• Deferred payment contracts must be reported into income at year end unless made non-assignable and non transferable.[23]

• IRS has resisted the use of deferred payment contracts for sales of livestock where the purchaser was subject to the Packers and Stockyards Act.[24]

• Installment sale treatment is not available to taxpayers who maintain inventories under their method of accounting.[25]

Therefore, it is important to maintain an awareness of both types of transactions and to characterize particular transactions as one or the other, even though the two may be treated the same for AMT purposes.

FOOTNOTES

1 Harl, "Installment Sales of Commodities and AMT," 7 *Agric. L. Dig*. 93 (1996).
2 TAM 9640003, Dec. 21, 1995.
3 See generally 4 Harl, *Agricultural Law* § 25.03[2](1996); Harl, *Agricultural Law Manual* § 4.01[1][b][ii](1996). See also Harl, "Deferred Payment Sales: AMT Liability"; 4 *Agric. L. Dig*. 17 (1993).
4 TAM 9640003, Dec. 21, 1996.
5 Coohey v. United States, C 95-163 9 (N.D. Iowa 1996) (deferred payment sale of hogs treated as installment sale).
6 I.R.C. § 6662(d).
7 I.R.C. § 6662(d)(1)(A).
8 I.R.C. §§ 6662(d)(2); 6664(c).
9 Treas. Reg. § 1.6662-4(d)(3)(iii).
10 Coohey v. United States, No. C95-163 (N.D. Iowa 1996).
11 *Id*.
12 I.R.C. § 56(a)(6).
13 See I.R.C. § 453(d).
14 *Id*.
15 Temp. Treas. Reg. § 15A.453-1(d)(2).
16 See Rev. Rul. 58-162, 1958-1 C.B. 234.
17 Rev. Rul. 79-379, 1979-2 C.B. 204, Rev. Rul. 70-294, 1970-1 C.B. 13 (sale to buyer subject to Packers and Stockyards Act). See Rev. Rul. 72-465, 1972-2 C.B. 233.
18 Levno v. United States, 440 F. Supp. 8 (D. Mont. 1977).
19 See n. 5 *supra*.
20 See I.R.C. § 453(b)(2)(B).
21 See Rev. Rul. 58-162, 1958-1 C.B. 234.
22 TAM 9640003, Dec. 31, 1995, footnote 6.
23 See Ltr. Rul. 8001001, Sept. 4, 1979.
24 See n. 17 *supra*.
25 Sec I.R.C. § 453(b)(2)(B).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

FENCE. In 1964, the plaintiff purchased property from a third party and the seller represented that a fence delineated the northern boundary of the property. The plaintiff continually maintained and mowed the land within the fence. The defendant purchased land north of the fence by sheriff's deed. The previous owner had purchased the land from the same third party who sold the southern portion to the plaintiff. The defendant ordered a survey of the property eight years after the purchase and discovered that the fence was located 10 feet onto the defendant's property. The defendant argued that the sheriff's deed conveyed title in preference to the title gained by the plaintiff by adverse possession. The court held that the defendant could acquire only the title held by the previous owner and because the plaintiff had acquired title by adverse possession before the sheriff's sale, the sheriff's deed was incapable of transferring title to the disputed strip. The defendant also argued that the failure of the plaintiff to pay property taxes on the disputed land prevented acquisition of the strip by adverse possession. The court held that because title by adverse possession provides no notice to the county tax assessor or to the adverse title holder, the failure to pay taxes on the strip does not affect acquisition by adverse possession. **Graham v. Lambeth, 921 P.2d 850 (Kan. Ct. App. 1996)**.

ANIMALS

COW. A cow belonging to the plaintiff broke through a fence and wandered onto the defendant's property. The plaintiff went to the defendant's house and asked for permission to retrieve the cow; however, the plaintiff did not identify the cow or ask for return of the cow. Instead, the plaintiff filed suit for conversion and sought damages. The plaintiff argued that, under Ga. Code § 44-12-150, proof of conversion was not required because the defendant still possessed the cow. The court held that the statute did not apply because the defendant committed no unlawful act in acquiring possession of the cow. Therefore, because the plaintiff failed to provide any evidence that the defendant converted the cow or that the plaintiff had made a demand for the cow which was rejected, judgment for the defendant was proper. **Simmons v. Bearden, 474 S.E.2d 250 (Ga. Ct. App. 1996)**.

BANKRUPTCY

FEDERAL TAXATION-*ALM* § 13.03[7].*

DISCHARGE. The debtor timely filed the 1991 income tax return. In March 1994, the IRS discovered an error in the 1991 return and sent a notice to this effect to the debtor. The debtor did not respond to the letter. In December 1994 the IRS recorded the lack of response

**Agricultural Law Manual* (ALM). For information about ordering the *Manual*, see the next to last page of this issue.*

from the debtor and in February 1995, within 180 days before the debtor filed for Chapter 7, the IRS sent an assessment notice for the amount owing for 1991. The debtor filed the Chapter 7 petition 455 days after the first notice of the error. The debtor argued that the first notice was an assessment, allowing the discharge of the taxes under Section 523(a)(1)(B).The court held that only the second qualified as an assessment because only that notice requested payment. The court noted that the first notice provided the debtor with the option of agreeing to an immediate assessment by responding to the notice but that the debtor chose not to respond, leaving the assessment to occur on the later date. **Schweizer v. United States, 96-2 U.S. Tax Cas. (CCH) ¶ 50,545 (C.D. Ill. 1996)**.

The debtors timely filed their 1982 and 1983 income tax returns and filed for Chapter 13 in April 1988. The IRS filed a claim for tax deficiencies for 1982 and 1983. The plan was confirmed and the case was dismissed on August 13, 1992. The debtors refiled for Chapter 13 on August 19, 1992 and claimed the 1982 and 1983 taxes as dischargeable. The IRS argued that the three year period of Sections 523(a)(1)(A), 507(a)(8)(A) was tolled during the first Chapter 13 case. The court held that no statutory authority existed for tolling of the three year period by a bankruptcy case. The court also held that the Bankruptcy Court's ruling that the taxes were dischargeable was not proper under use of equitable powers because the IRS failed to show any fraud or bad faith by the debtors in filing the second case. **Borsage v. United States, 96-2 U.S. Tax Cas. (CCH) ¶ 50,566 (S.D. Ala. 1996)**.

The debtor filed returns for 1987 through 1990 together but late for all years. The returns were sent to the IRS by delivering the returns to a private courier on November 22, 1991. The IRS received the returns on November 25, 1991. The debtor filed for Chapter 7 on November 23, 1993. The debtor argued that the taxes were dischargeable, under Section 523(a)(1)(B)(ii) as filed more than two years before the bankruptcy filing because the effective date of the filing was the date the returns were delivered to the courier. The court held that the "mailbox rule" (effective date of filing was postmark date) applied only for timely filed returns delivered to the U.S. Postal Service; therefore, the effective filing date for the returns was November 25, 1991, the date received by the IRS. ***In re* Smith, 96-2 U.S. Tax Cas. (CCH) ¶ 50,560 (6th Cir. 1996)**.

DISMISSAL. The debtor filed for Chapter 13 and the plan was confirmed. During the plan period, the debtor incurred additional post-petition employment and income tax liabilities which were not paid. The court dismissed the Chapter 13 case for bad faith in that the failure to pay the post-petition taxes was a prejudicial and unreasonable delay of payment of the IRS claims. ***In re* Bennett, 200 B.R. 252 (Bankr. M.D. Fla. 1996)**.

RETURNS. The debtor had failed to timely file returns for 1981 through 1984 for the debtor's business. The IRS constructed substitute returns and sent the debtor a 90-day determination letter which required a response by the debtor within 90 days in order for the debtor to challenge the determination in the Tax Court. The debtor filed the returns after the 90-day period had passed, thus allowing the debtor only an appeal to the District Court. The IRS argued that the returns were a nullity for purposes of Section 523(a)(1)(B) such that the taxes owed were not dischargeable because no return was filed. The court held that the returns were valid, under I.RC. § 6501(a), for purposes of commencing the three-year period for assessments; therefore, the returns were not a nullity under the I.R.C. and would qualify as returns under Section 523(a)(1)(B) and allow discharge of the taxes owed. ***In re* Sullivan, 200 B.R. 327 (Bankr. N.D. Ohio 1996)**.

The debtors filed for Chapter 13 and the court had ordered the debtors to file all pre-petition income tax returns which had not been filed. The debtors were granted one extension but failed to file returns for two tax years, although the debtors filed affidavits titled "Actual and Constructive Notice of Declaration" containing some statements of income and tax liability. The court dismissed the case for bad faith filing because the debtors failed to comply with the court's order to file all pre-petition income tax returns. ***In re* Tobias, 200 B.R. 412 (Bankr. M.D. Fla. 1996)**.

The debtor filed for Chapter 13 and the court had ordered the debtor to file a pre-petition income tax return which had not been filed. The debtor failed to file the return, although the debtor filed information in the bankruptcy schedules containing some statements of income and tax liability. The court dismissed the case for bad faith filing because the debtor failed to comply with the court's order to file the pre-petition income tax return. ***In re* MacClean, 200 B.R. 417 (Bankr. M.D. Fla. 1996)**.

CONTRACTS

HEDGE-TO-ARRIVE CONTRACTS. The plaintiff was an agricultural cooperative which entered into several hedge-to-arrive contracts with the defendant grain farmer. Under the contracts, the defendant was to deliver grain over several years, although the contracts contemplated rolling over the contracts in future years. The defendant repudiated the contracts and the plaintiff sued in state court for breach of contract. The defendant plead as an affirmative defense that the contracts were illegal under the Commodity Exchange Act and removed the case to federal court, arguing that the case essentially involved a federal question of the legality of the contracts under the CEA. The court held that the federal question aspect of the case existed only in the affirmative defense of the defendant and that removal was improper where the only federal question existed in an affirmative defense. **Farmers Co-operative Elevator v. Doden, No. C 96-3144-MWB (N.D. Iowa 1996)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has issued interim regulations amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Louisiana from Class A to Class Free. **61 Fed. Reg. 56116 (Oct. 31, 1996)**.

CROP INSURANCE. The FCIC has issued proposed regulations providing specific provisions for crop insurance for raisins as an endorsement to the Common Crop Insurance Policy. **61 Fed. Reg. 55928 (Oct. 30, 1996)**.

The FCIC has issued proposed regulations establishing procedures for determining eligibility for program participation in any program administered under the Federal Crop Insurance Act and administering and maintaining an ineligible tracking system. The proposed regulations also set out the criteria for reinstatement of program eligibility. **61 Fed. Reg. 56151 (Oct. 31, 1996)**.

The FCIC has adopted as final regulations providing specific provisions for crop insurance for pears as a pear endorsement to the Common Crop Insurance Policy. **61 Fed. Reg. 57578 (Nov. 7, 1996)**.

HORSES. The APHIS has adopted as final regulations removing the regulations governing the interstate movement of horses affected with or exposed to contagious equine metritis and adding this disease to a list of diseases not known to exist in the United States. **61 Fed. Reg. 56116 (Oct. 31, 1996)**.

LIVESTOCK. The APHIS has issued proposed regulations amending the regulations regarding the interstate movement of livestock by combining the provisions for the approval of livestock markets for cattle and bison, horses, and swine into a single section. The proposed regulations also remove the regulations that restrict the movement of swine and swine products from areas quarantined for hog cholera and that provide for the payment of compensation to the owners of swine destroyed because of hog cholera. **61 Fed. Reg. 56155 (Oct. 31, 1996)**.

PACKERS AND STOCKYARDS ACT-*ALM* § 9.05.* The respondent corporation operated a livestock auction which was a stockyard posted under the P&SA. The respondent was found to have a negative balance in the custodial account on four occasions during a 90 day period. The respondent was also found to have failed to reimburse the custodial account for withdrawals and to properly designate the custodial account. The ALJ also determined that the violations were aggravated by the respondent's receiving prior notice that the custodial account had a negative balance and occurrence of the above violations after that notice. The respondent argued that the negative balance violations were caused by a bank's refusal to honor an overdraft agreement, a bad check from a purchaser, and a delay in receipt of several receivables. The ALJ rejected these factors as mitigating the violations because it was the respondent's duty to insure that the custodial account was solvent. The ALJ issued a cease and desist order and fined the respondent $7,000. ***In re* Smithfield Livestock Auction, Inc., 55 Agric. Dec. 430 (1995)**.

The respondent corporation operated a registered stockyard. A routine audit showed that the respondent had a negative balance in its custodial account. The respondent argued that it had an open line of credit with a bank which would cover any overdraft drawn on the account and that no insufficient funds checks were ever issued by the respondent. The ALJ ruled that a line of credit was insufficient to meet the requirements of the P&SA that the custodial account have a positive balance at all times. The ALJ issued a cease and desist order and fined the respondent $4,000. ***In re* Greencastle Livestock Market, Inc., 55 Agric. Dec. 458 (1996)**.

PEANUTS. The AMS has adopted as final regulations which reduce the indemnification payment coverage to certain costs involved with appeal and product claims. The regulations reduce the Peanut Administrative Committee's indemnification payments for losses incurred by signatory handlers in not being able to ship unwholesome peanuts for edible purposes from a ceiling of $7 million for each of the last two years, to about $300,000. The reduction in indemnification claim payments would provide the Committee with adequate funds in its indemnification reserve to cover costs. **61 Fed. Reg. 55547 (Oct. 28, 1996)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT-*ALM* § 10.05[2].* The respondent was a PACA licensed produce dealer whose license had lapsed for nonpayment of the license fee. The PACA had received several PACA trust notices and reparation complaints and instituted an audit of the respondent. The audit revealed 24 unpaid sellers involving 166 lots of produce received through interstate commerce. The respondent claimed that the failures to pay resulted from errors made by salesmen hired by the respondent and from accounting errors. The ALJ ruled that the reasons for the nonpayments were insufficient and that the respondent had committed repeated and flagrant violations of PACA. The ALJ imposed the sanction of publication that the respondent had made repeated and flagrant violations of PACA. ***In re* N. Pugach, Inc., 55 Agric. Dec. 581 (1995)**.

The respondent was a PACA licensed produce dealer. A person (the employee) who worked for the respondent had been a 50 percent owner of another licensed produce dealer which was ruled to have committed repeated and flagrant violations of PACA. The ALJ in that case found that the employee had been responsibly connected with the other dealer and was prohibited from employment by another licensed dealer for one year. The respondent argued that the employee did not have any substantial duties with the respondent and was not paid for the work done. The ALJ found, however, that the employee took and delivered orders and participated in sales of produce. The ALJ also found that the respondent continued to

****Agricultural Law Manual* (ALM). For information about ordering the *Manual*, see the last page of this issue.**

employ the employee after being notified that employment was a violation of PACA. The ALJ imposed the sanction of revocation of the respondent's license. ***In re* County Produce, Inc., 55 Agric. Dec. 596 (1996)**.

The respondent was a produce dealer formerly licensed under PACA but which had lost its license for failure to pay the license fee. The respondent was found to have purchased 27 lots of produce without making timely payments for the produce. The ALJ ruled that the respondent had committed repeated and flagrant violations of PACA and ordered publication of that ruling. ***In re* Coastal Tomato & Banana Co., 55 Agric. De. 617 (1996)**.

POULTRY. The APHIS has adopted as final regulations generally revising the regulations concerning exotic Newcastle disease in birds and poultry, and psittacosis or ornithosis in poultry. **61 Fed. Reg. 56877 (Nov. 5, 1996)**.

FEDERAL ESTATE AND GIFT TAX

GENERATION SKIPPING TRANSFERS-*ALM* § 5.04[6].* The decedent died in October 1982. The residue of the decedent's estate passed to a marital trust for which a QTIP election was made by the estate. The trust provided that, upon the death of the surviving spouse, the trust principal passed to six trusts, one for each of the decedent's children. Each child was entitled to the income from the trust and to trust principal at the discretion of the trustees. Each child had a special testamentary power over trust principal. The decedent's will made no provision for payment of estate taxes imposed on the surviving spouse's estate from inclusion of the trust in the spouse's estate. The surviving spouse executed a will which provided for payment of estate and inheritance taxes, except for GST taxes and limited to a maximum amount, attributable to the marital trust included in the spouse's estate and which passed in trust to the decedent's children. The spouse's will also waived any right of recovery of taxes attributable to the children's' trusts. The IRS ruled that (1) the trust was treated as if a reverse QTIP election was made so that the decedent would continue to be considered the transferor of the children's' trust; (2) the waiver of the right of recovery was not considered a constructive addition to the trust so as to subject the trust to GSTT; and (3) the payment of estate and inheritance taxes did not subject the trust to GSTT. **Ltr. Rul. 9644048, Aug. 1, 1996**.

JOINT TENANCY PROPERTY. The decedent's predeceased spouse had executed a will which provided for either outright distribution of estate property to three unrelated persons or, at the discretion of the decedent, to execute promissory notes for the amounts to be distributed. The decedent did not make the outright distributions but created a joint bank account which included one of the legatees as a joint tenant and deposited the bequest amount in the account. The decedent executed promissory notes for the other bequests. The decedent's estate included one-half of the bank account in the decedent's estate. Under I.R.C. § 2040(a) the entire account was includible in the decedent's estate except for the portion contributed by the other joint tenant which was the tenant's separate property or was acquired for full consideration. The estate argued that the joint tenant's half of the account was received from the predeceased spouse's estate. The court held that the decedent's estate failed to provide sufficient evidence that the predeceased spouse's estate had sufficient property to fund the joint tenant's share of the account; therefore, no deduction was allowed for the joint tenant's share of the account. The estate excluded the amount owed on the note to the other legatees under I.R.C. § 2053(c)(1)(A). Again, the court held that the deduction for the note was not allowed because the decedent's estate did not provide sufficient evidence that the predeceased spouse's estate had sufficient property to pay the note. **Estate of Harden v. Comm'r, T.C. Memo. 1996-488**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* The decedent and surviving spouse had created a revocable trust for their benefit with the decedent and spouse as co-trustees. The trust provided that, at the death of the decedent, the trust was to be split into two trusts with the marital trust funded with $600,000. The surviving spouse was the trustee of this trust but could be replaced if necessary. The marital trust would terminate at the incompetency of the surviving spouse. The marital trust provided that the trustee had the discretion to distribute all trust income at least quarterly and to distribute all trust corpus for the surviving spouse's care, comfort, maintenance and welfare. The trust granted the surviving spouse the power to withdraw all trust principal. The surviving spouse had a general testamentary power of appointment over the trust corpus. The IRS ruled that the marital trust was not eligible for the marital deduction because the surviving spouse was not entitled in all events to the income from the trust, since the trustee had the discretionary power to accumulate income and the trust could terminate before the death of the surviving spouse. Although the surviving spouse retained the right to revoke the trust, this power lapsed at the incompetency of the surviving spouse; therefore, the IRS ruled that the surviving spouse's power to withdraw all trust principal was not exercisable in all events. **Ltr. Rul. 9644001, July 3, 1996**.

SPECIAL USE VALUATION-*ALM* § 5.03[2].* The decedent died on December 15, 1995 owning farm property. The decedent's estate attempted to make a special use valuation election on the estate's timely filed estate tax return. However, the executor failed to fill in the "yes" box after the question on the form asking if a special use valuation was elected and the return failed to include the recapture agreement of the qualified heirs. The IRS notified the estate that the election was incomplete and the estate supplied the recapture agreement within 90 days after the IRS notification. The IRS denied the election because the initial return did not substantially comply with the election requirements. The court held that the recapture agreement was an essential element of the election and the estate return did not substantially comply with the election; therefore, the estate was not entitled, under I.R.C. § 2032A(d)(3) to perfect the election. The estate also argued that Section 1421 of the Tax Reform Act of 1986 allowed the perfection of the election because the original estate tax return provided "substantially all the information" for the election. The court held that the recapture agreement was an essential part of the "information" required by Section 1421 and the failure to provide the agreement prevented the estate from perfecting the election after notice by the IRS. **Estate of Lucas v. United States, 96-2 U.S. Tax Cas. (CCH) ¶ 60,247 (11th Cir. 1996)**.

FEDERAL INCOME TAXATION

CORPORATIONS-*ALM* § 7.02.*

SECTION 1244 STOCK. The taxpayer was an attorney who initially invested $15,000 in a small business corporation as a silent partner. The taxpayer later guaranteed loans obtained by the corporation. When the corporation defaulted on the loans, the taxpayer started working for the corporation and invested additional funds in the corporation. The court held that the taxpayer was entitled to I.R.C. § 1244 stock treatment for losses only to the extent of the original $15,000 investment, with the remainder of the investment entitled to capital loss treatment. The court also disallowed a business bad debt deduction for the guaranteed loans because the guarantee was made primarily to protect the taxpayer's investment and not employment with the corporation. **Zuravin v. United States, 96-2 U.S. Tax Cas. (CCH) ¶ 50,543 (D. Md. 1996)**.

EMPLOYMENT TAXES. The taxpayer provided its new employees with an election to participate in a group health insurance plan. If the employee decided to participate, the taxpayer reduced the wages of the employee but not by an amount which totally covered the cost to the taxpayer of the coverage for the employee. The IRS assessed FICA and FUTA employment taxes on the amount of reduced wages. The court held that the reduced wage amounts were not subject to FICA or FUTA taxes. **Express Oil Change, Inc. v. United States, 96-2 U.S. Tax Cas. (CCH) ¶ 50,553 (N.D. Ala. 1996)**.

The IRS has issued "Independent Contractor of Employee?" explaining the three relief requirements provided by Section 530 of the Revenue Act of 1978: (1) have a reasonable basis for not treating workers as employees, (2) consistent treatment of similar workers as independent contractors, and (3) consistent filing of information returns with the IRS. **IR-96-44**.

PENSION PLANS. For plans beginning in October 1996, the weighted average is 6.91 percent with the permissible range of 6.22 to 7.47 percent (90 to 109 percent permissable range) and 6.22 to 7.61 percent (90 to 110 percent permissable range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 96-54, I.R.B. 1996-44, 13**.

RESPONSIBLE PERSON. The taxpayer was the spouse of the owner of a book store. The taxpayer and spouse had invested their lifesavings in the store and the taxpayer worked in the store as executive manager and purchaser. The spouse maintained management control over the staff and financial affairs of the store and checks were written by others only with the spouse's approval. The IRS argued that the taxpayer was a responsible person liable, under I.R.C. § 6672, for employment taxes owned by the business. The court held that the taxpayer's substantial financial and personal investment in the store and status as executive manager made the taxpayer liable as a responsible person in the business. ***In re* Pond, 200 B.R. 267 (Bankr. S.D. Fla. 1996)**.

RETURNS. The taxpayer purchased wood for third parties. The taxpayer contracted with independent timber harvesters who contracted with timber owners for the cutting of trees. The independent contractors delivered the cut trees to lumber mills and the lumber mills paid for the trees by paying the taxpayer. The taxpayer then paid the independent contractors. Some of the contractors had their payments made out in the form of two checks, one to themselves and one to the timber owners. The IRS ruled that the taxpayer had to report payments in excess of $600 per year for the payments made to the independent contractors (unless the contractor was a corporation) but did not have to make additional reports for the payments made by separate checks to the timber owners. **Ltr. Rul. 9643004, July 12, 1996**.

S CORPORATION-*ALM* § 7.03[2][c].*

PASSIVE INVESTMENT INCOME. The taxpayer was a corporation which owned rental properties. The corporation provided services to the tenants through full- and part-time employees. The corporation provided maintenance and construction services, a parking lot for the tenants and the tenants' customers, inspections, and subletting services. The corporation paid for the insurance, utilities and repairs for the properties. The IRS ruled that the rental income was not passive investment income for purposes of eligibility for S corporation status. **Ltr. Rul. 9643017, July 22, 1996**.

SOIL AND WATER CONSERVATION EXPENSES. The IRS has announced that Form 8645, Soil and Water Conservation Plan Certificate is obsolete for tax years after 1995. The information required by the former form is to be reported on Schedule F; Form 4835, Farm Rental Income and Expenses; Form 1040-SS, U.S. Self-Employment Tax Return (Virgin Islands, Guam, American Samoa, Northern Mariana Islands); and Form 1040-PR, Planilla Para La Declaracion De La Contribusion Federal Sobre El Trabajo Por Propia-Puerto Rico. **Ann. 96-42, I.R.B. 1996-20, 18**.

THEFT LOSS. The taxpayers loaned money to their son-in-law to assist the son-in-law in financing several business opportunities. The son-in-law used the money, however, to invest in the stock market and lost all of the

***Agricultural Law Manual* (ALM). For information about ordering the *Manual*, see the last page of this issue.**

borrowed funds. The taxpayers claimed the unrecoverable loans as a theft loss. The court disallowed the theft loss deduction because the taxpayers made the loans with no expectation of profit or interest on the loans and the taxpayers knew the loans were not repayable in the tax year prior to the year the deduction was claimed. **Leonard v. Comm'r, T.C. Memo. 1996-473**.

NUISANCE

HOG CONFINEMENT OPERATION. The plaintiffs purchased their rural home and farmland in 1977. The defendants purchased their land, directly south of the plaintiffs, in 1974 and operated a commercial hog feeding operation on the land since 1990. The plaintiffs suffered from the strong odors from the waste treatment lagoon maintained for the hog operation and presented testimony of several rural residents as to the strength and distasteful nature of the odors. The trial court ruled that the operation was a nuisance but only a temporary nuisance and awarded damages but no injunction. The trial court reasoned that technological advances in odor control would eventually solve the problem. The appellate court upheld the holding that the hog operation was a nuisance but held that the nuisance was permanent because no evidence was presented that any odor control technology was available or was soon to be available. The second issue was whether Iowa Code § 351.11 provided a defense against a nuisance action. The defendants' land was approved as an agricultural area on October 8, 1991 and, as an agricultural area, was protected from nuisance suits after that date. The court held that, because the nuisance action was brought before the land was approved as an agricultural area, the plaintiffs action was not barred and the plaintiffs could recover past, present and future damages caused by the nuisance. The trial court had awarded $45,000 in special damages for past and present injuries from the nuisance. Although the appellate court held that future damages were allowable, the court held that the $45,000 award was sufficient to cover the future damages as well. Note: A future issue of the Digest will publish an article by Neil E. Harl on this case. **Weinhold v. Wolff, No. 157/94-1589, ___ N.W.2d ___ (Iowa 1996)**.

STATE REGULATION OF AGRICULTURE

ENVIRONMENT. The plaintiffs owned a 55 acre tree covered parcel in the flood plain of a river. The plaintiffs wanted to clear cut the trees in order to develop the land as farm land. Under Conn. Gen. Stat. § 22a-342, the plaintiffs were required to obtain a permit from the county commissioner because the land was in a flood plain and adjacent to a river. The plaintiffs argued that they were exempt, under Conn. Gen. Stat. § 22a-349, from the permit requirement because the land was intended for farming. The court held that the exemption was available only for actions which were either farming in themselves or incidental to farming. Because the clear cutting of the trees was not a farming operation, since the cutting was a one time event and not part of a timber operation, the land did not qualify for the farming exemption. **Cannata v. Dept. of Environmental Protection, 680 A.2d 1329 (Conn. 1996)**.

CITATION UPDATES

Firsdon v. United States, 95 F.3d 444 (6th Cir. 1996), *aff'g*, 95-1 U.S. Tax Cas. (CCH) ¶ 50,040 (N.D. Ohio 1995) (net operating losses) see p. 151 *supra*.

AGRICULTURAL LAW PRESS
P.O. BOX 50703
EUGENE, OR 97405

ISSUE INDEX