Apparently, the Farm Service Agency has not exercised its waiver authority nor has FSA requested waiver of any "class of claims" from the Secretary of the Treasury."[19]

Other provisions

The Debt Collection Improvement Act of 1996[20] contained other provisions of interest.

• The head of a federal agency that administers a program which gives rise to a delinquent non-tax debt may "garnish the disposable pay of the individual to collect the amount owed, if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual.'[21] The amount garnished may not exceed 15 percent of disposable pay unless a greater percentage is agreed to in writing by the individual.[22]

• An agency head may, "for the purpose of collecting any delinquent non-tax debt owed by any person, *publish or otherwise publicly disseminate* information regarding the identity of the person and the existence of the non-tax debt."[23]

In conclusion

The 1996 legislation poses a serious economic threat to farmers who are burdened by low commodity prices. Ironically, responsibility for the low commodity prices lies with the Federal Agriculture Improvement and Reform Act of 1996[24] which was signed into law 22 days before the Debt Collection Improvement Act of 1996.[25]

FOOTNOTES

1 See Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321-365 (1996), enacted as Ch. 10 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996.

2 *Id.*

3 See generally, 11 Harl, *Agricultural Law* § 91A.01[2] (1999).

4 Notice LP-1729, Farm Service Agency, U.S. Department of Agriculture, March 24, 2000.

5 See note 1 *supra*.

6 See 31 U.S.C. § 3720B.

7 *Id.*

8 *Id.*

9 Notice LP-1729, March 24, 2000.

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

14 See ns. 6-7 *supra*.

15 See ns. 6-7 *supra*.

16 31 U.S.C. § 3720B(a).

17 31 U.S.C. § 3720B(b).

18 31 U.S.C. § 3720B(a).

19 31 U.S.C. § 3720B.

20 See n. 1 *supra*.

21 31 U.S.C. § 3720D(a).

22 31 U.S.C. § 3720D(b)(1).

23 31 U.S.C. § 3720E(a) (emphasis added).

24 Pub. L. No. 104-127, 110 Stat. 888 (1996), codified at 7 U.S.C. §§ 7201 *et seq.*

25 See n. 1 *supra*.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

CRUELTY TO ANIMALS. The defendant was convicted by jury trial of cruelty to animals. The defendant owned general and limited partnership interests in a family partnership which operated a cattle ranch. The taxpayer did not live on the ranch and the ranch was managed by an employee. The area experienced drought conditions and the charge arose from the defendant's failure to provide adequate supplemental feed. The cattle were inspected several times by sheriff's officers and officers from the local SPCA before the animals were finally seized. The defendant challenged the warrantless entries to inspect and seize the cattle. The court held that the defendant had standing to object to the warrantless searches; however, the court held that the searches and seizure were constitutional because the defendant had no expectation of privacy for open fields. **Westfall v. State, 10 S.W.3d 85 (Tex. Ct. App. 1999)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03[8].*

DISCHARGE. The debtors operated a cattle ranch and had granted a security interest in all livestock and after-acquired livestock to a creditor as collateral for a loan. The debtors made an annual interest payment on the loan but had sold most of the cattle without making any principal payments. The creditor obtained a judgment for the loan principal to the extent the creditor did not recover collateral. The court found that the creditor had expected some cattle sales and that the proceeds would be used to make interest payments, but that the creditor had not consented to the sale of collateral without application of the proceeds against the principal. The court held that the debtors had willfully and maliciously sold the collateral, causing loss to the creditor of the difference between the proceeds of the cattle sales and the amount paid for interest on the loan; therefore, the

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court held the judgment claim was nondischargeable to the extent of the proceeds of the cattle sold less the amount paid as interest on the loan. In addition, the conversion of the cattle collateral was held sufficient to deny the debtors a discharge in the case under Section 727(a)(2) for the transfer of property with the intent to hinder, delay or defraud the creditor and/or under Section 727(a)(5) for failing to satisfactorily explain the use of the cattle proceeds which were not paid as interest on the loan. ***In re* Gresham, 245 B.R. 65 (Bankr. N.D. Tex. 2000)**.

CHAPTER 13-*ALM* § 13.03.*

DISPOSABLE INCOME. The Chapter 13 plan provided for a 30 percent payment to unsecured creditors and $400 per month contribution to the debtor's retirement fund. The parties agreed that $100 of this contribution was required by the debtor's employment, but the trustee objected to confirmation of the plan because the additional $300 voluntary contribution was disposable income. The court agreed with the trustee and held that the voluntary contributions to the debtor's retirement plan was disposable income; therefore, the plan could not be confirmed unless the debtor included the $300 in the payments to unsecured creditors. ***In re* Hansen, 244 B.R. 799 (Bankr. N.D. Ill. 2000)**.

FEDERAL TAX-*ALM* § 13.03[7].*

DISCHARGE. The debtor failed to file returns or pay taxes for 1981-1987 because the debtor adopted the beliefs of a tax protestor group that taxes were illegal. The debtor plead guilty to the charge of failing to file a return in exchange for the dropping of the same charge for the other years. The court held that the taxes for 1981-1987 were nondischargeable under Section 523(a)(1)(C). ***In re* Berning, 244 B.R. 96 (Bankr. N.D. Ohio 1999)**.

The debtor filed to file returns and pay taxes for several tax years. The debtor had allowed some taxes to be withheld from wages but the debtor had filed false W-4 forms with excessive declared dependents. The debtor had some contact with a tax protestor organization but was not a member. The court held that the taxes were nondischargeable under Section 523(a)(1)(C). ***In re* Blakeman, 244 B.R. 100 (Bankr. N.D. Ohio 1999)**.

The debtors had successfully operated a business as a sole proprietorship and Subchapter S corporation for several years. When the business encountered financial difficulties, the debtors stopped filing returns and paying taxes. After several years, the debtor filed late returns only because the debtors needed tax returns in order to obtain a home mortgage loan. The accountant who filed the returns was not given complete information with which to file the returns and no taxes were paid. The court held that the debtors knew about their duty to file returns and pay taxes and willfully failed to fulfill that duty; therefore, the taxes were nondischargeable. ***In re* Crawley, 244 B.R. 121 (Bankr. N.D. Ill. 2000)**.

The debtor initially failed to file returns and pay taxes for 1982-1987. The debtor cooperated with the IRS during an audit to determine the taxes owed but failed to pay the taxes after the assessment and transferred all income-producing assets to the debtor's spouse when the IRS filed levies against the property. The court held that the taxes were nondischargeable under Section 523(a)(1)(C) for the debtor's willful attempt to evade taxes. ***In re* Carnes, 244 B.R. 435 (Bankr. W.D. Mo. 2000)**.

IRA. The debtor owned an interest in an IRA which was included in the bankruptcy estate to the extent the IRA was not exempt. The Bankruptcy Court issued an order that the nonexempt funds were to be paid to the bankruptcy trustee and reported under the estate employer identification number so that the income tax consequences of the distribution would be charged to the estate. The IRA custodian referred the matter to its legal counsel and determined that it must pay the funds to the debtor and report the distribution under the debtor's social security number. The custodian argued that it was required to make distributions only to the debtor and report such distributions only under the debtor's taxpayer number. The court held that, because the IRA nonexempt funds became part of the bankruptcy estate prior to the distribution, the correct owner was the estate and that the distribution should have been made under the estate's taxpayer number. The court held that the custodian deliberately ignored the original court order and several other options which could have avoided the current issue; therefore, the court held that the custodian was liable for sanctions, to be determined by the court. The IRS did not participate in the case. ***In re* Vogt, 245 B.R. 53 (Bankr. E.D. Va. 2000)**.

TAX LIENS. The U.S. Supreme Court has denied a petition for review in the following case. 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)**.

FEDERAL AGRICULTURAL PROGRAMS

ADVERTISING ASSESSMENTS. The USDA has been granted a stay pending appeal of the following case. The plaintiff was a mushroom grower assessed funds for the advertising of mushrooms as required under the Mushroom Promotion, Research and Consumer Information Act, 7 U.S.C. § 6101 *et seq*. The plaintiff argued that the assessment violated the First Amendment of the U.S. Constitution in that it required the plaintiff to participate in the advertisements which the plaintiff saw as against the plaintiff's interest. The court interpreted *Glickman v.*

Wileman Bros. & Elliott, Inc., 521 U.S. 457 (1997) as upholding the constitutionality of advertising assessments only where the industry was completely regulated as was the fruit tree industry in *Wileman*. Because the mushroom industry was not completely regulated, the assessments for compelled commercial speech violated the plaintiff's First Amendment right to not participate in the commercial speech in the advertisements. *United Foods, Inc. v. United States, 197 F.3d 221 (6th Cir. 1999).* **AMS News Release No. 120-00**.

PERISHABLE AGRICULTURAL COMMODITIES ACT-*ALM* § 9.05.* The AMS has adopted as final regulations under PACA which provide that a Limited Liability Company (LLC) is a legal entity under PACA and that members of an LLC and/or any other person authorized by the members to conduct business on behalf of an LLC are considered "responsibly connected" with the LLC. An LLC will be required to provide information about its members and organization in order to receive a PACA license. **65 Fed. Reg. 24853 (April 28, 2000)**.

The plaintiff sold produce to the defendants who later filed for bankruptcy. The plaintiff sought payment for the produce from the PACA trust fund. The defendants were a corporation which developed, owned and operated restaurants and a subsidiary corporation which operated its own restaurants. Both defendants argued that they were not dealers in produce, under 7 U.S.C. § 499a(b)(6), subject to PACA. The court noted that the statute was unambiguous and included retailers with purchases of commodities over $230,000 per year. The facts demonstrated that the defendants purchased the produce from a wholesaler, the plaintiff, for use in the restaurants and both defendants had annual purchases of commodities exceeding $230,000. The defendants argued that they were not retailers but were consumers of the produce. The court held that the defendants were subject to PACA as retailers because the defendants enhanced the produce by cooking and other preparation for serving to customers. The appellate court affirmed the original Bankruptcy Court decision that the defedants were subject to PACA as dealers. **Matter of Magic Restaurants, Inc., 205 F.3d 108 (3d Cir. 2000), rev'g *urep. D. Ct. dec.*, *rev'g* 204 B.R. 862 (Bankr. D. Del. 1997).** See also Matter of Magic Restaurants, Inc., 197 B.R. 455 (Bankr. D. Del. 1996), *app. denied*, 202 B.R. 24 (D. Del. 1996).

FEDERAL ESTATE AND GIFT TAX

DUTY OF CONSISTENCY. The decedent was predeceased by a spouse. The predeceased spouse's will bequeathed property in trust to the decedent for which the predeceased spouse's estate claimed a marital deduction and which was included on the estate tax return as a qualified marital trust. However, the return had the "no" box marked for the marital deduction for qualified terminable interest property. The decedent's estate return did not include the trust property in the gross estate and the return included a statement that the trust property was excluded because no QTIP election was made on the predeceased spouse's return. The statute of limitation had expired on the predeceased spouse's return. The court held that the duty of consistency applied to require the decedent's estate to include the trust property because the trust property was included in the marital deduction taken by the predeceased spouse's estate. The appellate court affirmed in an opinion designated as not for publication. **Estate of Letts v. Comm'r, 2000-1 U.S. Tax. Cas. (CCH) ¶ 60,374 (11th Cir. 2000), *aff'g*, 109 T.C. 209 (1997)**.

GIFT. The taxpayer had assisted in the financial affairs of the taxpayer's parents, including the settling of the father's estate. The taxpayer had also provided some assistance to the mother but the services had ended by the time of the tax year involved. The taxpayer was a co-owner of a joint bank account with the father and mother and made withdrawals from the account in several years, including $81,000 in 1994, the tax year involved in this case. In the early years, the withdrawals were included in the taxpayer's gross income and Form 1099-MISC was issued for those amounts. However, in 1994 a Form 1099-MISC was issued but the amount was not reported as income by the taxpayer. The Form 1099 was issued by the mother's accounting firm, although the firm did not have any knowledge of any services performed by the taxpayer for the mother in 1994. The form was issued only because such forms were issued in the past for withdrawals by the taxpayer. The court found that the taxpayer did not perform any services for the mother and that the mother allowed the withdrawals as gifts; therefore, the court held that the $81,000 was not taxable as wages for income or social security tax purposes. **Kropp v. Comm'r, T.C. Memo. 2000-148**.

JURISDICTION. The IRS had filed notices of deficiency with the decedent for assessed income taxes. After the decedent's death, the estate filed its estate tax returns but did not include any deduction for the pending assessed income taxes. The statute of limitations had passed on claiming refunds for the estate tax returns when the income tax was finally determined. The estate filed for review in the Tax Court and sought offset of the income taxes assessed by the amount of refund of estate tax, resulting from a deduction for the income taxes, which would be available if the statute of limitations had not run. The parties agreed that the doctrine of equitable recoupment would apply if the case was brought in the District Court but the IRS argued that the Tax Court had no authority to grant equitable relief. The Tax Court held that it had the authority to apply the equitable recoupment doctrine because (1) it had jurisdiction over the controversy and could apply equitable principles in resolving the case, and (2) the estate would not have full access to the equitable recoupment doctrine if required to file in District Court. **Estate of Orenstein v. Comm'r, T.C. Memo. 2000-150**.

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FEDERAL INCOME TAXATION

PROPOSED LEGISLATION. Legislation has been introduced in the U.S. Senate which includes (1) provisions for farm and ranch risk management accounts (FARRM accounts); (2) exclusion of gain from the sale of qualified farm property; (3) amendment of I.R.C. § 1402(a)(1) to avoid the "Mizell" holding by removing "an arrangement" and substitution "a lease agreement;" (4) treating CRP payments as payments from rental of real estate for purposes of I.R.C. § 1402(a)(1); (5) exemption of small issue agriculture bonds from the state volume cap; (6) exclusion from income of capital gain realized from transfer of farm property in partial or complete satisfaction of qualified farm indebtedness; (7) increase of amount excludible from income from discharge of farm indebtedness of solvent farmers; (8) a 10-year carryback of farm net operating losses; (9) allowing cash renting of special use farm property to qualified heirs for a qualified use; and (10) removal of the farm income averaging from increasing alternative minimum tax. **Sen. 2422**.

ACCOUNTING METHOD. The IRS has announced that the IRS will except a qualifying taxpayer with average annual gross receipts of $1,000,000 or less from the requirements to account for inventories and to use an accrual method of accounting for purchases and sales of merchandise. The IRS also provided the procedures by which a qualifying taxpayer may obtain automatic consent to change to the cash receipts and disbursements method of accounting. **Rev. Proc. 2000-22, I.R.B. 2000-__**.

C CORPORATIONS-*ALM* § 7.02.*

ACCOUNTING METHOD. The taxpayer was a medical professional corporation which provided chemotherapy services. The staff physicians examined patients and prescribed the chemotherapy for the patients' conditions. The taxpayers provided pharmacy services for drugs which were not administered at the clinics but were part of the chemotherapy regimen as well as the drugs which were used at the clinic. The IRS argued that the taxpayers were required to maintain inventories of the drugs as merchandise. The court held that the drugs were not merchandise but were part of the medical services offered by the taxpayers; therefore, the taxpayers were not required to use the accrual method of accounting. **Osteopathic Medical Oncology and Hematology, P.C v. Comm'r, 113 T.C. No. 26 (2000)**. The IRS has announced that it has acquiecsed in result to the holding of this case. **IRPO ¶ 51,255**. See also *Mid-Del Therapeutic Center, Inc. v. Comm'r, T.C. Memo. 2000-130, see p. 69 supra*.

DISASTER PAYMENTS. On April 10, 2000, the president determined that certain areas in the District of Columbia are eligible for assistance under the Act as a result of severe storms on January 25, 2000. **FEMA-1325-DR**. On April 10, 2000, the president determined that certain areas in Maryland are eligible for assistance under the Act as a result of severe storms on January 25, 2000. **FEMA-1324-DR**. On April 7, 2000, the president determined that certain areas in Texas are eligible for assistance under the Act as a result of severe storms, tornadoes and flooding on March 28, 2000. **FEMA-1323-DR**. Accordingly, a taxpayer who sustained a loss attributable to the disasters may deduct the loss on his or her 1999 federal income tax return.

In response to the widespread devastation caused by Hurricane Floyd in late 1999, the North Carolina legislature enacted a supplemental payment program which paid owners of homes in flood plains if the amount received for their homes from the federal government was less than the fair market value of a comparable home outside the flood plain. The program required the home owner to purchase another home in the same area and required repayment only if the new home is sold within five years. The IRS ruled that, under its own rulings, such as *Rev. Rul. 98-19, 1998-1 C.B. 840*, the supplemental payments were not included in gross income of the recipients because repayment was within the recipient's control. **CCA Ltr. Rul. 200017040, Feb. 28, 2000**.

The North Carolina legislature also enacted a grant program which provided grants to homeowners who were eligible for Small Business Administration loans to repair their homes. The grants reduced the need to borrow from the SBA. The IRS ruled that the grant payments were not included in gross income but had to be included in calculating the amount of any casualty loss. Thus, if a casualty loss is claimed in one tax year and the grant is received in the next tax year, the grant is included in income under the tax benefit rule. If the taxpayer has a reasonable expectation of receiving the grant in the same tax year as the loss occurred, the loss deduction must be reduced by the grant amount. **CCA Ltr. Rul. 200016019, Feb. 17, 2000)**.

DISCHARGE OF INDEBTEDNESS. The taxpayer had defaulted on a home mortgage loan and the lender had forgiven the loan amount not satisfied by the sale of the home. The IRS assessed discharge of indebtedness income tax against the amount of the loan above the fair market value of the house. The taxpayer was solvent at the time of the discharge and not in bankruptcy. The taxpayer argued that discharge of indebtedness income should not be taxed because the default on the mortgage was caused by the taxpayer's early retirement which was improperly forced upon the taxpayer by the taxpayer's employer. The court held that no exception to taxation of discharge of indebtedness was available for defaults beyond the taxpayer's control; therefore, the taxpayer recognized taxable discharge of indebtedness income. The appellate court affirmed without opinion in a case designated as not for publication. **Johnson v. Comm'r, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,391 (4th Cir. 2000), *aff'g*, T.C. Memo. 1999-162**.

HOBBY LOSSES. The taxpayer raised, bred and trained horses for 12 years. The court reviewed the factors of Treas. Reg. § 1.183-2(b) and held that the activity was not engaged in with the intent to make a profit: (1) the activity was not carried on in a business-like manner because the taxpayer (a) did not seriously investigate the activity's potential for profit, (b) did not formulate a business plan, (c) did not prepare budgets and other financial statements to gauge the profitability of the activity, (d) did not have a separate business bank account, and (e) did not change the business operation to make it more profitable; (2) the taxpayer had no expertise at operating a horse breeding business and did not obtain expert advice on operating the business; (3) the taxpayer did not present evidence that the horses would appreciate in value; (4) the taxpayer had not profitably operated any similar business; (5) the business never made a profit; (6) the activity had substantial losses which did not occur from unforeseen circumstances; (7) the losses offset income from other sources; and (8) the taxpayer received much personal pleasure from the activity. The appellate court affirmed in an opinion designated as not for publication. **Lundquist v. Comm'r, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,377 (11th Cir. 2000), aff'g, T.C. Memo. 1999-83**.

MARKET SEGMENT TRAINING GUIDE. The IRS has announced the publication of a revised Alternative Minimum Tax for Individuals, Market Segment Specialization Program Training Guide (12-1999). The IRS has announced the publication of a revised Garden Supplies Market Segment Specialization Program Training Guide (2-2000).

PARTNERSHIPS-*ALM* § 7.03.*

TAX SHELTER. The taxpayers were limited partners in several oil and gas partnerships. The court held that the taxpayers were properly denied deductions from the partnership because the partnership did not have an intent to make a profit but was formed only for tax benefit purposes. **Balboa Energy Fund 1981 v. Comm'r, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,426 (9th Cir. 2000)**.

PENSION PLANS. For plans beginning in April 2000, the weighted average is 6.03 percent with the permissible range of 5.43 to 6.33 percent (90 to 106 percent permissible range) and 5.43 to 6.64 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2000-25, I.R.B. 2000-17, 954**.

RETURNS. The IRS has announced the release of revised Publication 969 (Revised April 2000), Medical Savings Accounts. The IRS has also released Form 1128 (April 2000), Application to Adopt, Change or Retain a Tax Year. These documents are available at no charge (1) by calling the IRS's toll-free telephone number, 1-800-829-3676; (2) through FedWorld; (3) via the internet at http://www.irs.gov/prod/cover.html; or (4) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

S CORPORATIOS-*ALM* § 7.02[3][c].*

DISCHARGE OF INDEBTEDNESS. Certiorari has been granted for the following case. The taxpayer was a shareholder in an S corporation which was a partner in a joint venture which realized discharge of indebtedness income in 1991. The taxpayer increased the basis of the taxpayer's S corporation stock by the taxpayer's share of the discharge of indebtedness income passed through the S corporation. At the time of the discharge of the indebtedness, the S corporation was insolvent and had net operating losses. The increase in the stock basis enabled the taxpayer to deduct the carried-over losses in a later year. The IRS argued that the discharge of indebtedness income was not an item of income for purposes of determining stock basis because discharge of indebtedness income was excluded under the insolvency exclusion rule of I.R.C. § 108. The Tax Court held that, because the corporation was insolvent, I.R.C. § 108 caused an exclusion of the discharge of indebtedness income at the corporation level which was offset by reduction in tax attributes of the corporation, leaving no tax consequences to flow to the shareholders such as would increase the shareholders' basis in stock. **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**; **Nelson v. Comm'r, 99-2 U.S. Tax Cas. (CCH) ¶ 50,646 (10th Cir. 1999), *aff'g*, 110 T.C. 114 (1998).**

A petition for review by the U.S. Supreme court has been filed for the following case. The taxpayer was the sole shareholder of an S corporation. The corporation realized discharge of indebtedness income (DII) in a bankruptcy case and excluded the income under the bankruptcy exception of I.R.C. § 108(a). The taxpayer increased the basis of the taxpayer's stock by the amount of discharge of indebtedness income realized by the corporation. The court held, as the Tax Court has done since *Nelson v. Comm'r, 110 T.C. 114 (1998)*, that the taxpayer could not pass-through the S corporation's discharge of indebtedness income where the income was excluded from income under one of the Section 108 exceptions. The appellate court agreed that the DII had to be used to offset the other tax attributes, in this case net operating losses, of the corporation. However, the court held that the taxpayer's basis in the corporation was increased by the amount of DII and could be used to offset future losses of the corporation. The court noted that, after the facts in this case, the IRS had issued proposed regulations which adopt the holding in *Nelson*, but the court did not rule on the regulations. **Witzel v. Comm'r, 200 F.3d 496 (7th Cir. 2000), *aff'g in part*, T.C. Memo. 1999-64**.

NEGLIGENCE

IRRIGATION CANAL. The plaintiff was a farmer who owned an alfalfa field adjacent to an irrigation canal owned by the defendant. After a week of heavy rains, the canal broke and water, silt and debris flowed over the plaintiff's field. The plaintiff sued in negligence and received a trial court verdict for damages. The defendant argued that the plaintiff had not established the required duty of care or that the defendant failed in that duty. The defendant argued that the plaintiff had not presented any expert testimony as to the standard of care for maintaining an irrigation canal. The court held that Colo. Stat. § 7-42-108 required irrigation canal owners to maintain the canal in good condition to prevent water from escaping. The court held that the statute established the standard of "ordinary care, such as a man of

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average prudence and intelligence would use, under the circumstances, to protect his own property." The court held that this standard did not require expert testimony. The court also held that the plaintiff provided sufficient evidence of the breach of this duty by testimony of several of the defendant's employees that the defendant was warned about leaks and bank deterioration but the defendant did not repair the problem areas until after the break occurred. **Oliver v. Amity Mutual Irrigation Co., 994 P.2d 495 (Colo. Ct. App. 1999)**.

PRODUCTS LIABILITY

HERBICIDE. The plaintiff was a crop farmer who had purchased a herbicide from the defendant. The plaintiff had used Atrazine and Lasso to control weeds in the plaintiff's corn crops but the defendant had convinced the plaintiff to switch to a new herbicide because the defendant claimed that the herbicide controlled weeds better and was cheaper than Lasso and Atrazine. The herbicide failed to control weeds and the plaintiff sued for loss of crops and profits under the Texas Deceptive Trade Practices Act (DTPA) and for negligent misrepresentations. The defendant was granted summary judgment on three grounds, (1) preemption of the suit by FIFRA, (2) the DTPA did not apply to the rendering of professional services, and (3) the plaintiff failed to provide any evidence of causation. The court held that summary judgment was improperly granted because (1) FIFRA did not preempt the actions because the basis of the action was the representations made by the defendant, not anything on the product label; (2) the transaction was primarily one for the sale of goods and not professional services; and (3) the plaintiff had provided testimony of a neighboring farmer who was experienced in using herbicides on corn. **Cole v. Central Valley Chemicals, Inc., 9 S.W.3d 207 (Tex. Ct. App. 1999)**.

STATE TAXATION

TIMBER YIELD TAX. The plaintiff was a corporation owned by two individuals. The individuals purchased timberland in their individual names and then sold the land to the corporation. The corporation contracted with a third party for the cutting and sale of timber on the land, with a contract price of $215,000. The land had been certified and taxed as forest cropland under the Missouri Forest Croplands Program. The corporation failed to notify the Missouri Conservation Commission (MCC) that the cutting was being done and the MCC learned about the cutting from other parties. The corporation was found to have violated the certification and the MCC issued a certificate of cancellation, assessed additional property taxes and penalties and a yield tax of $12,900, based on the contract price. The notice of cancellation was sent to the two shareholders individually. The corporation argued that the notice was insufficient because it was not sent to the corporation. The court held that the notice was sufficient because the only shareholders and officers were given the notice. The corporation also argued that, because no notice of cancellation was given to the corporation, the corporation was still in the program. The court held that the statute provided for the assessment, penalty and yield tax if timber is cut, not only if certification is cancelled. The corporation argued that the yield tax was too high because there was no evidence of how much timber was actually cut. The court held that the statute required the land owner, upon notice of cancellation, to provide to the MCC a statement of timber removed. Because the corporation did not provide such a statement, the court held that the MCC was reasonable in assuming that the value of the timber cut was the contract price paid, $215,000. **Green Tree Farm, Inc. v. Director of Revenue, 10 S.W.3d 220 (Mo. Ct. App. 2000)**.

WATER LAW

BOUNDARY. The parties owned farm land on either side of the Platte River. When the land was originally deeded from the United States, the river ran full in its banks all year and the boundary line for the lands on each side was established as the center of the channel. After several bridges and a dam were built, the river split into two main channels and wandered between those channels from year to year, creating what is called a braided stream. The plaintiff argued that the boundary should be established in the northern thread of the river and the opposite land owner argued that the boundary should be the southern thread. The court denied both arguments and held that the doctrine of avulsion controled. The court held that the doctrine of avulsion applied where the river once flowed in a steady channel and later started to wander over varying channels. Although one landowner would gain dry land or shallow water access at times, the main channel could change to provide the other landowner the same access. Thus, under the avulsion doctrine, the boundary line did not change when the channel changed; therefore, the court held that the geographical center of the river was the boundary between the lands on either side of the river. **Anderson v. Cumpston, 606 N.W.2d 817 (Neb. 2000)**.

CITATION UPDATES

In re* Cousins, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,383 (1st Cir. 2000),** ***rev'g**, 99-2 U.S. Tax Cas. (CCH) ¶ 50,657 (D. N.H. 1999),** ***aff'g*****, 236 B.R. 119 (Bankr. D. N.H. 1999)** (post-petition interest) see p. 67 *supra*.

Wuebker v. Comm'r, 205 F.3d 897 (6th Cir. 2000) (CRP payments as self-employment income) see p. 41 *supra*.

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August 16-19, 2000 Inn of the Mountain Gods, Mescalero, NM

Come join us for a world-class seminar on the hottest topics in agricultural tax and law. **Space is limited** for these wonderful opportunities to gain expert insight into agricultural law and enjoy the many activities offered by both of these splendid resorts.

The first seminar will be Wednesday, Thursday, Friday and Saturday, May 31, June 1-3, 2000 at the Tan-Tar-A Resort & Spa located on the Lake of the Ozarks located in the heart of the Missouri Ozarks. The second seminar will be Wednesday, Thursday, Friday and Saturday, August 16-19, 2000 at the Inn of the Mountain Gods resort in the south central mountains of New Mexico. Registrants may attend one, two, three or all four days, with separate pricing for each combination. On Wednesday, Dr. Harl will speak about farm and ranch income tax. On Thursday, Dr. Harl will cover farm and ranch estate tax. On Friday, Roger McEowen will cover farm and ranch business planning. On Saturday, Roger McEowen will cover current developments in several other areas of agricultural law. Your registration fee includes a copy of Dr. Neil Harl's seminar manuals, *Farm Income Tax* (almost 300 pages) and *Farm Estate and Business Planning: Annotated Materials* (nearly 500 pages) and a copy of Roger McEowen’s outline, all of which will be updated just prior to the seminar. The seminar materials will also be available on CD-ROM for a small additional charge. Continental buffet breakfasts and break refreshments are also included in the registration fee.

Here are some of the major topics to be covered:

• Taxation of debt, taxation of bankruptcy, the latest on SE tax of rental of land to a family-owned entity; income averaging; earned income credit; commodity futures transactions; paying wages in kind.

• Federal estate tax, including 15-year installment payment of federal estate tax, co-ownership discounts, alternate valuation date, special use valuation, family-owned business deduction (FOBD), handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.

• Gifts and federal gift tax, including problems with future interests, handling estate freezes, and “hidden” gifts.

• Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.

• Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.

• Legal developments in farm contracts, secured transactions, bankruptcy, real property, water law, torts, and environmental law.

Special room discounts are available at both resorts. The resorts feature a variety of splendid guest accommodations and activities, including horseback riding, golf, sailing, hiking, tennis, fishing, and swimming.

The seminar registration fees for current subscribers to the *Agricultural Law Digest*, the *Agricultural Law Manual*, or *Principles of Agricultural Law* are $175 (one day), $340 (two days), $490 (three days), and $620 (four days). The registration fees for nonsubscribers are $195, $380, $550 and $700 respectively. A registration form is available online at **www.agrilawpress.com**

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