[20] Treas. Reg. § 10.25(b)(4).
[21] Treas. Reg. § 10.25(b)(2).
[22] Treas. Reg. § 10.25(b)(3).
[23] Treas. Reg. § 10.27(b)(2).
[24] Treas. Reg. § 10.27(b)(3).
[25] Treas. Reg. § 10.27(b)(4).
[26] Treas. Reg. § 10.27(d).
[27] Treas. Reg. § 10.29(b)(3).
[28] T.D. 9359, 2007-2 C.B. 931.
[29] Treas. Reg. § 10.29(b)(3).
[30] Treas. Reg. § 10.51(a)(14).
[31] Treas. Reg. § 10.71.
[32] Treas. Reg. § 10.72(b).
[33] Treas. Reg. § 10.72(d).
[34] Treas. Reg. § 10.82.
[35] Treas. Reg. §§ 10.77, 10.78.
[36] Treas. Reg. § 10.78(a).

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CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

AUTOMATIC STAY. The debtor had filed a previous Chapter 12 case which was dismissed because the debtor did not qualify as a family farmer since the debtor had over $4 million in debt. The debtor filed for Chapter 11 and a creditor sought termination of the automatic stay 30 days after the filing of the petition as provided by Section 362(c)(3), added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, because the debtor had not filed the Chapter 11 case in good faith. The court held that the debtor had filed the Chapter 11 case in good faith, as demonstrated by the factors that the previous case was dismissed for lack of eligibility and the debtor did not file the second case in order to delay or frustrate a creditor's efforts to enforce its rights through foreclosure. ***In re* McKinnon, 2007 Bankr. LEXIS 3317 (Bankr. S.D. Ga. 2007)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The FCIC has adopted as final regulations amending the common crop insurance regulations; northern potato crop insurance provisions, northern potato crop insurance quality endorsement, northern potato crop insurance processing quality endorsement, potato crop insurance certified seed endorsement, northern potato crop insurance storage coverage endorsement, and the central and southern potato crop insurance provisions to provide policy changes and clarify existing policy provisions to better meet the needs of the insureds, and to reduce vulnerability to fraud, waste and abuse. The changes are intended to apply for the 2008 and succeeding crop years. **72 Fed. Reg. 61273 (Oct. 30, 2007)**.

HORSES. Under current regulations, horses being transported to a slaughter facility are subject to requirements for transportation method; water, feed and rest requirements; and paperwork requirements. These regulations did not apply if the horses were first transported to an assembly point, feedlot or stockyard for further shipment to a slaughtering facility. In response to evidence that this exception is being abused to avoid the transportation requirements, the APHIS has issued proposed regulations which remove the exceptions for horses first transported to assembly points, feedlots and stockyards. Thus, horses being transported for eventual slaughter are covered by the transporting requirements during the entire trip to the slaughter facility, whether or not the horses are first transported to an assembly point, feedlot or stockyard. **72 Fed. Reg. 62798 (Nov. 7, 2007)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT. The AMS has issued proposed regulations amending the rules of practice under the PACA to increase informal complaint filing fees and formal complaint handling fees. The proposed rules increase from $60 to $100 the fee for filing an informal complaint and would increase from $300 to $500 the fee for handling a formal complaint. **72 Fed. Reg. 61820 (Nov. 1, 2007)**.

FEDERAL ESTATE AND GIFT TAXATION

GENERATION SKIPPING TRANSFERS. Seven trusts were created prior to September 25, 1985. The beneficiaries of the trusts decided to merge the seven trusts into four trusts, with original trusts 1 and 2 merging into new trust 1, original trusts 3 and 4 merging into new trust 2, original trusts 5 and 6 merging into new trust 3, and original trust 7 became new trust 4. The rights and shares of the current and remainder beneficiaries remained the same, with pro rata distributions of trust assets. The IRS ruled that the mergers of the trusts did not subject the trusts to GSTT. **Ltr. Rul. 200743019, July 19, 2007**.

INCOME IN RESPECT OF DECEDENT. The decedent owned a revocable trust which had entered into a contract to sell trust property. The closing date was extended by the discovery of a gas pipeline under the property. Before the issues created by the pipeline could be resolved, the decedent died and the property issues were resolved and sale were completed after the decedent's death. The IRS ruled that the gain from the sale was not income in respect of a decedent because the sale remained sufficiently contingent on the date of death due to unresolved substantial economic and ministerial matters. **Ltr. Rul. 200744001, July 18, 2007**.

INSTALLMENT PAYMENT OF ESTATE TAX. In *Estate of Roski v. Comm'r, 128 T.C. 113 (2007)*, the decedent's estate made the election to pay the estate tax, over $28 million, in installments. The IRS required the estate either to secure a bond equal to twice the amount of tax deferred or to provide a special lien under I.R.C. § 6324A in order to qualify for the election. The estate did not meet the requirements and requested a discretionary waiver of the requirements based on the strong financial condition of the estate's businesses and the tax history of the decedent's heir. The IRS had established a "bright-line" bond requirement: "The Service requires estates to furnish a surety bond as a prerequisite for granting the installment payment election. Instead of furnishing a surety bond, the estate may choose to elect the special lien provided for in I.R.C. § 6324A that requires the estate to have a lien placed on a specific property. This property must have a value equal to the total deferred tax plus four years of interest and must be expected to exist until the entire tax is paid." *Internal Revenue Manual Sec. 4.25.1.4.9(1)*. The court held that the use of a "bright-line" requirement of a bond or lien was an abuse of discretion; however, the court did not grant the estate summary judgment because several issues of fact remained as to whether the estate was entitled to a waiver. The IRS has issued a notice that describes its new policy which examines each estate on a case-by-case basis for determining whether a bond will be required, using at least the following factors: (1) the duration and stability of the closely held business on which the estate tax is differed; (2) the estate's ability to pay installments of tax and interest timely; and (3) the estate's compliance history. The notice provides interim guidance until proposed regulations can be issued and the IRS seeks comments and suggestions for such regulations. **Notice 2007-90, I.R.B. 2007-46**.

MARITAL DEDUCTION. The decedent's will bequeathed the residue of the estate to three trusts for the surviving spouse. The first trust held the decedent's share of community property, the second trust was to receive the maximum amount which could be used for the unified credit, and the third was to qualify as QTIP for which an election was to be made in order to obtain a marital deduction. The Form 706 was prepared which failed to include the third trust or make the QTIP election. The IRS granted an extension of time to file an amended return including the trust and the election. **Ltr. Rul. 200743018, July 19, 2007**.

QUALIFIED TUITION PROGRAM ACCOUNTS. The taxpayer made contributions to separate QTP accounts for eight grandchildren. The gifts were reported on Form 709 with an attachment stating the taxpayer's intent to prorate the gifts over 5 years. However, the Form 709 box on Line B of Schedule A was not checked. The IRS ruled that the taxpayer had substantially complied with the election requirements so that the election was timely and valid. **Ltr. Rul. 200743001, June 15, 2007**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued revised procedures for obtaining consent from the Commissioner for accounting method changes. The guidance also modifies the period for taking into account a net positive adjustment pursuant to I.R.C. § 481(a) to four tax years. The period for taking into account net negative adjustments remains one year. The amended procedures also add provisions allowing taxpayers, under certain circumstances, to change the year of the election while the Form 3115 is pending. Generally, the taxpayer must submit a written request within a certain time period and, unless it has been determined that a cut-off method must be used, the taxpayer must agree to accelerate the percentage of any net positive adjustments into the revised year. A taxpayer that does not qualify under these circumstances may, upon a showing of compelling circumstances, still be able to change the year of the request. Examples and a transition rule have been included. This procedure applies to Forms 3115 currently pending, or filed on or after November 6, 2007. **Rev. Proc. 2007-67, I.R.B. 2007-48**.

ALTERNATIVE MINIMUM TAX. The House Ways and Means Committee voted 22 to 13 to pass the Temporary Tax Relief Bill of 2007, H.R. 3996, on November 1. The committee approved the one-year patch to set the 2007 AMT exemption at $66,250 for married taxpayers filing jointly and $44,350 for individual filers.

CHARITABLE DEDUCTION. The taxpayer was an attorney who defended a person in a federal criminal trial. The taxpayer obtained photocopies of documents from the federal government and, after the trial, donated these copies to a university library and claimed a charitable donation deduction for the value of the documents. The court held that the taxpayer did not own any interest in the documents or have any tax basis in the documents; therefore, no charitable deduction was allowed. **Jones v. Comm'r, 129 T.C. No. 16 (2007)**.

COOPERATIVES. The taxpayer was a rural non-tax exempt telephone cooperative. The taxpayer had obtained loans from the Rural Telephone Bank and was required to purchase RTB stock. The RTB was dissolved by act of Congress and the taxpayer's stock was redeemed. The IRS ruled that the income from the RTB stock redemption was patronage-source income eligible for exclusion from gross income when distributed as a patronage dividend. To the extent the taxpayer conducted business with nonmembers, the income was non-excludible non-patronage source income. **Ltr. Rul. 200743023, July 18, 2007**.

DEPRECIATION. The taxpayer had made the election to claim additional first year (bonus) depreciation on eligible property based on advice from an independent tax return preparer. The taxpayer was not told that the taxpayer could elect not to take the additional first year depreciation deduction and sought an extension of time to file an amended return without the election. **Ltr. Rul. 200743004, July 24, 2007**.

DISASTER LOSSES. On October 23, 2007, the President determined that certain areas in California are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of wildfires, which began on October 21, 2007. **FEMA-3279-EM**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2006 returns.

DISCHARGE OF INDEBTEDNESS. The taxpayer was a managing member of an LLC which owned an interest in another LLC which owned a commercial property. The property was sold in Chapter 11 bankruptcy during a tax year, but the details of the sale were not available when the taxpayer filed its income tax return. After the return was filed, the taxpayer learned that the sale had produced discharge of indebtedness income and the taxpayer filed for an extension of time to treat the debt as qualified real property business indebtedness so that the taxpayer could reduce the basis of the property by the amount of discharge of indebtedness income. The IRS granted the extension. **Ltr. Rul. 200743012, July 27, 2007**.

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. **Elliott v. Comm'r, T.C. Memo. 2007-321; Stevens v. Comm'r, T.C. Memo. 2007-322; Ranson v. Comm'r, T.C. Memo. 2007-329.**

HYBRID VEHICLE TAX CREDIT. The IRS has announced that, because the manufacturer has sold 60,000 qualified vehicles, the hybrid vehicle tax credit for 2008 Toyota and Lexus hybrid models will apply only to vehicles purchased prior to October 1, 2007. For purchases made April 1, 2007, through September 30, 2007, the credit amounts are:

2008 Toyota Prius Hybrid	$787.50
2008 Toyota Camry Hybrid	$650.00
2008 Toyota Highlander Hybrid, 4WD	$650.00
2008 Lexus LS 600h Hybrid	$450.00
2008 Lexus RX 400h 2WD and 4WD	$550.00

IR-2007-186.

PASSIVE ACTIVITY LOSSES. The taxpayer owned a limited liability company which operated a pharmaceutical and radiological services business. The taxpayer formed a second limited liability company to purchase imaging equipment to be leased to the first LLC. The second LLC had net losses resulting from depreciation deductions and the taxpayer claimed these as ordinary non-passive losses. The IRS disallowed a portion of the losses as passive losses because the second LLC's leasing activity was substantial in relation to the first LLC's activity; therefore, the two activities could not be grouped as a single activity. The court held that the two activities could be grouped together because they share location, owners and were closely connected as business activites. In addition, the court held that the second LLC's activity was insubstantial in comparison to the first LLC's based on the extent of their business, the number of employees and the complexity of the activities. The court noted that the two entities were created primarily to take advantage of limiting tort liability and obtaining financing. **Candelaria v. United States, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,758 (W.D. Tex. 2007)**.

PENSION PLANS. The IRS has published the cost-of-living adjustments (COLAs), effective on Jan. 1, 2008, applicable to dollar limitations on benefits paid under qualified retirement plans and to other provisions affecting such plans. The maximum limitation for the I.R.C. § 415(b)(1)(A) annual benefit for defined benefit plans increased to $185,000 and the I.R.C. § 415(c)(1)(A) limitation for defined contribution plans increased to $46,000. The I.R.C. § 402(g)(1) limitation on the exclusion for elective deferrals under I.R.C. § 402(g)(3), which affects elective deferrals to I.R.C. § 401(k) plans and to the government's Thrift Savings Plan, among other plans, remains unchanged at $15,500. The dollar amount under I.R.C. § 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a five-year distribution period increased to $935,000. The dollar amount used to determine the lengthening of the five-year distribution period increased to $185,000. The I.R.C. § 414(q)(1)(B) limitation used in the definition of a highly compensated employee increased to $105,000. The annual compensation limit under I.R.C. §§ 401(a)(17), 404(l), 408(k)(3)(C) and 408(k)(6)(D)(ii) increased to $230,000. The annual compensation limitation under I.R.C. § 401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed COLAs to the compensation limitation under the plan to be taken into account, increased to $345,000. The I.R.C. § 408(k)(2)(C) compensation amount for simplified employee pension plans (SEPs) remains unchanged at $500. The I.R.C. § 408(p)(2)(E) limitation regarding SIMPLE retirement accounts remains unchanged at $10,500. The I.R.C. § 457(e)(15) limitation on deferrals with respect to deferred compensation plans of state and local governments and tax-exempt organizations remains unchanged at $15,500. The compensation amounts under Treas. Reg. § 1.61-21(f)(5)(i) concerning the definition of "control employee" for fringe benefit valuation purposes remained at $90,000. The compensation amount under Treas. Reg. § 1.61-21(f)(5)(iii) increased to $185,000. The dollar limitation under I.R.C. § 416(i)(1)(A)(i) concerning the definition of key employee in a top-heavy plan increased to $145,000. The dollar limitation under I.R.C. § 414(v)(2)(B)(i) for catchup contributions to an applicable employer plan other than a plan described in I.R.C. § 401(k)(11) or 408(p) for individuals aged 50 or over remains unchanged at $5,000. The limitation under I.R.C. § 414(v)(2)(B)(ii) for catchup contributions to an applicable employer plan described in I.R.C. § 401(k)(11) or 408(p) for individuals aged 50 or over remains unchanged at $2,500. **Notice 2007-87, 2007-2 C.B. 966**.

The IRS has issued the 2008 applicable mortality table and information related to the applicable interest rate for purposes of making certain plan distribution calculations under I.R.C.

§ 417(e)(3). The IRS also ruled that, although the basis for determining the applicable interest rate was changed by the Pension Protection Act of 2006 (Pub. L. No. 109-280), the rules in Treas. Reg. §§ 1.417(e)-1(d)(4), (d)(10)(ii) regarding the time for determining the applicable interest rate continue to apply for plan years beginning on or after January 1, 2008. **Rev. Rul. 2007-67, I.R.B. 2007-48**.

For plans beginning in November, 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 4.77 percent, the corporate bond weighted average is 5.89 percent, and the 90 percent to 100 percent permissible range is 5.30 percent to 5.89 percent. **Notice 2007-91, I.R.B. 2007-48**.

The taxpayer was divorced and part of the divorce decree was an order for the taxpayer to pay child support and alimony. When the taxpayer failed to make payments, the former spouse obtained a court order requiring the taxpayer to withdraw funds from a pension plan and make the payments. The taxpayer excluded the payments from income, arguing that the payments were made pursuant to a qualified domestic relations order, making the funds taxable to the former spouse. The court held that the withdrawal of the pension funds was not made pursuant to the divorce decree which made no mention of the taxpayer's pension funds; therefore, the funds withdrawn were taxable to the taxpayer, and were not paid pursuant to a QDRO. The taxpayer was allowed to claim a deduction for alimony for the portion of the funds used to satisfy the alimony requirement in the divorce decree and the same amount was taxable income to the former spouse. **Amarasinghe v. Comm'r, T.C. Memo. 2007-333**.

The taxpayer terminated employment in November 2004 and requested a distribution from a qualified pension plan in December 2004, expecting the distribution to occur in 2005; however, the distribution actually occurred in December 2004. The taxpayer did not include the distribution in income or pay the 10 percent penalty for early withdrawal. The taxpayer argued that the distribution was intended for 2005 but the court held that the distribution was taxable income for 2004, the taxable year in which it was received. The taxpayer did not claim any of the stated exceptions to the 10 percent penalty for early withdrawals but argued that the pension fund was taxable on the early distribution. The court held that the taxpayer was liable for the 10 percent penalty because no exceptions were claimed or proved. **Thompson v. Comm'r, T.C. Memo. 2007-327**.

PRACTICE BEFORE THE IRS. The IRS's Office of Professional Responsibility has published the names of attorneys, certified public accountants and enrolled agents who have been disbarred from practice before the IRS, have consented to suspensions from practice, have been placed under suspension from practice under the expedited proceeding provisions, or have consented to the issuance of a censure. Attorneys, CPAs, enrolled agents and enrolled actuaries are barred from accepting assistance from, or assisting, any disbarred or suspended practitioner if the assistance relates to a matter constituting practice before the IRS; further, they cannot knowingly aid or abet another person to practice before the IRS during the period of that person's suspension, disbarment or ineligibility. The announcement also includes the names of those whose eligibility to practice before the IRS has been restored **Ann. 2007-104, 2007-2 C.B. 924**.

QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE CREDIT. The IRS has certified the 2008 Honda Civic Hybrid GX, which runs on compressed natural gas, as eligible for the alternative motor vehicle credit under I.R.C. § 30B for $4,000. **IR-2007-181**.

RETURNS. The IRS has posted the following forms and instructions to its website, www.irs.gov/formspubs/index.html, in the Forms & Pubs section: Form 1040, Schedule F (2007), Profit or Loss From Farming; Form 8582 (2007), Passive Activity Loss Limitations; Instructions for Form 8810 (2007), Corporate Passive Activity Loss and Credit Limitation; Publication 225 (Rev. 2007), Farmer's Tax Guide; Publication 393 (Rev. 2007), Federal Employment Tax Forms; Publication 509 (Rev. 10-07), Tax Calendars.

The IRS has extended the tax return filing and payment deadlines for victims of the Southern California wildfires. Taxpayers in the presidentially declared disaster area consisting of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura counties will have until January 31, 2008, to file returns, pay taxes and perform other time-sensitive acts. The extended deadline applies to items due on or after October 21, 2007, when the fires began, and on or before January 31, 2008. This includes the federal withholding tax return, Form 941, normally due October 31, and the estimated tax payment for the fourth quarter, normally due January 15. In addition, the IRS is waiving the failure to deposit penalty for employment and excise deposits due on or after October 21, 2007, and on or before November 5, 2007, as long as the deposits are made by November 5, 2007. Taxpayers residing or with a business within the covered disaster area do not need to identify themselves as affected by the wildfires by writing on their returns or using the disaster designation in their tax software. However, affected taxpayers who reside or have a business located outside the covered disaster area are required to call the IRS disaster hotline at 1-866-562-5227 to identify themselves as eligible for disaster relief. **IR-2007-178**.

S CORPORATIONS

ELECTION. The taxpayer was an association which intended to elect to be taxed as a corporation and then to elect S corporation status. However, the taxpayer failed to file Form 8832, Entity Classification Election and Form 2553, Election by a Small Business Corporation. The IRS granted the taxpayer a 60-day extension to file the forms. **Ltr. Rul. 200744018, July 30, 2007**.

SHAREHOLDER BASIS. The taxpayers were shareholders of an S corporation and made advances to the corporation on an open account. The corporation made repayments during the tax year and had tax losses. The taxpayers made additional contributions to the corporation in order to increase their stock basis so that they could pass through the corporation net losses. The court held that the advances and repayments during a single tax year could be netted instead of being treated as separate transactions during the year. *Brooks v. Comm'r, T.C. Memo. 2005-204*. In response to *Brooks*, the IRS issued proposed regulations which provide that an open account debt is defined as shareholder advances not evidenced by separate written instruments for which the principal amount of the aggregate advances (net of repayments on the advances) does not exceed $10,000 at the close of any day during the S corporation's tax year. Separate advances under a line of credit agreement not evidenced by a separate written instrument would be included in the definition. To determine whether shareholder advances and repayments on advances exceed the $10,000 aggregate principal threshold, the shareholder would have to maintain a running balance of those advances and repayments, and the principal amount of the open account debt. *72 Fed. Reg. 18417 (April 12, 2007).* Commerce Clearing House has reported that the IRS is considering raising the $10,000 limit, based on comments received from the American Institute of Certified Public Accountants.

SELF-EMPLOYMENT. The taxpayer was employed as a truck driver. The taxpayer entered into an operating agreement with one shipper to haul shipment orders placed by the shipper's customers. The court held that the taxpayer was an independent contractor and the amounts received for making deliveries were self-employment income to the taxpayer, based on the following factors (1) the taxpayer determined which and when deliveries would be made; (2) the taxpayer either leased or owned the truck and paid for maintaining the truck, (3) the taxpayer was paid a fixed percentage of the gross amount billed for each delivery, (4) the employment agreement stated that the taxpayer was to be treated as an independent contractor and the taxpayer did not object to receiving Forms 1099 over several years which claimed all payments as non-wage income, and (5) the taxpayer incurred substantial non-reimbursed expenses in performance of the taxpayer's services. **Byers v. Comm'r, T.C. Memo. 2007-331**.

TRUSTS. The taxpayer created a charitable remainder unitrust with the taxpayer as beneficiary and the taxpayer's spouse as remainder beneficiary. The taxpayer and spouse divorced and, as part of the marriage separation agreement, the trust was divided into two equal charitable remainder unitrusts, each with one party as the current beneficiary and each party as the remainder beneficiary of the other's trust. A charitable organization remained the ultimate remainder beneficiary of both trusts. The IRS ruled (1) both trusts continued to qualify as charitable reminder unitrusts, (2) no gain or loss was recognized by the division, (3) the basis and holding periods of trust assets remained the same, (4) no gift tax liability resulted from the division, (5) the transfer of assets would not terminate the trusts' status as a private foundation or result in the imposition of taxes under I.R.C. § 507, and the division would not result in an act of self-dealing under I.R.C. § 4941 and will not be a taxable expenditure under I.R.C. § 4945. **Ltr. Rul. 200744019, June 1, 2007**.

VETERANS BENEFITS. The IRS has announced its acquiescence in *Wallace v. Comm'r, 128 T.C. 132 (2007)* which held that compensation received by a veteran in a compensated work therapy program was veteran's benefits and not included in taxable income.

NUISANCE

PIGS. The plaintiffs were a developer and homeowners in a housing subdivision neighboring the defendant's property. After a disagreement over a hunting incident, the defendant started raising pigs on the property. The testimony indicated that the defendant started the pig operation in order to "get even" with the homeowners. The trial court held that the pigs were a nuisance and issued an injunction which required the defendant to remove the pigs and pig buildings and which enjoined the defendant from raising pigs or cows on the property. The court upheld the trial court judgment, holding that the defendant was entitled to immunity from a nuisance suit, under Ohio Code § 929.04, because the property was not registered as an agricultural district. **Moody v. Wiza, 2007 Ohio App. LEXIS 4719 (Ohio Ct. App. 2007)**.

NEGLIGENCE

CUT-YOUR-OWN TREE FARM. The plaintiff was injured while looking for a Christmas tree on the defendant's cut-your-own tree farm. The plaintiff argued that the defendant failed to warn that tree stumps could be covered by snow and visitors could trip on the hidden stumps, resulting in injury. The defendant cited Mass. Gen. Laws ch. 128, § 2E which provides immunity for owners of pick-your-own Christmas tree farms. The plaintiff argued that the statute requires tree farm owners to post warning signs that give notice to customers that the tree farm is not liable for accidents on the property. The trial court had ruled that, although the posting of the warning sign was mandatory under the statute, the failure to post the sign did not affect the immunity from liability. The appellate court reversed, holding that the failure to post the warning sign removed the defendant's immunity from liability because, without the warning sign, customers could not make a reasonable, informed decision to subject themselves to the risk of walking among cut trees. **MacFayden v. Maki, 2007 Mass. App. LEXIS 1155 (Mass. Ct. App. 2007)**.

PROPERTY

PRIVATE ROAD. The plaintiffs owned property with no access to a public road and had used a private road over the defendants' property for over 50 years. The defendants sought to force the plaintiffs to use another access road in order to avoid increased traffic. The location and use of private roads was governed by statute in Wyo. Stat. § 24-9-101 *et seq*. and the county commissioners relied on county viewers and appraisers to rule that the original access road was the most reasonable and convenient access for the plaintiffs. The board awarded damages to the defendants based on an attempt to determine the loss of value to the defendants' property. The court held that the board's decision was supported by substantial evidence of the comparison of the two access roads. However, the court remanded the case for a new determination as to damages that reflected the true costs to the defendants from allowing access over their property. **Elk Horn Ranch, Inc. v. The Board of County Commissioners of Crook County, 2007 Wyo. LEXIS 170 (Wyo. 2007)**.

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FARM INCOME TAX, ESTATE AND BUSINESS PLANNING SEMINARS

by Neil E. Harl

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• 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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