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Cases, Regulations, and Statutes

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Trade or business. The third and final term of critical importance in the new proposed regulations is "trade or business." The proposed regulations, not surprisingly, take the position that the term "trade or business" has the same meaning as the term has acquired under the code section (Section 162) specifying what expenses are deductible as "ordinary and necessary expenses paid or incurred...in carrying on any trade or business...."

As the proposed regulations point out, property held merely for the production of income or property used in an activity not engaged in for profit does not qualify for expense method depreciation. Thus, taxable income derived from such property is not taken into account for purposes of the taxable income limitation under the expense method depreciation rules.

Carryover of disallowed deduction

The expense method depreciation rules permit a carryover for an unlimited number of years of expense method depreciation disallowed because of the taxable income limitation. The amount deductible in a carryover year is still subject to the maximum limit of $10,000.

The taxable income limitation applies at the partnership level as well as at the partner level. Therefore a partnership may have a carryover of disallowed deductions for expense method depreciation and a partner may have a carryover of disallowed deductions.

The basis of a partnership's expense method depreciation property must be reduced to reflect the amount of expense method depreciation elected by the partnership. This reduction must be made for the year the election is made even if part or all of the expense method depreciation is carried forward by the partnership because of the taxable income limitation.

Similarly, a partner who is allocated expense method depreciation from a partnership must reduce the basis of the partner's partnership interest by the full amount of the allocation even though the partner may not be able to deduct that year the allocated expense method depreciation. If a partner disposes of a partnership interest, or transfers a partnership interest in a transaction in which gain or loss is not recognized, the partner may have an outstanding carryover of disallowed deduction of expense method depreciation. In that event, the partner's basis in the partnership is increased immediately before the transfer by the amount of the partner's outstanding carryover of disallowed deductions with respect to the partnership interest. The proposed regulations note specifically that the carryover of disallowed deductions is not available to the transferee. The proposed regulations refer to the disallowed deduction not being available to the transfer of the expense method depreciation property. This is believed to be in error; the context of the statement is of a transfer of an interest in a partnership, not transfer of the property itself. The latter would likely trigger recapture of the expense method depreciation.

The proposed regulations point out that rules similar to those applicable to partnerships and partners apply to S corporations and their shareholders.

FOOTNOTES

6 Id.
7 Id.
8 I.R.C. § 164(f).
15 Id. § 1.179-2(c)(5)(ii).
16 Id.
17 Id.
18 See 4 Harl. supra note 2, § 29.05 [2][b], (Supp. 1991).
19 Id.
20 Id.
22 Id.
24 Id.
25 Id.
27 Id.
29 I.R.C. § 162(a).
30 See I.R.C. § 212.
31 See I.R.C. § 183.
33 Id.
36 I.R.C. § 179(d)(8).
37 Prop. Treas. Reg. § 1.179-3(g)(1).
40 Id.
41 Id.
42 Id.
43 Id.
44 See I.R.C. § 179(d)(10).
45 Prop. Treas. Reg. §§ 1.179-3(g)(1), 1.179-3(g)(2).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

POSSESSION. When the plaintiffs purchased their land in 1933, a fence enclosed an additional 15 plus acres which included five tracts of cedar trees. Over the years, the plaintiffs occasionally grazed cattle and goats on the disputed land, mended the fence and cut and sold some cedar wood. The court held that these activities were insufficient to show adverse possession of the disputed land. The fence was found to be a "casual fence" such that maintenance of the fence did not show adverse possession. Rhodes v. Cahill, 802 S.W.2d 643 (Tex. 1990).

AGRICULTURAL LABOR

TORTIOUS STRIKE ACTIVITY. A farm labor union was found liable for negligently failing to control
strikers where picket captains and strike coordinators were shown to have actively participated in picket line violence. The doctrine of comparative negligence was not applicable because the grower had no authority or ability to intervene in the supervision of the union’s picket line. The union was held liable for all of the grower’s losses from the strike where it was not possible to separate losses from legal strike activities from losses from illegal strike activity.  


**ANIMALS**

**FENCES**  
The plaintiffs owned a cow which was killed when it was struck by a motorcycle driven by the defendant when the cow wandered onto a highway adjacent to an open range area. The plaintiffs argued that Ariz. Rev. Stat. § 24-502, a “fence out” statute, relieved them of any liability to the defendant. The court held that the statute was inapplicable where livestock caused injury on a public highway. After examining common law liability for trespassing animals on public highways, the court determined that the plaintiffs owed motorists a duty of ordinary care to prevent injury from trespassing livestock; thus, the defendant needed to demonstrate some act of negligence by the plaintiffs, other than failure to erect a fence, in order to recover for the injuries. The plaintiffs’ suit for loss of the cow was not at issue before the court.  


The plaintiff was injured when the plaintiff’s car struck a bull owned by the defendant on a public highway. The bull was under the care of a third party (under a cow-calf operation agreement) who knew the bull had escaped several days before the accident. The defendant argued that Ill. Rev. Stat. ch. 8, § 1 removed any liability because the defendant had constructed a fence for the bull and had no knowledge of the bull’s escape. The court held that summary judgment for the defendant was improper because an issue of fact remained as to whether the cow-calf operation agreement created a partnership between the bull owner and the bull manager, thus imputing knowledge of the manager to the bull's owner.  


The defendant utility company had constructed a fence around a metering facility located on the plaintiff’s land where the plaintiff kept cattle in pasture. After the fence deteriorated, the plaintiff made makeshift repairs but the defendant later replaced the fence. However, several of the plaintiff’s cattle escaped and the plaintiff sued for their loss. The court held that although 4 Okla. Stat. § 98 required the plaintiff to fence in the cattle, the duty to provide the fence shifted to the defendant when it replaced the fence.  


**BANKRUPTCY**

**GENERAL**

**AUTOMATIC STAY.** The court held that two IRS summonses to a creditor for production of records concerning the debtor violated the automatic stay. The court, however, allowed the IRS relief from the stay to obtain the records.  

In re Spencer, 123 B.R. 858 (Bankr. N.D. Cal. 1991).


**AVOIDABLE TRANSFER.** Less than three months before filing bankruptcy, the debtor claimed an inheritance from the debtor's father. The court held that the disclaimer of the inheritance was not a transfer subject to avoidance by the trustee.  

In re Atchison, 925 F.2d 209 (7th Cir. 1991), aff'g unrep. D. Ct. dec., aff’g 101 B.R. 556 (Bankr. S.D. Ill. 1989).

**DISCHARGE.** The creditor owned timber land and contracted with the debtor for the harvesting of the timber. Under the contract, title to the timber remained with the creditor until the debtor sold the wood and remitted a percentage fee to the creditor. The creditor sought nondischargeability under Section 526(a)(6) for the amount of fee not paid by the debtor for timber harvested prior to filing bankruptcy. The court held that the proceeds of the timber sales represented property of the creditor which the debtor intentionally and maliciously failed to pay to the creditor; therefore, the debt was nondischargeable.  


**EXEMPTIONS.** The debtor's interest in an ERISA qualified plan was eligible for exemption although the plan was established by a corporation in which debtor was a 50 percent shareholder with power to alter or amend plan. The court found that the plan was not established with the intent to harm creditors. However, any premature distributions from the plan to the debtor would be grounds for reopening the case and such distributions would be subject to payment to creditors.  


The Sixth Circuit Court of Appeals has joined the Fourth Circuit in holding that ERISA qualified pension plans are excluded from the bankruptcy estate under ERISA as “applicable nonbankruptcy law” under Section 541(a)(1).  


The debtor was not allowed an exemption under Ohio Code § 2369.662, for a settlement from a personal injury action where the debtor failed to allocate the settlement as to personal injury (exempt) and as to pain and suffering (nonexempt).  


The unmarried debtor was allowed only a $30,000 homestead exemption under Cal. Civ. Code Proc. § 704.730(a) where debtor lived with adult unemployed son but presented no evidence that son was unable to care for himself.  


**POST-PETITION SECURITY INTEREST.** A bank held a perfected security interest in the debtor's farm products but the security interest did not extend to the...
debtor's corn crop planted and harvested after the debtor filed under Chapter 11. That case was later dismissed and the debtor refiled for Chapter 11 after the corn had been harvested and stored. The court held that under Section 349, the dismissal of the first Chapter 11 case allowed the security interest to attach to the corn. Matter of Kuecera, 123 B.R. 852 (Bankr. D. Neb. 1990).

CHAPTER 12

DISPOSABLE INCOME. After the debtors' Chapter 12 plan had been in operation over two years, the debtors were found to have accumulated disposable income. The debtors asked that, although the plan provided that disposable income was to be paid to the unsecured creditors, the disposable income be used for prepayment of secured creditors. The court held that such use of the disposable income violated Section 1225(b)(1) and ordered payment of the disposable income to the trustee for distribution to unsecured creditors. In re Fleshman, 123 B.R. 842 (Bankr. W.D. Mo. 1990).

ELIGIBILITY. The debtor was a minority shareholder in a family farm corporation which cash leased farm land from the debtor. The debtor's income from the lease for the year prior to bankruptcy exceeded 50 percent of all income. The debtor actively participated in the farm operation with the other shareholder, the debtor's son by providing management and labor. The court held that the cash rent was gross income from farming because of the debtor's participation in the farming operation and the use of the corporation and cash lease as a method of passing on the farm to the son. The court also noted that the lease was not a strict cash lease because in lean years, the rent was partially forgiven if the corporation did not have enough income. In re Voelker, 123 B.R. 749 (Bankr. E.D. Mich. 1990).

SET OFF. The debtors had enrolled 105 acres in the Conservation Reserve Program (CRP) in the year of filing bankruptcy and owed an unsecured debt to the Small Business Administration (SBA). The SBA claimed a right to set off the claim against each post-petition CRP payment, arguing that the CRP payments were installments of a government obligation which arose pre-petition. The court held that, because the debtor had continual performance obligations in order to receive the post-petition payments, the post-petition payments were post-petition obligations of the government and could not be set off against pre-petition debts of the debtor under Section 553(a). In addition, the court held that mutuality of the obligation was not present because the pre-petition CRP contract was an obligation of the debtor personally, whereas the post-petition CRP contract was the debtor-in-possession's obligation. In re Gore, 124 B.R. 75 (Bankr. E.D. Ark. 1990).

TRUSTEE. The Chapter 12 trustee brought an action to avoid prepetition transfers, but the court held that the trustee did not have any power to bring such actions while the debtor remained debtor-in-possession or until the trustee had acquired an order for restriction of the debtor-in-possession's powers. In re Teigen, 123 B.R. 887 (Bankr. D. Mont. 1991).

VALUATION. The court held that the valuation of the debtor's farm for purposes of Section 1225(a)(4) was to be determined as of the effective date of the Chapter 12 plan and not the date of the petition. In re Hopwood, 124 B.R. 82 (E.D. Mo. 1991).

CHAPTER 13

PLAN. The debtor's Chapter 13 plan provided for deferred payments on a loan secured by a car with an interest rate of 10 percent, although the contract rate on the loan was 12.9 percent. The court held that the plan was not confirmable and that the interest rate should have been 12.9 percent, the contract rate, where the contract rate was less than the market rate for similar loans in the region. In re Mellema, 124 B.R. 103 (Bankr. D. Colo. 1991).

FEDERAL TAXATION

ALLOCATION OF PLAN PAYMENT OF TAXES. The court held that the debtor's Chapter 11 plan payments of post-petition employment taxes were involuntary and could not be allocated by the plan. In re Jehan-Das, Inc., 925 F.2d 237 (8th Cir. 1991), aff'g unrep. D. Ct. dec. aff'g 91 B.R. 542 (Bankr. W.D. Mo. 1988).

AVOIDABLE LIENS. Although the IRS initially filed a secured claim against the debtors' real and personal property, the claim was amended to be an unsecured claim. The court held that the amendment waived the secured status of the IRS liens against the debtors' property and allowed the claims to be avoided under Section 506(d). In re Krahm, 124 B.R. 78 (Bankr. D. Minn. 1990).

POST-PETITION CLAIMS. After the claim date, the IRS filed a post-petition claim for federal income taxes for which estimated taxes were due but not paid prior to the debtors filing for bankruptcy. The debtors argued that the taxes were pre-petition taxes to the extent of the required estimated taxes. The court held that the claim was timely filed under 11 U.S.C. § 1305 because the estimated tax payments would have been only a pre-payment and the income taxes were considered payable with the tax return which was due post-petition. In re Ripley, 91-1 U.S. Tax Cas. (CCH) ¶ 50,150 (5th Cir. 1991).

POST-PETITION INTEREST. The Chapter 12 debtor's plan provided for payment of all pre-petition unsecured federal tax, penalty and interest claims. The court held that the debtor did not have to pay post-petition interest on the pre-petition taxes under Section 1222(a). In re Wakehill Farms, 123 B.R. 774 (Bankr. N.D. Ohio 1990).

CONTRACTS

CONSIDERATION. The plaintiffs were landlords of a corporation which grew potatoes on the plaintiff's land which were subject to a security interest held by a bank's receiver, the FDIC. The landlords sought assurance from an FDIC agent that the cash rent owed them by the corporation would be paid. The FDIC agent made assurances to one landlord preharvest that the rent would be paid from the potato proceeds; the same assurances were made to another landlord after the harvest. The court held that the post-harvest assurances were not enforceable because the FDIC received no consideration for the assurances. The court also held that material issues of fact remained as to whether the
FDIC received consideration for the pre-harvest assurances and as to whether the FDIC agent had authority to make the assurances. Parmenter v. F.D.I.C., 925 F.2d 1088 (8th Cir. 1991).

The parties executed an agreement selling standing timber to the defendant, leasing the timber land to the defendant, leasing timber cutting rights to the defendant and providing an option at the end of 35 years for the defendant to purchase the property at a set price. The plaintiff argued that the option was unenforceable for lack of consideration. The court held that the payments under the agreement were sufficient consideration for the option even though no specific payments were made for the option. Furse v. Timber Acquisition, 401 S.E.2d 155 (S.C. 1991).

REVOCATION OF ACCEPTANCE. The defendant purchased fertilizer from the plaintiff who filed suit for nonpayment for the fertilizer. The defendant responded to the suit by sending the plaintiff letters stating that the fertilizer was contaminated and that the defendant was not going to pay for it. The letters were verified as affidavits and the court held that the letters were sufficient notice of revocation of acceptance to present issues of material fact such that summary judgment for the plaintiff was improper. Roy Burt Enterprises, Inc. v. Marsh, 400 S.E.2d 425 (N.C. 1991).

CORPORATIONS

OFFICERS. The defendant was president and majority shareholder of a corporation owning land underlying an irrigation district reservoir leased from the corporation by the district. The plaintiffs, the other shareholders in the corporation, brought suit against the president for accepting a settlement of a property dispute with the irrigation district in which the bulk of the settlement proceeds were to be paid to the president and relatives. The court held that the president breached the fiduciary duty to the corporation for failure to disclose earlier settlement offers and in accepting the settlement proceeds. The court held that the president had no authority to accept the settlement under the bylaws or shareholder vote where less than two-thirds of the votes approved the settlement. Squaw Mountain Cattle Co. v. Bowen, 804 P.2d 1292 (Wyo. 1991).

FEDERAL AGRICULTURAL PROGRAMS

ANIMAL WELFARE ACT. The defendants' dog broker business license under the Animal Welfare Act was suspended for 90 days and the defendants were fined $12,000 for violations of the Act, including falsification of records, shipping puppies under age, and refusing to allow an APHIS inspection of the business premises and records. The court held that the violations and findings of willfulness were supported by substantial evidence. The defendants also argued that the penalties were imposed in retaliation for their publication of newsletters critical of the AWA and APHIS. The court held that the comments by the Administrative Law Judge and APHIS officers indicated concern for enforcement of the AWA and not retaliation against the defendants. The court noted that the investigation of the defendants began before publication of the newsletters and resulted from complaints by third parties. Cox v. U.S.D.A., 925 F.2d 1102 (8th Cir. 1991).

BORROWER’S RIGHTS. The FmHA had a secured loan on the debtor's farm which the debtors leased to a third party, although for the year in question, the lease remained unproved. After the debtors filed for bankruptcy, the FmHA sent a letter to the debtors' counsel offering debt counseling if the debtors dismissed their bankruptcy case or lifted the automatic stay. The court had approved a stipulation between the trustee and FmHA for the sale of the farm. The debtors asserted rights under the lease/buyback program under the Agricultural Credit Act of 1987. The court held that the FmHA letter violated the automatic stay in that the letter threatened to terminate the debtors' rights in the debt services by liquidating the collateral. The court also held that the trustee's sale of the farm was subject to the debtors' rights in the lease/buyback provisions of the 1987 Act which must be provided before the sale. In re Nelson, 123 B.R. 993 (Bankr. D. S.D. 1991).

BRUCELLOSIS. The APHIS has changed the classification of Oklahoma from a Class B to Class A state. 56 Fed. Reg. 13750 (April 4, 1991).

CROP INSURANCE. The FCIC has issued an interim rule deleting the provision that FCIC does not insure against flood losses on any unit subject to a water flowage easement. 56 Fed. Reg. 13576 (April 3, 1991).

FARM LOANS. The FmHA has adopted as final regulations amending the criteria by which a borrower is automatically selected for review of eligibility for graduation. 56 Fed. Reg. 12441 (March 26, 1991).

PAYMENT LIMITATIONS. In a case decided under pre-1989 regulations and law, the plaintiffs were a husband and wife, their wholly-owned farm corporation, and their two married sons. The sons rented farm land from the corporation but otherwise operated farming operations separate from the corporation and the parents. However, during the crop year the corporation made bulk purchases of farm supplies which the sons used but for which the sons did not promptly reimburse the corporation. In addition, the sons made checks to the corporation for "labor." The ASCS determined that the delayed payments for the supplies constituted financing of the sons' operations by the corporation and the labor performed by the corporation for the sons was custom farming. Both of these circumstances required all three operations to be combined into one "person" for payment limitation purposes. The court held that the determinations were supported by the evidence. Knaub v. U.S., 22 Cl. Ct. 268 (1991).

PRICE SUPPORT-PEANUTS. The CCC has affirmed the price support for 1991 crop quota peanuts at $642.79 per short ton and for additional peanuts at $149.75 per short ton. The minimum sales price for export for edible use of additional peanuts is $400.00 per short ton. 56 Fed. Reg. 11725 (March 20, 1991).

PRODUCTION ADJUSTMENT PROGRAMS. The CCC has issued the proposed 1992 wheat acreage

FEDERAL ESTATE AND GIFT TAX

GENERATION SKIPPING TRANSFER TAX. The decedent executed a will in April 1984 and was under a mental disability from October 1984 until death. The will provided for residuary bequests to nieces and nephews or to the heirs of predeceased nieces and nephews. Several nieces and nephews made qualified disclaimers such that their interests passed to their children. The IRS ruled that because of the mental disability of the decedent, the bequests were not subject to GSTT. Ltr. Rul. 9111011, Dec. 12, 1990.

GIFTS. The decedent established trusts for grandnieces and grandnephews who were aged one to eight at the time the trusts were established. The trusts provided that income was to be paid for the beneficiary's "college preparatory school, college, university, graduate school or technical school education" or for the care, support, health and education of the beneficiary in the event of "an accident, illness or disability affecting the beneficiary, or in the event of the death or disability of either or both of the beneficiary's parents." The court held that the trust placed "substantial restrictions" on the power of the trustee to distribute income such that the gifts were not taxable gifts excludible from the decedent's gross estate. Illinois Nat'l Bank of Springfield v. U.S., 91-1 U.S. Tax Cas. (CCH) ¶ 60,063 (C.D. Ill. 1991).

LIFE INSURANCE. The life insurance policies owned by a trust on the life of the trustee would not be included in the trustee's gross estate where the trustee's power of appointment over the trust corpus did not include the insurance policies. Ltr. Rul. 9111028, Dec. 17, 1990.

MARITAL DEDUCTION. An estate was denied a marital deduction for a life interest in trust passing to a surviving spouse where the estate tax return failed to list the property for which the QTIP election was to be made and answered the question for the election in the negative. The estate tax liability had been calculated as if the election was made, however. Est. of McCants v. Comm'r, T.C. Memo. 1991-90.

RETURNS. The decedent's estate filed a late estate tax return and requested an abatement of the additions to tax for the late return. The service center abated the tax but the district office reassessed the additions to tax. The IRS ruled that the service center's abatement was an administrative action not binding on the district office. Ltr. Rul. 9111005, Dec. 6, 1990.

SALE OF STOCK TO ESOP. The decedent's estate sold stock owned by the decedent to an ESOP at a price in excess of the value claimed for federal estate tax purposes. The IRS ruled that the estate was eligible for the Section 2057(a) deduction for one-half of the sales price of the stock to the extent the sales price did not exceed the fair market value of the stock. Note: Section 2057(a) has been repealed. Ltr. Rul. 9109002, Nov. 8, 1990.

FEDERAL INCOME TAXATION

C CORPORATIONS

STOCK BASIS. A shareholder's basis in corporation stock included amounts paid for the corporation's expenses as consideration for the stock. Miller v. Comm'r, T.C. Memo. 1991-126.

CASUALTY LOSS. A corporation was not allowed a casualty loss deduction for damage to the home of a shareholder where no evidence was presented of any corporation ownership interest in the house. N.A.M. Enterprises, Inc. v. Comm'r, T.C. Memo. 1991-142.

CONSTRUCTIVE RECEIPT. The taxpayer received a $3 million check in payment for stock in late 1985 and deposited the check in a trust account at a bank. The trustee then placed an order for the bank to purchase additional securities with the funds but the bank refused to do so until the check cleared the issuing bank, in 1986. The court held that the check was income in 1985 because the taxpayer could have taken steps to have the check cashed in 1985 and the restrictions resulted because of the voluntary deposit of the check with the bank. Bright v. U.S., 91-1 U.S. Tax Cas. (CCH) ¶ 50,142 (5th Cir. 1991).

EDUCATION EXPENSES. The taxpayer was an attorney engaged in the practice of law who attended law school for a master's degree in tax law. While attending school, the taxpayer provided only part-time legal services to clients. The IRS ruled that the expenses incurred in obtaining the master's degree were deductible under Section 162 because the taxpayer suspended the fulltime trade or business for less than one year. Ltr. Rul. 9112003, Dec. 18, 1990.

EMPLOYMENT BENEFITS. The IRS has ruled that accident and health insurance premiums paid by a partnership for its partners may be deducted from partnership gross income and are to be included in the gross income of the partners but the amount of the premiums may be deductible by the individual partners under the deduction for health insurance for self-employed persons. Similarly, the same treatment applies to premiums paid by S corporations for employees who own at least 2 percent of the stock. Rev. Rul. 91-26, I.R.B. 1991-15, 4.

The taxpayer was an employee and sole shareholder of two personal service corporations which maintained defined benefit and pension plans for the taxpayer. The plans provided for vesting of benefits when the taxpayer became permanently disabled. When the taxpayer did become permanently disabled, the plans distributed amounts from the plans which represented contributions from the taxpayer and the corporations. The court held that the distributions were includible in the taxpayer's income because the plans did not provide that (1) the purpose of the plans was to provide accident and health benefits, (2) plan payments were to be made for medical expenses in the event of injury or sickness, and (3) benefits pertained to specific injuries or illnesses. Berman v. Comm'r, 925 F.2d 936 (6th Cir. 1991).
HOBBY LOSSES. The taxpayer who worked full time as an airline pilot was not allowed deductions in excess of income from a farm where records were not maintained and the taxpayer admitted that the farm was not intended to make a profit. Barter v. Comm'r, T.C. Memo. 1991-124.

INVESTMENT TAX CREDIT. The taxpayers were required to recapture investment tax credit on a truck where the truck was sold before the end of its useful life and a replacement truck did not qualify for investment tax credit. Nicholson v. Comm'r, T.C. Memo. 1991-135.


PARTNERSHIPS

DISTRIBUTIONS TO RETIRING PARTNER. When the taxpayer withdrew from a partnership, the partnership had an accounting firm provide an accounting of the partnership to determine the taxpayer's share of the partnership assets and liabilities. The accounting determined that 90 percent of the partnership assets were unrealized receivables. The court held that the taxpayer failed to provide any evidence to refute the accounting and that 90 percent of the taxpayer's distributions after withdrawal was ordinary income from the unrealized receivables. Est. of Quirk v. Comm'r, 91-1 U.S. Tax Cas. (CCH) ¶ 50,148 (6th Cir. 1991), aff'd g T.C. Memo. 1989-286.

PROFIT MOTIVE. The court held that the taxpayer, a general partner in several cattle breeding limited partnerships, did not have a profit motive in forming the partnerships where even the taxpayer's projections showed no profit from the cattle breeding operations. The partnerships were formed only to generate commissions and general partner fees for the taxpayer. Thomas v. U.S., 91-1 U.S. Tax Cas. (CCH) ¶ 50,139 (E.D. Mo. 1991).

S CORPORATIONS

ONE CLASS OF STOCK. An S corporation amended its bylaws to provide for issuance of another type of common stock with a par value of 10 cents per share, no dividend rights, no transfer rights and no rights to corporation assets upon liquidation. The new stock holders had the power to elect 51 percent of the directors and to vote on some amendments to the bylaws. The IRS ruled that the new type of stock was not a second class of stock under Section 1361(b)(1)(D). Ltr. Rul. 9112017, Dec. 21, 1990.

TERMINATION. A decedent's estate passed S corporation stock to a trust which was not an eligible Subchapter S trust because the trust had two beneficiaries. Upon learning that the transfer of the stock terminated the S corporation election, the trust was reformed into two trusts, each with one beneficiary. The IRS ruled that the termination was inadvertent. Ltr. Rul. 9111044, Dec. 18, 1990.

TRUSTS. A ten year trust owning S corporation stock had four beneficiaries with equal shares in the net income of the trust. At the termination of the trust, the trust property was to be divided into equal shares for each beneficiary. The IRS ruled that each share of the trust was eligible as a Subchapter S trust. Ltr. Rul. 9111024, Dec. 14, 1990.

A trust established by the decedent's will provided for all income to be distributed to the trust beneficiary, the surviving spouse, at least quarterly but that if the spouse remarried, one-half of the trust corpus was to be distributed to the decedent's issue. The trustee obtained a court reformation of the trust to provide that no corpus was to be distributed during the beneficiary's lifetime. The IRS ruled that the trust qualified as a Subchapter S trust. Ltr. Rul. 9111029, Dec. 17, 1990.

TRUSTS. The taxpayer established an irrevocable trust with the income to be distributed to a charitable organization in a predetermined annuity amount. The remainder of the trust passed to the taxpayer's children. The IRS ruled that the transfer to the trust was eligible for a gift tax charitable deduction for the present value of the charitable annuity. The trust was allowed a charitable deduction to the extent trust income was distributed to the charity, and the trust property would not be included in the taxpayer's gross estate. Ltr. Rul. 9112009, Dec. 20, 1990.

WITHHOLDING TAXES. The IRS has adopted as final changes to the regulations governing the manner in which employers are to compute deposit liability at the end of a deposit period and implementing new Section 6302(g) concerning the acceleration of the deposit due date of employment taxes of $100,000 or more. 56 Fed. Reg. 13400 (April 2, 1991).

LANDLORD AND TENANT

EMBLEMENTS. The plaintiff leased farm land on an oral year-to-year lease from the owner who sold the land to the defendant. The plaintiff claimed that the alfalfa crop planted on the farm was personal property and belonged to the plaintiff after the land was sold and the lease terminated. The court held that alfalfa, as a five year perennial crop, was a fructus naturales and passed with the realty to the defendant. In addition, because the lease was for a certain period, the tenant's rights to crops on the land terminated with the lease. Triggs v. Kahn, 563 N.Y.S.2d 262 (App. Div. 1990).

In the next issue: "Payments on Guarantees" by Dr. Neil Harl
NUISANCE

CHICKEN FARM. The defendant operated an egg and poultry farm with 1.5 to 2 million chickens. The poultry manure was spread on 849 acres used for hay production. In 1983 the defendant applied the manure in liquid form, instead of dry, substantially increasing the odor from the fields. The plaintiff cited the defendant for violations of the county waste and garbage disposal ordinances. The defendant requested an injunction against enforcement of the ordinances based upon the Florida right to farm act. The defendant argued that so long as the farming operation on the 849 acres remained in the production of hay, no change in farming operation occurred. The court disagreed and remanded the case for determination as to whether the change in manure application caused a substantial degradation of the locale. Pasco County v. Tampa Farm Service, Inc., 573 So.2d 909 (Fla. Ct. App. 1990).

STATE TAXATION

SALES AND USE TAX. The petitioners purchased shares in the syndication of several breeding stallions which entitled the petitioners to have a number of mares artificially inseminated. The court held that the shares resulted in acquisition of ownership interests in the horses which were subject to state use tax. Hempt Bros. v. Cmwlth., 585 A.2d 593 (Pa. Cmwlth. 1991).

CITATION UPDATES

Schroeder v. U.S., 924 F.2d 1547 (10th Cir. 1991) (marital deduction), see p. 58 supra.