Cases, Regulations and Statutes

Robert P. Achenbach Jr
Iowa State University

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ENDNOTES


3 Treas. Reg. § 25.2511-2(c).


7 I.R.C. § 179(d)(4).

8 I.R.C. § 179(d)(4).

9 CCA 201343021, June 17, 2013.

10 Black v. Comm'r, 765 F.2d 862 (9th Cir. 1985) (terms of trust substantially diminished survivor's right of survivorship). But see Estate of May v. Comm'r, T.C. Memo. 1978-20 (no severance where joint tenancy property transferred to trust and subject to joint power of revocation).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

AUTOMATIC STAY. The debtor had filed a fifth Chapter 12 case, 21 years after filing the first Chapter 12 case. The main creditor was the Farm Service Agency which held a mortgage on the debtor’s farm. During the fourth Chapter 12 case, the debtor’s plan was confirmed and the debtor received a discharge. However, the debtor failed to make all payments to the FSA and the FSA sought to commence foreclosure proceedings. The debtor filed the fifth case to stay the foreclosure proceedings. The debtor admitted that the taxes on the farm had not been paid and that the debtor had not purchased insurance for the property. However, the value of the farm was $246,573 with outstanding claims of $65,712 for the FSA and property taxes owed of $28,627. The FSA sought relief from the automatic stay under Section 362(d)(4)(B) for “a scheme to delay, hinder, or defraud creditors that involved . . . multiple bankruptcy filings affecting such real property.” The court found that the first three cases indicated a scheme to delay the collection of the FSA debt; however, the fourth case was successfully concluded, and although not all debts were paid, the FSA did receive a substantial payment under the plan. The court also found that the debtor had timely filed a plan and not made any attempts to delay or hinder the proceedings. Thus, the court held that relief from the automatic stay would not be granted under Section 362(d)(4)(B). The FSA also sought relief under Section 362(d)(1) for cause. The court stated that “a slim and eroding equity cushion is sufficient to establish cause” for relief from the stay. To determine the sufficiency of protection of secured estate property, the court considered the size of the equity cushion; the rate at which the cushion will be eroded; whether periodic payments are to be made to prevent or mitigate the erosion of the cushion; and, if the property is to be liquidated, the likelihood of a reasonably prompt sale. In this case, the court found that the debtor had substantial equity in the property but the debtor did not provide any proof of insurance to prevent catastrophic loss. Thus, the court granted the relief from the automatic stay to the FSA but noted that, if the debtor produced evidence of sufficient insurance on the property the stay would be reinstated unless the debtor took any actions to further unreasonably delay the case. In re Olayer, 2017 Bankr. LEXIS 4045 (Bankr. W.D. Penn. 2017).

PLAN. The debtor filed for Chapter 12 and filed a proposed plan which provided for the leasing of a field sprayer to the debtor’s nephew and using the lease payments to pay the loan payments on the sprayer. The plan also provided for an extension of two years on the loan and an increase in the interest rate by 1.5 percent. The value of the sprayer exceeded the balance on the loan and the court found that the loan would be oversecured for the life of the loan so long as the sprayer was properly maintained. The plan also provided that, if the nephew defaulted on the lease payments, the sprayer would be sold. Section 1222(b)(2) allows a Chapter 12 plan to modify a secured claim by extending the payment period, if the plan provides that the creditor will retain its lien over the property. The creditor argued, however, that the plan was not feasible under the evidence because the debtor did not provide any evidence that the nephew had sufficient income to make the lease payments. The court found that the debtor also failed to show that the debtor could make the payments if the nephew defaulted. The court held that the debtor failed to demonstrate that the plan was feasible and denied confirmation of the plan. In re Furman, 2017 Bankr. LEXIS 4306 (Bankr. D. Kan. 2017).
USE OF CASH COLLATERAL. On the same day as the filing of their Chapter 12 petition, the debtors filed a motion to use cash collateral from a crop to be harvested later in the year. The secured creditor negotiated an order for use of cash collateral which provided for a cash payment to the creditor, replacement of a lien in the proceeds to replace the lien on the crops, and a priority administrative expense status for the creditor’s lien in the case of a default. The administrative claim status priority was agreed to be subordinated only to legal fees and expenses and any trustee fees and expenses. The negotiated order was approved by the court. The debtors filed a plan but it was denied for lack of feasibility. The creditor then sought approval of an administrative claim for the original claim. The debtors objected, citing Section 1205(b) as providing only four forms of adequate protection: cash payments, additional or replacement liens, rental payments, or “other relief” except for “entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense.” However, the court held that a negotiated cash collateral agreement is in the nature of a contract and binds the parties to its terms. The court reasoned that Section 1205(b) does not specifically prohibit the grant of the administrative claim status to a lien for which cash collateral use is granted but merely states that the grant of the administrative claim status alone is insufficient adequate protection for the use of cash collateral. The court also noted that the debtors are equitably estopped from obtaining use of cash collateral through granting administrative claim status to the lien and then objecting to the use of the administrative claim status when things do not work out and the creditor seeks to assert the administrative claim status. In re Mortellite, 2017 Bankr. LEXIS 4199 (Bankr. D. N.J. 2017).

FEDERAL TAX

DISCHARGE. The debtor owed taxes for 2011 and, after assessment by the IRS of the 2011 taxes, the debtor requested a collection due process hearing. During the hearing process, the IRS was prohibited from collecting on the taxes through a levy, although other means of collection were available. Section 523(a)(1)(A) excepts from discharge a tax “of the kind and for the periods specified in . . . § 507(a)(8) . . .” Section 507(a)(8) references a tax for which a return is last due after three years before the date of the filing of a bankruptcy petition. Section 507(a)(8) also tolls the three year period for any period during which a governmental unit is prohibited under applicable non-bankruptcy law from assessing a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days. The issue in this case was whether the three year period was tolled by a partial bar of the IRS collection ability, in this case by levy only. The court cited two cases: (1) Console v. Comm'r, 291 Fed. Appx. 234 (11th Cir. 2008) which held that a collection due process hearing tolled the three-year period in Section 507(a)(8); and (2) In re Lastra, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,116 (Bankr. D. N.M. 2012) which held that a collection due process hearing tolled the three-year period in Section 507(a)(8) and also stated that a partial bar of collection was sufficient to toll the limitation period. Thus, the court in this case held that the collection due process hearing tolled the three-year period during the hearing and 90 days thereafter. In re Tenholder, 2017 Bankr. LEXIS 3980 (Bankr. S.D. Ill. 2017).

LIEN AVOIDANCE. The IRS had filed and perfected a lien against the Chapter 7 debtor’s residence for unpaid taxes and penalties. The penalties totaled $162,690. The residence was valued at $185,000. The residence was subject to a first deed of trust, and the debtor claimed a homestead exemption for the home for $100,000. The Chapter 7 trustee did not seek avoidance of the tax lien and the debtor sought to avoid the penalty portion of the lien for the debtor’s benefit, primarily to support the homestead exemption. The IRS argued that only the trustee could seek lien avoidance and that the lien was effective against the homestead exemption property. Under Section 726(a)(4), a Chapter 7 trustee has authority to avoid “any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim.” Such claims include liens securing tax penalties. If the trustee does not exercise the lien avoidance power, Section 522(h) allows the debtor to “avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under [522(g)(1)] if the trustee had avoided such transfer, if—(1) such transfer is avoidable by the trustee under sections 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and (2) the trustee does not attempt to avoid such transfer.” The court in In re DeMarah, 62 F.3d 1248 (9th Cir. 1995) held that Section 522(c)(2)(B) precludes chapter 7 debtors from avoiding tax liens from otherwise exempt property even if the tax lien could be avoided by the trustee. Thus, the court in this case held that the debtor could not avoid the tax lien securing the assessed penalties. The court noted that, even if the trustee successfully avoided the tax lien as to the penalties, the lien is preserved for the bankruptcy estate and creditors and not for the benefit of the debtor; thus, the failure of the trustee to seek lien avoidance does not allow the debtor to seek avoidance for the benefit of the debtor. In re Hutchinson, 2018 Bankr. LEXIS 12 (Bankr. E.D. Calif. 2018).

FEDERAL ESTATE AND GIFT TAXATION

DISTRIBUTION ELECTION. An estate made a distribution within the first 65 days of the tax year and intended to make the election under I.R.C. § 663 but inadvertently failed to make the timely election. I.R.C. § 663(b)(1) provides that in general, if within the first 65 days of any taxable year of an estate or a trust, an amount is properly paid or credited, such amount shall be considered paid or credited on the last day of the preceding taxable year. I.R.C. § 663(b)(2) provides that I.R.C. § 663(b)(1) shall apply with respect to any taxable year of an estate or a trust only if the executor of such estate or the fiduciary of such trust (as the case may be) elects, in such manner and at such time as the Secretary prescribes by regulations, to have I.R.C. § 663(b)(1) apply for such taxable year. Treas. Reg. § 1.663(b)-2(a)(1) provides that if a
trust return is required to be filed for the taxable year of the estate for which the election is made, the election shall be made in the appropriate place on such return. The election under Treas. Reg. § 1.663(b)-2(a)(1) shall be made not later than the time prescribed by law for filing such return (including extensions thereof). Such election shall become irrevocable after the last day prescribed for making it. The IRS granted the estate an extension of time to make the election. Ltr. Rul. 201801001, Sept. 20, 2017.

GENERATION-SKIPPING TRANSFERS. The residue of the decedent’s passed to Trust 1. Trust 1 created an irrevocable subtrust, Trust 2, for the benefit of the decedent’s spouse and issue. Trust 2 provided that, during the spouse’s lifetime, the trustee, shall pay or apply for the benefit of the spouse all of the net income of Trust 2. No part of the principal of Trust 2 was to be distributed to the spouse during the spouse’s lifetime. The spouse had a limited power to appoint the principal of Trust 2 in favor of the decedent’s issue, by a writing signed by spouse during the spouse’s lifetime or by will. Any property not appointed during the spouse’s lifetime or at death passed to the decedent’s children. If a child predeceased the decedent, the property was to be distributed to the child’s issue by right of representation. The estate’s attorney prepared Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return; however, the attorney failed to allocate the decedent’s GST exemption to Trust 2. The IRS granted the estate an extension of time make the election to allocate the GST exemption to Trust 2. Ltr. Rul. 201801001, Sept. 20, 2017.

FEDERAL FARM PROGRAMS

REGULATIONS. The USDA has announced that it is withdrawing proposed regulations covering the following items and which have not received final action for over four years:
• Quality Samples Program
• Export Sales Reporting Program
• Project Financing — Renewable Energy Loans
• Rural Determination and Financing Percentage
• Viruses, Serums, Toxins, and Analogous Products; Detection of Avian Lymphoid Leukosis Virus
• Tuberculosis: Require Approved Herd Plans Prior to Payment of Indemnity
• Forfeiture Procedures Under the Endangered Species Act and the Lacey Act Amendments
• Chrysanthemum White Rust Regulatory Status Restrictions
• Farmers’ Market Promotion Program
• Hardwood Lumber and Hardwood Plywood Research and Promotion Program
• Soybean Promotion, Research, and Consumer Information; Beef Promotion and Research; Amendments to Allow Redirection of State Assessments to the National Program; Technical Amendments
• National School Lunch Program: Reimbursement for snacks in after school care programs
• Small Business Administration Timber Sale Set-Aside Program
• Proposed Directive on Groundwater Resource Management
• Forest Service Manual 2560
• Enhancing Policies Relating to Partnerships
• Management of Surface Activities Associated with Outstanding Mineral Rights on National Forest System Lands (Directive)

FEDERAL INCOME TAXATION

ADOPTION CREDIT. The IRS has published information about the adoption credit for parents who either adopted a child or tried to adopt a child. Credit. The credit is nonrefundable. This means the credit may only reduce a taxpayer’s tax liability to zero. If the credit is more than the tax owed, the taxpayer cannot receive an additional amount as a refund. Credit carryover. Taxpayers can carry any unused credit forward to the next year. This happens when the credit is more than the tax owed. In other words, taxpayers who have an unused credit in tax year 2017 can use it to reduce their taxes for 2018. Taxpayers can carry any remaining credits for up to five years, or until they fully use the credit, whichever comes first. Exclusion. If the taxpayer’s employer helped pay for the adoption through a qualified adoption assistance program, the taxpayer may qualify to exclude that amount from tax. Eligibility. An eligible child is an individual under age 18. It can also be an individual of any age who is physically or mentally unable to care for themselves. Special needs child. Special rules apply to taxpayers who adopted an eligible U.S. child with special needs. The taxpayers may be able to take the exclusion even if they did not pay any qualified adoption expenses. Qualified expenses. Adoption expenses must be directly related to the adoption of the child. The expenses must also be reasonable and necessary. Types of expenses that can qualify include adoption fees, court costs, attorney fees and travel. Domestic or foreign adoptions. In most cases, taxpayers can claim the credit whether the adoption is domestic or foreign. However, the rules for which year a taxpayer can claim qualified expenses differ between these two types of adoption. No double benefit. Depending on the adoption’s cost, taxpayers may be able to claim both the tax credit and the exclusion. However, they cannot claim both a credit and exclusion for the same expenses. Income limits. The credit and exclusion are subject to income limitations. The limits may reduce or eliminate the amount a taxpayer can claim depending on the amount of their income. See Form 8839, Qualified Adoption Expenses. IRS Tax Tip 2018-05.

ALIMONY. The taxpayer and former spouse had entered into a pre-nuptial agreement for payment to the spouse of
$100,000 plus $10,000 for each year of marriage. The couple divorced after four years of marriage and the couple executed a marital settlement agreement which provided for payment of $117,970 by the taxpayer to the spouse with no other spousal maintenance. The agreement included a provision that the agreement was binding on the parties “heirs, assigns, executors, administrators, representatives and successors in the interest of each party.” I.R.C. § 71(b)(1) defines alimony as meeting four requirements, with I.R.C. § 71(b)(1)(D) requiring that “there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.” The court found that the settlement agreement did not provide for termination of the taxpayer’s liability for the payment if the former spouse died. The court then looked to Texas law to determine if the state law required termination of the taxpayer’s liability for the payment if the former spouse died. The court held that, under Texas contract law, contractual support payments do not terminate on the death of the former payee spouse absent agreement to the contrary shown by the contract or surrounding circumstances. Thus, the court held that the taxpayer liability for the payment would not terminate under the agreement or state law and the payment was not alimony eligible for a deduction under I.R.C. § 215. Logue v. Comm’r, T.C. Memo. 2017-234.

COURT AWARDS AND SETTLEMENTS. The taxpayer had sued an accounting firm for malpractice, breach of contract, and violations of the Missouri Merchandising Practices Act. The taxpayer alleged that the accounting firm had given the taxpayer advice on forming S corporations and ESOPs for the taxpayer’s auto dealership consulting business. The taxpayer’s tax returns were audited and the scheme was determined to be an illegal tax shelter, resulting in $2.2 million in taxes and penalties, reached in a negotiated settlement with the IRS. The taxpayer sought recovery of the taxes, penalties, legal fees and costs, and punitive damages. The parties settled for much less than the taxes assessed. The taxpayer excluded the settlement payment and claimed a deduction for the legal fees and costs and for the difference between the taxes and penalties assessed and the settlement mount. The IRS assessed taxes based on inclusion of the settlement in taxable income and disallowance of the deductions. The taxpayer argued that the settlement was non-taxable as a return of capital. The court acknowledged that settlement proceeds would not be taxable to the extent the proceeds are recovery of a loss. See Rev. Rul. 57-47, 1957-1 C.B. 23 (“no taxable income is derived from that part of the recovery received by the taxpayer which does not exceed the amount of tax which she was required to pay because of the [tax consultant’s] error.”) Thus, the court held that the settlement was excludible from taxable income as a return for the extra taxes paid by the taxpayer. The court held that the legal fees and costs were not deductible as a business expense because the taxpayer sued in an individual capacity and not through the business. The court also disallowed the deduction for the difference between the settlement amount and the extra taxes because the taxpayer had agreed not to seek a deduction for that amount in negotiating the settlement with the IRS. McKenny v. United States, 121 AFTR 2d (RIA) 2018-__ (M.D. Fla. 2018).

INNOCENT SPOUSE RELIEF. The taxpayer inherited an IRA from a parent and received a distribution in 2014, part of which was placed in a joint bank account and part used to pay for expenses of the taxpayer’s daughter. A portion of the distribution was withheld for income tax purposes. The taxpayer and spouse hired a tax return preparer to prepare and file the 2014 return but the couple did not report the IRA distribution to the preparer. The IRS assessed taxes for the unreported distribution and the taxpayer filed for innocent spouse relief. The IRS granted only partial relief under I.R.C. § 6015(c) because the taxpayer had constructive knowledge of the distribution but lacked actual knowledge of the distribution. The taxpayer appealed the IRS ruling, arguing that, at the least, the taxpayer should be liable only for the amount of distribution placed in the joint bank account plus the taxes withheld. The taxpayer and spouse divorced in 2016, prior to filing for relief. The former spouse also appealed, arguing that no relief should be granted to the taxpayer. I.R.C. § 6015(c) allows a divorced or separated spouse to elect to limit liability for a tax deficiency to the portion allocable to the taxpayer under I.R.C. § 6015(d). I.R.C. § 6015(d) provides that “any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year.” Treas. Reg. § 1.6015-3(d)(2)(iii) state “. . . [e] rroneous items of income are allocated to the spouse who was the source of the income.” Denial of relief requires evidence that the taxpayer had actual knowledge of the item giving rise to the deficiency. The court found that although the taxpayer denied actual knowledge of the 2014 distribution, the taxpayer knew about the IRA and prior distributions. The court found, however, that there was no evidence of the taxpayer actual knowledge of the 2014 distribution; therefore, relief under I.R.C. § 6015(c) was proper. Bishop v. Comm’r, T.C. Summary Op. 2018-1.

PARTNERSHIPS

ADMINISTRATIVE ADJUSTMENTS. The IRS has adopted as final regulations replacing the TEFRA unified partnership audit and litigation rules. The new rules reflect the provisions of the Bipartisan Budget Act of 2015, as amended by Protecting Americans from Tax Hikes Act of 2015, Pub. L. 114-113, div. Q, § 411, 129 Stat. 3121 (2015). The final regulations contain provisions and procedures for partnerships with 100 or fewer eligible partners to elect out of the new centralized partnership audit regime. Eligible partners are individuals, C corporation, eligible foreign entity, S corporation, or the estate of a deceased partner. Married taxpayers are to be considered as separate partners for the election purposes. The electing partnership is to provide the names, TINs, and federal tax classifications of all partners and must notify all partners about the election. The final regulations require consistent reporting of partnership items by the partners. A partner who reports an item inconsistent with the partnership return must identify the inconsistency on the partner’s tax return. As under the TEFRA rules, the final regulations require partnerships to designate a representative. Any adjustment of
partnership items by the IRS are issued in a notice of proposed partnership adjustment (NOPPA) provided to the partnership and partnership representative. The final regulations allow a partnership to pass on the assessment of taxes in a NOPPA to the partners. The final regulations affect partnerships for taxable years beginning after December 31, 2017 and any partnerships that elect application of the centralized partnership audit regime pursuant to Treas. Reg. § 301.9100-22T for taxable years beginning after November 2, 2015 and before January 1, 2018. See also Harl, “Protecting Americans from Tax Hikes Act of 2015 (PATH)” 27 Agric. L. Dig. 1 (2016). 83 Fed. Reg. 24 (Jan. 2, 2018).

PENSION PLANS. For plans beginning in January 2018 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 2.84 percent. The 30-year Treasury weighted average is 2.77 percent, and the 90 percent to 105 percent permissible range is 2.56 percent to 2.98 percent. The 24-month average corporate bond segment rates for January 2018, without adjustment by the 25-year average segment rates are: 1.81 percent for the first segment; 3.68 percent for the second segment; and 4.53 percent for the third segment. The 24-month average corporate bond segment rates for January 2018, taking into account the 25-year average segment rates, are: 3.92 percent for the first segment; 5.52 percent for the second segment; and 6.29 percent for the third segment. Notice 2018-11, I.R.B. 2018-6.

S CORPORATIONS

ELECTION. The taxpayer was a corporation which elected to be taxed as an S corporation. The taxpayer then purchased all the equity interests in a subsidiary corporation for which the taxpayer made a QSub election. After both events, the taxpayer discovered that the Subchapter S election was invalid because not all shareholders consented to the election and the operating agreement provided for two classes of stock. The failure of the S corporation election also invalidated the QSub election. The taxpayer obtained the consent of all shareholders and revised the operating agreement to remove the second class of stock. The IRS ruled that the termination of the S corporation and QSub elections was inadvertent and did not terminate the S corporation status of the taxpayer and QSub status of the subsidiary. Ltr. Rul. 201801004, Oct. 10, 2017.

The taxpayer was an S corporation. The taxpayer transferred all its shares to a partnership which then transferred all the shares to a second partnership. Neither partnership was an eligible S corporation shareholder. After the taxpayer learned that the transfers terminated the S corporation election, the second partnership transferred the shares to an individual. The taxpayer claimed that all partners were eligible S corporation shareholders and the termination of the S corporation status was inadvertent. During this time, the taxpayer and shareholders all filed returns consistent with treatment of the taxpayer as an S corporation. The IRS ruled that the transfers did not terminate the S corporation status. Ltr. Rul. 201801007, Oct. 10, 2017.

TAX LIENS. The taxpayer purchased a condominium unit subject to a condominium association agreement under which the association assessed fees and late-payment fees in September 2015. In January 2016, the association recorded a notice of lien against the taxpayer for the fees. In April 2015, the IRS assessed the taxpayer for delinquent income taxes from 2009. In February 2016, the IRS recorded a Notice of Federal Tax Lien for the 2009 unpaid taxes. The issue was whether the association’s lien or the federal tax lien had priority. The court stated that the general rule is that a federal tax lien need not be filed to gain priority over other interests; it is perfected at the time the lien is assessed. However, I.R.C. § 6323(a) creates an exception to that general rule, stating that a tax lien “shall not be valid as against any purchaser, holder of a security interest, mechanic’s lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary.” I.R.C. § 6323(b) defines the term “security interest” as “any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability, . . .” and “A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money’s worth.” The court noted that other courts have required four conditions for application of the rule: (1) that the security interest was acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss; (2) that the property to which the security interest was to attach was in existence at the time the tax lien was filed; (3) that the security interest was, at the time of the tax lien filing, protected under state law against a judgment lien arising out of an unsecured obligation; and (4) that the holder of the security interest parted with money or money’s worth.” See Litton Indus. Automation Sys., Inc. v. Nationwide Power Corp. 106 F.3d 366 (11th Cir. 1997). The court found that the first, second and third conditions were met because (1) the association’s lien arose under a contract, (2) the taxpayer owned the condominium before the tax lien arose, and (3) the association lien was protected by state law against subsequent liens. The fourth condition was also met because the assessed fees were intended to offset expenses of the association. The court held that the association’s lien had priority over the federal lien but the priority was limited to the unpaid fees and penalty owed at the time the lien was recorded. The court found that the association’s lien stated that it included future costs of enforcing or collecting the fees, but the court held that, because the amount was not fixed before the arising of the federal tax lien, such costs did not have priority. Yarmouth Commons Ass’n v. Norwood, 2017-2 U.S. Tax Cas. (CCH) § 50,437 (E.D. Mich. 2017).

NUISANCE

RIGHT-TO-FARM. The defendants purchased property located in the village from the plaintiff village in 2014. The defendants had managed the property for the village before the purchase and the property was used for concerts and social events in addition to the use of the property to grow and harvest hay by a tenant who was also a neighbor and used the hay for feed for the
tenant’s cattle operation. In March 2016, the defendants changed the use of the farm land to start a calf nursing operation, with about 19 calves. In July 2016, the village passed an ordinance which prohibited the raising of calves within the village limits. After the ordinance was passed, the village police issued a citation to the defendants for violating the ordinance and a local court found that the defendants were in violation of the ordinance and subject to a fine of $100 per day if the calves were not removed within eight weeks. The defendants argued that the Illinois right-to-farm act, 740 ILCS 70/1, prohibited the enforcement of the ordinance against a pre-existing farm operation. The statute provided “No farm or any of its appurtenances shall be or become a private or public nuisance because of any changed conditions in the surrounding area occurring after the farm has been in operation for more than one year, when such farm was not a nuisance at the time it began operation . . .” The first issue was whether the “farm” had been in operation for more than a year prior to the passing of the ordinance. The court found that the haying operation constituted a farm operation and that the change to the calving operation maintained the character of the property as a farm for purposes of the statute. The court also found that the ordinance was a “changed condition in the surrounding area.” Because the haying operation existed more than one year before the ordinance, the court held that the right-to-farm statute applied to prohibit enforcement of the ordinance against the defendants. Village of Chadwick v. Nelson, 2017 Ill. App. LEXIS 781 (Ill. Ct. App. 2017).

IN THE NEWS

RETURNS. The IRS has announced that the nation’s tax season will begin Monday, Jan. 29, 2018 and reminded taxpayers claiming certain tax credits that refunds will not be available before late February. The nation’s tax deadline will be April 17 this year - so taxpayers will have two additional days to file beyond April 15. Many software companies and tax professionals will be accepting tax returns before Jan. 29 and then will submit the returns when IRS systems open. Although the IRS will begin accepting both electronic and paper tax returns Jan. 29, paper returns will begin processing later in mid-February as system updates continue. The IRS reminds taxpayers that, by law, the IRS cannot issue refunds claiming the Earned Income Tax Credit (EITC) and the Additional Child Tax Credit (ACTC) before mid-February. While the IRS will process those returns when received, it cannot issue related refunds before mid-February. The IRS expects the earliest EITC/ACTC related refunds to be available in taxpayer bank accounts or on debit cards starting on Feb. 27, 2018, if they chose direct deposit and there are no other issues with the tax return. The IRS also reminds taxpayers that they should keep copies of their prior-year tax returns for at least three years. Taxpayers who are using a tax software product for the first time will need to adjust gross income from their 2016 tax return to file electronically. Taxpayers who are using the same tax software they used last year will not need to enter prior-year information to electronically sign their 2017 tax return. Using an electronic filing PIN is no longer an option. Taxpayers can visit IRS.gov/GetReady for more tips on preparing to file their 2017 tax return. IR-2018-1.

The IRS has announced that all Forms 8809, Application for Extension of Time to File Information Returns, filed on paper are now processed by the Internal Revenue Service Center in Ogden, Utah. These paper forms must be mailed. Faxes will not be accepted. The mailing address is:
Department of the Treasury
Internal Revenue Service Center
Ogden, UT 84201-0209

The IRS will only grant extensions for very specific reasons. For example, records were lost in a disaster or someone responsible for filing the company’s returns has an unavoidable absence. Taxpayers can get details on these and other exceptions on Form 8809. E-News for Small Businesses, Jan. 8, 2018.

TAX RETURN PREPARERS. The IRS has announced that it will request additional information from tax professionals who call the Practitioner Priority Service or any toll-free IRS telephone number. The procedural change will require tax practitioners to provide personal information so that IRS customer service representatives may confirm their identities. This additional information may include data such as the practitioner’s Social Security number and date of birth. This personal information, in addition to the Centralized Authorization File (CAF) number, is necessary to verify the identity of the person to whom the IRS releases taxpayer information. The IRS has also made an update to Form 2848, Power of Attorney, and Form 8821, Tax Information Authorization, that will require practitioners to inform their clients if the practitioner is using an Intermediate Service Provider to access client transcripts via the Transcript Delivery System. A box must be checked if the practitioner is using a third party. The IRS defines Intermediate Service Providers as privately owned companies that offer subscriptions to their software and/or services that the taxpayer’s authorized representative can use to retrieve, store, and display tax return data (personal or business) instead of obtaining tax information directly from the IRS. There have been a number of changes by the IRS for tax professionals in recent weeks, and each is intended to enhance protections for practitioners and their clients. As part of these efforts, the IRS has also strengthened protections for IRS e-Services. E-Services account holders are urged to immediately upgrade their s-services account through the new two-factor identity verification process. Some tax professionals may need to complete this process by mail, which could add 10 days or more to the process. In the future, the IRS will ask each e-Services user to sign a new user agreement intended to ensure that all tax professionals understand their security obligations. E-News for Tax Professionals, 2018-2.

WITHHOLDING TAXES. IRS has issued IRS Publication 1494, Table for Figuring Amount Exempt from Levy on Wages, Salary or Other Income, for the 2018 tax year. The new table reflects the Tax Cut and Jobs Act changes in tax rates and deductions. This new version replaces one issued recently which did not reflect the new Act. The publication is used to determine the amount of wages, salaries, and other income that is exempt from a federal tax levy in 2018. IR-2018-05.
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