Cases, Regulations and Statutes

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7 I.R.C. § 1375(a).
12 I.R.C. § 1375(a).
18 Id.
19 Id.
20 Id.

# CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

## ADVERSE POSSESSION

**CONTINUOUS USE.** The disputed land included 31 acres erroneously included in the plaintiff's land by surveyors. The plaintiff presented evidence of some use of the disputed land as pasture and claimed a fence on the defendant's side of the disputed land was the boundary. The court held that the plaintiff had not shown sufficient hostile use to demonstrate adverse possession as a matter of law because the plaintiff failed to show continuous use of the disputed land and failed to show that the fence was adequately maintained to as to completely separate the disputed land from the defendant's land. *Wall v. Carrell*, 894 S.W.2d 788 (Tex. Ct. App. 1994).

## BANKRUPTCY

**GENERAL-ALM § 13.03.*

**EXEMPTIONS**

**AVOIDABLE LIENS.** The debtor filed a motion to avoid a judgment lien against the debtor's homestead. The debtor had filed an exemption for the homestead in the amount of $40,000 although Mont. Code § 70-32-104 allowed only an exemption of $20,000. However, no timely objections were filed. The court held that for avoidance purposes, the debtor was limited to the exemption amount the debtor "could claim;" therefore, the debtor could avoid judgment liens only to the extent the lien impaired the $20,000 statutory limit. *In re Moe*, 179 B.R. 654 (Bankr. D. Mont. 1995).

**HOMESTEAD.** The debtor claimed a homestead exemption for the debtor's $39,000 of equity in the homestead. The Chapter 7 trustee objected to the exemption because there existed $36,000 of pre-homestead claims in the case. The trustee argued that the trustee had the authority to object to the exemption under either Section 544(b) or as a representative of the estate. The court held that Section 544(b) did not apply because there was no transfer by the debtor to avoid by the trustee; however, the court held that the trustee did have the authority to object to the exemption on behalf of the pre-homestead creditors. The court also held that the debtor could not claim a homestead exemption except to the extent the equity in the homestead exceeded the pre-homestead claims filed in the case. *In re Rye*, 179 B.R. 375 (Bankr. D. Minn. 1995).

**IRA.** The debtor claimed the funds in an IRA as exempt under N.J. Stat. § 25:2-1. The trustee argued that the IRA was eligible for the exemption because the IRA funds were not rolled over from an ERISA qualified plan and the debtor had unrestricted access to the funds. The court held that the IRA was eligible for the exemption because the state exemption did not require that the funds be derived from an ERISA qualified plan or that the debtor's access to the funds be restricted. *In re Lamb*, 179 B.R. 419 (Bankr. D. N.J. 1994).

## CHAPTER 11-ALM § 13.03.*

**PLAN.** The debtor operated a retail garden shop and nursery. The Chapter 11 plan provided that the debtor would retain the business property and included the property at its liquidation value, thus stripping down the secured claims to the liquidation value. The court held that the property had to be included at its fair market value because the debtor had no intention of selling the property and would continue to receive income from the property. *In re Winthrop Old Farm Nurseries, Inc.*, 50 F.3d 72 (1st Cir. 1995).

## CHAPTER 12-ALM § 13.03[8].*

**CONVERSION.** The Chapter 7 debtor operated an exotic animal farm in which the debtors raised animals belonging to other investors in return for a partial ownership in the animals. The Chapter 7 trustee had filed a motion to reject the animal raising contracts because of the high expenses, the declining market for such animals and the debtors' interference with the trustee's operation of the business. The debtors then filed a motion to convert the case to Chapter 12. The debtors argued that they had an absolute right to convert the case at any time absent fraud. The debtors' argument was based on the legislative history of Section 706(a) in which the Senate committee report referred to the "absolute right" to convert a case. The court held that a Chapter 7 debtor did not have an absolute right to convert to Chapter 12 because the statute and legislative history provided exceptions to the conversion right. The court also held that conversion would be denied because the debtors' contracts to raise the animals could be rejected by the trustee based on the losses incurred by the estate and the debtors actions impairing the operation of the business. *In re Starkey*, 179 B.R. 687 (Bankr. N.D. Okla. 1995).

## FEDERAL TAXATION-ALM § 13.03[7].*

**ALLOCATION OF PAYMENTS FOR TAXES.** The debtors' business suffered losses from embezzlement by the...
manager of their business. Some of the funds embezzled were to be paid for federal employment taxes. Although the debtors made sufficient payments over the next three years to satisfy all employment taxes, the payments were made late and applied by the IRS to previous periods such that the penalties accrued caused an eventual deficiency assessed against the debtors personally. The debtors argued that some of the payment should have been allocated to current tax obligations to prevent further penalties. The court held that the IRS could not reallocate payments if (1) the payments were designated by the debtors for a particular period, (2) the payments were made with a return for a particular period, or (3) the payments were made by deposit. Undesignated payments or payments made in excess of a current obligation could be allocated by the IRS. Matter of Ledin, 179 B.R. 721 (Bankr. M.D. Fla. 1995).

AUTOMATIC STAY. The debtors had entered into a pre-petition closing agreement with the IRS which converted partnership tax items into nonpartnership items and initiated, under I.R.C. § 6503(a)(1), the one year limitation period for assessments based on the closing agreement to apply to the items. The debtors, however, filed for bankruptcy before the IRS could make an assessment and the debtors sought to avoid the IRS claim based on the closing agreement because the assessment was made postpetition without first obtaining relief from the automatic stay. The court held that the assessment did violate the stay and that the assessment period was not tolled by the filing of the bankruptcy case. However, the court held that it had the authority to retroactively grant relief from the automatic stay and that such relief was allowed in this case because the IRS would lose its claim if relief was not granted and the relief would have been granted if the IRS had timely applied for relief from the stay. The court also noted that the debtor would not be harmed by the granting of the relief because the whole situation arose because the debtor had accepted the closing agreement as a settlement of the taxes owed. In re Silvering, 179 B.R. 909 (Bankr. E.D. Cal. 1995).

The debtors filed for Chapter 13 in February 1994 and filed their federal income tax returns in August 1994, claiming a refund. The Chapter 13 plan provided for full payment of back taxes owed by the debtors and the plan was confirmed. After the confirmation, the IRS filed for relief from the automatic stay to effect a setoff of the refund against the taxes owed by the debtors. The debtors argued that no setoff was allowed after confirmation of a plan which provided for full payment of the IRS claim and that refusal to pay the refund was a violation of the automatic stay. The court held that the setoff met all of the requirements of Section 553(a) and that confirmation of the plan had no effect on the IRS right of setoff. The court granted the relief from the automatic stay. In re Tillery, 179 B.R. 576 (Bankr. W.D. Ark. 1995); In re Warwick, 179 B.R. 582 (Bankr. W.D. Ark. 1995).

AVOIDABLE LIENS. The IRS had filed a lien against the debtor's property. The debtor filed for Chapter 13 and the IRS claim was scheduled but the IRS did not file a claim. The Chapter 13 plan was confirmed. The debtor sought to avoid the IRS lien as against the debtor's homestead exemption to the extent the lien was unsecured. The IRS argued that under Dewsnup v. Timm, 502 U.S. 410 (1992), the lien could not be avoided because it was not disallowed in the case. The court held that Dewsnup did not apply to Chapter 13 cases and held that the tax lien was avoided to the extent that the lien exceeded the debtor's equity in the homestead. In re Hendrix, 179 B.R. 519 (Bankr. E.D. Ky. 1994).

DISCHARGE. The IRS sought to have the debtor's taxes for 1981 and 1982 declared nondischargeable for failure to file tax returns. The debtor testified that the debtor had cooperated with the IRS in collection efforts for those years and had signed a document which contained the IRS calculations as to the tax owed for those years. The IRS claimed to not have any such document and presented only a computer printout of collection and assessments made. The court held that the IRS had the burden of proving nondischargability of the taxes and held that the debtor's testimony was credible and sufficient to require the IRS to demonstrate that the debtor had not signed a substitute return for 1981 and 1982. Matter of Gless, 179 B.R. 646 (Bankr. D. Neb. 1995).

TAX LIEN. The Chapter 7 trustee had applied to the Bankruptcy Court for permission to hire a real estate broker who had a client who wanted to purchase property. The application was approved to the extent that the prospective client did purchase the property. The client purchased the property. Before the payment of the commission was finally approved, the IRS levied on the property. The trustee refused to pay the commission to the IRS because the fee payment had not been finally approved by the Bankruptcy Court. The court ruled that the fee was subject to the levy because there were no facts or reasons why the fee would not have been paid; therefore, the trustee was personally liable for failure to pay the commission to the IRS under the levy. United States v. Ruff, 179 B.R. 967 (M.D. Fla. 1995).

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has issued interim regulations changing Nebraska from a Class A to a Class Free state. 60 Fed. Reg. 28322 (May 31, 1995).

See proposed regulations under Tuberculosis, infra.

CROP INSURANCE. The FCIC has issued interim regulations adding a noninsured crop disaster assistance program to protect producers of crops for which insurance is not available. 60 Fed. Reg. 26669 (May 18, 1995).

PEANUTS. The CCC has adopted as final regulations establishing the 1995 quota peanuts average support level of $678.36 per short ton, the national average support level for additional peanuts at $132 per short ton, and the minimum CCC export edible sale price for additional peanuts at $40 per short ton. 60 Fed. Reg. 27868 (May 26, 1995).

TOBACCO. The CCC has adopted as final regulations establishing the 1995 marketing quota for burley tobacco at 549 million pounds and the 1995 price support level at 172.5 cents per pound. 60 Fed. Reg. 27867 (May 26, 1995).

TUBERCULOSIS. The APHIS has issued proposed regulations requiring the branding of tuberculosis and brucellosis reactor and exposed cattle and bison on the hide instead of on the jaw. The proposed regulations also allow the interstate movement to slaughter of reactor and exposed
animals if the animals are moved in the presence of an APHIS or state representative or are moved in vehicles closed with official seals. 60 Fed. Reg. 26377 (May 17, 1995).

FEDERAL ESTATE AND GIFT TAX

CLOSING LETTERS. After an examination of the estate's tax returns, the IRS issued an Estate Tax Closing Letter; however, the letter stated that it did not constitute a formal closing agreement. The IRS later reopened the examination of the returns and assessed a deficiency, giving the reason for reopening the case as so to avoid a "serious administrative omission." The court held that the reopening of the case was allowed and was not an abuse of discretion. Estate of Bommer v. Comm'r, T.C. Memo. 1995-197.

GENERATION SKIPPING TRANSFERS-ALM § 5.04[6]. A trust was established in 1934 for the benefit of the taxpayer. The trust granted the taxpayer a testamentary general power of appointment over one third of the trust or a testamentary limited power of appointment over the whole trust. The taxpayer disclaimed the general power of appointment and executed a will which exercised the limited power of appointment in favor of the taxpayer's children. The IRS ruled that the release of the general power of appointment did not subject the trust to GSTT and the exercise of the limited power of appointment would not subject the trust to GSTT since the exercise did not extend the life of the trust past 21 years after a life in being at the formation of the trust. Ltr. Rul. 9519009, Feb. 2, 1995.

The decedent's will provided for a nonmarital trust of property equal in value to the unified credit and a marital trust for the surviving spouse. The trustee, pursuant to authority under state law, divided the marital trust into a QTIP trust and a non-QTIP trust, for the purpose of making a reverse QTIP election, and further divided each of those trusts into trusts with one grandchild each as remainder holder. The IRS ruled that the grandchild trusts would be considered a separate trust for purposes of GSTT. Ltr. Rul. 9519050, Feb. 14, 1995.

GROSS ESTATE-ALM § 5.02.* The decedent’s estate included property in which the decedent had received a life interest from the estate of the decedent’s predeceased spouse and for which the predeceased spouse’s estate had claimed as QTIP. The decedent’s estate excluded the QTIP property, arguing that the property was not eligible QTIP because the trustee had discretion as to how often to make distributions. The Tax Court found that the trust required reasonable distributions, which the court interpreted as at least quarterly distributions. The Tax Court also held that the estate was improperly attempting to revoke the irrevocable QTIP election. The appellate court affirmed based on the first holding of the Tax Court. Est. of Cavenaugh v. Comm'r, 51 F.3d 597 (5th Cir. 1995), aff'g on point, 100 T.C. 407 (1993).

MARITAL DEDUCTION-ALM § 5.04[3].* Under the decedent’s will, certain assets passed to the surviving spouse in trust with the remainder of the estate and the remainder of the trust passing to the decedent’s daughter. In order to avoid problems with administering the trust, the spouse and daughter reached a settlement which provided for one-half of the estate to pass outright to each party. The estate claimed a marital deduction for the portion passing to the spouse. The court held that the surviving spouse’s interest in the trust was not QTIP because the will provided the spouse with no power to appoint the interest in the trust to only the spouse or the spouse’s estate. The court held that because the surviving spouse’s enforceable interest in the trust did not qualify as QTIP, the amount passing under the settlement could not qualify for the marital deduction. Est. of Carpenter v. Comm'r, 95-1 U.S Tax Cas. (CCH) ¶ 60,194 (4th Cir. 1995), aff'g, T.C. Memo. 1994-108.

The decedent’s 1978 will bequeathed an amount of the estate to a marital trust equal to the “maximum allowable marital deduction.” The decedent died in 1983 without changing the will. In 1987, Tennessee passed a statute allowing such bequests to qualify for the unlimited marital deduction if a state probate court determined that to be the intention of the decedent. The court held that the statute was insufficient to qualify the bequest, under the transitional rule of Pub. L. No. 97-34, 95 Stat. 172 (1981) (ERTA), for the unlimited marital deduction because the statute itself did not construe the bequest, but allowed a court to do the construing. The appellate court reversed, holding that the Tennessee statute was sufficient to comply with the transitional rule of ERTA even though the statute would allow different results for similar estates. Hall v. U.S., 95-1 U.S. Tax Cas. (CCH) ¶ 60,183 (6th Cir. 1995), rev’g and rem’g, 93-1 U.S. Tax Cas. (CCH) ¶ 60,135 (M.D. Tenn. 1993).

SPECIAL USE VALUATION-ALM § 5.03[2].* The taxpayer owned special use valuation property received from a decedent less than 10 years ago. The taxpayer transferred the property to a revocable trust for the taxpayer with a remainder to the taxpayer's spouse. The taxpayer was to receive all income from the trust and had the power at any time to revoke the trust and receive all trust property. The IRS ruled that the special use valuation benefits would not be recaptured because of the transfer of the property to the trust. Ltr. Rul. 9519015, Feb. 7, 1995.

VALUATION. The decedent owned varying interests in five corporations. Four of the corporations merely owned assets, such as trucks, real property or equipment which were leased to one corporation. The court held that the value of the decedent’s stock in those corporations was to be based on the fair market value of the assets held by the corporations because the assets were fully depreciated and were held for investment and not used in a trade or business of the corporations. The value of the decedent's stock was discounted for lack of marketability and for minority interests. Estate of Ford v. Comm'r, 95-1 U.S. Tax Cas. (CCH) ¶ 60,196 (8th Cir. 1995).

The taxpayer established a 10-year irrevocable trust for the taxpayer funded with S corporation stock. The trust provided an annual annuity of a percentage of the fair market value of the trust assets to be paid to the taxpayer on the anniversary of the creation of the trust. If the taxpayer died before the trust terminated, the trust assets were to be paid to the taxpayer's estate. At the end of ten years, the trust assets passed to taxpayer's children. The IRS ruled that (1) the taxpayer would be considered the owner of the trust if the value of the taxpayer's reversionary interest exceeded 5 percent of the value of all trust assets, (2) no gain or loss...
would be recognized from contribution of S corporation stock to the trust, (3) the trust was a QSST, (4) the taxpayer's interest in the trust was a qualified annuity interest under I.R.C. § 2702(b) such that the value of the gift to the children would be the fair market value of the property transferred to the trust less the value of the taxpayer's annuity interest, (5) payment of the annuity amount on the anniversary date with no proration during the first taxable year did not disqualify the annuity interest under Treas. Reg. § 25.2702-3(b), and (6) if the taxpayer survives the term of the trust, the property in the trust would not be included in the taxpayer's gross estate. Ltr. Rul. 9519029, Feb. 10, 1995.

FEDERAL INCOME TAXATION

C CORPORATIONS-ALM § 7.02.*

CONSTRUCTIVE DIVIDENDS. The taxpayer was the sole shareholder of a corporation and made withdrawals of cash from the corporation which were used to buy personal property and for personal expenses. The court held that the withdrawals were constructive dividends and not loans because the withdrawals had no date for repayment and the taxpayer forgave a portion of the withdrawals as bonuses each year, showing an intent not to repay the withdrawals. Tahamtan v. Comm'r, T.C. Memo. 1995-226.

The taxpayer was the sole shareholder of a corporation which made payments on the taxpayer's credit card accounts and a bank loan. The court held that the credit card payments were constructive dividends because the credit card was used to purchase the shareholder's personal items. The payments made to the bank were not constructive dividends because the payments were made in satisfaction of the corporation's bona fide obligation to the shareholder. Reis v. Comm'r, T.C. Memo. 1995-231.

CONSTRUCTIVE INCOME. The taxpayers, husband and wife, claimed all of the interest on their home mortgage as a personal deduction. However, a portion of the mortgage payments were made by a corporation owned by the taxpayers, although the corporation payments were not included by the taxpayers in their gross income. The taxpayers argued that they contributed personal funds to the corporation checking account from which the payments were made. The court held that the corporation payments were included in the taxpayers' gross income because the taxpayer provided no evidence of an intent to repay the corporation for the mortgage payments. Upper v. U.S., 95-1 U.S. Tax Cas. (CCH) ¶ 50,257 (D. N.J. 1995).

COURT AWARDS AND SETTLEMENTS-ALM § 4.02[14]. The taxpayer had brought a state court action for misrepresentation and breach of contract by the purchaser of the taxpayer's business. The parties settled with a payment to the taxpayer. The court held that the damages allocable to the misrepresentation claim were excludible from taxable income as tort damages, but that the breach of contract damages were not excludible. The appellate decision is designated as not for publication. Fits v. Comm'r, 95-1 U.S. Tax Cas. (CCH) ¶ 50,254 (8th Cir. 1995), aff'd, T.C. Memo. 1994-52.

The taxpayer had filed a suit against a former employer for violations of the Employee Retirement and Income Security Act of 1974 (ERISA). The taxpayer prevailed on the suit and a Special Master was appointed to determine the damage award. Based on the belief that extracontractual and punitive damages were awardable in ERISA actions, the Special Master characterized a portion of the settlement as for "dignitary injuries." The taxpayer excluded this portion of the settlement from gross income as relating to a "tort-like" action. The court held that extracontractual and punitive damages were not allowed in ERISA actions, therefore, no portion of the settlement could be excluded from gross income because ERISA did not provide any tort-like cause of action. Dotson v. U.S., 95-1 U.S. Tax Cas. (CCH) ¶ 50,258 (S.D. Tex. 1995).

DEPRECIATION-ALM §4.03[4]. The IRS has issued a safe harbor for the definition of demolition of a structure under I.R.C. § 280B. Under Section 280B, the costs of demolition of a building must be capitalized in the cost of the land on which the building stood. Under the safe harbor, the modification of a building will not be considered a demolition if (1) 75 percent or more of the existing external walls remain in place as external or internal walls and (2) 75 percent of the existing internal structural framework remain in place. Rev. Proc. 95-27, I.R.B. 1995-23.

HOBBY LOSSES-ALM § 4.05[1]. The taxpayer claimed deductions for expenses relating to a goat raising activity. The court held that the deductions were not allowed because the goat raising business was not entered into with the intent to make a profit since the activity was not conducted in a business-like manner. The appellate court affirmed but noted that the Tax Court's requirement that the taxpayer have an ultimate goal of realizing a profit to offset early losses is too broad a standard. The appellate decision is designated as not for publication. Keller v. Comm'r, 95-1 U.S. Tax Cas. (CCH) ¶ 50,250 (6th Cir. 1995), aff'd, T.C. Memo. 1993-415.

INTEREST. The taxpayer was a corporation which grew timber and manufactured paper products. The corporation sold some of its stock to a third party and the sale contract provided for "interest" on the sale price for the period between the contract and the closing date which could not occur until ICC approval was obtained. The corporation treated this "interest" as part of the purchase price included in long term capital gain on the stock. The IRS argued that the "interest" was taxable as interest and thus was ordinary income. The court held that the "interest" was part of the purchase price included in the long term gain because the purchaser could withdraw from the contract before closing and did not acquire title to the stock before closing. International Paper Co v. U.S., 95-1 U.S. Tax Cas. (CCH) ¶ 50,246 (Fed. Cls. 1995).

JURISDICTION. The taxpayer had applied to the IRS for abatement of interest on tax deficiencies because of delay caused by a criminal investigation. The IRS denied the application and the taxpayer petitioned the Tax Court for review of the IRS decision. The court held that the Tax Court did not have jurisdiction to review the IRS decision. Melin v. Comm'r, 95-1 U.S. Tax Cas. (CCH) ¶ 50,265 (7th Cir. 1995).

PARTNERSHIPS-ALM § 7.03.*

LIABILITIES. Two persons formed a partnership with one person contributing depreciable property subject to a
nonrecourse liability of $6,000, a book value of $10,000 and an adjusted basis of $4,000. The other person contributed $4,000 in cash. The IRS ruled that the partnership had $6,000 of I.R.C. § 704(c) built-in gain from the depreciable property and the contributing partner’s share of the nonrecourse liabilities was to be determined under Treas. Reg. § 1.752-3. Under Section 1.752-3(a)(1), the partners do not receive an allocation of nonrecourse liabilities because the book value exceeded the nonrecourse liability immediately after the contribution of the property. Under Section 1.752-3(a)(2), the nonrecourse liabilities are allocated as provided by I.R.C. § 704(c) as if the property was sold by the partnership in exchange only for assumption of the liability. In this case, such a transaction would result in $2,000 of taxable gain which would be allocated to the contributing partner and $4,000 of book loss, $2,000 of which would be allocated to each partner, if the partnership used the traditional method of making Section 704(c) allocations. If the partnership used the remedial allocation method of Treas. Reg. § 1.704-3(d), the partnership would make a remedial allocation of $2,000 tax loss to the noncontributing partner and a remedial allocation of tax gain to the contributing partner; thus, the contributing partner would be allocated $4,000 of the nonrecourse liabilities. If the partnership used the curative allocation method of Treas. Reg. § 1.704-3(c), the contributing partner would be allocated $2,000 of the nonrecourse liability. The excess nonrecourse liabilities are allocated under one of the alternatives of Section 1.752-3(c). Rev. Rul. 95-41, I.R.B. 1995-37.

LIMITED LIABILITY COMPANIES. The taxpayers formed a limited liability company under the Texas Limited Liability Act. The Act provides that an LLC is dissolved upon the death, expulsion, withdrawal, bankruptcy or dissolution of a member or other terminating event, unless there is at least one remaining member and a number of the remaining members, as established by the LLC agreement, vote to continue the LLC. The Act also prohibited the assignment or transfer of an LLC interest unless allowed by the LLC agreement. The IRS ruled that the LLC would be a partnership under the I.R.C. Ltr. Rul. 9520036, Feb. 17, 1995.

PENSION PLANS. For plans beginning in May 1995, the weighted average is 7.29 percent with the permissible range of 6.56 to 7.95 percent (90 to 109 percent permissible range) and 6.56 to 8.02 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). Notice 95-32, I.R.B. 1995-22, 6.

**S CORPORATIONS-ALM § 7.02[3][c].**

BUILT-IN GAIN. The taxpayer was a C corporation which had merged into an S corporation. The C corporation assets included growing timber. The IRS ruled that the income derived from the cutting of timber and the sale of the logs during the recognition period (10 years from the date of the election) would not constitute recognized built-in gain if the timber is cut during the recognition period. The sale of logs cut before the recognition period and sold during the recognition period would produce built-in gain. Ltr. Rul. 9519024, Feb. 9, 1995; Ltr. Rul. 9520044, Feb. 21, 1995.

ONE CLASS OF STOCK. An S corporation had one person and two qualified trusts as shareholders. From 1987 through 1991, the corporation made distributions to the shareholders which varied from the proportional interests of the shareholders in order to assist the shareholders in making federal income tax payments resulting from their share of corporation income. The disproportionate distributions were adjusted in 1994 to equalize the cumulative amount of per share distributions. The IRS ruled that the corporation did not create a second class of stock. Ltr. Rul. 9519035, Feb. 14, 1995.

An S corporation had three shareholders. Because of a misunderstanding of the regulations, the corporation made distributions to the shareholders based on cumulative earnings allocated to the shareholders instead of the correct allocation based on stock ownership. The corporation equalized the distributions to comply with the regulations. The IRS ruled that the temporary incorrect allocations did not create a second class of stock. Ltr. Rul. 9519048, Feb. 14, 1995.

**LABOR**

SUCCESSION CORPORATION. The plaintiff was a corporation engaged in the production, processing and transportation of poultry. A controlling interest of stock of the corporation was purchased by another corporation. Both corporations were found to have violated 29 U.S.C. § 158(a)(5) for the unfair labor practice of refusing to bargain with a union selected by a majority of the plaintiff’s workers. The purchasing corporation argued that it was not liable for the violations as a mere shareholder. The court held that the purchasing corporation became a successor to the plaintiff when it acquired a controlling interest in the plaintiff and continued the business of the plaintiff substantially unchanged. Holly Farms Corp. v. NLRB, 48 F.3d 1360 (4th Cir. 1995).

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Index to Volume 6 Nos. 1-12 (current issue pages in bold)

<table>
<thead>
<tr>
<th>Adverse Possession</th>
<th>General</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continuous use 90</td>
<td>Automatic stay 74</td>
</tr>
<tr>
<td>Exclusive possession 50</td>
<td>Avoidable liens 51, 90</td>
</tr>
<tr>
<td>Hostile possession 58</td>
<td>Avoidable transfers 2, 18, 58</td>
</tr>
<tr>
<td>Fence 58</td>
<td>Discharge 26, 35</td>
</tr>
<tr>
<td>Possession 42</td>
<td>Estate property 18, 59</td>
</tr>
<tr>
<td>Possession by cotenants 50</td>
<td>Employment of professionals 59</td>
</tr>
<tr>
<td>Animals</td>
<td>Executory contracts 18</td>
</tr>
<tr>
<td>Wild animals 26</td>
<td>Exemptions</td>
</tr>
<tr>
<td>Bankruptcy</td>
<td>Annuities 82</td>
</tr>
<tr>
<td></td>
<td>Avoidable liens 2, 10, 19, 35, 74</td>
</tr>
<tr>
<td></td>
<td>Conversion 2</td>
</tr>
<tr>
<td></td>
<td>Disability benefits 66</td>
</tr>
<tr>
<td></td>
<td>Homestead 2, 10, 27, 51, 59, 82, 90</td>
</tr>
<tr>
<td></td>
<td>Household goods 19</td>
</tr>
<tr>
<td></td>
<td>IRA 51, 90</td>
</tr>
<tr>
<td></td>
<td>Tools of the trade 74</td>
</tr>
<tr>
<td></td>
<td>Executory contracts 75</td>
</tr>
<tr>
<td></td>
<td>Involuntary petition 66</td>
</tr>
<tr>
<td></td>
<td>Revocation of discharge 75</td>
</tr>
<tr>
<td></td>
<td>Setoff 59</td>
</tr>
</tbody>
</table>

* Agricultural Law Manual (ALM). For information about ordering the Manual, see the last page of this issue. *