CASES, REGULATIONS AND STATUTES

CONTRACTS

UNJUST ENRICHMENT. The plaintiff started out as a a farm hand on the defendants' farm. The defendants agreed to help the plaintiff get into farming by crop share leasing a portion of their farm to the plaintiff. During the fall harvest, the parties disagreed on some issues with operating the farm and the plaintiff left the farm before harvest was complete. The defendant finished the harvest and retained all of the proceeds of the crops. The plaintiff filed suite claiming breach of contract, civil theft, conversion, unconscionability, and unjust enrichment. However, the trial court dismissed the plaintiff's contract claims because there was no contract due to the lack of a mutual assent on essential terms, including the rent-per-acre term, the cost of the use of machinery, and the rights to control the crop and proceeds. The trial court ruled, however, that the plaintiff proved the civil theft claim because the defendant had sold some of the plaintiff's crops without permission and that the defendant was unjustly enriched. On appeal, the appellate court affirmed on the issue of the non-existence of a contract, noting that both parties provided evidence of their understanding of the terms of the lease which disagreed with each other. The court stated that equitable relief for unjust enrichment requires that (1) a benefit be conferred by the plaintiff on the defendant; (2) the defendant accept the benefit; and (3) the defendant retain the benefit, although retaining it without payment is inequitable. The trial court ruled that (1) the plaintiff made substantial efforts to farm the defendants' land, improve the farm and fields, and personally incurred substantial expenses in order to create these benefits and raise a crop, (2) the defendants accepted those benefits because they claimed most of the crop proceeds for the 2016 harvest but did not compensate the plaintiff; and (3) it would be morally wrong for the defendants to retain the benefits of the plaintiff's money and labor for little or no compensation to the plaintiff." The appellate court affirmed and noted that the trial court's monetary award included consideration for the defendant's labor in finishing the harvest. **Brewer v. Kidrowski, 2018 Minn. App. Unpub. LEXIS 790 (Minn. Ct. App. 2018)**.

FEDERAL ESTATE AND GIFT TAXATION

GENERATION SKIPPING TRANSFERS. The taxpayer established three irrevocable trusts for the primary benefit of three children. The terms of the three trusts were substantially identical except for the named primary beneficiary. Under the terms of each trust, the trustee may make discretionary distributions of income for the health, education, and support of the primary beneficiary. Following the death of the second to die of the taxpayer and spouse, the trustee may make discretionary distributions of principal for the health, education, and support of the primary beneficiary. The primary beneficiary has the right to withdraw the principal of the trust in three stages. Each trust grants the primary beneficiary of each respective trust a testamentary power to appoint the assets held in the trust to the primary beneficiary's estate, the creditors of the primary beneficiary's estate, or to any person or corporation. If the primary beneficiary dies before the complete distribution of the trust, the trustee will, subject to the provisions of the power of appointment, distribute the trust assets in fee and per stirpes to the primary beneficiary's then living descendants. Taxpayer made gifts to the trusts in two tax years and the taxpayer and spouse each filed a timely Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return* for both years. On each form, the taxpayer and spouse signified their consent to treat the transfers as having been made one-half by each spouse. On both returns filed by the taxpayer and spouse, they erroneously allocated GST exemptions to the transfers to the three trusts. There have been no taxable distributions or taxable terminations with respect to the three trusts that would result in a GST tax liability on the part of any of such trusts or their beneficiaries. I.R.C. § 2601 provides that a tax is imposed on every generation-skipping transfer (GST). I.R.C. § 2611(a) provides that the term "generation-skipping transfer" means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip. I.R.C. § 2613 defines a skip person, in part, as a natural person assigned to a generation which is two or more generations below the generation assignment of the transferor. Treas. Reg. § 26.2632-1(b)(4)(i) provides, in part, that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709. With respect to a timely allocation, an allocation of GST exemption becomes irrevocable after the due date of the return. Except as provided in Treas. Reg. § 26.2642-3 (relating to charitable lead annuity trusts), an allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust. An allocation is also void if the allocation is made with respect to a trust that has no GST potential with respect to the transferor making the allocation, at the time of the allocation. For this purpose, a trust has GST potential even if the possibility of a GST is so remote as to be negligible. The IRS ruled that none of the trusts' beneficiaries were skip persons as to the taxpayer and spouse; therefore, none of the potential trust distributions would be considered direct skips. The IRS ruled that the allocations of the taxpayer's and spouse's GST exemptions made to the three trusts were void because there was no GST potential with respect to those transfers. **Ltr. Rul. 201836004, June 5, 2018; Ltr. Rul. 201836007, June 5, 2018**.

PORTABILITY. In a short e-mail Chief Counsel Advice letter, the IRS stated: "This is in reference to a claim for refund that your office is currently considering, filed by the above-referenced taxpayer on *****. As we discussed in our telephone call on

*****, the taxpayer is now seeking a private letter ruling from our office for an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to sever a trust and to make a qualified terminable interest property election under § 2056(b)(7) of the Internal Revenue Code. We believe the taxpayer's request for a private letter ruling presents an issue that is relevant to your consideration of the taxpayer's refund claim. The decedent was survived by his spouse. The executor of the decedent's estate timely filed a complete and properly prepared Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. In so doing, the estate made a portability election on the return for purposes of § 2010(c)(5)(A), permitting the estate to take into account decedent's deceased spousal unused exclusion amount under § 2010(c)(2)." **CCA 201835005, April 26, 2018**.

FEDERAL FARM PROGRAMS

AGRICULTURAL TRADE PROMOTION PROGRAM. The CCC has adopted as final a new regulation to implement the Agricultural Trade Promotion Program (ATP). The ATP provides assistance to U.S. agricultural industries to conduct activities that promote U.S. agricultural commodities in foreign markets for commodities impacted by tariffs, including activities that address existing or potential non-tariff barriers to trade. This rule specifies, among other things, eligibility requirements, activities eligible for reimbursement, contribution requirements, and application procedures for the ATP. This rule also provides a new information collection for required program information. **83 Fed. Reg. 44178 (Aug. 30, 2018)**.

CROP INSURANCE. The FCIC has adopted a final amendments to the Common Crop Insurance Regulations, Sugar Beet Crop Insurance Provisions to update existing policy provisions and definitions to better reflect current agricultural practices. The amendments include revising the definition of "crop year." The previous definition required a reference to specific counties, as the crop year was defined differently for several California counties. In 2013, the actuarial information that made insurance available was removed from all California counties except Imperial County, which has the same definition of "crop year" as used in all remaining insurable states and counties. Consequently, the revised definition removes references to specific counties such that all insurable counties have the same definition of "crop year." The amendments revise the basis of insurance from "standardized tons" to "pounds of raw sugar." The amendments add a definition of "Processor Contract" and remove the definition of "Sugar Beet Processor Contract" to conform the provisions to other crop insurance regulations. The amendments add a new subsection to allow for an "early harvest factor" in response to a lack of clarity in the event of the periodic decisions by sugar beet processors to request a portion of their contracted acres be harvested early. In these events, the actual harvested beets are often lower in weight and sugar content, resulting in what could appear to be a production loss. This provision provides more clear guidance for insurance providers in the event of early harvested acres and eliminates the unnecessary reduction in grower APH. The changes will be effective for the 2019 and succeeding crop years in states with a November 30 contract change date and for the 2020 and succeeding crop years in all other states. **83 Fed. Reg. 45535 (Sept. 10, 2018)**.

MARKET FACILITATION PROGRAM. The CCC has adopted as final a new regulation to implement the Market Facilitation Program (MFP). The MFP provides payments to producers with commodities that have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. This rule specifies the eligibility requirements, payment calculations, and application procedures for MFP. **83 Fed. Reg. 44173 (Aug. 30, 2018)**.

FEDERAL INCOME TAXATION

ALIMONY. The taxpayer was divorced in 2011 and the divorce decree included a provision that the taxpayer was responsible for payment of a student loan owed by the former spouse. The decree also provided that transfers of property between the parties was intended to be tax free and not alimony. The taxpayer claimed the payments made in 2013 on the debt as deductible alimony but the IRS denied the deduction. I.R.C. § 71(b)(1) defines an alimony payment as any cash payment meeting each of the following four criteria: "(A) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument, (B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215, (C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and (D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse." The IRS agreed that the debt payments met the A, C and D requirements but argued that the tax-free property transfer provision in the divorce decree did not satisfy the B requirement as to the debt. The IRS argued that the debt was covered by the divorce decree provision as part of the property transfers. The court found that the divorce decree was careful to treat transfers of property from debt payments; therefore, the failure of the divorce decree tax-free provision did not include the debt payment; therefore, the payments for the student debt qualified as deductible alimony. Note, the TCJA 2017 removed the deduction for alimony after 2017. **Vanderhal v. Comm'r, T.C. Summary Op. 2018-41**.

CHARITABLE DEDUCTION. The IRS has announced that business taxpayers who make business-related payments to charities or government entities for which the taxpayers receive state or local tax credits can generally deduct the payments as

business expenses. Responding to taxpayer inquiries, the IRS clarified that this general deductibility rule is unaffected by the recent notice of proposed rulemaking concerning the availability of a charitable contribution deduction for contributions pursuant to such programs. The business expense deduction is available to any business taxpayer, regardless of whether it is doing business as a sole proprietor, partnership or corporation, as long as the payment qualifies as an ordinary and necessary business expense. Therefore, businesses generally can still deduct business-related payments to charities or government entities in full as a business expense on their federal income tax return. **IR-2018-178; See also 2018ARD 177-4**.

COOPERATIVES. The taxpayer's articles of incorporation stated that it was formed for the following purposes: (1) to create a cooperative, rooted in local food production, that strengthens the physical and financial wellbeing of the community; (2) to provide local food producers and consumers a year-round market for buying and selling goods and services according to consumer cooperative and financially sound principles; (3) to provide members with any cooperative services or products; (4) to inspire the extension of the cooperative model and the expansion of agricultural and food-based enterprise in the region; (5) to empower the community to educate itself, and (6) to engage in all such activities as are incidental or conducive to attainment of your purposes. The articles of incorporation stated that the membership shall include, "individuals, firms, partnerships, limited liability companies, associations, corporations, federal, state or local governmental bodies or any subdivision therefore, or any other person or legal entity that applies for the services and products furnished by the corporation." Some of the taxpayer's members were producers, but the majority of the members were consumers buying from the member producers. The taxpayer's consumer members bought products from the various producer members. The taxpayer did not purchase supplies or equipment for the members and did not market or sell products to non-members. Customers had to be members to make purchases. An annual membership fee was charged. The taxpayer described itself as a local food hub where members order products via an online market place and pick up products at a specified location. Products were purchased directly from the producers based on the orders placed on the taxpayer's website. The website described the goods the producers sell, which includes things such as fruits, vegetables, fish, tea, honey, chocolate, and ice cream. Producers could bring excess produce, not listed on the website, to the pick-up location for sale to either members or non-members. Sales made by producer members to non-members were minimal. The articles of incorporation and bylaws allowed for surplus funds to be held and stated: "The corporation shall operate for the mutual benefit of its members as nearly as possible at cost, provided that reasonable reserves, as determined by the Board of Directors, may be set aside and accumulated for the purposes as the Board of Directors may determine are in the best interest of the corporation. All activities of the corporation shall be consistent with applicable law and the public interest. After all expenses and expenditures of the corporation have been paid and reasonable reserves, as determined by the Board of Directors, set aside, the net earnings of the corporation shall be accumulated in a surplus fund. The surplus fund, or any portion thereof, shall be distributed to members as determined by the Board." The taxpayer's income statement included sales which were offset by cost of goods sold and did not include distribution of profits to members. I.R.C. § 464(e)(1) defines the term "farming" as the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. For purposes of the preceding sentence, trees (other than trees bearing fruit or nuts) shall not be treated as an agricultural or horticultural commodity. I.R.C. § 521(b)(1) states that the type of farmers' cooperative exempt from taxation are farmers, fruit growers, or like associations organized and operated on a cooperative basis (A) for the purpose of marketing the products of members or other producers, and turning back the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (B) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. I.R.C. § 521(b)(3) permits exempt cooperatives to accumulate certain reserves for two specified purposes, without loss of exemption: (1) to satisfy a state statutory duty, not mere legal privilege, to maintain a reserve, or (2) for any necessary purpose. Treas. Reg. § 1.521-1(a)(1) states that a cooperative association engaged in the marketing of farm products for farmers, fruit growers, livestock growers, dairymen, etc., and turning back to the producers the proceeds of the sales of their products, less the necessary operating expenses, on the basis of either the quantity or the value of the products furnished by them, is exempt from income tax. Treas. Reg. Section 1.521-1(a)(3) provides in part that the accumulation and maintenance of a reserve required by a state statute, or the accumulation and maintenance of a reasonable reserve or surplus for any necessary purpose, such as to provide for the erection of buildings and facilities required in business or for the purchase and installation of machinery and equipment or to retire indebtedness incurred for such purposes, will not destroy the exemption provided in Treas. Reg. § 1.521-1(a)(1). Treas. Reg. § 1.521-1(b) states that cooperative associations engaged in the purchasing of supplies and equipment for farmers, fruit growers, livestock growers, dairymen, etc., and turning over such supplies and equipment to them at actual cost, plus the necessary operating expenses, are exempt from income tax. In *Rev. Rul. 64-246, 1964-2 C.B. 154*, an organization was engaged in the business of harvesting, processing, buying, selling, storing, and otherwise handling fish and fish products for its members and other patrons. Its membership was restricted to persons engaged in the production of agricultural commodities, including fish of commercial value produced in privately-owned waters. The IRS held that because the association was engaged in cooperatively marketing fish in privately-owned waters, it was considered to be an organization composed of producers of "farm-raised fish" which are, in other words, farm products and exempt under I.R.C. § 521 as a farmers' cooperative. In this case, the IRS ruled that the taxpayer was not eligible for tax exemption as a farmers' cooperative because (1) a majority of the members were consumers; (2) the member-producers who sell fish were not restricted to producers of fish in privately-owned waters as farm-

raised fish; (3) the taxpayer did not purchase supplies or equipment for the member-producers; (4) the membership consisted of a mixture of farmers, community members, businesses and anyone interested in selling and purchasing fresh food; and (5) the articles of incorporation and bylaws did not place any restriction on the use of surplus funds. **Ltr. Rul. 201835010, June 5, 2018**.

DISASTER LOSSES. On August 10, 2018, the President determined that certain areas in Wisconsin were eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and flooding which began on June 15, 2018. **FEMA-4383-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).

ESTIMATED TAXES. The IRS has published information on payment of estimate taxes. Individuals, including sole proprietors, partners and S corporation shareholders, may need to pay quarterly installments of estimated tax unless they owe less than $1,000 when they file their tax return or they had no tax liability in the prior year (subject to certain conditions). Other taxpayers who may need to make estimated payments include someone who:

- has more than one job but does not have each employer withhold taxes.
- is self-employed.
- is an independent contractor.
- is a representative of a direct-sales or in-home-sales company.
- participates in sharing economy activities where they are not working as employees.

Taxpayers are required, by law, to pay most of their tax liability during the year. For 2018, this means that an estimated tax penalty will normally apply to any party that pays too little tax, generally less than 90 percent of the tax shown on the return for the current tax year or 100 percent of the tax shown on the return for the preceding tax year, during the year through withholding, estimated tax payments or a combination of the two. In recent years, the IRS has seen an uptick in people subject to estimated tax penalties. These penalties normally apply when someone underpays their taxes. The number of people who paid this penalty jumped from 7.2 million in 2010 to 10 million in 2015, an increase of nearly 40 percent. The penalty amount varies, but can be several hundred dollars. There are special rules for farmers and fishermen. IRS Publication 505, *Tax Withholding and Estimated Tax*, has more on penalties for underpayment of tax. **IR-2018-182**.

FOREIGN INCOME. The IRS reminds taxpayers they have until September 28, 2018 to apply for the Offshore Voluntary Disclosure Program (OVDP). In March 2018, the IRS announced the program would end on Sept. 28, 2018. The IRS will continue to hold taxpayers with undisclosed offshore accounts accountable after the program closes. The IRS will maintain a pathway for taxpayers who may have committed criminal acts to voluntarily disclose their past actions and come into compliance with the tax system. Updated procedures will be announced soon. A separate program, the Streamlined Filing Compliance Procedures, for taxpayers who may have been unaware of their filing obligations, has helped about 65,000 additional taxpayers come into compliance. These streamlined procedures will continue to be available for now, but as with OVDP, the IRS has said it may end this program too at some point. Taxpayers who made non-willful mistakes or omissions on their tax returns should file amended returns or delinquent returns as soon as possible. **IR-2018-176**.

HEALTH INSURANCE. In 2015, the taxpayer enrolled in a health insurance plan offered through an insurance exchange created under the Patient Protection and Affordable Care Act (ACA). In January 2016 the Department of Health and Human Services issued to petitioner a Form 1095-A, *Health Insurance Marketplace Statement*, reporting that in 2015 no advance premium assistance payments had been made on his behalf. In October 2016, the taxpayer timely filed a Form 1040 for 2015, reporting business income of $1,163, deductions of $82 and $1,880 for self-employment tax and student loan interest, respectively, and adjusted gross income of -$799. The taxpayer attached to the 2015 tax return a Form 8962, *Premium Tax Credit*, and claimed a PTC of $3,156. The taxpayer reported a household size of one person and modified AGI (MAGI) of -$799. The IRS determined that the taxpayer was ineligible for the PTC because the taxpayer was not an "applicable taxpayer" within the meaning of I.R.C. § 36B(c)(1). The taxpayer asserts that the taxpayer (1) is entitled to the PTC under a special rule for taxpayers with household income below 100 percent of the federal poverty line and (2) should be treated as an applicable taxpayer consistent with the policy objectives underlying I.R.C. § 36B. I.R.C. § 36B(c)(1)(A) generally defines the term "applicable taxpayer" as a taxpayer whose household income for a taxable year equals or exceeds 100 percent, but does not exceed 400 percent, of the federal poverty line (FPL) for the taxpayer's household size. See also Treas. Reg. § 1.36B-2(b)(1). I.R.C. § 36B(d)(2)(A) defines the term "household income" as the modified AGI of the taxpayer plus the MAGI of family members for whom the taxpayer properly claims deductions for personal exemptions and who were required to file a federal income tax return under Treas. Reg. § 1.36B-1(d), (e)(1). I.R.C. § 36B(d)(2)(B) defines MAGI as AGI increased by certain items of income which are normally excluded from gross income. See also Treas. Reg. § 1.36B-1(e)(2). Treas. Reg. § 1.36B-2(b)(6)(i) provides an exception to the general definition of an applicable taxpayer as follows:

"(6) Special rule for taxpayers with household income below 100 percent of the Federal poverty line for the taxable year.—(i) In general.—A taxpayer (other than a taxpayer described in paragraph (b)(5) of this section) whose household income for a taxable year is less than 100 percent of the Federal poverty line for the taxpayer's family size is treated as an applicable taxpayer for the taxable year if—

(A) The taxpayer or a family member enrolls in a qualified health plan through an Exchange for one or more months during the taxable year;

(B) An Exchange estimates at the time of enrollment that the taxpayer's household income will be at least 100 percent but not more than 400 percent of the Federal poverty line for the taxable year;

(C) Advance credit payments are authorized and paid for one or more months during the taxable year; and

(D) The taxpayer would be an applicable taxpayer if the taxpayer's household income for the taxable year was at least 100 but not more than 400 percent of the Federal poverty line for the taxpayer's family size."

The court noted that the taxpayer did not qualify as an "applicable taxpayer" because the taxpayer's MAGI was less than 100 percent of the federal poverty line. The court found that the taxpayer did not meet two of the requirements for the exception: (1) the taxpayer's MAGI was not estimated by the health exchange to be at least 100 percent of the federal poverty line and (2) the taxpayer did not receive any advance premium assistance payments. The taxpayer argued that the exception in the regulations indicated that taxpayers with MAGI below the poverty line were to be covered by the ACA assistance payments, the court held that the statute and regulations were clear that the clear exception requirements had to be met in order to qualify for the assistance payments. **Gartlan v. Comm'r, T.C. Summary Op. 2018-42**.

IRA. The taxpayer received a distribution from a retirement plan in the form of a check which was deposited, less withheld federal and state taxes, into the taxpayer's checking account with the intent that the funds would be rolled over to the taxpayer's IRA. The taxpayer claimed that, prior to the distribution, the taxpayer relied on the taxpayer's spouse to handle all financial and tax matters and that the taxpayer and spouse had separated during the 60-day period for allowing tax free rollovers. Thus, the taxpayer requested a waiver of the 60-day rollover requirement. I.R.C. § 402(c)(3)(B) provides that the Secretary may waive the 60-day requirement under I.R.C. § 402(c)(3)(A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under I.R.C. § 402(c)(3)(B). *Rev. Proc. 2003-16, 2003-4 I.R.B. 359*, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to I.R.C. § 402(c)(3)(B), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred. The IRS granted a waiver of the 60-day rollover period. **Ltr. Rul. 201835017, June 6, 2018**.

LOSSES. The taxpayer owned 98 percent of an LLC taxed as a partnership. The LLC owned an interest in another LLC which operated a fitness gym (gym LLC). The taxpayer invested $85,000 in the gym LLC in 2010. In 2011, the taxpayer learned that the gym LLC would not be issuing a Schedule K-1 for 2010 and sought to recover the $85,000 investment. The claim was pursued until 2014 without any recovery. The taxpayer claimed a short-term capital loss for the $85,000 in 2010. I.R.C. § 165(a) allows a deduction for any loss sustained during the taxable year and not compensated for by insurance or otherwise. Under Treas. Reg. § 1.165-1(b) "To be allowable as a deduction under section 165(a), a loss must be evidenced by closed and completed transactions, fixed by identifiable events, and . . . actually sustained during the taxable year. Only a bona fide loss is allowable. Substance and not mere form shall govern in determining a deductible loss." The court found that the taxpayer's actions in not pursuing collection until 2011 and continuing to seek collection until 2014 indicated that the taxpayer did not deem the debt uncollectable in 2010. In addition, the taxpayer admitted that the taxpayer considered the investment sound until 2011 when the gym LLC failed to issue a Schedule K-1. Thus, the court held that the debt was not worthless in 2010 and no deduction was allowed for that year. **Ence v. Comm'r, T.C. Memo. 2018-151**.

QUARTERLY INTEREST RATES. The IRS has announced that, for the period October 1, 2018 through December 31, 2018, the interest rate paid on tax overpayments remains at 5 percent (4 percent in the case of a corporation) and for underpayments remains at 5 percent. The interest rate for underpayments by large corporations remains at 7 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 remains at 2.5 percent. **Rev. Rul. 2018-25, I.R.B. 2018-39.**

SECURED TRANSACTIONS

FRAUDULENT TRANSFERS. The plaintiff made a series of loans to the debtor partnership, a corporation and an individual debtor who owned the partnership and corporation. The individual and entities functioned as a single farming operation with each owning separate property. The plaintiff obtained a perfected security interest in all personal property owned by the individual, corporation and partnership. The individual, corporation and partnership defaulted on the loans and the plaintiff filed for replevin of the collateral personal property. However, just before the plaintiff sought to levy on the property, the corporation transferred all of its equipment to the debtor partnership without consideration. The debtor filed for bankruptcy immediately after the transfer. The plaintiff sought to avoid the transfer as violating the Iowa Uniform Voidable Transaction Act, Iowa Code § 684.1 *et seq*. The debtor argued that no fraudulent transfer occurred because the debtor did not transfer any of the debtor's assets and the transferred property remained subject to the plaintiff's security interest. Iowa Code § 684.4 states: "A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation under any of the following circumstances: a. With actual intent to hinder, delay, or defraud any creditor of the debtor. . .." Under Iowa Code § 684.5 a transaction is voidable by a creditor if: (1) the creditor's claim arose before the transfer, (2) the debtor did not receive reasonably equivalent value in the transfer, and (3) the debtor was insolvent at the time of the transfer or became insolvent as a result of the transfer. Iowa Code § 684.1(16) defines "transfer" as "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance." Iowa Code § 684.1(2) defines "asset" as "property of a debtor, but does not include . . . [p]roperty to the extent it is encumbered by a valid lien." Thus, the court held that no fraudulent transfer occurred because the debtor did not transfer an asset and because the property transferred was encumbered by the plaintiff's security interest. ***In re* Western Slopes Farms Partnership, 2018 Bankr. LEXIS 2742 (Bankr. N.D. Iowa 2018)**.

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