CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

EXEMPTIONS

HOMESTEAD. The debtor owned a one-fourth interest in a family rural property, with the debtor's three siblings owning the other interests. The property did not have a residence, no water or sewage service, and was not actually occupied by the debtor. The only improvements on the property were dirt roads that lead to places to hold barbecues and family gatherings, six deer blinds, and a small cabin that was in disrepair. A perimeter fence surrounded the property, a partition fence separates a portion of the property, and there was a vegetable garden. The debtor used the property for hunting, fishing, growing vegetables and family activities. The debtor testified that the debtor intended to build a residence on the property in four to five years when the debtor's finances improve. The court held that the debtor had demonstrated sufficient use of the property to evidence an intent to use the property as a residence; therefore, the court upheld the Bankruptcy Court's determination that the debtor's interest in the property was eligible for the homestead exemption. **Graham v. Kleb, 2008 U.S. Dist. LEXIS 6495 (S.D. Tex. 2008)**.

CONTRACTS

FRAUDULENT MISREPRESENTATION. The plaintiff was a cattle rancher who sent 1,432 calves to a feedlot based on the recommendation of the defendant non-profit association. The defendant licensed feedlots for use of the Certified Angus Beef trademark. The plaintiff claimed that the calves were sent to the defendant's feedlot based on statements made in the *Angus Journal* published by the defendant and a brochure published by the feedlot. The evidence also showed that the plaintiff discussed the feedlot's reputation with a friend who had sent cattle there in the past. The plaintiff alleged that the defendant certification of the feedlot amounted to fraudulent misrepresentation as to the quality of care provided by the feedlot. The plaintiff lost 385 cattle before removing them to another feedlot. The court granted summary judgment to the defendant because the plaintiff failed to show that a factual misrepresentation was made and that the plaintiff reasonably relied on any misrepresentation of fact. The court held that the journal article was a statement of opinion based on fact known to the author at the time of the article. In addition, The court held that the plaintiff had unreasonably relied on the opinions of third parties without sufficient personal inquiry into the conditions at the defendant's feedlot. **BCD Farms, Inc. v. Certified Angus Beef, LLC, 2008 U.S. Dist. LEXIS (D. Neb. 2008)**.

FEDERAL AGRICULTURAL PROGRAMS

FIRE ANTS. The APHIS has adopted as final regulations that amend the imported fire ant regulations by designating as quarantined areas all or portions of two counties in Arkansas, three in North Carolina, and three in Tennessee, by expanding the quarantined area in one county in Arkansas and 15 in Tennessee, and by designating the entire State of South Carolina as a quarantined area. **73 Fed. Reg. 6577 (Feb. 5, 2008)**.

PACKERS AND STOCKYARDS ACT. The GIPSA has issued proposed regulations which add "swine contractors" to the list of regulated entities subject to specific regulations under the Packers and Stockyards Act. In the 2002 Farm Bill, Pub. L. No. 107-171, Congress added swine contractors as entities regulated under the P&S Act. The proposed regulations prohibit regulated entities from circulating misleading reports about market conditions or prices. The proposed regulations also address inspection of business records and facilities, information that regulated entities are required to share with the Secretary of Agriculture, and USDA's responsibility to refrain from unauthorized disclosure of that information. **73 Fed. Reg. 7482 (Feb. 8, 2008)**.

The GIPSA has issued proposed regulations which amend four existing scales and weighing regulations issued under the P&S Act to ensure that payments by live poultry dealers and swine contractors to poultry and swine production contract growers are based on accurate weighing of both inputs and outputs. The proposed regulations amend a regulation on scale tickets to reduce redundant wording and clarify weighing procedures. The proposed regulations also amend a regulation on reweighing to add swine contractors to the list of firms that must comply, and to add feed to the list of items for which reweighing may be requested. The proposed regulations amend two regulations on weighing livestock and poultry to add weighing processes for feed, to add a specific time limit for weighing poultry, and to add swine contractors to the list of firms that must comply with care and promptness requirements. **73 Fed. Reg. 7686 (Feb. 11, 2008)**.

The plaintiffs were live cattle sellers who filed suit under the Packers and Stockyards Act against the defendant beef packing companies for violation of Section 202(a), (e) of the Act (7 U.S.C. § 192(a), (e)) because the packers took advantage of a

USDA miscalculation of cutout values for beef sales, resulting in underpayment to the plaintiffs for beef sold under the erroneous cutout values used for six weeks. Although the plaintiffs acknowledge that the underpricing was not the direct fault of the packers, the plaintiffs argued that the Act prohibited actions which had the effect of underpricing the cattle. The court held that the Act could be violated by the packers only through an intentional act of the packers; therefore, because the underpricing resulted from the errors of the USDA in reporting the cutout prices, the packers did not violate Section 202(a) of the Act. **Schumacher v. Cargill Meat Solutions Corp., 2008 U.S. App. LEXIS 1856 (8th Cir. 2008)**.

FEDERAL ESTATE AND GIFT TAXATION

ALTERNATE VALUATION DATE. The decedent's estate obtained an extension of time to file the estate tax return and timely filed the return before the due date. More than six months after the extended due date passed, the estate filed an amended return and elected to value estate property at the alternate valuation date. The court held that the election was denied as untimely filed because it was not made on an original or amended return filed before the due date of the estate tax return. **Estate of Loree v. United States, 2008-1 U.S. Tax Cas. (CCH) ¶ 60,555 (D. N.J. 2008)**.

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 Farnam v. Comm'r, 130 T.C. No. 2 (2008)**.

GENERATION-SKIPPING TRANSFERS. A pre-September 25, 1985 generation-skipping transfer tax-exempt trust was established by the decedents. The current beneficiaries and remainder holders were members of five family groups and the trust provided for an equal share of trust income among the five groups. The trustee obtained a court-ordered division of the trust into five separate trusts, one for each family group in order to provide for different investments suitable for each family group. The terms of the separate trusts were the same as the original trust, although new trustees were provided for some of the separate trusts. The IRS ruled that the division of the trust into five separate trusts did not subject the trusts to GSTT. **Ltr. Rul. 200806010, Sept. 29, 2007**.

MARITAL DEDUCTION. The decedent's estate passed to a revocable trust which provided for the creation of a QTIP trust with GST tax potential. The trust provided that the marital trust was to be severed into two trusts, a GST exempt marital trust and a GST non-exempt marital trust. The GST exempt marital trust was to be funded with assets equal to the fair market value of all of the marital trust's assets multiplied by a fraction, the numerator of which is the decedent's available GST exemption, and the denominator of which is the fair market value of all of the marital trust's assets as finally determined for federal estate tax purposes. The split was not made by the executor, although the executor filed the required estate tax return making a marital deduction QTIP election, a reverse QTIP election for GST purposes, and an allocation of the GST exemption to the marital trust. The IRS granted a 60-day extension of time to make the election under Treas. Reg. § 26.2652-2(c) to treat the marital trust as two separate trusts, one of which was deemed to have a zero inclusion ratio by reason of the executor's previous allocation of the GST exemption to the decedent's marital trust. **Ltr. Rul. 20005008, Oct. 12, 2007**.

FEDERAL INCOME TAXATION

Economic Stimulus Act Signed

-by Neil E. Harl

On February 13, 2008, H.R. 5140, The Economic Stimulus Act of 2008 was signed into law. In addition to the rebates assured to taxpayers which Congress hopes will spur economic activity and address the recession many fear will occur, the legislation also contains two significant income tax provisions.

<u>One-Year Boost in Section 179 Depreciation</u>. The new law increases for 2008 the maximum amount of expense method depreciation allowed from $125,000 to $250,000. The 2008 legislation makes it clear that there is to be no inflation adjustment for 2008. The new law also boosts the phase-out from $250,000 to $800,000. Again, no inflation adjustment is allowed for 2008.

The 2008 amendments did not change the requirements otherwise for expense method depreciation under I.R.C. § 179. **Act § 102, amending I.R.C. § 179(b)(1), (2)**.

<u>One-Year Return of Bonus Depreciation</u>. The 2008 law provides for a return of bonus depreciation under I.R.C. § 168(k) for 2008. The depreciation allowance is restored for one-year only at the 50 percent level on new property. To be eligible, the property must be placed in service before January 1, 2009, except for property having longer production periods and some aircraft. For those categories of property, the assets must be placed in service before January 1, 2010. **Act § 103, amending I.R.C. § 168(k)**.

For information about eligibility for the 2008 tax rebate payments, see **FS-2008-15**, **FS-2008-16**, and **IR-2008-18**.

BAD DEBTS. The taxpayers, husband and wife, loaned $10,000 to their child and spouse. The taxpayers claimed the loan as a bad debt deduction. The taxpayers testified that they did not expect the money to be repaid unless the child came

into some money. The taxpayers provided no evidence of a promissory note, terms of the loan or any attempts to have the loan repaid. The court also found that the taxpayers provided no evidence that the loan was worthless in the year of the deduction. The court held that the loan did not qualify for a bad debt deduction. **Sizelove v. Comm'r, T.C. Summary Op. 2008-15**.

COAL GASIFICATION CREDIT. The IRS has announced a special allocation of credits under the qualifying advanced coal program of I.R.C. § 48A. This special allocation round applies only to the pool of investment credits available for integrated gasification combined cycle (IGCC) projects using bituminous coal as primary feedstock. Except as specifically provided in the notice, this special allocation round will be conducted using the procedures provided in *Notice 2007-52, 2007-2 C.B. 1456*. $133.5 million is available for allocation in this special allocation round and may be allocated to a single project. To be considered in this special allocation round, applications must be submitted to the Department of Energy (DOE) on or before May 2, 2008 and to the IRS before June 3, 2008. **Notice 2008-26, I.R.B. 2008-9**.

CORPORATIONS

TERMINATION. The taxpayer corporation was dissolved administratively under state law for failing to pay state franchise taxes. The corporation was unaware of the administrative dissolution for some time and continued to file federal corporate income tax returns. When the corporation learned about the administrative dissolution, the corporation immediately re-incorporated in the state. The IRS ruled that the administrative dissolution did not terminate the corporation for federal income tax purposes because no distribution or transfer of property occurred. **Ltr. Rul. 200806006, Nov. 7, 2007**.

DISCHARGE OF INDEBTEDNESS. The IRS has released revised Form-982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment). Taxpayers who have had all or part of their mortgage indebtedness forgiven in 2007 may use this form to exclude that amount under the relief granted by the Mortgage Forgiveness Debt Relief Act of 2007, Pub. L. No. 110-142. The completed form should be attached to the individual's Form 1040. The amount of excludible debt forgiveness on a taxpayer's principal residence is limited to loans with a balance of less than $2 million ($1 million if married filing a separate return). Although the paper version of Form 982 is currently being accepted, the IRS urges taxpayers to wait to file until March 3 when the system can accept the more accurate and less error-prone electronic filing. The new mortgage debt forgiveness is effective for tax years 2007 thorough 2010 and is only for forgiveness of debt that has been used to buy, build or substantially improve the taxpayer's principal residence and must be secured by that residence. Second homes, rental property and credit card debt forgiveness do not qualify under the new debt relief provision. The IRS urged borrowers to carefully examine the Form 1099-C, Cancellation of Debt, they received from their borrowers for accuracy. The form should reflect the amount of debt forgiven and the fair market value of any property given up through foreclosure. Should there be a discrepancy, contact the lender immediately to correct any errors. **IR-2008-17**.

DISASTER LOSSES. On January 30, 2008, the president determined that certain areas in Indiana 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-1740-DR**. On February 5, 2008, the president determined that certain areas in Missouri are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on January 7, 2008. **FEMA-1742-DR**. On February 7, 2008, the president determined that certain areas in Arkansas are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on February 5, 2008. **FEMA-1744-DR**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their *2007* returns. On February 1, 2008, the president determined that certain areas in Kansas are eligible for assistance from the government under the Act as a result of severe winter storms, which began on December 6, 2007. **FEMA-1741-DR**. On February 6, 2008, the president determined that certain areas in Hawaii are eligible for assistance from the government under the Act as a result of severe storms, which began on December 4, 2007. **FEMA-1743-DR**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their *2006* returns.

The IRS has revised *Notice 2006-77, 2006-2 C.B. 590* which provides guidance on the use of the 50 percent additional depreciation allowance for qualified Gulf Opportunity Zone property. The changes primarily involve guidance on recapture of the GO Zone depreciation for taxpayers who relinquish the qualifying property through either a like-kind exchange or as a result of an involuntary conversion **Notice 2008-25, I.R.B. 2008-9**.

DOMESTIC PRODUCTION DEDUCTION. I.R.C. § 199 allows a deduction based on the lesser of a taxpayer's qualified production activities income (QPAI) in the tax year, or taxable income (determined without reference to I.R.C. § 199) in the tax year. Section 199(a)(1) allows a deduction equal to 9 percent (3 percent in the case of taxable years beginning in 2005 or 2006, and 6 percent in the case of taxable years beginning in 2007, 2008, or 2009) of the lesser of (1) the qualified production activities income (QPAI) of the taxpayer for the taxable year, or (2) taxable income (determined without regard to section 199) for the taxable year (or, in the case of an individual, adjusted gross income (AGI)). The deduction is limited to 50 percent of the Form W-2 wages paid by the taxpayer during the calendar year that ends in such tax year. The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), Pub. L. No. 109-222 amended I.R.C. § 199 to provide that such wages do not include any amount that is not properly allocable to domestic production gross receipts (DPGR). The IRS has adopted as final regulations under which a taxpayer may determine the amount of W-2 wages

properly allocable to DPGR for limitation purposes using any reasonable method that is satisfactory to the IRS based on all the facts and circumstances. The new regulations provide safe harbors for determining this amount. For taxpayers using either the I.R.C. § 861 method of cost allocation under Treas. Reg. §1.199-4(d) or the simplified deduction method under Treas. Reg. §1.199-4(e), the amount of W-2 wages properly allocable to DPGR can be determined by multiplying the amount of W-2 wages by the ratio of the taxpayer's wage expense included in calculating QPAI for the tax year to the taxpayer's total wage expense used in calculating the taxpayer's taxable income for the tax year. For purposes of determining the amount of wage expense in cost of goods sold (CGS) under this safe harbor, a taxpayer may determine its wage expenses included in CGS using any satisfactory method based on all of the facts and circumstances. A taxpayer that uses the small business simplified overall method of cost allocation may use the small business simplified overall safe harbor method. Under that method, the amount of W-2 wages properly allocable to DPGR is equal to the same proportion of W-2 wages that the amount of DPGR bears to the taxpayer's total gross receipts. **73 Fed. Reg. 8798 (Feb. 15, 2008)**.

A non-pooling-marketing cooperative made a $10,000 cash payment to patrons in exchange for product early in one tax year, processed the product, sold the product during the same taxable year, and made a final patronage dividend payment of all net earnings. The cooperative argued that the I.R.C. § 199 deduction for this cooperative will be lower than a pooling cooperative because the original cash payment was in cost of goods sold, thereby reducing qualified production activities income (QPAI), whereas the per-unit retains paid in money (PURPIMs) paid by a pooling cooperative were not in cost of goods sold, resulting in a larger amount of QPAI and, consequently, a larger I.R.C. § 199 deduction. In a Chief Counsel Advice letter, the IRS ruled that the argument failed to recognize that the $10,000 cash payment by the non-pooling-marketing cooperative to the patrons itself meets the definition of a PURPIM in I.R.C. §§ 1388(f) and 1382(b)(3) and would be deductible by the non-pooling cooperative in the same manner as the pooling cooperative resulting in identical I.R.C. § 199 calculations and I.R.C. § 199 deductions. The IRS noted that simple planning would get both cooperatives the same I.R.C. § 199 deduction amount by having the non-pooling cooperative not making a cash payment upon delivery of the product but merely paying $15,000 as a patronage dividend. The IRS also noted that even if the $10,000 amount was excluded from the non-pooling cooperative's § 199 calculation, the $10,000 would be domestic production gross receipts under I.R.C. § 199(c)(4)(A)(i)(I) to the patrons. So, ultimately, there would be $15,000 of QPAI split between the cooperative and the patrons. **CCA Ltr. Rul. 200806011, Oct. 22, 2007**.

EMPLOYEE BENEFITS. If an employer provides an employee with a vehicle that is available to the employee for personal use, the value of the personal use must generally be included in the employee's income and wages. *I.R.C. § 61; Treas. Reg. §1.61-21.* For employer-provided passenger automobiles (including trucks and vans) made available to employees for personal use that meet the requirements of Treas. Reg. § 1.61-21(e)(1), generally the value of the personal use may be determined under the vehicle cents-per-mile valuation rule of Treas. Reg. § 1.61-21(e). However, Treas. Reg. § 1.61-21(e)(1)(iii)(A) provides that, for a passenger automobile first made available after 1988 to any employee of the employer for personal use, the value of the personal use may not be determined under the vehicle cents-per-mile valuation rule for a calendar year if the fair market value of the passenger automobile (determined pursuant to Treas. Reg. § 1.61-21(d)(5)(i) through (iv)) on the first date the passenger automobile is made available to the employee exceeds a specified dollar limit. For employer-provided vehicles available to employees for personal use for an entire year, generally the value of the personal use may be determined under the automobile lease valuation rule of Treas. Reg. § 1.61-21(d). Under this valuation rule, the value of the personal use is the Annual Lease Value. Provided the requirements of Treas. Reg. § 1.61-21(d)(5)(v) are met, an employer with a fleet of 20 or more automobiles may use a fleet-average value for purposes of calculating the Annual Lease Values of the automobiles in the employer's fleet. The fleet-average value is the average of the fair market values of all the automobiles in the fleet. However, Treas. Reg. § 1.61-21(d)(5)(v)(D) provides that for an automobile first made available after 1988 to an employee of the employer for personal use, the value of the personal use may not be determined under the fleet-average valuation rule for a calendar year if the fair market value of the automobile (determined pursuant to Treas. Reg. § 1.61-21(d)(5)(i) through (v)) on the first date the passenger automobile is made available to the employee exceeds a specified dollar limit. The IRS has issued a revenue procedure which provides: (1) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2008 for which the vehicle cents-per-mile valuation rule provided under Treas. Reg. § 1.61-21(e) may be applicable is $15,400 for a passenger automobile and $16,700 for a truck or van; and (2) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2007 for which the fleet-average valuation rule provided under Treas. Reg. § 1.61-21(d) may be applicable is $19,900 for a passenger automobile and $20,800 for a truck or van. **Rev. Proc. 2008-13, 2008-1 C.B. 407**.

FOREIGN INCOME. The taxpayer performed work in Antarctica and the taxpayer excluded the wages earned while in Antarctica under I.R.C. § 911 as foreign income. The court held that income earned in Antarctica was not excludible under I.R.C. § 911 because Antarctica was not recognized by the U.S. government as a foreign sovereign nation. **Lemke v. Comm'r, T.C. Memo. 2008-19; McQuiston v. Comm'r, T.C. Memo. 2008-20; Thompson v. Comm'r, T.C. Memo. 2008-31; Rogers v. Comm'r, T.C. Memo. 2008-32.**

HOBBY LOSSES. The taxpayer was employed full-time as

an engineer and started a network marketing activity during non-working hours. The court held that the activity was not entered into with the intent to make a profit because (1) the taxpayer did not maintain sufficient records to evaluate the profitability of the activity and to change the activity to make it profitable; (2) the taxpayer had no expertise in marketing; (3) the taxpayer devoted only part-time efforts to the activity; (4) the activity had no profits and only losses; and (5) the losses offset income frm the taxpayer's employment. **Eder v. Comm'r, T.C. Summary Op. 2008-12**.

IRA. The taxpayer was employed as a teacher and had an interest in a qualified retirement plan. The taxpayer received distributions from the plan before retirement age and included the distributions in income, although the taxpayer did not pay the 10 percent penalty for early withdrawals. The taxpayer failed to identify any of the exemptions provided in I.R.C. § 72(t)(2) that would exempt the distributions from the 10 percent penalty; therefore, the court held that the early distributions were subject to the 10 percent penalty for early withdrawals. **Huynh v. Comm'r, T.C. Memo. 2008-27**.

LIKE-KIND EXCHANGES. The taxpayer owned real property which the taxpayer exchanged for property development rights which the taxpayer intended to apply to other property owned by the taxpayer. The development rights would allow the taxpayer to increase the development of the other property by adding more floor space to buildings. The IRS ruled that the development rights were like-kind with respect to the fee interest in the relinquished real property; therefore, the exchange was eligible for I.R.C. § 1031 deferred gain on the exchange. **Ltr. Rul. 200805012, Oct. 30, 2007**.

LIMITED LIABILITY COMPANIES. The taxpayer LLC was taxed as a partnership and had interests sold to two new members. Although the LLC intended to make the I.R.C. § 754 election to adjust the basis of LLC property, the federal return was filed inadvertently without the election. The IRS granted an extension of time to file an amended return with the I.R.C. § 754 election. **Ltr. Rul. 200806001, Nov. 5, 2007**.

MEDICAL EXPENSES. The taxpayers claimed a deduction for medical expenses above the 7.5 percent of income floor but provided written substantiation for only an amount less than the 7.5 percent amount. The taxpayer claimed additional amounts based on "guesstimates" of expenses based on historical amounts. The court denied the medical expense deduction for lack of substantiation. **Sizelove v. Comm'r, T.C. Summary Op. 2008-15.**

HOME OFFICE. The taxpayer claimed deductions based on the use of a bedroom for a home office and storage for a nonprofit social organization of which the taxpayer was an unpaid officer. The court held that the deductions were not allowed because the bedroom was not used on a regular basis as a principal place of business for the taxpayer's trade or business. **Sizelove v. Comm'r, T.C. Summary Op. 2008-15**

RETURNS. The IRS has announced that taxpayers in Iowa, Kansas, Oklahoma, Wisconsin, Kentucky, Pennsylvania and West Virginia filing paper returns will be sending their returns to a different service center from last year. Taxpayers who received an instruction booklet from the IRS in the mail and use the labels included with the booklet can be assured that their returns will go to the correct address. Those who do not receive a package should refer to the back cover of the instructions for Form 1040, 1040A or 1040EZ. Taxpayers who e-file are not affected by the changes. Taxpayers in Iowa, Kansas, Oklahoma and Wisconsin should file their returns with the IRS center in Fresno, California. Taxpayers in Kentucky should send their returns to the center in Austin, Texas. Taxpayers in Pennsylvania and West Virginia should send their returns to the center in Kansas City. **IR-2008-15.**

SALE OF PROPERTY. The taxpayers constructed a workshop as an addition to their personal residence garage for use in a woodworking business. The taxpayers sold the property and moved to another state. At the new residence, the taxpayers converted the garage into a workshop for use in the same business and built a new garage. The taxpayers reported no gain from the sale of the first residence but claimed a loss based on a pre-workshop appraisal of the residence and a post-workshop appraisal of the residence, with the loss based on the difference amount which was less than the cost of building the workshop. The taxpayers also claimed deductions for the second workshop for the cost of installing a furnace in the converted workshop. The court held that the second workshop was part of the residence and deductions for costs associated with the workshop were subject to the income limitations for a home office under I.R.C. § 280A(c)(5). As to the first workshop loss, the IRS argued that the amount received for the workshop should be based on the ratio of the area of the workshop to the area of the entire residence. The court rejected the taxpayers' and IRS's valuation methods and used an average value found by two appraisals done as part of the sale of the residence. **Mallin v. Comm'r, T.C. Summary Op. 2008-13**.

SELF-EMPLOYMENT INCOME. The taxpayer was a retired insurance agent. The taxpayer maintained an office with employees but payments were received only from the insurance company based on insurance policies in effect before the taxpayer's retirement and some new policies; however, the taxpayer's office did not actively solicit new policies and all payments of premiums were made directly to the insurance company. The court held that the taxpayer's payments were self-employment income because the payments were based on past services provided by the taxpayer and were not from current operations of the agency through the actions of the employees. **Edwards v. Comm'r, T.C. Memo. 2008-24**.

TRAVEL EXPENSES. The taxpayer claimed automobile expenses for travel on behalf of a nonprofit social organization and for travel to the taxpayer's place of employment. The court denied the deductions because the taxpayer was not involved in a trade or business with the social organization and failed to provide any written evidence to substantiate the employment travel. **Sizelove v. Comm'r, T.C. Summary Op. 2008-15.**

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SECURED TRANSACTIONS

CONSTRUCTIVE TRUST. The plaintiff loaned money to the debtor and sought a constructive trust on the proceeds of cattle sold by the debtor which were purchased using the borrowed money and which were collateral for the loan. The plaintiff sought a constructive trust on the proceeds held by the defendant. The plaintiff alleged that the defendant knew that the cattle were purchased with borrowed money, that the cattle were most likely collateral for the borrowed money and that the proceeds of the sales were required to be paid on the loans. The court held that the plaintiff's claim failed to state a cause of action because, in order for the defendant to be liable for the proceeds, the defendant had to be alleged to have known about the loan, the cattle as collateral and the restrictions on use of the proceeds, none of which was alleged by the plaintiff. ***In re* Norris, 2008 Bankr. LEXIS 69 (Bankr. D. Kan. 2008)**. **See also *In re* Norris, 2008 Bankr. LEXIS 35 (Bankr. D. Kan. 2008)**.

STATE REGULATION OF AGRICULTURE

MILK. The plaintiff was a cheese and milk producer subject to milk production assessments under a state milk marketing order used to purchase advertising of California milk products. The plaintiff argued that the assessments violated the freedom of speech clause of the state constitution. The court held that, under the reasoning in *Johanns v. Livestock Marketing Ass'n, 544 U.S. 550 (2005)*, the assessments did not violate the constitutional freedom of speech because the purchased advertisements were governmental speech as part of the state milk products promotional activity. **Gallo Cattle Co. v. A.G. Kawamura, 2008 Cal. App. LEXIS 165 (Calif. Ct. App. 2008)**.

IN THE NEWS

FLAT TAX. The Congressional Research Service has issued a report presenting an overview of the Hall-Rabushka proposal for a flat tax. **Congressional Research Service Report for Congress --Flat Tax: An Overview of the Hall-Rabushka Proposal, Updated February 1, 2008, 110th Congress Order Code 98-529, February 7, 2008**.

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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