growing of crops for other than reproductive purposes, and in an amount not to exceed that which was saved by the first farmer for planting that year's crop on the first farmer's holdings."[19]

• The 1994 amendments require that a breeder/seller use the variety name even after the expiration of the plant variety protection certificate except for lawn, turf, forage grass seed, alfalfa or clover seed unless required to use a variety name under state law.[20]

• The amendments clarify the law as to what constitutes infringement. Under the act as amended, it is an infringement, if done without the owner's authorization, to — (1) condition a variety for purposes of propagation or (2) stock the variety for any existing purpose that constitutes infringement.[21] However, it is not an infringement of an owner's rights to perform any act — (1) concerning propagating material of a protected variety that has been marketed in the United States unless the act involves further propagation of the variety or involves an export into a country that does not protect such varieties of the plant genus or species (unless the export is for final consumption) or (2) done privately and for non commercial purposes.[22]

In conclusion

Although the prohibition of the practice of selling saved seed is the most visible feature of the 1994 amendments, other provisions will have a modest effect on the seed trade and on the purchasers of seed subject to protection under the Plant Variety Protection Act.

FOOTNOTES

1 Pub.L. 91-577, 84 Stat. 1542 (1970); 7 U.S.C. §§ 2231-2583. See generally 12 Harl, **Agricultural Law** ch. 110 (1994). See also N. Harl, "The 'Saved Seed' Exception to the PVPA," 5 **Agric. L. Dig**. 129 (1994).

2 Asgrow Seed Co. v. Winterboer, 795 F. Supp. 915 (N.D. Iowa 1991), *rev'd*, 982 F.2d 486 (Fed. Cir. 1992).

3 *Id*.

4 62 U.S. Law Week 3683, April 19, 1994.

5 See n. 2 *supra*.

6 Plant Variety Protection Act Amendments of 1994, Pub. L. 103-349, 108 Stat. 3136-3145 (1994).

7 See H. Rep. No. 103-699, 103d Cong., 2d Sess., Aug. 12, 1994, to accompany H.R. 2927.

8 *Id*. at 10.

9 See n. 1 *supra*.

10 Plant Variety Protection Act Amendments of 1994, n. 6 *supra*, 108 Stat. 3140 (1994), *amending* 7 U.S.C. § 2483.

11 *Id*.

12 Plant Variety Protection Act Amendments of 1994, n. 6 *supra*, 108 Stat. 3139 (1994), *amending* 7 U.S.C. § 2402.

13 7 U.S.C. § 2402(b)(1).

14 Plant Variety Protection Act Amendments of 1994, n. 6 *supra*, 108 Stat. 3142 (1994), *amending* 7 U.S.C. § 2543.

15 See H.R. Rep. No. 103-699, n. 7 *supra*, at 2430-2431.

16 *Id*.

17 *Id*.

18 *Id*.

19 *Id*.

20 Plant Variety Protection Act Amendments of 1994, n. 6 *supra*, 108 Stat. 3142 (1994), *amending* 7 U.S.C. § 2541.

21 Plant Variety Protection Act Amendments of 1994, n. 6 *supra*, 108 Stat. 3141 (1994), *amending* 7 U.S.C. § 2541.

22 Plant Variety Protection Act Amendments of 1994, n. 6 *supra*, 108 Stat. 3142 (1994), *amending* 7 U.S.C. § 2541.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

AVOIDABLE TRANSFERS. Prior to filing for bankruptcy, the debtor inherited an interest in a farming partnership and one third of the decedent's estate. The debtor filed a valid disclaimer of all of the inheritance one day before filing for bankruptcy. The inherited property passed to the debtor's son. The Chapter 7 trustee sought to avoid the disclaimer as a fraudulent transfer. The court held that, under the Texas relation back doctrine, a disclaimer causes the property to be treated as having never vested in the disclaimant; therefore, the debtor never had an interest in the property for bankruptcy purposes and no transfer occurred. The court adopted the reasoning applied by *In re Atchinson, 925 F.2d 209 (7th Cir. 1991), cert. denied 112 S.Ct. 178 (1991)*. **Matter of Simpson, 36 F.3d 450 (5th Cir. 1994)**.

EXEMPTIONS

AVOIDABLE LIENS. The debtor claimed a homestead exemption in a residence in which the debtor had $2,100 in equity after two consensual liens. The property was also subject to two judgment liens far in excess of the value of the property. The court held that the judgment liens were voidable only to the extent of the debtor's equity in the property as of the date of the petition. **In re Menell, 37 F.3d 113 (3d Cir. 1994)**.

CONVERSION. Two days before filing for Chapter 7, the debtors sold their automobile and applied the proceeds on their homestead mortgage in order to increase the amount of their homestead exemption. The trustee challenged the pre-petition transfer as fraudulent. Under Fla. Stat. § 222.29, a homestead exemption is barred if the exemption resulted from asset conversions with the intent to hinder, delay or defraud creditors. The court held that the near pre-petition conversion of nonexempt assets to exempt assets was a transfer with the intent to hinder or delay creditors; therefore, the debtors' homestead exemption was denied to the extent of the pre-petition transfer. ***In re* Thomas, 172 B.R. 673 (Bankr. M.D. 1994)**.

HOMESTEAD. The debtor was employed as a psychotherapist and owned two horses. Although the debtor had at one time raised crops on a portion of the land, no farming activities had occurred for several years except for enrollment of some of the land as CRP. No residence existed on the land. Because the debtor did not have any other

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residence, the Bankruptcy Court granted the debtor three acres of the land on which to build a residence. Because the land was zoned for exclusive agricultural use, requiring 35 acres for building any residence, the court ordered the trustee to obtain residential zoning for the three acre parcel. The debtor argued that because the land was zoned for agricultural use, the homestead should have been 35 acres in size. The court held that restricting the homestead to three acres was proper in fairness to the creditors and because the debtor did not use the land for agricultural purposes. The court also held that the order to apply for the change of zoning was within the equitable powers of the court. **Matter of Lloyd, 37 F.3d 271 (7th Cir. 1994)**.

CHAPTER 12-*ALM* § 13.03[8].*

ESTATE PROPERTY. The debtors had defaulted on a mortgage loan on their farm and the secured creditor had obtained a foreclosure judgment in state court. Before the foreclosure sale took place; however, the debtors filed for Chapter 12. The creditor filed for relief from the automatic stay, arguing that the debtors had no rights in the property except their redemption rights. The court held that under South Dakota law, the debtor retained the right to cure the default until the foreclosure sale occurred; therefore, the debtor had sufficient rights in the property to be protected by the automatic stay. The court rejected two state court opinions to the contrary. ***In re* Bunke, 173 B.R. 172 (Bankr. D. S.D. 1994)**.

PLAN. The debtor's plan included payment of two secured claims, a mortgage to be paid over 20 years and a county tax obligation which was to be paid over the three years of the plan. The trustee objected to the plan and sought to extend the tax payments over a longer time to increase the amount of disposable income available to be paid to unsecured creditors over the life of the plan. The trustee argued that the two secured claims should have equal amortization periods. The court rejected this argument as not supported by the Bankruptcy Code nor required by the circumstances. The court noted that the tax obligation was nonvoluntary and the delay in payment would harm third parties, other taxpayers and government agencies, who did not have any say in the payment of the tax claim. The trustee also argued that the plan was proposed in bad faith because the three year tax payments minimized the amounts paid to unsecured creditors. The court held that the plan was not made in bad faith because the plan followed all statutory requirements and the payment period was justified under the reasons allowing a payment period different from the mortgage claim. **Matter of Fortney, 36 F.3d 701 (7th Cir. 1994)**.

TRUSTEE FEES. The debtors' Chapter 12 plan provided for payment of the trustee's fees except where direct payments to creditors were made. The plan also provided that the debtor would make all disbursements under the plan except for payments required to be made by the trustee. The trustee argued that the trustee fee was required to be paid on all payments under the plan on impaired claims, even those directly paid by the debtors. The debtors argued that the plan allowed direct payment of impaired claims; therefore, no fee was due for these direct payments. The Bankruptcy Court held that under Section 586, payments on impaired claims are made under the plan and require payment of the trustee's fee. The District Court reversed, holding that where the confirmed plan provided for direct payments to secured creditors without payment of trustee's fees, no payment of trustee's fees was required. The appellate court affirmed. ***In re* Wagner, 36 F.3d 723 (8th Cir. 1994), *aff'g*, 159 B.R. 268 (D. N.D. 1993), *rev'g*, 150 B.R. 753 (Bankr. D. N.D. 1993)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

AVOIDABLE LIENS. The IRS had filed and perfected a tax lien against the debtor pre-petition. The debtor received a discharge in a Chapter 7 no-asset case and filed a post-discharge motion to avoid the tax lien as a preference. The court held that, under Section 547(c)(6), because the tax lien was not avoidable under Section 545 as a perfected statutory lien, the tax lien was not avoidable under Section 547(b) as a preference. ***In re* Wiles, 173 B.R. 92 (Bankr. M.D. Pa. 1994)**.

CLAIMS. The IRS filed a timely claim for taxes, listing each item as estimated. Over one year later and after the bar date for claims, the IRS amended the claim, increasing the amount of the claim by $300,000. The Bankruptcy Court denied the increase in the claim because the IRS gave no reason for the delay and the trustee and creditors had relied on the original IRS claim in lengthy and expensive litigation which would not have occurred if the amount of the original claim had been closer to the amended claim. The appellate court reversed, holding that the amendment was allowable because the original claim was labeled as an estimate and the IRS filed the amendment as quickly as possible after receiving the completed tax returns involved. ***In re* Tanaka Bros. Farms, Inc., 36 F.3d 996 (10th Cir. 1994), *rev'g unrep. D. Ct. dec. aff'g*, 150 B.R. 55 (Bankr. D. Colo. 1993)**.

The IRS filed a claim for taxes in the case but when the trustee learned that the claim was only estimated and that the actual claim amount was different, the trustee filed an objection to the filed claim. The IRS failed to respond to the objection and the court disallowed the claim. The IRS argued that disallowing the claim amounted to a default judgment in violation of Fed. Rule 55 because the trustee failed to produce any evidence. The court held that the claim was properly disallowed because disallowance was not a default judgment. ***In re* Davis, 173 B.R. 124 (Bankr. N.D. Ohio 1994)**.

DISCHARGE. The debtors had filed a previous Chapter 13 case which was open during the tax years 1985 through 1989. The debtors filed a second case and the IRS filed a claim for taxes due from 1985 through 1989. The debtors argued that the taxes were dischargeable because due more than three years before the filing of the current case. Although the court noted that the Bankruptcy Code has no specific provision tolling the three year period for dischargeable taxes, the court held that it had the power under Section 105 to rule that the three year period was tolled during the first bankruptcy case because the IRS was prevented by the automatic stay from collecting the taxes. **Solito v. U.S., 172 B.R. 837 (W.D. La. 1994)**.

The debtors filed for Chapter 13 with a plan which provided for payment of all priority taxes but did not provide for any payments on secured tax claims. The IRS filed one claim for priority taxes and one secured claim for taxes. The debtors did not object to the IRS claims and the IRS did not object to the plan. The court held that the IRS claims in excess of the plan tax payments were discharged but that the lien securing the remaining taxes survived the bankruptcy case. The court rejected a petition by the debtors to value the IRS secured claim, holding that the time for such valuation was during the bankruptcy case before the confirmation of the plan. ***In re* Kuebler, 172 B.R. 595 (E.D. Ark. 1994), *aff'g*, 156 B.R. 1012 (Bankr. E.D. Ark. 1993)**.

PLAN. At the confirmation hearing, the IRS agreed to confirmation of the plan which included the following provisions: (1) the debtors were to file income tax returns for 1984-1986, (2) after the filings, the IRS had 90 days to file additional claims for those years, and (3) after additional claims were filed, the debtors had 180 days to file objections to the claims. The plan was confirmed and the debtors filed their 1984-86 returns. The IRS filed a claim for no tax due for 1984-86. Two and one-half years later, the IRS assessed the debtors $110,000 for 1984-86 and filed a Notice of Intent to Levy for the taxes plus penalties and interest. The debtors sought an injunction against the levy. The IRS argued that because the taxes were nondischargeable, the confirmed plan was not binding and that any injunction was prohibited by the Anti-Injunction Act. The court held that the IRS was bound by its agreement and the confirmed plan and that the IRS could be enjoined from violating that agreement because the IRS had voluntarily entered the agreement and a breach of the agreement would interfere with the orderly administration of the bankruptcy estate. An appeal was dismissed because the IRS later obtained summary judgment allowing the claims. ***In re* Martin, 172 B.R. 644 (S.D. Cal. 1994), *app. dismissed*, 150 B.R. 43 (Bankr. S.D. Cal. 1993)**.

CONTRACTS

BREACH. The defendant had contracted to obtain cucumbers for a pickle producer. The defendant in turn contracted with the plaintiffs to purchase pickles for the defendant. The defendant agreed to supply the necessary equipment for a pickle shed and to pay the plaintiffs 50 cents commission per bushel of pickles purchased. The agreement was only for 1989 but the defendant accepted cucumbers from the plaintiffs from the spring 1990 crop. Although the contract did not mention that the plaintiffs would be growing any of the cucumbers, the plaintiffs grew seed supplied by the pickle producer and included the grown cucumbers in the ones sold to the defendant. Because the spring 1990 crop was so large, the defendant informed the plaintiffs in July 1990 that no cucumbers would be purchased from the Fall 1990 crop. In February 1991, the defendant informed the plaintiffs that no additional cucumbers would be purchased from the plaintiffs and the pickle producer removed its equipment from the plaintiffs' farm. The plaintiffs argued that the defendant breached an implied contract for cucumbers for the Fall 1990 and 1991 seasons based on the defendant's failure to give timely notice that no cucumbers would be purchased and the failure of the defendant to remove the equipment until February 1991. The plaintiffs argued that the industry practice was that if notice is not given in a reasonable time before the crop season, a contract for cucumbers continued for the same period. The court held that the plaintiffs failed to provide sufficient evidence of such industry practice and that because the contract involved only the plaintiffs' purchase of cucumbers for the defendant, no breach of the contract could occur from the failure of the defendant to purchase cucumbers grown by the plaintiffs. **Love v. Gamble, 448 S.E. 2d 876 (S.C. App. 1994)**.

FEDERAL AGRICULTURAL PROGRAMS

BORROWER'S RIGHTS-*ALM* § 11.01[2].* The plaintiffs owned two ranches, a homestead and a second ranch. The homestead was paid for and the second ranch was subject to only a small liability. The plaintiffs purchased a third ranch by borrowing money from the FCB of Spokane. Because the purchase price exceeded the appraised value of the new ranch, the FCB took a mortgage on the second and third ranches with the loan amount being 59 percent of the value of the two properties. The plaintiffs testified that the FCB loan officer assured them that the homestead would not be endangered by the mortgage and that if the plaintiffs had trouble paying the loan, the FCB would take the two properties in full satisfaction of the loan. The mortgage incorporated the Farm Credit Act of 1971 and any amendments into the loan contract, including the FCB's rights of foreclosure. The value of the ranches declined substantially and the plaintiffs defaulted on the loan. The plaintiffs offered the deeds to the two ranches but the FCB declined to accept the deeds. The FCB sent the plaintiffs notice of their rights to apply for debt restructuring but denied their application. The plaintiffs sued the FCB for breach of contract arguing that the denial of the restructuring application violated the amended Farm Credit Act and that the FCB had breached its promise not to seek any deficiency beyond foreclosure against the two ranches. The FCB argued that no private right of action was allowed to enforce the provisions of the Farm Credit Act and that no oral evidence of any promise could be used because the written loan agreement constituted the entire agreement. The court held that where the Farm Credit Act was made a part of the loan agreement, a violation of the Act's terms could be enforced in a breach of contract action. The court also held that such a breach would be an affirmative defense to a foreclosure action by the FCB. The court also held that the oral representations of the loan officer could support an affirmative defense of equitable estoppel to the foreclosure action. The case was submitted to the court for supervisory control to establish the legal issues in the case prior to trial. **State v. District Court of the Third Jud. Dist., 881 P.2d 594 (Mont. 1994)**.

FEDERAL SEED ACT. The AMS has adopted as final regulations amending the Federal Seed Act regulations, primarily to change the common and botanical names of several agricultural and vegetable seeds and to update the standards for seeds. **59 Fed. Reg. 64486 (Dec. 14, 1994)**.

MIGRANT AGRICULTURAL LABOR-*ALM* § 3.04.* The plaintiffs were migrant agricultural workers who were hired by the defendant farm labor contractor. The plaintiffs were hired in El Paso, Texas and bused more than two hours to the fields where the plaintiffs picked chili peppers. Because the plaintiffs wanted an earlier pickup time, the plaintiffs arrived at the field before sunrise and had to wait about an hour each day before picking could start. At the end of the day, the defendant cashed the farmer's check,

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counted the plaintiffs' tally of pepper cartons and paid the plaintiffs. The ride back to El Paso took another two hours. The plaintiffs sought compensation for the travel times and the waiting periods at the beginning and ending of the day. The court held that the travel times were not compensable because the workers could choose where to live and did not have to use the defendant's transportation. The court remanded the case, however, on the issue of whether the waiting periods were compensable because the trial court did not make specific rulings on why it had determined that the waiting periods were compensable. The appellate court held that if the waiting periods were incurred for the benefit of the defendant, then the plaintiffs should have received compensation for the periods; however, if the waiting periods were necessitated by the number of employees or the employees own requests, the periods were noncompensable. **Vega v. Gasper, 36 F.3d 417 (5th Cir. 1994)**.

The plaintiff was a migrant farm worker who asked an employee of the defendant tomato farm and cannery whether the defendant needed any workers. The employee consulted with the defendant and informed the plaintiff that work was available. The plaintiff was hired by the defendant and the plaintiff sued for violations of the MSAWPA. The defendant did not challenge the violations but argued that the defendant was exempt from the MSAWPA because the defendant was a family farm which did its own farm labor contracting. The defendant obtained farm labor through three methods: (1) borrowing of workers from neighboring farms, (2) referrals from the state employment agency, and (3) word-of-mouth referrals from existing employees, as was done with the plaintiff. The court held that the borrowing of employees did not amount to farm labor contracting by nonfamily members because the test involved only how the defendant obtained the workers for the defendant's farm. Second, the court held that the referrals from the state employment agency did not amount to third party labor contracting because the state agency did not contract with the defendant for the employment recruiting. The court held that the defendant's employee performed labor contracting because the employment negotiations were conducted through the employee without any personal contact by the defendant; therefore, the defendant was not eligible for the family farm exemption from the MSAWPA. **Flores v. Rios, 36 F.3d 507 (6th Cir. 1994)**.

PESTICIDES-*ALM* § 2.04.* The EPA has issued proposed regulations governing the regulation under FIFRA of plant-produced pesticides used in the host plant. Several plant pesticides remain exempt from FIFRA regulation, including plant pesticides in which (1) the genetic material that encodes for a pesticidal substance is derived from plants that are sexually compatible with the recipient plan and has not been derived from a plant which is not sexually compatible with the recipient plan; (2) the pesticidal substance acts by inhibiting a pest from attaching to the plant, penetrating the plant or invading the plants tissue, or (3) the pesticidal substance is a coat protein from a plant virus. **59 Fed. Reg. 60519 (Nov. 23, 1994), *adding* 40 C.F.R. Part 174.**

TUBERCULOSIS. The APHIS has adopted as final the designation of Louisiana as an accredited-free state. **59 Fed. Reg. 60551 (Nov. 25, 1994)**.

WETLANDS RESERVE. The Farm Service Agency has adopted as final regulations implementing the Wetlands Reserve Program and changing the name of the Agricultural Stabilization and Conservation Service to the Farm Service Agency. **59 Fed. Reg. 60297 (Nov. 23, 1994)**.

FEDERAL ESTATE AND GIFT TAX

ADMINISTRATIVE EXPENSES. The decedent's estate claimed a deduction for an executor's fee of $100,000 based on an estimate of 1,000 hours of work at $100 per hour. The executor maintained no records of the work performed; therefore, the court accepted the IRS determination of $26,000 as the allowable fee deduction. The estate also claimed a deduction for the estimated expenses of selling real estate which had been on the market for four years, although the estate produced no records of attempts to advertise the sale or any prospective buyers. The court disallowed the selling expense deduction as too speculative. **Estate of Koss v. Comm'r, T.C. Memo. 1994-599**.

DISCLAIMERS-*ALM* § 5.02[6].* In 1929, the decedent's will created a trust for the decedent's spouse with remainders to the decedent's three children. The children had a general power of appointment over their remainder interests. In 1943 one child had disclaimed a portion of the general power of appointment such that the child retained only the power to appoint to specific persons. The child died without exercising the remaining power of appointment and the trust property passed under the trust to a grandchild of the original decedent. The grandchild filed a disclaimer of the interest which passed under the trust by reason of the child's failure to exercise the power of appointment. The IRS ruled that the child's release of a portion of the general power of appointment was not an exercise of the general power of appointment because the power was created before 1942 and the release occurred before 1951. The IRS also ruled that the release was an incomplete gift. Finally, the IRS ruled that the grandchild's disclaimer was effective because the grandchild's interest in the trust did not vest until the child's death. **Ltr. Rul. 9447021, Aug. 22, 1994**.

Within nine months after the decedent's death, the two residuary beneficiaries, cousins of the decedent, disclaimed their interests in the bequest, with one disclaiming all of the bequest and the other disclaiming a fraction of the bequest equal to $600,000 over the value of the property that would have passed under the decedent's will but for the disclaimer, as finally determined for estate tax purposes, net of all estate, inheritance and other death taxes. The IRS ruled that the disclaimers were effective and the disclaimed property passed to the disclaimants' children because the will did not provide for alternate residuary beneficiaries. The IRS also ruled that the decedent was of the same generation as the cousin because the mothers of the decedent and the cousins were sisters; therefore, the passing of the residuary bequest to the cousins' children was not subject to GSTT. **Ltr. Rul. 9447033, Aug. 26, 1994**.

GENERATION SKIPPING TRANSFERS-*ALM* § 5.04[6].* The decedent's will in 1957 established a testamentary trust with the decedent's daughter as life beneficiary with a remainder to the daughter's child, contingent on the child surviving the daughter. The trust was grandfathered as to GSTT because the trust was irrevocable since September 1986. The child transferred the contingent remainder to a Grantor Retained Annuity Trust (GRAT) for the benefit of the child. The IRS ruled that the transfer of the contingent remainder did not subject the trust to GSTT. **Ltr. Rul. 9446024, Aug. 17, 1994**.

An irrevocable trust was created before October 21, 1942. The beneficiary released the power to designate the beneficiaries of the trust and the heirs of the beneficiary also disclaimed their interests in the trust. The IRS ruled that the disclaimers were not transfers subject to gift tax and would not make the trust subject to GSTT. **Ltr. Rul. 9445014, Aug. 10, 1994, clarifying Ltr. Rul. 9051012, Sept. 20, 1990**.

GROSS ESTATE. The decedent was the beneficiary of a marital trust established by the will of the decedent's predeceased spouse. The trust provided for distribution of net income to the decedent and gave the trustees the power to distribute principal for the decedent's comfort, maintenance, support and general well-being. The decedent and spouse had long established the practice of giving substantial annual gifts to family members and the decedent continued the practice after the spouse's death. The decedent established an irrevocable trust for the decedent's children who would receive the marital trust corpus if the decedent died without otherwise exercising a power of appointment over the trust corpus. The marital trust trustees distributed several shares of stock to the decedent who contributed the stock to the irrevocable trust. The IRS argued that the distribution of the stock was beyond the authority of the trustees and that a state court would void the distributions. The Tax Court held that a state court would allow the distributions because of the decedent's and spouse's history of giving gifts to family members and that the stock was distributed to persons who would otherwise have received the stock. **Estate of Hartzell v. Comm'r, T.C. Memo. 1994-576**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* The decedent and spouse had established two inter vivos trusts with themselves as trustees and lifetime beneficiaries. At the death of the decedent, the surviving spouse was the sole beneficiary and the decedent's estate claimed a marital deduction for the decedent's interest in the trust which passed to the surviving spouse. The trusts also provided that the surviving spouse had to survive the first to die by nine months in order to receive the decedent's interest in the trust. The IRS argued that, under state law, the surviving spouse did not have a power of appointment over trust corpus or the power to require distribution of principal; therefore, the surviving spouse's interest was terminable and not eligible for the marital deduction as QTIP. The court held that, under state law, the trusts were revocable until nine months after the decedent's death and that the surviving spouse had the power to require distribution of principal ; therefore, the surviving spouse effectively had a power of appointment over trust principal and the interest was QTIP. **Estate of Flake v. Comm'r, T.C. Memo. 1994-573**.

The decedent's predeceased spouse's will had established a testamentary trust for the decedent spouse and had claimed a QTIP marital deduction based on the value of the decedent's income interest in the trust. The marital deduction was not necessary to reduce the estate tax to zero because of ample unified credit. The decedent's estate argued that the marital trust property was not included in the decedent's estate because the predeceased spouse's estate marital deduction election was invalid since the election included only the income interest which was not a fraction or percentage share of the trust property. The IRS ruled that although the deduction claim was based on the value of the income interest, the estate had characterized the claim as a percentage of the trust value; therefore, the election substantially complied with the QTIP election requirements and was valid. The IRS also stated that for purposes of inclusion of the property in the decedent's estate, the nature of the decedent's interest in the property was more important as to whether the interest was included in the decedent's estate. The estate also argued that because the predeceased spouse's estate made the election only as to the income interest, the value of the interest on the date of the decedent's death was zero. The IRS ruled that the marital deduction interest property included in the decedent's estate applies only to the trust property supporting the income interest; therefore, the value of the marital trust property and not the value of the income interest is included in the decedent's gross estate. **Ltr. Rul. 9446001, July 11, 1994**.

VALUATION-*ALM* § 5.02[3][a].* The taxpayer owned all of the issued common stock of a corporation. The corporation amended its articles of incorporation to issue a second class of preferred stock which (1) did not have voting rights; (2) had dividend rights, conversion rights, redemption rights, redemption price, and liquidation preferences alterable by the board of directors; (3) had a noncumulative dividend of 55 cents per share; (4) were convertible to common stock; (5) were redeemable by the corporation in three years or later if so determined by the board; and (5) were subject to other terms and conditions as approved by the board and the shareholder. The taxpayer converted just under half of the preferred shares to common stock and transferred the stock to the taxpayer's two children. The taxpayer filed a gift tax return and valued the common stock gift at its book value. The redemption date was extended to October 1995. The IRS ruled that the taxpayer made a transfer of an equity interest in the corporation while retaining an applicable retained interest; therefore, the gift of the stock had to be valued under I.R.C. § 2701. In determining the value of the gift, the major issue was the value of the preferred stock right of noncumulative dividend of 55 cents, the right to convert to common stock and the right to have the stock redeemed on a certain date. The IRS ruled that the dividend right was to be valued at zero because no election was made under Treas. Reg. § 25.2701-2(c)(2). The IRS also ruled that the conversion right was to be valued at zero. The IRS ruled that the redemption right was also valued at zero because the redemption date was passed and the date was extended without the consent of the shareholder, indicating that the corporation had an indefinite "call" right. The IRS noted that, because the shareholder was a director, the shareholder would be required by the director's fiduciary duty to continue to extend the redemption date in order to protect the existence of the corporation. **Ltr. Rul. 9447004, July 29, 1994**.

FEDERAL INCOME TAXATION

ALTERNATIVE MINIMUM TAX. The IRS has adopted as final regulations providing that noncorporate taxpayers must treat references to AGI as references to regular AGI in determining all items of AMT income, deductions or exclusions. The regulations also provide that, in general, all I.R.C. provisions that apply in determining the regular taxable income also apply in determining AMTI. **Treas. Reg. § 1.55-1**. **59 Fed. Reg. 60556 (Nov. 25, 1994)**.

The taxpayer had alternative minimum taxable income (AMTI) for 1984 as well as regular taxable income. The 1984 return included use of the 60 percent capital gain exclusion available in 1984. In 1987, the taxpayer had excess regular net operating losses which were carried back to 1984 but no alternative net operating losses. The NOL reduced the regular taxable income to zero and the remaining NOL was used up by the 60 percent capital gains exclusion. The taxpayer argued that because the taxpayer received no tax benefit from the capital gains deductions, the offset NOL reduced AMTI for 1984, under the tax benefit rule. The court held that, under I.R.C. § 55(b), for purposes of determining AMTI, the regular adjusted gross income could not be reduced by regular NOL and that the tax benefit rule did not apply because the Code expressly did not allow AGI to be reduced by regular NOL. The court also held that the tax benefit rule did not apply to AMT provisions. **Urbanek v. U.S., 94-2 U.S. Tax Cas. (CCH) ¶ 50,606 (S.D. Fla. 1994)**.

DEDUCTIONS. The IRS has issued proposed regulations eliminating the rule that required an employer to deduct and withhold income tax as a prerequisite for claiming a deduction for property transferred to an employee in connection with the performance of services. The proposed regulations provide guidance for substantiating a deduction for transfers of property for services. **59 Fed. Reg. 62370 (Dec. 5, 1994)**.

INFORMATION RETURNS. The IRS has adopted as final regulation governing the reporting of prepaid interest in the form of points paid on residential mortgages. Recipients of more than $600 or more of interest on a mortgage in a calender year must report the points on Form 1098. **59 Fed. Reg. 63248 (Dec. 8, 1994)**.

INSTALLMENT REPORTING-*ALM* § 6.03[1].* As part of a 12 month liquidation plan, the taxpayer S corporation sold its assets in exchange for an installment obligation. The corporation filed its Form 1120S prior to the due date and included all of the gain in income. The other shareholders objected to this return and the corporation filed an amended Form 1120S electing to report the gain in installments. The IRS ruled that, under *Haggar Co. v. Helvering, 308 U.S. 389 (1940)*, the second return was considered the "return" for purposes of the election to report gain on the installment method; therefore, the corporation would be allowed to report the gain on the installment method. **Ltr. Rul. 9446007, Aug. 12, 1994**.

INTEREST. The taxpayers were farmers who had short-term operating loans with a bank. The taxpayers borrowed money from the bank to build a barn. Because of financial difficulties, the taxpayers enrolled in the Dairy Termination Program and planned to apply the program funds to the loan over three years but were unable to provide enough other funds to make the loan payments. The taxpayers settled a foreclosure suit with the bank to pay only the DTP funds on the loan. The taxpayers claimed the entire payment as an interest deduction relying on language in the short-term notes that payments were to be applied first to interest. The court held that the interest deduction was not allowed because the taxpayers failed to provide substantial evidence of how the DTP payments were applied on the real estate loan. **Jacoby v. Comm'r, T.C. Memo. 1994-612**.

INTEREST RATE. The IRS has announced that for the period January 1, 1995 through March 31, 1995, the interest rate paid on tax overpayments remains at 8 percent and for underpayments at 9 percent. The interest rate for underpayments by large corporations also remains at 11 percent. Note: the just-enacted GATT legislation reduces the interest rate on overpayments above $10,000 by 1.5 percentage points. **Rev. Rul. 94-78, I.R.B 1994-51**.

PENSION PLANS. For plans beginning in November 1994, the weighted average is 7.24 percent with the permissible range of 6.52 to 7.97 percent for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 94-101, I.R.B. 1994-48, 6**.

SAFE HARBOR INTEREST RATES
December 1994

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR 6.66	6.55	6.50	6.46	
110% AFR	7.34	7.21	7.15	7.10
120% AFR	8.01	7.86	7.78	7.73
		Mid-term		
AFR 7.74	7.60	7.53	7.48	
110% AFR	8.53	8.36	8.27	8.22
120% AFR	9.33	9.12	9.02	8.95
		Long-term		
AFR 8.23	8.07	7.99	7.94	
110% AFR	9.08	8.88	8.78	8.72
120% AFR	9.91	9.68	9.57	9.49

SELF-EMPLOYMENT TAX. The taxpayer leased a cattle ranch on a sharecropping basis. The taxpayer did not participate in the management or production of the cattle raising business and did not perform any physical labor on the ranch. The court ruled that the net earnings from the sharecropping arrangement was not subject to self-employment tax. **Dugan v. Comm'r, T.C. Memo. 1994-578**.

TAX RATES. The taxable income ceilings for 1995 tax rates are (1) 15 percent: $39,000 for married couples filing jointly, $31,250 for heads of households, and $23,350 for single filers; (2) 28 percent: $94,250 for joint filers, $80,750 for heads of households, and $56,550 for single filers; (3) 31 percent: $143,600 for married couples filing jointly, $130,800 for heads of households, and $117,950 for single filers; (4) 36 percent: $256,500 for married couples filing jointly, $256,500 for heads of households, and $256,500 for single filers; (5) 39.6 percent, all income in excess of 36 percent ceiling. The standard deductions for 1995 are $6,550 for joint filers, $5,750 for heads of households and $3,900 for single filers. The personal exemption is $2,500. The personal exemption phases out beginning at $172,050 for joint filers, $143,350 for heads of households and $114,700 for single filers. **IR-94-115**.

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PRODUCTS LIABILITY

STATE OF THE ART DEFENSE. The plaintiff was injured when the plaintiff attempted to check a combine's engine while the cornhead was raised and running. The plaintiff attempted to climb over the cornhead in front of the cab and slipped. The plaintiff sued the defendant manufacturer of the combine in negligence for failure to warn. The trial judge instructed the jury that if the combine met the state of the art for design, the defendant could not be held to be negligent. The plaintiff appealed, arguing that the defendant had not provided sufficient evidence of the state of the art of combine design because the plaintiff had demonstrated that several safety measures were feasible and available to the defendant. The defendant's expert witnesses from two manufacturers gave opinions against all of the plaintiff's suggested safety modifications, primarily on the grounds that added protective devices would encourage operators to place themselves in danger by attempting to check on the machine while it was running. The court held that the defendant had produced sufficient evidence that the combine met the state of the art for combines at the date of manufacture of the plaintiff's combine. **Hughes v. Massey-Ferguson, Inc., 522 N.W.2d 294 (Iowa 1994)**.

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