resulting from deduction of interest on income tax returns); Ltr. Rul. 8429008, April 5, 1984.

15 Rev. Rul. 80-159, 1980-1 C.B. 206 (no reduction of marital deduction).

16 *Id*.

17 89 T.C. 1193 (1987). Compare Est. of Hubert v. Comm'r, 101 T.C. No. 22 (1993) (administration expenses did not reduce marital or charitable deduction).

18 *Id*.

19 Rev. Rul. 93-48, I.R.B. 1993-25, 9.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

ATTORNEY'S FEES. The debtor filed a Chapter 11 case and the debtor's attorneys claimed that during the case, the debtor was able to produce a crop because of the legal efforts of the attorneys. The crop was sold and the proceeds placed in escrow but the case was later dismissed. The attorneys claimed a portion of the proceeds under the Nebraska Attorney Lien statute, Neb. Rev. Stat. § 7-108. The court held that the statute did not apply because the proceeds were not held by an adverse party. The court also held that any claim to the proceeds as an administrative expense in the bankruptcy case was lost when the case was dismissed. **Matter of Olson, 161 B.R. 45 (D. Neb. 1992), *aff'g*, 101 B.R. 134 (Bankr. D. Neb. 1989)**.

AUTOMATIC STAY. In exchange for a delay in the sale of collateral farmland, the debtor had agreed in a pre-petition foreclosure case to allow the judgment creditor immediate relief from the automatic stay if the debtor filed for bankruptcy. The debtor operated several businesses and planned to use income from the land to fund the 100 percent payment Chapter 11 plan. The judgment creditor sought enforcement of the pre-petition agreement and relief from the automatic stay to sell the land. The court held that the pre-petition agreement alone was insufficient to require relief from the automatic stay absent a showing of bad faith on the part of the debtor. The court upheld the denial of relief from the automatic stay because no bad faith was shown and the property was necessary for a successful reorganization. **Farm Credit of Central Florida v. Polk, 160 B.R. 870 (M.D. Fla. 1993)**.

ENVIRONMENTAL CLEANUP COSTS. The debtor had leased land for its manufacturing business from a third party. The debtor moved its business to another location and eventually filed for Chapter 11. After the filing, the New Jersey Dept. of Environmental Protection and Energy (NJSEPE) discovered a hidden illegal seepage pit. After the claims bar date, the NJSEPE issued an administrative order and penalty assessment requiring the debtor to clean the pit and assessing the debtor a penalty. The debtor sought to avoid the order and penalty as untimely claims. The court held that the order and penalty were not claims because the cleanup involved an ongoing threat to the environment, the state was not seeking reimbursement for cleanup costs, and the order and penalty were an attempt by the state to force the debtor to comply with environmental laws. ***In re* Torwico Electronics, Inc., 8 F.3d 146 (3d Cir. 1993)**.

EXEMPTIONS

AVOIDABLE LIENS. The debtors and trustee entered into a court approved agreement to sell the debtors' homestead to the debtors for the amount which would have passed to the estate upon the sale of the property. The agreement and order acknowledged the debtors' exemption and judgment and tax liens against the property. After purchasing the property from the estate, the debtors sought to avoid one of the judgment liens as impairing the homestead exemption. The court held that the court approved agreement was res judicata as to the debtors as to the value of the residence and the amount of the liens and any impairment of the exemption. ***In re* Glenn, 160 B.R. 837 (Bankr. S.D. Calif. 1993)**.

HOMESTEAD. Seven years before filing for bankruptcy, the debtor transferred a residence to a business associate in an attempt to shield the house from tax liens. The debtor continued to have possession and control over the property and made the payments on loans secured by the property. The court held that the transfer was fraudulent given the attempts to hide the true nature of the transaction and the transfer was made when the debtor was insolvent; therefore, the debtor was denied the use of the homestead exemption for fraudulent pre-bankruptcy planning. The court rejected any requirement that the fraud occur in contemplation of filing bankruptcy; therefore, the fact that the fraud occurred seven years before the filing had no affect on the eligibility of the debtor for the exemption. ***In re* Curry, 160 B.R. 813 (Bankr. D. Minn. 1993)**.

The debtor purchased an undivided interest in 150 acres of rural land owned by the debtor's family. A portion of the land was platted and subdivided and offered for sale in units of one to five acres. The rest of the land was left idle with the intent to use it for further development once the platted portion was sold. The debtor conveyed 5.5 acres of the platted land to the debtor's spouse and the couple built a house on the land for use as their residence. The debtor claimed the 5.5 acre residence, the debtor's interest in the platted acres and the debtor's interest in the unplatted acres as a rural homestead exemption under Tex. Prop. Code § 41.002(b)(1). The court held that the 5.5 acres was qualified for the homestead exemption but that the platted and unplatted property was not entitled to the exemption because the debtor's intent to sell that property existed before the debtor established a residence on a portion of the land. ***In re* McCain, 160 B.R. 933 (Bankr. E.D. Tex. 1993)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

**Agricultural Law Manual* (ALM). For information about ordering the *Manual*, see the last page of this issue.

CLAIMS. The debtor's plan provided for payment of secured claims, including a secured claim for federal income taxes. Over one year after the bar date for claims, the IRS filed an unsecured claim for taxes. The court held that the late filed claim would not be allowed. ***In re* Leichter, 161 B.R. 60 (Bankr. D. Or. 1993)**.

The IRS filed a timely claim for priority taxes from the debtor's 1978-1988 and 1990 tax years. The IRS filed an untimely claim for priority taxes for 1978 through 1987 and 1989 taxable years. The court held that the untimely claims would be allowed as amendments of the timely filed claims because the taxes involved were of the same type. ***In re* Leland, 160 B.R. 834 (Bankr. E.D. Calif. 1993)**.

The IRS had filed a timely priority unsecured claim for 1989 and 1990 taxes owed by the debtors. One year after the bar date for filing claims, the IRS filed a "supplemental" priority unsecured claim for 1988 taxes owed by the debtors. The court held that the late filed claim would not be allowed as an amendment of the timely filed claim because the untimely claim was for separate taxable years. ***In re* Chavis, 160 B.R. 804 (Bankr. S.D. Ohio 1993)**.

DISCHARGE. In 1979, the debtor attended a tax protester seminar and decided to use the lecturer's methods for evading payment of federal income taxes. The debtor failed to file for 1979 through 1986 despite repeated notices and assessments from the IRS. The debtor had filed and paid taxes prior to 1979 and started filing and paying taxes after 1986 after seeking legal advice. The court held that the taxes for 1979 through 1986 were nondischargeable for willful attempts to evade taxes. ***In re* Laurin, 161 B.R. 73 (Bankr. D. Wyo. 1993)**.

SOVEREIGN IMMUNITY. After the debtor had received a discharge, the IRS improperly setoff the debtor's tax refunds against some of the discharged taxes. The debtor obtained an order from the Bankruptcy Court holding the IRS in civil contempt and granting the debtor attorney's fees. The IRS appealed, arguing that under *U.S. v. Nordic Village, 112 S.Ct. 1011 (1992)*, it had not waived its sovereign immunity against suits for monetary damages. The court held that the award of attorney's fees was allowed under I.R.C. § 7430. **U.S. v. Kolb, 161 B.R. 30 (N.D. Ill. 1993)**.

The debtors had created a bank account for use as an operating account during the bankruptcy case. After the debtors received their discharge, the IRS levied against the bank account and the debtors sought to recover the funds, arguing that the levies violated the automatic stay. The court held that it had no jurisdiction in that, under *U.S. v. Nordic Village*, the IRS had not waived its sovereign immunity against suits for monetary recoveries. In addition, the court held that the levies did not violate the automatic stay which had expired when the debtors received their discharge. **Quillen v. U.S., 160 B.R. 776 (W.D.Va. 1993)**.

CONTRACTS

SPECIFIC PERFORMANCE. The plaintiff had contracted with the defendant to purchase an Arabian mare owned by the defendant. After the final contract payment was made, the defendant refused to sign over the registration papers for the mare, claiming that all payments had not been made. The dispute lasted six years, ending with the plaintiff's suit for specific performance of the contract and damages resulting from the delay in performance. The court held that the jury award of damages and the trial court's order for specific performance were both allowed where the damages occurred from the delay in the performance. The court also upheld the dismissal of the plaintiff's claim of violation of the S.C. Unfair Trade Practices Act in that the defendant's action were not susceptible to repetition and did not impact on a public interest. **Perry v. Green, 437 S.E.2d 150 (S.C. Ct. App. 1993)**.

WARRANTY-*ALM* § 13.02.* The plaintiff was a farm corporation which grew potatoes. The plaintiff purchased a nematicide manufactured by one defendant and sold by another defendant. The nematicide worked for two seasons but apparently failed to control nematodes in the third crop year and the plaintiff sued for breach of express and implied warranties. The plaintiff alleged that the seller orally claimed that the nematicide would control nematodes and produce better potato crops. The court held that these allegations were sufficient evidence of an oral express warranty to defeat a summary judgment. The seller claimed that the implied warranties were disclaimed in written disclaimers on the bills of sale, the packaging and the delivery trucks and that the existence of these disclaimers over several years of dealings between the parties represented a course of dealing. The court agreed that the implied warranties were sufficiently disclaimed by the course of dealing between the parties. **Tolmie Farms v. J.R. Simplot Co., 862 P.2d 299 (Idaho 1993), *aff'g*, 862 P.2d 305 (Idaho Ct. App. 1992)**.

CORPORATIONS

DEADLOCK. The plaintiff and defendant were brothers and each owned 50 percent of a farm corporation. The plaintiff wanted the corporation to borrow money for operating expenses, commodity hedging and equipment purchases but the defendant wanted to borrow money only as a last resort. As a consequence, no board meetings were held and the plaintiff was forced to use his own funds to finance business opportunities for the corporation. The plaintiff sued for court ordered dissolution of the corporation. The court held that the deadlock of the shareholders and the risks required to be taken by the plaintiff for which the defendant benefitted were sufficient support for a court ordered dissolution of the corporation. The court also held that because dissolution was not required in order to protect a shareholder's interests in the corporation, the corporation was not entitled to buy out the plaintiff's interest at fair market value. **Foster v. Foster Farms, Inc., 436 S.E.2d 843 (N.C. Ct. App. 1993)**.

FEDERAL AGRICULTURAL PROGRAMS

BORROWER'S RIGHTS-*ALM* § 11.01[2].* The plaintiffs had a delinquent loan with the FmHA and applied for debt restructuring. The FmHA denied the restructuring but the county supervisor offered the plaintiffs the right to purchase their debt for the $79,836 recovery value of their loan. The state supervisor had approved the recovery value determination but not the offer. Two days later, the plaintiffs' two hen houses were destroyed by a snowstorm and six days later, the plaintiffs received an insurance check for $264,000. The FmHA recalculated the recovery value of the loan as $306,365 and the plaintiffs appealed this decision, arguing that the FmHA was bound by the earlier determination. The court held that the amended net recovery determination was valid because 7 C.F.R. § 1951.903(b) required the state director's approval before any net recovery value buy-out offer is final. The plaintiffs also argued that the increased net recovery determination was improper, under 7 U.S.C. § 2001(c)(4), because the determination was made more than 60 days after the debt restructuring application was made. The court held that the FmHA still had authority to make a final authorized net recovery determination because the statute did not specify any consequences of a failure to provide the net recovery determination within 60 days of an application. The court also held that allowing the late determination furthered the statutory purpose of maximizing the FmHA recovery. **Kinion v. U.S., 8 F.3d 639 (8th Cir. 1993)**.

CONSERVATION. The ASCS has issued proposed regulations incorporating the Water Quality Incentive Project into the Agricultural Conservation Program. **59 Fed. Reg. 1293 (Jan. 10, 1994)**.

DISASTER PAYMENTS-*ALM* § 10.03[4].* The plaintiffs suffered a disaster loss of their crops in 1988 and applied for and received disaster payments. The ASCS later determined that the plaintiffs were not eligible for the disaster payments because the plaintiffs' non-farm gross revenues exceeded $2 million and more than 50 percent of the plaintiffs' income was from non-farming activities. The plaintiffs argued that the ASCS regulations defining "person" for purposes of eligibility were improper because the definition used the same definition as was used for payment limitations. The court held that the definition borrowing was permissible because the purpose of the $2 million limitation on eligibility was the same as the purpose for the payment limitation, to limit benefits to smaller farmers who rely most heavily on agricultural operations. **Hanson v. Espy, 8 F.3d 469 (7th Cir. 1993), *rev'g*, 788 F. Supp. 403 (W.D. Wis. 1992)**.

FARM LOANS. In an effort to increase private lender participation in farm loans to meet the credit needs of farmers who suffered losses in the floods of 1993, the FmHA has issued proposed regulations easing and streamlining the collateral requirements for farm operating, real estate and emergency loans. **59 Fed. Reg. 2307 (Jan. 14, 1994)**.

TOBACCO. The ASCS has issued proposed regulations implementing the domestic tobacco content requirement of Section 1106 of the Omnibus Budget Reconciliation Act of 1993. **59 Fed. Reg. 1493 (Jan. 11, 1994)**.

WOOL. The CCC has adopted as final regulations establishing the 1993 support level for mohair at $4.738 per pound. **59 Fed. Reg. 2283 (Jan. 14, 1994)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION-*ALM* § 5.04[4].* Almost all of the decedent's property was held in a trust which became irrevocable upon the decedent's death. The trust income beneficiary and remainder holder was a charitable organization. The decedent had made lifetime gifts for which federal and state gift tax liability remained unpaid at the decedent's death. The estate failed to make its federal and state estate tax payments on time and was liable for accrued interest on the late taxes. The accrued gift taxes, the interest on the late taxes and other administrative expenses had to be paid from the trust assets because no other estate property existed. The estate claimed that the taxes and interest were paid from trust income and did not decrease the amount of the charitable deduction. The IRS ruled that the gift taxes paid pre-death by the decedent were included in the gross estate but were not included in the amount of the estate passing to the trust. The IRS also ruled that the unpaid gift tax liability and the administrative expenses were to be deducted from the trust principal passing to the charity. The IRS also ruled that the interest on the late taxes was not chargeable against the amount of the estate passing to the charity, whether the interest was paid from trust income or principal. **Ltr. Rul. 9351001, Aug. 27, 1993**.

GENERATION SKIPPING TRANSFER TAX-*ALM* § 5.04[6].* An irrevocable testamentary trust was established prior to September 25, 1985 and made one beneficiary and an independent entity co-trustees. The beneficiary could not participate in any decisions to make discretionary distributions to the beneficiary. The beneficiaries and co-trustees amended the trust to make a grandchild co-trustee, also with the restriction on the grandchild's participation in any discretionary distributions to the grandchild. The IRS ruled that the amended trust was not subject to GSTT. **Ltr. Rul. 9352013, Sept. 30, 1993**.

TRUSTS. Under a testamentary trust, the taxpayer and son were both income beneficiaries with the son as the remainder holder and having a limited power of appointment over trust corpus. The trust had the taxpayer and a third party as trustees and granted the trustees the power to distribute trust income at their discretion but prohibited the taxpayer from participating in any decisions to distribute trust income to the taxpayer. The independent trustee resigned and the taxpayer and son created a new trust with both beneficiaries as trustees. The new trust was created by the son exercising the power of appointment in favor of the taxpayer and the taxpayer creating the new trust. Except for the loss of the power of appointment and the new trustee provision, the new trust was identical to the old trust. The IRS ruled that the transfer of the old trust property to the new trust (1) was not a taxable sale, (2) was not a taxable gift, (3) did not cause the trust property to be included in the taxpayer's gross estate, and (4) did not cause the taxpayer and son to be treated as the owners of the trust under I.R.C. §§ 671-677. **Ltr. Rul. 9252005, Sept. 27, 1993**.

VALUATION-*ALM* § 6.01[6].* The decedent owned a controlling interest in a communications company and the estate valued the stock at $140 per share based upon the price which would be obtained in a secondary public offering. The court accepted the IRS valuation of $200 per share based on the price obtainable at a private offering but reduced the value to $178 because of the size of the majority interest, the possibility of conflict with other shareholders and FCC rules governing liquidation of the company. **Est. of Gray v. Comm'r, T.C. Memo. 1993-334**.

Before the decedent's death, the decedent owned stock, cash assets and ranchland. Some of the stock was preferred stock in a corporation with no assets in which the decedent's child and the child's spouse were the only directors. The decedent's child and spouse recapitalized the corporation, issuing voting and nonvoting common stock. The child, exercising a power of attorney, transferred the decedent's assets to the corporation in exchange for the nonvoting common stock. The corporation also executed an employment agreement hiring the child's spouse to run the ranch, even though the spouse had little experience in ranching and was otherwise employed as a teacher, at a salary at least three times what would be normally paid for an experienced ranch manager. The IRS ruled that the excess salary was a constructive dividend which transferred the decedent's equity interest to the spouse; therefore, the recapitalization and contribution of the decedent's assets were a gift to the extent of the excess salary and the gift was to be valued under I.R.C. § 2704. **Ltr. Rul. 9352001, Sept. 3, 1993**.

The taxpayer created an irrevocable ten-year trust which provided an annuity for the taxpayer of 7.5 percent of the fair market value of the trust property at the creation of the trust. The taxpayer was also to receive payments equal to the amount of federal taxes incurred by the taxpayer because the trust was a grantor trust. The taxpayer had the power to substitute property of equal value but could not contribute additional property. If trust income was insufficient to pay the annuity, the difference was to be paid from trust principal and any income in excess of the annuity was to be added to principal. The trust property included S corporation stock. The IRS ruled that no determination could be made as to whether the trust income was taxable to the taxpayer as a grantor/owner of the trust and whether the trust was a QSST. The IRS also ruled that the taxpayer held a qualified annuity interest for purposes of I.R.C. § 2702. **Ltr. Rul. 9352003, Sept. 23, 1993**. Similar annuity trusts were also ruled to be a qualified annuity interest under I.R.C. § 2702. **Ltr. Rul. 9352007, Sept. 28, 1993; Ltr. Rul. 9352017, Sept. 30, 1993; Ltr. Rul. 9351005, Sept. 16, 1993.**

The taxpayer held voting preferred stock in two corporations whose shares were held by the members of the taxpayer's family. The preferred stock had a restriction created in 1984 under which the voting rights of the stock would lapse if the taxpayer transferred the shares. The corporations were merged and a new class of preferred non-voting stock was issued for which the taxpayer exchanged the voting preferred stock. The transfer caused a lapse in the voting rights of the preferred stock; otherwise, the taxpayer's interest in the merged corporation equaled the taxpayer's total interests in the separate corporations. The IRS ruled that the exchange of stock did not cause the stock to be subject to I.R.C. § 2701 because the taxpayer only changed the form of the interest in the entities. The IRS also ruled that the exchange was not subject to I.R.C. § 2704 because the lapse of the voting rights occurred under a restriction created prior to October 9, 1990. **Ltr. Rul. 9352012, Sept. 29, 1993**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD-*ALM* § 4.01.* The IRS has provided guidance on the mark-to-market rules of accounting enacted by the Revenue Reconciliation Act of 1993, including which taxpayers qualify as "dealers in securities" under the new statute and which securities may be exempt from being marked to market because the securities are "held for investment." The ruling also discusses how taxpayers may change their accounting method to the new method. **Rev. Rul. 93-76, I.R.B. 1993-35, modified by Rev. Rul. 94-7, I.R.B. 1994-3**.

EMPLOYEE EXPENSES. The IRS has issued revised procedures for deemed substantiation of employee expenses for lodging, meals and other traveling expenses where the employer provides a per diem allowance allowance for expenses. The revised procedures also provide an optional method for employers and self-employed individuals to compute the deductible costs of business meals and other travel expenses. **Rev. Proc. 93-50, I.R.B. 1993-42, 24, *superseding*, Rev. Proc. 93-21, I.R.B. 1993-13, 11**.

The IRS has issued guidance for employers to determine the taxable portion of parking, van pooling and mass transit provided for employees. Up to $155 per month in parking and $60 per month in van pooling and mass transit is tax free to employees, with any additional amounts included in employee gross income. After March 1994, the value of the benefits must be determined according to what an individual would pay for these benefits in an arm's length transaction. **Notice 94-3, I.R.B. 1994-3**.

HOBBY LOSSES-*ALM* § 4.05[1].* The taxpayer was a veterinarian who operated a cattle breeding activity and goat-raising activity. The taxpayer was not allowed losses associated with the cattle breeding business because no animals were kept at the farm nor were other farming activities carried on at the farm. The losses from the goat-raising activity were also denied because the activity was not engaged in for profit. **Westbrook v. Comm'r, T.C. Memo. 1993-634**.

INVESTMENT INTEREST-*ALM* § 4.03[12].* The taxpayer had disallowed investment interest for four taxable years. In two of those taxable years, the taxpayer had net operating losses which were also disallowed because the taxpayer had a net taxable loss. The IRS argued that the excess investment interest in the taxable loss years was not allowed to be carried over to later taxable years with investment income because the investment interest was disallowed under the net operating loss rules of I.R.C. § 172 and not the investment interest limitation rules of I.R.C. § 163. The court held that the two rules worked independently, allowing disallowed investment interest under Section 163 to be fully carried forward in taxable years in which other business deductions were not allowed because of a net taxable loss. **Sharp v. U.S., 94-1 U.S. Tax Cas. (CCH) ¶ 50,001 (Fed. Cir. 1993),** ***aff'g*****, 92-2 U.S. Tax Cas. (CCH) ¶ 50,561 (Cl. Ct. 1992)**.

LIKE-KIND EXCHANGES. The taxpayer owned a parcel of commercial real estate subject to a net lease. The taxpayer was also a partner in a partnership which owned an adjacent parcel of commercial real estate subject to a net lease. Both properties were held for investment with the owners providing few services for the tenants. Both properties were transferred to the state under condemnation proceedings and the taxpayer and partnership purchased as tenants in common a third parcel of commercial real estate subject to a net lease. The parties provided few services for the tenant of the third property. The IRS ruled that under *Rev. Rul. 57-154, 1957-1 C.B. 262*, the taxpayer could not treat the new property as like-kind exchange property if the interest in the new property was deemed an interest in a partnership; however, because the parties provided no services to the tenant other than usual to the tenant-landlord relationship, the parties did not own the property as a partnership and the taxpayer could treat its interest in the new property as like-kind property. **Ltr. Rul. 9352008, Sept. 29, 1993; Ltr. Rul. 9352011, Sept. 29, 1993**.

LETTER RULINGS. The IRS has issued its annual list of procedures and fees for issuance of rulings, determination letters, information letters and closing agreements. Some of the current fees are as follows:

Type of request	Fee
Change in accounting period	$250
Change in accounting method	$600
All other rulings	$3,000

For individuals, trusts, partnerships, corporations and estates with total income of less than $150,000 and for "Subchapter F-exempt Organizations" with gross receipts of less than $150,000, some of the current fees are as follows:

Type of request	Fee
Change in accounting period	$250
Change in accounting method	$500
All other rulings	$500

Rev. Proc. 94-1, I.R.B. 1994-1, 10.

The IRS has issued its annual list of procedures for furnishing technical advice to District Directors and Chiefs, Appeals Offices. **Rev. Proc. 94-2, I.R.B. 1994-1, 60**.

The IRS has issued its annual list of tax issues for which the IRS will not give advance rulings or determination letters. **Rev. Proc. 94-3, I.R.B. 1994-1, 79**.

The IRS has issued procedures for issuing determination letters on the qualified status of employee plans under Sections 401(a), 403(a), 409 and 4975(e)(7). **Rev. Proc. 94-6, I.R.B. 1994-1, 142**.

The IRS has issued revised fee schedules for issuing determination letters on the qualified status of employee plans under Sections 401(a), 403(a), 409 and 4975(e)(7). **Rev. Proc. 94-8, I.R.B. 1994-1, 176**.

MILEAGE DEDUCTION. The standard mileage rate for 1994 is 29 cents per mile for business use, 12 cents per mile for charitable use and 9 cents per mile for medical and moving use. **Rev. Proc. 93-51, I.R.B. 1993-51**.

PENSION PLANS. The IRS has provided guidance for amendment of plans to comply with the $150,000 compensation limit imposed by the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, amending I.R.C. § 401(a)(17). **Rev. Proc. 94-13, I.R.B. 1994-3**.

PARTNERSHIPS-*ALM* § 7.03.*

DEFINITION. The IRS has issued a list of state limited partnership laws which conform to the Uniform Limited Partnership Act for purposes of Treas. Reg. § 301.7701-2. **Rev. Rul. 94-2 I.R.B. 1994-1, 8**.

DISTRIBUTIONS. The IRS has ruled that a deemed distribution resulting from a decrease in a partner's share of partnership liabilities is treated as an advance or draw of money to the extent of the partner's distributive share of partnership income. The IRS also ruled that advances or draws are to be taken into account as of the end of the partnership year. **Rev. Rul. 94-4, I.R.B. 1994-2, 20**.

LIMITED LIABILITY COMPANIES. The IRS has ruled that a business organized under the Oklahoma Limited Liability Company Act could be taxed as a corporation or partnership, but would be taxed as a partnership if the articles of organization restricted the transferability of interests and required the dissolution of the company upon termination of a member's interest unless all members agree to continue the company. **Rev. Rul. 93-92, I.R.B. 1993-42, 11**.

The IRS has ruled that a business organized under the Louisiana Limited Liability Company Act could be taxed as a corporation or partnership, but would be taxed as a partnership if the articles of organization restricted the transferability of interests and required the dissolution of the company upon termination of a member's interest unless all members agree to continue the company. **Rev. Rul. 94-5, I.R.B. 1994-2, 21**.

TAX YEAR. The IRS has announced that partnerships and S corporations which have elected under I.R.C. § 444 to have a tax year other than that of their owners may be required to increase the required deposit payment under I.R.C. § 7519 because of the increase in the highest tax bracket. Any payments due on May 15, 1994 are to be based on the 39.6 percent rate plus one percent or 40.6 percent. **Ann. 94-5, I.R.B. 1994-2**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

ADMINISTRATIVE ADJUSTMENTS. An S corporation had dissolved but during the winding up period, the corporation's tax matters person signed an agreement to extend the period of limitations on assessment of S corporation tax items. The court held that a final S corporation administrative adjustment filed within the extension period was valid because the TMP continued to have authority during the winding up period to manage the corporation's tax affairs. **Paxiteles, Inc. v. Comm'r, T.C. Memo. 1993-622**.

STOCK BASIS. An S corporation shareholder was not allowed to increase the basis of the shareholder's stock by the amount of an SBA loan made by the corporation and collateralized by the shareholder's personal assets. **Allen v. Comm'r, T.C. Memo. 1993-612**.

An S corporation shareholder could not increase the basis of the shareholder's stock by the amount of a corporation loan from a third party which was personally guaranteed by the shareholder. The shareholder's stock basis could not be increased by the amount of loans to the corporation which were unsubstantiated by records. **Shaver v. Comm'r, T.C. Memo. 1993-619**.

TAX YEAR. The IRS has announced that partnerships and S corporations which have elected under I.R.C. § 444 to have a tax year other than that of their owners may be required to increase the required deposit payment under I.R.C. § 7519 because of the increase in the highest tax bracket. Any payments due on May 15, 1994 are to be based on the 39.6 percent rate plus one percent or 40.6 percent. **Ann. 94-5, I.R.B. 1994-2**.

LANDLORD AND TENANT

TERMINATION OF LEASE-*ALM* § 13.05[1].* The parties were a landlord and a tenant who had a written farm lease which expired by its terms on February 28, 1991, with both parties waiving any notice of termination. After the lease terminated, the parties entered into negotiations for extending the lease, with the negotiations breaking down in May 1991 and the landlord giving the tenant three days notice to vacate under Neb. Rev. Stat. §§ 76-1401 et seq., 25-21,219. The court held that neither statute applied to agricultural leases and that, under common law, if the tenant remains on the land after a terminated lease and the landlord performs some action demonstrating acceptance of the tenant, the lease becomes a year-to-year lease requiring six months notice for termination. The case was remanded for findings on this issue. **Stuthman v. Stuthman, 507 N.W.2d 674 (Neb. Ct. App. 1993)**.

MORTGAGES

DEFICIENCY JUDGMENT. The defendants borrowed money from the plaintiff and granted a security interest in their farm as collateral for the loan. After the defendants defaulted on the loan and the plaintiff sought foreclosure, the defendants agreed to add another farm as additional security in exchange for the plaintiff's delay of the foreclosure. After the defendants further defaulted on their loan, the plaintiff purchased the first farm in a private foreclosure action and sought judicial foreclosure of the second farm. The defendants argued that the second foreclosure violated Calif. Code of Civil Proc. § 580b which prohibited deficiency judgments where the foreclosed property is sold for less than fair market value. The court held that the anti-deficiency statute did not apply where the lender seeks foreclosure against additional collateral voluntarily granted by the borrower without deception by the lender. **Western Farm Credit Bank v. Campbell, 861 P.2d 1041 (Or. Ct. App. 1993)**.

PRODUCTS LIABILITY

VICARIOUS LIABILITY. The plaintiff was operating a haystack mover owned by the plaintiff's employer when the plaintiff was injured. The mover was repaired by the seller while the mover was under warranty and the seller replaced a set screw with a protruding bolt which caught the clothing of the plaintiff, causing the injuries. The plaintiff sued the manufacturer of the mover for negligence, arguing that the manufacturer was vicariously liable for the negligent repair of the mover by the seller. The court held that the manufacturer was not vicariously liable for the repairs performed by the seller because the manufacturer exercised no control over the seller's repair methods, such as training the mechanics. **Zwingman v. Kallhoff, 507 N.W.2d 894 (Neb. 1993)**.

SECURED TRANSACTIONS

JOINT VENTURE. The plaintiffs were the parents of the defendants and both parties had discussed forming a joint venture between the defendants and a corporation owed by the plaintiffs to produce the 1990 potato crop. The defendants owned all of the land but leased a portion of the land to the plaintiffs. Before the crop was planted, the defendants granted a security interest in the crop to a bank which perfected the security interest. After the crop was planted, the parties signed the joint venture agreement. During the harvest, the plaintiff learned that the bank was intercepting the crop proceeds under the security agreement and the plaintiffs filed a processor's lien because the plaintiffs were processing some of the potatoes. The court held that the bank's security interest was valid because N.D.C.C. § 41-09-24 allowed a perfection of a security interest in crops prior to the planting of the crops. The court also held that the formation of the joint venture did not affect the security interest but that the security interest did not attach to the crops grown on the land leased by the plaintiffs. The court held that the processor's lien was invalid in that the corporation was only an alter ego of the plaintiffs and that the plaintiffs could not file a lien against their own crops. **Thompson v. Danner, 507 N.W.2d 550 (N.D. 1993)**.

PERFECTION-*ALM* § 13.01[2].* The defendant financed the 1991 corn and soybean crops through a supplier and signed a UCC-1 financing statement which listed the collateral crops, the names and addresses of the parties and a description of the land on which the crops were grown. The financing statement was properly filed in 1991. However, no written security agreement was made. The plaintiff filed a judgment lien in 1992 against all of the defendant's property and claimed a priority security interest in the proceeds of the 1991 crop. The court held that a security agreement was necessary for perfection of the security interest of the seed supplier and although a financing statement may function as a security agreement, the financing statement in this case could not function as a security agreement because it had no words granting a security interest in the crops. **Gibson County Farm Bureau v. Greer, 622 N.E.2d 551 (Ind. Ct. App. 1993)**.

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WILLS AND ESTATES

CROPS. At the decedent's death, the decedent owned a farm which was crop share leased to an unrelated party. On the decedent's death, the current crop had matured but had not been harvested. The administration of the estate encompassed two more crop years. The decedent's will bequeathed the residuary estate personal property to two children and a friend. The will bequeathed a life estate in the farm to the two children with the remainder to pass to a charitable organization. The issue was whether the proceeds of the crop share lease were personal property or income from the real estate. The court held that because the will specifically provided for the income from the farm to pass to the children, the income from the farm after the decedent's death passed to the children only. However, because the crops planted at the time of the decedent's death were matured, the crops were personal property to be shared by all three parties under the will. **Matter of Est. of Hughes, 506 N.W.2d 810 (Iowa Ct. App. 1993)**.

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