[17] Treas. Reg. § 1.121-4(e)(2)(ii)(B) (relationship of "related person" described in I.R.C. §§ 267(b) or 707(b)).

[18] I.R.C. §§ 671-679.

[19] Treas. Reg. § 1.121-1(c)(3)(i).

[20] Ltr. Rul. 200018021, Jan. 21, 2000.

[21] See Harl, "Sale of Residence in Trust: Is the Exclusion Available?" 11 *Agric. L. Dig.* 12 (2000).

[22] Treas. Reg. § 1.121-1(c)(3)(ii).

[23] Treas. Reg. § 1.1398-3(c).

[24] Chief Counsel Notice (35)-000-162, Aug. 10, 1999.

[25] I.R.C. § 121(c)(1), (2), as amended by H.R. 2676, Sec. 6024, 105th Cong., 2d Sess. (1998).

[26] Temp. Treas. Reg. § 1.121-3T.

[27] Temp. Treas. Reg. § 1.121-3T(c)(2).

[28] Temp. Treas. Reg. § 1.121-3T(d)(1).

[29] Temp. Treas. Reg. § 1.121-3T(d)(2).

[30] Temp. Treas. Reg. § 1.121-3T(e)(1).

[31] Temp. Treas. Reg. § 1.121-3T(e)(2).

[32] Temp. Treas. Reg. § 1.121-3R(f).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

FENCE. The disputed land was located on the defendant's side of a fence which ran between the parties' properties. The fence was constructed over 50 years ago and was continuous except for periods in the winter when the property was used for winter sports by the nearby town. The parties had treated the fence as the boundary line until the plaintiff had the properties surveyed. The defendant claimed title to the property by adverse possession and the plaintiff argued that no adverse possession occurred because the fence was one of convenience. The defendant denied this and supported its claim by years of use for grazing of cattle and horses. The court noted that the fence was constructed in a straight line and did not deviate for natural obstacles; therefore, the fence was not constructed for convenience but was intended to mark the boundary line. **Davis v. Chadwick, 55 P.3d 1267 (Wyo. 2002)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

SETOFF. The farm debtor originally filed for Chapter 7 and that case was closed and the debtor personally discharged of debts, including secured debts owed to the FSA. The creditor sought foreclosure of those secured debts but the foreclosure was delayed by the debtor's filing for Chapter 12. The debtor was allowed to enroll in federal farm programs post-petition and became entitled to payments under those programs. The USDA sought a setoff of the farm program payments against the secured debts. The court held that, because the debtor was relieved of personal liability for the secured debts in the prior Chapter 7 case, there existed no mutual personal debts between the USDA and the debtor to support a setoff under Section 553(a). ***In re* Myers, 284 B.R. Bankr. D. N.M. 2002)**.

FEDERAL TAX-*ALM* § 13.03[7].*

TAX LIENS. The debtors filed for Chapter 7 and the estate consisted of various exempt and non-exempt properties. The IRS had filed a pre-petition tax lien against the property of the debtors. The debtors sought a ruling that the tax lien did not attach to property claimed as exempt in the bankruptcy case. The debtors argued that I.R.C. § 6331 excluded exempt property from a tax lien. The court noted, however, that Section 6331 speaks only to exemption from levy and does not affect tax liens; therefore, the court held that the tax lien attached to the exempt and non-exempt assets of the debtors. ***In re* Goodykoontz, 284 B.R. 235 (Bankr. N.D. W. Va. 2002)**.

FEDERAL AGRICULTURAL PROGRAMS

EGGS. The AMS has issued proposed regulations amending the voluntary shell egg grading program by clarifying the requirements for using the ``Produced From'' grademark for shell eggs. As currently written, the regulations state that the "'Produced From' grademark may be used to identify products for which there are no official U.S. grade standards (e.g., pasteurized shell eggs), provided that these products are approved by the Agency and are prepared from U.S. Consumer Grade AA or A shell eggs under the continuous supervision of a grader." The proposed regulations remove the words "under the continuous supervision of a grader." **68 Fed. Reg. 1169 (Jan. 9, 2003)**.

FARM LOANS. The FSA has issued proposed regulations which eliminate the 30-day past-due period prior to a determination that the borrower is delinquent and clarify the use of the terms "delinquent" and "past due"

with regard to direct loan servicing and offset. Because the regulation only allows debt writedown after a borrower becomes delinquent, this proposed change would allow Farm Loan Program borrowers to receive debt writedown on the day after a missed payment, assuming all other primary loan servicing criteria are met, instead of waiting 31 days. **68 Fed. Reg. 1170 (Jan. 9, 2003)**.

PERISHABLE AGRICULTURAL COMMODIITES ACT. The plaintiff and defendants were agricultural produce sellers who sold produce to a PACA produce handler who did not pay for the produce. The defendants had previously filed suit against the produce handler for repayment from the PACA trust when the defendants knew the produce handler was insolvent. The plaintiff argued that under general trust principles, a co-beneficiary has a fiduciary duty to the other beneficiaries not to deplete the trust principal to the detriment of the other beneficiaries. The court agreed and held that, once a PACA trust beneficiary learns that a PACA trustee has become insolvent, the PACA trust funds are to be escrowed for pro rata distribution among all PACA trust beneficiaries. Thus, the defendants were required to return all PACA trust funds received after their learning about the produce handler's insolvency. **Fresh Kist Produce, LLC. v. Choi Corp., Inc., 223 F. Supp.2d 1 (D. D.C. 2002)**.

TOBACCO. The FSA and CCC have issued proposed regulations to amend the tobacco marketing regulations in order to provide for a system to electronically report non-auction purchases of burley and flue-cured tobacco at common delivery points known as receiving stations, and for the registration of these receiving stations. The proposed reporting system is voluntary and therefore any buyer who might find the system burdensome may comply with the record keeping and reporting requirements which are currently in place. **68 Fed. Reg. 1556 (Jan. 13, 2003)**.

FEDERAL ESTATE AND GIFT TAX

ALTERNATE VALUATION DATE. The decedent's estate hired a law firm to prepare its estate tax returns but the estate tax return did not include an alternate valuation date election. When the executor became aware that the election was available, the executor filed for an extension of time to file the election, within one year after the original return was due. The IRS granted the extension. **Ltr. Rul. 200302007, Sept. 25, 2002**.

CHARITABLE DEDUCTION. The decedent had created an inter vivos trust which became irrevocable upon the decedent's death. After the decedent's death, under an amendment to the trust, the trust continued for 21 years and then was to be distributed to 11 beneficiaries, including one charitable beneficiary which was added in the amendment. The other beneficiaries challenged the will and trust in court and eventually settled the suit with a compromise distribution to the charitable beneficiary. The IRS ruled that the will and trust challenge was bona fide and the settlement was not an attempt to circumvent I.R.C. § 2055(e)(2); therefore, the amount passing to the charitable beneficiary was eligible for the charitable deduction. **Ltr. Rul. 200252077, Sept. 24, 2002**.

DISCLAIMER. The taxpayer was the remainder beneficiary of a trust for a parent of the taxpayer's deceased spouse. When the parent died, the trust passed to the taxpayer because the spouse had predeceased the parent. The trust provided an income interest, a discretionary interest in trust principal and a remainder interest in a charity. The taxpayer filed a written disclaimer of the interest in trust principal and the trust was reformed to provide a fixed annual distribution percentage of 6.6 percent instead of the income interest for the taxpayer. The IRS ruled that the disclaimer was effective and the reformation of the trust was qualified to make the estate eligible for a charitable deduction for the value of the remainder principal interest passing to the charity. **Ltr. Rul. 200302029, Oct. 2, 2002**.

FAMILY-OWNED BUSINESS DEDUCTION. The decedent had owned common and preferred shares of stock in a family corporation. The common stock passed to the decedent's sons and the preferred stock passed to the decedent's daughters. The decedent's estate claimed the FOBD for the decedent's interest in the corporation. The corporation redeemed at fair market value the common stock from one son for cash and a promissory note. The IRS ruled that the redemption was considered a disposition causing recapture of FOBD, because the corporation was not a qualified heir and the redemption would not be considered a purchase by the other shareholders. **Ltr. Rul. 200252084, Sept. 18, 2002**.

FEDERAL INCOME TAXATION

ARBITRATION. The IRS has named 30 individuals to serve as qualified neutrals who are available to taxpayers for arbitration under the provisions of *Rev. Proc. 2002-67, I.R.B. 2002-43, 733*. Under that procedure, taxpayers who choose the Fast Track Dispute Resolution Procedure for their contingent liability cases must proceed to binding arbitration to resolve any issues not resolved during accelerated settlement negotiations. Those taxpayers are to select three candidates from the IRS's newly released qualified list of arbitrators and rank them in order of preference. The administrator of the arbitration process will arrange for the hiring of one of the candidates, based on availability and order of preference. **Ann. 2003-3, I.R.B. 2003-__**.

AUTOMOBILE EXPENSES. The taxpayer was employed by an automobile sales company at one of its

dealerships. Because of personnel problems, the taxpayer was transferred to another dealership 60 miles away. The taxpayer continued to reside near the original dealership because the management had promised to reassign the taxpayer to that dealership once the personnel problems had ceased. However, the taxpayer was denied a request to be assigned to the original dealership even after the personnel problems had ceased. The taxpayer claimed a mileage deduction for the miles traveled to and from the other dealership. The court held that the employment at the other dealership was intended to be temporary and the cost of travel was eligible for the mileage itemized deduction. The number of miles traveled was substantiated by the taxpayer's work schedule and the known distance from the taxpayer's residence to the dealership. **Brockman v. Comm'r, T.C. Memo. 2003-3**.

BUSINESS EXPENSES. The taxpayers, husband and wife, owned several C corporations, two of which owned partnership interests in partnerships which developed, owned and operated businesses. The partnerships were assessed local taxes and the taxpayers paid the taxes for the partnerships. The taxpayer argued that the taxes were deductible as business expenses. The Tax Court held that the taxes would be deductible only if they were an ordinary and necessary expense of the taxpayers' business. The Tax Court held that the taxpayers failed to provide evidence of any business operated by the taxpayers other than through the S corporations; therefore, the court disallowed the deduction for the taxes by the taxpayers. On appeal, the appellate court held that the taxpayers had provided sufficient evidence of the propriety of the deductions claimed, which shifted the burden of proof to the IRS. The case was remanded for consideration of the merits upon presentation of proof by the IRS. **Griffin v. Comm'r, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,186 (8th Cir. 2003), *vac'g and rem'g*, T.C. Memo. 2002-6**,

CORPORATIONS.

REASONABLE COMPENSATION. The taxpayer was a corporation which operated a family-run mechanical contractor business. The corporation was owned by one shareholder who had responsibility for human resources, finances, sales and marketing, training and supervising employees, and accounting and legal matters. The corporation encountered financial problems and the sole shareholder also became the sole employee. In order to meet bonding requirements of increased liquid assets, the corporation underpaid the shareholder for services to the corporation and retained the savings. The shareholder eventually sold all the stock to the shareholder's son who also served as an officer of the corporation and provided services to the corporation. The corporation never paid any dividends. The corporation provided a retirement plan, health insurance, life insurance, disability insurance, and use of a vehicle for the shareholder. The IRS stipulated that the shareholder's salary was within the range of salaries paid to similarly situated executives yet claimed that the shareholder's salary was excessive and denied a portion of the corporation's deduction for wages paid to the shareholder. The court held that, in view of the IRS admission that the shareholder's salary was within the range of salaries paid to similarly situated executives and the lack of any other evidence to show that the salary was excessive, the shareholder's salary was not excessive and the entire deduction was allowed. **Devine Brothers, Inc. v. Comm'r, T.C. Memo. 2003-15**.

STOCK REDEMPTION. The IRS has issued final and temporary proposed regulations which provide generally that if a corporation redeemed stock owned by a transferor spouse and the redemption resulted in a constructive distribution to the nontransferor spouse under applicable tax law, then the redemption would be taxable to the nontransferor spouse as if the nontransferor spouse had actually received the redemption proceeds. **68 Fed. Reg. 1534 (Jan. 13, 2003)**.

DEPENDENTS. The taxpayer was divorced in 1995 and paid alimony and child support in 1995 and 1996 for a child which lived with the former spouse during all of those years. Although the divorce decree awarded the child dependency exemption to the taxpayer, the former spouse did not execute a written declaration releasing to the taxpayer the dependency exemption for the child. The former spouse had no income during 1995 and 1996. The court held that the taxpayer was not entitled to the dependency exemption because the former spouse, the custodial parent, did not execute a written declaration releasing to the taxpayer the dependency exemption for the child. **Meyer v. Comm'r, T.C. Memo. 2003-12**.

DISASTER LOSSES. On January 6, 2003, the President determined that certain areas in Arkansas were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of a severe ice storm beginning on December 3, 2002. **FEMA-1450-DR**. Accordingly, a taxpayer who sustained a loss attributable to these disasters may deduct the loss on his or her 2002 federal income tax return.

EMPLOYEES. The taxpayer operated several video rental stores with several employees at each store, which the taxpayer treated as independent contractors for social security and income tax withholding purposes. The court found that the employees' work was controlled by the taxpayer who supplied all the equipment, facilities and costs for their work. The court held that the employees were not independent contractors and the taxpayer was required to withhold and pay social security and income taxes. **Ronald McLean Eastern Video v. Comm'r, T.C. Memo. 2003-13**.

INFORMATION RETURNS. The IRS has announced that, until further notice, the IRS will not require information reporting by brokers, under I.R.C. § 6045, with respect to securities futures contracts. **Notice 2003-8, I.R.B. 2003-__.**

LETTER RULINGS. The IRS has issued its annual list of procedures for issuing letter rulings. **Rev. Proc. 2003-1, I.R.B. 2003-1**.

The IRS has issued its annual list of procedures for furnishing technical advice to District Directors and Chiefs, Appeals Offices. **Rev. Proc. 2003-2, I.R.B. 2003-1**.

The IRS has issued its annual list of tax issues for which the IRS will not give advance rulings or determination letters. **Rev. Proc. 2003-3, I.R.B. 2003-1**.

PENSION PLANS. The IRS has issued a revenue procedure which provides guidance for complying with the user fee program of the Internal Revenue Service as it pertains to requests for letter rulings, determination letters, etc., on matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division; and requests for administrative scrutiny determinations under *Rev. Proc. 93-41, 1993-2 C.B. 536*. **Rev. Proc. 2003-8, I.R.B. 2003-1**.

The IRS has issued its annual list of procedures for issuing letter rulings on the qualified status of pension, profit-sharing, stock bonus, annuity and employee stock ownership plans (ESOPs) under I.R.C. §§ 401, 403(a), 409 and 4975(e)(7), and on the status for exemption of any related trusts or custodial accounts under I.R.C. § 501(a). **Rev. Proc. 2003-6, I.R.B. 2003-1**.

The IRS has provided guidance on applying to the Service for a waiver of the 60-day rollover requirement for transferring amounts distributed from a qualified employees' trust or individual retirement plan to an eligible retirement plan in order to avoid inclusion of the distribution in the distributee's gross income. **Rev. Proc. 2003-16, I.R.B. 2003-__**.

For plans beginning in January 2003, the weighted average is 5.54 percent with the permissible range of 4.98 to 6.09 percent (90 to 120 percent permissible range) and 4.98 to 6.65 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2003-7, I.R.B. 2003-__**.

RETURNS. The IRS has announced that taxpayers can begin electronically filing their 2002 returns on January 10, 2003. **IR-2003-4**.

The IRS has announced the publication of Publication 51 (Rev. January 2003), Circular A, Agricultural Employer's Tax Guide. This publication can be obtained by calling 1-800-TAX-FORM (1-800-829-3676); it is also available on the IRS's web site at www.irs.gov.

The IRS has announced a program to allow taxpayers to e-file their tax returns free. The Free File Initiative is a collaborative effort between the federal government and a consortium of tax-software companies known as the Free File Alliance. To date, the Alliance is composed of 17 private-sector companies. Alliance members assisted in establishing the Free File system and will also provide the tax preparation necessary to facilitate the initiative. Taxpayers can access the user-friendly Free File website program by logging on to www.irs.gov or www.firstgov.gov. There will be a Free File link that will take users to the Free File homepage. From there, taxpayers can determine their eligibility to use Free File by reviewing the Alliance member listings or by using the Free File Wizard. The Free File Wizard presents a series of short questions about age, income level and state of residency, for example, that will tell the taxpayer which Alliance member or members, if any, will prepare their returns for free. Each Alliance member has special criteria used to determine whether a taxpayer is eligible to use its service for free, not all taxpayers are eligible for free assistance. The IRS estimates that roughly 60 percent of taxpayers will be eligible for Free File assistance. Generally, most Alliance members will provide assistance only to taxpayers whose incomes do not exceed $28,000, so the impact on tax practitioners should be minimal. However, one site would provide assistance to taxpayers with adjusted gross incomes of $100,000 or more. Not all eligibility will be based on income. Alliance members also base eligibility on a taxpayer's state of residency, age or eligibility to file Form 1040EZ. Taxpayers ineligible for Free Filing may still link to an Alliance member's site and secure rate information. The IRS is also planning to work with churches and other types of community-based organizations to provide computer access to taxpayers that do not have computers. Voluntary Income Tax Assistance (VITA), Tax Counseling for the Elderly (TCE) and Taxpayer Assistance Centers are still available for taxpayers without computer access. **IR-2003-6**.

SECURED TRANSACTIONS

ATTACHMENT. A Chapter 12 farm debtor had granted a security interest in growing crops to a bank in 1993 and 2000, both prior to the effective date of enactment of Revised Article 9 in Kansas. The security agreements did not comply with Kan. Stat. § 84-9-203 because the agreements did not contain a description of the land on which the crops were to be grown; therefore, under the old law, the security agreements failed to create an enforceable security interest in the crops. Under Revised Article 9, Kan. Stat. 84-9-203(a) (2001), a description of the land is no longer required. The creditor argued that the passage of Revised Article 9 cured the fault with the security agreements and perfected the security interests in the growing crops. Recognizing the lack of any precedent for this case, the court examined the transition provisions of Revised Article 9. In Rev. U.C.C. §§ 703, 704, there are provisions for security interests which were enforceable under old law but did not comply with the revised law. The court noted that no transition provision allows security interests which were unenforceable under old law to become enforceable merely by passage of the revised law. Therefore, the court held that the creditor's unenforceable security interests did not become enforceable after passage of Revised Article 9 in Kansas. ***In re* Stout, 284 B.R. 511 (Bankr. D. Kan. 2002)**.

PURCHASE-MONEY SECURITY INTEREST. In May 1994, the debtor grain company borrowed money from a bank and planning commission and granted a security interest in the grain inventory and equipment. A continuation statement was filed in March 1999. A chemical supplier sold agricultural chemicals to the debtor on credit in 1997 and filed a security agreement and financing statement in January 1998 but neither document identified the security interest as a purchase-money security interest (PMSI). The supplier had met with an officer of the bank and the debtor and claimed to have presented the PMSI documents to the bank officer who reviewed them. When the supplier learned that the debtor was in financial trouble the supplier removed chemicals from the debtor's property worth as much as was owed to the supplier. The bank filed a suit alleging that the removal of the chemicals was an improper conversion of its collateral. The supplier argued that it had a PMSI in the chemicals. The bank argued that the supplier did not have a valid PMSI because written notification of the claimed PMSI was not given to the bank. The court held that the presentation of the security interest documents at the supplier-debtor-bank officer meeting was not sufficient to give notice of the PMSI claim by the supplier to the bank because neither document mentioned a PMSI. Therefore, the court held that the supplier did not perfect its PMSI and the removal of the chemicals was a conversion of the bank's collateral. **Guaranty State Bank & Trust Co. v. Van Diest Supply Co., 55 P.3d 357 (Kan. Ct. App. 2002)**.

IN THE NEWS

DISASTER PAYMENTS. On January 15, 2003, Senate Republicans proposed $3 billion in disaster relief, half the amount farm groups requested for losses in the past two years. Senators were expected to debate the bill and vote on amendments and to complete work before the end of January. The Republican plan would send row-crop growers a payment equal to 42.25% of the amount they received in guaranteed farm program payments last year. Applications would be reopened for the Livestock Compensation Program, which makes payments to ranchers and farmers in drought-affected areas. Democratic Leader Tom Daschle of South Dakota has filed a package for $5.9 billion to offset crop and livestock losses in 2001 and 2002. It could be offered as a substitute for the $3 billion. **Agriculture online; www.agriculture.com**.

PACKERS AND STOCKYARDS ACT. Legislation has been introduced in the U.S. Senate which provides that a packer may not—

"(f) Own or feed livestock directly, through a subsidiary, or through an arrangement that gives the packer operational, managerial, or supervisory control over the livestock, or over the farming operation that produces the livestock, to such an extent that the producer is no longer materially participating in the management of the operation with respect to the production of the livestock, except that this subsection shall not apply to--

(1) an arrangement entered into within 7 days (excluding any Saturday or Sunday) before slaughter of the livestock by a packer, a person acting through the packer, or a person that directly or indirectly controls, or is controlled by or under common control with, the packer;

(2) a cooperative or entity owned by a cooperative, if a majority of the ownership interest in the cooperative is held by active cooperative members that--

(A) own, feed, or control livestock; and

(B) provide the livestock to the cooperative for slaughter;

(3) a packer that is not required to report to the Secretary on each reporting day (as defined in section 212 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1635a)) information on the price and quantity of livestock purchased by the packer; or

(4) a packer that owns 1 livestock processing plant." **Senate Bill 27**.

WAREHOUSES. "Officials from 13 states are up in arms about a new USDA grain warehouse rule threatening several state funds that protect farmers from losses if their elevator goes bankrupt. The rule, which many believe would allow federally-licensed elevators to avoid participating in state indemnity programs, has been in effect since August. [See 67 Fed. Reg. 50777 (Aug. 5, 2002)] But last October USDA put a moratorium on applications for federal licenses from state warehouses. That moratorium was set to expire early this month, but USDA is expected to continue it while states, the USDA and industry groups try to work out a compromise." **Dan Looker, *Successful Farming***.

CITATION UPDATES

Seggerman Farms, Inc. v. Comm'r, 308 F.3d 803 (7th Cir. 2002), *aff'g*, T.C. Memo. 2001-99 (contributions to corporations) see p. 190 *supra*.

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