need by [sic] adduced to prove such investment intent has not been met here."[13] The court added, "indeed, we can find no credible evidence at all in the record which would justify a finding…that petitioner held his stored wheat for investment."[14] The court then noted that "…it is taxpayer's status when he earned the income, not when he received it, that is determinative."[15] The court agreed that the taxpayer's status might have changed upon retirement but the character of the income did not.[16]

The case was affirmed on this point by the Ninth Circuit Court of Appeals.[17] The Ninth Circuit observed that the taxpayer "…was not precluded from holding wheat as a capital asset merely because he had been engaged in the business of raising and selling it."[18] The Ninth Circuit then proceeded to explain that "the determining factor is the taxpayer's purpose in holding the property."[19] The court concluded that the taxpayer presented no evidence that he intended to hold the wheat for investment; an intent to discontinue the business does not convert stock in trade into a capital asset.[20]

Asmussen v. United States

Three years after the appellate decision in *Shumaker v. Commissioner*,[21] the case of *Asmussen v. United States*[22] was decided by the United States District Court in South Dakota. The facts are similar to those outlined in *Rev. Rul. 80-19*.[23]

In the *Asmussen* case,[24] the taxpayers placed their 1971 rye crop under CCC loan. The taxpayers had made the election to treat the loan proceeds as income.[25] The rye crop was later redeemed and held three years before sale by the taxpayers.

The court noted that "because the rye was raised on the plaintiff's farm, without the CCC redemption, there could be no capital gains treatment. The rye would properly be held by the plaintiffs 'primarily for sale to customers in the ordinary course of [their] trade or business,' and plaintiffs would not be entitled to a refund despite the presence of other facts indicative of investment intent."[26] The court then proceeded to hold that "the taxpayers had a subjective intent to treat the rye as an investment." In support of that conclusion, the court cited three factors—(1) the crop was segregated from the taxpayer's trade or business property (the crop was stored in 23 bins); (2) the difference between the redemption price and the market price was slight at the time of redemption; (3) the plaintiff's accountant had advised that capital gain treatment would be available on later sale; and (4) the redemption and subsequent holding of the crop were "isolated" transactions.

The court did not cite the case of *Shumaker v. Commissioner*[27] which had been decided more than three years earlier.

In conclusion

Both the *Shumaker* court[28] and the *Asmussen* court[29] agree that intent is the key factor in determining whether a crop can be held for investment as a capital asset. Anyone wanting to lay the foundation for capital gains treatment needs to develop a factual basis supporting a showing of intent to hold the crop for investment rather than for sale to customers in the ordinary course of business.

FOOTNOTES

1 See generally 4 Harl, *Agricultural Law* § 27.02[2] (2000); Harl, *Agricultural Law Manual* § 4.01[1][a] (2000).
2 See notes 3-10 *infra*.
3 Treas. Reg. § 1.61-4(a)(1).
4 1980-1 C.B. 185.
5 I.R.C. § 77(a).
6 Rev. Rul. 80-19, 1980-1 C.B. 185.
7 *Id.*
8 I.R.C. § 1721(a)(1).
9 Gamble v. Comm'r, 242 F.2d 586 (5th Cir. 1957).
10 Rev. Rul. 80-19, 1980-1 C.B. 185.
11 T.C. Memo. 1979-71.
12 See Shumaker v. Comm'r, 648 F.2d 1198 (9th Cir. 1981).
13 Schumaker v. Comm'r, T.C. Memo. 1979-71.
14 *Id.*
15 *Id.*
16 *Id.*
17 Shumaker v. Comm'r, 648 F.2d 1198 (9th Cir. 1981).
18 *Id.*
19 *Id.*
20 *Id.*
21 648 F.2d 1198 (9th Cir. 1981).
22 603 F. Supp. 60 (D. S.D. 1984).
23 1980-1 C.B. 185.
24 Asmussen v. United States, 603 F. Supp. 60 (D. S.D. 1984.
25 *Id.*
26 *Id.*
27 648 F.2d 1198 (9th Cir. 1981).
27 *Id.*
28 See note 23 *supra*.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

DOGS. The plaintiff owned two dogs which wandered on to the defendant's property. The defendant had recently lost some sheep to an animal attack and was watching the flock the next night when the defendant saw the plaintiff's dogs in with the sheep. Although the defendant did not see the dogs attack the sheep and the defendant was able to capture the dogs easily, the defendant claimed that the dogs were

chasing the sheep. The defendant knew the dogs belonged to the plaintiff but did not attempt to contact the plaintiff. The defendant declined a sheriff's offer to take the dogs to an animal shelter. Instead, the defendant visited two veterinarians over three hours in an attempt to euthanize the dogs. The second veterinarian agreed to euthanize the dogs but only after the defendant claimed that the dogs belonged to the defendant. The court noted that the defendant's sheep were attacked again several nights later. The plaintiff sued for the loss of the dogs and the defendant cited Mo. Rev. Stat. § 273.030 as allowing the defendant to kill the dogs because they attacked the defendant's sheep. The court held that the trial court had sufficient evidence to support the award for the plaintiff because the defendant failed to demonstrate that the dogs were chasing or attacking the sheep when they were killed. The court noted that the defendant was easily able to remove the dogs from the sheep area and control them. The court also upheld the trial court's award of punitive damages for the defendant's extreme efforts to have the dogs killed without any evidence that the dogs attacked the sheep and without any attempt to contact the dogs' known owner. **Propes v. Griffith, 25 S.W.3d 544 (Mo. Ct. App. 200)**.

BANKRUPTCY

CHAPTER 12-*ALM* § 13.03[8].*

Note: Chapter 12 authorizing law expired on June 30, 2000, although renewal legislation is pending.

MODIFICATION OF PLAN. The debtors had filed for a previous individual Chapter 12 case but were in default of the plan provisions for failure to make a scheduled plan payment and to pay real estate taxes on their property. The debtors filed a second Chapter 12 case as a partnership before the individual Chapter 12 case was dismissed. A creditor objected to the second filing as an attempt to modify the debtors' obligations covered by the first plan. The court held that the second case was dismissed for cause because the debtors could not modify the first plan and could not use a second filing to circumvent the first plan. ***In re* Harry & Larry Maronde Partnership, 256 B.R. 913 (Bankr. D. Neb. 2000)**.

FEDERAL TAX-*ALM* § 13.03[7].*

TAX LIEN. The debtor was an attorney and the estate included the law practice assets, including work in progress. The debtor purchased these assets from the bankruptcy estate. The IRS had filed a claim for unpaid taxes and argued that the law practice assets were subject to a tax lien filed pre-petition for the tax claim. The trustee argued that the lien did not attach to the work in progress because the value was too contingent. The court held that, under California law, the work in progress was a property interest of the debtor and was subject to the tax lien. ***In re* Herreras, 257 B.R. 1 (C.D. Calif. 2000)**.

FEDERAL AGRICULTURAL PROGRAMS

CONSERVATION RESERVE PROGRAM. The CCC has issued proposed regulations amending the Conservation Reserve Program (CRP) regulations to provide, under certain conditions, for equitable relief to producers who violated their contract based on a good faith reliance on the action or advice of certain USDA representatives, or while attempting to comply with their contract. It will also provide that CRP contracts will not be terminated for failure to plant cover when that failure was due to excess rainfall or flooding. **66 Fed. Reg. 15048 (March 15, 2001)**.

CROP INSURANCE. The plaintiff had purchased federal crop insurance from the defendant and filed a claim for crop losses. The defendant denied the claim on the basis that the land involved had not been planted and harvested in any of the three years before the year of the claimed loss. The plaintiff filed suit for breach of contract, misrepresentation, suppression, bad faith, negligent and wanton distribution of information and negligent and wanton supervision of agents. The defendant argued that the claims were subject to mandatory arbitration under the insurance contract and pre-empted by the Federal Crop Insurance Act (FCIA). The court held that the arbitration provision was enforceable and binding on the plaintiff as to factual determinations such as whether the plaintiff had planted and harvested a crop in the previous three years on the land involved but that, once the arbitration decision was reached, the remaining claims could be reviewed by a court. The court held that only actions against the Risk Management Agency (formerly FCIC) or USDA were subject to the exclusive jurisdiction of the federal courts. **Nobles v. Rural Community Ins. Services, 122 F. Supp.2d 1290 (M.D. Ala. 2000)**.

DISASTER ASSISTANCE. The CCC has issued final regulations implementing the 2000 crop disaster program. The 2000 program rules include additional eligible crop loss causes not covered in the 1998 program. **66 Fed. Reg. 15975 (March 21, 2001), adding 7 C.F.R. Part 1480**.

GENETICALLY MODIFIED ORGANISMS. The plaintiff granted a license to the defendant to sell genetically modified soybean seeds using the plaintiff's technology and claimed that the license ended when the defendant was merged into a subsidiary of another company. The court agreed with the plaintiff and granted the plaintiff's motion for summary judgment on the license termination issue. However, the court granted the defendant's motion for summary judgment on the issue of damages, ruling that the plaintiff was not entitled to any damages for alleged breach of the license agreements. The defendant is expected to file an appeal on the license termination issue with the U.S. Court of Appeals for the Federal Circuit. **Monsanto Co. v. Pioneer Hi-Bred International, Inc., No. 4:99CV1917-DJS (E.D. Mo. Mar. 20, 2001)**.

"**MAD COW" DISEASE**. In 1997, the FDA adopted 21 C.F.R. § 589.2000 which prohibited the feeding of protein derived from mammals to cattle and other ruminants. It is

suspected that Bovine Spongiform Encephalopathy ("Mad Cow" disease) can be spread by feeding protein from infected animals to other animals. Livestock packers, auctions and other cattle handlers are requiring producers to certify that their cattle have been fed in compliance with the regulations. With the seizure of a flock of sheep in Vermont believed to be infected with the disease, certification efforts are expected to increase and stricter regulatory compliance will be required from producers. A sample certificate of compliance provided by the Dunlop, Iowa, Livestock Auction follows:

> "The undersigned certifies that, to the best of his/her/its knowledge, as of the date of shipment or delivery, none of the livestock shipped to or delivered to Ipswitch Livestock Auction, Ipswitch, IA, will be, on such date, adulterated within the meaning of the Federal Food, Drug and Cosmetic Act (*i.e.*, none of the cattle or other ruminants will have been fed any feed containing protein derived from mammalian tissues, *e.g*., meat and bone meal, as that term is defined in 21 C.F.R. § 589.2000 and none of the livestock will have an illegal level of drug residues). This certificate shall remain in full force and effect until revoked in writing by the undersigned seller and such revocation is delivered to Ipswitch Livestock Auction, Ipswitch, IA.
>
> Date: ________________ Seller:___________________"

MARKETING ASSISTANCE. The CCC has adopted as final regulations implementing provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001, related to the Dairy and Cranberry Market Assistance Programs, the Honey Marketing Assistance Loan and LDP Program, the Sugar Program and payment limitations for marketing loan gains and loan deficiency payments. **66 Fed. Reg. 15171 (March 15, 2001)**.

MILK. The AMS has issued a notice of revisions to the United States Standards for Grades of Dry Whole Milk. The changes will: (1) lower the maximum bacterial estimate to not more than 10,000 per gram for U.S. Extra Grade and not more than 50,000 per gram for U.S. Standard Grade, (2) include protein content as an optional test, (3) incorporate maximum titratable acidity requirements, (4) expand the "Test methods" section to allow product evaluation using the latest methods included in the Standard Methods for the Examination of Dairy Products, in the Official Methods of Analysis of the Association of Official Analytical Chemists, and in standards developed by the International Dairy Federation, (5) reference the Food and Drug Administration's standards of identity for dry whole milk, and (6) relocate information concerning the optional oxygen content determination. **66 Fed. Reg. 14874 (March 14, 2001)**.

The CCC has issued final regulations implementing provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001, related to the Dairy Price Support, Dairy Recourse Loan, Livestock Assistance, American Indian Livestock Feed, and Pasture Recovery Programs. Dairy price support is extended through calendar year 2001 and dairy recourse loans are postponed until January, 2002. The LAP and PRP are being extended to cover disaster-related losses that occurred in calendar year 2000 and the AILFP was given additional funding. **66 Fed. Reg. 15537 (March 19, 2001)**.

FEDERAL ESTATE AND GIFT TAX

No items this issue.

FEDERAL INCOME TAXATION

PROPOSED LEGISLATION. Legislation has been introduced in the U.S. House of Representatives to include contiguous farm land and buildings as part of the personal residence for purposes of the exclusion of gain under I.R.C. § 121 from the sale of a personal residence. **H.R. 900**.

BAD DEBTS. The taxpayers, husband and wife, made advances to the wife's son over several years for business and personal expenses. During this time, the taxpayers did not execute any loan documents or require collateral for the advances. The evidence also showed that the son was in financial difficulty and the taxpayers had little hope of repayment. The court upheld the IRS disallowance of the bad debt deduction, holding that the advances were made with compassion and generosity but not part of a creditor-debtor relationship. The appellate court affirmed in an opinion designated as not for publication. **Kidder v. Comm'r, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,258 (9th Cir. 2001),** ***aff'g*****, T.C. Memo. 1999-345**.

DEPRECIATION-*ALM* § 4.03[4].* 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." In *FSA Ltr. Rul. 200033002, April 17, 2000*, 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.* In a subsequent ruling, the IRS reconsidered the facts and found that the raised floor was substantially different from the raised floor in Rev. Rul. 74-391 in that (1) no existing flooring was placed under the raised floor; (2) the raised floor covered 90 percent of one floor of the building; (3) the floor was integrated into the overall design and other building original components were designed to accommodate the raised floor; (4) removal of the flooring would require substantial remodeling, including repositioning of plumbing and other wiring; and (5) only a small portion of the raised floor would be used for computer wiring. The IRS ruled that the raised floor was a structural component of the building and had to be depreciated as part

**Agricultural Law Manual* (ALM).

of the building. **FSA Ltr. Rul. 200110001, September 13, 2000**.

DISASTER PAYMENTS. On March 5, 2001, the President determined that certain areas in Alabama were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of a severe storms and flooding on February 16-17, 2001. **FEMA-1362-DR**. On March 13, 2001, the President determined that certain areas in Arkansas were eligible for assistance under the Act as a result of a severe storms and flooding on February 14, 2001. **FEMA-1363-DR**. Accordingly, a taxpayer who sustained a loss attributable to the disasters may deduct the loss on his or her 2000 federal income tax return.

HOBBY LOSSES. The taxpayers purchased an 85 acre farm which was covered with trees. The taxpayers cleared most of the farm, built a residence on the property and started a tree farm. The taxpayers had nonfarm income from wages and a pension. The court held that the tree farm was not operated with an intent to make a profit because (1) the taxpayers did not keep full and accurate records sufficient to determine the profitability of the operation and did not make any attempts to change the business to make it profitable; (2) the taxpayers did not have or seek expert advice as to making the tree farm profitable; (3) although the taxpayers spent a considerable amount of time and work on the farm, most of the effort was not involved with the tree raising or selling part of the operation; (4) the taxpayers failed to prove how much appreciation in the property and trees had occurred or would occur to offset the losses; and (5) the taxpayers had not successfully operated any other similar business. The other factors of Treas. Reg. § 1.183-2(b) were held to be neutral on this issue. **Zarins v. Comm'r, T.C. Memo. 2001-68**.

INCOME. The taxpayer received a portion of the taxpayer's wages in payments made directly from the taxpayer's employer to the taxpayer's landlord for rent. The employer did not withhold any taxes from these payments. The taxpayer claimed these rent payments as nontaxable earned income. The taxpayer argued that the taxpayer should not have to pay any taxes on the payments because no tax was withheld by the employer. The court held that the taxpayer was liable for the tax on the wages, whether or not any amounts were withheld by the employer. **Zarcharias v. Comm'r, T.C. Memo. 2001-67**.

The taxpayer was self-employed as a cosmetologist. The IRS assessed an income tax deficiency for underreported income based upon deposits made to the taxpayer's bank accounts. The taxpayer did not produce full and accurate records of the business to support the income reported on the income tax return. Except for an adjustment for interaccount transfers, the IRS determinations based on the bank account deposits were upheld by the court. **Hintze v. Comm'r, T.C. Memo. 2001-70**.

IRA. During 1995, the taxpayer was employed by an employer which provided a pension plan. The employer sold the business to another company which terminated the pension plan in 1996. The taxpayer rolled over the vested amount in the plan to an IRA in 1996. The taxpayer made contributions to the IRA in 1995 and claimed a deduction for the contributions. The taxpayer argued that the taxpayer had orally terminated participation in the employer's plan in 1995 but the court did not believe the taxpayer and held that the taxpayer was an active participant in the employer's pension plan and was ineligible for a deduction for contributions to an IRA. **Hodder v. Comm'r, T.C. Summary Op. 2001-33**.

INSTALLMENT PAYMENT OF TAX. The taxpayer had entered into an agreement to pay back taxes in monthly installments. As part of that agreement, the taxpayer agreed to pay 20 percent of income monthly as estimated tax payments for each year. The agreement provided that if the 20 percent payments exceeded the actual amount owed for a tax year, the excess payments were applied against the back taxes. In 1997, the taxpayer made the 20 percent payments and filed a timely return, claiming a refund. However, the IRS audit produced a tax liability for 1997. The taxpayer argued that the 20 percent payments were sufficient to cover the increased tax liability for 1997. The IRS, however, had applied the excess to the back taxes based on the taxpayer's original return. The court held that, under the installment agreement, once the taxpayer filed a return, the amount of excess estimated tax payments was determined and applied to the back taxes. The court also held that the taxpayer could not recover the excess estimated payments to pay the current tax liability once the excess payments were applied to the back taxes. **McKoin v. Comm'r, T.C. Memo. 2001-62**.

INTEREST. The taxpayers entered into a lease of a residence and the lease contained an option for the purchase of the residence. A portion of the lease payments was to be credited toward the purchase price if the option was exercised. The taxpayers decided not to exercise the option because of repairs which the owner failed to complete. However, the taxpayers continued to pay the monthly lease amounts. Eventually, the taxpayers purchased the residence by assuming the mortgage. The taxpayers claimed mortgage interest deductions for the time the residence was leased to them. The court held that the interest was not deductible because the taxpayers were not obligated on the mortgage until it was assumed as part of the purchase. **Blanche v. Comm'r, T.C. Memo. 2001-63**.

LEGAL EXPENSES. The taxpayer had claimed various legal expenses as business deductions. The IRS recharacterized the expenses as capital expenses and disallowed the current deduction for the expenses. The court held that the legal expenses were to be capitalized because the taxpayer failed to provide evidence of the nature and purpose of the expenses. **Bello v. Comm'r, T.C. Memo. 2001-56**.

LIKE-KIND EXCHANGES. The taxpayer owned land which was to be sold to a nonprofit conservation organization. The organization agreed to participate in a like-kind exchange using a third party accommodator. The accommodator purchased the replacement property using borrowed funds and funds provided by the taxpayer. While the accommodator held the property, the property was leased to the taxpayer until the exchange was authorized by the organization. The main issue was whether the accommodator was an agent of the taxpayer such that the exchange would not qualify for like-kind exchange treatment. The IRS used

the six factors of *National Carbide Corp. v. Commissioner, 336 U.S. 422 (1949)* to determine the status of the accommodator as to the taxpayer. The IRS ruled that the accommodator was not the agent of the taxpayer because the accommodator (1) operated a separate business, (2) was not contractually authorized to bind the taxpayer by any action of the accommodator, (3) did not transfer money to the taxpayer; (4) had a written lease with the taxpayer; (5) was not owned by the taxpayer; and (6) had a business purpose separate from the exchange of the properties. **Ltr. Rul. 200111025, Dec. 8, 2000**.

PENSION PLANS. For plans beginning in February 2001, the weighted average is 5.89 percent with the permissible range of 5.30 to 6.19 percent (90 to 106 percent permissible range) and 5.30 to 6.48 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2001-20, I.R.B. 2001-__**.

The taxpayer was a retired teacher. During employment as a teacher, the taxpayer made after-tax contributions to a pension plan. These contributions formed a tax basis in the pension plan which was allocated ratably to each year distributions were made after the taxpayer's retirement. The taxpayer argued that the basis from these contributions should be increased to reflect the amount of inflation which occurred after the contributions were made. The court held that the taxpayer's basis in the pension plan could not be increased for inflation because there was no authority in the statute or regulations for increasing basis because of inflation. **Nordtvedt v. Comm'r, 116 T.C. No. 13 (2001)**.

RETURNS. The IRS has announced the use of automatic telephone and e-filing extension requests and approval. The phone requests can be made at 1-888-796-1074 and requires information from the taxpayer's 1999 return. The e-filing request can be made through e-filing services and also requires information from the 1999 return. **IR-2001-37**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

DISCHARGE OF INDEBTEDNESS. The taxpayer held a 25 percent interest in an S corporation which had discharge of indebtedness income. The corporation was insolvent and filed for bankruptcy; therefore, the discharge of indebtedness income was excluded from the corporation's income under I.R.C. § 108(a). The taxpayer increased the stock basis by the taxpayer's share of the discharge of indebtedness income. The Tax Court cited its holding in *Nelson v. Comm'r, 110 T.C. 114 (1998)*, to hold that discharge of indebtedness income excluded from an S corporation's income was not passed through to the shareholders to increase the basis of stock. The appellate court discussed the several decisions on both sides of the issue and held that an S corporation must first use any untaxed discharge of indebtedness income to reduce tax attributes at the corporate level before passing through any remaining discharge of indebtedness income to shareholders. In this case, the corporation had suspended losses which completely offset the discharge of indebtedness income, leaving no discharge of indebtedness income to pass through to the shareholders. In addition, the offset suspended losses were not passed through to the shareholders. After ruling in *Gitlitz v. United States, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,147 (S. Ct. 2001)*, see p. 15 *supra*, the U.S. Supreme Court granted certiorari, vacated and remanded this case. This case has been further remanded by the Circuit Court of Appeals for decision in light of *Gitlitz*. **Gaudiano v. Comm'r, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,278 (6th Cir. 2001), on rem. from __ S. Ct. __ (2001), *rem'g and vac'g*, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,559 (6th Cir. 2000), *aff'g*, T.C. Memo. 1998-408**.

SHAREHOLDER BASIS. The taxpayers were the shareholders of an S corporation which wanted to build a new furniture showroom. The corporation applied to a bank for a construction loan but was unable to provide sufficient collateral for the loan. The taxpayers provided a guarantee of the corporation's loan by providing personal assets as additional collateral. The taxpayers argued that, because the bank would not have made the loan to the corporation without the guarantee, the loan, in substance, was made to the taxpayers and reloaned to the corporation. The taxpayer sought to include the loan in their basis in the corporation in order to claim pass-through operating losses. The court refused to recharacterize the loan as made to the taxpayers because the taxpayers failed to show that the corporation had no ability to repay the loan. **Jackson v. Comm'r, T.C. Memo. 2001-61**.

SAFE HARBOR INTEREST RATES
April 2001

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	4.63	4.58	4.55	4.54
110 percent AFR	5.10	5.04	5.01	4.99
120 percent AFR	5.58	5.50	5.46	5.44
		Mid-term*		
AFR*	4.94	4.88	4.85	4.83
110 percent AFR*	5.44	5.37	5.33	5.31
120 percent AFR*	5.95	5.86	5.82	5.79
		Long-term		
AFR	5.43	5.36	5.32	5.30
110 percent AFR	5.99	5.90	5.86	5.83
120 percent AFR	6.53	6.43	6.38	6.35

Rev. Rul. 2001-17, I.R.B. 2001-15.

TRANSFER OF PROPERTY INCIDENT TO DIVORCE. The taxpayer received an interest in real property under a property settlement as part of a divorce. The divorce decree required the taxpayer to pay a sum of money to the ex spouse and that monetary award was secured by the real property received by the taxpayer under the divorce decree. The taxpayer sold the property and used most of the proceeds to satisfy the monetary obligation to the former spouse. The taxpayer did not include any of the gain from the sale in income, arguing that the sale was made "on behalf of" the former spouse and excludible under Treas. Reg. § 1.1041-1T(c), Q&A-9. The court noted that the former spouse had no obligation to the purchaser of the taxpayer's property; therefore, the sale was of no benefit to the spouse but was used by the taxpayer solely to satisfy an obligation of the taxpayer to the former spouse. The court held that the gain from the sale was included in the taxpayer's income. **Olsen v. Comm'r, T.C. Summary Op. 2001-32**.

TRAVEL EXPENSES. The IRS has released the applicable terminal charges and the Standard Industry Fare

**Agricultural Law Manual* (ALM).

Level (SIFL) mileage rates for use in determining the value of noncommercial flights on employer-provided aircraft taken from January 1, 2001, through June 30, 2001. The terminal charge is $35.84, and the SIFL mileage rates are: up to 500 miles, $0.1961 per mile; 501-1,500 miles, $0.1495 per mile; and over 1,500 miles, $0.1437 per mile. **Rev. Rul. 2001-13, I.R.B. 2001-__**.

NEGLIGENCE

LEVEE. The plaintiff's decedent had drowned when the decedent's car became trapped in flood waters on a highway near the defendants' farms. The defendants had constructed levees near the road to prevent flooding of their farms during heavy rains. When the accident occurred several inches of rain had fallen and the decedent was driving at night. The levees were constructed higher than the road surface such that the road would flood before the farms. The defendants argued that the levees were reasonable in that the levees were needed to prevent flooding. The evidence demonstrated, however, that in most years levees built to a height just below the road surface would have protected the land. The court held that building the levees above the roadway was not reasonable because the defendants could easily foresee that the levees would cause road flooding which would be dangerous to drivers. The court held that it was not reasonable to value crops and land over human life. The defendants also argued that the heavy rains on the evening of the accident were an intervening cause of the plaintiff's decedent's death. The court applied a "but for" test in holding that, but for the levees, the water would not have covered the highway when the decedent was driving on it; therefore, the levees were a direct and foreseeable cause of the accident and the decedent's death. **Robinson v. State Highway & Transportation Comm'n, 24 S.W.3d 67 (Mo. Ct. App. 2000)**.

NUISANCE

DAIRY. The plaintiff had purchased an operating dairy located in the defendant city. The city's residents near the plaintiff complained about offensive odors coming from the dairy and the plaintiff constructed a waste water treatment facility in the dairy but the odors and complaints continued. The defendant eventually refused to reissue the plaintiff's business license on the basis that the dairy was a nuisance under the defendant's nuisance ordinance. The plaintiff argued that Utah Code § 78-38-5 protected it from any actions for nuisance. The court held that the statute protected manufacturing operations which had been in operation for more than three years, which were not nuisances when begun and which had not changed their operation before the nuisance complaints were raised. Because the plaintiff had not changed its operations and had not been in operation for three years before the nuisance complaints, the court held that the statute did not protect the plaintiff from nuisance claims. The court also upheld the defendant's authority to establish a nuisance ordinance. **Dairy Product Services v. City of Wellsville, 13 P.3d 581 (Utah 2000)**.

PRODUCT LIABILITY

HERBICIDE. The plaintiff was a cotton farmer with a farm neighboring the defendant's farm. The defendant purchased herbicide and hired another defendant to apply the herbicide by air. The plaintiff argued that the herbicide was negligently applied so as to drift on to the plaintiff's fields and damage the plaintiff's crops. The neighbor argued that the action was pre-empted by FIFRA but the court held that the neighbor was not a supplier or manufacturer; therefore, the neighbor was not protected by FIFRA from negligence suits. In addition, the court held that the action did not involve the label of the herbicide but was concerned with the application as directed by the label. The neighbor also argued that the applicator was an independent contractor; therefore, none of the claimed negligence could be attributed to the neighbor. The plaintiff argued that an exception to the independent contractor rule applied because the application of herbicide was inherently dangerous. The court held that aerial crop spraying is inherently dangerous in circumstances where spray drift may occur. The court held that the neighbor was liable for negligence of the applicator because the neighbor was aware that the weather conditions would make the aerial spraying dangerous for the plaintiff's crops. The amount of damages was calculated using USDA crop reports from the area. **Foust v. Estate of Walters, 21 S.W.3d 495 (Tex. Ct. App. 2000)**.

TRESPASS

TIMBER. The parties owned neighboring rural land and a dispute arose over the boundary line when the plaintiff constructed a home on the plaintiff's property. The parties agreed to have the properties surveyed using the plaintiff's deed, although the defendant disagreed with the resulting survey. The defendant then proceeded to have another survey done using the defendant's deed. The survey produced a different boundary line and, based on that survey, the defendant removed trees from the disputed area between the properties. The plaintiff sued for the loss of the trees and the trial court awarded double the value of the trees removed from the plaintiff's property. The appellate court affirmed the award, holding that the plaintiff's surveyor used more reliable monuments and deed descriptions in surveying the properties. The court also held that the plaintiff was not entitled to treble damages because the defendant reasonably relied on the second survey and had no intention of removing trees belonging to the plaintiff. **Mix v. Miller, 27 S.W.3d 508 (Tenn. Ct. App. 1999)**.

CITATION UPDATES

Carlson v. Comm'r, 116 T.C. No. 19 (2001) (discharge of indebtedness) see p. 46 *supra*.

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July 31, August 1-3, 2001 Dickinson School of Law, Carlisle, PA
October 2-5, 2001 Interstate Holiday Inn, Grand Island, NE

Come join us for expert and practical seminars on the essential aspects of agricultural tax and law. Gain insight and understanding from two of the nation's top agricultural tax and law instructors.

The seminar are held at each site on Tuesday, Wednesday, Thursday, and Friday. Registrants may attend one, two, three or all four days, with separate pricing for each combination. On Tuesday, Dr. Harl will speak about farm and ranch income tax. On Wednesday, Dr. Harl will cover farm and ranch estate planning. On Thursday, Roger McEowen will cover farm and ranch business planning. On Friday, Roger McEowen will cover current developments in several other areas of agricultural law. Your registration fee includes comprehensive annotated seminar materials for the days attended which will be updated just prior to the seminar. The seminar materials will also be available on CD-ROM for a small additional charge. A buffet lunch and break refreshments are also included in the registration fee.

Here are some of the major topics to be covered:

- Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.
- Taxation of debt, taxation of bankruptcy, the latest on SE tax of rental of land to a family-owned entity; income averaging; earned income credit; commodity futures transactions; paying wages in kind.
- Federal estate tax, including 15-year installment payment of federal estate tax, co-ownership discounts, alternate valuation date, special use valuation, family-owned business deduction (FOBD), marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, trusts, and generation skipping transfer tax.
- Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.
- Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.
- Legal developments in farm contracts, secured transactions, bankruptcy, real property, water law, torts, and environmental law.

Special room discounted rates are available at each hotel for seminar attendees.

The seminar registration fees for current subscribers (and for multiple registrations from one firm) to the *Agricultural Law Digest*, the *Agricultural Law Manual*, or *Principles of Agricultural Law* are $180 (one day), $345 (two days), $500 (three days), and $650 (four days). The registration fees for nonsubscribers are $200, $385, $560 and $720, respectively. **Please Note**: the registration fees are higher for registrations within 20 days prior to the seminar, so please call for availability and the correct fees. More information and a registration form are available online at **www.agrilawpress.com**

For more information, call Robert Achenbach at 1-541-302-1958, or e-mail to **robert@agrilawpress.com**

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