carryback rules.[10] The income averaging statute[11] defines "elected farm income" as "so much of the taxable income for the taxable year" attributable to any farming business which is "specified in the election."[12] The term "taxable income" is defined as "gross income minus the deductions allowed by this chapter (other than the standard deduction)"[13] with no provision or restriction for reducing taxable income below zero.[14] For that reason, "elected farm income" could be negative.

However, the income averaging statute[15] specifies that "the increase in tax imposed by section 1 which would result if taxable income for each of the 3 prior taxable years were increased by an amount equal to one-third of the elected farm income" is to be added to the tax in the year of the income averaging election on "taxable income reduced by elected farm income."[16] Therefore, it would appear that negative elected farm income figures in the year of the election cannot be used to reduce the tax liability as calculated with reference to the three carryback years. [17]

**Who will benefit from new interpretation**

Farmers and ranchers with significant losses during the three carryback years will gain from the new interpretation. In particular, hog producers who suffered substantial losses in late 1998 and early 1999 will be among the prominent gainers.

**FOOTNOTES**

1 I.R.C. § 1301(a) enacted by Pub. L. 105-34, Sec. 933(a), 111 Stat. 881 (1997).

2 See generally, 4 Harl, *Agricultural Law* § 26.08 (2000); Harl, *Agricultural Law Manual* § 4.01[4] (2000); Harl, "Income Averaging," 8 *Agric. L. Dig.* 177 (1997); Harl, "New Income Averaging Regulations," 10 *Agric. L. Dig.* 165 (1999). Legislation was enacted in 1998 to make income averaging permanent (it was initially enacted only for 1998, 1999 and 2000). Pub. L. 105-277, Sec. 2011, 112 Stat. 1214 (1998).

3 See Harl and McEowen, "Reporting Farm Income," TM 608.

4 *Farmers Tax Guide*, Pub. 225, pp. 22-23, 2000.

5 Schedule J, Form 1040, 1998, 1999.

6 See 64 Fed. Reg. 54836, Oct. 8, 1999, Prop. Treas. Reg. § 1.1301-1. See generally Harl, "New Income Averaging Regulations," 10 *Agric. L. Dig.* 165 (1999).

7 Pub. 225, pp. 22-23.

8 *Id.*

9 *Id.*

10 See I.R.C. § 172(b),(i).

11 I.R.C. § 1301(b)(1).

12 I.R.C. § 1301(b)(1)(A).

13 I.R.C. § 63(a).

14 Id.

15 I.R.C. § 1301(a)(2).

16 *Id.*

17 See Harl and McEowen, "Reporting Farm Income," TM 608.

# CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

## ANIMALS

**STRAYS.** The plaintiffs found 11 cattle on their property which had strayed off the defendant's land. The plaintiffs filed suit in small claims court for the cost of keeping the animals until they were returned to the defendants. The defendants argued that Or. Stat. § 85.1 et seq. Did not allow recovery of maintenance costs where the owners of the animals is known to the person keeping the animals. The court held that the statute applied to domestic animals which included cattle and upheld the small claims court award of damages. **Berry v. Young, 6 P.2d 1070 (Okla. Ct. App. 2000)**.

## BANKRUPTCY

### GENERAL-*ALM* § 13.03.*

**ABSOLUTE PRIORITY RULE**. The debtor was a nonprofit agricultural cooperative which issued patronage stock to its members as patronage dividends. The debtor's Chapter 11 plan provided that the members would retain their patronage stock but only provided a 19 percent payment to one class of unsecured creditors. The plan treated the patronage stockholders as creditors of the debtor. The court held that patronage stock was in the nature of equity interests and the plan provision allowing stockholders to retain their equity interest while unsecured credits did not receive full payment violated the absolute priority rule and required that the plan not be confirmed. **Southern Pacific Transp. Co. v. Voluntary Purchasing Grps., Inc., 252 B.R. 373 (E.D. Tex. 2000)**.

**AUTOMATIC STAY**. The debtor owned property which was contaminated. The contamination spread to neighboring properties and to the town's drinking water. The commonwealth spent funds to clean up and contain the contamination and sought reimbursement for the debtor. When the debtor refused to reimburse the commonwealth, the commonwealth sent the debtor a notice of intent to file a lien against the debtor's property. During the administrative hearings on the lien, the debtor filed for Chapter 11 and sought to stay the lien proceedings. The commonwealth argued that the perfection of the lien was excepted from the automatic stay by Section 546(b) because the commonwealth had an interest in the property which was

*Agricultural Law Manual* (ALM).

protected by the lien. The lien was valid against third parties whose interests in the property arose in the time between the creation of the interest and perfection of the lien. The court held that the commonwealth statute governing environmental cleanup costs created an interest of the commonwealth in the debtor's property when the funds were expended to clean up and contain the contamination and the lien would be effective against third parties who acquired an interest in the property after the funds were expended. Therefore, the perfection proceedings did not violate the automatic stay. **229 Main Street Ltd. Partnership v. Commonwealth, 251 B.R. 186 (D. Mass. 2000)**.

### Chapter 12-*ALM* § 13.03[8].*

**PLAN.** The Chapter 12 debtors, husband and wife, operated a grain farm on owned and leased land. The plan provided for payment of nearly all farm income to unsecured and secured creditors but made no provision for payment of administrative costs from the debtors' use of combines which were repossessed after the petition was filed. The unsecured creditors objected to the plan because the plan payments to the unsecured creditors were less than what the unsecured creditors would receive in a liquidation. The issue was whether the value of the current crops was included in the liquidation calculation. The crops were planted after the petition was filed but were to be harvested soon after the intended confirmation of the plan. The court held that the value of estate property was to be determined as of the confirmation date and not the bankruptcy petition date; therefore, the crops were included in the liquidation amount and the plan could not be confirmed. The court further held that the plan was not confirmable because the debtors' income from the farm was insufficient to pay the amount of plan payments required to exceed the liquidation amount. ***In re* Novak, 252 B.R. 487 (Bankr. D. N.D. 2000)**.

### FEDERAL TAX-*ALM* § 13.03[7].*

**DISCHARGE**. In 1985, the IRS assessed taxes against the debtor based on a substitute return filed by the IRS. The debtor met with IRS agents about the tax deficiency and was shown the substitute return but was not asked to sign it. The debtor fully cooperated with the IRS and started making installment payments on the tax debt. The Bankruptcy Court found that the tax claim was accurately determined by the substitute return such that the return provided the IRS with sufficient information to make its assessment of tax. The court held that, under the specific circumstances of this case, the substitute return was considered a filed return for purposes of Section 523(a)(1)(B)(i) and the taxes involved were dischargeable. The Bankruptcy Appellate Panel affirmed but the Court of Appeals reversed, holding that the substitute return, created without assistance from the debtor and the installment payment agreement was not sufficient to qualify as returns for purposes of Section 523(a)(1)(B)(i); therefore the taxes were not dischargeable. The appellate court focused on the debtor's lack of participation in the completion of the substitute return and failure to sign it. ***In re* Hatton, 220 F.3d 1057 (9th Cir. 2000), *rev'g*, 216 B.R. 278 (Bankr. 9th Cir. 1997)**.

# CONTRACTS

**STATUTE OF FRAUDS**. The defendant was a grain farmer who had orally agreed to sell 12,500 bushels of wheat to the plaintiff grain elevator. The elevator's agent filled out a customary order sheet memorializing the terms. The defendant asked for a written agreement; however, the agreement was left at the elevator for several days because the agent thought that the defendant would come in to sign it. When the defendant did not come in for a week, the written agreement was mailed, signed by the agent, to the defendant. The price of wheat increased during this time and the defendant refused to sign the agreement and sought to renegotiate the terms. The defendant eventually sold the grain to another buyer and the plaintiff had to purchase other grain to cover the original grain purchase. The plaintiff sought damages for the extra cost of the cover purchase. The defendant argued that the agreement was not enforceable because it was not signed by both parties. The plaintiff provided evidence that 90 percent of its grain purchases from producers were made by the same type of oral contract. The Mont. Code § 30-2-201(2) version of U.C.C. § 2-201(2) provided that if an oral contract is made between merchants and one merchant supplies a written confirmation within a reasonable time, the agreement is binding between the merchants. The court ruled that the defendant was a merchant in this case. The trial court had held that the plaintiff's mailing of the written agreement a week after the agreement was made was not sent within a reasonable time given the rapidly rising prices for wheat at the time. The appellate court reversed, holding that, given the customary practices of the plaintiff and defendant, the plaintiff sent the confirmation agreement within a reasonable time. The court noted that the defendant usually came to the elevator within one or two days to sign the sales agreements and that the defendant had not requested a mailed confirmation. At trial the plaintiff examined the defendant on the stand and the defendant made several references to the agreement or contract. The plaintiff argued that these statements were admissions of the contract, taking the agreement out of the statute of frauds. The court held that the defendant's responses to carefully worded questions and hypothetical questions were insufficient to meet the admission exception to the statute of frauds. It is interesting that the court stated that its holding encouraged "efficient breaches" of contracts in times of rising prices, in that the defendant had the opportunity to cancel the contract and pay the difference in the contract price and later sell the grain for an even higher price, resulting in no loss to the buyer and more profit to the seller. Query whether any unexcused breach can be efficient enough to overcome the need for certainty in contractual relations? **ConAgra, Inc. v. Nierenberg, 7 P.3d 369 (Mont. 2000)**.

# FEDERAL AGRICULTURAL PROGRAMS

**BIOMASS ENERGY**. The CCC has adopted as final regulations establishing a bioenergy program to expand agricultural markets by promoting increased production of bioenergy through ethanol and biodiesel. Using the authority of the CCC Charter Act, which states in part, that CCC is authorized to use its general powers to "increase domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic markets for agricultural commodities…," CCC will make incentive cash payments to bioenergy producers who increase their purchases of eligible agricultural commodities, as compared to the corresponding period in the prior fiscal year and convert that commodity into increased bioenergy production. **65 Fed. Reg. 67608 (Nov. 13, 2000)**.

**BRUCELLOSIS.** The APHIS has adopted as final regulations changing the classification of Louisiana from Class A to Class Free. **65 Fed. Reg. 68065 (Nov. 14, 2000)**.

**LIVESTOCK BOND**. The plaintiff made a loan to a livestock market which was required to maintain a livestock bond by the Packers and Stockyards Act. The loan proceeds were used to pay cattle sellers for cattle purchased by the market. The plaintiff was granted a security interest in the market's accounts receivable, inventory and equipment. The market defaulted on the loan and the plaintiff sought recovery from the livestock bond issued by the defendant. The court held that the bond covered only the proceeds of the sale of cattle for the sellers of that cattle; therefore, the loan was not a covered transaction under the bond. **Rice-Bell v. Capitol Indemnity Corp., 8 P.3d 189 (Okla. Ct. App. 2000)**.

**WHEAT**. The GIPSA has announced that it will begin certifying wheat protein content results on any specified moisture basis requested by applicants in addition to certifying results on the current 12.0 percent moisture basis. **65 Fed. Reg. 66228 (Nov. 3, 2000)**.

# FEDERAL ESTATE AND GIFT TAX

**DISCLAIMER.** The decedent's will bequeathed property in trust to the surviving spouse. The spouse filed a timely written disclaimer of two-thirds of the trust, resulting in the property passing outright to the decedent's children. The IRS ruled that the disclaimer was effective. **Ltr. Rul. 200045026, Aug. 11, 2000**.

**INSTALLMENT PAYMENT OF ESTATE TAX.** The decedent's estate included the decedent's interest in a farm sole proprietorship, a closely-held non-farm C corporation, farmland and excess capital from the businesses. The estate elected to pay estate tax in installments. The court held that distributions of the excess capital by the estate did not constitute a disposition of business assets for purposes of the installment provisions. The estate transferred the sole proprietorship and C corporation to an LLC and the IRS ruled that the transfer was not a disposition for purposes of the installment provisions. The farmland passed to the decedent's daughter who died after the decedent. The farmland then passed to a trust under the daughter's will. The farmland was a fundamental part of the farming operation; therefore, the IRS ruled that the transfer of the farmland to the trust was a disposition for purposes of the installment provisions. The farmland was leased to the LLC which was owned by the surviving children of the decedent. The IRS ruled that the leasing of the farmland to the LLC did not affect the qualification of the estate for installment payment of estate tax. The IRS also ruled that the distribution of net profits from the LLC to members was not a disposition for purposes of the installment provisions. **Ltr. Rul. 200043030, July 26, 2000; Ltr. Rul. 200043031, July 26, 2000**.

# FEDERAL INCOME TAXATION

**ACCOUNTING METHOD**. The taxpayer was the sole shareholder of an S corporation on the cash method of accounting which operated a flooring installation business. The business primarily worked with general contractors who determined, in consultation with the taxpayer, what flooring was to be installed. The contractors generally negotiated with the flooring manufacturers as to the price. The taxpayer would then purchase the flooring and store the flooring in a warehouse in order to inspect the flooring and prepare it for installation. The warehouse was also used to store installation materials and equipment and no part of the warehouse was used to sell flooring to the general public. The court held that the corporation was primarily a service provider and not a seller of merchandise; therefore, the corporation was not required to use the accrual method of accounting. **Smith v. Comm'r, T.C. Memo. 2000-353**.

**AUTOMOBILE EXPENSES**. The taxpayer claimed automobile expenses for use of a car and truck in the taxpayer's hauling business. The taxpayer did not keep a log of the business use of the vehicles but only took an odometer reading on January 1 and December 31 of each year. The court held that the expenses were not deductible because the taxpayer failed to meet the substantiation requirements of I.R.C. § 274(d) and Temp. Treas. Reg. § 1.274-5T(b). **Schladweiler v. Comm'r, T.C. Memo. 2000-351**.

**BUSINESS EXPENSES**. The taxpayer owned and operated a hauling business and claimed deductions for fuel, repairs and meals. The taxpayer failed to keep full and accurate records of payment and purpose of the expenses and the court held that the unsubstantiated expenses were not

deductible. **Schladweiler v. Comm'r, T.C. Memo. 2000-351**.

**C CORPORATIONS-*ALM* § 7.02[3].***

CONSTRUCTIVE DIVIDENDS. The taxpayer was a subsidiary corporation of a Mexican corporation. The Mexican corporation received cattle for export into the U.S. and the taxpayer was the receiver of the cattle upon importation into the US. The two corporations jointly owned facilities on the Mexican-U.S. border. The Mexican corporation inspected and bathed the cattle to prepare them for export. The cattle owners were assessed a fee by the customs office which was passed on to the taxpayer. The taxpayer paid half of this fee to the Mexican corporation as reimbursement for the inspection and bathing services. The taxpayer deducted the reimbursement amount from income. The IRS argued that the reimbursed amount was a disguised dividend to the Mexican corporation because the costs for the inspection and bathing were incurred by the Mexican corporation. The court held that the reimbursement amounts were an expense of the taxpayer's operation since the inspection and bathing services were necessary for the importation of the cattle; therefore, the taxpayer could deduct the reimbursements as business expenses. **Union Ganadera Regional de Chihuahua, Inc. v. Comm'r, T.C. Memo. 2000-357**.

PERSONAL HOLDING COMPANY. The taxpayers, husband, wife and daughter, owned a closely-held corporation which purchased properties, renovated them, leased them to tenants and eventually sold the properties to the tenants using installment sales. The court upheld the Tax Court's determination that the corporation was a personal holding company because the corporation's business was primarily buying and renting property and not buying and selling property. **Char-Lil Corp. V. Comm'r, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,827 (10th Cir. 2000), *aff'g*, T.C. Memo. 1998-457**.

**CONSTRUCTION PERIOD INTEREST AND TAXES**. Under former I.R.C. § 189 (repealed 1986) no deduction was allowed for construction period interest and taxes for real property. The taxpayer constructed a power unit which consisted of a maze of pipes, valves, pumps and meters whose purpose was to aid in the production of taxpayer's manufacturing activities. The unit took up more than a city block and at its highest point extended about 100 feet into the air. The labyrinth of pipes and vessels was located on a concrete platform to which the components were bolted. The IRS ruled that the power unit was real property and construction interest and taxes were nondeductible under I.R.C. § 189. The current rules are in I.R.C. § 263A. **FSA Ltr. Rul. 200044008, July 28, 2000**.

**COST OF GOODS SOLD**. The taxpayer provided funds to a third party who used the funds to purchase and resell computer chips. When the chips were sold, the third party repaid the investment and paid a commission or interest on the amount originally paid. The taxpayer claimed the cost of the computer chips as cost of goods sold and deducted that amount from the amounts paid by the third party in determining gross income reported on Schedule C. The taxpayer did not keep any records of the cost of acquiring or selling the chips. The court held that the taxpayer was not entitled to deduct the cost of the chips from the payments to determine gross income which was actually the amounts received as commissions or interest on the investment amounts. The taxpayer was also assessed a negligence penalty for failing to keep accurate records. **Newman v. Comm'r, T.C. Memo. 2000-345**.

**COURT AWARDS AND SETTLEMENTS**. The taxpayer was one of 800 employees who signed releases as part of a voluntary downsizing by one employer. Although the taxpayer, representing the entire group, felt that the taxpayer had some claim for employment discrimination in treatment by the employer, the taxpayer had not filed a lawsuit or asserted any claim against the employer for such discrimination or other injury. The court held that the employment termination payments were includible in income. The appellate court affirmed. **Abbott v. United States, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,819 (2d Cir. 2000), *aff'g*, 76 F. Supp.2d 236 (N.D. N.Y. 1999)**.

The taxpayer was employed as an accountant with a company for several years. After another employee made an allegation of sexual harassment in the taxpayer's department, the taxpayer resigned, although no charges were made against the taxpayer. The taxpayer and the company negotiated a severance agreement after the taxpayer threatened suit for age discrimination and defamation. The severance agreement provided annual payments, a lump sum payment characterized as payment for the release of the discrimination and defamation claims, and a lump sum repayment of the taxpayer's investments in the company. The taxpayer sought to exclude from income the severance payments and the lump sum payment for the tort claims. The court held that the defamation and discrimination claims were bona fide and were tort or tort-like claims; therefore, the two lump sum payments for the release of those claims were excludible from income. The court held that the severance payments and investment payments were includible in income. **Gross v. Comm'r, T.C. Memo. 2000-342**.

The taxpayer was the owner of a shock absorber business. The taxpayer sued two former employees for slander and tortious interference with business relationships based on the former employees' attempts to steal the taxpayer's clients and business by making false statements to the taxpayer's customers. The jury awarded damages on the tortious interference with business relationships claim but only $1 for the slander claim. The employees filed for bankruptcy and the taxpayer negotiated a settlement with the employees. The taxpayer claimed that the settlement payments were for the personal injury claim of slander. The court held that the settlement payments had to be allocated to the two types of claims in the same proportion as the original jury verdict, with only $1 excludible from income for the slander claim. **Anderson v. Comm'r, T.C. Memo. 2000-344**.

**DISASTER PAYMENTS**. On November 1, 2000, the president determined that certain areas in New Jersey were

eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of the West Nile Virus on August 5, 2000. **FEMA-3156-EM**. On October 27, 2000, the President determined that certain areas in Arizona were eligible for assistance under the Act as a result of severe storms beginning on October 21, 2000. **FEMA-1347-DR**. On October 17, 2000, the President determined that certain areas in Michigan were eligible for assistance under the Act as a result of severe storms and flooding beginning on September 10, 2000. **FEMA-1346-DR**. Accordingly, a taxpayer who sustained a loss attributable to the disasters may deduct the loss on his or her 1999 federal income tax return.

**EARNED INCOME CREDIT**. The taxpayer claimed welfare payments under AFDC and SSI programs, Social Security disability benefits, and gifts as wages on the taxpayer's income tax return. No other wages or income were reported such that, after the standard deduction and exemptions, the taxpayer had zero taxable income. The taxpayer also claimed earned income credit. The court held that earned income does not include welfare payments such as AFDC and SSI, Social Security disability benefits or gifts. The appellate court affirmed in an opinion designated as not for publication. **Powers v. Comm'r, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,838 (6th Cir. 2000),** ***aff'g*****, T.C. Memo. 2000-5**.

**FUEL**. The IRS has posted on its web site, http://www.irs.gov, a certificate which farmers can present when purchasing undyed diesel fuel and kerosene tax free to registered fuel vendors. The IRS cautions that if the fuel is purchased without tax, no tax credit for the purchase may be claimed on the farmer's income tax return. A refund for any tax paid with the purchase may be claimed by the fuel vendor.

**HOBBY LOSSES.** The taxpayers purchased ten acres of rural land and used the land for several agricultural uses, including beekeeping, and Macadamia nut and persimmon orchards. The court held that the taxpayers did not carry on these activities with the intent to make a profit because (1) the taxpayers did not keep full and accurate records and separate bank accounts, did not obtain the necessary licenses and permits to sell the produce, and did not attempt any meaningful changes to make the activities profitable; (2) although the taxpayer did some research and consulted with other growers, the taxpayers did not become sufficiently knowledgeable to know how to make the activities profitable; (3) the taxpayers did not provide any evidence that the property would appreciate sufficiently to cover the losses; (4) the activities had no profitable periods and losses were increasing over the years; (5) no profit from the activities was projected; and (6) the agricultural activity losses substantially offset the taxpayers' other income. The court noted that the taxpayer spent a considerable amount of time and hard work on the activities, with little personal recreational pleasure, but that these efforts did not offset the other factors. **Dirkse v. Comm'r, T.C. Memo. 2000-356**.

**INSTALLMENT REPORTING.** The taxpayers sold real property by an installment sale but reported all of the gain on the income tax return for the year of the sale. The gain was offset by an expense method depreciation item. The IRS audited the return and increased the recognized gain and disallowed the expense method depreciation deduction. The taxpayer then sought to revoke their election not to use the installment method of reporting the gain. The court held that a revocation of the election not to use installment reporting was not allowed under Temp. Treas. Reg. § 15A.453-1(d)(4) because the sole purpose of the revocation was to avoid tax. **Krause v. Comm'r, T.C. Memo. 2000-343**.

**LEVY**. The IRS has issued tables for determining the amount of wages, salary and other income which was exempt from levy for delinquent taxes. **Notice 2000-47, I.R.B. 2000-__**.

**MILEAGE DEDUCTION**. The standard mileage rate for 2000 is 34.5 cents per mile for business use, 14 cents per mile for charitable use and 12 cents per mile for medical and moving expense purposes. **Rev. Proc. 2000-48, I.R.B. 2000-__**.

**RETURNS**. The IRS has announced the publication of revisions of Publication 529 (2000), Miscellaneous Deductions; Publication 575 (2000), Pension and Annuity Income; Publication 587 (2000), Business Use of Your Home (Including Use by Day Care Providers); Publication 929 (2000), Tax Rules for Children and Dependents; Publication 946 (2000) How to Depreciate Property; Publication 525 (2000), Taxable and Nontaxable Income; Publication 530 (2000), Tax Information for First-Time Homeowners; Publication 542 (2000), Corporations; Publication 560 (2000), Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans); Publication 911 (2000), Direct Sellers; Publication 936 (2000), Home Mortgage Interest Deduction; and Publication 1524 (2000), Procedures and Specifications for the 1065 e-file Program: U.S. Partnership Return of Income For Tax Year 2000; Form 1040, Schedule J (2000), Farm Income Averaging, and instructions; and Form 8815 (2000), Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989 (For Filers With Qualified Higher Education Expenses); Form 943 (2000), Employer's Annual Tax Return for Agricultural Employees. These documents are available at no charge (1) by calling the IRS's toll-free telephone number, 1-800-829-3676; (2) via the internet at http://www.irs.gov/prod/cover.html; (3) through FedWorld; or (4) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

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

SHAREHOLDER BASIS. The taxpayers owned and operated a trucking business as a partnership. The taxpayers formed an S corporation to handle the truck maintenance for the partnership. The corporation obtained an operating loan and the bank required the shareholders to guarantee personally the loan, including use of a second home mortgage to secure a portion of the loan. The partnership then transferred all assets to the corporation in a transaction treated as a sale for income tax purposes because the liabilities assumed by the corporation equaled the tax basis

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in the assets transferred. The taxpayer argued that their guarantee of the corporation's debt increased their basis in the corporation. The court held that the guarantees did not increase the shareholders' basis in the corporation because the loan was made to the corporation, the corporation made all payments on the loan, and the loan was not in default. The taxpayers also argued that the shareholder basis was increased by the amount the fair market value of the partnership's assets exceeded the liabilities assumed by the corporation. The court held that, because the transfer was structured as a tax-free sale, the taxpayers were prohibited from changing the character of the transfer later. **Estate of Bean v. Comm'r, T.C. Memo. 2000-355**.

# LANDLORD AND TENANT

**ILLUSORY LEASE.** The plaintiffs originally purchased four acres of rural land and built two houses on the property. The plaintiff grew Christmas trees on the property. The plaintiffs decided to sell one of the houses with one-half an acre of surrounding land. However, the land was subject to a restrictive covenant requiring all homesites to have two acres. In order to circumvent the restrictive covenant, the plaintiffs agreed to transfer title to an additional one and a half acres to the buyer in exchange for a 10 year lease of the one and a half acres. The lease provided for one 10-year renewal and had provisions for early termination of the lease by the plaintiffs. The buyers sold the home and land to the defendants who sought to break the lease on the basis that the lease was illusory because no consideration was given and the plaintiffs could terminate the lease at any time. The court held that the lease was not illusory because of the termination provision which was common in leases. The court also held that the transfer of title to the extra land was sufficient consideration for the lease. **Lane v. Wahl, 6 P.3d 621 (Wash. Ct. App. 2000)**.

**FARM IN PROFESSIONAL FARM-LIKE MANNER**. The plaintiff leased farm land to the defendant on a crop share basis for just over two years. The lease contained an option to purchase at the end of the two years. The lease also contained a provision that the tenant would farm the land in a "professional farm-like manner" and pay all property taxes. The tenant failed to seed completely the crop in the spring and the plaintiff was forced to finish the seeding, causing loss of crop from the delay. The tenant also failed to cultivate or seed the cropland in the fall. The tenant failed to spray for weeds for the following spring crop and failed to pay property taxes. The plaintiff sued for termination of the lease and purchase option. The court held that the plaintiff could use evidence of local farming practices to demonstrate the standard of farming in a professional farm-like manner. The court upheld the trial court's ruling that the defendant had breached the lease by not farming the land in a professional farm-like manner. **Harting v. Barton, 6 P.3d 91 (Wash. Ct. App. 2000)**.

# ZONING

**FARM EQUIPMENT.** The defendant owned land in the plaintiff township and stored on that land various pieces of farm equipment which were used in farming land in another township. The plaintiff had an ordinance which prohibited the storage of heavy equipment except equipment used in farming. The plaintiff cited the defendant for violating this ordinance because the farming equipment was not used in the township where the equipment was stored. The court also noted that the ordinance did not contain any language that would restrict the exception to farm equipment used in the township. The ordinance stated that the purpose of the exception for farm equipment was to help preserve farm land. The court held that this purpose was supported by allowing the exception to apply to farm equipment which was used on an active farm, including farms not located in the township; therefore, the court held that the defendant's storage of farm equipment used on a farm in another township did not violate the plaintiff township's ordinance. **Brandon Charter Township v. Tippett, 616 N.W.2d 243 (Mich. Ct. App. 2000)**.

**LIVESTOCK FEEDLOTS**. The plaintiff constructed a feedlot on their property and obtained a permit from the county. The county had adopted an ordinance governing feedlots and the plaintiffs' township had also adopted a more restrictive feedlot ordinance which did not allow the plaintiffs' feedlot as constructed. The plaintiffs argued that, under Minn. Stat. § 394.33 the county ordinance preempted the more restrictive township ordinance as inconsistent with the county ordinance. The court held that the township ordinance was only more restrictive and was not inconsistent with the county ordinance; therefore the township ordinance was allowable under the statute. The court also held that the statute allowed township ordinances to be more restrictive; therefore, no preemption could occur unless the township ordinance directly conflicted with a county ordinance in violation of Minn. Stat. § 394.33. **Altenburg v. Pleasant Mound Township, 615 N.W.2d 874 (Minn. Ct. App. 2000)**.

# CITATION UPDATES

**Fabry v. Comm'r, 223 F.3d 1261 (11th Cir. 2000),** ***rev'g*****, 111 T.C. 305 (1998)** (court awards and settlements) see p. 141 *supra*.

**Filios v. Comm'r, 224 F.3d 16 (1st Cir. 2000),** ***aff'g*****, T.C. Memo. 1999-92** (hobby losses) see p. 133 *supra*.

**Sack Bros. v. Tri-Valley Coop., Inc., 616 N.W2d 786 (2000)** (hedge-to-arrive contracts) p. 139 *supra*.

**Sidell v. Comm'r, 225 F.3d 103 (1st Cir. 2000),** ***aff'g*****, T.C. Memo. 1999-301** (passive activity income) see p. 158 *supra*.

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- 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.

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