[7] Prop. Treas. Reg. § 1.1301-1(e)(2)(i).
[8] Prop. Treas. Reg. § 1.1301-1(e)(1)(i).
[9] *Id*.
[10] *Id*.
[11] I.R.C. § 1301(b)(1).
[12] I.R.C. § 63(a).
[13] I.R.C. § 1301(a)(2).
[14] *Id*.
[15] Prop. Treas. Reg. § 1.1301-1(e)(ii), Ex. 3, 4.
[16] I.R.C. § 1211(b)(1).
[17] Prop. Treas. Reg. § 1.1301-1(e)(ii), Ex. 5.
[18] See Prop. Treas. Reg. § 1.1301-1(a)(2).
[19] Prop. Treas. Reg. § 1.1301-1(e)(ii)(A).
[20] *Id*.
[21] *Id*.
[22] *Id*.
[23] *Id*.
[24] Prop. Treas. Reg. § 1301-1(e)(ii)(B).
[25] *Id*.
[26] *Id*.
[27] I.R.C. § 1301(a).
[28] Prop. Treas. Reg. § 1.1301-1(f)(3).
[29] Prop. Treas. Reg. § 1.1301-1(f)(4).
[32] Prop. Treas. Reg. § 1.1301-1(d)(1).
[31] *Id*.
[32] *Id*.
[33] *Id*.
[34] I.R.C. § 68.
[35] *Id*.
[36] *Id*.
[37] *Id*.
[38] *Id*.
[39] *Id*.
[40] Prop. Treas. Reg. § 1.1301-1(f)(3).
[41] *Id*.
[42] See I.R.C. § 1301.
[43] Prop. Treas. Reg. § 1.1301-1(c)(2)(i).
[44] Prop. Treas. Reg. § 1.1301-1(c)(2)(ii).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

CHAPTER 12-*ALM* § 13.03[8].*

On October 9, 1999, President Clinton signed S. 1606, sponsored by Sen. Charles Grassley of Iowa, which extended Chapter 12 bankruptcy through June 30, 2000. Chapter 12 had expired at midnight on September 30 but the new legislation was retroactive to October 1. Legislation has been introduced to make Chapter 12 permanent (S. 260, the "Safeguarding America's Farms Entering the Year 2000 Act," and H.R. l763). **Pub. L. 106-70 (1999)**.

CLAIMS. The debtors filed for Chapter 12 and listed a fertilizer creditor's claim on their schedules as an unsecured claim. The claim was also included in the plan as part of the unsecured claims. The creditor did not participate in the case until filing an objection to the plan eight days after the claims bar date and did not actually file a claim until 160 days after the claims bar date. The debtor sought to disallow the claim, except as provided in the plan, as untimely filed. The creditor argued that (1) the objection to the plan should have been treated as an informal claim filing, allowing the late filing to relate back to the objection date, (2) the claim should be allowed for excusable neglect, and (3) the debtor's listing of the claim on the bankruptcy schedules acted as an informal claim. The court held that (1) even if the objection to the plan operated as an informal claim, the objection was filed after the claims bar date and was untimely; (2) excusable neglect was not allowed under Chapter 12 to allow untimely filed claims; and (3) only the creditor could file an unsecured claim. ***In re*** **Boudinot, 237 B.R. 413 (Bankr. S.D. Ohio 1999)**.

FEDERAL TAX-*ALM* § 13.03[7].*

AUTOMATIC STAY. The debtors filed for Chapter 13 in May 1996 and listed an unsecured IRS claim for $193. The debtors' plan was confirmed in September 1996 without objection. The debtors filed their 1996 tax return in February 1997 and claimed a refund. The IRS imposed a freeze on the debtors' tax account because the debtors were delinquent on their plan payments. The court adopted the holding of some prior cases that, upon confirmation, the estate property revested in the debtors but the estate includes all property acquired by the debtors post-confirmation; thus, the refund was estate property protected by the automatic stay. The court also held that the IRS refusal to pay the refund was a violation of the automatic stay and awarded the debtors $1000 in general damages, $12,000 in attorneys' fees and $7000 in emotion damages. ***In re*** **Holden, 236 B.R. 156 (Bankr. D. Vt. 1999)**.

DISCHARGE. The debtor did not file a tax return for the 1981 tax year and the IRS constructed a substitute return in order to make an assessment of taxes for that year. The debtor did not provide any evidence of filing a return for 1981. The court held that the 1981 taxes were nondischargeable under Section 523(a)(1) because the debtor had not filed a return for that year. ***In re*** **Barber, 236 B.R. 655 (Bankr. N.D. Ind. 1998)**.

POST-PETITION CLAIMS. The debtors filed for Chapter 13 in January 1994 and their plan was confirmed in September 1994. In 1998, when the plan was substantially consummated, the IRS filed a claim for 1994, 1995 and 1996 taxes. The Chapter 13 trustee moved to dismiss the case because it was unfeasible for the debtors to pay the claim. The court held that the tax claim was not entitled to priority status because the claim arose post-petition and did not relate to any pre-petition tax claims; therefore, the claim was not required to be included in the chapter 13 plan. The court denied the trustee's motion to dismiss the plan for unfeasibility. ***In re* Jagours, 236 B.R. 616 (Bankr. E.D. Tex. 1999)**.

TAX LIENS. The debtor was a beneficiary of a spendthrift trust and filed for Chapter 7. The debtor had received a discharge of some taxes but was not discharged for other taxes. The IRS had filed a pre-petition tax lien for several years of tax deficiencies. The issue was whether the tax lien attached to a property interest of the debtor in the spendthrift trust or whether the lien attached only to distributions from the trust when made. The court held that the debtor's right to future distributions was a property right to which the tax lien attached when filed; therefore, the tax lien for both the discharged and nondischarged taxes remained valid against the future distributions from the trust. ***In re* Orr, 180 F.3d 656 (5th Cir. 1999)**.

ENVIRONMENTAL LAW

HOG CONFINEMENT FACILITY. The defendant operated three hog confinement facilities and was cited with violating Iowa Code § 455B.186 for improper spray irrigation of animal wastes and violation of the freeboard standards. The state alleged that the defendant's employees sprayed animal wastes on several fields to the extent that the waste ran off through tile lines into a nearby river. The court first held that the statute called for strict liability and required only proof that the defendant sprayed the animal wastes which ran off the fields. The court held that there was substantial evidence of the source of the run off. The defendant argued that the pollution was excused because the defendant had obtained permits for the hog operations. The court held that the permits did not include the right to violate the pollution statute. The freeboard violations occurred when the waste pool berms overflowed. The statute required that the waste basins have at least two feet of berm above the waste. The defendant argued that the actions of tenants caused the overflow, but the court held that the tenants' actions were within the area of risk when the defendant failed to keep the two feet safety level in the basins. **State ex rel. Miller v. DeCoster, 596 N.W.2d 898 (Iowa 1999)**.

FEDERAL AGRICULTURAL PROGRAMS

CONSERVATION RESERVE. The plaintiff had enrolled land in the Conservation Reserve Program (CRP), based upon one sweet clover crop in 1984 and the stated intent that barley was to be planted in 1986. The local COC approved the enrollment because the plaintiff had established a rotation practice on the enrolled land. In 1991, the Office of Inspector General reviewed the state CRP contracts and determined that the plaintiff's contract was improperly granted in that the plaintiff had not planted two program crops on the land during 1981 through 1985. The plaintiff's CRP contract was canceled, although the plaintiff was allowed to keep the payments already made. The plaintiff argued that (1) the CRP contract approval was not reviewable by the OIG, (2) there was no statutory authority for cancellation of a CRP contract, and (3) it was inequitable for the USDA to cancel the contract. The court held that 7 U.S.C. § 1385 prevented review of the CRP contract only by courts and did not prevent review within the USDA. The court also held that 7 C.F.R. § 704.23 allowed the cancellation of CRP contracts. The court denied the plaintiff's equity argument, noting that the plaintiff failed to plant the barley crop in 1986 and was aware of the 1981-1985 crop requirements for the CRP contract. **Strong v. Glickman, 50 F. Supp.2d 1 (D. D.C. 1999)**.

EGGS. The **AMS** has issued interim regulations amending the voluntary shell egg grading program by adding a definition of the term "ambient temperature," by amending the refrigeration requirements, and by adding a labeling requirement. **64 Fed. Reg. 56945 (Oct. 22, 1999)**.

MEAT AND POULTRY INSPECTION. The Food Safety and Inspection Service issued a notice to advise interested persons of a change in the application of the requirements for inspection under the Federal Meat Inspection Act and the Poultry Products Inspection Act. In *Original Honey Baked Ham Company of Georgia, Inc. v. Glickman, et al., 172 F.3d 885 (D.C. Cir. 1999)*, the court decided that retail stores exempt from federal inspection requirements do not become subject to those requirements when they supply their own kiosks with cooked hams and cooked turkeys that the retail stores have sliced, glazed, and packaged. As a result, inspection under the FMIA or the PPIA is not required if an otherwise exempt retail store transports products such as these to additional locations before it sells them to consumers. The FSIS is considering new regulations in this area. **64 Fed. Reg. 55694 (Oct. 14, 1999)**.

PACKERS AND STOCKYARD ACT. Two livestock dealers purchased performance bonds from the plaintiff insurance company in order to meet the requirements of the Packers and Stockyards Act. The plaintiff issued the bonds without knowing that some of the signatures for the bond agreements were forged. The defendants were livestock producers who sold hogs to the dealers but who did not receive payment. The producers sought to recover payment from the plaintiff based upon the bonds. The plaintiff then discovered the forgery of the signatures and rescinded the bond policies. The plaintiff sought a declaratory judgment that the bonds were void ab initio and the plaintiff had no liability under the bonds. The first issue resolved by the court was that the PSA did not preempt state law governing bond liability because federal law had no express or implied preemption and the Georgia law did not conflict with the federal law. The court also ruled that state surety law, and not insurance law, applied to the case. The court held that, under Georgia law, a surety was liable under a bond if a principal commits fraud in obtaining the bond so long as the creditor does not participate in the fraud. Therefore, the court held that the plaintiff remained liable on the bond even though the bond agreement contained forged signatures.

American Mfg. Mut. Ins. Co. v. Tison Hog Market, 182 F.3d 1284 (11th Cir. 1999).

PERISHABLE AGRICULTURAL COMMODITIES ACT. The plaintiff was a PACA-licensed produce seller which was found to have failed to pay 19 producers for 86 lots of produce within 10 days after delivery. A subsequent investigation determined that, although the plaintiff had paid for most of the 86 lots, the plaintiff's total unpaid producers had increased to 25 and to 125 unpaid-for lots of produce. The ALJ and JO ruled that the plaintiff had committed willful, repeated and flagrant violations of the prompt payment requirement of PACA and had revoked the plaintiff's license. The plaintiff argued that the penalty was too harsh in that (1) the 10 days time limit for payments was too restrictive, (2) the ALJ and JO failed to consider mitigating factors, and (3) the ALJ and JO failed to consider a fine as a penalty instead of revocation. The plaintiff also argued that the ALJ's and JO's rulings were arbitrary and capricious because the violations were not willful, repeated and flagrant and because the USDA had not investigated other buyers. The court held that (1) the 10 day payment requirement was set by statute and could not be changed by judicial decision, (2) the plaintiff was not eligible for mitigation of the penalty because the plaintiff's number and amount of unpaid shipments increased over the period of the investigation, and (3) the ALJ's and JO's sanction were supported by the evidence and statute. The court also held that the rulings were not arbitrary and capricious in that (1) selective enforcement was not sufficient grounds to invalidate the sanction imposed, (2) the failure to make timely payments for a period of two years and 10 months demonstrated repeated violations, (3) the failure to make the payments was willful in that the number of unpaid shipments showed a careless disregard for the PACA timely payment requirements, and (4) the large number of violations showed that the plaintiff's actions were flagrant. **Allred's Produce v. USDA, 178 F.3d 743 (5th Cir. 1999)**.

TOBACCO. A large tobacco farm was sold in three parcels, with the plaintiff purchasing one 65 acre parcel. The original farm had a tobacco quota allotment and the plaintiff sought to have a portion of that allotment allocated to the 65 acres. The FSA determined that the proper allocation method was the "cropland" method of 7 C.F.R. § 718.205(f)(1), under which the tobacco quota would be allocated according to the ratio of cropland in the original property to the cropland in the separate property. The FSA determined that the plaintiff's parcel contained no cropland in that no crops had been planted on the property during the past three years. The evidence showed, however, that much of the property had been planted in the 1960s to other crops. Under 7 C.F.R. § 718.2, cropland is defined as land which had been planted in a "prior year." The FSA argued that the three year period used in the historical allocation method of 7 C.F.R. § 719.205(g) should apply to determine the extent of the "prior year" requirement for the cropland allocation method. The court held that a three year limitation on the term "prior year" was not supported by statutory or regulatory authority and held that the FSA should have allocated a portion of the tobacco allotment to the plaintiff's land. **Owens v. USDA, 45 F. Supp. 2d 509 (W.D. Va. 1998)**.

TUBERCULOSIS. The APHIS has issued interim regulations concerning the interstate movement of cattle and bison by raising the designations of California, Pennsylvania, and Puerto Rico from modified accredited states to accredited-free states. **64 Fed. Reg. 56399 (Oct. 20, 1999)**.

FEDERAL ESTATE AND GIFT TAX

JURISDICTION. The decedent's estate had entered into an agreement with the IRS that the decedent's gross and taxable estate exceeded $4 million and the IRS had alleged that the decedent's net worth on the date of death was at least $2.28 million. The court held that it had no jurisdiction over a case involving the abatement of interest. The estate argued that the decedent's net worth should have been determined on another date for purposes of jurisdiction, but the court held that the statute and regulations were clear that the date of the decedent's death was used to determine net worth for jurisdiction purposes. **Estate of Kunze v. Comm'r, T.C. Memo. 1999-344**.

LIFE INSURANCE. The taxpayers were two sisters. The first sister purchased life insurance on her parents and paid the first annual premium. The first sister let the policy lapse by not paying the second premium. The sisters then decided to purchase the policy together, with each paying half of the premiums. The taxpayers applied for reinstatement of the policy and the policy was reinstated. The IRS ruled that the policy was not transferred to the second sister for consideration because the policy was either (1) transferred to the second sister as a gift since the second sister did not make any payments to the first sister for the reinstated policy or (2) the reinstated policy was a new policy. **Ltr. Rul. 9940028, July 13, 1999**.

SPECIAL USE VALUATION. The taxpayers had received interests in farm land for which a special use valuation election was properly taken. The taxpayers decided to sell the land to third parties within 10 years after receiving the land from the decedent's estate and were liable for recapture of the special use valuation tax benefits. The state also had an inheritance tax which followed the federal special use valuation credit and provided for recapture of state special use valuation benefits. The taxpayers sought a ruling as to whether the estate was eligible for an increase in the state inheritance tax credit. The IRS ruled that the credit for state inheritance taxes would be increased because the amount of state inheritance taxes actually paid would increase from the recapture of federal special use valuation benefits. **Ltr. Rul. 9940005, June 2, 1999**.

FEDERAL INCOME TAXATION

BAD DEBTS. The taxpayers, husband and wife, made advances to the wife's son over several years for business and personal expenses. During this time, the taxpayers did not execute any loan documents or require collateral for the advances. The evidence also showed that the son was in financial difficulty and the taxpayers had little hope of repayment. The court upheld the IRS disallowance of the bad debt deduction, holding that the advances were made with compassion and generosity but not part of a creditor-debtor relationship. **Kidder v. Comm'r, T.C. Memo. 1999-345**.

BUSINESS EXPENSES. The taxpayer was an independent truck driver who deducted expenses for various truck operating expenses, a home office, insurance and legal fees. The IRS disallowed a portion of the expenses for lack of substantiation. The taxpayer offered no additional records to prove the disallowed amounts and the court upheld the IRS determination. **Moylan v. Comm'r, T.C. Memo. 1999-338**.

CHARITABLE DEDUCTION. The IRS has issued proposed regulations governing the character of certain distributions from a charitable remainder trust. In these transactions, a taxpayer typically contributes highly appreciated assets to a charitable remainder trust having a relatively short term and relatively high payout rate. Rather than sell the assets to obtain cash to pay the annuity or unitrust amount to the beneficiary, the trustee borrows money, enters into a forward sale of the assets, or engages in some similar transaction. Because the borrowing, forward sale, or other similar transaction does not result in current income to the trust, the parties attempt to characterize the distribution of cash to the beneficiary as a tax-free return of corpus under I.R.C. § 664(b)(4). Distributions may continue to be funded in this manner for the duration of the trust term. The appreciated assets may be sold and the transaction closed out in the last year of the trust, or the trustee may distribute the appreciated assets, subject to a contractual obligation to complete the transaction, to the charitable beneficiary. The proposed regulations provide that, to the extent that a distribution of the annuity or unitrust amount from a charitable remainder trust is not characterized in the hands of the recipient as income from the categories described in I.R.C. § 664(b)(1), (2), or (3) (determined without regard to the rules in the proposed regulations) and was made from an amount received by the trust that was neither a return of basis in any asset sold by the trust (determined without regard to the rules in the proposed regulations) nor attributable to a contribution of cash to the trust with respect to which a deduction was allowable under I.R.C. §§ 170, 2055, 2106, or 2522, the trust will be treated as having sold, in the year for which the distribution is due, a pro rata portion of the trust assets. The proposed regulations provide that any transaction that has the purpose or effect of circumventing this rule will be disregarded. For example, a return of basis in an asset sold by a charitable remainder trust does not include basis in an asset purchased by the charitable remainder trust from the proceeds of a borrowing secured by previously contributed assets. **64 Fed. Reg. 56718 (Oct. 21, 1999), adding Prop. Treas. Reg. § 1.643(a)-8**.

CONSTRUCTIVE RECEIPT. The taxpayer had filed a personal injury suit and received an award of damages plus interest. During the suit, the taxpayer's spouse filed for divorce and had a guardian ad litem appointed for the taxpayer. As part of the divorce, the spouse was awarded a portion of the lawsuit award and the award was required to be placed in an escrow account. The award was received by the taxpayer in one tax year and placed in the escrow account. The escrow account was distributed to the taxpayer in the following tax year. The court held that the taxpayer received the award proceeds in the first tax year because the escrow account restriction involved only the distribution of the proceeds and not the taxpayer's legal entitlement to the proceeds. **Sullivan v. Comm'r, T.C. Memo. 1999-341**.

DISASTER PAYMENTS. The President on Sept. 22, 1999, determined that certain areas in Pennsylvania are eligible for assistance from the federal government under the Disaster Relief and Emergency Assistance Act as a result of severe flash flooding associated with Tropical Depression Dennis beginning on Sept. 6, 1999. Accordingly, a taxpayer who sustained a loss attributable to the disaster occurring in the following counties may deduct the loss on his or her 1998 federal income tax return: Dauphin, Lycoming, Northumberland, Snyder and Union. **FEMA-1298-DR**.

MILEAGE DEDUCTION. **CORRECTION**: The standard mileage rate for **2000** (the previous issue had listed this as 1999) is 32.5 cents per mile for business use, 14 cents per mile for charitable use and 10 cents per mile for medical and moving expense purposes. **Rev. Proc. 99-38, I.R.B. 1999-43**.

PARTNERSHIPS-*ALM* § 7.03.*

ALLOCATION OF PARTNERSHIP ITEMS. The taxpayers, both individuals, were each 50 percent partners in a general partnership. The partnership borrowed money from a bank and used the borrowed and contributed funds to purchase nondepreciable property. The fair market value of the property fell $4,000, the bank reduced the principal amount of the loan by $2,000, and the first partner contributed an additional $500 to the partnership. The first partner's capital account was credited with the $500, which the partnership used to pay currently deductible expenses incurred in connection with the workout. All $500 of the currently deductible workout expenses were allocated to the first partner. The second partner made no additional contribution of capital. At the time of the workout, the second partner was insolvent within the meaning of I.R.C. § 108(a). The taxpayers agreed that, after the workout, the first partner would have a 60 percent interest and the second partner would have a 40 percent interest in the profits and losses of the partnership. The taxpayers amended the partnership agreement to make two special allocations: (1) the entire $2,000 of COD income was allocated to the second partner who was insolvent and eligible to exclude the COD from income, and (2) the partnership allocated the book loss from the revaluation $1,000 to the first partner and $3,000 to the second partner. The allocation of book loss resulted in reducing both capital accounts to zero. Thus, the cumulative effect of the special allocations was to reduce each partner's capital account to zero immediately following the allocations despite the fact that the second partner was allocated $2,000 of COD income for tax purposes. The IRS ruled that the allocations would be disregarded to the extent the allocations varied from the partners' interests in the partnership because the economic effect of the allocations did not differ from the economic effect which would have been produced by allocating the items in accordance with the partners' interests in the partnership. **Rev. Rul. 99-43, I.R.B. 1999-__**.

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PENSION PLANS. The IRS has issued the cost-of-living adjustments (COLAs) applicable to dollar limitations on benefits under qualified retirement plans and to other provisions affecting such plans that take effect on Jan. 1, 2000. **IR-1999-80**.

RETURNS. The IRS has issued the following revised forms: Form 1040, Schedule C (1999), Profit or Loss From Business, and instructions; Form 1040, Schedule E (1999), Supplemental Income and Loss, and instructions; Form 1040A or Form 1040, Schedule EIC (1999), Earned Income Credit; Form 1040, Schedule F (1999), Profit or Loss From Farming, and instructions; Form 1040, Schedule J (1999), Farm Income Averaging, and instructions; Form 1040, Schedule SE (1999), Self- Employment Tax; Form 1040A (1999), U.S. Individual Income Tax Return; Form 1040EZ (1999). These documents are available at no charge and can be obtained either (1) by calling the IRS's toll-free telephone number, 1-800-829-3676; (2) via the internet at http://www.irs.gov/prod/cover.html; (3) through FedWorld on the internet; or (4) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

SELF-EMPLOYMENT INCOME. Oral arguments in the appeal of *Wuebker v. Comm'r, 110 T.C. No. 31 (1999)*, before the Sixth Circuit Court of Appeals have been set for December 12, 1999. See Harl, "SE Tax on CRP Payments," 9 *Agric. Law Dig*. 98 (1998).

SOCIAL SECURITY TAX-*ALM* § 4.06.* Beginning with the January 2, 2000 payment, the monthly social security benefit payments will increase 2.4 percent to a maximum of $512 for an individual and $769 for a couple. The maximum amount of annual wages subject to Old Age Survivors and Disability Insurance for 2000 is $76,200, with **all** wages and self-employment income subject to the medicare portion of the tax. For 2000, the maximum amount of annual earnings before reduction of benefits is $17,000 for persons aged 65 through 69 and $10,080 for persons under age 65. The amount of wages necessary for one quarter of coverage is $780.

PRODUCT LIABILITY

HERBICIDE. The plaintiff was a rice farmer who applied to a crop a herbicide manufactured by the defendant. The plaintiff claimed that the herbicide did not perform as specified on the label and from the oral representations made by the defendant's sales personnel. The defendant argued that the plaintiff's claims were preempted by FIFRA because all the claims were based on information contained on the label. The defendant also argued that the oral representations were not actionable because the representations did not include information not found on the label. The plaintiff attempted to distinguish the claim as not pertaining to the labels but to the performance of the herbicide. The court held that the plaintiff's claims were preempted by FIFRA because the claims were derived from the label information and the oral statements did not exceed the information on the label. **Andrus v. Agrevo USA Co., 178 F.3d 395 (5th Cir. 1999)**.

PROPERTY

DRAINAGE. The plaintiff operated a sod farm neighboring the defendant's farm. The defendant's farm had drainage ditches which captured excess irrigation water from other farms. The overflow from these ditches passed through natural drainage onto the plaintiff's property and caused flooding occasionally. The plaintiff sued in negligence and trespass for damages caused by the flooding. The court held that (1) an upstream drainage property owner had a natural easement for drainage of surface water on to a downstream property; (2) an upstream owner could alter the natural drainage conditions so long as the flow of water did not do more harm to the downstream property than before the alteration, and (3) excess irrigation water was included in the definition of surface water; therefore, the defendant upstream owner had a natural. easement for the drainage of that water onto the plaintiff's downstream property so long as the defendant was not negligent in altering the drainage of the water. The court found that the defendant had not negligently maintained the ditches nor increased the flow of water on to the plaintiff's property beyond the natural drainage amount. **Bittersweet Farms, Inc. v. Zimbelman, 976 P.2d 326 (Colo. Ct. App. 1998)**.

STATE TAXATION

AGRICULTURAL USE. In 1989, the taxpayer purchased rural land which had been severely overgrazed. The taxpayer enrolled the land in a soil conservation plan with the local soil conservation district. Because of the enrollment in the conservation plan, the land was taxed as agricultural land, even though the land was located within a subdivision. In 1997, the county assessor withdrew the agricultural use status for property tax valuation, reasoning that eight years was enough time to replenish the soil and that the taxpayer had no intent to return the land to actual agricultural use. The taxpayer argued that the land was entitled to agricultural use valuation for tax purposes merely because the soil conservation plan was still in place. The court found no statutory basis for the taxpayer's argument and upheld the county assessor's ruling as based on substantial facts and evidence. **Johnston v. Park Cty. Bd. Of Equalization, 979 P.2d 578 (Colo. Ct. App. 1999)**.

CITATION UPDATES

Gitlitz v. United States, 182 F.3d 1143 (10th Cir. 1999), *aff'g sub nom.*, Winn v. Comm'r, T.C. Memo. 1998-71, *withdrawing* T.C. Memo. 1997-286 (discharge of indebtedness by S corporation) see p. 110 *supra*.

Heinold v. Siecke, 598 N.W.2d 58 (Neb. 1999) (emblements) see p. 135 *supra*.

***In re* Kerr, 237 B.R. 488 (W.D. Wash. 1999)** (sale of residence in bankruptcy) see p. 44 *supra*.

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