FOOTNOTES

[1] See generally 5 Harl, **Agricultural Law** § 43.02[2] (1991).
[2] See 6 Harl, *supra* note 1, § 46.08.
[3] Treas. Reg. § 25.2511-1(h)(4). See Ltr. Rul. 8302020, Oct. 5, 1982 (either mother (the contributor) or daughter as joint tenants could withdraw from savings account; gift occurred on withdrawal by daughter).
[4] Rev. Rul. 69-148, 1969-1 C.B. 226. But see First Wisconsin Trust Co. v. U.S., 553 F. Supp. 26 (E.D. Wis. 1982) (gift on transfer of corporate stock to street account in joint tenancy with other spouse).
[5] See notes 3 and 4 *supra*.
[6] Treas. Reg. § 25.2518-2(c)(5), Ex. 9.
[7] Est. of Dancy v. Comm'r, 872 F.2d 84 (4th Cir. 1989), *rev'g*, 89 T.C. 550 (1987) (disclaimers of "revocable" interests were qualified; disclaimer of interest in tenancy by entirety interest in real property not permitted).
[8] Ltr. Rul. 8208069, Nov. 25, 1981.
[9] Ltr. Rul. 8916070, Jan. 25, 1989 (decedent made all contributions to account and surviving spouse never made withdrawals from account, thus no completed gift to spouse during decedent's lifetime).
[10] Ltr. Rul. 9012053, Dec. 27, 1989.
[11] Ltr. Rul. 9017026, Jan. 26, 1990.
[12] Ltr. Rul. 9012053, Dec. 27, 1989.
[13] Treas. Reg. § 25.2515-1(b).
[14] Treas. Reg. § 25.2515-1(c)(1)(i).
[15] Treas. Reg. § 25.2515-1(b).
[16] Economic Recovery Tax Act of 1981, Pub.L. 97-34, Sec. 403(c)(3)(B), 95 Stat. 302 (1981), repealing I.R.C. § 2515.
[17] Rev. Rul. 83-35, 1983-1 C.B. 234. See Ltr. Rul. 8951070, no date given (disclaimer not qualified where disclaimant provided consideration to joint accounts).
[18] See notes 3-16 *supra*.
[19] Treas. Reg. § 25.2518-2(c)(4) (qualified disclaimer of joint tenancy or tenancy by the entirety interests must be made no later than nine months after creation of the joint interest, except for interests created before 1982). See Ltr. Rul. 7829008, April 14, 1978.
[20] *E.g.*, Est. of O'Brien v. Comm'r, T.C. Memo. 1988-240 (disclaimer of joint tenancy interest ineffective where not made within nine months of creation of joint tenancy).
[21] Kennedy v. Comm'r, 804 F.2d 1332 (7th Cir. 1986), *rev'g*, T.C. Memo. 1986-3 (period for reasonable time to disclaim surviving spouse's interest in joint tenancy interest held by decedent runs from date of death and not creation of joint tenancy).
[22] McDonald v. Comm'r, T.C. Memo. 1989-140, *on rem. from* 853 F.2d 1494 (8th Cir. 1988), *rev'g*, 89 T.C. 293 (1987), *on remand*, T.C. Memo. 1989-140 (disclaimer timely where surviving joint tenant made disclaimer within nine months of joint tenant's death but more than nine months after creation of joint tenancy). See also Ltr. Rul. 9135043, June 3, 1991 p. 165 *infra*.
[23] See Ltr. Rul. 9106016, Nov. 8, 1990 (disclaimer of tenancy by entirety interest by husband); Ltr. Rul. 9135044, June 3, 1991 p. 165 *infra*..

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL

AUTOMATIC STAY. The court held that the conversion of a Chapter 13 case to Chapter 7 after a creditor had obtained relief from the automatic stay did not affect the relief from the automatic stay and the creditor could continue with foreclosure against the debtor's property. ***In re* Campos, 128 B.R. 790 (Bankr. C.D. Cal. 1991)**.

AVOIDABLE LIENS. The debtor's residence was subject to a first mortgage in excess of the residence's fair market value and an IRS tax lien. The trustee abandoned the house and the debtors were granted a discharge. The debtors petitioned for avoidance of the IRS claim as an unsecured claim, under Section 506(d). The court examined the competing authority of *Gaglia v. First Federal Savings & Loan Ass'n, 889 F.2d 1304 (3rd Cir. 1989)* (avoidance allowed) *and In re Dewsnup, 908 F.2d 588 (10th Cir. 1990), cert. granted, 111 S. Ct. 949 (1991)* (avoidance not allowed), and held that avoidance of the unsecured claim was not allowed after the property subject to the lien was abandoned. The court stated that avoidance was not necessary because the discharge effectively prevented a deficiency judgment against the debtors on the lien in a post-bankruptcy foreclosure. ***In re* Elam, 129 B.R. 137 (Bankr. N.D. Ohio 1991)**.

AVOIDABLE TRANSFERS. Prior to filing bankruptcy, the debtors fraudulently transferred their homestead to third parties. One of the debtors' creditors filed suit in state court and received a judgment of fraudulent transfer which was filed prior to the debtors' bankruptcy filing. In the bankruptcy case, the trustee also moved for avoidance of the transfer as fraudulent. The trustee objected to the creditor's judgment lien claim against the homestead, arguing that the judgment lien did not attach to the property because the debtors did not have ownership and possession of the property when the lien was recorded. The court held that under state law, the judgment attached to the property when filed and remained a senior interest against the property after the bankruptcy filing and during the trustee's avoidance of the transfer. ***In re* Mathiason, 129 B.R. 173 (Bankr. D. Minn. 1991)**.

ESTATE PROPERTY. The debtor was a cotton merchant which purchased several truck loads of cotton from a seller but which failed to pay for four truck loads before filing bankruptcy. The seller claimed a priority

interest in the cotton over the trustee's interest in that title to the cotton was not intended to have been transferred to the debtor until the cotton was paid for. The cotton was shipped F.O.B. the seller's location loaded onto the trucks. The cotton was shipped to a warehouse operated by an affiliate of the debtor but no warehouse receipts were issued because the cotton was to be immediately shipped to cotton mills. The trustee argued that title to the cotton passed upon delivery to the warehouse and the seller retained, at best, an unperfected security interest in the cotton. The court agreed and found in addition that the warehouse did not hold the cotton as bailee for the seller. The court also held that the seller's oral demand for reclamation of the cotton was not sufficient under Section 546(c) because the seller failed to show that the debtor was insolvent at the time the demand was made. ***In re* Julien Co., 128 B.R. 987 (Bankr. W.D. Tenn. 1991)**.

EXEMPTIONS. The debtor claimed an exemption in the debtor's interest in an IRA under Section 541(c)(2) and under N.Y. Debt. & Cred. Law § 282. The court held that the debtor's interest in the IRA was not excludible from estate property under federal nonbankruptcy exemption nor under the New York exemption for "plan or contract on account of illness, disability, death, age or length of service." ***In re* Kramer, 128 B.R. 707 (Bankr. E.D. N.Y. 1991)**.

Prior to filing for bankruptcy, the debtor filed a homestead deed on a residence which was subject to a prior first deed of trust. During the bankruptcy proceeding a second lien was placed on the residence and a third lien was placed on the residence in order to secure plan payments to creditors. The trustee sold the residence but the proceeds were insufficient to pay the debtor's homestead exemption after payment on the third deed of trust. The debtor argued that the homestead exemption took precedence over the third deed of trust. The court held that the granting of the third deed of trust by the debtor was a waiver of the homestead exemption. ***In re* Shirley, 128 B.R. 724 (Bankr. W.D. Va. 1991)**.

The debtor listed stock in several corporations as exempt and objected to the trustee's motion to sell the stock and give the debtor the proceeds to the extent of the debtor's $5,000 exemption. The debtor argued that the exemption for personal or real property "to be selected by the householder," allowed the debtor to exempt the stock per se and to prevent the sale. The court held that the quoted language served only to require the debtor to identify the exempt property and that because the debtor failed to provide any evidence that the stock was not worth more than the exemption limit, the sale would be allowed so as to determine the value of the stock and give the debtor only the entitled exemption. ***In re* Spraker, 128 B.R. 727 (Bankr. W.D. Va. 1991)**.

The debtors had filed a homestead deed on two parcels of property on which their residence was located. After the debtors had filed for bankruptcy and converted their Chapter 13 case to Chapter 7, the debtors filed an amended homestead deed claiming a smaller exemption in the residential property and a larger exemption in unencumbered land. The court held the change in exemption was invalid under Virginia law which allowed amendment of a homestead deed only to change the value of the property. ***In re* Emerson, 129 B.R. 82 (Bankr. W.D. Va. 1991)**.

INVOLUNTARY CASES. A creditor of the debtor obtained a judgment against the debtor pre-petition and filed an involuntary petition against the debtor in an attempt to reach the debtor's interest in an ERISA qualified pension plan which was the debtor's sole asset. The creditor recognized that an involuntary petition is generally not allowed where the debtor has only one outstanding debt which is not being paid, but the creditor argued that because the debtor's interest in the pension plan was exempt from judgment under state law, the involuntary petition was allowed under an exemption formulated in *In re 7H Land & Cattle Co., 6 B.R. 29 (Bankr. D. Nev. 1980)* which allowed an involuntary petition where the creditor has no other recourse to collect a debt. The court held that the exception applied only where the creditor seeking the involuntary petition was the debtor's sole creditor; therefore the involuntary petition was denied. **In re Smith, 129 B.R. 262 (M.D. Fla. 1991), aff'g 123 B.R. 423 (Bankr. M.D. Fla. 1991)**.

CHAPTER 11

DISCHARGE. The debtor obtained loans from a creditor which were used in the debtor's thoroughbred horse farm and which were secured by horses. The loans were obtained over several years of debtor-creditor relationship and the creditor relied on financing statements up to one and one-half years old in determining the debtor's net worth. Although the court found that the debtor had made substantial misstatements on the financial statements, including undervaluing of liabilities and overvaluing of assets, the court held that the loans were dischargeable because the creditor unreasonably relied on the dated financial statements without attempting to verify the statements. ***In re* Burnett, 129 B.R. 299 (Bankr. M.D. Fla. 1991)**.

CHAPTER 12

AUTOMATIC STAY. The debtor partnership challenged the lifting of the automatic stay in order to sell farm land owned by another partnership. The same persons were partners in both partnerships and the partners in the title-holding partnership had assigned rights to the land to the debtor partnership partners as individuals and without the assent of the other partners or their representatives. Although the court acknowledged that the assignment did give the debtor partnership some rights in the land, the rights were insufficient to avoid the lifting of the automatic stay, given the debtor's attempts to confuse the title to the land and several attempts to avoid the foreclosure through bankruptcy filings. The court noted that the partners had control over the land and could have easily cleared title but had chosen to confuse the title as an attempt to avoid foreclosure and sale of the land. ***In re***

Cupples Farms, 128 B.R. 769 (Bankr. E.D. Ark. 1991).

CHAPTER 13

DISMISSAL. The debtor filed a Chapter 7 case and received a discharge; however, several months later, the debtor fell behind in payments on a mortgage under the plan and filed Chapter 13. The Chapter 13 plan provided for payment of the arrearages. The trustee objected to the plan and moved for dismissal because the filing was not made in good faith. The court found that precedent existed to allow a Chapter 13 filing soon after a Chapter 7 case but that such was allowed only where the debtor's circumstances changed because of events other than bankruptcy. In the present case, debtor was only eligible for Chapter 13 because the Chapter 7 case discharged all of the debtor's unsecured creditors; therefore, the Chapter 13 case was not filed in good faith and was dismissed. ***In re* Farrington, 129 B.R. 271 (Bankr. M.D. Fla. 1991)**.

FEDERAL TAXATION

ALLOCATION OF PLAN PAYMENTS FOR TAXES. The debtor had filed a liquidating Chapter 11 plan which allocated payments for federal trust fund taxes prior to payment of non-trust fund taxes. The court held that the plan could not allocate payments for taxes first to trust fund taxes. The court found that the allocation would not affect the success of the plan because the plan was a liquidating plan. In addition, the court noted that the only reason for the allocation was to reduce the possible penalty for responsible persons and that allowing the allocation would encourage mismanagement of a business debtor after the trust fund taxes were paid. **Matter of Visiting Nurses Ass'n of Tampa Bay, Inc., 128 B.R. 835 (Bankr. M.D. Fla. 1991)**.

AVOIDABLE TRANSFERS. The debtor made payments to the IRS within 90 days before filing bankruptcy and the trustee sought avoidance of the payments and return of the money. The IRS claimed that under *Begier v. Comm'r, 110 S.Ct. 2258 (1990)* see Vol 1, p. 127, the payments were not avoidable because the payments were voluntary payments of trust fund employment withholding taxes. The court remanded the case for determinations as to whether the debtor requested the payments be applied to trust fund taxes owed and whether the payments were actually applied to trust fund tax liabilities of the debtor by the IRS. The court held that both conditions were necessary to apply *Begier* in order to make the pre-petition payments nonavoidable. ***In re* L & S Concrete Services, Inc., 129 B.R. 208 (E.D. Wash. 1991)**.

CLAIMS. An IRS late-filed amendment for a claim for taxes for an additional tax year was allowed under the court's equity powers where, although the claim was not related to a timely filed claim for taxes for a previous taxable year, the debtor had previously listed the added tax year claim in the plan. ***In re* Unroe, 937 F.2d 346 (7th Cir. 1991), *aff'g*, 119 B.R. 626 (S.D. Ind. 1990), *aff'g*, 104 B.R. 77 (Bankr. S.D. Ind. 1989).**

DISCHARGE. The debtor was assessed for taxes and penalties and interest on the taxes within 240 days of filing bankruptcy but the taxes were for taxable years more than three years before the filing of bankruptcy. The debtor argued that although the taxes were not dischargeable (for other reasons), the interest and penalties relating to those taxes were dischargeable under Section 523(a)(7) because the interest and penalties related to taxes due more than three year prior to the filing for bankruptcy. The court held that the penalties and interest were dischargeable. ***In re* Roberts, 129 B.R. 171 (C.D. Ill. 1991), *aff'g*, 125 B.R. 534 (Bankr. C.D. Ill. 1991)**.

LEVY. The debtor was assessed for unpaid income taxes and a tax lien was recorded in the county recorder's office. A levy for the taxes was filed against the debtor's wages, but after the debtor filed for bankruptcy, the levy was released because of the automatic stay. The debtor and IRS filed a stipulation in the bankruptcy case that the income taxes were dischargeable but the IRS filed two improper levies against the debtor's wages, both of which were released. After the bankruptcy case, the IRS again filed an improper levy against the debtor's wages and the debtor brought suit for damages under I.R.C. § 6103 for improper disclosure of tax return information. The court held that the filing of the tax lien was a proper public disclosure of the tax return information; therefore, the levy, although otherwise improper, was not a disclosure of confidential information. **William E. Schrambling Accountancy Corp. v. U.S., 937 F.2d 1485 (9th Cir. 1991)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has issued an interim rule adding Hawaii and New Mexico to the list of brucellosis-free states. **56 Fed. Reg. 46108 (Sept. 10, 1991)**.

COMMODITY FUTURES TRADING. The CFTC has issued as final rules amendments to the regulations governing routine changes in contract marketing rules relating to trading months. The amendments allow the expedited procedure for CFTC approval without limitation on the length of time that a trading month may be listed in the future. **56 Fed. Reg. 42683 (Aug. 29, 1991)**.

The CFTC has issued proposed rules amending the trade option exemption of Rule 32.4(a) and case-by-case exemption of Rule 32.4(b) to permit trade options, and other options determined by the CFTC not to be contrary to the public interest, on agricultural commodities to the same extent as other commodities. **56 Fed. Reg. 43560 (Sept. 3, 1991)**.

The CFTC has issued proposed regulations, with request for comments, amending the Guideline on Economic and Public Interest Requirements for Contract Market Designation. The amendments would streamline the designation approval process by clarifying the standard of review for specified terms and conditions of proposed contract designations. **56 Fed. Reg. 43726 (Sept. 4, 1991)**.

The CFTC has issued as final rules amendments removing several requirements for designation of options on futures contracts and raising to 50 contracts the minimum reporting level requiring no exchange justification. **56 Fed. Reg. 43694 (Sept. 4, 1991)**.

PERISHABLE AGRIC. COMMODITIES ACT. The respondent was charged with failing to pay for 77 lots of fruit and vegetables from 17 sellers. The respondent argued that sanctions should not be imposed because the failure to pay resulted from the respondent being the victim of fraudulent practices of several fruit suppliers which resulted in substantial losses to the respondent and the bankruptcy of the respondent. The ALJ rejected the respondent's "excuse" as not relative to the imposition of sanctions and reiterated the "no excuses" policy- "the Act calls for payment, not excuses." The respondent's license was revoked. ***In re* Carlton Fruit Co., 49 Agric. Dec. 513 (1990)**.

The respondent was a licensed seller of one lot of cherries which was inspected and graded as "Washington #1." The respondent requested a second inspection in anticipation of shipment of the cherries to Canada, but the inspection resulted in the cherries not qualifying for "Washington #1" grade because of deterioration. The inspectors notified the respondent of the lower grading and warned the respondent against shipping the cherries in containers marked "Washington #1." The respondent, however, relied on a 20-25 year practice by the local inspectors of allowing a second inspection to be ignored if the grade of the cherries would not meet the grade of the first inspection and shipped the cherries in interstate commerce in containers marked as "Washington #1." The ALJ rejected this defense because the inspectors were not authorized to allow cherries which had been inspected twice to keep their grade from the first inspection if the second inspection showed a lower grade. The JO lowered the ALJ's sanction of a 30 day suspension to a three day suspension only because the respondent had relied on a 20-25 year practice by local inspectors. The JO warned that the lesser sanction was warranted only under the specific facts of the case and the regular 30 to 60 day suspensions would still be warranted in mislabeling and misbranding cases. ***In re* Stemilt Growers, Inc., 49 Agric. Dec. 520 (1990)**.

STATUTE OF LIMITATIONS. The debtor obtained an FmHA loan secured by farm land and defaulted on the loan in 1982. The FmHA made several written and oral communications with the debtor as to resolution of the loan, either through refinancing or sale of the land. The debtor also filed a series of bankruptcy cases which were all eventually dismissed. The FmHA filed a claim in the last case for the amount owed under the mortgage. After the last bankruptcy case, the FmHA sent the debtor notice of acceleration of the loan and demand for payment of the entire debt. In response, the debtor filed an application with the FmHA for loan services. The FmHA filed the current case for foreclosure almost eight years after the debtor's default. The debtor claimed that the foreclosure action was barred by the statute of limitations in 28 U.S.C. § 2415 in that (1) the early communications by the FmHA amounted to acceleration of the debt because the FmHA sought the sale of the land or (2) the FmHA's filing of a claim in bankruptcy was a notice of acceleration of the debt. The court held that the action was not barred by the statute of limitations in that (1) the original communications made no specific notice of acceleration of the debt and demand for payment, (2) the bankruptcy filings tolled the statute of limitations during the cases, and (3) the debtor's requests for loan services was an affirmation of the debt which restarted the limitation's period. **U.S. v. Brichat, 129 B.R. 235 (D. Kan. 1991)**.

TUBERCULOSIS. The APHIS has issued as a final rule amendments to the regulations governing the destruction of animals with tuberculosis. The amendments change "Deputy Administrator" to "Administrator" and "Veterinary Services" to "Animal and Plant Health Inspection Service." **56 Fed. Reg. 36997 (Aug. 2, 1991)**.

FEDERAL ESTATE AND GIFT TAX

DISCLAIMERS. The decedent and surviving spouse owned a residence as joint tenants, with the surviving spouse providing the downpayment and making all payments of the loan, taxes and insurance, including payments made after the decedent's death. The surviving spouse and the decedent's child continued to live in the residence after the decedent's death. Within nine months after the decedent's death, the surviving spouse disclaimed the decedent's one-half interest in the residence which would have passed to the surviving spouse so that the decedent's interest passed to the decedent's child. The IRS ruled that the disclaimer was valid. **Ltr. Rul. 9135043, June 3, 1991**.

The decedent and surviving spouse owned a residence as tenants by the entirety. The surviving spouse disclaimed the decedent's interest in the residence which would pass by right of survivorship as a tenant by the entirety. The disclaimed interest passed under the decedent's will either to a marital trust or residuary trust, in both of which the surviving spouse was the life time income beneficiary. The surviving spouse also disclaimed the annual right to withdraw 5 percent or $5,000 from the residuary trust. The IRS ruled that the disclaimer was valid. **Ltr. Rul. 9135044, June 3, 1991**.

FEDERAL INCOME TAXATION

ALTERNATIVE MINIMUM TAX. The taxpayer calculated alternative minimum tax by using the negative adjusted gross income amount from the regular tax computations and reducing the amount of preference items by the amount which provided no tax benefit under the regular tax computation. The court held that the alternative minimum tax should have been calculated by first determining the total gross income and then subtracting net operating loss carryover and itemized deductions. The dividend exclusion and capital gain deductions were then subtracted to determine the extent these items did not produce a tax benefit and would not be included in the alternative minimum tax calculations. **Breakell v. Comm'r, 97 T.C. No. 18 (1991)**.

AUTOMOBILE EXPENSES. The taxpayer was denied deductions for business use of an automobile where the only evidence of the business use was through oral testimony of the taxpayer. **Gleason v. Comm'r, T.C. Memo. 1991-418**.

BAD DEBTS. The taxpayer operated a petroleum distributorship which sold petroleum products to a service station owner on credit and claimed the amounts owed as business bad debts after the service station owner abandoned the business. The court held that the debts were entitled to a bad debt deduction because the amounts owed arose from a bona fide business debt, were evidenced by a promissory note and were based on an enforceable obligation for a specific amount. **Gleason v. Comm'r, T.C. Memo. 1991-418**.

C CORPORATIONS

LIQUIDATION. As part of a plan of complete liquidation, a corporation distributed its assets to limited partnerships and then distributed the limited partnership interests to its shareholders. The corporation argued that the recapture provisions of I.R.C. §§ 1245, 1250, 1254 did not apply because the partnership interests were not depreciable property. The court held that the distribution of the partnership interests was not a distribution of the specific assets and would not be subject to recognition of gain or loss upon distribution. **Petroleum Corp. of Texas v. U.S., 91-2 U.S. Tax Cas. (CCH) ¶ 50,417 (5th Cir. 1991), *rev'g and rem'g*, 90-2 U.S. Tax Cas. (CCH) ¶ 50,395 (N.D. Tex. 1990)**.

DEPRECIATION. Under pre-1987 rules, the taxpayer's costs of renovation of rental residential property for sheet metal roof, kitchen cabinets and tile were not deductible as repairs but were depreciable as 19-year property. The costs of a microwave and range were depreciable as 5-year property. **Subt v. Comm'r, T.C. Memo. 1991-429**.

HOLDING COMPANIES. The IRS has issued procedures for issuance of advance rulings on subissues which must be resolved in order to determine whether Section 351 applies to an exchange of stock for stock in the formation of a holding company. **Rev. Proc. 91-54, I.R.B. 1991-37, 12**.

INTEREST RATES. The IRS has announced that for the period October 1, 1991 through December 31, 1991, the interest rate for overpayment of taxes will remain at 9 percent and the rate for underpayments will remain at 10 percent. **Rev. Rul. 91-50, I.R.B. 1991-37, September 16, 1991**.

INVESTMENT TAX CREDIT. The taxpayer leased an airplane to a corporation in which the taxpayer was a 90 percent shareholder. The lease was for less than 50 percent of the useful life of the airplane and had no option to renew; however, the lease was renewed for an equal period, extending the entire lease period beyond 50 percent of the useful life of the aircraft. The IRS applied, and the court adopted, a realistic contemplation test in denying the taxpayer investment tax credit on the airplane in that the taxpayer and corporation contemplated that the lease would be extended beyond 50 percent of the airplane's useful life. The useful contemplation test was adopted by *Owen v. Comm'r, 881 F.2d 832 (9th Cir. 1989)* and *Connor v. Comm'r, 847 F.2d 985 (1st Cir. 1988)*. **Schiff v. Comm'r, 91-2 U.S. Tax Cas. (CCH) ¶ 50,423 (6th Cir. 1991)**.

The stipulated facts presented by the taxpayers, in the initial case, demonstrated that the leases of computer equipment by the taxpayers to a corporation controlled by them were for one year but were renewed each year. The Tax Court held that the burden was on the IRS to prove that the leases were intended to continue beyond half of the six year useful life of the computers and allowed the investment tax credit based on the stipulated facts. The Eighth Circuit Court of Appeals vacated and remanded the Tax Court opinion to provide grounds for its decision allowing investment tax credit. On remand, the Tax Court held that the IRS had met its burden by raising several issues that were not resolved in the stipulated facts--(1) why were the computers not sold to the corporation, (2) what was the business purpose for the one year leases, and (3) what other leases did the taxpayers have with third parties? Because the stipulated facts did not resolve these issues, summary judgment was awarded to the IRS. **Borcher v. Comm'r, 91-2 U.S. Tax Cas. (CCH) ¶ 50,416 (8th Cir. 1991), *aff'g*, 95 T.C. 82 (1990), *on rem. from* 889 F.2d 790 (8th Cir. 1989), *rev'g and rem'g* T.C. Memo. 1988-349**.

PAYMENT OF WAGES IN COMMODITIES. The taxpayer paid a spouse, under an employment agreement, $200 plus 3,000 pounds of live market hogs per month. The hogs were delivered to a market where title changed to the spouse, with the spouse receiving the proceeds of the sale of the hogs. The taxpayer argued that the arrangement was not subject to FICA withholding because the spouse was paid in pounds of hogs and the spouse had the risk of the eventual price received for the hogs. The IRS ruled that, as in *Rev. Rul. 79-207, 1979-2 C.B. 351*, because the sale of the hogs occurred immediately after the spouse's receipt of the hogs, the compensation was in cash and was subject to FICA withholding. See N. Harl, "Paying Wages in Kind for Agricultural Labor," 1 **Agric. Law Dig**. 53 (1990). See

also *Rev. Rul. 79-207, 1979-2 C.B. 351* (farm labor paid in commodity storage receipts treated as payment in cash); *Ltr. Rul. 8252018, September 17, 1982* (wages paid in form of milk by corporation carrying on dairy operation not subject to FICA tax where employees compensated with percentage of milk produced, percentage of calves and percentage of grain production). **Ltr. Rul. 9136001, May 14, 1991**.

PARTNERSHIPS

ADMINISTRATIVE ADJUSTMENTS. The taxpayer was a partner in a partnership which was a partner in a partnership which was the subject of a final partnership administrative adjustment (FPAA). Although the adjustment was not assessed against the first partner, the IRS assessed a deficiency against the taxpayer based on the FPAA. The taxpayer brought suit to enjoin the assessment and asserted that the assessment was barred by the statute of limitations. The court held that the suit was not barred by the Anti-Injunction Act because the taxpayer had no other means of challenging the deficiency assessment. However, the court held that the statute of limitations did not begin to run until the IRS received notice that the taxpayer was an indirect partner in the partnership which was the subject of the FPAA. The court held that because the taxpayer was not listed as an indirect partner on the first tier partnership's tax return, the taxpayer was an unidentified partner and the statute of limitations did not start to run when the first tier partnership return was filed. **Costello v. U.S., 765 F. Supp. 1003 (C.D. Calif. 1991)**.

Prior to issuing an FPAA, the IRS obtained an extension of the time for making assessments against the taxpayer partners attributable to partnership items. The extension agreement was signed by a partner who was not the tax matters partner, under the default procedure for determining the tax matters partner where no TMP had been designated. Although the extension was not signed by a TMP, the court held that the signing partner had the authority under state law and the partnership agreement to agree to the extension for the partnership because such extensions were part of the partnership's normal business operations. **Cambridge Research & Dev. Group v. Comm'r, 97 T.C. No. 19 (1991)**.

CONTRIBUTION OF SERVICES. The taxpayer provided services in the formation of partnerships which invested in real property. The taxpayer received an interest in the partnership profits in return for the services rendered and did not include the partnership interests in income. The court held that the partnership interests received by the taxpayer had no value because the income was highly speculative. Because the case was decided on this issue, the court did not specifically hold that if the partnership interests had value, the interests were includible in the taxpayer's income but expressed doubt that the interests were includible because the taxpayer received only a profit's interest in the partnership and not a capital interest. **Campbell v. Comm'r, 91-2 U.S. Tax Cas. (CCH) ¶ 50,420 (8th Cir. 1991), *aff'g and rev'g*, T.C. Memo. 1990-162**.

REFUNDS. The taxpayer filed the income tax return for 1981 in May 1987 showing a net operating loss for 1981 which the taxpayer elected to carry back to 1978 and 1979. The taxpayer then filed a claim for refund for 1978 and 1979. The IRS denied the refund, claiming that the statute of limitations on refunds for 1981 was three years after the due date for the 1981 return. The taxpayer argued that the special limitations period of I.R.C. § 6511(a) allows a claim for refund within two years after the tax is paid. The court held that only the special statute of limitations of Section 6511(d)(2)(A) for net operating losses applied where the refund claim resulted from carryback of net operating losses. **Sachs v. U.S., 91-2 U.S. Tax Cas. (CCH) ¶ 50,426 (6th Cir. 1991)**.

S CORPORATIONS

INADVERTENT TERMINATION. On May 22, 1990, stock in the taxpayer S corporation was transferred to three trusts but the trusts failed to file elections to be treated as qualified subchapter S trusts. The taxpayer corporation filed the elections, on April 30, 1991, upon learning from its accountant that the elections had not been filed. The IRS ruled that the termination was inadvertent and waived the termination of S corporation status. **Ltr. Rul. 9136024, June 11, 1991**.

PASSIVE INVESTMENT INCOME. The corporation leased personal property and provided the following services in connection with the leases:

- assisted lessees in making selections;
- assisted lessees in maintaining the property;
- handled state and city paperwork for lessees;
- provided resale services;
- provided analytical reports;
- provided on-line computer accessed information to lessees;
- managed credit card program for clients;
- arranged rental of other property for lessees.

The IRS ruled that the corporation's income from the leases was not passive investment income for purposes of the corporation's qualification for S corporation status. **Ltr. Rul. 9135033, May 31, 1991**.

SECURED TRANSACTIONS

FILING. The debtor had granted a security interest in farm equipment and cattle and the secured creditor filed the financing statement, under current law, in the county recorder's office. During the five year life of the security interest, the West Virginia legislature passed a law requiring filing of security interests in farm equipment and cattle with the Secretary of State. The court held that the change in the law did not affect the perfection of the previously filed security interest and the creditor had a perfected security interest in the debtor's farm equipment and cattle. ***In re* Simmons, 129 B.R. 84 (Bankr. N.D. W. Va. 1991)**.

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JOURNAL ARTICLES

"Symposium: 1990 Annual Agricultural Law Ass'n Annual Conference," 24 Indiana Law Review No. 4 (1991).

K. Meyer, "Should the Unique Treatment of Agricultural Liens Continue?"

S. Schneider, "Recent Developments in Chapter 12 Bankruptcy."

R. McEowen & N. Harl, Estate Planning for the Elderly and Disabled: Organizing the Estate to Qualify for Federal Medical Extended Care Assistance."

C. Bock, P. Harris & J Deery-Schmitt, "Agricultural Taxation-Selected Issues."

J. Copeland, "Analysis of the Farmer's Comprehensive Liability Policy."

A. Pires & S. Bagoly, "Federal Court Jurisdiction Over USDA/ASCS Cases: How and In What Courts Farmers Can Seek Review of USDA Denials of Their Subsidy Payments."

A. Turrini, "Swampbuster: A Report from the Front."

W. Brussard, "Protecting Agricultural Resources in Europe: A Report from the Netherlands."

C. Blakeslee, "Legal Concerns Triggered by Alternative Land Use-Subtle Issues and Potential Traps."

W. Smart, "Economic and Financial Analysis of Alternative Uses of Agricultural Land."

J. Becker, "Landowner or Occupier Liability for Personal Injuries and Recreational Use Statutes: How Effective is the Protection?"

M. Noble, "Recreational Access to Agricultural Land: Insurance Issues."

H. Wulfe, "Recreational Access to Agricultural Land: The European Experience."

Note, "Corporate Ownership Restrictions and the United States Constitution."

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