taxable years beginning after December 31, 2001.The bill is estimated to raise $33 million in revenue over the next decade.

[23] S. 2200, 107th Cong., 1st Sess. The legislation would apply to tax years beginning after December 31, 2001.

[24] 114 T.C. 343 (2000).

[25] *Id*. Both bills provide that "notwithstanding any prior regulation, revenue ruling, or other guidance issued by the Internal Revenue Service, no person shall be subject to the limitations added... before January 1, 2002." The most likely interpretation of that language is that it does not render the *Warren* litigation moot. Instead, the Ninth Circuit would have to interpret I.R.C. § 107 without the benefit of Rev. Rul. 71-280, but would not be precluded from reaching the same result.

[26] 114 T.C. 343 (2000).

[27] Rev. Rul. 71-280, 1971-2 C.B. 92.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

FEDERAL TAX-*ALM* § 13.03[7].*

DISCHARGE. The debtor had failed to file returns for 1983 through 1986. The IRS made assessments based on substitute returns it created. The debtor made two offers in compromise which were rejected because the debtor had not filed returns. The debtor eventually filed the returns, claiming less tax due than the amount assessed by the IRS. The debtor sought to discharge the taxes because the returns were filed more than three years before the bankruptcy petition was filed. The court held that the debtor's returns did not qualify as tax returns under Section 523(a)(1)(B) because the IRS had already created substitute returns and made an assessment and the debtors' returns were not an honest attempt by the debtor to comply with the filing requirements. ***In re* Rushing, 273 B.R. 223 (Bankr. D. Ariz. 2001)**.

NET OPERATING LOSSES. The debtor owned two S corporations and filed for Chapter 11, with the stock passing to the bankruptcy estate. The corporations had net operating losses for the period between the start of its tax year and the date of the debtor's bankruptcy petition. The debtor claimed the losses as net operating losses and carried the losses forward to post-bankruptcy tax years. The debtor did not elect to bifurcate the debtor's tax year in which the petition was filed. In a Chief Counsel Advice letter, the IRS ruled that the debtor could not claim the net operating losses because the losses passed to the bankruptcy estate with the stock. The net operating losses would then be used to decrease the basis of the stock to the extent of discharge of indebtedness which occurred as part of the bankruptcy case. If any net operating losses remained after the basis reduction, they passed to the debtor. After the bankruptcy case closed, the lowered basis of the stock also passed on to the debtor. **CCA Ltr. Rul. 200217003, Dec. 14, 2001**.

FEDERAL AGRICULTURAL PROGRAMS

FOOT AND MOUTH DISEASE. The APHIS has issued proposed regulations amending the indemnity provisions pertaining to the control and eradication of foot-and-mouth disease and other serious diseases, including both cooperative programs and extraordinary emergencies. **67 Fed. Reg. 21933 (May 1, 2002).**

KARNAL BUNT. The APHIS has issued interim regulations amending the Karnal bunt regulations to prohibit grain grown in a regulated area from being used as seed outside the regulated areas. The interim regulations also remove the requirement that wheat seed, durum wheat seed, and triticale seed that originates within a regulated area be treated with a fungicide before it may be planted within a regulated area. **67 Fed. Reg. 21159 (April 30, 2002).**

The APHIS has issued interim regulations amending the Karnal bunt regulations to provide compensation for certain growers and handlers of grain and seed affected by Karnal bunt who are not currently eligible for compensation, and for certain wheat grown outside the regulated area that was commingled with wheat grown in regulated areas in Texas. **67 Fed. Reg. 21561 (May 1, 2002).**

MIGRANT WORKERS. The plaintiffs were migrant and seasonal agricultural laborers who resided in Texas. The plaintiffs were recruited in Texas by a Texas farm-labor contractor hired by the defendant, a New York dairy, for work in New York. The employment contracts contained a provision that jurisdiction over the contracts was in New York. The defendant argued that the Texas District Court lacked personal jurisdiction over the defendant who had no contacts with the state. The court held that the forum selection clause was unenforceable as contrary to the provisions of MSAWPA which prohibited the waiver of rights granted by MSAWPA. The court also held that the court had personal jurisdiction over the defendant because the defendant had "purposefully directed" its activities at the residents of Texas by hiring the Texas farm-labor contractor to hire residents of Texas.

Gonsalez Moreno v. Milk Train, Inc., 182 F. Supp.2d 590 (W.D. Tex. 2002).

MILK. The plaintiffs were milk producers subject to a milk marketing order under the Agricultural Marketing Agreement Act. The producers challenged as unconstitutional the exemption from the milk pricing provisions of the marketing order because the provisions violated the equal protection guarantees of the Fifth Amendment. The court held that the plaintiffs lacked standing to challenge the pricing provisions without first seeking administrative review. **United Dairymen of Arizona v. Veneman, 279 F.3d 1160 (9th Cir. 2002)**.

PESTICIDES. The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136d(a)(2), requires pesticide registrants to report "factual information regarding unreasonable adverse effects on the environment" of a registered pesticide. The EPA issued a regulation, 40 C.F.R. § 159.158(a), which requires that this reporting include opinions of a registrant's employees and agents. The plaintiff challenged the regulation as beyond the authority provided by the statute. The court held that the regulation was valid and not unreasonable or contrary to law. **American Crop Protection Ass'n v. EPA, 182 F. Supp. 2d 89 (D. D.C. 2002)**.

WETLANDS. The USDA has issued proposed regulations setting out certain categorical minimal effect exemptions under the wetland conservation provisions of the Food Security Act of 1985, as amended. This proposed rule identifies five wetland conversion activities, which due to the type of wetlands or other criteria, would only have a minimal effect upon wetland functions and values, and thus would not render a producer ineligible for certain USDA program benefits. The five conservation activities would be (1) removal of woody vegetation, including stumps, from natural herbaceous wetlands; (2) removal of scattered woody vegetation, including stumps; (3) installation of grassed waterways for erosion control on non-highly erodible croplands; (4) terrace construction for erosion control on erodible cropland; and (5) control or removal of exotic invasive woody species, including stumps. **67 Fed. Reg. 19699 (April 23, 2002)**.

FEDERAL ESTATE AND GIFT TAX

CLAIMS. The decedent was killed in an automobile accident in which the other driver was also killed and the other driver's spouse and child were injured. The spouse and child filed a claim against the decedent's estate for the damages and also filed a lawsuit for damages, claiming that the decedent was at least partially at fault for the accident. The estate eventually settled with the spouse and child but claimed a deduction in excess of the amount paid, based upon the estimated liability of the estate on the decedent's death. In a Chief Counsel Advice letter, the IRS ruled that the deduction was limited to the actual amount of the payments because the claim was too contingent at the decedent's death. **CCA Ltr. Rul. 200217022, Jan. 17, 2002**.

GIFTS. The decedent's predeceased spouse had made over $800,000 in payments to the spouse's personal secretary. The decedent's estate sought a refund of gift taxes paid on the transfers, arguing that the transfers were compensation rather than gifts. The court held that the payments were gifts because the spouse maintained a close personal relationship with the secretary, had made numerous gifts over the years and filed gift tax returns for the transfers. **Lane v. Comm'r, 2002-1 U.S. Tax Cas. (CCH) ¶ 60,437 (4th Cir. 2002), *aff'g on point sub nom.*, Estate of Powell v. Comm'r, 2001-2 U.S. Tax Cas. (CCH) ¶ 60,416 (W.D. Va. 2001)**.

VALUATION. The decedent owned a 50 percent interest in five partnerships which owned and operated public assistance housing. Under contracts with HUD, the partnerships received guaranteed rents and subsidies for renting to low income and elderly tenants. The other 50 percent interests were owned by the decedent's son who participated in the management of the business. The partnership agreement provided for the sale of the decedent's interests to the son for $10,000 each and the estate claimed that amount as the value of each of the decedent's interests. The court disregarded the buyout agreement price as based on a testamentary purpose. The court valued the partnerships using the value of the partnership assets and expected income. The court allowed a discount for the decedent's interests for a lack of marketability, but did not allow a discount for a minority interest because (1) the HUD contracts provided a guaranteed income to both partners, (2) the partnership agreement required an annual distribution of net income to the partners, and (3) the partnership agreement required a vote of at least 75 percent of the interests to make any changes to the partnership agreement or to liquidate the partnership. **Estate of Godley v. Comm'r, 2002-1 U.S. Tax Cas. (CCH) ¶ 60,436 (4th Cir. 2002)**.

FEDERAL INCOME TAXATION

CHARITABLE DEDUCTION. The taxpayer owned shares of stock which were not publicly traded on a stock exchange market. The stock was issued by a bank holding company and was bought and sold through privately arranged sales. The taxpayer transferred the stock to a nonprofit family foundation and claimed a charitable deduction based on the fair-market value of the stock as determined by a subsequent sale of the stock to another bank corporation. The court held that the taxpayer could claim a deduction only for the taxpayer's basis in the stock because the stock was not qualified appreciated stock, under Treas. Reg. § 1.170A-13(c)(7)(xi)(A), since it was not readily available on an established securities market. The court also noted that the taxpayer failed to meet the substantiation requirements to demonstrate the appreciated value of the stock when transferred. **Todd v. Comm'r, 118 T.C. No. 19 (2002).**

CORPORATIONS-*ALM* § 7.02.*

DEDUCTIONS**.** The taxpayer corporation was sued by its shareholders for improper reporting of annual income and expenses. The taxpayer settled the lawsuit by agreeing to pay the shareholders in cash and stock. The IRS ruled that the settlement payment could be claimed as a current business expense deduction. **Ltr. Rul. 200216013, Jan. 16, 2002**.

COURT AWARDS AND SETTLEMENTS. The taxpayer was a plaintiff in a personal injury lawsuit and received a jury verdict for compensatory and punitive damages. The parties then entered a settlement agreement which did not allocate the funds received for the various types of awards. The court held that the settlement proceeds had to be allocated in the same ratio as the damages were allocated by the jury. ***In re* Valencia, 2002-1 U.S. Tax Cas. (CCH) ¶ 50,388 (Bankr. D. N.M. 2002)**.

DISASTER PAYMENTS. On April 4, 2002, the president determined that certain areas in Kentucky were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of severe storms and flooding on March 17-24, 2002. **FEMA-1407-DR**. On April 5, 2002, the president determined that certain areas in Tennessee were eligible for assistance under the Act as a result of severe storms and flooding on March 15-20, 2002. **FEMA-1408-DR**. On April 2, 2002, the president determined that certain areas in Virginia were eligible for assistance under the Act as a result of severe storms and flooding on March 17-20, 2002. **FEMA-1406-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.

HOME OFFICE. The IRS has published a new brochure, "Home-Based Business Tax Avoidance Schemes . . . At A Glance." The schemes described in the document claim that by setting up a bogus home-based business, individual taxpayers can deduct most, or all, of their personal expenses as business expenses. The brochure includes some examples of personal expenses that are not deductible but are commonly claimed as business expenses in home-based business tax avoidance schemes. The brochure explains that no matter how convincing the claims that are found in marketing materials for these schemes may appear, nondeductible personal living expenses cannot be transformed into deductible business expenses. The tax code firmly establishes that a clear business purpose and profit motive must exist in order to generate and claim allowable business expenses. Taxpayers who claimed such deductions on a past tax return should file an amended return as soon as possible to limit possible interest and penalties on top of any taxes they might owe. **Ann. 2002-48, I.R.B. 2002-__**.

IRA. In *Rev. Proc. 2002-10, I.R.B. 2002-4, 401,* the IRS provided guidance to users of its model individual retirement arrangements (IRAs), simplified employee pensions (SEPs) and SIMPLE IRA plans regarding the adoption of revised plans. According to those guidelines, existing model IRAs, SEPs and SIMPLE IRA plans, which do not reflect law changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001 and required minimum distribution regulations, cannot be used to establish new IRAs, SEPs and SIMPLE IRAs after June 1, 2002. The IRS has extended the June 1 deadline to October 1, 2002. Accordingly, financial institutions can use existing model IRAs to establish new IRAs for customers through October 1. Similarly, employers can use existing model SEPs or SIMPLE IRA plans to establish such plans through that date. The deadlines by which revised model forms must be adopted under *Rev. Proc. 2002-10* remain unchanged. **Ann. 2002-49, I.R.B. 2002-__**.

PENSION PLANS. For plans beginning in May 2002, the weighted average is 5.69 percent with the permissible range of 5.12 to 5.82 percent (90 to 106 percent permissible range) and 5.12 to 6.25 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2002-32, I.R.B. 2002-__**.

RETURNS. The IRS has issued proposed regulations which eliminate regulatory impediments to the electronic filing of Form 1040, "U.S. Individual Income Tax Return." These regulations generally affect taxpayers who file Form 1040 electronically and who are required to file any of the following forms: Form 56, "Notice Concerning Fiduciary Relationship;" Form 2120, "Multiple Support Declaration;" Form 2439, "Notice to Shareholder of Undistributed Long-Term Capital Gains;" Form 3468, "Investment Credit;" and Form T (Timber)" Forest Activities Schedules." **67 Fed. Reg. 20028 (April 24, 2002)**.

SELF-EMPLOYMENT TAX. The taxpayer was a commodities futures trader who had originally made the trades on the taxpayer's own account on the Chicago Board of Trade. However, for the tax year involved, the taxpayer conducted all trades through another broker because the taxpayer was being investigated by the CFTC. The taxpayer claimed all gains made in that year as capital gains and reported them on Schedule D. The expenses for the trades were deducted on Schedule C under the business of commodities trader. The court held that the gains made were self-employment income because the trades were made within the normal scope of the taxpayer's business as a commodities trader, even though made through a broker. **Rudman v. Comm'r, 118 T.C. No. 21 (2002)**.

STATE TAXATION

VALUATION. The plaintiff owned a farm on which the plaintiff had operated a hog farrowing facility since 1990. In 1999 the plaintiff built a house on the property a short distance from the farrowing facility. The plaintiff spent $328,000 in constructing the house but the county assessor valued the house at $540,000 for property tax purposes. The plaintiff challenged the valuation because it did not consider the negative effect of the proximity to the farrowing facility and the remoteness of the house from any road. The court held that the "external depreciation" caused by the proximity of the house to the farrowing facility was a valid factor in determining the value of the house and that this factor could not be ignored simply because the plaintiff chose the location of the house. **Livingston v. Board of Equalization, 640 N.W.2d 426 (Neb. Ct. App. 2002)**.

AGRICULTURAL LAW PRESS
P.O. Box 50703 Eugene, OR 97405

ZONING

By Roger A. McEowen

MORATORIUM. This case arose as part of Lake Tahoe preservation efforts brought by the Tahoe Regional Planning Agency, a land use and planning organization. The Agency imposed a moratorium on development in Lake Tahoe from 1981 to 1984 to give the Agency adequate time to revise its land use plan for the lake and basin, areas that were threatened by rapid growth and the associated impact from a growing population. Authorities were concerned about the buildup of algae in the lake, which obscured the clarity of the water. An association of property owners who wanted to build single-family homes near Lake Tahoe brought a takings claim. The U.S. District Court found that a taking had occurred, but the Ninth Circuit reversed. The U.S. Supreme Court agreed to hear the case, and rejected the plaintiff's argument that *Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992)* required a finding that the moratorium was a categorical taking. The court said that Lucas only required analysis of regulatory taking claims as a categorical taking in the unusual case where there is a total prohibition on the beneficial economical use of property. The court reasoned that moratoria are essential land-use development tools and that the time it takes for a decision to be made should be protected. In addition, the court stated that fairness and justice could not be served if categorical rules are applied to numerous normal delays. The Chief Justice dissented, joined by justices Thomas and Scalia, and pointed out that the distinction between temporary and permanent prohibitions is tenuous and that the takings in the case lasted almost six years. A separate dissent, authored by justice Thomas and joined by Scalia, argued that regulations prohibiting all productive uses of property are subject to *Lucas'* per se rule, regardless of whether the property involved retains theoretical useful life and value if, and when, the "temporary" moratorium is lifted. **Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, No. 00-1167, 2002 U. S. LEXIS 3028 (U.S. Sup. Ct. Apr. 23, 2002), *aff'g*, 216, F.3d 764 (9th Cir. 2000)**.

IN THE NEWS

2002 FARM BILL. The US House of Representatives by a vote of 280 to 141 approved the 2002 farm bill on May 2, 2002, despite a late bid to kill the plan by lawmakers who said the plan would encourage overproduction, fail to close loopholes for big farms and violate world trade rules. "First and foremost, this farm bill provides for a strong safety net for our agricultural producers," said Charlie Stenholm, the Agriculture Committee's Ranking Member. The bill, which would boost spending on crop and dairy subsidies by $31.2 billion through 2007, now goes to the Senate for a vote and the President has indicated that he will sign the legislation. **@griculture Online (www.agriculture.com).**

CITATION UPDATES

Bachler v. United States, 281 F.3d 1078 (9th Cir. 2002), *rev'g*, 2000-2 U.S. Tax Cas. (CCH) ¶ 60,390 (N.D. Calif. 2000) (generation skipping transfers) see p. 43 *supra*.

***In re* Young, 122 S. Ct. 1036 (2002), *aff'g*, 233 F.3d 56 (1st Cir. 2000)** (discharge) see p. 43 *supra*.