



Agricultural Law Press
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Issue Contents

Bankruptcy

General

Automatic stay **82**

Federal Estate and Gift Taxation

Alternate valuation date **82**

Federal Farm Programs

Pigs **83**

Bioengineered food **83**

Federal Income Taxation

Accounting method **83**

Bad debts **83**

Capital gains **84**

Disability benefits **84**

Disaster losses **85**

Employee expenses **85**

Health insurance **85**

Levy **85**

S corporations

Shareholder basis **86**

Safe harbor interest rates

June 2018 **87**

State taxes **87**

Work opportunity credit **87**

In the News

Qualified business income deduction **87**

Agricultural Law Digest

Volume 29, No. 11

June 1, 2018

ISSN 1051-2780

A personal message from Neil E. Harl

When I celebrated my 84th birthday last October 9, I made a vow to recognize that there comes a time when one should ease up. In my case, that was emphasized by the fact that the serious illness of my dear wife, Darlene, has necessitated almost full-time care in recent months. Accordingly, the decision was made a few months ago to retire from publishing.

Our various publications are being turned over to our good friend and long-time associate for nearly 40 years, Robert P. Achenbach, Jr. This publication, *Agricultural Law Digest*, has been written and edited by Bob since it was launched, January 1, 1990. The first issue featured an article, *Deferred Payment Contracts*, which was then an important matter, but his involvement has been substantial in that publication and every issue since and in other publications, including *Agricultural Law*, the 15-volume treatise published by Matthew Bender, LexisNexis; the two volume *Farm Income Tax Manual*, also published by Matthew Bender, LexisNexis; *Farm Estate and Business Planning*, now in its 19th edition; and other publications including *Agricultural Law Manual*. He will carry on with careful attention to developments in the world of taxation and related areas. His work has been vitally important for decades and decades and I am confident he will continue to bring useful information to our subscribers.

To our subscribers, my personal thanks for your loyalty over the years. Dr. Neil E. Harl.

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Coping with Conflicts Over Grain in a Crop Share or Livestock Share Lease

-by Neil E. Harl*

The occurrence of conflicts over harvested grain in crop share leases (and, less frequently livestock share leases) where the landowner is unable to monitor the harvesting process may be inching upward. The conflicts, in some instances, have contributed to shifting to cash rent leases with the tenant entitled to the entire crop. However, for those who prefer the risks of a crop share or livestock share lease for a variety of reasons, if the land owner is unable to maintain surveillance over the harvesting process, additional steps may be necessary if an agreed upon sharing is to be assured as between the land owner and the tenant (or tenants).

Who Gets the "End Rows"

One area of conflict that has been observed is that the tenant (or tenants) may move in

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and harvest the end rows (or end rows plus the same area all around the field) before accounting for the crop involved in those areas. A pattern of either nature, which reduces the land owner's overall share, can significantly cut the amount of the crop passing into the land owner's hands. If the landowner is observing the harvesting process, it is less likely that the tenant would lay claim to those strips which could amount to several acres for a large field. Certainly, the crop share or livestock share lease should include rules for such "end rows" if that is the expectation of the parties at the time the lease agreement is drafted.

Counting loads

Usually less frequent, is the sharing of crops as agreed upon (often a 50-50 division of crops although it could involve any specified sharing of the crop with some shares based upon a 60-40 or 40-60 share) but with the actual division of the crop in question departing from the lease agreement. With the tenant usually providing the harvesting equipment, it is tempting to harvest territory beyond what is contemplated. Unless the land owner is stationed where the harvesting is going on, some have found it tempting to make two, three or more rounds with the harvesting equipment beyond the agreed-upon shares.

Avoiding low yielding areas

If the land owner or some one representing the land owner is not observing the harvesting process, it is tempting to avoid low yielding areas whether because of ponding, different soil types or where a different seed variety has been used, all of which can be used to manipulate the harvesting process in the tenant's favor. One solution is to specify in the lease that the harvesting process, where there is suspected significant variance in yields,

is to prevent such harvesting on a preferential basis in terms of yield.

Require sharing of documents of sale

To assure a fair division of the crop after harvest, if there is doubt about a fair accounting, it may be advisable to require that copies of the sales documents be made available to the land owner. Otherwise, the land owner may not receive a fair division of the crop. If the tenant is hauling the crop to a market, without surveillance by the land owner, extra loads of crops may end up being shifted to the tenant.

Of course, if the buyer of the crop is related to the land owner or is a close friend, additional caution may be advisable although this is usually unnecessary.

If the crop is stored

If the crop is being stored, careful attention should be given to whether the crop is being measured for moisture levels and whether the determination of moisture levels is handled in a fair manner. This concern is usually greatest with corn early in the harvesting season. In the event some fields are showing higher moisture levels, it is helpful if attention is given to adjusting drydown from the higher moisture loads of the crop or otherwise including in the lease how moisture differentials are to be handled.

In conclusion

Fortunately, instances where land owner and tenant face such conflicts are rather rare. The presence of a lease or other document providing guidance to the parties usually reduces the temptation to take advantage of the other party.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

AUTOMATIC STAY. The debtor filed for Chapter 12 in December 2010 and in March 2018, an order to approve the trustee's motion to deem the plan completed was filed. In January 2014, the debtor purchased some equipment from a creditor outside of the bankruptcy proceedings. The debtor did not inform the creditor about the pending bankruptcy case until after the creditor filed a state court collection action to recover the unpaid portion of the purchase price for the equipment. After the debtor informed the creditor about the bankruptcy case, the creditor sought relief from the automatic stay to continue the collection process. Section 362(d)(1) allows relief from the automatic stay ". . . for cause, including the lack of adequate protection of an interest in property . . ." The court found that the debtor had not provided any protection of the creditor's interest in the property, did not seek court approval before incurring debt other than in

the ordinary course of the farming operation, and did not notify the creditor about the bankruptcy case until more than two years after the collection action was filed; therefore, the court granted the creditor relief from the automatic stay to pursue the state court collection action. *In re Hornung*, 2018 Bankr. LEXIS 1391 (Bankr. D. Kan. 2018).

FEDERAL ESTATE AND GIFT TAXATION

ALTERNATE VALUATION DATE. The executor of the decedent's estate consulted an attorney to prepare the Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*. A Form 706 was timely filed within one year after the due date (including extensions). The attorney did not make the alternate valuation election under I.R.C. § 2032 on the initial Form 706. The executor requested an extension of time to make the election under I.R.C. § 2032 to use the alternate valuation