ting a dollar of discharge of indebtedness income.[27]

• Capital losses for the taxable year and any carryover of capital losses to that year,[28] on a dollar-for-dollar basis.[29]

Reduction of basis. After all of the above reductions have been accomplished, attention shifts to the reduction of the income tax basis of the debtor's property.[30] However, basis reduction is limited to property used in a trade or business or held for the production of income.[31] The order of basis reduction is specified —

• Depreciable property.[32]

• Land used or held for use in the trade or business of farming.[33]

• Other qualified property.[34] Although the statute is not clear on that point, the apparent intent is to include inventory property such as stored grain under CCC loan where the election has been made to treat the loan as income, thus giving the commodity a basis.[35] Technically, inventory property is neither property used in a trade or business or held for the production of income.[36]

A highly significant question is whether the reduction of basis is limited to the amount in excess of the aggregate liabilities (the rule applicable to insolvent debtors and those in bankruptcy)[37] or whether the income tax basis of assets is reduced to zero as is the case where the election is made to reduce the basis first before reducing the tax attributes.[38] Because the basis reduction rule limiting basis reduction to the debt on the property applies only to instances where the debtor is insolvent or in bankruptcy, it appears that basis is reduced to zero in instances involving a solvent farm debtor.

Foreign tax credit. The last reduction for discharged indebtedness is for the foreign tax credit[39] of which farm debtors usually have none.

Discharge of indebtedness exceeding tax attributes and basis. If the amount of discharge of indebtedness exceeds the amount offset by the debtor's tax attributes and the amount absorbed by reduction of income tax basis of property, the excess must be recognized as income.[40]

FOOTNOTES

1 See I.R.C. § 108(a)(1)(C), before repeal by the Tax Reform Act of 1986.
2 See I.R.C. § 1017(a), before amendment by the Tax Reform Act of 1986.
3 I.R.C. § 108(a)(1)(C), repealed by Pub. L. 99-514, Sec. 822(a), 100 Stat. 2373 (1986).
4 I.R.C. § 108(g), enacted by the Tax Reform Act of 1986, Sec. 405(a), 100 Stat. 2224 (1986).
5 TAMRA, Pub. L. 100-647, Sec. 1004(a), 102 Stat. 3342, 3385 (1988), amending I.R.C. § 108(g).
6 *Id*., sec. 1004(c).
7 I.R.C. § 108(g).
8 See I.R.C. §§ 108(a)(1)(B), 108(a)(3).
9 I.R.C. § 108(a)(2)(A), added by TAMRA Sec. 1004(a)(1), 102 Stat. 3385 (1988).
10 I.R.C. § 108(a)(2)(B), added by TAMRA, Sec.1004(a)(1), 102 Stat. 3385 (1988).
11 I.R.C. § 108(g)(2).
12 See Harl, "Planning Under Bankruptcy and Debtor Distress," 9 J. Agr. Tax'n & L. 157, 164-168 (1987).
13 See generally Harl, "Developments in Planning Estates With Farm and Ranch Property," 23d Inst. on Est. Plan. ch. 16 (1989).
14 I.R.C. § 108(g)(1)(B).
15 *Id*.
16 I.R.C. §§ 46(c)(8)(D)(iv), 108(g)(3).
17 I.R.C. § 46(c)(8)(D)(v).
18 I.R.C. §§ 465(b)(3)(C)(i), 267(b)(1), 267(c)(4).
19 I.R.C. §§ 465(b)(3)(C)(i), 267(b)(2)–(12).
20 I.R.C. §§ 465(b)(3)(C)(i), 707(b)(1).
21 I.R.C. §§ 465(b)(3)(C)(i), 52(a), (b).
22 See note 16 *supra*.
23 See 4 Harl, Agricultural Law § 39.03[3] (Supp. 1990).
24 See I.R.C. §§ 108(a)(1)(A), 108(a)(1)(B).
25 I.R.C. § 108(b)(2)(A).
26 I.R.C. § 108(b)(3)(A).
27 I.RC. § 108(b)(2)(B). See I.R.C. § 108(b)(3)(B).
28 I.R.C. § 108(b)(2)(C).
29 I.R.C. § 108(b)(3)(A).
30 See I.R.C. §§ 108(b)(2)(D), 1017(b)(4).
31 I.R.C. §§ 1017(b)(4)(A)(i), (B), 108(g)(3)(C).
32 I.R.C. § 1017(b)(4)(A)(i)(I).
33 I.R.C. §1017(b)(4)(A)(i)(II).
34 I.R.C. §1017(b)(4)(A)(i)(III).
35 See I.R.C. § 77(a).
36 See note 32 *supra*.
37 See I.R.C. § 1017(b)(2).
38 I.R.C. § 108(b)(5). See also I.R.C. § 1017(b)(2).
39 I.R.C. § 108(b)(2)(E).
40 See I.R.C. § 108(g)(3)(A).

CASES, REGULATIONS AND STATUTES

ANIMALS

HORSES. The plaintiff was injured when thrown from a horse ridden at a resort stables. The stables argued assumption of risk defense. The court held that the assumption of risk defense was still available after adoption of comparative negligence by the California Supreme Court but that the trial court's granting of summary judgment for the defendant stables because the plaintiff assumed the risk that the horse might throw her was reversed. The court held that the plaintiff had not assumed the risk of being thrown by the particular horse, because the stables had not warned her that the horse had thrown a rider in the past. **Harrold v. Rolling "J" Ranch, 734 Cal. Rptr. 734 (Cal. App. 1990)**.

The plaintiff, a nine year old boy, was injured from a kick by a horse while playing with the horse. The court held that the horse's owner was not liable for the injury because the plaintiff failed to show that the owner had actual or constructive notice of the horse's vicious nature. **Williams v. Tysinger, 388 S.E.2d 616 (N.C. App. 1990)**.

As part of a breeding agreement between the owner of a stallion and the owner of a mare, the owner of the mare agreed to pay the owner of the stallion $60,000 if the owner of the mare "elects to sell the mare prior to foaling." The court held that the mare owner's cataloging of the mare at a horse auction prior to foaling constituted an election to sell and ordered the owner of the mare to pay the nomination fee of $60,000 under the foaling agreement. **Fried v. Picariello, 551 N.Y.S.2d 274 (App. Div. 1990)**.

BANKING

FAILURE TO MAKE LOAN. A farm debtor sued a production credit association for failure to make loans to enable the debtor to continue operating. The debtor alleged breach of contract, misrepresentation and negligence. The court held that the parties did not agree to a contract for the lending of money because the terms of the contract were not certain. The court held that the lender did not make any misrepresentations as to its conditions for making the loans and that the lender did

not owe the borrower any duty to use reasonable care in making loans. **Nelson v. Production Credit Ass'n of the Midlands, 729 F. Supp. 677 (D. Neb. 1989)**.

BANKRUPTCY

GENERAL

AVOIDABLE LIENS. After deduction of all secured and unsecured liens against the debtor's homestead, the debtors had $12,000 equity in their home. The court held that the entire amount, $32,000, of a judicial lien was avoidable as impairing the debtor's homestead exemption. ***In re*** **Galvan, 110 B.R. 446 (Bankr. 9th Cir. 1990)**.

ESTATE PROPERTY. The debtor inherited a remainder interest in his father's estate contingent upon the debtor's surviving his mother and his mother not bequeathing the property to someone else. Even if the mother died without bequeathing the property to someone else, the property was to be held in trust and was subject to a spendthrift clause. The court held that the debtor's interest in the contingent remainder was not property of the estate. ***In re*** **Davis, 110 B.R. 573 (Bankr. M.D. Fla. 1989)**.

EXEMPTIONS. In determining what household items were exempt under Louisiana law, the court included only those items actually used by members of the debtor's family and normally found in the rooms listed in the exemption statute. Thus, furniture in bedrooms not used by the family was not exempt. The contents of the debtor's home office were also held not eligible for the tools of a trade exemption where the home office was not necessary for the debtor's practice of law. The contents of the debtor's business office were exempt under the tools of a trade exemption to the extent actually used by the debtor and his secretary in the practice of law. **Matter of Mmahat, 110 B.R. 236 (Bankr. E.D. La. 1990)**.

A college professor's interest in a Teacher's Insurance and Annuity Ass'n (TIAA) annuity was not exempt but the professor's interest in a College Retirement Equity Fund (CREF) was held to be an exempt interest in a spendthrift trust. **Morter v. Farm Credit Services, 110 B.R. 390 (N.D. Ind. 1990)**.

The debtor had sold their farm under a contract to their children, reserving a life estate in the property during the term of the contract and in the deed. The court held that because the debtors still retained a possessory interest in the property, the life estate interest was eligible for the Minnesota homestead exemption, Minn. Stat. § 510.04. However, because the court held the sale of the property to occur upon execution of the contract, only the payments received within one year of the execution of the contract were eligible as proceeds of a sale of a homestead. ***In re*** **Ehrich, 110 B.R. 424 (Bankr. D. Minn. 1990)**.

The debtor was a director and president of a corporation which had an ERISA qualified plan for the debtor. Although the debtor held a controlling interest in the company as a shareholder and officer, the court held that the debtor did not control the ERISA plan. However, because the debtor could receive the debtor's interest in the plan upon retirement or termination of the plan, the plan was not a spendthrift trust exempt under Missouri law, Mo. Rev. Stat. § 513.427. ***In re*** **Mead, 110 B.R. 434 (Bankr. W.D. Mo. 1990)**.

Debtors had a long term lease in land on which their mobile home was placed. The mobile home was attached to a wooden addition. The court held that the debtor's interest in the lease and mobile home were eligible for the Nebraska homestead exemption, Neb. Rev. Stat. § 40-101. **Matter of Buzzell, 110 B.R. 440 (Bankr. D. Neb. 1990)**.

The Montana exemption for pension plans, Mont. Code § 31-2-106, was held pre-empted by ERISA and ERISA was held not to create a nonbankruptcy federal exemption. The debtor's interest in an Employee Stock Option Plan (ESOP) was held not includible in property of the estate to the extent of the debtor's employer's contributions. ***In re*** **Conroy, 110 B.R. 492 (Bankr. D. Mont. 1990)**.

The Arkansas exemption for life insurance proceeds was held unconstitutional because it allowed an exemption in excess of the $500 constitutional limitation on total personal property exemptions. ***In re*** **Holt, 894 F.2d 1005 (8th Cir. 1990), aff'g 97 B.R. 997 (W.D. Ark. 1988), aff'g 84 B.R. 991 (Bankr. W.D. Ark. 1988)**.

LIEN AVOIDANCE. A debtor was not allowed to avoid nonpossessory, nonpurchase money liens against a movie camera, movie projector, hedge trimmers and one-half horsepower boat motor because the items were not household goods. Lien avoidance was allowed for a power mower and power drill as household goods. ***In re*** **Vale, 110 B.R. 396 (Bankr. N.D. Ind. 1990)**.

POST–PETITION SECURITY INTERESTS. A secured creditor sued for foreclosure and sale of the debtor's farmland prior to the debtor's filing for bankruptcy. The creditor obtained relief from the automatic stay to continue the foreclosure and obtained the appointment by a state court of a receiver. The receiver cash rented the farm. The trustee argued that the rent was estate property because the creditor did not perfect its security interest in the rents post-petition. The court agreed for two reasons. First, the creditor did not perfect its security interest by giving the bankruptcy court notice of its intent to enforce the creditor's security interest in the rent and second, the post-petition perfection of a security interest was allowable only where the perfection would relate back to a pre-petition period. In this case, the creditor's entitlement to the rents arose only after appointment of a receiver which occurred post-petition. ***In re*** **Kurth Ranch, 110 B.R. 501 (Bankr. D. Mont. 1990)**.

PROFESSIONAL FEES. An auctioneer was authorized by the bankruptcy court to conduct piecemeal sales of the debtor's property for 10 percent of the proceeds plus costs. The auctioneer submitted statements for costs including labor costs. The court disallowed the payment of the labor costs as includible in the normal overhead costs for the auctioneer already compensated for in the 10 percent commission. ***In re*** **Cal Farm Supply Co., 110 B.R. 461 (Bankr. E.D. Cal. 1989)**.

CHAPTER 11

JURISDICTION. A produce supplier of mushrooms to the debtor filed claims under the trust created by the Perishable Agricultural Commodities Act. The debtor moved for withdrawal of the claims from the bankruptcy court, arguing that withdrawal was appropriate under 28 U.S.C. § 157(d) because the produce supplier's claims involved substantial issues under bankruptcy and nonbankruptcy law. The court held that withdrawal was not appropriate because the PACA issues were not substantial and the PACA trust would not be included in the bankruptcy estate. ***In re*** **Carolina Produce Distributors, Inc., 110 B.R. 207 (W.D. N.C. 1990)**.

CHAPTER 12

CONVERSION. A Chapter 12 plan provided that all farm machinery subject to a creditor's security interest was to be turned over to the creditor. The court found that the debtor had turned over substituted and inferior machinery and had sold the original machinery to a third party in violation of the plan. The court held the debtor's actions to be fraudulent and ordered the case to be converted to Chapter 7. ***In re* Reinbold, 110 B.R. 442 (Bankr. D. S.D. 1990)**.

CHAPTER 13

MODIFICATION OF PLAN. The debtors' original confirmed Chapter 13 plan provided for payment of a mortgage directly by the debtors. After confirmation of the plan, the debtors became delinquent on several payments and petitioned for modification of the plan to provide payment of the arrearage. The court allowed the modification. ***In re* Gadlen, 110 B.R. 341 (Bankr. W.D. Tenn. 1990)**.

FEDERAL TAXATION

ALLOCATION OF PLAN PAYMENTS OF TAXES. During the Chapter 11 administration of the debtor's business, the trustee incurred federal trust fund tax liability which went unpaid when due. Instead of paying the taxes, the trustee paid business rent which eventually enabled the trustee to position the business for reorganization. The trustee was then able to obtain sufficient funds to pay the unpaid trust fund taxes but not other taxes owed by the estate. The court ordered that the tax payments made by the trustee be allocated by the IRS first to the unpaid trust fund taxes in recognition of the trustee's personal risks taken in order to increase the value of the estate for the creditor. ***In re* ABA Recovery Service, Inc., 110 B.R. 484 (Bankr. S.D. Cal. 1990)**.

PREFERENTIAL TRANSFERS. Within 90 days of the debtor's filing for bankruptcy, the IRS had levied against funds held by the debtor's landlord for unpaid federal withholding taxes. The court held that the levy was an avoidable preferential transfer because the funds were not held in a separate trust account and the IRS lien on the funds was not secured and could be avoided by the trustee, thus the IRS received more than it would receive in a Chapter 7 liquidation. ***In re* Hearing of Illinois, Inc., 110 B.R. 380 (Bankr. C.D. Ill. 1990)**.

FEDERAL AGRICULTURAL PROGRAMS

AVOCADOS AND LIMES. The Agricultural Marketing Service(AMS) has issued a proposed rule authorizing expenditures and assessments under the Marketing Orders 911 and 915 for Florida limes and avocados. **55 Fed. Reg. 10785 (March 23, 1990)**.

CITRUS. The Animal and Plant Health Inspection Service(APHIS) has issued a proposed rule removing the Florida nursery strain of citrus canker from the citrus canker regulations. **55 Fed. Reg. 11209 (March 27, 1990).**

CONSERVATION PROGRAM. The Agricultural Stabilization and Conservation Service has issued a proposed rule revising the calculation of the maximum cost-share percentage for the Emergency Conservation Program (ECP) and amending the ECP, Agricultural Conservation Program and Forestry Incentives Program to provide that an applicant cannot be reimburse for costs for which the applicant will be reimbursed by a third party not eligible for program assistance. **55 Fed. Reg. 11384 (March 28, 1990).**

COTTON. The AMS has proposed the 1990 user fees charged to cotton producers for cotton classification and testing services. **55 Fed. Reg. 10781 (March 23, 1990)**.

CROP INSURANCE. Plaintiff applied for crop insurance and filed a claim for losses. The Federal Crop Insurance Corporation denied the claims because of misrepresentations as to the plaintiff's ownership interest in the crops insured. The court held that the plaintiff did not have any ownership interest in land on which the crops were grown where the land had been sold under foreclosure and the period of redemption had passed, although the deed had not yet been delivered. In addition, the court held that the plaintiff misrepresented his interest in other land as 100 percent owner where the plaintiff had crop share leased the land to a son. **Hermes v. Federal Crop Ins. Corp., 729 F. Supp. 1229 (D. Kan. 1990)**.

FEED GRAINS. APHIS has issued a proposed rule adding Wyoming to the list of protected states under the Black Stem Rust Quarantine. **55 Fed. Reg. 11208 (March 27, 1990).**

GRAIN STANDARDS. The Federal Grain Inspection Service has issued proposed regulations which discontinue the mandatory reporting requirements for individual component broken corn, broken kernals and foreign material on each certificate for grades representing nonexport inspections of corn and sorghum. These individual components will be reported on a request basis only. **55 Fed. Reg. 10784 (March 23, 1990)**.

HONEY. The Commodity Credit Corporation has issued a proposed determination that the 1990 honey price support be $0.5377 per pound. **55 Fed. Reg. 11415 (March 28, 1990).**

HORSES. APHIS has issued a proposed rule amending the procedures to be followed by Designated Qualified Persons in conducting inspections at horse shows, exhibitions, sales and auctions. **55 Fed. Reg. 11385 (March 28, 1990).**

LOAN PROGRAMS. The FmHA has issued as a final rule amendments to the administrative offset regulations which allow administrative offset against amounts which would otherwise be paid by other federal agencies, including retirement funds and pension payments. **55 Fed. Reg. 11000 (March 26, 1990)**.

The FmHA has issued an interim rule implementing the guaranteed loan program for community facilities established by Pub. L. No. 101-161. **55 Fed. Reg. 11133 (March 27, 1990).**

MEAT AND POULTRY. The Food Safety and Inspection Service has announced that the amount of meat products which may be sold in 1990 by retail stores exempt from federal inspection requirements is $33,700 and $33,100 for poultry. **55 Fed. Reg. 11983 (March 30, 1990)**.

MILK. The AMS has issued a proposed rule establishing procedures for denying, suspending or terminating U.S.D.A. certification of qualification of state or regional dairy product promotion, research or nutrition education programs under the National Dairy Promotion Program. **55 Fed. Reg. 11024 (March 26, 1990).**

The AMS has announced the suspension from March through August 1990 of the shipping standards for supply plants and the monthly requirement that a dairy farmer's milk be received at a pool plant in order to be eligible for diversion to nonpool plants. The AMS also announced the termination of a portion of the "producer" definition in the Southwest Plains milk marketing order which prevents dairy farmers from being considered producers under the order during March through July if they did not sufficiently supply the market during the previous fall months. See p. 65 *supra*, for announcement of the proposed suspension and termination. **55 Fed. Reg. 10999 (March 26, 1990)**.

The AMS has issued a proposed rule adopting a federal marketing order for South Carolina and North Carolina. **55 Fed. Reg. 11506 (March 28, 1990).**

The AMS has issued a proposed rule providing for announcement of the tentative and final prices of Class II milk before the 15th of the month preceding the effective month of the prices. **55 Fed. Reg. 11599 (March 29, 1990)**.

RURAL WATER ASSOCIATIONS. A rural water association was funded in part by loans from the FmHA. A community water customer of the association decided to purchase water from a nearby town and constructed a water pipeline to connect with the town's water supply. The rural water association sued to prohibit the twon from providing water to the community under 7 U.S.C. § 1926(a)(1) which prohibits municipal bodies from providing water to areas served by associations indebted to FmHA. The court held that the statute prohibited the contracting of water service by the town. In addition, the court held that the community could not invoke the defence of equitable estoppel where the rural water association action was based on a federal statute and protecting public policy. **Jennings Water, Inc. v. City of North Vernon, Ind., 895 F.2d 311 (7th Cir. 1989)**.

SWINE. The AMS has issued a proposed rule increasing the assessment per pound due on imported pork and pork products. **55 Fed. Reg. 11025 (March 26, 1990)**.

APHIS has issued a final regulation amending the swine identification regulations to require (with some exceptions) that swine in interstate commerce be identified at the first occurring point of the following: (1) the first commingling of swine in interstate commerce with other swine; (2) unloading of the swine at a livestock market; (3) transfer of ownership; (4) arrival at the final destination. **55 Fed. Reg. 11154 (March 27, 1990).**

TOBACCO. The AMS has issued a proposed rule providing procedures for grower referendums on the designation of markets for federal inspections where no tobacco was sold at auction at the market during the previous marketing season. **55 Fed. Reg. 11023 (March 26, 1990).**

WAREHOUSES. The Commodity Credit Corporation has issued a final rule amending the standards for approval of warehouses for grain, rice, dry edible beans and seed to establish new and uniform load out requirements. **55 Fed. Reg. 11571 (March 29, 1990)**.

FEDERAL ESTATE AND GIFT TAX

GENERATION SKIPPING TRANSFERS. Grantors established irrevocable trusts for each of their grandchildren with (1) the parent of the grandchildren are trustees; (2) the income is to be retained until the beneficiary reaches 21; (3) the income from the trust is to be distributed while the beneficiary is age 21 to 30; (4) the trust corpus is to be distributed to the beneficiary when the beneficiary reaches age 30; (5) if the beneficiary dies before reaching age 30 the trust corpus goes to the beneficiary's estate; (6) if the beneficiary dies after reaching age 21 but before age 30, the beneficiary may appoint the trust corpus by will; and (7) the trustees have the power to substitute similar income producing property in the trust corpus. IRS ruled that (1) the trust corpus was not includible in the grantors' estates; (2) the trustee's power to substitute property in the trusts did not cause the trust property to be includible in the trustees' gross estates; and (3) the transfers to the trust will qualify for the $2 million exclusion from the generation skipping transfer tax. **Ltr. Rul. 911052, Dec. 22, 1989**.

GIFTS WITHIN THREE YEARS OF DEATH. The decedent was the sole beneficiary of a revocable trust which was not amended or revoked before her death. Within three years of the decedent's death, the decedent transferred 900 share of stock from the trust corpus to her grandchildren. IRS ruled that the transfer of stock would be deemed a distribution of the stock to the beneficiary who then gave the stock to the grandchildren, instead of a revocation of the trust provision that the decedent was the only beneficiary. Thus, the transferred stock was not includible in the decedent's gross estate. IRS ruled that the transfer did not amount to a relinquishment of the power to revoke the trust as to the distributed stock. Such a relinquishment would, under I.R.C. § 2038(a)(1) and § 2035(d)(2), have made the stock includible in the decedent's gross estate. **Ltr. Rul. 9010004, Nov. 17, 1989**.

QUALIFIED DOMESTIC TRUSTS. IRS has announced the extension of the due date for trustees to report and pay the special estate tax on Qualified Domestic Trusts until after FORM 706QDT has been released. **Ann. 90-39, I.R.B. 1990-12, 26**.

FEDERAL INCOME TAXATION

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, 94 T.C. No. 26 (1990)**.

CASUALTY AND THEFT LOSSES. The taxpayer was not allowed a casualty loss for automobiles damaged by vandalism because the taxpayer failed to adequately document the adjusted basis of the automobiles. The taxpayer also failed to demonstrate that the adjusted basis of a house damaged by fire exceeded the amount of insurance proceeds. **Ganas v. Comm'r, T.C. Memo. 1990-143**.

A taxpayer was denied a theft loss deduction where the taxpayer failed to prove that under state law the sale of the taxpayer's furniture by a storage company to satisfy a debt was theft. In addition, the taxpayer failed to establish the adjusted

basis of the furniture. **Mallory v. Comm'r, T.C. Memo. 1990-152**.

DEPRECIATION. A limited partnership purchased several parcels of farmland, some with depreciable improvements and others without improvements. The court held that the cost basis of the depreciable assets from the purchase price was to be determined based on the ratio of the value of the assets to the value of all of the assets. Because the purchase price contained unstated interest, the purchase price was to be first reduced by the unstated interest. **Weis v. Comm'r, 94 T.C. No. 28 (1990).**

EMPLOYEE BUSINESS EXPENSES A shareholder-employee was denied a deduction for reimbursable business expenses where the employee did not seek reimbursement and the expenses were not necessary for the employee to perform his employment. **Kerr v. Comm'r, T.C. Memo. 1990-155**.

FAMILY TRUSTS. The transfer of cash to a family trust and a loan from the family trust to the settlors was held a sham transaction and deductions for interest payments on the loan were disallowed. **Alexander v. Comm'r, T.C. Memo. 1990-141**.

FUEL TAX CREDIT. The inflation adjustment factor for 1989 is 1.6069 and the reference price for qualified fuels is $15.85 per equivalent barrel. The phaseout of credit does not apply to the 1989 fuel tax credit. **55 Fed. Reg. 11104 (March 26, 1990).**

INSTALLMENT SALES OF BUILT-IN GAIN ASSETS. Under I.R.C. § 384, if a corporation acquires control of another corporation or the assets of another corporation in a "Type A, C or D" reorganization and either corporation has assets with built-in gains (i.e., fair market value in excess of basis), income attributable to such built-in gains may not be offset against any preacquisition loss of the other corporation, unless the built-in gains are less than the greater of 15 percent of the fair market value of the corporation's assets or $10 million. IRS has announced that it will issue regulations that provide "if a taxpayer sells a built-in gain asset either prior to or during the recognition period in an installment sale and recognizes the income from the sale pursuant to the installment method, the provisions of section 384 will continue to apply to gain recognized from the installment sale after the recognition period (including any gain recognized from the disposition of the installment obligation)." Thus, preacquisition losses will not be able to be offset against the built-in gains reported on the installment method. Similar regulations are to be issued for built-in gains of S corporations under I.R.C. § 1374. The regulations will be effective for installment sales after March 26, 1990. **Notice 90-27, I.R.B. 1990-15, April 9, 1990**.

IRA'S. A surviving spouse transfered the assets of the decedent spouse's IRA into the surviving spouse's IRA. IRS ruled that the rollover was not subject to tax. **Ltr. Rul. 9011035, Dec. 19, 1989**.

PARTNERSHIPS

LOSSES. Although limited partners agreed to be personally liable for a partnership nonrecourse note given for the purchase of computer equipment, the partners were not at risk as to the partnership note where the sellers of the equipment guaranteed the note. **Chase v. Comm'r, T.C. Memo. 1990-139**.

PENSION PLANS. IRS has issued procedures for determination letters concerning the qualified status of some ongoing pension, profit-sharing and annuity plans under I.R.C. §§ 401(a) and 403(a). **Rev. Proc. 90-20, I.R.B. 1990-15, April 9, 1990**.

RESPONSIBLE PERSON. Corporation president and controlling stockholder was held to be a "responsible person" for purposes of the penalty for failure to pay employee withholding taxes. The court also held that the president willfully failed to pay the withholding taxes because the corporation paid other creditors after the president had knowledge of the corporation's failure to pay employee withholding taxes. **Smith v. U.S., 894 F.2d 1549 (11th Cir. 1990)**.

S CORPORATIONS

ESTIMATED TAX. IRS has announced that S corporation must pay estimated taxes on the following taxes to the extent the total of these taxes is $500 or more—

(1) the built-in gains tax under I.R.C. § 1374(a);
(2) the excess net passive income tax under I.R.C. § 1375(a); and
(3) the investment tax credit recaptured under I.R.C. § 1371(d)(2).

The maximum estimated taxes required to be paid annually is the lesser of 90 percent of the above taxes or the sum of 90 percent of (1) and (2) plus 100 percent of (3). The taxes are to be paid with Form 8109, Federal Tax Deposit Coupon. **Ann. 90-44, I.R.B. 1990-13, 25**.

TAX LIEN PRIORITY. Federal liens for FICA and withholding taxes were held to have priority over District of Columbia sales and withholding tax claims where the federal taxes were assessed prior to the filing of the D.C. claims. The court held that although under D.C. law, the D.C. taxes became perfected when due, under federal law, the D.C. tax claims became choate only after filing. ***In re* Davis Ferry Enterprises, Inc., 110 B.R. 97 (D. D.C. 1989)**.

UNSTATED INTEREST. In two cases involving unstated interest, IRS found itself on both sides of the argument whether I.R.C. § 483 governs the time when unstated interest on installment obligations is recognized. See also *Ltr. Rul. 8545003, July 17, 1985* (accrual method partnership may deduct imputed interest only in taxable years payments due on installment obligation in purchase of farmland).

In the purchase of a condominium, the cash method taxpayers executed a note payable in two installments, one within six months of the purchase and the other at the end of 30 years. The note did not contain any provision for interest and the taxpayer agreed that the note amount included unstated interest. The taxpayer allocated the total interest pro rata between the two installments and deducted the interest in the first taxable year, but the IRS argued that under I.R.C. § 446(b), the amount of deductible interest was limited to the interest which accrued for the period up to the first payment because that method more clearly reflected income. The court held that the taxpayer could deduct the entire amount of unstated interest allocable to the first installment. The court ruled that I.R.C. § 483 which required recognition of the unstated interest was not limited by I.R.C. § 446. **Williams v. Comm'r, 94 T.C. No.27 (1990)**.

A limited partnership on the accrual method of accounting purchased a farm for $870,000 with $205,000 down and six annual installments of $11,500, culminating with a balloon payment at the end of

six years. The payments all included unstated interest. The partnership deducted imputed interest ratably over the life of the contract. IRS argued that the imputed interest was deductible ratably according to the amount of each payment. The court agreed with the IRS. In addition, because the first payment was made less than six months after the date of sale, no interest was deductible with respect to that amount. **Weis v. Comm'r, 94 T.C. No. 28 (1990)**.

SAFE HARBOR INTEREST RATES

April 1990

	Annual	Semi-annual	Quarterly	Monthly
Short-term				
AFR	8.56	8.38	8.29	8.24
110%AFR	9.43	9.22	9.12	9.05
120%AFR	10.31	10.06	9.94	9.86
Mid-term				
AFR	8.75	8.57	8.48	8.42
110%AFR	9.65	9.43	9.32	9.25
120%AFR	10.54	10.28	10.15	10.07
Long-term				
AFR	8.75	8.57	8.48	8.42
110%AFR	9.65	9.43	9.32	9.25
120%AFR	10.54	10.28	10.15	10.07

LANDOWNER'S LIABILITY

RECREATIONAL USE. The plaintiff was injured when his motorcycle struck an unmarked barbed wire gate across a road in a national forest area. The defendant owned a grazing permit for the area in which the accident occurred and pleaded as a defense Cal. Civ. Code § 846, which immunizes owners of interests in real property from liability for injuries to recreational users of the property. The court held that the federal grazing permit was a sufficient interest in real property for the statute to apply to the defendant. **Hubbard v. Brown, 266 Cal. Rptr. 491 (Cal. 1990), rev'g 256 Cal. Rptr. 430 (Cal. App. 1989)**.

MORTGAGES

ACTIONS. Under Minn. Stat. § 582.31, only one action is allowed to enforce an agricultural mortgage, either an action on the note or foreclosure of the mortgage. The farm corporation had given two mortgages on farm land to secure loans. The corporate officers signed the notes in their capacity as officers and signed without qualification. The mortgagee foreclosed against both mortgages upon default by the corporation and sued the officers as individuals in a contract action for the amount due on the notes. The mortgagee argued that Minn. Stat. § 582.31 did not bar the suit against the officers as individuals because the officers were guarantors of the note in that they signed the notes as individuals. The court held that the signatures of the officers as individuals made the officers personally liable as co-signors and not as guarantors because the notes contained no language of guaranty. The court also held that the statute prohibited any action for a personal judgment against any maker of the note once the mortgagee had elected to seek foreclosure. **Metropolitan Life Ins. Co. v. Christison, 451 N.W.2d 222 (Minn. App. 1990)**.

MERGER. Bank had a mortgage on debtor's ranch. A second bank obtained a judgment lien against the property and properly filed the lien. The debtor then deeded the ranch to the first bank in lieu of foreclosure. The first bank then filed for foreclosure and the second bank argued that the first bank's mortgage had been merged and thereby extinguished with the transfer of the deed. The court held that the first bank's mortgage was not merged and extinguished with the deed because the first bank did not intend for the merger as evidenced by the agreement in the deed that the release of the mortgage would occur six months after the transfer. **Federal Land Bank of Wichita v. Colorado Nat'l Bank of Denver, 786 P.2d 514 (Colo. App. 1989)**.

NUISANCE

HOG FARM. In a rehearing of a case reported at p. 39 *supra*, a change from grain farming to raising of hogs was held to be a significant change in the type of operation for purposes of the Indiana right-to-farm law, Ind. Code § 34-1-52-4. However, the increase in the number of hogs from 29 to over 300 was held not to be a significant change in the type of operation. In addition, the neighboring land owner's intent to develop the land for residential purposes without any further action did not constitute a changed condition in the use of the land. **Laux v. Chopin Land Associates, Inc., 550 N.E.2d 100 (Ind. App. 1990), vac'g 546 N.E.2d 115 (Ind. App. 1989)**.

RIPARIAN RIGHTS

FENCES. A landowner had constructed a fence across a stream which ran through his property. The state claimed that the landowner's ownership extended only to the banks because the stream was navigable, based on use of the stream by a canoe renting business. The court held that the stream was not navigable because the stream was not usable in its normal condition as a "highway of commerce." In addition, no public prescriptive easement existed because the state had not been required to take action to regulate traffic on the stream. Thus, the public had no right to recreational use of the stream without consent of the surrounding landowner. **State ex. rel. Meek v. Hays, 785 P.2d 1356 (Kan. 1990)**.

SECURED TRANSACTIONS

CONTINUATION. Creditor had a perfected security interest in debtor's tractor. The creditor filed a continuation statement during the pendency of the debtor's bankruptcy case and another junior creditor claimed that the continuation filing was void because it violated the automatic stay. The court held that the filing of the continuation statement was not void because it did not violate the automatic stay prohibition against creation, perfection or enforcement of a security interest. Under Colo. Rev. Stat. § 4-9-403(2) a security interest which lapses during an insolvency proceeding remains perfected until the greater of five years or 60 days after the insolvency proceeding terminates. The court held that this provision did not require that a continuation statement be filed only within the 60 days after the insolvency proceeding terminates. **John Deere Co. v. Alamosa Nat'l Bank, 786 P.2d 505 (Colo. App. 1989)**.

STATE REGULATION OF AGRICULTURE

HORSES. Defendant was convicted of failing to comply with Arkansas law requiring horses testing positive for equine infectious anemia to either be branded and quarantined or slaughtered. The defendant's

horse was tested, without her consent, by her estranged husband and a private veterinarian. The defendant argued that the law was unconstitutional because the law had not worked to decrease EIA in Arkansas or any other state. The court held that the statute was constitutional because the required test and other requirements were rationally based as a means of detecting EIA and preventing infection of other horses. The slaughtering requirement was held constitutional because it was part of the state's police power to control disease. **Winters v. State, 782 S.W.2d 566 (Ark. 1990)**.

VETERINARIANS

DAMAGES. A veterinarian had negligently injected two of plaintiff's cows with brucellosis. The court held that the plaintiffs could recover loss of net profits due to delay of sale of the remainder of the herd due to quarantine and seasonal nature of cattle sales. The court also held that the plaintiffs could not recover lost profits from unborn calves, damages for lost reputation or damages resulting from default on loan payments from delay of the sales. **Grieves v. Greenwood, 550 N.E.2d 334 (Ind. App. 1990)**.

MALPRACTICE. State race track veterinarian in testing of horse broke off a needle in the horse's throat and instead of attempting to remove the needle, left to test the other race horses. The court found the state liable for the malpractice of the veterinarian. The court held the veterinarian to a general standard of conduct and not to the standard of track veterinarians who might place their duty to have the races on schedule over the needs of an injured horse. **Restrepo v. State, 550 N.Y.S.2d 536 (N.Y. Ct. Cl. 1989)**.

WORKERS' COMPENSATION

SCOPE OF EMPLOYMENT. Fruit pickers had returned to their employer's orchard after work to retrieve an empty fruit tub. While returning from the orchard, the pickers were injured while helping a motorist push a car off the highway near the orchard. The court ruled that the fruit pickers were injured in the course of employment and eligible for workers' compensation. **Martinez v. D.L. Cullifer & Son, Inc., 556 So.2d 796 (Fla. App. 1990)**.

CITATION UPDATES

Radtke v. U.S., 895 F.2d 1196 (7th Cir. 1990), aff'g 712 F. Supp. 143 (E.D. Wis. 1989) (social security tax), see p. 82 *supra*.

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