CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

SALE OF COLLATERAL. The debtors filed for Chapter 12 and petitioned the court for permission to use the proceeds, $22,000, from the sale of cattle and crops for pre- and post-petition crop insurance premiums and for operating expenses. A creditor with a security interest in the crop and cattle objected to the use of the proceeds, arguing that the debtors failed to provide adequate protection of the creditor's liens. The court found that the creditor's claims totaled $311,000 and the undisputed current value of all collateral was $511,000, leaving a $200,000 equity cushion. The court held that the creditor was adequately protected after the use of the cash collateral to allow the debtor to use the proceeds for crop insurance and current operations. The court noted that the debtors did not carry insurance on the farm real property and ordered the debtors to obtain insurance on all real property prior to confirmation of any plan. ***In re* Fischer, 2008 Bankr. LEXIS 581 (Bankr. D. Neb. 2008)**.

FEDERAL TAXATION

DISCHARGE. The debtor filed for Chapter 7 in June 2006 and sought to have 1995 taxes declared dischargeable in the case. The issue was when the 1995 tax return was filed. The taxpayer testified that the 1995 return was filed in July 1998 but could not produce a postmark as evidence of the mailing of the return. The court held that the taxpayer's self-serving testimony was insufficient proof of mailing and that the copy of the return stamped by the IRS as received in 2004 was presumed to be the only filed return. Because the return was filed late and within two years before the bankruptcy filing, the 1995 taxes were nondischargeable. **In re Pizzuto, 2008-1 U.S. Tax Cas. ¶ 50,245 (Bankr. D. N.J. 2008)**.

FEDERAL AGRICULTURAL PROGRAMS

CONSERVATION SECURITY PROGRAM. The NRCS has announced the Fiscal Year 2008 sign-up, CSP-08-01 that will be open from April 18, 2008 through May 17, 2008, in selected 8-digit watersheds, which can be viewed at: http://www.nrcs.usda.gov/programs/csp/CSP_2008/2008_CSP_WS.html. **73 Fed. Reg. 16246 (March 27, 2008)**.

NATIONAL ORGANIC PROGRAM. The AMS has announced the sunset of 12 exempted substances added to the National List on September 12, 2006, with September 12, 2011, as the date by which the sunset review and renewal process must be concluded. The AMS seeks public comment on whether the identified existing exemptions should be continued. **73 Fed. Reg. 13795 (March 14, 2008)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT. The AMS has announced that it plans to review the regulations, other than rules of practice, under the Perishable Agricultural Commodities Act as to the economic impact of the regulations on small businesses. **73 Fed. Reg. 15122 (March 21, 2008)**.

POTATOES. The AMS has adopted as final regulations revising the United States Standards for Grades of Potatoes. The final rules provides en route or at destination tolerances for the U.S. No. 1 and U.S. No. 2 grades, revises current tolerances in all grades, deletes the U.S. Extra No. 1 grade and "Unclassified" section, and defines damage and serious damage by the following defects which will be added to Table III of the External Defects section: Cuts, Clipped Ends, Elephant Hide, Flattened or Depressed Areas/Pressure Bruises, Grub Damage, Nematode (Root Knot), Rodent or Bird Damage, Russeting, Silver Scurf, Sunken Discolored Areas, and Surface Cracks. The following defects and scoring guidelines that are currently listed in Table III of the External Defects section are also revised to reflect current inspection instructions: Air Cracks, Bruises, External Discoloration, Flea Beetle Injury, Greening, Growth Cracks, Rhizoctonia, Pitted Scab, Russet Scab, Surface Scab, and Wireworm or Grass Damage. Also, changes to the current scoring guide for sprouts are being made. In the Internal Defects section, Internal Black Spot is revised by implementing a color chip to assist in the scoring of this defect. Additionally, a revised large size is added as well as the inclusion of Chef and Creamer sizes. Most of the changes were the result of the detailed work performed by the Joint U.S./Canadian Potato Council that was charged with harmonizing the U.S. and Canadian Potato Grade Standards. **73 Fed. Reg. 15052 (March 21, 2008)**.

POULTRY. The Humane Methods Slaughter Act of 1958, 7 U.S.C. § 1901 *et seq*., governs the acceptable methods of slaughtering livestock. The FSIS had issued a notice that the slaughtering of poultry was governed by the Poultry Products Inspection Act and regulations. The plaintiffs challenged the USDA failure to include chickens, turkeys and other poultry in its regulations governing slaughtering methods. The court held that the legislative history of the statutes governing meat and poultry demonstrated that Congress did not consider poultry to be livestock, at least for purposes of the 1958 Act. **Levine v. Conner, 2008 U.S. Dist. LEXIS 15291 (N.D. Calif. 2008)**.

FEDERAL ESTATE AND GIFT TAXATION

FAMILY-OWNED BUSINESS DEDUCTION. The decedent owned a family corporation which operated a retail business. The decedent made loans to the corporation which were documented by promissory notes issued by the corporation. The decedent also formed a limited partnership and transferred the promissory notes to the partnership. The decedent's estate claimed the family-owned business deduction based on inclusion of the promissory notes as interests in a business held by the decedent. The court held that loan interests in a business did not qualify as qualified family-owned business interests under I.R.C. § 2057(b)(1)(C) which were limited to equity interests. **Estate of Artall v. Comm'r, T.C. Memo. 2008-67**.

GENERATION-SKIPPING TRANSFER TAX. A grantor had established five irrevocable trusts prior to September 25, 1985 and the five trusts now had a common single beneficiary. The first two trusts had identical provisions and the third, fourth and fifth trusts were similar, with differences primarily in the beneficiary's power to appoint trust property at death. The beneficiary and trustees petitioned a state court to combine the first two trusts into one trust and the third, fourth and fifth trusts into a second single trust. The IRS ruled that the merger of the trusts did not subject the trusts to GSTT. **Ltr. Rul. 200812002, Nov. 7, 2007**.

A pre-September 25, 1985 trust had one income beneficiary. The beneficiary and trustee applied to a state court to convert the trust to a total return trust. The IRS ruled that the conversion of the beneficiary's trust income interest to a total return trust interest did not subject the trust to GSTT. **Ltr. Rul. 200812018, Nov. 30, 2007; Ltr. Rul. 200812019, Nov. 30, 2007; Ltr. Rul. 200812020, Nov. 30, 2007**.

POWER OF APPOINTMENT. The taxpayer was the sole beneficiary of a trust which was established and made irrevocable prior to September 25, 1985. The taxpayer executed a partial renunciation and release of the power to appoint trust property to the taxpayer, the taxpayer's creditors, the taxpayer's estate, and the taxpayer's estate's creditors. The taxpayer planned to exercise the remaining power of appointment to appoint by will the trust property to the taxpayer's issue. The IRS ruled that the renunciation of a portion of the power of appointment was valid under state law; therefore, the taxpayer had only a limited testamentary power of appointment. In addition, the IRS ruled that the exercise of the limited power of appointment by will did not subject the trust to GSTT. **Ltr. Rul. 200812022, Nov. 7, 2007**.

FEDERAL INCOME TAXATION

2008 TAX REBATE. The IRS has issued a news release reminding taxpayers and preparers that nontaxable combat pay is qualifying income for purposes of the rebates payable in 2008 or 2009 under the Economic Stimulus Act of 2008 (Pub. L. No. 110-185). Military personnel who would normally not file a return because their income is nontaxable combat pay should file a simple Form 1040A, U.S. Individual Income Tax Return, with the IRS by October 15 in order to receive the economic stimulus payment in 2008. They should report their nontaxable combat pay on Line 40b of the Form 1040A to show at least $3,000 in qualifying income. The Department of Defense lists the amount of excluded combat pay with the designation "Code Q" in box 12 of Forms W-2, Wage and Tax Statement, received by military personnel. Package 1040A-3, available at the IRS website, www.irs.gov, provides all the necessary forms and instructions. Taxpayers can also access special software for filing a free electronic return from a special page on the website, Free File -Economic Stimulus Payment. **IR-2008-48; IR-2008-51.**

The IRS is asking the assistance of community groups, charities and other nonprofit organizations in educating low-income Americans who may not realize they could be eligible for a 2008 economic stimulus payment. Because some low-income workers have not filed a tax return at all or for years because their income has been too low, the IRS lacks the names and addresses of many such workers and, therefore, is unable to contact all who may be eligible for a payment. Organizations willing to help in this outreach effort can find tools and materials to help spread the word at the IRS's website (www.irs.gov). **IR-2008-42**

Commerce Clearing House has reported that the question has arisen whether, for 2007 income tax return filing purposes, joint filers can flip the order in which their names and Social Security numbers have always appeared on past returns in order to accelerate receipt of a rebate payment. The order of rebate check distribution will be based on the last two digits of the taxpayer's social security number. On a jointly filed return, the first Social Security number listed will determine the mail-out time. See *IR-2008-44*. An IRS spokesperson told CCH that such "reversed order" will not cause any problems, whether with computer matching of past returns or otherwise. As long as the Social Security number matches with the correct name, listing spouses in any order is permitted and, apparently, will make no difference except that the last two digits of the first-listed spouse's Social Security number will be used in the rebate distribution program. The IRS continues to emphasize, however, that the distribution schedule does not guarantee that any particular taxpayer will receive his, her, or their rebate payment under that schedule since there may be a variety of reasons for pulling a small number of those payments out of the line. CCH commented that, for those who file electronically, flipping the sequence in which spouses appear on the return for an earlier payment seems hardly worth the risk, despite IRS assurances, since, at best, a payment would be accelerated by two weeks: direct deposits for 00 last digits start on May 2 and for 99 last digits end on May 16. Paper checks, however, will be mailed based on a much longer schedule, starting on May 16 and not ending until July 11.

BUSINESS EXPENSES. The taxpayer formed a sole proprietorship business involved in publishing, research and seminars. The business was started in 1999 and the taxpayer included 1999 start-up expenses as deductions on the 2000 tax

return. The IRS challenged most of the taxpayer's business expenses as unsubstantiated and challenged the cost-of-goods amount claimed by the taxpayer. The court found that the disallowed expenses and cost of goods amount were not substantiated by the taxpayer and were, therefore, properly disallowed. **Jackson v. Comm'r, T.C. Memo. 2008-70**.

CHARITABLE ORGANIZATIONS. The IRS has announced the procedures for the public to inspect and to request copies of a charitable organization's Form 990-T, Exempt Organization Business Income tax Return. **Ann. 2008-21, I.R.B. 2008-13**.

CORPORATIONS

EMPLOYEE. The taxpayer family-owned corporation operated a trash hauling business started by a husband and wife in 1932. The wife performed bookkeeping for the business and was an officer and chairman of the board of the corporation. After the death of the husband, although most of the management of the business was performed by the sons during the tax years involved in the case, the wife spent an average of 40 hours per week on corporate business, including public relations activities such as attending charity and civic events. The IRS disallowed a portion of the wife's salary as a business expense deduction because the salary was excessive. The court characterized the wife's position as comparable to an outsider sitting as chairman of the board but allowed an 80 percent increase in allowable compensation for the wife's services to the corporation in public relations and experience in the corporate business. On appeal, in a decision designated as not for publication, the appellate court reversed as to the characterization of the wife's position as similar to an outsider. The appellate court noted that the evidence established that the wife's role in the corporation's finances was substantial and carried weight with creditors and other corporation board members. The appellate court affirmed the holding that the wife's compensation was too high but held that the allowed compensation should not be set below the compensation paid to other officers. On remand the Tax Court redetermined the wife's compensation to a level between what she was paid and what was paid to other officers. The appellate court affirmed in a decision designated as not for publication**. E.J. Harrison & Sons, Inc. v. Comm'r, 2008-1 U.S. Tax Cas. (CCH) ¶ 50,244 (9th Cir. 2008), *aff'g*, T.C. Memo. 2006-133, *on rem. from*, 2005-2 U.S. Tax Cas. (CCH) ¶ 50,493 (9th Cir. 2005), *aff'g in part and rev'g in part*, T.C. Memo. 2003-239**.

COURT AWARDS AND SETTLEMENTS. The U.S. Supreme Court has denied certiorari in the following case. The taxpayer was employed by a talent agency and was fired with much publicity in the media. The taxpayer sued the employer for defamation and breach of contract and the parties reached a settlement agreement which provided for payments. The first payment occurred prior to the effective date of the Small Business Job Protection Act of 1996 and three payments occurred after the Act. The court held that the payments were made in settlement of a tort claim but not for physical injuries; therefore, the first payment was excludible from income but the payments made after the effective date of the Small Business Job Protection Act of 1996 were included in income. **Polone v. Comm'r, 2008 U.S. LEXIS 2719 (March 24, 2008), *denying cert.*, 505 F.3d 966 (9th Cir. 2007), *aff'g*, T.C. Memo. 2003-339**.

DEPENDENTS. The taxpayer lived with a companion and the companion's two children. The taxpayer was not biologically related to the children, did not adopt the children and was not married to the companion. The couple and children lived with the taxpayer's parent without paying rent, although they contributed to the food and utility costs. The taxpayer did not provide evidence of all housing and food costs nor the amount paid by the taxpayer and companion. The taxpayer claimed the children as dependents and as qualifying children for earned income tax credits. The court held that the children did not qualify as dependents under I.R.C. § 152(c) or as a qualifying relative under I.R.C. § 152(d) because the taxpayer was not related to the children biologically, by adoption or by marriage and the taxpayer failed to provide evidence that the taxpayer provided more than one-half of the support for the children. **Marshall v. Comm'r, T.C. Summary Op. 2008-31**.

DISASTER LOSSES. On March 7, 2008, the president determined that certain areas in Illinois are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and flooding, which began on January 7, 2008. **FEMA-1747-DR**. On March 12, 2008, the president determined that certain areas in Missouri are eligible for assistance from the government under the Act as a result of severe winter storms and flooding, which began on February 10, 2008. **FEMA-1748-DR**. On March 13, 2008, the president determined that certain areas in Illinois are eligible for assistance from the government under the Act as a result of near-record snow, which began on February 5, 2008. **FEMA-3283-EM**. On March 14, 2008, the president determined that certain areas in Texas are eligible for assistance from the government under the Act as a result of wildfires, which began on March 14, 2008. **FEMA-3284-EM**. On March 19, 2008, the president determined that certain areas in Wisconsin are eligible for assistance from the government under the Act as a result of near-record snow, which began on February 5, 2008. **FEMA-3285-EM.** Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2007 returns.

DISCHARGE OF INDEBTEDNESS. The taxpayers used a credit card to pay hospital bills and cash advances, acquiring a balance of $21,270. The taxpayers and credit card company reached an agreement under which the credit card company agreed to settle the account for $4,592. The credit card company issued a Form 1099-C listing the difference as discharge of indebtedness income. The taxpayers did not include this amount in taxable income. The taxpayers argued that the amount forgiven was all accrued interest; therefore, the settlement represented a purchase price adjustment in that the credit card company essentially agreed to less interest charge. The court held that the purchase price adjustment exception of I.R.C. § 108(e)(5) did not apply because the taxpayers did not buy any property. **Payne v. Comm'r, T.C. Memo. 2008-66**.

FOREIGN INCOME. The taxpayer performed work in international waters and the taxpayer excluded the wages earned while in international waters under I.R.C. § 911 as foreign income. The court held that income earned in international waters was not excludible under I.R.C. § 911 because international waters are not

under the sovereignty of a foreign nation. In addition, under I.R.C. § 863(d)(2) the income was from "space or ocean activity" and deemed sourced in the United States. **Clark v. Comm'r, T.C. Memo. 2008-71**.

HEAVY TRUCK EXCISE TAX. The taxpayer was a dealer of heavy trucks. On sales of coal hauler trucks, the taxpayer would either collect, report and pay the I.R.C. § 4051(a) excise tax or require purchasers to sign a statement that a truck was going to be used only for off-road use. The court held that the excise tax was to be applied to the vehicle based on the vehicle's design, not on its intended or even actual use. The court held that the coal hauler trucks were subject to the excise tax because the trucks were not specifically designed for off-road use but could be used for both on- and off-road use. **Worldwide Equipment v. United States, 2008-2 U.S. Tax Cas. (CCH) ¶ 70,273 (E.D. Ky. 2008)**.

LIKE-KIND EXCHANGES. A testamentary trust owned a portion of an LLC, with the other owner being a corporation which was wholly-owned by the trust. The LLC obtained new property under a reverse like-kind exchange. The trust terminated by its own terms and the distribution of the trust assets resulted in termination of the LLC and creation of a successor LLC which held the replacement property for investment in a manner similar to the original LLC. The IRS ruled that the termination of the LLC did not cause loss of the like-kind exchange treatment of the replacement property because the termination resulted from independent causes from the termination of the trust by its terms. **Ltr. Rul. 200812012, December 19, 2007**.

PARTNERSHIPS

ADMINISTRATIVE ADJUSTMENTS. The taxpayer was a general and limited partner in a partnership which was considered a TEFRA partnership subject to the administrative adjustment rules because the partnership had several family limited partnerships as limited partners. The partnership got into financial difficulty which resulted in the taxpayer having a negative capital account balance which the taxpayer could not pay. The partnership entered into an agreement releasing the taxpayer from the requirement to restore the capital account balance. The taxpayer initially treated the release as a sale of the taxpayer's partnership interest but later filed an amended return treating the release as a discharge of indebtedness. The IRS denied the change of treatment and the taxpayer filed suit. The court dismissed the suit, holding that the release represented a partnership item under I.R.C. § 7422(h) and could not be litigated by a partner individually. **Bassing v. United States, 2008-1 U.S. Tax Cas. (CCH) (Fed. Cls. 2008)**.

PENSION PLANS. The IRS has issued proposed regulations that would provide guidance relating to the application of I.R.C. § 4980F to a plan amendment that is permitted to reduce benefits accrued before the plan amendment's applicable amendment date. The regulations would reflect certain amendments made to I.R.C. § 4980F by the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (2006). **73 Fed. Reg. 15101 (March 21, 2008)**.

PRACTICE BEFORE IRS. The IRS has released interim guidance clarifying that under Section 10.27(b) of Treasury Department Circular No. 230, 31 C.F.R. Part 10, effective after March 26, 2008, a practitioner may charge a contingent fee for services rendered in connection with the IRS's examination of or challenge to an amended return or claim for refund or credit that is filed (1) before the taxpayer received a written notice of examination of, or a written challenge to, the original tax return, or (2) no later than 120 days after receipt of the written notice or challenge. Further, a contingent fee may be charged for services rendered in connection with a whistleblower claim under I.R.C. § 7623. **Notice 2008-43, I.R.B. 2008-15**.

RENTAL INCOME. The taxpayer purchased a building in which the taxpayer's friend operated a bar. The taxpayer held the liquor license for the bar and was listed as the bar's agent for the state lottery. The taxpayer received fixed monthly rent from the bar owner under an oral lease. The bar owner was responsible for maintenance of the interior of the building and the taxpayer was responsible for maintenance of the outside of the building. The taxpayer used the account book from the bar to determine the taxpayer's annual taxes, and included the account book when presenting information to the taxpayer's tax return preparer. The tax return preparer assumed that the taxpayer owned the entire business and filed Schedule C to determine the taxpayer's annual taxable income. After the taxpayer was audited, the tax return preparer discovered that the relationship was actually landlord and tenant and prepared amended returns reporting the rental income on Schedule E. The IRS argued that the original filings using Schedule C was an admission by the taxpayer that the income were trade or business income. The court held that the original returns were based on good faith mistakes by the tax return preparer and that the taxpayer would be allowed to amend those returns to properly determine taxable income using Schedule E. **Monk v. Comm'r, T.C. Memo. 2008-64**.

RESEARCH CREDIT. The taxpayer was formed by a foreign corporation and domestic corporation to perform contract research and experimentation in the creation of inventions. The developed inventions are licensed to third parties for commercial exploitation in the licensees' territory or country. The taxpayer retained the right to continue development on the licensed inventions. The IRS ruled that the expenses incurred by the taxpayer for research and experimentation were qualified research expenses eligible for the research credit under I.R.C. § 41 because the taxpayer was involved in a bona fide trade or business of developing the inventions. **Ltr. Rul. 200811020, Dec. 3, 2007**.

RETURNS. The taxpayer filed suit against the IRS under I.R.C. § 7431 for disclosing information on the taxpayer's income tax returns to the taxpayer's business associates. The IRS argued that the disclosures were connected to an investigation of the taxpayer's taxes and were necessary to obtain information about the returns which was not otherwise reasonably available. The court granted summary judgment for the IRS because the taxpayer did not dispute the facts alleged by the IRS. **Bohall v. United States, 2008-1 U.S. Tax Cas. (CCH) ¶ 50,243 (D. D.C. 2008)**.

STATE TAXES. The taxpayers were residents of Florida who applied to their county property appraiser for a sales tax reimbursement of up to $1,500 if they purchased a mobile home to replace a mobile home that suffered major damage from tornados that occurred on December 25, 2006 and February 2, 2007 and

the mobile home was their permanent residence. The taxpayers also applied to their county property appraiser for a property tax reimbursement of up to $1,500 if their home was uninhabitable for 60 days or more as a result of damage from a tornado that occurred on February 2, 2007. The IRS ruled that the taxpayers had to include the reimbursements in in current income if the taxpayers had deducted the sales taxes or property taxes on prior tax returns. **CCA Ltr. Rul. 200811017, Oct. 9, 2007**.

SAFE HARBOR INTEREST RATES
April 2008

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	1.85	1.84	1.84	1.83
110 percent AFR	2.03	2.02	2.01	2.01
120 percent AFR	2.22	2.21	2.20	2.20
		Mid-term		
AFR	2.87	2.85	2.84	2.83
110 percent AFR	3.16	3.14	3.13	3.12
120 percent AFR	3.45	3.42	3.41	3.40
		Long-term		
AFR	4.40	4.35	4.33	4.31
110 percent AFR	4.85	4.79	4.76	4.74
120 percent AFR	5.29	5.22	5.19	5.16

Rev. Rul. 2008-20, I.R.B. 2008-14.

THEFT LOSSES. The taxpayers invested in a mortgage company which offered sub-prime mortgages to home buyers. The mortgage company was a legitimate company which operated alone for several years but was acquired by a second company which became the primary borrower of the taxpayer. The companies both became insolvent when the mortgage business collapsed. Several officers and employees were convicted of securities fraud and other crimes. The taxpayers received only a portion of their original investment through bankruptcy proceedings. In a Chief Counsel Advice Letter, the IRS ruled that the taxpayers could use the open transaction doctrine in the tax year the fraud was discovered to exclude amounts received up to the amount of the taxpayers' basis in their investments. For prior year losses, the taxpayers were eligible only for theft losses. **CCA Ltr. Rul. 200811016, June 22, 2007**.

TRAVEL EXPENSES. The IRS has announced the applicable terminal charge and the Standard Industry Fare Level mileage rates for determining the value of noncommercial flights on employer-provided aircraft in effect for the first half of 2008 for purposes of the taxation of fringe benefits .**Rev. Rul. 2008-14, 2008-1 C.B. 578**.

The taxpayer was self-employed as a truck driver and claimed fuel and other expenses for a car used to travel to where the truck was parked. The taxpayer did not have any written evidence of these expenses. The court held that the unsubstantiated expenses were properly disallowed and, because the expenses were incurred while traveling to and from a workplace, the expenses were nondeductible commuting expenses. **Singh v. Comm'r, T.C. Memo. 2008-68**.

TRUSTS. The taxpayer established a trust with the help of an attorney, intending the trust to be a charitable remainder unitrust (CRUT). However, the trust language created a net income makeup charitable remainder unitrust. When the error was discovered, the trustee applied to a state court, without objection from any interested party, to reform the trust *ab initio* to qualify as a CRUT. The IRS ruled that the reformation was valid under state law and allowed the trust to be taxed as a CRUT so long as the trustee corrected the distributions to comply with the CRUT provisions. **Ltr. Rul. 200811003, Dec. 10, 2007**.

The taxpayer filed for Chapter 11 bankruptcy and, under the bankruptcy plan, a trust was formed for the purpose of disposing of the taxpayer's assets. The trustees had the power to pursue litigation and to invest assets, but only to the extent necessary to protect the value of the assets. The IRS ruled that the trust qualified as a liquidating trust under Treas. Reg. § 301.7701-4(d) and Rev. Proc. 94-45, 1994-2 C.B. 684. **Ltr. Rul. 200811007, Dec. 7, 2007**.

UNEMPLOYMENT TAXES. In a Chief Counsel Advice letter, the IRS ruled that, where wages subject to FUTA taxes are not included in wages subject to state unemployment tax (SUTA), an employer may still be entitled to the maximum credit based on the SUTA tax paid and any additional credit attributable to wages subject to SUTA. The letter describes the proper method of calculating the SUTA credit. **CCA Ltr. Rul. 200812001, Feb. 12, 2008**.

WAGES. The taxpayer, a woman, was employed by a corporation and worked for the president, a man. The taxpayer and president had only a professional work relationship. When the president retired, the taxpayer was promoted to president and received a $160,000 payment from the corporation. The corporation issued a Form 1099-MISC identifying the payment as income. However, soon after the promotion, the employment relationship deteriorated because the taxpayer refused the romantic advances of the retired president. The taxpayer was fired and sued the corporation for damages from the wrongful termination. The taxpayer did not include the $160,000 payment in taxable income because the taxpayer treated the payment as a gift. The court found that the corporation had no donative intent in making the payment but made the payment as a reward for past service and an incentive to remain with the corporation. Therefore, the court held that the payment was not a gift and was included in the taxpayer's income. **Larsen v. Comm'r, T.C. Memo. 2008-73**.

SECURED TRANSACTIONS

AGRICULTURAL SUPPLIER LIEN. The plaintiff bank had loaned a sugar beet farmer money for operating expenses and obtained a perfected security interest in the crops and proceeds. The farm also obtained agricultural supplies for the crops from the defendant. The defendant filed an agricultural supplier's lien with the state and, on the same day, sent notice to the farm of the defendant's intent to file the lien. The agricultural lien statute had once required agricultural suppliers to send to the debtor a notice of intent to file the lien at least 30 days before filing the lien; however, the law was amended to remove the 30 day requirement. The statute, Mont. Code § 71-3-902, now states "A person, firm, corporation, or partnership that is entitled to a lien and that intends to file a lien under this part shall give notice, by certified mail, of

intent to file to the person, firm, corporation, or partnership for which labor or service was performed or materials furnished." Mont. Code § 71-3-902(2). The plaintiff argued that the statute still required prior notice of the intent to file the lien. Because the defendant sent the notice to the farmer on the same day the lien was filed, the defendant failed to comply with the statute. The court held that the removal of the 30 day prior notice requirement indicated that the legislature no longer required any prior notice of the intent to file the lien, only reasonable notice; therefore, the sending of the notice on the same day of the filing was reasonable and complied with the statutory requirements. The plaintiff next argued that the failure of the defendant to also file a financing statement, as required under the UCC, Mont. Code § 30-9A-502, caused the agricultural supplier's lien to lose its superpriority status. The court held that, although the UCC required perfection of the agricultural supplier's lien, the filing of the lien met all the requirements and purposes of a financing statement; therefore, the filing of the lien perfected the lien for purposes of the UCC. **Stockman Bank of Montana v. Mon-Kota, Inc., 2008 Mont. LEXIS 78 (Mont. 2008)**.

WORKERS' COMPENSATION

AGRICULTURAL EMPLOYEE. The plaintiff hired the employee to perform various tasks on the plaintiff's farm. The employee worked 25-30 hours per week and performed tasks such as repairing and maintaining farm equipment, hauling feed on the farm, operating planting and harvesting equipment, sorting and loading hogs and general supervising of operations. The employee was injured while assisting an independent contractor perform welding services on the farm. the employee filed for workers' compensation and the plaintiff objected, arguing that the employee was an agricultural employee exempt from workers' compensation. The court held that the employee worked in a dual capacity as an agricultural and non-agricultural employee. Because the employee was injured while performing maintenance with an independent contractor, the employee was not an agricultural employee for the purposes of the injury and was covered by workers' compensation under Ind. Code § 22-3-2-9(a). **Gerlach v. Woodke, 2008 Ind. App. LEXIS 364 (Ind. Ct. App. 2008)**.

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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