CASES, REGULATIONS AND STATUTES

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BANKRUPTCY

GENERAL

AUTOMATIC STAY. The debtor originally filed for Chapter 7 but converted the case to Chapter 12. The debtor's property included a ten acre parcel on which existed a residence, pasture and alfalfa fields. The debtor had two mortgages on the property for an amount far in excess of the value of the property. The debtor's plan proposed combining the two mortgages into one 30 year mortgage at 4 percent interest. The debtor claimed income only from an oral obligation from a former spouse to pay $3000 per month in support obligation and $2,250 in rent from houses on the former spouse's property which belonged to the former spouse. The debtor provided no evidence that either payment was enforceable by the debtor and the court noted that neither payment had been made before the bankruptcy filing. The debtor included no income from the pastures or sale of alfalfa. The court granted the bank relief from the automatic stay because the debtor's plan was not confirmable since the plan identified no legally enforceable income to support payments under the plan. ***In re* Fox, 2013 Bankr. LEXIS 653 (Bankr. D. Colo. 2013)**.

DISMISSAL. The debtors originally filed for Chapter 12 but the case was dismissed in June 2012 for lack of eligibility because the debtors were not family farmers. *See In re Marek, 2012 Bankr. LEXIS 2713 (Bankr. D. Idaho 2012).* The debtors refiled the case in Chapter 13 in August 2012 just prior to a scheduled nonjudicial deed of trust foreclosure sale of the debtors' real property. The court recited a large number of inaccuracies in the debtors' bankruptcy schedules which were discovered only after much investigation of the debtors' dealings with unrelated and related parties. The court noted that the debtors revised their bankruptcy schedules but only after the missing property and other transactions were discovered. The court dismissed the case for bad faith for failure of the debtors to file accurate and complete financial records and disclose all property and business relationships in the bankruptcy schedules. The debtors were also barred from filing a bankruptcy case for two years. ***In re* Marek, 2013 Bankr. LEXIS 681 (Bankr. D. Idaho 2013)**.

MARSHALLING. The debtor had originally filed for Chapter 12. A bank held a security interest in the debtor's real estate, crops and farm equipment. Another creditor had a security interest in the crops and equipment but no interest in the real estate. The second creditor sought to require the bank to look to the real estate first so that the second creditor could recover from the other farm property. The court in the Chapter 12 bankruptcy case denied the marshalling request because the Chapter 12 plan provided that the debtor would retain the real estate in the farm operation. The Chapter 12 case was later converted to Chapter 7 with all property sold. The second creditor now seeks to have the marshalling request reinstated and approved. The debtor and IRS objected to the request, arguing that the funds from the sale of the crop and equipment were needed to pay the taxes resulting from the sale of the real property, crops and equipment. Note: the Bankruptcy Court had applied the holding in *Hall v. U.S., 132 S.Ct. 1882 (2012)* during the Chapter 12 case and held that the taxes from the sale of the farm property were not dischargeable unsecured claims. The court states that the debtor's personal liability for the taxes from the sale of the real property in the Chapter 7 case was not clear. The debtor and IRS further argued that allowing the second creditor to receive the funds from the sale of the crops and equipment would be unfair to the other creditors and debtor in reducing the funds available to pay claims. The court noted that the doctrine of marshalling was not a fairness issue but one of protecting secured claimants by ordering the payment of priority secured claims first from priority collateral so that junior lienholders could recover from other collateral. Thus, the court held that marshalling would be allowed and the second creditor paid first from the funds remaining from the sale of the crops and equipment, subject only to trustee fees. ***In re* Ferguson, 2013 Bankr. LEXIS 3386 (Bankr. C.D. Ill. 2013)**.

CONTRACTS

CONSIDERATION. The plaintiff's husband had entered into a cow lease with the defendant in 1997. The lease provided for an initial herd of 130 cows and the husband to replenish any losses from the husband's share of the offspring of the herd or by purchasing new cows. After the husband died in 2004, the plaintiff sought return of the cows but the defendant returned only seven cows. The plaintiff sued to recover the missing cows but the defendant claimed that the decedent had never replenished the herd after losses from disease, age or sales; therefore, the rental contract was breached by the decedent for lack of consideration. The trial court ruled for the defendant based on some testimony of the defendant, some records kept by the decedent, and other testimony. The appellate court held that the defendant had provided sufficient proof to uphold the trial court's ruling that the decedent had breached the contract by failing to keep the herd at 130 during the lease. **Brash v. Gulleson, 2013 N.D. LEXIS 142 (N.D. 2013)**.

FEDERAL FARM PROGRAMS

NO ITEMS.

FEDERAL ESTATE AND GIFT TAXATION

NO ITEMS.

FEDERAL INCOME TAXATION

CORPORATIONS

BUILT-IN GAINS. The IRS has adopted as final regulations governing the determination of the bases of assets and stock in certain nonrecognition transactions, including exchanges under I.R.C. § 351. The regulations are intended to eliminate the possibility of duplicate loss deductions from net built-in gains attached to the exchanged assets. The regulations apply to corporations and large shareholders of corporations, including shareholders who are individuals, partnerships, corporations and tax-exempt entities. **78 Fed. Reg. 54156 (Sept. 3, 2013)**.

BUILT-IN LOSSES. The IRS has issued proposed regulations under I.R.C. §§ 334(b)(1)(B) and 362(e)(1). The proposed regulations apply to certain nonrecognition transfers of loss property to corporations that are subject to federal income tax and affect the corporation's receiving the loss property. The proposed regulations provide a framework for identifying importation property and determining whether the transfer of the property is a transaction subject to the anti-loss importation provisions. **78 Fed. Reg. 54971 (Sept. 9, 2013)**.

COURT AWARDS AND SETTLEMENTS. A Field Service Advice letter discussed the proper characterization of attorney's fees paid as part of a settlement of a lawsuit between an employee and employer involving claims for violations of the Age Discrimination in Employment Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act. In *Rev. Rul. 80-364, 1980-2 C.B. 294*, the IRS provided guidance concerning the income and employment tax consequences in three situations in which amounts paid by an employer as a result of litigation are partially used for attorney's fees. The ruling supports the proposition that when attorney's fees are clearly allocated as such by a court in a judgment awarding back pay, the attorney's fees, while includable in income, are not wages for employment tax purposes. However, in a situation in which a court order does not make a distinct allocation for attorney's fees and the claimant pays the attorney's fees out of the recovery, the entire recovery, including the amount paid to the attorney, is wages for employment tax purposes. The IRS ruled that the reasoning in the *Rev. Rul. 80-364* can be extended to settlement payments. When an employment-related claim brought under a fee-shifting statute is settled outside of court and the settlement agreement clearly allocates a reasonable amount of the settlement proceeds as attorney's fees, the amount allocated to attorney's fees, while includable in income, is not wages for employment tax purposes. On the other hand, if the settlement agreement does not clearly allocate an amount for attorney's fees, and/or the claim is brought under a statute that does not provide for fee-shifting, the entire amount paid to the claimant-employee is wages for employment tax purposes. **FAA 20133501F, Sept. 3, 2013**.

EMPLOYEE EXPENSES. The taxpayer worked as a journeyman pipefitter for a company located 120 miles form the taxpayer's residence. The taxpayer worked at job sites located near the company and either commuted to the sites or paid for overnight lodging while working at the sites. Although the company had a reimbursement policy for employees, the taxpayer did not file any claims for reimbursement of travel or lodging expenses but claimed the expenses on Schedule A. The court held that the travel expenses were not deductible because, as to the temporary job sites, the taxpayer's employment home was the location of the company and not the taxpayer's residence. The court also held the expenses nondeductible because the taxpayer did not provide substantiation of the expenses and the company had a reimbursement policy which the taxpayer did not use. **Lamb v. Comm'r, T.C. Summary Op. 2013-70**.

EXPENSE METHOD DEPRECIATION. The IRS has issued a notice which provides which guidance with respect to issues related to the enactment of § 315(d) of the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313 (January 2, 2013) (ATRA), which extended the application of I.R.C. § 179(f) from any taxable year beginning in 2010 or 2011 to any taxable year beginning in 2010, 2011, 2012, or 2013. For these years, I.R.C. § 179(f) expands the definition of property qualifying for I.R.C. § 179 to include qualified real property (as defined in I.R.C. § 179(f)(1) and (2)). The notice also provides allocation methodologies for determining the portion of the gain that is attributable to I.R.C. § 1245 property upon the sale or other disposition of qualified real property. Prior to the enactment of ATRA, I.R.C. § 179(f)(4) provided that, notwithstanding I.R.C. § 179(b)(3)(B), a taxpayer that elected to apply I.R.C. § 179(f) and elected to expense under I.R.C. §179(a) the cost (or a portion of the cost) of qualified real property placed in service during any taxable year beginning in 2010 or 2011 could not carryover to any taxable year beginning after 2011 the amount of any cost of such property that was disallowed as a I.R.C. § 179 deduction under the taxable income limitation of I.R.C. § 179(b)(3)(A). To the extent any disallowed I.R.C. § 179 deduction attributable to qualified real property for any taxable year beginning in 2010 (the 2010 disallowed I.R.C. § 179 deduction) was not used in any taxable year beginning in 2011, that amount was treated as not being subject to a I.R.C. § 179 election and instead was treated as property placed in service on the first day of the taxpayer's last taxable year beginning in 2011 for purposes of computing depreciation. Similarly, to the extent any disallowed I.R.C. § 179 deduction attributable to qualified real property for any taxable year beginning in 2011 (the 2011 disallowed § 179 deduction) was not used in the taxpayer's last taxable year beginning in 2011, that amount was treated as not being subject to a § 179 election and instead was treated as property placed in service on the first day of the taxpayer's last taxable year beginning in 2011 for purposes of computing depreciation. ATRA amended I.R.C. § 179(f)(4) to provide that, notwithstanding I.R.C. § 179(b)(3)(B), the amount of any cost of qualified real property elected to be expensed under § 179(a) for any taxable year beginning in 2010, 2011, 2012, or 2013 that is disallowed as a I.R.C. § 179 deduction under the taxable income limitation of I.R.C. § 179(b)(3)(A) cannot be carried over to a taxable year beginning after 2013. To the extent that any I.R.C. § 179 deduction attributable to qualified real property is not allowed to be carried over to a taxable year beginning after 2013, that amount is to be treated as an amount for which an election under I.R.C. § 179 was not made and that amount is treated as property placed in service on the first day of the taxpayer's last taxable year beginning in 2013 for purposes of computing depreciation. The notice provides that a taxpayer that treated the amount of a 2010 disallowed I.R.C. § 179 deduction or a 2011 disallowed I.R.C. § 179 deduction as property placed in service on the first day of the taxpayer's last taxable year beginning in 2011 may either (1) continue that treatment, or (2) if the period of limitations for assessment under § 6501(a) is open, amend its federal tax return for the last taxable year beginning in 2011 to carry over the 2010 disallowed I.R.C. § 179 deduction or the 2011 disallowed I.R.C. § 179 deduction to any taxable year beginning in 2012 or 2013. However, if the taxpayer's last taxable year beginning in 2011 is open under the period of limitations for assessment under I.R.C. § 6501(a) and an affected succeeding taxable year is closed under the period of limitations for assessment under I.R.C. § 6501(a), the taxpayer must continue to treat the amount of a 2010 disallowed I.R.C. § 179 deduction or a 2011 disallowed I.R.C. § 179 deduction as property placed in service on the first day of the taxpayer's last taxable year beginning in 2011. The notice also provides examples to illustrate the new provisions. **Notice 2013-59, I.R.B. 2013-40**.

FIRST-TIME HOMEBUYER CREDIT. The taxpayer purchased a residence and claimed the first-time homebuyer credit based on that purchase. The credit was denied because the IRS claimed that the taxpayer was married at the time of the purchase and the taxpayer's spouse had owned a residence within three years before the purchase. The taxpayer claimed that the couple was divorced by the time of purchase because the couple had signed a settlement agreement which provided that it determined the conditions of any divorce. However, a judgment of divorce was not entered in a state court until after the new residence purchase. The court held that the taxpayer was still married at the time of the home purchase and was not entitled to the first-time homebuyer's credit. **Triggiani v. United States, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,500 (Fed. Cls. 2013)**.

HEALTH INSURANCE. The IRS has issued a notice that clarifies that a health plan will not fail to qualify as a high deductible health plan (HDHP) under I.R.C. 223(c)(2) merely because it provides without a deductible the preventive health services required under section 2713 of the Public Health Service Act (PHS Act) to be provided by a group health plan or a health insurance issuer offering group or individual health insurance coverage. **Notice 2013-57, I.R.B. 2013-40**.

The IRS has issued a notice providing guidance on the application of certain provisions of the Affordable Care Act to the following types of arrangements: (1) health reimbursement arrangements (HRAs), including HRAs integrated with a group health plan; (2) group health plans under which an employer reimburses an employee for some or all of the premium expenses incurred for an individual health insurance policy, such as a reimbursement arrangement described in *Rev. Rul. 61-146, 1961-2 C.B. 25*, or arrangements under which the employer uses its funds to directly pay the premium for an individual health insurance policy covering the employee (collectively, an employer payment plan); and (3) certain health flexible spending arrangements (health FSAs). The notice also provides guidance on I.R.C. § 125(f)(3) and on employee assistance programs or EAPs. **Notice 2013-54, I.R.B. 2013-40**.

HOBBY LOSSES. The taxpayer was employed as a postal worker and filed Schedule C for a bowling activity in the tax year involved. Although the taxpayer had substantial winnings from bowling in 2000, the activity produced only losses in the years after 2000 and very little income. The Schedule C for the tax year involved showed no income but $28,000 in deductions, primarily from travel expenses and bowling fees. The taxpayer did not provide any records to substantiate the deductions. The court held that the taxpayer did not engage in the bowling activity with the intent to make a profit because (1) the taxpayer did not change the business activity to make the activity profitable; (2) the taxpayer did not seek expert advice on how to make the activity profitable; (3) the taxpayer spent a minimal amount of time in later years on the activity; (4) the taxpayer had only one year of profits; (5) the losses from the activity offset income from other sources; and (6) the taxpayer derived substantial personal pleasure from the activity. **Phillips v. Comm'r, T.C. Memo. 2013-215**.

MEDICAL EXPENSES. The taxpayer claimed various expenses related to a diagnosis of prostate cancer as medical expense deductions. The expenses deducted included the Medicare tax paid, herbal supplements, gym membership and dental expenses. The court held that the Medicare tax was not a deductible medical expense. The court allowed the deduction for the herb supplements because they were taken for the prostate cancer and were recommended by doctors and medical studies. The gym membership expense was not allowed as a deduction and the dental expenses were disallowed for lack of substantiation. **Humphrey v. Comm'r, T.C. Memo. 2013-198**.

PARTNERSHIPS

ENTITY ELECTION. The taxpayer was originally formed as a limited liability company. At the time of formation, the taxpayer had a single owner and was treated as a disregarded entity for federal tax purposes. The taxpayer then elected to be an S corporation. Subsequently, a foreign entity acquired an ownership interest in the taxpayer thereby terminating the taxpayer's S corporation election. In addition, new owners, including the foreign entity, acquired more than 50 percent of the ownership interests in the taxpayer. The taxpayer requested permission to elect to be taxed as a partnership and the IRS granted the permission and requested the taxpayer to file Form 8832, *Entity Classification Election*. **Ltr. Rul. 201336001, May 7, 2013**.

PASSIVE ACTIVITY LOSSES. The taxpayers, husband and wife, owned four residential rental properties which the taxpayers elected to be treated as one activity. The taxpayers hired a management company to provide some of the services to the properties. The taxpayers had adjusted gross income of over $150,000 for each of the two tax years involved and claimed losses of $63,000 and $51,000 for the rental activity. The taxpayers argued that the husband qualified for the real estate professional exception of I.R.C. § 469 and provided summaries prepared for trial of the husband's activities. The summaries did not contain any supporting written evidence. The court held that the summaries were untrustworthy and insufficient proof of the hours spent on the activity by the husband; therefore, the losses were passive activity losses and non-deductible. Because the taxpayers' adjusted income, without considering the rental activity losses, exceeded $150,000, the taxpayers were not eligible for the I.R.C. § 469(i)(3) allowance. **Daco v. Comm'r, T.C. Summary Op. 2013-71**.

PENSION PLANS. The rates below reflect changes implemented by the Moving Ahead for Progress in the 21st Century Act (*Pub. L. No. 112-141*). For plans beginning in September 2013 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 3.43 percent. The 30-year Treasury weighted average is 3.43 percent, and the 90 percent to 105 percent permissible range is 3.09 percent to 3.61 percent. The 24-month average corporate bond segment rates for September 2013, without adjustment by the 25-year average segment rates are: 1.37 for the first segment; 4.05 for the second segment; and 5.06 for the third segment. The 24-month average corporate bond segment rates for September 2013, taking into account the 25-year average segment rates, are: 4.94 for the first segment; 6.15 for the second segment; and 6.76 for the third segment. **Notice 2013-58, I.R.B. 2013-40**.

The taxpayer received a distribution from a pension plan with the intention that the distribution would be rolled over to an IRA within 60 days. However, the taxpayer suffered a medical injury which necessitated hospitalization for most of the 60 day period after the distribution. The taxpayer was unable to move or take care of any of financial affairs while undergoing medical treatment. The taxpayer submitted medical records including a letter from a physician that documented the taxpayer's state of mental and physical health during the period. After recovering from the medical condition, and after the expiration of the 60-day period, the taxpayer completed the rollover of the distributed amount to an IRA. The IRS waived the 60-day rollover period for the distribution. **Ltr. Rul. 201335028, June 6, 2013**.

QUARTERLY INTEREST RATE. The IRS has announced that, for the period October 1, 2013 through December 30, 2013, the interest rate paid on tax overpayments remains at 3 percent (2 percent in the case of a corporation) and for underpayments remains at 3 percent. The interest rate for underpayments by large corporations remains at 5 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 remains at 0.5 percent. **Rev. Rul. 2013-16, I.R.B. 2013-40.**

RESEARCH EXPENSES. The IRS has issued proposed regulations to amend the definition of research and experimental expenditures under I.R.C. § 174 providing guidance on the treatment of amounts paid or incurred in connection with the development of tangible property, including pilot models. **78 Fed. Reg. 54796 (Sept. 6, 2013)**.

S CORPORATIONS

DISTRIBUTIONS TO SHAREHOLDERS. The taxpayer owned an S corporation and an LLC which owned a second LLC. Both LLCs were disregarded entities for federal tax purposes. The second LLC received payments from investors for imported consumer receivables. A portion of the payment was the cost of the receivables, another portion was paid to the taxpayer for legal fees and the remainder was paid to the S corporation. The S corporation distributed that amount to the taxpayer. The taxpayer claimed that the distribution was held as a fiduciary for the second LLC but the court rejected this argument because the LLC was a disregarded entity and the taxpayer was not obligated to hold the funds for anyone else. Therefore, the distribution to the taxpayer was taxable income. The appellate court affirmed. **Rogers v. Comm'r, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,505 (7th Cir. 2013), *aff'g*, T.C. Memo. 2011-277**.

STRADDLES. The IRS has issued final and temporary regulations relating to the application of the straddle rules to a debt instrument. The temporary regulations clarify that a taxpayer's obligation under a debt instrument can be a position in personal property that is part of a straddle. The temporary regulations primarily affect taxpayers that issue debt instruments that provide for one or more payments that reference the value of personal property or a position in personal property. **78 Fed. Reg. 54568 (Sept. 5, 2013)**.

TRADE OR BUSINESS. The taxpayer retired and started trading stocks and call options under a strategy that produced income from the call options, trades of the stock and dividends from the stock. The stock was purchased on margin and the taxpayer incurred interest expense for the margin amounts. The taxpayer filed Schedule C to report the expenses for the stock activity and Schedule D to report the gains and losses from the sale of stock and options. The taxpayer argued that the stock and option activity was a trade or business and the taxpayer qualified as a trader. A trader's expenses are deducted in determining adjusted gross income; however, an investor's expenses are deducted under I.R.C. § 212 as itemized deductions, and deduction of investment interest is limited by I.R.C. § 163(d). The IRS recharacterized the taxpayer's stock and option activity as investing and disallowed most of the investment interest deductions. The court held that the taxpayer was an investor and not a trader because (1) the amount of trading each year was not substantial because it was less than 1000 trades per year and (2) the taxpayer did not make trades daily, often making three or fewer trades per month. Therefore, the court held that the stock and option trading activity did not have the frequency, continuity and regularity to constitute a trade or business. The court also noted that the taxpayer held stock long enough to collect substantial amounts of dividends, an indication that the activity was investing and not the business of trading. **Endicott v. Comm'r, T.C. Memo. 2013-199**.

NUISANCE

RIGHT-TO-FARM. The defendants purchased a group of neighboring parcels to create a single farm in 1985. The farm was used for raising cattle but a major activity included a pick-your-own pumpkin patch and corn maze. The plaintiff purchased a residential lot 18 years later and complained to the county building commissioner after the defendants expanded the farm activities to include music concerts, helicopter rides and ATV trails. The county declared the music concerts violated the zoning ordinances and ordered the defendant to limit the concerts to no more than one per year. When the defendant failed to comply and held several concerts in the next two years, the plaintiff sued for abatement of a nuisance. The defendant raised the defense that the Tennessee right-to-farm law, Tenn. Code §§ 43-39-101 *et seq*. prohibited a nuisance claim and the trial court dismissed the case because the statute applied to the defendant's farm. The appellate court held that the music concerts were within the definition of agritourism which was included in the definition of agriculture under the Tennessee law and upheld the trial court's dismissal of the suit. On further review by the Tennessee Supreme Court, the trial court dismissal was reversed, holding that (1) the plaintiff had presented a *prima facie* case of common-law nuisance, (2) the noise from the concerts and helicopter rides invaded the plaintiff's property, and (3) the right-to-farm statute did not apply because the music concerts bore no relation to the farming activities of raising cattle and crops on the farm. **Shore v. Maple Lane Farms, LLC, 2013 Tenn. LEXIS 644 (Tenn. 2013), *rev'g*, 2012 Tenn. App. LEXIS 229 (Tenn. Ct. App. 2012)**.

PROPERTY

PARTITION FENCE. In 1956, the plaintiff and the prior owner of the defendant's property agreed to construct a fence between their properties and treat the fence as the boundary between their properties. The defendant purchased the property in 2002 and had a retracement survey done which showed that portions of the fence were about one foot on to the defendant's property. The parties had several disagreements over the fence, resulting in the defendant removing the fence. The trial court found that both parties committed trespass during the dispute and awarded offsetting damages of one dollar each. The trial court ruled that the fence had established the boundary between the properties and the defendant had improperly removed the fence. The trial court awarded the plaintiff $580, the cost of materials for a replacement fence. The plaintiff appealed, arguing that the award of damages was too low and did not cover court costs and punitive damages. The appellate court held that the trial court award of $580 was sufficient because the plaintiff failed to prove any other costs of erecting the replacement fence. The appellate court also held that no court costs were awardable under Indiana law and no punitive damages were allowed because the defendant had given the plaintiff 60 days notice of the removal of the fence and the defendant had a reasonable belief that the fence was on the defendant's property. **Stratton v. Miller, 2013 Ind. App. Unpub. LEXIS 876 (Ind. Ct. App. 2013)**.

SECURED TRANSACTIONS

LEASE OR SECURITY INTEREST. The debtor, a dairy farmer, had granted a bank a security interest in all dairy cows owned and acquired to secured a loan. The debtor later entered into several 50-month cow "leases" under which the lessor retained ownership of cows purchased by the lessor and milked by the debtor. The debtor and bank argued that the leases were actually secured transactions thereby giving the bank a prior security interest in the cows. The court looked at several aspects of the "leases" to determine whether the leases were actually secured transactions under Ken. Stat. § 355.1-203(2). First, the court found that the term of the leases exceeded the economic life of the cows. Second the leases were not terminable by the debtor. Finally, the debtor had most of the indicia of ownership, including the requirement that the debtor replace all culled cows at the debtor's expense; however, in practice, the debtor was not required to pay the lessor the proceeds of the sale of any culled cow and often did not turn over the proceeds to the lessor. Thus, the court held that the leases were *per se* security interests and the bank's prior perfected lien on the debtor's cows had priority in the cows. ***In re* Purdy, 2013 Bankr. LEXIS 772 (Bankr. W.D. Ken. 2013)**.

PRIORITY. On the Chapter 12 petition date, the debtor owned 89 head of cattle. The debtor had granted to one creditor a security interest in "[a]ll assets, including, but not limited to, all now existing and after acquired ... farm products,... livestock,... including, but not limited to: cows and replacement young stock of all ages and breeds...." The creditor had perfected the security interest prior to the bankruptcy filing. Subsequent to the first creditor's security interest, another creditor had perfected a purchase money security interest in "21 Holstein heifers, 14 Holstein cows, and 10 Holstein heifers." The debtor's cattle were insufficient in number to satisfy both security interests and the second creditor sought to have its purchase money security interest declared to have priority over the first creditor's security interest. The court held that the first creditor's security interest covered all cattle owned by the debtor at the time of the bankruptcy petition. The court also held that the second creditor's purchase money security interest was not entitled to priority over the first creditor's security interest under Ky. Rev. Stat. § 355.9-324(4) because the second creditor failed to send an authenticated notice to the first creditor about the purchase money security interest. ***In re* Smith, 2013 Bankr. LEXIS 3513 (Bankr. W.D. Ky. 2013)**.

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