unenforceable or the termination of the administration of the estate for federal estate tax purposes.[22] If the cancellation occurs at the death of the holder of the obligation, the cancellation is treated as a transfer by the estate of the decedent. However, if the obligation were held by the person other than the decedent such as a trust, the cancellation is treated as a transfer by that person immediately after the decedent's death.[23] If the decedent and the obligor are related persons, the fair market value of the obligation for disposition purposes is not less than the face amount.[24]

An important point to remember is that a decedent's estate is not charged with income inclusion (except for distributions to the obligor) from installment obligations;[25] however, a disposition of installment obligations entered into by the estate constitutes a taxable disposition.[26] This point is especially important for installment sales by the estate of special use value land to a qualified heir.[27] I.R.C. Section 1040 operates to shield from recognition the gain on transfer of special use value land to a qualified heir.[28] However, that section does not appear to shield from recognition the gain on distribution of an *installment obligation* from the estate.

Cancellation or forgiveness of an installment obligation is treated as a disposition of the obligation by the holder.[29] Thus, if the seller forgives or cancels the obligation to pay amounts due, the result is a disposition of the obligation. If the obligor is a related party, the amount taken into account as a disposition triggering recognition of unreported gain attributable to the obligation is not less than the face amount of the installment obligation.[30] If the parties are unrelated, the calculations of gain on disposition are to use the fair market value of the obligation.[31] IRS has ruled, however, that cancellation of principal in a debt restructuring with a financially troubled buyer did not result in income tax consequences to the seller.[32] That ruling, however, is questionable in light of the fact that it ignores the 1980 statutory enactment requiring recognition on cancellation or forgiveness of principal with an installment obligation.[33]

FOOTNOTES

1 See generally 6 Harl, **Agricultural Law** § 48.03 (1991).
2 Id. at § 48.03[8].
3 See notes 15-20 *infra* and accompanying text.
4 I.R.C. § 453B(a).
5 *Id.*
6 I.R.C. § 453B(a)(1).
7 I.R.C. § 453B(a)(2). See Rev. Rul. 79-371, 1979-2 C.B. 294.
8 Rev. Rul. 65-185, 1965-2 C.B. 153.
9 Branham v. Comm'r, 51 T.C. 175 (1968); Bogatin v. U.S., 78-2 U.S.T.C. ¶ 9733 (W.D. Tenn. 1978).
10 Schaeffer v. Comm'r, T.C. Memo. 1981-27; Ltr. Rul. 8711002, Nov. 13, 1987 (pledging of mortgage contract as security for line of credit not disposition of contract where credit line less than amount of contract and secured creditor not responsible for collection of contract).
11 I.R.C. § 453A(d)(1), added by Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, Sec. 10202(c).
12 I.R.C. § 453A(d)(2).
13 I.R.C. § 453A(d).
14 I.R.C. § 453A(d)(4).
15 I.R.C. § 691(a)(4), 453B(c).
16 Treas. Reg. § 1.691(a)-5. See Trust. Co. of Georgia v. Ross, 262 F. Supp. 900 (N.D. Ga. 1966), *aff'd*, 392 F.2d 694 (5th Cir. 1967), *cert. denied*, 393 U.S. 830 (1968) (sale of stock in escrow); Hedrick v. Comm'r, 63 T.C. 395 (1974); Claiborne v. U.S., 648 F.2d 448 (6th Cir. 1981) (closing of land transaction after owner's death); Ltr. Rul. 9023012, March 6, 1990 (closing of land transaction cancellable if mortgage commitment not obtained within 45 days and decedent died within 45-day period; mortgage commitment not obtained but parties proceeded to closing and gain was income in respect of decedent).
17 I.R.C. § 2031.
18 Est. of Robinson v. Comm'r, 69 T.C. 222 (1977).
19 I.R.C. § 691(c).
20 I.R.C. § 453B(c).
21 I.R.C. § 691(a)(4), (5). See Rev. Rul. 86-72, 1986-1 C.B. 253 (gain recognized and includible in decedent seller's estate where installment note automatically cancelled upon seller's death).
22 Ltr. Rul. 8552007, Sept. 18, 1985.
23 I.R.C. § 691(a)(5)(A).
24 I.R.C. § 691(a)(5)(B).
25 I.R.C. § 453B(c).
26 See Rev. Rul. 55-159, 1955-1 C.B. 391 (distribution of installment obligation from trust to beneficiary was taxable disposition). See also Ltr. Rul. 8317050, Jan. 25, 1983 (same).
27 See generally 5 Harl, **Agricultural Law** § 43.03[2][d][iii] (1991).
28 I.R.C. § 1040(a).
29 I.R.C. § 453B(f).
30 I.R.C. 453B(f)(2).
31 I.R.C. §§ 453B(f)(1), 453B(a)(2).
32 Ltr. Rul. 8739045, June 30, 1987.
33 See Harl, "Forgiveness of Principal of Installment Obligations," 10 J. Tax'n & L. 67 (1988).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

TACKING POSSESSION. The case involved the ownership of land which was fenced too far on to the plaintiff's property and was used by the defendants and their parents for just over 30 years to raise animals and crops. The defendants claimed ownership of the disputed strip of land through acquisitive prescription (adverse possession) including the use of the land by the defendants' parents. The plaintiff argued that a survey of the land interrupted the defendants' possession of the disputed land, making possession less than 30 years. The court held that a survey does not interrupt possession and that the defendants could include the possession of their parents in determining whether possession was for 30 years. **Delgado v. Burns, 576 So.2d 1075 (La. Ct. App. 1991)**.

BANKING

BREACH OF CONTRACT. After the debtors incurred several years of losses, the PCA required the debtors to obtain other financing to decrease their debt principal. The debtors sought advice from the state university which developed a three year plan to increase the debtors' ranch profitability. The debtors obtained other financing which enabled them to reduce the loan principal owed to the PCA. After two more years of losses the PCA refused to continue the loans. The debtors sued the PCA for breach of contract and negligence for failing to finance the three year ranch plan. The court upheld the trial court's judgment notwithstanding the verdict of the jury for the debtors, holding that the debtors provided insufficient evidence that the PCA agreed to finance the three year plan and that the three year plan was too indefinite to form the basis of a valid contract. **Nelson v. Prod. Credit Ass'n of the Midlands, 930 F.2d 599 (8th Cir. 1991), *aff'g* 729 F. Supp. 677 (D. Neb. 1989)**.

BANKRUPTCY

GENERAL

EXEMPTIONS. The debtor was denied an exemption for a duplex which was rented to a third party and the debtor's child where the debtor was living with the debtor's fiance. ***In re* Bradshaw, 125 B.R. 782 (Bankr. E.D. Wis. 1991)**.

After the debtors' Chapter 13 plan was confirmed and payments made to the trustee, the debtors converted the case to Chapter 7 and claimed as exempt the debtors' wages paid to the trustee under the Chapter 13 plan. The court held that the character of the money as wages was lost once the money was paid to the trustee and the Chapter 13 plan was confirmed. Therefore, the debtors could not claim the money as exempt wages in the Chapter 7 case. ***In re* Radebaugh, 125 B.R. 797 (Bankr. W.D. Mo. 1991)**. ***In re* Halpenny, 125 B.R. 814 (Bankr. D. Hawaii 1991)**.

The debtor claimed an exemption for pension and profit sharing plans and an interest in an IRA. No creditor filed a timely objection to the exemptions but one creditor filed a late objection to the exemption of the plans and IRA. The court held that the debtor had a good-faith statutory basis for claiming the exemptions because the issue of whether the Illinois exemptions were pre-empted by ERISA was unsettled. Therefore, the untimely objection would not be allowed. ***In re* Kazi, 125 B.R. 981 (Bankr. S.D. Ill. 1991)**.

The debtor operated a trucking business and claimed three trucks, a trailer and a payloader as exempt. The debtor was not allowed an exemption for the trucks as tools of the trade because Montana provided a separate exemption for motor vehicles. However, because the value of each of the trucks exceeded the exemption amount for motor vehicles, the debtor could not claim any of the trucks as exempt. The trailer and payloader were allowable exemptions as tools of the trade. The debtor could not "stack" the general $600 per item exemption as to any one truck. ***In re* Neutgens, 126 B.R. 91 (Bankr. D. Mont. 1989)**.

The debtor's spouse was not entitled to any tools of the trade exemption for medical equipment used only by the debtor in a medical practice. ***In re* Bryan, 126 B.R. 108 (Bankr. D. N.M. 1991)**.

INJUNCTION. After the debtor sold collateral cattle without remitting the proceeds to the secured creditor, the debtor was indicted under Tex. Penal Code § 32.33(b), (c), for intentionally "hindering enforcement of a security interest or lien." The debtor then filed in Chapter 7. The debtor sought to enjoin the state criminal proceeding as infringing on a federal right to discharge in bankruptcy. The court held that the debtor does not have a federal right to prevent a state court from requiring that the debtor repay debts subject to a bankruptcy proceeding. ***In re* Fussell, 928 F.2d 712 (5th Cir. 1991)**.

PREFERENTIAL TRANSFERS. The debtors fed cattle belonging to another person and sold the cattle after the cattle reached a certain weight. The proceeds of the sales were then sent to the owner who returned the amount to be paid for the feeding. The court held that the payments of the sales proceeds within 90 days before the bankruptcy filing were not preferential transfers because the cattle and proceeds never belonged to the debtors. ***In re* Zwagerman, 125 B.R. 486 (W.D. Mich. 1991), *aff'g*, 115 B.R. 540 (Bankr. W.D. Mich. 1990)**.

SUBROGATION. A shareholder of the debtor, a corporation operating a hydroponic greenhouse, applied for a letter of credit from a bank for which the shareholder and debtor were liable. The letter of credit was used to pay amounts owed by the debtor secured by the debtor's greenhouse after the debtor defaulted on the loan. The creditor who was paid by the letter of credit held a first mortgage against the greenhouse. The shareholder reimbursed the bank for the payments under the letter of credit and sought subrogation of other creditors with liens against the greenhouse. The court held that the shareholder was not entitled to subrogation under Section 509 because the shareholder was not a guarantor of the first mortgage where the shareholder was only liable on the letter of credit and the bank issuing the letter of credit did not have a security interest in the greenhouse. **Matter of Agrownautics, Inc., 125 B.R. 350 (Bankr. D. Conn. 1991)**.

CHAPTER 12

PLAN. Under the debtors' Chapter 12 plan, farmland was conveyed to a secured creditor in partial satisfaction of a secured debt. The plan provided that the land transfer was subject to the debtors' rights of first refusal available under state law. The secured creditor sold the land at auction and the debtors sought to repurchase the land at the auction price. The court held that the debtors and creditor were bound by the plan provision and the debtors had the right to repurchase the land at the auction price. ***In re* Coleman, 125 B.R. 621 (Bankr. D. Mont. 1991)**.

FEDERAL TAXATION

AUTOMATIC STAY. After the debtor's Chapter 13 plan was confirmed, the IRS levied against the debtor's civil service annuity. The plan did not provide that the annuity was to remain estate property during the plan. The debtor argued that the levy violated the automatic stay and the annuity was needed to meet monthly expenses after plan payments were made. The court held that the levy did not violate the automatic stay because upon confirmation of the plan, the estate property reverted to the debtor unless the plan provides that the property was to remain estate property. ***In re* Lambright, 125 B.R. 733 (Bankr. N.D> Tex. 1991)**.

CLAIMS. The IRS filed a timely claim for withholding taxes for two calendar quarters. More than three years after the claim's bar date, the IRS filed a claim for withholding and corporate taxes for pre- and post-petition periods. The court held that the claims were not allowed. ***In re* Bondi's Valu-King, Inc., 126 B.R. 47 (N.D. Ohio 1991), *aff'g* 102 B.R. 108 (Bankr. N.D. Ohio 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 court held that the taxes were not dischargeable but the penalties and interest were dischargeable. ***In re* Roberts, 125 B.R. 534 (Bankr. C.D. Ill. 1991)**.

The debtor did not file tax returns for 1975 through 1978 but the IRS filed substitute returns. After litigation concerning deficiencies for those years, the IRS and debtor signed an agreement for a stipulated order in the Tax Court establishing the debtor's tax obligation. The court held that the taxes were not dischargeable because the debtor did not file a return for the taxes. Neither the substitute returns filed by the IRS nor the litigation agreement qualified as returns. ***In re* Gushue, 91-1 U.S. Tax Cas. (CCH) ¶ 50,223 (Bankr. E.D. Pa. 1991)**.

The debtors had filed a Chapter 7 case within three years of the date of the tax returns for 1985 and 1986 taxes and had received a discharge. The debtors filed the current Chapter 13 case after three years after the tax returns were filed for 1985 and 1986 and the debtors claimed that the tax claims for those years were not entitled to priority and were dischargeable as unsecured tax claims. The court held that the previous Chapter 7 case tolled the three year limitation period and that the Chapter 13 case was considered filed within three years of the due date for the returns for 1985 and 1986; therefore, the tax claims were entitled to priority and were not dischargeable. ***In re* Wise, 91-1 U.S. Tax Cas. (CCH) ¶ 50,243 (Bankr. E.D. Ark. 1990)**.

ESTATE LIABILITY. The trustee filed a request for a prompt tax liability determination with the bankruptcy estate tax returns. The IRS did not respond within 60 days but later assessed a deficiency against the estate. The court held that Section 505(b) did not discharge the bankruptcy estate as a successor of the debtor from liability for the taxes. **Matter of Fondiller, 125 B.R. 805 (N.D. Cal. 1991)**.

ESTATE PROPERTY. The Chapter 11 debtor's plan provided for payments from income generated by net operating loss carryovers against current income of the debtor during the plan. The creditor committee moved for an injunction against the debtor's parent corporation to prevent that corporation from declaring a worthless stock deduction for the debtor's stock, which would prevent use of the net operating losses by the debtor. The court held that the net operating losses were estate property and the parent corporation's claim of a worthless stock deduction would violate the automatic stay. ***In re* Prudential Lines, Inc., 928 F.2d 565 (2d Cir. 1991), *aff'g*, 119 B.R. 430 (S.D. N.Y. 1990), *aff'g*, 114 B.R. 27 (Bankr. S.D. N.Y. 1990)**.

PLAN. The debtor's Chapter 11 plan provided for payment of secured and unsecured tax claims which did not include any provision for interest. The court held that the IRS was barred from assessing or collecting any interest on the claims. ***In re* Custom Arc Mfg., Inc., 125 B.R. 843 (Bankr. M.D. Fla. 1991)**.

PRIORITY. The debtor was assessed a Section 72(t) 10 percent penalty for early withdrawal from pension and profit sharing plans. The court held that the penalty was a nonpecuniary loss penalty not entitled to priority payment under the debtor's Chapter 11 plan. ***In re* Cassidy, 126 B.R. 94 (Bankr. D. Colo. 1991)**. The same result was reached where the 10 percent penalty was applied for reversion of plan assets to a debtor corporation. ***In re* C-T of Virginia, Inc., 91-1 U.S. Tax Cas. (CCH) ¶ 50,240 (Bankr. W.D. Va. 1991)**.

SETOFF. The debtor had defaulted on guaranteed student loans which were assigned to the Department of Education for setoff against the debtor's income tax refunds. The refund was setoff within 90 days prior to the debtor's filing for bankruptcy. The trustee sought recovery of the refund as a preferential transfer under Section 547. The court held that the setoff was valid and not a preferential transfer. ***In re* Stall, 125 B.R. 754 (Bankr. S.D. Ohio 1991)**.

The IRS filed a secured claim and an unsecured claim for pre-petition taxes and setoff the unsecured claim with tax refunds due the debtors. The debtors sought to have the refunds allocated entirely to the priority unsecured tax claims. The court held that the IRS could allocate the setoff of the refunds at its discretion. ***In re* Carter, 125 B.R. 832 (Bankr. D. Kan. 1991)**.

CONTRACTS

SERVICE CONTRACT. The debtor entered into a seven year service contract to raise and milk dairy cattle purchased by investors. The investors provided the initial capital costs and paid for feed and supplies and were to be paid with income tax benefits and a share of the milk proceeds. After the end of the seven years, the dairy herd was sold and the debtor filed bankruptcy. The investors filed a claim in the bankruptcy case for breach of the contract by the debtor because of mismanagement of the operation. The court held that the statute of limitations had not expired because the claim was brought within three years after the end of the service contract which continually tolled the limitations period because each party had continuing obligations under the contract. The court also held that the debtor did not breach the contract because the losses incurred were the result of disease and problems beyond the debtor's control and that the debtor used reasonable diligence in maintaining and developing the herd. **Matter of Burger, 125 B.R. 894 (Bankr. D. Del. 1991)**.

FEDERAL AGRICULTURAL PROGRAMS

BORROWER'S RIGHTS. In 1986 the defendant bank acquired title to the debtors' farmland as a result of the debtors' default on their Chapter 11 plan payments. The bank and plaintiffs entered into option contracts to purchase the land and some extensions of the option made the option subject to the debtors' right of first refusal under the Agricultural Credit Act of 1987, even though the bank acquired the land prior to the effective date of the 1987 Act. The court held that the option contracts did not create any right of first refusal in the debtors other than the rights provided in the Act and that the 1987 Act did not apply where the land was acquired before the effective date of the Act. **Wiener v. Farm Credit Bank of St. Louis, 759 F. Supp. 510 (E.D. Ark. 1991)**.

The debtor had granted security interests in farmland to a Federal Land Bank. The FLB foreclosed on and purchased the land at a foreclosure sale. Within the one year redemption period, the debtor filed for bankruptcy, tolling the redemption period for 60 days. Neither the trustee nor the debtor attempted to redeem the property during the 60 days. The FLB then received title to the farmland and attempted to sell the property to a third party. The debtor argued that the FLB must first offer the property to the debtor under the Agricultural Credit Act of 1987 and Minn. Stat. § 500.24. The court held that because the FLB did not acquire title to the property until the end of the redemption period, which occurred after the filing of the bankruptcy case, the debtor personally acquired the right of first refusal under both statutes and the FLB must first comply with those statutes before selling the property. ***In re* Solberg, 125 B.R. 1010 (Bankr. D. Minn. 1991)**.

After the debtors defaulted on their FmHA loans, the debtors sold their crop and sent the proceeds to the FmHA. The debtors sought mediation under the Minnesota mandatory mediation law and requested living and operating expenses from the crop proceeds. The debtors had meanwhile lost their original farm and were operating on a rental basis. The mediator erroneously refused to order the living expenses and the lower court refused to order the expenses because the remedy was beyond the power of the court. The appellate court held that the lower court had the authority to order the living expenses but that the operating expenses were not appropriate because the debtors' farming operation had changed significantly from the operation involved at the time of the loan acceleration. **Wieweck v. U.S.D.A., 930 F.2d 619 (8th Cir. 1991)**.

CCC LOANS. The CCC has issued proposed regulations amending the debt settlement policy and procedure regulations to make the regulations applicable to all debts by and against the CCC. **56 Fed. Reg. 23250 (May 21, 1991)**.

FARM LOANS. The FmHA has issued proposed regulations to require a 10 percent downpayment, based on the option/sales contract price, in conjunction with insured and guaranteed farm loans. **56 Fed. Reg. 22666 (May 16, 1991)**.

The FmHA has issued proposed regulations changing the definition of "beginning farmer or rancher" to conform with the FACTA 1990 definition for purposes of giving priority for the purchase of FmHA inventory farmland. **56 Fed. Reg. 24143 (May 29, 1991)**.

The FmHA has issued proposed regulations allowing the FmHA to declare farmland as surplus inventory 12 months after the date the land is first published for sale to family-size farm operators. **56 Fed. Reg. 24145 (May 29, 1991)**.

The FmHA has issued proposed regulations which require a debt service margin of at least 5 percent on insured farmer program Loans. **56 Fed. Reg. 24356 (May 30, 1991)**.

The FmHA has issued interim regulations under the emergency loan program revising the definition of single enterprise to include single crops which constitute a basic part of an applicant's farming operation. The regulations also base eligibility on single enterprises having at least a 30 percent loss as a result of a natural disaster. The regulations remove the requirement that an applicant sell all nonessential assets but require that such assets be pledged as security for the emergency loan. **56 Fed. Reg. 24680 (May 31, 1991)**.

FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT. The court held that the plaintiff's action for injuries from a pesticide was pre-empted by FIFRA to the extent the action was based on the defendant's failure to adequately warn the plaintiff about the dangers of the pesticide. **Hurt v. Dow Chemical Co., 759 F. Supp. 556 (E.D. Mo. 1990)**.

GRAIN STORAGE FACILITIES. The plaintiff was injured while unloading grain at the defendant's grain storage facility operated as a joint venture of two companies. The plaintiff sought damages under the Federal Employer's Liability Act, arguing that the grain storage facility was a common carrier because the facility owned and leased railroad tracks, railroad cars and several engines. The court held that the facility was not a common carrier because the railroad equipment was not operated as a railroad carrying goods for the public. **Sullivan v. Scoular Grain Co. of Utah, 930 F.2d 798 (10th Cir. 1991)**.

MARKETING ORDERS. Milk producers brought an action for judicial review of an amendment to a milk marketing order decreasing the location adjustment factors. The court held that the amendment was subject to judicial review. **Farmers Union Milk Marketing Coop. v. Yeutter, 930 F.2d 466 (6th Cir. 1991)**.

A dairy cooperative reduced its payments to the CCC under the Dairy Collection Program (DCP) because milk delivered to a dairy was not paid for by the dairy. The CCC, however, argued that the cooperative was liable for the DCP payments because the cooperative paid its members for the milk even though the cooperative was not paid by the dairy. The cooperative argued that only handlers or end users of milk were responsible for the DCP payments. The court held that the regulations were reasonable under the statute in defining responsible person as a person making payments to producers for milk, whether or not the person making the payments actually received the milk. **Associated Milk Producers, Inc. v. U.S., 22 Cls. Ct. 682 (1991)**.

PACKERS AND STOCKYARDS ACT. The respondent packer corporation and the corporation's president and sole shareholder individually were assessed a total of $129,000 for failure to make prompt payment for purchases of cattle, operating while insolvent, dissipation of trust fund assets of another packer purchased by the respondent, and falsifying records of the purchase of the packer in order to avoid the trust. ***In re* Great American Veal, Inc., 48 Agric. Dec. 183 (1989)**.

WOOL. The CCC has issued proposed rules for implementing the 1991-1995 wool and mohair payment programs. The regulations combine the wool and mohair regulations in one part. **56 Fed. Reg. 22357 (May 15, 1991), removing 7 C.F.R. Part 1472 and amending 7 C.F.R. Part 1468**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The decedent established a trust with life income interests for the children and a remainder to a charitable organization. After the decedent's death, the children contested the will and eventually reached an agreement with the charitable organization to pay the organization a cash amount which exceeded the actuarial value of the organization's remainder interest in the trust. The court held that the charitable deduction was limited to the actuarial value of the remainder interest. **Terre Haute First Nat'l Bank v. U.S., 91-1 U.S. Tax Cas. (CCH) ¶ 60,070 (S.D. Ind. 1991)**.

Under the decedent's will money and property were bequeathed to a church, a qualified Section 501(c)(3) organization, for the saying of masses for the decedent at $3.00 per mass. The church honored requests for masses without requiring compensation. The IRS ruled that the bequests were deductible charitable bequests. **Ltr. Rul. 9119006, Jan. 24, 1991**.

ESTATE TAX LIEN. The taxpayer was the surviving spouse of the decedent but received only nonprobate assets. After unsuccessful efforts to collect estate tax deficiencies against the estate and the executors, the IRS attempted to foreclose its estate tax lien against property of the taxpayer more than ten years after the date of the decedent's death. The court held that Section 6324(a) extinguished the lien after ten years after the decedent's death, whether or not the IRS brought suit to foreclose the lien within the ten year period. **U.S. v. Schneider, 91-1 U.S. Tax Cas. (CCH) ¶ 60,068 (D. N.D. 1991)**.

GENERATION SKIPPING TRANSFER TAX. The taxpayer established trusts for grandchildren with the taxpayer as trustee. The trustee had the power to distribute income or principal to the beneficiaries while the beneficiaries were under the age of 21 except to fulfill any legal obligation of the trustee. The beneficiaries were entitled to all income after reaching age 21 and had a testamentary general power of appointment over trust corpus. The taxpayer had the power to appoint successor trustees. The parent of one beneficiary had predeceased the taxpayer. The IRS ruled that the trusts were completed gifts and the trust property would not be included in the taxpayer's estate. The trust with the predeceased parent was eligible for the predeceased child exclusion and not subject to GSTT. The other trusts were eligible for the then available $2 million exclusion. **Ltr. Rul. 9118009, Jan. 31, 1991**.

GROSS ESTATE. The decedent executed an agreement with the taxpayer, the ex-spouse of the decedent's grandson, under which the decedent would bequeath the decedent's residence to the taxpayer in return for the taxpayer's moving in with the decedent and caring for the decedent until death. The taxpayer moved in with and cared for the decedent until death and the decedent's will bequeathed the residence to the taxpayer. The court held that the house was included in the decedent's estate and was subject to a tax lien securing the installment payment of estate tax. **Metz v. U.S., 91-1 U.S. Tax Cas. (CCH) ¶ 60,071 (10th Cir. 1991), *aff'g* 89-2 U.S. Tax Cas. (CCH) ¶ 13,822 (D. Kan. 1989)**.

At the time of death the decedent was a co-trustee and beneficiary of a trust established by the decedent's parent. A bank was the other co-trustee. The trustees had the power to distribute trust corpus to any beneficiary for the comfort, support, maintenance or education of the beneficiary. The decedent became mentally incompetent within a year before and until death. The court held that the decedent held a general power of appointment over the trust corpus such that the corpus was included in the decedent's gross estate because the co-trustee did not have a sufficient adverse interest in the trust and the distribution of trust corpus was not subject to an ascertainable standard. **Est. of Vissering v. Comm'r, 96 T.C. No. 33 (1991)**.

MARITAL DEDUCTION. The surviving spouse received an interest in trust in farm real property. Under the trust, the surviving spouse was to receive all income at least annually but the trustee had the discretion to accumulate so much of the trust income as was not necessary for the surviving spouse's needs or best interests. The court held that the surviving spouse's interest in the trust was not QTIP because some trust income could be accumulated. **Est. of Ellington v. Comm'r, 96 T.C. No. 34 (1991)**.

The decedent's will left the residuary property in trust to the surviving spouse, the children and grandchildren. The trust was silent as to distribution of principal except that the trust was to terminate at the death of the surviving spouse with the trust corpus to pass to the children. The IRS ruled that under state case law, a trust is to distribute all income currently and not distribute principal if the trust is silent as to those issues; therefore, if the children and grandchildren disclaim their interests in the trust, the surviving spouse's interest in the trust was QTIP. **Ltr. Rul. 9119047, Feb. 12, 1991**.

SPECIAL USE VALUATION. The decedent owned just under 50 percent of a farm corporation's stock at the time of death. The executor valued the corporation property using special use valuation and then decreased the value of the decedent's share by 30 percent for a minority share discount. The IRS ruled that the estate was not entitled to the minority share discount after taking the special use valuation of corporate assets. The IRS cited *Est. of Maddox v. Comm'r, 93 T.C. 228 (1989)* for support. **Ltr. Rul. 9119008, Jan. 31, 1991**.

STATUTE OF LIMITATIONS. The decedent had made gifts of exempt notes in 1984 which were not included in a gift tax return for that year. After the statute of limitations had expired on assessment of gift tax on the notes, but before the limitations period had expired on assessments for estate tax, the IRS assessed a deficiency against the decedent's estate for failure to include the notes as adjusted taxable gifts. The court held that assessment was not time barred because the basis of a tax liability for a time barred period may be recomputed for the purpose of computing the tax liability of an open period. **Est. of Prince v. Comm'r, T.C. Memo. 1991-28**.

FEDERAL INCOME TAXATION

BAD DEBTS. The taxpayer was a major shareholder and officer in a corporation which produced alternative fuels. The taxpayer made loans to and guaranteed other loans to the corporation in several attempts to solve the corporation's recurring cash problems until the corporation was finally liquidated in bankruptcy. The loans and guarantees far exceeded the taxpayer's hopes for investment return or salary. The taxpayer's loans became worthless and the taxpayer was required to pay on the guaranteed loans. The court held that the loans and guarantees were deductible business bad debts where the dominate motive of the taxpayer in making the loans and guarantees was to maintain the business and to protect the taxpayer's employment. **Litwin v. U.S., 91-1 U.S. Tax Cas. (CCH) ¶ 50,229 (D. Kan. 1991)**.

CAPITAL ASSETS. As part of an employment contract with the corporation's chief executive officer, the corporation purchased the executive's house when it terminated the executive's employment. The court held that the house was a capital asset and the loss realized by the corporation upon sale of the house was a capital loss and not deductible as a business expense under I.R.C. §§ 162 or 165 because the house was not used in the corporation's trade or business. **Azar Nut Co. v. Comm'r, 91-1 U.S. Tax Cas. (CCH) ¶ 50,257 (5th Cir. 1991), *aff'g* 94 T.C. 455 (1990)**.

CASUALTY LOSSES. In December 1989, the taxpayer's citrus grove was damaged by a freeze and the area was declared a disaster area in January 1990. The taxpayer sought an appraisal of the damages but was unable to gather the information and file a timely election to deduct the losses in the previous tax year. The IRS ruled that the taxpayer could have an extension to file the election because of the short time between the disaster declaration and the election due date and the taxpayer acted diligently in attempting to prepare the election. **Ltr. Rul. 9120002, Feb. 7, 1991**.

CHARITABLE DEDUCTION. The taxpayers conveyed a scenic easement to the Western Pennsylvania Conservancy which allowed the taxpayers to continue to farm or subdivide the property but prevented mining and other industrial development of the area. The court held that the taxpayers had conveyed something of value but held that the issue of donative intent was a factual issue to be decided at trial. **McLennan v. U.S., 91-1 U.S. Tax Cas. (CCH) ¶ 50,230 (Cls. Ct. 1991)**.

DEPRECIATION. The IRS has issued tables to be used for the limitation on depreciation deductions for automobiles first placed in service in 1991 and the amounts to be included in income for automobiles first leased in 1991.

Tax year	Maximum depreciation
First	$2,600
Second	$4,300
Third	$2,550
Fourth and later years	$1,575

Rev. Proc. 91-30, I.R.B. 1991-20, 27.

The taxpayer converted a personal residence to a rental property. The court held that the depreciation on the property was to be computed using the original basis of the residence and not the fair market value of the house at the time the house was converted because the basis was less than the fair market value. **Proctor v. Comm'r, T.C. Memo. 1991-202**.

DISCHARGE OF INDEBTEDNESS. The taxpayer was a Chapter 13 debtor with a residence which had a fair market value substantially less than the indebtedness secured by the residence. The IRS ruled that an abandonment or foreclosure of the residence would be a disposition of the residence subjecting the taxpayer to recognition of any gain on the difference between the adjusted basis and the fair market value of the property. The IRS ruled that the bankruptcy exclusion of I.R.C. § 108(a)(1)(A) would not apply to any gain recognized but would apply to discharge of indebtedness income to the extent any indebtedness discharged exceeded the fair market value of the residence. **Ltr. Rul. 9120010, Feb. 14, 1991**.

The taxpayer purchased a building for $1 million using the proceeds of a nonrecourse loan for $1 million. After the building's value decreased to $800,000, the lender agreed to decrease the principal to $800,000. The IRS ruled that the taxpayer realized $200,000 in discharge of indebtedness income. The IRS cited for support *Commissioner v. Tufts, 461 U.S. 300 (1983)* and *Gershkowitz v. Comm'r, 88 T.C. 984 (1987)*, and rejected any interpretation of *Fulton Gold Corp. v. Comm'r, 31 B.T.A. 519 (1934)* which would support a contrary ruling. **Rev. Rul. 91-31, I.R.B. 1991-20, 4**.

FRINGE BENEFITS. The IRS has issued proposed regulations providing a new valuation rule for transportation provided by an employer to or from an employee's workplace due to unsafe workplace conditions and increasing the amount of the de minimis exclusion for public transport passes. **56 Fed. Reg. 23038 (May 20, 1991)**.

HOBBY LOSSES. The court held that the mere fact that the taxpayers had six consecutive years of substantial losses from their cattle breeding operation did not demonstrate a lack of profit motive sufficient to disallow deductions for those losses. **McLennan v. U.S., 91-1 U.S. Tax Cas. (CCH) ¶ 50,230 (Cls. Ct. 1991)**.

INSTALLMENT REPORTING. The taxpayers sold some property on installment but the income tax preparer erroneously failed to elect installment reporting of the gain from the transaction. The error was discovered and an amended return was filed prior to the due date, with extensions, of the original return. The IRS allowed the revocation of the election out of installment reporting. **Ltr. Rul. 9118013, Feb. 1, 1991**.

The taxpayers' accountants incorrectly interpreted the escrow documents for an installment sale of real property and failed to elect the use of installment reporting of the gain. The error was discovered and an amended return was filed before the due date of the original return, with extensions. The IRS ruled that the taxpayers would be allowed an extension of time to revoke the election out of installment reporting. **Ltr. Rul. 9118013, Feb. 1, 1991**.

INTEREST RATES. The IRS has announced the interest rates for July 1, 1991 to September 30, 1991, will remain at 9 percent for overpayments of taxes and 10 percent for underpayments. **Rev. Rul. 91-33, I.R.B. 1991-21, __**.

INVESTMENT TAX CREDIT. The taxpayers leased construction equipment to their wholly-owned corporation under oral leases. The court held that the taxpayers were not entitled to investment tax credit for the equipment because the leases were found to be indefinite because the taxpayers failed to prove that the leases were intended to be for less than 50 percent of the equipment's useful life. **Schumacher v. U.S., 91-1 U.S. Tax Cas. (CCH) ¶ 50,224 (10th Cir. 1991)**.

INVOLUNTARY CONVERSION. The taxpayers' sale of their residence to pay off debts caused recognition of gain because the attachment and threat of foreclosure of the taxpayers' residence was held not to be an involuntary conversion. **Recio v. Comm'r, T.C. Memo. 1991-215**.

A corporation owning a paper mill sold the mill to two trusts established by the president of the corporation. The two trusts then sold the mill to the federal government. Although the sale of the mill was prompted by the purchase of surrounding forest by the federal government, the sale of the mill was not an involuntary sale. The court ruled that the corporation could not report the gain from the sale of the mill on the installment method because the mill purchased the mill from a related party within two years of the second sale. The corporation failed to prove that the first sale to the trusts was not tax motivated. **Tecumseh Corrugated Box Co. v. Comm'r, 91-1 U.S. Tax Cas. (CCH) ¶ 50,255 (6th Cir. 1991), *aff'g* 94 T.C. 360 (1990)**.

LETTER RULINGS. The IRS has amended *Rev. Proc. 91-1, I.R.B. 1991-1, 9* and *Rev. Proc. 91-2, I.R.B. 1991-1, 38* involving requests for letter rulings or technical advice. The amendments include (1) the requirement in complex cases for submission of contrary authorities or a statement that none exist and (2) a user fee for requests for extensions of time under Treas. Reg. § 1.9100-1. **Rev. Proc. 91-25, I.R.B. 1991-20, 25**.

LIKE-KIND EXCHANGE. The taxpayer owned an undivided interest in land held as an investment. The land was sold to a state agency under threat of eminent domain. The IRS ruled that the taxpayer had three years to use the proceeds from the property to purchase qualifying replacement property but that the investment of the proceeds in improvements on the taxpayer's farm or in improvements in an already owned subdivision would not qualify as replacement property. **Ltr. Rul. 9118007, Jan. 30, 1991**.

PREPRODUCTION EXPENSES. A farm partnership failed to make the election under Section 263A(d)(3)(D) to currently deduct preproduction expenses because of the partnership's accountant's failure to make the election on the partnership tax returns. The IRS held that the partnership was not allowed an extension to file the election because good cause was not shown. **Ltr. Rul. 9119031, Feb. 8, 1991**.

RESPONSIBLE PERSON. The taxpayers were found by a jury to be responsible persons but the jury found that the taxpayers did not willfully fail to pay withholding taxes except for the last two months of a taxable year. The court held that the taxpayers were liable for the 100 percent penalty for any unpaid amounts for the previous 10 months only to the extent of any unencumbered funds available during the last two months of the taxable year but that the the taxpayers were liable for all of the withholding taxes not paid during the last two months. **Honey v. U.S., 760 F.Supp. 754 (W.D. Ark. 1991)**.

SAFE HARBOR INTEREST RATES

JUNE 1991

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	6.68	6.57	6.52	6.48
110% AFR	7.36	7.23	7.17	7.12
120% AFR	8.04	7.88	7.80	7.75
		Mid-term		
AFR	7.91	7.76	7.69	7.64
110% AFR	8.72	8.54	8.45	8.39
120% AFR	9.53	9.31	9.20	9.13
		Long-term		
AFR	8.30	8.13	8.05	8.00
110% AFR	9.14	8.94	8.84	8.78
120% AFR	10.00	9.76	9.64	9.57

SALE OF RESIDENCE. The taxpayers transferred their residence to an irrevocable trust with the taxpayers as beneficiaries and the taxpayers' son as trustee. The taxpayers had the lifetime possession of the residence and had the power to replace the trustee with anyone, including the taxpayers. The trustee had the discretion to distribute trust corpus for the care and maintenance of the beneficiaries but such distributions were conclusive as to all persons. The IRS ruled that the taxpayers would be treated as the owners of the trust and would be eligible for rollover of any gain resulting from the sale of the residence if the proceeds were used to purchase a new residence. **Ltr. Rul. 9118017, Feb. 1, 1991**.

S CORPORATIONS

CLASS OF STOCK. An S corporation with one class of issued stock created a stock appreciation equivalency plan for its employees. The value of plan units was determined by dividing the value of the corporation's assets by the number of shares of stock plus the number of plan units. The plan units received dividends. Employees could receive immediate payment of dividend amounts but could not receive other amounts until retirement, disability or termination of employment. The IRS ruled that the plan units were not a second class of stock. **Ltr. Rul. 9119041, Feb. 11, 1991**.

TRUSTS. Testamentary trusts were established for the decedent's children with each child receiving a share of trust income at least quarterly and trust corpus as needed for health, maintenance and education, with complete distribution when a beneficiary reaches age 30. If a beneficiary died before reaching age 30, the trust share passed to the beneficiary's descendants. The beneficiaries could also receive the trust corpus if the fair market value of the trust property decreases below a minimum amount. The IRS ruled that the trusts were qualified Subchapter S trusts. **Ltr. Rul. 9120027, Feb. 21, 1991**.

SELF-EMPLOYMENT. The taxpayer served as guardian of a brother's estate. The IRS moved for summary judgment arguing that the taxpayer's duties as guardian of the estate constituted a trade or business. The court held that summary judgment was not appropriate because material issues of fact remained as to (1) the extent of the taxpayer's management of the property of the estate, (2) the taxpayer's involvement in the liquidation of the estate, and (3) the motivation for the taxpayer's acceptance of the guardianship. **Bozeman v. U.S., 91-1 U.S. Tax Cas. (CCH) ¶ 50,251 (N.D. Tex. 1991)**.

SOIL AND CONSERVATION EXPENSES. The taxpayer, a domestic corporation, incurred soil and water conservation expenses on a farm operated in a foreign country. The taxpayer argued that the expenses were eligible for the deduction because the state of the foreign country required the expenses. The IRS ruled that the soil and conservation expense deduction was not available for expenses incurred after 1986 on farms outside of the U.S. The deduction was available for land outside of the U.S. prior to 1987. **Ltr. Rul. 9119005, Jan. 18, 1991**.

TAX LIENS. The IRS has adopted as final regulations governing the administrative appeal of a filing of an erroneous tax lien. **T.D. 8347, April 30, 1991**.

TRAVEL EXPENSES. The taxpayer reimbursed employees who used personal automobiles for company business. The reimbursements were for fixed ownership costs and for variable operating costs based on a cents-per-business mile rate. The IRS ruled that the reimbursed amounts were subject to withholding and the payment of employment taxes for amounts not substantiated by employees and the amounts deemed substantiated by the employees. **Ltr. Rul. 9117052, Jan. 30, 1991**.

MORTGAGES

DEFICIENCY. The defendants wanted to purchase a farm owned by a corporation, but in the negotiations it was determined that a purchase of the stock of the corporation was more advantageous. In order to finance the purchase of the stock, the defendants borrowed funds from the plaintiff which foreclosed on the loans when the defendants missed several payments. The defendants argued that the plaintiff could not bring an action for a deficiency under Cal. C.C.P. § 580b because the transaction was a purchase money transaction for real property. The court held that the purchase of the corporation's stock did not give the defendants any personal ownership rights in the land which remained owned by the corporation; therefore, the transaction was not a real property purchase transaction and was not eligible for the antideficiency provision of Section 580b. **Union Bank v. Anderson, 280 Cal. Rptr. 226 (Cal. Ct. App. 1991)**.

FORECLOSURE. The secured lender bank brought a foreclosure proceeding against the debtors' ranch after the debtors defaulted on their loans. The debtors asserted an affirmative defense that the bank breached an agreement to reamortize their loans during years in which their crops and cattle were affected by disasters. The court held that the affirmative defense was not available to the debtors because the debtors did not provide evidence that they could have made the loan payments even if the loans were reamortized. In addition, the court held that the debtors had the right to possession of the ranch during the redemption period without paying rent or profits to the bank. **Federal Land Bank of Spokane v. Snider, 808 P.2d 475 (Mont. 1991)**.

PARTNERSHIPS

LIABILITY FOR ACTS OF PARTNERS. The plaintiff was injured when the plaintiff visited the defendant while the defendant was working on the restoration of some old tractors as part of the defendant's hobby. The defendant was also a member of a farming partnership with three siblings. The court held that the partnership was not liable for the injuries because the defendant's hobby was not part of the partnership business and the hobby was pursued in a workshop solely possessed and occupied by the defendant. **Risk v. Schilling, 569 N.E.2d 646 (Ind. 1991), *rev'g* 549 N.E.2d 417 (Ind. App. 1990)**.

SECURED TRANSACTIONS

SALE OF REPOSSESSED COLLATERAL. The debtor had granted a bank a security interest in an irrigation system. After the debtor's default on the loan secured by the system, the debtor negotiated with the bank and a third party for the sale of the system but before the debtor could sell the system, the bank sold the system to the third party. The court held that the third party took the collateral free of the security interest, whether or not the bank had complied with the notice requirements of Section 9-504(4). **Lichty v. Federal Land Bank of Omaha, 237 Neb. 682, 467 N.W.2d 657 (1991)**.

STATE REGULATION OF AGRICULTURE

PESTICIDES. A fire at a seed and nursery business caused the release of large amounts of pesticide into the ground water and soil and because the business was financially unable to pay for the cleanup of the pesticide, the state began the cleanup. The state brought an action under Minn. Stat. § 18B for reimbursement against the pesticide manufacturer and distributor who sold the pesticide to the nursery. The court held that the manufacturer and distributed were not "responsible parties" liable for the cleanup because they did not own or control the pesticide at the time of the fire. **Tessman Seed & Chem. Co. v. State, 467 N.W.2d 625 (Minn. App. 1991)**.

TRESPASS

DAMAGES. The plaintiff was awarded treble the value of trees as shade trees for the loss of trees removed by the defendant. The court held that the shade tree value of the trees was appropriate where the plaintiff intended to use the area as a trailer park. The court also held that treble damages were appropriate where the defendant had been requested to stop clearing trees while a survey was done to insure that none of the plaintiff's trees were removed but the defendant refused. **Revels v. Knighton, 805 S.W.2d 649 (Ark. 1991)**.

In an action in trespass for the defendant's cutting of timber on the plaintiff's land, the measure of damages was the decrease in the value of the land after the trees were removed. **Boatright v. Morgan, 575 So.2d 1091 (Ala. 1991)**.

WORKERS' COMPENSATION

JOINT VENTURE. The plaintiff was injured while unloading grain at the defendant's grain storage facility operated as a joint venture of two companies. The plaintiff received workers' compensation for which one of the joint venturers paid the insurance premiums. The court held that the other joint venturer was not liable under the exclusive remedy immunity provision of Utah Code § 35-1-60. **Sullivan v. Scoular Grain Co. of Utah, 930 F.2d 798 (10th Cir. 1991)**.

CITATION UPDATES

***In re* Olson, 930 F.2d 6 (8th Cir. 1991), *aff'g* 121 B.R. 346 (N.D. Iowa 1989), *aff'g* 100 B.R. 468 (Bankr. N.D. Iowa 1989)** (taxation of abandonment in bankruptcy), p. 56 *supra*. **See also** Harl, "Abandonment in Bankruptcy," p. 17 *supra*.

The next issue will be published on July 5, 1991.

BACK ISSUES

Back issues of Volumes 1 and 2 of the Agricultural Law Digest may be ordered for $5.00 each from Robert Achenbach, Editor, Agricultural Law Digest, P.O. Box 5444, Madison,Wisconsin 53705. Volume 1, No. 27 contains a list of issues published in 1990. The following lists the issue numbers and the titles of the articles by Dr. Harl pbulished so far in Volume 2.

No. 1 "Cancellation of Installment Obligations"
No. 2 "Farm Leases and Passive Activity Losses"
No. 3 "Abandonment in Bankruptcy"
No. 4 "Avoiding Special Use Valuation Recapture"
No. 5 "Failure of Grain Elevators"
No. 6 "Part Gift / Part Sale"
No. 7 "Avoiding Acceleration of Installment Payment of Federal Estate Tax"
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