for the services performed for the trusts.[13]

In keeping with the Technical Advice Memorandum,[14] the outcome in terms of self-employment tax liability would seem to depend upon—(1) the nature of the lease or other arrangement between the trust and the tenant or operator, (2) the adequacy of the rental amount or other payment and (3) the identity of the tenant or operator. For a cash rent lease to a third party tenant who is not a trustee or beneficiary, the distributions should not be subject to self-employment tax. For a cash rent lease to a tenant who is also a beneficiary or the beneficiary of the trust, there should be no SE tax liability provided the rental is a fair market rental.[15] If it is not, a portion of the distribution could be subject to SE tax. If the trust property is rented under a non-material participation crop share lease to an unrelated tenant, there should be no SE tax on trust distributions. In the event the trust property is rented under a non-material participation crop share lease to a beneficiary or the beneficiary of the trust, again the question would seem to be whether the rental reflects a fair market rental.[16]

The TAM does not address the consequences of a custom farming operation or material participation crop share lease, both of which ordinarily would not produce self-employment tax liability for the beneficiaries of the trust.[17] However, the TAM cautioned that a trust resembling a business entity could be treated as a business entity with respect to SE tax liability.

Distributions from a testamentary trust

The other Technical Advice Memorandum,[18] involved farm income paid from an irrevocable testamentary trust to individuals who were both trust beneficiaries and trustees. In the facts of that TAM, on the decedent's death the decedent's wife and son became co-trustees and were also the trust's beneficiaries. The son was paid a fee by the trust for managing the farm operations and the decedent's surviving spouse was paid a fee for maintaining the farm records. The spouse and son reported these fees as subject to SE tax but the distributions by the trust were not reported as self-employment income.

IRS, in the TAM, agreed that the distributions were not considered net earnings from self-employment. IRS noted, however, that if the distributions from the trust were payments for any services the surviving spouse and son provided to the trust as part of their trade or business, those amounts would be considered net earnings from self-employment. As IRS stated, a focus on the adequacy of payments for services rendered is appropriate.

Thus, for example, if the payments to the son in the TAM represented inadequate compensation for services rendered, at least a portion of the distribution to the son is likely to be treated as net earnings from self-employment for the son.[19]

In conclusion

IRS warned in both TAMs, that arrangements that are denominated as trusts, but resemble business entities, would be treated as business entities for purposes of self-employment tax liability.

FOOTNOTES

1 See generally 8 Harl, *Agricultural Law* Ch. 62 (2003); Harl, *Agricultural Law Manual* § 8.02 (2003).

2 See I.R.C. § 1402(a).

3 See TAM 200305001, July 24, 2002; TAM 200305002, July 24, 2002.

4 See Rev. Rul. 58-5, 1958-1 C.B. 322; Ltr. Rul. 9107009, Nov. 14, 1990.

5 Rev. Rul. 58-5, 1958-1 C.B. 322.

6 Ltr. Rul. 9107009, Nov. 14, 1990.

7 Rev. Rul. 58-5, 1958-1 C.B. 322.

8 TAM 200305001, July 24, 2002.

9 *Id*.

10 *Id*.

11 *Id*.

12 I.R.C. §33 1402(a).

13 TAM 200305001, July 24, 2002.

14 *Id*.

15 Cf. McNamara v. Comm'r, 236 F.3d 410 (8th Cir. 2000). See Harl, "The Latest on *Mizell*,"13 *Agric. L. Dig*. 137 (2002).

16 *Id*.

17 See Treas. Reg. § 1.1402(a)-2(b) (trade or business must be carried on by the individual; income derived from a trade or business carried on by an estate or trust is not included in determining net income from self-employment of the individual beneficiaries).

18 TAM 200305002, July 24, 2002.

19 See I.R.C. § 1402(a).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

FEDERAL AGRICULTURAL PROGRAMS

ANIMAL WELFARE ACT. The APHIS has issued proposed regulation under the Animal Welfare Act to require that research facilities, dealers, and exhibitors maintain medical records as part of their program of adequate veterinary care. **68 Fed. Reg. 17752 (April 11, 2003)**.

CROP INSURANCE. The CCC has adopted as final regulations implementing section 2501 of the Farm Security and Rural Investment Act of 2002, which amended section 524 of the Federal Crop Insurance Act, which permits CCC to fund the Agricultural Management Assistance program administered by the NRCS in

Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. **68 Fed. Reg. 17272 (April 9, 2003)**.

FARM LOANS. The FSA has announced that the USDA is exercising its discretionary authority to designate crambe and sesame seed as eligible commodities for the 2002 crop year for the Direct and Counter Cyclical Payment Program, Marketing Assistance Loans and Loan Deficiency Payments from the CCC. **68 Fed. Reg. 15703 (April 1, 2003)**.

FEDERAL ESTATE AND GIFT TAX

FAMILY-OWNED BUSINESS DEDUCTION. The decedent's estate included a cattle ranch which was eligible for the family-owned business deduction (FOBD). The executrix hired an accountant to prepare the federal estate tax return but the accountant failed to elect the FOBD on the timely filed return. The IRS granted a 60 day extension to file a return with the FOBD election. **Ltr. Rul. 200313001, Dec. 13, 2002**.

GROSS ESTATE. The decedent's estate included several pieces of real estate which were encumbered by mortgages. The estate argued that only the decedent's equity interest was included in the gross estate. The court ruled that the full market value of the properties was included in the decedent's gross estate and that the amount of the mortgages was an allowed deduction for the estate. **Estate of Fung v. Comm'r, 2003-1 U.S. Tax Cas. (CCH) ¶ 60,460 (9th Cir. 2003), *aff'g*, 117 T.C. 247 (2001)**.

IRA. The decedent owned tax sheltered annuities which passed in part to a marital trust and in part directly to the surviving spouse. The surviving spouse transferred the direct bequest to an IRA in the spouse's name. The IRS ruled that the transfer was a tax deferred rollover and was not subject to income tax. **Ltr. Rul. 200314029, Jan. 7, 2003**.

INTEREST. The decedent bequeathed estate property through a will and a trust. The will and trust directed that estate taxes were to be paid from trust assets first. The will also provided that if any bequest was not paid within one year of the decedent's death, interest was to accrue until the bequest was paid. The executor, however, transferred most of the trust's assets to a foundation, depleting the liquid assets of the trust and forcing the estate property to be used to pay the taxes and other costs. This caused a delay in the payment of the bequests and interest was accrued. The estate claimed a deduction for the interest. The court held that the interest was not an ordinary and necessary expense because the improper transfer of the trust assets was the only reason that the interest accrued. The court noted that the interest expense was not incurred for the benefit of the estate but only benefitted the foundation. **Schwan v. United States, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,362 (D. S.D. 2003)**.

FEDERAL INCOME TAXATION

AUDIT. The IRS has announced that it has made permanent "Fast Track Settlement" (FTS), a process for large corporations to settle tax disputes before the audit of their return is complete. The IRS Large and Mid-Size Business (LMSB) Division and the Office of Appeals offer a joint process that uses Appeal's personnel as mediators in LMSB cases. Based on the Appeals officer's analysis of the issues, the Office of Appeals may also recommend a settlement. Under certain circumstances, other IRS divisions and taxpayers may also participate in the FTS program. FTS is optional for the taxpayer and does not eliminate or replace existing dispute resolution options, including the taxpayer's opportunity to request a conference with a manager or a hearing before the Office of Appeals. The taxpayer may also withdraw from the FTS process at any time. Official guidance for enrolling in FTS will be available in a forthcoming revenue procedure. **IR-2003-44**.

ACCOUNTING METHOD. The IRS has released a revenue procedure that modifies one of the terms and conditions under which the IRS grants approval of requests for changes in annual accounting periods filed under Rev. Proc. 2002-37, I.R.B. 2002-22, 1030, and Rev. Proc. 2002-39, I.R.B. 2002-22, 1046. The terms and conditions pursuant to which taxpayers generally are prohibited from carrying back net operating losses (NOLs) and capital losses generated in the short period necessary to effect the change, are increased to periods of less than 9 months. The modified carryback term and condition of the revenue procedure generally applies, in the case of taxpayers within the scope of Rev. Proc. 2002-37, to tax years ending on or after April 8, 2003, and, in the case of certain taxpayers within the scope of Rev. Proc. 2002-39, to applications filed on or after that date. In addition, the revenue procedure allows certain qualifying taxpayers that previously changed their annual accounting period, either automatically or with prior approval, to elect to apply either: (1) the modified carryback term and condition, under which the loss is carried back to the applicable number of years prescribed by I.R.C. §§ 172 or 1212, as it would have applied to the short period; or (2) in the case of taxpayers with certain NOLs arising in short periods ending during 2001 or 2002, an alternative carryback term and condition under which the NOL is carried back to each of the two tax years preceding the short period. **Rev. Proc. 2003-34, I.R.B. 2003-__**.

The taxpayer was an S corporation which offered its employees vacation pay which did not become "earned" until the first working day of the following year. The taxpayer had deducted the cost of this vacation pay on the income tax returns for the year prior to the year in which the pay was "earned." The taxpayer agreed that this was not the proper method of claiming the deduction, which was to claim the deduction in the tax year in which the vacation pay was "earned." However, the IRS did not examine the taxpayer's 1995 return, which had an improper deduction. The taxpayer's 1996 return was examined and the taxpayer sought to claim the 1995 accrued vacation pay in 1996, the year it was "earned." The IRS argued that the deduction was a change in accounting method and required the taxpayer to take an I.R.C. § 481(a) adjustment for the 1995 deduction in order to prevent a duplicate deduction. The court agreed that the change in method of claiming the deduction was a change in accounting method and required the adjustment for 1996. **Color Arts, Inc. v. Comm'r, T.C. Memo. 2003-95**.

BAD DEBTS. The taxpayer leased farm properties to several tenant farmers. The taxpayer established a corporation which made loans to the tenants. The taxpayer provided the funds to the corporation for the loans but did not own any stock in the corporation. The corporation executed two revolving credit notes, although the notes had no schedule of repayment of principal or interest and the notes were not signed by the taxpayer. The corporation had no income, capital or retained earnings. A security interest in corporate property was granted but the security interest was not perfected by the taxpayer. The corporation eventually was terminated after filing for bankruptcy. The taxpayer made no attempt to collect funds owed under the notes but claimed a bad debt deduction for the amount owed by the corporation. The court held that the bad debt deduction would not be allowed because the taxpayer failed to prove that a debtor-creditor relationship existed between the taxpayer and the corporation. **Meier v. Comm'r, T.C. Memo. 2003-94**.

BONUSES. The taxpayer received bonuses for several years from an employer. The employer did not include the bonus on the taxpayer's W-2 forms and did not withhold any taxes from the bonuses. The court held that the bonuses were given for the taxpayer's efforts as an employee and not from any donative intent of the employer. The court held that the bonuses were taxable income to the taxpayer. **Williams v. Comm'r, T.C. Memo. 2003-97**.

COOPERATIVES. The taxpayer was a rural telephone company which operated as a cooperative for federal tax purposes. The taxpayer purchased stock in another corporation which was formed to provide the taxpayer and other small rural telephone companies with sufficient capital to provide newer services to members. The taxpayer sold the stock with realized gains. The IRS ruled that the gains would be patronage-sourced income. **Ltr. Rul. 200314002, Dec. 4, 2002**.

CORPORATIONS.

MERGERS. The IRS Appeals Division has released Industry Specialization Program (ISP) Coordinated Issue Settlement Guidelines regarding contingent liability transactions that purport to comply with I.R.C. § 351. The IRS had previously concluded that losses generated by transfers of high basis assets to a corporation, purportedly in exchange for stock of the transferee corporation, and the corporation's assumption of a liability that the transferor has not yet taken into account for tax purposes, are not properly allowable. The transactions accelerate and/or duplicate tax deductions. The IRS generally intends to disallow losses claimed by the transferor and may impose penalties on participants or on persons who promote or report these transactions, including the accuracy-related, return preparer, promoter and the aiding and abetting penalties. While there may be differences among different cases with respect to the structuring of the transaction, the type of contingent liability assumed, the purported business purpose and the extent to which such business purpose was executed, it is the IRS's position that any business purpose is far outweighed by a taxpayer's interest in generating deductible loses. **IRPO ¶ 80,235**.

SECTION 1244 STOCK. The taxpayer established a corporation to operate a fiberglass manufacturing company. The company did little business and was described on tax returns for several years as an investment company. The corporation owned and traded stock in other corporations, although the corporation was not authorized by its articles of incorporation to engage in investment activities. When the corporation was terminated, the taxpayer claimed an ordinary loss for $100,000 of Section 1244 stock. The court held that the stock was not eligible for Section 1244 treatment because the corporation did not engage in any business and had income only from rents, dividends and the trading of stock. **Crigler v. Comm'r, T.C. Memo. 2003-93**.

COURT AWARDS AND SETTLEMENTS. The taxpayer's employment as a regional manager of retail stores was terminated and the taxpayer brought suit against the employer for breach of contract, breach of the covenant of good faith and fair dealing, age discrimination under state law, fraud and deceit, and specific performance. The trial jury awarded damages to the taxpayer under the claim for breach of the covenant of good faith and fair dealing. The taxpayer argued that the award was excluded from gross income because one of the claims involved a tort or tort-like issue. The court held that the judgment was included in the taxpayer's gross income because the award was based entirely on the contract cause of action and was not based on any tort or tort-like claim involving personal injury. The taxpayer had hired attorneys for the lawsuit under a contingency fee arrangement and the judgment award check was made out jointly to the taxpayer and the attorneys. The court held that the attorneys' fees were not excluded from the taxpayer's income but could only be claimed as a miscellaneous deduction. The court followed *Benci-Woodward v. Comm'r, 219 F.3d 941 (9th Cir. 2000), aff'g, T.C. Memo. 1998-395* decided in the circuit to which this case is appealable. The appellate court affirmed in an opinion designated as not for publication. **Freeman v. Comm'r, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,335 (9th Cir. 2003), *aff'g*, T.C. Memo. 2001-254**.

The taxpayer filed a sex discrimination law suit against a former employer. The petition did not claim any physical injury although the taxpayer testified in this case that the harassment worsened a preexisting medical condition. The taxpayer agreed to a money settlement in the discrimination suit and the settlement agreement did not apportion any of the funds to compensation for any physical injury. The court held that the settlement proceeds were included in gross income because they were not received as compensation for physical injuries or sickness. **Prasil v. Comm'r, T.C. Memo. 2003-100**.

DISASTER LOSSES. On February 25, 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 snow storms beginning on December 25, 2002. **FEMA-3173-EM**. On March 11, 2003, the President determined that certain areas in Maine were eligible for assistance under the Act as a result of snow storms on February 2, 2003. **FEMA-3174-EM**. On March 11, 2003, the President determined that certain areas in Massachusetts were eligible for assistance under the Act as a result of snow storms on February 17, 2003. **FEMA-3175-EM**. On March 11, 2003, the President determined that certain areas in Connecticut were eligible for assistance under the Act as a result of snow storms on February 17, 2003. **FEMA-3176-EM**. On March 11, 2003, the President determined that certain areas in New Hampshire were eligible for assistance under the Act as a result of snow storms on February 17, 2003. **FEMA-3177-EM**. On March 14, 2003, the President determined that certain areas in District of Columbia were eligible for assistance under the Act as a result of snow storms on February 16, 2003. **FEMA-3178-EM**. On March 14, 2003, the President determined that certain areas in Maryland were eligible for assistance under the Act as a result of snow storms on February 14, 2003. **FEMA-3179-EM**. On March 20, 2003, the President determined that certain areas in New Jersey were eligible for assistance under the Act as a result of snow storms on February 16, 2003. **FEMA-3181-EM**. On March 20, 2003, the President determined that certain areas in Delaware were eligible for assistance under the Act as a result of snow storms on February 14, 2003. **FEMA-3183-EM**. On March 14, 2003, the President determined that certain areas in Ohio were eligible for assistance under the Act as a result of severe winter ice and snow storms, heavy rain, flooding, tornadoes and mud and rock slides on February 15, 2003. **FEMA-1453-DR**. On March 14, 2003, the President determined that certain areas in Kentucky were eligible for assistance under the Act as a result of snow storms on February 2, 2003. **FEMA-1454-DR**. On March 14, 2003, the President determined that certain areas in West Virginia were eligible for assistance under the Act as a result of severe winter storm, record or near-record snow, heavy rains, flooding and landslides on February 16, 2003. **FEMA-1455-DR**. On March 20, 2003, the President determined that certain areas in Tennessee were eligible for assistance under the Act as a result of severe storms and flooding on February 14, 2003. **FEMA-1456-DR**. On March 27, 2003, the President determined that certain areas in North Carolina were eligible for assistance under the Act as a result of a severe ice storm on February 27, 2003. **FEMA-1457-DR**. On March 27, 2003, the President determined that certain areas in Virginia were eligible for assistance under the Act as a result of a severe winter storm, record/near-record snowfall, heavy rain, flooding and mudslides that began on February 15, 2003. **FEMA-1458-DR**. On March 27, 2003, the President determined that certain areas in Rhode Island were eligible for assistance under the Act as a result of record/near-record snowfall that began on February 17, 2003. **FEMA-3182-EM**. On March 27, 2003, the President determined that certain areas in New York were eligible for assistance under the Act as a result of record/near-record snowfall that began on February 17, 2003. **FEMA-3184-EM**. Accordingly, a taxpayer who sustained a loss attributable to these disasters may deduct the loss on his or her 2002 federal income tax return.

LEGAL FEES. The U.S. Supreme Court has denied certiorari in the following case. The taxpayer, a university professor, was not allowed a Schedule C deduction for legal fees incurred during an audit of the university because the fees did not result from the taxpayer's separate business activity. **Test v. Comm'r, 2002-2 U.S. Tax Cas. (CCH) ¶ 50,692 (9th Cir. 2002)**.

MARGIN ACCOUNTS. The taxpayer owned shares of stock in a corporation and established a securities trading margin account with a broker who charged interest and fees with respect to the margin account. At a time when the stock was appreciated, the taxpayer effected a short sale of an equal number of shares of stock in the same corporation through the broker who borrowed the shares of stock to make delivery for the short sale. The taxpayer clearly identified the stock and the short sale in its books and records as offsetting positions. The broker and the taxpayer negotiated changes to the interest rates and fees associated with the margin account. The taxpayer continued to hold the stock and has not delivered any other shares to the broker to close the short sale. The IRS ruled that (1) because the changes made to the terms of the margin account did not constitute a delivery of the taxpayer's stock, the changes to the interest rates and fees did not cause the short sale to be consummated for purposes of Treas. Reg. § 1.1233-1(a)(4) and (2) because the changes made to the terms of the margin account did not constitute a delivery of the stock, the changes did not cause the I.R.C. § 1259(a)(1) transition rule to cease to apply to either the short sale or the stock. **Rev. Rul. 2003-31, I.R.B. 2003-13**.

PENSION PLANS. For plans beginning in April 2003, the weighted average is 5.46 percent with the permissible range of 4.91 to 6.00 percent (90 to 120 percent permissible range) and 4.91 to 6.55 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2003-23, I.R.B. 2003-__**.

The IRS has adopted as final regulations, issued in question-and-answer format, relating to the notification requirements of I.R.C. § 4980F and section 204(h) of the Employee Retirement Income Security Act of 1974 (ERISA) and applying to defined benefit plans and individual account plans that are subject to the funding standards of I.R.C. § 412 and section 302 of ERISA. The regulations provide guidance on the requirement that plan administrators give notice of plan amendments to adversely affected plan participants and other parties when those amendments provide for a significant reduction in the rate of future benefit accrual or the elimination or significant reduction in an early retirement benefit or retirement-type subsidy. The final regulations had not yet been published in the Federal Register at the time the *Digest* went to press. **T.D. 9052**.

RETURNS. The IRS has issued a revenue procedure for granting certain taxpayers an automatic extension of time pursuant to Treas. Reg § 301.9100-3 to file elections on Form 8023, "Elections Under Section 338 for Corporations Making Qualified Stock Purchases," under I.R.C. § 338 which have not been timely filed. To obtain an automatic extension under Treas. Reg § 301.9100-3 to file an election under I.R.C. § 338, the required filer or filers must file Form 8023 no later than 12 months after the discovery of the failure to file the election. In addition, a single statement, filed under penalties of perjury by all required filers, must be attached to the Form 8023 and include several representations listed in the revenue procedure. **Rev. Proc. 2003-33, I.R.B. 2003-__**.

The IRS has announced that taxpayers who e-file may authorize the Treasury to electronically withdraw tax payments from their checking or savings accounts on a specified date at no charge. An electronic funds withdrawal may also be authorized when requesting an extension by phone at 1- 888-796-1074. Form 4868 should be used as a worksheet to prepare for the call, but should not be mailed to the IRS. The taxpayer's adjusted gross income from his or her 2001 tax return is also necessary to authorize the withdrawal. Tax payments may also be charged to major credit card accounts by calling or using the website of the processors handling such payments. However, private sector companies process the credit card transactions and charge convenience fees. The IRS notes that it does not collect such fees, nor does it receive or store the credit card numbers. Credit cards may also be used to pay the balance due on the 2002 income tax return, to make a payment related to an automatic filing extension request, to make estimated tax payments for 2003, or to make an installment payment on taxes owed for 1999 or a later year. Certain taxpayers who cannot pay the full tax due may qualify for an installment payment plan. A streamlined approval process is available if the amount due does not exceed $25,000 and the taxpayer will pay it within a five- year period. A Form 9465, Installment Agreement Request, should be attached to the front of the tax return, listing the proposed monthly payment amount and date. Taxpayers also have the option to make direct debit payments from their bank accounts each month through an electronic funds withdrawal program. There is a $43 fee for setting up the installment agreement. Taxpayers will also be charged interest, currently figured at 5 percent per year, compounded daily, and a late payment penalty. The penalty, usually 0.5 percent of the balance due per month, is reduced to 0.25 percent when the IRS approves the agreement for an individual taxpayer who timely filed the return and did not receive a levy notice. An interactive feature to help taxpayers determine their eligibility for an installment agreement and to download related forms is available at the IRS's website, www.irs.gov. Form 9465 is also available by calling 1-800-829-3676. **IR-2003-42**.

The IRS has included a section on its web site for questions and answers on exclusions, extensions and other tax benefits available to members of the armed forces serving in a combat zone; IRS Publication 3, Armed Forces' Tax Guide, which covers the special tax situations of active members of the U.S. Armed Forces; several recent news releases and notices, including Tax Tip 2003-41, Reservists, New Enlistees May Get Deferral for Back Taxes; IR-2002-18, Tax Relief for Troops in Afghanistan Combat Zone; Notice 2002-17, Tax Relief for those Involved in Operation Enduring Freedom; and a special e-mail address for members of the U.S. Armed Forces, their spouses, authorized agents or representatives, which can be used to notify the IRS about someone serving in a combat zone. The IRS automatically extends the deadline for filing tax returns, paying taxes, filing claims for refund and taking other actions related to federal income tax for U.S. Armed Forces personnel serving in a combat zone. The IRS also extends the deadline for those in the U.S. Armed Forces deployed overseas away from their permanent duty station in support of operations in a qualified hazardous duty area but who are outside that area. The deadline for filing returns, making payments or taking any other action with the IRS is extended for at least 180 days after the last day of qualifying combat zone service, or the last day of any continuous qualified hospitalization for injury from the combat zone. **IR-2003-43**.

The IRS has issued revised Form W-7, Individual Taxpayer Identification Number, which must be used by resident and non-resident aliens beginning April 15, 2003. This publication can be obtained by calling 1-800-TAX-FORM (1-800-829-3676); it is also available on the IRS's website at www.irs.gov.

TAX SHELTERS. The IRS has issued a warning to taxpayers against the use of offshore deferred compensation arrangements involving foreign and domestic employee leasing companies. Under the typical leasing arrangement, an individual taxpayer supposedly resigns from the current employer or professional corporation and signs an employment contract with an offshore leasing company. The offshore company indirectly leases the individual's services back to the original employer using one or more intermediaries. The individual performs the same services before and after entering into the leasing arrangement. Taxpayers have until April 15, 2003 to participate in the Offshore Voluntary Compliance Initiative which removes civil fraud and information return penalties in exchange for voluntary compliance. **Notice 2003-22, I.R.B. 2003-__**.

TRAVEL EXPENSES. The IRS has released the applicable terminal charge and the Standard Industry Fare Level (SIFL) mileage rates for use in determining the value of noncommercial flights on employer-provided aircraft taken from January 1, 2003, through June 30, 2003. The terminal charge is $37.76, and the SIFL mileage rates are: up to 500 miles, $0.2065 per mile; 501-1,500 miles, $0.1575 per mile; and over 1,500 miles, $0.1514 per mile. **Rev. Rul. 2003-25, I.R.B. 2003-13**.

LABOR

OVERTIME WAGES. The plaintiff was an employee of the defendant, a landscaping company, and performed fumigation services on a farm owned by the defendant and operated by another corporation owned by the same person who owned the defendant. The farm produced and sold ornamental plants and trees on land leased from the defendant using employees leased from the defendant. The plaintiff alleged that the plaintiff worked overtime hours without overtime pay as required under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq. The* plaintiff claimed that the plaintiff was employed by the defendant and not the farm; therefore, the plaintiff was not engaged in agricultural labor which is excluded from the overtime payment rules because the defendant was not engaged in an agricultural trade or business. The court held that the defendant and the plant and tree farm were so intertwined that they constituted a single agricultural enterprise and were exempt from the overtime rules.

Ares v. Manual Diaz Farms, Inc., 318 F.3d 1054 (11th Cir. 2003).

PRODUCT LIABILITY

COMBINE. The plaintiff purchased a combine and platform header manufactured by the defendant. The combine was used to harvest crops grown by third parties. During one harvest season it was discovered that the combine left a substantial amount of crop in the fields and the plaintiff was forced to compensate the farmers for lost crops. Plaintiff filed a "complaint for indemnity" based on a product liability theory, alleging that the combine "experienced a manufacturing defect in that it failed to properly separate, collect and store seed from the stalks of the rye, wheat, barley and oat grain straw." Defendant moved for summary judgment asserting, among other things, that the alleged defect did not make the combine "unreasonably dangerous," as is required for recovery under Or. Rev. Stat. § 30.920. The court held that mere economic loss unaccompanied by physical injury to property will not suffice for a product liability claim but physical destruction of, or perhaps other significant physical injury to, the property will. In this case, only economic loss resulting from the failure of the combine to harvest all of the crops was shown. The court upheld the summary judgment for the defendant granted by the trial court. **Russell v. Deere & Co., 61 P.3d 955 (Or. Ct. App. 2003)**.

WATER

DRAINAGE. **Submitted by Roger A. McEowen**. The plaintiffs were rural landowners who sued a city for trespass and negligence and sought injunctive relief due to the increased accumulation and flow of water over their property through a storm sewer drainage system constructed by the city for a residential subdivision. The landowners cited Kan. Stat. Ann.§ 24-105 which makes it unlawful to increase the volume of surface water flow onto an adjacent landowner. While the provision specifically applies only to agricultural land, the landowners claimed that the statute applied because the city condemned an easement over their property beyond the city limit. The trial court had disagreed, noting that the statutory provision did not modify the common law right of a landowner to change the flow of surface water within the incorporated limits of a city and that prior caselaw held that municipalities are not liable to property owners for the increased flow of surface water due to the opening of streets and the building of houses in the ordinary and regular course of expanding the size of the city. The trial court had also ruled that the landowners' negligence claim failed because there was no evidence presented that the city had either negligently designed or constructed the drainage system or adversely affected the quality of the water draining onto their property. The Kansas Supreme Court affirmed on appeal, holding that Kan. Stat. Ann. § 24-105 did not apply because the drainage system was constructed on city lands obtained pursuant to the eminent domain proceeding and that the system served the city's development project which was entirely within the city limits. The court also held that the landowners' trespass claim failed because the city did not disturb the natural flow of the water, but merely changed its velocity. In addition, the landowners' negligence claim failed because the city constructed the drainage system in conformance with generally recognized and prevailing standards, and no evidence of pollution was presented. **Williamson v. City of Hays, No. 87,771, 2003 Kan. LEXIS 121 (Kan. Sup. Ct. Mar. 7, 2003**).

CITATION UPDATES

Delano Farms Co v. California Table Grape Comm'n, 318 F.3d 895 (9th Cir. 2003) (grape checkoff) see p. 23, *supra***.**

IN THE NEWS

CHECKOFF. A Florida Circuit Court has held the Florida citrus "box tax" unconstitutional. The "box tax" was collected and administered by the Florida Department of Citrus (FDC) which the court ruled not to be a government agency; therefore, the court held that the advertising purchased with the "box tax" was not governmental speech. In addition, the court found that the primary purpose of the FDC was the collection of the "box tax" and the purchasing of advertising which was not the comprehensive regulation of the citrus industry as was found in *Glickman v. Wileman Bros., 521 U.S. 457 (1997)*; therefore, the forced participation of the state citrus growers in the advertising program violated their First Amendment free speech rights. **Tampa Juice Services, Inc. v. State of Florida, Case No. GC-G-00-3488 (10th Cir. Fla. March 31, 2003).**

DISASTER PAYMENTS. USDA Secretary Ann Veneman has announced that under the 2003 Disaster Assistance Package, the Crop Disaster Program will reimburse producers for qualifying crop losses in either the year 2001 or 2002. Sign up for the program will begin on June 6, 2003, with payments to begin shortly after that. She says crop disaster payments must be calculated using the same formula as used for the 2000 crop year. But, there is a new "wrinkle," according to USDA's chief economist, Keith Collins. There's an overall cap on the amount a producer can receive that aims to avoid penalizing people who had crop insurance. **Agriculture Online**.

GENETICALLY MODIFIED ORGANISMS. The Vermont Senate has passed a landmark bill requiring the labeling and registration of all GMO seeds sold in the state. This is one of two bills passed at the end of March by the Senate Agriculture Committee, with the second addressing the issue of farmer liability for GMO-related damages. Two additional bills, calling for food labeling and a moratorium on GM crops, have been deferred to a legislative summer study committee.

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AGRICULTURAL TAX AND LAW SEMINARS

by Neil E. Harl and Roger A. McEowen

April 28, 29, 30, May 1, 2003 Plaza Inn, Garden City, KS

Come join us for expert and practical seminars on the essential aspects of agricultural tax and law. Gain insight and understanding from two of the nation's top agricultural tax and law instructors. The seminars are held on Monday, Tuesday, Wednesday, and Thursday. Registrants may attend one, two, three or all four days, with separate pricing for each combination. On Monday, Dr. Harl will speak about farm and ranch income tax. On Tuesday, Dr. Harl will cover farm and ranch estate planning. On Wednesday, Roger McEowen will cover farm and ranch business planning. On Thursday, Roger McEowen will cover agricultural developments for 2002-2003. Your registration fee includes comprehensive annotated seminar materials for the days attended and lunch. The seminar registration fees for *current subscribers* to the Agricultural Law Digest, the Agricultural Law Manual, or Principles of Agricultural Law (and for multiple registrations from one firm) are $185 (one day), $360 (two days), $525 (three days), and $670 (four days). The registration fees for *nonsubscribers* are $200, $390, $570 and $720, respectively.

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August 12-15, 2003 Holiday Inn I-25, Fort Collins, CO
September 23-25, 2003 Interstate Holiday Inn, Grand Island, NE

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October 23, 2003: "Farm & Ranch Income Tax" by Neil E. Harl
October 24, 2003: "Farm & Ranch Estate and Business Planning" by Roger A. McEowen
Spa Resort, Palm Springs, CA

Registrants may attend either or both days. The registration fee includes comprehensive annotated seminar materials for the days attended which will be updated just prior to the seminar. The seminar registration fees for *current subscribers* to the Agricultural Law Digest, the Agricultural Law Manual, or Principles of Agricultural Law (and for each registrant for multiple registrations from one firm) are $185 for one day and $360 for both days. The registration fees for *nonsubscribers* are $200 for one day and $390 for both days.

Registration brochures will be mailed to all subscribers. In addition, complete information and a registration form are available now on our web site at http://www.agrilawpress.com. For more information, call Robert Achenbach at 1-541-302-1958, or e-mail to **robert@agrilawpress.com**

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