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Cases, Regulations and Statutes

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the ownership of each individual only to the extent their stock ownership is identical with respect to each corporation after the transfer.[7]

As might be expected, in determining whether the conditions for "control" exist, special constructive ownership of stock rules are applicable.[8] That is to say, an individual is deemed to be (1) the owner of the stock owned by the taxpayer's spouse; (2) the stock owned by minor children (3) stock owned by adult children and grandchildren if the taxpayer owns more than 50 percent of the value and voting power of the stock in the corporation; (4) stock owned by adult children and children if the taxpayer owns more than 50 percent of the value and voting power of the stock in the corporation; (5) stock owned by parents or grandparents if the taxpayer is 21 years of age or older and owns more than 50 percent of the value or voting power of the corporation's power; (6) stock held by a trust, estate, partnership or corporation in which the taxpayer owns a five percent or greater interest; and (7) stock on which the taxpayer holds an option to purchase or acquire.

If a husband and wife own and operate businesses which are separate, one of the spouses is not considered to own the other's stock if neither spouse directly owns stock in the corporation in which the other spouse owns stock; neither spouse is an employee or director in and does not take part in the management of the other's corporation, not more than 50 percent of the gross income of that corporation is from rents, royalties, dividends, interest and annuities and the other spouse's right to dispose of stock in that corporation is not substantially restricted or limited in favor of the other spouse or their minor children.[9] The charge based on facts as viewed by IRS may be avoided if the transferee corporation is in a position to establish that application of the lower graduated corporate tax rates or accumulated earnings credit is not a main purpose behind the split-up.

In conclusion

Remember, the scrutiny by IRS may be broader than Section 1551 and, where appropriate, be focused on I.R.C. § 269 or I.R.C. § 482, also. It essentially means that planned transactions that are viewed unfavorably by the Internal Revenue Service, by bearing the earmarks of transactions that lie outside the lines of propriety, may be difficult to defend.

ENDNOTES

1 See I.R.C. §§ 368, 355.

2 I.R.C. § 1551(a), (b).

3 Split-ups resemble, functionally, a complete liquidation.

4 See, e.g. I.R.C. § 269 (limiting corporate acquisitions or control of corporations).

5 I.R.C. § 1551(a).

6 I.R.C. § 1551(a); Treas. Reg. §1.1551-1(a).

7 I.R.C. § 1551(b); Treas. Reg. § 1.1551-1(e).

8 I.R.C. § 1551; Treas. Reg. § 1.1551-1(e)(2).

9 I.R.C. § 1563(e).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

HORSES. The plaintiff was a minor child who was bitten by a horse owned by the defendant at the defendant's stables. The plaintiff was at the stables with the plaintiff's mother who was teaching other children to ride horses owned by the children or the stable. The plaintiff's sister was cleaning the stall of a horse belonging to the plaintiff's mother next to the stall of the horse which bit the plaintiff. The plaintiff was bitten while walking past the horses stall but was not interacting with the horse before the accident. The plaintiff sued for negligence and the defendant argued that the New Jersey Equestrian Liabilities Act , N.J. Stat. Ann. §§ 5:15-1 to 12, provided personal immunity from the suit. The issue was whether the plaintiff was a participant in an equine activity. The plaintiff argued that that plaintiff was not involved in the care, riding or observation of equine activities but was merely there because the mother and sister were involved in such activities. The statute, N.J. Stat. Ann. § 5:15-2, defines participant to include "any person, whether an amateur or professional, engaging in an equine animal activity, whether or not a fee is paid to engage in the equine animal activity or, if a minor, the natural guardian, or trainer of that person standing in *loco parentis*, and shall include anyone accompanying the participant, or any person coming onto the property of the provider of equine animal activities or equestrian area whether or not an invitee or person pays consideration." The trial court ruled that the statute included the plaintiff as a participant in an equine activity because the plaintiff accompanied his parent and sister while they clearly engaged in equine activities. The appellate court affirmed. **Kirkpatrick v. Hidden View Farm, 2017 N.J. Super. LEXIS 4 (N.J. Super. Ct. 2017)**.

BANKRUPTCY

GENERAL

DISCHARGE. The debtor was a crop farmer who applied for a line of credit with an agricultural supplier. The debtor understated the outstanding liabilities on the loan application to show a positive net worth at a time when the debtor had a negative net worth. The loan was approved and the debtor was able to purchase farm supplies up to the loan limit. The debtor also purchased additional farm supplies under an open account with the same supplier which was granted when the debtor made a second application for an additional line of credit for the following year's crops. The second line of credit loan was eventually denied after the creditor requested a full accounting of the debtor's financial condition, but by that time the debtor had made significant purchases under the open account. The debtor defaulted on the loans after a poor crop year and filed for Chapter 7 bankruptcy. The supplier sought to have both loans declared non-dischargeable under Section 523(a)(2)(B) for filing a false application for credit with the intent to deceive the creditor. The debtor claimed that the debtor did not intend to deceive the creditor because the debtor misunderstood the application's request for outstanding debts to mean only the total annual debt payments and not the total debts owed. The court found that the debtor had much experience in obtaining loans for agricultural supplies and found that the debtor's explanation for the discrepancy was not credible and that the loan application was clear to any experienced debtor that the information requested was total liabilities. The court also found that the debtor knew that a loan application would likely be rejected if the debtor reported a negative net worth; thus, the debtor had significant motivation to show a positive net worth on the application. Therefore, the court held that the line of credit loan was nondischargeable under Section 523(a)(2)(B). The open account debt was more problematic because there was no written application submitted to the supplier and there was no evidence presented that the debtor did or said anything to deceive the supplier. Therefore, the court held that the open account debt remained dischargable. ***In re* French, 2016 Bankr. LEXIS 4125 (Bankr. W.D. Ky. 2016)**.

CHAPTER 12

DISCHARGE. The debtor owned and operated a family farming operation through two general partnerships. The partnerships had each filed for Chapter 11 bankruptcy and received discharges. In those cases, land and several pieces of farm equipment were sold, resulting in significant tax liability to the debtor. The debtor filed for Chapter 12 and a bank credit challenged the debtor's eligibility for Chapter 12, arguing that less than half of the debtor's income in prior years came from farming. The creditor argued that the income from the partnerships, including the gains from the sale of the partnerships' land and equipment were not gross income from farming as to the debtor because the partnerships were separate entities. The court held that the pass through income from the partnerships, including the gain from the sale of the land and equipment was gross income from farming as to the debtor, making the debtor eligible for Chapter 12. The creditor also challenged the debtor's eligibility for Chapter 12 on the grounds that the debtor's debts exceeded the statutory debt limit of Section 101(18)(A). The creditor argued that the total debt included claims listed on the bankruptcy schedules by the debtor, although some of the claims were not supported by any proof of claim; the proofs of claims filed by creditors; and the federal tax liability from the partnerships' sales of land and equipment. The court held that the determination of total debt was made as of the date of the petition, prior to the filing of the proofs of claim. The court held that the total debt did not include the post-petition filed proofs of claim because the debtor's schedules of debt were not shown to be fraudulent or filed in bad faith; therefore, the amount of scheduled debt controlled for purposes of Section 101 eligibility for Chapter 12. The court included the federal tax debt but that was insufficient to raise the amount of debt above the statutory limit. ***In re* Perkins, 2016 Bankr. LEXIS 4440 (W.D. Ky. 2016)**.

FEDERAL FARM PROGRAMS

NO ITEMS.

FEDERAL ESTATE AND GIFT TAXATION

CLOSING LETTERS. The IRS has issued guidance on a method available to confirm the closing of an examination of the estate tax return Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return,* such that an account transcript issued by the IRS can substitute for an estate tax closing letter (Letter 627). Estates and their authorized representatives may request an account transcript by filing Form 4506-T, Request for Transcript of Tax Return. Currently, Form 4506-T can be filed with the IRS via mail or facsimile (per the instructions on the form). For estate tax returns filed on or after June 1, 2015, the IRS changed its policy and now will issue an estate tax closing letter only at the request of an estate, which request is to be made at least four months after the filing of the estate tax return. **Notice 2017-12, I.R.B. 2017-4**.

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. 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 IRS granted the estate an extension of time to file Form 706 with the election. **Ltr. Rul. 201653010, Sept. 19, 2016; Ltr. Rul. 201653011, Sept. 19, 2016; Ltr. Rul. 201653012, Sept. 19, 2016; Ltr. Rul. 201653014, Sept. 19, 2016; Ltr. Rul. 201653015, Sept. 19, 2016.**

FEDERAL INCOME TAXATION

COURT AWARDS AND SETTLEMENTS. The taxpayer filed a lawsuit against an employer for discrimination based on age and disability. The parties reached a settlement and the taxpayer received a cash award in exchange for dropping the suit. The settlement did not allocate any of the funds as compensation for a physical injury and the taxpayer failed to present any credible evidence that any of the funds were paid to compensate for physical injury; therefore, the court held that the settlement payment was taxable income. **McKinney v. Comm'r, T.C. Memo. 2017-6**.

DEPENDANTS. The taxpayer and girl friend lived together during 2013 with their child. The taxpayer was incarcerated from January 16, 2013 through November 6, 2013. The taxpayer provided for the support of the girl friend and child by pre-paying the rent and transferring a tax refund to the girl friend. The taxpayer also provided for payment of utilities. The girl friend had no income during 2013 but the taxpayer had income from work performed after release from jail. The couple also received assistance from the Supplemental Nutrition Assistance Program. There was some evidence that the girl friend's parents provided some financial support and that they claimed the girl friend and child as dependents. The taxpayer filed a return for 2013 under the head of household status and claimed the girl friend and child as dependents, claimed the child tax credit and the earned income tax credit. The court held that the taxpayer properly claimed the child as a dependent and claimed the child tax credit and the earned income tax credit based on the child as a qualifying child. However, the court held that the girl friend was not an eligible dependent for the exemption because the taxpayer failed to prove that the taxpayer provided more than half of the support for the girl friend. **Binns v. Comm'r, T.C. Summary Op. 2016-90**.

EMPLOYEE BENEFITS. The IRS has issued a notice which provides that: (1) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2017 for which the vehicle cents-per-mile valuation rule provided under Treas. Reg. § 1.61-21(e) may be applicable is $15,900 for a passenger automobile and $17,800 for a truck or van; and (2) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2017 for which the fleet-average valuation rule provided under Treas. Reg. § 1.61-21(d) may be applicable is $21,100 for a passenger automobile and $23,300 for a truck or van. If an employer provides an employee with a vehicle that is available to the employee for personal use, the value of the personal use must generally be included in the employee's income and wages. I.R.C. § 61; Treas. Reg. § 1.61-21. If the employer meets certain requirements, the employer may elect to determine the value of the personal use using certain special valuation rules, including the vehicle cents-per-mile rule and the fleet-average value rule set forth in Treas. Reg. § 1.61-21(d) and (e), respectively. Both the vehicle cents-per-mile rule and the fleet-average value rule provide that those rules may not be used to value personal use of vehicles that have fair market values exceeding specified maximum vehicle values on the first day the vehicles are made available to employees. These maximum vehicle values are indexed for inflation and must be adjusted annually by referring to the Consumer Price Index. In years prior to 2013, these maximum vehicle values and guidance on their calculation and application were provided by Revenue Procedure. Guidance on the calculation and application of these maximum vehicle values is set forth in Treas. Reg. § 1.61-21(d) and (e) and does not change from year-to-year. Accordingly, beginning in 2013, only the maximum vehicle values as adjusted for inflation will be published annually in a shorter notice. **Notice 2017-1, 2017-1 C.B. 368**.

GAMBLING INCOME AND LOSSES. The IRS has issued proposed regulations under I.R.C. § 3402(q) with respect to withholding on certain payments of gambling winnings from horse races, dog races, and jai alai and on certain other payments of gambling winnings. The proposed regulations affect both payers and payees of the gambling winnings subject to withholding under I.R.C. § 3402(q). **REG-123841-16, 81 Fed. Reg. 96406 (Dec. 30, 2016)**.

HOBBY LOSSES. The taxpayer was president of a group of real estate development companies. The taxpayer's income came primarily from trusts which owned the real estate companies. The taxpayer worked an average of 10 hours per week for the companies. The taxpayer owned a horse operation involved in the breeding, training, showing and selling of quarter horses. The court held that the horse operation was not operated with the intent to make a profit because (1) although the taxpayer presented business plan for the operation, the plan was prepared only after the taxpayer was audited and the taxpayer presented no evidence that the plan was ever used; (2) although the taxpayer demonstrated sufficient expertise in the breeding, training and showing of horses, the taxpayer did not have any expertise in the business of horses and did not engage any experts as to the profitable business of horses; (3) the taxpayer spent considerable time on the horse operation but most of that time was for personal enjoyment and recreation; (4) the taxpayer did not present information of sufficient appreciation of the value of the operation's assets to offset substantial annual losses; (5) the annual losses substantially exceeded the occasional profits; and (6) the losses offset substantial income from other sources. **Hylton v. Comm'r, T.C. Memo. 2016-234**.

INFORMATION RETURNS. The IRS has issued a notice which provides guidance to implement changes made by the Protecting Americans from Tax Hikes Act of 2015 (Pub. L. No. 114-113) (PATH Act) regarding the *de minimis* error safe harbor from information reporting penalties under I.R.C. §§ 6721 and 6722 and the payee election to have the safe harbor not apply. These provisions are effective for information returns required to be filed and payee statements required to be furnished after December 31, 2016. Section 202 of the PATH Act amended I.R.C. §§ 6721 and 6722 to establish a safe harbor from penalties for failure to file correct information returns and failure to furnish correct payee statements for certain *de minimis* errors. The penalties apply when a person is required to file an information return, or furnish a payee statement, but the person fails to do so on or before the prescribed date, fails to include all of the information required to be shown, or includes incorrect information. Under the safe harbor, an error on an information return or payee statement is not required to be corrected, and no penalty is imposed, if the error relates to an incorrect dollar amount and the error differs from the correct amount by no more than $100 ($25 in the case of an error with respect to an amount of tax withheld). I.R.C. § 6721(c)(3)(B) provides that the safe harbor does not apply with respect to *any* incorrect dollar amount to the extent that such an error on an information return relates to an amount with respect to which an election is made under I.R.C. § 6722(c)(3)(B). Accordingly, if an election is in effect, a payor may be subject to penalties for an incorrect dollar amount appearing on an information return or payee statement even if the incorrect amount is a *de minimis* error. **Notice 2017-9, I.R.B. 2017-4**.

Effective last summer, Treasury Directive 9730 removed the automatic extension of time to file information returns on forms in the W-2 series (except Form W-2G) by the Jan. 31 due date. The directive replaces the 30-day automatic extension with a single, non-automatic, written extension request. The additional 30-day extension is no longer available. Requests for an extension of time to file Form W-2 must be submitted on paper Form 8809 and postmarked by Jan. 31, 2017. Requests must include an explanation for the request. Approvals are not automatic: Requests will be evaluated on a case by case basis. Correspondence will be issued if the Form 8809 is incomplete or denied. IRS will not issue approval notifications. **See T.D. 9730, 80 Fed. Reg. 48433 (Aug. 13, 2015)**.

IRS PUBLICATIONS. The IRS has published a revised Publication 15, (Circular E), *Employer's Tax Guide* (rev. Jan. 2017).

LETTER RULINGS. The IRS has issued its annual list of procedures for issuing letter rulings. The prior procedures were modified (1) to reflect a new address to send the duplicate copy of the Form 3115 for an automatic change in method of accounting, (2) to provide new addresses for exempt organizations to send the Form 3115 and (3) to provide that exempt organizations filing a Form 3115 for a nonautomatic change in method of accounting are subject to the user fees in Appendix A of the revenue procedure. Appendix A contains a schedule of user fees for requests. **Rev. Proc. 2017-1, 2017-1 C.B. 1**.

The IRS has issued its annual revision of the general procedures relating to the issuance of technical advice to a director or an appeals area director by the various offices of the Associate Chief Counsel. The new procedures reflect that in transactions involving multiple taxpayers, the field office may request a single TAM only if each taxpayer agrees to participate in the process by furnishing a Form 8821, *Tax Information Authorization*, or by other written consent. The procedures also explain the rights a taxpayer has when a field office requests technical advice. **Rev. Proc. 2017-2, 2017-1 C.B. 106**.

The IRS has issued its annual list of tax issues for which the IRS will not give advance rulings or determination letters. **Rev. Proc. 2017-3, 2017-1 C.B. 130**.

The IRS has issued its annual list of procedures for issuing letter rulings issued by the Commissioner, Tax Exempt and Government Entities Division, Employee Plans and Agreements Office. Note: *Rev. Proc. 2017-4* supersedes *Rev. Proc. 2016-6* and *Rev. Proc. 2016-8,* as well as *Rev. Proc. 2016-4*. **Rev. Proc. 2017-4, 2017-1 C.B. 146**.

The IRS has released an updated revenue procedure which explains when and how the IRS issues technical advice memoranda in the employee plans areas (including actuarial matters) and exempt organizations areas. **Rev. Proc. 2017-5, 2017-1 C.B. 230.**

PENSION PLANS. For plans beginning in January 2017 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 3.11 percent. The 30-year Treasury weighted average is 2.90 percent, and the 90 percent to 105 percent permissible range is 2.61 percent to 3.05 percent. The 24-month average corporate bond segment rates for January 2017, without adjustment by the 25-year average segment rates are: 1.57 percent for the first segment; 3.77 percent for the second segment; and 4.73 percent for the third segment. The 24-month average corporate bond segment rates for January 2017, taking into account the 25-year average segment rates, are: 4.16 percent for the first segment; 5.72 percent for the second segment; and 6.48 percent for the third segment. **Notice 2017-13, I.R.B. 2017-6**.

RETURNS. *Protecting Americans from Tax Hikes (PATH) Act*. Enacted in December 2015, the new law requires employers to file their copies of Forms W-2 by January 31 each year. Employers normally had until the end of February, if filing on paper, or the end of March, if filing electronically, to send in copies of these forms. These forms also go to the Social Security Administration. The new deadline also applies to certain Forms 1099. Those reporting non-employee compensation such as payments to independent contractors submitted to the IRS are due January 31. There is no change to the January 31 deadline for employers providing copies of these forms to their employees. The new January 31 deadline will help the IRS to spot errors on returns filed by taxpayers. *Some refunds delayed*. Certain taxpayers will get their refunds a bit later. By law, the IRS must hold refunds for any tax return claiming either the Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC) until February 15. This means the whole refund, not just the part related to the EITC or ACTC. **IR-2016-143**.

S CORPORATIONS

ASSIGNMENT OF INCOME. The taxpayer was a financial consultant who formed an S corporation to operate the taxpayer's consulting business. Prior to forming the corporation, the taxpayer personally entered into an independent contractor relationship with a financial services company. After the S corporation was formed, the taxpayer entered into another personal independent contractor relationship with a second financial services company. The S corporation was not a party to either contract and the commissions paid under the contracts was paid directly to the taxpayer. The taxpayer entered into an employee contract with the S corporation under which the taxpayer was paid an annual salary but the agreement did not require the taxpayer to remit to the corporation any commissions received by the taxpayer. In three tax years, the taxpayer reported a portion of the commissions as wage income from the corporation and most of the commissions were claimed on Schedule E as non-passive income. The non-passive income equaled the corporation's Form 1120S reported revenues less expenses. Neither of the independent contractor contracts listed the corporation as the payee. The court cited case precedent for the doctrine that income is to be taxed to the person or entity that controlled the income. For this purpose, two elements must be found in order for the corporation to have control: (1) the individual providing the services must be an employee of the corporation whom the corporation can direct and control in a meaningful sense, and (2) there must exist between the corporation and the person or entity using the services a contract or similar indicium recognizing the corporation's controlling position. In this case, the court held that the taxpayer was an employee of the corporation but the second element did not exist because there was no agreement between the corporation and the taxpayer for the first independent contractor relationship because the corporation did not exist until after the agreement was signed. The second agreement also demonstrated that the corporation did not have control over the income produced under the agreement because the second agreement did not mention the corporation and the corporation was not a party to the agreement. Thus, the court held that all the commission income was self-employment income taxable to the taxpayer. **Fleischer v. Comm'r, T.C. Memo. 2016-238**.

HOBBY LOSSES. The taxpayer and spouse were shareholders in an S corporation formed by the spouse. The spouse had been employed as an employee trainer for a chemical company. When that employment was terminated, the spouse formed the S corporation to operate an employee training service as an independent contractor. Just prior to the tax year involved, the corporation lost its only client, the spouse's previous employer, and had no income. The corporation had a tax loss for the tax year and the taxpayer claimed a portion of the loss on the taxpayer's personal return. The court held that the pass through loss was not deductible because the training operation was not operated with the intent to make a profit because (1) the corporation did not maintain complete and accurate records of the activity and (2) the activity never produced any profits. **Moyer v. Comm'r, T.C. Memo. 2016-236**.

INSURANCE

COVERED VEHICLES. The plaintiff's truck struck a farm tractor while the owner was moving the tractor on a highway. The parties reached a settlement for the owner's liability insurance policy limit; however, the plaintiff sought recovery from the defendant insurance company under the plaintiff's automobile uninsured motorist coverage. The insurance company denied coverage because the tractor was not a "motor vehicle" under the policy. The plaintiff sued for breach of contract. The trial court agreed with the defendant and ruled that the insurance company did not breach the insurance policy. The appellate court reversed. The appellate court found that the policy did not provide a definition of "motor vehicle;" therefore, the court relied on the dictionary definition of motor vehicle to be a "vehicle on wheels, having its own motor and not running on rails or tracks, for use on streets or highways." The court found that the tractor met this definition physically and noted that the tractor instruction manual included information driving the tractor on a highway. The court also noted that the accident occurred while the tractor was moving on a highway. The defendant argued that the definition of "motor vehicle" in the Colorado uninsured motorist statute should be applied. See Colo. Rev. Stats. § 42-1-102(58) "any self-propelled vehicle that is designed primarily for travel on the public highways and that is generally and commonly used to transport persons and property over the public highways." The defendant argued that the statute limits coverage to vehicles designed primarily for highway travel. The court rejected this argument because the policy did not reference the state statute. **Smith v. State Farm Mutual Auto. Ins. Co., 2017 Colo. App. LEXIS 11 (Colo. Ct. App. 2017)**.

LANDLORD AND TENANT

AGRICULTURAL LEASE. The plaintiff was a charitable organization which operated an arboretum on rural land owned by the defendant. Under a Memorandum of Understanding, the parties agreed to set up a series of 5-year leases totaling 99 years providing for the use of the land as an arboretum. The parties renewed the leases as intended for several years but the defendant issued a notice of termination. When the plaintiff refused to vacate, the defendant filed a forcible entry and detainer action in small claims court while seeking an injunction in the trial court. The defendant argued that the Iowa Constitution, Article I, Section 24, prohibited the 99-year lease of agricultural land. The constitution allowed only a maximum of 20-year leases of agricultural land. The plaintiff argued that, because the land was used as an arboretum, the constitutional provision did not apply. The appellate court reviewed several cases in Iowa and other states with similar provisions and held that a lease of agricultural land for non-agricultural purposes did not violate the constitutional lease period limitation. Thus, the focus was on the use of the land subject to the lease and not the nature of the land as suitable for agriculture. Because the Memorandum of Understanding and 5-year leases provided solely for use of the leased land as an arboretum, the 99-year lease did not violate the Iowa Constitution. **Iowa Arboretum, Inc. v. Iowa 4-H Foundation, 886 N.W.2d 695 (2016)**.

ORAL LEASE. The debtor leased farm land from a family trust set up by the debtor's parents. The debtor's mother was the trustee. The debtor and a brother farmed the land under an oral lease for several years until the lease was terminated by the trustee. The debtor had filed Chapter 12 bankruptcy and the trustee filed a claim for unpaid rent for the last year of the lease. Both parties acknowledged that an oral lease existed but disagreed on some of the terms. The debtor filed a counterclaim for reimbursed expenses related to improvements and repairs made to the property and repairs of equipment. The trustee argued that the reimbursement was not required under the lease and was time-barred by the 5-year statute of limitations. The court held that a time-barred claim under a lease is allowed where the claim is made as a counter-claim to defeat or diminish a recovery asserted by another party. The debtor presented several years of receipts and prior reimbursements of costs associated with the repair of equipment and property. The court held that the debtor produced sufficient uncontroverted evidence of the existence of an agreement that the trustee would reimburse the debtor for the repairs and improvements. Thus, the court held that the proven costs offset the claim for rent. ***In re* Meyer, 2017 Bankr. LEXIS 77 (Bankr. N.D. Iowa 2016)**.

PROPERTY

BOUNDARY. The plaintiffs and defendants owned farm land adjacent to each other along a gravel road. The plaintiffs' property near the road contained the remnants of two fences, one within five feet of the road and another several feet farther into the plaintiffs' property. The difference created a disputed strip of 2.6 acres. The defendants alleged that the second fence was the true boundary under a survey performed when they purchased their property; however, the property description of the area of their property was less than the area produced if the second fence was used as the boundary. Both sides obtained new surveys supporting their locations of the true boundary. The trial court weighed the strengths of each survey and ruled that the plaintiffs' survey was more accurate, although it had some errors. The court noted that "[i]n determining boundaries, the general rule is that natural and permanent monuments are the most satisfactory evidence and control all other means of description. Artificial marks, courses, distances, and area follow in the order named, area being the weakest of all the means of description." The court found that the defendants' original survey and resulting property description relied significantly on natural objects, such as trees and posts, which no longer existed and failed to identify any permanent monuments on which to base an accurate determination of the boundary. In addition, the permanent monuments mentioned in the survey and property description resulted in a boundary on the other side of the gravel road, and the property description does not mention the gravel road which existed prior to the survey. Thus, the appellate court affirmed the trial court's choice between the dueling surveys as confirming the most indicia of the boundary. **Stalker v. Means, 2017 Ky. App. LEXIS 32 (Ky. Ct. App. 2017)**.

IN THE NEWS

EXPIRING TAX PROVISIONS. The Joint Committee on Taxation has issued a list of the tax provisions which expired on Dec. 31, 2016, including (all citations are I.R.C.):

- Credit for certain nonbusiness energy property (§ 25C(g))
- Credit for residential energy property (§ 25D) 2
- Credit for qualified fuel cell motor vehicles (§ 30B(k)(1))
- Credit for alternative fuel vehicle refueling property (§ 30C(g))
- Credit for two-wheeled plug-in electric vehicles (§ 30D(g)(3)(E)(ii))
- Second generation biofuel producer credit (§ 40(b)(6)(J))
- Income tax credits for biodiesel fuel, biodiesel used to produce a qualified mixture, and small agri-biodiesel producers (§ 40A)
- Income tax credits for renewable diesel fuel and renewable diesel used to produce a qualified mixture (§ 40A)
- Excise tax credits and outlay payments for biodiesel fuel mixtures (§§ 6426(c)(6) and 6427(e)(6)(B))
- Excise tax credits and outlay payments for renewable diesel fuel mixtures (§§ 6426(c)(6) and 6427(e)(6)(B))
- Discharge of indebtedness on principal residence excluded from gross income of individuals (§ 108(a)(1)(E))
- Premiums for mortgage insurance deductible as interest that is qualified residence interest (§ 163(h)(3))
- Three-year depreciation for race horses two years old or younger (§ 168(e)(3)(A))
- Five-year cost recovery for certain energy property (§§ 168(e)(3)(B)(vi)(I) and 48(a)(3)(A))
- Seven-year recovery period for motorsports entertainment complexes (§§ 168(i)(15) and 168(e)(3)(C)(ii))
- Accelerated depreciation for business property on an Indian reservation (§ 168(j))
- Medical expense deduction: adjusted gross income (AGI) floor for individuals age 65 and older (and their spouses) remains at 7.5 percent (§ 213(f))
- Deduction for qualified tuition and related expenses (§ 222(e))
- Special rate for qualified timber gains (§ 1201(b))

The list also includes provisions which will expire in 2017, unless renewal legislation is enacted. **Joint Committee on Taxation List of Expiring Federal Tax Provisions 2016–2026, Congress, JCX-1-17**.

TAX RETURN PREPARERS. "The IRS, state tax agencies and tax industry leaders have issued a warning to tax professionals to be alert to an email scam from cybercriminals posing as clients soliciting their services. A new variation of this phishing scheme is targeting accounting and tax preparation firms nationwide. The scheme's objective is to collect sensitive information that will allow fraudsters to prepare fraudulent tax returns. These latest phishing emails come in typically two stages. The first email is the solicitation, which asks tax professionals questions such as 'I need a preparer to file my taxes.' If the tax professional responds, the cybercriminal sends a second email. This second email typically has either an embedded web address or contains a PDF attachment that has an embedded web address. In some cases, the phishing emails may appear to come from a legitimate sender or organization (perhaps even a friend or colleague) because they also have been victimized. Fraudsters have taken over their accounts to send phishing emails. The tax professional may think they are downloading a potential client's tax information or accessing a site with the potential client's tax information. In reality, the cybercriminals are collecting the preparer's email address and password and possibly other information. The IRS urges tax professionals and tax preparation firms to consider creating internal policies or obtain security experts' recommendations on how to address unsolicited emails seeking their services." **IR-2017-03**.

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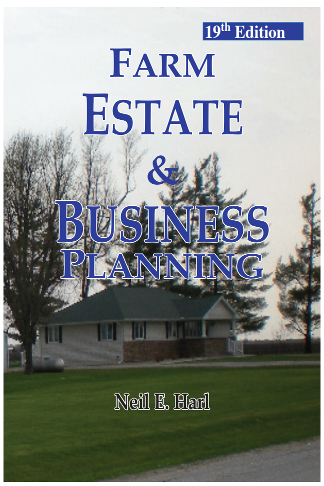
19th EDITION

FARM ESTATE & BUSINESS PLANNING



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The Agricultural Law Press is honored to publish the completely revised and updated 19th 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.

Written with minimum legal jargon and numerous examples, this book is suitable for all levels of people associated with farms and ranches, from farm and ranch families to lenders and farm managers. Some lawyers and accountants circulate the book to clients as an early step in the planning process. We invite you to begin your farm and ranch estate and business planning with this book and help save your hard-earned assets for your children.

The book is also available in digital PDF format for $25; see www.agrilawpress.com for ordering information for both the print and digital versions of the book.

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