8-9-2013

Cases, Regulations and Statutes

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After the acquisitions, Peco Foods contracted with a consultant to perform “segregated cost analyses” of the properties, which subdivided the assets into categories. With that report, Peco Foods proceeded to assign new useful lives to the properties, including reclassifying 39-year non-residential real property\(^7\) with straight-line depreciation into seven and 15-year class lives with 150 percent to 200 percent declining balance depreciation for an additional depreciation deduction of $5,258,754 over a five-year period.\(^8\) Peco Foods requested a change of accounting method and submitted amended returns with new depreciation schedules.

IRS objected and took the position that the original allocation agreements entered into by the parties were unambiguous, enforceable and complete in their coverage of the assets and thus bound the parties and the Tax Court and the Eleventh Circuit Court of Appeals agreed.\(^9\) Peco Foods sought to elevate the residual method of I.R.C. § 338(b)(5) over the written allocations but the courts also held that the residual method in I.R.C. § 338(b)(5)\(^9\) did not apply.

The courts in *Peco Foods, Inc. & Subs. v. Comm’r*, T.C. Memo. 2012-18, *aff’d*, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,412 (11th Cir. 2013) cited approvingly to *Commissioner v. Danielson*\(^10\) where the Third Circuit Court of Appeals ruled that a taxpayer could challenge the tax consequences of a written agreement “only by adducing proof in an action between the parties to the agreement that would be admissible to alter that construction or to show its unenforceability because of mistake, fraud, duress, etc.”\(^11\)

**Conclusion**

Where an allocation agreement is entered into, it is clear that the agreement will prevail, absent fraud, mistake or undue influence.

**ENDNOTES**


5. I.R.C. § 1060(c).


7. See note 1 supra.


10. Treas. Reg. § 1.1060-1(b)(1). See Hospital Corp. of America v. Comm’r, T.C. Memo. 1996-559 (acquisition of truck leasing business was an “applicable asset acquisition” because the transfer of assets constituted a “trade or business” court allocated the prices); *East Ford, Inc. v. Comm’r*, T.C. Memo. 1994-261 (corporation and subsidiaries were bound by asset allocation agreements which were enforceable).


12. 2013-2 U.S. Tax Cas. (CCH) ¶ 50,412 (11th Cir. 2013).

13. *Id*.


16. *Id*.

17. See note 5 supra and accompanying text.

18. 378 F.2d 771, 775 (3d Cir. 1967), *vac’g and rem’g*, 44 T.C. 549 (1965).

19. *Id*.

**CASES, REGULATIONS AND STATUTES**

by Robert P. Achenbach, Jr

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**ADVERSE POSSESSION**

**FENCE.** The plaintiffs’ and defendants’ properties were originally part of a single property which was divided in 1970 by sale. The original owners agreed to build a fence between the properties to keep the cattle on the plaintiff’s property from escaping on to the defendants’ property. The two properties were resold several times before the plaintiffs and defendants purchased the properties. The defendants had a survey performed which discovered that the fence was located up to 43 feet inside the true boundary between the properties. The defendants then posted the boundary and the plaintiff filed suit to quiet title by adverse possession. The plaintiffs argued that (1) adverse possession was obtained through their mowing of the land and planting of trees or (2) the fence was recognized and acquiesced to as the boundary. The court found that occasional mowing and planting of trees was not sufficient open and continuous hostile acts to obtain title by adverse possession. The court noted that the property around the fence was fairly wild and unimproved such that occasional mowing or planting of trees would not give notice of intent to claim title to the land. In addition, the plaintiffs’ activities occurred only for seven years and adverse possession in Washington required 10 years of continuous, open and hostile possession. On the issue of
acquiescence of the fence as the boundary, the court found that the plaintiffs failed to provide evidence of any positive conduct by any of the prior owners of either property that the fence was recognized as the true boundary. Most of the evidence demonstrated only a passive ignoring of the issue since the property near the fence was not used by any of the prior owners for any specific use. The court held that the plaintiffs did not obtain title to the disputed property by adverse possession nor acquiescence of the fence as the boundary. Vanderhoof v. Mills, 2013 Wash. App. LEXIS 1638 (Wash. Ct. App. 2013).

ANIMALS

HORSES. The plaintiff was injured while working for the defendants on their horse farm. The accident occurred while the plaintiff and defendant were walking the horses from a trail ride back to the barn when they passed through an area of tall grass and the plaintiff tripped on a hidden log. The horse then stepped on the plaintiff’s leg. The plaintiff filed an action in premises liability, claiming that the defendant was negligent in failing to mow the area where the accident occurred. The trial court granted summary judgment to the defendant because (1) Ky. Rev. Stat. § 247.402 prohibited claims based on inherent risks of farm animal activities where the defendant had posted signs required by the statute; and (2) the plaintiff had failed to show that any dangerous latent condition existed to raise the exception of Ky. Rev. Stat. § 247(2)(c). On appeal, the plaintiff argued that the overgrown grass area created a dangerous latent condition. The appellate court disagreed, holding that the evidence demonstrated that the area was observable by the plaintiff as an area with broken tree limbs at least partially hidden in the grass. The court noted that the plaintiff and defendant had dismounted in recognition that it would be dangerous to attempt to ride the horses through that area. The plaintiff also argued that the defendant failed to provide sufficient notice or warning of the dangers of animal farming activities. The court denied this claim because the plaintiff failed to submit any evidence on this issue until after summary judgment was granted. Finally, the plaintiff attempted to raise the issue that, as an invitee, the plaintiff was owed a higher duty to protect against hidden hazards. The court disagreed, holding that the defendant did not owe any duty to the plaintiff as an invitee to warn against natural outdoor hazards which are obvious. Guinn v. Thomas, 2013 Ky. App. Unpub. LEXIS 604 (Ky. Ct. App. 2013).

The plaintiff was injured while helping the defendant catch two horses, one of which belonged to the defendant, which were running loose. While the plaintiff was holding the horse belonging to the defendant the horse suddenly swung its head and hit the plaintiff, resulting in injuries. The defendant filed a motion for summary judgment after discovery was completed, claiming that the plaintiff had not shown that the defendant had any prior knowledge of the horse’s propensity or history of dangerous behavior. The trial court denied the motion and the defendant appealed. The appellate court noted that the plaintiff had deposition testimony of a third party who testified that the horse had exhibited aggressive behavior; however, the testimony also included the witnesses’ uncertainty that the horse in this case was the same horse observed by the witness. The appellate court held that, although the witness testimony was not completely clear, the burden was on the defendant to show that the horse seen by the witness was not the same horse involved in the accident; therefore, the summary judgment was properly denied. Carey v. Schwab, 2013 N.Y. Ap. Div. LEXIS 5280 (N.Y. Ct. App. 2013).

BANKRUPTCY

CHAPTER 12

AUTOMATIC STAY. The debtors had given a creditor a security interest in all crops, farm products and livestock for a secured loan for operating costs and equipment purchases. The debtors filed for Chapter 12 in 2008 when no crops were growing but when the debtors had possession of the proceeds from the sale of 2007 crops. The debtors obtained court permission to use the 2007 crop proceeds to plant the 2008 crop. The 2008 crop proceeds were applied to basic living expenses, payments to the Chapter 12 trustee and remodeling a house that was later sold with permission from the court. None of the proceeds from the 2008 crop was used for planting the 2009 crop. Since that time, none of the subsequent crops were funded with proceeds from grain encumbered by the creditor’s liens. The debtors and creditor entered into a stipulation which required the debtors to file affidavits attesting that a sale of cattle had been conducted and to report where the proceeds of the sale went. The bank was then to release its security interest in the cattle and in the debtors’ present and future crops. The debtors complied with the stipulation; however, when the debtors sought new financing for the 2011 crop, the bank informed them that the creditor’s lien had not been released. The debtors claimed that the delay in obtaining the release caused their weed control efforts to be ineffective for the 2011 and 2012 crops. The debtors filed a motion that the bank was in contempt of court for failure to comply with the court orders and was in violation of the automatic stay for failure to timely release the liens, post-petition. The creditor argued that the lien was not quickly released because of other bank activities and the creditor’s policy to not release any liens without court orders so that, if the bankruptcy case is dismissed, the liens will reattach automatically. The court held that, although the creditor was negligent in failing to timely process the lien release, the creditor did not violate any court orders or willfully attempt to delay or deny the debtor’s farming activities. Therefore, no violation of the automatic stay occurred. In re Fischer, 2013 Bankr. LEXIS 2650 (Bankr. D. Neb. 2013).

FEDERAL FARM PROGRAMS

SUGAR. The CCC has adopted as final regulations that specify the methods that the CCC can use to dispose of its sugar inventory
and establish the new Feedstock Flexibility Program (FFP). Through FFP, the Secretary is required to purchase sugar and sell it to produce bioenergy as a means to avoid forfeitures of sugar loan collateral under the Sugar Program. 78 Fed. Reg. 45441 (July 29, 2013).

**FEDERAL ESTATE AND GIFT TAXATION**

INCOME IN RESPECT OF DECEDENT. The residuary estate included two IRAs owned by the decedent at death which passed to a trust. The decedent’s will provided that a portion of the trust passed to two charitable organizations and the executor, who was also trustee of the trust, elected, under the terms of the will and trust, to transfer funds in the IRAs to the charities in satisfaction of that trust provision. The IRS noted that, under Rev. Rul. 92-47, 1992-1 C.B. 198, a distribution to the beneficiary of a decedent’s IRA that equals the amount of the balance in the IRA at the decedent’s death, less any nondeductible contributions, is income in respect of decedent under I.R.C. § 691(a)(1) and is includable in the gross income of the beneficiary for the tax year the distribution is received. Thus, the IRS ruled that the transfers to the trust and then to the charities were not transfers subject to I.R.C. § 691(a)(2) and that the IRD would be income only to the charities. Ltr. Rul. 201330011, March 5, 2013.

SELF-CANCELLING INSTALLMENT OBLIGATIONS. The decedent created several grantor trusts originally funded with common and preferred stock in exchange for self-cancelling promissory notes with terms based on the life expectancy of the decedent and with face amounts twice the value of the transferred stock. The notes provided only for payment of interest until the last day of the term when a balloon payment for all principal was to be paid. The poor health of the decedent made repayment unlikely. The IRS ruled that the promissory notes were not bona fide debt because there was no reasonable expectation of repayment; therefore, the notes were to be valued at fair market value. The IRS also ruled that the difference between the face value of the notes and the value of the stock exchanged was a taxable gift. Ltr. Rul. 201330033, Feb. 24, 2013.

TRANSFEREE LIABILITY. The decedent’s taxable estate included marketable securities held in a trust and in an IRA. The decedent’s child was co-trustee of the trust and the estate. The estate timely filed the federal estate tax return but requested six extensions for payment of the taxes due because the stock value had decreased. However, instead of holding the stock for sale when its price recovered, the child actively traded the stock until the estate became insolvent. The IRS sought recovery against the child for the amount transferred to the child from the IRA. The child argued that the suit was barred by the statute of limitations because the IRS did not make a timely I.R.C. § 6901 assessment against the child for the transferee liability. The court held that Section 6901 did not require an assessment against the individual but that the assessment against the estate under I.R.C. § 6324 would be sufficient. Because the estate assessment was suspended by the six extensions for payment of tax, the Section 6324 assessment was timely made and was applied to the child’s liability as a transferee. United States v. Mangiardi, 2013-2 U.S.Tax Cas. (CCH) • 60,669 (S.D. Fla. 2013).

**FEDERAL INCOME TAXATION**

CHARITABLE DEDUCTION. The taxpayers purchased parcels of land from the same company and granted a conservation easement in their parcels to a charitable organization, claiming a charitable deduction for the contribution. Each conservation easement grant contained the following language:

“Extinguishment — If circumstances arise in the future such that render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can be terminated or extinguished, whether in whole or in part, by judicial proceedings, or by mutual written agreement of both parties, provided no other parties will be impacted and no laws or regulations are violated by such termination.”

The taxpayers argued that the easements were either charitable trusts or restricted gifts subject to termination only by a court, under the cy pres doctrine. The court examined Colorado law and held that the easements did not create charitable trusts nor were the gifts restricted by the easements since the easements could be terminated by mutual agreement without the property continuing some charitable purpose. The court also held that the easements were not eligible for a charitable deduction under Treas. Reg. § 1.170A-14(g) because the termination clause prevented the easement from having perpetual protection from development. The taxpayer sought reconsideration of the latter holding based on the subsequent holding in Kaufman v. Comm’r, 2012-2 U.S. Tax Cas. (CCH) ¶ 50,472 (1st Cir. 2012), rev’d, 136 T.C. 294 (2011). The Tax Court denied the motion for reconsideration, noting that Kaufman involved issues not raised in the current case. Carpenter v. Comm’r, T.C. Memo. 2013-172, denying recon., T.C. Memo. 2012-1.

CHILD TAX CREDIT. The taxpayer supported a minor child who was not biologically related to the taxpayer nor adopted by the taxpayer. The taxpayer claimed head of household filing status and claimed the child tax credit, the earned income tax credit, and a dependency exemption deduction for the child. The court held that the child was not a qualifying child under I.R.C. § 152(c) because the child was not biologically related to nor adopted by the taxpayer. Because the child was not a qualifying child, the taxpayer was not entitled to the child tax credit or earned income tax credit for the child. Cooper v. Comm’r, T.C. Summary Op. 2013-59.

EMPLOYEE EXPENSES. The IRS has adopted as final regulations regarding the exception to the deduction limitations on certain expenditures paid or incurred under reimbursement...
or other expense allowance arrangements. The final regulations affect taxpayers that pay or receive advances, allowances, or reimbursements under reimbursement or other expense allowance arrangements and clarify the rules for these arrangements. The regulations amend regulations that apply the I.R.C. § 274(e) (3) exception to reimbursement and other expense allowance arrangements involving employees. The regulations clarify that these rules apply to reimbursement or other expense allowance arrangements between payors and employees. A payor may be an employer, an agent of the employer, or a third party. The regulations use the term payor to clarify that the rules relating to reimbursement and other expense allowance arrangements with employees do not require determining who is the common law employer. The rules require, instead, identifying the party that bears the expense and are not limited to employers. Thus, the rules encompass any party that reimburses an employee’s expenses under a reimbursement or other expense allowance arrangement. In addition, the regulations provide that, for a reimbursement or other expense allowance arrangement involving persons that are not employees (an independent contractor and a client or customer), the parties may expressly identify the party subject to the I.R.C. § 274(a) and (n) limitations. If the agreement does not specify a party, the limitations apply to the client if the independent contractor accounts to the client for (or substantiates) the expenses, and to the independent contractor if the independent contractor does not account to the client. 78 Fed. Reg. 46502 (Aug. 1, 2013).

**GAMBLING INCOME.** The IRS offers these six tax tips for the casual gambler. (1) Gambling income includes winnings from lotteries, raffles, horse races and casinos. It also includes cash and the fair market value of prizes, such as cars and trips. (2) If a taxpayer wins, the taxpayer may receive a Form W-2G, Certain Gambling Winnings, from the payer. The form reports the amount of the winnings to the taxpayer and the IRS. The payer issues the form depending on the type of gambling, the amount of winnings, and other factors. A taxpayer will also receive a Form W-2G if the payer withholds federal income tax from the winnings. (3) Taxpayers must report all gambling winnings as income on the federal income tax return. This is true even if the taxpayer does not receive a Form W-2G. (4) If the taxpayer is a casual gambler, the taxpayer should report the winnings on the “Other Income” line of your Form 1040, U.S. Individual Income Tax Return. (5) Taxpayers may deduct gambling losses on Schedule A, Itemized Deductions. The deduction is limited to the amount of the reported winnings. A taxpayer must report winnings as income and claim allowable losses separately. A taxpayer cannot reduce the winnings by the losses and report the difference. (6) Taxpayers must keep accurate records of the gambling activity, including items such as receipts, tickets or other documentation. Taxpayers should also keep a diary or similar record of the gambling activity and show winnings separately from losses. For more information, see Publication 525, Taxable and Nontaxable Income and Publication 529, Miscellaneous Deductions. IRS Summertime Tax Tip 2013-09.

**HOBBY LOSSES.** The taxpayer and spouse purchased a rural property and prepared the property for raising and breeding horses. The taxpayer did most of the work on the horse activity and also worked part time off the farm. The taxpayer eventually owned eight horses, some of which were used for breeding and some of which were used for showing. The court held that the horse activity was not entered into with the intent to make a profit because (1) the taxpayer did not maintain a written business plan nor modify any plan to make the activity profitable; (2) the taxpayer did not seek expert advice on how to modify the activity so as to make a profit; (3) although the taxpayer spent an average of 25 to 30 hours per week on the activity, the court found such activity consistent only with an interest in having horses; (4) the taxpayer had no evidence of success at a similar activity in the past; (5) the activity had only losses; (6) the activity had no profits and even very little gross receipts; (7) the losses offset substantial income from other sources; and (8) the taxpayer and family received a significant amount of personal pleasure from the horses. Craig v. Comm’r, T.C. Summary Op. 2013-58.

**HOME OFFICE DEDUCTION.** The IRS has published information about the simplified method of calculating the home office deduction. Taxpayers may use the simplified method when filing the 2013 tax return next year. If a taxpayer uses this method to claim the home office deduction, the taxpayer will not need to calculate the deduction based on actual expenses. Taxpayers may instead multiply the square footage of a home office by a prescribed rate. The rate is $5 per square foot of the part of the home used for business. The maximum footage allowed is 300 square feet. This means the most you can deduct using the new method is $1,500 per year. Taxpayers may choose either the simplified method or the actual expense method for any tax year. Once a taxpayer uses a method for a specific tax year, the taxpayer cannot later change to the other method for that same year. If a taxpayer uses the simplified method and owns a home, the taxpayer cannot depreciate the home office. Taxpayers can still deduct other qualified home expenses, such as mortgage interest and real estate taxes. Taxpayers will not need to allocate these expenses between personal and business use. This allocation is required if the taxpayer uses the actual expense method. Taxpayers claim these deductions on Schedule A, Itemized Deductions. Taxpayers can still fully deduct business expenses that are unrelated to the home if they use the simplified method. These may include costs such as advertising, supplies and wages paid to employees. If the taxpayer uses more than one home with a qualified home office in the same year, the taxpayer can use the simplified method for only one in that year. However, the taxpayer may use the simplified method for one and actual expenses for any others in that year. IRS Summertime Tax Tip 2013-12.

**PARSONAGE ALLOWANCE.** The taxpayer was hired as a minister and provided with a $500 monthly housing allowance. The taxpayer excluded the $500 from taxable income as a parsonage allowance. The IRS assessed taxes on the excluded amount because there was no official church action approving the $500 as a housing allowance. Although the original employment agreement did not mention any housing allowance, the taxpayer
presented a second agreement executed five years later which did authorize the housing allowance. The court held that the second agreement could not be used to prove church action five years earlier; therefore, the $500 monthly payment was taxable. Williams v. Comm’r, T.C. Summary Op. 2013-60.

PARTNERSHIPS

DEFINITION. The taxpayer owned and operated a car dealership. After an audit disclosed that the taxpayer had under-reported income and over-reported expenses, the taxpayer claimed that the dealership was operated as a partnership with an unrelated person who received part of the income. The court held that the dealership was operated as a sole proprietorship because (1) there was no written partnership agreement and the taxpayer failed to provide sufficient evidence of any oral agreement; (2) neither the third party nor the partnership was identified as the seller of the cars; (3) no Schedule K-1 or other tax form was issued identifying the other party’s income from the partnership; and (4) the third party had no records of involvement in management or ownership of the business. Azimzadeh v. Comm’r, T.C. Memo. 2013-169.

PASSIVE ACTIVITY LOSSES. The taxpayer was married and owned three residential rental properties with the taxpayer’s spouse. The spouse was employed full time and the taxpayer performed all the management of the three properties. One property was not rented during the tax year involved and the other properties both produced tax losses. The taxpayer did not make an election to treat the three properties as one business activity. The taxpayer produced a log of activity with the three properties, including efforts to find additional rental properties to purchase. The court found the log not to be made contemporaneously with the activities performed but allowed the log as evidence. However, the court found that many of the entries did not identify the property involved with each activity listed and many did not identify the activity involved although it listed the property involved; therefore, these entries were ignored. Because the taxpayer did not elect to treat the properties as a single business, the court examined the log to determine the number of hours spent on each property. The court held that the taxpayer did not materially participate in the rental activity of any property because the taxpayer did not spend at least 750 hours on any property. The court noted that the logs only properly substantiated a total of 418 hours on all properties together such that even if the election had been made, the taxpayer did not meet the material participation requirements of Temp. Treas. Reg. § 1.469-5T(a). Bugarin v. Comm’r, T.C. Summary Op. 2013-61.

PENSION PLANS. The decedent was a partner in a law firm and participated in the firm’s profit sharing plan governed by ERISA. The plan provided a death benefit payment to the participant’s spouse. The decedent married a same-sex spouse in Canada and the couple lived in Illinois where same-sex married couples were recognized as married. The court held that, under United States v. Windsor, 570 U.S. ___ (2013), 133 S.Ct. 2675 (2013), 2013-2 U.S. Tax Cas. (CCH) ¶ 60,667 (S. Ct. 2013), the term “surviving spouse” included same-sex partners who are married and live in a state which recognizes same-sex marriages. O’Connor v. Tobits, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,453 (E.D. Penn. 2013).

RETURNS. The IRS has published information about how to get a taxpayer’s federal tax return information from the IRS: Transcripts are free and you can get them for the current year and the past three years. In most cases, a transcript includes all the information you need. A tax return transcript shows most line items from the tax return originally filed. It also includes items from any accompanying forms and schedules filed. It does not reflect any changes made after the taxpayer filed the original return. A tax account transcript shows any changes either the taxpayer or the IRS made to the tax return after the taxpayer filed it. This transcript includes your marital status, the type of return you filed, your adjusted gross income and taxable income. Taxpayers can get transcripts on the web, by phone or by mail. To request transcripts online, go to IRS.gov and use the Order a Transcript tool. To order by phone, call 800-829-1140 and follow the prompts. To request a 1040, 1040A or 1040EZ tax return transcript by mail or fax, complete Form 4506-T-EZ, Short Form Request for Individual Tax Return Transcript. Businesses and individuals who need a tax account transcript should use Form 4506-T, Request for Transcript of Tax Return. If the taxpayer orders online or by phone, the taxpayer should receive the tax return transcript within five to 10 calendar days. Taxpayers should allow 30 calendar days for delivery of a tax account transcript if ordered by mail. If a taxpayer needs an actual copy of a filed and processed tax return, it will cost $57 for each tax year. Taxpayers should complete Form 4506, Request for Copy of Tax Return, and mail it to the IRS address listed on the form for the taxpayer’s area. Copies are generally available for the current year and past six years. Please allow 60 days for delivery. If the taxpayer lives in a Presidentially declared disaster area, the IRS may waive the fee to obtain copies of the tax returns. Visit IRS.gov and select the ‘Disaster Relief’ link in the lower left corner of the page for more about IRS disaster assistance. IRS Summertime Tax Tip 2013-10.

SAFE HARBOR INTEREST RATES

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SELF-EMPLOYMENT. The taxpayer was a pastor and provided free home Bible studies, new life classes, men’s and
women’s ministries, marriage outreach, youth outreach, and children’s outreach. The church compensated the taxpayer by paying the taxpayers’ personal credit card bills, utility bills, and home mortgage payments. The taxpayer signed a document entitled “Vow of Poverty, Statement of Faith” detailing that any donation/honorarium, and/or an endowment given to the taxpayer personally will be considered the property of the church, and that the church would in turn provide for the taxpayer’s needs. In the tax year involved, the church made home mortgage payments, personal credit card payments, and utility payments on the taxpayer’s behalf. The taxpayer did not report the amounts as taxable income nor pay any self-employment tax on the amounts. The taxpayer did not argue that the home mortgage payments were eligible as a parsonage allowance nor did the taxpayer claim the exemption from self-employment tax under I.R.C. § 1402(e). The taxpayer argued only that the vow of poverty excluded the payments from income. The court noted that there was precedent for exclusion of income under a vow of poverty but in those cases, the taxpayer was paid a salary by a third party and remitted this salary to the religious order by assignment in accordance with the vow of poverty. Here, the taxpayer received the benefit of the church payments which were not passed to another church under the vow of poverty; therefore, the payments were taxable income to the taxpayer and subject to self-employment tax. Rogers v. Comm’r, T.C. Memo. 2013-177.

PROPERTY

INVERSE CONDEMNATION. In 2002 Florida voters approved an amendment to Article X, Section 21 of the Florida Constitution, which makes it unlawful “for any person to confine a pig during pregnancy in an enclosure, or to tether a pig during pregnancy, on a farm in such a way that she is prevented from turning around freely.” The amendment took effect in 2008. The plaintiff owned and operated a sophisticated mass pork production operation in which the animals were housed in barns at all times. The plaintiff, who was reportedly one of only two pig farmers in Florida using gestation crates when the amendment was passed, had placed certain improvements on the plaintiff’s real property, including a breeding barn, a gestation barn where the gestation crates that were banned by the amendment were used, a farrowing barn with farrowing crates, two finishing barns, a feed mill and shelter equipped for storing and mixing feed, a lab/office with equipment for artificial insemination, four water wells with pumps to serve the barns and feed mill, clay lagoons for waste disposal, and a metal chute with hydraulic cylinders for lifting pigs into trailers for transport to market. The plaintiff shut down the business in 2003 after passage of the amendment, claiming that the plaintiff could not, without the gestation crates, operate the business and compete with other producers who were not similarly restricted. After shutting down the pig business, the plaintiff began raising perennial peanut hay on the tillable portion of the land. The plaintiff tore two barns down to the concrete slab and built new barns for the hay operation. The original barns could not be used for any purpose other than raising pigs because the eaves were too low. It was not possible to drive vehicles or equipment over the concrete flooring because of the gutters. The water wells and 1,000 gallon tanks had no other practical use. The plaintiff was unable to lease the empty feed mill, and it had no other use. The plaintiff submitted a compensation claim for the loss of the business to the Legislature for $1,350,000 but no money was appropriated. The plaintiff then filed a suit for inverse condemnation and compensation for the loss of value of the improvements from the pig operation. The trial court ruled that, focusing on only the plaintiff’s improvements, there was a substantial reduction in their market value as a result of the amendment and that the amendment interfered with plaintiff’s reasonable investment-backed expectations. The trial court concluded that the amendment resulted in an as-applied or regulatory taking of the plaintiff’s improvements which occurred on November 5, 2008, the effective date of the amendment, and that the statute of limitations began to run at that time. The trial court determined that the plaintiff was entitled to recover the fair market value of the improvements valued at the time of the taking, less salvage value. Although noting that the amendment restricted only the use of gestation crates, the trial court found that the amendment resulted in the taking of all of the improvements due to their “functionally integrated nature.” The appellate court affirmed on all issues. State of Florida v. Basford, 2013 Fla. App. LEXIS 11550 (Fla. Ct. App. 2013).

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**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**

**Succession planning and the importance of fairness**

**The Liquidity Problem**

**Property Held in Co-ownership**

- Federal estate tax treatment of joint tenancy
- Severing joint tenancies and resulting basis
- 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
- Family-owned business deduction recapture
- Property included in the gross estate
- Traps in use of successive life estates
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Taxable estate
- The applicable exclusion amount

- Unified estate and gift tax rates
- Portability and the new regulations
- Generation-skipping transfer tax
- Importance of the Rule Against Perpetuities

**Gifts**

- Reunification of gift tax and estate tax
- Gifts of property when debt exceeds basis

**Use of the Trust**

**The General Partnership**

- Small partnership exception
- Eligibility for Section 754 elections

**Limited Partnerships**

**Limited Liability Companies**

- Developments with passive losses
- Corporate-to-LLC conversions
- Eligibility for “small partnership” exception
- New regulations for LLC and LLP losses

**Closely Held Corporations**

- State anti-corporate farming restrictions
- Developing the capitalization structure
- Tax-free exchanges
- Would incorporation trigger a gift because of severance of land held in joint tenancy?
- “Section 1244” stock

**Status of the Corporation as a Farmer**

- The regular method of income taxation
- The Subchapter S method of taxation, including the “two-year” rule for trust ownership of stock
- Underpayment of wages and salaries

**Financing, Estate Planning Aspects and Dissolution of Corporations**

- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization

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