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Cases, Regulations, and Statutes

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50 percent of the acreage so designated is to be without restrictions
on haying and grazing except that acreage devoted to perennial
cover on which cost share assistance has been provided is not to be
credited toward the producer’s resource-conserving crop
requirement.

Barley, oats or wheat planted as part of a resource conserving
crop on reduced acreage may not be harvested in kernel form.
Farm program payments are not to be reduced as a result of plant-
ing a resource-conserving crop as part of a resource-conserving
crop rotation on payment acres. The term “resource conserving
crop” includes legumes, legume-grass mixtures, legume-small
grain mixtures, legume-grass-small grain mixtures and alternative
crops. The term “alternative crops” means experimental and
industrial crops grown in arid and semi-arid regions that conserve
soil and water.

Program payments are not to be made if the producer hays or
grazes the acreage during the 5-month period during which haying
and grazing is not allowed or, if the crop includes small grain,
before the producer harvests the small grain in kernel form.

The Secretary has the authority to make adjustments in the
crop acreage base to reflect resource-conserving crop rotation
practices maintained prior to participation in the program.
Producers enrolled in a resource-conserving crop rotation are not to
be ineligible to receive payment for program crops on acreage
equal to the average number of traditionally underplanted acres for
the three years before enrolling in the program.

Resource Conservation and Development Program
(Sec. 1452). The RC&D program is reauthorized through
1995. The number of acres is increased to 450.

Management of undesirable plants on federal lands
(Sec. 1453). The legislation amends the Noxious Weed Act of
1974. The authority is to be used to control the spread of undesir-
able plants as a result of transporting seeds or commodities to or
from federal lands.

Farmland Protection (Sec. 1464 et seq). Federal
departments and agencies are to use USDA-developed criteria to
determine the actual quantity of farmland converted by federal
programs. Under a new "Agricultural Resource Conservation
Demonstration Program," the state of Vermont (and other states
that operate or administer a land preservation fund on or before
August 1, 1991) can qualify for special 10-year subsidized loans
with no principal due during the 10 years.

**CASES, REGULATIONS AND STATUTES**

**BANKING**

**DUTY TO BORROWERS.** The plaintiffs had borrowed
substantial sums from the defendant bank for operating the plain-
tiffs’ farm and ranch. After the downturn in the rural economy,
the plaintiffs encountered financial difficulty and negotiated with
the bank for additional loans to cover a pending default on loans
secured by the farm land. Although a temporary agreement for a
letter of credit was obtained, the plaintiffs eventually had to
liquidate all property in satisfaction of the indebtedness. The
plaintiffs filed this action alleging breach of fiduciary duty, breach
of contract, breach of good faith in contract and in tort, fraud,
deceit and promissory estoppel. The court denied the plaintiffs’
 fiduciary duty claim because the plaintiffs were experienced
farmers and the bank did not exercise control over the operations
of the farm other than reasonable requirements for financial
records. The plaintiffs alleged that the bank breached a contract to
purchase some of the land and lease it back to the plaintiffs. The
court held that the plaintiffs had insufficient evidence of this
contract and gave no consideration to support the contract. The
court declined to recognize an action in tort for breach of good
faith because the plaintiffs’ right were already protected by other
remedies in contract and tort. The court also held against the
plaintiffs in the other causes of action because the bank followed
the contracts agreed to by the parties and the plaintiffs’ reliance on
the alleged oral agreements was not reasonable. **Garrett v.**
**Bankwest, Inc., 459 N.W.2d 833 (S.D. 1990).**
BANKRUPTCY

GENERAL

ADMINISTRATIVE EXPENSES. The plaintiffs were creditors who sold feed, seed and fertilizer to the Chapter 11 debtor-in-possession during the bankruptcy case. At the time the case was converted to Chapter 7, the plaintiffs were owed $10,000 for the supplies. The court held that although the supplies were administrative expenses in the Chapter 11 case, the supplies were treated as pre-petition dischargeable claims after conversion to Chapter 7. The plaintiffs also argued that under Section 506(c), the cost of the supplies should be allowed as a claim against the crops produced with the supplies. The court held that Section 506(c) could only be asserted by the trustee or debtor in possession and not by creditors. As the court noted, the suppliers of goods to the debtor-in-possession should have sought a security interest to protect their claims in the event of a conversion to Chapter 7. In re Ramaker, 117 B.R. 959 (Bankr. N.D. Iowa 1990).

EXCEPTIONS. The court held that the debtors' shotguns, rifles and a pistol were not exempt household goods under Maryland Code § 11-504(b)(4). The court also held that a VCR was exempt for the household goods exemption and a lien against the VCR could be avoided under Section 522(f), although the debtors did not list the VCR as exempt. In re Barnes, 117 B.R. 842 (Bankr. D. Md. 1990).

The debtor owned an interest in a pension fund established by an employer and which contained an anti-assignment clause. The court held that the pension fund was not a spendthrift trust and was includible in the bankruptcy estate because the debtor could receive a lump sum payment upon termination of employment. The court also held that the exemption for pension funds, Neb. Rev. Stat. § 25-1563.01 was not pre-empted by ERISA. No evidence was presented as to and the court did not rule on the issue of whether the pension fund was necessary for the support of the debtor, as required by the exemption provision. Matter of Nuttleman, 117 B.R. 975 (Bankr. D. Neb. 1990).

Two issues involving exemptions were certified to the Supreme Court of Wyoming: whether a husband and wife may each claim the $2,000 exemption of tools of the trade under Wyo. Stat. § 1-15-408, 75 percent of the proceeds of livestock and crops as personal earnings? The court held that the tools of the trade exemption was available to each person and not limited on a per business basis; therefore, the debtors were each entitled to the exemption. The court also held that the proceeds from the sale of livestock and crops are not earnings from personal services and therefore not eligible for the 75 percent exemption. Coones v. F.D.I.C., 796 P.2d 803 (Wyo. 1990).

SALE OF ESTATE ASSETS. The Chapter 11 trustee filed a motion to sell, free and clear of liens, the debtor's stored cotton which was collateral for a CCC loan. Some of the redemption periods for the cotton had ended prior to the bankruptcy filing, some had ended post-petition and some had not yet passed. The court held that under the CCC regulations, once the redemption period had lapsed, the CCC had to make an election to either take title to the cotton or sell the cotton. Therefore, because the CCC had not taken any action pre-petition to take title to the cotton or to sell the cotton, the right of redemption of the cotton was still available to the debtor on the petition date and the right to redeem the cotton was estate property. The court also held that the redemption period was tolled during the bankruptcy case. The court held that the CCC was a secured creditor as to the cotton and that the trustee could sell the cotton if the proceeds would exceed the amount due to the CCC for the cotton and other loan costs. If the proceeds would be less than the amount due, the trustee was to abandon the cotton to the CCC. The court found that the CCC was adequately protected by this arrangement and because the value of the cotton, if marketed properly, exceeded the amounts due on the loans, the sale of the cotton by the trustee would provide the maximum proceeds for the estate. In re Julien Co., 117 B.R. 910 (Bankr. W.D. Tenn. 1990).

CHAPTER 12

AUTOMATIC STAY. A plaintiff in a state case for specific performance on a real estate contract against the Chapter 12 debtors moved for relief from the automatic stay so that the state action could proceed. The contract buyer alleged that the relief should be granted because the contract was not executory or, even if executory, cannot be rejected by the debtors. The court denied the relief from the stay because the issues could be decided more economically in the bankruptcy court and the state action had not proceeded past a decision on summary judgment. In re Collins, 118 B.R. 35 (Bankr. D. Md. 1990).

DISMISSAL. The debtors' first Chapter 12 case was dismissed in May 1988 for failure to confirm a plan. A second Chapter 12 petition was dismissed in May 1990 because of unreasonable delay, continuing loss to the estate and absence of a reasonable likelihood of rehabilitation. The debtors filed a third Chapter 12 petition in June 1990. The debtors argued that their reevaluation of the valuation of some collateral and their decision to deed back to a creditor some collateral land were material changes in their circumstances since the second dismissal. The court held that these changes were only changes in legal tactics and were available to the debtors prior to the dismissal of their second case; thus, the changes were insufficient to support the allowance of the third petition. In re Fuhrman, 118 B.R. 72 (Bankr. E.D. Mich. 1990).

PLAN. The Chapter 12 debtors operated a cattle ranch and had granted a security interest in the cattle and ranch equipment as security for a loan from a bank. The Chapter 12 plan provided for the sale of some of the cattle with the proceeds used to operate the ranch and granted the bank a second mortgage in ranch real property as a replacement lien on the cattle sold. The debtors' equity in the real property was sufficient to cover the first and second liens against the property. The bank objected to confirmation of the plan and argued that Section 1225(a)(5)(B)(i) required that the bank retain the lien in the cattle. The debtors moved for relief from the stay so that the state action could proceed. The contract buyer alleged that the relief should be granted because the contract was not executory or, even if executory, cannot be rejected by the debtors. The court granted the relief from the stay because the issues could be decided more economically in the bankruptcy court and the state action had not proceeded past a decision on summary judgment. In re Collins, 118 B.R. 35 (Bankr. D. Md. 1990).

FEDERAL TAXATION

ALLOCATION OF PLAN PAYMENTS FOR TAXES. The court held that the Chapter 11 debtor could allocate tax payments made during the Chapter 11 case. In re T.M. Products Co., 118 B.R. 131 (Bankr. S.D. Fla. 1990).

AUTOMATIC STAY. The debtors filed a Chapter 11 petition with their corporation and during that case the IRS assessed the 100 percent penalty against the debtors as responsible persons in the corporation which failed to pay withholding taxes. The...
debtor's bankruptcy case, and filed their own individual Chapter 13 cases. The debtor argued that the IRS assessments during the Chapter 11 case were void for violation of the automatic stay. The court held that the assessments were only voidable and were valid in the Chapter 13 case because the debtor failed to object to the assessments during the Chapter 11 case. In re Schwartz, 90-2 U.S. Tax Cas. (CCH) ¶ 50,533 (Bankr. 9th Cir. 1990).

CLAIMS. The debtors were shareholders and officers of a corporation also in bankruptcy. The debtors listed in their debt schedules a contingent claim for one dollar a claim by the IRS for the 100 percent penalty for responsible persons in a corporation which does not pay withholding taxes. The IRS was provided with notice of the debtors' bankruptcy case and the schedule of debts but failed to file a claim for the 100 percent penalty until after the bar date for such claims. The IRS argued that the claim should be allowed because it related to other claims for personal income taxes owed by the debtors and because the debtors did not inform the investigating officer of the debtors' Chapter 13 case. The court held that the penalty claim did not relate to the personal income tax claims because the claims did not arise out of the same set of circumstances. The court also held that because the IRS knew about the Chapter 13 case and had determined the debtors' penalty liability before the claims date but did not seek an extension of time to file a claim, the IRS penalty claim would not be allowed. In re Miller, 118 B.R. 76 (E.D. Tenn. 1989).

TAX LIENS. The IRS held valid tax liens against the property of the debtors arising from the debtors' pre-petition dischargeable tax liabilities. The debtors argued that the tax liens should be released under I.R.C. § 6325 because the underlying tax obligations were unenforceable because dischargeable in bankruptcy. The court held that because the tax liens remained enforceable against the property after the debtor's discharge in bankruptcy, the IRS was not required by Section 6325 to release the liens. In re Dillard, 118 B.R. 89 (Bankr. N.D. Ill. 1990).

COMMODITY FUTURES

CONTRACTS. The CFTC has issued a notice of proposed contract market rule change which amends the rough rice futures contract locational price differentials for deliveries made at warehouses not located at mill sites. The amendments are effective in September 1991. 55 Fed. Reg. 42753 (Oct. 23, 1990).

CONTRACTS

FORWARD CONTRACTS. The plaintiff made an oral contract with the defendant for the defendant to grow confection sunflowers at a set price. The defendant's son signed written contracts memorializing the oral contracts. The written contracts identified the number of pounds of sunflowers to be delivered, the price and a requirement that the defendant purchase the seeds from the plaintiff. During the growing season, the contract was adjusted because of a severe infestation of weeds and drought. However, the defendant did not deliver any sunflowers harvested but sold most of the sunflowers to another party. The plaintiff covered the contract by purchasing sunflowers elsewhere at a price higher than the contract price. The plaintiff sued for the additional amount paid for the sunflowers. The defendant claimed that the contract was for the production on a set amount of acres and not for a set amount of pounds of sunflowers. The court held that the interpretation of the contract as for a set number of pounds was consistent with the contract as a whole. The defendant's failure to perform was not excused because of the drought because the defendant's total production exceeded the contracted amount of sunflowers. The court also held that although the defendant still had some sunflowers which could be delivered to the plaintiff, the plaintiff was justified in purchasing cover sunflowers upon learning that the defendant had sold some sunflowers to other parties because the sale substantially impaired the value of the whole contract. Red River Commodities, Inc. v. Eidsness, 459 N.W.2d 811 (N.D. 1990).

ORAL CONTRACTS. The plaintiffs applied for a loan from the defendant bank of $150,000 but when the bank requested a security interest in all of the plaintiffs' property, the plaintiffs resubmitted an application for a $300,000 line of credit to support the purchase of cattle. Although a bank internal memorandum indicated that the $300,000 line of credit had been approved, the written loan agreement was for only $150,000. When the bank refused to lend any amounts above $150,000, the plaintiffs suffered alleged financial losses. The plaintiffs then sued for breach of contract arguing that the bank failed to lend the additional $150,000. The bank defended by denying any agreement to lend more than $150,000, by asserting the statute of frauds because the contract was to be performed over more than one year, and by asserting that no parol evidence was admissible as to the written contract. The trial court had agreed with the bank and granted summary judgment for the bank. The appellate court, however, held that because the contract was capable, if even remotely, of being performed within one year, the statute of frauds did not apply. The court also held that parol evidence was admissible to prove the $300,000 line of credit because the written agreement indicated that a $300,000 line of credit was intended and supporting documents, such as the cash flow projections, indicated the larger line of credit. Delzer v. United Bank of Bismarck, 459 N.W.2d 752 (N.D. 1990).

The plaintiff entered into a timber sales agreement to cut merchantable timber from one tract and marked timber on another tract owned by the defendant. The defendant alleged that the plaintiff cut and removed more timber than allowed by the contract and sued for conversion. The court held that the plaintiff could not present any parol evidence to increase the amount due under the contract for the timber because the contract was clear and unambiguous as to the consideration to be paid. The court also held that summary judgment for the defendant was improper because the defendant failed to produce evidence that it had not cut more than allowed under the contract; thus, an issue of fact remained for the trier of fact to decide at trial. Ward v. Costal Lumber Co., Inc., 395 S.E.2d 601 (Ga. Ct. App. 1990).

FARM CREDIT SYSTEM

BORROWER'S RIGHTS. After negotiations for restructuring of the defendant's farm loans failed to produce an agreement, the FCB sued to reduce the defendant's balance on the loan to judgment. The defendant argued that the FCB violated the Agricultural Credit Act of 1987 by failing to approve the restructuring agreement where the cost of restructuring the loan was less than the cost of foreclosure. The court held that even if
the defendants had a right of private action to enforce the Act's provisions, the evidence demonstrated that the FCB had found that the cost of restructuring exceeded the cost of foreclosure in compliance with the Act. Bangs v. Farm Credit Bank of Columbia, 396 S.E.2d 6 (Ga. Ct. App. 1990).

FEDERAL AGRICULTURAL PROGRAMS

ADMINISTRATIVE PROCEDURE. The USDA has adopted as final regulations governing the appearance of USDA employees as witnesses in order to testify or produce official documents in judicial or administrative proceedings. 55 Fed. Reg. 42347 (Oct. 19, 1990).

BRUCELLOSIS. The APHIS has announced an interim rule adding North Carolina to the list of brucellosis-free states. 55 Fed. Reg. 41994 (Oct. 17, 1990).

The APHIS has announced an interim rule removing New Jersey from the list of brucellosis-free states. 55 Fed. Reg. 42353 (Oct. 19, 1990).

HOUSING LOANS. The FmHA has announced proposed regulations amending the administration of the Rural Housing loan program. The proposed regulations contain specific examples of what credit problems of borrowers will be considered unacceptable and under what circumstances poor credit may not be held against an applicant. 55 Fed. Reg. 42576 (Oct. 22, 1990).

PERISHABLE AGRICULTURAL COMMODITIES ACT. The debtor purchased produce from several creditors who were unpaid and who filed timely and sufficient notices of intent to preserve their rights in the PACA trust fund assets of the debtor. During the operation of the debtor's business, the debtor's principal had received a $40,000 donation from a parent which was used in the business and for the purchase of a truck and other equipment. The debtor's principal also transferred a small truck to the debtor. The court ruled that all assets of the debtor were considered part of the PACA trust assets unless proven by the debtor not to be proceeds from the sale of produce. The court held that because the debtor was unable to prove that the $40,000 was kept in a separate fund and the truck and equipment was purchased from this fund, the $40,000 was considered commingled with PACA trust assets and the truck and equipment were trust assets. The small truck was not included in PACA trust assets because it was transferred in kind to the debtor. In re Atlantic Tropical Market Corp., 118 B.R. 139 (Bankr. S.D. Fla. 1990).

PRODUCTION ADJUSTMENT PROGRAMS. The plaintiffs were partners in a farming partnership which had applied for participation in the 1986 wheat program. The partnership entered into a lease to farm land owned by a corporation and two of the partners individually, with the lease contingent upon the partnership being accepted into the wheat program. The partnership was formed with a small amount of capital and had applied for a farm operating loan from a bank which was approved contingent upon the partnership being accepted into the wheat program and receiving payments as a separate "person" for purposes of the $50,000 payment limitation. Although interim approval of the partnership application into the wheat program was granted, but without telling the partnership, the application was ultimately denied on the basis of failure to demonstrate that the partnership had an ownership interest in a farming operation. The partnership argued that the interim approval showed that the final decision was arbitrary and capricious. The court held that inconsistency in the approval process did not affect the priority of the ultimate decision so long as the ultimate decision was supported by the evidence before the agency. The court rejected the partnership's claim of equitable estoppel based on the interim approval because equitable estoppel is not allowed against a government agency and the partnership did not rely on the interim approval. The court also rejected the partnership's express and implied contract claims. Stevens v. U.S., 21 Cl. Ct. 195 (1990).

The plaintiffs had applied to the county ASCS committee for reconstitution of their farm acreage bases for wheat, cotton and corn. The committee ruled that the historical method should be used. After administrative appeal, the plaintiff succeeded in having the committee's decision reversed in favor of using the cropland method. The plaintiff then brought an action under the Federal Tort Claims Act for damages suffered during the administrative appeal process from the inability to use the cropland method of determining the crop acreage bases. The court held that because the ASCS county committee exercise judgment in determining which method to use, the decision of the committee was discretionary and not subject to the FTCA under 28 U.S.C. § 2680(a). Brackin v. U.S., 913 F.2d 858 (11th Cir. 1990).

FEDERAL ESTATE AND GIFT TAX

BASIS OF ESTATE PROPERTY. The decedent bequeathed stock to the surviving spouse in a marital trust over which the spouse had a general power of appointment. The surviving spouse died several years later but before the stock was actually transferred to the marital trust. Instead, the corporation was liquidated with realization of substantial gain and the marital trust received its share of the proceeds. The amount of property included in the surviving spouse's estate included the appreciation realized in the sale of the corporation assets. The executor of the decedent's estate then claimed a refund based on a stepped-up basis in the property passing to the marital trust equal to the value of the stock proceeds included in the surviving spouse's estate. The court held that the decedent's estate was not entitled to an increase in value of the marital trust property because, under Section 1014, a step-up in basis is allowed only for property received from a decedent; therefore, because the decedent did not receive the property from the surviving spouse, no step-up in basis is allowed. Connecticut Nat'l Bank v. U.S., 90-2 U.S. Tax Cas. (CCH) ¶ 50,526 (D. Conn. 1990).

DISCLAIMERS. The decedent had established an IRA account and at the time of death was receiving payments under an election to receive payments over the life expectancies of the decedent and the decedent's spouse. The decedent's spouse was named as a beneficiary and as a beneficiary of a trust which was a contingent beneficiary of the IRA. The other beneficiary of the trust was the spouse's child. The IRS ruled that the surviving spouse's disclaimer of an interest in the IRA and the trust was a qualified disclaimer. Ltr. Rul. 90037048, June 20, 1990.

GENERATION SKIPPING TRANSFERS. A trust was established in 1955 by the will of the parent of the trust beneficiaries. The beneficiaries have a testamentary power to appoint each beneficiary's share of the trust to their children. The beneficiaries proposed to execute wills which exercise that power of appointment to their children with a provision that if the
beneficiary's child predeceases the beneficiary, the grandchildren of the decedent as sole beneficiary and with the decedent retaining unrestricted right to amend any aspect of the trust. Within a month of death, the decedent directed the trustees to transfer stock worth about $10,000 to each of 20 persons. The trustees had not transferred the stock by the decedent's death but did so in a document back dated to before the decedent's death. The court held that the transferred stock was includible, under Section 2038, in the decedent's estate because at the time of the transfer the decedent held a power to amend or revoke the trust; therefore, under Section 2035, the transfer of the stock within three years of the decedent's death included the stock in the gross estate. Perkins v. U.S., 90-2 U.S. Tax Cas. (CCH) ¶ 60,042 (N.D. Ohio 1989).

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has announced that for purposes of the economic performance requirement of I.R.C. § 461(h), the IRS will not challenge positions previously taken that relied on published rulings relating to the accrual of property taxes for the taxable years beginning before January 1, 1990. For taxable years after that date, the proposed regulations issued on June 7, 1990 will apply. See p. 132 supra. Notice 90-64, I.R.B. 1990-44, 13.

COMMODITY FUTURES. The taxpayer made several trades in commodity futures over two years and claimed ordinary loss deductions for losses from the trades. The IRS moved for summary judgment on its claim that because a majority of the trades were speculative, all of the trades were speculative and subject to capital loss treatment. The court rejected this argument and held that the character of each trade determines the type of loss deduction allowed for each trade. The court held that summary judgment was not proper because material issues of fact remained as to the character of the trades involved. In re Blazek, 90-2 U.S. Tax Cas. (CCH) ¶ 50,528 (Bankr. D. Kan. 1990).

DISCHARGE OF INDEBTEDNESS. The settlement of the taxpayer's gambling debt in excess of $3 million for $500,000 was not discharge of indebtedness income because the gambling debt was unenforceable and the taxpayer held no property subject to the debt. Zarin v. Comm'r, 90-2 U.S. Tax Cas. (CCH) ¶ 50,530 (3rd Cir. 1990), rev'g, 92 T.C. 1084 (1989).

FORMS. The IRS has announced that Forms W-2c, Statement of Corrected Income and Tax Amounts, and W-3c, Transmittal of Corrected Income and Tax Statements, have been revised. The new forms may be ordered by calling 1-800-829-3676. Ann. 90-116, I.R.B. 1990-42, 31.

HOBBY LOSSES. The taxpayers were not allowed losses in excess of gross income from a horse breeding activity because of lack of profits, inconsistent success with horse breedings, and substantial losses. Harston v. Comm'r, T.C. Memo. 1990-538.

INTEREST. The taxpayer corporation established unfunded, nonqualified deferred compensation arrangements for key executives which provided for payments upon termination of employment. The accounts for each employee reflected the deferred compensation amount plus interest. The court held that the interest listed in each account was not deductible by the taxpayer except in the years the interest was actually paid to a
The private placement memorandum (PPM) indicates that the sale is exempt from registration under I.R.C. § 6111(c)(1)(B)(ii). The limited partnership and the partnership interest acquired by the investor's share of the gross deductions from the limited partnership. The IRS ruled that the numerator of the tax shelter ratio for each investor in the limited partnership is limited to the tax shelter registration number until the minimum number of subscribers was obtained and the invested funds were not returnable. Rev. Rul. 90-84, I.R.B. 1990-42, 4.

The taxpayer intended to sell limited partnership interests in a sale exempt from registration under I.R.C. § 6111(c)(1)(B)(ii). The private placement memorandum (PPM) indicates that the deductions and credits allocated to each investor will be more than double the investment in the partnership interests. However, the PPM also indicates that the passive income limitations of Section 469 may apply. The IRS ruled that the allocation of investment interest disallowed in each taxable year, including any carryover amount, could be carried over to the following year. Beyer v. Comm'r, 90-2 U.S. Tax Cas. (CCH) 50,536 (4th Cir. 1990), rev'g, 92 T.C. 1304 (1989).

INVESTMENT CREDIT TAX. The shareholders of an S corporation owning investment tax credit property was not required to recapture investment tax credit when the S corporation merged with a C corporation in a tax-free reorganization under Section 381(a), because the merger was a mere change in the form of doing business where the merged corporation continued the same business with the same assets. Giovannini v. U.S., 90-2 U.S. Tax Cas. (CCH) 50,542 (D. Ore. 1990).

PARTNERSHIPS

TAX SHELTERS. The taxpayer offered interests in a tax shelter but placed all funds received for subscriptions in an escrow account until a minimum number of subscriptions were obtained. If the minimum number was not obtained, the funds, plus any earnings, were to be returned to the subscribers. IRS ruled that the taxpayer was not required to provide the subscribers with the tax shelter registration number until the minimum number of subscribers was obtained and the invested funds were not returnable. Rev. Rul. 90-84, I.R.B. 1990-42, 4.

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SAFE HARBOR INTEREST RATES

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SALE OF RESIDENCE. The taxpayer sold an interest in real property which was partially used for a produce stand business and partially used as a residence. After sale of the taxpayer's interest in the property, the taxpayer purchased another residence. The court, in Poague v. U.S., 90-2 U.S. Tax Cas. (CCH) ¶ 50,448 (E.D. Va. 1990) see p. 175 supra, held that the gain from the sale of the interest in the old property was deferrable to the extent the property was used as a residence. In the present case, the court allocated the property first as to the percentage of the building space used as a residence and then allocated the remaining property according to the ratio of business space to residential space in the buildings. Poague v. U.S., 90-2 U.S. Tax Cas. (CCH) ¶ 50,539 (E.D. Va. 1990).

LANDLORD AND TENANT

DAMAGES. The plaintiff leased orchards which were damaged by the drifting of herbicide aerially applied by the defendant to a neighbor's wheat crop. The court held that the plaintiff could not recover damages for the lost production of the orchards for the time after the expiration of the lease in effect on the date of the injury to the orchard, even though the plaintiff renewed the lease under an option to renew. Burnette v. Morgan, 794 S.W.2d 145 (Ark. 1990).

SALE OF LEASED LAND. The plaintiff had purchased the farm in a foreclosure of a first mortgage held by the plaintiff. The second mortgage holder also began foreclosure proceedings against the farm and a receiver was appointed in that case. The receiver leased the farm to a corporation which subleased the farm to the defendant. The plaintiff then brought an action for ejectment of the defendant who counterclaimed for damages resulting from inability to participate in federal farm programs because of interference by the plaintiff. The court held that the failure of the plaintiff to serve to the defendant notice of termination of the lease resulted in no termination of the lease even though the sublessor had received notice. The court also upheld the jury verdict that the plaintiff interfered with the contractual relations of the defendant in asserting to the ASCS that the plaintiff was the owner of the land and would be applying for the federal farm programs. Kansas City Life Ins. Co. v. Hullinger, 459 N.W.2d 889 (Iowa Ct. App. 1990).

MORTGAGES

VALIDITY. The debtors had granted a bank a mortgage on the debtors' farm as security for two letters of credit totaling $280,000. The mortgage stated, however, that it secured a note for $200,000 and that upon satisfaction of the note, full title to the land would revert to the debtors and the bank would issue a release. The debtors did not make any withdrawals on the letters of credit and the letters expired prior to the debtor filing for bankruptcy but the bank did not issue any release. The debtors orally agreed to have the mortgage secure other obligations to the bank and several months later put those agreements in writing. The creditor committee and trustee sought to avoid the mortgage as unperfected because the mortgage expired when the letters of credit expired and the mortgage was not recorded as to the other obligations which it secured. The bank argued that the recording of the mortgage for the letters of credit was sufficient constructive notice of a security interest securing the later obligations. The court held that the expiration of the letters of credit terminated the mortgage and that any subsequent mortgage securing later obligations would be required to meet the formalities of Wis. Stat. § 706.02 which required mortgages to be in writing. Thus, the trustee, as a bona fide purchaser under Section 544(a)(3), could avoid the mortgage lien. In re Carley Capital Group, 117 B.R. 951 (Bankr. W.D. Wis. 1990).

NEGLIGENCE

GUY WIRE. The plaintiff was injured when the plaintiff's horse struck a guy wire supporting one of the defendant's electrical poles on a neighbor's property. The plaintiff was chasing a stray calf at the time of the accident. The court held that the plaintiff was a licensee on the neighbor's property and the property owners did not owe the plaintiff the duty of ordinary care. Because the defendant held only an easement for the electrical pole and guy wire, the defendant could not assert the same standard of care as the property owners. Therefore, summary judgment for the defendant was reversed because an issue of fact remained as to whether the defendant exercised ordinary care in not providing sufficient warning signs on the guy wire. Musch v. H-D Elec. Coop., Inc., 460 N.W.2d 149 (S.D. 1990).

PRODUCT LIABILITY

CULTIVATOR. The plaintiff's decedent was killed as a result of an accident involving the collision of a truck driven by the decedent and a cultivator manufactured by the defendant and pulled by a farmer on a highway overpass. The plaintiff sued the manufacturer in strict liability alleging that the cultivator was unreasonably dangerous because it lacked sufficient warning devices and the cultivator extended over the mid-point of the highway. The trial court granted summary judgment for the manufacturer and the appellate court agreed. The court held that the cultivator had warning reflectors on the portion extending over the highway and the tractor had its warning lights in operation. In addition, the plaintiff failed to present any evidence of alternative warning devices which would have prevented the accident. The court also held that the cultivator was not unreasonably dangerous due to its length, because (1) the owner had altered the design by attaching a harrow which prevented the complete folding of the cultivator's arms for transport, (2) the plaintiff had not presented any evidence of the feasibility of narrower designs of the cultivator, and (3) the state highway requirements for the widths of vehicles contained an exemption for farm husbandry equipment. Because the extension of the cultivator into the oncoming lane of traffic was an obvious danger, the width of the cultivator provided only a condition by which injury could be caused through the subsequent act of a person. West v. Deere & Co., 559 N.E.2d 511 (Ill. Ct. App. 1990).

SECURED TRANSACTIONS

PRODUCER'S LIEN. The Chapter 11 debtor was a fruit and vegetable processor which had purchased produce from growers. Some of the growers signed contracts which governed the sale of the produce to the debtor and which contained clauses releasing the growers' producer's lien. One grower signed the contract but crossed out the release portion. One grower association signed the contract but the contract provided for a security interest in the produce if the debtor failed to make
payment. The growers asserted their producer's lien, Cal. Food & Agric. Code §§ 55631-55653, against the debtor's bankruptcy estate property. The trial court entered judgment for the debtor, holding that because each grower had entered into a contract which provided payment terms, the growers had automatically released their liens according to Cal. Food & Agric. Code § 55637. The appellate court reversed, holding that the release of the lien is discretionary with the grower after payment arrangements are made. The issue of whether the release clauses in the contracts were effective was not decided. In re T.H. Richards Processing Co., 910 F.2d 639 (9th Cir. 1990).

**ZONING**

**PROPANE TANK.** The defendant constructed a liquid propane tank on land zoned agricultural and leased the tank to a farm cooperative association located next to the tank. The court held that the leasing of the tank was not an agricultural operation and violated the zoning ordinance. Farmington Township v. High Plains Coop., 460 N.W.2d 56 (Minn. Ct. App. 1990).