Cases, Regulations and Statutes

Robert P. Achenbach Jr.

9-29-2000

Follow this and additional works at: http://lib.dr.iastate.edu/aglawdigest

Part of the Agricultural and Resource Economics Commons, Agricultural Economics Commons, Agriculture Law Commons, and the Public Economics Commons

Recommended Citation


This Article is brought to you for free and open access by the Journals at Iowa State University Digital Repository. It has been accepted for inclusion in Agricultural Law Digest by an authorized editor of Iowa State University Digital Repository. For more information, please contact digirep@iastate.edu.
parties, as was the case in *Estate of Stinson v. United States*, the amount taken into account as a disposition triggering recognition of unreported gain attributable to the obligation is not less than the face amount of the installment obligation.

Thus, depending upon the income tax basis of the farmland sold to the corporation in *Stinson*, there could have been a substantial amount of gain from the forgiveness of the $147,000 principal amount.

**Other gift tax concerns**

Another possible challenge in *Stinson* which would likely have arisen had the forgiveness continued until sale of the property in 1990, is that consistent and regular forgiveness of obligations to pay can result in the forgiveness being considered a gift rather than a sale as of the date of the transaction. That would have meant that the entire forgiveness would have been a gift in 1981 with the donees not receiving a new income tax basis derived from the purchase price but rather would have had a carryover basis from the donor.

**In conclusion...**

The holding in *Estate of Stinson v. United States* that the gift was a gift of a future interest to shareholders increased the amount of adjusted taxable gifts and boosted the federal estate tax liability. However, the outcome could have been even more disadvantageous to the estate and the heirs had the other two issues been raised successfully by the Internal Revenue Service.

Quite clearly, any gift should be handled with care; a gift of installment payments to a corporate purchaser deserves even more careful handling in light of the possible consequences to the seller (and the seller’s estate) and the donees.

**FOOTNOTES**

1. I.R.C. § 1014(a).
2. See 6 Harl, Agricultural Law Ch. 46 (2000).
3. Estate of Stinson, 214 F.3d 846 (7th Cir. 2000).
4. 214 F.3d 846 (7th Cir. 2000).
5. *Id.*
6. *Id.*
7. I.R.C. § 2503(b). See 6 Harl, supra note 2, § 46.04[1][a].
8. I.R.C. § 2503(b).
10. Estate of Stinson, 214 F.3d 846 (7th Cir. 2000).
11. Rev. Rul. 71-443, 1971-2 C.B. 337; Ltr. Rul. 7935115, May 31, 1979 (transfer of corporate stock to issuing corporation); Ltr. Rul. 8422015, Feb. 15, 1984 (same). See Heringer v. Commissioner, 235 F.2d 149 (9th Cir. 1956) (transfer of stock to family corporation; gifts were future interests although court did not face issue of whether gift was to corporation or gift to shareholders); Chanin v. United States, 393 F.2d 972 (Ct. Cl. 1968); Georgia Ketteman Trust v. Comm’r, 86 T.C. 91 (1986) (gift of future interest; argument rejected that donees comprised entire membership of board of directors and could have declared corporate dividend).
12. Estate of Stinson, 214 F.3d 846 (7th Cir. 2000).
14. See note 12, supra.
17. See note 12 supra.
19. See note 12 supra.
20. See note 12 supra.
22. See generally 6 Harl, supra note 2, § 46.09[2].
23. 214 F.3d 846 (7th Cir. 2000).

**CASES, REGULATIONS AND STATUTES**

by Robert P. Achenbach, Jr.

---

**BANKRUPTCY**

**GENERAL-ALM § 13.03.**

**ESTATE PROPERTY.** The debtor was a watermelon and squash farmer who had suffered crop losses in 1998 and filed for Chapter 7 in February 1999. The debtor filed an application for disaster payments under the Crop Loss Disaster Assistance Program in April 1999 and a disaster payment was sent to the trustee. The debtor sought the recovery of the disaster payment from the trustee as not part of the bankruptcy estate because the debtor was not entitled to the payment as of the petition date. The court held that the disaster payment was estate property because all of the qualifying requirements, planting the crops and the disaster losses, occurred prior to the bankruptcy case petition. In addition, the court held that the disaster payments were the proceeds of the crops and included in the estate property. *In re Boyett*, 250 B.R. 817 (Bankr. S.D. Ga. 2000).

**EXEMPTIONS**

**DISASTER PAYMENTS.** The debtor was a watermelon and squash farmer who had suffered crop losses in 1998 and filed for Chapter 7 in February 1999. The debtor filed an application for disaster payments under the Crop Loss Disaster Assistance Program in April 1999 and a disaster payment was sent to the trustee. The debtor sought to exempt the payment under Ga. Stat. § 44-13-100 as public assistance. The court held that the exemption was limited to “local public assistance” which did not include federal farm disaster assistance.

**FEDERAL TAX-ALM § 13.03[7].**

**DISCHARGE.** The debtor owed taxes for several tax years. On the day before the filing of the Chapter 7 petition, the IRS attempted to levy against the debtor’s property by attempting to inventory the debtor’s property. However, the debtor refused to allow the IRS agents to enter the debtor’s property to conduct the inventory, even after being informed that the refusal was a violation of a law and a court order. The court held that, under *In re Griffith*, 206 F.3d 1389 (11th Cir. 2000), the single act of violating the court order authorizing the IRS levy was an affirmative act to attempt to defeat or evade payment of taxes sufficient to deny discharge of the tax claim. *In re Gillis*, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,713 (Bankr. S.D. Ga. 2000).

**POST-PETITION INTEREST.** The Chapter 7 trustee did not file or pay the bankruptcy estate’s income taxes for the four years of the case until the last year. The IRS added penalties and interest to the estate’s tax liability. The estate’s taxes and penalties were accorded administrative claim priority but the debtor argued that the interest on the taxes was not entitled to administrative claim priority. The IRS argued that the bankruptcy statute was not clear and that Section 503(b)(1) should be interpreted to include the interest as part of the taxes owed. The court held that Section 503(b)(1)(B) was clear and provided administrative claim priority only to taxes and penalties; therefore, the interest on the taxes was entitled only to a fifth priority as provided by Section 726(a)(5). *In re Weinstein*, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,714 (Bankr. 1st Cir. 2000).

**SOCIAL SECURITY BENEFITS.** The debtor had become eligible for social security benefits pre-petition and the IRS had filed a tax lien pre-petition. The debtor received a discharge of all taxes but the tax lien survived the bankruptcy case. The limitation period for collection by the IRS had not expired, due to tolling of the limitation period by an offer in compromise and the filing of the bankruptcy case, and the IRS attempted to levy on the debtor’s monthly social security payments. The court held that the social security payments were subject to the tax lien and levy but the levy was restricted by I.R.C. § 6331(h) to no more than 15 percent of the monthly payments. *In re Anderson*, 250 B.R. 707 (Bankr. D. Mont. 2000).

---

**FEDERAL AGRICULTURAL PROGRAMS**

**CROP INSURANCE.** The FCIC has issued interim regulations which amend the rice crop insurance provisions to provide coverage for losses (resulting from failure of irrigation water supplies due to drought and intrusion of saline water) as mandated by section 508(a)(8) of the Federal Crop Insurance Act. *65 Fed. Reg. 56773* (Sept. 20, 2000).

**ENVIRONMENTAL PROCEDURES.** The FSA has issued proposed revised regulations governing the environmental policies and procedures required under the National Environmental Policy Act and the Council on Environmental Quality. The new regulations revise the existing regulations to reflect the organizational changes in the USDA and to streamline the procedures used to comply with the NEPA and CEQ. *65 Fed. Reg. 55783* (Sept. 14, 2000).

**FARM EMERGENCY LOANS.** The FSA has issued proposed regulations to streamline the emergency loan program administrative burdens on the FSA and borrowers. The proposed regulations provide that in the case of loans in excess of $300,000 where the applicant's net worth is in excess of $1,000,000, the applicant must obtain three written declinations of credit and at least one of which must be from a lender outside the normal trade area of the applicant. The requirement is reduced to two written declinations for loans in excess of $300,000 where the applicant's net worth is $1,000,000 or less and one declination for loans less than $300,000. The written declination requirement may be waived for loans less than $100,000.

The proposed regulations simplify the calculation of qualifying production loss by calculating the eligible production loss as the difference between the production level for the disaster year and the production history for the crops on the farm. The production history for the farm is to be based on crop insurance and FSA data. In cases where sufficient production history is not available, the three year county production average for the crop is to be used. In addition, in order to provide more assistance to borrowers, the proposed rule will increase the loan level for production loss emergency loans from 80 percent to 100 percent of the eligible production loss.

The proposed rules provide that a borrower may use the proceeds of a production loss emergency loan for the purposes of replacing working capital lost as a result of the disaster. This is not expressly provided in the current regulations. The proposed regulations provide that livestock losses will be treated as a physical loss instead of a production loss as under the current rule. This change also required an amendment to allow payment of essential family household expenses from livestock physical loss loan proceeds.

The proposed rules specifically allow the costs of restoring perennials that produce an agricultural commodity to their pre-disaster condition as an eligible purpose for physical loss loans for the losses to chattel.

The proposed regulations eliminate the requirement that an emergency loan must be secured by a particular amount of collateral and require only that the applicant demonstrate an ability to repay the loan on an on-going operational basis, excluding special one-time sources of income or expenses.


**MEAT INSPECTION.** The plaintiffs were federal meat and poultry inspectors, their union and a private organization. The plaintiffs sought to enjoin the USDA from instituting
new meat inspection rules under which federal meat inspectors would no longer do the inspection of meat carcasses but would only oversee the inspection by employees of the meat packers. The plaintiff argued that the Federal Meat Inspection Act (FMIA), 21 U.S.C. § 604, required the federal inspectors to do the inspections. The USDA argued that the term “inspection” included observing others do the inspection but the court held that the plain meaning of the statute prohibited the USDA from allowing anyone but federal inspectors to do the inspection of processed meat. *American Fed. Of Employees v. Glickman*, 215 F.3d 7 (D.C. Cir. 2000).

**PERISHABLE AGRICULTURAL COMMODITIES ACT.** The defendant was a medical doctor who owned all of the stock of a PACA-licensed produce dealer corporation. The corporation purchased produce from the plaintiffs but did not pay for all of it. The corporation did not have enough assets, after liquidation of all accounts and property, to pay for the produce. The plaintiffs sought recovery from the defendant personally liable for the PACA trust fund shortfall of the corporation. The plaintiffs cited *Morris Okun, Inc. v. Harry Zimmerman, Inc.*, 814 F. Supp. 346 (S.D. N.Y. 1993) as authority for the defendant’s personal liability for the PACA trust. The defendant argued that the defendant merely owned the company as an investor and did not take part in any of the management of the business; therefore, the defendant should not be held liable for the corporation’s failure to pay for the produce. The court cited *Sunkist Growers, Inc. v. Fisher*, 104 F.3d 280 (9th Cir. 1997), in support of its holding that a 100 percent shareholder was in the position to control PACA trust assets held by the corporation. The court held that the defendant breached a fiduciary duty toward the PACA trust assets and was personally liable for the failure of the corporation to preserve PACA trust assets. The court noted that the PACA was a “tough law” and that the defendant should have known that it was the defendant’s personal responsibility to ensure that the corporation preserved the PACA trust for produce sellers. *Golman-Hayden Co., Inc. v. Fresh Source Produce, Inc.*, 217 F.3d 348 (5th Cir. 2000), aff’g, 27 F. Supp.2d 723 (N.D. Tex. 1998).

### FEDERAL ESTATE AND GIFT TAX

**MARRITAL DEDUCTION.** The decedent’s will provided for property passing to the surviving spouse in trust. The surviving spouse initially sought the surviving spouse’s elective share under state law but dismissed that claim. The spouse then filed an action for an accounting and determination of the dower share in the estate. In settlement of that action, the estate agreed to pay the spouse $135,000 and transferred some real property to the spouse. The estate claimed a marital deduction for the value of the settlement. The court held that, under New Jersey law, the surviving spouse did not have an enforceable right to terminate the trust income interest in favor of a lump sum payment; therefore, the money payment was not eligible for the marital deduction because the settlement was not made in exchange for an enforceable claim. Similarly, the court held that the transfer of the real estate in settlement of the dower claim was not enforceable and not eligible for the marital deduction. *Estate of Mergott v. United States*, 2000-2 U.S. Tax Cas. (CCH) ¶ 60,383 (D. N.J. 2000).

**REVOCABLE TRANSFERS.** The decedent had followed an estate plan of reducing the decedent’s estate by making annual gifts to relatives over 13 years. When the decedent’s health began to fail, the decedent granted a board power of attorney to the decedent’s daughter. During a time when the decedent was medically and mentally infirm, the daughter transferred several interests in real property to relatives who had received direct gifts from the decedent. The IRS argued that these late gifts were included in the decedent’s estate as revocable gifts because the daughter did not have explicit authority to make gifts for the decedent. The court examined Oregon law to determine the scope of a power of attorney. The court held that the gifts were valid and complete because (1) there was no state case law or statute prohibiting an inferred power to make gifts, (2) the Oregon law considered the decedent’s intention in interpreting the power of attorney, (3) there was a substantial pattern of gifting by the decedent preceding the gifts made by the attorney-in-fact, (4) the gifts made by the attorney-in-fact were consistent with the decedent’s prior gifting, (5) the gifts did not deplete the decedent’s estate assets to the estate’s detriment, and (6) it was clear there had been no fraud or abuse by the attorney-in-fact. *Estate of Pruitt v. Comm’r*, T.C. Memo. 2000-287.

**TRUSTS.** The decedent established a grantor retained annuity trust (GRAT) for the decedent’s benefit for a fixed term or until the decedent’s death. The decedent contributed all of the trust corpus and filed a gift tax return and paid the gift tax. The decedent received a percentage of the original trust corpus in monthly annuity payments and the decedent’s children where the remainder holders. The decedent died before the end of the term and the issue was the amount of the trust includible in the decedent’s gross estate. In a field service advice letter, the IRS ruled that, under I.R.C. § 2039(b), the entire amount passing to the remainder holders was included in the decedent’s estate because the decedent contributed all of the trust corpus to the trust. Alternatively, the IRS also ruled that the amount includible in the decedent’s gross estate under I.R.C. § 2036 was the amount of corpus necessary to yield the amount of the decedent’s retained annuity, based upon the applicable federal rate under I.R.C. § 7520, as of the date of the decedent’s death. *FSA Ltr. Rul. 200036012*, May 25, 2000.

### FEDERAL INCOME TAXATION

**BAD DEBT DEDUCTION.** The taxpayers, husband and wife operated a trucking business. The husband owned all of the stock of the first corporation. A second corporation was formed which was capitalized with only $500 and half of the shares were transferred to the husband and half to the wife. The second corporation received cash advances from the first corporation in exchange for promissory notes. However, the
second corporation made no payments on the notes, no interest was charged and the first corporation did not attempt to collect any of the debt. The second corporation terminated without repaying the notes. The second corporation claimed discharge of indebtedness income from the notes and the first corporation claimed a bad debt deduction. The court held that the advances were capital contributions and not loans because (1) no payments were scheduled or made, (2) the notes were to be repaid solely from the second corporation's earnings, (3) the second corporation was undercapitalized and (4) the second corporation made no attempt to borrow money from unrelated parties, even though such loans were available. The court held that the taxpayers were not entitled to a bad debt deduction because no bona fide debt existed. *Shedd v. Comm'r*, T.C. Memo. 2000-292.

**C CORPORATIONS**

**CONSTRUCTIVE DIVIDENDS.** The taxpayers, husband and wife operated a trucking business. The husband owned all of the stock of the first corporation. A second corporation was formed which was capitalized with only $500 and half of the shares were transferred to the husband and half to the wife. The second corporation received cash advances from the first corporation in exchange for promissory notes. However, the second corporation made no payments on the notes, no interest was charged and the first corporation did not attempt to collect any of the debt. The second corporation terminated without repaying the notes. The court held that the advances were constructive dividends to the taxpayers because (1) the payments were capital contributions to a corporation controlled by the taxpayers (see case under BAD DEBTS supra), and (2) the taxpayers failed to provide evidence of a business purpose for the advances except to transfer money. *Shedd v. Comm'r*, T.C. Memo. 2000-292.

**CAPITAL GAIN.** The IRS has adopted as final regulations which provide that, for purposes of applying I.R.C. § 1(h)(7)(B) (which provides that a taxpayer's unrecaptured section 1250 gain cannot exceed the taxpayer's net section 1231 gain), gain from the sale of a partnership, S corporation or trust interest that results in section 1250 capital gain is not treated as section 1231 gain even if section 1231 could apply to the disposition of the underlying partnership property. The IRS noted that, although section 1(h)(7) (in combination with section 751) applies a limited look-through rule for purposes of determining the capital gain rate applicable to the sale of a partnership, S corporation or trust interest, no similar look-through rule applies for purposes of applying section 1231. 65 Fed. Reg. 57092 (Sept. 21, 2000), *adding* Treas. Reg. § 1.1223-3.

**DISASTER PAYMENTS.** On September 1, 2000, the president determined that certain areas in Idaho were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of wildfires beginning on July 27, 2000. *FEMA-1341-DR*. On August 30, 2000, the President determined that certain areas in Montana were eligible for assistance under the Act as a result of a wildfires beginning on July 13, 2000. *FEMA-1337-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.

**ELECTRICITY PRODUCTION CREDIT.** The IRS has announced that the electricity production credit inflation factor for 2000 is 1.1382. *Notice 2000-52, I.R.B. 2000-__.*

**HOBBY LOSSES.** The taxpayers, husband and wife, were fully employed and also operated a paso fino horse breeding operation. The court held that the operation was not operated with an intent to make a profit because (1) although the taxpayers kept full and accurate records, the records were insufficient and were not used to evaluate the profitability of the business or to determine how to make the business profitable; (2) the taxpayers were not expert breeders and did not consult experts; (3) the operation had 11 years of losses; (4) the assets did not appreciate in value sufficient to offset the losses; and (5) the taxpayer derived significant personal pleasure from the activity. *McKeever v. Comm'r*, T.C. Memo. 2000-288.

**LIKE-KIND EXCHANGES.** The IRS has issued a revenue procedure which provides a safe harbor for some types of “reverse Starker” like-kind exchanges under which the IRS will not challenge (1) the qualification of property as either “replacement property” or “relinquished property” (as defined in Treas. Reg. § 1.1031(k)-1(a)) for purposes of I.R.C. § 1031 and the regulations thereunder or (2) the treatment of the “exchange accommodation titleholder” as the beneficial owner of such property for federal income tax purposes, if the property is held in a “qualified exchange accommodation arrangement” (QEAA).

Property is considered as held in a QEAA if all of the following criteria are met:

“(1) The qualified indicia of ownership of the property is held by a person who is not the taxpayer or a disqualified person and either such person is subject to federal income tax or, if such person is treated as a partnership or S corporation for federal income tax purposes, more than 90 percent of its interests or stock are owned by partners or shareholders who are subject to federal income tax. Such qualified indicia of ownership must be held by the exchange accommodation titleholder at all times from the date of acquisition by the exchange accommodation titleholder until the property is transferred as described in section 4.02(5) of this revenue procedure. For this purpose, “qualified indicia of ownership” means legal title to the property, other indicia of ownership of the property that are treated as beneficial ownership of the property under applicable principles of commercial law (e.g., a contract for deed), or interests in an entity that is disregarded as an entity separate from its owner for federal income tax purposes (e.g., a single member limited liability company) and that holds either legal title to the property or such other indicia of ownership;

“(2) At the time the qualified indicia of ownership of the property is transferred to the exchange accommodation titleholder, it is the taxpayer’s bona fide intent that the property held by the exchange accommodation titleholder represent either replacement property or relinquished property in an exchange that is intended to qualify for nonrecognition of gain (in whole or in part) or loss under §1031;

“(3) No later than five business days after the transfer of qualified indicia of ownership of the property to the exchange accommodation titleholder, the taxpayer and the exchange accommodation titleholder enter into a written agreement (the
“qualified exchange accommodation agreement”) that provides that the exchange accommodation titleholder is holding the property for the benefit of the taxpayer in order to facilitate an exchange under §1031 and this revenue procedure and that the taxpayer and the exchange accommodation titleholder agree to report the acquisition, holding, and disposition of the property as provided in this revenue procedure. The agreement must specify that the exchange accommodation titleholder will be treated as the beneficial owner of the property for all federal income tax purposes. Both parties must report the federal income tax attributes of the property on their federal income tax returns in a manner consistent with this agreement;

(4) No later than 45 days after the transfer of qualified indicia of ownership of the replacement property to the exchange accommodation titleholder, the relinquished property is properly identified. Identification must be made in a manner consistent with the principles described in [Treas. Reg.] § 1.1031(k)-1(c). For purposes of this section, the taxpayer may properly identify alternative and multiple properties, as described in [Treas. Reg.] § 1.1031(k)-1(c)(4);

(5) No later than 180 days after the transfer of qualified indicia of ownership of the property to the exchange accommodation titleholder, (a) the property is transferred (either directly or indirectly through a qualified intermediary (as defined in [Treas. Reg.] § 1.1031(k)-1(g)(4))) to the taxpayer as replacement property; or (b) the property is transferred to a person who is not the taxpayer or a disqualified person as relinquished property; and

(6) The combined time period that the relinquished property and the replacement property are held in a QEAA does not exceed 180 days.”

The revenue procedure also identifies the permissible legal and contractual arrangements for a QEAA:

“(1) An exchange accommodation titleholder that satisfies the requirements of the qualified intermediary safe harbor set forth in [Treas. Reg.] § 1.1031(k)-1(g)(4) may enter into an exchange agreement with the taxpayer to serve as the qualified intermediary in a simultaneous or deferred exchange of the property under [I.R.C.] § 1031;

“(2) The taxpayer or a disqualified person guarantees some or all of the obligations of the exchange accommodation titleholder, including secured or unsecured debt incurred to acquire the property, or indemnifies the exchange accommodation titleholder against costs and expenses;

“(3) The taxpayer or a disqualified person loans or advances funds to the exchange accommodation titleholder or guarantees a loan or advance to the exchange accommodation titleholder;

“(4) The property is leased by the exchange accommodation titleholder to the taxpayer or a disqualified person;

“(5) The taxpayer or a disqualified person manages the property, supervises improvement of the property, acts as a contractor, or otherwise provides services to the exchange accommodation titleholder with respect to the property;

“(6) The taxpayer and the exchange accommodation titleholder enter into agreements or arrangements relating to the purchase or sale of the property, including puts and calls at fixed or formula prices, effective for a period not in excess of 185 days from the date the property is acquired by the exchange accommodation titleholder; and

“(7) The taxpayer and the exchange accommodation titleholder enter into agreements or arrangements providing that any variation in the value of a relinquished property from the estimated value on the date of the exchange accommodation titleholder’s receipt of the property be taken into account upon the exchange accommodation titleholder’s disposition of the relinquished property through the taxpayer’s advance of funds to, or receipt of funds from, the exchange accommodation titleholder.” Rev. Proc. 2000-37, I.R.B. 2000-...
also noted that Form 966, Corporate Dissolution or Liquidation, may no longer be used to make a QSub election. These documents are available at no charge (1) by calling the IRS's toll-free telephone number, 1-800-829-3676; (2) via the internet at http://www.irs.gov/prod/cover.html; (3) through FedWorld; or (4) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

S CORPORATIONS-ALM § 7.02[3][c].

DISCHARGE OF INDEBTEDNESS. The taxpayers were shareholders in an S corporation which manufactured coated steel products. The corporation encountered financial troubles and was forced into involuntary Chapter 7 bankruptcy in 1992. The case continued for four years and included interim payments to creditors and negotiations with various parties. A discharge was granted in 1996. The taxpayers claimed discharge of indebtedness income from the S corporation in 1992 because the corporation was in bankruptcy, insolvent and was not able to pay the claims against it. The court held that no discharge of indebtedness occurred in 1992 because the bankruptcy proceeding was still active and no discharge was granted in that year; therefore, no identifiable event occurred which discharged any debt. The court also held that, even if discharge of indebtedness income was realized in 1992, the income could not be used to increase the shareholders’ basis in the corporation. Friedman v. Comm’r, 216 F.3d 537 (6th Cir. 2000), aff’g, T.C. Memo. 1998-196.

SAFE HARBOR INTEREST RATES

<table>
<thead>
<tr>
<th>October 2000</th>
<th>Short-term</th>
<th>Mid-term</th>
<th>Long-term</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Annual</td>
<td>Semi-annual</td>
<td>Quarterly</td>
</tr>
<tr>
<td>AFR</td>
<td>6.30</td>
<td>6.20</td>
<td>6.15</td>
</tr>
<tr>
<td>110 percent AFR</td>
<td>6.94</td>
<td>6.82</td>
<td>6.76</td>
</tr>
<tr>
<td>120 percent AFR</td>
<td>7.58</td>
<td>7.44</td>
<td>7.37</td>
</tr>
<tr>
<td>AFR</td>
<td>6.09</td>
<td>6.00</td>
<td>5.96</td>
</tr>
<tr>
<td>110 percent AFR</td>
<td>6.71</td>
<td>6.60</td>
<td>6.55</td>
</tr>
<tr>
<td>120 percent AFR</td>
<td>7.33</td>
<td>7.20</td>
<td>7.14</td>
</tr>
<tr>
<td>AFR</td>
<td>5.96</td>
<td>5.87</td>
<td>5.83</td>
</tr>
<tr>
<td>110 percent AFR</td>
<td>6.56</td>
<td>6.46</td>
<td>6.41</td>
</tr>
<tr>
<td>120 percent AFR</td>
<td>7.16</td>
<td>7.04</td>
<td>6.98</td>
</tr>
</tbody>
</table>


TRAVEL EXPENSES. The taxpayer was a tugboat captain and was required to be away from the taxpayer’s residence for 307 days in 1996. The taxpayer did not keep records of incidental travel expenses for those days but did present a written log of the tugboat which listed the days worked by the taxpayer. The records showed (1) the dates of the taxpayer’s departure and return from each city that the taxpayer visited while away from home (the time requirement), (2) the cities or points of locality of travel (the place requirement), and (3) the business nexus between the taxpayer’s employment and the taxpayer’s travel (the business purpose requirement). The court held that the taxpayer could deduct the incidental expense portion of the applicable federal per diem rates for meals and incidental expenses in Rev. Proc. 1996-28, 1996-1 C.B. 868 for the 1996 tax year. Westling v. Comm’r, T.C. Memo. 2000-289; Johnson v. Comm’r, 115 T.C. No. 16 (2000).

NEGLECT

RECREATIONAL IMMUNITY. The plaintiff was injured while viewing the livestock exhibit at a county fair sponsored by the defendant. The plaintiff was injured when struck from behind by a pig in the exhibit. The defendant argued that it was immune from liability for the injuries under Neb. Stat. § 37-729(3) because the plaintiff was participating in recreational activities at the fair. The statute did not specifically include or exclude county fair activities as covered recreational activities but listed several other activities and “otherwise using land for purposes of the user” which the court interpreted as including activities similar to the enumerated activities. The court characterized the enumerated activities as activities which required active participation of the user; therefore, the court held that visiting a county fair livestock exhibit was not covered by the statute because the activity did not require active participation of the visitors. The dissent argued that some of the enumerated activities did not require active participation and were similar enough in nature to county fair visitation to include the plaintiff’s activities as covered by the statute. Dykes v. Scotts Bluff Cty. Ag. Society, 260 Neb. 375, __ N.W.2d __ (2000).

The plaintiff was injured while riding a horse as part of a horse ride sponsored by the defendant. The defendant’s employees prepared the horses and chose the plaintiff’s horse based on the plaintiff’s lack of horse riding experience. Late in the ride, the plaintiff’s saddle became loose and slipped around the horse’s belly, throwing the plaintiff to the ground. The defendant argued that it was not liable for the injury because a loose saddle was an inherent risk of horse riding and Wyo. Stat. § 1-1-122 limited the duty of a provider of recreational activities to risks which were not inherent to the activity. The court held that a loose saddle was an inherent risk of horse riding and the defendant was not liable for the injury to the plaintiff because the plaintiff failed to show any other cause of the slipping which was not an inherent risk of horse riding. The plaintiff had presented testimony that the saddle slippage was caused by the failure to cinch the saddle strap tightly enough, but the court held that was part of the inherent risk of horse riding because the cinching of the strap was a judgment of the person who saddled the horse. Cooperman v. David, 214 F.3d 1162 (10th Cir. 2000), aff’g, 23 F. Supp.2d 1315 (D. Wyo. 1999).

CITATION UPDATES

Gaudiano v. Comm’r, 216 F.3d 524 6th Cir. 2000) (discharge of indebtedness), see p 110 supra.
Watch this space for further information on the Agricultural Law Press

AGRICULTURAL TAX AND LAW SEMINARS

in Florida

by Neil E. Harl and Roger A. McEowen

January 9-12, 2001

Jacksonville/St. Augustine, Florida

Planning is almost complete for our newest seminar in the Jacksonville/St. Augustine, Florida area. Come join us in America’s vacationland for expert seminars on the hottest topics in agricultural tax and law.

The seminars will be Tuesday, Wednesday, Thursday, and Friday, January 9-12, 2001. Registrants may attend one, two, three or all four days, with separate pricing for each combination. On Tuesday, Roger McEowen will cover current developments in many areas of agricultural law. On Wednesday, Roger McEowen will cover farm and ranch business planning. On Thursday, Dr. Harl will speak about farm and ranch income tax. On Friday, Dr. Harl will cover farm and ranch estate planning. Your registration fee includes comprehensive annotated seminar materials for the days attended which will be updated just prior to the seminar. The seminar materials will also be available on CD-ROM for a small additional charge. Continental buffet breakfasts and break refreshments are also included in the registration fee.

Here are some of the major topics to be covered:

• Legal developments in farm contracts, secured transactions, bankruptcy, real property, water law, torts, and environmental law.

• Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.

• Taxation of debt, taxation of bankruptcy, the latest on SE tax of rental of land to a family-owned entity; income averaging; earned income credit; commodity futures transactions; paying wages in kind.

• Federal estate tax, including 15-year installment payment of federal estate tax, co-ownership discounts, 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, trusts, 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.

Special room discounts are available at the hotel. Be sure to tell them that you are attending the agricultural law seminar.

The seminar registration fees for current subscribers to the Agricultural Law Digest, the Agricultural Law Manual, or Principles of Agricultural Law are $175 (one day), $340 (two days), $490 (three days), and $620 (four days). The registration fees for nonsubscribers are $195, $380, $550 and $700, respectively. Please Note: the registration fees are higher for registrations within 10 days prior to the seminar, so please call for availability and the correct fees. A registration form will be available online at www.agrilawpress.com

For more information, call/fax Robert Achenbach at 1-541-302-1958, or e-mail at robert@agrilawpress.com