Summary Op. 2006-55 (early distribution from 401(k) plan to pay wife's higher education expenses not within exception; was not an IRA as required).

[22] I.R.C. § 72(t)(2)(F). See Olup v. Comm'r, T.C. Summary Op. 2005-183 (couple ineligible for first-time homebuyer exception; husband had prior ownership interest in a principal residence (both must meet the requirement); Sharma v. Comm'r, T.C. Summary Op. 2008-98 (ownership previously of residence in joint tenancy precluded exception on early withdrawal; not "first-time homebuyer"). See also Ltr. Rul. 200829030, April 21, 2008 (intended to use distribution to purchase home but offer withdrawn).

[23] I.R.C. § 72(t)(8).

[24] Treas. Reg. § 1.72(p)-1. See Jordan v. Comm'r, 07-2 U.S.T.C. § 50,606 (1st Cir. 2007), *aff'g*, T.C. Memo. 2006-95 (taxpayer failed to show distributions from retirement plans were loans under I.R.C. § 72).

[25] Treas. Reg. § 1.72(p)-1.

[26] *Id.*

[27] I.R.C. § 72(t)(2)(G).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

AVOIDABLE TRANSFERS. The Chapter 7 debtor grain elevator had received a check on October 27, 2003, for soybeans sold by the debtor. The check was made out to the debtor and a bank, but the check was dishonored for lack of sufficient funds in the buyer's account. The check was replaced by a new identical check within the 90 days prior to the debtor's filing for bankruptcy. The second check was used to pay a loan to the bank, which released a lien on the soybeans. The Chapter 7 trustee sought to recover the payment, arguing that the replacement check was a payment without exchange for value. The Bankruptcy Court had agreed with the trustee but the District Court reversed, holding that the release of the lien after the receipt of the new check constituted a contemporaneous exchange for new value. The appellate court acknowledged that, in the usual circumstances, a dishonored check establishes an unsecured claim by the payee against the payor; therefore, replacement of a dishonored check with 90 days before a bankruptcy filing would be an avoidable transfer. However, because the bank in this case did not release its lien on the soybeans after the first check, the secured status of the claim remained and the replacement check was an exchange for new value from the release of the lien on the soybeans. **Velde v. Kirsch, 2008 U.S. App. LEXIS 20151 (8th Cir. 2008), *aff'g*, 366 B.R. 902 (D. Minn. 2007)**.

FEDERAL AGRICULTURAL PROGRAMS

BIOMASS CROP ASSISTANCE PROGRAM. The CCC has announced that it intends to prepare an Environmental Impact Statement (EIS) for the Biomass Crop Assistance Program (BCAP). BCAP is a new program authorized by the Food, Conservation, and Energy Act of 2008. The EIS will assess the potential environmental impacts of alternatives for administration and implementation of BCAP. As part of the EIS process, CCC is now soliciting input about potential alternatives for program implementation as well as potential environmental concerns associated with program implementation. CCC will develop and analyze a range of BCAP implementation alternatives. **73 Fed. Reg. 57047 (Oct. 1, 2008)**.

FARM LOANS. The FSA has issued proposed regulations amending its guaranteed farm loan program regulations governing interest rates to increase clarity and to be more consistent with other government loan guarantee programs. The proposed regulations tie the maximum interest rate that may be charged on FSA guaranteed farm loans to nationally published indices such as the Wall Street Journal Prime (also known as New York Prime), or the 10-year Treasury note rate unless the lender uses a formal written risk-based pricing model for loans, in which case the rate will be the rate charged to moderate risk borrowers. The proposed rule specifically asks for comments on the index to be used and the maximum allowable spread between the base rate and the rate to be charged to FSA guaranteed borrowers. **73 Fed. Reg. 56754 (Sept. 30, 2008)**.

NATIONAL ORGANIC PROGRAM. The AMS has announced that states may submit applications for federal assistance (Standard Form 424), and to enter into a cooperative agreement with the AMS for the allocation of National Organic Certification Cost-Share Funds. The AMS has allocated $22.0 million for its organic certification cost-share program commencing in Fiscal Year 2008. Funds are available under this program to interested states to assist organic producers and handlers certified under the National Organic Program, as appropriate. **73 Fed. Reg. 54555 (Sept. 22, 2008)**.

PACKERS AND STOCKYARDS ACT. The 2008 Farm Bill gave the GIPSA the responsibility of promulgating regulations with respect to the Packers and Stockyards Act, 1921 (7 U.S.C. 181 *et seq.*) to establish criteria to be considered in determining: (1) whether an undue or unreasonable preference or advantage has occurred in violation of the Act; (2) whether

a live poultry dealer has provided reasonable notice to poultry growers of any suspension of the delivery of birds under a poultry growing arrangement; (3) when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of such Act; and (4) if a live poultry dealer or swine contractor has provided a reasonable period of time for a poultry grower or a swine production contract grower to remedy a breach of contract that could lead to termination of the poultry growing arrangement or swine production contract. The 2008 Farm Bill also requires that regulations be promulgated to implement new Section 210 of the P&S Act regarding the use of arbitration in production contract disputes. This specifically involves: (1) the right to decline arbitration when entering into a contract; (2) disclosure of the right to decline arbitration; and (3) choice of arbitration once a dispute arises if both parties agree in writing. GIPSA is also required to establish the criteria that the Secretary will consider in determining whether the arbitration process provided in a production contract affords a meaningful opportunity for the grower or producer to participate fully in the arbitration process. The GIPSA has announced three town-hall meetings to gather information and recommendations from interested individuals and organizations regarding the promulgation of regulations concerning livestock and poultry production contracts, including swine production contracts and poultry growing arrangements as required by the 2008 Farm Bill. **73 Fed. Reg. 57588 (Oct 3, 2008)**.

FEDERAL ESTATE AND GIFT TAXATION

DISCLAIMERS. The taxpayer was a minor who was a current discretionary income beneficiary and a contingent remainder holder in two trusts. Within nine months after reaching the age of 18, the taxpayer disclaimed the contingent reminder right to receive distributions of corpus from the trusts upon the termination of the trusts. The IRS ruled that the disclaimer was valid because (1) it was executed within nine months of the taxpayer attaining the age of majority; (2) the disclaimed interest passed without any direction by the taxpayer and the taxpayer did not receive any benefits from the disclaimed interest following the disclaimer; (3) it was effective under applicable state law, which permitted a disclaimer of any separate interest in property; and (4) the taxpayer did not accept any of the benefits of the property interest disclaimed. The IRS noted that the receipt of distributions of income prior to reaching the age of majority did not disqualify the disclaimer of the interest in the trust corpus. **Ltr. Rul. 200838026, April 29, 2008**.

The decedent had owned interests in an IRA and a retirement plan, both of which named the surviving spouse as remainder beneficiary. Within nine months after the decedent's death, the surviving spouse filed a written disclaimer of any interest in the IRA and retirement plan. Under the decedent's will, the IRA and retirement plan passed to the residuary estate which passed to the decedent's children. The IRS ruled that, if the disclaimer was valid under state law, the disclaimer was valid for federal estate and gift tax purposes and did not result in a gift from the surviving spouse to the children. **Ltr. Rul. 200839030, May 20, 2008**.

GENERATION-SKIPPING TRANSFERS. The decedent's estate bequeathed a portion of the estate to two trusts. The first trust granted the beneficiary a power of appointment over trust assets which was in fact exercised by the beneficiary. The decedent's estate executor allocated the decedent's GSTT exemption to the first trust. The estate sought a ruling that the exemption allocation was void because no GSTT liability existed as to that trust and a ruling that the exemption was allocated automatically to the second trust for which a GSTT liability existed. The IRS granted both rulings. **Ltr. Rul. 200838022, April 28, 2008**.

GIFTS. The taxpayer owned publicly-traded securities and contributed those securities to a family limited partnership formed on July 15, 1998. The taxpayer's two children were limited partners with several limitations imposed on their rights to sell or transfer their partnership interests The securities were transferred to the partnership on December 4, 1998. On December 15, 1998, the taxpayer transferred a 22.25 percent partnership interest to each child by gift. The IRS argued that the transfers were indirect gifts of securities because the formation of the partnership, the transfer of the securities and the transfer to the children of the partnership interests all occurred on the same date, December 15, 1998. The court held that a valid partnership was formed in July 1998 and the securities were transferred over the next months and prior to the transfer of the partnership interests to the child, resulting in a direct gift of the partnership interests. Because the partnership interests were minority interests, the value of the interests was discounted 35 percent for minority interest, lack of marketability and lack of control. **Gross v. Comm'r, T.C. Memo. 2008-221**.

FEDERAL INCOME TAXATION

2008 STIMULUS PAYMENTS. The IRS reminded eligible individuals that October 15 is the deadline to file a 2007 income tax return and receive an economic stimulus check this year. By law, the IRS is not permitted to issue economic stimulus checks after December 31, 2008. Eligible individuals include retirees, disabled veterans, and others who, normally, are not required to file a tax return because they have no tax liability. In addition, taxpayers who received an extension to file their 2007 income tax return are still eligible to receive an economic stimulus payment this year. **IR-2008-109**.

AUCTION SECURITIES. The IRS has provided guidance regarding the treatment of taxpayers that receive certain settlement offers relating to auction rate securities. The guidance applies to taxpayers who, before June 30, 2009, receive settlement offers from persons against whom the taxpayers may have legal claims due to the other persons' conduct related to auction rate securities. The settlement offers must include

window periods that do not extend beyond December 31, 2012, and require that the taxpayer deliver an auction rate security that the taxpayer purchased on or before February 13, 2008. **Rev. Proc. 2008-58, I.R.B. 2008-41**.

BANKS. The IRS has announced that, for purposes of I.R.C. § 382(h), any deduction properly allowed after an ownership change of a corporation that is a bank with respect to losses on loans or bad debts, including any deduction for a reasonable addition to a reserve for bad debts, shall not be treated as a built-in loss or a deduction attributable to periods before the change date. Banks may rely on this guidance until further guidance is issued. **Notice 2008-83, I.R.B. 2008-42**.

COOPERATIVES. The taxpayer was a tax-exempt cooperative which operated a rural electric utility. The taxpayer sold capital assets at a gain which resulted in the lost of its tax-exempt status. The IRS ruled that the assets sold were directly related to the cooperative enterprise and the distribution of the gains to members was patronage-sourced income eligible for a deduction from taxable income. **Ltr. Rul. 200838008, June 9, 2008**.

CORPORATIONS

LOSS CORPORATIONS. The IRS has announced it intends to propose regulations under I.R.C. § 382(l)(1), which provides that the I.R.C. § 382 limitation is not increased by any capital contribution received by a loss corporation as part of a plan to avoid or increase the limitation. The proposed regulations will provide that a capital contribution is not treated as part of a plan solely because it was made during the two-year period ending with the change of ownership. Instead, whether a capital contribution is treated as part of a plan is generally determined based on all facts and circumstances. However, a capital contribution will not be treated as part of a plan if it fits within one of four safe harbors. **Notice 2008-78, I.R.B. 2008-41**.

DISASTER LOSSES. On September 12, 2008, the president determined that certain areas in Vermont are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and flooding, which began on July 21, 2008. **FEMA-1790-DR.** On September 18, 2008, the president determined that certain areas in Arkansas are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on September 2, 2008. **FEMA-1793-DR**. On September 22, 2008, the president determined that certain areas in Mississippi are eligible for assistance from the government under the Act as a result of Hurricane Gustav, which began on August 28, 2008. **FEMA-1794-DR**. On September 23, 2008, the president determined that certain areas in Indiana are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on September 12, 2008. **FEMA-1793-DR**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2007 returns.

DOMESTIC PRODUCTION DEDUCTION. The taxpayer was a non-exempt agricultural cooperative with a non-exempt agricultural cooperative as a subsidiary. Both cooperatives marketed and processed agricultural commodities produced by their members. The taxpayer made advance payments of per-unit retains to members during the tax year. The IRS ruled that the cooperative could add back the advance and final payments made to members as net proceeds in calculating qualified production activities income for purposes of the domestic production deduction under I.R.C. § 199. **Ltr. Rul. 200838011, June 18, 2008**.

EMPLOYEE EXPENSES. The IRS has announced an update of the simplified per diem rates that employers (or their agents or third parties) can use to reimburse employees for lodging, meals and incidental expenses incurred on or after October 1, 2008 during business travel away from home without the need to produce receipts. The simplified "high-low" per diem rates have decreased to $256 for high-cost localities and increased to $158 for low-cost localities. The incidental expense per diem remains at $3 per day. **Rev. Proc. 2008-59, I.R.B. 2008-41, *superseding*, Rev. Proc. 2007-63, 2007-2 C.B. 809**.

The taxpayer was employed as a trainee agent for an insurance company. The taxpayer sold insurance through personal contacts with clients throughout the taxpayer's geographic region. The taxpayer was not reimbursed for travel expenses by the employer. The taxpayer had written receipts and records but lost the records when they were in the taxpayer's car which was stolen. The taxpayer presented a computer-generated list list of clients served during the tax year but the list did not include dates, distance traveled or clients' addresses. The taxpayer claimed automobile expenses at the standard mileage rate, travel expenses for overnight trips and meal expenses. The court held that the deductions for the expenses were properly disallowed by the IRS because the taxpayer lacked sufficient substantiation of the amount and business purpose of the expenses. **Niyitegyeka v. Comm'r, T.C. Summary Op. 2008-129**.

FRIVOLOUS APPEALS. The taxpayers were assessed unpaid taxes and the taxpayers failed to appeal the assessments. When the IRS attempted to collect the unpaid taxes, the taxpayer filed an appeal under I.R.C. § 6330(b)(1) which allows taxpayers to discuss with the IRS the method of payment, not the underlying assessments. The taxpayers refused to discuss payment but merely sought documentation as to the propriety of the original assessments, an issue not allowed in an I.R.C. § 6330(b)(1) appeal. The court held that the refusal to comply with the I.R.C. § 6330(b)(1) appeal process demonstrated that the appeal was frivolous and upheld the imposition of sanctions by the Tax Court. **Gillespie v. Comm'r, 2008-2 U.S. Tax Cas. (CCH) ¶ 50,552 (7th Cir. 2008), aff'g, T.C. Memo. 2007-202**.

HOBBY LOSSES. The taxpayer owned and operated a successful electric pump business. The taxpayer became interested in Paso Fino horses and built a horse farm at the taxpayer's residence where the taxpayer raised Paso Fino horses for show competitions in which the taxpayer competed. The taxpayer later purchased a horse farm in Florida in order to be located in an area of top Paso Fino horse trainers. For 2002 through 2006 the taxpayer claimed tax losses from the horse operation. The court held that the horse operation was

operated with the intent to make a profit because (1) the taxpayer had a business plan for the horse activity and maintained full and accurate records for the activity, (2) the taxpayer actively advertised for the sale of horses, (3) the taxpayer had experience with Paso Fino horses and consulted some of the top Paso Fino experts when purchasing and breeding horses; (4) the taxpayer had reasonable expectations and actual appreciation in the value of the land and horses; (5) the taxpayer was an otherwise successful business owner and operator; (6) the five years of losses were not extraordinary for the start-up of a horse breeding business; and (7) the taxpayer did not claim losses associated with the taxpayer's personal horses used for competition by the taxpayer, except to the extent of money received from that activity. **Miller v. Comm'r, T.C. Memo. 2008-224**.

INDIANS. The IRS has designated the Indian tribal entities that appear on the annual lists published by the Bureau of Indian Affairs as Indian tribal governments for purposes of I.R.C. § 7701(a)(40). **Rev. Proc. 2008-55, 2008-2 C.B. 768**.

INVOLUNTARY CONVERSIONS. The IRS has issued guidance on determining the replacement period for application of I.R.C. § 1033(e) to the sale of livestock sold on account of drought. *Notice 2006-82, 2006-2 C.B. 529*. Under that guidance, under I.R.C. § 1033(e)(2)(B), the standard replacement period (four years after the close of the first taxable year in which any part of the gain from a drought sale occurs) can be extended by the Secretary of the Treasury if the Secretary determines that the drought area was eligible for federal assistance for more than three years. The IRS, after consultation with the National Drought Mitigation Center, publishes in September of each year a list of counties for which exceptional, extreme, or severe drought was reported during the preceding 12 months. Taxpayers may use this list instead of U.S. Drought Monitor Maps to determine whether a 12 month period ending on August 31 of a calendar year includes any period for which exceptional, extreme, or severe drought is reported for a location in the applicable region. The IRS has published a list of the counties and parishes in the United States that have suffered exceptional, severe or extreme drought during the 12 months ending August 31, 2008, sufficient to extend the livestock replacement period. **Notice 2008-86, I.R.B. 2008-42**.

PENSION PLANS. Although, as provided in *Rev. Proc, 2008-3 2008-1 C.B. 110*, the IRS will continue not to issue advance rulings or determination letters on the income tax consequences of establishing, operating, or participating in a nonqualified deferred compensation plan, as described in I.R.C. § 409A; the IRS has announced that it may issue rulings on the application of certain other tax provisions to taxpayers who participate in those plans. Specifically, for rulings and determination letters issued after September 25, 2008, the IRS may address issues such as the estate and gift tax consequences of proposed inter vivos or testamentary transfers of rights under nonqualified deferred compensation plans that may be covered by I.R.C. § 409A, and issues arising under the Federal Insurance Contributions Act with respect to nonqualified deferred compensation. **Rev. Proc. 2008-61, I.R.B. 2008-42**.

The IRS has provided guidance on the requirements to be satisfied by a sponsor of a defined benefit plan wishing to use substitute mortality tables in determining the plan's minimum funding requirements, as allowed under I.R.C. § 430(h)(3)(C). **Rev. Proc. 2008-62, I.R.B. 2008-42**.

The IRS has issued the static mortality tables to be used under I.R.C. § 430(h)(3)(A) for purposes of calculating the funding target and other items for valuation dates occurring during calendar years 2009 through 2013, and modified "unisex" mortality tables for use in determining minimum present value under I.R.C. § 417(e)(3) for distributions with annuity starting dates that occur during stability periods beginning in calendar years 2009 through 2013. **Notice 2008-85, I.R.B. 2008-42**.

RETURNS. Due to the severe storms and flooding from Hurricane Gustav that affected the Mississippi counties of Hancock, Harrison and Washington, the IRS is postponing certain filing and other deadlines until January 5, 2009, for taxpayers who reside in or have a business in the designated disaster area. The postponement applies to return filing, tax payment, and certain other time-sensitive acts otherwise due between August 28, 2008, and January 5, 2009. Also, the IRS is waiving the failure to deposit penalties for employment and excise deposits due on or after August 28 and on or before September 12, as long as the deposits were made by September 12. The postponement does not apply to information returns in the W-2, 1098, 1099 series, or to Forms 1042-S or 8027. However, penalties for failure to timely file information returns may be waived under existing reasonable cause procedures. Similarly, the postponement does not apply to employment and excise tax deposits. **Mississippi Disaster Relief Notice.**

S CORPORATIONS

CONVERSION TO LIMITED LIABILITY COMPANY. The taxpayer was an S corporation which converted to a limited liability company under state law and which elected to have the LLC taxed as a corporation for federal tax purposes. The IRS ruled that (1) the conversion qualified as a "Type F" reorganization under I.R.C. § 368(a)(1)(F); (2) no gain or loss was recognized by the reorganization; (3) the basis of assets remained the same; (4) no gain or loss was recognized by the shareholders; (5) the S corporation election terminated; (6) the taxpayer identification number transferred to the LLC; and (7) the LLC agreement did not create different classes of stock. **Ltr. Rul. 200839017, June 24, 2008**.

SALES OF SECURITIES. The taxpayer bought and sold securities and claimed to be a trader of securities under I.R.C. § 475(f) eligible for the election to use the mark-to-market method of accounting for the sales. The taxpayer did not make the election with a timely-filed tax return but attempted to make the election on an amended return filed three years later, although the taxpayer also failed to file Form 3115. Although the District Court did not rule on the issue of whether the taxpayer was a trader under Section 475(f), the court held that the taxpayer was not eligible for the election because the election was not timely made. The court also refused to grant the taxpayer an extension

of time to make the election because the taxpayer had waited too long to seek the extension and had not shown a good faith attempt to make the election with the timely-filed return. The appellate court affirmed. **Acar v. United States, 2008-2 U.S. Tax Cas. (CCH) ¶ 50,564 (9th Cir. 2008), *aff'g*, 2006-2 U.S. Tax Cas. (CCH) ¶ 50,529 (N.D. Calif. 2006)**.

SOCIAL SECURITY TAXES. The taxpayer, a non-profit teaching hospital, operated accredited medical residency programs for new doctors who have completed their medical education. The taxpayer withheld and paid FICA taxes on the amounts paid to the medical residents and filed for a refund of those payments, arguing that the medical residents qualified for the student exception under I.R.C. § 3121(b)(10). The IRS sought a summary judgment based on the argument that medical residents as a matter of law could never qualify for the student exception. The court held that the determination of whether the stipends paid to medical residents was subject to FICA taxes was to be based on the nature of the relationship between the residents and the payor of the stipend. If the relationship was educational, the student exception applied to relieve the stipends from FICA tax. The trial court denied the IRS motion for summary judgment and the appellate court affirmed. **The University of Chicago Hospitals v. United States, 2008-2 U.S. Tax Cas. (CCH) ¶ 50,566 (7th Cir. 2008), *aff'g*, 2006-2 U.S. Tax Cas. (CCH) ¶ 50,520 (N.D. Ill. 2006)**.

TAX-EXEMPT MONEY MARKET FUNDS. In response to the recent credit market instability, the Treasury has announced that it has made certain funds from its Exchange Stabilization Fund available on a temporary basis to regulated money market funds to enable such funds to maintain a stable $1.00 per share net asset value. The program is available to both money market funds holding assets subject to federal income tax and to money market funds holding assets that include state and local governmental debt obligations the interest on which is excludable from gross income under I.R.C. § 103. The Treasury Department and the IRS will not assert that the program causes any violation of the restrictions against federal guarantees of tax-exempt bonds under I.R.C. § 149(b) with respect to any tax-exempt bond assets held by tax-exempt money market funds participating in the program. In addition, the Treasury Department and the IRS will not assert that the program impairs the ability either of a money market fund participating in the program to designate exempt interest dividends under I.R.C. § 852(b)(5) or of the shareholders of such a fund to claim the benefits of tax exemption with respect to such exempt interest dividends under I.R.C. § 852(b)(5)(B). The program will be limited to assets in money market funds as of the close of business on September 19, 2008, and to investors of record as of that date. Participating money market funds are required to make premium payments to participate in the program. **Notice 2008-81, I.R.B. 2008-41**.

TAX RETURN PREPARERS. The taxpayer was an income tax return preparer who had prepared and filed 20 returns for seven clients which had falsely claimed Schedule C business losses, Schedule E rental losses and Form 4797 losses for 1999-2002 tax years. The clients had invested in a business run by the taxpayer, involving buying and selling of real estate. The taxpayer pleaded guilty to 20 counts of aiding in the preparation of false returns and was given a 21 month prison sentence. The taxpayer appealed the length of the sentence, arguing that some investment losses were allowable, which would reduce the loss of tax revenues from the false returns and reduce the sentence required by the sentencing guidelines of U.S.S.G. § 2T1.1. The court held that the amount of tax loss was properly calculated as the amount of taxes underpaid due to the false claims on the returns. **United States v. Blevins, 2008-2 U.S. Tax Cas. (CCH) ¶ 50,556 (8th Cir. 2008)**.

TRAVEL EXPENSES. The IRS has published the applicable terminal charge and the Standard Industry Fare Level (SIFL) mileage rates for determining the value of noncommercial flights on employer-provided aircraft in effect for the second half of 2008 for purposes of the taxation of fringe benefits. For flights taken during the period from July 1, 2008 through December 31, 2008, the terminal charge is $42.26, and the SIFL rates are: $.2312 per mile for the first 500 miles, $.1763 per mile for 501 through 1,500 miles, and $.1695 per mile for over 1,500 miles. **Rev. Rul. 2008-48, 2008-2 C.B. 713**.

TRUSTS. The taxpayer was self-employed in a business operated as a sole proprietorship. The taxpayer transferred a personal residence, business real estate, and the taxpayer's business income to a trust over which the taxpayer had complete control. The court held that the taxpayer was liable for income and self-employment tax on the trust income because the trust lacked economic substance since the taxpayer's relationship to the property did not change as a result of the transfer to the trust, the trustees had no meaningful role in the operation of the trust, there was no independent evidence that the businesses listed as beneficiaries of the trust even existed, and the trust did not impose any meaningful restrictions on the taxpayer's management or use of the property. **Linmar Property Management Trust v. Comm'r, T.C. Memo. 2008-219**.

IN THE NEWS

BEEF CHECKOFF. Brownsfieldnetwork.com has reported that Montana Senator Jon Tester has introduced the Beef Checkoff Modernization Act, a bill that would amend the beef checkoff. "The first [amendment] would require at least 30 percent of the beef checkoff money be used to promote U.S. beef, the second one would allow cattle producers to hold a referendum every seven years or sooner if it is petitioned to change the beef checkoff," Senator Tester said. The third modification would allow industry organizations that are in existence today to bid on contracts to promote U.S. beef. "When the beef checkoff was enacted it would allow bids to promote beef with agencies that existed in 1986, and that's the way it has been the last 22 years; this will allow other organizations to bid that weren't around in 1986," said Tester. **Brownsfieldnetwork.com. Sept. 30, 2008**.

Agricultural Law Press
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FARM INCOME TAX, ESTATE AND BUSINESS PLANNING SEMINARS

by Neil E. Harl

January 6-10, 2009

Outrigger Keauhou Beach Resort, Big Island, Hawai'i.

Spend a week in Hawai'i in January 2009 and attend a world-class seminar on Farm Income Tax, Estate and Business Planning by Dr. Neil E. Harl. The seminar is scheduled for January 6-10, 2009 at the spectacular ocean-front Outrigger Keauhou Beach Resort on Keauhou Bay, 12 miles south of the Kona International Airport on the Big Island, Hawai'i.

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The Agricultural Law Press has made arrangements for substantial discounts on partial ocean view hotel rooms at the Outrigger Keauhou Beach Resort, the site of the seminar. The seminar registration fee is $645 for current subscribers to the *Agricultural Law Digest,* the *Agricultural Law Manual* or the *Principles of Agricultural Law*. The registration fee for nonsubscribers is $695. For more information call Robert Achenbach at 541-466-5544 or e-mail at robert@agrilawpress.com.

AALA ANNUAL AGRICULTURAL LAW SYMPOSIUM

The American Agricultural Law Association is holding its 29th Annual Agricultural Law Symposium on October 24 & 25, 2008 at the City Center Marriott Hotel in downtown Minneapolis, MN.

Topics will include annual updates on bankruptcy, income and estate tax, federal farm programs, food safety and environmental law. Special panel presentations are being planned for topics of special interest to Minnesota and Midwest practitioners, as well as panel discussions on national agricultural law topics, including the 2008 Farm Bill.

More information can be found on the AALA web site http://www.aglaw-assn.org or by contacting Robert Achenbach, AALA Executive Director at RobertA@aglaw-assn.org or by phone at 541-466-5444.