CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

EXEMPTIONS

HOMESTEAD. The debtors, husband and wife, filed for Chapter 7 in October 2004. In 1994, the debtors had signed a "residency Agreement" for a townhome in an independent-living retirement community in exchange for an entrance fee and monthly payments. In 1999, the debtor personally guaranteed a loan and became subject to a deficiency judgment when the loan defaulted. In February 2004, the debtors purchased the townhome. The debtors were allowed a credit equal to the entrance fee plus 1.5 percent appreciation and the debtors paid the remainder with cash. The debtors claimed the townhome as an exempt homestead. The holder of the deficiency judgment objected to the exemption, arguing that the homestead was not eligible for the exemption because it was purchased after the entry of the deficiency judgment. The court held that Iowa Code § 561.20 allowed an exemption in a homestead purchased after a debt to the extent the homestead was purchased with the proceeds of a homestead which would otherwise have been exempt. The court held that the townhome was exempt to the extent of the debtors' investment in the townhome as part of the leasehold which was used to purchase the townhome after the deficiency judgment. Thus, the exemption equaled the entrance fee credited against the townhome purchase price. ***In re* Takes, 2005 U.S. Dist. LEXIS 31855 (N.D. Iowa 2005)**.

REFUND. The debtor filed for Chapter 7 on January 20, 2005 and listed tax debts for several years. The debtors listed a potential tax refund for 2004 as exempt property. The IRS sought to have the refund offset by the dischargeable tax claims. Thus, the issue was whether Section 522 (exempt property not subject to setoff) or Section 553 (allowing offset if allowed under nonbankruptcy law) controls. The court held that, because the refund does not exist until the IRS determines, under I.R.C. § 6402(a), whether an overpayment is to be offset by a prior tax liability, Section 522 does not apply until the IRS allows the refund claim. Therefore, the IRS was allowed the setoff of the alleged overpayment against the deficiecies of the prior tax years, including the taxes which would be discharged in bankruptcy. ***In re* Pigott, 330 B.R. 797 (Bankr. S.D. Ala. 2005)**.

FEDERAL TAX

ADMINISTRATIVE EXPENSES. The IRS Chief Counsel Office has ruled that pension underfunding taxes set forth under I.R.C. § 4971(a) and (b) relating to postpetition pension obligations of the bankruptcy estate are entitled to administrative expense priority under Section 503 of the Bankruptcy Code. **CC-2006-007, Dec. 22, 2005**.

DISCHARGE. The debtor had failed to timely file income taxes for several years but eventually filed the returns for 1983 through 1990 in 1992. The IRS acknowledged receipt of all but the 1986 return. The debtor filed for Chapter 7 and received a discharge but the IRS argued that the 1986 taxes owed were not discharged because no return was filed. The debtor presented evidence of a signed and dated copy of the 1986 return which was also signed by the return preparer. The court held that the copy of the return and the fact that the return was filed with several other returns which were received moved the burden of proof to the IRS to show that it did not receive the return. Because the IRS filed to prove that the return was not filed, the court held that the 1986 taxes were discharged. The IRS also argued that the filing of the 1986 return six years after it was due was not an "honest and reasonable attempt" to meet the filing requirements and should not be considered a return for purposes of Section 523(a)(B). The Bankruptcy and District Courts held that, because the late returns were filed in order to enable the debtor to make offers in compromise, the returns served a valid good faith purpose and would be considered valid returns for purposes of the discharge of the taxes owed. On appeal the appellate court reversed, holding that the late returns were not returns for purposes of Section 523(a)(B) because the returns did not relieve the IRS of the burden of calculating the tax liability. ***In re* Payne, 2005 U.S. App. LEXIS 27243, *rev'g and rem'g*, 331 B.R.358 (N.D. Ill. 2005), *aff'g*, 306 B.R.230 (Bankr. N.D. Ill. 2004)**.

FEDERAL AGRICULTURAL PROGRAMS

FRUITS AND VEGETABLES. The AMS has issued proposed regulations which amend the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. Some of the fruits and vegetables are already eligible for importation under permit, but are not specifically listed in the regulations. All of the fruits and vegetables, as a condition of entry, would be inspected and subject to treatment at the port of first arrival as may be required by an inspector. **70 Fed. Reg. 75967 (Dec. 22, 2005)**.

KARNAL BUNT. The APHIS has issued interim regulations adding areas in Maricopa and Pinal counties in Arizona to the list of regulated areas. **70 Fed. Reg. 73553 (Dec. 13, 2005)**.

MILK. The plaintiff dairy enrolled in the Milk Income Loss Contract Program (MILC) and received a payment in 2003. After the payment was made, the county FSA office learned that two of the owners of the plaintiff had been owners of three other dairies which had received their maximum MILC payments in 2003. These dairies had ceased operations and their cows and assets were sold to the plaintiff. The county determined that the plaintiff and the other dairies were affiliated and the plaintiff was not eligible for the 2003 payment and requested a refund of the 2003 payment.

The issue was the definition of the term "affiliated" which is not defined in the regulations, 7 C.F.R. § 1430.213(c). The parties did not dispute that all four dairies had at least one common owner; thus, the court held that the FSA determination that the four dairies were affiliated was reasonable, given the purpose for the limitation on payments under the program to independent operations. The plaintiff also argued that the finality rule prevented the FSA from demanding repayment of the 2003 MILC payment because the demand was made more than 90 days after the payment. The court held that the exception, provided in 7 C.F.R. § 718.306(a)(4), to the finality rule applied because the plaintiff knew or should have known that the payment was erroneously made and the initial decision was made without full information as to the plaintiff's relationship to the other dairies. **Northern Plains Dairy, LLP v. USDA, 2005 U.S. Dist. LEXIS 25567 (D. Minn. 2005)**.

MUSHROOMS. The AMS has announced that it plans a review of the Mushroom Promotion, Research, and Consumer Information Order to determine whether the Order should be continued without change, amended, or rescinded (consistent with the objectives of the Mushroom Promotion, Research, and Consumer Information Act of 1990) to minimize the impacts on small entities. AMS will consider the continued need for the Order; the nature of complaints or comments received from the public concerning the Order; the complexity of the Order; the extent to which the Order overlaps, duplicates, or conflicts with other federal rules, and, to the extent feasible, with state and local regulations; and the length of time since the Order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Order. **70 Fed. Reg. 73945 (Dec. 14, 2005)**.

PAYMENT LIMITATIONS. The plaintiff was the child of a farming family who established the plaintiff's separate operation as a teenager. The plaintiff owned farmland and farm equipment, although the plaintiff occasionally swapped labor and equipment with the parents. The plaintiff and parents' corporation orally entered into crop agreements under which they jointly purchase crop inputs in order to obtain quantity discounts. Complete and accurate records were kept to distinguish each party's share of the costs. The plaintiff and parents' corporation also jointly marketed their crops, also in order to obtain larger volume sales contracts which provided higher prices. The sales were made under the parents' corporate name because of long-standing commercial relationships with buyers. Although the scale tickets listed only the parents' corporate name, the parties kept accurate records of their share of the proceeds. The parents were convicted of criminally evading the payment limitation rules, but the jury acquitted the plaintiff. The plaintiff was subsequently investigated and ruled to have violated the payment limitation rules based on a relationship with the parents' operation. After losing all administrative appeals and at the trial court level, the plaintiff was successful at the appellate level. The appellate court held that the plaintiff was a separate person for purposes of the payment limitation provisions: because (1) merely having an interest in another farming operation does not negate "separate person" status if the individual has a separate and distinct interest in the individual's own farmland; (2) the oral crop marketing agreements between the plaintiff and the parents' entity were enforceable; and (3) the parents' entity had no true economic investment in the plaintiff's farming operation because the parents' entity's rights in the plaintiff's operation were merely contractual in nature and did not result in any contribution to the plaintiff's operation that was at risk such that the corporation was entitled to some of the program payments made to the plaintiff's operation. **Mages v. Johanns, No. 03-1400, 2005 U.S. App. LEXIS 28735 (8th Cir. Dec. 27, 2005)**.

POTATOES. The AMS has announced that it plans a review of the Potato Research and Promotion Plan to determine whether it should be continued without change, amended, or rescinded (consistent with the objectives of the Potato Research and Promotion Act of 1971) to minimize the impacts on small entities. **70 Fed. Reg. 73945 (Dec. 14, 2005)**.

FEDERAL ESTATE AND GIFT TAXATION

IRA. The decedent owned an IRA which had a trust as the sole beneficiary. The decedent's spouse was the grantor of the trust and the sole beneficiary. The IRs proceeds were distributed to the trust and the spouse had the IRA proceeds distributed by the trust to an IRA in the spouse's name. The IRS ruled that the decedent's IRA proceeds were eligible for nontaxable rollover to the surviving spouse's IRA because the trust was a grantor trust and the proceeds were distributed to the spouse's IRA. **Ltr. Rul. 200549021, Sept. 14, 2005**.

VALUATION. Within 57 days before the decedent's death and at a time when the decedent was diagnosed with a terminal disease, the decedent transferred a life estate in several properties to the remainder holders. At the time of the transfers, the decedent had a 50 percent chance of surviving one year. The decedent's estate sought a ruling as to the proper method of valuing the properties at the time of transfer. The IRS ruled that, because the decedent was terminally ill with a 50 percent chance of death within one year, the estate could not use a mortality component under I.R.C. § 7520 to value the life estates. The IRS ruled that the actuarial factor of .03325 was to be used to value the life estates. **Ltr. Rul. 200551013, Aug. 11, 2005**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued revised procedures for taxpayers who must change their method of accounting in order to comply with the uniform capitalization rules of Temp. Treas. Reg. §§ 1.263A-1T or 1.263A-2T. A taxpayer may either make an advance consent request under *Rev. Proc. 1997-27, 1997-1 C.B. 680* or use the automatic consent procedures of *Rev. Proc. 2002-9, 2002-1 C.B. 327*. **Rev. Proc. 2006-11, I.R.B. 2006-3**.

Treas. Reg. § 1.263(a)-4 prescribes the extent to which taxpayers must capitalize amounts paid or incurred to acquire or create (or to facilitate the acquisition or creation of) intangibles. Treas. Reg. § 1.263(a)-5 prescribes the extent to which taxpayers must capitalize amounts paid or incurred to facilitate an acquisition of a trade or business, a change in the capital structure of a business entity, and certain other transactions. Treas. Reg. § 1.167(a)-3(b) provides a safe harbor useful life for certain intangible assets. The IRS has issued procedures which must be used to obtain automatic consent for a change in method of accounting made to comply with these three regulations. **Rev. Proc. 2006-12, I.R.B. 2006-3**.

BUSINESS EXPENSES. The taxpayer claimed moving expenses and various business expenses associated with a job change and a personal business. The moving expenses and business expenses were disallowed for failure of the taxpayer to provide any truthful evidence to substantiate the expenses. **Clark v. Comm'r, T.C. Memo. 2005-292**.

CHARITABLE DEDUCTIONS. The IRS has issued a reminder that taxpayers must obtain a written acknowledgement of a vehicle charitable donation for which a charitable deduction of $500 is claimed. The written acknowledgement must be attached to the income tax return in which the deduction is claimed. **IR-2005-149**.

The taxpayers, husband and wife, claimed a charitable deduction for a portion of the amount paid to an Orthodix Jewish school for tuition for their children. The deductions had been claimed for three previous tax years without specific challenge by the IRS. The court held that none of the payment was eligible for the charitable deduction because the taxpayers received valuable benefits in the form of education for their children. The court also held that the accuracy-related penalty of I.R.C. § 6662 would not be imposed because the amount of underpayment was less than $5,000 and because the taxpayers had claimed the deduction for three years without challenge by the IRS. **Sklar v. Comm'r, 125 T.C. No. 14 (2005)**.

CORPORATIONS

ESTIMATED TAXES. The IRS has withdrawn temporary regulations issued in 1984 and issued new proposed regulations governing the use of annualization methods of determining income for estimated tax purposes. **70 Fed. Reg. 73393 (Dec. 12, 2005)**.

REORGANIZATIONS. In *Rev. Rul. 74-503, 1974-2 C.B. 117*, the taxpayer corporation transferred shares of its treasury stock to another corporation in exchange for newly issued shares of the other corporation's stock. In the exchange, the taxpayer corporation obtained 80 percent of the only outstanding class of the other corporation's stock. *Rev. Rul. 74-503* concluded that the basis of the treasury stock received by the other corporation was zero and the basis of the newly issued stock received by the taxpayer corporation was also zero. *Rev. Rul. 74-503* stated that the taxpayer corporation's basis in the stock received in the exchange was determined under I.R.C. § 362(a). The IRS has determined that this conclusion is incorrect and has revoked *Rev. Rul. 74-503*, effective December 20, 2005. The other conclusions in the ruling, including the conclusions that taxpayer corporation's basis in the stock received in the exchange and the other corporation's basis in the taxpayer corporation's stock received in the exchange are zero, are under study. **Rev. Rul. 2006-2, I.R.B. 2006-2**.

RETURNS. The taxpayer corporation hired a courier service to deliver its income tax return to the post office on the due date for the return. The return included several elections which were required to be made by the due date of the return, including an election not to deduct the additional first-year depreciation allowance. The courier service was prevented from delivering the return because access to the post office was prevented by a terrorist threat against a neighboring building. The return was delivered on the following day. The taxpayer requested an extension of time to make the elections in the return. the IRS granted the extension. **Ltr. Rul. 200550008, Aug. 31, 2005**.

COST OF GOODS SOLD. The taxpayer was in the business of refurbishing old cars for resale. Because of a variety of factors, the taxpayer had to pay cash for most of the cars. To make matters worse, the taxpayer's business records were stolen by an employee, evidently under a mistaken impression that the records were valuable. However, the taxpayer's accountant was able to obtain bank statements which corroborated the written ledgers presented by the taxpayer as evidence. In addition, the court found the taxpayer's testimony to be credible and supported by the evidence available. The court held that the cash payments were made for the cars and could be included in the cost of goods sold. **Cox v. Comm'r, T.C. Memo. 2005-288**.

COURT AWARDS AND SETTLEMENTS. The taxpayer had obtained a settlement in a personal injury law suit and the defendant assigned the liability for the settlement payments to a third party company. Employees of that company misused the investment funds which were to be the source of the settlement payments and the taxpayer joined a class action lawsuit against the company to recover the funds which were to be used to pay the personal injury lawsuit settlement. A settlement was reached in the second lawsuit and the taxpayer received payments to replace the lost original settlement payments. The IRS ruled that the new settlement payments retained the same character as the original settlement payments and were excluded from income as payments received for personal injuries. The IRS also ruled that the settlement payments made to the class action counsel were not included in the taxpayer's income because the taxpayer had no contract relationship with the class action attorneys. **Ltr. Rul. 200551008, Sept. 19, 2005**.

The taxpayer filed a lawsuit against a former employer for unlawful discrimination in providing pension benefits. The parties reached a settlement and the taxpayer received payments during the tax year, some of which were paid to the taxpayer's attorneys. The IRS ruled that the settlement payment was included in the taxpayer's income and that the attorneys' fees were deductible under I.R.C. § 62(a)(1)[20] because they were incurred in connection with a claim of unlawful discrimination. **Ltr. Rul. 200550004, Sept. 9, 2005**.

DEPRECIATION. The taxpayer was formed by a 50 percent shareholder and employee of an S corporation. The taxpayer purchased the assets of the old S corporation and the purchase price included a significant amount for goodwill. The original corporation was formed in 1994 and did not have any prior business. The IRS noted that the taxpayer and former corporation were related parties because the one shareholder owned 50 percent or more of each corporation; however, the IRS ruled that the anti-churning rules of I.R.C. § 197(f)(9) did not apply because the goodwill did not exist during the Section 197 transition period of July 25, 1991 to August 10, 1993. Therefore, the IRS ruled that the taxpayer could amortize the value of the goodwill using the straight-line method and a 15-year recovery period. **Ltr. Rul. 200551018, Sept. 15, 2005**.

IRA. The IRS has issued a revenue procedure which provides safe harbor methods that are permitted to be used in determining the fair market value of an annuity contract for purposes of determining the amount includible in gross income as a result of the conversion of a traditional IRA to a Roth IRA, as described in Q&A-14 of Temp. Treas. Reg. § 1.408A-4T. **Rev. Proc. 2006-13, I.R.B. 2006-3**.

The taxpayer was 49 years old and owned an IRA. The taxpayer received annual payments from the IRA in accordance with the fixed amortization method as described in section 2.01(b) of *Rev. Rul. 2002-62, 2002-2 C.B. 710*, except that rather than making a fixed annual payment, the taxpayer recalculated the amount of the annual payment each year. For subsequent years, the taxpayer will recalculate the annual distribution for each succeeding year based on the IRA account balance as of December 31 of the prior year, determine the taxpayer's life expectancy as of taxpayer's age in each subsequent year using the single life table contained in Treas. Reg. § 1.401(a)(9)-9, Q&A-1 of the regulations, and an interest rate that is not more than 120 percent of the federal mid-term rate for either of the two months immediately preceding the month in which the distribution began. The IRS ruled that the life expectancy and interest rate used are such that they do not result in the circumvention of the requirements of I.R.C. §§ 72(t)(2)(A)(iv) and 72(t)(4) (through the use of an unreasonable high interest rate or an unreasonable life expectancy). Therefore, the IRS ruled that the method (as modified) of determining periodic payments results in substantially equal periodic payments within the meaning of I.R.C. § 72(t)(2)(A)(iv) and such payments will not be subject to the additional tax of I.R.C. § 72(t). **Ltr. Rul. 200551032, Sept. 27, 2005**.

The taxpayers, husband and wife, met while the husband owned a townhouse used as his residence. The taxpayers were later married and lived in the townhouse while they constructed a new home. The husband withdrew money from the husband's IRA and used the money to pay part of the construction costs of the new home. The taxpayers reported the withdrawn IRA funds as income but did not pay the 10 percent penalty on early withdrawals, arguing that an exception applied because the money was used to purchase a first home as a married couple. The court held that the exception applied only if the home purchased was the first for both taxpayers; therefore, the penalty applied to the withdrawn funds. **Olup v. Comm'r, T.C. Summary Op. 2005-183**.

LEVY. The IRS has published tables showing the amount of an individual's income that is exempt from a notice of levy used to collect delinquent tax in 2006. This information is the same as that found in Publication 1494, Table for Figuring Amount Exempt from Levy on Wages, Salary, and Other Income --Forms 668-W(c), 668-W(c)(DO) and 668-W(ICS), which can be accessed on the IRS's website at www.irs.gov. **Notice 2005-100, I.R.B. 2005-52**.

PARTNERSHIPS

DISTRIBUTIVE SHARE. The taxpayer was a lawyer and tax return preparer who formed a partnership with another attorney. The partners had several disagreements over the allocation of partnership profits and agreed to place all partnership income in escrow until their dispute could be settled. The other partner filed the partnership income tax return and submitted a Form K-1 for the taxpayer, showing the taxpayer's distributive share of partnership income and other tax items. The taxpayer did not include the Form K-1 share as income on the taxpayer's personal income tax return, arguing that the funds were in escrow and could not be reached by the taxpayer. The court held that the taxpayer's access to the funds was not relevant to the taxpayer's liability for tax on the taxpayer's distributive share of partnership income; therefore, the Form K-1 amount was included in the taxpayer's taxable income. **Burke v. Comm'r, T.C. Memo. 2005-297**.

PENALTIES. The IRS has issued a revenue procedure which identifies circumstances under which the disclosure on a taxpayer's return, for 2005 and later, of a position with respect to an item is adequate for the purpose of reducing the understatement of income tax under I.R.C. § 6662(d) (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the preparer penalty under I.R.C. § 6694(a) (relating to understatements due to unrealistic positions). **Rev. Proc. 2005-75, I.R.B. 2005-50, *amending*, Rev. Proc. 2004-73, I.R.B. 2004-51**.

PENSION PLANS. For plans beginning in December 2005 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the corporate bond weighted average is 5.78 percent with the permissible range of 5.20 to 5.78 percent (90 to 100 percent permissible range). The 30-year Treasury securities rate for this period is 4.87 percent, the 90 percent to 105 percent permissible range is 4.38 percent to 5.11 percent, and the 90 percent to 110 percent permissible range is 4.38 percent to 5.3 percent. **Notice 2005-96, I.R.B. 2005-52**.

RETURNS. The IRS has published on its web site revised Publication 15-B (Rev. January 2005), Employer's Tax Guide to Fringe Benefits; Publication 51 (Rev. January 2006), (Circular A), Agricultural Employer's Tax Guide; Publication 502 (2005), Medical and Dental Expenses; Publication 503 (2005), Child and Dependent Care Expenses; Publication 925 (2005), Passive Activity and At-Risk Rules; Publication 584-B (Rev. December 2005), Business, Casualty, Disaster, and Theft Loss Workbook; Publication 936 (2005), Home Mortgage Interest Deduction; Publication 970 (2005), Tax Benefits for Education; Publication 972 (2005), Child Tax Credit; Publication 1474 (Rev. 1-2006); and Publication 926 (Rev. December 2005), Household Employer's Tax Guide for Wages Paid in 2006. See www.irs.gov/formspubs. These documents are available at no charge and can be obtained (1) by calling the IRS's toll-free telephone number, 1-800-829-3676; (2) through FedWorld on the Internet; or (3) by directly accessing the IRS Information Services bulletin board at (703) 321-8020.

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SAFE HARBOR INTEREST RATES

January 2006

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	4.38	4.33	4.31	4.29
110 percent AFR	4.82	4.76	4.73	4.71
120 percent AFR	5.27	5.20	5.17	5.14
		Mid-term		
AFR	4.48	4.43	4.41	4.39
110 percent AFR	4.93	4.87	4.84	4.82
120 percent AFR	5.39	5.32	5.29	5.26
		Long-term		
AFR	4.73	4.68	4.65	4.64
110 percent AFR	5.22	5.15	5.12	5.10
120 percent AFR	5.70	5.62	5.58	5.56

Rev. Rul. 2006-4, I.R.B. 2006-2.

S CORPORATIONS

PERSONAL EXPENSES. The taxpayers, husband and wife, formed two S corporations to operate the marketing business for vitamin products sold by the taxpayers. The taxpayers claimed deductions for improvements to their residence, arguing that the residence was necessary for the successful marketing of their products as a means of demonstrating the taxpayers' success with their business. The court held that the expenses were not deductible as business expenses because the improvements were made to the taxpayers' personal residence and not to a specific portion of the residence used exclusively for the business. **Deihl v. Comm'r, T.C. Memo. 2005-287**.

USER FEES. The IRS has announced increases in several user fees, effective February 1, 2006: (1) the fee for private letter rulings will increase from $7,500 to $10,000; however, taxpayers earning less than $250,000 can request a private letter ruling for a reduced fee of $625, while taxpayers earning from $250,000 to $1 million will pay $2,500; (2) the fee for requests for changes in accounting methods for businesses will increase from $1,500 to $2,500; (3) the cost of a prefiling agreement will increase to a new flat fee of $50,000 and advance pricing agreements will cost from $22,500 to $50,000; (4) fees for opinion letters on prototype IRAs, SEPs, SIMPLE IRAs and Roth IRAs will range from $200 to $4,500; (5) fees for exempt organizations rulings, which previously cost $155 to $2,570, will range from $275 to $8,700; and (6) other user fees in the exempt organizations and employee plans area will increase July 1, 2006. **IR-2005-144**.

WAGES. Under I.R.C. § 3121(a)(2)(A), payments received under a workers' compensation law on account of sickness or accident disability are excluded from wages for purposes of FICA tax. The IRS has adopted as final regulations which provide that payments received under a statute *in the nature of* a workers' compensation law on account of sickness or accident disability are excluded from wages for purposes of FICA tax. The new rule matches the rule for determining whether such payments are included in gross income for income tax purposes, under I.R.C. § 104. **70 Fed. Reg. 74198 (Dec. 15, 2005)**.

WATER

GROUND WATER. The plaintiff was a pecan farmer on land neighboring the defendant's manufacturing facility. In constructing a large underground storage facility, the defendant obtained a state permit to pump 2.07 acre-feet of groundwater from the construction site into an on-site retention basin where it would eventually go back into the aquifer; however, defendant actually pumped 122 acre-feet of water and dropped permanently the water table beneath the plaintiff's property by 16 feet, resulting in the loss of plaintiff's pecan trees. The trial court awarded 1.2 million to the plaintiff, holding that the defendant's use of the water was unreasonable. The appellate court reversed on the basis that under Arizona law, the defendant did not owe any duty to the plaintiff under the common law doctrine of reasonable use, because Arizona law does not require withdrawn water to be "used," but only requires the water be extracted for the beneficial use of the land from which the water is pumped. **Brady v. Abbott Laboratories, No. 04-15257, 2005 U.S. App. LEXIS 28889 (9th Cir. Dec. 29, 2005)**.