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ALR Federal Alert

Volume 169

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From the editor

It seems that during tax season financial matters are at the forefront of everyone's mind. This being the case, volumes 169 and 170 of ALR Federal contain relevant annotations discussing topics such as when is a nonbusiness debt worthless so as to be considered a loss under the tax code, when may a taxpayer assert equitable estoppel against the IRS, and what expenses qualify for reimbursement under the Bankruptcy Code provision allowing reimbusement to trustees, examiners, and professional persons for actual, necessary expenses. For those of you interested in other topics, ALR Federal continues to provide annotations on a variety of other federal statutes, such as the Family and Medical Leave Act and the Robinson-Patman Price Discrimination Act.

Amy P. Bunk, J.D.

Highlights

CIVIL RIGHTS

Actions Brought Under 42 U.S.C.A. §§1983 and 1985 for Sex Discrimination—Supreme Court Cases

After the Civil War, Congress passed several civil rights statutes designed to give force to the newly ratified Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution, including the statutes now codified at 42 U.S.C.A. §§1983 and 1985. The Civil Rights Act of 1871, along with the Fourteenth Amendment it was enacted to enforce, were crucial ingredients in the basic alteration of the federal system accomplished during the Reconstruction Era. During that time, the federal government was clearly established as a guarantor of the basic federal rights of individuals against incursions by state power, including the basic federal rights of women against sex discrimination. Title 42 U.S.C.A. § 1983 itself establishes no substantive rights, but is merely the vehicle for seeking a federal remedy for violations of federally protected rights. The United States Constitution and federal statutes define the substantive rights that may be asserted in a § 1983 action. The impetus for 42 U.S.C.A. § 1985 originated with documentation of murders, shootings, and whippings in North Carolina by the Ku Klux Klan and other notorious organizations. Legislative history suggests that the principle concern of the drafters was to protect any person or class of persons, including women, victimized by conspiracies to deprive them of constitutional rights. Although § 1985 was intended to act as a counterpart to the Fourteenth Amendment, legislative history demonstrates its supporters desired it to go beyond the state action requirement of the Amendment to include private conspiracies. This annotation collects and analyzes Supreme Court decisions that have discussed actions brought under 42 U.S.C.A. §§1983 and 1985 for sex discrimination. **169 ALR Fed 141**

BANKRUPTCY

Reimbursement to Trustees, Examiners, and Professional Persons for Actual, Necessary Expenses

In addition to the compensation trustees, officers, and other professional persons authorized by the court to perform services on behalf of a bankrupt are entitled to for providing such services, on occasion these persons also seek reimbursement for out-of-pocket expenses incurred in providing the necessary services. For instance, an attorney associated with the bankruptcy estate may seek reimbursement for photocopying and travel expenses. This article examines 11 U.S.C.A. § 330(a)(1)(B), which allows trustees, officers, and other professional persons to recoup "actual, necessary expenses" incurred in providing services for the bankruptcy estate. In particular, the annotation looks at what specific expenses are reimbursable. The article outline will direct you to the particular expense in which you have the most interest, whether it be legal research or clerical, stenographic, or secretarial expenses. The annotation summary contains a concise, easy-to read-overview of this issue that is important to all bankruptcy attorneys. Check the Research References portion of the annotation for additional research and practice aids. **169 ALR Fed 197**

CIVIL RIGHTS

Exhaustion of Administrative Remedies—ADA

Before instituting judicial action under Title I of the Americans with Disabilities Act (42 U.S.C.A. §§ 12111-12117), a complainant must first exhaust administrative remedies by filing a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC). The purpose of requiring resort to the EEOC is to give notice to the charged party and to promote voluntary compliance without litigation. Accordingly, the scope of the civil complaint is generally limited to that filed with the EEOC and the resulting investigation. This annotation examines those cases in which the courts determined whether an exhaustion of remedies had occurred. In particular, the annotation examines a number of alleged bases for failure to exhaust administrative remedies, including a failure to file with the EEOC, a failure to generally allege disability in the complaint filed with the EEOC, the question whether the particular issue on which the judicial action is based was raised before the EEOC, and the effect of failing to name in the EEOC complaint all parties against whom the action is brought. Check the Related Annotations section of the annotation for additional articles dealing with the ADA, including one at 144 ALR Fed 307 dealing with the statute of limitations that is particularly pertinent. **169 ALR Fed 439**

TAXES

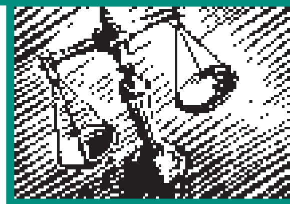
When Is Nonbusiness Debt "Worthless"

Section 166 of the Internal Revenue Code of 1954 (26 U.S.C.A. § 166) generally allows a deduction from income for any debt that becomes worthless within the taxable year. Specifically, § 166(d)(1)(B) provides that a nonbusiness debt that becomes worthless within the taxable year is considered a loss from the sale or exchange, during the taxable year, of a short-term capital asset. To be entitled to claim a deduction for a nonbusiness bad debt in a particular tax year, several cases, recognizing that the potential for obtaining a tax deduction for gifts to members of one's family would be immense if nonbusiness debts could easily be written off to produce income tax savings, held that a taxpayer must show that even a modest fraction of the debt cannot be recovered and that there is no reasonable prospect of recovering the debt during that year. This annotation collects and analyzes the federal and United States Tax Court cases that have determined whether a nonbusiness debt has become worthless within the meaning of § 166(d)(1)(B) or its predecessor, § 23(k)(4) of the Internal Revenue Code of 1939 (former 26 U.S.C.A. § 23(k)(4)). Check the Related Annotations section for references to annotations discussing what constitutes tax-deductible theft loss under 26 U.S.C.A. § 165 (98 ALR Fed 229) and what constitutes trade or business under Internal Revenue Code (U.S.C.A. Title 26) (161 ALR Fed 245). **169 ALR Fed 1**

Coming Soon

CIVIL RIGHTS

Title VII Sex Discrimination—Supreme Court Cases



Congress enacted Title VII, 42 U.S.C.A. §§2000e et seq., as part of the Civili Rights Act of 1964, seeking to make persons whole for injuries suffered on account of unlawful employment discrimination. The Civil Rights Act of 1991 responded to a series of decisions of the Supreme Court interpreting the Civil Rights Acts of 1866 and 1964, including Title VII as it related to sex discrimination claims. For instance, the 1991 Act set forth standards applicable in "mixed motive" sex discrimination cases and expanded female employees' rights to challenge discriminatory seniority systems. The Supreme Court

has held that sexual harassment claims may be brought under Title VII. Although the terms "quid pro quo" and "hostile work environment" do not appear in the statutory text of Title VII, the Supreme Court has held that these terms are relevant when there is a threshold question whether an employee can prove discrimination in violation of Title VII. This annotation collects and analyzes Supreme Court cases that have discussed discrimination or harassment based on sex in employment under Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. §§2000e et seq. Check the Related Annotations section for references to annotations discussing the liability of an employer for sexual harassment of an employee by a customer, client, or patron (163 ALR Fed 445) and what constitutes reverse or majority gender discrimination against males violative of the federal constitution or statutes—private employment cases (168 ALR Fed 1). **170 ALR Fed**

TRIAL

Justification for Judicial Misconduct

Defendants frequently raise, as an issue on appeal, the question whether, by remarks or acts, a federal trial judge has criticized, rebuked, or punished defense counsel in a criminal case in such a way that the court of appeals must reverse the defendant's conviction or remand the case for a new trial. Although often this is a successful cause of action, in many cases the courts have held that judges were justified in their acts or remarks, in some way corrected the possible error, or were excused in their conduct for some reason, and affirmed the conviction. This annotation collects and analyzes the cases discussing the justification, correction, or excusal of remarks or acts of a federal trial judge criticizing, rebuking, or punishing defense counsel in a criminal case as otherwise requiring a new trial or reversal. **170 ALR Fed**

ANTITRUST

Robinson-Patman Act

Section 2 of the Clayton Act, as originally enacted in 1914, Oct. 15, 1914, c. 323, § 2, 38 Stat. 730, was born of a desire by Congress to curb the use by financially powerful corporations of localized price-cutting tactics, which had gravely impaired the competitive position of other sellers. In 1936, this statute was broadened in various ways by the enactment of the Robinson-Patman Price Discrimination Act, 15 U.S.C.A. § 13(a), June 19, 1936, c. 592, § 1, 49 Stat. 1526, which replaced § 2 of the Clayton Act. A secondary-line injury under § 13(a) occurs when competition between favored and disfavored purchasers of a discriminating seller is harmed. One type of price discrimination that may result in a secondary-line injury to a disfavored purchaser is increased costs charged to, or expenses incurred by, the purchaser. A small number of federal courts have examined when such an injury occurs under § 13(a). This annotation collects and analyzes decisions that have addressed increased costs charged to, or expenses incurred by, a buyer as secondary-line price discrimination under § 2(a) of the Clayton Act, as amended by the Robinson-Patman Price Discrimination Act, 15 U.S.C.A. § 13(a). **170 ALR Fed**

ADMIRALTY

Jones Act—Supreme Court

In 1920, Congress enacted the Jones Act, 41 Stat. 988, c. 250, Merchant Marine Act 1920, § 33, 46 App. U.S.C.A. § 688, to remove the bar to suit for negligence, thereby heightening the legal protections that seamen receive because of their exposure to the "perils of the sea" that are unavailable to other maritime workers. Under the Jones Act, which makes applicable to seamen injured in the course of their employment the provisions of the Federal Employers' Liability Act (45 U.S.C.A. §§51-60), employees have a right of recovery for injuries resulting from the negligence of their employer, its agents, or its employees. Congress intended to confine the benefits of the Jones Act to members of the crew of a vessel plying in navigable waters, and to substitute for the land-based workers' right of recovery only such rights to compensation as are given by the Longshore and Harbor Workers' Compensation Act (33 U.S.C.A. § 902(3)(G)). The Supreme Court has addressed the validity, construction, and application of the Jones Act in a number of cases. In Harbor Tug and Barge Co. v. Papai, 520 U.S. 548, 117 S. Ct. 1535, 137 L. Ed. 2d 800, 1997 A.M.C. 1817 (1997), the Supreme Court found that a deckhand injured while painting a tug boat on a one-day job obtained through a union hiring hall did not have a substantial connection with a fleet of vessels so as to satisfy the seaman status requirement for the Jones Act (46 App.U.S.C.A. § 688(a)). *Harbor Tug* and other Supreme Court decisions which have discussed the validity, construction and application of the Jones Act are collected in this annotation. Check the Related Annotations section for annotations on recovery for negligent or intentional infliction of emotional distress under the Jones Act (123 ALR Fed 583) and recovery, under the Jones Act or seaworthiness doctrine, by a seaman or maritime worker injured in boarding or leaving ship (108 ALR Fed 264). **170 ALR Fed**

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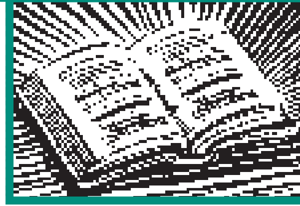
The following is a complete list, arranged alphabetically by topic, of annotations contained in the current Volume 169 or scheduled for publication in Volume 170 of ALR Federal. Some of the annotations listed may be rescheduled.



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