U.S.C. § 522(b)(2)(A) by virtue of its prohibition of provisions in the plan agreement for alienation or assignment of plan benefits. Most courts, however, have rejected this argument and denied the debtor's exemption of benefits of an employment pension plan qualified under ERISA. See ***In re* Daniel, 771 F.2d 1352 (9th Cir. 1985), *cert. denied* 475 U.S. 1016 (1985); *In re* Lichstrahl, 750 F.2d 1488 (11th Cir. 1985); *In re* Graham, 726 F.2d 1268 (8th Cir. 1984); *In re* Goff, 706 F.2d 574 (5th Cir. 1983); *In re* Gibben, 84 B.R. 494 (S.D. Ohio 1988); *In re* Slezak, 63 B.R. 625 (Bankr. W.D. Ky. 1986); *In re* O'Brien, 50 B.R. 67 (Bankr. E.D. Va. 1985).**

One Texas Bankruptcy Court, however, held that a debtor's interest in an employment plan is exempt under the "other federal law" provision of **11 U.S.C. § 522(b)(2)(A)**, where the retirement plan agreement contained anti-alienation language required by ERISA § 206(d), **29 U.S.C. § 1056(d)**. ***In re* Komet** *supra*. In so holding the court in *Komet* declined to follow *In re Goff* which stated that ERISA does not create a federal exemption for ERISA qualified plans. An Arizona Bankruptcy Court, however, has followed *Goff* and held the ERISA anti-alienation provision not to create a federal exemption. **In re Flindall, 105 B.R. 32 (Bankr. D. Ariz. 1989).**

In support of its holding, the Texas Bankruptcy Court argued that because the ERISA anti-alienation provision has been held by many courts to override state garnishment statutes, the anti-alienation provision operates as a federal exemption. The court disagreed with *Goff's* assertion that the anti-alienation provision served only as a qualification requirement for federal income tax benefits. See also **Note, Exemption of ERISA Benefits Under Section 522(b)(2)(A) of the Bankruptcy Code, 83 Mich. L. Rev. 214 (Oct. 1984)**.

Cases, Regulations, and Statutes

ADVERSE POSSESSION

Adverse possession by prescription of 15 acres was granted where land possessors had been conveyed the land but through a scrivener's error, the deed described only one-fourth of the intended acreage. Possession was held adverse because the possessors had asked the owners of record to sign a corrective deed more than 20 years before the current action and had openly and exclusively used the land for farming and recreation. **Daugherty v. Miller, 549 So.2d 65 (Ala. 1989)**.

AGRICULTURAL LABOR

MIGRANT WORKERS. Migrant farm workers were not denied due process rights by county health department's issuance of permits for migrant farm worker's housing which was substandard, because state housing permit laws did not create any due process rights. Issuance of permits for substandard housing did not violate Fair Housing Act because such actions did not discriminate against nonwhite migrant workers. **Edwards v. Johnston County Health Dept., 885 F.2d 1215 (4th Cir. 1989)**.

ANIMAL PROTECTION AND QUARANTINE

SWINE. The Animal and Plant Health Inspection Service (APHIS) has issued proposed regulations for allowance of interstate transportation of swine vaccinated with PRV/Marker pseudorabies vaccine and tested by the HardChek anti-PRV-gp EKISA test. **54 Fed. Reg. 45739 (Oct. 31, 1989) amending 9 C.F.R. §§ 85.1, .6, .8-.10.**

BANKRUPTCY

GENERAL

ADMINISTRATIVE EXPENSES. Although 11 U.S.C. § 503(b) is silent as to whether interest on post-petition tax liabilities receives administrative expense priority along with the post-petition taxes, the court held that the statute did not change prior case law which held that interest on post-petition taxes was entitled to administrative expense priority. ***In re* Allied Mechanical Services, Inc., 885 F.2d 837 (11th Cir. 1989)**.

AVOIDABLE LIENS. Although under Minnesota law, Minn. Stat. § 550.37, Chapter 7 debtors had waived their right to claim an exemption in farm equipment by voluntarily granting a security interest in the equipment, the debtors were allowed to avoid the secured lien on the equipment as impairing their exemption under 11 U.S.C. § 522(f): "Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien. . . ." ***In re* Thompson, 884 F.2d 1100 (8th Cir. 1989).**

CASH COLLATERAL. The debtor was allowed to use cash collateral milk sales proceeds which were subject to an assignment to an oversecured creditor. Adequate protection was supplied by the value of other collateral in excess of the creditor's claim and by cash payments to the creditor. **Delbridge v. Prod. Credit Ass'n & Federal Land Bank, 104 B.R. 824 (E.D. Mich. 1989).**

EXECUTORY CONTRACTS. Land sale contract of farmland was an executory contract requiring assumption or rejection by Chapter 12 debtor before confirmation of plan. Contract vendee's right under Indiana law to prevent forfeiture of the contract in some instances did not alter nature of contract as executory under federal bankruptcy law. ***In re* Coffman, 104 B.R. 958 (Bankr. S.D. Ind. 1989).**

EXEMPTIONS. Chapter 13 debtors were not allowed to avoid a judgment lien against their homestead where, under Ohio law, the homestead was exempt as against execution, attachment and sale but no execution, attachment or sale had been attempted. ***In re* Dixon, 885 F.2d 327 (6th Cir. 1989), rev'g 85 B.R. 745 (N.D. Ohio 1988), aff'g 79 B.R. 702 (Bankr. N.D. Ohio 1987).**

Under Virginia law, debtors are required to file a homestead exemption within five days after the first creditor's meeting in a bankruptcy case. In a Chapter 13 case, the court held that the Virginia filing requirement did not apply because the homestead exemption was not used to remove property from the bankruptcy estate. Thus, the Virginia filing requirement applied only in Chapter 7 cases. However, the court also

held that because the conversion of the debtors' case to Chapter 7 did not change the effective bankruptcy filing dates, the debtor's failure to file their homestead exemption did not prevent their claim to the exemption after conversion of the case to Chapter 7. ***In re* Edwards, 105 B.R. 10 (Bankr. W.D. Va. 1989).**

A debtor was not allowed a Florida homestead exemption for 160 acre rural platted subdivision where debtor found not to have lived on any part of land prior to filing bankruptcy with intent to remain. ***In re* Samson, 105 B.R. 124 (Bankr. S.D. Fla. 1989)**.

VOIDABLE PRE-PETITION TRANSFERS. A foreclosure sale of the debtor's real property on the day the bankruptcy petition was filed was not avoidable as a fraudulent transfer where the sale was commercially reasonable and the debtor failed to provide relevant evidence that the price received for the property was inadequate for a distressed sale. ***In re* Brown, 104 B.R. 609 (Bankr. S.D. N.Y. 1989).**

In direct conflict with the previous case, a Chapter 13 debtor was allowed to avoid a pre-petition foreclosure sale of the debtor's homestead where the debtor was insolvent at the time of the sale and the debtor demonstrated that the sale price ($66,000) was less than reasonably equivalent to the fair market value ($95,000) of the property. The court did not discuss the distressed sale value of the property. ***In re* Barrett, 104 B.R. 688 (Bankr. E.D. Pa. 1989).**

A debtor's pre-petition purchase of exempt life insurance policies with nonexempt property was voided where the purchase was made with the intent to defraud creditors because the debtor already had adequate life insurance and failed to list the policies in the asset schedules. ***In re* Beckman, 104 B.R. 866 (Bankr. S.D. Ohio 1989)**.

A debtor's pre-petition sale of exempt homestead and payment of some proceeds to creditor with judgment lien against home was voidable preference transfer even though the assets transferred were exempt. ***In re* Owen, 104 B.R. 929 (C.D. Ill. 1989), rev'g and rem'g 96 B.R. 168 (Bankr. C.D. Ill. 1989).**

FEDERAL INCOME TAX

DISCHARGE. Debtor's federal income tax liability for taxable years more than three years before bankruptcy filing were nondischargeable where first return substantially understated gross income and no returns were filed for other years until debtor confronted with IRS audit. ***In re* Carapella, 105 B.R. 86 (Bankr. M.D. Fla. 1989)**.

ESTATE TAX LIABILITY. A bankruptcy estate was held liable for tax on gain and interest income from the sale of grain subject to a Commodity Credit Corporation security interest where the proceeds were abandoned to the CCC over three years after the sale. The court held that the trustee's holding of the proceeds made the proceeds estate property. Although the court recognized that abandonment of the proceeds reverts title back to the debtor as owned previous to bankruptcy, the trustee, in holding the proceeds, exercised dominion and control and was therefore liable for any tax. The Bankruptcy Court had ruled that the estate should not be liable for tax on property to which it was not entitled, given the oversecured lien held by CCC. The District Court in reversing countered that the debtor should not be liable for the taxes where the debtor never had any control over the sale or the proceeds. ***In re* Bentley, 89-2 U.S.T.C. ¶ 9597 (S.D. Iowa 1989), rev'g 79 B. R. 413 (Bankr. S.D. Iowa 1987).**

Two subsequent cases, *In re McGowan, 95 B.R. 104 (Bankr. N.D. Iowa 1988)* and *In re Olson, 100 B.R. 458 (Bankr. N.D. Iowa 1989)*, have held that the income tax consequences of abandonment should be born by the debtor. IRS agrees with the holdings in *Bently* and *McGowan* that abandonment of estate property by the trustee is not a transfer taxable to the estate. *Letter from James Keightly, Associate Chief Counsel to Michael Paup, Deputy Assistant Attorney General, March 14, 1989.* The U.S. District Court for Minnesota, however has reversed the Bankruptcy Court in *In re Lamon, Civ. 6-89-239 (D. Minn. 1989)* and held that the Bankruptcy Court had erroneously approved the trustee's request for abandonment. The court noted that the trustee had a duty to the debtor as well as to the unsecured creditors and should not "burden unduly the debtor's opportunity for a fresh start."

For further discussion, see *4 Harl, Agricultural Law, § 39.02[2] (MB 1989).*

FILING OF RETURNS. For 1990 a bankruptcy trustee is required to file an estate income tax return, Form 1041, if the estate's gross income is $4,600 or more. See **I.R.C. § 6012(a)(9), (b)(12)**.

PREFERENTIAL TRANSFERS. The IRS pre-petition seizure of a corporate debtor's commercial bank account for failure to pay withheld employment taxes was held a voidable preferential transfer where IRS failed to demonstrate that any of the funds in the bank account were employment tax trust funds. ***In re* R&T Roofing Structures & Commercial Framing, Inc., 89-2 U.S.T.C. ¶ 9607 (9th Cir. 1989)**.

SETOFF. IRS was allowed to setoff the debtor's income tax refund for the taxable year prior to filing of bankruptcy but received after filing for bankruptcy against debtor's pre-petition income tax liability. **Harbaugh v. United States, 89-2 U.S.T.C. ¶ 9608 (W.D. Pa. 1989)**.

CHAPTER 12

DISMISSAL. Chapter 12 case dismissed for failure to file in good faith where present case was the third time debtor had filed a Chapter 12 case within a short time of an attempted foreclosure by creditors and the present case was filed while dismissal of previous Chapter 12 case was still under appeal by debtor. ***In re* Borg, 105 B.R. 56 (Bankr. D. Mont. 1989)**.

PLAN CONFIRMATION. A Chapter 12 plan was confirmed against arguments that the debtor would not be able to make the plan payments. The court held that the Bankruptcy Court had sufficient evidence that the debtors would have enough income from their grain farming operations, with more than $80,000 cushion, to make plan payments. ***In re* Rape, 104 B.R. 741 (W.D. N.C. 1989).**

A Chapter 12 plan was not confirmed where the debtor failed to include the value of growing crops and future Conservation Reserve Program payments *as of the effective date of the plan* in determining the value of assets available to be distributed to unsecured creditors. The debtor argued that these assets had no value because the crops were still growing and the CRP payments were not yet due but the court required the debtor to provide evidence of the value of this property and include that value in the amount to be paid to unsecured creditors under the plan. ***In re* Bremer, 104 B.R. 999 (Bankr. W.D. Mo. 1989).**

VALUATION. For purposes of determining the amount of a secured creditor's claim in collateral farmland, a Chapter 12 debtor's farmland was valued at its best use as crop land and not as pasture, the use intended by the debtor during the Chapter 12 plan. **Speck v. U.S Through Farmers Home Admin., 104 B.R. 1021 (D. S.D. 1989)**.

FEDERAL ESTATE & GIFT TAX

GROSS ESTATE. The parents' transfer of stock to corporation in exchange for promissory note to be paid by fixed installments of principal and interest for period not to exceed 15 years at 9.5 percent interest was ruled not to be a transfer of stock with a retained interest in the income or rights in the corporation and the stock would not be included in the parents' gross estates. Although the ruling noted that the issue depended upon a factual determination, the parents' leasing of facilities to the corporation would not be considered a retention of an interest in the income or rights in the corporation so long as the leases were arm's-length agreements for fair market value. **Ltr. Rul. 8943079, Aug. 3, 1989**.

The decedent was a shareholder and officer of a corporation which agreed to purchase the decedent's stock upon the decedent's death. The stock was paid for by an insurance policy on the decedent's life, owned by the corporation and naming the corporation as beneficiary. Any proceeds of the policy in excess of the value of the stock were to be paid to a surviving spouse or other named beneficiary. IRS ruled that the proceeds received by the surviving spouse were included in the decedent's gross estate because these proceeds were transferred during the decedent's life pursuant to a binding agreement and the decedent possessed the power at death to change the beneficiary. **Ltr. Rul. 8943082, Aug. 3, 1989**.

INSTALLMENT PAYMENT OF ESTATE TAX. No acceleration under 15-year installment payment of federal estate tax from "type D" reorganization of farm corporation. **Ltr. Rul. 8942031, July 24, 1989**.

MARITAL DEDUCTION. A surviving spouse's life interest in a residuary trust was eligible QTIP property where the spouse held a general power of appointment to transfer trust corpus. **Ltr. Rul. 8943005, July 9, 1989.**

A decedent's community property interest in the surviving spouse's profit sharing-money purchase pension plan was includible in the decedent's gross estate and was eligible for the marital deduction. **Ltr. Rul. 8943006, July 21, 1989**.

A surviving spouse's life income interest in a trust is eligible for the marital deduction where the spouse had a power to invade corpus until the surviving spouse remarries. **Ltr. Rul. 8943057, Aug. 1, 1989**.

SPECIAL USE VALUATION. A surviving spouse's election as executor to specially value property in a trust in which the spouse had a life estate did not result in a gift from the spouse to the remainder beneficiaries of a residue trust, in which the surviving spouse also had a life estate, where the special use valuation election increased the amount of property transferred to the trust under the provisions of the decedent's will. The IRS cited *Treas. Reg. § 20.2056(b)-4(a)* which states that a change in a bequest resulting from a section 2032 election is treated as passing from the decedent. The IRS held that elections under section 2032A produce a similar result. **Ltr. Rul. 8943004, July 17, 1989.**

FEDERAL FARM PROGRAMS

BEEF PROMOTION. In an action to enforce assessments under the Beef Promotion and Research Act of 1985, *7 U.S.C. § 2901 et seq.*, against a buyer and producer of cattle, the Act was upheld as a constitutional exercise of congressional power under the commerce clause, a constitutional delegation of congressional authority to a private beef promotion board, a constitutional incursion on the defendant's rights to free speech and association and a constitutional imposition of assessments against only producers of cattle. The buyer and producer were held personally liable for assessments not collected from cattle sales through auction business. **United States v. Frame, 885 F.2d 1119 (3d Cir. 1989), aff'g 658 F. Supp. 1476 (E.D. Pa. 1987)**.

EMERGENCY LIVESTOCK ASSISTANCE. The Commodity Credit Corporation has adopted as a final rule amendments to the regulations under the Emergency Livestock Assistance program allowing Indian livestock owners to participate in the livestock feed programs while receiving donated grain under the Indian Acute Distress Donation program. **54 Fed. Reg. 46607 (Nov. 6, 1989), amending 7 C.F.R. §§ 1475.3, .6**.

MARKETING ORDERS. The Agricultural Marketing Service has issued interim final rules amending the handling requirements in informal rules issued under the marketing order for oranges, grapefruit, tangerines and tangelos grown in Florida. **54 Fed. Reg. 46596 (Nov. 6, 1989), amending 7 C.F.R. §§ 905.306, .400**.

The Agricultural Marketing Service has issued an interim final rule temporarily decreasing the minimum size for tangerines shipped domestically. **54 Fed. Reg. 46597 (Nov. 6, 1989), amending 7 C.F.R. § 905.306(a) Table 1**.

The Agricultural Marketing Service has announced the assessment of $0.12 per 7/10 bushel carton of oranges and grapefruit shipped during the 1989-90 fiscal year in the Lower Rio Grande Valley in Texas. **54 Fed. Reg. 46599 (Nov. 6, 1989), amending 7 C.F.R. § 906.229**.

The Agricultural Marketing Service has announced the assessment of $0.07 per 23 pound lug of Tokay grapes shipped during the 1989-90 fiscal year in the San Joaquin County, California . **54 Fed. Reg. 46600 (Nov. 6, 1989), amending 7 C.F.R. § 926.228**.

The Agricultural Marketing Service has announced a 1 inch minimum and 1 3/4 inch maximum diameter requirements for domestic and export shipments of Irish potatoes grown in Colorado. **54 Fed. Reg. 46601 (Nov. 6, 1989), amending 7 C.F.R. § 948.386**.

The Agricultural Marketing Service has announced the assessment of $0.10 per 50 pound bag of Vidalia onions shipped during the 1989-90 fiscal year in Georgia. **54 Fed. Reg. 46603 (Nov. 6, 1989), amending 7 C.F.R. § 955.202**.

The Agricultural Marketing Service has announced the assessment of $0.025 per 25 pound container of tomatoes shipped during the 1989-90 fiscal year in Florida. **54 Fed. Reg. 46604 (Nov. 6,**

1989), amending 7 C.F.R. § 966.227.

The Agricultural Marketing Service has announced the maximum assessment of the lesser of $0.25 per pound or $0.275 less any credits per pound of almonds shipped during the 1989-90 fiscal year in California. **54 Fed. Reg. 46605 (Nov. 6, 1989), amending 7 C.F.R. § 981.338**.

The Agricultural Marketing Service has affirmed as a final rule the use of a container 12 3/8 by 8 3/4 by 5 7/8 inches containing not less than 10 pounds of limes for shipment of limes grown in Florida. **54 Fed. Reg. 46713 (Nov. 7, 1989), amending 7 C.F.R. § 911.329**.

The Agricultural Marketing Service has affirmed a finale rule relaxing grade requirements for organically grown pears, plums and peaches grown in California for the 1989 season. **54 Fed. Reg. 46714 (Nov. 7, 1989), amending 7 C.F.R. § 917.461**.

The Agricultural Marketing Service has affirmed as a finale rule establishing interest charges on delinquent handler assessments for kiwifruit grown in California. **54 Fed. Reg. 46715 (Nov. 7, 1989), amending 7 C.F.R. § 920.112**.

The Agricultural Marketing Service has affirmed as a finale rule elimination of pack and reporting requirements for shipments of small non-red-skinned potatoes of at least No. 1 grade. Also affirmed as final rule are reporting requirements for shipments of potatoes for canning, freezing, prepeeling and other processing. **54 Fed. Reg. 46716 (Nov. 7, 1989), amending 7 C.F.R. § 947.34**.

The Agricultural Marketing Service has affirmed as a finale rule changes in administrative rules and regulations for the marketing order for filbert/hazelnuts grown in Oregon and Washington. **54 Fed. Reg. 46718 (Nov. 7, 1989), amending 7 C.F.R. Part 982**.

The Agricultural Marketing Service has affirmed as a finale rule adding the Dominican Republic as a country eligible for export of reserve pool California raisins. **54 Fed. Reg. 46722 (Nov. 7, 1989), amending 7 C.F.R. § 989.221**.

The Agricultural Marketing Service has suspended from October 1989 through April 1990 of the requirement that a dairy farmer who was not a producer under the Great Basin order for a previous month would not be eligible to have milk diverted to a nonpool plant until one day's production is received at a pool plant. **54 Fed. Reg. 46723 (Nov. 7, 1989), suspending 7 C.F.R. § 1139.13(d)(6)**.

The Agricultural Marketing Service has affirmed as a finale rule tightened requirements for the percentage of U.S. No. 1 quality seedless lines in a shipment. **54 Fed. Reg. 46839 (Nov. 8, 1989), amending 7 C.F.R. § 911.344**.

The Agricultural Marketing Service has affirmed as a finale rule grade and size requirements for limited styles of imported and California olives. **54 Fed. Reg. 46841 (Nov. 8, 1989), amending 7 C.F.R. Part 932**.

The Agricultural Marketing Service has affirmed a finale rule authorizing use of bulk bin containers for shipping South Texas lettuce to shredders. **54 Fed. Reg. 46842 (Nov. 8, 1989), amending 7 C.F.R. § 971.322**.

The Farmers Home Administration has adopted as a final rule regulations providing for assessment of fees against FmHA borrowers for processing of uncollectible items such as insufficient funds checks. **54 Fed. Reg. 46843 (Nov. 8, 1989), amending 7 C.F.R. §§ 1951.6, .10, .11, .309**.

The Agricultural Marketing Service has announced a proposed rule that the announced Class II milk price announced by the 15th of the month prior to the month the price became effective would no longer be revised on the fifth day of the effective month. The rule affects marketing orders in the middle atlantic states and certain midwestern states. **54 Fed. Reg. 46904 (Nov. 8, 1989)**.

FEDERAL INCOME TAXATION

GENERAL

AUTOMOBILES. For 1989 the optional method of depreciation for automobiles placed in service after December 31, 1979, is 11 cents per mile. **Rev. Proc. 89-62, I.R.B. 1989-47, Nov. 20, 1989**.

The limitations on depreciation for automobiles placed in service during 1989 under *I.R.C. § 280F(a), (d)(7)* are as follows:

Tax Year	Amount
1st tax year(1989)	$2,660
2nd tax year(1990)	$4,200
3rd tax year(1991)	$2,550
Each succeeding tax year	$1,475

IRS also published a table for amounts included in income of lessees of passenger automobiles which are first leased in 1989. **Rev. Proc. 89-64, I.R.B. 1989-47, Nov. 20, 1989.**

IRS has announced significant new rules on substantiation of transportation expenses. A fixed mileage allowance (not exceeding the standard mileage rate-- 25.5 cents per mile for 1989) by an employer to pay an employee's transportation expenses away from home satisfies the substantiation requirements assuming time, place and business purpose are substantiated. In that event, the employee need not report the reimbursement as income.

• If a greater amount is received, the excess must be reported.

• If a lesser amount is received, a deduction may be claimed for expenses but the reimbursement must be reported into income.

• The above rules do not apply to related parties. Presumably, that means all reimbursement must be reported into income and expense deducted. For this purpose, "related party" includes brothers, sisters, spouses, ancestors, linear descendants and individuals owning more than 10 percent of stock of a corporation. **Rev. Rul. 89-120, I.R.B. 1989-47, November 20, 1989**.

DEDUCTIONS. Beginning in 1989, a deduction may not be claimed by an *individual* for basic local telephone service with respect to the first telephone line provided to *any* residence of the taxpayer. The provision does not affect the deductibility of long distance charges and apparently does not affect the deductibility of optional services such as extra directory listings or call waiting and does not affect the deductibility of equipment rentals. Note that the provision applys to any residence of individual taxpayers, even second or vacation residences, and is not limited to the principal residence. **TAMRA, Pub. L. No. 100-647, Sec. 5073, 102 Stat. 3682 (1988)**.

EXCHANGE OF LIKE-KIND PROPERTY. *Rev. Rul. 85-135, 1985-2 C.B. 181* (involving the exchange of assets of two radio stations) and *Rev. Rul. 57-365, 1957-2 C.B. 521* (involving exchange of assets of two telephone companies) have been clarified. IRS has ruled that the business assets of two similar businesses will not be treated as the exchange of a single business asset for purposes of I.R.C. § 1031. Therefore, the character of the individual assets will be analysed for section 1031 treatment. **Rev. Rul. 89-121, I.R.B. 1989-47, Nov. 20, 1989**.

The IRS has also announced that it will not issue letter rulings on the issue of the manner of determining like-kind property in the exchange of assets of similar businesses. **Rev. Proc. 89-65, I.R.B. 1989-47, Nov. 20, 1989, modifying Rev. Proc. 89-3, I.R.B. 1989-1, 29**.

GAIN ON SALE OF RESIDENCE. Two residences owned jointly by mother and by husband and wife as tenants by the entirety; husband and wife as one joint owner and mother as other joint owner could each exclude up to $125,000 of gain on the sale of the residence to the extent that each joint tenant used the residence as their principal residence. **Ltr. Rul. 8942008, no date given**.

INSTALLMENT METHOD. An inadvertent election out of the installment method reporting of gain on the installment sale of residential rental property was allowed to be revoked where the taxpayer heavily relied on a tax preparer's advice and acted quickly to revoke the election out upon discovery of the error. **Ltr. Rul. 8943039, July 31, 1989**.

PASSIVE ACTIVITY LOSSES. Worksheet 3 of Form 8582 for 1989 has been amended to conform with the regulations so that an active participation rental real estate activity (APRRA) pre-section 469(i) loss is reduced only by the amount of such loss allowed under section 469(i). The revision is also applicable for 1987 and 1988 taxable years. **Ann. 89-142, I.R.B. 1989-47, Nov. 20, 1989**.

PENALTIES. IRS has announced the interest rates for the January 1, 1990 through March 31, 1990 for overpayment (10 percent) and underpayment (11 percent) of federal taxes. **Rev. Rul. 89-125, I.R.B. 1989-48, Nov. 22, 1989**.

PENSION PLANS. I.R.C. § 89 governing nondiscrimination rules for employee pension has been repealed. Pub. L. No. 101-___, Sec. ___, 102 Stat. ___ (1989) (repeal included in public debt increase bill).

C CORPORATIONS

REORGANIZATION. Reorganization of farming corporation qualified as tax-free "type D" [I.R.C. § 368(a)(1)(D)] reorganization where assets and liabilities equal in value to each of four indiviudal shareholders' stock distributed to four corporations in exchange for stock which was then distributed to each shareholder in exchange for each shareholder's stock in the original corporation such that each shareholder owned all the stock in one new corporation. **Ltr. Rul. 8942031, July 24, 1989.**

S CORPORATIONS

ELECTION. An S Corporation was deemed to have substantially complied with the S corporation election regulations where the parents of qualified S trust beneficiaries had signed the consents on Form 2553 but failed to file individual beneficiary elections under section 1361(d)(2) until discovery of the error one year later. **Ltr. Rul. 8943076, Aug. 3, 1989**.

ELIGIBLE TRUSTS. Trusts which held shares of S corporation were "qualified S trusts" where each trust had one beneficiary to which all income and principal was to be distributed and the trust corpus was to be distributed to the beneficiary or beneficiary's estate upon termination of the trust or death of the beneficiary. **Ltr. Rul. 8942016, July 20, 1989.**

Marital deduction trusts holding S corporation stock were qualified subchapter S trusts where all income to be distributed to the surviving spouse with discretion by the trustee to distribute principal only to the surviving spouse. **Ltr. Rul. 8943077, Aug. 3, 1989**.

RE-ELECTION. A corporation was allowed to file an S corporation election within five years of revocating a previous election where the revocation was effective as of the date of the first election, thus, preventing the corporation from gaining a tax advantage from S corporation status. **Ltr. Rul. 8942017, July 20, 1989; Ltr. Rul. 8942069, July 26, 1989; Ltr. Rul. 8943052, July 31, 1989.**

TERMINATION. An S corporation's failure to file a timely election for a new trust which held shares in corporation was held an "inadvertent termination" of the S corporation election where the election was overlooked by several attorneys and accountants. **Ltr. Rul. 8942057, no date given.**

INTERNATIONAL TRADE

A determination of the International Trade Commission that rose imports from Columbia did not materially injure or threaten the domestic rose industry was upheld as substantially supported by the evidence. Evidence presented by rose producers to demonstrate the inaccuracy of data used by the ITC was held insufficient to show lack of evidence to support the ITC findings. **Roses, Inc. v. United States, 720 F. Supp. 180 (Ct. Int'l Trade 1989)**.

LANDOWNER LIABILITY

LICENSEES. The Colorado statute requiring a higher standard of care on a landowner toward licensees than for invitees was held unconstitutional. **Gallegos v. Phipps, 779 P.2d 856 (Colo. 1989)**.

MORTGAGES

In a case decided under Minn. Stat. Ann. § 500.24 before amendment in 1987, a former owner's assignment of the debtor's right of first refusal in foreclosed farmland was held valid and enforceable against the lender. **Rushford State Bank v. Kjos, 445 N.W.2d 846 (Minn. App. 1989).** The 1987 amendment expressly prohibited assignment of a debtor's right of first refusal to purchase foreclosed farmland.

SECURED TRANSACTIONS

Fence-line feed bunks were held not to be fixtures where debtor was tenant and held only a remainder interest in the farm at the time the security interest in the feed bunks

was given and bunks were attached to the realty only by a steel cable. **First Trust & Savings Bank of Moville v. Guthridge, 445 N.W.2d 401 (Iowa App. 1989).**

In a case which involved several aspects of conflicting security interests, the debtor had granted a security interest to a bank in an apple crop which was sold through a fruit handler who had agreed to help finance the harvesting and transporting of the apples. The handler also acquired a security interest in the crop secondary to the bank. The handler sold the apples through a sales agent who advanced financing to the handler who used the funds to finance the debtor's harvesting and transportation. Upon ultimate sale of the apples, the sales agent remitted the proceeds, less reimbursement for its service, to the handler who remitted the net proceeds to the debtor. The bank sued for the sale proceeds based upon its security interest in the apples.

U.C.C. § 306(2). The court held that the bank had not waived its security interest in the proceeds upon sale of the apple crop by the sales agent because the only sale the bank authorized was the one through the handler as to whom the bank had a prior security interest by express agreement of the parties. Because the sales agent's participation in the sale of the crop was not known by the bank, the bank was held not to have waived its security interest in the proceeds by the sale of the crop by the sales agent.

U.C.C. § 306(3). The bank did not lose its security interest for failure to perfect its security interest in the proceeds within 10 days of sale of the collateral crop where the security interest included proceeds.

U.C.C. § 9-307. The sales agent did not acquire a priority interest as a buyer in the ordinary course of business because the sales agent handled the apples on consignment and the sales agent "purchased" the apples from the crop handler and not the producer who created the security interest.

U.C.C. § 9-309. The sales agent also did not acquire a priority interest in the crop by virtue of being a purchaser of an instrument for new value because the sales agent did not "purchase" the proceeds but had setoff the proceeds against previous advances.

U.C.C. § 9-309. The sales agent failed to show that it was a holder of the proceeds in due course because it held the proceeds only as agent for the producers with knowledge that the producers and handlers had interests in the proceeds.

Finally, the court held that the bank's security interest applied to gross proceeds of the sale of the apples and not to the proceeds less the costs of sale. **Central Washington Bank v. Mendelson-Zeller, 779 P.2d 697 (Wash. 1989).**

STATE TAXATION

Land leased to a corporation for purposes of a buffer around the lessee's manufacturing plant was eligible for a property tax preference, under Utah Code § 59-5-87, as agricultural land where the land was subleased to others for the growing of wheat. **Salt Lake County v. State Tax Commn, 779 P.2d 1131 (Utah 1989)**.

WARRANTY

In an action for breach of warranty, seed corn dealer held to be agent of seed company where dealer called himself a salesman for seed company, seed company provided all order forms and delivery receipts, company allowed dealer to order on credit, company carried insurance on its products while in the possession of dealer and company assisted in adjustments and decisions following delivery of seed. Case remanded for new trial where decision for plaintiff based on misrepresentation which was not plead by plaintiff nor adequately tried by the parties. **Fleck v. Jacques Seed Co., 445 N.W.2d 649 (N.D. 1989).**

ZONING

Town Commission approval of permit to erect greenhouse with 4,000 gallon fuel tank affirmed because greenhouse eligible for "agricultural use" exemption from zoning bylaw limiting fuel tanks to 400 gallons. **Town of Tisbury v. Martha's Vineyard Comm'n, 544 N.E.2d 230 (Mass. App. 1989).**

Land Use Board of Appeals decision allowing vineyard owner to operate winery and retail outlet in exclusive farm use zone was upheld where winery was found to be "in conjunction with farm use" of the land. **Craven v. Jackson County, 308 Or. 281, 779 P.2d 1011 (1989), aff'g 94 Or. App. 49, 764 P.2d 931 (1988).**

CITATION UPDATES

Standard mileage rate deduction, 25.5 cents per mile, was announced in **Rev. Proc. 89-62, I.R.B. 1989-47, Nov. 20, 1989**.

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