[14] *E.g.*, Iowa Code § 490A.902.
[15] *Id.*
[16] See Rev. Rul. 93-30, I.R.B. 1993-16, 4; Rev. Rul. 88-76, 1988-2 C.B. 360.
[17] *E.g.*, Iowa Code § 490A.902.
[18] *E.g.*, Nev. Rev. Stat. Ann. § 86.371. See n. 5 *supra*.
[19] Fla. Stat. Ann. § 608.471.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL

CONSOLIDATION. The debtor filed a Chapter 11 case in 1990 and the debtor's wholly-owned farm corporation filed for Chapter 11 in 1992. The debtor moved for substantive consolidation of the cases. The court held that consolidation was untimely because no evidence was available to determine the effect on the creditors in each case. ***In re* Stevenson, 153 B.R. 52 (Bankr. D. Idaho 1993)**.

EXEMPTIONS-*ALM* § 13.03.*

HOMESTEAD. The debtors owned two neighboring buildings which they rented as four apartments and used the fifth apartment as their residence. The court held that the debtors could claim a homestead exemption only as to the portion of the buildings used as their personal residence. ***In re* Wierschem, 152 B.R. 345 (Bankr. M.D. Fla. 1993)**.

LIFE INSURANCE. The debtor was the surviving spouse of a person who had five life insurance policies, all of which named the surviving spouse as beneficiary; two had been assigned to the surviving spouse by the decedent, two were owned by the decedent and one was owned by the decedent's corporation. The court held that under N.Y. Ins. Law § 3212(b), the proceeds of the policies assigned to the surviving spouse were exempt but the other policies were not exempt. ***In re* Rundlett, 153 B.R. 126 (S.D. N.Y. 1993), *aff'g*, 142 B.R. 649 (Bankr. S.D. N.Y. 1992)**.

TAX REFUND. At the time of the bankruptcy filing, the IRS held $12,000 of excess taxes owed to the debtors as a refund. The debtors claimed that the refund was exempt under Mo. Rev. Stat. § 513.427 because the refund was not subject to attachment. The court held that under I.R.C. § 6402, the refund was subject to attachment in specific instances, although not by any current creditor of the debtors; therefore, the refund was not eligible for the exemption. ***In re* Robinson, 152 B.R. 956 (Bankr. E.D. Mo. 1993)**.

The debtor sought to exempt as wages federal and state income tax refunds resulting from taxes withheld from the debtor's wages during the 90 days prior to filing for bankruptcy. The court held that the refunds were not "wages" for purposes of the exemption statute, Okla. Stat. tit. 31 § 1(A)(18). ***In re* Miles, 153 B.R. 72 (Bankr. N.D. Okla. 1993)**.

WILD CARD. The debtor's fax machine, copier, office desk and chair, and file cabinet used in the debtor's business were eligible for the tools of the trade exemption to the extent of the dollar limit of that exemption, with any excess amount eligible for the "wild card" exemption. The debtor's bank account was not eligible for the tools of the trade exemption and was not eligible for the "wild card" exemption. ***In re* King, 153 B.R. 229 (Bankr. N.D. Ill. 1993)**.

CHAPTER 12

PLAN-*ALM* § 13.03[8][c].* The Chapter 12 plan was not confirmed where the plan failed to include (1) payment of trustee fees on impaired claims paid by the debtor directly, (2) a source of operating funds for restarting the debtor's dairy and livestock operations, and (3) several expense items. ***In re* Oster, 152 B.R. 960 (Bankr. D. N.D. 1993)**.

Although the debtor's spouse did not join in the bankruptcy case, the debtor's plan included the spouse's nonfarm income in the amount of income available to meet farm expenses. A creditor objected to the plan, arguing that the nondebtor spouse's income is not subject to the jurisdiction of the bankruptcy court and the spouse cannot be legally forced to contribute to the debtor's plan payments. The court held that the plan would be confirmed. The court noted that the court is also powerless to force the debtor to make plan payments; therefore, the court's inability to force the debtor's spouse to contribute income to the plan payments did not affect the confirmability of the plan. In both cases, the result of a failure to pay would be a default under the plan with the only remedy being denial of discharge. ***In re* Soper, 152 B.R. 985 (Bankr. D. Kan. 1993)**.

The Chapter 12 debtor's plan provided that stock in a Farm Credit Bank would be transferred to the bank in partial satisfaction of a secured claim of the bank. The bank objected to the plan, arguing that the stock could not be redeemed without permission of the bank. The court held that Section 1225(a)(5)(C) has precedence over the Farm Credit Bank regulations and that the redemption of the stock could be required by the plan. ***In re* Davenport, 153 B.R. 551 (Bankr. 9th Cir. 1993)**.

TRUSTEE FEES-*ALM* § 13.03[8][b].* The debtor's Chapter 12 plan was confirmed in 1989 and included a trustee fee of 6 percent. The trustee sought an increase in the fee to 10 percent in 1992 after the statutory fee was increased by order of the U.S. Attorney General. The court held that the fee could not be increased because (1) the trustee had not demonstrated that the debtor could make the payments with the increase in fees, (2) the trustee failed to show that the modification of the fee was proper, and (3) the confirmed plan was *res judicata* as to the trustee fee. ***In re* Roesner, 153 B.R. 328 (Bankr. D. Kan. 1993)**.

FEDERAL TAXATION

ATTORNEY'S FEES. Although the court held that the IRS was not deemed to have waived sovereign immunity for purposes of awarding attorney's fees and costs resulting from repeated violations of the discharge order, the court allowed such awards under I.R.C. § 7430. ***In re*** **Germine, 152 B.R. 619 (Bankr. 9th Cir. 1993)**.

The court held that penalty amounts assessed by the IRS against the debtor for late payment of nondischargeable taxes were also nondischargeable because the penalty was not related to a pecuniary loss of the IRS. ***In re*** **Hallock, 93-1 U.S. Tax Cas. (CCH) ¶ 50,315 (Bankr. D. Ariz. 1993)**.

DISCHARGE. The debtors originally filed a Chapter 13 case in which claims for priority and nonpriority taxes were filed. The debtors converted the case to Chapter 7 before completing the Chapter 13 plan and before obtaining discharge of the nonpriority taxes. The court held that the debtors remained personally liable for the nonpriority taxes and for post-petition interest and penalties on those taxes. ***In re*** **Quick, 152 B.R. 902 (Bankr. W.D. Va. 1992)**.

In a subsequent opinion in the above case, the court held that the IRS could not include penalties for failure to pay on the pre-petition nonpriority tax claims for the period during the Chapter 13 case. ***In re*** **Quick, 152 B.R. 909 (Bankr. W.D. Va. 1992)**.

The court held that the debtor's 1984 and 1985 taxes were nondischargeable because the returns were not filed. The court also held that the debtor's testimony that the returns were mailed was insufficient proof of the filing. **Matter of Harper, 153 B.R. 84 (Bankr. N.D. Ga. 1993)**.

The IRS assessed the debtor for 1982 through 1986 taxes on April 11, 1990. The debtor then filed a Chapter 13 case which was dismissed on February 20, 1991. The debtor refiled for Chapter 13 on April 11, 1991, more than 240 days after the assessment, and sought a determination that the taxes were dischargeable under Section 523(a)(1)(A). The court held that the 240 day rule was tolled by the filing of the first Chapter 13 case plus six months after the case was dismissed. ***In re*** **Richards, 93-1 U.S. Tax Cas. (CCH) ¶ 50,344 (10th Cir. 1993), *aff'g*, 92-2 U.S. Tax Cas. (CCH) ¶ 50,330 (W.D. Okla. 1992)**.

JURISDICTION. The Bankruptcy Court abstained from determining the debtor's tax claim because the estate had no funds to pay the taxes and the debtor was pursuing administrative appeal of the tax claim. ***In re*** **Hemaya, 153 B.R. 71 (Bankr. D. Kan. 1993)**.

PREFERENTIAL TRANSFER-*ALM* § 13.03[4].* Within 90 days before the debtor filed for Chapter 7, the IRS levied against the debtor's wages for payment of taxes which were nondischargeable in the bankruptcy case. The debtor sought recovery of the levied funds as a preferential transfer while the debtor was insolvent. The court held that the levied funds were recoverable to the extent the debtor could claim an exemption for the wages. ***In re*** **Williams, 153 B.R. 74 (Bankr. S.D. Ala. 1992)**.

NET OPERATING LOSSES. The debtor was allowed to carry back post-petition, pre-confirmation losses to pre-petition tax years with any resulting refunds passing to the bankruptcy estate. ***In re*** **Maley, 152 B.R. 789 (Bankr. W.D. N.Y. 1992)**.

The debtor was a corporation and moved to prevent any sales of its stock which would disqualify, under I.R.C. § 382(a), the debtor from using net operating loss (NOL) carryforwards. The court held that because the NOL's were estate property, any sale of stock by shareholders which would affect the use of the NOL's would violate the automatic stay. ***In re*** **Phar-Mor, Inc., 152 B.R. 924 (Bankr. N.D. Ohio 1993)**.

RESPONSIBLE PERSON. The debtors were a junior vice-president and personnel director in a family corporation which operated a security business. Neither debtor had control over corporate finances, responsibilities which included payment of the taxes, or control over the corporate books. The court held neither debtor was a responsible person liable for the 100 percent penalty under I.R.C. § 6672 for the corporation's failure to pay withheld employment taxes. ***In re*** **Dallas, 153 B.R. 76 (Bankr. S.D. Ala. 1992)**.

The debtor was controller of a corporation which failed to pay federal employment taxes. The court held that the debtor was liable for the I.R.C. § 6672 100 percent penalty as a responsible person because the debtor was responsible for payment of employment checks, had knowledge of the unpaid taxes, and had the authority to make priorities among the payments to the corporation's creditors. ***In re*** **Bourque, 153 B.R. 87 (Bankr. D. Mass. 1993)**.

The debtor was a director and officer of a corporation which failed to pay federal employment taxes. The debtor had purchased the business for the debtor's daughter who managed the day-to-day operations of the company, including payment of all business obligations. The court held that the debtor was a statutorily responsible person liable for the 100 percent penalty of I.R.C. § 6672 because the debtor was a director and officer and had check writing authority. ***In re*** **Fontenot, 153 B.R. 165 (Bankr. W.D. La. 1993)**.

RETURNS. The bankruptcy trustee had filed federal income tax returns for the estate and had requested an IRS prompt determination. The IRS gave written acceptance of the returns, reserving the right to make assessments based on errors or corrections. The IRS then assessed a penalty against the debtor under I.R.C. § 6722 for failure to provide W-2 forms to its employees. The trustee sought to avoid the assessment and levy of the penalty as violating Section 505(b). The Bankruptcy Court had held that the IRS assessment and levy violated Section 505; however, the District Court reversed because the penalty was not related to the income tax returns filed by the trustee and was not subject to the Section 505 prompt determination request. ***In re*** **Farm Loan Services, Inc., 153 B.R. 234 (W.D. Wis. 1992)**.

SALE OF RESIDENCE. The debtor's residence was sold by the Chapter 7 trustee and the trustee excluded the gain on the sale from sale under I.R.C. § 121 because the debtors were both over age 55. The court held that a bankruptcy estate could not claim the exclusion under I.R.C. § 121. ***In re*** **Mehr, 153 B.R. 430 (Bankr. D. N.J. 1993)**.

SOVEREIGN IMMUNITY. After the debtors filed for Chapter 13, the IRS levied against the debtor-spouse's wages. The IRS then filed a claim in the bankruptcy case for the remaining taxes owed by the debtors. The debtors sought recovery of the levied funds as estate property. The IRS argued that the sovereign immunity was not waived because the tax claim did not involve the levied funds. The court held that the sovereign immunity was waived under Section 106(a) because the IRS claim and recovery action were related since the recovery action was a compulsory counterclaim to the IRS tax claim. ***In re* Adams, 152 B.R. 1021 (Bankr. M.D. Ga. 1993)**.

The debtor sought to recover as avoidable preference payments, non-trust fund tax payments made within 90 days before the bankruptcy filing. The IRS argued that the action was barred by sovereign immunity. The court held that the preference action was a compulsory counterclaim to the IRS claim for taxes and that the IRS sovereign immunity was waived by 11 U.S.C. § 106(c). ***In re* Pullman Const. Indus., Inc., 153 B.R. 539 (N.D. Ill. 1993), *aff'g*, 142 B.R. 280 (Bankr. N.D. Ill. 1992)**.

The IRS withheld the debtors' tax refunds to offset tax claims which were paid and discharged in the debtors' Chapter 13 case. The debtors sought an award of attorney's fees incurred in recovering the refunds. The Bankruptcy Court held that although the attorney's fees were awardable because the IRS had waived sovereign immunity, the Bankruptcy Court could not award the fees because the court was not a "court of the United States." The court, instead, referred the matter to the District Court for review and implementation. ***In re* Sneller, 153 B.R. 343 (Bankr. M.D. Ala. 1993)**.

TAX LIEN. The debtor sought to avoid a federal tax lien filed against property owned by the debtor and former spouse as invalid because filed under the debtor's former married name. The court held that the debtor had no standing to avoid the lien because Section 545 allowed only a trustee the power to seek avoidance of statutory liens. ***In re* Goebel, 153 B.R. 593 (Bankr. M.D. Fla. 1993)**.

CONTRACTS

NOVATION. The defendant entered into a contract with the plaintiff's assignor to sell the defendant's cattle and to care for the cattle until the cattle were sold as feeder cattle. The cattle did not sell immediately and after a substantial feed bill had accrued, the parties orally agreed that 50 percent of the sale of the cattle as "fat cattle" would be paid to the assignor. The actual feed bill exceeded 50 percent of the sale proceeds and the assignee sued for the remainder owed. The defendant argued that the agreement for 50 percent of the proceeds was a novation of the contract and set the maximum which would be paid for the care of the cattle. The court held that the evidence was sufficient to show that the later agreement was not intended to set a maximum amount to be paid for the feed but only changed the method of payment and made an approximation of the resulting feed bill. **Production Credit Ass'n v. Alamo Ranch Co., 989 F.2d 413 (10th Cir. 1993)**.

FEDERAL AGRICULTURAL PROGRAMS

BORROWER'S RIGHTS-*ALM* § 11.01[2][g].* The FmHA has issued interim regulations limiting the number of writedowns and buyouts a borrower may receive. Generally, a borrower with loans dated after January 6, 1988 has a lifetime limit of either one writedown or one buydown, but a writedown or buyout received from an application made before November 28, 1990 does not count toward the limit. **58 Fed. Reg. 30102 (May 26, 1993)**.

The ASCS has issued proposed regulations governing the settlement of debts owed to the ASCS. **58 Fed. Reg. 33029 (June 15, 1993)**.

CROP INSURANCE-*ALM* § 13.04.* The FCIC has issued proposed regulations which provide for one crop insurance policy for wheat, barley, flax, oats and rye with some changes for each specific crop. **58 Fed. Reg. 32458 (June 10, 1993)**.

PEANUTS. The CCC has adopted as final the 1993 peanut crop national support level of $674.93 per short ton for quota peanuts and $131.09 per short ton for additional peanuts. The minimum CCC export sale price for additional edible peanuts is $400 per short ton. **58 Fed. Reg. 33884 (June 22, 1993)**.

PESTICIDES-*ALM* § 2.04.* The plaintiff was injured when a spray pump container of insect repellent leaked and ignited. The plaintiff sued the manufacturer for failure to warn and for breach of implied warranty. The court held that the failure to warn action was preempted by FIFRA and that the plaintiff alleged sufficient facts to support the implied warranty claim. **Levesque v. Miles, Inc., 816 F. Supp. 61 (D. N.H. 1993)**.

FEDERAL ESTATE AND GIFT TAX

ADMINISTRATIVE EXPENSES-*ALM* § 5.04[1].* The decedent's estate claimed deductions for administrative expenses paid to a company to operate the decedent's ranch and extensive oil, gas and mineral properties. The deductions were disallowed by the IRS as not meeting the requirements of Treas. Reg. § 20.2053-3(a). The estate argued that the regulations were invalid for impermissably restricting the requirements of I.R.C. § 2053(c)(2). The court held that the statute was ambiguous and that the regulations were a reasonable interpretation of the statute. **Hefner v. U.S., 93-1 U.S. Tax Cas. (CCH) ¶ 60,138 (W.D. Okla. 1993)**.

CHARITABLE DEDUCTION-*ALM* § 5.04[4].* The decedent's will provided that 60 percent of the residuary was to pass to organizations which were "tax exempt of inheritance." The will provided that the executor could distribute the property to existing organizations or form a new charitable organization. The IRS ruled that the bequest was sufficiently specific in amount and purpose to qualify for the charitable deduction. **Ltr. Rul. 9322025, Mar. 9, 1993**.

DEDUCTIONS-*ALM* § 5.04.* The trustees of a trust claimed a deduction for the full cost of investment advice, arguing that the investment advice was required in order for the trustees to fulfill their fiduciary duty to make prudent investments of trust property. The Tax Court, however, held that I.R.C. § 67 allowed a full deduction (i.e. not limited to the excess of 2 percent of AGI) only for expenses unique to trust administration. Because the investment advice was normal for any investment, the advice was not unique to trusts and was subject to the 2 percent limitation. The Tax Court also held that the trustees failed to prove that the investment advice was required by state law. The appellate court reversed, holding that the trustees' lack of investment experience made the investment advice necessary. **O'Neill v. Comm'r, 93-1 U.S. Tax Cas. (CCH) ¶ 50,332 (6th Cir. 1993), *rev'g*, 98 T.C. 227 (1992)**.

GENERATION SKIPPING TRANSFER TAX-*ALM* § 5.04[6].* The decedent's will bequeathed property in trust to the decedent's father with the remainder to pass to the decedent's siblings and their issue. The siblings disclaimed a portion of their remainder interests, which allowed the issue to also become first remainder holders. The executor partitioned the trust for the father into six trusts, each with one remainder beneficiary as created by the disclaimers. The IRS ruled that the six trusts would be considered separate trusts for GSTT purposes and would be eligible for the GST exemption amount. **Ltr. Rul. 9323027, Mar. 16, 1993**.

GIFTS-*ALM* § 6.01.* The taxpayers made contributions to a nonprofit club for the construction of a clubhouse. All club members who make such a contribution will receive a lifetime membership in the club subject to payment of current fees and the club rules of conduct. The IRS ruled that the contributions were gifts of present interests to the other club members, valued using the life expectancy of the members. **Ltr. Rul. 9323020, Mar. 12, 1993**.

GIFTS WITHIN THREE YEARS OF DEATH-*ALM* § 5.02[2].* The decedent had applied for an insurance policy, designating the decedent as the owner on the application. Before the policy was issued and the first premium paid, the decedent filed an amended application splitting the policy into two policies and naming the decedent's sons as owners of the policies. The decedent paid the first two premiums and the policies were issued to the sons. The IRS ruled that the decedent did not have any incidents of ownership in the first policy before transferring the policy to the sons; therefore, the transfer was not included in the decedent's gross estate. **Ltr. Rul. 9323002, Feb. 24, 1993**.

The decedent had established a revocable inter vivos trust with the decedent as sole beneficiary. The trust allowed the decedent to transfer irrevocable fractional interests in the trust to third persons. The decedent transferred several irrevocable fractional interests in the trust with a value of $10,000 each during the two years before death. The court ruled that the value of the transfers was included in the decedent's gross estate because the transfers represented relinquishments of the decedent's power over the trust interests. The court distinguished this case from *Est. of Jalkut v. Comm'r, 96 T.C. 675 (1990)* in that the transferred property was not removed from the trust. **Est. of Kisling v. Comm'r, T.C. Memo. 1993-262**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* The taxpayer owned an IRA which had the taxpayer's spouse as primary survivor beneficiary. The taxpayer established an irrevocable trust as the contingent survivor beneficiary. The trust had the spouse as beneficiary and required annual distribution of at least all of the income earned by the IRA annually. The IRS ruled that (1) a disclaimer by the surviving spouse, as primary beneficiary, of a portion of the IRA would be effective and (2) the trust would be QTIP eligible for the marital deduction. **Ltr. Rul. 9320015, Feb. 17, 1993**.

The taxpayer created a revocable trust which was the named remainder beneficiary of the taxpayer's IRA. The trust beneficiary was the taxpayer's surviving spouse and provided that the greater of (1) all annual income of the IRA or (2) the annual distribution from the IRA based on the life expectancy of the surviving spouse be distributed to the beneficiary at least annually. The IRS ruled that the trust would be QTIP eligible for the marital deduction. **Ltr. Rul. 9321058, Feb. 26, 1993**.

The taxpayers, husband and wife, established three revocable trusts with the surviving spouse as income beneficiary and other individuals as remainder beneficiaries. The trust agreements were apparently drawn from a living trust "kit" and contained contradictory provisions. The IRS ruled that the trusts contained ambiguous language and that the trusts would not qualify for the marital deduction. **Ltr. Rul. 9323019, Mar. 12, 1993**.

POWER OF APPOINTMENT-*ALM* § 5.02[5].* The decedent's will created two trusts, each with the surviving spouse and a bank as cotrustees. The first trust provided that the trustees had the discretion to accumulate income or to distribute current and accumulated income to the surviving spouse or to the decedent's child and heirs. The second trust provided that the trustees had the discretion to accumulate income or to distribute income to the surviving spouse or to distribute income and principal to the decedent's daughter or others for their comfort, support and education. The IRS ruled that the surviving spouse did not have a general power of appointment over the trusts because the state prohibited a trustee from exercising discretionary powers for the trustee's benefit unless exercised pursuant to an ascertainable standard. **Ltr. Rul. 9323028, Mar. 16, 1993**.

SPECIAL USE VALUATION-*ALM* § 5.03[2].* The decedent's estate included several interests in farm land. The executor filed the estate's Form 706 without a completed special use valuation election. The "no" box was checked on page 2 indicating no special use valuation election was made and the protective election box was not checked. The return did not contain any statement that an appraisal was pending at the time of the return. Citing *Est. of Gunland v. Comm'r, 88 T.C. 1453 (1987)*, the IRS ruled that no protective election was filed. **Ltr. Rul. 9323004, Mar. 4, 1993, *aff'g on recon.*, Ltr. Rul. 9306006, Nov. 9, 1992**.

TRUSTS-*ALM* Ch. 8.* The taxpayer transferred residential property to two trusts, one with the taxpayer as income beneficiary and one with the taxpayer's spouse as income beneficiary. The remainder of both trusts passed to the surviving spouse with further remainders to the couple's children. Each trust could receive a pour over from the probate estate of the initial beneficiary and each beneficiary had a general power of appointment over trust corpus. If the power of appointment is not exercised, the trustee of each trust is authorized to transfer a portion of trust corpus equal to the unused generation skipping transfer tax exemption to a third trust with the surviving spouse as beneficiary and the children as remainder beneficiaries. The trustee of the three trusts may distribute trust corpus for the health, education or support of the beneficiaries, except to the trustee if the trustee is also a beneficiary. The taxpayer was the initial trustee but the spouse had the power to remove the trustee from the spouse's trust and appoint a successor trustee. The IRS ruled (1) the taxpayer would be treated as owner of the trusts, including the third trust if the taxpayer survives the spouse; (2) the spouse would not be treated as the owner of the spouse's trust after the death of the taxpayer; (3) at the taxpayer's death, the basis of the trust assets in the taxpayer's trusts will equal the value of the assets for federal estate tax purposes; (4) at the spouse's death, the basis of the trust assets in the spouse's trusts will equal the value of the assets for federal estate tax purposes; (5) if the residence is sold during the taxpayer's and spouse's lifetimes, the sale would be eligible for the Section 121 exclusion and Section 1034 nonrecognition of gain treatment; (6) the estate of the first spouse to die may claim a marital deduction for the remainder interest passing to the surviving spouse if a valid QTIP election is made; (7) except to the extent the property receives QTIP treatment, the surviving spouse's interest in the third trust and the decedent's trust is not included in the surviving spouse's gross estate; (8) the transfer of the residence to the taxpayer's trust was not a completed gift subject to gift tax unless the taxpayer exercises the general power of appointment; and (9) the transfer of the interest in the residence to the spouse's trust was a taxable gift. **Ltr. Rul. 9321050, Feb. 25, 1993**.

VALUATION-*ALM* § 5.02[3][a].* The pre-1990 shareholder agreement initially provided that upon the death of a shareholder, the shareholder's stock would be redeemed for the proceeds of a life insurance policy plus a ten-year promissory note at 10 percent interest. The agreement was amended to provide for a 15-year note at an interest rate of 2 percent above the prime rate of a local bank. The IRS ruled that the modification of the agreement did not subject the stock to I.R.C. § 2703 valuation rules. **Ltr. Rul. 9322035, Mar. 10, 1993**.

FEDERAL INCOME TAXATION

ALTERNATIVE MINIMUM TAX. The taxpayer had net operating losses (NOL) for 1985 through 1988 and reported no alternative minimum tax (AMT) for 1985 because the taxpayer had no "economic income" for 1985 through 1988. The IRS ruled that the calculation of alternative minimum tax net operating losses for each taxable year is made in the same manner as regular NOL except (1) items of tax preference arising in a taxable year are added back to taxable income and (2) for individuals, only those itemized deductions allowable in computing alternative minimum taxable income are taken into account. **Ltr. Rul. 9321003, Feb. 10, 1993**.

The taxpayer requested a ruling as to how to calculate the allowable charitable deduction for purposes of determining alternative minimum tax. The IRS ruled that the charitable deduction limitation for AMT purposes is calculated separately using alternative minimum taxable income, with any disallowed charitable deduction carried forward for use in calculating AMT in future years. **Ltr. Rul. 9321063, Mar. 2, 1993**.

CHARITABLE DEDUCTION. The taxpayers granted to a nonprofit organization a scenic easement over a portion of their property which restricted the development of the property. The IRS denied the charitable deduction for the value of the easement, arguing that the taxpayers lacked donative intent in that the easement was granted in order to enhance the value of their property and to obtain the tax deduction and the transfer was without an exclusive conservation purpose. The court held that the transfer had an exclusive conservation purpose because the easement was granted to an organization devoted to conserving the property. The court also found that the transfers had the requisite donative intent in that the granting of the easement reduced the fair market value of the property. **McLennan v. U.S., 93-1 U.S. Tax Cas. (CCH) ¶ 50,345 (Fed. Cir. 1993), *aff'g*, 23 Cls. Ct. 99 (1991) and 24 Cls. Ct. 102 (1991)**.

COOPERATIVES. The taxpayer corporation was ruled to be operating on a cooperative basis where (1) the net income was annually redistributed to patron/shareholders based on each patron's business with the corporation, (2) the corporation did less than 50 percent of its business with nonshareholders, and (3) all shareholders have one vote. **Ltr. Rul. 9322028, Mar. 9, 1993**.

INVESTMENT TAX CREDIT-*ALM* § 4.04[1].* The plaintiffs were partners in a business which leased automobiles under 18 month leases. The plaintiffs argued that under normal lease practice, the leases were actually for 18 months less one day; therefore, the leases were for less than 50 percent of the three year useful life of the automobiles. The court held that the lease language was unambiguous; therefore, the leases were not for less than 50 percent of the useful life of the automobiles and the automobiles were not eligible for investment tax credit (ITC). The cash basis plaintiffs also leased some automobiles for less than 18 months but paid less than 15 percent of the rent for expenses. The plaintiffs argued that they had incurred deductible expenses as to the automobiles during the first 12 months of the leases. The court held that the automobiles were not eligible for ITC because the plaintiffs had not paid more than 15 percent of the leases for expenses for the automobiles. **Frei v. U.S., 93-1 U.S. Tax Cas. (CCH) ¶ 50,322 (D. Colo. 1993)**.

PARTNERSHIP-*ALM* § 7.03.*

LIMITED LIABILITY COMPANIES. The taxpayer formed a limited liability company (LLC) using stock from a wholly-owned corporation. The IRS ruled that the LLC would be taxed as a partnership because (1) the LLC lacked the corporate characteristic of continuity of life since the state LLC law and the LLC agreement required the consent of all members to continue the partnership after a terminating event, and (2) the LLC lacked the corporate characteristic of centralized management since the state LLC law and the LLC agreement provided that management of the company was vested in all of the members. **Ltr. Rul. 9320045, Feb. 24, 1993**.

TRANSFERS OF INTERESTS. The IRS has ruled that a transfer of an interest in partnership profits in exchange for services to the partnership is not a taxable event for the partnership or partner except (1) if the profits interest relates to a substantially certain and predictable stream of income from partnership assets; (2) if within two years of receipt, the partner transfers the interest; and (3) if the profits interest is a limited partnership interest in a publicly traded partnership. **Rev. Proc. 93-27, I.R.B. 1993-24**.

RETURNS. The IRS has adopted as final regulations governing the reporting of transactions involving more than $10,000. **58 Fed. Reg. 33763 (June 21, 1993)**.

SALE OR EXCHANGE. The taxpayers were brothers who jointly owned a large tract of developed and undeveloped land. Portions of this tract were sold to third parties such that the single tract became separated into two noncontiguous tracts. The taxpayers partitioned the remaining property into separate ownership portions with one taxpayer receiving cash to equalize the partition. The IRS ruled that the partition was not a taxable sale or exchange except to the extent the cash received by the one taxpayer exceeded that taxpayer's income tax basis of the real property received. The allocation of basis must be based on the property's share of the total fair market value of the partitioned property. **Ltr. Rul. 9320037, Feb. 22, 1993**.

SAFE HARBOR INTEREST RATES
July 1993

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR 3.95	3.91	3.89	3.88	
110% AFR	4.35	4.30	4.28	4.26
120% AFR	4.74	4.69	4.66	4.64
		Mid-term		
AFR 5.54	5.47	5.43	5.41	
110% AFR	6.11	6.02	5.98	5.95
120% AFR	6.67	6.56	6.51	6.47
		Long-term		
AFR 6.61	6.50	6.45	6.41	
110% AFR	7.28	7.15	7.09	7.05
120% AFR	7.95	7.80	7.73	7.68

SOCIAL SECURITY TAX-*ALM* § 4.06[2].[*] The taxpayer was a half owner and president of a family farm corporation which raised breeder pigs. The taxpayer entered into an employment contract with the corporation for annual compensation of $6,000 in cash and 20 percent of all butcher hogs at market weight. A bonus of up to 20 boars weighting no more than 300 pounds could also be granted. For 1990 the shareholder received $35,000 in hogs and in 1991 $41,000 in hogs but paid no FICA taxes on the value of the hogs. The taxpayer's share of market hogs was placed in separate pens and delivered to market in partitioned portions of trailers if the taxpayer's hogs were delivered with the corporation's hogs. The taxpayer received a separate check for the taxpayer's hogs. The taxpayer reimbursed the corporation for the costs of delivering the taxpayer's hogs. The IRS ruled that the efforts made by the taxpayer to separate the transfer of the hogs to the taxpayer as compensation were insufficient to change the true nature of the transaction as payment of cash for services; therefore, the transfers of the hogs were wages subject to FICA taxes. **Ltr. Rul. 9322003, Feb. 25, 1993**. For an article on this issue, see *A.L.D.* Vol. 3, No. 11 (May 22, 1992).

TAX LIENS. The IRS had filed tax liens against the taxpayers' residence which was the corpus of an Illinois land trust with the taxpayers as beneficiaries. The court held that under Illinois law, the taxpayers were treated as the owners of the property; therefore, the tax liens could attach to the property. **United States v. Stamps, 93-1 U.S. Tax Cas. (CCH) ¶ 50,280 (S.D. Ill. 1993)**.

PRODUCTS LIABILITY

TRACTOR-*ALM* § 1.02[4].[*] The plaintiffs' decedent was killed when pinned under a tractor manufactured by the defendant without roll-over protection (ROPS) or seat belts. The plaintiffs sued in strict liability for defective design for failure of the tractor to have ROPS. The plaintiff objected to comments in the defendant's closing arguments as to the marketability of the tractor without ROPS. The court held that the comments were allowable. The court also allowed references to the conduct of the decedent in operating the tractor as relevant to the causation of the accident, even though contributory negligence was not a defense. **Kolesar v. Navistar Intern. Transp. Corp., 815 F. Supp. 818 (M.D. Pa. 1993)**.

SECURED TRANSACTIONS

FEDERAL FARM PRODUCTS RULE-*ALM* § 13.01[4][a].[*] The plaintiff loaned $100,000 to an apple and cherry producer and perfected a security interest in the apple and cherry crops. The defendant also loaned the producer $100,000 and perfected its security interest in the apple crop. The producer delivered the apples to the defendant who sold them and applied the proceeds to the defendant's $100,000 loan. The plaintiff sued for the proceeds of the apple crop, claiming a prior lien on the crop. The defendant argued that the federal farm products law prevented the plaintiff from asserting its lien because the plaintiff failed to provide written notice to the defendant of the lien on the apples. The court held that because the defendant was a lienholder, the federal farm products rule did not apply. **Food Services of America v. Royal Heights, 850 P.2d 585 (Wash. App. 1993)**.

GARNISHMENT. The plaintiff filed a garnishment to collect on a judgment debt against the proceeds of milk produced by the defendant. The defendant argued that the milk proceeds were exempt from garnishment under N.D. Cent. Code § 28-22-02 as a "crop." The court held that although milk is a farm product, it is not a crop eligible for the exemption. **Friedt v. Moseanko, 498 N.W.2d 129 (N.D. 1993)**.

STATE REGULATION OF AGRICULTURE

MILK. The plaintiff was a milk dealer which purchased most of its milk from out-of-state producers. The plaintiff challenged the constitutionality under the Commerce Clause of a state pricing order which assessed milk dealers a premium on all Class 1 milk sold in the state. The assessed funds were distributed only to state producers; thus the producers who supplied the plaintiff would not receive any of the amounts assessed against the plaintiff. The court held that the order was not discriminatory because all dealers were assessed alike; therefore, the order would be evaluated to determine whether the benefit to local producers outweighed the burden on interstate commerce. The court held that the order did not violate the Commerce Clause because the incidental burden on interstate commerce was outweighed by the benefit to the state's dairy industry which was in danger of collapse without the assessed funds. **West Lynn Creamery v. Comm'r of Dept. of Food, 611 N.E.2d**

239 (Mass. 1993). Our thanks to Francis DiLuna for alerting us to this case.

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PESTICIDES. The defendant township passed an ordinance which required a permit to apply pesticides by aerial spraying. The plaintiff challenged the ordinance as preempted by the state pesticide law. The township argued that the statute expressly excepted zoning laws from the preempted effect of the statute. The court held that the ordinance was not an exempt zoning law because the focus was on regulating aerial spraying and not land use. **Minnesota Agric. Aircraft Ass'n v. Township of Mantrap, 498 N.W.2d 40 (Minn. Ct. App. 1993)**.

CITATION UPDATES

Est. of Vissering v. Comm'r, 990 F.2d 578 (10th Cir. 1993), ***rev'g and rem'g*****, 96 T.C. 749 (1991)** (gross estate) see p. 81 *supra*.

Langer v. Comm'r, 989 F.2d 294 (8th Cir. 1992), ***aff'g*****, T.C. Memo. 1990-268** (home office) see p. 22 *supra*.

White v. Comm'r, 991 F.2d 657 (10th Cir. 1993), ***aff'g*****, T.C. Memo. 1991-552** (partnership distributions), see p. 99 *supra*.

Commissioner v. Keystone Consolidated Indus., Inc., 113 S. Ct. 2006 (1993), ***rev'g*****, 951 F.2d 76 (5th Cir. 1992)** (retirement plans), see p. 99 *supra*.

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