CASES, REGULATIONS AND STATUTES

ADVERSE POSSESSION

FENCE. The plaintiffs and defendants owned farm land neighboring each other. The disputed strip between the properties include a line of three trees and a turn-row (a road used to turn around a tractor at the end of a row) used by the defendants in planting and harvesting crops. When the defendants started to install an irrigation system on the disputed property, the plaintiffs filed an action to enjoin the defendants from trespassing on their land; for quiet title; and for restoration of the land to its proper state. The defendant counterclaimed that the title to the disputed property had passed to the defendant under theories of boundary by acquiescence, boundary by agreement and adverse possession. The trial court ruled for the plaintiffs and the appellate court reviewed the trial court's decision on the basis of a preponderance of the evidence. The defendants first argued that the line of trees and the turn-row was a boundary to which both parties acquiesced over time. The court cited case precedent that "whenever adjoining landowners tacitly accept a fence line or other monument as the visible evidence of their dividing line and thus apparently consent to that line, it becomes the boundary by acquiescence." The court noted that the three trees were insufficient to create a boundary line in that most of the disputed land had no trees. The court also noted that the turn-row was not sufficient in length to create a distinct boundary sufficient to support a boundary by acquiescence ruling. In order to establish a claim for adverse possession in Arkansas, a party must prove that he or she had possessed the property in question continuously for more than seven years and that the possession was visible, notorious, distinct, exclusive, hostile, and with the intent to hold against the true owner. The court found that, although the defendants did make the most use of the turn-row, the defendants did not provide evidence that the defendants had exclusive use of the turn-row or that the plaintiffs were prevented from accessing the turn-row by a fence or gate. **Crum v. Siems, 2019Ark. App. 232 (Ark. Ct. App. 2019)**.

BANKRUPTCY

GENERAL

CONVERSION. The debtors, husband and wife, filed for Chapter 7 in February 2018 and filed a motion to convert the case to Chapter in July 2018. The Chapter 7 trustee and a creditor filed an objection to the conversion. Section 706(a) provides: "(a) The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable." In *Marrama v. Citizens Bank of Massachusetts, 549 U.S. 365 (2007)*, the U.S. Supreme Court held that there was no absolute right to convert a case under Section 706 and that a finding that the debtor sought a conversion in bad faith was grounds for denying the conversion. The *Marrama* court did not provide any factors to determine bad faith in seeking a conversion but the court listed factors used by other courts in deciding similar cases: (1) whether the debtor is seeking to convert to Chapter 13 in good faith (including a review of facts such as the timing of the motion to convert; the debtor's motive in filing the motion; and whether the debtor has been forthcoming with the bankruptcy court and creditors); (2) whether the debtor can propose a confirmable chapter 13 plan; (3) the impact on the debtor of denying conversion weighed against the prejudice to creditors caused by allowing conversion; (4) the effect of conversion on the efficient administration of the bankruptcy estate; and (5) whether conversion would further an abuse of the bankruptcy process. The court held that the debtors did not seek the conversion in good faith because (1) the debtors filed a prior case and the current case on the eve of foreclosure proceedings; (2) the creditor would be prejudiced by the conversion and denial of the conversion would have little impact on the debtors, (3) the court found that the debtors' declining income was likely to prevent a confirmable Chapter 13 plan. On the basis of these three factors, the court held that the debtors' filed the motion to convert to Chapter 13 in bad faith and that the conversion was denied. ***In re* Campbell, 2019 Bankr. 1273 (Bankr. M.D. Pa. 2019)**.

DISCHARGE. The debtor borrowed funds from the FSA and granted the FSA a security interest in "all farm equipment . . . and inventory, now owned or hereafter acquired by the Debtor, together with all replacements, substitutions, additions, and accessions thereto, including but not limited to the following which are located in the State of Alabama." The collateral included several pieces of farm equipment, 10 beef breeding cows and nine calves. The debtor lived with an unmarried partner who, without the debtor's knowledge and permission, sold all of the animals and most of the equipment to purchase drugs. However, the debtor sold a tractor and used the proceeds to pay the bail for the partner. The debtor filed for Chapter 7 and the FSA sought an order that the FSA's claim for the remainder of the loan was nondischargeable under Section 523(a)(6) for willful and malicious injury to the creditor. The court stated that willfulness requires a showing of an intentional or deliberate act, which is not done merely in reckless disregard of the rights of another. The court defined malicious to mean that the debtor's act be wrongful and without just cause or excessive even in the absence of personal hatred, spite or ill-will. In addition, the debtor must commit an act the purpose of which is to cause injury or which is substantially certain to cause injury. However, a showing of specific intent to harm is not required. The court found that the debtor was aware of the debtor's responsibilities toward the FSA and that the sale of the collateral would cause a loss to the FSA. The FSA sought an order that the full loan amount due was nondischargeable, but the court held

that only amount of the proceeds of the sale was nondischargeable under the Section 523(a)(6) willful and malicious injury provision. ***In re* Reid, 2019 Bankr. LEXIS 1253 (Bankr. S.D. Ala. 2019)**.

EXEMPTIONS.

IRA. The debtor withdrew $50,000 from an IRA on April 16, 2018 and deposited the funds in a checking account. The debtor used the funds in the checking account for personal uses but on June 15, 2018 redeposited $20,000 back to the IRA, within the 60 day rollover limitation period. The debtor filed for Chapter 7 on October 22, 2018 and claimed $40,000 in the IRA as exempt retirement account funds under 735 ILCS § 5/12-1006. The trustee objected to the exemption, arguing that the removal of the funds from the IRA made them ineligible for the exemption. The trustee cited three cases in support of this argument but the court distinguished all three cases because, in each case, the funds were not in a retirement plan or account at the time of the bankruptcy filing. The trustee also argued that, because the funds were commingled with non-IRA funds in the debtor's checking account, the funds lost their status as retirement funds. Under I.R.C. § 408(d)(1), amounts distributed from an IRA are included in the payee's gross income. Under I.R.C. § 408(d)(3), however, distributions are excluded from gross income if the entire amount is subsequently paid into an eligible retirement plan not later than the 60th day after the date on which the payee receives the distribution. These distributions and repayments are known as rollover contributions. Partial rollover contributions are also permitted under I.R.C. § 408(d)(3)(D). The court noted that Treas. Reg. § 1.408-4(b) recognizes the 60-day rollover rule and allows the money that was distributed from an IRA to be paid back "from the same amount of money and any other property." Thus, the court held that the commingling of the IRA distribution with personal funds did not affect the status of the IRA or any of the funds within it. The court denied the trustee's objection to the exemption. ***In re* Jones, 2019 Bankr. LEXIS 1198 (Bankr. S.D. Ill. 2019)**.

FEDERAL TAX

SHARED RESPONSIBILITY PAYMENT. The debtor filed for Chapter 13 and the IRS filed claims for an unsecured priority claim and a general unsecured claim. A portion of the priority claim was an assessment for an unpaid shared responsibility payment (SRP) because the debtor did not have health insurance. The debtor argued that the SRP was a penalty, was not entitled to priority status and was dischargeable. The Bankruptcy Code allows for the discharge of all debts with the exception of those listed as priority clams in Section 507(a). Section 507(a)(8)(A)(iii) prevents a debtor from discharging a priority tax while Sections 523(a)(7) 9 and 1328(a) allow for the discharge of a penalty. The court cited *United States v. New York, 315 U.S. 510 (1942)*, for the definition that a tax must be an "effort by the United States to obtain ... revenue." In contrast, under *United States v. La Franca, 282 U.S. 568 (1931)* a penalty is an "exaction imposed by statute as a punishment for an unlawful act" or omission. The court noted that the SRP was enacted to provide an incentive for healthy taxpayers to purchase health insurance so as to offset the economic effect of the mandate for health insurance companies to provide insurance to all applicants, whether or not they had a pre-existing condition. The court cited *National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012)* where the U.S. Supreme Court found that the SRP assessment under I.R.C. § 5000A constituted a tax and not a penalty and, therefore, was within Congress' constitutional powers to create. Therefore, the court held that the SRP was a tax and entitled to priority under Section 507(a)(8). ***In re* Cousins, 2019 Bankr. LEXIS 1156 (Bankr. E.D. La. 2019)**.

FEDERAL ESTATE AND GIFT TAXATION

No items.

FEDERAL FARM PROGRAMS

LIVESTOCK. The AMS is seeking comments on the feasibility of establishing a livestock dealer trust. Section 12103 of the Agriculture Improvement Act of 2018, Pub. L. 115–334, charged the Secretary with conducting a study to determine the feasibility of establishing a livestock dealer statutory trust. Section 12103 requires that the study: (1) Analyze how the establishment of a livestock dealer statutory trust would affect buyer and seller behavior in markets for livestock; (2) Examine how the establishment of a livestock dealer statutory trust would affect seller recovery in the event of a livestock dealer payment default; (3) Consider what potential effects a livestock dealer statutory trust would have on credit availability, including impacts on lenders and lending behavior and other industry participants; (4) Examine unique circumstances common to livestock dealers and how those circumstances could impact the functionality of a livestock dealer statutory trust; (5) Study the feasibility of the industry-wide adoption of electronic funds transfer or another expeditious method of payment to provide sellers of livestock protection from insufficient funds payments; (6) Assess the effectiveness of statutory trusts in other segments of agriculture, whether similar effects could be experienced under a livestock dealer statutory trust, and whether authorizing the Secretary to appoint an independent trustee under the livestock dealer statutory trust would improve seller recovery; (7) Consider the effects of exempting dealers with average annual purchases under a *de minimis* threshold from being subject to the livestock dealer statutory trust; and (8) Analyze how the establishment of a livestock dealer statutory trust would affect the treatment of sellers of livestock as it relates to preferential transfer in bankruptcy. **84 Fed. Reg. 17374 (April 25, 2019)**.

ORGANIC FOOD. The FSA, on behalf of the CCC, has announced the availability of funding under the Organic Certification Cost Share Program (OCCSP) for eligible certified

organic producers and handlers. FSA is also announcing the opportunity for state agencies to apply for grant agreements to administer the OCCSP program in FY 2019. State agencies that establish agreements for FY 2019 may be given the opportunity to extend their agreements and receive additional funds to administer the program in future years. Through this notice, FSA is providing the requirements for producers and handlers to apply for OCCSP payments, and for state agencies to establish agreements to receive funds in order to provide cost share assistance to eligible producers and handlers. **84 Fed. Reg. 17997 (April 29, 2019)**.

The AMS has adopted as final regulations amending the National List of Allowed and Prohibited Substances (National List) section of the USDA's organic regulations to implement recommendations submitted to the Secretary of Agriculture by the National Organic Standards Board. The final rule adds elemental sulfur to the National List for use in organic livestock production and reclassifies potassium acid tartrate from a nonagricultural substance to an agricultural substance and requires the organic form of the ingredient when commercially available. **84 Fed. Reg. 18133 (April 30, 2019)**.

INSPECTIONS. The AMS has announced the 2019 rates it will charge for voluntary grading, inspection, certification, auditing, and laboratory services for a variety of agricultural commodities including meat and poultry, fruits and vegetables, eggs, dairy products, and cotton and tobacco. The 2019 regular, overtime, holiday, and laboratory services rates will be applied at the beginning of the crop year, fiscal year or as required by law depending on the commodity. Other starting dates are based on cotton industry practices. This action establishes the rates for user-funded programs based on costs incurred by AMS. For consistency, audit fees will now be the same for all commodities at $115.00 per hour. **84 Fed. Reg. 18232 (April 30, 2019)**.

FEDERAL INCOME TAXATION

CORPORATIONS.

ACCOUNTING METHOD. The taxpayer was a common parent of an affiliated group of corporations. The taxpayer engaged an accounting firm to prepare its consolidated federal income tax return, the Form 1120, *U.S. Corporation Income Tax Return*, for the taxable year and to provide technical tax advice, including advice related to the taxpayer's methods of accounting. The taxpayer decided to change three methods of accounting: (1) treatment of computer software expenditures under *Rev. Proc. 2018-31, § 9.01, 2018-22 I.R.B. 637*; (2) the method of depreciating certain property considered qualified leasehold improvement property described in I.R.C. § 168(e)(6) under section 6.01 of *Rev. Proc. 2018-31*; and (3) the taxpayer's method of accounting for intangibles under section 11.05 of *Rev. Proc. 2018-31*. In accordance with the procedures of *Rev. Proc. 2015-13, 2015-5 I.R.B. 419*, the taxpayer completed a separate, original Form 3115 for each of the desired accounting method changes, and attached each of the originals to the taxpayer's timely filed (including extensions) original, consolidated federal income tax return. Further, in accordance with the procedures of *Rev. Proc. 2015-13*, the taxpayer filed a copy of each original Form 3115, with an original signature or a photocopy of the original signature, with the appropriate office of the IRS. The accounting firm was tasked with preparing and submitting a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, for the taxable year; however, due to an inadvertent error, the firm did not timely electronically file the Form 7004. As a result, when the taxpayer did file its consolidated Form 1120, the return was late. The late filing of the taxpayer's return for the taxable year made the originals of the three Forms 3115 for the three changes also late. In addition, the signed, duplicate copies of these originals were also filed late. The IRS granted the taxpayer an extension of time which resulted in the filed Form 1120 and three original and three copies of Form 3115 timely filed. **Ltr. Rul. 201917004, Dec. 18, 2018**.

INFORMATION RETURNS. Persons are required to report cash transactions of more than $10,000 to the IRS. *Who is covered*. For purposes of cash payments, a "person" is defined as an individual, company, corporation, partnership, association, trust or estate. For example: dealers of jewelry, furniture, boats, aircraft, automobiles, art, rugs and antiques; pawnbrokers; attorneys; real estate brokers; insurance companies; and travel agencies. *How to report*. Persons report the payment by filing Form 8300, *Report of Cash Payments Over $10,000 Received in a Trade or Business*. A person can file Form 8300 electronically using the Financial Crimes Enforcement Network's BSA E-Filing System. E-filing is free, quick and secure. Filers will receive an electronic acknowledgement of each form they file. Those who prefer to mail Form 8300 can send it to the IRS at the address listed on the form. *What is cash*? Cash includes coins and currency of the United States or any foreign country. For some designated reporting transactions, it's also a cashier's check, bank draft, traveler's check or money order with a face amount of $10,000 or less. *Designated reporting transaction*. A retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of a consumer durable, a collectible, or a travel or entertainment activity. *Retail sale*. Any sale (whether or not the sale is for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers. *Consumer durable*. An item of tangible personal property of a type that, under ordinary usage, can reasonably be expected to remain useful for at least 1 year, and that has a sales price of more than $10,000. *Collectible*. Any work of art, rug, antique, metal, gem, stamp, coin, etc. *Travel or entertainment activity*. An item of travel or entertainment that pertains to a single trip or event if the combined sales price of the item and all other items relating to the same trip or event that are sold in the same transaction (or related transactions) exceeds $10,000. *Exceptions*. A cashier's check, money order, bank draft, or traveler's check is not considered received in a designated

reporting transaction if it constitutes the proceeds of a bank loan or if it is received as a payment on certain promissory notes, installment sales contracts, or down payment plans. *When to file*. A person must report cash of more than $10,000 they received: in one lump sum; in two or more related payments within 24 hours; as part of a single transaction within 12 months; and as part of two or more related transactions within 12 months. A person must file Form 8300 within 15 days after the date they received the cash. If they receive payments toward a single transaction or two or more related transactions, they file when the total amount paid exceeds $10,000. For more information, see Pub. 1544, *Reporting Cash Payments of Over $10,000*, *IRS Form 8300 Reference Guide*; and *Form 8300 and Reporting Cash Payments of Over $10,000*. **Tax Tip 2019-49**.

REFUNDS. The taxpayer filed a 2012 individual return on May 2, 2016 and claimed a refund of taxes overpaid. In 2012, the taxpayer received only pension and annuities income and had $1,039 withheld for taxes. The IRS denied the claim for a refund because the claim was made on a return filed more than three years after the taxes were paid. Under I.R.C. § 6513(b)(1), withheld taxes are deemed to have been paid on April 15 of the year following the close of the taxable year, or in this instance, April 15, 2013. A taxpayer seeking a tax refund can sue the United States after the taxpayer has filed an administrative refund claim with the IRS once that claim has been rejected. See I.R.C. § 7422(a). An income tax return that reports an overpayment and seeks a refund is considered an administrative refund claim. See Treas. Reg. § 301.6402-3(a)(5). Federal courts lack subject matter jurisdiction to hear a tax refund suit where the taxpayer's administrative refund claim is untimely. Under I.R.C. § 6511(a), any administrative refund claim must be filed within three years of the date the tax return at issue was filed. If a taxpayer fails to meet the I.R.C. § 6511(a) requirements, the taxpayer must file the administrative claim within two years after the taxes involved were paid. In this case, the 2012 return was filed on May 2, 2016 and acts as an administrative claim for a refund; thus, the taxpayer could file for a refund for taxes paid after May 2, 2013. Because the withheld taxes were deemed paid on April 15, 2013, the taxpayer suit for the refund was untimely and the Tax Court did not have jurisdiction over the suit. **Washington v. United States, 123 AFTR 2d 2019-___ (S.D. NY. 2019)**.

RETURNS. The IRS Small Business/Self-Employed Division has issued guidance to its employees regarding what collection activity information can and cannot be disclosed with respect to a couple's joint return, where the couple has subsequently divorced or are separated and no longer reside in the same household. If any tax deficiency with respect to a joint return is assessed, the couple are no longer married or no longer reside in the same household, and either joint filer makes a request in writing, the IRS must disclose in writing to the individual making the request whether it has tried to collect the deficiency from the other filer, the general nature of those collection activities, and the amount collected. I.R.C. § 6103(e)(8). Upon receipt of either a verbal or written request from a taxpayer or authorized representative, the IRS may disclose limited information related to the collection of the tax from the other individual with whom the taxpayer filed a joint return when the taxpayer and the other individual are no longer married or are separated and no longer reside in the same household. Oral requests will be honored if received from either spouse or authorized representative, after verifying the identity of the person making the request to determine the right to the information. Disclosures made pursuant to I.R.C. § 6103(e)(8) are limited to the specific tax period associated with the requester's joint deficiency, and the information should not be disclosed if its release will seriously impair federal tax administration. Information that may be disclosed upon receipt of an oral or written request from a spouse who has been assessed the joint tax include: (1) whether IRS has attempted to collect the deficiency from the other spouse; (2) the amount collected, if any, and the current collection status (e.g., notice, taxpayer delinquent account (TDA), installment agreement, offer in compromise, suspended), and (3) ff suspended, the reason for suspension. (e.g., unable to locate, hardship, etc.) Information which IRS employees cannot disclose includes: (1) the other spouse's location or telephone number; (2) any information about the other spouse's employment, income, or assets; and (3) the income level at which a currently not collectible account will be reactivated. *Examples*. The guidance provides several examples, including the following: *Illustration 1*: Mr. and Mrs. Taxpayer filed a joint return for tax year 2016. They are now divorced and have mirrored assessments under MFT 31 for the year 2016. Mr. Taxpayer recently submitted an accepted offer in compromise (OIC). Mrs. Taxpayer calls in and asks if IRS has tried contacting her husband as he has told her that he owes no more monies for the 2016 tax year. An IRS employee determines that IRS records show a TC 480, *Offer in Compromise Pending* and TC 780, *Master File Account Compromised* posted to her MFT 31 module. While speaking with Mrs. Taxpayer, the employee can tell her that the account does reflect an OIC submission (TC 480) and acceptance (TC 780). He can relay what payments/refund offsets have credited to her MFT 31 and her current outstanding balance. *Illustration 2*. Mr. and Mrs. Taxpayer filed a joint return for tax year 2016. They are now divorced and have mirrored assessments under MFT 31 for tax year 2016. Mrs. Taxpayer has a continuous wage levy, and the payments have credited to Mr. Taxpayer's MFT 31 module. Mr. Taxpayer calls in to ask if IRS is receiving regular payments from his ex-spouse. While speaking with Mr. Taxpayer, an IRS employee can tell him that IRS is collecting monies from Mrs. Taxpayer and each month IRS is receiving $475.00 that is being credited to his 2016 module. The source of payment however, is not shareable. The employee also can relay what payments have credited to Mr. Taxpayer's MFT 31 module. The employee can relay Mr. Taxpayer's current outstanding balance. The employee cannot disclose any information about the other spouse's employment, income, or assets. The IRS noted that this guidance supersedes the current instructions found in IRM 5.1.22.3.1. **IRS Memo SBSE-05-0419-0010, April 16, 2019**.

The IRS has published information for taxpayers who need to file an amended return. *Use the Interactive Tax Assistant (ITA)*. The ITA titled *Should I File an Amended Return?* can help taxpayers determine if they should file an amended return to correct an error or make other changes to their original return.

Wait to file for corrected refund for tax year 2018. Taxpayers who are due refunds from their original 2018 tax return should wait to get it before filing Form 1040X to claim an additional refund. *File Form 1040X on paper*. Taxpayers must use Form 1040X, *Amended U.S. Individual Income Tax Return*, to correct their tax return. Taxpayers cannot file amended returns electronically. Taxpayers will mail Form 1040X to the address listed in the form's instructions. However, taxpayers filing Form 1040X in response to an IRS notice, should mail it to the address shown on the notice. *Amend to correct errors*. Taxpayers should file an amended tax return to correct errors or make changes to an original tax return. For example, taxpayers should amend their return to change their filing status. They should also file a 1040X to correct their income, deductions and credits. *Do not amend for math errors*. Taxpayers generally do not need to file an amended return to correct math errors on their original return. The IRS will automatically correct these. *Do not amend for missing forms*. Taxpayers also do not need to file an amended return if they forgot to attach tax forms. The IRS will mail a request to the taxpayer for missing forms. *File within three-year time limit*. Taxpayers usually have three years from the date they filed the original tax return to file Form 1040X to claim a refund. Taxpayers can file it within two years from the date they paid the tax, if that date is later. See *Washington v. United States, 123 AFTR 2d 2019-___ (S.D. NY. 2019)* summarized above. *Pay additional tax as soon as possible*. Taxpayers who will owe tax should file Form 1040X and pay the tax immediately to avoid potential penalties and interest on the unpaid taxes. They should consider using IRS Direct Pay to pay any tax directly from a checking or savings account at no cost. *Track amended return*. Generally, taxpayers can track the status of their amended tax return three weeks after they file, using 'Where's My Amended Return? on IRS.gov. **IRS Tax Tip 2019-51**.

THEFT. The taxpayers were each 50 percent owners of an S corporation. The corporation invested in a fraudulent real estate investment scheme in 2010, ultimately purchasing six properties. In 2011, the taxpayers learned that the scheme was fraudulent and attempted to recover some of the investment without success. The taxpayers consulted an attorney but did not file any law suit to recover their investment. The taxpayers cooperated with a police investigation in 2012 through 2015 and in 2015 the police indicated that any recovery was unlikely. The taxpayer did not file any insurance claims against the title insurance companies involved with the investments. The taxpayers individually claimed a theft loss deduction on their 2011 tax returns but the corporation did not claim a theft loss on its return. Under I.R.C. § 165(e), any loss arising from theft is treated as sustained during the taxable year in which the taxpayer discovers the loss and in which the loss is evidenced by a "closed and completed" transaction. See also Treas. Reg. § 1.165-1(d)(1). The regulations provide that, whether there is a closed and completed transaction with respect to a theft loss depends on the taxpayer's prospect of recovering the loss. See Treas. Reg. § 1.165-1(d)(2)(i). The court noted that the burden of proof is on the taxpayers to prove that the theft loss could have been ascertained with reasonable certainty as of December 31, 2011, and that the loss would never be recovered. If the prospect of recovery was unknowable at the end of the tax year, then the taxpayer is not entitled to the theft loss deduction for that year. The court found that the taxpayers failed to provide any evidence that they attempted to recover their loss. The court also found that the taxpayers subjective belief that the loss was unrecoverable occurred in 2010, although the taxpayers remained uncertain until told by the police in 2015, indicating that the taxpayers held some belief that they might still recover as late as 2015. Thus, the court held that the taxpayers failed to prove a closed and completed theft loss in 2011 and denied the loss deduction for 2011. **McNeely v. Comm'r, T.C. Memo. 2019-39**.

LABOR

AGRICULTURAL EMPLOYEE EXEMPTION. The plaintiff filed an action under federal and state labor laws against an employer for failure to pay overtime wages. The employer was a poultry research and development company in the business of development, production and sale of broiler breeder stock. The plaintiff's job duties included grading and vaccinating baby chicks as they moved along a conveyor belt. The hatchery is a factory-type setting where thousands of eggs are hatched, and the chicks are then vaccinated and graded, on a daily basis. The plaintiff also claimed that much of the plaintiff's work duties include maintenance work. The defendant claimed that the defendant was exempt from the federal and state overtime requirements because the plaintiff was employed as an agricultural worker. The federal exemption says that the overtime rules under 29 U.S.C. § 207(a)(12) "shall not apply with respect to . . . (12) any employee employed in agriculture." 29 U.S.C. § 213(b)(12). Agriculture is defined at 29 U.S.C. § 203(f) as, among other things, "the raising of . . . poultry, and any practices . . . performed by a farmer or on a farm as incident to or in conjunction with such farming operations . . . ." 29 U.S.C. § 203(f). Ark. Code Ann. § 11-4-211(b) mirrors the requirements of the federal statute in that "[t]he provisions regarding the payment of wages at one and one-half (1 1/2) times the regular rate of pay for overtime services shall not be applicable with respect to agricultural employees." 29 C.F.R. § 780.127 provides that "[h]atchery operations incident to the breeding of poultry, whether performed in a rural or urban location," are the "raising of poultry." 29 C.F.R. § 780.210 provides that "[w]here the hatchery is engaged solely in procuring eggs for hatching, performing the hatching operations, and selling the chicks, all the employees including office and maintenance workers are engaged in agriculture." In a ruling solely on the pleading, the court held that the plaintiff's petition clearly admitted that the defendant operated a hatchery and that the plaintiff both worked in the raising of poultry and maintenance for the defendant; therefore, the court held that the plaintiff's action was dismissed because the plaintiff was an agricultural worker exempt from the overtime provisions of the federal and state statutes. **Cea v. Cobb-Ventress, Inc., 2019 U.S. Dist. LEXIS 66007 (W.D. Ark. 2019)**.

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