[4] Id.
[5] Id.
[6] 16 U.S.C. § 1237A(d).
[7] Id.
[8] Rev. Rul. 77-414, 1977-2 C.B. 299.
[9] Id.
[10] Id.
[11] Id.
[12] I.R.C. § 1231(b).
[13] I.R.C. § 1221.
[14] I.R.C. § 1211(b).
[15] See Good v. Comm'r, 16 T.C. 906 (1952), *acq.*, 1951-2 C.B. 2 (unimproved land rented for pasture used in trade or business). Compare Durbin v. Birmingham, 92 F. Supp. 938 (D. La. 1950) (unimproved land rented to sharecroppers was capital asset where there was no management or control by taxpayer).
[16] See Ltr. Rul. 8350008, Aug. 23, 1983 (mere rental of real property does not constitute a trade or business under I.R.C. § 1231).
[17] Wofac Corp. v. United States, 269 F. Supp. 654 (D. N.J. 1976) (business discontinued because of unprofitability; non capital asset status not lost immediately).
[18] See Rev. Rul. 77-414, 1977-2 C.B. 299 (development rights).
[19] Id.
[20] Rev. Rul. 77-413, 1977-2 C.B. 298.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

STATE LAND. The plaintiff was the owner of farm land located in Missouri and Nebraska which had been owned by the plaintiff's father or the plaintiff since 1928. The defendant was a county in Nebraska which claimed title to the Nebraska land under a sheriff's deed. The plaintiff brought a quiet title action for the Nebraska land, claiming title by adverse possession. The court ruled that if the county had title to the land, the plaintiff could not acquire title by adverse possession. However, the court held that the county did not have title to the land because the county failed to create survey maps and books of field notes for the disputed land; therefore, the plaintiff's actual possession under the Missouri deed was sufficient to acquire title by adverse possession. **Vogel v. Bartels, 510 N.W.2d 529 (Neb. Ct. App. 1993)**.

ANIMALS

COWS-*ALM* § 1.0[2].* The plaintiff suffered personal injuries and damage to a car when the car struck some of the defendant's cows on a highway. The section of highway was in a "stock law" district which prohibited livestock on the highway. The defendant argued that the accident was the fault of the county for failing to properly maintain a cattle guard crossing about one-half mile from the accident. Some evidence presented at the trial indicated that the fence near the accident was down. The court held that under the "stock law," La. Rev. Stat. § 3:2803, negligence of the owner is presumed if an accident occurs while the owner's livestock are on a highway. The court held that the defendant failed to demonstrate that the cows escaped by the cattle guard crossing and not through other means; therefore, the trial court decision finding the defendant liable was proper. **Ourso v. Grimm, 630 So.2d 963 (La. Ct. App. 1994)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

EXEMPTIONS.

AVOIDABLE LIENS. The debtor sought to avoid a judgment lien as impairing the debtor's homestead exemption for a mobile home. The judgment lien resulted from a suit by the debtor's former father-in-law for the costs of the mobile home and improvements to the property to provide utilities and other living necessities. The New York exemption for homesteads excluded money judgments for the purchase price of the homestead. Thus, the issue in this case was whether the costs of the improvements were included in the purchase price of the mobile home. The court held that the improvement costs were included where the improvements were essential to making the mobile home habitable. ***In re* Onyan, 163 B.R. 21 (Bankr. N.D. N.Y. 1993)**.

OBJECTIONS. The debtor originally filed a Chapter 11 case and claimed $2,400 in property as exempt. No objections to the exemptions were filed. The case was converted to Chapter 7 and another creditors' examination took place and the trustee filed an objection to the exemptions within 30 days after the examination. The debtor argued that the objection was invalid as untimely because it was not filed within 30 days after the Chapter 11 creditors' examination. The court held that the conversion restarted the time limit for objections to exemptions and that the trustee's objection was timely. ***In re* Manning, 163 B.R. 380 (Bankr. S.D. Fla. 1994)**.

TOOLS OF THE TRADE. The debtors, husband and wife, operated a cattle and grain farm. The wife also worked part-time as a librarian, earning about one-tenth of the couple's total gross income. The husband claimed a pickup with a fuel tank and pump and hand tools as exempt tools of the trade and a passenger car as exempt. The wife also claimed a passenger car as exempt and several pieces of farm equipment as exempt tools of the trade. The wife performed bookkeeping for the farm as well as helped move equipment and tend the cattle. Both debtors signed all loans and purchase contracts. A creditor failed to timely object to the exemptions but timely objected to the debtors' attempt to void nonpurchase money security interests which impaired the exemptions. The court held that a creditor's failure to timely object to exemptions did not bar the creditor from objecting to the exemptions in challenging avoidance of the creditor's liens on the property. The court ruled that under Kan. Stat. § 60-2304, the debtors could claim a passenger car as exempt and another vehicle as exempt tool of the trade. The court held that the husband could exempt the pickup because the debtor used the truck in the farming operation. The court also held that the wife's nonfarm income was not sufficient to deny the wife's

entitlement to tools of the trade exemptions for the wife's participation in the farming operation. ***In re* Kobs, 163 B.R. 368 (Bankr. D. Kan. 1994)**.

CHAPTER 12-*ALM* § 13.03[8].*

VALUATION. The debtors' farm consisted of two parcels, one with the homestead and buildings and another of tillable land. The FmHA appraiser valued the homestead parcel based upon its hypothetical sale to a professional person for use as a hobby farm. The court held that because the debtors' plan provided that the debtors would retain the homestead parcel as well as the tillable parcel, the homestead parcel could only be valued as an operating farm. The debtors sought to reduce the value of the farm by the cost of a hypothetical sale of the farm. The court held that the costs of sale could not be deducted where the debtors planned to retain the farm. ***In re* Brace, 163 B.R. 274 (Bankr. W.D. Pa. 1994)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

AUTOMATIC STAY. The IRS had filed a prepetition tax lien against the debtor's residence. After the debtor received a discharge, the IRS filed a notice to levy against the house. The debtor argued that the limitations period for collection of the tax had expired because the tolling of the limitations period by the bankruptcy case occurred only for the period in which the IRS needed to apply for relief from the automatic stay. The court held that the limitations period was tolled during the entire bankruptcy case because the IRS had no duty, by statute or otherwise, to apply for relief from the automatic stay. **Wekell v. U.S., 14 F.3d 32 (9th Cir. 1994), *aff'g*, 144 B.R. 503 (W.D. Wash. 1992)**.

LOSSES. The debtor had a net operating loss for 1986 and filed for bankruptcy in 1987. The case was closed in 1988 but reopened in 1989. In 1990 the debtor filed amended returns for 1983, 1984 and 1985 using the carryback of the net operating loss because the bankruptcy estate did not make use of the net operating losses from 1986. The IRS denied the refund claims based on lapse of the statute of limitations for refund claims. The debtor argued that the statute of limitations was tolled by the bankruptcy case. The court held that the tolling of the statute of limitations provided by 11 U.S.C. § 346(i) was specifically made not applicable to federal taxes by 11 U.S.C. § 346(a); therefore, the statute of limitations for tax refunds was not tolled by the bankruptcy case. ***In re* Page, 163 B.R. 196 (Bankr. D. Minn. 1994)**.

REFUND. Before filing for bankruptcy, the debtor had applied for a "quickie" refund for prior tax years. The IRS granted the refund request post-petition but withheld the refund as a setoff of other taxes owed by the debtor. The trustee sought recovery of the refund as an impermissable setoff in violation of the automatic stay. The IRS argued that the refund was not bankruptcy estate property because, under the "quickie" refund rules, the IRS had 90 days to revoke the refund after an audit. The IRS agreed to reverse the setoff and the court held that the violation of the automatic stay was not sufficient to bar any setoff. ***In re* Custom Center, Inc., 163 B.R. 309 (Bankr. E.D. Tenn. 1994)**.

RESPONSIBLE PERSON. The debtor was the secretary and 50 percent shareholder of a corporation, with the debtor's brother as the other shareholder and president. The debtor had the authority to write company checks but usually conferred with the brother before writing any checks. The debtor testified that the brother had the primary responsibility for payment of employment taxes and that the debtor did not know the taxes were delinquent. The court held that the debtor was a responsible person and liable for the 100 percent penalty under I.R.C. § 6672 because the debtor had sufficient involvement with the company management and sufficient authority to pay the taxes. The court held that the debtor's lack of knowledge that the taxes were due was insufficient to relieve the debtor of liability for the taxes where the debtor had the power to review the company records. ***In re* Abel, 162 B.R. 993 (Bankr. E.D. Pa. 1994)**.

TAX LIEN. At the time of the filing of the petition, the debtors had no equity in their home and the home was subject to two mortgages with superior priority over a federal tax lien filed against the debtors' property. During the bankruptcy case, the debtors negotiated a reduction of one of the mortgages such that the post-confirmation sale of the house produced proceeds in excess of the two priority mortgages. The debtors' plan provided that any proceeds from the sale of the house would be applied to other creditors in the order of priority provided under non-bankruptcy law. The court held that under the plan provision, the tax lien attached to the house proceeds. ***In re* Schreiber, 163 B.R. 327 (Bankr. N.D. Ill. 1994)**.

CONTRACTS

MISREPRESENTATION. The plaintiffs leased farm land owned by the defendant for the purpose of growing coriander. During the lease negotiations, the defendant's employee told that plaintiffs that the farm had "very good land with very good water." An appraisal issued by the defendant also stated that the farm was "highly productive" with "good" quality well water. After three attempts to grow a crop, the plaintiffs discovered that the water on the leased land was very salty, causing the crops to die. The plaintiffs sued the defendant for misrepresentation. The defendant argued that (1) the statements made about the water quality were only opinions, (2) the statements were intended to cover the average water quality for the entire farm, not just the leased portion, (3) the plaintiffs did not reasonably rely on the statements because the plaintiffs were more expert on growing coriander than the defendant, and (4) the plaintiff had notice of the water problems sufficient to require the plaintiffs to make further inspection. The court upheld a judgment for the plaintiffs because (1) the defendant had superior knowledge of the matters covered by the oral and written appraisal statements on water quality, including the water on the leased portion and (2) the defendant's warnings about the possibility of salty water on the farm did not refer to or qualify the other statements about the water quality. **Roberts v. United New Mexico Bank at Roswell, 14 F.3d 1076 (5th Cir. 1994)**.

CORPORATIONS

PIERCING THE VEIL. The plaintiffs were family farmers who formed a corporation for estate planning purposes. The corporation held no assets except for two

pickup trucks and only operated the farm, leasing the land and equipment from the plaintiffs. Prior to the incorporation, the plaintiffs as individuals had obtained a SBA disaster loan. The plaintiffs had signed up as individuals and through the corporation for various programs through the ASCS. After the plaintiffs defaulted on their SBA loan, the SBA contacted the ASCS to perform an administrative offset of the payments due to the plaintiffs and their corporation. Notice of the offset was given to the plaintiffs who did not appeal that decision. The plaintiffs filed suit to recover the amounts due to the corporation. The government argued that the offset was valid because the regulations permitted looking through a corporation to hold the owners as personally liable for any offset of debts owed to the corporation. The court upheld the trial court decision for the government that the regulations gave the SBA and ASCS the authority to pierce the corporate veil for purposes of administrative offset. The court also examined whether the piercing of the corporate veil was proper in this case. The plaintiffs argued that the corporate form cannot be disregarded unless the corporation was used to fraudulently injure the party seeking to avoid the corporate form. The court held that no fraud need be shown and that all the factors for piercing the corporate veil were present: (1) the corporation had few assets, (2) the plaintiffs were the only owners of the corporation, (3) the formalities of the corporate form were not met, and (4) no separate records or accounts were kept for the corporation. **McCall Stock Farm, Inc. v. U.S., 14 F.3d 1562 (Fed. Cir. 1993), *aff'g*, 30 Fed. Cl. 248 (1992)**.

FEDERAL AGRICULTURAL PROGRAMS

BORROWER'S RIGHTS-*ALM* § 11.01[2].* The plaintiff had defaulted on loans from the defendant and the defendant had offered the plaintiff the right of first refusal on the sale of the plaintiff's farm property. The plaintiff offered a price for the farm $2 million over the appraised value and $14 million less than the total amount owed but required the defendant to release all liens. The defendant rejected the plaintiff's offer for the farm as insufficient. The plaintiff filed an action against the foreclosure, claiming that the defendant had violated provisions of the Agricultural Credit Act of 1987. The court held that the Act provided no right of private action for enforcement of the Act. **Grant v. Farm Credit Bank of Texas, 841 F. Supp. 186 (W.D. La. 1992)**.

BRUCELLOSIS. The APHIS has issued interim regulations providing for payment at fair market value for whole herds of swine depopulated by brucellosis. **59 Fed. Reg. 12530 (March 17, 1994)**.

The APHIS has issued interim regulations changing the classification of Texas from Class B to Class A state under the brucellosis regulations. **59 Fed. Reg. 14359 (March 28, 1994)**.

CROP INSURANCE-*ALM* § 13.04.* The plaintiff purchased crop insurance from the defendant who reinsured the policy with the FCIC. The plaintiff filed a claim for the loss of a soybean crop but the defendant denied the claim. The plaintiff brought suit in state court under state contract law but the defendant removed the case to federal court, claiming diversity jurisdiction and a federal question. The defendant admitted that diversity did not exist but claimed that federal law preempted all state court actions on federal crop insurance. The court held that federal jurisdiction existed because the Federal Crop Insurance Act fully preempted state law as to federal crop insurance. **Owen v. Crop Hail Management, 841 F. Supp. 297 (W.D. Mo. 1994)**.

MARKETING ORDERS-*ALM* § 10.05[1].* The plaintiffs were almond growers and processors who challenged marketing orders which required the plaintiffs to set-aside a portion of their crop for sale to non-competitive outlets such as school lunch programs. The court held that the set-asides were not a compensable "taking" because the plaintiffs had no right to market the crop free of regulation, given the long history of government regulation of almond production and sale. **Cal-Almond, Inc. v. U.S., 30 Fed. Cl. 244 (1994)**.

The plaintiffs were almond handlers who challenged an almond marketing order which required a handler to pay an advertising assessment unless the handler individually paid for "authorized" advertising. The plaintiffs challenged the order as violating their First Amendment rights. The court held that the advertising assessment violated the First amendment free speech rights of the handlers and that the government failed to demonstrate that the assessment accomplished its purpose of increasing the sales of almonds. **Cal-Almond, Inc. v. U.S.D.A., 14 F.3d 429 (9th Cir. 1993)**.

MEAT AND POULTRY INSPECTION. The FSIS has issued proposed regulations amending the requirements for placement of information on meat and poultry product labels. **59 Fed. Reg. 12462 (March 10, 1994); 59 Fed. Reg. 12472 (March 16, 1994)**.

The FSIS has adopted as final regulations requiring safe handling instructions on all raw meat and poultry product labeling. The labels are to include a rationale statement and address safe storage of raw products, prevention of cross-contamination, cooking of raw product and handling of leftovers. **59 Fed. Reg. 14528 (March 28, 1994)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION-*ALM* § 5.04[4].* The taxpayer and predeceased spouse established two irrevocable trusts in 1969, with the couple as lifetime income beneficiaries and charitable organizations as remainder holders. The trusts were amended after the Tax Reform Act of 1969 into two funds each, with each fund administered as a separate trust. The surviving spouse irrevocably assigned three of the funds to charitable organizations. The IRS ruled that (1) the assignments qualified for the income and gift tax charitable deductions and (2) the remaining fund would qualify for the estate tax charitable deduction. **Ltr. Rul. 9409016, Nov. 30, 1993**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* Under the decedent's will, the decedent's spouse received an interest in trust in estate property. Under the trust, the spouse was to

receive a minimum of $3,000 per month payable first from the trust income and second from the trust principle if trust income is insufficient. If trust income exceeded the monthly payment requirement, the excess income passed to the decedent's daughter. The executor elected QTIP treatment for 49 percent of the trust. The IRS ruled that the surviving spouse's interest in the trust was not QTIP because it was impossible to create a specific pecuniary amount of the trust which would provide only the spouse's $3,000 per month payments. The trust was created prior to October 24, 1992, the effective date of I.R.C. § 2056(b)(10) which restricts the definition of "specific portion" to portions determined on a fractional or percentage basis. **Ltr. Rul. 9409005, Oct. 29, 1993**.

Under the decedent's will, certain assets passed to the surviving spouse in trust with the remainder of the estate and the remainder of the trust passing to the decedent's daughter. In order to avoid problems with administering the trust, the spouse and daughter reached a settlement which provided for one-half of the estate to pass outright to each party. The estate claimed a marital deduction for the portion passing to the spouse. The court held that the surviving spouse's interest in the trust was not QTIP because the will provided the spouse with no power to appoint the interest in the trust to only the spouse or the spouse's estate. The court held that because the surviving spouse's enforceable interest in the trust did not qualify as QTIP, the amount passing under the settlement could not qualify for the marital deduction. **Est. of Carpenter v. Comm'r, T.C. Memo. 1994-108**.

The taxpayer had personally guaranteed the loans of businesses owned by the taxpayer's children. The taxpayer's will provided for property equal to twice the "net value cost" of the guarantees outstanding at the taxpayer's death to be transferred to an "estate trust," with the residue of the estate to pass to a marital trust. In an earlier letter ruling, *Ltr. Rul. 9113009, Dec. 21, 1990*, the IRS had ruled that if the estate was liable on the guarantees, the property in the estate trust eligible for the marital deduction would be reduced by the amount of the liability on the guarantees at the date of death and the marital deduction for the marital trust would be completely disallowed. In a revision of that part of the previous ruling, the IRS ruled that guarantees would not cause a complete denial of the marital trust but would reduce the marital deduction only by the value of the guarantees at the date of death. **Ltr. Rul. 9409018, Dec. 1, 1993**.

TRANSFERS WITH RETAINED INTERESTS-*ALM* § 5.02[4].* Six years prior to death, the decedent executed a durable power of attorney which granted the attorney the power to pay for the decedent's health care, household expenses and other matters of income and expenses if the decedent became incapacitated. During the six years, the decedent made gifts by check to several family members. Six weeks before the decedent died, the decedent became incapacitated. The attorney reissued some gifts checks made by the decedent but not delivered to the donees and the attorney loaned the decedent funds to make additional gifts during the decedent's incapacitation. The IRS ruled that the gifts made during the incapacitation were includible in the decedent's gross estate because the durable power of attorney did not explicitly confer the authority to make gifts. **Ltr. Rul. 9410028, Dec. 10, 1993**.

In June 1989, the taxpayer established two short term grantor retained income trusts and paid gift taxes on the value of the remainder interests which were created for the taxpayer's heirs. The trusts were designed to meet the safe harbor rules of I.R.C. § 2036(c)(6) in effect at the time. However, the IRS issued Notice 89-99 revising the safe harbor rules and the taxpayer released the taxpayer's reversionary interests in the trusts, paying gift tax on the releases. Section 2036(c) was then retroactively repealed and the taxpayer executed rescissions of the releases of the reversionary interests. The IRS ruled that the rescissions were ineffective to retroactively annul the releases for gift tax purposes. **Ltr. Rul. 9408005, Nov. 15, 1993**.

VALUATION. The decedent's estate included a platinum and diamond pin, a diamond and cultured pearl watch, and a diamond and emerald platinum ring. The estate valued the jewelry at the value a jeweler would pay, i.e., the fair market value less a commission. The IRS valued the jewelry based on the prices of similar pieces sold at auction. The court held that the comparable auction prices were to be used for valuing the jewelry. Although the opinion does not specifically discuss the issue, the holding apparently means that the costs of sale cannot be deducted from the value of estate property. **Est. of Lemann v. Comm'r, 94-1 U.S. Tax Cas. (CCH) ¶ 60,159 (E.D. La. 1994)**.

FEDERAL INCOME TAXATION

ALTERNATIVE MINIMUM TAX. The IRS has issued guidance for noncorporate taxpayers who were subject to alternative minimum tax (AMT) and who filed returns prior to March 17, 1994, for taxable years beginning before 1993. The IRS will not challenge the computation of items of AMT income, deduction or exclusion determined by reference to regular adjusted gross income on those returns. For taxable years beginning after Dec. 31, 1992, under proposed regulations, the noncorporate taxpayers must treat references to AGI as references to regular AGI in determining all items of AMT income, deductions or exclusions in accordance with Prop. Treas. Reg. § 1.55-1(b). **59 Fed. Reg. 12880 (March 18, 1994); Notice 94-28, I.R.B. 1994-14**.

The taxpayer was a subchapter T nonexempt cooperative with sales to member and nonmember patrons. The taxpayer distributed a patronage dividend based on taxable income from patronage earnings. The difference between the taxpayer's financial statement book income and taxable income is accounted for in a deferred patronage account, although differences between taxable income and book income occurred only temporarily because of timing differences. For the taxable year involved, a difference between the financial statement book income and taxable income was present because of an asset valuation increase in the LIFO inventory, resulting in AMT liability for the cooperative. The cooperative sought approval of including the amount in the deferred patronage account in determining AMT. The IRS ruled that the amount in the deferred patronage account could not be included in the patronage

dividend deduction for determining AMT because the cooperative's bylaws did not require that the amounts in the deferred patronage account be paid to the patrons. **Ltr. Rul. 9409004, Oct. 27, 1993**.

BUSINESS DEDUCTIONS. A tax accountant was denied business deductions for the boarding, riding and showing of the taxpayer's quarter horse because the activities were not ordinary or necessary for the taxpayer's tax practice. Other expenses attributed to the showing of the horse were denied because of lack of substantiation. **Shapiro v. Comm'r, T.C. Memo. 1994-105**.

C CORPORATIONS

LOSSES. The IRS has adopted as final regulations amending the rules governing ownership changes of loss corporations. The regulations treat an option to purchase stock as exercised only if issued or transferred for a principal purpose of manipulating the timing of a shift in owners to avoid or ameliorate the impact of an ownership change. **59 Fed. Reg. 12832 (March 18, 1994), amending Treas. Reg. § 1.382-2, -4** .

DEPRECIATION-*ALM* § 4.03[4].* The court held that the assembled workforce of a purchased and liquidated corporation was not an amortizable asset because the value of the asset did not diminish over time and the useful life of the asset could not be estimated. **Ithaca Industries, Inc. v. Comm'r, 94-1 U.S. Tax Cas. (CCH) ¶ 50,100 (4th Cir. 1994), *aff'g*, 97 T.C. 253 (1991)**.

DISCHARGE OF INDEBTEDNESS-*ALM* § 4.02[15].* The IRS has adopted as final regulations providing that the common law stock-for-debt exception to the discharge of indebtedness rules does not apply where the stock issued for the debt is nominal or token and fails to satisfy a proportionality test. The regulations provide a test for proportionality and for determining whether the stock issued is nominal or token. **59 Fed. Reg. 12830 (March 18, 1994), *adding* Treas. Reg. § 108-1**. The IRS has also issued guidance for determining whether an exchange of common stock for unsecured indebtedness of an insolvent debtor or a debtor in bankruptcy is nominal or token for purposes of the stock-for-debt exclusion for discharge of indebtedness. **Rev. Proc. 94-26, I.R.B. 1994-13**. **Note**: the stock-for-debt exclusion was repealed for stock issued for indebtedness after December 31, 1994, by OBRA 1993, § 13226.

EMPLOYEE PLANS. The tax operated a consulting business as a sole proprietor and employed the taxpayer's spouse in the business. The taxpayer adopted a written employer-provided accident and health plan covering all of the business employees, although the ruling did not mention whether the taxpayer had any other employees. Under the terms of the plan, the taxpayer reimbursed the spouse for medical expenses. The IRS ruled that the reimbursement was not included in the spouse's gross income and was deductible as a business expense by the taxpayer. **Ltr. Rul. 9409006, Nov. 12, 1993**.

HOME OFFICE-*ALM* § 4.02[13].* The taxpayer rented out a large portion of the taxpayer's home to third parties and used the taxpayer's bedroom for an office for the taxpayer's consulting business. The court held that the rental expenses associated with the rentals were not deductible in excess of the rental income. In addition, the taxpayer could not deduct home expenses related to the office because the office was not used exclusively for the business. **Russell v. Comm'r, T.C. Memo. 1994-96**.

The IRS has issued guidance for determining whether deductions associated with a home office may be made under the "relative importance" and "time" tests of *Commissioner v. Soliman, 113 S.Ct. 701 (1993)*, see *ALD*, Vol 4, p. 22. The IRS stated that the "relative importance" test will be applied first to determine where the most important business activities are performed. If that test does not yield a definite answer as to the principal place of business, the place where the most time is spent on the business activity will be used as the principal place of business. The ruling provides four examples for determinations of the principal place of business, including a plumber, a teacher, a writer and a multiple location craft retailer. **Rev. Rul. 94-24, I.R.B. 1994-15**.

INTEREST. The IRS has adopted as final regulations providing for interest on overpayments of taxes. **T.D. 8524, March 2, 1994**.

INTEREST RATE. The IRS has announced that for the period April 1, 1994 through June 30, 1994, the interest rate paid on tax overpayments remains at 6 percent and for underpayments remains at 7 percent. The interest rate for underpayments by large corporations remains at 9 percent. **Rev. Rul. 94-21, I.R.B. 1994-14**.

INVESTMENT INTEREST-*ALM* § 4.03[12].* In keeping with Tax Court, Fourth Circuit and Fifth Circuit opinions on the issue, the court held that the taxpayer could carry forward disallowed investment interest expenses to and through taxable years in which the taxpayer had income less than the disallowed interest expenses. **Richardson v. U.S., 94-1 U.S. Tax Cas. (CCH) ¶ 50,111 (W.D. Okla 1994)**.

PENALTIES. Prior to OBRA 1993, a taxpayer could avoid a negligence penalty for an erroneous return if the taxpayer's claim was "not frivolous." Under OBRA 1993, that standard was raised to a "reasonable basis" for the tax issue involved. The IRS has issued temporary regulations reflecting this change made by OBRA 1993. **59 Fed. Reg. 12547 (March 17, 1994)**.

QUALIFIED DEBT INSTRUMENTS. The IRS has announced the 1994 inflation adjusted amounts of debt instruments which qualify for the 9 percent discount rate limitation under I.R.C. §§ 483 and 1274:

Year of Sale or Exchange	1274A(b) Amount	1274A(c)(2)(A) Amount
1994	$3,433,500	$2,452,500

The $3,433,500 figure is the dividing line for 1994 below which (in terms of seller financing) the minimum interest rate is the lesser of 9 percent or the Applicable Federal Rate. Where the amount of seller financing exceeds the $3,433,500 figure, the imputed rate is 100 percent of the AFR except in cases of sale-leaseback transactions, where the imputed rate is 110 percent of AFR. If the amount of seller financing is $2,452,500 or less (for 1994), both parties may elect to account for the interest under the cash method of accounting. **Rev. Rul. 94-19, I.R.B. 1994-13**.

SAFE HARBOR INTEREST RATES

April 1994

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	4.51	4.46	4.44	4.42
110% AFR	4.97	4.91	4.88	4.86
120% AFR	5.42	5.35	5.31	5.29
		Mid-term		
AFR	5.88	5.80	5.76	5.73
110% AFR	6.48	6.38	6.33	6.30
120% AFR	7.08	6.96	6.90	6.86
		Long-term		
AFR	6.75	6.64	6.59	6.55
110% AFR	7.43	7.30	7.23	7.19
120% AFR	8.13	7.97	7.89	7.84

S CORPORATIONS-*ALM* § 7.02[3][c]*

ELIGIBILITY. The taxpayer was a partner in a professional corporation who wanted to limit the taxpayer's personal liability for the acts of the other partners. The taxpayer formed a corporation with the taxpayer as sole shareholder which would own the taxpayer's partnership share. Other individual partners were also forming corporations to limit their liability. The corporation had only one class of stock and one shareholder. The IRS ruled that because the formation of the corporation had a valid business purpose, the corporation was eligible for the S corporation election. **Ltr. Rul. 9409027, Dec. 6, 1993**.

NEGLIGENCE

CHICKEN FEEDER. The plaintiff was the parent of a four year old child whose finger was injured while accompanying his father who was working on a chicken feeder owned by the father's employer. The defendants were the chicken feeder manufacturer, the chicken farm owner and the chicken processor who contracted with the owner for the raising of the chickens. The farm owner had modified the chicken feeder by drilling additional holes for dispensing the feed; however, the new holes did not have any safety covering. The owner testified and the father testified that the owner had warned the father that a finger could be lost if poked in the hole while the feeder was running. The court held that the chicken processor was not liable for the accident because the processor exercised no control over the farm owner's operation of the farm. The court also held that the manufacturer was not liable because the injury occurred as a result of the modification of the feeder by the owner. The court also held that the farm owner was not liable for the injury because the child was not in the chicken coup with the owner's permission, the owner had given warning about the danger, and the injury occurred primarily because of the negligence of the father. **Williamson v. Tyson Foods, Inc., 626 So.2d 1261 (Ala. 1993)**.

NUISANCE

FEEDLOT-*ALM* § 13.08.* The defendants operated a confinement swine-raising facility and disposed of the waste from the facility by spreading the liquid and solids on the adjoining fields, using center-based pivots for spraying the liquid. The plaintiffs were neighbors who filed an action in nuisance because of the odors and flies created by the waste manure spreading and lagoons used to hold the waste. The trial court had used jury instructions which stated that the interference of the odors and flies was unreasonable if "the damage was greater than the plaintiffs should be required to bear without compensation; or the defendants could have avoided the harm in whole or in part without undue hardship." The appellate court held that the instructions were improper in that the standard was (1) whether the gravity of the harm outweighed the utility of the conduct, or (2) the harm was serious and the financial burden of compensating for the harm would not make the continuation of the conduct not feasible. **Kopecky v. National Farms, Inc., 510 N.W.2d 41 (Neb. 1994)**.

SECURED TRANSACTIONS

AFTER-ACQUIRED PROPERTY. The debtors had granted the FmHA a security interest in farm equipment, crops and other property, with the security agreement stating that the security interest also included after-acquired property; however, the financing statement did not mention after-acquired property. The court held that the financing statement's listing of the general types of property covered was sufficient notice to other creditors that the security agreement could cover after-acquired property; therefore, the debtors' after-acquired property was covered by the security interest. The debtors had fed some of the hay collateral to their cattle which were also covered by the FmHA security interest and the FmHA. The court agreed with the debtors that the security interest in the hay terminated when the hay was fed to the cattle. The court noted that the feeding of the hay to other collateral was a benefit to the FmHA and resulted in a higher value of the cattle, thus increasing the value of the FmHA's security interest in the cattle. The debtors had subtracted the costs of machinery repair from the value of the crops harvested by the equipment and the FmHA argued that because the repairs also benefitted the debtors as to future crops, a portion of the repair costs should not be deducted from the value of the harvested crops. The court held that the repair costs were deductible because the repairs were part of an ongoing farm operations which incurred annual repair expenses. ***In re* Brace, 163 B.R. 274 (Bankr. W.D. Pa. 1994)**.

CITATION UPDATES

Est. of Robertson v. Comm'r, 15 F.3d 779 (8th Cir. 1994), *rev'g*, 98 T.C. 678 (1992) (marital deduction), see p. 45 *supra*.

Sharp v. U.S., 14 F.3d 583 (Fed. Cir. 1993), *aff'g*, 92-2 U.S. Tax Cas. (CCH) ¶ 50,561 (Cl. Ct. 1992) (investment interest), see p. 21 *supra*.

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CONVERSION. The plaintiff was a seed and fertilizer supplier who advanced seed, fertilizer and other crop materials to the debtor. The debtor granted the plaintiff a security interest in the portion of the crop not already pledged as security for the rent for the crop land. The defendant was the landlord of the debtor who had perfected a landlord's lien for the rent on the debtor's crop land except for 350 acres which was to be used to allow the debtor to obtain financing for producing a crop. The plaintiff's security agreement did not specifically identify the 350 acres which could be used as collateral but only identified all of the debtor's leased land as the land on which the collateral crops were grown. The plaintiff sued the defendant for conversion of the crops because the defendant harvested most of the crops and applied the proceeds to rent and other financial advances to the debtor and to harvesting costs without remitting a portion of the proceeds to the plaintiff. The court held that because the plaintiff's security agreement did not identify the 350 acres on which the collateral crops were to be grown, the plaintiff's security interest was not perfected. The court also held that the payment of the harvesting costs before paying the plaintiff was proper under Mo. Rev. Stat. § 400.9-504(1). **MFA, Inc. v. Pointer, 869 S.W.2d 109 (Mo. Ct. App. 1993)**.

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