have failed to establish that the national market for fed cattle is national, that regional price differentials occur and, as such, Tyson does not have sufficient market power to influence the price paid for fed cattle.

[15] Arguably, under the PSA (unlike the Sherman Act), it is irrelevant whether the market for fed cattle is national. The key is whether a regionally dominant packer utilizes buying practices that have the effect of manipulating prices.

[16] 7 U.S.C. § 192.

[17] *See, e.g.,* Armour & Co. v. United States, 402 F.2d 712, 722 (7th Cir. 1968).

[18] *See, e.g.*, De Jong Packing Co. v. United States Department of Agriculture, 618 F.2d 1329, 1335 (9th Cir. 1980); Swift & Co. v. United States, 393 F.2d 247, 253 (7th Cir. 1968); Swift & Co. v. United States, 308 F.2d 849, 853 (7th Cir. 1962).

[19] An important feature of monopsony is regional dominance that is heavily influenced by shipping costs to access other competitive markets (i.e., packers).

[20] See note 1 *supra*.

[21] See notes 6-7 *supra*.

[22] See notes 17-18 *supra*.

[23] The Sherman Act is codified as 15 U.S.C. §1 et seq. The Clayton Act is codified as 15 U.S.C. §12 et seq.

[24] See note 1 *supra*.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

COUNTY FAIR. The plaintiff worked at a concession stand at a county fair run by the defendant. As the plaintiff walked from the concession stand towards a fair exit, the plaintiff passed the barns used for housing, but not showing, livestock. A horse drawing a buggy was being returned to the barns when it became spooked by a loud popping sound and ran into the plaintiff. The plaintiff filed a claim for negligence against the defendant which argued that Iowa Code § 673.2 barred the suit. The trial court granted summary judgment to the defendant, ruling that the statute immunized county fair sponsors from injuries to spectators. The plaintiff argued that the statute did not apply because the plaintiff was not a spectator at the fair and was not aware of the risks of the domesticated animal activities at the fair. The court held that the plaintiff was a spectator because the plaintiff was not a horse activity participant but was in the vicinity of the horse activities. However, the court held that there was an issue of fact whether it was reasonable to expect that the plaintiff would be aware of the risks of runaway horses just from walking in a pedestrian walkway at a county fair. If a fact finder found that a reasonable person would not be aware of such a risk, the statute would not apply to immunize the defendant from suit. **Hynes v. Clay County Fair Ass'n, 672 N.W.2d 764 (Iowa 2003)**.

BANKRUPTCY

FEDERAL TAX

DISCHARGE. The debtors, husband and wife filed their 1998 federal income tax return on March 17, 1999. On April 8, 2002, the debtors filed for Chapter 7 and sought to have the 1998 tax debt declared dischargeable because they filed their return more than three years before they filed their bankruptcy petition. The court held that Section 507(a)(8)(A)(i) refers to a date more than three years after a return was last due. Because the 1998 tax return was last due on April 15, 1999, the Chapter 7 petition was filed within three years of the date when the 1998 return was last due and the taxes were not dischargeable. ***In re*** **Reine, 301 B.R. 556 (Bankr. W.D. Mo. 2003)**.

TAX LIEN. The debtor had owned a car dealership with the debtor's father. When the father died, the father's shares in the dealership passed to the debtor. The father's estate had unpaid federal estate taxes and elected to pay these taxes in installments. The estate executed a lien on the father's shares as part of the agreement to allow installment payments of the taxes. Four years later, the son sold all of the assets to an unrelated company in exchange for the hiring of the debtor as a consultant. the IRS argued that the lien should cover the proceeds of the sale of the dealership assets. The court held that the estate tax lien was created by statute and could not be extended under any theory of equity; therefore, the lien was restricted to the shares of stock in the dealership and could not be used to cover the proceeds of the sale of the company's assets. ***In re*** **Roth, 301 B.R. 451 (Bankr. W.D. Penn. 2003)**.

CONTRACTS

ARBITRATION CLAUSE. The plaintiff meat processor had recruited the defendants, hog farmers, to raise hogs under contracts exclusively for the plaintiff. The plaintiff provided the hogs, feed and medication and the farmers housed and fed the hogs. Title to the hogs remained with the plaintiff at all times. When the price of pork declined, the plaintiff cancelled many of the contracts and the defendants sued for fraud, deceit and promissory estoppel. The plaintiff filed a motion to stay the litigation and to compel arbitration under arbitration clauses in all of the contracts. The defendants

argued that the arbitration clauses were unenforceable for lack of mutuality. The defendants pointed out and the court agreed that the contracts required the defendants to arbitrate contract violations by the plaintiff but allowed the plaintiff to seek any remedy for violations by the defendants. The court held that the variance between the rights of the plaintiff and defendants made the arbitration clause unenforceable. **Tyson Foods, Inc. v. Archer, 2004 Ark. LEXIS 107 (Ark. 2004)**.

COOPERATIVES

GRAZING COOPERATIVES. The plaintiff and two prior generations of the plaintiff's family had been members of a cooperative grazing association which regulated the plainitff's cattle grazing rights on public lands. In 1966, the association allowed newer members to acquire grazing rights. The plaintiff was found to have engaged in unauthorized grazing by the association and the plaintiff's grazing rights were altered. The plaintiff filed suit against the association, claiming that the association had violated its fiduciary duty to the plaintiff in 1966 when it diluted the plaintiff's grazing rights by granting grazing rights to persons who did not own base property, property owned when the association was formed. The court held that the fiduciary duty claim was barred by the statute of limitations because the original decision to change grazing rights occurred more than 20 years before the case was brought. The court also held that the association had sufficient evidence to support its ruling that the plaintiff grazed more animals on the plaintiff's land than was allowed under the plaintiff's grazing rights. **Dixon v. McKenzie Co. Grazing Association, 2004 ND Lexis 51 (N.D. 2004)**.

ENVIRONMENTAL LAW

CLEAN WATER ACT. The plaintiffs were several environmental groups and individuals who brought a citizen suit under the Clean Water Act to enjoin New York City from spraying insecticide, causing pollution to navigable waters. The trial court held that, because FIFRA did not allow citizen suits to enforce its provisions and the insecticide was governed by FIFRA, the suit could not be brought. The appellate court reversed, holding that the right to bring a citizen suit under the CWA did not require that a similar suit be able to be brought under FIFRA. The court refused to rule on the defendant's argument that the use of an FIFRA-approved insecticide could not violate the CWA. **No Spray Coalition, Inc. v. City of New York, 351 F.3d 602 (2d Cir. 2003)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has issued interim regulations under the brucellosis regulations, changing the classification of Wyoming from a Class Free to Class A state. **69 Fed. Reg. 7863 (Feb. 20, 2004)**.

The APHIS has issued interim regulations under the brucellosis regulations, changing the classification of Missouri from a Class A to Class Free state. **69 Fed. Reg. 9747 (March 2, 2004)**.

CHECKOFF. The plaintiffs were dairy farmers subject to assessment under the Dairy Promotion and Research Program. A portion of the funding of that program was spent on generic advertising of milk and milk products. The plaintiffs objected to the assessment as violating their First Amendment free speech rights because the plaintiffs believed their milk was of a superior quality and the advertisements did not distinguish between the different qualities of milk. The trial court had examined the extent of federal regulation of the dairy industry and found a pervasive program which regulated the price, marketing and production of milk throughout the country. The trial court then compared the degree of federal milk regulation to the peach and nectarine regulation described in *Glickman v. Wileman Bros. & Elliott, 521 U.S. 457 (1997)* and the mushroom regulation in *United States v. United Foods, Inc., 533 U.S. 405 (2001)*. See Harl, "Future of Commodity Check-Offs," 12 *Agric. L. Dig*. 113 (2001). The trial court held that the federal milk regulatory program was as pervasive as the peach and nectarine program; therefore, the milk advertisement program was economic speech not protected by the First Amendment. As economic speech, the advertising program was subject to a three part test established by the Court in Glickman. The trial court held that (1) the milk advertising program did not impose a restraint on the plaintiffs' freedom to communicate any message; (2) the milk advertising program did not compel the plaintiffs to engage in any actual or symbolic speech; and (3) although the program did compel the plaintiffs to finance the advertising (assumed by the court to be ideological views), the advertising was germane to the overall milk programs purpose of increasing demand for milk. Because the advertising program met all three factors, the trial court held that the assessments were not unconstitutional because they funded generic milk advertisements. The appellate court reversed, holding that the Dairy Promotion Program did not create a pervasive marketing regulation of the milk industry so as to make the dairy promotions governmental speech. The court noted that the Dairy Promotion Program had a separate governing board and was funded entirely by the assessments of private milk producers. The court acknowledged that milk production and marketing were subject to several federal programs, statutes and marketing orders, but the Dairy Promotion Program was not an integral part of the overall governmental regulation of the industry. **Cochran v. Veneman, 2004 U.S.**

App. LEXIS 3490 (3d Cir. 2004), *rev'g*, 252 F. Supp.2d 126 (M.D. Pa. 2003).

KARNAL BUNT. The APHIS has adopted as final regulations which amend the Karnal bunt regulations to include (1) clarifying the method for determining Karnal bunt infestation and the circumstances under which a field or area would be classified as a regulated area, as well as adding provisions and criteria for the release of fields or areas from regulation; (2) modifying the restrictions that apply to the planting of wheat, durum wheat, and triticale seed originating in regulated areas; and (3) modifying cleaning and disinfection requirements for certain equipment and storage facilities involved in the harvesting, planting, or storage of Karnal bunt-positive host crops or seeds, as well as providing for the disposal of chemically treated, spore-positive seed. **69 Fed. Reg. 8091 (Feb. 23, 2004)**.

TREE ASSISTANCE PROGRAM. The FSA has adopted as final regulations implementing, subject to the availability of funds, the Tree Assistance Program (TAP) authorized by the Farm Security and Rural Investment Act of 2002. The TAP program provides assistance to tree, bush and vine owners who have trees, bushes or vines lost by a natural disaster. No funds have been appropriated for the program at this time. **69 Fed. Reg. 9744 (March 2, 2004)**.

FEDERAL ESTATE AND GIFT TAX

LIFE INSURANCE. The shareholders of a family-owned corporation formed an LLC for the sole purpose of purchasing a life insurance policy on the majority shareholder in order to provide funds for redemption of that shareholder's stock upon death. The policy was transferred to the corporation and the LLC was liquidated. Upon the death of the majority shareholder, the insured, the shareholders planned to redeem the stock with a promissory note, terminate the corporation's tax year and submit the claim for the insurance after the start of the next tax year. The taxpayer corporation argued that the value of the insurance policy proceeds would not be included in the corporation's basis until the claim was approved. The IRS ruled that the proceeds of the insurance policy would be recognized to the corporation upon the shareholder's death because any delays were merely ministerial processes for filing the claim. **Ltr. Rul. 200409010, Nov. 13, 2003**.

VALUATION. The decedent had transferred seven real estate properties to a limited partnership in exchange for an interest in the partnership. The court held that the properties were included in the decedent's estate because (1) the transfer did not change the decedent's control over the properties, (2) the formalities of the partnership agreement were not followed, and (3) the partnership income was intended to pay the decedent's personal expenses. **Estate of Hillgren v. Comm'r, T.C. Memo. 2004-46**.

FEDERAL INCOME TAXATION

COURT AWARDS AND SETTLEMENTS. The taxpayer was a shareholder and employee of a corporation. The taxpayer's employment was terminated and the taxpayer sued the corporation for wrongful termination. The parties reached a settlement in which the corporation paid the taxpayer's attorney's fees, paid compensation for the wrongful termination and repurchased the taxpayer's stock. The taxpayer argued that the attorney's fees payment was excludible from income under I.R.C. § 62(c) as a reimbursement or other expense allowance arrangement. The court held that the payment did not qualify for I.R.C. § 62(c) treatment because the payment was not made under an accountable plan since the payments were not related to the performance of services for the corporation. Therefore, the attorney's fees were deductible only as miscellaneous expenses. **Biehl v. Comm'r, 351 F.3d 982 (9th Cir. 2003), *affg*, 118 T.C. 467 (2002)**.

After the taxpayer's employment was terminated, the taxpayer filed a lawsuit alleging four causes of action, negligence, breach of contract, breach of public policy, and wrongful discharge. The parties reached a settlement and the taxpayer excluded all of the proceeds except for the amount allocated to back pay. The court held that none of the settlement was excludible from taxable income because the lawsuit did not allege any physical injuries or sickness. **Tamberella v. Comm'r, T.C. Memo. 2004-47**.

DEPRECIATION. The taxpayer corporation filed a timely income tax return and did not claim the additional first year depreciation deduction as allowed by I.R.C. 168(k)(2)(C)(iii) and did not file the statement of election out of the deduction with the return. The IRS ruled that the taxpayer was covered by the provisions of *Rev. Proc. 2003-50, 2003-2 C.B. 119* which covered taxpayers with qualified property placed in service in a taxable year including September 11, 2001. **Ltr. Rul. 200409031, Nov. 21, 2003**.

DISCHARGE OF INDEBTEDNESS. The taxpayer was an employee of a company which granted the taxpayer an option to purchase stock in the company. The taxpayer purchased stock with a fair market value of $100,000 on January 1 in exchange for a recourse promissory note of $75,000. The taxpayer included the $25,000 difference in income for that year. In the following year, the stock value had decreased by $25,000 and the employer agreed to cancel $25,000 of the promissory note. The IRS ruled that the taxpayer realized $25,000 of income when that amount of the note was released. The IRS also noted that a change in the note's interest rate or a change from recourse to nonrecourse would also have resulted in taxable income to the taxpayer. **Rev. Rul. 2004-37, I.R.B. 2004-11**.

INTEREST RATE. The IRS has announced that, for the period April 1, 2004 through June 30, 2004, the interest rate paid on tax overpayments is 5 percent (4 percent in the case of a corporation) and for underpayments is 5 percent. The interest rate for underpayments by large corporations is 7

percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 is 2.5 percent. **Rev. Rul. 2004-26, I.R.B. 2004-11.**

LIKE-KIND EXCHANGES. The IRS has issued temporary regulations providing guidance on how to depreciate MACRS property acquired in a like-kind exchange under I.R.C. § 1031 or as a result of an involuntary conversion under I.R.C. § 1033 when both the acquired and relinquished property are subject to MACRS in the hands of the acquiring taxpayer. The *Digest* will publish a detailed article by Neil Harl on these temporary regulations and the implications for Rev. Proc. 2000-4, 2000-1 C.B. 313 in the next issue. **69 Fed. Reg. 9529 (March 1, 2004)**.

PENSION PLANS. For plans beginning in March 2004, the weighted average is 5.21 percent with the permissible range of 4.69 to 5.47 percent (90 to 105 percent permissible range) and 4.69 to 5.73 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2004-24, I.R.B. 2004-13**.

RETURNS. The IRS has announced changes in the reporting requirements for entities, including partnerships, S corporations, and estates, with 2002-2003 fiscal years. Section 2 of the Tax Technical Corrections Bill of 2003 (HR 3654, Sen 1984), which the IRS will allow taxpayers to apply as if presently enacted, would amend current law to allow partnerships, S corporations, and estates, including revocable trusts treated as part of an estate, with fiscal years beginning in 2002 to pass through dividends received in 2003 from domestic corporations and qualified foreign corporations as qualified dividends to their partners, shareholders and beneficiaries. In addition, it would amend the holding period rules for qualified dividends by changing the 120-day period to a 121-day period and the 180-day period to a 181-day period. Both amendments would be treated as if included in section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27). The announcement notes that dividends received in a tax year beginning in 2002 and ending in 2003 are not qualified dividends for individuals with 2002-2003 fiscal years, even if the dividends are received during 2003. Estates with 2002-2003 fiscal years and qualified dividends received in 2003 must attach to their 2002 Form 1041 a computation similar to that shown in Part V of the 2003 Schedule D (Form 1041) or the Qualified Dividends Tax Worksheet on page 22 of the 2003 Instructions for Form 1041 and Schedules A, B, D, G, I, J and K-1. Such estates may use the 2003 Schedule D (Form 1041) or the Qualified Dividends Tax Worksheet to figure 2002 tax. To do so, these filers must: (1) enter qualified dividends received in 2003 on line 20 of the 2003 Schedule D (Form 1041) or line 2 of the Qualified Dividends Tax Worksheet (whichever applies); (2) modify the computation in Part V of Schedule D (Form 1041) or the Qualified Dividends Tax Worksheet by using the 2002 Tax Rate Schedule instead of the 2003 Tax Rate Schedule; and (3) substitute $1,850 for $1,900 on line 25 of the 2003 Schedule D (Form 1041) or line 6 of the Qualified Dividends Tax Worksheet. This change also affects the computation of the alternative minimum tax. Estates should attach a computation similar to that shown in Part IV, Schedule I, of the 2003 Form 1041. Estates must continue to report each beneficiary's share of ordinary dividends for the entire tax year on line 2 of the 2002 Schedule K-1. In addition, the estate must report each beneficiary's share of qualified dividends received in 2003 on line 14 of the 2002 Schedule K-1. Estates also should advise beneficiaries filing Form 1040 to report qualified dividends on line 9b of the 2003 Form 1040. Partnerships and S corporations with 2002-2003 fiscal years must continue to report ordinary dividends for the entire tax year on the applicable lines. For Form 1065 (or 8865) filers: Schedule K, line 4b of the 2002 Form 1065 (or 8865) and each partner's share on line 4b of Schedule K-1 (Form 1065 or 8865). For Form 1065-B filers: Part II, line 2 of the 2002 Form 1065-B. For Form 1120S filers: Schedule K, line 4b of the 2002 Form 1120S and each shareholder's share on line 4b of Schedule K-1 (Form 1120S). In addition, partnerships and S corporations with 2002-2003 fiscal years must report qualified dividends received in 2003 as an item of information on the applicable lines or attachment. For Form 1065 (or 8865) filers: Schedule K, line 24 of the 2002 Form 1065 (or 8865) and each partner's share on line 25 of Schedule K-1 (Form 1065 or 8865). For Form 1065-B filers: Schedule K, line 16 of the 2002 Form 1065-B and each partner's share on an attachment to Schedule K-1 (Form 1065-B). For Form 1120S filers: Schedule K, line 21 of the 2002 Form 1120S and each shareholder's share on line 23 of Schedule K-1 (Form 1065 or 8865). Partnerships and S corporations should advise partners and shareholders filing Form 1040 to report qualified dividends on line 9b of the 2003 Form 1040. **Ann. 2004-11, I.R.B. 2004-10.**

The IRS has issued revised Form 3115 (rev. Dec. 2003), Application for Change in Accounting Method, and its instructions which replace the May 1999 version of Form 3115. To allow a reasonable transition period to the new form, the IRS will accept either form through May 31, 2004, except where the use of the new form is specifically required in guidance published by the IRS. See www.irs.gov/formspubs/index.html. This publication can also be obtained by calling 1-800-TAX-FORM (1-800-829-3676). **Ann. 2004-16, I.R.B. 2004-13**.

S CORPORATIONS

LEGAL EXPENSES. The taxpayer corporation was the defendant in several shareholder lawsuits challenging the corporation's failure to pay dividends and challenging the corporation's attempt to complete a reverse stock split. The court held that the expenses relating to the dividend suit were currently deductible but that the expenses relating to the stock split had to be capitalized. **Putnam-Greene Financial Corp. v. United States, 2004-1 U.S. Tax Cas. (CCH) ¶ 50,178 (M.D. Ga. 2004)**.

PASSIVE INVESTMENT INCOME. The taxpayer was an S corporation which operated printing, real estate and equipment leasing businesses. The taxpayer also invested in publicly traded limited partnerships which were taxed as partnerships and were not electing large partnerships. The partnerships were involved in the exploration, development and processing of natural resources. The IRS ruled that the taxpayer's distributive share of income from the limited partnerships was included in the taxpayer's gross receipts and

was not passive investment income. **Ltr. Rul. 200408017, Nov. 12, 2003**.

LABOR

AGRICULTURAL LABOR. The plaintiffs were temporary foreign workers hired under the H-2B visa program by the defendants to rake, gather, bale and load pine straw on timberland not owned by the defendants. Pine straw is composed of fallen pine needles and is used for mulch and ground cover. In the temporary labor certification application, the defendants stated that the laborers would be paid $6.65 per hour but told the workers they would be paid 70 cents per bale. The workers averaged about $7 per hour; however, the defendants subtracted from the wages the $400 application fee, $153 for visa-related expenses and $197 for bus fare. After the deductions, the workers received less than $6.65 per hour and some did not receive wages for their final week of work. The plaintiffs filed suit under the Migrant and Seasonal Agricultural Workers Protection Act for damages and injunctive relief. The trial court ruled that the plaintiffs were not agricultural laborers covered by MSAWPA. Although the court found that the pine straw harvesting was not performed on a farm, the work was agricultural employment in that it involved the gathering of an agricultural commodity. Therefore, the plaintiffs were covered by MSAWPA as agricultural laborers. **Morante-Navarro v. T & Y Pine Straw, inc., 350 F.3d 1163 (11th Cir. 2003)**.

The defendant bred and raised chickens primarily for their feathers and skins. The plaintiffs were employed by the defendant in the processing of the chicken skins. Although the plaintiffs worked more than 40 hours per week, the plaintiffs did not receive any overtime pay and brought suit under the Fair Labor Standards Act for unpaid overtime wages. Although the court acknowledged that the processing of chicken skins was not a common agricultural operation, the court held that the plaintiffs' work met the definition of secondary agriculture because it was a subordinate and necessary task incident to the defendant's agricultural operations. **Rodriguez v. Whiting Farms, Inc., 2004 U.S. App. LEXIS 2143 (10th Cir. 2004)**.

PRODUCTS LIABILITY

HERBICIDE. The plaintiffs were tomato growers who had fields near rice crops on which was used a herbicide manufactured by the defendant. The plaintiffs claimed that their crops were damaged by the herbicide which drifted onto their fields and brought claims under negligence and strict liability that the herbicide was unreasonably dangerous. The defendant argued that the claims were barred by preemption of FIFRA. Although the plaintiffs provided some evidence that there was no method of applying the herbicide to rice without damage to nearby tomato fields, the court found that the plaintiffs failed to prove that there was no safe method of applying the herbicide; therefore, the claims were based on the failure of the labels to provide safe instructions and the claims were preempted by FIFRA. **Hardin v. BASF Corp., 290 F. Supp.2d 964 (E.D. Ark. 2003)**.

PROPERTY

PRESCRIPTIVE EASEMENT. The defendants purchased 170 acres of unirrigated farmland in 1974 which included a cemetery. The defendants installed a center-pivot irrigation system and the wheel assembly passed over the cemetery. The system was replaced in 1996, with the wheel assembly still passing over the cemetery, but in a different place. The plaintiffs were descendants of persons buried in the graves which the wheel assembly passed over and the plaintiffs sought an injunction to prevent the trespass over the cemetery by the irrigation system. The defendant argued either (1) the suit should be dismissed under the doctrine of laches or (2) that the defendants acquired a right to operate over the cemetery by prescriptive easement. Initially, the court held that relatives of decedents have the right to enter and care for the decedents' graves and that this right prevents any defacing or meddling with graves. The court held that the doctrine of laches did not apply to prevent the suit because the plaintiffs brought the suit within three years of discovering the damage from the second irrigation system and the defendants were not prejudiced by the delay because the irrigation system had more than paid for itself during its use during the delay. As to the prescriptive easement, the defendants argued that the time of use of the first irrigation system should be tacked on to the time of use of the new system. The court held that no prescriptive easement had arisen because the 1996 system was located in a different position, causing new damage to the cemetery and violating the rights of different persons. The injunction ordered by the trial court was upheld. **Bogner v. Villiger, 796 N.E.2d 679 (Ill. Ct. App. 2003)**.

STATE TAXATION

AGRICULTURAL USE. The land involved in this case was subdivided by a previous owner into three three-acre lots. The land here comprised two of those lots. The owner did not develop the lots and used the lots for raising and storing hay and for storing logs. The county assessed the lots as rural residential property and the land owner appealed to the state property tax appeal board which ruled that the land was eligible for valuation as agricultural land. Under 35 ILCS 200/1-60 land qualified as agricultural use valuation land where the land was used to raise hay. The county argued, however, that 35 ILCS 200/9-65 requires subdivided lots to be reassessed and recorded. The court noted, however, that 35 ILCS 200/9-65 did not require the subdivided lots to be assessed as residential property and did not override the statutory provision for valuation of agricultural land. The court held that, because the land was used for agricultural purposes, the assessment should be as agricultural use land. **The Bond County Board of Review v. The Property Tax Appeal Board, 796 N.E.2d 628 (Ill. Ct. App. 2003)**.

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CITATION UPDATES

Fedex Corp. v. United States, 291 F. Supp.2d 699 (W.D. Tenn. 2003) (repairs) see Vol 14, *Agric. L. Dig*. p. 174.

IN THE NEWS

CROP INSURANCE FRAUD. The United States Attorney for the Northern district of Texas has announced the conviction of a 65 year old farmer on 25 counts of an indictment that charged him with one count of conspiracy to submit false claims and false statements to the Department of Agriculture, nine counts of making false claims to the government regarding the submission of false crop insurance claims; nine counts of making false statements to the government; and six counts of making false statements to the Department of Agriculture during the course of the investigation. The farmer faces a maximum sentence of 125 years in prison, $6.5 million in fines plus restitution of over $500,000. **Press Release, United States Attorney, Northern District of Texas, Feb. 25, 2004**.

FARM STATISTICS. The National Agricultural Statistics Services has reported that the number of farms in the North Central Region decreased by 5,300 (0.7 percent) and the number of farms in the West Region declined by 1,800 (0.6 percent). The South Region lost 1,300 farms (0.1 percent). The number of farms declined by 100 (0.1 percent) in the Northeast Region. The number of farms in 2003 declined in 20 states, remained unchanged in 28 states, and increased in two states. The largest decline in farms occurred in California which lost 1,200 farms followed by Missouri with 1,000. Other notable declines were: Minnesota and Nebraska, 900; Indiana, 800; North Carolina, 700; Iowa, 600; and Tennessee, Washington, and Wisconsin each losing 500 farms. For the two states with increased farm numbers, Mississippi added 600 and Montana 100 farms. **NASS, Farms and Land in Farms, February 2004**.

GENETICALLY MODIFIED ORGANISMS. Voters in Northern California's Mendocino County on March 2, 2004, passed a first-in-the-nation measure banning the raising of genetically engineered plants and animals. With 97 percent of precincts reporting, the measure won 14,384 votes, or 56 percent, to 11,148 votes, or 44 percent, opposed. Biotech foes hope the measure will galvanize similar efforts from Vermont to Hawaii. Organic vintners and farmers pushed for the ban, which would not prevent processed food made with genetically modified ingredients from being sold in stores. They claim genetically modified plants and animals could carry unintended health risks, although biotech supporters argue that no negative effects have been reported since the Food and Drug Administration first approved genetically engineered crops for human consumption 10 years ago. There are no known genetically modified crops raised in Mendocino County, but farmers said they would use the law as a marketing tool, especially in Europe, where there is opposition to genetically engineered foods. **CropChoice, March 3, 2004.**

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