CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

COWS. After the defendant's cows escaped from an electric wire fence, the plaintiff was injured while attempting to help the defendant round up the cows. The plaintiff sued under common-law negligence and breach of Mich. Code § 433.12 for failure to properly contain the cows. The court found that the plaintiff failed to demonstrate that the defendant was negligent in providing a proper fence or other closure for the cows; therefore, the plaintiff failed to show that the defendant breached any duty to the plaintiff in fencing the cows. The plaintiff also sought to use Mich Code § 433.12 as proof of negligence. Section 433.12 makes it a misdemeanor to allow animals to run at large. Although the court acknowledged that the violation of a criminal statute provides evidence bearing on the issue of negligence, the violation does not create a presumption of negligence unless the statute provides a civil liability. Section 433.12 provided for civil liability only for property damage; therefore, the court held that the defendant's violation of Section 433.12 was insufficient to prove negligence. **Whitby v. Wright, 2015 Mich. App. 1406 (Mich. Ct. App. 2015)**.

FEDERAL FARM PROGRAMS

RAISINS. The AMS has issued proposed regulation which revise the United States Standards for Grades of Processed Raisins. The proposed regulations remove five references to the term "midget" throughout the standards. The proposed regulations are a response to a petition by the Little People of America to eliminate the use of the word "midget." **80 Fed. Reg. 50803 (Aug. 21, 2015)**.

GRADE STANDARDS. The AMS has issued proposed regulations revising 46 U.S. Standards for Grades of fresh fruits and vegetables, fruits and vegetables for processing, nuts, and specialty crops by removing the "Unclassified" category from each standard. The "Unclassified" category is not a grade and only serves to show that no grade has been applied to the lot. The AMS has determined that the designation is no longer necessary. **80 Fed. Reg. 53021 (Sept. 2, 2015)**.

FEDERAL ESTATE AND GIFT TAXATION

BASIS OF ESTATE PROPERTY. The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 requires that the fair-market value that sets the basis for any property acquired from a decedent be consistent for the value of that property for estate-tax purposes. Effective for property with respect to which an estate tax return is filed after July 31, 2015, the basis of any property inherited cannot exceed the value reported on the estate tax return. Additionally, the Act required new information reporting for inherited property for which an estate tax return is filed after July 31, 2015. The Act obligates the executor of any estate required to file an estate tax return to furnish to IRS and to the recipients of the inherited property a statement identifying the value of the property as reported on the estate tax return. The statement must be provided no later than the earlier of 30 days after the estate tax return was required to be filed (including extensions) or 30 days after filing the estate tax return. *Pub. L. No. 114-41, § 2004 (2015), adding I.R.C. § 6035*. The IRS has announced that the due date for each statement required by I.R.C. § 6035 to be filed with the IRS or furnished to a beneficiary before February 29, 2016, is delayed until February 29, 2016, the due date for filing or furnishing that statement. This notice applies to executors of estates of decedents and to other persons who are required under I.R.C. § 6018(a) or (b) to file a return, if that return is filed after July 31, 2015. The delay was established to allow the Treasury Department and IRS to issue guidance implementing the reporting requirements of I.R.C. § 6035. Executors and other persons required to file or furnish a statement under I.R.C. § 6035(a)(1) or (a)(2) should not do so until the issuance of forms or further guidance by the Treasury Department and the IRS addressing the requirements of I.R.C. § 6035. **Notice 2015-57, I.R.B. 2015-36**.

DONEE LIABILITY FOR GIFT TAX. A decedent had created gifts to several shareholders when the decedent had sold stock back to the corporation for less than fair market value. The estate failed to pay the gift taxes and the donees agreed that they owed the taxes but argued that they should not be assessed interest because I.R.C. § 6324(b) limited their liability to the value of the gift received. The trial court held that, under I.R.C. §§ 6601 and 6621, the donee's tax liability (a separate liability) was itself subject to interest; therefore, the total donee liability, with the interest, could exceed the value of the original gifts. On appeal, the appellate court reversed, holding that, although the gift tax owed could include interest and penalties, I.R.C. § 6324(b) limits a donee's liability to the extent of the value of the gift. **United States v. Marshall, 2015-2 U.S. Tax Cas. (CCH) ¶ 60,689 (5th Cir. 2015), *rev'g sub nom.*, United States v. MacIntyre, 2012-1 U.S. Tax Cas. (CCH) ¶ 60,648 (S.D. Tex. 2012)**.

FIDUCIARY LIABILITY. The decedent had received a gift from a family member who did not pay the gift taxes owed. On the death of the decedent, the executor was informed that the IRS might have a claim against the decedent's estate for the gift taxes. However, the executor made distributions of property to heirs and transferred estate property to a charitable trust. Under the trust agreement, the trust was liable for the estate's debts and taxes. The court held that the transfer of the estate property violated the Federal Priority Statute, 31 U.S.C. § 3713, such that the executor and trustee were personally liable for the gift taxes owed by the estate. The executor and trustee argued that, although they had knowledge of the potential claim by the IRS, they had received legal advice that the claim would not be valid. The court held that the knowledge of the potential claim was sufficient to raise liability under the Federal Priority Act for failing to preserve a sufficient amount of the estate for payment of the claim. **United States v. Marshall, 2015-2 U.S. Tax Cas. (CCH) ¶ 60,689 (5th Cir. 2015),** ***aff'g sub nom*****., United States v. MacIntyre, 2012-2 U.S. Tax Cas. (CCH) ¶ 60,649 (S.D. Texas 2012)**.

GIFTS. The taxpayer owned two family farm limited partnerships and transferred interests in the partnerships to a daughter. The taxpayer filed a Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*, which identified the gifts by the Employer Identification Number (EIN) of each partnership and an abbreviated name, although the EIN of one partnership was incomplete. Attached to the return was a one-page supplement which stated that the assets of the partnerships consisted primarily of farm land, the land was appraised by a certified appraiser and the appraised value was reduced for minority interests, lack of marketability and other discounts. The IRS requested an extension of the assessment period for the gifts but the taxpayer refused, claiming that the return was properly done. Absent an exception, the IRS must assess the amount of any gift tax within three years after Form 709 is filed. I.R.C. § 6501(a). In the case of a gift that is required to be "shown" on a return, but which is not shown, the gift tax may be assessed at any time. I.R.C. § 6501(c)(9). The issue in this ruling was whether the taxpayer had provided sufficient information to apprise the IRS of the nature of the gift. Under Treas. Reg. §301.6501(c)-1(f)(2), an adequately disclosed gift requires (1) a description of the property and any consideration received by the donor, (2) the identity and relationship of the donor and donee, and (3) a detailed description of the method used to determine the fair market value of property transferred. The return should also describe any position contrary to proposed, temporary or final regulations. The IRS agreed that the identity and relationship of the donor and donee were identified in the return. Although the return did not fully disclose the identity of the partnerships, the return did provide the EIN for one partnership and the IRS could identify that entity by its EIN. However, the IRS found that the EIN for the other partnership was inaccurate because it omitted one number; therefore, that partnership was not adequately identified by the return. The IRS also found that the valuation description was flawed in several respects. The valuation information identified an appraisal only of the land and not of the partnerships or the gifted partnership interests. The return did not include financial data which was used in the valuation process. The return did not identify any restrictions on the transfer of the gifted property. The return did not include the appraisal method, such as use of comparables or book value, used by the appraiser. Finally, the return did not include any apportionment of the discounts for lack of marketability or minority interests. The IRS ruled that the return failed to adequately disclose the donor's transfer of interests in the partnerships. In particular, the return failed sufficiently to identify one of the partnerships and failed to sufficiently describe the method and information used to determine the fair market value of the partnership interests. Therefore, the IRS was not limited by the three year limitation period on assessments and could assess additional gift tax based upon those transfers at any time. **F.A.A. 20152201F, Aug. 24, 2015**.

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a "deceased spousal unused exclusion" (DSUE) amount to a surviving spouse. To obtain the benefit of portability of the decedent's DSUE amount to the spouse, the decedent's estate was required to file Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, on or before the date that is nine months after the decedent's date of death or the last day of the period covered by an extension. The decedent's estate did not file a timely Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The spouse, as executrix of the decedent's estate, represented that the value of the decedent's gross estate is less than the basic exclusion amount in the year of the decedent's death including taxable gifts. The spouse requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to elect portability of the decedent's DSUE amount pursuant to I.R.C. § 2010(c)(5)(A). The IRS granted the estate an extension of time to file Form 706 with the election. **Ltr. Rul. 201535004, May 12, 2015**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The taxpayer hired an accounting firm to prepare and electronically file the tax return. The return reflected a change in accounting for depreciation purposes and the taxpayer filed duplicate copies of Form 3115, *Application for Change in Accounting Method*. However, although the return preparer attached the original Form 3115 to the electronic return when it was filed, the return preparer failed to inform the taxpayer of the need to file a duplicate copy with the IRS. The IRS granted an extension of time to file the duplicate Form 3115. **Ltr. Rul. 201534006, May 15, 2015**.

BUSINESS EXPENSES. The taxpayers, husband and wife, formed an LLC to operate as a biotechnology company. The state registration papers listed another city as the location of the principal office of the LLC. The case does not state whether the taxpayers were otherwise employed. The taxpayers filed Schedule C for the LLC and claimed deductions for car and travel expenses, home office expenses and various other business expenses. The taxpayers did not provide any contemporaneous records of the use of their car for business purposes; therefore, the court held that the deductions for those expenses were properly denied by the IRS. The taxpayers did not claim any home office deduction but claimed deductions for expenses, such as water and sewer bills, that related to their residence. The taxpayers claimed to use their entire residence for business purposes but the taxpayer presented no written evidence to prove that the residence was used for any business purpose. Therefore, the court held that the deductions related to the use of the residence were also properly disallowed by the IRS. The remaining expenses were found to be either personal expenses or unrelated to the claimed business activity and the court held them to be disallowed as well. **Chen v. Comm'r, T.C. Memo. 2015-167**.

The taxpayer operated a repair business out of a portion of the taxpayer's home. The taxpayer claimed a variety of deductions for business expenses, including depreciation of buildings and tools, repairs to the repair building, utilities and vehicle expenses. The IRS challenged the depreciation deductions on the basis that the taxpayer's use of the property in the business was not ordinary and necessary. In particular, the IRS argued that a lawn mower was not eligible for a depreciation deduction because it was not an ordinary and necessary expense of a repair business. The taxpayer demonstrated that the lawn mower was used to maintain the repair business portion of the residence and was used to mow areas where the taxpayer placed advertising signs. The court held that the depreciation deduction was not dependent on the "ordinary and necessary" expense requirement but required only that the property be used in a trade or business. Therefore, the court held that the lawn mower was eligible for the depreciation deduction. The IRS also challenged the deduction for expenses relating to repairs of the shop building. Note: this case was decided prior to the new repair regulations. The court held that the repairs were currently deductible because the cost was minimal in relation to the cost of the entire repair shop area and did not result in a meaningful increase in the value or useful life of the shop. The court allowed a portion of the disputed utilities expense deduction based on an estimate of the proportion of the use of the electricity, phone, internet and cable for the business. The court finally looked at the claimed mileage expenses. The taxpayer presented receipts on which the taxpayer had written the number of miles traveled in relation to the transaction on the receipt. The court found that these receipts met the substantiation requirements by providing the number of miles, the business purpose of the trip and the time and place of the travel; therefore, the court held that the mileage expense deductions were improperly disallowed by the IRS. The court disallowed the assessment of the 20 percent accuracy-related penalty because the taxpayer had relied on a CPA to prepare the return, the taxpayer had provided the CPA with all receipts, and the number of disallowed deductions because of lack of records was minimal. The court held that the taxpayer had exercised ordinary and reasonable care in preparing the return; therefore, the penalty was not justified. **Ezzell v. Comm'r, T.C. Summary Op. 2015-52**.

CHARITABLE ORGANIZATIONS. The taxpayer's Articles of Incorporation stated that the taxpayer was organized for the provision of mediation services; quality management consulting; hospital accreditation preparation services; miscellaneous uplifting services for the elderly veterans of military service; and research and development services. The taxpayer's amended Articles of Incorporation also stated it was organized exclusively for charitable, religious, educational, and scientific purposes. The taxpayer stated that it provided internal auditing services. The consulting services targeted proactive risk management for patients, health care facilities, and health care providers. The taxpayer sought I.R.C. § 501(c)(3) status.

An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under I.R.C. § 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. The IRS cited *Airlie Foundation v. Internal Revenue Service, 283 F. Supp.2d 58 (D. D.C. 2003)*, which relied on the "commerciality doctrine" in applying the operational test. The operational test requires both that an organization engage "primarily" in activities that accomplish its exempt purpose and that not more than an "insubstantial part of its activities" further a non-exempt purpose. The court cited several factors: (1) competition with for-profit commercial entities; (2) extent and degree of below cost services provided; (3) pricing policies; (4) reasonableness of financial reserves; (5) whether the organization uses commercial promotional methods, and (6) the extent to which the organization receives charitable donations. Using these factors, the IRS ruled that the taxpayer operated in a commercial manner in that (1) it operated in competition with for-profit companies and individuals; (2) the taxpayer operated for the benefit of the employees who received substantial wages and commissions; (3) the services were not designed for the relief of the poor and distressed; and (4) the fees charged were comparable to for-profit companies. **Ltr. Rul. 201535019, June 5, 2015**.

CAPITAL GAINS. The taxpayer filed several *qui tam* actions against a former employer and others for fraud against the Medicare Program. The actions resulted in several recoveries by the government and payments to the taxpayer. The taxpayer reported the payments as capital gains income. The taxpayer argued that, in the *qui tam* actions, the taxpayer essentially sold information to the government in exchange for the reward. The court held that the payments were ordinary income because the taxpayer did not own a property interest in the information provided to the government and the government did not pay a set fee for the information. The appellate court affirmed. **Patrick v. Comm'r, 2015-2 U.S. Tax Cas. (CCH) ¶ 50,454 (7th Cir. 2015), *aff'g*, 142 T.C. No. 5 (2014)**.

CORPORATIONS

DISREGARDED ENTITIES. The taxpayer was a domestic corporation which was the common parent of an affiliated group of corporations that filed a consolidated federal income tax return. The taxpayer represented that it established or acquired 12 foreign entities at various times, each wholly owned, either directly or indirectly, by the taxpayer. The taxpayer was the only party that had contributed capital to each of these 12 entities, and that the taxpayer had consistently reported all of the activities, assets and liabilities of these 12 entities on its federal income tax returns beginning from each of their respective dates of formation or acquisition. The taxpayer stated that all 12 foreign entities were eligible to elect to be treated as disregarded entities for federal tax purposes, effective on each of their respective dates of formation or acquisition. However, no entity classification elections were filed for any of the 12 entities. The IRS granted a 120 extension of time to file the elections. **Ltr. Rul. 201535010, April 23, 2015; Ltr. Rul. 201535015, April 23, 2015**.

DEPENDENTS. The taxpayer had two children out of wedlock. During 2011, the children lived 176 days with the taxpayer and 189 days with the mother under an oral agreement between the taxpayer and the mother. The taxpayer agreed that the mother was the custodial parent. The taxpayer filed the 2011 return using head of household filing status and claimed two dependency exemption deductions and the earned income credit and the child tax credit based on the two children as dependents. The taxpayer did not file Form 8332, *Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent*, or other similar document signed by the mother. The court held that, under I.R.C. § 152(e), the children were the qualifying children of the mother, with whom they resided most of the tax year. Because the mother did not sign Form 8332 or a similar document, the taxpayer was not entitled to claim the dependency exemption deductions for the two children. Because the children were not qualifying children of the taxpayer, the taxpayer was held not entitled to the earned income tax credit or the child tax credit. Similarly, the taxpayer was held not entitled to use the head of household filing status because the taxpayer had no qualifying children. **Stapleton v. Comm'r, T.C. Memo. 2015-171**.

DEPRECIATION. The taxpayer was a parent corporation which filed a consolidated return for itself and its subsidiaries. The taxpayer placed in service qualified property during the tax year and did not claim the additional first year depreciation deduction for any class of qualified property. The taxpayer's tax return was filed in-house and the return failed to attach the election not to claim the additional first year depreciation deduction for all classes of qualified property placed in service by the taxpayer, as required by Treas. Reg. § 1.168(k)-1(e)(3)(ii). The IRS granted an extension of time to file an amended return with the election statement attached. **Ltr. Rul. 201535013, May 15, 2015**.

DISASTER LOSSES. On August 7, 2015, the President determined that certain areas in Missouri are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of a severe storms, tornadoes, and flooding which began on May 15, 2015. **FEMA-4238-DR.** On August 12, 2015, the President determined that certain areas in Kentucky are eligible for assistance from the government under the Act as a result of severe storms, tornadoes, and flooding which began on July 11, 2015. **FEMA-4239-DR.** On August 21, 2015, the President determined that certain areas in Washington are eligible for assistance from the government under the Act as a result of wildfires which began on August 13, 2015. **FEMA-3372-EM.** Accordingly, taxpayers in the areas may deduct the losses on their 2014 federal income tax returns. See I.R.C. § 165(i).

DOMESTIC PRODUCTION ACTIVITIES. The IRS has issued final and temporary regulations relating to the allocation of W-2 wages for purposes of the W-2 wage limitation on the amount of a taxpayer's deduction related to domestic production activities. The temporary regulations provide guidance on the allocation of W-2 wages paid by two or more taxpayers that are employers of the same employees during a calendar year and the determination of W-2 wages if the taxpayer has a short taxable year. Under I.R.C. § 199(b)(1), the amount of the deduction allowable under I.R.C. § 199(a) for any taxable year shall not exceed 50 percent of the W-2 wages of the taxpayer for the taxable year. I.R.C. § 199(b)(2)(A) generally defines W-2 wages, with respect to any person for any taxable year of such person, as the sum of amounts described in section 6051(a)(3) and (8) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year. I.R.C. § 199(b)(3), after its amendment by Section 219(b) of the Tax Increase Prevention Act of 2014, *Pub. L. 113-295, 128 Stat. 4010 (2014),* provides that the Secretary shall provide for the application of I.R.C. § 199(b) in cases of a short taxable year or where the taxpayer acquires, or disposes of, the major portion of a trade or business, or the major portion of a separate unit of a trade or business during the taxable year. These temporary regulations provide rules for calculating W-2 wages for purposes of the W-2 wage limitation in the case of an acquisition or disposition of a trade or business, the major portion of a trade or business, the major portion of a separate unit of a trade or business during the taxable year, or a short taxable year. The temporary regulations provide a rule for acquisitions and dispositions if one or more taxpayers may be considered the employer of the employees of the acquired or disposed of trade or business during that calendar year. In that case, the temporary regulations provide that the W-2 wages paid during the calendar year to employees of the acquired or disposed of trade or business are allocated between each taxpayer based on the period during which the employees of the acquired or disposed of trade or business were employed by the taxpayer. The temporary regulations also provide a rule to apply in the case of a short taxable year in which there is no calendar year ending within such short taxable year (short-taxable-year rule). Wages paid by a taxpayer during the short taxable year to employees for employment by such taxpayer are treated as W-2 wages for such short taxable year for purposes of I.R.C. § 199(b)(1). The temporary regulations also describe types of transactions that are considered either an acquisition or disposition for purposes of I.R.C. § 199(b)(3). Specifically, these temporary regulations provide that an acquisition or disposition includes an incorporation, a formation, a liquidation, a reorganization, or a purchase or sale of assets. **T.D. 9731, 80 Fed. Reg. 51,939 (Aug. 27, 2015)**.

HEALTH INSURANCE. The IRS has published information for taxpayers who receive letters from the IRS as to the premium tax credit for 2014 but who have not yet filed their tax return. Taxpayers must file a tax return to reconcile any advance credit payments received in 2014 and to maintain eligibility for future premium assistance. If a taxpayer does not file a return, the taxpayer will not be eligible for advance payments of the premium tax credit in 2016. If a taxpayer receives a Letter 5591, 5591A, or 5596, the taxpayer is being reminded to file the 2014 federal tax return along with Form 8962, *Premium Tax Credit*, within 30 days of the date of the letter to substantially increase the taxpayer's chances of avoiding a gap in receiving assistance with paying Marketplace health insurance coverage in 2016. If a taxpayer receives a 5591 or 5591A letter: (1) review the situation to see if the taxpayer agrees with the information in the letter; (2) use the Form 1095-A that the taxpayer received from the Marketplace to complete the return (If the taxpayer needs a copy of Form 1095-A, log in to HealthCare.gov or state Marketplace account or call the Marketplace call center); and (3) file the 2014 tax return with Form 8962 as soon as possible, even if the taxpayer does not normally have to file. If the taxpayer has already filed the 2014 tax return with Form 8962, the taxpayer may disregard the letter. If the taxpayer receives a 5596 letter: (1) review the situation to see if the taxpayer agrees with the information in the letter; (2) use the Form 1095-A that the taxpayer received from the Marketplace to complete Form 8962 (If the taxpayer needs a copy of your Form 1095-A, log in to HealthCare.gov or state Marketplace account or call the Marketplace call center.) and (3) file the 2014 tax return with Form 8962 as soon as possible, even though the taxpayer has an extension until October 15, 2015, to file. If the taxpayer has already filed the 2014 tax return with Form 8962, the taxpayer may disregard this letter. **Health Care Tax Tip 2015-52**.

The Taxpayer Advocate Service has developed three tools to assist in estimating both individual and employer health care-related credits and payments. Tax professionals are free to use these as well. The three tools are:

• Individual Shared Responsibility Payment Estimator (http://www.taxpayeradvocate.irs.gov/estimator/isrp/)

• Premium Tax Credit Change Estimator (http://www.taxpayeradvocate.irs.gov/estimator/premiumtaxcreditchange/)

• Small Business Health Care Tax Credit Estimator (http://www.taxpayeradvocate.irs.gov/estimator/smallbusiness2014/)

QUARTERLY INTEREST RATE. The IRS has announced that, for the period October 1, 2015 through December 31, 2015, the interest rate paid on tax overpayments remains at 3 percent (2 percent in the case of a corporation) and for underpayments remains at 3 percent. The interest rate for underpayments by large corporations remains at 5 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 remains at 0.5 percent. **Rev. Rul. 2015-17, I.R.B. 2015-39.**

SALE OF RESIDENCE. The taxpayer sold the principal residence in 2006 for $1,400,000 with payments stretched over eight years under an installment contract with the balance due in 2014. The seller had received $505,000 in installment payments at the time of the default and repossession of the property. The income tax basis, which was not contested, was $742,204. The seller had excluded the maximum of $500,000 of gain on the sale under the I.R.C. § 121 exclusion. The seller treated the reacquisition in 2009 as a reacquisition of the property under I.R.C. § 1038 but assumed the § 121 exclusion still applied. The Tax Court held that the taxpayer was required to recognize long-term capital gain on the reacquisition of the property, pursuant to I.R.C. § 1038, including gain previously excluded under I.R.C. § 121. See Harl, "Installment Sale with Section 121 Exclusion Followed by Repossession," 25 *Agric. L. Dig*. 105 (2014). **DeBough v. Comm'r, 2015-2 U.S. Tax Cas. (CCH) ¶ 50,455 (8th Cir. 2015), *aff'g*, 142 T.C. No. 17 (2014)**.

SELF-EMPLOYMENT. The IRS has issued a fact sheet covering the basic information about business taxes needed by anyone who is self-employed. The fact sheet provides an overview of subjects, including obtaining an Employer Identification Number; filing tax returns; business expenses; business use of a home; self-employment taxes; estimated tax payments; recordkeeping; and making electronic tax payments through IRS Direct Pay or the Electronic Federal Tax Payment System. **IRS Fact Sheet, FS-2015-22, Aug. 26, 2015**.

LANDLORD AND TENANT

ORAL LEASE. The plaintiff leased farm land to the defendant under a "bare-bones" written lease which provided few terms but listed cash rent to be paid semi-annually. Over four years, the defendant paid the rent but, as an incentive to the plaintiff to continue the lease, paid the plaintiff a share of the profits, after payment of the lease and other shared costs. The parties' relationship soured and the plaintiff terminated the lease. The defendant decided not to pay the profit share after the lease was terminated and the plaintiff sued for the profit share, based on an oral lease term to share profits. The trial court ruled that the oral lease existed and awarded the plaintiff the profit share. The defendant appealed and argued that the trial court improperly relied on parole evidence to find the existence of the oral lease for the profit share. On appeal, the appellate court reversed. The appellate court held that the trial court properly allowed and considered the parole evidence because the written lease contained few terms of a normal lease, such as a description of the land to be farmed, any restrictions on its use, the type of crops allowed or an integration clause. However, the court stated that the parole evidence of an oral contract generally involves oral contracts which supplement the original written contract and cover terms not covered specifically in the written contract, such as provisions to cover expenses for sale of the crop or for raising of livestock. The court held that the trial court erred in ruling that the oral contract was proven with clear and convincing evidence because (1) there was no evidence that the parties discussed the profit-sharing as a lease provision; (2) the profit-sharing payments were paid as an incentive for continuing the lease and were common practice in years of high crop prices; (3) the written lease provided for full payment of some expenses by the defendant, contrary to the existence of a profit-sharing agreement; and (4) the existence of a profit-sharing lease would have violated Farm Service Agency requirements. **Peck v. Four Acre Farms, Inc., 2015 Iowa App. LEXIS 696 (Iowa Ct. App. 2015)**.

Agricultural Law Press
127 Young Rd., Kelso, WA 98626