agricultural commodities is $230,000 or less. 7 U.S.C. § 499a(b)(6).

[14] 7 U.S.C. § 1638a(b).

[15] 7 U.S.C. § 1638a(e).

[16] The rationale for the statutory construct is clear in that only direct suppliers have knowledge of the retailer that will purchase their product. Other upstream suppliers do not have such knowledge.

[17] The statute provides that, "The Secretary may require that any entity that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable recordkeeping audit trail that will permit the Secretary to verify compliance with this subtitle." 7 U.S.C. § 1638a(d). The definition of "verifiable recordkeeping audit trail" is left to the Secretary's discretion.

[18] 7 U.S.C. § 1638a(f)(1).

[19] 67 Fed. Reg. 63367 at 63374-63375 (Oct. 11, 2002).

[20] 7 U.S.C. § 1638b(c).

[21] 7 U.S.C. § 1638b(b).

[22] 7 U.S.C. § 1638b(a) refers to the enforcement provisions of section 7 U.S.C. § 1636b.

[23] 7 U.S.C. § 1636b(a)(3).

[24] Remember, the statute bars the Secretary from imposing a mandatory identification system to verify country of origin of a covered commodity. 7 U.S.C. § 1638a(e).

[25] 67 Fed. Reg. 63367 at 63374 (Oct. 11, 2002).

[26] The same point can be made with respect to growers of fresh produce. Fresh produce growers maintain the same records as livestock producers as well as any extra documentation required under the Perishable Agricultural Commodities Act. 7 U.S.C. §§ 499a *et. seq*. Also, origin is not as complex of an issue to determine as compared to the intricacies of the tax code. As such, the recordkeeping burden for producers and growers (excluding fisherman and fish farmers) likely to be imposed by mandatory COOL can be expected to be nominal.

[27] Because the bulk of the recordkeeping burden falls on those firms with the highest degree of market power, it is to be anticipated that those firms (and their supporting organizations) would object most vociferously to the COOL legislation. However, the recordkeeping burden can be expected reasonably to be minimized by several factors. For example, cattle imported from Mexico are branded and tagged, and fat cattle imported from Canada are shipped in sealed trucks which are opened only at the packing plant. Also, current rules require that meat to be utilized for government use (schools and military) be segregated.

[28] 7 U.S.C. § 1638a(a)(1).

[29] Umberger, Feuz, Calkins, and Sitz, "Country of Origin Labeling of Beef Products: U.S. Consumers' Perceptions," Presented at the 2003 FAMPS Conference: "Emerging Roles For Food Labels: Inform, Protect, Persuade," Washington, DC March 20-21, 2003, available online at http://dare.agsci.colostate.edu/extension/cool.pdf.

[30] The primary drivers of these results were consumers' food safety concerns, preferences for labeling source and origin information, desires to support U.S. producers, and beliefs that U.S. beef was of higher quality.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

EXEMPTIONS.

EARNED INCOME CREDIT. The Chapter 7 debtor claimed an exemption, under Minn. Stat § 550.37, in state and federal income tax refunds to the extent the refunds were based on the federal earned income credit and the Minnesota working family credit. The state exemption applied to "All relief based on need, and the earnings or salary of a person who is a recipient of relief based on need . . ." The court held that the refund was exempt to the extent it was based on the federal EIC and the Minnesota working family credit. ***In re* Tomczyk, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,384 (Bankr. D. Minn. 2003)**.

CHAPTER 12

PLAN. The debtor farmed leased and owned land and had a portion of each type of land in CRP. The debtor's Chapter 12 plan provided two alternatives: (1) place all of the land in the next CRP sign-up or (2) continue farming the land and placing the same portion in CRP. The plan decreased the interest rate on secured loans and increased the term of the loans. The plan proposed to pay an amount equal to the fair market value of all collateral which was personal property and required the secured creditor to release the lien on the personal property. The court denied confirmation of the plan because (1) the CRP payments were too speculative because the next CRP program had not yet started; (2) the historical income from the farming operations did not support the plan's projected income; (3) the reduced rate and extended term were not consistent with market conditions for agricultural loans; and (4) the debtor could not sever the security interest in the personal property from the secured loans. The court acknowledged that the debtor had some equity in the

farm property to protect secured creditors but the income projections were too unrealistic to support the plan. ***In re* Clark, 288 B.R. 237 (Bankr. D. Kan. 2003)**.

FEDERAL TAX

REFUND. The debtors failed to report a substantial income tax refund on their initial bankruptcy schedules or during the meeting of creditors. The refund was discovered by the trustee who sought turnover of the full refund. The debtors amended their schedules and sought an exemption under Section 522(d)(5) for a portion of the refund. The trustee argued that no exemption should be allowed because the debtors intentionally tried to conceal the refund. The debtors claimed that they inadvertently failed to include the refund on their schedules and to disclose the refund to the creditors. The court held that the entire refund was to be turned over to the trustee because the debtors had ample notice of their duty to disclose the refund from language on the schedules and because the substantial amount of the refund would make it clear that it needed to be disclosed. In addition, the refund was the only non-exempt asset of the debtors and was the only asset not disclosed. ***In re* Colvin, 288 B.R. 477 (Bankr. E.D. Mich. 2003)**.

FEDERAL AGRICULTURAL PROGRAMS

EXOTIC NEWCASTLE DISEASE. The APHIS has issued interim regulations amending the exotic Newcastle disease regulations by quarantining El Paso and Hudspeth Counties, TX, and Dona Ana, Luna, and Otero Counties, NM, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread exotic Newcastle disease from the quarantined area. **68 Fed. Reg. 18531 (April 16, 2003)**.

ORGANIC FOODS. The AMS has issued proposed regulations which would amend the USDA National List of Allowed and Prohibited Substances to reflect recommendations submitted to the Secretary by the National Organic Standards Board from June 6, 2000 through October 20, 2002. **68 Fed. Reg. 18556 (April 16, 2003)**.

TOBACCO. The CCC has adopted as final regulations implementing the Tobacco Payment Program authorized by the Agricultural Assistance Act of 2003. **68 Fed. Reg. 18833 (April 17, 2003)**.

FEDERAL ESTATE AND GIFT TAX

IRA. The decedent owned an interest in two IRAs, each with a separate trust as the beneficiary. The surviving spouse made an election to receive the statutory elective one-third share of the estate. The surviving spouse received only a portion of the payment from one of the IRAs before the surviving spouse's death. That payment was included in the surviving spouse's gross income. The remainder of the one-third elective share was paid to the surviving spouse's estate. The IRS ruled that the payment from the IRA was income in respect of decedent. The IRS also ruled that the surviving spouse was entitled to a deduction for a portion of the federal estate tax paid by the decedent's estate that is attributable to the surviving spouse's share of the IRA payment made to the surviving spouse. The deduction is calculated using the ratio described in I.R.C. § 691(c)(1) multiplied by the federal estate tax attributable to the net value of the items of IRD. **Ltr. Rul. 200316008, Dec. 31, 2002**.

FEDERAL INCOME TAXATION

BANKRUPTCY EXPENSES. The taxpayer was a holding corporation with 32 subsidiaries which had all filed for consolidated Chapter 11 reorganization. The taxpayer sought to deduct as current business expenses the costs of various committees and professional services which occurred during the bankruptcy case. The court held that such expenses had to be capitalized because the expenses would not have been incurred but for the bankruptcy filing. ***In re* Hillsborough Holdings Corp., 2003-1 U.S. Tax Cas. (CCH) ¶ 50,394 (Bankr. M.D. Fla. 2003)**.

C CORPORATIONS.

CONSTRUCTIVE DIVIDENDS. The taxpayers, husband and wife, owned a corporation which operated a flower bulb importing and growing operation. The business leased farmland and several buildings from the taxpayers, but not the taxpayers' residence on the property. The taxpayers claimed that the residence was leased to the corporation by an oral lease but failed to provide any evidence to support the lease, such as payments made by the corporation. The corporation paid for several items: landscaping of the property, which was claimed as an advertising expense; all of the taxpayers' food costs, including groceries, which were claimed as a supplies deduction; construction of a solarium in the residence; and other general expenses for the residence. The landscaping expense was disallowed because the taxpayer failed to demonstrate how the landscaping benefited the corporation to any significant extent in relation to the primary benefit to the residence. The supplies deduction for the taxpayers' food costs was also denied because the taxpayers failed to demonstrate a business purpose for the expense. The corporation's payment of the food costs was also a constructive dividend to the taxpayers as a personal expense. The court noted that no other employee of the corporation received the same benefit. Although the taxpayers presented evidence that the solarium was used once to

experiment with the growing of Echinacea, the cost of the solarium was a constructive dividend to the taxpayers as a personal expense because the taxpayers failed to demonstrate any other business use of the solarium. Since the residence was not leased by the corporation, the general residential expenses were not eligible for business deductions and were constructive dividends to the taxpayers. The appellate court affirmed in a decision designated as not for publication. **Dobbe v. Comm'r, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,377 (9th Cir. 2003), *aff'g*, T.C. Memo. 2000-330**.

COURT AWARDS AND SETTLEMENTS. The taxpayer's employment was terminated after the employer determined that the taxpayer's fear of flying was sufficient grounds to terminate the taxpayer's employment. The taxpayer sought severance pay and compensation for emotional distress. The parties reached a settlement and the taxpayer received annual payments which were excluded from income. The settlement agreement allocated a portion of the payments to compensation for the emotional distress. The court held that the portion of the payments made in compensation for emotional distress was excludible from gross income. **Forste v. Comm'r, T.C. Memo. 2003-103**.

DEPENDENTS. The taxpayer was the noncustodial parent of a minor child who lived with the taxpayer's former spouse. The divorce decree granted the federal dependency exemption to the taxpayer. The taxpayer claimed the child as a dependent on the taxpayer's income tax return but did not include a written declaration signed by the former spouse releasing the former spouse's claim to the dependency exemption. The court held that without the written declaration attached to the return, the taxpayer was not entitled to claim the dependency exemption for the child. **Thomas v. Comm'r, T.C. Summary Op. 2003-39**.

The taxpayer was granted joint custody of a minor child in a divorce decree. The taxpayer alleged that the child lived with the taxpayer for more than one-half of the tax year and supported the claim with a calendar which was marked with the days the child was with the taxpayer. The court rejected the calendar evidence as incomplete in that it did not show how long the child was with the taxpayer on each day. The court upheld the IRS denial of the dependency exemption claimed by the taxpayer for the child. **Mentzel v. Comm'r, T.C. Summary Op. 2003-38**.

DEPRECIATION. This case involved seven cattle breeding partnerships formed by one organization. The organization originally owned or purchased cattle and resold the cattle to the partnerships in return for recourse promissory notes. However, the court found that many of the cattle sales were fictitious, the amounts "paid" for the cattle often exceeded the fair market value of the cattle, and the organization did not enforce the recourse nature of the notes. The court held that the partnerships failed to substantiate ownership of the cattle, the validity of the notes and the cost basis of the cattle; therefore, the partnerships were not allowed depreciation deductions for the cattle. The appellate court affirmed in a decision designated as not for publication. **Durham Farms #1 v. Comm'r, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,391 (9th Cir. 2003), *aff'g*, T.C. Memo. 2000-159**.

DISASTER LOSSES. The President on April 9, 2003 determined that certain areas in Colorado are eligible for assistance from the federal government under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of record snow on March 17-20, 2003. Accordingly, taxpayers who sustained losses attributable to the disaster may deduct the losses on their 2002 federal income tax returns. **FEMA-3185-EM**.

EDUCATION EXPENSES. The taxpayers, husband and wife, claimed a deduction for the wife's law school expenses. The wife was employed as a law librarian and continued in those duties after receiving the law degree and admission to the state bar. The wife claimed that she had no intention of ever practicing law. The law school degree was not required by the wife's employer. The court held that the law school expenses were not deductible because the education prepared the wife for a new trade or business. The appellate court affirmed in a decision designated as not for publication. **Galligan v. Comm'r, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,381 (8th Cir. 2003), *aff'g*, T.C. Memo. 2002-150**.

HOBBY LOSSES. The taxpayer was a medical doctor and the taxpayer and spouse started an activity which purchased, trained, showed and sold jumper horses. The activity was started primarily because the taxpayer's children were interested in riding jumper horses. The horses were maintained at third party farms and operated by employees. The activity was terminated when the child no longer participated in riding the horses. The court held that the activity was not engaged in with the intent to make a profit because (1) the taxpayers did not have a business plan for making the activity profitable; (2) the taxpayers did not have any expertise in running a profitable horse business and did not obtain the advice of experts on making the activity profitable; (3) the taxpayer failed to provide evidence of a significant amount of time spent at the activity; (4) the activity only produced losses; (5) the taxpayers had significant income from their medical practice which was partially offset by the losses; (6) the taxpayers and their children received significant amounts of personal pleasure from the activity; and (7) the taxpayers carried on the activity primarily to provide riding horses for their children. The taxpayers were not assessed an accuracy-related penalty because the taxpayers reasonably relied on the advice of professionals in filing their tax returns. The appellate court affirmed in a decision designated as not for publication. **Prieto v. Comm'r, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,376 (9th Cir. 2003), *aff'g*, T.C. Memo. 2001-266**.

INCOME. The taxpayer received wages, interest and distributions from pension plans and excluded all these items from income, claiming that the income tax was an excise tax and none of these items was attributable to excise activity. The court held that the items were taxable income and the taxpayer was subject to the additional tax for early distributions from

pension plans, failure to pay estimated taxes, and a penalty for delay from a frivolous appeal. **Cabirac v. Comm'r, 120 T.C. No. 10 (2003)**.

INTEREST. The taxpayer was a corporation which had hired a new president for a subdivision of the corporation. The president's employment was terminated and the corporation was required to purchase any stock owned by the president. The employee sued for wrongful termination and the parties reached a settlement. The settlement provided for a payment for the employee's stock and did not allocate any of the payment to interest. The corporation claimed a portion of the settlement as an interest deduction, although the corporation did not issue a Form 1099-INT to the employee. The court held that no interest deduction was allowed because the corporation failed to demonstrate that any interest was paid. **Indeck Energy Services, Inc. v. Comm'r, T.C. Memo. 2003-101**.

RETURNS. The IRS has announced the publication on its web site of Publication 596, Earned Income Credit; and publication of revised Publication 538, Accounting Periods and Methods which replaces the April 2001 revision and provides an explanation of how to determine the appropriate accounting year and accounting method for a business, as well as information on how to change an accounting period and accounting method. These publications can be obtained by calling 1-800-TAX-FORM (1-800-829-3676) and are also available on the IRS's website at www.irs.gov.

The IRS has reminded taxpayers that Free File, the tax preparation and electronic filing service, remains available for people who received filing extensions until August 15, 2003. Those taxpayers with hardship situations can request a second extension for an October 15, 2003, filing deadline. IRS e-file will also be available through October 15, 2003. Late filers who failed to get extensions have been advised to use Free File and e-file to help reduce the time that penalties are applied. **IR-2003-56**.

The IRS has issued temporary regulations to facilitate electronic filing by tax return preparers. The existing regulations, which contain references to manually signed returns, have resulted in uncertainty over whether preparers must produce manually signed, paper copies of returns for taxpayers and for the preparers' records. The temporary regulations clarify that preparers may avoid paper copies by retaining and furnishing to taxpayers copies of returns in electronic or digital format prescribed by the Commissioner. **68 Fed. Reg. 20069 (April 24, 2003)**.

SOCIAL SECURITY BENEFITS. The taxpayer had received taxable social security benefits and had failed to include them in taxable income. The taxpayer appealed the tax deficiency notice to the District Court which dismissed the appeal sua sponte as frivolous and the taxpayer appealed to the federal Circuit Court. The appellate court affirmed and ordered the taxpayer to show cause why the taxpayer should not be sanctioned for filing a frivolous appeal. **Triebel v. Comm'r, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,393 (7th Cir. 2003)**.

SAFE HARBOR INTEREST RATES

May 2003

	Annual	Semi-annual	Quarterly	Monthly
Short-term				
AFR	1.53	1.52	1.52	1.52
110 percent AFR	1.68	1.67	1.67	1.66
120 percent AFR	1.83	1.82	1.82	1.81
Mid-term				
AFR	3.17	3.15	3.14	3.13
110 percent AFR	3.50	3.47	3.46	3.45
120 percent AFR	3.82	3.78	3.76	3.75
Long-term				
AFR	4.79	4.73	4.70	4.68
110 percent AFR	5.27	5.20	5.17	5.14
120 percent AFR	5.76	5.68	5.64	5.61

Rev. Rul. 2003-45, I.R.B. 2003-__.

STATE REGULATION OF AGRICULTURE

WAREHOUSES. The plaintiff sold soybeans to the defendant over five years but was not paid because the defendant filed for bankruptcy. The defendant executed some "delayed payment agreements" in the last of the five years but made only interest payments on the agreements. The plaintiff sought recovery under the defendant's grain dealer's $50,000 bond based on allegations that the defendant violated the Michigan Grain Dealers Act. The plaintiff sought payment of $250,000, arguing that the bond provided $50,000 of coverage for each year. The trial court held that the bonding provisions of the Grain Dealers Act did not apply to these sales because the Act applied only to warehouse-receipted sales for bailed grain and these sales were credit sales to the defendant. The appellate court affirmed that the Act applied only to grain held by a warehouse as a bailment evidenced by a warehouse receipt. The case was remanded twice by the Michigan Supreme Court for clarification. **Dan De Farms v. Sterling Supply, 656 N.W.2d 877 (Mich. Ct. App. 2003),*on rem. from* 648 N.W.2d 646 (Mich. 2002), *rem'g*, 640 N.W.2d 583 (Mich. Ct. App. 2001), *on rem. from unpub. Mich. Sup. Ct. op. rem'g*, 625 N.W.2d 393 (Mich. Ct. App. 2001)**.

STATE TAXATION

AGRICULTURAL USE. The taxpayer owned 225 acres of rural land, a portion of which was used for hay and a portion of which was subject to a federal conservation contract. The property was assessed at fair market value without consideration of the conservation contract. The taxpayer

objected to the valuation, arguing that the entire property should have been valued for its use value as agricultural land. In addition, the taxpayer argued that the existence of the conservation contract also affected the value of the land. The assessor had denied agricultural use valuation for the hay land because the hay was harvested by a third party, but that reasoning was abandoned on appeal. The court agreed that Wis. Admin. Code & Tax § 18.05(1) included hay growing as an agricultural use and held that portion of the property was eligible for agricultural use valuation. The court found, however, that the conservation contract program was not one which was included in Wis. Admin. Code & Tax § 18.05(1) as an agricultural use; therefore, that portion of the property was not eligible for agricultural use valuation. However, the court held that the assessor must factor in the existence of the contract in determining the fair market value of the property. **Fee v. Board of Review, 657 N.W.2d 112 (Wis. Ct. App. 2002)**.

WATER

WELL. The plaintiffs owned rural property on which they had a residence and commercial nursery which included a greenhouse and retail sales building. The residential and commercial properties used water from a well which was drilled in 1965. The plaintiffs did not have a permit for the well. The Washington Department of Ecology (DOE) ordered the plaintiffs to stop using water from the well for the nursery, but not the residence, unless they applied for and obtained a permit. The Washington Pollution Control Hearings Board and a Circuit Court affirmed, reasoning in part that it should interpret Rev. Code Wash. § 90.44.050 not in light of the intent of the legislature when it enacted the law in 1945, but rather in light of "our current scientific understanding of ground and surface water continuity, the federal mandates to protect endangered salmon, and the increasing demand for water to serve our growing population and economy." The court noted that the statute allowed non-permit use of well water for "small withdrawals," defined as (1) any amount of water for livestock; (2) any amount of water for a lawn or for a noncommercial garden of a half acre or less; (3) not more than five thousand gallons per day for domestic use; and (4) not more than five thousand gallons per day "for an industrial purpose." Although the DOE had historically included agricultural use as industrial use under the fourth exemption, the DOE changed its interpretation of the fourth exemption to exclude agriculture from the definition of industrial use. The court held that the DOE interpretation of the statute and its order to the plaintiffs violated the clear language of the statute to provide an exemption for agricultural water use of less than 5,000 gallons per day. The court overturned the DOE order. **Kim v. Pollution Control Hearing Bd., 61 P.3d 1211 (Wash. Ct. App. 2003)**.

ZONING

HOG CONFINEMENT FACILITY. The plaintiffs were rural neighbors of a farm which sought a conditional use permit (CUP) for construction and operation of a 3,000 hog confinement facility. The plaintiffs presented evidence of increased health risks, property devaluation, increased traffic and environmental concerns but the CUP was approved by the county board of commissioners. The plaintiffs raised three issues on appeal: (1) the board failed to consider the health risks to the plaintiffs; (2) the hog facility did not comply with the setback requirements; and (3) the board failed to specify the reasons for the CUP approval. The court held that (1) the health risk evidence was inconclusive and the board had given full consideration to the evidence in approving the CUP; (2) the set back requirement was an issue for the zoning administrator which would arise only after the CUP was approved; and (3) the board's approval had used a checklist of the CUP requirements in categorizing the reasons for approving the CUP. The court upheld the approval of the CUP. **Schwardt v. County of Watonan, 656 N.W.2d 383 (Minn. 2003)**.

IN THE NEWS

FIELD BURNING. Idaho Gov. Dirk Kempthorne has signed a bill,H.B. 391, into law on April 23, 2003 that creates a legal safe harbor for farmers who engage in field burning as long as they conform to smoke-management regulations. The law says that burning does not constitute a public or private nuisance if farmers adhere to smoke management rules, and protects farmers from civil lawsuits. The issue is apparently a big one in Northern Idaho where farmers routinely burn crop residue after harvesting grass seed. A lawsuit was filed on April 11, 2003, against the law (in anticipation that it would become law) challenging it on constitutional grounds. The suit asks the state to pay health and property damages due to the smoke and seeks an order declaring the law unconstitutional on the basis that field burning constitutes a nuisance without compensation in violation of the takings provision of the Idaho Constitution. **Moon v. State, First Idaho Dist. Ct., No. 03-2622 (April 11, 2003)**.

MILK. The U.S. Justice Department announced on April 24, 2003, that it had filed a civil antitrust lawsuit against Dairy Farmers of America, Inc. and Southern Belle Co., LLC to compel DFA to divest its interests in Southern Belle Dairy in order to prevent higher milk prices in more than 100 school districts in Kentucky and Tennessee. The announcement says that DFA's acquisition resulted in a monopoly.

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