CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

COWS. The plaintiff was injured when the plaintiff's truck struck a cow owned by the defendant. The evidence showed that the defendant had learned on the day of the accident that the cow had escaped from the defendant's land to a pasture 12 miles away. However, the defendant did not look for the cow until the next day, the day after the accident. The defendant testified that it was highly unusual for a cow to escape and travel so far to another fenced pasture. The evidence also showed that the defendant's fences were in good repair before and after the escape. The trial court ruled that the defendant was not negligent as a matter of law. The defendant argued that the ruling was correct because the fences were in good repair and the defendant had no reason to believe that the cow would escape the neighbor's fenced pasture. The appellate court reversed, holding that the defendant should have known that a cow which escaped the defendant's fences and traveled 12 miles would probably escape other fences and travel a sufficient distance to be on a public highway. Therefore, an issue of fact remained as to whether the defendant exercised sufficient reasonable care in not immediately seeking to capture the cow. **Hand v. Starr, 550 N.W.2d 646 (Neb. 1996)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

AVOIDABLE TRANSFERS. During the year before filing for bankruptcy, the debtor corporation was insolvent. The corporation was owned by one individual, and the shareholder's spouse served as president, managing the corporation business, a livestock feedlot. The same shareholder also owned a real estate title company which was also managed by the spouse. The debtor received eight short term loans from the title company during the year before the bankruptcy filing, each loan made only after the prior loan was paid. The loans were made to allow the debtor to meet cash flow needs from buying and selling livestock. The trustee sought to have the transfers avoided as preferential transfers to an insider of the debtor. The court agreed that the transfers were preferential but held that the transfers were not avoidable because the transfers were made in the ordinary course of business for consideration. The court noted, however, that some of the payments exceeded the subsequent loans; therefore, the new value exception did not apply to the extent that the payments exceeded the value of the subsequent loans. **In re Liberty Livestock Co., 198 B.R. 365 (Bankr. D. Kan. 1996)**.

DISCHARGE. The debtor owned land neighboring the land of a claimant in a Chapter 7 case. During development of the debtor's land, a workcrew cut down trees and removed soil from the claimant's land. A state court trial for trespass was held and a jury verdict was entered against the debtor for treble damages to the trees. The jury verdict specifically found that the debtor had knowledge of the trespass and failed to take any action to stop it. The claimant sought to have the judgment debt declared nondischargeable for willful and malicious damage to the claimant's property. The court held that the actions of the debtor were clearly willful since the actions were done with knowledge of the trespass. The court also found that the debtor's actions were malicious in that the trespass continued for several months after the debtor was informed by the claimant that the trespassing was occurring. The court held that the fact that the damage was done by agents of the debtor did not affect the ruling because the agents were working under the control of the debtor. ***In re* Sullivan, 198 B.R. 417 (Bankr. D. Minn. 1996)**.

The debtor operated a grain buying, trucking and selling business and had purchased, but not paid for, substantial amounts of grain from one creditor. The debtor's business records consisted primarily of canceled checks and bank deposit slips. The debtor maintained no written records of the specifics of any grain sales or purchases or trucking expenses. The Bankruptcy Court held that the records were sufficient to deny a motion by the creditor to deny discharge to the debtor because an accountant could reconstruct the necessary information with the help of testimony from the debtor and because there was no evidence that the debtor concealed or destroyed any records. The appellate court reversed, holding that the burden was on the debtor to produce records sufficient to determine the debtor's business affairs, the testimony of the debtor could not be used to substitute for adequate written records, and the lack of any destruction or concealment of records was irrelevant to the issue of whether the records were sufficient. **Matter of Juzwiak, 89 F.3d 424 (7th Cir. 1996)**.

EXEMPTIONS

AVOIDABLE LIENS. The debtor originally filed for Chapter 12 prior to the 1994 amendment of Section 522. The case was converted to Chapter 7 after the amendment. A creditor had a judgment lien against the debtors' real property which included several separate parcels of farm land, one of which included the residence. The debtors had no equity in any of the property and claimed a homestead exemption for the residence parcel and the wildcard exemption for the other parcels. The debtors sought to avoid the judgment lien on all of the parcels as impairing the claimed exemptions. Under the Ohio exemption statute and prior Ohio bankruptcy cases, a judgment lien against exempt property was not avoidable unless the judgment creditor had begun foreclosure proceedings. The 1994 amendments to Section 522 removed that obstacle, but the creditor argued that the amendment did not apply to this case because the original Chapter 12 case was filed prior to the amendments. The court examined the legislative history of the amendments and held that the amendments were intended to clarify the existing law as intended by Congress and to overturn the Ohio rulings; therefore, the amendments could be applied to this case. The creditor also argued that the wildcard exemption could not be applied to several separate parcels of real estate. The court held that the wildcard exemption had no limitation as to the number or types of properties which could be exempted and that the judgment lien could be avoided on the basis of the wildcard exemption for property in which the debtor had no equity. ***In re* Miller, 198 B.R. 500 (Bankr. N.D. Ohio 1996)**.

CHAPTER 13-*ALM* § 13.03.*

ELIGIBILITY. The IRS had assessed the debtor for $297,000 in owed taxes, penalties and interest, based, in part, on allegations of tax fraud. The debtor brought an action in the Tax Court challenging the assessment but filed for Chapter 13 before the case was tried. The IRS moved to dismiss the Chapter 13 case for lack of jurisdiction because the debtor had more than $100,000 in unsecured debts. (The post-1994 limit is $250,000.) The debtor argued that because the tax liability was subject to a Tax Court challenge, the debt was unliquidated and not included in the debtor's debts for purposes of Chapter 13 eligibility. The debtor argued that the debt was unliquidated because the exact amount was not determinable, the amount was in dispute, and the debt was based on an allegation of fraud which the IRS was required to prove. The court held that (1) the amount of the claim was determinable under statutes and regulations; (2) the issue of the debtor's liability is not a factor in determining the liquidated status of a claim; and (3) disputed claims are considered debt for purposes of Chapter 13 eligibility. **United States v. Verdunn, 89 F.3d 799 (11th Cir. 1996)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

ALLOCATION OF PLAN PAYMENT OF TAXES. The debtor was a small corporation with three employees, the sole shareholder who was the uncompensated president, the shareholder's spouse who was the paid bookkeeper, and an unrelated employee. The debtor filed for Chapter 11 and the plan provided that payments made to the IRS were to be applied to employment tax trust fund obligations first, interest on the taxes second and penalties third. The effect of the allocation was to have nondischargeable taxes paid first with dischargeable taxes paid last, an advantage for the debtor should the plan fail. The IRS objected to the plan provision in that the debtor had not shown that the allocation was necessary for a successful reorganization. The debtor provided only testimony of the shareholder that the provision would be an incentive to work hard to make the reorganization a success. The court held that the plan could not be confirmed in that the debtor failed to show that the reorganization could not succeed without the plan provision. ***In re* Classic Chemical & Supply Co., 198 B.R. 112 (Bankr. E.D. Pa. 1996)**.

CLAIMS. The IRS filed a claim for taxes in the debtor's Chapter 13 case. The debtor challenged the claim, under Bankr. Rule 3001 on the basis that (1) the claim did not include any supporting facts, (2) the claim was not based on a writing, and (3) the agent who filed the claim did not have personal knowledge of the claim. The court held that the claim was sufficient because (1) a properly filed claim had a presumption of validity, (2) the claim was based upon the IRS statutory authority to assess taxes, and (3) Rule 3001 did not require personal knowledge for claimant's agents. The court also held that the debtor failed to provide any evidence to rebut the claim. **In re Hollars, 198 B.R. 270 (Bankr. S.D. Ohio 1996)**.

DISCHARGE. The debtors were audited in 1984 for tax deficiencies for 1975 through 1982 which were eventually determined by a Tax Court to exceed $2 million. Soon after the audit, the debtors began a series of asset transfers to their children, friends and new corporations in attempts to remove the assets from the reach of IRS liens and assessments. For example, the debtors had themselves removed from the payroll of one corporation after the IRS attempted to attach the wages. The debtors even went to the extreme of selling their residence to friends and renting the friends' house as their new residence. The debtors also paid off all debts other than the tax debt. The trial court held that the taxes were nondischargeable, under Section 523(a)(1)(C), for willfully attempting to evade the taxes. The debtors argued that all of the transfers were bona fide and made for personal and family reasons. The appellate court upheld the Bankruptcy Court's finding that the debtors' stated intentions were not credible. The appellate court also upheld the Bankruptcy Court's holding that the debtors' actions demonstrated in whole a willful attempt to evade payment of taxes, even though any one particular action could have been bona fide and for reasons independent of the tax debt. **Matter of Zuhone, 88 F.3d 469 (7th Cir. 1996)**.

The debtors failed for several years to make estimated tax payments or pay taxes when they filed their income tax returns. Several of the returns were also filed late. Although the debtors made some attempts to negotiate installment payment of the taxes, agreements were never reached. The debtors then joined a tax avoidance organization and removed assets to the organization in an attempt to avoid payment of the taxes. The debtors used letters and forms provided by the organization to mislead the IRS and to make frivolous arguments about their tax status. Only when the IRS began to attach the debtors' property with tax liens did the debtors give up on the tax avoidance organization and seek payment negotiations with the IRS. The court held that, although the non-payment of taxes was insufficient evidence of intent to evade payment of taxes, the debtors' actions went beyond mere nonpayment and included attempts to hide assets and mislead the IRS; therefore, the taxes were nondischargeable under Section 523(a)(1)(C). ***In re* Spirito, 198 B.R. 624 (Bankr. M.D. Fla. 1996)**.

The taxpayer was a beneficiary of a one-fourth interest in a trust. In May 1992, the taxpayer, spouse and the IRS reached an agreement in a Tax Court case determining the taxpayer's tax deficiencies for 1985 through 1987. The taxpayer claimed to have assigned the taxpayer's interest in the trust to the taxpayer's spouse in April 1992, but the taxpayer continued to receive distributions from the trust. In addition, the trustee did not receive any notice of the assignment until June 1993. The IRS issued notices of levy on the trust interest and the taxpayer filed for bankruptcy the next day. The court held that the taxes were

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nondischargeable because the trust assignment was a willful attempt to evade payment of taxes. ***In re* Ward, 96-2 U.S. Tax Cas. (CCH) ¶ 50,450 (Bankr. D. Colo. 1996)**.

REFUND. The debtors did not file income tax returns for 1986 and 1987 until 1993. The IRS had filed an assessment for the 1986 and 1987 taxes in 1990 but agreed in this case that no taxes were due for those years. The debtors' 1986 and 1987 returns requested a refund which the IRS denied as untimely. The court held that the limitation period for refund requests is, under I.R.C. § 6402(a), three years from the due date of the return, with extensions, for which the refund was claimed; therefore, the debtors' refund requests were untimely and the refunds could not be required to be offset against the IRS claims in the bankruptcy case. **Willis v. United States, 198 B.R. 201 (S.D. Tex. 1996)**.

SETOFF. The debtor filed a Chapter 13 case on January 12, 1996, and filed the debtor's 1995 income tax return on January 22, 1996, claiming a refund. The IRS refused to pay the refund, holding the refund as a setoff against prior taxes owed by the debtor. The debtor argued that the refund was a post-petition obligation of the IRS which was not subject to setoff against pre-petition obligations of the debtor. The IRS argued that the refund effective date should be the last date of the tax year for which the refund was sought. The court cited I.R.C. § 6407 which provided that the allowance date of a refund was the date the IRS first authorizes the scheduling of an overassessment; therefore, the refund obligation could not arise until the debtor filed an income tax return. The IRS argued that allowing the refund effective date to be determined by the filing of the return gave the debtor too much power to manipulate the status of the refund as a post-petition obligation. The court noted that the debtor would have this power even with the IRS's refund date because the debtor could have filed the case prior to December 31, 1995 and achieved the same result. The court held that the IRS could not set off the refund because the refund was a post-petition obligation. ***In re* Glenn, 198 B.R. 106 (Bankr. E.D. Penn. 1996)**.

FEDERAL AGRICULTURAL PROGRAMS

APPEALS. The petitioners appealed an adverse ruling of the FmHA (now FSA) to the National Appeals Division (NAD) and obtained a reversal, allowing a loan restructuring. The petitioners applied for legal fees under the Equal Access to Justice Act (EAJA) which were denied. The court held that the NAD appeal was an adjudication under the Administrative Procedures Act which allowed recovery of fees under the EAJA. The court specifically held that the appeal procedures were based, in part, on the APA because the statutes and regulations concerning the NAD appeal procedures did not supplant the APA procedures but only added to them. Although the NAD decision did not make a finding that the original agency determination was not substantially justified, the appellate court reviewed the NAD decision and found that the agency determination was based on numerous errors and inadequate recordkeeping; therefore, the court held that the agency determination was not substantially justified and the petitioners were entitled to recover legal fees under the EAJA. **Lane v. USDA, 929 F. Supp. 1290 (D. N.D. 1996)**.

CONSERVATION. The CCC and NRC have adopted as final regulations implementing the Wetlands Reserve Program. **61 Fed. Reg. 42175 (Aug. 14, 1996)**.

The CCC has issued a request for proposals from states, tribes, and local governments for cooperation in the acquisition of conservation easements or other interests in prime, unique or other productive soil for the purposes of limiting non-agricultural use of that land. **61 Fed. Reg. 43226 (Aug. 21, 1996)**.

CROP INSURANCE-*ALM* § 13.04.* The FCIC has adopted as final regulations providing specific provisions for the insurance of Texas citrus fruit crops in conjunction with the Common Crop Insurance Policy Basic Provisions. **61 Fed. Reg. 41297 (Aug. 8, 1996)**.

The FCIC has issued proposed regulations providing specific provisions for the insurance of walnut crops in conjunction with the Common Crop Insurance Policy Basic Provisions. **61 Fed. Reg. 41527 (Aug. 9, 1996)**.

The FCIC has issued proposed regulations providing specific provisions for the insurance of almond crops in conjunction with the Common Crop Insurance Policy Basic Provisions. **61 Fed. Reg. 41531 (Aug. 9, 1996)**.

The FCIC has adopted as final regulations implementing the Catastrophic Risk Protection Program. **61 Fed. Reg. 42979 (Aug. 20, 1996)**.

FARM LOANS. The FSA has adopted as final regulations establishing new policies and procedures for the release from liability of guaranteed loan borrowers and co-signers. **61 Fed. Reg. 43147 (Aug. 21, 1996)**.

FEDERAL ESTATE AND GIFT TAX

INSTALLMENT PAYMENT OF ESTATE TAX-*ALM* § 5.05[1].* The decedent owned and operated a cattle ranch with the decedent's son. The decedent owned land used in the ranch. The son owned other property used in the business. The decedent operated the ranch in part by a partnership with the son and in part as a sole proprietor. The son contributed part of the son's property to the partnership with the remainder of the son's property used by the partnership but owned by the son. The decedent also allowed the partnership to use the decedent's land and retained separate ownership of the land. The decedent was actively involved in the management of the partnership and proprietorship businesses. The partnership paid the real estate taxes, casualty and liability insurance and fencing costs for the property used by the partnership but the partnership did not pay rent for the use of the separately owned property. The IRS ruled that (1) the decedent was carrying on the cattle business both as a partner and as a sole proprietorship, (2) the decedent's land was essential to the operation as a partnership and sole proprietorship, and (3) the fact that the decedent owned the land separately from the partnership did not affect the decedent's eligibility for installment payment of estate tax because the income from the land was derived from the cattle business and not from rent of the land. **Ltr. Rul. 9635004, May 15, 1996**.

LIFE INSURANCE. The taxpayer established an irrevocable trust for the benefit of the taxpayer's children. The taxpayer's brother was named as trustee and the taxpayer and spouse were prohibited from becoming the trustee. The trustee had the discretion, during the taxpayer's lifetime, to distribute trust income to the taxpayer's issue. The trust terminated at the earlier of the taxpayer's death or the passing of 25 years. The trust was funded with a cash gift which was used to purchase a life insurance policy on the taxpayer's life. The trustee then entered into a split-dollar arrangement with the taxpayer's spouse under which the trust paid a portion of the policy premiums equal to the lesser of (1) the applicable amount in the P.S. 58 tables in Rev. Rul. 55-747, 1955-2 C.B. 228 and (2) the published premium rate for individual one-year term life insurance available to all standard risks of the insurance company issuing the policy. The spouse paid the rest of the premium from the spouse's separate property. The agreement terminated at the death or bankruptcy of the spouse or failure of either party to perform under the agreement. If the agreement terminated prior to the death of the taxpayer, the spouse would receive the net cash value of the policy. Upon the death of the taxpayer, the spouse would receive the greater of the net cash value or the amount of premiums paid by the spouse. The spouse's interests in the policy were secured by a promissory note and collateral assignment agreement. The IRS ruled that the spouse's payments of a portion of the premiums would not be gifts to the trust from the spouse or a deemed gift from the taxpayer. The IRS also ruled that the insurance proceeds would not be included in the taxpayer's gross estate. **Ltr. Rul. 9636033, March, 12, 1996**.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayer owned and operated a tax preparation and consulting business. The taxpayer had claimed deductions for office rent, equipment rental and utility expenses; however, the taxpayer was unable to substantiate many of the payments allegedly made for these expenses and several records were found to be not credible by the court. The court held that the taxpayer was not allowed deductions for which no supporting record was available. **Miller v. Comm'r, T.C. Memo. 1996-402**.

CHARITABLE DEDUCTION. A corporation obtained a nonrecourse loan from a bank in order to purchase computer equipment. The corporation then entered into a sale/leaseback agreement with the taxpayer. The taxpayer transferred the computer equipment to a school which agreed to assume the nonrecourse obligation. The court held that the taxpayer could not claim a charitable deduction from the transfer because the amount of the nonrecourse obligation assumed by the school exceeded the taxpayer's basis in the equipment. **Brown v. Comm'r, T.C. Memo. 1996-325**.

INTEREST RATE. The IRS has announced that for the period October 1, 1996 through December 31, 1996, the interest rate paid on tax overpayments is 8 percent and for underpayments is 9 percent. The interest rate for underpayments by large corporations is 11 percent. The interest rate on corporate overpayments above $10,000 is 6.5 percent. **Rev. Rul. 96-44, I.R.B 1996-__**.

MILEAGE EXPENSE. The taxpayer owned and operated an accounting practice. The taxpayer incurred automobile expenses from the use of the taxpayer's car in traveling to meet with clients of the firm. The taxpayer was not reimbursed by the firm for these expenses and claimed the expenses on the taxpayer's individual tax return. The taxpayer maintained a log of which clients were visited each day. The log did not contain information about the location of the meetings or what was discussed. The taxpayer had been audited for a prior tax year and only 82 percent of the automobile expenses were allowed. The taxpayer argued that 82 percent of the claimed expenses should also be allowed for the tax year involved in this case. The court held that the expenses were properly disallowed for lack of substantiation and that the IRS was not required to use an estimate from a previous year. **Thomas v. Comm'r, T.C. Memo. 1996-403**.

PENSION PLANS. For plans beginning in August 1996, the weighted average is 6.92 percent with the permissible range of 6.22 to 7.47 percent (90 to 109 percent permissable range) and 6.22 to 7.61 percent (90 to 110 percent permissable range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 96-43, I.R.B. 1996-__**.

PARTNERSHIPS-*ALM* § 7.03.*

ADMINISTRATIVE ADJUSTMENTS. Three years after the period for assessments against the partnership lapsed, the IRS sent a Notice of Final Partnership Administrative Adjustment to the "Tax Matters Partner" at the partnership address. Several partners received the generic FPAA, including the partner with the largest share of partnership profits. The FPAA was mailed within the limitation period for the notice. The partnership argued that the notice was untimely filed because it was mailed after the period for assessments had lapsed. The court held that the limitation period for FPAAs was independent of the assessment limitation period. The court also held that the failure of the FPAA to specifically name the tax matters partner did not invalidate the notice. **Wayne Caldwell Escrow Partnership v. Comm'r, T.C. Memo. 1996-401**.

An S corporation was a pass-through partner of a general partnership. The S corporation had two individuals as shareholders who were considered indirect partners of the general partnership under I.R.C. § 6231(a)(10). The S corporation was also the tax matters partner in the partnership but lost that status when it filed for bankruptcy. The IRS filed a FPAA with the general partnership and notified the S corporation that, as a result of the bankruptcy filing, the corporation's partnership items were converted to nonpartnership items and no longer subject to the FPAA or reviewable in FPAA proceedings. The two shareholders timely filed a petition for readjustment and the IRS argued that the petition was not allowed because the corporation's partnership items were converted to nonpartnership items. The court held that, because the shareholders were not debtors in the bankruptcy case, the bankruptcy filing did not

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affect their rights as indirect partners as to the FPAA proceeding. **Third Dividend/Dardanos Associates v. Comm'r, 88 F.3d 821 (9th Cir. 1996)**.

LIMITED LIABILITY COMPANIES. See **Ltr. Rul. 9636007, May 30, 1996** under **S CORPORATIONS** *infra*.

S CORPORATIONS-*ALM* § 7.02[3][c].*

ELIGIBILITY. An S corporation reorganized as a limited liability company in a tax-free reorganization, under I.R.C. § 368(a)(1)(F), with all shareholders receiving an equivalent interest in the LLC. The IRS ruled that (1) the LLC had the corporate characteristic of continuity of life because the LLC agreement provided that the bankruptcy, death, dissolution, expulsion, incapacity or withdrawal of any member did not result in the dissolution of the LLC; (2) the LLC had the corporate characteristic of centralized management because the LLC was managed by a board of directors; and (3) the LLC had the corporate characteristic of limited liability because the members of the LLC had no personal liability for the debts of the LLC. Therefore, the LLC was taxable as a corporation. The IRS also ruled that the LLC continued to be eligible for S corporation status if the reorganization did qualify as tax-free under I.R.C. § 368(a)(1)(F). **Ltr. Rul. 9636007, May 30, 1996**.

RETURNS. The IRS has announced that new Form 2553, Election by a Small Business Corporation, and instructions are available.

TAX LIENS. The taxpayer was the son of a farmer who owned a one-fourth interest in farm land, with the other interests owned by the father's siblings. Apparently, the father operated the farm alone. In 1984, under the threat of an impending law suit, the father transferred his interest in the farm to the taxpayer when the taxpayer was three years old in exchange for no consideration. The transfer was intended to place the farm outside the reach of the potential judgment creditor. The father continued to operate the farm and had control over all assets and income from the farm. Farm equipment was purchased with farm income and was held in the father's name. No rent was paid to the taxpayer for use of the farm. The IRS assessed taxes owed for 1984, 1986, 1988 and 1990 by the father. In May 1995, the IRS issued a Notice of Levy and Notice of Seizure on the farm. The taxpayer, through a court-appointed conservator, challenged the lien and levies as wrongful because the son did not owe any taxes. The court looked to Wyoming law for its holding that the father's transfer of the farm to the son was a fraudulent transfer because the transfer was made without consideration and the transfer made the father insolvent. The court held that the fraudulent conveyance rule applied even though the IRS was not a creditor at the time of the transfer. The also held that the taxpayer held title to the farm as the father's nominee for the same reasons that the transfer was fraudulent plus the father continued to exercise dominion and control over the property and to receive the benefits of the property. Therefore, the farm was subject to the tax lien and levy for the father's taxes. **Jessen v. United States, 96-2 U.S. Tax Cas. (CCH) ¶ 50,449 (D. Wyo. 1996)**.

The taxpayer was a shareholder in a family farm corporation. The taxpayer built a residence on corporate land using the taxpayer's separate funds, although the taxpayer did not pay real estate taxes on the land nor rent to the corporation for the use of the land. The taxpayer owed taxes for unreported drug sales and the IRS filed a tax lien against the residence. The IRS sought to foreclose on the lien by selling the taxpayer's stock in the corporation and the four acre residential parcel of the farm. Title to the four acres was in the name of the corporation. The IRS argued that the corporation was merely the alter ego of the taxpayer but the court held that the corporate form could not be disregarded because the taxpayer did not exercise control over corporate affairs. The court also ruled that the payment of real estate taxes and the failure to charge rent did not indicate that the corporation was the alter ego of the taxpayer, because the corporation was responsible for the taxes as title holder and the title to the land and improvements was not transferred to the taxpayer; thus, the benefits of the residence inured to the corporation. The court also rejected the IRS argument that the corporation held title to the four-acre parcel as the taxpayer's nominee, because the corporation acquired title to the land long before any residence was constructed. The IRS also sought to foreclose on the taxpayer's interest in the corporation by seeking sale of the taxpayer's interest in all of the corporation's assets. The court held that the lien attached only to the taxpayer's shares of stock. **United States v. Miller, 96-2 U.S. Tax Cas. (CCH) ¶ 50,445 (N.D. Ohio 1996)**.

PRODUCTS LIABILITY

HAY BALER. The plaintiff was injured while loading hay by hand into a hay baler manufactured by the defendant. The plaintiff presented evidence of similar accidents with the same model of hay baler and claimed that the defendant had knowledge that the hay baler was dangerous in that it could grab hay faster than an operator could release the hay, thus pulling hands and arms into the machinery. The plaintiff requested a jury instruction on the defendant continuing duty to warn but was refused. The appellate court reviewed Illinois law on the duty to warn and held that the case law indicated that there was no continuing duty of a manufacturer to warn purchasers of the manufacturer's products. The court distinguished the case of *Seegers Grain Co., Inc. v. United States, 577 N.E.2d 1364 (Ill. Ct. App. 1991)*, which held that a steel manufacturer had a duty to warn a customer about a similar accident which occurred within a month prior to the accident in the case, where the products were specifically designed for the injured party and the manufacturer had specific knowledge of the intended use and the inappropriateness of the manufacturer's product for the intended use. The court noted that, in this case, the hay baler was a generic product sold over-the-counter to a buyer unknown to the manufacturer; therefore, the *Seeger* special rule did not apply. **Birchler v. Gehl Co., 88 F.3d 518 (7th Cir. 1996)**.

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TRACTOR. The plaintiff was injured while employed on a sugarcane farm. The plaintiff was helping to remove a tractor and cutter implement from some muddy ground by pulling on the implement with a chain attached to another tractor. The driver of the stuck tractor left the driver's seat with the tractor still running in order to help the plaintiff. The stuck tractor went into reverse gear and backed the cutter over the plaintiff. The plaintiff alleged that the tractor was defectively design in that the tractor could be in gear when the shift lever was placed in the neutral position. The defendant tractor manufacturer claimed that the driver of the stuck tractor merely failed to properly place the tractor in neutral before leaving the cab. The plaintiff appealed a jury verdict for the defendant and argued that hearsay evidence was impermissibly admitted at the trial. The appellate court held that the evidence, testimony of the employer as to what the plaintiff said that the tractor driver said, was inadmissible hearsay. The appellate court then went on to a de novo review of the evidence and held that the defendant's experts' testimony was more credible that the tractor was not negligently designed and that any defect in the shift mechanism was caused by normal wear from use. **Clay v. International Harvestor Co., 674 So.2d 398 (La. Ct. App. 1996)**.

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