Cases, Regulations and Statutes

Robert P. Achenbach Jr
Iowa State University

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Debt restructuring should always be considered when it is in the lender’s best interests and may be justified when, even though not in the lender’s best short-term interests, it may be in the lender’s long term interests to keep a good manager in business. That decision, of course, is one for the lender to make. In general, debt restructuring is more likely to occur when collateral values are falling and losses from reduced collateral values loom large which suggests minimizing the time period between default and settlement of the loan matter but legal and accounting fees may reach significant levels if the resolution proceeds through formal channels and interruptions in interest payments become significant. Those costs may exceed the amount necessary to be forgiven to make the borrower stable.

Factors to consider

In determining whether a loan in default should be resolved with formal procedures or whether attention should be given to debt restructuring, several factors are worthy of consideration.

Is the collateral adequately valued? If collateral values have fallen well below the amount of the obligation, losses have already occurred. In such instances, it may be unlikely that full recovery is possible for the lender.

Is the loan documentation adequate? In the 1980s downturn, this was a key factor but, in general, loan documentation today tends to be more formal than was the case going into the farm debt crisis.

Could the borrower be made financially stable? What would be the cost to the lender to accomplish that result?

If restructuring, overall, appears feasible, how willing are the other lenders to absorb an equitable share of the total cost of restructuring? That can be a critical factor.

Is the borrower-lender relationship flawed? In the 1980s, there were charges of conflict of interest and misleading advice involved in some instances.

How important to the lender is “maintaining borrower discipline”? Some lenders may be reluctant to restructure because borrowers may come to expect such treatment whenever they get in financial difficulty.

Making the decision

A comparison of outcomes (restructuring or partial or total liquidation) on a net present value basis can provide guidance as to the most rational approach for both parties, but especially for the lender.

It is generally not rational to liquidate a loan if the loss expected to be taken is greater than what would be necessary to keep the borrower in business by restructuring the loan. That outcome necessarily depends upon (1) the probable net recovery value on the collateral; (2) the extent to which the lender is unsecured; (3) the cost of interruption of interest payments; and (4) whether the borrower, after restructuring, will be able to service the still outstanding debt.

Other factors

Attention should be given, also, to the income tax consequences of the alternatives, principally as those consequences can significantly tip the scale. The income tax consequences in bankruptcy should be reviewed carefully with attention given to the income tax treatment under a Chapter 12 filing (for farm and ranch bankruptcies) which is substantially less favorable to the debtor than the other bankruptcy chapters.3

Look for a discussion of those tax consequences in future issues of the Digest.

ENDNOTES


3 See Hall v. United States, 132 S. Ct. 1882 (2012) (tax liability was not incurred by the bankruptcy estate under 11 U.S.C. § 503(b) and thus was not subject to 11 U.S.C. 1222(a)(2) and remained the responsibility of the debtor). See Harl and Peiffer, “The U.S. Supreme Court Sets (For Now) One of the Chapter 12 Bankruptcy Tax Issues,” 23 Agric. L. Dig. 81 (2012).
location of the buyers and the tractors. On January 8, 2016, the creditor sought to file an objection to the debtor’s discharge and the debtor objected, arguing that the creditor’s motion was untimely filed after the deadline. The creditor argued that the deadline should be extended by equitable tolling. Section 523(c) provides that debts listed in Section 523(a)(2) shall be discharged unless, upon request from an interested party, a court determines that the debt is excepted from discharge. Bankruptcy Rule 7001(6) requires that an objection to dischargeability of debt be filed as a complaint in an adversary proceeding. Bankruptcy Rule 4007(c) requires that a complaint to determine the dischargeability of a debt be filed no later than 60 days after the first date set for the meeting of creditors unless the time is extended. The court recognized that equitable tolling was allowed by some courts but noted that courts should be cautious in allowing an exception to the clear and definite deadline established by the Bankruptcy Rules. The court held that equitable tolling would be denied in this case because (1) the creditor had full notice of all bankruptcy proceedings and deadlines, (2) the creditor failed to apply for an extension of the discharge deadline, (3) and the creditor waited four months after discovering that the collateral was missing to file the objection. In re Grabowski, 2016 Bankr. LEXIS 15 (Bankr. S.D. Ill. 2016).

ELIGIBILITY. The debtors, husband and wife, filed for Chapter 12 in October 2015. During the creditors’ meeting, the debtors testified that the last time they were actively farming was in 2013 when the debtors leased farm land which was actually farmed by their son under contract with the debtors. The debtors also testified that they had no intent to return to active farming. The trustee filed a motion to dismiss, arguing that the debtors were not family farmers and were not eligible for Chapter 12. The debtors argued that, although the son did the planting and harvesting of crops, the debtors supplied all the farm equipment; made the decisions as to what crops to plant; retained all profits and losses from the operation; sold all crops in their own names; paid for the seed, fertilizer and all materials used in the farming operation; and procured crop insurance in their own names. The court held that the debtors were engaged in a farming operation in 2013. The court also held that the debtors were not required to be actively farming on the date of the petition because Chapter 12 allowed for the complete liquidation of a farming operation such that the debt would no longer be able to farm after the bankruptcy case. Therefore, the debtors were eligible for Chapter 12. In re Williams, 2016 Bankr. LEXIS 1804 (Bankr. W.D. Ky. 2016).

PLAN. The debtors, husband and wife, were originally crop farmers. The debtors started a creamery business but the activity encountered financial, regulatory and licensing difficulties and failed. The debtors filed a Chapter 12 plan which provided for the sale of some milking equipment in order to provide funds for purchasing more cows. The debtors also planned to continue crop farming and the plan provided for use of some of the crops to feed the additional cows. A bank creditor held perfected liens on all of the debtors’ land and buildings, livestock, crops and some of the farm equipment. The creditor objected to the value placed on the farm land and buildings. The debtor argued that the fair market value of the property must be substantially reduced from the fact that several areas of the farm can be reached only by traveling on the neighbors’ properties. This was not an issue for the debtors because the neighbors were all relatives of the debtors. The bank’s appraiser also discounted the fair market value of the property but only as much as the cost of purchasing one acre strips of the neighbors’ properties. The court sidestepped this issue by finding that, even with the debtors’ low value for the property, the plan was not confirmable. The debtors’ plan provided for the sale of milking equipment for $35,000 and the purchase of 25 older cows, giving the debtors a herd of 43 cows. However, the plan also provided for the income of 50 cows producing every day. A dairy expert testified that, in order to effectively have 50 cows producing every day, the debtors’ herd would need to be at least 57 cows. The debtors also did not have a state milking license and had only plans to obtain one after the cows were purchased. The court held that the debtors’ financial projections were unreasonable and the debtors’ failed to prove they could make the plan payments. The Chapter 12 plan was not confirmed. In re Meinders, 2016 Bankr. LEXIS 1726 (Bankr. N.D. Iowa 2016).

FEDERAL TAX

PREFERENTIAL TRANSFERS. The debtor was a payroll management company which provided payroll services to various clients on an independent contractor basis. The debtor made five payments of employment taxes for five separate clients to the IRS within three months before filing for Chapter 7. The payments were $32,297, $5,338, $1,143, $352.84, and $281.13. The trustee sought to recover those payments as preferential transfers. Because only the payment for $32,297 exceeded the $5,850 minimum requirement under Section 547(c)(9), the trustee argued that the amounts should be aggregated so that all payments could be recovered because the payments were all made to the same transferee, the IRS. The court held that the four transfers less than $5,850 could not be aggregated because each payment was for a separate debt and client. The debtor argued that the $32,297 payment was not a preferential transfer because the debtor held the funds in trust, see I.R.C. § 7501(a), for payment to the IRS. The court agreed, holding that the $32,297 payment came from funds held in trust by the debtor for the client; therefore, the payment was not made with the debtor’s estate funds. In re Net Pay solutions, Inc., 2016 U.S. App. LEXIS 8601 (3d Cir. 2016), aff’d, 533 B.R. 126 (M.D. Pa. 2015).

FEDERAL FARM PROGRAMS

PERISHABLE AGRICULTURAL COMMODITIES ACT. The plaintiff sold the defendant apples grown in 2013 but failed to pay for the apples. The parties had done similar sales since 2009 and, although the bills of lading stated that payment was due within 10 days after delivery, the defendant never paid for delivered apples in less than 30 days. For the 2013 contract, the defendant told the plaintiff prior to the sale that payment could not be made for 12-14 months. Both parties agreed to the late payment and the apples were delivered. When payment was not made, the plaintiff sought to collect the amount from the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act
(7 U.S.C. 499e(c)). The defendant argued that the oral agreement for the 2013 crop extended the payment date beyond the 30 day limit required for payment under PACA (see 7 C.F.R. § 46.46(e)(2)); therefore, the plaintiff could not collect from the PACA trust fund. The plaintiff claimed that the plaintiff always relied on the 10-day payment requirement stated on each bill of lading. However, the evidence showed that the plaintiff never attempted to collect any payment within 10 days and often allowed months to pass before receiving payment. In addition, the court noted that the plaintiff did not attempt to collect the 2013 crop bill until 14 months after delivery, indicating that the plaintiff believed payment was not due for at least 14 months. Thus, the parties by course of dealing and, for the 2013 crop, by oral agreement extended the payment for the 2013 apples beyond 30 days after delivery; therefore, the plaintiff could not collect from the PACA trust fund. Heeren, LLC v. Cherry Growers Inc., 2016 U.S. Dist. LEXIS 69683 (W.D. Mich. 2016).

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The decedent died in 2010 and the executor failed to file a Form 8939, Allocation of Increase in Basis for Property Acquired from a Decedent, before January 17, 2012. The estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to file the Form 8939 to make the I.R.C. § 1022 election and to allocate basis provided by I.R.C. § 1022 to eligible property transferred as a result of the decedent’s death. Notice 2011-66, 2011-2 C.B. 184 section I.D.1, provides that the IRS will not grant extensions of time to file a Form 8939 and will not accept a Form 8939 filed after the due date except in four limited circumstances provided in section I.D.2: “Fourth, an executor may apply for relief under § 301.9100-3 in the form of an extension of the time in which to file the Form 8939 (thus, making the Section 1022 election and the allocation of basis increase), which relief may be granted if the requirements of § 301.9100-3 are satisfied. The IRS granted an extension of time to file the election. Ltr. Rul. 201622023, Feb. 28, 2016.

Estate Tax Returns. In a short Chief Counsel Advice letter, the IRS stated: “The estate stuff would be covered by 6103(e)(1)(E) and the gift tax (now that the donor is dead) would be covered by 6103(e)(3). Under 6103(e)(1)(E) and (3), the only people other than the administrator, executor, or trustee of the estate who can request the return information are heirs at law, next of kin, beneficiaries under the will and, only in the case of decedents (not the estate), donees of property. For all these categories, in order to be entitled to the return information, the person must establish that they have a material interest that will be affected by the information requested. A material interest is an important information that is often, but not required to be, financial in nature. We can withhold things if disclosure would seriously impair federal tax administration.” CCA 201621014, May 12, 2016.

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. 201621007, Feb. 17, 2016; Ltr. Rul. 201621008, Feb. 11, 2016; Ltr. Rul. 201621009, Feb. 11, 2016; Ltr. Rul. 201622023, Feb. 29, 2016; Ltr. Rul. 201622024, Feb. 29, 2016; Ltr. Rul. 201622026, Feb. 29, 2016; Ltr. Rul. 201622027, Feb. 26, 2016.

FEDERAL INCOME TAXATION

Corporations

Transferor Liability. The taxpayer was a controlling shareholder of a corporation which owned a chemical company. The taxpayer wanted to sell the company and contracted with an intermediary in a scheme under which the assets of the company would be sold to one buyer and the intermediary would purchase the taxpayer’s stock for an amount greater than if the company was sold and redeemed the stock. After the intermediary acquired the corporation, it failed to pay the taxes due from the asset sale and the IRS sought recovery from the shareholders. The court held that the transaction violated the Texas Uniform Fraudulent Transfer Act as to the the IRS and that the taxpayer was liable for the unpaid taxes. Cullifer v. Comm’r, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,296 (11th Cir. 2016), aff’d, T.C. Memo. 2014-208.

Disaster Losses. On May 6, 2016, the President determined that certain areas in Arkansas are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and tornadoes which began on March 18, 2016. FEMA-4270-DR. On May 24, 2016, the President determined that certain areas in Montana are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of a severe winter storm which began on April 15, 2016. FEMA-4271-DR. Accordingly, taxpayers in the areas may deduct the losses on their 2016 or
2015 federal income tax returns. See I.R.C. § 165(i).

**HOBBY LOSSES.** The taxpayer was a medical doctor who formed two limited liability companies with the taxpayer owning 75 percent of the first LLC. The first LLC purchased an airplane and the second LLC operated the airplane. The taxpayer was the sole pilot and user of the airplane which was used to transport the taxpayer to rural clinics and for personal use. The first LLC was taxed as a disregarded entity and was solely owned by the second LLC. The taxpayer elected to treat both LLCs as one activity for federal tax purposes. The taxpayer leased the airplane from the first LLC and the first LLC entered into a rental agreement with the second LLC. The airplane was also rented by the professional medical company in which the taxpayer practiced. The IRS disallowed deductions for losses from the airplane rental activity as not engaged in with the intent to make a profit. The court held that the airplane activity was not entered into with the intent to make a profit because the flights in the tax year were either for training of the taxpayer or maintenance. Steinberger v. Comm’r, T.C. Memo. 2016-104.

**INCOME.** This letter ruling discussed three situations: in situation one, an employer provided all employees, regardless of enrollment in other comprehensive health coverage, with certain benefits under a wellness program at no cost to the employees. In particular, the wellness program provided health screening and other health benefits such that the program generally qualified as an accident and health plan under I.R.C. § 106. In addition to those benefits, employees who participated in the program could earn cash rewards of varying amounts or benefits that did not qualify as I.R.C. § 213(d) medical expenses, such as gym membership fees. In situation two, an employer provided all employees, regardless of enrollment in other comprehensive health coverage, with certain benefits under a wellness program. Employees electing to participate in the wellness program paid a required employee contribution by salary reduction through a I.R.C. § 125 cafeteria plan. The wellness program provided health screening and other health benefits such that the program generally qualified as an accident and health plan under I.R.C. § 106. In addition to those benefits, employees who participated in the program could earn cash rewards of varying amounts or benefits that do not qualify as I.R.C. § 213(d) medical expenses, such as gym membership fees. In situation three, the same facts apply as in situation two, except that one of the benefits available under the wellness program included a reimbursement of all or a portion of the required employee contribution for the wellness plan that the employee made through salary reduction. In a Chief Counsel advice letter, the IRS ruled that, in situations one, two and three, the coverage provided by the wellness program is excluded under I.R.C. § 106(a) as coverage under an accident and health program. The health screenings and other medical care as defined under I.R.C. § 213(d) provided to employees by the program are excluded from the employees’ income under I.R.C. § 105(b). If an employee earns a cash reward under the program, the amount of the cash reward is included in the employee’s gross income under I.R.C. § 61 and is a payment of wages subject to employment taxes under I.R.C. §§ 3121(a), 3306(b), and 3401(a). In addition, in situation three, the fact that the payment to employees of reimbursements for all or a portion of the premiums paid by salary reduction is made through a wellness plan does not distinguish this arrangement from the arrangement addressed in Rev. Rul. 2002-3, 2002-1 C.B. 316. Accordingly, the exclusions under I.R.C. §§ 106(a) and 105(b) do not apply to amounts paid to employees as reimbursements of a portion of the premium for the wellness program that is excluded from gross income under I.R.C. § 106(a) (including salary reduction amounts pursuant to a cafeteria plan under I.R.C. § 125 that are applied to pay for such coverage). Accordingly, the reimbursement amounts are included in the employee’s gross income under I.R.C. § 61 and are payments of wages subject to employment taxes under I.R.C. §§ 3121(a), 3306(b), and 3401(a). CCA 201622031, April 14, 2016.

The taxpayer operated a medical supply business on the cash method of accounting. Prior to 2005, the taxpayer received Medicaid reimbursement checks from a health insurer and the total was reported as income by the taxpayer. A dispute arose between the parties which ended up with the taxpayer receiving, in 2010, payments from the insurer which were returns of the amount repaid in 2005. The taxpayer did not include these payments in taxable income because the taxpayer considered these payments as repayment of taxed income amounts. I.R.C. § 1341(a) provides a form of relief for a taxpayer on the cash method of accounting, allowing an adjustment to taxes owed in the year of the repayment to reflect taxes already paid. That provision applies if: (1) a taxpayer includes an amount in income for a prior tax year that the taxpayer repays in a later tax year and (2) the taxpayer is entitled to a deduction for the repayment for that later year. The court held that I.R.C. § 1341 would have allowed the taxpayer to adjust the taxes for the year of the taxpayer’s repayments to the insurer, if the taxpayer were entitled to a deduction in that tax year under another Code provision. However, none of the repayments were made in 2010, and in 2010 the taxpayer received payments that had to be included in taxable income, whether or not the taxpayer’s repayments were deducted in prior tax years. Udeobong v. Comm’r, T.C. Memo. 2016-109.

**INSTALLMENT REPORTING.** The taxpayer developed marketed, sold, and managed timeshares and related products. The taxpayer sold timeshare interests for a fixed purchase price that was financed with a loan provided by the taxpayer with payments due on a monthly basis. The taxpayer recognized income associated with its financed timeshare sales using the installment method under I.R.C. § 453(l)(2)(B). In accordance with I.R.C. § 453(l)(3), the taxpayer increased its federal income tax liability each year a payment is received on the installment obligation (other than the year of sale) by an amount of calculated interest. The amount of the calculated interest is determined based on the amount of tax due for the year that is attributable to the payments on the installment obligation received during the year from the date of sale to the date of each payment received, by using the applicable Federal rate (AFR) under I.R.C. § 1274 in effect at the
time of the sale. The taxpayer requested a ruling that in computing interest under I.R.C. § 453(l)(3), the taxpayer may use an AFR determined separately for each payment due under the installment obligation, based on the time period between the date of sale and the date of each payment. I.R.C. § 453(l)(3)(A) requires that a taxpayer increase its tax liability for a year in which an installment payment is received by a fraction, the numerator of which is the amount of the payment of qualified stated interest: (i) the number of complete years from the issue date until the payment is made; multiplied by (ii) a fraction, the numerator of which is the amount of the payment and the denominator of which is the debt instrument’s stated redemption price at maturity. The IRS ruled that, in determining the AFR to be used under I.R.C. § 453(l)(3)(B)(i) (III) to determine the amount of calculated interest for any taxable year, the seller must first determine the term of the installment obligation between the buyer and the seller. The IRS ruled that the obligation between the buyer and seller is an installment obligation under Treas. Reg. § 1.1273-1(e)(3) states that the weighted average maturity of a debt instrument is the sum of the following amounts determined for each payment under the instrument (other than a payment of qualified stated interest): (i) the number of complete years from the issue date until the payment is made; multiplied by (ii) a fraction, the numerator of which is the amount of the payment and the denominator of which is the debt instrument’s stated redemption price at maturity. The IRS ruled that, in determining the AFR to be used under I.R.C. § 453(l)(3)(B)(i) (III) to determine the amount of calculated interest for any taxable year, the seller must first determine the term of the installment obligation between the buyer and the seller. The IRS ruled that the obligation between the buyer and seller is an installment obligation under Treas. Reg. § 1.1273-1(e)(1) because the obligation provides for partial principal payments before maturity. As a result, the weighted average maturity of such obligation must be determined under Treas. Reg. § 1.1273-1(e)(3). The AFR to be used under I.R.C. § 453(l)(3)(B)(i)(III) to calculate the amount of interest for any taxable year is determined under I.R.C. § 1274(d)(1) by treating such weighted average maturity as the term of the installment obligation. Ltr. Rul. 201622007, Feb. 22, 2016.

PARTNERSHIPS

ELECTION TO ADJUST BASIS. The taxpayer was formed as a limited liability company and was classified as a partnership for federal tax purposes. In the tax year, interests in the taxpayer were redeemed but the taxpayer inadvertently failed to timely file an I.R.C. § 754 election for that tax year. The IRS granted an extension of time to file an amended return with the election. Ltr. Rul. 201622010, Feb. 18, 2016.

ENTITY CLASSIFICATION. The taxpayer was a foreign 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. Ltr. Rul. 201621001, Feb. 11, 2016.

PASSIVE ACTIVITY LOSSES. The taxpayers were husband and wife and owned three rental properties. The husband was employed full time as an airline pilot and the wife was employed part time, less than 200 hours per year, as a ski instructor. The wife personally oversaw all rental activities and management of the individual properties which were all located on the same parcel of land. The wife maintained activity logs which showed the wife spending 1,002 hours in 2008, 1,227 hours in 2009, 834 hours in 2010 and 863 hours in 2011 on the rental activities. The court held that the IRS conceded that the wife materially participated in the rental activities by failing to argue the issue. Under I.R.C. § 469(c)(7)(B), a taxpayer meets the requirements if he or she establishes the following:

“(i) more than one-half of the personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and

“(ii) such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates.

“In the case of a joint return, the requirements of the preceding sentence are satisfied if and only if either spouse separately satisfies such requirements.”

The court held that the rental activity was not a passive activity for any of the four tax years. Moon v. Comm’r, T.C. Summary Op. 2016-23.

PROFESSIONAL EMPLOYER ORGANIZATIONS. The Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014, enacted as part of The Tax Increase Prevention Act of 2014 (Pub. L. 113-295), added new I.R.C. §§ 3511 and 7705 relating to the federal employment tax consequences and certification requirements, respectively, of a certified professional employer organization (CPEO). The ABLE Act requires the establishment of a voluntary program for persons to apply to become certified as a CPEO. Temporary regulations under section 7705 (TD 9768) describe the certification requirements necessary for a person to become and remain a CPEO. The IRS has issued a revenue procedure which sets forth the detailed procedures for applying to be certified as a CPEO. A future revenue procedure will address requirements for a CPEO to remain certified and the procedures relating to suspension and revocation of CPEO certification. Rev. Proc. 2016-33, I.R.B. 2016-25.

RETURNS. The IRS has reduced from $400 to $275 the user fee for Form 1023–EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, effective July 1, 2016. Rev. Proc. 2016-32, 2016-1 C.B. 1019.

SELF-EMPLOYMENT TAX. The taxpayer worked as an independent contractor selling cosmetics, earning commissions from sales by sales representatives working under the taxpayer. The taxpayer participated in two post retirement programs. Both programs determined the payments by the amount of average commission income earned by the taxpayer in the retirement year. The programs provided that they were non-qualified deferred compensation arrangements for purposes of the federal tax laws because the participants were not employees. The programs also required the taxpayer to sign a non-competition agreement. The taxpayer formed a limited partnership and attempted to assign the pre-retirement commissions and post-retirement payments to
the partnership but the company refused to allow the assignments. The taxpayer argued that the retirement payments were payments for the sale of the taxpayer’s business with the company; however, the court noted that the company did not attempt to enforce the non-competition agreement when the taxpayer joined a competitor within two years of retirement. Therefore, the court held that the post-retirement payments were subject to self-employment tax because the payments were made under a non-qualified deferred compensation plan based on the taxpayer’s service with the company. Peterson v. Comm’r, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,289 (11th Cir. 2016), aff’d, T.C. Memo. 2013-271.

SMALL BUSINESS TAX CREDIT. The small business health care tax credit benefits employers who (1) offer coverage through the small business health options program, also known as the SHOP marketplace; (2) have fewer than 25 full-time equivalent employees; (3) pay an average wage of less than $50,000 a year; and (4) pay at least half of employee health insurance premiums. The maximum credit is 50 percent of premiums paid for small business employers and 35 percent of premiums paid for small tax-exempt employers. To be eligible for the credit, an employer must pay premiums on behalf of employees enrolled in a qualified health plan offered through a Small Business Health Options Program Marketplace, or qualify for an exception to this requirement. The credit is available to eligible employers for two consecutive taxable years beginning in 2014 or later. Employers may be able to amend prior year tax returns to claim the credit for tax years 2010 through 2013 in addition to claiming this credit for those two consecutive years. Employers can carry the credit back or forward to other tax years if they do not owe tax during the year. Employers may get both a credit and a deduction for employee premium payments. Since the amount of health insurance premium payments will be more than the total credit, if an employer is eligible, an employer can still claim a business expense deduction for the premiums in excess of the credit. Health Care Tax Tip 2016-54.

LANDLORD AND TENANT

TERMINATION. The defendants had lived on an acreage owned by the plaintiffs for 24 years. The plaintiffs sent the defendants a 30-day notice of termination of their possessory interest and occupancy of said residence and premises under Iowa Code § 562A.34(3). When the defendants did not leave, the plaintiffs filed an action for forcible entry and detainer to evict the defendants. The defendants argued that their occupancy of the property was in the nature of a farm tenancy and the termination notice was subject to the requirements of Iowa Code §§ 562.5 and 562.7 and had to be made prior to September 1, with termination to take place the following March 1. The only farming activity claimed by the defendants was the pasturing of a 38 year old horse on the property. The court noted that, under prior law, the termination requirements were required only for “tenants occupying and cultivating farms.” See Iowa Code § 562.5 (2005). However, the current statute required only that the tenant have a farm tenancy, defined as “a leasehold interest in land held by a person who produces crops or provides for the care and feeding of livestock on the land, including by grazing or supplying feed to the livestock.” Iowa Code § 562.1A(2) (2015). Because the defendants were grazing one horse, the court held that the defendants occupied the property under a farm tenancy and the termination notice was not valid. The case is currently designated as not for publication. Porter v. Harden, 2016 Iowa App. LEXIS 478 (Iowa Ct. App. 2016).

PROPERTY

TRESPASS. The plaintiff and defendant owned neighboring properties. The plaintiff’s property neighboring the defendants was primarily natural woodland which had not been disturbed since the plaintiff’s ancestors acquired the property. The defendant hired a contractor to remove trees and brush along the boundary between the properties but the contractor cleared an area as much as 50 feet on to the plaintiff’s property and left piles of brush and stumps onto the plaintiff’s side of the boundary. The work significantly altered the character of the land and allowed invasive weeds and erosion where none existed before the work. The defendant admitted seeing the work and instructing the contractor to remove the piles of debris. The plaintiff sued for common law trespass and statutory remedies under Ohio Stat. § 901.51, asking for treble damages and punitive damages. The defendant sought summary judgment dismissing the treble and punitive damages, arguing that no factual dispute existed. The court denied summary judgment because the determination as to whether the defendant acted recklessly or with a conscious disregard for the rights and safety of other persons involved issues of fact to be resolved by trial. Erickson v. Benchmore Farms, Inc., 2016 U.S. Dist. LEXIS 69514 (N.D. Ohio 2016).

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
October 11-12, 2016 - Atrium Hotel, Hutchinson, KS

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FARM ESTATE & BUSINESS PLANNING

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