How does this affect livestock under I.R.C. § 1231(b)(3)?

The key statute, I.R.C. § 1223(9), refers to the period to be eligible for long-term capital gains treatment in the period after death is referring to property held for ". . . more than one year."[8]

As is widely known, the statute in referring to property used in a trade or business, and thus eligible for long term capital gain and ordinary loss treatment, as 24 months or more for cattle and horses and, for other livestock, 12 months or more.[9] That rules out the special treatment assuring long-term capital gains treatment for the first 12 months after death for animals held by the decedent.

IRS published *Rev. Rul. 75-361*[10] making that very point and confirming the different treatment for trade or business livestock. The facts of that ruling were that cattle and other livestock acquired from the estate produced ordinary income on sale. The ruling points out that no exception was made in the statute for livestock used in a trade or business with specified holding periods of 12 and 24 months.[11]

What about animals that are not held for use in a trade or business?

Those animals not held for draft, dairy, breeding or sporting purposes have a more than one year holding period.[12] Therefore, if considered to be a capital asset, rather than a trade or business asset, those animals would appear to come within the rule of an automatic more-than-one year holding period at death. Animals used for entertainment, research or other non-trade or business purposes would seem to be within the bounds of the 1970 enactment.

Is there hope for a favorable amendment?

That is unclear. However, in light of the fact that the statute has been firmly in place for 45 years, the odds of an amendment appear to be slim unless momentum somehow builds for a change.

ENDNOTES

1 See I.R.C. § 1231(b)(3).

2 I.R.C. § 1223(9), enacted into law in the Excise, Estate and Gift Tax Adjustment Act of 1970, Pub. L. No. 91-614, § 101(g), 85 Stat. 534 (1970). See S. Rep. No. 91-1444, 91st Cong., 2d Sess. 9 (1970).

3 I.R.C. § 1223(9).

4 I.R.C. § 1014(a).

5 I.R.C. § 2032.

6 I.R.C. § 2032A.

7 I.R.C. § 2031(c).

8 I.R.C. § 1223(9).

9 I.R.C. § 1231(b)(3).

10 1975-2 C.B. 344.

11 *Id*.

12 See I.R.C. § 1231(b)(3).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ADVERSE POSSESSION

FENCE. In 1988, the plaintiff acquired land from the defendant who continued to live on land adjacent to the plaintiff's. A survey done at the time of sale showed that the boundary between the properties ran straight and did not follow a fence which was located a few feet onto the defendant's land. In 2011 the parties were involved in a water drainage dispute and in the course of that litigation, the parties affirmed the boundary as set forth in the survey. In 2015, the plaintiff filed a lawsuit in which the plaintiff claimed the portion of land on the plaintiff's side of the fence under adverse possession. The plaintiff claimed to have used the property for pasturing horses and cattle, mowed and hayed the land, and maintained the fence. The defendant claimed to have given the plaintiff permission to use the land on the plaintiff's side of the fence within the surveyed boundary. The trial ruled in favor of the defendant, concluding that the plaintiff had failed to establish (1) that the plaintiff had exclusive and continuous possession for at least 15 years and (2) that the plaintiff had occupied the property under a belief that the plaintiff owned it. On appeal, the appellate court affirmed, holding that the plaintiff failed to prove that the plaintiff had exclusive and continuous possession of the disputed property. The court pointed to evidence by the defendant that the defendant had entered the disputed property for hunting, maintaining pastures and to inspect the fence. **Bradford v. Parlett, 2015 Kan. App. LEXIS 1031 (Kan. Ct. App. 2015)**.

ANIMALS

ANIMAL CRUELTY. The defendant appealed a conviction of animal cruelty under Alaska Stat. § 11.61.140(a). The defendant co-owned three horses with the defendant's partner and kept the horses on the partner's father's farm. The horses were found starving and one had to be euthanized. The defendant argued that the statute was unconstitutionally vague in that it did not define which persons had a duty to care for particular animals. The court looked to common law and other criminal negligence statutes to fill in the definition of the persons with a duty of care. The court held that any person who assumes the responsibility for the care of an animal is subject to the statute. In this case, the defendant understood this definition in that the defendant's closing arguments focused on the issue of who, the defendant, the partner or the land owner, had assumed the responsibility of care. Therefore, the court upheld the conviction because the evidence demonstrated, and the jury found, that the defendant had fed and watered the horses prior to the conviction. **Sickel v. State of Alsaka, 2015 Alaska App. LEXIS 181 (Alaska Ct. App. 2015)**.

HORSES. The plaintiff was injured after the plaintiff's car struck the defendant's horse on a highway. The horse had escaped the defendant's farm and had been struck by another car before dying on the highway and before being struck by the plaintiff's vehicle. The plaintiff filed suit under the Illinois Animals Running at Large statute, 510 ILCS 55/1, a cause of action under the Illinois Animal Control Act, 510 ILCS 5/16, a cause of action for negligence, and one count labeled "severe emotional distress." The defendant filed a motion to dismiss the cause of action under Animal Control Act, arguing that the Animal Control Act did not apply to animals merely obstructing a highway. The plaintiff argued that the Animal Control Act applied because the plaintiff's injuries resulted from the actions of the horse in escaping from the farm. The court looked at Illinois court decisions on the relationship between the Animal Control Act and the Animals Running at Large statute and held that the Animal Control Act did not apply to actions covered by the Animals Running at Large statute. Therefore, the cause of action under the Animal Control Act was dismissed. **Weiss v. Campbell, 2015 U.S. Dist. LEXIS 166228 (S.D. Ill. 2015)**.

BANKRUPTCY

FEDERAL TAX

REFUND. The debtor filed for Chapter 7 and the bankruptcy estate included the debtor's interest in a pension account. After the petition was filed, the debtor received a distribution of the entire amount in the pension account. The distribution was taxable income and the debtor had no other income. The debtor requested that federal income tax be withheld from the distribution and the debtor filed an income tax return requesting a refund of most of the withheld tax. The refund was turned over to the bankruptcy trustee who claimed a small portion of the refund as bankruptcy estate property based on the date of the filing of the petition. The court held that the entire refund was excluded from the bankruptcy estate because the distribution was post-petition income to the debtor. The court did not discuss whether the pension account was exempt property. ***In re* Perkins, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,121 (Bankr. N.D. Ohio 2015)**.

FEDERAL FARM PROGRAMS

COTTON. The FCIC has adopted as final regulations amending the cotton crop insurance provisions and extra long staple cotton crop insurance provisions of the common crop insurance regulations. The prior provisions for duties of insureds in the event of damage or loss the provisions required that, in the event of damage or loss, the insured must leave cotton stalks intact for the insurance provider's inspection. The final regulations revise the provision to allow insurance companies discretion to require, in certain circumstances, that insureds leave the cotton stalks intact for company inspection. The final regulations also revise the provision to allow FCIC to include specific circumstances in the Special Provisions for which FCIC will require insureds to leave cotton stalks intact, and FCIC will require the company to conduct a cotton stalk inspection, making discretion inapplicable when any Special Provisions circumstance required by FCIC occurs. **80 Fed. Reg. 81159 (Dec. 29, 2015)**.

ORGANIC FOOD. The AMS has adopted as final regulations which modify the organic assessment exemption regulations under 23 federal marketing orders and 22 research and promotion programs. The regulations are amended to allow persons that produce, handle, market, or import certified organic products to be exempt from paying assessments associated with commodity promotion activities, including paid advertising, conducted under a commodity promotion program administered by the AMS. The revised exemption would cover all "organic" and "100 percent organic" products certified under the National Organic Program regardless of whether the person requesting the exemption also produces, handles, markets, or imports conventional or nonorganic products. Under the prior exemption, only persons that exclusively produce and market products certified as 100 percent organic are eligible for an exemption from assessments under commodity promotion programs. **80 Fed. Reg. 82005 (Dec. 31, 2015)**.

FEDERAL ESTATE AND GIFT TAXATION

TRANSFERS WITH RETAINED INTERESTS. The decedent and predeceased spouse (the parents) formed a family limited liability company and family residence trust as part of an estate tax plan. The LLC memorandum listed four purposes for forming the LLC: (1) limited liability; (2) passthrough of income taxation; (3) minimal formalities; and (4) the LLC was an ideal entity for owning real estate. The LLC was funded with marketable securities, real estate, a loan to one of the children and cash. The trust beneficiaries were the grantors' children and spouses of the children. The parents made annual gifts of interests in the LLC to the trust. At the time of the formation of the LLC and trust, both parents were in good health, except the decedent suffered physical disabilities from a pre-formation accident. I.R.C. § 2036(a) generally provides that if a decedent makes an *inter vivos* transfer of property other than a bona fide sale for adequate and full consideration and retains certain enumerated rights or interests in the property which are not relinquished until death, the full value of the transferred property will be included in the value of the decedent's gross estate. The IRS argued that all three elements of Section 2036(a) applied to include in the decedent's estate the LLC interests transferred to the family residence trust. The estate argued that the LLC interests were transferred for adequate consideration and the decedent did not retain any interest in the transferred LLC interests. The court stated that "[I]n the context of family limited partnerships, the bona fide sale for adequate and full consideration exception is met where the record establishes the existence of a legitimate and significant nontax reason for creating the family limited partnership and the transferors received partnership interests proportional to the value of the property transferred." The court looked at the following factors to be considered when deciding whether a nontax reason existed: (1) the taxpayer's standing on both sides of the transaction; (2) the taxpayer's financial dependence on distributions from the LLC; (3) the taxpayer's commingling of LLC funds with the taxpayer's own; (4) the taxpayer's actual failure to transfer the property to the LLC; (5) discounting the value of the LLC interests relative to the value of the property contributed; and (6) the taxpayer's old age or poor health when the LLC was formed. The court held that the LLC interests transferred were not included in the decedent's estate because the decedent had legitimate nontax reasons for transferring property to the LLC and eventually to the trust. The court noted that the trust beneficiaries received a substantial present economic benefit from the trust income passed through from the LLC. **Estate of Purdue v. Commr, T.C. Memo. 2015-249**.

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a "deceased spousal unused exclusion" (DSUE) amount to a surviving spouse. To obtain the benefit of portability of the decedent's DSUE amount to the spouse, the decedent's estate was required to file Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, on or before the date that is 9 months after the decedent's date of death or the last day of the period covered by an extension. The decedent's estate did not file a timely Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The spouse, as executrix of the decedent's estate, represented that the value of the decedent's gross estate is less than the basic exclusion amount in the year of the decedent's death and that during the decedent's lifetime, the decedent made no taxable gifts. The spouse requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to elect portability of the decedent's DSUE amount pursuant to I.R.C. § 2010(c)(5)(A). The IRS granted the estate an extension of time to file Form 706 with the election. **Ltr. Rul. 201552010, Aug. 26, 2015; Ltr. Rul. 201601006, Sept. 2, 2015**.

FEDERAL INCOME TAXATION

CHARITABLE DEDUCTIONS. On September 17, 2015, the IRS issued proposed regulations that implement the exception to the "contemporaneous written acknowledgement" (CWA) requirement for substantiating charitable contribution deductions of $250 or more. The proposed regulations provided rules concerning the time and manner for donee organizations to file information returns that report the required information about contributions. The IRS stated that some taxpayers under examination for their claimed charitable contribution deductions have argued that a failure to comply with the CWA requirements of I.R.C. § 170(f)(8)(A) may be cured if the donee organization files an amended Form 990, *Return of Organization Exempt From Income Tax*, that includes the information described in I.R.C. § 170(f)(8)(B) for the contribution at issue. These taxpayers argue that an amended Form 990 constitutes permissible donee reporting within the meaning of I.R.C. § 170(f)(8)(D), even if the amended Form 990 is submitted to the IRS many years after the purported charitable contribution was made. The IRS has consistently maintained that the I.R.C. § 170(f)(8)(D) exception is not available unless and until the Treasury Department and the IRS issue final regulations prescribing the method by which donee reporting may be accomplished. Moreover, the Treasury Department and the IRS had concluded that the Form 990 is unsuitable for donee reporting. Thus, the proposed regulations provided for donee reporting as a substitute for the CWA, at the option of the donee. If the donee does not file a report of the gift to the IRS and the donor, the donor is still required to obtain the CWA. The IRS was working on a form to be used by donees for this purpose. *80 Fed. Reg. 55802 (Sept. 17, 2015)*. The IRS has announced that it has withdrawn the proposed regulations in response to comments expressing concern about the burden on donee organizations to collect and maintain taxpayer identification numbers for the information returns. **NPRM REG-138344-13, 81 Fed. Reg. 882 (Jan. 7, 2016)**.

The taxpayers, husband and wife, purchased a residence built in 1898 listed on the National Register of Historic Places in a neighborhood designated as a historical district. After attending a presentation by a charitable organization, the taxpayers used the organization to grant a facade easement on the residence to the organization. The easement prohibited any change to the exterior of the residence without the prior permission of the organization. The taxpayers used an appraiser suggested by the organization and obtained two appraisals which determined that the easement was valued at $108,000. The taxpayers claimed the charitable deduction for $108,000 on their tax return but did not include either appraisal with the return. The appraisals were not offered as evidence at trial and the taxpayers did not provide expert testimony as to the value of the easement. The court held that the charitable deduction for the easement was properly denied by the IRS because the tax return did not include a qualified appraisal to support the value of the easement. **Gemperle v. Comm'r, T.C. Memo. 2016-1**.

CORPORATIONS

MUTUAL INSURANCE COMPANY STOCK. The taxpayers, husband and wife, created a trust and used the trust to purchase life insurance policies on their lives. The policies were all purchased from mutual insurance companies. The companies demutualized and the trust received shares of the companies in exchange for its membership interest in the companies. The trust then sold the shares. Initially, the trust claimed all of the proceeds as taxable but filed for a refund based on the argument that the basis of the stock equalled the IPO value of the stock plus a portion of the premiums paid. The District Court agreed, holding that the basis of the stock resulted from the mutual and voting rights purchased with the policies. On appeal, the appellate court reversed, holding that the taxpayer did not have any tax basis in the mutual insurance membership rights exchanged for the stock derived from the demutualization. **Dorrance v. United States, 2015-2, U.S. Tax Cas. (CCH) ¶ 50,588 (9th Cir. 2015); *rev'g*, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,236 (D. Ariz. 2013)**.

DEPRECIATION. The taxpayer was a limited liability company taxed as a partnership and was part of an affiliated group of corporations and limited liability companies. The operating agreement between the members of the group provided that no additional first year depreciation would be taken for property placed in service. The taxpayer's return was prepared by in-house tax counsel who was not familiar with the operating agreement. The taxpayer's return claimed the additional first year depreciation in error. After the in-house counsel learned about the operating agreement provision on depreciation, the taxpayer requested an extension of time to revoke the election to claim additional first year depreciation. The taxpayer stated that the property for which the depreciation was claimed had not been sold. The IRS granted the extension. **Ltr. Rul. 201552004, Sept. 22, 2015**.

DISASTER LOSSES. On December 23, 2015, the President determined that certain areas in Idaho are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of a severe storm which began on November 17, 2015. **FEMA-4246-DR.** On December 29, 2015, the President determined that certain areas in Oklahoma are eligible for assistance from the government under the Act as a result of severe winter storms and flooding which began on November 27, 2015. **FEMA-4247-DR.** Accordingly, taxpayers in the areas may deduct the losses on their 2014 or 2015 federal income tax returns. See I.R.C. § 165(i).

EARNED INCOME CREDIT. The taxpayers, husband and wife, traded stock on an online brokerage service. For the tax year involved, the taxpayers did not report any income from the trading of stock. The taxpayers claimed the earned income credit on their return, but the credit was denied by the IRS. The court found that the taxpayers had realized over $4,000 in gain from the trading of stock and approved the assessment of taxes on this unreported capital gain income. Under I.R.C. § 32(i), no earned income credit is allowed for taxpayers with more than $3,200 (for the tax year involved) in gain from the sale of capital assets. Thus, because the trading in stock resulted in gain in excess of $3,200, the court held that the taxpayers were properly denied the earned income credit. **Simmons v. Comm'r, T.C. Memo. 2015-252**.

HEALTH INSURANCE. The IRS has published a notice extending the due dates for the 2015 information reporting requirements, both furnishing to individuals and filing with the IRS, for insurers, self-insuring employers, and certain other providers of minimum essential coverage under I.R.C. § 6055, and the information reporting requirements for applicable large employers under I.R.C. § 6056. The notice also provides guidance to individuals who, as a result of these extensions, might not receive a Form 1095-B or Form 1095-C by the time they file their 2015 tax returns. **Notice 2016-4, I.R.B. 2016-3**.

The IRS has published information for applicable large employers (ALEs) about new information statements to be filed in 2016. The Affordable Care Act requires applicable large employers to file Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns* and Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*. (1) The due date for furnishing these forms is extended. The due date for furnishing the 2015 Form 1095-B and the 2015 Form 1095-C to the insured and employees is extended from February 1, 2016, to March 31, 2016.The due date for health coverage providers and employers furnishing the 2015 Form 1094-B and the 2015 Form 1094-C to the IRS is extended from February 29, 2016, to May 31, 2016 if not filing electronically. The due date for health coverage providers and employers electronically filing the 2015 Form 1094-B and the 2015 Form 1094-C with the IRS is extended from March 31, 2016, to June 30, 2016. While the IRS is prepared to accept information reporting returns beginning in January 2016 and employers and other coverage providers are encouraged to furnish statements and file the information returns as soon as they are ready. (2) An ALE is required to file Form 1094-C with the IRS; however, an ALE is not required to furnish a copy of Form 1094-C to its full-time employees. (3) Generally, an ALE must file Form 1095-C or a substitute form for each employee who was a full-time employee for any month of the calendar year. (4) In addition, an ALE that sponsors a self-insured plan must file Form 1095-C for each employee who enrolls in the self-insured health coverage or enrolls a family member in the coverage, regardless of whether the employee is a full-time employee for any month of the calendar year. (5) Form 1095-C is not required for the following employees, unless the employee or the employee's family member was enrolled in a self-insured plan sponsored by an ALE member: an employee who was not a full-time employee in any month of the year and an employee who was in a limited non-assessment period for all 12 months of the year. (6) If an ALE member sponsors a health plan that includes self-insured options and insured options, the ALE member should complete Part III of Form 1095-C only for employees and family members who enroll a self-insured option. (7) An ALE member that offers coverage through an employer-sponsored insured health plan and does not sponsor a self-insured health plan should NOT complete Part III. (8) An ALE may provide a substitute Form 1095-C; however, the substitute form must include the information on Form 1095-C and must comply with generally applicable requirements for substitute forms. **Health Care tax Tip 2015-85**.

INCOME. In 2015, the IRS has issued an announcement that the IRS will not assert that an individual whose personal information may have been compromised in a data breach must include in gross income the value of the identity protection services provided by the organization that experienced the data breach. Additionally, the IRS will not assert that an employer providing identity protection services to employees whose personal information may have been compromised in a data breach of the employer's (or employer's agent or service provider's) recordkeeping system must include the value of the identity protection services in the employees' gross income and wages. The IRS will also not assert that these amounts must be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to such individuals. This announcement does not apply to cash received in lieu of identity protection services, or to identity protection services received for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package. This announcement also does not apply to proceeds received under an identity theft insurance policy; the treatment of insurance recoveries is governed by existing law. *Ann. 2015-22, I.R.B. 2015-35*. The IRS has announced additions to the guidance provided in 2015 to include identity protection services provided to employees or other individuals before a data breach occurs. Accordingly, the IRS will not assert that an individual must include in gross income the value of identity protection services provided by the individual's employer or by another organization to which the individual provided personal information (for example, name, social security number, or banking or credit account numbers). The IRS will also not assert that an employer providing identity protection services to its employees must include the value of the identity protection services in the employees' gross income and wages. Finally, the IRS also will not assert that these amounts must be reported on an information return (such as Form W- 2 or Form 1099-MISC) filed with respect to such individuals. **Ann. 2016-2, I.R.B. 2016-3**.

INFORMATION RETURNS. I.R.C. § 6050S(a)(1) requires eligible educational institutions to file information return Form 1098-T with the IRS and to furnish written statements to taxpayers relating to qualified tuition and related expenses paid to or billed by the eligible educational institution. I.R.C. § 6050S(b)(2) provides that these information returns must contain, among other things, the name, address, and TIN of any individual who is enrolled at the institution and the amount of qualified tuition and related expenses paid or billed. I.R.C. § 6721 imposes a penalty on an eligible educational institution that fails to file correct and/or timely information returns with the IRS. I.R.C. § 6722 imposes a penalty on an educational institution that fails to furnish correct and/or timely written statements to the student. However, I.R.C. § 6724(a) provides that the penalty under I.R.C. §§ 6721 or 6722 may be waived if it is shown that the failure was due to reasonable cause and not due to willful neglect. The Trade Preferences Extension Act of 2015 (Pub. L. No. 114-27, 129 Stat. 362 (Jun. 29, 2015)) (TPEA) amended I.R.C. § 6724 by adding a new subsection (f), which provides that no penalty will be imposed under I.R.C. §§ 6721 or 6722 against an eligible educational institution solely by reason of failing to include an individual's TIN on a Form 1098-T or related statement if the institution contemporaneously certifies under penalties of perjury in the form and manner prescribed by the Secretary that it has complied with the standards promulgated by the Secretary for obtaining such individual's TIN. The provision applies to returns required to be made and statements required to be furnished after December 31, 2015. **Ann. 2016-3, I.R.B. 2016-4**.

LETTER RULINGS. The IRS has issued its annual list of procedures for issuing letter rulings. The prior procedures were modified (1) to reflect a new address to send the duplicate copy of the Form 3115 for an automatic change in method of accounting, (2) to provide new addresses for exempt organizations to send the Form 3115 and (3) to provide that exempt organizations filing a Form 3115 for a nonautomatic change in method of accounting are subject to the user fees in Appendix A of the revenue procedure. Appendix A contains a schedule of user fees for requests. **Rev. Proc. 2016-1, 2016-1 C.B. 1**.

The IRS has issued its annual revision of the general procedures relating to the issuance of technical advice to a director or an appeals area director by the various offices of the Associate Chief Counsel. The new procedures reflect that in transactions involving multiple taxpayers, the field office may request a single TAM only if each taxpayer agrees to participate in the process by furnishing a Form 8821, *Tax Information Authorization*, or by other written consent. The procedures also explain the rights a taxpayer has when a field office requests technical advice. **Rev. Proc. 2016-2, 2016-1 C.B. 102**.

The IRS has issued its annual list of tax issues for which the IRS will not give advance rulings or determination letters. **Rev. Proc. 2016-3, 2016-1 C.B. 126**.

The IRS has issued its annual list of procedures for issuing letter rulings involving exempt organizations. **Rev. Proc. 2016-4, 2016-1 C.B. 142**.

The IRS has released an updated revenue procedure which explains when and how the IRS issues technical advice memoranda in the employee plans areas (including actuarial matters) and exempt organizations areas. **Rev. Proc. 2016-5, 2016-1 C.B. 188.**

The IRS has issued procedures for issuing determination letters on qualified status of employee plans under I.R.C. §§ 401(a), 403(a), 409 and 4975. **Rev. Proc. 2016-6, 2016-1 C.B. 200.**

The IRS has issued a revised revenue procedure which provides guidance for complying with the user fee program of the IRS as it pertains to requests for letter rulings, determination letters, etc., on matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division; and requests for administrative scrutiny determinations under *Rev. Proc. 93-41,* *1993-2 C.B. 536*. **Rev. Proc. 2016-8, 2016-1 C.B. 243**.

NET OPERATING LOSSES. The taxpayers' daughter purchased two residential properties for the purpose of renting them. The daughter was the sole mortgagor and title holder for both properties. The daughter sold both properties for a loss; however, the taxpayers claimed the loss as net operating loss carried forward from the year of sale. The taxpayers did not provide any information on their returns as to how the loss was calculated and provided no evidence of their ownership of the two properties. The court held that any loss incurred was incurred by the taxpayers' daughter; therefore, the taxpayers could not claim the deduction. In addition, the court held the net operating loss deduction was properly denied, under Treas. Reg. § 1.172-1(c), because the taxpayers failed to provide information on their returns sufficient to show how they calculated the loss. **Ghafouri v. Comm'r, T.C. Memo. 2016-6**.

INSURANCE

BUSINESS PROPERTY EXCLUSION. In 2011, the defendant insureds, husband and wife, purchased a 10 acre rural property with a house, barn and other small buildings. The defendants purchased a standard homeowner's property insurance policy from the plaintiff. The policy provided an exclusion for structures "[u]sed in whole or in part for business purposes." The policy defined "business" as "any full-time, part-time or occasional activity engaged in as a trade, profession or occupation, including farming." At the time of the purchase of the insurance, the defendants did not own any chickens or turkeys. After the defendants started acquiring chickens and turkeys, they asked the insurance company about insurance to cover liability for illness of purchasers of their eggs. Although the insurance company acknowledged that some risk was involved, the insurance company informed the defendants that their homeowner policy did not cover such risk because it excluded business property. The defendants' barn burned down while it was being used to house hundreds of turkeys and laying chickens. The defendants had acquired licenses from the state department of agriculture to sell turkeys, chickens and eggs and established a business name for their operation. The defendants argued that the policy covered the barn loss under their homeowner policy in that the turkey, chicken and egg operation was not a business but only a hobby. The defendants argued that the operation was not a business because they never gained a profit. However, the court ruled that an actual profit was not required to establish a business, only an intent to make a profit was required. The court found that the defendants' activities in caring for the birds, selling the birds and eggs at markets, and expanding their operation amounted to an effort to make a profit; therefore, the barn was business property excluded from coverage by the homeowners property. **Erie Ins. Exch. v. Bullock, 2015 Ohio App. LEXIS 5205 (Ohio Ct. App. 2015)**.

COVERAGE. The defendant insured owned a horse which was loaned to a friend for a trail ride in another county. The friend lost the horse during the ride. A few months later, the plaintiff came upon the horse while hunting and was injured when the horse attacked the plaintiff. The plaintiff obtained a judgment against the defendant insured and sought to recover from the defendant's insurance policy. The insurance company denied coverage, arguing that the defendant's farm liability policy did not cover the defendant's animals when they are not on the defendant's farm premises. The court held that the term "farm liability" applied only to the defendant's animals while on the defendant's farm. The court noted that the policy did not define "farm liability" and the court looked to the plain and ordinary meaning of farm to include only the insured's premises and not all locations where the defendant's animals existed. The court also noted that the horse was not being used by the defendant at the location of the accident; therefore, the horse was not being used as part of the farm operations. The plaintiff had also alleged that the insurance company had waived its right to contest coverage and the insurance company sought a summary judgment on the issue. The court denied summary judgment because an issue of fact remained as to whether the actions of the companies employees amounted to a waiver. **Thor v. American Family Mutual Ins. Co., 2015 U.S. Dist. LEXIS 164328 (D. Colo. 2015)**.

COVERAGE FOR LOSS OF USE. The plaintiff owned a farm and buildings for storing grain. The plaintiff obtained property insurance for the farm and a special endorsement for coverage of grain drying equipment. The grain drying equipment was destroyed by a fire and the plaintiff received payment for the lost equipment. However, the plaintiff also claimed that the policy covered the cost of the loss of the use of the grain drying equipment and sought payment for the cost of drying grain elsewhere. The insurance company denied the claim, stating that the policy covered only "direct physical loss or damage." The plaintiff noted that the policy included loss of use in it definition of "property damage" and the definition of property damage should be read into the definition of "direct physical loss or damage." The court disagreed and held that the plain language of the policy did not include covereage for loss of use of the grain drying equipment. **Huether v. Nodak Mutual Ins. Co., 871 N.W.2d 444 (N.D. 2015)**.

STATE TAXATION OF AGRICULTURE

VALUATION. The plaintiffs, husband and wife, owned a high-end horse breeding and training facility which included their residence. The plaintiffs appealed the determination of fair market value for property tax purposes by the defendant assessor. Both parties presented expert appraisals of the property to support their valuation, with the plaintiffs' expert advocating a lower value based on the poor horse market and substantial depreciation. The assessor argued for an even higher valuation based on a replacement value. The court found errors in both sets of appraisals and held that both sides failed to prove the fair market value; therefore, the original valuation was upheld. **Ellison v. Clackamas County Assessor, 2015 Ore. App. LEXIS 157 (Ore. Ct. App. 2015)**.