FOOTNOTES

[1] I.R.C. § 101(a)(1).

[2] Prop. Treas. Reg. §§ 1.101-8, 1.7702-0, 1.7702-2, 1.7702A-1.

[3] I.R.C. § 101(a)(2).

[4] I.R.C. § 101(a)(2)(B).

[5] I.R.C. § 101(a)(2)(A).

[6] Treas. Reg. § 1.101-1(b)(2).

[7] See Treas. Reg. § 1.101-1(b)(4).

[8] See, e.g., Malone v. U.S., 326 F. Supp. 106 (D. Miss. 1971).

[9] See I.R.C. § 101(a)(2).

[10] See note 5 *supra*.

[11] See Rev. Rul. 69-187, 1969-1 C.B. 45 (donee-transferee paid loan); Ltr. Rul. 8027113, no date given (donee did not pay loan).

[12] See I.R.C. § 101(a)(2)(A).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL

DISMISSAL. The debtor had originally filed a Chapter 12 bankruptcy case and a creditor had filed a motion for relief from the automatic stay in that case. The debtor discovered that the debtor was not eligible for Chapter 12 and voluntarily dismissed the Chapter 12 case and refiled for Chapter 11. The creditor argued that Section 109(g) prohibited the second filing within 180 days after a voluntary dismissal of a case in which a motion for relief from the automatic stay had been filed. The court held that Section 109(g) was not mandatory and that a second filing would be allowed because the debtor did not dismiss the first case and refile only to prevent the creditor from obtaining relief from the automatic stay. **Tooke v. Sunshine Trust Mortgage Trust No. 86-225, 149 B.R. 687 (M.D. Fla. 1992)**.

EXEMPTIONS

AVOIDABLE LIENS. The debtors claimed an exemption under 11 U.S.C. § 522(d)(5) for $4,235 of the equity in their homestead. The debtors sought avoidance of a $300,000 second lien against the homestead as impairing their exemption. The court held that the lien could be avoided only to the extent of the debtors' claimed exemption amount. The remaining portion of the lien was held to be subordinate to the exemption amount after conclusion of the bankruptcy case. ***In re* Gonzalez, 149 B.R. 9 (Bankr. D. Mass. 1993)**.

Twelve days before filing for bankruptcy the debtor transferred homestead property to the debtor and the debtor's spouse as joint tenants. The debtor and spouse filed a joint bankruptcy case and each claimed the Maine $60,000 homestead exemption. The homestead was subject to a mortgage in excess of the fair market value and to two judgment liens. No objections to the exemption claims were filed and the debtors sought to avoid the judgment liens as impairing the homestead exemptions. The court held that because the judgment liens attached to the homestead before the transfer to the spouse, the spouse could not avoid the judgment liens. The court also held that the debtor could not avoid the judgment liens because the debtor had no equity in the homestead, even if the judgment liens were avoided. ***In re* Saturley, 149 B.R. 245 (Bankr. D. Me. 1993)**.

HOMESTEAD. When a creditor attempted to levy on real property owned by the debtor, the debtor claimed the property eligible for a homestead exemption. The state court denied the debtor's claim and the creditor sought a sale of the property. The sale was prevented by the debtor's bankruptcy filing, in which the debtor again claimed the property as an exempt homestead. The creditor failed to timely object to the exemption but objected when the debtor sought an avoidance of the lien as impairing the exemption. The court held that the failure to timely object to the exemption prohibited any denial of the exemption; however, the court also ruled that the failure to object to the exemption did not prevent the denial of the exemption for purposes of lien avoidance. The court also held that the Bankruptcy Court's denial of the avoidance because of giving full faith and credit to the state court denial of the exemption was improper because the debtor's eligibility for the exemption had to be determined as of the date of the petition and the facts and circumstances could have changed between the state court ruling and the filing of the petition. ***In re* Morgan, 149 B.R. 147 (Bankr. 9th Cir. 1993)**.

Under a divorce settlement, the debtor had received money for the debtor's interest in the marital homestead in Michigan. The debtor moved to Kansas and filed for bankruptcy, claiming the money as exempt proceeds from the sale of a homestead. The court held that because the debtor would not have been allowed a Kansas exemption for a Michigan homestead, the debtor could not claim a homestead exemption from the proceeds of a Michigan homestead. ***In re* Sipka, 149 B.R. 181 (D. Kan. 1992)**.

The debtor had executed a deed of trust encumbering the debtor's rural homestead and had signed a waiver asserting that the property was not the debtor's homestead although the property was the debtor's residence at that time and when the bankruptcy petition was filed. The secured creditor objected to the debtor's homestead exemption claim, citing the waiver. The court held that under Texas law, the waiver was ineffective to overcome the statutory prohibition against attachments against homesteads; therefore, the exemption was allowed. ***In re* Stephens, 149 B.R. 414 (Bankr. E.D. Tex. 1992)**.

The court held that the IRS tax lien filed against the debtors' homestead remained valid where the debtors claimed the homestead exempt in their bankruptcy case. ***In re* Braddock, 149 B.R. 636 (Bankr. D. Mont. 1992)**.

PERSONAL INJURY AWARDS. When the debtor filed for bankruptcy, a personal injury action filed by the debtor was pending. The debtor listed the action in the bankruptcy schedules as an unliquidated claim but did not claim the action as exempt. Three years later the debtor entered into a settlement with one of the defendants which provided for $7,000 for bodily injury and $43,000 for loss of future income. The debtor then amended the bankruptcy schedules to claim a $7,500 exemption for bodily injury award, $14,091 for loss of future income award and $5,000 for loss of consortium award. The court held that (1) the late amendment of the exemption schedules would be allowed; (2) only $7,000 would be exempt because that was the amount awarded for personal injury; (3) no loss of consortium exemption would be allowed because the judgment did not provide for loss of consortium; and (4) the loss of future earnings exemption would be limited to the amount needed by the debtor. ***In re* Corbi, 149 B.R. 325 (Bankr. E.D. N.Y. 1993)**.

TAX REFUND. The debtor claimed a post-petition income tax refund as exempt based on the debtor's ownership of the survivorship interest in the refund. The debtor argued that because the income tax return was filed jointly with the debtor's nondebtor spouse, the tax refund was tenancy by the entireties property. Only the debtor had income subject to tax. The court held that because no conveyance instrument operated to create a tenancy by the entirety interest in the refund, no exemption was allowed. ***In re* Larish, 149 B.R. 117 (Bankr. M.D. Tenn. 1992)**.

WAGES. The creditor had instituted a wage deduction proceeding against the debtor and some of the debtor's wages had been withheld but no wage deduction order had been filed by the time the debtor filed for bankruptcy. The debtor claimed $2,000 of the wages as exempt under the Illinois wildcard exemption and sought to avoid the judgment lien supporting the wage deduction. The court held that the wage deduction remains estate property subject to the exemption until the wage deduction order has been filed and allowed the exemption and lien avoidance. ***In re* Garcia, 149 B.R. 530 (Bankr. N.D. Ill. 1993)**.

CHAPTER 12

AUTOMATIC STAY. The Chapter 12 debtor had received an usufruct (life estate) in property by gift. While the debtor was insolvent, the debtor renounced the usufruct, allowing the usufruct to revert to a trust for third parties. More than one year after the renunciation was publicly recorded, a creditor sought revocation of the renunciation. The debtor argued that the one year statute of limitations on actions for revocation had expired and the claim was untimely. The creditor argued that 11 U.S.C. § 108(c) tolled the limitations period during the bankruptcy case plus 30 days. The court held that Section 108(c) did not apply because Section 108(c) applied only to claims against nondebtors. **Farm Credit Bank of Texas v. Vallee, 148 B.R. 1021 (W.D. La. 1992)**.

FEDERAL TAXATION

AUTOMATIC STAY. The debtors filed a Chapter 13 case on December 4, 1984 and the IRS filed a claim for personal income taxes for 1983. The debtors' plan was confirmed on July 19, 1985 and the plan listed the 1983 taxes but provided for no payment. The IRS made several assessments and levies against the debtors' property from 1984 through 1988 for taxes owed for 1984 through 1987, including 100 percent penalties for 1982 and 1983 as responsible persons in a corporation which failed to pay employment taxes. In 1989, the debtors sought recovery of the levied property. The court held (1) the 1983 taxes were discharged, (2) the 1984 taxes were a post-petition liability of the debtors because the taxes were not due until April 15, 1985, (3) the 1982 and 1983 responsible person penalty taxes were discharged because no claim was filed in the case; (4) the IRS was required to return all property levied against less than two years before the action for recovery was filed; and (5) the levies for the 1982, 1983 and 1984 taxes and penalties violated the automatic stay, entitling the debtors to return of the property and recovery of attorneys' fees and court costs. ***In re* Matravers, 149 B.R. 204 (Bankr. D. Utah 1993)**.

The debtors' Chapter 13 plan was confirmed with the confirmation order stating that discharge was to occur upon completion of the plan. During the plan period, the debtors were late on several plan payments to the IRS and the IRS levied against the debtors' property. The debtors sought recovery of the levied property, arguing that the levies violated the automatic stay. The court noted that the automatic stay normally terminates upon confirmation of a Chapter 13 plan because confirmation normally acts to discharge the debtors; however, because the debtors' confirmation order delayed discharge until completion of the plan, the automatic stay remained in effect. The court held that the levies were violations of the automatic stay but denied recovery because the amounts levied were owed by the debtors under the plan. ***In re* Reisher, 149 B.R. 372 (Bankr. M.D. Pa. 1992)**.

PLAN. Although required by local bankruptcy rules to provide notice to the IRS at a certain address, the debtor failed to provide notice of the final confirmation hearing or to serve a copy of the confirmation order to the correct IRS office. The debtor sought turnover of amounts paid to the IRS during the bankruptcy case in excess of the IRS claim. The court held that although the IRS eventually had notice of the confirmation order and failed to object, the IRS was not bound by the order because the debtor failed to serve notice to the correct address. ***In re* Griffin Oil Co., Inc., 149 B.R. 419 (Bankr. E.D. Tex. 1992)**.

PRIORITY. The debtor was assessed a Section 72(t) 10 percent penalty for early withdrawal from pension and profit sharing plans. The court held that the penalty was a nonpecuniary loss penalty not entitled to priority payment under the debtor's Chapter 11 plan. ***In re* Cassidy, 983 F.2d 161 (10th Cir. 1992), *aff'g unrep. D. Ct. dec. aff'g*, 126 B.R. 94 (Bankr. D. Colo. 1991)**.

TAX LIENS. At the filing of the bankruptcy petition, the debtor owned an interest in an ERISA-qualified pension plan. The court held that the plan was not estate property but that the debtor's interest in the plan remained subject to bankruptcy court jurisdiction. The court also held that the pre-petition federal tax lien attached to the debtor's interest in the plan as of the date of the petition. ***In re* Anderson, 149 B.R. 591 (Bankr. 9th Cir. 1992)**.

CONTRACTS

ANTICIPATORY BREACH. In April 1988, the plaintiff entered into a written contract with the defendant to purchase dry edible navy beans from the defendant at the end of the harvest in 1988. The contract provided two payment options and an employee of the plaintiff inadvertently filled out both options. In May 1988, the defendant told the plaintiff to tear up the contract, although the plaintiff disputed that the statement was ever made. The issue was whether the plaintiff was entitled to the difference in the contract price and the cover price at the time of the anticipatory breach or at the time of intended performance of the contract. The court held that because U.C.C. § 2-610 allowed an aggrieved party a commercially reasonable time to await performance before suspending performance or seeking a remedy, the defendant was entitled to the difference in the contract price of beans and the market value at the time of the anticipatory breach. The jury found that the repudiation of the contract by the defendant occurred in May 1988 when the market and contract prices for the beans were the same. **Trinidad Bean & Elevator Co. v. Frosh, 494 N.W.2d 347 (Neb. Ct. App. 1992)**.

CONSIDERATION. In an attempt to avoid foreclosure against the plaintiff's farm, the plaintiff attempted to sell some land against which the defendant held a junior lien. The defendant initially agreed to release its lien but later refused to release the lien unless it received a portion of the proceeds. When the plaintiff sued for breach of contract, the defendant argued that no contract existed because no consideration was to be given by the plaintiff for the defendant's release of the lien. The plaintiff argued that the payment of the proceeds on the first mortgage would be a benefit to the defendant. The court held that the plaintiff's obligation to make payments on the loans was a pre-existing obligation which could not be used as new consideration for the defendant's release of the lien. ***In re* Bennett, 149 B.R. 16 (N.D. N.Y. 1993)**.

FEDERAL AGRICULTURAL PROGRAMS

CONVERSION. The defendant was convicted of conversion resulting from the sale without permission of grain which was collateral for a federal farm program loan. The issue was the amount of loss involved so as to determine the enhancement level of the offense for sentencing purposes. The defendant argued that only the loss relating to the counts to which the defendant pled guilty could be included. The court held that the losses relating to the dismissed counts would be included because the amounts resulted from conduct related to the criminal conduct to which the defendant pled guilty. **U.S. v. Redlin, 983 F.2d 893 (8th Cir. 1993)**.

GUARANTEED LOANS. The plaintiff bank made a loan to the farm debtors who applied for an FmHA guarantee of the loan. The FmHA and bank agreement for the loan guarantee required the bank to release all prior security interests and to apply all payments from the debtors on the guaranteed loan before making any payments on other loans to the debtors made by the bank. The debtor signed up for the Dairy Termination Program and sold all cattle. The debtor remitted the proceeds of the sale of the cattle and the program payments to the bank which applied only the proceeds of the sale of the cattle against the guaranteed loan. After the debtors were discharged in bankruptcy, the bank filed a claim with the FmHA for the losses on the guaranteed loan. The court held that the FmHA denial of the claim was proper because the bank failed to apply all payments against the guaranteed loan first. **Union Bank & Trust Co. v. U.S., 27 Fed. Cl. 403 (1992)**.

FEDERAL ESTATE AND GIFT TAX

GENERATION SKIPPING TRANSFERS. The decedent died in 1969 and the decedent's will created a residuary trust for the surviving spouse. The trustee had the power to distribute trust corpus to the surviving spouse and the descendants of the decedent. The children of the decedent proposed to obtain a state court order of their disclaimer of any right to the trust corpus. The disclaimer also included the children's current and future heirs. It was unknown whether the disclaimer would be effective under local law to bind the descendants of the children. The IRS ruled that because the disclaimer of the children was untimely, the disclaimer, if effective under local law, would be a gift to the remainder interest holders and an addition to the trust, subjecting the trust to GSTT when any distributions were made to skip persons. Even if the disclaimer was not effective, a gift would be made unless a descendant successfully challenged the disclaimer within 9 months after reaching majority. **Ltr. Rul. 9308007, Nov. 24, 1992**.

The decedent died in 1956 and the decedent's will established a trust for each of two daughters. Each trust provided that upon the death of the daughter, the trust passed to the daughter's children, with further remainders to the children's issue. If a daughter died without issue, the trust property passed to the other trust. One daughter had only adopted children and the state law at the time of the decedent's death did not included adopted children in the definition of children for probate purposes. Therefore, in 1982, the two daughters entered into an agreement to treat the daughter's adopted children as natural children. Because one of the natural children was a minor, the agreement was reexecuted in 1986 when the child reached its majority. The IRS ruled that the 1982 agreement resulted in gifts to the first daughter's trust to the extent of the value of their release to the adopted children of the first daughter of their rights in the remainder of the daughter's trust. These gifts were not subject to GSTT because they were made before enactment of the GSTT. However, the 1986 agreement resulted in a gift from the minor child and caused an addition to the first trust, subjecting that trust to GSTT to the extent of that gift. **Ltr. Rul. 9308032, Nov. 30, 1992**.

GIFT. The taxpayer and the taxpayer's children formed a limited partnership with the taxpayer contributing $750,000 in exchange fore a one percent general partnership interest and a 98 percent limited partnership interest. The children each contributed $50 for a .00661 limited partnership interest. The taxpayer transferred most of the taxpayer's limited partnership interests to the children and a trust for grandchildren. A document entitled "Gift of Limited Partnership Interest" gave the limited partnership interests a stated value. The document also provided that if the value of a donated partnership interest should be valued differently by an agreed settlement of a bona fide dispute or by a court judgment in a bona fide dispute, the value so determined should control. The taxpayer argued that the transfer of the limited partnership interest was not subject to gift tax because the gifts were incomplete since the amount of each partnership interest could be changed by the taxpayers bringing a court action to determine the value of the interests. The IRS ruled that because the taxpayer or donees were unlikely to challenge the value of the interests, the transfers were completed gifts subject to a condition subsequent, similar to the clause in *Commissioner v. Proctor, 142 F.2d 824 (4th Cir. 1944)* and the value of the limited partnership interests were not limited to the value stated in the transfer agreement. **Ltr. Rul. 9309001, Sept. 30, 1992**.

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent owned interests, either personally or through partnerships or corporations, in residential and commercial rental properties. The decedent, either personally or through the entities, actively managed and maintained the properties, performing various services for the tenants. The partnerships and corporations all had 15 or fewer partners or shareholders. The IRS ruled that the decedent's interests qualified as interests in closely held businesses and the estate was eligible for installment payment of estate tax. **Ltr. Rul. 9309015, Dec. 1, 1992**.

STEP-UP IN BASIS. One month prior to the decedent's death, the decedent and surviving spouse established a revocable trust for the benefit of the decedent and spouse. The survivor received the entire trust upon the death of the other beneficiary. The trust provided that either beneficiary could revoke the trust and allowed each beneficiary to file a written election to have taxes, debts and expenses of the first beneficiary to die to be paid from the trust. The trust, and therefore the election, could not be revoked by the surviving beneficiary after the death of the other beneficiary. The IRS ruled that because the surviving spouse had the power to revoke the trust during the year before the death of the decedent, the surviving spouse could not increase the basis of the property to the estate tax value, even though all of the trust property was included in the decedent's gross estate. **Ltr. Rul. 9308002, Nov. 16, 1992**.

TRANSFERS WITHIN THREE YEARS OF DEATH. The decedent had established a revocable trust under which the decedent had the authority to direct the trust to distribute income and corpus. The decedent was the sole income and principal beneficiary of the trust whether or not the decedent was incompetent. The decedent made gifts from the trust and after the decedent became incompetent, the decedent's guardian continued the patern of making gifts from the trust up to the date of the decedent's death. The IRS ruled that the gifts from the trust were properly characterized as withdrawals for the decedent's benefit followed by transfers to the donees. Therefore, the transfers within three years before the decedent's death were not included in the decedent's gross estate. **Ltr. Rul. 9309003, Nov. 13, 1992**.

TRUSTS. The decedent was a beneficiary of three trusts established by predeceased parents. The remainder beneficiaries were three children of the decedent and the trustees sought to have the three trusts administered as nine separate trusts, three for each child. The court held that because the original grantors had established separate trusts for the decedent and had granted the trustees discretion in administering the trusts, the administration of the trusts as nine separate trusts was allowed. **John L. Dickinson Testamentary Trust v. Comm'r, T.C. Memo. 1993-62**.

VALUATION. The taxpayer established a charitable remainder unitrust for each of five of the grantor's children. Each trust provides for an 8 percent of net value annual distribution, payable quarterly to the grantor, with the same amount payable to the grantor's spouse upon the grantor's death, and payable to the grantor's child upon the death of the grantor and spouse. After the death of the child, the trust property passes to charitable organizations. The grantor retained the right to remove the unitrust interests of the spouse and child by will. The grantor released this right. The IRS ruled that the value of the unitrust amounts would be valued under I.R.C. § 7520. The ruling sets forth the unitrust factor for each unitrust holder. **Ltr. Rul. 9309041, Dec. 8, 1992**.

In order to reduce the state franchise tax which was based on the number of authorized shares of a corporation, the corporation decreased the number of shares of authorized common and preferred stock but increased the par value of each share proportionately such that the total capitalization of the corporation remained the same and the value of each shareholder's total stock holding remained the same. Thus, the one million shares of preferred stock with a par value of $10 were reduced to 10,000 shares with a par value of $1,000. Each share of preferred and common stock carried one vote before and after the change. The IRS ruled that the change was not subject to the valuation rules of I.R.C. §§ 2701, 2704. **Ltr. Rul. 9309018, Dec. 3, 1992**.

FEDERAL INCOME TAXATION

COOPERATIVES. An exempt Section 521 agricultural marketing cooperative imported a portion of a raw product to meet the emergency needs of the cooperative and its members. The cooperative paid customs duty on the imported product. The cooperative entered into an agreement with a third party corporation under which the corporation would import a quantity of the same raw product, refine the product and re-export the product, enabling the cooperative to obtain a "drawback" of the custom duties paid on the raw product imported by the cooperative. The transaction was a "paper" transaction as to the cooperative which took no possession or ownership of the imported and exported products. The "drawback" was treated as a partial recovery of previous marketing expenses. The "drawback" amount was less than one-tenth of one percent of the total earnings of the cooperative. The IRS ruled that the agreement would not affect the exempt status of the cooperative because the amount of the drawback was *de minimis* and the transaction was a limited, one-time occurrence. **Ltr. Rul. 9309012, Dec. 1, 1992**.

ESTIMATED TAXES. The IRS has announced that the following lines of Worksheet 2.7 "Estimated Tax Worksheet Limiting Use of Prior Year's Tax," in IRS Pub. 505 should not be filed in: Line 6, columns a, c, and d; Line 7, columns b, c, and d; Lines 9-15, column a; and Line 18, column a. The announcement includes a copy of the corrected worksheet. **Ann. 93-35, I.R.B. 1993-9, 43**.

PARTNERSHIPS

DEFINITION. The taxpayers formed a limited liability company (LLC) under a state law which provided that the death, retirement, resignation, expulsion, bankruptcy or dissolution of a member caused a termination of the LLC. The LLC agreement provided that all members must consent to any transfer of an interest in the LLC. The IRS ruled that the LLC lacked continuity of life and free transferability of interests and was classified as a partnership for federal tax purposes. **Ltr. Rul. 9308027, Nov. 27, 1992**.

The IRS ruled that a business organized under the Virginia Limited Liability Company Act was classified as a partnership for federal tax purposes. **Ltr. Rul. 9308039, Dec. 2, 1992**.

PENSION PLANS. For plans beginning in February 1993, the weighted average is 8.04 percent with the permissible range of 7.24 to 8.85 percent for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 93-13, I.R.B. 1993-9, 40**.

RETURNS. The IRS has announced a new Form 9465 "Installment Agreement Request," for taxpayers who want to request installment payment of their 1992 tax during 1993. Installment payment of taxes is subject to interest and late payment penalties. **IR 93-25, March 3, 1993**.

S CORPORATIONS.

MERGER. An S corporation reorganized in a merger qualified under I.R.C. § 368(a)(1)(F) into a business trust which qualified as an association for federal tax purposes. The IRS ruled that the S corporation status was not lost because of the reorganization and that the accumulated adjustments account carried over to the new business trust. In addition, the original corporation's holding period for its assets carried over to the new trust and the trust could use the old corporation's identification number. **Ltr. Rul. 9309031, Dec. 4, 1992**.

ONE CLASS OF STOCK. An S corporation obtained several loans from another corporation, two shareholders, and two shareholders and other individuals. The obligations provided for market rate of interest, a regular payment schedule and nonconvertibility of the obligations. The corporation also entered into shareholder agreements which included buy-sell agreements, redemptions agreements, an option plan for employees, put-call agreements and employee agreements. In the various agreements, the price of any stock involved would be determined at fair market value and the agreements resulted from arms-length negotiations. The IRS ruled that the shareholder agreements and corporate obligations were not second classes of stock. **Ltr. Rul. 9308006, Nov. 24, 1992**.

SHAREHOLER'S BASIS. The taxpayer was the sole shareholder of an S corporation and cosigned and guaranteed a note given by the S corporation. The note was secured by a deed of trust on the property purchased with the loan proceeds. The corporation made all payments on the note. The lender obtained no financial statement from the taxpayer and no liens were placed on the taxpayer's property to secure the note. The court held that taxpayer's basis in the stock in the corporation was not increased by the taxpayer's guarantee of the obligation. **Keech v. Comm'r, T.C. Memo. 1993-71**.

SAFE HARBOR INTEREST RATES
APRIL 1993

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR 3.75	3.72	3.70	3.69	
110% AFR	4.13	4.09	4.07	4.06
120% AFR	4.51	4.46	4.44	4.42
		Mid-term		
AFR 5.45	5.38	5.34	5.32	
110% AFR	6.01	5.92	5.88	5.85
120% AFR	6.56	6.46	6.41	6.37
		Long-term		
AFR 6.52	6.42	6.37	6.34	
110% AFR	7.18	7.06	7.00	6.96
120% AFR	7.85	7.70	7.63	7.58

TAX LIENS. The debtor had assigned to a secured creditor the proceeds of oil and gas produced on property owned by the debtor. The oil and gas had been pledged as security for a loan and the proceeds from the oil and gas were credited against the loan. The IRS filed a tax lien against the real property after the creditor's security interest was perfected and after the assignment. The IRS attempted to levy against the proceeds when the creditor received them. The court held that the creditor's security interest had priority and that the tax lien could not attach to the proceeds because the debtor's interest in them was unvested and contingent until the oil and gas were actually produced. ***In re* Hawn, 149 B.R. 450 (Bankr. S.D. Tex. 1993)**.

LABOR

EMPLOYER LIABILITY. The plaintiff was an employee of the defendant and worked as a laborer on the defendant's farm. The plaintiff was injured when the plaintiff attempted to lower the tongue of an upturned feed wagon by climbing onto the tongue. The plaintiff slipped and fell and sued the defendant for negligence in failing to warn other employees not to load the wagon while disconnected from the tractor. The court upheld a summary judgment for the defendant, holding that the upturned wagon did not present any hidden danger and that the plaintiff was injured through the plaintiff's own voluntary action in climbing onto the wagon tongue with muddy feet. **Farmer v. Heard, 844 S.W.2d 425 (Ky. Ct. App. 1992)**.

MORTGAGES

BORROWER'S RIGHTS. The plaintiff's predecessor in interest loaned money to the defendant partnership and when the defendant defaulted on loan payments, the plaintiff brought a foreclosure action against farm land owned by the defendant. The defendant argued that notice served on it was defective under Minn. Stat. § 582.042 because the defendant was a family farm. The court held that the defendant was not entitled to the notice requirements because (1) neither the partnership nor any of its members lived on the farm land, (2) the farm land was cash rented, and (3) the partnership had no income from the sale of farm products in the taxable year before the foreclosure action was filed. **Resolution Trust Corp. v. Lipton, 983 F.2d 901 (8th Cir. 1993)**.

SECURED TRANSACTIONS

CONSERVATION RESERVE PAYMENTS. A creditor argued that its security interest in the debtor's farm products included the debtor's rights to Conservation Reserve Program payments. The court held that the creditor did not have a security interest in the CRP payments because the payments were rent and considered real property. In addition, the court held that the creditor's security interest was not perfected because the financing statement was filed with the county recorder instead of the Secretary of State. ***In re* Zweygardt, 149 B.R. 673 (D. Kan. 1992)**.

INSURANCE PROCEEDS. The plaintiff rented farm land to the defendant and helped the defendant obtain crop financing by lending the defendant money. The defendant also borrowed money from the FmHA and the FmHA agreed to subordinate its security interest in the defendant's crops to the security interest of the plaintiff. The FmHA required the defendant to obtain crop insurance and the defendant assigned the right to the proceeds to the FmHA. The plaintiff's security agreement only required the defendant to obtain insurance if required by the plaintiff, but the plaintiff did not require insurance on the crops. The plaintiff sought recovery of the crop insurance proceeds as subject to the superior security interest. The court held that under *Zorba's Inn, Inc. v. Nationwide Mut. Fire Ins. Co., 377 S.E.2d 797 (N.C. Ct. App. 1989)*, the plaintiff's security interest did not attach to the insurance proceeds because neither the security agreement nor the plaintiff required the defendant to obtain insurance and to assign the proceeds to the plaintiff. **Lyon v. May, 424 S.E.2d 655 (N.C. Ct. App. 1993)**.

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RECEIVERS. Prior to the debtor's filing for bankruptcy, a receiver was appointed to operate the debtor's orchards. During the receiver's tenure, the receiver treated tree stakes with various chemicals and used other chemicals in spraying the trees. Each year, the receiver obtained state court approval for its operation of the orchards. After the debtor filed for bankruptcy and a trustee was appointed to operate the business, the receiver applied for recovery of costs and expenses it incurred in the previous year. The trustee and creditors sought to charge against the receiver the costs of cleaning up the soil from contamination from the chemicals used by the receiver. The court held that the receiver was not liable to the bankruptcy estate for tortious acts performed within its authority and that the receiver had derivative judicial immunity from liability under the Comprehensive Environmental Response, Compensation and Liability Act as well as the Washington Model Toxic Control Act and Hazardous Waste Management Act. ***In re* Sundance Corp., Inc., 149 B.R. 641 (Bankr. E.D. Wash. 1993)**.

CITATION UPDATES

Litwin v. U.S., 983 F.2d 987 (10th Cir. 1993), ***aff'g,*** **91-1 U.S. Tax Cas. (CCH) ¶ 50,229 (D. Kan. 1991)** (bad debt deduction), see p. 41 *supra*.

McCabe Packing Co v. U.S., 809 F. Supp. 614 (C.D. Ill. 1992) (constructive dividends), see p. 41 *supra*.

ISSUE INDEX