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Agricultural Law Digest

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LIKE-KIND EXCHANGES. The taxpayer owned a one-third interest in real property, with the taxpayer’s parent owning the other two-thirds. An unrelated third party contracted to purchase the full interest in the property and the taxpayer sought a suitable replacement property to create a like-kind exchange. The parent used the proceeds to purchase a second property which was used as a residence. The taxpayer was unable to find a suitable replacement property and restructured the sale of the original property as follows: (1) the taxpayer contracted to purchase the parent’s property, (2) the taxpayer transferred all rights to the first property and the sales contract to a fourth unrelated party, (3) the taxpayer assigned the contract to purchase the parent’s property to the fourth party, (4) the fourth party sold the first property to the third party, (5) the fourth party and the taxpayer paid the parent for the parent’s property, and (6) the parent transferred the parent’s property through the fourth party to the taxpayer. The IRS denied like-kind exchange treatment for the transaction, under I.R.C. § 1031(f), because the series of transactions was considered to be a sale between related parties, using the unrelated fourth party merely to change the form, but not the substance, of the transaction. Although the taxpayer stated that no tax avoidance was intended throughout the events involved, the IRS found that the sole purpose of the structure of the transactions was to qualify the taxpayer for like-kind exchange treatment for a related party sale which would otherwise not qualify. *Ltr. Rul. 9748006, Aug. 25, 1997.*

PENSION PLANS. For plans beginning in November 1997, the weighted average is 6.81 percent with the permissible range of 6.13 to 7.29 percent (90 to 109 percent permissible range) and 6.13 to 7.49 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). *Notice 97-69, I.R.B. 1997-48, 12.*

PREPRODUCTIVE EXPENSES. The IRS has announced that nursery plant growers, but not mere purchaser/resellers, 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 announcement 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. The IRS stated that examples will be added to the regulations to illustrate these points. See p. 133 supra. *Ann. 97-120, I.R.B. 1997-50, ___.*

PRODUCTS LIABILITY

CATTLE FEED. The plaintiffs owned a dairy and purchased cattle feed from the defendant which the plaintiffs alleged caused health problems in their dairy herd. The plaintiffs sued for breach of implied warranty of merchantability, breach of the implied warranty of fitness for a particular purpose, strict liability and negligence. The plaintiffs claimed that the feed was moldy, damaged by insects and had too high a moisture content, causing the cows to become sick. The defendant claimed that the mold was a natural part of organic feed and that the problems were caused by the plaintiffs’ poor management practices. The plaintiffs produced expert witnesses on the cause of the illnesses and the court found that the evidence demonstrated that the mold in the feed did cause some of the illnesses. The court held that the mold in the feed was a breach of the implied warranty of merchantability. The court also held that the moldy feed was not a breach of the implied warranty of fitness for a particular purpose because the feed was not specially formulated for the plaintiffs and the plaintiffs modified the feed with substances acquired from other sources. The court also denied the strict liability claim because the plaintiffs had seen the mold in the feed and had fed the feed to the cows after such notice and because mold was to be reasonably expected to exist in organic substances. The plaintiffs were awarded damages for the loss of cows, for the damage caused to the cow barn from the thrashing about of sick cows, and damages from emotional distress to the plaintiffs injured by sick cows. *Carpenter v. Land O'Lakes, Inc., 976 F. Supp. 968 (D. Or. 1997).*

WATER RIGHTS

DRAINAGE. The plaintiff owned the north half of a section of farm land separated by a gravel road from the southern half of the section owned by the defendants. After the plaintiffs’ land was flooded by excessive rainfall, the plaintiffs sued to remove obstructions to the natural drainage across the two properties. The plaintiffs alleged that the defendants had blocked tubes located under the gravel road, increasing the flooding. The parties had agreed at trial to be bound by a survey of the properties and the plaintiffs sought a partial summary judgment that the survey demonstrated that the plaintiffs’ property was the dominant drainage estate. The court held that the trial court’s granting of the partial summary judgment was improper because the survey included only elevation figures and failed to answer all factual questions involving the natural drainage, the existence of prescriptive easements or permissive blockages. *Grace Hodgson Trust v. McClannahan, 569 N.W.2d 397 (Iowa Ct. App. 1997).*

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Feeling the chill of winter in your bones yet? Spend a week in Hawai‘i in January 1998 and re-warm yourself! 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*.

Call Robert Achenbach at 1-541-302-1958.