The term "qualified appraiser" (again, for purposes of *this paragraph* – limited to paragraph 11 in I.R.C. § 170(f)), on the other hand, means an individual who ". . . (I) has earned an appraisal designation from a recognized professional organization or has otherwise met minimum education and experience requirements set forth in regulations . . . ; (II) regularly performs appraisals for which the individual receives compensation, and (III) meets such other requirements as may be prescribed . . . " by the Department of the Treasury.[14] The individual must – (1) demonstrate verifiable education and experience in valuing the type of property subject to the appraisal and (2) has not been prohibited from practicing before the Internal Revenue Service during the three-year period ending on the date of the appraisal in question.[15]

An appraiser must include a declaration, in the appraisal statement, that the appraiser may be subject to a penalty if a substantial or gross valuation misstatement results from an appraisal of the property that the appraiser knows, or should have known, would be used in connection with a tax return or claim for refund.[16]

Important point for farm and ranch appraisals (and appraisers)

Notice 2006-96[17] makes it clear that an appraiser is treated as having earned an appraisal designation from a recognized professional appraisal organization if the appraisal designation is awarded on the basis of demonstrated competency in valuing the type of property for which the appraisal is performed. Also, the education and experience requirements are likewise associated with the type of property being valued. Thus, appraisers of farm and property are not judged by the competency of appraisers of urban property.

ENDNOTES

[1] See Duffy, *Iowa Farmland Survey*, Iowa State University Extension, December 2012.

[2] See I.R.C. § 2001(a). See generally 5 Harl, *Agricultural Law,* Chapters 42-45 (2013); Harl, *Agricultural Law Manual* § 5.03 (2013).

[3] See I.R.C. § 2601. See generally 5 Harl, *Agricultural Law* § 44.08 (2013).

[4] See I.R.C. § 2501(a). See generally 6 Harl, *Agricultural Law* Ch. 46 (2013).

[5] See I.R.C. §§ 170(f)(11)(E), 6695A.

[6] Pub. L. No. 109-280, 120 Stat. 780 (2006), adding I.R.C. § 170(f)(11)(E) and I.R.C. § 6695A (penalties).

[7] 2006-2 C.B. 902.

[8] 2006-2 C.B. 902.

[9] I.R.C. § 6695A(a).

[10] I.R.C. § 6695A(b).

[11] I.R.C. § 6695A(c).

[12] I.R.C. § 170(f)(11)(E)(i).

[13] Notice 2006-96, 2006-2 C.B. 902.

[14] I.R.C. § 170(f)(11)(E)(ii).

[15] I.R.C. § 170(f)(11)(E)(iii).

[16] Notice 2006-96, 2006-2 C.B. 902.

[17] 2006-2 C.B. 902.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

ELIGIBILITY. We have been informed by one of the attorneys in the case that the IRS has decided not to appeal the following case. The debtor had farmed with a brother in a partnership from 1993 through 2010 when the partnership was dissolved. The dissolution agreement split some of the farm equipment but the brother assumed the partnership liabilities and paid cash for the value of the debtor's partnership interest. The debtor's share of farming income for 2007 through 2010 exceeded 50 percent of the debtor's total income. After the dissolution and up to the bankruptcy petition, the debtor continued to farm alone in a much smaller operation. The debtor filed for Chapter 12 in 2011 and federal and state tax claims arising from the dissolution of the partnership were filed in the debtor's bankruptcy case and the IRS argued that the debtor was not eligible for Chapter 12 because the debtor did not have farm income for at least three years before the filing of the petition, because the debtor changed farming operations in 2010. The IRS argued that the farm income eligibility requirements had to be met by the debtor in the farming operation active when the petition was filed; therefore, the debtor's income from the partnership could not be considered. The court disagreed and held that the farm income requirement did not require that the income come solely from the operation active when the debtor filed the petition and could be combined with all farm activity during the three years prior to the petition. Because the debtor's farming income in two of the pre-bankruptcy years exceeded non-farm income, the debtor was eligible for Chapter 12. ***In re* Hemann, 2013 Bankr. LEXIS 1385 (Bankr. N.D. Iowa 2013)**.

USE OF ESTATE PROPERTY. The debtors, husband and wife, owned and operated a dairy farm through a limited liability company. The debtors had purchased the dairy farm with a real estate mortgage and commercial security agreement with a bank which provided for a blanket security interest on the land, equipment, livestock, and milk and cattle sale proceeds. The debtors had suffered losses to their cows from stray electricity and sought

permission to sell the damaged cows and use the proceeds to purchase new cows for the dairy. The debtors proposed providing replacement liens on the the new cows and provided for monthly payments based on the amount of milk sales as the new cows began full production. The court approved the use of the sale proceeds to purchase replacement cows because the creditor was adequately protected and the debtors had demonstrated their expertise at the dairy operation, thwarted only by the stray voltage problem which had been corrected. ***In re* Vander Vegt, 2013 Bankr. LEXIS 1788 (Bankr. N.D. Iowa 2013)**.

FEDERAL TAX

CLAIMS. The debtors had purchased real property using a bank loan secured by a deed of trust pledging the property as collateral. The debtors defaulted on the loan and the bank issued a Form-1099-C, *Cancellation of Debt*, listing the difference between the fair market value of the property and the loan value as discharged indebtedness. The debtors then included the reported amount as taxable income on their federal return. The debtors later filed for Chapter 13 and the bank filed a claim for the same amount plus interest and attorney fees. The court held that the bank was estopped from asserting its claim for the deficiency in bankruptcy by the filing of the Form 1099-C which amounted to an admission that the debt had been cancelled. ***In re* Reed, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,325 (Bankr. E.D. Tenn. 2013)**.

FEDERAL FARM PROGRAMS

WHEAT. The GIPSA has adopted as final regulations revising the U.S. Standards for Wheat under the U.S. Grain Standards Act to change the definition of Contrasting Classes in Hard White wheat and change the grade limits for shrunken and broken kernels. **78 Fed. Reg. 27857 (May 13, 2013)**.

FEDERAL ESTATE AND GIFT TAXATION

No items.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The taxpayer, a corporation with wholly-owned subsidiaries, internally prepared its consolidated federal income tax return but engaged an advisor to prepare a Form 3115 to to automatically change the method of accounting to deduct repair and maintenance costs not required to be capitalized under I.R.C. § 263(a) and unit of property determinations for retirements of depreciable tangible property pursuant to the provisions of *Rev. Proc. 2011-14, I.R.B. 2011-4, 330*. The taxpayer timely filed Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns* but due to an unusual series of events, the taxpayer failed to file a timely return with the attached original Form 3115 filed under section 6.02(3)(a)(i) of *Rev. Proc. 2011-14, I.R.B. 2011-4, 330*. However, the taxpayer represented that the copy of the Form 3115 required to be filed by section 6.02(3)(a)(ii)(B) of *Rev. Proc. 2011-14* was timely filed with the Ogden Service Center. The IRS granted an extension of time to file an amended return with Form 3115. **Ltr. Rul. 201318007, Feb. 4, 2013**.

The taxpayer, a corporation with wholly-owned subsidiaries, hired a tax professional to prepare its consolidated federal income tax return but the return preparer failed to attach to the return a Form 3115 to automatically change the method of accounting. The IRS granted an extension of time to file an amended return with Form 3115. **Ltr. Rul. 201318002, Jan. 22, 2013**.

CAPITAL GAINS. Taxpayer maintained relationships with merchants and provided servicing and clearing operations with larger merchants. The taxpayer sold part of its business relating to the direct merchant relationship with merchants to third party purchasers. These third party purchasers were in the business of consolidating servicing of transactions among multiple major providers, permitting a competitive advantage. The sale of these merchant contracts relating to merchants resulted in the recognition of significant taxable gains to the taxpayer. The taxpayer originally reported taxable gains on the sale of the merchant contracts as ordinary income but later filed amended federal income tax returns recharacterizing the gains on the sale of the merchant contracts as capital gains, which were offset by capital losses arising in the taxable year. The taxpayer sold the merchant contracts pursuant to various agreements which transferred the right, title and interest in a merchant servicing agreement and the books and records of each acquired merchant to the identified third party purchaser. Under the agreements, the third party purchasers assumed the obligations and liabilities of the taxpayer arising out of the transactions entered into by the acquired merchant. The agreements provided for an initial term of a specific number of years, along with renewal and termination provisions. The taxpayer argued that the merchant contracts qualify as I.R.C. § 1221 capital assets, as the merchant contracts are not excluded by the categories enumerated in I.R.C. § 1221(a)(1) through (8). In a Chief Counsel Field Advice letter, the IRS ruled that the gain on the sale of the merchant contracts was ordinary income because: (1) the sales represented the right to receive ordinary income, since the fees were collected from merchants for the performance of servicing and clearing operations; and (2) the agreements, under which the merchant contracts were sold, reflected a term certain for the transfer of the accounts, with provisions for renewal or termination. **FAA 20131901F, May 15, 2013**.

CHARITABLE DEDUCTIONS. The taxpayer is a corporation which is a wholly-owned subsidiary of another corporation and joins in the consolidated federal income tax return filed for the

affiliated group headed by that corporation. The taxpayer owned certain improved real property which contained I.R.C. § 1250 depreciable real property. Most of this I.R.C. § 1250 property had been fully depreciated. The taxpayer intends to contribute some or all of the property to one or more organizations that are exempt from federal income tax under I.R.C. § 501(c)(3) as a charitable contribution under I.R.C. § 170, and the taxpayer intends to claim a charitable deduction under Section 170 with respect to its contribution of the property. The taxpayer represented that the Section 501(c)(3) tax-exempt organizations will have the same basis in the property as the taxpayer will have at the time of the transfer pursuant to I.R.C. § 1015(a). The IRS ruled that I.R.C. § 291(a)(1) would not apply to reduce the charitable deduction for the transfer of the property because the transfer was a gift. **Ltr. Rul. 201318003, Jan. 22, 2013**.

DEPENDENTS. The taxpayer was the divorced parent of three children. The divorce decree contained a provision granting the taxpayer the dependency exemption for one child in odd numbered years and two children during even numbered years. The former spouse had the same right in the opposite years. However, the spouse could claim the exemptions only if the spouse was employed during that year and the taxpayer could claim the exemptions only if the taxpayer was current on all child support payments. The divorce decree had no provision requiring either parent to sign a Form 8332, *Release of Claim to Exemption for Child of Divorced or Separated Parents*. In the tax year involved here, the children lived with the former spouse more than 50 percent of the year and the former spouse was not employed. The former spouse had not signed a Form 8332 but the taxpayer claimed exemptions for all three children. The court held that the taxpayer was not entitled to any of the dependency exemptions for the three children because the taxpayer was not the custodial parent in that year and the custodial parent did not sign a Form 8332 which was attached to the taxpayer's return. **Shenk v. Comm'r, 140 T.C. No. 10 (2013)**.

DISABILITY PAYMENTS. The taxpayer was a political subdivision with all powers to govern and provide for the health, safety and welfare of its citizens. The taxpayer adopted a statute to create a plan which provided for payment of benefits to qualifying beneficiaries of certain public employees who die or sustain an injury resulting in death in the line of duty. The plan received funding from the taxpayer which also accepted contributions from members of the general public to fund the plan. The amount paid to qualifying beneficiaries was a onetime payment of a designated amount which was not determined based on a deceased employee's age or length of service or prior contributions to the plan. The taxpayer represented that the plan was not an annuity from a plan that is qualified under I.R.C. § 401(a). The IRS ruled that the benefits paid under the plan were not considered gross income to the beneficiaries because amounts received by an employee under a workers' compensation act or under a statute in the nature of a workers' compensation act that provided compensation to employees for personal injuries or sickness incurred in the course of employment are excluded from gross income. **Ltr. Rul. 201318001, Oct. 17, 2011**.

DOMESTIC PRODUCTION DEDUCTION. The taxpayer was a Subchapter T marketing cooperative. On the taxpayer's Schedule G of Form 1120-C, *U.S. Income Tax Return for Cooperative Associations*, the taxpayer listed patronage gross receipts and nonpatronage gross receipts. Additionally, the taxpayer claimed a domestic production deduction for patronage income and no deduction for nonpatronage income. Although the taxpayer computed a number for both patronage and nonpatronage income for purposes of the deduction, the taxpayer did not perform two deduction computations, one for patronage sourced activities and another for nonpatronage sourced activities. Instead, the taxpayer computed its deduction by aggregating the patronage and nonpatronage sourced activities. The taxpayer took the position that because the taxpayer found no basis in I.R.C. § 199 or the Treasury Regulations for I.R.C. § 199 that requires cooperative to perform two separate calculations, the taxpayer's position was "correct, reasonable and proper based on the law and regulations." In a Chief Counsel Field Advice letter, the IRS ruled that the taxpayer had to separately compute the deduction as to patronage-sourced income. The IRS noted that the taxpayer's nonpatronage-sourced income (wages) produced a negative qualified production activities income and no deduction; thus, aggregating the patronage and nonpatronage-sourced income would result in distortion of the proper amount to be used to determine the deduction, which was limited only to patronage-sourced income. **FFA 20131802F, May 7, 2013**.

HOBBY LOSSES. The taxpayer was a part-time professor who started writing plays and historical books. The taxpayer claimed expenses for this activity for trips to France. The expenses include rent, a typist, a driver and a maid. The losses from the writing activity offset the taxpayer's income from teaching and social security benefits. The court held that the writing activity was not engaged in with the intent to make a profit because (1) the taxpayer had no business plan, business activity records or separate bank account; (2) the taxpayer made no attempt to change the activity to decrease expenses or increase revenue; (3) the activity had no income; (4) although the taxpayer had expertise as to the subject of the writings, the taxpayer had no expertise as to the business of writing; (5) the taxpayer failed to provide evidence of how much time was spent on the activity; (6) the losses offset a substantial amount of other income; and (7) the taxpayer received personal pleasure from the trips to France. **Westrich v. Comm'r, T.C. Summary Op. 2013-35**.

IRA. The taxpayer received an early distribution from an IRA on January 1, 2008 but failed to pay the 10 percent additional tax on the amount. The taxpayer claimed that the distribution was exempt from the 10 percent tax because the funds were used to purchase a home as a first-time homebuyer under I.R.C. § 72(t)(2)(F). However, the court found that the title to the home did not include the taxpayer's name, the home was purchased in 2007 and the taxpayer had owned a house within two years of the alleged purchase; therefore, the court held that the taxpayer was not eligible for the first-time homebuyer exemption from the 10 percent tax. **Ung v. Comm'r, T.C. Memo. 2013-126**.

INNOCENT SPOUSE RELIEF. During marriage, the taxpayer's former spouse owned and operated a drug store as a corporation. The taxpayer served as chief financial officer, worked in the store, wrote checks and made deposits. When the store had financial difficulties, the couple withdrew amounts from their IRAs to pay business expenses. The couple did not file income tax returns in those years and the IRS assessed taxes and penalties based on those withdrawals. When the former spouse died, the taxpayer received the spouse's interest in the business plus substantial proceeds from a life insurance policy. The taxpayer filed for innocent spouse relief, claiming that the former spouse had promised to pay taxes from the withdrawn amounts. The court agreed with the IRS denial of innocent spouse relief because (1) the taxpayer received a benefit from the failure to pay taxes, (2) the taxpayer has not fully complied with the income tax laws since those years, and (3) the taxpayer would not suffer economic hardship from having to pay the taxes. In addition, the court noted the taxpayer's close involvement with the business indicated that the taxpayer was aware of, if not complicit in, the failure to pay the taxes. **Marzullo v. Comm'r, T.C. Memo. 2013-120**.

The taxpayer's former spouse was a dentist who owned a dental practice which operated in two cities. The taxpayer took care of all financial matters, including payment of all business expenses with the bookkeeper and preparation of the tax return with a tax return prepararer. The former spouse refused to participate in any of the financial activities for the business or family. The IRS assessed taxes for the years the couple filed joint returns and the taxpayer sought innocent spouse relief. After the couple divorced, the taxpayer received all the business assets but had a difficult time keeping the dental practice operating and was forced to sell one office to pay debts and expenses for the remaining office. The court held that innocent souse relief was allowed because (1) the taxpayer was divorced from the former spouse, (2) the taxpayer demonstrated that payment of the taxes would be a financial hardship, and (3) the taxpayer showed that the taxpayer did not receive a financial benefit from not paying the taxes. Although two factors weighed against relief, the court felt that the taxpayer deserved to continue efforts to support five minor children without the burden of taxes resulting from the former spouse's income. **Cutler v. Comm'r, T.C. Memo. 2013-119**.

MORTGAGE INTEREST. The taxpayers, husband and wife, purchased a home using a negative amortization mortgage loan. The mortgagee sent the taxpayers a Form 1098 listing the total interest charged in 2007 and the portion paid and portion added to the loan principal. The taxpayers claimed the entire interest charged as a mortgage interest deduction. The taxpayers provided no evidence that the unpaid portion of the interest was actually paid and not added to the mortgage principal. The court held that the taxpayers were limited to a deduction for only the amount actually paid in 2007. **Hargreaves v. Comm'r, T.C. Summary Op. 2013-37**.

PENSION PLANS. The rates below reflect changes implemented by the Moving Ahead for Progress in the 21st Century Act (*Pub. L. No. 112-141*). For plans beginning in May 2013 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 2.93 percent. The corporate bond weighted average is 3.48 percent, and the 90 percent to 105 percent permissible range is 3.13 percent to 3.66 percent. The 24-month average corporate bond segment rates for May 2013, without adjustment by the 25-year average segment rates are: 1.46 for the first segment; 4.15 for the second segment; and 5.20 for the third segment. The 24-month average corporate bond segment rates for May 2013, taking into account the 25-year average segment rates, are: 4.94 for the first segment; 6.15 for the second segment; and 6.76 for the third segment. **Notice 2013-32, I.R.B. 2013-22**.

RETURNS. The IRS has announced that it will be making changes to the Schedule M-3 filing requirement for taxpayers with assets between $10M-$50M for Forms 1120, 1120-C, 1120-F, 1120S, 1065 and 1065-B. These taxpayers will be permitted to file Schedule M-1 in place of the Schedule M-3 Parts II and III. These changes will be effective for tax years ending on December 31, 2014, and later. No changes are currently planned to the Schedule M-3 requirements for Forms 1120-L, or 1120-PC, nor for Form 1120 taxpayers filing as a mixed group. See http://www.irs.gov/Businesses/Corporations/Schedule-M-3-for-Large-Business-&-International-(LB&I).

The IRS has adopted as final regulations that provide rules requiring any person assigned an employer identification number to provide updated information to the IRS in the manner and frequency prescribed by forms, instructions, or other appropriate guidance. **78 Fed. Reg. 26244 (May 6, 2013)**.

SAFE HARBOR INTEREST RATES

June 2013

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	0.18	0.18	0.18	0.18
110 percent AFR	0.20	0.20	0.20	0.20
120 percent AFR	0.22	0.22	0.22	0.22
		Mid-term		
AFR	0.95	0.95	0.95	0.95
110 percent AFR	1.05	1.05	1.05	1.05
120 percent AFR	1.14	1.14	1.14	1.14
		Long-term		
AFR	2.47	2.45	2.44	2.44
110 percent AFR	2.72	2.70	2.69	2.68
120 percent AFR	2.96	2.94	2.93	2.92

Rev. Rul. 2013-12, I.R.B. 2013-24.

STUDENTS. The IRS has published information for students with summer jobs. (1) As a new employee, students will need to fill out a Form W-4, *Employee's Withholding Allowance Certificate*. It is important to complete the W-4 form correctly so the employer withholds the right amount of taxes. Students can use the IRS Withholding Calculator tool at IRS.gov to help fill out the form. (2) If the student receives tips as part of wages, they should remember that all tips are taxable. Students should keep a daily log to record the tips. If the student receives $20 or more in cash tips in any one month, the student must report the tips for that month to the employer. (3) Students earning money for doing odd jobs this summer need to keep in mind that earnings received

from self-employment are subject to income tax. Self-employment can include pay the student gets from jobs like baby-sitting and lawn mowing. (4) Students may not earn enough money from a summer job to owe income tax, but the student will probably have to pay Social Security and Medicare taxes. The student's employer usually must withhold these taxes from the paycheck. Or, if the student is self-employed, the student may have to pay self-employment taxes. The student's payment of these taxes contributes to the student's coverage under the Social Security system. (5) If the student is in ROTC, the student's active duty pay, such as pay received during summer camp, is taxable. However, the food and lodging allowances received in advanced training are not taxable. (6) If the student is a newspaper carrier or distributor, special rules apply to such income. Whatever the student's age, the student is treated as self-employed for federal tax purposes if: (a) the student is in the business of delivering newspapers; (b) substantially all pay for these services directly relates to sales rather than to the number of hours worked; and (c) the student works under a written contract that states the employer will not treat the student as an employee for federal tax purposes. If the student does not meet these conditions and is under age 18, then the student is usually exempt from Social Security and Medicare tax. **IRS Special Edition Tax Tip 2013-10**.

LABOR

AGRICULTURAL EMPLOYER. The defendants were companies which owned orchards in Washington and leased them to another defendant in exchange for a management fee. In turn, that defendant subleased the orchards to another defendant orchard operator under a similar arrangement. The sublease required the operator to "hire, employ, discharge and supervise the work of all employees and independent contractors performing labor and/or services on the Properties." The court held that the operator qualified as an agricultural employer under the Federal Labor Contractor Act (FLCA) and Wash. Code § 19.30.010(4) because the operator was in the business of growing, producing, or harvesting of farm or nursery products. In addition, the court held that the operator qualified as a farm labor contractor under the FLCA and Wash. Code § 19.30.010(3) because the operator hired and employed agricultural employees in its orchards. Thus, the court held that the operator was required to register as a farm labor contracting activity under the FLCA. **Saucedo v. NW Management and Realty Services, Inc., 2013 U.S. Dist. LEXIS 53252 (E.D. Wash. 2013)**.

PATENTS

GENETICALLY MODIFIED SEEDS. The defendant was a farmer who purchased the plaintiff's genetically modified soybeans from a grain elevator and planted them without payment of the plaintiff's licensing fee. The soybeans were originally grown by several farmers who had paid the licensing fee and sold to a grain elevator which mingled the patented soybeans with other non-patented soybeans from the grain elevator's producers. Thus, the case is different from a farmer growing patented seeds and then saving some of the resulting crop seeds for planting future crops without payment of the licensing fee in that the resulting crop was sold to the elevator and resold to the third party defendant. The trial court and Federal Circuit Court of Appeals held that the defendant also had to pay the licensing fee because each seed was a new copy of the original patented seed, thus the patent was not exhausted by the sale of the patented seeds to the elevator. The U.S. Supreme Court also affirmed. **Monsanto Co. v. Bowman, 2013 U.S. LEXIS 3519 (U.S. Sup. Ct. 2013), *aff'g*, 657 F.3d 1341 (Fed. Cir. 2011), *aff'g*, 686 F. Supp.2d 834 (S.D. Ind. 2009)**.

PRODUCTS LIABILITY

VACCINE. The plaintiff purchased a circovirus vaccine for pigs from the defendant. The vaccine proved ineffective to reduce the mortality rate of the plaintiff's pigs. Although the defendant tested the vaccine and tissue from the dead pigs, it found no live virus in the vaccine. However, when the plaintiff switched to another vaccine from another company, the deaths ceased. The plaintiff filed actions in breach of express warranty, breach of implied warranties of merchantability and fitness for a particular purpose, strict products liability, misrepresentation, and negligence. The defendant sought dismissal on the theory that the actions were barred by preemption of federal law controlling vaccines, the Virus-Serum-Toxin Act ("VSTA"), 21 U.S.C. §§ 151-159. The court agreed, holding that VSTA and the regulations under the Act created a comprehensive regulation of vaccines by federal law and agencies, preempting any actions under state law because they would create standards in addition to the comprehensive federal regulatory scheme. **Wyoming Premium Farms, LLC v. Pfizer, Inc., 2013 U.S. Dist. LEXIS 62476 (D. Wyo. 2013)**.

SECURED TRANSACTIONS

FEDERAL FARM PRODUCTS RULE. The plaintiff was a lender who made loans to farmers which were secured by the farmers' crops. The farmers sold the crops to the defendant and did not apply the proceeds to the loans. The defendant was aware of the security interests in the crops but did not pay any of the proceeds to the plaintiff. The plaintiff filed a state law action for conversion and the defendant argued that the state law action was preempted by the Federal Farm Products statute, 7 U.S.C. § 1631(d). The court agreed, noting that Tennessee law provides for application of the Federal Farm Products statute in cases where a buyer has purchased farm products subject to a security interest in those products. **The New London Tobacco Market, Inc. v. Burley Stabilization Corp., 2013 U.S. Dist. 68785 (E.D. Tenn. 2013)**.

LEASE OR SECURITY INTEREST. The debtor, a dairy farmer, had granted a bank a security interest in all dairy cows

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

IN THE NEWS

IRS CLOSURES. The Internal Revenue Service has announced additional details about the closures planned for May 24, June 14, July 5, July 22 and Aug. 30, 2013. Due to the current budget situation, including the sequester, all IRS operations will be closed on those days. This means that all IRS offices, including all toll-free hotlines, the Taxpayer Advocate Service and the agency's nearly 400 taxpayer assistance centers nationwide, will be closed on those days. No tax returns will be processed and no compliance-related activities will take place. The IRS noted that taxpayers should continue to file their returns and pay any taxes due as usual. Taxpayers needing to contact the IRS about their returns or payments should be sure to take these furlough dates into account. In some instances, this may include taxpayers with returns or payments due soon after a furlough day, such as the June 17 deadline for taxpayers abroad and those making a second-quarter estimated tax payment as well as the September 3, 2013 deadline for truckers filing a highway use tax return. Because none of the furlough days are considered federal holidays, the shutdown will have no impact on any tax-filing deadlines. The IRS will be unable to accept or acknowledge receipt of electronically-filed returns on any day the agency is shut down. Similarly, tax payment deadlines are also unaffected. The only tax payment deadlines coinciding with any of the furlough days relate to employment and excise tax deposits made by business taxpayers. These deposits must be made through the Treasury Department's Electronic Federal Tax Payment System (EFTPS), which will operate as usual. On the other hand, the agency will give taxpayers extra time to comply with a request to provide documents to the IRS. This includes administrative summonses, requests for records in connection with a return examination, review or compliance check, or document requests related to a collection matter. No additional time is given to respond to other agencies or the courts. Where the last day for responding to an IRS request falls on a furlough day, the taxpayer will have until the next business day. If the last day to respond is Friday, May 24, for example, the taxpayer will have until Tuesday, May 28 to comply (Monday, May 27 is Memorial Day). Further details on the impact of the shutdown on IRS procedures will be available on IRS.gov. Some web-based online tools and phone-based automated services will continue to function on furlough days, while others will be shut down. Available services include Withholding Calculator, Order A Transcript, EITC Assistant, Interactive Tax Assistant, the PTIN system for tax professionals, Tele-Tax and the Online Look-up Tool for those needing to repay the first-time homebuyer credit. Services not available on those days include Where's My Refund? and the Online Payment Agreement. Visit online tools on IRS.gov to learn more about these tools. At a later date, the IRS may possibly announce one or two additional furlough days if necessary.

REGISTERED TAX RETURN PREPARERS. The IRS has announced that fee amounts collected for scheduled registered tax return preparer test appointments canceled due to the court ordered injunction are being refunded. Additionally, fees collected from return preparers who tested on or after January 18, 2013, the date the test was enjoined, are also being refunded. No additional refund or reimbursement requests related to registered tax return preparer regulation are being provided or considered at this time. E-mail notifications will be provided to those receiving refunds to explain the process. No action is necessary to receive the refund. A credit for the test fee will automatically be made to the account used to pay the fee. It is anticipated that all refunds will be processed by July 19, 2013.

FARM ESTATE AND BUSINESS PLANNING

by Neil E. Harl

NEW 17th Edition Available Now!

The Agricultural Law Press is honored to publish the revised 17th Edition of Dr. Neil E. Harl's excellent guide for farmers and ranchers who want to make the most of the state and federal income and estate tax laws to assure the least expensive and most efficient transfer of their estates to their children and heirs. The 17th Edition includes all new income and estate tax developments from the 2012 tax legislation.

We also offer a PDF version for computer and tablet use at $25.00.

Print and digital copies can be ordered directly from the Press by sending a check for $35 (print version) or $25 (PDF version) to Agricultural Law Press, 127 Young Rd., Kelso, WA 98626. Please include your e-mail address if ordering the PDF version and the digital file will be e-mailed to you.

Credit card purchases can be made online at www.agrilawpress.com or by calling Robert at 360-200-5666 in Kelso, WA.

For more information, contact robert@agrilawpress.com.

Agricultural Law Press
127 Young Rd., Kelso, WA 98626

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

May 30-31, 2013, Greeley, CO, Clarion Inn & Conference Center, 701 8th St., Greeley, CO

Join us for expert and practical seminars on the essential aspects of agricultural tax law. Gain insight and understanding from one of the country's foremost authorities on agricultural tax law. The seminars will be held on two days from 8:00 am to 5:00 pm. On the first day, Dr. Harl will speak about farm and ranch income tax. On the second day, Dr. Harl will cover farm and ranch estate and business planning. Registrants may attend one or both days, with separate pricing for each combination. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch. **Online registration is available at www.agrilawpress.com.**

The topics include:

First day

FARM INCOME TAX

New Legislation

Reporting Farm Income
- Leasing land to family entity
- Constructive receipt of income
- Deferred payment and installment payment arrangements for grain and livestock sales
- Using escrow accounts
- Payments from contract production
- Items purchased for resale
- Items raised for sale
- Crop insurance proceeds
- Weather-related livestock sales
- Sales of diseased livestock
- Reporting federal disaster assistance benefits
- Gains and losses from commodity futures, including consequences of exceeding the $5 million limit

Claiming Farm Deductions
- Soil and water conservation expenditures
- Fertilizer deduction election
- Depreciating farm tile lines
- Farm lease deductions
- Prepaid expenses
- Preproductive period expense provisions
- Regular depreciation, expense method depreciation, bonus depreciation
- Paying rental to a spouse
- Paying wages in kind
- Section 105 plans

Sale of Property
- Income in respect of decedent
- Sale of farm residence
- Installment sale including related party rules
- Private annuity
- Self-canceling installment notes
- Sale and gift combined.

Like-Kind Exchanges
- Requirements for like-kind exchanges
- "Reverse Starker" exchanges
- What is "like-kind" for realty
- Like-kind guidelines for personal property
- Partitioning property
- Exchanging partnership assets

Taxation of Debt
- Turnover of property to creditors
- Discharge of indebtedness
- Taxation in bankruptcy.

Second day

FARM ESTATE AND BUSINESS PLANNING

New Legislation

Succession planning and the importance of fairness

The Liquidity Problem

Property Held in Co-ownership
- Federal estate tax treatment of joint tenancy
- Severing joint tenancies and resulting basis
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- Other problems of property ownership

Federal Estate Tax
- The gross estate
- Special Use Valuation
- Family-owned business deduction recapture
- Property included in the gross estate
- Traps in use of successive life estates
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Taxable estate
- The applicable exclusion amount
- Unified estate and gift tax rates
- Portability and the new regulations
- Federal estate tax liens
- Undervaluations of property

Gifts
- Reunification of gift tax and estate tax
- Gifts of property when debt exceeds basis

Use of the Trust

The General Partnership
- Small partnership exception
- Eligibility for Section 754 elections

Limited Partnerships

Limited Liability Companies
- Developments with passive losses
- Corporate-to-LLC conversions
- Eligibility for "small partnership" exception
- New regulations for LLC and LLP losses

Closely Held Corporations
- State anti-corporate farming restrictions
- Developing the capitalization structure
- Tax-free exchanges
- Would incorporation trigger a gift because of severance of land held in joint tenancy?
- "Section 1244" stock

Status of the Corporation as a Farmer
- The regular method of income taxation
- The Subchapter S method of taxation, including the "two-year" rule for trust ownership of stock
- Underpayment of wages and salaries

Financing, Estate Planning Aspects and Dissolution of Corporations
- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization

Social Security
- In-kind wages paid to agricultural labor

The seminar registration fees for *current subscribers* (and for each one of multiple registrations from the same firm) to the *Agricultural Law Digest*, the *Agricultural Law Manual*, and *Farm Estate and Business Planning* are $225 (one day) and $400 (two days). The registration fees for *nonsubscribers* are $250 (one day) and $450 (two days).

See www.agrilawpress.com for more information and online registration.

Contact Robert Achenbach at 360-200-5666, or e-mail Robert@agrilawpress.com for a brochure.

APPROVED CONTINUING EDUCATION PROVIDER