the court denied a deduction for the telephone on the grounds it was not an ordinary and necessary expense and the court doubted that the telephone was used in the home office only for business purposes.[33]

In conclusion

In light of the cases and rulings to date, it is clear that employees bear a fairly heavy burden in establishing deductibility for listed property items such as computers. However, it is possible to succeed in obtaining a depreciation deduction if the facts in support of deductibility are persuasive.[34]

FOOTNOTES

1 Deficit Reduction Act of 1984, Pub. L. 98-369, Sec. 179(a), 98 Stat. 713 (1984) (applicable to property placed in service after June 18, 1984, in tax years ending after that date).

2 See I.R.C. § 280F. See generally 4 Harl, *Agricultural Law* § 29.03[10](1997); Harl, *Agricultural Law Manual* § 4.03 [4][g][iii](1997).

3 I.R.C. § 280F(d)(3).

4 I.R.C. § 280F(d)(4)(A)(i).

5 I.R.C. § 280F(d)(4)(A)(ii).

6 I.R.C. § 280F(d)(4)(A)(iii).

7 I.R.C. § 280F(d)(4)(A)(iv).

8 I.R.C. § 280F(d)(4)(A)(v).

9 I.R.C. § 280F(d)(4)(A)(vi).

10 I.R.C. § 280F(d)(5).

11 I.R.C. §§ 280F(a)(1), 280F(d)(5). See Rev. Proc. 97-20, I.R.B. 1997-11, 10.

12 Rev. Proc. 97-20, I.R.B. 1997-11, 10.

13 I.R.C. §§ 280F(a)(1), 280F(d)(4)(A)(ii).

14 I.R.C. § 280F(d)(1).

15 I.R.C. § 280F(b)(1).

16 I.R.C. § 280F(b)(3). See McFadden v. Comm'r, T.C. Memo. 1989-174 (automobile used 22 percent of time for business use).

17 I.R.C. § 280F(d)(3).

18 I.R.C. § 280F(d)(3)(A).

19 Bryant v. Comm'r, T.C. Memo, 1993-597, *aff'd in Unpub. Op.* (3d Cir. 9/15/94).

20 McCann v. Comm'r, T.C. Memo. 1996-120.

21 Rev. Rul. 86-129, 1986-2 C.B. 48.

22 Ltr. Rul. 8710009, Dec. 3, 1986.

23 Ltr. Rul. 8725067, March 25, 1987.

24 Mulne v. Comm'r, T.C. Memo. 1996-320.

25 *Id.*

26 See I.R.C. § 119.

27 See United States Junior Chamber of Commerce v. Comm'r, 334 F.2d 660, 663 (Ct. Cl. 1994) (employee required to accept lodging for the convenience of the employer as a condition of employment under I.R.C. § 119).

28 See Temp. Treas. Reg. § 1.280F-6T(a)(2)(ii).

29 *Id.*

30 T.C. Memo. 1996-320.

31 *Id.*

32 *Id.*

33 *Id.*

34 Mulne v. Comm'r, T.C. Memo. 1996-320.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

CONTINUOUS POSSESSION. The disputed land was .534 acres included in the title held by the plaintiff farmer. The land was triangular shaped and fenced on two sides and provided access to a road to the defendant's residence. The defendant's parents purchased the ranch next to the disputed land and the fences made it appear that the disputed land was included in the property purchased. The defendant's parents used the disputed land for walking cows from pasture to the milking area, allowing the cows to pasture temporarily on the disputed land. The plaintiff occasionally used the disputed land for hunting and had to climb over, under or walk around the fence in order to enter the disputed land. The trial court had ruled for the plaintiff because the disputed land was not entirely fenced in. The appellate court held that the defendant's use of the disputed land was sufficient to amount to actual possession given the partial fencing of the land, since the defendant's use would not have been possible if the third side was fenced. However, because the land was transferred from the defendant's parents to the defendant less than 21 years before the dispute and the transferred title made no mention of the disputed land, the defendant could not include the parents' possession; therefore, the defendant did not have possession long enough to give rise to title by adverse possession. **Moore v. Duran, 687 A.2d 822 (Pa. Super. 1996)**.

BANKRUPTCY

<u>GENERAL</u>-*ALM* § 13.03.*

EXEMPTIONS

HOMESTEAD. The debtors had claimed a homestead exemption for their residence under 188 Mass. Gen. Laws § 1. The trustee objected to the exemption to the extent of debts incurred by the debtors prior to their filing of a homestead declaration. The court denied the objection, holding that Section 522(c) pre-empted the state law limitations on the homestead exemption and allowed the exemption as to all pre-petition debts. ***In re* Whalen-Griffin, 206 B.R. 277 (Bankr. D, Mass. 1997)**.

<u>Chapter 12</u>-*ALM* § 13.03.*

CLAIM. The debtor was a co-obligor with the debtor's parent on a secured loan. The debtor and parent operated separate farm operations, although the operations shared some resources. The parent had filed a separate Chapter 12 case and the plan provided for full payment of the loan by the parent. The debtor objected to the filing of a claim by the bank for the same loan, arguing that the claim was satisfied in the parent's Chapter 12 case. The court held that the bank could assert a claim in both bankruptcy cases and that the trustees in the cases would monitor the payments and object to the separate claims once the loan was satisfied in full. ***In re* McCloy, 206 B.R. 428 (Bankr. N.D. Tex. 1997)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

AUTOMATIC STAY. The debtors filed for Chapter 13 and listed alleged claims of the IRS for taxes owed by the debtor's corporation. The IRS was mailed notices about the bankruptcy case and participated in a hearing on the tax claim. The IRS then sent a letter to the debtors informing them that they would be assessed the responsible person penalty for taxes owed by the corporation. The debtors argued that the letter violated the automatic stay and sought damages for attorney fees incurred to raise the issue. The court held that the letter was an assessment which violated the automatic stay but denied any damage award because the debtors provided no evidence that the attorney fees included any attempt to solve the problem outside of the court. ***In re* Craine, 206 B.R. 594 (Bankr. M.D. Fla. 1997)**.

CONTRACTS

HEDGE-TO-ARRIVE CONTRACTS. The following is an excerpt from a case involving a hedge-to-arrive contract. The court opinion has few facts recited.

> "...Upon the evidence adduced by plaintiff[cooperative] and the admission of defendant Biron J. Smith, this Court finds that the defendant is in breach of cash forward contracts he voluntarily entered into with plaintiff . . ."

The court found that the contracts, being in writing, were not in violation of the Ohio statute of frauds; that the contracts were not executory in nature, and that defendant was in breach for failing to perform in accordance with the terms. It further found that plaintiff's contracts were not void or unenforceable.

As to the issue of fraudulent inducement, the defendant admitted that absolutely no representations--at least as the defendant could specifically remember--were made to him by plaintiff or its agents upon which he relied in executing said delivery contracts. "There can be no fraud in the inducement…." **Countrymark Co-op. v. Smith, Case No. 96-165-OC (Ohio Com. Pleas, Hancock Cty 1997)**.

A corn producer had entered into a contract to deliver corn to be grown during a subsequent growing season. The producer had wanted a minimum price for the corn which the buyer refused to guarantee, but the parties included a hedge-to-arrive contract method to help the producer obtain the desired price. The buyer argued that the hedge-to-arrive aspect was not a guarantee by the buyer that the minimum price would be obtained by the producer. After the corn was harvested and ready for delivery, the buyer refused to pay the minimum price, even though the buyer had made a substantial profit from the hedge of commodity futures. The arbitrator found that, while the producer had some expertise with commodity futures, the producer relied on the buyer's expertise with the hedge-to-arrive aspect of the transaction as a means to obtain the minimum price for the corn. The arbitrator awarded the producer the difference between the actual price received for the corn and the minimum price of the contract. **In the Matter of the Arbitration between Hoffman and Farmers Elevator Co., Case No. 56 181 00459 96 (Minn. 1997)**.

The plaintiff grain producer had entered into hedge-to-arrive contracts with the defendant for delivery of grain to the defendant. The contracts contained a clause requiring arbitration of all claims or controversies arising out of the contract. The contracts were rolled over several times until the defendant decided to close out the hedges. The defendant then charged the plaintiff for the losses and the plaintiff sought arbitration of the dispute. The defendant argued that the arbitration clause was unenforceable because the hedge-to-arrive contracts were illegal futures contracts. The court held that the arbitration clause required that the issue of illegality be determined by arbitration and the court ordered the dispute submitted to arbitration. **Herwig v. Hahnaman-Albrecht, Inc., 1997 WL 72079 (N.D. Ill. 1997)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The FCIC has issued proposed regulations which include the quota tobacco Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 26248 (May 13, 1997)**.

The FCIC has issued proposed regulations which include the apple Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 25140 (May 8, 1997)**.

The FCIC has issued proposed regulations which include the green peas Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 23680 (May 1, 1997)**.

The FCIC has issued proposed regulations which include the peanut Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 23685 (May 1, 1997)**.

The FCIC has issued proposed regulations which include the processing beans Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 23675 (May 1, 1997)**.

The FCIC has adopted as final regulations which include the fresh market tomatoes Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 23628 (May 1, 1997)**.

The FCIC has adopted as final regulations which include the almonds Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 25107 (May 8, 1997)**.

PEANUTS. The FSA has adopted as final regulations implementing the Agricultural Market Transition Act of 1996 by (1) eliminating the national poundage quota floor, (2) eliminating the undermarketing carryover provisions, (3) establishing temporary seed quota allocations, (4) establishing the ineligibility of certain farms for quota allocation, (5) authorizing inter-county transfer of farm poundage quotas, (6) eliminating the special allocations of increased quotas for certain Texas counties, and (7) establishing new provisions for "considered produced" credit for transferred quotas. **62 Fed. Reg. 25433 (May 9, 1997)**.

TOBACCO. The CCC has adopted as final regulations establishing the 1997 marketing quota for flue-cured tobacco at 973.8 million pounds, with a price support of 162.1 cents per pound. **62 Fed. Reg. 24799 (May 7, 1997)**.

TUBERCULOSIS. The APHIS has issued interim regulations changing the designation of Wisconsin from an accredited-free (suspended) state to an accredited-free state. **62 Fed. Reg. 24801 (May 7, 1997)**.

FEDERAL ESTATE AND GIFT TAX

ANNUAL EXCLUSION. The decedent had established an irrevocable trust with two of the decedent's children as income and principal beneficiaries. The trust was funded with a commercial building. The trust also named 16 contingent beneficiaries, including grandchildren and great-grandchildren of the decedent. Under the trust, all beneficiaries and contingent beneficiaries had the power to require distribution of up to $10,000 annually. The power had to be exercised within 30 days after property was transferred to the trust. The beneficiaries were notified about the transfer of the building to the trust but no beneficiary requested any distribution. The estate claimed that no agreement or understanding existed that the beneficiaries would not request distribution. The court also found that no agreement or understanding existed and that none of the beneficiaries believed that they would be penalized for making a request. The court held that the beneficiaries' interests in the trust were present interests and that the value of the interests transferred were eligible for the annual gift tax exclusion. **Est. of Kohlsaat v. Comm'r, T.C. Memo. 1997-212**.

CLAIMS AGAINST THE ESTATE. The decedent had made a pledge to a building fund of a university. The decedent died before making any payments under the pledge but the estate intended to fulfill the pledge with payment from the estate. The IRS ruled that, because the university had an enforceable claim against the estate under state law, the estate was entitled to a deduction for the amount paid to the university. **Ltr. Rul. 9718031, Feb. 4, 1997**.

INCOME IN RESPECT OF DECEDENT. The decedent owned and operated a farm on two parcels of land. The decedent's son crop share leased the two parcels from the decedent. Within two weeks before the decedent's death, the decedent and son entered into new leases which allowed the son to pay either one-half of the proceeds of the farm as rent or $10,000 annual rent, at the son's option, for parcel one. The second parcel was leased for cash only. For six weeks after the decedent's death the son paid a crop share rent for parcel one, but from then on paid the cash rent for both parcels. The executor filed a federal income tax return for the estate and reported the grain and livestock on the parcels with a basis equal to the fair market value at death. This resulted in less reported gain from the sale of the grain and livestock. The IRS argued that the grain and livestock proceeds were income in respect of a decedent and required the estate to use the decedent's lower basis in the property to determine the amount of gain. The court agreed with the IRS, holding that, because the rent was ordinary income to the decedent before death and the decedent had a vested right to the income, the rent was IRD to the estate. Although not mentioned in the opinion, the lease was apparently a non-material participation lease. Commodities under a material participation share lease receive a new basis at death under long-standing authority. **Est. of Gavin v. United States, ___ F.3d ___ (8th Cir. 1997)**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* The decedent's surviving spouse elected to take the Tennessee statutory elective share of the decedent's estate. The elective share was approved by the probate court and the estate distributed property equal to the full share without reduction for a pro rata share of the decedent's secured debt. Citing *Estate of Williams v. Comm'r, 103 T.C. 451 (1994)* which also involved the same Tennessee law, the Tax Court held that under Tennessee law, the elective share had to be reduced by the pro rata share of secured debts. The appellate court reversed, citing a Tennessee Supreme Court decision rendered subsequent to the Tax Court decision, *Estate of Williams v. Huddleston, 938 S.W.2d 415 (Tenn. 1997)*. The Tennessee case held that the surviving spouse's elective share was not liable for a proportionate share of secured debts. The appellate court held that because the marital share was not subject to payment of the secured debts under state law, the estate was entitled to a marital deduction for the entire marital elective share of the estate. **Estate of Tenenbaum v.**

Comm'r, 97-1 U.S. Tax Cas. (CCH) ¶ 60,269 (6th Cir. 1997), ***rev'g*****, T.C. Memo. 1995-48**.

REFUND. The decedent died in 1994. The decedent had made gifts in 1982, 1989 and 1991, of fractional interests in real property to family members. The fractional interests were valued by taking the fractional interest times the fair market value of the entire property. The 1982 and 1989 gifts were not taxed because of the unified credit. The 1991 gifts resulted in gift tax paid by the decedent. The decedent's personal representative filed a timely request for a refund, based on a revaluing of the 1991 gifts using a discount for the fractional interests conveyed. During a meeting with the IRS after the statute of limitations for a refund had expired, the estate sought to revalue the 1982 and 1989 gifts as well. The estate argued that a claim for refund for the 1991 taxes necessarily included the 1982 and 1989 gifts because they affected the amount of the 1991 gifts offset by the unified credit left over from 1982 and 1989. The IRS ruled that the 1982 and 1989 gifts could still be revalued because no tax was paid and accepted by both the taxpayer and IRS. However, the IRS ruled that the oral amendment of the refund claim to include the 1982 and 1989 gifts was considered a new claim for refund and was denied as untimely filed. **Ltr. Rul. 9718004, Jan. 7, 1997**.

SPECIAL USE VALUATION-*ALM* § 5.03[2].* The decedent owned and operated a farm on two parcels of land. The decedent's son operated the farm with the decedent until 12 years before the decedent's death when the son crop share leased the two parcels from the decedent. Within two weeks before the decedent's death, the decedent and son entered into new leases which allowed the son to pay either one-half of the proceeds of the farm as rent or $10,000 annual rent, at the son's option, for parcel one. The lease also granted the son the option to purchase parcel one at a set price. The second parcel was leased for cash only and also included a set price purchase option. For six weeks after the decedent's death the son paid a crop share rent for parcel one, but from then on paid the cash rent for both parcels. The son received a one-seventh interest in the land under the decedent's will. The son exercised the option to purchase one parcel in less than two years after the decedent's death and exercised the option on the seco0nd parcel just over two years after the decedent's death. The court held that all of the land was eligible for special use valuation because the qualified heirs, the other children of the decedent retained a financial risk in the farm while the farm was cash rented. The court reasoned that the fixed rental was not the full rental value of the land and that the son had the option to pay the one-half share if that was a lower rent. In addition, the other heirs were at risk because the son had the option to purchase the land at a set price, independent of fair market value. Neil Harl will publish an article on this case, critical of the decision, in the next issue of the Digest. **Est. of Gavin v. United States, ___ F.3d ___ (8th Cir. 1997)**.

VALUATION. The IRS ruled that a trust holding a residence used as a vacation home by the grantor was a valid qualified personal residence trust. **Ltr. Rul. 9718007, Jan. 22, 1997**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued revised procedures for obtaining consent from the Commissioner for accounting method changes. The previous procedures have been simplified. The Category A, Category B, Designated A, and Designated B classifications were eliminated, the 90-day window at the beginning of an examination has been eliminated, the 30-day window for taxpayers under continuous examination was increased to 90 days and the number of consecutive months a taxpayer is required to be under examination was reduced to 12 months. **Rev. Proc. 97-27, I.R.B. 1997-__, __**.

CAPITAL GAINS. The chairmen of the Senate Finance Committee and the House Ways and Means Committee have announced that the effective date of any change in the tax rate for capital gains would be May 7, 1997 (transactions on or after that date).

CAPITAL EXPENSES. The taxpayer purchased undeveloped land which was zoned for one residence per acre. The taxpayer believed that the zoning designation could be changed to allow more dense development and challenged the constitutionality of the zoning status of the land. The land was eventually rezoned to allow a greater density of development. The taxpayer deducted the costs of the rezoning effort as current business expenses. The court held that the expenses associated with the rezoning effort were to be capitalized in the cost of the land. **Hustead v. Comm'r, T.C. Memo. 1997-205**.

COURT AWARDS AND SETTLEMENTS. The taxpayer filed an action against an employer for sex discrimination under Title VII of the Civil Rights Act of 1964. The parties reached a settlement of payment of amounts for back pay. The court held that the settlement payment was included in income because the action did not involve tort or tort-like causes of action. The court also held that amounts in the settlement paid directly to the taxpayer's attorney were also included in gross income but were eligible for an itemized deduction. **Hardin v. Comm'r, T.C. Memo. 1997-202**.

DEPRECIATION-*ALM* § 4.03[4].* In 1983, the taxpayers purchased farm and ranch land which contained about 250,000 trees and schrubs which did not produce fruit or nuts and were not harvested for wood. The trees and shrubs were used primarily for a windbreak but also for soil and water conservation. The taxpayers assigned a $1 per plant value and claimed depreciation and investment tax credit on the trees and shrubs. The IRS denied the depreciation and investment tax credit. The court held that the trees and shrubs were not eligible for depreciation or investment tax credit because the trees and shrubs were not used for the production of fruit, nuts or wood; therefore, the trees and shrubs were part of the nondepreciable realty. The appellate court affirmed on this point, noting that the trees and shrubs were a deductible expense under I.R.C. § 175 which allowed the deduction only for improvements which were not depreciable, such as trees and shrubs used for windbreaks. **Everson v. U.S., 108 F.3d 234 (9th Cir. 1997),** ***aff'g on point*****, 95-1 U.S. Tax Cas. (CCH) ¶ 50,150 (D. Mont. 1995)**. See also Harl, "Depreciating Trees and Shrubs, 6 *Agric. Law Dig*. 81 (1995).

INVESTMENT TAX CREDIT. Prior to formation of a limited partnership, the general partner signed an agreement to purchase cattle, some of which were bred heifers. When the partnership agreement was executed 11 months later, the cattle were transferred to the partnership with the partnership accepting the debt for the cattle. The court held that the heifers were used Section 38 property because the cattle gave birth prior to transfer to the partnership. The court also held that the partners were able to claim their share of investment tax credit for the cattle because the cattle were placed in service for further breeding when acquired by the partnership. **Coward v. Comm'r, T.C. Memo. 1997-198**.

PARTNERSHIPS-*ALM* § 7.03.*

TERMINATION. The IRS has adopted as final regulations governing the effect of a termination of a partnership caused by the sale or exchange of 50 percent or more of the total interests in partnership capital and profits. The regulations provide that, upon the termination, the partnership is deemed to have first transferred all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership. The terminated partnership is deemed to have immediately thereafter distributed the interest in the new partnership to the purchasing partner and other remaining partners in liquidation of the old partnership, either for continuation of the business or dissolution. **Treas. Reg. § 1.708-1(b)(1)(iv)**. Previously, the termination was deemed to result in a distribution of the partnership *assets* to the purchasing and remaining partners. The new rule means that there is no longer the possibility of gain under I.R.C. § 731(a), no change in the basis of partnership assets, and no new five-year period for purposes of I.R.C. §§ 704(c)(1)(B), 737. I.R.C. § 704(c) property held by the terminated partnership continues as I.R.C. § 704(c) property in the new partnership. Regulations under I.R.C. §§ 704, 731, 737 were also changed to reflect the new rules. **62 Fed. Reg. 25498 (May 9, 1997)**.

S CORPORATIONS

PASSIVE INVESTMENT INCOME. The taxpayer was a shareholder in an S corporation and materially participated in the management activities of the corporation. The management activities were performed for other corporations in which the taxpayer had a passive interest. The taxpayer claimed income from the S corporation as nonpassive and sought to include the taxpayer's share of the expenses of the other corporations for the management expenses as nonpassive expenses. The IRS ruled that the expenses were passive investment expenses because the taxpayer did not materially participate in the other corporations. **Ltr. Rul. 9718002, Dec. 31, 1996**.

TERMINATION. A corporation with stock owned by trusts made an S corporation election but failed to file the elections for the trusts, causing the S corporation election to terminate. The corporation and trusts all filed returns based on the S corporation status of the corporation. The IRS waived the termination of the election. **Ltr. Rul. 9718008, Jan. 28, 1997**.

TRAVEL EXPENSES. The taxpayer resided in Illinois and traveled to Florida for temporary employment in construction. The taxpayer received self-employment income for the work and claimed deductions associated with business use of a vehicle and living expenses. The court upheld IRS disallowance of the deductions because the taxpayer failed to provide written records to substantiate the claimed expenses as to amount and purpose. **Pasharikoff v. Comm'r T.C. Memo. 1997-208**.

NEGLIGENCE

SALE OF LIVESTOCK. The plaintiff contracted with a cattle producer to purchase 50 head of registered black angus cattle. The written contract provided for one-half payment on delivery and one-half in three months. The seller did not file a financing statement or otherwise perfect a security interest in the cattle. The contract also contained a provision that the seller not inquire about what the buyer did with the cattle after delivery. The plaintiff resold the cattle immediately to the defendant company but did not pay the remaining one-half of the purchase price before filing for bankruptcy. The seller sought recovery under a theory of negligence, arguing that the cattle had been groomed for sale four weeks before the sale to the company, making the cattle appear to be recently sold, and the company, therefore, had a duty to determine whether the plaintiff had sufficient right to sell the cattle. The court held that the grooming of the cattle was insufficient notice to the company to give rise to a duty to inspect the plaintiff's title to the animals. **Clark v. Bowling Green Livestock Market, Inc., 206 B.R. 439 (Bankr. W.D. Ky. 1996).**

PRODUCT LIABILITY

PICKUP. The plaintiffs were injured while riding in the open cargo section of a pickup manufactured by the defendant. The plaintiffs brought an action in negligence, breach of warranties, misrepresentation and fraud. The defendant raised the defense of an open and obvious danger and the trial court granted summary judgment on all counts for the defendant. The appellate court affirmed, holding that the plaintiff failed to provide evidence of an issue of fact that people were not aware of the danger of riding in the cargo area of a pickup. The appellate court also affirmed on the other issues, holding that the

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plaintiffs failed to show that the cargo area was negligently designed, since the cargo area could not be designed for both passenger and cargo use. **Maneely v. General Motors Corp., 108 F.3d 1176 (9th Cir. 1997)**.

SECURED TRANSACTIONS

CONTINUATION FILING. The bank had acquired a secured loan from another creditor and had filed a continuation statement. The debtor argued that the security interest was not perfected because the continuation statement failed to include all of the information in the original financing statement, since the statement did not include a description of the collateral. The creditor argued that the rule of substantial compliance used for sufficiency of financing statements should also apply to continuation filings. The court disagreed because the statute, Tex. Bus. & Com. Code § 9.401, did not have a substantial compliance provision and the statute expressly requires the continuation to contain all the information in the financing statement. The court also noted that precedent had held that continuation statement requirements should be strictly followed. Therefore, the court held that the security interest was not perfected after the filing of the continuation statement. ***In re* McCloy, 206 B.R. 428 (Bankr. N.D. Tex. 1997)**.

CONVERSION. The plaintiff contracted with a cattle producer to purchase 50 head of registered black angus cattle. The written contract provided for one-half payment on delivery and one-half in three months. The seller did not file a financing statement or other wise perfect a security interest in the cattle. The contract also contained a provision that the seller not inquire about what the buyer did with the cattle after delivery. The plaintiff resold the cattle immediately to the defendant company but did not pay the remaining one-half of the purchase price before filing for bankruptcy. The seller sought recovery for conversion by the company which purchased the cattle from the plaintiff. The court held that the seller transferred sufficient title to the plaintiff such that sale to the company was not a conversion. **Clark v. Bowling Green Livestock Market, Inc., 206 B.R. 439 (Bankr. W.D. Ky. 1996)**.

LANDLORD'S LIEN. The debtor orally rented farm land from a parent. The parent claimed to have made payments for the repair of the debtor's farm equipment and filed a secured claim for a landlord's lien. The parent argued that the secured claim was secured by the equipment as well as the debtor's crops. The statute for the lien, Tex. Prop. Code § 54.001 allowed a lien for money and land value supplied by a landlord for the tenant's growing of a crop. The parent's testimony and evidence failed to identify any written evidence of the claimed repair expenses, failed to identify that the repairs were necessary for the growing of the tenant's crops and failed to show that the equipment was used by the tenant. The court held, therefore, that the landlord's lien available to the parent was not secured by the debtor's equipment to the extent of the alleged repair costs. ***In re* McCloy, 206 B.R. 428 (Bankr. N.D. Tex. 1997)**.

STATE REGULATION OF AGRICULTURE

FEEDLOTS. The defendant county enacted several ordinances which governed the construction of new large livestock confinement feeding facilities. The ordinances required (1) submission of an application prior to construction detailing the information about who was building the facility, the construction plans and information about the drainage for the land; (2) submission of proof of financial ability to pay for any environmental damage from the facility; (3) acquisition of a land application permit for the spreading of manure on land involved; and (4) compliance with air quality standards and emission control standards. The plaintiff was an association of county livestock producers and argued that the ordinances violated state law against zoning laws which restricted agricultural use of land and the ordinances were pre-empted by state laws governing the various subject matters of the ordinances. The court held that the ordinance governing air quality was a zoning ordinance and was void because it restricted the agricultural use of land. However, the court upheld the remaining ordinances as not preempted by state laws and as valid exercises of local governance in furtherance of state policies. **Humboldt County Livestock Producers v. Humboldt County, No. 16322 (D.C. Humboldt County, Iowa 1997)**.

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