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Cases, Regulations, and Statutes

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for the tax year of debt cancellation or discharge although the basis is reduced on the first day of the following tax year. As a general rule, the discharge of indebtedness for insolvent taxpayers (insolvent after the discharge as well as before) is handled much the same as in bankruptcy with the same rules applicable on reduction of tax attributes and reduction of basis (including the time when the basis of assets is reduced) except that the basis of exempt assets is not protected from reduction. The amount of discharge of indebtedness that may be excluded from income is limited to the extent of the debtor’s insolvency except for the solvent farm debtor rule that will be discussed in the next issue. The determination of insolvency is made immediately before the discharge of indebtedness. Insolvency is defined as an “excess of liabilities over the fair market value of assets.” It appears that both tangible and intangible assets are included in the calculations and both recourse and nonrecourse liabilities are counted. However, it is not clear whether contingent liabilities should be included. Exempt property apparently is not included in the insolvency calculations. The separate assets of a debtor’s spouse are not included in determining the extent of insolvency. A point to remember: in discharging indebtedness, the taxpayer’s net worth may rise by more than the amount of discharge of indebtedness for income tax reporting purposes. A write-off of accrued but unpaid interest for a cash basis taxpayer and a write-off of property taxes and other obligations that would have produced an income tax deduction if paid may nonetheless affect solvency of the taxpayer. Thus, the two sets of calculations—net worth and discharge of indebtedness—should be carried on contemporaneously.

**FOOTNOTES**

1. See p. 69 supra.
4. See Ltr. Rul. 8920019, Feb. 7, 1989 (Chapter 12 debtor was “in bankruptcy” for purposes of discharge of indebtedness).
5. See I.R.C. § 108(b).
7. Id.
10. I.R.C. § 1398(g).
11. Id.
12. See 4 Harl., supra note 2, § 39.02 for a discussion of income taxation in bankruptcy.
22. I.R.C. § 1017(c)(1).
23. I.R.C. § 1017(a).
25. I.R.C. § 1017(c)(2).
27. Treas. Reg. § 1.1017-1.
31. See I.R.C. § 1017(b)(2).
32. Id.
37. See I.R.C. § 1017(c)(1) (rule limited to taxpayers in bankruptcy).
39. Id.
40. See 4 Harl., supra note 2, § 39.03[2].
43. See note 8 supra.

**CASES, REGULATIONS AND STATUTES**

**ANIMALS**

**MISTREATMENT.** The testimony of a deputy sheriff and a state veterinarian who had examined the horses was sufficient evidence to support a jury verdict convicting defendant of mistreatment of the horses because of failure to provide horses with adequate food and water. State v. Shaeffer, 450 N.W.2d 754 (N.D. 1990).

**BANKING**

**NEGligence.** Farmers had borrowed from PCA for operating expenses for several years with the loans secured by farm equipment, land and crops "growing or to be grown." After negotiations for restructuring the loans, the PCA decided not to loan the farmers any more money and the money for the next year's crop was obtained elsewhere. The PCA filed an action for a money judgment and foreclosure on the collateral. The farmers counterclaimed that the PCA owed a fiduciary duty to them as shareholders of the PCA and that the PCA was liable in tort for bad faith in failing to exercise forebearance under the federal regulations. The court held that the fiduciary duty of a corporation extended to all shareholders as a group and not to individual shareholders. Because the farmers did not have a right to a private cause of action under the federal regulations, the farmers cannot sue the PCA in state court. Production Credit Ass'n v. Ista, 451 N.W.2d 118 (N.D. 1990).

**BANKRUPTCY**

**GENERAL**

**ADMINISTRATIVE EXPENSES.** The lessor of irrigation equipment was not allowed administrative expense priority for rent for the period between the debtor's filing for bankruptcy and the date the lease was deemed rejected where the debtor did not use the equipment during that period. In re Carmichael, 109 B.R. 849 (Bankr. N.D. Ill. 1990).

**AUTOMATIC STAY.** A debtor was not allowed to recover attorney fees

CLAIMS. The amount of the IRS's allowed secured claim in the debtor's homestead is the fair market value less the hypothetical costs of sale, although the debtor plans to retain possession of the homestead. *In re Coby*, 109 B.R. 963 (Bankr. D. Nev. 1990).

EXEMPTIONS. Debtors owned 2.5 acres in a "country living" development of residential homes. The debtors did not operate a farm or ranch on the property. The debtors were denied use of the rural homestead exemption under Texas law and were limited to one acre of land as a homestead exemption. *In re Spencer*, 109 B.R. 715 (Bankr. W.D. Tex. 1989).

The debtors claimed an annuity from a court settlement of a personal injury action as exempt property. The bankruptcy court allowed the debtors to use the annuity and supply their own horses to perform their duties as a yardman. The court held that the debtor was entitled to an exemption for the horses as tools of the debtor's trade. *In re Stewar*, 110 B.R. 11 (D. Idaho 1989).

FIDUCIARY DUTY OF DEBTOR. Prior to filing for bankruptcy, the debtor had attempted to sell farmland to a third party for $45,000 but the sale was not completed. The debtor then filed for bankruptcy and during the bankruptcy case filed a motion to sell the land to his parents for the fair market price of $14,000. The sale was approved by the bankruptcy court after notice to all creditors and a hearing. Over one year later but still during the bankruptcy case, the third party reoffered to purchase the land from the debtor's parents for the same $45,000. The creditors argued that the debtor breached his fiduciary duty to the creditors to disclose the prebankruptcy offer and that the profits from the sale should be distributed to creditors. The court held that given the procedural correctness of the sale and the failure of the creditors to object to the sale, the sale was not fraudulent. *In re Schipper*, 109 B.R. 832 (Bankr. N.D. Ill. 1989).

LIEN AVOIDANCE. Chapter 7 joint debtors, husband and wife, were allowed to avoid judgment lien against husband's interest in the house where the debtors' equity in the house was less than the full exemption. *In re Nunley*, 109 B.R. 784 (Bankr. E.D. Tenn. 1990).

CHAPTER 12

ELIGIBILITY. A creditor was not allowed to raise the issue of whether the debtor was a family farmer eligible for Chapter 12 in an appeal of confirmation of the Chapter 12 plan. *First Nat'l Bank v. Kerwin-White*, 109 B.R. 627 (D. Vt. 1990).

PLAN. The Chapter 12 debtor's plan provided for payment in full of a secured creditor's claim by transferring some of the real property securing the claim to the creditor sufficient, at the value set by the bankruptcy court, to repay the creditor. The plan was confirmed over the objections of the secured creditor who argued that the creditor should have retained a lien on the remainder of the collateral real property to cover any deficiency upon sale of the property transferred under the plan. On appeal, the court agreed with the creditor, holding that 11 U.S.C. § 1225(a)(5)(C) required transfer of all property securing a creditor's lien before a plan could be confirmed over objection of the creditor. *First Nat'l Bank v. Kerwin-White*, 109 B.R. 627 (D. Vt. 1990).

FEDERAL TAXATION

ACCOUNTING METHOD. In a Chapter 11 bankruptcy case, IRS's were upheld in requiring a shift to accrual accounting by the debtor under I.R.C. § 446 as more nearly reflective of income. The outcome was additional recognition of income by the debtor in the pre-bankruptcy filing period. *In re BKW Systems, Inc.*, 90-1 U.S.T.C. ¶ 50,139 (Bankr. D. N.H. 1989).

ALLOCATION OF TAXES. A Chapter 11 plan was not confirmed where the plan attempted to allocate payments to be made for several types of federal income and withholding taxes owed by debtor. The court held that such payments could not be allocated by the plan because the payments were involuntary. *In re Mold Makers, Inc.*, 109 B.R. 845 (Bankr. N.D. Ill. 1989).

AVOIDABLE TRANSFERS. An action by the trustee to seek
The FCA has issued proposed rules authorizing all institutions of the Farm Credit System (except the Federal Agricultural Mortgage Corporation) to organize service corporations which would be exempt from the requirement that all stock be owned by FCS banks and only require at least 80 percent ownership by FCS banks. 55 Fed. Reg. 9138 (March 12, 1990), adding 7 C.F.R. § 611.1137.

FEDERAL ESTATE & GIFT TAX

ANNUAL EXCLUSION. The House Ways and Means subcommittee has been presented with a proposal that the $10,000 per donee annual exclusion be replaced by a $30,000 per donor annual exclusion and with the proposal that a gift of property in trust would not be eligible for the annual exclusion unless the donee's power of withdrawal from the trust lasted for the donee's life. Both proposals would become effective for gifts made after the date of committee action.

MARITAL DEDUCTION. An estate was entitled to a marital deduction for a widow's allowance paid to the surviving spouse. Est. of Watson v. Comm'r, 94 T.C. No. 16 (1990).

The decedent's will provided for a marital QTIP trust and a marital share trust. In addition, the will provided for distribution of a promissory note reported on the installment method for federal income tax purposes to either the marital share trust or outright to the surviving spouse. IRS ruled that because the will provided that the value of any assets distributed in kind to the marital trusts be fairly representative of the net appreciation or depreciation in value of all property which could be distributed to the trusts, the marital trusts were eligible for the marital deduction. IRS also ruled that gain from the promissory note may still be reported on the installment method whether the note is distributed to the marital trust or the surviving spouse. Ltr. Rul. 9007016, Nov. 16, 1989.

A surviving spouse received 50 percent of the decedent's Keogh plan and all of the decedent's interest in a corporate money purchase plan. IRS ruled that the value of the property received by the surviving spouse was eligible for the marital deduction because under the plans' agreements, the surviving spouse was a deemed beneficiary of the amounts received. Ltr. Rul. 9008003, Nov. 13, 1989.

TRANSFERS WITH RETAINED INTERESTS. Taxpayer sold stock in a closely held corporation to the corporation in exchange for a 15 year promissory note. The taxpayer's spouse remained a majority shareholder in the corporation. The promissory note was held to be "qualified debt" for purposes of I.R.C. § 2036(c). IRS ruled that the interest of the spouse retaining an interest in the corporation is not attributable to the spouse selling the stock under I.R.C. § 2036(c)(3)(C) and that the sold stock would not be includible in the selling spouse's gross estate. Ltr. Rul. 9008065, Nov. 29, 1989.

TRUSTS. The corpus of a trust established by the decedent was includible in the decedent's gross estate where the trust terminated before the decedent's death but the trust did not provide for distribution of the corpus. Est. of Watson v. Comm'r, 94 T.C. No. 16 (1990).

VALUATION. The value of a decedent's stock in a closely held publishing company was discounted because of likelihood of protracted litigation over the rights and duties of the stock. Est. of Newhouse v. Comm'r, 94 T.C. No. 14 (1990).

Husband and wife, ages 82 and 80, owned a house as joint tenants and conveyed the house by gift to a third party, retaining the right to live in the residence for the rest of their lives. The value of the gift was determined using Table A(1) of Publication 723E, Actuarial Values to be .44906 times the fair market value of the house. Ltr. Rul. 9008042, Nov. 27, 1989.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. A company which grows and markets hybrid seed corn was eligible to use the cash method of accounting for reporting income. The company grew 50 percent of the corn and contracted with others for the remainder, supplying the seed, paying for most of the growing expenses and overseeing the entire process. Ltr. Rul. 9009003, Nov. 8, 1989.

ALCOHOL FUELS CREDIT. The IRS has issued final regulations which provide questions and answers concerning the term "qualified mixture" under I.R.C. § 40. Under the final regulation, a qualified mixture is a mixture of alcohol and gasoline or other special fuel which (1) is sold by the taxpayer producing such mixture to any person for use as a fuel or (2) used as a fuel by the taxpayer producing the mixture. The mixture remains a qualified mixture even if the alcohol is chemically transformed by the mixture or prior to mixture, provided that there is no loss of energy content of the alcohol. 55 Fed. Reg. 8946 (March 9, 1990), adding Treas. Reg. § 1.40-1.

ANNUITIES. Taxpayer transferred an interest in an apartment in exchange for an annuity which was to pay a minimum annual income with a minimum total payment. If the minimum total payment had not been made by the taxpayer's death, the remainder was to be paid to her estate. The taxpayer retained the right to terminate the annuity and receive the remainder of the minimum payment at any time. IRS ruled that the taxpayer may report the gain from the transaction on an annual basis and that upon the taxpayer's death, the remainder amount paid will be treated as income in respect of a decedent. Ltr. Rul. 9009064, Dec. 8, 1989.

BAD DEBTS. Taxpayer invested in a car dealership and received 49 percent of the corporation's stock in return. The investment was made with the intent to turn the business into a profitable one and resell the investment at a profit. The taxpayer loaned the corporation additional amounts which were recorded on the corporate books as loans. Because the taxpayer was found to be in the business of purchasing, promoting and organizing businesses, the loss of value from the failure of the car dealership was a deductible business bad debt. Farrington v. U.S., 90-1 U.S.T.C. ¶ 50,125 (Bankr. N.D. Okla. 1990).

C CORPORATIONS

REORGANIZATIONS. A farming and manufacturing corporation decided to reorganize into two separate corporations, one for farming and one for manufacturing. The distribution of the farming business assets to the new corporation in exchange for stock which was to be distributed to the old corporation's shareholders was ruled a "type D" reorganization. Ltr. Rul. 9008078, Nov. 30, 1989.

DISCHARGE OF INDEBTEDNESS. The taxpayer was held to have realized long term capital gain from the sale of stock to his children and discharge of indebtedness income from the acquisition of the taxpayer's debts by

**ELECTRONIC REPORTING.** IRS was held not liable for interest on a refund for the period of delay resulting from the sending of the refund by ordinary mail instead of by electronic transfer as requested by the taxpayer. *Onan Corp. v. U.S.* 90-1 U.S.T.C. ¶ 50,135 (Cl. Ct. 1990).

**HOBBY LOSSES.** A person engaged in horse raising and training was held not to have engaged in the activity for profit but only to make her daughter a first class equestrian rider. *Wardrum v. Comm’r*, T.C. Memo. 1990-121.

**HOME OFFICE.** A home office deduction was disallowed for a self-employed actor who was also employed by a theater company as a school administrator and who used the office for both activities. The court ruled that because the office use as an employee was not for the convenience of the employer theater company, the entire use of the office was nondeductible. *Hamacher v. Comm’r*, 94 T.C. No. 21 (1990).

**INSTALLMENT SALES.** A corporation owning a paper mill sold the mill to two trusts established by the president of the corporation. The two trusts then sold the mill to the federal government. Although the sale of the mill was prompted by the purchase of surrounding forest by the federal government, the sale of the mill was not an involuntary sale. The court ruled that the corporation could not report the gain from the sale of the mill on the installment method because the mill purchased the mill from a related party. The corporation failed to prove that the first sale to the trusts was not tax motivated. *Tecumseh Corrugated Box Co. v. Comm’r*, 94 T.C. No. 22 (1990).

**INVESTMENT INTEREST.** Interest on loans used to purchase bank stock was held subject to the limitation on investment interest where the taxpayer purchased the stock with "substantial investment intent" in that the primary reason for the purchases was to sell the stock after it appreciated and the taxpayer was not in the trade or business of buying banks. *In re Butcher*, 109 B.R. 775 (Bankr. E.D. Tenn. 1990), aff’g 100 B.R. 363 (Bankr. E.D. Tenn. 1989).

**INVESTMENT TAX CREDIT.** A partnership lessor of equipment was denied investment tax credit for the first 12 months of the lease where the partnership did not pay for any deductible expenses for the equipment. *Gohr Farms, Inc. v. Comm’r*, T.C. Memo. 1990-88.

**IRA’S.** Take taxpayer made withdrawals from an IRA account but redeposited the funds within 60 days. IRS ruled that such transactions qualify as rollovers and do not cause inclusion of the withdrawn amounts in income. *Ltr. Rul. 9010007*, Dec. 14, 1989.

**LETTER RULINGS.** The IRS has announced amended user fees for letter rulings effective April 1, 1990. The fee for rulings from the Associate Chief Counsel (Technical) and Associate Chief Counsel (International) is $500 for a change in accounting method (Form 3115) $500 and $500 for rulings from individuals, estates and trusts with total income of less than $150,000 as reported on the federal income tax return for the last taxable year ending before the ruling request. The fee for determination letters governed by Rev. Proc. 90-1 and Rev. Proc. 87-4 concerning income tax, estate tax, gift tax, excise tax, employment tax and administrative matters is $250. *Rev. Proc. 90-17, I.R.B. 1990-12, March 12, 1990.*

**NET OPERATING LOSS.** A taxpayer was not allowed a net loss carryback where the taxpayer had made an irrevocable election to carry net operating losses forward by typing "Taxpayer elects to carry net operating loss over under I.R.C. 172(b)(2)(C).” *Santi v. Comm’r*, T.C. Memo. 1990-137.


**PENSION PLANS.** For plans beginning in February 1990 the weighted average is 8.55 with the permissible range of 7.70 to 9.41 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). *Notice 90-22, I.R.B. 1990-12, 11.*

**RESPONSIBLE PERSON.** The director, vice-president and 50 percent shareholder of a corporation was held not to be a "responsible person" liable for the corporation's failure to pay withholding taxes because the responsibility for payment of such taxes had been give exclusively to the other 50 percent shareholder. *In re Brady*, 110 B.R. 16 (Bankr. D. Nev. 1990).

**RETURNS.** IRS has announced that until further guidance is published, employers maintaining plans under I.R.C. §§ 79, 105, 106 and 129 are not required to file information returns under I.R.C. § 6039D. Employers maintaining plans under I.R.C. §§ 120, 125 or 127 are still required to file information returns Form 5500, 5500-C or 5500-R under I.R.C. § 6039D, but need not supply additional information required by TRA 1986, section 1151 until further guidance is published by IRS. *Notice 90-24, I.R.B. 1990-13, March 26, 1990.*


**SAVINGS BONDS.** Series E and EE savings bonds owned by husband and wife individually and as co-owners were transferred and reissued under the name of the husband and wife as trustees of a trust which is considered owned by the trustees. IRS ruled that the transfer was not a taxable event. *Ltr. Rul. 9009053, Dec. 6, 1989.*

**S CORPORATIONS.** CLASSES OF STOCK. Stock purchased through a corporation's shareholder stock option agreement did not create a second class of stock where the agreement did not affect the shareholder's fights in profits and
SECURED TRANSACTIONS

CONVERSION. As part of a settlement agreement, the seller and lessors of dairy cattle had agreed to each’s portion of the remaining dairy herd after default of the purchaser/lessee. The delivery of the cattle, which were held by a third party for four months after the agreement, was held not to amount to a conversion. Ragland v. Davis, 782 S.W.2d 560 (Ark. 1990).

FEDERAL CROP PROGRAM PAYMENTS. In settlement of debts owed to a bank, a farm debtor assigned his interest in federal feed grain program payments to the bank up to the amount owed. After the debtor filed for Chapter 12 bankruptcy, another creditor objected to the bank’s receipt of those payments, arguing that the bank held only an unperfected security interest in the payments. The court agreed, holding that under the statute and regulations of the federal feed grain program, a participant could not assign his interest in the payments for pre-existing debt and that any assignment could be for security purposes only. Therefore, the bank held only a security interest in the payments which was unperfected because of filing errors. In re Blackert, 109 B.R. 857 (C.D. Ill. 1990), rev’g 95 B.R. 972 (Bankr. C.D. Ill. 1989).

GUARANTORS. The parents of the debtor had guaranteed the loan on the debtor’s tractor which was secured by a perfected security interest of the bank. After the debtor had filed for bankruptcy, the parents paid the outstanding debt on the tractor and possession of the tractor was given to the parents. The bankruptcy trustee filed an action for turnover of the tractor back to the estate and for avoidance of the guarantors’ lien on the tractor under the trustee’s priority position as of the filing of bankruptcy. The parents claimed that by paying the loan, they acquired the bank’s prior security interest in the tractor. The court rejected that argument in that under Minnesota law, Minn. Stat. § 336.9-302(2), the bank would have to assign its security interest to the parents, which it did not do. Second, the parents argued that they acquired a valid prepetition lien by virtue of equitable subrogation. The court rejected that argument because the parents paid the loan after the filing of the petition and thus at the time of the filing did not have a valid lien because of their subrogation rights. In re Bukowski, 109 B.R. 932 (Bankr. D. Minn. 1990).

LANDLORD’S LIEN. A farm tenant failed to pay the second installment of annual rent and the landlord brought an action to enforce the statutory landlord’s lien against the proceeds of the sale of the tenant’s crop held by a bank. The bank had required the tenant to have the bank’s name placed on an check received from the sale of the crops. The court held that the landlord’s lien extended to the proceeds of the crop because the bank knew about the landlord’s lien and participated in the terms of the sale by having its name placed on the check. The court upheld the lower court’s finding that the landlord did not waive the lien by allowing the tenant to sell the crop without prior consent, because one-half of the rent was required to be paid before harvest of the crop. Planters Bank & Trust Co. v. Sklar, 555 So.2d 1024 (Miss. 1990).

STATE REGULATION OF AGRICULTURE

AERIAL SPRAYERS. Aerial sprayer of pesticide was found not to have violated state regulation for contamination of state waters because amount of pesticide in lakes and stream was not injurious to animals or humans. Sprayer was found to have failed to follow label instructions for spraying of pesticide which prohibited spraying of chemical on water. Duflo Spray-Chemical, Inc. v. Jorling, 550 N.Y.S. 497 (A.D. 3d Dept. 1990).

FORECLOSURE. Farmers had transferred land to the bank in lieu of foreclosure. The bank sold the land to a third party and the farmers sued the bank for failure to offer the land to them first under Iowa Code § 524.910(2). The court upheld the constitutionality of the statute on equal protection and due process grounds. Knepper v. Monticello State Bank, 450 N.W.2d 833 (Iowa 1990).

STATE TAXATION

VALUATION. A family corporation decided to split the corporation into two corporations with each brother owning one corporation. Because of federal tax considerations, the stock of the new corporation was owned by the old corporation for three days. The court held that the momentary ownership of the corporation by another corporation did not disqualify the farm land for present use valuation as farm land where all the corporations involved were owned by the same family members and the ownership resulted from federal estate and income tax considerations. Appeal of ELE, Inc., 388 S.E.2d 241 (N.C. App. 1990).
SOCIAL SECURITY TAX AND IMMIGRATION REQUIREMENTS IN HIRING OF FAMILY MIGRANT FARM LABOR

by Robert Achenbach

Social Security Tax. Employees. For cash remuneration paid after 1987, an employer is required to withhold an employee's share of social security taxes (7.65 percent for 1990) if $150 or more is paid to an employee or $2,500 or more is paid to all employees during a year for agricultural labor. For 1990, up to $51,300 of wages are subject to social security tax withholding.

Independent contractors. Cash remuneration paid to an independent contractor for agricultural labor is not subject to withholding of the contractor's share of social security tax and the payor is not required to pay the contractor's or an employer's share of social security tax. Instead, the payor is required to file information Form 1099 MISC and the laborer may be required to report the income as self-employment income and pay social security tax on that amount.

Crew leaders. Crew leaders are considered independent contractors for social security tax purposes. Crew leader is defined by the Internal Revenue Code 1986 as follows:

"The term 'crew leader' means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. For purposes of this chapter and chapter 2, a crew leader shall, with respect to service performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person."

Thus, when a farmer hires a family of migrant farm laborers through one of the parents, a major concern of the farmer is determining whether an employment relationship exists. If the family of workers are all considered employees of the farmer and either the farmer pays any employee over $150 in wages or the farmer pays over $2,500 in wages for agricultural labor during the year, the wages are subject to social security tax withholding and payment by the farmer. If the parent who negotiates with the farmer is considered a crew leader furnishing the "crew" of the rest of the family, the parent is an independent contractor and the farmer is not required to withhold or pay social security tax on amounts paid for the labor.

Sachs v. United States, involved the hiring of families of migrant farm workers to maintain and harvest sugar beet, cucumber and tomato crops. The families were paid on a per hour basis with payments made to the head of each family who provided necessities for the family members and paid each member an allowance. The court held that the heads of the families were not crew leaders and that all family members were employees of the farmer. The court examined the definition of "farm labor contractor" under the Farm Labor Contractor Act of 1963 (now the Migrant and Seasonal Agricultural Workers Act) which excluded from farm labor contractors individuals who recruited members of their own family.

Alien agricultural labor. Agricultural labor performed by citizens from foreign countries temporarily admitted to perform agricultural labor is excluded from the definition of employment for social security tax purposes. Illegally admitted agricultural workers, however, are subject to social security tax and employers are required to comply with the withholding and tax payment provisions.

A farm employer is required to obtain every employee's social security account number. If the employee does not furnish an account number, the employee is to supply the following information to the employer on a signed and dated Form SS-5:

1. the employee's full name, address, date and place of birth.
2. the full name of the employee's father.
3. the employee's mother's full name before marriage, and
4. a statement as to where and when a Form SS-5 was previously filed.

The employee is still required to file a Form SS-5 application and the employer is required to advise the employee of that requirement.

If the employee has not furnished the employer with an account number by the time payment of withheld social security taxes are to be paid, the employer is to provide the above information on a Form SS-5 or in a written statement and state whether an application for an account number has been filed or provide a statement as to why the above information has not been obtained.

Immigration Law

Under the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, substantial monetary penalties and possible imprisonment may be imposed if a farmer knowingly hires or continues to employ an alien not lawfully admitted to the United States.

Because the penalties are based on a farmer knowingly hiring an illegal alien, the farmer need only comply with the verification requirements to avoid