CASES, REGULATIONS AND STATUTES

BANKRUPTCY

GENERAL

DISCHARGE. The debtors, husband and wife, filed for Chapter 13 but the case was converted to Chapter 7. In 2016, the debtors borrowed operating funds from a bank and granted a security interest in all crops to be grown in 2016. The debtors planted corn, millet and barley, with the barley harvested first. The debtors informed the buyers of the barley that the bank had a lien on the crop but the buyer did not include the name of the bank on the all of the weight tickets nor on all of the payment checks. The debtors cashed the checks made out to them alone and used the proceeds to fund their farm operation for the remainder of the year, expecting the proceeds from the sale of the corn and millet to be used to pay off the remainder of the loan. The check made out with the bank's name were given to the bank. The debtors did not realize any revenue from the corn which was damaged by early snow storms and realized only a portion of the expected proceeds from the millet crop because of rain. thus, the debtors defaulted on the loan and filed for bankruptcy. The bank sought to have the loan deficiency declared nondischargeable under Section 523(a)(6) for "willful and malicious injury by the debtor to another entity or to the property of another entity." The court noted that Section 523(a)(6) required a finding that the debtor acted both willfully and maliciously and not merely negligently. As to the willful requirement, the court stated: "The willful injury requirement of § 523(a)(6) is met when it is shown either that the debtor had a subjective motive to inflict the injury or that the debtor believed that injury was substantially certain to occur as a result of his conduct." The court also stated that an injury is malicious if it "involves (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." Here the court found that, at the time the debtors cashed the checks, the debtors believed that revenue from the other crops would be sufficient to pay off the loan; therefore, the debtors did not have any motive or intent to injure the bank's rights in the collateral. Thus, the court held that the loan deficiency was dischargeable. ***In re* Robertus, 2018 Bankr. LEXIS 1847 (Bankr. D. Mont. 2018)**.

FEDERAL ESTATE AND GIFT TAXATION

ALTERNATE VALUATION DATE. The co-executors of a decedent's estate hired an attorney to prepare the estate's Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*. The attorney prepared Form 706, but did not make the alternate valuation date election under I.R.C. § 2032. The co-executors timely filed the Form 706. After the due date of Form 706, the co-executors filed a supplemental Form 706 making the I.R.C. § 2032 election; however, the IRS issued a letter to the estate that said that since the I.R.C. § 2032 election was not made timely, the assets cannot be valued under I.R.C. § 2032 unless an extension of time is granted under the relief provisions of Treas. Reg. §§ 301.9100-1 and 301.9100-3. I.R.C. § 2032(a) provides, in part, that the value of the gross estate may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows: (1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition. (2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date 6 months after the decedent's death. I.R.C. § 2032(d)(1) provides that an election under I.R.C. § 2032 shall be made by the executor on the estate tax return. Under I.R.C. § 2032(d)(2), no election may be made under I.R.C. § 2032 if the return is filed more than 1 year after the time prescribed by law (including extensions) for filing the return. Treas. Reg. § 20.2032-1(b)(3) provides that a request for an extension of time pursuant to Treas. Reg. §§ 301.9100-1 and 301.9100-3 will not be granted unless the estate tax return is filed no later than 1 year after the due date of the return (including extensions actually granted). The IRS granted the estate an extension of time to make the election on an amended return because the co-executors reasonably relied on the attorney to file the return. **Ltr. Rul. 201825013, March 19, 2018**.

GIFTS. The taxpayer and decedent spouse had entered into a deed of transfer with two museums, under which the taxpayer and spouse agreed to donate the artwork to the museums, with possession of the artwork to transfer to the museums on the death of the second of the taxpayer and spouse. The deed provided that the taxpayer shall grant to the museums the legal title, naked ownership and remainder interest in and to the artwork. The deed further provided that the taxpayer would reserve for the taxpayer's benefit a life interest in and to the artwork. The life interest and automatically expired on the death of the taxpayer. The deed also provided that the parties intended for the transfer of artwork to not qualify as a completed *inter vivos* gift for gift tax purposes on the basis that the taxpayer was not releasing dominion and control over the artwork until death. If the taxpayer receives a favorable ruling on the gift tax treatment, the donation under the deed was deemed to take effect as of the date of the favorable ruling. If the taxpayer does not obtain a favorable ruling, then the deed does not come into force. The deed also imposed certain conditions subsequent which, if any are not satisfied, the taxpayer would have the option to revoke the transfer of the artwork. The conditions subsequent, which apply during the life of the taxpayer were: (1) the museums must comply with the requirements regarding the housing, display and exhibition of the artwork as set forth in the deed; (2) the law principles currently governing the gift must not be replaced; (3)

the museums must not become privately owned; and (4) the tax laws must not change to cause the taxpayer to become subject to taxation during Taxpayer's life or upon death in connection with the transfer of the artwork. Finally, the deed provided that the taxpayer could renounce and waive the life interest by delivery of some or all of the artwork to the museums. During the period of the taxpayer's life interest, the taxpayer retained physical possession of the artwork; however, the taxpayer could not sell or otherwise dispose of any of the artwork. Treas. Reg. § 25.2511-2(b) provides that as to any property, or part thereof or interest therein, of which the donor has so parted with dominion and control as to leave in the donor no power to change its disposition, whether for the donor's own benefit or the benefit of another, the gift is complete. But if upon a transfer of property, whether in trust or otherwise, the donor reserves any power over its disposition, the gift may be wholly incomplete, or may be partially complete and partially incomplete, depending upon all the facts in the particular case. The IRS ruled that, although the transfer of the artwork to the museums was subject to several conditions subsequent, the conditions that could cause a revocation of the transfer were not dependent on any act of the taxpayer; thus, the taxpayer's grant to the museums of the legal title, naked ownership and remainder interest in and to the artwork would be a completed gift for gift tax purposes, but for the condition precedent of receipt of a favorable ruling on the gift tax treatment. **Ltr. Rul. 201825003, March 9, 2018**.

FEDERAL INCOME TAXATION

DISABILITY PAYMENTS. The taxpayer was a medical doctor who had to retire from the practice of medicine because of a physical injury. After retiring the taxpayer began receiving disability payments under a longterm disability policy and from the Social Security Disability Insurance (SSDI) program. On the taxpayer's return, the taxpayer included social security payments as taxable income but did not include the SSDI payments. Gross income specifically "includes social security benefits," in an amount determinable under a specified statutory formula. See I.R.C. § 86(a) and (b). I.R.C. § 86(d)(1)(A) defines the term "social security benefit" to include "any amount received by the taxpayer by reason of entitlement to . . . a monthly benefit under title II of the Social Security Act." SSDI benefits are paid monthly and have been paid under title II of the Social Security Act since 1956. The taxpayer argued that SSDI benefits are excluded from gross income by I.R.C. § 104(a), which covers certain amounts payable on account of physical injuries or sickness. However, the court stated that by enacting I.R.C. § 86, Congress stated its clear intent that all forms of social security benefits are taxable. In addition, I.R.C. § 104(a)(1) excludes from gross income only"amounts received under workers' compensation acts as compensation for personal injuries or sickness." The court found that the taxpayer received benefits under the Social Security Act, not under any workers' compensation law. Treas. Reg. § 1.104-1(b) provides that a statute in the nature of workers' compensation is one that "provides compensation to employees for personal injuries or sickness incurred in the course of employment." Thus, a statute providing for payment of benefits that are not related to an injury incurred in the course of employment is not considered to be a statute in the nature of workers' compensation. Because the taxpayer's injuries were not incurred in the course of the taxpayer's employment and the SSDI payments were based on the taxpayer length of service and contributions to the SSDI program, the SSDI payments were taxable to the taxpayer. **Palsgaard v. Comm'r, T.C. Memo. 2018-82**.

IRS LETTERS. The IRS has published information for taxpayers who receive a letter from the IRS. Most IRS letters and notices are about federal tax returns or tax accounts. The IRS will never initiate contact using social media or text message. Each notice deals with a specific issue and includes specific instructions on what to do. The IRS and its authorized private collection agencies do send letters by mail. Most of the time all the taxpayer needs to do is read the letter carefully and take the appropriate action. A notice may reference changes to a taxpayer's account, taxes owed, a payment request or a specific issue on a tax return. Taking action timely could minimize additional interest and penalty charges. If a letter is about a changed or corrected tax return, the taxpayer should review the information and compare it with the original return. If the taxpayer agrees, the taxpayer should make notes about the corrections on a personal copy of the tax return, and keep it for their records. There is usually no need for a taxpayer to reply to a notice unless specifically instructed to do so. On the other hand, taxpayers who owe taxes should reply with a payment. IRS.gov has information about payment options. If a taxpayer does not agree with the IRS, the taxpayer should mail a letter explaining why the disagreement with the notice. They taxpayer should mail it to the address on the contact stub at the bottom of the notice. The taxpayer should include information and documents for the IRS to review when considering the dispute. The taxpayer should allow at least 30 days for the IRS to respond. If a taxpayer must contact the IRS by phone, the taxpayer should use the number in the upper right-hand corner of the notice. The taxpayer should have a copy of the tax return and the IRS letter when calling. **IRS Tax Tip 2018-95**.

INNOCENT SPOUSE RELIEF. The taxpayer had been married to a deceased spouse during the tax years involved in this case. The spouse had controlled the finances of the couple and had failed to pay federal taxes for the years involved and failed to pay other family and business expenses. However, the spouse, unbeknownst to the taxpayer, had obtained life insurance worth several millions of dollars which passed to the taxpayer and the spouse's business partners. The taxpayer requested equitable innocent spouse relief but failed to include the insurance proceeds in the taxpayer's assets on Form 8857, *Request for Innocent Spouse Relief*. *Rev. Proc. 2013-34, I.R.B. 2013-43, 397* sets forth seven factors that must be weighed to grant a request for equitable relief under I.R.C. § 6015(f): (1) marital status; (2) economic hardship; (3) in the case of an underpayment, knowledge or reason to know that the tax liability would or could not be paid; (4) legal obligation to pay the outstanding tax liability; (5) receipt of a significant benefit from the unpaid tax liability; (6) compliance with tax laws;

and (7) mental or physical health at the time of filing. The court denied the taxpayer's equitable innocent spouse relief because (1) although the couple were no longer married, the taxpayer received the assets to pay the taxes from the decedent's insurance; (2) the taxpayer did not suffer any economic hardship because the insurance proceeds exceeded the taxes due; and (3) the taxpayer did not fully comply with income tax laws in failing to include the substantial insurance proceeds in assets on Form 8857. The remaining factors were either neutral as to relief or slightly favored the taxpayer; however, the court focused on the fact that the insurance proceeds paid the taxes involved and that, if relief were granted, the IRS would likely be unable to recover the taxes from the decedent's estate which did not have enough assets to pay all creditors. **Hale v. Comm'r, T.C. Memo. 2018-93**.

LEGAL EXPENSES. The taxpayer had been a partner in an investment company and had set up a deferred compensation plan. The taxpayer's spouse filed for divorce just before the company terminated. The taxpayer received distributions from the terminated company, some of which represented the taxpayer's capital interest in the company and some of which represented payment of the deferred compensation. The divorce court ruled that the capital distributions were post-marital assets and the deferred compensation distributions were marital assets. The divorce decree split the marital assets between the couple. The taxpayer claimed the legal expenses associated with the divorce proceedings as to the distributions as legal expense deductions. I.R.C. § 212 governs the deductibility of litigation costs as an itemized deduction, when the costs are incurred as a nonbusiness profit-seeking expense. I.R.C. § 212 allows an individual to deduct all of the ordinary and necessary expenses paid or incurred in: (1) producing income, (2) managing, conserving, or maintaining property held for the production of income, or (3) determining, collecting, or refunding any tax. I.R.C. §§ 162(a) and 212 are considered in *pari materia*, except for the fact that the income-producing activity of the former section is a trade or business whereas the income-producing activity of the latter section is a pursuit of investing or other profit-making that lacks the regularity and continuity of a business. The taxpayer argued that the legal expenses were deductible because the legal issues involved included the nature and value of the distributions. The disagreed, finding that the legal issues involved arose out of the divorce proceedings and not the business activities of the taxpayer; therefore, the legal expenses were non-deductible personal expenses. **Lucas v. Comm'r, T.C. Memo. 2018-80**.

MEDICAL MARIJUANA. The taxpayers co-owned a medical marijuana sales business as equal shareholders in an S corporation. The taxpayers received wages as officers of the corporation and reported their share of the corporation's pass-through income and expenses. However, because the business income and deductions resulted from the sale of marijuana, I.R.C. § 280E disallowed any of the business expenses as deductions except as to any reduction as cost of goods sold (COGS). The taxpayers argued that the disallowance of the deduction to the corporation for the wages paid to the taxpayers resulted in double taxation in violation of the S corporation rules. I.R.C. § 280E precludes taxpayers from deducting any expense related to a business that consists of trafficking in a controlled substance, including marijuana, even if legal under state law. The court disagreed on the basis that shareholders of S corporations have two types of income, pass-through income from the S corporation and wage income as officers of the corporation. The court reasoned that the taxpayers chose the form of business entity by which to operate their business, resulting in two forms of taxable income; therefore, the taxpayer cannot complain if their elected business entity results in separate taxes for both types of income, even when the shareholders are also employees. Thus, the court held that the taxpayers must pay taxes on their share of the S corporation taxable income and pay taxes on the wages received as employees. **Loughman v. Comm'r, T.C. Memo. 2018-85**.

PARTNERSHIPS

ENTITY CLASSIFICATION ELECTION. When the taxpayer was formed, it elected to be taxed as a corporation. Less than 60 months later, more than 50 percent of the ownership of the taxpayer changed. After the change, the taxpayer wanted to elect to be taxed as a partnership but failed to timely file Form 8832, *Entity Classification Election*, and sought an extension of time to file the election. Treas. Reg. § 301.7701-3(c)(1)(iv) provides that if an eligible entity makes an election under paragraph (c)(1)(i) of this section to change its classification (other than an election made by an existing entity to change its classification as of the effective date of this section), the entity cannot change its classification by election again during the sixty months succeeding the effective date of the election. However, the Commissioner may permit the entity to change its classification by election within the 60 months if more than 50 percent of the ownership interests in the entity as of the effective date of the subsequent election are owned by persons that did not own any interests in the entity on the filing date or on the effective date of the entity's prior election. An election by a newly formed eligible entity that is effective on the date of formation is not considered a change for purposes of Treas. Reg. § 301.7701-3(c)(1)(iv). The IRS granted an extension of time to file the election. **Ltr. Rul. 201825005, March 23, 2018; Ltr. Rul. 201825008, March 16, 2018; Ltr. Rul. 201825009, March 16, 2018; Ltr. Rul. 201825010, March 16, 2018; Ltr. Rul. 201825011, March 16, 2018; Ltr. Rul. 201825022, March 5, 2018.**

PENSION PLANS. For plans beginning in June 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 3.13 percent. The 30-year Treasury weighted average is 2.85 percent, and the 90 percent to 105 percent permissible range is 2.57 percent to 3.00 percent. The 24-month average corporate bond segment rates for June 2018, *without adjustment* by the 25-year average segment rates are: 2.07 percent for the first segment; 3.70 percent for the second segment; and 4.43 percent for the third segment. The 24-month average corporate bond segment rates for June 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 2018-56, I.R.B. 2018-27**.

RENTAL EXPENSES. The taxpayers, husband and wife owned two residences, one of which they used for their own residence and one which they claimed to have rented to their

daughter and family. The taxpayers presented a rental agreement which showed the rent to be $600 per month; however, in 2015, the taxpayers claimed only $150 in rental income for the entire year. The taxpayers claimed miscellaneous deductions for the rented residence for repairs and property taxes. I.R.C. § 280A(a) provides that generally no deduction is allowable with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence. One of the exceptions in I.R.C. § 280A(b) to the general rule is a deduction otherwise allowable to the taxpayer without regard to its connection with the taxpayer's trade or business or income-producing activity. Thus, a taxpayer is otherwise entitled under I.R.C. § 164(a)(1) to deduct state and local real estate taxes. The court found that, although the taxpayers present bills for real estate taxes, the bills did not identify the property involved. In addition, the court found that the taxpayers failed to provide any evidence as to who paid the bills or even if the bills were paid. Therefore, the court held that the taxpayers failed to provide any support for their real estate tax deductions. I.R.C. § 280A(d)(1) provides that a taxpayer uses a dwelling unit during the taxable year as a residence if the taxpayer uses the unit or a portion thereof for personal purposes for the greater of (1) 14 days during the taxable year or (2) 10 percent of the number of days during such year for which such unit is rented at a fair rental. Under I.R.C. § 280A(d)(2)(A) and (C), a taxpayer is deemed to have used a dwelling unit for personal purposes for any day or part of that day on which the dwelling unit is used (1) for personal purposes by the taxpayer or by a member of the family, including a lineal descendant, or (2) by any individual unless for that day the dwelling unit is rented for a rental which is a fair rental under the facts and circumstances. However, I.R.C. § 280A(d)(3)(A) provides that a taxpayer will not be treated as using a dwelling unit for personal purposes "by reason of a rental arrangement for any period if for such period such dwelling unit is rented, at a fair rental, to any person for use as such person's principal residence." The court found that the taxpayers failed to demonstrate that the second residence was rented for fair market rental; therefore, the court held that the taxpayer could not claim deductions for the miscellaneous expenses incurred for the second residence. **Perry v. Comm'r, T.C. Memo. 2018-90**.

S CORPORATIONS

SHAREHOLDER BASIS. The taxpayers, husband and wife, were involved in pass-through entities which owned and operated nursing homes. The husband owned several S corporations which operated the nursing homes and actively managed the day-to-day operations of the facilities. The wife was a member of several LLCs which owned the real and personal business property operated by the S corporations. The S corporations borrowed operating funds from the LLCs, from commercial lenders and from the other S corporations. The taxpayers were listed as co-borrowers on the loans, but the loans from the LLCs and other S corporations carried no interest and were paid from income as available. The taxpayers provided no evidence that the lenders, either the other entities or the commercial lenders, looked to the taxpayers for payment of the loans. The LLC's borrowed funds from commercial lenders to be used for acquiring nursing homes for remodeling. The wife presented no evidence to show that the wife was personally liable for any portion of the loans, although the wife was listed as a guarantor of some of the loans along with other members of the LLCs. None of the loans were listed as recourse obligations of the LLCs. The taxpayers claimed pass-through losses from the S corporations and LLCs based on an increase in their bases in the entities from the loans. The loss deductions were disallowed by the IRS because the taxpayers did not have any basis in their interests in the S corporations or LLCs. I.R.C. § 1366(d)(1) limits the amount of losses and deductions a shareholder may take into account for any taxable year to the sum of the adjusted basis in the stock of the S corporation plus the shareholder's adjusted basis in "any indebtedness of the S corporation to the shareholder." Any claimed increase in a shareholder's basis must be based on "some transaction which when fully consummated left the taxpayer poorer in a material sense." In this case the court found no evidence that the husband was more than potentially liable personally for any of the S corporation loans. The evidence showed that the lenders looked only to the S corporations for payment and never asked the husband for payment. Although the loans required the husband to be a co-borrower on the loans, the court held that the taxpayer provided insufficient evidence that the lenders looked to the husband for payment. Under the regulations, LLCs are generally treated the same as partnerships for federal tax purposes. See Treas. Reg. § 301.7701-3(a). A deduction for a partner's distributive share of partnership losses is allowed only to the extent of the adjusted basis of the partner's interest in the partnership at the end of the partnership year in which such loss occurred. See I.R.C. § 704(d). Any increase in a partner's share of liabilities of the partnership is considered a contribution by the partner to the partnership and increases the basis of the partner's interest in the partnership. See I.R.C. §§ 722, 752(a); Treas. Reg. § 1.752-1(b). As to the LLC loans, the court found that the LLC tax returns did not report the amount of LLC liabilities and the wife failed to provide any evidence of the amount of the liabilities or the wife's share in those liabilities. Thus, the court held that the wife's share of LLC losses were properly disallowed for failure of the wife to provide sufficient evidence by which the court could calculate any portion of the wife's basis. The appellate court affirmed. **Hargis v. Comm'r, 2018-1 U.S. Tax Cas. (CCH) ¶ 50,295 (8th Cir. 2018), *aff'g*, T.C. Memo. 2016-232**.

SAFE HARBOR INTEREST RATES

July 2018

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	2.38	2.37	2.36	2.36
110 percent AFR	2.63	2.61	2.60	2.60
120 percent AFR	2.86	2.84	2.83	2.82
		Mid-term		
AFR	2.87	2.85	2.84	2.83
110 percent AFR	3.16	3.14	3.13	3.12
120 percent AFR	3.45	3.42	3.41	3.40
		Long-term		
AFR	3.06	3.04	3.03	3.02
110 percent AFR	3.37	3.34	3.33	3.32
120 percent AFR	3.68	3.65	3.63	3.62

Rev. Rul. 2018-19, I.R.B. 2018-27.

UNIFORM CAPITALIZATION. The TCJA 2017, § 13207, added I.R.C. § 263A(d)(2)(C) to the uniform capitalization rules (UNICAP) to provide that the UNICAP rules of I.R.C. § 263A

do not apply to certain costs that are paid or incurred by certain investor/taxpayers for replanting after the loss or damage of citrus plants, effective for certain costs that are paid or incurred after December 22, 2017, and on or before December 22, 2027. (*Note, the various ten-year effective dates of many TCJA 2017 provisions result from the special Congressional rules that allowed simple majority votes for passage. Congress is currently working on further legislation which, if enacted, would make many TCJA 2017 provisions permanent.)* The IRS has issued a revenue procedure providing the procedures by which certain taxpayers may obtain automatic consent to change their method of accounting from applying I.R.C. § 263A to citrus plant replanting costs to not applying I.R.C. § 263A to those costs, under I.R.C. § 263A(d)(2)(C). Under the rules prior to TCJA 2017, only the owner of a citrus grove could avoid the UNICAP rules for certain costs paid or incurred to replant plants bearing an edible crop for human consumption that were lost or damaged by reason of freezing temperatures, disease, drought, pests, or casualty. Under the TCJA 2017 provision, in the case of replanting citrus plants after the loss or damage of citrus plants by reason of freezing temperatures, disease, drought, pests, or casualty, the UNICAP rules do not apply to replanting costs paid or incurred by an investor/taxpayer, other than the owner of the citrus plants, if: (1) the owner has an equity interest of not less than 50 percent in the replanted citrus plants at all times during the taxable year in which such amounts were paid or incurred and the investor/taxpayer holds any part of the remaining equity interest; or (2) the investor/taxpayer acquired the entirety of the owner's equity interest in the land on which the lost or damaged citrus plants were located at the time of such loss or damage, and the replanting is on such land. *Rev. Proc. 2018-31, I.R.B. 2018-22, 637*, provides the latest procedures by which a taxpayer may obtain automatic consent from the Commissioner to change to a method of accounting. The new revenue procedure amends *Rev. Proc. 2018-31* to include the new TCJA 2017 UNICAP rule for citrus plants, allowing qualifying investors to change from capitalizing such costs to currently deducting such costs. ***Note***: the IRS waived the rule prohibiting the same accounting change within five-years as to this procedure. **Rev. Proc. 2018-35, I.R.B. 2018-27**.

NUISANCE

RIGHT-TO-FARM. The plaintiffs were neighbors of the defendant confined animal feeding operation (CAFO) involving a facility capable of raising 10,000 pigs. The plaintiffs alleged negligence and temporary nuisance based on the odors, pathogens, and flies they alleged stem from the CAFO, as well as defendants' alleged failure to use prudent management practices to reduce these odors, pathogens, and flies. The defendant filed for summary judgment based on the statutory immunity provided by the Iowa right-to-farm law, Iowa Code § 657.11(2). The plaintiffs also sought summary judgment based on the unconstitutionality of the statute as applied, based on the holding in *Gacke v. Pork Xtra, L.L.C., 684 N.W.2d 168 (Iowa 2004)*. The trial court granted summary judgment for the plaintiffs and the defendant appealed. In *Gacke*, the Iowa Supreme Court found that Iowa Code § 657.11(2) created an easement on the neighboring plaintiffs' property in violation of the takings clause of the Iowa Constitution by allowing the CAFOs to continue acting as a nuisance while barring the plaintiffs from obtaining the appropriate remedy of diminution-in-value damages for the actual taking of their property. However, the court also held that "[t]he takings clause does not prohibit limitations on other damages recoverable under a nuisance theory" since "the recovery of diminution-in-value damages fully compensates the burdened property owners for the unlawful taking." The *Gacke* court held the statute unconstitutional as applied because (1) the plaintiffs received no particular benefit from the nuisance immunity granted to the CAFOs other than that inuring to the public in general; (2) despite obtaining no specific benefit from the statutory immunity, the plaintiffs sustained significant hardship; and (3) the plaintiffs had resided on their property long before the surrounding CAFOs were built. The court noted that the three factors identified in *Gacke* had developed into a three part test used by trial courts in Iowa. Thus, a determination that the statute was unconstitutional as applied required factual findings which were not made by the trial court in this case in granting summary judgment. The court reversed the trial court and held that the summary judgment for the plaintiffs was improper in this case prior to establishing the facts to support a determination that the statute was unconstitutional as applied to these plaintiffs. **Honomichi v. Valley View Swine, 2018 Iowa Sup. LEXIS 67 (Iowa 2018).**

The defendants owned and operated a commercial horse boarding activity. The property contained one residence and a large barn/arena with a three bedroom apartment in the second floor. The apartment was rented to a persons who, if they assisted with watching over the horses at night, received a discount on the rent, although the renters were not employees of the defendants and did not provide care for the horses. The evidence also showed that not all renters assisted with watching over the horses at night and did not receive any discount. The plaintiff township charged the defendants with violating a town ordinance which allowed only one residence on the property and which prohibited any residence in an arena. The defendant argued that the Michigan right-to-farm statute, Mich. Cod. Laws § 286.471 *et seq*., prohibited enforcement of the ordinance against the defendants. Mich. Cod. Laws § 286.472(a), defines farm as "the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products." "Farm operation" is defined in Mich. Cod. Laws § 286.472(b) as "the operation and management of a farm or a condition or activity that occurs at any time as necessary on the farm in connection with the commercial production, harvesting, and storage of farm products . . .." The trial court granted summary judgment to the township, ruling that the arena apartment was not necessary to the operation of the horse activity and therefore was not covered by the right-to-farm statute. On appeal, the court noted that the tenants were not required to assist with watching over the horses; therefore, the arrangement was more for the convenience of the defendants than necessary for the operation of the horse activity. Thus, the appellate court agreed that the renting of the apartment was not part of the farm operation and the ordinance did not violate the right-to-farm statute. **Township of Williamstown v. Sandalwood Ranch, 2018 Mich. App. LEXIS 2691 (Mich. Ct. App. 2018)**.

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