CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ADVERSE POSSESSION

HOSTILE USE. The parties owned two rural farms with a common boundary. In 1918, the current two properties were one parcel and were divided by a sale to two owners. The transfer deeds established an easement for both owners for one half of a driveway which ran along the boundary line. The defendant's easement extended on the plaintiff's side of the driveway and the plaintiff's easement extended on the defendant's side of the driveway. However, the driveway, or the description in the deeds, was not correctly placed along the boundary line but wandered back and forth across the line. The plaintiff sought to quiet title in the property on the defendant's side of the driveway which was included in the metes and bounds description in the deeds. The defendant claimed title to the disputed property by adverse possession through the farming of the land and use of the driveway. The court held that no adverse possession occurred because the easement created a permissive use of both parties over the boundary line. The trial court ordered a new description of the boundary to be the middle of the driveway as originally intended in the 1918 transfers. The appellate court affirmed that the trial court had the power to correct the deeds' description of the boundary and easements. **Rosenthal v. McGraw, 2014 Wis. App. LEXIS 653 (Wis. Ct. App. 2014)**.

BANKRUPTCY

CHAPTER 12

ADMINISTRATIVE EXPENSES. The debtor borrowed money from a bank and the loan agreement provided that the debtor would maintain insurance on all collateral. Prior to filing the Chapter 12 petition, the debtor stopped paying for insurance on two pieces of farm equipment. Prior to the petition and after the petition, the bank requested the debtor to obtain the required insurance but the debtor failed to do so. After the petition was filed, the bank obtained force-place insurance on the two pieces of equipment but the insurance period included several months prior to the petition. The bank failed to include the insurance costs in its payoff statement when the debtor sold collateral to pay the loan. The bank filed a claim for administrative expenses for the insurance cost. The court allowed the insurance costs as an administrative expense but only for the period after the petition was filed. ***In re* Jarriel, 2014 Bankr. LEXIS 3938 (Bankr. S.D. Ga. 2014)**.

DISMISSAL. The debtor filed for Chapter 12 and filed schedules of property. In the course of proceedings on a motion for adequate protection, the debtor offered to sell the debtor's interest in some land. However, that interest in the land was not listed in the property schedules. Further proceedings revealed other omissions in the property schedules. The debtor offered no reason for the omissions except that the debtor owned so many property interests that the debtor merely forgot about them all. The debtor also transferred interests in property without prior notice to or consent from the court. After further hearings the court discovered duplications in the schedules and other assets not listed in the original schedules or the amended schedules. The court held that the case was dismissed under Section 1208(c)(1) for unreasonable delay and gross mismanagement. The court noted that dismissal was also warranted under Section 1208(d) for fraud but the trustee had not asked for dismissal under that section. ***In re* Dickenson, 2014 Bankr. LEXIS 4067 (Bankr. W.D. Va. 2014)**.

FEDERAL TAX

DISCHARGE. The debtors, husband and wife, invested in two offshore tax shelters and claimed loss deductions from those investments which were used to offset investment income. The losses were disallowed, resulting in substantial tax assessments just at a time when the debtors' other income was lost. The debtors filed for Chapter 11 and sought a discharge of the taxes still owed at the time. The court refused to except the taxes from discharge on the basis of fraudulent returns because the debtors received professional investment advice which was extremely complicated. However, the court found that the debtors continued to maintain a lavish lifestyle even after learning that they owed the assessed taxes; therefore, the court held that the taxes were non-dischargeable for attempt to evade payment of the taxes. The court also held that the taxes were dischargeable as to the wife because the court found that she did not participate in the investments and had limited understanding of the complicated investments, the husband's financial condition or the husband's intent to not pay the taxes. On appeal, the appellate court reversed, holding that the taxpayers' lavish lifestyle was insufficient, by itself, to demonstrate an intent to evade payment of the taxes. The case was remanded for analysis of the evidence for specific intent to evade taxes. ***In re* Hawkins, 2014-2 U.S. Tax Cas. (CCH) ¶ 50,439 (9th Cir. 2014), *rev'g and rem'g*, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,295 (N.D. Calif. 2011), *aff'g*, 2010-1 U.S. Tax Cas. (CCH) ¶ 50,365 (Bankr. N.D. Calif. 2010)**.

COMMERCIAL LAW

NEGLIGENT MISREPRESENTATION. The plaintiff used the defendant as a broker, advisor and consultant as part of several horse sale and purchase transactions. Several of the horse purchases involved the purchase of a suitable horse for the plaintiff's children to use in various horse riding competitions. In each case, the defendant represented that the horse would be suitable for the rider and the types of competition entered by the child. The plaintiff alleged that in each case the horse was found to be unsuitable. The court examined the various statements made by the defendants and determined that a few statements were statements of fact, such as whether the horse had won any competitions, and held that the plaintiffs failed to show that those fact statements were false. The court found most of the statements to be true from evidence supplied by the defendant and not contradicted by any evidence supplied by the plaintiff. The other statements, such as whether the horse would be a good match for the child, were found to be opinions and not supportive of an action for negligent misrepresentation. Thus, the court granted summary judgment for all negligent misrepresentation claims. **Olympic Dreams, LLC v. Clark, 2014 U.S. Dist. LEXIS 120064 (D. Conn. 2014)**.

FEDERAL FARM PROGRAMS

CROP INSURANCE. The CCC and FSA have adopted as final regulations implementing the new Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) Programs authorized by the 2014 Farm Bill. The regulations also include conforming changes to certain FSA regulations that apply to multiple programs. ARC and PLC provide producers a choice between a program that provides counter-cyclical type of payment support, PLC, and a revenue support type of program, ARC. During a defined election period, current producers can elect different programs for different covered commodities on a farm, for example, choosing PLC for corn and ARC county option for soybeans on the same farm. ARC offers the additional choice of a revenue guarantee based on average revenue for a county or on actual historical revenue for an individual farm. If a producer elects ARC individual coverage based on historical revenue for that specific farm, however, all the farm's covered commodities are elected with that option, with no option for PLC on that farm. The regulations specify the eligibility requirements, enrollment procedures, and payment calculations for ARC and PLC. **79 Fed. Reg. 57703 (Sept. 26, 2014)**.

FEDERAL ESTATE AND GIFT TAXATION

VALUATION. The decedent and pre-deceased spouse had owned an extensive collection of various art works. The couple had created limited-term grantor retained income trusts and contributed several pieces of art to the trusts. When the pre-deceased spouse died, the spouse's trust interest passed to the decedent. At the termination of the trusts, the children received a 50 percent share of the trust assets. In addition, the portion of the art works in the pre-deceased spouse's estate passed to the decedent who disclaimed 26 percent of value of each piece so that portion of the art work value passed to the children. Thus, the children owned fractional shares of the artwork with the decedent. The estate claimed a 44.75 percent discount on the value of the art in the decedent's estate for lack of control and marketability due to owning a fractional interest. The court held that the estate was entitled to a 10 percent discount because the other interest holders, the decedent's children, would immediately purchase any sold fractional interests in the art. On appeal the appellate court reversed, holding that the 44.75 percent discount was more accurate in that a willing buyer would pay less for the fractional interests in the art due to the restrictions on alienation of the interests. **Estate of Elkins v. Comm'r, 2014-2 U.S. Tax Cas. (CCH) ¶ 60,683 (5th Cir. 2014), *rev'g*, 140 T.C. No. 5 (2013)**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued a revised revenue procedure for automatic consent of the IRS for certain changes in accounting methods. In most situations, a completed and filed current Form 3115, *Application for Change in Accounting Method*, will serve as the application for consent to change accounting methods. The procedures generally apply to applications to change accounting methods that are filed on or after September 18, 2014. **Rev. Proc. 2014-54, I.R.B. 2014-41**.

ALIMONY. The taxpayer was divorced and the divorce decree provided that the taxpayer was required to withdraw funds from the taxpayer's IRA which would be paid to the ex-spouse's IRA in a rollover under a qualified domestic relations order. The decree did not excuse the taxpayer's obligation to pay the IRA funds if the ex-spouse died before the distribution. However, the taxpayer failed to execute the distribution until the ex-spouse received a separate court order in a lawsuit filed to enforce the divorce decree terms. The taxpayer claimed the distribution as an alimony payment excluded from taxable income. The court held that the distribution was not alimony because the obligation did not meet the I.R.C. § 71(b)(1)(D) requirement that the obligation to make alimony payments be extinguished by the ex-spouse's death. **Laremore v. Comm'r, T.C. Summary Op. 2014-94**.

CHARITABLE CONTRIBUTIONS. The taxpayer was a limited liability company formed as a joint venture between a I.R.C. § 501(c)(3) corporation and a for-profit corporation. The taxpayer was required to obtain a certificate from the state and the certificate required certain operations to be undertaken by the taxpayer or the taxpayer was required to make contributions to other I.R.C. § 501(c)(3) organizations. The IRS ruled that, because such contributions were required by state law in order for the taxpayer to continue in business, the contributions bore a direct relationship to the taxpayer's business and were made with a reasonable expectation of a financial return commensurate with the amount of the payment. See *Rev. Rul. 72-314, 1972-1 C.B. 44*. Thus, the IRS held that the charitable contributions made to satisfy the certificate requirements were not eligible for the charitable deduction. **Ltr. Rul. 201437004, May 30, 2014**.

CORPORATIONS

FOREIGN INVERSIONS. The IRS has announced that it will issue regulations targeting corporate inversion transactions.

The Treasury and the IRS understand that certain inversion transactions are motivated in substantial part by the ability to engage in certain tax avoidance transactions after the inversion that would not be possible in the absence of the inversion. Therefore, the Treasury and IRS will issue regulations that will address transactions that are structured to avoid the purposes of I.R.C. § 7874 and 367 by (1) disregarding certain stock of a foreign acquiring corporation that holds a significant amount of passive assets; (2) disregarding certain non-ordinary course distributions; and (3) providing guidance on the treatment of certain transfers of stock of a foreign acquiring corporation (through a spin-off or otherwise) that occur after an acquisition. The Treasury and IRS also intend to issue regulations that will address certain tax avoidance by (1) preventing the avoidance of I.R.C. § 956 through post-inversion acquisitions by controlled foreign corporations (CFCs) of obligations of (or equity investments in) the new foreign parent corporation or certain foreign affiliates; (2) preventing the avoidance of U.S. tax on pre-inversion earnings and profits of CFCs through post-inversion transactions that otherwise would terminate the CFC status of foreign subsidiaries and/or substantially dilute the U.S. shareholders' interest in those earnings and profits; and (3) limiting the ability to remove untaxed foreign earnings and profits of CFCs through related party stock sales subject to I.R.C. § 304. Generally, the regulations will apply to acquisitions or transfers of stock completed on or after September 22, 2014. **Notice 2014-52, I.R.B. 2014-42**.

OFFICER COMPENSATION. The taxpayer corporation was solely owned by one person who was an architect and served as president of the corporation. The architect's spouse was the bookkeeper for the business. At the end of the tax year, the spouse issued a check to the architect which represented the remaining profit of the taxpayer. The architect signed and endorsed the check but did not cash it. The spouse recorded the payment as a loan from the architect and the loan was repaid in the following tax year. At the time the check was written, the taxpayer had insufficient funds to cover the check. The architect testified that the taxpayer could have obtained a loan from an unrelated party but decided not to obtain a loan so as to avoid the costs. The taxpayer claimed a deduction for the check as officer compensation. The court upheld the IRS disallowance of the deduction because, during the tax year, the check was not an unconditional transfer of funds in that the architect's use of the funds was restricted to lending the money back to the taxpayer. **Vanney Associates, Inc. v. Comm'r, T.C. Memo. 2014-184**.

COURT AWARDS AND SETTLEMENTS. The taxpayer was employed as a waiter in a restaurant. The taxpayer's employment was terminated over a disagreement about the restaurant's eating policy and the taxpayer's medical need to eat more often than allowed by the policy. The taxpayer filed suit under a claim of disability discrimination and alleged that the taxpayer "has suffered, and will continue to suffer, severe emotional distress, anxiety, depression and other consequential damages" The parties reached a settlement, a portion of which was expressly made for lost wages, with the rest in settlement of all claims. The settlement made no mention of any physical injuries to be compensated for by the settlement. The court held that the settlement proceeds were taxable income because the proceeds were not in compensation for any claimed physical injuries. **Smith v. Comm'r, T.C. Summary Op. 2014-93**.

DEPRECIATION. The taxpayer was an LLC which elected to be taxed as a C corporation. The taxpayer hired a tax return preparer to file returns for two tax years. Although the taxpayer placed in service qualified property during the taxable years, the return preparer made the election not to claim the additional first year depreciation deduction for all classes of qualified property placed in service for both years. There was no discussion of the election until after the returns were filed but the taxpayer later decided to revoke the election. The IRS granted an extension of 60 days for the taxpayer to file amended returns with a written statement attached revoking the election. **Ltr. Rul. 201437010, May 30, 2014**.

HEALTH INSURANCE. The IRS has published information for taxpayers who might qualify for an exemption from having qualifying health coverage and making a payment. Publication 5172, *Health Coverage Exemptions*, includes information about how taxpayers can receive an exemption. The Affordable Care Act calls for each individual to have qualifying health insurance coverage for each month of the year, have an exemption, or make an individual shared responsibility payment when filing a federal income tax return. A taxpayer may be exempt if the taxpayer: (1) has no affordable coverage options because the minimum amount for annual premiums is more than 8 percent of household income, (2) has a gap in coverage for less than three consecutive months, or (3) qualifies for an exemption for one of several other reasons, including having a hardship that prevents the taxpayer from obtaining coverage or belonging to a group explicitly exempt from the requirement. A comprehensive list of the coverage exemptions is available on www.IRS.gov/ACA. Taxpayers can obtain some exemptions only from the Marketplace in the area where they live, others only from the IRS when they file their income tax return, and others from either the Marketplace or the IRS. Additional information about exemptions is available on the Individual Shared Responsibility Provision web page on www.IRS.gov. The page includes a link to a chart that shows the types of exemptions available and how to claim them. For additional information about how to get exemptions that may be granted by the Marketplace, visit HealthCare.gov/exemptions. **Health Care Tax Tip 2014-19**.

IRA. The taxpayer had been employed with the federal government and participated in a civil servant pension plan. The taxpayer retired and the plan informed the taxpayer that the taxpayer could contribute additional funds to the plan to make up for contributions not made while the taxpayer was employed. The taxpayer used funds from a personal IRA to contribute to the pension plan. The taxpayer excluded the IRA distribution from taxable income because the funds were rolled over to the government pension plan. The court held that the contribution to the pension plan was not eligible for rollover treatment because the IRS funds were pre-tax funds and the pension plan treated its funds as after-tax funds. **Bohner v. Comm'r, 143 T.C. No. 11 (2014)**.

INNOCENT SPOUSE RELIEF. The taxpayer and former spouse filed joint tax returns while married and in one tax year, the couple had unreported discharge of indebtedness income from a cancelled credit card debt and a cancelled home mortgage equity line of credit. The credit card and mortgage loan were both acquired by the ex-spouse by forging the taxpayer's signature. The taxpayer testified that the taxpayer did not know about the loans and card and did not learn about the cancellation of indebtedness until two years after the return was filed. The court held that the taxpayer was entitled to innocent spouse relief under I.R.C. § 6015(f) for the unpaid taxes attributable to the discharge of indebtedness income. **Pejoski v. Comm'r, T.C. Summary Op. 2014-98**.

The taxpayer sought equitable innocent spouse relief from taxes owed by and attributable to the taxpayer's former spouse. The court looked at the eight factors of *Rev. Proc. 2013-34, 2013-2 C.B. 397* and found that three factors favored relief: (1) the taxpayer was divorced, (2) the taxpayer has been in compliance with income tax laws, and (3) the taxpayer did not receive a benefit from the unpaid taxes. The court found four factors were neutral: (1) the taxpayer did not claim any mental or physical health problems, (2) the taxpayer has not alleged any abuse or financial control by the ex-spouse, (3) the taxpayer would not suffer financial hardship from payment of the taxes, and (4) the taxpayer did not have a specific legal obligation to pay the taxes because the divorce decree assigned the tax liabilities. The court found one factor which weighed heavily against relief in that the taxpayer had knowledge that the former spouse had not paid any taxes for several years prior to and during the marriage. Although only one factor weighed against allowing relief, the court held that the relief was properly denied by the IRS because (1) the taxpayer knew of the former spouse's long history of tax noncompliance; (2) the taxpayer was actively involved with the former spouse's business activities, which generated the unpaid income tax liability; (3) the taxpayer knew that the former spouse had failed to make estimated tax payments for several years; (4) the taxpayer exercised considerable control over the household finances and decision making; and (5) the taxpayer would not suffer economic hardship if relief were denied. **Ehrmann v. Comm'r, T.C. Summary op. 2014-96**.

In 2007, the taxpayer received two distributions from two retirement accounts. In early 2008, the taxpayer and former spouse separated and they were divorced in June 2008. A joint electronic return was prepared by a tax return preparer and filed in August 2008. The return preparer did not testify. The taxpayer claimed to have not participated in the preparation of or signed the electronic return. The former spouse claimed that the taxpayer did participate in and sign the return, although the spouse claimed no knowledge of the retirement distributions. The electronic return listed the larger distribution but claimed it was rolled over and was not taxable. The taxpayer sought innocent spouse relief from assessment of taxes attributable to the retirement fund distributions. The court found that the former spouse's testimony as to the preparation and signing of the tax return was not credible, particularly the inconsistent testimony that the spouse did not know about the retirement funds distribution yet the spouse included the distribution on the return. The court also noted that there was no evidence that the taxpayer authorized the filing of an electronic return. Therefore, the court held that the joint electronic return was not valid and no innocent spouse relief could be granted. **Sorrentino v. Comm'r, T.C. Summary Op. 2014-99**.

INTEREST PENALTY. The taxpayers, husband and wife, had a net operating loss (NOL) in 2005. The taxpayers decided to carry forward the NOL to 2006 but did not make the election to do so required by I.R.C. § 172(b)(1), (3). The 2006 return had zero taxable income after application of the NOL. The taxpayers changed their minds in 2008 and filed amended returns for 2003 and 2006. On the 2003 amended returns, the taxpayers applied the NOL as a carryback, resulting in an overpayment of the taxes for 2003. On the return, the taxpayers requested that the refund be applied to their 2006 taxes. The 2006 amended return removed the NOL carryforward and applied the 2003 refund. The IRS refused to apply the 2003 refund to the 2006 taxes and the taxpayers paid the new 2006 taxes separately. The IRS assessed interest on the 2006 taxes from the date of the return to the date the taxes were paid. The taxpayers then sought abatement of the interest charged on the 2006 taxes. The court held that the IRS properly refused to abate the interest on the 2006 taxes because there was no action by the IRS which caused any delay in payment of the taxes. The court noted that the whole issue was created by the taxpayers' improper carryforward of the NOL without making the proper election. **Larkin v. Comm'r, T.C. Memo. 2014-195**.

LEVY. The taxpayer owned a certificate of deposit which was levied against by the IRS to satisfy a tax obligation of the taxpayer's husband. The taxpayer first sought assistance from the Taxpayer Advocate Service but was unable to obtain help. The taxpayer also filed an administrative claim but it was denied. More than nine months after the levy, the taxpayer filed a suit in the Tax Court for wrongful levy. The IRS argued that, because the taxpayer had not filed a request for return of the property within nine months after the levy, the nine month statute of limitations under I.R.C. §§ 7426(i), 6532(c)(1) on suits for wrongful levy applied. The court agreed and dismissed the suit. **United States v. Estate of Reitano, 2014-2 U.S. Tax Cas. (CCH) ¶ 50,442 (D. Mass. 2014)**.

LIKE-KIND EXCHANGES. The taxpayer operated an equipment rental business and established an I.R.C. § 1031 like-kind exchange program (LKE Program), as permitted under *Rev. Proc. 2003-39, 2003-1 C.B. 971*. The LKE Program used a qualified intermediary and used a first-in first-out methodology for choosing equipment to be replaced. However, after an audit, the IRS determined that some of the chosen equipment was not eligible for like-kind exchange treatment. The taxpayer asserted that it had other previously unmatched replacement properties which it should match with the eligible relinquished properties. For these other assets, which were acquired within the relevant 45-day identification period, there is no eligibility issue. The taxpayer argued that I.R.C. § 1031 *requires* the taxpayer to re-match the eligible relinquished properties to the other previously unmatched eligible replacement properties. In a Chief Counsel Advice letter, the IRS ruled that, because the like-kind exchange treatment is not elective and the taxpayer's LKE program otherwise met all the requirements of I.R.C. § 1031, the taxpayer met the requirements by selecting other eligible exchange properties, even after the return was filed with the original ineligible properties. **TAM 201437012, April 18, 2014**.

PARTNERSHIPS.

ELECTION TO ADJUST BASIS. The taxpayer was a limited liability company which elected to be taxed as a partnership. The taxpayer sold several items of nondepreciable property over three years and also made distributions to one of the two partners in excess of the partner's adjusted basis in its partnership interest. The taxpayer hired tax advisors to file the tax returns for those three years but the advisors failed to make the I.R.C. § 754 election to adjust the basis of partnership assets. The IRS granted the taxpayer an extension of time to file amended returns with the election. **Ltr. Rul. 201438008, April 30, 2014**.

PENSION PLANS. The IRS has issued guidance for allocating pretax and after-tax amounts among disbursements from a qualified plan, under I.R.C. § 403(b) or 457(b), to several destinations, such as a regular IRA and a Roth IRA. **Notice 2014-54, I.R.B. 2014-14**.

The IRS has issued proposed regulations under I.R.C. § 402A which would limit the applicability of the requirement in Treas. Reg. § 1.402A-1, Q&A-5(a), applicable to distributions from designated Roth accounts that "any amount paid in a direct rollover is treated as a separate distribution from any amount paid directly to the employee." Under the proposed regulations, that separate distribution requirement would not apply to distributions made on or after the applicability date of the Treasury decision finalizing the proposed regulations. The applicability date of the regulations is proposed to be January 1, 2015. However, in accordance with I.R.C. § 7805(b)(7), taxpayers are permitted to apply the proposed regulations to distributions made before the applicability date, so long as such earlier distributions are made on or after September 18, 2014. **79 Fed. Reg. 56310 (Sept. 19, 2014)**.

S CORPORATIONS

ELECTING SMALL BUSINESS TRUST. The taxpayer was an S corporation and stock had been transferred to a trust which qualified as a electing small business trust (ESBT). However, the taxpayer mistakenly filed an election to qualify the trust as a qualified subchapter S trust. The taxpayer treated the trust as an ESBT. The IRS ruled that the error did not terminate the S corporation election and granted an extension of time to file the proper election. **Ltr. Rul. 201438015, April 23, 2014**.

TRAVEL EXPENSES. The IRS has issued a notice which provides the 2014-2015 special *per diem* rates for taxpayers to use in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home. The special transportation industry meal and incidental expenses (M&IE) rates are $59 for any locality of travel in the continental United States and $65 for any locality of travel outside the continental United States (CONUS). The rate for the incidental expenses only deduction is $5 per day for travel inside or outside the Continental United States. The *per diem* rates in lieu of the rates described in *Notice 2012-63, 2012-2 C.B. 496* (the *per diem* substantiation method) are $259 for travel to any high-cost locality and $172 for travel to any other locality within CONUS. The amount of the $259 high rate and $172 low rate that is treated as paid for meals for purposes of I.R.C. § 274(n) is $65 for travel to any high-cost locality and $52 for travel to any other locality within CONUS. The per diem rates in lieu of the rates described in *Notice 2012-63* (the meal and incidental expenses only substantiation method) are $65 for travel to any high-cost locality and $52 for travel to any other locality within CONUS. **Notice 2014-57, I.R.B. 2014-41**.

The taxpayer was employed as a pastor and was required to travel to hospitals, funerals, Bible study sessions, and homes belonging to members of his congregations. In addition to pastoral duties, the taxpayer was also required to attend church conference meetings. The church had a policy of reimbursing the taxpayer for all church-related travel costs. The taxpayer submitted requests to the church for reimbursement of travel costs but the taxpayer testified that the church did not have enough funds to reimburse the taxpayer for non-conference travel. The court held that the taxpayer was entitled to a deduction for the unreimbursed travel costs because the church refused to pay those costs. **Monsalve v. Comm'r, T.C. Summary Op. 2014-91**.

NUISANCE

RIGHT-TO-FARM. The defendant owed a three acre rural property which had been a quarry but was used by the defendant to mulch raw materials, including tree stumps, yard waste, and logs transported to the property. The plaintiff township sought an injunction against the mulching operation as violating the township ordinance which required a minimum of five acres for a commercial operation. The defendant argued that the Pennsylvania Right-to-Farm Act, 3 Pa. C.S. § 315(a), prohibited the injunction. The court held that the mulching operation did not qualify as a forestry use or a farming/nursery use because the operation did not mulch raw materials produced on the property. **Tinicum Township v. Nowicki, 2014 Pa. Comm. LEXIS 440 (Penn. Comm. Ct. 2014)**.

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

On the back cover, we list the agricultural tax seminars coming up in early October 2014. Here are the cities and dates for the other seminars this fall:

October 13-14, 2014 - Ramada Hotel, Hutchinson, KS

November 24-25, 2014 - Adams State Univ., Alamosa, CO

Each seminar will be structured the same as the seminars listed on the back cover of this issue. More information will be posted on www.agrilawpress.com and in future issues of the *Digest*.

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

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

Join us for expert and practical seminars on the essential aspects of agricultural tax law. Gain insight and understanding from one of the country's foremost authorities on agricultural tax law. The seminars will be held on two days from 8:00 am to 5:00 pm. Registrants may attend one or both days. On the first day, Dr. Harl will speak about farm and ranch estate and business planning. On the second day, Dr. Harl will cover farm and ranch income tax. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch. A discount ($25/day) is offered for attendees who elect to receive the manuals in PDF format only (see registration form for use restrictions on PDF files).

October 2-3, 2014, Holiday Inn, Rock Island, IL, ph. 309-794-1212
October 6-7, 2014 -Best Western Hotel, Clear Lake, IA, ph. 641-357-5253

More locations and dates listed on previous page.

The topics include:

First day

FARM ESTATE AND BUSINESS PLANNING

New Legislation
Succession planning and the importance of fairness
The Liquidity Problem
Property Held in Co-ownership
- Federal estate tax treatment of joint tenancy
- Severing joint tenancies and resulting basis
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- Other problems of property ownership

Federal Estate Tax
- The gross estate
- Special Use Valuation
- Property included in the gross estate
- Traps in use of successive life estates
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Taxable estate
- The applicable exclusion amount
- Unified estate and gift tax rates
- Portability and the regulations
- Federal estate tax liens
- Undervaluations of property

Gifts
- Reunification of gift tax and estate tax
- Gifts of property when debt exceeds basis

Use of the Trust
The General Partnership
- Small partnership exception
- Eligibility for Section 754 elections

Limited Partnerships
Limited Liability Companies
- Developments with passive losses
- Corporate-to-LLC conversions
- New regulations for LLC and LLP losses

Closely Held Corporations
- State anti-corporate farming restrictions
- Developing the capitalization structure
- Tax-free exchanges
- Would incorporation trigger a gift because of severance of land held in joint tenancy?
- "Section 1244" stock

Status of the Corporation as a Farmer
- The regular method of income taxation
- The Subchapter S method of taxation, including the "two-year" rule for trust ownership of stock
- Underpayment of wages and salaries

Financing, Estate Planning Aspects and Dissolution of Corporations
- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization
- Entity Sale
- Stock redemption

Social Security
- In-kind wages paid to agricultural labor

Second day

FARM INCOME TAX

New Legislation
Reporting Farm Income
- Leasing land to family entity
- Constructive receipt of income
- Deferred payment and installment payment arrangements for grain and livestock sales
- Using escrow accounts
- Payments from contract production
- Items purchased for resale
- Items raised for sale
- Crop insurance proceeds
- Weather-related livestock sales
- Sales of diseased livestock
- Reporting federal disaster assistance benefits
- Gains and losses from commodity futures, including consequences of exceeding the $5 million limit

Claiming Farm Deductions
- Soil and water conservation expenditures
- Fertilizer deduction election
- Depreciating farm tile lines
- Farm lease deductions
- Prepaid expenses
- Preproductive period expense provisions
- Regular depreciation, expense method depreciation, bonus depreciation
- Paying rental to a spouse
- Paying wages in kind
- Section 105 plans

Sale of Property
- Income in respect of decedent
- Sale of farm residence
- Installment sale including related party rules
- Private annuity
- Self-canceling installment notes
- Sale and gift combined.

Like-Kind Exchanges
- Requirements for like-kind exchanges
- "Reverse Starker" exchanges
- What is "like-kind" for realty
- Like-kind guidelines for personal property
- Partitioning property
- Exchanging partnership assets

Taxation of Debt
- Turnover of property to creditors
- Discharge of indebtedness
- Taxation in bankruptcy.

The seminar early-bird discount registration fees for *current subscribers* (and for each one of multiple registrations from the same firm) to the *Agricultural Law Digest*, the *Agricultural Law Manual*, or *Farm Estate and Business Planning* are $225 (one day) and $400 (two days). The early-bird registration fees for *nonsubscribers* are $250 (one day) and $450 (two days). Nonsubscribers may obtain the discounted fees by purchasing any one or more of our publications. See www.agrilawpress.com for online book and newsletter purchasing.

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