Cases, Regulations and Statutes

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period. Written consent of all interested owners is required for this method.

The regulations authorize an increase or decrease in allotment, quota or base by as much as 10 percent if the owners agree in writing and the county committee determines that the method used did not produce an equitable division.

FOOTNOTES
1 See generally 11 Harl, Agricultural Law ch. 91 (1993); Harl, Agricultural Law Manual § 10.03 (1993).
5 Id.
6 7 C.F.R. § 719.8(a) (1993).
9 7 C.F.R. § 719.8(c) (1993). See sample request form below.

Dear Committee Members:

Enclosed herewith please find a Memorandum of Understanding by and between __________ Seller, and __________ Buyer, pertaining to the conveyance under contract dated __________ of the tract of land described as __________.  As required by 2-CM Handbook, the Buyers do hereby identify the following tracts as believed to be comparable to the above described tract:

<table>
<thead>
<tr>
<th>Farm No.</th>
<th>Farmland</th>
<th>Cropland Corn</th>
<th>Yield</th>
<th>Oats Yield</th>
</tr>
</thead>
<tbody>
<tr>
<td>2194</td>
<td>530</td>
<td>421.9</td>
<td>23.7</td>
<td>88</td>
</tr>
<tr>
<td>2265</td>
<td>380</td>
<td>289.4</td>
<td>19.2</td>
<td>95</td>
</tr>
</tbody>
</table>

As further required by 2-CM Handbook, the Buyers do hereby identify the following tracts as believed to be comparable to the real property retained by Seller:

<table>
<thead>
<tr>
<th>Farm No. Farmland</th>
<th>Cropland Corn</th>
<th>Yield</th>
<th>Oats Yield</th>
</tr>
</thead>
<tbody>
<tr>
<td>325</td>
<td>86</td>
<td>81.3</td>
<td>69.3</td>
</tr>
<tr>
<td>377</td>
<td>200</td>
<td>177.1</td>
<td>90.5</td>
</tr>
<tr>
<td>305</td>
<td>40</td>
<td>38.8</td>
<td>18.3</td>
</tr>
</tbody>
</table>

The above identified comparable tracts are either located adjacent to the subject tract (which is the case with farms no. 325 and 2377) or within one-quarter mile (as in the case of farm no. 305). Moreover, the soil type, topography, fertility level and past management practices are comparable for the subject tract and the comparable tracts. As further required by 2-CM Handbook, the Buyers do hereby identify the following tracts as believed to be comparable to the real property retained by Seller:

<table>
<thead>
<tr>
<th>Farm No. Farmland</th>
<th>Cropland Corn</th>
<th>Yield</th>
<th>Oats Yield</th>
</tr>
</thead>
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<td>421.9</td>
<td>23.7</td>
</tr>
</tbody>
</table>

The above identified comparable tracts are either located adjacent to the subject tract (which is the case with farms no. 325 and 2377) or within one-quarter mile (as in the case of farm no. 305). Moreover, the soil type, topography, fertility level and past management practices are comparable for the subject tract and the comparable tracts.

Sincerely,

Buyer

On this ______ day of _______, the undersigned, __________ Seller and __________ Buyer, do hereby agree as follows:

1. The Buyer has agreed to purchase certain real property previously owned by Seller, in __________ Township, __________ County, __________, and more specifically described as __________ containing 80 acres more or less, said purchase having been previously agreed to in a certain contract between Seller and Buyer dated __________.

2. The Seller represents that Seller had owned the subject real property for more than three years.

3. The Seller and Buyer acknowledge that the subject real property has been farmed as part of a larger farming operation by Seller for many years.

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL

EXEMPTIONS-ALM § 13.03[4].

ANNUITY. The debtor was a beneficiary of an annuity purchased by an insurance company in satisfaction of a personal injury judgment against the insurance company. The debtor claimed the annuity as exempt under Fla. Stat. § 222.14. A creditor objected to the exemption, arguing that the exemption should not be allowed for annuity payments of court judgments. In a certified question from the Eleventh Circuit Court of Appeals, the Florida Supreme Court held that the annuity exemption applied to all annuities, including annuities used to satisfy court judgments. The exemption was allowed. In re McCollam, 986 F.2d 436 (11th Cir. 1993).

COURT AWARDS AND SETTLEMENTS. The debtor claimed payments from a structured wrongful death settlement as exempt under Va. Code § 34-28.1. The court held that the statute applied only to the proceeds of awards and settlements from personal injury actions, which did not include wrongful death actions. In re Cassell, 151 B.R. 78 (Bankr. W.D. Va. 1993).
The debtor was the beneficiary of an annuity contract purchased by an insurance company in settlement of a personal injury action brought by the debtor. The debtor continued to suffer medical and psychiatric disability from the injuries and the court found that the annuity proceeds were almost entirely needed to pay the medical costs of the injuries and that the debtor had no ability for employment. The court held that the debtor was entitled to claim the entire monthly annuity payments as exempt because the payments qualified for the personal injury award exemption and the exemption for compensation for loss of future earnings. In re Chaney, 151 B.R. 147 (Bankr. W.D. Tenn. 1993).

**CHAPTER 12**

**CONVERSION-ALM § 13.03[8][d].** The debtors had filed a Chapter 12 case and had obtained confirmation of a plan which provided that most of the estate property revested with the debtors. The case was converted to Chapter 7 during the pendency of the plan. On the date of conversion, the debtors had money in a bank account and several accounts receivable from the sale of crops. The debtors made various payments from the bank account, including amounts deposited from the accounts receivables after the conversion. The debtors argued that the bank account and accounts receivable were not estate property because the Chapter 12 plan revested the property with the debtors. The court held that the provisions of a Chapter 12 plan remain defeasible until the debtors complete the plan and receive a discharge and that the conversion of the Chapter 12 case to Chapter 7 before discharge revests all the debtor’s property to the estate. The court held that the amounts in the bank account and accounts receivables were estate property and ordered return of all payments. In re White, 151 B.R. 274 (Bankr. D. N.M. 1993).

**ESTATE PROPERTY-ALM § 13.03[8][c].** The debtors’ three-year Chapter 12 plan provided for payment to creditors of disposable income for the 1988, 1989 and 1990 crop years. In 1990, the debtors received approval of the amount of disposable income for 1988 and completed payments for that year. In 1991, after completion of the 1990 crop year but before approval of the 1989 and 1990 disposable income payments, the debtors inherited property from a parent. The court then entered an order approving the 1989 and 1990 disposable income payments and discharging the debtors but a creditor objected, arguing that the inheritance was estate property and should have been included in the disposable income. The court held that the inheritance was property of the estate but that the inheritance was not includible in disposable income because it was received after the final plan year. The court disregarded the fact that a final determination of disposable income and discharge had not been made when the inheritance accrued, stating that the delay was not caused by the debtors and but for the delay, the inheritance would have occurred after the closing of the case. In re Hart, 151 B.R. 84 (Bankr. N.D. Tex. 1993).

**PLAN-ALM § 13.03[8][c].** The debtor’s Chapter 12 plan provided for payment to unsecured creditors of an amount equal to the amount the creditors would receive in a Chapter 7 liquidation. The trustee, however, deducted from the debtor’s payments on this amount, the trustee fees and post-confirmation administrative expenses, including attorney’s fees. The trustee argued that the trustee fees and administrative expenses were unsecured claims required to be paid first out of the liquidation payment amount. The court held that the payment of trustee fees and post-confirmation administrative expenses was the debtor’s liability and that the liquidation amount in full was to be paid to the unsecured creditors. In re Winter, 151 B.R. 278 (Bankr. W.D. Okla. 1993).

**CHAPTER 13**

**PLAN-ALM § 13.03[3].** A creditor sought prepetition foreclosure on a mortgage on the debtors’ residence. The debtors’ Chapter 13 plan provided for payment of less than the remaining amount owed with a 10 percent interest rate. The court held that the debtors were not prohibited from modifying the mortgaged debt on their residence. However, the court also held that because (1) the debt was short term and had been accelerated by the creditor and (2) the residence was worth much more than the remaining debt, the debtors were required to pay the full balance of the loan plus costs and attorney’s fees at the contract rate of interest. In re Aguirre, 150 B.R. 922 (Bankr. N.D. Tex. 1993).

The debtor’s Chapter 13 plan provided for bifurcation of a mortgage against the debtor’s residence into secured and unsecured claims and the creditors objected. The court held that a Chapter 13 plan could bifurcate a mortgage against a debtor’s residence into secured and unsecured claims, avoid the unsecured claims and provide for payment of the secured portion as provided by the original loan agreement terms. However, the plan must also provide for payment of any arrears over a reasonable time not longer than the plan period and provide for payment of the unsecured claim in an amount not less than the creditor would receive in a Chapter 7 liquidation. In re Richards, 151 B.R. 8 (Bankr. D. Mass. 1993).

**FEDERAL TAXATION**

**CAPITAL EXPENSES.** A Chapter 11 debtor corporation was allowed to deduct currently professional fees and expenses relating to operating the business during the bankruptcy proceeding where the corporation provided sufficient evidence of the segregation of the expenses between the operation of the business and the reorganization in bankruptcy. In re Placid Oil Co., 93-1 U.S. Tax Cas. (CCH) ¶ 50, 234 (5th Cir. 1993), rev’g, 92-1 U.S. Tax Cas. (CCH) ¶ 50,049 (Bankr. N.D. Tex. 1990).

**CLAIMS.** The IRS had not received a notice of the debtor’s bankruptcy case until eight months after the bar date for claims; however, the IRS failed to file a claim until two years after receiving the notice. The IRS claim involved a priority claim for unpaid taxes for which the debtor had not filed a tax return. The court held that the IRS claim would be allowed as a priority claim because no distributions from the estate had been made by the trustee and the lower courts had not found any bad faith or unreasonable delay by the IRS. In re Century Boat Co., 986 F.2d 154 (6th Cir. 1993).

The debtor did not list the IRS as a creditor until after the bar date for claims. The IRS then filed for permission to
file a late claim. The court held that because the IRS did not receive notice of the bankruptcy until after the bar date, the untimely claim would be allowed. *In re Vaughn*, 151 B.R. 87 (Bankr. W.D. Tex. 1993).

The IRS had filed a timely claim for tax penalties against the debtors as responsible persons in a corporation which failed to withhold and pay employment taxes. After the bar date for claims, the IRS filed additional claims for the same penalties as to the same corporation but for different time periods and as to another corporation in which the debtors were responsible persons. The court held that the new claims were sufficiently linked to the timely claims to be amendments to the timely claims. The amendments were allowed because the delay in filing the claims was caused, in part, by the debtors’ failure to file tax returns or otherwise assist the IRS in determining the liability, even though the debtors knew the corporations owed employment taxes. *In re Barton*, 151 B.R. 110 (Bankr. W.D. Mich. 1993).

**DISCHARGE-ALM § 13.03[6]**. The debtors made several pre-petition gift transfers of property for which no federal gift tax return was filed or gift tax paid. The debtors listed the claims as disputed on their schedules but the IRS filed no claim for the gift taxes in the case. The debtors’ confirmed plan made no provision for payment of the gift taxes and the plan was consummated. The debtors filed an objection to the IRS post-confirmation assessment of the gift taxes as barred by the confirmation of the plan. The court held that the confirmation order had no effect on the dischargeability of the gift taxes which were not dischargeable under Section 523(a)(1) because no return was filed. *In re Grynberg*, 986 F.2d 367 (10th Cir. 1993), aff’g, 142 B.R. 415 (D. Colo. 1991).

The IRS filed claims for several years of taxes due more than three years before the filing of the bankruptcy petition. The debtor had filed returns for the taxes but made no payments except when forced by repeated IRS levies. The court held that the taxes were nondischargeable because the debtor’s history of nonpayment except when forced by the levies and the debtor’s attempts to foil the IRS levy attempts demonstrated willful attempt to evade or defeat payment of the taxes. *In re Lewis*, 151 B.R. 140 (Bankr. W.D. Tenn. 1992).

**SOVEREIGN IMMUNITY**. After the debtors had received a discharge of their 1982 taxes in their Chapter 7 case and the case had been closed, the IRS filed a Notice to Levy against the debtor’s wages and attempted to apply later tax refunds against the 1982 taxes. The debtor sued for sanctions for violation of the discharge order by the IRS. The IRS argued that because it had not filed a claim in the Chapter 7 case, under *U.S. v. Nordic Village*, 112 S. Ct. 1011 (1992), it had not waived sovereign immunity against the debtor’s suit. The court held that the debtor’s were entitled to sanctions, including costs and attorney’s fees, because *Nordic Village* did not prohibit actions for sanctions against the IRS but only prohibited actions for money judgments. *In re Daniels*, 150 B.R. 985 (Bankr. M.D. Ga. 1992).

**FEDERAL AGRICULTURAL PROGRAMS**

**COMMODITY FUTURES**. The CCC has announced the establishment of an options pilot program (OPP) to allow participants in the corn and soybean acreage reduction program to purchase put options contract for 1993 on the Chicago Board of Trade. The pilot program is restricted to three counties in each of Iowa, Illinois and Indiana. 58 Fed. Reg. 21876 (April 23, 1993). Note: For a warning about the income tax consequences of participating in the OPP, see p. 32 supra.

**PERISHABLE AGRICULTURAL COMMODITIES ACT-ALM § 10.05[2]**. A produce seller sold produce to the debtor under a written agreement that payment was due within 30 days after invoice. However, because the Bankruptcy Court found that the parties in practice ignored the payment term provision, the court held that the produce seller had failed to comply with the PACA trust fund requirements. On appeal, the District Court held that the payment terms in the written agreement controlled and that the course of dealing between the parties did not affect the produce seller’s eligibility for the PACA trust fund. The produce seller later purchased produce stalls from the buyer in partial satisfaction of past due accounts and leased the stalls back to the buyer, giving the buyer an option to repurchase some of the stalls if the past due amounts were paid. The court held that this arrangement gave the seller equity securing the produce sold after the transfer and the seller did not have rights in the PACA trust funds after the transfer. *In re Lombardo Fruit & Produce Co.*, 150 B.R. 941 (E.D. Mo. 1993), aff’g in part and rev’g in part, 107 B.R. 952 (Bankr. E.D. Mo. 1989).

The plaintiff was a produce supplier who sold produce to a company with six grocery stores. The company sold the stores to the defendant and the plaintiff sought recovery from the PACA trust for unpaid for produce. The parties agreed that the PACA trust contained at least the value of the produce and the sales of produce on the last day of the previous owner’s day of business. The issue remained as to who had the burden of proving how much of the company’s other inventory was purchased with PACA trust funds and, therefore, remained subject to the PACA trust. The court held that the burden was on the defendant. *Sanzone-Palmisano Co. v. M. Seaman Enter.*, 986 F.2d 1010 (6th Cir. 1993).

**FEDERAL ESTATE AND GIFT TAX**

**DEDUCTIONS-ALM § 5.04**. At the death of the decedent’s predeceased spouse, the decedent’s two stepsons challenged the spouse’s will leaving everything to the decedent. The decedent and the stepsons reached an agreement under which the decedent was to include in the decedent’s will a bequest of 40 percent of the estate to the stepsons. After the decedent’s death, the stepsons filed a claim against the estate under the agreement for the 40 percent share. The decedent’s executrix agreed to pay the stepsons their 40 percent and claimed the payment as a deduction against the taxable estate. The court held that the
payment was not deductible because the only consideration for the payment was the donative intent of the spouse’s. Est. of Huntington v. Comm’r, 100 T.C. No. 19 (1993).

**GENERATION SKIPPING TRANSFER TAX-ALM**

§ 5.04[6]. The taxpayer established four identical trusts for four grandchildren, with trust corpus exceeding the GSTT exemption amount. During the life of the taxpayer, the trusts were to accumulate all income and make no distributions. At the death of the taxpayer, the trustee could distribute to each beneficiary so much of the trust income as was necessary for the beneficiary’s support, education, health and maintenance. One-third of each trust corpus was to be distributed when each beneficiary reached age 30, with the remainder distributed when the beneficiary reached age 35. If the beneficiary died before full distribution of the trust corpus, the trust property passed in the following order: (1) to the lineal descendants of the beneficiary, (2) to the lineal descendants of the beneficiary’s parent, (3) as appointed by will by the beneficiary, and (4) to a charity. The IRS ruled that the taxpayer’s transfers of property to the trusts were direct skips. During the taxpayer’s life, the taxpayer either will serve as trustee or have the power to change the trust. The IRS ruled that the trust property would not be included in the taxpayer’s estate because no property was to be distributed during the taxpayer’s life; therefore, the taxpayer had no power to alter the beneficiaries’ rights in the trusts. Ltr. Rul. 9314033, Jan. 8, 1993.

**GIFT-ALM** § 6.01. The taxpayer and the other equal shareholder entered into a cross-purchase shareholder agreement which established the total value of the stock. The agreement also provided for the required purchase by the taxpayer’s son of the stock of the first shareholder to die, using the proceeds of life insurance on the decedent shareholder. The agreement also provided for adjustment of the value of the stock by a majority vote of the shareholders. The other shareholder died by suicide, resulting only in life insurance proceeds equal to the amount of premiums paid. Under the agreement, if the taxpayer’s son failed to purchase all of the decedent’s stock, the corporation was required to purchase the stock at the established price. When the son failed to purchase more than 2.59 shares of stock, the taxpayer had the corporation redeem the decedent’s shares and transferred 11.41 of the decedent’s shares to the son plus 14 shares owned by the taxpayer. Later, the taxpayer transferred 111 shares to the son. The IRS ruled that the transfers of the stock to the son were taxable gifts: (1) the transfer of the decedent’s 11.41 shares was a gift because it represented the taxpayer’s relinquishment of a right to have the corporation purchase the shares which would have increased the taxpayer’s share in the corporation; (2) the transfers of the 14 and 111 shares were taxable gifts valued at the fair market value of the stock because, as majority shareholder, the taxpayer had the power to increase the value of the stock for redemption and shareholder purchase purposes. Ltr. Rul. 9315005, Dec. 31, 1992.

**GROSS ESTATE-ALM** § 5.02. At the time of death the decedent was a co-trustee and beneficiary of a trust established by the decedent’s parent. A bank was the other co-trustee. The trustees had the power to distribute trust corpus to any beneficiary for the continued comfort, support, maintenance or education of the beneficiary. The decedent became mentally incompetent within a year before and until death. The court held that the decedent did not have a general power of appointment over the trust corpus because the distribution of trust corpus was subject to an ascertainable standard. Est. of Vissering v. Comm’r, 93-1 U.S. Tax Cas. (CCH) ¶ 60,133 (10th Cir. 1993), rev’g and rem’g, 96 T.C. 749 (1991).

**INCOME IN RESPECT OF DECEDEDENT-ALM** § 6.02[1]. The decedent had established a revocable trust funded with Series E and H bonds. Both sets of bonds had unreported increases in value. The trust provided that upon the decedent’s death, the trustee was to distribute a fixed sum to a charity. The trustee proposed to distribute the bonds in satisfaction of the pecuniary amount for the charity. The IRS ruled that the transfer of the bonds would constitute a disposition causing the unreported increase in value to be reported as trust income. Ltr. Rul. 9315016, Jan. 15, 1993.

**INSTALLMENT PAYMENT OF ESTATE TAX-ALM** § 5.05[1]. The decedent and spouse had created a trust for themselves with the remainder to pass to the surviving trustor and then to the couple’s children and grandchildren. The decedent’s estate consisted primarily of an interest in a closely-held business and the estate elected to pay the estate tax in installments. During the administration of the estate, the surviving spouse died and the trust assets passed to the children and grandchildren. The IRS ruled that the decedent’s estate, under I.R.C. § 6166, was not allowed to pay any generation skipping transfer tax by installments but that under I.R.C. § 6161(a)(2), the Commissioner had the authority to grant the estate up to 10 years to pay the GSTT. Ltr. Rul. 9314050, Jan. 13, 1993.

**MARITAL DEDUCTION-ALM** § 5.04[3]. The decedent’s will provided that estate taxes were to be paid from the residuary estate. The will also provided for an annuity for the decedent’s mother, to be paid from the residuary estate. Finally, the will provided that the residuary estate pass to the survivors in trust. The IRS ruled that the marital deduction for the marital trust was to exclude the taxes paid from the residuary estate and the value of the property needed to produce the annuity for the decedent’s mother, valued under Treas. Reg. § 20.2031-7 as of the date of the decedent’s death. Ltr. Rul. 9313002, May 15, 1992.

The IRS had reduced the estate’s marital deduction by the amount of estate administrative expenses which were paid out of the estate’s net income during the administration. The court held that the marital deduction would be reduced whether the administrative expenses were paid from estate corpus or income. Fisher v. U.S., 93-1 U.S. Tax Cas. (CCH) ¶ 60, 132 (Fed. Cl. 1993).

**RETURNS.** The IRS has announced the pending publication of new Form 706 and 706-NA for use by estates of decedents dying after December 31, 1992. The new forms use the new tax rate of 50 percent but the IRS

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*Agricultural Law Manual (ALM). For information about ordering the Manual, see the last page of this issue.*
cautions that the rate may be increased by Congress to the old rate of 55 percent. Ann. 93-61, I.R.B. 1993-16.

SPECIAL USE VALUATION-ALM § 5.03[2]. The IRS has issued the list of average annual effective interest rates charged on new loans by the Farm Credit Bank system to be used in computing the value of real property for special use valuation purposes:

<table>
<thead>
<tr>
<th>District</th>
<th>Interest rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baltimore</td>
<td>9.75</td>
</tr>
<tr>
<td>Columbia</td>
<td>10.35</td>
</tr>
<tr>
<td>Louisville</td>
<td>10.16</td>
</tr>
<tr>
<td>Omaha</td>
<td>9.54</td>
</tr>
<tr>
<td>Sacramento</td>
<td>11.03</td>
</tr>
<tr>
<td>St. Paul</td>
<td>10.28</td>
</tr>
<tr>
<td>Spokane</td>
<td>10.27</td>
</tr>
<tr>
<td>Springfield</td>
<td>10.10</td>
</tr>
<tr>
<td>Texas</td>
<td>10.05</td>
</tr>
<tr>
<td>Wichita</td>
<td>9.75</td>
</tr>
</tbody>
</table>


The decedent bequeathed equal undivided interests in special use valuation property to six children. The children exchanged the undivided interests for equal portions of the property. Five of the children cash leased their properties to the sixth child. The court held that the cash lease caused recapture of the five children’s share of the special use valuation benefits. Fisher v. Comm’r, T.C. Memo. 1993-139.

VALUATION-ALM § 6.01[6]. The taxpayer transferred a one-half community property interest in a residence to a 20-year trust with the taxpayer as beneficiary and the taxpayer’s children as remainder holders, subject to defeasance by a power of appointment held by the trustee who could be a related party. The IRS ruled that (1) the trust qualified as personal residence trust not subject to valuation under I.R.C. § 2702 and (2) the transfer to the trust was a completed gift to the remainder holders. Ltr. Rul. 9315019, Jan. 13, 1993.

FEDERAL INCOME TAXATION

BAD DEBT DEDUCTION-ALM § 4.03[7]. The taxpayer had to make $5,000 in payment to support the taxpayer’s children because the former spouse failed to make child support payments. The IRS ruled that because the child support obligation was imposed by the divorce decree, the taxpayer had no basis in the child support obligation of the former spouse; therefore, no bad debt deduction would be allowed for the taxpayer’s own payment of the obligation. Rev. Rul. 93-27, I.R.B. 1993-15, 4.

CASUALTY LOSSES-ALM § 4.05[2][a]. The taxpayer was not allowed a casualty loss deduction for the decline in value of stock during the market crash of 1987 because the loss did not result from a closed transaction. Furer v. Comm’r, T.C. Memo. 1993-165.

COMMODITY STRADDLES. Gains realized on commodity futures straddles entered into on the London Metal Exchange by commodities traders were long-term gains. Johnson v. Comm’r, T.C. Memo. 1993-178.

COOPERATIVES-ALM § 14.03. In 1990, the cooperative had a member-sourced net operating loss in one of its regional operations. In 1991, the same regional operation had net earnings from member patronage sources. The cooperative wanted to make an allocation of patronage dividends to members in that regional operation before utilizing the net operating loss from 1990. The IRS ruled that because the membership in the regional operation was relatively steady and the allocation of the loss was consistent with the membership agreement, the allocations would be allowed as proposed. Ltr. Rul. 9314013, Jan. 6, 1993.

DEPRECIATION-ALM § 4.03. The taxpayer had been using the Accelerated Cost Recovery Method of claiming depreciation on an apartment building acquired before 1981. The taxpayer attempted to revoke the ACRS method and change to the straight line method on a tax return. The court held that prior consent from the IRS was required to change the depreciation method on property acquired before 1981. Henderson v. Comm’r, T.C. Memo. 1993-171.

HOBBY LOSSES-ALM § 4.05[1]. The taxpayers were denied deduction of losses from a horse breeding business because the activity was not engaged in for profit where the taxpayers’ estimates of expected profits were unreasonable and inaccurate; the losses continued to be significant; and the taxpayers had substantial income from their employment as accounting professors. Smith v. Comm’r, T.C. Memo. 1993-140.

PARTNERSHIPS-ALM § 7.03.

ADMINISTRATIVE ADJUSTMENTS. The IRS filed a final partnership administrative adjustment (FPAA) with the largest general partner, the managing partner, all partners and the partnership. The managing partner was not the designated tax matters partner (TMP) but the managing partner filed a petition contesting the FPAA and signed the petition as TMP. Two years later, the other partners claimed that (1) the petition was invalid because not made by the TMP and (2) because no valid petition had been filed, the statute of limitations had expired on the FPAA. The court held that the other partners had ratified the managing partner’s actions by failing to object earlier and waiting until the statute of limitations had passed. Mishawaka Properties Co. v. Comm’r, 100 T.C. No. 22 (1993).

DEFINITION. The IRS has ruled that a company formed under the Nevada Limited Liability Companies Act, Rev. Rev. Stat. § 86.011 et seq., was classified as a partnership for federal tax purposes. Rev. Rul. 93-30, I.R.B. 1993-16, 4.

RETIREMENT PLANS. The IRS has provided additional guidance concerning the time period for providing the written explanation required under I.R.C. § 402(f) and the time period for satisfying the consent requirements of I.R.C. § 411(a)(11). Participants are allowed to waive the 30-day period for consent and to waive the written explanation requirement. Notice 93-26, I.R.B. 1993-18.
The IRS has issued proposed regulations, under I.R.C. § 401(1), which provide for a permitted disparity between employer contributions to and employer-provided benefits under qualified plans. 58 Fed. Reg. 21426 (April 21, 1993).

The IRS has issued proposed regulations amending the rules under I.R.C. § 410(b) as to the minimum coverage requirements and nondiscrimination requirements of I.R.C. § 401(a)(4). 58 Fed. Reg. 21412, 21417 (April 21, 1993).

RETURNS. The IRS has announced that taxpayers may file for an automatic four month extension for filing a return and are not required to make full payment with the extension request. The tax liability must be fully estimated on the extension request and the full payment with interest made by the end of the extension. No penalty will be assessed for late payment if the extension procedures are correctly followed. Notice 93-22, I.R.B. 1993-17.

The IRS has issued proposed regulations which allow persons who file fiduciary income tax returns for compensation to use a facsimile signature instead of a manual signature. 58 Fed. Reg. 21548 (April 22, 1993).

SAFE HARBOR INTEREST RATES

May 1993

<table>
<thead>
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<td>3.69</td>
<td>3.67</td>
<td>3.66</td>
</tr>
<tr>
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<td>4.10</td>
<td>4.06</td>
<td>4.04</td>
<td>4.03</td>
</tr>
<tr>
<td>120% AFR</td>
<td>4.48</td>
<td>4.43</td>
<td>4.41</td>
<td>4.39</td>
</tr>
<tr>
<td>Mid-term</td>
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S CORPORATIONS-ALM § 7.02[3][c].

ELECTION. In 1983, a C corporation filed a Form 1120-S as an election to be taxed as an S corporation. The IRS rejected the return and the corporation refiled a Form 1120 and paid taxes as a C corporation. In 1984, the corporation again filed a Form 1120-S, stating on the form that the previous Form 1120-S was an election to be taxed as an S corporation. The court held that no valid election had been made because the corporation failed to timely file Form 2553 as required by the regulations. Rockwell Inn, Ltd. v. Comm’r, T.C. Memo. 1993-158.

TRUSTS. A trust owned shares of an S corporation. The trust provided for payment of net trust income to the beneficiary and allowed the beneficiary to withdraw up to a fixed amount of trust corpus annually. At the death of the beneficiary, the trust terminated and all trust property passed to a third party. The third party had a durable power of attorney to act on behalf of the beneficiary. The IRS ruled that the trust was a QST. Ltr. Rul. 9314021, Jan. 7, 1993.

A trust holding S corporation stock had two equal beneficiaries such that each beneficiary’s share could be considered a separate trust. However, the trust provided that all trust corpus could be distributed to one beneficiary for the health, education, support or maintenance of the beneficiary. Because that beneficiary had substantial income from other sources, the possibility of distribution of trust corpus to that beneficiary was remote. The IRS ruled that because a possibility, however remote, existed that trust corpus could be distributed to one of the beneficiaries, the share of the other beneficiary could not be a QSST. Rev. Rul. 93-31, I.R.B. 1993-17, 5.

TAX LIENS. The IRS has issued proposed regulations which provide that a state is not considered to have designated a second office for filing a notice of tax lien where the state establishes a national filing system under a nontax federal statute (e.g. the central filing system required under the federal farm products rule for security interests in farm products). 58 Fed. Reg. 21550 (April 22, 1993).

WITHHOLDING TAXES.-ALM § 4.06 During the taxpayer’s employment, the employer did not withhold or pay federal employment taxes for the taxpayer; instead, the taxpayer paid the self-employment tax. The taxpayer sought a refund of the self-employment taxes, arguing that the taxpayer was an employee and not liable for self-employment taxes. The taxpayer and IRS agreed that the taxpayer was an employee. The court held that the taxpayer was not entitled to a refund of the amount paid which should have been withheld and paid by the employer from the taxpayer’s wages. The court also held that the taxpayer was not entitled to a refund for the amount of the employer’s portion of the FICA taxes. Thus, the taxpayer was entitled only to the amount of self-employment taxes paid which exceeded the total FICA taxes which would have been paid by the taxpayer’s employer. Donohoe v. U.S., 93-1 U.S. Tax Cas. (CCH) ¶ 50,216 (W.D. Wash. 1993).

SECURED TRANSACTIONS

CONTINUATION. The debtors had granted a bank a security interest in farm machinery prior to granting a security interest in the same machinery to the FmHA. The bank filed its security interest before the FmHA perfected its security interest. The bank filed a continuation statement six months and four days before the security interest was to expire. The continuation statute required continuation statements to be filed within the six months before the expiration of a security agreement. During the bankruptcy proceeding of the debtor, the FmHA believed that it had a junior security interest in the machinery and filed no objections to the debtor’s plan. However, after the debtor defaulted on the plan payments and the bank sought to sell the machinery and collect the proceeds, the FmHA asserted a priority security interest based on the bank’s faulty continuation filing. The court held that the six month continuation filing requirement was absolute, making the bank’s security interest unperfected. The court also held that other equitable defenses did not apply because the FmHA did not have access to the relevant documents and had made no misrepresentations as to fact. In re Isringhausen, 151 B.R. 203 (Bankr. S.D. Ill. 1993).
CITATION UPDATES

Garner v. Comm’r, 987 F.2d 1475 (5th Cir. 1993), aff’g, T.C. Memo. 1991-569 (bad debts) see p. 66 supra.

JOURNAL ARTICLES

A. Pires, “Why the U.S. Claims Court [now the Court of Federal Claims] is not a Viable Venue for Farmers: The U.S. Claims Court’s Handling of Agricultural Cases, 1980-1990,” Univ. of Ark. L. J. 223 (Winter 1993). The article does a fine job of supporting the thesis that appeals of adverse decisions by the USDA have more opportunities for relief in the U.S. District Court than in the Federal Court of Claims. However, perhaps the better lesson is the need for appellants to carefully present their case before the lower administrative agencies to build a record on which either reviewing court can support relief for the appellant. As the article points out, local and state USDA agencies may not allow appellants much opportunity to present evidence, but the recent case of Jones v. Espy, Civ. Action No. 90-2831-LFO (D. D.C. 1993) see p. 64 supra may help convince the USDA agencies that failure to allow complete presentations of evidence will not be tolerated by the courts, at least the U.S. District Court.

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