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Cases, Regulations and Statutes

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enacted Revised Article 9. As the official comment states, about Appendix II—

“This section replaces the limited priority in crops afforded by former Section 9-312(2). That priority has generally been thought to be of little value for its intended beneficiaries. This section attempts to balance the interests of the production-money secured party with those of a secured party who has previously filed a financing statement covering the crops that are to be produced. For example, to qualify for priority under this section, the production-money secured party must notify the earlier-filed secured party prior to extending the production-money credit. The notification affords the earlier secured party the opportunity to prevent subordination by extending the credit itself.”

Quite clearly, without the Appendix II provision, a number of farm debtors will be denied credit. A new value lender cannot gain priority in a new crop over the prior perfected secured creditor who has an after-acquired property clause, absent a subordination agreement. This will likely lead to more bankruptcy filings with superpriority status than possible for an alternative creditor who offers new value to the debtor.

PMSI for livestock and inventory

Ironically, the Revised Article 9 adds a new provision specifying that a purchase-money security interest in livestock (that are farm products) has priority over a conflicting security interest in the same livestock and in their identifiable proceeds. It is not completely clear why a PMSI in livestock and inventory should be allowed, on a priority basis, and to deny PMSI status for a new value lender for crops.

FOOTNOTES

2. See McEowen and Harl, Principles of Agricultural Law § 3.01 (2000).
3. UCC, Article 9, § 9-312(2). See 13 Harl, supra n. 1, § 118.02[3].
4. Id.
5. Id.
10. See, e.g., H.F. 2513, Seventy-eighth Iowa General Assembly (does not include Appendix II).
12. Rev. Article 9, § 9-324(d).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-ALM § 13.03[8].

EXEMPTIONS.

CHILD TAX CREDIT. The debtors filed for Chapter 7 on October 29, 1999 and received a discharge on February 2, 2000. The debtors’ schedules did not disclose any income tax refund due for 1999, but the debtors amended their Schedule B to include a federal income tax refund of $3,819 and amended their exemptions to include $1,500 of the refund as an child tax credit exempt under Idaho Code § 11-603(4) as public assistance. The court reviewed the public policy and congressional purpose of the child tax credit and held that the credit was not public assistance legislation. The court noted that a denial of the exemption did not negate the congressional purpose of the credit because the debtors did receive the benefit of the credit in reducing their tax liability. However, the court held that the credit did not have the public assistance purpose sufficient to remove the refund from the bankruptcy estate for payment of creditors. In re Dever, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,616 (Bankr. D. Idaho 2000).

EDUCATION TAX CREDIT. The debtor filed for Chapter 7 in September 1999 and received a discharge in December 1999. The debtor had attended a university during 1999 and included a $1,500 tax credit for college tuition under the Hope Scholarship Credit. In February 2000, the debtor amended the exemption schedule to include an exemption, under Idaho Code § 11-603(4), for $1,500 of the 1999 tax refund. The Idaho exemption is for benefits received under public assistance legislation. The court noted that the Hope Credit was not limited to poor taxpayers and was not a refundable credit; therefore, the court held that the education tax credit was not eligible for the exemption for public assistance payments. In re Cramption, 249 B.R. 215 (Bankr. D. Idaho 2000).
CLAIMS. The debtors filed for Chapter 13 on September 1996 and their plan included payments for a federal tax claim. However, the IRS did not file a claim. On November 21, 1996, the case was dismissed because the debtors did not appear for the confirmation hearing. The debtors did not appear because the debtors were not sent any notice of the hearing. The trustee obtained a reinstatement of the case 79 days later and notice of the reinstatement was sent to the IRS. At that date, the IRS had 13 days left to file a claim under Section 502(b)(9). The IRS did not file a claim, however, until 11 days after the 180 day claims bar date and the debtors objected to the claim as untimely filed. The IRS argued, and the lower courts held, that either the 79 day gap period tolled the 180 day claims period or that the bar date was equitably tolled for the 11 days after the date had passed. The appellate court held that the statute was clear that claims had to be filed within 180 days after the filing of the petition and that there was no provision for tolling of the 180 day limit by delays caused by procedural errors. The court also rejected the equitable tolling argument because the IRS made no attempt to obtain an extension prior to expiration of the 180 day limit and there was no precedent for use of equitable tolling in this case. In re Gardenhire, 209 F.3d 1145 (9th Cir. 2000), rev’d, 220 B.R. 376 (Bankr. 9th Cir. 1998).

DISCHARGE. The debtor had taxes owed for several tax years more than three years before the filing of the Chapter 7 petition. In most of the years in issue, the debtor had claimed excessive personal exemptions on W-4 forms filed with the debtor’s employer. The debtor knew that the exemptions claimed were in excess of the personal exemptions allowed but used the excess exemptions as a means of adjusting the withheld taxes for increased deductions for home interest and real estate taxes. The tax returns for the years involved were filed several years late and did not include payments, but the debtor enclosed a letter with the returns requesting help in making the payments through installments. The debtor testified that the original returns were not filed because the debtor usually had overpaid the taxes and received refunds. The court found that the debtor had primarily miscalculated the effect of the excess exemption filings and had made some effort to pay the taxes. The court held that the taxes were dischargeable because the debtor did not willfully attempt to evade payment of the taxes. In re McDonald, 249 B.R. 312 (Bankr. E.D. Mo. 1999).

The debtor failed to file tax returns and make tax payments for 1983 through 1990. The debtor had self-employment income and did not make any estimated tax payments during those years. The IRS instituted an audit and the debtor cooperated with the IRS in determining the debtor’s taxable income for the years involved. The IRS prepared a Form 4549 for each tax year, the debtor signed each form, and the IRS accepted each form as determining the debtor’s tax liability for each year. The debtor filed for Chapter 7 in 1997 and argued that the taxes for these years were dischargeable. The IRS argued that the taxes were nondischargeable because of a failure to file a return. The court held that the Form 4549 qualified as a return for these years and the taxes were not nondischargeable because of a failure to file a return. The court left open the possibility that the taxes could still be nondischargeable for willful attempt to evade taxes. In re Mathis, 249 B.R. 324 (S.D. Fla. 2000).

FEDERAL AGRICULTURAL PROGRAMS

ANIMAL WELFARE. The APHIS has issued proposed regulations which amend the animal welfare regulations to exempt from licensing any person who maintains a total of three or fewer breeding female dogs and/or cats on his or her premises, if no more than three breeding female dogs and/or cats are maintained on the premises, regardless of ownership; and who sells only the offspring of these dogs and/or cats, which were born and raised on the premises, for pets or exhibition, and is not otherwise required to obtain a license. The proposed regulations also include in the exemption from licensing persons who maintain three or fewer breeding female small exotic or wild mammals on a single premises. The animals are commonly known as pocket pets, which include hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, jerboas, and other small mammalian species. The proposed regulations remove the provision for voluntary licenses for persons otherwise exempt from licensing. The proposed regulations amend the termination provisions to include a list of circumstances for termination of a license which is the same list of circumstances for denial of a license. The proposed regulations add a new requirement that all licensees who maintain potentially dangerous animals must demonstrate adequate experience and knowledge of the species that they maintain. 65 Fed. Reg. 47908 (Aug. 4, 2000).

BRUCELLOSIS. The APHIS has issued interim regulations amending the brucellosis regulations to change the classification of Louisiana from Class A to Class Free. 65 Fed. Reg. 47653 (Aug. 3, 2000).

CROP INSURANCE. The FCIC has adopted as final regulations revising the fig, pear, walnut, almond, prune, table grape, peach, plum, apple and stonefruit crop insurance provisions. The proposed regulations amend the apple crop insurance provisions by allowing optional units and price elections by varietal group. The fig, pear, walnut, almond, prune, table grape, peach, plum, apple and stonefruit crop insurance provisions are revised by adding provisions to specify that the insured’s elected or assigned coverage level or the ratio of the insured’s price election to the maximum price election offered may not be increased and that each subsequent crop year coverage begins on the day immediately following the end of the insurance period for the prior crop year. The almond and walnut crop insurance provisions are revised by allowing insurance coverage for trees that have been grafted. The almond crop insurance provisions are revised by deleting the word “rejects” from the definition of “meat pounds.” 65 Fed. Reg. 47834 (Aug. 4, 2000).
**FEDERAL ESTATE AND GIFT TAX**

**DISCLAIMER.** The decedent’s spouse had predeceased the decedent. The spouse’s estate had bequeathed property in trust to the decedent and passed the residuary estate to the decedent. The spouse’s will provided that if the decedent disclaimed the residuary estate bequest, the residuary estate passed to the trust. The decedent’s executor, within nine months after the spouse’s death, disclaimed the interest in the residuary estate. The IRS ruled that the disclaimer was effective to pass the residuary estate to the trust. *Ltr. Rul. 200030011, April 26, 2000.*

**GENERATION SKIPPING TRANSFERS.** The taxpayer was the current income beneficiary of a trust established prior to 1985. The trust was modified to allow the taxpayer and other remainder beneficiaries to substitute a new trustee and to set investment policies for the trust. The modifications also provided that the trustee, beneficiary and investment managers of the trust were to act in fiduciary capacities. The IRS ruled that the changes did not subject the trust to GSTT and that the taxpayer’s new powers did not give the taxpayer a power of appointment over trust corpus. *Ltr. Rul. 200030008, April 24, 2000.*

**MARITAL DEDUCTION.** The decedent’s will passed the residuary estate to a trust for the benefit of the surviving spouse and three children. The beneficiaries could also serve as trustees. Within nine months after the decedent’s death, the children filed a qualified disclaimer of their interests in the trust income and principal during the life of the surviving spouse and their rights to be trustees. The trust was then amended to be split into four equal share trusts and the executor elected QTIP treatment of one trust. The IRS ruled that the disclaimers were effective and that the fractional share trust would qualify for QTIP treatment. *Ltr. Rul. 200030012, April 26, 2000.*

**TRUSTS.** The taxpayer was the beneficiary of a trust which required current payments of net income to the taxpayer but gave the trustee discretion as to distributions of principal. On February 17, 1994, the tax year involved in this case, a local court ordered the trustee to retain all income. The trust was eventually terminated by court order requiring the trustee to retain all income changed the trust to a complex trust. As a complex trust, only income actually distributed was taxable to the taxpayer; therefore, the court held that the 1994 trust income was not taxable to the taxpayer until actually paid. *Steingold v. Comm’r, T.C. Memo. 2000-225.*

**FEDERAL INCOME TAXATION**

**ACCOUNTING METHOD.** The taxpayer was a corporation which provided paving services. The taxpayer purchased asphalt from a related corporation at cost. The taxpayer was required to use the asphalt within a few hours of delivery. The taxpayer used the cash method of accounting, deducting the cost of the asphalt when payment was made to the related corporation and including payments for services when the customer makes payment. The IRS argued that the asphalt was merchandise and created an inventory, requiring the taxpayer to use the accrual method of accounting. The court held that the taxpayer did not have any inventory of asphalt, as required by Treas. Reg. § 1.471-1, because the asphalt had to be used immediately after delivery; therefore, the taxpayer was not required by Treas. Reg. § 1.471-1 to use the accrual method of accounting. The IRS also argued that the taxpayer’s accounting method failed to clearly reflect income. The court held that the disparity of deductions and income resulted from the delay between the taxpayer’s payment for the asphalt and the client’s payment for the paving services and did not result from purchasing asphalt for later use, since it was impossible to use the asphalt after only a few hours. *Jim Turin & Sons, Inc. v. Comm’r, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,610 (9th Cir. 2000), aff’d, T.C. Memo 1998-22.*

The taxpayer was a corporation which operated a business of construction of streets, sidewalks, curbs and similar improvements. The taxpayer did not maintain any storage of construction materials and purchased these materials from suppliers as needed for delivery to particular construction project sites. Some of the materials, such as the concrete, had to be used within a short time after delivery or it would be worthless. The taxpayer’s annual gross receipts did not exceed $5 million and the taxpayer used the cash method of accounting. Although most receipts and expenses occurred in the same tax year, occasionally, some expenses would be incurred in one tax year and receipts collected in the following tax year. The court held that the construction materials were not merchandise held in inventory; therefore, the taxpayer could use the cash method of accounting. *Vandra Bros. Construction Co., Inc. v. Comm’r, T.C. Memo. 2000-233.*

**BAD DEBTS.** The taxpayer had owned 51 percent of a corporation which operated a purified water business. The other 49 percent was owned by the taxpayer’s son. The corporation sold its assets to another unrelated corporation in exchange for installment payments. The son then started a catering business and obtained loans from third parties and from the taxpayer. The third party loans were secured by assignments of the son’s portion of the installment payments from the sale of the corporation’s assets. The

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* *Agricultural Law Manual (ALM).*
taxpayer operated a travel agency. The taxpayer made personal loans to the son’s business, even after it became clear that the business was failing. After the son’s business failed, the taxpayer claimed the loans as bad business debt deductions, arguing that the loans were made to protect the taxpayer’s interest in the installment payments. The court held that the loans were not made for a business purpose because (1) the taxpayer was not in the business of making loans and (2) the original corporation was no longer in business; therefore, the loans were not made to protect any business of the taxpayers. Cook v. Comm’r, T.C. Memo. 2000-253.

The taxpayer loaned $75,000 to an unrelated partnership. The interest charged on the loan was held to be usurious and was not collectible. The taxpayer recovered most of the principal but had to file suit in 1993 to recover the last $2,641. The taxpayer spent over $200,000 in 1993 and 1994 in legal fees to collect the remainder owed. The taxpayer claimed the unpaid principal and the attorney’s fees incurred in 1993 as a business bad debt deduction for 1993. The taxpayer was not in the lending business. The court held that the taxpayer failed to prove that the loan was a business loan; therefore, the debt was not eligible for business bad debt treatment. In addition, the court held that in 1993, the loan was not worthless because it was still subject to litigation. The court also held that the legal fees incurred were not deductible as a trade or business expense or as a casualty or theft loss. Miller v. Comm’r, T.C. Memo. 2000-240.

BUSINESS EXPENSES. The taxpayers were employed full time and also operated three sole proprietorships. The taxpayers claimed various business expenses for these businesses, including travel, meals and office expenses. The taxpayers had receipts for some of the expenses but no record of the business purpose. The taxpayers’ records for the travel and meals expenses did not include time, place, purpose and cost of each expense. Most of the taxpayers’ records were summaries of the year’s expenses or were created at the end of the tax year or in preparation for trial. The court held that the expenses were properly disallowed for lack of substantiation. Nitschke v. Comm’r, T.C. Memo. 2000-230.

CASUALTY LOSS. The taxpayers claimed a casualty loss deduction in 1996 for earthquake damage to their residence. The taxpayers testified that the damage was discovered in 1995 but was believed to have occurred during an earthquake in 1994. The taxpayers claimed that their tax return preparer advised them to take half of the loss as a deduction in 1995 and half in 1996. The court held that no casualty loss deduction could be claimed in 1996. Hunter v. Comm’r, T.C. Memo. 2000-249.

DISASTER PAYMENTS. On July 27, 2000, the president determined that certain areas in Vermont are eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of severe storms and flooding on July 14, 2000. FEMA-1336-DR. On July 21, 2000, the President determined that certain areas in New York are eligible for assistance under the Act as a result of a severe storms and flooding beginning on May 3, 2000. FEMA-1335-DR. Accordingly, a taxpayer who sustained a loss attributable to the disasters may deduct the loss on his or her 1999 federal income tax return.

DISCHARGE OF INDEBTEDNESS. The taxpayer’s parents formed an S corporation which owned and operated the family farm. The parents gifted stock in the corporation to the taxpayer and other children. In April 1989 the corporation transferred $50,000 to the taxpayer by check (marked as $10,000 gift, $40,000 loan) in exchange for a $50,000 promissory demand note. The corporation listed the note as an asset on the 1989 through 1993 federal income tax returns but did not charge interest or seek payment of principal during those years. In 1994, the corporation reorganized as three corporations and none of the spin-off corporations listed the loan as an asset at the end of that year. The taxpayer claimed that the loan was satisfied by an annual $10,000 forgiveness on the loan; however, the taxpayer failed to present any evidence to support that claim. The IRS included the entire face value of the note as discharge of indebtedness income to the taxpayer in 1994 because the note became unenforceable in 1994 under local statute of limitations law. The court held that the corporation and taxpayer treated the transfer as a loan and that the loan became unenforceable in 1994, creating discharge of indebtedness income to the taxpayer. Randolph v. Comm’r, T.C. Memo. 2000-248.

EMPLOYEE DEDUCTIONS. The taxpayer worked as a process-server. The taxpayer obtained all assignments from a messenger service and was restricted by the service as to the locations and times of service. The service issued W-2 forms and withheld income, FICA and FUTA taxes. However, the taxpayer treated the net wages as income and claimed business deductions for travel, meals and other expenses associated with the process serving. The court held that the taxpayer was an employee of the messenger service because the service had control over the duties of the taxpayer; therefore, the expenses were limited to deductions as non-reimbursed employee expenses on Schedule A. The court also denied the deductions for meals because none of the meals was incurred during travel which required an overnight stay. Frische v. Comm’r, T.C. Memo. 2000-237.

The taxpayer worked as a voice actor for radio, television and other media productions which did not require the use of the taxpayer’s picture. The taxpayer used various talent agencies to find jobs. The various media companies which hired the taxpayer issued W-2 forms and withheld income, FICA and FUTA taxes. However, the taxpayer treated the net wages as income and claimed business deductions for travel, meals and other expenses associated with the jobs. The taxpayer did not declare any of the net income as self-employment income and did not pay self-employment tax. The taxpayer claimed that the taxpayer was an independent contractor with sufficient control over the taxpayer’s duties in each job but failed to provide any evidence to support this claim. The court held that the W-2 forms, withholding of employment taxes, the taxpayer’s failure to request corrected W-2 forms, the taxpayer’s failure to pay self-employment tax and the taxpayer’s failure to provide evidence of control over the jobs demonstrated that the taxpayer was an employee and
could not take the expenses as a business deduction. 


ENVIRONMENTAL CLEANUP COSTS. The taxpayer was a subsidiary of an electric utility company which owned a former electricity-generating plant. The plant had been shut down and all electrical generating equipment removed. The taxpayer wanted to develop the property for other uses but discovered that the land was contaminated with hazardous waste. The taxpayer incurred cleanup expenses in order to make the land salable. The court held that, because the environmental cleanup costs were incurred to put the property into a condition for a new use, the cleanup costs had to be capitalized. Dominion Resources, Inc. v. United States, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,633 (4th Cir. 2000), aff’g, 48 F. Supp.2d 527 (E.D. Va. 1999).

HOBBY LOSSES. The taxpayer was employed full time as a radiologist and purchased a 78 acre farm for a residence and to operate an Arabian horse breeding operation. For the 12 tax years involved, the operation produced only tax losses and only a few years of gross income before deductions. The operation did not sell any horses bred on the farm but produced income from sale of horses purchased from other persons and prize money. The court held that the horse breeding operation was not engaged in for profit because (1) the taxpayer did not have a plan to make the operation profitable and paid for personal expenses from the business bank account; (2) the taxpayer’s expertise was consistent with operation of the activity as a hobby and not as a business; (3) the time demands of the taxpayer’s medical practice prevented the taxpayer from devoting more time to the farm than would be required for a hobby; (4) the taxpayer failed to demonstrate that any appreciation of the business assets would offset the substantial losses; (5) the taxpayer had no history of running profit horse breeding activities; (6) the activity had only tax losses and any pre-tax profits were from non-breeding activities; (7) the taxpayer had substantial income from full time employment which was offset by the activity losses; and (8) the taxpayer’s activities in horse showing and riding evidenced a substantial amount of personal enjoyment from the activity. Novak v. Comm’r, T.C. Memo. 2000-234.

The taxpayer was fully employed as a newspaper distributor and operated a paint horse breeding operation on a farm not owned by the taxpayer. The court did not specifically discuss the facts of the case in relation to the nine factors of Treas. Reg. § 1.183-2(b), although the court acknowledged that the nine factors were relevant to the determination of intent to make a profit. The court held that the horse breeding operation was not entered into with the intent to make a profit because the taxpayer had no business plan, did not seek the advice of experts as to how to make the business profitable, and did not spend a significant amount of time at the activity. The court held that the taxpayer’s primary purpose was the taxpayer’s love of horses. Cramer v. Comm’r, T.C. Memo. 2000-229.

INCOME. The taxpayers cared for an unrelated person after that person’s spouse died. The taxpayers provided a room in their home, provided medical care, food and clothing and performed personal services for the person. The person had promised to reimburse the taxpayers and the taxpayers expected to be reimbursed by the person. The taxpayers received no payment for the services or goods until the person died, leaving them most of the person’s estate. The taxpayers filed a claim against the estate for reimbursement for the goods and services and the claim was allowed. The taxpayers included only one half of the claim as income for personal services, arguing that the other half was reimbursement for actual expenses. The court found that the taxpayer had paid at least as much as claimed for the expenses and held that the claim for reimbursed expenses was not taxable. Muegge v. Comm’r, T.C. Memo. 2000-232.

LODGING. The taxpayer and spouse owned and operated a hotel as sole proprietors. The taxpayers also used a portion of the hotel as their residence. The taxpayers did not include in income the value of the use of the hotel as lodging, arguing that their presence was required for the business. In a field service advice letter, the IRS cited pre-I.R.C. § 119 ruling, Rev. Rul. 53-80, 1953-1 C.B. 62, which held that the costs of meals, lodging and other expenses of the owner of a hotel who resided at the hotel had to be excluded from the deductible costs of the hotel. The IRS ruled that I.R.C. § 119 did not apply because the taxpayer was not an employee; therefore, the costs of the lodging and meals at the hotel were to be included in the taxpayer’s income. FSA Ltr. Rul. 200031003, March 16, 2000.

MEALS. The taxpayer was a brokerage corporation which invited its brokers to up to three annual conferences. The brokers were treated as independent contractors and not as employees. The taxpayer provided most of the meals for the brokers and their guests. The value of the meals for each broker ranged from $109 to $709 depending on the number and type of conferences attended by each broker. The IRS ruled that the meals were not de minimis fringe benefits and were not excepted from the limitation of deductions under I.R.C. § 274(n)(1) because the exception applied only to meals provided to employees. Ltr. Rul. 200030001, April 6, 2000.

MEDICAL EXPENSE. The taxpayers claimed medical expenses on Schedule A for amounts paid to their daughter who used the funds to pay medical expenses of the daughter’s children. The taxpayers did not present any evidence of the daughter’s payment of the medical expenses or the medical expenses themselves. The court held that the medical expense deductions were denied for lack of substantiation. Hunter v. Comm’r, T.C. Memo. 2000-249.

PENSION PLANS. The IRS has issued proposed regulations which provide that, under I.R.C. § 414(u)(4), if a plan provides for the suspension of a participant’s obligation to repay a loan for any part of any leave of absence for a period of military service, the suspension will not cause the loan to be deemed distributed, even if the leave exceeds one year, as long as loan repayments resume upon the completion of the military service, the amount then remaining due on the loan is repaid in substantially level installments thereafter, and the loan is fully repaid by the end of the period equal to the original term of the loan plus the period of the military service. The proposed

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also included the imposition of taxes; therefore, the self-tax voluntary. The court held that the word “contributions” in the title of the Self-Employment Contributions Act made the self-employment tax not voluntary. The taxpayer also argued that, because the taxpayer did not have funds to pay the taxes when the returns were due, the returns were not required to be filed until the taxpayer had the money to pay the taxes. The court held that returns are required even if no payment is made. 

**NEGLIGENCE**

**CONSTRUCTIVE NOTICE.** The plaintiff was attending a 4-H horse show at the fairgrounds operated by the defendant. The plaintiff slipped on a puddle on a stair as the plaintiff descended the steps in the horse arena. The plaintiff testified that the puddle was not on the steps when the plaintiff descended the steps 30 minutes earlier and that the plaintiff saw the puddle before stepping on the step and falling. The plaintiff sued for negligence. The trial court held that the defendant was entitled to a judgment as a matter of law because the puddle was an open and obvious danger and the plaintiff failed to prove that the defendant knew about or had constructive notice about the puddle. The appellate court held that a puddle was not an open and obvious danger such as to relieve the defendant of liability for negligence in failing to remove the danger. However, the court also held that the defendant demonstrated that the puddle existed no more than 30 minutes, which was too short a time to impose constructive notice on the defendant of the puddle’s existence and have time to remove the danger.


**SECURED TRANSACTIONS**

**ATTACHMENT.** The debtor had granted a security interest in crops to be grown more than 90 days prior to filing for Chapter 7. However, the collateral crops were not planted until less than 90 days before the petition filing and the debtor sought to avoid the security interest in the crops as a preferential transfer. The court held that, under Neb. Stat. U.C.C. § 9-203(5)(a), the security interest did not attach until the crops were planted; therefore, the security interest arose within 90 days before the filing of the petition and was avoidable.


**CITATION UPDATES**

Pugh v. Comm’r, 213 F.3d 1324 (11th Cir. 2000), rev’g T.C. Memo. 1999-38 (discharge of indebtedness of S corporation) see p. supra.
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