and Job Creation Act of 2010, Pub. L. No. 111-312, § 401(a), 124 Stat. 3296 (2010).

[6] The American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 331, 126 Stat. 2313 (2012).

[7] I.R.C. § 263A(d)(1)(A).

[8] I.R.C. § 447(a).

[9] See 1 Harl, *Farm Income Tax Manual* §§ 1.07[3][e][i], 1.07[3][e][ii], 1.07[3][e][iii], 1.07[3][e][iv] (2014 ed.).

[10] See 6 Harl, *Agricultural Law* App. 51B, Article VII (2014).

[11] Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 11602(a), 104 Stat. 1388 (1990), enacting I.R.C. § 2703(a).

[12] *Id.*, I.R.C. § 2703(b).

[13] 136 Cong. Rec. 30,488, 30,540-30,541 (1990).

[14] T.C. Memo. 2006-76.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

FEDERAL FARM PROGRAMS

MAPLE SYRUP. The AMS has adopted as final regulations revising the United States Standards for Grades of Maple Sirup (Syrup) to replace the current grade classification requirements with new color and flavor descriptors, and revise the Grade A requirements to be determined free from damage. The USDA Color Standards for Maple Sirup will become obsolete, and color will be determined using a spectrophotometer, or any method that provides equivalent results. The regulations also change the spelling from "sirup" to "syrup." **80 Fed. Reg. 4853 (Jan. 29, 2015)**.

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The decedent died in 2010 and the executor retained a tax professional to advise on estate tax matters including the necessity to file a Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*. The tax professional prepared the Form 8939 but failed to file the form before January 17, 2012. The estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to file the Form 8939 to make the I.R.C. § 1022 election and to allocate basis provided by I.R.C. § 1022 to eligible property transferred as a result of the decedent's death. *Notice 2011-66, 2011-2 C.B. 184 section I.D.1*, provides that the IRS will not grant extensions of time to file a Form 8939 and will not accept a Form 8939 filed after the due date except in four limited circumstances provided in section I.D.2: "Fourth, an executor may apply for relief under § 301.9100-3 in the form of an extension of the time in which to file the Form 8939 (thus, making the Section 1022 election and the allocation of basis increase), which relief may be granted if the requirements of § 301.9100-3 are satisfied. The IRS granted an extension of time to file the election. **Ltr. Rul. 201504009, Oct. 2, 2014.**

TRANSFEREE LIABILITY. The taxpayers were the executor of a decedent's estate and several recipients of property from the estate. The estate paid about half of the estate tax owed when it timely filed the estate tax return. Several years later, two of the recipients agreed to pay the remaining estate tax, interest and penalties in installments; however, the payments ceased before all tax, interest and penalties were paid. The court held that the recipients of estate property were jointly and severally liable for the unpaid estate tax, interest and penalties up to the value of the property received from the estate. The court also held that the executor was personally liable for the unpaid estate tax, interest and penalties because the executor had paid some estate liabilities before fully paying federal taxes. **United States v. Estate of Mabel Hurd, 2015-1 U.S. Tax Cas. (CCH) ¶ 60,687 (C.D. Calif. 2015)**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued a revised *Rev. Proc. 2015-13*, to permit taxpayers, for Form 3115 filings on or after January 16, 2015 through May 31, 2015, for the forms to be filed under *Rev. Proc. 2011-14, 2011-1 C.B. 330*, or under *Rev. Proc. 2015-13, 2015-1 C.B. 419*, for automatic accounting method changes to choose whether to use *Rev. Proc. 2015-13* or whether to use *Rev. Proc. 2011-14, 2011-1 C.B. 330*, for automatic accounting method changes for their 2014 tax returns. **Rev. Proc. 2015-13, 2015-1 C.B. 419**.

CAPITAL COSTS. In a Chief Counsel Advice letter, the IRS ruled that taxpayers trafficking in a Schedule I or Schedule II controlled substance, such as medical marijuana sold legally in a state, must use the applicable inventory-costing regulations under I.R.C. § 471 as they existed when I.R.C. § 280E was enacted in 1982. The IRS also ruled that it may require a taxpayer trafficking in a Schedule I or Schedule II controlled substance to change to an inventory method for that controlled substance when the taxpayer currently deducts otherwise inventoriable costs from gross income. **CCA 201504011, Dec. 10, 2014**.

CAPITAL GAIN. The taxpayers were related limited liability companies (LLCs) which purchased certificates of purchase of tax lien through tax liens auctions. When a property relating to the lien was not redeemed by the owner, the LLCs obtained a tax deed and sold the property as quickly as possible. The LLCs reported the gain as capital gain and reported the gain under the installment reporting method. The court held that the LLCs sold the properties in the ordinary course of a trade or business, resulting in ordinary gain, because (1) the LLCs made the sales on a regular and frequent basis, (2) the amount of the sales was significant, (3) the LLCs held the properties for as short a time as possible, (4) the LLCs had a significant number of employees involved in the activity, and (5) the properties were an essential part of the LLCs' activities. Because the gain was ordinary, the gain could not be reported using the installment method. **SI Boo, LLC v. Comm'r, T.C. Memo. 2015-19**.

DEPENDENTS. The taxpayer claimed an adult child and the child's minor daughter as dependents and claimed the earned income tax credit based on the dependency of the child and granddaughter. The child and granddaughter lived with and were supported by the taxpayer from January 2011 through August 2011. For the reminder of 2011 the child and granddaughter lived with someone else who claimed to be common-law married to the child. The third party testified that he had agreed to be married to the child when they signed their joint return filed for 2011. The court held that the child and granddaughter were eligible dependents of the taxpayer because the child and common-law spouse did not become married until 2012 when the tax return was signed. The court noted that the child could not claim the granddaughter as a dependent because the child was claimed as a dependent on the taxpayer's return. **Saenz v. Comm'r, T.C. Summary Op. 2015-6**.

DEPRECIATION. The taxpayer was part of an affiliated group that filed a consolidated federal income tax return on a fiscal year basis. The taxpayer's consolidated federal income tax return for the taxable year was timely filed and the period of limitation on assessment under I.R.C. § 6501(a) for the taxable year had not expired. The taxpayer placed in service qualified property (as defined in I.R.C. § 168(k)(2)) for depreciation purposes during the taxable year. On the taxpayer's parent corporation's timely filed consolidated federal income tax return for the taxable year, the taxpayer did not claim the additional first year depreciation deduction for any classes of qualified property placed in service by the taxpayer during that taxable year; however, the taxpayer inadvertently failed to attach the election statement not to claim the additional first year depreciation deduction for all classes of qualified property placed in service by the taxpayer, as required by Treas. Reg. § 1.168(k)-1(e)(3)(ii), to the consolidated federal income tax return for the taxable year. The IRS granted an extension of time to file an amended return with the election statement. **Ltr. Rul. 201505002, Sept. 18, 2014**.

The IRS has issued tables detailing the (1) limitations on depreciation deductions for owners of passenger automobiles (and for trucks and vans) first placed in service during calendar year 2015 and (2) the amounts to be included in income by lessees of passenger automobiles first leased during calendar year 2015.

For passenger automobiles placed in service in 2015 the depreciation limitations are as follows (same as for 2014):

Tax Year	Amount
1st tax year	$3,160
2d tax year	5,100
3d tax year	3,050
Each succeeding year	1,875

For trucks and vans placed in service in 2015 the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$3,460
2d tax year	5,600
3d tax year	3,350
Each succeeding year	1,975

The procedure also provides revised tables of depreciation limitations and lessee inclusion amounts for passenger automobiles that were first placed in service or first leased by the taxpayer, respectively, during 2014 and to which the 50 percent additional first year depreciation deduction under I.R.C. § 168(k)(1)(A) applies as extended by the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, § 125(a), 128 Stat. 4010 (2014).

For passenger automobiles placed in service in 2014 for which the additional first year depreciation deduction applies, the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$11,160
2d tax year	5,100
3d tax year	3,050
Each succeeding year	1,875

For trucks and vans placed in service in 2014 for which the additional first year depreciation deduction applies, the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$11,460
2d tax year	5,500
3d tax year	3,350
Each succeeding year	1,975

For leased passenger automobiles, I.R.C. § 280F(c) requires a reduction in the deduction allowed to the lessee of the passenger automobile. The reduction must be substantially equivalent to the limitations on the depreciation deductions imposed on owners of passenger automobiles. Under Treas. Reg. § 1.280F-7(a), this reduction requires a lessee to include in gross income an inclusion amount determined by applying a formula to the amount obtained from tables included in the revenue procedure. Each table shows inclusion amounts for a range of fair market values for each taxable year after the passenger automobile is first leased. **Rev. Proc. 2015-19, I.R.B. 2015-8**.

EARNED INCOME TAX CREDIT. The IRS has published information about the earned income tax credit. *Eligibility*. If the taxpayer worked and earned under $52,427, the taxpayer may qualify for EITC. If the taxpayer's financial or family situation has changed, the taxpayer should review the EITC eligibility rules. Taxpayers might qualify for EITC this year even if they did not in the past. If the taxpayer qualifies for EITC, the taxpayer must file a federal income tax return and claim the credit to get it. This is true even if the taxpayer is not otherwise required to file a tax return. Taxpayers can use the EITC Assistant tool on IRS.gov to determine if they qualify and to estimate the amount of the EITC. *Know the rules*. Taxpayers need to understand the rules before claiming the EITC, to be sure they qualify: (1)

The taxpayer's filing status cannot be Married Filing Separately. (2) The taxpayer must have a Social Security number that is valid for employment for the taxpayer, spouse if married, and any qualifying child listed on the tax return. (3) The taxpayer must have earned income. Earned income includes earnings from working for someone else or working self-employed. (4) Taxpayers may be married or single, with or without children to qualify. If the taxpayer does not have children, the taxpayer must also meet age, residency and dependency rules. If the taxpayer has a child who lived with the taxpayer for more than six months of 2014, the child must meet age, residency, relationship and the joint return rules to qualify. (5) If the taxpayer is a member of the U.S. Armed Forces serving in a combat zone, special rules apply. **IRS Tax Tip 2015-09**.

FRIVOLOUS TAX ARGUMENTS. The IRS announced the publication of the 2015 version of "The Truth About Frivolous Tax Arguments," available at www.IRS.gov. The IRS noted that promoters of frivolous schemes encourage taxpayers to make unreasonable and outlandish claims to avoid paying the taxes they owe. These arguments are wrong and have been thrown out of court. While taxpayers have the right to contest their tax liabilities in court, no one has the right to disobey the law or disregard their responsibility to pay taxes. The penalty for filing a frivolous tax return is $5,000. The penalty applies to anyone who submits a purported tax return or other specified submission, if any portion of the submission is based on a position the IRS identified as frivolous in *Notice 2010-33, 2010-1 C.B. 609* or reflects a desire to delay or impede administration of the tax laws. Those who promote or adopt frivolous positions also risk a variety of other penalties. For example, taxpayers could be responsible for an accuracy-related penalty, a civil fraud penalty, an erroneous refund claim penalty, or a failure to file penalty. The Tax Court may also impose a penalty against taxpayers who make frivolous arguments in court. Taxpayers who rely on frivolous arguments and schemes may also face criminal prosecution for attempting to evade or defeat tax, and taxpayers may be convicted of a felony for willfully making and signing, under penalties of perjury, any return, statement, or other document that the person does not believe to be true and correct as to every material matter. Persons who promote frivolous arguments and those who assist taxpayers in claiming tax benefits based on frivolous arguments may be prosecuted for a felony. **IR-2015-23**.

HEALTH INSURANCE. The IRS has issued a notice providing limited relief for taxpayers who have a balance due on their 2014 income tax return as a result of reconciling advance payments of the health insurance premium tax credit against the premium tax credit allowed on the tax return. The notice provides relief from the penalty under I.R.C. § 6651(a)(2) for late payment of a balance due and the penalty under I.R.C. § 6654(a) for underpayment of estimated tax. This relief applies only for the 2014 taxable year. This relief does not apply to any underpayment of the individual shared responsibility payment resulting from the application of I.R.C. § 5000A because such underpayments are not subject to either the I.R.C. § 6651(a)(2) penalty or the I.R.C. § 6654(a) penalty. To qualify for the relief, taxpayers must meet certain requirements. The IRS will abate the I.R.C. § 6651(a)(2) penalty for taxable year 2014 for taxpayers who (i) are otherwise current with their filing and payment obligations; (ii) have a balance due for the 2014 taxable year due to excess advance payments of the premium tax credit; and (iii) report the amount of excess advance credit payments on their 2014 tax return timely filed, including extensions (Line 46 of Form 1040 or Line 29 of Form 1040A). Further, the Service will waive the § 6654 penalty for taxable year 2014 for an underpayment of estimated tax for taxpayers who have an underpayment attributable to excess advance credit payments if the taxpayers (i) are otherwise current with their filing and payment obligations; and (ii) report the amount of the excess advance credit payments on a 2014 tax return timely filed, including extensions. **Notice 2015-9, 2015-1 C.B. 590**.

The IRS has published a chart to help taxpayers and tax return preparers better understand what to report on the 2014 tax return as to health insurance coverage and credits:

If the taxpayer…	Then the taxpayer…
And everyone in your tax household had health coverage for the entire year	Will simply check the box on line 61 of Form 1040, line 38 of Form 1040-A, or line 11 of Form 1040-EZ
Enrolled in health insurance through the Marketplace	Should receive a Form 1095-A Health Insurance Marketplace Statement from the Marketplace
Received a Form 1095-A, Health Insurance Marketplace Statement, showing you received the benefit of advance payments of the premium tax credit in 2014	Must file a tax return in 2015 and reconcile the advance payments with the amount of the premium tax credit allowed on your return.
Need to reconcile the advance payments of the credit with the credit allowed	Make the calculations using IRS Form 8962 Premium Tax Credit (PTC)
Must repay any excess advance payments of the premium tax credit	Must report the information on line 46 Form 1040 or line 29 of Form1040-A, and cannot file Form 1040-EZ
Are claiming the premium tax credit and did not benefit from advance payments of the premium tax credit	Must file a tax return and IRS Form 8962, Premium Tax Credit (PTC)
Did not receive a Form 1095-A, Healthcare Insurance Marketplace Statement,from the Marketplace	Should contact the state or federal Marketplace through which you enrolled
Are claiming an exemption from the requirement to have health coverage for anyone on your tax return	Will complete Form 8965, Health Coverage Exemptions,and submit it with your tax return
Still need to obtain a religious conscience exemption or a hardship exemption that can only be granted by the Marketplace	Should file an application with the Marketplace and follow the instructions below about how to report exemptions from the Marketplace on your tax return

Obtained an exemption from the Marketplace, and received your unique Exemption Certificate Number	Will enter the Exemption Certificate Number in Part I of Form 8965, Health Coverage Exemptions, and submit the form with your return
Applied for an exemption from the Marketplace, but do not currently have an Exemption Certificate Number	Will enter 'PENDING' in Part I of Form 8965 Health Coverage Exemptions, and submit the form with your return
Are claiming an exemption that can be granted only from the IRS	Will not need an Exemption Certificate Number, but will complete Parts II and III of Form 8965, Health Coverage Exemptions, and submit the form with your return
Are able to obtain the exemption from either the IRS or the Marketplace	Should obtain the exemption from the IRS by completing Part II and III of Form 8965,Health Coverage Exemptions, and attach this form to your federal tax return when you file
Are making a shared responsibility payment because you did not have health coverage or qualify for an exemption for any month in 2014	Will enter the payment amount on line 61 of Form 1040, line 38 of Form 1040-A, or line 11 of Form 1040-EZ

Health Care Tax Tip 2015-05.

HOBBY LOSSES. The taxpayers, husband and wife, began their horse breeding activity with horses purchased or foaled at third party stables. After several years, the taxpayer sought a rural farm on which to construct an equine facility for their horses but several problems arose that prevented completion of the construction. Some of the horses were moved to the new property but the facilities were not complete. During most of the time, the wife provided most of the time on the activity and their children rode some of the horses for recreation and shows. The court held that the activity was not engaged with the intent to make a profit because (1) the taxpayers did not make a reasonable effort to establish their own facility; (2) the taxpayers failed to adequately advertise their horses; (3) the records did not properly segregated business and personal expenses; (4) the taxpayers had no prior business experience with horses; (5) although the taxpayer spent a considerable amount of time on the activity, much of it was for personal or recreational pleasure; (6) the activity had only losses and little revenue; and (7) the substantial losses offset substantial income from other sources. On appeal the appellate court affirmed in a decision designated as not for publication. **Bronson v. Comm'r, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,178 (9th Cir. 2015), *aff'g*, T.C. Memo. 2012-17**.

PASSIVE ACTIVITY LOSSES. The first taxpayer was a state licensed real estate agent and worked full-time as an independent contractor for a real estate brokerage firm but was not licensed as a real estate broker. The taxpayer brought together buyers and sellers of real property and negotiated contracts of sale and other agreements between buyers and sellers of real property. The second taxpayer was a state licensed mortgage broker who brought together lenders and borrowers. Under state law, the second taxpayer's mortgage brokerage business was considered to be a real property brokerage business. I.R.C. § 469(c)(7)(C) defines the term "real property trade or business" as "any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental operation, management, leasing, or brokerage trade or business." In a Chief Counsel Advice letter, the IRS ruled that the first taxpayer's activities met the Section 469(c)(7)(C) definition of real property trade or business but that the second taxpayer's activities did not. **CCA 201504010, Dec. 17, 2014**.

REFUNDS. The decedent had prepared a 2001 federal income tax return with a son but failed to actually file the return. The return claimed a refund of over $49,000. In 2005 after the decedent's death, the son filed the 2001 tax return and sought the refund. A letter sent with the return claimed that the decedent had been suffering from Alzheimer's disease in 2001 and subsequent years, entitling the decedent to the refund under the financially disabled exception of I.R.C. § 6511(h)(1) to the three-year limitation period on refund claims. The statute defines "financially disabled" as "unable to manage his financial affairs by reason of a medically determinable physical or mental impairment … which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." See I.R.C. § 6511(h)(2). The decedent's estate presented evidence from a doctor that the decedent suffered from Alzheimer's disease in 2001 through 2005; however, the same doctor in 2005 had sent a letter to the state motor vehicle department which did not mention any mental incapacitation and only stated that the decedent suffered from age-related memory loss. The court stated that this inconsistency placed in doubt the veracity of the doctor's statements to the IRS that the decedent suffered from financial disability and the court held that the estate was not entitled to receive the late-filed claim for a refund. **Estate of Rubinstein v. United States, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,176 (Fed. Cls. 2015)**.

SOCIAL SECURITY. The taxpayer, a state university, had entered into a Section 418 (42 U.S.C. § 418) agreement with the Social Security Administration which excluded compensation for services provided by students from employment taxes. The taxpayer operated a hospital at which the taxpayer provided a medical residency program and the taxpayer sought a refund of employment taxes paid for the compensation for the medical residents, arguing that the medical residents were students. The taxpayer had been treating the medical residents as non-students for purposes of the employment taxes since the inception of the Section 418 agreement and since the student exemption was added to the agreement. The court held that the medical residents were not students and that the taxpayer had agreed to that interpretation by not attempting to exclude the medical residents from employment taxes after the student exemption was added to the agreement. **University of Texas System v. United States, 2014-2 U.S. Tax Cas. (CCH) ¶ 50,363 (5th Cir. 2014)**.

TAX RETURN PREPARERS. The IRS has announced the launch of a new, online public directory of tax return preparers.

This searchable directory on www.IRS.gov will help taxpayers find a tax professional with credentials and select qualifications to help them prepare their tax returns. The directory is a searchable, sortable listing featuring: the name, city, state and zip code of attorneys, CPAs, enrolled agents and those who have completed the requirements for the voluntary IRS Annual Filing Season Program (AFSP). All preparers listed also have valid 2015 Preparer Tax Identification Numbers (PTIN). Taxpayers may search the directory using the preferred credentials or qualifications they seek in a preparer, or by a preparer's location, including professionals who practice abroad. Tax return preparers with PTINs who are not attorneys, CPAs, enrolled agents or AFSP participants are not included in the directory, nor are volunteer tax return preparers who offer free services. **IR-2015-22**.

TIP INCOME. The IRS has published information on the taxation of tips. *Tips are taxable*. Taxpayers must pay federal income tax on any tips they receive. The value of non-cash tips, such as tickets, passes or other items of value are also subject to income tax. *Include all tips on the income tax return*. Taxpayers must include the total of all tips received during the year on their income tax return. This includes tips directly from customers, tips added to credit cards and the taxpayer's share of tips received under a tip-splitting agreement with other employees. *Report tips to the employer*. If a taxpayer receives $20 or more in tips in any one month, from any one job, the taxpayer must report the tips for that month to the taxpayer's employer. The report should only include cash, check, debit and credit card tips the taxpayer received. The taxpayer's employer is required to withhold federal income, Social Security and Medicare taxes on the reported tips. See also Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*. Taxpayers should not report the value of any noncash tips to their employer. Taxpayers can use Publication 1244, *Employee's Daily Record of Tips and Report to Employer*, to keep a daily log of tips. For more information, see Publication 1244 or Publication 531, *Reporting Tip Income*. **IRS Tax Tip 2015-13**.

LANDLORD AND TENANT

RENT. The plaintiff leased farm land to the defendants, husband and wife and their corporation. The parties entered into a written lease with a five year duration but the lease specified only the rent amount for the first year and provided for an annual review of the lease. The parties negotiated modified rent rates for the second year but failed to agree as to the rent in the third year. In the third year, the defendants tendered the same rent as for the second year and the plaintiff sued for failure to negotiate in good faith and for failing to pay the fair rental rate for the use of the land. The trial court ruled that the contract was unambiguous and rejected the use of any parole evidence to modify the contract. The trial court ruled for the defendants that the lease did not require the parties to renegotiate the rental rate each year but only provided for a review of the lease. On appeal the appellate court affirmed. The central issue was whether the failure of the lease to provide a rental rate for each year of the contract caused the contract to be ambiguous, allowing parole evidence to prove the intent of the parties. Although the court held that the rental rate was an essential term of a lease, the court held that the lease did provide for a rental rate and a means of renegotiating the rental rate by agreement of the parties. The court held that the lease was not ambiguous merely because the lease did not contain a provision regarding any failure to agree as to a modification of the rental rate. **Gibbons Ranches, LLC v. Bailey, 289 Neb. LEXIS 13 (Neb. 2015)**.

TERMINATION. The landowner plaintiffs, husband and wife, signed a five-year lease with the defendants, husband and wife, under which the defendants paid $70 per acre annually. The lease was to expire on December 31, 2011. In 2010 the plaintiff husband died and the defendants agreed with the plaintiff wife to cooperatively enter the land in the conservation stewardship program. The defendants received all program payments. In March 2011 the plaintiff sent the defendants notice of termination of the lease on December 31, 2011 and included a demand that the defendants not plant any fall-seeded crops. The defendants planted a wheat crop in September 2011 anyway. The plaintiff wife sued to have the lease declared terminated on December 31, 2011 and to have the crop granted to the plaintiff. The trial court granted both claims, awarding the crop to the plaintiff. On appeal, the appellate court reversed. The appellate court noted two clauses in the lease: (1) the tenants had total discretion to plant whatever crops they deemed advantageous and (2) the landowners granted the tenants possession of the ground upon which crops were growing during the year of termination through and including the harvest of those crops. The court held that, under these provisions, the defendants had a right to plant the fall-seeded wheat crop and had the right to possession through the time of harvest of the wheat crop; therefore, although the lease was terminated on December 31, 2011, the 2011-planted crop belonged to the defendants. **Meirs v. Webber, 2015 Kan. App. Unpub. LEXIS 52 (Kan. Ct. App. 2015)**.

PROPERTY

TIMBER DAMAGE. The parties owned neighboring rural properties. The defendant admitted that workers hired to clear a fence and trees removed the plaintiff's fence and more than two dozen trees on the plaintiff's property. The trial court found that the removal of the fence and trees did not diminish the value of the plaintiffs' property and awarded damages for the value of the trees only. At trial an arborist testified as to the value of the trees under two methods, "depreciated replacement cost" and "cost of cure." The first method calculated the cost of restoring the trees to their pre-removal condition, $158,000, and the second method calculated merely the cost of replanting the trees with younger trees, $53,000. The trial court awarded damages of $45,000 and the appellate court affirmed, holding that the trial court had sufficient evidence to support the award. **Ortega v. Cheshier, 2015 Tex. App. LEXIS 837 (Tex. Ct. App. 2015)**.