Assets		Securities	
Land	*Non-land*	*Value*	*Type*
181,820	18,180	200,000	Common stock
818,197	81,810	900,000	Preferred stock
1,000,000	100,000	1,100,000	
(91.91%)	(9.09%)		

With the decedent holding 78.64 percent of the preferred stock, 78.64 percent of $818,197 or $643,343 would be eligible for special use valuation.

Assuming that special use value is 20 percent of fair market value, 20 percent of $643,343 or $128,681 would be the special use value of the land. Adding to that the decedent's share of the non-land assets (78.64 percent times $81,810 or $64,335), the decedent's preferred stock would have a value of $193,016 or $27.27 per share.

The ruling by contrast, reaches the startling conclusion that the common stock has no value. Obviously, the common stock does have value, arguably the residual above the preferred's par value or $200,000 in amount.

FOOTNOTES

1 I.R.C. § 2032A(g). See generally 5 Harl, Agricultural Law § 43.03[2][e] (1992).

2 See I.R.C. § 2032A(g).

3 Maddox v. Comm'r, 93 T.C. 228 (1989).

4 Ltr. Rul. 9220006, Jan. 29, 1992.

5 See generally 6 Harl, *supra* n. 1, § 46.02[2] (gift tax); 8 Harl, *supra* n. 1, § 58.05[2][c] (estate tax).

6 The helpful comments by Prof. J. A. Kasner, University of Santa Clara School of Law, are acknowledged. See Kasner, "Special Use Valuation Permitted for Preferred Stock in Ranch Corporation" ("But there Is a Catch"), 56 Tax Notes 98 (1992).

7 January 29, 1992.

8 Ltr. Rul. 8131007, April 22, 1981.

9 See I.R.C. § 2032A(b)(1)(C)(ii).

10 See 5 Harl, *supra* n. 1, § 43.03[2][e].

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANTI-TRUST

LEASES. The plaintiffs were sugarcane farmers who subleased land from the defendants who leased the land from the owners. The defendants also owned sugarcane mills and required the plaintiffs to sign leases which required the tenants to deliver all sugarcane grown on the land to the mills owned by the sublessors. The court ruled that such "tying arrangements" were a violation of the Sherman Anti-Trust Act in that the arrangements eliminated competition in the geographical area around each mill. The court applied the law to the limited geographical area around the mills because it found that the economic feasibility of growing and selling sugarcane was limited to transportation distances of about 25 miles. **Breaux Bros. Farms, Inc. v. Teche Sugar Co., Inc., 792 F. Supp. 1436 (W.D. La. 1992)**.

BANKRUPTCY

GENERAL

DISCHARGE. The debtor was found guilty of several willful violations of the Migrant and Seasonal Agricultural Worker Protection Act and the plaintiffs in that suit sought collateral estoppel effect of that judgment such that the judgment amount was nondischargeable in the debtor's bankruptcy case. The court held that the judgment amount was nondischargeable except as to the judgments entered because of the default of the debtor. ***In re* Kallmeyer, 143 B.R. 271 (Bankr. D. Kan. 1992)**.

ESTATE PROPERTY. On the day prior to the filing for bankruptcy, the debtors' parents executed a deed for 60 acres of farmland to the debtors. The deed was recorded an hour after the filing of the petition. The debtors had thought that the bankruptcy petition was filed before the deed was executed and attempted to disclaim the deed post-petition. The court held that the property was transferred to the debtors before the bankruptcy filing and was estate property, making the disclaimer an unauthorized transfer of estate property. ***In re* Strotheide, 142 B.R. 850 (Bankr. S.D. Ill. 1992)**.

The debtors' Chapter 11 plan was confirmed and substantially consummated when the debtors defaulted on payments to a secured creditor. The debtors claimed that they transferred all of their post-petition farm property to their son in exchange for lifetime support and filed a motion to convert the case to Chapter 7. The bankruptcy court had dismissed a motion by the trustee to adjudicate the parties' rights to the property because after confirmation of the plan, all property reverted back to the debtors such that no bankruptcy estate remained subject to bankruptcy court jurisdiction. The litigation moved to state court where it was held that the property transfer was ineffective. The court in this case held that because it had no jurisdiction to affect the state court ruling and the property was no longer bankruptcy estate property, the issue of the rightful owner of the property was moot and beyond the jurisdiction of the federal courts. ***In re* Helms, 142 B.R. 964 (D. Kan. 1992)**.

EXEMPTIONS

AVOIDABLE LIENS. The debtors were not allowed to avoid a judgment lien against their homestead where the debtors had no equity in the homestead eligible for an exemption. **Matter of Arevalo, 142 B.R. 111 (Bankr. D. N.J. 1992)**.

The debtors had claimed a tractor as exempt and had received a discharge in 1988. The tractor was subject to a nonpossessory, nonpurchase money security interest which was not avoided in the case. The creditor sought to reopen the case to obtain an order for recovery of the tractor under the lien. The debtor argued that *Owen v. Owen, 111 S.Ct.*

1833 (1991) allowed avoidance of such liens against tools of a trade. The court refused to apply *Owen* retroactively to a case which had been closed prior to the decision. ***In re* Blackstone, 142 B.R. 146 (Bankr. N.D. Tex. 1992)**.

The debtor claimed two farm tractors as exempt under Tex. Prop. Code § 42.002(a) as tools of the trade. The debtor sought avoidance of a nonpurchase money, nonpossessory security interest in the tractors. The creditor argued that *Owen v. Owen, 111 S.Ct. 1833 (1991)* should not be applied to liens created before the decision, that tractors and other such large equipment were not tools of the trade eligible for the exemption, and that at the most only one tractor would be eligible because only one tractor was reasonably necessary for farming. The court held that *Owen* would be applied retroactively and that the test for eligible equipment was whether the equipment was normally used in farming and not whether the equipment was reasonably necessary for farming by the debtor. ***In re* Nash, 142 B.R. 148 (Bankr. N.D. Tex. 1992)**.

The debtors sought avoidance of judicial liens against their homestead which they claimed as exempt under Ohio Rev. Code § 2329.66(A)(1). The court held that under the Ohio exemption, the exemption was allowed only as against "execution, garnishment, attachment or sale" and thus did not provide any exemption in a bankruptcy case. Therefore, no exemption was impaired by the judicial liens and the liens could not be avoided. ***In re* Bursee, 142 B.R. 167 (Bankr. N.D. Ohio 1992)**. However, another Ohio Bankruptcy Court held that a judicial lien on a homestead was avoidable because the restriction on the exemption to "execution, garnishment, attachment or sale" was an impermissable limitation on the federal avoidance right. ***In re* Moreland, 142 B.R. 221 (Bankr. S.D. Ohio 1992)**.

The debtor had listed "household goods" in the list of exemptions which was not objected to by a creditor with a nonpurchase money, nonpossessory security interest in the debtor's household goods. The debtor sought to avoid the lien as to the exempt property. The court held that the allowance of the exemption resulting from a lack of objection did not affect the lien avoidance ability of the debtor; however, because the debtor did not specifically itemize the claimed exempt property, the court held that avoidance of the lien was not possible because the court could not determine what property was eligible for an exemption. ***In re* Mohring, 142 B.R. 389 (Bankr. E.D. Cal. 1992)**.

HOMESTEAD. The debtors claimed an exemption for their homestead, listed the value of the homestead as $415,000, and claimed that the homestead was excluded from the estate because the trustee failed to object to the exemption and valuation within 30 days and the value of the homestead was less than the encumbrances plus the exemption plus the costs of selling the home. The debtors also argued that any post-petition appreciation of the homestead above $415,000 was not estate property. The court held that the costs of selling the home could not be considered in determining whether any value exists for the estate, the trustee may object to the valuation, but not the existence, of the homestead after the 30 day period and post-petition appreciation of the homestead was estate property. ***In re* Hyman, 967 F.2d 1316 (9th Cir. 1992), *aff'g*, 123 B.R. 342 (Bankr. 9th Cir. 1991)**.

IRA. The debtor's interest in an IRA was held not to be exempt because the fund was not necessary for the support of the debtor. The debtor was a divorced 34 year old radiologist with two children. ***In re* Smith, 142 B.R. 334 (Bankr. E.D. Mo. 1992)**.

The court held that the debtor's interest in an IRA was eligible for the federal exemption under Section 522(d)(10)(E) as a "pension, profit-sharing, annuity or similar plan or contract." ***In re* Chiz, 142 B.R. 592 (Bankr. D. Mass. 1991)**.

LIFE INSURANCE. The debtor was the surviving spouse of a person who had five life insurance policies, all of which named the surviving spouse as beneficiary; two had been assigned to the surviving spouse by the decedent, two were owned by the decedent and one was owned by the decedent's corporation. The court held that under N.Y. Ins. Law § 3212(b), the proceeds of the policies assigned to the surviving spouse were exempt but the other policies were not exempt. ***In re* Rundlett, 142 B.R. 649 (Bankr. S.D. N.Y. 1992)**.

TRACTOR. The debtors claimed a farm tractor as exempt under 11 U.S.C. § 522(d)(2) as a motor vehicle and sought avoidance of a nonpurchase money, nonpossessory security in the tractor as a tool of the trade. The court held that the tractor was eligible for the motor vehicle exemption and was eligible for the lien avoidance as a tool of the trade. ***In re* Branas, 143 B.R. 64 (Bankr. W.D. Pa. 1992)**.

PREFERENTIAL TRANSFERS. More than one year before filing for bankruptcy, the debtor borrowed money from a bank and granted a security interest in the debtor's property to secure the loan. Within one year before the petition, the debtor authorized the bank to offset funds in the debtor's account against the loan balance. The bankruptcy trustee sought avoidance of that transfer as preferential. The court held that the transfer was not avoidable because the debtor received equivalent value for the transfer in the form of the reduction of the loan balance. The court also held that the trustee could not challenge the legality of the original loan as fraudulent in order to avoid the loan payment. **Matter of Loyal Cheese Co., Inc., 969 F.2d 515 (7th Cir. 1992)**.

CHAPTER 11

PLAN. The debtors' plan provided for the purchase of farm land obtained by a creditor in a related bankruptcy case, abandonment of other property to the creditor, and contribution of money into the farm business from additional loans from new creditors. The creditor which owned the land objected to the plan as not authorized by 11 U.S.C. § 363 and as unfair in that the creditor would have the risk of depreciation on the abandoned property. The court ruled that Section 363 did not give the debtor any right to purchase property from a creditor against the creditor's wishes and that the absolute priority rule exception was not satisfied where the additional capital contributed to the business was borrowed. ***In re* Batten, 141 B.R. 899 (Bankr. W.D. La. 1992)**.

CHAPTER 12

DISMISSAL. A Chapter 12 trustee had sought an accounting from the debtor-in-possession because the trustee had not received any information about the debtor's conduct of the farming business post-petition. The debtor then sought dismissal of the case, stating that most debts had been renegotiated. The court held that the debtor would be required to file the accounting before dismissal of the case after the trustee had time to examine the accounting for any fraud. ***In re* Goza, 142 B.R. 766 (Bankr. S.D. Miss. 1992)**.

PLAN. The Chapter 12 plan provided for payment of a secured claim over 40 years but made no mention of payment of post-petition, pre-confirmation interest or attorney's fees. The creditor applied some of the first plan payments to post-petition, pre-confirmation interest and attorney's fees and the debtor objected. The court held that the secured creditor was entitled, under Section 506(b) to post-petition, pre-confirmation interest and attorney's fees on its claim whether or not such amounts were listed in the confirmed plan. ***In re* Conrad, 142 B.R. 314 (Bankr. E.D. Ark. 1992)**.

TRUSTEE FEES. The Chapter 12 debtor's plan provided for direct payments to three impaired creditors, the FmHA, Farm Credit Services and Farm Credit Bank of Spokane. The trustee objected to these payments and loss of trustee fees therefrom. The trustee acknowledged that the additional fees would make the debtor's plan unfeasible. The impaired creditors did not object to the plan. The court held that the direct payments would be allowed because of the sophistication of the creditors, the lack of objection by the creditors and the remedies available to these creditors under the plan in case of default. ***In re* Teigen, 142 B.R. 397 (Bankr. D. Mont. 1992)**.

CHAPTER 13

PLAN. The debtor's plan proposed to pay to an ERISA plan 100 percent of an amount borrowed from the debtor's interest in the plan by the debtor, while paying other unsecured creditors only 17 percent of their claims. The court held that the plan could not be confirmed over the objection of an unsecured creditor because the debtor would not be paying all disposable income to unsecured creditors. The court treated the payments to the ERISA plan as payments to the debtor. ***In re* Scott, 142 B.R. 126 (Bankr. E.D. Va. 1992)**.

The debtor's plan included payments to the debtor's pension plan and only 10 percent on unsecured claims. The court held that the plan was not confirmable because the pension plan payments were disposable income required to be paid to the unsecured creditors. ***In re* Fountain, 142 B.R. 135 (Bankr. E.D. Va. 1992)**.

VALUATION. The debtor owned a pickup truck for personal use subject to a security interest held by a bank. The court held that the value of the truck, for purposes of determining the amount of the secured claim of the bank, was the wholesale value of the truck where the truck was not used in the debtor's business. ***In re* Goldner, 142 B.R. 926 (Bankr. D. Idaho 1992)**.

FEDERAL TAXATION

ABSOLUTE PRIORITY RULE. Under the debtors' Chapter 11 plan, the debtors proposed to contribute $20,000 of machinery to the farm business and $30,000 cash from a gift from a third party. The Bankruptcy Court had held that the debtors' contributions were not substantial enough to apply the absolute priority rule to allow the debtors to retain an interest in the business while paying unsecured creditors less than the full amount of their claims. The appellate court refused to decide whether the absolute priority rule survived enactment of the 1978 Bankruptcy Act and affirmed the lower court's decision, based on a comparison of the contribution to the amount of unpaid unsecured debt. ***In re* Snyder, 967 F.2d 1126 (7th Cir. 1992), *aff'g unrep. D. Ct. dec. aff'g*, 105 B.R. 898 (Bankr. C.D. Ill. 1989)**.

ADMINISTRATIVE EXPENSES. While the debtor's case was still in Chapter 11, the debtor obtained approval for loans from a creditor in exchange for superpriority of that creditor in the funds. The funds were used to keep the debtor's businesses going so that they could be sold as going concerns. During this period, the businesses incurred additional employment tax liability which was not paid. After the case was converted to Chapter 7, the IRS filed a claim for the employment taxes, interest and penalties and sought priority under Section 506(c) as to the borrowed funds because the nonpayment of the taxes helped preserve the businesses. The court held that the IRS was entitled to priority as to the unpaid taxes but not as to the interest and penalties. **U.S. v. The Merchants Bank, 142 B.R. 889 (W.D. Mo. 1992)**.

AVOIDABLE TRANSFERS. In 1988, the debtor was assessed tax penalties and the debtor paid a portion of the penalties and filed for a refund. The debtor challenged the denial of the refund to the District Court and was denied. The debtor then filed for Chapter 11 and sought recovery of the partial payment as an avoidable preferential transfer made within 90 days before the petition. The court held that the effective date of the payment was when it was made and not the date of the final determination of the appeal by the District Court; therefore, the payment was not made within 90 days before the petition and was not avoidable. ***In re* Nielsen, 143 B.R. 93 (Bankr. N.D. Tex. 1992)**.

AUTOMATIC STAY. After the debtor filed for Chapter 13 and the IRS had filed a claim for taxes owed by the debtor and nondebtor spouse, the IRS seized the income tax refund from their joint return and applied it to taxes owed by the nondebtor spouse. The debtor filed a show cause motion for violation of the automatic stay, but the IRS filed a lien against the debtor's and nondebtor's property. Although the debtor again filed a show cause motion for the second violation, the IRS seized a later income tax refund from a joint return and applied it to the nondebtor's income tax deficiency. The IRS was held to have willfully violated the automatic stay and was required to repay the debtor's share of the seized property and pay the debtor's attorney and court costs. The court held that because the IRS had filed a claim in the case involving the taxes affected by the seizures and liens, 11 U.S.C. § 106(c) applied to waive the governmental immunity for monetary claims. The court also held that I.R.C. § 7430 did not apply in cases involving violation of the automatic stay. **Taborski v. U.S., 141 B.R. 959 (N.D. Ill. 1992)**. The same result was obtained in another case where the IRS made post-confirmation levies against the debtor's and nondebtor's bank accounts. The debtor was not allowed punitive damages, however. ***In re* Kidd, 142 B.R. 238 (Bankr. S.D. Ohio 1992)**.

During the period of the debtor's Chapter 11 plan, the IRS informed the debtor that additional employment taxes would be assessed such that after payment of the taxes in the plan, the debtor would still owe an additional amount. The IRS also filed a notice of levy and a notice of a federal tax lien. The debtor sought sanctions against the IRS for violation of the automatic stay. The court held that the additional employment taxes were not discharged by the bankruptcy case and that the debtor would remain liable for the taxes outside of bankruptcy. The court also held that the lien notice did not violate the automatic stay because the lien merely extended liens which would have otherwise automatically been released. The court refused to issue any sanctions for the notice of levy because no property was actually seized. ***In re* Stuber, 142 B.R. 435 (Bankr. D. Kan. 1992)**.

After the confirmation of the debtor's Chapter 13 plan, the IRS sought relief from the automatic stay to levy for unpaid taxes. The court held that after the confirmation of a Chapter 13 plan, only the money and property paid to the trustee in accordance with the plan were estate property subject to the automatic stay and allowed the levy against any property held by the debtor and not paid to the trustee. ***In re* Thompson, 142 B.R. 961 (Bankr. D. Colo. 1992)**.

After the debtor filed for Chapter 7 and notified the IRS of the petition, the IRS made several levies against the debtor's wages and property, although no funds were actually paid to the IRS. The court held that because the IRS had not filed a claim in the case, Section 106(c) did not waive the IRS's governmental immunity in an action for monetary damages. ***In re* Nichols, 143 B.R. 104 (Bankr. S.D. Ohio 1992)**.

BAD DEBT DEDUCTION. Because of the officers and shareholder's fraudulent lending practices, the date when the debtor corporation's bad debts became worthless was unknowable. The IRS claim for unpaid taxes determined the bad debt deduction based on the accrual method because the date when the debts became worthless was unknown. The bankruptcy trustee sought use of the cash method, arguing that the burden was on the IRS to prove when the debts became worthless. The court held that the method of claiming the bad debt deduction was not affected by a bankruptcy proceeding and that where the date of worthlessness was unknown, the accrual method of claiming the deduction was to be used. ***In re* Landbank Equity Corp. v. Levy, 92-2 U.S. Tax Cas. (CCH) ¶ 50,464 (4th Cir. 1992)**.

CLAIMS. The IRS filed a timely claim for $365 for interest on the debtors' late payment of 1984 taxes. During the bankruptcy case and two months before the claims bar date, the debtors filed an amended 1984 return showing an additional $1.6 million tax liability; however, the IRS did not file a claim for these taxes until six months after the claims bar date. The court held that the claim was not allowed because the claim did not relate to the timely filed claim for interest and the IRS did not provide evidence of a reason for its failure to timely file the claim other than an overburdened claims office staff. ***In re* Norris Grain Co., 969 F.2d 1047 (11th Cir. 1992), *aff'g without pub. op.*, 131 B.R. 747 (M.D. Fla. 1990), *aff'g*, 81 B.R. 103 (Bankr. M.D. Fla. 1987)**.

DISCHARGE. The debtor filed a Chapter 11 petition on April 15, 1991 and sought discharge of 1987 and 1988 federal income taxes. The court held that the taxes for 1987 but not 1988 were dischargeable because the tax return was not due *after* three years before the filing of the petition. ***In re* Luke, 142 B.R. 160 (Bankr. W.D. Mich. 1992)**.

The debtors made several pre-petition gift transfers of property for which no federal gift tax return was filed or gift tax paid. The debtors listed the claims as disputed on their schedules but the IRS filed no claim for the gift taxes in the case. The debtor's confirmed plan made no provision for payment of the gift taxes and the plan was consummated. The debtors filed an objection to the IRS post-confirmation assessment of the gift taxes as barred by the confirmation of the plan. The court held that the confirmation order had no effect on the dischargeability of the gift taxes which were not dischargeable under Section 523(a)(1) because no return was filed. ***In re* Grynberg, 142 B.R. 415 (D. Colo. 1991)**.

The court held that the determination of the dischargeability of the debtor's liability for tax deficiency should have been made using the "preponderance" standard of proof used in *Grogan v. Garner, 111 S. Ct. 654 (1991)*. The retroactive application of *Grogan* was required because the bankruptcy case was pending when *Grogan* was decided. ***In re* Graham, 92-2 U.S. Tax Cas. (CCH) ¶ 50,447 (3d Cir. 1992), vac'g and rem'g, 131 B.R. 275 (E.D. Pa. 1991), *aff'g*, 108 B.R. 498 (Bankr. E.D. Pa. 1989)**.

The court found that the debtor had not filed returns for 1981, 1982 and 1983 but had filed amended returns for those years in 1986 after the IRS had made an assessment for the unpaid taxes due for those years. The court held that the amended returns were not returns for purposes of Section 523(a)(1)(B)(i) so as to make the taxes for those years dischargeable. **Arenson v. U.S., 92-2 U.S. Tax Cas. (CCH) ¶ 50,466 (D. Neb. 1992)**.

The IRS assessed income tax deficiencies against the debtor in 1978 for failure to report amounts embezzled by the debtor in income. The debtor reached a settlement with the IRS which included an agreement by the IRS not to seek fraud penalties. The IRS sought nondischargeability of the unpaid deficiencies because of fraudulent returns. The court held that the IRS was not estopped by the settlement from asserting fraud in the bankruptcy case. **Levinson v. U.S., 969 F.2d 260 (7th Cir. 1992)**.

JURISDICTION. The debtor corporation sought to enjoin the IRS from seeking collection of the I.R.C. § 6672 penalty against the debtor's officers and shareholders as responsible persons for failure of the corporation to pay employment withholding taxes. The court held that the court was prohibited by the Anti-Injunction Act where the injunction involved nondebtors. ***In re* Davidson's of Pikeville, Inc., 142 B.R. 789 (Bankr. E.D. Ky. 1992)**.

The IRS had levied on the debtor's interest in an ERISA qualified pension plan which the debtor had claimed as exempt. The plan administrator sought bankruptcy court guidance as to whom the debtor's interest should be paid. The court held that once the debtor's interest was found to be exempt, the bankruptcy court was without jurisdiction to determine the debtor's liability for payment of taxes with the funds from the plan because the property was no longer in the bankruptcy estate. ***In re*** **Lewis, 142 B.R. 952 (D. Colo. 1992)**.

PLAN. In the confirmation order, the court ruled that the principal purpose of the corporate debtor's reorganization plan was not tax avoidance. Under the plan, the debtor carried over net operating losses and distributed stock to shareholders and creditors in satisfaction of some claims. The IRS subsequently issued final regulations under I.R.C. § 269 prohibiting the use of net operating losses by certain reorganized corporations if the principal purpose of the reorganization was tax avoidance. The debtor sought a ruling that the confirmation order precluded the IRS from prohibiting the debtor from using its carryover net operating losses. The court held that the confirmation order did not have preclusive effect as to tax issues which arose post-confirmation. ***In re*** **Hartman Material Handling Systems, Inc., 141 B.R. 802 (Bankr. S.D. N.Y. 1992)**.

SOVEREIGN IMMUNITY. The debtor sought to recover as avoidable preference payments, non-trust fund tax payments made within 90 days before the bankruptcy filing. The IRS argued that the action was barred by sovereign immunity. The court held that the preference action was a compulsory counterclaim to the IRS claim for taxes and that the IRS sovereign immunity was waived by 11 U.S.C. § 106(c). ***In re*** **Pullman Const. Indus., Inc., 142 B.R. 280 (Bankr. N.D. Ill. 1992)**.

CONTRACTS

EXTRINSIC EVIDENCE. The defendant contracted with the defendant to raise turkeys provided by the defendant. Under the contract, the defendant was to provide "a maximum of 32 flocks consisting of a total of 300,000 young turkeys in each 12 month period." The plaintiff argued that the provision required the defendant to provide at least that many turkeys each year and the failure of the defendant to provide that amount caused the failure of the plaintiff's business, the loss of the business property and loss of profits. The defendant argued that the provision allowed it discretion as to how many birds to provide each year. The court ruled that the provision was ambiguous and allowed extrinsic evidence of the conduct of the parties. The contract also provided for an amount to be paid by the defendant if the contract was terminated early, in recognition that an early termination would jeopardize the plaintiff's ability to pay off loans incurred to build the facilities used to raise the turkeys. The court held that because the defendant failed to make this payment, the plaintiff was entitled to damages for lost profits for the period after the contract was terminated. **Superbird Farms, Inc. v. Perdue Farms, Inc., 970 F.2d 238 (7th Cir. 1992)**.

FEDERAL AGRICULTURAL PROGRAMS

ADMINISTRATIVE APPEALS. The ASCS has issued proposed regulations amending the administrative review process to provide for procedures for filing requests for administrative review of adverse determinations by county committees, the Deputy Administrator and the National Appeals Division. **57 Fed. Reg. 43937 (Sept. 23, 1992)**.

ALIEN AGRICULTURAL LABOR. The Secretaries of Agriculture and Labor have determined that no additional aliens should be admitted to the United States or should otherwise acquire the status of aliens lawfully admitted for temporary residence under Section 210A of the Immigration and Nationality Act to meet a shortage of workers to perform seasonal agricultural services during fiscal year 1993. **57 Fed. Reg. 45370 (Oct. 1, 1992)**.

The plaintiffs were alien agricultural workers hired under the H-2 program which required a minimum hourly wage. The hourly wage was annually adjusted and the regulations required employers to adjust the piece rate wage such that the average worker would earn the minimum hourly wage. The workers successfully challenged a 1978 interpretation which would allow the piece rate adjustment to be based on a previous year's average worker's production. In 1985, the USDA required by contract employers to base their piece rate on the current year productivity but the growers filed separate letters of protest, claiming that they were entitled to base the adjustment on the average productivity of workers in the previous year. The court held that the employers were not entitled to challenge the regulation because they agreed by contract to provide the higher piece rate. **Frederick County Fruit Growers v. Martin, 968 F.2d 1265 (D.C. Cir. 1992)**.

BORROWER'S RIGHTS. The FmHA held a first mortgage on farm property owned by the debtors and leased to third parties. After the debtors defaulted on their loan, the FmHA sent the debtors notice of loan servicing options but received no response. After the debtors filed Chapter 12 bankruptcy, the FmHA sent the debtor's counsel a letter providing possible loan servicing options. After again receiving no response, the FmHA agreed to allow the trustee to sell the farm free and clear of liens. The debtors argued that the letter to their counsel violated the automatic stay and that the agreement to allow the trustee to sell the property violated the debtors' right of first refusal under the Agricultural Credit Act. The court held that the letter did not violate the automatic stay because the letter made no effort to enforce or collect upon an obligation but merely informed the debtors of their rights. The court also held that the FmHA agreement to sell the farm did not violate the debtor's rights because the debtors had lost those rights by choosing bankruptcy over loan restructuring. **U.S. v. Nelson, 969 F.2d 626 (8th Cir. 1992),** ***aff'g in part and rev'g in part an unrep. D. Ct. dec. aff'g,*** **123 B.R. 993 (Bankr. D. S.D. 1990)**.

CROP INSURANCE. The FCIC has announced that the date for accepting applications for wheat, barley, rye, oat, potato and nursery crop insurance for the 1993 crop year has been extended to October 31, 1992. **57 Fed. Reg. 44967-44969 (Sept. 30, 1992)**.

GUARANTEED LOANS. The FmHA has issued final regulations providing procedures for guaranteeing loans to businesses impacted by natural disasters such as Hurricane Andrew and for injuries caused by microbursts of wind. **57 Fed. Reg. 45968 (Oct. 5, 1992)**.

HERBICIDES. The plaintiff grain farmer applied the herbicide Scepter, a herbicide registered with the EPA, to a crop of soybeans. Eleven months later, as provided by the instructions, the plaintiff planted corn on the same acres but the corn was damaged by the carryover effect of the herbicide. The plaintiff sued the manufacturer for failure to adequately test the product, for failure to properly formulate the product, for failing to manufacture the product in conformity with its specifications, for selling the product with an inaccurate label, and for failing to warn that it was unsafe to plant corn 11 months after application of the product. The manufacturer argued that FIFRA preempted the suit. The court held that FIFRA preempted state tort actions only insofar as the tort duty involved would require labeling in addition to or different from the federal labeling requirements of FIFRA such that in order for the manufacturer to comply with the state tort duty, the manufacturer would have to violate FIFRA. The case was remanded for consideration of the plaintiff's claims based on this standard. **Worm v. American Cyanamid Co., 970 F.2d 1301 (4th Cir. 1992)**.

MEAT AND POULTRY INSPECTION. The FSIS has adopted as final regulations permitting the use of ionizing radiation to treat fresh or frozen uncooked poultry carcasses or parts. **57 Fed. Reg. 43588 (Sept. 21, 1992)**.

NATIONAL FORESTS. The Forest Service has adopted as final revisions to its policies and procedures for implementing the National Environmental Policy Act and Council on Environmental Quality regulations. **57 Fed. Reg. 43180 (Sept. 18, 1992)**.

PESTICIDES. The EPA has published in their entirety the comments of the USDA regarding the final regulations for the Worker Protection Standard for Agricultural Pesticides. See p. 157 *supra.* **57 Fed. Reg. 42472 (Sept. 14, 1992)**.

TOBACCO. The ASCS has announced that the 1992 marketing quota for flue-cured tobacco is 891.8 million pounds and the price support level is $1.56 per pound. **57 Fed. Reg. 43176 (Sept. 18, 1992)**.

The CCC has announced that the 1992 marketing quota for burley tobacco is 670.0 million pounds and the price support level is $1.649 per pound. **57 Fed. Reg. 43178 (Sept. 18, 1992)**.

The CCC has adopted as final regulations involving the enforcement of the price support program for tobacco. **57 Fed. Reg. 43580 (Sept. 21, 1992)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. Under the decedent's will property passed to a charitable organization subject to use conditions and sale restrictions. The estate was allowed a charitable deduction for the fair market value of the property. After the limitation period expired for assessment of estate tax, the property was reconveyed to the estate because the organization failed to comply with the use conditions. The IRS noted that the initial charitable deduction should not have been allowed unless the chance that the conditions on the transfer would occur was "so remote as to be negligible." However, because the reconveyance was in furtherance of the devise to the remainder holders under the will, the estate was not required to include the fair market value of the reconveyed property in gross income. **Ltr. Rul. 9236003, May 22, 1992**.

DISCLAIMERS. Under the decedent's will, property passed to the decedent's three children who were directors of a private foundation established by the decedent. The will provided that if the children disclaimed any bequest, the property passed to a charity selected by the disclaimant's spouse. If the charity selected is the private foundation, the property was to be held in a separate fund administered by directors other than the disclaimant. The IRS ruled that any disclaimed property passing to the private foundation was eligible for the charitable deduction. **Ltr. Rul. 9235022, May 29, 1992**.

The decedent's executor filed a disclaimer of the decedent's interest in a predeceased spouse's estate more than nine months after the spouse died but less than nine months after the spouse's will was admitted to probate. The court held that the disclaimer was not effective because the nine month period of I.R.C. § 2518 began on the predeceased spouse's death. **Est. of Fleming v. Comm'r, 92-2 U.S. Tax Cas. (CCH) ¶ 60,113 (7th Cir. 1992)**.

At the death of the spouse, the surviving spouse received a life interest in a trust with unlimited power to withdraw corpus and a remainder to the decedent's son. The surviving spouse executed a disclaimer of a portion of the interest in the trust sufficient to decrease the decedent's taxable estate to $500,000 and elected to decrease the disclaimed amount by the administrative expenses which were taken as an estate income tax deduction. The court held that the disclaimed amount could be decreased by the administrative expenses because the disclaimer was made in terms of a formula based on reducing the taxable estate. **Est. of McInnes v. Comm'r, T.C. Memo. 1992-558**.

A portion of an intervivos trust passed to the decedent's daughter on the decedent's death with the daughter having the power to appoint any of the principal to herself, her estate or anyone else. The daughter was also to serve as trustee. The daughter disclaimed the right to appoint a portion of the trust corpus and the right to serve as trustee with the result that the disclaimed portion of the trust would pass to the daughter's issue on her death. The IRS ruled that the disclaimer was effective for the fractional share of the trust such that the fractional share would not be included in the daughter's gross estate. The IRS also ruled that the passing of the trust property to the daughter's issue would be a direct skip subject to GSTT and that the GSTT exemption amount would be allocated to that property using the fraction equal to the ratio of the value of the property disclaimed to the value of the entire trust property. **Ltr. Rul. 9236018, June 5, 1992**.

GENERATION SKIPPING TRANSFER TAX. The taxpayer was the beneficiary of a life interest in a trust created by the taxpayer's parent in 1955 and which granted each beneficiary a testamentary power to appoint the interest to a descendant. The taxpayer executed a will which appointed the trust interest to the taxpayer's grandchildren in trust with the trust to terminate not later than 21 years after the death of the last of the taxpayer's children living at the death of the grantor of the taxpayer's trust interest. The IRS ruled that the trusts for the taxpayer's grandchildren would not be subject to GSTT. **Ltr. Rul. 9235030, May 29, 1992**.

The taxpayer was the beneficiary of a life interest in a trust created by the taxpayer's parent in 1973 and which granted the taxpayer a power to appoint one-half of the interest to anyone other than the taxpayer, the taxpayer's estate or the taxpayer's creditors. The taxpayer appointed one-half of the trust property to another irrevocable trust for the taxpayer's life with a remainder to the taxpayer's issue. The irrevocable trust was required to terminate within 21 years after the death of persons living at the death of the taxpayer's parent. The IRS ruled that the original trust was not subject to GSTT nor was the trust created by the exercise of the special power of appointment. **Ltr. Rul. 9236029, June 9, 1992**.

GROSS ESTATE. The decedent was a co-trustee and life beneficiary of a trust established by a predeceased parent. The decedent was also co-trustee of a trust for the decedent's sister. Each trust allowed the trustees to distribute trust corpus for the beneficiary's "support, maintenance, comfort, emergencies and serious illness," but the distributee co-trustee could not participate in the decision to make the distribution. The IRS ruled that because the distribution of corpus was not subject to an ascertainable standard and because the co-trustees had reciprocal powers, the decedent's interest in the trust was includible in the decedent's gross estate. **Ltr. Rul. 9235025, May 29, 1992**.

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent's estate elected installment payment of estate tax under I.R.C. § 6166. The estate included stock in two corporations which passed to one heir. The heir transferred the stock in exchange for stock in a new corporation which would redeem the shares as necessary to pay the estate tax installments. The IRS ruled that the redemptions would not be considered dispositions of the heir's interest in the stock to cause acceleration of the installment payments. **Ltr. Rul. 9238029, June 22, 1992**.

JOINT PROPERTY. The decedent and surviving spouse purchased real property in joint tenancy in 1955 with funds earned solely by the decedent. The decedent's estate claimed the entire real property in the decedent's estate and the surviving spouse used the estate property value as a basis for determining gain on the sale of the property. The court held that the entire property was includible in the decedent's gross estate because Section 2040(b) as added in 1976 was not amended by ERTA 1981 for estates where the joint interest was created prior to the 1976 amendment. **Gallenstein v. U.S., 92-2 U.S. Tax Cas. (CCH) ¶ 60,114 (6th Cir. 1992), aff'g, 91-2 U.S. Tax Cas. (CCH) ¶ 60,088 (E.D. Ky. 1991)**.

LIFE INSURANCE. The taxpayer was a shareholder of a corporation which owned life insurance polices on the life of the taxpayer. The corporation sold the policies to an irrevocable trust for their fair market value. One beneficiary of the trust was the son of the taxpayer and the trust, son and taxpayer were all partners of a pre-existing partnership. The IRS ruled that because the sale of the life insurance policies was to a partner of the the taxpayer, the proceeds of the policies at the death of the taxpayer would not be included in gross income. **Ltr. Rul. 9235029, May 29, 1992**.

MARITAL DEDUCTION. The decedent's will bequeathed estate property to the surviving spouse in an amount, after deductions, necessary to reduce the estate tax to zero. The estate incurred $26,000 in attorney's fees and the surviving spouse as executrix elected to claim $13,000 of the fees on the estate's income tax return and $13,000 as an estate tax deduction. Although the court found that the will was unclear as to whether income tax deductions were intended to reduce the marital bequest, the court held that under state law, the surviving spouse as executrix had sufficient discretion to allocate the expense such that the marital bequest was not affected; therefore, the income tax deduction did not decrease the marital bequest. **Est. of Young v. Comm'r, T.C. Memo. 1992-551**.

The decedent's will bequeathed property in trust to the surviving spouse. Under the trust, all trust income was to be distributed at least quarterly and the trustee had the power to distribute trust corpus to the spouse. The trust also provided that the trustee had unlimited power to hold, manage, invest or reinvest trust property. The IRS ruled that because the trustee would be subject to the "prudent man standard" in investing trust property to prevent investment in nonproductive property, the trust was QTIP. **Ltr. Rul. 9237009, May 21, 1992**.

SALE OF ESTATE PROPERTY. Under the decedent's will, an heir had the option to receive art work in the estate up to the value of one-half of the residuary estate or the proceeds of the sale of the art work equal to one-half of the residuary estate. The heir elected the second option and the estate sold the art work at an auction in which the auction house received a premium of 10 percent of the bid price from the buyer of each piece. The estate argued that the fair market value of the art work was equal to the bid price and did not include the premium paid by the buyer which was paid to the auction house. The estate also argued that if the premium was included in the fair market value of each piece, the premium was deductible as an administrative expense. The IRS ruled that because the total amount paid was used by the art industry to determine value and was listed as the price of auctioned art work, the fair market value of the art work included the premium. The IRS also ruled that because the sale of the art work was done to facilitate the option selected by the heir, the premium paid to the auction house was not an administrative expense except to the extent the estate could demonstrate that the sale was made in order to pay other estate administrative expenses. **Ltr. Rul. 9235005, May 27, 1992**.

SPECIAL USE VALUATION. Prior to death, the decedent's farm was crop share leased to a grandson. The farm was bequeathed to a son of the decedent, an uncle of the grandson. The uncle elected special use valuation of the farm and continued the lease of the farm to the nephew but on a cash lease basis. The uncle argued that the cash lease of the farm did not amount to a cessation of qualified use because a family member continued to farm the property. In the alternative, the uncle argued that the lease was a disposition of the farm to a qualified heir. The court held that the qualified use test was determined based on the qualified heir's use of the property and a cash lease was not a qualified use. The court also held that the lease of the property was not a disposition sufficient to make the nephew a qualified heir. **Williamson v. Comm'r, 92-2 U.S. Tax Cas. (CCH) ¶ 60,115 (9th Cir. 1992), *aff'g*, 93 T.C. 242 (1989)**.

FEDERAL INCOME TAXATION

COOPERATIVES. A nonexempt agricultural cooperative entered into a marketing arrangement with a corporation for the processing and marketing of raw agricultural products produced by the cooperative's members. The cooperative provided financing for the corporation by direct contribution of capital and relending of borrowed funds to the corporation. The corporation also made payments to the cooperative under a licensing agreement. The IRS ruled that all of the payments to the cooperative were patronage sourced income because the payments were closely related to the cooperative's need for the corporation's processing and marketing services. **Ltr. Rul. 9236001, May 20, 1992**.

The taxpayer was an agricultural products marketing cooperative which was a defendant in a civil antitrust lawsuit. The taxpayer reached an out-of-court settlement in which it paid cash and a promissory note to the plaintiff. The lawsuit involved the taxpayer's marketing activities directly related to patronage sourced income. The IRS ruled that the payments under the settlement were patronage sourced expenses for purposes of determining net patronage source earnings for allocating patronage dividends. **Ltr. Rul. 9238010, June 16, 1992**.

ELECTIONS. The IRS has redesignated the citations of the treasury regulations governing taxpayer elections under TAMRA 1988. **57 Fed. Reg. (1992)**.

EMPLOYEE. The taxpayer operated a forestry service business which included the planting and pruning of pine trees for a client on a contract basis. The taxpayer used crews of full time workers to do the planting and pruning. The taxpayer provided supervision as to how the trees were to be planted and pruned and required specific work starting times. The workers provided their own equipment which cost less than $100 and was not a significant investment in the business. The workers were paid on a weekly basis and could quit or be fired without liability. The IRS ruled that the workers were employees subject to FICA and FUTA withholding. **Ltr. Rul. 9237001, Nov. 14, 1991**.

HOBBY LOSSES. The taxpayer was allowed loss deductions from a cattle-raising business. The court found that the taxpayer had 20 year's experience in the cattle business, invested substantial amounts of time in the business, kept accurate records and investigated the profit potential of the business before acquiring the business. **McGuire v. Comm'r, T.C. Memo. 1992-542**.

INSTALLMENT METHOD. The taxpayer owned a corporation X which owned another corporation Y and two subsidiaries. In 1981, the X corporation sold its Y stock to a third corporation, W, wholly owned by the taxpayer's daughter and two trusts for the taxpayer's grandchildren. The consideration for the stock was a 20-year promissory note and the sale was reported on the installment method. The taxpayer also received a security interest in the Y corporation stock, the stock of the two subsidiaries and any proceeds. In 1983, the daughter's corporation W and corporation Y and its subsidiaries adopted plans of liquidation under which the Y corporation distributed the proceeds of its assets to corporation W and W distributed the proceeds of its assets to the daughter and the trusts. The final distribution included cash. Thus, the security for the installment sale of the Y corporation stock was converted into other property including cash. The IRS noted that the changes in the W and Y corporations did not affect the installment method of reporting the sale, nor did the mere change in the collateral securing the sale. However, under Temp. Treas. Reg. § 15a.453-1(b)(3)(i), gain must be reported by the seller to the extent the security for the installment sale is cash or cash equivalent. Therefore, once the Y corporation stock was liquidated into cash and cash equivalents, the taxpayer had to report gain to the extent of the cash or cash equivalents securing the note. In addition, the IRS ruled that the entire distribution of the Y corporation stock by the W corporation to the daughter and trusts was a second distribution to a related person but would not cause recognition of the entire gain from the installment sale because the distribution by the W corporation occurred more than two years after the installment sale. The IRS noted that the two year rule could be tolled if the W corporation's risk of loss was substantially diminished. **Ltr. Rul. 9238005, June 8, 1992**.

INVESTMENT TAX CREDIT. The taxpayer was denied investment tax credit for leased equipment which was leased to and used by the same business before and after the purchase by the taxpayer. **Schlang v. Comm'r, T.C. Memo. 1992-515**.

PARTNERSHIPS

ADMINISTRATIVE ADJUSTMENTS. The taxpayer was a partner with the taxpayer's spouse in a business. The spouse had declared bankruptcy and the IRS had issued a deficiency notice to both parties disallowing some partnership losses and credits. The nondebtor spouse argued that the deficiency notice was defective because it involved partnership items and the IRS did not comply with the partnership administrative adjustment rules. The IRS argued that the rules did not apply because one partner was in bankruptcy. The court held that the bankruptcy rule did not apply to the nondebtor partner and that the deficiency notice was invalid as to the nondebtor partner for failure to comply with the partnership administrative adjustment procedures. **Dubin v. Comm'r, 99 T.C. No. 17 (1992)**.

The IRS has sent a Final Partnership Administrative Adjustment disallowing deductions made by the partners because the partners were not at-risk as to partnership liabilities for which the deductions were taken. The partners argued that the "at-risk" determination was not a partnership item subject to the FPAA procedures. The court held that although the at-risk determination did involve a determination of the nature of the partnership liabilities involved, the at-risk determination was not subject to the FPAA procedure because the at-risk determination was not an item used in preparation of the partnership return. **Hambrose Leasing 1984-5 v. Comm'r, 99 T.C. No. 15, 1992**.

A tax matters partner had signed a consent for extension of the period for assessments against the partnership after the partner had resigned from the partnership. The court held that the consent was effective against the partnership because the partner had not resigned as tax matters partner and the partnership had not designated a new tax matters partner prior to the signing of the consent. **Monetary II Limited Partnership v. Comm'r, T.C. Memo. 1992-562**.

TRANSACTIONS. The IRS has adopted as final regulations governing transactions between partners and between partners and their partnership. **57 Fed. Reg. 44974 (Sept. 30, 1992)**.

PENSION PLANS. For plans beginning in September 1992 the weighted average is 8.19 percent with the permissible range of 7.37 to 9.01 percent for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 92-42, I.R.B. 1992-39, 13**.

RETURNS. The IRS has issued new Form 1120-W(FY) Fiscal Year Corporation Estimated Tax for corporations with taxable years beginning after June 30, 1992 and before January 1, 1993. **Ann. 92-130, I.R.B. 1992-38, 43**.

SAFE HARBOR INTEREST RATES
OCTOBER 1992

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	3.85	3.81	3.79	3.78
110% AFR	4.23	4.19	4.17	4.15
120% AFR	4.62	4.57	4.54	4.53
		Mid-term		
AFR	5.78	5.70	5.66	5.63
110% AFR	6.37	6.27	6.22	6.19
120% AFR	6.96	6.84	6.78	6.74
		Long-term		
AFR	7.03	6.91	6.85	6.81
110% AFR	7.74	7.60	7.53	7.48
120% AFR	8.46	8.29	8.21	8.15

SAFE HARBOR LEASING. The taxpayer entered into several safe harbor leasing agreements involving segments of railroad track. The court held that each segment was to be treated as a separate transaction and denied depreciation deductions and investment tax credits for those segments not placed in service in the required periods under the safe harbor leasing rules. In addition, the deductions and credits were denied because the property was not sufficiently described in the leases. **Armstrong World Indus., Inc. v. Comm'r, 92-2 U.S. Tax Cas. (CCH) ¶ 50,461 (3d Cir. 1992), *aff'g*, T.C. Memo. 1991-326**.

S CORPORATIONS

ELECTION. A shareholder died on March 1, 1991, and the corporation made the S corporation election on March 15, 1991 with all other shareholders consenting to the election. The IRS ruled that the executor or administrator of the deceased shareholder's estate could give the consent to the election. **Rev. Rul. 92-82, I.R.B. 1992-39, 10**.

TRUSTS. The IRS has ruled that a trust which qualifies as an individual retirement account under I.R.C. § 408(a) cannot be a qualified Subchapter S trust. **Rev. Rul. 92-73, I.R.B. 1992-37, 7**.

Under the decedent's will, shares of an S corporation passed to two trusts which had the surviving spouse as beneficiary. Under the trusts, the spouse was to receive all income at least annually and the trustee had the discretion to distribute trust corpus to the spouse for maintenance, support and medical needs. The IRS ruled that the trusts were qualified Subchapter S trusts. **Ltr. Rul. 9236036, June 10, 1992**.

TRUSTS. The taxpayer operated a dairy farm which was transferred by deed to a trust with the taxpayer's spouse and daughter as trustees but no named beneficiary. The taxpayer continued to operate the farm and received payments and paid expenses in the taxpayer's name. No distributions to beneficiaries were made and the trust filed fiduciary tax returns but the taxpayer did not file personal income tax returns. The taxpayer argued that the income tax deficiency assessed should have been reduced by the expenses of the farm. The taxpayer refused to testify about the dairy expenses and income, claiming that the records were in the possession of the trustees, but the taxpayer made no effort to obtain the records for the Tax Court or IRS. The court held that the trust was a sham and that the taxpayer was liable for tax on all income of the trust. The court also held that the taxpayer was not allowed deductions in addition to any discovered by the IRS from third parties because the taxpayer failed to provide any evidence of the deductions even though the records were claimed to be held by the taxpayer's spouse and daughter as trustees. **Buelow v. Comm'r, 970 F.2d 412 (7th Cir. 1992)**.

WITHHOLDING TAXES. The IRS has adopted as final regulations governing payment of payroll withholding taxes. The payments are to be made monthly for employers who paid $50,000 or less during the previous July 1 to June 30 and for new employers. Employers who paid more than $50,000 during that period will be required to make payments semi-weekly. Exceptions include requiring immediate payments when the withheld amount exceeds $100,000 during a semi-weekly or monthly period. Payments with respect to wages paid to farm workers are based on the previous calendar year. The regulations are effective for payments to be made after December 31, 1992, with a one-year transition rule. **57 Fed. Reg. 44099 (Sept. 24, 1992)**.

The taxpayer was employed by a brokerage firm which treated its brokers as independent contractors for purposes of federal employment tax withholding. The IRS determined that the brokers were employees subject to withholding and entered into a settlement with the employer concerning the amount owed by the employer. The taxpayer claimed a credit for the amount of withholding taxes which should have been, but were not, withheld by the employer. The court held that the taxpayer could not claim credit for withholding taxes which were not withheld and paid by the employer. ***In re* Eryurt, 142 B.R. 999 (Bankr. M.D. Fla. 1992)**.

NUISANCE

COTTON GIN. The plaintiff purchased a rural home in 1978 and the defendant built a cotton gin within 300 feet of the plaintiff's home in 1980. The plaintiff suffered from asthma and complained to the defendants and various governmental agencies over the next 5 years about the dust from the gin. The defendants modernized the gin in 1983 and added pollution control devices in 1984 and 1985. The plaintiff brought suit for damages and an injunction against the gin as a private nuisance. The defendant asserted the one year statute of limitations for nuisance actions against agricultural operations as a defense to the action. The court held that the gin was an agricultural operation within the statute, Miss. Code § 95-3-29 and that no changes had been made in the operation, except for an increase in the amount of cotton ginned, sufficient to restart the one year limitation period. **Bowen v. Flaherty, 601 S.2d 860 (Miss. 1992)**.

RACKETEERING

RICO. The plaintiffs were a Chapter 12 bankruptcy debtor and the Chapter 12 trustee. The debtor had purchased farm supplies from the defendant and had defaulted on the credit account with the defendant who obtained a judgment for the unpaid amount. The debtor settled the matter by agreeing to pay some money immediately, to grant a security interest in all of the debtor's property and to give a promissory note bearing 2 percent monthly interest compounded monthly. The note was to be paid from 50 percent of the proceeds of joint checks for the debtor's crops. The defendant failed to pay the debtor 50 percent of the joint checks and refused to allow a lien to be released so that the debtor could sell some farm land at fair market value. After the primary mortgage holder foreclosed on the debtor's land, the defendant purchased the land at the foreclosure sale at bargain prices. The debtor alleged that the actions of the defendant violated the Racketeering Influenced and Corrupt Organizations Act. The action was dismissed for failure to state a cause of action except as to two specific allegations of incidents of mail fraud and as to the allegation of a pattern of future racketeering activity in that the defendant also charged excessive interest to other delinquent accounts. ***In re* Bennett, 142 B.R. 616 (Bankr. N.D. N.Y. 1992)**.

INSURANCE

APPLES. The plaintiff was an apple grower who suffered hail damage to an apple crop. The defendant's adjuster sampled only apples from the lower portions of the trees and submitted a damage claim based on that sample. The plaintiff hired its own adjuster who reached a higher damage amount by including apples from the tops of the trees as well as apples from the sides of the trees. The court held that evidence of the plaintiff's past yields and profits was irrelevant as to the amount of insurable loss because the insurable loss was based on percentage of crop loss and not actual profits loss. The court also upheld the jury award of damages for vexatious and unreasonable conduct by the defendant because the evidence was sufficient to show that the defendant purposefully used a less effective sampling method and refused to negotiate with the plaintiff on the method of determining the crop loss. **Boyd v. United Farm Mut. Reins. Co., 596 N.E.2d 1344 (Ill. Ct. App. 1992)**.

LANDLORD AND TENANT

REPAIRS. The tenant leased an old manufacturing storage warehouse to store excess grain and beans on a temporary basis. Under the lease, the tenant had responsibility for repairs although the landlord agreed to and did make some repairs to the roof. The tenant requested that the fire sprinkler system be turned off and the landlord turned off the system but did not drain the pipes. After the tenant disconnected the electricity to the sprinkler heating system, the valves froze, causing water to leak onto the stored grain. The tenant sued for damages to the grain from the leaky roof and sprinkler system. The landlord sued for unpaid rent after the tenant failed to vacate the premises until 8 months after termination of the lease. The court held that the landlord was not liable for the water damage from the leaky roof because the tenant had the responsibility for repairs. The court also held that the landlord had assumed the duty to properly turn off the sprinkler system and was liable for that damage. The tenant was held liable for the unpaid rent on the holdover period. **A.O. Smith Corp. v. Kaufman Grain Co., 596 N.E.2d 1156 (Ill. Ct. App. 1992)**.

PRODUCTS LIABILITY

MILKING SYSTEM. The owners of a dairy farm sued the installer and designer of a milking system for breach of implied and express warranty and negligence for injury to dairy cows and lost profits. The action was filed more than four years but less than six years after delivery of the system. The court held that the four year statute of limitations of the UCC, Mich. Stat. Ann. § 19.2725, applied because the action was one for economic loss between a buyer and seller of business products. Although the contract was for goods and services, the court followed the test set forth in *Bonebrake v. Cox, 499 F.2d 951 (8th Cir. 1974)* and held that because the contract was predominantly one for goods, the UCC statute of limitations applied. **Neibarger v. Universal Cooperatives, 486 N.W.2d 612 (Mich. 1992), *aff'g*, 450 N.W.2d 88 (Mich. App. 1989)**.

SECURED TRANSACTIONS

FEDERAL FARM PRODUCTS RULE. The Packers and Stockyards Administration has certified the Colorado central filing system for most farm products. **57 Fed. Reg. 45605 (Oct. 2, 1992)**.

AGRICULTURAL LAW DIGEST
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FILING. The debtor granted a security interest in a farm tractor to the creditor who filed the financing statement in the county of the debtor's business on October 2, 1989. Effective October 1, 1989, Florida law changed to require filing of all financing statements with the Secretary of State. The court held that the security interest was unperfected because it was filed in the wrong place. ***In re* Walker, 142 B.R. 484 (Bankr. M.D. Fla. 1992)**.

PERFECTION. A partnership which operated a dairy granted security interests in partnership farm and dairy equipment to a creditor. Although the security agreement was properly executed, the financing statement listed the three partners individually as the debtors and not the partnership. The financing statement was signed by the three partners over the words "d/b/a Walker Brothers Dairy." The court held that the security interest was not perfected because the financing statement did not correctly identify the debtor as the partnership. ***In re* Walker, 142 B.R. 482 (Bankr. M.D. Fla. 1992)**.

STATE TAXATION

AGRICULTURAL USE. The taxpayer operated a greenhouse for the production and sale of ornamental plants on a portion of several acres. The county board of revision denied the taxpayer's application for reduction of tax assessment under the Current Agricultural Use Value program because the agricultural products grown by the taxpayer were grown above the ground in pots. The court held that the growing method was not a relevant criterion for determination of whether the land was used for agricultural purposes and allowed the tax reduction. **Siebenthaler v. Montgomery Cty. Bd. of Rev., 598 N.E.2d 78 (Ohio Ct. App. 1991)**.

CITATION UPDATES

***In re* Lindsey, 142 B.R. 447 (Bankr. W.D. Okla. 1992)** (Chapter 12 trustee tax liability) see p. 147 *supra*.

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