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Cases, Regulations and Statutes

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A better solution may be to utilize a crop share lease, rather than a cash rent lease. Crop share leases meet the qualified use test in the post-death period.24

FOOTNOTES
1 I.R.C. § 2032A. See generally, 5 Harl, Agricultural Law §43.03[2](1994); Harl, Agricultural Law Manual § 5.03[2](1994).
3 See I.R.C. § 2032A(c)(6)(A).
4 E.g., Williamson v. Comm'r, 93 T.C. 242 (1989), aff'd, 974 F.2d 1525 (9th Cir. 1992) (cash rent lease to nephew was cessation of qualified use).
5 E.g., Ltr. Rul. 8240015, June 29, 1982 (surviving spouse did not have equity interest in land which was rented to children under “net lease”).
6 See n. 4 supra.
7 See n. 5 supra.
8 I.R.C. § 2032A(c)(7)(A).

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

BANKRUPTCY

BANKRUPTCY REFORM ACT OF 1994

The Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, (the Act) made several important changes to the Bankruptcy Code. The Act expressly waives the governmental immunity for money judgments against the IRS for violation of the automatic stay and other provisions. However, the Act limits the amount of attorney’s fees recoverable to $75 per hour unless special expertise was required and prohibits awards of punitive damages.

The Act also limits the actions which constitute a violation of the automatic stay, excluding tax audits, assessments, demands for tax returns and issuing of notices and demands for payment of assessments.

The Act extends the period for governmental entities to file claims after the first creditors’ meeting to 180 days but expressly provides that late filed claims may be disallowed.

The Act increases the debt limit for Chapter 13 eligibility to $250,000 of unsecured debt and $750,000 of secured debt.

GENERAL-ALM § 13.03.*

ATTORNEY’S FEES. The debtors filed for Chapter 11 and because they could not afford to give their bankruptcy attorney a retainer, the attorney took a second mortgage on the debtors’ farm. The fair market value of the farm was sufficient to cover the other secured debt. The trustee objected to the second mortgage as disqualifying the attorney under Section 327(a). The court, sitting en banc, held that the attorney’s second mortgage gave the attorney an adverse interest in the estate sufficient to disqualify the attorney. In re Escalera, 171 B.R. 107 (Bankr. E.D. Wash. 1994).

CONSOLIDATION. The debtors, husband and wife, owed a corporation which operated a horse breeding ranch. The husband had made a personal guarantee of a corporation loan to purchase a horse and had listed the farm as the husband’s asset, even thought he farm was owned solely by the wife. The court found that the creditor had not relied on the farm in making the loan because no check was made as to actual ownership and the farm was not taken as security for the loan. The debtors filed a joint Chapter 11 petition, listing all of their assets on one schedule. The cases were also jointly administered. The creditor sought to have the cases declared substantively consolidated, subjecting the wife’s farm to the husband’s guarantee, because the assets of the debtors were commingled and the cases were jointly administered. The appellate court reversed the order for consolidation, holding that the joint administration of cases was insufficient to make them consolidated and that the wife’s assets and proceeds of assets were sufficiently identifiable to be subject only to her debts. The court also held that, because the creditor did not rely on the farm as security for the loan and did not attempt to clarify ownership of the farm before making the loan, the equities favored not subjecting the wife’s farm to the husband’s guarantee. In re Reider, 31 F.3d 1102 (11th Cir. 1994).

SALES TAXES. The debtors were the owners of a corporation which operated a pizza restaurant which owed the state for sales taxes collected but not paid. The debtors were personally liable for the corporation’s sales taxes. The debtors argued that the sales taxes were a form of excise tax dischargeable under Sections 523(a)(1)(A), 507(a)(7)(E). The court held that because the debtors were personally liable for the taxes, the sales taxes were a trust fund type of tax under Section 507(a)(7)(C) and nondischargeable. In re Kelley, 171 B.R. 113 (Bankr. N.D. Okla. 1994).

CHAPTER 12-ALM § 13.03[8].*
PLAN. Two years before filing for Chapter 12, the debtor borrowed money from a bank to construct two poultry houses which were granted as collateral for the ten year loan. The debtor’s plan proposed to pay the remainder of the loan over 15 years at 8.25 percent. The bank objected to the plan, arguing that it did not make loans secured by poultry houses for more than 10 years because the “life expectancy” of poultry houses is about 10 years and that the minimum interest rate would be the prime rate plus 2 percent. The court held that the plan could not be confirmed with a payment term of more than 10 years at an interest rate of at least the prime rate plus 2 percent. 9.25 percent at the date of the petition. The plan also provided for partial payment of another loan by transferring some of the land securing the loan. The bank objected to this provision because the land had no access to a public road. The debtor agreed to include an access easement over the debtor’s land as part of the plan. The debtor claimed a homestead exemption for the debtor’s deceased spouse as well and the debtor’s own exemption, citing Ala. Code § 6-10-101. The exemption for the debtor’s deceased spouse as well and the as part of the plan. The debtor claimed a homestead exemption for the debtor’s deceased spouse as well and the debtor’s own exemption, citing Ala. Code § 6-10-101. The court held that the statute did not provide any additional exemptions in bankruptcy and limited the debtor to one exemption. Matter of Rice, 171 B.R. 401 (Bankr. N.D. Ala. 1994).

TRUSTEE’S FEES. The debtors’ plans (the opinion involved several bankruptcy cases) provided for plan payments directly to creditors with no payment of the trustee’s fees on those payments. The cases generally involved three types of claims, secured claims for long term debt, secured claims for short term debt, and income and real estate tax claims. The court held that the secured long term claims could be paid outside of the plan without payment of trustee’s fees but the short term secured claims must be paid through the trustee. The court also held that the real estate taxes could be paid outside of the plan free of the trustee’s fee because the taxes were secured by liens but that the income taxes had to be paid through the trustee. The court stated that this allocation allowed the trustee to receive reasonable compensation in these cases but that in other cases, the allocation could be different in order to provide reasonable compensation for the trustee, tempered by the debtors’ need to reorganize. In re Westpfahl, 171 B.R. 330 (Bankr. C.D. Ill. 1994).

FEDERAL TAXATION-ALM § 13.03[7].

AUTOMATIC STAY. The debtor filed for Chapter 13 in February 1988 and the plan was confirmed in May 1988. In August 1989, the IRS assessed the debtor for delinquent 1988 taxes and in May 1990 the IRS assessed the debtor for delinquent 1989 taxes. In September 1990, the IRS filed tax liens for the 1988 and 1989 taxes and in September 1991, the IRS levied against amounts owed to the debtor by a client. In April 1992, the debtor’s Chapter 13 case was dismissed. The employees of the debtor sought to avoid the IRS assessments and levies as violating the automatic stay. The court held that the employees lacked standing to seek avoidance of the assessments and levies but that even if the employees had standing, the assessments and levies did not violate the automatic stay because on confirmation of the plan and dismissal of the case, the estate property reverted to the debtor. Shell Oil Co. v. Capital Financial Services, 170 B.R. 903 (S.D. Tex. 1994).

The IRS had filed a pre-petition levy on the debtor's wages which the IRS failed to lift upon the debtor's filing for bankruptcy. In addition, a second levy was made post-petition after the IRS received notice of the bankruptcy filing. Although the IRS returned the funds received under the second levy, the court held that the 90 day period taken to return the funds was unreasonable and (1) allowed the debtor 11 percent interest on the funds from the date of levy until the date of the refund, (2) allowed the debtor 11 percent interest on funds levied under the pre-petition levy but received post-petition, and (3) awarded $1,000 in attorney's fees. The District Court initially held that the award of attorney’s fees was improper because the award was not based on a finding of actual fees incurred. On remand, the fees were determined. On a second appeal, the District Court, a different judge, held that the action was barred by sovereign immunity which had not been waived in the case. Matter of Fernandez, 171 B.R. 135 (M.D. Fla. 1994), rev’g unrep. Bankr. Ct. dec. on remand from, 132 B.R. 775 (M.D. Fla. 1991), aff’g in part and rev’g, 125 B.R. 317 (Bankr. M.D. Fla. 1991).

CLAIMS. The debtors filed for Chapter 7 and did not include any federal income tax claims on the schedules. The bar date for claims was in March 1992 but the IRS did not indicate that the debtors owed any taxes until December 1993 and formally filed a claim in March 1994. The claim included a priority tax claim and a general unsecured tax claim for a prepetition tax year. At the time of the claim filing, the trustee had not made any distributions, the case was still open and the unsecured creditors were eligible to receive only a t minimis return on their claims. The court held that under the circumstances of the filing, the tax claims would be allowed because no bad faith by the IRS was shown in filing the claim late. In re Miller, 171 B.R. 163 (Bankr. S.D. Fla. 1994).

The debtors owed federal taxes for 1989 and 1990 and the IRS had filed a prepetition tax lien against the debtors’ property for the taxes. The taxes had accrued interest and penalties to the extent that the total taxes, interest and penalties exceeded the fair market value of the debtors’ property subject to the lien. The IRS allocated the collateral to the claim starting with the taxes, interest and penalties accrued for 1989 and then for 1990. The debtors argued that the lien should be applied first to the taxes for both years, then to the interest and penalties. The effect of the debtors’ allocation would be to make all of the penalties dischargeable as unsecured claims. The court held that United States v. Energy Resources Co., 495 U.S. 545 (1990), did not apply to give the court the authority to reallocate the collateral supporting the IRS claim; therefore, the IRS allocation would be followed. In re Burgess, 171 B.R. 227 (Bankr. E.D. Tex. 1994).

DISCHARGE. The debtor was denied a discharge as to federal taxes because the debtor transferred assets to a trust controlled by the debtor when the debtor knew that the IRS claimed a tax deficiency and would seek a lien against the property. The court held that an attempt to avoid attachment of a lien through a fraudulent transfer was an attempt to evade payment of taxes, preventing discharge of the tax.
Breeders, Inc., 858 F. Supp. 831 (N.D. Ind. 1994)

DISMISSAL. The debtor filed for Chapter 13 and admitted not filing federal income tax returns for the last 28 years. The debtor filed the tax returns for the previous ten years only after the urging of the Bankruptcy Court but did not file a plan. The court held that the case would be dismissed for bad faith filing. In re Morimoto, 171 B.R. 85 (Bankr. 9th Cir. 1994).

TAX LIENS. The debtors had granted a mortgage on their home to secure a loan for the purchase of the home. The mortgage was released by mistake in March 1986. Before the error was discovered, the IRS filed tax liens on the homestead. The Bankruptcy Court and District Court allowed the reinstatement of the mortgage as of the date of the error, giving the mortgage a priority security interest in the home, because the IRS did not rely on the release since it did not know about the release until the debtors filed for bankruptcy. The Appellate court reversed, holding that I.R.C. § 6323 did not require IRS knowledge of the release and did not allow any retroactive effect from the reinstatement of the mortgage. In re Haas, 31 F.3d 1081 (11th Cir. 1994).

CONTRACTS

BOARS. The plaintiff purchased 21 boars from the defendant over five written contracts. The plaintiff alleged that the several of the boars were infected with atrophic rhinitis and sued for damages. The defendant pled the contracts which provided that damages for boars infected with rhinitis was limited to the purchase price. The contracts also contained a section which asked the buyer to include any additional terms and the plaintiff had filled in “none.” The plaintiff attempted to present evidence that the defendant’s salesperson orally represented that the boars were disease free. The damages limitation language was printed on the front of the contracts and in bold or red. The court held that the contract language was not ambiguous, that the plaintiff was an experienced buyer of hogs and that the parol evidence was not allowed to alter the terms of the contracts. The plaintiff also asserted that the oral representations amounted to fraud, allowing the parol evidence under the fraudulent misrepresentation exception. The plaintiff argued that, under the Louisiana Deficiency Judgment Act (LDJA), La. Rev. Stat. § 13:4106, the bank was barred from seeking any further recovery because the bank recalled the stock in partial satisfaction of the debt. The court held that the stock cancellation was made under federal law; therefore, the LDJA did not apply and that the federal law preempted the operation of the LDJA as to FLB loans. The debtor also brought an action against the bank for violations of the Agricultural Credit Act. The court held that the Agricultural Credit Act does not provide a private right of action to enforce the Act. Farm Credit Bank of Texas v. Farish, 32 F.3d 184 (5th Cir. 1994).

CORPORATIONS

DISSOLUTION. The debtor had formed an Iowa farm corporation in the 1970’s to farm land in Iowa. In 1973, the corporation sold its Iowa land and purchased land in Illinois and registered to do business in Illinois as a farm corporation. In 1977, the Iowa Secretary of State involuntarily dissolved the corporation for failure to pay the annual fee and file an annual report. The debtors did not receive notice of the dissolution and continued to operate the farm as a corporation. In 1981, the corporation sold some of its land to an Illinois land trust and rented the land from the trust. The proceeds of the sale were used to pay operating expenses and debts. In 1982, the trustee seized the corporation’s farm equipment and other assets to recover damages and costs resulting from the corporation’s default of the lease. The corporation transferred the land to the trustee, sold all other remaining land, and ceased farming. After the debtors filed for bankruptcy, the bankruptcy trustee sought recovery of the corporation’s assets, arguing that the conveyances of the land were without effect because the corporation was dissolved at the time of the conveyances. The court applied Iowa law effective at the time because the corporation was created by Iowa law and Iowa corporation dissolution law did not contravene Illinois law. The court held that after dissolution, a corporation has authority to sell its assets for the purpose of winding up its affairs. Although the initial transfer of the land to the land trust was not for the purpose of winding up the corporation’s affairs and therefore was not within the corporation’s authority, the final transfers of land were made with the intent to terminate the corporation’s business and were authorized by Iowa law. In re Morris, 30 F.3d 1578 (7th Cir. 1994), aff’g unrep. D. Ct. dec. aff’g, 147 B.R. 930 (Bankr. S.D. Ill. 1992).

FEDERAL AGRICULTURAL PROGRAMS

BORROWER’S RIGHTS-ALM § 11.01[2]. The debtor defaulted on a loan with a Federal Land Bank and the bank recalled the debtor’s FLB stock which the debtor was required to purchase as a condition for the loan. The bank informed the debtor about the debtor’s right to seek debt restructuring but the debtor did not apply for debt restructuring. The bank then instituted foreclosure proceedings against the debtor’s farm property. The debtor argued that under the Louisiana Deficiency Judgment Act (LDJA), La. Rev. Stat. § 13:4106, the bank was barred from seeking any further recovery because the bank recalled the stock in partial satisfaction of the debt. The court held that the stock cancellation was made under federal law; therefore, the LDJA did not apply and that the federal law preempted the operation of the LDJA as to FLB loans. The debtor also brought an action against the bank for violations of the Agricultural Credit Act. The court held that the Agricultural Credit Act does not provide a private right of action to enforce the Act. Farm Credit Bank of Texas v. Farish, 32 F.3d 184 (5th Cir. 1994).

BRUCELLOSIS. The APHIS has issued interim regulations increasing the indemnity for brucellosis reactor and exposed cattle and bison destroyed during herd depopulation or after being sold or traded from a herd subsequently found to be infected with brucellosis. 59 Fed. Reg. 52233 (Oct. 17, 1994).

DISASTER PAYMENTS. The FmHA has issued interim final regulations establishing the Disaster Set Aside program for FmHA borrowers who operated a farm or ranch in a federally declared disaster area in 1993. Under the program, a distressed borrower may move the next scheduled loan payment to the end of the loan term. 59 Fed. Reg. 53079 (Oct. 21, 1994).
IMPORTS. The ASCS has issued proposed regulations implementing an end-use certificate program for wheat and barley imported from any foreign country which requires end-use certificates of U.S.-produced wheat and barley. 59 Fed. Reg. 52931 (Oct. 20, 1994).

MEAT AND POULTRY INSPECTION. The AMS has issued proposed regulations updating the voluntary poultry grade standards as to discoloration, exposed flesh, and the procurement grades. 59 Fed. Reg. 52469 (Oct. 18, 1994).

FEDERAL ESTATE AND GIFT TAX

GENERATION SKIPPING TRANSFERS-ALM § 5.04[6]. The decedent had established a revocable inter vivos trust which provided that, upon the death of the decedent, the trust assets passed to another trust for the decedent’s grandniece and grandnephew for life with the remainder to pass to a charitable organization. The beneficiaries received an annuity but the life expectancy of the beneficiaries made the possibility of any amount passing to the charitable organization remote such that no estate tax charitable deduction would be allowed. The IRS ruled that the trust qualified as a charitable remainder trust even though the charitable organization had less than a 5 percent chance of receiving any trust property. The IRS also ruled that the charitable organization was not a “skip person” and that the transfer to the trust was not subject to GSTT because the transfer was already subject to estate tax. Ltr. Rul. 9440010, July 5, 1994.

In 1982, the decedent’s will bequeathed property to two trusts. Each trust had the surviving spouse and one of the decedent’s sons and his issue as beneficiaries. The trustee of each trust had the power to distribute net income to the beneficiaries and to distribute trust principal for “special needs or emergencies.” The trustee petitioned a state court for the authority to distribute trust property to minor beneficiaries through a custodian appointed under the Virginia Uniform Transfers to Minors Act. The IRS ruled that the trustee’s authority to make distributions to a custodian could not pass to minor beneficiaries without prior court order.

The decedent’s will included an exercise of a power of appointment over trust assets in a trust created by the decedent’s father in 1945. The decedent’s will appointed the property to trusts for the decedent’s children. The trustee of one of the children’s trusts exercised a power to invade principal to transfer trust property to a new identical trust but with the provision that the trust terminated as to the assets from the decedent’s father before 21 years after the death of the last descendant of the decedent in being at the death of the decedent’s father. The IRS ruled that the transfer of the trust property to the new trust would not subject the trust to GSTT as to the assets passing from the decedent’s father under the power of appointment to the new trust. Ltr. Rul. 9440011, July 5, 1994.

The decedent’s will passed property to a trust which consisted of a marital share and a residuary share. The surviving spouse disclaimed a fractional share of the marital trust and the estate elected to treat the remaining marital share trust as QTIP. The estate also made the reverse QTIP election of I.R.C. § 2652 giving the marital trust a zero inclusion ratio. The surviving spouse transferred the income interest and remainder interest in the marital share trust to a trust for the spouse’s children and filed a gift tax return. The IRS ruled that the marital trust assets that passed to the spouse’s children would also have a zero inclusion ratio for GSTT purposes. Ltr. Rul. 9440018, July 7, 1994.

In 1981, an irrevocable trust was created for the grantor’s daughter with a remainder for the daughter’s children. The daughter created a second trust for the daughter’s child, funded with property which would have a zero inclusion amount after allocation of the GSTT exemption. The trust was to terminate within the period allowed by the state rule against perpetuities. The daughter then formed a limited partnership and contributed the assets of the original trust in exchange for a .99 percent general partnership interest and a 98.02 percent limited partnership interest. The new trust was also contributed to the partnership in exchange for a 99 percent general partnership interest. Both trusts received partnership interests corresponding to the value of assets contributed to the partnership. The IRS ruled that the contribution of the original trust assets to the partnership would not subject the trust to GSTT. Ltr. Rul. 9440023, July 8, 1994.

INSTALLMENT PAYMENT OF ESTATE TAX-ALM § 5.05[1]. The decedent’s estate originally filed an estate tax return claiming no tax due. After an audit the IRS sent a notice of tax deficiency to the wrong address but the estate received the notice with 34 days remaining to make an election to pay the deficiency in installments. The estate filed 10 days late to the wrong IRS service center and the election included a check for the first installment of taxes but not the interest due. The estate argued that the election should have been allowed because of the delay in receipt and unavoidable delays caused by the estate’s attorney. The court held that the denial of the election was proper because the estate had sufficient time to make the election and the election was not only late but was improperly filed and did not include the required payment.


MARITAL DEDUCTION-ALM § 5.04[3]. The decedent’s will provided for the surviving spouse to receive the decedent’s personal property, the decedent’s daughters to receive $600,000 and the surviving spouse to receive all remaining property. The estate was liable for Ohio estate tax of $153,738. The IRS allocated the state tax against the residuary bequest to the spouse, making the tax amount not eligible for the marital deduction and the estate liable for $55,000 in federal estate taxes. Under Ohio Rev. Code § 2113.86(B), the state estate tax could not be allocated to specific bequests; therefore, the allocation of the estate taxes to the residuary clause was proper and decreased the property eligible for the marital deduction. Est. of Ferrara v. U.S., 94-2 U.S. Tax Cas. (CCH) ¶ 60,181 (N.D. Ohio 1994).

The decedent’s estate included assets in excess of $102 million and secured debts in excess of $37 million. The decedent’s surviving spouse petitioned the state probate court to take the surviving spouse’s elective one-third share...
of the estate. The estate argued that the elective share was not liable for the secured debt under Tennessee law; therefore, the marital deduction would equal one-third of the estate’s assets without first reducing the estate by the amount of secured debt. The court held that Tennessee law was changed to remove the elective share exemption from liability for an estate’s secured debt; therefore, the surviving spouse’s elective share had to be reduced by one-third of the secured debt. Est. of Williams v. Comm’r, 103 T.C. No. 25 (1994).

The decedent’s will provided for specific bequests to the surviving spouse and children, employees, charities and others. The residuary estate passed to a charitable organization. The surviving spouse filed an election within nine months after the decedent’s death to take a partial statutory share from the residuary estate and renounced any right to an elective share from any of the specific bequests. The IRS ruled that the property passing under the partial statutory share would be considered as passing from the decedent to the surviving spouse and eligible for the marital deduction. The IRS also ruled that the renunciation of the statutory share as to the specific bequests would be an effective disclaimer. Ltr. Rul. 9440027, July 11, 1994.

VALUATION-ALM § 5.02[3][a]. The taxpayer transferred stock to a trust which provided for a percentage annuity payment to the taxpayer plus an amount equal to the federal income tax liability incurred by the taxpayer from the trust. The IRS ruled that the transfer of the stock to the trust did not cause recognition of any gain or loss and that the taxpayer’s interest in the trust was a qualified interest under I.R.C. § 2702(b). Ltr. Rul. 9441031, July 12, 1994.

The taxpayers, husband and wife, jointly owned two vacation homes on adjoining lots. The taxpayer divided the realty such that each taxpayer owned one residence. Each residence was transferred to a ten-year trust with the owner as the sole beneficiary. The trusts provided that if the property was sold or destroyed, the trusts became annuity trusts for the beneficiary. The beneficiary had the right of first refusal on any sale of the trust property. The IRS ruled that the trusts were qualified personal interest trusts for purposes of I.R.C. § 2702. Ltr. Rul. 9441039, July 15, 1994.

FEDERAL INCOME TAXATION

BAD DEBTS-ALM § 4.03[7]. The taxpayer was the sole shareholder and president of a corporation which was terminated. The taxpayer personally paid a settlement to the corporation’s former employees after the state department of labor brought suit on behalf of the employees. The taxpayer was allowed only a nonbusiness bad debt deduction for the settlement payment because the corporation and not the taxpayer was considered to be the entity in the trade or business which employed the employees. Ludwig v. Comm’r, T.C. Memo. 1994-518.

COOPERATIVES. A cooperative amended its bylaws to provide for calculation of an Alternative Minimum Tax Income (AMTI) patronage dividend for its members in order to obtain a full deduction for such payments for AMT purposes. The IRS ruled that the amendment complied with the requirements for an AMT patronage dividend deduction from AMT and that the AMT and regular patronage dividend deductions were to be reported on separate schedules with the two sets of figures combined on one Form 4626 to which the schedules should be attached. Ltr. Rul. 9440002, June 21, 1994.

COURT AWARDS AND SETTLEMENTS-ALM § 4.02[14]. The taxpayer received a settlement of a Title VII racial discrimination suit against the U.S. Commerce Department and claimed a portion of the settlement as excludible from income as character damage. The court held that under U.S. v. Burke, 112 S.Ct. 1867 (1992), awards and settlement payments under Title VII actions are included in taxable income. United States v. Stubblefield, 94-2 U.S. Tax Cas. (CCH) ¶ 50,515 (S.D. Tex. 1994).

EXPENSES. The estimated deductible costs for use in adjusting farm expenses to exclude the cost of producing home-consumed farm produce on 1994 income tax returns as issued by the Iowa State University Extension Service are as follows--

- Pork $33.75 per 100 lbs. liveweight
- Beef $43.85 per 100 lbs. liveweight
- Lamb $41.40 per 100 lbs. liveweight
- Broilers $1.45 per 4 pound bird
- Eggs $0.58 per dozen
- Milk $8.05 per 100 lbs. or $0.69 per gallon

The above costs include all cash costs, depreciation and deductible production costs of home-raised feed. No charge is made for the farm operator’s labor. If hired labor or purchased grain and roughages are used to produce these products, or if high interest costs are incurred, the costs should be increased accordingly. In arriving at production costs, it was assumed that the young animals were raised and fed. FM 1421, Iowa State University, October 1994.

INSTALLMENT REPORTING-ALM § 6.03[1]. The taxpayer corporation sold some land on a two year installment contract but the taxpayer’s tax department mistakenly believed the transaction involved only one payment and did not elect the installment method of reporting the gain from the sale. The taxpayer represented that the revocation of the election out of the installment method would not decrease the taxpayer’s aggregate tax liability. The IRS ruled that the revocation of the election would be allowed. Ltr. Rul. 9441010, July 6, 1994.

LEVY. The IRS has adopted as final regulations increasing the amount of some exemptions and adding property to the list of exemptions from levy as required by TAMRA 1988. 59 Fed. Reg. 53087 (Oct. 21, 1994).

PARTNERSHIPS-ALM § 7.03.*

TERMINATION. A 50 percent partner transferred a 49 percent partnership interest to an affiliate. At least one year and one day later, the partner transferred the other 1 percent. The IRS ruled that neither transfer caused the termination of the partnership for federal tax purposes because 50 percent of the partnership was not transferred within a 12 month period. Ltr. Rul. 9440017, July 17, 1994.

*Agricultural Law Manual (ALM). For information about ordering the Manual, see the last page of this issue.
The taxpayer formed a corporation to conduct stock trading using the proceeds of a sale of another corporation. The new corporation hired independent money managers who were instructed to trade stock owned by the corporation for the purpose of obtaining the maximum capital return. Thus, most of the stock trades were for long-term holding of stock. The taxpayer’s duties involved managing the corporation but the taxpayer did not participate in any trades nor did the taxpayer meet with the money managers to discuss any trades. The court held that the taxpayer’s activity with the corporation did not constitute a trade or business because the taxpayer did not personally participate in the stock trading, the stock trading did not occur often enough, the taxpayer did not actively participate in the money’s manager’s trading of the stock and the management of the money managers by the corporation did not qualify as a trade of business of the taxpayer. Mayer v. U.S., 94-2 U.S. Tax Cas. (CCH) ¶ 50,509 (Fed. Cl. 1994).

TRAVEL EXPENSES. The taxpayer was denied deductions for travel expenses incurred while traveling between two jobs because the taxpayer did not maintain records showing the amount, time, place and business purpose of the travel. Guice v. Comm’r, T.C. Memo. 1994-521.

TRUSTS. The taxpayer was a self-employed consulting engineer who formed a trust to hold the taxpayer’s personal and business assets. The court held that the trust income from the taxpayer’s business was the taxpayer’s personal income subject to self-employment tax because the trust was a sham since the taxpayer treated the trust assets as the taxpayer’s own and did not consult with the trustee before buying, selling or giving away trust property. Spencer v. Comm’r, T.C. Memo. 1994-531.

MORTGAGES

GROWING CROPS. The debtors had granted a mortgage on their farm to the Wyoming Farm Loan Board (the Board). The debtors filed for Chapter 12 bankruptcy but the Board was allowed relief from the automatic stay to foreclose against the property. The property included winter wheat which would mature in three months after the foreclosure sale and three irrigation systems owned by the debtors. The court held that the crops were part of the real estate and title to the crops passed with the real estate on the foreclosure sale. The creditor purchased the property at the foreclosure sale and the debtors sought rent for use of the irrigation systems. The court held that the Board was a government entity which had not waived its sovereign immunity from suits for money damages. Haldeman v. State of Wyoming Farm Loan Board, 32 F.3d 469 (10th Cir. 1994).

SECURED TRANSACTIONS

CONTINUATION. In February 1984, the debtors gave a creditor a mortgage on farm real estate. Under S.D. Code §44-8-26, the mortgage was valid for five years and 60 days unless an addendum was filed before the end of that period (April 1989). The creditor failed to file an addendum within that period and the debtor claimed that the mortgage lapsed and the loan became unsecured. The debtor had filed for Chapter 11 bankruptcy in January 1985 and the case was closed in February 1986. The creditor argued that the automatic stay of the bankruptcy tolled the five year and 60 day period during the case, under Section 108(c), allowing the lapse date to extend to May 1990, after the addendum was filed. The court held that Section 108(c) did not apply because the creditor had ample time to file the addendum within the three years after the close of the Chapter 11 case; therefore, the mortgage lapsed five years and 60 days after filing. In re Roth, 171 B.R. 357 (Bankr. D. S.D. 1994).
STATE REGULATION OF AGRICULTURE

MILK. The Maine Dairy Farm Stabilization Act, Me. Rev. Stat. tit. 36, §§ 4541-4547, imposed a tax on all packaged fluid milk sold in Maine irrespective of the origin of the milk but provided a rebate only to Maine dairy producers. A company which sold out of state milk in Maine sued, arguing that the tax and rebate program violated the Commerce Clause of the U.S. Constitution. Citing West Lynn Creamery, Inc. v. Healy, 114 S.Ct. 2205 (1994), the appellate court reversed a holding for the state and ruled that the tax and rebate program violated the Commerce Clause. Cumberland Farms, Inc. v. LaFaver, 33 F.3d 1 (1st Cir. 1994), rev’g and rem’g, 834 F. Supp. 27 (D. Me. 1993).

CITATION UPDATES

Downey v. Comm’r, 33 F.3d 836 (7th Cir. 1994), rev’g, 100 T.C. 634 (1993) (court awards and settlements) see p. 149 supra.

Horton v. Comm’r, 33 F.3d 625 (6th Cir. 1994), aff’g, 100 T.C. 93 (1993) (court awards and settlements) see p. 149 supra.

Kisling v. Comm’r, 32 F.3d 1223 (8th Cir. 1994) (transfers within three years of death) see p. 141 supra.

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