CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

FEDERAL AGRICULTURAL PROGRAMS

KARNAL BUNT. The APHIS has adopted as final regulations which amend the Karnal bunt regulations by removing from regulated areas any noninfected acreage that is more than three miles from a field or area associated with a bunted wheat kernel. This action would reduce the size of the areas that are regulated because of Karnal bunt in La Paz, Maricopa, and Pinal Counties of Arizona. The amendments also specify that mechanized harvesting equipment must be cleaned and disinfected before leaving a regulated area only if it has been used to harvest host crops that test positive for Karnal bunt. **65 Fed. Reg. 50595 (Aug. 21, 2000)**.

OFFSET. The FSA has adopted as final regulations which eliminate the provisions setting out separate set-off regulations of the former Farmers Home Administration and provide that the Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service and FSA, Farm Loan Programs will adhere to the requirements in the USDA administrative offset regulations. The regulations also eliminate the requirement that a borrower's account be accelerated prior to offset of payments from a Federal agency to delinquent borrowers. **65 Fed. Reg. 50598 (Aug. 21, 2000)**.

SCRAPIE. The APHIS has issued proposed regulations which would provide for a list of “consistent states,” which conduct an active scrapie program for identifying scrapie in flocks. All states currently meet this standard. **65 Fed. Reg. 49770 (Aug. 15, 2000)**.

SHARED APPRECIATION AGREEMENTS. The FSA has adopted as final regulations amending the Shared Appreciation Agreement (SAA) and the servicing regulations of SAAs. The SAA ensures that FSA shares in any appreciation of real estate security when a farm borrower has received a writedown of a portion of a FSA debt. The amount due can be paid in full or amortized when the SAA matures or is triggered during the term of the agreement. The amendments will allow the value of some capital improvements made during the term of the SAA to be deducted from recapture, change the maturity period of future SAAs from 10 years to 5 years, and reduce the interest rate on SAA loans to the Farm Program Homestead Protection rate. These changes will give borrowers an opportunity to repay a portion of the FSA debt that was written off, while still ensuring that the FSA promptly recaptures some appreciation of the collateral. **65 Fed. Reg. 50401 (Aug. 18, 2000)**.

WETLANDS. The plaintiff had applied to the ASCS (now FSA) for permission to clean out a canal which ran through the plaintiff’s property since before 1985. The ASCS allowed the plaintiff to clean out the canal as allowable maintenance but designated eight acres along the canal as ‘farmed wetland pasture.” The plaintiff objected to the wetland determination and the NRCS made two inspections of the land, upholding the farmed wetland pasture determination. The determination was appealed and upheld through the NAD and the plaintiff sought judicial review of the determination as arbitrary and capricious. The court held that the inspections and soil tests had established that the land contained hydric soils and was often wet, even before the canal was constructed; therefore, the ASCS determination was based on substantial evidence and was properly made. **Prokop v. United States, 91 F. Supp.2d 1301 (D. Neb. 2000)**.

FEDERAL ESTATE AND GIFT TAX

ALTERNATE VALUATION. The decedent died on April 13, 1993, and on January 12, 1994, the estate filed for an extension to file the federal estate tax return on July 13, 1994, along with payment of $2 million in estimated tax. The estate sought valuation of the estate’s primary assets, shares of publicly traded stock but was unable to obtain an appraisal before the extended filing date. The estate tax return was filed on January 19, 1996 and the return used the alternate valuation date for the stock less a 75 cents per share blockage discount. The court held that the estate had to use the date of death value of the stock because the alternate valuation date election was not made on a timely filed return. The court also held that the estate failed to show any reasonable cause for the delay in filing the return or election, since the estate failed to file a return until more than a year after the appraisal was obtained. The court noted that the estate could have preserved the election by timely filing the return with the election and an estimated valuation then filing a supplemental return once the appraisal was obtained. **Estate of Eddy v. Comm’r, 115 T.C. No. 10 (2000)**.

GIFT. The IRS has provided procedures for disclosing unreported gifts for purposes of the running of the statute of limitations on assessing taxable gifts. To commence the running of the period of limitations on assessment with respect to a gift that was not adequately disclosed on a federal gift tax return, the donor must file an amended gift tax return for the calendar year in which the gift was made. The amended return must identify the transfer and provide all of the information required under Treas. Reg. § 301.6501(c)-1(f)(2) that was not previously submitted with the original gift tax return. The amended return must be filed with the same IRS center where the donor previously filed the gift tax return for the calendar year. The top of the first page of he amended return must have the words “Amended Form 709 for gift(s) made in [the calendar year that the gift was made]--In accordance with Rev. Proc. 2000-34, 2000-34 I.R.B. 186.” **Rev. Proc. 2000-34, I.R.B. 2000-34 186.**

VALUATION. The decedents, husband and wife, died simultaneously in an airplane crash. The decedents had executed wills, each of which created life estate interests in trust for the surviving spouse. The wills provided for simultaneous deaths by providing that in such case, each would be treated as surviving the other, for purposes of the trusts. The estates valued the interests in the trusts using the actuarial tables of Treas. Reg. § 20.7520-1 through 20.7520-4. The court held that pre-Section 7520 case and regulatory law denied use of the actuarial tables in the case of simultaneous deaths and that the enactment of Section 7520 did not attempt to change that prior law; therefore, the decedent estate could not use the actuarial tables to value the decedents' interests in the trusts and the value of the interests was zero. **Estate of Harrison v. Comm'r, 115 T.C. No. 13 (2000)**.

FEDERAL INCOME TAXATION

PENDING LEGISLATION. Legislation has been introduced in the U.S. House of Representatives which would exclude from I.R.C. § 263A, the costs of replanting crops destroyed by a casualty, including (1) the costs of the taxpayer of such replanting (other than special replanting costs); (2) 80 percent of the taxpayer's special replanting costs of such replanting; (3) the costs of the taxpayer to remove such plants; and (4) the preproductive costs of the taxpayer of such replanting. The term 'special replanting costs' means direct costs incurred for (1) plants (including qualified additional plants) and supporting structures; (2) replacing irrigation and drainage systems destroyed during removal of the lost or damaged plants; and (3) land preparation and fumigation. **H.R. 4783**.

Legislation has been introduced in the U.S. House of Representatives which would prevent the increase of alternative minimum tax because of the use of income tax averaging by farmers. **H.R. 5040**.

BUSINESS EXPENSES. The taxpayers operated a wholesale/retail business about six miles from their rural residence. The taxpayers maintained an office for the business at their residence and maintained several cattle at their residence. The taxpayers claimed travel expenses for use of automobiles to travel from their residence to their business, arguing that the travel was between two businesses. The court held that the travel expenses were not eligible for a business deduction because the primary purpose of the travel from the business to the residence was personal. The court also disallowed the travel deduction because the taxpayers did not keep complete records of the travel. The taxpayer restored a pond on their residence which had become stagnated after a winter storm caused several trees to fall into the pond. The court held that no casualty deduction was allowed for the expense of repairing the pond because the pond became stagnated over several months from several causes. **Barmes v. Comm'r, T.C. Memo. 2000-254**.

C CORPORATIONS-*ALM* § 7.02.*

REASONABLE COMPENSATION. The taxpayer was a closely-held corporation which produced business labels. The company paid annual bonuses to its sole shareholder and president, generally based upon the last year's performance of the company. IN the tax year involved, the president received a much larger bonus, although the last year's performance was not exceptional. The company had produced new label technology but the technology had not yet proved itself as commercially profitable. The court examined the five factors of *Elliotts, Inc. v. Comm'r, 716 F.2d 1241 (9th Cir. 1983)* to determine that the bonus was excessive compensation and to determine the reasonable compensation. The court held that the three fold increase in the bonus was not reasonable because the president did not perform any additional tasks or contribute significantly to the corporation's profits and the increase in bonus was substantial in comparison to earlier years. **Labelgraphics, Inc. v. Comm'r, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,648 (9th Cir. 2000)**.

TAX SHELTERS. The IRS has issued modifications to the tax shelter rules issed earlier this year. See p. 45 *supra*. **65 Fed. Reg. 49909 (Aug. 16, 2000)**.

DEPRECIATION. The taxpayer constructed a raised floor above the normal floor of a building in order to provide space for computer wiring. The taxpayer treated the floor as 5-year recovery property under the asset class 00.12 "information systems." The IRS agreed that the raised floor was depreciable personal property and determined that, absent further factual findings, the floor was properly characterized under an activity category, asset class 57.0 "Distributive Trades and Services, and depreciable as 5-year property. See *Rev. Rul. 74-391, 1974-2 C.B. 9*. **FSA Ltr. Rul. 200033002, April 17, 2000**.

The taxpayers purchased a timber farm and in 1988 constructed a reservoir on the farm. The taxpayers used MACRS straight-line depreciation for the reservoir, based on a useful life of 31.5 years. The taxpayers sought to use a 15-year useful life period. The court held that the change in depreciation period was an accounting change which required prior permission from the IRS. **Kurzet v. Comm'r, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,671 (10th Cir. 2000)**.

DISASTER PAYMENTS. In response to the widespread devastation caused by Hurricane Floyd in late 1999, the North Carolina legislature enacted two disaster assistance programs for farmers, the Farm Structure Disaster Assistance program and the Emergency Conservation Program Cost Share Buy-Down program. The disaster payments provided funds for replacing or repairing buildings and for repairing conservation improvements. The IRS ruled that the payments would be included in income except to the extent the involuntary conversion rules applied where the taxpayer used the disaster funds to purchase replacement property. The IRS also ruled that, to the extent a taxpayer had claimed a casualty loss deduction, the disaster payments would be reportable as income under the tax benefit rule. The IRS also ruled that, if the taxpayer had elected to deduct currently soil and water conservation expenses, disaster funds used for soil and water conservation would be deductible; without the election, the expenses have to be included in the basis of the property. **CCA Ltr. Rul. 200032041, June 30, 2000**.

DISCHARGE OF INDEBTEDNESS. The IRS has ruled that a direct acquisition of debt, within the meaning of Treas. Reg. § 1.108-2(b), does not occur upon the acquisition of corporate debt by a beneficiary of a decedent creditor's estate or by a beneficiary of a revocable trust that became irrevocable upon the creditor's death where the beneficiary of the estate is related to the corporate debtor and the decedent creditor was also related to the corporate debtor, but the estate or trust is not related to the corporate debtor. **Rev. Proc. 2000-33, I.R.B. 2000-__**.

HOBBY LOSSES. The taxpayer owned a manufacturing company and also operated a horse breeding and racing

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operation over many years. The court reviewed the factors of Treas. Reg. § 1.183- 2(b) to hold that the activity was not engaged in with the intent to make a profit: (1) the activity was not carried on in a business-like manner because the taxpayer (a) did not change the method of operation to make it profitable and (b) did not seek expert advice on how to make the business profitable; (2) the taxpayer had no expertise at operating a horse breeding business and did not obtain expert advice on operating the business; (3) the taxpayer did not present evidence that the horses would appreciate in value; (4) although the taxpayer was successful at manufacturing, there was no evidence that this ability was applied to horse breeding; (5) the business never made a profit; (6) the activity had substantial losses which did not occur from unforeseen circumstances; and (7) the losses offset income from other sources. **Filios v. Comm'r, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,670 (1st Cir. 2000), *aff'g*, T.C. Memo. 1999-92**.

HOME OFFICE. The taxpayer was self-employed as an over-the-road trucker. The taxpayer maintained an office in the taxpayer's residence for keeping records and schedules for the business. The court held that the taxpayer could not claim home office expenses deductions because the primary business location was on the road. **Duncan v. Comm'r, T.C. Memo. 2000-269**.

LODGING. The taxpayer was self-employed as an over-the-road trucker. The taxpayer kept a log of the hauling trips but did not keep records of actual lodging and meal expenses; instead, the taxpayer claimed the per diem rates allowed by *Rev. Proc. 93-50, 1993-2 C.B. 586*. The court held that the per diem rates were allowed for lodging expenses only where the taxpayer was paid a per diem for lodging in reimbursement of lodging expenses independent of the actual expenses. The taxpayer was allowed the per diem rate for meals. Thus, the court held that the lodging expenses were not deductible for lack of substantiation records. **Duncan v. Comm'r, T.C. Memo. 2000-269**.

LOSSES. The IRS has issued a warning that certain promotions of transactions involving the sale of encumbered partnership interests as a means of generating tax losses will not be recognized by the IRS. **Notice 2000-44, I.R.B. 2000-__**.

PREPRODUCTION EXPENSES. The IRS has adopted as final regulations governing the special rules for preproduction expenses for property produced in the trade or business of farming, under I.R.C. § 263A.

The regulations clarify that the special rules of section 263A(d) apply only to property produced in a farming business. The regulations provide that, for purposes of section 263A, the term farming means the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity. Examples include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit, nuts, or other crops; the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The regulations clarify that for this purpose harvesting does not include contract harvesting of an agricultural or horticultural commodity grown or raised by another taxpayer. The regulations clarify that the special rules of section 263A(d) do not apply to a taxpayer that merely buys and resells plants or animals grown or raised by another. In evaluating whether a taxpayer is engaged in the production, or merely the resale, of plants or animals, consideration will be given to factors including: the length of time between the taxpayer's acquisition of a plant or animal and the time the plant or animal is made available for sale to the taxpayer's customers, and, in the case of plants, whether plants acquired by the taxpayer are planted in the ground or kept in containers.

The regulations provide that a farming business does not include the processing of commodities or products beyond those activities that are incident to the growing, raising, or harvesting of such products.

The regulations clarify that, as under prior law, taxpayers generally must capitalize preparatory expenditures, including the cost of seeds, seedlings, and animals; clearing, leveling and grading land; drilling and equipping wells; irrigation systems; and budding trees. However, because section 263A requires the capitalization of certain indirect costs as well as direct costs, the amount of preparatory expenditures capitalized may be greater under section 263A than under prior law.

The regulations clarify that costs that were, in years prior to the enactment of section 263A, regarded as developmental are included in the category of preproductive period costs. Section 263A generally requires the capitalization of preproductive period costs including the costs of irrigating, fertilizing, spraying, cultivating, pruning, feeding, providing veterinary services, rent on land, and depreciation allowances on irrigation systems or structures. Preproductive period costs also include real estate taxes, interest, and soil and water conservation expenditures incurred during the preproductive period of a plant.

Taxpayers that are required by section 447 or 448(a)(3) to use an accrual method must capitalize all preproductive period costs of plants (without regard to the length of the preproductive period) and animals. Taxpayers that are not required by section 447 or 448(a)(3) to use an accrual method qualify for an exception to this general rule. Under this exception, taxpayers are not required to capitalize preproductive period costs incurred with respect to animals, or with respect to plants that have a preproductive period of 2 years or less. Thus, under this exception, taxpayers are required to capitalize only those preproductive period costs incurred with respect to plants that have a preproductive period in excess of 2 years. The regulations clarify that, for purposes of determining whether a plant has a preproductive period in excess of 2 years, in the case of a plant grown in commercial quantities in the United States, the nationwide weighted average preproductive period of such plant is used.

The IRS and Treasury Department are considering the publication of guidance with respect to the length of the preproductive period of certain plants that will have more than one crop or yield. At the present time, the IRS and Treasury Department anticipate that such guidance would provide that plants producing the following crops or yields have a nationwide weighted average preproductive period in excess of 2 years: almonds, apples, apricots, avocados, blueberries, blackberries, cherries, chestnuts, coffee beans, currants, dates, figs, grapefruit, grapes, guavas, kiwifruit, kumquats, lemons, limes, macadamia nuts, mangoes, nectarines, olives, oranges, peaches, pears, pecans, persimmons, pistachio nuts, plums, pomegranates, prunes, raspberries, tangelos, tangerines, tangors, and walnuts.

Preproductive period costs (e.g., irrigating, fertilizing, real estate taxes, etc.) are capitalized during the preproductive period of a plant or animal. A taxpayer that grows a plant that will have more than one crop or yield is engaged in the production of two types of property, the plant and the crop or yield of the plant (e.g., the orange tree and the orange). The regulations clarify the capitalization period for plants that will have more than one crop or yield, for crops or yields of plants that will have more than one crop or yield, and for other plants.

The regulations clarify that the preproductive period of a plant generally begins when a taxpayer first incurs costs with respect to the plant, e.g., when the plant is acquired or the seed is planted. In the case of the crop or yield of a plant that has become productive in marketable quantities, the preproductive period of the crop or yield begins when the crop or yield first appears, whether in the form of a sprout, bloom, blossom, bud, etc.

In the case of a plant that will have more than one crop or yield, the preproductive period of the plant ends when the plant becomes productive in marketable quantities (i.e., when the plant is placed in service for purposes of depreciation). In the case of the crop or yield of a plant that has become productive in marketable quantities, the preproductive period of the crop or yield ends when the crop or yield is disposed of. Finally, in the case of other plants, the preproductive period ends when the plant is disposed of.

The regulations provide that the preproductive period of an animal begins at the time of acquisition, breeding, or embryo implantation. The regulations clarify that, in the case of an animal that will be used in the trade or business of farming, the preproductive period generally ends when the animal is placed in service for purposes of depreciation. However, in the case of an animal that will have more than one yield, the preproductive period ends when the animal produces (e.g., gives birth to) its first yield. In the case of any other animal, the preproductive period ends when the animal is sold or otherwise disposed of. The regulations clarify that, in the case of an animal that will have more than one yield, the costs incurred after the beginning of the preproductive period of the first yield but before the end of the preproductive period of the animal must be allocated between the animal and the yield on a reasonable and consistent basis. Any depreciation allowance on the animal may be allocated entirely to the yield.

The regulations provide that the costs required to be capitalized with respect to farming property may, if the taxpayer chooses, be determined using any reasonable inventory valuation method, such as the farm-price method of accounting (farm-price method) or the unit-livestock-price method of accounting (unit-livestock-price method). Under the regulations, these inventory methods may be used by a taxpayer regardless of whether the farming property being produced is otherwise treated as inventory by the taxpayer, and regardless of whether the taxpayer is otherwise using the cash method or an accrual method.

The regulations clarify that notwithstanding a taxpayer's use of the farm-price method with respect to farming property to which the provisions of section 263A apply, the taxpayer is not required, solely by such use, to use the same method of accounting with respect to farming property to which the provisions of section 263A do not apply.

The regulations under section 263A modify the rule set forth in Sec. 1.471-6 providing that no increase in unit cost is required under the unit-livestock-price method with respect to the taxable year in which certain animals are purchased, if the purchases occur in the last 6 months of the taxable year. The regulations provide that any taxpayer required to use an accrual method under section 448(a)(3) must include in inventory the annual standard unit price for all animals purchased during the taxable year, regardless of when in the taxable year the purchases are made. The regulations further amend this rule and provide that all taxpayers using the unit-livestock-price method must modify the annual standard price to reasonably reflect the particular period in the taxable year in which purchases of livestock are made, if such modification is necessary in order to avoid significant distortions in income that would otherwise occur through operation of the unit-livestock-price method. The regulations do not specify the particular modification that must be made to the annual standard price for any particular taxpayer, but rather allow any reasonable modification made by the taxpayer to the annual standard price to avoid significant distortions in income.

The regulations clarify that farmers using the unit-livestock-price method are permitted to elect the simplified production method, as well as the simplified service cost method of accounting, under section 263A. In such a situation, section 471 costs are the costs taken into account by the taxpayer under the unit-livestock-price method using the taxpayer's standard unit price determined under these and final regulations. The term “additional section 263A” costs includes all additional costs required to be capitalized under section 263A including costs that are required to be capitalized under section 263A that are not reflected in the standard unit prices (e.g., general and administrative costs and depreciation, including depreciation on a calf's mother).

Certain taxpayers, other than those required to use an accrual method by section 447 or 448(a)(3), may elect not to capitalize the preproductive period costs of certain plants even though such plants have a preproductive period in excess of 2 years and would otherwise be subject to the capitalization requirements of section 263A. Taxpayers making this election may continue to deduct (subject to other limitations of the Code) the preproductive period costs that were deductible under the rules in effect before the enactment of section 263A. The regulations clarify that, although a taxpayer producing a citrus or almond grove may make this election, the election does not apply to the preproductive period costs of a citrus or almond grove that are incurred before the close of the fourth taxable year beginning with the taxable year in which the trees were planted.

If a taxpayer makes this election with respect to any plant, the taxpayer must treat the plant as section 1245 property. In addition, the taxpayer, and any person related to the taxpayer, must use the alternative depreciation system of section 168(g)(2) for any property used predominantly in a farming business that is placed in service in a taxable year for which the election is in effect.

Section 263A(d) provides an exception from capitalization for preproductive period costs incurred with respect to plants that are replacing certain plants that were lost by reason of certain casualties. The regulations clarify that this exception for preproductive period costs does not apply to preparatory expenditures or the costs of capital assets. In addition, the regulations clarify that the casualty loss exception applies whether the plants are replanted on the same parcel of land as the plants destroyed by casualty or on another parcel of land of the same acreage in the United States. The regulations additionally clarify that the exception applies to all plants replanted on such acreage, even if the plants are replanted in greater density than the plants destroyed by the casualty. **65 Fed. Reg. 50638 (Aug. 21, 2000), adding Treas. Reg. § 1.263A-4T**.

The IRS has issued a list of plants producing the following crops or yields which have a nationwide weighted average preproductive period in excess of 2 years: almonds, apples, apricots, avocados, blackberries, blueberries, cherries, chestnuts, coffee beans, currants, dates, figs, grapefruit, grapes, guavas, kiwifruit, kumquats, lemons, limes, macadamia nuts, mangoes, nectarines, olives, oranges, papayas, peaches, pears, pecans, persimmons, pistachio nuts, plums, pomegranates, prunes, raspberries, tangelos, tangerines, tangors, and walnuts. This is not an all-inclusive list of plants that have a nationwide weighted average preproductive period in excess of 2 years. In the case of other plants grown in commercial quantities in the United States, the nationwide weighted average preproductive period must be determined based on available statistical data. **Notice 2000-45, I.R.B. 2000-__**.

RETURNS. The IRS has announced that the new Form 1040A, line 10, will permit taxpayers to report capital gains from Form 1099-DIV, box 2a, on their 2000 tax return.

SAFE HARBOR INTEREST RATES

September 2000

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	6.33	6.23	6.18	6.15
110 percent AFR	6.97	6.85	6.79	6.75
120 percent AFR	7.62	7.48	7.41	7.37
		Mid-term		
AFR	6.22	6.13	6.08	6.05
110 percent AFR	6.85	6.74	6.68	6.65
120 percent AFR	7.50	7.36	7.29	7.25
		Long-term		
AFR	6.09	6.00	5.96	5.93
110 percent AFR	6.71	6.60	6.55	6.51
120 percent AFR	7.33	7.20	7.14	7.09

Rev. Rul. 2000-41, I.R.B. 2000-__.

WAGES. The taxpayer was a professional corporation which entered into an agreement with its sole shareholder for legal services to the corporation. The agreement provided for payment of 1993 and 1994 wages in December 1993. The shareholder then loaned the 1994 wage amount back to the corporation which paid off the loan over 1994. This allowed the corporation to not claim any employment taxes for 1994. The IRS and the court disallowed the transaction as a sham with no economic purpose but to avoid the employment taxes and ruled that the 1994 wages were to be treated as paid in 1994 and subject to employment taxes. **Jeffery B. Fleck Co., L.P.A. v. United States, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,665 (N.D. Ohio 2000)**.

STATE REGULATION OF AGRICULTURE

CHERRIES. The plaintiff was a corporation which represented cherry growers and which could not reach a price agreement with the Michigan Agricultural Cooperative Marketing Association (MACMA). The MACMA invoked the arbitration provisions of the Agricultural Marketing and Bargaining Act (the Act) to resolve the issue. The plaintiff argued that it was not a handler subject to the Act arbitration provisions. The court held that the defendant marketing board had primary jurisdiction over the determination whether the plaintiff was subject to the Act; therefore, the court had jurisdiction only to review the board's determination. The major issue was whether the plaintiff was an association and therefore excluded by the Act from the definition of handler. The court held that the definition of association included only organizations which acted on behalf of members with who the organization had exclusive contracts for acting as the members' exclusive agent in negotiations with handlers. **Cherry Growers v. Agric. Marketing Bd., 610 N.W.2d 613 (Mich. Ct. App. 2000)**.

WAREHOUSES. The plaintiff grain elevator had entered into grain forward contracts with the defendant for delivery of grain after harvest. Between the time of the contract and harvest, the plaintiff ran into financial trouble and sold all the contracts to another elevator and turned in the plaintiff's grain dealer license. The contract with the defendant; however, had a non-assignment provision and the defendant refused to approve the assignment of the contract to the new elevator. The defendant also refused to deliver the grain to the plaintiff, arguing that the plaintiff could no longer purchase the grain because of the termination of the grain dealer's license. The court adopted the approach of the Restatement (Second) of Contracts, Sections 178 and 181, in determining whether the loss of the grain dealer's license made the contract unenforceable. The court held that the public policy underlying the grain dealer licensing requirements outweighed the public policy for enforcing contracts. **Mincks Agri. Center, Inc. v. Bell Farms, Inc., 611 N.W.2d 270 (Iowa 2000)**.

ZONING

CONDITIONAL USE. The plaintiffs owned land neighboring property owned by a canning company. The canning company applied for a conditional use permit to conduct wastewater spraying on the land which was zoned as "agricultural-urban expansion." The spraying was done on fields planted with grass which was not harvested and sold as a crop. The defendant township approved the conditional use permit, ruling that the spraying operation was similar to farming. The major issue was the reasonableness of the board's determination that the spraying operation was similar to farming. The court upheld the zoning board's determination as within the reasonable interpretation of the board's own zoning ordinance. The court noted that farming did not require that all crops be harvested since some farming operations included plowbacks, seedbanks, and windrows. **R.L. Hexum & Associates v. Rochester Township, 609 N.W.2d 271 (Minn. App. 2000)**.

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