[24] Temp. Treas. Reg. § 1.469-5T(b)(2)(ii)(A).
[25] See Treas. Reg.§ 20.2032A-3(g), Ex. 4 (eligibility for special use valuation).
[26] I.R.C. § 469(h)(5).
[27] I.R.C. §§ 469(h)(3), 2032A(b)(4).
[28] I.R.C. §§ 469(h)(3), 2032A(b)(5).
[29] I.R.C. § 469(h)(4)(A).
[30] S. Rep. 99-313, 99th Cong., 2d Sess. 735 (1986).
[31] I.R.C. § 469(i).
[32] I.R.C. § 469(i)(1), as amended by Sec. 1005(a)(6), Pub. L. 100-647, 102 Stat. 3388 (1988).
[33] I.R.C. § 469(i)(3).
[34] I.R.C.§ 469(i)(1).
[35] Temp. Treas. Reg. § 1.469-2T(e)(3)(viii), Ex. 8.
[36] *Id*.
[37] Letter dated Oct. 24, 1990, from Kenneth W. Gideon, Assistant Secretary (Tax Policy) to Senator Charles E. Grassley.
[38] See Harl, "Crop Share Leases and Material Participation Dichotomy," 49 Tax Notes 1255 (1990).

CASES, REGULATIONS AND STATUTES

ADVERSE POSSESSION

OPEN AND NOTORIOUS POSSESSION. In 1951, the plaintiffs purchased a northern portion of land owned by the seller but the southern boundary marked on the land included ten acres not included in the legal description of the land sold. The remaining southern portion was sold in 1979, and in 1985, the purchasers of the remaining portion discovered the error and claimed title to the ten acres. The plaintiffs brought a quiet title suit alleging title to ten acres of land by adverse possession. The trial court ruled that the plaintiff had title by adverse possession. The court held that sufficient evidence was presented to support the judgment because the plaintiffs and the seller had staked out the boundaries of the sold portion and the community had treated the disputed acres as owned by the plaintiffs. The court also held that sufficient evidence was presented of the plaintiff's actual possession of the ten acres from the plaintiff's use of the land for a residence, an archery range, trash burning and timber cutting. **Green v. Lange, 797 S.W.2d 765 (Mo. App. 1990)**.

BANKS

FIDUCIARY DUTY. The plaintiffs had obtained farm operating loans from the defendant bank for several years, but in 1985, the defendant refused to advance loans for the crop year and suggested that the plaintiffs obtain a loan from the FmHA. Although the plaintiffs, apparently, obtained a loan from the FmHA, the plaintiffs sued the defendant for breach of fiduciary duty, fraud, breach of implied-in-fact contract and interference with the FmHA loan contract. The court held that the defendant had no fiduciary duty toward the plaintiffs resulting from the past loans where the defendant did not assent to or become aware of any fiduciary relationship. The court also dismissed the plaintiff's fraud allegations because the allegations were based upon a breach of the fiduciary duty (which was already rejected) to inform the plaintiffs about various aspects of the FmHA loan. The court held that no contract-in-law for the defendant to lend the plaintiff operating expenses was created because both parties did not agree to any such contract and the past loans did not create any contract right to future loans. **Irons v. Community State Bank, 461 N.W.2d 849 (Iowa Ct. App. 1990)**.

BANKRUPTCY

GENERAL

AUTOMATIC STAY. At the time of filing for bankruptcy, the debtor was current on all local property taxes; however, after the filing, the taxes became delinquent and the city and county argued that the statutory liens which attached were entitled to super priority over other security interests in the debtor's land for which the taxes were owed. The court held that the statutory liens were void as violating the automatic stay because the liens did not arise until the taxes were assessed, which occurred post-petition. **Makoroff v. City of Lockport, 916 F.2d 890 (3d Cir. 1990), *aff'g* 111 B.R. 107 (W.D. Pa. 1990), *aff'g* 95 B.R. 370 (Bankr. W.D. Pa. 1989)**.

AVOIDABLE TRANSFERS. The debtors executed contracts for future delivery of grain to a creditor in return for the ability to purchase seed, fertilizer and chemicals for production of the grain during the crop year. After harvest, the debtor delivered the grain to the creditor who offset the amount owed by the debtor with the proceeds of the sale of the grain. The debtor declared bankruptcy a month after the offset and the trustee sought to avoid the offset as a preferential transfer. The court held that the date of transfer was not the date of the execution of the contracts but the date of the application of the grain proceeds to the debtors' account. The court also held that the contracts did not give the creditor any right in the grain but served only to set the price for the grain as between the debtor and the creditor and that the parties did not agree to the offset as the purpose of the contract. The court also rejected the creditor's claim that the contract and offset was a payment in the ordinary course of business because the creditor had not required the contract in previous purchases of supplies by the debtor. Thus, the court held that the offset was a preferential transfer. ***In re* Woker, 120 B.R. 454 (Bankr. S.D. Ill. 1990)**.

CLAIMS. In the debtor's Chapter 13 plan, the secured portion of a creditor's claim secured by a pickup was determined using the wholesale value of the truck. The court agreed with the use of the wholesale value of the truck because the creditor was in the business of financing automobile dealers and not in the business of buying and selling vehicles. ***In re* Owens, 120 B.R. 487 (Bankr. E.D. Ark. 1990)**.

DISCHARGE. The debtors originally filed their case under Chapter 7 but later converted the case to Chapter 11. The creditor filed a complaint against discharge of a claim 56 days after the case was converted but more than 60 days after the first meeting of creditors in the Chapter 7 case. The creditor argued that Bankr. Rule 1019(3) allowed the creditor an additional 60 day period after the conversion of the case. The court held that Rule 1019 does not refer to conversions of Chapter 7 cases to Chapter 11 and that none of the reasons for the extension of time in those situations

is relevant in conversions from Chapter 7 to Chapter 11; therefore, the period for filing dischargeability complaints is not extended by the conversion of the Chapter 7 case. ***In re* Kirkpatrick, 120 B.R. 309 (Bankr. S.D. N.Y. 1990)**.

The debtor used nonexempt assets for travel and other nonrecoverable expenses, improvements to an exempt residence and to pay on the homestead mortgage. Although the court did not disagree with the lower courts' rulings that the debtor's prebankruptcy conversions were not fraudulent, the court held that the excessive nature of the expenditures demonstrated intent to delay and hinder creditors sufficient to deny the debtor's discharge in this case. **Matter of Bowyer, 916 F.2d 1056 (5th Cir. 1990)**.

DISMISSAL. The debtors had filed a previous Chapter 11 case which was dismissed for inability to effectuate a plan and unreasonable delay prejudicial to creditors. Less than six months later, the debtors filed a second Chapter 11 case, claiming that a proposed lender liability case against a creditor would allow the debtors to successfully reorganize. The court held that the proposed suit was not a sufficient change in circumstances to support the new Chapter 11 filing because the debtors had ample time during the previous case to file the suit and were, therefore, estopped from using the proposed suit as a basis for the new filing. **Matter of Schwenk, 120 B.R. 524 (Bankr. D. Neb. 1990)**.

EXEMPTIONS. The debtor claimed as exempt an interest in an IRA which contained funds rolled over from an ERISA qualified profit-sharing plan. The court held that the Montana exemption, Mont. Code § 31-2-106(3), for the IRA was not preempted by ERISA. ***In re* Locke, 120 B.R. 563 (Bankr. D. Mont. 1990)**.

RIGHT TO JURY TRIAL. The Chapter 11 trustee filed suit for avoidance as preferential transfers the redemption of some thrift and passbook savings certificates by depositors of the debtor. The court held that the depositors were not entitled to a jury trial on the issue of the preferential transfers where the depositors had filed claims for the remaining amounts on deposit. Those depositors who had not filed claims were entitled to a jury trial. **Langenkamp v. Culp, 111 S. Ct. 330 (1990), rev'g 897 F.2d 1041 (10th Cir. 1990)**.

CHAPTER 12

INTEREST RATE. In the Chapter 12 plan, the debtors proposed to pay a secured claim for county real estate taxes over 30 years at the prevailing market rate of interest. The county argued that the interest rate should be no less than the statutory interest rate of 14 percent for delinquent taxes under Neb. Rev. Stat. §§ 77-207 (1986) and 45-104.01 (1988). The court held that *U.S. v. Neal Pharmacal Co., 789 F.2d 1283 (8th Cir. 1986)* controlled to require that the claim receive only a market rate of interest. The court applied the *In re Wichmann* formula of the treasury bill rate plus 2 percent for risk, rejecting the debtors' argument that the oversecured status of the claim made it riskless. **Matter of Bantam, 120 B.R. 530 (Bankr. D. Neb. 1990)**.

FEDERAL TAXATION

AUTOMATIC STAY. The IRS was found to have willfully violated the automatic stay by requiring that the debtor fill out a personal asset statement, by seizing corporate assets and seizing personal assets after the debtor filed for Chapter 13. The trial court awarded actual and punitive damages and attorney's fees which were upheld by the appellate court. However, the appellate court required the set off of the award and fees against the debtor's tax liability. The court also held that if, upon remand, the debtor could demonstrate that the IRS action was not substantially justified, the attorney's fees would be affirmatively paid. **U.S. v. McPeck, 90-2 U.S. Tax Cas. (CCH) ¶ 50,593 (8th Cir. 1990)**.

CLAIMS. The IRS failed to receive notice of the debtor's bankruptcy and consequently failed to file a claim for priority taxes until after the bar date for claims. The lower courts held that the tax claim was entitled to the third priority under Section 726(a)(3). The appellate court held that under principles of due process and equity, the tax claim was entitled to its original priority because the IRS did not receive notification of the bankruptcy case. The court noted that although the government is not entitled to due process, the possibility that a priority claim of an individual would be affected by the issue supported the due process argument. **U.S. v. Cardinal Mine Supply, Inc., 916 F.2d 1087 (6th Cir. 1990)**.

RETURNS. For 1991, the level for filing a bankruptcy return (Form 1041) is $5,000, up from $4,775 in 1990.

SUBORDINATION. The IRS filed claims for federal income and employment taxes, including pre-petition penalties and interest on the taxes. The court held that although a bankruptcy court has the authority under Section 510(c) to subordinate nonpecuniary loss tax penalties, the subordination was not automatic but may be done after notice and a hearing on the equities of the subordination as to other unsecured creditors. **Burden v. U.S., 917 F.2d 115 (3d Cir. 1990), *rev'g* 109 B.R. 107 (E.D. Pa. 1989)**. See also **Schultz Broadway Inn v. U.S., 912 F.2d 230 (8th Cir. 1990)** (pre-petition non-pecuniary loss tax penalties subordinated to unsecured creditors with actual losses).

CONTRACTS

RESCISSION. The plaintiff contracted with the defendant to purchase the defendant's livestock auction business. The plaintiff sought rescission of the contract for misrepresentation by the seller of the number of livestock sold through the business. The court held that the trial court denial of the rescission was based on substantial evidence that no misrepresentation had been made and that the plaintiff was an experienced businessperson who relied on expert advice in purchasing the business. **Chamberlain Livestock Auction v. Penner, 462 N.W2d 479 (S.D. 1990)**.

COMMODITY FUTURES TRADING

DUAL TRADING. The Chicago Merchantile Exchange has submitted "Proposed Rule 552--Dual Trading Restrictions" to the CFTC, which would restrict dual trading across all mature and liquid CME futures and option contract months. **55 Fed. Reg. 52294 (Dec. 21, 1990)**.

FARM CREDIT SYSTEM

JURISDICTION. A Production Credit Association filed a foreclosure action against the debtors in state court and was awarded a default judgment. The debtors argued that the trial court was without jurisdiction to hear the case because the PCA was not registered to transact business in North Dakota. The court held that federally chartered instrumentalities such as PCA's are not required to register in order to maintain an action in North Dakota. **Prod. Credit Ass'n v. Obridgewitch, 462 N.W.2d 115 (N.D. 1990)**.

FEDERAL AGRICULTURAL PROGRAMS

BORROWER'S RIGHTS. In response to a claim filed by the FmHA for unpaid farm program loans, the Chapter 11 debtors filed a counterclaim alleging violation of their fifth amendment due process rights in administering the loans. The court held that 11 U.S.C. § 106(a) did not allow the debtors to bypass the requirement that administrative remedies be first exhausted before court review because the counterclaims were not compulsory where most of the alleged infringements took place after the loans were closed. However, under Section 106(b), the debtors' claim was allowed but any recovery would be restricted to a setoff of the FmHA claim. The court held that the debtors did not have a due process right to be informed of any right to loan consolidation, rescheduling or deferral, or to receive management assistance or credit counseling under 7 C.F.R. § 1924.59. In addition FmHA officials were entitled to qualified immunity from suit because even if their actions were found to have violated the debtors' due process rights, the due process rights had not been clearly established at the time of the officials' actions. The court also held that the farm program legislation and regulations did not create a private right of action to enforce the provisions. **Ashbrook v. Block, 917 F.2d 918 (6th Cir. 1990)**.

DAIRY TERMINATION PROGRAM. After selling all dairy cattle under the federal Dairy Termination Program, the defendant agreed to work for the decedent milking the decedent's cows in return for wages. The defendant was also to receive reimbursement for expenses, up to one-half of the proceeds of the sales of milk. The defendant also milked cows of a son in return for any calves produced by those cows. After the decedent's death, the defendant continued to work for the estate for several months and filed a claim against the estate for the wages and reimbursable costs. The estate argued that the defendant's involvement with the decedent's dairy operation was an illegal contract because it violated the defendant's obligations under the DTP. The court held that although the defendant's employment by the decedent may have violated the terms of the DTP contract, the DTP contract was not voided by the violations but only subjected the defendant to civil penalties. Therefore, the employment contract was not void as illegal. **Est. of Welch v. Welch, 797 S.W.2d 742 (Mo. App. 1990)**.

MARKETING ORDERS. The plaintiff was an almond handler subject to the California Almond Marketing Order and challenged the order on several constitutional grounds while pursuing the same issues in an administrative appeal. The court held that the plaintiff had to first exhaust all administrative appeals before bringing suit in federal court. **Saulsbury Orchards & Almond Processing, Inc. v. Yeutter, 917 F.2d 1190 (9th Cir. 1990)**.

TUBERCULOSIS. The APHIS has affirmed the designation of Idaho and Ohio as accredited-free states. **55 Fed. Reg. 52167 (Dec. 20, 1990)**.

SETOFF. The FmHA has adopted as final amendments to the regulations governing IRS offset. The amendments clarified the accounts eligible for the offset. **55 Fed. Reg. 52037 (Dec. 19, 1990)**.

FEDERAL ESTATE AND GIFT TAX

GENERATION SKIPPING TRANSFER TAX. The decedent's will established a marital deduction trust and a remainder trust. The surviving spouse had the power to withdraw principal from the marital trust and a testamentary power of appointment over the marital trust. The surviving spouse was also the lifetime beneficiary of the remainder trust and had a testamentary power to appoint the corpus of the remainder trust. If the surviving spouse failed to appoint the marital trust, the trust property passed to the remainder trust. If the surviving spouse failed to appoint the remainder trust, the trust property passed equally to surviving descendants except for the greater of $250,000 or one half of each descendant's share, which passed in trust. The estate proposed to split the marital trust into two marital trusts, with one elected as QTIP and elected to not be treated as QTIP for GSTT purposes. The surviving spouse would disclaim the power to withdraw principal from the QTIP trust and the testamentary power of appointment over the QTIP trust. The IRS ruled that the QTIP trust qualified as QTIP and because of the GSTT election, the decedent would be treated as the transferor of the QTIP trust property. The surviving spouse would be treated as the transferor of the second marital trust for GSTT purposes. The estate was allowed to allocate any unused GSTT exemption to the QTIP trust and the remainder trust. The inclusion ratio of the QTIP and remainder trusts would be zero. **Ltr. Rul. 9048045, Aug. 31, 1990**.

MARITAL DEDUCTION. The decedent's will was executed prior to 1981 and the decedent died after 1981. The decedent's will bequeathed to the surviving spouse an amount equal to the maximum marital deduction allowable in determining the federal estate tax under the I.R.C. "as now existing or hereafter amended." The IRS ruled that the bequest was a formula clause not subject to the transition rules and allowed the unlimited marital deduction. **Ltr. Rul. 9048001, Aug. 16, 1990**.

TRANSFERS WITHIN THREE YEARS OF DEATH. The grantor created a revocable trust with the grantor having the power to withdraw property from the trust and to direct the trustee to make distributions to other persons. The IRS held that distributions directed by the grantor to donees were includible in the grantor's gross estate under Section 2038(a)(1) because the distributions were a relinquishment of the grantor's power to revoke the trust. **Ltr. Rul. 9049002, Aug. 29, 1990**.

TRANSFERS WITH RETAINED INTERESTS. The taxpayer owned a limited partnership interest in a partnership which owned only publicly traded stock in a corporation. The taxpayer proposed to transfer a portion of the limited partnership

interest to a ten-year trust. If the taxpayer died before the end of the trust, trust corpus passed to the taxpayer's estate. At the end of 10 years, the trust corpus passed to a trust for the taxpayer's children. Using the actuarial factors of Section 7520, the taxpayer's retained income interest was valued at $.5802785 with the factor for the contingent remainder being $.1383216 which was 23.8 percent of the value of the retained income interest. The IRS ruled that the taxpayer's interest in the trust was a qualified trust income interest under Section 2036(c)(6). Note: Section 2036(c) was repealed by RRA 1990. **Ltr. Rul. 9048024, Aug. 30, 1990.**

The same result was found where the taxpayer transferred an interest in an S corporation to a 10 year trust with the reversionary interest more than 5 and less than 25 percent of the value of the retained income interest in the trust. **Ltr. Rul. 9048027, Aug. 31, 1990**.

The taxpayer transferred common stock to a ten-year trust with the taxpayer as income beneficiary with the power to require the trustee to convert nonproductive property to productive property. The taxpayer had a general power of appointment over trust corpus if the taxpayer died before termination of the trust. After ten years the trust passed to the taxpayer's children or their issue. IRS ruled that transfer of the remainder interests was a completed gift not eligible for the annual exclusion with the value of the gift determined as the value of the property transferred to the trust less the value of the taxpayer's retained interest. The IRS also ruled that the trust property would not be included in the taxpayer's gross estate if the taxpayer survived the trust. **Ltr. Rul. 9049033, Sept. 10, 1990**.

The taxpayers (husband and wife) proposed to redeem their stock in their closely held corporation in exchange for a note payable by the corporation over 15 years. The taxpayers' child was the remaining shareholder. The IRS ruled that if the note satisfied the requirements of Section 2036(c)(7), the note would be qualified debt and the taxpayers would not be treated as having retained an interest in the corporation. **Ltr. Rul. 9049037, Sept. 11, 1990**.

FEDERAL INCOME TAXATION

CHARITABLE DEDUCTION. The IRS has ruled that for taxable years beginning in or after 1991 where a charitable deduction of capital gain property is limited by Section 170(b)(1)(C)(iv), the carryover of unused charitable deduction in subsequent taxable years is not a tax preference item in those years. **Rev. Rul. 90-111, I.R.B. 1990-53, December 31, 1990**.

COOPERATIVES. In order to decrease the costs of paying very small patronage dividends, a taxable cooperative adopted a policy of retaining such very small payments, applying small payments either to the cost of a member's stock or in cash, and applying larger payments as required by subchapter T. The IRS ruled that the cooperative policy would not violate the requirements of Section 1388(a) for distribution of patronage dividends because the policy affected only *de minimis* amounts. **Ltr. Rul. 9049026, Sept. 10, 1990**.

EMPLOYEE EXPENSES. The IRS has adopted as final regulations providing guidance for the reporting and withholding on payments made for employee business expenses under a reimbursement or other expense allowance arrangement. **55 Fed. Reg. 51688 (Dec. 17, 1990), adding Treas. Reg. §§ 1.62-2, 31.3121(a)-(3), 31.3306(b)-2**.

The IRS has revised Rev. Proc. 89-66, 1989-2 C.B. 792, providing optional standard mileage rates for employees, self-employed individuals, or other taxpayers to use in computing the deductible costs paid or incurred on or after January 1, 1991, of operating a passenger automobile for business, charitable, medical or moving expense purposes. The revenue procedure also provides rules for deemed substantiation under Temp. Treas. Reg. § 1.274-5T, of the amount of ordinary and necessary expenses of travel paid or incurred by an employee when the payor provides a mileage allowance reimbursement arrangement. **Rev. Proc. 90-59, I.R.B. 1990-52, 8**.

The IRS has revised Rev. Proc. 89-67, 1989-2 C.B. 797 providing rules under which the amount of ordinary and necessary business expenses of an employee for lodging, meal and/or incidental expenses incurred while traveling will be deemed substantiated under Temp. Treas. Reg. § 1.274-5T when an employer provides a per diem allowance under a reimbursement or other expense allowance arrangement. **Rev. Proc. 90-60, I.R.B. 1990-52, 14**.

HOBBY LOSSES. The taxpayers were not allowed deductions in excess of income for a hay farm where the farm never produced any hay or revenue. The taxpayers were also not allowed deductions in excess of income for a peach orchard where they made no effort to determine whether peach farming was feasible. **Wright v. Comm'r, T.C. Memo. 1990-630**.

HOME-CONSUMED FARM PRODUCE. The suggested estimated deductible costs for use in adjusting farm expenses to exclude the cost of producing home-consumed farm produce on 1990 income tax returns, as prepared by Iowa State University Extension are as follows--

Pork	$34.60 per 100 lbs. liveweight
Beef	$45.60 per 100 lbs. liveweight
Lamb	$42.90 per 100 lbs. liveweight
Chicken	$0.94 per bird
Eggs	$0.43 per dozen
Milk	$7.61 per 100 lbs. or $0.65 per gallon

HOME OFFICE. A college professor was denied deductions for use of a home office where the professor was provided with two offices and a storage room on campus and the use of the home office was only for the convenience of the taxpayer. **Cadwallader v. Comm'r, 90-2 U.S. Tax Cas. (CCH) ¶ 50,597 (7th Cir. 1990), *aff'g* T.C. Memo. 1989-356**.

INFORMATION RETURNS. The IRS has adopted as final regulations governing the reporting of real estate transactions under I.R.C. § 6045(e), effective for real estate transactions closing on or after January 1, 1991. **55 Fed. Reg. 51282 (Dec. 13, 1990), adding Treas. Reg. § 1.6045-4. See Vol. 1, p. 106**.

Effective for amounts received after November 5, 1990, the penalty for intentional disregard of the cash transaction reporting requirements under Section 6050I is the greater of $25,000 or the amount received in the transaction, up to $100,000. **Ann. 90-142, I.R.B. 1990-53, 3**.

INSURANCE. The IRS has ruled that where a life insurance policy owner exercises an option to change the insured of the policy, the transaction is treated as a taxable exchange of insurance policies. **Rev. Rul. 90-109, I.R.B. 1990-52, 17**.

PENALTIES. The IRS has issued guidance on crediting of federal tax deposits for determining whether a failure-to-deposit penalty under Section 6656 should apply. **Rev. Proc. 90-58, I.R.B. 1990-52, 5**.

S CORPORATIONS

ELECTION. The corporation's sole shareholder was a trust which was a qualified subchapter S trust. When the corporation filed its first Subchapter S election, the election did not contain an election by the trust or the trust beneficiary consent to the election. The IRS, however, sent a letter accepting the election. After the error was discovered, an amended election was filed with the omitted trust elections. The IRS ruled that the S corporation election was not effective until the second election was filed. **Ltr. Rul. 9048025, Aug. 31, 1990; Ltr. Rul. 9048026, Aug. 31, 1990; Ltr. Rul. 9048030, Aug. 31, 1990**.

EMPLOYEES. The taxpayer was the sole accountant and 50 percent (the taxpayer's spouse owned the other 50 percent) shareholder in an S corporation which operated an accounting business. The taxpayer declared all payments from the corporation as dividends but the IRS claimed that the payments were wages subject to withholding taxes. The court held that because the taxpayer performed substantial and essential services for the corporation, the payments were wages subject to withholding taxes. The court also held that the taxpayer was not an independent contractor. **Spicer Accounting, Inc. v. U.S., 918 F.2d 90 (9th Cir. 1990)**.

TERMINATION. The termination of a corporation's S status was ruled inadvertent where stock in another corporation was issued to the S corporation until the transfer was discovered by the corporation's tax advisor. **Ltr. Rul. 9048028, Aug. 31, 1990**.

The termination of a corporation's S status was ruled inadvertent where stock in the corporation was issued to non-qualified trusts until discovery by the corporation's tax advisor. **Ltr. Rul. 9048029, Aug. 31, 1990**.

The termination of a corporation's S status was ruled inadvertent where corporation stock was transferred to qualified trusts which failed to make the election to be treated as subchapter S trusts until the error was discovered by the corporation's tax advisor. **Ltr. Rul. 9048031, Aug. 31, 1990**.

SOCIAL SECURITY. The level of earned income before loss of social security benefits in retirement is $7,080 for persons age 62 through 64 and $9,720 for persons age 65 and older.

TAX RATES. The inflation adjusted income tax rates for 1991 are as follows--

Rate	Married filing jointly	Head of household	Unmarried individual	Married filing separately
15	0– 34,000	0 – 27,300	0 – 20,350	0 – 17,000
28	Over 34,000 and not more than 82,150	Over 27,300 but not more than 70,450	Over 20,350 but not over 49,300	Over 17,000 but not over 41,075
31	Over 82,150	Over 70,450	Over 49,300	Over 41,075

Other 1991 rates, personal exemptions and other inflation adjusted tax amounts have also been announced. **Rev. Proc. 90-64, I.R.B. 1990-53, Dec. 31, 1990**.

UNDERPAYMENT OF TAX. The IRS has issued temporary regulations governing the provisions of RRA 1990 for the increased rate of interest, the federal short-term interest rate plus five points, payable on large (more than $100,000 for a taxable period) underpayments of tax by corporation. The determination is made only after an assessment has been made; thus, although a tax was underpaid by an amount less than $100,000 as of the date due, interest may accrue such that on the assessment date, the underpayment exceeds $100,000. The increased rate does not apply, however, until the earlier of 30 days after the IRS sends either a "30 day letter" or a "90 day letter." **55 Fed. Reg. 52042 (Dec. 19, 1990), adding Temp. Treas. Reg. § 301.6621-3T**.

SAFE HARBOR INTEREST RATES
JANUARY 1991

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	7.53	7.39	7.32	7.26
110% AFR	8.30	8.13	8.05	8.00
120% AFR	9.07	8.87	8.77	8.71
		Mid-term		
AFR	8.12	7.96	7.88	7.83
110% AFR	8.95	8.76	8.67	8.60
120% AFR	9.78	9.55	9.44	9.37
		Long-term		
AFR	8.44	8.27	8.19	8.13
110% AFR	9.31	9.10	9.00	8.93
120% AFR	10.17	9.92	9.80	9.72

INSURANCE

DUTY TO DEFEND. The plaintiffs were sued for nuisance and damages from harm done to a neighbor's corn crop from manure tracked on to a highway near the neighbor's property when the plaintiff transported the manure to fields. The plaintiff owned two insurance policies, a comprehensive personal liability policy and a personal umbrella policy and requested the insurer to defend and indemnify the plaintiff in the suit. The insurer refused because there was no "occurrence" and the discharge of waste was not sudden and accidental as required under the policy exception for waste material. The court held that the damage caused by the manure was not sudden and accidental because the insured made repeated trips over time, all of which contributed to the damage. **Weber v. IMT Ins. Co., 462 N.W.2d 283 (Iowa 1990)**.

SECURED TRANSACTIONS

FEDERAL FARM PRODUCTS RULE. The P&SA has amended the certification of the central filing system of Louisiana to include all farm products. **55 Fed. Reg. 51306 (Dec. 13, 1990)**.

SETTLEMENTS. As part of a financing arrangement for the sale of Arabian horses, the debtors guaranteed the promissory note of the buyer and granted a security interest in the debtor's farm machinery and equipment. After the buyer defaulted on the note, the creditor sued the debtors on the guarantee. The parties reached a settlement which released the debtors from all claims of

the suit. However, when the debtors failed to perform under the settlement and filed for bankruptcy, the creditor filed a claim based upon the security interest in the farm machinery and equipment. The court held that the settlement was intended by the parties to release only the debtors' guarantee and not the security interest. In addition, the future advances clause in the security agreement was held to cover the debtor's obligations under the settlement as a compromised version of the original guarantees subject to the security agreement. ***In re* McLaughlin Farms, Inc., 120 B.R. 493 (Bankr. N.D. Iowa 1990)**.

STATE REGULATION OF AGRICULTURE

PESTICIDES. Plaintiff sued the manufacturer of a pesticide used in treating fence posts for damages resulting from contamination of the plaintiff's soil due to the manufacturer's failure to warn of the environmental dangers of the pesticide. The manufacturer argued that the state tort action was not allowed because FIFRA preempted any state action concerning labeling of pesticides. The court held that FIFRA did not actually or impliedly preempt state tort actions for failure to warn. **Arkansas Platte & Gulf Partnership v. Van Waters & Rogers, Inc., 748 F.Supp. 1474 (D. Colo. 1990)**.

STATE TAXATION

VALUATION. The plaintiffs enrolled irrigated farm land in the federal conservation reserve program for 10 years and removed the irrigation equipment. The court held that the continued valuation of the land as irrigated was not improper because the earning capacity of the land under CRP exceeded that of nonirrigated land and the plaintiffs had not demonstrated that the valuation exceeded the valuation for other similar land. **Watley v. Bd. of Equalization, 236 Neb. 549, 462 N.W.2d 426 (1990)**.

TRESPASS

INJURY TO ANIMALS. The plaintiffs sued for double damages under Mo. Stat. § 537.330 for the loss of value to two bulls which the defendant shot. The court upheld the trial verdict for the plaintiffs because the bulls were shot in a wanton or malicious manner where the bulls were shot several times at close range in their hind quarters. **Freeman v. Lawson, 797 S.W.2d 882 (Mo. Ct. App. 1990)**.

CITATION UPDATE

Lebowitz v. Comm'r, 917 F.2d 1314 (2d Cir. 1990), rev'g T.C. Memo. 1989-178 (interest on nonrecourse obligation), see Vol. 1, p. 254.

NEW PUBLICATION

The Drake University Agricultural Law Center Director, Neil Hamilton, has published a new guide for farmers and ranchers on environmental law, "What Farmers Need to Know About Environmental Law." Although the book is written in question and answer form primarily for non-lawyers, all agricultural advisors may find the information helpful. The book covers federal and Iowa environmental law. The book may be ordered for $20 from Drake University Agricultural Law Center, Environmental Law Book, Des Moines, Iowa, 50311

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