Land held for investment

Thus far, no guidance has been provided on handling CRP payments where the land is held solely for investment with no trade or business involved and with the landowner not materially participating under the CRP contract.[21] Arguably, CRP payments received on land held for investment and not in any way involved in or related to a farming operation would not be considered earnings from self-employment. In the recent case of *Connie D. Ray*[22] the Tax Court stressed the necessity for "a connection or nexus between the payments received by the taxpayer and some trade or business from which they were derived."[23] If that nexus is absent, and the activity is in the nature of an investment, payments should not be subject to self-employment tax. As noted, however, authority is lacking in this situation.

IRS could, conceivably, take the position that CRP payments are self-employment income if the taxpayer materially participates in any trade or business, but that argument seems unlikely to prevail absent clear statutory authority to that effect.

FOOTNOTES

1 16 U.S.C. § 3831, added by Pub. L. 99-198, Sec. 1231, 99 Stat. 1508 (1985). See generally 11 Harl, *Agricultural Law* § 91.03[4](e) (1996); Harl, *Agricultural Law Manual* § 10.03[3](f) (1996).

2 See 4 Harl, *Agricultural Law* § 37.03[3][b](1996).

3 Ltr. Rul. 9637004, May 1, 1996.

4 Ray v. Comm'r, T.C. Memo. 1996-436.

5 Ltr. Rul. 8822064, March 7, 1988.

6 See I.R.C. § 1402(a)(1).

7 *Id*.

8 See I.R.C. § 1402(a)(1).

9 Ltr. Rul. 8822064, March 7, 1988.

10 Letter from Peter K. Scott, Associate Chief Counsel, Technical, March 10, 1987.

11 See 4 Harl, *supra* n. 1, § 37.03[3][b].

12 Ltr. Rul. 9637004, May 1, 1996.

13 *Id*.

14 *Id*.

15 T.C. Memo. 1996-436.

16 *Id*.

17 Notice 87-26, 1987-1 C.B. 470.

18 *Id*.

19 Rev. Rul. 60-32, 1960-1 C.B. 23.

20 Soc. Sec. Rul. 67-42 (cropland adjustment income).

21 Cf. Ltr. Rul. 8822064, March 7, 1988 (retired, non materially participating landowner; CRP payments not earnings from self-employment).

22 T.C. Memo. 1996-436.

23 *Id*.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

POSSESSION. The disputed land was surrounded by land owned by the plaintiff. The plaintiff had repaired and maintained a perimeter fence around the plaintiff's land and had grazed sheep or cattle on the entire property for more than 18 years. The only action taken by the defendant's predecessor in interest was to seek an appraisal of the disputed parcel in one year. The effect of the appraisal was not litigated, however. The trial court held that the plaintiff did not acquire the disputed land by adverse possession because the plaintiff had not fenced off the land and used that parcel for any particular purpose. The appellate court reversed, holding that, where the disputed land was within the boundaries of a perimeter fence and the plaintiff used all of the land uniformly, no fencing of the disputed land was required to achieve adverse possession. **Palmer Ranch, Ltd. v. Suwansawasdi, 920 P.2d 870 (Colo. Ct. App. 1996)**.

PUBLIC EASEMENT. The plaintiff owned farm land which abutted a natural lake. The plaintiff had granted the county the right to build a road over a portion of the plaintiff's land and the road ran to within three feet of the high water mark of the lake on the plaintiff's land. The public used the road as an access point to the lake but neither the county nor the state improved the area bordering the lake to improve public access or use of the lake. The state sought jurisdiction over the disputed land under a theory of prescriptive easement. The court held that the state had not given any express notice of its easement claim to the plaintiffs until the suit was filed and the state's failure to take any actions consistent with an easement claim, such as building docks or clearing shoreline trees, prevented a claim of prescriptive easement. **Larman v. State, 552 N.W.2d 158 (Iowa 1996)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

AUTOMATIC STAY. The debtors had defaulted on a loan and the creditor obtained a state court judgment and a judgment lien against soybeans stored on the debtors' farm. The creditor executed against the storage bin and removed most of the soybeans, retaining possession of the bin and beans. Just before the execution, the debtors made two deliveries of soybeans to other parties. The debtors then filed for Chapter 12 and sought turnover of the execution proceeds and remaining soybeans. The creditor retained possession of the soybeans until the Bankruptcy Court ordered transfer to the trustee. The debtors sought sanctions against the creditor for violating the automatic stay by retaining the soybeans after the filing of the bankruptcy petition. The Bankruptcy Court held that the creditor only technically violated the automatic stay in order to protect the creditor's interests in the soybeans and denied the claim for actual and punitive damages because the court found no willful or egregious actions by the creditor. The debtors also argued that some soybeans were missing and that the creditor was responsible for the missing soybeans. The Bankruptcy Court found that the debtors' own actions demonstrated that the bin was not full when the creditor executed against it; therefore, there was insufficient evidence that any soybeans were missing. The appellate court affirmed. ***In re* Kolberg, 199 B.R. 929 (W.D. Mich. 1996)**.

AVOIDABLE LIENS. The debtor was a grain storage and marketing facility which accepted grain from producers on delayed pricing contracts. The debtor's license was revoked when the facility showed a large short fall of grain in storage as compared to the amount of grain owed on the delayed price contracts. Under Ohio Rev. Code § 926.021, grain producers were provided with a lien for grain stored in grain elevators and terminals. The bankruptcy trustee sought to avoid the producers' liens on the grain stored in the debtor's facilities at the date of the petition, arguing that the statutory liens were avoidable under Section 547 because the liens arose when the debtor became insolvent and the license was revoked. The court held that the statutory lien arose when the grain was delivered, making the producers secured creditors. The trustee argued that the liens were not perfected on the date of the petition and were avoidable under Section 545(2) since the trustee acted as a bona fide purchaser as of the date of the bankruptcy petition. The court also denied this argument on the same basis that the statute created and perfected the liens as of the date of delivery. The trustee also argued that the liens were avoidable under Section 545(1). The court held that Section 545(1) applied only to avoid the fixing of a lien and could not be used where the liens were fixed long before the debtor filed for bankruptcy. **Matter of Merchants Grain, 93 F.3d 1347 (7th Cir. 1996)**.

PREFERENTIAL TRANSFERS. The debtor operated a grain storage facility in Ohio. The debtor had entered into delayed pricing contracts with several grain producers who stored grain at the facility. The debtor failed to meet Ohio statutory net worth requirements and its license was suspended. Under Ohio law, grain producers have a statutory lien for grain stored in a licensed facility which continues until the producer receives compensation for the grain. The debtor was allowed to continue in business to liquidate the grain inventory and to disburse payments to the producers. Some of these payments occurred within 90 days before the debtor filed for bankruptcy and the bankruptcy trustee sought to recover the payments as preferential transfers. The trustee argued that the statutory lien was voidable by the trustee under Section 545(1) because it arose only when the facility became insolvent. The court held that the Ohio statutory lien arose when the grain was deposited in the facility. The trustee also argued that the lien was voidable under Section 545(2). The court held that Section 545(2) did not apply because no lien existed at the time of the petition since the producers' liens were extinguished upon payment. Thus, the court held that the producers were secured creditors and that the payments received pre-petition were no more than the producers would have received in the bankruptcy case and the transfers were not avoidable. **Merchants Grain, Inc. v. Adkins, 93 F.3d 1347 (7th Cir. 1996), *aff'g*, 184 B.R. 52 (S.D. Ind. 1995)**.

PRIORITY. The debtor was a purchaser and processor of fryer chickens. Under a process enacted by the Oregon legislature, the members of the fryer chicken industry in Oregon voted to establish a fryer commission to make assessments against purchasers of fryer chickens and to use the proceeds to promote the Oregon fryer chicken industry. The debtor had failed to pay assessments and the Oregon Fryer Commission filed a claim in the debtor's bankruptcy case and argued that the claim was entitled to priority, under Section 507(a)(8)(C) as a tax claim. The court used the four factors determined in *In re Lorber Industries of California, 675 F.2d 1062 (5th Cir. 1982)* to determine whether the assessments were taxes. The court held that the assessments were fees and not taxes because (1) the assessments were voluntary in that the members of the fryer industry voluntarily established the commission, (2) the assessments were not imposed under the state police or taxing authority, and (3) the assessment were made to support only a small segment of the public. The court held that the fourth element, imposition by or under authority of the legislature, was a close issue and decided not to rule on that element since the remaining elements favored holding that the assessments were fees not entitled to priority under Section 507(a)(8)(C). ***In re* Belozer Farms, Inc., 199 B.R. 720 (Bankr. 9th Cir. 1996)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

DISCHARGE. The debtors filed a previous Chapter 13 case which was filed 179 days after the IRS assessed the taxes which were a claim made in that case. The debtors made some payments on the tax claim but did not receive a discharge. After 754 days, the case was dismissed before the plan was completed. The IRS filed a notice to levy after the case was dismissed and 15 days later the debtors filed the instant case, arguing that the taxes were now dischargeable because the taxes were assessed more than 240 days before the filing of the second petition. The court held that there was no statutory authority for a tolling of the 240 day period during the first bankruptcy case but held that the court had equitable power to order the tolling of the 240 day period. The court found that the tax claim arose because the debtors underreported the amount of tax due, made an initial partial payment with an insufficient funds check, and filed the second case primarily to prevent the IRS from executing on the levy. The court held that under those circumstances, the court would exercise its equitable authority to toll the 240 day period for the time of the first bankruptcy filing. ***In re* Miller, 199 B.R. 631 (Bankr. S.D. Tex. 1996)**.

NET OPERATING LOSSES. The debtor had net operating losses in 1975 which the debtor carried forward to tax years through 1993 when the bankruptcy case was closed. The law in 1975 was that NOLs could only be carried forward five years. The debtor filed for bankruptcy in late 1979, prior to the effective date of the Bankruptcy Act of 1978 and was not affected by I.R.C. § 1398. The court held that the debtor was limited to the five year carryforward period for the NOLs and the carryover period was not affected by later I.R.C. amendments or bankruptcy law. **Beery v. Comm'r, T.C. Memo. 1996-464**.

FEDERAL AGRICULTURAL PROGRAMS

CONSERVATION. The NRCS and FSA have announced that they will conduct 54 public forums where interested individuals can provide comments and ideas on the implementation of the conservation provisions of the Federal Agriculture Improvement and Reform Act of 1996, which includes: Highly Erodible Land Compliance, Wetlands Conservation, Conservation Reserve Program, and the Environmental Quality Incentives Program. The announcement contains the addresses and dates of the forums. **61 Fed. Reg. 52663 (Oct. 7, 1996)**.

The CCC has issued proposed regulations implementing the Environmental Quality Incentives Program (EQIP) as authorized by amendments in the Federal Agriculture Improvement and Reform Act of 1996 to the Food Security Act of 1985. **61 Fed. Reg. 53573 (Oct. 11, 1996)**.

CROP INSURANCE. The FCIC has issued proposed regulations providing for a Group Risk Plan of Insurance. The plan provides insurance against the widespread loss of certain crops in a county. The GRP pays only when the average yield of the entire county drops below the expected county yield as determined by FCIC. The payment is determined on the basis of the difference between the expected area yield and the actual average yield for the whole designated area. Thus, an insured can have no loss yet receive payments if the area wide losses reduce the area yield to a below-expected level and an insured may experience a loss and yet receive no payment because the average yield for the area was higher or as high as the expected average yield. **61 Fed. Reg. 52717 (Oct. 8, 1996)**.

FARM LOANS. The plaintiff had obtained an FmHA (now FSA) loan but was in default on the loan for over four years. The plaintiff was offered loan restructuring but failed to file the application within the time allowed. The court held that the FmHA did not abuse its discretion in servicing the loan and did not act in a capricious manner in applying the law to the plaintiff. The court also rejected the plaintiff's equal protection argument because the plaintiff failed to provide any evidence that the plaintiff was treated any differently from other persons similarly situated. **Daniel Farms v. Espy, 932 F. Supp. 1173 (E.D. Mo. 1996)**.

IMPORTS. The APHIS has issued proposed regulations establishing a new domestic quarantine notice. The domestic quarantine notice would provide that, subsequent to their importation, plants and plant parts prohibited under foreign quarantine notices from being imported into certain states or areas are also prohibited from being moved interstate into those states or areas. **61 Fed. Reg. 51376 (Oct. 2, 1996)**.

PAYMENT LIMITATIONS-*ALM* § 10.03[4].* The plaintiffs were farmers who had various relationships with a large family farm corporation. The corporation was owned by the parents and the children participated in farming some of the land owned by the corporation. One son was determined by ASCS (now FSA) to not be a separate person for payment limitation purposes because the son failed to demonstrate the source of the son's financing for the son's farming operation. The court noted that the son provided no bank records to support claims that the son's operation was funded by either a bank loan or personal savings. The parents argued that the ASCS determination that they were involved in a scheme or device to evade the payment limitations was not supported by the administrative record because no evidence of the parents' activites was cited in support of the administrative ruling. The court, however, held that the ASCS determination that the corporation was involved in a scheme or device was supported by the record and the actions of the corporation carried over to the parents as sole owners. **Huntsman Farms, Inc. v. Espy, 928 F. Supp. 1451 (E.D. Ark. 1996)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT-*ALM* § 10.05[2].* The debtor had purchased dried prunes and dried apricots from a seller and had not paid for the fruit. The debtor had previously granted a blanket security interest to a lender which covered all inventory. The seller sought to claim a priority interest in the proceeds of the dried fruit under the PACA trust provisions. The lender argued that the drying process converted the fruit into a product not covered by PACA. The issue involved the definition of fresh fruit, in 7 C.F.R. § 46.2(u), covered by PACA, which included fruit from which the surface moisture had been removed. The seller argued that the sun drying of the fruit was primarily for the removal of surface moisture. The court found that the drying of the prunes and apricots involved removal of a substantial amount of water from the whole fruit and altered the nature, taste and shape of the fruit so as to produce a food of a different character from the original fruit; therefore, the dried fruit was not a fresh fruit and the PACA trust rules did not apply to the proceeds of the dried fruit. ***In re* L Natural Foods Corp., 199 B.R. 882 (Bankr. E.D. Pa. 1996)**.

PESTICIDES. See **Bruce v. ICI Americas, Inc., 933 F. Supp. 781 (S.D. Iowa 1996)** under **Products Liability** *infra*.

SEEDS. The APHIS has issued proposed regulations amending the imported seed regulations to (1) move the regulations to a new part, 7 C.F.R. Part 361; (2) establish a seed analysis program with Canada; and (3) provide compliance agreements with companies which import seed for cleaning or screening. **61 Fed. Reg. 51791 (Oct. 4, 1996)**.

TOBACCO. The CCC has adopted as final the determination that the marketing quota for 1996 burley tobacco is 633.6 pounds and the price support level is 173.7 cents per pound. **61 Fed. Reg. 50423 (Sept. 26, 1996)**.

FEDERAL ESTATE AND GIFT TAX

CAPITAL GAINS. A trust was formed by a decedent's will and the trust was funded with estate property. The executor, a bank, made an I.R.C. § 643(e)(3) election on the estate's income tax return to treat any gain from the funding

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of the trust as capital gain. The executor consulted with its accountants and received erroneous advice that gain would be recognized from the transfer and that a Section 643(e) election was necessary to minimize the tax on the transaction. When the executor learned that no gain was recognized by the estate in funding the trust, the executor petitioned for revocation of the Section 643(e)(3) election. The IRS noted that the election would have caused recognition of the gain. The IRS ruled that the revocation would be allowed because the executor exercised due diligence in seeking and relying on the tax advice of the accountants. **Ltr. Rul. 9641018, July 3, 1996**.

GENERATION SKIPPING TRANSFERS-*ALM* § 5.04[6].* The taxpayer requested an extension of time to file an inter vivos QTIP election under I.R.C. § 2523(f). The IRS ruled that it had no authority to grant an extension under Treas. Reg. § 301.9100-1 because the time for filing the election was established by statute, I.R.C. § 2523(f)(4). **Ltr. Rul. 9641023, July 10, 1996**.

GIFT-*ALM* § 6.01.* The decedent died in 1991 and had made taxable gifts in 1976, 1987 and 1988. The tax on the 1987 gift was calculated by first applying the unified rate schedule to the total of the 1976 and 1987 gifts. The tax attributable to the 1976 gift was subtracted from the above total tax to determine the 1987 tax. The same procedure was used for the 1988 gift, i.e., the tax attributable to the 1976 and 1987 gifts was subtracted from the tax calculated on all three gifts. The IRS ruled that this was the proper method of calculating the gift tax for these gifts for purposes of determining the tentative estate tax under I.R.C. § 2001(b). **Ltr. Rul. 9642001, Nov. 30, 1994**.

POWER OF APPOINTMENT. The decedent owned a beneficial interest in a trust established by the decedent's predeceased spouse. The trust provided for trustee discretion to make payments to the decedent from trust income and principal for the decedent's "care, support and maintenance, hospital and medical needs and expenses of invalidism." The trust also provided the decedent with the noncumulative right to withdraw the greater of 5 percent of the trust principal or $5,000 annually. The decedent never made any withdrawals from the trust. The trustee was not allowed to consider any withdrawals by the decedent in making discretionary distributions from trust income or principal. The court characterized the decedent's annual noncumulative power to withdraw 5 percent of the trust principal as a general power of appointment over 5 percent of the trust and the failure to exercise that power each year as a lapse of the power. The estate argued that the power had lapsed with the decedent's death and I.R.C. § 2041(b)(2) allowed exclusion of the 5 percent from the decedent's gross estate. The court held that the exception in Section 2041(b)(2) applied only to lapsed powers of appointment and was not available to the decedent's estate because the decedent still held the power to withdraw 5 percent of the trust on the date of death. The court noted that this interpretation was consistent with an example in Treas. Reg. § 20.2041-3(d)(3) which was drawn from the legislative history of I.R.C. § 2041. See also *Estate of Kurz v. Comm'r, 101 T.C. 44 (1993)*. **Estate of Dietz v. Comm'r, T.C. Memo. 1996-471**.

SPECIAL USE VALUATION-*ALM* § 5.03[2].* An estate elected special use valuation of farm land which was devised to three children of the decedent. Within ten years after the death of the decedent, one of the children sold that child's entire interest in the farm to the two siblings. The IRS ruled that the sale was not a disposition causing recapture of special use valuation benefits; however, the purchasing siblings must execute an amendment to the agreement consenting to personal liability for recaptured special use valuation benefits. The amended agreement should reflect the new ownership status of the parties. **Ltr. Rul. 9642055, July 24, 1996**.

FEDERAL INCOME TAXATION

ASSESSMENTS. The taxpayer timely filed an income tax return for 1990. The taxpayer subsequently moved and filed other federal tax forms which indicated a new address but did not file a change of address form with the IRS. The IRS sent a notice of deficiency for 1990 to the address on the taxpayer's 1990 return, but the notice was returned as undeliverable because the taxpayer had moved. The IRS sent another notice of deficiency to the same address without any attempt to determine the taxpayer's new address. The court held that the second notice was invalid in that the IRS failed to exercise due diligence in determining the taxpayer's new address once the IRS learned that the taxpayer had moved. **Crawford v. Comm'r, T.C. Memo. 1996-460**.

FARM CREDIT SYSTEM. The taxpayer was an Agricultural Credit Association formed from the merger of a Production Credit Association and a Federal Land Bank Association. The enabling legislation provided that ACAs have the same powers as FLBs including the making of long term loans. FLBs were exempt from income tax on the income from long-term loans and the taxpayer argued that this exemption carried over to the ACA long-term loans. The IRS ruled that because no explicit exemption for ACAs was included in the enabling legislation, the ACA was not entitled to the exemption available to FLBs. **Ltr. Rul. 9641006, July 18, 1996**.

INTEREST. The taxpayer worked as a furniture lumper and claimed withholdings of social security taxes on the taxpayer's income tax returns. The taxpayer made such claims without receiving W-2 forms from the employer. After an audit, the IRS determined that the taxpayer was an independent contractor and owed for the underpaid social security taxes on the income. The taxpayer paid the tax deficiency and $42,000 in interest and claimed the interest paid as a business deduction for the tax years involved. The IRS disallowed the deduction. The court held that the interest payment was not an ordinary and necessary business expense because the taxpayer was on notice that the social security taxes were owed from the lack of W-2 forms. **Michael v. Comm'r, T.C. Memo. 1996-466**.

IRA. The decedent had owned an interest in a pension plan and an IRA with the surviving spouse as the designated beneficiary. The surviving spouse was over the age of 70 1/2 years and transferred the interests in the plan and IRA to a new IRA in the surviving spouse's name. No other amounts were contributed to the IRA. Payments from the surviving spouse's IRA were based on the joint life expectancy of the surviving spouse and the designated beneficiary. The IRS ruled that distributions to the surviving spouse from the IRA were excluded in determining the amount of excess distributions subject to the 15 percent tax imposed by I.R.C. § 4980A. The IRS also ruled that any amounts in the IRA at the surviving spouse's death would be excluded in determining excess accumulations for purposes of calculating the 15 percent increase in estate tax under I.R.C. § 4980A(d). **Ltr. Rul. 9642059, July 24, 1996**.

LIKE-KIND EXCHANGES-*ALM* § 4.02[16].* This ruling involved six taxpayers who owned, as tenants in common, undivided one-sixth interests in 23 separate parcels of farm land. The parcels were cropshare leased and the leases were managed by one of the taxpayers as agent for the others. The taxpayers exchanged their partial interests in the several properties for entire fee interests in a few of the properties. By agreement of the parties, no further disposition of the properties was to occur, except upon the death of a party, for at least two years after the transfers. The exchanged property interests were of equal value with no boot or assumption of liabilities by any party. The IRS ruled that the exchanges would qualify for like-kind exchange treatment without recognition of gain so long as the values of the exchanged interests were approximately equal. **Ltr. Rul. 9642029, July 16, 1996; Ltr. Rul. 9642032, July 16, 1996; Ltr. Rul. 9642033, July 16, 1996; Ltr. Rul. 9642034, July 16, 1996; Ltr. Rul. 9642035, July 16, 1996.**

LODGING EXPENSES. The taxpayer operated gaming resorts and offered discounted and free lodging, meals and travel to its customers in accord with industry marketing practices. The benefits were available to the general public and were usable at the taxpayer's facilities. The taxpayer also provided similar benefits to selected customers for use at unrelated facilities. The IRS ruled that the benefits offered to the general public were exempted from the disallowance provisions of I.R.C. § 274 and were deductible under I.R.C. § 162. However, the IRS ruled that the benefits offered to selected customers and used at unrelated facilities were not deductible under I.R.C. § 274. **Ltr. Rul. 9641005, June 27, 1996**.

REFUNDS. The taxpayer filed for an automatic extension to file the 1986 return and included a check for $25,000. The plaintiff did not file a return for 1986 until 1993 and the return showed a tax liability of only $14,900. The taxpayer requested a refund which was denied by the IRS. The court held that the $25,000 check was a payment and not a deposit; therefore, the refund request was barred by the limitations period of I.R.C. § 6511. **Ott v. United States, 96-2 U.S. Tax Cas. (CCH) ¶ 50,526 (W.D. Wash. 1996)**.

S CORPORATIONS

NATURAL RESOURCE RECAPTURE PROPERTY. The IRS has adopted as final regulations governing the treatment of gain, under I.R.C. § 1254, from disposition of natural resource recapture property by S corporations and from disposition of S corporation stock to the extent of Section 1254 costs allocable to the stock. Disposition of natural resource recapture property by an S corporation requires calculation at the shareholder level of the income recaptured. Section 1254 costs must be recaptured in like-kind exchanges and involuntary conversions where any gain is recognized in the transaction and where the replacement property is not Section 1254 property. **61 Fed. Reg. 53062 (Oct. 10, 1996)**.

SAFE HARBOR INTEREST RATES
November 1996

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	5.96	5.87	5.83	5.80
110% AFR	6.56	6.46	6.41	6.37
120% AFR	7.16	7.04	6.98	6.94
		Mid-term		
AFR	6.60	6.49	6.44	6.40
110% AFR	7.27	7.14	7.08	7.04
120% AFR	7.94	7.79	7.72	7.67
		Long-term		
AFR	7.02	6.90	6.84	6.80
110% AFR	7.73	7.59	7.52	7.47
120% AFR	8.45	8.28	8.20	8.14

SOCIAL SECURITY TAX-*ALM* § 4.06.* Beginning with the January 2, 1997 payment, the monthly social security benefit payments will increase to a maximum of $484 for an individual and $726 for a couple. The maximum amount of annual wages subject to Old Age Survivors and Disability Insurance for 1997 is $65,400, with **all** wages and self-employment income subject to the medicare portion of the tax. For 1997, the maximum amount of annual earnings before reduction of benefits is $13,500 for persons aged 65 through 69 and $8,640 for persons under age 65. The amount of wages necessary for one quarter of coverage is $650. **Social Security Admin. News Release, October 17, 1996**.

NUISANCE

HOGS-*ALM* § 13.08.* The parties were two sons of one parent who devised the family farm in two parcels, one to each son. The parcels were divided by a stream and a road along the stream. At a point near the plaintiff's residence, the defendant's parcel included a narrow strip of land between the road and the plaintiff's land. The strip was crossed by a driveway which the plaintiff constructed in order to reach a new residence built on the plaintiff's parcel. Although no agreement was entered into by the parties allowing the driveway, the defendant never objected to the driveway. The defendant used a portion of the defendant's parcel for raising hogs and the defendant moved a part of the hog lot to the narrow strip of land in front of the plaintiff's residence. The plaintiff sued for an injunction, arguing that the use of the narrow strip constituted a private nuisance because of the sight, odor and insect problems caused by the hogs. The trial master denied the injunction, ruling that the odor and insect problems were no worse before the hogs were moved. The appellate court reversed, holding that the testimony clearly indicated that the use of the strip for raising and feeding hogs interfered with the plaintiff's use of the residence and lowered the value of the residence. The court affirmed the trial master's ruling that the defendant had acquiesced to the building of the driveway so as to create a prescriptive easement for the driveway. **O'Cain v. O'Cain, 473 S.E.2d 460 (S.C. Ct. App. 1996)**.

PRODUCTS LIABILITY

PESTICIDES. The plaintiffs owned and operated a large family grain farm. The plaintiffs applied to their corn crop a rootworm pesticide manufactured by the defendant. After the pesticide failed to control rootworm, the plaintiffs sued for breach of implied warranty of fitness for a particular purpose, breach of warranty of merchantability, and in strict liability. The defendant argued that the claims were all barred by pre-emption of FIFRA and that the disclaimers of implied and express warranties barred the claims. The court found that a portion of the plaintiff's claims on both the breach of warranty claims was based on representations made by the defendant in advertising, sales literature and a trade name. The court held that to the extent the claims were not label based, the claims were not pre-empted by FIFRA. However, the court held that the disclaimers were conspicuous and barred the nonpre-empted claims. The strict liability claim was also dismissed because the plaintiffs sought economic damages for their losses, which were not allowed under state law. In addition, the manufacturer was not in privity with the plaintiffs because the pesticide was sold by independent dealers. **Bruce v. ICI Americas, Inc., 933 F. Supp. 781 (S.D. Iowa 1996)**.

SECURED TRANSACTIONS

PRIORITY. The debtor was a cotton grower who had granted a security interest in the cotton crop to the lessor of the land on which the crop was grown. The lessor executed a financing statement in April 1993. The lessor then sold the property under an agreement which allocated the rent between the lessor and the new buyer. The debtor also borrowed money from a commercial lender to finance the production of the cotton crop and granted the lender a security interest in the same crop. The lender filed a financing statement in May 1993. The debtor hired another company to harvest the cotton and granted that company a security interest in the cotton. The harvesting company filed a financing statement in July 1993. The proceeds of the cotton were insufficient to pay all of the debts and the issue was the priority of the three security interests. Under La. Rev. Stat. § 3:2651 a statutory priority was available first to laborers and second to lessors who could assert a lessor's privilege. An initial issue was whether the statute applied to the proceeds of the cotton. The court held that the priority statute applied to harvested and unharvested cotton so long as the security interest arose while the cotton was unharvested. The parties argued that the harvesting company was not a laborer entitled to the top priority under the statute. The court held that the harvesting company was not entitled to the top priority as a laborer because the company hired other workers to actually harvest the cotton. The court also held that the lessor could not assert statutory priority because the lessor did not assert its lessor's priority within 15 days after the cotton was harvested. The court also held that the buyer of the land did not have a perfected security interest in the cotton crop because no assignment of the security interest was included in the sale agreement and the buyer failed to properly perfect a security interest in the cotton crop. Thus, the priority of the security interests was based on the date of perfection as to the original lessor, the lender and the harvesting company. **Bayou Pierre Farms v. BAT Farms Partners, III, 676 So.2d 643 (La. Ct. App. 1996)**.

STATE TAXATION

AGRICULTURAL USE. The defendants owned ranch land which received special valuation for property tax purposes based on the earnings capability of the land. The land was used for grazing, but the defendants leased several parcels to third parties for use as pasture. In several tax years several of the parcels were not actually used for grazing because of unavailability of water and other reasons. The Board of Adjustment allowed the valuation of the land as pasture because the board held that the statute did not require actual use of the land for grazing but only that the land was pasture land and that the possessor intended to use the land for grazing. The court held that the statute required actual grazing on land for each year the land received the special valuation, except where the grazing was not done in order to carry out conservation practices. The court also held that the Board of Adjustment should have determined whether any of the parcels were separate tax units or part of larger units on which some grazing had occurred, because the statute did not require grazing on all of a parcel which received special valuation. The court remanded the case back to the Board of Adjustment for determinations as to whether grazing did not occur because of conservation practices and whether any of the parcels could be joined with other land on which grazing did occur. **Douglas County Bd. of Equalization v. Clarke, 921 P.2d 717 (Colo. 1996)**.

VETERINARIANS

BAILMENT. The plaintiff delivered a pet dog to the care of the defendant veterinarian for a surgical procedure. The dog died after the procedure was performed and the plaintiff sued the defendant for breach of a bailment agreement. Plaintiff's petition did not allege any negligence and sought damages only for the fair market value of the dog. The court held that, because the dog was delivered to the veterinarian for performance of professional medical procedures, an action in bailment may not be brought. The court noted that only an action in negligence is allowed and because the plaintiff did not allege any negligence, the case was properly dismissed. **Price v. Brown, 680 A.2d 1149 (Pa. 1996)**.

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