under I.R.C. § 162 specifying what expenses are deductible as "ordinary and necessary expense paid or incurred…in carrying on any trade or business… ."[14] The determination of whether a trade or business is actively conducted by the taxpayer is made based on all of the facts and circumstances.[15] In general, it requires that the taxpayer "meaningfully participates in the management or operations of the trade or business."[16] Thus, it would appear that a non-material participation landlord under a share-rent lease should be eligible to use installment reporting of gain, even though on an accrual method of accounting, if the landlord is substantially or "meaningfully" involved in management.

Likewise, it would seem that a farm landlord operating under a share-rent lease with little or no involvement in management (as well as a cash rent farm landowner) is likely to be barred from installment reporting of gain if on an accrual method of accounting. [17]

Effect on installment sale of commodities

In a last minute amendment to the Installment Sales Act of 1980,[18] the Congress acted to enable some farm and ranch taxpayers to report the gain from the sale of crops and livestock (and other commodities) on the installment method of reporting. [19] A farm and ranch taxpayer receiving gain from the installment sale of property may report the transaction on the installment method, with the gain taxable as the payments are received by the seller, so long as the property involved "is not required to be included in inventory under the taxpayer's method of accounting."[20] Thus, taxpayers on the cash method of accounting and those under hybrid methods of accounting (who are not required to maintain inventories) are eligible to use the provision. Those on an accrual accounting method requiring that inventories be maintained have not been eligible for installment reporting of commodities. Such taxpayers would not, therefore, be impacted by the 1999 amendment because they were already precluded from using the provision added in 1980. However, those under an accrual accounting method who do not maintain inventories are expected to be impacted negatively by the late 1999 amendment barring installment reporting for those on an accrual accounting method except for those involved in the trade or business of farming.[21]

Taxpayers barred by the 1999 amendment from using installment reporting for commodities are left with deferred payment reporting of gain[22] which is clearly available for deferred reporting of gain on crops[23] but in the past has been challenged in the sale of livestock when the buyer is subject to the Packers and Stockyards Act.[24]

In conclusion

The 1999 amendment adds another item to the long list of situations where trade or business status is a critical determinant of eligibility. Unfortunately, the law is not clear as to where that line is drawn in the context of farm and ranch leases.

FOOTNOTES

1 I.R.C. § 453, as amended by H.R. 1180, Sec. 536, 106th Cong., 1st Sess. (1999). See generally 6 Harl, *Agricultural Law* § 48.03 (1999); Harl, *Agricultural Law Manual* § 6.03[1] (1999).

2 Pub. L. 96-471, 94 Stat. 2247 (1980).

3 Pub. L. 106-__, Sec. 536 (a), 106th Cong., 1st Sess. (1999).

4 See 4 Harl, *Agricultural Law* § 25.02 (1999).

5 *Id.*, § 25.06.

6 Pub. L. 106-__, Sec. 536(c), 106th Cong., 1st Sess. (1999).

7 See generally, Harl, *supra* n. 4, § 25.03.

8 Pub. L. 106-__, Sec. 536(a)(2); I.R.C. § 453(l)(2)(A).

9 *Id*.

10 See Treas. Reg. § 1.175-3.

11 *Id*.

12 I.R.C. § 179. See 4 Harl, *supra* n. 4, § 29.05[2][b] (1999).

13 I.R.C. § 179(b)(3)(A).

14 I.R.C. § 162(a). See Treas. Reg. § 1.179-2(c)(6).

15 Treas. Reg. § 1.179-2(c)(6)(ii).

16 *Id*.

17 See n. 8 *supra* and accompanying text.

18 Pub. L. 96-471, Sec. 2, 94 Stat. 2247 (1980).

19 See I.R.C. § 453(b)(2)(B).

20 *Id*.

21 See ns. 3 and 8, *supra*.

22 See Rev. Rul. 58-162, 1958-1 C.B. 234. See generally 4 Harl, *supra* n. 4, § 25.03[2].

23 *Id*.

24 See, e.g., United States v. Pfister, 205 F.2d 538 (8th Cir. 1953), *rev'g*, 102 F. Supp. 640 (D. S.D. 1952) (sale of cattle through public auction not eligible for installment reporting; Packers and Stockyards Act prohibited livestock markets from purchasing consigned animals for their own account so principal-agent relationship existed). See generally 4 Harl, *supra* n. 4, § 41.06.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

IMPOUNDMENT. The defendants were members of an animal society and the county sheriff's department. The defendant discovered that cattle belonging to the plaintiff were escaping onto neighbors' land and public highways. They visited the plaintiff's farm and found that several cattle had died and the carcasses were rotting in the same field as cattle were grazing and that several cattle were dying from starvation. The defendants removed the animals and notified the plaintiff of the impoundment under Tenn. Code § 39-14-210. The plaintiff filed a Section 1983 claim that the impoundment without a warrant violated the due process and taking clauses of the constitution. The court held that the impoundment was proper in that the defendants were faced with an emergency situation and the statute provided adequate post-impoundment remedies if the impoundment was abusive. **Lowery v. Faires, 57 F. Supp.2d 483 (E.D. Tenn. 1998)**.

ADVERSE POSSESSION

ABANDONED RAILWAY. The previous owners of the plaintiff's land had granted a right-of-way to a railroad on their land. The deed provided that, if the railroad abandoned the use of the right-of-way as a railway, the full title reverted back to the landowner. The railroad abandoned the right-of-way in October 1986 and transferred its rights to the defendant, subject to "any conditions, restrictions, reservations, licenses, leases and easements." The defendants intended to use the strip of land to extend a bike trail. The plaintiff filed an action to quiet title in May 1996, less than ten years after the abandonment. The court held that the initial transfer of the right-of-way was subject to reversion because the railroad received an easement to use the land only for railway purposes and that, once the railway was abandoned, the easement ceased. The court also held that the defendants did not acquire title by adverse possession because they did not have a claim of right or possession for over 10 years after the date of abandonment by the railroad. **Moore v. Wabash Trace, 991 S.W.2d 681 (Mo. Ct. App. 1999)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

ADMINISTRATIVE CLAIMS. The debtors had leased farmland from a creditor. The landlords' liens were not perfected and were avoided by the Chapter 7 trustee. However, the debtors used the farms during the bankruptcy case, planting the crops just before filing for bankruptcy and harvesting the crops 142 days later. The landlords filed administrative claims for the rental of the properties during the bankruptcy case. The Bankruptcy Court had determined the rental value of the properties by multiplying the annual rent by a fraction equal to the number of days the property was used by the bankruptcy estate divided by 365. The appellate court remanded the case because it held that the use of the number 365 failed to take into account the limited use of a farm during nonproductive months. The court noted that, in this case, the bankruptcy estate had the use of the farm during nearly the entire productive period of the farm for the year, from planting to harvest. ***In re* Wedermeier, 239 B.R. 794 (Bankr. 8th Cir. 1999)**.

CHAPTER 12-*ALM* § 13.03.*

SETOFF. The debtors had contracted with a creditor to store their grain with the creditor. The debtors prepaid the storage costs which were ratably refundable if the debtors removed the grain before the end of the storage agreement. The debtor sold the grain after filing for bankruptcy and the estate sought turnover of the refund from the creditor. The debtors had also purchased goods and services from the creditor on account and the creditor sought to offset the refund against the amount owed by the debtors. The court held that the refund was not an amount owed by the creditor to the debtors but was property of the estate; therefore, there was no mutuality of debt between the parties to support a setoff. ***In re* Marshall, 240 B.R. 302 (Bankr. S.D. Ill. 1999)**.

FEDERAL TAX-*ALM* § 13.03[7].*

DISCHARGE. The debtor failed to report and pay taxes on early distributions from an employment pension. The debtor had reported some of the distributions as income, which the court found as indicative of the debtor's knowledge of the need to report all of the distributions as income. The court held that the taxes on the distributions were nondischargeable for willful and intentional attempt to evade payment of the taxes because the debtor knew the taxes were to be paid, had sufficient funds to pay the taxes and did not report or pay the taxes. The court also noted that the IRS was the only large creditor in the no asset case. ***In re* Scarpiello, 240 B.R. 203 (Bankr. E.D. Pa. 1999)**.

The debtor failed to file and pay taxes for 1983 and 1984. The IRS constructed substitute returns for those years an made an assessment based on those returns. The debtor did not assist in the filing of those returns. The debtor filed returns for those years in 1994 but the returns were returned by the IRS. The court held that neither the IRS returns nor the debtor's returns would be considered returns for purposes of Section 523(a)(1)(B) and the taxes were not dischargeable for failure of the debtor to file a return. ***In re* Prince, 240 B.R. 261 (Bankr. N.D. Ohio 1999)**.

SALE OF ESTATE ASSETS. The debtors' plan provided for the sale of some estate property which was to be managed by a creditors' representative. The plan provided that the representative would be responsible for filing any tax returns and paying any taxes which may result from the sale of the estate property. The unsecured creditors objected to the provision for payment of taxes from the sale proceeds. The court held that the representative was not responsible for payment of the taxes from the sale of the assets because the debtors' plan did not establish a trust and did not transfer title to the property to a trustee. The court noted that the representative had powers similar to a trustee but held that the plan had no language of intent to create a trust. ***In re* Shank, 240 B.R. 216 (Bankr. D. Md. 1999)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The FCIC has approved for reinsurance and subsidy the insurance of canola/rapeseed, corn, feed barley, spring wheat, soybeans, and sunflowers, in select states and counties under the Revenue Assurance plan of insurance for the 2000 crop year. **65 Fed. Reg. 1677 Jan. 11, 2000)**.

MILK. The plaintiffs were dairies subject to the 1983 Dairy Promotion Stabilization Act assessment of 15 cents per hundredweight to fund promotion of dairy products. The plaintiffs had challenged the assessments as violating their First Amendment free speech rights. The Supreme Court held that the assessments were constitutional because the assessment "funds advertising that promotes only consumption of dairy products and does not identify individual financial sponsors, does not compel any producer to endorse or fund any political or ideological view, and is part and parcel of a legitimate regulatory scheme for promotion of commodities, and thus...does not violate producers' First Amendment free speech rights." **Nature's Dairy v. Glickman, U.S., 99-439, Jan. 10, 2000**.

NOXIOUS WEEDS. The AMS has adopted as final amendments to the Federal Seed Act regulations. The regulations designate seeds of species listed in the Federal Noxious Weed Act, except for the Cuscuta species, as noxious and prohibits the shipment of agricultural and vegetable seeds containing them, adds two kinds, creeping foxtail and flatpea, to the list of those subject to the FSA, updates the seed testing regulations, updates the seed certification regulations, and corrects several minor errors. **65 Fed. Reg. 1703 (Jan. 11, 2000)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The decedent's will included a bequest to a charity which was listed in IRS Pub. 78 at the time of the decedent's death. The IRS ruled that the estate was entitled to rely on the listing in Pub. 78 and was eligible for a charitable deduction for the bequest to the charity. **Ltr. Rul. 200001010, Sept. 30, 1999**.

GIFTS. The taxpayer purchased mineral leases from the government. Some of the leases were purchased in the name of the taxpayer's spouse but were actually held and maintained by the taxpayer and the taxpayer's company. The taxpayer was sued by former business partners and the taxpayer sought to remove the leases from the reach of these litigants should they win the litigation. The taxpayer had the title to the leases transferred to the spouse without consideration. However, the spouse signed blank assignment forms with which the taxpayer could revest any lease back to the taxpayer at any time. The transfer tactic failed because of state fraudulent transfer statutes and the partners were able to sue the spouse to collect on the money judgment. The court held that the transfers of the leases were not completed gifts because the taxpayer continued to enjoy the benefits of the leases. In addition, the transfers were held not to be gifts because the taxpayer had the power to revoke the transfers at anytime through use of the blank signed assignment forms. **Grynberg v. Comm'r, T.C. Memo. 2000-15**.

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent's estate representative had obtained the maximum extension to file and pay federal estate tax; however, the representative did not file and pay the taxes until more than six months after the extensions expired. The representative made the Section 6166 election to make installment payments of estate tax. The court held that the election was not allowed because it was not made on a timely filed estate tax return. **Estate of Hinz v. Comm'r, T.C. Memo. 2000-6**.

MARITAL DEDUCTION. The decedent had an IRA with a trustee as the primary beneficiary. All of the income of the trust was to be distributed to the surviving spouse and no one had the power to appoint trust corpus to anyone but the surviving spouse. The spouse had the authority, exercisable annually, to compel the trustee to withdraw from the IRA an amount equal to the income earned on the assets held by the IRA during the year and to distribute that amount through the trust to the spouse. The IRS ruled that the decedent's executer could elect QTIP treatment for the trust and IRA. **Rev. Rul. 2000-2, I.R.B. 2000-__**.

VALUATION. The decedent owned a half interest in a 90 acre rural property. The property was zoned for agricultural use but was held primarily for investment and development. The decedent had sold portions of the property to various governmental agencies and schools. The estate valuation of the property sought to decrease the value because of political bias against further development of the land but no restrictions had been passed. The estate also sought to discount the value for estate tax purposes by 40 percent for the decedent's half interest. The court raised the estate tax valuation by allowing a smaller discount for the anti-development bias and because the property had developers interested in purchasing the property. The court also allowed only a 10 percent discount for the one-half interest to provide for any hypothetical partitioning costs. **Estate of Busch v. Comm'r, T.C. Memo. 2000-3**.

The decedent owned, in whole or part, several apartment buildings in an area of San Francisco. The issue was the amount of blockage and fractional interest discounts to be applied to the fair market value of the properties. A blockage discount of 11 percent was applied to account for the similarity in size and purpose of several properties. A 20 percent discount was applied to the value of properties in which the decedent held a fractional interest. Estate of **Brocato v. Comm'r, T.C. Memo. 1999-424**. Neil Harl will publish an article on *Busch* and *Brocato* in a future issue of the *Digest*.

VALUATION OF STOCK. The decedent owned 62 percent of the stock in a family corporation which operated a heavy equipment rental company. The value of the decedent's stock was based on a combination of the value the company assets (65 percent weight) and the earnings of the company (35 percent weight) because the company was in no danger of liquidation. The court also allowed a 15 percent discount for lack of marketability and 7.5 percent for lack of super-majority control. The super-majority control was required by the corporate charter to force the liquidation of the company. **Estate of Dunn v. Comm'r, T.C. Memo. 2000-12**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued 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 ruling, *Rev. Rul. 92-13, 1992-1 C.B. 665*, include (1) certain exceptions to the 6-year waiting period between automatic period changes, such as for changes to or from a 52-53-week taxable year referencing the same month; (2) three exceptions to the scope restrictions applicable to an automatic period change for a corporation that is a member of a partnership or a beneficiary of a trust or estate; (3) elimination of the prohibition of an automatic period change for a corporation making an S corporation election effective for the taxable year immediately following a change in accounting period, provided the corporation is changing to a permitted S corporation taxable year; (4) modification of the scope restriction for a cooperative association with a loss in the short period required to effect the change to allow an otherwise automatic change if the patrons of the cooperative association remain substantially the same before and after the accounting period change; and (5) removal of the requirement that a net operating loss in the short period required to effect the change must be deducted ratably over 6 years and increase of (from $10,000 to $50,000) the exception to the general rule proscribing a carryback of a short period NOL. **Rev. Proc. 2000-11, I.R.B. 2000-__**.

BAD DEBT DEDUCTION. The taxpayer had loaned funds to a solely-owned corporation. The taxpayer claimed the loans as bad debts on income tax returns for 1988 and 1989 and the bad debt deductions offset gains realized from the sale of stock in another corporation. However, after 1988, the taxpayer's corporation continued to do business and even made a public offering of stock. The court held that the loans were not shown to be worthless in 1988 or 1989 and disallowed the bad debt deductions. The appellate court affirmed in a decision designated as not for publication. **Coborn v. Comm'r, , 2000-1, U.S. Tax Cas. (CCH) ¶ 50,132 (8th Cir. 1999), *aff'g*, T.C. Memo. 1998-377**.

The taxpayer owned a corporation which purchased other failing corporations with the intent to revitalize those corporations. The taxpayer made loans to the corporation and one of the acquired companies which eventually became worthless. The taxpayer claimed a business bad debt deduction, arguing that the taxpayer was in the business of buying and rehabilitating corporations. The court held that the taxpayer was not in the business of making loans since the corporation did all of the acquisition and rehabilitation and the taxpayer had treated the loans as investments in the taxpayer's records and tax returns. **Bell v. Comm'r, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,141 (8th Cir. 2000)**.

BUSINESS EXPENSES. The IRS has ruled that costs incurred by a taxpayer to obtain, maintain, and renew International Organization for Standardization (ISO) 9000 certification are deductible as ordinary and necessary business expenses under I.R.C. § 162, except to the extent they result in the creation or acquisition of an asset having a useful life substantially beyond the taxable year, such as a quality manual. **Rev. Rul. 2000-4, I.R.B. 2000-__**.

The taxpayer was not employed but was contesting a discharge from governmental employment. The taxpayer made weekly trips to the public library in order to remain eligible for reinstatement if the government agency should decide to rehire the taxpayer. The court disallowed a deduction for the travel expense to the public library because the taxpayer was not engaged in any income producing trade or business. **Hunter v. Comm'r, T.C. Memo. 2000-2**.

CORPORATIONS

CONSTRUCTIVE DIVIDEND. The taxpayers were equal shareholders in a corporation which operated a liquor store and bar. The IRS determined that the taxpayers had failed to report much of their cash income. The court held that the unreported income was assessed against each shareholder equally as a constructive dividend. **Crabtree v. Comm'r, T.C. Memo. 1999-423**.

COURT AWARDS AND SETTLEMENTS. The taxpayer was one of 800 employees who filed releases as part of a voluntary downsizing by one employer. Although the taxpayer, representing the entire group, felt that the taxpayer had some claim for employment discrimination in treatment by the employer, the taxpayer had not filed a lawsuit or asserted any claim against the employer for such discrimination or other injury. The court held that the employment termination payments were includible in income. **Abbott v. United States, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,127 (N.D. N.Y. 1999)**.

DEPRECIATION. The IRS has announced guidance for claiming depreciation for property acquired in a like-kind exchange or as part of an involuntary conversion. The guidelines will be issued as regulations. A taxpayer must follow the principles set out in this notice for acquired MACRS property placed in service on or after January 3, 2000, in a like-kind exchange of MACRS property under I.R.C. § 1031 or as a result of an involuntary conversion of MACRS property under I.R.C. § 1033. For purposes of determining the depreciation allowable for MACRS property acquired in an exchange of MACRS property for like-kind property to which I.R.C. § 1031 applies, or acquired in replacement of involuntarily converted MACRS property to which I.R.C. § 1033 applies, the acquired MACRS property should be treated in the same manner as the exchanged or involuntarily converted MACRS property with respect to so much of the taxpayer's basis in the acquired MACRS property as does not exceed the taxpayer's adjusted basis in the exchanged or involuntarily converted MACRS property. Any excess of the basis in the acquired MACRS property over the adjusted basis in the exchanged or involuntarily converted MACRS property is treated as newly purchased MACRS property.

For acquired MACRS property placed in service before January 3, 2000, in a like-kind exchange of, or as a result of an involuntary conversion of, MACRS property, the IRS is aware that taxpayers are depreciating this acquired property either (1) in the manner set out in this notice consistent with Prop. Treas. Reg. § 1.168-5(f); or (2) as newly purchased MACRS property. The IRS will allow a taxpayer to continue to use its present method of depreciating the acquired property and will treat these methods as allowable methods of depreciation. However, a taxpayer presently treating the acquired property as newly purchased MACRS property may change to treating the property under the principles in this notice, provided the property has been treated by the taxpayer as acquired in a I.R.C. § 1031 like-kind exchange or I.R.C. § 1033 involuntary conversion and the change is made for the first or second taxable year ending after January 3, 2000. **Notice 2000-4, I.R.B. 2000-__**.

EARNED INCOME CREDIT. The taxpayer claimed welfare payments under AFDC and SSI programs, Social Security disability benefits, and gifts as wages on the taxpayer's income tax return. No other wages or income were reported such that, after the standard deduction and exemptions, the taxpayer had zero taxable income. The taxpayer also claimed earned income credit. The court held that earned income does not include welfare payments such as AFDC and SSI, Social Security disability benefits or gifts. **Powers v. Comm'r, T.C. Memo. 2000-5**.

INCOME. The taxpayer owned a corporation which owned and operated a child care center. The taxpayer transferred the corporation to a charitable remainder unitrust. The trust then sold the business to third parties who required that the taxpayer sign a covenant not to compete within five years or 100 miles of the business. The court held that a portion of the sale proceeds had to be allocated to the covenant not to compete and that this portion of the sale proceeds was income to the taxpayer and not the trust because the covenant was personal to the taxpayer. **Jorgl v. Comm'r, T.C. Memo. 2000-10**.

LETTER RULINGS. The IRS has issued its annual list of procedures for issuing letter rulings. **Rev. Proc. 2000-1, I.R.B. 2000-__, _**.

The IRS has issued its annual list of procedures for furnishing technical advice to District Directors and Chiefs, Appeals Offices. **Rev. Proc. 2000-2, I.R.B. 2000-__, _**.

The IRS has issued its annual list of tax issues for which the IRS will not give advance rulings or determination letters. **Rev. Proc. 2000-3, I.R.B. 2000-__**.

OFFERS IN COMPROMISE. The IRS has announced a simplified method of settling taxpayer debts under the offer in compromise program. The new offer will allow taxpayers a fixed monthly payment option and will assist taxpayers and practitioners in situations where the full amount of the debt cannot be met. Under the new program, the IRS will calculate the exact amount an individual will owe during the life of the offer in compromise payments, without fluctuating interest rates. The simplified monthly payment option allows the IRS to collect the maximum amount the taxpayer is able to pay after covering basic living expenses. All offers in compromise submitted after Jan. 1, 2000, must be on the new Form 656, Offer in Compromise, which replaces Form 656-A. The form is available on the IRS web site at http://www.irs.gov/, in the "Forms and Pubs" section. **IR-1999-105**.

PARTNERSHIPS-*ALM* § 7.03.*

BASIS. The IRS has issued proposed regulations relating to the allocation of nonrecourse liabilities by a partnership. The proposed regulations revise tier three of the three-tiered allocation structure contained in the current nonrecourse liability regulations, and also provide guidance regarding the allocation of a single nonrecourse liability secured by multiple properties. **65 Fed. Reg. 2081 (Jan. 13, 2000)**.

PENSION PLANS. A corporate taxpayer had a qualified cash or deferred arrangement plan under I.R.C. § 401(k) and provided for matching contributions in accordance with I.R.C. § 401(m). The corporate tax year ended on June 30 and the plan year end was December 31. By the last day of the plan year, December 31, the corporation had contributed amounts to the plan in accordance with the terms of the plan. The contributions consisted of (1) the elective deferral and matching contributions attributable to compensation earned by plan participants before the end of the corporate year ending June 30; and (2) the elective deferral and matching contributions attributable to compensation earned after June 30. The corporation obtained an extension for filing its return to March 15. The corporation deducted the entire amount of the elective deferral and matching contributions made to the plan during the plan year. The total amount did not exceed 15 per cent of compensation otherwise paid or accrued during the tax year in accordance with the limitations of I.R.C. § 404(a)(3)(A)(i). The IRS position, set forth in a Coordinated Issue Paper, is that contributions to a qualified cash or deferred arrangement plan within the meaning of I.R.C. § 401(k) or to a defined contributions plan as matching contributions within I.R.C. § 401(m) are not deductible by the employer for a specific tax year if those contributions are attributable to compensation earned by plan participants after the end of such taxable year. **IRPO ¶ 181,415 (Oct. 26, 1996)**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

BASIS. The taxpayer owned an S corporation formed for the purpose of acquiring another unrelated corporation. The funds for the acquisition were borrowed from a bank and structured in such a way as to include a personal loan by the taxpayer. However, the court found that, in substance, the taxpayer's personal loan was actually a personal guarantee of the S corporation's loan because the taxpayer did not receive any funds and was not required to make any payments on the loan unless the S corporation failed to make payments. The court held that the taxpayer could not increase the taxpayer's basis in the corporation for the guarantee of the S corporation loan. This resulted in disallowance of the taxpayer's share of corporate losses. **Grojean v. Comm'r, T.C. Memo. 1999-425**.

SELF-EMPLOYMENT TAX. The taxpayers were equal shareholders in an S corporation which operated restaurants. The corporation had a net loss in the tax year involved and the taxpayers offset their share of the loss against other income for purposes of determining self-employment income. The court held that the taxpayers' share of S corporation income and loss is not included in

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self-employment income. The court noted the continuing validity of Rev. Rul. 59-221, 1959-1 C.B. 225 since Congress has not overturned that ruling in the several modifications of the self-employment tax rules passed since the ruling was issued. **Ding v. Comm'r, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,137 (9th Cir. 1999)**.

SELF-EMPLOYMENT TAX. See item under **S Corporations** *supra*.

TRAVEL EXPENSES. The taxpayer was hired through a temporary employment agency to work on a project over 400 miles from the taxpayer's home. The taxpayer worked on the project for three years and stayed in the city of the project during the week, visiting the taxpayer's family on weekends. The court found that the expected duration of the project was over two years; therefore, the court held that the taxpayer was not entitled to claim deductions for travel between the project city and the family home or for meals and lodging while in the project city. **Saric v. Comm'r, T.C. Memo. 2000-8**.

WITHHOLDING TAXES. The taxpayer was employed by a framing shop. The employer treated the taxpayer as an independent contractor and did not withhold any income taxes from the taxpayer's wages. The taxpayer did not pay any income taxes on the wages received from the employer. The taxpayer argued that, under IRS Pub. 15, "Circular E, Employer's Tax Guide," the employer was liable for the income taxes because the employer failed to withhold the taxes. The court held that the publication did not control where the statute, I.R.C. § 3509, was clear that an employee remained liable for the income taxes, even where the employer failed to withhold taxes. The court held that the taxpayer was liable for the income taxes on the wages paid. **Lucas v. Comm'r, T.C. Memo. 2000-14**.

PRODUCT LIABILITY

INSECTICIDE. The plaintiff hired the defendant to spray an insecticide on Christmas trees grown by the plaintiff. The insecticide damaged the trees and the plaintiff notified the Oregon Department of Agriculture which conducted an investigation. The ODA issued a report which included statements about the cause of the damage to the trees and the plaintiff sought to include this report in evidence in a negligence suit against the defendant. The defendant argued that the ODA was prohibited from making determinations as to the causes of pesticide damage, the person who may have caused the damage or the financial amount of the damage. The court agreed that the statute, Or. Rev. Stat. § 634.172(3)(a), did contain these provisions but the report was allowed as evidence because the statute did not expressly prohibit the use of a report with these findings in a civil lawsuit. **Holbrook v. Precision Helicopters, Inc., 986 P.2d 646 (Or. Ct. App. 1999)**.

PROPERTY

ABANDONMENT. The county owned a roadway easement of 60 feet wide across a portion of the defendant's land. A 12 foot roadway existed on the land which was seldom used and maintained. The defendant placed a fence near the road and planted trees on the property for eventual harvest. The defendant argued that the county had abandoned the easement except for the roadway and five feet on either side. The defendant also raised the policy argument that the productive use of the land served public policy. The court held that no abandonment could occur where a portion of the easement was still in use and there was no evidence of an affirmative act of abandonment of the disputed portion. **Allamakee County v. Collins Trust, 599 N.W.2d 448 (Iowa 1999)**.

STATE TAXATION

AGRICULTURAL USE. The defendants purchased a five acre parcel of rural land. Two acres were used for a residence, with the other three acres leased to a third party for crop farming. The three acres had been used for farmland for many years and were assessed as agricultural land. The county decided that the entire five acres was used primarily for residential purposes and changed the valuation accordingly. The state Tax Appeal Board reversed the changed valuation. The court held that property may be split so as to value a portion as agricultural if that portion (1) is used solely for agricultural purposes, (2) has been used that way for many years without change, (3) has not changed in use since the last assessment, and (4) the land surrounding is used for farming. Therefore, the court held that the valuation of a portion of the property as agricultural for property tax purposes was proper. **Kankakee Cty. Bd. Of Rev. v. Tax Appeal Bd., 715 N.E.2d 274 (Ill. Ct. App. 1999)**.

CITATION UPDATES

Estate of Starkey v. United States, 58 F. Supp.2d 939 (S.D. Ind. 1999) (marital deduction) see 10 *Ag. L. Dig*. 84 (1999)

Kikalos v. Comm'r, 190 F.3d 791 (7th Cir. 1999) (interest on taxes) see 10 *Ag. L. Dig*. 154 (1999).

Merkel v. Comm'r, 192 F.3d 844 (9th Cir. 1999), aff'g, 109 T.C. 463 (1997) (discharge of indebtedness) see 10 *Ag. L. Dig*. 153 (1999).

United States v. Scherping, 187 F.3d 796 (8th Cir. 1999) (piercing the corporate veil) see 10 *Ag. L. Dig*. 133 (1999).

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