[10] Est. of Frane v. Comm'r, 98 T.C. 341 (1992), *aff'd and rev'd*, 93-2 U.S.T.C. ¶ 50,386 (8th Cir. 1993).
[11] 98 T.C. 341 (1992) (cancellation of installment note treated as disposition; reported on decedent's final return).
[12] Treas. Reg. § 20.2053-6(f).
[13] *Id.*
[14] I.R.C. § 1(e).
[15] Revenue Reconciliation Act of 1993, § 13201(c), Pub. L. 103-66, 103d Cong., 1st Sess. (1993).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

COWS-*ALM* § 1.01[2].* The plaintiff was injured when the plaintiff's truck struck several cows on a highway. The cows belonged to the defendants and had escaped from separate fenced pastures. The defendants had both moved for a directed verdict in the trial but the court allowed the case to go to the jury which awarded damages to the plaintiff. The plaintiff had presented evidence of prior escapes by the cows of both defendants and the poor condition of the fences. The plaintiff also provided expert testimony that the fences were inadequate because the fences allowed the cows to stick their heads through the fences, which encouraged the cows to attempt to break through the fences. The appellate court held that the evidence was sufficient to raise factual issues of the defendants' negligence to allow the case to go to the jury. **Carver v. Kinnett, 434 S.E.2d 136 (Ga. App. 1993)**.

HORSES-*ALM* § 1.01[2].* The plaintiff was injured when the plaintiff's car struck a horse owned by the defendants. The plaintiff sued the defendants for negligently, willfully and wantonly allowing the horse to run at large on a highway. The trial court granted the defendant summary judgment. The appellate court reversed holding that Ala. Code § 3-5-14(a) (making it unlawful for persons having custody of livestock to allow the livestock to run at large in the police jurisdiction of a city) created a duty in the defendant not to negligently allow the horse to run at large and that the plaintiff had presented sufficient evidence of prior escapes by the horse to raise a fact issue as to whether the defendant was negligent in fencing the horse. The court noted that the degree of care required is dependent upon the animal involved and the nearness of the enclosure to public highways. **Lollar v. Poe, 622 So.2d 902 (Ala. 1993)**.

BANKRUPTCY

GENERAL

AVOIDABLE TRANSFERS-*ALM* § 13.03[3].* The debtor was a cotton merchant who stored cotton in the creditor's warehouse. The creditor's billing procedure was to invoice the cotton owners for storage and shipping costs when the cotton was removed from the warehouse. The invoices stated that payment was due in seven days but the creditor presented evidence in the industry and between the creditor and debtor that late payments of nine to 19 days were ordinarily allowed before more stringent payment terms were imposed. The trustee had sought recovery of payments made by the debtor to the creditor within 90 days prior to the petition as preferential. The creditor claimed that the payments were eligible for the Section 547(b)(2)(C) exception for payments made in the ordinary course of business. The trustee had argued that the most extreme incidents of late payments in the pre-preferential period should be excluded from consideration but that the most extreme incidents of late payments during the preferential period were not in the ordinary course of business. The court held that the entire history of payments between the creditor and the debtor and the creditor and the other clients was relevant to the issue and the history demonstrated that the late payments made by the debtor were within the ordinary course of business practiced by the creditor to all clients; therefore, the late payments made during the 90 days before the petition were not preferential. ***In re* Julien Co., 157 B.R. 834 (Bankr. W.D. Tenn. 1993)**.

EXEMPTIONS-*ALM* § 13.03[3].*

AMENDMENT. The debtors originally filed for Chapter 11 and claimed the federal homestead exemption to the extent of the debtors' equity in the house. The case was converted to Chapter 7 and the debtors amended the exemption to claim the exemption under the Washington homestead exemption. During this time, the home increased in value by almost $80,000. The trustee objected to the amendment as in bad faith and prejudicial to creditors. The court held that the amendment would be allowed because the initial exemption claimed prevented the sale of the house and all appreciation in the house belonged to the debtors. ***In re* Hall, 1 F.3d 853 (9th Cir. 1993)**.

AVOIDABLE LIENS. The debtor claimed a homestead exemption and sought to avoid judicial liens which impaired the exemption. The court held that under Illinois law, judicial liens cannot attach to the debtor's exemption amount; therefore, the judicial liens could not impair the debtor's homestead exemption rights. ***In re* Haynes, 157 B.R. 646 (Bankr. S.D. Ind. 1992)**.

CONVERSION OF ASSETS. One month prior to filing for bankruptcy, the debtor consulted with an attorney and converted non-exempt property into an exempt annuity. The trustee objected to the annuity exemption as improper pre-bankruptcy planning. The court held that because no evidence was presented that the conversion occurred under imminent threat of levy, attachment, garnishment or execution, the conversion was not improper. ***In re* Swecker, 157 B.R. 694 (Bankr. M.D. Fla. 1993)**.

CONVERSION OF CASE. The debtor had filed a Chapter 13 case in which the plan was confirmed. The debtor had claimed, as exempt, interests in two IRA's. The debtor converted the case to Chapter 7 and the trustee objected to the exemptions for the interests in the IRA's, arguing that a recent state case had declared the exemptions unconstitutional prior to the conversion. The lower courts held that the debtor was not entitled to the exemptions because as of the date of the conversion, the exemptions were not allowed. The appellate court reversed, holding that the exemptions available on the date of the original petition applied to the converted case. ***In re*** **Marcus, 1 F.3d 1050 (10th Cir. 1993),** ***rev'g*****, 140 B.R. 803 (D. Colo. 1992),** ***aff'g*****, 128 B.R. 294 (Bankr. D. Colo. 1991)**.

HOMESTEAD. The debtor and spouse filed a joint bankruptcy petition and each claimed the $5,000 homestead exemption in a house. Although both debtors owned the house, only the spouse and children lived in the house. The court held that the debtor was entitled to the homestead exemption because the debtor's dependents lived there. ***In re*** **Miller, 157 B.R. 621 (Bankr. N.D. Ohio 1993)**.

LIFE INSURANCE. At the time of the filing of the petition, the debtor sought a declaratory judgment against an insurance company for payment of the proceeds of a life insurance policy after the death of the debtor's spouse. A creditor had obtained a judgment against the debtor and had served a notice of garnishment on the insurance company and filed a claim in the bankruptcy case. The debtor moved to avoid the judgment lien as impairing the exemption for the insurance proceeds under Ill. Stat. § 5/12-1001(f). The creditor argued that the life insurance proceeds exemption was limited by Ill. Stat. § 5/12-1001(h) to the amount reasonably necessary for the support of the debtor. The court acknowledged that the two statutes overlapped in their grant of exemptions for spouses for the proceeds of life insurance policy on spouses, but held that the more general statute applied to allow a 100 percent exemption and avoidance of the judicial lien. The other statute was held to apply, somewhat inartfully, to cases not covered by the more general statute. ***In re*** **Bateman, 157 B.R. 635 (Bankr. N.D. Ill. 1993)**.

SETOFF. The debtor was a customer of a nonprofit rural electric cooperative. Under the cooperative's bylaws, annual excess revenues are to be paid into capital accounts for patronage capital credits for its customers. No interest or dividends are paid on these credits and the credits cannot be "retired" by payment to the customers except by vote of the cooperative's board of directors. The directors usually retire credits 25 years after the credits were created such that in the debtor's case, the credits for 1967 and 1968 were retired, although the directors did not authorize payment to the debtor but sought setoff of the credits against amounts owed to the cooperative by the debtor for electrical service. The debtor argued that the credits were not eligible for setoff because the credits were not an obligation of the cooperative at the time of the petition. The court agreed and ordered payment of the credits to the bankruptcy estate. The debtor also sought recovery of the entire capital credit because the debtor was liquidating in the bankruptcy case and would terminate its account. The cooperative refused to retire the credits. The court held that the debtor was not entitled to turnover of the unretired credits because the cooperative had never retired credits in less than 25 years after the credits were created. **Matter of Greensboro Lumber Co., 157 B.R. 921 (Bankr. M.D. Ga. 1993)**.

CHAPTER 12-*ALM* § 13.03[8].*

PLAN. A creditor objected the the debtor's Chapter 12 plan as to (1) the value of stock in a family-owned farm corporation, (2) the interest rate on plan payments on a debt secured by farm land, and (3) the amount of payments to unsecured creditors. An independent appraisal valued the corporation by first valuing its property at fair market value and applying a 25 percent discount to the debtor's stock for the minority interest, a 10 percent discount for lack of marketability, and a 20 percent discount for restrictions on corporate borrowing and transfer of shares. The court held that the valuation was proper, and because the value was higher than that used by the debtor, the plan could not be confirmed unless amended to include the higher value in the amount paid to unsecured creditors. The plan provided for interest on deferred payments on a secured loan at 8.5 percent which the debtor stated was a "prime rate" plus 2 percent. The court held that the proper rate was the rate charged for riskless loans plus an amount to account for the risk factor. Because the debtor did not explain the source of the interest rate used, the plan could not be confirmed. The court also held that the amount paid to unsecured creditors, plus all disposable income during the plan, met the liquidation payments test if the debtor amended the plan to include the higher stock valuation discussed above. ***In re*** **Harper, 157 B.R. 858 (Bankr. E.D. Ark. 1993)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

AUTOMATIC STAY. During the taxpayer's bankruptcy case, the IRS, in violation of the automatic stay, assessed the taxpayer for additional I.R.C. § 6672 penalties. The taxpayer did not object to the assessments during the bankruptcy case which did not discharge the penalties. After the close of the bankruptcy case, the taxpayer signed a Tax Collection Waiver extending the statute of limitations on collection of the penalties and agreed to pay the penalties in installments. The taxpayer also requested liens against an interest in a pension plan and the taxpayer's home in order to allow the taxpayer more time to pay the penalties. After the extension on the statute of limitations expired, the taxpayer petitioned for refund of the assessments made during the bankruptcy case. Although the court acknowledged that the assessments made in violation of the automatic stay were void, the court held that the assessments would be allowed because the taxpayer willfully delayed objecting to the assessments until the IRS was unable to correct the mistake and make proper assessments after the bankruptcy case. **Bronson v. U.S., 28 Fed. Cl. 756 (1993)**.

CLAIMS. The current opinion involved three cases: (1) the debtors failed to include the IRS in its list of claims or creditors until seven days before the bar date for claims, but the IRS failed to object to the plan or confirmation and filed a claim over two months after the bar date; (2) the IRS was listed as a creditor but the IRS failed to object to the plan or file a claim until more than two months after the bar date; and (3) no notice of the case was sent to the IRS but the IRS filed a claim 15 months after the bar date. The court held that in all three cases, the IRS claims were barred as untimely and could not be allowed as amended claims because no timely claim was filed. ***In re* Turner, 157 B.R. 904 (Bankr. N.D. Ala. 1993)**.

INTEREST AND PENALTIES. The debtor filed a Chapter 13 case in 1980. The plan was confirmed in 1980 but the case was dismissed in 1983 when the debtor failed to make all payments under the plan. The debtor filed a second Chapter 13 case in 1986. A plan was confirmed but the case was dismissed after the debtor failed to make all plan payments. The debtor filed a third Chapter 13 case and the IRS filed a claim which included interest and penalties which accrued during the previous two cases. The court held that the IRS could file a claim for the interest and penalties accruing during a bankruptcy case where the bankruptcy case is dismissed before the plan was completed. ***In re* Lyall, 157 B.R. 599 (Bankr. S.D. Tex. 1993)**.

RESPONSIBLE PERSON. The IRS filed a claim under I.R.C. § 6672 for the 100 percent penalty as a responsible person in a company which failed to pay federal employment taxes. The debtor was a shareholder and officer in the corporation which operated several restaurants and admitted that the debtor had the authority to issue checks for payment of the taxes but argued that the authority was delegated to a management company. The court held that the responsibility for the taxes could not be delegated where the debtor retained the authority to make the payments. **I.R.S. v. Charlton, 2 F.3d 237 (7th Cir. 1993)**.

TAX LIENS. The IRS made a pre-petition assessment against the debtor for unpaid FICA taxes and filed a Notice of Federal Tax Lien in the county recorder's office. The debtor originally filed in Chapter 11 but the case was converted to Chapter 7 and the trustee sought to avoid the tax lien as to vehicles owned by the debtor and sold by the trustee. The court held that the trustee's status as bona fide purchaser of the estate property related back to the original Chapter 11 petition and that the trustee could seek avoidance of unperfected liens on estate property. The court also held that the tax lien was unperfected because under Florida law, liens on vehicles must be recorded on the vehicle title in order to be perfected. Therefore, the tax liens were unperfected and avoidable by the trustee. ***In re* Southern Transfer & Storage Co., 157 B.R. 691 (Bankr. M.D. Fla. 1993)**.

CONTRACTS

FRAUDULENT CONCEALMENT. The plaintiff purchased irrigated farm land from the defendant and alleged that the defendant fraudulently concealed its knowledge that several of the irrigation systems were in poor shape and needed extensive repair. The plaintiff had made several inspections of the farm before signing the purchase agreement and the agreement stated that the sale was "as is" and that the buyer had the right to inspect the farm and to rescind the contract without cause. The plaintiff was an experienced irrigation farmer and business owner but failed to make a full inspection of the irrigation equipment. Although the evidence demonstrated that the defendant had some knowledge that several of the wells could be in poor condition, the court held that the plaintiff's superior experience and the purchase contract provision placed the duty on the plaintiff to inspect the irrigation equipment before completing the purchase. **Boegel v. Colorado Nat'l Bank of Denver, 857 P.2d 1362 (Kan. Ct. App. 1993)**.

COOPERATIVES

STOCK REDEMPTION-*ALM* § 14.02.* The defendant was a member of a cooperative marketing association which had sued the defendant for payment of an account with the cooperative. The defendant sought setoff of the defendant's stock and stock credits with the cooperative. Under the cooperative's bylaws, stock could be redeemed at the death of a member or the cessation of a member's eligibility for membership. The cooperative's board also had the authority to redeem stock when a member reached a certain age or failed to patronize the cooperative for more than three years. The defendant did not meet any of the conditions for redemption of stock. The court held that the stock was not a debt eligible for setoff because the bylaws made the obligation to the member contingent and not immediately payable. The court also held that the cooperative's past early redemptions of stock in setoff of members' accounts did not make the current refusal arbitrary or capricious because the prior setoffs were minor in comparison. **Hydro Co-op. Ass'n v. Shantz, 858 P.2d 123 (Okla. Ct. App. 1993)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE-*ALM* § 13.04.* The FCIC has adopted as final regulations expanding the range of sanctions for fraud, misrepresentation, false claims and other violations of contracts for insurance and to provide insurance services. **58 Fed. Reg. 53109 (Oct. 14, 1993)**.

The FCIC has issued proposed regulations establishing the Actual Production History program which bases insurance coverage on the insured's actual production history which will be multiplied by a percentage of an elected coverage level and price per commodity unit to determine the dollar amount of insurance coverage per acre. **58 Fed. Reg. 53150 (Oct. 14, 1993)**.

FEDERAL ESTATE AND GIFT TAX

ANNUITY-*ALM* § 6.04.* The decedent had been the beneficiary of an annuity trust established by a predeceased spouse. The trust provided for a fixed annual distribution with a power in the decedent to withdraw an additional 5 percent of the trust assets. The IRS argued that the trust was not an annuity to be valued under Treas. Reg. § 20.2031-7(a) but a life interest limited by a term of years, valued under Treas. Reg. § 20.2031-7(e), because the trust would be depleted if the decedent had lived to be 109 years old. The court held that the trust was an annuity because Treas. Reg. § 20.2031-7 did not define a "term certain" to include the time in which an annuity would be depleted. **Est. of Shapiro v. Comm'r, T.C. Memo. 1993-483**.

BASIS OF ESTATE PROPERTY. Prior to death, the decedent transferred stock to the corporation's ESOP, purchased qualified replacement property, and made the election under I.R.C. § 1042(a) for the transactions. The replacement property passed to the decedent's estate. The IRS ruled that because no disposition occurred upon transfer of the property to the estate, no recapture under I.R.C. § 1042(a) occurred and the basis of the property in the estate's hand would be determined under I.R.C. § 1014(a). **Ltr. Rul. 9339005, June 23, 1993**.

CHARITABLE DEDUCTION-*ALM* § 5.04[4].* The decedent's will provided for a bequest to a trust for three beneficiaries with the remainder to pass to a church. Prior to filing the estate tax return, the executor filed a petition in state court for reformation of the trust to provide for payment of equal shares to the beneficiaries of a unitrust amount equal to the lesser of the annual trust net income or 6.7 percent of the net market value of the assets of the trust as valued on the first day of each taxable year. If trust net income exceeded 6.7 percent of the trust assets, the trustee was to distribute so much of the excess net income so as to make payments in prior years equal 6.7 percent of the trust assets in those years. The IRS ruled that the original trust was a reformable trust because the remainder interest would have been eligible for a deduction but for the requirements of I.R.C. § 2055(e)(2). The IRS also ruled that the reformation would be allowed to qualify the trust remainder interest for the charitable deduction because the value of the reformed remainder interest did not exceed the value of the former remainder interest by more than 5 percent. **Ltr. Rul. 9339006, June 23, 1993**.

GENERATION SKIPPING TRANSFER TAX-*ALM* § 5.04[6].* In 1958, a husband and wife established an irrevocable trust for their children. In 1959, the husband's will created a second trust for the same children. The trusts were identical except that the second trust allowed for distribution of trust principal for the beneficiaries' reasonable care, maintenance, medical care, support and education. The two trusts were merged with the portion of the trust assets in the second trust maintained separately for purposes of enforcing the principal distribution rights. The IRS ruled that the merger did not cause gain or loss to be recognized and did not affect the basis or holding period of the trust assets or beneficial interests. The IRS also ruled that the merger would not subject the pre-1985 trusts to GSTT. **Ltr. Rul. 9338020, June 24, 1993**.

The taxpayer established two irrevocable trusts in 1981 for grandnephews and grandnieces with the taxpayer's spouse as trustee. The trustee had the power of income distribution that was not subject to an ascertainable standard. The taxpayer did not have the right to remove the trustee but had the right to choose any successor trustee except the taxpayer. The taxpayer made several post-October 22, 1986 contributions to the trusts. The IRS ruled that the trusts would not be included in the taxpayer's gross estate. The IRS also ruled that the portion of the trusts' principal contributed after October 22, 1986 would be subject to GSTT and the taxpayer's GSTT exemption amount. **Ltr. Rul. 9340014, June 30, 1993**.

The decedent had established a revocable trust in 1950 which had the decedent as lifetime beneficiary. The decedent's children would receive the trust corpus upon the decedent's death. The decedent became incompetent prior to October 22, 1986 and remained so until death. An attorney-in-fact was appointed by the decedent and the attorney made several gifts for the decedent. The decedent's children executed disclaimers of their remainder interests, causing the interests to pass to their issue. The IRS ruled that the trust was exempt from GSTT and that the disclaimers did not subject the trust to GSTT. **Ltr. Rul. 9340027, June 30, 1993**.

A trust was established in 1924 with equal shares for three children. The beneficiaries had the power to withdraw a portion of the trust corpus. In 1991 the trust was partitioned into three equal trusts, one for each child. The partitioning was ruled not to be an exercise of a power of appointment but the power to withdraw trust corpus was ruled to be a general power of appointment created before October 21, 1942. One child died without exercising all of the power to withdraw corpus and the child's children, the remainder holders, filed written disclaimers of their interests in the decedent's trust such that the trust property of the decedent's trust passed to the remainder holders' children. The IRS ruled that the lapse of the decedent's power of withdrawal was not an addition to the trust because the power did not cause the trust property to be included in the decedent's estate since the power was created prior to October 21, 1942. **Ltr. Rul. 9340053, July 12, 1993**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* After the decedent's death the will was contested by the surviving spouse and a will settlement was reached for distribution of the residuary estate between the surviving spouse and a charitable organization. The IRS argued that the marital and charitable deductions should be limited to the lesser of the amount to have been distributed under the will or the actual amount distributed. The court held that the actual amounts distributed under the settlement would be allowed as deductions because the settlement was the result of a bona fide adversary proceeding involving enforceable rights. The IRS also argued that the marital and charitable deductions should be reduced by the amount of administrative expenses, whether or not the expenses were paid from principal or income. The court held that the administrative expenses reduced the deduction only to the extent paid from principal because, under Georgia law, the estate could pay such expenses from principal or income as allowed by the will. The court rejected a contrary holding in *Est. of Street v. Comm'r, 92-2 U.S. Tax Cas. (CCH) ¶ 60,122 (6th Cir. 1992)*. **Est. of Hubert v. Comm'r, 101 T.C. No. 22 (1993)**.

Under the decedent's will, the residuary estate passed to a credit shelter trust equal in amount to the unused unified credit amount, with the remainder passing to a marital trust. The executor had the discretion to charge administrative expenses to either principal or income and choose to allocate the expenses to estate income and deducted the expenses on the fiduciary income tax return. The court held that the allocation was proper because of the decedent's intent to maximize the marital deduction and Oklahoma law which provided that absent any direction in the will, administrative expenses were to be charged to estate income. **Est. of Allen v. Comm'r, 101 T.C. No. 23 (1993)**.

Under the decedent's will, the entire estate passed to the surviving spouse for life or until the spouse remarried, with a remainder interest in the decedent's issue. The IRS ruled that the bequest was not eligible as QTIP because the surviving spouse's interest in the property could terminate before death. **Ltr. Rul. 9340018, June 30, 1993**.

The decedent had established a 5-year grantor retained annuity trust (GRIT) which provided that if the decedent died within the five years and the decedent failed to exercise a testamentary power of appointment of the trust property, an equal share of the property passed to the decedent's two children. The decedent died within the five years of the trust and did not exercise the power of appointment. The children filed written disclaimers of their interests in the trust property, which then passed by intestacy to the surviving spouse. The IRS ruled that the property passing by means of the disclaimers was eligible for the marital deduction. **Ltr. Rul. 9340052, July 12, 1993**.

SPECIAL USE VALUATION-*ALM* § 5.03[2].* The decedent died on November 26, 1981 and the decedent's will devised a 120 acre farm as tenants in common to a child of the decedent's brother and a child of the decedent's sister. The two cousins sold a 5 acre parcel to the child of one cousin. The child resided on the parcel, and buildings on the parcel were used in the farming operation on the remaining 115 acres. The child materially participated in the farm operation and owned a 25 percent interest in the operation. The IRS ruled that the cousins were qualified heirs under the definition of family member *prior to the effective date of ERTA 1981*. The IRS also ruled that the sale of the 5-acre parcel to the cousin's child did not cause the recapture of special use benefits if the child executed an agreement consenting to personal liability for a recapture of special use benefits. **Ltr. Rul. 9340035, July 7, 1993**.

TRANSFERS WITH RETAINED INTERESTS-*ALM* § 5.02[3].* The decedent had created three irrevocable trusts for grandchildren. The independent trustee had unrestricted powers to distribute trust income and principal. The decedent retained the right to remove the independent trustee and appoint another independent trustee but could not appoint the decedent as trustee. The IRS argued that the power to replace the trustee was sufficient control over the trustee to give the decedent the power to designate the persons who were to possess or enjoy the trust property. The court held that because the independent trustee was under a fiduciary duty to exercise the trustee's power in the best interests of the beneficiaries, the decedent's power to replace the trustee was not sufficient to control trust distributions. **Est. of Wall v. Comm'r, 101 T.C. No. 21 (1993)**.

VALUATION-*ALM* § 6.01[6].* The taxpayer held an interest in a house owned with the taxpayer's spouse as tenants in common. The taxpayer transferred the interest in the house to a five-year trust. The house was subject to a mortgage on which the taxpayer continued to be liable after the house was transferred to the trust. Under the trust, the taxpayer could continue to live in the house rent-free. If the taxpayer died during the five years, the house passed to the taxpayer's estate. At the end of the five years, the trust corpus passed to the taxpayer's children. The IRS ruled that the trust was a qualified personal residence trust and a qualified annuity trust such that the retained interest of the taxpayer would be valued under I.R.C. § 7520. **Ltr. Rul. 9340009, June 29, 1993**.

FEDERAL INCOME TAXATION

C CORPORATIONS

INTEREST. The taxpayer, a corporation on the accrual method of accounting and using a calendar tax year, issued debentures which paid interest semi-annually but not on June 30 and December 31 of each year. The debentures were convertible to stock at the option of the bond holder but the taxpayer would not pay the interest accrued nor include the accrued interest in the value of the stock given for the bond. The IRS ruled that the taxpayer could not claim a deduction for the accrued interest for the period between the last interest payment date and the end of the taxable year because bond holders could convert the bonds before the next interest payment date and the taxpayer would not have to pay the accrued interest. Therefore, the "all events" test of Treas. Reg. § 1.461-1(a)(2) had not been met as of the end of the taxable year. **Ltr. Rul. 9340001, June 15, 1993**.

CHARITABLE DEDUCTION. The taxpayer formed a charitable remainder unitrust funded with 20 percent of the stock of the grantor's family corporation. The trust provided authority for the trustee to sell or exchange the stock but the corporation, taxpayer and other family members claimed no intent to buy the shares for at least one year and then only at fair market value. The trust also provided that any death taxes owed by the grantor's estate could not be paid from the trust but that if the trust became liable for such taxes, the beneficiaries would be required to compensate the trust for the payments in order to remain as beneficiary. The grantor retained the power to remove the trustee and appoint the grantor or any other person as trustee. The IRS ruled that the trust was eligible for the charitable deduction and that the grantor would not recognize income, gain or loss from disposition of the stock by the trust. **Ltr. Rul. 9339018, June 30, 1993**.

DISCHARGE OF INDEBTEDNESS-*ALM* § 4.02[15].* The stock of the taxpayer, a corporation, was purchased by one corporation from another corporation for cash and a note secured by the assets of the taxpayer. The purchaser funded the purchase with a loan from a bank. The purchasing corporation merged into the taxpayer and the taxpayer entered into negotiations to reduce the amount of the note given to purchase the taxpayer's stock. The IRS ruled that the taxpayer would be considered the purchaser of the stock because the merger was intended as part of the purchase and that any discharge of indebtedness income could be used as a purchase price reduction. **Ltr. Rul. 9338029, June 25, 1993; Ltr. Rul. 9338049, June 15, 1993**.

HEDGES-*ALM* § 4.02[6].* The temporary and proposed regulations discussed in Neil Harl's article in the last issue, see p. 165 *supra*, were published at **58 Fed. Reg. 54037, 54075 (Oct. 20, 1993)**.

INVESTMENT TAX CREDIT-*ALM* § 4.04.* On its 1985 federal income tax return, the taxpayer corporation elected to take a reduced investment tax credit instead of a basis adjustment for qualified progress expenditures made

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in connection with the construction of a machine which qualified as Section 38 property. The taxpayer requested permission to revoke the election because of the reduction of corporate income tax rates passed in the Tax Reform Act of 1986. The IRS ruled that the revocation would not be allowed because revocation is allowed only in extraordinary circumstances and not where mere hindsight makes the revocation more desireable. **Ltr. Rul. 9339002, June 8, 1993**.

MEDICAL EXPENSES. The IRS has announced that it will not issue advance rulings or determination letters concerning whether amounts paid for medical care, including insurance, are deductible if the expenses do not meet the conditions of I.R.C. § 213(d)(7). **Rev. Proc. 93-43, I.R.B. 1993-34**.

The IRS has ruled that *Rev. Rul. 75-302, 1975-2 C.B. 86, Rev. Rul. 75-303, 1975-2 C.B. 87, and Rev. Rul. 76-481, 1976-2 C.B. 82* should not be interpreted to allow a current deduction for future medical care or insurance extending substantially beyond the taxable year except where the future care is purchased in connection with obtaining lifetime care discussed in those rulings. **Rev. Rul. 93-72, I.R.B. 1993-34**.

PENSION PLANS. The IRS has adopted as final regulations governing the application of the minimum funding requirements of I.R.C. § 412 for pension plans that have been terminated and then restored by the sponsoring employers. **58 Fed. Reg. 54489 (Oct. 22, 1993)**.

RETURNS. For individual taxpayers electing to pay in installments the additional taxes caused by the Revenue Reconciliation Act of 1993, the IRS is developing Form 8841 and has issued guidance for computing and making the installment election. **Notice 93-51, I.R.B. 1993-33**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

RE-ELECTION. In April 1991, one shareholder of an S corporation transferred one share of stock to an ineligible shareholder with the intent to terminate the S corporation election. In December 1992, the shareholder reacquired the share and all shareholders consented to a new S corporation election, effective January 1, 1993. The IRS ruled that the new election would be allowed because the event causing the termination was not reasonably within the control of the corporation or the majority of shareholders and the corporation and majority shareholders did not plan the termination. **Ltr. Rul. 9340047, July 9, 1993**.

TRUSTS. The decedent's will passed property in trust to the surviving spouse and children. The trust provided for payment of trust annual net income to the spouse and the children as needed for their support, with any undistributed income accumulated. The surviving spouse was the trustee and had a testamentary power to appoint trust corpus to the descendants of the decedent. The trust allowed for payment of death taxes if not paid by other estate property. The executor wanted to transfer S corporation stock to the trust and sought a state court reformation of the trust to provide for annual distribution of all trust net income to the surviving spouse and to remove the provision allowing for payment of death taxes from the trust. The IRS ruled that the reformed trust would qualify as a Subchapter S trust. **Ltr. Rul. 9338007, June 15, 1993**.

SAFE HARBOR INTEREST RATES
November 1993

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR 3.68	3.65	3.63	3.62	
110% AFR	4.06	4.02	4.00	3.99
120% AFR	4.43	4.38	4.36	4.34
		Mid-term		
AFR 4.92	4.86	4.83	4.81	
110% AFR	5.42	5.35	5.31	5.29
120% AFR	5.91	5.83	5.79	5.76
		Long-term		
AFR 5.84	5.76	5.72	5.69	
110% AFR	6.44	6.34	6.29	6.26
120% AFR	7.03	6.91	6.85	6.81

SOCIAL SECURITY TAX-*ALM* § 4.06.* Beginning with the January 3, 1994 payment, the monthly social security benefit payments will increase 2.6 percent. The maximum amount of annual wages subject to Old Age Survivors and Disability Insurance for 1993 is $60,600, with **all** wages and self-employment income subject to the medicare portion of the tax. The maximum amount of annual earnings before reduction of benefits is $11,160 for persons aged 65 through 69 and $8,040 for persons under age 65. The amount of wages necessary for one quarter of coverage is $620. **HHS News Release, October 15, 1993**.

TRUSTS-*ALM* Ch. 8.* Three trusts were created for the same beneficiary, with the only difference being that one trust provided that any undistributed annual net income be distributed to the beneficiary's issue. The three trusts were consolidated with a provision that the undistributed net annual income from the assets of the one trust be distributed to the beneficiary's issue. The IRS ruled that the consolidation did not cause recognition of gain under I.R.C. § 1001. The trusts before and after consolidation had at least one nonfamily member as co-trustee; therefore, the IRS ruled that the beneficiary would not be considered the owner of the trusts since any distribution of trust principal required consent of an unrelated trustee. The IRS also ruled that because the three trusts were irrevocable before September 25, 1985, the consolidation did not subject the trust to GSTT. **Ltr. Rul. 9338015, June 23, 1993; Ltr. Rul. 9338021, June 24, 1993; Ltr. Rul. 9339008, June 23, 1993**.

LANDLORD AND TENANT

EASEMENT. The defendant leased farm land under an open ended written lease. The landlord granted the plaintiff an easement to construct and maintain a 14 inch carbon dioxide pipeline through the land leased by the defendant but the defendant did not join the the easement grant. The court held that the landlord had retained a right to grant rights in the subsurface use of the property and that a lease of such rights created an estate dominant over the surface lessee's rights except for such damages caused to the surface use. Therefore, the plaintiff had the right to enter the property and make use of the easement and the defendant was entitled to recover any damages to crops or land occurring from the plaintiff's use of the easement. **Mobil**

Pipe Line Co. v. Smith, 860 S.W.2d 157 (Tex. Ct. App. 1993).

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RIPARIAN RIGHTS

PRIORITY. A group of ranchers with ranches bordering on a creek petitioned the state Department of Ecology to reduce the water usage of neighboring irrigation wells which had junior rights in the ground water feeding the creek. The Department of Ecology attempted to mediate the dispute between the affected parties but eventually issued a cease and desist order prohibiting the irrigation farmers from withdrawing water from their wells for irrigation. The farmers appealed the order to the court, arguing that the Department of Ecology had no authority to make a determination of the priority of the water users' water rights. No formal ajudication of water rights had ever occurred. The court held that the determination of the priority of water rights was beyond the authority of the Department of Ecology and was vested exclusively in the courts. **Rettkowski v. State, 858 P.2d 232 (Wash. 1993)**.

STATE TAXATION

AGRICULTURAL USE. The plaintiff owned 2.26 acres in an incorporated city next to a residential subdivision. The property across the street was planted in soybeans and was taxed as agricultural use property. The plaintiff planted fescue and brome grasses on the tract and contracted with a horse farmer to harvest the hay from the land. However, because of a drought, no hay was produced. The court held that because the land was used for the production of an agricultural product, the land was eligible for valuation as agricultural property to be valued at its use value. **Board of County Comm'rs v. Smith, 857 P.2d 1386 (Kan. Ct. App. 1993)**.

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