of the decedent's death."[6] There are, of course, adjustments authorized to the decedent's adjusted basis (the aggregate basis increase of $1,300,000,[7] the increase for "qualified spousal property" of up to $3,000,000,[8] the adjustment for built-in losses and loss carryovers[9] and the adjustment for decedent non-residents of the United States of $60,000.[10]

EGTRRA in Section 901 provides for a "sunsetting" of all provisions in the 2001 Act (including I.R.C. § 1022) –

> "All provisions of and amendments made by this Act shall not apply – (2) . . . .to estates of decedents dying, gifts made, or generation skipping transfers, after December 31, 2010."

Some have argued that somehow, for deaths in 2010, the heirs will still retain a fair market value basis *if the inherited assets are sold after 2010*.[11] That is *not* what the statute states. To repeat, the statute merely states that ". . . this Act shall not apply . . . to estates of decedents *dying*. . . after December 31, 2010."[12] The sunset provision says nothing about the sale of assets in 2011 or later. Neither the statute nor the sunset provision says anything about the basis of decedents dying in 2010 being entitled to a step-up (or down) in basis in 2011. The statute merely states that the various Act provisions will not apply to deaths after December 31, 2010. There is a lack of credible authority for arguing that, for a death in 2010, the property is entitled to a new basis if the assets are held until 2011 or later.

Rules for determining basis for deaths after 2010

Assuming that Congress restores the concept of a new basis at death (or allows the current law to continue), property held by decedents dying after 2010 will be entitled to a new basis at death (stepped up or down) under the rules of *I.R.C. § 1014(a)*. Congressional action to restore carryover basis after 2010 would require enactment or reenactment of carryover basis rules because the rules in EGTRRA will not be effective in 2011 and later years without further action by the Congress.

ENDNOTES

[1] Pub. L. No. 107-16, § 901(a), (b), 115 Stat. 38 (2001). See Harl and McEowen, "Economic Growth and Tax Relief Act of 2001, H.R. 1836: Summary of Selected Provisions," 12 *Agric. L. Dig*. 81 (2001); Harl and McEowen, "Economic Growth and Tax Relief Reconciliation Act of 2001, H.R. 1836: Summary of Selected Provisions –Part II," 12 *Agric. L. Dig*. 97 (2001). See also Harl, "Income Tax Basis for Decedents Dying in 2010," 21 *Agric. L. Dig*. 81 (2010).

[2] See Harl, "Tempted to Make Big Gifts in 2010?" 21 *Agric. L. Dig*. 185 (2010).

[3] See Harl, "Income Tax Basis for Decedents Dying in 2010," 21 *Agric. L. Dig*. 81 (2010).

[4] I.R.C. § 2031(a). See also Malm v. United States, 420 F. Supp. 2d 1040 (D. N.C. 2005) (basis determined by date of death, not date of estate's sale of assets).

[5] I.R.C. § 1022(a)(1).

[6] I.R.C. § 1022(a)(2).

[7] I.R.C. § 1022(b)(2)(B).

[8] I.R.C. § 1022(c).

[9] I.R.C. § 1022(b)(2)(C).

[10] I.R.C. § 1022(b)(3).

[11] 2010 University of Illinois Federal Tax Workbook p. 366 (2010).

[12] EGTRRA, § 901(a)(2), Pub. L. No. 107-16, 115 Stat. 38 (2001) (emphasis added).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

HORSES. The plaintiff was a minor injured when bitten by a horse owned by the defendants. The defendants raised the defense that they were not liable for the injury because there was no evidence that the horse had a propensity to bite people or that the defendants knew of any such propensity. The defendants sought summary judgement and the trial court granted their motion. The court found that there was no evidence that the horse had any history of biting people and the plaintiff showed only that horses had a general tendency to bite if they thought food was offered by hand. The plaintiff also sought liability under the attractive nuisance doctrine. The court also rejected this claim of liability because Connecticut has not adopted the attractive nuisance doctrine but relies solely on a standard negligence that requires a higher degree of care with children. **Vendrella v. Astriab Family Limited Partnership, 2010 Conn. Super. LEXIS 2380 (Conn. Super. Ct. 2010)**.

STRICT LIABILITY. The plaintiff was injured when the plaintiff's car struck the defendant's cow on a public highway. The plaintiff sued alleging negligence and strict liability under S.C. Code § 47-7-130. The defendant was granted summary judgment on the claim of strict liability. The defendant argued, and the trial court held, that S.C. Code § 47-7-130 did not apply to personal injuries. The statute provides that an owner of a domestic animal is liable for all damages resulting from a trespassing animal. The appellate court held that the statute allowed all types of damages, to real and personal property and for injuries to persons. However, the court held that the statute applied only for trespassing animals; therefore, summary judgment for the defendant on the claim of strict liability was proper. **Williams v. Smalls, 2010 S.C. App. LEXIS 222 (S.C. Ct. App. 2010)**.

BANKRUPTCY

GENERAL

ATTORNEY'S FEES. The debtor was a lawyer and had successfully challenged an IRS claim in the taxpayer's bankruptcy case. The debtor acted *pro se* in the bankruptcy case and the challenge to the IRS claim and sought attorney's fees. The Bankruptcy Court awarded the fees but the appellate court reversed, holding that attorney's fees could not be awarded where the debtor had not incurred any out-of-pocket expenses from engaging the services of an attorney. **United States v. Hudson, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,719 (2d Cir. 2010)**.

FEDERAL TAX

DISCHARGE. The debtor owed taxes from 1999, 2000 and 2001 resulting from withdrawals from an IRA with insufficient withholding of taxes. In addition to insufficient withholding of taxes from the distributions, the taxpayer withdrew all of the IRA funds, stopped using checking accounts, and made extravagant purchases of real estate and personal property. The court held that the taxes were nondischargeable under Section 523(a)(1)(C) for willful attempting to evade payment of the taxes. The court found that the debtor had made affirmative acts to avoid payment of the taxes by dealing in cash, stopping direct deposit of salary payments and opening a new bank account used to convert checks to cash. The court also found two indicia of willfulness: the debtor's intentional changing of withholding amounts to less than the amount sufficient to pay taxes and the debtor's changing to cash dealing after the IRS levied against the debtor's checking account. ***In re* Barkley v. United States, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,725 (Bankr. N.D. Ga. 2010)**.

CONTRACTS

FARMER AS MERCHANT. The defendant farmer had entered into a series of oral contracts with the plaintiff cooperative for the sale of grain. The defendant failed to perform on two of the contracts and the plaintiff filed suit for breach of contract. The defendant raised a statute of frauds defense and the plaintiff sought summary judgment under the claim that the defendant was a merchant under the Minnesota UCC § 336.2-201(2). The plaintiff argued that, as a merchant under the UCC, the defendant had admitted the existence and terms of the contract after the plaintiff had sent the defendant a letter outlining the oral contracts' terms. In a decision designated as not for publication, the appellate court affirmed the trial court's grant of summary judgment for the plaintiff. The court acknowledged that the issue of whether a farmer can be a merchant under the UCC had not been decided in an appellate court in Minnesota but relied on similar cases in other states. The court found that the defendant was a merchant under the UCC because (1) the defendant had been farming since 1973, (2) the defendant had taken agricultural and business classes in college, (3) the defendant made all marketing decisions, (4) the defendant had sold grain to a variety of buyers and (5) the defendant had experience with cash sales and futures contracts. **Glacial Plains Cooperative v. Lindgren, 2010 Minn. App. Unpub. LEXIS 880 (Minn. Ct. App. 2010)**.

FEDERAL FARM PROGRAMS

EMERGENCY FOREST RESTORATION PROGRAM. The FSA has issued interim regulations amending the regulations to implement the new Emergency Forest Restoration Program (EFRP) as required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The EFRP will provide financial assistance to owners of non-industrial private forest land to restore land that was damaged by a natural disaster on or after January 1, 2010. This interim rule also reorganizes existing Emergency Conservation Program (ECP) regulations to incorporate EFRP and makes minor technical amendments to the existing regulations for ECP including general regulations that will now apply to both ECP and EFRP. **75 Fed. Reg. 70083 (Nov. 17, 2010)**.

CROP INSURANCE. The FCIC has issued proposed regulations to amend the common crop insurance regulations, extra long staple cotton crop insurance provisions, to remove all references to the daily spot cotton quotation and replace the reference with the national average loan rate published by the FSA, to incorporate a current special provisions statement into the crop provisions, and to make the extra long staple cotton crop insurance provisions consistent with the upland cotton crop insurance provisions. The changes will apply for the 2012 and succeeding crop years. **75 Fed. Reg. 70850 (Nov. 19, 2010)**.

FEDERAL ESTATE AND GIFT TAXATION

MARITAL DEDUCTION. The decedent had established a trust prior to marriage to the surviving spouse. The couple had entered into a marital agreement which had some terms that were inconsistent with the trust as to distribution of property at the decedent's death among the surviving spouse and other heirs. The surviving spouse and other heirs obtained legal counsel and negotiated a resolution of the inconsistencies. The surviving spouse received estate property under the settlement agreement and the estate sought a ruling that amounts distributed to the spouse under the agreement were eligible for the marital deduction. The IRS ruled that the settlement was reached in good faith settlement of the spouse's legally enforceable claims; therefore, the property received under the settlement was eligible for the marital deduction. **Ltr. Rul. 201046004, Aug. 17, 2010**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The taxpayer had timely filed its federal income tax return for the taxable year, along with the original Form 3115 filed under *Rev. Proc. 2008-52, 2002-1 C.B. 327*, to change its method of accounting for deducting internal employee compensation in the year the compensation is incurred, commencing with the taxable year ended. However, the taxpayer failed to file a duplicate of the Form 3115 with the IRS until one day after the deadline contained in section 6.02(3)(a) of *Rev. Proc. 2008-52* due to an oversight by the taxpayer's tax preparation service beyond the taxpayer's control. The IRS allowed the taxpayer an extension of time to file Form 3115. **Ltr. Rul. 201046002, Aug. 18, 2010**.

BONDS. The IRS has issued guidance on the determination of when state and local bonds, as defined in I.R.C. § 103(c) are considered "issued" for purposes of deadlines on issuing bonds. The notice provides guidance on the relevant distinction between the "issue date" of a "bond" versus the "issue date" of an "issue" for purposes of this determination. One instance, among others, in which the notice applies is in determining when Build America Bonds, structured as "draw-down" bonds or loans in which draws are funded at different times, are considered issued for purposes of statutory deadlines on issuing these bonds under I.R.C. § 54AA. The notice does not apply for purposes of applying the qualified small issuer and de minimis exceptions to the tax-exempt carrying cost disallowance provision under I.R.C. § 265(b)(3) and I.R.C. § 265(b)(7) to draw-down loans. **Notice 2010-81, I.R.B. 2010-50**.

BUSINESS EXPENSES. The taxpayer was self-employed as a loan officer and worked with a loan processor. The taxpayer testified that the loan processor was to be paid 90 percent of the loan commissions obtained by both parties. The taxpayer's bank statements and checks demonstrated a pattern of deposits of the loan commission checks and payments to the loan processor of approximately 90 percent of the deposited commissions. However, there were several deposits which did not match the pattern. The court believed the taxpayer that the later deposits were only deposits of the taxpayer's share of the loan commissions and that the remainder was paid in cash to the loan processor. The court allowed business wage deductions for the amounts paid by checks to the loan processor but adjusted the wage deductions allowed for the cash payments to reflect the same percentage as the check payments. The taxpayer's deductions for other business expenses were disallowed for failure to provide any written substantiation of the expenses. **Jenkins v. Comm'r, T.C. Memo. 2010-251**.

COURT AWARDS AND SETTLEMENTS. The taxpayer suffered physical injuries and sickness while incarcerated in a state prison. The taxpayer was released after it was determined that the taxpayer was wrongfully convicted. The state legislature enacted legislation which provided compensation for persons wrongfully convicted and the taxpayer received payments under this law. In a Chief Counsel Advice letter, the IRS ruled that payments received under the state compensation law were excludible from taxable income as compensation for physical injuries. **CCA 201045023, Nov. 4, 2010**.

DISABILITY PAYMENTS. The taxpayer's employer carried a disability insurance policy which provided monthly payments if the taxpayer was unable to work because of a physical disability. The taxpayer was injured while working and filed a claim for the disability, which was rejected. The taxpayer eventually obtained a settlement after filing a lawsuit against the insurance company. The insurance company issued a Form 1099 listing the settlement payment as miscellaneous income but sent the form to the wrong address. The taxpayer had a tax return preparer prepare the income tax return and the issue of the taxable nature of the settlement payment was investigated with calls to the employer and the IRS, both of which indicated that the settlement was not taxable. The IRS assessed a deficiency for the tax on the settlement amount. The court examined the original disability insurance policy to determine the nature of the payments and found that the payments were intended to substitute for the loss of income from a disability and were not intended as compensation for the injury itself. The court found that the settlement payment was intended to pay the taxpayer for the lost payments under the insurance policy and were not intended as compensation for the injury itself; therefore, the payments were taxable under I.R.C. § 105(c). The court refused to assess the accuracy-related penalty under I.R.C. § 6662 because the taxpayers made a reasonable attempt to determine the tax nature of the settlement and did not receive the Form 1099. **Gentile v. Comm'r, T.C. Memo. 2010-254**.

DISASTER LOSSES. On November 2, 2010, the President determined that certain areas in South Dakota 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 July 20, 2010. **FEMA-1947-DR.** On November 5, 2010, the President determined that certain areas in the Virgin Islands are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on October 1, 2010. **FEMA-1948-DR.** Accordingly, taxpayers in the areas may deduct the losses on their 2009 federal income tax returns. See

I.R.C. § 165(i).

DOMESTIC PRODUCTION DEDUCTION. The taxpayer was a non-exempt farmer's marketing and purchasing agricultural cooperative. The cooperative made payments to members and participating patrons for grain produced by the members and patrons which were qualified per-unit retain allocations because they were (1) distributed with respect to the crops that the cooperative stored, processed and marketed for its patrons; (2) determined without reference to the cooperative's net earnings; and (3) paid pursuant to a contract with the patrons establishing the necessary pre-existing agreement and obligation, and within the payment period of I.R.C. § 1382(d). The IRS ruled that the cooperative was allowed to add back these amounts paid to members as net proceeds in calculating its qualified production activities income under I.R.C. § 199(d)(3)(C). **Ltr. Rul. 201046001, Aug. 6, 2010**

INCOME. The taxpayer, a public utility, started a pilot program to determine the effectiveness of smart grid photovoltaic systems for residential customers. The customers received different types of systems installed in their homes without cost. The systems became the permanent property of the customers and had the potential to add value to the customers' homes. The IRS ruled that the value of the systems was not income to the customers but constituted energy conservation subsidies excluded from income under I.R.C. § 136. **Ltr. Rul. 201046013, Aug. 10, 2010**.

IRA. The IRS has issued guidance to drafters and users of pre-approved IRAs and drafters and users of prototype IRAs, including rules for when documents must be submitted to the Internal Revenue Service and new user fees for individual retirement annuities. The revenue procedure also provides guidance to users of the IRS's model IRAs and describes the availability of new model individual retirement annuities. **Rev. Proc. 2010-48, I.R.B. 2010-50**.

INNOCENT SPOUSE RELIEF. The taxpayer and spouse failed to file returns and pay taxes for several years due to the taxpayer's spouse's financial difficulties. The spouse suffered from depression and alcoholism and was eventually admitted for rehabilitation treatment. The taxpayer discovered the non-filings and unpaid taxes during the spouse's treatment and made some attempts to file the returns. The couple separated but did not divorce. The court held that the taxpayer was not entitled to equitable innocent spouse relief, under I.R.C. § 6015(f) and *Rev. Proc. 2003-61, 2003-2 C.B. 296*, because the taxpayer was still married, the taxpayer did not demonstrate any economic hardship from paying the taxes, the taxpayer had not fully complied with the tax laws since the tax years involved, the taxpayer would receive a significant benefit from not paying the taxes and the taxpayer had reason to know that the taxes were not being paid. **Pugsley v. Comm'r, T.C. Memo. 2010-255**.

During the taxpayer's marriage, the couple's income came solely from the spouse's sole proprietorship business. The spouse controlled the financial information from the business and there was evidence of mental and physical abuse of the taxpayer by the spouse. The couple divorced and the IRS assessed unpaid taxes from which the taxpayer sought innocent spouse relief. The court granted equitable innocent spouse relief under *Rev. Proc. 2003-61, 2003-2 C.B. 296*, because (1) the taxpayer was divorced, (2) the taxpayer would suffer economic hardship from paying the taxes; (3) the taxpayer had since complied with all tax laws; (4) the taxpayer would not receive a significant benefit from not paying the taxes; and (5) the taxpayer was abused by the former spouse during the tax years involved. **Drayer v. Comm'r, T.C. Memo. 2010-257**.

LEGAL EXPENSES. The taxpayer was an S corporation owned by another corporation. An employee of the taxpayer was a shareholder of the other corporation. The employee provided investment services for a third corporation which committed embezzlement of its clients' funds. Although the taxpayer ceased business with the third corporation upon learning about the embezzlement, the employee failed to timely report the embezzlement to the proper authorities and the employee pled guilty of misprison, resulting in a fine, order for restitution, and a prison sentence. The taxpayer paid the fine and restitution assessment and legal fees for the employee. The IRS ruled that the amounts paid arose out of the taxpayer's business activities and were deductible under I.R.C. § 162(a). **Ltr. Rul. 201045005, July 29, 2010**.

REPAIRS. The IRS has published an Audit Techniques Guide that addresses whether an expenditure qualifies as a currently deductible repair or is required to be capitalized. **Capitalization v Repairs Audit Technique Guide, IRPO ¶ 202,495, Nov. 22, 2010**.

S CORPORATIONS

PASSIVE INVESTMENT INCOME. The taxpayer was an S corporation which had a subsidiary which owned and operated a series of commercial rental properties for small start-up technology companies. The taxpayer, through the subsidiary, provided services for the buildings and tenants, including (1) the maintenance of all mechanical, electrical, BMS and control monitoring, emergency power, fire alarm, elevators, plumbing, and other major and minor systems in the properties; (2) the performance of exterior and interior cleaning, painting, decorating, plumbing, carpentry, landscaping, roofing, maintenance of heating, ventilating and air conditioning systems, and such other normal maintenance, repair work and minor construction as may be necessary; (3) investigating all necessary preventative maintenance programs; (4) purchasing supplies, materials and services; and (5) regularly inspecting and testing the physical condition of the properties. The IRS ruled that the taxpayer provided sufficient services or incurred substantial costs in the rental of the properties so that the rent received was derived from an active trade or business and was not passive investment income. **Ltr. Rul. 201045006, July 14, 2010**.

SAFE HARBOR INTEREST RATES

December 2010

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	0.32	0.32	0.32	0.32
110 percent AFR	0.35	0.35	0.35	0.35
120 percent AFR	0.38	0.38	0.38	0.38
		Mid-term		
AFR	1.53	1.52	1.52	1.52
110 percent AFR	1.68	1.67	1.67	1.67
120 percent AFR	1.83	1.82	1.82	1.81
		Long-term		
AFR	3.53	3.50	3.48	3.47
110 percent AFR	3.89	3.85	3.83	3.82
120 percent AFR	4.24	4.20	4.18	4.16

Rev. Rul. 2010-29, I.R.B. 2010-50.

TAX RETURN PREPARERS. The IRS has published information on the new PTIN. "New regulations require all paid tax return preparers to apply for a Preparer Tax Identification Number — even those who already have one — before preparing any federal tax returns in 2011.

"The PTIN requirement is one of the first provisions being implemented in a new oversight program to help regulate the tax preparation industry. Beginning January 1, 2011, anyone paid to prepare all or substantially all of any federal tax return or claim for refund must have a PTIN. The requirement applies to all paid tax return preparers, including those who are enrolled agents, certified public accountants and attorneys.

"Tax return preparers can register immediately using a new PTIN sign-up system available through www.IRS.gov/taxpros. Tax return preparers who received their PTINs prior to Sept. 28, 2010, must register using the new sign-up system. Preparers will need to create an account, complete the PTIN application and pay a $64.25 fee. To apply for a PTIN online, follow these four easy steps:

"1. Create Your Account — Create an account by providing your name, email address and security question information. The system will then email your temporary password, which you will change when you go back to enter your information in the PTIN application.

"2. Apply for Your PTIN — Complete the online application by providing certain information from your previous year's tax return, professional credentials, and more.

"3. Pay Your Fee — The application will transfer you to our partner bank where you will make your payment by credit card or direct debit.

"4. Get Your PTIN — After the bank confirms your payment, your PTIN is provided online. If you already have a PTIN, you will retain the same number in most cases. You will also receive a welcome letter providing additional guidance.

"It only takes about 15 minutes to sign up online and receive your PTIN. If you opt to use the paper application, Form W-12, IRS Paid Preparer Tax Identification Number Application, it will take 4-6 weeks to process. For more information, visit IRS.gov." **Special Edition Tax Tip 2010-13**.

PROPERTY

DRAINAGE. The plaintiffs owned farm land neighboring the defendant's property. The evidence showed that the plaintiffs' land had not historically flooded until after the defendant made changes to the defendant's land. The evidence showed that the defendant had filled wetlands on the defendant's property and dug a drainage ditch which directed water onto the plaintiffs' property. The filled wetland was used to grow crops where no crops were grown before. The plaintiffs also demonstrated that, before the conversion, the natural flow of draining water was from the plaintiffs' land on to the defendant's property but that this flow was reversed by the actions of the defendant. The trial court also noted that the defendant did most of the conversion at night, the conversion may violate state and federal wetland rules, and a neighbor testified that the defendant had diverted other drainage water after the neighbor refused to testify in the defendant's favor. The trial court ruled that the defendant unreasonably interfered with the natural flow of surface water in that the benefit to the defendant was outweighed by the harm to the plaintiffs' property. In a decision designated as not for publication, the appellate court affirmed, holding that the trial court's ruling was supported by substantial evidence. **Vokal v. Vokal, 2010 Minn. App. Unpub. 1133 (Minn. Ct. App. 2010)**.

STATE TAXATION OF AGRICULTURE

AGRICULTURAL USE. The plaintiffs owned farm land which was used for farming in 2004 and 2005. In early 2006 the land was sprayed with herbicide in preparation for planting crops but no crop was planted because, by the planting date, a sale of the property to a developer was expected to close before a crop could be harvested. The property had been assessed at $11,000 under special use valuation for 2004 and 2005 but the county assessed the property at $3 million as urban land for 2006 because of the sale. The plaintiffs argued that the land was still eligible for agricultural valuation in 2006 because, as of January 1, 2006, the land was still intended to be farmed and the land had been farmed the previous two years. The court held that the county was authorized to value the land in 2006 as urban land because the land was not used as a farm in 2006 since no crop was planted or harvested. **Oakridge Development Co. v. The Property Tax Appeal Bd., 2010 Ill. App. LEXIS 1005 (Ill. Ct. App. 2010)**.

The plaintiff purchased 10.55 acres of land zoned as residential and agricultural and built a residence on the land. The land was assessed for property taxes as residential property but the plaintiff appealed to the Iowa Property Assessment Appeal Board (PAAB), arguing that the property should be assessed as agricultural land. The appeal noted that for three years prior to the assessment, six acres were devoted to growing alfalfa, two acres were used for pasturing horses and two acres were timberland. The plaintiff also presented a Schedule F of the federal income tax return showing a loss from farming operations, with $119 in agricultural program payments and $15,221 in expenses. The assessor presented an analysis of the comparable income producing ability of the residence, at $12,000 per year in rent, and the farm, which produced a loss. The assessor argued that, because the residence had a greater income producing ability, the property was properly assessed as residential. The PAAB ruled that the land was to be assessed as agricultural property, finding that the plaintiff was making a good faith attempt to profitably breed and raise horses. The PAAB noted that the losses were consistent with a new business, especially with horses. The trial and appellate courts affirmed the PAAB ruling as supported by substantial evidence. **Polk County Board of Review v. Property Assessment Appeal Bd., 2010 Iowa App. 855 (Iowa Ct. App. 2010)**.

The plaintiffs purchased a four acre rural property on which existed a hay barn, sheep barn, alfalfa crop land and a residence. The plaintiffs were employed full time and the wife intended to start a sheep breeding business on the property. The plaintiffs constructed a sheep pen but had no sheep on the property. After requests for information on the income from agricultural activities from the plaintiff went unanswered, the assessor assessed the property as residential. The plaintiff appealed the assessment to the Iowa Property Assessment Appeal Board (PAAB), arguing that the property should be assessed as agricultural land. The plaintiffs presented a federal income tax Schedule F showing a tax loss from the farming operations. The PAAB ruled that the land should be assessed as agricultural land because the plaintiffs were making a good faith effort to raise alfalfa and sheep. The trial and appellate courts affirmed the PAAB ruling as supported by substantial evidence. **Polk County Board of Review v. Property Assessment Appeal Bd., 2010 Iowa App. 834 (Iowa Ct. App. 2010)**.

TIMBER. The plaintiffs were North Carolina partnerships which owned forest land in West Virginia. The plaintiffs' operations were limited to managing the timber land, sustaining timber on the land and selling harvesting rights to third parties. The plaintiffs did no harvesting of the trees themselves. The plaintiffs were assessed West Virginia business excise taxes which the plaintiffs appealed, arguing that the management of timber land was exempt from the excise taxes as an agricultural operation. The court agreed with the plaintiffs, noting that the statute, W. Va. Code § 110-23-3.10, specifically included the management of timber land, if no harvesting activity is included, in the definition of agriculture. **Morris v. Heartwood Forestland Fund Limited Partnership, 2010 W. Va. LEXIS 137 (W. Va. 2010)**.

ZONING

PRIOR NONCONFORMING USE. The defendant inherited land from an aunt. The aunt had used a portion of the land since 1936 to pasture livestock until the aunt's death. Two other parcels were purchased in 1950 and 1957. In 1955 the city zoned the land purchased in 1957 as residential but allowed the aunt to keep livestock on the property. The other two parcels were zoned agricultural but were re-zoned as residential in 1983, with the city again allowing the aunt to pasture animals on the entire property. After the aunt died, the city informed the defendant that livestock was not permitted on land zoned residential and ordered the removal of the defendant's three horses and a mule. The defendant asserted the defense of prior non-conforming use but the trial court found the defendant guilty of violating the zoning law. On appeal, the appellate court reversed, holding that the original zoning citation was too broad. The court found that the original 1936 parcel and the parcel purchased in 1950 both had prior non-conforming uses in that the zoning laws, or lack thereof, did not prohibit the livestock until the subsequent zoning change in 1955. The remaining parcel obtained in 1957 did not have a prior nonconforming use but was very small in comparison to the whole property and was comprised of mostly wooded land not used to pasture livestock. Thus, a citation for the whole property was too broad and the small portion of the land which was in violation was too small to justify the citation. **City of Clear Lake v, Kramer, 2010 Iowa App. LEXIS 865 (Iowa Ct. App. 2010)**.

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