



# BECE HOLIDAY EDITION

Barrett, Easterday, Cunningham & Eselgroth LLP

December 2007

## Year-End Tax Strategies

December is traditionally the time to review taxable income and deductions for the year and to take steps to manage the tax liability for the year. Common strategies:

- ◆ Look at the tax situation for both the current and the upcoming year. Taking steps to reduce this year's income may be counter-productive if the taxpayer moves into a higher tax bracket next year.
- ◆ Manage year-end receipts by deferring sales or billing, or accelerate receipts by moving up sales and billing or offering an incentive for earlier payment.
- ◆ Prepay expenses to reduce current year income. Make needed capital purchases before year end that qualify for depreciation deduction or for Section 179 expensing.
- ◆ Prepay property taxes and make charitable contributions before year end. Make state and local estimated income tax payments before year end. Sometimes a taxpayer can lump itemized deductions into every other year and claim the standard deduction in the alternate years thereby maximizing the benefit of itemizing.
- ◆ Keep in mind the income limits to qualify for child tax credits, education credits, phase out of itemized deductions and exemptions. It may be possible to manage income to maintain eligibility for these benefits, or manage income to meet the qualifications every other year.
- ◆ If estate taxes may be an issue, consider making gifts to individuals before year end up to the annual exclusion amount (\$12,000 for 2007).
- ◆ Don't overlook taxes owed to school districts and municipalities. Our office receives several inquiries each year from taxpayers whose city of residence has advised them they should have been filing tax returns and paying tax.
- ◆ At press time, the Alternative Minimum Tax (AMT) structure for 2007 remains uncertain. Prior AMT relief in the form of higher exemptions is scheduled to expire (and be significantly reduced) for 2007.

Efforts are underway in Congress to at least restore the higher exemptions. If Congress does not act, many more people will be subject to AMT. If a taxpayer is subject to AMT, some of the tax strategies will not result in lower tax because different rules apply. The initial set of tax forms will not include any of the changes.

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## Seasons Greetings



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## Did You Know...

- In 2005, the top 10% of income earners (over \$103,900 of income) paid 70% of the income taxes collected by the IRS.
- If you plan to buy and expense an SUV that weighs over 6,000 pounds in the near future for business purposes, you may want to consider doing so in 2007, as Congress is working on legislation that will likely limit the accelerated expensing to SUVs over 14,000 pounds.
- The annual exclusion for 2008 remains at \$12,000 for most people, but the annual exclusion for gifts to non-citizen spouses increases to \$128,000.
- The decrease in value from the special real estate valuation provision for federal estate tax purposes increases to \$960,000.





Year End Tax Strategies, Continued from page 1

## Some Important Tax Numbers for 2007

### Tax Rates

Income tax rates range from 5% to 35%. Marginal tax rates jump from 15% to 25% for taxable incomes over \$63,700 for Married filing Joint filers, and over \$31,850 for Single Individual filers.

### Standard Deduction Amounts

Married Filing Joint Return	\$10,700
Single Status Filer	5,350
Head of Household	7,850
Married Filing Separately	5,350
Personal Exemption	3,400

### Tax Credits                      Maximum Amount

Child Tax Credit	1,000
Hope Education Credit	1,650
Lifetime Learning Credit	2,000

### Capital Gain Rates

<u>Category</u>	<u>Tax Rate</u>
Gain on Collectibles	28%
Unrecaptured IRC 1250 Gain	25%
Net Long Term Capital Gain	15%
Reduced Rate	5%

### FICA/Self Employment Tax

Maximum SS Earnings	:	\$97,500
FICA rate for each employer and Employee:		7.65%
Self Employment Tax Rate:		15.3 %

### Retirement Plan Contribution Limits

IRA	\$4,000
SIMPLE Plan	\$10,500
457 Plan	\$15,500
401(k) & SEP plans	\$15,500

(Note: Other limits may apply. Catch-up Contributions Available Over Age 50. )

### Standard Mileage Rates for 2007

Business Use	\$0.485
Charity Use	0.14
Medical Use	0.20
Moving Expense	0.20

Mileage Rates for 2008 will be 50.5 cents per mile for business miles, 19 cents for medical use, moving expenses and charity use.



### Depreciation and Section 179 Expense

Maximum Section 179	\$125,000
Depreciation limit for Cars	\$3,060 (1 <sup>st</sup> yr)
Limit for Pickups & Vans	\$3,260 (1 <sup>st</sup> yr)

### Number of Years to Depreciate:

Automobiles	5
Computers, copiers	5
Cattle (Dairy or Breeding)	5
Office Furniture & Equip	7
Farm Equipment	7
Grain Bin	7
Single Purpose Ag Structure	10
Tile/Drainage Systems	15
Farm Buildings	20
Residential Rental	27.5
Non-residential Real Prop	39

## Where Do You Keep your Important Legal Documents?

Two factors are critical for legal document storage. First, make sure the documents are preserved. Second, make sure they can be found and accessed. We recommend keeping a written list of important documents that includes their location and explains how they may be accessed. Store the list where it can be located when it is needed. Consider giving a copy of the list to family members, the person(s) who will serve under your power of attorney or as your executor or trustee, and your attorney.

**Tip of the Day:** We don't recommend burying your legal documents in the yard; but if you do, use a rust-free, sealed container (Preservation), and be sure it's on your side of the property line (Access).

New Fact sheets based on the Estate Planning letter study are available for free online at :

<http://ohioline.osu.edu/ep-fact/index.html>



## COURT FINDS AGRICULTURAL ACTIVITIES TO BE NUISANCE “What You Say, Can And Will Be Used Against You”

There is an old saying among lawyers and law professors that “bad facts make bad law.” Whether that is true or not, some “bad facts” in a case originating in Ottawa County, Ohio, resulted in a court finding that the raising of cattle and swine under the particular facts was a nuisance. The court issued an order permanently enjoining the presence of cattle or swine on a particular parcel of agricultural land (the decision being upheld by an Ohio appellate court).

### The Facts

First, a little geography lesson. The property is located in Catawba Island Township in Ottawa County, Ohio. The website for Catawba Island Township provides a good summary of the area:

“Founded in 1861, Catawba Island is home to more than 3,100 people, but many more visit each year. Miles of beautiful shorelines, great fishing, nature reserves and state parks make Catawba Island a summertime paradise for many in Ohio’s North Coast region and beyond.”

So, it seems that recreation in paradise might be the expectation of those who visit or live in Catawba Island Township. Nevertheless, agriculture is a permitted use in Catawba Island Township and the township zoning inspector confirmed that the landowner was in compliance with the zoning code. The property was not, however, enrolled in an agricultural district.

The plaintiffs in the case included at least two hous-

ing developers and several owners of nearby homes and residential lots. The plaintiffs alleged nuisance, intentional infliction of emotional distress, diminished value of real estate and trespass. All of these allegations stemmed from the cattle and swine located on the adjacent property. The case also involved a “goose hunting” incident and criminal charges that ultimately were dismissed.

**...a witness testified that the landowner said that he was going to put pigs on the property to irritate his neighbors.**

The landowner apparently purchased the farm property in 1995. He testified that he had from the beginning planned to raise livestock. Cattle apparently had been raised for several years. However, the landowner in 2003 began construction of livestock facilities on the property. The swine facility, described in the court’s opinion as a pig sty, received the major part of the court’s attention in its written opinion.

Suffice it to say that the adjoining residents complained about the odor generated by the livestock and about the “noise from the pig feeder [that] continues day and night.” There also was testimony about water or waste flowing onto adjacent land. Interestingly, the plaintiffs’ expert was an associate agricultural engineering professor at The Ohio State University and the defendant’s expert was an extension swine program specialist from The Ohio State University. Plaintiffs’ expert testified that the swine facility and manure handling system was not appropriate for the property. Defendant’s expert testified about the effect of planned improvements on minimizing noise and odor coming from the property.

It is rather clear from reading the

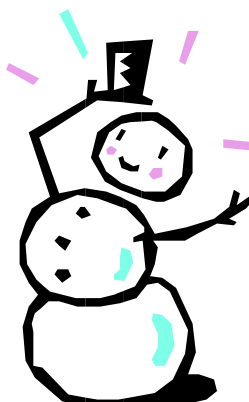
appellate court’s opinion that the most damaging aspect of the case was the testimony indicating the landowner’s motivation for raising livestock on his property. The picture painted of the landowner was that he didn’t get along with his neighbors. Indeed, there was testimony that included the following:

- It was reported the landowner stated that “I’m going to ... put pigs in here and chase [you] back to Cleveland! I have been here for 15 years and I’m sick of you people.”
- Following a “goose shooting incident,” the landowner stated “Let’s see how they like it when I put f%#!\*ing pigs back there.”
- Another witness testified that the landowner “stated that he was going to put pigs on the property to ‘piss off’ his neighbors.”

Moreover, the trial judge stated:

“The judge, with permission of counsel and accompanied by them, visited the scene of the ‘pig farm’ and was shocked by the conditions and the nuisance created. The stench was sufficient to take one’s breath away and burn the nostrils. While there, I considered breathing through my mouth rather than through my nose, but came down on the side of caution and continued breathing through my nose as I realized it might actually taste worse than it smelled.”

The trial court permanently enjoined the landowner “from maintaining the absolute nuisance of harboring pigs or cows on the property.” As the appellate court noted, “[a]n absolute nuisance, or nuisance per se, is based on intentional conduct or an abnormally dangerous condition that cannot be maintained without injury to property, no matter what precautions are taken.” In contrast, a “qualified nuisance is defined as essentially a tort of negligent maintenance of a



(Continued on page 4)



*(Agricultural Nuisance Continued from page 3)*

condition that creates an unreasonable risk of harm.”

Lessons for Livestock Operators

Livestock owners may have reason to be concerned about the impact of the ruling in the Ottawa County case. Those who don’t like livestock operations obviously will attempt to use the case in other situations. However, there also is a strong argument that the outcome simply was the result of a unique set of facts.

Historically, a nuisance has been something that “unreasonably” interferes with an owner’s use and enjoyment of his property. Excessive odor certainly can be deemed a nuisance. However, there are at least two Ohio statutes, Ohio Rev. Code §§ 3767.13 and 929.04, that provide some protection from nuisance actions for agricultural activities.

Section 3767.13 is the general statute prohibiting certain activities, but also providing nuisance protection. It provides in relevant part that:

(A) No person shall erect, continue, use, or maintain a building, structure, or place for the exercise of a trade, employment, or business, or *for the keeping or feeding of an animal which, by occasioning noxious exhalations or noisome or offensive smells, becomes injurious to the health, comfort, or property of individuals or of the public* [emphasis added].

(B) No person shall cause or allow offal, filth, or noisome substances to be collected or remain in any place to the damage or prejudice of others or of the public.

\* \* \*

(D) *Persons who are engaged in agriculture-related activities*, as “agriculture” is defined in section 519.01 of the Revised Code, and who are conducting those activities outside a municipal corporation, *in accordance with generally accepted agricultural practices*, and in such a manner so as not to have a substantial, adverse effect on the public health, safety, or welfare *are exempt from divisions (A) and (B) of this section*, from any similar ordinances, resolutions, rules, or other enactments of a state agency or political subdivision, and from any ordinances, resolutions, rules, or other enactments of a state agency or political subdivision that prohibit excessive noise [emphasis added].

The other statutory provision that provides some protection from nuisance is contained in the so-called agricultural district law. Section 929.04 sets forth a defense to nuisance action that is applicable to activity conducted in an agricultural district and reads as follows:

In a civil action for nuisances involving agricultural activities, *it is a complete defense if* [emphasis added]:

(A) The agricultural activities were conducted within an agricultural district;

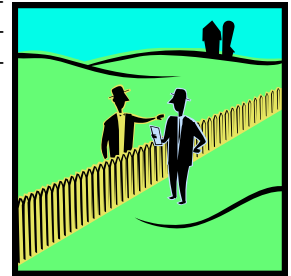
(B) *Agricultural activities were established within the agricultural district prior to the plaintiff’s activities or interest on which the action is based* [emphasis added];

(C) The plaintiff was **not** involved in agricultural production [emphasis added]; and

(D) The agricultural activities were not in conflict with federal, state, and local laws and rules relating to the alleged nuisance or were conducted in accordance with generally accepted agriculture practices.

The plaintiff may offer proof of a violation independently of proof of a violation or conviction by any public official.

So, it is rather obvious that the agricultural district nuisance exemption has several limitations including the fact that it will not protect a livestock owner from a nuisance action brought by another person engaged in agricultural production.



Be a good neighbor

Livestock owners can learn the following lessons from the Ottawa County case:

**Lesson #1:** Work hard at having good relationships with your neighbors.

**Lesson #2:** Exercise caution in making statements about the reasons you are putting in a livestock operation, whether next to residential properties or even your agricultural neighbors. In other words, agricultural activities are not to be used as a weapon to punish your neighbors.

**Lesson #3:** Operate your livestock operation in accordance with regulatory standards and generally accepted agricultural practices. This means you need to have a plan and then follow it.

**Lesson #4:** Consider whether your land should be in an agricultural district. There are pros and cons of entering an agricultural district, which should be evaluated prior to enrolling land.





## CASE UPDATE—THINK BEFORE YOU SHOOT!

Livestock owners should take note of the recent *State v. Smith* decision reached in Licking County. A livestock owner appealed his conviction on two counts of injuring two dogs in violation of Ohio Revised Code section 959.02. Appellant stated that he shot and killed the dogs on his property because he believed (apparently erroneously) they were attacking his sheep. In his defense, Appellant cited Ohio Revised Code Section 955.28, which stated that a dog can be killed at the time of that chasing, approaching, attempt, killing, or injury of livestock.

The Appellant also argued the dog trespassing provision contained in Ohio

Revised Code section 959.04 prevented his conviction. That section allows a landowner to avoid prosecution under 959.02 if the landowner injured or killed the animal to keep it from his premises. The landowner must, within fifteen days, make payment for the damages done to the animal to the nearest judge of the county court.

The Appellate Court took exception to Appellant's argument because he failed to pay the necessary bond to the Court as required under 959.04. The Court also took note of the fact that the dogs were actually tracking coyotes that were killing livestock in the area and that the adjacent landowner had given

the dogs' owner permission to enter the property.

The Court elected not to overturn Appellant's conviction stating the provisions of 959.04 did not apply because Appellant had not paid the necessary bond with the judge and that Ohio case law had held that a dog is not trespassing when it's within call of its owner even though upon the land of another.

Given the decision of the Fifth District Appellate Court, livestock owners need to consider this particular aspect of the law before taking aim at trespassing dogs or risk facing prosecution for their actions.



## CHANGE IN OHIO LAW REGARDING SIGNAGE ON TRACTORS

New signage requirements for tractors or other farm machinery traveling on Ohio roads went into effect on October 18, 2007. The Ohio General Assembly recently passed House Bill No. 9 which put in place new signage requirements for those pieces of farm equipment capable of traveling faster than twenty-five miles per hour. The relevant portion of Ohio Revised Code section 4513.11 (G) reads as follows:

*“Every unit of farm machinery that is designed by its manufacturer to operate at speed greater than twenty-five miles per hour shall display a slow-moving vehicle emblem and a speed identification symbol or SIS ...when the unit is operated on the street or highway, irrespective of the speed*

**The operator of a tractor with an SIS is required to carry documentation provided by the manufacturer indicating the maximum MPH**

*at which at the unit is operated on the street or highway. The SIS shall indicate the maximum speed in miles per hour at which the unit of farm machinery is designed by its manufacturer to operate.”*

The statute does not change the requirement that a unit of farm machinery must display the traditional slow moving signage. If a tractor that meets the speed requirements for the SIS is towing or pulling a piece of equipment at speeds greater than twenty-five miles per hour, the unit of equipment shall also display the same SIS that is located on the tractor. This is in addition to the slow moving sign still required under Ohio law.

The operator of a tractor with an SIS is required to carry documentation provided by the manufacturer indicating the maximum speed in miles per hour at which the tractor is designed to operate.

A violator of the new signage law is guilty of a minor misdemeanor on the first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the initial transgression, the person is guilty of a third degree misdemeanor. Thus it is important to obtain the SIS as soon as possible after the first offense to avoid harsher penalties in the future.

It is recommended that all Ohio farmers owning farm machinery covered by the new law that were unaware of the new requirements contact their local equipment dealer or Ohio Farm Bureau representative to obtain the necessary signage.

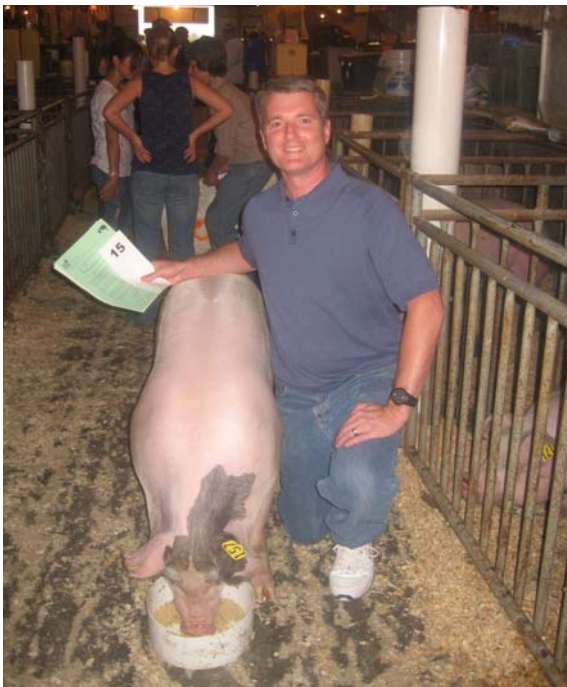




## “Kiddies” Are Growing Bigger

Your college student may now be considered a “kiddie” by the IRS. In 1986, Congress enacted what is known as the “kiddie tax” to tax the unearned income of young children at the tax rates applicable to their parents. At first, it applied only to children under the age of 14 and then in 2006 to children under the age of 18. Beginning in 2008, the “kiddie tax” will apply also to children who are age 18 and to children who are age 19 through age 23 who are full time students with earned income that does not exceed one-half of the student’s support. If you have a child who

falls into these categories and is already 18 by the end of 2007, you should evaluate whether there is any tax advantage to recognizing capital gains on assets owned by the child in 2007 rather than deferring to 2008 or later. In 2007, your child may pay only 5% federal tax and any relevant state or local taxes on the capital gains. However, please remember that if your total income in 2008, including capital gain, is less than approximately \$32,550 for individuals and \$65,100 for a married couple filing jointly, you will not owe any federal tax on the long-term capital gain.



### BECE Supports Delaware County Youth

In September, Russell Cunningham represented the firm at the Delaware County Fair Junior Livestock sale. The firm partnered with **City Barbeque** restaurants to buy two market hogs.

Congratulations to the following exhibitors:

- Steven Potter, 11th grader, of the Berlin 4-H Club
- Lane Kleilein, 6th grader, Norton Neighbors 4-H Club

## Don’t Throw Away Your Tax-Exempt Status

**FROM THE IRS:** Beginning in 2008, small tax-exempt organizations will have **a new filing requirement**. It’s short, easy and electronic – it’s the new e-Postcard.

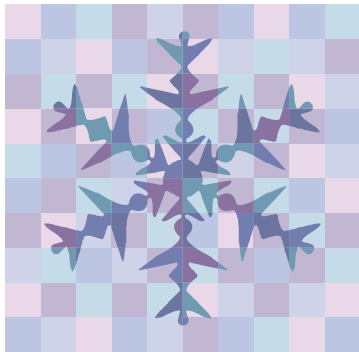
If you are a tax-exempt organization that normally has annual gross receipts of \$25,000 or less and does not have to file Form 990 or 990-EZ, you must file the e-Postcard. The e-Postcard is due by the 15th day of the fifth month after the close of your tax year. So if your organization operates on a calendar year, the e-Postcard is due by May 15 of the following year.

What happens if you don’t file? You risk losing your tax-exempt status! If you think this new filing requirement applies to your organization, check out the website:

[www.irs.gov/eo](http://www.irs.gov/eo)

**New e-Postcard filing requirement for non-profit organizations**

For complete details and while you’re there, sign up for Exempt Organization’s free mail newsletter, **EO Update**, to receive up-to-date information posted on the charity pages of IRS.gov.



**Newsletter Feedback - Please let us know if:**

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- You have any questions, suggestions or concerns.
- You wish to be removed from our mailing list.

**Direct Attorney Telephone Numbers**

We value your call, so please feel free to contact each of us on our direct lines at the following numbers:

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 Russell Cunningham (614)210-1844      Carolyn Eselgroth (614)210-1845      Troy Callicoat (614)210-1847

If we are not available when you call, your call will roll over to either a receptionist or our voicemail.

***Celebrating  
5 Years!***

November 12, 2007 marked the Fifth Anniversary of the formation of **Barrett, Easterday, Cunningham & Eselgroth, LLP**. We are very thankful to all of you who have put your trust in us to help with your legal needs. We look forward to many more years of working with you.



*Back Row: Theresa Barrett, Jeff Easterday, Lisa & Russell Cunningham, David Barrett, Troy & Mandie Callicoat. Front Row: Ron Waterman, Rhonda Williams, Carolyn Eselgroth, Cheryl Davis, Terri Foltz.*



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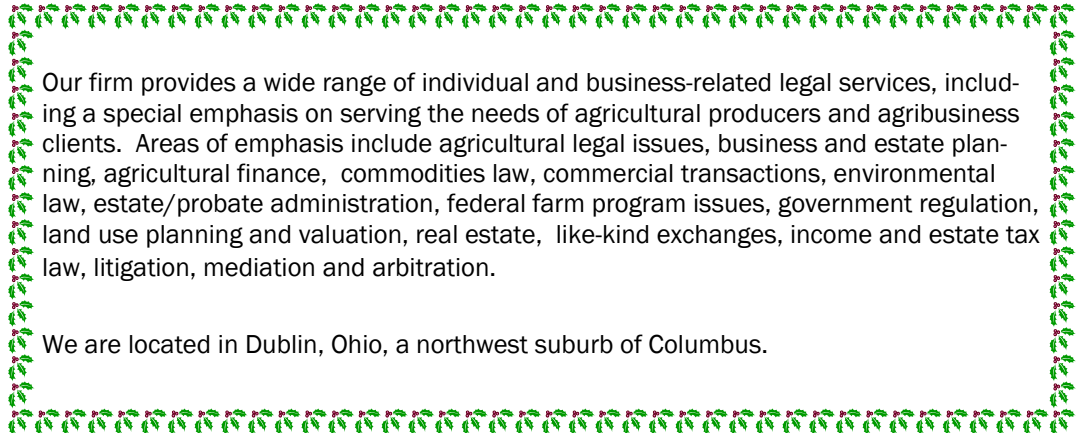
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**IRS Circular 230 Disclosure:** In accordance with IRS regulations, please be advised that to the extent this communication, including any attachments hereto, contains any federal tax advice, such advice is neither intended nor written to be used (and cannot be used) for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code, nor for promoting, marketing or recommending to another person any transaction, arrangement or matter addressed herein.



Our firm provides a wide range of individual and business-related legal services, including a special emphasis on serving the needs of agricultural producers and agribusiness clients. Areas of emphasis include agricultural legal issues, business and estate planning, agricultural finance, commodities law, commercial transactions, environmental law, estate/probate administration, federal farm program issues, government regulation, land use planning and valuation, real estate, like-kind exchanges, income and estate tax law, litigation, mediation and arbitration.

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