8-5-2011

Cases, Regulations and Statutes

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The justification given for that conclusion was the holding in
Gavin v. United States, which involved a choice by the son
leasing the farmland from the other children of the decedent to
pay either a cash rent of $10,000 or a 50 percent share of the
crops. The problem with that case was that, at the time, with
two exceptions cash rents were not permitted in the recapture
period by one qualified heir to another qualified heir. It was
clear at the time (1990 to 1992) that cash rental of land, even to
a member of the qualified heir’s family in the post-death period
causd recapture of special use valuation benefits except for
the two-year grace period immediately following death and,
since 1988, cash rental by a surviving spouse to a member of
the surviving spouse’s family.11

The 1997 amendment added a provision that cash rent
leasing was permissible in the post-death period by a lineal
descendant of the decedent to a member of the family of the
lineal descendant, which would have embraced the fact pattern
in the four letter rulings, but that statutory amendment was not
even mentioned in the rulings. Instead, the authors of the ruling
cited to a case that was thoroughly discredited and ignored the
statutory amendment that would have provided clear authority
for the holding in the four rulings.

The impression left by the rulings is that any cash renting is
permissible in the post-death period with qualified heirs and the
reality is that, except for the special rule for surviving spouses,14
only lineal descendants of the decedent renting to members
of the lineal descendant’s family can properly cash rent land
without recapture consequences. The term “qualified heir” is
much broader than “a lineal descendant of the decedent renting
to a member of the lineal descendant’s family.”16

In conclusion

It would be unwise to rely on the language in the four rulings.
Decisions on cash renting in the post-death period are governed
by the statute and not by Gavin v. United States which was
incorrectly decided and its authority has not improved since
1997.

ENDNOTES

1. I.R.C. § 2032A. See generally 5 Harl, Agricultural Law §
43.03(2) (2011); Harl, Agricultural Law Manual § 5.03(2) (2011).
See also Harl, “Post-Death Cash Rent Leasing: One More Time,”
8 Agric. L. Dig. 89 (1997).

2. I.R.C. § 2032A(c).

3. Ltr. Rul. 201129016, April 6, 2011; Ltr. Rul. 201129018, April
6, 2011; Ltr. Rul. 201129019, April 6, 2011; Ltr. Rul. 201129020,
April 6, 2011.

4. Gavin v. United States, 113 F.3d 802 (8th Cir. 1997); Minter
v. United States, 19 F.3d 426 (8th Cir. 1994).

5. See Harl, “Post-Death Cash Rent Leasing: One More Time,”
8 Agric. L. Dig. (1997).


7. See note 3 supra.

8. 113 F.3d 802 (8th Cir. 1997).

9. See, e.g., Williamson v. Comm’r, 974 F.2d 1525 (9th Cir.
1992) (cash rent lease to nephew); Shaw v. Comm’r, T.C. Memo.
1991-372 (cash rent lease to son); Fisher v. Comm’r, T.C. Memo.
1993-139 (cash rent lease to brother).


12. See note 6 supra.


14. See note 3 supra.


19. 113 F.3d 802 (8th Cir. 1997).

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr

BANKRUPTCY
No items.

FEDERAL FARM PROGRAMS

CROP INSURANCE. The FCIC has issued proposed regulations amending the Common Crop Insurance Regulations,
Onion Crop Insurance Provisions which provide policy changes, clarify existing policy provisions to better meet the needs of insured
The FCIC has issued proposed regulations which replace the Group Risk Plan (GRP) provisions in CFR part 407, which includes the: GRP Basic Provisions, GRP Barley Crop Provisions, GRP Corn Crop Provisions, GRP Cotton Crop Provisions, GRP Forage Crop Provisions, GRP Peanut Crop Provisions, GRP Sorghum Crop Provisions, GRP Soybean Crop Provisions, and GRP Wheat Crop Provisions, with a new Area Risk Protection Insurance (ARPI) Basic Provisions and ARPI Crop Provisions for each of these crops except Barley and Peanuts. The new ARPI provisions will also replace the Group Risk Income Protection (GRIP) Basic Provisions, the GRIP Crop Provisions, and the GRIP-Harvest Revenue Option (GRIP-HRO). ARPI will offer producers a choice of Area Revenue Protection, Area Revenue Protection with the Harvest Price Exclusion, or Area Yield Protection, all within one Basic Provision and the applicable Crop Provisions. This will reduce the amount of information producers must read to determine the best risk management tool for their operation and will improve the provisions to better meet the needs of insureds. The changes will apply for the 2013 and succeeding crop years. 76 Fed. Reg. 44200 (July 22, 2011).

GRAIN INSPECTION. The GIPSA has issued proposed regulations which revise the regulations that cover the official grain inspection and weighing service procedures that GIPSA’s Federal Grain Inspection Service (FGIS) performs under the authority of the United States Grain Standards Act (USGSA), as amended. The proposed regulations update the regulations issued under the USGSA pertaining to grain exported in large reusable containers typically loaded onto export ships. The proposed regulations add new definitions of composite and average grades, limit the number of such containers that could be averaged or combined to form a single lot, restrict the inspection and weighing of such container lots to the official service provider’s area of responsibility, specify a 60-day retention period for file samples representing such container lots, and make consistent the weighing certification procedures for container lots with those for inspection certification procedures. 76 Fed. Reg. 42067 (July 18, 2011).

ESTATE TAX LIEN. In a Chief Counsel Advice letter, the IRS discussed transferee liability and the enforcement of the estate tax lien on good faith purchasers of estate property. I.R.C. § 6324(a)(2) states that where property is included in the gross estate pursuant to I.R.C. §§ 2034 through 2042, the transferee of the property (such as a surviving joint tenant or remainderman beneficiary) automatically becomes personally liable for the estate tax to the extent of the date of death value of the property received. The personal liability of a transferee under I.R.C. § 6324(a)(2), however, extends only to those who have received assets of a decedent’s estate which are includable for Federal estate tax purposes under the provisions of I.R.C. §§ 2034 to 2042, inclusive (broadly speaking, assets which pass outside the decedent’s probate estate). The IRS also ruled that the estate tax lien under I.R.C. § 6324(a)(1) remains on probated estate property even after sale to a good faith purchaser unless the estate representative has been discharged from personal liability. I.R.C. Sec. 6324(a)(3). CCA 201129037, June 16, 2011.

GENERATION SKIPPING TRANSFERS. The decedent and spouse had created two trusts. Prior to September 25, 1985, the decedent died, making one trust irrevocable. The trustees, beneficiaries and reminder holders entered into a nonjudicial dispute resolution agreement under applicable state law to clarify and amend the investment responsibilities of the trustees and to allow the bank trustee to make adjustments between principal and income. The agreement provided that the individual trustee of each trust, who was also the income beneficiary of one of the trusts, would make all the investment decisions on behalf of the trusts. The IRS ruled that the modifications did not subject the trust to GSTT because the modifications did not shift any beneficial interests in the trusts. Ltr. Rul. 201129013, March 23, 2011; Ltr. Rul. 201129014, March 23, 2011; Ltr. Rul. 201129015, March 23, 2011.

The decedents, husband and wife, each created a trust with the other as beneficiary. At the death of the decedents before September 25, 1985, each trust became irrevocable and was split into two shares, one for each of two children; thus, each child owned a half interest in each trust. The beneficiary of a share of each trust obtained a state court ruling allowing the consolidation of the two half shares into one trust. The IRS ruled that the consolidation of the two shares into one did not subject the trust to GSTT. Ltr. Rul. 201128018, April 8, 2011.

IRA. The decedent’s estate contained the decedent’s interest in an IRA which had the decedent’s estate named as the beneficiary. The estate transferred the IRA to an IRA owned by the estate. Under the decedent’s will, the IRS funds passed to the decedent’s two children in equal shares. The executor created two sub-IRA’s in the name of the decedent with each child as a beneficiary of one sub-IRA. The sub-IRAs will make distributions intended to meet the minimum distribution requirements of I.R.C. § 401(a)(9) based on the decedent’s remaining life expectancy. The IRS ruled that (1) the sub-IRAs are inherited IRAs; (2) the trustee-to-trustee transfer to be used to establish the sub-IRA will not, under Rev. Rul. 78-406, 1978-2 C.B. 157, constitute a taxable payment or distribution, within the meaning of I.R.C. § 408(d), to each child, and also will not be considered an attempted rollover from the estate IRA into the sub-IRAs; (3) each sub-IRA could be treated separately for purposes of the minimum distribution requirements; and (4) the distribution period could be determined using the decedent’s remaining life expectancy. Ltr. Rul. 201128036, April 21, 2011.
ACCOUNTING METHOD. The taxpayer was a limited liability company taxed as a partnership and had timely filed its federal tax return for the taxable year along with the original of a Form 3115 to change its method of accounting for depreciation of certain property under the automatic procedures of Rev. Proc. 2008-52, 2008-2 C.B. 587, as amplified, clarified, and modified by Rev. Proc. 2009-39, 2009-2 C.B. 371 and as superseded by Rev. Proc. 2011-14, 2011-1 C.B. 330. However, the taxpayer failed to file a signed duplicate copy of the Form 3115 with the IRS national office as required by section 6.02(3)(a) of Rev. Proc 2011-14. An accountant assisted Taxpayer in the preparation of the Form 3115 and advised the taxpayer to attach the original Form 3115 to the taxpayer’s federal tax return and to file the federal tax return before the due date of the return for the taxable year. The accountant advised the taxpayer either to send the duplicate copy of the Form 3115 back to the accountant so that the accountant could hand deliver the duplicate copy to the IRS national office, or to mail the duplicate copy of the Form 3115 directly to the IRS national office at the address provided in Rev. Proc. 2011-14, via certified mail. Because of a miscommunication between the taxpayer and the accountant, the taxpayer mailed the duplicate copy of the Form 3115 to the accountant with the understanding that the accountant would file the duplicate copy with the IRS national office. The accountant received the duplicate copy and failed timely to file the duplicate copy with the IRS national office on or before the date of the taxpayer’s timely filed tax return. The IRS granted an extension of time to file the duplicate copy of Form 3115 with the national office. Ltr. Rul. 201128002, April 5, 2011.

ADOPTION TAX CREDIT. The IRS has published information about the adoption tax credit for adoptions in 2011. The Affordable Care Act increased the amount of the credit and made it refundable, which means it can increase the amount of a taxpayer’s refund. The adoption tax credit is as much as $13,170 and taxpayers who adopt a child in 2010 or 2011 may qualify if they adopted or attempted to adopt a child and paid qualified expenses relating to the adoption. Taxpayers with modified adjusted gross income of more than $182,520 in 2010 may not qualify for the full amount and it phases out completely at $222,520. The IRS may make inflation adjustments for 2011 to this phase-out amount as well as to the maximum credit amount. Taxpayers may be able to claim the credit even if the adoption does not become final. If taxpayers adopt a special needs child, they may qualify for the full amount of the adoption credit even if they paid few or no adoption-related expenses. Qualified adoption expenses are reasonable and necessary expenses directly related to the legal adoption of the child who is under 18 years old, or physically or mentally incapable of caring for himself or herself. These expenses may include adoption fees, court costs, attorney fees and travel expenses. To claim the credit, taxpayers must file a paper tax return and Form 8839, Qualified Adoption Expenses, and must attach documents supporting the adoption. Documents may include a final adoption decree, placement agreement from an authorized agency, court documents and the state’s determination for special needs children. Taxpayers can still use IRS Free File to prepare their return, but it must be printed and mailed to the IRS, along with all required documentation. Failure to include required documents will delay a refund. The IRS is committed to processing adoption credit claims quickly, but it also must safeguard against improper claims by ensuring the standards for this important credit are met. If taxpayers’ return is selected for review, please keep in mind that it is necessary for the IRS to ensure the legal criteria are met before the credit can be paid. If taxpayers are owed a refund beyond the adoption credit, they will still receive that part of their refund while the review is being conducted. For more information see the Adoption Benefits FAQ page available at www.irs.gov or the instructions to IRS Form 8839, Qualified Adoption Expenses.

IRS Summertime Tax Tip 2011-10.

DISASTER LOSSES. On June 6, 2011, 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 severe storms and tornadoes which began on May 22, 2011. FEMA-1989-DR. On June 7, 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 tornadoes which began on May 21, 2011. FEMA-1990-DR. On June 7, 2011, the President determined that certain areas in Illinois are eligible for assistance from the government under the Act as a result of severe storms and flooding which began on April 19, 2011. FEMA-1991-DR. On June 10, 2011, the President determined that certain areas in Alaska are eligible for assistance from the government under the Act as a result of an ice jam and flooding, which began on May 8, 2011. FEMA-1992-DR. On June 10, 2011, the President determined that certain areas in New York are eligible for assistance from the government under the Act as a result of severe storms and tornadoes which began on April 26, 2011. FEMA-1993-DR. On June 15, 2011, the President determined that certain areas in Massachusetts are eligible for assistance from the government under the Act as a result of severe storms and tornadoes which began on June 1, 2011. FEMA-1994-DR. On June 15, 2011, the President determined that certain areas in Vermont are eligible for assistance from the government under the Act as a result of severe storms and tornadoes which began on April 23, 2011. FEMA-1995-DR. On June 23, 2011, the President determined that certain areas in Indiana 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-1997-DR. On July 8, 2011, the President determined that certain areas in Arkansas are eligible for assistance from the government under the Act as a result of severe storms and tornadoes which began on May 24, 2011. FEMA-4000-DR. On July 8, 2011, the President determined that certain areas in Vermont are eligible for assistance from the government under the Act as a result of severe storms and tornadoes which began on May 26, 2011.
FEMA-4001-DR. On July 13, 2011, the President determined that certain areas in Ohio are eligible for assistance from the government under the Act as a result of severe storms and tornadoes which began on April 4, 2011. 

FEMA-4002-DR. On July 13, 2011, the President determined that certain areas in Pennsylvania are eligible for assistance from the government under the Act as a result of severe storms and flooding which began on April 25, 2011. 

FEMA-4003-DR. On July 14, 2011, the President determined that certain areas in Puerto Rico are eligible for assistance from the government under the Act as a result of severe storms and flooding which began on May 20, 2011. 

FEMA-4004-DR. On July 20, 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 June 18, 2011. 

FEMA-4005-DR. Accordingly, taxpayers in the areas may deduct the losses on their 2010 federal income tax returns. See I.R.C. § 165(i). 

The taxpayers, a husband and wife, operated rental properties that were damaged in one tax year as a result of a disaster. The President of the United States determined that the damage caused by disaster warranted assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The taxpayers contacted an accountant to prepare an income tax return for the tax year of the disaster. At the time, the taxpayers did not have complete information, such as loss verification reports from the Small Business Administration Disaster Processing Unit, to file the income tax return for the tax year and filed an extension for the income tax return. The accountant overlooked the deadline to report the taxpayers’ loss from the disaster on an amended tax return for the tax year prior to the disaster. The accountant mistakenly believed that an exception to the deadline to elect to report a casualty loss attributable to a federally declared disaster in the immediately preceding year applied for losses resulting from the disaster, and applied the exception to the taxpayers’ loss from the disaster. As a result, the taxpayers’ amended income tax return for the prior tax year and original income tax return for the tax year of the disaster were filed together. The taxpayers claimed the casualty loss on the prior tax year amended tax return to ease some of the financial obligations associated with restoring the damaged properties. The taxpayers received a notice from the IRS disallowing the claim for refund for the prior tax year amended tax return because it was received after the deadline for making an election to claim a casualty loss for the disaster on a prior tax year income tax return. The taxpayers then asked the Appeals Office of the IRS for reconsideration of the claim disallowance and the Appeals Office denied the claim. The IRS, however, granted an extension of time to file the election available under Treas. Reg. §1.165-11 to report a disaster loss pursuant to I.R.C. § 165(i). Ltr. Rul. 201129022, April 15, 2011.

GAMBLING LOSSES. The taxpayer had claimed income from gambling on Schedule C and also claimed gambling expenses, including travel, vehicle expenses, supplies, meals and entertainment, and bad debts, for a net loss. The taxpayer claimed to be a professional gambler. The court held that the taxpayer was not a professional gamble because (1) the taxpayer did not keep full and accurate records; (2) was not an expert at gambling; (3) the taxpayer only spent time as allowed by the taxpayer’s employment; (4) the taxpayer had no history of success at gambling; (5) the taxpayer never made a profit; (6) the taxpayer’s losses offset substantial amounts of wage income; and (7) the taxpayer received personal pleasure from gambling. Thus, the taxpayer was allowed only an itemized deduction for the amount of wagering losses equal to the gambling income. Moore v. Comm’r, T.C. Memo. 2011-173.

HIGHWAY USE TAX. As reported in the last issue of the Digest, the IRS announced regulations providing that, for truckers and other owners of heavy highway vehicles, their next federal highway use tax return, usually due Aug. 31, will instead be due on Nov. 30, 2011. The regulations were published at 76 Fed. Reg. 43121 (July 20, 2011).

INNOCENT SPOUSE. The Internal Revenue Service has announced that it will extend help to more innocent spouses by eliminating the two-year time limit that now applies to certain relief requests. Existing regulations, Treas. Reg. § 1.6015-1, et seq., adopted in 2002, require that innocent spouse requests seeking equitable relief be filed within two years after the IRS first takes collection action against the requesting spouse. The time limit, adopted after a public hearing and public comment, was designed to encourage prompt resolution while evidence remained available. The IRS plans to issue regulations formally removing this time limit. The IRS will no longer apply the two-year limit to new equitable relief requests or requests currently being considered by the agency. A taxpayer whose equitable relief request was previously denied solely due to the two-year limit may reapply using IRS Form 8857, Request for Innocent Spouse Relief, if the collection statute of limitations for the tax years involved has not expired. Taxpayers with cases currently in suspense will be automatically afforded the new rule and should not reapply. The IRS will not apply the two-year limit in any pending litigation involving equitable relief, and where litigation is final, the agency will suspend collection action under certain circumstances. The change to the two-year limit is effective immediately. This change does not apply to innocent spouse relief under I.R.C. §§ 6015(b) or (c) which are governed by the two-year statutory deadline. This change, outlined in Notice 2011-70, I.R.B. 2011—, only applies to equitable innocent spouse relief under I.R.C. § 6015(f). IR-2011-80; CC 2011-017, July 26, 2011.

The taxpayer and former spouse had filed a joint return in which the taxpayer’s wages were declared and an equal amount of state taxes were claimed as a deduction. After the parties divorced, the IRS disallowed the state tax deduction and made an assessment against the taxpayer and former spouse. The taxpayer filed for innocent spouse relief but the court held that relief was not allowed because the erroneous deduction was attributable to the taxpayer. Pearce v. Comm’r, T.C. Summary Op. 2011-98.
PASSIVE ACTIVITY LOSSES. The taxpayers were married individuals who filed their tax returns jointly. The husband was in a real property business as defined by I.R.C. § 469 and was qualified under Treas. Reg. § 469(c)(7)(B) to make an election to treat all interests in rental real estate as a single rental real estate activity. However, the taxpayers inadvertently filed their joint return without the statement required under Treas. Reg. § 1.469-9(g)(3). The IRS granted the taxpayers an extension of time to file the statement with an amended return. Ltr. Rul. 201128009, April 6, 2011.

PENSION PLANS. The taxpayer claimed to have been disabled by mental illness in the tax year in which the taxpayer received early distributions from retirement accounts. The IRS disagreed and assessed the 10 percent additional tax for early distributions. The taxpayer argued that the distributions were exempt from the 10 percent tax under I.R.C. § 72(t)(2)(A)(iii) and presented evidence of medical and psychiatric treatment. The taxpayer did not present a doctor’s certification or any other evidence substantiating the nature or severity of the taxpayer’s condition, the expected duration of the condition, or whether the condition could be remedied. The court found that the taxpayer was able to perform gainful activity with the help of medication and therapy but did not require institutionalization or constant supervision; therefore, the taxpayer was not disabled for purposes of the 10 percent additional tax exemption. Isaacs v. Comm’r T.C. Memo. 2011-175.

SAFE HARBOR INTEREST RATES

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S CORPORATIONS

MORE THAN ONE CLASS OF STOCK. The taxpayer represented that, under its governing instruments, all shares of stock have possessed identical rights to distribution and liquidation proceeds. The taxpayer further represented that neither the taxpayer nor its shareholders knew that disproportionate distributions could potentially terminate the taxpayer’s S corporation election. In a subsequent tax year, the taxpayer learned that the distributions it made were not consistent with its governing instruments and could be construed to create a second class of stock, and, thus, could potentially have terminated its S corporation election. As a result, the taxpayer made corrective distributions to its shareholders, eliminating the cumulative amount of the disproportionate distributions. The taxpayer and shareholders consistently treated the taxpayer as an S corporation and agreed to make any adjustments consistent with the treatment of the taxpayer as an S corporation as may be required by the IRS. The IRS ruled that the termination of S corporation status was inadvertent and that the corrective distributions did not create a second class of stock causing termination of S corporation status. Ltr. Rul. 201129023, March 28, 2011.

THEFT LOSSES. The taxpayer had made investments in several tax-related investment schemes. The promoters of the schemes were convicted of criminal fraud and other charges and ordered to pay restitution to victims of the schemes, including the taxpayer. The taxpayer claimed a theft loss deduction for the amounts invested in the schemes. The court held that the loss deductions were not allowed because the taxpayer failed to prove that the losses were not reasonably recoverable as of the end of the tax year in which the losses were claimed. The appellate court affirmed in a decision designated as not for publication. Vincentini v. Comm’r, 2011-2 U.S. Tax Cas. (CCH) ¶ 50,505 (6th Cir. 2011), aff’g T.C. Memo. 2008-271.

TRAVEL EXPENSES. The IRS has announced that it intends to discontinue authorizing the high-low substantiation method for travel expenses. In 2011, the IRS plans to publish a revenue procedure providing the general rules and procedures for substantiating lodging, meal, and incidental expenses incurred in traveling away from home (omitting the high-low substantiation method). Ann. 2011-42, I.R.B. 2011-32.

TRUSTS. The taxpayer created a qualified personal residence trust under which the taxpayer retained a term interest to possess and occupy the trust’s residence. The trust originally provided that, at the end of the term, the trust benefits passed to the taxpayer’s children, with distribution of the property at the death of the taxpayer and spouse. The taxpayer obtained a modification of the trust agreement to provide (1) the children would have a power to appoint an equal share of the trust corpus to themselves or to provide a further term interest in the residence as a gift to the taxpayer and spouse. The IRS ruled that, if the modification language followed the sample language of Rev. Proc. 2003-42, 2003-1 CB 993, the modifications did not disqualify the trust for special valuation status under I.R.C. § 2702. Ltr. Rul. 201129017, April 13, 2011.

The trust was a calendar-year trust and had made a distribution within the first 65 days of a tax year but failed to include the distribution on its federal income tax return for the previous tax year. The IRS granted the trust a 120-day extension of time to make the election on an amended return. Ltr. Rul. 201129026, April 12, 2011.

WAGES. The taxpayer was physically disabled and lived with an uncle, helping the uncle with several of the uncle’s personal and business activities. The initial agreement was that the taxpayer’s work would not be compensated but the taxpayer would eventually receive compensation from the
business profits in later years. The uncle provided the taxpayer with funds which were designated as loans but the IRS assessed taxes based on treatment of the money as compensation after the uncle’s company issued Form 1099-MISC for the payments. The court held that the funds were loans because (1) there was a reasonable expectation that the taxpayer would be able to repay the amount of the checks from future profits; (2) the loan agreements that were executed for each check showed an intent to create a debtor-creditor relationship; (3) provisions were included in the loan agreements for a fixed repayment date and an annual interest rate; (4) there was a notation on each check indicating it was a loan and the checks were drawn on the uncle’s individual checking account, not his business account; and (5) the amount of the checks was not deducted as compensation paid by the uncle’s business. Kaider v. Comm’r, T.C. Memo. 2011-174.

WITHHOLDING TAXES. The IRS has published information about the withholding calculator at IRS.gov which can help taxpayers figure the correct amount of federal withholding and provide information used to complete a new Form W-4, Employee’s Withholding Allowance Certificate. To use the calculator, taxpayers will need their most recent pay stubs and their most recent federal income tax return. In order to obtain the best answers, taxpayers should (1) fill in all information that applies to the taxpayer’s situation; (2) estimate when necessary, but remember, the results are only as accurate as the information provided; (3) check the information links embedded in the program whenever there is a question about an item; and (4) print out the final screen that summarizes the entries and the results. Use the printed information to complete a new Form W-4 (if necessary) and give the completed W-4 to the taxpayer’s employer. Taxpayers should keep the print of the final screen and a copy of the new W-4 with the tax records.

For many people, the withholding calculator is a great tool that can simplify the process of determining the proper withholding. However, if the taxpayer is subject to the alternative minimum tax or self-employment tax or if the current job will end before the end of the year, the taxpayer will probably achieve more accurate withholding by following the instructions in Publication 919, How Do I Adjust My Tax Withholding, which is available at www.irs.gov. IRS Summertime Tax Tip 2011-06.

CROP SPRAYING. The plaintiffs owned and operated an organic farm. The defendant cooperative performed aerial crop spraying of herbicides and other chemicals on the fields surrounding the plaintiffs’ farm, resulting in several instances of overspraying which resulted in drifting of the chemicals on to the plaintiffs’ crops, resulting in loss of organic status, destruction of crops and loss of production for three years as required by state organic crop laws. The plaintiffs sued in trespass, negligence, nuisance and battery. The trial court dismissed the trespass claim because “trespass by particulate matter” was not recognized in Minnesota. The nuisance and negligence causes were dismissed for lack of evidence of damage. The appellate court reversed, holding that chemical spray drift could constitute actionable trespass. The court also held that the existence of the chemicals on the organic farm were sufficient evidence of damages to allow the nuisance and negligence claims, although the court did not rule on the amount of damages. Johnson v. Paynesville Farmers Union Cooperative Oil Co., 2011 Minn. App. LEXIS 92 (Minn. Ct. App. 2011).

FARM ESTATE AND BUSINESS PLANNING

by Neil E. Harl

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The Agricultural Law Press is honored to publish the completely revised and updated 16th Edition of Dr. Neil E. Harl’s excellent guide for farmers and ranchers who want to make the most of the state and federal income, gift and estate tax laws to assure the least expensive and most efficient transfer of their estates to their children and heirs. This book contains detailed advice on assuring worry-free retirement years, using wills, trusts, insurance and outside investments as estate planning tools, ways to save on estate settlement costs, and an approach to setting up a plan that will eliminate arguments and friction in the family.

Federal estate taxation has undergone great changes in recent years and this book sorts out these changes for you in a concise manner. FEBP also includes discussion of employment taxes, formation and advantages of use of business entities, federal farm payments, state laws on corporate ownership of farm land, federal gift tax law, annuities, installment obligations, charitable deductions, all with an eye to the least expensive and most efficient transfer of the farm to heirs.

Written with minimum legal jargon and numerous examples, this book is suitable for all levels of people associated with farms and ranches, from farm and ranch families to lenders and farm managers. Some lawyers and accountants circulate the book to clients as an early step in the planning process. We invite you to begin your farm and ranch estate and business planning with this book and help save your hard-earned assets for your children.

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Three locations and dates to chose from:
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September 15-16, 2011, Sioux Falls, SD  Ramkota Hotel, 3200 W. Maple St., Sioux Falls, SD 57107 ph. 605-336-0650

The topics include:

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