CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ADVERSE POSSESSION

PRESCRIPTIVE EASEMENT. The plaintiffs sought declaration of an easement over a corner of the defendant's property. Although the plaintiffs provided evidence about and claimed use of a lane on the easement for over 30 years, the defendant argued that the easement was abandoned for over 10 years when the lane was overgrown by trees. The jury found for the plaintiffs and the appellate court affirmed, holding that the jury had sufficient evidence that the easement existed and was not abandoned by the plaintiffs. **Mills v. Vendermyde, 2011 Ill. App. Unpub. LEXIS 2003 (Ill. Ct. App. 2011)**.

ANIMALS

DOGS. The plaintiff's dog escaped from their property and was picked up by animal control and placed in an animal shelter. The plaintiff attempted to retrieve the dog but could not pay the fee. The shelter placed the dog on "hold for owner" status but, before the plaintiff could return to pay the fee a couple of days later, the dog was euthanized by mistake by the defendant, an employee of the shelter. The plaintiff sued for damages based on the sentimental or intrinsic value of the dog. The defendant argued that such damages were not allowed for the loss of a dog and the trial court dismissed the case. On appeal, the appellate court noted that the Texas Supreme Court had ruled that, in the case of personal property, where there is little or no market value, personal property may still have sentimental or intrinsic value to support a damage award. The court held that the personal property value rule overruled prior law which held that dogs have no damages value unless a market value can be shown. **Medlen v. Strickland, 2011 Tex. App. LEXIS 8819 (Tex. Ct. App. 2011)**.

BANKRUPTCY

GENERAL

PLAN. The debtors were farmers who filed for Chapter 13. The farm was collateral for a loan from a creditor and their plan proposed to pay the loan by subdividing the property into nine residential parcels for sale. The debtors had retained a real estate agent who agreed to pay all development fees in exchange for a commission on all sales. The debtors claimed that the whole property could not be sold but that the sale of the subdivided parcels would produce enough proceeds to pay all costs and the creditor's loan. The plan also provided that, if the sales were not completed in 24 months, the debtors would transfer any remaining parcels to the creditor. An appraisal demonstrated that the creditor was oversecured on its bankruptcy claim. The creditor objected to the plan and argued that Montana law required the creditor to approve the subdivision, which the creditor refused to do. The court approved the plan, holding that the plan was feasible, used funds outside the bankruptcy estate and involved an oversecured claim. The court noted that the creditor's refusal to consent to the subdivision for state law requirements would be seen as grounds for appointment of the Chapter 13 trustee as the creditor's representative to sign the consent for the subdivision. ***In re* Launderville, 2011 Bankr. LEXIS 4003 (Bankr. D. Mont. 2011)**.

FEDERAL TAX

DISCHARGE. The debtor was an attorney who represented one client for several years. Because the case was handled on a contingent fee basis, the debtor had almost no income for all those years. In 2000, the debtor received a large contingency fee after the case settled and used most of the funds to pay off debts incurred during the case. The debtor realized that a substantial tax liability resulted from the payment but instead of paying estimated tax payments, the debtor invested most of the tax payment in a mutual fund with the hopes of earning enough to pay the full tax bill. The debtor filed the 2000 tax return one month late and did not make any tax payment. In 2007 the debtor filed for Chapter 7 and sought to have the 2000 taxes discharged. The IRS objected and sought nondischargeability of the taxes under Section 523(a)(1)(C). The court examined the actions of the debtor from 2000 to 2007 and did not find any evidence to support a finding that the debtor willfully attempted to evade payment of the taxes. The debtor's action in the years from 2000 through 2007 were not filled with expensive lifestyle but merely continual financial difficulties in meeting personal and business needs. ***In re* Kight, 2011-2 U.S. Tax Cas. (CCH) 50,715 (Bankr. M.D. Fla. 2011)**.

FEDERAL FARM PROGRAMS

KARNAL BUNT. The APHIS has issued interim regulations amending the Karnal bunt regulations to make changes to the list of areas or fields regulated because of Karnal bunt, a fungal disease of wheat, to remove areas and fields in Riverside County, CA, from the list of regulated areas. **76 Fed. Reg. 72081 (Nov. 22, 2011)**.

FEDERAL ESTATE AND GIFT TAXATION

ALTERNATE VALUATION. On April 24, 2008, the

Department of the Treasury announced proposed regulations to make a change in the regulations for making the election for and using the alternate valuation method of valuing property for federal estate tax purposes. See Harl, "IRS Proposes Change to Combat Post-Death Maneuvering of Value," 19 *Agric. L. Dig.* 65 (2008). The IRS has now withdrawn those proposed regulations and reissued amended proposed regulations. Prop. Treas. Reg. § 20.2032-1(c)(1)(i) identifies transactions that constitute distributions, sales, exchanges, or dispositions of property. If an estate's (or other holder's) property is subject to such a transaction during the alternate valuation period, the estate must value that property on the transaction date. The value included in the gross estate is the fair market value of that property on the date of and immediately prior to the transaction. The term "property" refers to the property includible in the decedent's gross estate under I.R.C. § 2033. Prop. Treas. Reg. §§ 20.2032-1(c)(1)(ii) and (c)(1)(iii)(A) identify two exceptions to the rule in Prop. Treas. Reg. § 20.2032-1(c)(1)(i). If either exception applies, the estate may use the 6-month date and value the property held on that date. The exception in Prop. Treas. Reg. § 20.2032-1(c)(1)(ii) applies only to transactions in which an interest in a corporation, partnership, or other entity (entity) includible in the decedent's gross estate is exchanged for one or more different interests (for example, a different class of stock) in the same entity or in an acquiring or resulting entity or entities during the alternate valuation period. Such transactions may include, without limitation, reorganizations, recapitalizations, mergers, or similar transactions. This exception substitutes a fair market value test for the corporate provisions in the current regulations. Specifically, this paragraph proposes that, if, during the alternate valuation period, the interest in an entity includible in the gross estate is exchanged for a different interest in the same entity, or in an acquiring or resulting entity or entities, and if the fair market value of the interest on the date of the exchange equals the fair market value of the property for which it was exchanged, then the transaction will not be treated as an exchange for purposes of I.R.C. § 2032(a)(1). As a result, the estate may use the six-month date to value the interest in the same entity or in the acquiring or resulting entity or entities received in the exchange. For this purpose, the fair market values of the surrendered property and received interest are deemed to be equal if the difference between the fair market values of the surrendered property and the received interest does not exceed 5 percent of the fair market value of the surrendered property as of the transaction date. This section has no effect on any other provision of the Code that is applicable to the transaction. For example, the provisions of chapter 14 may apply even if the transaction does not result in a deemed exchange for I.R.C. § 2032 purposes as a result of satisfying the provisions of Prop. Treas. Reg. § 20.2032-1(c)(1)(ii). Prop. Treas. Reg. § 20.2032-1(c)(1)(iii)(A) proposes that, if, during the alternate valuation period, an estate (or other holder) receives a distribution from a business entity, bank account, or retirement trust (entity) and an interest in that entity is includible in the decedent's gross estate, the estate may use the six-month date to value the property held in the estate if the following requirement is satisfied. The fair market value of the interest in the entity includible in the gross estate immediately before the distribution must equal the sum of the fair market value of the distributed property on the date of the distribution and the fair market value of the interest in the entity includible in the gross estate immediately after the distribution. If this requirement is not satisfied, the estate must use the fair market value as of the distribution date and immediately prior to the distribution of the entire interest in the entity includible in the gross estate. For purposes of this section, any distribution is deemed to consist first of excluded property (as defined in Prop. Treas. Reg. § 20.2032-1(d)), if any, and then of included property. Prop. Treas. Reg. § 20.2032-1(c)(1)(iv) proposes an aggregation rule to use in calculating the fair market value of each portion of property that is, or is deemed to be distributed, sold, exchanged, or otherwise disposed of during the alternate valuation period, and that remains in the gross estate on the six-month date. Prop. Treas. Reg. § 20.2032-1(c)(iii)(B) provides a special rule to use in determining the portion of a trust includible, by reason of a retained interest, in the decedent's gross estate under section 2036 as of the alternate valuation date. Prop. Treas. Reg. § 20.2032-1(c)(2) is amended to clarify when property, the title to which passes by contract or by operation of law, is deemed to be distributed, sold, exchanged, or otherwise disposed of for section 2032 purposes. Prop. Treas. Reg. §20.2032-1(c)(3) is amended to clarify the person or entity that will be treated as having sold, exchanged, or otherwise disposed of the property for section 2032 purposes. Prop. Treas. Reg. § 20.2032-1(c)(4) is added to provide that if Congress, by statute, has deemed that a post-death event has occurred on the decedent's date of death, the post-death event will not result in a distribution, sale, exchange, or other disposition of the property for I.R.C. § 2032 purposes. To date, the only post-death event that satisfies this exception is the grant, during the alternate valuation period, of a conservation easement in accordance with I.R.C. § 2031(c). With respect to such a grant, for I.R.C. § 2032 purposes, the estate must determine the fair market value of the property as of the date of death and as of the alternate valuation date, taking into account the effect of the easement on each of those valuation dates. Prop. Treas. Reg. § 20.2032-1(f) is revised to clarify the types of factors that impact the fair market value of property and the effect of which will be recognized under section 2032. **76 Fed. Reg. 71491 (Nov. 28, 2011)**.

SELF-DEALING. The decedent was the beneficiary of a marital trust established by a predeceased spouse. The trust owned four limited partnership interests. The decedent had established a testamentary charitable lead unitrust and the decedent's estate planned to sell the limited partnership interests to the partnership under a buy-sell agreement. The proceeds would be used to fund the testamentary unitrust. The IRS ruled that the limited partnership interests were each a disqualified person with respect to the unitrust because of the decedent's interest in the partnership. The IRS ruled, however, that the exception of I.R.C. § 4941(d)(1) applied because (1) since all beneficiaries consented to the sale, the executor had a power of sale; (2) the unitrust obtained a court order approving the sale; (3) the sale occurred before termination of the estate; (4) the appraisal reflected the fair market value of the partnership interests; and (5) the unitrust received cash, which is more liquid than the partnership interests it gave up. **Ltr. Rul. 201146026, Aug. 19, 2011**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The taxpayer had filed a duplicate Form 3115, *Application for Change in Accounting Method*, for consent for a change in method of accounting for self-insured employee medical benefits. The taxpayer had hired a tax return preparer to file the federal income tax return electronically but the preparer failed to include a signed Form 3115 with the return. The IRS granted an extension of time to file the Form 3115. **Ltr. Rul. 201145014, Aug. 1, 2011**.

BUSINESS EXPENSES. The taxpayer operated bricklaying and farming businesses and failed to file returns and pay taxes for 1999 through 2005. The taxpayer explained that the taxpayer believed that no taxes were due or returns required after the taxpayer reached age 72. The IRS made assessments based on substitute returns created using records of payments made to the taxpayer. The taxpayer filed a schedule of expenses for the two businesses for 2004 and 2005 based on receipts of the expenses. The taxpayer was unable to file similar schedules for 1999 through 2003 because the records were destroyed during an illness. The court held that the expenses listed for 2004 and 2005 were allowed deductions because they were substantiated by receipts. The court also held that an estimate of the expenses for 1999 through 2003 would be made based on the expenses listed for 2004 and 2005 because the record on the whole justified an estimate in this case. **West v. Comm'r, T.C. Memo. 2011-272**.

The President has signed into law legislation providing tax credits for employers who hire military veterans and a repeal of the 3-percent withholding tax imposed on federal contractors. The bill offers a tax credit of up to $5,600 for hiring veterans who have been looking for a job for more than six months, as well as a $2,400 credit for veterans who are unemployed for more than four weeks but less than six months. The measure also provides for a tax credit of up to $9,600 for hiring veterans with service-connected disabilities who have been looking for a job for more than six months. **Pub. L. No. 112-56**.

CORPORATIONS

REORGANIZATIONS. The IRS has issued proposed regulations regarding the determination of the basis of stock or securities in a reorganization where no stock or securities of the issuing corporation is issued and distributed in the transaction. The proposed regulations clarify that, in certain reorganizations where no stock or securities of the issuing corporation is issued and distributed in the transaction, the ability to designate the shares of stock of the issuing corporation to which the basis, if any, of the stock or securities surrendered will attach applies only to a shareholder that owns actual shares in the issuing corporation. **76 Fed. Reg. 71878 (Nov. 21, 2011)**.

HOME ENERGY CREDITS. The IRS reminds homeowners that they still have time this year to make energy-saving and green-energy home improvements and qualify for either of two home energy credits. The Nonbusiness Energy Property Credit is aimed at homeowners installing energy efficient improvements such as insulation, new windows and furnaces. The credit is more limited than in the past years, but can still provide substantial tax savings.

• The 2011 credit rate is 10 percent of the cost of qualified energy efficiency improvements. Energy efficiency improvements include adding insulation, energy-efficient exterior windows and doors and certain roofs. The cost of installing these items does not count.

• The credit can also be claimed for the cost of residential energy property, including labor costs for installation. Residential energy property includes certain high-efficiency heating and air conditioning systems, water heaters and stoves that burn biomass fuel.

• The credit has a lifetime limit of $500, of which only $200 may be used for windows. If the total of nonbusiness energy property credits taken in prior years since 2005 is more than $500, the credit may not be claimed in 2011.

• Qualifying improvements must be placed into service to the taxpayer's principal residence located in the United States before January 1, 2012.

Homeowners going green should also check out the Residential Energy Efficient Property Credit, designed to spur investment in alternative energy equipment.

• The credit equals 30 percent of what a homeowner spends on qualifying property such as solar electric systems, solar hot water heaters, geothermal heat pumps, wind turbines, and fuel cell property.

• No cap exists on the amount of credit available except for fuel cell property.

• Generally, labor costs are included when figuring this credit.

Not all energy-efficient improvements qualify for these tax credits, so homeowners should check the manufacturer's tax credit certification statement before they purchase. Taxpayers can normally rely on this certification statement which can usually be found on the manufacturer's website or with the product packaging. Eligible homeowners can claim both of these credits on Form 5695, *Residential Energy Credits*, when they file their 2011 federal income tax return. Because these are credits and not deductions, they reduce the amount of tax owed dollar for dollar. An eligible taxpayer can claim these credits regardless of whether the taxpayer itemizes deductions on Schedule A. **IRS Tax Tips, Special Edition 2011-08**.

IRA. The taxpayer owned an IRA and wished to convert it to a Roth IRA. The taxpayer discussed the conversion with the custodian of the IRA who assured the taxpayer that the conversion would not produce any tax consequences. However, the taxpayer's income tax return preparer refused to report a contribution as to the Roth IRA because the taxpayer's adjusted gross income was too high for a conversion. The taxpayer sought an extension of time to have the contribution characterized as made to a traditional IRA. The IRS granted the extension. **Ltr. Rul. 201145033, Aug. 18, 2011**.

LIMITED LIABILITY COMPANY. The taxpayer formed a limited liability company and wanted the LLC to be taxed other than as a partnership. The taxpayer failed to timely file Form 8832, Entity Classification Election. The IRS granted an extension of time for the taxpayer to file Form 8832. **Ltr. Rul. 201146004, July 6, 2011.**

MEDICAL EXPENSES. The IRS has announced that it acquiesces in the holding of the following case. The taxpayer was diagnosed with gender identity disorder and underwent hormone therapy and sex-reassignment surgery, including breast augmentation surgery. The court held that the cost of the hormone therapy and sex-reassignment surgery were deductible medical expenses for treatment of the gender identity disorder, a professionally recognized medical and psychiatric condition. The cost of the breast augmentation surgery was not deductible because it was not a part of the recognized treatment for the disorder. **O'Donnabhain v. Comm'r, 134 T.C. 34 (2010)**.

PARTNERSHIPS

DISCHARGE OF INDEBTEDNESS. The IRS has adopted as final regulations relating to the application of section I.R.C. § 108(e)(8) to partnerships and their partners. The proposed regulations provide guidance regarding the determination of discharge of indebtedness income of a partnership that transfers a partnership interest to a creditor in satisfaction of the partnership's indebtedness (debt-for-equity exchange). The regulations also provide that I.R.C. § 721 applies to a contribution of a partnership's recourse or nonrecouse indebtedness by a creditor to the partnership in exchange for a capital or profits interest in the partnership. **76 Fed. Reg. 71255 (Nov. 17, 2011)**.

PASSIVE ACTIVITY LOSSES. The IRS has issued proposed regulations regarding the definition of an "interest in a limited partnership as a limited partner" for purposes of determining whether a taxpayer materially participates in an activity under I.R.C. § 469. The IRS noted that many states have adopted the Revised Uniform Limited Partnership Act of 1985 which allows limited partners to participate in the management and control of the partnership without losing their limited partner status. In addition, under the Uniform Limited Liability Company Act of 1996, LLC members of member-managed LLCs do not lose their limited liability by participating in the management and conduct of the company's business. Therefore, the proposed regulations eliminate the current regulations' reliance on limited liability for purposes of determining whether an interest is an interest in a limited partnership as a limited partner under I.R.C. § 469(h)(2) and instead adopt an approach that relies on the individual partner's or LLC member's right to participate in the management of the entity. **76 Fed. Reg. 72875 (Nov. 28, 2011)**.

QUALIFIED DEBT INSTRUMENTS. The IRS has announced the 2012 inflation adjusted amounts of debt instruments which qualify for the interest rate limitations under I.R.C. §§ 483 and 1274A:

Year of Sale or Exchange	1274A(b) Amount	1274A(c)(2)(A) Amount
2012	$5,339,300	$3,813,800

The $5,339,300 figure is the dividing line for 2012 below which (in terms of seller financing) the minimum interest rate is the lesser of 9 percent or the Applicable Federal Rate. Where the amount of seller financing exceeds the $5,339,300 figure, the imputed rate is 100 percent of the AFR except in cases of sale-leaseback transactions, where the imputed rate is 110 percent of AFR. If the amount of seller financing is $3,813,800 or less (for 2012), both parties may elect to account for the interest under the cash method of accounting. **Rev. Rul. 2011-27, 2011-2 C.B. 805**.

REGISTERED TAX RETURN PREPARERS. The IRS has adopted as final regulations which would establish a new user fee for individuals to take the registered tax return preparer competency examination and a new user fee for certain persons to be fingerprinted in conjunction with the preparer tax identification number, acceptance agent, and authorized e-file provider programs. The IRS portion of the fingerprinting fee would be $33, and the IRS portion of the testing fee would be $27. These user fees are in addition to any fees charged by the third-party vendors administering the programs. The fees to be charged by third-party vendors are not being announced at this time, but the total fees, including the IRS user fees, are expected to be between $60 and $90 for fingerprinting and $100 and $125 for testing. **76 Fed. Reg. 72619 (Nov. 25, 2011)**.

The IRS has also released a fact sheet that provides additional details about the test, including which preparers are required to take it and how to schedule an appointment. More information on the registered tax return preparer competency examination and the special enrollment examination is available at http://www.IRS.gov/taxpros/tests.

SAFE HARBOR INTEREST RATES
December 2011

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	0.20	0.20	0.20	0.20
110 percent AFR	0.22	0.22	0.22	0.22
120 percent AFR	0.24	0.24	0.24	0.24
		Mid-term		
AFR	1.27	1.27	1.27	1.27
110 percent AFR	1.40	1.40	1.40	1.40
120 percent AFR	1.52	1.52	1.52	1.52
		Long-term		
AFR	2.80	2.78	2.77	2.76
110 percent AFR	3.08	3.06	3.05	3.04
120 percent AFR	3.37	3.34	3.33	3.32

Rev. Rul. 2011-31, I.R.B. 2011-49.

S CORPORATION

DISTRIBUTIONS TO SHAREHOLDERS. The taxpayer owned an S corporation and an LLC which owned a second LLC. Both LLCs were disregarded entities for federal tax purposes. The second LLC received payments from investors for imported consumer receivables. A portion of the payment was the cost of the receivables, another portion was paid to the taxpayer for legal fees and the remainder was paid to the S corporation. The S corporation distributed that amount to the taxpayer. The taxpayer claimed that the distribution was held as a fiduciary for the second LLC but the court rejected this argument because the LLC was a disregarded entity and the taxpayer was not obligated to hold the funds for anyone else. Therefore, the distribution to the taxpayer was taxable income. **Rogers v. Comm'r, T.C. Memo. 2011-277**.

ELECTION. The taxpayer was a corporation which, upon incorporation, had intended to make the election to be taxed as an S corporation but failed to timely file Form 2553, *Election by* *a Small Business Corporation*. The IRS granted an extension of time to file Form 2553. **Ltr. Rul. 201146003, July 13, 2011**.

NUISANCE

HOG CONFINEMENT OPERATION. The plaintiffs were neighbors who lived within one and one-half miles of the defendant's swine facility. The swine facility contained on average of more than 14,000 swine of various ages. The animal waste was stored in underground pits and spread over fields belonging to neighboring farmers. The plaintiffs filed suit in public and private nuisance to reduce the odors. Although the plaintiffs obtained air monitors and personal logs, the monitors rarely detected significant amounts of ammonia and hydrogen sulfide in the air. Evidence from non-party neighbors also indicated few odor problems. The jury found for the defendant on the private nuisance claim and the trial judge granted summary judgment for the defendant on the public nuisance claim. The appellate court affirmed the grant of summary judgment because the plaintiffs failed to demonstrate that the defendant's operation violated a right common to the general public. The appellate court also affirmed the jury verdict of no private nuisance because the plaintiffs failed to demonstrate that the invasion of odors was severe enough to constitute a material annoyance to an adjoining landowner as experienced by a reasonable person of ordinary sensibilities. **Pierson v. Bible Pork, Inc., 2011 Ill. App. Unpub. LEXIS 2837 (Ill. Ct. App. 2011)**.

PROPERTY

BOUNDARY. The plaintiffs purchased their homestead in 1963 and used the disputed land continuously after the purchase, including building a shed and a pig pen on the disputed land. The defendant purchased the neighboring land in 2008. The defendant had a survey done which discovered that the disputed land was included in the defendant's title and, after several disputes between the parties, the plaintiffs filed the current action to quiet title to the disputed land. The plaintiffs claimed that the boundary had changed by acquiescence. The court noted that the parties' use of their lands created a clear boundary in that the plaintiffs used their land as a homestead and the defendant's land had been continuously used as crop land. The defendant argued that boundary by acquiescence was not proper in this case because no previous owner had agreed to the change in the official boundary line. The court disagreed, holding that the plaintiffs needed to show only that no previous owner during the previous 10 years had objected to the existing boundary, as created by the plaintiffs' use of their property. **Carter v. Fleener, 2011 Iowa App. LEXIS 1363 (Iowa Ct. App. 2011)**.

DRAINAGE. In 1994, the plaintiff purchased two adjoining rural lots on which the plaintiff lived and kept horses. In 2007, the defendants purchased neighboring land which had a pond near the boundary of the two properties which drained on to the plaintiff's land when the pond filled with rain water. The plaintiff alleged that the pond drain did not work properly and created excessive water on the plaintiff's property. However, the plaintiff's evidence did not show any change in the operation of the pond or its drain by the defendants. Instead, the evidence showed that in 2008 and 2009, the area experienced excessive rain and snow. The trial court held for the defendants because the plaintiff's land was the servient estate and the defendants, holding the dominant estate were not liable for damages caused by the natural flow of drain water from their property onto the plaintiff's property. The trial court also enjoined the plaintiff from building any dike or raising the level of the land to alter the natural course of drainage. On appeal, the appellate court affirmed that the trial court decision was supported by substantial evidence. The court also upheld the injunction because it did not prevent the normal activities associated with keeping horses but merely prevented the plaintiff from changing the drainage. **Newlin v. Callender, 2011 Iowa App. LEXIS 1250 (Iowa Ct. App. 2011)**.

SECURED TRANSACTIONS

LANDLORD'S LIEN. The plaintiff rented farm land to a tenant who had also obtained a crop loan from the Farm Service Agency. The tenant defaulted on the rent payment and the plaintiff alleged that the tenant had made payments to the FSA which were subject to a prior perfected landlord's lien under Ark. Code § 18-41-101. The FSA argued that the plaintiff's claim was for conversion and that an action for conversion had to be brought under the Federal Tort Claims Act. The plaintiff admitted that the plaintiff had not complied with the FTC Act because the plaintiff had not exhausted administrative appeals. However, the plaintiff argued that the claim was not for conversion for enforcement of the lien. The court held that in both cases, the claim had to be dismissed against the FSA because the FSA had not consented to a suit for lien enforcement and a conversion action had to be brought under the FTC Act. The claim against the tenant was remanded to the Arkansas state court. **Boeuf River Farm, Inc. v. U.S.D.A. Farm Services Agency, 2011 U.S. Dist. LEXIS 132902 (E.D. Ark. 2011)**.

PRIORITY. This case involved a peanut broker who went bankrupt; a cooperative bank which loaned money to the broker, secured by a perfected security interest in the broker's inventory of peanuts; peanut growers contracted by the broker to provide peanuts; and the plaintiff peanut warehouse to which the peanuts were delivered, shelled and stored. The growers' contracts with the warehouse stated that title remained with the growers until title passed to the peanut broker. The bank asserted that its security interest had priority as to the proceeds of the peanuts because it was perfected first. The growers argued that the broker never had title to the peanuts; therefore, the bank's security interest never attached to the peanuts. The court disagreed, holding that the delivery of the peanuts to the warehouse created a constructive possession of the peanuts in the broker sufficient to attach the bank's security interest. However, the court remanded the case for a fact determination as to whether the bank had operated in bad faith as to the growers in failing to divulge the bank's knowledge about the broker's financial status. **Farm Credit of Northwest Florida, ACA v. Easom Peanut Co., 2011 Ga. App. LEXIS 817 (Ga. Ct. App. 2011)**.

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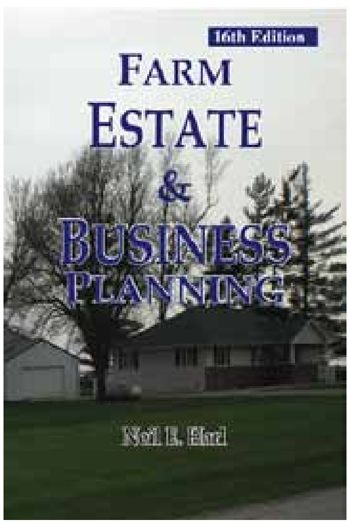

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