Cases, Regulations and Statutes

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rentals involved should not be included in self-employment income.

For those renting both machinery and land in retirement, including both in the same lease should buttress the argument that the amounts received are not subject to self-employment tax. In that event, the language of Section 1402 should apply which specifically excludes rentals from personal property rented with real estate from net earnings from self-employment.

Those renting personal property who do not wish to have the rentals included in self-employment income should develop the strongest possible case for passive investor status rather than trade or business status. Thus, the lease should be drafted to place responsibility on the lessee for maintenance and repair of the rental property, for example, and the lessee should avoid involvement in management or decision making relative to property under the lease. The net income could then be reported on line 22 of Form 1040 (or on Form 4835 or Schedule E) with the reported as "net income from passive rental activity."

FOOTNOTES

2 I.R.C. § 1402(a).
3 I.R.C. § 1402(b).
4 I.R.C. § 1402(a)(1).
5 Id.
6 I.R.C. § 1402(a).
7 Id.
8 I.R.C. § 1402(c).
10 See I.R.C. § 1402.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

HOSTILE POSSESSION. The parties' lands were separated by a fence which extended onto the plaintiff's land at the northern end and extended onto the defendant's land at the southern end of the fence. The court held that neither party could claim adverse possession of the disputed areas because the possession of the disputed area was not continuously hostile by either party over a single ten year period. Blankenship v. Payton, 605 So.2d 817 (Miss. 1992).

ANIMALS

CATTLE. The plaintiff sued the owner of a bull for the death of the plaintiff's spouse who collided with the bull on a highway near the bull owner's farm. The court held that the bull's owner was not strictly liable for the accident because the plaintiff failed to show any vicious propensity of the animal known to the owner. The court found that all cattle seek to escape from fenced areas. The court also held that the mere escape of the bull was not evidence of negligence per se by the owner but that negligence required a showing of the owner's unreasonable choice of method of confinement or the owner's allowing the animal to remain at large after knowledge of the escape. Greathouse v. Armstrong, 601 N.E.2d 419 (Ind. Ct. App. 1992).

BANKRUPTCY

GENERAL

EXEMPTIONS.

AVOIDABLE LIENS. The debtors sought to avoid a judicial lien against their homestead as impairing their homestead exemption. However, the debtors had no equity interest in the homestead because the amount of consensual liens against the home exceeded the fair market value of the home. The court held that the liens could not be avoided


HOMESTEAD. Prior to filing bankruptcy, the debtors sold their rural home for cash and a note and purchased a ranch. The debtors claimed as exempt the current homestead and the proceeds of the sale of the first homestead. The court held that the debtors were limited only to one exemption and denied the exemption for the remainder of the proceeds of the first residence. In re England, 975 F.2d 1168 (5th Cir. 1992), aff'g, 141 B.R. 495 (N.D. Tex. 1991).

IRA. The debtor claimed an exemption for the debtor's interest in an IRA which contained funds rolled over from an ERISA qualified pension plan. The court held that the IRA was not estate property to the extent of the rolled over plan funds but that any additional funds contributed to the IRA were not exempt. In re Morgan, 145 B.R. 760 (Bankr. N.D. N.Y. 1992).

The debtor's interests in Keogh and IRA plans were not excluded from the bankruptcy estate because the debtor failed to present evidence of any anti-alienation or transfer restrictions. The interests were eligible for the exemption under Cal. Civ. Code Proc. § 704.115(e) only to the extent reasonably necessary for the support of the debtor. In re Switzer, 146 B.R. 1 (Bankr. C.D. Cal. 1992).

PENSION PLAN. The debtor's exemption for an interest in a pension plan was denied because the funds were not reasonably necessary for the debtor's support. In re Cauvel, 146 B.R. 166 (Bankr. W.D. Pa. 1992).

TENANCY BY THE ENTIRETIES. The debtor was allowed an exemption for the debtor's interest in a residence owned with the non-debtor spouse as tenants by the entireties but only as to the amount of equity remaining after joint debts. In re Maloney, 146 B.R. 168 (Bankr. W.D. Pa. 1992).

GRAIN ELEVATORS. Prior to the debtor's filing for bankruptcy, the Missouri Department of Agriculture
discharge after completion of payments under the plan, even if the creditors petitioned for stay of the order pending appeal. The court denied the petition, holding that the MDA would not be injured by the order, that the MDA was not likely to succeed on appeal, and that public policy would not be served by the stay because most of the unsecured creditors had claims against the funds. In re Mount Moriah Elevator, Inc., 146 B.R. 451 (Bankr. W.D. Mo. 1992). See also In re Mount Moriah Elevator, Inc., 143 B.R. 905 (Bankr. W.D. Mo. 1992).

PREFERENTIAL TRANSFERS. The debtor operated a grape storage and processing facility and had purchased grapes which were stored at the facility. In an attempt to decrease the debtor's debt to the supplier for the grapes, the debtor set off the storage costs against the purchase price of the grapes during the 90 days prior to filing for Chapter 11. In addition, during this same period the debtor entered into an agreement with the supplier to blend the purchased grapes with some of the debtor's own stock and sell the processed fruit to a third party, with the proceeds paid directly to the supplier. The court held that the offset of storage costs was a preferential transfer subject to avoidance. The blended contract was also a preferential transfer except to the extent of the value of the supplier's grapes used. The court held that the transfers were not eligible for setoff or recoupment because the transfers were not part of the original grape purchase contract. In re Keystone Foods, Inc., 145 B.R. 502 (Bankr. W.D. Pa. 1992).

CHAPTER 12 ADMINISTRATIVE EXPENSES. After the Chapter 12 debtors sought discharge after completion of the plan, a creditor sought recovery of its expenses, over $17,000, in pursuing the recovery of these funds. The court held that the fees were recoverable. In re Peterson, 145 B.R. 631 (Bankr. D. S.D. 1992).

DISCHARGE. The debtor's Chapter 12 plan provided for avoidance of the unsecured portion of a secured creditor's undersecured claim. The creditor argued that the unsecured portion could not be avoided until the secured portion had been paid. The court held that the unsecured portion of the claim would be avoided when the debtor was granted a discharge after completion of payments under the plan, even where the payments on the secured portion could continue after the plan period. In re Leverett, 145 B.R. 709 (Bankr. W.D. Okla. 1992).

During the Chapter 12 plan, a secured creditor obtained relief from the automatic stay to repossess collateral securing its claim. Some of the collateral, cattle, were sold by the debtor after the creditor failed to repossess the cattle for three months. The other collateral, farm equipment, was sold by the creditor in another state at auction. The court argued that the creditor was not entitled to any deficiency payment for the collateral because the collateral was not sold in a commercially reasonable manner. The debtors sought discharge after all other payments were made except for the deficiency. The court refused to decide the commercial reasonableness issue, noting that the plan provided for resolution of the dispute between the parties. The court held that although the debtors could petition for a "hardship discharge," as long as plan payments remained to be made, no discharge could be granted. In re Grimm, 145 B.R. 994 (Bankr. D. S.D. 1992).

DISMISSAL. The debtor had filed a Chapter 11 case prior to enactment of the Family Farm Bankruptcy Act of 1986 and had made substantial payments under the plan. Before the Chapter 11 case was completed, the debtor filed for Chapter 12 in an attempt to further reschedule secured debts remaining from the Chapter 11 case. The court dismissed the Chapter 12 case as filed in bad faith and in violation of Section 302(c)(1) of the 1986 Act. In re Utne, 146 B.R. 242 (Bankr. D. S.D. 1992).

DISPOSABLE INCOME. The Chapter 12 debtors had filed for discharge after completing payments under the plan. Creditors objected to the discharge because the debtors had not paid all disposable income to the trustee. The debtors argued that the remaining funds were needed to finance the next year's farming operations. The creditors argued that the debtor should be required to obtain financing for the next year's crop, thus freeing up the available funds to be paid to unsecured creditors. The court held that the issue of whether the debtor should be required to seek financing was factual, dependent upon whether the debtor could obtain financing and how much financing would be sufficient for a successful operation. The court denied discharge at this time and gave the debtor an additional opportunity to seek discharge by demonstrating that borrowing would be unavailable or at least unfeasible. In re Schmidt, 145 B.R. 983 (Bankr. D. S.D. 1991).

Creditors objected to the Chapter 12 debtor's discharge based on the debtor's failure to pay all disposable income to the trustee. Specifically, the creditors argued that (1) over $9,000 in a bank account were disposable income, (2) the increase in cows, calves and bulls represented disposable income and (3) the debtor's tithing to a church was disposable income. The court held that the amounts were not disposable income because (1) the $9,000 was a necessary and not excessive amount for the debtor to finance the next year's farming operations, (2) the additional cattle were not an excessive expansion of the operation, and (3) the tithing was done within the income of the debtor projected in the plan. In re Stottlemyre, 146 B.R. 234 (Bankr. W.D. Mo. 1992).

MODIFICATION OF PLAN. The Chapter 12 debtors sought modification of their confirmed plan to
extend the plan beyond five years after the first payment under the original plan. The court held that the modification would violate Section 1222(c) and could not be allowed. The court also held that because the debtors were in default of their first payment under the original plan, the plan was not feasible and ordered dismissal unless the debtors converted the case within 15 days. In re Whitby, 146 B.R. 19 (Bankr. D. Idaho 1992).

FEDERAL TAXATION

ALLOCATION OF PLAN PAYMENTS FOR TAXES. The Chapter 7 debtor was a “responsible person” liable for I.R.C. § 6672 penalty for failure of the debtor's corporation to pay withholding taxes. The corporation had also filed Chapter 7 bankruptcy and also owed other taxes. The corporation made a payment on its tax claims and the debtor requested reduction of the Section 6672 penalty claim in the debtor's case. The court held that absent proof of the need to allocate the tax payment to the withholding claim in order to successfully reorganize, the IRS was not required to allocate the tax payment as requested by the corporation debtor. U.S. v. Pepperman, 976 F.2d 123 (3d Cir. 1992).

ESTATE PROPERTY. A federal income tax refund was sent by the IRS to a Friend of the Court who administered the debtor's child support obligation for the state. The refund was placed in an escrow account and the Friend of the Court obtained a sequestration order to acquire the funds. These events all occurred prepetition. The court held that the refund was estate property but was not eligible for an exemption because the refund was for child support. In re Rouse, 145 B.R. 546 (Bankr. W.D. Mich. 1992).

GOVERNMENTAL IMMUNITY. In January 1988, the Chapter 13 debtors were granted a discharge of all claims, including federal tax claims. In May 1990, the IRS filed a notice of tax lien against the debtors' property for the taxes discharged in the bankruptcy case. The debtors sought sanctions against the IRS for violating the permanent injunction created by the discharge. After a court order found that the lien violated the injunction, the IRS levied against the debtors' bank account. The IRS argued that monetary sanctions were prohibited by United States v. Nordic Village, 112 S. Ct. 1011 (1992). The court held that an action for monetary sanctions was not barred where the IRS filed a claim in the case and the sanctions related to that claim. In re Moulton, 146 B.R. 495 (Bankr. M.D. Fla. 1992).

JURISDICTION. Prior to filing for bankruptcy, a corporation paid a portion of its federal employment taxes and the IRS applied the payment to the deficiency in such a manner as to leave trust fund liability outstanding. After the bankruptcy petition was filed, the corporation sought to enjoin the IRS from assessing the I.R.C. § 6672 responsible person penalty against the corporation's president. The court held that the action was barred by the Anti-Injunction Act, 26 U.S.C. § 7421, because the corporation failed to show that the IRS would not prevail on the merits and the corporation would suffer irreparable harm. Matter of Ray Stevens Paving Co., 145 B.R. 647 (D. Ariz. 1992).

PENSION PLAN. The debtor was assessed the 10 percent tax, under I.R.C. § 4980, for reversion of a qualified pension plan to the debtor as employer. The IRS argued that the tax was entitled to a priority under Section 507(a)(7)(E) because the tax was enacted to recapture the tax advantages resulting from contributions to qualified pension funds. The court held that the tax was not a penalty and was entitled to priority because the tax is similar to an excise tax. In re C-T of Virginia, Inc., 977 F.2d 137 (4th Cir. 1992), aff’d, 135 B.R. 501 (W.D. Va. 1991), rev’d, 128 B.R. 628 (Bankr. W.D. Va. 1991).

POST-CONVERSION INTEREST AND PENALTIES. During the administration of the debtor's Chapter 11 case, the debtor incurred penalties and interest on taxes incurred during the Chapter 11 case. The case was converted to Chapter 7 and the IRS argued that Section 348(d) allowed the penalties and interest to continue to accrue during the Chapter 7 case. The court held that under a pre-bankruptcy code case, Nicholas v. U.S., 384 U.S. 678 (1966), the penalties and interest did not continue to accrue after the conversion. In re Sun Cliffe, Inc., 92-2 U.S. Tax Cas. (CCH) ¶ 50,577 (Bankr. D. Colo. 1992).

SUBROGATION. The debtor was a 50 percent partner in a partnership which owed state and federal taxes. The other nondebtor partners paid the partnership tax liabilities and then filed a claim in the bankruptcy case and sought subrogation of the state and federal tax claims as to the amount paid for the partnership taxes. The court held that the nondebtor partners' claim could not be subrogated where other tax claims could be filed against the debtor. In re Davis, 145 B.R. 499 (Bankr. W.D. Pa. 1992).

TAX YEAR ELECTION. An involuntary Chapter 11 petition was filed against the debtor in June 1986 and the order for relief was filed in October 1986. In January 1987, the debtor filed an election to terminate the debtor's tax year as of the filing of the order for relief. The IRS disallowed the election, arguing that the election had to be filed within four and one-half months after the involuntary petition was filed. The court held that the election was valid because it was filed within four and one-half months after the order for relief was filed. In re Kreidle, 146 B.R. 464 (Bankr. D. Colo. 1991), aff’d, 143 B.R. 941 (D. Colo. 1992).

FEDERAL AGRICULTURAL PROGRAMS

ALIEN AGRICULTURAL WORKERS. The plaintiff had entered the country illegally but in October 1987 applied for legal residency as a seasonal agricultural worker. Although residency was not approved until April 1988, the residency status was made retroactive to October 1987. In December 1987 the plaintiff had applied for food stamps and erroneously received food stamps from the state. The state sought refund of the food stamps for the period prior to the approval of residency. The court held that the retroactive approval of the residency status validated the plaintiff's entitlement for the food stamps. The court noted
that the holding did not mean that illegal aliens were entitled to food stamps during the pendency of their residency applications. Velez v. Coler, 978 F.2d 647 (11th Cir. 1992).

BORROWER'S RIGHTS. The plaintiffs applied for an FmHA farm emergency loan which was granted subject to the plaintiffs acquiring a subordination of a lien on the plaintiffs’ next year's crop. When the subordination was not obtained, the loan approval was rescinded. However, the FmHA later ruled that the lien subordination was not necessary. The plaintiffs sued for negligence by the FmHA under the Federal Tort Claims Act. The court held that, under Ohio law, the FmHA had no fiduciary duty to the plaintiffs before final loan approval, thus no action under the Federal Tort Claims Act could be brought. Shaner v. U.S., 976 F.2d 990 (6th Cir. 1992).

BRUCELLOSIS. The APHIS has adopted as final the change in designation of Illinois and Indiana from Class A to Class Free states. 57 Fed. Reg. 56439 (Nov. 30, 1992).

FARM LOANS. The FmHA has adopted as final amendments to the Farm Labor Housing Loan and Grant regulations. The changes affect unauthorized rents, income eligibility, occupancy of farm housing, delegation of authority, verification of income and verification of income from farm labor. 57 Fed. Reg. 59900 (Dec. 17, 1992).

GRAIN STANDARDS. The FGIS has adopted as final regulations revising the U.S. Standards for wheat to (1) remove the description for Red Durum wheat from the definition of unclassed wheat, (2) reduce the sample grade criteria for stones to four or more, (3) reduce the sample grade criteria for glass to one or more, (4) establish a cumulative total criteria for factors which may cause sample grade, (5) reduce the limit for ergot to .05 percent by weight, (6) reduce the minimum criteria for the special grade light smutty wheat to more than 5 smut balls, and (7) reduce the grading limits for foreign material in grades 1, 2 and 3. 57 Fed. Reg. 58961 (Dec. 14, 1992).

The FGIS has adopted as final regulations revising the U.S. Standards for sorghum to (1) reduce the limit for light smutty wheat to more than 5 smut balls, and (7) reduce the grading limits for foreign material in grades 1, 2 and 3. 57 Fed. Reg. 58961 (Dec. 14, 1992).

PACKERS AND STOCKYARDS ACT. The plaintiff had obtained surety bonds from the defendant as required by the Packers and Stockyards Act. Claims were filed against the bonds based on insufficient funds checks issued by a third party whom the claimants believed was working for the plaintiff. After the claims were filed, the defendant terminated the surety bonds. The plaintiff claimed the termination was improper under the surety agreement because the claims were frivolous. The court held that the surety agreement allowed the defendant to cancel the bonds for any reason after notice. The plaintiff also alleged that the Packers and Stockyards Administration was liable for negligence in that the PSA failed to properly investigate the insufficient funds checks. The court held that the suit against the PSA was without subject matter jurisdiction because the PSA investigation was a discretionary function. Cooper v. American Auto. Ins. Co., 978 F.2d 602 (10th Cir. 1992).

TUBERCULOSIS. The APHIS has adopted as final the change in designation of Pennsylvania from an accredited-free to a modified accredited state. 57 Fed. Reg. 56439 (Nov. 30, 1992).

FEDERAL ESTATE AND GIFT TAX

ASSESSMENT. In 1984, the IRS and taxpayers had entered into an agreement in settlement of income tax deficiencies arising from transfers of property to a family corporation. In 1989, the IRS assessed gift tax deficiencies from the same transactions and tax years. The court held that I.R.C. § 6212(c)(1) allowed separate assessments of income and gift tax for the same transactions in the same tax year. Towe v. Comm’r, T.C. Memo. 1992-689.

CHARITABLE DEDUCTION. The decedent's will bequeathed property in trust to a brother with split remainder interests to a nephew and a church. After the IRS disallowed a charitable deduction for the present value of the remainder interest to the church under I.R.C. § 2055(e)(2)(A), the estate made a cash gift to the church equal to the present value of the remainder interest. The court held that the cash gift was also nondeductible as an attempt to bypass the requirements of Section 2055(e)(2)(A). Est. of Burdick v. Comm’r, 92-2 U.S. Tax Cas. (CCH) ¶ 60,122 (9th Cir. 1992), aff’g, 96 T.C. 168 (1991).

GENERATION SKIPPING TRANSFERS. The taxpayers created two trusts in 1976, one for each of their children, with remainders to the issue of the beneficiaries. The trusts provided for distribution of trust income and corpus for the beneficiary's comfort and welfare. No additions had been made to the trusts after September 25, 1985. The trusts were amended after 1986 to provide for a trust committee with the authority to remove and replace trustees, but no grantor or beneficiary was to serve on the committee or as trustee. The trusts were also amended to provide for "reasonable compensation to trustees who render services to trusts." The IRS ruled that the changes did not subject the trusts to GSTT. Ltr. Rul. 9247020, Aug. 24, 1992.

Prior to 1985, the taxpayer had established a trust with three beneficiaries. The trustee had discretion to distribute all trust income and principal, even to the point of terminating the trust. After 1986, additions were made to the trust which were subject to GSTT; thus, the trust contained some property subject to GSTT. The trustee distributed the trust accumulated income and corpus to the three beneficiaries, with two of the beneficiaries receiving their distribution in trust. The new trusts gave the beneficiary a testamentary general power of appointment, with any remainder passing to the beneficiary's issue. The IRS ruled that (1) the distributions to the new trusts would not be subject to GSTT except as to the additional property, (2) the distributions to the new
trusts were taxable terminations causing recognition of GSTT as to the additional property, and (3) the new trusts would be considered the transferees of all property in the trusts for purposes of further GSTT. Ltr. Rul. 9248010, Aug. 27, 1992.

MARITAL DEDUCTION. The decedent's will bequeathed property in trust to the surviving spouse who was also named as co-executor with a bank. Under the will, the marital trust was to be funded with only property for which the executor elected QTIP treatment. Under the will, property for which a QTIP election was not made passed to a trust for the decedent's children. The surviving spouse arranged the probate court proceedings such that the co-executor bank would not become co-executor until after the QTIP election was made. The Tax Court had agreed with the IRS that the property passing to the marital trust for which a QTIP election was made did not qualify as QTIP because the power of the executor amounted to a power to appoint the marital property to someone other than the surviving spouse. The appellate court reversed and held that because the statute and regulations defined QTIP property as property passing to the surviving spouse for which a QTIP election was made, the will's conditioning of the bequest upon the making of the QTIP election satisfied the QTIP requirements. Est. of Clayton v. Comm'r, 976 F.2d 1486 (5th Cir. 1992), rev'g, 97 T.C. 327 (1991).

The decedent had bequeathed property to a trust. The trustee had discretion to distribute trust income to the surviving spouse or the decedent's son or the son's male issue. The trustee also had the discretion to pay estate administration costs from the trust principal. The trust was partitioned by state court order, with one of the resulting trusts having only the surviving spouse as the income beneficiary after the son disclaimed any right to discretionary income distributions. The son also executed an approval of the partitioning of trust assets and for the allocation of a pecuniary amount to the spouse's trust for payment of estate administration costs. The IRS ruled that the disclaimer was effective, the spouse's trust qualified as QTIP but that the allocation of the additional pecuniary amount because the additional amount did not pass from the decedent to the QTIP trust. Ltr. Rul. 9247002, Mar. 31, 1992.


VALUATION. The decedent's estate included 50 percent of the stock of a corporation. The stock was subject to a buy-sell agreement which required the decedent's estate to sell the stock to the remaining shareholder at book value. The agreement also provided that during the life of the shareholders, either shareholder could elect to dissolve the corporation with division of the proceeds of the sale of assets. The estate sold the stock to the surviving shareholder for $100,000 and the surviving shareholder liquidated the corporation for over $1 million. The court held that the value of the stock was its book value, $100,000, because the buy-sell agreement was made at arm's length and set a reasonable price at the time of the agreement. Est. of Carpenter v. Comm'r, T.C. Memo. 1992-653.

The taxpayer established a 15 year irrevocable trust which paid the grantor an annuity of the higher of a percentage of the trust assets or a percentage of the trust income. The independent trustee had the power to replace trust assets and the grantor had the power to purchase trust property for fair market value. The remainder of the trust passed to the issue of the grantor. The IRS ruled that the grantor's annuity interest was a qualified annuity interest under Treas. Reg. § 25.2702-3, and that the value of the grantor's retained annuity interest for gift tax purposes was the present value of the right to receive the annuity amount, based on the number of years in which the annuity fund would be exhausted, which in this case could be less than 15 years. Ltr. Rul. 9248016, Aug. 31, 1992.

The taxpayers were husband and wife and owned all of the common and preferred stock of a corporation. The taxpayers transferred as gifts identical proportions of each class of stock to their children. The IRS ruled that the stock would not be subject to the valuation rule of Section 2701(a)(1). The transferred stock was subject to a right of first refusal for shares transferred to persons other than permitted transferees. The right of refusal was granted to a senior debt holder in a pre-October 9, 1990 agreement. The stockholders amended the agreement to substitute other investors as holding the right of first refusal. The IRS ruled that the amendment did not subject the stock to valuation under Section 2703. Ltr. Rul. 9248026, Sept. 1, 1992, modifying, Ltr. Rul. 9226063, March 31, 1992, see Vol. 3, p. 127.

FEDERAL INCOME TAXATION

BUSINESS DEDUCTIONS. The taxpayer was president and 50 percent shareholder of a new small business corporation. In order to assist the corporation, the taxpayer incurred several expenses related to the business for which the taxpayer was not reimbursed. The court held that the taxpayer could not deduct the expenses from the taxpayer's personal taxable income because the expenses were not incurred for the taxpayer's personal business. Kliethermes v. U.S., 27 Fed. Cl. 111 (1992).

COOPERATIVES. A taxable farm cooperative distributed patronage dividends partly in cash and partly in qualified written notices of allocation. The amount of the notices was included in the patron's taxable income and deducted from the cooperative's gross income. The cooperative had the policy of redeeming some notices earlier than normal at the request of a patron, but at less than face value. The IRS ruled that the recognition rule of I.R.C. § 311(a) did not apply to cooperatives. The IRS ruled that the tax benefit rule required that the cooperative include in income the reduction in value of the notices which were redeemed for less than face value. Ltr. Rul. 9249005, Aug. 21, 1992.

DISCHARGE OF INDEBTEDNESS. The taxpayer was a partner in a partnership which had a portion of a mortgage debt cancelled. The court held that the partner did not have discharge of indebtedness income for the partner's share of the cancelled debt because the partner was insolvent.

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before and after the cancellation of partnership indebtedness. Instead, the partner’s basis in the partnership interest was reduced by the partner’s share of the cancelled debt. **Babin v. Comm’r,** T.C. Memo. 1992-673.

**INTEREST RATE.** The IRS has announced that for the period January 1, 1993 through March 31, 1993, the interest rate paid on tax overpayments remains at 6 percent and for underpayments remains at 7 percent. The interest rate for underpayments by large corporations remains at 9 percent. **Rev. Rul. 92-110, I.R.B. 1992-52.**

**INSTALLMENT REPORTING.** The taxpayer received grain as crop share rental and stored part of the grain in a local elevator for cash plus a payment a year later at a determinable price. The contract allowed the taxpayer to seek payment at an earlier date. The court held that under state U.C.C law the contracts were not payable upon demand but were instruments payable upon a definite time, subject to acceleration. Therefore, the taxpayer could report the later payment in the taxable year of receipt. The payments were held to be ordinary rental income and not income from a capital asset. **Applegate v. Comm’r,** 92-2 U.S. Tax Cas. (CCH) ¶ 50,623 (7th Cir. 1992), aff’d, 94 T.C. 696 (1990).

**INVESTMENT TAX CREDIT.** The plaintiff operated a rendering equipment which recycled animal waste. The court held that the animal products rendered were solid waste. The court also held, in agreement with **Pepcol Mfg. Co. v. Comm’r,** 98 T.C. 127 (1992), that the exception for animal waste was invalid as inconsistent with other regulations and statutes involving solid waste. Therefore, the continuous rendering equipment was eligible for the investment tax credit. **Griffin Indus., Inc. v. U.S.,** 92-2 U.S. Tax Cas. (CCH) ¶ 50,623 (7th Cir. 1992), aff’d, 94 T.C. 696 (1990).

**PARTNERSHIP.**

**LOSSES.** The debtor’s interest in a partnership became worthless upon the partnership’s filing for Chapter 7 bankruptcy and the debtor claimed the debtor’s basis in the worthless upon the partnership’s filing for Chapter 7 bankruptcy and the debtor claimed the debtor’s basis in the worthless on the partnership’s filing for Chapter 7 bankruptcy and the debtor claimed the debtor’s basis in the worthless. The court held that the loss was an ordinary loss. **In re Kreidle, 146 B.R. 464** (Bankr. D. Colo. 1991), aff’d, 143 B.R. 941 (D. Colo. 1992).

**RETURNS.** The IRS has adopted as final regulations which provide that no information return is required from a broker for excepted sales. Excepted sales are defined as sales designated as excepted by IRS revenue ruling or revenue procedure. **57 Fed. Reg. 58983** (Dec. 14, 1992), amending Treas. Reg. § 1.6045-1.

**S CORPORATIONS.**

**ESTATES.** The decedent’s estate included shares of S corporation stock which were bequeathed to an individual. The executor elected to pay federal estate tax by installments under I.R.C. § 6166 and would retain the stock to facilitate payment of the estate tax by installments. The IRS ruled that the estate ownership of the stock did not cause termination of the S corporation status. **Ltr. Rul. 9247035, Aug. 27, 1992.**

**ONE CLASS OF STOCK.** An S corporation established a split-dollar life insurance agreement as a fringe benefit for employees under which the corporation would pay the premiums on existing life insurance policies owned by the employees, less the term insurance cost. The IRS ruled that the agreement did not establish a second class of stock. **Ltr. Rul. 9248019, Aug. 31, 1992.**

**TRUSTS.** The taxpayer established two identical irrevocable trusts, each with one beneficiary, and funded the trusts with S corporation stock. The trustee had the discretion to distribute, in addition to trust income, trust corpus for the maintenance, support and education of the beneficiary in the manner to which the beneficiary had been accustomed, to the extent the funds were not otherwise available to the beneficiary. The beneficiary had a special testamentary power of appointment over trust corpus, otherwise the remainder passed to the issue of the beneficiary. The IRS ruled that the trusts were QSST. **Ltr. Rul. 9247022, Aug. 24, 1992.**

**SAFE HARBOR INTEREST RATES**

**JULY 1993**

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<td>8.45</td>
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</table>

**TAX RATES.** The IRS has issued the 1993 inflation adjusted tax rates, standard deduction, personal exemption, earned income credit, amounts allowed against earned income in computing the "kiddie tax," income limitation for itemized deductions, and limits on charitable contributions. **Rev. Proc. 92-102, I.R.B. 1992-52.**

**WITHHOLDING TAXES.** The IRS has announced new rules for monthly or semi-weekly payment of federal employment and withholding taxes, other than FUTA, which begin January 1, 1993. Employers will be allowed all of 1993 to convert to the new rules. **Notice 931, Nov. 1992.**

The IRS has issued proposed regulations amending the existing rules for interest-free adjustments of underpayment of employment taxes to include employers who did not file a return and pay the tax solely because they improperly failed to treat one or more individuals as employees. **57 Fed. Reg. 58423** (Dec. 10, 1992).
SECURED TRANSACTIONS
DESCRIPTION OF COLLATERAL. In February 1987, a Chapter 12 debtor had granted a security interest in "All crops of every kind grown or to be grown, heretofore or hereinafter, within one year from date of execution. . ." The security interest described the real estate on which the crops were to be grown only as "lands commonly known and referred to as the Roy Peeler Farm in Cross County, Arkansas." The creditor sought enforcement of the security interest in crops grown in 1988, 1989, and 1990. The court held that the security interest did not attach to the 1989 and 1990 crops since the crops were not planted within one year after February 1987. The court also held that the security interest was unperfected as to the 1988 crop because the description of the real estate was insufficient. In re Peeler, 145 B.R. 973 (Bankr. E.D. Ark. 1992).

ZONING
FARM OPERATOR. The defendants had filed an application to allow construction of a residence on their farm which was zoned for exclusive farm use. The Land Use Board of Appeals granted the license because the applicant was found to be a farm operator and required the assistance of the son in the farm operations. The petitioners objected to the grant, arguing that the son's assistance was not needed in the farm operation as it existed at the time of the application. The court held that the zoning ordinance and statute allowed the construction where the applicant demonstrated that the son's assistance was needed in the future because of expansion of the farm operation. Kenagy v. Benton County, 838 P.2d 1076 (Or. Ct. App. 1992).

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