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Cases, Regulations, and Statutes

Robert P. Achenbach Jr
Iowa State University

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

HORSES. The plaintiff was injured while participating in a horseback riding tour on the defendant's ranch. The plaintiff had signed up with a third party tour organizer for the horseback tour before traveling to the defendant's ranch. At the ranch the plaintiff was presented with a waiver form releasing the defendant from liability for injuries which may arise during the horseback riding tour. The plaintiff read the waiver and signed it. The plaintiff was injured during a trail ride and filed a negligence suit against the defendant, claiming unfair and deceptive trade practices regarding the waiver. The trial court granted summary judgment to the defendant, based on the waiver of liability signed by the plaintiff. The plaintiff argued that the process of allowing the advance booking for the horseback ride and then, upon arrival, requiring the plaintiff to sign a waiver of liability, was an unfair and deceptive business practice. The appellate court held that a question of fact remained as to whether a deceptive business practice occurred in the failure of the third party tour organizer to give the plaintiff notice of the requirement of signing the liability waiver before the plaintiff made and paid for the riding reservation. Because a question of fact remained, the court held that the summary judgment for the defendant was improper and the case was remanded to determine whether the failure of the third party tour company to disclose the waiver was a deceptive business practice sufficient to void the waiver. **Courbat v. Dahana Ranch, Inc., 141 P.3d 427 (Hawai'i 2006)**.

PIT BULLS. The plaintiff was employed at an animal hospital and was injured by a pit bull owned by the defendant and boarded at the hospital while awaiting surgery. The plaintiff brought actions for strict liability under Cal. Civ. Code § 3342 and for common law strict liability. Under Section 3342, a dog owner is strictly liable for any dog bite injuries, regardless of the owner's knowledge of the dog's prior viciousness. The defendant argued that the veterinarian's rule (veterinarians assume risk of handling animals in their care) prevented application of the statute because the plaintiff assumed the risk of dog bites by working in a dog kennel. The court agreed with the defendant and upheld the dismissal of the statutory strict liability action. However, the court held that sufficient fact issues remained for trial on the common law action for strict liability. The court noted that the defendant had knowledge about the dog's prior attacks which were not communicated to the plaintiff or the plaintiff's employer; therefore, the plaintiff could not have assumed a risk unknown to the plaintiff. **Priebe v. Nelson, 140 P.3d 848 (Calif. 2006), *aff'g*, 14 Cal. Rptr. 3d 173 (Calif. Ct. App. 2004)**.

BANKRUPTCY

FEDERAL TAX

DISCHARGE. The debtor had owned and operated several businesses but did not maintain any written records of the business dealings. The debtor did not file any corporation income tax returns for several of the businesses. The debtor also had few records of the debtor's personal financial affairs, including credit cards, loans or wages. The only source of records was various court judgments and proceedings for unpaid debts. The IRS moved to deny discharge under Section 727(a)(3) for failure to keep, maintain and present financial records. The court held that the debtor failed to justify the debtor's failure to meet the requirements of Section 727(a)(3) to produce sufficient records for creditors to ascertain the debtor's financial situation. ***In re* Bastin, 2006-2 U.S. Tax Cas. (CCH) ¶ 50,570 (Bankr. E.D. Ky. 2006)**.

FEDERAL AGRICULTURAL PROGRAMS

CABBAGE. The FCIC has issued proposed regulations adding crop insurance coverage for cabbage under the Common Crop Insurance Policy Basic Provisions. The proposed regulations would convert the cabbage pilot crop insurance program to a permanent insurance program starting with the 2009 crop year. **71 Fed. Reg. 66694 (Nov. 16, 2006)**.

FARM LABOR. The National Agricultural Statistics Service has issued farm employment figures as of November 17, 2006. There were 1,077,000 hired workers on the nation's farms and ranches the week of October 8-14, 2006, down 5 percent from a year ago. Of these hired workers, 797,000 workers were hired directly by farm operators. Agricultural service employees on farms and ranches made up the remaining 280,000 workers. Farm operators paid their hired workers an average wage of $9.95 per hour during the October 2006 reference week, up 34 cents from a year earlier. Field workers received an average of $9.25 per hour, up 35 cents from October 2005, while livestock workers earned $9.41 per hour compared with $9.15 a year earlier. The field and livestock worker combined wage rate, at $9.29 per hour, was up 33 cents from last year. The number of hours worked averaged 41.6 hours for hired workers during the survey week, down 1 percent from a year ago. All NASS reports are available free of charge on the internet. For access, go to the NASS Home Page at: http:/www.usda.gov/nass/. **Sp Sy 8 (11-06).**

GRAIN. The CCC has announced that it will make available for sale a portion of its grain inventory beginning November 20, 2006, via the internet at http://www.GrainLink.com. **71 Fed. Reg. 66496 (Nov. 15, 2006)**.

MUSTARD. The FCIC has issued proposed regulations adding crop insurance coverage for mustard under the Common Crop Insurance Policy Basic Provisions. The proposed regulations would convert the mustard pilot crop insurance program to a permanent insurance program starting with the 2008 crop year. **71 Fed. Reg. 66698 (Nov. 16, 2006)**.

FEDERAL ESTATE AND GIFT TAXATION

INCOME IN RESPECT OF DECEDENT. The estate received an item of ordinary income in respect of decedent (IRD) which was included in gross income and made a cash distribution to estate beneficiaries in the same tax year. The estate filed Form 1041 and included the IRD in distributed net income and claimed a distribution deduction for the same amount. In a Chief Counsel advice letter, the IRS ruled that the estate used the proper procedure for treatment of the IRD. The IRS distinguished this case from *Rollert v. Comm'r, 752 F.2d 1128 (6th Cir. 1985)*, which has been cited for the general proposition that IRD items are not included in DNI. The IRS stated that *Rollert* concerned a factually and legally distinguishable situation. In *Rollert*, an estate claimed an income distribution deduction for the distribution of rights to receive future payments of IRD to the decedent's residuary trust, without having taken the value of the rights into the estate's gross income. The IRS stated that the court in *Rollert* correctly held that this treatment was inconsistent with I.R.C. § 691 and that the full value of the payments actually received was includible as IRD in the years received by the residuary trust. The IRS noted that, in *Rollert*, the estate would not have been eligible to take the I.R.C. § 691 deduction even if it had taken the present value of the rights into its gross income, because the estate was not the proper party to include any amounts in gross income, as I.R.C. § 691 requires inclusion in gross income of only the actual payments and only by the party receiving those payments. **CCA Ltr. Rul. 200644016, July 13, 2006**.

The decedent's estate included an IRA which had a trust as the remainder beneficiary. The trust provided, on the death of the decedent, for specific pecuniary bequests to several charities with the remainder to pass to named non-charity beneficiaries. The estate satisfied the trust bequests by assigning each beneficiary a share of the IRA based on the value of the bequest. In a Chief Counsel advice letter, the IRS ruled that the balance in the IRA was income in respect of decedent (IRD) and the use of the IRA to satisfy the bequests was treated as a sale or exchange; therefore, under I.R.C. § 691(a)(2), the trust must include in its income the value of the IRA shares used to satisfy the bequests. The estate had argued that the value of the shares was income to the beneficiaries under I.R.C. § 408(d)(1). The IRS disagreed, focusing on the trust as the beneficiary of the IRA in that the trust received the benefits of the IRA by using it to fulfill the bequests. **CCA Ltr. Rul. 200644020, Dec. 15, 2005**.

IRA. The taxpayer was the surviving son of deceased parents. The father had established an IRA with a trust as the remainder beneficiary. The father had not been receiving distributions when the father died. The trust had the surviving spouse as the beneficiary and distributions were established based on the spouse's life expectancy. The spouse died before receiving any distributions and without naming a remainder beneficiary for the IRA, but the son received the IRA as the sole descendant. The IRS ruled that the son could not use the son's life expectancy to determine the annual minimum required distribution amount from the mother's IRA and that the IRA must be distributed within five years as required by I.R.C. § 401(a)(9)(B)(ii). **Ltr. Rul. 200644011, Aug. 22, 2006**.

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent's estate included real estate and interests in corporations which owned real estate. The estate elected to pay the estate tax in installments. Under the installment payment rules, the estate was required to include the real estate as security for the I.R.C. § 6324A lien agreement securing the unpaid installments. The real estate in the decedent's estate was subject to mortgages which provided that the mortgages would be deemed in default if the real estate became subject to any other liens; therefore, the estate provided the security for the Section 6324A lien by pledging the shares of the corporations owned by the decedent. The estate inquired whether the pledging of the stock was sufficient to release the real estate in the decedent's estate from any liability for the Section 6324(a)(1) lien. In a Chief Counsel advice letter, the IRS ruled that, in the case of a default on the installment payments where the stock was insufficient to cover the default, the remaining estate property, including the real estate, would still be subject to the Section 6324A lien. **CCA Ltr. Rul. 200645027, July 31, 2006**.

FEDERAL INCOME TAXATION

COOPERATIVES. The taxpayer was a corporation formed to market farm products produced by its members. The taxpayer sought classification as an I.R.C. § 501(c)(5) tax-exempt agricultural organization. The IRS ruled that that taxpayer was not eligible for Section 501(c)(5) status because the taxpayer served only as a marketing agent for its members and did not benefit the industry in general. **Ltr. Rul. 200644043, May 26, 2006**.

DEPRECIATION. For taxable years beginning in 2007, under I.R.C. § 179(b)(1) the aggregate cost of any I.R.C. § 179 property a taxpayer may elect to treat as an expense can not exceed $112,000. Under I.R.C. § 179(b)(2) the $112,000 limitation is reduced (but not below zero) by the amount by which the cost of I.R.C. § 179 property placed in service during the 2007 taxable year exceeds $450,000. **Rev. Proc. 2006-53, I.R.B. 2006-48**.

DISASTER LOSSES. On November 2, 2006, the President determined that certain areas in Missouri are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms which began on July 19, 2006. **FEMA-1667-DR.** On November 2, 2006, the president determined that certain areas in Lousiana are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on October 16, 2006. **FEMA-1668-DR.** Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2005 returns.

HYBRID VEHICLE TAX CREDIT. Effective for vehicles placed in service after December 31, 2005, an alternative motor vehicle credit is allowed which is the sum of (1) qualified fuel cell motor vehicle credit, (2) advanced lean burn technology motor vehicle credit, (3) qualified hybrid motor vehicle credit, and (4) qualified alternative fuel motor vehicle credit. I.R.C. § 30B(a). The credit is phased out when a manufacturer sells its 60,000 hybrid vehicle. The IRS has announced that Honda and General Motors have not yet sold their 60,000th vehicle; therefore, their certified vehicles remain eligible for the credit. Toyota has reached the 60,000 vehicle limit so the credit is being phased out for Toyota and Lexus certified vehicles. See also Harl, "Additional Items in the Energy Policy Act of 2005, 16 *Agric. L. Dig*. 131 (2005). **IR-2006-171; IR-2006-172; IR-2006-177**.

INSTALLMENT AGREEMENTS. The IRS has announced increases in the fees for installment agreements entered into after January 1, 2007: (1) Effective January 1, 2007: (1) the fee for new direct debit installment agreements, where payments are deducted directly from a taxpayer's bank account, will increase from $43 to $52; (2) the fee for other new installment agreements will increase from $43 to $105; (3) the fee to restructure an existing or reinstate a defaulted installment agreement will increase from $24 to $45. The new fees will also apply to installment agreements made using the Online Payment Agreement application on www.IRS.gov, which became available on October 16. To be eligible for an installment agreement, a taxpayer must first file all required tax returns and be current with any estimated tax payments. **IR-2006-176**.

INSURANCE. The taxpayer was employed as a cable television salesman and became totally disabled from an injury suffered on the job. The taxpayer received payments from the employer's long term disability insurance plan. The taxpayer excluded the payments from taxable income, arguing that the payments were excludible under I.R.C. § 105(c) because the payments were based on the severity of the injury and not on the taxpayer's wages. However, the court found that the payments were based on a percentage of the taxpayer's salary at the time of the injury; therefore, the payments were not excludible under I.R.C. § 105(c). **Connors v. Comm'r, T.C. Memo. 2006-239**.

INTEREST. The taxpayer was a veterinarian who had purchased three horses from a horse owner in Ireland. The first two horses were purchased with promissory notes which charged interest on the unpaid balances. The third horse was also purchased with a down payment but the horse died just after the sale. The taxpayer received an insurance payment for the third horse and transferred most of that amount to the horse seller as payment of interest owed for the first two horses. The IRS denied the claimed interest expense deduction because the IRS claimed that the insurance money was used to purchase the third horse. The court noted that written evidence of the terms and payments for the first two horses was not presented by either side, forcing the court to rely on the credibility of the taxpayer in order to determine whether any interest was owed. The court held that the taxpayer's testimony and claims were credible and upheld the deduction for payment of interest. The court noted that the taxpayer and seller had a substantial history of business and the seller would allow extensions on the promissory notes. **Murphy v. Comm'r, T.C. Memo. 2006-243**.

LOTTERY. The taxpayer won a state lottery and over one year later assigned the right to receive future payments in exchange for a lump-sum payment. The taxpayer reported the lump sum payment as long-term capital gain. The court held that the lump sum payment was ordinary income. **Womack v. Comm'r, T.C. Memo. 2006-240**.

PENSION PLANS. For plans beginning in November 2006 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities rate for this period is 4.85 percent, the corporate bond weighted average is 5.79 percent, and the 90 percent to 100 percent permissible range is 5.21 percent to 5.79 percent. These amounts are unchanged from October 2006. **Notice 2006-104, I.R.B. 2006-48**.

RETURNS. The IRS has announced that the deadline for filing 2006 income tax returns and making federal tax payments has been extended to April 17, 2007, for individuals in six states and the District of Columbia. Due to April 15 falling on a Sunday in 2007, most of the country will have until Monday, April 16, to file their 2006 returns; however, because April 16 is Patriots' Day, a state holiday in Massachusetts, all taxpayers in states served by the Andover, Massachusetts, IRS processing center will have an extended deadline of April 17. The states affected are Maine, Massachusetts, New Hampshire, New York, Vermont and Maryland, as well as the District of Columbia. **Notice 2006-103, I.R.B. 2006-47**.

SOCIAL SECURITY BENEFIT. The debtors, husband and wife had filed their income tax return for 2003 and included $36,000 of adjusted gross income but did not include $6,000 in social security disability benefit payments. The taxpayers argued that the payments were not included in taxable income because the payments were for the wife's disability. The court held that, under I.R.C. § 86, social security disability payments were taxable to the same extent as non-disability payments. Therefore, because the taxpayers' adjusted gross income plus one-half of the social security payments exceeded $32,000, the taxpayer had to include the greater of one-half of the social security payments or one-half of the amount of total income that exceeded $32,000. **Jacobs v. Comm'r, T.C. Summary Op. 2006-181**.

STOCK OPTIONS. While the taxpayer was employed as vice-president of a corporation, the taxpayer received incentive stock options. The taxpayer did not exercise the stock options until 11 months after retiring from employment. The taxpayer argued that the taxpayer's employment continued but the court held that the work performed for the corporation was not under an employee-employer relationship and held that the gain from the exercise of the options was included in taxable income and could not be deferred under

I.R.C. § 421 until the stock was sold. **Humphrey v. Comm'r, T.C. Memo. 2006-242**.

TAX RATES. The standard deductions for 2007 are $10,700 for joint filers, $7,850 for heads of households, $5,350 for single filers and $5,350 for married individuals who file separately. The income limit for the maximum earned income tax credit is $5,590 for taxpayers with no children, $8,390 for taxpayers with one child, and $11,790 for taxpayers with two or more children. The IRS also announced the inflation adjusted tax tables and other inflation adjusted figures for 2007. The personal exemption is $3,400. For 2007, the personal exemption amount begins to phase out at, and is reduced to $1,133 after, the following adjusted gross income amounts:

Filing Status	AGI – Beginning of Phaseout	AGI Above Which Exemption is $1,133
I.R.C. § 1(a)	$234,600	$357,100
I.R.C. § 1(b)	$195,500	$318,000
I.R.C. § 1(c)	$156,400	$278,900
I.R.C. § 1(d)	$117,300	$178,550

For taxable years beginning in 2007, the limitation under I.R.C. § 512(d)(1), regarding the exemption of annual dues required to be paid by a member to an agricultural or horticultural organization, is $136. **Rev. Proc. 2006-53, I.R.B. 2006-48**.

TELEPHONE EXCISE TAX REFUND. The IRS has announced a formula that individuals and businesses and tax-exempt organizations can use to estimate their federal long-distance telephone excise tax refunds. The IRS has also issued a "Questions and Answers for Businesses and Tax-Exempt Organizations" document with details on using the formula and other information on the refund. Sole proprietors, independent contractors, farmers and individual owners of rental property can use the formula only if they report more than $25,000 of gross rental and business income on their 2006 federal income tax returns. The refund is capped at 2 percent of total telephone expenses for businesses with 250 or fewer employees, and at 1 percent for businesses with more than 250 employees. **IR-2006-179**.

TRAVEL EXPENSES. The taxpayer was a trucking company which reimbursed drivers on a cents-per-mile basis for meals and incidental expenses (M&IE) they incurred while away from home. The employer did not require drivers to substantiate their actual M&IE, relying instead on the per diem allowance provided by the IRS. The IRS ruled that all travel expense reimbursements made under a trucking company's arrangement were treated as paid under a nonaccountable plan because the arrangement did not ensure that the allowances did not exceed the per diem limit ($52 per day for 2006) and the arrangement routinely paid allowances in excess of that amount without requiring substantiation of the actual expenses or repayment of the excess. The failure to track excess allowances and routine payment of excess allowances that were not repaid or treated as wages evidenced a pattern of abuse of the accountable plan rules. As a result, all of the reimbursements under the plan, not only those that exceeded the $52 limit, must be treated as paid under a nonaccountable plan, and so were subject to withholding and employment taxes. **Rev. Rul. 2006-56, I.R.B. 2006-46**.

LANDLORD AND TENANT

OPTION TO PURCHASE. The defendant leased farm land from the plaintiffs, husband and wife, with quarterly lease payments. The lease provided that the lease would expire 90 days after the death of the last to die of the plaintiffs. The lease also provided an option to purchase the land after the death of both plaintiffs, and the defendant paid $4,000 for the option rights. The defendant failed to make a quarterly rent payment and the plaintiffs gave notice of termination of the lease and filed a forcible entry and detainer action. The trial court ruled that the failure to pay the lease payment was a breach of the lease and terminated the lease. The trial court also held that the option agreement was not severable from the lease and terminated with the lease. The appellate court affirmed, noting that the $4,000 payment for the option to purchase was merely a portion of the regular $10,000 quarterly lease payment, which was reduced to $6,000 for the first payment. Therefore, the court held that no additional consideration was provided for the option to purchase and the option could not be considered as separate from the lease which was terminated when the lease payment was not made. **Pauley v. Simonson, 720 N.W.2d 665 (S.D. 2006)**.

NUISANCE

GRAIN STORAGE FACILITY. The defendants purchased an existing commercial grain storage and drying facility which had been sufficient to process only the grain produced by the previous owners. The defendants substantially expanded the facility to handle grain produced by others. The plaintiffs were persons who owned homes near the expanded grain storage and drying facility and filed a nuisance action after the grain facility was greatly expanded over several years, causing a substantial increase in the amount of grain dust and chaff deposited on the plaintiffs' properties. The trial court ruled that the expanded facility was a nuisance and awarded damages based on 90 days of loss of enjoyment per year since the construction of the expanded facilities. The defendants argued that the finding of nuisance was improper in that the grain facility existed prior to the plaintiffs' moving to the neighborhood. The court held that the point in time for determining whether a nuisance existed before the plaintiffs moved to the neighborhood was when the activities of the defendant began to constitute a nuisance. The court noted that the defendants substantially increased the storage capacity after purchasing the existing facility and that the complained-of activities did not occur until after all plaintiffs had moved to the neighborhood. Thus, the plaintiffs had priority of location as to the activities which were found to be a nuisance. The court upheld the damage award based on 90 days of harvest and grain processing at $6.00/day and for cleanup expenses. The court reversed an award of attorney fees, holding that award was not authorized by any statute. **Miller v. Rohling, 720 N.W.2d 562 (Iowa 2006)**.

PESTICIDES

AERIAL CROP SPRAYING. The defendant was hired by a neighbor of the plaintiff to aerially spray Roundup Ultra herbicide on the neighbor's land. In an action for strict liability and negligence, the plaintiff alleged that the spray drifted onto the plaintiff's corn crop causing damage to the crop. The trial court granted a directed verdict for the defendant on the issue of strict liability, holding that the spraying of the herbicide was not an ultrahazardous activity. The trial court also directed a verdict for the defendant on the negligence claim, ruling that the plaintiff failed to show that the aerial spraying was negligently performed or that the spraying caused the damage to the plaintiff's crops. The appellate court affirmed on both issues, holding that the spraying of the herbicide was not an ultrahazardous activity in that the herbicide was commonly used in the farming community, was available for sale to the general public and could be easily controlled by proper application. The court also held that the plaintiff failed to show that the damage to the plaintiff's crop was caused by any negligent actions of the defendants. **Mangrum v. Pigue, 198 S.W.3d 496 (Ark. 2006)**.

PRODUCT LIABILITY

FRONT END LOADER. The plaintiff was injured when the plaintiff's tractor flipped over while using a front end loader manufactured by the defendant. The plaintiff brought suit for negligence, strict liability and failure to warn, alleging that the front end loader caused the tractor to be unstable and susceptible to rolling over. The plaintiff had re-graded the ditch where the accident occurred, sold the front end loader and repaired the tractor before the trial. The court held summary judgment for the defendant on the strict liability action was proper in that the plaintiff failed to demonstrate that the plaintiff was injured as a result of the alleged defective design of the front end loader in that the plaintiffs' expert was unable to verify the following critical components of the accident: the height of the loader at the time of the accident; the weight of the dirt in the loader at the time of the accident; the speed at which the tractor was traveling at the time of the accident; the angle of the turn; the slope of the ground; the depth of the ditch; the soil conditions at the accident scene; whether the wheels contained ballast; the angle of the bucket at the time of the accident; whether there was a hydraulic leak which caused the loader to fall; the nature of the terrain; whether the plaintiff was using wheel brakes; the steering radius; and whether the plaintiff hit the brakes. Because the cause of action for negligence required a higher level of proof of causation, the court also held that summary judgment for the defendant was also proper because the proof for strict liability was not met for the above reasons. **Menz v. New Holland North America, Inc., 2006 U.S. Dist. LEXIS 82122 (E.D. Mo. 2006)**.

SEED. In 1998, the plaintiff purchased soybean seed sold by one defendant and manufactured by the other defendant. The first planting failed to germinate and the plaintiff purchased a second batch of seed which also failed to grow. In July 1998, the plaintiff had the seed tested by a state board and the seed seller had the seeds tested. The tests showed germination rates of 29 and 35 percent, far below the 80 percent germination rate claimed by the manufacturer. In January 1999, the plaintiff requested seed arbitration by the Arkansas State Plant Board but the board ruled that, under Ark. Code § 2-23-102(a), the board did not have jurisdiction because the plaintiff failed to file the arbitration complaint within 10 days after discovering the seed defect. The trial court affirmed the board's ruling. On appeal the plaintiff argued that the 10-day requirement of the statute was directory and not mandatory and that the trial court should have considered evidence of lack of cooperation and delay on the part of the seed manufacturer. The appellate court affirmed, holding that the statute was specific in the time required to file notice with the Plant Board in order to provide the court with jurisdiction over an action for defective seed. Note: In 1999, the statute was amended to change the 10-day requirement to "a reasonable time." **Slusser v. Farm Service, Inc., 198 S.W.3d 106 (Ark. 2006)**.

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