"Agreements with insurance companies that provide for payments without regard to actual losses of the insured, e.g., in the event that certain weather conditions occur or do not occur, do not constitute insurance payments for the destruction of or damage to crops. Accordingly, payments under such contracts will not qualify for deferral under section 451(d) of the Code."[17]

The latter provision prevents the proceeds from so-called "rain insurance" policies from being eligible for deferral.

In light of these authorities, it appears that the proceeds from crop insurance policies involving revenue assurance will not be considered eligible for deferral under current law. An amendment to Section 451(d) of the Internal Revenue Code will be necessary to make such proceeds eligible for deferral. Without such an amendment, revenue assurance is likely to be less popular than would be the case if the proceeds were eligible for deferral.

FOOTNOTES

1 See generally 13 Harl, *Agricultural Law* ch. 120A (1996); Harl, *Agricultural Law Manual* § 13.04[1] (1997).

2 I.R.C. § 451(d).

3 Treas. Reg. § 1.61-4(c).

4 I.R.C. § 451(d).

5 Notice 89-55, 1989-1 C.B. 696.

6 I.R.C. § 451(d).

7 Treas. Reg. § 1.451-6(a)(1).

8 Rev. Rul. 74-145, 1974-1 C.B. 113.

9 *Id*.

10 Treas. Reg. § 1.451-6(b).

11 Treas. Reg. § 1.451-6(b)(2).

12 Treas. Reg. § 1.451-6(a)(2).

13 See I.R.C. § 451(d).

14 Treas. Reg. § 1.451-6(a).

15 Treas. Reg. § 1.451-6(a)(1).

16 Notice 89-55, 1989-1 C.B. 698.

17 *Id*.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

FEDERAL TAXATION-*ALM* § 13.03[7].*

ALLOCATION OF TAX PAYMENTS. The debtor was a part owner of a corporation which had failed to pay employment taxes. The corporation entered into an installment payment agreement with the IRS for payment of the taxes and penalties. As part of that agreement, the debtor agreed to be liable for the 100 percent penalty as a responsible person in the corporation. The installment agreement did not provide for any allocation of the payments between the tax debt and the penalties and interest on the debt. The debtor, in the debtor's case, moved to require the IRS to retroactively allocate the installment payments first to the tax debt and then to the penalties and interest. The court denied the motion for two reasons: (1) the court did not have any authority to make rulings involving the corporation because the corporation was not a debtor in this case, and (2) the court had no authority to make retroactive allocation of tax payments, especially where the tax payments were not made with a specific allocation request by the taxpayer. ***In re* Kaplan, 104 F.3d 589 (3d Cir. 1997)**.

DISCHARGE. In a Tax Court case involving the debtor's 1988 income taxes, the Tax Court held that the debtor was liable for fraud penalties in connection with the taxes owed. The debtor then filed for bankruptcy and sought to avoid the 1988 taxes. The court held that the Tax Court ruling was to be given collateral estoppel effect in the bankruptcy case because the Tax Court made a specific ruling of fraud based on a higher standard of proof; therefore, the 1988 taxes were nondischargeable under Section 523(a)(1)(C). ***In re* Mitchell, 97-1 U.S. Tax Cas. (CCH) ¶ 50,268 (Bankr. C.D. Calif. 1997)**.

DISMISSAL. When the debtor filed for Chapter 13, the debtor had not filed income tax returns for 1987 through 1994. The Bankruptcy Court ordered the debtor to file the income tax returns as a condition for confirmation of the plan. The debtor filed the returns but put zeros in all lines of the return. the debtor argued that the IRS had no authority to tax income or to require income tax returns to be filed. The Bankruptcy Court dismissed the case for failure to comply with an order of the court. The District Court ruled that, because the debtor had clear notice of the court order and sufficient time to comply, the Bankruptcy court acted reasonably in dismissing the case for failure of the debtor to comply with the court-ordered filing of the returns. **Jablonski v. I.R.S., 204 B.R. 456 (W.D. Pa. 1996)**.

CONTRACTS

NONACCEPTANCE OF GOODS. The defendant, a landscaping contractor, ordered several types of ornamental trees from the plaintiff to be sent COD. When the trees arrived at the defendant's business, the defendant paid only the shipping charges, at the acquiescence of the plaintiff.

After inspecting the trees, the defendant informed the plaintiff that many of the trees were unacceptable because of their poor condition and refused to pay for the poor quality trees. However, the defendant "heeled in" the trees and watered them for several months before chipping the dead trees into mulch. The plaintiff argued that the defendant accepted the trees when the defendant paid for the shipping costs. The court held that payment of the shipping costs was not an indication of acceptance because the COD terms required some payment before delivery would occur and gave the defendant an opportunity to inspect the trees. The defendant sought recovery of the labor and other incidental costs in maintaining the trees during the dispute. The court awarded to the defendant the costs of maintaining the trees to the extent proved by the defendant. **Gragg Farms v. Kelly Green Landscaping, 674 N.E.2d 783 (Ohio Mun. 1996)**.

FEDERAL AGRICULTURAL PROGRAMS

PERISHABLE AGRICULTURAL COMMODITIES ACT. The plaintiff sold fresh fruit to a corporation owned by the defendants. The corporation failed to pay for the fruit and the plaintiff filed a complaint under PACA and filed an action in state court for payment for the fruit. The state court awarded a money judgment to the plaintiff and the plaintiff dismissed the PACA complaint. The corporation went out of business and did not pay the judgment. The plaintiff then filed a complaint against the defendants under PACA. The defendants argued that the issues involved in the PACA action were collaterally estopped by the state court action and the res judicata effect of that judgment, thus limiting the plaintiff's recovery to the money judgment against the corporation. The court held that the defendants were liable for the PACA trust established upon the sale of the fruit and that the defendants' liability was separate from the corporation's liability. The court also ruled that the state court judgment had no res judicata effect because the defendants were not parties in that action and the PACA liability of the defendants was not litigated in that action. Finally, the court held that the plaintiff's dismissal of the PACA action did not preclude the filing of a PACA action against the defendants. **Sunkist Growers, Inc. v. Fisher, 104 F.3d 280 (9th Cir. 1997)**.

TOBACCO. The plaintiff had owned a tobacco farm since 1970 and had increased the tobacco allotment for the farm steadily over the years. After a neighboring property was sold, the county committee discovered that a portion of the neighboring farm had been included in the aerial photo of the plaintiff's farm by mistake. The committee then reduced the plaintiff's allotment by the proportion of the amount of the neighbor's land erroneously included in the plaintiff's land. The committee used the reconstitution regulations of 7 C.F.R. § 719 as authority for the reduction, arguing that the removal of the erroneous land from the plaintiff's land in the records constituted a transfer of the land. The court found that the determination of the plaintiff's original allotments did not depend on the erroneous inclusion of the neighboring land; therefore, the discovery of the error should not have affected the tobacco allotment of the plaintiff's land. The court held that the county committee should have only corrected the aerial photo and left the allotment unchanged. **Copley v. Elliot, 948 F. Supp. 586 (W.D. Va. 1996)**.

FEDERAL ESTATE AND GIFT TAX

DISCLAIMERS-*ALM* § 5.02[6].* The decedent had established an irrevocable trust in which the decedent had a testamentary power to appoint the trust principal to the decedent's descendants and their spouses. At the death of the decedent, the trust property passed to the decedent's descendants, but if none survived the decedent, the trust property passed to the decedent's brother. The decedent and brother also established another trust with a portion of the trust as irrevocable. At the decedent's death, the decedent's share of the trust was to pass to the brother. The decedent did not exercise the power of appointment over the first trust. The brother disclaimed any interest in either trust within nine months after the decedent's death. The IRS ruled that the disclaimers were effective and did not result in any gift tax liability for the brother. **Ltr. Rul. 9710025, Dec. 9, 1996**.

GROSS ESTATE. The decedent was injured at birth by the negligence of doctors and hospital staff. The decedent obtained a negligence judgment against the hospital and the decedent received a settlement award of money to the decedent's parents to be used to support the decedent, attorney fees, and money which was placed in a court-supervised trust for the decedent. The trustee was given discretion to distribute trust principal and interest to the decedent for the decedent's health, education, maintenance and support until the earlier of the decedent's death or 25 years. The court retained the power to revoke the trust, at which time the funds were to be paid to the decedent. The decedent's estate argued that the trust was not includible in the decedent's gross estate because (1) the trustee had discretion as to whether to distribute trust principal, and (2) the court retained the power to revoke the trust. The court held that the decedent had the sole beneficial interest in the trust because the trustee had the power to control only the timing. The court also held that the trial court did not have control over the trust because if the trust was revoked, all of the trust principal was to be distributed to the decedent. Therefore, the court held that the date-of-death value of the trust was included in the decedent's gross estate. The case is designated as not for publication. **Arrington v. United States, 97-1 U.S. Tax Cas. (CCH) ¶ 60,260 (Fed. Cir. 1997)**.

IRA. The decedent's will provided for a pre-residuary marital trust for the surviving spouse which was to be funded with the maximum amount of property sufficient to reduce the estate tax to zero. The will provided for passing of the residuary estate to a trust for the surviving spouse and children. The trustee had the discretionary power to distribute principal and income to the surviving spouse for support and discretionary power to distribute principal and income to the children for their support and education. The surviving spouse had a lifetime and testamentary special power of appointment over the trust assets. A portion of the residuary estate was the decedent's interest in an IRA. The surviving spouse disclaimed the power of appointment and the right to trust income and principal. But the surviving spouse did not disclaim the right to receive the residuary as an heir-at-law. The children also executed disclaimers of their entire interests in the trust so that the trust assets passed to the surviving spouse under the trust and will provisions and intestacy law. The surviving spouse received the trust corpus as part of the residuary assets, including the decedent's IRA assets. The surviving spouse rolled the IRA funds over to an IRA in the surviving spouse's name. The IRS ruled that the IRA would be treated as having passed directly to the surviving spouse and the spouse would not include the IRA funds in current income. **Ltr. Rul. 9710034, Dec. 12, 1996**.

The decedent owned an interest in an IRA which had the surviving spouse as the designated beneficiary. The decedent had been receiving distributions from the IRA and was over the age of 70 1/2 years at death. After the decedent's death, the surviving spouse requested a trustee-to-trustee distribution from the decedent's IRA to the spouse's IRA. The surviving spouse was also over the age of 70 1/2. The IRS ruled that (1) the surviving spouse could treat the decedent's IRA as her own because the transfer of the funds constituted an election to treat both IRAs as belonging to the spouse, (2) the spouse could elect a new beginning date for the IRA, (3) the spouse could elect whether or not to recalculate the life expectancy as of the new beginning date, and (4) no excise tax would be imposed for failure to make distributions from the decedent's IRA during the year of the decedent's death. **Ltr. Rul. 9711032, Dec. 20, 1996**..

MARITAL DEDUCTION-*ALM* § 5.04[3].* After the decedent's death the will was contested by the surviving spouse and a will settlement was reached for distribution of the residuary estate between the surviving spouse and a charitable organization. The IRS argued that the marital and charitable deductions should be limited to the lesser of the amount to have been distributed under the will or the actual amount distributed. The court held that the actual amounts distributed under the settlement would be allowed as deductions because the settlement was the result of a bona fide adversary proceeding involving enforceable rights. The IRS also argued that the marital and charitable deductions should be reduced by the amount of administrative expenses, whether or not the expenses were paid from principal or income. The court held that the administrative expenses reduced the deduction only to the extent paid from principal because, under Georgia law, the estate could pay such expenses from principal or income as allowed by the will. The Supreme Court affirmance resolves a conflict between this case and a contrary holding in *Est. of Street v. Comm'r, 974 F.2d 723 (6th Cir. 1992)*; *Burke v. United States, 994 F.2d 1576 (Fed. Cir. 1993), cert denied., 114 S. Ct. 546 (1993)*. **Est. of Hubert v. Comm'r, 97-1 U.S Tax Cas. (CCH) ¶ 60,261 (S. Ct. 1997), aff'g, 95-2 U.S. Tax Cas. (CCH) ¶ 60,209 (11th Cir. 1995), *aff'g*, 101 T.C. 314 (1993)**.

The decedent had executed a will in 1973 which provided for a marital trust for the surviving spouse which was funded with 50 percent of the estate in order to take advantage of the maximum marital deduction available at the time. The will also provided for another trust which had a spendthrift clause. The marital trust was designated as trust A and the non-marital trust was designated as trust B. In 1982, the will was amended to provide for $2 million of assets to pass to the non-marital trust, redesignated as trust A, and the remainder to pass to the marital trust, redesignated as trust B, again in order to take advantage of the unlimited marital deduction and QTIP provisions available at that time. The marital trust was set up to be QTIP. However, the amended will unknowingly retained the spendthrift clause as to trust B, now the marital trust. The IRS claimed that the will provided for application of the spendthrift clause against the marital trust, thus limiting the surviving spouse's rights to the trust income. In addition, the IRS claimed that the will allowed the trustee to pay some expenses from the marital trust. The estate claimed that the application of the spendthrift and expense provisions was inadvertently not changed to reflect the change in designation of the trusts as A and B. The court found that the will was ambiguous in that the IRS interpretation was contrary to will provisions devising all the remaining assets to the marital trust. Therefore, the court held that the spendthrift clause and expense payment provisions did not apply to the marital trust and the entire QTIP trust was eligible for the marital deduction. **Miller v. U.S., 949 F. Supp. 544 (N.D. Ohio 1996)**.

FEDERAL INCOME TAXATION

BELOW MARKET INTEREST LOANS. The taxpayer was a corporation owned by a husband and wife. The shareholders contracted to build two buildings which were to be leased to the corporation. The funds for the construction, however, were borrowed from the corporation as needed. The loans were recorded as such on the corporation's books but no interest was paid during the construction periods. The shareholders did make provisions for repayment of the loans with interest after completion of the construction. The taxpayer argued that the loan was not made until the final payment was made for the construction.

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The court held that, under I.R.C. § 7872, each payment was considered a separate loan with the amount of interest below the market interest rate, as determined using the Applicable Federal Rate tables, as income to the shareholders. The court rejected the taxpayer's argument that the lack of interest rate did not affect the income tax liability of the taxpayer and shareholders because payment of interest would have produced offsetting income and deductions. **KTA-Tator, Inc. v. Comm'r, 108 T.C. No. 8 (1997)**.

COURT AWARDS AND SETTLEMENTS. The taxpayers sued their former employers for sex discrimination under Title VII of the Civil Rights Act of 1964. The taxpayers received a settlement award of back and front pay. The court held that the settlement proceeds were includible in income because the action did not provide compensation for tort-type personal injuries. **Frederickson v. Comm'r, T.C. Memo. 1997-125; Martinez v. Comm'r, T.C. Memo. 1997-126**.

The taxpayer owned several restaurants under a license from a national corporation. The taxpayer joined with several other restaurant licensees in a corporation which owned all of their restaurants in exchange for stock in that corporation. The national corporation prevented the restaurant corporation from making a public offering and the taxpayer sued the national corporation, alleging injury from emotional distress. The taxpayer reached a settlement agreement with the national corporation which provided for the purchase of all of the taxpayer's stock and release of all claims by the taxpayer. The IRS argued that the settlement proceeds were all received in exchange for the stock. The court found that the settlement agreement specifically included the release of the emotional distress claim; therefore, the court held that a portion of the settlement would be allocated to that claim. The court held that the portion of the settlement which related to the emotional distress claim was excludible from income under I.R.C. § 104 as payments received for a personal injury claim. **Noel v. Comm'r, T.C. Memo. 1997-113**.

DISASTER AREAS-*ALM* § 4.05[2].* The IRS has announced the disaster areas designated by the President for 1996 for purposes of eligibility of taxpayers to qualify for I.R.C. § 165(i) deferral of claiming losses from those disasters. **Rev. Rul. 97-11, I.R.B. 1997-10, 5**.

The President has declared certain areas of South Dakota as disaster areas from a Nov. 13, 1996 storm. Losses from these casualties may be deducted in taxpayers' 1995 returns.

ENVIRONMENTAL CLEANUP COSTS. The IRS has issued a proposed revenue procedure, *Notice 97-7, I.R.B. 1997-1, 8*, which would provide guidance for issuing letter rulings on the tax treatment, under I.R.C. §§ 162 and 263, of environmental cleanup costs involving a single environmental cleanup transaction. The proposed procedures would apply for an experimental period of two years once the final procedures are issued. The public is invited to comment on the proposed procedures. The IRS has announced that taxpayers may request a pre-submission conference to discuss the procedures for submitting a letter ruling request if the taxpayer intends to file a request for a letter ruling. The conference is advisory only and any advice from the IRS cannot be relied upon under I.R.C. § 7805(b). **Ann. 97-22, I.R.B. 1997-__, __**.

HOBBY LOSSES. The taxpayers, husband and wife, operated a horse breeding and racing activity. The husband was employed full-time as an anesthetist and received a military pension. The wife was not employed and devoted full-time to the horse activity except when suffering from injuries or illnesses not related to the activity. The court held that the taxpayers operated the activity with the intent to make a profit because (1) the taxpayers operated the activity in a businesslike manner in using business stationery, advertising in trade publications and participating in trade shows; (2) the taxpayers developed a business plan, although some of the plans were prevented by the wife's illnesses; (3) the taxpayers maintained sufficient records for accurate tax return preparation; (4) the taxpayers attended seminars at conventions and colleges to learn more about the horse breeding and racing businesses; (5) the taxpayers expended significant amounts of time on the activity and did not use the horses for personal pleasure; (6) the losses incurred were due to the physical inability of the wife to fully participate in the business during her illnesses. **Phillips v. Comm'r, T.C. Memo. 1997-128**.

LETTER RULINGS. The IRS has announced a pilot program of pre-submission conferences in the National Office for matters which will be a subject of a letter ruling request under Rev. Proc. 97-2, I.R.B. 1997-1, 64. **Rev. Proc. 97-21, I.R.B. 1997-12**.

LEVY. The taxpayer was receiving benefits under social security which were levied against by the IRS. The taxpayer argued that the social security benefits were exempt from levy under 42 U.S.C. § 407(a). The court held that I.R.C. § 6334(c) overrides Section 407(a) and allowed the levy of the benefits. The court also ruled that the taxpayer's claim for damages was not allowed because the IRS had not waived its governmental immunity from such suits under the Federal Tort Claims Act. **Leininc v. United States, 97-1 U.S. Tax Cas. (CCH) ¶ 50,254 (D. Conn. 1997)**.

RETURNS. The IRS has announced that persons living in declared disaster areas in Arkansas, Kentucky and Ohio will be allowed extra time to file returns and make payment due in March. Returns due by March 15, 1997 will be considered timely filed if filed by April 15, 1997, but interest must be paid for the time after March 15, 1997. Farmers who had planned to file returns and to make estimated payments by March 3, 1997, have until April 15, 1997 to file the returns and make the payments. Penalties on tax deposits due from March 3 through March 15, 1997, will not be assessed if the payments are made by March 31, 1997. The IRS also will suspend examination and collection activities in the disaster area until April 7, 1997. **IR 97-12**.

The IRS has announced a pilot program for District of Columbia, Alabama, Delaware, Florida, Georgia, Indiana, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, under which Form 941 Telefile can be used for filing and payment of employment taxes. IR **97-10**.

The IRS has issued guidance for taxpayers who maintain books and records using an electronic storage system that either images the hardcopy books and records or transfers computerized records to optical storage disks. Records maintained in an electronic storage system in compliance with the revenue procedure will constitute records under I.R.C. § 6001. **Rev. Proc. 97-22, I.R.B. 1997-__**.

S CORPORATIONS-*ALM* § 7.03[2][c].*

PASSIVE INVESTMENT INCOME. The taxpayer was a corporation which planned to make the Subchapter S election. The corporation owned several properties, one of which was a farm. The corporation leased the farm to third parties and provided services to the tenants. The services, provided by the corporation's employees included maintaining irrigation pumps, mowing, spraying to control weeds, operating wildlife management areas, and maintaining bridges and irrigation improvements. The IRS ruled that the rental income from the farm lease was not passive investment income for purposes of the Subchapter S election. **Ltr. Rul. 9710014, Dec. 4, 1996**.

TRUSTS. All of the stock of an S corporation was owned by three QSSTs. The corporation redeemed a pro rata number of shares from each trust, using retained earnings to fund the redemptions. The corporation declared to the trustee that the distribution of retained income was a redemption or call of shares. Under the trust agreements, the trustee had the authority to allocate the distribution to principal or income, and the trustee chose to allocate the distributions to principal. Under state law a distribution made pursuant to a call of shares was principal to the trusts. The IRS ruled that the proceeds of the redemption was not fiduciary accounting income under I.R.C. § 643(b). The IRS also ruled that I.R.C. §§ 1368(b), (c) applied in determining the extent to which the distributions were includible in trust income. The IRS ruled that the distribution did not change the trusts' status as QSSTs. **Ltr. Rul. 9710026, Dec. 9, 1996**.

SOIL AND WATER CONSERVATION EXPENSES. Senator Charles Grassley of Iowa has introduced Sen. 429 which would amend I.R.C. § 175(a) (soil and water conservation expenditures) to provide:

> "(4) Cash rent landlords.--A taxpayer shall be treated as engaged in the business of farming with respect to any land used in farming if such taxpayer rents such land (regardless of the basis of the rental payment) to a member of the taxpayer's family (as defined in section 2032A(e)(2)."

TRUSTS. The taxpayers owned and operated a high-rise window washing business and transferred the business to a trust for no consideration. The business was continued as before the transfer to the trust. The trustee was the promoter of the trust package sold to the taxpayers. The trust made several loans to the taxpayers and the trustee executed a line of credit to the taxpayers. The taxpayer issued checks to themselves from the trust's accounts pursuant to the loans and line of credit. The taxpayers did not include the business income in their gross income. The taxpayers claimed to have paid back the loans but failed to provide any documentary or other evidence of repayment. The court held that the loans were not bona fide because, the loans were unsecured, no credit report or financial statement was required, and the loans had below market interest rates. The court held that the amounts distributed as loans were gross income to the taxpayers. **Maranto v. Comm'r, T.C. Memo. 1997-122**.

NEGLIGENCE

ELECTRICITY. The plaintiff was a dairy farmer and the defendant was a rural electric, nonprofit cooperative which supplied the electrical power to the plaintiff's farm. The plaintiff detected signs of stray voltage affecting the dairy cows and had the farm tested for stray voltage. Although the tests were inconclusive, the effects of stray voltage continued, even after the plaintiff rewired most of the dairy buildings. The plaintiff sued in negligence and nuisance, claiming that the stray voltage came from ground circuits used by the defendant. The plaintiff claimed to have lost seven cows and 12 to 15 calves from miscarriages and claimed that 20 to 40 percent of the cows failed to conceive calves from the effects of the stray voltage. The trial jury awarded the plaintiff $573,000 for negligence. The defendant argued that the jury instructions for the standard of care was erroneous in that it required the defendant to exercise the highest degree of care in handling electricity which is a dangerous product. The court held that the instruction was improper in that the standard of care for electricity was ordinary and reasonable care under the circumstances to prevent injury. The case was remanded for retrial on this issue. The trial court presented a jury instruction on the liability of the defendant's stray voltage as a private nuisance. The court held that the instruction was improper in that the electricity was provided in compliance with statutes and regulations; therefore, the stray voltage could not be considered a nuisance. **Kuper v. Lincoln-Union Elec. Co., 557 N.W.2d 748 (S.D. 1996)**.

RIPARIAN RIGHTS

DRAINAGE. The plaintiff owned a farm neighboring the defendant's farm. The plaintiff created a channel to drain surface water to a tile line which had a vertical pipe at its opening. The plaintiff lowered this pipe to provide access for

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the drain water. However, the defendant restored the drain opening to the original height and plugged the opening to prevent any water from entering the tile line. The plugging of the tile line caused the drained water to back up and flood the plaintiff's property. The plaintiff argued that the plaintiff had a prescriptive easement to use the tile line or that the plaintiff was entitled to use the drain surface water through the tile line as a reasonable use. The court held that the reasonable use doctrine applied here and that the defendant's proper remedy was to sue for damages if the plaintiff's draining method was unreasonable. The court upheld no award of damages for the defendant because the defendant showed no evidence of damage to the tile line, except from the defendant's own actions. The defendant was enjoined from blocking the plaintiff's use of the tile line. The court also upheld the damage award to the plaintiff from the flooding caused by the defendant's blockage of the tile line. The court also denied the plaintiff's claim of prescriptive easement, holding that the right of natural drainage could not create an easement. **Kral v. Boesch, 557 N.W.2d 597 (Minn. Ct. App. 1996)**.

SECURED TRANSACTIONS

PERFECTION. The debtor borrowed money from the plaintiff and the debtor granted the plaintiff a security interest in growing crops. The security agreement described the land on which the crops were growing by legal description of all of the debtor's crop land, even though the debtor did not grow crops on all of the land described. The plaintiff filed a financing statement but the financing statement provided a legal description of only some of the land and the land described was land not planted by the debtor. The debtor also granted a security interest in the same crops to a bank and the bank properly perfected that security interest. The plaintiff argued that the bank was not misled by the error in the description of the crop land in the financing statement. The court cited *First Nat'l Bank in Creston v. Francis, 342 N.W.2d 468 (Iowa 1984)* in support of its holding that where the financing statement makes use of the legal description of the land on which the collateral crops are to be grown, errors which are more than minor make the description insufficient to perfect the security interest. The court held that a completely erroneous description was insufficient to perfect the plaintiff's security interest; therefore the bank had a superior security interest in the crops. The court rejected the plaintiff's argument that the bank was not actually misled by the erroneous description because the bank had knowledge of where the debtor grew the crops. The court held that the statute governing the sufficiency of description of the land, Wis. Stat. § 409.110, provided no allowance for failure to mislead other creditors. **Smith & Spidahl Enter., Inc. v. Lee, 557 N.W.2d 865 (Wis. Ct. App. 1996)**.

PRODUCER'S LIEN. The bankruptcy debtor had purchased processed shelled pecans from a processor of nuts which also grew pecans at the processor's orchards. The processor claimed a secured lien under the California statutory producer's lien, Calif. Food & Agric. Code §§ 55631-55635, arguing that the pecans sold to the debtor were produced by the processor. The debtor argued that the processor was estopped from claiming the lien because the processor did not inform the debtor that the pecans were produced in the processor's orchard. The court held that the processor was estopped because (1) the processor knew that at least some of the nuts were grown in the processor's orchard, (2) the processor intended that the debtor would act in accordance with the belief that the nuts were not produced by the processor, (3) the debtor did not know the true origin of the nuts, and (4) the debtor relied on the processor's failure to tell where the nuts came from. The debtor also argued that the processor did not qualify for the statutory producer's lien because the processor mixed nuts from other processors with the nuts produced by the processor and the processor had no proof that the nuts sold to the debtor were exclusively produced by the processor. The court examined the records of the processor and found that the records were inconsistent and inaccurate such that it was impossible to tell where the nuts came from which were sent to the debtor; therefore, the processor failed to prove that the nuts came exclusively from the processor's orchard and the lien was not available to the processor. ***In re* S.N.A. Nut Co., 204 B.R. 537 (Bankr. N.D. Ill. 1997)**.

STATE TAXATION

TIMBERLAND. The taxpayers owned 23 acres of land on which stood the taxpayers' residence, outbuildings, a swimming pool and a tennis court. The taxpayers challenged the assessment of the whole property, arguing that a hog confinement operation across the road diminished the value of the property. The state assessor made a visit to the taxpayers' property for about an hour and detected no odor from the hog operation. The assessor also drove by the hog operation but again did not detect an odor. The state board of assessment rejected the decrease in value for odors from the hog operation, based on the assessor's visit. The court held that the short visit by the assessor was insufficient to make a determination of the extent of the effect of the odor on the value of the taxpayers' property and remanded the case to obtain sufficient evidence of any odor problem. The taxpayers also argued that the land was eligible for the 80 percent reduction as woodland. The court found that the property had less than a 50 percent canopy coverage of trees and did not meet the statutory definition of woodland. In addition, the court noted that the taxpayers did not harvest any timber from the land. **Corey v. State Bd. of Tax Commissioners, 674 N.E.2d 1062 (Ind. Tax. 1997)**.

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