FOOTNOTES

1 I.R.C. § 453. See generally 6 Harl, Agricultural Law § 48.03 (1992).

2 E.g., Trivett v. Comm'r, 611 F.2d 655 (6th Cir. 1979), *aff'g*, 36 T.C.M. 675; Pozzi v. Comm'r, 49 T.C. 119 (1967).

3 See, e.g., Reed v. Comm'r, 83-2 U.S.T.C. ¶ 9728 (1st Cir. 1983), *rev'g*, T.C. Memo. 1982-734 (escrow arrangement entered into prior to existence of seller's unrestricted right to sale proceeds).

4 See Rev. Rul. 77-294, 1977-2 C.B. 173 (escrow had to impose substantial restriction serving bona fide purpose of purchaser to be upheld).

5 Harris v. Comm'r, 477 F.2d 812 (4th Cir. 1973).

6 I.R.C. § 453(e)(1), (3). See Tecumseh Corrugated Box Co. v. Comm'r, 94 T.C. 360 (1990), *aff'd*, 932 F.2d 526 (6th Cir. 1991) (transfer of property to trust which later assigned property to partnership formed by same parties followed by sale to U.S. Government; transaction represented second disposition by related party).

7 I.R.C. § 453(e)(4).

8 I.R.C. § 453(e)(2)(A).

9 I.R.C. § 453(e)(6)(B). See Ltr. Rul. 8848054, Sept. 7, 1988 (substitution of new property as security for installment obligation secured by property sold under threat of condemnation not disposition of installment obligation).

10 I.R.C. § 453(e)(6)(C).

11 I.R.C. § 453(e)(7).

12 I.R.C. § 453(e)(6)(A).

13 I.R.C. §§ 453(f)(1), 267(b),(c)(4).

14 I.R.C. § 453(f)(1).

15 Id. See Ltr. Rul. 8829002, March 18, 1988 (partner owning 40 percent of partnership which received in liquidation of corporation installment obligation for property purchased by partners from corporation was not related to partner's father who was 60 percent partner; transfer of installment obligation owned by 40 percent shareholder to partnership in liquidation of corporation not disposition of installment obligation causing recognition of all gain where shareholder became 40 percent partner in acquiring partnership and transfer not shown or made for principal purpose of avoiding income tax).

16 I.R.C. §§ 453(g), 1239.

17 See notes 9-12 *supra* and accompanying text.

GENERAL ASSET ACCOUNT DEPRECIATION

The IRS has issued proposed regulations which simplify the computation of depreciation by allowing taxpayers to group assets in one or more general asset accounts with the assets in any particular asset account depreciated as a single asset. The regulations apply to assets placed in service in taxable years ending on or after the date of publication of the final regulation. For prior taxable years, the IRS indicated that it will allow use of any reasonable method that clearly reflects income and is consistently applied to the general asset accounts.

A general asset account includes assets with the same asset class, depreciation method, recovery period and convention which are placed in service in the same taxable year. An asset may not be placed in a general asset account if (1) a credit is claimed under I.R.C. § 47 or § 48, (2) the asset is used in a passive activity, or (3) the asset is used predominantly outside the United States or involves foreign sourced income.

The amount realized upon the disposition of an asset in a general asset account is recognized as ordinary income limited to the unadjusted depreciable basis of the account (disregarding any election under I.R.C. §§ 179, 190) less any amounts previously recognized as ordinary income at the time of disposition. The disposition of an asset does not affect the depreciation claimed on the general asset account. Typically, the entire disposition price is reportable as ordinary income.

A special rule is provided that gain or loss from the disposition of all of the assets or the last asset from the general asset account is determined with reference to the adjusted depreciable basis at termination (the remaining basis). A taxpayer may terminate general asset account treatment for a particular asset if the asset is disposed of as the result of a casualty, charitable contribution, the cessation of a business or in transactions to which nonrecognition provisions apply.

An anti-abuse rule specifies that if an asset in a general asset account is disposed of in a transaction one of the principal purposes of which is to avoid net operating loss limitations or the use of a credit, the disposition of the asset is treated as though a general asset election had never been made for the asset.

The election to apply the general asset account rules is to be made on a timely filed return, including extensions, for the tax year the assets are placed in service. The election is made by typing or printing "GENERAL ASSET ACCOUNT ELECTION MADE UNDER SECTION 168(i)(4)" on the top of Form 4562. **57 Fed. Reg. 39374 (Aug. 31, 1992), adding Prop. Treas. Reg. §§ 1.168(i)-1, 1.56(g)-1**.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

LACHES. In 1978, the plaintiff landlord conveyed an irregular shaped partial of land to the defendant who farmed the surrounding land as a tenant of the plaintiff. In building a homestead on the property, the tenant made minor encroachments of the plaintiff's land in building a pond, driveway and drainage pipe. When the plaintiff became aware of the encroachments, the plaintiff included in the 1982 lease a provision by which the tenant waived any right to the encroachments. The plaintiff then filed an action in 1987 to clear title to the encroachments in the plaintiff. The tenant acknowledged that no claim to the encroachments was available under adverse possession because the adverse possession had not occurred for the required ten years at the time of the suit. Instead, the tenant argued that the plaintiff was estopped by the principal of laches. The court held that the statutory doctrine of adverse possession exclusively governed such cases and determined that the tenant could not claim any title to the encroachments given the waiver of such rights in the 1982 lease. The court also noted that laches would not apply because the tenant could not show any harm resulting from the plaintiff's delay in bringing the suit where the defendant made all of the improvements in 1978 and made no further expenditures in reliance on the plaintiff's inaction. **Clanton v. Hathorn, 600 So.2d 963 (Miss. 1992)**.

ANIMALS

HORSES. The plaintiff was injured while releasing a weanling colt. The evidence showed that the colt had successfully escaped twice before and had become difficult to release easily and that this information was known to the defendant and the defendant's employees who failed to warn the plaintiff about the horse. In addition, the defendant's employees also knew that the plaintiff had no experience with handling weanling horses. The court upheld a jury verdict for the plaintiff and award of $250,000. The court held that the plaintiff did not assume the risk of handling the colt because the colt's dangerous nature was not known to the plaintiff. The court also rejected the defendant's contributory negligence argument because the plaintiff handled the horse under the instructions of the defendant's employees. **Grote v. Meers Land & Cattle Co., 485 N.W.2d 748 (Neb. 1992)**.

BANKING

FIDUCIARY DUTY. The debtor was a farmer in his 60's whose mental health was in decline. The debtor and the debtor's father had close personal ties with the bank and over several years before the present action, the debtor had relied more and more on the advice of the plaintiff bank as to financial matters concerning the farm. When the debtor's loans with the bank had become undersecured, the bank sought to renew the loans with additional collateral and convinced the debtor and the debtor's daughters to pledge additional property. The evidence demonstrated that had the debtor sought independent advice, a filing for bankruptcy would have removed much of the debtor's financial troubles and avoided foreclosure by the bank on the additional collateral. The court held that the bank had taken on a fiduciary responsibility with the debtor and had violated that duty by seeking to better its own position at the cost of the debtor. The bank's foreclosure action was dismissed and the debtor awarded over $200,000 in damages. **Boatmen's Nat'l Bank of Hillsboro v. Ward, 595 N.E.2d 622 (Ill. Ct. App. 1992)**.

BANKRUPTCY

GENERAL

AUTOMATIC STAY. In January 1989, the debtor filed for Chapter 7 bankruptcy. Two creditors had secured loans against the debtor's tobacco crop. Prior to receiving a discharge of the loans, the debtor had the tobacco crop sold in the name of a daughter and did not apply any of the proceeds to the secured loans. The debtor obtained a discharge of the secured loans in April 1989. The creditors filed a criminal complaint against the debtor for a fraudulent sale of collateral under Ohio Rev. Code § 2913.45. The debtor sought to enjoin the criminal action as filed in bad faith as an attempt to collect the discharged debt through criminal process. The court held that the criminal complaint was not filed in bad faith where that the complaint did not seek restitution. ***In re* Daulton, 966 F.2d 1025 (8th Cir. 1992)**.

EXEMPTIONS.

AVOIDABLE LIENS. The debtor had granted a security interest in the debtor's television, VCR and mobile home to secure a personal loan. The debtor claimed the property as exempt and sought to avoid the lien on the exempt property. The court held that, under Bankruptcy Code Section 522(f)(2)(A), the lien was avoided as to the television and VCR. However, because the security interest was voluntarily granted, the lien was not avoidable as to the mobile home. ***In re* Jensen, 141 B.R. 733 (Bankr. D. Idaho 1992)**.

EARNINGS. The debtor listed as exempt, under N.Y. Debtor & Creditor Law § 282, $50,000 in earnings from personal services as 90 percent of earnings earned within 60 days before filing for bankruptcy. The court held that the earnings were eligible for the exemption and that the exemption was not subject to the $2,500 limitation of N.Y. Debtor & Creditor Law § 283. ***In re* Maidman, 141 B.R. 571 (Bankr. S.D. N.Y. 1992)**.

HOMESTEAD. Prior to filing bankruptcy, the debtors sold their rural home for cash and a note and purchased a ranch. The debtors claimed as exempt the current homestead and the proceeds of the sale of the first homestead. The court held that the debtors were limited only to one exemption and denied the exemption for the proceeds of the first residence. ***In re* England, 141 B.R. 495 (N.D. Tex. 1991)**.

IRA. A Chapter 7 debtor was not allowed an exemption, under N.Y. Debtor & Creditor Law § 282, for the debtor's interest in an IRA. ***In re* Orlebeke, 141 B.R. 569 (Bankr. S.D. N.Y. 1992)**.

PARTNERSHIPS. The debtor was a limited partnership formed as part of a property settlement between the general and limited partner. After the limited partner obtained an order terminating the partnership and giving the general partner 90 days to wind up the partnership affairs, the general partner filed for personal bankruptcy and also filed a bankruptcy petition for the partnership. The limited partner challenged the general partner's authority to file a petition for the partnership after the general partner had become a bankruptcy debtor. The court held that the Tex. U.L.P.A § 35(3)(b) prohibited the general partner from any act on behalf of the partnership except as provided by the termination order. The court also held that Bankr. Rule 1004(a) did not preempt the Texas law. **Matter of Phillips, 966 F.2d 926 (5th Cir. 1992)**.

CHAPTER 11

REVOCATION OF PLAN. As part of the Chapter 11 plan, the debtor in possession, an operator of a sod farm, proposed a plan which provided for hiring of a third party as manager of the business through the five year plan. The plan disclosure statement listed the manager's past experience as a builder of another successful business. The plan was confirmed over the objections of several creditors. After the confirmation, the creditors learned through newspaper accounts of indictments against the manager and the bankruptcy of the manager's other business. The creditors sought revocation of the plan, under Section 1144, as a fraud on the court. The court found that the debtor and the debtor's attorney, who was also the attorney for the manager's bankruptcy, knew about the manager's financial and criminal troubles and intentionally failed to disclose these facts to the bankruptcy court. Because the debtor-in-possession and bankruptcy attorney were officers of the court, their failure to disclose material information relative to the qualifications of the manager constituted a fraud on the court and the court ordered revocation of the plan confirmation and the debtor's discharge. The court noted that the revocation did not bar the debtor from seeking another confirmation of a plan nor the debtor's future discharge. ***In re*** **Michelson, 141 B.R. 715 (Bankr. E.D. Cal. 1992)**.

CHAPTER 13

PLAN. The debtor's Chapter 13 plan valued the debtor's automobile at the NADA wholesale value for purposes of determining the value of the creditor's secured claim against the automobile. The creditor argued that the value should be determined using the NADA retail value. After noting that no general rule had been established by the courts, the court adopted the use of the average between the wholesale and retail price, with the possibility that the value could be modified for other factors affecting value. ***In re*** **Stauffer, 141 B.R. 612 (Bankr. N.D. Ohio 1992)**.

FEDERAL TAXATION

ADMINISTRATIVE EXPENSES. The debtor originally filed for Chapter 11 but converted the case to Chapter 7 after two years. The IRS filed a claim in the Chapter 7 case for post-petition, preconversion taxes plus interest and penalties. The parties agreed that the taxes and interest were entitled to administrative expense priority but disagreed as to the penalties. The court held that under Section 503(b), the penalties were entitled to the same priority as the taxes to which the penalties applied. However, the court applied Section 510(c)(1) and subordinated the penalties to all other priority claims, thus causing the penalties to be paid pro rata with other second priority claims. The IRS had also filed a claim after the claims bar date in the Chapter 7 case for additional taxes for the same period. The court allowed the additional claim as an amendment to the original timely filed claim because the amendment related to the same type of tax and the same taxable period. The court also subordinated the penalties associated with the additional taxes. ***In re*** **First Truck Lines, Inc., 141 B.R. 621 (Bankr. S.D. Ohio 1992)**.

AVOIDABLE TRANSFERS. Prior to filing for bankruptcy in 1989, the debtors filed their 1988 federal income tax return on which they elected to have the amount of overpayment applied to their 1989 estimated taxes. After the bankruptcy trustee sought return of the overpayment from the IRS, the IRS erroneously sent the overpayment to the debtors who immediately reapplied the funds to their 1989 taxes. The court held that the election to apply the refund to the estimated taxes was an irrevocable election which terminated the debtors' rights to the funds; therefore the refund was not bankruptcy estate property subject to recovery by the trustee. The trustee also argued that the refund became estate property when the IRS repaid the refund to the debtors. The court held that because the IRS had no authority to repay the refund and the debtors immediately reapplied the refund to the estimated taxes as per the original election, the refund never became estate property. ***In re*** **Block, 141 B.R. 609 (N.D. Tex. 1992)**.

CLAIMS. The taxpayer owned a logging company which treated its loggers as independent contractors and did not withhold federal employment taxes from compensation paid to the workers. The IRS contested the classification in an audit of the corporation but an agent agreed to offset from the total liability the amount of FICA and FUTA taxes actually paid by the workers. Although the taxpayer obtained a signed Form 4669 from most of the workers, the IRS did not include the amounts to reduce its claim against the taxpayer in the current bankruptcy case. The court held that in a bankruptcy case, the claimant has the burden of proving its claim and that the IRS failed to demonstrate that the loggers were employees and not independent contractors. In addition, the IRS failed to prove the amount of its claim because it failed to consider the amounts of FICA and FUTA taxes paid by the loggers. ***In re*** **Rasbury, 141 B.R. 752 (N.D. Ala. 1992),** ***aff'g*****, 130 B.R.990 (Bankr. N.D. Ala. 1991)**.

DISCHARGE. In April 1990 the IRS assessed the debtor for 1982 through 1986 taxes. The debtor filed a Chapter 13 case in July 1990 which was voluntarily dismissed in February 1991. The debtor refiled for Chapter 13 in April 1991 and sought discharge of the 1982 through 1986 taxes as assessed before 240 days before the filing for bankruptcy. The court held that the 240 day limitation period was tolled during the first bankruptcy case and the taxes were not dischargeable. ***In re*** **Richards, 141 B.R. 751 (W.D. Okla. 1992)**.

CONTRACTS

MODIFICATION. The plaintiff was a farm equipment dealer which had purchased and sold farm equipment made by a predecessor corporation which was purchased by the defendant. A new dealership contract between the parties provided for an annual parts return program which was to be limited to return of parts purchased solely from the defendant and not from the predecessor corporation. In addition, the contract provided that at the termination of the contract, the corporation agreed to repurchase all parts purchased from it, but not parts purchased from the predecessor corporation. The contract also prohibited any oral modification or waiver by conduct. The plaintiff argued that the contract was modified by the defendant's acceptance of old parts during the contract and that the defendant should be required to accept old parts upon termination of the contract. The court held that even if the acceptance of the old parts during the contract modified the contract, the modification was only of the return program provision and not the contract termination parts purchase provision. **Farm Equip. Store v. White Farm Equip., 596 N.E.2d 274 (Ind. Ct. App. 1992)**.

FEDERAL AGRICULTURAL PROGRAMS

COTTON. The CCC has issued interim regulation amending the price support loan program regulations for cotton, amending several administrative provisions and eligibility requirements. **57 Fed. Reg. 40593 (Sept. 4, 1992)**.

PESTICIDES. The EPA has issued as final regulations governing the protection of workers from agricultural pesticides. The regulations expand the scope of the regulations to include employees in forests, nurseries and greenhouses and employees who mix, load, apply or otherwise handle pesticides in these locations. The regulations add requirements for warnings about applications, personal protective equipment and restrictions on entry to treated areas. The regulations contain new provisions for decontamination, emergency assistance, contact with handlers, and safety training procedures. Pesticide registrants are required to include in labels appropriate statements referencing these new requirements. **57 Fed. Reg. 38102 (Aug. 21, 1992)**.

The EPA has issued proposed regulations providing an exception to the above final regulations to allow, under specific conditions, early entry of workers to perform routine hand labor tasks on cut flowers and cut ferns. **57 Fed. Reg. 38175 (Aug. 21, 1992)**.

The EPA has issued proposed regulations adding a requirement that specific hazard information be made available to agricultural workers and pesticide handlers concerning the pesticides to which the workers are exposed. **57 Fed. Reg. 38167 (Aug. 21, 1992)**.

FEDERAL ESTATE AND GIFT TAX

FLOWER BONDS. The decedent owned flower bonds with a par value of $8 million which carried annual interest rates from 3 to 4.25 percent, payable semiannually. The bonds were all used to pay a portion of the estate tax. The bonds were issued at a discount because of the low interest rate and the estate requested a ruling as to whether the value of the bonds for estate tax purposes could be discounted because of the low interest rate during the time between the decedent's death and the use of the bonds to pay the estate tax. The IRS ruled that the low interest rate on the bonds could not be used as a discount factor because the delay in payment of estate claims was not a discounting factor for estate tax purposes. In addition, the IRS ruled that the value of flower bonds is the higher of par value or the mean between the highest and lowest selling price on the valuation date. **Ltr. Rul 9235003, May 20, 1992**.

GENERATION SKIPPING TRANSFERS. The decedent's will provided for property to pass to a marital trust and a family trust. The marital trust qualified as QTIP and the remainder passed to the family trust. The family trust provided for trust income and principal to be distributed to the surviving spouse, a son and two grandchildren. The executor petitioned the probate court for division of the marital trust into three trusts so that one of the trusts could make a reverse QTIP election. Each trust was to receive a proportionate share of all trust property, to evenly allocate appreciation and depreciation items and to evenly distribute the obligations to the beneficiary. The IRS ruled that the division of the trust was allowed and that the reverse QTIP election would be permitted. The executor also had the family trust split into a trust equal to the GSTT exemption for the grandchildren and a trust for the remaining property. The resulting trusts maintained the apportioned obligations of the original trust. The IRS ruled that the resulting trusts would be treated as separate trusts with the exempt trust eligible for application of the GSTT exemption. **Ltr. Rul. 9233007, May 13, 1992**.

INTEREST RATES. The IRS has announced that for the quarter beginning October 1, 1992 and ending December 31, 1992, the interest rate on overpayments of taxes is 6 percent and on underpayments is 7 percent. **Rev. Rul. 92-77, I.R.B. 1992-38**.

IRA'S. The decedent and surviving spouse had created a revocable inter vivos trust which passed to the surviving spouse upon the decedent's death. The decedent owned two IRA's and a defined benefit plan which named the trust as sole beneficiary. The surviving spouse, as trustee, elected to receive lump sum distributions to the trust from the plan and IRA's and then contributed the funds to another IRA within 60 days of the distributions. The IRS ruled that the distributions were eligible for tax free rollover treatment of I.R.C. § 408(a). **Ltr. Rul. 9234032, May 27, 1992**.

LIFE INSURANCE. The taxpayers were equal shareholders of an S corporation. Under the corporation agreement, the corporation would purchase a shareholder's stock in the event of the shareholder's disability or if the shareholder did not want to continue in the corporation if the corporation was sold or sold its stock to the public. The corporation owned life insurance policies on the lives of the shareholders. The corporation paid the premiums and was the sole beneficiary. In the event a shareholder's stock was purchased by the corporation, the shareholder had the right to purchase the life insurance policy on the shareholder's life for the amount of the cash surrender value of the policy. The IRS ruled that the policies were not includible in the shareholders' gross estate because the right to purchase the policies was not an incident of ownership. **Ltr. Rul. 9233006, May 11, 1992**.

MARITAL DEDUCTION. The decedent bequeathed property in trust to the surviving spouse conditioned upon the surviving spouse's not electing to take the statutory elective share of the decedent's estate. The surviving spouse decided not to elect to take the statutory share and the executor sought a QTIP election for the trust property. The

IRS ruled that the requirement that the surviving spouse not make the statutory share election in order to receive the trust did not make the property ineligible for the QTIP election. **Ltr. Rul 9233033, May 19, 1992**.

At the decedent's death, property in an intervivos trust established by the decedent and surviving spouse passed to the surviving spouse under the trust, with all trust income to be distributed at least annually. The trust was funded with the decedent's share of community property and separate property. The trustee also had the power to distribute principal for the surviving spouse's health, comfort and support. The IRS ruled that the trust property was eligible QTIP. **Ltr. Rul. 9233034, May 19, 1992**.

The decedent's will stated that the decedent's intent was to provide the estate with the maximum marital deduction allowed by federal estate tax law at the decedent's death. However, the will bequeathed a portion of the residuary estate in trust to the surviving spouse equal to one-half of the adjusted gross estate less the value of all other items of the gross estate which qualified for the marital deduction. The decedent's state law included a provision allowing wills with formula maximum marital deductions to be eligible for the unlimited marital deduction. The IRS ruled that the state law did not apply because the will did not contain a formula maximum marital deduction clause. In addition, the IRS ruled that the estate was not entitled to a maximum marital deduction because the will limited the amount of property passing to the surviving spouse. **Ltr. Rul. 9235001, Jan. 22, 1992**.

SPECIAL USE VALUATION. The decedent's interest in ranch property passed to three grandchildren in trust. The estate made a special use valuation election containing all required information but the recapture agreement was signed only by the trustee. Within 90 days after the IRS notified the estate of the incomplete election, the estate filed an amended return with the trust beneficiaries' signatures on the recapture agreement. The court held that the first election substantially complied with the election requirements entitling the estate to make an amended election within 90 days after notification by IRS. **Est. of McAlpine v. Comm'r, 92-2 U.S. Tax Cas. (CCH) ¶ 60,109 (5th Cir. 1992), *aff'g*, 96 T.C. 134 (1991)**.

The decedent bequeathed a ranch operation to the decedent's adopted son. The decedent's estate elected special use valuation for the ranch. The son transferred the ranch to a new corporation in exchange for 100 percent of the stock. The son materially participated in the operation of the ranch and was required by the corporation bylaws to continue such participation. The corporation assumed liability for any additional estate tax which might be recaptured. The son transferred stock to the son's spouse, children and irrevocable trusts for grandchildren. The IRS ruled that the transfer of the ranch to the corporation would not cause recapture of the special use valuation benefits so long as the exchange was tax-free under I.R.C. § 351 and the corporation was considered a closely held business under I.R.C. § 6166. The transfer of stock to the family members also did not cause recapture of estate tax benefits. **Ltr. Rul. 9235028, May 29, 1992**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued procedures by which taxpayers who are required to use inventories can obtain expeditious consent to change their method of accounting to either an overall accrual method or an accrual method in conjunction with a request to change to a special method. **Rev. Proc. 92-74, I.R.B. 1992-38**.

The IRS has issued procedures by which taxpayers who are not required to use inventories can obtain expeditious consent to change their method of accounting to either an overall accrual method or an accrual method in conjunction with a request to change to a special method. **Rev. Proc. 92-75, I.R.B. 1992-38**.

C CORPORATIONS

ACCOUNTING METHOD. The taxpayers were three family corporations. The parent corporation was engaged in the processing and marketing of agricultural products and the other corporations were engaged in the growing and processing of agricultural products. The two other corporations had changed their method of accounting to accrual accounting and had established suspense accounts. The taxpayers merged the two other corporations into the parent corporation, with the resulting corporation qualifying as a family corporation and operating the two former corporations as divisions of the parent corporation. The IRS ruled that the merger did not cause inclusion of amounts in the suspense accounts in gross income and that the parent corporation would be required to maintain the suspense account. The IRS also ruled that only the income from the growing of the agricultural products, and not the processing or marketing, were includible in the parent corporation's gross income from farming for purposes of I.R.C. § 447(i)(3). **Ltr. Rul. 9233014, May 15, 1992**.

COSTS OF RETURN PREPARATION. The taxpayers hired a CPA for tax advice and for preparation of their income tax return, including a Schedule C for a sole proprietorship and Schedule E for rental income from real property. The IRS ruled that the costs relating to the tax advice concerning items of income and expense reportable on Schedule C were deductible business expenses. The costs relating to the tax advice concerning items of income and expense reportable on Schedule E were deductible from gross income under I.R.C. § 62(a)(4). The IRS also ruled that the costs relating to the preparation of Schedules C and E were deductible from gross income under I.R.C. § 62(a). The other costs relating to the preparation of the individual tax returns were eligible itemized deductions subject to the 2 percent of gross income limitation. **Ltr. Rul. 9234009, May 20, 1992**.

HOME OFFICE. An insurance salesman was not allowed a deduction for expenses associated with an office in a residence during a period in which the salesman also rented an office elsewhere which was used as the principal place of business. **Banatwala v. Comm'r, T.C. Memo. 1992-483**.

INSTALLMENT REPORTING. In 1990, the taxpayer sold property for a downpayment and installment note. On the taxpayer's 1990 tax return, the taxpayer's accountant inadvertently claimed the entire gain from the sale as recognized in 1990. Upon learning about the mistake, the taxpayer informed the accountant who attempted to correct the error. The IRS ruled that the taxpayer could revoke the election out of the installment method and file an amended return. **Ltr. Rul. 9233044, May 21, 1992**.

LIKE-KIND EXCHANGE. The taxpayers granted a state board a conservation easement in perpetuity on their land which they used in the business of farming. Using a qualified intermediary, the parties obtained a fee simple interest in other farm land in exchange for the conservation easement. The IRS ruled that the fee simple interest qualified as like-kind property for a tax-free exchange for the conservation easement. **Ltr. Rul. 9232030, May 12, 1992**.

PARTNERSHIPS

ADMINISTRATIVE ADJUSTMENTS. The taxpayers were partners in a partnership which claimed various deductions relating to a partnership nonrecourse obligation. The IRS sent notices of a Final Partnership Administrative Adjustment disallowing the deductions because the partners were not at risk as to the obligation. The partners argued that the determination of the partner's risk as to the obligation was not determinable in an administrative adjustment because the at-risk determination was not a partnership item. The court agreed and held that only the nature of the obligation at the partnership level, nonrecourse or recourse, could be determined in an FPAA proceeding. **Grumbles v. Comm'r, T.C. Memo. 1992-489**.

STATUTE OF LIMITATIONS. A general partner had signed an agreement to extend the three-year limitation period on assessments as to the partnership. The court held that the agreement was binding on the partnership because such agreements are considered partnership business and a general partner has the authority to bind the partnership as to partnership business matters. **Iowa Investors Baker v. Comm'r, T.C. Memo. 1992-490**.

In a series of similar cases, the Tax Court has held that the statute of limitations for assessment of tax on a partner's distributive share of partnership tax items was determined only by the filing of the individual partner's return and was not affected by the running of the limitations period as to the partnership return. **Olson v. Comm'r, T.C. Memo. 1992-486; Maxfield v. Comm'r, T.C. Memo. 1992-487; Iowa Investors Baker v. Comm'r, T.C. Memo. 1992-490; Harp v. Comm'r, T.C. Memo. 1992-491; Grayson v. Comm'r, T.C. Memo. 1992-492; Erculei v. Comm'r, T.C. Memo. 1992-493; Douglas v. Comm'r, T.C. Memo. 1992-494; Dakolios v. Comm'r, T.C. Memo. 1992-495; Counter v. Comm'r, T.C. Memo. 1992-496; Collier v. Comm'r, T.C. Memo. 1992-497; Collier v. Comm'r, T.C. Memo. 1992-498; Butler v. Comm'r, T.C. Memo. 1992-499; Bunghero v. Comm'r, T.C. Memo. 1992-500; Brophy v. Comm'r, T.C. Memo. 1992-501; Anderson v. Comm'r, T.C. Memo. 1992-502; Farmer v. Comm'r, T.C. Memo. 1992-503; Doxtater v. Comm'r, T.C. Memo. 1992-505; Harp v. Comm'r, T.C. Memo. 1992-506; Haynes v. Comm'r, T.C. Memo. 1992-507; Hostetler v. Comm'r, T.C. Memo. 1992-508; Iarussi v. Comm'r, T.C. Memo. 1992-509; Kelley v. Comm'r, T.C. Memo. 1992-510;Reeve v. Comm'r, T.C. Memo. 1992-511; Ranieri v. Comm'r, T.C. Memo. 1992-512; O'Brien v. Comm'r, T.C. Memo. 1992-513**.

PENSION PLANS. The IRS has provided guidance for employers to implement the early termination restrictions of Treas. Reg. § 1.401(a)(4)-5(b). The ruling also provides guidance as to whether a lump sum distribution which is subject to an escrow agreement qualifies as a lump sum distribution under I.R.C. § 402(e)(4)(A). **Rev. Rul. 92-76, I.R.B. 1992-76**.

For plans beginning in August 1992 the weighted average is 8.23 percent with the permissible range of 7.41 to 9.06 percent for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 92-38, I.R.B. 1992-36, 18**.

REPORTING REQUIREMENTS. The IRS has issued proposed regulations authorizing the Federal Crop Insurance Corporation to require insureds and reinsurance companies to furnish an Employer Identification Number to the FCIC. The regulations also allow the FCIC to require insureds to provide the EIN's of persons and entities with substantial beneficial interests in the insureds. **57 Fed. Reg. 39379 (aug. 31, 1992)**.

RETURNS. The IRS has provided extensions for filing federal returns for taxpayers affected by Hurricane Andrew. **Notice 92-40, I.R.B. 1992-38**.

S CORPORATIONS

ELIGIBILITY. The taxpayer corporation owned and operated a mobile home park and provided without charge, in addition to general maintenance and utility services, a clubhouse, swimming pool, exercise area, car wash, and holiday activities. The IRS ruled that for purposes of eligibility of the taxpayer corporation for S corporation status, the amounts received from the mobile home residents were not "rentals from real estate" under I.R.C. § 1362(d)(3)(D)(i). **Ltr. Rul. 9234012, May 20, 1992**.

The taxpayer corporation operated a facility which rented space to antique retailers. The taxpayer provided general maintenance services; sponsored promotional antique shows and festivals; assisted the retailers in promotional activities, remodeling and financing; and gave general marketing advice. The IRS ruled that the revenues received from the rental of the spaces to the retailers were not passive investment income under I.R.C. § 1362(d)(3)(D). **Ltr. Rul. 9234011, May 20, 1992**.

AGRICULTURAL LAW DIGEST
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SECURED TRANSACTIONS

CONVERSION. The plaintiff bank held a perfected security interest in a farmer's crops. The farmer sold the crops and received a check in payment which was used to pay a loan from the defendant bank. The plaintiff sued uder a theory of conversion for recovery of the identifiable proceeds of the collateral. The court held that the defendant was a holder in due course, under U.C.C. § 3-302 in that the defendant gave value for the check and had no knowledge of the security interest in the check. Therefore, under U.C.C. § 9-309, the defendant's interest in the check took priority over the prior perfected security interest. The court held that although Section 9-306 allows a security interest to attach to the proceeds of collateral, Section 9-306 subjects itself to the other section of Article 9, including Section 9-309. **Farmers State Bank v. Nat'l bank, 596 N.E.2d 173 (Ill. Ct. App. 1992)**.

FRAUDULENT TRANSFERS. A junior creditor, the plaintiff, had obtained a judgment against the debtor and had initiated foreclosure proceedings against the debtor. The creditor had entered into mandatory mediation because the debtor was a farmer, but during the mediation process, the debtor sold to a nephew, the defendant, stock in a corporation which owned two vacation homes and some personal property for about one-half of their fair market value. The nephew then leased the properties back to the debtor. The debtor applied the proceeds to loans held by a priority creditor. The nephew had knowledge of the foreclosure and mediation proceedings and was a business associate with the debtor. The court held that the transaction was void as a fraudulent transfer and required the nephew to return the shares, without recompensation, for distribution to the debtor's creditors. **Prod. Credit Ass'n v. Shirley, 485 N.W.2d 469 (Iowa 1992)**.

PROCESSOR'S LIEN. In a certified question, the court ruled on the issue of whether milk producers were entitled to protection under Wash. Rev. Code § 60.13.020 and held priority liens on milk delivered to a processor. The court held that Section 60.13.020 defined "agricultural product," at the time the milk was delivered, as covering only horticultural, viticultural and forage products. The court also held that the 1991 amendment to the law to include milk and milk products could not be retroactively applied to the 1990 milk deliveries. ***In re* F.D. Processing, Inc., 832 P.2d 1303 (Wash. 1992)**.

ISSUE INDEX