Cases, Regulations and Statutes

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indicated such an intention. Therefore, the arrangement was not an eligible participant in a like-kind exchange because it was deemed to be a partnership rather than a mere co-ownership of property.

### Other authority

But is the 1997 private letter ruling, with its singular emphasis on filing a federal income tax return, consistent with other authority?

A 1975 revenue ruling, Rev. Rul. 75-374, also involved the question of whether the co-owners of real property, in this case an apartment project, should be treated as a partnership for federal income tax purposes. Citing the regulations, the ruling notes that mere co-ownership of property that is maintained, kept in repair and rented to others did not constitute a partnership. The ruling further states that tenants in common may be treated as partners if they actively carry on a trade, business, financial operation or venture, and divide the profits from the arrangement.

The ruling concludes that the two owners, one an insurance company and the other an investment trust, were to be treated as co-owners and not as partners. The ruling explained that the furnishing of customary services in connection with the maintenance and repair of an apartment project would not transform a co-ownership arrangement into a partnership but the furnishing of additional services would render a co-ownership a partnership if the additional services are furnished directly by the co-owners or through their agent. The ruling observed that, in the facts of the ruling, the co-owners were not furnishing the additional services either directly or through an agent—an unrelated corporation was responsible for managing the project.

### Lessons to be learned

The conclusion of the 1997 private letter ruling is worrisome for many farm and ranch exchanges involving co-ownership of property. The ruling identifies four key factors—(1) there was co-ownership of property; (2) management services exceeded "customary" services for maintenance and repair; (3) the additional services were by the co-owners or by an agent; and (4) the co-owners filed a partnership income tax return.

In a typical co-ownership of farmland rented under a crop-share or livestock share lease, the lease is not ordinarily considered to be a partnership but the involvement in management often exceeds the customary management level, at least compared to a cash rent lease and the involvement is often by the co-owners themselves or by a farm manager as agent. Thus, if the co-owners file a federal partnership income tax return (which many do as a matter of convenience), like-kind exchange treatment may be in jeopardy.

Therefore, in instances where a like-kind exchange is contemplated, it is important not to file a Form 1065, partnership income tax return. A shift to a cash rent lease would not appear to be necessary but it would be advisable to keep management activities to the "customary" level for the 2 years preceding the exchange.

### FOOTNOTES

6. Id.
7. See I.R.C. § 1031(a)(1).
9. Id.
10. Id.
11. Id.
14. Id.
15. Id.
20. Id.
21. Id.
22. See Harl, Agricultural Law § 41.06 (1999) (imputation of activities by agent to property owner as principal).
23. Id.
25. Id.

### CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

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**BANKRUPTCY**

**CHAPTER 13--ALM § 13.03.*

**ELIGIBILITY.** The debtors, husband and wife, originally filed for Chapter 13 but both debtors died before filing a plan. The debtors claimed their 140 acre residence as an exempt rural homestead. The debtor’s attorney filed a motion to convert the case to Chapter 7, which the court originally granted. On reconsideration, the court vacated the conversion of the case, holding that the decedent’s estate could not convert a case to Chapter 7 because the estate could not file for Chapter 7. The court emphasized that the estate could not be a debtor because the estate did not have income to fund the plan. The court also dismissed the Chapter 13 case on the grounds that the estate would be better administered in state probate court to give the creditors the best payment on their claims. *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999).

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* Agricultural Law Manual (ALM).
FEDERAL TAXATION-ALM § 13.03[7].

AUTOMATIC STAY. On the date of the bankruptcy petition filing, the debtor owned a contingent interest in a trust for the debtor’s parent. After the petition, the parent died and some of the trust property passed to the debtor. The IRS had filed a prepetition tax lien which the parties agreed attached to the contingent interest of the debtor in the trust property. The IRS argued that the lien also attached to the trust property that vested in the debtor post-petition. The debtor argued, and the court agreed, that the automatic stay, under Section 362(a)(5), prevented the attachment and perfection of the tax lien to the vested interest which arose post-petition. Therefore, the IRS tax claim was secured only to the extent of the value of the debtor’s pre-petition contingent interest in the trust. In re Avis, 99-2 U.S. Tax Cas. (CCH) ¶ 50,632 (4th Cir. 1999).

CLAIM. The debtor owned an interest in a 401(k) retirement plan which was subject to a federal tax lien. The issue was whether the value of the debtor’s interest in the plan was the full face value of the interest or was reduced by the amount of early withdrawal penalties. The court held that the tax costs of withdrawal of the 401(k) funds did not decrease the value of the property for bankruptcy purposes in determining the secured portion of a claim. The court held that the value of property was to be its replacement value; therefore, the value of the 401(k) interest was the amount of money needed to acquire a similar interest. Since there would be no tax resulting from the acquisition of another 401(k) interest, the value of the interest was not reduced by any tax consequences. Leedy v. Comm’r, 99-2 U.S. Tax Cas. (CCH) ¶ 50,617 (Bankr. E.D. Va. 1999).

DISCHARGE. The debtor failed to file returns for 1985-1987 and 1989. The IRS constructed substitute returns and made assessments based on those returns. In 1994, in response to an IRS amnesty program, the debtor filed the returns for those years using the figures supplied by the IRS in its assessments. The debtor filed for bankruptcy in 1997 and sought discharge of the 1985-87 taxes. The IRS argued that the 1994-filed returns could not be considered returns for purposes of Section 523 because the debtor’s returns served no purpose since the returns reflected only the IRS calculations. The court rejected this argument because Section 523 had no provision for returns filed after substitute returns are constructed. The court held that the returns were sufficient for Section 523 and also held that the forms were filed in good faith because they were prepared by professional preparers and filed in order to take advantage of the amnesty program. In re Nunez, 232 B.R. 778 (Bankr. 9th Cir. 1999).

CONTRACTS

LIMITATION OF WARRANTY. The plaintiff was a tobacco farmer who purchased tobacco seed from the defendant. Only about 15 percent of the seeds germinated, resulting in substantial loss of crop. At the time of purchase, the parties did not discuss any limitation of the defendant’s liability for defective seeds. The label on the seed packages limited the defendant’s liability to the purchase price of the seeds but the plaintiff sued for the loss of profit on a normal crop, arguing that the warranty limitation was void as unconscionable. The court discussed the unique aspect of seeds and farming which made warranty limitation clauses unconscionable: (1) the product was not subject to repair, (2) the farmer had to invest significant economic and labor before discovering the defect in the seeds, (3) the recovery of the purchase price was significantly less than the potential economic losses, (4) the farmer rarely is in any position to bargain over the warranty provisions, (5) the manufacturer was better able to spread the risk of loss than the farmer, and the manufacturer has better resources for testing the product before sale and use. The court identified several cases supporting its holding that the warranty limitations clause was void as unconscionable. Mullis v. Speight Seed Farms, Inc., 505 S.E.2d 818 (Ga. Ct. App. 1998).

REQUIREMENTS CONTRACTS. The debtor was a dairy which had won a contract to supply a school district with all of its milk needs during the school year. The debtor filed for bankruptcy and the trustee sought to recover contract payment from the school district. The school district alleged that the dairy breached the requirements contract in that the dairy stopped delivering milk when it filed for bankruptcy. The district claimed that the contract required the dairy to provide all the milk for the entire school year. The court held that, in order for the diary to be required to supply all the milk, the district had to be required to purchase all the milk from the dairy. The court found that no contract provision required the district to purchase any milk from the dairy but only governed the price paid for milk which was purchased by the district; therefore, the dairy did not breach any requirement to deliver and the district had to pay the bankruptcy estate for the milk delivered before the bankruptcy filing. In re Modern Dairy of Champaign, Inc., 171 F. 3d 1106 (7th Cir. 1999).

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has issued interim regulations amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Kansas from Class A to Class Free. 64 Fed. Reg. 36775 (July 8, 1999).

EGGS. The AMS is soliciting comments on its proposal to change the United States Grade Standards for shell eggs. Specifically, AMS proposes to delete the general term “inedible eggs” and its definition, revise the definition of the general term “Loss” eggs by including examples of inedible eggs, revise the term descriptive of an A quality white, and delete specifications for packaging materials. 64 Fed. Reg. 34764 (June 29, 1999).

PRODUCTION FLEXIBILITY CONTRACTS. The CCC has issued a notice of proposed regulations governing production flexibility contracts (PFCs) for the purpose of seeking comments on: (1) the appropriateness of the current method of calculating PFC payment reductions as a result of a fruit or vegetable planting violation as set forth in 7 CFR 1412.401; (2) alternative methods for calculating PFC payment reductions for fruit or vegetable planting violations, if the current method of calculation is considered inappropriate; (3) the retroactivity of any change in the method of calculating payment reductions; and (4) the effect any change in the method of calculating payment reductions should have on PFC’s which have been terminated, or for which contract...
acreage was reduced, because of the current method of calculating payment reductions for fruit or vegetable planting violations. 64 Fed. Reg. 34154 (June 25, 1999).

**FEDERAL ESTATE AND GIFT TAX**

**GENERATION-SKIPPING TRANSFERS.** The taxpayer was a beneficiary of a trust created in 1935 and held a general power of appointment over trust assets. The taxpayer executed a written disclaimer which reduced the power of appointment such that the taxpayer could exercise the power only in favor of the taxpayer’s estate and could only exercise the power only at the taxpayer’s death. The IRS ruled that the partial disclaimer did not subject the trust to GSTT. Ltr. Rul. 9923028, April 15, 1999.

**MARITAL DEDUCTION.** Under the decedent’s will, all estate taxes were payable from the residuary bequest under the trust that passed to the children, but the pecuniary marital share was not burdened with any estate taxes. Almost all of the decedent’s assets were held in the trusts; therefore, the IRS ruled that the tax payment provision in the will was inoperative, and the tax payment directions in the trust governed the allocation of estate taxes. The trust directed payment from principal but did not specify any particular assets as the source of payment. However, the trust provided that property excludable from computing the federal estate tax was not to be burdened with payment of estate taxes. The IRS ruled that the marital trust assets were not to be burdened with payment of estate taxes; therefore, the marital deduction was not decreased by any of the estate taxes. Ltr. Rul. 9925002, March 16, 1999.

**VALUATION.** The decedent had received undivided interests in two trusts, a survivor’s trust and a marital trust, in 21 ranch properties from a predeceased spouse’s estate. The predeceased spouse’s estate claimed a marital deduction for the marital trust as QTIP. The property in both trusts was included in the decedent’s estate and the IRS argued that the properties should have been aggregated for valuation purposes, making them ineligible for any fractional interest discount. The Tax Court disagreed with the IRS and followed its decisions in Estate of Mellinger v. Comm’r, 122 T.C. 26 (1999) and Estate of Nowell v. Comm’r, T.C. Memo. 1999-15 and the Fifth Circuit opinion in Estate of Bonner v. U.S., 84 F.3d 196 (5th Cir. 1996) to hold that I.R.C. § 2044 had no requirement for aggregation of property in separate trusts for federal estate tax valuation purposes. Estate of Lopes v. Comm’r, T.C. Memo. 1999-225.

The taxpayer transferred to a trust a beneficial interest in a cooperative apartment which the taxpayer used as a residence. The IRS ruled that the beneficial interest in the apartment was a residence for purposes of qualifying the trust as a qualified personal residence trust. Ltr. Rul. 9925027, March 25, 1999.

**VALUATION OF STOCK.** The decedent owned shares of stock which were unregistered and their sale was restricted for federal securities law purposes such that the stock could be sold only under the following circumstances: (1) after the securities are formally registered with the SEC; (2) in a private resale to a purchaser who would also be subject to resale restrictions; or (3) pursuant to an exemption from the securities law restrictions. The decedent was considered an “affiliate” for securities law purposes at the time of death and, therefore, was subject to stringent volume limitations, disclosure and other requirements if the decedent were to dispose of the shares pursuant to SEC Rule 144. However, the estate was not an affiliate and could sell the shares pursuant to SEC Rule 144(k) without regard to such restrictions. The IRS ruled in a 1992 field service advice that the stock sale restrictions should not be considered when valuing the stock for federal estate tax purposes. FSA 1992-0901-2, Sept. 1, 1992.

**FEDERAL INCOME TAXATION**

**AUDITS.** The IRS has issued a revenue procedure which describes the method by which a taxpayer may request an early referral of one or more unresolved issues from the Examination or Collection Division to the Office of Appeals (Appeals). I.R.C. § 7123 provides that the Secretary shall prescribe procedures by which any taxpayer may request such an early referral. Early referral is a process to resolve cases more expeditiously through the District and Appeals offices working together. This process is optional and may be requested by any taxpayer. The revenue procedure also describes the method by which a taxpayer may request early referral of one or more unagreed issues with respect to an involuntary change in method of accounting, employment tax, employee plans, or exempt organizations. Rev. Proc. 99-28, I.R.B. 1999-___.

**CAPITAL GAINS.** CCH has reported that House Ways and Means Committee Chairman Bill Archer, R-Tex, on July 7 said that his 1999 tax proposal will reduce the maximum capital gains tax rate from 20% to 15% on gains from property held more than one year. For taxpayers in the 15% ordinary income tax bracket, the capital gains tax rate would decline from 10% to 7.5%. The effective date for the reductions would be July 1, 1999. NEWS-FEDERAL, 99TAXDAY, 07/08/99, Item #C.1.

**CHARITABLE DEDUCTION.** The taxpayer conveyed a commercial building to a charitable organization for its fair value. However, the taxpayer claimed a charitable deduction for 50 percent of the additional value of the building in the hands of the organization, a so-called value-in-use. The court held that the valuation of the building based on the donee’s use was not proper and denied the charitable deduction. Arbor Towers Associates, Ltd. V. Comm’r, T.C. Memo. 1999-213.

**COURT AWARDS AND SETTLEMENTS.** The taxpayers filed suit for personal injuries arising out of an automobile accident. The taxpayers received a jury award for the personal injuries and the state court added statutory delay damages determined by applying an interest rate to the jury award over the time between the filing of the suit and the jury award. During the appeal process, the parties reached a settlement which was not much less than the total state court award. The court found that the delay damages were very similar to pre-judgment interest. The court held that the delay damages were included in the taxpayers’ income because the purposes of the delay damages was to compensate the taxpayers for the loss of the use of the jury award during the lawsuit. The court delayed ruling on the proper allocation of the settlement between personal injury compensation and delay damages pending...

DEDUCTIONS. The court disallowed a portion of the taxpayers’ claimed charitable and miscellaneous deductions because the taxpayer failed to present any evidence to substantiate the expenses. Muhsin v. Comm’r, T.C. Memo. 1999-215.

DISASTER PAYMENTS. On May 21, 1999, the president determined that certain areas in Iowa are eligible for assistance under the Act as a result of severe storms, flooding and tornadoes beginning on May 16, 1999 (FEMA-1277-DR). Black Hawk, Bremer, Buchanan, Butler, Clayton, Clinton, Crawford, Delaware, Dubuque, Fayette, Harrison, Jones, Linn and Scott. The president on May 28, 1999, determined that certain areas in Jo Daviess County in Illinois are eligible for assistance under the Act as a result of severe storms and flash flooding beginning on May 16, 1999 (FEMA-1278-DR). Taxpayers in these areas who sustained losses attributable to the disaster may deduct them on their 1998 returns.

HOBBY LOSSES. The taxpayer was employed as a district sales manager of an insurance company with substantial income. The taxpayer purchased 5, 40 and 120 acre parcels for the construction of a residence and for use in fish farming, harvesting timberland, and growing row crops and Christmas trees. The taxpayer placed some of the land in government subsidy programs, received government disaster payments and made depreciable improvements to the land. The taxpayer reported losses from the farming activities for all seven tax years since the purchase of the property. Due to equipment failure, the fish farming activity produced only minimal sales of fish and the loss of most of the fish. At the time of the trial, no fish were being raised while a wind powered system was being installed. The Christmas tree operation had not yet produced any salable trees but the taxpayer estimated that sales would begin within two years after the trial. Although the taxpayer had begun some management of the timberland, no trees had yet been cut for sale. The taxpayer hired a local farmer to raise row crops on a small portion of the larger tract and enrolled 14 acres of the 40 acre tract in the federal CRP. The Tax Court first held that all of the taxpayer’s activities on the rural land would be considered as one activity for purposes of the hobby loss provisions. The court then held that the taxpayer did not operate the farming business with an intent to make a profit, based on the following factors. (1) The taxpayer kept separate records for the business through an accountant but the taxpayer did not present the records into evidence, several checks were made for personal expenses and the books were not well organized. (2) The taxpayer did not expend much time on the farm other than that which contributed to the personal pleasure from rural life. The row crops were produced by an independent contractor. (3) The taxpayer failed to provide sufficient evidence that the land and business assets would appreciate in value. (4) The business had losses in all years of operation. (5) The taxpayer had substantial income from other sources which would be offset by the losses. (6) The taxpayer had not had past success with similar activities or much experience at the farming activities attempted. (7) The taxpayer and family derived personal and recreational pleasure from the activities. The appellate court reversed, holding that (1) the taxpayers’ records were sufficient in that the taxpayers, their accountant and the IRS had been able to determine the taxpayers’ profits and losses; (2) the taxpayers spent considerable and tenacious efforts to make the farm profitable; (3) the taxpayers demonstrated an honest expectation of appreciation of assets; (4) the losses resulted from unexpected adverse weather and animal damage; (5) although the taxpayers had substantial other income, the losses were actual out-of-pocket losses and not paper losses; (6) the record showed that the taxpayers had a record of successful business endeavors; and (7) the personal pleasure activities often were undertaken to protect the business, such as deer hunting to remove crop-eating deer. Holmes V. Comm’r, 99-2 U.S. Tax Cas. (CCH) ¶ 50,642 (6th Cir. 1999), rev’g, T.C. Memo. 1997-401.

LIKE-KIND EXCHANGES. The taxpayer owned a one-half interest in 39,000 acres of timberland with the other half interest owned by a corporation. The majority of the corporation was owned by the taxpayer’s son. Because of a disagreement as to the use of the timberland, the parties agreed to exchange a portion of each’s half interest such that each would solely own an equal number of acres. The corporation then planned to harvest and sell the timber and the taxpayer planned to retain the timberland as an investment. The IRS ruled that the exchange would qualify as a like-kind exchange and that the corporation’s disposition of the timberland would have no effect on the like-kind exchange treatment of the exchange. Ltr. Rul. 9926045, April 2, 1999.

LOSSES. The taxpayer was a corporation which purchased property from a major shareholder at an arm’s-length, fair-market-value price. The shareholder owned more than 50 percent of the value of the stock in the corporation. The purchase price was paid to the shareholder in the form of an annuity, using the annuity tables contained in the predecessor regulations to Treas. Reg. §20.2031-7. Thereafter, the taxpayer sold the property to unrelated third parties at a price equivalent to the fair market value of the property. The major shareholder was still alive when the property was sold. The taxpayer recognized no gain or loss on the sale. Annuity payments were made to the shareholder until the taxpayer decided to terminate the annuity by making a payment to the shareholder of the present value of the remaining annuity payments. The total payments made under the annuity contract, including the final payment, exceeded the sales price of the property to the unrelated third parties. In accordance with Rev. Rul. 55-119, 1955-1 C.B. 352, which applies to taxpayers not engaged in the business of writing annuities (which is the case here), the taxpayer took a capital loss deduction on its return for the year of the annuity buyout. In a field service advice, the IRS ruled that the loss deduction was allowed. The IRS also ruled that I.R.C. § 267(a) did not prevent recognition of the loss because the taxpayer failed to present any evidence to substantiate the charitable and miscellaneous deductions. Muhsin v. Comm’r, T.C. Memo. 1999-215.

PENSION PLANS. The taxpayers were teachers who owned interests in a retirement fund. The school district started a new
retirement program and encouraged the taxpayers to change to the new fund. The taxpayers received all the money in the old fund and transferred the money to the new program. In a decision designated as not for publication, the court held that the funds were subject to the 15 percent excise tax of I.R.C. § 4980A(a). Scallion v. United States, 99-2 U.S. Tax Cas. (CCH) ¶ 50,644 (4th Cir. 1999), aff’g, 98-1 U.S. Tax Cas. (CCH) ¶ 50,284 (D. Md. 1998).

RENTAL PROPERTY. The taxpayers purchased a building which was used for six residential apartments. The court found that the taxpayers terminated all of the leases in 1993 and began renovation of the entire building for use as their residence. The court disallowed depreciation and other deductions associated with the maintenance of the building for 1994 and 1995 because the building was not held for a trade or business use after termination of the leases. Towles v. Comm’r, T.C. Memo. 1999-223.

RETURNS. The IRS has announced that approximately 2.2 million taxpayers who received vouchers for Form 1040-ES, Estimated Tax for Individuals, in late May, received misprinted versions. The second quarter forms should have had the due date of June 15, 1999 and the fourth quarter forms should have the due date of January 18, 2000. Second quarter payments with postmarks of June 16, 1999 will be accepted as timely filed.

S CORPORATIONS-ALM § 7.02[3][c].

DISCHARGE OF INDEBTEDNESS. The taxpayer was a shareholder in an S corporation which was a partner in a joint venture which realized discharge of indebtedness income in 1991. The taxpayer increased the basis of the taxpayer’s S corporation stock by the taxpayer’s share of the discharge of indebtedness income passed through the S corporation. At the time of the discharge of the indebtedness, the S corporation was insolvent and had net operating losses. The increase in the stock basis enabled the taxpayer to deduct the carried-over losses in a later year. The IRS argued that the discharge of indebtedness income was not an item of income for purposes of determining stock basis because discharge of indebtedness income was excluded under the insolvency exclusion rule of I.R.C. § 108. The Tax Court held that, because the corporation was insolvent, I.R.C. § 108 caused an exclusion of the discharge of indebtedness income at the corporation level which was offset by reduction in tax attributes of the corporation, leaving no tax consequences to flow to the shareholders such as would increase the shareholders’ basis in stock. Gillett v. United States, 99-2 U.S. Tax Cas. (CCH) ¶ 50,645 (10th Cir. 1999), aff’d sub nom., Winn v. Comm’r, T.C. Memo. 1998-71, withdrawing T.C. Memo. 1997-286; Nelson v. Comm’r, 99-2 U.S. Tax Cas. (CCH) ¶ 50,646 (10th Cir. 1999), aff’d, 110 T.C. 114 (1998).

SELF-EMPLOYMENT TAX. The taxpayer operated a retail store and created inventions in the taxpayer’s spare time. The taxpayer received a patent for a microwave product. The taxpayer sued two companies for infringement of the patent and received settlement payments and licensing agreements. The taxpayer argued that the settlements and licensing fees were not self-employment income because the taxpayer was not in the business of inventing. The court held that the taxpayer was not in the business or trade of inventing because the taxpayer did not develop or design inventions on a continuous or regular basis; therefore, the payments were not self-employment income. Levinson v. Comm’r, T.C. Memo. 1999-212.

TAX LIENS. The IRS has issued proposed regulations providing that a district director, the director of a service center or the Assistant Commissioner (International) (the director) may withdraw a notice of federal tax lien if the director determines that (1) the filing of the notice of federal tax lien was premature or otherwise not in accordance with the administrative procedures of the Secretary; (2) the taxpayer has entered into an agreement under section 6159 to satisfy the liability for which the lien was imposed by means of installment payments, unless the agreement by its terms provides that the notice will not be withdrawn; (3) the withdrawal of notice will facilitate collection of the tax liability for which the lien was imposed; or (4) the withdrawal of notice would be in the best interest of the taxpayer, as determined by the National Taxpayer Advocate, and in the best interest of the United States, as determined by the director. The notice of federal tax lien is withdrawn by filing a notice of withdrawal in the office in which the notice of federal tax lien is filed and providing the taxpayer with a copy of the notice. Following the withdrawal of a notice of federal tax lien, chapter 64 of subtitle F, relating to collection, is applied as if the IRS had never filed a notice of federal tax lien. The withdrawal of a notice of federal tax lien does not affect the underlying tax lien. The withdrawal simply relinquishes any lien priority the IRS had obtained under I.R.C. § 6323 when the IRS filed the notice being withdrawn. 64 Fed. Reg. 35102 (June 30, 1999).

TRUSTS. The taxpayer was a limited partner in a real estate investment trust (REIT) which owned timberland. The partnership entered into timber cutting contracts with third parties to cut, harvest and sell the timber. The partnership would retain an economic interest in the timber under the agreements and would have passive income from the proceeds of the agreements. The partnership did not cut, harvest or merchandise any of the timber. The partnership alleged that the income from the agreements would qualify under I.R.C. § 631(b). The IRS ruled that, provided that the timber cutting agreements entered into by the partnership were governed by § 631(b), the gross income derived from the disposal of timber pursuant to the cutting agreements would constitute gross income derived from gain from the sale or disposition of real property (or interests in real property) which is not property (or interests in real property) described in I.R.C. § 1221(1), for purposes of I.R.C. §§ 856(c)(2)(D) and 856(c)(3)(C). Also, such income would not be treated as prohibited transaction income under I.R.C. § 857(b)(6) which imposes a 100 percent tax on a REIT for such transactions. Ltr. Rul. 925015, March 19, 1999. *Agricultural Law Manual (ALM).
could remove improvements so long as the land was returned to its former condition. The plaintiff sued for reimbursement for the remaining sugarcane plants and stubble. The defendants sought offset for the amount of sugarcane plants and stubble which were on the land when the leases began. The court found that no evidence was presented as to the amount of plants and stubble on the land at commencement of the leases. The court held that the defendants were not entitled to offset for the value of improvements on the land at commencement of the leases because the leases contained no provision for such offset. The defendants also argued that La. Civil Code art. 493 limited the plaintiff to recovery only for plantings made within 90 days before the defendants’ demand for the plaintiff to remove improvements from the property. The court held that the defendants’ termination notice was not a demand under the statute; therefore, the plaintiff was entitled to compensation for all plant and stubble on the land. The court noted that the defendants leased the land to another sugarcane grower who used the remaining plant and stubble to grow more sugarcane, demonstrating the value of the remaining improvements to the defendants. Caballero Planting Co., Inc. v. Hymel, 713 So.2d 1277 (La. Ct. App. 1998).

**PARTNERSHIPS**

**DEFINITION.** In 1968, two brothers executed a written partnership agreement for the operation of a ranch for ten years. However, the ranch was never formally run as a partnership and no change in the operation occurred at the end of the ten years until the death of one brother. The surviving brother had claimed all of the ranch losses on tax returns and had made references to the ranch as owned by him and the other brother as the hired man. The court held that the partnership agreement and testimony of the surviving brother demonstrated that the ranch was operated as a partnership, entitling the decedent’s estate to one-half of the partnership assets. In re Estate of Bolinger, 971 P.2d 767 (Mont. 1998).

**PRODUCT LIABILITY**

**PESTICIDE.** The plaintiff purchased a pesticide for the control of weevils in stored peas. The pesticide was manufactured by the defendant. The plaintiff sought recovery in breach of express and implied warranty from statements on the package labels, and manuals and for negligent oral misrepresentations by the defendant’s employees. The court held that the breach of warranty claims were preempted by FIFRA because the claims arose from information on the product’s labels. The plaintiff had plead two kinds of oral representations by the defendant’s employees. The first involved statements which reiterated the information on the product label. The second set of representations involved information comparing the product to other products. The court held that the first oral representations were not actionable because they involved information on the product label and were preempted by FIFRA. However, the court held that the claim arising from the second set of oral representations involving comparison of the product to other products was not preempted by FIFRA because the comparative representations involved information not found on the label and were voluntarily made for commercial advantage. M & H Enterprises v. Tri State Delta Chemicals, Inc., 984 S.W. 2d 175 (Mo. Ct. App. 1998).

**SECURED TRANSACTIONS**

**ATTACHMENT.** The plaintiff was a farm equipment dealer which entered into an installment contract for sale of a combine. The person who negotiated the contract was not the buyer and forged the signature of the buyer on the agreement in order to obtain possession of the combine. The forger then borrowed money from the defendant, using the combine as collateral. The defendant repossessed the combine when the forger failed to make payments on the loan. The plaintiff sued for conversion, claiming a priority interest in the combine. The defendant claimed a priority security interest as a good faith purchaser. The court held that the forger’s interest in the combine was void, not voidable; therefore, the forger had no property rights in the combine because of the forgery. Because the forger had no property rights in the combine, the defendant’s security interest could not attach to any interest of the forger in the combine. The court held that, because the plaintiff’s title was never conveyed, the plaintiff retained title to the combine. Moore Equipment Co. v. Halferty, 980 S.W.2d 578 (Mo. Ct. App. W.D. 1998).

**FEDERAL FARM PRODUCTS RULE.** The plaintiff had loaned money to a cotton producer and obtained a security interest in the cotton grown by the producer. The plaintiff provided notice of the security interest to the defendant cotton brokerage. The producer delivered the cotton to the brokerage warehouse which issued electronic warehouse receipts which were sold to several cotton merchants. The security agreement prohibited the delivery of the cotton to a warehouse without prior permission of the plaintiff. The plaintiff sued the brokerage and cotton merchants for conversion, alleging a priority security interest under the federal farm products lien rule. The court held that the plaintiff had fully complied with the federal farm products rule requirements. The defendants argued that the U.S. Warehouse Act, 7 U.S.C. § 259, preempted the federal farm products rule where an electronic warehouse receipt has been issued. The court held that, although the Warehouse Act did provide for a priority scheme, the Act did not exclude application of other federal and state law concerning priority of security interests; therefore, the Act did not preempt the federal farm products rule. The defendants also argued that the plaintiff had acquiesced in the delivery of the cotton to the warehouse, but the court held that insufficient evidence existed to grant the defendants a summary judgment on that issue. Agricredit Acceptance, LLC. v. Hendrix, 32 F. Supp.2d 1361 (S.D. Ga. 1998).

**CITATION UPDATES**

In re St. Francis, 232 B.R. 518 (Bankr. N.D. GA. 1999) (sale of residence) see p. 75 supra.
The Agricultural Law Press and the Montana Society of CPAs present

“SEMINAR IN THE ROCKIES”

AGRICULTURAL TAX AND LAW SEMINAR

by Neil E. Harl and Roger A. McEowen

August 4-6, 1999

Rock Creek Resort, Red Lodge Montana

Come join us in the clear, wild mountain air of the Montana Rocky Mountains for a world-class seminar on the hottest topics in agricultural tax and law. Space is limited for this wonderful opportunity to gain expert insight into agricultural law and enjoy the splendor of one of America’s greatest natural wonders.

The seminar will be Wednesday, Thursday, and Friday, August 4-6, 1999 at the Rock Creek Lodge, near Red Lodge located in the heart of the magnificent Montana Rockies. Registrants may attend one, two or all three days, with separate pricing for each combination. On Wednesday, Dr. Harl will speak about farm and ranch income tax. On Thursday, Dr. Harl and Roger McEowen will cover farm and ranch estate planning. On Friday, Roger McEowen will cover current developments in all other areas of agricultural law. Your registration fee includes a copy of Dr. Neil Harl’s seminar manuals, Farm Income Tax (almost 300 pages) and Farm Estate and Business Planning: Annotated Materials (nearly 500 pages) and a copy of Roger McEowen’s seminar materials, all of which will be updated prior to the seminar. The seminar materials will also be available on CD-ROM for a small additional charge. Continental buffet breakfasts and break refreshments are also included in the registration fee.

Special room discounts are available for all rooms at the Rock Creek Resort. The resort is located 60 miles south of Logan International Airport in Billings, MT and 60 miles north of Yellowstone Regional Airport in Cody, WY.

The seminar registration fees for current subscribers to the Agricultural Law Digest, the Agricultural Law Manual, or Principles of Agricultural Law and members of the MSCPAs are $175 (one day), $350 (two days) and $500 (three days). The registration fees for nonsubscribers and nonmembers are $195, $380 and $560 respectively.

There is still plenty of room, but hurry, time is running short.

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Whether or not you can make it to the Montana seminar, check out our next seminar:

The Agricultural Law Press presents the 4th Annual “Seminar In Paradise”

FARM ESTATE AND BUSINESS PLANNING SEMINAR

by Neil E. Harl and Roger A. McEowen

January 24-28, 2000

Royal Lahaina Resort, Island of Maui, Hawai’i

Spend a week in Hawai’i in January 2000! 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 and Prof. Roger A. McEowen. The seminar is scheduled for January 24-28, 2000 at the spectacular ocean-front Royal Lahaina Resort on the Island of Maui, 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. That is 20 hours of practical instruction in the most important areas of agricultural estate and business planning. Each participant will receive a copy of Dr. Harl's 500 page seminar manual, Farm Estate and Business Planning: Annotated Materials, which will be updated just prior to the seminar. A CD-ROM version will also be available for a small additional charge.

Attendees are eligible for substantial discounts on hotel rooms at the Royal Lahaina Resort, the site of the seminar.

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

Call/fax Robert Achenbach at 1-541-302-1958 or e-mail: aglaw@aol.com, if you need a brochure for either seminar.

Also, see our web site for details and registration forms:

http://members.aol.com/aglaw/agpub

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