subsections 2341(3) and (4), (2) can only save and sell seed descended from a PVPA certificate owner for seeding purposes, (3) in selling seed must primarily grow crops from that seed for consumption, (4) in acquiring seed, must primarily grow crops from that seed for consumption, (5) can neither save nor sell seed harvested from that seed, (6) must comply with state laws, and (7) cannot divert seed originally sold for consumption to planting purposes.[17]

The Circuit Court held that the "saved seed" exception[18] permitted up to one-half of a farmer's crop produced from a protected novel plant society to be sold as seed in competition with the owner of the novel variety.[19]

The appellate court held that the district court had erred in reading the limitation (of the seed needed by the farmer for the following year) into the statute and vacated the permanent injunction against the Winterboers.

Supreme Court grant of review

On April 18, 1994, the U.S. Supreme Court granted review in the case.[20]

Implications of the case

The long-running case has attracted a great deal of attention among farmers and in the seed trade.[21] The ultimate outcome, whether in the Supreme Court or the Congress, will have important implications for firms engaged in plant breeding. On the other hand, the case as finally laid to rest will have important implications also for farmers in terms of the cost of seed.

FOOTNOTES

1 Pub. L. 91-577, 84 Stat. 1542 (1970); 7 U.S.C. §§ 2231-2583. See generally 12 Harl, *Agricultural Law* ch. 110 (1994).
2 See 7 C.F.R. Part 180.
3 7 U.S.C. § 2541.
4 35 U.S.C. § 161.
5 *Id*.
6 35 U.S.C. § 163.
7 7 U.S.C. § 2543.
8 *Id*.
9 *Id*.
10 Asgrow Seed Co. v. Winterboer, 795 F. Supp. 915 (N.D. Iowa 1991).
11 Delta and Pine Land Co. v. People Gin Co., 694 F.2d 1012 (5th Cir. 1983).
12 *Id*. at 1016.
13 795 F. Supp. 920.
14 Asgrow Seed Co. v. Winterboer, 982 F.2d 486 (Fed. Cir. 1992).
15 982 F.2d 486, 489.
16 *Id*. at 490.
17 *Id*.
18 7 U.S.C. § 2543.
19 982 F.2d 486, 490.
20 62 U.S. Law Week 3683, April 19, 1994.
21 Amicus curiae briefs were filed by 16 firms in the appellate court proceeding. 982 F.2d 486, 487 (Fed. Cir. 1992).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

EXEMPTIONS

HOMESTEAD. The debtors lived in Texas but had purchased ranch land in Oklahoma with the intent to move there when they retired. The Oklahoma ranch did not have a residence. The debtors listed the Oklahoma property as eligible for the Oklahoma homestead exemption but moved to amend their schedules to list the Texas property as eligible for the Texas homestead exemption. The debtor husband made several statements in judicial proceedings that the Oklahoma property was their homestead but the wife made statements only that the Oklahoma property was chosen as the residence for exemption purposes because the bankruptcy filing was an attempt to reorganize the ranch operation. The court held that the debtors had the right to amend their exemption schedule and that, because the wife made no misrepresentations in judicial proceedings as to the debtors' true residence, the debtors were not estopped from claiming the Texas residence as the exempt homestead. Because the Texas residence had already been sold by the trustee, the court remanded the case for an appropriate remedy. ***In re*** **Osborn, 24 F.3d 1199 (10th Cir. 1994)**.

LIFE INSURANCE. The debtor claimed as exempt, under Ind. Code § 27-1-12-14(d), the debtor's interest in a pre-paid life insurance policy on the debtor's life. A creditor objected to the exemption, arguing that the exemption was unconstitutional under the state constitution. The court held that, under *Matter of Zumbrun, 626 N.E.2d 452 (Ind. 1993)*, unlimited exemptions violated the constitutional requirement that exemptions be limited to a reasonable amount. Because the life insurance exemption was not limited, the life insurance exemption was unconstitutional and the debtor's exemption was denied. ***In re*** **Foster, 168 B.R. 183 (Bankr. S.D. Ind. 1994)**.

DISCHARGE. The debtor's Chapter 7 schedules included an exemption for the debtor's home. A creditor objected to the exemption and moved to have the debtor's discharge denied under Section 727(a)(2)(A) because the debtor filed a false homestead exemption claim. The court held that Section 727(a)(2)(A) requires that the debtor transfer property with intent to hinder creditors and that an exemption claim, even if false, was not a transfer. The court also held that the exemption was allowed because the exemption did not require that the debtor reside in the

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house every day but only that the debtor intend to return to the house as a residence. ***In re* Garcia, 168 B.R. 403 (D. Ariz. 1994)**.

INVOLUNTARY PETITION. At a time when the debtor was not generally making payments to creditors, the debtor formed a family partnership and transferred $10 million in property to the partnership, effectively transferring the property by gift to other family members. The court held that an involuntary petition was allowed because the debtor's assets were rapidly and substantially diminished by the gifts. **In re Knoth, 168 B.R. 311 (Bankr. D. S.C. 1994)**.

CHAPTER 11-*ALM* § 13.03.*

ABSOLUTE PRIORITY RULE. The debtors, husband and wife, owned a ranch business and filed for Chapter 11. The Bankruptcy Court had ruled that the debtors could not retain any interest in the farm unless the unsecured creditors were paid in full and had dismissed the case because the debtors had no reasonable likelihood of proposing a confirmable plan. The debtors had stated that additional investment would come from loans from family members and sale of post-petition assets. The District Court held that the absolute priority rule exception was available to the debtors but that the debtors failed to show that substantial new money would be invested in the operation to satisfy the rule. In addition, the District Court held that the debtors had no reasonable likelihood of a confirmable plan, even with the use of the absolute priority rule exception. **Coones v. Mutual Life Ins. Co., 168 B.R. 247 (D. Wyo. 1994)**.

CHAPTER 12-*ALM* § 13.03[8].*

CONVERSION. The debtors had submitted a Chapter 12 plan for confirmation which was granted with conditions. The debtors failed to meet the conditions and the case was converted to Chapter 7. The debtors retained the proceeds from the sale of crops which occurred during the Chapter 12 case, arguing that the estate property reverted to the debtors after the confirmation of the plan. The court held that the property did not revert to the debtors because the confirmation was conditional and the debtors failed to meet the conditions. Therefore, the proceeds of the sale and other accounts receivable became estate property upon conversion of the case to Chapter 7. **In re White, 25 F.3d 931 (10th Cir. 1994)**.

PLAN. The debtors' Chapter 12 plan was confirmed and the debtors had completed the three years of the plan. The debtors sought a discharge but the unsecured creditor objected, arguing that the debtors had not paid all disposable income from one of the plan years. During the plan period, the debtors had one year of net profit and two years of net losses, with a resulting net loss over the three years. The plan had language which indicated both that the disposable income was to be determined on an annual basis and that the disposable income was to be determined at the end of the three years. The creditors favored the annual determination and the debtors favored the three year determination. The Bankruptcy Court ruled that the disposable income was to be determined annually and denied discharge until the debtors distributed property to the unsecured creditors equal to the disposable income of the first year. The District Court and appellate court affirmed, holding that the Bankruptcy Court's decision deserved deference because that court had confirmed the plan. **Matter of Weber, 25 F.3d 413 (7th Cir. 1994)**.

TRUSTEE FEES. This case involved rulings on several bankruptcy cases in which the debtors' plans provided for direct payments to creditors without payment of the trustee's fee. The trustee also objected to the plans' provisions for payment of a trustee fee of only 10 percent of the amounts paid to creditors through the trustee, instead of 10 percent of all amounts paid to the trustee (amounting to 11.11 percent of payments to creditors). The court held that Chapter 12 plans may provide for direct payments to creditors without payment of the trustee's fee and that the trustee's fee was to be assessed only against payments made to creditors. ***In re* Westpfahl, 168 B.R. 337 (Bankr. C.D. Ill. 1994)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

AUTOMATIC STAY. The debtor filed for Chapter 11 five days before the scheduled foreclosure sale of the debtor's property. Although the U.S. Marshall's office received notice of the bankruptcy filing, the individual Deputy Marshall conducting the sale did not learn about the filing until the debtor notified the deputy when the deputy arrived to sell the property. The deputy refused to halt the sale unless ordered by the U.S. Marshall or a court; however, the deputy did call the Marshall's office after the sale was concluded and was told about the bankruptcy filing, at which time the Deputy Marshall voided the sale. The court held that the IRS willfully violated the automatic stay because the Deputy Marshall refused to halt the sale once notified by the debtor of the filing. However, because the debtor failed to show any damages from the attempted sale, the debtor's motion for sanctions and damages was dismissed. ***In re* Clarkson, 168 B.R. 93 (Bankr. D. S.C. 1994)**.

The debtor's Chapter 13 plan was confirmed in December 1989 and the confirmation order included the provision that the bankruptcy estate property reverted to the debtor upon confirmation. The debtor filed a joint tax return for 1992 with the debtor's spouse who had also filed for bankruptcy (see case below) and claimed a refund. The IRS intercepted the refund and applied it to taxes owed by the debtor for 1990. The debtor argued that the interception of the refund was a violation of the automatic stay. The court held that because the refund was post-petition property and was applied to a post-petition debt, the automatic stay did not apply. ***In re* Hudson, 168 B.R. 448 (Bankr. S.D. Ga. 1994)**.

The debtor's spouse in the above case had filed for bankruptcy in March 1993. The debtor sought damages from the IRS for the interception of the 1992 refund described above. The IRS argued that it was entitled to setoff the pre-petition 1992 refund against the debtor's pre-petition 1990 tax liability. The court held that the right of setoff was subject to obtaining a prior court order; therefore, the interception of the refund was a violation of the automatic stay. The court also held that the sovereign immunity of the IRS was waived by the IRS claim in the case and awarded the debtor attorney's fees incurred in bringing the action against the IRS. However, the court implied that the IRS would be allowed to keep the refund under its right of setoff. ***In re* Hudson, 168 B.R. 449 (Bankr. S.D. Ga. 1994)**.

DISCHARGE. The debtor had obtained a judgment that a late filed claim of the IRS was disallowed; however, the IRS sent the debtor an assessment notice for the taxes involved in the disallowed claim during the appeals of the disallowance ruling. The IRS, however, told the debtor that it would not attempt any enforcement of the assessment until the appeal was settled. The Bankruptcy Court held that the assessment violated the discharge injunction of Section 524(a) but that the assessment would be allowed to stand because no harm was done to the debtor. The District Court noted that holding was also justified because the confirmed plan provided for payment of post-confirmation assessments. ***In re* Norris Grain Co., 168 B.R. 264 (M.D. Fla. 1994), *aff'g*, 138 B.R. 1004 (Bankr. M.D. Fla. 1992)**.

The taxes involved were assessed 1489 days before the filing of the bankruptcy petition. The debtor filed an offer to compromise within 240 days after the assessment and the offer was pending 653 days before rejection by the IRS. Thus, under Sections 507(a)(7)(A)(ii) and 523(a)(1)(A), the taxes were dischargeable because the total of 240 days plus 30 plus the length of the pending compromise (923 days) was less than the number of days from the date of assessment to the date of the petition (1489 days). After the first one was rejected, the debtor filed a second offer of compromise which was pending on the date of the petition, but the second offer was made more than 240 days after the assessment. The IRS argued that the first offer of compromise suspended the running of the first 240 day period so that the second offer would be considered as filed within the 240 days after assessment. The court rejected this argument as not supported by the statutes involved and held that the taxes were dischargeable. ***In re* Callahan, 168 B.R. 272 (Bankr. D. Mass. 1993)**.

The debtor failed to file and pay taxes owed for 1974-1981. Pursuant to a plea bargain agreement, the debtor pled guilty, under I.R.C. 7203, to willfully failing to file an income tax return for 1976 in exchange for dropping other charges. The debtor also filed returns for the missing years but only paid the taxes due for one year. The IRS argued that the taxes still owed for the 1974-1981 taxable years were nondischargeable under Section 523(a)(1)(C) for willful attempt to evade taxes. The court held that the debtor's guilty plea was an admission only of the element of willfulness of the failure to file and pay taxes but did not prove that the debtor made any act or commission to evade taxes; therefore, the taxes were dischargeable. The District Court reversed, holding that the debtor's failure to file income tax returns and to pay the taxes were sufficient to bar discharge of the taxes. The appellate court affirmed the District Court. **Matter of Toti, 24 F.3d 806 (6th Cir. 1994), *aff'g*, 149 B.R. 829 (E.D. Mich. 1993), *rev'g*, 141 B.R. 126 (Bankr. E.D. Mich. 1992)**.

LIQUIDATING TRUSTS. The IRS has issued revised conditions for considering whether it will issue advance rulings classifying entities created under Chapter 11 plans as liquidating trusts. **Rev. Proc. 94-45, I.R.B. 1994-28, 124, *modifying*, Rev. Proc. 91-15, 1991-1 C.B. 484**.

REFUND. The debtor sought to offset an IRS tax claim by the amount of refund the debtors claimed in a 1992 filing of the 1986 and 1987 returns. Although the debtors' 1992 refund claim was timely under I.R.C. § 6511(a), the refund claim was untimely under I.R.C. § 6511(b)(2)(A) because the refund claim was not made within three years after the debtors paid any taxes against which the refund claim was made. ***In re* Ford, 168 B.R. 173 (Bankr. S.D. Ohio 1994)**.

CONTRACTS

GUARANTY. The plaintiff was a supplier of raw potatoes and the defendant was a dealer in processed potato products. The defendant had asked the plaintiff to sell potatoes to a processor but the plaintiff declined because of the processor's poor credit record. The plaintiff claimed that the defendant offered to guarantee any sale of potatoes to the processor and the plaintiff then agreed to the sale. The processor failed to pay for the potatoes and filed for bankruptcy and the plaintiff sued for recovery on the guaranty. The defendant asserted the statute of frauds as a defense because the guaranty was not in writing. The court held that the statute of frauds did not apply because the jury found that the defendant benefited from the guaranty. The defendant also argued that the guaranty should be discharged because the plaintiff failed to protect the collateral, the processor's accounts receivable, because the plaintiff failed to timely file a notice to preserve its rights to the Perishable Agricultural Commodities Act trust. The court agreed. **Century 21 Products v. Glacier Sales, 875 P.2d 1238 (Wash. Ct. App. 1994)**.

FEDERAL AGRICULTURAL PROGRAMS

BORROWER'S RIGHTS-*ALM* § 11.01[2][g].* The defendants had obtained secured installment loans from the FmHA and had defaulted on the loans in 1983. The parties had made several attempts to restructure the debt by selling the collateral but without much success. The court found that the FmHA was enjoined from accelerating farm debts by the two *Coleman* cases and FmHA administrative decisions for a total of 1015 days between the date of the defendants' defaults and the FmHA filing of a foreclosure suit. The defendants argued that the suit was barred by the six year statute of limitations, 28 U.S.C. § 2415(a). The court held that the statute of limitations was tolled during the 1015 days, under 28 U.S.C. § 2416(b), because the defendants' were exempt from legal process during the court and administrative injunctions. The court also held that the statute barred only the installment payments due before six years and 1015 days before the filing and not the whole debt. **U.S. v. Rich, 853 F. Supp. 341 (E.D. Cal. 1994)**.

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MEAT AND POULTRY. The FSIS has adopted as final regulations governing mandatory information labeling on meat and poultry products. **59 Fed. Reg. 40209 (Aug. 8, 1994)**.

PESTICIDES-*ALM* § 2.04.* The plaintiff purchased the herbicide Beacon manufactured by the defendant for control of the plaintiff's Johnson grass. The herbicide apparently failed to control the grass and the plaintiff sued for damages to the crop based on breach of express warranty and redhibition (misrepresentation) of the sale of a defective herbicide. The defendant argued that the actions were preempted by FIFRA. The court held that the action was not preempted by FIFRA. **Prather v. Ciba-Geigy Corp., 852 F. Supp. 530 (W.D. La. 1994)**.

POULTRY PRODUCTS. Under a recently enacted California statute, Cal. Food & Agric. Code § 26661, poultry products could only be labeled as "fresh" if the products had been stored above 25 degrees. Under the federal Poultry Products Inspection Act (PPIA), 21 U.S.C. §§ 451-470, and USDA regulations, poultry products may be labeled as fresh if stored between 0 and 40 degrees. The plaintiffs argued that the PPIA preempted the state statute. The state argued that its statute only prohibited certain labeling and did not add any labeling requirement or require a different label than the federal act. The court held that a prohibition was equal to a requirement and that, because the state law prohibited a label that the federal law allowed, the state requirement was in addition to and different from the federal requirement and was preempted. The court also held that, because the state labeling requirement was not severable from the similar requirements for advertising and other marketing methods, the state was enjoined from enforcing any of the statute. **National Broiler Council v. Voss, 851 F. Supp. 1461 (E.D. Cal. 1994)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION-*ALM* § 5.04[4].* The decedent's will bequeathed the residuary estate to four charitable organizations and one individual. The will stated that estate and inheritance taxes were to be paid from the residuary estate without adjustment among the residue beneficiaries. The executor obtained a probate court order, with the consent of the individual residual legatee, allocating all of the taxes to the individual's share. The court held that the charitable deduction for the four charitable bequests would be reduced by the estate and inheritance taxes because the decedent's will was unambiguous and the probate court order was obtained through an ex parte non-adversarial proceeding. **Est. of McKay v. Comm'r, T.C. Memo. 1994-362**.

DISCLAIMERS-*ALM* § 5.02[6].* In 1965 the decedent's parent established a trust for the decedent in which the decedent had a testamentary power to appoint the trust corpus to persons including the decedent's spouse. The decedent's will appointed the trust corpus to a marital trust. The surviving spouse claimed to have learned about both trusts after the death of the decedent and filed a written disclaimer of any interest in the marital trust within nine months after learning about the trusts. The IRS ruled that the disclaimer was valid if the surviving spouse learned about the trusts less than nine months before making the disclaimer, but the IRS would not rule on the factual question of when the surviving spouse learned about the trusts. **Ltr. Rul. 9431022, May 6, 1994**.

GENERATION SKIPPING TRANSFERS-*ALM* § 5.04[6].* A testamentary trust became irrevocable prior to September 1985 and had several current beneficiaries. The trustees proposed to obtain a state court order separating the trust into pro rata trusts for each beneficiary with the same terms as the original trust, except that different trustees may be eventually chosen for the trusts. The IRS ruled that the partition of the trust would not result in income tax recognition or subject the trusts to GSTT or gift tax and the basis and holding period of trust assets would carry over to the new separate trusts. **Ltr. Rul. 9430014, April 28, 1994**.

POWER OF APPOINTMENT. The decedent had executed a joint will with a predeceased spouse, conveying their ranch to the survivor, the decedent, with remainders to charities and a nephew. The survivor had the right to encumber or mortgage any of the property, to execute mineral leases, and to convey royalties on part of the property. The decedent remarried and used the property to secure a loan, the proceeds of which were given to the new spouse. The decedent also conveyed mineral interests to the spouse by royalty deed. The IRS ruled that the decedent had a general power of appointment over the ranch sufficient to include it in the decedent's gross estate. **Ltr. Rul. 9431004, April 26, 1994**.

STATUTE OF LIMITATIONS. In 1981 the decedent had made gifts of mineral rights and filed a gift tax return valuing the property at $14,769. In 1985, the decedent's estate tax return listed the gifts as adjusted taxable gifts at the value claimed on the gift tax return. In 1986, the IRS revalued the mineral rights gifts at $135,750 and assessed additional estate tax. The estate argued that the revaluation of the gifts was barred by the statute of limitations on the gifts. The court held that the estate tax statute of limitations applied and that the gift tax statute of limitations did not apply because no gift tax was assessed. **Evanson v. U.S., 94-2 U.S. Tax Cas. (CCH) ¶ 60,174 (8th Cir. 1994)**.

TAX LIEN. During the administration of the estate the executor pledged estate property as security for loans used to pay federal and state estate taxes. The loans were eventually repaid with other loans and the collateral was sold to third parties. Several years later, the IRS claimed a lien on the sold properties based on unpaid estate taxes. Under I.R.C. § 6324(a)(1), a federal estate tax lien is divested as to property which is used to pay charges against the estate and administrative expenses, if approved by a court of appropriate jurisdiction. Although the stipulated facts recited that the estate property was used to pay estate taxes under approval of a state probate court, the IRS argued that the value of the property in excess of the loan amount remained subject to the lien. The court held that partial divestment was appropriate only if a portion of the loan proceeds was used to pay charges and administrative expenses, not if only a portion of the value of the property is used as collateral. Therefore, the estate tax lien on the properties was divested by the loan which was entirely used to pay federal and state estate taxes. **United States v. Davis, 94-2 U.S. Tax Cas. (CCH) ¶ 60,175 (W.D. Mo. 1994)**.

VALUATION. The decedent died in 1985 and the estate included an automobile salvage yard and a fill dirt dump. The estate tax return in 1988 valued the property at $735,000 and did not include any reduction for environmental problems with the land. In 1990 an EPA investigation found the property to be contaminated with automobile oil and grease, leaking underground tanks, groundwater contamination and regulated solid waste. Because of a lack of evidence as to the amount of contamination which occurred between 1985 and 1990, the court allowed a discounting of the estate tax value of the property by the estimated costs to clean the soil, remove underground tanks and to conduct hydrogeological studies. **Est. of Necastro v. Comm'r, T.C. Memo. 1994-352**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The taxpayer was a family farm corporation which filed a consolidated return with its subsidiaries. Because the gross income of the corporations exceeded $25 million, the corporations were required to use the accrual method of accounting and to maintain a suspense account. Two of the subsidiaries had a contraction of income from farming in one taxable year. The taxpayer argued that because the gross income test for use of accrual accounting was determined at the consolidated level, the determination of contraction of farm income should also be determined at the consolidated level. The IRS ruled that the statute, I.R.C. § 447(i)(3), required that the reduction in gross receipts from farming had to be measured on a separate corporation basis. **Ltr. Rul. 9428004, April 7, 1994**.

BAD DEBT DEDUCTION-*ALM* § 4.03[7].* The taxpayer was a physician who had invested in a company developing solar heating systems. When the company needed additional capital, the taxpayer personally guaranteed a note given by the company. The taxpayer claimed a business bad debt deduction for the amount paid on the guarantee when the company defaulted. The court held that because the taxpayer did not do business with the company and was not employed by the company, the taxpayer was limited to a nonbusiness bad debt deduction. **Weber v. Comm'r, T.C. Memo. 1994-341**.

DUES DEDUCTION. The IRS has issued proposed regulations disallowing the dues deduction for dues paid to luncheon clubs, airline and hotel clubs and any organization which has the principal purpose of conducting entertainment activities or gaining access for the members to entertainment facilities. the regulations could allow the deduction for service club dues. The regulations reflect the changes made by OBRA 1993. **59 Fed. Reg. 41414 (Aug. 12, 1994), *amending* Treas. Reg. § 1.274-2**.

DEPRECIATION-*ALM* § 4.03[4].* The IRS has issued tables, revised for inflation, detailing the limitation on depreciation deductions for automobiles first placed in service during 1994:

Tax Year	Amount
1st tax year	$2,960
2d tax year	4,700
3d tax year	2,850
Each succeeding year	1,675

The IRS also issued tables providing the amounts to be included in income for automobiles first leased during 1994. **Rev. Proc. 94-53, I.R.B. 1994-32, 18**.

HOBBY LOSSES-*ALM* § 4.05[1].* The taxpayer was an airline pilot who purchased a farm near the taxpayer's parents' farm. The court held that the taxpayer operated the farm with the intent to make a profit because the taxpayer used innovative farming techniques, followed established farming practices, spent all non-flight time on the farm, performed all the labor, and intended to retire on the farm and live off the income. The court noted that the losses were attributable to start-up costs and problems beyond the taxpayer's control. Although the court found that the expectation of profit was not reasonable, the court held that the taxpayer had an honest intent to farm the land for profit. **Buckner v. Comm'r, T.C. Memo. 1994-376**.

NET OPERATING LOSS. The taxpayer was a parent corporation in an affiliated group which acquired an S corporation. In the post-acquisition tax year, the subsidiary S corporation business had a net operating loss which contributed to the taxpayer's net operating loss on the consolidated return. The taxpayer attempted to carry the net loss back to the pre-acquisition tax year. The court held that the taxpayer could not carry the net loss attributable to the S corporation back to pre-acquisition tax years. **Amorient, Inc. v. Comm'r, 103 T.C. No. 11 (1994)**.

SAFE HARBOR INTEREST RATES
September 1994

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR 5.86	5.78	5.74	5.71	
110% AFR	6.46	6.36	6.31	6.28
120% AFR	7.06	6.94	6.88	6.84
		Mid-term		
AFR 7.05	6.93	6.87	6.83	
110% AFR	7.77	7.62	7.55	7.50
120% AFR	8.49	8.32	8.24	8.18
		Long-term		
AFR 7.63	7.49	7.42	7.38	
110% AFR	8.41	8.24	8.16	8.10
120% AFR	9.19	8.99	8.89	8.83

S CORPORATIONS-*ALM* § 7.02[3][c].*

BUILT-IN GAINS. The taxpayer was a corporation engaged in the production and harvesting of timber. The corporation had two subsidiaries which it planned to liquidate so that the taxpayer would be eligible for the S corporation election. The taxpayer used the accrual method of accounting and the trees harvested by the taxpayer had growing cycles of 60 and 100 years. The IRS ruled that the income derived from the cutting of timber and the sale of the logs during the recognition period (10 years from the date of the election) would not constitute recognized built-in gain if the timber is cut during the recognition period.

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The sale of logs cut before the recognition period and sold during the recognition period would produce built-in gain. **Ltr. Rul. 9430026, May 2, 1994**.

SALE OF RESIDENCE. The taxpayer sold a residence and purchased a new residence when the taxpayer was over 55 years old. The taxpayer's tax return preparer made the I.R.C. § 121 election to exclude the gain from the sale of the residence. Several years later, the taxpayer sold the second residence and purchased a third and claimed the Section 121 election again. The IRS denied the second election because only one Section 121 election is allowed each taxpayer. The taxpayer argued that the first election was an error and sought revocation of the election on the grounds the sale and reinvestment provisions of I.R.C. § 1034 were mandatory and would have covered the gain involved. The court held that the election could not be revoked more than three years after it was made and could not be revoked because of reliance on the tax return preparer. **Robarts v. Comm'r, 103 T.C. No. 5 (1994).**

While the taxpayer was married, the taxpayer and spouse sold their jointly owned residence and elected on a joint return to defer the gain because the couple intended to purchase a new residence within two years. However, the couple divorced and only the taxpayer purchased a new residence. The taxpayer attempted to amend the original joint return to include in income the gain from the spouse's share of the residence but the spouse refused to sign the return. The IRS assessed the taxpayer for the spouse's nondeferrable gain. Although the court agreed that the taxpayer and spouse each realized half of the gain from the sale of the joint residence and each had the ability to purchase a separate residence to qualify for deferring each's share of the gain, the taxpayer was still liable for the spouse's gain because the filing of the joint return made each jointly and several liable for the gain. **Murphy v. Comm'r, T.C. Memo. 1994-364**.

PROPERTY

FENCES. The plaintiff and defendant were adjoining landowners. The fence between the properties became worn and the plaintiff requested that the defendant replace half of the fence while the plaintiff replaced the other half. When the defendant refused, the plaintiff notified the township board which ordered the defendant to replace one-half of the fence. When the defendant still failed to comply, the board gave the plaintiff permission to obtain bids for replacement of one-half of the fence, selected the lower bid and had the fence replaced, with the plaintiff paying the contractor. The plaintiff sought recovery, under Minn. Stat. § 344.03 of double the cost of replacing the defendant's half of the fence. The defendant argued that the statute did not apply because the defendant's land adjoining the fence was not used or improved. The court held that the statute only required that some portion of the land adjoining the fence needed to be improved or used. The defendant also argued that because no prior notice of the first fence viewing was given to the defendant, the statute could not be enforced against the defendant. The court held that the statute required strict compliance with the notice requirements and that any post-fence viewing statements by the defendant did not waive the jurisdiction error of lack of notice. Therefore, the award of double costs was improper and void. **Rice v. Kringler, 517 N.W.2d 606 (Minn. App. 1994)**.

SECURED TRANSACTIONS

DRAGNET CLAUSE. The debtors purchased fertilizer and chemicals on credit from the creditor over several years. Each year the debtors would grant the creditor a security interest in farm property and would pay off the loan at the end of the year. In 1992, the debtors obtained fertilizer and chemicals from the creditor but filed for bankruptcy before the security agreement was signed. The creditor filed a secured claim for the 1992 debt, arguing that the dragnet clause in the 1991 security agreement covered the 1992 loan. The District Court had held that the dragnet clause did not apply to the 1992 debt because the course of conduct between the parties demonstrated that a new security agreement was required each year. The appellate court reversed, holding that the 1991 dragnet clause was clear and unambiguous and applied to the 1992 debt if, as required under Wisconsin law, the 1992 debt related to the 1991 debt. The court held that because the 1992 debt was for the same purposes as the 1991 debt and was identical in form and substance, the 1992 debt was related to the 1991 debt and was subject to the 1991 dragnet clause. **Matter of Kazmierczak, 24 F.3d 1020 (7th Cir. 1994)**.

STATE TAXATION

OPEN SPACE. The plaintiff was a Virginia corporation owned by a Swiss corporation. The plaintiff owned open land in Texas and applied for valuation as open land under Tex. Tax Code § 23.52-3. The application was denied because Tex. Tax Code § 23.56 made open space valuation unavailable to corporations which are required by state or federal law to register their ownership of land because of foreign ownership of the corporation. The plaintiff argued that the statute violated Tex. Const. art. VIII, § 1-d(a) which provided for the valuation of open space land at its use value. The court held that the purpose of the constitutional provision was the preservation of open land and that the Section 23.56 limitation based on ownership was not rationally related to the state's interest in preserving open space; therefore, the statute was unconstitutional. **HL Farm Corp. v. Self, 877 S.W.2d 288 (Tex. 1994)**.

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WATER

EASEMENT. A married couple purchased a ranch with water rights. The wife's parents were co-signers of the purchase and also owned a neighboring ranch (the Glenn ranch). The husband's parents also owned a neighboring ranch (the Kellum ranch). The couple extended the irrigation system to the Glenn ranch and received full title to their ranch. All three ranches were run as one unit but not as a formal partnership. The water rights on the couple's ranch were amended to include the Glenn and Kellum ranches with all of the water coming from one source on the couple's ranch. The plaintiff acquired the Glenn ranch through foreclosure and the defendant acquired the couple's and Kellum ranches also through foreclosure. The plaintiff argued that it owned a portion of the water rights allocable to the Glenn ranch under the amended water rights and that the plaintiff had an implied easement or easement by estoppel for transport of the water right over the defendant's land. The court held that the amendments to the water rights contract did include a grant of water to the Glenn ranch; however, because the ranches were maintained in separate ownership, no implied easement was created. The court also held that an easement by estoppel was not created because the original owners made no agreement to create an easement for transport of the water to the Glenn ranch. **Wayt v. Buerkel, 875 P.2d 499 (Or. App. 1994)**.

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