FOOTNOTES

1 See generally Harl, *The Farm Debt Crisis of the 1980s*, Iowa State University Press, 1990.

2 See 4 Harl, *Agricultural Law* § 39.03 (1992).

3 *Id*., § 39.03[3].

4 Bkrpcy. Rule 4004(a), (c).

5 11 U.S.C. § 1141.

6 11 U.S.C. § 1228(a).

7 11 U.S.C. § 1328(a).

8 I.R.C. § 108(a)(1)(A).

9 Ltr. Rul. 8928012, April 7, 1989.

10 I.R.C. § 1398(a) (new entity concept applicable only to Chapter 7 and 11 filers).

11 I.R.C. § 61(a)(12). See, e.g., Vukasovich, Inc. v. Comm'r, 790 F.2d 1409 (9th Cir. 1986), *aff'g in part and rev'g in part,* T.C. Memo. 1984-611 (cancellation of indebtedness for less than amount owed resulted in ordinary income to debtor).

12 See Harl, Discharge of Indebtedness, Insolvent Debtors and Debtors in Bankruptcy, 1 *Agric. L. Dig*. 77 (1990). See also 4 Harl, *Agricultural Law* § 39.03 (1992).

13 I.R.C. § 108(g).

14 I.R.C. § 108(g)(3)(D).

15 I.R.C. § 1017(b)(2).

16 I.R.C. §§ 108(b)(5); 1017(b)(2). See Temp. Treas. Reg. § 7a.1(c).

17 I.R.C. § 108(a)(1)(A).

18 See 11 U.S.C. § 1228(a).

19 See I.R.C. § 1017(b)(2).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL

EXEMPTIONS.

AVOIDABLE LIENS. A hospital perfected statutory liens against the proceeds of an automobile accident insurance policy received by the debtor resulting from an automobile accident. The debtor claimed an exemption for the insurance proceeds and avoidance of the hospital lien as impairing the exemption. The court held that because the hospital lien arose purely by act of statute, the lien could not be avoided and had priority over the debtor's exemption claim. ***In re* Pohrman, 146 B.R. 570 (Bankr. D. Or. 1992)**.

The debtors sought to avoid a judgment lien against their homestead which was claimed as an exemption. The judgment creditor argued that because the debtor had waived the homestead exemption as to the judgment lien when the lien attached, the debtor was precluded from claiming the homestead exemption as to the judgment lien. The court held that under North Carolina case law, a waiver applied only to the execution of the judgment lien and that a bankruptcy filing was treated as a separate execution for which a separate waiver would have to be filed. Thus, the judgment lien could be avoided because the debtors had not waived the homestead exemption in the bankruptcy case. ***In re* Pinner, 146 B.R. 659 (Bankr. E.D. N.C. 1992)**.

IRA. The debtors' interests in custodial IRA's were held to be exempt under Ill. Rev. Stat. ch 110, ¶ 12-1006 where the IRA's were established with a good faith intent to qualify under the Internal Revenue Code. The court also held that the IRA's did not need to qualify as spendthrift trusts in order to be exempt. ***In re* Templeton, 146 B.R. 757 (Bankr. N.D. Ill. 1992)**.

CHAPTER 13

DISPOSABLE INCOME. The debtors' Chapter 13 plan provided for a 41 percent payment of unsecured creditors' claims and provided for personal expenses to include $614 per month for tuition and rent for a child in college. A creditor argued that the tuition and rent should be included in disposable income as excessive and unnecessary personal expenses. The court held that because the child was a senior and was attending a low cost state college, the expenses were necessary and not unreasonable, especially where the unsecured creditors were receiving 41 percent of their claims and would receive nothing in a Chapter 7 case. ***In re* Riegodedios, 146 B.R. 691 (Bankr. E.D. Va. 1992)**.

FEDERAL TAXATION

CLAIMS. An IRS late-filed claim amendment for over $2 million in unpaid taxes was denied because the amendment was significantly different from the original claim for $11,000. The court held that the existence of an ongoing audit of the tax returns for the tax years subject to the claim did not excuse the IRS for failure to seek extension of time to file claims. ***In re* Stavriotis, 977 F.2d 1202 (7th Cir. 1992), *aff'g*, 129 B.R. 527 (N.D. Ill. 1991), *aff'g*, 103 B.R. 1005 (Bankr. N.D. Ill. 1989).**

EXCISE TAXES. The debtor filed for bankruptcy in July 1986 and the IRS filed claims for 1984, 1985 and 1986 for the excise tax on accumulated funding deficiencies in the debtor's ERISA plans. The debtor had obtained a waiver for 1984 and was current on payment terms up to the filing for bankruptcy but stopped making payments after the filing. No waiver was obtained for 1985 but the bankruptcy filing occurred before the latest date for which the deficiency could have been paid without penalty. The 1986 liability occurred post-petition. The court held that the excise tax for all three years would not be allowed because the liability arose post-petition and would violate the automatic stay. For 1984, the waiver acted as a credit to relieve the deficiency until payments were not made under the waiver agreement. The court held that a retroactive provision was invalid as contrary to statute. ***In re* Chateaugay Corp., 146 B.R. 626 (S.D. N.Y. 1992)**.

JURISDICTION. Under the debtor's plan, an amount was to be paid to a third party who filed a claim in the case. The plaintiff had a judgment lien against the property of the third party and the IRS had also filed a tax lien against the third party's property. The plaintiff sought a bankruptcy court order requiring the plan disbursing agent to make the plan payment directly to the plaintiff in recognition of the priority of the plaintiff's lien above the IRS lien. The court held that the bankruptcy court was without jurisdiction over the controversy because the issues were not related to the bankruptcy case. ***In re* North Star Contracting Corp., 146 B.R. 514 (Bankr. S.D. N.Y. 1992)**.

PASSIVE ACTIVITY LOSSES. The debtor had prepetition passive activity losses and credits and the estate creditors sought a determination that the losses and credits passed to the bankruptcy estate upon the debtor's filing for bankruptcy. The court held that the losses and credits did not pass to the bankruptcy estate because the statute, I.R.C. § 1398(g), limited the allowable tax items which could pass to the estate. Note: the IRS has now issued proposed regulations including passive activity losses in the list of tax items which pass to the bankruptcy estate in Chapters 7 and 11 (see Vol. 3, *Agric. L. Dig.*, p. 191). ***In re* Antonelli, 92-2 U.S. Tax Cas. (CCH) ¶ 50,619 (Bankr. D. Md. 1992)**.

POST-CONFIRMATION INTEREST. The IRS had filed a claim which included pre-petition tax and interest. The claim was disputed and appealed until the U.S. Supreme court denied certiorari of a ruling allowing the claim. The debtor's plan provided payment of all allowed claims on the later of the plan effective date or the date the claims became allowed. The IRS argued that because the claim could not be paid under the plan until the final appeal was exhausted, the payment of the claim was a deferred payment and the IRS was entitled to post-confirmation interest under Section 1129(a)(9)(C). The court held that the delay caused by the appeals did not make the payment deferred where the plan provided for immediate payment when the claim became allowed. ***In re* White Farm Equipment, Co., 146 B.R. 736 (Bankr. N.D. Ill. 1992)**.

RETURNS. The debtor sought to have the Chapter 7 trustee file a federal income tax return for the estate. The debtor argued that the estate had substantial discharge of indebtedness income, income from the sale of the debtor's partnership interest and other income. The trustee argued that only liquidating trustees who sell estate property are required to file returns for estates. The court held that all bankruptcy trustees are required to file bankruptcy estate tax returns if the estate income exceeds the standard deduction plus the personal exemption. The court held that the trustee was not required to file a return because the discharge of indebtedness income was not recognized since the debtor was insolvent, the sale of the partnership interest was not approved, and the remaining income totaled less than the personal exemption plus the standard deduction. ***In re* Pflug, 146 B.R. 687 (Bankr. E.D. Va. 1992)**.

CONTRACTS

BREACH. The plaintiffs were seed companies which grew and sold to seed dealers seed distributed to them by the defendant. For over five years before 1984, the plaintiffs were the only marketing companies for the seed under contracts, written and oral, with the defendant. In 1984, without notice to the plaintiffs, the defendant started selling the seed directly to dealers. The plaintiffs sued for breach of contract and fraud in that their contracts granted them exclusive rights to sell the defendant's seed to dealers and that the defendant entered into the 1984 contracts knowing that it intended to sell directly to dealers. The court held sufficient evidence was shown to demonstrate that a contract provision stating that the plaintiffs had "no exclusive rights of any kind" referred only to territorial exclusivity. The verdict of fraud against the defendant was upheld because the evidence showed that the defendant entered into new sales contracts with some plaintiffs and encouraged others to renew their contracts, after the defendant had decided to sell directly to dealers. **Latham Seed v. Nickerson American Plant Breeders, 978 F.2d 1493 (8th Cir. 1992)**.

FEDERAL AGRICULTURAL PROGRAMS

BORROWER'S RIGHTS. The FmHA has adopted as final amendments to the regulations involving servicing of FmHA loans to borrowers who have filed for bankruptcy. The amendments add a notice, Exhibit E-1 to Instruction 1955-A, of acceleration of a loan after default of a debtor's bankruptcy plan. Exhibit E is also amended to clarify that foreclosure of a secured loan, discharged in bankruptcy but in default under the bankruptcy loan, is only against the collateral and not an attempt to collect the liability from the debtor individually. **57 Fed. Reg. 60084 (Dec. 18, 1992)**.

CATTLE. The APHIS has issued a proposed rule allowing calves younger than four weeks old to be imported from Canada without being tested for tuberculosis. **57 Fed. Reg. 62501 (Dec. 31, 1992)**.

CONSERVATION RESERVE PROGRAM. In August 1986, the plaintiffs had applied for participation in the Conservation Reserve Program (CRP). The application was signed by most of the undivided interest owners of the land involved. The approved application was signed by a CCC representative in January 1987. Five days later the USDA announced a bonus payment for first time CRP applicants who applied in February 1987. The plaintiffs made new applications for enrollment in the CRP in February 1987 in hopes of qualifying for the bonus. The plaintiffs argued that the original contracts were invalid because not all owners signed the application and the application was not approved within 30 days. The CCC ruled that the application did not need to be signed by all owners and that the 30 day period applied only to the plaintiffs' ability to reject the contract. The court held that the August 1986 contract was valid and that the plaintiffs did not qualify for the bonus because they were not new applicants in February 1987. **Rochman v. U.S., 27 Fed. Cl. 162 (1992)**.

CROP INSURANCE. The FCIC has adopted as final amendments to the Corn, Grain Sorghum and Soybean Endorsements adding required late planting and prevented planting provisions. **58 Fed. Reg. 3202 (Jan. 8, 1993)**.

FARMER-OWNED RESERVE--WHEAT. The CCC has adopted as final regulations providing that 1992 crop wheat may not be pledged as collateral of FOR loans. **57 Fed. Reg. 62473 (Dec. 31, 1992)**.

FARM CREDIT SYSTEM. The plaintiff's uncle had died and the decedent's estate placed the decedent's farm for sale. The plaintiff asked the defendant, a loan officer for a Federal Land Bank Association (FLBA) whether the plaintiff could borrow money to purchase the decedent's farm. The plaintiff did not make any loan application. A third party did apply for a loan to purchase the farm and privately agreed to sell the defendant 80 acres. When the sale was submitted to the probate court for approval, the third party agreed to sell the plaintiff five acres for use by the decedent's surviving spouse. The plaintiff sued the district Federal Land Bank (FLB), the FLBA and the defendant for breach of fiduciary duty and fraud. The court held that (1) the defendant was not an agent for the FLB, (2) no fiduciary duty was owed by the FBLA to the plaintiff because the plaintiff did not make a loan application, and (3) the defendant was not liable for fraud because the plaintiff did not rely on any statements made by the officer to the plaintiff's detriment. As to the last holding, the court noted that the plaintiff received the five acres and consented to the sale to the third party. **Anderson v. Boeke, 491 N.W.2d 182 (Iowa Ct. App. 1992)**.

HERBICIDES. The plaintiff alleged that the plaintiff contracted T-cell lymphoma from exposure to a herbicide manufactured by the defendant. The plaintiff sued the defendant herbicide manufacturer for, among other claims, negligent failure to warn. The defendant argued that the failure to warn claim was barred by preemption of the Federal Insecticide, Fungicide and Rodenticide Act as to labeling requirements for registered herbicides. The court held that a state tort action for failure to warn regulated only the sale and use of herbicides and, therefore, was not preempted by the FIFRA prohibition of state labeling requirements. **Couture v. Dow Chemical U.S.A., 804 F. Supp. 1298 (D. Mont. 1992)**.

TOBACCO. The ASCS has issued proposed regulations allowing the construction of tobacco auction markets as far as five miles from a city or town. **58 Fed. Reg. 3233 (Jan. 8, 1993)**.

FEDERAL ESTATE AND GIFT TAX

ADJUSTED TAXABLE GIFTS. In 1979, the decedent made a gift of stock which was valued for gift tax purposes at $20,000 and the resulting gift tax was offset by the available unified credit. After the decedent died in 1988, the executor included the claimed value of the gift in the amount of adjusted taxable gifts. The IRS examiner revalued the 1979 gift at $300,000 and calculated the gift tax payable by offsetting $38,000 of unified credit available to the decedent in 1979. The executor argued that the entire gift tax which would have been payable (the assessment period for the gift tax had expired) on the revalued gift should have been used to reduce the tentative estate tax and the amount of unified credit actually claimed by the decedent in 1979 should be used to reduce the unified credit against the estate tax. The IRS ruled that in determining the "amount of tax which would have been payable" under I.R.C. § 2001(b)(2), the entire amount of unified credit available to the donor must be used to offset the gift tax which would have been payable on the gift. **Ltr. Rul. 9250004, Aug. 24, 1992**.

DISCLAIMERS. An irrevocable trust was created in 1917 and terminated in 1979 when the last income beneficiary died. The trust property was then to be distributed to the taxpayer as one of the remainder holders. The taxpayer/decedent disclaimed the interest in the trust property within two months after the death of the last income beneficiary. The three-judge appellate court held that the 1917 creation of the trust with the remainder to the decedent was a taxable transfer, based on Treas. Reg. § 25.2511-1(c)(2). Therefore, under pre-1977 law, the disclaimer was untimely because not made within a reasonable time after the taxpayer learned about the remainder interest, when the taxpayer reached age 21 in 1931. The appellate court, *en banc*, reversed, holding that the application of the regulation to a pre-gift tax transfer was improper; therefore, the 1917 trust was not a taxable transfer and the decedent's disclaimer was timely. The court refused to follow the contrary decision in *Ordway v. U.S., 908 F.2d 890 (11th Cir. 1990), cert. denied, 111 S. Ct. 2916 (1991).* **Irvine v. U.S., 1992 WL 381688 (8th Cir. 1992), *rev'g on rehearing*, 91-2 U.S. Tax Cas. (CCH) ¶ 60,074 (8th Cir. 1991), *rev'g* 1989-2 U.S. Tax Cas. (CCH) ¶ 13,818 (D. Minn. 1989)**.

GENERATION SKIPPING TRANSFER TAX. The IRS has issued proposed regulations reflecting the changes made under the Tax Reform Act of 1986 and amendments made in 1988 and 1989, as to direct skips occurring at death with respect to property held in trust. The proposed regulations amend Temp. Treas. Reg. § 26.2662-1(c)(2)(iii) to increase to $250,000 the maximum amount of property passing from a trust arrangement (including life estates, remainders, estates for years and insurance and annuity contracts) as a direct skip for which the executor is responsible for filing the return and paying the GSTT. If $250,000 or more of property passes as a direct skip, the trustee or life insurance company must file the return and pay the GSTT. The proposed regulations also amend Temp. Treas. Reg. § 26.2601(b)(1)(v)(B)(2) to allow grandfathered trusts to remain exempt from GSTT if a nongeneral power of appointment is exercised and does not postpone or suspend the vesting, ownership or power of alienation for 90 years after the creation of the trust. The temporary regulations had allowed exemption only for nongeneral powers of appointment which postponed vesting for more than 21 years after a life in being at the creation of the trust. **57 Fed. Reg. 61355 (Dec. 24, 1992)**.

The IRS has issued proposed regulations implementing several aspects of GSTT. The proposed regulations provide that no automatic allocation of the $1 million GSTT exemption will be made to trusts which will have a new transferor before any GST will occur, e.g. a reverse QTIP election. Allocation of the exemption, either by the executor or automatically, to a trust must be made to the entire trust principal and not to any specific trust asset. **Prop. Treas. Reg. § 26.2632-1.**

The proposed regulations provide that when a GSTT exemption is allocated to a lifetime transfer on a late filed Form 709, the transferor may elect to value the property at the fair market value as of the first day of the month of the late allocation. However, the date of death value must be used if the transfer occurs within 15 months of the decedent's death or the fiduciary is required to fund the payment with property fairly representative of the net appreciation or depreciation occurring between the date of death and the payment date. **Prop. Treas. Reg. § 26.2642-2.**

The proposed regulations provide the method for recomputing the inclusion ratio for a trust for which an additional transfer is made, for trusts consolidated with other trusts, and for charitable lead annuity trusts. **Prop. Treas. Reg. § 26.2642-1.**

Under the proposed rules, a pecuniary amount payable from a trust which is included in the transferor's gross estate may be treated as a separate trust if the pecuniary amount is promptly funded. **Prop. Treas. Reg. § 26.2654-1.**

For reverse QTIP elections made for a trust prior to December 24, 1992, the executor may elect to treat the trust as two trusts, one with a zero inclusion ratio. **Prop. Treas. Reg. § 26.2652-2**.

A beneficiary of a trust which allows the beneficiary a right of withdrawal is treated as the transferor of the trust property when the right of withdrawal expires, to the extent the beneficiary is treated as making a transfer subject to gift tax. **Prop. Treas. Reg. § 26.2652-1.**

The proposed regulations generally apply to generation-skipping transfers occurring after December 24, 1992. **57 Fed. Reg. 61356 (Dec. 24, 1992)**.

The taxpayer transferred stock with an annual dividend of $350,000 to trusts for grandchildren in exchange for debt instruments for $1.5 million with interest payments of $165,000. The trust beneficiaries had the right to require withdrawal of annual contributions to the trusts subject to the trustee's right to delay payment if trust owned stock would be required to make the distributions. The IRS ruled that the GSTT $2 million exemption could not be applied to the transfers because the taxpayer's right to the interest on the notes was a retained interest held by a person other than the beneficiaries. The transfer was also not eligible for the annual gift tax exclusion amount because the beneficiaries' right to withdraw trust contributions was subject to the trustee's right to delay such payments for ten years. The IRS also ruled that the transferred property was includible in the taxpayer's gross estate because the taxpayer retained an interest in the property through the interest payments on the notes. **Ltr. Rul. 9251004, Sept. 4, 1992**.

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent owned all of the stock of two corporations, a 50 percent interest in a partnership and an undivided 50 percent interest in a commercial rental property. The decedent personally or through the business entities, managed the operation of rental properties owned by the entitles and the decedent, including maintenance, hiring employees, preparing properties for tenants, obtaining new tenants and maintaining good tenant relations. The IRS ruled that the decedent's interests in the properties and entities were interests in closely held businesses for purposes of installment payment of estate tax. The IRS also ruled that cash accounts maintained by the entities for working capital for tax and repair payments were not passive assets and were includible in the decedent's closely held business amount. **Ltr. Rul. 9250022, Sept. 11, 1992**.

IRA. The taxpayer was the designated beneficiary of an IRA in the name of the decedent. The taxpayer transferred the IRA to another custodian but maintained the IRA under the name of the decedent and with the same schedule of payments. The IRS ruled that the transfer was not subject to tax. **Ltr. Rul. 9250041, Sept. 17, 1992**.

MARITAL DEDUCTION. Although the surviving spouse and decedent had signed an antenuptial agreement limiting the amount of the decedent's property passing to the spouse, the surviving spouse challenged the agreement and sought the statutory one-third share of the decedent's estate. In settlement of the surviving spouse's claim, the one-third share was placed in a trust for life and the spouse received a life estate in the homestead. The IRS ruled that the present value, based on the life expectancy of the surviving spouse, of the trust and the life estate in the homestead was eligible for the marital deduction. **Ltr. Rul. 9251002, Aug. 27, 1992**.

The decedent's will bequeathed property to the surviving spouse, children and grandchildren, with remainders to the great grandchildren. All of the descendants disclaimed their shares of the decedent's estate such that the entire estate passed to the surviving spouse. The IRS ruled that the disclaimers were qualified and the property passing to the surviving spouse was eligible for the marital deduction. **Ltr. Rul. 9251019, Sept. 18, 1992**.

PRIORITY. In administering the decedent's estate, the executor successfully litigated the qualification of an unfunded trust as the decedent's will. The executor claimed as administrative expenses (1) an executor's fee, (2) money advanced to the estate to pay an estate debt, and (3) attorney's fees for the probate court and tax litigation. The executor sought priority of the administrative expenses over a federal tax claim against the estate for unpaid taxes owed by the decedent. The court held that under 31 U.S.C. § 3713, the administrative expenses were entitled to priority over the federal tax claims. **Est. of Capato v. U.S., 92-2 U.S. Tax Cas. (CCH) ¶ 60,124 (D. Or. 1992)**.

FEDERAL INCOME TAXATION

C CORPORATIONS.

ALTERNATIVE MINIMUM TAX. The IRS has adopted as final regulations amending the rules for determining adjusted current earnings for purposes of determining the alternative minimum tax for corporations. **57 Fed. Reg. 60474 (Dec. 21, 1992)**.

BUSINESS DEDUCTIONS. In completing a redemption of the corporate taxpayer's stock from an ESOP, the corporation borrowed the funds used to purchase the stock. The corporation claimed the loan fees and expenses as business deductions. The court held that under I.R.C. § 162(k), the fees and expenses were not deductible because they were incurred as part of a stock redemption. ***In re* Kroy (Europe) Ltd., Kroy, Inc., 92-2 U.S. Tax Cas. (CCH) ¶ 50,611 (D. Ariz. 1992), *rev'g*, 92-1 U.S. Tax Cas. (CCH) ¶ 50,146 (Bankr. D. Ariz. 1992)**.

DEPRECIATION. As reported in Vol. 3 *Agric. L. Digest* p. 186, the IRS adopted as final regulations governing the applicable conventions under the accelerated cost recovery system. One change in the final regulations should be noted. The proposed regulations allowed a depreciation deduction for mid-quarter property placed in service and disposed of in the same taxable year. The final regulations provide that all depreciable property placed in service and disposed of in the same taxable year is not eligible for a depreciation deduction. Treas. Reg. § 1.168(d)-1(b)((ii). **57 Fed. Reg. 48980 (Oct. 29, 1992)**.

DISCHARGE OF INDEBTEDNESS. The IRS has adopted as final regulations providing that the acquisition of indebtedness by a person related to the debtor from a person who is not related to the debtor results in discharge of indebtedness income to the debtor based on the cost of acquiring the indebtedness at the time it was acquired by the related person. The proposed regulations had based the amount of discharge of indebtedness on the fair market value of the indebtedness at the time the indebtedness was acquired. The final regulations apply the fair market standard if the debtor acquired the indebtedness six months or more before acquisition of the indebtedness by a related person or if the purpose of the acquisition is the avoidance of tax.

Under the proposed regulations, the basic rule also applied where the creditor became related to the debtor, if (1) the creditor acquired the indebtedness less than six months before becoming related to the debtor, or (2) on the day the creditor became related to the debtor, the indebtedness of the debtor represented more than 25 percent of the fair market value of the creditor's assets or the assets of all persons related to the debtor after the creditor becomes related to the debtor. In addition, if the creditor acquired the indebtedness between 6 and 24 months before becoming related to the debtor, the rule applied unless the creditor could demonstrate that the indebtedness was not acquired in anticipation of the creditor becoming related to the debtor. The final regulations remove the six to 24 month test and the 25 percent test and base the relatedness of the creditor on the facts and circumstances of the acquisition. However, the final regulations require disclosure of the facts and circumstances if either of the two tests is met.

The rule does not apply to indebtedness (1) acquired by the debtor and with a maturity date within one year of the indebtedness being acquired by a related person, if the indebtedness is retired on that date, or (2) acquired by a dealer of securities in the ordinary course of business. **57 Fed. Reg. 61805 (Dec. 29, 1992), adding Treas. Reg. § 1.108-2**.

EMPLOYEE BENEFITS. The IRS has adopted as final regulations governing the exclusion of working condition fringe benefits excludible from income for governmental employees and volunteers for governmental units.

The final regulations also amend the rules for special valuation of employer provided fringe benefits. **Treas. Reg. § 1.61-21(c)** The final regulations remove the requirement that an employer inform an employee that the special valuation election has been made by the employer. The final regulations require at least one of the following conditions for use of the special valuation election:

(1) the employer treats the value of the benefit as wages;
(2) the employee includes the value of the benefit in income;
(3) the employee is not a "control" employee; or
(4) the employer demonstrates a good faith effort to treat the benefit correctly for reporting purposes.

An employee may use a special valuation rule not used by the employer if none of the four conditions is met. **57 Fed. Reg. 62192 (Dec. 30, 1992)**.

EXPENSE METHOD DEPRECIATION. The IRS has adopted as final regulations involving the limitations on the amount of expense method depreciation allowable. The proposed regulations were discussed in Harl, "Expense Method Depreciation," 2 *Agric. L. Dig*. 69 (1991), and only the changes made by the final regulations are noted here. For purposes of the taxable income limit on the amount of expense method depreciation, the final regulations:

(1) include in the taxable income of an employee any unreimbursed employee business expenses;
(2) include in a partnership's net income from a trade or business all I.R.C. § 702 partnership items other than credits, tax-exempt income and guaranteed payments
(3) include in an S corporation's net income all S corporation items under I.R.C. § 1366(a) other than credits, tax-exempt income and compensation paid to shareholder-employees; and
(4) exclude from the income limit any deduction suspended by the I.R.C.

57 Fed. Reg. 61313 (Dec. 24, 1992). Note: copies of Dr. Harl's article may be ordered for $2.00 from Agricultural Law Press, P.O. Box 5444, Madison, WI 53705.

MILEAGE DEDUCTION. The standard mileage rate for 1993 remains at 28 cents per mile for business use, 12 cents per mile for charitable use and 9 cents per mile for medical and moving use. The depreciation rate remains at 11.5 cents per mile. **Rev. Proc. 92-104, I.R.B. 1992-52, 24**.

MINORS. The taxpayer was a minor child under the age of 14 with both parents living. The taxpayer had unearned income resulting from investment of settlement proceeds from a personal injury suit. The taxpayer argued that taxation, under I.R.C. § 1(g), of the unearned income at the highest marginal rate of the parents was unconstitutional for lack of due process. The court held that the statute was constitutional as applied in this case. **Butler v. U.S., 798 F. Supp. 574 (E.D. Mo. 1992)**.

PARTNERSHIPS

ADMINISTRATIVE ADJUSTMENT. The IRS sent a final partnership administrative adjustment (FPAA) to a general partner, a corporation, of the partnership even though another individual had been named as tax matters partner. The court held that the FPAA was not invalid. **Holstein ET IV, Ltd. v. Comm'r, T.C. Memo. 1992-716**.

PASSIVE ACTIVITY LOSSES. For taxable years 1987 and 1988, the taxpayer was an employee of a company which managed the development, construction and leasing of rental properties owned by partnerships of which the taxpayer was a partner. The taxpayer materially participated in the preconstruction and development activities. The IRS ruled that under Temp. Treas. Reg. § 1.469-4T(p), the taxpayer's share of partnership loss from the preconstruction and development activities was not a passive loss, even though the final activity, the rental of the properties, was a passive activity for the partnerships. **Ltr. Rul. 9252003, Aug. 31, 1992**.

PENSION PLANS. The taxpayer was an employee and sole shareholder of a professional corporation. The taxpayer disolved the corporation and received all of the assets, including distributions from pension and profit sharing plans, but continued the business as a sole proprietor. The taxpayer elected the 10-year averaging method of the reporting of the gain from the plans' distributions. The court held that the termination of the corporation was not a separation of service allowing use of the 10-year averaging method where the taxpayer continued the business. **Burton v. Comm'r, 99 T.C. No. 32 (1992)**.

RETURNS. The IRS has issued revised rules as to the obligations of participants in the electronic filing program. **Rev. Proc. 93-8, I.R.B. 1993-2**.

S CORPORATIONS

PASSIVE INVESTMENT INCOME. A corporation owned a shopping center and was a general partner in a partnership which owned another shopping center. The corporation hired an agent to provide various business services for the tenants and the corporation also provided business services. Although the services were included in the rent, the compensation for the services constituted a material part of the rent. The IRS ruled that the amounts received as rent were not passive investment income for the purpose of qualifying the corporation for the S corporation election. **Ltr. Rul. 9250011, Sept. 4, 1992)**.

RE-ELECTION. The corporation made an S corporation election effective for the tax year beginning on January 1, 1989 but filed a revocation on January 24, 1989, which was determined to be effective as of January 1, 1989. The IRS ruled that the corporation could make an S corporation election effective January 1, 1992. **Ltr. Rul. 9251025, Sept. 18, 1992**.

PARTNERSHIP

JOINT VENTURE. The plaintiff sued for payment for delivered hay. The plaintiff argued that the defendant was a joint venturer with a third party in the buying, hauling and selling of hay. The defendant and a third party negotiated the hay purchase contracts, both persons supplied labor and equipment to the business, and the profits and losses were shared 60/40. The court held that the operation was a joint adventure and that the defendant was liable for the unpaid hay. **Hill v. Zimmerer, 839 P.2d 977 (Wyo. 1992)**.

PRODUCTS LIABILITY

SEEDS. The plaintiff purchased watermelon seeds from separate defendants. The seeds grew well enough until the plants developed a blotch which eventually destroyed most of the crop. The plaintiff alleged that the seed was produced on infected fields and sued for breach of implied and express warranties, strict liability and negligence. The court ruled that the first defendant was not liable for breach of express warranty in that the seed containers only promised that the seed would have "high vitality, vigor and germination," all of which were met. The court ruled that an issue of fact remained as to the other defendant in that the seed containers promised that the seeds were "strictly high grade seeds" which would amount to an express warranty if watermelon seeds were commonly graded. The court held that an issue of fact was raised as to whether the terms "properly fitted for seeding purposes" meant only that the seeds were warranted to be watermelon seeds and not that the seeds were free of disease. The first defendant was held to have effectively disclaimed any implied warranties through conspicuous placement on the seed containers of a specific disclaimer of implied warranty of merchantability or of fitness for a particular purpose. The second defendant was relieved of any implied warranties because of an established industry practice to limit liability to the cost of the seeds. The court held that this rule applied even where the purchaser had no knowledge of the industry practice. The court denied summary judgment for the defendants on the strict liability claim because an issue remained as to whether the disease caused "sudden" damages. Summary judgment for the defendants was allowed as to the negligence claim because the plaintiff failed to provide any substantive proof that the seeds were negligently harvested by the defendants. **Martin Rispens & Son v. Hall Farms, Inc., 601 N.E. 2d 429 (Ind. Ct. App. 1992)**.

STATE REGULATION OF AGRICULTURE

MILK. The Pennsylvania Milk Marketing Board established a $1.05 per hundredweight "add-on" to the price of Class I milk for 1991-1992. The plaintiff challenged the "add-on" as beyond the board's authority. The court held that under Penn. Stat. § 700j-801, the board had broad discretion to set milk prices and because the "add-on" had an expiration date, the price increase was subject to review within a reasonable time. **Finucane v. Pennsylvania Milk Marketing Board, 615 A.2d 936 (Pa. Cmwlth. 1992)**.

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PSEUDORABIES. The plaintiff lost a substantial number of pigs to pseudorabies. The plaintiff learned that several swine herds in the same county had been quarantined for pseudorabies infections but that no public notice of the quarantines was made by the state Department of Agriculture. The plaintiff sued the state for failing to give public notice of the pseudorabies outbreak. The Nebraska Department of Agriculture had a policy of informing veterinarians of pseudorabies quarantines but no policy of informing the public. The court held that the statute, Neb. Rev. Stat. § 54-701, vesting power in the Department of Agriculture to control infectious diseases in livestock did not require public notice of infectious disease outbreaks; therefore, such notice was a discretionary function. The court also held that under the state Tort Claims Act, the state may not be sued for claims based upon discretionary functions. **Blitzkie v. State, 491 N.W.2d 42 (Neb. 1992)**.

WATER RIGHTS

APPURTENANCE TO LAND. The parents of the plaintiff filed for water use rights on their farm land. Prior to issuance of the certificate of appropriation, the parents conveyed the land with all appurtenances to their children in equal shares, with the plaintiff receiving a one-fifth interest. After the certificate was issued, the children reconveyed the parcels to each other in different shares and some conveyed their property to the defendants. The plaintiff argued that the water right passed in the first conveyance of the parents because appropriation had been demonstrated, although the certificate had not yet been issued. The court held that a water right cannot pass as an appurtenance to land until the certificate has been issued. **Little v. Greene & Weed Inv., 839 P.2d 791 (Utah 1992)**.

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