CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

FEDERAL ESTATE AND GIFT TAXATION

APPLICABLE EXCLUSION AMOUNT. In a 2017 Revenue Procedure, the IRS had announced the 2018 annual inflation adjustments for several tax provisions, including the tax rate schedules and other tax changes, prior to passage of the Consolidated Appropriations Act of 2018, *Pub. L. No. 115-141*. See *Rev. Proc. 2017-58, 2017-2 C.B. 489*. The IRS has now announced revised adjustments. Estates of decedents who die during 2018 have a basic exclusion amount of $11,180,000, up from a total of $5,450,000 for estates of decedents who died in 2017. **Rev. Proc. 2018-18, I.R.B. 2018-__, *modifying*, Rev. Proc. 2017-58, 2017-2 C.B. 489**.

SPECIAL USE VALUATION. Decedent's estate included a revocable trust. The decedent's son and daughter were co-trustees of the revocable trust and, pursuant to I.R.C. § 2203, served as co-executors of the decedent's estate. The decedent's estate also included farmland. The son and daughter retained an accountant to prepare and timely file the decedent's Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*. The accountant did not advise the son and daughter to make an election to specially value the farmland under I.R.C. § 2032A and the election was not made on the timely filed Form 706. After filing the decedent's Form 706, the son met with an attorney to discuss estate planning. The attorney discovered that the I.R.C. § 2032A election was never made on the Form 706 and the estate requested an extension of time to make the § 2032A election. Treas. Reg. § 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Treas. Reg. § 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). A request for relief under Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Treas. Reg. § 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. Thus, the IRS granted the estate an extension of time to make the I.R.C. § 2032A election. **Ltr. Rul. 201814004, Dec. 11, 2017**.

FEDERAL FARM PROGRAMS

MILK. The AMS has issued proposed regulations concerning the issuance of a Federal Milk Marketing Order (FMMO) regulating the handling of milk in California. This proposed rule proposes adoption of a California FMMO incorporating the entire state of California and would adopt the same dairy product classification and pricing provisions used throughout the current FMMO system. The proposed California FMMO provides for the recognition of producer quota as administered by the California Department of Food and Agriculture. This proposed FMMO is subject to producer approval by referendum. **83 Fed. Reg. 14110 (April 2, 2018)**.

ORGANIC FOOD. The AMS has announced the renewal of 17 substances on the National List of Allowed and Prohibited Substances within the USDA organic regulations. The announcement reflects the outcome of the 2018 sunset review process and addresses the recommendations submitted to the Secretary of Agriculture through the AMS by the National Organic Standards Board. Synthetic substances allowed for use in organic crop production include copper sulfate, ozone gas, and peracetic acid. Nonsynthetic substances prohibited for use in organic crop production include calcium chloride. Nonagricultural (non-organic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food groups)" include agar-agar, animal enzymes, calcium sulfate, carrageenan, glucono delta-lactone, tartaric acid, and cellulose. Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as "organic" include colors derived from plants and beta-carotene extract color. **83 Fed. Reg. 14347 (April 4, 2018)**.

POULTRY. The APHIS has issued proposed regulations to amend the regulations governing the National Poultry Improvement Plan (NPIP) by updating and clarifying several provisions, including those concerning NPIP participation, voting requirements, testing procedures, and standards. These proposed changes were voted on and approved by the voting delegates at the NPIP's 2016 National Plan Conference. **83 Fed. Reg. 15082 (April 9, 2018)**.

FEDERAL INCOME TAXATION

ALIMONY. The taxpayer was divorced and the divorce decree did not provide for alimony but provided for the payment by the taxpayer of one-half of several debts held jointly with the former spouse. The taxpayer hired a CPA to prepare the tax return and claimed the amounts paid on the joint debts as deductible alimony. The former spouse did not include these amounts in taxable income. The IRS disallowed the alimony deductions and the taxpayer appealed. I.R.C. §§ 215(a) and (b) allow a deduction for the payment of alimony as defined in I.R.C. § 71(b)(1)(D), which provides: "(1) In general.—The term "alimony or separate maintenance payment" means any payment in cash if— . . ., 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." To determine whether the taxpayer has liability to continue payments after the ex-spouse's death, the court applies the following sequential approach: (1) the court first looks for an unambiguous termination provision in the applicable divorce instrument; (2) if there is no unambiguous termination provision, then the court looks to whether payments would terminate at the payee's death by operation of state law; and (3) if the state law is ambiguous as to the termination of payments upon the death of the payee, the court will look solely to the divorce instrument to determine whether the payments would terminate at the payee's death. The court found that the divorce decree was silent on this issue and looked to Arkansas law for guidance. The court found that Arkansas law treated alimony and debt allocation as separate items with debt allocation to be based on the financial status of the parties. In addition, the court found that the divorce decree included language from the state court that alimony was not appropriate in this case. Therefore, the court held that the allocation of the joint debts did not qualify as alimony under state law and the taxpayer's obligations to pay the debt would not be extinguished at the death of the ex-spouse. The result was that the debt payments were not eligible for the alimony deduction under I.R.C. § 215. **Davidson v. Comm'r, T.C. Memo. 2018-38**.

I.R.C. § 71 prior to the TCJA 2017 provided rules regarding the tax treatment of alimony and separate maintenance payments, with I.R.C. § 71(a) providing that gross income includes amounts received as alimony or separate maintenance payments. I.R.C. § 682 prior to the TCJA 2017 provided rules regarding the tax treatment of the income of certain trusts payable to a former spouse who was divorced or legally separated. I.R.C. § 682(a) provides that there shall be included in the gross income of a wife who is divorced or legally separated under a decree of divorce or of separate maintenance (or who is separated from her husband under a written separation agreement) the amount of the income of any trust which such wife is entitled to receive and which, except for former I.R.C. § 682, would be includible in the gross income of her husband, and such amount shall not, despite any other provision of subtitle A of the Code, be includible in the gross income of such husband. I.R.C. § 682(a), however, did not apply to any trust income payable under the terms of such decree or agreement or the trust instrument for the support of the husband's minor children. I.R.C. § 682(b) provided that, for purposes of computing the taxable income of the trust and the taxable income of a wife to whom I.R.C. § 682(a) applied, such wife shall be considered as the beneficiary specified in part I of subchapter J of chapter 1 of the Code. The TCJA 2017 repealed both I.R.C. §§ 77 and 682. Section 11051(c) of the TCJA 2017 provides that the amendments made by Section 11051 shall apply to: (1) any divorce or separation instrument (as defined in former I.R.C. § 71(b)(2)) executed after December 31, 2018, and (2) any divorce or separation instrument (as so defined) executed on or before such date and modified after such date if the modification expressly provides that the amendments made by such section apply to such modification. The IRS has announced that it intends to issue regulations as to the effective date concerning the repeal of I.R.C. § 682. The regulations will provide that I.R.C. § 682, as in effect prior to December 22, 2017, will continue to apply with regard to trust income payable to a former spouse who was divorced or legally separated under a divorce or separation instrument (as defined in I.R.C. § 71(b)(2)) executed on or before December 31, 2018, unless such instrument is modified after that date and the modification provides that the changes made by Section 11051 of the TCJA 2017 apply to the modification. **Notice 2018-37, I.R.B. 2018-18**.

ACCOUNTING METHOD. Section 13221 of the Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97 amended I.R.C. § 451 to include two new subsections, I.R.C. §§ 451(b) and (c) (also re-designating existing (b) through (i) as (d) through (k)) which allow accrual method taxpayers to elect a limited deferral of the inclusion of income associated with certain advance payments. The new I.R.C. §§ 451(b) and (c) largely track the approach in *Rev. Proc. 2004-34, 2004-1 C.B. 991*. The Department of the Treasury and the IRS expect to issue future guidance regarding the treatment of advance payments to implement this legislative change. I.R.C. § 451(a) provides that the amount of any item of gross income is included in gross income for the taxable year in which received by the taxpayer, unless, under the method of accounting used in computing taxable income, the amount is to be properly accounted for as of a different period. Treas. Reg. § 1.451-1(a) provides that, under an accrual method of accounting, income is includible in gross income when all the events have occurred that fix the right to receive the income and the amount can be determined with reasonable accuracy. All the events that fix the right to receive income generally occur when: (1) the payment is earned through performance, (2) payment is due to the taxpayer, or (3) payment is received by the taxpayer, whichever happens earliest. See *Rev. Rul. 2003-10, 2003-1 C.B. 288*. *Rev. Proc. 2004-34* provides a full inclusion method and a deferral method of accounting for the treatment of advance payments for goods, services, and other items. Under the full inclusion method, advance payments are included in income in the year of receipt. Under the deferral method, an advance payment is included in gross income for the taxable year of receipt to the extent (1) recognized in revenue in a taxpayer's applicable financial statement for that taxable year or (2) earned, for taxpayers without an applicable financial statement, in that taxable year, and the remaining amount of the advance payment is included in the next succeeding taxable year after the taxable year in which the payment is received. New I.R.C. § 451(b)(1)(A)(i) provides that for an accrual method taxpayer, the all events test for any item of gross income shall not be treated as met any later than when the item is taken into account as revenue in an applicable financial statement of the taxpayer. New I.R.C. § 451(c)(1)(A) generally provides that an accrual method taxpayer shall include an advance payment in gross income in the taxable year of receipt. Alternatively, under new I.R.C. § 451(c)(1)(B), an accrual method taxpayer may elect to defer the recognition of all or a portion of an advance payment to the taxable year following the taxable year in which the payment is received, except any portion of such advance payment that is required under new I.R.C. § 451(b) to be included in gross income in the taxable year in which the payment is received. New I.R.C. § 451(c)(4)(A) defines an advance payment as any payment: (1) the full inclusion of which in the gross income of the taxpayer for the taxable year of receipt is a permissible method of accounting, (2) any portion of which is included in revenue by the taxpayer in an applicable financial statement, or such other financial statement as the Secretary may specify, for a subsequent taxable year, and (3) which is for goods, services, or such other items as may be identified by the Secretary. These changes mirror the rules set forth in *Rev. Rul. 2004-34*. The new changes are effective generally for taxable years beginning after December 31, 2017. Taxpayers, with or without applicable financial statements, receiving advance payments may continue to rely on *Rev. Proc. 2004-34* until future guidance is effective. **Notice 2018-35, I.R.B. 2018-18**.

BUSINESS INTEREST DEDUCTION. Prior to the passage of the Tax Cuts and Jobs Act 2017 (TCJA), *Pub. L. 115-97*, I.R.C. § 163(j) disallowed a deduction for disqualified interest paid or accrued by a corporation in a taxable year if two threshold tests were satisfied: (1) the payor's debt-to-equity ratio exceeded 1.5 to 1.0 (safe harbor ratio) and (2) the payor's net interest expense exceeded 50 percent of its adjusted taxable income (generally, taxable income computed without regard to deductions for net interest expense, net operating losses, domestic production activities under section 199, depreciation, amortization, and depletion). Disqualified interest for this purpose included interest paid or accrued to: (1) related parties when no Federal income tax was imposed with respect to such interest; (2) unrelated parties in certain instances in which a related party guaranteed the debt; or (3) a real estate investment trust ('REIT') by a taxable REIT subsidiary of that REIT. For any taxpayer to which I.R.C. § 163(j) applies, the TCJA amended I.R.C. § 163(j)(1) to limit the taxpayer's annual deduction for business interest expense to the sum of: (1) the taxpayer's business interest income (as defined in I.R.C. § 163(j)(6)) for the taxable year; (2) 30 percent of the taxpayer's adjusted taxable income (as defined in I.R.C. § 163(j)(8)) for the taxable year; and (3) the taxpayer's floor plan financing interest (as defined in I.R.C. § 163(j)(9)) for the taxable year. The limitation in I.R.C. § 163(j) applies to all taxpayers, except for certain taxpayers that meet the gross receipts test in I.R.C. § 448(c), and to all trades or businesses, except certain trades or businesses listed in I.R.C. § 163(j)(7). I.R.C. § 163(j)(2), as amended by the Act, provides that the amount of any business interest not allowed as a deduction for any taxable year as a result of the limitation in section 163(j)(1) is treated as business interest paid or accrued in the next taxable year and may be carried forward. The IRS and Treasury Department intend to issue regulations clarifying that taxpayers with disqualified interest disallowed under *prior* I.R.C. § 163(j)(1)(A) for the last taxable year beginning before January 1, 2018, may carry such interest forward as business interest to the taxpayer's first taxable year beginning after December 31, 2017. The regulations will also clarify that business interest carried forward will be subject to potential disallowance under I.R.C. § 163(j), as amended by the TCJA, in the same manner as any other business interest otherwise paid or accrued in a taxable year beginning after December 31, 2017. Prior to the TCJA, I.R.C. § 163(j)(2)(B)(ii) also allowed a corporation that was subject to the limitation in I.R.C. § 163(j)(1) to add to its annual limitation any "excess limitation carryforward" from the prior year, as defined in I.R.C. § 163(j)(2)(B)(ii). I.R.C. § 163(j), as amended by the TCJA, does not have a provision that would allow an excess limitation carryforward. Thus, the forthcoming regulations will clarify that no amount previously treated as an excess limitation carryforward may be carried to taxable years beginning after December 31, 2017. The IRS also intends to issue regulations clarifying that the disallowance and carryforward of a deduction for a C corporation's business interest expense under I.R.C. § 163(j), as amended by the TCJA, will not affect whether or when such business interest expense reduces earnings and profits of the payor C corporation. **Notice 2018-18, I.R.B. 2018-16**.

DISCHARGE OF INDEBTEDNESS. The taxpayer had obtained health insurance and received a bill for medical services rendered by a medical professional. The bill states that the amount billed equals $170 but also states that the amount allowed is $100. The difference resulted from the contract between the health insurance company and the medical professional which allowed for the lower payment even though the amount billed was higher. The IRS ruled that no discharge of indebtedness occurred because there was no amount owed by the taxpayer beyond the amount allowed, as stated on the bill for services. **INFO 2018-0002, April 5, 2018**.

INCOME. The taxpayer was employed as an automobile repair technician. The taxpayer received 12 checks from the employer during the tax year totaling $9,134. However, the employer issued a Form 1099-MISC to the taxpayer which listed $22,049.55 as compensation. The employer later issued a corrected Form 1099-MISC which listed the compensation as $12,738. The taxpayer listed income of $27,736 and withholding credits of $9,793. The IRS assessed a deficiency based on income of $34,787.55 which equaled the $22,049.55 and the $12,738 from both Forms 1099-MISC. At trial the IRS amended its assessment to only $9,134; however, the taxpayer argued that the actual compensation was $34,787.55 but only $9,134 was taxable because the employer withheld the remainder. The taxpayer presented evidence that the Texas Workforce Commission had credited the taxpayer with wage credits of $34,787.55; therefore, the taxpayer argued, that amount should be considered as the taxpayer's compensation but reduced by the withholding. The court found that the 12 checks from the employer to the taxpayer were the best evidence of the compensation received by the taxpayer; therefore, it held that the taxpayer's taxable income was $9,134 and the taxpayer had overreported taxable income. **Trimble v. Comm'r, T.C. Memo. 2018-36**.

INFLATION ADJUSTMENTS. In a 2017 Revenue Procedure, the IRS had announced the 2018 annual inflation adjustments for several tax provisions, including the tax rate schedules and other tax changes, prior to passage of the Consolidated Appropriations Act of 2018, *Pub. L. No. 115-141*. See *Rev. Proc. 2017-58, 2017-2 C.B. 489*. The IRS has now announced revised adjustments, including the following dollar amounts: (1) For tax year 2018, the 37 percent tax rate affects single taxpayers whose income exceeds $500,000 ($500,000 for married taxpayers filing jointly). (2) The standard deduction for tax year 2018 for heads of household rises to $24,000, $12,000 for singles and married persons filing separate returns, and $12,000 for married couples filing jointly. (3) The limitation for itemized deductions has been removed. (4) The personal exemption for tax year 2018 has been removed. (5) The Alternative Minimum Tax exemption amount for tax year 2018 is $70,300 (single) and $109,400 (joint) and begins to phase out at $500,000 (single) and $1 million (joint). (6) The tax year 2018 maximum Earned Income Credit amount is $14,290 for taxpayers filing jointly who have three or more qualifying children. (7) For tax year 2018, the I.R.C. § 179 expense method depreciation limitation is $1 million with the phaseout beginning at $2,500,000. (8) For tax year 2018 participants who have self-only coverage in a Medical Savings Account, the plan must have an annual deductible that is not less than $2,300, but not more than $3,450. For self-only coverage the maximum out of pocket expense amount increases to $4,550. For tax year 2018 participants with family coverage, the floor for the annual deductible is $4,550; however, the deductible cannot be more than $6,850. For family coverage, the out-of-pocket expense limit is $8,400 for tax year 2018. (9) For tax year 2018, the foreign earned income exclusion is $103,900. (10) **Rev. Proc. 2018-18, I.R.B. 2018-__, *modifying*, Rev. Proc. 2017-58, 2017-2 C.B. 489**.

QUALIFIED DEBT INSTRUMENTS. For taxable years beginning after December 31, 2017, Section 11002(d)(10) of the Tax Cut and Jobs Act of 2017, Pub. L. 115-97 (the Act), amended I.R.C. § 1274A(d)(2) to change the calculation of the adjustments for inflation. As amended by the Act, I.R.C. § 1274A(d)(2) provides that the dollar amounts stated in I.R.C. § 1274A(b) and (c)(2)(A) are each increased by an adjustment for inflation determined by multiplying the stated amount by the cost-of-living (COL) adjustment determined under I.R.C. § 1(f)(3) for the calendar year in which the taxable year begins, by substituting "calendar year 1988" for "calendar year 2016" in I.R.C. § 1(f)(3)(A)(ii). Thus, for purposes of I.R.C. § 1274A(d)(2), the COL adjustment for any calendar year is the percentage (if any) by which the Consumer Price Index for All Urban Consumers (C-CPI-U) for the preceding calendar year exceeds the CPI for calendar year 1988, multiplied by the amount determined in I.R.C. § 1(f)(3)(B). The amount determined in I.R.C. § 1(f)(3)(B) is the C-CPI-U for calendar year 2016 divided by the CPI for calendar year 2016. I.R.C. § 1(f)(4) defines the CPI for any calendar year as the average of the C-CPI-U as of the close of the 12-month period ending on August 31 of that calendar year. I.R.C. § 1(f)(6)(B) defines the C-CPI-U for any calendar year as the average of the Chained Consumer Price Index for All Urban Consumers as of the close of the 12-month period ending on August 31 of such calendar year. Under I.R.C. § 1274A(d)(2), any increase in an adjustment for inflation is rounded to the nearest multiple of $100 (or, if such increase is a multiple of $50, such increase shall be increased to the nearest multiple of $100). The IRS has announced the 2018 inflation adjusted amounts of debt instruments which qualify for the interest rate limitations under I.R.C. §§ 483 and 1274A:

Year of Sale or Exchange	1274A(b) Amount	1274A(c)(2)(A) Amount
2018	$5,831,500	$4,165,300

The $5,831,500 figure is the dividing line for 2018 below which (in terms of seller financing) the minimum interest rate is the lesser of 9 percent or the Applicable Federal Rate (AFR). Where the amount of seller financing exceeds the $5,831,500 figure, the imputed rate is 100 percent of the AFR except in cases of sale-leaseback transactions, where the imputed rate is 110 percent of AFR. If the amount of seller financing is $4,165,300 or less (for 2018), both parties may elect to account for the interest under the cash method of accounting. **Rev. Rul. 2018-11, I.R.B. 2018-18**.

SELF-EMPLOYMENT. The taxpayer had been a sales agent for Mary Kay, Inc., initially selling cosmetics and eventually working up to the position of national sales director. The taxpayer enrolled in the Mary Kay disability, retirement, insurance and death benefit plan. Under the plan, retired national sales directors received monthly payments after retirement based on the average commissions earned during the taxpayer's last five years of service. The plan agreement provided that the payments were deferred compensation and were subject to self-employment taxes. However, the taxpayer, under the advice of an accountant, did not pay self-employment taxes on the plan payments received after retirement. The court cited *Peterson v. Comm'r, T.C. Memo. 2013-271, aff'd, 827 F3d 968 (11th Cir. 2016)* which held that payments under the same Mary Kay plan were subject to self-employment taxes. Under that precedent, the court held that the retirement plan benefits received by the taxpayer were subject to self-employment taxes because the plan payments were based on the taxpayer's employment during the last five years before retirement. **Sherman v. Comm'r, T.C. Summary Op. 2018-15**.

TRAVEL EXPENSES. The taxpayers, husband and wife, purchased a run-down residence in a city 250 miles from the couple's home with the intent to have the husband repair and remodel the residence to receive a profit on the sale of the residence. The husband was retired and used the project to keep busy. The couple still owned the residence at the time of trial because the repairs were not yet completed. The taxpayers claimed deductions on Schedule C related to the husband's travel to the residence which were disallowed by the IRS as capital expenses required to be added to the residence's tax basis. I.R.C. § 263(a)(1) provides that no current deduction is allowed for amounts "paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate." See also Treas. Reg. § 1.263(a)-3 (such amounts must be capitalized). I.R.C. § 1221(a)(1) provides that a capital asset does not include "property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business." The taxpayers argued that they purchased the residence for sale after it was remodeled and, therefore, was not a capital asset. The court stated that prior cases have used nine factors in determining whether property was held for sale in the ordinary course of a trade or business: (1) the taxpayer's purpose in acquiring the property; (2) the purpose for which the property was subsequently held; (3) the taxpayer's everyday business and the relationship of the income from the property to the taxpayer's total income; (4) the frequency, continuity, and substantiality of sales of property; (5) the extent of developing and improving the property to increase the sale revenue; (6) the extent to which the taxpayer used advertising, promotion, or other activities to increase sales; (7) the use of a business office for the sale of property; (8) the character and degree of supervision or control the taxpayer exercised over any representative selling the property; and (9) the time and effort the taxpayer habitually devoted to sales of property. The court held that the residence was not held for sale in the ordinary course of a trade or business because (1) the taxpayers did not keep separate records for the activity, (2) no other real estate purchases and sales were made either before or after the purchase of the residence; (3) the activity did not otherwise produce any income; and (4) the taxpayers did not maintain a business office. In addition, the court noted that the expenses related to the activity were made primarily to increase the property's value and to extend its useful life, both characteristic of non-deductible capital expenses. **Havener v. Comm'r, T.C. Summary Op. 2018-17**.

NUISANCE

RIGHT-TO-FARM. The defendant owned and operated a paper mill built in 1986 to convert waste paper into recycled paper products. The factory was located on 130 acres and included a disposal site for sludge produced as part of the recycling process. The defendant obtained a state permit for operating the disposal site. The sludge disposal produces hydrogen sulfide, a gas which smells like rotten eggs, which is not a state or federally controlled pollutant. The plaintiffs were neighbors of the recycling plant who moved in after 2000 who claimed that the hydrogen sulfide created odors and corrosive effects that damaged the plaintiffs' property, including air conditioning units, smoke alarms, copper pipe and other metal items. The plaintiffs brought suit in nuisance, negligence and trespass and the defendant argued that the suit was prohibited by the Georgia right-to-farm statute, Ga. Code § 41-1-7. Ga. Code § 41-1-7(c) provides that "[n]o … agricultural support facility, or any operation at an agricultural support facility shall be or shall become a nuisance, either public or private, as a result of changed conditions in or around the locality of such facility or operation if the facility or operation has been in operation for one year or more. The provisions of this subsection shall not apply when a nuisance results from the negligent, improper, or illegal operation of any such facility or operation." The term "agricultural support facility" is defined in Ga. Code § 41-1-7(b)(3.1) as "any food processing plant or forest products processing plant together with all related or ancillary activities." Ga. Code § 41-1-7(b)(4.2) further defines "forest products processing plant" as "a commercial operation that manufactures, packages, labels, distributes, or stores any forest product. . .." The court found that the Georgia Forestry Commission and other governmental agencies had determined that recycled paper was a forest product; therefore, the court held that the defendant's paper recycling facility was covered by the right-to-farm statute as an agricultural support facility. The court next examined whether the defendant's sludge facility was operated negligently. The plaintiffs argued that the mere fact that the facility emitted hydrogen sulfide was sufficient to show that the facility was operated negligently. The court disagreed, noting that hydrogen sulfide was not a regulated pollutant at the state or federal levels; therefore, the emission of hydrogen sulfide was not proof of negligent operation. Thus, the court held that the nuisance and negligence claims were barred by the Georgia right-to-farm statute and were dismissed. **Georgia Pacific Consumer Products, LP v. Ratner, 2018 Ga. App. LEXIS 175 (Ga. Ct. App. 2018)**.

IN THE NEWS

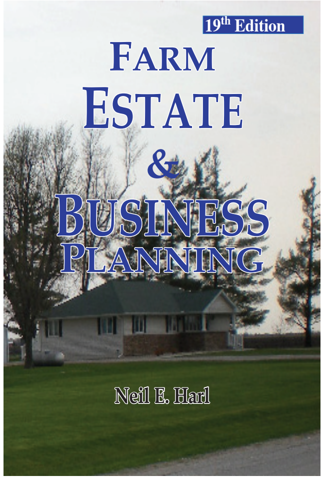
ENVIRONMENTAL LAW. The Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, Title XI, exempts farms from air emission reporting under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9603. Accordingly, under Title XI of the legislation, entitled the Fair Agricultural Reporting Method Act or the FARM Act, "air emissions from animal waste at a farm" are now exempt from CERCLA reporting requirements. "The term 'farm' means a site or area (including associated structures) that--(i) is used for--(I) the production of a crop; or (II) the raising or selling of animals (including any form of livestock, poultry, or fish); and (ii) under normal conditions, produces during a farm year any agricultural products with a total value equal to not less than $1,000." "Animal waste" is defined to include "feces, urine, or other excrement, digestive emission, urea, or similar substances emitted by animals (including any form of livestock, poultry, or fish) . . . animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically found with such waste." The 2018 Act also continues the exemption for "a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq*.) or the handling and storage of such a pesticide product by an agricultural producer."

TAX CUTS AND JOBS ACT. The IRS has created a tax reform page for taxpayers and tax professionals to provide information about the 2017 legislation and links to IRS news releases, publications, notices, and legal guidance related to the legislation. **https://www.irs.gov/newsroom/tax-reform**

Agricultural Law Press
735 N. Maple Hill Rd., Kelso, WA 98626

19th EDITION

FARM ESTATE & BUSINESS PLANNING



Soft cover, 8.25 x 5.5 inches, 510 pages
Published April 2016

The Agricultural Law Press is honored to publish the completely revised and updated 19th Edition of Dr. Neil E. Harl's excellent guide for farmers and ranchers who want to make the most of the state and federal income and estate tax laws to assure the least expensive and most efficient transfer of their estates to their children and heirs. This book contains detailed advice on assuring worry-free retirement years, using wills, trusts, insurance and outside investments as estate planning tools, ways to save on estate settlement costs, and an approach to setting up a plan that will eliminate arguments and friction in the family. Federal estate taxation has undergone great changes in recent years and this book sorts out these changes for you in a concise manner. *Farm Estate and Business Planning* also includes discussion of employment taxes, formation and advantages of use of business entities, federal farm payments, state laws on corporate ownership of farm land, federal gift tax law, annuities, installment obligations, charitable deductions, all with an eye to the least expensive and most efficient transfer of the farm to heirs.

Written with minimum legal jargon and numerous examples, this book is suitable for all levels of people associated with farms and ranches, from farm and ranch families to lenders and farm managers. Some lawyers and accountants circulate the book to clients as an early step in the planning process. We invite you to begin your farm and ranch estate and business planning with this book and help save your hard-earned assets for your children.

The book is also available in digital PDF format for $25; see www.agrilawpress.com for ordering information for both the print and digital versions of the book.

ORDER FORM (or call 360-200-5666)

*Free shipping and handling when check or credit card number submitted with order.

*Return in 10 days for full refund if not satisfied.

*Quantity discounts available for 10 or more books - great for handing out to clients to encourage estate planning.

___ Please send me ____ copies for $35.00 each.   Check enclosed for $___________
___ Please charge my credit card: __Visa __ MasterCard __Discover __Am Express #_________________________________
_____/______Expiration date   _____ Cvv code
___ Bill me and add shipping and handling of $5.00 per book.

Name - please print or type

Street address   City   State   Zip

Phone   E-mail - if you want to be informed of updates/corrections

Send to: Agricultural Law Press, 735 N. Maple Hill Rd., Kelso, WA 98626