Tax Cas. (CCH) ¶ 50,090 (D. Minn. 1990) (conveyance of farm to bank).

[8] I.R.C. § 1231. See, e.g., Good v. Comm'r, 16 T.C. 906 (1952), *acq*., 1951-2 C.B. 2 (unimproved land rented for pasture used in trade or business because of consistent attempts by taxpayer to rent land).

[9] I.R.C. § 1221.

[10] Ltr. Rul. 8350008, Aug. 23, 1983 (mere rental of real property does not constitute trade or business under I.R.C. § 1231).

[11] See, e.g., Wofac Corp. v. United States, 269 F. Supp. 654 (D. N.J. 1976) (business discontinued because of unprofitability; non capital asset status not lost immediately).

[12] See Bressi v. Comm'r, T.C. Memo. 1991-651 (capital gains income as to excess of fair market value over basis; discharge of indebtedness income for indebtedness discharged over fair market value).

[13] I.R.C. § 61(a)(12).

[14] I.R.C. § 108(a)(1)(B).

[15] I.R.C. § 108(a)(1)(A).

[16] I.R.C. § 108(e)(5).

[17] I.R.C. § 108(g). See Harl, Neil E., "Meeting the Tests for the Solvent Farm Debtor Rule," 5 Agric. L. Dig. 153 (1994).

[18] I.R.C. § 108(c).

[19] See Tufts v. Comm'r, 461 U.S. 300 (1983); Estate of Newman v. Comm'r, T.C. Memo. 1990-230; Rev. Rul. 82-202, 1982-2 C.B. 36; Ltr. Rul. 9302001, Aug. 31, 1992 (difference between property basis and debt is gain; no discharge of indebtedness income). Compare Fulton Gold Corp. v. Comm'r, 31 B.T.A. 519 (1934) (reduction in non recourse debt results only in basis reduction, not in immediate taxation).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

POSSESSION. The disputed property was included in the titles of both parties. The disputed property was a wooded marsh area at the rear of the defendants' residences and the defendants used the disputed area occasionally for hunting and trapping. The plaintiff had the property surveyed in 1960 and had placed stone markers on the corners and wood stakes along the disputed line. The plaintiff had granted hunting and trapping leases and continually inspected the property and the boundary markers. The plaintiff also dug trenasses (shallow ditches) in the disputed property and maintained the trenasses. The court held that the defendant failed to prove continuous possession of the disputed property during the previous ten years sufficient to claim the disputed property by acquisitive prescription (adverse possession). **Harry Bourg Corp. v. Punch, 653 (La. Ct. App. 1995)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

DISCHARGE. The debtor was a wheat farmer who had borrowed operating funds from the FmHA over several years. The debtor had granted the FmHA a security interest in all crops grown on the debtor's farm and the FmHA had perfected the security interest. The debtor sought a bank loan for planting costs for the 1992 wheat crop but the bank required a subordination of the FmHA security interest in the crop which the FmHA refused to grant. The debtor then borrowed the funds from the debtor's father. In order to pay off that loan and to cover the harvesting costs, the debtor leased the land to the father who hired the debtor to harvest the crop. The debtor assigned to the father a contract to purchase the crop from a third party. Neither the debtor nor the father paid any of the proceeds of the crop to the FmHA. The FmHA sought to have its claim considered nondischargeable to the extent the proceeds of the 1992 crop were not paid to the FmHA. The court held that the assignment and sale of the contract to third parties without payment to the FmHA when the debtor knew that the FmHA had the priority security interest in the crop was a a willful conversion of the crop with the intent to harm the FmHA; therefore, the FmHA debt was nondischargeable to the extent of the sale proceeds of the crop. ***In re* Recker, 180 B.R. 540 (E.D. Mo. 1995)**.

EXEMPTIONS

HOMESTEAD. Before filing for bankruptcy, the debtor transferred title to the debtor's residence to a trust for the benefit of an heir. At the time of the petition, the debtor continued to reside in the house and paid all maintenance expenses, taxes and insurance on the property and continued to pay the mortgage on the property. The debtor claimed the house as an exempt homestead. The court held that the transfer of title to the trust removed the homestead nature of the property and denied the exemption. ***In re* Robinson, 180 B.R. 174 (Bankr. E.D. Tex. 1995)**.

IRA. The debtor claimed stock held in an IRA as exempt under Wash. Rev. Code. § 6.15.020. The trustee objected to the exemption, arguing that the state law was preempted by ERISA. The court held that ERISA did not preempt the state law exemption for IRAs. **In re Nelson, 180 B.R. 584 (Bankr. 9th Cir. 1995)**.

CHAPTER 12-*ALM* § 13.03[8].*

DISMISSAL. When the mortgagee attempted to foreclose on the debtor's farm land in 1987, the debtor filed for Chapter 12, but the case was dismissed when the debtor defaulted on plan payments of administrative costs and property taxes. The creditor again attempted foreclosure but the debtor refiled for Chapter 12 just before the foreclosure sale. The second case was also dismissed because the court found that the debtor could not successfully reorganize and

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the court held that the debtor would not be allowed to modify the plan. When the creditor again tried to foreclose, the debtor filed a third Chapter 12 case. By the time of the third filing, the mortgage debt had more than doubled, although the mortgagee was still oversecured, and the property taxes had more than tripled. The creditor sought relief from the automatic stay and dismissal of the case. The debtor argued that an offer of adequate protection payments was sufficient to bar relief from the automatic stay. The court held that the case should be dismissed because (1) the excessive delay was caused by the debtor's multiple last minute filings, (2) a great increase in the mortgage debt and property taxes was incurred during the delay, (3) the second case dismissal order barred any further amended plans, and (4) the debtor still had no chance of a successful reorganization. **Matter of Fern Acres, Ltd., 180 B.R. 554 (Bankr. D. Neb. 1995)**.

PLAN. The debtors' Chapter 12 plan provided for payment of the Farm Credit Bank's (FCB) secured loan over 30 years at 8 percent interest. The FCB objected to the plan as not paying it the current value of the claim because the interest rate was less than the market rate for similar loans. The FCB argued that the interest rate should be 11.1 percent, equal to the interest rate for new loans, 9.85 percent, plus 1.2 percent for the increased risk of lending to the debtor with a history of defaults and a financially troubled farming operation. The court held that the debtors did not pose any additional risk because the bankruptcy case would provide a comprehensive reorganization of the debtors' finances; therefore, the appropriate interest rate would be the market rate for similar new loans, 9.85 percent, with no additional interest for risk. The court also denied confirmation of the debtors' plan because the projected income and expenses were substantially different than the debtors' historical income and expenses and the debtors failed to explain the differences. The court dismissed the case because the debtors had failed to propose a confirmable plan, had failed to file proper schedules on time and had failed to timely prosecute the case throughout the proceedings. The debtors' appeal was dismissed as untimely filed. ***In re* Zerr, 180 B.R. 281 (D. Kan. 1995), *app. dismissed*, 167 B.R. 953 (Bankr. D. Kan. 1994)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

AVOIDABLE TRANSFERS. The debtor had borrowed from the Small Business Administration (SBA) which had a first lien on the debtor's property. The IRS levied against the debtor's assets for back taxes and sold the property at auction. The IRS applied the proceeds to the debtor's tax liability but later paid the proceeds to the SBA after the SBA requested the proceeds based on its prior lien. The debtor sought to avoid, under Section 547, the payment to the SBA as a preferential transfer. The court held that only a trustee has the power to avoid preferential transfers. The court also held that the SBA payment was proper and complied with federal tax law and secured transactions law. ***In re* Danley, 180 B.R. 291 (Bankr. W.D. Okla. 1995)**.

CLAIMS. The IRS filed a claim in the debtor's Chapter 13 case but did not file the claim using the official Bankruptcy Court form. When the debtor objected to the claim, the IRS filed an amended claim for the same amount but on the official form. The debtor objected to the claim because the amendment was untimely, the IRS failed to include evidence to support the claim and the IRS refused to file income tax returns for the debtor for the tax years involved with the claim. The court held that the amendment was allowed because the initial claim substantially complied with filing requirements and was sufficient notice to the debtor of the IRS claim. The court also held that the IRS was not required to file substitute returns for the debtor nor provide any evidence to support its claim until the debtor provided some evidence that the claim was erroneous. **Martin v. I.R.S., 180 B.R. 90 (E.D. N.C. 1994)**.

The debtors filed for Chapter 12 in November 1992 and listed the IRS as a creditor. The IRS bankruptcy claims office for the debtor's state reviewed the debtor's file and found only a de minimis amount of taxes due and did not file a claim in the case, although the IRS requested the debtor to file any future income tax returns with the bankruptcy claims office and not the regional service center. The debtor filed the tax return for 1991 late and postpetition but filed the return with the regional service center. The debtor's plan provided for a federal tax claim equal to the amount of taxes due for the 1991 return. The IRS did not file a claim until after the claims bar date and sought permission to file the untimely claim based on an amendment of the claim listed by the debtor in the plan or based on the equities of the case. The court held that the IRS claim could not be treated as an amendment of the debtor's listing of the IRS claim because the IRS had not actively participated in the case until it filed its claim. However, the court held that because the debtor filed the 1991 return late, postpetition and to the regional service center, the equities favored allowing the full IRS claim because the IRS delay was caused by the debtor. ***In re* Faust, 180 B.R. 432 (Bankr. D. S.C. 1995)**.

PRIORITY TAX CLAIMS. The debtor received a pre-petition reversion of amounts in a retired employee pension plan and the IRS assessed the excise tax under I.R.C. § 4980(a). The IRS filed a claim for the taxes as a priority tax claim and the other creditors objected, arguing that the tax was actually a penalty not entitled to the priority of 11 U.S.C. § 507(a)(7). The Bankruptcy Court held that the excise tax was a penalty because it was assessed without reference to the tax benefits received by the debtor from the pension plan; therefore, the tax claim was not entitled to a priority. The Bankruptcy Court also agreed to subordinate the tax claim to other unsecured claims to avoid the inequity of the burden on the unsecured creditors. The District Court reversed, holding that the tax on pension plan reversions was an excise tax and not a penalty; therefore, the claim was entitled to priority. ***In re* Juvenile Shoe Corp. of America, 180 B.R. 206 (E.D. Mo. 1995), *rev'g and rem'g*, 166 B.R. 404 (Bankr. E.D. Mo. 1994)**.

TAX LIENS. The IRS had filed claims for pre-petition taxes owed by the debtor and the claims were determined to be secured claims, unsecured priority claims, and general unsecured claims. The debtor's Chapter 13 plan was confirmed and after the debtor paid the amount of the secured claim, the debtor sought release of the tax lien. The

IRS argued that the lien had to remain effective until all its claims were paid in order to protect its priority status. The court held that, under Section 506(d), the tax lien became void after payment of the underlying obligation. ***In re* Campbell, 180 B.R. 686 (M.D. Fla. 1995), *aff'g*, 160 B.R. 198 (Bankr. M.D. Fla. 1993)**.

The IRS had filed a tax lien against property owned by a corporation. The corporation filed for bankruptcy and the plan provided for the sale of the property to the debtor in the instant case. The IRS had notice of the plan and sale but did not object. The IRS did not refile the lien as to the purchaser and when the purchaser also filed for bankruptcy, the IRS failed to file a timely claim for the lien. The lower courts held that because the property subject to the lien was sold, the tax lien became unperfected and was subject to avoidance in the purchaser's bankruptcy case. The appellate court reversed, holding that the IRS was not required to refile its tax lien against the transferee in order to maintain the lien's perfected status against the property. **U.S. v. LMS Holding Co., 50 F.3d 1526 (10th Cir. 1995), *rev'g*, 161 B.R. 1020 (N.D. Okla. 1993), *aff'g*, 149 B.R. 681 (Bankr. N.D. Okla. 1993)**.

TRUSTEE LIABILITY. During a Chapter 7 case for a corporation, an administrative claim filed by one of the officers of the corporation was approved subject to further order of the court. The IRS then levied against the trustee for taxes owed by the corporation officer but the trustee did not make any payments under the levy. The corporation was liquidated and the trustee filed a final distribution plan with the Bankruptcy Court which approved the plan. The IRS did not object to the distribution plan although the plan did not include any payment under the levy. The IRS then assessed the trustee personally, under I.R.C. § 6331, for failing to make any payments under the levy. The court held that the trustee was personally liable for failing to comply with the levy, at least when the distributions were made, because the amount due for the officer's claim was fixed and determinable when the levy was made. **United States v. Hemmen, 51 F.3d 883 (9th Cir. 1995)**.

CONTRACTS

"AS IS" SALES. The plaintiff purchased a used farm tractor from the defendant, an implement dealer. The sales contract included a statement that the tractor was sold "as is;" however, the dealer included a statement that the equipment had not been altered or modified and that the tractor was serviced according to the manufacturer's recommendations. The plaintiff was injured when the tractor lurched when the plaintiff started it in gear, because the tractor had been modified to bypass the neutral safety switch. The plaintiff argued that the dealer's statements in the sales contract was a voluntary inspection and that the inspection created a duty to discover the modification of the neutral safety switch. The defendant argued that the sales contract term "as is" relieved the defendant of any duty to inspect the tractor. The court held that the sales contract statements indicated that the dealer had inspected the tractor in order to make the statements; therefore, the defendant voluntarily accepted the duty to inspect carefully to the extent of the sale contract statements. **Snelten v. Schmidt Implement Co., 647 N.E.2d 1071 (Ill. Ct. App. 1995)**.

DAMAGES. The plaintiff and defendant had orally agreed to farm on a partnership basis. In violation of that agreement, the defendant sold most of the acres the defendant had contributed to the partnership and the plaintiff sued for loss of federal farm program payments and loss of partnership income. The trial court had calculated damages based on a bushel per acre production times the number of acres removed, divided by the plaintiff's share. The defendant complained that the trial court used gross profit figures only and should have reduced the damages by the plaintiff's share of expenses which would have been incurred to produce the crop. The appellate court reversed and remanded the case for recalculation of the damages based on net profit from the removed acres. **Olsen v. Airheart, 531 N.W.2d 571 (S.D. 1995)**.

REVOCATION. The defendants advertised in a trade publication for the sale of a "proven breeder pair" of emus. The plaintiffs answered the ad and traveled to the defendants' farm to purchase the emus. The defendants selected the pair of emus and stated that the emus were a proven breeder pair. Four months later, the plaintiffs discovered that both emus displayed male behavior and notified the defendants who suggested that the plaintiffs "vent sex" both birds. The "vent sex" examination showed that both birds were males and the plaintiff sued for loss of production. The defendants argued that the plaintiffs should have "sexed" the birds earlier; therefore revocation of the contract was untimely. The court held that where a seller expressly warrants the condition of the contract goods, the buyer is not required to inspect the goods for conformity with the contract. The court also held that the express warranty of condition excused the delay in inspection of the birds until the plaintiffs were on notice that the birds did not conform to the warranted condition. **Smith v. Penbridge Associates, Inc., 655 A.2d 1015 (Pa. Super. 1995)**.

TERMINATION. The plaintiff contracted with the defendant for the defendant to raise cattle owned by the plaintiff. The contract provided that the contract would run for three years or terminate by mutual agreement after six months' notice. The defendant gave the six month notice but the plaintiff claimed not to have assented to the termination. The trial court ruled that the six month notice was sufficient to terminate the contract. The appellate court reversed, holding that the contact was clear that mutual consent to the termination was required. **Olsen v. Airheart, 531 N.W.2d 571 (S.D. 1995)**.

CORPORATIONS

PIERCING THE CORPORATE VEIL. The plaintiff leased cows to the defendants who were the sole shareholders in a corporation which operated a dairy farm. The plaintiff sued for conversion, constructive fraud and bailment when the plaintiff learned that most of the cows were gone and the remainder were underfed and had to be sold for slaughter. The plaintiff did not name the corporation as a defendant and argued that the corporation should be ignored such that the shareholders were personally liable. The court refused to pierce the corporate veil to find the shareholders personally liable because the corporation was adequately capitalized and was not insolvent, the shareholders did not divert corporation assets to their own use, and the corporate form was not used to commit fraud, violate a legal duty or perpetuate a dishonest act. Although the corporation may have breached the lease contract, the shareholders, through the corporation, did not breach any duty to the plaintiff outside of the contract. **Wolf v. Walt, 530 N.W.2d 890 (Neb. 1995)**.

FEDERAL AGRICULTURAL PROGRAMS

FEDERAL CROP INSURANCE-*ALM* § 13.04.* The plaintiff was a cotton producer who obtained federal crop insurance from the defendants, an insurance company and an insurance agent. The plaintiff's action alleged negligence, breach of contract and bad faith refusal to pay benefits for the plaintiff's claim of loss of cotton production from a drought. The defendants removed the plaintiff's action from state court to federal district court and the court *sua sponte* raised the issue of jurisdiction. The court held that the Federal Crop Insurance Act, 7 U.S.C. § 1506(d), required federal court jurisdiction only where the FCIC is sued; therefore, because the FCIC is not involved in the case and the plaintiff's action is against the defendants for their actions only, the court held that it did not have exclusive jurisdiction over the case and remanded the case to the original state court. **O'Neal v. Cigna Property & Cas. Ins. Co., 878 F. Supp. 845 (D. S.C. 1995)**.

The FCIC has issued interim regulations amending the Florida Citrus Endorsement to the General Crop Insurance Policy to require that the insured crop suffer at least an average 50 percent of damage before an indemnity would be due under any catastrophic risk protection policy. **60 Fed. Reg. 29749 (June 6, 1995)**.

The FCIC has issued interim regulations amending the Hybrid Sorghum Seed, Sunflower Seed and Rice endorsements of the General Crop Insurance Policy to allow an insured to collect a guaranteed deficiency payment under the 50/92 and 0/92 provisions and a prevented planting indemnity under the crop insurance program. **60 Fed. Reg. 29959 (June 7, 1995)**.

PACKERS AND STOCKYARDS ACT-*ALM* § 9.05.* The Grain Inspection, Packers and Stockyards Administration has issued proposed regulations requiring scales used for purchasing livestock on a dressed weight basis or a carcass weight basis be equipped with printing devices for printing scale tickets. The proposed regulations also include a requirement that the purchases, sales, acquisitions and settlements of live poultry be based on actual weights. **60 Fed. Reg. 29506 (June 5, 1995)**.

PESTICIDES-*ALM* § 2.04.* The plaintiffs were cotton farmers who applied an insecticide to their cotton crop in combination with a herbicide. The plaintiffs sued the manufacturer of the insecticide for negligence and strict liability. Four of the claims against the defendant involved the failure to warn about the dangers to crops from applying the insecticide with the herbicide. The court ruled that these claims were pre-empted by FIFRA. The plaintiffs also alleged that (1) the defendant negligently designed the insecticide so that if used with another product it would cause damage to cotton crops and (2) the defendant failed to adequately test the insecticide with other products to discover the danger of combined application. The court held that these two claims were essentially claims of failure to warn and were also pre-empted by FIFRA. **Hopkins v. American Cyanamid Co., 658 So.2d 196 (La. Ct. App. 1995)**.

The plaintiffs grew strawberry, blackberry and other plants for sale. The plants were treated with a fungicide manufactured by the defendant. The plaintiffs claimed that the fungicide was contaminated with a herbicide which caused the loss of several years' production of plants and made some of their soil unusable. The defendant argued that the claim was unprovable because the plaintiffs had applied for federal disaster payments for destruction of the plants from wet weather. The plaintiffs responded that the disaster payments were applied for before they realized the true cause of the problem. The court held that sufficient evidence was available for a jury to determine whether the fungicide caused the loss of the plants. The defendant also argued that the plaintiffs' claims were pre-empted by FIFRA. The court held that the claims of misrepresentation and breach of implied warranty were pre-empted as based on failure to warn and inadequate labeling. However, the court held that the plaintiffs' claims of failure to recall the contaminated product and to warn the purchasers of the contamination after the defendant knew about the contamination were not pre-empted by FIFRA because the claims went beyond inadequate labeling. **Miller v. E.I. Du Pont de Nemours & Co., 880 F. Supp. 474 (S.D. Miss.1994)**.

WOOL. The CCC has adopted as final regulations establishing the 1995 support level for mohair at $4.657 per pound. **60 Fed. Reg. 28522 (June 1, 1995)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The taxpayer executed a will which provided for a bequest which created a trust for several charities. The trust provided for distribution of all annual net income and authorized the trustee to substitute a new charitable beneficiary if any charitable beneficiary terminated or otherwise became ineligible for charitable organization status. The trustee also had the power to terminate the trust if the trust became infeasible to operate and to divide the remaining trust corpus among the existing beneficiaries in the same proportion as income was distributed. The IRS ruled that if no changes of law or fact occur, the trust bequest would be eligible for the charitable deduction for estate tax purposes. **Ltr. Rul. 9521011, Feb. 23, 1995**.

DISCLAIMERS-*ALM* § 5.02[6].* The decedent and surviving spouse had created a revocable inter vivos trust with the grantors and their daughter as cotrustees. When the decedent died, the trust provided for a splitting of the trust into two trusts with one trust for the surviving spouse consisting of enough estate property to reduce the decedent's estate tax to zero. The surviving spouse remained as cotrustee and income beneficiary. Within nine months after the decedent's death, the surviving spouse disclaimed any rights to the income or corpus of the trust and disclaimed any power to act as trustee. The IRS ruled that the disclaimer was effective. The IRS noted that the disclaimer of a trustee was not usually allowed but because the surviving spouse also disclaimed interests in the income and corpus of the trust, the disclaimer of the trustee powers was allowed. **Ltr. Rul. 9521032, Feb. 28, 1995**.

GENERATION SKIPPING TRANSFERS-*ALM* § 5.04[6].* Eleven irrevocable trusts were created for the grantor's family members from 1959 through 1974. Pursuant to express authority in the trusts' agreements, the trustees terminated the original trusts and formed new trusts identical to the original trusts but added a spendthrift provision to each trust. The IRS ruled that only because the spendthrift provisions were authorized by the original trusts, the new trusts would not be subject to GSTT. **Ltr. Rul. 9521008, Feb. 22, 1995**.

Two irrevocable trusts for the grantor's three daughters were created in 1959. The two trusts were identical except that the trusts had slightly different standards for trustee invasion of principal for the benefit of a beneficiary. The current beneficiaries were one surviving daughter and the issue of one other daughter. In 1992, the trusts were merged into one trust with each beneficiary retaining the same share of trust income. The trust was then split back into two trusts, again retaining the beneficiaries' proportionate share of trust assets and income. The standards of corpus distribution also were retained as to the same assets through the merger and split of the trusts. The IRS ruled that the trusts were not made subject to GSTT by the merger and split. **Ltr. Rul. 9521021, Feb. 27, 1995**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* The decedent's will bequeathed the residual estate to the surviving spouse if the surviving spouse "survived distribution of her share of the remainder of my estate." The will also provided for passing of the residual share to the decedent's heirs if the spouse did not survive the decedent. The estate claimed a marital deduction for personal and real property in the residual estate which was distributed to the surviving spouse. The IRS denied the marital deduction because the will did not provide for absolute passing of the property to the surviving spouse within six months of the decedent's death. The estate argued that the will was ambiguous and sought to include extrinsic evidence of the decedent's intent that the surviving spouse only needed to have survived the decedent to take under the residuary clause. The court held that, as to the personal property, the surviving spouse would not receive title until the property was distributed; therefore, no marital deduction was allowed because the will provision would divest the surviving spouse of that property if the spouse died before distribution. However, because, under Washington law, title to real property passed to heirs immediately upon the death of the decedent, the marital deduction was allowed for the real property because distribution was deemed to have occurred immediately. The IRS made the argument that the marital deduction was not to be allowed because it was subject to reduction for estate expenses, an argument quickly rejected by the court as undermining all marital deductions. **Estate of Bond v. Comm'r, 104 T.C. No. 31 (1995)**.

TRANSFERS WITHIN THREE YEARS OF DEATH. The decedent had established a revocable trust which provided that the decedent reserved the right to amend the trust by written notice to the trustee. In 1980, the decedent sent the trustee a written amendment to the trust to provide for annual distributions of corpus to several persons, with the distributions to commence in the next year. The distributions were not made in 1983, 1986 and 1987. The decedent died in 1987 and the trustees made the missing distributions after the decedent's death. The decedent's estate claimed a deduction for the post-death payments but the deductions were denied. The court held that the payments were not deductible as claims against the estate because the payments were an obligation of the trust and not the estate. The court also held that the 1986 and 1987 payments were included in the decedent's estate because the payments represented a relinquishment of the decedent's right to revoke the trust as to those payments within three years of the decedent's death. The 1983 payment was not included because the relinquishment of the power to revoke occurred more than three years before the decedent's death. **White v. U.S., 881 F. Supp. 688 (D. Mass. 1995)**.

VALUATION. The decedent's estate included several mineral leaseholds and the issue was the value of the minerals extracted between the date of the decedent's death and the alternate valuation date. The court held that the extracted minerals had to be valued as if the minerals were still in place and the value could not include any factor based on the actual sales price of the extracted minerals. **Holl v. Comm'r, 95-1 U.S. Tax Cas. (CCH) ¶ 60,197 (10th Cir. 1995), *rev'g and rem'g*, 101 T.C. 455 (1993), *on rem. from* 967 F.2d 1437 (10th Cir. 1992)**.

FEDERAL INCOME TAXATION

C CORPORATIONS-*ALM* § 7.02[3][b].*

CONSTRUCTIVE DIVIDENDS. The taxpayer owned a corporation which operated a bus company. The taxpayer diverted payments to the corporation for the taxpayer's own use and issued corporation checks in payment for personal expenses. The taxpayer also loaned money to the corporation but at below-market interest rates. The court held that the diverted money and checks were constructive income to the taxpayer and that the value of the difference between the market rate of interest and the interest actually charged was income to the taxpayer. **Pittman v. Comm'r, T.C. Memo. 1995-243**.

SHAREHOLDER'S BASIS. The taxpayer was a corporation which owned all the shares of a subsidiary corporation. The taxpayer entered into a short sale of stock of unrelated corporations and transferred the proceeds of that sale to the subsidiary which assumed the obligation to deliver identical stock to close the sale. At the time of the assumption, the cost of the replacement stock was less than the short sale amount. The IRS ruled that upon contribution of the proceeds to the subsidiary, the taxpayer's basis in the subsidiary's stock increased but that the increase was offset by the assumed obligation to replace the stock. **Rev. Rul. 95-45, I.R.B. 1995-26**.

WITHHOLDING. The taxpayer entered into an oral agreement with a neighboring farmer to operate that farmer's farm for $350 per week. The taxpayer did not fill out any W-4 forms and accepted the weekly checks without objection. The taxpayer operated the farm and grew and harvested various crops. The taxpayer also leased another farm and produced crops with the financial help of the farmer. The farmer filed Form 1099 and claimed the wages paid and the financial assistance as non-employee compensation. The taxpayer filed tax returns which included the $350 weekly payments as wages but the taxpayer included a statement that claimed that the actual weekly wage was $500 with the difference being withheld federal and state taxes. The IRS conceded that the $350 weekly wages were the taxpayer's income but denied that the taxpayer should be credited for the withheld amounts claimed by the taxpayer. The court held that (1) the $350 wages paid by the farmer were exempt from withholding because the taxpayer performed agricultural labor and (2) because the taxpayer did not file any W-4 forms with the farmer or otherwise request withholding, the taxpayer could not claim any credit for withheld employment taxes which were not actually withheld or paid. **Spell v. Comm'r, T.C. Memo. 1995-229**.

PROPERTY

COTENANCY. The debtor purchased a rice farm with several others in order to have a place to hunt ducks. The debtor operated the farm in order to defray the expenses of ownership by all parties. Eventually, the debtor acquired 7/8 ownership of the property with a widow of one of the purchasers retaining a 1/8 interest. The property was no longer used by the widow as a hunting area and the debtor had exclusive use of the property to grow rice, either by the debtor or through a cropshare agreement with a tenant. The property was sold as part of a bankruptcy case and the issue was the amount of the proceeds which belonged to the cotenants. The debtor argued that the cotenant out of possession (COTOP) owed for the expenses of the property and the COTOP sought a portion of the income from the property. The court held that the COTOP was not entitled to a share of the income from the sharecrop lease because the debtor paid a portion of the expenses in return for a share of the crop. The court also held that the COTOP was liable only for loan expenses based on the loan taken when the co-owners were using the land for hunting and the additional loans incurred by the debtor for operating the rice farm were the liability of the debtor alone. The court also held that the COTOP's share of expenses could be offset by the value of the debtor's exclusive use of the property. ***In re* Fazzio, 180 B.R. 263 (Bankr. E.D. Calif. 1995)**.

PRODUCTS LIABILITY

CORN PICKER-*ALM* § 1.02[4].* The plaintiff was injured while operating a corn picker manufactured by the defendant and the plaintiff sued for defective design, failure to warn, negligence and breach of implied and express warranty. In pre-trial motions, the defendant argued that the suit should be dismissed because the danger was open and obvious, either because of the plaintiff's use of the machine or the warnings on the machine. The court denied the motion and held that, because the plaintiff had only eight hours of use of the machine before the accident, the plaintiff's use of the machine was not sufficient to give the plaintiff knowledge of the danger as a matter of law. In addition, the court held that an issue of fact remained as to whether the warnings were sufficient. **Bellinger v. Deere & Co., 881 F. Supp. 813 (N.D. N.Y. 1995)**.

GROWTH HORMONES-*ALM* § 1.02[4].* The plaintiff operated a cattle feeding operation where the plaintiff fed cattle on contract with the cattle owners. One owner requested that its cattle be implanted with growth hormones manufactured by the defendant. The plaintiff contracted with veterinarians who supplied and implanted the growth hormones in the cattle. The cattle did not gain weight as expected and the plaintiff alleged that losses were sustained because the cattle had to be fed longer to reach market weight. The plaintiff sued the defendant under theories of strict liability, negligence and breach of express and implied warranties. The court held that summary judgment for the the defendant was properly granted because (1) the plaintiff sought only consequential economic damages, (2) the plaintiff did not purchase the hormones from the defendant, and (3) the plaintiff did not own the cattle. **Tomka v. Hoechst Celanese Corp., 528 N.W.2d 103 (Iowa 1995)**.

SEEDS-*ALM* § 1.02[4].* The plaintiffs purchased milo seed produced by a subsidiary of the defendant. While planting the seed, the plaintiffs noticed that some of the seed was much smaller but did not adjust their planters to account for smaller seed. The crop season was beset with a wet period and a dry period but the seed germinated well; however, in several areas the seeds were planted too closely, causing low yields from crowding. The plaintiffs sued for breach of warranty and negligence. The jury awarded the plaintiffs the value of the loss of production, the value of the milo lost as feed and punitive damages. The court held that the awards for loss of production and for the value of the lost production as feed were a double recovery and reversed the award for the milo as feed. The court also reversed the punitive damages award, holding that the plaintiffs failed to show willful or wanton misconduct by the defendant in packing smaller seed. **Ciba-Geigy Corp. v. Murphree, 653 So.2d 857 (Miss. 1994)**.

STATE TAXATION

AGRICULTURAL USE. The taxpayer corporation owned forest land on the Gulf of Mexico. The land was subject to a zoning ordinance that restricted the land use to silviculture. The taxpayer did not use the land for silviculture but merely held the land for investment. The court held that the denial of assessment as agricultural land was proper because the taxpayer attempted no agricultural production on the land. The concurring opinion noted that although the land could not be assessed as agricultural land, the valuation of the land should have taken into account the zoning use restriction. **Davis v. St. Joe Paper Co., 652 So.2d 907 (Fla. Ct. App. 1995)**.

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ZONING

AGRICULTURAL USE. A company applied for permission to operate a composting facility on its land zoned for agricultural use under the local ordinance. The facility would use various organic materials shipped in from third parties, including trees, yard refuse, treated human waste, food processing waste and chicken manure. The materials would be composted in buildings set on concrete slabs and then shipped to various users for use as fertilizer and soil conditioners. The zoning board approved the request, ruling that the facility was sufficiently similar to a sawmill or natural resource uses identified in the ordinance as permitted uses. The zoning ordinance defined permitted agricultural uses as the raising of farm products, including livestock, poultry and crops. The court held that the compost facility was not an agricultural operation because the facility did not use products raised on the land and did not use the products on the land owned by the facility. The court also held that the zoning board's ruling that the facility was similar to a sawmill or natural resource use was reversed because the zoning board cited no evidence to support the board's ruling. **Clout, Inc. v. Clinton Zoning Bd., 657 A.2d 111 (Pa. Cmwlth. 1995)**.

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