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# Cases, Regulations, and Statutes

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# CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

## ANIMALS

**HORSES**. The plaintiff was injured while riding a horse owned by the defendant during a test ride to see if the plaintiff wanted to buy the horse. The plaintiff had informed the defendant that the plaintiff was a beginning rider. The horse was a thoroughbred race horse which had not been raced and which showed much energy and was difficult to control when shown to the plaintiff. The plaintiff accepted an offer to ride the horse which quickly ran out of control and caused the saddle to slip. The plaintiff claimed that (1) the horse was improperly saddled or saddled with faulty tack and (2) the defendant failed to take reasonable and prudent efforts to determine the ability of the plaintiff to safely manage the horse. Both claims are exceptions to the limited liability provided for horse owners under the Massachusetts Equine Activity Act, Mass. Gen. Laws Ch 128, § 2D. The trial court granted summary judgment for the defendant on both claims under the Act. The appellate court affirmed on the first claim, holding that the plaintiff failed to provide any evidence that the horse was not saddled properly or the defendant used faulty equipment. The court noted that the fact that the saddle slipped was not sufficient evidence of improper saddling of the horse or faulty tack. The appellate court reversed on the second claim, holding that there remained an issue of fact for the jury as to whether the actions of the horse were sufficient to put the defendant on notice that the plaintiff would not have sufficient skill to control the horse. **Pinto v. Revere-Saugus Riding Acadamy, Inc., 2009 Mass. App. LEXIS 746 (Mass. Ct. App. 2009)**.

## BANKRUPTCY

### GENERAL

**TOOLS OF THE TRADE.** The debtor owned a semi-tractor truck which was used in the debtor's business. The debtor claimed an Iowa exemption for the truck as a vehicle. The debtor also sought to avoid a lien on the truck under the federal lien avoidance provision, Section 522(l), for liens on tools of the debtor's trade. Under Iowa law, a vehicle was not eligible for the state tools of the trade exemption. The court held that the federal definition of tools of the trade controlled for purposes of the lien avoidance provision and granted avoidance of the lien. ***In re*** **Cleaver, No. 08-6052 (8th Cir. June 11, 2009)**.

### FEDERAL TAX

**DISCHARGE.** In 2005 the debtor filed tax returns for 1997, 1998 and 1999 which listed no tax due. The debtor was assessed penalties for filing a frivolous return under I.R.C. § 6702. In 2006, the debtor filed for Chapter 7 and sought to have the penalties discharged. The IRS argued that the tax penalties were nondischargeable under Section 523(a)(7)(B) because the penalties were assessed in 2005. The Bankrutpcy Court had ruled that the penalties were deemed to have arisen in 1997, 1998 and 1999, more than three years before the bankruptcy filing; therefore, the penalties were dischargeable. The appellate court reversed, holding that, because the penalties arose only upon the filing of the returns in 2005, the penalties did not arise more than three years before the bankruptcy filing and were nondischargeable. ***In re*** **Wilson, 2009-1 U.S. Tax Cas. (CCH) ¶ 50,455 (Bankr. 10th Cir. 2009)**.

## FEDERAL FARM PROGRAMS

**CROP INSURANCE.** The FCIC has issued interim regulations amending the Common Crop Insurance Regulations, Basic Provisions to revise enterprise unit provisions to protect the program from potential abuse as a result of the increased premium subsidies for enterprise and whole farm units provided by the 2008 Farm Bill. **74 Fed. Reg. 28154 (June 15, 2009)**.

**PEAS**. GIPSA has adopted as final regulations revising the U.S. Standards for Whole Dry Peas and Split Peas to amend the general definitions, "Whole Dry Peas" and "Split Peas," and the following specific definitions: "Smooth Green Dry Peas," "Smooth Yellow Dry Peas," "Wrinkled Dry Peas," "Green Split Peas" and "Yellow Split Peas." In addition, the regulations modify the classification term and associated definitions, "Winter Dry Peas" and "Winter Split Peas." **74 Fed. Reg. 29469 (June 22, 2009)**.

## FEDERAL ESTATE AND GIFT TAXATION

**GENERATION-SKIPPING TRANSFERS**. The decedent had established two trusts for a child prior to September 25, 1985. After the decedent's death, the daughter disclaimed any interest in the trusts and they passed in equal shares to the daughter's three children. The trustee obtained court permission to consolidate the two trusts held by each child, with each trust split into two shares to accommodate the differences in the original two trusts for each child. The IRS ruled that the consolidation of the trusts for each child with two shares each did not subject the trusts to GSTT. **Ltr. Rul. 200924018, Feb. 25, 2009**.

A decedent had established a trust which became irrevocable on the decedent's death prior to September 25, 1985. The decedent's surviving spouse had a power of appointment over the trust and did not exercise the power except to direct that any estate tax from the trust was to be paid from trust corpus. The trust was included in the spouse's estate and paid estate tax on the trust corpus included in the estate. The trust passed to the remainder holders, nieces and nephews of the decedents. Three of the remainder holders in the trust disclaimed their interest in the trust and those shares passed to trusts for each of the disclaimants' children. The decedent spouse's estate paid GSTT on the transfers to the children's trusts but one of the disclaimants filed a refund claim. The parties did not dispute that the transfers resulted in direct skips but the disclaimant argued that the trusts were exempt under the pre-1985 grandfathered trust provisions. The court held that the exercise of the power of appointment by the decedent resulted in a constructive addition and transfer which subjected the trust to GSTT. **Estate of Timken v. United States, 2009-1 U.S. Tax Cas. (CCH) ¶ 60,574 (E.D. Ohio 2009)**.

**SPLIT DOLLAR LIFE INSURANCE**. The taxpayer established an irrevocable trust for the benefit of the taxpayer's issue. During the taxpayer's life, the trustees were authorized to distribute some or all of the trust income or principal for the education, health, maintenance and support of the taxpayer's issue. After the death of the taxpayer, the trust is to be divided into separate shares with a separate share to be held for each living and deceased child of the taxpayer survived by issue. The trust purchased a life insurance policy on the life of the taxpayer with the trust designated owner and beneficiary of the policy. The trust also entered into a split-dollar life insurance agreement and collateral assignment with a limited liability limited partnership with two general partners, including a corporation of which the taxpayer was the sole shareholder. Under the agreement, the trust was designated the owner of the policy with the ability to exercise all rights of ownership except the right of the collateral assignee. Under the agreement, the partnership will pay all of the policy premiums and the trust is obligated to repay the partnership that portion of the annual premiums equal to the lesser of: (1) the applicable amount provided in the P.S. 58 tables set forth in *Rev. Rul. 55-747, 1955-2 C.B. 228* (or the tables and rates as may be in use under applicable treasury regulations for the date on which the determination is made); or (2) the insurance carrier's rate for one-year renewable term insurance. Upon the death of the taxpayer, the agreement terminates and partnership is to receive a portion of the proceeds of the policy equal to the greater of premiums paid (less any partnership loans against the policy) or cash surrender value (reduced by any partnership loans against the policy). The trust was designated beneficiary of the balance of the insurance proceeds. Prior to the death of the taxpayer, the agreement could be terminated unilaterally by the partnership or the trustees or upon the dissolution or bankruptcy of the partnership. To secure the partnership's interest in the policy and its proceeds, the trustees executed a collateral assignment pursuant to which the trustees assigned the policy to the partnership and retain all rights of ownership in the policy subject to the right of the partnership to borrow against its share of cash value. The rights expressly retained by the trustees include, but are not limited to: the right to cancel or surrender the policy, the right to assign ownership of the policy, the right to designate and change the beneficiary of the policy, the right to obtain loans on the policy, and the right to exercise all settlement options permitted by the terms of the policy. The IRS ruled that the payment of the premiums by the partnership under the terms of the agreement, would not result in income to, or gifts by the taxpayer, provided that the amounts paid by the trust for the life insurance benefit that the trust receives under the agreement is at least equal to the amount prescribed under *Rev. Rul. 64-328, Rev. Rul. 66-110, and Notice 2002-8*. The IRS also ruled that, if some or all of the cash surrender value is used (either directly, or indirectly through loans) to fund the trust's obligation to pay premiums, the partnership (i.e., the partners) will be treated as making a gift at that time. **Ltr. Rul. 200925003, Dec. 16, 2008**.

# FEDERAL INCOME TAXATION

**CROP INSURANCE PROCEEDS**. The Eighth Circuit Court of Appeals has affirmed the holding in the following case. The following summary is quoted from Harl, "Deferring Crop Insurance and Disaster Payments: How Not to Do It," 19 *Agric. L. Dig.* 33 (2008): In the 2008 Tax Court case, *Nelson v. Commissioner,* two related farm partnerships in Minnesota were involved in the production of sugar beets and, in one of the partnerships, other crops as well. The taxpayers had been following what the Tax Court referred to as a "method of allocation" whereby 65 percent of the sugar beet crop was arbitrarily reported in the year the crop was harvested and 35 percent the following year. The court noted that similar formulas were utilized for the other crops produced.

The Tax Court delicately sidestepped the propriety of such an allocation. Without must question, this would have been an unauthorized method of accounting. The law, I.R.C. § 451(d), is well settled when a crop becomes subject to income tax unless the transaction comes within an exception such as the deferral provision in question in this case.

The Tax Court instead focused on the narrow issue of whether the taxpayers were eligible to defer crop insurance proceeds under those facts. The Tax Court agreed with IRS that the 35 percent of crops carried over was not sufficient to support the deferral of the entire amount of crop insurance proceeds. The court discussed, approvingly, the attempt in *Rev. Rul. 74-145, 1974-1 C.B. 113* to provide more specific guidance than was afforded by the statute and held that 35 percent carried over was less than substantial (which has been interpreted as more than 50 percent). The Tax Court specifically rejected the argument that deferral of only a small portion of the crop historically would allow deferral of 100 percent of the crop insurance proceeds (and disaster payments) currently where a loss has occurred, which is what the taxpayers were trying to do. **Nelson v. Comm'r, 2009-1 U.S. Tax Cas. (CCH) ¶ 50,431 (8th Cir. 2009), *aff'g*, 130 T.C. 70 (2008)**.

**COURT AWARDS AND SETTLEMENTS**. The taxpayer had filed a suit against a former employer for sexual harassment and improper termination of employment. Although the taxpayer testified that the actions of the employer created various physical and health problems, the suit did not ask for any damages for physical injuries. The parties settled and the settlement agreement acknowledged that the taxpayer had suffered emotional injuries as well as physical injuries but the settlement did not allocate any of the settlement proceeds as compensation for physical injuries. The court held that the settlement proceeds were taxable because the law suit did not seek compensation for physical injuries. The court characterized the settlement agreement as covering all possible causes of action and not as referring to any physical injuries in fact. **Hellesen v. Comm'r, T.C. Memo. 2009-143**.

**DISASTERS**. The IRS has released guidance encouraging taxpayers to safeguard themselves during the 2009 hurricane season. The IRS suggests that taxpayers keep an extra set of records, preferably electronic records, in a location separate from their storage of original documents. The IRS also recommends that taxpayers take pictures or videos of items in their homes in order to more easily document items lost in a disaster. Finally, the IRS encourages employers to update emergency plans as needed and to ask payroll service providers if they have fiduciary bonds in place in the event of default by the provider. If a disaster occurs, the IRS has specialists available who are trained to handle disaster-related issues at (866) 562-5227. The IRS can also provide copies or transcripts of tax returns at no cost to taxpayers located in federal disaster areas. **IR-2009-61.**

**DISASTER LOSSES.** On May 8, 2009, the president determined that certain areas in Alabama 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, tornadoes, and flooding, which began on April 10, 2009. **FEMA-1836-DR.** On May 12, 2009, the president determined that certain areas in Mississippi are eligible for assistance from the government under the Act as a result of severe storms, tornadoes, and flooding, which began on March 25, 2009. **FEMA-1837-DR.** On May 15, 2009, the president determined that certain areas in West Virginia are eligible for assistance from the government under the Act as a result of severe storms, tornadoes, and flooding, which began on May 3, 2009. **FEMA-1838-DR.** On May 15, 2009, the president determined that certain areas in Tennessee are eligible for assistance from the government under the Act as a result of severe storms, tornadoes, and flooding, which began on April 10, 2009. **FEMA-1839-DR.** On May 27, 2009, the president determined that certain areas in Florida are eligible for assistance from the government under the Act as a result of severe storms, tornadoes, and flooding, which began on May 17, 2009. **FEMA-1840-DR.** On May 29, 2009, the president determined that certain areas in Kentucky are eligible for assistance from the government under the Act as a result of severe storms, tornadoes, and flooding, which began on May 3, 2009. **FEMA-1841-DR.** On June 3, 2009, the president determined that certain areas in Alabama are eligible for assistance from the government under the Act as a result of severe storms, tornadoes, and flooding, which began on May 6, 2009. **FEMA-1842-DR.** Accordingly, taxpayers in the areas may deduct the losses on their 2008 federal income tax returns. See I.R.C. § 165(i).

**EMPLOYEE BENEFITS**. The IRS had issued a request for comments from the public regarding several proposals to simplify the procedures under which employers substantiate an employee's business use of employer-provided cellular telephones or other similar telecommunications equipment. *Notice 2009-46, 2009-1 C.B. 1068*. CCH has reported that the IRS has reversed its direction on this issue and has indicated that it supports easing the listed property rules under I.R.C. § 280F for employer-provided cell phones. The IRS also stressed that the IRS is not "cracking down" on employer-provided cell phones, contrary to some media reports. In the U.S. House of Representatives, Rep. Sam Johnson, R-Tex., has introduced legislation (H.R. 690) to remove cell phones from the category of listed property under I.R.C. § 280F. The bill has 33 co-sponsors and has been referred to the House Ways and Means Committee. Sen. John Kerry, D-Mass., has introduced similar legislation (Sen. 144) in the U.S. Senate; his bill has 45 co-sponsors and has been referred to the Senate Finance Committee.

**HOBBY LOSSES**. The IRS has posted an Audit Techniques Guide to its web site regarding the application of the hobby loss rule under I.R.C. § 183. The guide is aimed at assisting IRS examination agents in distinguishing between a business activity in which deductions are allowable, an activity not engaged in for profit where deductions are strictly limited, and personal activities for which deductions are generally not allowed. Factors to consider when determining if an activity is engaged in for profit include whether: (1) the activity has large expenses with little or no income; (2) losses from the activity offset other income on the taxpayer's return; (3) the activity results in a large tax benefit to the taxpayer; and (4) the taxpayer's history of the activity shows that it generated profits in any tax year. The guide also provides a list of possible activities that may be affected by the hobby loss rules of I.R.C. § 183. **IRC §183: Activities Not Engaged in For Profit Audit Technique Guide, June 19, 2009, IRPO ¶207,252.**

**HOMEOWNER AFFORDABILITY AND STABILITY PLAN PAYMENTS**. The Homeowner Affordability and Stability Plan (the Plan) helps at-risk homeowners modify their mortgages to avoid foreclosure. The Home Affordable Modification Program (HAMP), a key component of the Plan, helps homeowners who have defaulted, or are at risk of default, on their mortgages because, for example, they are suffering serious hardships, decreases in income, increases in expenses, or high mortgage debt compared to monthly income. Under HAMP, homeowners that make timely payments on their modified loans are eligible to have incentive payments made on their behalf to lenders/investors. Each month that a homeowner makes a mortgage payment on time, the homeowner accrues an amount toward a Pay-for-Performance Success Payment. A payment of the accrued amounts is made annually, to reduce the principal balance on the homeowner's mortgage loan. Homeowners can receive principal reductions of up to $1,000 per year for up to five years, subject to a *de minimis* threshold. The IRS has issued a ruling that the annual HAMP payments are excludible from taxable income as governmental welfare payments. See also *Rev. Rul. 1974-205, 1974-1 C.B. 20; Rev. Rul. 98-19, 1998-1 C.B. 840*. **Rev. Rul. 2009-19, I.R.B. 2009-28**.

**INCENTIVES FOR VEHICLE TRADE-INS**. On June 24, 2009, the President signed into law Pub. L. No 111-32 (Supplemental Appropriations Act, 2009, Title XIII, "cash for clunkers") which provides for $3500 or $4500 vouchers to automobile dealers who participate in the program, administered by the National Highway Traffic Safety Administration. The $3500 vouchers can be used when a customer trades in a lower fuel efficient vehicle in a purchase or lease of a vehicle with fuel efficiency at least four miles (two miles for category 1 trucks) per gallon more than the traded-in vehicle. The $4500 vouchers can be used when a customer trades in a lower fuel efficient vehicle in a purchase or lease of a vehicle with fuel efficiency at least 10 miles (five miles for category 1 trucks) per gallon more than the traded-in vehicle. The dealers will be required to transfer the traded-in vehicle to an entity for disposal. The vouchers are available for sales and leases between July 1 and November 1, 2009. The vouchers are not taxable income to the dealer or purchaser or lessee of a vehicle for which a voucher is issued. $1 billion has been allocated to the program. The next issue of the *Digest* will include an article on the new program by Neil Harl.

**INNOCENT SPOUSE RELIEF**. The taxpayer and spouse had filed a joint income tax return for 2003 with tax due but they did not pay the tax. In 2005, the IRS sent a notice of intent to levy and the taxpayer did not request a hearing on the matter. In 2007, more than two years after the notice, the taxpayer filed From 8857, Request for Innocent Spouse Relief, and the IRS denied the request because it was made more than two years after the notice. See Treas. Reg. § 1.6015-5(b)(1). The court held that the two year limitation period was invalid as neither a permissible construction nor a reasonable interpretation of I.R.C. § 6015; therefore, innocent spouse relief should have been granted, as conceded by the IRS. **Caldwell v. Comm'r, T.C. Summary Op. 2009-95**.

The taxpayer and former spouse had filed joint income tax returns but a substantial number of deductions related to the spouse's business were disallowed, resulting in tax liability. The IRS had stipulated that the taxpayer was entitled to innocent spouse relief but the former spouse filed as an intervenor to challenge the taxpayer's entitlement to such relief. The court held that, because the couple had kept their business affairs separate, the court held that the taxpayer was entitled to innocent spouse relief because the taxpayer did not have knowledge that the claimed deductions were improperly claimed. **McDaniel v. Comm'r, T.C. Memo. 2009-137**.

**MINISTERIAL INCOME.** The IRS ruled that, because a university was an integral agency of a religious denomination, ordained, commissioned, or licensed ministers who teach or serve in faculty, executive, management, or administrative positions were performing services in the exercise of their ministry for purposes of I.R.C. § 107. The IRS ruled that ministers were entitled to exclude from their gross income amounts that are properly designated as rental allowances under I.R.C. § 107. **Ltr. Rul. 200925001, Feb. 24, 2009**.

**PARTNERSHIPS**

ELECTION TO ADJUST BASIS. The taxpayer limited partnership failed to make the I.R.C. § 754 basis adjustment election after the death of a partner. The IRS granted an extension of time to file an amended return with the election. **Ltr. Rul. 200924014, March 5, 2009**.

**RETURNS**. The IRS has extended return filing and payment deadlines for victims of the recent severe storms, tornadoes and flooding in Adair, Barry, Barton, Bollinger, Cape Girardeau, Christian, Dade, Dallas, Dent, Douglas, Greene, Howell, Iron, Jasper, Jefferson, Laclede, Lawrence, Madison, Newton, Ozark, Polk, Reynolds, Ripley, St. Francois, Shannon, Texas, Washington and Webster counties in Missouri, which were declared federal disaster areas on May 8, 2009. The deadline is extended to July 7, 2009, for filing returns, paying taxes and other time-sensitive acts that would have been due on or after May 8, 2009, and on or before July 7, 2009. **Missouri Disaster Relief Notice, KS/MO-2009-45**. The IRS has extended return-filing and payment deadlines for victims of the wildfires in Carter, Cleveland, Grady, Lincoln, McClain, Murray, Oklahoma, Payne, and Stephens counties in Oklahoma that were declared federal disaster areas on April 9, 2009. Affected taxpayers include those residing or having businesses in the disaster area, as well as persons living outside the covered disaster areas whose books, records, or tax professionals' offices are located in the covered disaster areas and all relief workers affiliated with recognized government or philanthropic organizations that assisted in the relief efforts. Persons who qualify for assistance have until June 8, 2009, to file returns, pay taxes and perform other time-sensitive acts otherwise due between April 9, 2009, and June 8, 2009. **Oklahoma Disaster Relief Notice, OK-2009-11**. Taxpayers affected by the severe storms, tornadoes, flooding, and straight-line winds in Alabama counties of Autauga, Elmore and Montgomery on May 6, 2009, have until July 6, 2009, to file returns, pay taxes and perform other time-sensitive acts otherwise due between May 6, 2009, and July 6, 2009. **Alabama Disaster Relief Notice, AL-2009-60**.

**S CORPORATIONS**

BUILT-IN GAINS. The taxpayer was a C corporation which provided professional personal services. The taxpayer elected to be taxed as an S corporation and had built-in gains from outstanding accounts receivables and built-in losses from outstanding costs relating to the production of outstanding accounts receivables. The IRS ruled that (1) the taxpayer's payments to the shareholder professional employees of salary and wages relating to the production of outstanding accounts receivable on the effective date of the S corporation election, if paid in the first two and one-half months of the recognition period, qualify as built-in loss items under I.R.C. § 1374(d)(5)(B); (2) the taxpayer's payments to its non-shareholder employees of salary and wages relating to the production of outstanding accounts receivable on the effective date of the S corporation election, if paid during the recognition period, qualify as built-in loss items under I.R.C. § 1374(d)(5)(B); and (3) the taxpayer's payments of other unpaid payroll expenses and accounts payable related to the production of the accounts receivable outstanding on the effective date of the S corporation election, if paid during the recognition period, qualify as built-in loss items under I.R.C.

§ 1374(d)(5)(B). **Ltr. Rul. 200925005, Feb. 27, 2009**.

ONE CLASS OF STOCK. An S corporation entered into an informal unwritten employment agreement with two of its officers. The corporation claimed that the agreement was not intended to circumvent the one class of stock requirement. The IRS ruled that a commercial contractual agreement, such as a lease, employment agreement, or loan agreement, is not a binding agreement relating to distribution and liquidation proceeds and thus is not a governing provision unless a principal purpose of the agreement is to circumvent the one class of stock requirement under I.R.C. § 1361(b)(1)(D). **Ltr. Rul. 200924019, March 5, 2009**.

**SAFE HARBOR INTEREST RATES**

**July 2009**

| | Annual | Semi-annual | Quarterly | Monthly |
|---|---|---|---|---|
| | | **Short-term** | | |
| AFR | 0.82 | 0.82 | 0.82 | 0.82 |
| 110 percent AFR | 0.90 | 0.90 | 0.90 | 0.90 |
| 120 percent AFR | 0.98 | 0.98 | 0.98 | 0.98 |
| | | **Mid-term** | | |
| AFR | 2.76 | 2.74 | 2.73 | 2.72 |
| 110 percent AFR | 3.03 | 3.01 | 3.00 | 2.99 |
| 120 percent AFR | 3.32 | 3.29 | 3.28 | 3.27 |
| | | **Long-term** | | |
| AFR | 4.36 | 4.31 | 4.29 | 4.27 |
| 110 percent AFR | 4.80 | 4.74 | 4.71 | 4.69 |
| 120 percent AFR | 5.24 | 5.17 | 5.14 | 5.12 |

**Rev. Rul. 2009-20, I.R.B. 2009-28**.

**TAX LITIGATION.** The IRS has issued an update to the procedures to be followed when a taxpayer is awarded litigation or administrative costs under I.R.C. § 7430, including awards made pursuant to a settlement. Additionally, the notice reminds attorneys of their obligation to promptly submit to the National Office the requisite paperwork needed for the timely processing and payment of attorney fee awards. **Chief Counsel Notice CC-2009-018**.

**TAX SHELTERS**. The taxpayer invested in a circular computer equipment sale-leaseback limited partnership and the IRS disallowed deductions claimed from the limited partnership. The IRS also assessed penalties under I.R.C. § 6653(a) for negligence. The taxpayer raised the defense of reasonable reliance on the advice of a CPA. The court found that the taxpayer had unreasonably relied on the advice of the CPA because (1) the CPA had a conflict of interest from compensation from the partnership, (2) the CPA did not have any expertise in computer equipment leasing, and (3) the partnership investment documents disclosed that other partnerships had been audited and denied similar deductions. The court also noted that a significant set of case precedents demonstrated the clear impropriety of claiming deductions from such investment schemes. **Pack v. Comm'r, T.C. Memo. 2009-150**.

**WITHHOLDING TAXES**. The taxpayers were nonprofit corporations which offered graduate medical education programs for medical residents and fellows. The residents were enrolled in courses, performed research and participated in teaching rounds, receiving grades, evaluations and certification at the end of the program. The residents performed medical services for more than 40 hours per week and received stipends to help offset the cost of enrollment. The taxpayers did not withhold or pay FICA taxes on the stipends, arguing that the stipends were exempt under I.R.C. § 3121(b)(10) as amounts paid to students. The IRS issued regulations which restricted the I.R.C. § 3121(b)(10) exemption to organizations with a primary purpose of education and for part-time employment only. The trial court held that the regulations were invalid as improperly restricting the exemption beyond the statute. The appellate court reversed, holding the regulations consistent with other FICA exceptions which focused on part-time employment. **Mayo Foundation for Medical Education and Research v. United States, 2009-1 U.S. Tax Cas. (CCH) ¶ 50,432 (8th Cir. 2009), *rev'g*, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,577 (D. Minn. 2007)**.

The taxpayer filed a 2004 tax return showing tax due but the taxpayer did not pay the taxes owed. The IRS assessed penalties for failure to timely pay taxes, failure to pay estimated taxes and interest. The taxpayer argued that the taxpayer's employer failed to withhold the proper amount; therefore, the taxpayer was not liable for any additional taxes or penalties. The court held that the taxpayer was liable for the remaining tax because the amount of tax owed was not determined by the amount withheld but by the amount of taxable income. **Frederick v. Comm'r, 2009-1 U.S. Tax Cas. (CCH) ¶ 50,436 (3d Cir. 2009)**.

# STATE REGULATION OF AGRICULTURE

**CORPORATE OWNERSHIP OF FARMLAND.** A state district court in North Dakota has ruled that the North Dakota law on restriction of ownership of farmland by corporations, N.D. Cent. Code § 10-06.1-1 *et seq*. is constitutional. The defendant was a non-profit corporation which acquired three parcels of rural land for conservation purposes. Under N.D. Cent. Code § 10-6.1-10(2) a non-profit corporation can acquire farmland for the purpose of conservation of land and wildlife habitat. N.D. Cent. Code § 10-6.1-10(3) requires a non-profit corporation to first obtain permission from the governor, through a public hearing held by the state natural areas advisory committee, before purchasing farmland for conservation purposes. The defendant did not obtain permission from the governor until after the acquisition, at which time the governor denied permission to acquire the land. One of the parcels was obtained after the approval process resulted in a denial by the governor. The court held that the restrictions on non-profit corporate purchasing of farmland was constitutional under the Dormant Commerce Clause. The court ruled that the land received by the defendant as a gift was not subject to the restrictions because the defendant did not purchase that land. The court also ruled that the land which was not suitable for farming was also excluded from the restrictions. The court ordered the defendant to divest itself of the remaining land because the governor denied the purchase of the land or the defendant failed to properly seek approval before its acquisition. **Stenehjem v. Crosslands, Inc., No. 20-05-C-002 (N.D. D. Ct. June 5, 2009)**.

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# FARM INCOME TAX, ESTATE AND BUSINESS PLANNING SEMINARS

**by Neil E. Harl**

## January 4-8, 2010

## Sheraton Keauhou Bay Resort & Spa

## Kailua-Kona, Big Island, Hawai'i.

Spend a week in Hawai'i in January 2010 and attend a world-class seminar on Farm Income Tax, Estate and Business Planning by Dr. Neil E. Harl. The seminar is scheduled for January 4-8, 2010 at Kailua-Kona, Big Island, Hawai'i, 12 miles south of the Kona International Airport.

**NEW FOR 2010**: This year we are asking for advance attendance commitment before contracting with the hotel. If you plan to attend the seminar, please send your name, address, phone number and e-mail address with a check for $100 to Agricultural Law Press, P.O. Box 835, Brownsville, OR 97327. If insufficient people send in their checks, we will cancel the seminar and return your deposit. If a sufficient number of people do send in their deposits, the seminar will be held and the deposits will become non-refundable and used to decrease the registration fee by $100. The decision whether to hold the seminar will be made on July 10, 2009 so please mail your deposit by July 6, 2009. Because the deadline will be near when this issue is published, please send an e-mail to Robert@agrilawpress.com to let me know that your deposit is coming.

Seminar sessions run from 8:00 a.m. to 12:00 p.m. each day, Monday through Friday, with a continental breakfast and break refreshments included in the registration fee. Each participant will receive a copy of Dr. Harl's 400+ page seminar manual *Farm Income Tax: Annotated Materials* and the 600+ page seminar manual, *Farm Estate and Business Planning: Annotated Materials,* both of which will be updated just prior to the seminar.

Here is a sample of the major topics to be covered:

- Farm income items and deductions; losses; like-kind exchanges; and taxation of debt including the Chapter 12 bankruptcy tax provisions.
- 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.
- Introduction to estate and business planning.
- Co-ownership of property, including discounts, taxation and special problems.
- Federal estate tax, including alternate valuation date, special use valuation, handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.
- Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.
- Organizing the farm business—one entity or two, corporations, general and limited partnerships and limited liability companies.
- Recent legislation tax provisions.

The seminar registration fee is $645 for current subscribers to the *Agricultural Law Digest,* the *Agricultural Law Manual* or the *Principles of Agricultural Law*. The registration fee for nonsubscribers is $695. For more information call Robert Achenbach at 541-466-5544 or e-mail at robert@agrilawpress.com.