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Cases, Regulations and Statutes

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Transfer of policy ownership within three years of death

Transfer of policy ownership within three years of death by the insured continues to make the policy proceeds includible in the insured’s gross estate.10

If a policy was not transferred by the insured within three years of death, and the policy was not owned by the decedent at death, is any amount included in the insured’s estate (in addition to premium amounts paid by the insured)? The question is whether payment of premiums within three years of death would cause a proportionate part of the insurance collected at death to be included in the insured’s gross estate. IRS ruled, in 1967,11 that a proportionate part of the policy proceeds would have to be included in the insured’s gross estate. However, that position was abandoned in 1971 with the result that only the premiums paid within three years of death would be included of forfeiture.12 This assumes the original policy was transferred more than three years before death. IRS maintains the former position for accidental death policies and for whole life policies taken out or transferred within the three year period.13

Redemption of the policy during life

Remember, the payment of life insurance proceeds after the death of the insured does not result in the proceeds being subject to income tax.14 But if a life insurance policy is surrendered to the insurer for the available cash value, to the extent the fair market value of the life insurance policy exceeds the policy’s income tax basis (based on the premiums paid), the amount of the proceeds over which the taxpayer-insured has control or receives an economic benefit otherwise, is subject to income tax as ordinary income.145

ENDNOTES

3 Treas. Reg. § 25.2511-1(h)(8).
4 Rev. Rul. 81-166, 81-1 C.B. 477 (gift by policy owner to beneficiaries at death of insured).
5 Treas. Reg. § 25.2512-6(a). If the particular kind of policy is not then available, the value may be established by the replacement cost of comparable policies.
6 Treas. Reg. § 25.2512-6(a). For each policy of life insurance given to a donee or donees during a calendar year, the donor is to obtain a statement by the insurance company on Form 712, Life Insurance Statement, and file it with the Internal Revenue Service Office with whom the gift tax return is filed.
7 I.R.C. § 2503(b).
8 Skouros v. Comm’r, 188 F.2d 831 (2d Cir. 1951).
9 Some policies may be worded to avoid this problem.
10 I.R.C. § 2035(a)(2). See I.R.C. § 2042 (proceeds of life insurance). That is one of only four instances where a gift within three years of death causes inclusion of the value in the donor’s gross estate. The others are retained life estates, I.R.C. § 2036; transfers taking effect at death, I.R.C. § 2037; and revocable transfers, I.R.C. § 2038.
13 See Bel v. United States, 452 F.2d 683 (5th Cir. 1971), cert. denied, 406 U.S. 919 (1972) (payment of premium on accidental death policy was deemed an act of “transfer”); Estate of Silverman v. Comm’r, 61 T.C. 338 (1973), aff’d, 521 F.2d 574 (2d Cir. 1975) (amount included in decedent’s estate was portion of face value equal to ratio of premiums paid by decedent to total premiums where policy was transferred six months before death).
14 I.R.C. § 101(a). The so-called “viatical settlements” whereby amounts are received under a life insurance contract on the life of the insured who is “terminally ill” or “chronically ill” are treated as paid by reason of the death of the insured with no income tax imposed. I.R.C. § 101(g)(1)(B).
15 See Freedman v. Comm’r, 346 F.2d 526 (6th Cir. 1965), aff’d, 41 T.C. 428 (1963). See also Gluckman v. Comm’r, T.C. Memo. 2012-329 (life insurance policy benefits required to be included in gross income; taxpayer’s employer withdrew from benefit plan, resulting in no risk of forfeiture); Scott v. White, T.C. Summary Op. 2012-108 (termination of life insurance policy resulted in constructive receipt of income).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

HORSES. The plaintiff was riding a horse on a public highway when the defendant approached from the rear with the defendant’s child in a stroller and two dogs. The plaintiff’s horse bolted and threw the plaintiff who sustained injuries. The defendant asserted the defense of assumption of risk in that the spooking of the horse was within the normal risks of equestrian activities. The court noted that the doctrine of assumption of risk in New York required that the equestrian activity be “sponsored or otherwise supported by the defendant;” therefore, the doctrine could not be used as a defense in this case. The court held that the defendant was entitled to summary judgment on the negligence claim because actions for injuries caused by domestic animals are available only in strict liability which must be established by “evidence that the animal’s owner had notice of its vicious propensities.” The court noted that there was no evidence that the defendant’s dogs directly caused the spooking of the plaintiff’s horse or that the defendant had any knowledge that the dogs would cause the horse to spook. Filer v. Adams, 2013 N.Y. App. Div. LEXIS 3831 (N.Y. Sup. Ct. 2013).
BANKRUPTCY

GENERAL

AUTOMATIC STAY. The debtor had filed for Chapter 12 and received permission to use cash collateral to plant crops in 2008. None of the cash collateral was used to plant 2009 or later crops and the debtor petitioned the court for release of the lien against crops. The court granted the order but the bank failed to promptly execute the release. When the debtor sought financing for the 2011 crop, a new lender refused to make the loan with the crop lien still active. By the time the debtor notified the bank that the lien was not released and the bank released the lien, it was too late for proper application of fertilizer and weed control for the 2011 crop. The debtor filed a motion for damages resulting from the failure of the bank to release its lien, arguing that failure to release the lien was a violation of the automatic stay. The court found that the bank had reasonable justifications for failing to timely release the lien in that the bank was in the process of taking over the operations of the original bank which failed during the bankruptcy and the bank staff did not know that the debtor needed the release within a certain time. The court held that the failure to promptly release the lien was not a violation of the automatic stay. In re Fischer, 2013 Bankr. LEXIS 2650 (Bankr. D. Neb. 2013).

The debtor purchased 84 head of dairy cattle in June 2012 and agreed to pay in installments of monthly milk assignments. The debtor made two such payments and made a third by cash. The creditor/seller learned that the debtor was in financial difficulty and removed 45 cattle on November 30, 2012, one day after the debtor had filed for Chapter 12 unbeknownst to the seller. On December 6, 2012, the seller participated in a count of the debtor’s cattle as part of the bankruptcy case. On advice of counsel, the seller returned 42 cattle on December 21, 2012. The remaining three had already been sold. The debtor filed a motion for contempt, claiming damages from the repossession of the 45 cattle from lost milk proceeds, including losses caused by the frequent moving of the cattle in December to and from the debtor’s property. The court awarded these damages plus punitive damages for violation of the automatic stay for over three weeks before the return of the cattle. In re Purdy, 2013 Bankr. LEXIS 2247 (Bankr. W.D. Ky. 2013).

CHAPTER 12

DISMISSAL. The debtors, husband and wife, filed for Chapter 12 three times within 29 months. The first case was voluntarily dismissed, the second case was dismissed on the motion of a creditor and the third case is the instant case. The debtors claimed debts of $2,985,178 but the actual amount was $3,982,671 which exceeded the limit of Section 109(f). The debtors claimed that one creditor had received funds from an auction of their property; however, the court found that the auction proceeds were still held by a receiver and had not yet been paid to the creditor. Therefore, the debtors were not eligible for Chapter 12 and the case was dismissed. The court also imposed a 180 day bar on refileing by the debtors because of bad faith in the current case. The court noted that the debtors had misstated their debts in court documents, had serially filed for bankruptcy, the third filing was made only to halt a state court action, and the debtors had failed to comply with court orders for discovery. In re Cabral, 2013 Bankr. LEXIS 2382 (Bankr. E.D. Calif. 2013).

PARTNERSHIPS. One of the partners of a farm partnership filed a voluntary petition in Chapter 12 bankruptcy for the partnership. The other partner filed a motion to dismiss, arguing that the filing violated Or. Stat. § 67.140(11) which requires consent of all partners for actions taken by the partnership outside the ordinary course of business. The debtor-partner argued that the statute did not prevent partnership agreements from providing for different rules as to partnership business outside the ordinary course of business. On examining the debtor-partnership agreement, the court held that it did not provide for less than unanimous consent of all partners for a filing for bankruptcy; therefore, the filing by one partner without evidence that all partners consented to the filing was not properly authorized and required the dismissal of the case. In re Loverin Ranch, 2013 Bank. LEXIS 2378 (Bankr. D. Or. 2013).

PLAN. The debtor was a crop farmer who had borrowed money from a bank, the only creditor in the case, for one year to purchase real property on speculation. The debtor’s farm property served as collateral on the loan. The Chapter 12 plan proposed five annual payments over 15 years. The plan included income from the crops, land leased to other persons, the debtor’s spouse’s non-farm income, farm program payments, custom farming income and the proceeds of the sale of farm real and personal property. The bank objected to the plan as not feasible and because the loan underlying the bank’s claim was extended from one year to 15 years. The court noted that the debtor’s projections of income and expenses were generally consistent with historical operation of the farm but noted that the debtor had made changes which increased the income, maintained crop insurance, and proposed the sale of property to more quickly reduce the loan amount. The court held that the plan was feasible within the normal risks of farming. The court also noted that the debtor’s collateral value was more than double the amount of the loan so the bank was adequately protected if the plan projections fell short. The court held that the extension of loan was reasonable in light of the need to support a reorganization of the farm operation to provide income for payment of the loan. The proposed interest rate of 5.75 percent was also held to be reasonable, if not a little high, in that it provided a 2.5 percent cushion for risk above the 3.25 percent prime rate, given the more than adequate protection provided by the collateral. In re Wise, 2013 Bankr. LEXIS 2299 (Bankr. D. S.C. 2013).

FEDERAL FARM PROGRAMS

CROP INSURANCE. The FCIC has adopted as final regulations for the Area Risk Protection Insurance (ARPI) Basic Provisions, ARPI Barley Crop Insurance Provisions, ARPI Corn Crop Insurance Provisions, ARPI Cotton Crop Insurance Provisions,


FEDERAL ESTATE AND GIFT TAXATION

NO ITEMS.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The IRS has published information for taxpayers who are starting a new business. (1) Type of Business. Early on, a taxpayer will need to decide the type of business organization structure the taxpayer is going to establish. The most common types are sole proprietorship, partnership, corporation, S corporation and limited liability company. Each type reports its business activity on a different federal tax form. (2) Types of Taxes. The type of business run usually determines the type of taxes to be paid. The four general types of business taxes are income tax, self-employment tax, employment tax and excise tax. (3) Employer Identification Number. A business often needs to get a federal EIN for tax purposes. See www.IRS.gov to find out whether the business needs this number. Taxpayers can apply for an EIN online. (4) Recordkeeping. Keeping good records will help the taxpayer when it is time to file business tax forms at the end of the year. The records help taxpayers track deductible expenses and support all the items reported on the business tax return. Good records will also help the taxpayer monitor the progress of the business and prepare financial statements. Taxpayers may choose any recordkeeping system that clearly shows the business income and expenses. (5) Accounting Method. Each taxpayer must also use a consistent accounting method, which is a set of rules that determine when to report income and expenses. The most common are the cash method and accrual method. Under the cash method, taxpayers normally report income in the year the income is received and deduct expenses in the year they are paid. Under the accrual method, taxpayers generally report income in the year it is earned and deduct expenses in the year they are incurred. This is true even if the taxpayer receives the income or pays the expenses in a future year. For more information, see the “Business Taxes” and “Starting a Business” pages on irs.gov. Publication 583, Starting a Business and Keeping Records.

IRS Summertime Tax Tip 2013-02.

The taxpayer corporation claimed deductions for amounts reimbursed employees and officers for car leases and highway tolls incurred for travel from the employees’ residences to the corporation’s workplace. The court held that the expenses were nondeductible commuting expenses; therefore, the reimbursement of the expenses was also not deductible by the corporation. The decision is designated as not for publication.


CONSERVATION EASEMENTS. The taxpayers, husband and wife, donated a facade easement to an historical urban property to a charitable organization. In recognition of IRS increased scrutiny of easement contributions announced in Notice 2004-41, 2004-2 C.B. 31, the charitable organization had developed a letter to easement donors promising to refund all or part of an easement donation if the IRS denied all or part of the charitable deduction for the easement contribution. The evidence showed that the taxpayers investigated the letter and were assured that the refund promise would be met. The IRS denied a charitable deduction for the value of the easement because the easement was contingent on subsequent events. The taxpayers argued that the letter was unenforceable so it did not create a contingency based on an IRS audit of the transaction. The court disagreed, holding that no state or federal law prohibited enforcement of the letter and that the charitable organization was likely to give the refund, as it had to other donors. Graev v. Comm’r, 140 T.C. No. 17 (2013).

CORPORATIONS

DIVIDENDS. The taxpayer was the sole owner of a corporation which operated a construction company. The taxpayer built a home on property owned by the taxpayer. During the construction the corporation paid the subcontractors and vendors directly, and its framing crew framed the lakefront home. The taxpayer repaid the corporation for all amounts paid to the subcontractors and also reimbursed the corporation for its labor and overhead costs. The corporation, however, did not charge the taxpayer an amount equal to the customary profit margin that the corporation used to calculate the contract price that it charged its unrelated clients. The IRS argued that the amount of profit normally received for such a project was a constructive dividend income to the taxpayer. The court disagreed, holding that no constructive dividend was paid because the taxpayer did not receive anything that reduced the corporation’s earnings and profits nor did the taxpayer receive any corporate property. Welle v. Comm’r, 140 T.C. No. 19 (2013).
NONRECOGNITION TRANSACTIONS. The IRS has issued a revenue procedure which modifies and amplifies section 6.03, section 6.11, Appendix C, and Appendix E of Rev. Proc. 2013-1, 2013-1 C.B. 1 (explaining procedures for requesting letter rulings generally), and modifies and amplifies sections 3.01(41), 4.02(2), and 4.02(9) of Rev. Proc. 2013-3, 2013-1 C.B. 113 (listing areas of the Code under the jurisdiction of the Associate Chief Counsel (Corporate) on which the Service will not issue letter rulings), by modifying the scope of, and procedures for requesting, letter rulings issued by the Service under I.R.C. §§ 332, 351, 355, 368, or 1036, and certain related I.R.C. sections. The IRS will no longer rule on whether a transaction qualifies for nonrecognition treatment under I.R.C. §§ 332, 351, 355, or 1036, or on whether a transaction constitutes a reorganization within the meaning of I.R.C. § 368. The IRS will instead rule only on significant issues under I.R.C. §§ 332, 351, 355, 368, or 1036. In addition, the IRS will rule only on significant issues under related I.R.C. sections that address the tax consequences (such as nonrecognition and basis) that result from the application of I.R.C. §§ 332, 351, 355, 368, or 1036. Rev. Proc. 2013-32, I.R.B. 2013-32.

DEPRECIATION. The taxpayer was a developer of renewable energy products and developed a megawatt solar photovoltaic power generation facility. The facility was completed and ready for electricity production in one tax year but the electrical system to which the facility was connected was subject to litigation which prevented the final network upgrades for the taxpayer’s facility. Once the litigation was resolved, the upgrades would occur but during the upgrades, the production of electricity by the system would be curtailed. The IRS ruled that the facility would be considered as placed in service once it began producing electricity and not in the tax year the upgrades were completed. Ltr. Rul. 201326008, March 21, 2013.

DISCHARGE OF INDEBTEDNESS. The IRS has adopted as final regulations relating to the application of I.R.C. § 108(i) to partnerships and S corporations. The regulations provide rules regarding the deferral of discharge of indebtedness income and original issue discount deductions by a partnership or an S corporation in respect to re-acquisitions of applicable debt instruments after December 31, 2008, and before January 1, 2011. The regulations affect partnerships and S corporations with respect to re-acquisitions of applicable debt instruments and their partners and shareholders. 78 Fed. Reg. 39973 (July 3, 2013).

The IRS has adopted as final regulations under I.R.C. § 108(i) primarily affecting C corporations regarding the acceleration of deferred discharge of indebtedness income and deferred original issue discount (OID) deductions under I.R.C. § 108(i)(5)(D), and the calculation of earnings and profits as a result of an election under I.R.C. § 108(i). The regulations also provide rules applicable to all taxpayers regarding deferred OID deductions under I.R.C. § 108(i) as a result of a re-acquisition of an applicable debt instrument by an issuer or related party. 78 Fed. Reg. 39984 (July 3, 2013).

The taxpayer was a part owner of a limited liability company which had obtained loans from an unrelated company. The LLC defaulted on the loans but the creditor forgave the loans, resulting in discharge of indebtedness income to the LLC which was not reported by the LLC or to the taxpayer. After the taxpayer’s return was filed, the taxpayer met with tax advisors and determined that the LLC should have reported the discharge of indebtedness income on its income tax return, including the Schedule K-1 furnished to the taxpayer and that the taxpayer could have made the election described in I.R.C. § 108(c)(3)(C) for qualified real property indebtedness. The IRS granted an extension of time to file an amended return with the election. Ltr. Rul. 201325004, March 18, 2013.

EMPLOYEE. The taxpayer was a tax-exempt corporation formed to maintain a house of worship. One of the members of the board of directors resigned and the taxpayer purchased a house which was leased to the resigned board member. The member paid for insurance and other maintenance costs and paid a small rent to the taxpayer. The issue was whether the member was an employee of the corporation in maintaining the house. The court held that the member was an employee because (1) the taxpayer did not operate a trade or business with the house, (2) the taxpayer had no right to fire the member but only to evict the member, (3) the member had no professional relationship with the taxpayer after retiring from the board, and (4) the taxpayer intended only to create a measure of support for the retired member. Kadimah Chapter Kiryat Ungyar v. Comm’r, T.C. Memo. 2013-161.

HEALTH INSURANCE. Beginning in 2014, eligible individuals who purchase coverage under a qualified health plan through an Affordable Insurance Exchange are allowed a premium tax credit under I.R.C. § 36B. Under I.R.C. § 36B and Treas. Reg. § 1.36B-2, in general, an individual (who may be the taxpayer claiming the premium tax credit or a member of the taxpayer’s family) may receive health insurance coverage subsidized by the premium tax credit only for months the individual is enrolled in a qualified health plan through an exchange and is not eligible for other minimum essential coverage. Under I.R.C. § 5000A(f)(1)(A), minimum essential coverage includes coverage under government-sponsored programs such as the Medicare program under part A of title XVIII of the Social Security Act, the Medicaid program under title XIX of the Social Security Act, the Children’s Health Insurance Program (CHIP) under title XXI of the Social Security Act, and the TRICARE program under chapter 55 of title 10 U.S. Code. The IRS has issued a notice which provides guidance on whether or when, for purposes of the premium tax credit under I.R.C. § 36B, an individual is eligible for minimum essential coverage under certain government-sponsored health programs or other coverage designated as minimum essential coverage. Notice 2013-41, I.R.B. 2013-29.

For each month beginning after December 31, 2013, I.R.C. § 5000A requires individuals who are not exempt to either maintain minimum essential coverage for themselves and any nonexempt family members or include an individual shared responsibility payment with their Federal income tax return. A taxpayer is liable under I.R.C. § 5000A for any nonexempt individual whom the taxpayer may claim as a dependent. Under I.R.C. § 5000A(f)(2),
minimum essential coverage includes coverage under an eligible employer-sponsored plan. The IRS has published proposed regulations under I.R.C. § 5000A that provide that an eligible employer-sponsored plan means, with respect to an employee, a group health plan (whether an insured group health plan or a self-insured group health plan) or group health insurance coverage offered by an employer to the employee that is (i) a governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act (42 U.S.C. 300gg-91(d)(8)), (ii) any other plan or coverage offered in the small or large group market within a state (including for this purpose a self-insured group health plan), or (iii) a grandfathered health plan offered in a group market. See Prop. Treas. Reg. § 1.5000A-2(c)(1). The proposed regulations provide that an individual has minimum essential coverage for a month in which the individual is enrolled in and entitled to receive benefits under a program or plan identified as minimum essential coverage. See Prop. Treas. Reg. § 1.5000A-1(b)(1). Many employer-sponsored plans have a non-calendar plan year. Generally, eligible employer-sponsored plans do not permit employees to enroll in the plan after the beginning of a plan year (as defined in Prop. Treas. Reg. § 54.4980H-1(a)(30)) unless certain triggering events occur, such as a change in employment status. The IRS has issued a notice which provides relief from the I.R.C. § 5000A shared responsibility payment for specified individuals who are eligible to enroll in certain eligible employer-sponsored health plans with a plan year other than a calendar year (non-calendar year plans) if the plan year begins in 2013 and ends in 2014. Notice 2013-42, I.R.B. 2013-29.

LIKE-KIND EXCHANGE. The taxpayer entered into a ground lease for 33 years to build a hotel. When the lease had 21 years remaining the leasehold was sold using a qualified intermediary and replaced with a fee interest in two improved properties. The court held that the exchange of a 21 year leasehold was not eligible for the transaction as a like-kind exchange. The taxpayer argued that Treas. Reg. § 1.1031(a)(1-c) did not treat all leasehold interests of less than 30 years as not like kind to fee interests. The court did not discuss that issue because there was sufficient case precedent that leaseholds of more than 21 years and less than 30 years were not like-kind to fee interests. The court held that the exchange of a 21 year leasehold interest in the hotel property was not eligible for like-kind exchange treatment with the purchase of a fee interest in two improved properties. VIP's Industries, Inc. & Subs. v. Comm'r, T.C. Memo. 2013-157.

MARRIED TAXPAYERS. Note: with the constitutionality of the Defense of Marriage Act in United States v. Windsor, 2013-2 U.S. Tax Cas. ¶ (CCH) 60,667 (S. Ct. 2013), the following information now also applies to same-sex couples in those states which have legalized same sex marriages. The IRS has published information for newlywed couples. (1) It is important that the names and Social Security numbers that taxpayers put on their tax return match their Social Security Administration records. If a taxpayer has changed the taxpayer’s name, report the change to the SSA by filing Form SS-5, Application for a Social Security Card. Taxpayers can get this form at SSA.gov, by calling 800-772-1213 or by visiting the local SSA office. (2) If a taxpayer’s address has changed, file Form 8822, Change of Address to notify the IRS. Taxpayers should also notify the U.S. Postal Service if their address has changed. (3) If a taxpayer works, the taxpayer should report a name or address change to the employer. This will help to ensure that the taxpayer receives the Form W-2, Wage and Tax Statement, after the end of the year. (4) If the taxpayer and spouse both work, both taxpayers should check the amount of federal income tax withheld from their pay. The taxpayers’ combined incomes may move them into a higher tax bracket. Use the IRS Withholding Calculator tool at IRS.gov to help complete a new Form W-4, Employee's Withholding Allowance Certificate. See Publication 505, Tax Withholding and Estimated Tax, for more information. (5) If the taxpayers did not qualify to itemize deductions before they were married, that may have changed. The taxpayer and spouse may save money by itemizing rather than taking the standard deduction on their tax return. Taxpayers will need to use Form 1040 with Schedule A, Itemized Deductions. Taxpayers cannot use Form 1040A or 1040EZ when they itemize. (6) If the taxpayers are married as of Dec. 31, that is their marital status for the entire year for tax purposes. The taxpayer and spouse usually may choose to file their federal income tax return either jointly or separately in any given year. Married taxpayers may want to figure the tax both ways to determine which filing status results in the lowest tax. In most cases, it’s beneficial to file jointly. IRS Summertime Tax Tip 2013-01.

S CORPORATIONS

ELECTION. The taxpayer S corporation failed to timely file Form 2553, Election by a Small Business Corporation after formation. The IRS granted an extension of time to file Form 2553, Ltr. Rul. 201325001, March 19, 2013.

SECOND CLASS OF STOCK. The taxpayer S corporation hired an individual to work for the company. The taxpayer and individual agreed that as part of the employment, the individual would invest in the company. The company issued three mandatorily convertible debentures, one to the individual and two to the individual’s IRA account in exchange for funds. The individual debenture did not bear interest and the number of shares convertible under the individual debenture was based on the per-share purchase price of the company’s common stock established in a valuation report prepared in the year of issuance of the debenture. The debenture matured and was converted to common stock. The IRA debentures could be redeemed by the company for stock or money and the company redeemed the IRA debentures with money. The IRS ruled that the debentures did not create a second class of stock causing the termination of the S corporation. Ltr. Rul. 201326012, March 25, 2013.

SUBSIDIARIES. The taxpayer was an S corporation which purchased another corporation through a stock purchase. Although the taxpayer intended to make the QSub election for the acquired corporation, the taxpayer failed to timely file Form, 8869, Qualified Subchapter S Subsidiary Election, for the new subsidiary. The IRS granted an extension of time to file the election. Ltr. Rul. 201325008, March 22, 2013.

TRUSTS. The taxpayer created an irrevocable trust with the
Farmland assessment could be granted to a non-contiguous parcel which provided support for a farm on another parcel, but the court upheld the denial of farmland assessment for the 44 acres because the parcel was not reasonably necessary for the operation of the 93 acres hay and grain farm.  


The plaintiff owned 29.5 acres of rural land located in an exclusive farm use (EFU) zone in Oregon and included two legal dwellings and qualifies for farm special assessment homesite under Or. Rev. Stat. § 308A.253. However, the county assessor denied special use farm assessment for 18 of the acres because of non-use. The plaintiff responded to the change by claiming that cattle were run on the land over several years and that the plaintiff intended to grow Himalayan blackberries on the property for sale. The court held that the plaintiff failed to support the claim of running cattle on the land, including any evidence for the cattle owner. The court held that the growing of Himalayan blackberries was not an acceptable farming practice because the blackberries were listed as a noxious weed in Oregon. The plaintiff provided evidence of attempts to remove blackberries from pasture land and plans to plant an orchard in the future, but the court held that clearing blackberries was not a farming practice and future activities did not affect the EFU status during the current year.  

**Stutzman v. Yamhill County Assessor, 2013 Ore. Tax LEXIS 109 (Or. Tax Ct. 2013).**

**HERBICIDE.** The plaintiff operated a farm growing trees for sale to garden centers and wholesale brokers. The plaintiff alleged that the defendant sprayed 2, 4-D herbicide on the defendant’s farm which drifted onto the plaintiff’s property and damaged the plaintiff’s trees. The plaintiff filed suit against the defendant seeking compensatory and punitive damages for the losses it had incurred, alleging those losses to be the result of negligent and reckless spraying of 2, 4-D upon the defendant’s farm which caused vapor to drift to the plaintiff’s farm. Both sides presented expert testimony as to the possible causes of the damage to the plaintiff’s trees and the plaintiff moved for a directed verdict on the issue of liability on the basis that the plaintiff had proven that the spraying caused the damage to the trees. The defendant moved for directed verdict on the issue of punitive damages. The trial court denied the first motion and granted the motion on punitive damages. The jury returned a verdict for the defendant. The appellate court affirmed both motion rulings. The court noted that there was sufficient disagreement among the expert testimony as to what could or did cause the damage to make the issue of causation a jury question. However, in ruling on the second motion for directed verdict, the court agreed with the trial court that there was insufficient proof of bad faith by the defendant. In addition, the jury verdict of no liability made the issue of punitive damages moot.  


**STATE TAXATION OF AGRICULTURE**

**AGRICULTURAL USE.** The plaintiff owned a 44 acre rural property consisting mostly of trees on wetland. The county assessor inspected the 44 acre property and found it was a wooded parcel with no management plan and where no routine agricultural or horticultural activities took place. Accordingly, the tax assessor determined that the property did not qualify for a farmland assessment pursuant to N.J. Admin. Code § 18:15-1.1. The plaintiff also owned a 93 acre lot used as a grain and hay farm and which qualified for farmland assessment. The plaintiff argued that the 44 acre parcel supported the 93 acre parcel by supplying firewood for the farmhouse and construction wood for farm buildings. The two parcels were six miles apart. The court acknowledged that
AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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The topics include:

First day
FARM INCOME TAX

New Legislation
Reporting Farm Income
Constructive receipt of income
Deferred payment and installment payment
arrangements for grain and livestock sales
Using escrow accounts
Payments from contract production
Development in SE tax for CRP payments
Leasing land to family entity
Items purchased for resale
Items raised for sale
Crop insurance proceeds
Weather-related livestock sales
Sales of diseased livestock
Reporting federal disaster assistance benefits
Gains and losses from commodity futures,
including consequences of exceeding the
$5 million limit

Claiming Farm Deductions
Soil and water conservation expenditures
Fertilizer deduction election
Depreciating farm tile lines
Farm lease deductions
Prepaid expenses
Preproductive period expense provisions
Regular depreciation, expense method
Depreciation, bonus depreciation
Paying rental to a spouse
Paying wages in kind
Section 105 plans

Sale of Property
Income in respect of decedent
Sale of farm residence
Installment sale including related party rules
Private annuity
Self-canceling installment notes
Sale and gift combined.

Like-Kind Exchanges
Requirements for like-kind exchanges
"Reverse Starker" exchanges
What is "like-kind" for realty
Like-kind guidelines for personal property
Partitioning property
Exchanging partnership assets

Taxation of Debt
Turnover of property to creditors
Discharge of indebtedness
Taxation in bankruptcy.

Second day
FARM ESTATE AND
BUSINESS PLANNING

New Legislation
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