75 percent of the trust.[16] Accordingly, 75 percent of the gain on the residence was excludible.[17] A late 1982 private letter ruling[18] involved a revocable inter vivos trust. The grantor requested a ruling as to whether transfer of the title to the residence (which was community property) to the trust would disqualify the grantor from the exclusion for the gain. Because the grantors had reserved the power to revoke the trust, the grantors were treated as the owners of the entire trust.[19] Thus, the grantors were not disqualified from claiming the exclusion on sale of the residence.[20] The ruling specified, however, that the ruling was "strictly limited to the period of time in which both…are alive, neither…becomes subject to a judicial determination of incompetence, and [the grantor] may fully exercise the power to revoke [their] respective interests in the trust."[21]

More recent authority

A 1998 private letter ruling, involving a revocable inter vivos trust, allowed the exclusion on the sale of the residence owned by the trust.[22]

In an early 2000 private letter ruling,[23] the only asset held by a trust was the taxpayer's residence. The taxpayer was the income beneficiary of the trust, established by the taxpayer's parent. The taxpayer was currently living in an assisted care facility and the trustee was planning to either lease or sell the residence. The taxpayer had no power over trust corpus or discretionary authority to distribute trust corpus. The ruling holds that the taxpayer was not deemed to be the owner of the trust. Therefore, the trustee could not exclude any gain from the sale of the residence from trust income.[24]

In conclusion

It is clear from the rulings to date, that, to the extent the grantor or beneficiary has sufficient authority over the trust or trust property to require that the grantor or beneficiary be considered the owner of the trust, such portion of the gain on the residence is excludible from income.[25] That suggests careful planning attention on whether the residence should be placed in trust and the powers exercisable over the trust and over trust property by the grantor or beneficiary. Indeed, it suggests that it may be wise to place the residence in the marital trust for that reason.

FOOTNOTES

1 See I.R.C. § 121. See generally 6 Harl, *Agricultural Law* § 48.02[5] (2000); Harl, *Agricultural Law Manual* § 6.03[2] (2000).

2 Pub. L. No. 88-272, Sec. 206(a); Pub. L. No. 97-34, Sec. 123, 95 Stat. 197 (1981), amending I.R.C. § 121 (excluded amount increased to $125,000 ($62,500 on separate return)).

3 Rev. Rul. 66-159, 1966-1 C.B. 162.

4 See I.R.C. § 1034, before repeal by Pub. L. No. 105-34, Sec. 312, 111 Stat. 836 (1997).

5 See note 2 *supra*.

6 See Rev. Rul. 66-159, note 3 *supra*.

7 1985-1 C.B. 183.

8 See I.R.C. §§ 678, 671.

9 Rev. Rul. 85-45, 1985-1 C.B. 183.

10 Ltr. Rul. 8007050, Nov. 23, 1979; Ltr. Rul. 8239055, June 29, 1982; Ltr. Rul. 8313025, Dec. 23, 1982.

11 Ltr. Rul. 8007050, Nov. 23, 1979.

12 I.R.C. § 676(a).

13 Ltr. Rul. 8007050, Nov. 23, 1979.

14 Ltr. Rul. 8239055, June 29, 1982.

15 See Treas. Reg. § 1-672(a)-1(a).

16 See note 13 *supra*.

17 *Id*.

18 Ltr. Rul. 8313025, Dec. 23, 1982.

19 I.R.C. § 676(a).

20 Ltr. Rul. 8313025, Dec. 23, 1982.

21 *Id*.

22 Ltr. Rul. 9912026, Dec. 23, 1998.

23 Ltr. Rul. 200018021, Jan. 21, 2000.

24 *Id*.

25 I.R.C. § 121.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

FEDERAL TAX-*ALM* § 13.03[7].*

POST-PETITION INTEREST. The IRS filed a claim for nondischargeable taxes in the debtor's Chapter 11 case. The plan provided for full payment of the claim, but as required by Section 502(b)(2), no provision was made for payment of post-petition and pre-confirmation interest (so-called gap interest). The court held that the debtor was personally liable for the gap interest because (1) Section 502(b)(2) prevented the bankruptcy estate from paying that interest; (2) because the interest was not a liability of the estate, the plan did not estop the IRS from collecting the interest from the debtor; and (3) the underlying tax was nondischargeable so the gap interest was nondischargeable. ***In re* Stacy, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,481 (Bankr. W.D. Va. 2000)**.

TAX LIEN. The debtor was married but filed for Chapter 13 separately. The debtor and spouse filed a joint income tax return for 1994 and the IRS filed a claim for taxes owed for that year. The IRS filed a notice of tax lien for the 1994 taxes and the issue was whether the lien included the value of the debtor's entire residence or only the debtor's interest

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in the property. The residence was owned by the couple as tenants by the entirety. The court held that, because the 1994 return was filed jointly, the taxes were a joint debt of the couple and subjected the entire residence to the tax lien, even though only the debtor filed for bankruptcy. ***In re* O'Gorman-Sykes, 245 B.R. 815 (Bankr. E.D. Va. 1999)**.

VALUATION. The Chapter 13 debtor was the sole shareholder of a corporation which operated a delivery service. The debtor was the primary contact between the company and its clients who used the company's services out of loyalty to the debtor. The debtor's plan provided for the continued operation of the company with plan payments made from the debtor's disposable income. The IRS had filed a tax lien against the corporation's stock and the issue was the value of that stock for purposes of determining the secured portion of the IRS claim. The IRS argued that the stock should be valued based upon the income of the corporation and the goodwill. The debtor argued that the value of the corporation should be determined using the liquidation value of the business with no value for goodwill because the business was dependent upon the services of the debtor. The court held that the income of the corporation was relevant to the value of the corporation because the debtor was going to continue the business. The court also held that, although the debtor's services to the business were important, the nature of the debtor's services did not involve the type of specialized skill or judgment that was so individualized that it could not be performed by another person; therefore, the goodwill of the company had value independent of the debtor's services and increased the value of the company. ***In re* Thomas, 246 B.R. 500 (E.D. Pa. 2000), *aff'g*, 231 B.R. 581 (Bankr. E.D. Pa. 1999)**.

CONTRACTS

HEDGE-TO-ARRIVE CONTRACTS. The plaintiff cooperative and defendant grain farmer had been doing business for many years, using many types of grain transactions, including grain forward contracts. In 1991 through 1996, the parties entered into several hedge-to-arrive (HTA) contracts for corn and soybeans, usually with no problems because the defendant used the contracts for only a small portion of the total harvest, grain prices did not fluctuate much during the contracts, and the defendant usually delivered during the first year. However, in 1995, the parties entered into large, three year HTA contracts and during the contracts, the price of corn increased above the contract price. In addition, the defendant's production was insufficient to meet the contract amounts and the defendant sought to roll over the contracts to later production years. When the contract and current corn prices became too divergent, the plaintiff sent a letter to the defendant which indicated that the plaintiff wanted to terminate the contracts with delivery of the grain by the defendant. The defendant responded in writing that the defendant was repudiating the contracts unless the contracts were later found to be enforceable, in which case the defendant would continue to perform under the contracts. The plaintiff then demanded adequate assurance that the defendant would deliver the corn in the contracts. The defendant had sought clarification of the terms of the contract and refused to promise delivery until those terms were settled. However, the defendant made written assurance that, if the contracts were held to be enforceable, the defendant would perform on the contracts. The plaintiff canceled the contracts and brought suit for anticipatory breach of contract. The trial court had held that the defendant's repudiation of the contract was reasonable grounds for insecurity sufficient to require adequate assurance but also held that, given the history of the defendant to perform on contracts, the defendant's written promise to perform was adequate assurance. Therefore, the trial court held that the plaintiff's cancellation of the contract was a breach of contract and precluded the plaintiff's recovery of any damages on the contract. See also Harl, "Adequate Assurance in Contracts," 9 *Agric. L. Dig.* 41 (1998). On appeal the Iowa Supreme Court reversed, holding that the defendant's written assurances were insufficient because the condition of performance, judicial review of the contract, was not possible within 30 days and was not part of the original contract; therefore, the plaintiff's repudiation was not a breach of the contract. **Land O'Lakes, Inc. v. Hanig, No. 50/98-1370 (Iowa April 26, 2000)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The Court of Appeals for the District of Columbia has upheld a ruling that national banks may not sell crop insurance unless they meet the requirements fo the Gramm-Leach-Bliley Act, Pub. L. No. 106-102, §§ 103(a), 121, 113 Stat. 1338 (1999). An article by Dr. Harl will appear in an upcoming issue of the Digest. **Independent Ins. Agents of Am., Inc. v. Hawke, No. 99-5158 (D.C. Cir. May 16, 2000), *aff'g*, 43 F. Supp. 2d 21 (D.D.C. 1999)**.

EGGS. The AMS has adopted as final regulations amending the voluntary shell egg grading program by adding a definition of the term "ambient temperature," by amending the refrigeration requirements, and by adding a labeling requirement. **65 Fed. Reg. 34569 (May 31, 2000)**.

FARM CREDIT ADMINISTRATION. The FCA has adopted as final regulations which provide that a Farm Credit bank or association will no longer need approval from other system institutions when it buys participations in loans from non-system lenders. **65 Fed. Reg. 33743 (May 25, 2000)**.

MEAT AND POULTRY INSPECTION. The FSIS has adopted as final regulations removing the remaining requirements pertaining to partial quality control (PQC) programs. A PQC program controls a single product, operation, or part of an operation in a meat or poultry establishment. The final regulations remove the design requirements for PQC programs and the requirements for establishments to have PQC programs for certain products or processes. **65 Fed. Reg. 34381 (May 30, 2000)**.

TUBERCULOSIS. The APHIS has extended to June 16, 2000, the comment period for proposed regulations which amend the bovine tuberculosis requirements to establish several new levels of tuberculosis risk classifications to be applied to states. The amendments would also add goats to the animals covered by the regulations and increase the amount of testing which must be done before the animals may be moved in interstate commerce. **65 Fed. Reg. 34598 (May 31, 2000)**.

FEDERAL ESTATE AND GIFT TAX

PROPOSED LEGISLATION. Legislation has been introduced in the U.S. House of Representatives that would increase from 15 to 75 the number of partners or shareholders in a business which qualified for the closely-held business definition for purposes of qualifying an estate for installment payment of estate tax. **H.R. 4512**.

ALTERNATE VALUATION DATE. The decedent's estate filed an estate tax return but did not make the I.R.C. § 2032 alternate valuation election. Less than one year after the original return was due, the estate filed a supplemental estate tax return which included an alternate valuation election and sufficient supporting information. The use of the alternate valuation date decreased the value of the estate. The IRS allowed an extension for the late filed election. **Ltr. Rul. 200021021, Feb. 18, 2000**.

ANNUITY. The decedent had owned four parcels of farmland which were originally intended to pass to the decedent's grandchildren by testamentary bequest. The decedent decided, however, to sell the parcels to the grandchildren in exchange for an annuity. The decedent executed the documents for the transfer prior to April 30, 1989 (the effective date of I.R.C. § 7520) but title did not pass until after that date when the grandchildren signed the annuity agreement. The decedent's accountant valued the annuity using tables which were not effective under Section 7520 and used too low an interest rate, whereas the accountant should have used the procedures in *Notice 89-24, 1989-1 C.B. 660.* As a result the annuity amount was too low to make the value of the annuity equal the fair market value of the farmland transferred. The court held that the difference between the fair market value of the farmland and the value of the annuity was a taxable gift from the decedent. As part of the transfer, the decedent required the grandchildren to contribute their interests in the land to a family partnership which provided that other partners would have a first option to purchase any interest in the land to be sold. The estate argued that the partnership arrangement made the transfer a business transaction exempt from the gift tax. The court held that the transfer was not a business transaction because no arm's-length negotiations took place to determine the details of the transfer. The appelate court affirmed in a decision designated as not for publication. **Est. of Cullison v. Comm'r, 2000-1 U.S. Tax Cas. (CCH) ¶ 60,376 (9th Cir. 2000), *aff'g*, T.C. Memo. 1998-216**.

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent owned an interest in a shopping center which was passed to an heir who owned the remaining interest. Most of the estate was liquidated to pay estate taxes but the estate made an election to pay the remainder of the estate taxes in installments. The heir discovered that the shopping center could not obtain an operation line of credit with the estate tax paid in installments. The heir obtained a private loan for payment of the estate taxes in full. The loan had a provision prohibiting prepayment and the estate agreed not to claim any interest expenses as an estate tax deduction until the interest was actually paid on the loan. The IRS ruled that the loan benefited the estate sufficiently for the interest to be an administrative expense of the estate. The IRS ruled that the interest on the loan was deductible as an estate administrative expense so long as the interest was actually paid. **Ltr. Rul. 20002011, Feb. 15, 2000**.

SPECIAL USE VALUATION-*ALM* § 5.03[2].* The IRS has issued the 2000 list of average annual effective interest rates charged on new loans by the Farm Credit Bank system to be used in computing the value of real property for special use valuation purposes:

District	Interest rate
Columbia	9.82
Omaha/Spokane	8.10
Sacramento	8.06
St. Paul	8.26
Springfield	8.93
Texas	8.19
Wichita	8.18

Rev. Rul. 2000-20, I.R.B. 2000-__.

FEDERAL INCOME TAXATION

PROPOSED LEGISLATION. Legislation has been introduced in the U.S. House of Representatives that would allow a tax credit of up to $30,000 for "qualified value-added agricultural property" placed in service in the tax year. Qualified value-added agricultural property is defined as depreciable property with a useful life of three years or more "which is used to add value to a good or product, suitable for food or nonfood use, derived in whole or in part from organic matter which is available on a renewable basis, including agricultural crops and agricultural wastes and residues, wood wastes and residues, and domesticated animal wastes." The credit is limited to persons who materially participate in the farming business. For partnerships, S corporations and cooperatives, the material participation test is applied at the member level. **H.R. 4497**.

ACCOUNTING METHOD. The taxpayer was a corporation which leased port facilities from a city. As part of the lease arrangement, the city issued industrial development bonds to finance part of the renovation of the facilities. The bonds were paid from increased rent charged to the taxpayer. The taxpayer originally treated these rent payments as true rent and deducted the payments as business rent expenses. The taxpayer decided that the lease payments for the renovations were actually principal and

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interest and the renovations were assets owned by the taxpayer. Thus, the taxpayer argued that it should be allowed to claim depreciation on the renovation assets. The IRS argued that the change was a change in accounting method which required prior consent of the Commissioner. The taxpayer argued that the original characterization of the payments as rent was erroneous; therefore, no consent was required to change the characterization to the proper one. The court held that the recharacterization of the payment was a change in accounting method which required prior consent from the IRS. **Cargill Incorporated v. United States, 91 F. Supp.2d 1293 (D. Minn. 2000)**.

BAD DEBT DEDUCTION. The U.S. Supreme Court has denied certiorari in the following case. 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 orally contracted with a carpenter to build three residential properties. The carpenter had no other source of money or loans from the projects. The contract provided for the taxpayer to advance money for the project in increments with a consulting fee and the advances to be paid to the taxpayer from the sale proceeds. The carpenter filed for bankruptcy, the properties were foreclosed upon and the taxpayer was not repaid. The court held that the taxpayer could not deduct the advanced funds as a bad debt because the advances were more in the nature of investments because (1) there was no written loan agreement; (2) there was no fixed maturity date since the repayment was to be made only when the properties sold; (3) the repayment was to be made from the sale profits; (4) the taxpayer could not enforce repayment until he properties sold; (5) the consulting fee indicated a joint venture; and (6) the carpenter never made any repayment. **Provost v. Comm'r, T.C. Memo. 2000-177**.

C CORPORATIONS-*ALM* § 7.02[2].*

ACCOUNTING METHOD. The taxpayer was a corporation which sold seed, herbicide, fertilizer, farm equipment and other farming supplies to farmers. The corporation used the cash method of accounting for tax purposes. The corporation was owned by one person who carried the business far beyond the mere selling of merchandise. The owner provided financial and other help to area farmers, often borrowing money to help the farmers meet their supply needs. The corporation allowed the purchasing of supplies on credit and had substantial income from interest charged on the loans and credit purchases. Testimony of several farmers demonstrated that the owner's efforts were crucial to the survival of several farming operations in the area. The corporation did not own any farm land nor did it raise any crops or livestock. The corporation had gross income of over $3 million in the tax years at issue. The IRS argued that the corporation was required to use the accrual method of accounting and maintain inventories. The court held that the corporation had to use inventories and the accrual method of accounting because the sale of merchandise was a substantial income producing factor in the business. The court also held that the corporation was not a farmer eligible for the cash method of accounting because the corporation was not directly involving in any farming activity. The corporation argued that it was involved in farming because it bore the risk of farming activities through the loans to farmers and the credit purchases. The court found, however, that most of the loans and credit purchases were secured. The court also noted that the taxable income of the corporation was substantially different under the two methods of accounting, with the accrual method more closely reflecting actual income. The appellate court affirmed in a decision designated as not for publication. **Ward Ag Products, Inc. v. Comm'r, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,487 (11th Cir. 2000), *aff'g*, T.C. Memo. 1998-84**.

CONSTRUCTIVE DIVIDENDS. The taxpayer was the sole owner of a corporation which operated a delivery business. The taxpayer personally cashed some of the checks from clients and did not report the checks as income to the corporation or to the taxpayer. The taxpayer claimed that the money from these checks was paid to casual laborers but provided no evidence to support these payments. The taxpayer also failed to provide any evidence that the corporation did not have sufficient income to make dividend payments. The court held that the money from the cashed checks was a constructive dividend to the taxpayer. The opinion is designated as not for publication. **AJF Transportation Consultants, Inc. v. Comm'r, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,473 (2d Cir. 2000)**.

REORGANIZATIONS. The IRS has adopted as final regulations which provide that prior ownership of a portion of a target corporation's stock by an acquiring corporation generally will not prevent the "solely for voting stock" requirement in a "Type C" reorganization of the target corporation and the acquiring corporation from being satisfied. **65 Fed. Reg. 31805 (May 19, 2000)**.

COURT AWARDS AND SETTLEMENTS-ALM § 4.02[14]. The taxpayer had filed a suit against the taxpayer's former employer under the federal Age Discrimination in Employment Act of 1967. The parties reached a settlement and the taxpayer received payment to a trust account held by the taxpayer's attorney. The attorney retained the portion for the legal fees and paid the remainder to the taxpayer. The taxpayer included only the amount received from the attorney trust account in income. The court held that the entire settlement payment was included in the taxpayer's income with the taxpayer entitled to an itemized deduction for the legal fee retained by the attorney. **Kenseth v. Comm'r, 114 T.C. No. 26 (2000)**.

The taxpayer was a tenured professor at a university. The taxpayer filed an age discrimination suit under the federal Age Discrimination in Employment Act of 1967 and state anti-discrimination law against the university in which the jury returned a verdict for the university. During the appeal, the parties negotiated a settlement for $350,000 and the resignation of the taxpayer from the university. The court found that the settlement proceeds were paid by the university in exchange for the taxpayer's resignation and in order to decrease the costs of further litigation and not to compensate the taxpayer for personal injuries; therefore, none of the proceeds was excludible from the taxpayer's gross income. **Reisman v. Comm'r, T.C. Memo. 2000-173**.

The taxpayer owned property neighboring a petroleum processing plant. The taxpayer complained about the odors and appearance of the plant and the plant owners agreed to purchase the taxpayer's property for cash and 450 acres of property elsewhere. The taxpayer signed a release of all claims against the plant owners. The court held that, under Texas law, an action for emotional harm could not result from the lawful operation of the plant. The court also held that the taxpayer had not made any claim in tort for personal harm but that the proceeds were paid in compensation for the property rights transferred to the plant owners; therefore, the proceeds were included in the taxpayer's gross income to the extent they exceeded the taxpayer's basis in the property. **Holland v. United States, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,465 (S.D. Texas 2000)**.

DEPRECIATION. The taxpayer owned a ski resort located on public land. The taxpayer incurred costs for clearing land; grading mountain roads, trails and slopes; and surfacing roads and trails. The IRS ruled, subject to further factual development, that the costs for clearing land and grading the roads, trails and slopes were not depreciable. The IRS also ruled that the costs of surfacing the roads and trails were depreciable over 15 years. **FSA Ltr. Rul. 200021013, Feb. 17, 2000**.

This case involved seven cattle breeding partnerships formed by one organization. The organization originally owned or purchased cattle and resold the cattle to the partnerships in return for recourse promissory notes. However, the court found that many of the cattle sales were fictitious, the amounts "paid" for the cattle often exceeded the fair market value of the cattle, and the organization did not enforce the recourse nature of the notes. The court held that the partnerships failed to substantiate ownership of the cattle, the validity of the notes and the cost basis of the cattle; therefore, the partnerships were not allowed depreciation deductions for the cattle. **Durham Farms #1 v. Comm'r, T.C. Memo. 2000-159**.

DISCHARGE OF INDEBTEDNESS. The taxpayer was an S corporation which owned an interest in a partnership which had discharge of indebtedness income from reduction of a loan involving qualified real property business indebtedness. The taxpayer's return preparer failed to make the I.R.C. § 108(c)(3)(C) election to reduce basis of depreciable assets and the taxpayer sought an extension of time to file the election. The IRS granted the extension. **Ltr. Rul. 200021014, Feb. 17, 2000**.

DISASTER PAYMENTS. On May 12, 2000, the president determined that certain areas in Missouri are eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of severe storms and flooding on May 6-7, 2000. **FEMA-1328-DR**. On May 13, 2000, the President determined that certain areas in New Mexico are eligible for assistance under the Act as a result of a severe forest fire beginning on May 5, 2000. **FEMA-1329-DR; FEMA 3154-EM**. Accordingly, a taxpayer who sustained a loss attributable to the disasters may deduct the loss on his or her 1999 federal income tax return.

ITEMIZED DEDUCTIONS. The taxpayer won $858 in a lottery, although the taxpayer had a net loss from gambling over the tax year. The taxpayer filed an income tax return, claiming the standard deduction and $858 in gambling losses. The taxpayer agreed that the taxpayer was not in the business of gambling. The court held that gambling losses were allowed only to the extent of winnings and only if the taxpayer claimed itemized deductions instead of the standard deduction. **Torpie v. Comm'r, T.C. Memo. 2000-168**.

INTEREST ON TAXES AND REFUNDS. The IRS has issued procedures for application of the zero interest rate, under I.R.C. § 6621(d), when there are overlapping periods of underpayment and overpayment of taxes. **Rev. Proc. 2000-26, I.R.B. 2000-__**.

PASSIVE ACTIVITY LOSSES. The taxpayer was the sole shareholder of two C corporations which owned commercial buildings. One corporation leased its building to a third party and realized a net loss for the tax year. The other corporation leased its building to the shareholder's law firm and realized net income for the tax year. The taxpayer offset the income and loss as both passive items. The IRS applied Treas. Reg. § 1.469-2(f)(6) to recharacterize the income as nonpassive, preventing offset against the passive loss. The court upheld the regulation as valid, citing *Schwalbach v. Comm'r, 111 T.C. 215 1998)*. **Krukowski v. Comm'r, 114 T.C. No. 25 (2000)**.

PENSION PLANS. For plans beginning in May 2000, the weighted average is 6.03 percent with the permissible range of 5.41 to 6.32 percent (90 to 106 percent permissible range) and 5.41 to 6.62 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2000-27, I.R.B. 2000-27, 1116**.

The taxpayer was a family farm corporation which adopted an ESOP defined contribution plan. The plan had the same person as the trustee and only participant, the president of the taxpayer. Instead of paying the president wages for managing the farm, the taxpayer paid the president as an independent contractor, with the president reporting the income on Schedule C as a sole proprietor. The taxpayer claimed no deduction for wages and deducted the payments to the president as management fees. The IRS disqualified the ESOP because the taxpayer paid no compensation to employees. The taxpayer argued that the management fees paid to the president were sufficient to qualify the plan. The court held that the president was not employed by the taxpayer but was a sole proprietor, essentially self-employed. The court held that the management fees did not qualify as compensation to the president; therefore, the taxpayer could not claim any deductions for contributions to the ESOP, which was limited to 25 percent of the participant's compensation. There was no discussion of whether the president would be considered an employee under other aspect of income tax law. **Van Roekel Farms, Inc. v. Comm'r, T.C. Memo. 2000-171**.

PREPRODUCTION EXPENSES. The taxpayer was a corporation which operated a citrus orchard. The taxpayer instituted advanced techniques in planting, fertilizing and irrigating which minimized the growing period between planting and fruit production. The taxpayer was able to produce some fruit within two years, but not full production. Although the taxpayer was able to produce fruit within two years, the taxpayer did not provide evidence that the nationwide average preproduction period for citrus fruit was less than two years. The court found that the taxpayer had used special and advanced techniques which were not widely used. The IRS argued that the prohibition in I.R.C. § 263A(d)(3)(C) of citrus and almond growers from electing out of the capitalization rules for four years indicated Congressional intent that the preproductive period for citrus was longer than two years. The court held that the prohibition in I.R.C. § 263A(d)(3)(C) would be superfluous unless the preproductive period for citrus was intended to be at least four years. In addition, the court held that the taxpayer failed to demonstrate that even the taxpayer's methods would produce a commercially viable harvest within two years; therefore, the taxpayer was required to capitalize the preproductive period expenses. **Pelaez and Sons, Inc. v. Comm'r, 114 T.C. No. 28 (2000).**

WITHHOLDING TAXES. The taxpayer was a professional baseball team which was required to pay back wages under a employment settlement. The employees who received the payments did not work for the team in the year the back wages were paid. The court held that, under *Bowman v. United States, 824 F.2d 528 (6th Cir. 1987)*, the wages were taxable only as to the years the wages were earned, not when they were paid. The case is designated as not for publication. **Cleveland Indians Baseball Co. v. United States, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,469 (6th Cir. 2000)**.

NUISANCE

FLOODING. The defendant and predecessors in interest had owned and operated a cranberry bog since the mid-nineteenth century. After the plaintiff purchased a neighboring farm, the water level in the cranberry bog was maintained at a steady level by means of an outlet dam. The plaintiff brought a private nuisance action, claiming that the operation of the bog increased the flooding of the plaintiff's property. The court held that the nuisance action was properly dismissed because the plaintiff failed to demonstrate that the increased flooding was caused by the bog. The trial court evidence included testimony of a neighbor who had excavated part of the neighbor's land, changing the drainage of the area. **Zink v. Khwaja, 608 N.W.2d 394 (Wis. Ct. App. 2000)**.

SECURED TRANSACTIONS

PRIORITY. The plaintiff sold cattle to the defendant and received payment in the form of drafts against the defendant/buyer's line of credit. The line of credit was with a farm credit bank which had perfected a security interest in all cattle owned and acquired by the defendant. The bank declared the line of credit in default before honoring the drafts. The plaintiff sought replevin of the cattle but the bank argued that it had a priority security interest in the cattle because the plaintiff did not perfect a security interest in the cattle. The trial court had ruled that the plaintiff and defendant had established a course of conduct that title to the cattle would not pass to the defendant until payment was made. The appellate court held that any reservation of title by the seller was restricted, under Neb. U.C.C. § 2-401, to reservation of a security interest. In addition, the bank, as a security interest holder, became a good faith purchaser of the cattle eligible to receive title to the cattle. Because the plaintiff failed to perfect the security interest, the bank's perfected security interest had priority. **Maryott v. Oconto Cattle Co., 607 N.W.2d 820 (Neb. 2000)**.

WATER LAW

GOVERNMENTAL APPROPRIATION. The Minidoka National Wildlife Refuge was established by the United States in 1915. Within the boundaries of the refuge are the Smith Springs which flow through the refuge and on to a reservoir. The United States filed a claim for 1.16 cubic feet per second for non-consumptive beneficial use of the refuge wildlife. The beneficial use did not require any physical diversion of water and no physical diversions were constructed in the refuge. The Snake River Basin Adjudication Court granted the appropriation as a constitutional appropriation. Under the Idaho doctrine of constitutional appropriation, a water right may be established by merely diverting water and putting it to a beneficial use. The court recognized two exceptions to the diversion requirement established by Idaho courts: (1) where the water is used for stock watering and (2) state entities which make nondiversionary appropriations for state citizens under the state permit system. The court held that the constitutional appropriation method was not available to the United States because neither exception applied. The court held that wildlife was not livestock. The court held that the second exception did not apply because the United States did not obtain a state permit for the water use. **State v. United States, 996 P.2d 806 (Idaho 2000)**.

CITATION UPDATES

***In re* Bossert, 204 F.3d 888 (9th Cir. 2000), *rev'g*, 230 B.R. 172 (E.D. Wash. 1999), *aff'g*, 201 B.R. 553 (Bankr. E.D. Wash. 1996)** (discharge of post-petition interest), see p. 51 *supra*.

Top of Iowa Co-op. v. Sime Farms, Inc., 608 N.W.2d 454 (Iowa 2000) (hedge-to-arrive contracts) see p. 59 *supra*.

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AGRICULTURAL TAX AND LAW SEMINAR IN NEW MEXICO

by Neil E. Harl and Roger A. McEowen

August 16-19, 2000 Inn of the Mountain Gods, Mescalero, NM

Come join us for a world-class seminar on the hottest topics in agricultural tax and law. **Space is limited** for this wonderful opportunity to gain expert insight into agricultural law and enjoy the many activities offered by this splendid resort. The resort is very busy at this time of year, so make your reservations early.

The seminar will be Wednesday, Thursday, Friday and Saturday, August 16-19, 2000 at the Inn of the Mountain Gods resort in the south central mountains of New Mexico. Registrants may attend one, two, three or all four days, with separate pricing for each combination. On Wednesday, Dr. Harl will speak about farm and ranch income tax. On Thursday, Dr. Harl will cover farm and ranch estate tax. On Friday, Roger McEowen will cover farm and ranch business planning. On Saturday, Roger McEowen will cover current developments in several other areas of agricultural law. Your registration fee includes comprehensive annotated seminar materials for the days attended which will be updated just prior to the seminar. The seminar materials will also be available on CD-ROM for a small additional charge. Continental buffet breakfasts and break refreshments are also included in the registration fee.

Here are some of the major topics to be covered:

• Taxation of debt, taxation of bankruptcy, the latest on SE tax of rental of land to a family-owned entity; income averaging; earned income credit; commodity futures transactions; paying wages in kind.

• Federal estate tax, including 15-year installment payment of federal estate tax, co-ownership discounts, alternate valuation date, special use valuation, family-owned business deduction (FOBD), handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.

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

• Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.

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

• Legal developments in farm contracts, secured transactions, bankruptcy, real property, water law, torts, and environmental law.

Special room discounts are available at the resort. The resort features a variety of splendid guest accommodations and activities, including horseback riding, golf, sailing, hiking, tennis, fishing, and swimming.

The seminar registration fees for current subscribers to the *Agricultural Law Digest*, the *Agricultural Law Manual*, or *Principles of Agricultural Law* are $175 (one day), $340 (two days), $490 (three days), and $620 (four days). The registration fees for nonsubscribers are $195, $380, $550 and $700 respectively. **Please Note**: the registration fees are higher for registrations within 30 days prior to the seminar. A registration form is available online at **www.agrilawpress.com**

For more information, call/fax Robert Achenbach at 1-541-302-1958, or e-mail at **robert@agrilawpress.com**

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