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Cases, Regulations, and Statutes

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CASES, REGULATIONS AND STATUTES

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BANKRUPTCY

<u>GENERAL</u>-*ALM* § 13.03.*

EXEMPTIONS.

FEDERAL CHILD TAX CREDIT. The debtor claimed an exemption, as a public assistance benefit, for the portion of a federal income tax refund which resulted from the child tax credit. The court held that the federal child tax credit was not public assistance because the credit was not available only for low income taxpayers. ***In re* Seward, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,668 (Bankr. E.D. Ky. 2001)**.

<u>FEDERAL TAX</u>-*ALM* § 13.03[7].*

PREFERENTIAL TRANSFERS. The debtor was delinquent in payment of child support and had requested a refund for 1999 taxes. The IRS approved the refund but sent the refund to the county child support enforcement agency in partial payment of the debtor's delinquent obligation. The debtor filed for Chapter 7 within 90 days after the transfer and the trustee sought recovery of the transfer as a preferential transfer. The trustee argued that the transfer was avoidable under Section 547(c)(7)(A) because the child support debt was assigned to the county agency. The court held that the debt was not assigned to the agency in that the agency acted only as a trustee for the custodial parent. ***In re* Sanks, 265 B.R. 566 (Bankr. N.D. Ohio 2001)**.

EMPLOYER LIABILITY

INDEPENDENT CONTRACTOR. The plaintiff was a hunter who was injured while hunting on land which had been used to dump diatomaceous earth and fruit pomace (fruit processing waste). The plaintiff fell through an earthen covering and was burned because the wastes had started burning from spontaneous combustion. The plaintiff sued the fruit processor who had hired an independent contractor, the owner of the farm, to dispose of the wastes. The evidence indicated that the defendant had been notified that the farmer had been improperly disposing of the wastes by dumping them together in a pit on the farm. The evidence also indicated that the pit had started burning and had produced smoke and odors which were the source of complaints by neighbors to the defendant. The dumping was also not licensed. The defendant sought dismissal of the case, arguing that it was not liable for the injury because the improper disposal was the act of an independent contractor. The court held that the plaintiff had pled and shown sufficient facts that, if proved at trial, would support enforcing liability against the defendant for the acts of the independent contractor. The court also held that the same facts, if proved at trial would support a violation of the Hazardous Waste Management Act, Wash. Code Ch. 70.1.05, which would extend liability to the defendant for the acts of the independent contractor. **Hickle v. Whitney Farms, Inc., 29 P.3d 50 (Wash. Ct. App. 2001)**.

FEDERAL AGRICULTURAL PROGRAMS

CONSERVATION. The CCC has issued a notice of financial assistance to eligible producers to promote water conservation in the Klamath Basin as provided for by the Supplemental Appropriations Act, 2001, Pub. L 107-20. The notice sets out the method by which the payment will be distributed on behalf of eligible producers to eligible owners and operators who did not receive certain expected deliveries of irrigation water within the Klamath Basin during the past crop year, and who agree to promote water conservation methods in future agricultural activities. **66 Fed. Reg. 51637 (Oct. 10, 2001)**.

MILK MARKETING ORDERS. The plaintiffs were dairy farmers who claimed that they were adversely affected by federal milk marketing orders in violation of the Wisconsin antitrust law because milk processors were able to pay less for milk by manipulating data used to establish minimum milk prices. The court dismissed the action, holding that the filed rate doctrine barred an action for damages based on the marketing orders. The filed rate doctrine was created by the U.S. Supreme Court in *Keogh v. Chicago & N.W. Ry. Co., 260 U.S. 156 (1922)*, and provides that rates established by administrative commissions cannot be reviewed by courts except as to whether the adoption process was flawed. In this case, there was no allegation that the rate making process was flawed. **Servais v. Kraft Foods, Inc., 631 N.W.2d 629 (Wis. Ct. App. 2001)**.

WEEDS. The APHIS has issued proposed regulations which revise the regulations regarding the movement of plant pests by adding risk-based criteria for determining the plant pest status of organisms, establishing a notification process that could be used as an alternative to the current permitting system, and providing for the environmental release of organisms for the biological control of weeds. The proposed changes clarify the factors that would be considered when assessing the plant pest risks associated with certain organisms and facilitate the importation and interstate movement of regulated organisms. **66 Fed. Reg. 51340 (Oct. 9, 2001)**.

FEDERAL ESTATE AND GIFT TAX

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent had owned 470 shares of a closely-held corporation. Under a shareholder agreement, the corporation was required to repurchase the shares from the decedent's estate using the proceeds of life insurance on the decedent's life and other funds. The corporation repurchased 86 shares with the life insurance proceeds and agreed to repurchase the remaining shares by purchasing 38.4 shares annually. The estate elected to pay the estate tax in installments. The central issue was whether the provision in I.R.C. § 6166(g)(1)(A) prevented the installment election. I.R.C. § 6166(g)(1)(A) provides that installment payments will be accelerated and due upon the sale or exchange of 50 percent of more of the decedent's interest in a closely-held business. Because the corporation would eventually repurchase 50 percent or more of the decedent's stock, the installment payments would be accelerated. In a Chief Counsel Advice letter, the IRS ruled that the estate was eligible for the installment payment of tax because it met the requirements at the time of the election. The IRS also discussed the I.R.C. § 6166(g)(1)(B) exception to acceleration of the installments where the sale of the stock constituted a redemption under I.R.C. § 303. Section 303 requires that the amount of the distribution in redemption of stock cannot exceed the sum of the estate, inheritance, legacy, and succession taxes (plus interest) and the amount of funeral and administration expenses allowable as deductions for Federal estate tax purposes. The IRS stated that estate should first make the calculations under Rev. Rul. 86-54, 1986-1 C.B. 356, which provides two alternative approaches to the requirement of I.R.C. § 6166(g)(1)(B) that estate tax must be paid in an amount not less than the amount of money and other property distributed in the Section 303 redemption on or before the date prescribed for payment of the first installment due after the date of the distribution (or, if earlier, on or before the day that is one year after the date of the distribution). **CCA Ltr. Rul. 200141015, July 2, 2001**.

The decedent's estate had filed for an extension of time to file the estate tax return and had included payment of estimated estate taxes with the extension application. The estate timely filed the estate tax return and elected to make the eligible tax payments in installments. The estate filed for a refund of the taxes paid with the extension application to the extent the taxes were eligible for the installment provision. The amount paid with the extension application did not exceed the total estate tax due. Essentially, the estate requested the return of the estate taxes paid which were eligible to be paid under the installment election. In a Chief Counsel Advice letter, the IRS ruled that no refund was allowed because the taxes paid did not exceed the total estate taxes due. **CCA Ltr. Rul. 200141013, June 28, 2001**.

JOINT TENANCY PROPERTY. The IRS has issued an acquiescence in the following decision. In 1972, the decedent and spouse had acquired stock in a tenants' corporation for an apartment in New York City. The title to the stock was held as joint tenants with right of survivorship. The court had insufficient factual development to determine the amount of consideration furnished by each taxpayer for the stock. At the death of the decedent, the estate included all of the value of the stock in the decedent's estate. The spouse then sold the stock, using the federal estate tax basis for determining the gain from the sale. The IRS recomputed the gain from the sale, using only 50 percent of the value of the stock as the basis for federal estate tax purposes. The IRS argued that the 1981 amendment of I.R.C. § 2040(b)(2) made I.R.C. § 2040(b)(1) effective for all estates of decedents dying after December 31, 1981, regardless of when the joint tenancy property was purchased. The court followed *Gallenstein v. United States, 975 F.2d 286 (6th Cir. 1992)*, to hold that the amendment did not apply to joint tenancy interests created prior to 1977; therefore, the decedent was not restricted to including only 50 percent of the value of the stock in the decedent's estate but the amount of stock included would be determined under the consideration furnished test. See also Harl, "Basis for Joint Tenancy Property," 9 *Agric. L. Dig.* 49 (1998). **Hahn v. Comm'r, 110 T.C. 140 (1998), *acq.*, AOD CC-2001-06**, **I.R.B. 2001-__**.

FEDERAL INCOME TAXATION

BAD DEBT DEDUCTION. The taxpayer provided consulting services and formed three corporations to accommodate the business needs of the consulting firm. The taxpayer provided the operating funds to the corporations through personal advances of funds. When the consulting business failed, the corporations also failed and the taxpayer claimed a bad debt deduction for the amounts contributed to the corporations. The Tax Court originally held that the amounts contributed were not loans but were equity contributions because (1) no promissory notes were executed, (2) no interest rate was set, (3) no terms of repayment were established and repayment was inconsistent and corresponded to income of the corporations, (4) the corporations were thinly capitalized, and (5) the amounts contributed were at high risk of nonpayment because the business depended upon one main client but no compensation was involved for this risk factor. On appeal, the appellate court reversed, holding that the Tax Court had failed to consider interest payments made by the three corporations as evidence supporting the taxpayer's argument that the contributed funds were loans. On remand, the Tax Court held that the interest payments did not support characterization of the contributions as debt because (1) the interest income and deductions were not consistently or completely reported by the taxpayer and the other corporations, (2) the interest payments were followed by additional contributions to the corporations, and (3) the amounts of the interest payments were dependent upon the

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income of the other corporations. **Cerand & Co. v. Comm'r, T.C. Memo. 2001-271,** ***on rem. from,*** **254 F.3d 258 (D.C. Cir. 2001),** ***rev'g and rem'g*****, T.C. Memo. 1998-423**.

COURT AWARDS AND SETTLEMENTS-ALM § 4.02[14].* The taxpayers filed suit for personal injuries arising out of an automobile accident. The taxpayers received a jury award for the personal injuries and the state court added statutory delay damages determined by applying an interest rate to the jury award over the time between the filing of the suit and the jury award. During the appeal process, the parties reached a settlement which was not much less than the total state court award. The court found that the delay damages were very similar to pre-judgment interest. The court held that the delay damages were included in the taxpayers' income because the purpose of the delay damages was to compensate the taxpayers for the loss of the use of the jury award during the lawsuit. The court delayed ruling on the proper allocation of the settlement between personal injury compensation and delay damages pending presentation of evidence and arguments on the allocation issue. The appellate court affirmed on the delay damages issue. **Francisco v. United States, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,625 (3d Cir. 2001),** ***aff'g*****, 99-2 U.S. Tax Cas. (CCH) ¶ 50,625 (E.D. Penn. 1999)**.

DEPENDANTS. The taxpayer was not married and lived with the taxpayer's minor child in a home owned and occupied by the taxpayer's parents. The court found that the taxpayer provided more than one-half of the support for the child and was, therefore, eligible to claim the child as a dependent and to file using the head of household status. However, because the parents' modified adjusted gross income exceeded the taxpayer's, the taxpayer could not claim the earned income tax credit as to the child. **Obriot v. Comm'r, T.C. Summary Op. 2001-162**.

DEPRECIATION. The taxpayer operated a business renting video games and originally filed returns claiming depreciation deductions based on straight line depreciation over two years. The taxpayer sought to amend its original returns to elect out of MACRS under I.R.C. § 168(f)(1). The court held that the taxpayer could not elect out of the MACRS depreciation method because the taxpayer had originally depreciated the property using a term of years. **New Gaming Systems, Inc. v. Comm'r, T.C. Memo. 2001-277**.

The IRS has issued guidance providing taxpayers relief from the application of the mid-quarter convention contained in the depreciation rules. The notice provides that taxpayers may elect not to apply the mid-quarter convention if their third quarter includes September 11, 2001. The notice does not limit this provision to taxpayers directly affected by the terrorist attacks of September 11, 2001. **Notice 2001-70, I.R.B. 2001-__**.

The taxpayer was an electric utility company which incurred costs in digging trenches for installing underground electrical facilities. The court held that the trenching costs had to be capitalized because the facilities had a useful life in excess of one year and would produce income over the life of the facilities. **Florida Progress Corp. v. United States, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,679 (11th Cir. 2001),** ***aff'g*****, 98-2 U.S. Tax Cas. (CCH) ¶ 50,591 (M.D. Fla. 1998).**

DISASTER PAYMENTS. On September 21, 2001, the President determined that certain areas in Virginia were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of fire and explosions at the Pentagon on September 11, 2001. **FEMA-1392-DR**. On September 28, 2001, the President determined that certain areas in Florida were eligible for assistance under the Act as a result of severe storms, tornadoes and flooding beginning on September 13, 2001. **FEMA-1393-DR**. Accordingly, a taxpayer who sustained a loss attributable to the disasters may deduct the loss on his or her 2000 federal income tax return.

ENVIRONMENTAL CLEANUP COSTS. The taxpayer had purchased two existing retail store properties. The stores were not selling gasoline at the time of purchase and the taxpayer did not know that gasoline stations had been operated at the properties. Underground storage tanks were still in place and had leaked gasoline into the soil. The taxpayer claimed the soil cleanup expenses as a current business deduction but the IRS argued that the cleanup costs had to be capitalized into the purchase price of the properties. The court held that the cleanup costs had to be capitalized because the taxpayer did not cause the contamination and the cleanup improved the condition of the property, even though the value of the property did not increase above what the taxpayer paid for them. **United Dairy Farmers, Inc. v. United States, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,680 (6th Cir. 2001),** ***aff'g*****, 107 F. Supp. 2d 937 (S.D. Ohio 2000)**.

HOBBY LOSSES. The taxpayers, husband and wife, operated a cattle and deer operation. The taxpayers were also the sole shareholders of a corporation which operated a manufacturing facility. The court held that the taxpayers did not operate the cattle and deer operation with the intent to make a profit because (1) the taxpayers did not keep complete and accurate books, and did not have any business plan to make the operation profitable; (2) although the taxpayers had substantial knowledge of raising cattle, they had little experience in making such an operation profitable; (3) although the taxpayers spent considerable time on the operation, much of that time was spent in recreational activities; (4) although the real property appreciated, the appreciation was substantially less than the losses incurred; (5) although the taxpayers were successful with their manufacturing business, the taxpayer made little effort to make the cattle and deer operation profitable; (6) the operation had losses in 19 of the 20 years of operation; (7) the taxpayers had substantial income from other sources which was offset by the farm losses; and (8) the taxpayers received much personal pleasure from the cattle and deer operation as well as other aspects of rural life. The appellate court affirmed in a decision designated as not for publication. **Kahla v. Comm'r, 2001-2 U.S. Tax Cas.**

(CCH) ¶ 50,660 (5th Cir. 2001), ***aff'g*****, T.C. Memo. 2000-127**.

PENSON PLANS. The IRS has issued, in question and answer form, guidance on the I.R.C. § 415 limitation increases enacted by EGTRRA 2001, including: (1) benefit increases that may be provided as a result of the increased I.R.C. § 415 limitations under EGTRRA; (2) plan amendments that may be adopted to take into account the increased Section 415 limitations; (3) the effect of the increased Section 415 limitations on other qualification requirements; and (4) how the "sunset" provision of EGTRRA is taken into account for purposes of Sections 412 and 404. **Rev. Rul. 2001-51, I.R.B. 2001-__,** ***modifying*****, Rev. Rul. 98-1, 1998-1 CB 249**.

The IRS has announced relief to employers who, because of the September 11th terrorist attacks, were not able to make required contributions to their pension plans on or before September 15, 2001, to satisfy the minimum funding standards. The relief concerns certain penalties relating to Form 5500 for defined benefit and money purchase pension plans that are required to be filed on or before October 15, 2001. **Ann. 2001-103, I.R.B. 2001-43**.

The taxpayer received an early distribution from a qualified retirement plan which triggered the 10 percent addition to income tax imposed by I.R.C. § 72(t). The taxpayer claimed the 10 percent tax as a deduction under I.R.C. § 164(a). The court held that the Section 72(t) tax is an addition to the income tax and under I.R.C. § 275(a)(1) no deduction is allowed for federal income taxes. **Trace v. Comm'r, T.C. Summary Op. 2001-165**.

The IRS has announced that revised determination letter forms for pension, profit-sharing, stock bonus and annuity plans will be available in late November 2001. The revised forms are intended to simplify application procedures for determination letters. Revised forms include Form 5300, Application for Determination for Employee Benefit Plan; Schedule Q (Form 5300), Elective Determination Requests; Form 5307, Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans; Form 5309, Application for Determination of Employee Stock Ownership Plan; and Form 6406, Short Form Application for Determination for Minor Amendment of Employee Benefit Plan. The revised forms will be available from IRS distribution centers (1-800-TAX-FORM) and on the IRS web site at www.irs.gov, under "Forms & Pubs." **Ann. 2001-109**.

RETURNS. The taxpayer was living with a same sex partner and claimed the partner as a deduction on the taxpayer's income tax return, although the taxpayer had crossed out all references to "spouse" on the return. The taxpayer used the "married filing joint return" tax schedule, although the taxpayer marked out the term "married" on the return. The court noted that no change in the taxpayer's marital status under state or federal law had occurred since the same issue was litigated for previous tax returns in *Mueller v. Comm'r, T.C. Memo. 2000-132, aff'd, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,391 (7th Cir. 2001);* therefore, the court held that the taxpayer could not use the joint return tax schedule or claim the standard deduction for joint returns. **Mueller v. Comm'r, T.C. Memo. 2001-274**.

The IRS has posted the following forms and instructions to its web site at www.irs.gov, in the "Forms & Pubs" section: Form 943 (2001), Employer's Annual Tax Return for Agricultural Employees, and instructions; and Instructions for Form 940-EZ (2001), Employer's Annual Federal Unemployment (FUTA) Tax Return.

S CORPORATIONS-ALM § 7.02[3][c].*

EMPLOYEE. The taxpayer was an S corporation with one shareholder who was a veterinary doctor. The shareholder provided consulting and surgical services for other veterinary clinics. The clinics paid the fees for the services to the S corporation. The corporation did not pay wages to the shareholder but claimed all payments as distributions of corporate income. Neither the corporation nor the shareholder paid employment taxes on the distributions. The court held that the shareholder was an employee of the corporation and the amounts paid to the shareholder were subject to employment taxes. The court also held that the I.R.C. § 530(a)(1) exception did not apply because the corporation did not have a reasonable basis for not treating the shareholder as an employee. **Veterinary Surgical Consultants, P.C. v. Comm'r, 117 T.C. No. 14 (2001)**.

The taxpayer was an S corporation wholly-owned by a husband and wife. The corporation operated a drywall construction business and was managed by the husband who was a 99 percent shareholder, with the wife owning the other 1 percent. The shareholders claimed all income from the corporation on Schedule E as nonpassive income and the corporation did not withhold or pay any federal employment taxes on the amounts paid to the shareholders. The court held that the shareholder was an employee of the corporation and the amounts paid to the shareholder were subject to employment taxes. The court also held that the I.R.C. § 530(a)(1) exception did not apply because the corporation did not have a reasonable basis for not treating the shareholder as an employee. **Yeagle Drywall Co., Inc. v. Comm'r, T.C. Memo. 2001-284**.

SHAREHOLDER BASIS. The taxpayers owned and operated a trucking business as a partnership. The taxpayers formed an S corporation to handle the truck maintenance for the partnership. The corporation obtained an operating loan and the bank required the shareholders to guarantee personally the loan, including use of a second home mortgage to secure a portion of the loan. The partnership then transferred all assets to the corporation in a transaction treated as a sale for income tax purposes because the liabilities assumed by the corporation equaled the tax basis in the assets transferred. The taxpayer argued that their guarantee of the corporation's debt increased their basis in the corporation. The court held that the guarantees did not increase the shareholders' basis in the corporation because the loan was made to the corporation, the corporation made all payments on the loan, and the loan was not in default. The taxpayers also argued that the shareholder basis was increased by the amount the fair market value of the

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partnership's assets exceeded the liabilities assumed by the corporation. The court held that, because the transfer was structured as a tax-free sale, the taxpayers were prohibited from changing the character of the transfer later. The appellate court affirmed in a decision designated as not for publication. **Estate of Bean v. Comm'r, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,669 (8th Cir. 2001), *aff'g*, T.C. Memo. 2000-355**.

The taxpayer owned two corporations, a mining corporation and a farm corporation. The farm corporation was transferred to the taxpayer's spouse during the tax years involved in the case. The mining corporation made distributions of dividends owed to the taxpayer and the distributions were either made directly to the farm corporation or passed on by the taxpayer to the farm corporation. The farm corporation incurred several years of losses and the taxpayer and spouse claimed deductions for those losses. The IRS argued that the amounts transferred from the mining corporation to the farm corporation were intercorporate loans which did not increase the taxpayer's and spouse's basis in the farm corporation. The court held that the transfers from the mining corporation to the farm corporation were contributions or loans from the taxpayer to the farm corporation or gifts to the taxpayer's spouse and then contributed or loaned to the farm corporation; therefore, the transfers increased the basis of the taxpayer and spouse in the farm corporation sufficient to allow deduction of the farm losses. **Yates v. Comm'r, T.C. Memo. 2001-280**.

SAFE HARBOR INTEREST RATES
November 2001

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	2.73	2.71	2.70	2.69
110 percent AFR	3.00	2.98	2.97	2.96
120 percent AFR	3.28	3.25	3.24	3.23
		Mid-term		
AFR	4.13	4.09	4.07	4.06
110 percent AFR	4.55	4.50	4.47	4.46
120 percent AFR	4.97	4.91	4.88	4.86
		Long-term		
AFR	5.31	5.24	5.21	5.18
110 percent AFR	5.84	5.76	5.72	5.69
120 percent AFR	6.39	6.81	6.75	6.72

Rev. Rul. 2001-52, I.R.B. 2001-__.

SAVER'S CREDIT. The IRS has issued, in question-and-answer format, a description of the new "saver's credit," an income tax credit that is available to eligible taxpayers who contribute to a retirement plan or IRA, enacted as part of EGTRRA 2001. The IRS has also provided a sample notice that employers can give to employees explaining the credit. **Ann. 2001-106, I.R.B. 2001-44**.

SELF-EMPLOYMENT TAX. The taxpayer had income from the taxpayer's legal practice but did not pay any self-employment tax, arguing that the self-employment tax was voluntary. The taxpayer provided no further argument or authority on this issue. The court held that self-employment taxes were mandatory. **Baker v. Comm'r, T.C. Memo. 2001-283**.

SOCIAL SECURITY TAX-*ALM* § 4.06.* The maximum amount of annual wages subject to Old Age Survivors and Disability Insurance for 2002 will be $84,900, with **all** wages and self-employment income subject to the medicare portion of the tax.

TRUSTS. The IRS mailed a notice of deficiency to the taxpayer trust and the trust filed a petition in the Tax Court under the name of the trust and signed by a named person. The IRS and court sent requests to the trust for information which would establish the identity of the trustee or other fiduciary with authority to bring the petition for the trust. The requests were sent to the trust's address in the name of the person who signed the petition. The trust failed to respond to the requests and the court dismissed the action. **Northstate Tax Consultants v. Comm'r, T.C. Memo. 2001-279**.

UNEMPLOYMENT COMPENSATION. The taxpayer erroneously listed unemployment compensation benefits as social security benefits on the taxpayer's income tax return. The taxpayer, however, included the unemployment compensation in the taxable income and paid tax on the compensation. The IRS changed the return by excluding the listed social security benefits from income and increased the taxpayer's refund. The taxpayer made several contacts with the IRS to verify the increased refund and was told each time that the refund was correct. The taxpayer eventually spent the extra refund amount. Two years later the IRS issued a deficiency based on the erroneous refund. The taxpayer argued that the deficiency notice was invalid because the taxpayer reasonably and in good faith relied on the advice of several IRS employees. The court held that the advice of IRS employees does have the force of law and does not negate a correct deficiency notice. The court noted that the taxpayer's frequent contact with the IRS was based on the taxpayer's own awareness that a problem may have existed with the increased refund. **Ferreira v. Comm'r, T.C. Summary Op. 2001-167**

TAX SHELTERS. These cases involved taxpayers who invested in a partnership which developed and operated jojoba farms. The taxpayer claimed tax losses more than double the initial investment in the first tax year and additional losses in following years. The losses were disallowed because the partnership was held to be a sham tax shelter. The issues in this case were whether the taxpayer was liable for the negligence component of the accuracy-related penalty and whether the IRS should have waived the understatement of tax component of the accuracy-related penalty. The court ruled that the taxpayer had sufficient business acumen that it was unreasonable for the taxpayer to not have sought expert tax advice before claiming substantial and accelerated tax losses more than double the initial investment. The taxpayers also failed to provide any substantial authority for their claim of losses. **Lopez v. Comm'r, T.C. Memo. 2001-278.**

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SECURED TRANSACTIONS

PRODUCER'S LIEN. The debtor was a rice processor who had purchased several varieties of rice from a grower. The debtor segregated purchased rice by variety and crop year but commingled rice of the same year and variety from different producers. The grower sought to enforce its producer's lien, under Cal. Food & Agric. Code § 55631, in order to recover amounts owed by the debtor for rice purchased from the grower. The grower argued that Cal. Food & Agric. Code § 55634 extended the producer's lien to cover all rice in the debtor's possession. The court held that Section 55634 allowed a producer's lien to extend to a crop which was commingled with crops from other producers. Thus, a producer's lien would cover a crop held separately by a buyer and the same crop even if commingled with other similar crops of other producers. Thus, the grower's producer's lien did not extend to other types of rice or to rice which was segregated by the debtor. The decision does not discuss how to allocate the remaining rice inventory among the competing producers' liens. ***In re* California Pacific Rice Mill, Ltd., 265 B.R. 237 (Bankr. E.D. Cal. 2001)**.

IN THE NEWS

SHARED APPRECIATION AGREEMENTS. "Farmers suing the federal Agriculture Department over a 1980s farm bailout would get some help from a House measure that delays government foreclosures on the loans.

"The delay would be in effect through the end of 2002. It is included as an amendment to the $170 billion farm bill the House passed Oct. 5, said Rep. Earl Pomeroy, D-N.D. The Senate Agriculture Committee is expected to start work on its farm proposals later this month. 'Lenders, farmers and the U.S. Department of Agriculture all require more time to fairly sort out' the disputed bailout agreements,' Pomeroy said.

"More than 100 farmers or ranchers from 16 states, including North Dakota, are suing the USDA over bailout deals signed under the Agricultural Credit Act of 1987.

"The act allowed farmers struggling through a severe economic slump to write off or restructure federal loans, provided they signed new, 10-year deals called shared appreciation agreements.

"The terms of those agreements are in dispute. The USDA says the farmers need to repay the debt that was written off when the deals were signed, although the agency would cap those bills at one-half the amount by which the land used as collateral has increased in value.

"The farmers argue the government would be entitled to a share of the appreciation money only if they had sold their land or stopped farming within the 10 years. They say the USDA has notified them it will foreclose on their property if they don't pay the debt. The farmers sued the government in U.S. District Court in Fargo in June. They have until Oct. 30 to respond to the USDA's request for dismissal.

"The farmers' lawyer, Sarah Vogel, said the House measure was not a response to the lawsuit and 'just bought time, that's all.' While the lawsuit was not the direct cause of the amendment, it does show 'the merit for it,' Pomeroy said. This summer, the farmers asked U.S. District Judge Rodney Webb to order the government to stop collecting on the loans until the lawsuit was resolved. Webb refused, saying the farmers hadn't met the legal burden required for the injunction they sought." **Jack Sullivan, Associated Press, October 12, 2001**.

NUISANCE. "A PorkNet Summary/ -- Oklahoma pork producers are now subject to new, more stringent odor laws.

Gov. Frank Keating signed the rules Oct. 8. The new regulations are designed to punish hog operations where neighbors have complained about odor to the state's Agriculture Department.

Letters were sent to 10 farms on Oct. 9 telling them they must abide by the new regulations. The 10 farms have each had three or more complaints filed about the odors from their operations. Kendra Farms East will get an additional letter because officials say the operation has had three or more "verified complaints" filed against it within the past six months. Kendra Farms East must work with state officials on a plan to control odors and install new technology.

The remaining farms must each stop spreading manure onto land on weekends, holidays and when the wind is blowing more than 20 mph.

Verified complaints are those filed by neighbors within two miles of an operation; neighbors living farther away can file general complaints.

A state official said all hog operations with more than 2,500 head will receive copies of the new regulations." **Mick Hinton, *The Oklahoman*, Oct. 9, 2001**.

CITATION UPDATES

Estate of O'Neal v. United States, 258 F.3d 1265 (11th Cir. 2001), *rem'g*, 81 F. Supp.2d 1205 (N.D. Ala. 1999) (claims) see p. 132 *supra*.