valuation.

Unfortunately, the instructions to Schedule T, the schedule on which the family-owned business deduction is claimed, states as follows—

> "For 5 of the 8 years before the decedent's death, there was material participation by the decedent or a member of the decedent's family in the business to which the ownership interest relates."

That passage is obviously based on the relevant language in the main part of the statute[16] but ignores the modifications at the end of the statute.[17]

Also, the instructions to Schedule T state, several paragraphs farther on, as follows—

> "To make the section 2057 election, either the decedent or a member of the decedent's family must have materially participated in the trade or business to which the ownership interest relates for at least 5 of the 8 years ending on the date of the decedent's death."

Again, that passage is based on the relevant language in the main part of the FOBD statute[18] and ignores the further guidance on the topic near the end of the statute.[19]

Moreover, a 1998 Senate Finance Committee report,[20] the General Explanation of Tax Legislation Enacted in 1998 (The "Blue Book,")[21] the Conference Report to the Taxpayer Relief Act of 1997,[22] a letter from the Joint Committee on Taxation to Sen. Charles Grassley,[23] and the Senate Finance Committee Report to Accompany the Taxpayer Relief Act of 1997[24] all contain nearly identical language requiring material participation for five or more years in the eight-year period ending on the date of the decedent's death.

In conclusion

The statute itself is relatively clear as to the pre-death material participation rule. Unfortunately, the explanation by the Internal Revenue Service, the Senate Finance Committee and the Joint Committee on Taxation reflect only part of the rule applicable for purposes of the family-owned business deduction. Hopefully, the long-awaited regulations under I.R.C. § 2057 will clarify the situation and confirm the statutory language.

FOOTNOTES

1 I.R.C. § 2032A(b)(4), (5). See generally 5 Harl, *Agricultural Law* § 43.03[2][d][vi]; Harl, *Agricultural Law Manual* § 5.03[2][d][iv] (2000).

2 I.R.C. § 2057(b)(1)(D), 2057(i)(3)(A). See generally Harl, *supra note* 1, § 44.03[2](c).

3 See, e.g., S. Rep. No. 105-174, 105th Cong., 2d Sess. (1998). See notes 20-24 *infra*.

4 The instructions for Schedule T, Form 706, contain two incorrect references to the pre-death material participation test for FOBD. See notes 16-17 *infra* and accompanying text.

5 See Harl, "Sorting Out 'Material Participation': The Trap in FOBD," 11 *Agric. L. Dig.* 137 (2000).

6 We are indebted to David Crumley, a tax attorney from Fort Dodge, Iowa, for useful insights into the problem.

7 I.R.C. § 2032A(b)(1)(C), before enactment of the Economic Recovery Tax Act of 1981, Sec. 421(b)(2), adding I.R.C. § 2032A(b)(4). See 5 Harl *supra note 1*, § 43.03[2][d][vi].

8 I.R.C. §§ 2032A(b)(1)(C), 2032A(b)(4).

9 I.R.C. § 2032A(b)(4)(A)(i).

10 I.R.C. § 2032A(b)(4)(A).

11 I.R.C. § 2057(b)(1)(D)(ii).

12 I.R.C. § 2057(b)(1)(D).

13 See I.R.C. § 2032A(e)(6).

14 I.R.C. § 2057(i)(3)(A).

15 I.R.C. § 2057(b)(1)(D), 2057(i)(3)(A).

16 I.R.C. § 2057(b)(1)(D).

17 I.R.C. § 2057(i)(3)(A).

18 I.R.C. § 2057(b)(1)(D).

19 I.R.C. § 2057(i)(3)(A).

20 S. Rep. No. 105-174, 105th Cong., 2d Sess. (1998).

21 Joint Committee on Taxation, November 24, 1998, pp. 170-174.

22 H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. 399 (1997).

23 See letter, dated November 3, 1997, reprinted in Harl and McEowen, "The Family-Owned Business Exclusion—Section 2033A," *TM 829*, 1998, Worksheet 21, 2000 revision forthcoming.

24 S. Rep. No. 33, 105th Cong., 1st Sess. 43 (1997).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

EXEMPTIONS

HOMESTEAD. The debtor was of advanced age and living in a retirement community when the debtor caused an automobile accident. The injured party sued the debtor for an amount in excess of the insurance carried by the debtor. The debtor's family members worked with the debtor to convert most of the debtor's liquid, non-exempt assets into the purchase of a residence, effectively removing the assets from the reach of the injured party who was a creditor in the bankruptcy case. In order to move to the residence, the debtor had to hire a live-in nurse. The residence was clearly larger than needed by the debtor and was expanded in order to use

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up all of the liquid assets. The court held that the debtor was not entitled to an exemption for the residence because the residence was purchased as part of a fraudulent transfer. ***In re* Sholdan, 217 F.3d 1006 (8th Cir. 2000),** ***aff'g*****, 218 B.R. 475 (Bankr. D. Minn. 1998),** ***on rem. from*****, 108 F.3d 886 (8th Cir. 1997)**.

Chapter 12-*ALM* § 13.03[8].*

APPEALS. The debtor had filed a pro se petition for Chapter 12 which was dismissed on the motion of a creditor. The debtor filed two motions for reconsideration but both were denied. The debtor filed an appeal to the District Court 17 days after the last court order denying reconsideration. The appeal was dismissed for untimeliness. The debtor argued that the appeal was timely because the post-dismissal motions tolled the appeal period. The court held that appeals had to be filed within 10 days after the order appealed to; therefore, the debtor's appeal was untimely filed 17 days after the last court order. The debtor also argued that the appeal time should be extended for excusable neglect because the debtor had filed pro se. The court held that the excusable neglect provision only applied where the appellant files for an extension, which the debtor did not do. In addition, a late appeal is treated as a motion for an extension only in criminal appeals. ***In re* Williams, 216 F.3d 1295 (11th Cir. 2000)**.

LEGISLATION. A reminder that the statute providing for Chapter 12 expired on June 30, 2000 without extending legislation at this time. Legislation to make Chapter 12 permanent is pending.

Chapter 13-*ALM* § 13.03.*

DISPOSABLE INCOME. The debtor was an attorney who had three year's of nondischargeable taxes. The debtor's plan provided for full payment of the taxes plus prepetition interest over five years by monthly payments and an annual balloon payment. The debtor's income had fluctuated over the previous four years and the debtor used the average income for the first three years in calculating the anticipated disposable income available to the debtor during the plan. The fourth year was the year before the bankruptcy case filing and had a much higher amount of income. The IRS objected to the plan because it did not include payment of post-confirmation interest on the tax claims and did not apply all of the debtor's disposable income to plan payments. The IRS argued that the debtor understated the anticipated income and improperly included private school tuition for the debtor's children as a personal expense during the plan. The court held that the private school tuition was to be included in disposable income because the children were young and adequate public schools were available. The court also recalculated the anticipated income, giving more weight to the last year before the bankruptcy filing, because the debtor did not provide any evidence that year's income was higher because of unique or extraordinary circumstances. The plan was not confirmed also because it did not provide for payment of post-confirmation interest on the tax claims. **In re Weiss, 251 B.R. 453 (Bankr. E.D. Pa. 2000)**.

FEDERAL TAX-*ALM* § 13.03[7].*

CLAIMS. The debtor claimed an exemption for the debtor's interest in an ERISA qualified pension plan and the exemption was allowed. The IRS had filed a secured claim for taxes based on a prepetition tax lien on the debtor's interest in the ERISA plan. The court held that the exempt property could serve as collateral for the tax lien; therefore, the tax claim was not secured to the extent of the debtor's interest in the ERISA plan. ***In re* Keyes, 2000-2 U.S. Tax Cas. (CCH) (Bankr. E.D. Va. 2000)**.

DISCHARGE. Although the debtor had filed income tax returns for several years, the debtor stopped filing returns and paying taxes after deciding that the IRS had no authority to collect taxes. The debtor continued to refuse to file returns or pay taxes after assessments by the IRS. The debtor attempted to hide assets from the IRS by using sham trusts and false business names for bank accounts and avoiding the use of checks. Criminal charges were eventually brought against the debtor who still resisted filing the returns. Eventually the debtor did file returns but only under court orders. The court held that the taxes were nondischargeable under Section 523(a)(1)(C) for willfully attempting to evade payment of taxes. ***In re* May, 251 B.R. 714 (Bankr. 8th Cir. 2000),** ***aff'g*****, 247 B.R. 786 (Bankr. W.D. Mo. 2000)**.

The debtor, a self-employed attorney, failed to pay for federal taxes for three tax years for which returns were filed more than three years before the Chapter 7 petition. However, except for some partial payments in later years, the debtor did not make any estimated tax payments, did not make any payments with the returns, and filed all of the returns late by several months. During these tax years, the debtor had sufficient funds to make the tax payments and was aware of the need to make the tax payments. The court held that the taxes were nondischargeable because the debtor's failure to make estimated taxes and to pay the taxes when able were affirmative acts to attempt to evade or defeat the tax liabilities. The case is designated as not for publication. ***In re* Haesloop, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,757 (E.D. N.Y. 2000).**

The IRS filed tax claims for 1991, 1996, 1997 and 1998. The taxpayers filed for Chapter 7 on August 9, 1999. The debtors claimed to have filed a tax return for 1991 but did not produce any evidence of that return or a mailing of the return, The IRS constructed a substitute return which was not prepared with the help of the debtors and was not signed by the debtors. The court held that the 1991 taxes were not dischargeable because no return had been filed. The tax claims for the other years were also nondischargeable because the returns for those years were required to be filed within three years before the filing of the petition. ***In re* Villalon, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,753 (Bankr. N.D. Ohio 2000)**.

NET OPERATING LOSS. The debtor filed for Chapter 7 and claims for taxes for the previous two tax years were included in the case. The claim for the first year was discharged but the pre-bankruptcy tax year claim was not discharged. The return for the year of the bankruptcy case was not filed until the following year and included a net operating loss for which the debtor did not make an election to carry forward. The debtor argued that the net operating loss could not be carried back to the first tax year since the taxes were discharged; therefore, the net operating loss was

carried back to the pre-bankruptcy year. In a Field Service Advice letter, the IRS compared the discharged tax year to a tax year in which it was barred from making an assessment and cited case authority which allowed the IRS to carry net operating losses to a year not in issue as a preliminary step to assessing taxes in a tax year still open for assessment. Therefore, the IRS ruled that the net operating losses would have to be applied first to the tax from the discharged tax year before applying the net operating losses to the pre-bankruptcy tax year. **FSA Ltr. Rul. 200039007**, **(June 23, 2000)**.

CONTRACTS

COMMERCIAL REASONABLENESS OF RESALE OF GOODS. The defendant had agreed to purchase popcorn from the plaintiff when the popcorn was still growing. The popcorn became contaminated with corn smut on the surface of the stored corn. The parties discussed the situation for several months after which the defendant rejected the popcorn. The plaintiff then attempted to resell the popcorn by sending samples of the popcorn to various buyers. The samples were taken from the worst part of the stored crop. The plaintiff received some offers at half of the original contract price and gave the defendant an option to purchase the popcorn at the highest bid price. The defendant refused and the plaintiff sold the popcorn to another buyer. The plaintiff then sued for the difference between the contract price and the actual price at which the popcorn was sold. The plaintiff argued that the defendant failed to timely reject the popcorn and the defendant countered that the plaintiff did not resell the popcorn in a commercially reasonable manner. The court held that the plaintiff followed standard commercial practice in taking bids and in sending samples of popcorn in the worst condition. The evidence demonstrated that popcorn buyers generally want to see the poorest quality sample in making a bid. The court upheld the jury instruction for timely rejection, holding that the determination of reasonableness of the time and manner of rejection is a fact issue for the jury. **Smith v. Paoli Popcorn Co., 260 Neb. 460, __ N.W.2d __ (Sept. 29, 2000)**.

COOPERATIVES

NEWS ITEM. The Associated Press has reported that the Farmers Cooperative Association, the largest cooperative in Kansas has filed for Chapter 11 bankruptcy with over $10 million in debts. The cooperative is seeking lender and court approval to continue operations during the bankruptcy reorganization. A future issue of the Digest will contain an article by Roger McEowen and Neil Harl on issues for producers with grain or contracts with elevators who declare bankruptcy.

FEDERAL AGRICULTURAL PROGRAMS

ANIMAL WELFARE ACT. The Associated Press has reported that the USDA has decided to settle the following case and promulgate minimum care standards for rats, mice and birds used in research. The plaintiffs, a non-profit organization, a private firm and an individual challenged regulations promulgated under the Animal Welfare Act, 7 U.S.C. § 2131 et seq., which excluded birds, rats and mice from the definition of animals covered by the Act. The USDA challenged the standing of the individual plaintiff, arguing that the plaintiff had not suffered any injury from the regulations. The individual was a research lab assistant and claimed emotional distress from the poor living conditions of the mice and rats under the individual's care. The court held that the individual's emotional distress was sufficient injury for standing to sue and that the lack of regulation of the care of the mice and rats resulted from the USDA's failure to promulgate regulations covering mice and rats. The court also held that the Act did not give the USDA unreviewable discretion to determine which animals were to be regulated. The Act defined the covered animals as "any live or dead dog, cat, monkey (non-human primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal . . .." The court refused to grant a summary judgment for either party because insufficient evidence had been presented to determine whether the regulations were reasonable under the Act. **Alternatives Research & Development v. Glickman, 101 F. Supp.2d 7 (D. D.C. 2000)**; see p. 139 supra.

CROP INSURANCE. The FCIC has issued proposed regulations amending the forage seeding crop insurance provisions by (1) adding a new contract change date for South Dakota counties where the special provisions designate both fall and spring final planting dates; (2) adding cancellation and termination dates for South Dakota counties that will be applicable when the special provisions designate both fall and spring final planting dates; and (3) adding end of insurance period dates for fall and spring planted acreage in California, Colorado, Idaho, Nebraska, Nevada, Oregon, Utah and Washington. **65 Fed. Reg. 57562 (Sept. 25, 2000)**.

FEDERAL ESTATE AND GIFT TAX

MARITAL DEDUCTION. The decedent's estate passed in trust to two trusts for the surviving spouse, marital and nonmarital trusts. The trustee filed the estate tax return and afterwards wanted to split the marital trust into GSTT exempt and nonexempt shares, with a reverse-QTIP election for the exempt share. The IRS ruled that the estate would be granted a 30 day extension to file the appropriate elections. **Ltr. Rul. 200039035, June 26, 2000.**

VALUATION. The decedent owned an interest in a consumer electronics retail store. The issue was the value of

the decedent's interest in the store. The court valued the nonoperating assets, those assets of the store not needed for income, using an asset value approach. The court valued the operating assets using the income approach, after increasing store income by the amount of overcompensation of employees related to the decedent. **Estate of Renier v. Comm'r, T.C. Memo. 2000-298**.

FEDERAL INCOME TAXATION

C CORPORATIONS-*ALM* § 7.02[3].*

CONSTRUCTIVE DIVIDENDS. The taxpayer owned a business as a sole proprietor before incorporating the business. The taxpayer had income and expenses accrued prior to incorporation and those items were listed as receivables and payables on the corporation's books. The receivables were considered valid debt of the taxpayer. The taxpayer was charged with failing to report income and the corporation paid the legal defense fees but charged the payments to the taxpayer by reducing the receivables resulting from the pre-incorporation income. The court held that the reduction of the taxpayer's debt to the corporation by the amount of legal fees was a constructive dividend to the taxpayer. **Midwest Stainless, Inc. v. Comm'r, T.C. Memo. 2000-314**.

CASUALTY LOSS. The taxpayer owned an apartment building with a basis of $672.093 and a fair market value of $2 million. The building suffered flood damage, reducing the fair market value to $750,000. The taxpayer received insurance proceeds of $767,000 and used the proceeds and $483,000 of the taxpayer's own money to repair the damage. The court calculated the allowed loss deduction under I.R.C. § 165(a) of zero as follows: (1) the loss was $672,093, the lesser of the decrease in fair market value and the adjusted basis in the property before the casualty and (2) the deduction was limited to the amount of loss, $672,093, not compensated by insurance. Since the insurance proceeds, $750,000, exceeded the loss of $672,093, no loss deduction was allowed. **LaFavre v. Comm'r, T.C. Memo. 2000-297**.

COURT AWARDS AND SETTLEMENTS. The taxpayer filed a suit against a mortgage lender for fraudulent misrepresentation, negligent misrepresentation, and negligent processing of the application for a veteran's home mortgage loan. The pleadings were later amended to include claims of intentional infliction of emotional distress and punitive damages. The jury awarded compensatory damages and punitive damages but did not find the lender liable on the claim of intentional infliction of emotional distress. The taxpayer argued that the punitive damages were excludible from income because the suit was based on personal tort injuries. The court held that the punitive damages were included in income because (1) the lender was held not liable for any personal injury and (2) infliction of emotion distress was not a physical personal injury. **Brandriet v. Comm'r, T.C. Memo. 2000-302**.

DEPENDENTS. In a Chief Counsel Advice, the IRS ruled that the parents of a kidnapped child may claim a dependency exemption for the child in the year of the kidnapping but may not claim the exemption in later tax years in which the child remained missing and the parents maintained a room for the child and incurred search expenses. Even though the IRS applied a presumption of support for the year of the kidnapping, the presumption was not applied in later years, even though the first presumption arose because no one else was eligible for the exemption. The discussion did not raise the issue of the survival of the child in the later years. On reconsideration the IRS ruled that the dependent exemption would be allowed in this case for the years that the child was missing. **CCA Ltr. Rul. 200038059, Sept. 22, 2000, revoking, CCA Ltr. Rul. 200034029, July 25, 2000**.

DISCHARGE OF INDEBTEDNESS. The taxpayer participated in a program provided by a casino under which the taxpayer signed a gambling marker under the understanding that if the gambling net proceeds produced a loss, the amount the taxpayer owed on the marker would be discounted by a prearranged amount. The IRS ruled that the arrangement was a prenegotiated sale of entertainment services, gambling, and that the discount was not discharge of indebtedness income but a purchase price adjustment. The IRS focused on the factors that the transaction was a sale of services and that the discount was prearranged as part of an incentive for the sale of the services. The IRS did not rule out a similar result for non-prenegotiated transactions, but stated that such circumstances would be more difficult to meet the purchase price adjustment requirement. **Ltr. Rul. 200039037, July 27, 2000.**

EMPLOYEE EXPENSES. The IRS has issued revenue procedures updating Rev. Proc. 2000-9, I.R.B. 2000-21, 280, which provide rules under which the amount of ordinary and necessary business expenses of an employee for lodging, meals, and incidental expenses or for meals and incidental expenses incurred while traveling away from home will be deemed substantiated under Temp. Treas. Reg. § 1.274-5T when a payor (the employer, its agent, or a third party) provides a per diem allowance under a reimbursement or other expense allowance arrangement to pay for such expenses. This revenue procedure also provides an optional method for employees and self-employed individuals to use in computing the deductible costs of business meal and incidental expenses paid or incurred while traveling away from home. Use of a method described in this revenue procedure is not mandatory and a taxpayer may use actual allowable expenses if the taxpayer maintains adequate records or other sufficient evidence for proper substantiation. This revenue procedure does not provide rules under which the amount of an employee's lodging expenses will be deemed substantiated when a payor provides an allowance to pay for those expenses but not meals and incidental expenses. **Rev. Proc. 2000-39, I.R.B. 2000-__**.

HOBBY LOSSES. The taxpayers, husband and wife, operated a horse breeding and boarding operation and were employed fulltime at other jobs. The court held that the taxpayers operated the horse breeding and boarding activity with the intent to make a profit because (1) the taxpayers had a business plan and complete records and the taxpayers

increased the boarding activity to increase revenue while developing the breeding activity; (2) the wife had extensive personal expertise with horses and the husband had considerable expertise in running a business; and (3) the taxpayers and their daughter spent considerable time on the activity. The court held that the other factors of Treas. Reg. § 183-2(b) were neutral, primarily because the taxpayers had only operated the activity for four years and were still developing the business. The court noted that the activity produced substantial amount of recreation for the taxpayers and their daughter but also noted that the taxpayers planned to use the income from the activity to fund their retirement, indicating a long-term profit motive. **Strickland v. Comm'r, T.C. Memo. 2000-309**.

LIKE-KIND EXCHANGES. The taxpayer transferred property under a "reverse Starker" (see *Starker v. United States,602 F.2d 1341 (9th Cir. 1979)*) exchange; that is, the replacement property was purchased by the taxpayer, with title in the name of an intermediary, before the relinquished property was sold, with the contract of sale assigned to the intermediary who then passed title to the taxpayer. The taxpayer argued that the safe harbor rules of Treas. Reg. § 1.1031(k)-1 should be applied to the transaction to qualify the intermediary and to qualify the exchange for like-kind exchange treatment. In a technical advice memorandum, the IRS ruled that the safe harbor rules applied only where the taxpayer does not purchase the replacement property prior to exchange of the relinquished property. The IRS ruled that, although title to the replacement property was taken by the intermediary, the taxpayer negotiated for, paid for and was personally liable on the purchase money mortgage for the replacement property and all this occurred prior to the exchange of properties by the intermediary. **TAM Ltr. Rul. 200039005, May 31, 2000.**

PASSIVE ACTIVITY INCOME. The taxpayer owned five grantor trusts which owned several historical buildings. The buildings were renovated and leased to a C corporation wholly-owned by the taxpayer for use in the corporation's business. The taxpayer claimed rehabilitation credit for the renovations and characterized the rent income as passive investment income. The IRS denied the credit because the IRS recharacterized the rental income as nonpassive under the "self-rented" property rule of Treas. Reg. § 1.469-2(f)(6) and the attribution rule of Treas. Reg. § 1.469-4(a). The taxpayer attacked the validity of the regulations as exceeding the IRS authority under the statute. The court upheld the regulations and held that the characterization of the rental income as nonpassive caused the taxpayer to be ineligible for the rehabilitation credit. **Sidell v. Comm'r, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,751 (1st Cir. 2000), *aff'g*, T.C. Memo. 1999-301**.

PENSION PLANS. The IRS has issued a revenue procedure by which a plan administrator or plan sponsor may obtain approval of the Secretary of the Treasury for a change in funding method as provided by I.R.C. §§ 412(c)(5)(A), 302(c)(5)(A). **Rev. Proc. 2000-41, I.R.B. 2000-__**.

The IRS has issued a revenue procedure which provides approval to change the funding method used to determine the minimum funding standard for defined benefit plans to one of seventeen methods, including a change in the asset valuation method to one of six asset valuation methods, a change in the valuation date to the first day of the plan year, a change in the method for valuing ancillary benefits to the method used to value retirement benefits and certain changes that become necessary or expedient under special circumstances. Any changes in funding method under this revenue procedure must satisfy the rules concerning the continued maintenance of certain amortization bases, the creation of an amortization base resulting from the change in method (method change base), and the amortization period for the method change base. Taxpayers, plan administrators, and enrolled actuaries are cautioned to consider the overall restrictions for use of this procedure, the additional restrictions for approval of any of the changes, and specific restrictions described under each of the approvals. Approval for changes not provided by this revenue procedure may be requested from the IRS. **Rev. Proc. 2000-40, I.R.B. 2000-__**.

For plans beginning in September 2000, the weighted average is 5.96 percent with the permissible range of 5.36 to 6.26 percent (90 to 106 percent permissible range) and 5.38 to 6.56 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2000-42, I.R.B. 2000-29, 302**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

SHAREHOLDER. The taxpayer, the taxpayer's son and an unrelated party formed an S corporation in order to operate an auto dealership. The unrelated party was supposed to receive one-third of the stock and to loan the corporation $25,000. The transfer of stock was not made contingent on the loan and the loan provision did not state a date by which the loan had to be made. The taxpayer became dissatisfied with the unrelated party's sales performance and the parties executed an agreement to terminate the unrelated party's involvement with the corporation, including repayment of the money loaned by the unrelated party. The agreement stated that no stock had been issued and that the unrelated party's entitlement to the stock was terminated. The corporation had filed several years of federal tax returns which included the unrelated party as a one-third owner of the corporation. The court held that the unrelated party was a one-third owner of the corporation because, under state law, actual issuance of stock was not required for ownership in a corporation and because the corporation had treated the unrelated party as a shareholder on the federal tax returns. **Feraco v. Comm'r, T.C. Memo. 2000-312**.

SELF-EMPLOYMENT TAXES. The taxpayer was assessed for self-employment taxes resulting from a determination that the taxpayer was not an employee of a commercial fishing vessel. The taxpayer pursued the administrative appeals without success and filed an appeal with the Tax Court. The court held that it did not have jurisdiction over the case because the underlying tax liability involved self-employment taxes. **Anderson v. Comm'r, T.C. Memo. 2000-311**.

TAX SHELTERS. The defendants participated in Morningstar Consultants in order to promote and sell the De-Taxing America Program. The program purported to provide step-by-step instructions for "removing" a program purchaser

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from the federal income and social security tax systems. The program materials assured readers that the federal government was without authority to tax them and that by following the instructions outlined in the program individuals could legally refuse to pay federal income and social security tax. Several of Morningstar's customers took steps to evade the federal tax laws and filed false or fraudulent income tax returns relying on the instructions and assertions made in the program materials. The court held that the program was an abusive tax shelter because the defendants made false statements as to the tax benefits of the program. The court upheld a permanent injunction against the defendants' promotion and sale of the program. **United States v. Raymond, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,750 (7th Cir. 2000)**.

PARTNERSHIPS

DISSOLUTION. The plaintiff and defendant were brothers who orally agreed to form a partnership to farm land leased from their parents. The lease also included the lease of livestock owned by the parents. The partnership was allowed to use farm machinery and other parental assets without charge. The parents executed a contract for deed to sell the farm to the brothers with a retained life estate in the homestead. The price of the sale was below fair market value because the parties intended that the brothers would provide for the parents' needs for the rest of their lives; however, that agreement was not written into the contract for deed. A disagreement between the brothers arose when the plaintiff wanted to build a house on a portion of the farm. The plaintiff sued for dissolution of the partnership and division of the partnership assets. The defendant argued that the dissolution was a breach of fiduciary duty in that the purpose of the partnership was to take care of their parents, as evidenced by the transfer of the farm and the parents' retention of the life estate in exchange for the promise to take care of them. The court found that a partnership existed and that the partnership was a partnership at will, because no partnership term was agreed to. The court also found that the partnership was not bound by the promise to take care of the parents because that promise was not written into the farm sale contract. The court held that the partnership was at will because no definite term was agreed to and no definite purpose was agreed to. Because the partnership was at will, either partner could require the dissolution of the partnership at any time; therefore, the plaintiff did not violate any fiduciary duty in seeking dissolution of the partnership. **Mack v. Mack, 613 N.W.2d 64 (S.D. 2000)**.

SECURED TRANSACTIONS

FEDERAL DISASTER PAYMENTS. The defendant had granted a security interest to the plaintiff in the defendant's crops and federal farm program payments. The defendant defaulted on the secured loan and the plaintiff requested that the defendant execute an assignment of federal crop disaster payments to which the defendant was entitled. The defendant refused to execute the assignment and the plaintiff sued in a state court for an injunction to prevent the defendant from using the federal disaster payments other than to pay the loan. The defendant removed the action to federal court and the plaintiff sought to remand the case back to state court arguing that the federal court lacked jurisdiction because no federal question was involved. The defendant argued that the assignment of federal farm disaster payments was prohibited by federal regulations, 7 C.F.R. § 1477.109. The court held that the regulations were not intended to preempt state secured transactions law; therefore, no federal question existed in the case and the case was remanded back to the state court. **Ag Acceptance Corp. v. Nelson, 103 F. Supp.2d 1129 (D. Minn. 2000)**.

ZONING

CONDITIONAL USE. The plaintiff applied for a conditional use permit to construct two hog confinement facilities for over 6,000 pigs. The county board of commissioners denied the permit because (1) the facilities would impact the local roads, create pollution and create undue risk of offensive odors; (2) the manure spreading contracts did not accurately identify the land to be used; (3) the state and county did not have sufficient resources to monitor the facilities; and (4) the permit would not promote the public health, safety and welfare. The trial court upheld the board's decision and granted the board a directed verdict, adding a holding that the plaintiff had failed to provide evidence of attempts to minimize offensive odors. The plaintiff argued that the performance standards set forth in the county ordinance were the sole criteria in determining whether a permit should be granted. The board had considered other factors and the court held that the permit approval consideration should involve all relevant factors and not just the criteria in the performance standards set forth in the ordinance. However, the court held that factor (3) above was not a proper consideration for the permit since it was beyond the control of the plaintiff. The court also held that factor (1) was not proper if the harm caused to the roads could be mitigated by conditions attached to the permit. The court held that, because factor (1) was not fully explored as to mitigating conditions and factor 2 was improperly considered, a direct verdict was improper. The court held that the directed verdict was also improper because the plaintiff had presented evidence of how the plaintiff planned to minimize odors and pollution from the facilities, raising a fact issue as to whether these efforts were sufficient to grant the permit. The court remanded the case back to the board for determinations in accord with these holdings. ***In re* Conditional Use Permit Denied to Meier, 613 N.W.2d 523 (S.D. 2000)**.

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The seminars will be Tuesday, Wednesday, Thursday, and Friday, January 9-12, 2001 at the beach side Hampton Inn St. Augustine Beach, Florida. Registrants may attend one, two, three or all four days, with separate pricing for each combination. On Tuesday, Roger McEowen will cover current developments in many areas of agricultural law. On Wednesday, Roger McEowen will cover farm and ranch business planning. On Thursday, Dr. Harl will cover farm and ranch estate planning. On Friday, Dr. Harl will speak about farm and ranch income tax. Your registration fee includes comprehensive annotated seminar materials for the days attended which will be updated just prior to the seminar. The seminar materials will also be available on CD-ROM for a small additional charge.

Here are some of the major topics to be covered:

- Legal developments in farm contracts, secured transactions, bankruptcy, real property, water law, torts, and environmental law.
- Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.
- 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, trusts, 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.

The Hampton Inn provides a full vacationland experience, from white sandy beaches to plentiful golf. Special room discounted rates are available at the hotel for seminar attendees. See our brochure or web site for more details.

The seminar registration fees for current subscribers to the *Agricultural Law Digest*, the *Agricultural Law Manual*, or *Principles of Agricultural Law* are $175 (one day), $340 (two days), $490 (three days), and $620 (four days). The registration fees for nonsubscribers are $195, $380, $550 and $700, respectively. **Please Note**: the registration fees are higher for registrations within 20 days prior to the seminar, so please call for availability and the correct fees. More information and a registration form is available online at **www.agrilawpress.com**

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

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