Cases, Regulations and Statutes

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the interest payments on the note and the fact that the son was the decedent's only heir and the natural object of her bounty.

A 1991 private letter ruling involved a somewhat similar issue. In that ruling, a revocable inter vivos trust sold an undivided five percent interest to the children. The sale was ineffective and the full fair market value of the residence was included in the decedent's gross estate.

Clearly, parent-child transfers will be subjected to close scrutiny. To minimize the chance for a successful challenge, a parent-child transfer should assure control and enjoyment to the child or children after the transfer. If the child does not move into the residence, paying real estate taxes and maintenance costs is helpful. A federal gift tax return should be filed if handled as a gift. If characterized as a sale, that characterization should not be weakened by forgiveness of principal. In the event the residence is sold by the new owners, the proceeds should not go to the decedent's estate. But even if handled at arm's length, an IRS challenge may still be successful.

### FOOTNOTES

1. Union Planters Nat'l Bank v. U.S., 361 F.2d 662 (6th Cir. 1966);

Clearly, parent-child transfers will be subjected to close scrutiny. To minimize the chance for a successful challenge, a parent-child transfer should assure control and enjoyment to the child or children after the transfer. If the child does not move into the residence, paying real estate taxes and maintenance costs is helpful. A federal gift tax return should be filed if handled as a gift. If characterized as a sale, that characterization should not be weakened by forgiveness of principal. In the event the residence is sold by the new owners, the proceeds should not go to the decedent's estate. But even if handled at arm's length, an IRS challenge may still be successful.

### CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

### BANKRUPTCY

#### GENERAL

Estate Property. When the debtor left an accounting firm, the debtor received monthly payments for the debtor's share of company stock. The payments were contingent upon the debtor's not independently performing any accounting services for the firm's clients. The debtor argued that the monthly payments were personal earnings not included in the bankruptcy estate. The court held that the payments were part of the compensation for the debtor's stock and were estate property. In re McDaniel, 141 B.R. 438 (Bankr. N.D. Fla. 1992).

Exemptions.

Annuity. The debtor owned several annuities which were claimed as exempt under Iowa Code § 627.6(8)(e). The court held that because the debtor had the right to withdraw amounts from the annuities at any time, the annuities were not eligible for the exemption. In re Huebner, 141 B.R. 405 (N.D. Iowa 1992).

Personal Injury Awards. The debtor received a $10,000 settlement from a hospital in satisfaction of a medical malpractice claim arising out of an injury to the debtor's arm. The debtor claimed $5,000 of the settlement as exempt under Ohio Rev. Code § 2329.66(A)(12), which did not allow an exemption for amounts received for pain and suffering or actual pecuniary loss. The settlement did not identify the portion of the amount which was for personal injury, pain and suffering or pecuniary loss. The trustee objected to the exemption, arguing that the debtor was required to allocate the settlement as to amounts received for personal injury and for the other purposes. The court held that the burden was on the trustee to prove that the debtor's exemption was not allowed as claimed. In addition, the court held that the Ohio exemption covered awards for personal injury and that at least $5,000 of the settlement was reasonably allocated to the personal injury and was exempt. In re Lester, 141 B.R. 157 (S.D. Ohio 1992).

The debtor received a $15,000 settlement from the debtor's insurance company on a suit against the insurance company for bad faith conduct in failing to pay the debtor's disability insurance claim arising out of an automobile accident. The debtor claimed the settlement proceeds as exempt under Wis. Stat. § 815.18(3)(i)1.e, d, which provided an exemption for awards for personal injury and pain and suffering. The court held that the settlement
proceeds were exempt because the debtor's suit against the insurance company was for emotional suffering and because the action arose out of the car accident which inflicted personal injury on the debtor. In re Harvey, 141 B.R. 164 (Bankr. E.D Wis. 1992).

SETOFF. The creditor was a company which sold cotton for its member producers, including the debtor. The creditor provided storage, sales and inventory management systems for the debtor and claimed a lien on the debtor's cotton stored with the creditor as of the bankruptcy filing. The creditor sought to setoff a portion of the proceeds by claiming that the creditor owed a debt to the debtor because if the creditor had sold the stored cotton, instead of the trustee, the creditor would have been indebted to the debtor for the cotton, less any charges. The court held that the creditor acted as a bailee and not a debtor of the debtor as to the stored cotton and was not entitled to a setoff. In re Julien Co., 141 B.R. 359 (Bankr. W.D. Tenn. 1992).

CHAPTER 11

PLAN. The debtor's plan contained an agreement between the debtor and a creditor with security interests in the debtor's personal property and four parcels of farmland. Under the agreement, each parcel of real property was valued separately and the debtor was given the right to prepay all or a portion of the amount owed. The debtor sought to sell one of the parcels free and clear of all liens. The creditor objected, arguing that it was not bound to the valuation of the property in the agreement and that any excess proceeds from the sale must be applied to the remaining loan balance. The court held that the parties were bound by the agreement's valuation of the separate parcels and that the debtor was not required by the agreement to apply to the loan balance any proceeds of the sale in excess of the valuation of the parcel set by the agreement. Therefore, the creditor was required to satisfy the lien on the sold property after the debtor tendered the amount equal to the creditor's lien against the property. In re Heine, 141 B.R. 185 (Bankr. D. S.D. 1992).

CHAPTER 12

PLAN. The debtor had mortgaged farm property to the Commissioners of the Oklahoma Land Office. In confirming the debtor's plan, the court allowed the debtor to treat the mortgage as secured to the extent of the fair market value of the property and unsecured for the amount in excess of the fair market value. The state challenged the "write down" of its mortgage as violating the Tenth and Eleventh Amendments to the Constitution. The court held that Section 106(c) of the Bankruptcy Code waived the state's right of immunity as to declaratory and injunctive relief such as provided by the "write down" provision. The court also held that the Tenth amendment does not prevent federal statutes from being applied to areas of traditional state governmental functions. In re Crook, 966 F.2d 539 (10th Cir. 1992).

TAX LIABILITY. In a Chapter 12 case, the trustee sought recovery of oil and gas property fraudulently transferred by the debtors pre-petition. The debtor's plan provided that if the trustee recovered the property, the property was to be sold and the proceeds, less the costs of sale, were to be distributed to the unsecured creditors. The trustee was able to recover the property and sold the property. The trustee sought a declaration of who was to pay the taxes on the gain from the sale. The court held that because a separate liquidating trust was not formed and the plan did not expressly provide for payment of taxes from the proceeds, the debtor was liable for any tax resulting from the sale. In re Lindsey, 92-2 U.S. Tax Cas. (CCH) ¶ 50,400 (Bankr. W.D. Okla. 1992).

CHAPTER 13

CONVERSION. The debtor owned horse boarding and riding stables and filed for Chapter 11. The court had ordered the debtor to file a plan and disclosure statement by March 1992 or face conversion of the case to Chapter 7. The case was converted to Chapter 7 by the court's own motion after the plan and disclosure statements were not filed on time. The debtor then sought to have the Chapter 7 case converted to Chapter 13. The court allowed the conversion because the debtor qualified for Chapter 13 and showed cause for the conversion from the debtor's need for additional time to improve the business to generate net income. Although the court found that the debtor currently had expenses exceeding income from the horse business, the court held that the debtor had "regular income" sufficient to qualify for Chapter 13. However, the court seemed to place great emphasis on allowing the debtor a chance to increase income above expenses so that debts could be repaid. In re Masterson, 141 B.R. 84 (Bankr. E.D. P. 1992).

PLAN. The Chapter 13 debtor filed a plan which did not provide for full payment of state and federal priority tax claims. No objections were made at the confirmation hearing but the court sua sponte rejected the plan for failure to provide full payment of priority claims. On appeal, the debtor argued that the tax creditors' failure to object to the plan evidenced their agreement to less than full payment. The court held that the bankruptcy court had an independent duty to assure that the plan complied with all Chapter 13 requirements and that the denial of confirmation was proper where no creditor had made an express affirmation of consent to the plan. In re Northrup, 141 B.R. 171 (N.D. Iowa 1991).

FEDERAL TAXATION

AUTOMATIC STAY. The debtor sought damages and attorney's fees from the IRS for the IRS's post-petition levy against the debtor's pension payments in violation of the automatic stay. The IRS argued that the action was barred by the doctrine of sovereign immunity. The court held that Section 106(c) was not a waiver of sovereign immunity as to monetary damages and dismissed the debtor's action. Matter of Toti, 141 B.R. 126 (Bankr. E.D. Mich. 1992).

AVOIDABLE LIENS. The debtor had obtained a discharge of several years' taxes and sought to avoid the perfected federal tax liens against exempt property, including the debtor's residence. The court pointed to the language of Section 522(c)(2)(B), which expressly allows exempt
property to be subject to perfected tax liens, to hold that the federal tax liens remained valid against the exempt property after the bankruptcy case. In re Rouse, 141 B.R. 218 (Bankr. W.D. Okla. 1992).

CLAIMS. The debtor objected to the amount of an IRS claim, arguing that one half of the taxes were due from the debtor's ex-spouse. The taxes arose from the partnership business of the debtor and ex-spouse and the court held that the debtor had joint and several liability for all partnership debts, including the taxes. The debtor also objected to the claim because the claim was filed after the confirmation of the Chapter 13 plan. The court held that because the plan provided for a final determination of claims within 45 days after confirmation, the timely filed additional IRS claim was allowed. In re Eiden, 141 B.R. 121 (Bankr. W.D. Tex. 1992).

DISCHARGE. The debtor failed to file and pay taxes owed for 1974-1981. Pursuant to a plea bargain agreement, the debtor pled guilty, under I.R.C. 7203, to willfully failing to file an income tax return for 1976 in exchange for dropping other charges. The debtor also filed returns for the missing years but only paid the taxes due for one year. The IRS argued that the taxes still owed for the 1974-1981 taxable years were nondischargeable under Section 523(a)(1)(C) for willful attempt to evade taxes. The court held that the debtor's guilty plea was an admission only of the element of willfulness of the failure to file and pay taxes but did not prove that the debtor made any act or commission to evade taxes; therefore, the taxes were dischargeable. Matter of Toti, 141 B.R. 126 (Bankr. E.D. Mich. 1992).

In March 1983, the debtors filed a Chapter 11 bankruptcy case. In March 1985, the debtors obtained an order disallowing IRS income tax claims but the order was reversed in April 1986. In August 1987, the Chapter 11 case was closed. In February 1989, the debtors filed for Chapter 7 and sought discharge of 1982 and 1983 taxes because the tax returns were filed more than three years before the filing of the bankruptcy petition. The debtors acknowledged that the three year period was tolled during the Chapter 11 case, but argued that the period during which the disallowance order was in effect should not be included in the tolling period. The court held that because the IRS was prevented from collecting the taxes during the period the disallowance order was in effect, that period also tolled the three year period. In re Montoya, 965 F.2d 554 (7th Cir. 1992).

REFUNDS. The Bankruptcy Court had ordered that any post-petition tax refund due to the debtor be paid directly to the trustee for distribution as provided by the debtor's Chapter 13 plan. The court held that the refund was income subject to the jurisdiction of the Bankruptcy Court and that the order did not violate the Anti-Assignment Act. In re Cochran, 141 B.R. 270 (M.D. Ga. 1992).

TAX LIENS. The debtors were three corporations which operated several convenience stores and truck stops. The bankruptcy cases of the three corporations were consolidated. One of the truck stops was sold pre-petition and the sale closed post-petition. The buyer, pursuant to Mo. Rev. Stat. §§ 143.241(5), 144.150(3), made out two checks, with one payable to the debtor and the Missouri Department of Revenue in order to assure that state taxes owed by the business were paid. The court held that the amount of this check necessary to pay state taxes due was not subject to the prior federal tax lien because the debtor had no rights in the amount. Also, a creditor had a priority perfected security interest in the assets of one of the debtor corporations and asserted that the lien covered the assets of the other corporations when the cases were consolidated. The court held that the consolidation of the debtors' cases did not affect the pre-petition priority of security interests of the individual debtors. In re Pronto Enterprises, Inc., 141 B.R. 179 (Bankr. W.D. Mo. 1992).

FEDERAL AGRICULTURAL PROGRAMS

BORROWERS' RIGHTS. The plaintiffs borrowed funds from the defendant bank, an institution subject to the Agricultural Credit Act of 1987. After the plaintiffs defaulted on their loan, the bank sought foreclosure but the subsequent passage of the 1987 Act gave the plaintiffs the possibility to restructure the debt. The bank supplied the plaintiffs with the chance to restructure their debt and the plaintiffs filed an application for restructure. The bank asked for more information and clarifications but did not set a date for return of the required information. A month later, the bank terminated the restructuring process and resumed the foreclosure. The plaintiffs asserted in defense of the foreclosure that the bank had terminated the restructuring process in bad faith. The bank argued that case law had established that the plaintiffs had no private right of action to enforce the 1987 Act. The court held that the state court action was the proper forum for asserting the bad faith defense because the bank's termination of the restructuring process left the plaintiffs without any administrative appeal process. Lillard v. Farm Credit Services, 831 S.W.2d 626 (Ky. Ct. App. 1991), cert. denied (Ky. 1992).

BRUCELLOSIS. The APHIS has withdrawn proposed regulations which would have phased out the federal indemnity program for owners of brucellosis reactor cattle and bison. 57 Fed. Reg. 37736 (Aug. 20, 1992).


FARM LOANS. The plaintiff bank made farm loans guaranteed by the FmHA. A dispute between the plaintiff and FmHA arose over one loan as to allocation of the proceeds from the sale of collateral securing the loan. When the bank refused to accept a settlement offered by the...
FmHA, the FmHA refused to guarantee any additional loans made by the bank. The court held that the refusal did not amount to an unconstitutional taking of property by the government because the bank had no right to do business with the FmHA. Bank of Jackson County v. Cherry, 966 F.2d 1406 (11th Cir. 1992).

TUBERCULOSIS. The APHIS has adopted as final the designation of Tennessee as an accredited-free state. 57 Fed. Reg. 37869 (Aug. 21, 1992).

The APHIS has issued an interim rule designating Pennsylvania as a modified accredited-free state. 57 Fed. Reg. 37869 (Aug. 21, 1992).

**FEDERAL ESTATE AND GIFT TAX**

**ALLOCATION OF ESTATE TAXES.** The will of the predeceased spouse provided for property passing to the decedent in a marital trust with a remainder to their children. The trust provided that all death taxes resulting from the death of the primary beneficiary were to be paid by the trust before distribution to the remainder holders. The court ruled that the decedent's estate taxes resulting from the distribution to the remainder holders were chargeable to the trust. Est. of Woll v. U.S., 92-2 U.S. Tax Cas. (CCH) ¶ 60,107 (S.D. Ind. 1992).

**DEDUCTION FOR TAXES.** The decedent's estate included Series HH United States Savings Bonds. The executrix elected to include the accrued interest on the bonds in the decedent's final income tax return. The IRS ruled that the income tax paid on the accrued interest was deductible from the gross estate for estate tax purposes. Ltr. Rul. 9232006, April 17, 1992.

**DISCLAIMERS.** The decedent's estate included marital community property and the decedent's separate property. The decedent and spouse had also owned property as joint tenants. The decedent died intestate and the surviving spouse disclaimed the community property and one-half of the separate property which the surviving spouse was entitled to receive under the California laws of intestate succession. The spouse also disclaimed the one-half survivorship interest in the jointly held property. The IRS ruled that the one-half survivorship interest was deductible from the gross estate for estate tax purposes. Ltr. Rul. 9232006, April 17, 1992.

**MARITAL DEDUCTION.** The decedent's will established a marital trust which was designated as a beneficiary of the decedent's interest in a profit sharing retirement plan. The trustee elected to receive payments from the plan in installments and made arrangements with the plan administrator for calculations of the portion of each installment which represented plan income. The IRS ruled that the trust was QTIP. Ltr. Rul. 92320036, May 13, 1992.

**VALUATION.** The taxpayer established an eight year irrevocable trust with the taxpayer as income beneficiary and the taxpayer's issue as remainder holders. The taxpayer retained a testamentary power of appointment over the trust corpus if the taxpayer died before the trust terminated. The trustees had the discretion to apply trust income to the payment of principal and interest on any notes held by the trust. The taxpayer sought valuation of the gift of the remainder interest using Treas. Reg. § 25.2512-5. The IRS ruled that because the trustee had discretion to apply trust income to the payment of trust notes, the value of the retained income interest was not ascertainable, thus making the valuation of the remainder interests unascertainable. Therefore, the entire amount transferred to the trust was taxable as a gift. Ltr. Rul. 9232002, Dec. 30, 1991.

**FEDERAL INCOME TAXATION**

**ALTERNATIVE MINIMUM TAX.** The taxpayers had depletion deductions for the 1984 taxable year in excess of taxable income. In calculating their alternative minimum tax, the taxpayers argued that the preference item for depletion should be reduced by the amount of excess depletion deductions because the excess deductions did not reduce their taxable income. The court held that such reduction of the preference items was not supported by statute, regulations or case authority. Allison v. U.S., 92-2 U.S. Tax Cas. (CCH) ¶ 50,405 (W.D. Tex. 1992).

**BAD DEBTS.** The taxpayer had pledged stock to guarantee a business colleague’s stock margin account. The stock was sold to satisfy the colleague’s losses and the taxpayer claimed a deduction for the lost stock. The court denied the deduction because the taxpayer failed to demonstrate that the colleague was unable to repay the taxpayer for the lost stock and had failed to pursue collection efforts. Kelly v. Comm’r, T.C. Memo. 1992-452.

**GENERATION SKIPPING TRANSFERS.** The taxpayer established irrevocable trusts for grandchildren. Each beneficiary had the power to require immediate distribution of all gifts to the trusts. The IRS ruled that (1) the beneficiaries would be considered as owners of the trusts, (2) the trusts would be eligible Subchapter S trusts, (3) transfers to the trusts would qualify for the annual gift tax exclusion, and (4) transfers to the trusts were direct skips to which the taxpayer's GSTT exemption would be automatically allocated. Ltr. Rul. 92320013, May 4, 1992.
C CORPORATIONS

CONSTRUCTIVE DIVIDENDS. The taxpayer received a bargain rental of a residence from the corporation in which the taxpayer was an officer. The court held that the difference between the rental paid and the fair rental value of the residence was compensation and not a constructive dividend where the taxpayer received less than full compensation for work for the corporation. Akers v. Comm'r, T.C. Memo. 1992-476.

STOCK. The IRS has adopted as final regulations governing the use of corporate tax attributes under I.R.C. § 382 attributable to the period preceding an ownership change of a loss corporation and the segregation of stock ownership of an open-end regulated investment company following issuances and redemptions of stock. 57 Fed. Reg. 38281 (Aug. 24, 1992).

TAX YEAR. The IRS has announced that corporations whose employees perform veterinary services are qualified personal service corporations which will be required to change to a calendar taxable year for its first taxable year after December 31, 1991, unless the corporation establishes a business purpose for a different tax year, makes an election to retain its present tax year or uses another tax year for which it is qualified. Rev. Rul. 92-65, I.R.B. 1992-35, 11.

DAIRY TERMINATION PROGRAM. The taxpayer had enrolled in the Dairy Termination Program (DTP) and sold all dairy cattle for slaughter in exchange for payments from the USDA. The IRS calculated the amount of the DTP payments entitled to capital gains treatment by using the average price of all Idaho dairy cattle sales as reported by the USDA. The taxpayer argued that the taxpayer’s cattle were above average and therefore had a higher fair market value than the average Idaho dairy cattle price. The court held that the USDA price was the best evidence of fair market value because the taxpayer failed to provide sufficient evidence to prove a higher fair market value of the taxpayer's cattle. The taxpayer also argued that an amount in excess of the fair market value should have been included in the amount eligible for capital gains treatment to account for other capital value of the cattle, such as good will and going concern value. The court rejected these additional capital amounts because the cattle were not sold for use as dairy cattle but were sold for slaughter. The court also disallowed a deduction for abandonment of the dairy facilities because the taxpayer failed to show an affirmative act of abandonment in that much of the facility was used for beef cattle raising. Standley v. Comm'r, 99 T.C. No. 13 (1992).

DEPRECIATION. The IRS has issued proposed regulations governing the election for maintaining general assets accounts for groups of depreciable assets for the purpose of claiming depreciation for the assets in each account. 57 Fed. Reg. 39374 (Aug. 31, 1992).

DISASTER PAYMENTS. The IRS has adopted as final regulations allowing cash basis farmers to elect to defer inclusion of crop insurance proceeds until the taxable year following the taxable year in which the crop destruction occurred. 57 Fed. Reg. 38594 (Aug. 26, 1992).

EMPLOYMENT BENEFITS. The IRS has ruled on the income tax affects of an employer's payment for outplacement services for terminated employees. The IRS ruled that such payments are excludible from the employee’s gross income and are not subject to FICA, FUTA and income tax withholding if the costs have a business purpose to the employer other than as employee compensation. Where the outplacement services are provided in lieu of all or a portion of severance pay, the value of the outplacement services may be claimed as a miscellaneous itemized deduction (subject to the 2 percent of gross income reduction) by the employee but the amount of the reduction in severance pay is wages subject to FICA, FUTA and income tax withholding. Rev. Rul. 92-69, I.R.B. 1992-36.

EMPLOYMENT TAXES. The taxpayer was assessed additional taxes for understatement of income. The taxpayer was also assessed social security taxes on the unreported income which was wage income. The court held that the IRS had no authority to seek payment of employment taxes from the taxpayer before seeking payment from the employer. Myers v. U.S., 92-2 U.S. Tax Cas. (CCH) ¶ 50,393 (D. Ariz. 1992).

FORECLOSURE. The taxpayers defaulted on payments for rental property subject to a recourse mortgage. The seller/mortgagee foreclosed on the property and purchased the property at the foreclosure sale for less than the amount owed by the taxpayers and obtained a deficiency judgment for the remaining balance. The court held that the proceeds of the foreclosure sale represented the amount realized by the taxpayer and the taxpayer could take a loss deduction for the amount of basis in the property in excess of the amount realized. The court noted that any additional amounts paid by the taxpayer would not be deductible and that any discharge of the indebtedness would be income to the taxpayer. Aizawa v. Comm'r, 99 T.C. No. 10 (1992).

INTEREST. The IRS has issued proposed regulations clarifying the period during which interest is allowed on overpayments credited against a taxpayer's liability for interest and additions to tax. 57 Fed. Reg. 38457 (Aug. 25, 1992).

PARTNERSHIPS

TAX YEAR. A partnership tax year was held not to have begun until the month the partnership first realized income and paid deductible expenses. Sutow v. Comm'r, T.C. Memo. 1992-473.

PENSION PLANS. The IRS has issued proposed regulations which delay the effective date of the final regulations under I.R.C. §§ 401(a)(4), 410(b) to taxable years beginning on or after January 1, 1994, to allow additional time for taxpayer compliance and time for IRS clarification and simplification. 57 Fed. Reg. 35536 (Aug. 10, 1992).
The IRS has ruled that I.R.C. §§ 411(d)(6), 401(a)(25) do not require that an early retirement window benefit be provided permanently to all employees under a retirement plan if the temporary benefit does not contravene the purposes of those sections. Rev. Rul. 92-66, I.R.B. 1992-36.

RECORDS. The IRS has issued procedures for alternative proof of payment of taxes or other tax items where the taxpayer does not have cancelled checks returned by the taxpayer's banking institution. Rev. Proc. 92-71, I.R.B. 1992-35.

RESEARCH EXPENSES. The taxpayers formed a limited partnership which invested in a corporation which grew jojoba. The partnership claimed deductions for the investment as research and experimental costs. The court held that because the corporation did no research and the technology developed by the corporation would not be used in a trade or business, the deductions were not allowed. Stankevich v. Comm'r, T.C. Memo. 1992-458.

S CORPORATIONS

INADVERTENT TERMINATION. A shareholder of an S corporation pledged stock as security for a loan. After the shareholder defaulted on the loan, the bank took the stock in foreclosure. Upon learning that the bank had acquired the stock and was not a qualified shareholder, the majority shareholder purchased the stock from the bank. The IRS waived the termination of S corporation status as inadvertent. Ltr. Rul. 9232029, May 12, 1992.

TRUSTS. S corporation stock was held in a QSST. Under state law, undistributed income from the trust was to be distributed to the beneficiary's estate unless otherwise provided by the trust. In one situation, the trust was silent as to distribution of undistributed income. The IRS ruled that because I.R.C. § 1361(d)(3)(B) has no requirements as to undistributed income at the beneficiary's death and the state law provided that the undistributed income be distributed to the beneficiary's estate, the trust remained a QSST. In another situation, the trust provided that undistributed income was to be distributed to the remainder holder. The IRS ruled that because I.R.C. § 1361(d)(3)(B) has no requirements as to undistributed income at the beneficiary's death and the undistributed income was distributed only to one person, the trust remained a QSST. Rev. Rul. 92-64, I.R.B. 1992-33, 9.

SAFE HARBOR INTEREST RATES

SEPTERNBER 1992

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SOCIAL SECURITY TAX. The taxpayer, age 70, had self-employment income from a logging business, tax exempt income from state bonds and received social security benefit payments. The court held that the self-employment income was subject to social security tax and that the social security benefits were includible in taxable income, with the tax exempt income included in the calculation of the amount of social security payments includible in taxable income. Levine v. Comm'r, T.C. Memo. 1992-469.

SECURED TRANSACTIONS

FEDERAL FARM PRODUCTS RULE. Two creditors sought priority for their security interests in the debtor's cotton. The first creditor had a security interest in the cotton granted by the seller of the cotton to the debtor. That security interest became unperfected, under U.C.C. § 9-103(1)(d)(i), as to any buyer of the cotton who purchased the cotton after the debtor purchased the cotton and removed the cotton from the seller's state. The second creditor had a security interest in all property of the debtor, but that security interest arose upon the debtor's purchase of the cotton. The second creditor argued that the federal farm products rule, 7 U.S.C. § 1631, preempted U.C.C. § 9-103(1)(d)(i), and that the first creditor's security interest was unperfected under the federal rule. The court held that the federal rule did not preempt the state law and that the first creditor's security interests in the seller's cotton had priority except for the security interests which complied with the federal rule and those for which the debtor complied with the federal rule. The court left open the issue as to whether the second creditor's security interest in the purchased cotton arose after the cotton was removed from the state in which the first creditor's security interest was filed. In re Julien Co., 141 B.R. 384 (Bankr. W.D. Tenn. 1992).

PERFECTION. The debtors were husband and wife and owned and operated a farm. The husband had granted a bank a security interest in all farm equipment but the financing statement was signed only by the husband. In the debtor's bankruptcy case, the trustee asserted that one-half of the non-exempt equipment belonged to the wife and that the security interest in that equipment was not perfected because the financing statement did not list the wife as debtor and was not signed by the wife. The court held that the wife held a one-half interest in all farm equipment because the bank failed to rebut the evidence that the equipment was acquired with joint funds after the debtors were married. The court also held that no evidence was presented that the farm was operated as a formal partnership. The court held that the omission of the wife's name and signature from the financing statement was a seriously misleading omission causing the security interest to be unperfected. In re Griffin, 141 B.R. 207 (Bankr. D. Kan. 1992).
VALUE OF COLLATERAL. The debtor owned two parcels of farm land, each subject to a security interest. The Chapter 7 bankruptcy trustee filed a notice of intent to sell the land by auction which would offer the parcels separately and as one unit, depending upon which method produced the larger amount of proceeds. No objection to the sale or method of sale was filed by either security interest holder. The land was sold at auction as one unit for $307 per acre. The one creditor objected to a pro rata distribution of the proceeds because the creditor claimed that its collateral was worth more than the other parcel of land. The court held that the creditor was estopped from objecting to the pro rata allocation of the proceeds because the creditor did not object to the method of sale and did not assert the unequal value of the collateral before the sale. In re Boyer, 141 B.R. 214 (Bankr. D. Kan. 1992).

WAREHOUSE LIEN. The creditor was a company which sold cotton for its member producers, including the debtor. The creditor provided storage, sales and inventory management systems for the debtor and claimed a lien on the debtor’s cotton stored with the creditor as of the bankruptcy filing for the services provided as to previously stored and sold cotton. The warehouse receipts stated that the creditor claimed a lien for all charges relating to the stored cotton. The court held that the warehouse receipts were insufficient for the creditor to assert a lien against the stored cotton, under U.C.C. § 7-209, for charges relating to other goods because the warehouse receipts did not expressly provide that the stored cotton would be subject to a lien for charges against other cotton. In re Julien Co., 141 B.R. 359 (Bankr. W.D. Tenn. 1992).

STATE REGULATION OF AGRICULTURE

PESTICIDES. The plaintiff’s grapes were seized by the state department of agriculture because the plaintiff had sprayed the grapes with an “economic poison.” The plaintiff argued that the statute which authorized the seizure was unconstitutional because the statute did not provide for compensation in the case of a wrongful taking. The court held that the seizure statute was constitutional because the plaintiff had other means of suing for compensation for wrongful seizure. Sandrini Bros. v. Voss, 9 Cal. Rptr.3d 763 (Cal. Ct. App. 1992).