CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

FEDERAL TAX

DISCHARGE. The debtor incurred substantial income taxes in 2000 from a successful business but failed to pay sufficient estimated taxes to cover the taxes owed. In 2001 the debtor's business declined rapidly from the effects of September 11 and the debtor had insufficient funds to pay the 2000 taxes. The debtor had used most of the 2000 income to make investments in technology stocks and the stock market crash resulted in substantial losses for the debtor which could not be used to offset the 2000 taxes. The evidenced showed that the taxpayer eventually sold or lost to repossession most of the taxpayer's property in the following year leading up to the bankruptcy filing. The court held that the taxes were dischargeable because the debtor did not willfully attempt to evade payment of the taxes. ***In re* Rhodes, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,274 (Bankr. M.D. Fla. 2006)**.

CONTRACTS

TERMINATION. The plaintiff was a chicken grower who contracted with the defendant to raise chickens supplied by the defendant. The chicken grower's agreement provided that the contract could be terminated if the plaintiff violated any federal, state or local laws or regulations. The defendant discovered that the plaintiff had improperly disposed of dead chickens in violation of state law and immediately terminated the chicken grower agreement. The plaintiff argued that only the state Board of Animal Health could determine whether a violation occurred and that, because the plaintiff had not been cited for any violation, the termination of the agreement was improper. The court held that the agreement did not specify that a violation had to be found by any governmental agency, only that a violation occurred. The court held that the improper disposal of the dead birds was a violation of state law; therefore, the termination of the agreement was proper. **Gatlin v. Sanderson Farms, Inc., 2007 Miss. LEXIS 28 (Miss. 2007)**.

FEDERAL AGRICULTURAL PROGRAMS

DISASTER ASSISTANCE. The CCC has adopted as final regulations implementing the Emergency Agricultural Disaster Assistance Act of 2006, Pub. L. 109-234 which provides funds for assistance in areas affected by hurricanes Katrina, Ophelia, Rita and Wilma. The funds will be distributed through eight programs: (1) the Livestock Compensation Program will provide payments to livestock owners and cash lessees (not both for same livestock) for certain feed losses; (2) the Livestock Indemnity Program II will provide benefits to livestock owners and contract growers (not both for same livestock) for certain livestock deaths; (3) the Citrus Disaster Program will provide benefits to citrus producers who suffered citrus crop production losses and associated fruit-bearing tree damage, including related clean-up and rehabilitation costs; (4) the Fruit and Vegetable Disaster Program will provide benefits to producers who suffered fruit and vegetable crop production losses, including related clean-up costs; (5) Tropical Fruit Disaster Assistance Program will provide benefits to producers of carambola, longan, lychee, and mangos who suffered tropical fruit production losses; (6) the Nursery Disaster Assistance Program will provide benefits to commercial ornamental nursery and fernery producers who suffered inventory losses and incurred clean-up costs; (7) the Tree Assistance Program will provide benefits to producers who suffered tree, bush, or vine losses for site preparation, replacement, rehabilitation, and pruning; and (8) the 2005 Catfish Grant Program will provide assistance in the form of grants to states having catfish producers who suffered catfish feed losses. **72 Fed. Reg. 6435 (Feb. 12, 2007)**.

GENETICALLY MODIFIED ORGANISMS. The plaintiffs were several organizations which sought to have several genetically engineered varieties of grasses listed as noxious weeds under the Plant Protection Act (PPA). The plaintiffs also charged that field tests of genetically engineered (GE) creeping bentgrass violated the National Environmental Policy Act (NEPA) and the Administrative Procedure Act because the APHIS failed to first adequately determine the GE bentgrass was a plant pest under the PPA and the APHIS failed to prepare an environmental impact statement or environmental assessment as required by the NEPA. The GE bentgrass was genetically altered to be resistant to glyphosate herbicide (Roundup). The defendant producer of the GE bentgrass challenged the plaintiffs' standing to bring the suit, alleging that no injury had been shown. The court held that the plaintiffs had standing through showing that the GE bentgrass has sufficient ability to spread the modified genes to other native plants, harming the plaintiffs' aesthetic interest in viewing native flora and fauna. The court also held that the APHIS improperly failed to consider the plaintiffs' requests for a determination as to whether the GE bentgrass met the criteria of a plant pest and failed to determine whether the field tests were required to file an environmental impact statement or environmental assessment. **International Center for Technology Assessment v. Johanns, 2007 U.S. Dist. LEXIS 7773 (D. D.C. 2007)**.

The plaintiffs were alfalfa growers and an environmental association which challenged the APHIS's decision to deregulate alfalfa that has been genetically engineered (GE) to resist

glyphosate herbicide (Roundup). The plaintiffs argued that the deregulation of GE alfalfa required an environmental impact statement because the GE alfalfa could significantly decrease the number of non-GE varieties through gene crossing. The APHIS did issue an environmental assessment but ruled that the GE alfalfa would not have a significant impact because organic producers were required to have buffer zones to prevent contamination and plants often develop their own resistance to herbicides. The court held that an environmental impact statement was required because the plaintiffs demonstrated that the GE alfalfa could contaminate non-GE varieties even with the buffer zones and result in a significant environmental impact. **Geertson Seed Farms v. Johanns, No. C 06-01075 CRB, (N.D. Calif. Feb. 13, 2007)**.

SHARED APPRECIATION AGREEMENTS. The plaintiffs were farmers who entered into a ten-year shared appreciation agreement with the FmHA (now FSA) in exchange for a write-down of their debt to the FmHA. At the end of the ten years, the FSA sought to recapture the amount of appreciation in the farm. The plaintiffs challenged the appraisal method used to determine the amount of appreciation, arguing that the FSA used different valuation methods, resulting in too high a value at the end of the ten years. The plaintiffs' farm was appraised under a different set of regulations which had been amended by the time of the second appraisal. The initial regulations allowed valuation by full market value or agricultural use value. The later regulations required valuation at full market value only. The plaintiffs argued that the original valuation was made using the agricultural use standard; therefore, the same standard had to be used in valuing the property for appreciation purposes at the end of the agreement term. The FSA argued that both appraisals did use the same consideration and employ the same standards. The trial court agreed with the plaintiffs but the appellate court reversed, holding that both appraisals used the same standard by valuing the land at its highest and best use as agricultural land. **Davies v. Johanns, 2007 U.S. App. LEXIS 3230 (8th Cir. 2007), rev'g, 409 F. Supp. 2d 1150 (W.D. Mo. 2006)**.

FEDERAL ESTATE AND GIFT TAXATION

IRA. The decedent's estate included an IRA which had the taxpayer as one of the remainder beneficiaries. The estate became subject to litigation over the actions of an heir who had power of attorney over the decedent's assets before the decedent's death. As part of a settlement, the parties agreed that the IRS would be transferred to one of the heirs and not to the remainder beneficiaries. The taxpayer had received an annual distribution from the taxpayer's share of the IRA but did not return that distribution to the estate or heir. The IRS ruled that the transfer of the IRA funds to the heir was not a taxable gift, did not result in the IRA being included in the taxpayer's estate and did not result in future distributions from the IRA being included in the taxpayer's income; however, the one annual distribution from the IRA to the taxpayer was included in income. **Ltr. Rul. 200707158, Feb. 21, 2006**.

REFUNDS. The decedent died on August 5, 1998 and the estate tax return was filed on November 14, 1999. The IRS disputed the estate's valuation of stock held by the decedent and the IRS's higher valuation was eventually determined in a Tax Court case. Because the stock had a higher date of death value, the sale of the stock produced less capital gain to the estate and the estate filed for a refund based on the lesser gain. The refund request was filed more than three years after the filing of the estate tax return; therefore, the IRS rejected the claim. The estate argued that the limitation period should have been waived under the mitigation provisions of I.R.C. §§ 1311-1314. The court held that the mitigation provisions did not apply because (1) the mitigation provisions were not applicable to Tax Court determinations in estate tax cases, (2) the basis of the stock was not erroneously determined by the Tax Court ruling. **Malm v. United States, 420 F. Supp. 2d 1040 (D. N.D. 2005)**.

FEDERAL INCOME TAXATION

ALTERNATIVE MINIMUM TAX. The taxpayer had alternative minimum tax credits of over $70,000 but was limited to use only $200 of the credit in the tax year involved. The taxpayer argued that the unused minimum tax credits should be refunded because the taxpayer was unlikely to be able to use the credits in future tax years. The court noted that I.R.C. § 53 was clear that the unused credit was available only for carryforward to future tax years to offset AMT and that there was no authority for a cash refund of unused credit; therefore, the taxpayer's refund claim was denied. **Moss v. United States, 2007-1 U.S. Tax Cas. (CCH) ¶ 50,249 (D. Or. 2006)**.

ARCHER MEDICAL SAVINGS ACCOUNTS. The IRS has announced that trustees and custodians must report to the Internal Revenue Service the number of Archer MSAs established (1) between January 1, 2005 and June 30, 2005 and (2) between January 1, 2006 and June 30, 2006. Trustees must report this information to IRS on separate Forms 8851 for 2005 and 2006, no later than March 20, 2007. Form 8851 (revised 2007) is currently available at www.irs.gov. **Ann. 2007-24, I.R.B. 2007-10**.

BAD DEBTS. The taxpayer was the sole shareholder of a corporation which operated a trucking business. The taxpayer was also an employee of the corporation, serving as manager of operations. The taxpayer made loans to the corporation in order to keep the business running and to preserve the taxpayer's employment with the corporation. The corporation filed for Chapter 7 bankruptcy in 1996 and the loans were discharged without payment in 1996. The taxpayer argued that the amount of the loans was a business bad debt entitled to be deducted from the taxpayer's gross income. The IRS argued that the loan was deductible as a miscellaneous itemized deduction, subject to the 2 percent limitation. The Tax Court held that the bad debt deduction had to be claimed as a miscellaneous itemized deduction because the taxpayer was not in the trade or business of lending money but was in the trucking business. The court held that the business bad debt deduction could not be taken

by an employee of the debtor. The appellate court affirmed in a decision designated as not for publication. **Graves v. Comm'r, 2007-1 U.S. Tax Cas. (CCH) ¶ 50,252 (9th Cir. 2007), *aff'g*, T.C. Memo. 2004-140**.

COOPERATIVES. The taxpayer was a rural telephone cooperative which borrowed funds from the Rural Telephone Bank. The taxpayer was required to purchase stock in the bank as part of the loan agreement. The RTB was eventually dissolved and the stock held by the taxpayer was redeemed. The IRS ruled that the proceeds from the redeemed stock were patronage-sourced income except to the extent that the taxpayer provided services to nonmembers during the period the stock was held. Thus, a portion of the proceeds must be allocated to non-patronage-source income based on the proportion of business conducted with nonmembers. **Ltr. Rul. 200706002, Nov. 6, 2006**.

DISASTER LOSSES. On February 3, 2007, the president determined that certain areas in Florida are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and tornadoes, which began on February 1, 2007. **FEMA-1679-DR.** Taxpayers who sustained losses attributable to these disasters may deduct the losses on their **2006** returns. On February 8, 2007, the president determined that certain areas in Florida are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding, which began on December 25, 2006. **FEMA-1680-DR.** Taxpayers who sustained losses attributable to these disasters may deduct the losses on their **2005** returns. On February 9, 2007, the president determined that certain areas in Illinois are eligible for assistance from the government under the Act as a result of severe winter storms, which began on November 30, 2006. **FEMA-1681-DR.** Taxpayers who sustained losses attributable to these disasters may deduct the losses on their **2005** returns. On February 14, 2007, the president determined that certain areas in Washington are eligible for assistance from the government under the Act as a result of severe winter storms and landslides, which began on December 14, 2006. **FEMA-1682-DR.** Taxpayers who sustained losses attributable to these disasters may deduct the losses on their **2005** returns.

DISCHARGE OF INDEBTEDNESS. The taxpayers were shareholders of three S corporations. One of the corporations borrowed funds from the other two. Although the transactions were recorded as loans on the corporations' accounts, no other loan formalities were executed, such as interest charged, repayment schedule, collateral or any attempt to enforce repayment of the loan. The borrower corporation was terminated and the "loan" written off the books of the lending corporations. The court held that the transactions were actually contributions of capital and the lending corporations did not have discharge of indebtedness income from the write-off of the amounts. **Ellinger v. United States, 2007-1 U.S. Tax Cas. (CCH) ¶ 50,253 (M.D. Fla. 2005), *aff'd*, 2006 U.S. App. LEXIS 29218 (11th Cir. 2006)**.

EARNED INCOME CREDIT. The taxpayer lived with and supported two children until June 2, 2002, when the taxpayer was arrested. From June 2 to July 2, the taxpayer supported the children through state-funded services. The taxpayer had not lived with the children since the arrest and was serving a life sentence in prison. The taxpayer's tax return for 2002 claimed earned income tax credit and the IRS denied the credit on the basis that the taxpayer did not live with the children for more than half of the year. The court held that the taxpayer was entitled to the EIC because the imprisonment was considered a temporary absence from the home. **Rowe v. Comm'r, 128 T.C. No. 3 (2007)**.

HEALTH SAVINGS ACCOUNTS. The IRS has released guidance on the procedures for tax-free rolling of assets from health flexible spending accounts (FSAs) that have grace periods or health reimbursement accounts (HRAs) to health savings accounts (HSAs) as allowed by the Tax Relief and Health Care Act of 2006, Pub. L. 109-432. **Notice 2007-22, I.R.B. 2007-10**.

HYBRID VEHICLE TAX CREDIT. The IRS has announced the hybrid vehicle certifications and the credit amounts for:

Year and Model	Credit Amount
2006 Honda Accord Hybrid w/o updated calibration	$650
2006 Honda Accord Hybrid with updated calibration	$1,300
2007 Honda Accord Hybrid	$1,300
2007 Honda Accord Hybrid Navi	$1,300
2006 and 2007 Honda Civic Hybrid	$2,100
2006 Honda Insight	$1,450

See Harl, "Additional Items in the Energy Policy Act of 2005, 16 *Agric. L. Dig*. 131 (2005). **IR-2007-38**.

RENT. The IRS has published a reminder for taxpayers to follow the specific rules and procedures for deducting rent and lease expenses. Deductions related to dual use (i.e., personal and business) property are limited and taxpayers with dual use property should consult IRS Publication 587, Business Use of Your Home, and IRS Publication 463, Travel, Entertainment, Gift, and Car Expenses. Taxpayers involved in conditional sales contracts should consult Chapter 4 of IRS Publication 535, Business Expenses, to determine whether their expenses are deductible or must be capitalized. A conditional sales contract generally exists when at least part of the rental payments are applied toward the purchase price or give the taxpayer advantageous rights to acquire the property. Taxpayers who produce real property and/or tangible personal property for resale or purchase property for resale may have to capitalize certain rental-type payments under the uniform capitalization rules of I.R.C. § 263A and such taxpayers should consult IRS Publication 538, Accounting Periods and Methods.

RETURNS. The IRS has posted the following forms/instructions to its website, www.irs.gov/formspubs/index.html, in the Forms & Pubs section: Form 706-A (Rev. January 2007), United States Additional Estate Tax Return; Form 709 (2006), United States Gift (and Generation-Skipping Transfer) Tax Return; Form 1040 (2006), U.S. Individual Income Tax Return; Form 1040 (Schedules A & B) (2006), Schedule A --Itemized Deductions and Schedule B --Interest and Ordinary Dividends; Form 1040-ES (E) (2007), Estimated Tax for Individuals; 1120-C Form (2006), U.S. Income Tax Return for Cooperative Associations, and instructions; and Form 2553 (Rev. December 2006), Election by a Small Business Corporation.

The IRS has announced that taxpayers will have through

Tuesday, April 17, 2007 to file 2006 individual tax returns (and certain other forms) and pay any taxes due. The filing date was extended because April 15 falls on a Sunday in 2007 and the following day, April 16, is Emancipation Day, a newly instituted legal holiday in the District of Columbia. Under a federal statute enacted decades ago, legal holidays observed in the District of Columbia have nationwide impact on federal tax deadlines. IRS officials became aware of the application of this statute with respect to the April 16 Emancipation Day holiday only recently, after forms and publications for the 2006 tax year had gone to print. Many forms and publications will not be updated, but the IRS website will include information on the new filing deadline. See IRS Pub. 509, Tax Calendars for 2007, available at the IRS web site at http://www.irs.gov/publications/p509/index.html. **Ann. 2007-16, I.R.B. 2007-8.**

SAFE HARBOR INTEREST RATES
March 2007

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	5.06	5.00	4.97	4.95
110 percent AFR	5.58	5.50	5.46	5.44
120 percent AFR	6.09	6.00	5.96	5.93
		Mid-term		
AFR	4.86	4.80	4.77	4.75
110 percent AFR	5.35	5.28	5.25	5.22
120 percent AFR	5.84	5.76	5.72	5.69
		Long-term		
AFR	5.01	4.95	4.92	4.90
110 percent AFR	5.52	5.45	5.41	5.39
120 percent AFR	6.03	5.94	5.90	5.87

Rev. Rul. 2007-15, I.R.B. 2007-11.

STOCK OPTIONS. The taxpayers received stock options under an agreement which restricted the transfer of the options except by will or laws of descent or distribution. The court held that the value of the options was not included in income in the year the options were granted because the options did not have an ascertainable value due to the transfer restrictions. **Hubbard v. United States, 2007-1 U.S. Tax Cas. (CCH) ¶ 50,261 (9th Cir. 2006)**.

TAX COURT JURISDICTION. The taxpayers filed a challenge to an IRS determination concerning collection of taxes owed by the taxpayers. The taxpayers owed taxes for several tax years, with less than $50,000 owed for any one year but a total tax deficiency of over $150,000. The taxpayers and IRS agreed that the case could be heard under the "small tax case" or "S case" procedures under I.R.C. § 7463. However, the Tax Court held that Section 7463(f)(2) prohibited the Tax Court to use the small tax case procedures where the amount at issue exceeded $50,000; therefore, the Tax Court removed the small tax case designation from the case. **Schwartz v. Comm'r, 128 T.C. No. 2 (2007)**.

TAX SCAMS. The IRS has issued its annual "Dirty Dozen" consumer alert that cautions taxpayers about falling victim to a variety of tax scams:

•Telephone excise tax refund abuses. The IRS has received improper requests for the special telephone tax refund. It is investigating potential abuses and will take action against taxpayers who claim improper refund amounts and return preparers who assist them.

•Abusive Roth IRAs. Promoters have urged taxpayers to transfer under-valued stock to Roth IRAs in order to circumvent the annual contribution limit and reduce taxes. The IRS cautions taxpayers to be wary of advisors who encourage them to shift under-valued property to Roth IRAs.

•*Phishing*. This is an internet-based technique used by identity thieves to acquire personal financial data in order to gain access to the financial accounts of unsuspecting consumers, run up charges on their credit cards or apply for new loans in their names. These criminals pose as representatives of a financial institution or as the IRS and send out fictitious e-mail correspondence in an attempt to trick consumers into disclosing private information. The IRS does not use e-mail to initiate contact with taxpayers about issues related to their accounts. Taxpayers should contact the IRS if they have any doubt regarding whether a contact from the IRS is authentic.

•*Disguised corporate ownership*. This scam involves the use of anonymous entities to facilitate the under-reporting of income, nonfiling of tax returns, listed transactions, money-laundering, financial crimes and possibly terrorist financing. The IRS is working with state authorities to identify these entities and to bring their owners into compliance.

•*Zero wages*. In this scam, a taxpayer attaches to his or her return either a Form 4852 (Substitute Form W-2) or a corrected Form 1099 that shows zero or little wages or other income.

•*Return preparer fraud*. The IRS reminds taxpayers that "if it sounds too good to be true, it probably is," and that taxpayers are ultimately responsible for the accuracy of their returns.

•*American Indian employment credit*. Another scam involves taxpayers who attempt to reduce their taxable income by claiming an American Indian employment or treaty credit. Although there is an Indian employment credit available for businesses, there is no provision for its use by employees. The IRS also cautions taxpayers that unscrupulous promoters have informed Native Americans that they are not subject to federal income taxation and, in some cases, used phishing (see *supra*) techniques to solicit personal information.

•*Trust misuse*. Promoters have urged taxpayers to transfer assets into trusts to reduce taxes. Taxpayers should seek the advice of a trusted professional before entering into a trust.

•*Structured entity credits*. In a newly identified scheme, promoters are setting up partnerships to own and sell state conservation easement credits, federal rehabilitation credits and other credits in order to generate losses. The IRS cautions taxpayers that investments in these entities are not valid, and the losses are not deductible.

•*Abuse of charitable organizations and deductions*. The IRS continues to observe the use of tax-exempt organizations to improperly shield income or assets from taxation.

•*Form 843 tax abatement*. This scam involves the filer requesting abatement of previously assessed tax using Form 843. Many using this scam have not previously filed tax returns, and the tax they are trying to have abated has been assessed by the IRS through the Substitute for Return Program.

•*Frivolous arguments*. These include various arguments and claims regarding the constitutionality of federal tax laws. The

IRS cautions that taxpayers have the right to contest their tax liabilities in court, but that no one has the right to disobey the law. Taxpayers are encouraged to report suspected tax fraud activity to the IRS by using Form 3949-A, Information Referral. Form 3949-A is available for download from the IRS website at irs.gov, or by mail by calling 1-800-829-3676. **IR-2007-37**.

TELEPHONE EXCISE TAX REFUND. The IRS announced that special agents carried out search warrants in seven cities, targeting tax-preparation businesses suspected of preparing returns on behalf of clients requesting egregious amounts regarding the special telephone excise tax refund. The search warrants were served at tax-preparation businesses in Atlanta, Ga.; Dallas, Tyler and Athens, Texas; Riverside, Calif.; Miami, Fla.; and Baton Rouge, La. The businesses were temporarily closed and computers and documents to use in the investigations were seized. Additional tax preparers across the nation who are preparing questionable telephone tax refund requests are receiving visits from IRS revenue agents (auditors) and special agents. The IRS warns taxpayers to avoid tax return preparers who make false claims of the availability of large telephone tax refunds. **IR-2007-36**.

THEFT LOSS. The taxpayer had claimed theft loss deductions based on the loss of several Persian rugs. The taxpayer provided only oral testimony and a "cost appraisal" of the lost rugs. The trial court had denied the deduction for lack of substantiation of the taxpayer's tax basis in the rugs and the appellate court affirmed. ***In re* Smith, 2007-1 U.S. Tax Cas. (CCH) ¶ 50,277 (D. Nev. 2006)**.

TRUSTS. The taxpayer created two trusts for which the taxpayer was treated as the owner under the grantor trust rules. One trust owned a life insurance policy on the taxpayer's life and transferred the policy to the other grantor trust in exchange for cash. I.R.C. § 101(a)(1) excludes from income amounts received from a life insurance policy because of the death of the insured. I.R.C. § 101(a)(2) provides, generally, that if a life insurance contract, or any interest therein, is transferred for a valuable consideration, the exclusion from gross income provided by I.R.C. § 101(a)(1) shall not exceed an amount equal to the sum of the actual value of the consideration and the premiums and other amounts subsequently paid by the transferee. The IRS ruled that, because the taxpayer was treated as the owner of both trusts, the taxpayer was also the owner of all trust assets; therefore, the transfer of the life insurance policy did not result in any change of ownership and Section 101(a)(2) did not apply. The ruling also discussed the same question where the transferor trust was not a grantor trust. In this case, the transfer did result in a change of ownership did but the IRS ruled that, because the transfer was made to a grantor trust, the transfer was deemed made to the taxpayer, the insured; therefore, the exception of I.R.C. § 101(a)(2)(B) applied. **Rev. Rul. 2007-13, I.R.B. 2007-11**.

LANDLORD AND TENANT

DAMAGES. The plaintiff leased 1,300 acres of farm land under a cash lease for five years. The lease provided for termination for failure of the plaintiff to farm the land "in a good and farmer-like manner." The lease was renewed for another five years but a disagreement as to the plaintiff's farming practice ended with the defendant landlord telling the plaintiff that the lease was terminated because of the poor farming practices and that a new tenant would be farming the land immediately. The plaintiff filed suit to enforce the lease or for damages and was awarded over $300,000 in damages. The defendant had argued that the termination was justified because the plaintiff had not farmed the land in a good and farmer-like manner. The trial court ruled that the termination was not reasonable and awarded damages for lost profits and the cost of tilling the land. The defendant appealed, arguing that the trial court failed to apply the doctrine of avoidable consequences because the plaintiff failed to continue farming the land during the controversy so as to minimize the losses. The trial court had found that the plaintiff had tried to find substitute land to rent but none was available in the area. The defendant had retracted the lease termination during the case and argued that the plaintiff could have continued to farm the original land in mitigation of the losses. The court held that a retraction made after a suit had commenced was ineffective to raise the issue of mitigation of damages. **Hanson v. Boeder, 2007 N.D. LEXIS 20 (N.D. 2007)**.

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SELECTED ISSUES IN FARM TAXATION

By Roger A. McEowen

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