CASES, REGULATIONS AND STATUTES

ADVERSE POSSESSION

HOSTILE POSSESSION. The plaintiff purchased land from the parent of the defendants. The testimony showed that during the purchase, the plaintiff and owner discussed the boundary line of the plaintiff's property to include all of the land up to an existing fence. However, the fence was not on the boundary described by the deeds resulting from the sale and the defendants claimed that the plaintiff used the disputed area by permission from the prior owner. The evidence showed that, for more than 40 years, the plaintiff raised crops on the plaintiff's farm up to the fence and in later years, leveled the land for growing rice, causing the land to be lower up to the fence. Thus, the fence line boundary was clear even after the fence was removed. Under Arkansas common law, in order to prove the elements of adverse possession, a claimant must show that the claimant has possessed the disputed property continuously for seven years and that the possession has been actual, open, notorious, continuous, hostile, and exclusive; and it must be accompanied with an intent to hold against the true owner. The defendants argued that, because the plaintiff and original owner had discussed the boundary of the plaintiff's farm, the plaintiff had no intent to "hold against the true owner." Although the court acknowledge some authority on both sides of the issue of whether intent or actual behavior controlled for determining hostile possession, the court favored the case law trend toward the view that the "hostility" element should be determined by behaviors and not primarily by inquiring into a claimant's subjective intent. The appellate court held that, based on the more than 40 years that the plaintiff used the disputed land, the plaintiff's use of the disputed strip was sufficient to support the plaintiff's title to the disputed land by adverse possession. **Collier v. Gilmore, 2018 Ark. App. LEXIS 663 (Ark. Ct. App. 2018)**..

FEDERAL ESTATE AND GIFT TAXATION

APPLICABLE EXCLUSION AMOUNT. Estates of decedents who die during 2019 have a basic exclusion amount of $11,400,000. **Rev. Proc. 2018-57, I.R.B. 2018-49**.

The IRS has issued proposed regulations which address the effect of the TCJA 2017 increase in the applicable exclusion amount (AEA) for 2018 through 2025 ($10 million, adjusted for inflation, $11.4 million for 2019) as to estates of decedents dying after 2025 ($5 million, adjusted for inflation), resulting in different exclusion amounts for pre-death gifts during 2018 through 2025 and for post-2025 estates. The federal gift tax is imposed by I.R.C. § 2501 on an individual's transfers by gift during each calendar year. The gift tax is determined under a seven-step computation required under I.R.C. §§ 2502 and 2505 using the rate schedule set forth in I.R.C. § 2001(c) as in effect for the calendar year in which the gifts are made. First, I.R.C. § 2502(a)(1) requires the determination of a tentative tax (that is, a tax unreduced by a credit amount) on the sum of all taxable gifts, whether made in the current year or in one or more prior periods. Second, I.R.C. § 2502(a)(2) requires the determination of a tentative tax on the sum of the taxable gifts made in all prior periods. Third, I.R.C. § 2502(a) requires the tentative tax determined in Step 2 to be subtracted from the tentative tax determined in Step 1 to arrive at the net tentative gift tax on the gifts made in the current year. Fourth, I.R.C. § 2505(a)(1) requires the determination of a credit equal to the applicable credit amount within the meaning of I.R.C. § 2010(c). The applicable credit amount is the tentative tax on the AEA determined as if the donor had died on the last day of the current calendar year. The AEA is the sum of the BEA as in effect for the year in which the gift was made, any DSUE amount as of the date of the gift as computed pursuant to Treas. Reg. § 25.2505-2, and any restored exclusion amount as of the date of the gift as computed pursuant to *Notice 2017-15, I.R.B. 2017-6, 783*. Fifth, I.R.C. § 2505(a)(2) and I.R.C. § 2505(a) require the determination of the sum of the amounts allowable as a credit to offset the gift tax on gifts made by the donor in all preceding calendar periods. For purposes of this determination, the allowable credit for each preceding calendar period is the tentative tax, computed at the tax rates in effect for the current period, on the AEA for such prior period, but not exceeding the tentative tax on the gifts actually made during such prior period. Sixth, I.R.C. § 2505(a) requires that the total credit allowable for prior periods determined in Step 5 be subtracted from the credit for the current period determined in Step 4. Finally, I.R.C. § 2505(a) requires that the credit amount determined in Step 6 be subtracted from the net tentative gift tax determined in Step 3. The federal estate tax is imposed by I.R.C. § 2001(a) on the transfer of a decedent's taxable estate at death. The *estate tax* is determined under a five-step computation required under I.R.C. §§ 2001 and 2010 using the same rate schedule used for gift tax purposes as in effect at the decedent's death. First, I.R.C. § 2001(b)(1) requires the determination of a tentative tax (again, a tax unreduced by a credit amount) on the sum of the taxable estate and the adjusted taxable gifts, defined as all taxable gifts made after 1976 other than those included in the gross estate. Second, I.R.C. § 2001(b)(2) and (g) require the determination of a hypothetical gift tax (a gift tax reduced, but not to below zero, by the credit amounts allowable in the years of the gifts) on all post-1976 taxable gifts, whether or not included in the gross estate. The credit amount allowable for each year during which a gift was made is the tentative tax, computed using the tax rates in effect at the decedent's death, on the AEA for that year, but not exceeding the tentative tax on the gifts made during that year. See I.R.C. § 2505(c). The AEA is the sum of the AEA as in effect for the year in which the gift was made, any DSUE amount as of the date of the gift as computed pursuant to

Treas. Reg. § 25.2505-2, and any restored exclusion amount as of the date of the gift as computed pursuant to *Notice 2017-15*. This hypothetical gift tax is referred to as the gift tax payable. Third, I.R.C. § 2001(b) requires the gift tax payable determined in Step 2 to be subtracted from the tentative tax determined in Step 1 to arrive at the net tentative estate tax. Fourth, I.R.C. § 2010(a) and (c) require the determination of a credit equal to the tentative tax on the AEA as in effect on the date of the decedent's death. Under I.R.C. § 2010(d), this credit may not exceed the net tentative estate tax. Finally, I.R.C. § 2010(a) requires that the credit amount determined in Step 4 be subtracted from the net tentative estate tax determined in Step 3. The different manner in which these two taxes are determined and the limited years in which the TCJA 2017 AEA amount applied give rise to two issues. First, in cases in which a taxpayer exhausted AEA and paid gift tax on a pre-2018 gift, and then either makes an additional gift or dies during the increased AEA period, will the increased AEA be absorbed by the pre-2018 gift on which gift tax was paid so as to deny the taxpayer the full benefit of the increased AEA during the increased AEA period? Second, in cases in which a taxpayer made a gift during the increased AEA period that was fully sheltered from gift tax by the increased AEA but makes a gift or dies after the increased AEA period has ended, will the gift that was exempt from gift tax when made during the increased AEA period have the effect of increasing the gift or estate tax on the later transfer (in effect, subjecting the earlier gift to tax even though it was exempt from gift tax when made)? The proposed regulations would amend Treas. Reg. § 20.2010-1 to provide a special rule in cases where the portion of the credit as of the decedent's date of death that is based on the AEA is less than the sum of the credit amounts attributable to the AEA allowable in computing gift tax payable within the meaning of I.R.C. § 2001(b)(2). In that case, the portion of the credit against the net tentative estate tax that is attributable to the AEA would be based upon the greater of those two credit amounts. **REG-106706-18, 83 Fed. Reg. 59343 (Nov. 23, 2018); *see also* IR-2018-229**.

GIFTS. For calendar year 2019, the first $15,000 of gifts to any person (other than gifts of future interests in property) are not included in the total amount of taxable gifts under I.R.C. § 2503 made during that year. For calendar year 2019, the first $155,000 of gifts to a spouse who is not a citizen of the United States (other than gifts of future interests in property) are not included in the total amount of taxable gifts under I.R.C. §§ 2503 and 2523(i)(2) made during that year. **Rev. Proc. 2018-57, I.R.B. 2018-49**.

INSTALLMENT PAYMENT OF ESTATE TAX. For an estate of a decedent dying in calendar year 2019, the dollar amount used to determine the "2-percent portion" (for purposes of calculating interest under I.R.C. § 6601(j)) of the estate tax extended as provided in I.R.C. § 6166 is $1,550,000. **Rev. Proc. 2018-57, I.R.B. 2018-49**.

SPECIAL USE VALUATION. For an estate of a decedent dying in calendar year 2019, if the executor elects to use the special use valuation method under I.R.C. § 2032A for qualified real property, the aggregate decrease in the value of qualified real property resulting from electing to use § 2032A for purposes of the estate tax cannot exceed $1,160,000. **Rev. Proc. 2017-58, I.R.B. 2017-45**.

FEDERAL FARM PROGRAMS

PERISHABLE AGRICULTURAL COMMODITIES. The plaintiff was an interstate wholesale dealer in agricultural commodities which sold produce to the defendant interstate buyer of produce. The plaintiff sold produce to the defendant from May 2018 through June 2018 but the defendant failed to pay for any of the produce. The plaintiff provided notice to the defendant of the plaintiff's intention to enforce the Perishable Agricultural Commodities Act (PACA) trust to obtain payment. However, the defendant admitted that the defendant had insufficient funds to pay for the produce, had numerous other PACA trust claims against it, and would need a payment plan to make any payments. Thus, the plaintiff sought an injunction against the defendant to prevent the defendant from further dissipating the PACA trust fund. The evidence also showed that the defendant had entered into an agreement for a payment plan but failed to execute the agreement and made no payments under the plan. The court entered an order to show cause why an injunction should not be issued but the defendant failed to answer the order. The court stated that (1) an injunction is an extraordinary remedy to be granted only in limited circumstance and (2) a court may grant an injunction only if a party shows: (a) a likelihood of success on the merits; (b) that it will suffer irreparable harm if the injunction is denied; (c) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (d) that the public interest favors such relief. Under the PACA, 7 U.S.C. § 499e(c), all "perishable agricultural commodities, inventories of food or other derivative products, and any receivables or proceeds from the sale of such commodities or products, are to be held in a non-segregated floating trust for the benefit of unpaid sellers." If PACA funds are commingled with other funds, all of the funds are covered by the PACA trust. Produce buyers subject to PACA are required to maintain trust assets in a manner that such assets are freely available to satisfy outstanding obligations to sellers of perishable agricultural commodities and any act or omission inconsistent with this responsibility, including dissipation of trust assets, is prohibited. See 7 C.F.R. § 46.46(e)(l). Dissipation of trust assets is defined by 7 C.F.R. § 46.46(b)(2) as any act which could result in the diversion of trust assets or the impairment of a seller's right to obtain payment. The court found (1) the plaintiff sold produce to the defendant which had failed to pay for the produce, (2) the defendant failed to maintain the PACA trust sufficient to pay for the produce, (3) the defendant's failure to maintain the PACA trust has and will continue to harm the plaintiff's ability to receive payment from the trust, (4) the defendant had outstanding accounts receivables which would be dissipated unless the defendant is enjoined, and (5) the defendant failed to follow through with negotiate settlements or payment plans and failed to answer the court's "show cause" order. Thus, the court issued a preliminary injunction against the defendant from further dissipating any PACA trust assets. The decision is designated as not for publication. **Eagle Fruit Traders v. Ultra**

Fresh, LLC, 2018 U.S. Dist. LEXIS 195747 (D. N.J. 2018).

FEDERAL INCOME TAXATION

ALTERNATIVE MINIMUM TAX. The taxpayer and spouse were liable for the alternative minimum tax rate for 2012 when the taxpayer suffered from compulsory gambling which the taxpayer claimed resulted from a side affect of medication. The taxpayer argued that the gambling winnings and losses artificially affected their income because the taxpayer was not able to pay business expenses, resulting in higher than normal business income. Thus, the taxpayer sought an exemption from the AMT due to medical disability. The court held that I.R.C. §§ 56, 57 and 58 did not provide any exceptions to application of the AMT and that the imposition of the AMT was proper. **Gillette v. Comm'r, T.C. Memo. 2018-195**.

DISASTER LOSSES. On October 15, 2018, the President determined that certain areas in Virginia were eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of Hurricane Florence which began on September 8, 2018. **FEMA-4401-DR**. On October 31, 2018, the President determined that certain areas in Montana were eligible for assistance from the government under the Act as a result of flooding which began on May 1, 2018. **FEMA-4405-DR**. Accordingly, taxpayers in these areas may deduct the losses on their 2018 or 2017 federal income tax returns. See I.R.C. § 165(i).

IDENTITY THEFT. The IRS has issued a warning to the public of a surge of fraudulent emails impersonating the IRS and using tax transcripts as bait to entice users to open documents containing malware. The scam is especially problematic for businesses whose employees might open the malware because this malware can spread throughout the network and potentially take months to successfully remove. This well-known malware, known as Emotet, generally poses as specific banks and financial institutions in its effort to trick people into opening infected documents. In the past few weeks, the scam masqueraded as the IRS, pretending to be from "IRS Online." The scam email carries an attachment labeled "Tax Account Transcript" or something similar, and the subject line uses some variation of the phrase "tax transcript." These clues can change with each version of the malware. Scores of these malicious Emotet emails were forwarded to phishing@irs.gov recently. The IRS reminds taxpayers it does not send unsolicited emails to the public, nor would it email a sensitive document such as a tax transcript, which is a summary of a tax return. The IRS urges taxpayers not to open the email or the attachment. If using a personal computer, delete or forward the scam email to phishing@irs.gov. **IR-2018-226**.

INFLATION ADJUSTMENTS. The IRS has announced the 2019 annual inflation adjustments for more than 50 tax provisions, including the tax rate schedules, and other tax changes, including the following dollar amounts: (1) For tax year 2019, the tax rate schedule is

1. Married Individuals Filing Joint Returns and Surviving Spouses

If Taxable Income Is	The Tax Is
• Not over $19,400	10% of the taxable income
• Over $19,400 but not over $78,950	$1,940 plus 12% of the excess over $19,400
• Over $78,950 but not over $168,400	$9,086 plus 22% of the excess over $78,950
• Over $168,400 but not over $321,450	$28,765 plus 24% of the excess over $168,400
• Over $321,450 but not over $408,200	$65,497 plus 32% of the excess over $321,450
• Over $408,200 but not over $612,350	$93,257 plus 35% of the excess over $408,200
• Over $612,350	$164,709.50 plus 37% of the excess over $612,350

2. Heads of Households

If Taxable Income Is:	The Tax Is:
• Not over $13,850	10% of the taxable income
• Over $13,850 but not over $52,850	$1,385 plus 12% of the excess over $13,850
• Over $52,850 but not over $84,200	$6,065 plus 22% of the excess over $52,850
• Over $84,200 but not over $160,700	$12,962 plus 24% of the excess over $84,200
• Over $160,700 but not over $204,100	$31,322 plus 32% of the excess over $160,700
• Over $204,100 but not over $510,300	$45,210 plus 35% of the excess over $204,100
• Over $510,300	$152,380 plus 37% of the excess over $510,300

3. Unmarried Individuals (other than Surviving Spouses and Heads of Households)

If Taxable Income Is:	The Tax Is:
• Not over $9,700	10% of the taxable income
• Over $9,700 but not over $39,475	$970 plus 12% of the excess over $9,700
• Over $39,475 but not over $84,200	$4,543 plus 22% of the excess over $39,475
• Over $84,200 but not over $160,725	$14,382.50 plus 24% of the excess over $84,200
• Over $160,725 but not over $204,100	$32,748.50 plus 32% of the excess over $160,725
• Over $204,100 but not over $510,300	$46,628.50 plus 35% of the excess over $204,100
• Over $510,300	$153,798.50 plus 37% of the excess over $510,300

4. Married Individuals Filing Separate Returns

If Taxable Income Is:	The Tax Is:
• Not over $9,700	10% of the taxable income
• Over $9,700 but not over $39,475	$970 plus 12% of the excess over $9,700
• Over $39,475 but not over $84,200	$4,543 plus 22% of the excess over $39,475
• Over $84,200 but not over $160,725	$14,382.50 plus 24% of the excess over $84,200
• Over $160,725 but not over $204,100	$32,748.50 plus 32% of the excess over $160,725
• Over $204,100 but not over $306,175	$46,628.50 plus 35% of the excess over $204,100
• Over $306,175	$82,354.75 plus 37% of the excess over $306,175

5. Estates and Trusts

If Taxable Income Is:	The Tax Is:
• Not over $2,600	10% of the taxable income
• Over $2,600 but not over $9,300	$260 plus 24% of the excess over $2,600
• Over $9,300 but not over $12,750	$1,868 plus 35% of the excess over $9,300
• Over $12,750	$3,075.50 plus 37% of the excess over $12,750

(2) The standard deduction for tax year 2019 for heads of household rises to $18,350, $12,200 for singles and married persons filing separate returns, and $24,400 for married couples filing jointly. (3) The Alternative Minimum Tax exemption amount for tax year 2019 is $71,700 (single), $55,850 (married, filing separately) and $111,700 (joint) and begins to phase out at $510,300 (single) and $1,020,600 (joint). For tax year 2019, the 28 percent AMT rate applies to taxpayers with taxable incomes above $194,800

($97,400 for married individuals filing separately). For taxable years beginning in 2019, for a child to whom the I.R.C. § 1(g) "kiddie tax" applies, the exemption amount under I.R.C. §§ 55 and 59(j) may not exceed the sum of (1) the child's earned income for the taxable year, plus (2) $7,750. (4) The tax year 2019 maximum Earned Income Credit amount for taxpayers filing jointly is $6,920 (no qualifying children), $10,370 (one qualifying child) and $14,570 (two or more qualifying children). (5) For tax year 2019, the I.R.C. § 179 expense method depreciation limitation is $1,020,000 with the phaseout beginning at $2,550,000. (6) For tax year 2019 participants who have self-only coverage in a Medical Savings Account, the plan must have an annual deductible that is not less than $2,350, but not more than $3,500. For self-only coverage the maximum out of pocket expense amount increases to $4,650. For tax year 2019 participants with family coverage, the floor for the annual deductible is $4,650; however, the deductible cannot be more than $7,000. For family coverage, the out-of-pocket expense limit is $8,550 for tax year 2019. (7) For tax year 2019, the adjusted gross income amount used by joint filers to determine the reduction in the Lifetime Learning Credit is $116,000 ($58,000 for single). (8) For tax year 2019, the foreign earned income exclusion is $105,900. (9) For purposes of the maximum capital gains rate, for taxable years beginning in 2019, the Maximum Zero Rate Amount under I.R.C. § 1(h)(1)(B)(i) is $78,750 (joint return or surviving spouse), $52,750 (head of household), $39,375 in the case of any other individual (other than an estate or trust), and $2,650 in the case of an estate or trust. The maximum 15-percent rate amount under I.R.C. § 1(h)(C)(ii)(l) is $488,850 in the case of a joint return or surviving spouse (1⁄2 such amount in the case of a married individual filing a separate return), $461,700 in the case of an individual who is the head of a household (§ 2(b)), $434,550 in the case of any other individual (other than an estate or trust), and $12,950 in the case of an estate or trust. (10) For taxable years beginning in 2019, under I.R.C. § 23(a)(3) the credit allowed for an adoption of a child with special needs is $14,080. For taxable years beginning in 2019, under I.R.C. § 23(b)(1) the maximum credit allowed for other adoptions is the amount of qualified adoption expenses up to $14,080. (11) For taxable years beginning in 2019, the threshold amount under I.R.C. § 199A(e)(2) (qualified business income deduction limitation) is $321,400 for married filing joint returns, $160,725 for married filing separate returns, and $160,700 for single and head of household returns. (12) For taxable years beginning in 2019, a corporation or partnership meets the gross receipts test of I.R.C. § 448(c) for any taxable year if the average annual gross receipts of such entity for the three taxable year period ending with the taxable year which precedes such taxable year does not exceed $26,000,000. (13) For calendar year 2019, the value of property exempt from levy under I.R.C. § 6334(a)(2) (fuel, provisions, furniture, and other household personal effects, as well as arms for personal use, livestock, and poultry) cannot exceed

$9,540. The value of property exempt from levy under I.R.C. § 6334(a)(3) (books and tools necessary for the trade, business, or profession of the taxpayer) cannot exceed $4,770. **Rev. Proc. 2018-57, I.R.B. 2018-49**.

IRA. In 2012 the taxpayer was taking a medication which had the side effect of causing the taxpayer to exhibit compulsive gambling behavior. The taxpayer's gambling resulted in severe financial losses from the gambling losses and the taxpayer's failure to properly conduct business affairs, mostly the maintenance of rental properties. Thus, in 2012, the taxpayer received pre-age 591/2 distributions from an IRA. The taxpayer listed the IRA distribution as taxable income and reported the 10 percent additional tax on early distributions, but failed to pay the taxes owed above what was withheld by casinos and the taxpayer's spouse's employer. In appealing the assessment of the unpaid taxes, the taxpayer argued that the 10 percent additional tax should not be imposed because the IRA distribution was used to compensate for the loss of income which resulted from a disability caused by the medication side effect. Under I.R.C. § 72(t)(2)(A)(iii), the 10 percent additional tax is not imposed on a distribution that is "attributable to the employee's being disabled within the meaning of subsection (m)(7)." I.R.C. § 72(m)(7) provides that a taxpayer is disabled if "unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration." The taxpayer pointed to two examples in Treas. Reg. § 1.72-17A(f)(2). The first example involved "damage to the brain or brain abnormality which has resulted in severe loss of judgment, intellect, orientation, or memory." The second example involved "[m]ental diseases (e.g. psychosis or severe psychoneurosis) requiring continued institutionalization or constant supervision of the individual." The court held that the two examples did not apply in this case because, under I.R.C. § 72(m)(7), the exception for a medical condition requires that the condition not be remediable. The court noted that the taxpayer had stopped taking the drug which caused the compulsory gambling and was receiving treatment for the gambling addiction itself. **Gillette v. Comm'r, T.C. Memo. 2018-195**

PENSION PLANS. For plans beginning in November 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 3.34 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 3.04 percent. The 24-month average corporate bond segment rates for November 2018, *without adjustment* by the 25-year average segment rates are: 2.43 percent for the first segment; 3.89 percent for the second segment; and 4.49 percent for the third segment. The 24-month average corporate bond segment rates for November 2018, taking into account the 25-year average segment rates, are: (1) for plan years beginning in 2017: 4.16 percent for the first segment; 5.72 percent for the second segment; and 6.48 percent for the third segment; (1) for plan years beginning in 2018: 3.92 percent for the first segment; 5.52 percent for the second segment; and 6.29 percent for the third segment; (3) for plan years beginning in 2019: 3.74 percent for the first segment; 5.35 percent for the second segment; and 6.11 percent for the third segment. **Notice 2018-86, I.R.B. 2018-50**.

QUALIFIED DEBT INSTRUMENTS. The IRS has announced the 2019 inflation adjusted amounts of debt instruments which qualify for the interest rate limitations under I.R.C. §§ 483 and 1274A:

Year of Sale or Exchange	1274A(b) Amount	1274A(c)(2)(A) Amount
2019	$5,944,600	$4,246,200

The $5,944,600 figure is the dividing line for 2019 below which (in

terms of seller financing) the minimum interest rate is the lesser of 9 percent or the Applicable Federal Rate (AFR). Where the amount of seller financing exceeds the $5,944,600 figure, the imputed rate is 100 percent of the AFR except in cases of sale-leaseback transactions, where the imputed rate is 110 percent of AFR. If the amount of seller financing is $4,246,200 or less (for 2019), both parties may elect to account for the interest under the cash method of accounting. **Rev. Proc. 2018-57, I.R.B. 2018-49**.

SAFE HARBOR INTEREST RATES
December 2018

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	2.76	2.74	2.73	2.72
110 percent AFR	3.03	3.01	3.00	2.99
120 percent AFR	3.32	3.29	3.28	3.27
		Mid-term		
AFR	3.07	3.05	3.04	3.03
110 percent AFR	3.39	3.36	3.35	3.34
120 percent AFR	3.69	3.66	3.64	3.63
		Long-term		
AFR	3.31	3.28	3.27	3.26
110 percent AFR	3.64	3.61	3.59	3.58
120 percent AFR	3.98	3.94	3.92	3.91

Rev. Rul. 2018-30, I.R.B. 2018-49.

UNIFORM CAPITALIZATION. The IRS has adopted as final regulations amending Treas. Reg. §§ 1.263A-1, -2, and -3 to (1) provide rules for the treatment of negative adjustments related to certain costs required to be capitalized to property produced or acquired for resale; (2) provide a new simplified method of accounting, the modified simplified production method, for determining the additional I.R.C. § 263A costs that must be capitalized to ending inventory or other property on hand at the end of the year; and (3) redefine how certain types of costs are categorized for purposes of the simplified methods for determining the additional I.R.C. § 263A costs that must be capitalized to ending inventory or other property on hand at the end of the year. Under the simplified production method and the simplified resale method, a taxpayer determines the additional I.R.C. § 263A costs (as defined in Treas. Reg. § 1.263A-1(d)(3)) that must be capitalized to ending inventory or other property on hand at the end of the year by multiplying the I.R.C. § 471 costs (as defined in Treas. Reg. § 1.263A-1(d)(2)) remaining on hand at year end (or reflected in the current-year increment in the case of a taxpayer using the LIFO inventory method) by an absorption ratio. **T.D. 9843, I.R.B. 2018-50**.

NEGLIGENCE

DUTY TO WORKERS. The plaintiff had volunteered to help friends, two of the defendants, harvest hay on the other defendant's farm (the landowner). The plaintiff and friends used a hay baler owned by the landowner which had no safety guard over one of the chains used to operate the baler. The plaintiff was injured when the plaintiff's finger was caught in the chain while the baler was in operation. The landowner filed a motion for summary judgment, arguing that the friends had been given "complete power" to hire helpers; therefore, the landowner did not owe any duty of care as to the plaintiff. The court found that the landowner owned both the farm where the accident occurred and the baler which injured the plaintiff. The court also found that the landowner had the knowledge that the friends were going to use the baler and would be obtaining help in harvesting the hay. Thus, the court found that the landowner failed to show that the plaintiff's presence on the farm and use of the baler was not reasonably foreseeable. The court reviewed the New York common law principles of landowner liability: (1) the lack of the chain guard was a dangerous condition known to the landowner; (2) the lack of the chain guard was an open and obvious condition but that condition affected only the landowner's duty to warn about the condition; however, the landowner failed to show that the exposed chain was so obvious and open a condition to negate the landowner's duty to warn; (3) the court found that the landowner did not lease the land or baler to the friends or create a bailment such as to transfer liability to the friends for the baler's condition; and (4) the landowner failed to provide any evidence of any intervening cause of the accident. Thus, the court held that the trial court's grant of summary judgment to the landowner was improper and remanded the landowner's liability issue to the trial court. At trial, the friends also submitted a motion for summary judgment, arguing that they did not have sufficient control over the farm or baler to be liable for the accident. On appeal the appellate court agreed, holding that the friends had insufficient control to be liable for a dangerous condition which they could not correct. In addition, the appellate court agreed that the plaintiff was not employed by the friends in that the plaintiff testified that the plaintiff had merely volunteered to help the friends without any expectation of compensation. **Breau v. Burdick, 2018 N.Y. App. Div. LEXIS 7844 (Sup. Ct. N.Y. 2018)**.

WORKERS' COMPENSATION

COURSE OF EMPLOYMENT. The plaintiff was employed on the defendant's dairy farm to tend and milk cows. The plaintiff left the farm to visit the plaintiff's residence which was across a road from the dairy and was provided by the defendant. While at the residence, the plaintiff drank a beer before driving back to the dairy. During the trip back, the plaintiff was injured in an accident on the highway. The plaintiff filed for workers' compensation benefits which were denied by the Workers' Compensation Board because the plaintiff had engaged in a prohibited activity at the time of the accident. The court stated that, although momentary deviations from the work routine for a customary and accepted purpose will not bar a claim for benefits, activities that constitute purely personal pursuits do not fall within the scope of employment and, therefore, a claimant may not recover for injuries sustained while engaging in such pursuits. The court found that the defendant employer had given the plaintiff notice that drinking was not permitted while working. The court held that the plaintiff was engaged in a prohibited employment activity at the time of the accident; therefore, the injuries suffered in the accident were not work-related and the plaintiff was not eligible for workers' compensation benefits. **Matter of Button v. Button, 2018 N.Y. App. Div. LEXIS 7753 (N.Y. App. Div. 2018)**.

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