only purpose of the transaction was to avoid self-employment tax.[11]

The outcome was that the gain on the sale of the soybeans was included in the husband's regular farm income and subjected to social security tax.

Conclusion

In both rulings, the message is relatively clear: transactions involving closely related family members, especially husband and wife, will be subjected to close scrutiny. In neither case did the ruling state that the basic planning strategy was improper or impossible. But in both instances the taxpayers failed to meet the standard of adherence to detail and the careful establishment of bona fides necessary in a family transaction.

FOOTNOTES

1 Ltr. Rul. 9206008, Oct. 31, 1991; Ltr. Rul. 9210004, Nov. 29, 1991
2 See generally 4 Harl, **Agricultural Law** Ch. 37 (1992).
3 Ltr. Rul. 9206008, Oct. 31, 1992.
4 *Id.*
5 *Id.*
6 Ltr. Rul. 9210004, Nov. 29, 1991.
7 *Id.*
8 *Id.*
9 Rev. Rul. 55-551, 1955-2 C.B. 520. See SoRelle v. Comm'r, 22 T.C. 459 (1954), acq., 1955-1 C.B 6; Farrier v. Comm'r, 15 T.C. 277 (1950), acq., 1955-1 C.B. 4.
10 Ltr. Rul. 9210004, Nov. 29, 1991.
11 *Id.*

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL

ADMINISTRATIVE EXPENSES. A creditor sold some cheese to the debtor and after the debtor failed to make payment, the creditor sent a notice of reclamation within ten days of delivery. Although the debtor failed to return the cheese or pay for it, the creditor did nothing until after the debtor filed for bankruptcy. The creditor sought, under Section 546(c), payment for the cheese as an administrative expense or as a security interest against estate property. The court held that the creditor had lost the right to administrative expense priority because the creditor did not diligently pursue the reclamation or payment for the cheese for eight months after delivery of the cheese. The court noted, but disagreed with, *In re Griffin Retreading Co., 795 F.2d 676 (8th Cir. 1986)* which allowed a Section 546(c) remedy even though the creditor waited 102 days to reassert the claim where the creditor otherwise met the requirements of the statute. **Matter of Crofton & Sons, Inc., 139 B.R. 567 (Bankr. M.D. Fla. 1992)**.

AVOIDABLE TRANSFERS. In an attempt to save some of the family farm, the debtor borrowed money from a brother to buy-down a loan against the farm. The brother took a mortgage and note for the money but the mortgage was not recorded until less than 90 days before the debtor filed for bankruptcy. The trustee sought to avoid the recording of the mortgage as a preferential transfer. The court held that the recording was a preferential transfer and that the exception for ordinary course of business transactions did not apply because the loan was the only transaction of this type between the brothers. ***In re* Vatnsdal, 139 B.R. 472 (Bankr. D. N.D. 1991)**.

Prior to filing for bankruptcy, the debtors converted $440,000 in nonexempt assets to a commercial annuity exempt under Florida law. The trustee sought to avoid the transfer as a fraudulent transfer under Fla. Stat. § 726.105. The court held that the conversion of the assets to the annuity was not a "transfer" and therefore not subject to the fraudulent transfer statute. ***In re* Levine, 139 B.R. 551 (Bankr. M.D. Fla. 1992)**.

EXEMPTIONS.

AMENDMENT. After the debtors filed their bankruptcy cases and claimed exemptions, the Arkansas legislature amended the exemption statute to allow debtors to choose either the state or federal exemptions. The court held that the legislation did not apply retroactively to bankruptcy cases filed before the amendment. ***In re* Gardner, 139 B.R. 460 (Bankr. E.D. Ark. 1991)**.

AUTOMATIC STAY. A creditor sought relief from the automatic stay to execute a lien against furs and jewelry owned by the debtors and claimed as exempt to the amount of $1,000. The debtors claimed that the lien was avoidable because it was not perfected by possession. The court allowed the creditor to execute against the property, subject to escrow of the claimed exemption amount, because the lien was perfected, under Florida law, by filing of the writ of execution with the sheriff prior to the bankruptcy petition. ***In re* Miele, 139 B.R. 296 (Bankr. D. N.J. 1992)**.

AVOIDABLE LIENS. The debtor sought to avoid a judgment lien on the debtor's homestead. The lien arose from the debtor's divorce proceedings in 1976 and attached upon the debtor's acquisition of the homestead in 1984. The U.S. Supreme Court had held that the lien was avoidable if the lien fixed upon an interest of the debtor. On remand, the court held that the lien did not fix on an interest of the debtor because the lien existed prior to the date the debtor acquired the homestead and, under Florida law, the homestead was not exempt as to pre-existing liens; therefore, the lien did not impair any exemption. ***In re* Owen, 961 F.2d 170 (11th Cir. 1992), *on rem'd from*, 111 S.Ct. 1833**

(1991), *rev'g and rem'g*, 877 F.2d 44 (11th Cir. 1989).

HOMESTEAD. The debtors purchased 129 acres of ranch land through a partnership and set aside 15 acres for the debtors family homestead, with the remaining acres to be used for development. The debtors subsequently personally acquired the land and used the land as collateral for a development loan, expressly excepting the 15 acres as homestead property. The issue on appeal was whether the debtors were restricted to the 15 acres used as a homestead or were entitled to the 200 acre Texas homestead exemption for all of the land. The Bankruptcy and District Courts held that substantial evidence supported the finding that the debtors intended to use only the 15 acres as a homestead and the remaining acres as development property; therefore, the debtors would be allowed only the 15 acres as exempt homestead property. The appellate court reversed, holding that the homestead character of the land was not destroyed by the failed attempt to develop a portion of the land nor by the disclaimer of homestead rights, so long as the land continued to be actually used as the homestead. **Bradley v. Pacific Southwest Bank, F.S.B., 960 F.2d 502 (5th Cir. 1992), *rev'g*, 121 B.R. 306 (N.D. Tex. 1990)**.

PENSION PLAN. The U.S. Supreme Court has held that a debtor's interest in an ERISA qualified pension plan is excluded from the bankruptcy estate under ERISA as applicable nonbankruptcy law under Section 541(c)(2). **Patterson v. Shumate, 112 S.Ct. 2242 (1992)**.

PROCEEDS. A first deed of trust creditor had obtained a foreclosure and sale of the debtor's property pre-petition but the sale netted proceeds in excess of the lien. A judicial lien holder sought relief from the automatic stay to execute against the surplus. The debtor claimed $2,500 of the surplus as exempt under the North Carolina wild card exemption. The court held that the debtor retained sufficient interest in the surplus to claim an exemption and that the judicial lien would be avoided to the extent the lien impaired the wild card exemption. ***In re* Harris, 139 B.R. 386 (Bankr. E.D. N.C. 1992)**.

SAILBOAT. The court held that the debtor was not entitled to an exemption for a sailboat as athletic sporting equipment under Tex. Prop. Code § 42.002(3)(E). ***In re* Griffin, 139 B.R. 415 (Bankr. W.D. Tex. 1992)**.

TOOLS OF THE TRADE. The debtor sought to avoid nonpossessory, nonpurchase money liens on several pieces of farm equipment. The debtor testified that the debtor used the equipment either not at all or seldom post-petition and produced only one crop on 60 leased acres over 15 months. The court held that the items of equipment were not tools of the debtor's trade because the debtor failed to demonstrate intent to use the equipment for farming. **In re Hrncirik, 138 B.R. 835 (Bankr. N.D. Tex. 1992)**.

WILD CARD. The debtor claimed $7,400 of the value of unimproved land as exempt under the wild card exemption of 12 Vt. Stat. § 2740(7). The trustee objected to the exemption, arguing that the wild card exemption was available only as to personal property. The court held that the wild card exemption could be used for any property owned by the debtor, including real property. ***In re* Christie, 139 B.R. 612 (Bankr. D. Vt. 1992)**.

CHAPTER 12

AVOIDABLE LIENS. The Chapter 12 debtors sought to avoid the unsecured portion of a mortgage lien. The creditor argued that the unsecured portion should not be avoided until after the debtor had paid or otherwise satisfied the secured portion of the lien. The creditor argued that avoidance before such payment would prevent restoration of the avoided portion if the debtor converted the case to Chapter 7 or would make assertion of the lien difficult if the debtor sold the collateral. The court held that the unsecured portion of the lien would not be avoided until the secured portion was satisfied. ***In re* Kinder, 139 B.R. 743 (Bankr. W.D. Okla. 1992)**.

DISMISSAL. The Chapter 12 debtor had filed for divorce prior to filing for bankruptcy and the divorce court had awarded interim possession of the farm to the wife. The Chapter 12 case was over one year old, but the debtor had obtained an extension to file a plan and the confirmation hearing date was set. Three creditors sought dismissal of the case for lack of jurisdiction, unreasonable delay by the debtor and ineligibility of the debtor for Chapter 12. The jurisdiction and eligibility arguments were based on the divorce court's award of interim possession of the farm to the wife. The court held that the interim award did not completely divest the debtor of rights to the farm and whatever rights were to be granted to the debtor in the divorce proceedings would be administered in bankruptcy. The court also ruled that dismissal would not be allowed where the debtor properly obtained the extensions and delay was also caused by the creditors. ***In re* French, 139 B.R. 476 (Bankr. D. S.D. 1992)**.

FEDERAL TAXATION

ABANDONMENT. During the Chapter 7 case, the debtor thought that an income tax refund would be less than $500. The trustee filed a no asset report but before the report was approved and the case closed, the debtor learned that the refund would be over $2,000. The debtor informed the trustee but the case was closed before the trustee could take any action. The trustee then sought a reopening of the case to administer the tax refund. The debtor argued that the refund was deemed abandoned because the refund was not administered during the case. The court held that the abandonment rule would not apply because the refund was not listed on the debtor's schedule of assets. ***In re* McCoy, 139 B.R. 430 (Bankr. S.D. Ohio 1991)**.

AVOIDABLE LIENS. The IRS had filed a tax lien against the debtor's property, including an automobile. Under I.R.C. § 6323(b)(2), a tax lien is not valid against a buyer of an automobile without notice of the tax lien. The trustee argued that, under Section 545, the trustee took possession of the automobile as a bona fide purchaser without knowledge of the lien. The court held that the tax lien was avoidable as to the automobile because actual physical possession by the trustee was not required for avoidance. ***In re* Walter, 139 B.R. 695 (Bankr. N.D. Ohio 1992)**.

The IRS had a properly filed tax lien against securities, motor vehicles and personal property owned by the Chapter 11 debtor. The debtor-in-possession sought avoidance of the lien against this property under I.R.C. § 6323(b) and Section 545. The court held that the tax lien would be avoided as to

the securities and vehicles because the debtor remained in possession of the property and took possession as debtor-in-possession as a bona fide purchaser without notice of the lien. The tax lien was not avoidable as to the personal property because the debtor-in-possession did not take possession through a retail sale as required by I.R.C. § 6323(b)(3). **U.S. v. Sierer, 139 B.R. 752 (N.D. Fla. 1991), *aff'g in part and rev'g in part*, 121 B.R. 884 (Bankr. N.D. Fla. 1990)**.

The debtor operated a hearing aid business inside a department store under a lease agreement which provided for payment of the debtor's rent from the monthly sales proceeds collected by the department store from the hearing aid business. The IRS levied on a tax lien against the proceeds held by the department store and the Chapter 7 trustee sought return of the money, under Section 545(2), as exempt under I.R.C. § 6323(b). The court held that the sales proceeds were not "money" and therefore exempt from levy under the "securities" exemption, because the proceeds owed to the debtor were not transferable. **Christison v. U.S., 960 F.2d 613 (7th Cir. 1992)**.

EXEMPTION. The debtor's earned income tax credit for the taxable year which included the petition date was allowed as an exemption. ***In re* Buchanan, 139 B.R. 721 (Bankr. D. Idaho 1992)**.

PLAN. Under the debtor's Chapter 11 plan, the IRS claim for pre-petition withholding taxes would be paid in equal monthly installments of principal and interest with a balloon payment at the end of the sixth year. The IRS argued that under Section 1129(a)(9)(C), the plan had to pay the claim in equal payments for the life of the plan, with no balloon payment. The court held that Section 1129(a)(9)(C) did not prohibit balloon payments so long as the monthly plan payments included payment on principal and interest. ***In re* Volle Elec., Inc., 139 B.R. 451 (C.D. Ill. 1992), *aff'g*, 132 B.R. 365 (Bankr. C.D. Ill. 1991)**.

PRIORITY. The IRS claimed priority of its tax lien, under 31 U.S.C. § 3713, against the debtor's property. The IRS argued that Section 3713 applied because upon levy against the debtor's property, the debtor became insolvent and committed an act of bankruptcy. The court reversed a summary judgment for the IRS because an issue of fact remained as to whether the debtor was insolvent at the time the tax lien was filed. The court held that the tax lien itself could not be both the action which made the debtor insolvent and the act of bankruptcy which are required by Section 3713. **Jonathan's Landing, Inc. v. Townsend, 960 F.2d 1538 (11th Cir. 1992)**.

RESPONSIBLE PERSON. A former shareholder and officer of the debtor corporation petitioned for a determination of the debtor's federal tax liability. The shareholder had been assessed the Section 6672 100 percent penalty as a responsible person for the failure of the debtor to pay employment withholding taxes. The court refused to make the determination because the request involved only the personal tax liability of a nondebtor. ***In re* American Motor Club, Inc., 139 B.R. 578 (Bankr. E.D. N.Y. 1992)**.

The debtor was a "responsible person" under Section 6672 liable for unpaid federal withholding taxes not paid by a corporation. The corporation had obtained surety bonds which covered unpaid taxes but the IRS failed to timely seek collection on the bonds. The Bankruptcy Court had allowed the debtor to off set the amounts collectible from the bonds from the debtor's Section 6672 liability. The District Court held that the setoff was improper because the IRS had no duty to seek collection first from the corporation or surety before assessing the debtor and the debtor and corporation could also have sought repayment from the surety. ***In re* Nece, 139 B.R. 637 (S.D. Tex. 1992)**.

CORPORATIONS

STOCK REDEMPTION. The corporation decided by a majority vote of shareholders to sell its assets. A dissenting minority shareholder demanded redemption of preferred stock at fair market value but the corporation redeemed the stock at $1 per share under the formula provided in the Articles of Incorporation. The shareholder sued for the difference under Colo. Rev. Stat. §§ 7-4-123, 7-4-124, requiring redemption at fair market value. The court held that a corporation's articles of incorporation could not override the statutory requirement that a dissenting shareholder's stock is to be redeemed at fair market value when the corporation decides to sell its assets. **Breniman v. Agricultural Consultants, Inc., 829 P.2d 493 (Colo. Ct. App. 1992)**.

FEDERAL AGRICULTURAL PROGRAMS

CONSERVATION. The CCC has issued a proposed regulation amending the Conservation Reserve Program to allow producers to include small farmed wetlands in the CRP acres. **57 Fed. Reg. 28468 (June 25, 1992)**.

FARMER OWNED RESERVE PROGRAM. The CCC has adopted as final amendments to the Farmer Owned Reserve Program regulations to provide that 1991 feed grains may not be pledged for FOR loans. **57 Fed. Reg. 27353 (June 19, 1992)**.

GRAIN STORAGE. The plaintiff stored CCC grain under a contract. The CCC withheld storage fees owed to the plaintiff because grain loaded out from the storage facility was graded lower than when the grain was placed in storage. The CCC used inspectors from FGIS, but the plaintiff alleged that the loaded-out grain was misgraded. CCC sought dismissal of the claim as a tort claim beyond the jurisdiction of the court. The court held that the misgrading claim sounded in contract because the focus of the plaintiff's claim was the reliability of the FGIS grading and use of the grading by CCC. The court also held that an agency relationship between CCC and FGIS was not required for maintenance of the misgrading claims by the plaintiff. **HNV Cent. River Front Corp. v. U.S., 25 Cls. Ct. 606 (1992)**.

MEAT AND POULTRY INSPECTION. The FSIS has adopted as final amendments to the regulations governing the processing of oval sausage and dry-cured ham to destroy trichinae. **57 Fed. Reg. 27870 (June 22, 1992)**.

PESTICIDES. The plaintiffs were injured when the pesticide Chlordane was sprayed in the apartment complex where the plaintiffs lived or worked. The plaintiffs sued the applicator, manufacturer and sellers of the Chlordane under a theory of products liability for failure to provide adequate warning and instructions. The defendant manufacturer sought dismissal of the action as preempted by FIFRA. The court held that FIFRA did not preempt state tort action for failure to warn because the manufacturer's compliance with the federal statutory labeling and state tort liability requirements was not impossible. **Thornton v. Fondren Green Apartments, 788 F.Supp. 930 (S.D. Tex. 1992)**.

TOBACCO. The CCC has issued proposed regulations amending the tobacco support program. The amendments provide that (1) warehouse operators and dealers will not be allowed carryover or purchase credit for damaged tobacco, (2) persons affiliated with dealers who owe penalties or persons who allow such indebted dealers to use their dealer identification cards will be responsible for such debts, (3) flue-cured and burley tobacco dealers are to file an annual letter of credit or bond to secure payment of potential penalties, and (4) identification cards may be suspended for material program violations. **57 Fed. Reg. 28801, June 29, 1992**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The grantors had established a charitable remainder unitrust which provided a set unitrust amount payable to the grantors for life. The trust provided that a successor trustee could not be the grantors or anyone subordinate to the grantors. The grantors reformed the trust to provide that a successor trustee could be the grantors or subordinates of the grantors. The IRS ruled that the amendment would not alter the trust qualification as a charitable unitrust because the trustee did not have the power to alter the unitrust payment amount. **Ltr. Rul. 9224040, March 6, 1992**.

DISCLAIMERS. Fifteen months after the death of the decedent, the decedent's children, aged 17, 28 and 38 filed disclaimers of their interests in the decedent's estate, except for $600,000. The IRS ruled that the disclaimers of the 28 and 38 year old children were untimely but that the disclaimer of the 17 year old child was timely. **Ltr. Rul. 9223051, Mar. 11, 1992**.

The decedent's will bequeathed stock to the surviving spouse in trust with the remainder to a charitable trust. The surviving spouse disclaimed in writing all interest in the stock within nine months after the decedent's death and the charitable remainder holder disclaimed any interest in the stock through a state court proceeding within nine months after the decedent's death. The stock then passed under the will to the decedent's children. The IRS ruled that the disclaimers were timely and effective. The IRS also ruled that for purposes of I.R.C. § 382 the basis of the stock in the hands of the children was the same as the decedent's at death and the holding period of the decedent was includible in the holding period of the children. **Ltr. Rul. 9222041, Feb. 28, 1992**.

GENERATION SKIPPING TRANSFER TAX. A trust, irrevocable upon the settlor's death in 1974, had the settlor's son as lifetime beneficiary and trustee. At the son's death, the trust was to be split into two trusts, one for each grandchild. The trustee obtained a state court order establishing two trusts, with each grandchild as the remainderholder for each trust and adding provisions for successor trustees. The IRS ruled that the partition of the trust and trustee provisions would not subject the trust to GSTT. **Ltr. Rul. 9223048, Mar. 10, 1992**.

The decedent created a revocable intervivos trust which became irrevocable upon the decedent's death. The current beneficiary of the trust was a nephew who had the power to invade trust corpus for "his separate support and maintenance. The remainder of the trust passed to grandnieces and grandnephews of the decedent. The IRS ruled that the beneficiary's power to invade corpus was not a general power of appointment because the power to invade corpus was subject to an ascertainable standard. Therefore, the trust property was not includible in the beneficiary's gross estate. The death of the beneficiary would be a taxable termination subject to GSTT. **Ltr. Rul. 9222039, Feb. 28, 1992**.

GROSS ESTATE. The decedent owned an usufruct (life estate) in an installment note received from the decedent's predeceased spouse. The predeceased spouse had elected to report gain from the note on the installment method and the predeceased spouse's estate elected to have the usufruct treated as QTIP. The IRS ruled that the proceeds of the note and any appreciation in the value of the note, less any capital gains tax paid by the decedent on the note, which passed to the remainder holder were includible in the decedent's gross estate. **Ltr. Rul. 9223006, Feb. 28, 1992**.

MARITAL DEDUCTION. The decedent bequeathed $500,000 to the surviving spouse but allowed the executor to delay payment if payment would require sale of estate property. If the payment was delayed, interest was to be paid to the surviving spouse. The court held that the bequest was eligible for the marital deduction. **Est. of Friedberg, T.C. Memo. 1992-310**.

The surviving spouse received an interest in trust in farm real property. Under the trust, the surviving spouse was to receive all income at least annually but the trustee had the discretion to accumulate so much of the trust income as was not necessary for the surviving spouse's needs or best interests. The Tax Court held that the surviving spouse's interest in the trust was not QTIP because some trust income could be accumulated. The appellate court reversed, holding that the trustee was required to distribute all income in order to effectuate the decedent's intent that the trust qualify for the marital deduction. **Est. of Ellingson v. Comm'r, 92-1 U.S. Tax Cas. (CCH) ¶ 60,101 (9th Cir. 1992), *rev'g*, 96 T.C. 760 (1991)**.

Prior to death, the decedent and the surviving spouse acquired securities and brokerage accounts as joint tenants with their two children. Because the decedent contributed one-half of the assets in the account, the executor included one-half of the securities and brokerage accounts in the decedent's gross estate. The decedent's interest in the securities and accounts passed in equal shares to the

surviving joint tenants, the surviving spouse and two children. The IRS ruled that as a joint tenant, the surviving spouse had a power to appoint the surviving spouse's interest in the securities and accounts to the surviving spouse by severing the joint tenancy; therefore, the surviving spouse's share of the decedent's interest in the securities and accounts was eligible for the marital deduction. **Ltr. Rul. 9224010, March 6, 1992**.

The decedent's will passed property in trust to the surviving spouse. The trust provided that if the executor does not make the QTIP election to any assets to be transferred to the marital trust, the assets were to be transferred to a different trust. The IRS ruled that because the trust property was subject to divestiture, the trust property was not eligible for the marital deduction, even if the executor makes the QTIP election. **Ltr. Rul. 9224028, March 13, 1992**.

SALE OF STOCK TO ESOP. The executrix purchased stock with estate funds and sold the stock back to the corporation's Employee Stock Ownership Plan (ESOP) and applied for a refund for the 50 percent deduction allowed at the time of the sale. The IRS had issued *Rev. Rul. 87-13, 1987-1 C.B. 20* interpreting I.R.C. § 2057 as requiring the decedent to own the stock prior to death. Congress retroactively amended I.R.C. § 2057 to require that the stock sold be owned by the decedent prior to death. The court upheld the constitutionality of the retroactive application of the amendment which denied the 50 percent deduction to the estate because the estate could reasonably foresee the amendment and the amendment was not a new tax but a change of tax benefits. **Ferman v. U.S., 92-1 U.S. Tax Cas. (CCH) ¶ 60,100 (E.D. La. 1992)**.

TRUSTS. The beneficiary of a trust established by the will of the beneficiary's parent was liable for tax on the income earned by the trust where the trustee was required to distribute all income to the beneficiary. **Seligson v. Comm'r, T.C. Memo. 1992-320**.

VALUATION. The value of residential property for estate tax purposes was determined using the current single family residential zoning of the land and not the potential zoning as multi-family residential, as proposed by the IRS. Another parcel of property was valued by the court at about the average between the IRS and estate's value using comparable land. The value of a third property was discounted for the lack of public sewer connection. **Est. of Ratcliffe v. Comm'r, T.C. Memo. 1992-305**.

The decedent's estate included stock subject to a redemption agreement. The estate elected to value estate property at the alternate valuation date but the stock was valued, as required by the redemption agreement, as of the date of the decedent's death. The stock not subject to the redemption agreement was valued at the alternate valuation date. The court held that events after the alternate valuation date would not be considered in determining the value of the nonredemptive stock on the alternate valuation date. **Est. of Friedberg, T.C. Memo. 1992-310**.

FEDERAL INCOME TAXATION

C CORPORATIONS

ESTIMATED TAX. A small C corporation had a net operating loss for the 1990 taxable year and $0 tax liability. The corporation had $1,000 tax liability for 1991 but failed to pay any estimated taxes. The IRS ruled that in order for a C corporation to base its estimated tax payments on the previous year's tax liability, the previous taxable year had to have a positive tax liability; therefore, the corporation, for 1991, had an underpayment of estimated taxes. **Rev. Rul. 92-54, I.R.B. 1992-27, June 22, 1992**.

CAPITAL GAINS. The taxpayers were farmers who received payments over several taxable years under a 1985 mining contract which produced capital gains during those years. The taxpayers filed for a refund based on the argument that the repeal of the capital gains deduction in 1986 should not apply to a pre-existing contract and that because the taxpayers were farmers, they were eligible for the special treatment for the sale of cattle under the Dairy Termination Program. The court held that long-standing precedent allowed application of changes in the tax laws to contracts with taxable payments over several years. In addition, the court held that the special treatment for the sale of dairy cattle clearly did not apply to the sale of other capital assets. The court also held that the special treatment for dairy farmers did not violate the equal protection provisions of the U.S. Constitution. **Mostowy v. U.S., 92-1 U.S. Tax Cas. (CCH) ¶ 50,311 (Fed. Cir. 1992), *aff'g*, 24 Cl. Ct. 193 (1991)**.

DISCHARGE OF INDEBTEDNESS. The IRS has issued a revenue ruling concerning the stock-for-debt exception to recognition of income from discharge of indebtedness. In one situation, a corporation which was insolvent by $50,000 but not in bankruptcy exchanged $10,000 in debt instruments and $20,000 in stock for $90,000 in debt held by one person. The IRS ruled that the amount of discharge of indebtedness income, $90,000, was reduced by the face value of the debt and stock, $30,000, to $60,000. Because the corporation was insolvent by $50,000, only $10,000 was discharge of indebtedness income. In the second situation, the $10,000 in debt instruments were exchanged for $30,000 in debt owed to one person and the $20,000 in stock was exchanged for $60,000 in debt owed to another person. The IRS ruled that the stock for debt was considered first such that the discharge of indebtedness income was reduced by the value of the stock to $40,000, none of which was recognized. The debt-for-debt exchange reduced the discharge of indebtedness to $20,000, $10,000 of which must be used to reduce tax attributes (because the stock-for-debt exception did not apply) and $10,000 of which was recognized as income. **Rev. Rul. 92-52, I.R.B. 1992-27, June 16, 1992**.

EMBRYO TRANSPLANT ACTIVITY. A college professor and registered nurse were disallowed depreciation and investment tax credit for breeding cows purchased as part of an investment in an embryo transplant cattle breeding activity. The court found that the embryo transplant activity was a sham and the investment constructed for the purpose of creating tax deductions. The

business operator had no facilities or equipment for transplanting embryos, had fewer cattle than claimed and retained possession and control of the cattle the taxpayers claimed to have purchased and for which the taxpayers claimed deductions. ***In re* Gran, 92-1 U.S. Tax Cas. (CCH) ¶ 50,283 (8th Cir. 1992), *aff'g*, 131 B.R. 843 (E.D. Ark. 1991), *aff'g* 108 B.R. 668 (Bankr. E.D. Ark. 1989)**.

ESCROWS. The IRS has ruled that, under I.R.C. § 468B(g), *Rev. Rul. 64-131, 1964-1 C.B. 485, Rev. Rul. 70-567, 1970-2 C.B. 133, and Rev. Rul. 71-119, 1971-1 C.B. 163* are obsolete to the extent that they rule that interest earned by escrow accounts, settlement funds or similar funds is not subject to tax to the accounts. The interest amounts are taxable to the distributee when distributed. **Rev. Rul. 92-51, I.R.B. 1992-27, June 12, 1992**.

HEALTH INSURANCE. The Tax Extension Bill of 1992, H.R. 3040 would extend to December 31, 1993, the availability of the 25 percent deduction from gross income for health insurance costs paid by self-employed persons.

HOBBY LOSSES. The taxpayer, a lawyer, was allowed business deductions for a citrus tree orchard where the court found that the operation was run in a businesslike manner with intent to make a profit, even though the market conditions for citrus made profit expectations unreasonable. The taxpayer was not allowed deductions for a horse breeding operation which was not run in a businesslike manner. **Siegal v. Comm'r, T.C. Memo. 1992-334**.

The taxpayers were not allowed business deductions for a horse breeding activity where the taxpayers could not demonstrate an intent to make a profit, only one horse was involved and the profit from the horse's future races was speculative. **Aretakis v. Comm'r, T.C. Memo. 1992-356**.

INTEREST RATE. The IRS has announced that for the period July 1, 1992 through September 30, 1992, the interest rate paid on tax overpayments remains at 7 percent and for underpayments remains at 8 percent. **Rev. Rul. 92-44, I.R.B. 1992-24, 86**.

INVESTMENT TAX CREDIT. A partnership was denied energy tax credit for an on-farm energy plant because the plant was never placed in service, production of the plants was not commenced and no sales of the plants were made. **Wall v. Comm'r, T.C. Memo. 1992-321**.

IRA'S. The taxpayer received a distribution from an IRA and immediately deposited the funds in another IRA with a different investment company. The taxpayer made two other such rollovers of IRA funds that taxable year. The court ruled that the first transfer was not a trustee-to-trustee transfer because the initial account funds were distributed to the taxpayer. Because the first transaction was not taxable as a rollover, the second and third transactions were not eligible for the rollover nonrecognition exemption. **Martin v. Comm'r, T.C. Memo. 1992-331**.

LIKE-KIND EXCHANGE. The taxpayers, husband and wife, each established a trust with each owning a parcel of land. The first trust leased out its parcel for 47 years and exchanged its reversionary interest for other qualifying like-kind property. The IRS ruled that the exchange qualified for Section 1031(a) nonrecognition treatment. The IRS also ruled that if the first trust exchanged the like-kind property for similar property owned by the second trust, the exchange would not cause recognition of tax from the initial like-kind exchange under the sale between related persons rule, because each trust was established by a different person. **Ltr. Rul. 9224008, March 6, 1992**.

SAFE HARBOR INTEREST RATES

JULY 1992

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	4.84	4.78	4.75	4.73
110% AFR	5.33	5.26	5.23	5.20
120% AFR	5.82	5.74	5.70	5.67
		Mid-term		
AFR	6.85	6.74	6.68	6.65
110% AFR	7.55	7.41	7.34	7.30
120% AFR	8.25	8.09	8.01	7.96
		Long-term		
AFR	7.73	7.59	7.52	7.47
110% AFR	8.52	8.35	8.26	8.21
120% AFR	9.32	9.11	9.01	8.94

S CORPORATIONS

TRUSTS. The IRS has ruled that a charitable remainder trust cannot qualify as a Subchapter S trust; therefore, if stock of an S corporation is transferred to a charitable remainder trust, the S corporation election terminates. **Rev. Rul. 92-48, I.R.B. 1992-24, 7**.

STRADDLES. The taxpayer was a commodities dealer who engaged in several pre-ERTA commodities straddles. The IRS disallowed the separate loss and gain treatment of the "legs" of the straddles, arguing that the straddles were not entered into for profit but only for the tax benefits. The court held that Section 108 of the Tax Reform Act of 1984 provided an irrebutable presumption that pre-ERTA straddles by commodities dealers were made while engaged in a trade or business. The court also held that the presumption applied to transactions on foreign exchanges. **Horn v. Comm'r, 92-2 U.S. Tax Cas. (CCH) ¶ 50,328 (D.C. Cir. 1992), *rev'g*, T.C. Memo. 1988-570**.

LANDLORD AND TENANT

AGENCY. In the negotiations for renewal of a farm lease, the tenant required that the landlord repair irrigation equipment. A manager of the landlord agreed to the repairs and the tenant established an account with the plaintiff for charging labor and materials to the landlord. The bills were sent to the tenant and forwarded to the landlord. The first set of bills was paid by one check from the landlord but the second set of bills went unpaid. The court held that substantial evidence existed that express and implied authority had been granted to the tenant to contract for the labor and materials for the repair of the irrigation equipment. The landlord had also argued that the initial check was only for start-up costs and that the first payment did not authorize any further repairs. The court held that the landlord had given the plaintiff no indication of this limitation on the first payment. **Tri-Circle, Inc. v. Brugger Corp., 829 P.2d 540 (Idaho Ct. App. 1992)**.

AGRICULTURAL LAW DIGEST
P.O. BOX 5444
MADISON, WI 53705-5444

EMBLEMENTS. The plaintiff leased land from the defendant for raising sugarcane. The defendant did not renew the lease and ordered the plaintiff to vacate the premises. The plaintiff demanded compensation for plant cane and stubble planted by the plaintiff and remaining on the land. The defendant answered in a letter advising the plaintiff that the plaintiff could remove the plant cane and stubble. The plaintiff did not remove the cane and stubble and sued for compensation. The defendant argued that La. Code Civ. Proc. art. 966 prevented the plaintiff from receiving compensation because the plaintiff did not remove the cane and stubble within 90 days after demand to do so by the defendant. The court held that the letter from the defendant was not a demand sufficient to give rise to application of the statute but was only a request. **Caballero Planting Co. v. Hymel, 597 So.2d 35 (La. Ct. App. 1992)**.

PROPERTY

JOINT TENANCY. The decedent had received a farm from a predeceased spouse and transferred the farm, via a "straw man," to the decedent and one child, with the deed stating that the conveyance was to the decedent and child "as joint tenants, forever in fee simple." At the time of the conveyance, the tillable land was leased to a third party. The decedent and child later gave a mortgage on the property to a bank. The decedent's other child argued that the farm was held by the decedent and child as tenants in common because the deed did not have any survivorship language, the unity of possession was not present because of the lease, and the mortgage severed the joint tenancy. The court held that language of survivorship was not essential in this case, the conveyance was made subject to the lease and a mortgage does not sever the joint tenancy where both tenants grant the mortgage. **Downing v. Downing, 606 A.2d 208 (Md. 1992)**.

CITATION UPDATES

***In re* Byrum, 139 B.R. 498 (C.D. Calif. 1992)** (discharge of taxes), see p. 108 *supra*.

Suffness v. U.S., 788 F. Supp. 304 (N.D. Tex. 1992) (involuntary conversion), see p. 70 *supra*.

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