[5] See Maxwell v. Gardner, Unempl. Ins. Rep. (CCH) ¶ 14,533 (N.D. Ala. 1966).
[6] See, e.g., Rev. Rul. 60-32, 1960-1 C.B. 23 (payments under Soil Bank Program includible as self-employment income of owner operator).
[7] Stevenson v. Comm'r, T.C. Memo. 1989-357 (business of leasing and selling portable advertising signs).
[8] I.R.C. § 1402(b).
[9] See Letter from Peter K. Scott, Associate Chief Counsel, Technical, Internal Revenue Service, March 10, 1987.
[10] Ltr. Rul. 8822064, March 7, 1988.
[11] *Id.*
[12] Notice 87-26, 1987-1 C.B. 470.
[13] Rev. Rul. 60-32, 1960-1 C.B. 23.
[14] Soc. Sec. Rul. 67-42 (cropland adjustment program).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL

ESTATE PROPERTY. Prior to bankruptcy, the debtors transferred their residence to a trust for the benefit of the debtors. The trust instrument provided that the trustee had the power to sell the property only with the permission of the debtors and contained spendthrift trust provisions. The remainder of the trust was to pass to the debtors' issue. The court held that the trust was not a valid spendthrift trust and was included in estate property. The court also held that the debtors' children owned no interest in the trust because the entire beneficial interest belonged to the debtors and the debtors retained control over sale of the trust property. ***In re* Frangos, 132 B.R. 723 (Bankr. N.D. Ohio 1991)**.

EXEMPTIONS.

HOMESTEAD. Four months prior to filing bankruptcy the debtor moved out of the residence because judgment creditors told the debtor that the house would be sold. The debtor claimed the house as exempt and stated that she would move back into the house and repair it if the exemption was allowed. The court held that N.M. Stat. § 42-10-9 did not require physical possession as of the date of the bankruptcy petition where the only reason the debtor did not occupy the residence was because creditors told the debtor she would lose the house. ***In re* Wells, 132 B.R. 966 (Bankr. D. N.M. 1991)**.

PENSION PLAN. The debtor claimed an exemption in an ERISA qualified pension plan established by the debtor's corporation. The court held that the plan was not excluded from the bankruptcy estate under ERISA as a nonbankruptcy law exemption but was exempt under Fla. Stat. § 222.21, which was not pre-empted by ERISA. The court also held that the Florida exemption was not unconstitutional in that Fla. Const. Art. 10, § 4(a)(2) did not limit the value of exemptions for personal property. ***In re* Rosenbloom, 132 B.R. 970 (Bankr. S.D. Fla. 1991)**.

The debtor claimed an exemption in an ERISA qualified pension plan. The court held that the plan was exempt under Fla. Stat. § 222.21, which was not pre-empted by ERISA. ***In re* Gurvish, 132 B.R. 976 (Bankr. S.D. Fla. 1990)**.

The debtor claimed an exemption in an ERISA qualified pension plan. The court held that the plan was not excluded from the bankruptcy estate under ERISA as a nonbankruptcy law exemption and was not exempt under Ariz. Rev. Stat. § 33-1126, which was pre-empted by ERISA. **Pitrat v. Garlikov, 947 F.2d 419 (9th Cir. 1991)**.

STEREO. The debtor claimed an exemption for a $600 built-in stereo using the $200 exemption for household goods plus $400 of the wildcard exemption resulting from the unused homestead exemption under Ga. Code § 44-13-100(a)(6). The court held that the exemption was allowed because the wildcard exemption could be applied to property partially exempt under other exemption provisions. **Matter of McGuire, 132 B.R. 803 (Bankr. M.D. Ga. 1987), *aff'd*, 132 B.R. 807 (M.D. Ga. 1989)**.

INVOLUNTARY PETITION. Involuntary petitions were filed against the debtors who argued that the petitions were improper because the loans held by the filing parties were subject to bona fide disputes. The court followed precedent in the Seventh and Tenth Circuits as to the standard used to determine whether a bona fide dispute exists as "an objective basis for either a factual or legal dispute as to the validity of the debt." The court held that the trial court could examine the legal and factual issues involved in the dispute for the purpose of the determination. The creditors had the initial burden to show that no dispute existed and then the burden shifted to the debtors to show the existence of a dispute. The court held that the creditors met their burden in showing that the loans' terms, payment amounts and effect of guarantees were not in dispute by the parties. The court also held that the debtors failed to demonstrate the existence of an oral agreement to alter the terms of the loans; thus, no bona fide dispute as to the loans was found. ***In re* Rimel, 946 F.2d 1363 (8th Cir. 1991), *aff'g*, 121 B.R. 253 (E.D. Mo. 1990), *aff'g*, 111 B.R. 250 (Bankr. E.D. Mo. 1990)**.

SALE OF ESTATE PROPERTY. The Chapter 11 debtor entered into a stipulated agreement with creditors to purchase anhydrous ammonia stored in the debtor's tanks and subject to competing security interests. The stipulation stated the price as $123.12 per metric ton. One of the creditors sought modification of the agreement to set the price at $123.12 per short ton. The creditor argued that parol evidence of the amended price should be allowed to prove the intended price and that the agreement should be amended because of mistake. The court held that parol evidence was not allowed because the agreement contained no inconsistencies or ambiguities as to the price and that amendment for mistake would not be allowed because only the creditor claimed a mistake was made. ***In re* Royster Co., 132 B.R. 684 (Bankr. S.D. N.Y. 1991)**.

TRUSTEE'S DUTY. The debtor's sole asset was a fully equipped dairy farm, without dairy cows. In the process of ordering the estate, the trustee received an offer to purchase the dairy farm from a neighbor. After several months of investigation, the trustee accepted the offer and petitioned the court for approval of the sale. While the trustee was obtaining approvals from creditors and the debtors, some of the equipment was removed by a creditor and the buyer reduced the offer price. The reduced price was also accepted but before the sale could commence, other creditors removed more equipment and the offer price was further reduced. This price was too low and the farm was sold at foreclosure auction by the mortgagee for less than the loan against the property. The secured creditors brought an action against the trustee for breach of duty under Section 704(1), arguing that the trustee failed to expeditiously sell the estate property, causing loss to the creditors. The court held that Section 704(1) requires the trustee only to expeditiously close the estate and that the trustee used due diligence in processing the proposed sale of the farm. The court found that the trustee could not be held liable for the improper actions of the secured creditors' removal of estate property in violation of the automatic stay. ***In re*** **Hutchinson, 132 B.R. 827 (Bankr. M.D. N.C. 1991)**.

FEDERAL TAXATION

ALLOCATION OF PLAN PAYMENT OF TAXES. The debtor was a shareholder and officer of a corporation which had filed Chapter 7 bankruptcy in which the corporation made plan payments of taxes, including employment taxes. The debtor challenged the assessment of responsible person taxes under I.R.C. § 6672 for employment taxes not paid by the corporation. The debtor argued that the corporation's Chapter 7 plan tax payments were voluntary and should have been applied first to the employment tax liability, thus lessening the debtor's responsible person liability. The court held that Chapter 7 plan payments of taxes were involuntary and that the IRS was not required to allocate the payments as directed by the plan. **Venttis v. U.S., 132 B.R. 720 (E.D. Mich. 1991)**.

AUTOMATIC STAY. The IRS had filed a pre-petition levy on the debtor's wages which the IRS failed to lift upon the debtor's filing for bankruptcy. In addition, a second levy was made post-petition after the IRS received notice of the bankruptcy filing. Although the IRS returned the funds received under the second levy, the court held that the 90 day period taken to return the funds was unreasonable and (1) allowed the debtor 11 percent interest on the funds from the date of levy until the date of the refund, (2) allowed the debtor 11 percent interest on funds levied under the pre-petition levy but received post-petition, and (3) awarded $1,000 in attorney's fees. The District Court held that, the award of attorney's fees was improper because the award was not based on a finding of actual fees incurred. **Matter of Fernandez, 132 B.R. 775 (M.D. Fla. 1991),** ***aff'g in part and rem'g*****, 125 B.R. 317 (Bankr. M.D. Fla. 1991)**.

DISCHARGE. The debtor filed returns for taxable years 1981 through 1985 in June 1986 and for 1985 in July 1986. The debtor filed a Chapter 13 petition in October 1987 which was dismissed in June 1989. The debtor filed the current Chapter 7 case in August 1989, more than three years after the returns were filed. The IRS argued that the first Chapter 13 case tolled the three and two year requirements of Sections 523(a)(1)(A) and (1)(1)(B)(ii) and that the tax liability and assessed penalties for those years were not dischargeable. The court held that the Chapter 13 case tolled the time requirements for dischargeability of the tax liabilities and the penalties but that the time period for the penalties began when the taxes were first due and not when the tax returns were filed. **Matter of Stoll, 132 B.R. 782 (Bankr. N.D. Ga. 1990)**.

The debtors listed on their bankruptcy schedules disputed gift tax liability for several pre-petition gifts for which no gift tax return was filed. The IRS filed a claim for income taxes but no claim regarding the gift taxes. After the debtors' plan was confirmed and fully completed, the IRS issued an assessment for the gift taxes and the debtors filed for an injunction, arguing that the gift tax claim was disallowed and discharged in the bankruptcy case. The court held that because no return was filed, the gift taxes were not discharged in the bankruptcy case. ***In re*** **Grynberg, 91-2 U.S. Tax Cas. (D. Colo. 1991),** ***aff'g*****, 91-2 U.S. Tax Cas. (Bankr. D. Colo. 1991)**.

ESTATE PROPERTY. The debtors filed a Chapter 7 case in July 1984 and received a discharge in December 1987 in a no asset case. The debtors filed their 1987 tax return in 1988 and claimed a refund. The trustee petitioned to reopen the case to recover the refund as estate property. The court held that the portion of the refund attributable to the pre-petition portion of 1987 was estate property. ***In re*** **Barowsky, 946 F.2d 1516 (10th Cir. 1991),** ***aff'g*** **102 B.R. 250 (D. Wyo. 1989)**.

FEDERAL AGRICULTURAL PROGRAMS

BORROWER'S RIGHTS. The CCC has adopted as final regulations amending the debt settlement policies and procedures regulations to include all debts whether or not they arise from domestic transactions. **56 Fed. Reg. 66954 (Dec. 27, 1991)**.

CROP INSURANCE. The FCIC has adopted as final regulations providing a three-year program of crop insurance protection against loss of California citrus production. **57 Fed. Reg. 173 (Jan. 3, 1992)**.

DISASTER ASSISTANCE. The Congress has passed and the President signed the Disaster Assistance Act of 1991. The Act provides for payments for 1990 and 1991 losses from damaging weather (including drought, hail, excessive moisture, freeze, tornado, hurricane, earthquake or excessive wind) or other deterioration of a crop from insects or disease which is accelerated by damaging weather. No payments will be made until all claims are filed, and if total payments exceed the amount appropriated, all payments will be reduced by a national factor.

Payment eligibility for corn and other participating crops requires yield less than 65 percent of the ASCS yield if the producer has FCIC insurance and 60 percent without insurance. Payments are 65 percent of the target price. Payment eligibility for nonparticipating program crops requires yield less than 65 percent of the ASCS yield if the producer has FCIC insurance and 60 percent without insurance. Payments are 65 percent of the loan rate. Payment eligibility for soybeans requires yield less than 65 percent of the county average yield if the producer has FCIC insurance and 60 percent without insurance. Payments are 65 percent of the average county price for the last three median crop years. Payment eligibility for other nonprogram crops requires yield less than the average county yield or proven yield for the crop. Payments are 65 percent of the average county price for the last three median crop years.

FARM LOANS. The FmHA has adopted as final regulations amendments to the Real Estate Title Clearance and Loan Closing regulations to conform the regulations with title evidence requirements of conventional lending institutions. **56 Fed. Reg. 67470 (Dec. 31, 1991)**.

MEAT AND POULTRY INSPECTION. The FSIS has adopted as final amendments to the regulations governing uniform net weight labeling. The FSIS has announced that the effective date of the final regulations would be extended to March 2, 1992, for the provisions involving the standards for installing, maintaining, testing and inspecting scales. **56 Fed. Reg. 67485 (Dec. 31, 1991)**.

WETLANDS. The SCS, EPA, Army Corps of Engineers, and the Fish and Wildlife Service have proposed regulations adopting into the respective agencies' regulations portions of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, including the revisions to the Manual proposed on August 14, 1991. **56 Fed. Reg. 65964 (Dec. 19, 1991)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The decedent bequeathed property to four trusts, two of which were educational trusts for the payment of support for the beneficiaries during enrollment in college, and the other two trusts were for payment of support of the beneficiaries while serving as full-time missionaries for a church. The beneficiaries were the descendants of the parents of the decedent and spouse. The current descendants totaled almost 700. The IRS ruled that the bequests to the trusts did not qualify for the charitable deduction. **Ltr. Rul. 9149005, Aug. 29, 1991**.

Under the decedent's will, the decedent's residence was devised to two beneficiaries for life with the remainder to pass to a trust which held the residuary estate for the beneficiaries and which had a charity as the remainder holder. The IRS ruled that because the residence passed to the residuary trust before passing to the charity, the residence portion of the trust did not qualify for the charitable deduction. Although the IRS declined to rule on the effect of a state court reformation of the residence trust, the IRS suggested reforming the trust as provided in Section 8 of Rev. Proc. 90-32, 1990-1 C.B. 546. **Ltr. Rul. 9151022, Sept. 20, 1991**.

GENERATION SKIPPING TRANSFER TAX. The taxpayer transferred interests in a partnership to trusts for the lifetime benefit of their children with remainders to the children's issue. The IRS ruled that (1) the transfers were completed gifts entitled to the unified credit, (2) the the value of the gifts was not subject to the special valuation rules of Section 2707, and (3) the gifts of the partnership interests and any future gifts to the trusts would not be subject to GSTT to the extent the taxpayers allocated their exemption amount to the gifts. **Ltr. Rul. 9149023, Sept. 5, 1991; Ltr. Rul. 9151037, Sept. 25, 1991**.

INSTALLMENT PAYMENT. The decedent owned shares of stock in a small corporation which exceeded in value 35 percent of the gross estate and the estate elected to pay the federal estate tax in installments. The stock was bequeathed to an heir in trust and the heir proposed to purchase most of the shares of the stock owned by the trust with the rest passing to the heir under the terms of the decedent's will. The IRS ruled that the purchase of the stock was a disposition causing acceleration of the payment of estate tax. **Ltr. Rul. 9149015, Aug. 30, 1991**.

INTEREST RATES. The IRS has announced that for the quarter beginning January 1, 1992 and ending March 31, 1992, the interest rate on overpayments of taxes is 8 percent and on underpayments is 9 percent. **Rev. Rul. 91-65, I.R.B. 1991-51, 60**.

MARITAL DEDUCTION. The surviving spouse, a Canadian citizen, was the beneficiary of two IRA's owned by the decedent. In order to qualify the IRA's for the marital deduction, the spouse created two trusts to which the IRA benefits were irrevocably assigned. The spouse retained the power to require distributions from the trusts' principal but the trustee was required to withhold and pay any estate tax due on such distributions. The trustee was to be a U.S. citizen. The spouse also retained full power to dispose of the trusts' assets at death. The IRS ruled that the value of the IRA's transferred to the trusts was eligible for the marital deduction. **Ltr. Rul. 9151043, Sept. 26, 1991**.

The decedent had purchased a residence which the decedent and spouse owned as tenants by the entirety, and the decedent did not make the Section 2515 election. Both parties were not U.S. citizens. The parties also owned a joint brokerage account which was divided equally in 1986 and each spouse contributed the share into another joint brokerage account. The residence passed to the surviving spouse at the decedent's death. The surviving spouse executed a disclaimer of one-half of the interest in the residence and transferred the remaining one-half interest and one-half of the brokerage account assets to a trust for the surviving spouse. The trust principal could be distributed to the spouse for health, maintenance and support but the trustee was to withhold estate tax due on such distributions. The surviving spouse also retained the power to dispose of trust assets at death. The IRS ruled that the disclaimer of the one-half interest in the residence was qualified, even though the spouse continued to live in the residence, and the trust assets qualified for the marital deduction. **Ltr. Rul. 9151044, Sept. 26, 1991**.

The decedent had established a trust funded with real estate with a remainder to the decedent surviving son. The decedent's will bequeathed one-half of a bank account to the surviving son and one-half to the surviving spouse. The remainder of the estate passed to the son. Prior to the decedent's death, the son and spouse signed an agreement in which the spouse agreed not to contest the trust and to waive any rights of inheritance in the decedent's estate. The son agreed to pay the spouse $125,000 and to transfer to the spouse after the decedent's death two partnership interests belonging to the decedent. The court held that the property transferred to the spouse under the agreement was not eligible for the marital deduction, nor was it deductible as a creditor's claim or administrative expense. **Est. of Suzuki v. Comm'r, T.C. Memo. 1991-624**.

POWER OF APPOINTMENT. The taxpayer's will bequeathed the residuary estate to the surviving spouse in trust for life. The beneficiary had the power to invade trust principal for maintenance and support or to give to the children. The beneficiary also had the power to sell or exchange trust property with the proceeds to remain in the trust. The IRS ruled that (1) the surviving spouse did not have a general power of appointment over trust property, (2) the trust property would not be includible in the surviving spouse's estate, and (3) any transfers to the surviving spouse or to the children would not be subject to gift tax. **Ltr. Rul. 9150025, Sept. 13, 1991**.

VALUATION. The decedent's estate included 779 shares in a C corporation, which represented 69.4 percent of the stock. The decedent's estate argued that the value of the stock should be discounted for the fact that if the corporation was liquidated, the corporation would recognize capital gain from the sale of its depreciated assets; therefore, a potential purchaser of the stock would not pay the full value of the stock. The C corporation had no intentions of liquidating. The IRS ruled that because the liquidation and resulting tax liability were speculative, the stock value could not be discounted because of the possible tax liability resulting from a liquidation. **Ltr. Rul. 9150001, Aug. 20, 1991**.

The taxpayer owned general and limited partnership interests in a family partnership in which the partnership agreement had not been amended since before October 8, 1990. Under the partnership agreement, when a partner ceases to be a general partner, the partner's general and limited partnership interests became "fixed" and the partner was entitled to annual guaranteed payments, adjusted only for inflation. The partnership agreement also provided for the purchase of a deceased partner's interest by the remaining partners at book value with any amount over the proceeds of life insurance to be paid over 20 years at a below market rate of interest. The IRS ruled that the taxpayer's ceasing to be a general partner was not subject to Section 2707 because the partnership agreement was not entered into or substantially modified after October 8, 1990. The IRS declined to rule on the effectiveness of the buy-sell agreement for a deceased partner's interest because the issue required factual determinations. **Ltr. Rul. 9151045, Sept. 26, 1991**.

The taxpayer owned a lease of the taxpayer's residence and stock in the cooperative housing corporation from which the residence was leased. The taxpayer transferred the lease and stock to an irrevocable 11 year trust for the taxpayer's sole benefit with a remainder to the taxpayer's surviving children. The trust could only contain the lease and stock plus money sufficient for repairs and maintenance of the residence, with any extra assets to be distributed to the taxpayer. If the taxpayer died before the trust terminated, the trust assets passed to the taxpayer's estate or as appointed by the taxpayer's will. If the trust property was not used by the taxpayer as a residence, the assets were to be converted to an annuity. The IRS ruled that the trust was a personal residence trust excepted from the valuation rules of Section 2707. The IRS also ruled that the creation of the contingent remainder interest in the surviving children was a completed gift valued at the amount of the trust assets less the taxpayer's income and contingent reversionary interests. **Ltr. Rul. 9151046, Sept. 26, 1991**.

The decedent's estate included 1,000 shares of a closely held private farming corporation. The estate was unable to obtain an appraisal of the stock in order to timely file an estate tax return. The estate's appraiser valued the stock using the historical earnings of the corporation and the corporation's net assets, discounting the stock for lack of marketability. The IRS appraiser valued the stock solely on the basis of the corporation's net assets. The court held that the value of the stock was between these two values, using the earnings and net asset value. The assessment for late filing was upheld because the late appraisal was insufficient reasonable cause for the delay. **Est. of Campbell v. Comm'r, T.C. Memo. 1991-615**.

FEDERAL INCOME TAXATION

TAX EXTENSION ACT OF 1991

On December 11, 1991, the President signed into law the Tax Extension Act of 1991 which extended through June 30, 1992, the following provisions:

1. The research and experimentation expense allocation rules. Sec. 101.
2. The qualified research expenditure credit. Sec. 102
3. The exclusion from income for employer-provided education assistance. Sec. 103.
4. The exclusion for employer-provided group legal services. Sec. 104.
5. The targeted jobs credit. Sec. 105.
6. Business energy credits for solar and geothermal property. Sec. 106.
7. The tax credit for low-income rental housing. Sec. 107.
8. The authority of state and local governments to issue qualified mortgage bonds and mortgage credit certificates. Sec. 108
9. The authority to issue qualified small-issue bonds (to finance manufacturing facilities or land or property for first time farmers). Sec. 109.
10. The 25 percent deduction for health insurance costs of self-employed individuals for amounts paid before July 1, 1992, for insurance coverage for periods before July 1, 1992. Earned income is to be prorated for the year in calculating the earned income limitation. Sec. 110.
11. The orphan drug tax credit. Sec. 111.
12. The rule that charitable contributions of tangible personal property are not treated as a preference item for alternative minimum tax purposes (for contributions through June 30, 1992). Sec. 112.
13. The legislation also modifies the requirements for payment of estimated tax by large corporations , raising the

minimum tax payments to avoid penalty to 95 percent of the current year's tax liability in 1995. Sec. 201. **Pub. L. No. 102-227, ___ Stat. ___ (1991)**.

BAD DEBTS. The taxpayer/shareholder was not allowed a bad debt deduction for amounts loaned to an S corporation because the loan was not a bona fide debt where the loan was to be repaid from corporate profits, the money provided the initial working capital of the corporation, the corporation had a high debt-to-equity ratio and the loan repayment terms were ignored. **Sutherland v. Comm'r, T.C. Memo. 1991-619**.

BUSINESS DEDUCTIONS. An accountant was not allowed a business deduction for the purchase of exercise equipment purchased because the accountant's long working hours prevented use of an athletic club. **Kelly v. Comm'r, T.C. Memo. 1991-605**.

The business deductions claimed by an officer of an unrelated corporation from the operation of a farm were disallowed due to lack of substantiation. **Olympic Shipping Lines, Inc. v. Comm'r, T.C. Memo. 1991-623**.

EMPLOYEE EXPENSES. The taxpayer, an officer of a corporation, was required to travel to attend business meetings and, as part of company policy, was required to pay for a portion of the travel costs. Some of the travel was made on an airplane owned by the taxpayer. The taxpayer claimed operation expenses in proportion to the business use not reimbursed by the company and depreciation and investment tax credit for the airplane to the extent of the business use ratio. The court held that the airplane expenses were reasonable and necessary business expenses and deductible and the taxpayer could take a depreciation deduction and investment tax credit on the airplane to the extent of business use. **Noyce v. Comm'r, 97 T.C. No. 46 (1991)**.

EXTENSIONS. The IRS has adopted as final regulations governing the issuance of extensions for making elections for which the time for making the election is not established by statute. **56 Fed. Reg. 64980 (Dec. 13, 1991)**.

INVESTMENT TAX CREDIT. The taxpayer was denied investment tax credit for an on-farm electrical energy plant which was not placed into service. The court held that the mere holding out that the plant was available for lease was not sufficient placement in service where the plant never produced any energy. **Wall v. Comm'r, T.C. Memo. 1991-611**.

MEALS. The taxpayer company provided reimbursement of its employees' costs for meals during overtime periods. For union employees, the reimbursement was a fixed amount, independent of whether a meal was actually purchased, depending upon when the overtime period occurred; for non-union employees, the reimbursement was limited to the actual cost of meals purchased. The reimbursements were paid from petty cash and the company claimed that keeping track of each reimbursement was "costly." The IRS ruled that the meals did not qualify for the occasional meal money exception to wages. The IRS noted that the reimbursement procedure was incorporated in the collective bargaining agreement and that the taxpayer failed to demonstrate that the tracking of the reimbursements would be administratively difficult. The IRS also ruled that the meal expenditures were not a *de minimis* fringe benefit excludible from wages where the company showed only that the total meal expenses were small in comparison to the total wages paid. The IRS pointed out that in order for the meal expenses to be excluded as administratively difficult, the expenses must meet the frequency test as to each employee and the *de minimis* test for the total paid to each employee. **Ltr. Rul. 9148001, Aug. 15, 1991**.

MILEAGE DEDUCTION. The standard mileage deduction for business use of an automobile for 1992 is 28 cents per mile. **Rev. Proc. 91-67, I.R.B. 1991-52, Dec. 30, 1991**.

NET OPERATING LOSSES. The taxpayers filed several tax returns in which the taxpayers elected to carry-back only their alternative minimum tax net operating losses while carrying forward the regular net operating losses. The court held that this split election was invalid and ruled that the taxpayers could elect to carry back all net operating losses. **Plumb v. Comm'r, 97 T.C. No. 44 (1991)**.

PARTNERSHIPS

PARTNERSHIP INCOME. The taxpayer, an attorney, had income from referral fees earned while the taxpayer was an associate with another firm. After the taxpayer joined another firm which was a partnership, the fees were paid for the referrals and the taxpayer turned over the fees to the partnership as required under the partnership agreement. The court held that because some additional consulting was required by the taxpayer after joining the partnership, the fees were partnership income. The court rejected the IRS argument of assignment of income because the earnings of the partners were considered to be partnership income, thus no assignment was made. **Schneer v. Comm'r, 97 T.C. No. 45 (1991)**.

LIABILITIES. The IRS has adopted as final regulations amendments to the regulations governing partnership liabilities, as amended by the Tax Reform Act of 1984. **56 Fed. Reg. 66348 (Dec. 23, 1991)**.

The IRS has adopted as final regulations amendments to the regulations governing the allocation among partners of deductions attributable to partnership nonrecourse liabilities. **56 Fed. Reg. 66978 (Dec. 27, 1991)**.

RETURNS. The IRS has announced that it will be issuing a revised Form 5452, Corporate Report of Nondividend Distributions to be filed for distributions made during 1991. **Ann. 92-1, I.R.B. 1992-2, Dec. 19, 1991**.

S CORPORATIONS

DISTRIBUTIONS. An S corporation had accumulated C corporation earnings and profits which were distributed to shareholders in cash and promissory notes with interest above the applicable federal rate over 15 years. The notes were not convertible into stock. The IRS ruled that (1) the notes were straight debt and not a second class of stock, (2) no gain was recognized by the corporation on the distribution, and (3) the earnings and profits of the corporation would be reduced by the amount of cash plus the principal amount of the notes distributed. **Ltr. Rul. 9149030, Sept. 9, 1991**.

STRADDLES. The taxpayer was not allowed to claim capital losses from commodity futures straddles where the history of trades and losses demonstrated a tax avoidance intent. **Bowers v. Comm'r, T.C. Memo. 1991-609**.

SAFE HARBOR INTEREST RATES

JANUARY 1992

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	5.12	5.06	5.03	5.01
110% AFR	5.65	5.57	5.53	5.51
120% AFR	6.16	6.07	6.02	5.99
		Mid-term		
AFR	6.73	6.62	6.57	6.53
110% AFR	7.41	7.28	7.21	7.17
120% AFR	8.10	7.94	7.86	7.81
		Long-term		
AFR	7.72	7.58	7.51	7.46
110% AFR	8.51	8.34	8.25	8.20
120% AFR	9.31	9.10	9.00	8.93

VALUATION. The taxpayers purchased land on which avocado trees were grown and allocated part of the purchase price to the trees and other improvements for purposes of depreciation. The court held that the allocation of the purchase price was to be based upon the value of the land determined by comparable sales in the area and subtracting the price of the comparable sales from the purchase price to determine the value of the trees and other improvements. The comparable sales included land with significant residential development potential because the court found that the purchase price of the taxpayer's land also was influenced by the development potential. **Wyatt v. Comm'r, T.C. Memo. 1991-621**.

LANDLORD AND TENANT

IRRIGATION RENT. The previous owners of land owned by the parties entered into a canal easement under which the land owner allowed the canal to be built through the property in exchange for use of water from the canal; however, the land owner was to pay rent of either a portion of the crop produced or a $4 per acre cash rent. The plaintiff, a successor of the landowner had been paying the cash rent, substantially less than the cost of the water, and the defendant sought payment of the share rent. The court held that the agreement allowed the landowner to determine the rent amount. **Stafford v. Jennings-Norwood Farm & Irr. Co., Inc., 586 So.2d 735 (La. Ct. App. 1991)**.

MORTGAGES

REDEMPTION. The debtor had filed for Chapter 7 and received a discharge, including personal liability for a mortgage on the debtor's farm. The mortgagee had obtained a foreclosure judgment for $127,959 on the mortgage prior to the debtor's filing for bankruptcy, and after the bankruptcy, sold the farm at a sheriff's sale to the plaintiff for $50,000. The debtor sought redemption of the property at the bankruptcy sale confirmation hearing by paying $50,000. The plaintiff argued that the debtor could redeem the property only by paying the amount of the judgment. The court held that the bankruptcy proceeding had resulted in the stripping of the judgment down to the fair market value by voiding the amount of the mortgage in excess of the collateral's fair market value. The "judgment" for purposes of Wis. Stat. § 846.13 then became the stripped down amount surviving the bankruptcy and the debtor could redeem the loan by paying this amount. Comment: The dissent raised the argument that the Chapter 7 discharge only affected the debtor's personal obligation under the mortgage and that the judgment as against the property remained in full effect. This point is supported by several cases, particularly in the income tax area; however, the current case points to the difficulties from bifurcation of a debtor's mortgage liability into *in personam* and *in rem* for the purposes of discharge in bankruptcy. Not discussed by the majority or dissent is whether a redemption is a satisfaction of an *in personam* right or an *in rem* right. **Hobl v. Lord, 458 N.W.2d 536 (Wis. Ct. App. 1990), cert. denied, 112 S.Ct. 440 (1991)**.

The defendant obtained a foreclosure judgment against land owned by the plaintiffs. The parties entered into a stipulation made part of the foreclosure judgment allowing the plaintiffs to continue to farm the land during the period of redemption for the purposes of harvesting crops planted before the foreclosure judgment. The agreement also provided that the defendant would then have the right to raise crops on the land. Pursuant to the agreement, the plaintiffs continued to farm the land and harvested the existing crop. The defendant then planted a wheat crop which the plaintiffs claimed was theirs. The court held that the agreement was clear and unambiguous that the defendant had sole right to crops planted during the period of redemption and the plaintiffs had waived their statutory right to crops planted during the redemption period. **Aetna Life Ins. Co. v. Saterlee, 475 N.W.2d 569 (S.D. 1991)**.

PRODUCTS LIABILITY

GRAIN STORAGE SYSTEM. The plaintiffs leased a grain storage system for their dairy farm manufactured by one defendant and sold by another defendant. The plaintiffs sued the defendant under theories of strict liability for misrepresentation, negligent and intentional misrepresentation, breach of express and implied warranties and advertising fraud. The court upheld the jury verdict against the seller for intentional misrepresentation in that the plaintiffs provided evidence that the seller falsely represented the system would be oxygen free and that the plaintiffs reasonably relied on the seller as to that condition of the storage system. The court held that the damages for loss of bargain were limited to the rent for the system. The plaintiffs were not allowed damages for economic loss in tort because of the failure of the product to perform as warranted under the sales contract. The court also held that it was reversible error for the trial court to direct a verdict for the manufacturer on the negligent misrepresentation claim where the manufacturer provided the seller with printed material containing false statements concerning the performance of the storage system. **D'Huyvetter v. A.O. Smith Harvestore, 475 N.W.2d 587 (Wis. Ct. App. 1991)**.

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TRACTOR. The plaintiff's decedent was killed when a tractor manufactured by the defendant turned over on him. The plaintiff sought recovery under theories of failure to warn and defective design from failure of the tractor to have a rollover protective structure (ROPS). The court reversed the jury verdict and remanded for a new trial where the trial court allowed the issue of the failure to warn to go to the jury because the plaintiff failed to provide substantial evidence that any warning would have been read and heeded by the decedent. The court also held that the issue of defective design for failure of the tractor to have a ROPS was properly submitted to the jury because the defendant failed to demonstrate that the ROPS was so impracticable to be put on the tractor that the tractor was not defectively designed without it. **Deere & Co. v. Grose, 586 So.2d 196 (Ala. 1991)**.

STATE TAXATION

AGRICULTURAL USE. The defendant corporation owned 50,000 acres of timblerland used for growing and harvesting timber. The corporation also leased the land to local hunting clubs to help control the deer population and the income from the leases was less than 10 percent of the income from the timber operations. The county assessor interpreted S.C. Code § 12-43-230(a) as prohibiting an agricultural use valuation if the land was used for any non-agricultural use. The court held that the statute applied only as to portions of land used only for non-agricultural purposes. **Jasper County Assessor v. Westvaco Corp., 409 S.E.2d 333 (S.C. 1991)**.

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