# CASES, REGULATIONS AND STATUTES

## ANIMALS

**CATTLE**. The defendant had allowed a third party to bring a heifer on to his premises to use the defendant's butchering equipment. While the heifer was being unloaded it got loose and in the process of capturing the animal, the plaintiff was injured. The plaintiff sued under the Animal Control Act, Ill. Rev. Stat. ch 8, ¶ 351, claiming the defendant was liable as an keeper of the heifer. The court held that the defendant was not a keeper of the animal because the defendant exercised no care, custody or control over a period of time. The plaintiff also claimed liability under the Domestic Animals Running at Large Act, Ill. Rev. Stat. ch. 8, ¶ 1, again claiming that the defendant was a keeper of the heifer. The court also rejected this argument in that the defendant never took control of the heifer since it escaped before entering on to the property. **Gahm v. Cave, 551 N.E.2d 779 (Ill. App. 1990)**.

## BANKING

**ACCELERATION OF LOAN**. Defendant bank received a check for the sale of seed corn addressed to plaintiff debtor and applied the full amount of check plus the balance of the debtor's checking account with bank towards loan due almost seven months later. The debtor filed an action in tort for wrongful negotiation of the check. Under the loan agreement, the bank had the right to accelerate the loan if the bank deemed itself unsecure as to the loan. The court upheld the trial court's finding that there was substantial evidence to support the bank's finding of insecurity in that the debtor had a negative net worth. **Tolander v. Farmers Nat'l Bank, 452 N.W.2d 422 (Iowa 1990)**.

## BANKRUPTCY

### GENERAL

AVOIDABLE LIENS. Debtor had received title to homestead under divorce agreement which gave former spouse a mortgage on payments to be made to the spouse by the debtor. The court held that the mortgage was not avoidable as a judicial lien because the lien was consensual. ***In re* McCormmach, 111 B.R. 330 (Bankr. D. Or. 1990)**.

FRAUDULENT TRANSFERS. The foreclosure sale of the debtor's home at 69.5 percent of the fair market value was not alone sufficient reason to set aside foreclosure sale as a fraudulent transfer. **Barrett v. Commonwealth Fed. Sav. and Loan, 111 B.R. 78 (E.D. Pa. 1990), vac'g and rem'g 104 B.R. 688 (Bankr. E.D. Pa. 1989)**.

DISCHARGE. The debtor was a corporation which had obtained a confirmed plan in a voluntary Chapter 11 case which provided for deferred payment of federal taxes. The debtor failed to pay the taxes due under the plan and a subsequent Chapter 11 case was filed. IRS argued that its unpaid claims from the first case retained their priority status in the second case. The court held that under 11 U.S.C. § 1141(d)(1), a corporate debtor is discharged by the confirmation of a Chapter 11 plan from all claims which arose before confirmation, including federal taxes. Thus, the IRS had only a general unsecured claim. **Official Committee of Unsecured Creditors v. U.S., 111 B.R. 158 (N.D. Ill. 1990), rev'g and rem'g 103 B.R. 177 (Bankr. N.D. Ill. 1989)**.

### FEDERAL TAXATION

ALLOCATION OF PLAN PAYMENTS FOR TAXES. Allocation of Chapter 13 plan payments to pay taxes of most recent years first not allowed because payment of taxes under Chapter 13 plan was involuntary. ***In re* Davis, 111 B.R. 234 (Bankr. E.D. Mo. 1990)**.

TAX LIENS. Debtors received a discharge of federal taxes in Chapter 7. The court held that the tax liens against the debtor's property were not extinquished by the discharge and remained valid after discharge. ***In re* Isom, 90-1 U.S.T.C. ¶ 50,216 (9th Cir. 1990), aff'g 95 B.R. 148 (Bankr. 9th Cir. 1989)**.

WITHHOLDING TAXES. The president and chief operating officer of the debtor corporation operated the business post-petition until replaced by the trustee. During this time, the president withheld employment taxes and placed the funds in the debtor's general operating account. The trustee was unaware that the general operating account contained the withheld amounts and the trustee spent all of the account on other operating expenses. After the IRS assessed the president the 100 percent penalty for failing to pay the withheld taxes, the president brought an action against the trustee for breach of duty and contribution for failure to pay the withheld taxes. The court held that because the taxes were incurred post-petition, the taxes were not held in trust but were part of the estate property and subject to payment under the administrative expenses priorities. In addition, the court held that the funds were not held in trust because the funds were not segregated from the general operating funds. Thus, the trustee did not breach any duty to apply the funds to payment of taxes. ***In re* Major Dynamics, Inc., 897 F.2d 433 (9th Cir. 1990), aff'g unrep. D. Ct. dec. aff'g 59 B.R. 687 (Bankr. S. D. Cal. 1985)**.

## CONTRACTS

**TIMBER**. Plaintiffs sold to the defendants "all timber standing, lying, growing and being" on certain timberland with the total payment based on the estimated number of cords available on the land. The contract specified that the defendants had 24 months to remove the timber; after such time the remaining timber reverted back to the plaintiffs. The defendants did not remove all of the timber during the 24 months and paid the plaintiffs only for the wood removed. The court held that because the contract conveyed all of the wood to the defendants and identified the quantity of wood involved in the contract price, the defendants were required to pay the full contract price even though they did not remove all of the wood. **Chavers v. Kent Diversified Products, Inc., 389 S.E.2d 261 (Ga. App. 1989)**.

# FARM CREDIT SYSTEM

**FEDERAL FARM CREDIT BANKS FUNDING CORPORATION**. The FFCBFC brought an action under the Administrative Procedures Act(APA) against the Farm Credit Administration (FCA) for improper issuance of Accounting Bulletin 89-2 which required FCSIC to list amounts held in the FFCBFC insurance fund as an expense instead of as a restricted asset as was the practice of FFCBFC before issuance of AB 89-2. The FFCBFC and FCA disagreed as to which method was in keeping with GAAP. The court held that AB 89-2 was not an interpretative regulation but was substantive and FCA was required by the APA to give prior notice of the rulemaking and an opportunity for public comment. Therefore, AB 89-2 was invalid. **Federal Farm Credit Banks Funding Corp. v. Farm Credit Admin., 731 F.Supp. 217 (E.D. Va. 1990)**.

# FEDERAL AGRICULTURAL PROGRAMS

**ALIEN AGRICULTURAL WORKERS**. The Secretaries of Agricultural and Labor have announced that Office of Management and Budget has approved the paperwork requirements of the final rules governing appeals of the determination of the number of additional aliens who may be admitted to fill a shortage of agricultural workers. The appeal rules became effective upon approval of the OMB on April 17, 1990. **55 Fed. Reg. 14231 (Apr. 17, 1990)**.

**CITRUS**. APHIS has issued a proposed rule allowing certain movements of untreated oranges, tangerines and grapefruit from Mexico through Galveston, Texas for import. **55 Fed. Reg. 15232 (Apr. 23, 1990)**.

**CROP INSURANCE**. The FCIC has issued proposed regulations adding procedures and requirements for nonstandard assigned yields for determining federal crop insurance premium rates. **55 Fed. Reg. 17276 (Apr. 24, 1990), adding 7 C.F.R. § 400.301 *et seq*.**

**EXPORT PROGRAMS**. The CCC has issued proposed regulations governing the payment of bonuses in connection with the export of agricultural commodities under the Export Enhancement Program. **55 Fed. Reg. 17443 (Apr. 25, 1990)**.

The CCC has issued proposed regulations amending the Targeted Export Assistance program regulations to incorporate requirements previously found only in TEA agreements and guidelines. **55 Fed. Reg. 17618 (Apr. 26, 1990), amending 7 C.F.R. Part 1485**.

**MILK**. The AMS has adopted as a final rule the removal of the plant location adjustment provision from the marketing orders for upper Florida, Tampa Bay and southeastern Florida marketing areas. **55 Fed. Reg. 17589 (Apr. 26, 1990)**.

**PEANUTS**. The AMS has issued a proposed rule increasing the assessment on peanuts under Marketing Agreement 146 for 1990-91 crop year to $0.52 per ton. **55 Fed. Reg. 14096 (Apr. 16, 1990)**.

**SWINE**. The APHIS has issued a proposed rule removing Indiana and Maryland from the list of states which permit feeding of treated garbage to swine. Alaska was removed from the list of states which issue garbage treating licenses under agreement with APHIS. **55 Fed. Reg. 15236 (Apr. 23, 1990)**.

**VIRUSES, SERUMS AND TOXINS**. The APHIS has issued proposed rules for data requirements for the use of autogenous biologics. **55 Fed. Reg. 15233 (Apr. 23, 1990)**.

# FEDERAL ESTATE AND GIFT TAX

**DISCLAIMERS**. At the decedent's death, property from the decedent's predeceased spouse's residuary trust passed by testamentary power of appointment exercised by the decedent to grandchildren along with the corpus of a trust established by the decedent. The grandchildren were ruled to have effective disclaimers of a fractional interest in real estate under the decedent's trust and the property passed by way of the decedent's power of appointment. **Ltr. Rul. 9014005, Dec. 22, 1989**.

After suffering a stroke, the surviving spouse of the decedent executed a power of attorney appointing two sons as attorneys-in-fact which was not be affected by the surviving spouse's subsequent disability or incapacity. Before the surviving spouse's death, the sons executed disclaimers of the surviving spouse's interest in two trusts received from the decedent under the decedent's will. IRS held that because the power of attorney was a durable power of attorney under state law, the disclaimers were effective for federal estate tax purposes. **Ltr. Rul. 9015017, Jan. 10, 1990**.

**GENERATION SKIPPING TRANSFERS**. The decedent held at death a power of appointment of an irrevocable trust established by the will of the decedent's predeceased spouse. The trust was irrevocable on September 25, 1985. IRS ruled that the exercise of the power of appointment did not postpone or suspend the vesting of any interest in the trust and that the trust was not subject to generation skipping transfer tax. **Ltr. Rul. 9014005, Dec. 22, 1989**

**GIFTS WITHIN THREE YEARS OF DEATH**. The decedent had established a revocable trust with the decedent as sole income beneficiary. The decedent also had the power to direct the trustee to pay trust principal as the decedent directed. At the decedent's death, the trust property passed to trusts for the decedent's surviving spouse or members of the decedent's family. The decedent directed the trustee to distribute trust corpus to individuals within three years of the decedent's death. IRS ruled that the trust property was includible in the decedent's gross estate under I.R.C. § 2038 because the decedent held the power at death to amend or revoke the trust. IRS also ruled that the distributions directed by the decedent from the trust were relinquishments of the decedent's right to revoke the trust as to the property transferred and therefore each distribution was a gift by reason of a termination of the decedent's right to revoke the trust and was subject to I.R.C. § 2038(a)(1). Because the pre-death distributions would have been includible in the decedent's gross estate under section 2038, the distributions were includible in the decedent's gross estate. IRS rejected the

estate's arguments that (1) because the decedent exercised so much control over the trust assets, the pre-death distributions should be considered as having been made directly from the decedent, (2) the trustee was only acting as an agent for the decedent and (3) the distributions were subject to inclusion in the decedent's gross estate under section 2041 (retained power of appointment) and not section 2038. IRS noted that section 2041 does not apply if the decedent's interest in property is includible in the estate under section 2038. **Ltr. Rul. 9015001, Dec. 29, 1989**.

**INSTALLMENT PAYMENT OF ESTATE TAX**. Decedent held a one-third beneficial interest in a trust which owned timber land. The trustee, an independent bank, had general powers to mange and invest the trust property subject to requirements that the trustee consult with the beneficiaries regarding management of the timber land. One of the beneficiaries, a brother of the decedent, also owned half of a management company which provided services to the trustee in managing the timber land and marketing of timber harvested. IRS ruled that the decedent's interest in the trust would be treated as an interest in a joint venture with the trustee and brother of the decedent acted as agents for the decedent in managing the timber land. Because the decedent shared in the income and risks of the enterprise, the decedent's interest in the trust qualified as an interest in a closely held business for purposes of installment payment of estate tax. **Ltr. Rul. 9015003, Dec. 22, 1989**.

**MARITAL DEDUCTION**. The estate was not allowed a marital deduction where the estate tax return failed to identify the life income interest passing to the surviving spouse and the box for making the election was marked "no." **Est. of Higgins v. Comm'r, 897 F.2d 856 (6th Cir. 1990), aff'g 91 T.C. 61 (1989)**.

**TRANSFERS WITH RETAINED INTERESTS**. The grantor had established a five year trust in which the grantor's spouse was trustee and the grantor was the sole income beneficiary. The grantor proposed to amend the trust to make an unrelated party trustee and to relinquish the power to appoint seven-eighths of the trust property if the grantor died after the trust had been in effect for one year but before the trust terminated. IRS ruled that the relinquishment of the power to appoint seven-eighths of the trust property was a gift if the grantor dies before the trust terminates and that as amended, the grantor's interest in the trust was a qualified trust income interest such that when the trust terminates after five years, the grantor will not be considered to have made a gift either as of the date of the relinquishment of the power to appoint seven-eighths of the trust property or upon termination of the trust. **Ltr. Rul. 9012034, Dec. 21, 1989**.

The grantor had established a trust in which the grantor was trustee and received the income from the trust for the earlier of thirteen years or the grantor's death. If the grantor died before thirteen years, the trust corpus reverted to the grantor's estate. After thirteen years the trust corpus would pass to the grantor's sons. The grantor reported and paid gift tax on the transfer. The grantor later amended the trust to (1) make the sons cotrustees, (2) decrease the length of the trust to ten years, (3) decrease the grantor's reversionary interest to one-fourteenth after five years, and (4) allow the replacement of trust corpus with productive property. IRS ruled that the reduction in the length of the trust and the reduction in the reversionary interest after five years were taxable gifts. The trust was ruled a "qualified trust income interest" and if the grantor survives the trust, the grantor would not be treated as having made a gift after five years or when the trust terminates after ten years. **Ltr. Rul. 9012057, Dec. 27, 1989**.

The grantor had established an irrevocable ten year trust with S corporation stock as corpus and the grantor as sole income beneficiary. The common stock of the S corporation is to be reissued in equal parts as voting and nonvoting shares. IRS ruled that because the value of the grantor's reversionary interest did not exceed 25 percent of the value of the income interest, the grantor will not be considered to have retained the enjoyment of the nonvoting stock transferred to the trust. **Ltr. Rul. 9015024, Jan. 11, 1990**.

**TRUSTS**. A shareholder of an S corporation transferred common stock to an irrevocable trust for ten years with the shareholder as sole income beneficiary. The shareholder had the power to require replacement of unproductive trust property with productive property. If the shareholder dies before ten years, the trust corpus passes to the shareholder's estate. After ten years, the trust corpus is distributed in trust to another person. The common stock of the S corporation is to be reissued in equal parts as voting and nonvoting shares. IRS ruled that the shareholder would be treated as the owner of the trust and that the trust was a qualified subchapter S trust. IRS also ruled that because the termination of the shareholder's interest in the trust was subject to conditions, the shareholder's death or ten years, beyond the shareholder's control, the transfer of the stock to the trust was subject to federal gift tax in the year of the transfer. The value of the gift depended upon the shareholder's exercise of the power to require the trust property to be productive. **Ltr. Rul. 9015024, Jan. 11, 1990**.

# FEDERAL INCOME TAXATION

**BAD DEBTS.** Taxpayer purchased a 49 percent interest in a corporation owning a car sales business. The taxpayer purchased the interest in order to rehabilitate the business and resell the business to the other stockholder at a profit. During the course of business, the taxpayer loaned money to the corporation which was entered as a loan on the corporate books and for which notes were issued. The court held that the loss on the loans when the business went out of business was a deductible bad debt loss where the court found that the taxpayer was in the business of buying businesses with the intent to resell them for a profit. ***In re* Farrington, 111 B.R. 342 (Bankr. N.D. Okla. 1990)**.

**COST-SHARE PAYMENTS**. IRS ruled that the payments received by a lessor of property under the Watershed Protection and Flood Prevention Act, 16 U.S.C. § 1001 *et seq.*) were excludible from gross income of the lessor. **Ltr. Rul. 9014041, Jan. 5, 1990**.

**DEPRECIATION.** IRS ruled that unless the taxpayer elects not to use the MACRS, the class life and recovery periods of Rev. Rul. 87-56, 1987-2 C.B. 674 must be used. If the taxpayer elects out of MACRS, the amount of depreciation may be based on the number of hours the depreciated assets were used during the taxable year but cannot exceed, during the first two-thirds of the property's useful life, the total allowance permitted

under the declining balance method. **Ltr. Rul. 9015014, Jan. 9, 1990**.

**INFORMATION RETURNS.** IRS has announced proposed regulations governing the reporting of real estate transactions which will replace the existing temporary regulations on January 1, 1991. The proposed regulations will apply the reporting requirements to all transfers of present and future interests in (1) improved and unimproved land, including air space; (2) inherently permanent structures, including any residential, commercial or industrial building; (3) condominium units; and (4) stock in a cooperative housing corporation. Exempted from the requirements are (1) transactions which are not sales or exchanges; (2) foreclosures; (3) transfers in which the total consideration received is less than $250; and (4) transfers of surface or subsurface natural resources, crops, burial plots, and unaffixed mobile homes. The rules governing determination of the "reporting person" are generally unchanged from the previous regulations, which are effective until December 31, 1990. **55 Fed. Reg. 14429 (Apr. 18, 1990) adding Prop. Treas. Reg. § 1.6045-4**.

**INVESTMENT TAX CREDIT**. A noncorporate lessor was not allowed investment tax credit on leased property where, under the circumstances, the lease was intended to be indefinite. **Crockett v. Comm'r, T.C. Memo. 1990-201**.

IRS was denied a summary judgment where although some elements of a lack of a profit motive, under I.R.C. § 183, were shown, there were genuine issues of fact as to other elements. **Thomas v. U.S., 90-1 U.S.T.C. ¶ 50,208 (E.D. Mo. 1990)**.

**IRA'S**. Taxpayer was a non-spouse beneficiary of an IRA owned by another individual. IRS ruled that the entire amount of a rollover of funds from the individual's IRA at the death of the individual was taxable to the taxpayer. **Ltr. Rul. 9014071, Jan. 12, 1990**.

**LIFE INSURANCE**. A corporation transferred life insurance policies on the corporation's two shareholders to a partnership in which the shareholders were the sole partners in payment of rent owed to the partnership for leasing of operating facilities. The policies named the corporation as beneficiary. The beneficiary on each policy will be the other partner. IRS ruled that the transfer is excludible from income under Treas. Reg. § 1.101-1(b)(3)(ii) because the transfer involves the transfer to a partnership of the insured. **Ltr. Rul. 9012063, Dec. 28, 1989**.

**LIKE-KIND EXCHANGES**. IRS has issued proposed regulations governing the federal income tax treatment of exchanges of personal property and exchanges of multiple properties.

The general rule is that the nonrecognition rules of I.R.C. § 1031 do not apply to an exchange of one kind or class of property for property of a different kind or class.

**Like-kind property classes**. Under Prop. Treas. Reg. § 1.1031(a)-2, depreciable personal property held for use in a business is of the same class if within the same General Business Asset Class as described in Rev. Proc. 87-56, 1987-2 C.B. 674 or the same Product Class. Prop. Treas. Reg. § 1.1031(a)-2(b)(2) also lists the General Business Asset Classes. Properties are in the same product class if they have the same five digit product code in the U.S. Department of Commerce, Bureau of the Census, 1987 Census of Manufacturers and Census of Mineral Industries, 1989 Reference Series: Numerical List of Manufactured and Mineral Products (Feb. 1989). If the depreciable tangible personal property does not have a product code or is listed under a miscellaneous product code, the determination of the class is based on all facts and circumstances.

Intangible personal property, nondepreciable personal property and property held for investment are determined to be of a like-kind depending upon the type of right involved and on the type of underlying property to which the property relates. Prop. Treas. Reg. § 1.1031(a)-2(c).

**Exchanges of multiple properties**. In an exchange involving several properties, the properties must first be separated into properties eligible for like-kind exchange treatment and those ineligible. The eligible properties must then be segregated into exchange groups consisting of properties of the same business asset class or product class. Prop. Treas. Reg. § 1.1031(f)-1(b)(2)(i).

Liabilities assumed by the taxpayer are to be offset by the liabilities from which the taxpayer is relieved in the exchange. Excess liabilities assumed by the taxpayer are allocated to the exchange groups based on the fair market value of the groups. Excess relieved liabilities are allocated to money or property not subject to the nonrecognition rules. Prop. Treas. Reg. § 1.1031(f)-1(b)(2)(ii), (iii).

In the exchange of the properties in each exchange group, after allocation of liabilities, gain is recognized to the extent the aggregate fair market of the properties in the received exchange group exceed the aggregate fair market value of the properties transferred. Losses are not recognized. Prop. Treas. Reg. § 1.1031(f)-1(b)(2)(iv).

The aggregate basis of the properties in each exchange group is the aggregate basis of the properties transferred plus the gain recognized for the exchange of the properties in that group. The aggregate basis is then allocated to each property in the group based upon the pro rata fair market value of the properties. Prop. Treas. Reg. § 1.1031(f)-1(c).

The proposed regulations contain several examples illustrating the above rules. **55 Fed. Reg. 17635 (Apr. 26, 1990), adding Prop. Treas. Reg. §§ 1.1031(a)-2, 1.1031(f)-1**.

An owner of an oil and gas lease sold the lease to a petroleum company and negotiated the purchase of a farm from a land trust. The petroleum company had paid cash ernest money for the lease and the taxpayer had provided the land trust with some money to purchase the farm and had begun farming the land. The parties then attempted to restructure the transactions to have the petroleum company exchange the farm for the oil and gas lease. The court held that although the parties are generally able to structure such agreements for tax purposes, the transactions had already been substantially implemented prior to the restructuring and a like-kind exchange of property had not occurred for income tax purposes. **Est. of Alexander v. Comm'r, 94 T.C. No. 34 (1990)**.

## PARTNERSHIPS

CONTRIBUTIONS. A limited partnership was proposed in which the fair market value of the property transferred to the partnership in marketable securities was 62.13 percent of the total partnership property. The remaining property was timber and timberland and timber cutting rights. The timber cutting rights would be reduced to cash within one year of partnership formation. IRS ruled that the partnership was not an investment

company and that the contribution of property to the partnership was a nontaxable transaction. **Ltr. Rul. 9013016, Dec. 22, 1989**.

**PENALTIES.** IRS has adopted as final regulations involving the abatement of penalties and additions to tax attributable to erroneous advice received from an officer or employee of IRS acting in an official capacity. The proposed regulations were published at 54 Fed. Reg. 21073 (May 16, 1989). **55 Fed. Reg. 14244 (Apr. 17, 1990), adding Treas. Reg. § 301.6404-3**.

**RESIDENTIAL ENERGY CREDIT**. The taxpayers were not allowed a residential energy credit for water-to-air heat pump system because the system derived its heat from geothermal heated water and not from solar heated water. **Newborn v. Comm'r, 94 T.C. No. 36 (1990)**.

### S CORPORATIONS

BUILT-IN GAINS. An S corporation had a short taxable year for its first taxable year as an S corporation. IRS ruled that the short taxable year counted as a taxable year for purposes of the tax on built-in net capital gains under I.R.C. § 1374(a). **Ltr. Rul. 9015040, Jan. 12, 1990**.

RE-ELECTION. An S corporation had revoked its S corporation election. After just over three years, all of the stock of the corporation was sold to persons unrelated to the original shareholder. IRS allowed the new shareholder to re-elect S corporation status within five years of the revocation. **Ltr. Rul. 9015015, Jan. 9, 1990**.

TRUSTS. Shares of an S corporation stock were transferred in trust by the decedent's will to the surviving spouse as sole income beneficiary for the spouse's life. The trust terminates upon the death of the surviving spouse. Although the trust does not provide for any distribution of trust principal until termination of the trust, under local law, the only person who could invade principal would be the income beneficiary. IRS ruled that the trust was a qualified subchapter S trust. **Ltr. Rul. 9015043, Jan. 12, 1990**.

A shareholder of an S corporation transferred common stock to an irrevocable trust for ten years with the shareholder as sole income beneficiary. The shareholder had the power to require conversion of unproductive trust property with productive property. If the shareholder dies before ten years, the trust corpus passes to the shareholder's estate. After ten years, the trust corpus is distributed in trust to another person. The common stock of the S corporation is to be reissued in equal parts as voting and nonvoting shares. IRS ruled that the shareholder would be treated as the owner of the trust and that the trust was a qualified subchapter S trust. **Ltr. Rul. 9015024, Jan. 11, 1990**.

The grantor established an irrevocable trust for a grandchild consisting of stock of an S corporation. The trustee is to distribute annually the net income of the trust and has the discretion to distribute trust principal for payment of the beneficiary's share of tax on undistributed income of the corporation. IRS ruled that the trust was a qualified subchapter S trust and that undistributed S corporation income is not trust income and is not required by the trust instrument to be distributed to the beneficiary. **Ltr. Rul. 9014031, Jan. 3, 1990**.

Taxpayers successfully petitioned a state court for reformation of a trust which owned stock in a corporation to split the trust into separate trusts for each beneficiary and to make distribution of trust income mandatory. IRS ruled that the reformed trusts were qualified subchapter S trusts. **Ltr. Rul. 9014025, Jan. 3, 1990**.

The owner of all the stock of an S corporation transferred the nonvoting stock to trusts for each child. Upon the death of a beneficiary, the trust corpus is to be split into individual trusts for the beneficiary's children. The trustee is required to pay trust income and principal to the beneficiary. If the trust does not hold S corporation stock, the trustee is not required to distribute trust income. The taxpayer proposes to have the trust income paid to grantor trusts established by each beneficiary. IRS ruled that the trusts were qualified subchapter S trusts so long as the income is distributed currently but that the trusts were not qualified subchapter S trusts if trust income is distributed to grantor trusts. **Ltr. Rul. 9014008, Dec. 27, 1989**.

### SAFE HARBOR INTEREST RATES

**MAY 1990**

| | Annual | Semi-annual | Quarterly | Monthly |
|---|---|---|---|---|
| **Short-term** | | | | |
| AFR | 8.65 | 8.47 | 8.38 | 8.32 |
| 110% AFR | 9.454 | 9.32 | 9.21 | 9.14 |
| 120% AFR | 10.42 | 10.16 | 10.03 | 9.95 |
| **Mid-term** | | | | |
| AFR | 8.81 | 8.62 | 8.53 | 8.47 |
| 110% AFR | 9.70 | 9.48 | 9.37 | 9.30 |
| 120% AFR | 10.61 | 10.34 | 10.21 | 10.12 |
| **Long-term** | | | | |
| AFR | 8.74 | 8.56 | 8.47 | 8.41 |
| 110% AFR | 9.64 | 9.42 | 9.31 | 9.24 |
| 120% AFR | 10.53 | 10.27 | 10.14 | 10.06 |

# INSURANCE

**COVERAGE.** A neighboring property owner filed an action against the defendant for injunctive relief for the defendant's closing of a section line by a gate and for trespass on the neighbor's private road. The plaintiff insurance company filed an action for declaratory relief that it was not obligated to defend the defendant insured because the property insurance policies owned by the insured did not cover intentional acts of the insured. The insured/defendant argued that the insurance company was required to make an independent investigation as to whether the insured's acts were intentional. The court ruled that the insurance company could rely on the facts alleged in the neighbor's complaint to determine whether the insurance policy covered any of the acts of the insured. Because the neighbor's complaint alleged only intentional acts, closing of the section line and trespass, the policy did not cover the defendant insured and the insurance company was not required to defend the insured. Also, the insurance company was not required to defend the case because the neighbor was not seeking any damages but only injunctive relief. **National Farmers Union Prop. & Cas. Co. v. Kovash, 452 N.W.2d 307 (N.D. 1990)**.

# MORTGAGES

**REDEMPTION RIGHTS**. Debtors had deeded title to farm land to lender in lieu of foreclosure but advised the lender of their desire to repurchase the land. The lender sold the land to third parties without

giving the debtors notice or an opportunity to first repurchase the property as required under Iowa Code § 524.910(2). The trial court held that the lender had violated the debtors' rights under the code but did not void the sale of the land to the third parties on equitable grounds. The Supreme Court held that the equities favored voiding the contract in this case and required the sale of the land to the debtors. **Decorah State Bank v. Wangsness, 452 N.W.2d 438 (Iowa 1990)**.

# RIPARIAN RIGHTS

**EASEMENTS**. The plaintiffs and defendants each purchased a portion of a farm on opposite sides of a road. The defendant's portion contained a sandpoint and pump which operated on electricity from the plaintiffs' property to supply water to the plaintiffs' property. After the defendants disconnected and dismantled the sandpoint and pump, the plaintiffs filed an action arguing that the sandpoint and pump were an implied easement. Although acknowledging the case as a close call, the court upheld the trial court's finding of no easement because the water from the sandpoint was not reasonably necessary for the plaintiffs' property in that other sources of water were available. **Hallock v. Wear, 551 N.E.2d 712 (Ill. App. 1990)**.

**NAVIGABLE WATERS**. The court held that a stream which flowed through the defendant's property was not open to public access because the stream was not navigable. The court found that the stream was only passable by boat during flooding of a nearby river and only then for a short time. **Gollate v. Harrell, 731 F. Supp. 453 (S.D. Ala. 1989)**.

# STATE REGULATION OF AGRICULTURE

**PESTICIDES**. The plaintiff challenged a city ordinance which restricted aerial spraying of pesticides as preempted by the Federal Insecticide, Fungicide and Rodenticide Act. The court held that FIFRA preempted the city ordinance because FIFRA allowed regulation of pesticides only to the states, which under a definition in FIFRA, 7 U.S.C. § 136(aa), did not include cities. **Mortier v. Town of Casey, 452 N.W.2d 555 (Wis. 1990)**.

# WORKERS' COMPENSATION

**EMPLOYEE STATUS**. Plaintiff was hired by a farmer to drive the farmer's truck in delivering grain for the grain elevator defendant. The farmer was to receive payment according to the number of bushels hauled for the elevator and the plaintiff received a percentage of that payment. The only control over the driver exercised by the grain elevator was where the grain was to be delivered. The number of trips and the route taken were discretionary with the driver. The driver was injured while making a delivery. The court held that the driver was not an employee of the grain elevator because the elevator did not have the right to control how the driver did the job except for the destination of the grain. The court also held that the driver was not an employee of the elevator under the "lent employee" theory for the same reason. **Bargery v. Obion Grain Co., 785 S.W.2d 118 (Tenn. 1990)**.

# CITATION UPDATES

**Gradow V. U.S., 897 F.2d 516 (9th Cir. 1990), aff'g 11 Cl. Ct. 808 (1987)** (community property in gross estate). See p. 80 *supra*.

Agricultural Law Digest
P.O. Box 5444
Madison, Wisconsin 53705-5444