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Cases, Regulations and Statutes

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The plaintiff was injured after falling off a galloping horse during a trail ride while staying at the defendant’s resort. No evidence for why the horse was galloping was given and no specific act of negligence was shown. The defendant sought summary judgment on three arguments. First, the defendant argued that the Pennsylvania Equine Activity Law, 4 Pa. Stat. Ann. § 60 et. seq., barred liability under the assumption of risk doctrine. The court noted that the statute required at least two signs be posted explaining the assumption of risk from equine activities but that the evidence was unclear as to whether the stables had such signs and what the signs said. Therefore, an issue of fact remained as to the signs and summary judgment could not be granted on this basis. The defendant also argued that the common law doctrine of assumption of risk applied. The court held that the existence of the statute on assumption of risk for equine activities overrode the common law doctrine. The defendant also argued that no act of negligence was alleged by the plaintiff. Here the court agreed, noting that the plaintiff had failed to identify any action by the defendant which could have caused the horse to gallop or that the horse was unsuitable for use by novice riders in a trail ride; therefore, summary judgment was granted to the defendant. DeShields v. Mountain Laurel Resort & Spa, 2011 U.S. Dist. LEXIS 54344 (M.D. Penn. 2011).

The plaintiff was injured when a week-old colt pushed on a gate which struck the plaintiff. The defendant described the colt as skittish and nervous and the colt had backed into the gate to avoid having a halter placed on its head. The trial and appellate courts stated that New York case law had established that liability for the acts of domestic animals was based solely on the owner’s knowledge of the animal’s vicious propensity to cause injury. Because the week-old colt had no vicious propensities but was only nervous and skittish to human touch, no liability arose for its actions to avoid human contact. Krieger v. Cogar, 921 N.Y.S.2d 767 (N.Y. App. Ct. 2011), aff’g, 907 N.Y.S.2d 438 (N.Y. Sup. Ct. 2010).

The FCIC has adopted as final regulations to amend the common crop insurance regulations, extra long staple cotton crop insurance provisions, to remove all references to the daily spot cotton quotation and replace the reference with the national average loan rate published by the FSA, to incorporate a current special provisions statement into the crop provisions, and to make the extra long staple cotton crop insurance provisions consistent with the upland cotton crop insurance provisions. The changes will apply for the 2012 and succeeding crop years. 76 Fed. Reg. 32067 (June 3, 2011).

The plaintiff was injured when a week-old colt pushed on a gate which struck the plaintiff. The defendant described the colt as skittish and nervous and the colt had backed into the gate to avoid having a halter placed on its head. The trial and appellate courts stated that New York case law had established that liability for the acts of domestic animals was based solely on the owner’s knowledge of the animal’s vicious propensity to cause injury. Because the week-old colt had no vicious propensities but was only nervous and skittish to human touch, no liability arose for its actions to avoid human contact. Krieger v. Cogar, 921 N.Y.S.2d 767 (N.Y. App. Ct. 2011), aff’g, 907 N.Y.S.2d 438 (N.Y. Sup. Ct. 2010).
adopted as final regulations amending the regulations relating to lending and leasing limits and loan and lease concentration risk mitigation. The final rule lowers the limit on extensions of credit to a single borrower or lessee for each Farm Credit System institution operating under Title I or II of the Farm Credit Act of 1971. This final rule also adds new regulations requiring all Titles I, II, and III system institutions to adopt written policies to effectively identify, limit, measure and monitor their exposures to loan and lease concentration risks. 76 Fed. Reg. 29992 (May 24, 2011).

HORSES. The APHIS has issued proposed regulations amending the horse protection regulations to require horse industry organizations or associations that license designated qualified persons to assess and enforce minimum penalties for violations of the Horse Protection Act and the regulations. The regulations currently provide that such penalties will be set either by the horse industry organization or association or by the U.S.D.A. 76 Fed. Reg. 30864 (May 27, 2011).

LIVESTOCK DISEASES. The APHIS has issued proposed regulations which remove the lists of regions classified with respect to certain animal diseases and pests from the animal and animal product import regulations and posts them to the APHIS web site. The regulations would provide the web address and would explain APHIS' criteria and process for adding or removing a region from, or removing a region from, each of the lists. The technical criteria APHIS uses to evaluate whether a region should be added to or removed from the lists would not change. The proposed regulations also remove the lists of states approved to receive horses imported from foreign regions where contagious equine metritis is considered to exist and, instead, post approved states to the APHIS web site. The criteria for approving a state would not change. The proposed regulations provide an opportunity for public comment on changes to the lists through announcements in the Federal Register. 76 Fed. Reg. 31499 (June 1, 2011).

RURAL HOUSING. The FSA and Rural Housing Service have adopted as final regulations implementing two changes in the regulations for the Rural Housing Service Section 502 Single Family Housing Guaranteed Loan Program by eliminating the lender’s published Department of Veterans Affairs rate for first mortgage loans with no discount points as an option for a maximum interest rate on loans and by allowing the USDA Secretary to seek indemnification from the originating lender if a loss is paid under certain circumstances. 76 Fed. Reg. 31217 (May 31, 2011).

FEDERAL ESTATE AND GIFT TAXATION

MARITAL DEDUCTION. The decedent had created a revocable trust which, upon the decedent’s death, was split into two trusts, with one trust for the surviving spouse. The spouse’s trust was designed to qualify as QTIP for the estate tax marital deduction. The estate hired an attorney to prepare the estate’s federal estate tax return but the attorney failed to include the QTIP election. The IRS granted the estate an extension of time to file a supplemental Form 706 with the election. Ltr. Rul. 201121003, Feb. 4, 2011.

GENERATION-SKIPPING TRANSFERS. The taxpayers were great-grandchildren of a decedent who had died prior to September 25, 1985, and whose will created trusts for the decedent’s spouse and children with remainders to grandchildren. The current trust beneficiaries disagreed as to the terms of the trust and its affects under state law and negotiated a settlement which modified some elements of the trust. The IRS ruled that the modifications resulted from a bona fide legal dispute and would not cause the trust distributions to be a gift or income to the beneficiaries, nor would the modifications subject the trust to GSTT. Ltr. Rul. 201121002, Jan. 28, 2011.

BUSINESS EXPENSES. The taxpayer business participated in a tool plan administered by a third party. The tool plan was intended to reimburse the taxpayer’s employees for the use of their tools and equipment. Under the tool plan, tool payments are made to employees as purported nontaxable reimbursement for the cost of the tools they are required to provide as a condition of employment. However, neither the employer nor the plan administrator verifies that the tools being claimed by the employees are actually required in the performance of services for the employer. The taxpayer’s employees continued to receive essentially the same amount per hour under the tool plan as they did before implementation of the tool plan, but under the tool plan the amount was split into two portions, one treated as wages and the other treated as nontaxable reimbursement for tool expenses and the tool plan’s administrative fee. In a Chief Counsel Advice letter, the IRS ruled that the tool plan was an nonaccountable plan and payments received by the employees were wages and subject to withholding and payment of income and employment taxes. CCA 201120021, March 18, 2011.

CONSCIENCE-BASED OBJECTION TO TAXES. The taxpayer refused to pay federal income taxes on the basis of a conscientious objection to military spending. The court held that there was no constitutional or statutory authority for refusal to pay taxes based on a conscientious objection to governmental expenditures. The appellate court affirmed in a decision designated as not for publication. Ruhaak v. Comm’r, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,403 (7th Cir. 2011).

CONSERVATION EASEMENTS. The taxpayers, husband and wife, granted several conservation easements
in several properties to charitable organizations and received conservation income tax credits from Colorado. The taxpayers sold most of the tax credits and reported the proceeds as short-term capital gains, using as a basis the expenses related to the creation of the easement. The IRS assessed a deficiency based on re-characterization of the proceeds as ordinary income and reduction of the basis to zero. The court held that the proceeds of the sale were taxed as short term capital gains because the tax credits were not one of the exceptions listed in I.R.C. § 1221 and the proceeds were not received in substitution for a right to ordinary income. The gains were short-term because the holding period of the tax credits did not include the holding period for the land. The court also held that the expenses of creating the conservation easements did not create any tax basis for the tax credits sold because the taxpayers did not acquire the tax credits by purchase. See also Tempel v. Comm’r, 136 T.C. No. 15 (2011), summarized in 22 Agric. L. Dig. 52 (2011). McNeil v. Comm’r, T.C. Memo. 2011-109. 

CORPORATIONS.

REORGANIZATIONS. The IRS has issued a revenue procedure which provides procedures that an acquiring corporation may use to establish its basis in stock of another corporation when it acquires that corporation’s stock in a transferred basis transaction. Rev. Proc. 2011-35, I.R.B. 2011-25.

DEPENDENTS. The taxpayer’s child was born in 1991 and the taxpayer and the child’s mother were divorced in 1992. In a permanent order of child support, the taxpayer was ordered to pay monthly child support. One provision of that order permitted the taxpayer, for income tax purposes, to claim the child as a dependent in odd years provided that the child support payments were current. The taxpayer paid all child support for 2007. The child lived with the former spouse for all of 2007 and the spouse was the custodial parent. On the taxpayer’s tax return for 2007, the taxpayer claimed a dependency exemption deduction and a $1,000 child tax credit in relation to the child and reported the tax liability using head of household rates. The taxpayer did not attach to the return a Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents, because the former spouse did not provide a signed Form 8332 despite petitioner’s efforts to secure one. The court held that the taxpayer was not eligible for the dependency exemption and child tax credit for the child because the return did not include a signed Form 8332 or a reasonable equivalent. Without an eligible dependent, the taxpayer was not eligible for head of household filing status. Espinosa v. Comm’r, T.C. Memo. 2011-108.

DISASTER LOSSES. On May 9, 2011, the President determined that certain areas in Tennessee are eligible for assistance from the government under the Act as a result of severe storms and tornadoes which began on April 19, 2011. FEMA-1979-DR. On May 9, 2011, the President determined that certain areas in Missouri are eligible for assistance from the government under the Act as a result of severe storms, flooding and tornadoes which began on April 19, 2011. FEMA-1980-DR. On May 10, 2011, the President determined that certain areas in North Dakota are eligible for assistance from the government under the Act as a result of flooding which began on February 14, 2011. FEMA-1981-DR. On May 10, 2011, the President determined that certain areas in Minnesota are eligible for assistance from the government under the Act as a result of severe storms and flooding which began on March 16, 2011. FEMA-1982-DR. On May 11, 2011, the President determined that certain areas in Mississippi are eligible for assistance from the government under the Act as a result of flooding which began on May 3, 2011. FEMA-1983-DR. On May 13, 2011, the President determined that certain areas in South Dakota are eligible for assistance from the government under the Act as a result of flooding which began on March 11, 2011. FEMA-1984-DR. On May 13, 2011, the President determined that certain areas in Oklahoma are eligible for assistance from the government under the Act as a result of a severe winter storm which began on January 31, 2011. FEMA-1985-DR. On May 20, 2011, the President determined that certain areas in North Dakota are eligible for assistance from the government under the Act as a result of a severe winter storm which began on April 29, 2011. FEMA-1986-DR. On May 20, 2011, the President determined that certain areas in Idaho are eligible for assistance from the government under the Act as a result of flooding which began on March 31, 2011. FEMA-1987-DR. On May 27, 2011, the President determined that certain areas in Oklahoma are eligible for assistance from the government under the Act as a result of flooding which began on April 21, 2011. FEMA-1988-DR. Accordingly, taxpayers in the areas may deduct the losses on their 2010 federal income tax returns. See I.R.C. § 165(i).

DISCHARGE OF INDEBTEDNESS. The taxpayer had incurred student loans and had defaulted on the repayment of the loans. The state student loan agency obtained a judgment against the taxpayer for the unpaid loan. In 2005, the taxpayer entered into negotiations with the agency for settlement of the debt and the taxpayer sent a check for $45,000 on December 28, 2005 in settlement of the $73,258 outstanding debt. In February 2006, the agency filed court documents showing the judgment as satisfied. The agency also issued a Form 1099-C, Cancellation of Debt, to the taxpayer showing discharge of indebtedness income of $27,821. The taxpayer argued that the payment was made in settlement of a dispute over how much was owed; therefore, there was no discharge of debt. The court rejected this argument because the agency had obtained a judgment for the full amount and there was no evidence of any negotiations as to the amount owed; therefore, the court held that the taxpayer had taxable discharge of indebtedness income for the difference between the
judgment amount, plus interest, as of the date the agency filed a satisfaction of judgment in 2006. Martin v. Comm’r, T.C. Summary 2011-62.

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. 201120008, Feb. 15, 2011.

ELECTRICITY PRODUCTION CREDIT. The 2011 inflation-adjustment factors used in determining the availability of the credit for renewable electricity production, refined coal production, and Indian coal production under I.R.C. § 45 for qualified energy resources and refined coal is 1.4459. The inflation adjustment factor for Indian coal is 1.1066. The reference price for calendar year 2011 for facilities producing electricity from wind is 4.68 cents per kilowatt hour. The 2011 reference price for fuel used as feedstock is $55.66 per ton. Because the 2011 reference price for electricity produced from wind does not exceed eight cents multiplied by the inflation adjustment factor, the phaseout of the credit does not apply to such electricity sold during calendar year 2011. Because the 2011 reference price for fuel used as feedstock for refined coal does not exceed the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor plus 1.7, the phaseout of the credit does not apply to refined coal sold during calendar year 2011. Further, the phaseout of the credit for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy does not apply to such electricity sold during calendar year 2011. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy for 2011 have not yet been determined. Notice 2011-40, 2011-1 C.B. 806.

FIRST-TIME HOME BUYER CREDIT. The taxpayer was physically and mentally handicapped and lived with parents in their home. The taxpayer was represented by an accountant as guardian. The accountant arranged for the guardian to purchase the parents’ home for the amount of money owed on the mortgage after the parents had fallen behind in the payments. The home was purchased with funds held for the taxpayer from a personal injury settlement and the guardian held title to the home as guardian for the taxpayer. The guardian filed the taxpayer’s income tax return and claimed the first-time home buyer’s credit for the taxpayer. The court held that, although the purchase was structured as a purchase of the home by the accountant, the reality of the transaction was that the home was purchased by the taxpayer; therefore, the first-time home buyer’s credit was not available to the taxpayer as a related person purchasing the parents’ home. Rodriguez v. Comm’r, T.C. Memo. 2011-122.

INVESTMENT INCOME. The taxpayer was in the real estate building and construction business. The taxpayer hired a tax return preparer to prepare the tax return. The taxpayer was a shareholder of an S corporation and reported pass-through income of from Schedule K-1 as non-passive income on the taxpayer’s Schedule E, Supplemental Income and Loss. The taxpayer had paid interest related to debt proceeds used by the taxpayer to purchase the stock. The interest was deducted on Form 4952, as investment interest expense. Based on advice of the tax return preparer, the taxpayer made the decision to elect to include qualified dividend income and net capital gains as investment income for purposes of deducting investment interest expense. The taxpayer hired a different tax return preparer to prepare the income tax return for a subsequent tax year and that preparer informed the taxpayer that the previous interest expense should have been reported as a business interest expense. Therefore, the previous election to treat qualified dividends and net capital gains as investment income was not necessary. The taxpayer sought an extension of time to revoke the election to have the dividend and net capital gain treated as investment income. The IRS granted the extension. Ltr. Rul. 201121006, Feb. 9, 2011.

LIFE INSURANCE. The taxpayers, husband and wife, were the only employees of an S corporation owned solely by the husband. The corporation provided death and severance benefits for the taxpayers, funded with life insurance on the taxpayers. The corporation stopped paying the insurance premiums and the policy was distributed to the husband. The cash surrender value of the policy was less than the surrender charges on the date of distribution but the IRS assessed a tax deficiency based on the cash surrender value of the policy without any reduction for the surrender charges. The policy was not surrendered but only transferred to the husband. On a motion by the IRS for summary judgment, the court denied the motion because the record was not clear as to the fair market value of the policy and whether the cash value of the policy equaled the fair market value due to the effect of the surrender charges which were assessable, but not assessed, against the policy. See similar holdings in Schwab v. Comm’r, 136 T.C. No. 6 (2011); Matthies v. Comm’r, 134 T.C. 141 (2010). Lowe v. Comm’r, T.C. Memo. 2011-106.

PASSIVE ACTIVITY LOSSES. The IRS has published procedures for making an untimely election to treat all rental activities as one activity for passive activity losses purposes. The procedures are intended to eliminate the need for letter ruling requests for extensions of time to file the election, and the IRS will no longer process letter ruling requests made after or pending as of June 13, 2011. A taxpayer is eligible for an extension of time to file a Treas. Reg. § 1.469-9(g) election if the taxpayer represents on a statement that satisfies the procedural requirements of the revenue procedure and under penalties of perjury that it meets all of the following requirements:
(1) The taxpayer failed to make an election under Treas. Reg. § 1.469-9(g) solely because the taxpayer failed to timely meet the requirements in Treas. Reg. § 1.469-9(g).

(2) The taxpayer filed consistently with having made an election under Treas. Reg. § 1.469-9(g) on any return that would have been affected if the taxpayer had timely made the election. The taxpayer must have filed all required federal income tax returns consistent with the requested aggregation for all of the years including and following the year the taxpayer intends the requested aggregation to be effective and no tax returns containing positions inconsistent with the requested aggregation may have been filed by or with respect to the taxpayer during any of the taxable years.

(3) the taxpayer timely filed each return that would have been affected by the election if it had been timely made. The taxpayer will be treated as having timely filed a required tax or information return if the return is filed within six months after its due date, excluding extensions.

(4) the taxpayer has reasonable cause for its failure to meet the requirements in Treas. Reg. § 1.469-9(g).

The taxpayer must attach the statement required by Treas. Reg. § 1.469-9(g)(3) to an amended return for the most recent tax year and mail the amended return to the IRS service center where the taxpayer will file its current year tax return. The statement must contain the declaration required by Treas. Reg. § 1.469-9(g)(3), must explain the reason for the failure to file a timely election, and must include the representations required in the revenue procedure. The statement must identify the taxable year for which it seeks to make the late election. Finally, the statement must state at the top of the document “FILED PURSUANT TO REV. PROC. 2011-34.” The declaration and representations required in the revenue procedure must be accompanied by a dated declaration, signed by the taxpayer which states: “Under penalties of perjury I (we) declare that I (we) have examined this election, including any accompanying documents, and, to the best of my (our) knowledge and belief, the election contains all the relevant facts relating to the election, and such facts are true, correct, and complete.” The individual or individuals who sign must have personal knowledge of the facts and circumstances related to the election. The IRS will notify the taxpayer upon receipt of a completed application requesting relief under this revenue procedure. Any taxpayer receiving relief under this revenue procedure is treated as having made a timely election to treat all interests in rental real estate as a single rental real estate activity as of the taxable year for which the late election was requested. Rev. Proc. 2011-34, I.R.B. 2011-24.

S CORPORATIONS

ASSESSMENTS. This case involves the same issues as Salman Ranch Ltd. v. Comm'r, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,405 (Fed. 9th Cir. 2011), rev'g unpub. Tax Court dec.

FARM INCOME TAX, ESTATE AND BUSINESS PLANNING SEMINARS

by Neil E. Harl
January 16-20, 2012 (tentative)
Kailua-Kona, Big Island, Hawaii'i.

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First day
FARM INCOME TAX
New Legislation
Reporting Farm Income
Leasing land to family entity
Items purchased for resale
Items raised for sale
Crop insurance proceeds
Sales of diseased livestock
Gains and losses from commodity futures

Claiming Farm Deductions
Soil and water conservation expenditures
Fertilizer deduction election
Farm lease deductions
Preproductive period expense provisions
Paying wages in kind

Sale of Property
Income in respect of decedent
Sale of farm residence
Installment sale including related party rules
Sale and gift combined.

Like-Kind Exchanges
Requirements for like-kind exchanges
What is “like-kind” for realty
Partitioning property

Taxation of Debt
Turnover of property to creditors
Discharge of indebtedness

Second day
FARM ESTATE AND BUSINESS PLANNING
New Legislation
The Liquidity Problem
Property Held in Co-ownership
Federal tax treatment of joint tenancy
Traps in severing joint tenancies
Joint tenancy and probate avoidance
Joint tenancy ownership of personal property
Other problems of property ownership

Federal Estate Tax
The gross estate
Special use valuation
Property included in the gross estate
Basis calculations under uniform basis rules
Valuing growing crops
Claiming deductions from the gross estate
Marital and charitable deductions
Generation-skipping transfer tax, including later GST consequences for transfers in 2010
Taxable estate

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