

under a sole proprietorship and in their Chapter 11 plan proposed to contribute their labor and exempt property to the farm business to satisfy the absolute priority rule. The debtors' attorney also agreed to be paid out of future farm earnings instead of estate property.

The debtors claimed that because the farm business had little or no "going concern" value, the debtors did not retain any interest of value. The court rejected this argument, noting that the U.S. Supreme Court in *Ahlers* held that the retained control over the

business and possible future earnings from the business were sufficient retained interests to invoke the absolute priority rule.

The court, after some discussion as to whether the exception to the absolute priority rule still exists, held that even under the exception, the debtor's contribution must be necessary for the reorganization and must be substantial and exceed the value of the debtors' retained interests in the business. The debtors were held not to have met the burden of showing their entitlement to the exception.

FOOTNOTES

¹ 11 U.S.C. § 1129(b)(1).

² 11 U.S.C. § 1129(b)(2)(B)(ii).

³ Case v. Los Angeles Lumber Products Co., 308 U.S. 106 (1939). See *In re Henke*, 90 B.R. 451 (Bankr. D. Mont. 1988) (absolute priority rule did not bar farm debtor's Chapter 11 plan where debtor would invest non-farm

income in plan payments).

⁴ *In re Ahlers*, 794 F.2d 388 (8th Cir. 1986), *rev'd* 485 U.S. 197 (1988).

⁵ *Id.* See also *In re Stegall*, 64 B.R. 296 (Bankr. C.D. Ill. 1986), *aff'd* 85 B.R. 510 (C.D. Ill. 1987) (farmer-debtor's labor may not be considered as contribution sufficient to overcome

absolute priority rule); *In re Rudy Debruycker Ranch, Inc.*, 84 B.R. 187 (Bankr. D. Mont. 1988) (debtor's contribution of services and some property to farm operations not sufficient to allow exception to absolute priority rule).

⁶ *In re Olson*, 80 B.R. 935 (Bankr. C.D. Ill. 1987) (absolute priority rule not

met where secured creditor would not receive full payment and farmer-debtor's contribution would be from profits from farming).

⁷ *In re Snyder*, 105 B.R. 898 (Bankr. C.D. Ill. 1989).

⁸ *In re Drimmel*, 108 B.R. 284 (Bankr. D. Kan. 1989).

Cases, Regulations and Statutes

BANKRUPTCY

GENERAL

AVOIDABLE TRANSFER. Chapter 7 farm debtors had granted a new mortgage on farm land to creditor in exchange for release of mortgage on other land. The trustee had argued that because the previous mortgage was junior to other liens in excess of the property's value, the release of the old mortgage did not constitute new value received for the new mortgage and thus the granting of the new mortgage within 90 days of the bankruptcy filing was an avoidable preferential transfer. The court ruled that the exchange of mortgages was a contemporaneous exchange for new value. *In re Quade*, 108 B.R. 681 (Bankr. N.D. Iowa 1989).

ESTATE PROPERTY. An ERISA qualified employee pension and profit sharing plan was not estate property because the plan qualified as a spendthrift trust under Missouri law. *In re Boon*, 108 B.R. 697 (W.D. Mo. 1989), *rev'g* 90 B.R. 988 (Bankr. W.D. Mo. 1988).

EXEMPTIONS. The Illinois exemption for payments from pension (and other types of) plans was held not to apply to a

lump sum distribution of the debtor's entire interest in the plan. *In re Summers*, 108 B.R. 200 (Bankr. S.D. Ill. 1989).

The Bankruptcy Court for the Northern District of Oklahoma held that the exemption for qualified individual retirement accounts was not preempted by ERISA. *In re Ridgway*, 108 B.R. 294 (Bankr. N.D. Okla. 1989).

A different Oklahoma Bankruptcy Court has held that the federal ERISA does preempt the Oklahoma exemption for retirement plans but also held that such plans are exempt under ERISA as a federal exemption. *In re Burns*, 108 B.R. 308 (Bankr. W.D. Okla. 1989).

The Oklahoma exemption for tax qualified retirement plans was held unconstitutional because it did not limit exemption to amount necessary for support of debtor and did not exclude retirement plans over which the debtor had access to the funds. *In re Garrison*, 108 B.R. 760 (Bankr. N.D. Okla. 1989); *In re Walker*, 108 B.R. 769 (Bankr. N.D. Okla. 1989).

LIEN AVOIDANCE. A debtor who had claimed a homestead exemption under state law for a mobile home was not allowed to avoid a nonpossessory, nonpurchase money lien against the mobile home as

household goods under Section 522(f)(2). *In re Coonse*, 108 B.R. 661 (Bankr. S.D. Ill. 1989).

SETOFF. The Commodity Credit Corporation attempted a setoff of a deficiency on a CCC crop storage loan owed by a farm corporation against disaster payments due to the sole shareholder from crop disaster losses in the shareholder's separate pecan growing operations. The court denied the setoff because lack of mutuality of debtors where the corporation and the shareholder were considered separate entities. *In re Jones*, 107 B.R. 888 (Bankr. N.D. Miss. 1989).

CHAPTER 11

MODIFICATION OF PLAN. Dairy farm debtors' Chapter 11 plan provided that priority city real property taxes would be paid in full in installments over length of plan. The plan also gave the debtors the right to object to any claims under the plan within 60 days after confirmation of the plan. The court denied the debtors' attempt to bifurcate the real property tax claim into secured and unsecured claims after confirmation of the plan because the plan had provided that the claims would be paid in full. *In re Henderberg*, 108 B.R. 407 (Bankr. N.D. N.Y. 1989).

CHAPTER 12

MODIFICATION OF PLAN. A Chapter 12 debtor's confirmed plan provided several "drop dead" clauses allowing creditors remedies in the event the debtor defaulted on any plan payments. After defaulting on some plan payments, the debtor sought modification of the plan. The Bankruptcy Court had held that because the plan had provisions governing default by the debtor, the debtor could not modify the plan. The District Court reversed on that point of law without ruling on whether the modifications sought were allowable. *In re Mader*, 108 B.R. 643 (N.D. Ill. 1989).

PLAN. Prior to filing for bankruptcy, debtors owned one tract of farmland and rented another from their parents. The owned tract, however, was mortgaged for a debt owed by the parents but without personal liability of the debtors. The parents transferred the rented farmland to the debtors and then filed Chapter 7 bankruptcy. The debtors did not assume the mortgage on this farmland but took ownership subject to their parents' mortgage. The debtors then filed in Chapter 12. The Chapter 12 plan proposed to pay the mortgages on both tracts of land. The court held that although the debtors were not liable for the mortgages beyond the value of the land, both mortgages were claims against property of the bankruptcy estate and could be dealt with in the plan. However, the court held that the plan was not proposed in good faith because the combination of the parents' transfer of the farmland to the debtors without the debtors' assumption of the mortgage, followed by the parents' filing of Chapter 7 and the debtors' filing of Chapter 12 subjected the mortgagee to possible loss of security without recourse against any of the debtors personally. *In re Marshall*, 108 B.R. 195 (Bankr. C.D. Ill. 1989).

SALE OF ESTATE ASSETS. Although Section 1206 refers only to the sale of estate property by the trustee, a Chapter 12 debtor in possession was allowed to sell farm land. The sale was permitted where the proceeds of the sale remained subject to the liens on the land. *In re Brileya*, 108 B.R. 444 (Bankr. D. Vt. 1989).

FEDERAL TAXATION

DISCHARGE. Debtor's liability for tax deficiency was not nondischargeable because of the debtor's fraudulent filing of

income tax returns where the only evidence was that debtor significantly underreported income. *In re Graham*, 108 B.R. 498 (Bankr. E.D. Pa. 1989).

NET OPERATING LOSSES. A parent holding company corporation was enjoined from claiming a business bad debt for stock owned in debtor subsidiary corporation which would deny the subsidiary's bankruptcy estate of a net operating loss carryover deduction. The court held that the net operating loss carryover was property of the bankruptcy estate and the parent corporation's claiming of a deduction would violate the automatic stay as an attempt to control estate property. *In re Prudential Lines, Inc.*, 107 B.R. 832 (Bankr. S.D. N.Y. 1989).

RESPONSIBLE PERSON. The debtor was an officer of a corporation and was liable as a "responsible person" for the corporation's withholding employment taxes. The corporation had provided for the deficiency in withholding taxes in its Chapter 11 plan which was confirmed. The debtor had filed a personal Chapter 13 plan. IRS attempted to assess the "responsible person" penalty in the Chapter 13 proceeding. The court held that the effect of the assessment against the debtor on the Chapter 11 plan was relevant to allowance of the IRS claim in the Chapter 13 case and required a hearing to present evidence of the effect on the Chapter 11 plan. *In re Dobbins*, 108 B.R. 638 (Bankr. W.D. Tenn. 1989).

FEDERAL AGRICULTURAL PROGRAMS

1990 FARM BILL

The 1990 farm bill, H.R. 3950, has been introduced under the title Food and Agricultural Resources Act of 1990. The new bill generally extends the provisions of the 1985 Act. Although the final version is still far from certain, some aspects of the introduced bill are summarized here—

Target prices. The minimum target price for wheat would be \$4.00 per bushel, for corn \$2.75 per bushel and for feed grains at a "fair reasonable rate."

Support levels. The loan rates for wheat and feed grains would continue at 75 and 85 percent of the market price for the preceding five market years, excluding the

highest and lowest years. Loan levels may be reduced by the Secretary by up to 20 percent but only if compensation payments are made to producers. The loan rate for soybeans would be 75 percent of the previous five year price, not to exceed 5 percent decline per year and not lower than \$4.50 per bushel.

Acreage reductions. If wheat stocks exceed 1 billion bushels the acreage reduction must be between 20 and 30 percent. If corn stocks exceed 2 billion bushels, acreage reduction must be between 12.5 and 20 percent. If corn stocks are between 1.8 and 2 billion bushels, the acreage reduction must be between 10 and 12.5 percent. The national program acreage provisions are extended if no acreage reduction is in effect.

Conservation reserve program. The 1990 bill continues the discretionary authority for enrollment of highly erodible lands in the CRP.

Other continued programs: The current per "person" total program payment limitations are continued. Advance deficiency payments are to be continued. The Food security wheat reserve is continued. The system for determining acreage base and program yields is continued. Prevented planting disaster payments, land diversity payments, payment in kind deficiency payments and planting of alternative crops on conserving use are continued.

BORROWER'S RIGHTS. Farm debtors allowed to sue for declaratory and injunction relief against Farm Credit Bank for failure to give borrowers notice of right of first refusal to repurchase land. *In re Jarrett Ranches, Inc.*, 107 B.R. 963 (Bankr. D. S.D. 1989).

A Farm Credit Bank and Production Credit Association entered into an agreement with farm debtors restructuring their farm loans. Under the agreement the debtors agreed to waive their rights under the Agricultural Credit Act of 1987 for a first option to repurchase some of the land transferred to the FCB. However, FCB later offered to resell the land to the debtors but after the debtors initiated purchase negotiations, the FCB revoked the offer. The court held that the offer to resell the land to the debtors reinstated their rights under the Agricultural Credit Act of 1987 and that once reinstated, the rights could not be revoked by FCB. The land was to be sold at public auction in 59 parcels. When the highest bid was received for each parcel, the FCB was to inform the debtors who then would be required to bid against the highest bidder for the land. The court

held that where the FCB intends to sell the entire amount of repossessed land, the land must be sold as one unit and that once a high bid for the land had been obtained, the debtor could only be required to match or exceed the highest bid in order to exercise the right of first purchase. Because the FCB failed to follow the correct sale procedures, the court ordered the resale of the land in compliance with the debtor's rights under the Agricultural Credit Act of 1987. *In re Jarrett Ranches, Inc.*, 107 B.R. 969 (Bankr. D. S.D. 1989).

Farm debtors of a Farm Credit Bank sued the bank for failure of the bank to provide, within 45 days of a foreclosure, the debtors with a written notice of their rights to negotiate a restructuring of their loans under the Agricultural Credit Act of 1987. The court ruled that the debtors had a right to bring a private action under the 1987 Act and that the debtors were entitled to the rights under the 1987 Act although the debtors were in bankruptcy at the time of foreclosure. However, the court ruled that the bank did not violate the 1987 Act because the bank had provided the debtors with an opportunity to negotiate the restructuring of their loans before foreclosure. The debtors had no rights under the 1987 Act to sue FCB employees individually. *Hill v. Farm Credit Bank of St. Louis*, 726 F. Supp. 1201 (E.D. Mo. 1989).

COMMUNITY LOANS. The FmHA has adopted as a final rule amendments to the regulations governing the servicing of community and insured business program loans and grants. 55 Fed. Reg. 4399 (Feb. 8, 1990), amending 7 C.F.R. Part 1951, subpart E.

COTTON. The Commodity Credit Corporation has announced that the 1990 loan level for Extra Long Staple (ELS) cotton is \$0.8177 per pound, the target price is \$0.981 per pound, the acreage reduction is 5 percent, and recourse loans will be available for 1990 ELS seed cotton. 55 Fed. Reg. 5033 (Feb. 13, 1990).

CROP INSURANCE. The Federal Crop Insurance Corporation has announced a proposed rule adding a common set of crop insurance regulations and a common policy of insurance applicable to all crop insurance policies, effective with the 1991 crops. 55 Fed. Reg. 4382 (Feb. 7, 1990), adding 7 C.F.R. Part 499.

The Federal Crop Insurance Corporation has adopted as a final rule the addition of the fresh plum endorsement to the

general crop insurance regulations. 55 Fed. Reg. 4395 (Feb. 8, 1990), adding 7 C.F.R. § 401.146.

CROP LOANS. A farm corporation defaulted on its federal crop loan with the Commodity Credit Corporation and the CCC took possession of the collateral soybeans. The CCC transferred the beans from the corporation's storage to a third party which eventually purchased the beans. The court found that CCC used poor methods of shipping and storing the beans and had commingled the beans with beans of different quality. Thus, CCC was unable to accurately determine or prove the quantity or quality of the corporation's beans when obtained by CCC and the court did not allow CCC to assess a deficiency against the corporation when the beans sold for less than the loan amount. *In re Jones*, 107 B.R. 888 (Bankr. N.D. Miss. 1989).

FEES. The Agricultural Marketing Service has announced a proposed rule increasing the hourly fee rates for voluntary federal meat grading and certification services. 55 Fed. Reg. 3962 (Feb. 6, 1990), amending 7 C.F.R. § 54.27.

The Agricultural Marketing Service has announced a proposed rule increasing the hourly fee rates for voluntary federal egg products inspection and egg, poultry and rabbit grading services. 55 Fed. Reg. 3963 (Feb. 6, 1990), amending 7 C.F.R. Parts 55, 56, 59, 70.

The Food Safety and Inspection Service has adopted as a final rule increases in the fees charged for overtime and holiday inspections, voluntary inspection, identification, certification and laboratory services. 55 Fed. Reg. 4410 (Feb. 8, 1990), amending 7 C.F.R. §§ 391.2, .3, .4.

The Agricultural Marketing Service has announced a proposed rule increasing the hourly fee rates for inspection and grading of tobacco offered for importation into the United States. 55 Fed. Reg. 4615 (Feb. 9, 1990), amending 7 C.F.R. § 29.500.

GRAPES. The Animal and Plant Inspection Service has announced proposed rules allowing importation of grapes from Australia with fumigation and cold treatments. 55 Fed. Reg. 3963 (Feb. 6, 1990), adding 7 C.F.R. § 319.56-2h.

HONEYBEES. The Animal and Plant Inspection Service has announced proposed rules removing restrictions on the importation of honeybees and honeybee semen from New Zealand. 55 Fed. Reg. 3968 (Feb. 6, 1990), amending 7 C.F.R. § 322.1.

KIWI. The Agricultural Marketing Service has issued an interim final rule relaxing the minimum net weight requirements for kiwi grown in California for the remainder of the 1989-90 shipping season. 55 Fed. Reg. 5569 (Feb. 16, 1990), amending 7 C.F.R. § 920.302.

MILK. The Agricultural Marketing Service has announced a proposed suspension from February through August 1990 of the shipping standards for supply plants and the monthly requirement that a dairy farmer's milk be received at a pool plant in order to be eligible for diversion to nonpool plants. The AMS also announced the proposed termination of a portion of the "producer" definition in the Southwest Plains milk marketing order which prevents dairy farmers from being considered producers under the order during February through July if they did not sufficiently supply the market during the previous fall months. 55 Fed. Reg. 5854 (Feb. 20, 1990).

PERISHABLE AGRICULTURAL COMMODITIES ACT. A produce seller sold produce to the debtor under a written agreement that payment was due within 30 days after invoice. However, because the court found that the parties in practice ignored the payment term provision, the produce seller had failed to comply with the PACA trust fund requirements. The produce seller later purchased produce stalls from the buyer in partial satisfaction of past due accounts and leased the stalls back to the buyer giving the buyer an option to repurchase some of the stalls if the past due amounts were paid. The court held that this arrangement gave the seller equity securing the produce sold after the transfer and the seller did not have rights in the PACA trust funds after the transfer. *In re Lombardo Fruit & Produce Co.*, 107 B.R. 952 (Bankr. E.D. Mo. 1989).

POULTRY. The Animal and Plant Inspection Service has announced an interim rule adding *Salmonella enteritidis* serotype *enteritidis* (SE) to be a communicable disease of poultry in the United States and adding restrictions on the interstate

movement of chickens, eggs and egg products from flocks tested to have SE. The interim rule also adds testing requirements for egg production flocks. **55 Fed. Reg. 5576 (Feb. 16, 1990), adding 7 C.F.R. §§ 82.30 - .36.**

PRUNES. The Agricultural Marketing Service has issued an interim final rule changing the boundaries of the districts established for independent producer representation on the prune marketing committee. **55 Fed. Reg. 5570 (Feb. 16, 1990), amending 7 C.F.R. § 993.128.**

RICE. The Federal Grain Inspection Service has announced a proposed rule amending the United States Standards for rough rice, brown rice for processing and milled rice to establish two subclasses for short grain rice: short grain rice and short grain sweet rice. **55 Fed. Reg. 4582 (Feb. 8, 1990), amending 7 C.F.R. Part 68.**

RURAL HOUSING. The FmHA has revised its interim rule for the prepayment of rural housing and labor housing loans. **55 Fed. Reg. 4985 (Feb. 13, 1990), amending 7 C.F.R. Part 1965, Subpart B, Exhibit E.**

SPEARMINT OIL. The Agricultural Marketing Service has announced an interim final rule increasing the quantity of Class 3 spearmint oil which may be purchased from producers during the 1989-1990 marketing year. **55 Fed. Reg. 4983 (Feb. 13, 1990), amending 7 C.F.R. § 985.209.**

FEDERAL ESTATE AND GIFT TAX

GENERATION SKIPPING TRANSFERS. Under the decedent's will, one half of the residuary estate was bequeathed to the decedent's child, unless the child predeceased the decedent, in which case the property passed to the child's issue. One of the decedent's surviving children will submit a qualified and timely written disclaimer of the interest in the residuary property equal to the maximum amount exempt from the generation skipping transfer tax less any other amounts subject to the GSTT. IRS ruled that the disclaimed amounts would be eligible for the \$2 million exemption from the GSTT. **Ltr. Rul. 9004015, Oct. 27, 1989.**

MARITAL DEDUCTION. Decedent had bequeathed a specific value of property to a child with the value of estate assets to be determined at the date of distribution with the residuary of the estate to the surviving spouse. The value of the estate assets declined significantly during administration of the estate. The IRS ruled that the decline in value of estate assets does not make the bequest to the surviving spouse a terminable interest. **Rev. Rul. 90-3, I.R.B. 1990-4, 13.**

PRIOR TRANSFER CREDIT. Under I.R.C. § 2013(c)(1), the prior transfer credit may not exceed the amount by which the transferee's estate tax, computed after the allowance of all credits except the credit for tax on prior transfers, exceeds the estate tax computed by excluding from the transferee's gross estate the value of the transferred property. IRS has ruled that for purposes of determining this limitation, the unlimited marital deduction should be claimed for amounts bequeathed to a surviving spouse. **Rev. Rul. 90-2, I.R.B. 1990-4, 12.**

TAX LIENS. Under I.R.C. § 6324(a)(1) a tax lien for unpaid federal estate taxes is 10 years from the date of death. Two Circuit Courts of Appeals have held that section 6324(a)(1) requires the IRS to complete collection, including any court action, within the ten year period. **United States v. Potemken, 841 F.2d 97 (4th Cir. 1988); United States v. Clavenger, 517 F.2d 230 (7th Cir. 1975).** However, the U.S. District Court for the Eastern District of Tennessee has held that the ten year limitation is tolled by the filing of a court action by the IRS for collection of the tax. **Beaty v. United States, 90-1 U.S.T.C. ¶ 60,004 (E.D. Tenn. 1989).**

SPECIAL USE VALUATION. A qualified heir received title to property for which special use valuation was elected. Before the administration of the estate had closed the heir sold part of special use valued property to an unrelated party. The heir incurred expenses in the sale of the property and interest from late payment of the estate tax due from recapture of special use valuation benefits resulting from the sale of the property. IRS ruled that because the sale was not necessary for the administration of the estate, the costs of the sale and interest on the late payment of estate tax were not deductible as estate administrative costs. **Rev. Rul. 90-8, I.R.B. 1990-5, Jan. 29, 1990.**

A qualified heir had mortgaged property for which a special use valuation election had been taken when the heir received the property. The heir subsequently defaulted on the loans secured by the mortgage and the property was sold at a foreclosure sale with the proceeds used to pay off a portion of the loan. The court held that although the foreclosure sale was an involuntary conversion of the property, because the heir failed to reinvest the proceeds in substitute qualified property, the heir was liable for recapture tax. **In re Morgan, 90-1 U.S.T.C. ¶ 60,005 (Bankr. E.D. Okla. 1990).**

TRANSFERS WITH RETAINED INTERESTS. A major shareholder of a closely-held corporation transferred shares of nonvoting common stock to the shareholder's children while retaining all of the voting and some of the nonvoting stock. IRS ruled that because the potential appreciation of the corporation property will accrue to each shareholder in proportion to their stock ownership, the stock transferred would not be includible in the shareholder's gross estate. IRS also ruled that because the shares transferred did not ever have any voting rights, the shareholder did not transfer the stock while retaining the voting rights in the stock and the stock transferred would not be includible in the shareholder's gross estate. **Ltr. Rul. 9004017, Oct. 27, 1989.**

The sole shareholder of a corporation received a second class of common stock which had no voting powers as a dividend. The shareholder transferred the nonvoting stock to sons and grandchildren while retaining the voting common stock. IRS ruled that because the transferred stock did not ever have voting rights, the nonvoting stock would not be included in the transferor's gross estate. **Ltr. Rul. 9004009, Oct. 26, 1989.**

TRUSTS. A trust established with three income beneficiaries was to be divided under a state court action into three separate trusts. IRS ruled that the separation was not a transfer subject to gift tax because the interests of the beneficiaries did not change except as to the form of the trusts. IRS also ruled that the trusts were not subject to the generation skipping transfer tax because the original trust was not subject to the GSTT as an irrevocable trust established before September 25, 1985. The new trusts were ruled not to be grantor trusts for federal income tax purposes because the beneficiaries did not establish the original trust; the

state court action was ruled not to be an establishment of the trusts, but only a modification. Finally, the division of the trust was ruled a nontaxable transfer of the trust corpus for federal income tax purposes. **Ltr. Rul. 9004007, Oct. 19, 1989.**

VALUATION. A grantor established a three year irrevocable trust with the grantor as income beneficiary. If the grantor died before the termination of the trust, the principal of the trust was to be distributed to the grantor's estate. If the trustee, an independent third party, decided to terminate the trust prior to the end of three years, the grantor was to receive "that fractional share of the principal of the trust which constitutes the then value of the trust determined immediately prior to such termination by using the method of valuation by which the donor's interest would be valued for federal gifts tax purposes." If the grantor survived the trust, the trust was to continue with other named beneficiaries. IRS ruled that because the grantor was now in normal health, the transfer of property to the trust was subject to gift tax and that the value of the grantor's retained interest in the trust could be valued using the actuarial tables of Treas. Reg. § 25.2512-5. **Ltr. Rul. 9004002, Oct. 12, 1989.**

FEDERAL INCOME TAXATION

CORRECTION TO FARMERS TAX GUIDE

On page 61, right column, it states that only cash wages count against the \$2,500 limit for FICA tax purposes. I.R.C. § 3121(a)(8)(B)(ii) uses the term "employer's expenditures for agricultural labor" rather than "cash remuneration" which is used elsewhere in the same section. Accordingly, it appears that *all* wages count against the \$2,500 threshold figure, even wages paid in kind.

DEPRECIATION. Taxpayer was allowed ACRS deduction for a full year's depreciation for a computer where the taxpayer had been in business for the entire year. **McKnight v. Commr, T.C. Memo. 1990-69.**

DISCHARGE OF INDEBTEDNESS. An insolvent debtor transferred to a creditor in satisfaction of a debt property with a fair market value exceeding the debtor's basis in the property but less

than the amount of debt discharged by the creditor. IRS ruled that the transfer was a disposition causing recognition of gain to the debtor to the extent the fair market value of the property exceeded the debtor's basis in the property. The amount by which the discharged debt exceeded the fair market value of the property was discharge of indebtedness income. However, the debtor did not recognize income from the discharge of indebtedness from the amount of debt discharged in excess of the fair market value of the property in this case because the amount of debt discharged did not exceed the amount by which the debtor was insolvent. **Rev. Rul. 90-16, I.R.B. 1990-8, 5.**

Farm debtors had transferred land to a creditor in satisfaction of a debt which exceeded the fair market value of the land transferred. The debtors treated the transfer as a sale on their income tax return but did not elect Section 108 treatment for the discharge of indebtedness income. The court allowed the IRS to raise in its response to a motion for summary judgment that the debtors failed to make a timely election under Section 108 and ruled that because the debtors failed to make a Section 108 election with their income tax return, the debtors were not allowed Section 108 treatment of the discharge of indebtedness income. **Jenniges v. United States, 90-1 U.S.T.C. ¶ 50,090 (D. Minn. 1990).**

EMPLOYEE EXPENSES. IRS has provided additional guidelines for an optional method of computing the deductible costs of business incidental expenses incurred while the employee or self-employed person is traveling away from home. **Rev. Proc. 90-15, I.R.B. 1990-10, March 5, 1990.**

INTEREST RATES. For April 1, 1990 through June 30, 1990, the interest rate on underpayments of federal taxes is 11 percent and is 10 percent for overpayments of federal taxes. **Rev. Rul. 90-19, I.R.B. 1990-9, Feb. 26, 1990.**

INVESTMENT TAX CREDIT. A pipeline construction company's payment of surface damages to landowners was held to be part of the cost of the pipeline easements purchased from the landowners. Because the easements are considered intangible property, the cost of the easements and surface damages were not eligible for investment tax credit. **True v. United States, 90-1 U.S.T.C. ¶**

50,062 (10th Cir. 1990), rev'g on point 603 F. Supp. 1370 (D. Wyo. 1985).

PARTNERSHIPS

LIMITED PARTNERSHIPS. IRS has ruled that the Mississippi limited partnership act corresponds to the Uniform Limited Partnership Act for purposes of Treas. Reg. § 301.7701-2. **Rev. Rul. 90-18, I.R.B. 1990-8, 18.**

MERGERS. Three partnerships merged with one of the partnerships treated as the continuing partnership. The other two partnerships liquidated their shares in the merged partnership by transferring them to their partners. The distributed shares equaled 50 percent of the continuing partnership. The IRS ruled that the continued partnership was not terminated by the distribution. **Rev. Rul. 90-17, I.R.B. 1990-8, 13.**

PENALTIES. IRS has announced circumstances under which the disclosure on a return is adequate for reducing the understatement of income tax under I.R.C. § 6662(d) as added by the Revenue Reconciliation Act of 1989, Pub. L. No 101-239, § 7721, 103 Stat. 2106 (1989). **Rev. Proc. 90-16, I.R.B. 1990-10, March 5, 1990.**

S CORPORATIONS

INADVERTENT TERMINATION. An S corporation's status was terminated when a second class of stock was issued as a result of the failure of the board of directors to amend the bylaws to remove differences between the types of stock except for voting rights. IRS ruled the termination inadvertent where not tax motive was found and all shareholders had intended to be treated as S corporation shareholders. **Ltr. Rul 9004006, Oct. 18, 1989.**

SECTION 1244 STOCK. Taxpayers were denied an ordinary loss deduction for disposition of Section 1244 stock where the taxpayers failed to prove that the stock was common stock or to give evidence as to the nature of the corporation's income or the amount of corporation capital. **In re Neeseman, 90-1 U.S.T.C. ¶ 50,088 (Bankr. N.D. Ga. 1989).**

SOCIAL SECURITY TAX. IRS Circular E "Employer's Tax Guide" incorrectly states the maximum amount of 1990 wages subject to social security tax at \$50,400. The correct amount is \$51,300.

WITHHOLDING. Under Section 7631 of the Revenue Reconciliation Act of 1989, amending I.R.C. § 3401(a), if an agricultural worker's wages are subject to FICA withholding, the wages are also subject to income tax withholding effective for remuneration paid after December 31, 1989. In general, agricultural employees are subject to FICA withholding if an employee earns at least \$150 in annual *cash* remuneration or are covered because of the FICA withholding test. That test subjects employee wages to FICA withholding if the employer pays more than \$2500 during the year to all employees. Employees who are hand harvest laborers, are paid on a piece rate basis, commute daily to the farm from their permanent residence and were employed in agriculture less than 13 weeks during the prior year are exempt from application of the employer FICA withholding test. Thus, payment of wages to agricultural labor in non-cash form (in kind) results in the wages not being subject to FICA or income tax withholding. See Harl, "Paying Wages in Kind for Agricultural Labor," *Agricultural Law Digest*, p 53.

MORTGAGES

FORECLOSURE. Mortgagee fore-

closed on farmland and after the sheriff's sale transferred the property to a third party during the mortgagor's period of redemption. After the period of redemption had lapsed, the mortgagor sued the mortgagee for violation of the statutory right of first refusal, Minn. Stat. § 500.24(6). The mortgagee claimed that it never acquired the property since it assigned its interest in the land before the period of redemption had lapsed. The court disagreed and held that the transfer of the land was void until the mortgagor was allowed an opportunity to purchase the property at the price offered to the third party. **Harbal v. Federal Land Bank of St. Paul, 449 N.W.2d 442 (Minn. App. 1989).**

PRODUCTS LIABILITY

COTTON GIN. Employee of cotton gin was injured when his hand was caught in cotton lint cleaner machine. The machine had a protective grille which had been removed and employee had used his hand to clean the machine while it was running instead of using a stick provided by the employer. The court upheld a 10 percent liability judgment against the manufacturer of the lint cleaning machine which was found to be unreasonably

dangerous because the machine would operate with the protective grille removed. **Davis v. Commercial Union Ins. Co., 892 F.2d 378 (5th Cir. 1990).**

VETERINARIANS

LICENSES. State Veterinary Medical Board had suspended veterinarian's license for six months for unsanitary conditions. In reviewing the board's ruling, the trial court had held the ruling supported by substantial evidence but had reduced the suspension for being too harsh. The Court of Appeals held that the trial court erred in reducing the suspension without identifying how the board's ruling was not supported by the evidence. **Hale v. Ohio State Veterinary Medical Bd., 548 N.E.2d 247 (Ohio App. 1988).**

CITATION UPDATE

In re Gran, 108 B.R. 668 (Bankr. E.D. Ark. 1989). See p. 59 supra.

Smoot v. United States, 892 F.2d 597 (7th Cir. 1989). See p. 49 supra.