Cases, Regulations and Statutes

Robert P. Achenbach Jr.

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The result was valuation of the minority interest of the S corporation stock at $439 per share, down from an undiscounted value of $1818. 10

Precedential value of the decision

Will Estate of Smith 11 become a dominant precedent in valuing farm corporation stock? Certainly the decision breaks new ground in two areas—(1) the 26 percent discount rate for valuing the earnings stream and (2) the 50 percent discount from asset value to determine fair market value of the stock. The 35 percent discount for minority interest and non-marketability is not pathbreaking. A number of courts have approved comparable or even greater discounts 12 including some Circuit Courts of Appeal. 13

But a 50 percent discount from asset values to stock values and a 26 percent discount rate in valuing the earnings stream in addition to the discount for non-marketability set Smith v. Comm’r14 apart from most other decisions.

Impact on planning

Valuing stock for federal estate tax (or even federal gift tax) purposes is only one of the reasons why stock is valued. A major reason is that stock may be sold to younger family members, stock may be used to pay part of the compensation for younger employees and stock value may be an important element in dispositive plans routing stock to on-farm heirs and other assets to off-farm heirs. In all of these situations, tax considerations may lurk in the background but a major consideration is fairness within the family.

An obvious question—is the Smith v. Comm’r15 methodology likely to be viewed as equitable as between or among the heirs? And if that methodology is not employed, and other valuation approaches are used to value stock during life, will that influence the Internal Revenue Service—and the courts—as values are placed on the stock at death? Certainly, if Smith v. Comm’r16 is upheld on appeal, and if the principal concern is valuation for death tax purposes, the prudent planning approach would seem to be to avoid valuation methodologies that could be interpreted as placing a higher value on the stock at death. On the other hand, if frequent transfers of stock during life are contemplated, and considerations of fairness loom large, those factors should be weighed against a highly discounted value at death.

Another issue—is Smith v. Comm’r17 applicable to other forms of organization? Certainly the element of control may be a greater factor with corporations than with other organizational alternatives and the income tax consequences of liquidations may be more severe with corporations (particularly C corporations) than for organizational options based upon partnership tax treatment. However, the decision should carry some weight with valuation of the so-called pass-through entities based upon partnership tax status.

FOOTNOTES

1. T.C. Memo. 1999-368.
4. Id.
5. Id.
6. Id.
7. Id.
8. Id.
9. Id.
10. Id.
12. See, e.g., Furman v. Comm’r, T.C. Memo. 1998-365 (40 percent combined discount for minority interest and non-marketability and 10 percent to reflect fact majority owner was key person in management); Estate of Brookshire v. Comm’r, T.C. Memo. 1998-365 (40 percent discount allowed for stock in family-held grocery chain); Dockery v. Comm’r, T.C. Memo. 1998-114 (40 percent discount for minority interest and lack of marketability).
15. T.C. Memo. 1999-368.
16. Id.
17. Id.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

COLOR OF TITLE. The plaintiffs sought to quiet title to 1.2 acres of pasture land which lay on the plaintiff’s side of a creek which ran between the parties’ properties. The plaintiff claimed title under a deed which generally described the disputed land. The defendant claimed that the deed was insufficient color of title to the property because the deed did not contain a precise legal description of the disputed land. The plaintiff presented a surveyor as an expert witness who testified that the description was adequate to determine the boundaries of the land described in the deed. The court held that this evidence was sufficient to provide the plaintiff with
color of title to the disputed land. The defendant also claimed to have adversely used the disputed land for recreational uses but the court upheld the trial court’s determination that the defendant had not adversely used the disputed land. 

**Belcher v. Stone, 998 S.W.2d 759 (Ark. Ct. App. 1999).**

### BANKRUPTCY

**GENERAL-ALM § 13.03.*

**DISCHARGE.** In August 1997, the debtor was assessed $24.00 an acre under the Mississippi Boll Weevil Management Act (MBWMA). In May 1998, the debtor filed for Chapter 7 and sought to have the assessment held to be a dischargeable debt. The state argued that the assessment was a nondischargeable tax. Because the Bankruptcy Code does not define the difference between a tax and a fee, the court looked to National Cable Television Ass’n v. U.S., 415 U.S. 336 (1974), which defined a tax as an assessment levied by a governmental unit for public purposes while a fee is an assessment for bestowing a private benefit. The court held that the MBWMA assessment was enacted to benefit the boll weevil eradication program over the entire state and was a nondischargeable tax. In re McCain, 237 B.R. 881 (Bankr. N.D. Miss. 1998).

**FEDERAL TAX-ALM § 13.03[7].**

**CLAIMS.** The debtor filed for Chapter 13 in May 1998 and the first meeting of creditors took place in July 1998, creating a claims bar date of November 1998. The debtor listed the IRS claims in the schedule of debts and the IRS received notice of the bankruptcy case proceedings. The debtor filed a plan which was confirmed without objection in December 1998. The debtor decided to file a claim on December 4, 1998, for the secured tax claim because the IRS had not filed any claims. The IRS drew up a proof of claim on December 1, 1998 but did not file it until December 7, 1998. The IRS argued that its untimely filed claims, which included secured claims and unsecured priority and general claims, should be allowed as amendments of the debtor’s filed claim. The confirmed plan provided only for payment of the secured tax claim and all timely filed claims. The court held that the IRS claim could not be allowed as an amendment of the debtor-filed claim because the IRS claim was constructed prior to the date that the debtor filed the protective claim. The court also denied the claim on equitable grounds because the IRS failed to take any actions to protect its claims until after the confirmation and the denial of the IRS claim would not be a windfall for the debtor or other creditors. In re Jones, 238 B.R. 338 (Bankr. W.D. Mich. 1999).

**DISCHARGE.** The debtor had filed two previous bankruptcy cases in which tax claims had been filed. The issue was whether the three year limitation period for tax claims was tolled during the previous bankruptcy cases. The court held that the three year period was not tolled, unless it was proved that the debtor had committed misconduct or abuse of the bankruptcy system by filing the previous bankruptcy cases. The case was remanded for presentation of evidence on the debtor’s conduct. In re Burt, 237 B.R. 914 (Bankr. N.D. 1999).

### CONTRACTS

**PRICE.** The plaintiff grew, harvested and delivered potatoes under a contract with the defendant. The contract called for “U.S. No. 1 two inch or 4 ounce minimum” potatoes at a set price. The contract also provided for inspection of the deliveries and rejection of loads or combination of loads which did not have at least 50 percent which met the contract standard. The contract further provided that if any load was accepted and commingled with other potatoes and was “rejectable” potatoes under the standard, the parties had to renegotiate the price for the rejectable potatoes. The loads for all but the last two days of deliveries were rejectable but the defendant accepted the potatoes and commingled them with other potatoes. The parties attempted to renegotiate the price but failed to agree. The trial court determined the fair market price of the potatoes and awarded that price to the plaintiff, even though the fair market price exceeded the contract price for acceptable potatoes. The appellate court affirmed the judgment, holding that the standard was applied to the total of each day’s deliveries, resulting in all deliveries but the last two days as rejectable and subject to renegotiation. The appellate court upheld the fair market value determination based on evidence of same day sales by the plaintiff of similar potatoes. One justice filed a dissent which criticized allowing the plaintiff to receive more for the rejectable potatoes than the contract price for the acceptable potatoes. Lickley v. Max Herbold, Inc., 984 P.2d 697 (Idaho 1999).

### FEDERAL AGRICULTURAL PROGRAMS

**FARM LOANS.** The FSA has issued final regulations which amend the FSA loan servicing notice to borrowers, Attachment 1 to Exhibit A of 7 C.F.R. Part 1951, subpart S, to include provisions that delinquent, enforceable nontax debts may be transferred to the Department of Treasury for collection or termination of the claim. Such transfer is not to occur before all collateral is liquidated. 64 Fed. Reg. 62971 (Nov. 18, 1999).

**PESSORABIES.** The APHIS has announced that, because of additional funding, it will extend, until further notice, the interim animal health regulations (see 64 Fed. Reg. 2545 (Jan. 15, 1999)) to provide for the payment of indemnity by the USDA for the voluntary depopulation of herds of swine known to be infected with pseudorabies. The payment of indemnity will encourage depopulation of infected herds, and therefore will reduce the risk of other swine becoming infected with the disease. 64 Fed. Reg. 62569 (Nov. 17, 1999).

**SHARED APPRECIATION AGREEMENTS.** The FSA has issued proposed regulations amending the Shared Appreciation Agreement (SAA) and the servicing regulations of SAs. The SAA ensures that FSA shares in any appreciation of real estate security when a farm borrower has
received a writedown of a portion of a FSA debt. The amount due can be paid in full or amortized when the SAA matures or is triggered during the term of the agreement. The amendments will allow the value of some capital improvements made during the term of the SAA to be deducted from recapture, change the maturity period of future SAAs from 10 years to 5 years, and reduce the interest rate on SAA loans to the Farm Program Homestead Protection rate. These changes will give borrowers an opportunity to repay a portion of the FSA debt that was written off, while still ensuring that the FSA promptly recaptures some appreciation of the collateral. 64 Fed. Reg. 61221 (Nov. 10, 1999).

SMALL HOG OPERATIONS PROGRAM. The FSA has issued interim regulations amending the regulations for the Small Hog Operations Payment (SHOP) Program. See 64 Fed. Reg. 47097 (Aug. 30, 1999). The FSA has announced that the interim regulations will be located at 7 C.F.R. Part 759 instead of at Part 761 as originally announced. 64 Fed. Reg. 62565 (Nov. 17, 1999).

FEDERAL ESTATE AND GIFT TAX

CLAIMS. The decedent had received from a predeceased spouse an usufruct (life estate) in mineral rights in land, with the remainder passing to the decedent’s children. The decedent received the royalties over several years before death. The estate deducted the value of the royalties received as a claim of the children against the estate. The estate argued that the decedent was required to account for and repay any royalties received and retained during the usufruct. The court examined state law and the predeceased spouse’s will and held that the type of usufruct granted to the decedent did require the decedent to account for and repay any mineral royalties received during the usufruct; therefore, the children were entitled to repayment from the estate and the estate was entitled to a deduction for the amount paid. Marshall v. Comm’r, 99-2 U.S. Tax Cas. (CCH) ¶ 60,360 (E.D. La. 1999).

CONSTITUTIONALITY. The decedent’s estate attacked the 1993 retroactive increase in the federal estate tax rates. The decedent had died after the rates had automatically lowered but before the retroactive increases were enacted. The estate argued that the retroactive application was unconstitutional on the grounds that it constituted a direct tax without apportionment, contravened the Constitution’s prohibition against ex post facto laws, violated the Due Process, Takings, and Equal Protection Clauses of the Fifth Amendment to the Constitution, and violated the Separation of Powers doctrine. The court upheld the constitutionality of the retroactive application of the rate increases. U.S. Bank, N.A. v. United States, 99-2 U.S. Tax Cas. (CCH) ¶ 60,361 (D. Neb. 1999).

DISCLAIMERS. The decedent’s will provided for trusts to be funded from the estate. The trust beneficiaries were also board members of a private foundation which was the contingent remainder holder of the beneficiaries’ interests in the trust. The foundation amended its code of regulations to provide that a disclaimant board member could not vote on any use or disposition by the foundation of any property received from the trusts by way of a disclaimer filed by the disclaimant. The IRS ruled that disclaimers of interests in the trust were qualified disclaimers and the property passing under the disclaimers to the foundation was eligible for the charitable deduction. Ltr. Rul. 9944038, Aug. 11, 1999.

GENERATION SKIPPING TRANSFERS. There have been numerous private letter rulings regarding the effect that a proposed modification or construction will have on an exempt trust for GST tax purposes. In rulings in this area, the IRS has held that a modification will not cause the trust to lose its exempt status if the modification does not result in any change in the quality, value, or timing of any beneficial interest under the trust. Although the statute does not specifically address modifications to trusts that are exempt under section 1433(b)(2) of the TRA, the IRS has ruled that a trust that is modified such that none of the beneficial interests change can be viewed as the same trust that was in existence on September 25, 1985. The proposed regulations adopt a liberal standard with respect to changes that may be made to the trust without the loss of exempt status. In addition, the proposed regulations clarify the application of the effective date provisions when the exercise or lapse of a general power of appointment over an otherwise grandfathered trust results in property passing to a skip person.

Under the proposed regulations, a court order in a construction proceeding that resolves an ambiguity in the terms of a trust instrument will not cause the trust to lose its exempt status. The judicial action, however, must involve a bona fide issue and the court’s decision must be consistent with applicable state law that would be applied by the highest court of the state. Construction proceedings determine a settlor’s intent as of the date the instrument became effective, and, thus, a court order construing an instrument that satisfies these requirements does not alter or modify the terms of the instrument. Under the proposed regulations, a court-approved settlement of a bona fide controversy relating to the administration of a trust or the construction of terms of the governing instrument of a trust will not cause a trust to lose its exempt status. This will be the case, however, only if the settlement is the product of arm’s length negotiations, and the settlement is within the range of reasonable outcomes under the governing instrument and applicable state law addressing the issues resolved by the settlement.

The proposed regulations also address the situation in which a trustee distributes trust principal to a new trust for the benefit of succeeding generations. In some cases, the governing instrument grants the trustee broad discretionary powers to distribute principal to or for the benefit of the trust beneficiaries, outright or in trust. Under these circumstances, distributions by the trustee to trusts for the benefit of trust beneficiaries will not cause the original trust or the new trusts to lose exempt status provided the vesting of trust principal is not postponed beyond the perpetuities period applicable to the original trust. Finally, under the proposed regulations, a trust may be modified and remain exempt for GST purposes. The modification, however, must not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation, as defined in I.R.C. § 2651, than the person or
persons who held the beneficial interest prior to the modification and must not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

The IRS believes that there is no substantive difference between the situation in *Simpson v. United States*, 183 F.3d 812 (8th Cir. 1999), where property passed pursuant to the exercise of a general power of appointment and the situation in *Peterson Marital Trust v. Commissioner*, 78 F.3d 795 (2d Cir. 1996), where property passed pursuant to a lapse of a general power of appointment. It is the IRS position that an individual who has a general power of appointment has the equivalent of outright ownership in the property. The value of the property subject to the general power is includible in the powerholder's gross estate at death under I.R.C. § 2041(a). In either case, the powerholder can avoid the consequences of the GST tax by appointing the property to nonskip persons. Therefore, as the court noted in *Peterson Marital Trust*, there is no basis for exempting such dispositions from the GST tax under the TRA effective date provisions. Accordingly, the proposed regulations clarify that the transfer of property pursuant to the exercise, release, or lapse of a general power of appointment created in a pre-September 25, 1985 trust is not a transfer under the trust, but rather is a transfer by the powerholder occurring when the exercise, release, or lapse of the power becomes effective, for purposes of Section 1433(b)(2)(A) of the TRA. *64 Fed. Reg. 62997 (Nov. 18, 1999), adding Prop. Treas. Reg. § 26.2601-1(b)(1)(i).*

GIFTS. The taxpayer and spouse established a limited partnership with the taxpayer and spouse each holding general and limited partnership interests. The taxpayers transferred limited partnership interests to their children. The partnership agreement was characterized as following the majority of partnership agreements and state law in providing management control by the general partners. The IRS also found that the general partners were bound by a strict fiduciary duty towards the limited partners. The IRS ruled that the gifts of limited partnership interests were completed gifts eligible for the annual exclusion. Ltr. Rul. 9944003, July 2, 1999.

RETURNS. The IRS has released a revised Form 709, United States Gift and Generation-Skipping Transfer Tax Return. These documents are available at no charge and can be obtained either: (1) by calling the IRS's toll-free telephone number, 1-800-829-3676; (2) via the World Wide Web at http://www.irs.gov/prod/cover.html; (3) through FedWorld on the Internet; or (4) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

REVOCABLE TRANSFERS. The decedent had executed a durable power of attorney designating a daughter as the decedent’s agent. The daughter created two trusts for the decedent’s property, with the decedent’s great-grandchildren as beneficiaries. The value of the gifts resulting from the trusts was less than gifts the decedent had made over several years before creating the power of attorney. The IRS noted that the power of attorney did not expressly empower the daughter to make gifts but that the power was very broad and covered almost every other control over the decedent’s property. The IRS ruled that the gifts were excludible from the decedent’s gross estate because the gifts could not be revoked by the decedent prior to death. Ltr. Rul. 9944005, July 16, 1999.

SPECIAL USE VALUATION. The decedent and predeceased spouse had bequeathed their one-half undivided interests in a ranch to separate trusts. After the death of the decedent, the spouse’s trust owned a one-half undivided interest in the ranch and a son owned the other half. The decedent’s estate elected special use valuation for the decedent’s portion of the property. The son was employed by the trustee to operate the trust’s livestock operation on the ranch and the son also had a separate livestock operation on the property. The son and the trust exchanged interests in the ranch land such that the son would own a fee interest in one half of the property and the trust owned a fee interest in the other half. No other change was made in the operation of the ranch. The IRS ruled that the exchange of interests was a like-kind exchange and would not cause recapture of special use valuation benefits. Ltr. Rul. 9945046, Aug. 12, 1999.

VALUATION OF STOCK. The decedent owned one-third of the stock of a family farm S corporation, with the decedent two other siblings owning the other two thirds. The farm generally produced dividends sufficient to pay only shareholders’ tax liability from farm income. The shareholders did not actively operate the farm but hired a manager who worked for a salary and a percentage of farm income. The court valued the decedent’s stock by assigning a weight of 70 percent to an asset-value approach and 30 percent to the earning-based approach, because the farm had very low earnings. The decedent’s shares were also discounted 35 percent for lack of marketability. *Estate of Smith v. Comm’r*, T.C. Memo. 1999-368.

FEDERAL INCOME TAXATION

NEW LEGISLATION. The U.S. House of Representatives has passed legislation which includes (1) a five-year extension of the research and experimentation tax credit; (2) a three-year fix of the alternative minimum tax; (3) a two-and-a-half year extension of the work opportunity tax credit; (4) a two-year extension of the exception under Subpart F for active financing income; (5) a two-and-a-half year extension of the tax-free treatment of employer-provided education assistance; (6) a two-and-a-half year extension of the credit for electricity produced from wind and closed loop biomass, modified to include poultry waste; (7) a two-year extension of the qualified zone academy bond proposal, a school construction bond; (8) a two-and-a-half year extension of the welfare to work tax credit; and (9) a two-year extension of the suspension of income limitation on percentage depletion. H.R. 1180.

CORPORATIONS-ALM § 7.02,*

REASONABLE COMPENSATION. The taxpayer was a closely-held corporation. The principal shareholder was also the chief executive and provided the significant expertise and marketing for the corporation’s product. The IRS argued that the shareholder’s salary was excessive and the Tax Court had
ruled that the reasonable salary was near the midpoint between the IRS reasonable compensation and the actual amount paid. The Tax Court used the seven factors used by several courts; however, the appellate court held that the seven factor test was insufficient in that the test did not provide enough guidance to reach a rational decision. The appellate court adopted a “reasonable investor” test which looked at the salary which a shareholder would consider reasonable, given the investment return expectations for the company. The court held that the chief executive’s salary was reasonable because the corporation was still able to provide a substantial return on investment after paying the salary. **Exacto Spring Corp. v. Comm’r,** 99-2 U.S. Tax Cas. (CCH) ¶ 50,964 (7th Cir. 1999).

**COURT AWARDS AND SETTLEMENTS.** The taxpayer’s employment was terminated after the taxpayer suffered a heart attack. The taxpayer negotiated a settlement of release payments which included an agreement not to divulge employer secrets and payment for an automobile leased to the taxpayer. The taxpayer had indicated that a suit for wrongful termination was possible but did not bring any suit and the release agreement did not mention any payments for personal injuries. The court included all of the release payments in the taxpayer’s income because the taxpayer failed to show that any of the payments were made on account of tort or tort-like injuries. **D’Amico v. Comm’r,** T.C. Memo. 1999-374.

**DEPRECIATION.** The taxpayer operated a used aircraft parts business in which used aircraft parts were rented to movie production studios. The taxpayer did not provide records for the rental of individual parts or their expected useful life. The IRS determined that the parts had recovery periods of five years and the taxpayer argued that the parts had useful lives of only three years and were entitled to be depreciated over three years. The court held that the taxpayer failed to provide evidence of a useful life of less than four years; therefore, the IRS determination was upheld. **Thomson v. Comm’r,** T.C. Memo. 1999-371.

**HOBBY LOSSES.** The taxpayer owned and operated a computer hardware and software company and purchased two ranch land parcels with the intent to start a cattle operation. The parcels were purchased without first assessing the ability of the land to sustain cattle or crops. Although cattle were eventually placed on the land, the taxpayer never developed the land enough to sustain the cattle operation. The court held that the ranch operation was not engaged in with the intent to make a profit because (1) the taxpayer did not keep separate records for the operation, did not have a profitability plan and made only minimal changes to make the operation profitable; (2) the taxpayer had little knowledge of cattle raising and did not hire experts for advice; (3) the taxpayer spent little time on the operation; (4) the taxpayer had no expectation of appreciation of the ranch assets; (5) the ranch never became profitable; and (6) the ranch was started for personal reasons independent of any profit motive. **Wesinger v. Comm’r,** T.C. Memo. 1999-372.

**INCOME AVERAGING.** Legislation has been introduced in the U.S. Senate to extend income averaging to businesses which sell agricultural products. Agricultural products include “fertilizers, seeds, agricultural equipment, and other products sold for use in a farming business.” Qualifying businesses would be those with 100 or fewer full-time employees and which have not less than 75 of gross receipts from the sale of agricultural products. The new provision would not apply to taxable years beginning after December 31, 2002. **Sen. 1860.**

**INTEREST ON TAXES.** The IRS has issued a revenue procedure providing guidance on the application of I.R.C. § 6621(d) with respect to interest accruing before October 1, 1998. I.R.C. § 6621(d) provides for a net interest rate of zero to the extent of overlapping tax underpayments and tax overpayments, and generally applies to interest for periods beginning after July 22, 1998. However, the net interest rate of zero in I.R.C. § 6621(d) also applies to interest for periods beginning before July 22, 1998, provided certain conditions are met. Among these conditions is a requirement that a taxpayer request the application of I.R.C. § 6621(d) by December 31, 1999. **Rev. Proc. 99-43, I.R.B. 1999-__, modifying, Rev. Proc. 99-19, I.R.B. 1999-13, 10.

**NET OPERATING LOSSES.** The taxpayers had carried back net operating losses from 1993 to 1991. In 1994, they had net operating losses again but included a statement waiving the right to carry the losses back. However, the election statement referred to I.R.C. § 172(B)(3), whereas the proper section number has a lower case “(b).” The IRS subsequently disallowed the 1993 loss and the taxpayers sought to carry back the 1994 loss. The taxpayers argued that the 1994 election to waive the carryback period was ineffectual because the use of the incorrect citation made the election statement ambiguous. The court held that the election was valid because it was intended to be made by the taxpayers, since at the time the taxpayers had no taxable income to offset in 1991, and would not cause any confusion. **Harding v. Comm’r,** T.C. Memo. 1999-378.

**PARTNERSHIPS-ALM § 7.03.**

**RETURNS.** The IRS has adopted as final regulations for filing partnership returns on magnetic media under I.R.C. § 6011(e). The final regulations provide that partnerships with more than 100 partners must file their partnership returns on magnetic media. The determination of whether a partnership has more than 100 partners is made by counting the number of partners the partnership had over the partnership’s taxable year, regardless of whether a partner was a partner for the entire year or whether the partnership had over 100 partners on any particular day in the year. The final regulations provide that a partnership return is a form in Series 1065 (including Form 1065, U.S. Partnership Return of Income, and Form 1065-B, U.S. Return of Income for Electing Large Partnerships), along with the corresponding Schedules K-1 and all other related forms and schedules that are required to be attached to the Series 1065 form. Magnetic media means any magnetic media permitted under applicable regulations, revenue procedures, or publications. The IRS will prescribe procedures for participation in the mandatory magnetic media filing program for partnerships with more than 100 partners. Included in those procedures will be methods for registering for the program and signing the partnership return. The procedures will be contained in applicable revenue procedures or publications. **64 Fed. Reg. 61502 (Nov. 12, 1999).**

PENSION PLANS. The IRS and the U.S. Department of Labor's Pension and Welfare Benefits Administration have granted extensions to pension and other employee benefit plans (Form 5500 filers) in the federal disaster areas due to Hurricane Floyd and Hurricane Irene. Plan administrators will have until November 30, 1999, to file required returns/reports. The extension applies to employee benefit plans, banks and insurance companies located in the counties designated as federal disaster areas. It also applies to plan administrators located outside the disaster areas who are unable to obtain the information necessary for filing from service providers, banks or insurance companies whose operations are located in the disaster areas. The agencies will not impose late filing penalties for pension and employee benefit plan returns/reports and related excise taxes due on or before September 15, 1999, if they meet the November 30th deadline. To qualify for the extension, returns/reports must be labeled "Hurricane Floyd" or "Hurricane Irene," as appropriate, across the top margin of the first page. The return/report of an employee benefit plan not located within a designated disaster area must have an attachment identifying the plan's service provider affected by the disaster and the county in which the service provider is located. IR 1999-92.

The taxpayer was a professional corporation with one shareholder. The corporation established a defined benefit plan for the shareholder/employee and two other employees. The plan was terminated as to the other employees who received their full vested benefits. The shareholder made a series of personal loans from the plan which kept the plan near zero. The loans were not secured and did not have maturity dates. The shareholder made no payments on the loans, although the shareholder had sufficient assets to make payments. The court held that the plan was not qualified because it was not operated for the exclusive benefit of the employees. Westchester Plastic Surgical Associates, P.C. v. Comm'r, T.C. Memo. 1999-369.

RETURNS. In response to concerns about disclosing Social Security numbers on returns prepared by tax preparers, the IRS has established an alternative identification number, the Preparer Tax Identification Number (PTIN). This number can be used on returns and refunds prepared after Dec. 31, 1999. Tax preparers wishing to receive a PTIN in time for the 2000 filing season should submit an application as soon as possible by downloading Form W7-P, Application for Preparer Tax Identification Number, or by calling the IRS toll-free tax forms line at (800) 829-3676.

The IRS announced that it plans to issue guidance regarding the penalty relief that will be available for taxpayers who took necessary steps to prepare for the date change to the year 2000 but who were unable to comply with tax laws due to Y2K problems that were beyond their control. IR-1999-89.

LANDLORD AND TENANT

LANDLORD LIABILITY FOR INJURIES. The plaintiff was employed by a third party to pick up a load of beans stored in a bin operated by a tenant of the defendant. The plaintiff was injured while loading the beans and sued the defendant as owner/landlord for negligence in maintaining an unsafe premises. The defendant denied any liability because the tenant owed no duty of care to the plaintiff. The plaintiff argued that the defendant retained sufficient control over the property to impose a duty of care in that the defendant (1) was required to pay the insurance on the bin, (2) was required to pay one-half of repair costs, and (3) received lease payments based on the income of the bin. The court found, however, that the tenant had inspected the bin and initiated and directed all repair and maintenance. The court held that the defendant did not retain sufficient control over the property to be held liable for injuries occurring on the property. Van Essen v. McCormick Enter. Co., 599 N.W.2d 716 (Iowa 1999).

RECREATIONAL IMMUNITY. The plaintiff was attending a county fair sponsored by the defendant when the plaintiff was injured while attempting to help recapture a runaway steer. The defendant argued that it was immune from liability under the recreational activity statute. The plaintiff argued that fairgoing was not listed as a recreational activity under the statute or that the plaintiff was more than momentarily diverted from that activity when injured. The court held that fairgoing was sufficiently similar to the listed recreational activities to be covered by the statute. The court held that the plaintiff’s actions occurred while the plaintiff was engaged in a recreational activity and did not affect the immune status of the defendant. The court held that the plaintiff was injured while loading the beans and sued the defendant as owner/landlord for negligence in maintaining an unsafe premises. The defendant denied any liability because the tenant owed no duty of care to the plaintiff. The plaintiff argued that the defendant retained sufficient control over the property to impose a duty of care in that the defendant (1) was required to pay the insurance on the bin, (2) was required to pay one-half of repair costs, and (3) received lease payments based on the income of the bin. The court found, however, that the tenant had inspected the bin and initiated and directed all repair and maintenance. The court held that the defendant did not retain sufficient control over the property to be held liable for injuries occurring on the property. Schultz v. Grinnell Mutual Reins. Co., 600 N.W.2d 243 (Wis. Ct. App. 1999).

PRODUCT LIABILITY

FERTILIZER. The plaintiff was a governmental corporation which owned the World Trade Center and sued in negligence and products liability the defendant fertilizer manufacturer for damages resulting from use of the defendant’s products in the bombing of the trade center. The plaintiff argued that the ammonium nitrate produced by the defendant was unreasonably dangerous and defective in that the chemical was not produced in a nonexplosive form available at the time. The court held that the defendant was not liable for the bombing because the actions of the persons who constructed the bomb were an intervening cause of the bombing which were not reasonably foreseeable by the defendant. Port Authority of N.Y. & N.J. v. Arcadian Corp., 189 F.3d 305 (3d Cir. 1999), aff’g, 991 F. Supp. 390 (D. N.J. 1997).
4th Annual

‡ SEMINAR IN PARADISE ‡

FARM ESTATE AND BUSINESS PLANNING

by Neil E. Harl and Roger A. McEowen

January 24-28, 2000

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 Hawai‘ian 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.