incidental to the realization of the return on an investment was not subject to SE tax but held that no part of the taxpayer's income from the sign business fell within that exception.[12]

Ray v. Commissioner

The 1996 Tax Court case of *Ray v. Commissioner*[13] involved a farmer who had acquired 1,022 acres of farmland which had been bid into the conservation reserve program[14] by the prior owner.[15] The Tax Court applied a "direct nexus" test to determine whether the CRP income was subject to self-employment tax.[16] Thus, if there is a direct nexus or connection between the land in question and the farm business, self-employment tax is due. The taxpayer applied herbicide to the land in question and "shredded" natural grasses on the tract, apparently using the taxpayer's equipment and employees. The land was in the same general area as the farm business. As the court stated¾

"In this case, we are satisfied that the payments that petitioner Connie Ray received from the CRP program were in return for caring for the farmland that he owned, as required by the contract with CCC. Petitioner Connie Ray was an active farmer/rancher with respect to additional acreage, and the payments received here had a direct nexus to his trade or business."[17]

The court in *Ray v. Commissioner*[18] credited the Internal Revenue Service in *Rev. Rul. 60-32*[19] with articulating the "direct nexus" test, but, in reality, *Rev. Rul. 60-32*[20] only reached that conclusion by implication in stating that payments under the Soil Bank Program were includible in net earnings from self-employment if the taxpayer "operates his farm personally or through agents or employees" or is operated by others and the taxpayer materially participates in the production of commodities or the management of production.[21]

Conclusion

Based on existing authority, the direct nexus test would seem to lead to the conclusion that, where some land is rented under a cash rent lease or a non-material participation share lease and other land is included in a farming operation (or rented under a material participation share lease), the cash rented land (or land under a non-material participation share lease) is subject to self-employment tax if there is a direct connection or nexus with the farm business. On the other hand, if that connection or nexus is not present, self-employment tax is not imposed on the net income from the land that is cash rented or rented under a non-material participation share lease. That leaves open the possibility that rented land, owned by a farmer, could be considered an investment asset with the result that the rents from the leased land would not be subject to self-employment tax.

The nexus or connection seems to be heavily dependent upon proximity in location and use of the equipment and personnel from the farm business to maintain the land rented under a non-material participation lease arrangement.

FOOTNOTES

1 I.R.C. § 1402(a). See generally 5 Harl, *Agricultural Law* § 37.03[3] (2003); Harl, *Agricultural Law Manual* § 4.06[3] (2003).
2 I.R.C. § 1402(a)(1). See 5 Harl, *supra* note 1, § 37.03[3]; Harl, *supra* note 1, § 4.06[3].
3 I.R.C. § 1401.
4 I.R.C. § 1402(a).
5 I.R.C. § 3101.
6 See I.R.C. § 1402(a).
7 I.R.C. § 1402(a)(1).
8 *Id*.
9 T.C. Memo. 1989-357.
10 *Id*.
11 *Id*.
12 *Id*.
13 T.C. Memo. 1996-436.
14 See 7 C.F.R. Pt. 1410 (2002).
15 *Ray v. Comm'r*, T.C. Memo. 1996-436.
16 *Id*.
17 *Id*.
18 T.C. Memo. 1996-436.
19 1960-1 C.B. 23.
20 *Id*.
21 *Id*.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

HOSTILE USE. The disputed 9.6 acres was located on the defendant's side of a fence. The evidence showed that the defendant pastured cattle on the property, maintained the fence, mowed the property and posted "No Trespassing" signs on the property. The court held that the defendant's open and hostile use of the property for over 10 years was sufficient to transfer title to the defendant by adverse possession. Although a portion of the property was woods and brush, the court ruled that the property was not wilderness land subject to a higher degree of proof for adverse possession. **Luttrell v. Stokes, 77 S.W.2d 745 (Mo. Ct. App. 2002)**.

BANKRUPTCY

FEDERAL TAX-*ALM* § 13.03[7].*

DISCHARGE. The debtor, a lawyer, failed to pay taxes and timely file income tax returns for five tax years. Some taxes were paid but only after assessment and collection efforts by the IRS. The debtor also failed to make quarterly estimated tax payments for these years and the years up to the bankruptcy case. The debtor had substantial income during these years but spent the money on other uses or transferred property to family members. The debtor was also found to have used the debtor's professional corporation to avoid levies and to pay for personal obligations. The court held that the debtor's conduct indicated a pattern of attempting to avoid payment of the taxes sufficient to make the taxes nondischargeable for willful attempt to evade payment of taxes under Section 523(a)(1)(C). ***In re* Ryan, 286 B.R. 141 (W.D. Mo. 2002)**.

POST-PETITION INTEREST. The IRS sought post-petition interest on a pre-petition tax claim and a ruling that the interest claim was nondischargeable. The debtor argued that the interest should not be allowed because the interest arose out of an improper setoff by the IRS that violated the automatic stay. The court held that post-petition interest was allowed and that any compensation for a violation of the automatic stay had to be handled in a separate motion. ***In re* Payne, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,243 (Bankr. D. Kan. 2003)**.

CONTRACTS

STATUTE OF FRAUDS. The plaintiffs had enrolled their farm in the Freedom to Farm program which provided cash subsidies (AMTA payments) based on the crop base of the farm. The plaintiffs sold at auction their farm in parcels, some of which had crops and some of which were pasture. The auction bill of sale provided that "all announcements made at the auction shall take precedence over any prior advertising, either oral or written." At the auction, it was announced that the crop base would not be allocated to the pasture parcels. The defendant purchased one of the pasture parcels and refused to sign a letter acknowledging that the pasture would receive no crop base. The defendant refused to sign the letter under the belief that, in the absence of the letter, the USDA would prorate the crop base to all parcels. The plaintiffs sued for breach of contract for the defendant's failure to sign the crop base letter. The court held that the purchase agreements signed at the auction contained the essential contract terms and satisfied the Statute of Frauds, but that any indefinite terms could be clarified by reference to extrinsic evidence. Thus, the court allowed extrinsic evidence to be admissible concerning the defendant's intended use for the purchased land to raise hay and cattle and that the defendant never claimed he believed land he purchased would include a crop base. As a result, the court held the defendant in breach for failing to execute the letter. **Holbert v. Whitaker, 87 S.W.3d 360 (Mo. Ct. App. 2002).**

The plaintiff had leased farm land on a crop-share basis from the defendant and the defendant's deceased father under an oral year-to-year basis for several years. After the death of the father, the plaintiff and defendant orally agreed to allow the plaintiff to continue leasing the property and to live on a house on the property. The plaintiff alleged that the oral lease was to continue until the plaintiff retired and that the use of the house was to be rent free. The defendant argued that the lease was not enforceable because it was not in writing as required by the Statute of Frauds. The court held that promissory estoppel, like part performance, also applied as an exception to the Statute of Frauds where the party seeking to enforce an oral contract can show detrimental reliance on the alleged contract. The court noted that the tenant made substantial improvements to the farm and had moved to the house in reliance on the oral agreement. **Kolkman v. Roth, 656 N.W.2d 148 (Iowa 2003)**.

The defendant farmer had borrowed operating funds from the defendant bank and granted a security interest in the farm property. The farmer had also purchased farm supplies from the plaintiff on credit. The parties signed a subordination agreement allocating the proceeds of the 1997 crop between the creditors if the crop proceeds were above a stated minimum. The bank claimed the agreement required the plaintiff to make any check to the farmer payable to the farmer and the bank jointly. The farmer received a check from the plaintiff for the hauling of potatoes, not for the potatoes themselves. The bank sued for conversion of the proceeds of the check. The court held that the payment for hauling potatoes was not covered by the bank's security interest in the potatoes and no conversion occurred when the plaintiff issued a check in the farmer's name only. **Western Farm Service, Inc. v. Olsen, 59 P.3d 93 (Wash. Ct. App. 2002)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The plaintiff purchased crop insurance from the defendant and made a claim based on destruction of the 1999 wheat crop by wild geese. Although the insurance company agent originally indicated that the crop was a total loss and fully covered, the company denied coverage for 1100 acres. The plaintiff filed suit for breach of contract and the defendant sought to require arbitration of the matter under the insurance contract arbitration clause. The trial court held that the arbitration clause was unenforceable under Ark. Code Ann. § 16-108-201. The appellate court reversed, holding that the Federal Crop Insurance Act preempted the state law and allowed arbitration clauses. **IGF Insurance Co. v. Hat Creek Partnership, 76 S.W.2d 859 (Ark. 2002)**.

FARM CENSUS. The NASS has issued a report of the number of farms and amount of land in farming for the United States and individual states for 2002. The number of farms in the United States in 2002 is estimated at 2.16 million, up 0.1 percent from 2001. The increase in farms occurred primarily in agricultural operations with $1,000-$9,999 in sales. Total land in farms, at 941.5 million acres, increased 170,000 acres from last year. The average size of farm, 436 acres, decreased one acre from 2001. The increase in the number of farms and land in farms primarily resulted from the inclusion of pasture only farms in 2002. **NASS, Farms and Land in Farms, February 2003**.

FEDERAL ESTATE AND GIFT TAX

GIFT. The taxpayer deeded a residence to the taxpayer's two children subject to a life estate for the taxpayer. Prior to the transfer, the two children orally promised to reconvey the property back to the taxpayer at the taxpayer's request. The taxpayer made such a request but the children refused to reconvey the property. The taxpayer filed suit to recover the property and the children settled the suit by transferring the property to the taxpayer. The IRS ruled that the original conveyance to the children and the reconveyance back to the taxpayer were not completed gifts for federal gift tax purposes. In addition, the IRS ruled that neither the taxpayer nor the children recognized any income from the transfers. **Ltr. Rul. 200308046, Nov. 19, 2002**.

The taxpayer created several inter vivos irrevocable trusts for the benefit of the taxpayer's spouse. The trusts were intended to qualify for the gift tax QTIP marital deduction but no election was made. The taxpayer argued that the transfers were not taxable gifts because the donative intent of the transfers was not fulfilled due to the failure of the trusts to qualify for the marital deduction. The District Court agreed with the taxpayer, ruling that, under state law, there was an incomplete gift for lack of donative intent; therefore, no federal gift tax applied. The appellate court reversed, holding that the trust instruments were sufficient to pass ownership to the trusts under state law and those transfers gave rise to the federal gift tax liability. The court distinguished this case from the holding of *Estate of Davenport v. Comm'r, 184 F.3d 1176 (10th Cir. 1999)*, in that state law did not control on the issue of donative intent, but was limited to whether a completed transfer had occurred. **Wells Fargo Bank New Mexico v. United States, 2003-1 U.S. Tax Cas. (CCH) ¶ 60,456 (10th Cir. 2003)**.

SELF-CANCELLING INSTALLMENT NOTES. The decedent decided to move to Italy, the decedent's homeland, and sell two commercial properties to the decedent's son. The parties executed a self-canceling installment note for the full value of the properties. Although the decedent was suffering from heart disease, medical testimony estimated that the decedent was expected to live 5-13 years after the sale. However, the decedent died five months later in Italy after heart surgery. The IRS argued that the properties should be included in the decedent's estate because the SCIN was not a bona fide transaction since the son was not expected to make full payment on the SCIN. The court noted that SCINs between family members are subject to closer scrutiny but that a SCIN will be held valid if it can be demonstrated that the parties had a real expectation of payment and enforcement of collection of payment. Although only the first three payments were made, they were made on time. The SCIN was secured by a mortgage. The son testified that the decedent expected the payments to support the decedent's retirement in Italy. The court held that these factors supported a ruling that the SCIN was a bona fide sale with full intent to make the payments. However, the court remanded the case to the Tax Court for a ruling on the issue of whether the SCIN was a bargain sale resulting in a gift which would be included in the decedent's estate. **Estate of Costanza v. Comm'r, 2003-1 U.S. Tax Cas. (CCH) ¶ 60,458 (6th Cir. 2003),** ***rev'g and rem'g,*** **T.C. Memo. 2001-128**.

FEDERAL INCOME TAXATION

CORPORATIONS-*ALM* § 7.02[3].*

EMPLOYEE. The taxpayer was an S corporation with one shareholder who was also the sole officer and director, and the taxpayer operated a business of veterinary surgical consultations for other veterinarians. The business operations were performed by the shareholder and the business was located at the shareholder's residence. The corporation did not have a separate bank account and the business and personal income and expenses were handled through the shareholder's personal bank account. The corporation reported income for 1997 and 1998, deductions for compensation paid to officers but no deductions for wages or salaries. The shareholder reported the shareholder's share of income from the corporation on Schedule K-1 and Schedule E. The corporation did not withhold or pay any employment taxes. The court held that the shareholder was an employee of the taxpayer and the taxpayer was required to withhold, report and pay employment taxes. **Veterinary Surgical Consultants, P.C. v. Comm'r, T.C. Memo. 2003-48**. See also **Mike J. Graham Trucking, Inc. v. Comm'r, T.C. Memo. 2003-49; Superior Proside, Inc. v. Comm'r, T.C. Memo. 2003-50; Specialty Transport & Delivery Services, Inc. v. Comm'r, T.C. Memo. 2003-51; Nu-Lock Design, Inc. v. Comm'r, T.C. Memo. 2003-52; Water-Pure Systems, Inc. v. Comm'r, T.C. Memo. 2003-53.**

SALE OF ASSETS. The taxpayer was the sole owner of a corporation which operated a beer distributorship. The taxpayer sold the company to unrelated parties and the sales

***Agricultural Law Manual* (ALM).**

agreement contained a covenant not to compete and a consulting agreement under which the taxpayer was hired as a consultant for five years. No allocation of the sales proceeds was made for intangible assets such as good will and going concern value. The IRS argued that a portion of the amounts allocated to the covenant not to compete and the consulting agreement was actually properly allocated to the intangible assets. The court noted that much of the taxpayer's business was dependent upon the taxpayer's personal relationship with retailers and the taxpayer's personal knowledge of the area. The court also noted that the company buyers were unfamiliar with the beer distribution business in general and in the specific region supplied by the company in particular. The court assigned a portion of the sales proceeds to the covenant not to compete and the consulting agreement based on the importance of the agreements to the success of the buyers' continuation of the company's business. The court held that the remainder of the amount allocated under the sale contract to the covenant not to compete and the consulting agreement had to be allocated to the intangible assets. The appellate court affirmed in an opinion designated as not for publication. **Langdon v. Comm'r, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,244 (8th Cir. 2003),** ***aff'g sub. nom.*****, Bemidji Distributing Co., Inc. v. Comm'r, T.C. Memo. 2001-260**.

DISASTER LOSSES. On February 4, 2003, the President determined that certain areas in Oklahoma were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of a severe ice storm beginning on December 3, 2002. **FEMA-1452-DR**. Accordingly, a taxpayer who sustained a loss attributable to these disasters may deduct the loss on his or her 2001 federal income tax return.

The IRS has issued a list of areas declared by the President to be disaster areas for 2002. **Rev. Rul. 2003-29, I.R.B. 2003-__**.

ESTIMATED TAX PAYMENTS. The IRS has ruled that the rules for imposition of an addition to tax for insufficient estimated tax payments are not affected if the previous tax year's income tax return was filed late. Accordingly, when an individual filed a late return for the preceding taxable year and paid the installments for the current tax year properly predicated on tax shown on the late filed return, the IRS will not impose the addition to tax under I.R.C. § 6654(a) for the underpayment of estimated tax for the current taxable year. **Rev. Rul. 2003-23, I.R.B. 2003-8**.

INSTALLMENT REPORTING. The taxpayer sold some real property in exchange for a seller-financed promissory note to be paid in monthly installments over several years. Although the taxpayer intended to report the gain from the sale using the installment method of reporting and instructed the tax accountant to make that election on the taxpayer's tax return, the accountant reported all the gain in the first year. The error was discovered in the return for the following tax year and the taxpayer applied for permission to revoke the election out of the installment method. The IRS granted the request. **Ltr. Rul. 200308042, Nov. 18, 2002**.

INTEREST. The taxpayer incurred interest on amounts borrowed from a brokerage firm as part of the purchase of stocks through that firm. The IRS argued that the interest was nondeductible personal interest because the taxpayer was an investor and not engaged in the business of a trader. The court ruled that the margin interest was deductible as investment interest. **Miner v. Comm'r, T.C. Memo. 2003-39**.

MEALS. The IRS has announced that, for tax years beginning after December 31, 2002, family day care providers may choose to use a standardized rate to claim the deduction for meals provided to children in their care instead of keeping detailed records and receipts of food purchased for use in their business. However, if taxpayers used the standard meal rates (USDA Tier I rates) for prior tax years to claim their deductible food costs, then the IRS will not raise the issue of the amount of the deduction claimed in the prior years. **IR-2003-20**.

RETURNS. The IRS has announced the publication of revised Form 4141 (2002), Senior Citizens--Did you know that you can be charged tax on money you don't get? This publication discusses the required minimum distribution rules, which provide that taxpayers with retirement plans must begin to take distributions from their plans once they reach the age 70-1/2. It provides information on the rules, how to calculate the required minimum distribution, how to delay the first distribution and what happens if the rules are not followed. This publications 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.

S CORPORATIONS

ESOP. An S corporation provided an ESOP for its employees. The ESOP held stock in the corporation and received a portion of the corporation's income. An employee received 5 shares of the stock in a distribution from the ESOP. The IRS ruled that the ESOP increased its basis in the stock by the amount of income from the S corporation; therefore, when the stock was distributed to the employee, the stock basis was the original basis plus the stock's share of corporation income. If the employee did not roll over the stock to another qualified pension plan, the employee would be taxable on the difference between the fair market value of the stock on distribution and its carryover basis. **Rev. Rul. 2003-27, I.R.B. 2003-__**.

An S corporation provided an ESOP for its employees which allowed for distribution of stock to the employee if a distribution is made from the ESOP. The IRS ruled that, if the employee rolls over the distribution to an IRA which is not an eligible S corporation shareholder, the S corporation status is not lost if the S corporation is required to and does repurchase the distributed stock by the date of the distribution. No S corporation items attributable to the stock may pass to the IRA. **Rev. Proc. 2003-23, I.R.B. 2003-__**.

SECOND CLASS OF STOCK. An S corporation had a policy of making proportionate distributions in an amount necessary to cover shareholder taxes generated by net flowthrough income. The corporation made such distributions in a tax year consistent with this policy. In subsequent tax years, the corporation redeemed shares from several shareholders and the distributions were modified to reflect the ownership changes. The corporation filed an amended return for the pre-redemption tax year and the shareholders also filed amended returns for that year to reflect the corporation's amendments. The corporation then revised the distributions for that tax year to reflect the change in taxes owed by the shareholders, but the distribution was based on the pre-redemption stock holdings in effect during the original tax year. The IRS ruled that this did not create a second class of stock causing termination of S corporation status. **Ltr. Rul. 200308035, Nov. 12, 2002**.

STOCK REDEMPTION. All the shares of an S corporation were owned by the members of one family or by trusts with the members of that family as beneficiaries. The corporation established a plan for redemption of stock from the shareholders at fair market value if a shareholder desired to redeem some stock. One shareholder redeemed for cash a portion of the stock owned by the shareholder. The shareholder did not participate in the management of the corporation and the shareholder's family members and trusts did not participate in management of the corporation. The corporation did not have any declared but unpaid dividends on the redeemed stock. The IRS ruled that the redemption of the stock would not be considered a dividend so long as no other stock was redeemed by other shareholders. The redemption would be taxable to the extent the cash received exceeded the shareholder's basis in the stock. **Ltr. Rul. 200307001, Aug. 16, 2002**.

SAFE HARBOR INTEREST RATES
March 2003

	Annual	Semi-annual	Quarterly	Monthly
Short-term				
AFR	1.58	1.57	1.57	1.56
110 percent AFR	1.74	1.73	1.73	1.72
120 percent AFR	1.89	1.88	1.88	1.87
Mid-term				
AFR	3.24	3.21	3.20	3.19
110 percent AFR	3.56	3.53	3.51	3.50
120 percent AFR	3.89	3.85	3.83	3.82
Long-term				
AFR	4.80	4.74	4.71	4.69
110 percent AFR	5.28	5.21	5.18	5.15
120 percent AFR	5.77	5.69	5.65	5.62

Rev. Rul. 2003-26, I.R.B. 2003-__.

TAX SCAMS. The IRS has issued a warning to taxpayers to avoid 12 tax scams used to defraud taxpayers using various tax related processes including: (1) offshore trusts or other arrangement to avoid tax; (2) identity theft; (3) phony tax payment checks; (4) tax credits or refunds related to slavery reparations; (5) failure of employers to withhold taxes from employee wages; (6) improper use of home-based businesses to facilitate improper deduction of personal expenses; (7) "pay the tax, get the prize" schemes; (8) frivolous tax-protest arguments; (9) scams involving purported refunds of Social Security taxes in exchange for a "paperwork" fee; (10) refund schemes, in which individuals are asked to give their social security numbers to the promoter; (11) sharing or "borrowing" of earned income tax credit dependents; and (12) schemes in which a purported IRS agent comes to a taxpayer's home to collect taxes. **IR-2003-18**.

WATER RIGHTS. The taxpayer was a mutual ditch company formed by its shareholders to transport and store water under water rights held by the shareholders. The shareholders sold a portion of their water rights to a single purchaser. The taxpayer was not a party to the sale and received no property as a result of the sale. The IRS ruled that the corporation did not realize any gain or loss from the shareholders' sale of their water rights and that the shareholders would realize capital gain or loss from the sale of the water rights. **Ltr. Rul. 200307062, Oct. 31, 2002**.

SECURED TRANSACTIONS

CONVERSION. The defendant farmer had borrowed operating funds from the defendant bank and granted a security interest in the farm property. The farmer had also purchased farm supplies from the plaintiff on credit. The parties signed a subordination agreement allocating the proceeds of the 1996 crop between the creditors if the crop proceeds were above a stated minimum. The crop proceeds did not meet the minimum and the suppliers were not paid. In 1997, another subordination agreement was executed which provided for payment of the suppliers if the 1997 crop was at least 95 percent of the projected crop. However, the agreement stated only that the bank would "review payment" if the 95 percent level was reached. The farmer's crop was monitored and found to be above 95 percent of the projected crop but the bank refused payment. The bank had requested a jury instruction on the application of the Statute of Frauds but was denied by the trial court. The appellate court agreed that Wash. Rev. Code § 19.36.140 required notice of the Statute of Frauds on the subordination agreement before the Statute of Frauds could apply to the agreement. Because no notice was included in the agreement, no jury instruction was required. **Western Farm Service, Inc. v. Olsen, 59 P.3d 93 (Wash. Ct. App. 2002)**.

STATE REGULATION OF AGRICULTURE

FARMLAND PRESERVATION LAW. Case summary by Roger A. McEowen. The plaintiff operated a tree nursery farm that had been in the family for approximately 60 years and had been farmed for more than 200 years. The surrounding area had become commercially developed. The nearby city, county and state department of transportation (IDOT) collaborated on relocation plans for several roads to alleviate traffic congestion. The plans involved construction of a new road directly through the plaintiff's tree farm. The plaintiff was not willing to sell a portion of the land, so IDOT exercised its "quick-take" authority under state law (605 ILCS 5/4-501). The plaintiff raised several issues on appeal, with one issue involving whether IDOT violated the state farmland preservation law by attempting to convert the plaintiff's farmland to another use without first complying with the Illinois Farmland Preservation Act (IFPA) (505 ILCS 75/1 *et. seq*.). IFPA establishes a procedure by which farmland is to be converted to nonagricultural purposes and requires IDOT to obtain a determination from the state Director of Agriculture of whether a proposed road project complies with IDOT's policy statements and working agreements. IDOT did not obtain such a determination from the Department of Agriculture concerning the road project. The court held that IFPA did not apply to the tree farm because the farm did not involve the type of land intended to be protected. The court noted that the statutory language concerned erosion of Illinois farmland and the elimination of sources of food products. Because the land at issue had not been used for food production for the past 60 years, the statute did not apply. The court also held that IDOT did not abuse its "quick-take" authority granted under state law. **Department of Transportation v. The Sunnyside Partnership, L.P., No. 5-02-0434, 2003 Ill. App. LEXIS 244 (Ill. Ct. App. Feb. 20, 2003).**

STATE TAXATION

HOG CONFINEMENT FACILITIES. The taxpayers owned several hog confinement facilities and objected to the property tax valuations of the buildings on the properties. The taxpayers argued that (1) the assessor failed to take into account the productivity and net-earning capacity criteria for valuing agricultural real estate pursuant to Iowa Code § 441.21(1)(e); (2) the assessments improperly included the value of removable personal property; (3) the formula applied in valuing the buildings relied on inaccurate data concerning comparable sales; (4) the amount of the assessments are excessive when compared to the valuations of similar facilities by assessors in other counties; (5) the Iowa Department of Revenue and Finance failed to adopt a rule embracing the formula used to allocate value to the buildings; and (6) in using cost of construction as a measure of value, the board of review and district court relied on average costs and ignored evidence of actual costs. The court held that the valuation law was properly applied to the taxpayer's hog confinement buildings. **H & R Partnership v. Davis County Bd. Of Review, 654 N.W.2d 521 (Iowa 2002)**.

IN THE NEWS

CORPORATIONS. The North Dakota House of Representatives has passed a bill (53-40) to amend the North Dakota anti-corporate farming law to allow nonfamily members to own shares in farm corporations. The law would also require the principal shareholder to be actively engaged in operating the farm or ranch, but not necessarily residing on the farm or ranch.

FARM LABOR. The National Agricultural Statistics Service (NASS) has issued the latest agricultural labor statistics which show the number of hired farm workers down 1 percent but wages up 4 percent from January 2002. All NASS reports are available by subscription free of charge direct to your e-mail address. Starting with the NASS home page at http:/www.usda.gov/nass/, click on Publications, then click on the Subscribe by E-mail button which takes you to the page describing e-mail delivery of reports.

GENETICALLY MODIFIED ORGANISMS. EU member-states are calling for tighter biotech crop controls to prevent contamination of other crops, Reuters reports. The European Commission will issue a report next week on separating genetically and non-genetically modified crops, but says the issue isn't meant to be used as justification for maintaining a de facto ban on the importation of such crops, which the commission suspects some member-states might do. Italy and eight other EU members seek solid rules on contamination, and a few of those members refuse to lift the EU's five-year moratorium on biotech crops until such rules are in place. **Agriculture Online**.

ORGANIC FARMING. A Massachusetts organization responsible for certifying organic farmers has charged USDA with undermining the new organic program and lowering established standards for organic certification. Massachusetts Independent Certification, Inc. (MICI) filed a complaint to be heard by an administrative law judge alleging that USDA wrongly interfered in MICI's decision not to certify a commercial egg producer. MICI had denied organic certification to the operation because, contrary to the organic regulations that went into effect on October 21, 2002, the chickens did not have access to the outdoors. On the day after MICI denied the organic certification, USDA overruled MICI's decision and directed it to certify the commercial egg-laying operation. **Jill Krueger, Farmers' Legal Action Group, Inc**.

LOAN RATES. USDA has announced the corn, sorghum, and soybean county loan rates for 2003, as well as county and regional loan rates for other commodities. "The relative levels of the 2003-crop county loan rates for each commodity reflect the most recent information available about price relationships around the country," USDA said in a release. USDA says the new rates address producer concerns about disparate rates on or near state borders. USDA listed loan rates for corn and sorghum at $1.98 per bushel and for soybeans at $5.00 per bushel.

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by Neil E. Harl and Roger A. McEowen

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* * * *

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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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