9-13-1991

Cases, Regulations, and Statutes

Robert P. Achenbach Jr.

_Agricultural Law Press_, robert@agrilawpress.com

Follow this and additional works at: [http://lib.dr.iastate.edu/aglawdigest](http://lib.dr.iastate.edu/aglawdigest)

Part of the _Agricultural and Resource Economics Commons_, _Agricultural Economics Commons_, _Agriculture Law Commons_, and the _Public Economics Commons_

Recommended Citation


Available at: [http://lib.dr.iastate.edu/aglawdigest/vol2/iss18/2](http://lib.dr.iastate.edu/aglawdigest/vol2/iss18/2)

This Article is brought to you for free and open access by the Journals at Iowa State University Digital Repository. It has been accepted for inclusion in Agricultural Law Digest by an authorized administrator of Iowa State University Digital Repository. For more information, please contact digirep@iastate.edu.
FOOTNOTES

1 See generally 5 Harl, Agricultural Law § 46.08 (1991).
2 I.R.C. § 2518(b).
3 Est. of Fleming v. Comm’r, T.C. Memo. 1989-675 (disclaimer of property passing to decedent’s estate under husband’s will not timely because not made within nine months of death; estate argument that disclaimer timely if within nine months after will admitted to probate unsuccessful). See Ltr. Rul. 8607013, Nov. 14, 1985 (possible beneficiaries of special power of appointment of surviving spouse over testamentary marital trust corpus must disclaim interests within nine months of creation of trust).
5 See Est. of Selby v. U.S., 84-1 U.S.T.C. ¶ 13,556 (10th Cir. 1984); Ltr. Rul. 8701001, Aug. 19, 1987 (disclaimer by guardian of minor heirs effective where disclaimer is open, notorious, exclusive and continuous, the element of the required 20 years. The court held that where possession is open, notorious, exclusive and continuous, the element of hostile possession is presumed, subject to rebuttal by the title holder that the possession was permissive. The court held that the defendant did not permit the adverse possession of the disputed land because the defendant objected to the fence continuously during the over 20 years of the fence’s existence. Sutton v. Miller, 592 A.2d 83 (Pa. Super. 1991).
7 Ltr. Rul. 8527087, no date given.
10 I.R.C. § 2518(b). See Ltr. Rul. 8326110, March 30, 1983 (disclaimer by daughter as mother’s personal representative was qualified even though property passed to daughter as result).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

HOSTILE POSSESSION. The plaintiff built a fence between the plaintiff’s and defendant’s properties without consulting a survey and placed the fence on the defendant’s property. In an action for adverse possession, the defendant conceded that the plaintiff had open, notorious, exclusive and continuous possession of the disputed land for the required 20 years. The court held that where possession is open, notorious, exclusive and continuous, the element of hostile possession is presumed, subject to rebuttal by the title holder that the possession was permissive. The court held that the defendant did not permit the adverse possession of the disputed land because the defendant objected to the fence continuously during the over 20 years of the fence’s existence. Sutton v. Miller, 592 A.2d 83 (Pa. Super. 1991).

PRESCRIPTIVE EASEMENT. In defense of an action for trespass, the defendants asserted a prescriptive easement over the plaintiff’s land which allowed the defendants to use a strip of land as access to a portion of the defendants’ ranch land. Although the defendants, and their predecessors in ownership, established open, notorious, continuous and uninterrupted use of the disputed land under a claim of right and with knowledge of the owner, the court held that the use was presumed permissive because during the use of the land, the land was unimproved, uncenced, wild and remote. Therefore, the defendants did not acquire a prescriptive easement allowing them to use the land and to defeat the trespass action. Burnett v. Jayo, 812 P.2d 316 (Idaho Ct. App. 1991).

ANIMALS

HORSES. The plaintiff was injured by a fall from a horse during a riding lesson at the defendant’s stables. The defendant was granted summary judgment based on a release from liability signed by the plaintiff prior to taking the first lesson. The court held that the release did not violate public policy, was effective for lessons taken after the signing, included accidents involving falls, and was effective, even
though the plaintiff did not read it, where the release contained the words "CAUTION: READ BEFORE SIGNING" above the signature line and "RELEASE" at the top of the page. Biern v. Fox Meadow Farms, Ltd., 574 N.E.2d 1311 (Ill. Ct. App. 1991).

The plaintiffs sued the owner of a horse for personal and property damages resulting from an collision of the plaintiffs' car with the horse. The court held that the defendant had no duty to keep the horse off the highway, a farm-to market road, unless a local option election was in effect to require the fencing of domestic animals. A summary judgment for the defendant was reversed and the case remanded to determine whether the accident occurred within an area for which the local option election applied. Hollingsworth v. King, 810 S.W.2d 772 (Tex. Ct. App. 1991).

**BANKING**

**FIDUCIARY DUTY.** The plaintiff applied for and obtained an operating loan from the defendant bank for the plaintiff’s ranch but the bank informed the plaintiff that much of the loan would need to be financed by other banks because the loan exceeded the bank's legal lending limit. The bank obtained financing through two other banks and the plaintiff was able to obtain loans for two years using this arrangement. However, in the third year the other banks refused to finance the loan and the plaintiff was unable to borrow more than the defendant's lending limit. The plaintiff sued for damages, arguing that the bank had a fiduciary duty to warn the plaintiff that the other banks might refuse to make the loans at any time. The court held that the bank did not have sufficient superior knowledge and control over the plaintiff’s financing to have a fiduciary duty to the plaintiff. The court noted that the plaintiff had experience with similar types of loans and exercised complete control over the ranch operations. Waddell v. Dewey County Bank, 471 N.W.2d 591 (S.D. 1991).

**BANKRUPTCY**

**GENERAL**

**EXEMPTIONS.** The debtor claimed an exemption, under Okla. State. tit. 31, § 1(A)(20), (21), in workers’ compensation death benefits received after the death of the debtor's spouse, although the debtor had already received more than the exemption amount prior to filing bankruptcy. Three state courts had ruled that the debtor did not qualify for any additional exemption in the benefits. The bankruptcy court ruled that the state court adjudications were res judicata as to the debtor's entitlement to any additional amounts as an exemption. In re Cella, 128 B.R. 574 (Bankr. W.D. Okla. 1991).

The debtor claimed an exemption for the debtor's interest in a pickup truck and sought to avoid a consensual nonpurchase money security interest in the pickup. The exemption, Wyo. Stat. § 1-20-106(a)(iv), applied only to levy or sale upon execution or attachment; therefore, the lien did not impair the exemption and was not avoidable. The court noted that although the lien was not removed by the bankruptcy proceeding, neither was the exemption, which continued after bankruptcy. In re Vangorp, 128 B.R. 579 (Bankr. D. Wyo. 1991).

The debtor claimed a business homestead exemption for real and personal property used by the debtor in a medical practice. The real property was owned by a partnership in which the debtor was a partner and leased to a corporation in which the debtor was a shareholder and employee. The personal property was owned by the debtor but was also leased to the corporation. The court held that none of the property qualified for the business homestead exemption by the debtor. In re Cooper, 128 B.R. 632 (Bankr. E.D. Tex. 1991).

The debtors claimed a homestead exemption and lived in the house during the bankruptcy case. The trustee petitioned for and obtained an order requiring the debtors to pay fair market rent during the time the debtors lived in the house during the case, with the amount of accrued rent deducted from the exemption amount when the house was sold. The appellate court reversed the order, holding that the trustee cannot charge the debtors rent for living in the homestead during the bankruptcy case where the debtors claim a homestead exemption. Matter of Szekely, 936 B.R. 897 (7th Cir. 1991), rev'd, 111 B.R. 681 (N.D. Ill. 1990).

**CHAPTER 12**

**DISMISSAL.** The Chapter 12 debtors filed a motion to dismiss their case after the trustee filed a report alleging that the debtors pre-bankruptcy fraudulently conveyed assets to a wholly-owned corporation. The trustee also filed a motion to convert the case to Chapter 7 on the basis of the debtors’ pre-bankruptcy fraudulent transactions. The debtors argued that Section 1208(b) required immediate dismissal upon the request of the debtors. The court held that the purpose of Chapter 12, the fresh start of honest debtors, was best served by allowing the conversion of the case to Chapter 7 even though the debtors requested dismissal. In re Graven, 936 F.2d 378 (8th Cir. 1991), aff'd unrep. D. Ct. dec., aff'd, 101 B.R. 109 (Bankr. W.D. Mo. 1990).

**FEDERAL TAXATION**

**AVOIDABLE LIENS.** The debtor operated a business as a wholly-owned corporation after the corporation's legal status was revoked after the corporation failed to pay annual registration fees. The court held that the revocation of the corporation's legal status caused the corporation's assets and liabilities to transfer to the debtor individually. The IRS filed a tax lien for tax liability of the corporation's assets incurred after the corporation status was revoked by the state. The tax lien was filed in the name of the corporation which was the same name as the debtor only with "Inc." added. The debtor argued that because the corporation no longer existed when the tax lien was filed, the filing of the lien was insufficient to perfect the lien. The court held that because the lien was filed on the same day, the name of the debtor and the corporation used the debtor's name, the filing was constructive notice of the lien against the debtor and the tax lien was perfected and not avoidable. Hudgins v. I.R.S., 91-2 U.S Tax Cas. ¶ 50,397 (E.D. Va. 1991). On remand, the debtors' motion to avoid the lien was dismissed. Hudgins
CLAIMS. The Chapter 7 debtors failed to file a claim for employment tax within the time limit of bankruptcy Rule 9006(b) after the IRS failed to file a claim in the case. The debtors attacked the rule for failure to provide notice to the debtors of the expiration of the time limit. The court held that the burden on the debtors was fair where the rule operated to provide a benefit to the debtors. The court also held that the filing of the claim by the debtors would not relate back to the listing of a general claim in the debtors’ schedules. In re Davis, 936 F.2d 771 (4th Cir. 1991).

PENSION PLAN. The debtor was assessed the 10 percent tax, under I.R.C. § 4980, for reversion of a qualified pension plan to the debtor as employer. The IRS argued that the tax was entitled to a priority under Section 507(a)(7)(E) because the tax was enacted to recapture the tax advantages resulting from contributions to qualified pension funds. The court held that the tax was a penalty not entitled to priority because the amount was fixed and did not necessarily relate to the tax benefits, if any, received by the debtor. In re C-T of Virginia, Inc., 128 B.R. 628 (Bankr. W.D. Va. 1991).

RESPONSIBLE PERSON. The plaintiffs were officers of a debtor corporation who were assessed the 100 percent penalty for failure of the corporation to pay employment withholding taxes. Pursuant to a settlement, the IRS agreed to abate the penalty to the extent the corporation paid the deficiency plus applicable interest. The agreement allowed either party to reassert a claim if the corporation did not pay all taxes and interest. The corporation paid all taxes and interest except for interest accruing during the bankruptcy case and the IRS reassessed the plaintiffs for the interest not paid. The plaintiffs argued that the IRS had no authority to collect the interest because the corporation paid the tax and interest it was liable for. The court held that the plaintiffs remained liable for any unpaid tax or penalty because the plaintiffs’ liability was separate from the corporation’s liability. Bradley v. U.S., 936 F.2d 707 (2nd Cir. 1991).

CONTRACTS

MUTUAL MISTAKE. The plaintiff owned a farm and contracted with the defendant for treated wastewater to be delivered by pipeline from the defendant’s water treatment lagoons. The contract was for not less than 408 acre feet and not more than 610 acre feet of water per year. The plaintiff sued for breach of contract for two years when the amount of wastewater delivered amounted to 47.5 and 147.5 acre feet respectively. For most of the years preceding the two years in question, the plaintiff requested much less water than the contract provided and the defendant provided less water than was requested, yet the plaintiff was satisfied until the two years in question. The court held that the contract was modified by mutual mistake in that the course of conduct between the parties over several years demonstrated that the plaintiff overestimated the amount of water needed and the defendant overestimated the amount of wastewater, it could produce. Leydet v. City of Mountain Home, 812 P.2d 755 (Idaho Ct. App. 1991).

UNFAIR PRACTICES ACT. The plaintiff agreed to purchase cattle owned by the plaintiff which were being pastured at the farm of a third party who had approached the plaintiff about the sale. The plaintiff paid a downpayment to the third party who informed the defendant of the sale agreement but who did not forward or ever pay the downpayment to the defendant. When the defendant learned that the third party had not forwarded the downpayment, the defendant removed the cattle and canceled the sales agreement. The plaintiff sued the defendant for violation of the Unfair Practices Act, alleging that the defendant’s failure to perform the contract was a deceptive practice. The court held that mere failure to perform on a contract was not an unfair practice, which required a knowingly made false or deceptive statement with the intent to deceive. Stevenson v. Louis Dreyfus Corp., 811 P.2d 1308 (N.M. 1991).

FEDERAL AGRICULTURAL PROGRAMS

BORROWER’S RIGHTS. The defendants asserted as a defense to a foreclosure action that the plaintiff had not complied with the Agricultural Credit Act of 1987 and regulations in that the plaintiff had not completed participation in loan restructuring and state mediation. The court held that the plaintiff had submitted the defendants’ loan to the credit review committee for restructuring and the committee had determined that the loan was not worthy of restructuring; therefore, the 1987 Act had been complied with. The court also held that participating in mediation was not a prerequisite to a foreclosure action and that the plaintiff had submitted to mediation but that the defendants did not pursue the mediation. Federal Land Bank v. Northcutt, 811 P.2d 1368 (Okla. Ct. App. 1991).

CONTRACTS. The plaintiff submitted a bid for the sale of all-beef and soy patties to the USDA for distribution in federal child nutrition programs. The plaintiff attempted to cancel or change its bid to add 11 cents per pound before the contract was awarded, due to a claimed mistake in valuing costs. The contracting officer assessed the plaintiff for reprocurement costs and liquidated damages for nonperformance of the awarded contract. The court held that although the contract officer should have first analyzed the plaintiff’s claim before awarding the contract, the error was harmless because the plaintiff failed to provide evidence to support the costs used to make the bid or evidence of the intended correct bid. Goldberger Foods, Inc. v. U.S., 23 Cl. Ct. 295 (1991).

COTTON. The CCC has issued interim regulations implementing the upland cotton first handler and user marketing certificate programs. The interim regulations contain changes from the proposed regulations issued in June 1991. 56 Fed. Reg. 41431 (Aug. 21, 1991).

DAIRY TERMINATION PROGRAM. The plaintiffs purchased a dairy farm on a land sales contract and operated a diary until the plaintiffs signed up for the Dairy
Termination Program under which the plaintiffs received over $200,000 for agreeing not to use the facility for milk production. The plaintiffs then defaulted on the land sales contract and the land reverted to the seller who rented the land to a third party who operated a dairy on the property. The USDA assessed the plaintiffs the amount paid plus interest for violating the DTP contract provision prohibiting the use of the facility for dairy production. The plaintiffs argued that the statute, 7 U.S.C. § 1446(d)(3)(A)(iv)(II), required only that the producer not "make available" the facility for dairy production and that the regulations, 7 C.F.R. § 1430.457(d), which required no production at the facility went beyond the statutory authority. The court held that the regulations were consistent with the purposes of the DTP in that the regulations prevented new producers from using old facilities to increase dairy production. Therefore, the plaintiffs violated the DTP contract and the assessments were proper. Sybrandy v. U.S.D.A., 937 F.2d 443 (9th Cir. 1991).

PRICE SUPPORT-WOOL. The CCC has issued the final determinations for the support price of shorn wool of $1.88 per pound and $4.448 per pound for mohair. 56 Fed. Reg. 42023 (Aug. 26, 1991).

RURAL HOUSING. The FmHA has issued interim regulations amending the Rural Housing program to include a deferred payment mortgage option. 56 Fed. Reg. 41764 (Aug. 23, 1991).

TIMBER. The plaintiffs sued for an injunction to stop the sale of timber by the Forest Service in the Shawnee National Forest. The court denied the plaintiffs' motion for a preliminary injunction because the plaintiffs failed to show that they would likely succeed on the merits of their action. The court held that the harvest method, characterization of the forest, and environmental impact statements all complied with statutory and regulatory provisions. RACE v. U.S.D.A., 765 F.Supp. 502 (S.D. Ill. 1990).

FEDERAL ESTATE AND GIFT TAX

ANNUITIES. Within one year of death and when the decedent was gravely ill, the decedent established private annuities with the decedent's children equal to the property bequeathed to each child under the decedent's will. The IRS ruled that the value of the decedent's remainder interest in the annuities was to be determined using the actual length of the decedent's life from the date the annuities were issued, because the decedent and children knew that the decedent was incurably ill and due to die within a short time. The IRS also ruled that the transfer of interests in partnerships owned by the decedent in exchange for the annuities was a gift where the value of the partnership interests exceeded the value of the decedent's interest in the annuities. Ltr. Rul. 9133001, Jan. 31, 1990.

GENERATION SKIPPING TRANSFERS. The decedent bequeathed property in trust to the surviving spouse which qualified as QTIP. The executor divided the QTIP trust into two trusts and made a reverse QTIP election as to one trust, to which a portion of the decedent's $1 million GSTT exemption was allocated. The IRS ruled that the procedure was permissable. Ltr. Rul. 9133016, May 16, 1991.

SPECIAL USE VALUATION. The taxpayer received special use valued farmland from deceased parents and cash leased the property to the taxpayer's son. The court held that the cash lease of the property was a cessation of qualified use causing recapture of special use valuation benefits. The court held that the fact that the property was leased to an otherwise qualified heir was immaterial. Shaw v. Comm'r, T.C. Memo. 1991-372.

TRANSFERS WITH RETAINED INTERESTS. The decedent conveyed farmland to sons in two transactions with the deeds limiting the sons' ability to transfer the interests in the land. Under an oral agreement with the sons, the decedent continued to live on the homestead. The decedent continued to claim depreciation and net farm losses from the farm. The court held that the value of the entire farm land was included in the decedent's gross estate because the transfers were either transfers with a retained life estate or revocable transfers. Est. of Baggett v. Comm'r, T.C. Memo. 1991-362.

VALUATION. On the date of death, the decedent had an interest in a personal liability judgment which was on appeal. The court held that the value of the judgment was the judgment award less costs and was discounted for the risk involved in an appeal. Est. of Lennon v. Comm'r, T.C. Memo. 1991-360.

FEDERAL INCOME TAXATION

ANNUITIES. The taxpayer received some of a distribution from a retirement plan as an annuity and used the 10-year averaging method to compute the tax on the total distributions. The court held that the 10-year averaging method was not allowed because the taxpayer did not receive all distributions within the same taxable year. Twombly v. Comm'r, T.C. Memo. 1991-416.

C CORPORATIONS

CAPITAL ASSETS. The taxpayer was a corporation which owned a large number of convenience stores, many of which also included a gas station. In an attempt to insure a steady supply of gasoline for these stores, the taxpayer purchased 12.3 percent of the stock of an oil and gas exploration corporation. The taxpayer's public and shareholder statements and public filings stated that the stock purchase and ownership were for investment purposes and that the taxpayer would not purchase any oil or gas from the corporation, in order for the oil and gas corporation to retain its income tax depletion allowances. However, the taxpayer intended to use the corporation's oil as barter to obtain gasoline from other companies if the supply of gasoline from its regular suppliers was ever curtailed. The taxpayer was forced to sell the stock of the oil and gas exploration corporation when the corporation filed for bankruptcy, and the taxpayer claimed the loss of value of the stock as an ordinary loss. The court held that the ownership of the stock had the requisite "close connection" with the taxpayer's trade or business to qualify for the inventory exception of I.R.C. § 1221(1). The court looked beyond the taxpayer's public statements and securities filings to find...
that the purchase of the stock was primarily made to insure a steady source of gasoline for the taxpayer's convenience stores. *The Circle K Corp. v. U.S.*, 91-2 U.S. Tax Cas. (CCH) ¶ 50,382 and 91-2 U.S. Tax Cas. (CCH) ¶ 50,383, *vaeg and reissuing*, 91-1 U.S. Tax Cas. (CCH) ¶ 50,260 (Clis. Ct. 1991).

**MEALS AND LODGING.** The taxpayers formed a corporation and contributed farm business personal property and their residence to the corporation and leased farm land to the corporation. As employees of the corporation, the taxpayers had the corporation claim the cost of their lodging (in the residence transferred to the corporation) and meals as business expense deductions and excluded the costs of these items from the taxpayers' income under Section 119. Although the IRS agent acknowledged that the taxpayers could exclude the items from income, the agent disallowed the costs as business expenses under Section 269 because the taxpayers formed the corporation for the purpose of evading taxes. The IRS ruled that because the meal and lodging expenses were properly excluded from the taxpayers' income and would be allowed if the taxpayers had formed a partnership, no tax evasion purpose existed. *LTR. Rul. 9134003*, May 6, 1991.


**DEPRECIATION.** The assembled workforce of a purchased and liquidated corporation was not an amortizable asset because the value of the asset did not diminish over time. Contracts for the supply of raw material were amortizable because the contracts had an ascertainable useful life of 14 months. *Ithaca Industries, Inc. v. Comm'r*, 97 T.C. No. 16 (1991).

**DISCHARGE OF INDEBTEDNESS.** A person unrelated to a corporation formed a new corporation solely for the purpose of purchasing the old corporation's debts for less than the issue price. The old corporation then purchased the new corporation's stock for the same amount; thus avoiding the discharge of indebtedness income which would have resulted if the old corporation purchased its own debt for less than the issue price. The IRS ruled that the substance of the transaction was the purchase of debt by a related party, the new corporation, even though the stock purchase occurred after the debt purchase. *Rev. Rul. 91-47*, I.R.B. 1991-35, Aug. 15, 1991.

**INVESTMENT TAX CREDIT.** A noncorporate lessor of an airplane was allowed investment tax credit where the business deductions exceeded 15 percent of rental income from the plane, excluding the rental security deposit and monthly management fees. *Levy v. Comm'r*, T.C. Memo. 1991-391.

**LIKE-KIND EXCHANGE.** The sale and purchase of investment real estate was not eligible for like-kind exchange treatment where the sale proceeds were placed in a trust over which the seller had unrestrained control and the exchange property not purchased as part of integrated transactions. *Greene v. Comm'r*, T.C. Memo. 1991-403.

**LOSSES.** The taxpayers purchased an old building with the intent to renovate the building; however, the city housing agency ordered the building to either be completely renovated according to the code for new buildings or to be torn down. The taxpayers decided not to renovate the building and later demolished the building. The IRS ruled that the loss of the building was due to demolition and not abandonment; therefore, Section 280B required that the cost of the building be capitalized into the value of the land. *LTR. Rul. 9131005*, April 25, 1991.

**PARTNERSHIPS**

**LOSSES.** The taxpayer invested in a limited partnership interest in a tax shelter cattle breeding partnership and guaranteed some partnership indebtedness. The court held that the taxpayer could not deduct a share of the partnership losses beyond the initial investment where the taxpayer could seek reimbursement from the partnership for the amounts guaranteed. *Tepper v. Comm'r*, T.C. Memo. 1991-402.

**RETURNS.** The IRS has announced that the Automated Processing of Extensions process will not be initiated in 1992 and applications for extensions must be made on Form 4868 for 1992. *IR 91-86*, Aug. 16, 1991.

The IRS has issued new Forms 8827 "Credit for Prior Year Minimum Tax--Corporations," 8829 "Expenses for Business Use of Your Home," and 8830 "Enhanced Oil Recovery Credit."

**SAFE HARBOR INTEREST RATES**

**SEPTEMBER 1991**

<table>
<thead>
<tr>
<th></th>
<th>Annual</th>
<th>Semi-annual</th>
<th>Quarterly</th>
<th>Monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Short-term</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AFR</td>
<td>6.60</td>
<td>6.49</td>
<td>6.44</td>
<td>6.40</td>
</tr>
<tr>
<td>110% AFR</td>
<td>7.27</td>
<td>7.14</td>
<td>7.08</td>
<td>7.04</td>
</tr>
<tr>
<td>120% AFR</td>
<td>7.94</td>
<td>7.79</td>
<td>7.72</td>
<td>7.67</td>
</tr>
<tr>
<td><strong>Mid-term</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AFR</td>
<td>7.96</td>
<td>7.81</td>
<td>7.74</td>
<td>7.69</td>
</tr>
<tr>
<td>110% AFR</td>
<td>8.77</td>
<td>8.59</td>
<td>8.50</td>
<td>8.44</td>
</tr>
<tr>
<td>120% AFR</td>
<td>9.59</td>
<td>9.37</td>
<td>9.26</td>
<td>9.19</td>
</tr>
<tr>
<td><strong>Long-term</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AFR</td>
<td>8.41</td>
<td>8.24</td>
<td>8.16</td>
<td>8.10</td>
</tr>
<tr>
<td>110% AFR</td>
<td>9.27</td>
<td>9.06</td>
<td>8.96</td>
<td>8.89</td>
</tr>
<tr>
<td>120% AFR</td>
<td>10.13</td>
<td>9.89</td>
<td>9.77</td>
<td>9.69</td>
</tr>
</tbody>
</table>

**S CORPORATIONS**

**ADMINISTRATIVE ADJUSTMENTS.** After an S corporation received an FSAA which adjusted the corporation's capital stock, loans payable, loans receivable and similar items, a shareholder requested dismissal because the adjustments affected only the shareholders' bases in the corporation and not corporation tax items. The court held that it had jurisdiction to rule on the adjustments because the shareholders' bases would need to be determined through determination of corporation level tax items. *University Heights at Hamilton Corp. v. Comm'r*, 97 T.C. No. 17 (1991).

**TIMBER.** The taxpayer elected to treat the cutting of timber as a sale or exchange and included the cost of road construction in the fair market value of the cut timber. The court held that the cost of the roads was not includible in the fair market value of the timber because the construction expenses were separately deductible. *Willamette Industries, Inc. v. Comm'r*, T.C. Memo. 1991-389.

LABOR

MIGRANT AGRICULTURAL WORKERS. The plaintiffs were migrant agricultural workers who harvested pickles for the defendant and who brought claims under the Migrant and Seasonal Agricultural Worker Protection Act and the Fair Labor Standards Act. The court held that the defendant was not exempt from the act as a family business because the plaintiffs were recruited by a farm labor contractor who was not a member of the defendant's immediate family. The court also ruled that the plaintiffs were employees where the defendant controlled the work, provided all of the investment, and had all the opportunity for profit from the harvest. The defendants were found to have violated the requirements for posting employment conditions and housing terms. The defendant was found not to have violated the terms of the working arrangement where the labor contractor fired the plaintiffs when the plaintiffs refused to help other workers harvest their fields which was a customary thing to do. The firings were also held not to be retaliatory for the plaintiffs' complaints to the defendant for alleged violations. The damage award was decreased because the violations were primarily technical in that the plaintiffs were not harmed by the violations because they had the information from other sources. Under the FSLA, the defendant was found to have failed to pay the plaintiffs minimum wages and awarded the plaintiffs the lost wages plus an equal amount as liquidated damages because the defendants failed to show that the violation was made in good faith. Aviles v. Kunkle, 765 F.Supp. 358 (S.D. Tex. 1991).

MORTGAGES

DEFICIENCY JUDGMENT. Although the defendants intended to purchase only the farm land, the defendants chose to purchase the stock of the corporation owning the farm land in order to retain the federal water rights which were owned by the corporation and which would be lost if the corporation were liquidated. The defendants borrowed the purchase money for the stock and after default argued that the anti-deficiency statute for purchase money mortgages applied because the loan was used to purchase the land, although the purchase was structured as a stock purchase. The court held that the anti-deficiency provision did not apply because the defendants acquired only a shareholder's interest in the corporation and no interest in the land. The defendants could not disregard the corporate structure of a bona fide corporation. Union Bank v. Anderson, 283 Cal. Rptr. 823 (Cal. Ct. App. 1991).

PRODUCTS LIABILITY

COMBINE. The plaintiff was injured when cleaning the vertical auger in a combine manufactured by the defendant. The defendant argued that the danger presented by the auger was open and obvious, precluding recovery by the plaintiff. The court held that even if the danger was open and obvious, the defendant was still liable if the open and obvious nature of the danger was not within the cognition of a reasonable user; therefore, the issue remained a jury question. The defendant also argued that the proximate cause of the accident was the engagement of the power drive on the auger by a coworker who did not know the plaintiff had an arm in the auger. The court held that the defendant was liable, even if the product was negligently misused, if it was foreseeable that the product could be negligently misused. The court held that the evidence demonstrated that the only method for cleaning the auger encouraged the negligent misuse of the combine because the person required to turn on the power to the auger could not see the person cleaning the auger. Wheeler v. John Deere Co., 935 F.2d 1090 (10th Cir. 1991).

GRAIN AUGER. The plaintiff was injured when a leg slipped through a protective grating on a floor grain auger. The auger was purchased through the defendant, an employee of the supplier of the auger. The plaintiff alleged that the defendant undertook to provide engineering services for the installation of the auger and failed to recommend a safety grate to cover the auger. The court found that the defendant served only as a salesperson filling the order for the purchaser of the auger and had recommended that the purchaser seek expert advice for a safety grate. Therefore, the defendant was not liable for the failure of the auger to have a safety grate. Anderson v. Scheffer, 811 P.2d 1125 (Kan. 1991).

SECURED TRANSACTIONS

PURCHASE MONEY SECURITY INTERESTS. The debtor had granted a security interest in all farm equipment including after-acquired equipment to the plaintiff bank. Subsequently, the debtor purchased a combine and other farm machinery financed through the seller and the defendant manufacturer and the defendant asserted a priority security interest in the purchased equipment through a purchase money security interest. The plaintiff bank argued that the purchase money security interest was not perfected within the statutory 20 day limit because the defendant did not sign the purchase agreement until 22 days after the debtor took possession of the equipment. The court held that the purchase money security interest was perfected within the 20 day limit because the defendant took value for the security interest in that the seller was given credit on its account within the 20 days and the defendant filed the security interest within the 20 days. The court found that these actions constituted acceptance of the financing of the purchase even though the purchase agreement was not signed by the defendant until later. NBD-Sandusky Bank v. Ritter, 471 N.W.2d 340 (Mich. 1991), rev'd, 446 N.W.2d 340 (Mich. Ct. App. 1989).
RIGHTS IN COLLATERAL. The debtor granted the plaintiff a security interest in cattle and farm equipment, including after-acquired property, which was perfected by the plaintiff. The debtor entered into a contract to purchase cattle from the defendant which provided that the debtor would select the cattle and pay for the whole lot after all had been selected. As the cattle were selected over several days, the cattle were moved to a third party's farm. The brands and tags were not removed and the defendant paid for the cattle's keeping. After the debtor defaulted on the loan owed to the plaintiff, the defendant replevied the selected cattle and the plaintiff brought an action for conversion, arguing that the debtor had sufficient interest in the cattle for the security interest to attach to the cattle as after-acquired property. The court held that the debtor did not have sufficient interest in the cattle for the security interest to attach because the debtor had no possession or control over the cattle. Central Prod. Credit Ass'n v. Hopkins, 810 S.W.2d 108 (Mo. Ct. App. 1991).

STATE TAXATION

AGRICULTURAL USE. The plaintiff was denied valuation of pasture land as agricultural, under Or. Rev. Stat. §§ 215.203, 308.370, where the land was not zoned as farm land and the plaintiff did not lease the land for the tax year or otherwise use the land for agricultural purposes. The court held that the plaintiff's intent to lease the land for agricultural purposes was insufficient where the land was not in fact so leased. Stilwell v. Depart. of Revenue, 311 Or. 381, 811 P.2d 1373 (1991).

CITATION UPDATES
