

7-31-2009

Cases, Regulations, and Statutes

Robert P. Achenbach Jr
Iowa State University

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

 Part of the [Agricultural and Resource Economics Commons](#), [Agricultural Economics Commons](#), [Agriculture Law Commons](#), and the [Public Economics Commons](#)

Recommended Citation

Achenbach, Robert P. Jr (2009) "Cases, Regulations, and Statutes," *Agricultural Law Digest*: Vol. 20 : No. 15 , Article 2.
Available at: <http://lib.dr.iastate.edu/aglawdigest/vol20/iss15/2>

This Article is brought to you for free and open access by the Journals at Iowa State University Digital Repository. It has been accepted for inclusion in Agricultural Law Digest by an authorized editor of Iowa State University Digital Repository. For more information, please contact digirep@iastate.edu.

I.R.C. § 469.

¹⁶ I.R.C. § 469(h)(2).

¹⁷ Temp. Treas. Reg. § 1.469-5T(a)(1).

¹⁸ Temp. Treas. Reg. § 1.469-5T(a)(2).

¹⁹ Temp. Treas. Reg. § 1.469-5T(a)(3).

²⁰ Temp. Treas. Reg. § 1.469-5T(a)(4).

²¹ Temp. Treas. Reg. § 1.469-5T(a)(5).

²² Temp. Treas. Reg. § 1.469-5T(a)(6).

²³ Temp. Treas. Reg. § 1.469-5T(a)(7).

²⁴ Temp. Treas. Reg. § 1.469-5T(h)(2).

²⁵ Temp. Treas. Reg. § 1.469-5T(a)(1).

²⁶ Temp. Treas. Reg. § 1.469-5T(a)(5).

²⁷ Temp. Treas. Reg. § 1.469-5T(a)(6).

²⁸ Temp. Treas. Reg. § 1.469-5T(e)(3).

²⁹ Temp. Treas. Reg. § 1.469-5T(e)(3)(ii).

³⁰ Harl, "Are Members of LLCs 'Limited Partners'?" 19 *Agric. L. Dig.* 109 (2008).

³¹ See 8 Harl, *Agricultural Law* § 61.01[3][a][i][A] (2009).

³² See Conf. Report to H.R. 3838, Tax Reform Act of 1986;

Joint Committee on Taxation, Staff Description (JCS-10-87), Tax Reform of 1986 ("Blue Book").

³³ 186 F. Supp. 2d 1123 (D. Or. 2000).

³⁴ *Id.*

³⁵ *Id.*

³⁶ Temp. Treas. Reg. § 1.469-5T(a)(1) through (a)(7).

³⁷ Temp. Treas. Reg. § 1.469-5T(e)(2).

³⁸ 132 T.C. No. 19 (2009).

³⁹ 186 F. Supp. 2d 1123 (D. Or. 2000).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Temp. Treas. Reg. § 1.469-5T(e)(2).

⁴³ *Garnett v. Comm'r*, 132 T.C. No. 19 (2009).

⁴⁴ 2009-2 U.S. Tax Cas. (CCH) ¶ 50,500 (Fed. Cl. 2009).

⁴⁵ 186 F. Supp. 2d 1123 (D. Or. 2000).

⁴⁶ 132 T.C. No. 19 (2009).

⁴⁷ Temp. Treas. Reg. § 1.469-5T(e)(3).

⁴⁸ *Thompson v. United States*, 2009-2 U.S. Tax Cas. (CCH) ¶ 50,500 (Fed. Cl. 2009).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ADVERSE POSSESSION

PRESCRIPTIVE EASEMENT. The plaintiff purchased a parcel of neighboring land from the defendant. The parties disagreed as to the northern boundary of the purchased land, with the defendant arguing that the border created a square parcel and the plaintiff arguing that the boundary was a fence. The plaintiff installed a septic system which had a leach field that extended onto the disputed land. The defendant instructed a tenant to farm the disputed land but the plaintiff told the tenant not to drive on the land because it would damage the leach field. The plaintiff stored machinery on the land at the alleged boundary but the defendant removed some of the machinery. The machinery left was too heavy to be moved. The plaintiff sought title to the disputed land by adverse possession over ten years. The court held that the actions of the defendant were sufficient to show that the plaintiff did not have exclusive use and possession of the disputed land; therefore, the plaintiff did not acquire title by adverse possession. The plaintiff also sought a prescriptive easement for the use of the leach field. The court held that the defendant had sufficient notice of the construction and existence of the leach field for over 10 years to create a prescriptive easement for the plaintiff. **Townsend v. Nickell, 2009 Iowa App. LEXIS 274 (Iowa Ct. App. 2009)**

BANKRUPTCY

FEDERAL TAX

DISCHARGE. The debtor, a citizen of Canada, had borrowed funds from a Canadian corporation in order to pursue a medical education. The debtor did not complete the education and declared bankruptcy in the U.S. The Canadian corporation sought to have the loan declared nondischargeable under Section 523(a)(8) as a qualified education loan, as defined in I.R.C. § 221(d)(1). The debtor argued that the loan was not a qualified education loan because the debtor was not a "taxpayer" inasmuch as the debtor never filed a U.S. income tax return. The court held that, although the debtor was potentially liable for U.S. taxes, the debtor, as a resident alien, was not a taxpayer until the debtor filed a return. Therefore, the loan was not nondischargeable as a qualified education loan. **In re LeBlanc, 2009-2 U.S. Tax Cas. (CCH) ¶ 50,498 (Bankr. M.D. Pa. 2009).**

FEDERAL FARM PROGRAMS

CHICKEN. The FSIS has issued re-proposed regulations providing new information on, and re-proposing the definition and standard for, "roaster" and "roasting chicken." FSIS had proposed this definition and standard in its September 29, 2003, proposed rule to amend the definitions and standards for the official U.S.

classes of poultry. *68 Fed. Reg. 55902* After the proposed rule was published, FSIS received from the Agricultural Marketing Service new information that would affect the definition and standard for “roaster” or “roasting chicken.” **74 Fed. Reg. 33374 (July 13, 2009).**

CONSERVATION RESERVE PROGRAM. The plaintiff had entered three parcels of farm land in the Conservation Reserve Program. The plaintiff sold all the parcels to an unrelated LLC. The plaintiff visited the FSA office and informed them of the sale and orally indicated that the new owner would assume the CRP contracts. However, a representative of the buyer visited the FSA and merely cancelled one of the contracts, paying the cancellation fee. The buyer did not execute any written agreement to assume the CRP contracts. The FSA cancelled the remaining contracts and required the plaintiff to refund all annual payments with interest and liquidated damages. The appendix to the CRP contracts contained a provision which stated that, if a participant transfers property subject to a contract and the new owner does not become a successor to the contract within 60 days of the transfer, or within such time as deemed appropriate by the CCC, the contract would be terminated and the original owner must refund all payments made plus interest and any liquidated damages as set out in the appendix. The plaintiff appealed the assessment but was unsuccessful in the administrative appeals. The plaintiff sought judicial review of the National Appeals Decision upholding the FSA assessments as arbitrary and capricious and unsupported by substantial evidence. The plaintiff argued that the FSA should be estopped from cancelling the contracts because the FSA failed to apprise the plaintiff that the buyer had not assumed the contracts and because the FSA took two years to cancel the contracts. The court held that the doctrine of estoppel was not available because the plaintiff failed to show that it relied on the statements or actions of the FSA. The plaintiff also argued that the CRP contracts should have been treated as one contract and that the actions of the buyer in cancelling one contract should have been deemed an assumption of that contract and the others. The court held that the contracts were separate contracts, with separate payments and termination dates. The court noted that the plaintiff was aware of the need for the buyer to assume the contracts within 60 days after a sale and that the plaintiff had even visited the FSA office to inform the FSA of the sale and the intention of the buyer to assume the contracts. Finally, the plaintiff argued that the FSA should be estopped from cancelling the contracts because it did not follow the regulations in allowing (1) the one contract to be cancelled before it was assumed, and (2) an unauthorized representative of the buyer to cancel the contract. The court held that the plaintiff again failed to show that it relied on any of this misconduct in failing to obtain an assumption of the contracts by the buyer. **Balfour Land Co., L.P. v. United States, 2009 U.S. Dist. LEXIS 52289 (M.D. Ga. 2009).**

GRAIN SORGHUM. Section 12009 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) requires the FCIC to obtain the services of five expert reviewers to “develop and recommend a methodology for determining an expected market price for grain sorghum for both the production and revenue-based plans of insurance to more accurately reflect the actual market price

at harvest” and for FCIC to publish the selected methodology for notice and comment on the methodology. The FCIC has announced that it intends to implement the methodology submitted by the Texas A&M University reviewer, Dr. James Richardson. Details about this methodology as well as the other methodologies proposed by the expert reviewers can be found at <http://www.rma.usda.gov>. **74 Fed. Reg. 36655 (July 24, 2009).**

FEDERAL ESTATE AND GIFT TAXATION

IRA. The decedent owned an IRA and had made a trust the sole remainder beneficiary of the IRA. The trust consisted of three sub-trusts, one of which the surviving spouse was the sole beneficiary of this sub-trust and was entitled to receive all income and could receive principal by request. The surviving spouse could also amend or revoke the sub-trust. The surviving spouse demanded that the entire IRA be transferred to the sub-trust and withdrew that amount which was rolled over to an IRA in the surviving spouse’s name. The IRS held that the surviving spouse was treated as the distributee of the IRA and that amount was not treated as an inherited IRA for purposes of I.R.C. § 408(d)(3)(C). **Ltr. Rul. 200928043, April 14, 2009.**

INSTALLMENT PAYMENT OF ESTATE TAX. The issue was whether money owed by a decedent’s son’s company to the decedent’s company over 10-15 years of using the father’s company’s operational services, administrative support, equipment use and services was a passive asset. The son kept track of the money owed to the father’s company, but the son did not make any payments. In a Chief Counsel Advice letter, the IRS ruled that a “passive asset” is defined in I.R.C. § 6166 as any asset other than an asset used in carrying on a trade or business. The IRS ruled that money owed by the son’s company to the decedent/father’s company that was accumulating over so many years was not as an asset needed for the conduct of the father’s active business; therefore, the asset was a passive asset under section 6166. **CCA Ltr. Rul. 200928037, May 20, 2009.**

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayer was employed as an accountant and joined an online travel service which paid commissions for the sale of travel packages. The taxpayer did not make any sales through this service but only purchased one travel package for the taxpayer’s personal use. The taxpayer entered into a lease and claimed the lease expenses as a business expense on a Schedule C for the travel sales service. The taxpayer cancelled the travel sales service within two months but continued the lease of the residence for another four

months. The taxpayer claimed the rent payments as a business deduction. The court held that the rent was unreasonable for a business activity without any income and which was abandoned after only two months. Therefore, the rent was a nondeductible personal expense. **Outerbridge v. Comm'r, T.C. Memo. 2009-173.**

The taxpayer was a partner with two related persons in a partnership which operated a personal products sales business. The taxpayer received 100 percent of the partnership profits. The partnership filed a partnership income tax return but the taxpayer reported the income on Schedule C and claimed deductions for advertising, car expenses, car lease payments, home office expenses, meals and entertainment and equipment rent. The IRS disallowed a portion of the expenses for lack of substantiation of the business purpose for the expenses. The court upheld the IRS disallowance of the deductions, although some of the amounts were adjusted. The advertising deductions were for gifts made to sales personnel as incentives and rewards for sales efforts, which are generally deductible. However, the court allowed deductions only for the gifts for which the taxpayer provided written receipts and other records. The claimed deductions for car expenses were allowed fully because the taxpayer provided a travel log of the car use and receipts for maintenance expenses. The taxpayer claimed deductions for the cost of a camera, office and storage furniture, and a CD player used in the business. The court held that these items had useful lives of over one year; therefore, the deduction was limited to the depreciation allowable. The court allowed a deduction for 72 percent of the lease payments on a car used 72 percent of the time on business activities because the taxpayer substantiated the business use of the vehicle. The court agreed with the IRS disallowance of much of the travel expenses where the taxpayer failed to provide sufficient evidence of the proportion of business activity and personal pleasure activity for each trip. The court also agreed with the disallowance of a portion of the meals and entertainment expenses for lack of substantiation as to the business purpose for the meals. The court also disallowed deductions for the partnership rent for an area in the taxpayer's basement for storage of business items because there was no rental agreement and the transaction lacked economic substance. **Bruns v. Comm'r, T.C. Memo. 2009-168.**

CASUALTY LOSSES. Senator Jim Webb has received a letter from the IRS which may allow a casualty loss deduction for damages from defective Chinese drywall installed in taxpayers' residences. The letter states, "If it is determined that Chinese-made drywall emits an unusual or severe concentration of chemical fumes that cause the extreme and unusual damage you describe, affected taxpayers can qualify for a casualty loss deduction." The damages have included irritated and itchy eyes and skin, difficulty breathing, bloody noses and headaches. The odors have also reportedly corroded pipes and electrical equipment. The defective drywall has appeared in Florida, Louisiana, Virginia, Alabama, Arizona, California, Georgia, Indiana, Kentucky, Louisiana, Michigan,

Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Tennessee, Texas, Virginia, Washington, Wisconsin, Wyoming and the District of Columbia. **IRS Chief Counsel Letter Regarding Chinese-Made Drywall, July 2, 2009.**

DISASTER LOSSES. On June 23, 2009, the President determined that certain areas in Oklahoma are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of near record snow, which began on March 27, 2009. **FEMA-3305-EM.** Accordingly, taxpayers in the areas may deduct the losses on their 2008 federal income tax returns. See I.R.C. § 165(i).

FILING STATUS. During the two tax years involved, the taxpayer lived with a same sex partner in states which did not recognize same sex marriages. The taxpayer and partner were never married but participated in a commitment ceremony. The taxpayer did not file federal income tax returns as a civil disobedience protest against the inability to use the joint filing status on the returns. The IRS filed a notice of deficiency based on substitute returns constructed using the single status. The court held that, because the taxpayer had not filed any returns, even an amended return after the IRS constructed a substitute return, the taxpayer was not entitled to use the joint filing status. The court did not discuss the constitutional issues raised by the taxpayer but noted that the joint filing status of taxpayers is determined by looking at the state law as to the marriage status of the taxpayer. **Merrill v. Comm'r, T.C. Memo. 2009-166.**

HOBBY LOSSES. The taxpayer was employed as a fireman and lived on a family farm owned by the taxpayer's parents. The taxpayer purchased two cows which were kept on the farm. The IRS disallowed deductions for a net loss of \$24,116, of which \$19,785 was attributable to a depreciation and Section 179 expense method deduction, \$492 was attributable to a deduction for repairs and maintenance, and \$1,131 was attributable to a deduction for other expenses. There was no income reported on the Schedule F, and \$2,708 was shown as cost of goods sold. The court held that the purchase and raising of two cows was insufficient to make the taxpayer in the trade or business of farming, and the deductions were properly disallowed by the IRS. **Foriest v. Comm'r, T.C. Summary Op. 2009-110.**

IRA. The taxpayer had an IRA from which the taxpayer was receiving a series of substantially equal payments. The taxpayer terminated employment and directed that an amount held in a pension plan be distributed to a new account. However, the trustee of the fund, distributed the amount into the IRA. The taxpayer sought a ruling that the erroneous distribution to the IRA did not result in a modification of the periodic payments such that the distribution would be subject to a 10 percent additional tax. The IRS ruled that the error will not be considered a modification of a series of substantially equal periodic payments from the IRA within the meaning of I.R.C. § 72(t)(4) that would result in an imposition of the 10 percent additional tax applied on premature distributions under section 72(t)(1). **Ltr. Rul. 200929021, April 21, 2009.**

LIFE INSURANCE. The taxpayer purchased a life insurance

policy in 1965 and borrowed against the policy. The taxpayer did not repay any of the loans and the interest on the loans was added to the loan amount. The policy was terminated when the loan amount exceeded the value of the policy and the taxpayer did not reduce the loan. The taxpayer received a discharge of the loan and received \$792 in net proceeds from the termination. The insurance company issued a Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., to petitioner reporting a taxable gain of \$105,190 resulting from termination of the policy. The taxpayer reported that taxable gain on their income tax return but also claimed a deduction for the total unpaid interest of \$111,727 included in the loan balance, reporting that this interest was home mortgage interest. The taxpayer had not paid any interest on a mortgage on the taxpayer's home in that tax year. The court held that the loan interest discharged was taxable income to the taxpayer and was not deductible as home mortgage interest because the loan was not collateralized by any residence. **Giannaris v. Comm'r, T.C. Summary Op. 2009-114.**

PARTNERSHIPS

ADJUSTED BASIS ELECTION. The taxpayer was an LLC taxed as a partnership. An interest in the LLC was sold to a new member but the LLC failed to make the I.R.C. § 754 election to adjust the LLC basis in its property. The IRS granted an extension of time to make the election. **Ltr. Rul. 200929003, April 9, 2009.**

PENALTIES. The taxpayers, husband and wife, sold their interest in a business for \$5 million. The taxpayer used their regular accountant to prepare their income tax return and provided some information about the sale but no bank statements which would have shown the large amounts deposited after the sale. The accountant-prepared return failed to include most of the proceeds of the sale in income. The taxpayer stated that they did not examine the return before they signed and filed it. The IRS assessed an accuracy-related penalty for understatement of their taxes. The court held that the taxpayers failed to establish that they acted in good faith and reasonable cause in relying on the accountant to properly prepare their return; therefore, the accuracy-related penalty was properly assessed. **Prudhomme v. Comm'r, 2009-2 U.S. Tax Cas. (CCH) ¶ 50,500 (5th Cir. 2009), aff'g, T.C. Memo. 2008-83.**

PLUG-IN ELECTRIC VEHICLE CREDIT. The IRS has published a notice setting forth interim guidance, pending the issuance of regulations, relating to the qualified plug-in electric vehicle credit under I.R.C. § 30. The notice provides procedures for a vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) to certify to the Internal Revenue Service that a vehicle of a particular make, model, and model year meets the requirements that must be satisfied to claim the new specified plug-in electric vehicle credit under I.R.C. § 30. The notice also provides guidance to taxpayers who purchase vehicles regarding the conditions under which they may rely on the vehicle manufacturer's (or, in the case of a foreign vehicle manufacturer, its domestic distributor's) certification in determining whether a credit is allowable with

respect to the vehicle. The IRS stated that the regulations will incorporate the rules set forth in this notice. **Notice 2009-58, I.R.B. 2009-30.**

REFUND. The taxpayer submitted a claim for refund of employment taxes paid more than three years before the refund claim was filed. The taxpayer claimed to have entered into an agreement for installment payment of back taxes which directed that payments be credited to the earliest-owed taxes first. The checks, however, did not carry any designation as to the taxes to be paid with the check funds. The taxpayer claimed that, if the IRS had applied the payments to the earliest taxes, the entire tax amount would have been lower. The taxpayer sought a refund of the difference between the amount owed under the designation and the amount owed without designation. The court held that the refund claim was untimely because it was filed more than three years after the taxes were paid. In addition, the court held that no installment agreement existed and that the taxpayer failed to properly designate the taxes to be paid from each check received by the IRS. **Cardenas & Sons Farming, Inc. v. United States, 2009-2 U.S. Tax Cas. (CCH) ¶ 50,497 (Fed. Cls. 2009).**

RESEARCH CREDIT. The IRS has issued proposed regulations that amend the regulations concerning taxpayers who make the election to claim the reduced research credit under I.R.C. § 280C(c)(3). The proposed regulations simplify how taxpayers make the election. **74 Fed. Reg. 34523 (July 16, 2009).**

RETURNS. The IRS has issued six new security, privacy and business standards to serve taxpayers and protect their information that is collected, processed and stored by authorized e-file providers. The standards are: extended validation secure socket layer (SSL) certificate; external vulnerability scan; information privacy and safeguard policies; protection against bulk filing of fraudulent income tax returns; public domain name registration; and reporting of security incidents. **Ann. 2009-56, 2009-2 C.B. 145.**

The IRS has adopted as final regulations under I.R.C. § 6033(i)(1) describing the time and manner in which certain tax-exempt organizations not currently required to file an annual information return under I.R.C. § 6033(a)(1) are required to submit an annual electronic notice including certain information required by I.R.C. § 6033(i)(1)(A) through (F). These regulations affect tax-exempt organizations whose annual gross receipts are not normally in excess of \$25,000. **74 Fed. Reg. 36395 (July 23, 2009).**

SELF-EMPLOYMENT INCOME. The taxpayers provided home care for their grandchild and received from the state of Illinois payments in compensation for the care of the child under the Child Care Assistance Program for low-income families. The payments were included in the taxpayers' taxable income but they did not pay self-employment taxes on the payments. The taxpayers did not claim any deductions for expenses related to the child care. The court held that the taxpayers were not carrying on a trade or business in the care of their grandchild; therefore, the state payments were not self-employment income. **Steele v. Comm'r, T.C. Summary Op. 2009-45.**

SAFE HARBOR INTEREST RATES**August 2009**

	Annual	Semi-annual	Quarterly	Monthly
Short-term				
AFR	0.83	0.83	0.83	0.83
110 percent AFR	0.91	0.91	0.91	0.91
120 percent AFR	1.00	1.00	1.00	1.00
Mid-term				
AFR	2.80	2.78	2.76	2.76
110 percent AFR	3.08	3.06	3.05	3.04
120 percent AFR	3.37	3.34	3.33	3.32
Long-term				
AFR	4.26	4.22	4.20	4.18
110 percent AFR	4.69	4.64	4.61	4.60
120 percent AFR	5.12	5.06	5.03	5.43

Rev. Rul. 2009-22, I.R.B. 2009-31.

TAX TIPS. The IRS has published a list of tax tips for students with summer jobs: “(1) Taxpayers fill out a W-4 when starting a new job. This form is used by employers to determine the amount of tax that will be withheld from your paycheck. Taxpayers with multiple summer jobs will want to make sure all their employers are withholding an adequate amount of taxes to cover their total income tax liability. To make sure your withholding is correct, visit the Withholding Calculator on www.irs.gov. (2) Whether you are working as a waiter or a camp counselor, you may receive tips as part of your summer income. All tip income you receive is taxable income and is therefore subject to federal income tax. (3) Many students do odd jobs over the summer to make extra cash. Earnings you received from self-employment are subject to income tax. These earnings include income from odd jobs like baby-sitting and lawn mowing. (4) If you have net earnings of \$400 or more from self-employment, you will also have to pay self-employment tax. This tax pays for your benefits under the Social Security system. Social Security and Medicare benefits are available to individuals who are self-employed the same as they are to wage earners who have Social Security tax and Medicare tax withheld from their wages. The self-employment tax is figured on Form 1040, Schedule SE. (5) Subsistence allowances paid to ROTC students participating in advanced training are not taxable. However, active duty pay – such as pay received during summer advanced camp – is taxable. (6) Special rules apply to services you perform as a newspaper carrier or distributor. You are a direct seller and treated as self-employed for federal tax purposes if you meet the following conditions: (a) you are in the business of delivering newspapers; (b) all your pay for these services directly relates to sales rather than to the number of hours worked; and (c) You perform the delivery services under a written contract which states that you will not be treated as an employee for federal tax purposes. (7) Generally, newspaper carriers or distributors under age 18 are not subject to self-employment tax.” **Summertime Tax Tip 2009-05.**

TRAVEL EXPENSES. The taxpayer was employed as a driver of a pilot vehicle used for escorting wide or oversized load trucks. The taxpayer did not file returns or pay taxes for several years and the IRS filed a notice of deficiency based on substitute returns created with Forms W-2, Wage and Tax Statement, 1099-MISC, Miscellaneous Income, 1099-R, Distributions From Pensions,

Annuities, Retirement, or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., and 1099-G, Certain Government Payments filed by the taxpayer’s employers. The taxpayer disputed the amounts listed on the forms but failed to provide any evidence to support any other amounts. The taxpayer also claimed deductions for unreimbursed mileage for the pilot vehicle. The taxpayer provided only mileage logs created for the litigation and the court rejected that evidence. However, the taxpayer’s employer presented mileage logs created in the normal course of business and the court allowed a mileage deduction based on those logs. The taxpayer also claimed deductions for unreimbursed meal expenses but those deductions were disallowed because of the taxpayer’s failure to provide any information regarding the time, place or business purpose of the meals. **McGowan v. Comm’r, T.C. Memo. 2009-172.**

The taxpayer was employed on an irregular basis as a massage therapist while living in Galveston, TX. The taxpayer accepted full-time six-month employment in Shreveport, LA and claimed the housing and meal expenses as a business deduction. The taxpayer did not own a residence in Galveston but lived with a friend, paying only for part of the cable TV bill. When the taxpayer worked in Shreveport, the taxpayer lived in a mobile home owned by the taxpayer. The taxpayer maintained the following connections with Galveston while in Shreveport: the mobile home was registered in Texas, (2) the taxpayer paid Texas personal taxes on the mobile home, and (3) the taxpayer maintained a bank account and post office box in Galveston. The court held that the taxpayer was not entitled to lodging and meal expenses while working in Shreveport because the taxpayer did not maintain a separate residence in Galveston. **Thompson v. Comm’r, T.C. Summary Op. 2009-111.**

PARTNERSHIPS

CONVERSION. The plaintiff had purchased cattle from a person who was a partner in a cattle raising business. The other defendant partners provided the cattle and the defendant/debtor contributed services in raising the cattle. The debtor co-mingled the debtor’s own cattle and cattle provided by another unrelated party. The plaintiff was not told that the cattle purchased belonged to anyone other than the debtor. The debtor used the proceeds of the sale to pay operating expenses for the services provided to the partnership and the unrelated party. When the unauthorized sale was discovered, the parties reached an agreement for covering the sale; however, the debtor did not perform as agreed. The plaintiff sued the partners for conversion of the sale proceeds. The court held that the partners did not convert the plaintiff’s proceeds because the debtor acted in the debtor’s individual capacity and not as a partner. In addition, the partners were not liable for the failure of the debtor to deliver the cattle because the partnership did not own the cattle sold and the partners did not make any representations to the plaintiff as to their authorization for the sale of partnership cattle. **In re Morton, 2009 Bankr. LEXIS 1518 (Bankr. D. Idaho 2009).**



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.**

We are happy to report that a sufficient number of people have sent in deposits for this seminar that we have decided to hold the seminar. Thus, the seminar will not be cancelled except for extraordinary circumstances. We encourage all subscribers to let us know if you plan to attend. Additional brochures will be sent out this fall.

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.

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.
- Deferring crop insurance proceeds and livestock sales; reinvestment opportunities for livestock to avoid reporting the gain; involuntary conversions.
- Circumstances under which self-employment tax is due
- 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; emphasis on entity liquidations, reorganizations and other strategies for removing capital from the entity.
- Recent developments in the treatment of losses of LLCs and LLPs
- 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.