Part 2, an amount equal to 100 percent of the projected funding requirement for the marital trust. The IRS ruled that the executor made a valid QTIP election for the fractional share of the marital trust sufficient to reduce the estate tax to zero. **Ltr. Rul. 9217005, Dec. 31, 1991**.

The decedent's will bequeathed to a marital trust so much of the estate property equal to the "maximum marital deduction allowable by the Federal estate tax law applicable to the Settlor's estate." The decedent's will was last revised in 1976. The IRS ruled that the marital bequest was a formula clause subject to the transitional rule of ERTA 1981 and limited the marital deduction to the greater of one-half of the decedent's estate or $250,000. **Ltr. Rul. 9217008, Jan. 6, 1992**.

The decedent's will, last amended in 1977, bequeathed as much property in trust to the surviving spouse as would result in no federal estate tax liability for the estate. The IRS ruled that under *Levitt v. Comm'r, 95 T.C. 22 (1990)*, the decedent's will was not subject to the transitional rule of

ERTA 1981 and that the estate was entitled to the unlimited marital deduction. **Ltr. Rul. 9217030, Jan. 24, 1992**.

In filing Form 706 for an estate, the executor claimed a marital deduction for a trust eligible as QTIP and identified the trust but otherwise failed to properly complete Schedule M. The executor filed an amended Schedule M which properly made the election and filed for an extension of time to make the QTIP election. The IRS ruled that good cause and intent to originally make the election was shown and the extension was granted. **Ltr. Rul. 9217017, Jan. 23, 1992; Ltr. Rul. 9217025, Jan. 24, 1992; Ltr. Rul. 9217028, Jan. 24, 1992.**

TRUSTS. The grantor transferred property in trust for life to a daughter. The trust provided that if the daughter was survived only by adopted children, a portion of the trust property would pass to such children in trust, with the remainder passing to a charitable foundation. The trustee sold some appreciated stock belonging to the trust and established two trust funds with a portion of the stock allocated to the fund which would pass to the foundation if the daughter left surviving adopted children. The IRS ruled that the taxable gains attributable to the sale of the stock in the foundation trust fund were deductible from the taxable income of the trust under I.R.C. § 642(c)(2). **Ltr. Rul. 9217023, Jan. 24, 1992**.

FEDERAL INCOME TAXATION

ALTERNATIVE MINIMUM TAX. The IRS has adopted as final regulations governing the application of the tax benefit rule to the minimum tax, effective for minimum taxes which arose in taxable years beginning after December 31, 1975 and before January 1, 1987. **57 Fed. Reg. 19253 (May 5, 1992)**..

CHARITABLE DEDUCTION. The donor established an eight year charitable remainder annuity trust which provided for annual payments of $6,400 to the donor, age 85, or the donor's surviving spouse, age 80, with the remainder to a charity. The IRS ruled that the present value of the retained annuity in August 1991 was $37,981.41. **Ltr. Rul. 9216006, Jan. 16, 1992**.

C CORPORATIONS

ALLOCATION OF INCOME. An agricultural cooperative formed a subsidiary corporation to act as distributor of the cooperative's products in some states. The cooperative controlled all aspects of the corporation's activities and the income from the corporation was allocated entirely to the cooperative. The IRS ruled that income generated by the corporation's sales were to be allocated to the corporation because the corporation did not act as an agent for the cooperative in making the sales. **Ltr. Rul. 9217003, Nov. 21, 1991**.

HOBBY LOSSES. The taxpayers were employed full time as pipefitters and worked on their horse farm before and after work and on weekends. The court held that the horse breeding activity was not operated with the intent to make a profit because the activity was not operated in a businesslike manner where very little advertising was done, no advice was sought from experts and the taxpayers made no attempt to improve the profitability of the activity. **Gircsis v. Comm'r, T.C. Memo. 1992-244**.

IRA'S. The taxpayers received monthly distributions from their IRA's based upon an amortization of the amounts in the accounts at 8 percent interest over the life expectancy as determined in Table V of Treas. Reg. § 1.72-9. The IRS ruled that the distributions qualified as a series of substantially equal periodic payments and were not subject to additional tax under I.R.C. § 72(t)(1). **Ltr. Rul. 9217048, Jan. 31, 1992**.

LIKE KIND EXCHANGES. The taxpayers transferred a conservation easement in perpetuity on their farm to the county conservation board in exchange for a fee simple interest in another farm. The IRS ruled that the exchange qualified as a like-kind exchange under I.R.C. § 1031(a) allowing no recognition of gain or loss on the transaction. **Ltr. Rul. 9215049, Jan. 15, 1992**.

PARTNERSHIPS

DEFINITION. The IRS has ruled that where a partnership agreement restricts the transfer of more than 20 percent of all interests in partnership capital, income, gain, loss, deduction and credit, the partnership lacks the element of free transferability of interests for the purpose of determining whether the partnership is a partnership for federal income tax purposes. **Rev. Proc. 92-33, I.R.B. 1992-17, 28**.

The IRS has ruled that the Utah Limited Partnership Act, Utah Code §§ 48-2a-1 et seq., corresponds to the Uniform Limited Partnership Act for purposes of Treas. Reg. § 301.7701-2. **Rev. Rul. 92-34, I.R.B. 1992-18, 11**.

DISTRIBUTIONS. The taxpayer was a 45 percent partner in a partnership in which the other partner was a corporation controlled by the taxpayer's father. The taxpayer received distributions from the partnership in excess of the taxpayer's share of partnership profits. The court ruled that the excess distributions were gain includible in income upon the termination of the partnership and not loans because the taxpayer did not provide evidence of an enforceable debt obligation. **Seay v. Comm'r, T.C. Memo. 1992-254**.

PASSIVE INVESTMENT INTEREST INCOME. The taxpayer purchased all the stock of an S corporation from the taxpayer's father in exchange for cash and a promissory note secured by the stock. The taxpayer worked full time for the corporation as director and chief executive officer. The IRS ruled that the interest expense resulting from the promissory note was to be allocated among the various assets of the corporation under *Notice 89-35, 1989-1 C.B. 675* in order to determine whether the interest expense is subject to the Section 163(d) limitation. Because the taxpayer materially participated in the corporation business, the interest expense allocated to inventory was not investment expense subject to the limitations of I.R.C. § 469. However, interest expense allocated to portfolio income would be subject to Section 163(d) limitations. **Ltr. Rul. 9215013, Jan. 7, 1992**.

PENSION PLANS. An employee was not allowed to use 10-year averaging for a lump sum distribution from an early retirement program because the program was not a qualified plan under I.R.C. § 402(a). **McKnight v. Comm'r, T.C. Memo. 1992-241**.

The taxpayers, husband and wife, received lump sum distributions from a profit-sharing plan and an incentive savings plan. The distribution from the savings plan was rolled over to an IRA. The distribution from the profit sharing plan was reported as income with a 10-year averaging election. The court held that the 10-year averaging election was available only if elected for all lump sum distributions; therefore, the 10-year averaging election only for the profit sharing distribution was not allowed. **Fowler v. Comm'r, 98 T.C. No. 34 (1992)**.

For plans beginning in April 1992 the weighted average is 8.35 percent with the permissible range of 7.51 to 9.18 percent for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 92-21, I.R.B. 1992-17, 12**.

The decedent owned an interest in an ERISA qualified pension plan, and the decedent's first spouse had executed a waiver of benefits in favor of the plaintiff. The decedent had married a second time and had executed prior to marriage an antenuptial agreement in which the fiance/defendant agreed to waive all rights and causes of action against the decedent which could arise as a result of their marriage. The court held that the defendant's, the surviving spouse, antenuptial agreement did not effect a waiver of the surviving spouse's rights to the ERISA fund because the agreement did not comply with the waiver requirements of ERISA. **Hurwitz v. Sher, 92-1 U.S. Tax Cas. (CCH) ¶ 50,213 (S.D. N.Y. 1992)**.

RESPONSIBLE PERSON. The debtor, a radiologist, was a shareholder, director and officer in several corporations which operated other businesses, including an agricultural cooperative, a timber farm, a trucking firm and a logging firm. The IRS assessed the 100 percent penalty under I.R.C. § 6672 against the debtor as a responsible person involved in the corporations which failed to pay withheld employment taxes. The court held that the debtor was not a responsible person because the debtor had no check writing authority, was not involved in the daily management of the corporations, and had no contact with the corporations' creditors. ***In re* Hughes, 137 B.R. 614 (Bankr. E.D. Va. 1992)**.

The debtor was the wife of the sole shareholder of a corporation and was a director and officer of the corporation. The debtor had check writing authority, performed all corporation bookkeeping, and paid other corporation creditors while knowing that withheld employment taxes were unpaid. The court held that the debtor was a responsible person subject to the 100 percent penalty of I.R.C. § 6672. ***In re* Zauss, 137 B.R. 682 (Bankr. W.D. Tenn. 1992)**.

S CORPORATIONS

TAX YEAR. When the corporation made its S corporation election, the corporation selected a date other than a calendar year end as the taxable year. The taxable year was rejected by the IRS but the corporation filed its return based on the requested date. The corporation then filed Form 8716 requesting the use of the elected date as its taxable year end, with a request for extension of time to file the request. The IRS denied the extension for lack of prompt action. **Ltr. Rul. 9216032, Jan. 22, 1992**.

TIMBER. The taxpayer, a family owned forest products company, included its timber holdings in southern Oregon and northern California in one block for purposes of computing timber depletion allowance. The court held that the two areas of timber were sufficiently similar and included in one operation to be considered one block under Treas. Reg. § 1.611-3(d)(1). The court rejected IRS arguments to require a different means of depletion to more accurately reflect income because the taxpayer demonstrated that the blocking method used conformed to industry practice. **RLC Industries Co. v. Comm'r, 98 T.C. No. 33 (1992)**.

LABOR

AGRICULTURAL EMPLOYER. The petitioner was hired by a purchaser of a vineyard to manage the vineyard with authority to hire and fire employees, set and pay wages and withholding taxes, establish work hours and procedures, and purchase needed supplies. The California Agricultural Labor Relations Board ruled that the petitioner was a successor agricultural employer required to bargain in good faith with the vineyard workers' labor union, the UFW which had a collective bargaining agreement with the vineyard's former owner. The court held that the petitioner had sufficient authority over management of employees to be considered an agricultural employer and that the petitioner was a successor employer because the petitioner also performed similar duties for the previous lessee of the vineyard. **Michael Hat Farming Co. v. ALRB, 6 Cal.Rptr.2d 179 (Cal. Ct. App. 1992)**.

LANDLORD AND TENANT

OPTION TO RENEW. The defendants had entered into a five year lease of grazing land with the plaintiff which included an option to renew for an additional five years upon notice by registered mail and payment of "the amount of rental offered by some other responsible party." The defendant timely sent notice of intent to exercise the option to renew by registered mail and sent increased rent payment checks for the first six months of the extended lease. The defendant also filed a notice of real estate lease and sent a copy to the plaintiff. The plaintiffs attempted to reject the extended lease by arguing that the rent was inadequate, the extended lease violated the statute of frauds, and that no lease existed. The court held that the extended lease was enforceable because the defendant complied with the requirements for exercising the option to renew the lease; the notice to exercise the lease, the rent checks and letters between the parties were sufficient memoranda to constitute writings in support of the extension; and an extension of a written lease did not need another writing to show existence of the extended lease. **McClellan v. Britain, 826 P.2d 245 (Wyo. 1992)**.

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SECURED TRANSACTIONS

PURCHASE MONEY SECURITY INTEREST. A creditor had a judgment lien against the debtor's property prior to the date the debtor purchased a cotton picker at an auction. The debtor had made prior arrangements with a bank to borrow the money for the picker but because the amount was unknown until the bidding was completed, the debtor used funds borrowed from a daughter to buy the picker. The debtor then completed the loan and repaid the daughter. The bank claimed priority of a purchase money security interest in the picker over the creditor's judgment lien under Ga. Code § 11-9-310(1)(d). The court held that the bank had a purchase money security interest because the loan closing was tied to the purchase of the picker. The court held that the statutory priority granted to purchase money security interests did not apply in this case because the judgment lien was not a security interest granted by the debtor. **Corim, Inc. v. Belvin, 414 S.E.2d 491 (Ga. Ct. App. 1991)**.

STATE REGULATION OF AGRICULTURE

BORROWER'S RIGHTS. The plaintiffs defaulted on their farm mortgage and the farm was sold at a foreclosure sale to the mortgagee bank. The plaintiffs sued the bank for breach of fiduciary duty, breach of an implied covenant of good faith and fair dealing, breach of contract and negligence in granting the loan. The court held that the bank did not have a fiduciary duty towards the plaintiffs because the bank did not control the affairs of the plaintiffs. The court also denied the claim of breach of good faith dealing, holding that the action was not recognized in Michigan. The breach of contract claim was based on contract duties imposed by federal statutes and regulations, but the court denied this claim because the loan agreements contained all obligations of the parties. Finally, the court held that the bank had no duty toward the plaintiffs to determine the plaintiffs' ability to make the loan payments. **Ulrich v. Federal Land Bank of St. Paul, 480 N.W.2d 910 (Mich. Ct. App. 1992)**

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