Cases, Regulations and Statutes

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interest in the partnership or two partnerships in which the same persons own, directly or indirectly, more than 10 percent of the capital or profits interest\textsuperscript{14} and persons who are engaged in trades or businesses under common control.\textsuperscript{14}

What is “qualified farm indebtedness”? To be eligible to be treated as “qualified farm indebtedness,” the indebtedness must be incurred directly in connection with the operation by the taxpayer of the trade or business of farming and 50 percent or more of the average gross receipts of the taxpayer for the three preceding taxable years must be attributable to the trade or business of farming.\textsuperscript{15} Note that the same Internal Revenue Code Section\textsuperscript{16} in extending the provision to other types of businesses, in defining “qualified property,” refers to property which is used or held for use “in a trade or business or for the production of income.”\textsuperscript{17} That broadens the scope of the provision to include cash rent landowners but that is not included in the subsection providing the rules for “qualified farm indebtedness”\textsuperscript{18} which is not extended to cash rent landowners.\textsuperscript{19}

How gain is avoided

Reduction of tax attributes. The 1986 provision assures avoidance of taxation on discharge of indebtedness (or forgiveness of indebtedness) by requiring a reduction of “tax attributes” (such as net operating losses for the year and any carryover of losses to that year) and by reduction of income tax basis on eligible property.\textsuperscript{20}

Reduction of income tax basis. After the tax attributes have been reduced, any remaining discharge of indebtedness is used to reduce the income tax basis of “qualified property” of the debtor.\textsuperscript{21} The term “qualified property” means any property which is used or is held for use in a trade or business or for the production of income for business and investment entities\textsuperscript{22} but the more narrow provision (trade or business of farming) applies elsewhere to farm indebtedness.\textsuperscript{23}

Order of basis reduction. The order of income tax basis reduction is (1) depreciable property, (2) land used or held for use in the trade or business of farming and (3) other qualified property.\textsuperscript{24} The rules under I.R.C. § 1017\textsuperscript{25} state that the basis reduction is to apply the language in I.R.C. § 108(g)(3)(C) which states that the test is held for use in a trade or business or held for the production of income. That apparently includes cash rent landowners.

ENDNOTES


\textsuperscript{3} I.R.C. § 61(a)(12). See, e.g., Vukasovich, Inc. v. Comm’r, 790 F. 2d 1409 (9th Cir. 1986), aff’d in part, rev’d in part, T.C. Memo. 1984-611 (cancellation of indebtedness for less than amount owed resulted in ordinary income to debtor).

\textsuperscript{4} See I.R.C. § 108(g) (eligible farm and ranch taxpayers).


\textsuperscript{6} I.R.C. § 108(g).

\textsuperscript{7} I.R.C. § 108(g).

\textsuperscript{8} I.R.C. §§ 108(g)(1)(B), 49(a)(1)(D)(iv).

\textsuperscript{9} I.R.C. §§ 108(g)(1)(B).

\textsuperscript{10} I.R.C. § 49(a)(1)(D)(v).

\textsuperscript{11} I.R.C. § 465(b)(3)(C)(i), 267(c)(4), 707(b)(1).

\textsuperscript{12} I.R.C. §§ 465(b)(3)(C)(ii), 267(b)(2) through (13).

\textsuperscript{13} I.R.C. §§ 465(b)(3)(C), 707(b)(1).

\textsuperscript{14} I.R.C. §§ 465(b)(3)(C), 707(b)(1).

\textsuperscript{15} I.R.C. § 108(g)(2)(B).

\textsuperscript{16} I.R.C. § 108(g)(3).

\textsuperscript{17} I.R.C. § 108(g)(3).

\textsuperscript{18} I.R.C. § 108(g)(2).

\textsuperscript{19} See Lawinger v. Comm’r, 103 T.C. 428 (1994).

\textsuperscript{20} I.R.C. § 108(g)(3)(A).

\textsuperscript{21} I.R.C. §§ 108(g)(3)(A)(2).

\textsuperscript{22} I.R.C. § 108(g)(3)(C).

\textsuperscript{23} I.R.C. § 108(g)(2)(B).

\textsuperscript{24} I.R.C. § 1017(b)(4).

\textsuperscript{25} I.R.C. § 1017(b)(4).

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**ADVERSE POSSESSION**

**EXCLUSIVE USE.** The parties were neighbors who both engaged in crop farming on their land. Although the case originally involved five parcels of land between the farms, only two were in issue on appeal. The evidence included aerial photos of the disputed parcels showing the defendant’s planting of crops continuously from the defendant’s land onto the disputed parcels. The defendant also testified as to the use of the disputed parcels and the trial court gave the defendant’s testimony more credibility than the plaintiff’s testimony. Although the plaintiff testified that the plaintiff used one parcel to turn around equipment, the court held that this occasional use was not sufficient to overcome the defendant’s continuous use of the parcel for raising crops. Therefore, the defendant was granted title to both parcels based on exclusive use of the parcels for crop farming. \textit{Johnson v. Fischer, 2016 Minn. App. Unpub. LEXIS 433 (Minn. Ct. App. 2016).}
BANKRUPTCY

GENERAL

DISCHARGE. The debtor had owned and operated a farm and cattle business as a sole proprietor. During litigation with the debtor’s sons, the debtor transferred title to the farm to the debtor’s wife. After the sons were awarded a money judgment, the trial court ruled that the transfer of the real property was fraudulent and ordered the transfer voided. In 2012 the debtor transferred the farm to a limited liability company which had the wife as the sole member. Less than a year later the debtor filed for Chapter 7. The debtor’s bankruptcy schedules did not list the farm property as belonging to the LLC but later filed amended schedules which did list the property as owned by the LLC. The sons filed a motion to deny discharge to the debtor under Section 727(a)(2) (intent to hinder, delay or defraud creditors), Section 727(a)(4)(A) (false oath) and Section 727(a)(5) (loss of assets). The court held that discharge was denied under Sections 727(a)(2) and (a)(4)(A). The court found that the debtor had transferred the farm to the LLC without consideration, transferred the farm to a related party, retained possession and control over the farm, retained a financial interest in the farm, transferred substantially all of the debtor’s assets to the LLC, and demonstrated a pattern of hiding ownership of the farm. The court noted that the transfer of the farm to the LLC left the debtor insolvent. The court also denied discharge under Section 727(a)(4)(A) because of the debtor’s false bankruptcy schedules which claimed assets not owned by the debtor and omitted material facts about the farm ownership. In re Rademaker, 2016 Bankr. LEXIS 1873 (Bankr. E.D. Mo. 2016).

FEDERAL FARM PROGRAMS

INSPECTION SERVICES. The AMS has announced the 2016 rates it will charge for voluntary grading, inspection, certification, auditing and laboratory services for a variety of agricultural commodities including meat and poultry, fruits and vegetables, eggs, dairy products, and cotton and tobacco. The 2016 regular, overtime, holiday, and laboratory services rates will be applied at the beginning of the crop year, fiscal year or as required by law (June 1 for cotton programs) depending on the commodity. 81 Fed. Reg. 27387 (May 6, 2016).

FEDERAL ESTATE AND GIFT TAXATION

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a “deceased spousal unused exclusion” (DSUE) amount to a surviving spouse. To obtain the benefit of portability of the decedent’s DSUE amount to the spouse, the decedent’s estate was required to file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, on or before the date that is 9 months after the decedent’s date of death or the last day of the period covered by an extension. The decedent’s estate did not file a timely Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The estate represented that the value of the decedent’s gross estate was less than the basic exclusion amount in the year of the decedent’s death including any taxable gifts made by the decedent. The estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to elect portability of the decedent’s DSUE amount pursuant to I.R.C. § 2010(c)(5)(A). The IRS granted the estate an extension of time to file Form 706 with the election. Ltr. Rul. 201620008, Jan. 28, 2016.

FEDERAL INCOME TAXATION

AMERICAN OPPORTUNITY CREDIT. The taxpayer was enrolled full time at a university during 2011 and incurred $11,748 in tuition and education expenses. The taxpayer qualified for tax-free educational benefits under the Post-9/11 GI Bill, including the Yellow Ribbon GI Education Enhancement Program, and during 2011, the Department of Veterans Affairs paid $11,748 directly to the University of Phoenix on the taxpayer’s behalf. Because this amount covered all of his tuition and related educational expenses, the taxpayer did not incur any student loan debt or receive any scholarships for 2011. The university issued the taxpayer a Form 1098-T, Tuition Statement, for 2011, which reflected the taxpayer’s student status as at least half-time and the total payment of $11,748 received for qualified tuition and related expenses. The taxpayer provided this form to a tax return preparer who included a deduction for the American Opportunity Credit (AOC) on the 2011 return. Under I.R.C. § 25A(g)(2) and Treas. Reg. § 1.25A-5(c)(1), in determining the amount of the AOC, qualified tuition and related expenses for any academic period must be reduced by certain tax-free educational assistance allocable to such period. For this purpose, the term “tax-free educational assistance” means (1) a qualified scholarship that is excludable from income under I.R.C. § 117; (2) a veterans’ or member of the armed forces’ educational assistance allowance under chapter 30, 31, 32, 34 or 35 of title 38 of the United States Code, or under chapter 1606 of title 10 of the United States Code; (3) employer-provided educational assistance that is excludable from income under I.R.C. § 127; or (4) any other educational assistance that is excludable from gross income (other than as a gift, bequest, devise, or inheritance within the meaning of I.R.C. § 102(a)). The court held that the taxpayer was not entitled to any AOC for 2011 because the taxpayer did not personally pay for any education expenses in 2011. Lara v. Comm’r, T.C. Memo. 2016-96.

COOPERATIVES. The taxpayer was a farmers’ cooperative
association which files a consolidated federal income tax return on Form 1120-C, U.S. Income Tax Return for Cooperative Associations, on the basis of a fiscal year. The taxpayer sold a broad range of farm supplies – including energy products (such as diesel fuel, propane, heating oil, and gasoline), crop nutrients, crop protection products and livestock feed – to its local farm supply cooperative members, and they in turn sold those products to their farmer and rancher members. The taxpayer also sold farm supplies directly to farmer and rancher members. The taxpayer paid patronage dividends to members. The taxpayer generally did not pay patronage dividends to nonmembers, but the taxpayer’s bylaws provide that a nonmember can be eligible to share in patronage dividends if the taxpayer agrees to conduct business with the nonmember on a patronage basis. The taxpayer has agreements to conduct business with a few nonmembers on a patronage basis, but most nonmembers do not share in patronage dividends. The taxpayer referred to members and nonmembers who are eligible to not pay patronage dividends to nonmembers, but the taxpayer’s bylaws provide that a nonmember can be eligible to share in patronage dividends if the taxpayer agrees to conduct business with the nonmember on a patronage basis. The taxpayer has agreements to conduct business with a few nonmembers on a patronage basis, but most nonmembers do not share in patronage dividends. The taxpayer referred to members and nonmembers who are eligible to share in patronage dividends as “patrons.” The taxpayer instituted a new system which allows patrons to make greater use of the internet and computers in their contacts with the taxpayer. The prospective patron can access the application form online but mails a printed copy to the taxpayer. The taxpayer also provided a method of filling out the application and consent form online and submitting the form online as well. The taxpayer requested a ruling that a consent for a patron that the taxpayer obtained electronically under the new process will be a valid “consent in writing” of the patron within the meaning of I.R.C. § 1388(c)(2)(A). Under Treas. Reg. § 1.1388-1(c)(3)(i), no special form is required for the written consent so long as the document on which it is made clearly discloses the terms of the consent. Consent can be made on a signed invoice, sales slip, delivery ticket, marketing agreement, or other document, on which appears the appropriate consent. The IRS ruled that the taxpayer’s new process for obtaining consent will involve patrons completing and submitting an online form and this on-line form should be considered an “other document” within the meaning of Treas. Reg. § 1.1388-1(c)(3)(i). The IRS noted that, although when Subchapter T was enacted, digital signing of documents was unknown, in current times, the submission of electronic documents is considered a signed written document. Therefore, the IRS ruled that the taxpayer’s new process for obtaining consent is considered an “other document” within the meaning of Treas. Reg. § 1.1388-1(c)(3)(i). Ltr. Rul. 201619003, Feb. 10, 2016.

CORPORATIONS

SHAREHOLDER LOANS TO CORPORATION. The taxpayers, husband and wife, created a family corporation with the husband and wife owning 25 percent each and their children owning the remaining 50 percent. The corporation operated the husband’s consulting business. Starting in the 1990s, the taxpayers loaned funds to the corporation and claimed the amounts as a deduction on their personal Schedule C. The IRS did not challenge the deductions until 2010, 2011 and 2012, when the deductions were disallowed. The court upheld the denial of the deductions, holding that the loans were investments in the corporation giving rise to assets, a loan or a capital contribution to the corporation. The taxpayers also argued that the IRS was estopped from challenging the deductions because the IRS had not challenged the deductions in prior tax years. The court held that, under Auto. Club of Mich. v. Commissioner, 353 U.S. 180, 183 (1957), the Supreme Court held that the Commissioner’s failure to challenge a taxpayer’s treatment of an item in an earlier year does not preclude an examination of the correctness of the treatment of that item in a later year because “[t]he doctrine of equitable estoppel is not a bar to the correction by the Commissioner of a mistake of law.” Aleamoni v. Comm’r, T.C. Summary Op. 2016-21.

EDUCATION EXPENSES. The taxpayer was an enrolled agent and had obtained a master’s degree in taxation. The taxpayer provided services in accounting, financial planning and tax return preparation. The taxpayer then decided to attend law school, was admitted to the state bar, and began practicing law. The tax year involved was 2010 in which the taxpayer incurred tuition and fees for attending law school. The taxpayer claimed the law school tuition and fees as deductions on the Schedule C for the taxpayer’s tax return preparation, accounting and financial planning business. Treas. Reg. § 1.162-5(b)(1) provides that two types of educational expenses are not deductible. One type is expenses for education that is part of a program of study which will lead to qualifying the taxpayer for a new trade or business. The regulation gives the following example of the expenses of this type: “A, a self-employed individual practicing a profession other than law, for example, engineering, accounting, etc., attends law school at night and after completing his law school studies receives a bachelor of laws degree.” Thus, the court held that the taxpayer could not deduct the tuition and fees expenses for law school because the education qualified the taxpayer for a new profession. Santos v. Comm’r, T.C. Memo. 2016-100.

ELECTRICITY PRODUCTION CREDIT. The 2016 inflation-adjustment factors used in determining the availability of the credit for renewable electricity production, and refined coal production under I.R.C. § 45 for qualified energy resources and refined coal is 1.5566. For calendar year 2016, the inflation-adjustment factor for Indian coal production is 1.1934. The credit for refined coal production is $6,810 per ton of qualified refined coal sold in 2015. The 2016 reference price for fuel used as feedstock is $53.74 per ton. The amount of the credit is 4.5 cents per kilowatt hour on sales of electricity produced from wind energy. Because the 2016 reference price for electricity produced from wind does not exceed eight cents multiplied by the inflation adjustment factor, the phaseout of the credit does not apply to such electricity sold during calendar year 2016. Because the 2016 reference price for fuel used as feedstock for refined coal does not exceed the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor plus 1.7, the phaseout of the credit does not apply to refined coal sold during calendar year 2016. The phaseout of the credit for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy does not apply to such electricity sold during calendar year 2016. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy does not apply to such electricity sold during calendar year 2016. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy does not apply to such electricity sold during calendar year 2016.
energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy for 2016 have not yet been determined. **Notice 2016-34, I.R.B. 2016-22.**

**EMPLOYEES.** The taxpayer was a solely owned limited liability company which provided non-medical in-home care services to senior citizens. The taxpayer contracted with 35 workers to provide the services mostly at one senior care facility. The taxpayer did not train the workers and did not instruct the workers as to how to perform their duties. Instead, the senior care facility provided most of the care instructions. The taxpayer did obtain workers’ compensation for the workers. The owner of the taxpayer started the operation after researching the operation of similar businesses and noted that all treated their workers as independent contractors. Post-start up research also revealed that a common industry practice was to treat such workers as independent contractors. The IRS audited the owner of the taxpayer twice and included investigations into the taxpayer’s operation. The audits did not result in any change in classification of the workers. The IRS performed an audit of the taxpayer’s returns and reclassified the workers as employees and assessed employment taxes. Section 530 of the Revenue Act of 1978 provides a safe harbor for taxpayers who owe back employment taxes after they erroneously fail to classify certain workers as employees. Section 530, which is uncodified, “allows the taxpayer to avoid liability for certain federal employment taxes if the taxpayer had a reasonable basis for not treating such individual as an employee.” The court held that the taxpayer had a reasonable basis for treating the workers as independent contractors because the IRS did not reject the taxpayer’s treatment during its audit of the owner and the taxpayer had made extensive research into the industry practice of treating workers as independent contractors. **Nelly Home Care, Inc. v. United States, 2016-1 U.S. Tax Cas. (CCH) § 50,280 (E.D. Penn. 2016).**

**INNOCENT SPOUSE RELIEF.** The taxpayer and former spouse had filed a joint return for 2006 for which the IRS assessed a deficiency. The former spouse filed for innocent spouse relief and the court held that the spouse had signed the return under duress so no joint return was deemed filed. That ruling was upheld by the Ninth Circuit Court of Appeals and the U.S. Supreme Court denied certiorari. The taxpayer filed a separate innocent spouse claim which was stayed until a final decision was reached in the appeals of the first case. The court held that the issue of the filing of a joint return was collaterally estopped by the final decision in the first case; therefore, no innocent spouse relief could be granted to the taxpayer. **Hiramanek v. Comm’t, T.C. Memo. 2016-92.**

**PARTNERSHIPS**

**ELECTION TO ADJUST BASIS.** The taxpayer was a limited liability company which elected to be taxed as a partnership for federal income tax purposes. In one tax year, the taxpayer made liquidating distributions to several members but the taxpayer’s tax advisors did not inform the taxpayer of the election to adjust the taxpayer’s basis in the taxpayer’s assets. The taxpayer requested, and the IRS granted, an extension of time to file an amended return making the I.R.C. § 754 election to adjust the basis of the partnership assets. **Lttr. Rul. 201620002, Jan. 7, 2016.**

**ENTITY CLASSIFICATION.** The taxpayer was a limited liability company which intended to elect to be taxed as a partnership for federal income tax purposes. The taxpayer failed to timely file Form 8832, **Entity Classification Election,** and sought an extension of time to file the form. The IRS granted the extension. **Lttr. Rul. 201620005, Feb. 8, 2016.**

The taxpayer was a corporation which formed a limited partnership in which interests may be sold in an initial public offering. The partnership will be engaged in the production, storage, transportation, and marketing of the nitrogen-based fertilizers ammonia, ammonium nitrate, ammonium nitrate-ammonia, urea (both granulated and in solution), and urea ammonium nitrate, all direct application fertilizers. The partnership will sell these products in bulk to customers operating in agricultural and non-agricultural industries. Under I.R.C. § 7704(a), publicly traded partnerships are taxed as corporations. An exception to this rule is provided by I.R.C. § 7704(c) for publicly traded partnerships which have at least 90 percent of their income from “qualifying income.” “Qualifying income” includes income from the exploration, development, mining or production, processing, refining, transportation, or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber). The IRS ruled that the partnership’s income was qualifying income to the extent the nitrogen-based fertilizer products were consistent with the industry standards for agricultural fertilizers. **Lttr. Rul. 201619002, Feb. 8, 2016.**

**PENSION PLANS.** For plans beginning in May 2016 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 2.62 percent. The 30-year Treasury weighted average is 3.06 percent, and the 90 percent to 105 percent permissible range is 2.76 percent to 3.22 percent. The 24-month average corporate bond segment rates for May 2016, without adjustment by the 25-year average segment rates are: 1.48 percent for the first segment; 3.90 percent for the second segment; and 4.90 percent for the third segment. The 24-month average corporate bond segment rates for April 2016, taking into account the 25-year average segment rates, are: 4.43 percent for the first segment; 5.91 percent for the second segment; and 6.65 percent for the third segment. **Notice 2016-33, I.R.B. 2016-22.**

**SOCIAL SECURITY BENEFITS.** In 2011, the taxpayer was injured in a federal employment related accident and received workers’ compensation payments from the Department of Labor Office of Workers’ Compensation Programs. The taxpayer also applied for Supplemental Security Income (SSI) disability payments. The SSI disability payments were granted; however, the Social Security Administration (SSA) withheld the entire amount of the payments because the taxpayer’s income, including the workers’ compensation benefits, was too high. The taxpayer never actually received the SSI disability benefits in 2011. Nevertheless, the SSA issued the taxpayer a Form SSA-1099, **Social Security Benefit Statement,** which reflected benefits paid in 2011 of attributable to “Workers’ compensation offset.” The
The court noted that there was an issue of fact as to whether the agent informed the plaintiffs about the need for an inspection prior to coverage of the buildings and that there was an issue of interpreting the policy as to whether the loss was covered under the general weather damage provision. Bolinger v. Clarks Fork Mutual Ins. Co., 2016 Mo. App. LEXIS 352 (Mo. Ct. App. 2016).

CORN STOVER. The plaintiff leased farm land from the defendant city under a cash lease. The lease provided for automatic renewal from year-to-year with an annual termination date of March 1. The city decided to terminate the lease in 2014 and the plaintiff sued for improper termination, to recover for the amount of corn stover that the plaintiff was not allowed to take after the last harvest, and the pro rata cost of lime applied in 2011 (two years of value remained for the lime application). The lease provided “Tenant shall not remove from the Real Estate, nor burn, any straw, stalks, stubble, or similar plant materials, all of which are recognized as the property of Landlord.” The lease also required the tenant to obtain written authorization from the landlord for any expenses. However, the lease provided that the tenant was to be reimbursed for any unused benefits from the application of lime. The city sent the plaintiff a notice of termination on August 19, 2013, effective the following March. The trial court granted summary judgment to the city on all claims and the plaintiff appealed. The plaintiff argued that the termination notice was improper because the city council did not vote to terminate the lease. The court held that, although the entering into the lease required a vote of the council, the termination of the lease merely required a directive from the council to the city clerk. The plaintiff argued that the application of the lime was authorized by the lease provision because the plaintiff did not charge for application of the lime. The court agreed, holding that the amended provision controlled because it specifically applied to the application of lime and the plaintiff did not charge for the application. On the issue of ownership of the corn stover, the court first looked at Iowa Code § 562.5A: “Unless otherwise agreed to in writing by a lessor and farm tenant, a farm tenant may take any part of the above ground part of a plant associated with a crop, at the time of harvest or after the harvest, until the farm tenancy terminates as provided in this chapter.” The court held that the lease here did specifically provide that the corn stover belonged to the landlord; therefore, the plaintiff did not have a contractual right to the corn stover. Hettinger v. City of Strawberry Point, Iowa, 2016 Iowa App. LEXIS 467 (Iowa Ct. App. 2016).

INSURANCE

COVERAGE. The plaintiff raised turkeys in three buildings on the plaintiff’s farm. The plaintiff purchased property insurance from the defendant through an agent on all the buildings on the farm and specifically requested insurance on damage from the weight of snow, ice and sleet. The agent provided a premium quote and claimed that the plaintiff was told that the snow, ice and sleet coverage would not take effect until the buildings were inspected. The defendant claimed to have given the plaintiff a written proposal which stated the same condition. The plaintiff purchased the insurance on February 25, 2013. The written policy was not received by the plaintiff until March 4, 2013 but was backdated to the date of the payment of the premium and did not contain the endorsement for the snow, ice and sleet damage coverage. On February 26, 2013, two of the turkey buildings collapsed from the weight of snow and ice. There was no evidence that the plaintiff had any knowledge that the buildings would collapse. The defendant denied coverage because the buildings were not inspected before the damage occurred. The plaintiff filed suit for full coverage of the loss and the trial court granted summary judgment to the plaintiff. On appeal, the appellate court reversed, noting that several material facts remained at issue. The court noted that there was an issue of fact as to whether the agent informed the plaintiffs about the need for an inspection.

NUISANCE

RIGHT-TO-FARM. The defendant started a large scale commercial composting operation on land zoned agricultural in 2008. At that time, the zoning ordinance for agricultural
zones specifically excluded operations involving the disposal of garbage and other waste material. In 2011 the ordinance was amended to remove the specific exclusions but allowed merely “farms.” In 2014, the defendant began receiving yard waste to compost and neighbors complained about the odors from the operation. The plaintiff ordered the defendant to cease operating the composting operation as a violation of the zoning ordinance. When the defendant failed to cease the operation, the plaintiff filed suit alleging that the operation was a violation of the ordinance, a public nuisance, and a violation of state environmental quality laws. The defendant argued that the composting operation was a farm and was protected from enforcement of the actions brought by the plaintiff. The court held that the composting operation was not a farm, either under the ordinance or under the definition used by the Michigan right-to-farm law. The court held that the definition of “farm product” under the Michigan right-to-farm law, Mich. Code § 286.472(c), included only “plants and animals useful to human beings.” The compost produced by the defendant did not meet this definition; therefore, the operation was not a farm under the right-to-farm law. Charter Township of White Lake v. Ciurlik Enterprises, 2016 Mich. App. LEXIS 956 (Mich. Ct. App. 2016).

SECURED TRANSACTIONS

PRIORITY. On April 12, 2012, the debtor obtained a production-money loan from the plaintiff bank and the bank perfected a security interest in the debtor’s crops, farm products, equipment and accounts. The debtor agreed to take over commodity futures contracts for corn and soybeans to be delivered to the defendant from the debtor’s 2012 crop. The contracts provided that the defendant had the right to set off from payments for the delivered crops the value of any undelivered crops. The defendant did not register its interest in the crops with the Mississippi Secretary of State. The debtor did deliver most of the crops but failed to deliver on the soybean contracts; therefore, the defendant offset the value of the undelivered soybeans. The plaintiff sued to recover the full amount owed for the delivered crops without any offset, arguing that it had a prior perfected security interest in the delivered crops. The court found that, because Mississippi has a centralized filing system, the production-money security interest was governed by the Food Security Act of 1985 (FSA) which provides that buyers of farm products take the products free of security interests unless the buyer received direct notice of the security interest or purchased the agricultural products in a state with a centralized filing system. Under the FSA, a buyer of farm products takes subject to a security interest created by the seller if the buyer has failed to register with the Secretary of State of such state prior to the purchase of farm products; and the secured party has filed an effective financing statement or notice that covers the farm products being sold. Thus, the court held that, because the defendant did not register and the plaintiff perfected its security interest, the plaintiff held a priority security interest in all of the debtor’s crops and was entitled to the proceeds of the sale of those crops, without setoff for the undelivered crops. Guaranty Bank & Trust Co. v. Agrex Incorporated, 2016 U.S. App. LEXIS 7731 (5th Cir. 2016), aff’g, 2015 U.S. Dist. LEXIS 67110 (N.D. Miss. 2015).

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

Due to serious family medical issues, Dr. Harl has had to cancel at least the first three seminars previously announced. Although Dr. Harl may need to cancel the remaining seminars, except Ames, IA, here are the tentative cities and dates for the seminars in 2016 at this time:

August 24-25, 2016 - Quality Inn, Ames, IA
September 15-16, 2016 - Ramkota Hotel, Sioux Falls, SD
September 22-23, 2016 - Holiday Inn, Rock Island, IL
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