FOOTNOTES

1 See generally 5 Harl, Agricultural Law § 43.02[2] (1992). See also Hines, Estate Planning Iowa Joint Tenancies, Monograph No. 7, Agricultural Law Center, University of Iowa (1960).

2 Gallenstein v. U.S., 91-2 U.S.T.C. ¶ 60,088 (E.D. Ky. 1991), *aff'd*, 92-2 U.S.T.C. ¶ 60,114 (6th Cir. 1992).

3 I.R.C. § 2040, before amendment by the Tax Reform Act of 1976.

4 I.R.C. § 2040(b).

5 I.R.C. § 2040(a). See Est. of Stimson v. Comm'r, T.C. Memo. 1992-242 (balance in joint bank accounts included in gross estate even though daughters' names on account for convenience in managing their affairs); Est. of Hicks v. Comm'r, T.C. Memo. 1977-215 (father-son stock margin account).

6 Treas. Reg. § 20.2040-1(a)(2). See Est. of Hatchett v. Comm'r, T.C. Memo. 1989-637 (estate met burden of proof to extent of one-quarter of value that was attributable to surviving spouse's inheritance from parent); Hudson v. U.S., 79-1 U.S.T.C. ¶ 13,292 (W.D. Okla. 1979) (evidence did not show exact amount contributed by survivor).

7 I.R.C. § 2040(b)(1), as enacted by Pub. L. 94-455, § 2002.

8 I.R.C. § 2515, before repeal by the Economic Recovery Tax Act of 1981, Pub. L. 97-34, § 403(c)(3)(B). See Treas. Reg. § 25.2515-1(b), -1(c)(1)(i).

9 Treas. Reg. § 25.2511-1(h)(4). See Rev. Rul. 68-269, 1968-1 C.B. 399.

10 Treas. Reg. § 25.2511-1(h)(4). See Est. of McCammon v.Comm'r, T.C. Memo. 1980-327 (withdrawal not in contemplation of death). See also Ltr. Rul. 8302020, Oct. 5, 1982 (either mother (the contributor) or daughter as joint tenants could withdraw from savings account; gift occurred on withdrawal by daughter).

11 I.R.C. § 2040(d), before amendment by the Economic Recovery Tax Act of 1981, Pub. L. 97-34, § 403(c)(i).

12 Rev. Rul. 82-159, 1982-2 C.B. 210 (same rule if joint tenancy terminated and reformed after 1979 and election filed).

13 Rev. Rul. 82-159, 1982-2 C.B. 210.

14 I.R.C. § 2040(b).

15 *Id.*

16 See I.R.C. § 1014(b).

17 Gallenstein v. U.S., n. 2 *supra*.

18 *Id.*

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

HORSE. The plaintiff was injured when thrown from a horse owned by the defendant. The court upheld a summary judgment for the defendant because the plaintiff had no evidence that the defendant had any knowledge of the horse's propensity to throw its riders. **Berneathy v. Pursley, 832 S.W.2d 524 (Mo. Ct. App. 1992)**.

The plaintiff was injured when thrown from a horse owned by the defendant. The plaintiff alleged that the defendant was liable under the Animal Control Act, Ill. Rev. Stat. ch. 8, ¶ 366, which holds animal owners liable for the attacks and injuries caused by the animal. The court held that the Act did not apply to horse riders who voluntarily assume control of the animal which injured them. **Ennen v. White, 598 N.E.2d 416 (Ill. Ct. App. 1992)**.

BANKRUPTCY

GENERAL

AVOIDABLE TRANSFERS. Prior to filing for bankruptcy, the debtor was involved in a suit against a manufacturer of cattle feed for damages resulting from defective feed. Prior to 90 days before filing for bankruptcy, the debtor assigned to a creditor a portion of the anticipated damages. The debtor received the damage award within the 90 days before filing for bankruptcy and the creditor received the portion of the award before the bankruptcy case commenced. The court held that the transfer to the creditor was not avoidable as a preferential transfer because the effective date of the transfer was the date the assignment of the damage award was executed, not the date the award was paid to the creditor. ***In re* Wagner, 144 B.R. 430 (Bankr. N.D. Iowa 1992)**.

DISCHARGE. The debtors had leased dairy cows from the creditor under contract. Over the several years of the contract relationship, the parties kept informal and often inaccurate account of the number of cows under the lease. The creditor terminated the lease and recovered most of the cows and sued for damages for the missing cows. A state court judgment awarded the creditor damages and the debtor filed for bankruptcy. The creditor sought to have the judgment declared nondischargeable under Sections 523(a)(4), (6). The court held that the debt was dischargeable because (1) the lease did not give rise to a fiduciary relationship as required by Section 523(a)(4) and (2) the loss of the cows, while a breach of contract, was more the result of sloppy accounting over the years by both parties than embezzlement or larceny as required by Section 523(a)(6). ***In re* Hoffman, 144 B.R. 459 (Bankr. D. N.D. 1992)**.

ESTATE PROPERTY. The debtor had received a life estate in a farm by testamentary bequest from the debtor's parent. The debtor mortgaged the farm and after defaulting on the secured loan, entered into a settlement with the lender for $80,000 which was placed in a spendthrift trust for the debtor. A bankruptcy creditor challenged the trust as fraudulent because a settlor cannot be a beneficiary of a spendthrift trust. The debtor argued that the trust was established by either the lender or the court and was valid. The court held that the trust was established by the debtor as part of the default settlement and was included the trust property in the bankruptcy estate. ***In re* Morris, 144 B.R. 401 (Bankr. C.D. Ill. 1992)**.

EXECUTORY CONTRACTS. Four months before filing for bankruptcy, the debtors entered into a contract for deed to sell a ranch purchased by the debtors one month earlier. One month before the filing for bankruptcy, the transaction was closed with the buyer paying the downpayment and the deed being placed in escrow until the final installment was paid. The debtors sought assumption of the contract but two creditors related to the original owner objected and sought rejection so that they could purchase the ranch for $5,000 more than the buyer paid. The court held that where substantial performance by the buyer had been made and payments were current, the contract should be assumed. The court noted that rejection of the contract would not necessarily have helped the objecting creditors because the rejection acted only as a breach of the contract and not a rescission. ***In re* Seymour, 144 B.R. 524 (Bankr. D. Kan. 1992)**.

EXEMPTIONS

RETIREMENT PLANS. The court held that the debtor's interest in an ERISA qualified profit-sharing plan was not estate property. ***In re* Sirois, 144 B.R. 12 (Bankr. D. Mass. 1992); In re Greif, 144 B.R. 206 (Bankr. D. Mass. 1992)**.

GRAIN ELEVATORS. The claimants were farmers who had stored beans in elevators operated by the debtor through a corporation owned by the debtor. The claimants had filed claims against the corporation in its bankruptcy case and now proceeded against the debtor individually for conversion of the stored beans. The claimants also sought priority for their claims under Section 507(a)(5)(A) as grain producers. The court held that the claims would be allowed to the extent the claimants had not received payment from the corporation's bankruptcy case but that no priority would be allowed because the proceeds of the beans were property of the corporation's bankruptcy estate. ***In re* Hawkins, 144 B.R. 481 (Bankr. D. Idaho 1992)**.

SETOFF. The debtors were farmers who filed for bankruptcy in November 1991. The debtors applied for disaster payments for their 1990 and 1991 crops. The FmHA petitioned for relief from the automatic stay to offset claims against the debtors against the disaster payments. The court found that although the disaster payments in general were authorized by the Food, Agriculture, Conservation and Trade Act of 1990, the specific appropriations were not made until the 1991 Emergency Crop Loss Assistance Act, signed in December 1991. Thus, the debtors were not entitled to the disaster payments until after the filing of the petition and setoff was denied to the FmHA. ***In re* Young, 144 B.R. 45 (Bankr. N.D. Tex. 1992)**.

CHAPTER 7

DISCHARGE. More than one year before filing for bankruptcy but just after a creditor accelerated secured loans to the debtors, the debtors transferred several items of collateral to trusts for their minor children, although the debtors continued to make use of the property. The court held that the trusts were shams and that the transfers were made with the intent to hinder, delay or defraud creditors. Although the transfers were made more than one year before the bankruptcy filing, the court held that the debtors would not be granted a discharge because the concealment of the assets in the trust was continuous. ***In re* Debruin, 144 B.R. 90 (Bankr. E.D. Wis. 1992)**.

CHAPTER 11

ABSOLUTE PRIORITY RULE. The debtors were partners in a farm partnership. The debtors' Chapter 11 plan provided for retention of the farm, reduction of the secured claims to the value of the collateral, and 10 percent payment of all unsecured claims. In order to satisfy the new investment exception to the absolute priority rule, the debtors stated that a debt from their father would be released, thus contributing $20,000 in equipment which secured the debt and $10,000 which would have been paid on the unsecured portion of the debt. The court held that the plan did not satisfy the exception because the contributed money was not new money and was not substantial in relation to the value of the unsecured claims. ***In re* Snyder, 144 B.R. 393 (C.D. Ill. 1990), *aff'g*, 99 B.R. 885 (Bankr. C.D. Ill. 1989)**.

CHAPTER 12

DISMISSAL. The debtor's first plan provided that a bank with a secured interest in all farm equipment, livestock and feed would be paid nothing because an anticipated lawsuit against the bank for breach of loan commitments would produce an award greater than the amount owed to the bank. The court rejected this plan as too speculative. The second amended plan of the debtors provided for the sale of the bank's collateral with the proceeds used to pay another secured creditor and the bank to receive a second mortgage on the debtor's ranch. The court also rejected this plan and dismissed the case because the bank would not retain its lien on its claim as required by Section 1225(a)(5). ***In re* Ames, 973 F.2d 849 (10th Cir. 1992)**.

PLAN. The debtor's Chapter 12 plan provided for payment of bankruptcy related attorney's fees monthly over the five years of the plan. The attorneys objected, arguing that the fees, as administrative expenses, were required to be paid before any other unsecured claims were paid. The court held that Section 1226(b)(1) allowed the payment of administrative expenses over the life of the plan. ***In re* Palombo, 144 B.R. 516 (Bankr. D. Colo. 1992)**.

SETOFF. The debtors had enrolled farm land in the CRP and were indebted to the FmHA on a loan secured by the debtor's land but subordinated to a security interest in the same land granted to the FCS. The FmHA sought administrative setoff of the CRP payments or at least elevation of its unsecured claim to secured status to the extent of the allowable setoff. The court held that although the FmHA was eligible to set off the CRP payments, the setoff would not be allowed because the CRP payments were necessary for the successful reorganization of the debtors and were used to pay off the priority claim of the FSC. ***In re* Lincoln, 144 B.R. 498 (Bankr. D. Mont. 1992)**.

TRUSTEE FEES. The court held that the Bankruptcy Court did not abuse its discretion to require Chapter 12 plan payments of impaired claims to be made through the trustee and made subject to the trustee's fees. ***In re* Fulkrod, 973 F.2d 801 (9th Cir. 1992), *aff'g*, 126 B.R. 584 (Bankr. 9th Cir. 1991)**.

FEDERAL TAXATION

AUTOMATIC STAY. After the debtor had paid the tax claims under the debtor's plan, the IRS served notices of intent to levy and made several levies against the debtor's property for payment of the taxes already paid in the bankruptcy case. The debtor petitioned for an injunction against future levies and monetary damages. The court held that the debtor's action was barred by sovereign immunity and that Section 106 did not waive the immunity because the IRS no longer had a claim in the case since the taxes had been paid. ***In re* Unroe, 144 B.R. 85 (Bankr. S.D. Ind. 1992)**.

The IRS had filed a prepetition tax lien against the debtor's residence. After the debtor received a discharge, the IRS filed a notice to levy against the house. The debtor argued that the limitations period for collection of the tax had expired because the tolling of the limitations period by the bankruptcy case occurred only for the period in which the IRS needed to apply for relief from the automatic stay. The court held that the limitations period was tolled during the entire bankruptcy case because the IRS had no duty, by statute or otherwise, to apply for relief from the automatic stay. **Wekell v. U.S., 144 B.R. 503 (W.D. Wash. 1992)**.

After the debtors had filed for bankruptcy and the plan was confirmed, the IRS filed a notice of intent to levy on the debtors. The debtors notified the IRS of the pending bankruptcy case but the IRS levied against the debtors' wages. The debtors sought compensation and costs resulting from the IRS violation of the automatic stay. The court held that Sections 106 and 362 provided a waiver of governmental immunity for the action to recover monetary damages. ***In re* Tyson, 92-2 U.S. Tax Cas. (CCH) ¶ 50,527 (Bankr. M.D. Fla. 1992)**.

AVOIDABLE LIENS. The IRS had filed a tax lien against the debtors' residence and personal property. The debtors sought a determination of the secured amount of the lien based on a determination of the value of the residence and also sought avoidance of the lien, under Section 506(a), to the extent the lien was unsecured. The court held that the value of the home for purposes of the tax lien was the forced tax sale valuation and not the fair market value. The court also held that under *Dewsnup v. Timm, 112 S.Ct. 773 (1992)*, Section 506(a) did not void unsecured liens. ***In re* Taffi, 144 B.R. 105 (Bankr. C.D. Cal. 1992)**.

DISCHARGE. The debtor was a partner in a partnership which had received a Notice of Final Partnership Administrative Adjustment for 1983 which was still contested during the bankruptcy case. The IRS also filed a notice of deficiency to the debtor for additional taxes arising out of the the FPAA and the debtor was contesting that notice at the time of the bankruptcy filing. After the debtor received a discharge, the debtor sought a ruling that the 1983 additional taxes were dischargeable as a general unsecured claim. The court held that because the taxes were still assessable upon the filing for bankruptcy, the taxes were not dischargeable under Sections 507(a)(7)(A)(iii) and 523. ***In re* Crawford, 144 B.R. 346 (Bankr W.D. Tex. 1992)**.

The debtor's sought the discharge of federal income taxes for taxable years for which tax returns were filed late but more than two years before filing for bankruptcy. The debtors did not pay the taxes owed when the returns were filed because the debtors made bad business investments and spent too much on their lavish lifestyle. The IRS argued that the debtors' failure to make any payments was an attempt to evade or defeat their tax obligations. The court held that the taxes were dischargeable because the IRS failed to establish that the failure to pay the taxes was willful. ***In re* Sonnenberg, 92-2 U.S. Tax Cas. (CCH) ¶ 50,531 (N.D. Ill. 1992)**.

PLAN. Various local, state and federal tax authorities objected to the debtor's Chapter 11 plan which provided for 100 percent payment of all tax claims but the payments were not to start until one year after the plan began, with interest accruing during the deferral period. The court held that the plan should be approved as fair and equitable, proposed in good faith, and reasonably necessary for a successful reorganization. ***In re* Gregory Boat Co., 144 B.R. 361 (Bankr. E.D. Mich. 1992)**.

TAX LIEN. The IRS filed a notice of tax lien before the debtor filed for bankruptcy. The IRS argued that the lien attached to money owed to the debtor by a third party. The court held that the tax lien did not attach to the money because the IRS did not have possession of the money. ***In re* Merida Tiles Corp., 144 B.R. 550 (Bankr. S.D. Fla. 1992)**.

CONTRACTS

BREACH. The plaintiff's corn crop was damaged by a herbicide manufactured by the defendant. The defendant's agents had inspected the damaged crop and had agreed that the herbicide caused the damage. The agents agreed to pay the plaintiff for replanting costs and for lost yield based upon a random harvest sample. The agents worked with the plaintiff in obtaining the harvest sample and in calculating the yield loss. After the plaintiff submitted the request for replanting costs and yield losses, the defendant offered a reduced amount in settlement of the claim. The plaintiff filed suit after the parties failed to agree on a settlement amount. The court held that the parties had entered into a contract for the damages and that the defendant's failure to pay the contract amount was a breach. The court found that the actions of the agents and the settlement negotiations supported the existence of the contract. **Ciba-Geigy Corp. v. Alter, 834 S.W.2d 136 (Ark. 1992)**.

CATTLE. The plaintiff had entered into a contract with the defendants to have the defendants feed and breed cattle owned by the plaintiff. After the plaintiff decided to raise the cattle himself, the parties entered into a stipulation as to how many steers, bred heifers and calves were to be delivered from the herds cared for by the defendants. The plaintiff sued for breach of contract when the cattle delivered did not meet the stipulated numbers and many of the cattle were unfit for breeding because of age or failure of the defendants to Bangs vaccinate the cattle. The court awarded damages for the loss of value for the cattle which were not Bangs vaccinated because the defendants knew that the cattle were to be used for breeding. **Mash v. Cutler, 488 N.W.2d 642 (S.D. 1992)**.

CORPORATIONS

DISSOLUTION. The plaintiff was a 50 percent shareholder in a farm corporation and sought dissolution of the corporation because of deadlock and oppressive management by the defendants. The defendants were the plaintiff's brother and spouse. The trial court had granted summary judgment, under Mo. Rev. Stat. § 351.494, on the dissolution action because both parties had a 50 percent share and because the brother and spouse had made loans to their children, had terminated the life insurance for the plaintiff and had slaughtered corporation cattle for use by the employees. The appellate court reversed, holding that although the trial court was allowed the discretion to order dissolution, sufficient facts were in dispute to provide grounds for relief other than dissolution. **Struckhoff v. Echo Ridge Farm, Inc., 833 S.W.2d 463 (Mo. Ct. App. 1992)**.

FEDERAL AGRICULTURAL PROGRAMS

CONSERVATION RESERVE PROGRAM. The defendant was the son of the plaintiff farm owner and had operated the family farm for several years after the death of the father. The defendant had enrolled land in the federal Conservation Reserve Program (CRP) but had not obtained the signatures of the plaintiff or other family members who owned an interest in the land. After the defendant ceased managing the farm, the plaintiff informed the ASCS that the CRP contract was not signed by all owners and the ASCS required a new contract to be signed. The defendant refused to sign the new contract and the contract was terminated, with the ASCS seeking over $16,000 in liquidated damages. The jury found that the defendant acted maliciously in refusing to sign the new contract but awarded only $1,100 in damages. The court upheld the jury verdict as not so grossly out of proportion to the actual damages so as to shock the conscience. **Hansen v. Hansen, 835 P.2d 748 (Mont. 1992)**.

COTTON. The CCC has issued proposed regulations which provide for a 1993 ELS cotton acreage diversion of between 15 and 25 percent and no paid diversion program. **57 Fed. Reg. 48748 (Oct. 28, 1992)**.

EGGS. The AMS has issued proposed regulations establishing storage temperature and labeling requirements for table eggs. **57 Fed. Reg. 48569 (Oct. 27, 1992)**.

HERBICIDES. The plaintiff planted a corn crop after application of the herbicide Dual manufactured by the defendant. After the crop was damaged by a heavy rain which caused the herbicide to adversely affect the germination of the corn seed, the plaintiff sued in tort for failure to adequately warn about the risk of use of the herbicide when high moisture is available soon after planting. The defendant argued that the herbicide was registered under the Federal Insecticide, Fungicide, and Rodenticide Act which preempted state tort actions involving inadequate warnings on labels. The court held that FIFRA did not preempt such state tort actions. **Ciba-Geigy Corp. v. Alter, 834 S.W.2d 136 (Ark. 1992)**.

PESTICIDES. The plaintiffs filed an action for damages against the manufacturer of a termicide sprayed in the plaintiffs' home, alleging that the defendant manufacturer failed to warn about the dangers of the termicide. The defendant argued and the court held that the FIFRA preempted state court tort actions based on failure to adequately label registered pesticides. **Davidson v. Velsicol Chemical, 834 P.2d 931 (Nev. 1992)**.

FEDERAL ESTATE AND GIFT TAX

CANCELLATION OF INDEBTEDNESS. At the date of death, the decedent was owed $215,000 by a nephew on a promissory note. The estate valued the note at less than fair market value for estate tax purposes because the nephew was insolvent. The decedent's will cancelled all debts from family members, including the nephew, who also received a bequest for over $1 million. The IRS ruled that the note could be valued for less than fair market value because of the nephew's insolvency. The IRS also ruled that the cancellation of the promissory notes was not income to the estate because the cancellation was made with donative intent and the estate never became an obligor of the notes. **Ltr. Rul. 9240003, June 17, 1992**.

DISCLAIMERS. The taxpayer received by intestate succession shares of stock owned by the decedent spouse. The corporation made a distribution by check to the decedent's estate and the taxpayer's son deposited the check into a survivorship bank account owned by the taxpayer. The taxpayer had no knowledge of the distribution until after the check was deposited. The taxpayer disclaimed 250 shares of the stock and the portion of the distribution resulting from those shares. The IRS held that the disclaimer was effective. **Ltr. Rul. 9243024, July 23, 1992**.

GENERATION SKIPPING TRANSFER TAX. In 1969 and 1972, the taxpayer established trusts for the taxpayer's children and their issue. The trustees had the discretion to distribute income and principal to the beneficiaries. The trusts terminated at the earlier of the date the youngest grandchild reached age 35 or the expiration of 21 years after the death of the last beneficiary alive at the execution of the trusts. The taxpayer's children had a special power of appointment over trust corpus to any of their issue. The IRS ruled that the irrevocable trusts were not subject to GSTT because no additions were made to the trusts after September 25, 1985 and that the testamentary appointment of the trust property to trusts for the taxpayer's grandchildren did not subject the second trusts to GSTT. **Ltr. Rul. 9241025, July 9, 1992**.

In 1966 and 1967 the grantors established irrevocable trusts for their children with remainders passing to the issue of the beneficiaries. The trusts originally had only independent trustees but the trusts were modified to provide for trustees who were also beneficiaries but the trusts provided that trustees who were also beneficiaries could not participate in trustee discretionary distributions of trust principal. The IRS ruled that the modifications would not subject the trusts to GSTT. **Ltr. Rul. 9242011, July 17, 1992**.

GIFT. The taxpayer transferred a life estate interest in six fine art pieces to a spouse. The life estate granted the spouse full use and enjoyment of the art and the right to sell the life estate but no power to sell the art pieces. The remainder interest in the art passed to a charitable organization. The IRS ruled that the transfer was a gift eligible for the gift tax marital deduction as QTIP. The IRS also ruled that the passing of the remainder interest to the charitable organization would be eligible for a charitable deduction to the spouse's estate if the taxpayer makes a gift tax QTIP election as to the life estate interest. **Ltr. Rul. 9242006, July 15, 1992**.

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent's estate elected to pay state and federal estate taxes in installments. The estate filed supplemental Form 706 returns with each installment claiming the interest paid with the deferred payments as a deduction and recomputing the federal estate tax. The IRS ruled that under Rev. Proc. 81-27, 1981-2 C.B. 548, this was the proper procedure. **Ltr. Rul. 9241002, June 23, 1992**.

SPECIAL USE VALUATION. Under a revocable trust agreement, upon the death of the predeceased spouse, the trust was split into a marital share and a decedent's share, with the marital share to be funded with so much of the predeceased spouse's estate so as to reduce the federal estate tax to zero. The trustee had the discretion of choosing the property for the marital share. The predeceased spouse's estate contained stock in a farm corporation for which special use valuation was elected. The trustee first determined the dollar amount to be included in the marital trust in order to reduce the estate tax to zero, then the trust valued the stock at the fair market value to determine the number of shares to transfer to the marital trust share. The resulting number of shares was then included in the decedent's gross estate at their fair market value. The IRS argued that the shares should have been valued at the special use valuation for the purpose of determining the number of shares distributed to the marital trust share. The court held that the trustee's method was proper. **Simpson v. U.S., 92-2 U.S. Tax Cas. (CCH) ¶ 60,118 (D. N.M. 1992)**.

VALUATION. In 1986, the taxpayer corporation recapitalized and issued common stock with a par value of $50 and one vote per share, and preferred stock with a par value of $1 and 10 votes per share. In 1992, the par value of the common stock was changed to $5 and 10 times as many shares were issued. At the same time, the votes per share of the preferred stock were changed to 100. The IRS ruled that the stock was not subject to the I.R.C. § 2701 rules because the original stock issue occurred before October 9, 1990, and the subsequent modification did not change the terms and conditions of the stock and the voting proportions remained the same between the common stock and preferred stock. **Ltr. Rul. 9241014, July 8, 1992**.

FEDERAL INCOME TAXATION

DEPRECIATION. The IRS has adopted as final regulations relating to the applicable conventions for the accelerated cost recovery system. **T.D. 8444, Oct. 29, 1992**.

EMPLOYEE. The taxpayer worked on a dairy farm as a milker. The dairy had the authority to supervise and control the taxpayer's time and methods of work. The taxpayer was paid a salary with a guaranteed minimum. The taxpayer could be terminated without liability to the dairy. The taxpayer did not have other business assets or office or perform milking services for other dairies. The IRS ruled that the taxpayer was an employee of the dairy for federal withholding tax purposes. **Ltr. Rul. 9241017, July 8, 1992**.

INSTALLMENT REPORTING. A decedent's estate sold several parcels of real property for cash and 10-year promissory notes. The estate's income tax return elected to report the gain on the installment method and the estate provided no evidence that it intended to elect out of the installment method at that time. After the obligors on the notes declared bankruptcy, the estate filed an amended return electing out of the installment method. After an audit, the estate learned that permission was required to revoke an installment method election but the estate waited almost a year to provide the necessary information so that a request to revoke the election could be made. The IRS ruled that a revocation would not be allowed. **Ltr. Rul. 9243004, June 2, 1992**.

The taxpayer hired a tax return preparer to prepare the taxpayer's return for a taxable year in which the taxpayer sold a residence for cash and an installment note. The taxpayer relied on the return preparer to report the taxes with the minimum tax liability but the preparer reported all of the gain but none of the interest from the sale of the residence. After the taxpayer obtained other tax advice and discovered the election out of the installment method, the taxpayer sought revocation of the election. The IRS allowed the revocation. **Ltr. Rul. 9243019, July 22, 1992**.

LETTER RULINGS. The IRS has announced reduction of user fees for multiple letter rulings involving substantially identical issues for members of a common entity. **Rev. Proc. 92-90, I.R.B. 1992-46**.

LIKE-KIND EXCHANGES. The taxpayer corporation originally owned agricultural land but granted a series of ground leases to several parcels to a second corporation which improved the land and built office buildings on the parcels. Because of stricter requirements by lenders, the second corporation needed complete fee interests in the parcels it wanted to develop and exchanged the taxpayer's interest in several parcels for the second corporation's ground leases in other parcels, including some which had partial improvements. The IRS ruled that because the exchange was separate from the original ground lease transactions and had a commercial purpose, the exchange was not subject to the step transaction doctrine. Thus, the exchange qualified for like-kind tax deferral under I.R.C. 1031. **Ltr. Rul. 9243038, July 27, 1992**.

PARTNERSHIPS

DISCHARGE OF INDEBTEDNESS INCOME. The IRS has ruled that an allocation of partnership discharge of indebtedness income to partners which is not made in accordance with the partners' share of the indebtedness has substantial economic effect only if the partners are required to restore any negative capital account balances. **Rev. Rul. 92-97, I.R.B. 1992-46**.

The IRS has announced that it will not challenge the purchase price adjustment of an indebtedness of a bankrupt or insolvent partnership so long as the transaction would qualify for the purchase price adjustment under I.R.C. § 108(e)(5) but for the bankruptcy or insolvency of the partnership. **Rev. Proc. 92-92, I.R.B. 1992-46**.

PASSIVE ACTIVITY LOSSES. The taxpayer defaulted on $1 million debt, 60 percent of which was allocated to passive activity expenditures. The taxpayer satisfied the debt by transfer of property to the lender with a fair market value of $800,000 and a basis of $700,000. The IRS ruled that 60 percent, $120,000, of the discharge of indebtedness income, $200,000, was passive activity income. **Rev. Rul. 92-92, I.R.B. 1992-45**.

RETIREMENT PLANS. The IRS has issued a model notice of direct rollover options which employers may use to notify retirement plan recipients of their right to rollover plan distributions. **Notice 92-48, I.R.B. 1992-45**.

S CORPORATIONS.

TERMINATION. An S corporation had three trusts as shareholders which improperly filed income tax returns to show the accumulation of all income. The returns were amended to properly show the distribution of all income to the beneficiaries. The IRS ruled that the S corporation status did not terminate as a result of the improperly filed trust returns. **Ltr. Rul. 9240041, July 8, 1992**.

SELF-EMPLOYMENT. The taxpayer was an elected member of the board of a rural electric nonprofit cooperative. The board members received compensation for services provided in the management of the cooperative. The IRS ruled that the compensation received was self-employment income to the taxpayer. **Ltr. Rul. 9240012, July 1, 1992**.

SPECIAL ALERT

Because of the veto of H.R. 11, the 25 percent deduction for health insurance premiums for self-employed persons expired June 30, 1992.

NEGLIGENCE

DUTY. The plaintiff was a employee of the defendant corn processor. The plaintiff alleged injury to the plaintiff's heart from inhaling fumes from "steepwater" while loading the material into truck tanks. Steepwater is the remaining fluid from the processing of corn into several byproducts. The court upheld a summary judgment for the defendant because the plaintiff failed to provide any evidence that the injury to the plaintiff was foreseeable by the defendant in that none of the ingredients in the steepwater were known to be a danger to hearts. **McCullough v. Amstar Corp., 833 S.W.2d 312 (Tex. Ct. App. 1992)**.

PARTNERSHIPS

DISSOLUTION. The parties had formed a farm partnership which owned land in South Dakota. After a creditor brought an action for foreclosure because of the default by the partnership on several loans, one partner petitioned for an accounting and dissolution of the partnership. The trial court entered a dissolution order for the sale of the property in South Dakota and distribution of the proceeds. The other partners argued that the North Dakota trial court had no jurisdiction over the South Dakota land. The court held that the dissolution order affected only the partners individually, requiring them to execute the necessary deeds and that the deeds executed in South Dakota made the transfer, not the trial court order. **First Nat'l Bank of Belfield v. Candee, 488 N.W.2d 391 (N.D. 1992)**.

PARTNERSHIP PROPERTY. In 1983, the plaintiff and defendant entered into an agreement to operate a cotton gin and farm on land purchased for the partnership. Mortgage payments for the land were included in partnership expenses and partnership income tax returns. Although the property was not placed in the name of the partnership, the court held that the intent of the parties was that the land be partnership property. **Crowe v. Smith, 603 S.2d 301 (Miss. 1992)**.

PROPERTY

EASEMENT BY NECESSITY. The plaintiffs owned land-locked farm land which was accessible only by a private road owned by the defendant. One plaintiff's land became land locked as a result of a conveyance partitioning the land to the defendant and plaintiff. Because the conveyance created the land-locked tract, the court held that the plaintiff received an easement by necessity to use the defendant's road for access. Another plaintiff did not receive the land-locked land in a partition but had received permission from the defendant to use the road. Without use of the road, the second plaintiff would have had to traverse a quicksand stream or a steep hill; therefore, the court held that the defendant's grant of permission was irrevocable because a revocation would operate as a fraud on the plaintiff. **Martin v. See, 598 N.E.2d 321 (Ill. Ct. App. 1992)**.

RIPARIAN RIGHTS

DRAINAGE. The plaintiff owned farm land on to which water drained from the defendant's land. The defendant constructed a drainage ditch to collect surface water from the eastern half of the property and caused the water to drain through the western natural drainage on to the plaintiff's property. The additional flow did not cause flooding but did add to the deposit of silt on the plaintiff's property. The plaintiff filed actions under the Shorelines Management Act (SMA), in nuisance, and in trespass for damages and an injunction against further use of the new ditch. The court held that the plaintiff could not bring an action under the SMA because only the state could use the Act to obtain an injunction and the plaintiff failed to show any actual damage to the plaintiff's property to support a monetary judgment. The court also held that the defendant should be enjoined from using the ditch because the ditch altered the natural flow of drainage on the east side of the property to the west side. The court held that the "common enemy" doctrine did not apply because the western drainage was increased by the defendant's ditch. **Hedlund v. White, 836 P.2d 250 (Wash. Ct. App. 1992)**.

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SECURED TRANSACTIONS

SALE OF COLLATERAL. The plaintiff and brother operated a farm partnership which borrowed operating money from the defendant bank which was secured by farm equipment. After the partnership defaulted on the loans, the bank repossessed the collateral and privately sold it without giving notice to the partners. After discovering the error, the bank allowed the brother to bid on the collateral. After the brother submitted a bid for one dollar more, the bank gave notice of the bids to the plaintiff and brother. The plaintiff did not bid on the equipment. The plaintiff sought a declaratory judgment that the bank was prohibited from seeking any deficiency because of lack of notice and a commercially unreasonable sale of the collateral. The court held that the sale was not commercially unreasonable because the price received exceeded the fair market value of the equipment. The court also held that a deficiency would not be barred by the lack of notice because (1) the debt did not involve the purchase of the collateral, (2) the amount of collateral sold without notice was minor compared to the total amount of collateral, and (3) the plaintiff still had sufficient opportunity to guarantee the best price for the sale of the remaining collateral. **Knierim v. First State Bank, 488 N.W.2d 454 (Iowa Ct. App. 1992)**.

ZONING

AGRICULTURAL USE. The petitioner's land was zoned such that farm buildings could be built only on a parcel which "is planted in perennials capable of producing upon harvest, an average of at least $10,000 in gross annual income." The petitioner's land had strawberries planted on it but the plants had not and could not produce sufficient income to meet the zoning requirements, but the petitioner planned to replant the crop to increase the yield in the future to meet the gross income requirement. The court upheld the refusal of the building permit, holding that the zoning ordinance required the currently planted crop to be able to produce the gross income required. **McKay Creek Valley Ass'n v. Washington County, 834 P.2d 482 (Or. Ct. App. 1992)**.

CITATION UPDATES

Armstrong World Indus., Inc. v. Comm'r, 974 F.2d 422 (3d Cir. 1992), ***aff'g*****, T.C. Memo. 1991-326** (safe harbor leasing) see p. 170 *supra*.

ENERGY POLICY ACT OF 1992, Pub. L. No. 102-486, was signed into law on October 24, 1992. See p. 177 *supra*.

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