

## FARM PROGRAM YIELDS ON NEWLY IRRIGATED ACRES

by Robert P. Achenbach, Jr.

For purposes of the several federal crop adjustment programs, the determination of farm program yields is based upon the average program yields of the farm for three of the past five years (the highest and lowest yields of the five years are disregarded) before the effective date of a farm bill (i.e. 1981-1985 for the 1985 farm bill and 1986-1990 for the 1990 farm bill).<sup>1</sup> Thus, if a producer increased production by irrigation after 1985 or after 1990,<sup>2</sup> the farm program yield may not be increased to reflect the irrigated yield.

Reconstituted and combined farms with irrigated and nonirrigated yield acres receive a weighted average yield.<sup>3</sup> However, under the farm reconstitution regulations, an irrigated yield tract may not be combined with a non-irrigated yield tract if the tracts have different owners.<sup>4</sup> When a combined farm is divided, the total irrigated yield for the resulting farms cannot exceed the irrigated yield acres of the combined farm.<sup>5</sup>

The regulations do not provide for adjustment of post-1985 feed grain yields based on a change of production method. However, the statute allows adjustments in cases of natural disaster or other condition beyond the control of the producer but the statute leaves the adjustment amount and method to discretionary regulations by the Secretary.<sup>6</sup> The regulations<sup>7</sup> allow such adjustments only for ELS cotton. There is no adjustment provision for other program crops.

The ASCS handbook, however, does provide for an increase in program yield where the acres were not irrigated from 1981-1985 but were irrigated prior to 1981.<sup>8</sup> Under this provision post-1985 irrigated acres may receive an irrigated yield, if (1) a producer had an irrigated farm program yield on acres prior to 1981, (2) the acres were not planted or credited as conserving acres during 1981-1985, and (3) irrigation was prevented during 1981-1985 by circumstances beyond the producer's control. In making the exception, the ASCS noted that the farm program yield restrictions to program yields of the previous 3-5 years can be seen as unduly harsh in cases where land was once irrigated, but for reasons beyond the control of the producer, the irrigation was not done during 1981-1985.<sup>9</sup>

The handbook exception does not apply where irrigation was prevented by circumstances beyond the producer's control but the producer continued to plant on the acres. Without a similar exception for producers who continued to produce crops on the acres without the previous irrigation

(which was lost due to conditions beyond the producer's control, e.g., contamination of the water), the Secretary's implementation of the program yield provisions could be viewed as arbitrary in that the distinction between continued and abandoned production during the nonirrigated years violates a major purpose of the production adjustment programs, the limiting of crop production in return for program benefits. The exception allows a greater increase in post-1985 production from irrigation on poor cropland (i.e., cropland which could not produce without irrigation) than the increase in production on marginal cropland (i.e., cropland which can produce without irrigation). The focus of the exception should be only upon the harsh effect of the loss of irrigation yield because of conditions beyond the control of the producer, not the type of land involved.

Another exception is provided in the handbook for combined crop acreage bases (currently allowed only for corn and grain sorghum).<sup>10</sup> The provision allows an irrigated program yield for a new program crop included in a combined acreage base to the extent the new crop is planted instead of the original crop if an irrigated yield has been established for the original crop. Combined crop acreage base refers to allowing the production of any of the combinable crops (such as grain sorghum on corn acres) without changing the acreage base.

### FOOTNOTES

<sup>1</sup> 7 U.S.C. § 1466; 7 C.F.R. § 1413.6.

<sup>2</sup> This article focuses on the 1985 farm bill because implementing regulations are not yet available for this aspect of the 1990 farm bill. However, the 1990 provisions are similar and similar regulations are expected.

<sup>3</sup> 7 C.F.R. § 1413.11(b).

<sup>4</sup> 7 C.F.R. § 719.4(g).

<sup>5</sup> ASCS Handbook 2-CM SCOAP, ¶ 87.5.

<sup>6</sup> 7 U.S.C. § 1466(c)(2). The 1990 farm bill changed the statute by removing the natural disaster and unavoidable condition requirements but retained the language making such adjustments discretionary with the Secretary. 1990 Act, Sec. 1101, amending 7 U.S.C. § 1466(c)(2).

<sup>7</sup> 7 C.F.R. § 1413.6(b)(2).

<sup>8</sup> ASCS Handbook 5-PA ¶ 158(G).

<sup>9</sup> See comments to Amendment 19, ASCS Handbook 5-PA ¶ 158(G).

<sup>10</sup> ASCS Handbook 5-PA ¶ 158(E).

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## CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

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### BANKRUPTCY

#### GENERAL

**EXEMPTIONS.** The debtors' homestead was sold by order of the bankruptcy court and the exempt proceeds were placed in the court registry. The debtors had filed for divorce and a property settlement had not been obtained by the time the bankruptcy trustee petitioned for a claim against the homestead proceeds. The trustee argued that the proceeds

were no longer exempt because the debtors have failed to reinvest the proceeds in another homestead. The court held that the proceeds were still exempt because the debtors did not have access to the proceeds because of the pending divorce litigation. *In re Huth*, 122 B.R. 724 (Bankr. E.D. Mo. 1988).

The debtor's interest in an IRA was held eligible for an exemption as a profit sharing or similar plan under Neb.

Rev. Stat. § 25-1563. **Matter of Anzalone, 122 B.R. 750 (Bankr. D. Neb. 1990).**

A debtor's interest in employee benefit plan was not a spendthrift trust where the debtor could withdraw funds in circumstances of dire need. The Florida exemption held preempted by ERISA. *In re Rosenquist, 122 B.R. 775 (Bankr. M.D. Fla. 1990).*

At the time of bankruptcy filing, the debtors held a remainder interest in a spendthrift trust. The primary beneficiary died within 180 days after the bankruptcy filing and the debtors became the income beneficiaries of the trust. The court held that 75 percent of the trust was excluded from the bankruptcy estate under Cal. Probate Code § 15306 and the remaining interest was available for an exemption to the extent necessary for the debtors' support. *In re Neuton, 922 F.2d 1379 (9th Cir. 1990).*

The debtor claimed that a bank account held by the debtor and the debtor's nondebtor spouse as tenants by the entireties was not estate property. The court held that the account was estate property and was not exempt to the extent of joint debts of the debtor and spouse. *In re Charles, 123 B.R. 52 (Bankr. E.D. Mo. 1991).*

#### CHAPTER 11

**MODIFICATION OF PLAN.** Although the case does not involve a debtor's attempt to modify a plan, the debtors were effectively able to relitigate a default provision in a Chapter 11 plan after a default had occurred by seeking equitable adjustment for the amount of payments made during the plan. See case under Contracts, *infra. In re Larsen, 122 B.R. 733 (Bankr. D. S.D. 1990).*

#### FEDERAL TAXATION

**ABANDONMENT.** The trustee abandoned two tracts of mortgaged land which were then sold under foreclosure proceedings. The debtors filed federal and state income tax returns showing the gain from the sale of the land as taxable to the bankruptcy estate. The trustee argued that the abandonment was not a sale or exchange of the property by the estate. The court agreed, holding that the estate does not receive any benefit or consideration from the abandonment to support a sale or exchange from abandonment. *In re Olson, \_\_\_ F.2d \_\_\_, No. 90-2248 (8th Cir. 1991), aff'g unrep. D. Ct. dec., aff'g 100 B.R. 468 (Bankr. N.D. Iowa 1989).* See also Harl, "Abandonment in Bankruptcy," p. 17 *supra*.

**ALLOCATION OF PLAN PAYMENTS FOR TAXES.** The court held that the bankruptcy court had no authority to allow debtor allocation of employment taxes paid prior to confirmation of the Chapter 11 plan. *In re Equipment Fabricators, Inc., 91-1 U.S. Tax Cas. (CCH) ¶ 50,097 (D. Ariz. 1991).*

**DISCHARGE.** Taxes owed by the debtors were not dischargeable where, at the time of the bankruptcy petition, the IRS could still assess the taxes but for the automatic stay and a pending tax court case. *In re Wines, 122 B.R. 804 (Bankr. S.D. Fla. 1991).*

## COMMODITY FUTURES

**PERFORMANCE RECORDS.** The CFTC has issued advisory guidance rules for acceptable methods of computation of periodic rate of return and use of the Value Added Monthly Index in performance table presentations. **56 Fed. Reg. 8109 (Feb. 27, 1991).**

## CONTRACTS

**EQUITABLE ADJUSTMENT.** As part of the debtors' Chapter 11 plan, the deed for the debtors' farmland was placed in escrow and the plan provided that if the debtors defaulted on plan payments on a loan secured by the farmland, the creditor would receive the deed. After paying over \$80,000, the debtors defaulted on their payments and the deed was transferred to the creditor. The debtors filed for equitable adjustment of the plan to recover either part of the property or restitution to the extent of the plan payments and appreciation of the land value. The creditor argued that *res judicata* and collateral estoppel prevented relitigation of the plan. The court held that the issue of equitable adjustment was not barred by *res judicata* or collateral estoppel because the issue was not litigated in the confirmation of the plan. The court held that the debtors were not entitled to equitable adjustment based upon the appreciation of the land value but could receive restitution for the amount of payments made less the costs and loss of rental value to the creditor. *In re Larsen, 122 B.R. 733 (Bankr. D. S.D. 1990).*

## FEDERAL AGRICULTURAL PROGRAMS

**ADMINISTRATION.** The USDA has adopted as final regulations implementing the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99-509, and establishing administrative process and procedures to recompense the USDA for false, fictitious and fraudulent claims arising in programs administered by the USDA. **56 Fed. Reg. 9581 (March 7, 1991).**

**CONSERVATION RESERVE PROGRAM.** The CCC has issued proposed regulations implementing the CRP for the 1991-1995 crops. **56 Fed. Reg. 9293 (March 6, 1991).**

**CROP ADJUSTMENT PROGRAMS.** The CCC has issued proposed rules concerning the implementing in 1991 of discretionary acreage reduction provisions of the 1990 Farm Bill.

(1) CCC will not implement the provision giving producers the option of increasing or decreasing the acreage reduction level with a corresponding decrease or increase in the target price.

(2) CCC will not implement the provision allowing planting of a designated crop on one-half of the reduced acreage with a corresponding reduction in deficiency payments.

(3) CCC will not implement the provision allowing the planting of certain commodities on ACR acreage.

(4) CCC will allow the planting of oats on wheat and feed grain ACR acreage.

(5) No paid land diversion will be implemented for the 1991 crop of upland cotton and for 1991-1995 crops of wheat, feed grains, ELS cotton and rice.

(6) Malting barley producers will not be exempted from the feed grain acreage reduction requirements for 1991-1995 crops. **56 Fed. Reg. 8265 (Feb. 28, 1991).**

The ASCS and CCC have issued proposed rules implementing the changes to the price support, payment and production adjustment programs for the 1991-1995 crops of rice, upland and extra long stable cotton, feed grains and wheat made by the 1990 Farm Bill. **56 Fed. Reg. 8044 (Feb. 26, 1991).**

**DEFICIENCY PAYMENTS.** The CCC has issued a final determination of the recalculation of 1988 and 1989 barley deficiency payments made by CCC under the 1988 and 1989 barley price support and production adjustment programs. **56 Fed. Reg. 8977 (March 4, 1991).**

**DISASTER ASSISTANCE.** The ASCS has issued proposed rules implementing the disaster assistance program for the 1990 crop production of peanuts, soybeans, sugar beets and sugarcane damaged by a natural disaster in 1989, resulting in a loss of more than 40 percent of the crop. **56 Fed. Reg. 6994 (Feb. 21, 1991).**

**FARM LOANS.** The FmHA has issued interim regulations to provide annual operating loan assistance, or the granting of subordinations, to deserving delinquent farm borrowers who do not have the opportunity to have their accounts restructured because the FmHA is revising its notices concerning loan servicing programs as required by the 1990 Farm Bill. **56 Fed. Reg. 6795 (Feb. 20, 1991).**

The FmHA has issued an interim rule amending the guaranteed loan regulations to provide for an Interest Assistance Program which replaces the interest rate buydown program. The changes increase the potential level of government reimbursement for interest rate reductions, extend the potential term of interest rate reduction, provide various administrative changes and extend the program through September 30, 1995. **56 Fed. Reg. 8258 (Feb. 28, 1991).**

**PACKERS AND STOCKYARDS ACT.** The respondent was found to have purchased and sold cattle without a bond, failed to make prompt and full payment of the cattle and violated a permanent injunction to cease and desist buying and selling cattle without a bond. The ALJ had ordered a three year suspension which was decreased to 90 days if the respondent obtained a bond and made full restitution for cattle not paid. The JO increased the suspension to five years and 180 days respectively, citing the respondent's past similar violations and the respondent's willful and knowing violations of the Act. The JO rejected the respondent's claim of mitigating factor from the payments being made to the sellers, ruling that the failures to promptly pay for the cattle financially hurt the sellers even though they would eventually be paid. *In re Tiemann*, **47 Agric. Dec. 1573 (1988).**

**PAYMENT LIMITATIONS.** The CCC and ASCS have issued proposed rules revising the payment limitation regulations to implement the changes made by the 1990 Farm Bill. The revisions include the provision that CRP

rental payments received by a heir with respect to inherited land under a CRP contract at the time of inheritance are not included in the payment limitation of the heir. Also included is the provision for treating a husband and wife as separate persons if each qualifies for payment and neither receives payments through another entity. In an example provided in the explanation, a husband and wife jointly own a farming operation, with joint ownership of equipment. The husband provides at least 50 percent of the husband's commensurate share of active personal labor and the wife contributes a significant contribution of active personal management. Both spouses' shares of the profits and losses are commensurate with their contributions and all contributions are at risk. The husband and wife would be determined to be separate persons, each eligible for a separate payment limitation. **56 Fed. Reg. 8287 (Feb. 28, 1991), amending 7 C.F.R. Parts 1497, 1498.**

**PRICE SUPPORT-HONEY.** The CCC has issued interim regulations implementing the changes to the honey price support program made by the 1990 Farm Bill. **56 Fed. Reg. 9592 (March 7, 1991).**

**TOBACCO.** The CCC has issued proposed rules amending the tobacco loan program regulations to implement the changes made by the 1990 Farm Bill concerning marketing assessments on the 1991 through 1995 crops. **56 Fed. Reg. 6998 (Feb. 21, 1991).**

## FEDERAL ESTATE AND GIFT TAX

**CHARITABLE DEDUCTION.** The taxpayer established a 15-year trust with the taxpayer as beneficiary and the taxpayer's spouse as secondary beneficiary. The remainder was held by a charitable organization. The trust provided that no estate or inheritance taxes for the taxpayer's estate were to be paid from the trust. The taxpayer proposed to amend the trust to provide that any estate taxes due from the taxpayer's death which were assessable against the trust were to be paid by the surviving spouse as a condition for receiving any remaining interest in the trust. The IRS held that, as held in Rev. Rul. 82-128, 1982-2 C.B. 71, the trust did not qualify as a charitable remainder trust because taxes could be assessed against the trust when the surviving spouse received a present interest in the trust. The IRS also held that the amendments to the trust would be qualified reformations of the trust and would qualify the trust as a charitable remainder trust. **Ltr. Rul. 9107010, Nov. 15, 1990.**

**DISCLAIMER. Note: this letter ruling was incorrectly cited on p. 49 supra.** Within nine months after the decedent's death, the surviving spouse made a disclaimer of any survivorship interest in property owned by the decedent and the surviving spouse as tenants by the entireties. The IRS ruled that the disclaimer was timely. **Ltr. Rul. 9106016, Nov. 8, 1990.**

**GENERATION SKIPPING TRANSFER TAX.** The partitioning of two trusts irrevocable as of October 21, 1986, into three trusts did not subject the trusts to GSTT where the partitioning did not alter the beneficial interests. **Ltr. Rul. 9108013, Nov. 21, 1990.**

**GIFT.** The decedent received stock in trust from a predeceased spouse and had the power to direct in writing the trustees (one of whom was the decedent) to transfer trust property to the decedent. The decedent also had the power to appoint the trust property by will. Before the decedent died, the decedent wrote a letter to the other trustee directing that shares of stock be transferred to 10 donees. The other trustee, however, did not make the transfers until after the decedent's death. The court held that the gift of the stock was not completed before the decedent's death because the letter requesting the transfers was insufficient under the trust to make such a transfer and because the stock was not actually transferred until after the decedent's death. **Howell v. U.S., 91-1 U.S. Tax Cas. (CCH) ¶ 60,058 (N.D. Ala. 1991).**

**INCOME IN RESPECT OF DECEDENT.** At the death of the decedent, an installment note from an heir to the decedent was cancelled. The decedent had reported the income from the note in installments under Section 453. The IRS ruled that the remainder of the gain on the installment sale was included in the gross income of the decedent's estate, the cancellation of the note was a specific bequest, the decedent's estate was not entitled to a deduction for the cancellation of the note, and the heir would not include in income any gain attributable to the cancellation. **Ltr. Rul. 9108027, Nov. 26, 1990.**

**LETTER RULINGS.** The IRS has issued a mandatory checklist for information to be included in all ruling requests concerning estate, gift and generation skipping transfer tax rulings. **Rev. Proc. 91-14, I.R.B. 1991-6, 21.**

**MARITAL DEDUCTION.** The surviving spouse received a survivorship interest in a joint stock account and elected to take the statutory spousal share. After negotiations with other heirs, the surviving spouse transferred all property to a trust in exchange for a life income share in the trust. The estate argued that all of the property was eligible for the marital share because the property vested in the surviving spouse before the settlement agreement transferred the property to the trust. The court held that the will contest provisions in Treas. Reg. § 20.2056(e)-2(d) did not apply because the settlement was not reached as part of a will contest. However, the court agreed with case precedents that the rationale of the will contest regulations was applicable to prohibit the marital deduction in this case where the surviving spouse would receive property under a settlement. **Schroeder v. U.S., 91-1 U.S. Tax Cas. (CCH) ¶ 60,059 (10th Cir. 1991), aff'g 696 F. Supp. 1426 (W.D. Okla. 1988).**

## FEDERAL INCOME TAX

**COOPERATIVES.** Two corporations formed a third corporation as a cooperative to handle the two corporations' product sales worldwide. Under the cooperative's organizational documents, all of the cooperative's business was to be done with the two corporation shareholder members. Although the cooperative was to function on a non-profit basis, the documents provided that any net income was to be distributed at least annually to the patrons. Return on capital contributions to the shareholders was prohibited.

The shareholders were required to fund the operations of the cooperative. The IRS ruled that the cooperative would operate on a cooperative basis for the purposes of Subchapter T. **Ltr. Rul. 9108042, Nov. 27, 1990.**

**DISASTER LOSSES.** The IRS has announced the areas of Alabama, Indiana, Kentucky, Mississippi and Tennessee which have been declared disaster areas by the President. Taxpayers who have suffered losses due to the named disasters may elect special treatment of the losses under I.R.C. § 165(i). **Ann. 91-32, I.R.B. 1991-9, 54.**

**EMPLOYEE BENEFIT PLANS.** The amounts received by a permanently disabled taxpayer under a defined benefit plan were not excludible from income because the plans had no indicia of a dual purpose to also provide accident and health benefits and the benefits were not variable for different types of disability. **Berman v. Comm'r, 91-1 U.S. Tax Cas. (CCH) ¶ 50,081 (6th Cir. 1991), aff'g T.C. Memo. 1989-654.**

**IRA'S.** The IRS has ruled that the amount shown in box 10 of Form W-2 less the amount shown in Box 14 will be considered as a safe harbor amount of "compensation" for purposes of determining the amount of allowable contributions to an IRA. **Rev. Proc. 91-18, I.R.B. 1991-9, 14.**

**NET OPERATING LOSS.** An election to relinquish the carryback of net operating losses was untimely where the taxpayer made the election to carry forward the net operating losses on an amended return filed two years after the losses were incurred. **Menaged v. Comm'r, T.C. Memo. 1991-79.**

### PARTNERSHIPS

**DEFINITION.** A limited partnership formed under a Uniform Limited Partnership Act was held to lack the corporate characteristic of limited liability where the partnership agreement required the sole general partner to maintain a net worth of at least 10 percent of the total contributions of all partners. **Ltr. Rul. 9107025, Nov. 19, 1990.**

**PARTNERSHIP PROPERTY.** Five months prior to death, the decedent signed a partnership agreement which stated that the decedent contributed farmland to the partnership. The estate representative, who was also the decedent's heir, argued that the farmland was not estate property because the land was contributed to the partnership. The court disagreed because (1) on the same day that the partnership agreement was signed, the decedent executed a will leaving the farmland to the heir; (2) the estate representative listed the land as estate property on the estate tax schedules; (3) the heir mortgaged the land as collateral for a personal loan; (4) the heir sold part of the land without showing any partnership ownership in the sale contracts; and (5) the deed conveying the land recited that the land was subject to payment of federal estate taxes, as asserted by the IRS in this case. **U.S. v. Chapel Chase Joint Venture, Inc., 753 F. Supp. 179 (D. Md. 1990).**

**PENALTIES.** The IRS has issued proposed regulations implementing the accuracy-related penalty as revised by OBRA 1989. The proposed rules provide rules for three components of the penalty: (1) negligence or disregard of

rules or regulations, (2) substantial understatement of income tax and (3) substantial overvaluation of property for income tax purposes. **56 Fed. Reg. 8943 (March 4, 1991).**

**RETIREMENT PLANS.** The IRS announced the February 1991 weighted average interest rate of 8.63 percent and the permissible range of interest rates, 7.76 to 9.49 percent, for use in calculating liability for purposes of the full funding limitation under section 412(c)(7). **Notice 91-8, I.R.B. 1991-9, 14.**

**RETURNS.** The IRS has issued guidance on what disclosure on a taxpayer's return is adequate for the purposes of reducing the understatement of income tax penalty under I.R.C. § 6662(d). **Rev. Proc. 91-19, I.R.B. 1991-10, 24, amending Rev. Proc. 90-16, 1990-1 C.B. 477.**

## S CORPORATIONS

**STATUTE OF LIMITATIONS.** The IRS mailed a notice of deficiency to an S corporation's shareholders after the statute of limitations had run as to the corporation but before the statute of limitations had run as to the shareholders. The court held that the notice was not time barred. **Brody v. Comm'r, T.C. Memo. 1991-78.**

**TERMINATION.** The IRS ruled as inadvertent the termination of an S corporation's status as a result of the issuance of stock to an IRA where the corporation had received erroneous advice from an accountant and an attorney and had redeemed the stock upon learning that the election had terminated. **Ltr. Rul. 9107018, Nov. 16, 1990.**

**SOCIAL SECURITY TAX.** Starting in 1991 the maximum amount of self-employment income subject to social security taxes is different for old-age, survivors and disability insurance (OASDI) (\$53,400 for 1991) and health insurance (HI) (\$125,000 for 1991). Thus, for self-employment incomes above \$53,400, each amount must be calculated separately and added for the total tax. However, in calculating the self-employment deduction in each calculation, the statute allows a 7.65 percent decrease in the taxable amount for both OASDI and HI. The OASDI tax is 12.4 percent and the HI tax is 2.9 percent. **See I.R.C. § 1402(a)(12).**

**TRUSTS.** The taxpayers created business trusts under Minnesota law to own the taxpayers' businesses, with the taxpayers as beneficiaries. The court agreed with the IRS that the trusts were shams because the taxpayers' relationships to the businesses did not change after the transfers. **Chase v. Comm'r, 91-1 U.S. Tax Cas. (CCH) ¶ 50,090 (8th Cir. 1991), aff'g T.C. Memo. 1990-164.**

## LANDLORD AND TENANT

**IMPROVEMENT LEASE.** The parties signed an improvement lease under which the lessee was to install irrigation equipment and maintain and repair the irrigation equipment and other improvements, except that after 1986, the lessor was responsible for the cost of replacement parts and the lessee was responsible for the cost of repair labor. The court held that the maintenance and repair clauses applied equally to irrigation equipment above and below the

ground. **Burgeson v. Columbia Producers, Inc., 803 P.2d 838 (Wash. App. 1991).**

## MORTGAGES

**FRAUDULENT CONVEYANCES.** The debtor farm corporation owned 50 percent of another ranch corporation. Both corporations were liable on a mortgaged loan. The debtor brought an action against the lender for avoidance of the loan under the Fraudulent Conveyance Act, Neb. Rev. Stat. § 36-601 *et seq.* The court held that the loan would be considered a liability only of the debtor. This resulted in the debtor not being made insolvent by the loan and removing one of the factors for proving a fraudulent conveyance. **Central States Resources Corp. v. Leo Tobin Farms, Inc., 922 F.2d 490 (8th Cir. 1991).**

**RENT PROCEEDS.** The debtor purchased farm land from a grandparent under a contract for deed. The debtor gave mortgages on the land to the FmHA as security for farm program loans. The FmHA mortgages stated that the mortgage was subject to the sale contract. After the debtor defaulted on the contract and the FmHA loans, a receiver was appointed during the pendency of a forfeiture action. During the receivership, the land was rented to third parties and the receiver and FmHA both sought the rent proceeds. The court held that the "subject to" clause in the FmHA mortgage did not subordinate the FmHA mortgage to the contract as to the rent but only subordinated the mortgage as a security interest in the land. In addition, the contract only entitled the contract vendor to the rent after forfeiture was completed. **Schaffner v. Ebel, 464 N.W.2d 460 (Iowa Ct. App. 1990).**

## PRODUCTS LIABILITY

**TRACTORS.** The plaintiff was injured when a tractor built before 1948 rolled over when the plaintiff was driving up a 30 degree incline strewn with logs. Plaintiff sued the manufacturer in strict liability for failure of the tractor to be equipped with a rollover protection structure or front weights and failure of the manufacturer to warn of rollover dangers on inclines. The court held that summary judgment for the defendant manufacturer was proper because the plaintiff failed to show that a rollover protection structure was available for such tractors when manufactured and that front weights would have protected against a rollover. In addition, summary judgment was proper on the failure to warn issue because the plaintiff was an experienced tractor driver and the danger of driving a tractor up a 30 degree incline strewn with logs was open and obvious. **Lloyd v. John Deere Co., 922 F.2d 1192 (5th Cir. 1991).**

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## STATE REGULATION OF AGRICULTURE

**BORROWERS RIGHTS.** The plaintiff debtor brought an action in negligence against a federal land bank for failure to follow the requirements of the Agricultural Credit Act of 1987 because the bank did not approve the debtor's loan restructuring plans. The court held that under *Harper v. Federal Land Bank of Spokane*, 878 F.2d 1172 (9th Cir. 1989), the 1987 Act did not provide a private right of action to enforce the Acts provisions. In addition, the court held that the debtor could not bring a private state action for negligence under the theory that a violation of a statute is a presumption of negligence, because the debtor was not one of the class of persons to be protected by the act, except incidentally. **Sierra-Bay Fed. Land Bank v. Superior Court**, 277 Cal. Rptr. 753 (Cal. Ct. App. 1991).

## CITATION UPDATES

**U.S. v. Mews**, 923 F.2d 67 (7th Cir. 1991) (constructive dividends) p. 43 *supra*.

**Est. of Love v. Comm'r**, 923 F.2d 335 (4th Cir. 1991) (administrative expenses) p. 49 *supra*.

**Martin v. U.S.**, 923 F.2d 504 (7th Cir. 1991), *rev'g* 90-1 U.S. Tax Cas. (CCH) ¶ 60,015 (N.D. Ind. 1990) (marital deduction) p. 42 *supra*.

**Young v. Comm'r**, 923 F.2d 719 (9th Cir. 1991), *aff'g* T.C. Memo. 2987-397 (allocation of partnership losses) p. 43 *supra*.

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## ISSUE INDEX

### Bankruptcy

#### General

#### Exemptions

Employee plan 56

Homestead 55

IRA 56

Spendthrift trust 56

Tenancy by the entireties 56

#### Chapter 11

Modification of plan 56

#### Federal taxation

Abandonment 56

Allocation of plan payments  
for taxes 56

Discharge 56

### Commodity Futures

Performance records 56

### Contracts

Equitable adjustment 56

### Federal Agricultural Programs

Administration 56

Conservation reserve program 56

Crop adjustment programs 56

Deficiency payments 57

Disaster assistance 57

Farm loans 57

Packers and Stockyards Act 57

Payment limitations 57

Price support-honey 57

Tobacco 57

### Federal Estate and Gift Tax

Charitable deduction 57

Disclaimer 57

Generation skipping transfers 57

Gift 58

Income in respect of decedent 58

Letter rulings 58

Marital deduction 58

### Federal Income Taxation

Cooperatives 58

Disaster losses 58

Employee benefit plans 58

IRA's 58

Net operating losses 58

Partnerships

Definition 58

Partnership property 58

Penalties 59

Retirement plans 59

Returns 59

S corporations

Statute of limitations 59

Termination 59

Social security tax 59

Trusts 59

### Landlord and Tenant

Improvement lease 59

### Mortgages

Fraudulent conveyances 59

Rent proceeds 59

### Products Liability

Tractors 59

### State Regulation of Agriculture

Borrowers rights 60