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Cases, Regulations and Statutes

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CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

PERMISSIVE USE. The defendant's predecessor in ownership acquired the property by homesteading in 1930. The property did not have access to a road so the original owners used a road on the property now owned by the plaintiff. The plaintiff's property was owned by unrelated parties when the defendant's predecessors in ownership first used the road. The property was then owned by the predecessors in ownership's brother and then by the plaintiff. The predecessors in ownership's use of the road was never challenged but when the defendant purchased the land, the plaintiff barred the defendant from using the road. The defendant argued that the predecessors in ownership had acquired a prescriptive easement over the road because the use of the road was hostile to the actual ownership. The court held that the familial and cordial relationship between the predecessors in ownership and the owners of the plaintiff's land supported the presumption that the use was permissive. Because the defendant failed to provide evidence that no permission was granted, the predecessors in ownership's use of the road did not create a prescriptive easement over the road. **A.B. Cattle Co. v. Forgey Ranches, Inc., 943 P.2d 1184 (Wyo. 1997)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

EXEMPTIONS

HOMESTEAD. When the debtor married, the spouse owned the residence in which the couple would live. The debtor signed the mortgage and made the mortgage payments because the debtor was the sole wage earner. The couple planned to put the title to the house in both of their names when the note was to be refinanced in 1997. However, at the time of the debtor's individual filing for Chapter 7, title to the house was only in the non-debtor spouse's name. The debtor claimed a homestead exemption for the residence. The Illinois exemption required that the debtor either own or "rightly possess by lease or otherwise" the property. The court held that the debtor could not claim the exemption because the debtor did not have an ownership interest in the residence. ***In re* Hartman, 211 B.R. 899 (Bankr. C.D. Ill. 1997)**.

Chapter 13-*ALM* § 13.03.*

ELIGIBILITY. The debtors, husband and wife, filed for Chapter 13 and listed unsecured tax debt of $81,000. The IRS filed a claim for more than $800,000 and moved to dismiss the case because the debtors had too much debt to file for Chapter 13. The taxes owed by the debtors were the subject of litigation in the Tax Court which was pending throughout the current Chapter 13 case. The court held that the tax claim was disputed and unliquidated for Chapter 13 purposes and did not disqualify the debtors for Chapter 13. **United States v. May, 211 B.R. 991 (M.D. Fla. 1997)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

AUTOMATIC STAY. The debtor received a discharge in a Chapter 13 case, including the discharge of taxes. After the discharge, the IRS attempted to collect the discharged taxes by filing a lien against the debtor's home and freezing a post-discharge refund due to the debtor. The court awarded actual damages plus attorney fees resulting from the need to reopen the case and remove the lien and recover the refund. The attorney fees were limited by the Equal Access to Justice Act. ***In re* Brown, 211 B.R. 1020 (Bankr. S.D. Ga. 1997)**.

The debtor filed for Chapter 7 in April 1996 and listed an expected refund from 1995 in the schedule of assets. In May 1996, the IRS applied the refund to the debtor's taxes for 1990, 1991 and 1992 and remitted to the debtor only the balance after those taxes were fully paid. The debtor received a discharge in July 1996 which discharged the 1990 and 1991 taxes only. The debtor sought recovery of the full refund, arguing that the offset was improper and violated the automatic stay. The court held that, under Section 522(c), the IRS was authorized to offset only the nondischargeable taxes and the court ordered recovery of the 1990 and 1991 tax payments from he refund. Although the parties and the court agreed that the offset violated the automatic stay, the only damages proved by the debtor were the amounts offset for the 1990 and 1991 taxes; therefore, the debtor was not awarded any additional damages. ***In re* Jones, 212 B.R. 680 (Bankr. M.D. Ala. 1997)**.

AVOIDABLE LIENS. The IRS had perfected a tax lien against the debtor's personal property, which included a promissory note owned by the debtor. The Chapter 7 trustee sought to avoid the tax lien under Section 545(2) as a bona fide purchaser of the note and under I.R.C. § 6323(b) which excepted bona fide purchasers from the tax lien. The court held that the bankruptcy provision was not applicable to the I.R.C. provision and the trustee could not avoid the tax lien. ***In re* Berg, 121 F.3d 535 (9th Cir. 1997), *aff'g*, 188 B.R. 615 (Bankr. 9th Cir. 1995)**.

DISCHARGE. For the tax years 1987, 1988, and 1989, the debtor filled out a Form W-4 and indicated on the form that the debtor had not paid any taxes the previous year and did not expect to pay any tax for the current tax year. Although the first statement was correct, because the debtor did not pay any federal taxes in the previous year, the reason the statement was correct was because the debtor failed to pay the taxes owed. The debtor had sufficient taxable income from wages in each year to require the filing of a return and payment of the tax. The debtor did not file a return for these years until after the IRS began collection efforts and did not pay the taxes owed. The debtor claimed that the statements on the W-4 forms were correct under the actual experience of the debtor. The court held that the W-4 forms were fraudulently filed and caused the taxes for those years to be nondischargeable. ***In re* Bertelt, 213 B.R. 173 (Bankr. M.D. Fla. 1997)**.

The debtor in 1992 owned one-third of the stock in a corporation which was also owned by two unrelated women. The corporation qualified for minority status for various purposes. Prior to receiving the debtor's 1991 tax return from the debtor's accountant, the debtor transferred the debtor's interest in the corporation to the debtor's wife for no consideration. The court found that the reason for the transfer was to maintain the corporation's minority status and not to hide assets from the IRS. The debtor also stated that, at the time of the transfer, the debtor did not believe the stock had any value. The debtor failed to pay the 1991 taxes, because the debtor did not expect the taxes to be so high. The court stated that, although the debtor's explanation for the transfer and failure to pay was not well supported, the court did not find any evidence of an attempt to evade payment of the taxes. The court held that mere failure to pay taxes was not sufficient to deny a discharge of the taxes. The court also held that the IRS failed to provide evidence of willful intent to evade taxes sufficient to make the taxes nondischargeable. ***In re* Huber, 213 B.R. 182 (Bankr. M.D. Fla. 1997)**.

CONTRACTS

SPECIFIC PERFORMANCE. The plaintiff, a partnership, entered into an agreement with the defendants to purchase their farm for residential development. The agreement required the plaintiff to purchase similar farm property for a like-kind exchange to allow the defendants to avoid recognition of federal capital gains tax on the sale. The plaintiff purchased some property to partially complete the transaction but had a difficult time finding suitable property to complete the transaction. The replacement property cost substantially more than the value of the property exchanged by the defendants. The original agreement granted the plaintiff an option to purchase the property using the exchange method and this option expired while the parties were still searching for suitable replacement property so the defendants, as alleged by the plaintiff, agreed to extend the option deadline while the defendants searched for suitable property. Also during this time, the value of the remaining land increased because of development of neighboring land. The plaintiff sought specific performance of the contract option, claiming that the defendants orally modified the sale agreement to extend the option. The trial court granted the defendants summary judgment, ruling that the wirtten agreement option provision could not be orally modified. The plaintiff argued that the partial performance of the first exchange was sufficient to bring the contract out of the Statute of Frauds and modify the option deadline. The appellate court held that the plaintiff had provided sufficient evidence to raise an issue of fact as to whether the option deadline had been extended. **Johnson Farms v. McEnroe, 568 N.W.2d 920 (N.D. 1997)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has adopted as final regulations changing the classification of Iowa from Class A to Class Free. **62 Fed. Reg. 60639 (Nov. 12, 1997)**.

CROP INSURANCE. The FCIC has adopted as final regulations which include the green peas Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 61898 (Nov. 20, 1997)**.

PEANUTS. The CCC has adopted as final regulations establishing the 1997 quota peanuts average support level of $610 per short ton, the national average support level for additional peanuts at $132 per short ton, and the minimum CCC export edible sale price for additional peanuts at $400 per short ton. The 1997 national poundage quota is 1,133,000 short tons. **62 Fed. Reg. 62689 (Nov. 25, 1997)**.

PERISHABLE AGRICULTURAL COMMODITY ACT. The defendants were a corporation which was licensed under PACA as a produce broker and the sole shareholder/president of the corporation. The plaintiffs were agricultural commodity producers who sold produce to the defendant corporation but were not paid and who preserved their rights in the PACA trust imposed on the corporation. The corporation was liquidated but the proceeds covered only one-fourth of the claims held by the plaintiffs. The plaintiffs sought to impose personal liability on the individual defendant as a person "responsibly connected" to the corporation. The failure of the business was precipitated by the failure of one of the corporation's clients defaulting on payment for produce sold through the corporation. The president of the corporation tried to keep the corporation viable for three months by taking a minimal salary for all employees but was not successful. The plaintiffs argued that the president should be held personally responsible because the president caused the corporation to pay other creditors and to pay wages and authorized the selling on credit of the produce to the client which defaulted. The court held that PACA has no provision which makes a person responsibly connected with a licensed broker individually liable for the PACA trust merely because the person was responsibly connected with the broker. In addition, the court held that the actions of the president in paying minimal salaries and making sales on credit did not subject the president to individual liability for the PACA trust. **Farm-Wey Produce, Inc. v. Wayne L. Bowman Co., Inc., 973 F. Supp. 778 (E.D. Tenn. 1997)**.

SUGAR. The debtor was a corporation which processed and marketed sugar. The debtor was self-insured for workers' compensation purposes which created an automatic lien against the debtor's property for unpaid workers' compensation benefits. The debtor obtained price support loans from the CCC. The CCC filed financing statements to secure the loans. Under federal law and regulations, the CCC secured loan had priority over all subsequent loans made by the debtor. The court held that the federal law and regulations pre-empted any state law which was different from the federal priority scheme; therefore, the state of Montana could not assert state law to give priority to the workers' compensation lien for unpaid benefits which accrued after the CCC loan. **State of**

Montana v. United States, 124 F.3d 1269 (Fed. Cir. 1997), ***aff'g*****, 33 Fed. Cls. 82 (1995)**.

FEDERAL ESTATE AND GIFT TAX

INSURANCE. A husband and wife owned, as community property, 72 percent of the stock of a bank. The three children of the couple, all employees of the bank, entered into split-dollar insurance agreement with the bank as to second-to-die insurance policies on the parents. Each child was the owner of their respective policies. The bank paid a portion of the premiums and was entitled to recover those payments at the termination of the policy. Only the children could terminate the split-dollar agreements. The parents each provided testamentary bequests of each parent's community property interest in the bank stock in trust for the surviving spouse, such that the surviving spouse would not be treated as the owner of the trust. The bank was to serve as trustee and as executor of the parents' estates. The IRS ruled that the individual parents were not in control of the bank and the children were the owners of the insurance policies. The IRS also ruled that the insurance policies were not included in the parents' estate. **Ltr. Rul. 9746004, Aug. 8, 1997; Ltr. Rul. 9746006, Aug. 11, 1997**.

IRA. The taxpayer's deceased spouse had owned an interest in an IRA which named the taxpayer as remainder beneficiary. The taxpayer received the entire corpus of the IRA and rolled the proceeds over to two IRAs in the taxpayer's name within 60 days after receipt of the proceeds. The first IRA will pay out benefits in equal payments over the life expectancy of the taxpayer and a designated beneficiary, with cost-of-living increases each year. The second IRA will accumulate all earnings. The IRS ruled that the method of determining periodic payments from the first IRA was sufficient to prevent additional tax under I.R.C. § 72(t). The IRS noted that the second IRA would not be taken into account for this purpose. **Ltr. Rul. 9747045, Aug. 28, 1997**.

POWER OF APPOINTMENT. A husband and wife created an irrevocable trust for the benefit of their son and his issue. The initial trustee was a corporate bank. The son had the power to remove the trustee and replace the trustee with another corporate trustee. The trustee was required to make at least annual distributions of all trust income to the son and had the power to distribute trust principal for any purpose. The son also had the power to appoint by will the trust accumulated income to any person, including the estate of the son. There was no authority for appointing trust principal. The IRS ruled that the trust principal would not be included in the son's gross estate because the power to remove and replace the trustee was not a power of appointment over trust principal. **Ltr. Rul. 9746007, Aug. 11, 1997**.

FEDERAL INCOME TAXATION

CASUALTY LOSSES. The taxpayer was a timber company which managed timber land owned either by itself or other owners. The timber was separated into tracts for depletion purposes. Several tracts of timber were damaged by a hurricane and the issue in this case was whether the losses could be determined using the same depletion blocks as "single identification property" for purposes of determining the amount of casualty loss deduction. The court held that under a stipulation agreed to by the IRS, the depletion blocks had a commercial, forest management and depletion purpose; therefore, the block could be used to determine the casualty loss deduction. **International Paper Co. v. United States, 97-2 U.S. Tax Cas. (CCH) ¶ 50,911 (Fed. Cls. 1997)**.

CORPORATIONS-*ALM* § 7.02[3][c].*

ACCUMULATED EARNINGS TAX. The taxpayer corporation was incorporated in 1954 and operated a dairy which produced, processed and distributed milk and milk products. All of the shareholders were descendants or spouses of descendants of a husband and wife. The corporation had a stock purchase agreement to purchase at a set price the stock of any deceased shareholder or upon the transfer of any shares. The corporation did redeem the shares of two shareholders when they died but did not redeem the shares of another shareholder because the shareholder's estate did not need cash for estate taxes. Upon the advice of an attorney, the corporation repaid early debentures owed to one shareholder who was not in good health. The corporation sold all of its milk to a cooperative and purchased the milk it processed from the cooperative. The corporation purchased its new cows from third parties instead of breeding its cows and raising new calves for the dairy herd. The corporation prepared a capital expenditures program which included expansion plans and a change to self-insurance for half of its insurance needs. The corporation formed a trust to increase the shareholders' investment in the corporation and was funded with liquid assets and stock owned by the shareholders. The corporation created a cow replacement reserve instead of obtaining commercial insurance on the herd. The reserve was determined by estimating the replacement cost of a cow, less the slaughter value of the cow. The court first looked at the three factors of Treas. Reg. § 1.533-2(a)(2) and determined that (1) the corporation did not lend money to the shareholders or spend funds for the shareholders' personal benefit; (2) the corporation did not invest in unrelated businesses; and (3) the corporation's annual 10 percent dividends were sufficient. The court noted that the corporation paid substantial salaries to the shareholder officers. The IRS argued that the reserve accumulated for herd expansion was unreasonable because the herd was not increased. The court found that the reserve was reasonable even with a decreasing herd because (1) the cost of replacement cows increased, (2) a break in a dike decreased the available water, and (3) environmental factors limited the size of the herd. The court also held that the accumulations for capital improvements, self-insurance and repayment of loans were reasonable. **Gustfson's Dairy, Inc. v. Comm'r. T.C. Memo. 1997-519**.

LIKE-KIND EXCHANGES. The taxpayer owned a one-half interest in two residential investment properties.

The first property was transferred on February 5, 1990 and the second on February 14, 1990. In both cases the sale proceeds were placed in escrow with attorneys. The sale contracts both stated that the taxpayer intended to exchange the property in order to obtain like-kind gain deferral treatment. On the taxpayer's return for 1990, the taxpayer claimed to have identified replacement property on April 1, 1990, more than 45 days after either sale. The selected property was transferred on June 19, 1990 to the taxpayer. The court held that the taxpayer was not entitled to like-kind exchange treatment because the replacement property was not identified within 45 days after either transfer. The appellate court affirmed in a ruling designated as not for publication. **Smith v. Comm'r, 97-2 U.S. Tax Cas. (CCH) ¶ 50928 (4th Cir. 1997), *aff'g*, T.C. Memo. 1997-109**.

PREPRODUCTIVE EXPENSES. CCH has reported that Jan Skelton, attorney-advisor, IRS Office Chief Counsel (Income Tax & Accounting) stated that nursery plant growers may still take advantage of the farming business exception under I.R.C. § 263A(d). That statute allows growers of plants with preproductive periods of two years or less to deduct currently seed costs and preproductive costs and need not keep inventory and capitalized cost records. The statement resulted from confusion which has arisen over whether nursery plant growers meet the definition of farmer under the proposed regulations under I.R.C. § 263A. See p. 133 *supra*. **CCH Online, News-Federal, 97Taxday, item #I.2, Nov. 20, 1997**.

RETURN PREPARER LIABILITY. The plaintiff was a certified public accountant who prepared returns for a construction company. In the process of auditing the contractor's books in filling out a tax return, the plaintiff altered the dates on several documents. During an IRS audit of the contractor, the documents were presented by the plaintiff to the IRS in the altered form. The IRS discovered the alterations and assessed the contractor additional taxes based on the original dates of the documents. The IRS also assessed the plaintiff $100,000 under I.R.C. § 6701 for preparation and presentation of documents which result in an understatement of tax liability. The plaintiff sought a summary judgment which was denied because the court held that an issue of fact remained as to whether the plaintiff had reason to know that the documents would be used in a matter before the IRS. **Cheshire v. United States, 97-2 U.S. Tax Cas. (CCH) ¶ 50,912 (M.D. Ala. 1997)**.

RETURNS. The IRS has issued proposed regulations for assigning adoptive taxpayer identification numbers for adopted children where the adopting parent cannot obtain the child's assigned social security number or a new social security number. **62 Fed. Reg. ________ (Nov. , 1997)**.

The IRS has identified several forms involving reporting of capital gains which have instructions which are incorrect for taxpayers with tax years ending after May 6, 1997: 1997 Form 1099-DIV, Dividends and Distributions; 1997 Form 1099-B, Broker and Barter Exchange Transactions; 1996 Form 2439; and 1996 Schedules K & K-1. The announcement provides the correct instructions for these forms as to reporting capital gains. **Ann. 97-109, I.R.B. 1997-__, __**.

The IRS has announced that taxpayers in Grand Forks county, North Dakota and Polk county, Minnesota have until January 13, 1998 to file returns and pay taxes due after April 15, 1997, including Forms 1040, 1040A, 1040EZ, 1040NR, 709, 709-A, 1120, 1120-A, 1120-H, 1120S, 990, 990-EZ and 990-T. The extension also applies to estimated tax payments due after April 15, 1997. The extension does not apply to employment taxes. **Notice 97-62, I.R.B. 1997-__, __**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

LIQUIDATION. The taxpayer was an S corporation formerly wholly-owned by the decedent. The decedent's estate distributed all the stock to a trust which then distributed the stock to the income beneficiary who gave the stock to three individuals. The corporation adopted a plan of liquidation which included distributing all its assets to the shareholders. The corporation represented that (1) the estate, trust and individuals were eligible S corporation shareholders (2) no owner or constructive owner of 20 percent of the assets would reincorporate with the owner's assets, (3) the fair market value of the assets exceeded the corporation's liabilities, and (4) the liquidation plan would result in cessation of the corporation's business. The IRS ruled that the tax consequences of the liquidation would be determined under I.R.C. § 331. **Ltr. Rul. 9747035, Aug. 25, 1997**.

SECOND CLASS OF STOCK. In order to expand the S corporation's business, the corporation borrowed from its shareholders, including several trusts. The loans came from the income distributions to the trusts. Instead of making the distributions, the corporation issued promissory notes. The notes carried interest equal to the Applicable Federal Rate at the time of each loan. The interest rate was not tied to corporate profits. The loans were voluntary and did not require that the notes be converted to common stock. The IRS ruled that the loans would be "straight debt" and would not create a second class of stock for purposes of the corporation's S corporation status. **Ltr. Rul. 9746038, Aug. 14, 1997**.

SAFE HARBOR INTEREST RATES
December 1997

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	5.68	5.60	5.56	5.54
110% AFR	6.25	6.16	6.11	6.08
120% AFR	6.83	6.72	6.66	6.63
		Mid-term		
AFR	6.02	5.93	5.89	5.86
110% AFR	6.63	6.52	6.47	6.43
120% AFR	7.25	7.12	7.06	7.02
		Long-term		
AFR	6.31	6.21	6.16	6.13
110% AFR	6.95	6.83	6.77	6.73
120% AFR	7.59	7.45	7.38	7.34

SOCIAL SECURITY TAX-*ALM* § 4.06.* The IRS has also issued the 1998 covered compensation tables for

Agricultural Law Manual* **(ALM). For information about ordering the *Manual*, see the last page of this issue.

determining contributions to defined benefit plans and permitted disparity. **Rev. Rul. 97-45, I.R.B. 1997-46, 4**.

The maximum amount of annual wages subject to Old Age Survivors and Disability Insurance for 1998 is $68,400, with **all** wages and self-employment income subject to the medicare portion of the tax. **IRS Notice 1036 (Rev. Nov. 1997).**

TRAVEL EXPENSES. The taxpayer resided in Houston, Texas where the taxpayer had completed a Ph.D. in history. The taxpayer accepted a tenure-track position to teach history in Charlotte, North Carolina for the 1990-91 academic year. In May 1991, the taxpayer accepted a position at the University of Houston for the 1991-92 academic year, although the taxpayer also received an offer to continue the position in North Carolina. The taxpayer claimed deductions for reimbursed employment-related expenses for 1991 relating to the teaching position in North Carolina. The court held that, because the teaching position was tenure-track and the employer gave no indication that the employment would not be continued after the end of the academic year, the taxpayer's residence in North Carolina was not temporary and the deductions were not allowable. **Turner v. Comm'r, T.C. Memo. 1997-522**.

LANDLORD AND TENANT

LEASE. The plaintiff landlord and defendant tenant had entered into a seven-year lease of farmland. The plaintiff was listed in the lease as the owner of the land but actually held only a life estate in the property. The lease provided for cash rent for a portion of the property and crop share rent for the remainder of the property. The lease also provided for the possible sale of the land to the defendant at a price to be negotiated at the end of the lease. The price was to be determined by appraisals done by one appraiser chosen by the plaintiff and one by the defendant. The defendant made several major improvements to the property but fell behind on the rent payments and the plaintiff sought an early eviction for nonpayment of rent and waste. The trial judge gave a two option judgment for the plaintiff: (1) a sale of the entire interest in the farm to the defendant or (2) payment of the value of the improvements to the defendant. The appellate court upheld the judgment, holding that the plaintiff had misrepresented the plaintiff's ownership interest in the property and that the defendant had relied on the possibility of purchasing the property when the defendant spent time and effort in making the improvements to the property. **Ehrman v. Feist, 568 N.W.2d 747 (N.D. 1997)**.

SECURED TRANSACTIONS

DEFICIENCY. The plaintiff bank loaned money to the defendant for operation of the defendant's farm. The defendant granted the plaintiff a security interest in all livestock, machinery and equipment. The defendant filed for Chapter 7 bankruptcy and the trustee abandoned the livestock to the bank. The defendant requested that the livestock be sold by private sale to a relative but the bank refused and sold the livestock at a sale barn. The trustee also abandoned the machinery and equipment and the bank sold the non-exempt property. The defendant was not notified of the sale time or place except the defendant was notified that the cattle would be sold at the sale barn. The defendant argued that the bank was not entitled to any deficiency judgment because the collateral was not sold in a commercially reasonable manner and the bank failed to notify the defendant about the time and place of the sales. The case involved a certification of questions as to whether the "absolute bar rule" still applied in Iowa to bar recovery of a deficiency when the secured creditor failed to notify the debtor of the sale of collateral. In particular, the court was asked whether the holding in *Barnhouse v. Hawkeye State Bank, 406 N.W.2d 181 (Iowa 1987)*, abrogated the rule or created only an exception to the rule. The court held that *Barnhouse* only created an exception where the value of the collateral sold without notice was *de minimis* in comparison to the value of all collateral. The court stated that the major factor in determining whether a *Barnhouse* exception exists is whether, under the circumstances of the case, the underlying purposes of Iowa Code § 554.9504(3) would be frustrated by application of the rule barring recovery of the deficiency. Finally, the court noted that the justifications for the rule in the first place have diminished sufficiently to justify another look at the rule in Iowa. **Hartford-Carlisle Savings Bank v. Shivers, 566 N.W.2d 877 (Iowa 1997)**.

PRIORITY. See **State of Montana v. United States, 124 F.3d 1269 (Fed. Cir. 1997)** under **Sugar** under **Federal Agricultural Programs** *supra*.

STATE TAXATION

AGRICULTURAL USE. The defendant owned several tracts of undeveloped land, totaling 3,420 acres. The land was leased to a third party for grazing sheep and cattle. One parcel of the land, comprising about 1,400 acres, was very steep and rocky, had no water supply and was plagued by domestic dogs which would attack the livestock. The tenant testified that the livestock were kept off the 1,400 acres but occasionally strayed on to that parcel. The rent for the lease did not include any value for this parcel. The court held that the 1,400 acre parcel did not qualify for special use valuation under Utah Code § 59-2-503(1) because the parcel was not actively devoted to an agricultural use. **County Bd. of Equalization v. Stichting Mayflower Recreational Fonds, 943 P.2d 2328 (Utah Ct. App. 1997)**.

CITATION UPDATES

Estate of Rinaldi v. U.S., 38 Fed. Cls. 341 (1997) (marital deduction) see p. 132 *supra*.

Est. of Millikin v. Comm'r, 125 F.3d 339 (6th Cir. 1997), ***rev'g on reconsid. en banc*****, 106 F.3d 1263 (6th Cir. 1997),** ***aff'g*****, T.C. Memo. 1995-288** (administrative expenses) see p. 148 *supra*.

Monroe v. Comm'r, 124 F.3d 699 (5th Cir. 1997), ***rev'g*****, 104 T.C. 352 (1995)** (disclaimer) see p. 165 *supra*.

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• 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.

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