tax rate, and was held to have standing to challenge the statute because it was financially injured.

[20] 249 F.3d 814 (8th Cir. 2001).

[21] *Id*.

[22] For a discussion of the issue of packer ownership and control of livestock through contractual relationships and the effort, at the federal level, to ban packer ownership of livestock, see McEowen, Carstensen and Harl, "The 2002 Senate Farm Bill: The Ban on Packer Ownership of Livestock," *7 Drake J. of Ag. L. 267* (2002).

[23] It is noted, however, that had the court analyzed the issue and determined that the out-of-state companies were engaging in farming in South Dakota under the contracts, the issue would have remained as to whether Amendment E discriminated against these businesses by treating them in a more disadvantageous manner than in-state businesses.

[24] For example, the court noted that the "pro" Amendment E statements compiled by the Attorney General informed voters that without passage of Amendment E, "[d]esperately needed profits will be skimmed out of local economies and into pockets of distant corporations," and "Amendment E gives South Dakota the opportunity to decide whether control of our state's agriculture should remain in the hands of family farmers and ranchers or fall into the grasp of a few, large corporations." The court claimed that these statements were "brimming with protectionist rhetoric."

[25] Why the court found statements of intent relevant to the discrimination issue without examining the content of the language of Amendment E is not explained.

[26] However, state legislation designed to maintain clean air has been held to constitute a legitimate exercise of the state's police power allowing the state to act in many areas of interstate commerce. See, e.g., Huron Cement Co. v. Detroit, 362 U.S. 440 (1960).

[27] The court failed to mention the numerous exemptions under the South Dakota provision.

[28] It is noted that South Dakota is expected to file a petition for rehearing with the court.

[29] 249 F.3d 814 (8th Cir. 2001).

[30] The state of Iowa presently has an appeal pending with the Eighth Circuit involving the state's ban on packer ownership of livestock. Smithfield Foods, Inc. *et. al*. v. Miller, 241 F. Supp.2d 978 (S.D. Iowa 2003). Most of the states with major anti-corporate farming laws are located within the Eighth Circuit.

[31] 249 F.3d 814 (8th Cir. 2001).

[32] Indeed, the court cited *H.P. Hood & Sons v. DuMond, 336 U.S. 525 (1949)*, where the Court stated that "the vision of the Framers was that every farmer . . . shall be encouraged to produce by the certainty that he will have free access to every market in the Nation."

[33] For a discussion of these issues see, McEowen, Carstensen and Harl, note 22 *supra*; Stumo and O'Brien, Antitrust Fairness vs. Equitable Unfairness in Farmer/Meat Packer Relationships, *8 Drake J. of Ag. L. 91* (2003); and Carstensen, Concentration and the Destruction of Competition in Agricultural Markets: The Case for Change in Public Policy, *2000 Wis. L. Rev. 531* (2000).

[34] 249 F.3d 814 (8th Cir. 2001).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

DISCHARGE. The plaintiffs operated a dairy farm and had purchased feed from the debtor under the recommendation of a nutritionist employed by the debtor. The plaintiff filed a lawsuit for damages to the cows resulting from improper formulation of the feed by the nutritionist. While the lawsuit was pending, the debtor filed for Chapter 11. There was some dispute as to whether the plaintiffs received proper notice of the bankruptcy proceedings, and the plaintiffs failed to file a claim in the bankruptcy case. The debtor's plan provided that "administrative trade claims" would be paid as in the normal course of business without necessity of the creditor filing a claim. A discharge was granted in the Chapter 11 case. The plaintiffs sought further prosecution of the lawsuit and the debtor filed for summary judgment based on the discharge of the claim in the bankruptcy case . The plaintiffs argued that the lawsuit was an "administrative trade claim" which was not discharged. The trial court granted the summary judgment, holding that the plaintiffs' lawsuit was not an administrative trade claim because the plaintiffs had liability insurance to cover their claim. The appellate court reversed, holding that the existence or non-existence of liability insurance was irrelevant to whether the lawsuit was an administrative trade claim. The case was remanded for a ruling on whether the plaintiffs' suit was an administrative trade claim. The appellate court noted that administrative trade claims include tort claims because such claims are an ordinary cost of doing business. **Fieber's Dairy, Inc. v. Purina Mills, Inc., 331 F.3d 584 (8th Cir. 2003)**.

The debtor had given a creditor a packet of financial materials as part of a request for an extension of credit on a farm loan. The materials included a list of equipment owned by the corporation wholly-owned by the debtor. Some of the equipment was not owned by the corporation but was owned by the debtor and the debtor's brother who farmed separately. However, the financial materials also included a depreciation schedule which was not consistent with the list of equipment. No tax return was required from the debtor by the creditor. During the application period, the corporation was in the process of reorganizing by distributing the debtor's brother's

share to the brother. The creditor sought to have the loan declared nondischargeable under Section 523(a)(6) for willful and malicious injury by the debtor to the creditor's property and under Section 523(a)(2)(A) for obtaining the loan by false pretenses. The court held that the loan was not nondischargeable under Section 523(a)(6) because, although reckless in failing to properly distinguish corporate property from jointly owned property, the debtor's actions were not malicious. The court also held that the loan was not nondischargeable under Section 523(a)(2)(A) because the debtor did not make any oral statements that misrepresented the true nature of the equipment ownership with the intent to deceive the creditor. ***In re* Mau, 293 B.R. 919 (Bankr. C.D. Ill. 2003)**.

The debtor had granted a security interest in 100 cattle and two trailers for a loan from a creditor. The security agreement also required the debtor to use a specific auction to sell the cattle. Beginning nine days after the execution of the loan until the creditor obtained possession of the cattle after the bankruptcy petition, the debtor sold many of the cattle at other auctions and did not use the proceeds for the loan. The debtor claimed that the sales were made at other auctions in order to maximize the price received and the proceeds were used for the farm operation, including the feeding and care of the remaining cattle. The creditor sought a declaration that the loan was nondischargeable under Section 523(a)(6) for willful and malicious injury to the creditor's property. The court held that, although the debtor's actions were willful, the creditor failed to prove that the sales were made with a malicious intent to harm the creditor; therefore, the loan was not nondischargeable under Section 523(a)(6). ***In re* Logue, 294 B.R. 59 (Bankr. 8th Cir. 2003)**.

FEDERAL TAX

DISCHARGE. The debtor did not file returns or pay taxes for 1993, 1994 and 1995. The IRS prepared substitute returns and issued a notice of deficiency and assessments based on those returns. The debtor received a discharge in a Chapter 7 case but the discharge order did not specifically mention the income taxes owed. When the IRS sought to levy on the debtor's property for those taxes, the debtor sought a ruling that the taxes were discharged. The court held that the taxes were not discharged because the debtor did not timely file income tax returns and the substitute returns prepared by the IRS did not constitute returns for purposes of Section 523(a)(1)(B). **Swanson v. Comm'r, 121 T.C. No. 7 (2003).**

TAX REFUNDS. The debtor's plan provided for payment of any federal income tax refunds directly to the Chapter 13 trustee and the trustee sought an order requiring the IRS to send the refunds directly to the trustee. The IRS objected on three grounds: (1) the refunds were not "projected disposable income," (2) such an order would violate the Assignment of Claims Act, and (3) the order would place an unfair administrative burden on the IRS. The court held that, (1) because the debtor agreed to have the refunds included in the plan income, the refunds were included in disposable income; (2) the Assignment of Claims Act does not bar voluntary payments under bankruptcy plans; and (3) because income deduction orders in bankruptcy cases have proved to be essential in successful reorganizations, the benefit outweighed the burden on the IRS. The IRS was ordered to pay the refunds directly to the trustee. ***In re* Knapp, 294 B.R. 334 (W.D. Wash. 2003), *aff'g*, 285 B.R. 480 (Bankr. W.D. Wash. 2002)**.

CONTRACTS

HEDGE-TO-ARRIVE CONTRACTS. The Chapter 12 debtor was a farmer who had entered into several hedge-to-arrive contracts which provided for delivery of grain but allowed the debtor to rollover the delivery of the grain to subsequent years. The contracts also contained clauses which required all disputes involving the contracts to be arbitrated under the National Grain and Feed Association arbitration rules. After the debtor defaulted on the contracts, the buyer obtained a state court judgment to enforce the arbitration provisions and the parties submitted the dispute to arbitration. The arbitration panel ruled that the hedge-to-arrive contracts were enforceable and not illegal off-exchange futures contracts because actual delivery of the grain was intended. The buyer filed a claim in the bankruptcy case based on the arbitration award. The debtor sought to challenge the claim on the basis that the arbitration award was improper because of industry bias of the arbitration panel and because the hedge-to-arrive contracts were illegal off-exchange futures contracts. The court held that the debtor failed to prove that the arbitration panel was biased or exceeded its authority and also upheld the panel's ruling that the contracts were enforceable. A petition for rehearing was denied. ***In re* Robinson, 330 F.3d 834 (6th Cir. 2003), *denying rehearing for*, 326 F.3d 767 (6th Cir. 2003), *aff'g*, 265 B.R. 722 (Bankr. 6th Cir. 2001)**.

FEDERAL AGRICULTURAL PROGRAMS

FEDERAL FARM LOANS. The FSA has issued proposed regulations revising the regulations governing the guaranteed farm loan program to allow guaranteed loans to be rescheduled with a balloon payment under certain circumstances. The proposed regulations also (1) allow low-risk subordinations to be approved by the appropriate agency personnel at the field level rather than the national office, (2) allow lenders to make debt installment payments in accordance with lien priorities, payment due dates and cash flow projections, (3) clarify that packager and consultant fees for servicing of guaranteed loans are not covered by the guarantee, and (4) clarify the amount a lender can bid at a foreclosure sale. **68 Fed. Reg. 49723 (Aug. 19, 2003)**.

SHARED APPRECIATION AGREEMENTS. The plaintiffs had entered into shared appreciation agreements with the USDA in exchange for a write-down of their federal farm loans. The plaintiffs did not sell or otherwise transfer their property during the agreements and claimed that the USDA county supervisors had told them that if the loan was not paid, the property was not

sold and the plaintiffs continued farming the land, nothing would be owed under the shared appreciation agreements. The District Court had held that the Agriculture Credit Act, 7 U.S.C. Sec. 2001(b)(4), unambiguously requires recapture of 50 percent of the appreciated value of the property securing the loan upon the expiration date of a shared appreciation agreement. The appellate court affirmed, holding that the plaintiffs' action for a declaratory judgment asserting a different construction of the Act and the agreement was properly dismissed. **Stahl v. USDA, 327 F.3d 697 (8th Cir. 2003), aff'g, 2002 U.S. Dist. LEXIS 9534 (D. N.D. 2002)**.

SUGAR BEETS. The CCC has adopted as final regulations implementing provisions of the Agricultural Assistance Act of 2003 related to the Sugar Beet Disaster Program. This program will assist sugar beet producers who suffered production losses for either the 2001 or 2002 crop year due to weather related disasters which resulted in the prevention of planting or the reduction of quantity or quality while the beets were in the field. **68 Fed. Reg. 49329 (Aug. 18, 2003)**.

FEDERAL ESTATE AND GIFT TAXATION

DISCLAIMER. The taxpayer was a minor when the taxpayer's parent died. The decedent's will provided for bequests to the taxpayer and the taxpayer executed a written disclaimer of a portion of the bequests within nine months after reaching age 21 and before receiving any of the estate assets. The IRS ruled that the disclaimer was effective. **Ltr. Rul. 200333023, May 8, 2003**.

UNIFIED CREDIT. The taxpayer was the beneficiary of a QTIP marital trust established under a decedent spouse's will. The marital trust was funded with stock in exchange for money from the decedent's children. The taxpayer assigned the taxpayer's entire interest in the trust to the children resulting in the stock being held in the names of the children and not by the trust. The assignment to the children was reported as gifts and a gift tax return was filed. The gifts used up the taxpayer's unified credit. The taxpayer filed a lawsuit to negate the assignment of the stock as invalid under the spendthrift clause of the trust. A state court ruled that the assignments were null and void and the assets reverted back to the trust. The IRS ruled that the state court ruling complied with state law; therefore, the gift did not occur and the unified credit was restored to the taxpayer. **Ltr. Rul. 200334020, May 13, 2003**.

VALUATION. The decedent had won a state lottery and, as of the date of the decedent's death, was eligible for 18 annual installment payments of the prize. Although the estate acknowledged that the remaining prize payments were included in the decedent's estate, the estate argued that the installments should be valued under a fair market test. The IRS agreed that under standard fair market valuation, the value of the remaining installments would be highly discounted because of the restrictions on assignment of the annual installments. The Tax Court held that the installments were an annuity for federal estate tax purposes and had to be valued using the actuarial tables of I.R.C. § 7520. The appellate court reversed, holding that the second part of the holding was contrary to the holding of *Estate of Shackleford v. United States, 262 F.3d 1028 (9th Cir. 2001), aff'g, 99-2 U.S. Tax Cas. (CCH) ¶ 60,356 (E.D. Cal. 1999).* The appellate court held that the use of the valuation tables would produce an unrealistic and unreasonable result, given the restrictions on transfers or assignment of annual installments under the state lottery rules. **Estate of Gribauskas v. Comm'r, 2003-2 U.S. Tax Cas. (CCH) ¶ 60,466 (2d Cir. 2003),** ***rev'g and rem'g*****, 116 T.C. 142 (2001)**.

VALUATION OF STOCK. The taxpayer gave 10 shares of stock in a closely-held corporation which produced manufacturing machines. The various valuation experts used several methods of valuation, resulting in a range of values for the stock. The court chose a value near the average of the valuation range after allowing a 15 percent discount for minority interest and 25 percent discount for lack of marketability. **Hess v. Comm'r, T.C. Memo. 2003-251**.

FEDERAL INCOME TAXATION

CORPORATIONS

ESTIMATED TAXES. The IRS has issued a reminder that corporations making estimated tax payments are permitted to postpone payment of 25 percent of the September 15 estimated installment until October 1, 2003, notwithstanding I.R.C. § 6655, which imposes a penalty for nonpayment of estimated tax, pursuant to Section 501 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27). **IR-2003-105**.

DEPRECIATION. The taxpayer constructed and operated wind turbine electric generators (WTGs). The turbines had reached a state of service where (1) all necessary permits and licenses had been obtained; (2) the WTGs were synchronized to the power grid generating electricity for production of income; (3) the critical tests for the various components of the WTGs had been completed; (4) the WTGs were placed in the control of taxpayer by the building contractor; and (5) taxpayer had sold some electricity. However, a substation operated by a the taxpayer had to be upgraded in order for the full generating capacity of the WTGs to be used. The IRS ruled that the WTGs had been placed in service and were eligible for depreciation on the date the above factors had been established. **Ltr. Rul. 200334031, May 19, 2003**.

The taxpayer claimed a deduction for computer equipment purchased in one tax year; however, the taxpayer did not file Form 4562 to claim expense method depreciation, under I.R.C. § 179, for the computer equipment. The court held that, because the taxpayer did not make the Section 179 election for the computer equipment, the taxpayer was not entitled to a current

deduction for the cost of the computer equipment but had to depreciate the cost. **Visin v. Comm'r, T.C. Memo. 2003-246.**

EARNED INCOME CREDIT. The taxpayer had two children by a previous marriage. The divorce decree was not placed in evidence and there was no evidence of either parent's right to custody of the children. The evidence of where the children lived during the tax year at issue was contradictory and the court held that the taxpayer failed to prove that the children lived with the taxpayer more than one-half of the tax year and was not entitled to claim the earned income tax credit for the children. **Kennedy v. Comm'r, T.C. Summary Op. 2003-121**.

HOME OFFICE. The taxpayer was self-employed as an interior designer and claimed a deduction for a portion of the rent paid by the taxpayer for an apartment which was also used as the taxpayer's residence. The total of home office deductions exceeded the gross income from the interior design business and the IRS disallowed the portion of the expenses in excess of the income, as provided by I.R.C. § 280A(c)(5). The taxpayer argued that the Section 280A(c)(5) limitation did not apply to rent expense. The court disagreed, holding that the Section 280A(c)(5) limitation applied to expenses associated with a residence and the taxpayer's apartment was used by the taxpayer as a residence. The court noted that the amount of disallowed expense could be carried over to the next tax year. **Visin v. Comm'r, T.C. Memo. 2003-246**.

IRA. The taxpayer was a trust beneficiary of a trust which was funded by a decedent's interest in an IRA. The beneficiary of the trust requested a distribution from the IRA to the taxpayer under the erroneous advice of a third party. The error was not discovered until more than 60 days after the distribution. The IRS ruled that the erroneous distribution could not be returned to the IRA and that the distribution was included in the taxpayer's taxable income. **Ltr. Rul. 200334044, May 30, 2003**.

MILEAGE EXPENSES. The taxpayer claimed to operate a travel service and claimed mileage expenses for trips to pick up tickets for clients. The taxpayer had no written contemporaneous logs of the trips or other written records. The court disallowed the mileage deductions to the extent not approved by the IRS. **Kwan v. Comm'r, T.C. Summary Op. 2003-119**.

OFFERS IN COMPROMISE.The IRS has released a revenue procedure that explains procedures for submission and processing of offers to compromise a tax liability. The procedures reflect changes to the law made by the IRS Restructuring and Reform Act of 1998 (P.L. 105-206). The revenue procedure applies to all offers to compromise a civil or criminal liability under I.R.C. § 7122, except for those offers submitted directly to the Office of Appeals. The procedures do not apply to offers to compromise a tax liability after a case involving a civil or criminal liability has been referred to the Department of Justice for prosecution or defense. **Rev. Proc. 2003-71, I.R.B. 2003-36**.

The IRS has posted Form 656-A, Offer in Compromise Application Fee Instructions and Certification, to its website, www.irs.gov/formspubs/index.html, in the Forms & Pubs section. The document is available at no charge and can be obtained (1) by calling the IRS's toll-free telephone number, 1-800-TAX-FORM (1-800-829-3676); (2) through FedWorld on the Internet; or (3) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020. The IRS has announced that, beginning November 1, 2003, it will charge a $150 application fee for the processing of many offers in compromise (OICs), in order to offset the cost of the service and reduce frivolous claims. **IR-2003-99**.

PENSION PLANS. The taxpayer received distributions from two pension plans and did not include the amounts in taxable income. The taxpayer claimed that the amounts were transferred to IRAs but failed to provide sufficient evidence of the location of the funds. The court held that the funds were included in taxable income for lack of evidence of a qualifying rollover transfer. **Jensen v. Comm'r, T.C. Memo. 2003-249**.

REVENUE RULINGS. The IRS has published a list of revenue rulings, revenue procedures, and notices that, although not specifically revoked or superseded, are obsolete. **Rev. Rul. 2003-99, I.R.B. 2003-34, 388**.

SAFE HARBOR INTEREST RATES
September 2003

	Annual	Semi-annual	Quarterly	Monthly
Short-term				
AFR	1.52	1.51	1.51	1.51
110 percent AFR	1.67	1.66	1.66	1.65
120 percent AFR	1.82	1.81	1.81	1.80
Mid-term				
AFR	3.43	3.40	3.39	3.38
110 percent AFR	3.77	3.74	3.72	3.71
120 percent AFR	4.12	4.08	4.06	4.05
Long-term				
AFR	5.02	5.02	4.99	4.97
110 percent AFR	5.60	5.52	5.48	5.46
120 percent AFR	6.11	6.02	5.98	5.95

Rev. Rul. 2003-101, I.R.B. 2003-36.

SAVINGS BONDS. The taxpayer cashed two U.S. Savings Bonds but did not report the interest accrued on the bonds as income. The taxpayer claimed that the proceeds of the bonds were used to pay for education expenses but did not provide any documentation of the taxpayer's education status or expenses during the tax year in which the bonds were cashed. The court held that, without such evidence, the interest was taxable income. **Medina v. Comm'r, T.C. Summary Op. 2003-115**.

CITATION UPDATES

Scott v. United States, 328 F.3d 132 (4th Cir. 2003), ***aff'g*****, 2002-1 U.S. Tax Cas. (CCH) ¶ 50,364 (E.D. Va. 2002)** (trusts) see p. 78 *supra*.

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