the bankruptcy costs (93.79 percent times $44,327, the total amount paid in the year in question, 1995).[16]

In *Cox v. Comm'r*,[17] the husband was a corporate employee. The wife opened a western wear store which failed the following year. The spouses each filed Chapter 7 bankruptcy. The combined debts totaled $163,819 of which $159,822 was attributable to the wife's western wear store. The issue before the Tax Court was whether the $1500 attorney's fee (reduced from $5,000) was deductible as a business expense.

The court said the key question is whether the claim *arises in connection with* the taxpayer's profit-seeking activities.[18] Accordingly, the court concluded that the bankruptcies were caused by the failure of the western wear business. Thus, the debtors were entitled to deduct an amount which bore the same ratio to the $1500 fee as the claims of the business creditors ($159,822) bore to the total claims of creditors ($163,819). The Tax Court rebuffed the argument by the Internal Revenue Service that the "fresh start" from bankruptcy was a personal benefit and, therefore, no portion of the fees was deductible. The court agreed that the fresh start was a *consequence* of the bankruptcies, not the cause, and thus was irrelevant to the determination of deductibility.[19] A 1963 U.S. Supreme Court case, *United States v. Gilmore*,[20] had resolved that issue. The court said that the question of whether legal expenses incurred in divorce proceedings attributable to the former spouse's claim to controlling stock interests in three corporations were deductible was properly based on the test of whether the claim arose in connection with the taxpayer's profit-seeking activities, not the consequences which might result from failure to defeat the claim.[21]

**FOOTNOTES**

1 See generally 5 Harl, *Agricultural Law* § 39.04[2][a][ii] (1999).
2 I.R.C. § 1398(h)(1).
3 *In re* Wills, 46 B.R. 333 (D. Md. 1985).
4 I.R.C. § 1398(h)(1); 11 U.S.C. § 123.
5 11 U.S.C. § 503.
6 I.R.C. § 1398(e)(3).
7 T.C. Memo. 2000-82.
8 *Id*.
9 *Id.* See I.R.C. § 162.
10 *Id*.
11 *Id*.
12 See note 7 *supra*.
13 *Id*.
14 Cox v. Comm'r, T.C. Memo. 1981-552.
15 *Id*.
16 Catalano v. Comm'r, T.C. Memo. 2000-82.
17 T.C. Memo. 1981-552.
18 *Id*.
19 See United States v. Gilmore, 372 U.S. 39, 49 (1963).
20 *Id*.
21 *Id*.

# CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

## ADVERSE POSSESSION

**PERMISSIVE USE.** The defendants' predecessor in interest received the land by patent from the U.S. and constructed a fence near the boundary to separate the land from the neighboring public land. The neighboring land was eventually conveyed to the predecessor in interest to the plaintiff's property; however, the fence remained between the properties, even though the fence was constructed on the plaintiff's property, creating a 7.3 acre strip not on the defendant's deed. The defendant's daughter constructed a residence on one acre within the disputed strip. The disputed strip was otherwise undeveloped. When a survey showed the true boundary line, the plaintiff sought to quiet title in the disputed strip. The defendants argued that title to the disputed strip passed to them by adverse possession or by boundary acquiescence. The court found that the fence was never intended to be placed on the boundary line because the fence was simply barbwire stretched from tree to tree in an irregular fashion. The court noted that property transferred from the government always had straight line boundaries. The court held that the fence was merely a fence of convenience, constructed merely to separate the land from public land. The court held further that a fence of convenience created a permissive use of the property within the fence and beyond the true boundary line; therefore, no adverse possession could occur. However, the court allowed title in the one acre with the residence to pass by adverse possession because the construction of a residence exceeded the permissive use evidenced by the fence and created a use open and hostile to the true title. **Kimball v. Turner, 993 P.2d 303 (Wyo. 1999)**.

## BANKRUPTCY

**GENERAL-*ALM* § 13.03[8].***

**EXEMPTIONS**.

HOMESTEAD. The debtors owned an 80 acre farm which was split for mortgage loan purposes into a 20 acre

tract with the residence and a 60 acre tract for farming only. Each tract was separately deeded to the debtors. The split was required by the lender and was not otherwise recognized by the debtors who treated both tracts as one property. The debtors' Chapter 13 plan provided for abandonment of the residential 20 acres to the lender and application of the homestead exemption as to the remaining 60 acres. The debtors planned to build a residence on the 60 acre tract. The Bankruptcy Court had held that the 60 acre tract was not eligible for the Wyoming homestead exemption because, on the date of the petition, the tract was separated and did not contain the residence. The appellate court reversed, holding that the homestead exemption attached to the entire property, including the portion which does not contain the residence; therefore, on the date of the petition, the debtors had established their homestead rights as to the 60 acre parcel. ***In re* Kwiecinski, 245 B.R. 672 (Bankr. 10th Cir. 2000)**.

**FEDERAL TAX-*ALM* § 13.03[7].***

**SALE OF RESIDENCE**. The debtor filed for Chapter 7 and the bankruptcy trustee sold the debtor's residence, resulting in capital gain of $77,000. On the bankruptcy estate's income tax return, the trustee reported the gain from the sale of the residence but excluded the gain from income under I.R.C. § 121, as amended in 1997 (allowing exclusion of gain). The court held that the amendment of Section 121 broadened the policy scope of the statute to include exclusion by bankruptcy estates. In addition, the court held that the plain language of I.R.C. § 1398 allows tax attributes of the debtor to pass to the bankruptcy estate, including the right to an exclusion of gain from the sale of the residence. ***In re* Bradley, 245 B.R. 533 (M.D. Tenn. 1999), *aff'g*, 222 B.R. 313 (Bankr. M.D. Tenn. 1998)**.

**SET-OFF**. The debtor owed taxes for 1991 which were dischargeable in the debtor's Chapter 7 case. The debtor filed the case in March 1997 and claimed a refund for 1996 as exempt. The exemption was not challenged but the IRS sought to offset the refund against the 1991 taxes. The IRS argued that the setoff provision, allowing setoff of the refund against the pre-petition tax debt, took precedence over the exemption. The court held that exempt property was not subject to the setoff provisions because the exempt property was not part of the bankruptcy estate. ***In re* Alexander, 245 B.R. 280 (W.D. Ky. 2000), *aff'g*, 225 B.R. 145 (Bankr. W.D. Ky. 1998)**.

# FEDERAL AGRICULTURAL PROGRAMS

**DISASTER PAYMENTS**. The plaintiffs were farmers who had suffered crop damage and losses from a late freeze and excessive rains in 1989. The plaintiffs had also treated their crops with a herbicide which was contaminated with a defoliant. Prior to learning about the contamination, the plaintiffs applied for disaster payments, listing the sole cause of loss as the weather conditions. The plaintiffs received disaster payments. After the disaster payments were received, the plaintiffs discovered the contamination and sued the herbicide manufacturer for damages. During the trial, the jury was made aware of the disaster payments received by the plaintiffs, but the plaintiffs presented no evidence that the jury award was reduced because of this information. The plaintiffs alleged that a USDA lawyer told them that their eligibility for the disaster payments would not be affected by the trial or any admission that some of the damage was caused by the herbicide. During the trial the plaintiffs alleged that the contaminated herbicide was responsible for 30 percent of the crop losses. After the trial the USDA audited the plaintiffs' payments and determined that less than 50 percent of the crop was lost from weather related conditions because 30 percent of the loss was from herbicide contamination, a loss not covered by the disaster payment program. The plaintiffs argued that the contaminated herbicide made the crops more susceptible to the weather conditions such that the contamination accelerated the losses from the weather conditions. The court held that the regulations, 7 C.F.R. § 1477.3(f), restricted the cause of the acceleration to the weather conditions, such as drought causing increased crop susceptibility to insect damage. Therefore, the herbicide damage was not a natural weather condition which was covered by the disaster payment program. The plaintiffs did provide some evidence of a neighboring farm where no herbicide was used but the farmer lost more than 50 percent of the crop from weather conditions. The court held that this evidence was insufficient to prove that at least 50 percent of the damage on the sprayed acres arose from weather conditions. The plaintiffs also argued that the USDA was estopped from seeking reimbursement because the USDA lawyer had said that the USDA would not seek reimbursement. The court held that the USDA was not bound by the lawyer's representations. **Harrod v. Glickman, 206 F.3d 783 (8th Cir. 2000)**.

**PERISHABLE AGRICULTURAL COMMODITIES ACT**. The debtor was a corporation which operated a chain of restaurants. The debtor had received, but not paid for, produce from a produce supplier. The supplier sought to have some of the debtor's assets declared to be part of the PACA trust from which the supplier's claims should be paid. The debtor argued that PACA did not apply to the debtor because the debtor was not a dealer under the act. The statute, 7 U.S.C. § 499e(b)(6), defined a dealer as a person in the business of buying or selling wholesale or jobbing quantities of perishable agricultural commodities. The regulations, 7 C.F.R. § 46.2(x), defined "wholesale or jobbing quantities" as at least one ton of aggregate commodities in any one day. The debtor often received more than one ton of commodities in any given day. The court, however, declared the terms "wholesale or jobbing quantities" as ambiguous and found a statement of the USDA in the legislative history that the USDA did not consider restaurants to be dealers unless they purchased commodities for other entities. The court held that the debtor, as a restaurant, was not intended by the law, as interpreted by the USDA, to be a dealer under PACA; therefore, no PACA trust existed to satisfy the claim of the supplier. ***In re* Old Fashioned Enterprises, Inc., 245 B.R. 639 (D. Neb. 2000)**.

The debtor was a corporation which operated a chain of restaurants. The debtor had received, but not paid for, produce from a produce supplier. The supplier sought to have some of the debtor's assets declared to be part of the PACA trust from which the supplier's claims should be paid. The debtor argued that PACA did not apply to the debtor because the debtor was not a dealer under the act. The statute, 7 U.S.C. § 499e(b)(6), defined a dealer as a person in the business of buying or selling wholesale or jobbing quantities of perishable agricultural commodities. The regulations, 7 C.F.R. § 46.2(x), defined "wholesale or jobbing quantities" as at least one ton of aggregate commodities in any one day. The debtor often received more than one ton of commodities in any given day. However, the debtor argued that PACA did not apply to the debtor because the debtor was primarily a retail restaurant and not primarily a buyer and seller of produce. The court rejected that argument, holding that the definition of dealer included persons who either purchased or sold large quantities of produce. The court also rejected the argument that the definition of dealer was ambiguous and that the USDA policy of not enforcing PACA against restaurants was to be given any deference. The court held that the debtor was a dealer subject to PACA trust provisions. The issue now has several decisions on both sides and needs Supreme Court or legislative guidance. **In re Country Harvest Buffet Restaurants, Inc., 245 B.R. 650 (Bankr. 9th Cir. 2000)**.

**SOYBEANS**. The AMS has announced that its Request for Referendum showed that too few soybean producers wanted a referendum on the Soybean Promotion and Research Order for one to be conducted. The Request for Referendum was held from October 20, 1999, through November 16, 1999, at the FSA offices. To trigger a referendum 60,082 soybean producers had to complete a Request for Referendum. The number of soybean producers requesting a referendum was 17,970. **65 Fed. Reg. 30832 (May 15, 2000)**.

**STORAGE FACILITIES**. The CCC has issued interim regulations implementing a farm storage facility loan program to provide financing for producers to build or upgrade farm storage and handling facilities. Specific eligibility requirements for applicants are a satisfactory credit rating as determined by CCC; no delinquent federal debt as defined by the Debt Collection Improvement Act of 1996; production of facility loan commodities; proof of crop insurance from FCIC or a private company; compliance with USDA provisions for highly erodible land and wetlands; ability to repay the debt resulting from the program; compliance with any applicable local zoning, land use and building codes for the applicable farm storage facility structures; and need for new or additional farm grain storage or handling capacity. **65 Fed. Reg. 30345 (May 11, 2000), adding 7 C.F.R. Part 1436**.

# FEDERAL ESTATE AND GIFT TAX

**CLAIMS**. The IRS has issued a nonacquiescence in the following decision but will follow the decision in the Fifth Circuit. On the date of the decedent's death, the decedent was involved in a suit filed by the lessor of an oil lease for excess royalty payments made to the decedent. The lessor received some favorable rulings soon after the decedent's death but settled for a smaller sum than was originally sought from the decedent 15 months after the decedent's death. The decedent's estate valued the law suit claim as of the decedent's death, based on the money judgment sought by the lessor. The IRS argued that the claim was to be valued at the amount that the estate eventually paid or that the estate had discharge of indebtedness income when the settlement was reached to the extent the actual amount paid was less than the claim allowed for estate tax purposes. The court held that the value of the claim was to be determined as of the date of death, based on the information available at that time. The court also held that the estate did not recognize discharge of indebtedness income when it settled for an amount less than the claim's value as of the date of death. **Estate of Smith v. Comm'r, 198 F.3d 515 (5th Cir. 1999), rev'g, 108 T.C. 412 (1997), I.R.B. 2000-__**.

**DONEE LIABILITY.** The decedent had made several inter vivos gifts to the taxpayer but did not include the gifts on gift tax returns. The IRS had assessed gift tax against the decedent before death. After the decedent's death the IRS sought payment of the taxes from the donee. The decedent's estate had challenged the gift tax assessment in the Tax Court and the case was still pending. The IRS ruled that it had the authority to impose personal liability on a donee for unpaid gift tax but that it would wait until the Tax Court case was concluded before determining the amount of liability. The IRS stated that its policy was to pursue the donee only where collection from the donor is not possible. **Ltr. Rul. 200018013, Jan. 11, 2000**.

**MARITAL DEDUCTION**. The decedent's estate passed all the estate in trust to the decedent's spouse. The estate failed to timely file the estate tax return on which a QTIP election and reverse QTIP election were made. The decedent's will had made provision for allocation of trust assets to two trusts, one of which was to be funded to the extent of the GST exemption amount. The IRS ruled that, because the return was filed late, the GST exemption amount had to be allocated by the automatic allocation provision which allocated the exemption amount according to the property received by the skip persons. The IRS also ruled that the QTIP and reverse QTIP elections were timely made because the QTIP election was made on the first estate tax return and the reverse QTIP election was made on the same return as the QTIP election. Because the GST exemption amount exceeded the property passing from the estate, all of the exemption was allocated to the reverse QTIP trust. **Ltr. Rul. 200018036, Feb. 4, 2000**.

# FEDERAL INCOME TAXATION

**COURT AWARDS AND SETTLEMENTS-ALM § 4.02[14]**. The taxpayer had sued a construction company for fraud, conspiracy and breach of contract arising out of a contract to make repairs to the taxpayer's house. The jury awarded over $6 million to the taxpayer, of which $153,000 was for compensatory damages and $6 million was for punitive damages. The lawsuit was filed on May 11, 1989 and the jury award was paid in 1992. The court held that the amendment to I.R.C. § 104(a)(2) which was enacted in the *Omnibus Budget Reconciliation Act of 1989 (OBRA 1989), Pub. L. 101-239, sec. 7641(a), 103 Stat. 2106 (1989)* stated that the amendment did not apply to lawsuits filed before July 10, 1989; therefore, the amendment did not apply in this case and the punitive damage award was included in the taxpayer's income. However, the court also held that the award was to be decreased by the amount of attorney's fees paid out of the award. The IRS had argued that the attorney's fees should have been treated as a miscellaneous itemized deduction. The appellate court affirmed, holding that the attorney fee issue was controlled by *Cotnam v. Comm'r, 263 F.2d 119 (5th Cir. 1959).* **Davis v. Comm'r, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,431 (11th Cir. 2000), *aff'g*, T.C. Memo. 1998-248**.

After suffering a stroke, the taxpayer allowed the taxpayer's sons to run the taxpayer's business. The business did not succeed under the sons' management and the taxpayer sought to regain control of the business. The taxpayer eventually filed a personal injury suit against the sons, alleging that the sons' mismanagement of the business caused the taxpayer emotional and physical distress. The parties eventually reached a settlement which stated that the settlement proceeds were paid entirely for the personal injuries suffered by the taxpayer. The IRS argued that the settlement proceeds were paid to compensate the taxpayer for the economic losses of the business and that the proceeds were included in gross income. The court held that the proceeds were excludible from gross income as amounts paid for personal injuries because the intention of the parties was that only the personal injury claims were valid and that the proceeds were paid solely for the personal injuries. **Estate of Schoeneman, T.C. Memo. 2000-161**.

**DISASTER PAYMENTS**. On April 28, 2000, the president determined that certain areas in Maine are eligible for assistance under the Act as a result of severe storms, flooding and ice jams on March 28, 2000. **FEMA-1326-DR**. On May 3, 2000, the President determined that certain areas in Kansas are eligible for assistance under the Act as a result of severe storms and tornadoes on April 19-20, 2000. **FEMA-1327-DR**. Accordingly, a taxpayer who sustained a loss attributable to the disasters may deduct the loss on his or her 1999 federal income tax return.

**HOME OFFICE**. The taxpayer operated a consulting business out of an office in the taxpayer's garage. The taxpayer deducted expenses associated with the residence in proportion to the ratio of square feet in the garage as to the total square footage of the residence. The court disallowed a deduction for the home office, however, because the taxpayer did not have records of the taxpayer's business activity in the office and at clients' locations. The court held that the taxpayer failed to prove that the office was the taxpayer's principal place of business. **Beale v. Comm'r, T.C. Memo. 2000-158**.

**IRA**. The decedent had owned an IRA with the decedent's child designated as the primary remainder beneficiary. However, the decedent was receiving distributions based solely upon the decedent's life expectancy, recalculated each year. The child began receiving the distributions after the decedent's death based on the child's life expectancy. The child was 43 years old when the decedent died. The IRS ruled that (1) the child was the designated beneficiary of the IRA, (2) the child was timely designated as the beneficiary, (3) the child may use the child's life expectancy for calculating distributions even though the decedent used only the decedent's life expectancy for calculating distributions, and (4) upon the child's death the annual distributions of any remainder will equal the annual distributions to the child. **Ltr. Rul. 200018057, Feb. 9, 2000**.

**MARKET SEGMENT TRAINING GUIDE**. The IRS has announced the publication of a revised Market Segment Specialization Program Audit Technique Guide—Livestock Industry.

**MEDICAL DEDUCTION**. The taxpayer had a dependent who had a chronic disease. The dependent's physician recommended that the taxpayer travel to another city to attend a medical conference primarily on the disease suffered by the dependent. The physician recommended the conference as a means to obtain information which would aid in the treatment of the disease. The IRS ruled that the travel costs and conference registration fees were deductible as medical expenses but that the cost of meals and lodging were not deductible. **Rev. Rul. 2000-24, I.R.B. 2000-19, 963**.

**PARTNERSHIPS-*ALM* § 7.03.***

TAX SHELTERS. The taxpayer was a limited partnership engaged in the production of livestock and offering two types of partnership interests. One set of interests had a fixed rate of return and a liquidation preference but did not share in profits and losses. The other interests shared in the profits and losses. The sales of both interests were required to be registered with the state securities commission. The taxpayer obtained exemption letters for three sales of limited amounts of the partnership interests. The taxpayer transferred its breeding and research division to another partnership in which the taxpayer retained a substantial ownership interest. Two other persons owned minimal interests. The new partnership's operations remained integral to the taxpayer's business. Both partnerships used the cash method of accounting. The IRS ruled that, because the taxpayer's interests were required to be registered under state law or exempted from registration before any sale, the taxpayer was a farming syndicate and a tax shelter prohibited from using the cash method of accounting. The IRS also ruled that there were insufficient facts to determine whether the second partnership was a farming syndicate or tax shelter because the connection with the

taxpayer was unclear and the purpose for forming the second partnership was not clear. The IRS ruled that, if the second partnership was formed with the intent to circumvent the tax shelter provisions enforceable against the taxpayer, the second partnership would be held to be a tax shelter also. **FSA Ltr. Rul. 200018018, Jan. 13, 2000**.

**PENSION PLANS**. The taxpayer was an employer which provided a 401(k) plan for its employees. Employees were allowed to make additional voluntary contributions from wages. Less than 85 percent of the employer's assets were sold to an unrelated company and the employees with jobs associated with the sold assets also became employed by the second employer. The taxpayer distributed the plan vested amounts, including the voluntary contributions, to the employees who took the new jobs with the second employer. The IRS ruled that the distributions would not disqualify the taxpayer's plan because the change of employment status resulting from the sale of assets was a "change in service" for purposes of I.R.C. § 401(k). **Rev. Rul. 2000-27, I.R.B. 2000-21**.

The taxpayer owned a sole proprietorship accounting business. The taxpayer adopted a self-employed retirement money purchase plan. For 1994, the taxpayer did not make any contributions to the plan during the plan year. The taxpayer filed for the automatic extension to file the income tax return for 1994 and received another extension to file until October 16, 1995. The contributions to the plan were made just before the return was filed on October 16, 1995 and the taxpayer claimed a deduction for the contributions on the return. The IRS assessed an excise tax of 10 percent of the 1994 contributions for failure of the taxpayer to make the contributions in a timely manner. Under Treas. Reg. § 1.412(c)-12(b), contributions are subject to the excise tax if not made within eight and one-half months after the close of the plan year. The taxpayer argued that the contributions were timely because made with the time for filing the income tax return plus any extensions because (1) the plan provided that contributions could be made up to the date of the filing of the income tax return plus any extensions and (2) I.R.S. Pub. 560, Retirement Plans for the Self-Employed, provided that the deduction for the contributions was available only for contributions made before the filing of the return plus extensions.. The court held that the regulations took precedence over the plan language and that the Pub. 560 language applied only to the deductibility of the contributions and not to the timeliness of the contributions as to the excise tax. Therefore, the court held that the contributions were made late and were subject to the 10 percent excise tax. **Wenger v. Comm'r, T.C. Memo. 2000-156**.

**RETURNS**. The IRS has released revised Form 5452 (May 2000), Corporate Report of Nondividend Distributions. The document is available at no charge: (1) by calling the IRS's toll-free telephone number, 1-800-829-3676); (2) at http://www.irs.gov/prod; (3) through FedWorld on the Internet; or (4) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

**S CORPORATIOS-*ALM* § 7.02[3][c].***

SHAREHOLDER BASIS. The taxpayer was the sole shareholder in several S corporations. A couple of the corporations ceased business and the taxpayer paid taxes owed by those corporations. However, the taxpayer presented no evidence that the taxpayer's interest in those corporations became worthless. The other corporations made loans to the taxpayer but the taxpayer had no records of repayments to the corporations. The taxpayer sought to claim pass-through deductions and losses from the corporations but the court held that the deductions and losses could not be allowed without adequate proof of the taxpayer's basis in each corporation and adequate proof that the stock in the corporations was worthless. **DeJoy v. Comm'r, T.C. Memo. 2000-162**.

**SAFE HARBOR INTEREST RATES**

**June 2000**

| | Annual | Semi-annual | Quarterly | Monthly |
|---|---|---|---|---|
| | | **Short-term** | | |
| AFR | 6.53 | 6.43 | 6.38 | 6.35 |
| 110 percent AFR | 7.19 | 7.07 | 7.01 | 6.97 |
| 120 percent AFR | 7.87 | 7.72 | 7.65 | 7.60 |
| | | **Mid-term** | | |
| AFR | 6.62 | 6.51 | 6.46 | 6.42 |
| 110 percent AFR | 7.29 | 7.16 | 7.10 | 7.06 |
| 120 percent AFR | 7.96 | 7.81 | 7.74 | 7.69 |
| | | **Long-term** | | |
| AFR | 6.39 | 6.29 | 6.24 | 6.21 |
| 110 percent AFR | 7.04 | 6.92 | 6.86 | 6.82 |
| 120 percent AFR | 7.69 | 7.55 | 7.48 | 7.43 |

**Rev. Rul. 2000-28, I.R.B. 2000-__**.

**SALE OF RESIDENCE**. The taxpayer was the income beneficiary of a trust established by the taxpayer's parent. The only asset of the trust was the taxpayer's residence. 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 IRS ruled that the taxpayer would not be treated as the owner of the trust nor as the owner of the residence. Therefore, the trustee could not make use of I.R.C. § 121 to exclude any gain from the sale of the residence from trust income. **Ltr. Rul. 200018021, Jan. 21, 2000**.

**SELF-EMPLOYMENT INCOME.** During the tax years involved the taxpayers were married. The wife operated a medical transcription service and the husband was fully employed elsewhere. The husband prepared the tax returns and divided the income from the transcription business equally between himself and his wife. The court found that the wife exercised substantially all the management and control of the business and performed most of the day-to-day operations; therefore, the court held that all of the transcription service income was self-employment income to the wife. **Charlton v. Comm'r, 114 T.C. No. 22 (2000)**.

# LABOR

**CHICKEN CATCHERS.** The plaintiffs were chicken catchers for the defendant, a vertically integrated poultry operation. The defendant contracted with farms for the growing of chickens supplied by the defendant. The defendant hired crew leaders, usually experienced chicken catchers, to provide the chicken catcher crews. The defendant established all of the procedures, equipment and financing of the chicken catcher crews but paid only the

crew leaders on a unit basis. The defendant treated the crew leaders as independent contractors even though the IRS had ruled that the crew leaders were employees for federal tax purposes. The plaintiffs were often required to work more than 40 hours per week and to work on weekends and holidays but were not paid any overtime. The plaintiffs sought three years of back overtime wages, charging that the defendant willfully violated the Fair Labor Standards Act. The defendant argued that the plaintiffs were employees of the crew leaders only and that the plaintiffs were agricultural laborers excluded from protection of the FLSA. The court held that the crew leaders, and therefore the plaintiffs, were employees of the defendant because (1) the defendant had complete control over the work performed; (2) the crew leaders had no opportunity to increase the profit from the operation because the crew leader's compensation was determined by the defendant and not negotiated; (3) the defendant provided all the equipment; (4) the crew leaders had long-standing, permanent and exclusive relationship with the defendant; (5) the crew leader did not provide any special skill or expertise for the work; and (6) the work was integral to the defendant's operation. The court also held that the agricultural labor issue was decided by the Supreme Court in *Holly Farms v. NLRB, 517 U.S. 392 (1996)* which held that chicken catchers were not agricultural labor under the National Labor Relations Act. The court held that the FSLA and NLRA used the same meaning for the term "agricultural labor." The defendant was required to pay three years of back overtime wages instead of two years because the defendant willfully violated the FSLA overtime provisions. The court found that the defendant had prior warning from the IRS that the crew leaders would be treated as employees and warning from *Holly Farms* that chicken catchers were not exempt agricultural laborers. **Heath v. Perdue Farms, Inc., 87 F. Supp.2d 452 (D. Md. 2000)**.

# LIMITED LIABILITY COMPANIES

**REAL ESTATE TRANSFER FEE.** The taxpayers were members of one family which originally owned a family limited partnership. The partnership owned three parcels of real property which were leased to third parties. The partnership was reorganized as a limited liability company under Wisconsin law. The reorganization did not involve any payment of cash or property and was evidenced by a Memorandum of Organization and Operating Agreement which was recorded. The LLC became the owner of the real property. The LLC was assessed a real estate transfer fee under Wis. Stat. § 77.21(1). The taxpayers argued that no fee was assessable because no transfer occurred. The court held that the reorganization of the partnership into the LLC resulted in the transfer of the real property from the partnership to the LLC for value and was subject to the transfer fee. **Wolter v. Wisconsin Dept. of Revenue, 605 N.W.2d 283 (Wis. Ct. App. 1999)**.

# PROPERTY

**BOUNDARY BY ACQUIESCENCE.** The plaintiff owned land neighboring the defendant's land. On both sides of the defendant's land were tracts of land, owned by third parties, which had levees on their borders. The two levees were in line with each other. The defendant's predecessor in interest cleared the land, including a 50 foot strip of land on the plaintiff's side of the line created by the two levees. A survey by the defendant demonstrated that the true boundary line between the defendant's and plaintiff's tracts was close to the point where the clearing stopped. The defendant constructed a levee on the true boundary. The plaintiff argued that the levees on either side of the defendant's property created a boundary by acquiescence. Although the plaintiff presented testimony of the neighbors that everyone treated the line of the levees as the boundary between the defendant's and plaintiff's properties, the court held that no boundary by acquiescence was created because there was no fence, lane, ditch or other similar monument between the properties which was visible evidence of a dividing line. **Hedger Bros. Cement & Materials v. Stump, 10 S.W.3d 926 (Ark. Ct. App. 2000)**.

**DRAINAGE.** The plaintiff owned land neighboring the defendant's land. The defendant constructed a levee on the boundary between the defendant's and plaintiff's properties. The defendant then constructed a drainage pipe which drained water off the defendant's land onto the plaintiff's land. The natural drainage of the properties resulted in water draining from the defendant's property to the plaintiff's property but the drain allowed the defendant to drain more water at one time. Although the plaintiff acknowledged that the land was often flooded, the plaintiff argued that the increased flow during shorter times would damage the trees on the plaintiff's land. The court held that the plaintiff could not enjoin the use of the drain pipe because the plaintiff failed to provide evidence of any increase in damage from the change in drainage flow rate. **Hedger Bros. Cement & Materials v. Stump, 10 S.W.3d 926 (Ark. Ct. App. 2000)**.

**EASEMENT BY NECESSITY**. The properties owned by the plaintiff and defendant were once owned by one person. When the property was split, the only access to the defendant's property was over a road in the corner of the plaintiff's property. The defendant sought an easement by necessity over the road because the defendant needed to move farm machinery to the defendant's property after it was cleared. The court granted the easement by necessity because (1) the properties were once owned by one person, (2) the defendant's property was created by severance from the main property, and (3) the use of the road was required at the time of the severance and continued currently. Although the plaintiff claimed that the defendant could get to the property through other neighboring properties, the court also held that the plaintiff failed to prove that the defendant had any other legal access to the defendant's property. **Hedger Bros. Cement & Materials v. Stump, 10 S.W.3d 926 (Ark. Ct. App. 2000)**.

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## 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 opportunities 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 a copy of Dr. Neil Harl's seminar manuals, *Farm Income Tax* (almost 300 pages) and *Farm Estate and Business Planning: Annotated Materials* (nearly 500 pages) and a copy of Roger McEowen's outline, all of 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 both resorts. The resorts feature 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. The registration fees are higher for registrations within 30 days prior to the seminar. A registration form is available online at **www.agrilawpress.com**

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