1-21-1994

Cases, Regulations and Statutes

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corporate reorganization that splits off corporate assets (and shareholders) into a newly formed corporation. That procedure is discussed in the July, 1991, issue of Agricultural Law Digest.

**FOOTNOTES**

7. I.R.C. § 1239(a).
10. Id.
12. I.R.C. § 1001(b).
17. I.R.C. § 1374(b)(1).
22. I.R.C. § 331(a). See ns. 11-13 supra and accompanying text.
24. N. Harl, "Divisive Corporate Reorganizations," 2 Agric. L. Dig. 121 (1991). Editor's note: Reprints of the 1991 article may be ordered for $5.00 from Editor, Agricultural Law Press, P.O. Box 5444, Madison, WI 53705.

**CASES, REGULATIONS AND STATUTES**

by Robert P. Achenbach, Jr.

**BANKRUPTCY**

**GENERAL**

**ESTATE PROPERTY-ALM § 13.03[3].** In 1990 and 1991, the debtor suffered crop losses from natural disasters and in December 1991, federal disaster payments for 1990 and 1991 crops were authorized by Congress. The debtor filed for Chapter 7 in January 1992 and received crop disaster benefits in April 1992. The debtor argued that: the benefits were post-petition payments excluded from the estate; the proceeds of crops which would have been estate property because all of the taxable income was received by the debtor; the proceeds of crops which would have been estate property after the filing of the petition. The court held that: the debtor could claim an exemption for property which became estate property after the petition. In re Ring, 160 B.R. 692 (M.D. Ga. 1993).

**EXEMPTIONS-ALM § 13.03[3].**

**HOMESTEAD.** The debtors were allowed to include in their homestead a vacant lot across the street from their residence which was used for parking, a garden and storage. In re Flatt, 160 B.R. 497 (Bankr. N.D. N.Y. 1993).

**IRA.** The debtor was allowed an exemption for $9,000 in an IRA as reasonably necessary for the debtor’s support because the debtor was in school and had no other source of retirement funds. In re Baumgardner, 160 B.R. 572 (Bankr. S.D. Ohio 1993).

**PERSONAL PROPERTY.** The debtors claimed an exemption for the $77,000 cash value of a life insurance policy under Tex. Prop. Code § 42.002(a)(2) and $57,000 in personal property under Tex. Prop. Code § 42.001. The trustee argued and the court held that the cash value of the life insurance policy was allowed as an exemption but that exemption exhausted the debtors’ personal property exemptions which were limited to $60,000; therefore, no exemption was allowed for the other personal property. In re Bowes, 160 B.R. 290 (Bankr. N.D. Tex. 1993).

**POST-PETITION PROPERTY.** Within 180 days after filing a Chapter 7 petition, the debtor inherited property from a decedent. The debtor filed amended exemption schedules claiming a portion of the inherited property as exempt. The trustee argued that the debtor could only claim exemptions for property owned by the debtor on the date of the petition. The court held that the debtor could claim an exemption for property which became estate property after the filing of the petition. In re Magness, 160 B.R. 294 (Bankr. N.D. Tex. 1993).

**FEDERAL TAXATION-ALM § 13.03[7].**

**ADMINISTRATIVE EXPENSES.** An involuntary petition was filed against the debtor in September 1988 and the debtor’s taxable year ended on December 31, 1988. The IRS filed an untimely claim for the 1988 taxes and sought administrative expense priority for the claim, arguing that the taxes became due post-petition, the taxes were incurred by the bankruptcy estate. The court held that because of the taxes became due post-petition, the taxes were incurred by the bankruptcy estate. The court held that because all of the taxable income was received by the debtor pre-petition, the taxes were incurred by the debtor and not the estate. In re Pacific-Atlantic Trading Co., 160 B.R. 136 (N.D. Cal. 1993).

**AVOIDABLE LIENS.** The debtors sought to avoid pre-petition state and federal tax liens under Section 545(1)(D) as filed when the debtor was insolvent. The court held that the Section 545(1)(D) avoidance can occur only when a lien arose because of the debtor’s insolvency; therefore, Section 545(1)(D) did not apply in this case because the liens were filed independent of the debtor’s insolvency. In re Swafford, 160 B.R. 246 (Bankr. N.D. Ga. 1993).

**CLAIMS.** The Chapter 13 debtors had obtained confirmation of their plan in September 1991. The debtors filed a return for a prepetition tax year in 1992 and the IRS filed a claim in the case in 1993. The trustee moved to disallow the claim as untimely filed. The IRS argued that because the debtors’ plan provided for payment of all...
priority claims, the IRS claim had to be included in the plan, whether timely filed or not. The court held that timeliness of filing is a prerequisite to allowance of priority claims but the court allowed further proceedings on whether the IRS claim should be allowed on equitable grounds. Matter of Keck, 160 B.R. 113 (Bankr. N.D. Ind. 1993).

The IRS was allowed to file a priority tax claim 35 days after the claims bar date where (1) the claim was filed before any distributions by the trustee and before the close of the estate, (2) no indicia of bad faith was found on the part of the creditor, and (3) allowance of the claim would not prejudice other creditors. Matter of Brenner, 160 B.R. 302 (Bankr. E.D. Mich. 1993).

The debtor had listed a claim for federal taxes in the Chapter 13 case but the IRS did not file a claim until five months after the claims bar date. The debtor sought to avoid the claim to the extent it exceeded the debtor’s listed claim. The IRS received notice of the case and did not give any excuse for the delay but argued that its claim was allowable as an amendment to the debtor’s listed claim. The court held that the IRS claim was disallowed to the extent it exceeded the debtor’s original claim. In re Stoiber, 160 B.R. 307 (Bankr. N.D. Ohio 1993).

CONFIRMATION. The IRS had filed secured, priority and unsecured claims in the debtor’s case. The court had ordered objections to the plan to be filed within three business days before the confirmation hearing. The IRS failed to file an objection before the hearing but the IRS filed an objection within three days before a second hearing after the first hearing was continued. The court held that the objection would be considered because the debtor had sufficient notice and opportunity for responding to the objection. In re Ryan, 160 B.R. 494 (Bankr. N.D. N.Y. 1993).

DISCHARGE-ALM § 13.03[6].* The debtors had failed to timely file federal income tax returns due more than three years before the filing of their bankruptcy petition. The IRS had assessed tax deficiencies, negligence penalties and interest for these tax years. The court held that the interest and penalties were all dischargeable because the returns to which the assessments applied were due more than three years before the petition. The court reversed the Bankruptcy Court ruling that the taxes were dischargeable, holding that the wrong standard for “willful” evasion of taxes was applied. The court held that “willful” involved only an intentional and knowing attempt to evade or defeat taxes. In re Hedgecock, 160 B.R. 380 (D. Or. 1993).

PREFERENTIAL TRANSFERS. In February 1993, the IRS levied the debtor’s employer for commissions earned by the debtor. The debtor filed for Chapter 13. The employer paid the February 1993 commission to the IRS post-petition and the debtor sought turnover of the money paid. The court held that the February levy divested the debtor of any interest in the February commission such that the commission was not estate property subject to turnover. In re Eisenbarger, 160 B.R. 542 (Bankr. E.D. Va. 1993).

PRIORITY CLAIMS. The IRS had filed claims for taxes and civil fraud penalties against the Chapter 13 debtor and the debtor objected to the claims in substance and as priority claims. The debtor argued that taxes based on fraudulent returns or willful evasion of taxes are not entitled to priority under Sections 523(a)(1)(C) and 507(A)(7)(A)(iii) and are eligible for discharge under Section 1328(a)(2). The court agreed, noting that only Chapter 13 contains no exception to discharge for tax claims based on fraud. The IRS argued that the debtor should be barred from using Chapter 13 because the attempt to discharge the tax fraud claims indicated a bad faith filing. The court held that the debtor’s use of valid Chapter 13 provisions to discharge civil tax fraud penalty claims was not bad faith. Matter of Verdunn, 160 B.R. 682 (Bankr. M.D. Fla. 1993).

RESPONSIBLE PERSON. The debtor was president and sole shareholder in a corporation which failed to make payments of withholding taxes. The debtor claimed to have been unaware of the failure to make the payments and took steps to pay the deficiency as soon as the debtor was aware of it. The court held that the debtor was a "responsible person" although payment of the withholding taxes was delegated to other employees and the failure to make the payments was willful in that the debtor continued to make payment of net wages to employees after the debtor was notified of the deficiency. In re Vaglica, 160 B.R. 557 (E.D. Tex. 1993), aff’g, 112 B.R. 17 (Bankr. E.D. Tex. 1990).

TAX LIENS. The IRS had filed claims for pre-petition taxes owed by the debtor and the claims were determined to be secured claims, unsecured priority claims, and general unsecured claims. The debtor’s Chapter 13 plan was confirmed and after the debtor paid the amount of the secured claim, the debtor sought release of the tax lien. The IRS argued that the lien had to remain effective until all its claims were paid in order to protect its priority status. The court held that, under Section 506(d), the tax lien became void after payment of the underlying obligation. In re Campbell, 160 B.R. 198 (Bankr. M.D. Fla. 1993).

CONTRACTS

GOOD FAITH. The plaintiff potato grower granted the defendant a right of first refusal to purchase potatoes after harvest. The plaintiff received an offer from a third party but refused the offer. The third party refused to make a further offer until the defendant waived its right of first refusal, which the defendant refused to do. The negotiations fell through and the plaintiff sought recovery from the defendant for the loss of purchase price, claiming that the defendant breached the duty of good faith dealing in refusing to waive the right of first refusal during the negotiations. The court held that the defendant did not breach the duty of good faith dealing because the first refusal option did not require a waiver until another offer had been made and no offer existed when the defendant was asked to waive the option. The plaintiff also alleged that the defendant intentionally interfered with the plaintiff’s business in refusing to waive the option during the negotiations in that the defendant had not required a firm offer in dealings with other potato growers. The court held that the plaintiff had raised sufficient evidence to defeat a motion for summary
COOPERATIVES

DISSENTER’S RIGHTS. The plaintiff was an agricultural cooperative which decided to merge with another cooperative. The defendant was a member of the plaintiff and held a voting common share in the plaintiff as well as nonvoting preferred shares and a share in the patrons’ equity reserve and general reserve. The plaintiff held a vote on the merger and the defendant voted against the merger and sought payment for its entire interest in the plaintiff under Ind. Code § 15-7-1-28. The court held that the defendant was not entitled to payment of its interest in the plaintiff because the plaintiff was not required to have a shareholder’s vote for the merger. In addition, the court held that the defendant was not entitled to payment for the preferred shares or the patron’s equity and general reserves because those interests were not voting interests. Indiana Farm Bureau Co-op. v. AgMAX, 622 N.E.2d 206 (Ind. Ct. App. 1993).

FEDERAL AGRICULTURAL PROGRAMS

BORROWER’S RIGHTS-ALM § 11.01[2]." The defendant had borrowed money from the plaintiff and had granted to the plaintiff a security interest in the defendant’s farm. After the defendant’s default on the loan, the plaintiff sought foreclosure. One of the defendant’s defenses was that the plaintiff failed to comply with the Agricultural Credit Act. The court held that the defendant could raise the plaintiff’s failure to comply with the Act as an equitable defense to a foreclosure action. Western Farm Credit Bank v. Pratt, 860 P.2d 376 (Utah Ct. App. 1993).

BRUCELLOSIS. The APHIS has issued interim regulations adding Kansas to the list of validated brucellosis-free states. 58 Fed. Reg. 68505 (Dec. 28, 1993).

The APHIS has issued proposed regulations providing for payment of indemnity to owners of destroyed brucellosis-exposed cattle or bison where the cattle or bison were acquired from a herd which, after the acquisition, was discovered to be infected with brucellosis. 58 Fed. Reg. 68561 (Dec. 28, 1993).

CROP INSURANCE-ALM § 13.04." The FSIS has issued interim regulations to add provisions to the hybrid seed crop regulations for coverage of losses due to late and prevented planting. 58 Fed. Reg. 67644 (Dec. 22, 1993).

The FSIS has issued interim regulations to add provisions to the corn, grain sorghum, hybrid sorghum seed, rice, cotton, barley, oats and wheat crop endorsements for coverage of losses due to late and prevented planting. 58 Fed. Reg. 67630 (Dec. 22, 1993).

GOVERNMENTAL LIABILITY. The plaintiff was a nursery which imported apple root stock fumigated by the defendant fumigation company. The company was regulated by the Plant Protection and Quarantine Division (PPQ) and fumigated the root stock under guidelines set forth in the PPQ manual. The plaintiff and defendant alleged that the PPQ was responsible for damages to the root stock for failing to insure that the stock was fumigated properly. The court held that the regulatory relationship between the PPQ and the defendant did not give rise to a duty to insure the proper fumigation of the plaintiff’s root stock. The court also held that the PPQ was not liable for failing to properly monitor the defendant’s operation because under Washington’s “public duty doctrine,” the PPQ did not breach a duty to a specific person. Cameron v. Janssen Bros. Nurseries, Ltd., 7 F.3d 821 (9th Cir. 1993).

FEDERAL ESTATE AND GIFT TAX

ALTERNATE VALUATION-ALM § 5.03[2]." Two forged deeds purporting to transfer real estate owned by the decedent were dated May 6, 1986 but the deeds were not recorded until two days after the decedent’s death. The estate representative successfully voided the deeds in state court. The estate elected to value the property on the alternate valuation date and discounted the value of the property by 70 percent because the recorded deeds created a cloud on the title. The IRS ruled that the forged deeds did not affect the valuation of the property for estate tax purposes because the decedent’s total estate and gift tax liability would be the same whether the deeds were valid or invalid. Ltr. Rul. 9350004, June 8, 1993.

CHARITABLE DEDUCTION-ALM § 5.04[4]." The taxpayers established an irrevocable charitable lead trust which provided annual payments of $975,000 with authority for the trustees to make additional payments if the excess payments commuted future payments by the same amount. The trust made several annual excess payments but did not commute future payments by the excess amounts. The court held that the trust was not allowed a deduction for the excess amounts because the amounts were not made pursuant to the trust provisions. Rebecca K. Crown Income Charitable Fund v. Comm’r, 8 F.3d 571 (7th Cir. 1993), aff’d, 98 T.C. 276 (1992).

DISCLAIMERS. A portion of the decedent’s estate passed in trust to an heir. The trust provided that if the heir disclaimed a portion of the trust, that portion passed to a charitable foundation in which a child of the heir served as a trustee. The heir disclaimed in writing 80 percent of the interest in the trust. The IRS ruled that the disclaimer was effective and the child’s serving as trustee of the foundation would not be considered as a power of the heir to direct the transfer of the property. The IRS also ruled that the passing of the disclaimed property to the charitable foundation would be eligible for a charitable deduction to the decedent’s estate. The decedent’s will also provided for an increase in the property passing to the heir equal to the estate tax benefit resulting from a disclaimer. The IRS ruled that this provision was not in the nature of consideration for the disclaimer. Ltr. Rul. 9350032, Sept. 22, 1993.

The decedent’s will bequeathed property in trust to the surviving spouse and provided that if the spouse disclaimed a portion of the bequest, that portion would pass to qualified charitable foundations. The spouse served as a trustee and president of the foundations but the foundations amended
their bylaws to have the disclaimed funds managed by a trustee committee which did not include the spouse. The IRS ruled that the spouse’s disclaimer of a portion of the bequest was a qualified disclaimer and that the property passing to the charitable foundations would be eligible for the charitable deduction. Ltr. Rul. 9350033, Sept. 22, 1993.

GIFT-ALM § 6.01.* The decedent’s family corporation had recapitalized the corporation’s stock, exchanging common stock for preferred stock, with all additional common stock transferred to the decedent’s son. The preferred stock had time limited voting rights and a right to receive noncumulative dividends at the discretion of the board of directors. The preferred stock was also subject to a stock restriction and repurchase agreement allowing the corporation to redeem the stock at $105 a share. The court held that no gift occurred in the recapitalization because the value of the common stock transferred was not greater than that of the preferred stock received. The court also held that the failure of the corporation to pay dividends on the preferred stock was not a gift because the decedent, as a board member, was under a fiduciary duty to act in the best interests of the shareholders and the company needed extra reserves in the difficult economic times being experienced.


LIFE INSURANCE. The decedent had owned 49.5 percent of the stock of a corporation and entered into a buy-sell agreement under which a trust was created to purchase life insurance on the life of the decedent to be used to at least partially fund a redemption of the decedent’s shares on the decedent’s death. The trustee was prohibited from exercising any incidents of ownership over the insurance policy and the decedent had the right to purchase the policy at the cash surrender value. Because the life insurance was term, the policy would have a zero cash value for several years. The corporation paid for the policy with earnings which otherwise would have accrued to the shareholders. The decedent then entered into a redemption agreement under which the decedent received $150,000 for a covenant not to compete and a note for $300,000 payable over 30 months for the decedent’s stock. At the decedent’s death, $92,000 remained to be paid on the note. The IRS ruled that the life insurance policy was included in the decedent’s gross estate because the decedent constructively retained the incidents of ownership of the policy in that the trustee had no independent power over the insurance policy. Ltr. Rul. 9349002, Aug. 25, 1993.

VALUATION-ALM § 6.01[6].* The taxpayer owned, with other family members, 45 percent of the stock of a corporation which employed the taxpayer. The taxpayer and corporation entered into a stock option plan which gave the taxpayer the right for five years to purchase stock at 110 percent of the market price of the stock on the date an option was granted. The taxpayer transferred the options to an irrevocable trust for the taxpayer’s descendants. The IRS ruled (1) the transfers of the options to the trusts were completed gifts, (2) I.R.C. § 2701 does not apply to the transfers because the options are not equity interests in the corporation, (3) I.R.C. § 2703 does not apply to the transfers because the transfers were arm’s length transfers for adequate consideration, and (4) the options would not be includible in the taxpayer’s gross estate because the trusts were irrevocable. Ltr. Rul. 9350016, Sept. 16, 1993.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD-ALM § 4.01.* The IRS has adopted as final regulations relating to the requesting of IRS approval for a change in accounting method required by I.R.C. § 448. The regulations also provide rules for adjustment of taxable income under I.R.C. § 481(a) because of the change in accounting method. 58 Fed. Reg. 68297 (Dec. 27, 1993).

BAD DEBTS-ALM § 4.03[7].* The taxpayer was employed as an executive in another business and loaned money to the taxpayer’s family farming operation. The taxpayer was not employed by the farming operation and treated the involvement of money and time as retirement planning. The court held that the taxpayer could claim only a personal bad debt deduction for losses on the loan because the loan was not made to protect the taxpayer’s employment with the farm operation. Schmidt v. Comm’r, T.C. Memo. 1993-506.

COURT AWARDS AND SETTLEMENTS. The IRS has ruled that compensatory damages, including back pay, awarded in an action for disparate impact gender discrimination under the Civil Rights Act of 1964 and disparate impact racial discrimination under the Civil Rights Act of 1870 are excludible from gross income. However, awards of back pay alone are not excludible. Rev. Rul. 93-88, L.R.B. 1993-41, 4.

DISCHARGE OF INDEBTEDNESS-ALM § 4.02[15].* The cash method taxpayers entered into an agreement with the SBA to discharge a portion of their indebtedness in exchange for cash payments. The payments were made in December but the removal of the lien and other ministerial actions were not completed until January. The court held that the discharge of indebtedness income from the transaction was recognized in the taxable year of the payments because no further contingency remained for cancellation of the debt. Rivera v. Comm’r, T.C. Memo. 1993-609.

The IRS has issued temporary regulations relating to information reporting requirements of financial entities discharging $600 or more of indebtedness per year per debtor. The temporary regulations provide that the date of discharge for information reporting purposes occurs when an identifiable event occurs after which the debt no longer need be paid. Such events include (1) a discharge in bankruptcy, (2) an agreement between the lender and debtor to discharge the debt, and (3) cancellation of the debt by operation of law. However, the determination of the identifiable event is to be made based on all the facts and circumstances. 58 Fed. Reg. 68301 (Dec. 27, 1993).

INTEREST RATE. The IRS has announced that for the period January 1, 1994 through March 31, 1994, the interest rate paid on tax overpayments remains at 6 percent and for underpayments remains at 7 percent. The interest

PARTNERSHIPS-ALM § 7.03.*

CONTRIBUTIONS. The IRS has adopted as final regulations relating to the allocation of built-in gain or loss in property to the partner who contributed the property. In general, the regulations require the use of a reasonable allocation method which takes into account the variation between the adjusted tax basis of the property and its fair market value. The new regulations provide three methods considered reasonable but allows taxpayers to use another method if under the facts and circumstances, the method is reasonable. The regulations specifically define as unreasonable an allocation method which increases or decreases the property's basis or where the partnership creates tax allocations of income, gain, loss or deduction independent of allocations affecting book capital accounts. 58 Fed. Reg. 67676 (Dec. 22, 1993).

LIMITED LIABILITY COMPANIES. The IRS has ruled that a business organized under the Arizona Limited Liability Act could be taxed as a corporation or partnership, but would be taxed as a partnership if (1) the articles of organization restricted the transferability of interests and required the dissolution of the company upon termination of a member's interest unless all members agree to continue the company and (2) the articles of organization provided for management by elected members of the organization. Rev. Rul. 93-93, I.R.B. 1993-42, 13.


S CORPORATIONS-ALM § 7.02[3][c]*

STOCK BASIS. The IRS has adopted as final regulations relating to adjustments to the basis of a shareholder's stock in an S corporation and the basis of a shareholder's indebtedness of an S corporation to a shareholder. The IRS also adopted as final regulations relating to the treatment of distributions to S corporation shareholders.

The basis of a shareholder's stock is increased, on a per share-per day basis, by the shareholder's pro rata share of (1) the corporation's separately stated items of income, (2) the corporation's nonseparately stated items of income, and (3) the excess of the corporation's deductions for depletion over the basis of the property subject to depletion. Treas. Reg. § 1.1367-1(b).

The basis of a shareholder's stock is decreased, on a per share-per day basis (but not below zero) by (1) distributions that are not includible in the shareholder's income under Section 1368, (2) the shareholder's pro rata share of corporation items of loss and any expense of the corporation that is not deductible in computing its taxable income and not chargeable to a capital account, and (3) deductions for depletion to the extent that the deduction does not exceed the basis of the property subject to depletion. Treas. Reg. § 1.1367-1(c).

The regulations require that, if for any taxable year the shareholder's basis of an S corporation debt has been decreased, any net increase in shareholder basis for any subsequent taxable year must be used to restore the basis of the debt, as existing on the first day of the subsequent taxable year, before increasing the shareholder's basis in stock. If the shareholder holds more than one debt of the corporation, the restoration of basis is to be first applied to any debt which is repaid during the subsequent taxable year. The remaining increase is to be allocated among the remaining debts according to the amount of reduction in the previous taxable year. Treas. Reg. § 1.1367-2(c).

The regulations provide that a distribution by an S corporation without earnings and profits is not included in the shareholder's gross income to the extent the distribution does not exceed the adjusted basis of all the shareholder's shares of stock. Treas. Reg. § 1.1368-1(c). If the amount of the distribution exceeds the adjusted basis of all of the shareholder's stock, the excess is treated as gain from the sale or exchange of property.

A distribution in excess of a corporation's accumulated adjustments account (AAA) is not included in the gross income of the shareholder to the extent the distribution is an actual distribution of money and the portion in excess of the AAA does not exceed the shareholder's net share of the corporation's previously taxed income immediately before the distribution. Treas. Reg. § 1.1368-1(d).

The tax effect of a distribution to a shareholder is determined only after taking into account the adjustments to bases of the shareholder's stock under Section 1367 without regard for the distributions made during the corporation's taxable year. The determination of the source of a distribution is to be made only after the AAA has been adjusted to reflect (1) increases for taxable income items and the excess of the deductions for depletion, (2) decreases for nondeductible noncapital expenses (excluding taxes attributable to taxable years as a C corporation or to exempt income), (3) decreases from oil and gas depletion deductions, and (4) decreases for items of loss or deduction. Treas. Reg. § 1.1368-1(e).

If a shareholder disposes of 20 percent or more of the shareholder's stock in a 30-day period, the corporation may elect to treat the taxable year as two taxable years, with the first ending on the date the stock was transferred, for purposes of allocating items of income and loss, adjustments to the AAA, basis and earnings and profits, and determining the tax effect of distributions. Treas. Reg. § 1.1368-1(g).

If the sum of all distributions, except distributions from earnings and profits or PTI, during the taxable year exceed the AAA at the close of the taxable year, the balance of the AAA is allocated among the distributions in proportion to the amount of each distribution. Treas. Reg. § 1.1368-2(b). 59 Fed. Reg. 12 (Jan. 3, 1994).

TRUSTS. S corporation stock was held in several trusts. The trusts provided for trustee discretion for treating corporate distributions as income or principal but state law required the proceeds of stock redemptions to be allocated to trust principal. The S corporation redeemed some of its stock for cash in an I.R.C. § 302(d) redemption. The IRS ruled that the distributions to the trusts would not be income to the trust beneficiaries; therefore, allocation of the
distributions to trust principal would not disqualify the trusts as QST’s. Ltr. Rul. 9349099, Sept. 9, 1993.

TRAVEL EXPENSES. The taxpayer was a self-employed logger who also repaired equipment in a home shop. The court held that the taxpayer could deduct the cost of travel between the home and various logging sites because the taxpayer regularly used the home for a business. Walker v. Comm’r, 101 T.C. No. 36 (1993).

NEGLECT

STATUTE OF LIMITATIONS. The plaintiff granted the defendant permission to graze cattle on the plaintiff’s land and to intermingle those cattle with the plaintiff’s cattle. On April 10, 1992, the plaintiff filed suit against the defendant for damage to the plaintiff’s cattle from an infection of trichomoniasis from the defendant’s cattle. The defendant argued that the action was barred by the two-year statute of limitations of the defendant’s cattle. The appellate court reversed, holding that when the defendant attempted to control the spread of weeds, the defendant owed the plaintiffs the duty to use ordinary care for injury to personal property. The court held that the three-year statute of limitation of the defendant for actions applied because where the two statutes conflict the longer limitation period is to be used. Ritland v. Rowe, 861 P.2d 175 (Mont. 1993).

SPREAD OF WEEDS. The defendant enrolled fields in the Conservation Reserve Program which were adjacent to the plaintiff’s farm. After kochia and Russian thistle grew on the CRP acres, the defendant combined the area as a weed control method. The plaintiffs sued for damages to their property from the spread of the cut weeds. The trial court held that the defendant had no duty to the plaintiff in the control of weeds. The appellate court reversed, holding that when the defendant attempted to control the spread of weeds, the defendant owed the plaintiffs the duty to use ordinary care to prevent the spread of the weeds to the plaintiff’s property and the plaintiffs had raised sufficient facts to place at issue the question of whether the defendant used a reasonable method of weed control in respect to that duty. Kukowski v. Simonson Farm, Inc., 507 N.W.2d 68 (N.D. 1993).

PRODUCTS LIABILITY

CATTLE FEED. The plaintiffs were dairy farmers who fed their cows feed manufactured by the defendant. The plaintiffs claimed that the feed was contaminated by the pesticide Aldrin, causing illness and poor milk production in their cows. The plaintiffs sued the defendant in strict liability and the defendant argued that strict liability was not applicable because no harm to humans was alleged, only economic damages were claimed and the damage was not sudden or major. The court held that (1) an action for strict liability may be allowed where the only injury was to personal property, (2) the plaintiffs’ claim included loss of property in that the plaintiff claimed that the cows had become valueless, and (3) the action in strict liability was barred because the damages did not occur suddenly but progressed over five years. Reed v. Central Soya Co., Inc., 621 N.E.2d 1069 (Ind. 1993).

SEEDS. The plaintiff purchased watermelon seeds from separate defendants. The seeds grew well enough until the plants developed a blotch which eventually destroyed most of the crop. The plaintiff alleged that the seed was produced on infected fields and sued for breach of implied and express warranties, strict liability and negligence. The lower appellate court ruled that the first defendant was not liable for breach of express warranty in that the seed containers only promised that the seed would have “high vitality, vigor and germination,” all of which were met. The Supreme Court reversed, holding that a fact issue was raised as to whether the blotch affected the seed vitality. Both appellate courts ruled that no issue of fact remained as to the other defendant for breach of express warranty in that the seed order promised that the seeds were “strictly high grade seeds,” because the plaintiff failed to produce evidence to support a definition of “high grade.” The appellate court held that an issue of fact was raised as to whether the terms “properly fitted for seeding purposes” meant only that the seeds were warranted to be watermelon seeds and not that the seeds were free of disease. The first defendant was held to have effectively disclaimed any implied warranties through conspicuous placement on the seed containers of a specific disclaimer of implied warranty of merchantability or of fitness for a particular purpose. The Supreme Court held that an issue of fact remained as to whether the second defendant was relieved of any implied warranties because of an established industry practice to limit liability to the cost of the seeds. The Supreme Court allowed summary judgment for the defendants on the strict liability claim because the disease did not cause “sudden” damages and the action was one in warranty. Summary judgment for the defendant was allowed as to the negligence claim because the plaintiff sought only economic damages. Martin Rispens & Son v. Hall Farms, Inc., 621 N.E.2d 1078 (Ind. 1993), rev’d in part and aff’d in part, 601 N.E.2d 429 (Ind. Ct. App. 1992).

SECURED TRANSACTIONS

DESCRIPTION OF COLATERAL. The defendants, father and son, borrowed money from the plaintiff and granted the plaintiff a security interest in “All swine now owned or hereafter acquired” by the defendants with the swine to be kept on the son’s farm. The defendants sought to avoid the plaintiff’s foreclosure action by claiming that the swine owned by the father were not included in the collateral. The court held that because both defendants signed the loan and security papers, the all inclusive description of the collateral applied to swine owned by both defendants. The defendants also claimed that the plaintiff’s repossessing the proceeds of a sale of the swine was a wrongful intentional interference with business relations. The court held that no wrongful interference can occur where the plaintiff is enforcing a valid security interest. Driggers v. Continental Grain Co., 435 S.E.2d 722 (Ga. Ct. App. 1993).

CITATION UPDATES

AGRICULTURAL LAW MANUAL

by Neil E. Harl

This comprehensive, annotated looseleaf manual is an ideal deskbook for attorneys, tax consultants, lenders and other professionals who advise agricultural clients. The book contains over 900 pages and an index.

TABLE OF CONTENTS

Chapter 1: Farm and Ranch Liability
Chapter 2: Environmental Law Relating to Farms and Ranches
Chapter 3: Agricultural Labor
Chapter 4: Income Tax and Social Security
Chapter 5: Estate Planning: Death-Time Transfers and Private Annuities
Chapter 6: Organizing the Farm or Ranch Business
Chapter 7: Life Estates and Trusts
Chapter 8: Governmental Regulation of Animal Production, Shipment and Sale
Chapter 9: Governmental Regulation of Crop Production, Shipment and Sale
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Chapter 11: Government Regulation of Foreign Trade
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ISSUE INDEX

Bankruptcy
  General
    Estate property 10
    Exemptions
    Homestead 10
    IRA 10
    Personal property 10
    Post-petition property 10
  Federal taxation
    Administrative expense 10
    Avoidable liens 10
    Claims 10
    Confirmation 11
    Discharge 11
    Preferential transfer 11
    Responsible person 11
    Tax lien 11
Contracts
  Good faith 11
Cooperatives
  Dissenter’s rights 12
  Federal Agricultural Programs
    Borrower’s rights 12
    Brucellosis 12
    Crop insurance 12
    Governmental liability 12
  Federal Estate and Gift Tax
    Alternative valuation 12
    Charitable deduction 12
    Disclaimers 12
    Gift 13
    Life insurance 13
    Valuation 13
  Federal Income Taxation
    Accounting method 13
    Bad debts 13
    Court awards and settlements 13
    Discharge of indebtedness 13
    Interest rate 13
    Partnerships
      Contributions 14
  Limited liability companies 14
    Pension plans 14
    S corporations
      Stock basis 14
      Trusts 14
      Travel expenses 15
Negligence
  Statute of limitations 15
  Spread of weeds 15
Products Liability
  Cattle feed 15
  Seeds 15
Secured Transactions
  Description of collateral 15