[12] Rev. Proc. 87-56, 1987-2 C.B. 674.
[13] Rev. Proc. 88-22, 1988-1 C.B. 785.
[14] I.R.C. § 168(e)(3)(C)(ii).
[15] Rev. Proc. 87-56, 1987-2 C.B. 674.
[16] I.R.C. § 168(b)(1).
[17] I.R.C. § 168(b)(2)(B).
[18] See notes 27-29 *infra*.
[19] I.R.C. § 168(e)(1).
[20] See I.R.C. § 48(p).
[21] I.R.C. § 168(e)(3)(D).
[22] I.R.C. § 168(b)(3)(E)(the statute erroneously lists it as (D)).
[23] I.R.C. §§ 168(e)(1), (3)(E).
[24] 1987-2 C.B. 674.
[25] Non-farm fences.
[26] I.R.C. § 168(b)(2).
[27] I.R.C. §§ 168(e)(2)(B),(3)(F).
[28] Rev. Proc. 87-56, 1987-2 C.B. 674.
[29] I.R.C.§§ 168(c)(1), (b)(3)(B).
[30] I.R.C. § 168(c)(1), (e)(2)(A).
[31] I.R.C. § 167(j)(2)(B).
[32] I.R.C. § 167(k)(3)(C).
[33] I.R.C. § 167(j)(2)(B).
[34] I.R.C. §§ 168(b)(3)(B),(c)(1).
[35] I.R.C. §§ 168(e)(2)(B), (c)(1).
[36] I.R.C. § 168(b)(3)(A).
[37] Ltr. Rul. 8929047, April 25, 1989.
[38] Prop. Treas. Reg. § 1.168-5(f)(2).
[39] I.R.C. § 168(g).
[40] I.R.C. § 56(a)(1)(A)(ii).
[41] I.R.C. § 168(g)(2)(C). Special rules apply to single purpose agricultural and horticultural structures (15 year class life) and trees and vines (20 year class life). I.R.C. § 168(g)(3)(B).
[42] I.R.C.§§168(g)(1),280F(b)(2).
[43] I.R.C. § 168(b)(2),(5),(c)(2).
[44] I.R.C. § 179.
[45] I.R.C. § 179(b)(4).
[46] I.R.C. § 179(d)(8). The basis at the partnership level must be reduced even though the partner is precluded from deducting a portion of the amount because of application of the dollar limitation at that level. Rev. Rul. 89-7, I.R.B. 1989-3, 6.
[47] *Id.*
[48] I.R.C. § 312(k)(3)(B).
[49] I.R.C. § 179(d)(4).
[50] I.R.C. § 179(d)(1).
[51] I.R.C. § 48(a).
[52] See I.R.C. § 179(d)(1).
[53] I.R.C. § 179(d)(3).
[54] I.R.C. § 179(d)(2)(A), (B).
[55] I.R.C. § 179(b)(2).
[56] I.R.C. § 179(b)(2). See also Ann. 89-30, I.R.B. 1989-9, 63 (limitation computed by subtracting from $10,000 amount by which cost of section 179 property placed in service during taxable year exceeds $200,000).
[57] I.R.C. § 179(b)(3)(A).
[58] General Explanation of the Tax Reform Act of 1986 109 (1987).
[59] I.R.C. § 179(b)(3)(B).
[60] See Helvering v. Janney, 311 U.S. 189 (1940) (joint return reflects the activity of taxable unit, husband and wife).
[61] I.R.C. § 179(c)(1).
[62] Treas. Reg. § 1.179-4(a).
[63] Treas. Reg. § 1.179-4(b).

Cases, Regulations and Statutes

ANIMALS

FENCES. A landowner was not entitled to damages under an unjust enrichment theory for depasturage from a neighbor's cattle which wandered on to the landowner's unfenced pasture after the landowner notified the cattle owner of the trespass. Under Wyoming "fence out doctrine," an animal owner is not liable for injury caused by animals which trespass on unfenced property. **R.O. Corp. v. John H. Bell Iron Mountain Ranch Co., 781 P.2d 910 (Wyo. 1989)**.

BANKRUPTCY

GENERAL

AUTOMATIC STAY. The Small Business Administration violated the automatic stay when it administratively offset the debtor's farm program payments against debts owed to the SBA. **Small Bus. Admin. v. Rinehart, 887 F.2d 165 (8th Cir. 1989), aff'g 88 B.R. 1014 (D. S.D. 1988), aff'g 76 B.R. 746 (Bankr. D. S.D. 1987)**.

AVOIDANCE OF LIENS. Debtors could avoid liens impairing their homestead exemption where debtors had waived their homestead exemption rights. ***In re* Henderson, 106 B.R. 169 (Bankr. N.D. Ill. 1989)**.

DISCHARGE. Debtors' debt to creditor not dischargeable because of fraud where debtors had pledged 19 head of cattle which they did not own as collateral. ***In re* Kissinger, 106 B.R. 180 (Bankr. E.D. Ark. 1989)**.

Chapter 7 debtors were denied discharge for failure to list pre-petition sales of collateral with the intent to hinder and delay a secured creditor, for failure to list assets on bankruptcy schedules, for pledging of vehicles which debtors did not own as collateral, and for converting and concealing collateral. ***In re* Bastrom, 106 B.R. 223 (Bankr. D. Mont. 1989)**.

Debt which arose from debtor's embezzlement while debtor held power of attorney over farm and other property of creditor held nondischargeable because of defalcation of debtor as fiduciary; debt as to debtor's spouse held nondischargeable due to debtor's spouse's laceny of creditor's property. **Matter of Burgess, 106 B.R. 612 (Bankr. D. Neb. 1989)**.

EXEMPTIONS. ERISA qualified plan not exempt as spendthrift trust under Colorado law or under federal nonbankruptcy law. ***In re* Toner, 105 B.R. 978 (Bankr. D. Colo. 1989)**.

ERISA qualified plan not exempt as spendthrift trust under Oklahoma law and Oklahoma exemption for ERISA plans preempted by ERISA. ***In re* Weeks, 106 B.R. 257 (Bankr. E.D. Okla. 1989)**.

Florida exemption for ERISA plans preempted by ERISA. ***In re* Sheppard, 106 B.R. 724 (Bankr. M.D. Fla. 1989); *In re* Bryant, 106 B.R. 727 (Bankr. M.D. Fla. 1989)**. *Contra* ***In re* Bryan, 106 B.R. 749 (Bankr. S.D. Fla. 1989)**.

Exemptions in property not precluded by debtor's lack of equity in exempt property. Debtor not eligible for exemption for hogs not used primarily for personal, family or household use but were source of business income. No exemption in farm equipment allowed where farm land had been foreclosed upon and debtors employed in nonfarm employment. ***In re* Wiford, 105 B.R. 992 (Bankr. N.D. Okla. 1989)**.

A trustee's failure to object to debtor's claimed exemption in proceeds of settlement of personal injury action did not constitute waiver of estate's right to amount in excess of statutory exemption limit. **Matter of Isakson, 106 B.R. 21 (Bankr. D. Conn. 1989)**.

Debtors, emancipated and financially independent, living with parents allowed homestead exemption as to portion of residence in which they lived. ***In re* Howell, 106 B.R. 99 (Bankr. W.D. Va. 1989)** (consolidated cases).

Kentucky exemption for retirement benefits not applicable as against consensual liens granted in the benefits. ***In re* Peklenk, 106 B.R. 119 (Bankr. W.D. Ky. 1989)**.

In California, married debtors are allowed only one set of exemptions. ***In re* Stratton, 106 B.R. 188 (Bankr. E.D. Cal. 1989)**.

Debtor entitled only to a homestead exemption as to one residence on property and the land on which the residence is located. Other houses rented to tenants cannot be included in the homestead. ***In re* Tiffany, 106 B.R. 213 (Bankr. D. Idaho 1989)**.

Debtor allowed exemption in tax exempt annuity which was terminable at will where annuity was reasonably necessary for debtor's support. ***In re* Hunsucker, 106 B.R. 220 (Bankr. D. Mont. 1988)**.

Debtors could not avoid judicial lien against exempt homestead where lien attached prior to time residence became homestead. ***In re* Keenan, 106 B.R. 239 (Bankr. D. Colo. 1989)**.

Debtors allowed exemption only in 75 percent of interest or other earnings on IRA account under Colorado exemptions. ***In re* Lownsberry, 106 B.R. 245 (Bankr. D. Colo. 1989)**.

Under Missouri law, debtor could exempt the present value of the debtor's interest in a retirement plan which was necessary for the debtor's support. The debtor's interest in a profit sharing fund was not exempt, however, where debtor had treated fund as a savings acount and had made two withdrawals. ***In re* Kendrick, 106 B.R. 605 (Bankr. W.D. Mo. 1988)**.

Although debtor were not allowed an exemption for proceeds of the sale of their real estate by the bankruptcy estate as rent because no rent had accrued as of the date of the bankruptcy petition, the debtors were allowed to amend their exemption claims to add a possible exemption in the proceeds as a homestead exemption. **Armstrong v. Hursman, 106 B.R. 625 (D. N.D. 1988)**.

A debtor was allowed a homestead exemption in the proceeds of the post-petition sale of the debtor's residence without having to reinvest the proceeds in another residence because exemption determined as of the date of the petition. ***In re* Whitman, 106 B.R. 654 (Bankr. S.D. Cal. 1989)**.

TRUSTEES. Debtors-inpossession were not required to comply with United States Trustees guidelines requiring debtors to open new bank accounts and imprint "debts-in-possession" and bankruptcy case number on checks. The court noted that although the guidelines are useful and often restate existing law, the guidelines are not law or even administrative regulations and therefore are not independently enforceable. **Matter of Johnson, 106 B.R. 623 (Bankr. D. Neb. 1989)**.

CHAPTER 7

TRUSTEE. The debtors were without standing to sue creditor for breach of contract because only the trustee in Chapter 7 cases has the power to bring suit for the bankruptcy estate. No bearch of contract to loan money where parties never agreed as to amount of money, term of loan or when loan to be made. ***In re* Louden, 106 B.R. 109 (Bankr. E.D. Ky. 1989)**.

CHAPTER 11

ABSOLUTE PRIORITY RULE. Debtors' contribution of farm machinery worth $20,000 over five years of Chapter 11 plan and contribution of $30,000 cash to farm operations were not substantial contribution of fresh capital to overcome absolute priority rule where $1.1 million was owed to unsecured creditors. ***In re* Snyder, 105 B.R. 898 (Bankr. C.D. Ill. 1989)**.

CHAPTER 12

CONFIRMATION OF PLAN. The debtor's plan was not confirmed because the unsecured creditors would not receive at least as much as in a liquidation, 11 U.S.C. § 1225(a)(4). The debtors argued that the date for determining the value of estate property should be the date of the petition or the latest date for the confirmation hearing, 135 days after the filing of the petition (90 days for filing the plan plus 45 days for the confirmation hearing). The court held that the debtors had waived this argument because the confirmation hearing was postponed by their own motion several times; thus, the valuation date was the date the confirmation hearing was actually held. **Gribbons v. Federal Land Bank of Louisville, 106 B.R. 113 (W.D. Ky. 1989)**.

Plan could not provide for abandonment of Federal Land Bank stock in partial satisfaction of bank's claim. ***In re* Miller, 106 B.R. 136 (Bankr. N.D. Ohio 1989), amending 98 B.R. 311 (Bankr. N.D. Ohio 1989)**.

DISMISSAL. A debtor's filing of Chapter 12 case soon after receiving a discharge in Chapter 7 (a so-called "Chapter 19" case) was not bad faith filing per se but is prima facie evidence of bad faith filing requiring rebuttal by debtor. Effect of discharge of unsecured debt in Chapter 7 case would be considered in confirmation of Chapter 12 plan. ***In re* Wickliffe, 106 B.R. 470 (Bankr. W.D. Ky. 1989)**.

ELIGIBILITY. Corporation which employed unskilled laborers to harvest citrus crops of farmers was not a farmer eligible for Chapter 12. ***In re* Blackwelder Harvesting Co., Inc., 106 B.R. 301 (Bankr. M.D. Fla. 1989)**.

INTEREST RATE IN PLAN. The interest rate on deferred payments on secured claims of creditor was set at 12.75 percent, equaling the current interest rate under the loan contract. ***In re* Miller, 106 B.R. 136 (Bankr. N.D. Ohio 1989), amending 98 B.R. 311 (Bankr. N.D. Ohio 1989)**.

SECURED CLAIMS. The amount of a secured creditor's claim equaled the fair market value of the creditor's interest in the collateral without reduction for liquidation costs where debtor intended to retain property. ***In re* Usry, 106 B.R. 759 (Bankr. M.D. Ga. 1989)**.

FEDERAL TAXATION

DISCHARGE. Post-petition interest on nondischargeable tax claims is nondischargeable and tax fraud penalties for taxable years more than three years prior to filing of bankruptcy petition were dischargeable. ***In re* Burns, 887 F.2d 1541 (11th Cir. 1989)**.

ESTATE PROPERTY. A prepetition IRS levy of debtor's bank accounts was subject to turnover of accounts to the bankruptcy estate upon showing by debtor that IRS adequately protected where the bankruptcy petition was filed before notice of seizure and transfer of funds in accounts. ***In re* Brown, 106 B.R. 546 (Bankr. N.D. Ill. 1989)**.

RESPONSIBLE PERSON. The Bankruptcy Court was without authority, under the Anti-Injunction Act, to enjoin collection of the 100 percent penalty from the president of the debtor corporation for failure of the corporation to pay unem-

ployment and social security taxes. **Matter of Nolan Contracting, Inc., 106 B.R. 105 (Bankr. E.D. La. 1989)**.

FEDERAL ESTATE AND GIFT TAX

GROSS ESTATE. Although the surviving spouse was considered to have contributed consideration to certificates of deposit owned jointly with the decedent, only one-quarter of the certificates were excluded from the decedent's gross estate where the surviving spouse failed to provide complete records to substantiate the contributions. **Estate of Hatchett v. Commr, T.C. Memo. 1989-637**.

GENERATION SKIPPING TRANSFERS. The transfer of property to the grandchildren of the decedent resulting from the disclaimer of the decedent's children's interests qualifies for the $2 million per grandchild exemption to the generation skipping transfer tax. **Ltr. Rul. 8946060, Aug. 23, 1989**.

A beneficiary's (grandchild of the decedent) interest in a trust was eligible for the exclusion from the generation skipping transfer tax where the beneficiary had the power to withdraw all or part of the trust property at any time although the trust was not otherwise required to distribute all income annually. Apparently, having a *Crummey* power does not satisfy the requirement that all trust income must be distributed at least annually once the grandchild reaches age 21. **Ltr. Rul. 8947007, Aug. 22, 1989**.

GIFTS. The value of property received by devisees under a will settlement with the decedent's surviving spouse was subject to federal gift tax because although the surviving spouse was not named in the will, under state law (North Dakota) the surviving spouse was entitled to all of the decedent's property under the omitted spouse rule. **Nelson v. United States, 89-2 U.S.T.C. § 13,823 (D. N.D. 1989)**.

LETTER RULINGS. IRS has announced that it will continue to issue advance rulings on estate tax matters after December 31, 1989. **Ann. 89-153, I.R.B. 1989-49, 22**.

MARITAL DEDUCTION. A surviving spouse's interest in estate property was a terminable interest not eligible for the marital deduction where the interest was contingent upon the survival of the spouse after the will was admitted to probate, which under state law could have occurred up to four years after the decedent's death. I.R.C. § 2056(b)(3) allows an exception only for up to six months. **Estate of Shepherd v. Commr, T.C. Memo. 1989-610**.

A devise to a surviving spouse of a life estate in personal property is eligible for the marital deduction where the surviving spouse has the power under state, Colorado, law to sell the nonproductive property and invest in productive property. **Ltr. Rul. 8948002, no date given**.

A surviving spouse's interest in a marital trust did not qualify as QTIP property where the surviving spouse's interest was contingent upon the surviving spouse as executor electing to treat the property as QTIP property. **Ltr. Rul. 8947001, July 31, 1989**.

A surviving spouse's lifetime interest in a trust was not eligible for the marital deduction where the surviving spouse held a power to appoint the trust property for the spouse's comfort, maintenance or convenience. The court held that the term convenience was equivalent to comfort and did not expend the power to include the power to appoint trust property in all events as required by Treas. Reg. § 20.2056(b)-5(g)(3). **Estate of Hatchett v. Commr, T.C. Memo. 1989-637**

SPECIAL USE VALUATION. A qualified heir's enrollment of 9 acres of special use valued farm land in the Reinvest in Minnesota land conservation program did not cause recapture of the special use valuation benefits. **Ltr. Rul. 8946023, Aug. 18, 1989**.

The transfer of special use valued farm land from one qualified heir to another qualified heir (sibling) in exchange for other farm land not special use valued did not result in recapture of the special use valuation benefits. The lien on the special use valued property remained attached to that property after the exchange. **Ltr. Rul. 8947020, Aug. 24, 1989**.

STATE DEATH TAX CREDIT. A failure to pay state death taxes at the time a federal estate tax is due against which credit for the state death taxes has been taken subjected the estate to interest on the underpayment of estate taxes until the state death taxes are paid. **Ltr. Rul. 8947005, Aug. 21, 1989**.

FEDERAL FARM PROGRAMS

EXPORTS. The Commodity Credit Corporation has announced the criteria for determining the overall annual program level for the CCC Export Enhancement Program and for determining the review and selection of individual EEP sales initiatives. **54 Fed. Reg. 48785 (Nov. 27, 1989)**.

FARM CREDIT ADMINISTRATION. The FCA has requested comments from the public on implementing new statutory rules governing the procedure under which an FCA institution may terminate its charter by becoming chartered under other federal or state authority. **54 Fed. Reg. 51763 (Dec. 18, 1989)**.

The FCA has issued a final rule providing the procedure for service of process on the FCA. **54 Fed. Reg. 50735 (Dec. 11, 1989), adding 12 C.F.R. § 600.10**.

FARM PROGRAM LOANS. The FmHA has announced proposed rules to change the processing of applications for guaranteed Farmer Program loans to require credit bureau reports on new guaranteed loan applications. **54 Fed. Reg. 48770 (Nov. 27, 1989), amending 7 C.F.R. §§ 1980.113, .124**.

FmHA loan restructuring regulations under the Agricultural Credit Act of 1987 which do not include farmers whose debts to FmHA have been discharged in bankruptcy were found valid. **Lee v. Yeutter, 106 B.R. 588 (D. Minn. 1989)**.

INSPECTION. The Agricultural Marketing Service has issued a final rule providing revised fees for inspection of processed fruits, vegetables and other products. **54 Fed. Reg. 50731 (Dec. 11, 1989), amending 7 C.F.R. §§ 52.42, .49, .50, .51**.

MILK. The Agricultural Marketing Service has issued proposed changes in the dates by which payments are to be made to producers and prices are to be announced under the marketing orders in the New York-New Jersey and Middle Atlantic marketing areas. **54 Fed. Reg. 51749 (Dec. 18, 1989), amending 7 C.F.R. §§ 1002.22, .30, .50a, .80, .85, .86, .89**.

The Agricultural Marketing Service has announced an interim amendment of

several milk marketing orders to provide for announcement of the Class II milk price on or before the 15th of the month preceding the effective date of the Class II price. The amendment removes the revision of the Class II price by the 5th of the effected month; the revision will instead be incorporated into the Class II price for the following month. **54 Fed. Reg. 49955 (Dec. 4, 1989)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT. A produce seller did not preserve rights to PACA trust funds where seller did not agree in wirting with buyer prior to sales that payments were to be made within 30 days and seller failed to provide notice within 30 days after payment due to buyer and USDA of the intent to preserve rights in the PACA trust. ***In re* Lombardo Fruit & Produce, 106 B.R. 593 (Bankr. E.D. Mo. 1989)**.

POTATOES. The Agricultural Marketing Service has withdrawn a proposed rule requiring positive lot stamping on containers of Idaho-Oregon potatoes. **54 Fed. Reg. 51749 (Dec. 18, 1989)**.

SUPPLEMENTAL FOOD PROGRAMS. The Food and Nutrition Service has issued an interim rule expanding the eligibility of facilities which house and feed homeless persons for the Supplemental Food Prgram for Women, Infants and Children under the Hunger Prevention Act of 1988 (Pub. L. No. 100-435). **54 Fed. Reg. 51289 (Dec. 14, 1989**)

TOMATOES. The Agricultural Marketing Service has issued an interim final rule exempting handlers of yellow-meated tomatoes from the container requirements under the Florida tomato handling regulation under marketing order No. 966. **54 Fed. Reg. 51296 (Dec. 14, 1989), amending 7 C.F.R. § 966.323**.

WAREHOUSES. The Commodity Credit Corporation has proposed extending the 30 day load out requirement to 60 days for warehouses contracting with CCC for storage under the Uniform Grain, Rice, Milled Rice, Bean and Seed Storage Agreements. **54 Fed. Reg. 51403 (Dec. 15, 1989), amending 7 C.F.R. § 1421.5552(a)(9)**.

WHEAT. The Federal Grain Inspection Service has issued a final rule amending the United States Standards for Wheat to replace the single class White wheat with two classes, Hard White wheat and Soft White wheat. Soft White wheat will have the subclasses Soft White wheat, White Club wheat and Western White wheat. **54 Fed. Reg. 48735 (Nov. 27, 1989), amending 7 C.F.R. § 810.2202**.

FEDERAL INCOME TAXATION

SPECIAL NOTE: THE OMNIBUS BUDGET RECONCILIATION ACT OF 1989 WAS SIGNED BY THE PRESIDENT ON DECEMBER 19, 1989.

COOPERATIVES. A cooperative association of thoroughbred race horse breeders was ruled to meet two requirements of an exempt farmers' cooperative--(1) thoroughbred raxe horses were livestock and (2) the cooperative members were considered livestock producers where each member bore the economic risks of breeding the horses. **Ltr. Rul. 8946004, July 17, 1989**.

CORPORATIONS. For a Section 351 exchange of ACRS or MACRS property for corporate stock--(1) prorate the allowable depreciation between the transferor and the corporation for the year of transfer and (2) the transferred property counts in the hands of the corporation as property placed in service for purposes of the 40 percent test with respect to the mid-quarter convention. **Ltr. Rul. 8948015, Aug. 31, 1989.**

DEDUCTIONS.

BUSINESS LOSSES. A greenhouse business was not allowed deductions for abandonment losses, depreciation and research expenses where no records kept and the purpose of the activity was to provide the taxpayer's son with a chance to establish a business. **Brown v. Commr, T.C. Memo. 1989-645**.

A shareholder who invested amounts in a corporation but did not receive additional stock for the contribution could not increase the basis of qualifying Section 1244 stock and was required to apportion losses between Section 1244 stock and non-Section 1244 stock. **Pierce v. Commr, T.C. Memo. 1989-647**.

An owner of a horse showing and breeding business was allowed to deduct losses where the owner sought a high degree of expertise in the business and hired qualified and competent persons to assist. **Prinia v. Commr, T.C. Memo. 1989-627**.

Owner of thoroughbred breeding and racing activity was not allowed deduction for business losses where owner did not engage in activity with actual and honest profit motive. **Purdey v. Commr, T.C. Memo. 1989-657**.

Grantor trusts owning horse breeding investments were allowed depreciation deductions for horses and breeding rights only to the extent of the fair market value of the property where the price paid exceeded fair market value. Losses from the activities were limited to the income from the activities because of a lack of profit motive where the taxpayers could have purchased the breeding mares for less than the costs paid to rent the horses. **A. Ross Winans Grantor Trust v. Commr, T.C. Memo. 1989-653**.

BUSINESS USE OF AUTOMOBILES. The standard mileage rate for business use of automobiles in 1990 is 26 cents per mile for all business miles. For charitable activities the rate is 12 cents per mile and for medical and moving expense purposes, the standard rate is 9 cents per mile. The amount of depreciation allowed for automobiles and for which the standard mileage rate is taken is 11 cents per mile in 1989 and 1990. The Revenue Procedure also provides rules and rates for deduction of business use of automobiles by employees. Beginning in 1990, payments to employees equal to or less than the standard mileage rate need not be reported into income.

- Payments in excess of the standard mileage rate allowance are reportable as income and are subject to withholding and employment taxes.
- If employees substantiate a greater amount than the standard mileage allowance, an itemized deduction may be claimed subject to the 2 percent floor for the excess with the deemed substantiated portion of the payment reported on Form 2106 and the amount (if any) in excess of the deemed substantiated rate included in gross income.
- Although not mentioned in Rev. Proc. 89-66, the temporary regulations, Temp. Treas. Reg. § 1.274-5T(f)(5)(ii), specify that employees related to the employer are not relieved from the substantiation requirements merely because of an accounting to the employer. **Rev. Proc. 89-66, I.R.B. 1989-52, Dec. 26,**

1989. See also Harl, "Income Tax Rules for Farm Vehicles," *Agricultural Law Digest* p. 17 (1989), for discussion of rules governing deduction of the costs of business use of automobiles.

DEDUCTIONS FOR BUSINESS EXPENSES FOR MEALS, LODGING AND TRAVEL. IRS has issued *Rev. Proc. 89-67*, providing guidance for substantiation of business expenses for meals, lodging and travel under Temp. Treas. Reg. § 1.274-5T when the expenses are paid under a reimbursement arrangement. **Rev. Proc. 89-67, I.R.B. 1989-32, Dec. 26, 1989**.

DISCHARGE OF INDEBTEDNESS. A bank's receipt of early withdrawal penalties imposed on certificates of deposit is discharge of indebtedness income. **Centennial Savings Bank v. United States, 89-2 U.S.T.C. ¶ 9612 (5th Cir. 1989)**. *Contra* **Colonial Savings Ass'n v. United States, 88-2 U.S.T.C. ¶ 9458 (7th Cir. 1988)**.

EMPLOYEE. A worker who herded and fed sheep was an employee where employer had and exercised the right to control the work of the employee, the employee did not perform similar services for others, the employee received a monthly salary and was not at risk in the business, and the employment could be terminated by either party without liability. **Ltr. Rul. 8947030, Aug. 25, 1989**.

FORMS. IRS has issued Form 940-EZ, Employer's Annual Federal Unemployment (FUTA) Tax Return for small businesses which timely pay unemployment contributions to only one state. The form is included in Pub. 51, Agricultural Employer's Tax Guide.

SAFE HARBOR INTEREST RATES

January 1990

	Annual	Semi-annual	Quarterly	Monthly
Short-term				
AFR	7.90	7.75	7.68	7.63
110%AFR	8.71	8.53	8.44	8.38
120%AFR	9.52	9.30	9.19	9.12
Mid-term				
AFR	7.94	7.79	7.72	7.67
110%AFR	8.75	8.57	8.48	8.42
120%AFR	9.57	9.35	9.24	9.17
Long-term				
AFR	8.02	7.87	7.79	7.74
110%AFR	8.85	8.66	8.57	8.51
120%AFR	9.66	9.44	9.33	9.26

EMPLOYMENT BENEFITS. The IRS has issued guidance for the tax treatment and reporting requirements for refunds paid or benefits received under the Maintenance of Effort provision of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360). **Notice 90-2, I.R.B. 1990-2, Jan. 8, 1990**.

INSTALLMENT METHOD. Taxpayers were allowed to revoke their election to report gain on the installment method of reporting where the taxpayers had intended to elect out of the installment method but their tax return preparer had failed to make the election. **Ltr. Rul. 8948028, Sept. 5, 1989**.

INVESTMENT TAX CREDIT. The opinion in **Borcher v. Commr, T.C. Memo. 1988-349** was vacated and remanded in **89-2 U.S.T.C. ¶ 9637 (8th Cir. 1989)** for the Tax Court to provide grounds for its decision allowing investment tax credit on computer equipment leased by shareholders to their wholly-owned corporation.

PENALTIES. The Omnibus Budget Reconciliation Act of 1989 provided several changes for the civil tax penalty provisions--

• For late returns, incorrect returns or incomplete returns the penalties are $15 per return if the return is not correctly filed or amended within 30 days, $30 per return if the return is not correctly filed or amended after 30 days or before August 1 and $50 per return if the return is not correctly filed or amended by August 1. **OBRA Sec. 7711(a), amending I.R.C. §§ 6721(a), 6724 and adding I.R.C. § 6721(d)**.

• The penalty for failure to provide a correct and complete payee statement is $50 for each statement. **OBRA Sec. 7711(a), amending I.R.C. §§ 6722(a), 6723, and 6724(d)**.

• A penalty of 20 percent of an understatement of tax is imposed on incorrect returns resulting from negligence, substantial understatement of income tax, substantial overvaluation of property, substantial overstatement of pension liaiblities and substantial estate and gift tax undervaluations. **OBRA Sec. 7721(a), amending I.R.C. §§ 6653, 6662 and adding I.R.C. §§ 6663, 6664 and 6665**.

PENSION PLANS. IRS has issued extensions of several filing periods for plans adopted or amended after December 31, 1987. **Rev. Proc. 89-65, I.R.B. 1989-50, 8**.

SALE OF RESIDENCE. A bona fide sale to a wholly owned corporation of a residence owned by the shareholders would qualify for nonrecognition of gain where sale occurred within two years after shareholders moved into new residence. **Ltr. Rul. 8946021, Aug. 18, 1989**.

S CORPORATIONS. A president of an S corporation who is not a shareholder may not be a "tax matters person" for purposes of filing a petition contesting a tax adjustment of the corporation. The court allowed the corporation to amend the petition to substitute a shareholder as the tax matters person, in part because the IRS failed to raise the issue until trial. **Gold-N-Travel, Inc. v. Commr, 93 T.C. No. 52 (1989)**.

The momentary ownership of S corporation stock by a partnership which has transferred its assets to the corporation in exchange for stock which is then transferred from the partnership to the partners does not prohibit the corporation from electing S corporation status. **Ltr. Rul. 8948015, Aug. 31, 1989**.

A termination of S corporation status resulting from the transfer of stock to trusts and the failure to have the trust beneficiaries file consents to the S corporation election was ruled an inadvertent termination where the beneficiary elections were filed as soon as the error was realized and no tax motive for the failure was found. **Ltr. Rul. 8946074, Aug. 24, 1989; Ltr. Rul. 8946077, Aug. 24, 1989**.

An S corporation election was substantially complied with and effective where the beneficiaries of a trust which held stock in the corporation inadvertently failed to file qualified subchapter S trust elections until the error was discovered. **Ltr. Rul. 8947043, Aug. 29, 1989; Ltr. Rul. 8947013, Aug. 23, 1989**.

A corporation was allowed to make an S corporation election within one year of a voluntary termination of a prior election where the termination was effective as of the date of the prior election. **Ltr. Rul. 8947047, Aug. 29, 1989**.

TAX RATES AND LEVELS. The inflation adjusted taxable income levels for 1990 individual taxpayers are as follows:

Tax rate	Taxable income level

	Joint	Single
15%	Not over 32,450	Not over 19,450
28%	Over 32,450	Over 19,450

	Married Filing Separately	Heads of Households
15%	Not over 16,225	Not over 26,050
28%	Over 16,225	Over 26,050

	Estates and Trusts
15%	Not over 5,450
28%	Over 5,450

IR 89-149, Dec. 14, 1989.

TAX SHELTERS. The IRS challenged four cattle breeding enterprises as abusive tax shelters. The investors would typically invest $100,000, $2,000 in cash and a $98,000 recourse promissory note on which the investor would pay interest for the first four years and then pay off the principal in the next three years. The investor paid a per cow maintenance fee at $1,000 per cow per year but the fees were not paid until the fifth and sixth years. The investor also paid a management fee. The investor had a "put" option to sell the calves to the rancher for a fixed price for a given year's crop of calves. The rancher paid for the calves with a promissory note. The net result was that the $98,000 promissory note was paid off with offsetting obligations. Major tax benefits flowed from depreciation and investment tax credit benefits. The court held that penalties for promoting abusive tax shelters could be assessed against an individual promoter as well as the promoter's corporation used in the promotion. False statements were found in promotional literature as to depreciation and investment tax credit on intangible property rights. The case was remanded to determine if the promoter had knowledge or reason to know that the statements were false. **Autrey v. United States, 89-2 U.S.T.C. ¶ 9659 (11th Cir. 1989)**.

UNDERSTATEMENT OF TAX. Spouse not excused from liability for understatement of income and federal income tax as "innocent spouse" where evidence showed that spouse in position to know of understatments and had benefited from income not reported. ***In re* Clark, 106 B.R. 602 (Bankr. E.D. Mo. 1989)**.

LABOR

MIGRANT WORKERS. The cutting and gathering of uncultivated evergreen boughs was not agricutlural labor and the employment was not exempt from the minimum wage requirement under the Fair Labor Standards Act although the employees were migrant agricultural workers under the Migrant and Seasonal Agricultural Worker Act. **Colunga v. Young, 722 F. Supp. 1479 (W.D. Mich. 1989)**.

LANDLORD AND TENANT

CROP SHARE. Landlord's cause of action for unpaid crop share rent was not barred by the statute of limitations (six years for contract actions) where landlord's right to payment of rent did not accrue until the crop produced by the tenant was sold. **Obrist v. Aylett, 781 P.2d 381 (Or. App. 1989)**.

MORTGAGES

MORATORIUM. The Iowa farm mortgage foreclosure moratorium statute, Iowa Code Section 654.6, was found unconstitutional because it applied only to loans for which the debtor was required to purchase stock in the lender (i.e. Federal Land Banks and Production Credit Associations). The court held that all actions stayed by the moratorium must be commenced within two years after July 1, 1990, but may not be commenced prior to that date. **Federal Land Bank of Omaha v. Lockard, 446 N.W.2d 808 (Iowa 1989)**.

PRODUCTS LIABILITY

COMBINES. A directed trial court verdict for the defendant was upheld in an action in strict liability for injury resulting from a grain auger on a combine manufactured by the defendant where the evidence supported the finding that the danger from the auger was open and obvious. **Melton v. Deere & Co., 887 F.2d 1241 (5th Cir. 1989)**.

RIPARIAN RIGHTS

DAMS. A subservient downstream landowner may not obstruct the flow of water from the dominant owner's estate even though no damage yet to dominant estate. **Sloan v. Wallbaum, 447 N.W.2d 148 (Iowa App. 1989)**.

DRAINAGE. Landowner not allowed injunction to force neighboring landowner to fill in ditch constructed to drain property where ditch directed water into the natural drainage of both properties. See Neb. Rev. St. 31-201. **Stuthman v. Adelaide D. Hull Trust, 233 Neb. 586, 447 N.W.2d 23 (1989)**.

SECURED TRANSACTIONS

CROPS. Creditor held security interest in crops grown on land listed in security interest although debtor's farming operations listed under sister's name where evidence demonstrated conveyance part of scheme to defraud and hinder creditors. **Central Prod. Credit Ass'n v. Hans, 545 N.E.2d 1063 (Ill. App. 1989)**.

FEDERAL FARM PROGRAM PAYMENTS. Creditor's security interest in crops and proceeds held not to cover payments to debtor under Disaster Assistance Act of 1988. Debtor's assignment of payments under Federal Feed Grain Program was not "outright assignment" of disaster payments but was unperfected security interest voidable by bankruptcy trustee. ***In re* Ladd, 106 B.R. 174 (Bankr. C.D. Ill. 1989)**.

LEASE V. SECURITY INTEREST. Lease of Harvestore feed storage equipment held to be true lease and not a sale with a retained security interest where agreement termed a lease, lessor retained title to equipment, lease term less than half of useful life of equipment, lessee required to maintain equipment, lessee had option to purchase equipment at end of lease at fair market value, lessor paid insurance on equipment and lease could be renewed at fair rental value of equipment. ***In re* Cress, 106 B.R. 246 (D. Kan. 1989)**.

CITATION UPDATES

***In re* R&T Roofing Structures & Commercial Framing, Inc., 887 F.2d 981 (9th Cir. 1989)**. See p. 12 *supra*.