CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ADVERSE POSSESSION

PRACTICAL LOCATION. The parties owned neighboring rural land tracts. In one corner of the plaintiff's land existed an "indentation" belonging to the defendant's land. The plaintiff treated the disputed land as part of the plaintiff's property and maintained it until the previous owner of the defendant's land planted trees. At the time of the planting, neither neighbor knew the correct boundary but mutually agreed to the tree planting. The previous neighbor erected a fence on the neighbor's side of the disputed strip to fence in livestock. When the defendant purchased the neighbor's land, the fence was removed and the disputed property included in development plans. The plaintiff argued that the boundary line was established by the planting of the trees or the fence by acquiescence or practical location. The court held that the doctrine of practical location did not apply because, at the time the trees were planted or the fence erected, the neighboring land owners were not intending to settle a dispute of a boundary which could not be otherwise determined. The court also held that the doctrine of acquiescence did not apply because the plaintiff failed to prove that any particular boundary had been agreed upon for at least 10 years. **Jager v. Bracker West Farm Corp., 2007 Iowa App. LEXIS 995 (Iowa Ct. App. 2007)**.

BANKRUPTCY

FEDERAL TAX

DISCHARGE. The IRS has issued the 2007 allowable living expense standards. Allowable living expense standards, also known as collection financial standards, are used to determine the ability of a taxpayer to pay a delinquent tax liability. The standards are effective October 1, 2007. For bankruptcy purposes, the effective date for the new standards will be January 1, 2008. The standards have been redesigned to incorporate: (1) a new category for out-of-pocket health-care expenses; (2) the elimination of income ranges for national standards for food, clothing and other items; (3) a nationwide set of tables for national standard expenses, eliminating separate tables for Alaska and Hawaii; (4) an expanded number of household categories for housing and utilities; (5) an allowance for cell phone costs in housing and utilities; (6) equal allowances for first and second vehicles under transportation expenses; (7) fewer Metropolitan Statistical Areas for vehicle operating costs; and (8) a separate nationwide public transportation allowance. **IR-2007-163**

The debtor was a real estate attorney who filed for Chapter 7 bankruptcy and sought to have several federal tax claims declared dischargeable. The IRS argued that the claims were nondischargeable under Section 523(a)(1)(C) because the debtor willfully attempted to evade payment of the taxes. The court noted that the debtor had attempted to remove assets from IRS reach by transferring them to the debtor's spouse and had the debtor's law firm purchase several assets which the debtor continued to use for personal purposes. The debtor also lived an expensive lifestyle and was able to pay for many expensive items and services while not paying taxes. The court held that the tax claims were nondischargeable under Section 523(a)(1)(C). ***In re* Jacobs, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,658 (11th Cir. 2007)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The FCIC has adopted as final regulations amending the fresh market sweet corn crop insurance provisions of the common crop policy to allow for the expansion of fresh market sweet corn coverage into more areas where the crop is produced, when provided in the actuarial documents and when it is marketed through direct marketing. This change will be applicable for the 2008 and succeeding crop years for all counties with a contract change date on or after the effective date of this rule and for the 2009 and succeeding crop years for counties with a contract change date prior to the effective date of this rule. **72 Fed. Reg. 54519 (Sept 26, 2007)**.

FARM CREDIT SYSTEM. The FCA has adopted as final regulations which provide that, when the assets of a Farm Credit System institution in liquidation are distributed, the claims of holders of subordinated debt will be paid after all general creditor claims. **72 Fed. Reg. 54525 (Sept. 26, 2007)**.

FARM LEASES. The CCC and FSA have announced that they intend to issue proposed regulations governing the treatment of so-called "combination" or "flex" leases for purposes of programs administered by the FSA, CCC and the FCIC. The CCC and FSA are seeking comments prior to issuing the new regulations. **72 Fed. Reg. 55105 (Sept. 28, 2007)**.

FARM LOANS. The FCA has adopted as final regulations amending the priority of claims regulations to provide priority of claims rights to Farm Credit System banks if they make payments under a reallocation agreement to holders of consolidated and system-wide obligations on behalf of a defaulting system bank. The final rule also clarifies that payments to a class of claims will be on a pro rata basis. **72 Fed. Reg. 54527 (Sept. 26, 2007)**.

PEANUTS. The CCC has announced the uniform rates that CCC will pay for storage, handling, and other associated costs for 2007 crop of peanuts for warehouse operators operating under a CCC Peanut Storage Agreement. CCC will pay $8.00 per ton in-elevation charges to the receiving warehouse, only in cases where CCC directs delivery of CCC-owned peanuts from one warehouse to another location. In cases where the producer

did not prepay the in-elevation charges, CCC will pay the CCC-approved in-elevation charge at a rate of $8.00 per ton to the warehouse operator and collect the amount from the producer after loan forfeiture. Storage amounts may be earned at the rate of $.089 per ton per day beginning on the day following the loan maturity date, based on a monthly storage rate of $2.71 per ton. CCC will pay a load-out rate of $8.00 per ton which includes all items associated with loading out CCC-owned peanuts, such as weighing and placing peanuts aboard railcars or trucks, when ordered by CCC. **72 Fed. Reg. 54426 (Sept. 25, 2007)**.

FEDERAL ESTATE AND GIFT TAXATION

CLAIMS. The decedent was the beneficiary of a trust and had agreed to receive the annual income of the trust while the trust income was less than the amount required by the trust agreement to be distributed annually to the decedent. However, when the income exceeded the decedent's annual benefit, the decedent continued to receive the total trust income. The trustee sued the decedent's estate for the excess distributions and received a court decision to recover the excess distributions. The decedent's estate paid the award and claimed the payment as an estate tax deduction. The court held that the claim was eligible for a deduction because the claim was determined by a court and the ruling complied with local law. **Estate of Southard v. United States, 2007-2 U.S. Tax Cas. (CCH) ¶ 60,549 (S.D. Ohio 2007)**.

GENERATION-SKIPPING TRANSFERS. The beneficiaries of a pre-September 25, 1985 trust filed suit against the trustee in a disagreement over trust provisions for passage of a deceased beneficiary's remainder interest. The parties reached a settlement which redetermined provisions of the trust and settled all issues. The IRS ruled that the settlement did not cause the trust to be subject to GSTT because the settlement resulted from a bona fide dispute and the result was within the range of reasonable outcomes possible under state law and the trust agreement. **Ltr. Rul. 200738005, May 29, 2007**.

RETURNS. Form 706, U.S. Estate (and Generation-Skipping Transfer) Tax Return (Rev. September 2007), has been released by the IRS. The revised form is only to be used for decedents dying in calendar year 2007. The instructions note the following changes: (1) the maximum tax rate for decedents dying in 2007 has decreased to 45 percent; (2) I.R.C. § 6694, as amended by the Small Business and Work Opportunity Tax Act of 2007 (Pub. L. 110-28), extends the application of the income tax return preparer penalties to all tax return preparers, including estate tax return preparers; (3) a decedent's authority over certain financial accounts in a foreign country must be reported on Line 14 of Part 4 of the revised form; (4) the following inflation-adjusted amounts have increased for decedents dying in 2007: (a) the maximum reduction allowed as a result of special use valuation is $940,000 and (b) the amount used in computing the two-percent portion of estate tax payable in installments under I.R.C. § 6166 is $1,250,000; and (5) beginning with the estates of decedents dying and generation-skipping transfers occurring after December 31, 2003, the generation-skipping transfer exemption is equal to the applicable exclusion amount, which is $2 million for 2007. Among the changes to the revised form, family limited partnerships (FLPs), limited liability corporations (LLCs) and fractional interests in real estate were added to the list of interests owned by a decedent at the time of death listed on line 10a of Part 4. Line 10b of Part 4 was added, asking if any interests listed on line 10a were discounted on the estate tax return. If you answered yes on line 10a, full details for partnerships, including FLPs, unincorporated businesses, and LLCs must be included on Schedule F. If the partnership interest is jointly owned, details must be included on Schedule E. Details for fractional interests in real estate must be included on Schedule A.

TRUSTS. A charitable remainder unitrust had several beneficiaries who received annual unitrust amounts. Each beneficiary's share was treated as a separate trust. At the death of a beneficiary, the beneficiary's share of trust corpus passed to a charity. The trustee and beneficiaries decided to terminate the trust, distributing pro rata shares of the trust assets to the beneficiaries based on the actuarial values determined under I.R.C. § 7520, with the remainder distributed to the charity. The IRS ruled that the distributions to the beneficiaries were to be treated as sales of the unitrust interests to the charity, the adjusted basis in each beneficiary's interest is to be disregarded and any gain from the sale is long-term capital gain. The IRS also ruled that the distributions would not be considered self-dealing because the remainder holder was a charity and the beneficiaries received the actuarial value of their interests. **Ltr. Rul. 200739004, June 21, 2007**.

FEDERAL INCOME TAXATION

ALIMONY. The taxpayer lived in California, a community property state. The taxpayer's divorce decree required the taxpayer to pay the former spouse a monthly amount equal to one-half of the taxpayer's pension benefits to which the taxpayer was entitled whether or not the taxpayer was retired. The taxpayer was eligible for retirement but had not retired in 2000 so the taxpayer had to make the payments from wage income and deducted the payments from taxable income. The IRS argued that the payments were not deductible because the taxpayer was not retired when the payments were made and the deduction violated the assignment of income rules. The Tax Court held that the payments qualified for exclusion because the payments were made under the divorce decree as a division of community property. the appellate court reversed, holding that the payments were not alimony because the payments had to be made even upon the death of the spouse, until the taxpayer retired. The appellate court noted that the taxpayer made the choice to remain working and to pay the obligation from wages. **Dunkin v. Comm'r, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,656 (9th Cir. 2007), *rev'g*, 124 T.C. 180 (2005)**.

AUCTIONS. The IRS has published a fact sheet noting that income earned from auctions and consignment sales may

be taxable. Generally, all income from traditional or online auctions and consignment sales is taxable as either ordinary or business income. In certain circumstances such income can qualify for capital gain treatment. Business income from an auction or consignment sale is subject to the same taxes (income, self-employment, employment or excise taxes). A retail or service business owner must include this income in business income. Nonbusiness persons must also report a gain from a sale. These gains may be business income or capital gains. Income resulting from auctions akin to an occasional garage or yard sale is generally not required to be reported. Traditional or online auction and consignment sellers in the business to make a profit can generally deduct ordinary and necessary expenses, such as verifiable auction and consignment fees and commissions. The IRS further explained that only the business portion of expenses that are partly personal and partly business are deductible and notes that common split expenses are those related to a person's home that they also use for their business. **IRS Fact Sheet FS-2007-23.**

CHARITABLE DEDUCTION. The taxpayer made charitable contributions of facade easements and substantiated the contributions with (1) valuation of the property before the contribution using traditional appraisal methods (such as market data of comparable properties or income capitalization); and (2) estimation of the value of the facade easement by applying a percentage to the value of the property before the contribution. The percentage selected was based on a statement that it was "generally recognized" that facade easement contributions result in a loss of value of between 10 percent and 20 percent of the underlying property and the appraisals generally used a percentage within that range. The valuations contained no valuation of the property after the contribution. The IRS stated that certain tax advisors and charitable organizations are misinforming the public about the valuation of contributed facade easements by indicating that the IRS allows tax deductions of approximately 10 to 15 percent of the fair market value of the underlying property. In a Chief Counsel Advice letter, the IRS ruled that there was no "generally recognized" percentage by which a facade easement reduces the value of property. The IRS further ruled that, unless there is a substantial record of sales of easements comparable to the donated easement (in which case the appraisal would be based on the comparables, see I.R.C. § 1.170A-14(h)(3)(i)), an appraisal that does not value the property both before and after the donation will not be accepted by the IRS to substantiate the deduction. **CCA Ltr. Rul. 200738013, Aug. 9, 2007**.

CORPORATIONS

ACCOUNTING METHOD. The IRS has issued revised procedures for some corporations to obtain expeditious approval of a change in annual accounting period from or to a 52-53 week tax year. Changes from the previous revenue procedure, *Rev. Proc. 2006-45, 2006-2 C.B. 851*, include (1) modifying the scope provision regarding a corporation that exits a consolidated group; (2) modifying the terms and conditions relating to record keeping and book conformity in the case of a controlled foreign corporation that has a majority U.S. shareholder year (as defined in I.R.C. § 898(c)(3)) and that is changing to a one-month deferral year described in I.R.C. § 898(c)(2) or to a 52-53-week taxable year that references such one-month deferral year. **Rev. Proc. 2007-64, I.R.B. 2007-42**.

LIENS. The taxpayer corporation acquired the assets of another corporation under a court-approved asset purchase agreement which did not assume any liabilities of the acquired corporation. The acquired corporation was in receivership at the time and the IRS had filed tax liens for unpaid employment taxes. The IRS was not a party to the receivership proceedings. The owner of the taxpayer was the son of the owner of the acquired corporation and the taxpayer continued the acquired corporation's business in the same manner and place. The court noted that, under Ohio law, the taxpayer was not a continuation of the acquired corporation because corporations are separate entities. The court held that federal law applied, however, for federal tax purposes and the taxpayer was held to be a mere continuation of the acquired corporation and was liable for the acquired corporation's taxes and subject to the tax liens. **Whelco Industrial, Ltd. v. United States, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,678 (N.D. Ohio 2007)**.

COURT AWARDS AND SETTLEMENTS. The taxpayer filed a law suit against the California Franchise Tax Board under the California Information Practices Act and asked for damages for mental suffering and emotional stress. The jury awarded the taxpayer money for damages for emotional distress. The taxpayer argued that the jury award represented compensation for "damage to human capital" and was, therefore, not income. The court ruled that the jury award was included in income. **Ballmer v. Comm'r, T.C. Memo. 2007-295**.

DISASTER LOSSES. On September 14, 2007, the president determined that certain areas in Iowa are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of a drought, which began on March 5, 2007. **FEMA-1727-DR**. On September 21, 2007, the president determined that certain areas in Missouri 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 August 19, 2007. **FEMA-1728-DR**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2006 returns.

EMPLOYEE EXPENSES. The IRS has announced an update of the simplified per diem rates that employers (or their agents or third parties) can use to reimburse employees for lodging, meals and incidental expenses incurred on or after October 1, 2007 during business travel away from home without the need to produce receipts. The simplified "high-low" per diem rates have decreased to $237 for high-cost localities and increased to $152 for low-cost localities. The incidental expense per diem remains at $3 per day. **Rev. Proc. 2007-63, I.R.B. 2007-42, *superseding*, Rev. Proc. 2006-41, 2006-2 C.B. 777**.

EMPLOYEE BENEFITS. The IRS has announced a delay in the effective date of the following ruling to January 1, 2009. The employer provided plastic smartcards or debit cards which could be used to purchase transportation on public transportation (unspecified in the ruling). The IRS ruled that the amounts on the

cards were excludible from the employees' wages as a qualified transportation fringe benefit if the employer has a means of verifying the use of the cards only for transportation or the cards can only be used to purchase transportation. If the cards can be used for non-transportation purposes and their use cannot be verified, the value of the cards is wages to the employees. *Rev. Rul. 2006-57, 2006-2 C.B. 911*. **Notice 2007-76, 2007-2 C.B. 735.**

EMPLOYER IDENTIFICATION NUMBER. The IRS has announced its new online application process for employer identification numbers (EIN) is now available. Taxpayers wishing to request an EIN should go to www.irs.gov, enter the requested information and receive an EIN that is immediately recognized by the IRS. Help screens are available to assist with the requested information and taxpayers have the option of printing the confirmation notice. **IR-2007-161.**

EVIDENCE. The IRS has announced that it does not acquiesce in the decision in *Roxworthy v. Comm'r, 2006-2 U.S. Tax Cas. (CCH) ¶ 50,458 (6th Cir. 2006)*, in which the court held that the work product privilege applied to an accounting firm's opinion letters because they were prepared in support of a position taken by the client's tax return in anticipation of disagreement with the IRS that could end up in litigation. **AOD-2007-04**.

FOREIGN INCOME. The taxpayer performed work in Antarctica and the taxpayer excluded the wages earned while in Antarctica under I.R.C. § 911 as foreign income. The court held that income earned in Antarctica was not excludible under I.R.C. § 911 because Antarctica was not recognized by the U.S. government as a foreign sovereign nation. **Vaitonis v. Comm'r, T.C. Memo. 2007-290; Brown v. Comm'r, T.C. Memo. 2007-166.**

IRA. The taxpayers, husband and wife, each owned an IRA funded with money rolled-over from pension funds. The IRA funds were invested, under the advice of the manager, in high-risk mutual funds. When the mutual funds lost over two-thirds of the IRA investment, the taxpayers sued the manager for recovery of the lost money. The parties reached a settlement and the taxpayers' share of the settlement was placed in the IRAs. The IRS ruled that the settlement proceeds represented a restorative payment not subject to income tax. **Ltr. Rul. 200738025, June 26, 2007**.

The taxpayer was employed by a company which established a SIMPLE IRA account for its employees. The taxpayer did not have money withheld from wage payments for contribution in the IRA but deposited amounts withdrawn from a personal savings account. The IRS disallowed the deduction for the contributions to the IRA because they were not made by the employer. The taxpayer argued that the personal contributions should be acceptable because the tax effect was the same as if the contributions were made from withheld wages. The court held that the statute, I.R.C. § 408(p)(2)(A) was clear that SIMPLE IRA contributions had to be made by the employer from withheld wages; therefore, the taxpayer's personal contributions were not eligible for the deduction. **Forret v. Comm'r, T.C. Summary Op. 2007-165**.

INVOLUNTARY CONVERSIONS. The IRS has published a list of the counties and parishes in the United States that have suffered exceptional, severe or extreme drought during the 12 months ending August 31, 2007. The list includes counties in 40 of the 50 states. As authorized in I.R.C. § 1033(e)(2)(B) and implemented in *Notice 2006-82, 2006-2 C.B. 529* (see 17 *Agric. L. Dig*. 141 2006*)*, an extended replacement period is available for livestock sold on account of extreme weather conditions if those weather conditions continue for more than three years. **Notice 2007-80, I.R.B. 2007-43**.

LIMITED LIABILITY COMPANY. The taxpayer owned a business which was formed as a limited liability company with the taxpayer as the sole owner. The taxpayer did not file an election to have the LLC taxed as a corporation. The company failed to pay employment taxes and the IRS sought payment from the taxpayer as sole proprietor of a disregarded entity. The taxpayer argued that the "check-the-box" election regulations did not apply to employment taxes, only income taxes. The court held that the regulations apply for "federal tax purposes" which include employment taxes. **Stearn & Co., L.L.C. v. United States, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,676 (E.D. Mich. 2007)**.

PENSION PLANS. For plans beginning in September 2007 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities rate for this period is 4.93 percent, the corporate bond weighted average is 5.86 percent, and the 90 percent to 100 percent permissible range is 5.27 percent to 5.86 percent. **Notice 2007-75, 2007-2 C.B. 679**.

S CORPORATIONS

NUMBER OF SHAREHOLDERS. The IRS has issued proposed regulations governing the definition of family members for purposes of I.R.C. § 1361(c)(1) which allows all family members to be treated as one shareholder for S corporation purposes. Section 403(b) of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109-135) eliminated the requirement of an election in order for a family to be treated as one shareholder, providing instead that members of a family would automatically be treated as one shareholder for purposes of I.R.C. § 1361(b)(1)(A). Although the portions of *Notice 2005-91, 2005-2 C.B. 1164*, addressing the manner of making the family shareholder election are no longer relevant, the proposed regulations retain the provisions of *Notice 2005-91* describing certain entities other than individuals who will be treated as members of the family. The family members are determined by reference to a common ancestor. I.R.C. § 1361(c)(1)(B) defines "members of a family" as a common ancestor, any lineal descendant of the common ancestor, and any spouse or former spouse of the common ancestor or any such lineal descendant. Adopted and foster children are included among the lineal descendants as described in I.R.C. § 1361(c)(1)(C). An individual is not eligible to be the common ancestor for purposes of this provision if, on the applicable date, the individual is more than six generations removed from the youngest generation of shareholders who would otherwise be members of the family (without regard to the "six generation" test of I.R.C. § 1361(c)(1)(B)(ii)). Section 403(b) of the 2005 Act also changed the applicable date in I.R.C. § 1361(c)(1)(B)(iii) on which a person will be tested for qualification as a "common ancestor" to the latest of (1) the date the S election is made, (2) the earliest date an individual who is a "member of the family" holds

stock in the S corporation, or (3) October 22, 2004. The regulation clarifies that the "six generation" test is applied only at the date specified in I.R.C. § 1361(c)(1)(B)(iii) for determining whether an individual meets the definition of "common ancestor," and has no continuing significance in limiting the number of generations of a family that may hold stock and be treated as a single shareholder. The regulation provides that there is no adverse consequence to a person being a member of two families. **72 Fed. Reg. 55132 (Sept. 28, 2007)**.

PASSIVE INVESTMENT INCOME. The taxpayer S corporation decided to change its farming operations from employee-run to crop-share leasing of the property. Under the crop share agreements the taxpayer was actively involved in most management decisions, including deciding what crops to plant, monitoring crop rotation, determining varieties of seeds to plant, and deciding what chemicals to apply to the crops. In addition, the taxpayer paid 50 percent of crop inputs (such as storage, chemical treatment, and seed). The taxpayer was liable for real estate taxes, insurance, tiling, and building repairs including maintenance of the dryers, elevator leg, grain blower and storage bins. The tenants were responsible for labor and machinery. The IRS ruled that the rents received under the crop-share leases were not passive investment income under I.R.C. § 1362(d)(3)(C)(i). **Ltr. Rul. 200739008, June 20, 2007**.

TRANSFER OF STOCK. Section 235 of the American Jobs Creation Act of 2004 (Pub. L. 108-357) amended I.R.C. § 1366(d)(2) to provide that if the stock of an S corporation is transferred between spouses or incident to divorce under I.R.C. § 1041(a), any loss or deduction with respect to the transferred stock which cannot be taken into account by the transferring shareholder in the year of the transfer because of the basis limitation in I.R.C. §1366(d)(1) shall be treated as incurred by the corporation in the succeeding taxable year with regard to the transferee. Prior to this amendment, any losses or deductions disallowed under I.R.C. § 1366(d) were personal to the shareholder and did not transfer upon the transfer of the S corporation stock to another person. I.R.C. § 1366(d)(2) is effective for transfers after December 31, 2004. The IRS has issued proposed regulations amending the provisions of Treas. Reg. § 1.1366-2(a)(5) to include this exception to the general rule of nontransferability of losses and deductions. **72 Fed. Reg. 55132 (Sept. 28, 2007)**.

TRUSTS. Section 236 of the American Jobs Creation Act of 2004 (Pub. L. 108-357) amended I.R.C. § 1361(d)(1) to provide that, for purposes of applying I.R.C. §§ 465 and 469 to the beneficiary of a qualified subchapter S trust (QSST) with respect to which the beneficiary has made an election under I.R.C. § 1361(d)(2), the disposition of S corporation stock by the QSST shall be treated as a disposition by the beneficiary. This created an exception to the general rule of I.R.C. § 1.1361-1(j)(8), which provides that the trust, rather than the beneficiary, is treated as the owner of the S corporation stock in determining the income tax consequences of a disposition of the stock. The IRS has issued proposed regulations adding conforming language to Treas. Reg. § 1.1361-1(j)(8). **72 Fed. Reg. 55132 (Sept. 28, 2007)**.

WORTHLESS STOCK. The taxpayers owned stock in an S corporation which operated a construction business. The taxpayers had accumulated deferred passive loss deductions. The corporation became insolvent in 1995 and its bonding companies took control over the corporation's financial activities and refused to provide any bonding for new construction contracts. The corporation filed a law suit against a client and hoped the recovery would be sufficient to pay off the defaulted bonds and re-establish its bond-worthiness so it could continue in business. The lawsuit was settled in 1997, resulting in discharge of indebtedness income to the corporation. However, the settlement was not large enough to allow the corporation to continue in business. The taxpayers claimed that the stock became worthless in 1997 and the loss was deductible because the basis of the stock was increased by the discharge of indebtedness income passed through to the shareholders. The court held that the corporation stock became worthless in 1995 when the corporation became insolvent and lost its bonding and any prospect of new business. Although the lawsuit had potential to bring value to the corporation's stock, the court held that the taxpayers failed to provide enough information about the lawsuit for the court to judge whether the lawsuit, in 1995, had any reasonable potential for a sufficient recovery of business operations. **Bilthouse v. United States, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,680 (N.D. Ill. 2007)**.

TRAVEL. The taxpayer owned and operated a home remodeling business and claimed mileage expense deduction for the use of the taxpayer's truck in the business. The taxpayer produced written job worksheets on which were recorded the date, job site location, employees used, work performed and number of miles driven to and from the work site. The taxpayer also maintained a truck log which listed additional miles but the log did not list the purpose of any trip. The court held that the mileage recorded on the job sheets was deductible as properly substantiated but the mileage recorded on the truck log was not sufficiently substantiated to allow the deduction for those miles. **Walters v. Comm'r, T.C. Summary Op. 2007-167**.

STATE REGULATION OF AGRICULTURAL

HORSES. The plaintiff, a non-U.S. company, owned and operated the only U.S. facility for slaughtering horses for human consumption, primarily outside the U.S. In 2007, Illinois amended the Illinois Horse Meat Act, 225 ILCS 635, to prohibit the slaughtering of horses for meat for human consumption, whether the meat is sold, given away or exported. The plaintiff argued that the amendment violated the U.S. Commerce Clause and the federal Meat Inspection Act which limits the powers of the states to regulate interstate and foreign commerce. The court ruled that the federal Meat Inspection Act applied only to the extent horse meat was produced for human consumption but had no authority over whether a state allowed or prohibited the slaughter of horses for human consumption. The court also held that the law did not violate the Commerce Clause in that the law did not favor Illinois companies over companies in other states, of which there are none. **Cavel International, Inc. v. Madigan, 2007 U.S. App. LEXIS 22510 (7th Cir. 2007)**.

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The Seminars in Paradise have returned!

FARM INCOME TAX, ESTATE AND BUSINESS PLANNING SEMINARS

by Neil E. Harl

Outrigger Keauhou Beach Resort, Big Island, Hawai'i. January 8-12, 2008

Spend a week in Hawai'i in January 2008! Balmy trade winds, 70-80 degrees, palm trees, white sand beaches and the rest of paradise can be yours; plus a world-class seminar on Farm Income Tax, Estate and Business Planning by Dr. Neil E. Harl. The seminar is scheduled for January 8-12, 2008 at the spectacular ocean-front Outrigger Keauhou Beach Resort on Keauhou Bay, 12 miles south of the Kona International Airport on the Big Island, Hawai'i.

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Here are a sample of the major topics to be covered:

• Farm income items and deductions; losses; like-kind exchanges; and taxation of debt including the new Chapter 12 bankruptcy tax.

• 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.

• Introduction to estate and business planning.

• Co-ownership of property, including discounts, taxation and special problems.

• Federal estate tax, including alternate valuation date, special use valuation, handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.

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

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

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