"the relations of the petitioner and Moss as co-owners of the tract of land mentioned were not harmonious and litigation between them appeared probable…."[19] Accordingly, the two co-owners entered into a contract providing for a public sale of the property involved.[20]

As the Board of Tax Appeals observed, the taxpayer "sold nothing" and merely purchased the remaining interest.[21] As with the later revenue ruling,[22] the Board of Tax Appeals stated that "the only effect at the auction as to this acreage was to establish the price at which the petitioner purchased the undivided interest of Moss [the other co-owner] therein."[23] As a consequence the taxpayer neither realized a taxable gain nor sustained a deductible loss from the sale of the taxpayer's interest in the land.[24]

In conclusion

The two primary authorities, *Rev. Rul. 55-77*[25] and *Hunnicutt v. Comm'r*,[26] indicate that a selling co-owner of property who purchases the property in a partition and sale proceeding or other public auction recognizes neither gain nor loss as to the property interest sold. That is highly important for heirs who find themselves faced with a co-owner who wants out of the co-ownership arrangement but the parties are unable to agree upon the terms of sale. The selling co-owner who intends to acquire the property in a partition and sale action or in a public auction can rest assured that the transaction does not trigger gain (and will not produce a deductible loss).

FOOTNOTES

1 See, e.g., Iowa Code, Ch. 651 (1999).
2 I.R.C. § 1001(c).
3 See, e.g., I.R.C. §§ 1031, 1033.
4 I.R.C. § 1031.
5 I.R.C. § 1033.
6 I.R.C. § 351.
7 I.R.C. § 721.
8 I.R.C. § 368(a)(1).
9 I.R.C. § 121.
10 I.R.C. § 1001(c).
11 Treas. Reg. § 1.1033(a)-1(a).
12 *Id.*
13 *Id.*
14 Rev. Rul. 55-77, 1955-1 C.B. 339.
15 *Id.*
16 *Id.*
17 *Id.*
18 Hunnicutt v. Comm'r, 10 B.T.A. 1004 (1928), *acq.*, C.B. VII-2, 19.
19 *Id.*
20 *Id.*
21 *Id.*
22 Rev. Rul. 55-77, 1955-1 C.B. 339.
23 Hunnicutt v. Comm'r, 10 B.T.A. 1004 (1928), *acq.*, C.B. VII-2, 19.
24 *Id.*
25 1955-1 C.B. 339.
26 10 B.T.A. 1004 (1928), *acq.*, C.B. VII-2, 19.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL -*ALM* § 13.03.*

DISCHARGE. The debtor had granted a security interest in most of the debtor's farm property to a bank. The debtor also purchased farm supplies on credit from a supplier. The supply credit was unsecured until the debtor told the supplier that the debtor was having a hard time paying bills. The supplier asked the debtor to grant a security interest in the debtor's crops to collaterize the supply debt, which the debtor voluntarily agreed to do. The debtor was able to plant another crop without any additional debt and scaled back the farm operation and moved to a cheaper residence to decrease expenses. The debtor sold most of the crop to a third party who was not listed as a potential buyer on the security agreement with the supplier; however, the debtor sold some of the crop to the supplier who allowed the debtor to keep the proceeds. The debtor used the proceeds of the sale of crop to the supplier to pay other debts of the farm. The supplier sought a ruling that the debt to the supplier was nondischargeable for willful and malicious injury to the supplier's security interest in the crops. The court found that the debtor's actions were focused on saving the farm as a viable operation, had taken several steps to reduce expenses and costs, was not aware that the law required the debtor to supplement the list of potential buyers if the crop was sold to a non-listed buyer, and was not aware that use of the proceeds for farm debts was not a permitted use of the proceeds of collateral. Therefore, the court held that the debtor did not willfully or maliciously harm the supplier and the debt was dischargeable. ***In re* Crump, 247 B.R. 1 (Bankr. W.D. Ky. 2000)**.

FEDERAL TAX -*ALM* § 13.03[7].*

AVOIDABLE LIENS. The IRS had filed two tax liens against the debtor's property prepetition. The debtor sought to avoid the liens under Section 522(f)(1) as impairing the debtor's exemptions. The court held that Section 522(f)(1) could not be used to avoid a federal tax lien because (1) the lien is created by statute and is not a judicial lien and (2) under North Carolina law, the exemptions are inapplicable as to federal tax liens; therefore, no exemptions are impaired by the tax lien. ***In re* Morgan, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,596 (Bankr. E.D. N.C. 2000)**.

**Agricultural Law Manual* (ALM).

ALLOCATION OF PAYMENTS FOR TAXES. The debtors filed for Chapter 7 and owed personal income taxes as well as an I.R.C. § 6672 penalty as responsible persons in a corporation which failed to pay employment taxes. The corporation's main asset was its subscribers in the corporation's pager business. Another company agreed to purchase the customer base for $55 a name if the debtors agreed to sign a noncompetition agreement and $10 a name if the debtors did not sign the noncompetition agreement. The debtors argued that the difference in price was their personal asset and should have been used to reduce their Section 6672 liability. The trustee agreed to seek the allocation of the proceeds of the sale to the IRS such that the price difference would be applied to the employment taxes first. The IRS refused to allocate the proceeds other than to the debtors' tax claims and the debtor sought a ruling from the court to force the allocation. The court held (1) the debtors did not have standing to bring the action because the allocation would not benefit the bankruptcy estate; (2) the proceeds of the customer list sale were property of the estate; and (3) the court had no authority to force allocation of Chapter 7 payments to the IRS. ***In re* Applied Paging Technologies, Inc. v. United States, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,587 (D. N.J. 2000).**

DISCHARGE. The debtor originally filed a Chapter 13 case on February 25, 1993, but dismissed the case on June 1, 1995. The present Chapter 7 case was filed on August 27, 1997 and the debtor sought a ruling that 1991 and 1992 taxes were dischargeable as due more than three years before the Chapter 7 filing. The Bankruptcy Court held that, under the plain language of the statute, Section 507(a)(8)(A)(i), the previous bankruptcy case did not toll the three year period. The Bankruptcy Appeals Court reversed, holding that the clear Congressional intent was that the IRS was to have a full three years to collect a tax and that the Section 507 three year limitation was tolled during the previous bankruptcy case. The appellate court reversed, holding that the courts should not attempt to alter the plain, unambiguous language of the statute which does not provide for any tolling of the three-year period by the filing of prior bankruptcy cases. ***In re* Palmer, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,588 (6th Cir. 2000), *rev'g*, 228 B.R. 880 (Bankr. 6th Cir. 1999)**.

NET OPERATING LOSSES. Five months before filing for Chapter 7 in March 1995, the debtor filed the income tax return for 1993 and made the election to carry forward all net operating losses (NOLs) in that year. If the NOLs had been carried back, the debtor would have been entitled to over $200,000 in refunds, far more than if the NOLs were carried forward. The Chapter 7 trustee filed income tax returns for the estate and claimed a refund based on the carry back of the NOLs. When the IRS disallowed the carrybacks, the trustee sought avoidance of the NOL election by the debtor as a fraudulent transfer. The court held that (1) the NOL election was a transfer, (2) NOLs are an interest in property of the debtor or the estate, (3) the election was a fraudulent transfer because the debtor did not receive a reasonably equivalent value for the election and the debtor was insolvent at the time of the election. The court also held that the transfer of tax attributes under I.R.C. § 1398 did not restrict the trustee's avoidance powers under Section 548. Therefore, the court held that the NOL election could be avoided by the trustee in favor of allowing the trustee to carry the NOLs back to earlier tax years. ***In re* Feiler, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,579 (9th Cir. 2000), *aff'g*, 230 B.R. 164 (Bankr. 9th Cir. 1999), *aff'g*, 218 B.R. 957 (Bankr. N.D. Cal. 1998)**.

ENVIRONMENTAL LAW

HOG WASTE LAGOON. The defendant operated a large hog confinement facility and deposited the hog wastes into a lagoon. The lagoon was located over old underground tile lines which had become broken, allowing the hog wastes to seep into the tile line and be discharged into the Iowa River. The defendant was fined under Iowa Code § 455B.191 for the discharge. The defendant argued that the trial court had improperly applied a strict liability standard and should have used only a negligence standard. The defendant claimed that the defendant should not be held liable for not knowing that the tile was damaged. The defendant also argued that, if the statute imposed strict liability, the stricter standard should apply only to incidents of direct discharge of waste into a river or stream. The court held that (1) the statute imposed strict liability in all cases of discharge of waste that pollutes waters of the state and (2) a tile line qualified as a water of the state, under Iowa Code § 455B.171(32). **State ex. rel. Miller v. DeCoster, 608 N.W.2d 785 (Iowa 2000)**.

FEDERAL AGRICULTURAL PROGRAMS

BIOMASS ENERGY. The CCC seeks comments concerning the establishment of a bioenergy program to expand agricultural markets by promoting increased production of bioenergy through ethanol and biodiesel. Using the authority of the CCC Charter Act, which states in part, that CCC is authorized to use its general powers to "increase domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic markets for agricultural commodities…," CCC proposes to make incentive cash payments to bioenergy producers who increase their purchases of eligible agricultural commodities, as compared to the corresponding period in the prior fiscal year and convert that commodity into increased bioenergy production. **65 Fed. Reg. 46115 (July 27, 2000)**.

FARM LOANS. The following letter addresses a concern raised in the May 12, 2000 issue of the Digest by Neil Harl:

Dear Mr. Secretary,

We are writing to express our concern about a recent decision by the Farm Service Agency to alter its interpretation of the provisions of the Debt Collection Improvement Act of 1996 with respect to eligibility for the marketing assistance loan and loan deficiency payments. In a notice (LP-1729) issued on March 21, 2000, the agency instructed its state and county offices to withhold commodity loans and LDP's from any producer with delinquent Federal non-tax debt. We believe that this decision was an overly broad interpretation of the Act, and ask you to rescind it.

We do not agree that the language in the provision which refers to "...loans, loan insurance or guarantees" was intended by Congress to include USDA's marketing assistance loan program or loan deficiency payments received by farmers in lieu of participation. The descriptor `marketing assistance' is crucial to understanding this distinction--this program was designed to help farmers market their products after harvest time, when prices tend to rise. Since the marketing assistance loans are fully collateralized by the physical commodity, farmers' financial ability to repay the marketing assistance loans or outstanding loans is not jeopardized by their participation in this program. In fact, denying these farmers the benefits of the marketing assistance loan program unduly constrains their ability to market successfully, which seems clearly inconsistent with the objective of the Act.

Absent an affirmative decision to rescind FSA's March 21 notice, we urge you to seriously consider a waiver of this regulation, as is permitted under statute. In light of Congressional acknowledgement of continued economic stress in American agriculture by broad support of the economic assistance package on May 25, enforcement of this notice would send contradictory signals to farmers struggling to survive in farming. We understand that producers of winter wheat nationwide who remain delinquent on non-tax Federal debt are already affected by LP-1729, so prompt action on your part is critical. **Letter to Secretary Dan Glickman from Senators Tom Harkin, Bob Kerrey, Tim Johnson, Max Baucus, Larry Craig, Pat Roberts, and Tom Daschle, July 26, 2000**.

TOBACCO. The AMS has adopted as final regulations which add a new provision to the grade standards for baled flue-cured tobacco, establish bale dimensions and spacing requirements, and revise the poundage adjustment for a warehouse selling in excess of the sales schedule for designated and undesignated tobacco. **65 Fed. Reg. 46085 (July 27, 2000)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The decedent had established a charitable remainder annuity trust with the decedent as annuitant to receive 5 percent of the value of the trust corpus each year. As the trust was established, the trust qualified for a charitable deduction. However, during the four years of the trust's existence, no distributions were made to the decedent. At the decedent's death, the trust provided for secondary annuitants who would receive the 5 percent payments if the annuitants agreed to pay the estate taxes resulting from the payments. The secondary annuitants, except one, declined the annuities. The annuitant who accepted, however, refused to pay any taxes and threatened a lawsuit to receive the annuity. The trustee reached a settlement and agreed to pay the taxes from the trust. The court held that the estate was not eligible for a charitable deduction for the trust because the 5 percent annuity was not paid and the charitable remainder holder did not receive all the remainder of the trust, because some of the trust was used to pay the taxes on the one secondary annuitant's payments. **Estate of Atkinson v. Comm'r, 115 T.C. No. 3 (2000)**.

DISCLAIMER. The taxpayer was the great-grandchild of the decedent and was the remainder beneficiary of a trust established by the decedent's will for the taxpayer's parent. The parent died and the taxpayer learned about the remainder interest shortly thereafter. Within nine months after learning about the vesting interest in the trust, the taxpayer disclaimed a fractional share of the interest in the principal of the trust. The taxpayer, however, retained the right to the share of trust income and the remaining interest in the trust principal. The IRS ruled that the disclaimer of the fractional share of the interest in trust principal was not a gift. **Ltr. Rul. 200029048, April 25, 2000.**

GIFT. The decedent's will provided for property passing in a QTIP trust to the spouse. The spouse objected to the handling of the estate and the trustee's refusal to distribute trust corpus to the spouse. The parties reached a settlement under which the spouse received cash for the spouse's share of the estate including the QTIP trust. The release of the spouse's interest in the QTIP trust was considered a sale of the interest in the trust. The settlement provided that any gift tax from the transaction would be paid by the other heirs. The IRS ruled that the spouse's release of the interest in the QTIP trust resulted in a gift to the extent that the value of the trust interest exceeded the consideration paid for it, including the gift tax paid by the other heirs. **Ltr. Rul. 200027001, March 3, 2000**.

The taxpayer had originally sold real estate to the taxpayer's children for a downpayment and a promissory note. However, the taxpayer returned the downpayment checks and never attempted to collect on the note. The children executed a mortgage for the taxpayer and the taxpayer released the mortgage when one child needed to secure a loan on the property. When the checks were returned an accompanying letter referred to the purchase of the real estate by the children and a gift of only the downpayment. The IRS filed a tax lien against the taxpayer's property and the issue was whether the taxpayer had any attachable interest in the property when the tax lien was filed. The court held that if the transaction was a purchase, the taxpayer still had a right of payment which was subject to the lien. However, if the taxpayer had forgiven the entire note, no interest remained to be attached. The court held that the facts were insufficient to grant either party a summary judgment prior to trial. **United States v. Jepsen, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,608 (W.D. Ark. 2000)**.

MARITAL DEDUCTION. The decedent's will provided for property passing in a QTIP trust to the spouse. The spouse objected to the handling of the estate and the trustee's refusal to distribute trust corpus to the spouse. The parties reached a settlement under which the spouse received cash for the spouse's share of the estate including the QTIP trust. The release of the spouse's interest in the QTIP trust was considered a sale of the interest in the trust. The spouse had received some income distributions from the trust and had agreed to reduce the amount received in the settlement by the amount of income distributions already received. The IRS ruled that the income from the trust could not be considered part of the sale of the trust proceeds. The IRS also ruled that the spouse's basis in the income interest in the trust did not include any adjustment under I.R.C. §§ 1014, 1015, 1041. The sale proceeds were long-term capital gain but did not include pre-sale income distributions. **Ltr. Rul. 200027001, March 3, 2000**.

TRUSTS. The taxpayers, husband and wife, each established a grantor retained annuity trust (GRAT). Each trust provided that if the annuitant died with a surviving spouse, the surviving spouse would continue as annuitant. Each trust also allowed the grantor the power to revoke the remainder annuity for the surviving spouse. The taxpayers valued the remainder interests of both trusts using both lives. The court held that a qualified annuity interest had to set a certain term in order to qualify the trust as a GRAT. Because the lifetime of the secondary annuitant was uncertain and could be revoked, the GRATs had to be valued using a single life. **Cook v. Comm'r, 115 T.C. No. 2 (2000)**.

FEDERAL INCOME TAXATION

PROPOSED LEGISLATION. Legislation has been introduced in the U.S. House of Representatives which (1) increases the deduction for health insurance to 100 percent for self-employed individuals; (2) provides for the exclusion of up to $500,000 in gain from the sale of qualified farm property; (3) excludes income averaging for farmers from increasing the alternative minimum tax; (4) provides for deductions for contributions to a Farm and Ranch Risk Management account (FARRM); (4) repeals the federal estate, gift and generation-skipping transfer taxes; (5) repeals the step-up in basis of inherited property; (6) allows a step-up in basis of up to $1,300,000 in inherited property and up to $3,000,000 of property inherited by a surviving spouse; (7) decreases the maximum federal estate and gift tax rate to 50 percent for estates over $2,500,000 with phase-in of future reductions; (8) replaces the unified credit with the unified exemption amount, an amount of adjusted estate which is exempt from gift and estate tax, increased from $675,000 in 2001 to $1,000,000 in 2006; and (9) provides for deemed allocation of GST exemption amounts to indirect skip lifetime transfers. **H.R. 4885**.

COURT AWARDS AND SETTLEMENTS-ALM § 4.02[14]. The taxpayers had filed a lawsuit in tort and contract against their employer for wrongful termination of employment and had received a jury award for compensatory and punitive damages. The taxpayers had agreed to pay their attorneys on a contingency fee basis and a portion of the award was paid to the attorneys. As in *Coady v. Comm'r, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,528 (9th Cir. 2000 (Alaska attorney fee lien))* *see p. 101 supra,* the court looked at the nature of the attorney's lien created by statute in California and held that the lien did not create a sufficient property interest in the jury award to exclude the fees from the taxpayers' income. Dr. Harl will publish an article on this issue in the next issue of the Digest. **Benci-Woodward v. Comm'r, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,595 (9th Cir. 2000)**.

The taxpayer was a surviving heir of a decedent killed in an automobile accident. The taxpayer received a payment from the driver's insurance company for "bodily and personal injuries, damage to property, and the consequences thereof." The IRS ruled that the payments could be excluded from income as resulting from a claim for personal injuries. **Ltr. Rul. 200029020, April 18, 2000**.

The taxpayers had brought a suit against a TV station for defamation and had received a jury award which included actual and punitive damages and interest. The case was appealed but the station reached a settlement with the taxpayers before the appeal was heard. The taxpayers had hired their attorneys on a contingent fee basis and paid them from the settlement proceeds. The taxpayers excluded all of the settlement proceeds from their income. The Tax Court had allocated the settlement proceeds to the types of damages and interest in the same proportion as the original jury award and included the entire attorney fee in the taxpayers' income. The appellate court held that it was bound to follow the precedent of *Cotnam v. Comm'r, 263 F.2d 119 (5th Cir. 1959)* which held that attorney contingency fees were excludible from income. The *Cotnam* court reasoned that the contingency fee arrangement transferred the taxpayers' rights in the award sufficiently to remove the fees from the taxpayers' income. The court also noted that this concept is independent of the state law lien rights granted attorneys' fee. This issue remains deeply divided among the courts. Dr. Harl will publish an article on this issue in the next issue of the Digest. **Srivastava v. Comm'r, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,597 (5th Cir. 2000).**

DEPRECIATION. The taxpayers purchased rental real estate and held the property for over fourteen years. The taxpayers made capital improvements to the property. The taxpayers did not claim any depreciation deductions for the entire fourteen years. The taxpayers sold the property and deducted from the sale proceeds the property and water taxes owning against the property. The taxpayers used their undepreciated basis to determine that the sale of the property produced a loss. The court held that the real estate taxes and water taxes were not chargeable against the sale proceeds. In addition, the court held that the taxpayers' basis in the property had to be decreased by the amount of depreciation deductions allowable over the fourteen years. Thus, the sale of the property produced gain to the taxpayers. **Jakubowski v. United States, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,604 (D. Colo. 2000)**.

DISCHARGE OF INDEBTEDNESS. The taxpayer was the sole shareholder of two S corporations which operated a marina and a mobile home park. Both businesses eventually failed, with the corporations both owing money to the taxpayer. The taxpayer admitted that, in 1992, the taxpayer no longer owed the money to the corporations. However, the taxpayer provided no evidence of payment of the loans and provided no other evidence of the loan transactions with the corporations. The taxpayer also failed to prove that the taxpayer was insolvent when the loans were discharged; therefore, the court held that the taxpayer had discharge of indebtedness income which was not excluded from the taxpayer's income. **Toberman v. Comm'r, T.C. Memo. 2000-221**.

A partnership was formed to construct, acquire and lease commercial property. The partners executed recourse promissory notes and personal guarantees for the partnership debt. The partnership business faltered and the lender eventually accepted the proceeds of the sale of the partnership property for the debt; however, the lender retained a right to recover on the guarantees from the partners. In a Chief Counsel Advice letter, the IRS ruled that no discharge of indebtedness had yet occurred because the lender had the right of recovery from the partners. **CCA Ltr. Rul. 200028019, April 14, 2000**.

EARNED INCOME CREDIT. This Chief Counsel Advice letter involved two situations. In the first situation, the taxpayers were married and claimed EIC. The taxpayers were eligible for the EIC except that one taxpayer did not have a valid Taxpayer Identification Number (TIN) issued by the Social Security Administration (SSA). The taxpayer was issued a valid TIN after the return was filed. In the second situation, a single taxpayer with a qualifying child claimed the EIC. The taxpayer was eligible for the EIC except that the child did not have a valid TIN from the SSA until after the return was filed. In both cases, the IRS ruled that the taxpayers can file amended returns and claim the EIC, using the valid TINs. **CCA Ltr. Rul. 200028034, June 9, 2000**.

HOBBY LOSSES-*ALM* § 4.05[1].* The taxpayers, husband and wife operated two businesses, a dental practice and an apple orchard. The taxpayers operated the dental practice and the orchard as a partnership. The taxpayers combined the income and expenses of both activities on one partnership return. In most tax years the dental practice was reported on Schedule C and the orchard on Schedule F, but in one tax year, both activities were reported on Schedule F. The taxpayers claimed that the activities were related in that the taxpayers recommended that their patients eat apples and gave or sold apples to the clients. The court held that the dental practice was not sufficiently related to the orchard activity to allow the activities to be combined as one business for income tax purposes. The court also held that the orchard activity was not engaged in for profit, based on the following factors: (1) the taxpayers did not keep accurate and full production records; (2) the taxpayers kept only a "canceled check" record of business transactions; (3) the only changes to the orchard operation were made to decrease the work load of the taxpayers and not to make the activity more profitable; (4) the taxpayers had little experience or expertise in growing apples and did not seek sufficient expert assistance; (5) the taxpayers did not spend sufficient amount of time on the activity to fully harvest the apples; (6) the orchard had never produced a profit; and (7) the taxpayers had substantial income from the dental practice which was offset by the losses from the orchard activity. The court denied deductions related to the orchard activity in excess of the income from the activity. The appellate court affirmed in an opinion designated as not for publication. **Zdun v. Comm'r, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,580 (9th Cir. 2000), *aff'g*, T.C. Memo. 1998-296**.

IRA. The taxpayer owned an IRA in the taxpayer's sole name. The taxpayer withdrew all of the funds in the IRA and transferred them to the taxpayer's spouse who did not transfer them to an IRA in the spouse's name. A few days later, the taxpayer and spouse executed a stipulation for a judgment for divorce and the divorce was granted six months later. The taxpayer did not include the IRA distribution in income. The issue was whether the IRA distribution was excludible from income under I.R.C. § 408(d)(6). The taxpayer argued that the transfer of the money qualified as a transfer of an interest in the IRA. The court held that once the funds were withdrawn from the IRA, the taxpayer no longer had an interest in the IRA. The court held that Section 408(d)(6) required the transfer of the IRA itself and the continuance of the IRA in the name of the former spouse, in order for Section 408(d)(6) to apply. The taxpayer was also required to pay the I.R.C. § 72(t) 10 percent addition to tax for the early withdrawal of funds from the IRA. **Jones v. Comm'r, T.C. Memo. 2000-219**.

INHERITANCE. The taxpayer was the surviving spouse of the decedent. The decedent's will provided for property passing in trust to the spouse. The spouse objected to the handling of the estate and the trustee's refusal to distribute trust corpus to the spouse. The parties reached a settlement under which the spouse received cash for the spouse's share of the estate. The IRS ruled that the money was not included in income because the payment represented the spouse's share of the estate. **Ltr. Rul. 200027001, March 3, 2000**.

INTEREST. The taxpayer was a member of a home owners association which was responsible for maintenance of common areas. The association was a non-stock corporation incorporated under state law. The association decided to demolish a common building and rebuild the building by borrowing money. The association members would be assessed an additional amount each month to cover the cost of paying the loan principal and interest. The members were not personally obligated on the loan and the members' homes were not collateral for the loan. The IRS ruled that the taxpayer's share of the interest paid was not eligible as qualified residence interest and was not deductible by the taxpayer. **Ltr. Rul. 20029018, April 18, 2000**.

JURY FEES. In a National Service Center Advice letter, the IRS ruled that fees received for jury duty are included in gross income but are not subject to income tax withholding and are not included in earned income for earned income credit purposes. **NSCA Ltr. Rul. 200028035, June 14, 2000.**

***Agricultural Law Manual* (ALM).**

PENSION PLANS. The IRS has ruled that a deferred compensation plan did not fail to qualify as an "eligible deferred compensation plan" merely because deferrals were made under an arrangement that allowed a fixed percentage of an employee's compensation to be deferred on the employee's behalf under the plan, unless the employee affirmatively elected to receive the amount in cash. However, the obligation to make the deferrals for a month must be established before the beginning of the month, either by an automatic election or by an agreement to alter the terms of the automatic election and to receive cash in lieu of the deferrals. **Rev. Rul. 2000-33, I.R.B. 2000-33**.

For plans beginning in July 2000, the weighted average is 5.99 percent with the permissible range of 5.39 to 6.29 percent (90 to 106 percent permissible range) and 5.39 to 6.59 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2000-31, I.R.B. 2000-1274**.

SAFE HARBOR INTEREST RATES

August 2000

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	6.37	6.27	6.22	6.19
110 percent AFR	7.02	6.90	6.84	6.80
120 percent AFR	7.66	7.52	7.45	7.40
		Mid-term		
AFR	6.33	6.23	6.18	6.15
110 percent AFR	6.97	6.85	6.79	6.75
120 percent AFR	7.62	7.48	7.41	7.37
		Long-term		
AFR	6.22	6.13	6.08	6.05
110 percent AFR	6.85	6.74	6.68	6.65
120 percent AFR	7.50	7.36	7.29	7.25

Rev. Rul. 2000-38, I.R.B. 2000-__.

PRODUCT LIABILITY

FRONT END LOADER. The plaintiff was injured while using a tractor front end loader to move round hay bales. The loader was manufactured by the defendant but was not equipped with an optional bale clamp. The plaintiff used a homemade fork attachment. The plaintiff was injured when a bale fell on the plaintiff as the loader raised up accidentally, allowing the bale to fall back onto the tractor, while the plaintiff was distracted by an obstruction behind the tractor. There was no evidence that the loader controls allowed the loader to rise by itself. The loader carried warnings about the danger of using the loader to move hay bales without the use of the clamp. The evidence also showed that the plaintiff knew about the danger of transporting bales without the clamp and had used similar equipment to move bales with a clamp. The defendant argued that it had no liability because the warnings were adequate for the plaintiff, based on the plaintiff's experience. The court held that summary judgment for the defendant was proper because the plaintiff demonstrated no defect in the loader or the warnings which gave rise to the accident. See also *Delaney v. Deere & Co., 985 F. Supp. 1009 (D. Kan. 1997)*. **Delaney v. Deere & Co., 999 P.2d 930 (Kan. 2000)**.

SECURED TRANSACTIONS

AGISTER LIEN. The defendant had purchased pasture land subject to a pre-existing lease. The tenant had contracted with the plaintiff to pasture cattle on the land and had received payment for that pasturing. However, the tenant did not make any rent payments. The defendant notified the tenant that it was asserting an agister's lien on the cattle until the rent was paid. After learning about the default on the rent, the plaintiff cancelled the pasturing contract and attempted to remove the cattle but the defendant prevented the removal, based on its agister's lien. The court held that no agister lien was available, under Wyo. Stat. § 29-7-101(a), because the defendant did not provide any pasture grass to the plaintiff's cattle in that, under the lease, the possession of the pasture grass had passed to the tenant. The court noted that to hold otherwise would place the plaintiff in the position as guarantor of the rent, even after the plaintiff had paid the tenant for use of the pasture. **Panhandle Feeders v. C & D Enterprises, 1 P.3d 647 (Wyo. 2000)**.

TRESPASS

TIMBER. The defendant was a survey company which performed a survey for land neighboring the plaintiff's property. During the survey, the defendant's employee cut a three foot path through brush and tree saplings to create a line-of-sight path. The evidence showed that 312 saplings of various kinds of trees were cut but the only evidence of the value of the trees was an estimate by the plaintiff of about $25 each. There was no evidence presented as to the value of the property before and after the cutting. The trial court had awarded the plaintiff $3,000 for the trees. The appellate court held that the award was improper for lack of specific evidence of the value of the trees. The court noted that there was no evidence of the size, type, age and height of any of the trees before they were cut. The court held that, on remand, if the value of the cut trees could not be determined, the amount of damages would be the loss of fair market value of the property, if any. **Brand v. Mathis & Associates, 15 S.W. 3d 403 (Mo. Ct. App. 2000)**.

CITATION UPDATES

Davis v. Comm'r, 210 F.3d 1346 (11th Cir. 2000), ***aff'g*, T.C. Memo. 1998-248** (court awards and settlements) see p. 85 *supra*.

Land O'Lakes, Inc. v. Hanig, 610 N.W.2d 518 (Iowa 2000) (hedge-to-arrive contracts) see p. 83 *supra*.

AGRICULTURAL LAW PRESS
P.O. Box 50703 Eugene, OR 97405

The Agricultural Law Press presents

AGRICULTURAL TAX AND LAW SEMINARS in Grand Island, Nebraska

by Neil E. Harl and Roger A. McEowen

October 3-6, 2000 Best Western Riverside Inn, Grand Island, NE

Come join us for a world-class seminar on the hottest topics in agricultural tax and law in the heartland of American agriculture. **Space is limited** for this wonderful opportunity to gain expert insight into agricultural law.

The seminar will be Tuesday, Wednesday, Thursday, and Friday, October 3-6, 2000 at the Best Western Riverside Inn in downtown Grand Island, NE. Registrants may attend one, two, three or all four days, with separate pricing for each combination. On Tuesday, Dr. Harl will speak about farm and ranch income tax. On Wednesday, Dr. Harl will cover farm and ranch estate tax. On Thursday, Roger McEowen will cover farm and ranch business planning. On Friday, Roger McEowen will cover current developments in several other areas of agricultural law. Your registration fee includes comprehensive annotated seminar materials for the days attended which will be updated just prior to the seminar. The seminar materials will also be available on CD-ROM for a small additional charge. Continental buffet breakfasts and break refreshments are also included in the registration fee.

Here are some of the major topics to be covered:

• Taxation of debt, taxation of bankruptcy, the latest on SE tax of rental of land to a family-owned entity; income averaging; earned income credit; commodity futures transactions; paying wages in kind.

• Federal estate tax, including 15-year installment payment of federal estate tax, co-ownership discounts, alternate valuation date, special use valuation, family-owned business deduction (FOBD), handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, trusts, and generation skipping transfer tax.

• Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.

• Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.

• Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.

• Legal developments in farm contracts, secured transactions, bankruptcy, real property, water law, torts, and environmental law.

Special room discounts are available at the hotel. Be sure to tell them that you are attending the agricultural law seminar.

The seminar registration fees <u>for current subscribers</u> to the *Agricultural Law Digest*, the *Agricultural Law Manual*, or *Principles of Agricultural Law* are $175 (one day), $340 (two days), $490 (three days), and $620 (four days). The registration fees for <u>nonsubscribers</u> are $195, $380, $550 and $700, respectively. **Please Note**: the registration fees are higher for registrations within 30 days prior to the seminar, so please call for availability and the correct fees. A registration form is available online at **www.agrilawpress.com**

For more information, call/fax Robert Achenbach at 1-541-302-1958, or e-mail at **robert@agrilawpress.com**