# CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

## ANIMALS

**HORSES**. The plaintiff was hired by the defendant, the owner-operator of a horse stable, to feed, water and groom horses and to clean stables. The plaintiff was injured while riding a horse belonging to a third party who rented stable space and services from the defendant. The defendant had informed the plaintiff that employees could ride only horses belonging to the defendant. The defendant raised the defense of the Equine Immunity Statute, La. Rev. Stat. § 9:2795.1, to exempt the defendant from liability for the plaintiff's injuries. The plaintiff argued that the statute was unconstitutional in that it denied the plaintiff due process. The court held the statute to be constitutional because it had the rational purpose of protecting and promoting the horse industry. **Faul v. Trahan, 718 So.2d 1081 (La. Ct. App. 1998)**.

## BANKRUPTCY

### GENERAL-*ALM* § 13.03.*

**EXEMPTIONS**.

TAX REFUNDS. The debtor filed for Chapter 7 in February 1998 and soon after filed the debtor's personal income tax return for 1997, claiming a refund. The debtor claimed the refund as exempt "earnings" under Okla. Stat. Tit. 31, § 1.1. The court held that, once the debtor's earnings were withheld for possible taxes, the earnings lost their character as earnings and became taxes; therefore, the refund constituted refunded taxes and not exempt earnings. ***In re* Annis, 99-2 U.S. Tax Cas. (CCH) ¶ 50,757 (Bankr. 10th Cir. 1999)**.

### CHAPTER 12-*ALM* § 13.03[8].*

**PLAN**. The debtor had borrowed money to build a turkey confinement operation. The debtor was 69 years old and had borrowed the money for 10 years at 10 percent interest the first year and prime plus 1 1/2 percent thereafter. When the operation began to lose money, the debtor moved off the farm and hired a manager to run the operation and live on the farm. The debtor and manager had orally agreed that the manager could purchase the farm after five years. The debtor's plan provided for repayment of the loan over 20 years at 7 percent interest. The lender argued that the plan was not proposed in good faith because the debtor was no longer in farming and the interest rate was not high enough on the plan deferred payments. The court held that the debtor had sufficient interest in the farm to be eligible for Chapter 12. The court also held that the plan was confirmable to the extent the plan provided reasonable projections of income and expenses, given the farm's history of producing actual profit even though the farm produced tax losses. However, the court held that the plan could not be confirmed because 20 years was too long for a debtor who was already 69 years old and the interest rate could not be lower than 7.5 percent which provided for a riskless rate of 5.5 percent plus 2 percent for risk. ***In re* Lockard, 234 B.R. 484 (Bankr. W.D. Mo. 1999)**.

### FEDERAL TAXATION-*ALM* § 13.03[7].*

**ESTATE PROPERTY**. The debtors filed for Chapter 7 on December 14, 1998. The case does not indicate whether the debtors made the election to end their 1998 tax year as of the date of the petition. The debtors timely filed their 1998 tax return which claimed a refund. The trustee sought turnover of the refund as estate property. The court held that the refund was estate property but, citing *In re Witmer, 228 B.R. 841 (Bankr. W.D. Va. 1998)*, decreased the amount by 17/365 to account for the number of days in 1998 that occurred post-petition. ***In re* Webb, 234 B.R. 96 (Bankr. W.D. Mo. 1999)**.

**SALE OF RESIDENCE**. The Chapter 7 debtor owned a residence which would have produced $7,800 for creditors after the debtor's exemption if sold by the trustee and the trustee was eligible for the I.R.C. § 121 exclusion of gain. The trustee sought permission from the court to sell the residence to the debtor for $7,000. The court permitted the sale and held that the trustee would have been eligible for the gain exclusion. As noted in the last issue, the IRS has acquiesced on this issue. ***In re* Bailey, 234 B.R. 7 (Bankr. D. R.I. 1999)**.

## CONTRACTS

**HEDGE-TO-ARRIVE CONTRACTS.** The plaintiffs were grain farmers who had entered into hedge-to-arrive (HTA) contracts with a cooperative for the sale of corn, with the contract contemplating delivery of the crop but allowing for the contract to be "rolled" to a later date. The contracts contained an "options" clause which resulted in the creation of new HTAs. These were "calls" which the producers sold through the cooperative. The cooperative was expected to maintain any hedge on the commodity and pay the expenses of keeping the hedge in place including margin calls. The court first concluded that the contacts did not allow unlimited rolling and did not allow for unilateral cancellation. The court reasoned that the contracts, therefore, were valid cash forward contracts because the producers were obligated to make physical delivery of the corn at some future time or to negotiate a settlement short of delivery. The court then turned to the question of whether the options clauses made the contracts illegal under the Commodity Exchange Act. The option clauses conferred on the cooperative the right, but not the obligation, to purchase corn at a specified price on a future date. The court noted that there is no cash forward contract exception for options. Besides, the Court observed, the options were not a marketing technique but were speculative in nature. When the cooperative exercised the option clauses, the producers entered into additional HTAs to satisfy their obligations. The court said the additional or "resultant" HTAs were unenforceable. But the court held that the option clauses were severable from the original HTAs which remained enforceable. **CoBank v. Alexander, No. 3:96CV7687 (N.D. Ohio 1999)**.

# FEDERAL AGRICULTURAL PROGRAMS

**CROP INSURANCE**. The FCIC has issued proposed regulations which amend the Forage Production Crop Insurance Provisions and Forage Seeding Crop Insurance Provisions, and delete Forage Production Winter Coverage Endorsement. The forage policy is revised by: allowing optional units; changing the cancellation and termination dates in California, Nevada and Utah; requiring the insured to report all forage acreage on or before each date specified in the Special Provisions; changing dates when insurance attaches and when insurance ends; extending dates in some counties in California to allow year round coverage; clarifying that insurance is not available for damage or loss of production that occurs after removal from windrow; allowing forage to be direct marketed; and including optional unit procedures in the event of a loss. The forage seeding policy is revised by: adding cancellation and termination dates for California and South Dakota; requiring the insured to report all insurable forage seeding acreage on or before each acreage reporting date specified in the Special Provisions; specifying in all states and in California, unless otherwise specified in the Special Provisions, forage damaged before the final planting date must be replanted to the extent that the forage has less than a 75 percent stand; allowing a replant payment in California, unless otherwise specified in the Special Provisions, on any acreage planted to the insured crop that is damaged by an insurable cause of loss occurring within the insurance period to the extent that less than 75 percent of normal stand remains; allowing increased replanting payments if specified in the Special Provisions; and removing the 10 percent planted acreage requirements. The proposed regulations also restrict the effect of the current Forage Production and Forage Seeding Crop Insurance Regulations to the 2000 and prior crop years. **64 Fed. Reg. 46599 (Aug. 26, 1999)**.

**EMERGENCY LOANS.** The plaintiff was a farmer who operated a farm through a wholly-owned corporation. The corporation applied for an emergency loan but the application was denied because the corporation would not be able to repay the loans. The denial was appealed to the National Appeals Division (NAD) and, during the appeal, the corporation filed for bankruptcy. The plaintiff then attempted to be substituted for the corporation in the loan application. The substitution issue was raised at the appeal level but was denied as outside the scope of the appeal. The plaintiff, now also in bankruptcy, sought judicial review of the substitution issue. The USDA argued that the plaintiff had not exhausted the administrative appeals process. The plaintiff argued that further administrative appeals were useless because (1) the NAD had ruled on the matter and (2) the USDA had indicated that it would not substitute the plaintiff for the corporation. The court held that the plaintiff had not exhausted all administrative appeals because (1) the substitution issue was not raised in a separate appeal and (2) the USDA decision was still appealable. **Bentley v. Glickman, 234 B.R. 12 (N.D. N.Y. 1999)**.

**PACKERS AND STOCKYARDS ACT**. The plaintiff purchased cattle under a "Beef Marketing Agreement" which was proposed by a group of Kansas feedlots. Under the agreement, the plaintiff would make an initial bid on a pen of cattle. The initial bid was based on the midpoint between the highest purchase price reported by USDA in a given week in Kansas for at least 2500 cattle and the highest price the plaintiff paid for the same number of cattle in Kansas during the week. This was called the "Kansas High Price." The feedlot could than accept or reject the bid. If the bid was rejected, then other cattle buyers could bid. But as long as the plaintiff's initial bid was no less than 50 cents below the Kansas High Price, the plaintiff had a right of first refusal on the cattle. Thus, once other buyers had completed bidding, the feedlot had to offer the pen of cattle to the plaintiff at the highest bid price. If the plaintiff opted to exercise the right of first refusal, the feedlot could go back to the high bidder in an attempt to get a higher bid. But after all bidding was completed, the plaintiff could still get the cattle by matching the highest bid. The USDA argued that the right of first refusal violated the Packers and Stockyards Act which makes it unlawful for a packer to engage in "any unfair, unjustly discriminatory, or deceptive practice" or "make or give any undue or unreasonable preference or advantage to any particular person or locality…." The Judicial Officer had concluded that the plaintiff did not have to participate in bidding after its initial bid and could obtain a pen of cattle by matching, instead of exceeding, the highest bid. The appellate court disagreed and said the right of first refusal did not have the effect of suppressing or reducing competition. Indeed, the court said that the plaintiff paid a higher price for cattle under the agreement than for cattle bought in transactions with other feedlots. **IBP, Inc. v. Glickman, No. 98-3104 (8th Cir. 1999)**.

# FEDERAL ESTATE AND GIFT TAX

**DISCLAIMERS**. The decedent and surviving spouse owned a joint account with a brokerage firm. The surviving spouse was appointed executor of the decedent's estate. After the death of the decedent, the surviving spouse received an income check from the brokerage firm and deposited the entire amount in the decedent's and spouse's joint bank account. The spouse then withdrew half of the amount and deposited that into the estate's account. The spouse also had the property in the joint brokerage account placed in an account solely in the spouse's name. The spouse did not make use of any of the brokerage account before disclaiming any interest in the decedent's portion of the account. The IRS ruled that the surviving spouse had not accepted any of the benefits of the decedent's portion of the account prior to filing the disclaimer; therefore, the disclaimer was qualified. **Ltr. Rul. 9932042, May 19, 1999**.

# FEDERAL INCOME TAXATION

**BUSINESS EXPENSES**. The taxpayer was self-employed as a computer engineer and claimed three payments as business expenses. However, the taxpayer provided no corroborating evidence of the business purpose of the expenses and the court denied the deduction as business expenses. **Simpson v. Comm'r, T.C. Memo. 1999-274**.

**CAPITAL GAIN**. As amended in 1997, I.R.C. § 1(h) generally divides a taxpayer's net capital gain into several rate

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groups. A maximum marginal rate of 25 percent applies to unrecaptured section 1250 gain (25-percent gain), which is defined in I.R.C. § 1(h)(7)(A) as the amount of long-term capital gain (not otherwise treated as ordinary income) that would be treated as ordinary income if I.R.C. § 1250(b)(1) included all depreciation and the applicable percentage under I.R.C. § 1250(a) were 100 percent, reduced by any net loss in the 28-percent rate category. A maximum marginal rate of 20 percent applies to adjusted net capital gain (20/10-percent gain), defined in I.R.C. § 1(h)(4) as the portion of net capital gain that is not taxed at the 28-percent or 25-percent rates. A reduced rate of 10 percent is applied to the portion of the taxpayer's adjusted net capital gain that would otherwise be taxed at a 15-percent rate. The IRS has adopted as final regulations which provide that, if a portion of the capital gain from an installment sale of real depreciable property consists of 25-percent gain, and a portion consists of 20/10-percent gain, the taxpayer is required to take the 25-percent gain into account before the 20/10-percent gain, as payments are received. In addition, an example in the regulations illustrates that I.R.C. § 1231 gain from an installment sale that is recharacterized as ordinary gain under I.R.C. § 1231(c) is deemed to consist first of 25-percent gain, and then 20/10-percent gain. Consistent with this treatment and with the general rule that 25-percent gain is taken into account first, another example in the regulations illustrates that, where there is installment gain that is characterized as ordinary gain under I.R.C. § 1231(a) because there is a net section 1231 loss for the year, the gain is treated as consisting of 25-percent gain first, before 20/10-percent gain, for purposes of determining how much 25-percent gain remains to be taken into account in later payments. The final regulations also provide that the capital gain rates applicable to installment payments that are received on or after the effective date of the 1997 Act from sales prior to the effective date are determined as if, for all payments received after the date of sale but before the effective date, 25-percent gain had been taken into account before 20/10-percent gain. The regulations further provide that, in the event the cumulative amount of 25-percent gain actually reported in installment payments received during the period between the effective date of I.R.C. § 1(h) and the effective date of these regulations was less than the amount that would have been reported using the front-loaded allocation method of the regulations, the amount of 25-percent gain actually reported, rather than an amount determined under a front-loaded allocation method, must be used in determining the amount of 25-percent gain that remains to be reported. **64 Fed. Reg. 45874 (Aug. 23, 1999), adding Treas. Reg. § 1.453-12**.

**CASUALTY LOSS**. The taxpayer was an S corporation which operated a racetrack. A portion of the property was flooded in one tax year and the taxpayer claimed a casualty loss deduction for flood damage. The taxpayer claimed the loss based on the decrease in the fair market value of the entire property. The court held that, under Treas. Reg. § 1.165-7(b)(2)(i), casualty loss deduction were allowable only for losses associated with a "single, identifiable property damaged or destroyed." The court found that the taxpayer had not identified the amount of loss associated with single pieces of real or personal property; therefore, none of the loss could be deducted. As an example, the court noted that the taxpayer had identified $300,000 of costs from employees repairing the damages. The court noted that these expenses were deductible as ordinary and necessary business expenses and would produce a double deduction if also allowed as a casualty loss deduction. The taxpayer admitted that it could not clearly allocate the casualty losses to specific property with a specific tax basis. The court concluded that no loss deduction could be allowed without sufficient evidence of income tax basis for single pieces of property damaged by the flood. The opinion is designated as not for publication. **Trinity Meadows Raceway, Inc. v. Comm'r, 99-2 U.S. Tax Cas. (CCH) ¶ 50,754 (6th Cir. 1999)**.

**CORPORATIONS-*ALM* § 7.02.***

CONSTRUCTIVE DIVIDENDS. A corporation was owned by two shareholders, one owning 90 percent of the stock and the other 10 percent. The company instituted an incentive compensation plan based upon the company's total sales as compared to an average industry margin. The shareholders were the only participants and the payments were often greater than provided by the plan. The court held that the standard to be applied was (1) whether the plan had any disguised dividend element and (2) whether the payments were reasonable compensation. The court held that the plan had a disguised dividend element because (1) 81 to 94 percent of the corporation's earning were paid as compensation; (2) the corporation never declared dividends; (3) the payments were greater than provided by the plan; and (4) the payments were inconsistent with a compensatory intent because (a) only the shareholders were eligible, (b) the payments were based on earnings, and (c) the payments were not based on services rendered but had the effect of distributing all of the corporation's earnings. The court disallowed the deduction of the plan payments as employee compensation. **O.S.C. & Associates, Inc. v. Comm'r, 99-2 U.S. Tax Cas. (CCH) ¶ 50,765 (9th Cir. 1999)**.

DISTRIBUTIONS OF STOCK. The IRS has issued proposed regulations relating to recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with an acquisition. **64 Fed. Reg. 46155 (Aug. 24, 1999)**.

PIERCING OF CORPORATE VEIL. The taxpayers had transferred farm property to a corporation and two business trusts, although the taxpayers continued to use and operate the farm as owners. The corporation did not keep separate records or accounts and did not file state and federal tax returns. The taxpayers used the assets for personal and business purposes without compensating the corporation. The IRS sought to collect assessment of back taxes from the corporation's and trusts' assets, arguing that the entities were shams created merely to evade payment of the taxes. The court held that the IRS could collect on the taxes from the corporation's and trusts' assets as belonging to the taxpayers because the corporation and trusts were merely the alter ego of the taxpayers who did not maintain the formalities of the entities and who treated the entities' assets as their own. The court also found that the taxpayers formed the entities under the guidance and advice of known promoters of abusive tax shelters and the promoters were the trustees of the trusts. **United States v. Scherping, 99-2 U.S. Tax Cas. (CCH) ¶ 50,758 (8th Cir. 1999)**.

**DISCHARGE OF INDEBTEDNESS**. The IRS has revoked the following 1991 letter ruling. The taxpayer had negotiated a debt settlement with a creditor resulting in release of indebtedness for less than fair market value. The taxpayer had not filed for bankruptcy. The IRS ruled that the value of the taxpayer's personal and real property exempt under state law was not included in determining the taxpayer's insolvency for purposes of the insolvency exclusion of I.R.C. § 108(a)(1)(B). In the current ruling, the IRS examined the legislative history of I.R.C. § 108 and found no clear authority for excluding exempt property from the insolvency calculation and concluded that, because I.R.C. § 108(a)(1)(B) did not expressly exclude exempt property, the value of exempt property was to be included in determining the solvency of a taxpayer who has discharge of indebtedness income. Neil Harl will publish an article on this issue in a future issue of the *Digest.* **Ltr. Rul. 9932013, May 4, 1999), revoking, Ltr. Rul. 9125010, March 19, 1991**.

The taxpayer owned real and personal property with the taxpayer’s spouse as tenants by the entirety. The taxpayer was obligated to a lender which canceled a portion of the loan. The taxpayer excluded the assets held as tenants by the entirety in determining that the taxpayer was insolvent at the time of the loan cancellation and could exclude the discharge of indebtedness income from taxable income. The IRS ruled, however, that the entire value of the assets held as tenants by the entirety was to be included in determining whether the taxpayer was solvent at the time of loan cancellation; therefore, because the taxpayer was solvent at the time of loan cancellation, the discharge of indebtedness amount was included in taxable income. **FSA Ltr. Rul. 9932019, May 10, 1999**.

**EMPLOYEE BENEFITS**. The IRS has provided guidance relating to the repeal of the combined limitation on defined benefit and defined contributions plans under I.R.C. § 415(e) by the Small Business Job Protection Act (Pub. L. No. 104-88). The repeal was effective for limitation years beginning on or after Jan. 1, 1998. **Notice 99-44, I.R.B. 1999-35**.

**INFORMATION REPORTING**. The IRS has issued general guidelines for reporting requirements where a trucking company makes payments to third party trucking companies for freight costs. I.R.C. § 6041(a) provides, in part, that all persons engaged in a trade or business and making payment in the course of the trade or business to another person of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of $600 or more in any taxable year shall render a true and accurate return to the Secretary of the Treasury setting forth the amount of those gains, profits, and income and the name and address of the recipient of such payment. I.R.C. § 6041A states that if any service-recipient engaged in a trade or business pays in the course of such trade or business during any calender year remuneration to any person for services performed by such person, and the aggregate of such remuneration paid to such person during such calender year is $600 or more, then the service recipient shall make a return setting forth the aggregate amount of such payments and the name and address of the recipient of such payments. The term “service-recipient” means the person for whom the service is performed. Treas. Reg. § 1.6041-3(d) excepts freight payments from information reporting. I.R.C. § 6041A was added to the law by §312(a) of the Tax Equity and Fiscal Responsibility Act of 1982, 1982-2 C.B. 561. The Conference Report stated that until new regulations are issued under I.R.C. § 6041A, the existing regulatory exceptions under I.R.C. § 6041 will continue to apply. H.R. Conf. Rep. No. 760, 97th Cong., 2d Sess. 567 (1982), 1982-2 C.B. 646. Because no new applicable regulatory exception has been issued under I.R.C. § 6041A, the exception contained in Treas. Reg. § 1.6041-3(d) applies to information reporting under I.R.C. § 6041A. The exception for “freight” has been in existence since 1918. The IRS stated that it has consistently interpreted the term “freight” using its plain meaning, i.e., as a method or service for transporting goods or the cost of such transportation. This interpretation results in a general exception from reporting of payments for truck, rail, ship, and air freight services. The IRS ruled that, if a trucking company has reached its hauling capacity and contracts with another trucking company to haul excess livestock or goods and an employer-employee relationship has not been created, it appears that the payment is for the cost of transporting goods or “freight.” Additionally, the IRS noted that payments to incorporated trucking companies are excepted from reporting by Treas. Reg. § 1.6041-3(c). **Ltr. Rul. 9932048, June 17, 1999**.

**INTEREST**. The taxpayers paid interest on a tax deficiency which arose from investment income and the taxpayers claimed the interest on taxes as a business expense deduction. The court agreed with the Fourth, Sixth, Eighth and Ninth Circuit Courts of Appeals that interest paid on federal income taxes is nondeductible personal interest. **Davis v. United States, 99-2 U.S. Tax Cas. (CCH) ¶ 50,783 (W.D. Tex. 1999)**.

**INTEREST RATE**. The IRS has announced that, for the period October 1, 1999 through December 31, 1999, the interest rate paid on tax overpayments is 8 percent (7 percent in the case of a corporation) and for underpayments is 8 percent. The interest rate for underpayments by large corporations is 10 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 is 5.5 percent. **Rev. Rul. 99-36, I.R.B. 1999-__**.

**LEASE VERSUS INSTALLMENT PURCHASE**. The taxpayer leased over 500 trucks. The lease agreements contained terminal rent adjustment clauses (TRACs) providing for compensation to the taxpayer from the lessor if the trucks sold for more than the remaining lease amount plus the costs of sale. Under I.R.C. § 7701(h), a TRAC was to be disregarded if the vehicle lease would otherwise be treated as a lease. The IRS argued that the TRAC should still be a factor in determining whether a vehicle lease was really a lease for tax purposes. The court held that the plaintiff’s leases were standard equipment leases; therefore, the TRACs were to be disregarded for tax purposes. Neil Harl will publish an article on this issue in a future issue of the *Digest*. **Peaden v. Comm’r, 113 T.C. No. 6 (1999)**.

**PENSION PLANS**. For plans beginning in August 1999, the weighted average is 6.01 percent with the permissible range of 5.41 to 6.31 percent (90 to 106 percent permissible range) and 5.41 to 6.61 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 99-38, I.R.B. 1999-31, 134**.

The taxpayer was a corporation which sponsored a qualified deferred compensation plan. The plan and some of the taxpayer’s employee filed a suit against a securities brokerage firm and the taxpayer paid the litigation costs. The taxpayer sought to deduct these costs as costs of administering the plan. The IRS argued that, under Treas. Reg. § 1.404(a)-3(d), administrative costs were deductible only if reoccurring, but the court held that the costs were deductible because they were ordinary and necessary costs of administering the plan. **Sklar, Greenstein & Scheer, P.C. v. Comm'r, 113 T.C. No. 9 (1999)**.

**RETURNS**. The IRS has announced that its web site, http://www.irs.ustreas.gov, contains an interactive calculator that helps taxpayers on installment plans figure their monthly payment amounts and then prints out an installment agreement form for them to file. It is to be used by individuals who have filed their returns and are not already paying taxes under an installment agreement. **IR-1999-69**.

**SAFE HARBOR INTEREST RATES**
**September 1999**

| | Annual | Semi-annual | Quarterly | Monthly |
|---|---|---|---|---|
| | | **Short-term** | | |
| AFR | 5.42 | 5.35 | 5.31 | 5.29 |
| 110 percent AFR | 5.98 | 5.89 | 5.85 | 5.82 |
| 120 percent AFR | 6.52 | 6.42 | 6.37 | 6.34 |
| | | **Mid-term** | | |
| AFR | 5.98 | 5.89 | 5.85 | 5.82 |
| 110 percent AFR | 6.58 | 6.48 | 6.43 | 6.39 |
| 120 percent AFR | 7.19 | 7.07 | 7.01 | 6.97 |
| | | **Long-term** | | |
| AFR | 6.25 | 6.14 | 6.11 | 6.08 |
| 110 percent AFR | 6.89 | 6.78 | 6.72 | 6.69 |
| 120 percent AFR | 7.53 | 7.39 | 7.32 | 7.28 |

**Rev. Rul. 99-37, I.R.B. 1999-__**.

**TRAVEL EXPENSES**. The taxpayer was self-employed as a printing consultant. The taxpayer's permanent residence and in-home business office were in Illinois but over five years, the taxpayer provided extensive consulting for a client in California. Although the consulting was temporary in nature, several circumstances required the taxpayer to make several trips of extended length to California, enough to make it- less expensive for the taxpayer to rent a small, sparsely furnished apartment in California. The IRS argued that the taxpayer's tax home was in California for the five years because of the length of time spent with the client and the need for the apartment. The court held that the travel expenses to California were deductible business expenses because (1) the permanent residence was in Illinois, (2) the taxpayer was available and did provide services to other clients in other states from the Illinois office, and (3) the work in California was always intended to be temporary. **Mitchell v. Comm'r, T.C. Memo. 1999-283**.

# LANDLORD AND TENANT

**EMBLEMENTS**. The plaintiff had a remainder interest in farm land after the plaintiff's parents deeded the land to the plaintiff and reserved a life estate. The land was cropshare leased to a third party. The last life tenant died in July 1996 and the issue was the ownership of the landlord's share of the crops harvested the following autumn. The deed to the plaintiff did not mention this contingency. The court held that, under the doctrine of emblements under state law, the crops belonged to the life tenant since the life tenancy document did not provide otherwise. Therefore, at the termination of the life tenancy, the crops belonged to the life tenant's estate and not to the remainder holder, the plaintiff. **Heinold v. Siecke, __ N.W.2d __ (Neb. 1999)**.

# NUISANCE

**HOG CONFINEMENT FACILITY**. The defendant operated a 2,880 head hog production facility and the plaintiffs were neighbors who sought to enjoin the operation as a nuisance. The defendant had made several improvements to control odors from the waste lagoon. The defendant presented evidence that the odor controlling methods were the best available. At trial the plaintiffs sought to include a jury instruction that there was no legal defense that a farm operation was not a nuisance if the farm used "state-of-the-art" technology to control odors. The plaintiff appealed the trial judges refusal to include that instruction to the jury. The court held that the proposed instruction accurately described the law of nuisance in North Carolina, that the efforts of a defendant to control the odors was irrelevant as to the issue of the existence of a nuisance. The court held that the issue of the defendant's efforts to control the odors was sufficiently important in the case to require the jury instruction to prevent jury confusion as to the law to be applied in the case and remanded the case for a new trial. **Parker v. Barefoot, 502 S.E.2d 42 (N.C. Ct. App. 1998)**.

# WORKERS' COMPENSATION

**STABLE WORKER**. The plaintiff was hired by the defendant, the owner-operator of a horse stable, to feed, water and groom horses and to clean stables. The plaintiff was injured while riding a horse belonging to a third party who rented stable space and services from the defendant. The plaintiff argued that the plaintiff was an independent contractor and not restricted to a claim under Workers' compensation for the injuries. The court held that the evidence was sufficient to find that the plaintiff was an employee because the plaintiff's duties were under the control of the defendant. The plaintiff also argued that the claim was an intentional tort excepted from the workers' compensation coverage. The court held that the evidence presented a close question as to the defendant's knowledge of the horse's propensity to "flip;" therefore, the court deferred to the trial court's judgment as to the credibility of the witnesses which supported the verdict for the defendant. **Faul v. Trahan, 718 So.2d 1081 (La. Ct. App. 1998)**.

# CITATION UPDATES

***In re* Griffith, 174 F.3d 1222 (11th Cir. 1999), *rev'g and rem'g*, 210 B.R. 216 (S.D. Fla. 1997), *aff'g*, 161 B.R. 727 (Bankr. S.D. Fla. 1993)** (discharge in bankruptcy) see p. 123 *supra*.

**Richmond v. United States, 172 F.3d 1099 (9th Cir. 1999), *aff'g*, 234 B.R. 787 (S.D. Cal. 1997)** (automatic stay) see p. 115 *supra*.

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