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Cases, Regulations, and Statutes

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apprise IRS of the nature of the transferred and retained interests.

Retained interests in trust or term interests in property generally are valued at zero for federal gift tax purposes unless in the form of an annuity or unitrust interest.

If two or more members of the same family acquire interests in the same transaction or series of related transactions, the person or persons acquiring the term interests in the property are treated as having acquired the entire property and then transferred to the other persons the interests acquired by the other persons in the transaction or transactions. The transfer is treated as made in exchange for the consideration, if any, provided for the acquisition of interests in the property. This could involve joint purchase of a life estate and remainder.

Relative to buy-sell agreements, the legislation provides that the value of property is determined without regard to any option, agreement, right or restriction unless—

(1) the option, agreement, right or restriction is a bona fide business arrangement;

(2) the option, agreement, right or restriction is not a device to transfer the property to members of the decedent's family for less than full and adequate consideration; and

(3) the terms of the option, agreement, right or restriction are comparable to those obtained in similar arrangements entered into by persons in an arm's length transaction.

The Conference report indicates that it is not the intent that a buy-sell agreement be ignored merely because its terms differ from those used by another, similarly situated firm. General business practice may recognize more than one valuation approach even within the same industry.

Under the legislation, the value of property is determined without regard to any restriction other than a restriction which by its terms will never lapse. In addition, any right held by the decedent with respect to property includible in the gross estate which lapses on the decedent's death would, in valuing the property in the estate, be considered to be exercisable by the estate. Any restriction that effectively limits the ability of a corporation or partnership to liquidate is ignored in valuing a transfer among family members if—(1) the transferor and family members control the corporation or partnership and (2) the restriction either lapses after the transfer or can be removed by the transferor or members of the family, either alone or collectively. This rule does not apply to a restriction arising as part of a financing with an unrelated party (which is commercially reasonable) or a restriction required under state or federal law. Regulatory authority is given to disregard other restrictions which reduce the value of the transferred interest for transfer tax purposes but which do not ultimately reduce the value of the interest to the transferee. **RRA 1990, Secs. 11601, 11602, adding I.R.C. § 2701 *et seq*.**

The amendments apply to gifts after October 8, 1990; transfers after October 8, 1990; to agreements, options, rights or restrictions entered into after October 8, 1990; to agreements, options, rights or restrictions which are substantially modified after October 8, 1990; and to restrictions or rights created after October 8, 1990.

36. Disabled access credit. An eligible small business is allowed a nonrefundable income tax credit equal to 50 percent of the amount of eligible public accommodations access expenditures for any taxable year that exceed $250 but do not exceed $10,250.

An eligible small business is defined as a person with gross receipts for the preceding taxable year that did not exceed $1 million or had no more than 30 full-time employees during the preceding taxable year.

Eligible access expenditures generally include amounts paid or incurred–

(1) for the purpose of removing architectural, communication, physical or transportation barriers which prevent a business from being accessible to or usable by individuals with disabilities;

(2) to provide qualified interpreters or other effective methods of making orally delivered materials available to those with hearing impairments;

(3) to provide qualified readers taped texts and other effective methods of making visually delivered materials available to individuals with visual impairments;

(4) to acquire or modify equipment or devices for individuals with disabilities; and

(5) to provide other similar services, modifications, materials or equipment.

All expenditures must be reasonable and necessary to accomplish the stated purposes.

The disabled access credit is included as a general business credit. The portion of any unused business credit attributable to the disabled access credit may not be carried back to any taxable year ending before the date of enactment.

The provision is effective for expenditures paid or incurred after the date of enactment.

CASES, REGULATIONS AND STATUTES

BANKRUPTCY

GENERAL

EXEMPTIONS. The debtor's interest in a retirement plan was not excluded from the bankruptcy estate as a spendthrift trust because the debtor could receive the funds in the plan upon termination of employment. The debtor's interest in the plan, totaling over $12,000, was exempt under Mo. Rev. Stat. § 513.430(10(e), as necessary for the debtor's support where the debtor's income was insufficient for the debtor's and the debtor's child's support and no evidence was shown that the debtor would have any significant increase in income. The court indicated that the amount of the interest in the retirement plan was also a factor favoring the exemption. ***In re* Boykin, 118 B.R. 716 (Bankr. W.D. Mo. 1990)**.

The debtor was not allowed an exemption for IRA and Keogh accounts under Ohio Rev. Code § 2329.66(a)(10)(c) because the funds were not necessary for the debtor's support. The court found that the debtor was a 59 year old attorney with the ability to earn sufficient amounts to accumulate retirement funds. ***In re* Herzog, 118 B.R. 529 (Bankr. N.D. Ohio 1990)**.

The debtor owned funds in an ERISA qualified retirement plan carried by the debtor's former employer. At the time of filling bankruptcy, the debtor could withdraw amounts contributed to the plan. The court held that the debtor's interest in the plan was estate property subject to turnover to the estate and that such turnover would not effect the tax status of the plan for other employees. ***In re* Threet, 118 B.R. 805 (Bankr. N.D. Okla. 1990)**.

FRAUDULENT TRANSFERS. The foreclosure sale of of the debtor's residence at 69.5 percent of fair market value was held to be not less than a reasonably equivalent value and not a fraudulent transfer under Section 548. The court reasoned that the amount received was not unreasonable for a foreclosure sale even though the residence might have sold for more through a typical private sale. ***In re* Barrett, 118 B.R. 255 (E.D. Pa. 1990), *rev'g* 113 B.R. 175 (Bankr. E.D. Pa. 1990), *on rem. from* 111 B.R. 78 (E.D. Pa. 1990), *vac'g and rem'g* 104 B.R. 688 (Bankr. E.D. Pa. 1989)**.

Within 14 months prior to filing bankruptcy, the debtors transferred their 20 percent interest in a farm to their children pursuant to an oral agreement made several years earlier. The bankruptcy court had ruled that the transfer was not fraudulent under Kansas law because the children did not participate in the fraud and did not have any knowledge of circumstances under which knowledge of the fraud could be imparted to them. The district court upheld the lower court because the rule of law was established by the Kansas Supreme Court. In addition, the court held that the children had given consideration for the interest in the farm because the parents were allowed to use the farm rent free during their lifetimes. ***In re* Kennedy, 118 B.R. 792 (D. Kan. 1990)**.

CHAPTER 12

ELIGIBILITY. The debtor was held to be eligible for Chapter 12 where, although more than 50 percent of the debtor's income came from the cash rental of farmland, the debtor had a "significant degree if engagement in, and played a significant operational role in, the production of crops" on the rented land. The debtor had helped maintain the fences, had planted the set-aside acres, and had helped "walk" the beans grown on the land. In addition, the debtor was eligible under the 80 percent debt-from-farming requirement where the debtor was actively involved in the hog confinement operation financed by the debtor. ***In re* Easton, 118 B.R. 676 (Bankr. N.D. Iowa 1990), *on rem. from,* 883 F.2d 630 (8th cir. 1990), *vac'g and rem'g,* 104 B.R. 111 (N.D. Iowa 1989), *aff'g,* 79 B.R. 836 (Bankr. S.D. Iowa 1988)**.

PLAN. The Chapter 12 trustee filed a motion for determination of the debtor's disposable income and turnover of such income. The court held that the burden of proof of disposable income is on the debtor and allowed the debtor a hearing to rebut the trustee's evidence of additional disposable income during two years of the plan. ***In re* Kuhlman, 118 B.R. 731 (Bankr. D. S.D. 1990)**.

FEDERAL TAXATION

ADMINISTRATIVE EXPENSES. The Chapter 11 debtor continued to operate the business after filing for bankruptcy and became liable for interest on unpaid taxes incurred post-petition. The court held that the post-petition interest and taxes were entitled to administrative expense priority. ***In re* Flo-Lizer, Inc., 90-2 U.S.Tax Cas. (CCH) ¶ 50,546 (6th Cir. 1990), *aff'g*, 107 B.R 143 (S.D. Ohio 1989)**.

CLAIMS. The IRS was barred from filing a late claim although the late claim resulted from a notice to the IRS of the debtor corporation's bankruptcy with an incorrect taxpayer identification number. ***In re* Ohio Movers & Storage, Inc., 118 B.R. 533 (Bankr. N.D. Ohio 1990)**.

The IRS claim for taxes was held to be an allowed secured claim although the claim was secured by property in which the debtors claimed an exemption. The court held that the determination as to whether the property was estate property was to be made as of the filing of the petition, before exemptions are claimed and allowed. ***In re* Hall, 118 B.R. 671 (Bankr. S.D. Ind. 1990)**.

PRIORITY. The IRS had filed a claim for taxes under I.R.C. § 4971 assessed against the debtor for failure to fully fund an ERISA plan. The court held that the tax assessed under Section 4971 was a penalty not eligible for priority under Section 507(a)(7) and was to be subordinated under the claims of general unsecured creditors. ***In re* Mansfield Tire & Rubber Co., 90-2 U.S. Tax Cas. (CCH) ¶ 50,549 (E.D. Ohio 1990), *aff'g*, 80 B.R. 395 (Bankr. E.D. Ohio 1987)**.

Pre-petition interest on a pre-petition claim for taxes was allowed the same priority as the taxes. **U.S. v. Stowe, 90-2 U.S. Tax Cas. (CCH) ¶ 50,559 (D. N.D. Ind. 1990)**.

RESPONSIBLE PERSON. The debtor was a treasurer and 50 percent shareholder in two corporations which failed to make withholding tax payments. The court held that the debtor was liable for the 100 percent penalty as a responsible person in the corporations where the debtor knew the withholding taxes were not being paid. ***In re* Mason, 118 B.R. 170 (Bankr. D. Mass. 1990)**.

RETURNS. In 1987, the debtor filed tax returns for 1981, 1982 and 1983, using the "married filing single" status. The debtor attempted to file amended returns in 1989 using the "married filing jointly" status. The court held that because more than three years had elapsed since the filing date for the returns, Section 6013 prevented the debtor from electing the married status on the amended returns. ***In re* Stallings, 118 B.R. 387 (Bankr. D. S.C. 1989)**.

CONTRACTS

BREACH. The defendant contracted with the plaintiff for aerial spraying of postemergence herbicide. The plaintiff sprayed only part of the land but sprayed the remainder after the defendant complained that part of the land was missed.

The plaintiff sued for nonpayment and the defendant argued that the plaintiff should be entitled to payment only for the chemicals timely applied. The court held that the evidence supported the finding that the charges were reasonable for the services rendered. The court allowed interest on the charges equal to the rate charged by the plaintiff on overdue accounts but disallowed additional statutory interest on the judgment. **Carson Grain & Implement, Inc. v. Dirks, 460 N.W.2d 483 (Iowa Ct. App. 1990)**.

CONTRACT. The cross-claim plaintiff agreed to lend $135,000 to a rancher for the purchase of cattle from the cross-claim defendant who, in turn, agreed to repurchase the cattle some months later. The cross-claim defendant, however, applied the proceeds of the loan to offset other amounts owed by the rancher to the cross-claim defendant. The court held that sufficient evidence of a contract was presented and that the cross-claim defendant breached the contract by not delivering the cattle. **Federal Land Bank of Omaha v. Emberton, 460 N.W.2d 488 (Iowa Ct. App. 1990)**.

FRAUD. The plaintiff leased a cattle silage storage system after the defendant's sales representatives stated that the system would keep the silage in an "oxygen-limited" condition. The plaintiff sued the defendant manufacturer of the system for fraud after the plaintiff's dairy cattle became ill and decreased production after being fed silage stored in the system. The court held that the plaintiff presented sufficient evidence of all elements of fraud in that the defendant, through its sales representatives and promotional materials, represented that the system would prevent oxygen from reaching the silage stored in the system when the defendant's own studies demonstrated that the system did not always prevent oxygen from reaching the silage. The court upheld the jury award of damages for the loss of production and rent paid. **Lollar v. A.O. Smith Harvestore Products, Inc., 795 S.W.2d 441 (Mo. Ct. App. 1990)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has issued an interim rule changing the classification of Arkansas from Class B to Class A under the brucellosis regulations. **55 Fed. Reg. 42954 (Oct. 25, 1990)**.

CONSERVATION RESERVE PROGRAM. The state of North Dakota acquired farmland under mortgage foreclosures and applied to place the land under CRP within four months. The application was denied under 7 U.S.C. § 3835(a)(1)(C), because of an administratively-developed standard that land acquired after October 1, 1985 and held less than three years was presumed to have been acquired for the purpose of placing the land in CRP. The court held that the exception provided by Section 3835(a)91)(C) was not judicially reviewable because the exception was discretionary with the Secretary of Agriculture. The court also held that the Secretary was not required to promulgate regulations establishing standards for application of the exception in Section 3835(a)(1)(C). **State of N.D. ex. rel. Bd. of Univ. & School Lands v. Yeutter, 914 F.2d 1031 (8th Cir. 1990),** ***aff'g in part and rev'g in part*****, 711 F.Supp. 517 (D. N.D. 1989)**.

FARM LOANS. The FmHA has adopted as final amendments to the farm loan regulations requiring credit bureau reports on all new and rescheduled loans and screening for previous debts with the FmHA. **55 Fed. Reg. 46187 (Nov. 2, 1990)**.

MILK. The AMS has issued a proposed rule merging the milk marketing areas of the Rio Grande Valley, Lubbock-Plainview, Texas Panhandle and all unregulated areas in New Mexico into one marking order. **55 Fed. Reg. 43345 (Oct. 29, 1990)**.

PESTICIDES. The EPA has issued proposed rules which amend the rules governing the certification of applicators of restricted pesticides. The amendments include establishment of private applicator categories, elimination of the non reader provision, elimination of the exemption for medical doctors and veterinarians, and establishment of additional commercial applicator categories. **55 Fed. Reg. 46690 (Nov. 7, 1990)**.

FEDERAL ESTATE AND GIFT TAX

DISCLAIMERS. The taxpayer received securities by gift six days before the donor died. The decedent's will bequeathed property in trust to the taxpayer. If the securities had not been transferred prior to the decedent's death, the securities would pass under the will to the taxpayer in trust. The IRS ruled that the taxpayer could make a qualified disclaimer of the intervivos gift within nine months after the gift and that the passing of the securities to the taxpayer in trust under the will did not disqualify the disclaimer. **Ltr. Rul. 9043050, July 31, 1990**.

GIFT. The taxpayer received property from the decedent, the taxpayer's sister, through the state laws of intestacy and transferred the property to a third party according to the wishes of the decedent. The IRS ruled that the transfer of the property to the third party was a gift from the taxpayer. **Ltr. Rul. 9042047, July 24, 1990**.

GENERATION SKIPPING TRANSFERS. The surviving spouse received a life estate interest in several assets which included the power to sell, use or pledge the assets and for which the estate elected QTIP treatment. The IRS ruled that, under Section 2652(a), the estate may also elect to treat the QTIP property as if no QTIP election was made such that the surviving spouse will be subject to any GSTT as to the property. **Ltr. Rul. 9043028, July 27, 1990**.

The grantor established an intervivos trust which provided for equal shares for each of the grantor's children and the grandchildren of any deceased child. While all of the grantor's children were still living and before any grandchildren were born, the trust was amended to exclude the grandchildren as possible beneficiaries. The IRS held that distributions from the amended trust would not be subject to GSTT because none of the beneficiaries was a skip person. **Ltr. Rul. 9043061, Aug. 1, 1990**.

GROSS ESTATE. The taxpayer's will provided for the establishment of a trust which provided income for life for the surviving spouse with the remainder to pass to the couple's children. The surviving spouse had no power of appointment over trust corpus but had the power to prohibit the trustee from selling any corporation stock held by the trust. The IRS ruled that the surviving spouse's veto power over sales of stock would not cause inclusion of trust corpus in the surviving spouse's gross estate. **Ltr. Rul. 9042048, July 24, 1990**.

MARITAL DEDUCTION. The decedent's taxable estate included property passing to the spouse under the will which was not eligible for the marital deduction and property held by the decedent and surviving spouse as tenants by the entireties which passed outside of the will and which was eligible for the marital deduction. The decedent's will stated that real property passing under the will was not to be used to pay any state or federal estate taxes; however, the residuary estate was insufficient to pay the taxes due. The estate allocated the remaining taxes against the real estate, arguing that under Virginia law, the decedent could not encumber the entireties property without the consent of the spouse. The court held that federal law controlled and that the decedent's provision that taxes were not to be charged against the real property passing under the will required the remaining taxes to be charged against the property passing outside of the will, thus decreasing the property eligible for the marital deduction. **Est. of Reno, 90-2 U.S. Tax Cas. (CCH) ¶ 60,046 (4th Cir. 1990)**.

An estate was not allowed a marital deduction for a surviving spouse's interest in QTIP property where no QTIP election was made on the estate tax return. In addition, the QTIP election was not allowed on an amended return. **Robinson v. U.S., 90-2 U.S. Tax Cas. (CCH) ¶ 60,045 (S.D. Calif. 1990)**.

The decedent's will, executed in 1979, bequeathed property in trust to the surviving spouse equal to the "maximum estate tax marital deduction allowable" less the amount of other property eligible for the marital deduction and any amount of property which would result in no federal estate tax. The court held that the will did not contain a formula clause subject to the ERTA transition rules and that the full unlimited marital deduction was available to the estate. **Est. of Kendall v. Comm'r, T.C. Memo. 1990-547**.

In 1980, the decedent had established a testamentary trust to be funded with property equal to the maximum marital deduction less other credits available to the estate. The decedent amended the trust in 1985. the IRS ruled that because the trust was amended after passage of ERTA, the transitional rule of ERTA did not apply and the unlimited marital deduction was available to the decedent's estate for the trust. **Ltr. Rul. 9042020, July 19, 1990**.

The decedent's estate proposed to elect QTIP treatment for a fraction of property eligible for QTIP. The fraction of property so elected equaled (1) the smallest amount of the deduction under section 2056(b)(7) that resulted in no federal estate tax after utilization of the maximum amount of available unified credit divided by (2) the value of all QTIP property. The IRS ruled that the fractional election was allowed. **Ltr. Rul. 9043015, July 26, 1990**.

The surviving spouse received interests in two trusts. Under both trusts the surviving spouse received all income at least quarterly and could receive corpus for support. The remainder of the first trust went to named beneficiaries and to the second trust. The remainder of the second trust went to named charities. The IRS ruled that the surviving spouse's interests in the trusts were eligible for the marital deduction. The IRS also ruled that the surviving spouse's estate will be eligible for a charitable deduction for the trust property passing to the charities. **Ltr. Rul. 9043016, July 26, 1990**.

The surviving spouse received a life estate interest in several assets which included the power to sell, use or pledge the assets. The IRS ruled that the life estate interests were QTIP and if the QTIP election is made for specific property and inadequate records are not maintained as to the use and disposition of QTIP property, non-QTIP property of equal value will be includible in the surviving spouse's estate. **Ltr. Rul. 9043028, July 27, 1990**.

The decedent's will established two trusts, one providing lifetime income for the surviving spouse with the trustee having power to distribute principal to the spouse and with the spouse having the power to require the sale of unproductive trust assets. The other trust also provides income to the surviving spouse but cannot distribute principal unless the first trust is exhausted. The surviving spouse is on a committee with the power to change the trustee of the second trust but the spouse may not be the trustee of the second trust. A QTIP election was made for the first but not the second trust. The IRS ruled that the assets of the second trust are not includible in the surviving spouse's estate by reason of the spouse's power to vote to change the trustee. **Ltr. Rul. 9043052, July 31, 1990**.

The taxpayer proposed to establish two trusts, one trust is to be funded by an IRA and the other is to receive income and distributions from the IRA trust. The surviving spouse is the lifetime beneficiary of the second trust. The IRS ruled that the second trust was eligible QTIP. **Ltr. Rul. 9043054, July 31, 1990**.

The decedent's will established a trust for the surviving spouse who was not a U.S. citizen. The spouse was also the trustee of the trust. The trust would have qualified as QTIP except that the surviving spouse was not a U.S. citizen and was the trustee. The spouse proposed to create a new trust with a U.S. trustee and including the assets of the nonqualifying trust. The IRS ruled that the new trust would qualify as a Qualified Domestic Trust and would be eligible for the QTIP marital deduction. **Ltr. Rul. 9043070, Aug. 3, 1990**.

SAVINGS BONDS. The decedent had purchased savings bonds with the decedent and another person as beneficiaries but the decedent did not tell the other person about the purchases. The IRS ruled that no gift of the cotenancy interest in the bonds was completed. The IRS also ruled that the other person may disclaim any interest in the bonds within nine months after the death of the decedent. If the other person does not disclaim any interest in the bonds and the bonds are redeemed by the decedent's estate with the proceeds distributed to other persons, the co-owner will be considered to have made a gift of those bonds and will realize income from any accrued interest on the bonds. **Ltr. Rul. 9043043, July 31, 1990**.

SPECIAL USE VALUATION. Special use valuation property was held by two trusts. The surviving spouse was the beneficiary of both trusts but under the second trust income could be distributed to the decedent's issue if the first trust provided the surviving spouse with sufficient income. The IRS ruled that the net cash rental of the special use valued land to a qualified heir by the first trust was not a cessation of qualified use under Section 2032A(b)(5)(A). However, the net cash rental by the second trust would be a cessation of qualified use because persons other than the surviving spouse could receive income from the trust. **Ltr. Rul. 9043044, July 31, 1990**.

TRANSFERS WITH RETAINED INTERESTS. In 1979, the two shareholders of a corporation entered into a buy-sell agreement which required both shareholders to first offer any stock for sale to the corporation and upon the death of either shareholder the surviving shareholder was required to purchase the decedent's stock. The purchase price was set as the per share book value at the time of the event causing the sale. The agreement was amended in 1982. The IRS ruled that because the agreement was entered into and amended before adoption of I.R.C. § 2036(c), the buy-sell agreement was not a disproportionate transfer. **Ltr. Rul. 9043071, Aug. 2, 1990**.

FEDERAL INCOME TAXATION

COST SHARE PAYMENTS. The USDA has determined that payments under the Colorado River Basin Salinity Control Program are made primarily for the purposes of soil and water conservation, protecting or restoring the environment, or providing a habitat for wildlife. Therefore, payments under the program are excludible from income under I.R.C. § 126. **55 Fed. Reg. 42868 (Oct. 24, 1990)**.

DEPLETION. On the date of death, the decedent owned working and royalty interests in producing oil and gas property which was community property. The surviving spouse filed a joint return for the calendar tax year of the decedent's death. The IRS ruled that the surviving spouse must calculate the depletion allowance using either the cost depletion method or the percentage depletion method, whichever produces the largest allowance. The surviving spouse's basis in the property is the basis as determined under I.R.C. § 1014. **Ltr. Rul. 9042002, Jan. 10, 1990**.

DISCHARGE OF INDEBTEDNESS. The taxpayer controlled a corporation and owed a debt to the corporation's subsidiary. In satisfaction of the debt to the subsidiary, the taxpayer had the corporation issue a promissory note to the subsidiary. The court held that the taxpayer realized income from the discharge of indebtedness because the promissory note was worthless because the corporation had no assets. **Yamamoto v. Comm'r , T.C. Memo. 1990-549**.

INSTALLMENT REPORTING. Through the error of an income tax preparer, the entire gain from the installment sale of real property was reported on the taxpayer's return for the year of sale. The error was not discovered for two years when a new accountant was used. The IRS ruled that because no written memorandum existed which indicated that the taxpayer intended to make an election to use the installment reporting of the income, the election not to use installment reporting could not be revoked. The ruling did not cite any authority for the written memorandum requirement. **Ltr. Rul. 9042014, July 18, 1990**.

INTEREST. The taxpayer established trusts for a niece and nephew. The trusts were funded with cash, but shortly after the trusts were funded the taxpayer borrowed the funds in exchange for promissory notes bearing 20 percent interest. The court denied the taxpayer deductions for interest paid on the notes where, under California law, the notes were considered promises to make future gifts. **Martyr v. Comm'r, T.C. Memo. 1990-558**.

LIENS. The IRS has issued a table listing the amount of wages exempt from levy under I.R.C. § 6334(d) for the various filing statuses and wage periods. **Notice 90-65, I.R.B. 1990-45, 35**.

LIFE INSURANCE. A corporation in which the taxpayer was a majority shareholder transferred a life insurance policy on the life of the taxpayer to a partnership of which the taxpayer was a partner. The partner paid the corporation the cash value of the policy. The IRS ruled that the proceeds of the policy will be excludible from gross income under I.R.C. § 101(a)(1). **Ltr. Rul. 9042023, July 19, 1990**.

PARTNERSHIPS

ADMINISTRATIVE ADJUSTMENTS. The partnership elected its accountant as its managing partner and tax matters partner; however, the accountant did not own a capital or profits interest in the partnership. In response to a final partnership administrative adjustment, the accountant authorized a petition for readjustment. The court held that the accountant could not serve as a tax matters partner because the accountant did not own a capital or profits interest in the partnership. The partnership was allowed 60 days to file an amended petition. **Montana Sapphire Assoc., Ltd. v. Comm'r, 95 T.C. No. 34 (1990)**.

AT-RISK RULES. The taxpayers were limited partners in a partnership involved in leasing computer equipment. the Tax Court had originally held that the taxpayers' investments in the partnership were held "other than interests as creditors" and that deductions relating to those interests were not allowed under I.R.C. § 465(b)(3)(A). Upon reconsideration, the court held that because the investment related only to contracts to develop computer software, the activity invested in was not governed by section 465(b)(3)(A) because the statute was dependent upon a listing of covered activities by regulations to be issued. Because the regulations have been issued, the taxpayers' investments were not limited by the at-risk rules. The court also held that *Jackson v. Comm'r, 86 T.C. 492 (1988), aff'd on other issues, 89-1 U.S. Tax Cas. (CCH) § 9123 (10th Cir. 1989)*, and its progeny would no longer be followed. **Alexander v. Comm'r, 95 T.C. (1990), *rev'g*, T.C. Memo. 1990-141**.

PASSIVE ACTIVITY LOSSES. Although the instructions to Form 4835 state that non-material participation share leases are eligible for the $25,000 deduction of passive activity losses, the temporary regulations, Example 8, state that a crop share lease is to be considered a joint venture and not rental real estate and not eligible for the $25,000 deduction. In a letter to Senator Charles Grassley of Iowa, Kenneth Gideon, Assistant Secretary (Tax Policy) has reiterated the rule in Example 8 but without mentioning the instructions to Form 4835. **Highlights & Documents, Nov. 9, 1990, p. 1351**.

PENALTIES. The IRS has announced that for January 1, 1991 through March 31, 1991, the interest rate on underpayment of federal taxes continues at 11 percent and on overpayment remains at 10 percent. **Rev. Rul. 90-94, 1990-46, 4**.

S CORPORATIONS

TERMINATION. The termination of a corporation's S corporation status was ruled inadvertent where the trustee of two trusts which held corporation stock failed to make current distributions of corporation income but loaned the money back to the corporation. **Ltr. Rul. 9042010, July 12, 1990**.

The termination of a corporation's S corporation status was ruled inadvertent where the stock of the corporation was issued to a trust which allowed the accumulation of income and where upon discovery of this fact, the trust sold the stock to another eligible shareholder. **Ltr. Rul. 9043030, July 30, 1990**.

The termination of a corporation's S corporation status was ruled inadvertent where the stock of the corporation was transferred by a shareholder's estate to a trust which was not an eligible shareholder and where, upon discovery of the termination, the stock was transferred to an eligible trust in exchange for assets of equal value. The income from both of the trusts involved was paid to the shareholder's surviving spouse. **Ltr. Rul. 9043032, July 30, 1990**.

SOCIAL SECURITY. The SSA has announced that the wage amount for a a quarter of coverage in 1991 is $540; the monthly exempt amount of wages for 1991 is $810 for beneficiaries age 65 through 69 and $590 for beneficiaries under age 65; the cost-of-living increase in benefits for 1991 is 5.4 percent; and the supplemental security income for 1991 is $407 for eligible individuals, $610 for eligible individuals with an eligible spouse, and $204 for an essential person. **55 Fed. Reg. 45856 (Oct. 31, 1990)**.

MORTGAGES

DEFICIENCY. The plaintiff obtained a foreclosure judgment against the defendants in 1983, an in rem judgment against additional property in 1986 with a sale of the additional property later in 1986, and another judgment against additional property in 1988. The defendants filed a motion for discharge of judgment, arguing that the two year limitation on deficiency judgments, Iowa Code § 654.1, barred the 1988 action. The court held that the continuing jurisdiction of the trial court over the foreclosure judgment and related deficiency actions meant that the case was pending on June 1, 1986 when the ruling in *Federal Land Bank of Omaha v. Lockard, 446 N.W.2d 808 (Iowa 1989)* became effective. The court in *Lockard* held that deficiency judgments barred under Iowa Code § 654.6 would be allowed to be enforced until July 1, 1990. Therefore, the 1988 deficiency action was not barred. **Federal Land Bank of Omaha v. Recker, 460 N.W.2d 480 (Iowa Ct. App. 1990)**.

NEGLIGENCE

RECREATIONAL USE. The plaintiff was injured while diving into a pond located on the defendant's property without the permission of the defendant. The defendant had posted no trespassing signs on the property. The court held that the defendant was not liable for the injury under Iowa Code §§ 111C.3 and .4 which states that a landowner owes no duty to recreational users. The court held that the statutes apply whether or not the recreational users were invited or not to use the property. **Peterson v. Schwertley, 460 N.W.2d 469 (Iowa 1990)**.

PRODUCTS LIABILITY

CORN HUSKER. The plaintiff was injured when the plaintiff's hand was caught in the rollers of a corn husker when the plaintiff attempted to remove some corn while the machine was running. The defendant manufacturer filed a third party action against the employer. The court held that sufficient evidence was presented to the jury of the plaintiff's knowledge of the risk for the jury to allocate fault between the plaintiff and the manufacturer. As between the plaintiff and the manufacturer, the jury had allocated 55 percent of the fault to the manufacturer but in the third party action, as between the manufacturer and the employer, the jury allocated all of the fault to the employer. The court held that the allocation in the third party action was an improper award of indemnity by the jury. **Hackett v. Equipment Specialists, Inc., 559 N.E.2d 752 (Ill. Ct. App. 1990)**.

DAMAGES. The plaintiff insurance company brought an action for damages under the Indiana Products Liability Act, Ind. Code § 33-1-1.5 et seq., to recover amounts paid to its insured when an electrical switch made by the defendants failed to turn on ventilation fans in a poultry house causing suffocation of the poultry. The court held that privity between the plaintiff and the defendants was not required by the act and that as a subrogee of the user/insured, the plaintiff could bring an action under the act. The court also ruled that the plaintiff could recover economic as well as compensatory damages because the injury to the poultry was sudden and major. **Yasuda Fire & Marine Ins. Co. of America v. Lake Shore Elec. Corp., 744 F.Supp. 864 (S.D. Ind. 1990)**.

SECURED TRANSACTIONS

FARM EQUIPMENT. Tree stump harvesting equipment was not farming equipment where the debtor did not cultivate or care for crops but merely removed tree stumps from forested areas. Therefore, the creditor's filing of a security interest in the county clerk's office was insufficient to perfect the security interest in the equipment under S.C. Code § 36-9-401. ***In re* Creel, 118 B.R. 372 (Bankr. D. S.C. 1988)**.

STATE REGULATION OF AGRICULTURE

PESTICIDES. The plaintiff sought a declaratory judgment that California Proposition 65 requirements for warnings on labels of pesticides were pre-empted by the Federal Insecticide, Fungicide and Rodenticide Act and the Federal Hazardous Substances Act. The court held that the state warning requirements were not pre-empted by FIFRA or FHSA. **Chemical Specialties Mfrs. Ass'n, Inc. v. Allenby, 744 F.Supp. 934 (N.D. Cal. 1990)**.

STATE TAXATION

MANUFACTURING EXEMPTION. The plaintiff was a honey processor who applied for a manufacturer's exemption under 72 Pa. Stat. § 7602. The court held that the processing of raw honey into edible honey was not a manufacturing process eligible for the exemption. **Stewart Honeybee Products, Inc. v. Board of Finance, 579 A.2d 872 (Pa. 1990)**.

VALUATION. The plaintiffs operated a cattle feedlot which was assessed for property tax purposes at a value using the cost of the facilities to determine value. The board of assessment used only the cost method because it lacked evidence of comparable sales within the county where the facility was located. The court held to be improper the board's refusal to consider evidence of comparable sales within the vicinity of the plaintiff's facility even though not in the same county, especially when such comparable sales indicated a valuation of one-third of the value reached by the cost method. **Board of Assessment Appeals v. E.E. Sonnenberg, 797 P.2d 27 (Colo. 1990)**.

WORKERS' COMPENSATION

STABLE WORKER. The claimant was hired to take care of and oversee the breeding and foaling of thoroughbred race horses and was injured while picking up a sack of feed. The court held that the claimant was not an agricultural worker exempt from workers' compensation coverage because the employment involved the raising of domestic animals. The claimant was also held not to be an independent contractor because the employment was indefinite and the salary was based on time and not any particular project. **Sport O'Kings Farms v. Thomas, 797 P.2d 1016 (Okla. Ct. App. 1990)**.

ZONING

PERMITTED USES. The petitioner owned 57 acres of land within an exclusive farm use zone and wanted to build a non-farm residence on seven acres. The petitioner argued that the non-farm use of the seven acres was allowed under Or. Rev. Stat. § 215.283(3)(d), because the seven acres were not suitable for farming. The court held that because the remaining 47 acres were generally suitable for farming, the non-farm use of the seven acres was not allowed. **Smith v. Clackamas County, 103 Or. App. 370, 797 P.2d 1058 (1990)**.

The petitioner owned 40 acres of land in an exclusive farm use zone and wanted to conduct surface shale mining on the property. The court held that the nonconforming use was allowable because the 40 acres were generally unsuitable for farming. **Clark v. Jackson County, 103 Or. App. 377, 797 P.2d 1061 (1990)**.

CITATION UPDATES

Moser v. Comm'r, 914 F.2d 1040 (8th Cir. 1990), ***aff'g*** **T.C. Memo. 1989-142** (limitation of loss deduction), see p. 192 *supra*.

Hudspeth v. Comm'r, 914 F.2d 1207 (9th Cir. 1990), ***aff'g on point*****, T.C. Memo. 1985-628** (tax benefit rule), see p. 193 *supra*.

Est. of Heim v. Comm'r, 914 F.2d 1322 (9th Cir. 1990), ***aff'g*****, T.C. Memo. 1988-433** (marital deduction), see p. 203 *supra*.