Cases, Regulations and Statutes

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installment reporting if the evidence of indebtedness received by the seller of the property is “payable on demand” or is “readily tradable.” A Field Service Memorandum, after analyzing whether a transaction similar to that of a “structured sale” would be tripped up by the readily tradable” restriction in the statute, opined that the Commissioner might well take that position. The conclusion of the author (or authors) of the Field Service Advice memorandum was that “we believe the Commissioner may argue that the LIBOR notes (used in that transaction) are not eligible for Section 453 installment treatment because they are readily tradable within the meaning of the statute.

In light of the Field Service Advice Memorandum, it would be prudent to request a private letter ruling, detailing the precise facts of a proposed sale before committing to such a transaction.

A final note

In general, sellers under installment contracts have retained title until all or a substantial proportion of the principal payments have been paid before giving up title to the property. That has provided a modicum of protection against default by the purchaser. In “structured sales” as described herein, there would be no such protection, creating a significant risk of non-payment under the obligation. The combined risks and uncertainties would suggest caution before entering into a “structured sales” transaction.

ENDNOTES

4 See I.R.C. § 5891(a).
6 E.g., Iowa Code Ch. 682, “Structured Settlement Protection.”
7 I.R.C. § 453.
9 I.R.C. § 453(f)(4)(A), (B).

CASES, REGULATIONS AND STATUTES

BANKRUPTCY

CHAPTER 12

AVOIDABLE TRANSFERS. The debtor was a limited partnership which filed for Chapter 12. The debtor had granted a bank security interests in all livestock, equipment and crops owned by the debtor. The bank obtained relief from the automatic stay and began non-bankruptcy proceedings to obtain the collateral. However, instead of proceeding against the collateral, the bank allowed the debtor to sell equipment and livestock to a third party, with the proceeds used to pay off the debt secured by the property. The same process was used by another creditor. Both sets of sales were to the same person and neither sale was approved by the Bankruptcy Court. The debtor then sought to avoid the sales to the third party under Section 549 as unapproved post-petition sales. The purchaser filed for summary judgment, arguing that the debtor lacked standing to bring the action because the debtor was not injured by the sales in that the proceeds were used to pay off the debts secured by the collateral sold. The court denied the summary judgment because the purchaser failed to demonstrate conclusively that the sales were not injurious to the debtor or the bankruptcy estate. In re David Johnsman Limited Partnership, 2015 Bankr. LEXIS 2702 (Bankr. N.D. Ohio 2015).

CONTRACTS

REMEDIES. The plaintiff contracted with the defendant to build a hog building on the plaintiff’s farm. The building used trusses manufactured by the defendant. Six years later, the trusses failed and the roof collapsed, causing damage to the building and loss of hogs inside. The plaintiff sued for breach of implied warranty and sought damages for the cost of the building repair, loss of animals and loss of profits from use of the building. The defendant argued that no loss of profits could be recovered because the transaction was a commercial contract and the Uniform Commercial Code, Mich. Comp. Laws § 440.2725(2), applied to bar the case under its four year statute of limitations. The court looked to Neibarger v. Universal Cooperatives, Inc., 486 N.W.2d 612, 618 (Mich. 1992), for application of the economic loss doctrine under Michigan law. The court interpreted Neibarger to hold that the economic loss doctrine prevented an action in tort “where damage to other property was caused by the failure of a product purchased for commercial purposes to perform as expected, and this damage was within the contemplation of the parties to the agreement and the occurrence of such damage could have been the subject of negotiations between the parties.” The plaintiffs argued that Neibarger did not apply to prohibit tort claims in this case because the defendant designed, manufactured and sold an
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Mutual Ins. Co. of Michigan v. Borkholder Buildings & Supply, began when the trusses were added to the building. The statute did not have held that Mich. Comp. Laws § 440.2725(2), applied to bar the case commercial property constructed with the product. Thus, the court contract between the product manufacturer and the owner of the commercial property constructed with the product. Thus, the court held that Neibarger further defined the parameters of the economic loss doctrine to apply the doctrine in cases where the product failure caused damage to commercial property other than the product itself and in cases where there was no privity of contract between the product manufacturer and the owner of the commercial property constructed with the product. Thus, the court

FEDERAL FARM PROGRAMS

No items.

FEDERAL ESTATE AND GIFT TAXATION

DISCLAIMERS. The taxpayer was the spouse of a person who was the beneficiary of a trust established by the spouse’s parent. The trust provided that if the beneficiary marries, one-half of the trust income was to be distributed to the taxpayer as spouse. The beneficiary also established a trust for the benefit of the taxpayer but the trust provided that if the beneficiary and taxpayer married and the taxpayer became entitled to payments from the parental trust, the trust income was not to be paid to the taxpayer. Within nine months after the taxpayer married the beneficiary, the taxpayer executed a written disclaimer of any benefit in the parental trust. The taxpayer attested that the taxpayer had not received any benefit from the parent trust. The parties attested that the taxpayer did not participate in any manner in creating the second trust and did not have knowledge of that trust until after it was created. The IRS ruled that the disclaimer was effective and did not result in any gift by the taxpayer. The IRS also ruled that the taxpayer’s benefits under the second trust were not received in consideration for the disclaimer of the taxpayer’s interest in the parental trust. Ltr. Rul. 201540006, June 11, 2015.

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent died in 1990 and the estate filed a timely Form 706 in August 1991. The estate elected to pay the estate taxes by installments but the 1991 return did not make any payment. The heirs signed refunding agreements providing that the heirs would refund to the estate property received from the estate if additional estate taxes were assessed. In 1994, the estate made a payment to the IRS for a portion of the assessed taxes and a portion of the property of the estate was distributed to all but one heir who became the executor of the estate. The executor then distributed the remainder of the estate to the executor. No subsequent tax payments were made, including any installment payments. On October 15, 2001, the IRS sent a “Statement of Tax Due IRS” to the estate indicating the amount of estate tax due plus penalties and interest. Another notice was sent in 2002 that threatened termination of the installment election if payment was not made. A third notice was sent in October 2003 and stated that the installment payments were being accelerated and that all taxes, penalties and interest were due. The IRS took no further action until November 2012 when the IRS filed notices of federal tax liens against the estate property. In September 2013, the IRS filed suit to collect the unpaid taxes, penalties, and interest. The executor filed a motion for summary judgment, arguing that the IRS suit was barred by the 10-year limitations period of I.R.C. § 6502(a). The IRS countered that the limitations period was suspended under I.R.C. § 6503. Under §6166(g)(3)(A), the 10-year limitations period begins running when: (1) an estate fails to pay any principal or interest payment pursuant to its I.R.C. § 6166 election; and (2) notice and demand for taxes due is made by the IRS. The issue was which communication by the IRS began the running of the limitation period. The taxpayer argued that either or both the 2001 notice and 2002 notice constituted notice and demand by the IRS such that the 10-year limitations period began running as early as October 2001, and no later than September 2002. Therefore, the limitation period expired no later than September 2012, and the IRS action to collect the taxes, which was filed in September 2013, was filed after the 10-year limitation period had run. The court found that the 10-year limitations period could not start running until the estate defaulted on the installment election. The court held that the 2001 notice did not terminate the installment election; therefore, that notice did not start the running of the limitations period. However, the court held that the 2002 notice stated that the installment election was terminated unless payment was made; therefore, the 2002 notice began the running of the limitations period. Because the IRS filed suit more than 10 years after the 2002 notice, the IRS suit was barred by the 10-year limitations period. United States v. Godley, 2015-2 U.S. Tax Cas. (CCH) ¶ 60,690 (W.D. N.C. 2015).

FEDERAL INCOME TAXATION

APPEALS. The IRS has announced a proposed revenue procedure that would update Rev. Proc. 87-24, 1987-1 C.B. 720, which describes the practices for the administrative appeals process in cases docketed in the United States Tax Court. Since the issuance of Rev. Proc. 87-24 in January 1987, the Internal Revenue Service (IRS) has been reorganized several times, the volume of litigation in the Tax Court has increased, and the IRS has adopted new policies and procedures to more efficiently manage the IRS’s work load. Accordingly, Rev. Proc. 87-24 needs to be updated to more accurately reflect the procedures utilized in managing the flow of docketed cases between the Office of Appeals (Appeals)
and the Office of Chief Counsel (Counsel). The proposed update
to Rev. Proc. 87-24 is not intended to materially modify the current
practice of referring docketed cases to the Office of Appeals
(Appeals) for settlement currently utilized in the vast majority of
cases. The proposed revenue procedure describes the policies to
ensure that docketed cases are handled consistently nationwide.
Additionally, the proposed revenue procedure updates official
titles and removes the exclusion for cases governed by rulings by
the National Office in employee plans and exempt organizations
to reflect recent organization changes in the Tax Exempt and
Government Entities Division. The proposed revenue procedure
clarifies that, except in rare circumstances, the Office of Chief
Counsel (Counsel) will refer cases docketed in Tax Court to
Appeals for settlement consideration. However, the proposed
revenue procedure recognizes that there are cases and issues
that should not be referred to Appeals or for which Counsel
needs additional time before referring the case to Appeals. The
proposed revenue procedure clarifies the procedures for when
those situations arise. The proposed revenue procedure promotes
the shared responsibility of Counsel and Appeals to interact in
a manner that preserves Appeals’ independence. For instance,
the proposed revenue procedure clarifies that, even in docketed
cases, Appeals may exclude Counsel from settlement conferences
with the taxpayer if Appeals determines Counsel’s involvement
will not further settlement of the case. The proposed revenue
procedure also addresses coordination if a taxpayer raises a new
issue while the docketed case is in Appeals. Finally, the proposed
revenue procedure describes procedures for requesting assistance
from Counsel while the docketed case is in Appeals, and the
internal procedures for handling and transferring custody of the
administrative file for docketed cases referred to Appeals. Notice
2015-72, I.R.B. 2015-44.

BAD DEBT DEDUCTION. The taxpayer owned and operated
a landscaping business in Arizona. The taxpayer’s brother owned a
C corporation which operated a scrap metal business in Texas. In
order to save the brother lending costs, the taxpayer worked part
time in and loaned money to the scrap metal business. The taxpayer
did not own any part of the corporation. The scrap metal business
floundered and the taxpayer claimed the total amount loaned as
an “other expense” deduction on a separate Schedule C, resulting
in a significant loss which offset income from the taxpayer’s
landscaping business. The court looked at three theories argued
by the taxpayer for allowance of the loss deduction: (1) the loss
was from the trade or business of the taxpayer; (2) the loss arose
from a worthless security; and (3) the loss was allowable as a bad
debt. The court held that the loss was not from a separate business
of the taxpayer because the money was loaned to a corporation
not owned by the taxpayer. The court held that the worthless
security deduction was not allowed because the taxpayer failed
to demonstrate that the taxpayer’s interest in the corporation was
worthless during the tax years involved. Finally, the court held
that bad debt deduction was not allowed because the taxpayer was
not in the trade or business of lending and the taxpayer failed to
show that the debt was worthless during the tax years involved.

BUSINESS EXPENSES. The taxpayers, husband and
wife, claimed deductions for five telephones, including three
cellular phones and two land-line phones on the husband’s
law practice Schedule C. One cellular phone was attributed
to the wife’s business; two cellular phones were attributed to
the husband’s law practice; one land line was attributed to the
taxpayers’ horse boarding and sales activity; and one land line
was attributed to the husband’s home office. The court found that
the records provided by the taxpayers did not clearly identify the
business activity for each phone. In addition, the wife failed to
demonstrate that the wife actively pursued a trade or business
in the tax year involved, making her cell phone expense a non-
business expense. The phone used for the farm was not used
in the husband’s law practice and should have been claimed on
the farm partnership, Form 1065. Finally, the taxpayers had no
separate personal phone; therefore, one of the land lines was
also a nondeductible personal expense. The IRS had allowed
a deduction for only one-half of the claimed phone expenses,
and the court held that the taxpayer failed to show that they
were entitled to any deduction above that allowed by the IRS.

The taxpayer was a family-owned corporation with the father
as president and two sons as employees. The taxpayer rented
a beachfront house for one week which was used to entertain
members of the family and employees of one of the taxpayer’s
customers. The taxpayer claimed the expenses from the rental
and entertainment as advertising expenses. The taxpayer claimed
that the week long “retreat” was used to build customer and
employee relationships. However, the taxpayer had very little
documentation of the expenses and had no written proof that
any expenses were paid and for what purpose. The father and
sons testified as to the nature and purpose of the retreat but the
the court ignored the testimony because it was not supported
by any written receipts or other records. The court held that the
deductions for the retreat expenses were properly disallowed
by the IRS for lack of substantiation. Karras v. Comm’r, T.C.
Memo. 2015-204.

CASUALTY LOSSES. The taxpayers, husband and wife,
owned a horse boarding and sales activity conducted on their
rural residential property. The taxpayers constructed a riding
arena on the property which was defective constructed. The taxpayers claimed the repair costs on Schedule A, less an
amount received from the builder, as a casualty loss because the
arena was damaged by sinkholes. The taxpayer also presented
the argument that the repair cost was deductible as a trade or
business expense. The court held that no casualty loss deduction
was allowed because there was no identifiable event which
caused the damage to the arena. Similarly, the court held that the
repair cost was not eligible for a business loss deduction because
there was not a complete sale, destruction or abandonment of
the arena as a business asset to create a closed transaction. See
Treas. Reg. § 1.165-2(c). Wideman v. Comm’r, T.C. Summary

DEPRECIATION. The taxpayer was a family-owned
corporation with the father as president and two sons as
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employees. The taxpayer claimed I.R.C. § 179 expense method depreciation deductions for two vehicles, a pickup truck, and a Hummer. The taxpayer did not provide records to show who owned the vehicles, when they were placed in service, or that they were even used in the taxpayer’s business. The taxpayer presented only depreciation schedules prepared for the tax returns and testimony of one of the sons who could not identify the true owner of the pickup. The taxpayer did not provide any mileage records or receipts. The court held that the depreciation deductions for the two vehicles were properly disallowed by the IRS for lack of substantiation. Karras v. Comm'r, T.C. Memo. 2015-204

DISASTER LOSSES. On September 22, 2015, the President determined that certain areas in California are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of the Valley and Butte Fires which began on September 9, 2015. FEMA-4240-DR. Accordingly, taxpayers in the areas may deduct the losses on their 2014 federal income tax returns. See I.R.C. § 165(i).

HEALTH INSURANCE. On October 7, 2015, the President signed into law, Pub. L. No. 114-60, which amends the Affordable Care Act definition of “small employer.” Prior to the amendment, employers with 51-100 employees were small employers but states had the option to treat them as large employers until December 31, 2015. Under the new law, employers with 51-100 employees were large employers but the states could elect to treat them as small employers for purposes of the health insurance marketplaces. Pub. L. No. 114-60, 114th Cong., (October 7, 2015).

The IRS has published information on the 2016 dates for filing information to the IRS on health care coverage. Health insurance issuers, self-insured employers, government agencies, or other entities that provide minimum essential coverage to an individual during a calendar year, must report to the IRS certain information about the coverage that they provide. If an organization is an applicable large employer, it must report to the IRS information about the coverage that they provide to the covered individuals. Health Care Tax Tip 2015-64.

INSTALLMENT REPORTING. The taxpayer sold stock in exchange for 10 monthly payments over two tax years. The taxpayer hired an accountant to prepare the tax return for the first tax year. The accountant filed the return using the installment method of reporting against the wishes of the taxpayer who wanted to claim all of the gain in the first tax year. The IRS granted the taxpayer an extension of time to file an amended return with an election out of the installment method of reporting the gain from the sale of stock. Ltr. Rul. 201540003, June 25, 2015.

PARTNERSHIPS

ENTITY CLASSIFICATION. The taxpayer was an organization which intended to be taxed as a disregarded entity. However, the taxpayer failed to file a timely Form 8832, Entity Classification Election, to be treated as a disregarded entity for federal tax purposes. The IRS granted an extension of time to file the form. Ltr. Rul. 201541002, June 26, 2015; Ltr. Rul. 201541004, June 17, 2015.

PASSIVE ACTIVITY LOSSES. The taxpayer owned and operated a small construction business and also worked on maintaining rental units owned by the taxpayer’s spouse. The couple lived in a four story home and rented out the top two floors of the home. The taxpayer maintained contemporaneous work logs that identified the hours spent working on the home cleaning and maintenance. The log was revised later to prorate the hours allocated to work done on common areas to remove the portion allocated to the personal living space. Even with the hours reduced, the court found that the taxpayer spent 1008 hours in 2010 and 752 hours in 2011 on the rental activity. Thus, the court held that the taxpayer met the requirements of I.R.C. § 469(c)(7)(B)(ii) by spending more than 750 hours per year on the rental activity and the activity was not a passive activity. In addition, because the taxpayer worked more than 500 hours each year on the activity, the taxpayer was held to have materially participated in the activity and the losses from the activity were not passive activity losses. Simmons-Brown v. Comm’r, T.C. Summary Op. 2015-62.

PENSION PLANS. For plans beginning in October 2015 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 2.95 percent. The 30-year Treasury weighted average is 3.14 percent, and the 90 percent to 105 percent permissible range is 2.83 percent to 3.30 percent. The 24-month average corporate bond segment rates for October 2015, without adjustment by the 25-year average segment rates are: 1.35 percent for the first segment; 4.01 percent for the second segment; and
5.04 percent for the third segment. The 24-month average corporate bond segment rates for October 2015, taking into account the 25-year average segment rates, are: 4.72 percent for the first segment; 6.11 percent for the second segment; and 6.81 percent for the third segment. Notice 2015-71, I.R.B. 2015-43.

RETURNS. The taxpayers, husband and wife, timely filed a joint return for 2000. The taxpayers hired an accountant to prepare the return and the completed return was given to the husband who signed it. The return was given to the wife but she failed to sign the return before the husband mailed the return to the IRS. The IRS returned the Form 1040. The taxpayers claimed that the returned form did not provide any explanation for the return. The husband also testified that the return of the form was not deemed unusual because the husband often sought copies of returns to provide information to lenders. In 2002 the IRS notified the taxpayers that the 2000 return was unfiled and the taxpayer sent a copy of the original return, with all signatures but with no explanation or statement that they considered the return a copy of the original filed return. The IRS treated the second return as an original return. The taxpayers were audited and the taxpayers informed the IRS in 2005 that they considered the return filed in 2000 as the original return for purposes of any limitations period. The taxpayer argued two theories to make the return filed in 2000 sufficient to meet the signature requirements. First, the taxpayers argued that the taxpayers substantially complied with the filing requirements. The court rejected this argument on the basis that the failure of the wife to sign the Form 1040 meant that the wife failed to certify that all the statements in the tax return were made under penalty of perjury and were true, correct, and complete to the best of the taxpayer’s knowledge. The taxpayers also argued that “[i]t is well-established by a long line of cases that a joint Form 1040 filed with the signature of only one spouse is valid if both the husband and wife intended to file a joint return.” The court held that the “tacit consent” doctrine did not apply here because the husband did not sign the wife’s name on the Form 1040. The court noted that the taxpayers did not provide complete explanations for their actions in failing to obtain the wife’s signature and failing to correct the error when the return was sent back by the IRS. Reifler v. Comm’r, T.C. Memo. 2015-199.

SOCIAL SECURITY. Beginning with the January 2016 payment, the monthly social security standard benefit payment remains at $733 for an individual and $1,100 for a couple. The maximum amount of annual wages subject to Old Age Survivors and Disability Insurance for 2016 remains at $118,500, with all wages and self-employment income subject to the medicare portion of the tax. For retirees under full retirement age, the retirement earnings test exempt amount remains at $15,720 a year, with $1 withheld for every $2 in earnings above the limit. The retirement earnings test exempt amount (the point at which retirees begin to lose benefits in conjunction with their receipt of additional earnings) remains at $41,880 a year for the years before an individual attains full retirement age; the test applies only to earnings for months prior to reaching full retirement age. One dollar in benefits will be withheld for every $3 in earnings above the limit, and no limit on earnings will be imposed beginning in the month in which the individual reaches retirement age. The amount of earnings required for a quarter of coverage increases to $1,260. http://www.ssa.gov/news/press/factsheets/colafacts2016.html

LABOR

AGRICULTURAL LABOR. The defendants owned and operated a bait-worm growing operation. The defendants imported baby worms from Europe and grew them to market size in beds constructed on their farm. The defendant grew corn on the farm for use as feed for the worms. The defendants harvested the worms and packaged them on the farm for shipment to bait shops. The plaintiffs were employees of the defendant who alleged that the failure of the defendants to pay overtime wages violated the Fair Labor Standards Act. The plaintiff brought a private suit allowed under 29 U.S.C. § 216(b) for violations of the FLSA. The district court ruled in favor of the defendant that the agricultural worker exemption, 29 U.S.C. § 216(b)(12). 29 U.S.C. § 203(f) defines agriculture to include “farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.” The court noted that the definition secondarily may include non-farming activities that are closely related to agriculture that are performed by a farmer on a farm. In this case, the focus was on the primary definition of agriculture because the primary activity of the owner must be farming in order for the exemption to apply under the primary or secondary definitions. The appellate court focused on the “the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities” language in the definition and concluded that the raising of worms was similar to the raising of other creatures for non-food purposes. Therefore, the appellate court affirmed the trial court’s ruling that the plaintiffs were agricultural workers exempt from the overtime rules under the FLSA. Barks v. Silver Bait, LLC, 2015 U.S. App. LEXIS 17310 (6th Cir. 2015).

PRODUCT LIABILITY

CATTLE CHUTE. The plaintiff was injured while using a cattle chute manufactured by the defendant. The hydraulic fluid in the control valve escaped and struck the plaintiff with enough force to cause injury. The operator’s manual for the chute required a power source manufactured by the defendant; however, the plaintiff was using hydraulic power from a tractor.
at the time of the accident. The plaintiff filed suit under a strict liability claim. At trial, the expert and non-expert testimony was inconclusive as to the cause of the malfunction of the valve. The trial court gave the following instruction to the jury: “A product is in a defective condition if [i]t has defects in design, manufacturing, instructions, warnings, and such defects existed at the time the product left the manufacturer’s and/or seller’s hands.” The plaintiff requested the following additional jury instruction but the court denied the request: “A product may also be defective without any ascertainable defect in the product and although the product was precisely what it was intended to be, if the manufacturer fails to give adequate and timely warnings as to the dangers or hazards which may result from a foreseeable use or misuse of the product.” The jury found for the defendant and the plaintiff appealed, arguing that the requested jury instruction should have been given. The appellate court affirmed, holding that the omitted instruction would not have changed the verdict because (1) another jury instruction included information on warnings, (2) the lack of a warning was not a factor in the case where the cause of the accident was unknown, and (3) the evidence showed that the plaintiff had ignored other warnings in the manual as to the use of proper equipment. Feight v. Moly Manufacturing, Inc., 2015 Kan. App. Unpub. LEXIS 839 (Kan. Ct. App. 2015).

LEASE OR SECURITY INTEREST. The debtor, a dairy farmer, obtained a loan from a bank and had granted a security interest in all dairy cows owned and acquired. In order to increase the number of cows in the dairy herd, the debtor later entered into several 50-month cow “leases” under which the lessor retained ownership of cows purchased by the lessor to be milked by the debtor. The debtor and bank argued that the leases were actually secured transactions thereby giving the bank a prior security interest in the “leased” cows. The Bankruptcy Court looked at several aspects of the “leases” to determine whether the leases were actually secured transactions under Ken. Stat. § 355.1-203(2). First, the Bankruptcy Court found that the term of the leases exceeded the economic life of the cows. Second the leases were not terminable by the debtor. Finally, the debtor had most of the indicia of ownership, including the requirement that the debtor replace all culled cows at the debtor’s expense; however, in practice, the debtor was not required to pay the lessor the proceeds of the sale of any culled cow and often did not turn over the proceeds to the lessor. Thus, the Bankruptcy Court held that the leases were per se security interests and the bank’s prior perfected lien on the debtor’s cows had priority in the cows. On appeal, the appellate court reversed and remanded, holding that the economic life test was to be applied to the entire herd and not the individual cows. Because the leases provided for replacement cows, the 50 month lease would not extend past the economic viability of the herd. In addition, the appellate court held that the debtor failed to show that the debtor obtained any equity interest in the leased cows nor that the debtor could prevent repossession of the cows at the end of the lease. Therefore, the appellate court held that the debtor and bank failed to prove that the leases were not security interests and the bank had a priority security interest in the leased cows. On remand, the Bankruptcy Court again held that the leases were actually security interests in that the lessor’s failure to enforce the terms of the lease allowed the debtor to acquire sufficient equity interest in the cows and the bank’s security interest to extend to the cows. The Bankruptcy Court noted that the proceeds of the culled cows were placed in the debtor’s bank account with the lender bank and that these commingled funds were also used to acquire replacement cows which were subject to the leases. Once the funds were commingled with the debtor’s other funds, they became subject to the security interest and the cows purchased with those funds were also subject to the bank’s security interest. Finally, Bankruptcy Court noted that the lessor’s only indicia of ownership for any particular cow was the brand or ear tag. The court found that the debtor and lessor were very sloppy in keeping records of the branding and ear tags such that they were unreliable as proof of ownership. In re Purdy, 2015 Bankr. LEXIS 2938 (Bankr. W.D. Ky. 2015), on remand from, 2014 U.S. App. LEXIS 17259 (6th Cir. 2014), rev’g and rem’g, 2013 Bankr. LEXIS 772 (Bankr. W.D. Ken. 2013).

TORTS

CONVERSION. The plaintiff entered into a contract for plaintiff to deliver to the defendant feeder pigs on a routine basis. Under the terms of the contract, the plaintiff paid for the feed, transportation, and veterinary services and medication for the hogs, and the defendant provided daily care until the hogs reached market weight. The plaintiff paid the defendant a monthly fee based on the total number of hog spaces available at the defendant’s facility, but the plaintiff retained ownership interest in the hogs. The defendant kept an inventory of the hogs at the facility, and hogs not accounted for by the inventories and death loss reports were charged against the defendant’s next monthly payment. The defendant was also restricted from keeping other hogs at the facilities unless approved by the plaintiff. After an investigation in a bankruptcy proceeding, the plaintiff discovered that 3,000 hogs were unaccounted for and that a hog buyer had records of nearly 3,000 hogs purchased from the defendant. The plaintiff filed for conversion of the 3,000 hogs and the trial court ruled in the plaintiff’s favor, awarding the plaintiff the value of the hogs plus costs and punitive damages. The defendant appealed, arguing that the evidence was insufficient to prove that the hogs sold belonged to the plaintiff and not to the defendant. The appellate court affirmed the trial court ruling, noting that there was substantial evidence that the defendant never owned or raised any hogs other than the ones provided by the plaintiff. The evidence included the defendant’s tax returns which claimed no expenses or income from the defendant’s own hogs; the defendant’s loan applications which did not include any hogs as assets; the defendant’s receipts which did not include any expenses for raising hogs other than the plaintiff’s; the testimony of the defendant’s employees as to the existence of hogs other than the plaintiff’s; and the defendant’s bank accounts which did not show any use of funds to purchase hogs. Pruisner v. Ballhagen, 2015 Iowa App. LEXIS 912 (Iowa Ct. App. 2015).
18th EDITION

FARM ESTATE & BUSINESS PLANNING

The Agricultural Law Press is honored to publish the completely revised and updated 18th 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 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. Farm Estate and Business Planning 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.

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