Developments in Perspective

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rancher wishing to lease a piece of equipment has an item to trade in. This can create significant income tax problems if handled as a single transaction—a trade in of the used item and a leasing of the replacement.

The problem is that a trade is a tax-free exchange only if it is "held for productive use in a trade or business or for investment" and is exchanged "solely for property of like kind." An exchange of a tractor for the lease of a replacement tractor, for example, does not appear to be a like kind exchange. Therefore, a trade of a used tractor for a lease of a replacement tractor is likely to be treated as a sale of the used tractor and a lease of the replacement. Such a characterization would require recognition of gain or loss, recapture of depreciation and recapture of investment tax credit on the trade in and a recalculation of the lease payments for income tax purposes. Quite clearly, the better approach, at least from the standpoint of simplicity, is to handle such trades as two separate transactions—(1) a sale of the used equipment to the dealer and (2) a lease of the replacement item.

Footnotes

1  See generally 4 Harl, Agricultural Law § 29.05 [2][d] (MB 1989).
4  Id.
8  See note 2 supra.
11 Id. at 716.
12 Id.
13 Id.
14 Id.
15 Id.
16 Id.
17 Id.
19 Id.
20 I.R.C. § 1031(a).
21 See Treas. Reg. § 1.1031(a)-1 (lease of 30 years or more of real property considered like kind in exchange for real property).

The issue of whether ERISA preempts employment plan exemptions of other states has yet to be tried. The U.S. Supreme Court in Mackey stated:

"ERISA § 514(A) preempts 'any and all State laws insofar as they may now or hereafter relate to any employee benefit plan' covered by the statute."

ERISA governs:

"Any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund or program—

(i) provides retirement income to employees, or

(ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan." 29 U.S.C. § 1002(2)(A).

Under this broad definition and Mackey, most state employment plan exemptions would be preempted by ERISA.

Note: Two courts have held that ERISA does not preempt state IRA exemptions. In re Laxson, 102 B.R. 85 (Bankr. N.D. Tex. 1989) (Texas IRA exemption not preempted by ERISA); In re Martin, 102 B.R. 639 (Bankr. E.D. Tenn. 1989) (Tennessee IRA exemption not preempted by ERISA).

Debtors have argued, without much success, that although ERISA preempts state exemptions for employment pension plans, ERISA itself is a federal exemption allowed under 11

DEVELOPMENTS IN PERSPECTIVE

PREEMPTION OF STATE EXEMPTIONS FOR EMPLOYMENT PLANS BY ERISA

A number of cases have been published recently involving the issue as to whether the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1144(a), preempts state exemptions for employment plans and prevents such exemptions from being used at the state and federal levels.

The source of the issue is the U.S. Supreme Court case, Mackey v. Lanier Collections Agency & Service, Inc., 486 U.S. 825, 108 S. Ct. 2182, 100 L.Ed.2d 836 (1988), which held that a Georgia anti-garnishment statute was unconstitutional because the subject of the statute was preempted by ERISA § 514(a), 29 U.S.C. § 1144(a). The Georgia statute expressly prohibited garnishments of ERISA plans, except in the cases of alimony or child support. Mackey, however, did not involve a bankruptcy exemption.

Although one Texas Bankruptcy Court judge has ruled that ERISA did not preempt the Texas exemption of ERISA plans, In re Volpe, 100 B.R. 840 (W.D. Texas 1989) (Kelly, B.J.), other Texas Bankruptcy Court judges and Arizona and Mississippi Bankruptcy Courts have held state ERISA plan exemptions preempted by ERISA based upon the ruling in Mackey. In re Komet, 104 B.R. 799 (Bankr. W.D. Tex. 1989), aff’d point on rehear’g 93 B.R. 498 (Bankr. W.D. Tex. 1988) (Clark, B.J.); In re Flindall, 105 B.R. 32 (Bankr. D. Ariz. 1989); In re Larson, 102 B.R. 85 (Bankr. N.D. Tex. 1989); In re McLeod, 102 B.R. 60 (Bankr. S.D. Miss. 1989); In re Dyke, 99 B.R. 343 (Bankr. S.D. Tex. 1989).
U.S.C. § 522(b)(2)(A) by virtue of its prohibition of provisions in the plan agreement for alienation or assignment of plan benefits. Most courts, however, have rejected this argument and denied the debtor’s exemption of benefits of an employment pension plan qualified under ERISA. See In re Daniel, 771 F.2d 1352 (9th Cir. 1985), cert. denied 475 U.S. 1016 (1985); In re Lichstrahl, 750 F.2d 1488 (11th Cir. 1985); In re Graham, 726 F.2d 1268 (8th Cir. 1984); In re Goff, 706 F.2d 574 (5th Cir. 1983); In re Gibben, 84 B.R. 494 (S.D. Ohio 1988); In re Slezak, 63 B.R. 625 (Bankr. W.D. Ky. 1986); In re O’Brien, 50 B.R. 67 (Bankr. E.D. Va. 1985).

One Texas Bankruptcy Court, however, held that a debtor’s interest in an employment plan is exempt under the “other federal law” provision of 11 U.S.C. § 522(b)(2)(A), where the retirement plan agreement contained anti-alienation language required by ERISA § 206(d). 29 U.S.C. § 1056(d). In re Komet supra. In so holding the court in Komet declined to follow In re Goff which stated that ERISA does not create a federal exemption for ERISA qualified plans. An Arizona Bankruptcy Court, however, has followed Goff and held the ERISA anti-alienation provision not to create a federal exemption. In re Flindall, 105 B.R. 32 (Bankr. D. Ariz. 1989).

In support of its holding, the Texas Bankruptcy Court argued that because the ERISA anti-alienation provision has been held by many courts to override state garnishment statutes, the anti-alienation provision operates as a federal exemption. The court disagreed with Goff’s assertion that the anti-alienation provision serves only as a qualification requirement for federal income tax benefits. See also Note, Exemption of ERISA Benefits Under Section 522(b)(2)(A) of the Bankruptcy Code, 83 Mich. L. Rev. 214 (Oct. 1984).

ADVERSE POSSESSION

Adverse possession by prescription of 15 acres was granted where land possessors had been conveyed the land but through a scrivener’s error, the deed described only one-fourth of the intended acreage. Possession was held adverse because the possessors had asked the owners of record to sign a corrective deed more than 20 years before the current action and had openly and exclusively used the land for farming and recreation. Daugherty v. Miller, 549 So.2d 65 (Ala. 1989).

AGRICULTURAL LABOR

MIGRANT WORKERS. Migrant farm workers were not denied due process rights by county health department’s issuance of permits for migrant farm worker’s housing which was substandard, because state housing permit laws did not create any due process rights. Issuance of permits for substandard housing did not violate Fair Housing Act because such actions did not discriminate against nonwhite migrant workers. Edwards v. Johnston County Health Dept., 885 F.2d 1215 (4th Cir. 1989).

ANIMAL PROTECTION AND QUARANTINE

SWINE. The Animal and Plant Health Inspection Service (APHIS) has issued proposed regulations for allowance of interstate transportation of swine vaccinated with PRV/Marker pseudorabies vaccine and tested by the HardChek anti-PRV-gp EKISA test. 54 Fed. Reg. 45739 (Oct. 31, 1989) amending 9 C.F.R. §§ 85.1, .6, .8-.10.

BANKRUPTCY

GENERAL

ADMINISTRATIVE EXPENSES. Although 11 U.S.C. § 503(b) is silent as to whether interest on post-petition tax liabilities receives administrative expense priority along with the post-petition taxes, the court held that the statute did not change prior case law which held that interest on post-petition taxes was entitled to administrative expense priority. In re Allied Mechanical Services, Inc., 885 F.2d 837 (11th Cir. 1989).

AVOIDABLE LIENS. Although under Minnesota law, Minn. Stat. § 550.37, Chapter 7 debtors had waived their right to claim an exemption in farm equipment by voluntarily granting a security interest in the equipment, the debtors were allowed to avoid the secured lien on the equipment as impairing their exemption under 11 U.S.C. § 522(f): “Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien....” In re Thompson, 884 F.2d 1100 (8th Cir. 1989).

CASH COLLATERAL. The debtor was allowed to use cash collateral milk sales proceeds which were subject to an assignment to an oversecured creditor. Adequate protection was supplied by the value of other collateral in excess of the creditor’s claim and by cash payments to the creditor.


EXECUTORY CONTRACTS. Land sale contract of farmland was an executory contract requiring assumption or rejection by Chapter 12 debtor before confirmation of plan. Contract vendee’s right under Indiana law to prevent forfeiture of the contract in some instances did not alter nature of contract as executory under federal bankruptcy law. In re Coffman, 104 B.R. 958 (Bankr. S.D. Ind. 1989).

EXEMPTIONS. Chapter 13 debtors were not allowed to avoid a judgment lien against their homestead where, under Ohio law, the homestead was exempt as against execution, attachment and sale but no execution, attachment or sale had been attempted. In re Dixon, 885 F.2d 327 (6th Cir. 1989), rev’g 85 B.R. 745 (N.D. Ohio 1988), affg 79 B.R. 702 (Bankr. N.D. Ohio 1987).

Under Virginia law, debtors are required to file a homestead exemption within five days after the first creditor’s meeting in a bankruptcy case. In a Chapter 13 case, the court held that the Virginia filing requirement did not apply because the homestead exemption was not used to remove property from the bankruptcy estate. Thus, the Virginia filing requirement applied only in Chapter 7 cases. However, the court also...