Cases, Regulations and Statutes

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1999 under a production flexibility contract for the farm under the Agricultural Market Transition Act....”\textsuperscript{15} That provision is titled, “Market Loss Assistance.”\textsuperscript{16} Because the legislation does not refer to the payments as “disaster payments” or payments “for the destruction or damage to crops,” the payments do not appear to be deferrable to 2000.\textsuperscript{17}

Similar language was used in the provision authorizing payments to producers of the 1999 crop of oilseeds “that are eligible to obtain a marketing assistance loan.”\textsuperscript{18} Again, the payments do not appear to be deferrable.\textsuperscript{19}

An amount of $325,000,000 was authorized “to provide assistance directly to livestock and dairy producers...to compensate the producers for economic losses incurred during 1999.”\textsuperscript{20} Those amounts are income to the producers in the year received.

Benefits to producers of upland cotton,\textsuperscript{21} peanuts\textsuperscript{22} and tobacco\textsuperscript{23} are likewise not deferrable.

The legislation also authorizes the advance payment in full of remaining payments under production flexibility contracts through 2002.\textsuperscript{24} Those payments would also be taxable in the year of receipt. Legislation was enacted in 1998 making payments under the Federal Agriculture Improvement and Reform Act of 1996 not subject to constructive receipt, effective for taxable years after 1995.\textsuperscript{25} That legislation followed the enactment of legislation advancing, on an elective basis, the spring, 1999, federal farm program payment to the autumn of 1998.\textsuperscript{26}

The 1999 legislation increased the limit on marketing loan gains and loan deficiency payments for the 1999 crop year to $150,000.\textsuperscript{27}

In conclusion

With net farm income expected to be lower in 1999 than in recent years, it may be good tax planning anyway to include payments in 1999 rather than to defer taxability of payments to 2000. However, the taxpayer does not have that choice except for 1999 disaster payments for crop losses.\textsuperscript{28}

FOOTNOTES


4 I.R.C. § 451(d).


6 Treas. Reg. § 1.451-6(a)(2).

7 Treas. Reg. § 1.451-6(b)(2).


9 Id. See Notice 89-55, 1989-1 C.B. 696.

10 I.R.C. § 451(d).

11 Id.

12 See n. 1 supra.


14 See I.R.C. § 451(d).


16 Id.

17 I.R.C. § 451(d).


19 See I.R.C. § 451(d).


CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

COTENANTS. The plaintiffs first received the farm property as remainder holders after a life estate, created in 1968, held by the plaintiffs’ father. The father received the life estate upon the death of the plaintiffs’ mother who had received the property from her parents in 1955. However, the plaintiffs discovered, in a title opinion in 1996, that the 1955 transfer from the grandparents to the mother was actually to the mother and father as tenants in common. Thus, the father owned one-half of the property in fee and that one-half interest passed, in part, to other heirs of the father. The plaintiffs sought to clear the title, arguing that the plaintiffs acquired title by adverse possession from 1968 to the present action. The plaintiffs actively farmed the land and paid the taxes. The defendants argued that adverse possession did not...
apply between cotenants unless there was an ouster of one cotenant. The court held that an exception to this rule applied in that the mother's will transferred the entire fee, first as a life estate to the father, and then as a remainder to the plaintiffs. The court held that the transfer of an entire interest by the creation of the remainder to the plaintiffs acted as an ouster of the father's cotenancy interest, allowing the plaintiffs to acquire title by adverse possession of the property. Buchanan v. Rediger, 975 P.2d 1225 (Kan. Ct. App. 1999).

**BANKRUPTCY**

GENERAL-ALM § 13.03.9

EXEMPTIONS.

Earned Income Credit. The debtor filed for Chapter 7 in November 1998 and filed the 1998 tax return in 1999, claiming a refund. The debtor claimed the earned income credit portion of the refund as either (1) not estate property, (2) exempt as wages under 15 U.S.C. § 1673 or (3) exempt under Wyo. Stat. § 42-2-113 as a public assistance payment. The court held that (1) the refund was estate property; (2) the earned income credit was a refund of taxes, not wages; and (3) was not eligible for the public assistance exemption. In re Trudeau, 237 B.R. 803 (Bankr. 10th Cir. 1999).

Wages. The debtor was an entertainer and sole shareholder of an S corporation. The debtor's entertainment contracts were handled by the corporation. Just before filing for bankruptcy, the corporation paid most of its cash to the debtor as "wages." The debtor claimed an exemption for the "wages." The trustee objected to the exemption, arguing that the debtor was an independent contractor and did not receive exempt wages. The court held that the debtor was an employee of the S corporation because the entertainment contracts, payments and expenses were handled by the corporation. The case was remanded for evidence as to how much of the payment was actually wages, since the payment was a large lump-sum made on the eve of filing for bankruptcy. In re Carter, 182 F.3d 1027 (9th Cir. 1999).

FEDERAL TAX-ALM § 13.03[7].

Discharge. The debtor, an attorney, failed to file income tax returns for six consecutive tax years. The evidence demonstrated that the debtor paid some of the taxes as estimated payments and payments with requests for extension. The evidence also showed that the debtor had sufficient income and funds to pay the amounts owed. The court found that, during the first two years, the debtor's failure to file was caused by actions of the debtor's former spouse, and the court held that the taxes owed for those two years were dischargeable because the debtor did not willfully attempt to evade payment of those taxes. The court held that the taxes owed for the other tax years were nondischargeable because the debtor was aware of the need to pay the taxes, had the money to pay the taxes and chose not to file accurate returns and pay the full taxes due. In re Weiss, 237 B.R. 600 (Bankr. E.D. Pa. 1999).

The debtor failed to file income tax returns and pay taxes for several tax years. For other tax years in question, the debtor filed returns but did not pay the taxes. The debtor also filed false employment forms with the debtor's employer, claiming excessive exemptions. The IRS filed a claim for the unpaid taxes and sought a ruling that the taxes were nondischargeable because of the debtor's willful attempt to evade taxes. The IRS filed a tax lien and the debtor sought to exclude the debtor's interest in a pension plan from the tax lien. The court held that the evidence demonstrated that the debtor failed to pay the taxes when the debtor knew the taxes were owed and had funds to pay the taxes. The court also held that the willfulness of the failure to pay was demonstrated by the false employment forms. The court also held that the tax lien attached to the pension funds, whether or not the funds were eventually held to be exempt, which was not decided in this case. In re Tudisco, 183 F.3d 133 (2d Cir. 1999).

Post-petition interest. The Chapter 7 trustee filed the estate's income tax returns for four years in 1996. The IRS assessed penalties and interest for the late taxes. The trustee included the penalties and interest in the final distribution as an administrative expense. The court held that Section 503(b) did not include interest on post-petition interest as an administrative expense. In re Weinstein, 237 B.R. 4 (Bankr. D. Mass. 1999).

The taxpayer originally filed for Chapter 13 and made payment of all tax claims under the plan. However, the taxpayer did not receive a discharge in that case because the taxpayer converted the case to Chapter 7 before completing all plan payments. The IRS assessed post-petition penalties and interest on the tax claims after the Chapter 7 case was closed. The court held that, although the penalties and interest would have been discharged in the Chapter 13 case if the taxpayer had received a discharge in that case, the penalties and interest were not discharged in the Chapter 7 case and the taxpayer remained liable for them once the Chapter 7 case was closed. In re Holway, 237 B.R. 217 (Bankr. M.D. Fla. 1999).

**ENVIRONMENTAL LAW**

CLEAN WATER ACT. The plaintiff brought actions under the federal Clean Water Act and the Washington Pollution Control Act against the defendants, livestock confinement facility operators for improper discharge of animal wastes. The defendants initially argued that they were not concentrated animal feeding operations (CAFOs) as defined in the CWA, but the court found that each facility confined and maintained more than 700 head of dairy cattle at each facility. The defendants also argued that the entire facilities were not point sources subject to the CWA, but that only the portions of the facilities which involved animal waste were regulated by the CWA. The court held that the CWA did not include any provision for classifying only a portion of a CAFO as a point source for pollution; therefore, the entire facility was subject to the CWA as a pollution point source. However, the court held that an issue of fact remained as to the extent the portions of the manure spreading operation on the land around the facility were part of the
point source regulated by the CWA. The court also held that a fact issue remained as to whether the drains, ditches and canals around the facilities were regulated by the CWA as “waters of the United States.” Finally, the court held that the plaintiffs had a private right of action to enforce the provisions of the Washington Pollution Control Act. Community Ass’n for Restoration v. Sid Koopman Dairy, 54 F. Supp.2d 976 (E.D. Wash. 1999).

**CONTRACTS**

RESCISSIO.N. The plaintiff transferred a farm to a daughter and her husband, retaining a life estate in the farm buildings. The plaintiff claimed that the daughter agreed to support the plaintiff for the rest of the plaintiff’s life in exchange for the transfer. After disagreements arose, the daughter attempted to evict the plaintiff and file for bankruptcy. The bankruptcy plan proposed to sell the farm to pay the daughter’s debts and the plaintiff objected to the plan as unfeasible. The plaintiff argued that the eviction rescinded the contract because the daughter no longer agreed to support the plaintiff. The property transfer agreement did not contain any promise of support. The court held that the plaintiff failed to provide evidence that the conveyance was made in exchange for a promise of support or that the parties intended the conveyance to be in exchange for the promise of support. In re Fillion, 181 F.3d 859 (7th Cir. 1999).

**FEDERAL AGRICULTURAL PROGRAMS**

**LIVESTOCK INDEMNITY PROGRAM.** The CCC has issued interim regulations which set forth the terms and conditions for the 1999 Livestock Indemnity Program, authorized by the 1999 Emergency Supplemental Appropriations Act. The program will provide monetary assistance to producers for livestock losses due to natural disasters occurring between May 2, 1998, and May 21, 1999. Also, this rule sets out a clarifying change regarding offsets and withholdings from payments made in the crop disaster program operated under 7 CFR Part 1477. 64 Fed. Reg. 58766 (Nov. 1, 1999).

**LIVESTOCK MANDATORY REPORTING.** The Congress has enacted the Livestock Mandatory Reporting Act of 1999. The Act establishes a requirement that packers of cattle, swine, and lambs report information on the livestock passing through their facilities. A packer includes “any person engaged in the business of buying cattle [or swine] in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products... for sale or shipment in commerce, or of marketing meat or meat food products... in an unmanufactured form acting as a wholesale broker, dealer or distributor in commerce.” The term packer as to cattle packers also refers only to federally inspected processing plants which slaughter an average of at least 125,000 head of cattle over the previous last five years. Pub. L. No. 106-78, 106th Cong., 1st Sess. (1999).

**MEAT AND POULTRY INSPECTION.** The defendant was a custom meat slaughterer and was indicted for violating the Federal Meat Inspection Act, 21 U.S.C. § 610(a) for failure to mark the meat as “Not for Sale” and for failing to operate the business in a sanitary manner. The defendant’s operation prepared meat from carcasses supplied by the customers who received the prepared meat. The defendant argued that the Act did not apply to the defendant because the meat was not offered for sale to customers. The court held that the Act applied to operations which prepared meat “for commerce” and that term included meat custom prepared for customers who supplied the animals for slaughter. United States v. Turner, 50 F. Supp.2d 687 (E.D. Mich. 1999).

**PERISHABLE AGRICULTURAL COMMODITIES ACT.** The AMS has issued proposed regulations under PACA which provide that a Limited Liability Company (LLC) is a legal entity under PACA and that members of an LLC and/or any other person authorized by the members to conduct business on behalf of an LLC are considered “responsibly connected” with the LLC. An LLC will be required to provide information about its members and organization in order to receive a PACA license. 64 Fed. Reg. 57405 (Oct. 25, 1999).

**TUBERCULOSIS.** The APHIS has issued interim regulations to allow zones within a state to be assigned different risk statuses and to clarify the conditions for assigning a particular risk status for bovine tuberculosis. The interim regulations also increase the amount of testing that must be done before certain cattle and bison may be moved interstate. 64 Fed. Reg. 58769 (Nov. 1, 1999).

**FEDERAL ESTATE AND GIFT TAX**

**ALTERNATE VALUATION DATE.** The decedent’s estate included shares of stock in a trust. The estate claimed that the stock was eligible for a blockage discount. The stock was sold within six months after the decedent’s death. The estate made a protective election to value the shares as of the alternate valuation date if the value of the stock and the tax on the stock were determined to be higher on the date of death. The IRS held that the protective election was allowed. Ltr. Rul. 9942015, July 22, 1999.

**GIFTS.** The decedent had received a one-half interest in the estate of the decedent’s predeceased spouse. The one-half interest was eligible for the marital deduction which the predeceased spouse’s estate claimed. The predeceased spouse’s estate was not closed before the decedent died, 14 years later, and the estate generated investment income. The decedent was entitled to one-half of this investment income but no distributions were made. Instead, the estate income was used in the family farming and other operations in which the decedent’s children participated. The decedent had given interests in the farm and other estate assets over the 14 years in amounts which approximated the annual exclusion amount. The IRS argued that the use of this investment income in the business operations was a series of gifts to the children. The court found that, although the decedent was
entitled to one-half of this investment income, the decedent’s estate did not include any of that income. The estate argued that the decedent had contributed the investment income to the family operations which were run as a partnership with the children. The court held that no partnership existed because (1) no separate bank accounts were maintained, (2) no Form 1065 was filed for any tax year, and (3) no partnership agreement was executed. The estate also argued that the decedent contributed the investment income to the farming operations as a business investment as the decedent’s share. The court found that the other family members did not contribute significant amounts of money or services to match the decedent’s contribution; therefore, the additional amounts contributed by the decedent were gifts to the children. **Estate of Hendrickson v. Comm’r, T.C. Memo. 1999-357.**

**REVOKEABLE TRANSFERS.** Before the decedent died the decedent executed a durable power of attorney in favor of an heir. Before the decedent died the heir issued several checks on the decedent’s checking account to various heirs but the checks were not delivered or cashed until after the decedent died. The estate argued that, under the relation-back doctrine, the date of the gifts related back to the date the checks were executed, removing the gifts from the decedent’s gross estate. The estate claimed that the decedent could not revoke the gifts because the decedent was too ill. The estate cited **Estate of Metzger v. Commissioner, 100 T.C. 204 (1993), aff’d, 38 F.3d 118 (4th Cir. 1994),** as allowing use of the relation-back doctrine to treat the checks as gifts on the date of execution, instead of the date the check is cashed. The court distinguished Metzger as applying only to charitable gifts and held that noncharitable gifts remain revocable until the decedent’s death if not cashed before the decedent’s death. The appellate court affirmed the decision without a published opinion. **Estate of Newman v. Comm’r, 99-2 U.S. Tax Cas. (CCH) ¶ 60,358 (D.C. Cir. 1999), aff’g, 111 T.C. No. 3 (1998).**

**VALUATION.** The decedent owned undivided interests in several parcels of real property. The IRS ruled that one proper method of valuation of the undivided interests, for estate tax purposes, was to first determine the fair market value of the fee interest of each property, multiply that amount by the undivided interest fraction, and subtract from each value the share of the costs of partition allocable to the undivided interest. Thus, the estate could deduct the hypothetical costs of partitioning the undivided interests from the fair market value of each undivided interest. **Ltr. Rul. 9943003, June 7, 1999.**

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**FEDERAL INCOME TAXATION**

**BUSINESS EXPENSES.** The taxpayer received income from lecturing and claimed expenses for, among other items, rental of formal clothing and for lost luggage. The taxpayer did not provide any written receipts which itemized the clothing rental and did not identify the purposes for which the clothing was worn. The taxpayer did not provide any police report for the lost luggage or any evidence of the cost of the luggage or its contents. The court disallowed both deductions for lack of substantiation. **McBrayer v. Comm’r, T.C. Memo. 1999-360.**

**CASUALTY LOSS.** In 1992 through 1995, the taxpayer claimed a casualty loss deduction for a “nonviable fetus” which was aborted by the taxpayer’s former spouse in the mid-1970s. The court disallowed the deduction as untimely claimed and because a nonviable fetus was not property for purposes of I.R.C. § 165(c)(3). **Riley v. Comm’r, T.C. Memo. 1999-363.**

**DEPRECIATION.** Although the 1993 field service advice has all dates removed, apparently the taxpayer had used a fully depreciated automobile in a trade or business for less than 50 percent of total use in a tax year following the last tax year in which I.R.C. § 179 expense depreciation was taken. The IRS ruled that, even though the reduction in business use occurred in a tax year after the last recovery year had expired, the taxpayer had to recapture any excess depreciation taken above that which would have been taken using the straight-line method over five years. **FSA 1993-1007-1, Oct. 7, 1993.**

**DISASTER PAYMENTS.** The President, on Sept. 23, 1999, determined that certain areas in Connecticut are eligible for assistance from the federal government under the Disaster Relief and Emergency Assistance Act as a result of Tropical Storm Floyd on Sept. 16, 1999. Accordingly, a taxpayer who sustained a loss attributable to the disaster occurring in Litchfield County may deduct the loss on his or her 1998 federal income tax return. **FEMA-1302-DR.** On Sept. 18, the President determined that certain areas in Pennsylvania are eligible for assistance from the federal government under the Act as a result of Hurricane Floyd on Sept. 16, 1999. A taxpayer who sustained a loss attributable to the disaster occurring in Berks County may deduct the loss on his or her 1998 federal income tax return. **FEMA-1294-DR.** On Sept. 18, the President determined that certain areas in Virginia are eligible for assistance from the federal government under the Act as a result of Hurricane Floyd on Sept. 13, 1999. Taxpayers who sustained losses attributable to the disaster occurring in the counties of Brunswick, Charles City, Essex, New Kent, Northampton, Richmond and Westmoreland may deduct the losses on their 1998 federal income tax returns. **FEMA-1293-DR.** On Oct. 15, 1999, the President determined that certain areas in Arizona are eligible for assistance from the federal government under the Act as a result of severe storms, flooding and high winds beginning on Sept. 14, 1999. Accordingly, taxpayers who sustained losses attributable to the disaster occurring in Maricopa County may deduct them on their 1998 federal income tax returns. **FEMA-1304-DR.** On Oct. 20, 1999, the President determined that certain areas in Florida are eligible for assistance from the federal government under the Act as a result of Hurricane Irene beginning on Oct. 14, 1999. Accordingly, taxpayers who sustained a loss attributable to the disaster occurring in the counties of Brevard, Broward, Collier, Dade, Glades, Hendry, Highlands, Indian River, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Polk, St. Lucie, Seminole and Volusia may deduct the loss on his or her 1998 federal income tax return. **FEMA-1306-DR.**

**HOBBY LOSSES.** The taxpayer was a medical doctor who had purchased a cattle ranch 43 miles from the taxpayer’s
that the taxpayer had no basis left in the corporation in the tax year involved and could not claim any additional share of company losses. **Hogan v. Comm’r, T.C. Memo. 1999-365.**

**CONVERSION TO PARTNERSHIP.** An S corporation converted to a limited partnership by first creating an LLC which purchased an equal interest in the corporation and then converting the corporation to an LP with the original shareholder as limited partner and the new LLC as a general partner. The conversion was intended to qualify as a “type F” reorganization, I.R.C. § 368(a)(1)(F) so as to not lose the S corporation election. The new LP elected to be taxed as an association under Treas. Reg. § 301.7701-3. The IRS ruled that the LP did not lose its S corporation status because of the conversion. **Ltr. Rul. 9942009, July 16, 1999.**

**TRUSTS.** The taxpayer contributed S corporation stock to an irrevocable trust. The trust agreement provided that the trustees had the authority to make loans to the taxpayer, and the taxpayer had the authority to borrow from the trust, all or any part of the corpus and/or income of the trust, without adequate security, and subject to the trust agreement and in exchange for the taxpayer’s promissory note of equal value to the amount loaned. The S corporation and the taxpayer represented that it was their intention that this provision allowed the taxpayer to exercise this power unconditionally, without the approval of the trustees, or any other party. The trust agreement also provided that the taxpayer had the right and power at any time, acting in a nonfiduciary capacity and without consent of the trustees, to withdraw any asset of the trust if the taxpayer simultaneously contributed other property of an equivalent value. The IRS ruled that the taxpayer would be treated as the owner of the trust and that the trust was an eligible shareholder of the S corporation. **FSA Ltr. Rul. 9942017, July 22, 1999.**

**SAFE HARBOR INTEREST RATES**

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**SALE OF RESIDENCE.** In a case involving tax law prior to passage of the residence exclusion, the taxpayers sold their previous residence for a gain in December 1991 and purchased a new residence for an amount less than the gain in May 1992. The taxpayers immediately began to plan and begin construction of a detached addition to the new residence. However, two years after the sale of the first house, the new addition was not in livable condition. The taxpayers had still not moved into the new addition over 6 years after beginning construction. The court held that the construction costs of the addition could not be added to the purchase price of the second residence for purposes of I.R.C. § 1034; therefore, the taxpayers were not eligible for rollover of the gain from the sale of the first house. **Parker v. Comm’r, T.C. Memo. 1999-347.**
TAX RATES. The IRS also announced the inflation adjusted tax tables and other inflation adjusted figures for 2000. The standard deductions for 2000 are $7,350 for joint filers, $6,450 for heads of households, $4,400 for single filers and $3,675 for married individuals who file separately. The personal exemption is $2,800. The income limit for the maximum earned income credit has increased to $6,920 for a qualifying individual with one child, $9,720 for a taxpayer with two or more children, and $4,610 for a taxpayer with no children. The EIC will be denied if the aggregate amount of certain investment income exceeds $2,400. Rev. Proc. 99-42, I.R.B. 1999--.

TRUSTS. A trust was established for a child of the grantors. Transfers of property and money to the trust were subject to the absolute power of the beneficiary to withdraw those transfers within 30 days. If the beneficiary failed to exercise the withdrawal power, the beneficiary retained a right to have all trust income allocable to the portion of the transfers subject to the power to withdraw, in the sole discretion of the trustee, distributed to the beneficiary or accumulated for future distribution to the beneficiary. The IRS ruled that, because the beneficiary had a power to withdraw all of the transfers of property and money to the trust, the beneficiary would be treated as the owner of the entire trust under I.R.C. § 678(a). Ltr. Rul. 9942037, June 7, 1999.

PRODUCT LIABILITY

HAY BALER-ALM § 2.04.* The plaintiff’s decedent was killed when the decedent became entangled in a round hay baler manufactured by the defendant. The plaintiff sued for negligence, strict liability and breach of implied warranty. The defendant sought summary judgment, arguing that the baler was not defectively designed and the plaintiff failed to show causation. The defendant claimed that there was no evidence that alternative designs were available and feasible. The plaintiff had provided evidence that other manufacturers were producing balers with additional safety features. The court held the plaintiff’s evidence was sufficient to raise a jury question as to negligent design. The court also denied summary judgment on the causation issue because the plaintiff’s experts would testify as to the defects in the baler which could have caused the injury, creating a jury question as to causation. The trial jury went on to render a verdict for the plaintiff and the appellate court affirmed. Kinser v. Gehl Co., 184 F.3d 1259 (10th Cir. 1999), aff’g, 989 F. Supp. 1144 (D. Kan. 1997).

STATE TAXATION

GREENHOUSES. The taxpayer operated an ornamental horticultural nursery which included polyethylene greenhouses. The greenhouses were constructed on cement posts embedded in the ground. The greenhouses were constructed by fastening metal hoops to the posts by steel bolts. The plastic was then stretched over the hoops to create the enclosure. Doors and exhaust fans were built into the ends of each greenhouse. The greenhouses had no permanent floor or foundation but cement walkways were poured inside each greenhouse. Each greenhouse had electricity, water and gas connections. The township tax tribunal ruled that the greenhouses were not part of the real property; therefore, the greenhouses were exempt from taxation as personal property used in agricultural operations. The court disagreed, holding that the greenhouses were annexed to the real property by bolts and gravity; therefore, the greenhouses were subject to taxation as part of the real property. The court noted that, although the greenhouses could be readily moved, they had utilities connected to them, a permanent walkway inside and were not moved as part of the nursery operation. Tuinier v. Bedford Charter Township, 599 N.W.2d 116 (Mich Ct. App. 1999).

TRESPASS

LIVESTOCK. The plaintiff grew pumpkins on land neighboring the defendant’s farm. The plaintiff sued in strict liability, under S.D.C.L. §§ 40-28-4, 40-28-18, for damages to the pumpkin crop caused by the defendants’ cattle when they trespassed on the plaintiff’s land. The suit was brought more than six months after the plaintiff discovered the damage from the trespass but within one year after the damage occurred. The defendant argued that the suit was barred by the statute of limitations for actions under Section 40-28-18. The statute required suits to be filed “no later than one year after the trespass occurred or six months after [the plaintiff] knew or should have known of the injury resulting from the trespass.” The court held that the statute was ambiguous and interpreted the statute to mean that the plaintiff could file an action within the later date of one year after the occurrence of the trespass or the date six months after the plaintiff knew or should have known about the injury caused by the trespass. Because the suit was filed within one year after the trespass, the suit was timely filed. Zoss v. Schaffers, 598 N.W.2d 550 (S.D. 1999).

CITATION UPDATES

Estate of Davenport v. Comm’r, 184 F.3d 1176 (10th Cir. 1999), aff’g, T.C. Memo. 1997-390 (gift) see p. 116 supra.

Estate of Magnin v. Comm’r, 184 F.3d 1074 (9th Cir. 1999), rev’g, T.C. Memo. 1996-25 (transfers with retained interests) see p. 117 supra.

Holmes v. Comm’r, 184 F.3d 536 (6th Cir. 1999), rev’g, T.C. Memo. 1997-401 (hobby losses) see p. 109 supra.
4th Annual

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Royal Lahaina Resort, Kaanapali Beach, Island of Maui, Hawai‘i

Celebrate the Millenium by leaving winter behind and spending a week in Hawai‘i in January 2000! Balmy trade winds, 70-80 degrees, palm trees, white sand Kaanapali beach 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 plenty of time to golf, play tennis or just lie in the warm Hawaian sun. A continental breakfast and break refreshments for each day are included in the registration fee. 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.

Here are some of 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 deduction (FOBD), 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 and medicaid trusts.
- Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.

**Early registration is important** to obtain the lowest airfares and insure availability of convenient flights at a busy travel time of the year. 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.

**Subscribers should have received their brochure.**

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