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Cases, Regulations and Statutes

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[12] See I.R.C. § 2032A(b)(1)(C)(i); Treas. Reg. § 20.2032A-3(b)(1); see, e.g., Ltr. Rul. 8147100, Aug. 27, 1981 (cash rent lease to partnership comprised of decedent's sons as partners acceptable for special use valuation).
[13] I.R.C. § 2032A(c)(7)(A).
[14] I.R.C. § 2032A(b)(5)(A).
[15] I.R.C. § 2032A(c)(7).
[16] I.R.C. § 2033A(i)(3)(G).
[17] See I.R.C. § 2032A(c)(7)(A).
[18] I.R.C. § 2033A(e)(1).
[19] See I.R.C. § 2033A(e)(2)(D)(ii).
[20] *Id*.
[21] I.R.C. § 2033A(e)(2)(D)(ii).
[22] I.R.C. § 543(b)(3).
[23] Webster Corp. v. Comm'r, 25 T.C. 55 (1955), *acq*., 1960-2 C.B. 7, *aff'd*, 240 F.2d 164 (2d Cir. 1957).
[24] See I.R.C. § 1402.
[25] See Harl, *supra* n. 1; Harl, *supra* n. 2.
[26] I.R.C. § 2033A.
[27] I.R.C. § 2612(c)(1).
[28] I.R.C. § 2033A(f)(1)(A).
[29] I.R.C. § 2033A(f)(1)(B).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

CLAIMS. The debtor's Chapter 13 plan provided for payment over the life of the plan of a claim secured by a tractor-trailer used in the debtor's truck hauling business. The issue involved was the value of the truck for purposes of the claim and plan payments. The debtor argued that the truck was to be valued according to the amount of proceeds resulting from a foreclosure sale, less the costs of the sale. The creditor sought a fair market value of the truck for replacement purposes. The court held that, because the truck remained in the possession of the debtor for the production of income, the truck was to be valued as an operating business asset, using the replacement value. **Associates Commercial Corp. v. Rash, 117 S. Ct. 1879 (1997),** ***rev'g*****, 90 F.3d 1036 (5th Cir. 1996),** ***rev'g en banc*****, 31 F.3d 325 (5th Cir. 1994),** ***rev'g unrep. D. Ct. dec. aff'g*****, 149 B.R. 430 (Bankr. E.D. Tex. 1993)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

PREFERENTIAL TRANSFERS. The debtor had made several payments of employment taxes to the IRS within 90 days before filing the Chapter 11 petition. The payments were not designated by the debtor and the IRS applied the payments to non-trust fund taxes owed by the debtor. The debtor sought to avoid and recover the payments as preferential under Section 547(b). The court found that the debtor was insolvent during the 90 day pre-petition period, the payments were made for the benefit of the IRS, and the IRS received more than it would have if the debtor filed for Chapter 7 before the payments were made. The court held, however, that the debtor had a beneficial interest in the payments only to the extent the payment represented the debtor's share of the social security tax on the wages paid. In addition, the court held that the payments were not made for an antecedent debt but were made for taxes due after the payments were made (an employer's social security taxes are due at the end of the employment quarter); therefore, the payments were not preferential under Section 547(b). After reconsideration, the Bankruptcy Court held that the payments made after the date for which penalties would be assessed were payments made for an antecedent debt and were recoverable as preferential transfers. The IRS also argued that the late payments were excepted from the preferential transfer rules in that the payments were made in the ordinary course of business. The court held that the debtor had a history of making timely payments; therefore, the late payments were not made in the ordinary course of business. ***In re*** **Pullman Const. Industries, Inc., 210 B.R. 302 (N.D. Ill. 1997),** ***aff'g*****, 190 B.R. 618 (Bankr. N.D. Ill. 1996),** ***aff'g in part and rev'g in part on reconsideration*****, 186 B.R. 88 (Bankr. N.D. Ill. 1995)**.

CONTRACTS

BREACH OF WARRANTY. The plaintiff was a wheat farmer who purchased winter wheat seed from the defendant. The defendant's agents orally represented that the seed was certified and the delivery tickets also stated that the seed was certified. The defendant had tested the seed for germination and knew that the seed's germination rate was insufficient to qualify as certified seed. Each delivery ticket carried terms of disclaimer of all warranties except to the extent of the purchase price of the seed, but the disclaimer was not discussed or negotiated by the parties. The seed did not germinate properly and the plaintiff lost the entire crop planted with the seed provided by the defendant. The court held that the disclaimers were ineffective to limit the defendant's liability for breach of warranty because the disclaimers did not specifically set forth the aspects of the seed which were not warranted and because the disclaimers were not negotiated by the parties. The court also held that the disclaimers were unconscionable because the defect of the seed was known by the defendant and was not discoverable by the plaintiff until the seed was used. The court also held that the disclaimers were unenforceable because they failed of an essential purpose in that the disclaimers deprived the plaintiff of the substantive value of the seed as represented as certified. The court noted that the oral and written representations of the defendant that the seed was certified were express warranties which were shown to be breached. The plaintiff has also claimed that the defendant violated the Washington Seed Act and Consumer Protection Act in labeling the seed as certified when the defendant knew that the seed did not meet the germination requirements for certified seed. The plaintiff had obtained insurance proceeds from a private insurer and the ASCS (now FSA) based on weather conditions which affected the crop loss. The defendant sought an offset for the insurance payments. The court held that the payments were from collateral sources independent of the defendant and from events separate from the breach of the warranty; therefore, the defendant was not entitled to offset the insurance proceeds from the amount awarded for the breach of warranty. **Cox v. Lewiston Grain Growers, Inc., 936 P.2d 1191 (Wash. Ct. App. 1997)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE-*ALM* § 13.04.* The FCIC has adopted as final regulations which include the Table Grape Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 47745 (Sept. 11, 1997)**.

PESTICIDES. The EPA has issued proposed regulations under the Worker Protection Standard for agricultural workers. The proposed regulations allow the wearing of separable glove liners to be worn beneath chemical-resistant gloves. The proposed regulations also delete the requirement that pilots must wear chemical-resistant gloves when entering and exiting aircraft used to apply pesticides. All other WPS provisions about glove liners and chemical-resistant gloves are unaffected by the proposed regulations. **62 Fed. Reg. 47543 (Sept. 9, 1997)**.

FEDERAL ESTATE AND GIFT TAX

ANNUAL EXCLUSION-*ALM* § 6.01.* The taxpayers established several trusts funded with interests in farm land. Each trust had one of their four children as primary income beneficiary, with contingent remainders to the beneficiary's children and the beneficiary's siblings. Each trust provided for an annual right to withdraw all or a portion of annual contributions to the trust. The right of withdrawal was granted to the income beneficiary and all contingent beneficiaries. However, the right to withdraw was not exercised by any beneficiary. The purpose of the trusts was to pass the farm to the four children and the actions of all parties remained consistent with that purpose. The taxpayers claimed an annual federal gift tax exclusion amount for each primary and contingent beneficiary for transfers of interests in farm land to each trust. The IRS ruled that the taxpayers did not make gifts of present interests to the contingent beneficiaries; therefore, the taxpayers could not claim an annual exclusion for the contingent beneficiaries. In support of its ruling, the IRS focused on the remoteness of the contingent interests, the intent to transfer the farm only to the four primary beneficiaries, and the lack of exercise of the annual withdrawal rights by the contingent beneficiaries. **Ltr. Rul. 9731004, April 21, 1997**.

CAPITAL ASSETS. The Taxpayer Relief Act of 1997 did not amend I.R.C. § 1223(11) which gives assets held until death (other than livestock) a holding period of "more than one year." It is not clear whether assets must be held an additional six months or the full period of "more than 18 months" to be eligible for the 20 percent and 10 percent capital gains rates for sales after July 28, 1997. A technical correction is expected to address the problem.

The maximum 25 percent rate is applied to "unrecaptured section 1250 gain" in the case of sale of depreciable real property in the new capital gain provision. It appears that, in the case of installment sale of eligible assets, the amount subject to the 25 percent tax rate is not subject to recapture treatment which must be includible in income in the year of sale.

GIFT-*ALM* § 6.01.* The taxpayer had received an interest in trust in property passing from a predeceased spouse's estate. The trust interest was QTIP and the estate had claimed a marital deduction. The taxpayer executed an untimely disclaimer of the interest in the trust, filed a federal gift tax return for the transfer, and paid gift tax. The trust interest passed to a child of the taxpayer who reimbursed the taxpayer for the gift tax paid. The IRS ruled that the amount of the gift, under I.R.C. § 2519 (the value of the trust corpus less the value of the QTIP interest) was reduced by the amount of gift taxes paid by the donee. **Ltr. Rul. 9736001, May 21, 1997**.

IRA. The surviving spouse was a sole trustee and sole beneficiary of a trust which was the designated beneficiary of an IRA owned by the decedent. The surviving spouse had the authority to revoke the trust at any time and the power to appoint trust property to anyone. The surviving spouse planned to take all distributions from the IRA to the trust, in excess of the minimum required annual distributions, and place them into the surviving spouse's own IRA. The IRS ruled that, because the surviving spouse had the authority to revoke the trust, the IRA funds passing to the trust and then to the spouse's IRA would be treated as passing directly from the IRA to the spouse. **Ltr. Rul. 9736042, June 10, 1997**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* The decedent was the beneficiary of a trust established by the will of the decedent's pre-deceased spouse. The trust was adjudicated by the Tax Court as QTIP eligible, in part, for the marital deduction. The Tax Court had ordered that the trust be split into a QTIP trust and a non-QTIP trust; however, the trustees failed to split the trust. The decedent's estate argued that, because the trust was not split, some of the income and principal from the trust was not paid to the decedent; therefore, the trust was not QTIP and was not includible in the decedent's gross estate. The court held that, because a portion of the trust was allowed as a marital deduction, that portion of the trust was included in the decedent's gross estate. **Soberdash v. Comm'r, T.C. Memo. 1997-362**.

POWER OF APPOINTMENT. A will established a trust for the testator's spouse and children, naming one of the children as co-trustee with two unrelated persons. The trust provided that the child could not participate in trust decisions concerning distributions to the child or the child's dependents. The trust also provided the child with the power to remove any co-trustee and to replace that trustee with another unrelated and subordinate trustee. The IRS ruled that the child did not have a general power of appointment over trust corpus. **Ltr. Rul. 9735023, May 30, 1997**.

REVOCABLE TRANSFERS-*ALM* § 5.02[2].* The decedent, who was childless, had provided some gifts for the children and grandchildren of the decedent's siblings. However, none of the recipients was a dependent of the decedent. After the decedent became incompetent, two nephews were appointed as guardians of the decedent. The guardians petitioned a state court to allow them to make gifts on behalf of the decedent to members of the decedent's siblings' families, including two large gifts to the siblings. The purpose of the gifts was to decrease the decedent's estate tax liability, taking advantage of the annual exclusion for gifts. The state court issued an order approving the gifts. The estate argued that the state, Maryland, allowed courts of equity to approve such gifts under the substitution of judgment doctrine. The IRS ruled that the doctrine was followed in Maryland but only to the extent the gifts were made to persons who were dependents of the donor. Thus, the IRS ruled that the gifts made by the guardians under authority of the state court order were not valid under state law and were, therefore, revocable by the decedent and included in the decedent's gross estate. **Ltr. Rul. 9731003, March 31, 1997**.

TRANSFERS WITH RETAINED POWERS-*ALM* § 5.02[3].* The decedent and spouse had transferred land to an Illinois land trust and initially held a 50 percent interest in the trust. The trust provided that the trust principal could be transferred by the trustee only upon written consent of holders of two-thirds of the interests in the trust. The decedent made several inter vivos transfers of portions of the decedent's interest in the trust and the decedent's estate excluded these transferred interests from the decedent's estate. The IRS argued that *Estate of Bowgren v. Comm'r, 105 F.3d 1156 (7th Cir. 1997)* controlled as precedent to require that the transferred interests were included in the decedent's gross estate because the decedent retained an interest in the transferred interests. In *Bowgren,* the decedent had retained the sole authority to allow the trustee to transfer trust assets. In this case, the court followed *Adolphson v. U.S., 90-2 U.S. Tax Cas. (CCH) ¶ 60,048 (C.D. Ill. 1990)* and held that the trust assets were includible in the decedent's gross estate because the decedent, in conjunction with less than all beneficiaries, had the authority to allow the trustee to transfer trust assets. **Swain v. U.S., 97-2 U.S. Tax Cas. (CCH) ¶ 60,284 (C.D. Ill. 1997)**.

TRUSTS. The taxpayer established an inter vivos irrevocable trust for a term of years for the benefit of the taxpayer. The trust provided for quarterly annuity payments of a percentage of the fair market value of trust assets. The trust also provided that if the taxpayer died before the termination of the trust, the annuity amount was to be pro-rated to the date of death and paid to the taxpayer's estate, with the remainder of the trust assets paid to the taxpayer's estate. If the taxpayer survived the termination of the trust, the trust assets were to be held in trust until the taxpayer reached a certain age and then the assets were to be distributed to the taxpayer. The IRS ruled that the taxpayer would be treated as the owner of the trust assets for federal income and estate tax purposes and that no gain or loss was recognized upon the transfer of assets to the trust. **Ltr. Rul. 9735034, June 2, 1997**.

The taxpayer owned a vacation residence which included a house, guest house, two detached garages, a boathouse, two sheds and a pond. The taxpayer had obtained classification of the property as forest land for local property tax valuation, although only minimal harvesting of trees was planned. The property was subject to restrictions on subdivision in order to preserve the natural watershed drainage. The taxpayer transferred the property to a trust for 20 years, with the taxpayer as beneficiary. If the taxpayer died before the end of the trust, the property passed under the taxpayer's will. If the taxpayer and spouse survived the trust, the property passed to the taxpayer's spouse and children, with the remainder passing to the children. During the taxpayer's lifetime after the trust term, the taxpayer was to pay fair market rental to the beneficiaries, who were not obligated to rent the property to the taxpayer. The IRS ruled that the trust was a qualified personal residence trust and the trust property would not be included in the taxpayer's gross estate. **Ltr. Rul. 9735035, June 2, 1997**.

In 1959, the taxpayer established trusts for the taxpayer's children, naming the taxpayer's brother as individual trustee. In the same year, the taxpayer's sister established trusts for her children, also naming the brother as individual trustee. In 1985, the brother resigned as trustee of both sets of trusts and the taxpayer was made trustee of the sister's trusts and the sister was made trustee of the taxpayer's trusts. Now the taxpayer and sister propose to amend the trusts to make the children trustees of trusts of which the child was not a beneficiary. The IRS ruled that the trusts were not included in the taxpayer's gross estate because there was no intent to establish reciprocal trusts with the sister, since the taxpayer and sister were made trustees 16 years after the trusts were established. The IRS also ruled that the taxpayer did not hold a power of appointment over the trust. Finally, the IRS ruled that the changes in the trustee designations did not cause the trusts to be subject to GSTT. **Ltr. Rul. 9735025, May 3, 1997**.

VALUATION. The decedent's son held a power of attorney over the decedent's assets and caused several checks to be written and contributed to a family limited partnership which held an indirect interest in another independent partnership which invested in high risk derivative securities. The decedent's estate discounted the value of the partnership interests acquired with the checks by 55 percent because of the high risk nature of the investments. The IRS disallowed the discounting of the partnership interests because the sole purpose of the contributions to the partnership was to reduce the value of the decedent's estate. In addition, the IRS noted that the price of the partnership interests was already discounted for the nature of the investment when the contributions were made. **Ltr. Rul. 9735003, May 8, 1997**.

After the decedent became terminally ill, the decedent's child was given a durable power of attorney over the decedent's financial affairs. The child formed two limited liability companies and transferred much of the decedent's assets to the LLCs. The LLC agreements contained restrictions on sale of the interests in the LLCs. The decedent had established an inter vivos trust, under which the remainder would have passed to the decedent's two children. The child, under the power of attorney, transferred the trust to the LLCs in exchange for interests in the LLCs. The decedent's estate valued the decedent's interests in the LLCs using a 75 percent discount for lack of marketability and minority interests held by the decedent. At the death of the decedent, the LLC interests passed to the trust remainder holders. The IRS ruled that the LLC interests would be disregarded for purposes of valuing the decedent's gross estate because the acquisition of the LLC interests was made within a family, had no business purpose other than to decrease the value for estate tax purposes, and did not change the testamentary scheme in place before the transfers. **Ltr. Rul. 9736004, June 6, 1997**.

FEDERAL INCOME TAXATION

CONSERVATION EASEMENTS. The taxpayer was a water company which owned a reservoir and surrounding land. The reservoir created a habitat for flora and fauna and a greenbelt within an urban area. The local governments and an environmental preservation foundation sought to acquire the land and reservoir to prevent development of the area. The taxpayer conveyed the reservoir and a conservation easement on the land which prevented development of the property, but reserved the taxpayer's right to withdraw water, except to the extent the loss of water would endanger the wildlife on the property. The IRS ruled that the conservation easement qualified as a charitable deduction. **Ltr. Rul. 9736016, June 5, 1997**.

COURT AWARDS AND SETTLEMENTS. The taxpayer was awarded a cash judgment of punitive damages in a tort suit against an insurance company. Fifty percent of the award was paid to the taxpayer's attorney for the contingent fee charged. Under Alabama law, the attorney fee was not included in the taxpayer's income. The court held that the attorney fee paid was not included in the taxpayer's income. ***In re* Hamilton, 97-2 U.S. Tax Ca. (CCH) ¶ 50,628 (M.D. Ala. 1997)**.

PENSION PLANS. For plans beginning in August 1997, the weighted average is 6.85 percent with the permissible range of 6.16 to 7.33 percent (90 to 109 percent permissable range) and 6.16 to 7.53 percent (90 to 110 percent permissable range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 97-47, I.R.B. 1997-35, 5**.

RETURNS. Under the Taxpayer Bill of Rights 2, Pub. L. No. 104-168, § 1210, 110 Stat. 1452 (1996) the "timely mailing as timely filing/paying" rule of I.R.C. § 7502(a) can be met by using designated private delivery service instead of the U.S. Postal Service. The IRS has announced that the designation of four private delivery services in *Notice 97-26, I.R.B. 1997-17, 6* (see p. 70 *supra*) remains unchanged. The IRS also announced that the designation of private delivery services will be made only annually on or before September 1 of each year. **Notice 97-50, I.R.B. 1997-37**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

MORE THAN ONE CLASS OF STOCK. An S corporation entered into a split-dollar insurance agreement with a trust which held life insurance policies on the life of an employee of the corporation. The agreements provided that the trust would reimburse the corporation for the "cost of current insurance protection" as determined by economic benefit rules. At the death of the insured or upon the surrender of the policy before the death of the insured, the corporation would receive the lesser of the cash value of the policy or the amount of premiums paid by the corporation. The IRS ruled that the split-dollar life insurance agreement did not create a second class of stock. **Ltr. Rul. 9735006, May 20, 1997**.

NEGLIGENCE

GRAIN ELEVATOR. The plaintiff was injured while delivering grain to a grain elevator owned by the defendant during a lightning storm which ignited grain dust. The plaintiff sought recovery in negligence for the failure of the defendant to place lightning rods on the elevator and for failure to evacuate the premises during the storm. The defendant argued that an expert on lightning devices was not qualified to give opinion testimony as to the need for the lightning devices. The court held that the expert witness did not need to be fully qualified because the witness was testifying about matters within the common knowledge of the jurors, the dangerousness of lightning and the need for protection. The defendant also argued that the evacuation issue should not have been given to the jury. The court held that the plaintiff failed to identify any statutory or other duty to evacuate the building during a storm. **Messink v. American Grain, 564 N.W.2d 376 (Iowa 1997)**.

SECURED TRANSACTIONS

PRIORITY. The plaintiff had loaned funds to a livestock rancher and dealer and secured the loan with a perfected security interest in all current and after-acquired livestock of the debtor. The debtor contracted with the defendant for the purchase and immediate resale of cattle to a third party for cash. The defendant delivered the cattle to a third party feedlot designated by the debtor. The debtor issued checks for the livestock but the checks were not honored. The debtor was in bankruptcy at the time of the transaction and the plaintiff sought to include the livestock as collateral under the after-acquired property clause of the security agreement. The defendant sought reclamation of the cattle after the checks bounced. Thus, the issue was whether the defendant's right of reclamation or the plaintiff's security interest had priority. The court held that the debtor obtained sufficient rights in the livestock upon delivery for the security interest to attach and for the debtor to convey title to another good faith purchaser free of the defendant's reclamation right. Therefore, the court held that the plaintiff's security interest had priority over the defendant's right of reclamation. **Cooperative Finance Ass'n v. B&J Cattle, 937 P.2d 915 (Colo. Ct. App. 1997)**.

FORECLOSURE SALE. The plaintiffs owned 295 acres of farm land which were subject to a mortgage. All of the acres were covered by the mortgage as a single parcel of land; however, the acres were separated by three roads into a 220 acre parcel, a 70 acre parcel and a five acre parcel. The plaintiffs defaulted on the mortgage and the land was sold at an auction which offered the land as one parcel. The plaintiffs argued that the land should have been offered for sale first in three parcels in order to obtain the highest price. The trial court had ruled that the price received for the land was fair and reasonable. The appellate court held that, because the mortgage covered all the acres as one unit, the mortgagee was not required to offer the land in smaller parcels at the foreclosure sale. The court noted that the plaintiffs failed to provide any evidence that offering the farm in smaller parcels would have obtained a higher price for the entire farm. **Dixon v. Farm Credit Bank of Texas, 689 So.2d 135 (Ala. Ct. App. 1996)**.

WAREHOUSE. The plaintiff was a bank which held a perfected security interest in tobacco grown by the debtor. The debtor had borrowed funds from the defendant tobacco warehouse but the warehouse did not perfect a security interest in the tobacco grown with the funds. The harvested tobacco was delivered to the defendant and sold, but because the sale proceeds did not exceed the debt, nothing was paid to the debtor. The plaintiff filed a notice of the security interest with the defendant after the sale but before the debtor received any of the proceeds of the sale, since the debtor never received any proceeds. The defendant argued that Ky. Rev. Stat. § 355.9-307(2) relieved the warehouse of any liability to the plaintiff for the proceeds of the tobacco sale. The court held that the statute was not intended to apply to warehouses which were also creditors of a tobacco grower. The court cited a Washington case, *Food Services of America v. Royal Heights, Inc., 871 P.2d 590 (1994)* in support of its holding. **Farmers Bank v. Dykes Tobacco, Inc., 945 S.W.2d 433 (Ky. Ct. App. 1997)**.

STATE TAXATION

AGRICULTURAL LAND-*ALM* § 13.06.* In 1996, the state of Wisconsin passed a law to phase-in use valuation of agricultural land. The phase in required an initial freeze of valuation of all agricultural land with an annual change in the method of valuation to alter that frozen valuation by the use value of the land. The plaintiffs included agricultural land owners who claimed that the law violated the uniformity clause of the Wisconsin constitution because the frozen aspect of the valuation did not take into account land which decreased in value during the phase-in period, resulting in different tax rates for the land with decreased value. The court found that the plaintiffs had no evidence that this difference had actually occurred at the time of the suit, primarily because the suit was brought soon after the law was enacted. The court dismissed the case without prejudice, noting that another suit could be brought if the tax rate difference was shown to occur. **Norquist v. Zeuske, 564 N.W.2d 748 (Wis. 1997)**.

ZONING

LIVESTOCK CONFINEMENT FACILITIES. In April 1994, the plaintiffs acquired 3,000 acres of farm land and constructed several hog confinement facilities on the property, including confinement buildings and waste lagoons. In June 1994, the defendant township promulgated zoning regulations which established bonding (for the coverage of possible cleanup costs) and setback requirements for livestock confinement facilities. The plaintiffs' facilities were found not to be in compliance with the new regulations and the plaintiffs brought suit for an injunction against enforcement of the regulations as without statutory authority. The plaintiffs argued that Mo. Rev. Stat. § 65.677 prohibited enforcement of zoning powers against farm buildings or farm structures and that the confinement facilities were either farm buildings or structures. In addition, the plaintiffs argued that the township's zoning powers did not include the authority to require bonds for buildings or for the cleanup costs of the use of land. The defendant argued that the statute was ambiguous in that it did allow the regulation of agricultural use of land. The court held that the livestock confinement buildings and lagoons were farm structures under the statute and exempt from zoning regulation by the defendant. The township also sought to enforce its regulations as equitable relief against the plaintiffs' buildings as a public nuisance. The court held that the township had no authority under Mo. Rev. Stat. § 65.677 to bring a public nuisance action. **Premium Standard Farms v. Lincoln Township, 946 S.W. 2d 234 (Mo. 1997)**.

CITATION UPDATE

Estate of Kokernot v. Comm'r, 112 F.3d 1290 (5th Cir. 1997), *aff'g*, T.C. Memo. 1995-590 (special use valuation) see p. 101 *supra*.

Bolding v. Comm'r, 117 F.3d 270 (5th Cir. 1997), *rev'g*, T.C. Memo. 1995-326. (shareholder basis) see p. 127 *supra*.

Patten v. United States, 116 F.3d 1029 (4th Cir. 1997), *aff'g*, 96-1 U.S. Tax Cas. (CCH) ¶ 60,231 (W.D. Va. 1996) (joint tenancy property) see p. 108 *supra*.

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2d ANNUAL SEMINAR IN PARADISE

FARM ESTATE AND BUSINESS PLANNING by Dr. Neil E. Harl
January 5-9, 1998

Spend a week in Hawai'i in January 1998! Balmy trade winds, 70-80 degrees, palm trees, white sand beaches and the rest of paradise can be yours; plus a world-class seminar on Farm Estate and Business Planning by Dr. Neil E. Harl. The seminar is scheduled for January 5-9, 1998 at the spectacular ocean-front Hilton Waikoloa Village Resort on the Big Island, Hawai'i.

Seminar sessions run from 8:00 a.m. to 12:00 p.m. each day, Monday through Friday, with a continental breakfast and break refreshments included in the registration fee. Each participant will receive a copy of Dr. Harl's 400 page seminar manual, *Farm Estate and Business Planning: Annotated Materials* which will be updated just prior to the seminar.

Here are the major topics to be covered:

• Introduction to estate and business planning.

• Liquidity planning with emphasis on 15-year installment payment of federal estate tax.

• Co-ownership of property, including discounts, taxation and special problems.

• Federal estate tax, including alternate valuation date, special use valuation, family-owned business exclusion, handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, 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.

• Using trusts, including funding of revocable living trusts.

• Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.

• Ethics (2 hours).

The Agricultural Law Press has made arrangements for **group discount air fares** on United Airlines, available through Sun Quest Vacations. In addition, attendees are eligible for **substantial discounts on hotel rooms at the Hilton Waikoloa Village Resort**, the site of the seminar. Early registration is important to obtain the lowest airfares and insure availability of convenient flights at a busy travel time of the year.

The seminar registration fee is $645 for current subscribers to the *Agricultural Law Digest* or the *Agricultural Law Manual*. The registration fee for nonsubscribers is $695.

If you have not yet received a registration packet call Robert Achenbach at 1-541-302-1958.

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