CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

CRAM DOWN. The debtors purchased a 60 acre parcel of farmland on which was located their residence. The debtors also owned an adjoining 100 acres and used the farmland for raising cattle. Both debtors were employed full time in off-farm jobs. The 60 acres were purchased under a contract and the contract was eventually paid off with a mortgage loan. The mortgage loan made no mention that a portion of the property was to be used for commercial purposes and was titled as a residential mortgage loan. The debtors' plan bifurcated the mortgage loan into the amount covering the residence and the amount covering the remaining portion of the 60 acres, arguing that, under Section 1322(b)(2), the loan not secured by the residence could be modified by the Chapter 13 plan. Although the court did not discuss the circumstances of the debtors' use of the entire 60 acres, the court held that the entire 60 acres was the debtors' residence and the entire loan was not eligible for modification by the plan. The court did point out that the loan was designated as a residential loan and that little income came from the 60 acres. ***In re*** **McConnell, 296 B.R. 197 (Bankr. D. Minn. 2003)**.

DISCHARGE. The debtor had purchased seed potatoes from a supplier. The parties had agreed to payment terms different from the 10-day payment terms provided for under PACA, but the invoices failed to identify the different payment terms, although the invoices did give notice of the seller's intent to preserve rights in the PACA trust. The seller sought a ruling that the potato seed sale debts were nondischargeable under Section 523(a)(4) because the invoices did not comply with the PACA trust requirements. The seller also incurred attorney's fees in attempting to collect the debts and the court held that these fees were also nondischargeable. ***In re*** **Delyser, 295 B.R. 430 (Bankr. W.D. N.Y. 2003)**.

FEDERAL TAX

DISCHARGE. The debtors, husband and wife, failed to timely file their 1989 and 1990 income tax returns. The debtors did not respond to IRS inquiries about the missing returns and the IRS constructed substitute returns for determining the amounts to assess the debtors. A notice of deficiency was sent to the debtors but they failed to respond and the IRS issued a notice of assessment in July 1993. The debtors filed for Chapter 7 in June 1994 and filed the missing returns. The 1989 and 1990 taxes were not discharged and the debtors entered into an installment payment plan but defaulted on the payments. The debtors filed a second Chapter 7 case and sought a discharge of the taxes under Section 523(a)(1)(B). The court held that the returns filed by the debtors were not required returns once the IRS had made an assessment of the taxes; therefore, Section 523(a)(1)(B) no longer applied to the taxes and the taxes were nondischargeable. ***In re*** **Miniuk, 2003-2 U.S. Tax Cas. (CCH) ¶ 50,667 (Bankr. E.D. Ill. 2003)**.

ERRONEOUS REFUND. The taxpayers had filed a 2000 return and paid the tax. The IRS notified the taxpayers that the return was incorrect and issued a refund check. The IRS discovered that the refund was in error and made a supplemental assessment to recover the refund. The debtors filed for Chapter 7 and received a discharge which would have included the erroneous refund under Section 507. The IRS argued that the erroneous refund had changed in character because of the supplemental assessment; therefore, the assessment was not discharged. The court held that the erroneous refund was discharged because the refund takes on the priority status of the underlying taxes but not the discharge status of the taxes. The court also held that issuing the supplemental assessment did not change the nature of the erroneous refund. ***In re*** **Frontone, 296 B.R. 184 (Bankr. C.D. Ill. 2003)**.

FEDERAL AGRICULTURAL PROGRAMS

KARNAL BUNT. The APHIS has adopted as final regulations changing the list of areas of Arizona, Texas, and New Mexico which are regulated because of the existence of Karnal bunt disease. **68 Fed. Reg. 56529 (Oct. 1, 2003)**.

POULTRY. The FSIS has issued proposed regulations which amend the definitions and standards for the official U.S. classes of poultry so that they more accurately and clearly describe the characteristics of poultry in the market today. Poultry classes are defined primarily in terms of the age and sex of the bird. Genetic improvements and new poultry management techniques have reduced the grow-out period for some poultry classes, while extensive cross breeding has produced poultry with higher meat yields but blurred breed distinctions. **68 Fed. Reg. 55902 (Sept. 29, 2003)**.

FEDERAL ESTATE AND GIFT TAXATION

CHARITABLE DEDUCTION. The decedent's will created a trust for an heir with a remainder interest in the trust to a charity. The trust did not meet the requirements of a charitable remainder trust under I.R.C. § 664 because the trust did not provide for distributions to the non-charitable beneficiary either as a specified dollar amount which was equal to a percentage of the initial fair market value of the trust's property (a charitable remainder annuity trust) or a fixed percentage of the trust's property's fair market value determined annually (a charitable remainder unitrust). The trust was reformed by a state court to provide for an annual payment to the beneficiary of 8 percent of the fair market value of the trust assets. The IRS ruled that the reformed trust was eligible for the charitable deduction. **Ltr. Rul. 200340001, June 25, 2003**.

The taxpayer established an irrevocable trust which provided for a guaranteed amount to be paid from the trust to the charity annually for 30 years, with the remainder of the trust to pass at that time to the taxpayer's children. The IRS ruled that the trust was eligible for the gift tax charitable deduction. **Ltr. Rul. 200339018, June 17, 2003**.

DISCLAIMERS. The decedent and spouse had established two trusts. On the death of the decedent, the spouse became the beneficiary of both trusts. The second trust provided discretion for the trust to distribute income and principal to the spouse if the income from the first trust was not sufficient to meet the spouse's needs. More than nine months after the decedent's death, the spouse disclaimed any interest in the second trust, which then passed to the decedent's children. Although the spouse's rights to receive income and principal distributions from the second trust were contingent on the spouse exhausting the income and principal of the first trust and were subject to the discretion of the trustee, the IRS ruled that the relinquishment of the spouse's interest in the second trust would be a transfer of property by gift under I.R.C. § 2501(a) to the children. The IRS also held that, since the disclaimer occurred more than nine months after the death of the decedent, I.R.C. § 2518 did not apply. **Ltr. Rul. 200339021, June 19, 2003**.

FAMILY-OWNED BUSINESS DEDUCTION. The decedent's estate hired a law firm to file the estate tax return for the estate. Although the estate included interests in a family-owned business, the estate tax return did not file Schedule T for the FOBD election. A second law firm hired to file the estate's state tax return discovered the error and the estate sought an extension of time to make the FOBD election. The IRS granted the extension. **Ltr. Rul. 200339025, June 30, 2003**.

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent was the grantor of a revocable trust which was the sole shareholder of two S corporations. The corporations owned commercial properties and the employees of the corporations managed and maintained the properties. The decedent met or spoke with the chief financial officer every business day, and discussed all decisions regarding the operations of the business, including: negotiating and renegotiating leases, advising as to other corporate matters, supervising and planning maintenance activities, overseeing and contracting tenant improvements, coordinating and planning the marketing of the properties, billing and collecting rents, handling tenant complaints, maintaining tenant relations, coordinating legal and accounting services, and negotiating with and paying all vendors. The taxpayer met or spoke with the chief financial officer every business day, and discussed all decisions regarding the operations of the business, including, but not limited to: negotiating and renegotiating leases, advising as to other corporate matters, supervising and planning maintenance activities, overseeing and contracting tenant improvements, coordinating and planning the marketing of the properties, billing and collecting rents, handling tenant complaints, maintaining tenant relations, coordinating legal and accounting services, and negotiating with and paying all vendors. In addition, the decedent maintained absolute discretion regarding personnel hiring and firing and approved all major leasing, acquisition and construction decisions. The corporations owned sufficient equipment to handle all but extraordinary maintenance. The IRS ruled that the decedent's participation in the business of the two corporations, as assisted by the employees, was sufficient to make the decedent's interest in the corporations an interest in a closely held business for purposes of installment payment of estate tax. **Ltr. Rul. 200339043, June 25, 2003; Ltr. Rul. 200339047, June 25, 2003**.

The decedent owned several properties which were operated as multiple residential rental units, owned a 50 percent interest in several other similar properties, and owned a partnership interest in other similar properties. The decedent and son, the owner of the other interests in the properties, assisted by five part-time employees, performed all services in the management and maintenance of the properties, including advertising vacant apartments, interviewing, screening and selecting prospective tenants, negotiating and executing leases, collecting rents, maintaining common areas, making ordinary plumbing and electrical repairs, purchasing appliances, supplies, and equipment, and inspecting rental units. Extraordinary repairs were made by independent contractors. The IRS ruled that the decedent's participation in the business of the two corporations, as assisted by the employees, was sufficient to make the decedent's interest in the corporations an interest in a closely held business for purposes of installment payment of estate tax. **Ltr. Rul. 200340012, July 1, 2003**.

FEDERAL INCOME TAXATION

CLEAN-BURNING FUEL DEDUCTION. The IRS has certified the 2004 Toyota Prius as eligible for the clean-burning fuel deduction. Taxpayers who purchase a new hybrid vehicle may claim a tax deduction of up to $2,000 on Form 1040. Under current law, the clean-burning fuel deduction will be reduced incrementally until it expires beginning 2007. Purchasers of IRS-certified cars, which also includes the 2003 Honda Insight, will be able to claim a deduction of $2,000 if the vehicle is placed in service on or before December 31, 2003. The $2,000 maximum deduction will be reduced by 25 percent for vehicles placed into service in 2004, by 50 percent in 2005 and by 75 percent in 2006. No deduction will be allowed for vehicles placed in service after December 31, 2006. The one-time deduction must be taken in the year the vehicle was originally used, and the taxpayer must be the original owner. To claim the deduction, individuals must write "clean fuel" on Line 33 of the 2003 Form 1040. **IR-2003-114**.

COURT AWARDS AND SETTLEMENTS. The taxpayer had sued the taxpayer's former employer for intimidation, discrimination, and terroristic threatening and sought damages for lost wages, humiliation, embarrassment, personal indignity, and mental and emotional distress. The parties reached a settlement and the employer paid the settlement amount less income tax withholding. The taxpayer filed suit to recover the withheld taxes and argued that the taxability distinction between money received for physical and non-physical injuries was unconstitutional as violating the equal protection component of the Fifth Amendment. The court held that the distinction between payments for physical and non-physical injuries was rationally related to the governmental purpose to establish a uniform policy regarding taxation of damage awards. **Young v. United States, 332 F.3d 893 (6th Cir. 2003), *en banc rehearing denied*, 2003 U.S. App. LEXIS 14046 (6th Cir. July 8, 2003)**.

The taxpayer sued a former employer for race discrimination in termination of employment. The suit asked only for back pay and attorneys' fees as damages. The parties reached a settlement which characterized the payments as for personal injury to the taxpayer. The court held that the character of the settlement proceeds was determined by the pending claims made in the lawsuit; therefore, the settlement proceeds were for back pay and attorneys' fees and were included in the taxpayer's income. The appellate court affirmed on the issue of whether the settlement proceeds were included in the taxpayer's income but reversed on the issue of the attorneys' fees, which were excluded from income because the contingency fee agreement removed the fees from the taxpayer's control. **Banks. v. Comm'r, 2003-2 U.S. Tax Cas. (CCH) ¶ 50,675 (6th Cir. 2003), *aff'g in part and rev'g in part*, T.C. Memo. 2001-48**.

The taxpayer complained to a television station about a news report about the taxpayer which the taxpayer felt was false and defamatory. The taxpayer claimed that the report resulted in harassment and embarrassment for the taxpayer and the taxpayer's children. No lawsuit was filed but the station agreed to pay the taxpayer $10,000 in settlement of the dispute. The taxpayer did not include the settlement in taxable income and argued that the settlement was income to the children only. The court noted that the settlement was signed only by the taxpayer, the payment check was made out to the taxpayer only, the television issued a Form 1099-MISC in the taxpayer's name only, and the taxpayer never contacted the station to include the childrens' names on the above documents. The court held that the settlement was taxable only to the taxpayer. **Cotterell v. Comm'r, T.C. Summary Op. 2003-145**.

DEFERRED COMPENSATION. The taxpayer was an 80 percent owner of an S corporation and a C corporation. The S corporation used the accrual method of accounting and a calendar tax year. The C corporation used the cash method of accounting and a fiscal year ending on July 31. The C corporation performed management services for the S corporation and the S corporation claimed a deduction for these services on its annual tax return. However, the S corporation did not actually make any payment but issued a note to the C corporation for the amounts owed. The note was assumed in the later merger of the two companies. The court held that I.R.C. § 404(d) applied to the fees because the fees were deferred compensation for services. The court also held that the S corporation was not entitled to a deduction for the accrued fees because payment was not made within a brief period of time and the services were completed. **Weaver v. Comm'r, 121 T.C. No. 14 (2003)**.

DEPENDENTS. The taxpayers were never married but they produced a child. The mother executed a Form 8332 releasing her claim to the dependency deduction for the child indefinitely. However, after the mother married a third party, the child lived primarily with the mother and the mother claimed the dependency deduction. The father claimed that the Form 8332 was never revoked; therefore, he was entitled to the deduction. The mother argued that I.R.C. § 152(e) did not apply to parents who were never married. The court held that, because the statute expressly applied to parents who lived apart, there was no requirement that the parents be married at any time. The court held that until the Form 8332 was revoked by the mother, the father was entitled to the deduction. **King v. Comm'r, 121 T.C. No. 12 (2003)**.

DISASTER LOSSES. On August 29, 2003, the President determined that certain areas in New York were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of severe storms, tornadoes and flooding that began on July 21, 2003. **FEMA-1486-DR**.

On September 5, 2003, the President determined that certain areas in Indiana were eligible for assistance under the Act as a result of a severe storms, tornadoes and flooding that began on August 26, 2003. **FEMA-1487-DR**. On September 12, 2003, the President determined that certain areas in Vermont were eligible for assistance under the Act as a result of a severe storms and flooding that began on July 21, 2003. **FEMA-1488-DR**. On September 12, 2003, the President determined that certain areas in New Hampshire were eligible for assistance under the Act as a result of a severe storms and flooding that began on August 26, 2003. **FEMA-1489-DR**. On September 18, 2003, the President determined that certain areas in Virginia were eligible for assistance under the Act as a result of Hurricane Isabel that began on September 18, 2003. **FEMA-1491-DR**. On September 19, 2003, the President determined that certain areas in Maryland were eligible for assistance under the Act as a result of Hurricane Isabel that began on September 18, 2003. **FEMA-1492-DR**. On September 20, 2003, the President determined that certain areas in District of Columbia were eligible for assistance under the Act as a result of Hurricane Isabel that began on September 18, 2003. **FEMA-1493-DR**. On September 20, 2003, the President determined that certain areas in Delaware were eligible for assistance under the Act as a result of Hurricane Isabel that began on September 18, 2003. **FEMA-1494-DR**. On September 18, 2003, the President determined that certain areas in North Carolina were eligible for assistance under the Act as a result of Tropical Storm Henri that began on September 15, 2003. **FEMA-1490-DR**. On September 23, 2003, the President determined that certain areas in West Virginia were eligible for assistance under the Act as a result of Hurricane Isabel that began on September 18, 2003. **FEMA-1495-DR**. On September 23, 2003, the President determined that certain areas in Ohio were eligible for assistance under the Act as a result of a severe statewide power outage that began on August 14, 2003. **FEMA-3187-EM**. On September 23, 2003, the President determined that certain areas in New Jersey were eligible for assistance under the Act as a result of a severe statewide power outage that began on August 14, 2003. **FEMA-3188-EM**. On September 23, 2003, the President determined that certain areas in Michigan were eligible for assistance under the Act as a result of a severe statewide power outage that began on August 14, 2003. **FEMA-3189-EM**. Accordingly, taxpayers who sustained losses attributable to the disaster may deduct the losses on their 2002 federal income tax returns.

HOBBY LOSSES. The taxpayers, husband and wife, were employed full time as a physician and real estate manager. The husband entered into a partnership with another physician to breed purebred horned Hereford cattle. The partnership operation was unprofitable and the partnership was dissolved with the taxpayer purchasing the other partner's share of the land. The taxpayer then continued the same business but using a different method of breeding the cattle. The operation employed one ranch manager. The wife maintained the financial and breeding records. The farm property was also used for recreational purposes for the riding of horses maintained on the property. The operation had six years of net losses and the IRS disallowed deductions in excess of income for the operation. The court held that the cattle breeding operation was entered into with an intent to make a profit because (1) the land appreciated in value during the operation of the activity; (2) the taxpayer maintained separate and accurate records sufficient to gauge the progress of the activity and was seeking to build the herd to a level which would produce a profit; (3) the taxpayer and ranch manager had sufficient expertise to operate the activity profitably; (4) the hiring of a full time manager provided substantial involvement by the taxpayer, who consulted with the manager almost daily; (5) the losses were in keeping with the costs of starting a new business; and (6) although the farm was used for recreational purposes, the cattle breeding activity was not part of the recreation. **Burrus v. Comm'r, T.C. Memo. 2003-285**.

LETTER RULINGS. The President on October 1, 2003 signed legislation that reauthorizes IRS user fees through December 31, 2004. **Pub. L. No. 108-89**.

LIMITED LIABILITY COMPANIES. The taxpayer was the sole member of an LLC which owned interests in several S corporations. The taxpayer and spouse created a revocable trust and transferred the LLC to the trust. The IRS ruled that the LLC was still an eligible entity, disregarded as an entity separate from its owner, unless it elects otherwise. The IRS also ruled that the trust is an eligible S corporation shareholder under I.R.C. § 1361(c)(2)(A)(i). **Ltr. Rul. 200339026, June 23, 2003**.

PENSION PLANS. The IRS has released an updated list of entities that have been approved by the Commissioner to serve as a nonbank trustee or custodian for Archer medical savings accounts, custodial accounts of a pension plan qualified under I.R.C. § 401, custodial accounts described in I.R.C. § 403(b)(7), trust or custodial accounts of individual retirement accounts established under I.R.C. §§ 408(a), 408A or 530 and custodial accounts of eligible state deferred compensation plans described in I.R.C. § 457(b). These accounts are tax-exempt if the trustee or custodian is a bank (for Archer MSAs, a bank or insurance company) or an approved nonbank trustee or custodian. **Ann. 2003-54, I.R.B. 2003-40**.

For plans beginning in September 2003, the weighted average is 5.29 percent with the permissible range of 4.76 to 5.82 percent (90 to 120 percent permissible range) and 4.76 to 6.35 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2003-61, I.R.B. 2003-__**.

The taxpayer corporation's ESOP plan was held in a previous case to be not qualified in 1986 under I.R.C. § 401(a) because the annual additions exceeded the I.R.C. § 415(c) limits. The present case involved the issue of whether the plan was qualified in subsequent years. The court held that the plan

continued to be not qualified because the taxpayer had not made any corrective changes from the conditions involved in the previous case. **Clendenen v. Comm'r, 2003-2 U.S. Tax Cas. (CCH) ¶ 50,679 (8th Cir. 2003), *aff'g*, T.C. Memo. 2003-32**.

RETURNS. The IRS has announced the publication on its web site of Form 1040, Schedule C-EZ (2003), Net Profit From Business; Form 1040, Schedule D-1 (2003), Continuation Sheet for Schedule D; Form 1040, Schedule E (2003), Supplemental Loss and Income; Form 1040, Schedule F (2003), Profit or Loss From Farming; Form 1040, Schedule SE (2003), Self-Employment Tax; Form 1040EZ (2003), Income Tax Return for Single and Joint Filers With No Dependents; Form 8160 (2003), Tax Package Information; Form 8160-A (2003), Form 1120/1120-A Tax Package Information; Form 8160-B (2003), Form 1120S Tax Package Postcard; and Form 8160-C (2003), Form 1065 Package Information; Form 1040, Schedule C (2003), Profit or Loss From Business, and instructions; Form 2106-EZ (2003), Unreimbursed Employee Business Expenses; Form 4835 (2003), Farm Rental Income and Expenses; Form 8736 (Rev. October 2003), Application for Automatic Extension of Time To File U.S. Return for a Partnership, REMIC, or for Certain Trusts; Form 8800 (Rev. September 2003), Application for Additional Extension of Time To File U.S. Return for a Partnership, REMIC, or for Certain Trusts. See www.irs.gov/formspubs/index.html. These publications can also be obtained by calling 1-800-TAX-FORM (1-800-829-3676).

TRAVEL EXPENSES. I.R.C. § 274(h) disallows deductions for expenses incurred in connection with conventions, seminars or similar meetings held outside of the "North American Area." The IRS has issued an updated list of the states, possessions and countries included in the "North American Area" for purposes of Section 274(h). **Rev. Rul. 2003-109, I.R.B. 2003-__**.

TRUSTS. The taxpayers owned several nursing homes and personal residences and transferred these properties to three trusts for the benefit of their children. The court found that the taxpayers used the funds in the trusts' bank accounts for personal expenses and otherwise treated the properties the same as before creating the trusts. The court held that the trusts were shams and to be ignored for federal income tax purposes. **Carey v. Comm'r, T.C. Memo. 2003-281**.

NUISANCE

RIGHT-TO-FARM. The defendants had owned and operated a sheep farm for over 10 years when the defendants constructed a 10 acre feedlot on their property large enough to feed 6000 lambs. The feedlot was as close as 160 from the plaintiff's residence. The pasture land on which the feedlot was located had been used for pasturing from 1000-3000 sheep. The plaintiffs complained of flies, smell, dust, and noise and light from the feedlot operation, including during the night after lights were installed at the feedlot. In July 1998, the plaintiffs filed a suit in nuisance to enjoin the operation of the feedlot and to obtain damages for the loss of value of their property, medical costs, clean-up costs and pain and suffering. The defendant argued that Texas Agric. Code § 251.004(a) barred the nuisance action. The trial court jury found that the defendants' feedlot was a nuisance and was negligently operated. The trial court issued an injunction against the feedlot, ordering the feedlot to be dismantled and the area cleaned. The Texas right-to-farm law provided that no suit could be brought after one year after the operation commenced if the operation remained substantially unchanged after the operation was begun. The parties agreed that the feedlot began operation in March 1997, more than one year before the suit was brought. The plaintiffs argued that the conditions which gave rise to the complaint, the dust, flies, lights and noise, did not occur for several months after the operation began, within one year of the suit. The jury had found that the operation had changed, but the date used was the date of the use of the land as pasture in 1996, not the date the feedlot began operation in March 1997. The court held that the use of the wrong date was improper and remanded for new trial on this issue. **Holubec v. Brandenberger, 111 S.W.3d 32 (Texas 2003)**.

PRODUCTS LIABILITY

MEAT. The plaintiffs had become ill from eating meat contaminated with E. coli bacteria at the defendant restaurant which had purchased the meat from the defendant meat processing business. The plaintiffs sued for negligence and the defendants sought a summary judgment on the grounds that the suit was preempted by the Federal Meat Inspection Act. The Act, 21 U.S.C. § 678, has a preemption clause which states: "Requirements within the scope of this chapter with respect to premises, facilities and operations of any establishment at which inspection is provided under subchapter I of this chapter [§§ 601-624], which are in addition to, or different than those made under this chapter may not be imposed by any State ... This chapter shall not preclude any State ... from making requirement [sic] or taking other action, consistent with this chapter, with respect to any other matters regulated under this chapter." The defendants argued that meat contaminated with E. coli was not "adulterated" as defined by the Act and the meat was inspected by the government; therefore, no negligence suit should be allowed for meat which is allowed by the Act. The court held that meat contaminated with E. coli. did meet the definition of adulterated under the Act, which included substances which made the meat unfit for human consumption. The court also pointed to FSIS policy statements which considered E. coli.-contaminated meat to be adulterated unless converted to cooked products. The court

Agricultural Law Press
P.O. Box 50703 Eugene, OR 97405

also held that the meat inspection provisions of the Act did not preempt the negligence suit because the inspection provisions applied only to the processing facilities and not to the product shipped to end users. Therefore, the court held that the Act did not preempt the negligence suit. **Estate of Kriefall v. Sizzler U.S.A. Franchise, Inc., 665 N.W.2d 417 (Wis. Ct. App. 2003)**.

STATE TAXATION

AGRICULTURAL USE. The plaintiff operated two greenhouses on two neighboring parcels of land. The operation consisted of indoor and outdoor growing areas and a retail outlet, although most of the plants were sold at wholesale. The indoor growing facilities used soil from other sources. The property was originally taxed as commercial property but the plaintiff obtained a ruling from the Board of Assessment Appeals that the land was taxable as agricultural land. Under Colo. Const. art. X, § 3(1)(a) and Colo. Rev. Stat. § 39-1-103(5)(a), agricultural land is defined as property used for two years as a farm or ranch. Colo. Rev. Stat. § 39-1-102(1.1) defines agriculture as including horticulture. The BAA had ruled that, because the greenhouses produced horticultural products, the properties were farms. The court noted; however, that Colo. Rev. Stat. § 39-1-102(3.5) requires that the agricultural products "originate from the land's productivity." The court held that the statute phrase was not ambiguous and required some nexus between the land and the horticultural production. The court held that the placement of greenhouse buildings on the land did not create a sufficient nexus between the horticultural production and the land itself. Therefore, the court held that the property was not a farm and was not entitled to be taxed as agricultural property. **Welby Gardens Co. v. Colorado Board of Assessment Appeals, 71 P.3d 992 (Colo. 2003), *aff'g*, 56 P.3d 1121 (Colo. Ct. App. 2002)**.

AGRICULTURAL TAX AND LAW SEMINARS

SEMINAR IN PARADISE

"Farm Income Tax and Estate and Business Planning"

by Dr. Neil E. Harl and Roger A. McEowen

January 5-9, 2004 Waikoloa Beach Marriott Resort, Big Island of Hawaii

Come join us at our "Seminar in Paradise" on the Big Island of Hawaii in January 2004. The seminars are designed to provide a morning of intense learning about the important issues of agricultural tax, estate planning and business planning and afternoons and evenings are free to enjoy the soft island breezes, professional golf courses and the best deep sea fishing.

The seminars run from 8am to Noon each day. The Monday and Tuesday seminars will cover Farm Income Tax; the Wednesday and Thursday seminars will cover Farm Estate Planning; and the Friday seminar will cover Farm Business Planning. The registration fees are $645 for *current subscribers* and $695 *for nonsubscribers*. Nonsubscribers are eligible for the lower fee if they purchase one of our publications before or within 30 days after the seminars.

All Digest subscribers should have received a brochure by now. If you missed your brochure, please contact us.

EARLY REGISTRATION DISCOUNTS EXTENDED. Up to October 31, 2003, early registrants will be able to pay a non-refundable (unless we cancel) deposit of $100 in exchange for a $50 reduction of the registration fee. If you are interested and want more information, call Robert at 541-302-1958 or e-mail at robert@agrilawpress.com.