[5] 7 U.S.C. §§ 2541(a), 2483.
[6] Capper-Volstead Act, 7 U.S.C. §§ 291, 292. See generally 14 Harl, *Agricultural Law* § 137.04 (1998).
[7] See generally Neale, *The Antitrust Laws of the United States of America* Ch. XI (2d ed. 1970).
[8] International Business Machines Corp. v. United States, 298 U.S. 131 (1936).
[9] 258 U.S. 451 (1922).
[10] Clayton Act, § 3.
[11] International Salt Co. v. United States, 322 U.S. 392 (1947).
[12] *Id*.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

COTENANTS. The plaintiffs first received the farm property as remainder holders after a life estate, created in 1968, held by the plaintiffs' father. The father received the life estate upon the death of the plaintiffs' mother who had received the property from her parents in 1955. However, the plaintiffs discovered, in a title opinion in 1996, that the 1955 transfer from the grandparents to the mother was actually to the mother and father as tenants in common. Thus, the father owned one-half of the property in fee and that one-half interest passed, in part, to other heirs of the father. The plaintiffs sought to clear the title, arguing that the plaintiffs acquired title by adverse possession from 1968 to the present action. The plaintiffs actively farmed the land and paid the taxes. The defendants argued that adverse possession did not apply between cotenants unless there was an ouster of one cotenant. The court held that an exception to this rule applied in that the mother's will transferred the entire fee, first as a life estate to the father, and then as a remainder to the plaintiffs. The court held that the transfer of an entire interest by the creation of the remainder to the plaintiffs acted as an ouster of the father's cotenancy interest, allowing the plaintiffs to acquire title by adverse possession of the property. This case was submitted by Roger McEowen, Associate Professor of Agric. Econ. and Ext. Specialist, Agric. Law and Policy at Kan. State Univ. **Buchanan v. Rediger, __ P.2d __ (Kan. Ct. App. 1999)**.

BANKRUPTCY

FEDERAL TAXATION-*ALM* § 13.03[7].*

DISCHARGE. The debtor owed taxes for 1985-1988. The debtor did not file the returns for those years until after the IRS had made an assessment based on substitute returns constructed by the IRS. The debtor's returns used the figures from the substitute returns. The IRS argued that the discharge of taxes provision under Section 523(a)(1)(B) did not apply because the IRS had made an assessment and constructed substitute returns prior to the debtor's filing of the tax returns. The Bankruptcy and District Courts held that Section 523(a)(1)(B) had no exception for returns filed after assessment. In addition, the courts held that the returns were valid and were not affected by the substitute returns constructed by the IRS. The appellate court reversed, holding that the debtor's return was not a valid return because it served no purpose once the IRS constructed substitute returns and assessed a deficiency ***In re* Hindenlang, 164 F.3d 1029 (6th Cir. 1999), *rev'g*, 214 B.R. 847 (S.D. Ohio 1997), *aff'g*, 205 B.R. 874 (Bankr. S.D. Ohio 1997)**.

SECURED CLAIMS. The debtor's Chapter 13 plan provided that, upon payment of a claim as required by Chapter 13, any lien securing the claim would be released. The plan did not provide for full payment of several tax claims which were secured by tax liens against the debtor's residence. The court held that lien could not be extinguished merely by a provision in the plan but had to be avoided or modified in an affirmative action in the bankruptcy case. To the extent a claim is not paid in full, the security interest survives the bankruptcy discharge and continues *in rem*, although the debtor's personal liability for the debt is discharged. ***In re* Deutchman, 228 B.R. 829 (D. Md. 1998)**.

The debtor had filed a previous Chapter 7 case. Because the trustee declared the case a no-asset case, the IRS did not file a secured claim for employment taxes owed by the debtor. The debtor received a discharge in that case. The debtor then filed the current Chapter 13 case and the IRS filed a secured claim for the same employment taxes. The debtor argued that the taxes were secured in the first case and, therefore, discharged under Section 727 because no claim was filed. The court held that, in the Chapter 7 case, the taxes were nondischargeable, whether a claim was filed or not; therefore, the tax claim remained viable in the Chapter 13 case and was still secured. ***In re* Gust, 229 B.R. 44 (Bankr. S.D. Ga. 1998)**.

SETOFF. The debtor filed for Chapter 7 on April 12, 1996 and filed the debtor's 1995 income tax return on April 15, 1996, claiming a refund. The IRS filed a claim for 1990, 1991, and 1992 income tax deficiencies and offset the debtor's refund by the amount of the tax claims. The 1990 and 1991 claims were discharged. The debtor had listed the income tax refund as exempt property and no creditor challenged the exemption. The IRS sought retroactive permission to execute the offset. The court acknowledged that prior decisions were split as to whether the offset provision, Section 553(a), or the exemption provision, Section 522(c), took precedence. The court followed the majority of courts in holding that exempt property was not subject to the setoff provision and the setoff was not proper. Although the IRS refusal to return the refund was a violation of the automatic stay, the court held that the IRS did not need to return the amount of the 1992 tax claim because that claim was not discharged. ***In re* Jones, 99-1 U.S. Tax Cas. (CCH) ¶ 50,366 (M.D. Ala. 1999)**.

CONTRACTS

REVOCATION OF ACCEPTANCE. The plaintiff sold 858 cases of split fryer chicken breasts to the defendant. The cases were resold to a third party. Two weeks later the third party rejected 521 cases as containing chicken breast pieces and the defendant stopped payment on its check for the 521 cases. The plaintiff sued for payment on the original contract, arguing that revocation of acceptance was not proper because the defendant did not inspect the cases and because the defendant did not revoke acceptance of the entire 858 cases. The court held that each case was a commercial unit for which acceptance could be revoked. The court also held that the revocation was enforceable because the parties knew that the cases would be shipped too quickly for an inspection and the defendant told the plaintiff that the defendant would rely on the plaintiff's representation that all the cases contained only split chicken breasts. **Grand State Marketing v. Eastern Poultry, 975 S.W.2d 439 (Ark. Ct. App. 1998)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has adopted as final amendments to the brucellosis regulations to allow a state to retain its Class Free status following the detection of an affected herd if the state meets certain conditions. These conditions, which include quarantining, testing, and depopulating the affected herd and conducting an investigation to ensure that brucellosis has not spread from the affected herd, would allow a state to avoid losing its Class Free status due to an isolated case of infection being detected in the state. **64 Fed. Reg. 15296 (March 31, 1999)**.

The APHIS has adopted as final amendment of the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Mississippi from Class A to Class Free. **64 Fed. Reg. 15298 (March 31, 1999)**.

TOBACCO. The CCC has adopted as final regulations for the 1998 marketing quota ranges for tobacco:

Kind and Type	Quota (Million pounds)
Virginia fire-cured(type 21)	2.725
Ky-Tenn. fire-cured(types 22-23)	44.6
Dark air-cured(types 35-36)	11.15
Virginia sun-cured(type 37)	0.165
Cigar filler & binder(types 42-44, 53-55)	6.63
Maryland (type 32)	5.45
Pennsylvania filler(type41)	.665
Cigar-Binder(type 51-52)	1.31

64 Fed. Reg. 15296 (Mar. 31, 1999).

The 1998 tobacco price support levels were as follows:

Kind and Type	Cents per pound
Virginia fire-cured(type 21)	153.6
Ky-Tenn. fire-cured(types 22-23)	168.1
Dark air-cured(types 35-36)	145.0
Virginia sun-cured(type 37)	136.0
Cigar filler & binder(types 42-44, 53-55)	121.2

64 Fed. Reg. 15296 (Mar. 31, 1999).

FEDERAL ESTATE AND GIFT TAX

FAMILY-OWNED BUSINESS DEDUCTION. Legislation has been introduced in the U.S. House of Representatives which would eliminate the limitation on the amount of the deduction for family-owned business interests. **H.R. 1278, 106th Cong., 1st Sess**.

RETURNS. The IRS has announced the release of revised Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. This form can be obtained either: (1) by calling the IRS's toll-free telephone number, 1-800-TAX-FORM; (2) at http://www.irs.ustreas.gov/prod/cover.html; (3) through FedWorld on the internet; or (4) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

TRUSTS. The taxpayer established a trust for the taxpayer's child. The trust provided that the child had the right to withdraw all contributions to the trust within 30 days after the trustee gives the child notification of the contribution. The trustee was required to give reasonable notification of all contributions. The trust also provided that no withdrawals could be used to satisfy the taxpayer's parental obligation to support the child. The IRS ruled that the transfer of property to the trust was eligible for the gift tax annual exclusion and that the trust property would not be included in the taxpayer's gross estate, so long as there was no agreement that the child would not exercise the right of withdrawal. **Ltr. Rul. 9912016, Dec. 21, 1998**.

VALUATION OF STOCK. The decedent owned 19.86 percent of the stock of a family-owned S corporation, the largest block of stock owned by any one shareholder. The estate valued the stock at $29.77 per share, based upon a pre-death appraisal and two post-death sales of stock by other family members to another family member. The sales were made without negotiation and without any determination of the fair market value of the stock. The court held that the post-death sales were not determinative of the value of the stock because the transactions were not negotiated and the number of shares sold was much smaller than the decedent's holdings. The estate presented an expert appraiser's appraisal of the stock in support of the $29.77 value but the court found that the appraiser's valuation was defective because it was based solely upon sale of the stock to other shareholders, which was not required by the corporation's bylaws. The court held that the IRS valuation of the stock was to be used because the estate failed to present sufficient evidence to rebut that valuation. **Estate of Kaufman v. Comm'r, T.C. Memo. 1999-119**.

FEDERAL INCOME TAXATION

BAD DEBT. The taxpayer was a retired farmer who had formed three construction corporations with an unrelated person. The taxpayer contributed money to the corporations in exchange for promissory notes. The notes went unpaid and the notes were consolidated. The taxpayer borrowed some money from the other shareholder, although the notes remained unpaid. The taxpayer claimed that the money was loaned to the corporation as part of the taxpayer money-lending business. The corporation terminated at the death of the other shareholder, leaving most of the notes unpaid. The court found that the taxpayer did loan money to the corporation over several years but that the taxpayer made no loans to anyone else; therefore, the court held that the taxpayer was not in the money lending business. The court held that the loans were made as part of the taxpayer's investment in the corporation and entitled the taxpayer to only a nonbusiness bad debt deduction. **German v. Comm'r, T.C. Memo. 1999-104**.

The taxpayer was a retail lumber corporation which was associated through its shareholders to a corporation which supplied wood products to the taxpayer. The taxpayer contributed money to the wood products corporation over several years; however, no promissory notes were executed, no collateral or security was attached and no fixed repayment terms were established. The wood products corporation was placed in receivership and the IRS filed a claim for unpaid taxes. The taxpayer also filed a claim for the amounts contributed to the wood products corporation. The receivership action did not litigate the taxpayer's claim but included the claim in the debts of the wood products corporation. The court held that the IRS was not estopped by the receivership action from challenging the nature of the taxpayer's contributions to the wood products corporation as debt, because the nature of the contributions was not litigated or even investigated in the action with notice to the IRS. In addition, the court held that the contributions were no bona fide debt because (1) no note was executed, (2) the corporations were closely related by shareholders and business dealings, (3) no security was granted for the contributions, (4) no repayment terms were made, (5) no repayments were made, and (6) the wood products corporation was thinly capitalized. The court held that the taxpayer could not take a bad debt deduction for the contributions. **J&W Fence Supply Co., Inc. v. United States, 99-1 U.S. Tax Cas. (CCH) ¶ 50,396 (S.D. Ind. 1999)**.

The taxpayer operated a plumbing business and claimed bad debt deductions for unpaid work from stopped checks and work orders. The taxpayer did not present any evidence that the income from these items was included in the gross income on the taxpayer's income tax returns. The court disallowed the bad debt deductions for items which were not also included in the taxpayer's gross income. **Worthington v. Comm'r, T.C. Memo. 1999-113**.

BASIS OF IMPROVEMENTS. The cash-basis taxpayers owned some office condominiums and made improvements to the properties. The improvements were paid for by execution of promissory notes. The taxpayers then sold the properties and included the amount of the promissory notes in the basis of the properties in calculating the taxable gain from the sale. The taxpayers argued that, because the basis of the real property would include any indebtedness incurred in the purchase of the property, the basis would also include any indebtedness incurred in making improvements to the property. The court held that I.R.C. § 1016 allowed adjustments to basis only for actual expenditures; therefore, the taxpayers could not increase their basis in the property by the amount of additional debt incurred for improvements to the property. **Owen v. United States, 99-1 U.S. Tax Cas. (CCH) ¶ 50,380 (W.D. Tenn. 1999)**. The Digest will pbulish an article by Neil Harl on this issue in a forthcoming issue.

BUSINESS DEDUCTIONS. The taxpayer claimed automobile and phone expenses as business deductions but provided no evidence of the amount and purpose of the expenses except for oral testimony. The court held that the oral testimony was insufficient evidence to support the deductions. **Neal v. Comm'r, T.C. Memo. 1999-97**

COMPROMISE OFFERS. The IRS has announced that it intends to expand the Offer in Compromise program in order to make it easier for more taxpayers who are unable to pay their tax bills to arrive at settlements. According to the IRS, the changes that are being made will feature more straightforward rules, increased flexibility by key agency employees, and fewer rejections of compromise offers. Less financial documentation will be required with respect to smaller compromise offers, and new deferred payment procedures will be available for taxpayers who would likely have been excluded from the program under the old guidelines. **IR 1999-30**.

COURT AWARDS AND SETTLEMENTS. In a case designated as not for publication, the appellate court upheld a Tax Court decision that the proceeds of a settlement in an action under Title VII are not excludible from gross income. The appellate court also upheld the Tax Court ruling that the amount of attorneys' fees awarded and paid directly to counsel were not excludible from the taxpayer's gross income. **Brewer v. Comm'r, 99-1 U.S. Tax Cas. (CCH) ¶ 50,378 (9th Cir. 1999), *aff'g*, T.C. Memo. 1997-542**.

The taxpayer and a corporation controlled by the taxpayer had filed suit against a valve supplier for economic and mental anguish damages resulting from a defective valve used in the corporation's oil well. The parties reached a settlement and the settlement agreement allocated a portion of the proceeds to the mental anguish claims. The court disallowed the allocation in the settlement because the allocation was not determined in an adversarial situation in that the defendant had no interest in how the proceeds were allocated. The court held that the settlement would be allocated to the mental anguish claim in the same proportion as the proportion of the taxpayer's claim for damages for mental anguish was to the total claim in the initial case petition. The portion allocated to mental anguish was excludible from the taxpayer's gross income. **Burditt II v. Comm'r, T.C. Memo. 1999-117**.

The taxpayer brought a suit against a former employer under the Age Discrimination in Employment Act (ADEA) and received a jury award. In a decision designated as not for publication, the appellate court held that the verdict proceeds were included in the taxpayer's gross income because an action under the ADEA did not involve tort or tort-like rights and the award was not received on account of personal injuries or sickness. **Dewey v. United States, 99-1 U.S. Tax Cas. (CCH) ¶ 50,375 (10th Cir. 1999)**.

DEPENDENTS. The taxpayer was divorced from the mother of the taxpayer's three children who lived with the mother. The taxpayer claimed the children as dependents on the taxpayer's return. The taxpayer did not file Form 8332 or otherwise provide a signed statement from the mother waiving the mother's right to claim the children as dependents. The taxpayer claimed that the children could be claimed as dependents because the taxpayer provided more than half of their support; however, the taxpayer did not present evidence of the amount of support provided. The court held that the taxpayer could not claim the children as dependents. **Neal v. Comm'r, T.C. Memo. 1999-97**.

ELECTRONIC PAYMENTS. The IRS has announced that beginning July 1, 1999, any taxpayer that is currently required to deposit federal depository taxes by electronic funds transfer and that deposited more than $200,000 in aggregate federal depository taxes during calendar year 1998 will be subject to the 10-percent I.R.C. § 6656 failure to deposit penalty if the taxpayer fails to make deposits by electronic funds transfer. The IRS will not, however, impose the I.R.C. § 6656 penalty on taxpayers that did not deposit more than $200,000 in aggregate federal depository taxes during calendar year 1998 solely for the failure to deposit by electronic funds transfer. This waiver applies only to deposit obligations incurred after June 30, 1999, and on or before December 31, 1999. This waiver does not affect the waiver announced in *Notice 99-12, I.R.B. 1999-9, 44*, covering the period beginning January 1, 1999, and ending June 30, 1999. **Notice 99-20, I.R.B. 1999-__, __**.

ENVIRONMENTAL CLEANUP COSTS. The taxpayer was a subsidiary of an electric utility company which owned a former electricity-generating plant. The plant had been shut down and all electrical generating equipment removed. The taxpayer wanted to develop the property for other uses but discovered that the land was contaminated with hazardous waste. The taxpayer incurred cleanup expenses in order to make the land salable. The court held that, because the environmental cleanup costs were incurred to put the property into a condition for a new use, the cleanup costs had to be capitalized. **Dominion Resources, Inc. v. United States, 99-1 U.S. Tax Cas. (CCH) ¶ 50,369 (E.D. Va. 1999)**.

HOME OFFICE. The taxpayer was an attorney and decided to leave one firm and join another firm. The taxpayer stated that the taxpayer used a home office to plan the new firm, wind down client affairs after the new firm was formed and to perform work while at home. The taxpayer had an office at both firms and did not regularly meet clients in the home office. The court held that the taxpayer was not entitled to deductions relating to the home office. The case is designated as not for publication. **Fingar v. Comm'r, 99-1 U.S. Tax Court (CCH) ¶ 50,392 (11th Cir. 1999)**.

INCOME AVERAGING. CCH has reported that U.S. Senators Charles Grassley and Christopher Bond have urged IRS Commissioner Rossotti to issue immediate guidance to farmers who are trying to meet the tax deadline, which was then just 20 days away. The two senators also urged him not to assess penalties against farmers who have attempted to comply with the statute without the benefit of IRS guidelines. When asked about the lack of regulations, an IRS official told CCH that analysts were working to publish guidance but, in the meantime, the IRS is referring taxpayers to information that already exists. Publications such as Publication 553, Highlights of 1998 Tax Changes, Publication 225, Farmer's Tax Guide, and Schedule J (Form 1040), Farm Income Averaging, currently provide informal references on how the provisions would apply for people who wish to use income averaging for their 1998 returns, the official said. **News-Federal, 99TaxDay, 03/29/99, Item #C.1.**

This case involved prior (pre-1987) income averaging law. The taxpayer had taken an improper deduction on the taxpayer's 1985 income tax return. In 1994, the taxpayer filed an amended 1985 return without the improper deduction but also changed the return to use income averaging based on 1982, 1983, and 1984 income. However, the 1984 return had included an improper loss deduction. If the 1984 return had not included the loss deduction, the taxpayer would not have been entitled to income averaging in 1985. The period to assess the 1984 taxes had expired and the taxpayer argued that the 1985 amended return could use the 1984 reported, but incorrect, income. The court held that the income averaging calculation had to be based upon the taxpayer's actual 1984 taxable income, even if the assessment period had expired. **Butcher v. Comm'r, T.C. Memo. 1999-114**.

IRA-ROTH. Taxpayers may transfer amounts in a traditional IRA to a Roth IRA if their income, not counting the taxable amount of the conversion, is not more than $100,000 and they are not married filing separately. The same income limit applies to both single and joint returns. The IRS has announced that those who converted traditional IRAs to Roth IRAs in 1998 and now find that they exceeded the $100,000 income limit should recharacterize these conversions by transferring the conversion amount plus related earnings back to traditional IRAs. Taxpayers should contact the IRA trustee to do this. Ineligible taxpayers must usually recharacterize by April 15. Those who get filing extensions have until their extended due date to recharacterize. Failure to correct the mistake could mean a 10 percent early withdrawal tax for those under age 59 1/2 and an excess contribution tax if a person put too much into a Roth IRA in 1998. Taxpayers who have already filed a tax return reporting a Roth IRA conversion and who recharacterize it by April 15 should file an amended return using Form 1040X, and attach Form 8606, Nondeductible IRAs, to report the IRA transactions. **IR 1999-35**.

RETURNS. The IRS has announced new electronic filing options this year and a streamlined approval process. Taxpayers who e-file by computer may authorize the government to take the money directly from their checking or savings account. There is no charge for this service. Another innovation this year allows taxpayers to charge the balance due on a credit card. Any person may call toll-free to 1-888-2PAY-TAX to charge the 1998 federal income tax to a MasterCard, Discover, or American Express card. Only the 1998 taxes may be charged, not estimated taxes for 1999. Taxpayers who use Intuit tax preparation software to e-file from home may pay the balance due by including their Discover Card number as part of the electronic file they send. Under both the phone and computer methods, private sector companies process the credit card transactions and the users pay convenience fees. The IRS is not involved in setting or collecting the fees. The cardholder's account statement will show tax payments and fees separately. Taxpayers who cannot pay the full tax due may set up an installment payment plan with the IRS. Last year, Congress gave taxpayers a right to an installment agreement, provided certain conditions are met, including that the tax owed is not more than $10,000 and the taxpayer will pay it within a three-year period. The IRS went beyond these limits in recently streamlining its approval process for installment agreements. The IRS will now grant installments to taxpayers who agree to pay a balance due of $25,000 or less within a five-year period. These agreements do not require a collection manager's approval and do not involve the filing of liens. Taxpayers may make these agreements in person, by phone, or by correspondence. This streamlined process applies to both individual and business income taxes, and to any type of tax for a business that is no longer operating. Instead of waiting for a contact from an IRS collector, taxpayers may ask for an installment plan when they file their returns. They should attach Form 9465, Installment Agreement Request, to the front of the tax return, listing the proposed monthly payment amount and the day. They may also choose to have the payments taken automatically from their bank account. The IRS will generally let them know within 30 days if the proposal is accepted. Form 9465 is available from the IRS Web site at *www.irs.ustreas.gov*, by calling (toll-free) 1-800-TAX-FORM, or from IRS TaxFax. From a fax machine, call 703-368-9694--not a toll-free number--and request item #14842 by return fax. There is a $43 fee for setting up the installment agreement. Taxpayers on an installment agreement will also pay interest, currently figured at eight percent per year, compounded daily, plus a monthly late payment charge of 0.5 percent of the balance due. After 1999, this monthly penalty drops to 0.25 percent for taxpayers with an installment agreement, provided they had filed the return on time and did not receive a notice that the IRS intended to enforce collection through a levy. Besides possibly qualifying for this reduced late payment penalty, people who cannot pay the taxes owed have another good reason to file their returns on time--to avoid the late filing penalty of 5 percent per month of the balance due. Sending as large a payment as possible with the return will lessen any interest and penalty charges. Taxpayers should make checks payable to United States Treasury and should include their name, address, social security number (or TIN), a daytime phone number, the tax year and the form filed. They should not attach the checks to the tax forms, and should send any 1999 estimated tax payments separately. **IR 1999-36**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

BASIS OF STOCK. The taxpayer owned a one-third interest in an S corporation. The taxpayer sold the interest back to the corporation for $275,000 at the end of the tax year. The corporation issued a Form K-1 which listed the taxpayer's stock basis as $19,790 and allocated that much of the corporation's tax loss to the taxpayer. The taxpayer claimed the taxpayer's entire share of the corporation's loss against the proceeds of the stock. The IRS disallowed all of the losses except for $19,790. The taxpayer argued that the passive activity loss rules allowed the stock redemption proceeds to be included in the stock basis as gain. The court rejected this application of the passive activity loss rules and held that the adjustments to stock basis were solely determined under I.R.C. §§ 1366, 1367; therefore, the taxpayer's loss deduction was limited to the taxpayer's basis in the stock and debt. **Miller v. United States, 99-1 U.S. Tax Cas. (CCH) ¶ 50,398 (N.D. W.Va. 1999)**.

DISCHARGE OF INDEBTEDNESS. This case is the latest in a growing string of cases which have followed *Nelson v. Comm'r, 110 T.C. 12 (1998)*. The taxpayers owned 50 percent of an S corporation and had zero basis in their stock due to continuing losses incurred by the corporation. The corporation ceased operations and a portion of the corporation's remaining debt was forgiven by creditors, resulting in discharge of indebtedness income which was not recognized because of the insolvency exception. The taxpayers increased the basis of their stock by their share of the discharge of indebtedness income. The court held that the discharge of indebtedness income was to be determined at the S corporation level. Because the discharge of indebtedness income was not recognized by the corporation, because of the insolvency exception, no discharge of indebtedness income passed to the shareholders which could be used to increase the basis of stock. **United States v. Farley, 99-1 U.S. Tax Cas. (CCH) ¶ 50,370 (W.D. Pa. 1999)**.

SALE OF RESIDENCE. The taxpayer transferred title to the taxpayer's residence to a grantor revocable trust. The IRS ruled that the taxpayer was considered the owner of the residence for purposes of the I.R.C. § 121 exclusion of gain from the sale of a residence. Although the exclusion was expanded in 1997, the IRS ruled that *Rev. Rul. 66-159, 1966-1 C.B. 162* (grantor treated as trust owner) and *Rev. Rul. 85-45, 1985-1 C.B. 183* (beneficiary treated as trust owner) were still valid. **Ltr. Rul. 9912026, Dec. 23, 1998**.

STATE REGULATION OF AGRICULTURE

CORRECTION: The following case was incorrectly summarized in the last issue. The changes are in italics. Our apologies for the errors.

LIVESTOCK CONFINEMENT FACILITIES. The defendant counties had passed ordinances regulating the location of concentrated livestock facilities. The plaintiffs wanted to construct a livestock confinement facility on the plaintiffs' land which would violate the ordinances. The plaintiffs alleged that the ordinances were preempted by state law and regulations of the Mississippi Department of Environmental Quality. The regulations involved the distances between concentrated livestock facilities and adjacent property. The *plaintiffs* sought a preliminary injunction against enforcement of the ordinances pending trial. The court granted the injunction, holding that the *plaintiffs* were likely to prevail on the preemption issue and on the claims that the ordinances violated substantive due process in that the distance requirements were unduly oppressive. **Prestage Farms v. Bd. of Supervisors of Noxubee Co., 23 F. Supp.3d 663 (N.D. Miss. 1998)**.

TRESPASS

TIMBER CUTTING. The plaintiff leased real property to the defendant for use as a race track. The property included several acres of trees. The lease provided that the defendant was to invest in improvements on the property but required the defendant to obtain the plaintiff's prior permission to make any improvements. The defendant cut down several acres of the trees without permission and the plaintiff sued for the value of the timber, including treble damages under Rev. Code Wash. § 64.12.030. The trial court awarded the value of the trees only, holding that the plaintiff failed to prove that the trees were cut willfully by the defendant. On appeal for the first time, the plaintiff argued that Rev. Code Wash. § 64.12.030 did not apply because of the landlord-tenant relationship of the parties. The court held that Rev. Code Wash. § 64.12.030 applied to all cutting of trees by trespass, regardless of the relationship of the parties. **JDFJ Corp. v. International Raceway, Inc., 970 P.2d 343 (Wash. Ct. App. 1999)**.

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