CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

FEDERAL TAX

DISCHARGE. The IRS has issued a ruling that governs the dischargeability of federal income tax claims in a bankruptcy case where the debtor has been granted an extension of time to file a return because the taxpayer lives in a Presidentially-declared disaster are or is serving in a combat zone. Under Section 507(a)(8)(A)(i), an unsecured pre-petition tax claim is eligible for discharge if the tax return associated with the claim was "last due, under applicable law or any extension" more than three years before the date of the filing of the bankruptcy petition. The IRS ruled that the disaster or combat zone extensions granted under I.R.C. §§ 7508, 7508A are not considered extensions but merely postponements of the filing requirement; therefore, for purposes of Section 507(a)(8)(A)(i), such postponement of the filing requirement does not change the due date of the income tax return for discharge in bankruptcy purposes. **Rev. Rul. 2007-59. 2007-2 C.B. 582**.

FEDERAL AGRICULTURAL PROGRAMS

FARM LOANS. The plaintiffs had obtained several FSA loans over many years but the loans were mishandled by an FSA employee and the plaintiffs were eventually forced to use the Debt to Nature program which allowed the plaintiffs to remain on the farm but not use the property for farming for 50 years. The plaintiffs filed several administrative claims without success and could not find an attorney willing to take their case. The plaintiffs filed a *pro se* action against the FSA more than six years after the plaintiffs were forced into the Debt to Nature program. The USDA sought dismissal of the action as untimely filed since it was filed more than six years after the alleged wrongs were committed. Although the court sympathized with the plaintiffs for the clear misbehavior of the FSA employee and the difficulties in finding proper legal representation, the court held that such difficulties did not waive the statute of limitations such as to prevent dismissal of the case. **Ansell v. United States, 2007 U.S. Dist. LEXIS 65067 (W.D. Penn. 2007)**.

IMPORTS. The APHIS has adopted as final amendments to the regulations regarding the importation of animals and animal products to establish conditions for the importation of the following commodities from regions that present a minimal risk of introducing bovine spongiform encephalopathy into the United States: (1) live bovines for any use born on or after a date determined by the Animal and Plant Health Inspection Service to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the region of export; (2) blood and blood products derived from bovines; and (3) casings and part of the small intestine derived from bovines. The APHIS conducted a risk assessment and comprehensive evaluation of the issues and concluded that such bovines and bovine products can be safely imported under the conditions described in this rule. **72 Fed. Reg. 53313 (Sept. 18, 2007)**.

FEDERAL ESTATE AND GIFT TAXATION

GENERATION-SKIPPING TRANSFERS. The taxpayer was the current income beneficiary of a trust created by the taxpayer's parent prior to September 25, 1985. The trust listed the taxpayer's three children and remainder holders. The taxpayer had an annual right of withdrawal of the greater of $5,000 or five percent of the trust's annual income and had a testamentary power to appoint trust principal. The taxpayer, as trustee, obtained court permission to partition the trust into three equal trusts, each with one child as remainder holder, with the other trust provisions maintained the same as the original trust. The IRS ruled that the division of the trust did not subject the trust to GSTT. However, to the extent the taxpayer did not receive an annual distribution of the greater of $5,000 or five percent of the trust income, the accumulated amount not distributed was subject to GSTT. In addition, to the extent the taxpayer does not exercise the testamentary limited power of appointment over property of the three resulting trusts, the principal of the trust would be included in the taxpayer's gross estate and subject to GSTT. **Ltr. Rul. 200736023, May 14, 2007**.

The decedent had established a trust prior to September 25, 1985 for the decedent's surviving spouse with remainders to three children. The surviving spouse died and the trust had the three children as beneficiaries. The beneficiaries obtained court approval for division of the trust into three trusts, one for each child with similar trust provisions and equal shares of the original trust property. The IRS refused to rule whether the division of the trust caused the trusts to be subject to GSTT as provided in Rev. Proc. 2007-1, 2007-1 C.B. 1, because the fact situation was the same as one of the examples in Treas. Reg. § 26.2601-1(b)(4)(E). **Ltr. Rul. 200736002, May 22, 2007**.

GIFTS. Commerce Clearing House has calculated the projected inflation-adjusted figure for the gift tax exclusion for 2008 as $12,000. **CCH 2007TAXDAY, Item #M.1 (Sept. 20, 2007)**.

TRANSFERS WITH RETAINED INTERESTS. The decedent had transferred a residence to a trust for the decedent's benefit. The trust exchanged the property for other income property. When the decedent was 85, the decedent suffered a

stroke and was moved to an assisted-living facility. The decedent and children formed a family limited partnership and the trust transferred the trust property to the partnership in exchange for partnership interests. The children contributed minimal funds to the partnership. Although the property was transferred to the partnership, loans secured by the property remained the liability of the trust. Because the transfer deprived the decedent of income but left the decedent with the loan payments, the partnership distributed funds to the decedent in order to make the loan payments and other expenses. The court found that the decedent and children had an implied agreement that the income from the properties would continue to be available for the decedent's expenses; therefore, the court held that the properties were included in the decedent's estate under I.R.C. § 2036(a)(1). In addition, the court held that the transfer to the partnership was not made in good faith because (1) the decedent was unable to have sufficient income to cover expenses by the transfer, (2) the partnership formalities were not followed after the transfer, and (3) the decedent received no benefit from the transfer other than estate and gift tax benefits. **Estate of Bigelow v. Comm'r, 2007-2 U.S. Tax Cas. (CCH) ¶ 60,548 (9th Cir. 2007), *aff'g*, T.C. Memo. 2005-65**.

FEDERAL INCOME TAXATION

CHARITABLE DEDUCTIONS. The IRS has issued guidance on the reporting requirements for charitable organizations which receive a contribution of a qualified motor vehicle with a claimed value of more than $500. See *Notice 2006-1, 2006-1 C.B. 347*. The IRS has provided information on where to file a completed Form 1098-C, Contributions of Motor Vehicles, Boats, and Airplanes, an information form used by a donee organization to report a contribution of a qualified vehicle with a claimed value of more than $500, for calendar years ending on or after December 31, 2007. This notice changes where to file a completed Form 1098-C as described in Section 3 of *Notice 2006-1*. **Notice 2007-70, I.R.B. 2007-40**.

COOPERATIVES. The taxpayer was a rural telephone cooperative tax-exempt under I.R.C. § 501(c)(12). The cooperative had three subsidiaries: (1) a subsidiary which owned an interest in a partnership which provided cell phone service in one area; (2) a subsidiary which owned an interest in a partnership which provided cell phone service in a second area; and (3) a subsidiary which owned an interest in a partnership which provided long distance phone service. The cooperative was required to obtain stock in the Rural Telephone Bank as part of loans acquired from the RTB. The RTB was dissolved by Act of Congress and the cooperative's RTB stock was redeemed. The IRS ruled that the income realized by cooperative by the liquidation payment for stock of the RTB constituted patronage-sourced income which could be excluded from its gross income when allocated to the cooperative's patrons by a true patronage dividend. However, to the extent, if any, that the cooperative conducted telephone business with nonmembers it was required to make an allocation of the income between patronage and nonpatronage sources based on the proportion of business conducted with members and nonmembers. **Ltr. Rul. 200736017, Dec. 21, 2006**.

CORPORATIONS

CONSTRUCTIVE DIVIDENDS. The taxpayer owned and operated a corporation which produced, distributed and sold a variety of products. The taxpayer purchased a river-side residence with a boat dock and renovated the boat dock with a houseboat and floating garage. The taxpayer paid 30 percent of the cost of the renovation and the corporation paid the remaining costs. The corporation used the floating structures for promotional events, meetings and advertising photo shoots. The taxpayer used the structures for personal use about 10 times a year. The IRS argued that the value of the taxpayer's use of the floating structures was a constructive dividend to the taxpayer. The court disagreed and held that the taxpayer's personal investment in the renovation of the floating structures entitled the taxpayer to a fair use of the structures. **Reeves v. Comm'r, T.C. Memo. 2007-273**.

COURT AWARDS AND SETTLEMENTS. The taxpayer's spouse was killed in an accident while the spouse was working. The taxpayer received workers' compensation but also sued the employer for negligence. The taxpayer received a jury award but agreed to a smaller amount in a settlement for punitive damages. Under Texas law, Tex. Civ. Prac. & Rem. Code § 71.001 *et seq.*, an injured employee could elect to receive workers' compensation and sue for punitive damages or elect not to receive workers' compensation and sue for compensatory and punitive damages. Under I.R.C. § 104(c) punitive damages are excluded from taxable income only in wrongful death actions for which only punitive damages may be awarded. The court held that, because the taxpayer had the option to recover compensatory damages in the wrongful death lawsuit by rejecting any workers' compensation, the state law did not restrict damages in the wrongful death action to punitive damages. **Benavides v. United States, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,638 (5th Cir. 2007), aff'g, 2006-1 U.S. Tax Cas. (CCH) ¶ 50,263 (S.D. Tex. 2006)**.

The taxpayer had filed suit against an employer for Medicare fraud under the federal False Claims Act. The taxpayer received a portion of the judgment award under the whistle-blower provisions of the statute. However, an investigator sued the taxpayer for fees resulting from investigations performed as part of the lawsuit and the taxpayer filed for bankruptcy in order to prevent collection of the fees from the judgment award. One installment of the award was received by the taxpayer in 1999 but was transferred to the bankruptcy trustee pending a ruling on the investigator's claim. The taxpayer argued that the last installment was not included in taxable income because the taxpayer never received the benefit of the payment. The court held that the taxpayer had sufficient dominion and control over the installment to include that amount in income when received. The court noted that the taxpayer had voluntarily transferred the payment to the bankruptcy trustee, indicating the taxpayer's control over the funds. **Burns v. Comm'r, T.C. Memo. 2007-271**.

The taxpayer sued a former employer for damages stemming

from race discrimination, breach of contract, breach of the covenant of good faith and fair dealing, and harassment. The petition included a request for damages for emotional distress. The parties reached a settlement for about five percent of the damages requested. The settlement agreement provided that the employer would issue a Form 1099-MISC for the settlement amount and required the taxpayer to provide a filled-in form W-9, Request for Taxpayer Identification Number and Certification. The court held that the settlement proceeds were paid primarily for back wages and were included in gross income. **Hawkins v. Comm'r, T.C. Memo. 2007-286**.

DEPENDENTS. The taxpayer lived with, but was not married to, the parent of two children. The mobile home residence was owned by the parent's father and most of the household bills were in the name of the father. The couple testified that the taxpayer provided funds in cash for payment of the mortgage and bills but no evidence was presented as to the amount of the mortgage and bills or as to how much was paid by the taxpayer. The court ruled that the taxpayer failed to provide sufficient evidence to prove that the taxpayer provided more than one half of the support for the children; therefore, the taxpayer could not claim tax deductions for the children as dependents nor use the head of household filing status. **Nobles v. Comm'r, T.C. Memo. 2007-277**.

DEPRECIATION. Commerce Clearing House has calculated the projected inflation-adjusted figure for allowed expense method depreciation for 2008 as $128,000, with the phaseout to begin at $510,000. **CCH 2007TAXDAY, Item #M.1 (Sept. 20, 2007)**.

DISABILITY PAYMENTS. The taxpayer was an attorney whose practice was operated by a professional corporation wholly-owned by the taxpayer. The corporation purchased a disability insurance policy for the taxpayer and paid the premiums; however, the taxpayer reimbursed the corporation by deducting the cost of the premiums from a loan made to the corporation. The taxpayer had a practice of accurately removing all personal expenses from the accounts of the corporation so that the corporation made no personal expense payments. The court held that the disability payments were excludible from the taxpayer's income because the premiums were paid by the taxpayer. **Cotler v. Comm'r, T.C. Memo. 2007-283**.

DISCHARGE OF INDEBTEDNESS. The IRS has added a new section on their web site, www.irs.gov, for taxpayers who have lost their homes to foreclosure. The new section advises taxpayers of the possible tax consequences of foreclosure and includes a worksheet to help taxpayers determine if they are eligible for any the special relief provisions. The IRS urges taxpayers to consider all their options before giving up their home to foreclosure because there can be severe tax consequences. Under I.R.C. § 108, the difference between the fair market value of the house and the amount of the debt wiped out by the foreclosure is taxable income. However, special rules apply where the taxpayer is insolvent at the time of the foreclosure. Taxpayers are also warned to carefully check the Form 1099-C, Cancellation of Debt, they receive from the lender to make sure the figures are accurate. The IRS will send a notice to taxpayers receiving a Form 1099-C with information on what to do if the figures on a Form 1099-C are not accurate. Lenders are also reminded of their obligation to provide accurate information on the form. **IR-2007-159**

DISASTER LOSSES. On September 7, 2007, the president determined that certain areas in North Dakota are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of a drought, which began on March 5, 2007. **FEMA-1725-DR**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2006 returns.

FOREIGN INCOME. The taxpayer performed work in Antarctica and the taxpayer excluded the wages earned while in Antarctica under I.R.C. § 911 as foreign income. The court held that income earned in Antarctica was not excludible under I.R.C. § 911 because Antarctica was not recognized by the U.S. government as a foreign sovereign nation. **Drake v. Comm'r, T.C. Memo. 2007-279; Davis v. Comm'r, T.C. Memo. 2007-280; Burton v. Comm'r, T.C. Memo. 2007-274; Cotten v. Comm'r, T.C. Memo. 2007-275; Drake v. Comm'r, T.C. Memo. 2007-287; Savage v. Comm'r, T.C. Memo. 2007-288**.

GAMBLING LOSSES. The taxpayer operated a sole proprietorship business as a certified public accountant and had gambling income and losses. The gambling income and losses were claimed on a Schedule C. The IRS rejected the reporting of the gambling income and losses on Schedule C and required the reporting of the gambling losses on Schedule A as an itemized deduction. The taxpayer argued that Schedule C reporting was proper in that the gambling was a trade or business of the taxpayer. The court held that the taxpayer's gambling was not a trade or business because (1) the taxpayer relied primarily on the accounting business for income, (2) the taxpayer did not keep complete records of all gambling activity, (3) the gambling activity was not sufficiently continuous or regular to qualify as a business. **Mohammadpour v. Comm'r, T.C. Summary Op. 2007-163**.

INTEREST. The taxpayer had income from professional commodities trading and partnership investments. The taxpayer was assessed tax deficiencies and interest on adjustments to losses claimed from the various business operations. The taxpayer filed amended returns for the years in which the interest was paid, seeking refunds based on deductions claimed for the interest paid on the back taxes. The taxpayer argued that, because the unpaid tax was paid on business income, the interest on the unpaid taxes was deductible as a business expense. Under Treas. Reg. § 1.163-9T(b)(2)(i)(A), interest on underpayment of taxes is not deductible regardless of the source of the income generating the tax liability. The taxpayer challenged the regulation as beyond the authority of the statute, I.R.C. § 163(h). The court held that the regulation was a reasonable interpretation of the statute and entitled to deference as proper. The disallowance of the deduction for interest charged on unpaid taxes was upheld. **Johnson v. United States, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,647 (N.D. Ill. 2007)**.

LIFE INSURANCE. The taxpayer was employed by a bank which obtained a life insurance policy on the life of the taxpayer. The taxpayer claimed that the policy was to have been conveyed to the taxpayer's spouse as part of the employment agreement. When

the bank failed to transfer the policy the taxpayer sued the bank for breach of the agreement. The parties settled with the bank paying $500,000 to the taxpayer in settlement of the insurance claim. The policy was not transferred to the taxpayer or spouse. The taxpayer claimed the settlement as capital gain income, arguing that the settlement was a sale of the policy. The court noted that the bank did not receive anything in exchange for the settlement payment except settlement of the claim, since the policy was not transferred. Thus, the settlement proceeds were ordinary income. **Eckersley v. Comm'r, T.C. Memo. 2007-282**.

PENSION PLANS. The IRS has issued a revenue procedure which provides a safe harbor under which an insurance company subject to tax under subchapter L of the Internal Revenue Code is not required to take into account any portion of the increase for the taxable year in policy cash values of life insurance contracts described in I.R.C. § 264(f)(4)(A) (I-COLI Contracts) for purposes of applying the insurance company proration rules in I.R.C. §§ 807(a)(2), 807(b)(1), 805(a)(4), 812, or 832(b)(5). **Rev. Proc. 2007-61, I.R.B. 2007-40**.

RETURNS. The IRS has issued a clarification of *Notice 2006-56, 2006-2 C.B. 58*, which, under the authority of I.R.C. § 7508A, postponed until October 16, 2006 the time for certain individuals affected by Hurricane Katrina to file 2005 income tax returns. *Notice 2006-56* also provided that the filing period would be postponed until April 15, 2007 for taxpayers who, under I.R.C. § 6081, requested an extension of time to file their 2005 returns prior to October 16, 2006. *Revenue Ruling 2007-59, 2007-2 C.B. 582* held that the Internal Revenue Service's grant of relief under Section 7508A does not change the date on which a return is "last due, including extensions" for purposes of Bankruptcy Code Sections 507(a)(8)(A)(i) and 523(a)(1)(A), which provide priority and nondischargeability for certain tax claims in bankruptcy cases. The notice provides that the date on which the 2005 return would be "last due, including extensions" is October 15, 2006, if an affected taxpayer receives relief under Section 7508A, obtains an extension of time to file under Section 6081 within the 7508A postponement period, and files bankruptcy. **Notice 2007-74, 2007-2 C.B. 585**.

SAFE HARBOR INTEREST RATES
October 2007

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	4.19	4.15	4.13	4.11
110 percent AFR	4.62	4.57	4.54	4.53
120 percent AFR	5.04	4.98	4.95	4.93
		Mid-term		
AFR	4.35	4.30	4.28	4.26
110 percent AFR	4.79	4.73	4.70	4.68
120 percent AFR	5.23	5.16	5.13	5.11
		Long-term		
AFR	4.88	4.82	4.79	4.77
110 percent AFR	5.37	5.30	5.27	5.24
120 percent AFR	5.86	5.78	5.74	5.71

Rev. Rul. 2007-63, I.R.B. 2007-41.

SALE OF STOCK. The taxpayer was employed as a facilities technician and also made personal stock trades. The taxpayer did not trade stocks for any customers but made such trades only for the taxpayer's benefit. The taxpayer did not make any timely election to use the mark-to-market method of accounting for the stock trades. The taxpayer reported net capital gain from the stock trades in 1999 and net short-term capital loss from stock trades in 2000. The taxpayer filed an amended 1999 return and attempted to carry the 2000 net short-term capital losses back to 1999 to offset the capital gain. The court held that the election to use the mark-to-market accounting method could not be made by an amended return filed after the due date for the tax year in which the accounting method was to apply; therefore, the taxpayer was prevented from carrying back the net capital losses under I.R.C. § 1212(b). **Kirch v. Comm'r, T.C. Memo. 2007-276**.

SMALL TAX CASE. The IRS issued a determination that the taxpayers owed more than $50,000 in unpaid taxes. The taxpayers filed an appeal with the Tax Court and requested that the court treat the case as a "small tax case" using procedures under I.R.C. § 7463(f)(2). The court noted that the small tax case procedures were available only where the unpaid tax was less than $50,000. The taxpayer arged that, because they disputed only $30,000 of the unpaid tax, the case was eligible for the small tax case procedures. The court held that the eligibility for Section 7463(f)92) procedures is determined by the amount of unpaid tax listed in the IRS notice of determination, not by the amount actually disputed by the taxpayers; therefore, the taxpayers were not eligible for the small tax case procedures. **Leahy v. Comm'r, 129 T.C. No. 8 (2007)**.

STOCK OPTIONS. During the taxpayer's marriage, the taxpayer's spouse received incentive stock options (ISO). The couple divorced and, as part of the divorce decree, half of the ISOs were transferred to the taxpayer who could exercise the ISOs through the former spouse. The IRS ruled that the taxpayer's exercise of the ISOs did not violate the lifetime exercise requirement of I.R.C. § 422(b) because the exercise related to the cessation of marriage. The IRS also ruled that the transfer of the ISOs to the taxpayer did not cause a recognition of gain or loss because the transfer did not constitute a disposition of stock. The IRS ruled that the exercise of the ISOs by the taxpayer through the former spouse would result in income to the taxpayer included in gross income and subject to the alternative minimum tax. **Ltr. Rul. 200737009, June 15, 2007**.

TRAVEL EXPENSES. The IRS has published the applicable terminal charge and the Standard Industry Fare Level (SIFL) mileage rates for determining the value of noncommercial flights on employer-provided aircraft in effect for the second half of 2007 for purposes of the taxation of fringe benefits. For flights taken during the period from July 2007 through December 31, 2007, the terminal charge is $37.91, and the SIFL rates are: $.2074 per mile for the first 500 miles, $.1581 per mile for 501 through 1,500 miles, and $.1520 per mile for over 1,500 miles. **Rev. Rul. 2007-55, 2007-2 C.B. 604**.

LABOR

WORK. The plaintiffs were chicken processing plant workers who were required to wear protective clothing while working. The plaintiffs argued that the defendant employer violated the

Fair Labor Standards Act for failing to pay the workers for the time spent putting on and taking off the protective clothing over the course of a work day. The evidence showed that the amount of time spent donning and doffing such clothing varied from six to 13 minutes a day. The trial court had given the jury instructions as to the definition of work as something which required exertion, which included consideration as to whether the clothing was cumbersome or heavy or required concentration for donning or doffing. The appellate court remanded the case, holding that the instruction was improper because the proper test for the definition of work was whether the activity was controlled or required by the employer and was pursued for the benefit of the employer. **De Asenico v. Tyson Foods, Inc., 2007 U.S. App. LEXIS 21289 (3d Cir. 2007), *rev'g and rem'g*, 2006 U.S. Dist. LEXIS 33411 (E.D. Penn. 2006)**.

PROPERTY

BOUNDARY. The land owned by the parties was originally owned by one family which had split the land between family members. A road ran between the properties and the deeds splitting the property granted a six foot easement to each side of the road to the neighboring landowner. Thus, the boundary line ran down the center of the road. Later owners, the defendants, of one parcel paved the road, and the other owners, the plaintiffs, alleged that the paved road did not follow the original property line. The plaintiffs commissioned a survey of the property and constructed a fence on what they claimed was the true property line. The fence blocked the road in several places and the defendants counter-sued for trespass. The defendants claimed a prescriptive easement for the road but the court held that the claim was properly denied because the defendants could not show 20 years of adverse use. The court held that the trial court improperly granted judgment notwithstanding the jury verdict as to the boundary line, because the plaintiffs had presented sufficient evidence to place the issue in question so as to allow the jury to find the boundary line to be other than that determined by the survey. In addition, the court held that the trial court improperly granted judgment notwithstanding the jury verdict as to the trespass claims in favor of the plaintiffs in that the defendant had presented sufficient evidence that the fence was placed on the easement road in violation of the defendants' easement rights. **Jones v. Popper, 2007 N.C. App. LEXIS 1887 (N.C. Ct. App. 2007)**.

STATE TAXATION

SALES AND USE TAX. The plaintiffs operated a farm on which two pole buildings were located, one an indoor arena and stalls 60 by 200 feet in size and the other approximately 1,000 square feet in size. The plaintiff contended that the buildings were exempt from tax under Or. Rev. Stat. § 307.397 as agricultural buildings. The court noted that Section 307.397 applied only to machinery, equipment and tangible personal property and held that the pole buildings were not machinery or equipment. The court also noted that Or. Rev. Stat. § 307.030(1) defined real property as land and "all buildings, structures, improvements, machinery, equipment or fixtures erected upon, above or affixed to the land." In addition, the exemption provided by Section 307.397 applied only to frost control systems used in agriculture; trellises used for hops, beans or fruit or for other agricultural or horticultural purposes; hop harvesting equipment, oyster racks, trays, and stakes; or equipment used for the fresh shell egg industry. The court held that the Section 307.397 did not apply to the two pole buildings which were included in the real property tax valuation of the farm. **Gardner v. Multnomah County Assessor, 2007 Ore. Tax LEXIS 136 (Or. Tax Ct. 2007)**.

TORTS

INTERFERENCE WITH BUSINESS RELATIONS. The plaintiffs operated a worm farm and obtained permission from a nearby dairy to take their manure. The defendants complained to the dairy about the practice, claiming that the worm farm created too many flies. The dairy refused to let the plaintiffs remove manure after the defendants complained. The plaintiffs had their operation inspected twice by the state which found the operation properly operated and free of flies. The dairy still refused to provide the manure and the plaintiffs' farm ceased operation for lack of manure. The plaintiffs sued the defendants for tortuous interference with business relations. The dairy owner provided an affidavit describing the events and the affidavit did mention the complaints made by the defendants but also stated that the denial of access to the manure had several other reasons not tied to the complaints, including the added trouble of stopping work to load the manure, the sloppy handling of the manure by the plaintiffs and lack of any benefit to the dairy because the amount of manure was insignificant to the total amount produced by the dairy. The affidavit also stated that the defendants had withdrawn their complaint. The court noted that the evidence included some testimony from the dairy employees that there was some problem with flies on the plaintiffs' property. The court held that the trial court's grant of summary judgment to the defendants was proper because the plaintiffs failed to show that the manure agreement was terminated merely because of the defendants' original complaints and the complaints were made with the intent to damage the plaintiffs' business. **Bateman v. Gray, 2007 Miss. App. LEXIS 595 (Miss. Ct. App. 2007)**.

IN THE NEWS

BIODIESEL. North Carolina has enacted a provision for a motor fuel excise tax exemption for biodiesel that is produced by an individual for use in a private passenger vehicle that is registered in the individual's name. **S.B. 1272**.

SALES AND USE TAX. North Carolina has enacted a provision for a sales and use tax exemption for baler twine sold to farmers. **H.B. 487**.

Agricultural Law Press
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The Seminars in Paradise have returned!

FARM INCOME TAX, ESTATE AND BUSINESS PLANNING SEMINARS

by Neil E. Harl

Outrigger Keauhou Beach Resort, Big Island, Hawai'i. January 8-12, 2008

Spend a week in Hawai'i in January 2008! Balmy trade winds, 70-80 degrees, palm trees, white sand beaches and the rest of paradise can be yours; plus a world-class seminar on Farm Income Tax, Estate and Business Planning by Dr. Neil E. Harl. The seminar is scheduled for January 8-12, 2008 at the spectacular ocean-front Outrigger Keauhou Beach Resort on Keauhou Bay, 12 miles south of the Kona International Airport on the Big Island, Hawai'i.

Seminar sessions run from 8:00 a.m. to 12:00 p.m. each day, Tuesday through Saturday, with a continental breakfast and break refreshments included in the registration fee. Each participant will receive a copy of Dr. Harl's 400+ page seminar manual *Farm Income Tax: Annotated Materials* and the 600+ page seminar manual, *Farm Estate and Business Planning: Annotated Materials,* both of which will be updated just prior to the seminar.

Here are a sample of the major topics to be covered:

• Farm income items and deductions; losses; like-kind exchanges; and taxation of debt including the new Chapter 12 bankruptcy tax.

• Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.

• Introduction to estate and business planning.

• Co-ownership of property, including discounts, taxation and special problems.

• Federal estate tax, including alternate valuation date, special use valuation, handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.

• Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.

• Organizing the farm business—one entity or two, corporations, general and limited partnerships and limited liability companies.

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The seminar registration fee is $645 for current subscribers to the *Agricultural Law Digest,* the *Agricultural Law Manual* or the *Principles of Agricultural Law*. The registration fee for nonsubscribers is $695. For more information call Robert Achenbach at 541-302-1958 or e-mail at robert@agrilawpress.com.