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Cases, Regulations, and Statutes

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[18] I.R.C. § 4975(e)(2).

[19] *Id*.

[20] I.R.C. § 4975(c).

[21] I.R.C. § 408(e)(2).

[22] I.R.C. § 179(d)(4).

[23] Pub. L. No. 111-147, 111th Cong., 2d Sess. (2010), amending I.R.C. § 179.

[24] I.R.C. § 408(a).

[25] I.R.C. § 408(d)(1).

[26] I.R.C. § 1221.

[27] I.R.C. § 1231.

[28] I.R.C. § 691(a)(2). See Rev. Rul. 69-297, 1969-1 C.B. 131 (profit sharing trust; estate as beneficiary); Ltr. Rul. 200316008, Dec. 31, 2002 (IRA proceeds distributed to estate and beneficiaries were income-in-respect-of- decedent).

[29] I.R.C. § 1014(c).

[30] I.R.C. § 1014(a).

[31] See Harl, "Income Tax Basis for Decedents Dying in 2010," 21 *Agric. L. Dig*. 81 (2010).

[32] The Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-248, § 1603, amending 7 U.S.C. § 1308(a)(4).

[33] I.R.C. § 512(a)(1), (b)(3)(A)(i).

[34] See Sherwin-Williams Co. Employee Health Plan v. United States, 2002-2 U.S. Tax Cas. (CCH) ¶ 50,721 (N.D. Ohio 2002) (tax-exempt health plan).

[35] I.R.C. § 1(e).

[36] I.R.C. § 219(e).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

DISCHARGE. The debtors obtained a loan from a bank secured by crops. The debtors used the proceeds for personal expenses as well as other farm expenses. The crop was sold but the proceeds were not used to pay the loan. The debtors filed for Chapter 12 and the bank moved to have the loan declared nondischargeable under Section 523(a)(6) for willful or malicious injury by the debtor to the creditor. The debtor testified that the debtor knew that the crop proceeds were supposed to be paid on the loan. The court held that the debtors' use of the loan and crop proceeds for their own use constituted a willful injury of the creditor and ruled that the debt was nondischargeable. ***In re* Marklin, 2010 Bankr. LEXIS 1706 (Bankr. W.D. Ky. 2010)**.

FEDERAL TAX

DISCHARGE. In 1996, the debtor filed for Chapter 13 and the IRS filed claims for taxes owed for 1988-1990 and 1992-1995. The debtor's plan provided for payment of the taxes and the debtor received a discharge in 2002. In 1998, the IRS assessed the debtor for 1996 and 1997 unpaid taxes and in 2002, the IRS assessed the debtor for unpaid taxes for 1999, 2000 and 2001. The debtor argued that the 2002 discharge included all taxes owed to that point. The court held that, because the 1996, 1997, 1999, 2000 and 2001 tax claims were not filed in the Chapter 13 case and were not paid under the plan, the taxes for those years were not discharged in that case. **Johnson v. Comm'r, T.C. Summary Op. 2010-69**.

FEDERAL FARM PROGRAMS

PACKERS AND STOCKYARDS ACT. The GIPSA has issued proposed regulations amending the regulations under the Packers and Stockyards Act, 1921, describing and clarifying conduct that violates the P&S Act, including (1) eight examples of conduct deemed unfair; (2) clarification of when certain conduct in the livestock and poultry industries represents the making or giving of an undue or unreasonable preference or advantage or subjects a person or locality to an undue or unreasonable prejudice or disadvantage; (3) whether a live poultry dealer has provided reasonable notice to poultry growers of a suspension of the delivery of birds under a poultry growing arrangement; (4) when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of the P&S Act; and (5) whether a packer, swine contractor or live poultry dealer has provided a reasonable period of time for a grower or a swine producer to remedy a breach of contract that could lead to termination of the growing arrangement or production contract. **75 Fed. Reg. 35338 (June 22, 2010)**.

REIMBURSEMENT TRANSPORTATION COST PAYMENT PROGRAM. The FGSA has adopted as final regulations implementing the new Reimbursement Transportation Cost Payment (RTCP) Program for geographically disadvantaged farmers and ranchers authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The purpose of the RTCP Program is to assist farmers and ranchers in Hawaii, Alaska and insular areas who paid to transport either an agricultural commodity or an input used to produce an agricultural commodity. The payments provided by the RTCP Program are intended to offset a

portion of the costs of transporting agricultural inputs and products over long distances. The rules specifies eligibility requirements, payment application procedures, and the method for calculating individual payments. **75 Fed. Reg. 34336 (June 17, 2010)**.

FEDERAL ESTATE AND GIFT TAXATION

CHARITABLE DEDUCTION. The decedent's will provided for life-time payments to two heirs, with the remainder to a trust which was directed to either build and maintain buildings for a town or, if the buildings are refused, to benefit charities. The executor and trustees petitioned a local court to clarify various provisions of the trust so that the amounts paid to the heirs and the charities were determined and the definition of charity was clarified. The IRS ruled that the amounts passing to the trust for the charities, as amended by the court order, were eligible for the charitable deduction. **Ltr. Rul. 201022001, Jan. 11, 2010**.

GENERATION-SKIPPING TRANSFERS. The taxpayers, husband and wife, created four trusts for four children and their issue. The taxpayers made gifts to the trusts in four tax years which were split by the taxpayers. The taxpayers hired an accountant to prepare the gift tax returns but the accountant failed to allocate each taxpayer's GST exemption to the transfers by gift. The IRS granted an extension to file amended returns with the GST exemption allocations. **Ltr. Rul. 201022003, Jan. 15, 2010**.

The decedent had created a trust fund with an IRA. The decedent died prior to September 25, 1985, and upon the decedent's death, the trust was divided into separate trusts for each beneficiary. The trustee of one of these trusts elected to treat that trust's share of the IRA as a separate IRA and then had the IRA split into two IRAs, with distributions to the beneficiary made from one IRA. The IRS ruled that the election to treat the IRA share as a separate IRA, the splitting of the IRA into two IRAs and the distributions from one IRA did not subject the trust to GSTT because the changes merely changed the manner in which the trust assets were held and did not cause any property to pass to lower generations. **Ltr. Rul. 201023050, Jan. 25, 2010**.

GIFTS. The taxpayer transferred stock by gift but did not include on the gift tax return the method used to determine the fair market value of the stock and did not include any discounts used to value the stock. In a Chief Counsel Advice letter, the IRS ruled that the statute of limitations on assessments on the gift was unlimited under I.R.C. § 6501(c)(9) because the taxpayer failed to disclose the value of the gift in a "manner adequate to apprise the Secretary of the nature of such item." The IRS noted that Treas.. Reg. § 301.6501(c)-1(f) requires a detailed description of the method used to determine the fair market value of the gifted property, including any discounts applied. **CCA Ltr. Rul. 201024059, May 11, 2010**.

The taxpayer was the surviving spouse of a decedent whose will created a marital trust for the taxpayer for which a QTIP election was made. The taxpayer decided to terminate and distribute the marital trust to the remainder holders, receiving only the value of the income interest and reimbursement for any gift tax owed on the transfer. The IRS ruled that the termination and distribution of the trust resulted in a gift of the reminder interest less the gift tax paid by the donees. The IRS also ruled that no part of the trust would be included in the taxpayer's gross estate. **Ltr. Rul. 201024008, Feb. 4, 2010**.

MARITAL DEDUCTION. The decedent's will created two trusts, a marital trust and a residuary trust. The residuary trust was to receive the largest amount of property which would result in no estate tax due. The remainder of the assets passed to the marital trust. The estate included a QTIP election for the marital trust. However, the election was not needed because no estate tax would be due even without the marital deduction. The IRS ruled that the QTIP election was treated as null and void for transfer tax purposes under *Rev. Proc. 2001-38, 2001-1 C.B. 1335*, because the QTIP election was not necessary to reduce the estate tax liability to zero. **Ltr. Rul. 201022004, Jan. 28, 2010; Ltr. Rul. 201024035, Jan. 20, 2010**.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayer was an independent insurance agent who failed to file income tax returns for several years. The IRS made tax assessments based on substitute returns and the taxpayer sought additional deductions for business expenses. However, the taxpayer did not have sufficient written records to support the additional deductions and the court held that the deductions allowed by the IRS were proper. A late filing penalty was also imposed by the IRS. The taxpayer argued that personal injuries prevented the taxpayer from filing the returns. The court upheld the late filing penalty because the taxpayer had continued to work during the period of the injuries and received substantial income. **Coury v. Comm'r, T.C. Memo. 2010-132**.

CHARITABLE DEDUCTION. In a Chief Counsel Advice letter, the IRS ruled that the individual or individuals who conducted the appraisal must sign Part III of Form 8283, Noncash Charitable Contributions, and that the appraisers' firm cannot sign the form. The IRS noted that each appraiser was liable for penalties for any false or fraudulent overstatement made in an appraisal. **CCA Ltr. Rul. 201022021, May 5, 2010**.

CORPORATIONS.

LOSS CORPORATIONS The IRS has issued guidance under I.R.C. § 382 for measuring owner shifts of loss corporations that have more than one class of stock outstanding and regarding the effect of fluctuations in the value of one class of stock relative to another class of stock. The notice also provides interim guidance to the effect that the IRS will accept certain methodologies for taking into account or not taking into account fluctuations in value, and identifies one methodology that the IRS views as inconsistent with I.R.C. § 382(l)(3)(C). **Notice 2010-50, I.R.B.**

2010-27.

The IRS has adopted as final regulations governing prepaid income under the built-in gains provisions of I.R.C. § 382(h) for loss corporations which have undergone an ownership change. **75 Fed. Reg. 33990 (June 16, 2010)**.

OFFICER COMPENSATION. The taxpayer corporation operated a packaging service. The sole shareholder performed the company management services as president, CEO and COO. The court held that the deducted compensation for the wages was reasonable because (1) the officer made all the important decisions for the company, (2) the company had been very successful as a result of these decisions, and (3) the compensation was consistent with the business policy of the company. The court noted that one factor weighed against the reasonableness of the compensation in that an investor would expect a higher rate of return from the company than was possible with the high compensation of the officer. Because of this factor, the court reduced the compensation deduction for the second tax year involved in the case. **Multi-Pak Corp. v. Comm'r, T.C. Memo. 2010-139**.

COURT AWARDS AND SETTLEMENTS. A decedent's estate filed a wrongful death action against a company and received judgment. However, the state legislature passed an act to provide compensation for claims for wrongful death and physical injury against the company. The legislation voided all court judgments and precluded victims from filing personal claims against the company. The estate received compensation from the state under the legislation. The IRS ruled that the compensation received under the legislation would be excludible from estate income under I.R.C. § 104(a)(2). **Ltr. Rul. 201022009, Feb. 24, 2010; Ltr. Rul. 201022010, Feb. 24, 2010; Ltr. Rul. 201022011, Feb. 24, 2010; Ltr. Rul. 201023012, Feb. 22, 2010; Ltr. Rul. 201024025, Feb. 18, 2010; Ltr. Rul. 201024041, Feb. 18, 2010**.

DEPENDENTS. The taxpayer lived with but was not married to a mother and her child. The court found that the taxpayer was not the biological father of the child, although the issue was in dispute. The court held that the taxpayer was not eligible to file using head of household status or claim the earned income tax credit with one qualifying child, the child tax credit, the additional child tax credit and the child care credit. **Moore v. Comm'r, T.C. Summary Op. 2010-80**.

DISCHARGE OF INDEBTEDNESS. The IRS has announced that, under the Affordable Care Act, health care professionals who received student loan relief under state programs that reward those who work in underserved communities may qualify for refunds on their 2009 federal income tax returns as well as an annual tax cut going forward. Prior to the new law, only amounts received under the National Health Service Corps Loan Repayment Program or certain state loan repayment programs eligible for funding under the Public Health Service Act qualified for a tax exclusion. The Affordable Care Act expands this tax exclusion to include any state loan repayment or loan forgiveness programs intended to increase the availability of health care services in underserved areas or health professional shortage areas and makes this exclusion retroactive to the 2009 tax year. Health care professionals participating in these programs who have reported income from repaid or forgiven loan amounts on their 2009 returns, possibly after receiving a Form W-2, Wage and Tax Statement, or Form 1099, may be due refunds. Those who believe they qualify for this relief may want to consult their state loan program offices to determine whether the program is covered by the new law. Health care professionals who have not yet filed for 2009 need not report eligible loan repayment or forgiveness amounts when they file. Those who have already filed may exclude eligible amounts by filing Form 1040X, Amended U.S. Individual Income Tax Return. Individuals filing Form 1040X to claim this exclusion should write "Excluded student loan amount under 2010 Health Care Act" in the Explanation of Changes box. Health care professionals may request an employer or other issuer to provide a Form W-2c, Corrected Wage and Tax Statement, or 1099 and may attach the corrected form to the Form 1040X. However, the Form 1040X may also be filed without attaching a corrected form. An individual whose employer withheld and paid taxes under the Federal Insurance Contributions Act (FICA) on payments covered under the new exclusion may request that the employer seek a refund of withheld FICA on the employee's behalf. And because employers also pay a portion of the FICA tax, the employer also may also be entitled to a refund. To obtain a refund, an employer should file a separate Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund, for each Form 941, Employer's Quarterly Federal Tax Return, which needs to be corrected. An employer filing a Form 941-X is also required to file a Form W-2c for each employee who benefits from the exclusion. **IR-2010-074**.

A petition for review by the U.S. Supreme Court has been filed in this case. The taxpayers used a credit card to pay hospital bills and cash advances, acquiring a balance of $21,270. The taxpayers and credit card company reached an agreement under which the credit card company agreed to settle the account for $4,592. The credit card company issued a Form 1099-C listing the difference as discharge of indebtedness income. The taxpayers did not include this amount in taxable income. The taxpayers argued that the amount forgiven was all accrued interest; therefore, the settlement represented a purchase price adjustment in that the credit card company essentially agreed to less interest charge. The court held that the purchase price adjustment exception of I.R.C. § 108(e)(5) did not apply because the taxpayers did not buy any property from the credit card company. The appellate court affirmed in a decision designated as not for publication. Note that it is well established that cancellation of accrued interest (unless deducted by a taxpayer on accrual accounting) is of no income tax consequence if the receipt of interest income can be offset by a deduction of interest expense. **Payne v. Comm'r, 2010-1 U.S. Tax Cas. (CCH) ¶ 50,132 (8th Cir. 2009), *aff'g*, T.C. Memo. 2008-66**.

DOMESTIC PRODUCTION DEDUCTION. The taxpayer was a non-exempt farmer's marketing and purchasing agricultural cooperative. The cooperative made payments to members which were qualified per-unit retain allocations because they were (1) distributed with respect to the crops that the cooperative stored, processed and marketed for its patrons; (2) determined without reference to the cooperative's net earnings; and (3) paid pursuant

to a contract with the patrons establishing the necessary pre-existing agreement and obligation, and within the payment period of I.R.C. § 1382(d). The IRS ruled that the cooperative was allowed to add back these amounts paid to members as net proceeds in calculating its qualified production activities income under I.R.C. § 199(d)(3)(C). **Ltr. Rul. 201022005, Feb. 24, 2010; Ltr. Rul. 201023011, March 3, 2010; Ltr. Rul. 201024030, March 8, 2010**.

EMPLOYEE STOCK OPTION PLAN. The taxpayer had sold stock to an ESOP without recognition of gain by obtaining qualified replacement property. The divorce decree required the taxpayer to transfer the qualified replacement property to the former spouse. The IRS ruled that, under I.R.C. § 1041(b)(1), the transfer of the property was treated as a gift because it was made incident to a divorce. The IRS also ruled that, because the property was transferred by gift, the disposition of the qualified replacement property did not result in any recognition of gain. **Ltr. Rul. 201024005, Dec. 16, 2009**.

HOBBY LOSSES. The taxpayer's spouse was employed full time as a controller for a steel company. The taxpayer entered several bass fishing tournaments in the tax years involved in the case and reported the prizes as income and expenses as deductions on Schedule C, listing the business as professional fishing. The court held that the activity was not engaged with the intent to make a profit because, although the taxpayer generally attempted to be a professional fisherman, the taxpayer entered tournaments for two-member teams which required the taxpayer to catch more fish alone than the other teams caught with two member teams. The court found that this method created such a competitive disadvantage that the taxpayer would not have a reasonable expectation of profit from the activity. **Lowe v. Comm'r, T.C. Memo. 2010-129**.

INNOCENT SPOUSE. The taxpayer filed for equitable innocent spouse relief, under I.R.C. § 6015(f), from joint tax liabilities created by the taxpayer's spouse's criminal activity. The IRS denied relief under Treas. Reg. § 1.6015-5(b)(1) because the relief was requested more than two years after collection efforts had begun. Although I.R.C. § 6015(b) and (c) have a two-year limitation period, the Tax Court held that the absence of a two year limitation period in I.R.C. § 6015(f) indicated Congress' intent to allow equitable relief requests to be made for a longer, if not unlimited, period. Therefore, the Tax Court held that the two year period of limitations in Treas. Reg. § 1.6015-5(b)(1) was invalid as to requests for equitable relief under I.R.C. § 6015(f). The appellate court reversed, holding that the IRS imposition of a two-year limitation period on equitable relief requests was reasonable under the statutory limitations for statutory relief. The court noted that the taxpayer in this case had an alternative relief provision in I.R.C. § 6343(a)(1)(D). **Lantz v. Comm'r, 2010-1 U.S. Tax Cas. (CCH) ¶ 50,446 (7th Cir. 2010), *rev'g and rem'g*, 132 T.C. No. 8 (2009)**.

The IRS has issued guidance based on the *Lantz* case, *supra*. In general, the IRS will continue to argue that the two year period of limitations in Treas. Reg. § 1.6015-5(b)(1) applies for filing of equitable innocent spouse relief. **CC-2010-011**.

The taxpayer's former spouse had omitted income from joint returns. Although no assessment had yet been made against the taxpayer personally, the taxpayer sought equitable innocent spouse tax relief for the tax deficiencies resulting from the unreported income. The court held that equitable relief should be granted because (1) the taxpayer was no longer married to the former spouse, (2) the taxpayer received no benefit from the unpaid taxes, (3) the tax liability resulted solely from the former spouse's activities, and the taxpayer would suffer significant hardship from paying the tax deficiency. **Wilson v. Comm'r, T.C. Memo. 2010-134**.

NEW MARKETS CREDIT. The IRS has issued a ruling that, for purposes of determining the new markets tax credit allowable under I.R.C. § 45D, the amount of the qualified equity investment made by an LLC classified as a partnership includes cash from a recourse loan to the LLC that the LLC invests as equity in a qualified community development entity. **Rev. Rul. 2010-17, I.R.B. 2010-26**.

PARTNERSHIPS

DISTRIBUTIVE SHARE. The IRS has adopted as final regulations under I.R.C. § 704(c) which provide that the anti-abuse rule takes into account the tax liabilities of both the partners in a partnership and certain direct and indirect owners of such partners. The regulations further provide that an I.R.C. § 704(c) allocation method cannot be used to achieve tax results inconsistent with the intent of subchapter K. **75 Fed. Reg. 32659 (June 9, 2010)**.

PENSION PLANS. For plans beginning in May 2010 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 4.39 percent, the corporate bond weighted average is 6.34 percent, and the 90 percent to 100 percent permissible range is 5.71 percent to 6.34 percent. **Notice 2010-47, I.R.B. 2010-26**.

SAFE HARBOR INTEREST RATES

July 2010

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	0.61	0.61	0.61	0.61
110 percent AFR	0.67	0.67	0.67	0.67
120 percent AFR	0.73	0.73	0.73	0.73
		Mid-term		
AFR	2.35	2.34	2.33	2.33
110 percent AFR	2.59	2.57	2.56	2.56
120 percent AFR	2.83	2.81	2.80	2.79
		Long-term		
AFR	3.94	3.90	3.88	3.87
110 percent AFR	4.34	4.29	4.27	4.25
120 percent AFR	4.73	4.68	4.65	4.64

Rev. Rul. 2010-18, I.R.B. 2010-27.

SALE OF RESIDENCE. The taxpayer had owned 50 percent of a residence, with the other 50 percent owned by an unrelated person. The residence was sold and the taxpayer realized $264,644 of gain from the sale. The taxpayer claimed the full $250,000 exemption of the gain and the IRS disallowed half of that exemption, claiming that, because the taxpayer owned

only 50 percent of the residence, the taxpayer was limited to 50 percent of the exemption. The court ruled that the taxpayer was entitled to the full $250,000 exemption and pointed to Treas. Reg. § 1.121-2(a)(2) which specifically states that each unmarried owner of a residence is eligible for the $250,000 exemption. **Hsu v. Comm'r, T.C. Summary Op. 2010-68**.

SELF-EMPLOYMENT TAXES. The taxpayer provided services as a contractor for an organization. The taxpayer's salary was reported on Form W-2 by the employer which indicated that no income or social security taxes were withheld from the income paid. The taxpayer used computer tax preparation software to prepare income tax returns and the taxpayer claimed that the software and experts from the software company indicated that the social security taxes were included in the income taxes. The IRS assessed a deficiency for the unpaid social security taxes and assessed an accuracy-related penalty. The court held that the accuracy-related penalty was proper because the taxpayer's reliance on the computer software program was unreasonable. The court also held that the taxpayer's activities after filing the return to pay the social security taxes did not affect the taxpayer's intent when filing the return. **Parker v. Comm'r, T.C. Summary Op. 2010-78**.

START-UP EXPENSES. The taxpayer maintained a number of video and software-related web sites on weight loss, foreign language translations, a physician's desk reference guide, and an online retail web site selling dresses and related items. The court held that the activities were all separate for purposes of eligible business deductions because each web site had a separate and unique clientele and different products or services. The taxpayer argued that the unified business was the offering of services to create web sites and the existing web sites were to be used as examples to sell the web page design services. The court held that the expenses pertaining to the web design services were non-deductible start-up expenses because, although the example web sites were functioning, no efforts had yet begun to reach potential customers for the web page design services. Deductions for the various activities were allowed only to the extent of written substantiation. **Alvi v. Comm'r, T.C. Summary Op. 2010-79**.

TRUSTS. The taxpayer trust made a charitable contribution in a tax year and the trustee intended that the trust would make the election in I.R.C. § 642(c)(1) to take the charitable deduction in the previous tax year. The election was not made by the due date of the return for the second tax year, as required by Treas. Reg. § 1.642(c)-1(b)(2). The IRS granted the trust an extension of time to file the election and to filed amended returns for both tax years. **Ltr. Rul. 201023015, Feb. 25, 2010**.

LANDLORD AND TENANT

LEASE. The plaintiffs had leased farm land from the defendant for several years under a written lease executed in January or February of the crop year of the lease. After the defendant raised the rent one year, the plaintiffs requested that the lease be renewed in October before fall fertilizer was applied. However, the defendant did not send a lease in October and did not contact the plaintiffs until May of the crop year, after the plaintiffs had mailed the deposit check and the first rent payment. The defendant then notified the plaintiffs that the land had been leased in the prior February to another person. The plaintiffs sued for breach of contract. The trial jury found that a lease contract existed between the parties, the defendant breached the contract and the plaintiffs suffered damages of $35,081.69. The defendant appealed, arguing that no contract existed since the parties did not execute a written contract as in the past, did not enter into an oral contract and no terms of the alleged contract were proved. The court cited Restatement (Second) of Contracts § 19 "(1) The manifestation of assent may be made wholly or partly by written or spoken words or by other acts or by failure to act. (2) The conduct of a party is not effective as a manifestation of his assent unless he intends to engage in the conduct and knows or has reason to know that the other party may infer from his conduct that he assents." The court held that the jury had sufficient evidence to find that the defendant's acceptance of the deposit and first rent payment would be relied upon by the plaintiffs as a renewal of the lease; therefore, the defendant's failure to return the deposit and notify the plaintiffs was acceptance of the lease renewal. **Blad v. Parris, 2010 Minn. App. Unpub. LEXIS 417 (Minn. Ct. App. 2010)**.

NEGLIGENCE

HORSE BREEDING. The plaintiff had brought a horse to the defendant's farm to bred the plaintiff's stallion and several mares. The stallion was to be breed using artificial insemination at a "dummy" mare. The plaintiff, an experienced artificial insemination breeder, brought the plaintiff's own dummy and participated in the collection process with the stallion. Although the stallion was collected successfully three times without incident, on the fourth attempt, the horse kicked the plaintiff, resulting in serious injury and a suit in negligence, gross negligence, fraud, misrepresentation, negligent misrepresentation and breach of contract. The defendant sought summary judgment based on a theory that the plaintiff waived any right of action for breach of contract because the plaintiff participated in the collection process several times. The court held that waiver of a breach of contract required some consideration received for the waiver. Because there was no consideration received, the court denied summary judgment for fraud, misrepresentation, negligent misrepresentation and breach of contract. The defendant also argued that the defendant had no duty towards the plaintiff. The court held that the defendant had a duty to use reasonable care and that an issue of fact remained as to the care taken by the defendant, preventing summary judgment. **Wilson v. Davis, 2010 U.S. Dist. LEXIS 53766 (W.D. Ky. 2010)**.

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FARM INCOME TAX, ESTATE AND BUSINESS PLANNING SEMINARS

by Neil E. Harl

January 3-7, 2011

Sheraton Keauhou Bay Resort & Spa

Kailua-Kona, Big Island, Hawai'i.

Spend a week in Hawai'i in January 2011 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 3-7, 2011 at Kailua-Kona, Big Island, Hawai'i, 12 miles south of the Kona International Airport.

Pre-Registration Deposit: Again 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, 2010 so please mail your deposit by July 6, 2010.

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, transferring insurance policies, 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, including recent developments in handling LLC losses.

• Recent legislative tax provisions.

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