[9] 11 U.S.C. § 362(a)(8); *see* Nichols v. Comm'r, T.C. Memo. 1988-257 (Tax Court case commenced by debtor dismissed for violation of automatic stay).

[10] 11 U.S.C. § 362(b)(1).

[11] 11 U.S.C. § 362(b)(2)(A).

[12] *See In re* Aznoe Agribiz, Inc., 416 B.R. 755 (Bankr. D. Mont. 2009) (postpetition filing of statutory agricultural supplier's lien did not violate automatic stay).

[13] 11 U.S.C. § 362(b)(7). See, e.g., Pitts v. Comm'r, 2005-2 U.S. Tax Cas. (CCH) ¶ 50,655 (S.D. N.Y. 2005) (IRS sending of Form CP-158 to demand debtor file income tax returns did not violate automatic stay).

[14] See *In re* Prange Foods Corp., 63 B.R. 211 (Bankr. W.D. Mich. 1986) (automatic stay does not toll 30-day period for filing of notice under Perishable Agricultural Commodities Act for eligibility of producer for trust proceeds; in addition producer need not file motion to lift stay to file PACA claim).

[15] 11 U.S.C. § 362(b)(18).

[16] 11 U.S.C. § 362(b)(26); *see In re* Ewing, 400 B.R. 913 (N.D. Ga. 2008) (Chapter 13 petition did not stay right of IRS to offset prepetition tax refund against prepetition tax liability); *In re* Bryant, 399 B.R. 477 (Bankr. W.D. Ky. 2009) (Chapter 7 discharge did not stay right of IRS to offset prepetition tax refund against prepetition tax liability).

[17] See *In re* Myers, 491 F.3d 120 (3d Cir. 2007); Makoroff v. Lockport, n. 5 *above*.

[18] *Id*., see also ns. 20-25 below and accompanying text.

[19] 11 U.S.C. § 362(k); *see* Archer v. Macomb County Bank, 853 F.2d 497 (6th Cir. 1988) (debtor awarded actual damages for lost horse breeding and training contracts and punitive damages where mortgagor attempted foreclosure after notice of bankruptcy filing); *In re* Herbert, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,206 (9th Cir. 1999) (debtors allowed actual damages for IRS violation of automatic stay; punitive damages not allowed against IRS).

[20] *See, e.g., In re* Kretzer, 48 B.R. 585 (Bankr. D. Nev. 1985) (repossession action against pickup truck did not violate automatic stay where truck was exempt property removed from bankruptcy estate).

[21] 11 U.S.C. § 362(c)(2); *see, e.g. In re* Dickey, 64 B.R. 3 (Bankr. E.D. Va. 1986) (assessment and levy by IRS after confirmation of debtor's Chapter 13 plan for postpetition income taxes not in violation of automatic stay because confirmation of plan terminates stay).

[22] *In re* Schonscheck, 2018 Bankr. LEXIS 3231 (Bankr. E.D. Wis. 2018).

[23] *In re* Albany Partners, Ltd., 749 F.2d 670, 675 (11th Cir.1984) ("[A]n order annulling the stay [can] operate retroactively to the date of the filing of the petition which gave rise to the stay, and thus validate actions taken by the party at a time when he may have been unaware of the existence of the stay.")

[24] *In re* Pinetree, Ltd., 876 F.2d 34 (5th Cir. 1989).

[25] *In re* Pinetree, Ltd., 876 F.2d 34 (5th Cir. 1989).

CASES, REGULATIONS AND STATUTES

BANKRUPTCY

GENERAL

EXEMPTIONS

RETIREMENT ACCOUNTS. Prior to filing for Chapter 7, the the debtor was divorced and the divorce decree property settlement provided that the debtor was awarded one-half of the former spouse's I.R.C. § 401(k) account and all of the funds in the former spouse's IRA. At the time of the filing for bankruptcy, neither property transfer had occurred. The debtor claimed the 401(k) and IRA funds as exempt funds under Section 522(d)(12) but a creditor objected to the exemptions. Section 522(d)(12) provides an exemption for "Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." The court cited *Clark v. Rameker, 134 S. Ct. 2242 (2014)* for a definition of retirement funds: "The ordinary meaning of "fund[s]" is "sum[s] of money … set aside for a specific purpose." And "retirement" means "[w]ithdrawal from one's occupation, business, or office." Section 522(b)(3)(C)'s reference to "retirement funds" is therefore properly understood to mean sums of money set aside for the day an individual stops working." The debtor argued that the 401(k) and IRA accounts were created by the former spouse as funds for their retirement. However, the court found that the funds in the hands of the debtor were merely part of the divorce property settlement and held that they were not eligible for the retirement fund exemption. ***In re* Lerbakken, 2018-2 U.S. Tax Cas. (CCH) ¶ 50,454 (Bankr. 8th Cir. 2018)**.

FEDERAL TAX

TAX LIENS. The debtor filed for Chapter 7 and the estate included the debtor's residence for which the debtor claimed the Washington state exemption of $125,000. A bank had a secured claim against the property of $476,240 and an unsecured judgment claim for $1.4 million. The IRS had a tax lien against the property for $687,661. The total secured claims exceeded the value of the property after the exemption amount. The property was sold under an agreement that the bank would allow the trustee to receive part of the proceeds due to the bank to compensate the trustee for the costs of the sale and that the debtor would receive the exemption amount. The IRS objected to the sale and the trustee agreed to leave the issue of the exemption to further court proceedings. The property was sold and the trustee (1) filed a motion to distribute the exemption amount to the IRS but (2) sought to use Section 724(b) to reduce the amount paid to the IRS by the costs of the

trustee's administering the sale. Section 724(b) permits a trustee to subordinate an otherwise unavoidable tax lien in "property in which the estate has an interest" to the payment of certain types of administrative claims including the actual, necessary costs and expenses of preserving the estate. The IRS argued that Section 724(b) does not apply to the proceeds of exempt property because the estate has no interest in exempt property, not only because exempt property is excluded from the estate but also because exempt property remains fully subject to the tax lien. In addition, the IRS argued that Section 522(k) provides that "[p]roperty that the debtor exempts under this section is not liable for payment of any administrative expense . . .." A debtor's allowed exemption removes property (or a debtor's interest up to a certain value in such property) from the bankruptcy estate and the reach of that debtor's creditors. An exception to the general exemption scheme is Section 522(c)(2)(B), which provides that exempt property remains liable for a properly noticed tax lien. The court stated that Section 724(b) applied where the tax lien was attached to property of the estate which was subordinate to other liens and allowed certain administrative claims to be paid before the subordinate tax lien. In this case, the tax lien was (1) attached to non-estate property and (2) superior to any other liens; therefore, Section 724(b) did not apply to allow the trustee to reduce the lien for payment of any administrative costs. The court noted that, to allow application of Section 724(b) to the proceeds of exempt property would violate Section 522(k)'s prohibition of the reduction of an exemption by administrative costs. Thus, the court held that the full exemption amount would be paid to the IRS under the tax lien claim. ***In re* Selander, 2018-2 U.S. Tax Cas. (CCH) ¶ 50,461 (Bankr. W.D. Wash. 2018)**.

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The decedent died in 2010 and the attorney hired by the executor failed to file a Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*, before January 17, 2012. The estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to file the Form 8939 to make the I.R.C. § 1022 election and to allocate basis provided by I.R.C. § 1022 to eligible property transferred as a result of the decedent's death. *Notice 2011-66, 2011-2 C.B. 184 section I.D.1*, provides that the IRS will not grant extensions of time to file a Form 8939 and will not accept a Form 8939 filed after the due date except in four limited circumstances provided in section I.D.2: "Fourth, an executor may apply for relief under § 301.9100-3 in the form of an extension of the time in which to file the Form 8939 (thus, making the Section 1022 election and the allocation of basis increase), which relief may be granted if the requirements of § 301.9100-3 are satisfied. The IRS granted an extension of time to file the election. **Ltr. Rul. 201842004, July 9, 2018.**

FEDERAL FARM PROGRAMS

No items.

FEDERAL INCOME TAXATION

BAD DEBTS. The taxpayer made a loan to the organization in one tax year. The organization filed a Form 990, *Return of Organization Exempt from Income Taxation,* as an organization described in I.R.C. § 501(c)(4). In a later tax year, the organization dissolves without any repayment of the loan. On the taxpayer's income tax return for that same tax year, the taxpayer claimed a worthless debt deduction under I.R.C. § 166 for the amount of the unpaid loan. According to the taxpayer, the organization's purpose was to advocate for improved public education. On its Form 990, however, the organization reported that it engaged in political campaign activity in connection with a certain candidate, who was running for an elective public office and spent funds to promote the election of the candidate. I.R.C. § 166(a)(1) allows a deduction for a debt which becomes worthless within the taxable year. I.R.C. § 271 provides, however, that the deduction under I.R.C. § 166 is not allowed for worthlessness of any debt that is owed by a political party. I.R.C. § 271(b)(1), defines a political party is defined as: (A) a political party; (B) a national, state or local committee of a political party; or (C) a committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of presidential or vice-presidential electors or of any individual whose name is presented for election to any federal, state, or local elective public office, whether or not such individual is elected. In a Chief Counsel Advice letter, the IRS stated that an organization's qualification as an organization described in I.R.C. § 501(c)(4) is independent from the definition of a "political party" for purposes of I.R.C. § 271. I.R.C. § 271 defines political party without reference to any other Code section or regulation and without regard to tax status. A committee, association or organization, whether it is taxable or tax-exempt, that accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of a candidate for elective public office is a political party under I.R.C. § 271. Therefore, the IRS ruled that the expenditures made by the organization were made for the purpose of influencing or attempting to influence the election of a candidate for elective public office, and therefore, the organization met the definition of a political party under I.R.C. § 271 and the taxpayer could not claim a worthless debt deduction under I.R.C. § 166 for the debt owed by the organization. **CCA 201842006, Sept. 17, 2018**.

DISASTER LOSSES. On September 27, 2018, the President

determined that certain areas in Hawaii 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 Lane which began on August 22, 2018. **FEMA-4395-DR**. On October 11, 2018, the President determined that certain areas in Florida were eligible for assistance from the government under the Act as a result of Hurricane Michael which began on October 7, 2018. **FEMA-4399-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).

INFORMATION RETURNS. The IRS has issued proposed regulations relating to penalties for failure to file correct information returns or furnish correct payee statements. The proposed regulations contain safe harbor rules that, for penalty purposes, generally treat as correct payee statements or corresponding information returns that contain errors relating to *de minimis* incorrect dollar amounts. They prescribe the time and manner in which a payee may elect not to have the safe harbor rules apply. **83 Fed. Reg. 52726 (Oct. 17, 2018)**.

PENSION PLANS. For plans beginning in October 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 3.15 percent. The 30-year Treasury weighted average is 2.88 percent, and the 90 percent to 105 percent permissible range is 2.59 percent to 3.02 percent. The 24-month average corporate bond segment rates for October 2018, *without adjustment* by the 25-year average segment rates are: 2.35 percent for the first segment; 3.85 percent for the second segment; and 4.47 percent for the third segment. The 24-month average corporate bond segment rates for September 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 2018-82, I.R.B. 2018-__**.

IRS PUBLICATIONS. The IRS has issued revised backup withholding publication, Publication 1281, *Backup Withholding for Missing and Incorrect Name/TIN(s)*, updated to reflect the backup withholding tax rate dropping from 28 percent to 24 percent, a key change made by the Tax Cuts and Jobs Act (TCJA) effective Jan. 1, 2018. In general, backup withholding applies in various situations including, but not limited to, when a taxpayer fails to supply their correct taxpayer identification number (TIN) to a payer. A TIN is usually a Social Security number (SSN), but it can be an Employer Identification Number (EIN), Individual Taxpayer Identification Number (ITIN) or Adoption Taxpayer Identification Number (ATIN). Backup withholding also applies, following notification by the IRS, where a taxpayer underreported interest or dividend income on their federal income tax return. Pub. 1281 features answers to 34 frequently asked questions (FAQs). One of them, Q/A 34, points out that a payer who mistakenly backup withheld at an incorrect rate (such as the old 28-percent tax rate, rather than the new 24-percent rate), need not refund the difference to the payee. However, a payer who chooses to refund the difference must do so before the end of the year and can then make appropriate adjustments to their federal tax deposits. When backup withholding applies, payers must backup withhold tax from payments not otherwise subject to withholding. Payees may be subject to backup withholding if they: (1) fail to give a TIN, (2) give an incorrect TIN, (3) supply a TIN in an improper manner, (4) underreport interest or dividends on their income tax return, or (5) fail to certify that they are not subject to backup withholding for underreporting of interest and dividends. Backup withholding can apply to most kinds of payments reported on Forms 1099, including: (1) interest payments; (2) dividends; (3) patronage dividends, but only if at least half of the payment is in money; (4) rents, profits or other income; commissions, fees or other payments for work performed as an independent contractor; payments by brokers and barter exchange transactions; payments by fishing boat operators, but only the portion that is in money and represents a share of the proceeds of the catch; payment card and third-party network transactions; and royalty payments. Backup withholding also may apply to gambling winnings that are not subject to regular gambling withholding. To terminate backup withholding, the payee must correct any issues that caused it. They may need to give the correct TIN to the payer, resolve the underreported income and pay the amount owed, or file a missing return. Payers report any backup withholding on Form 945, *Annual Return of Withheld Federal Income Tax*. The 2018 form is due Jan. 31, 2019. For more information about depositing backup withholding taxes, see Publication 15, *Employer's Tax Guide;* the "Backup Withholding" page in Publication 505, *Tax Withholding and Estimated Tax* and Publication 1335, *Backup Withholding Questions and Answers*. Payers also show any backup withholding on information returns, such as Forms 1099, that they furnish to their payees and file with the IRS. Like regular federal income tax withholding, a payee can claim credit for any backup withholding when they file their 2018 federal income tax return. **IR-2018-205**.

OPPORTUNITY ZONE TAX INCENTIVE. The IRS has issued proposed regulations and other published guidance for the new Opportunity Zone tax incentive, created by the 2017 Tax Cuts and Jobs Act and designed to spur investment in distressed communities throughout the country through tax benefits. Under a nomination process completed in June, 8,761 communities in all 50 states, the District of Columbia and five U.S. territories were designated as qualified Opportunity Zones. Opportunity Zones retain their designation for 10 years. Investors may defer tax on almost any capital gain up to Dec. 31, 2026 by making an appropriate investment in a zone, making an election after December 21, 2017, and meeting other requirements. The proposed regulations clarify that almost all capital gains qualify for deferral. In the case of a capital gain experienced by a partnership, the rules allow either a partnership or its partners to elect deferral. Similar rules apply to other pass-through entities, such as S corporations and their shareholders, and estates and trusts and their beneficiaries. Generally, to qualify for deferral, the amount of a capital gain to be deferred must be invested in a Qualified Opportunity Fund (QOF), which must be an entity treated as a partnership or corporation for federal tax purposes and organized in any of the 50 states, D.C. or five U.S. territories for the purpose of investing in qualified opportunity zone property. The QOF must hold at least 90 percent of its assets in qualified Opportunity Zone property (investment standard). Investors who hold their QOF investment for at least 10 years may qualify to increase their basis to the fair market value of the investment on the date it is sold. The proposed regulations also provide that if at least 70 percent of the tangible business property owned or leased by a trade or business is qualified opportunity

zone business property, the requirement that "substantially all" of such tangible business property is qualified opportunity zone business property can be satisfied if other requirements are met. If the tangible property is a building, the proposed regulations provide that "substantial improvement" is measured based only on the basis of the building (not of the underlying land). In addition to the proposed regulations, Treasury and the IRS issued *Rev. Rul. 2018-29, I.R.B. 2018-45* providing guidance for taxpayers on the "original use" requirement for land purchased after 2017 in qualified opportunity zones. The IRS also released Form 8996, *Qualified Opportunity Fund*, which investment vehicles will use to self-certify as QOFs. **NPRM REG-115420-18; IR-2018-206**.

PERSONAL EXEMPTION. The IRS has issued a Notice which provides interim guidance, pending issuance of proposed regulations, clarifying how the reduction of the personal exemption deduction to zero in new I.R.C. § 151(d)(5) applies for purposes of certain rules under I.R.C. §§ 36B and 6011 relating to the premium tax credit and under I.R.C. § 5000A relating to the individual shared responsibility provision. The Tax Cuts and Jobs Act, *Pub. L. No. 115-97, § 11041, 131 Stat. 2054, 2082 (2017)*, added I.R.C. § 151(d)(5) which reduces the amount of the personal exemption deduction to zero for taxable years beginning after December 31, 2017, and before January 1, 2026. The Notice provides that "the following rules apply for purposes of the regulations under §§ 36B and 5000A and for purposes of § 1.6011-8(a): (1) A taxpayer is considered to have claimed a personal exemption deduction for himself or herself for a taxable year if the taxpayer files an income tax return for the year and does not qualify as a dependent of another taxpayer under § 152 for the year; (2) A taxpayer is considered to have claimed a personal exemption deduction for an individual other than the taxpayer if the taxpayer is allowed a personal exemption deduction for the individual (taking into account § 151(d)(5)(B)) and lists the individual's name and TIN on the Form 1040, U.S. Individual Income Tax Return, or Form 1040NR, U.S. Nonresident Alien Income Tax Return, the taxpayer files for the year." **Notice 2018-84, I.R.B. 2018-45**.

QUALIFIED BUSINESS INCOME DEDUCTION. Although not providing any new guidance, the IRS has published some things business owners should know about the QBI deduction: The deduction applies to qualified business income, real estate investment trust dividends, and publicly traded partnership income. Qualified business income is the net amount of qualified items of income, gain, deduction and loss connected to a qualified U.S. trade or business. Only items included in taxable income are counted. The deduction is available to eligible taxpayers, whether they itemize their deductions on Schedule A or take the standard deduction. The deduction is generally equal to the lesser of these two amounts: (1) 20 percent of qualified business income plus 20 percent of qualified real estate investment trust dividends and qualified publicly traded partnership income and (2) 20 percent of taxable income computed before the qualified business income deduction minus net capital gains. For taxpayers with taxable income computed before the qualified business income deduction that exceeds $315,000 for a married couple filing a joint return, or $157,500 for all other taxpayers, the deduction may be subject to additional limitations or exceptions. These limitations and exceptions are based on the type of trade or business, the taxpayer's taxable income, the amount of W-2 wages paid by the qualified trade or business, and the unadjusted basis immediately after acquisition of qualified property held by the trade or business. Income earned through a C corporation or by providing services as an employee is not eligible for the deduction. Taxpayers may rely on the rules in the proposed regulations until final regulations appear in the Federal Register. **Tax Reform Tax Tip 2018-166**.

RECORDKEEPING. The IRS has published information about things taxpayers can do to help reconstruct or get copies of specific types of records after a disaster: *Tax Return Transcripts*. Taxpayers can get free tax return transcripts by using the "Get Transcript" tool on IRS.gov. They can also call 800-908-9946 to order them by phone. *Proof of loss*. To establish the extent of the damage, taxpayers should take photographs or videos of affected property as soon as possible after the disaster. Taxpayers can look on their mobile phone for pictures that show the property before the disaster damaged it. If a taxpayer does not have photographs or videos of their property, a simple method to help them remember what items they lost is to sketch pictures of each room that was affected. Taxpayers can support the valuation of property with photographs, videos, canceled checks, receipts, or other evidence. If they bought items using a credit card or debit card, they should gather past statements from their credit card company or bank. If the taxpayer did not keep these records or they were destroyed, statements may be available online or they can contact their financial institution. *Records about property*. Taxpayers can contact the title company, escrow company, or bank that handled the purchase of their home to get copies of appropriate documents. Taxpayers who made improvements to their home should contact the contractors who did the work to see if records are available. If possible, the home owner should get statements from the contractors to verify the work and cost. They can also get written accounts from friends and relatives who saw the house before and after any improvements. For inherited property, taxpayers can check court records for probate values. If a trust or estate existed, the taxpayer can contact the attorney who handled the trust. When no other records are available, taxpayers can check the county assessor's office for old records that might address the value of the property. There are several resources that can help someone determine the current fair-market value of most cars on the road. These resources are all available online and at most libraries. They include Kelley's Blue Book, the National Automobile Dealers Association, and Edmunds. **IRS Tax Tip 2018-165**.

RETURNS. The IRS has issued as a revenue procedure the guidelines and requirements for 2018 substitutes for official IRS tax forms, to be published as Pub. 1167, *General Rules and Specifications for Substitute Forms and Schedules*. **Rev. Proc. 2018-51, I.R.B. 2018-44, 721**.

TAX RETURN PREPARERS. The IRS has issued a reminder that federal tax return preparers must renew their Preparer Tax Identification Numbers (PTINs) for 2019. All current PTINs will expire Dec. 31, 2018. Anyone who prepares or helps prepare any federal tax return, or claim for refund, for compensation must have a valid PTIN from the IRS. The PTIN must be used as the identifying number on returns prepared. Failure to have and use a valid PTIN may result in penalties. For those who have a 2018

PTIN, the renewal process takes a few moments online. Those who cannot remember their user ID and password can find online tools to assist them. Preparers can get started at www.irs.gov/ptin. If registering for the first time, the PTIN application may also be completed online. There is no fee for obtaining or renewing a PTIN. Paper Form W-12, IRS Paid Preparer Tax Identification Number Application and Renewal, is available for paper applications and renewals, and takes four to six weeks to process. All enrolled agents, regardless of whether they prepare returns, must renew their PTIN annually in order to maintain their active status. *Annual Filing Season Program*. The voluntary IRS Annual Filing Season Program is intended to encourage non-credentialed tax return preparers to take continuing education (CE) courses to increase their knowledge and improve their filing season readiness. Participation generally requires 18 hours of CE from an IRS approved provider, including a course in basic tax filing issues and updates, ethics, as well as other federal tax law courses. More information on the types and amounts of CE required for the program is available online. Preparers desiring to receive an Annual Filing Season Program Record of Completion for 2019, must (1) complete their continuing education requirements by Dec. 31, 2018; (2) have a valid 2019 PTIN; and (3) consent to adhere to specific requirements in Treasury Department Circular No. 230. The IRS has a video at www.IRS.gov to demonstrate how to sign the Circular 230 consent and print the Record of Completion. **IR-2018-207**.

SAFE HARBOR INTEREST RATES
November 2018

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	2.70	2.68	2.67	2.67
110 percent AFR	2.97	2.95	2.94	2.93
120 percent AFR	3.25	3.22	3.21	3.20
		Mid-term		
AFR	3.04	3.02	3.01	3.00
110 percent AFR	3.35	3.32	3.31	3.30
120 percent AFR	3.65	3.62	3.60	3.59
		Long-term		
AFR	3.22	3.19	3.18	3.17
110 percent AFR	3.54	3.51	3.49	3.48
120 percent AFR	3.87	3.83	3.81	3.80

Rev. Rul. 2018-28, I.R.B. 2018-45.

INSURANCE

STATUTE OF LIMITATIONS. The plaintiffs, husband and wife, were farmers who suffered damage to their barn during a tornado in 2015. The plaintiffs received insurance proceeds from a claim for that damage. However, unknown to the plaintiffs, the barn damage included damage to the electrical wiring in the barn and on March 20, 2016, the barn burned down, presumably because of the damaged wiring, resulting in loss of farming equipment and loss of income from the plaintiffs' inability to timely plant their next crop. The plaintiffs filed another insurance claim and received some proceeds, but on March 20, 2017, they filed the current action based on breach of contract for failure of the defendant insurance company to fully cover their claim. The trial court dismissed the cased based on the 12-month Wisconsin statute of limitations under Wis. Stat. § 631.83(1)(a) which provides that "[a]n action on a fire insurance policy must be commenced within 12 months after the inception of the loss." The defendant argued that the "inception of the loss" occurred when the tornado damaged the barn wiring. The appellate court looked primarily to the nature of the loss and damage for which recovery was sought, in this case the damage caused by the fire. Because the damage caused by the fire did not occur until March 20, 2016, the inception of the loss occurred on that date and the plaintiffs' action was timely filed on March 20, 2017, exactly 12 months later. **Stelpflug v. Rural Mut. Ins. Co., 2018 Wisc. App. LEXIS 832 (Wis. Ct. App. 2018)**.

PRODUCTS LIABILITY

ANIMAL FEED. The plaintiff purchased milk-replacer products from the defendants who included the manufacturer, distributor and seller of the products. The plaintiff alleged that the milk-replacer products were defective such that the calves to which the product was fed became malnourished and contracted disease which resulted in the death of the calves. The plaintiff sued in negligence, alleging that defendants breached their duty to the plaintiff ". . . to mix the milk replacement . . . in a reasonably safe condition;" and that the defendants failed (1) ". . . to ensure proper levels of nourishment to prevent weakened immune systems in the calves . . . predisposing calves to infectious diseases," (2) ". . . to follow standard feed mixing practices by using tainted milk product," (3) ". . . to properly inspect the feed as mixed and delivered to ensure the product conformed to applicable standards in the feed industry," and (4) ". . . to act as a reasonable and prudent feed company under the circumstances described." The defendant moved for summary judgment, arguing that the tort claims were barred by the economic loss doctrine and the plaintiff's action was properly one of breach of contract. The court cited *Richards v. Midland Brick Sales Co., Inc., 551 N.W.2d 649, 650 (Iowa Ct. App. 1996)* for the principle that the economic loss doctrine is the generally recognized principle of law that plaintiffs cannot recover in tort when they have suffered only economic harm and that Iowa courts "have consistently found the proper remedy is in contract, not tort, in actions where the only damage was a loss of the benefit of the bargain or was to the product itself." Further, an action in tort applies only where the product is dangerous and causes injuries to or risk of injuries to the plaintiff or the plaintiff's property. The court also cited *Nelson v. Todd's Ltd., 426 N.W.2d 120, 125 (Iowa 1988)*for the principle that when damage is " . . . the foreseeable result from a failure of the product to work properly because of a defect or omission from the product . . . the remedy lies in contract." The *Nelson* case involved a meat curing product which did not contain an essential ingredient and failed to properly cure meat for the plaintiff. The *Nelson* court held that the damage that the plaintiff suffered "was the foreseeable result from a failure of the product to work properly because of a defect or omission from the product." In this case, the damage to the plaintiff's calves occurred because of a defect in the milk-replacer; thus, the plaintiff remedy sounded only in contract and the tort claims were dismissed by the court. **Black Soil Dairy v. Land O'Lakes, 2018 U.S. Dist. LEXIS 180378 (W.D. Iowa 2018)**.

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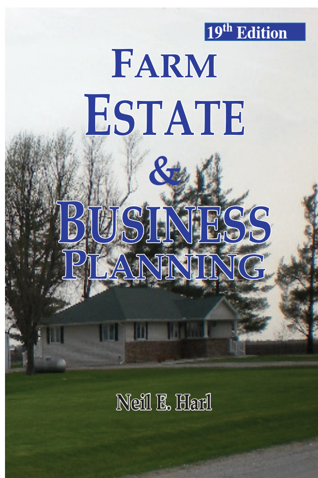
FARM ESTATE & BUSINESS PLANNING



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