unconditional obligation, regardless of whether embodied in a formal note, to pay a sum certain on demand or on a specified date which —

• Does not provide for an interest rate or payment dates that are contingent on profits, the borrower's discretion, the payment of dividends with respect to common stock or similar factors.

• Is not convertible (directly or indirectly) into stock or any other equity interest of the S corporation, and

• Is held by an individual (other than a nonresident alien), an estate or a trust described in I.R.C. § 1361(c)(2).

The fact than an obligation is subordinated to other debt does not prevent the obligation from qualifying as straight debt.[23]

An obligation that originally qualifies as straight debt ceases to so qualify if the obligation — (1) is materially modified so that it no longer satisfies the definition of straight debt or (2) is transferred to a third party who is not an eligible shareholder.[24]

FOOTNOTES

1 Pub. L. No. 85-866, 85th Cong., 2d Sess. (1958). See generally 6 Harl, Agricultural Law ch. 56 (1992).
2 E.g., Parker Oil Co. v. Comm'r, 58 T.C. 985 (1972).
3 See, e.g., Treas. Reg. § 1.1371-(g), T.D. 6904, Dec. 27, 1966.
4 E.g., Rev. Rul. 63-226, 1963-2 C.B. 341.
5 Treas. Reg. § 1.1371-1(g). See Henderson v. U.S., 245 F. Supp. 782 (D. Ala. 1965); Catalina Homes, Inc. v. Comm'r, 23 T.C.M. 1361 (1964). But see Gamman v. Comm'r, 46 T.C. 1 (1966).
6 Treas. Reg. § 1.1361-1(g).
7 Parker Oil Co. v. Comm'r, 58 T.C. 985 (1972).
8 Rev. Rul. 73-611, 1973-2 C.B. 312.
9 T.D. 6904, Dec. 27, 1966.
10 Stinnett v. Comm'r, 54 T.C. 221 (1970) (installment notes did not give rise to second class of stock even though disproportionate to shareholdings).
11 Tech. Inf. Release No. 1248, July 27, 1973.
12 Pub.L. No. 97-354, 97th Cong., 2d Sess. (1982).
13 I.R.C. § 1361(c)(4). E.g., Ltr. Rul. 8405077, Nov. 2, 1983 (all shares had identical rights to dividends and to assets on liquidation; acceptable to have different restrictions on stock transfer).
14 57 Fed. Reg. 22646, May 29, 1992.
15 Treas. Reg. § 1.1361-1(l)(1). Legislation has been proposed mandating this result. H.R. 11, Sec. 4601, 102d Cong., 2d Sess. (1992).
16 Treas. Reg. § 1.1361-1(1)(2)(iii).
17 *Id.*
18 Treas. Reg. § 1.1361-1(l)(4)(ii)(A).
19 Treas. Reg. § 1.1361-1(l)(4)(ii)(B)(1).
20 Treas. Reg. § 1.1361-1(1)(4)(ii)(B)(2).
21 Treas. Reg. § 1.1361-1(l)(4)(ii)(B).
22 Treas. Reg. § 1.1361-1(l)(5)(i).
23 Treas. Reg. § 1.1361-1(l)(5)(ii).
24 Treas. Reg. § 1.1361-1(l)(5)(iii).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

POSSESSION. In 1951, the defendant purchased by deed the disputed 9.58 acres which were split by a road from other land in the same purchase. The defendant posted the property, sold timber from the property, allowed hunting on the property and paid all taxes due on the property. The plaintiffs purchased the land in an escheat sale and discovered the true boundaries from a survey. The court held that the defendant's use of the land under color of title was sufficient to support a finding of adverse possession. **Maynard v. Hibble, 418 S.E.2d 871 (Va. 1992)**.

BANKRUPTCY

GENERAL

AVOIDABLE TRANSFERS. Two creditors, the Commodity Credit Corporation (CCC) and the National Dairy Promotion and Research Board (NDPRB) had received what would otherwise constitute avoidable pre-petition transfers from the debtor and had filed additional claims in the case. The unsecured creditor committee failed to file an avoidance action within two years after the transfers and such an action would be barred by Section 549(d). The committee argued that the CCC and NDPRB claims were disallowed under Section 502(d) because neither had returned the avoidable transfers. The CCC and NDPRB argued that a pre-petition transfer was no longer avoidable for purposes of Section 502(d) after the time limit of Section 549(d). The court held that in order to further the policy of equitable distribution of estate property, Section 549 was to be interpreted to include in the definition of "avoidable transfers" transfers which could not be avoided because of the time limitation. Therefore, creditors who receive pre-petition avoidable transfers and do not return (either voluntarily or by an avoidance action) the transferred property are not allowed claims in the bankruptcy case. Thus, such creditors have the choice of keeping the avoidable transfers and losing their bankruptcy claims or returning the transferred property and having their claims allowed in the case. ***In re* KF Dairies, Inc., 143 B.R. 734 (Bankr. 9th Cir. 1992)**.

ESTATE PROPERTY. Within 180 days after the debtor filed bankruptcy, the debtor's aunt died leaving the debtor a bequest of real and personal property. The estate was not admitted to probate until after 180 days following the bankruptcy petition and the debtor argued that under state law, the debtor was not entitled to the bequests until after the will was admitted to probate. The court held that the

bequests were estate property because under state law the title to the property passed under the will upon the death of the decedent, with confirmation upon admission of the will to probate. ***In re* Chenoweth, 143 B.R. 527 (S.D. Ill. 1992), *aff'g*, 132 B.R. 161 (Bankr. S.D. Ill. 1991)**.

EXEMPTIONS

AVOIDABLE LIENS. The debtor claimed farm equipment as exempt and sought to avoid a judgment lien held by the debtor's former spouse. The lien was created by a divorce decree awarding the debtor the farm equipment and awarding the spouse a lien on the property to secure a property settlement cash award to be paid in installments. The court held that because the debtor's interest in the property and the judgment lien were created at the same time, the judgment lien was not avoidable under Section 522(f). **Matter of Brockman, 143 B.R. 703 (Bankr. S.D. Iowa 1992)**.

CATTLE. The debtor dairy farmer claimed three bulls as exempt tools of the trade under Vt. Stat. § 2740(2). In denying the exemption, the court distinguished the Vermont exemption as much narrower than the exemption statutes involved in the cases which allowed such an exemption. The court also noted that an exemption for cattle was otherwise provided; thus, indicating that cattle were not intended by the legislature to be exempt as tools of the trade. ***In re* Parrotte, 143 B.R. 622 (Bankr. D. Vt. 1992)**.

HOMESTEAD. The debtor had granted a deed of trust to 430 acres of farm and ranch land which included 9.95 acres on which the residence was located. The deed of trust claimed a homestead exemption in 200 acres but the 200 acres did not include the debtor's residential 9.95 acres. Instead, the deed misidentified the homestead acres as including the residence of the debtor's son, property not owned by the debtor. In the debtor's Chapter 11 case, the debtor claimed a different 200 acres, including the debtor's residence, as an exempt rural homestead under Tex. Const. Art. 16, § 51. A creditor objected to the exemption, arguing that the homestead designation in the deed of trust indicated the debtor's abandonment of the residence as a portion of the exempt homestead. The court held that the debtor could not be held to the deed of trust designation because the designation was clearly inaccurate where it failed to include the debtor's residence and included property not owned by the debtor. The debtor was allowed the 200 acres contiguous to the residence. **Matter of Kennard, 970 F.2d 1455 (5th Cir. 1992)**.

The debtor claimed the marital residence as exempt under Section 522(b)(2)(B) because the residence was owned by the debtor and nondebtor spouse as tenants by the entirety and the residence was exempt from process for the debtor's individual debts. The court held that because the residence was exempt from process under state law for the debtor's individual debts and the spouse was not a debtor nor were joint debts administered in the bankruptcy case, the debtor's interest in the residence was not estate property. As the case notes, Ohio has repealed the statute authorizing tenancy by the entirety. ***In re* Pernus, 143 B.R. 856 (Bankr. N.D. Ohio 1992)**.

In exchange for a secured creditor's refinancing of loans to the debtors, the debtor executed a deed of trust on their farm real property, including their homestead. Although the creditor did not file a formal objection to the debtors' exemption for the homestead, the creditor did file a motion for relief from the automatic stay to foreclose against the homestead and farm land securing the refinanced loans. The court held that the creditor's agreement to refinance the loans was sufficient consideration for the transfer of the homestead by deed of trust. The court also held that the homestead was not eligible for an exemption because the homestead was subject to a deed of trust and the debtors had no equity in the homestead. Finally, the exemption was not allowed even though the creditor failed to object within 30 days after the creditors' meeting, because the creditor's motion for relief from the automatic stay acted as a challenge to the homestead exemption. ***In re* Stanley, 143 B.R. 900 (Bankr. W.D. Mo. 1992)**.

The debtor was a single grandmother with whom lived her married daughter and minor granddaughter. The daughter's husband did not live with the debtor and was unemployed. The daughter was employed but did not have sufficient income for self-support. The court ruled that the debtor was eligible, as a head of household, for the Texas 200 acre rural homestead exemption for the debtor's rural land including the residence. **Matter of Hill, 972 F.2d 116 (5th Cir. 1992)**.

IRA. The debtors claimed their interests in individual retirement annuities as exempt under Section 522(d)(10)(E). The court held that the annuities were not eligible for the exemption because the debtors had the ability to receive distributions at any time, subject to withdrawal penalties. ***In re* Moss, 143 B.R. 465 (Bankr. W.D. Mich. 1992)**.

The debtors claimed $4,000 in an individual retirement account as exempt under Section 522(d)(10)(E). The court held that an IRA was eligible for the exemption and that the IRA would be exempt because it was necessary for the eventual retirement support of the debtors. ***In re* Hickenbottom, 143 B.R. 931 (Bankr. W.D. Wash. 1992)**.

OBJECTION. The debtor claimed as exempt nominal amounts of several properties eligible for an exemption. Although the debtor claimed no specific reason for this method of claiming exemptions, the court found that the debtor sought to make the trustee's liquidation of the properties difficult, if not impossible. Therefore, the court held that the nominal exemption amounts were made in bad faith and were disallowed. ***In re* Larson, 143 B.R. 543 (Bankr. D. N.D. 1992)**.

GRAIN ELEVATORS. Prior to the filing for bankruptcy, the Missouri Department of Agriculture had seized the debtor grain elevator's assets and placed them in an escrow account for distribution to creditors under the state statute. After the elevator filed for bankruptcy, the trustee sought turnover of the escrow account for administration in bankruptcy. The major difference between the two distribution schemes was that under the Bankruptcy Code, grain producers were entitled to a priority claim for up to $2,000 with all remaining claims receiving a pro rata share of the remainder; the state scheme provided only a pro rata distribution. The court held that federal bankruptcy law prevailed over state law and ordered the escrow account turned

over to the bankruptcy trustee. The court rejected the argument that the seizure of the elevator's assets was not subject to the automatic stay because the seizure was a proceeding by a governmental unit to enforce police or regulatory powers, as defined by state law. ***In re* Mount Moriah Elevator, Inc., 143 B.R. 905 (Bankr. W.D. Mo. 1992)**.

CHAPTER 11

ABSOLUTE PRIORITY RULE. The debtor's Chapter 11 plan provided that all estate farm and ranch property would revert to the debtor upon confirmation of the plan. Unsecured creditors would not receive the full value of their claims but the plan provided that the debtor would assign a portion of a $500,000 life insurance policy to electing creditors. The assignee creditor would be required to pay the annual premium on the portion assigned. The debtor was 66 years old and in poor health. The debtor argued that the offered assignments would satisfy the absolute priority rule as an infusion of capital. The court held that the "new value" exception to the absolute priority rule was available but that the interests in the life insurance policy did not qualify because the present value of the interests did not represent a substantial contribution and the interests would pass to the creditors and not the debtor's business for business expenses. ***In re* Dowden, 143 B.R. 388 (Bankr. W.D. La. 1989)**.

CHAPTER 12

PLAN. The debtor's Chapter 12 plan provided that unsecured creditors would receive payments from projected income of the debtor during the plan, but also provided that the projected income would be zero. The debtor sought discharge after making all payments under the plan but the trustee objected, claiming that the debtor had failed to pay all net disposable income to the unsecured creditors. The debtor argued that because the plan provided for no projected income, the debtor was relieved of the requirement to pay any disposable income. The court held that the payment of disposable income requirement was triggered by objections of unsecured creditors during the confirmation process. Therefore, the plan was confirmed because the debtor's plan provided for payment of such income during the plan and the debtor could not negate that requirement by claiming in the plan that no such income was projected. ***In re* Rowley, 143 B.R. 547 (Bankr. D. S.D. 1992)**.

FEDERAL TAXATION

AUTOMATIC STAY. The IRS was found to have violated the automatic stay when it filed a notice of income tax lien after the debtors had filed their bankruptcy petition. The court held that the IRS had waived its immunity from a suit for damages for violation of the automatic stay when the IRS filed a claim in the bankruptcy case involving the same taxes for which it had filed the lien notice. ***In re* Pinkstaff, 92-2 U.S. Tax Cas. (CCH) ¶ 50,502 (9th Cir. 1992)**.

During the debtor's Chapter 7 case and after notice to the IRS, the IRS assessed taxes against the debtor and filed a notice of tax lien for those taxes. The debtor brought a post-discharge action to void the assessment and lien. The court held that the assessment and lien were void because they violated the automatic stay. **Spears v. U.S., 143 B.R. 950 (W.D. Okla. 1992)**.

ESTOPPEL. The debtor elected to terminate the taxable year on the date the order for relief was filed, creating a short post-petition taxable year in 1986. The plan provided for payment of the post-petition 1986 taxes and the taxes were paid. The debtor maintained constant communication with the IRS throughout the bankruptcy case but the IRS filed no claim for the post-petition 1986 taxes until two years after confirmation of the Chapter 11 plan and ten days before the assessment period lapsed. The IRS had filed no objection to the disclosure statement or plan and told the debtor that no additional tax would be due for post-petition 1986. The court held that the IRS was estopped from assessing additional taxes, interest and penalties for the post-petition 1986 taxable year. ***In re* Kreidle, 143 B.R. 941 (D. Colo. 1992)**.

JURISDICTION. Pre-petition, the debtor had filed a petition in the Tax Court to redetermine a tax deficiency assessed by the IRS. While this petition was pending, the debtor also filed for bankruptcy which stayed the Tax Court proceeding. The bankruptcy court lifted the stay as to the Tax Court proceeding but the trustee negotiated a settlement with the IRS which decreased the tax liability to allow payments to other unsecured creditors. The IRS filed a claim in the bankruptcy case and the trustee submitted the agreement in satisfaction of the claim. The debtor objected to the settlement, arguing that the bankruptcy court had no jurisdiction over the matter once the automatic stay was lifted. The court held that jurisdiction over the matter remained concurrent and the debtor had consented to personal jurisdiction by filing the bankruptcy petition. **U.S. v. Wilson, 92-2 U.S. Tax Cas. (CCH) ¶ 50,510 (4th Cir. 1992)**.

PLAN. The Chapter 11 debtor's plan did not provide for payment of federal interest and penalties on pre-petition taxes. The court held that the interest and penalties were not allowed claims which needed to be included in the plan. However, because the interest and penalties were nondischargeable, the debtor's ability to complete the plan payments would be affected by the debtor's continued liability for the interest and penalties. Therefore, the court required the debtor to include the payment of the interest and penalties in the plan. ***In re* JAS Enterprises, Inc., 143 B.R. 718 (Bankr. D. Neb. 1992)**.

The debtor's plan proposed to pay the IRS claim by selling the debtor's unencumbered exempt homestead and pay the IRS from the proceeds. The IRS had agreed to the arrangement. The trustee objected, arguing that all plan payments were to be made by installments through the trustee. The court held that the plan was confirmable because the debtor's equity in the house substantially exceeded the amount owed to the IRS and that the payment could be made directly by the debtor. ***In re* Gregory, 143 B.R. 424 (Bankr. E.D. Tex. 1992)**.

POST-CONVERSION INTEREST. During the debtor's Chapter 11 case, the debtor incurred post-petition payroll taxes which accrued post-petition interest and penalties. The court held that after the debtor converted the case to Chapter 7, the IRS could no longer assess interest and penalties on the post-petition taxes incurred during the Chapter 11 portion of the case. ***In re* Sun Cliffe, Inc., 143 B.R. 789 (Bankr. D. Colo. 1992)**.

FEDERAL AGRICULTURAL PROGRAMS

BORROWER'S RIGHTS. The plaintiffs were farmers who had borrowed money from the defendant and its former subsidiary production credit association. After the defendant refused to lend any additional money to the plaintiffs, the plaintiffs brought an action for breach of fiduciary duty and breach of contract. The trial court granted summary judgment to the defendant on all counts. The appellate court upheld the trial court judgment, holding that the plaintiffs failed to show any contract or promise to lend additional money or to rollover the short term loans to long term loans. The court also upheld the judgment on the fiduciary duty claim because the plaintiffs failed to demonstrate that the production credit association dominated the plaintiffs or inserted itself into the management of the plaintiffs' operation. The plaintiffs were experienced farmers who had made several key important management and lending decisions. **Yoest v. Farm Credit Bank of St. Louis, 832 S.W.2d 325 (Mo. Ct. App. 1992)**.

PACKERS AND STOCKYARDS ACT. The plaintiff was the assignee of livestock sellers who sold livestock to a slaughtering facility which sold its products to the defendant. The defendant had granted the slaughtering facility a security interest in accounts receivables owed to the defendant by its customers. The security interest was subordinated to another security interest granted to the defendant's bank. After the defendant failed to pay for livestock, the plaintiff sued to include the accounts receivables in the P&SA statutory trust. The court held that the accounts receivables from the sale of meat products to the defendant's customers were not included in the P&SA trust. **Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc., 969 F.2d 1384 (2d Cir. 1992), *rev'g*, 768 F. Supp. 70 (S.D. N.Y. 1991)**.

PEANUTS. The ASCS has adopted as final determinations of the 1992 national poundage quota for peanuts as 1,540,000 short tons and a price support of $674.93 per short ton, with a price support of $131.09 per short ton for additional peanuts, and a minimum CCC sales price of $400.00 for additional peanuts for export edible use. **57 Fed. Reg. 46477 (October 9, 1992)**.

TOBACCO. The CCC has announced the price support levels for 1992 crops of the following types of tobacco:

Kind and Type	Cents per pound
Virginia fire-cured(type 21)	136.7
Ky-Tenn. fire-cured(types 22-23)	142.1
Dark air-cured(types 35-36)	121.7
Virginia sun-cured(type 37)	120.8
Cigar filler & binder(types 42-44, 53-55)	105.4

57 Fed. Reg. 46534 (Oct. 9, 1992).

WHEAT, FEED GRAINS, COTTON, AND RICE. The CCC has issued proposed determinations for the 1993 crops of wheat, feed grains, cotton and rice: (1) the same crops as for 1992 may be planted on "flexible" acres; (2) target option payments will not be provided; (3) no decision as to whether designated crops may be planted on up to one-half of the reduced acreage; (4) planting of oats on wheat and feed grains ACR will not be allowed; (5) planting of conserving crops on ACR will not be permitted; (6) no decision as to whether alternative crops may be planted on ACR; and (7) no decision as to whether producers of malting barley should be exempt from the acreage reduction. **57 Fed. Reg. 42899 (Sept. 17, 1992)**.

FEDERAL ESTATE AND GIFT TAX

VALUATION. The decedent's estate contained a minority interest in a corporation. The estate sought a 40 percent discount for the decedent's stock for the minority interest and 20 percent discount for lack of marketability. The court upheld the Tax Court's factual determination of a 20 percent discount for the decedent's stock for the minority interest and 10 percent discount for lack of marketability based on the testimony of competing experts. **Est. of Berg v. Comm'r, 92-2 U.S. Tax Cas. (CCH) ¶ 60,117 (8th Cir. 1992)**.

FEDERAL INCOME TAXATION

ENERGY POLICY ACT OF 1992 TAX PROVISIONS

REPORTING. Taxpayers who claim deductions for qualified residence interest paid to a seller who financed the sale of the residence are required to report the name, address and taxpayer identification number of the seller/payee and any person also named on the seller's return. The seller is also required to report the name, address and TIN of the buyer who paid or was liable for the interest and any person also named on the buyer's return. **Sec. 1933, adding I.R.C. § 6109(h)**.

Persons otherwise required to report real estate transactions are also required to report any portion of real property tax which is treated as a tax imposed by I.R.C. § 164(d)(1)(B) on the purchaser of the property. **Sec. 1939, amending I.R.C. § 6045(e)**.

CLASSIFICATION OF STOCK OR DEBT. The characterization as stock or debt of an interest in a corporation at the time of issuance is binding on the corporation and subsequent holders, but not the IRS. Subsequent holders are not bound by the issuer's characterization if the holder identifies the inconsistency on the holder's return. **Sec. 1936, adding I.R.C. § 385(c)**.

MARITAL DEDUCTION-QTIP. Under I.R.C. § 2056, a life estate or other terminal interest in a "specific portion" of a decedent's estate passing to a surviving spouse is eligible for the marital deduction if the surviving spouse has a general power of appointment over the "specific portion." The Act defines "specific portion" to include only fractional or percentage interests, thus excluding fixed dollar amounts. The same rule applies for the gift tax marital deduction. **Sec. 1941, adding I.R.C. §§ 2056(b)(10), 2523(e)(2)**.

PARTNERSHIP. Partners who contribute appreciated property to a partnership are required to recognize the precontribution gain if other partnership property is distributed to the partner within five years after the

contribution and the value of the distributed property exceeds the partner's adjusted basis in the partnership interest. Note that the rule does not apply to distributions of the contributed property. **Sec. 1937, adding I.R.C. § 737.**

BAD DEBTS. The taxpayer was a corporation which guaranteed the loans of another corporation. After the other corporation defaulted on the loans, the creditors filed suit against the taxpayer on the guarantees. In the following taxable year, the taxpayer agreed to make the guarantee payment but attempted to deduct the loss during the taxable year of the corporation's default and the filing of the suit. The court held that the debt was not eligible for a bad debt deduction until the taxable year in which the guarantee amount was actually paid. **Black Gold Energy Corp. v. Comm'r, 99 T.C. No. 24 (1992)**.

CHARITABLE DEDUCTION. Under an agreement with the county planning commission, the taxpayer granted an agricultural and conservation easement in farm and ranch land to a charitable organization. Under the agreement, the taxpayer would be allowed to commercially develop 5 percent of the land which was otherwise restricted to agricultural use. The IRS ruled that the taxpayer would be allowed a charitable deduction for the difference in the value of the conservation easement over the development rights received under the agreement if the taxpayer could establish donative intent for the granting of the easement. **Ltr. Rul. 9239002, June 17, 1992**.

The taxpayers transferred an easement on their rural land to a charitable organization for no consideration. The easement restricted the development of the land to one single family house per parcel with the remainder of each parcel required to be used for farming. The major issue was the decrease in fair market value of the land after the transfer in order to determine the amount of the charitable deduction. The court accepted the valuation of the taxpayer's expert based on the expert's experience and the use of several comparable sales. **Dennis v. U.S., 92-2 U.S. Tax Cas. (CCH) ¶ 50,498 (E.D. Va. 1992)**.

EMPLOYEE BENEFITS. The IRS has issued proposed regulations governing the valuing of employer-provided fuel used by an employee in an employer-provided automobile, valued under the automobile lease valuation rule, for purposes of inclusion in the employee's income. The fuel may be valued at 5.5 cents per mile or at actual fair market value, unless the employer is charged for the fuel or reimburses the employee for the fuel, in which case the fair market value must be used (which can be the amount charged or reimbursed if the purchase of the fuel is at arm's length). Additional methods are provided for taxpayers owning fleets of 20 or more automobiles. **57 Fed. Reg. 46525 (Oct. 9, 1992)**.

INTEREST. A calendar year taxpayer paid interest payments on a residential adjustable rate mortgage (ARM) in a taxable year. During the next taxable year, the mortgage company reimbursed the taxpayer for excess interest paid during the previous year. The IRS ruled that the interest paid in the first taxable year was deductible in that taxable year and that the amount of reimbursed interest was includible in the following taxable year's income to the extent the reimbursed interest decreased the tax for the previous year. **Rev. Rul. 92-91, I.R.B. 1992-44**.

LIFE INSURANCE. A corporation had two related shareholders and owned a paid up life insurance policy on one shareholder. The corporation and the two shareholders are also partners in another partnership. The corporation transferred the life insurance policy to the uninsured shareholder in exchange for the current unearned premiums on the policy. The new owner changed the beneficiary to the new owner. The IRS ruled that the proceeds of the insurance policy on the death of the insured would not be included in the new owner's income. **Ltr. Rul. 9239033, June 30, 1992**.

PARTNERSHIPS

DEFINITION. A farm business was operated as a partnership where all four partners could write checks on the business bank account, two partners contributed equipment and all four partners contributed cash for the purchase of additional equipment. The allocation of all partnership income to one partner was disallowed because the allocation did not have substantial economic effect on the distributee partner and did not reflect the equal interest of all partners. The partnership was required to use ACRS depreciation method because no election to use the straight line method was made. **Barron v. Comm'r, T.C. Memo. 1992-598**.

LIMITED PARTNERSHIPS. The IRS has ruled that the Connecticut Revised Limited Partnership Act corresponds to the Uniform Limited Partnership Act for purposes of Treas. Reg. § 301.7701-2. **Rev. Rul. 92-88, I.R.B. 1992-40, 26**.

STATUTE OF LIMITATIONS. In a series of similar cases, the Tax Court has held that the statute of limitations for assessment of tax on a partner's distributive share of partnership tax items was determined only by the filing of the individual partner's return and was not affected by the running of the limitations period as to the partnership return. **Swarner v. Comm'r, T.C. Memo. 1992-519; Reid v. Comm'r, T.C. Memo. 1992-520; McDonald v. Comm'r, T.C. Memo. 1992-521; Worley v. Comm'r, T.C. Memo. 1992-523; Litterio v. Comm'r, T.C. Memo. 1992-524; Wilkin v. Comm'r, T.C. Memo. 1992-525**.

PENSION PLANS. The IRS has issued procedures for reporting employee contributions for payers of distributions from employee plans and annuities on Form 1099-R. **Rev. Proc. 92-86, I.R.B. 1992-42, 37**.

The taxpayer received a distribution from a profit-sharing plan and rolled over a portion of the distribution to an IRA. The court ruled that the taxpayer could not elect 10-year averaging for the portion not rolled over to the IRA. **Barrett v. Comm'r, T.C. Memo. 1992-611**.

REPORTING. The IRS has issued proposed regulations relating to the reporting requirements for reimbursements of excess interest paid on mortgages which was deductible. **57 Fed. Reg. 47428 (Oct. 16, 1992)**.

S CORPORATIONS

TRUSTS. A qualified Subchapter S trust (QSST) sold all of its S corporation stock. Under state law, the gain or loss from the sale of trust owned stock is to be allocated to trust

corpus and not income. The IRS ruled that for federal tax purposes, the gain or loss from the sale is recognized by the trust beneficiary. **Rev. Rul. 92-84, I.R.B. 1992-40, 24**.

A testamentary trust established by a decedent for two heirs owned S corporation stock. The trust held all of the property but kept record of each beneficiary's share of trust corpus and income. The trustee was required to distribute all trust income and had discretion to distribute trust corpus. The trust had several spendthrift provisions and allowed the trustee to accumulate income and withhold corpus if the beneficiary became incompetent. The IRS ruled that the trust was a qualified Subchapter S trust. **Ltr. Rul. 9239034, June 30, 1992**.

SAFE HARBOR INTEREST RATES
NOVEMBER 1992

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	3.61	3.58	3.56	3.55
110% AFR	3.98	3.94	3.92	3.91
120% AFR	4.35	4.30	4.28	4.26
		Mid-term		
AFR	5.68	5.60	5.56	5.54
110% AFR	6.25	6.16	6.11	6.08
120% AFR	6.83	6.72	6.66	6.63
		Long-term		
AFR	7.00	6.88	6.82	6.78
110% AFR	7.71	7.57	7.50	7.45
120% AFR	8.43	8.26	8.18	8.12

SALE AND LEASEBACK. The taxpayer entered into a transaction to purchase solar-powered water heaters and lease the property back to the seller. The court disallowed depreciation deductions and investment tax credit for the property because the transaction was a sham where the seller retained possession, paid all taxes and bore the risk of maintenance and loss. **Sacks v. Comm'r, T.C. Memo. 1992-596**.

SOCIAL SECURITY TAX. Beginning with the January 2, 1993 payment, the monthly social security benefit payments will increase 3.0 percent. The maximum amount of annual wages subject to Old Age Survivors and Disability Insurance for 1993 is $57,600, with a maximum of $135,000 subject to the medicare portion of the tax. The maximum amount of annual earnings before reduction of benefits is $10,560 for persons aged 65 through 69 and $7,680 for persons under age 65. The amount of wages necessary for one quarter of coverage is $590. **HHS News Release, October 16, 1992**.

NEGLIGENCE

LICENSEE. The plaintiff was a friend of the defendant children and during a visit accompanied the defendant's son to the defendant's horse corral. During the visit one of the horses kicked the plaintiff while the plaintiff was in one of the stalls. The court held that the plaintiff was a licensee because the plaintiff was not specifically invited to visit the horse corral; therefore, the defendant owed only a duty to warn of a dangerous condition of which the plaintiff was not aware. The court also held that the defendant did not breach this duty because the plaintiff was aware that horses kick from seeing horses kick on TV or at rodeos. **Smith v. Andrews, 832 S.W.2d 395 (Tex. Ct. App. 1992)**.

NUISANCE

ALLIGATOR FARM. The plaintiffs were neighbors to the defendant's alligator farm and sought an injunction against the operation of the farm. The trial court found that the farm damaged the neighbors' properties but ordered only odor control measures. The plaintiffs argued on appeal that a finding of a nuisance required shut-down of the business. The appellate court upheld the trial court order as within its discretion where the nuisance was curable by less restrictive means. **Barras v. Herbert, 602 So.2d 186 (La. Ct. App. 1992)**.

RIPARIAN RIGHTS

BEAVER DAM. The plaintiffs were upstream riparian owners along a creek which also ran through the defendant's property. The creek was dammed by a beaver dam on the defendant's property, causing water to flood the plaintiff's property. The defendants refused to remove the dam and refused to allow the plaintiff to remove the dam. In an action to force the removal of the dam, the defendant argued that Vt. Stat. § 43 barred the action because the statute required the plaintiff and defendant to obtain a permit before removal of the dam. The court held that the statute did not preclude the defendant's duty to remove the dam under common law because the permit was merely an administrative step in the process of removal. **Villeneuve v. Powers, 609 A.2d 994 (Vt. 1992)**.

CREEK. The plaintiffs were downstream riparian owners along a creek which ran through the defendant's property. In order to alleviate flooding, the defendant cleared trees and brush from the creek and widened and straightened the creek channel, causing additional flooding of the plaintiffs' properties. The defendant had obtained a state department of natural resources permit for the work. The trial court awarded damages to the plaintiffs. The court held that the defendant had made substantial changes in the creek's natural channel and was not entitled to the common enemy doctrine defense to liability for damages caused by the changes. **McIntyre v. Guthrie, 596 N.E.2d 979 (Ind. Ct. App. 1992)**.

SECURED TRANSACTIONS

PERFECTION. The debtor granted a security interest to the plaintiff seed company in the debtor's crops. The security agreement contained no description of the land on which the collateral crops were to be grown other than identification of the county and the debtor's landlord. The financing statement contained a legal description of the land. The court held that the security interest did not attach because the security agreement did not contain a sufficient description of the land on which the crops were to be grown, as required by Kan. Stat. § 84-9-203(1). The court also held that the description in the financing statement was sufficient but could not be used to cure the defect in the security agreement description. **Garst Seed Co. v. Wilson, 833 P.2d 138 (Kan. App. 1992)**.

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PURCHASE MONEY SECURITY INTEREST. The plaintiff was the former spouse of the debtor and while the plaintiff and debtor were still married, the debtor agreed to purchase a horse trailer for the plaintiff as a gift. The debtor arranged a loan from the defendant of the purchase price of the trailer and granted a security interest in the trailer as collateral for the loan. The loan proceeds were placed in a joint account and the plaintiff withdrew the funds used to pay for the trailer. The debtor defaulted on the loan after the divorce and the defendant repossessed the trailer under the authority of the purchase money security interest. The plaintiff argued that the security interest did not attach because the debtor never had any interest in the trailer. The court held that the intent of the parties was that the trailer, and not the loan proceeds, was a gift from the debtor to the plaintiff, demonstrating that the debtor had an interest in the trailer sufficient for the security interest to attach. The court held that the plaintiff acted as the debtor's agent in disbursing the proceeds to pay for the trailer. **Mays v. Brighton Bank, 832 S.W.2d 347 (Tenn. Ct. App. 1992)**.

STATE REGULATION OF AGRICULTURE

GRAIN ELEVATORS. Two grain producers sold grain to a bonded grain elevator for cash but the elevator failed to make full payment for several months and then filed for bankruptcy with a substantial balanced owed to each producer. The producers filed claims against the elevator's bonding company. The bonding company argued that because the producers failed to receive immediate cash payments, the transactions were credit transactions not covered by the bonds. The bonding company also argued that the producers' claims were untimely because not filed until several months after the sale. The court held that the nature of the sales could not be altered by the actions of the buyer in failing to make immediate payment. The court also held that the claims were timely because filed within 30 days after the elevator declared bankruptcy and the producers were certain that no further payments would be made. **Matter of Grain Buyer's Bond, 486 N.W.2d 466 (Minn. Ct. App. 1992)**.

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