CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ADVERSE POSSESSION

FENCE. In 1975, the defendants purchased a seven acre parcel from a person who owned the defendants' land and the plaintiff's land as one parcel. When the defendants purchased their parcel, a fence existed between the properties. Although the defendants thought the fence was the legal boundary of their property, the fence was actually 15 feet over their boundary. The defendants used the 15 foot strip as part of their land and provided some maintenance of the fence when they raised some livestock on their land. Otherwise, the land was used for pasture, a garden or crops. The plaintiff purchased the neighboring land in 1998 and told the defendants that the fence did not match the surveyed property line, although the defendants continued to assert that the fence was the boundary line. The court held that the defendants' use of the disputed strip and occasional maintenance of the fence transferred title to them by adverse possession. **Piles v. Gosman, 2006 Ind. App. LEXIS 1467 (Ind. Ct. App. 2006)**.

BANKRUPTCY

GENERAL

AVOIDABLE TRANSFERS. The debtor borrowed funds from a creditor and granted a security interest in the debtor's dairy cows to secure the loan. The creditor did not file a financing statement to perfect the security interest. The debtor decided to sell the herd at auction. The auctioneer was informed about the security agreement and issued a proceeds check jointly to the debtor and creditor. The check was not cashed because the debtor intended to file for Chapter 7. The creditor requested the auctioneer to issue a check for the entire proceeds to the creditor. The bankruptcy trustee sought recovery of the auction proceeds from the creditor as a preferential transfer recoverable under Sections 547 and 550, because the creditor did not have a perfected security interest in the proceeds. The creditor argued that, once the cattle came into the possession of the auctioneer who had knowledge of the security agreement, the security interest became perfected. The court noted that U.C.C. § 9-313(c) allows perfection after possession of the collateral by a third party where the third party authenticates a record that the third party is holding the collateral for the secured party's benefit. The court found that the check made out jointly to the debtor and the creditor was an authenticated record that the auctioneer held the proceeds for the creditor in recognition of the security interest, resulting in the perfection of the creditor's security interest. Therefore, the creditor had a perfected security interest in the proceeds when it received the check in its sole name from the auctioneer and was not required to pay the proceeds into the bankruptcy estate. ***In re* Clayson, 341 B.R. 137 (Bankr. W.D. N.Y. 2006)**.

FEDERAL FARM PROGRAM PAYMENTS. The debtors, husband and wife, were cotton farmers who had granted a security interest in their crops, gin rebates and counter-cyclical payments for 2002 through 2006 to a bank to secure farm loans. The debtors conducted farming operations in 2002 and filed for Chapter 7 in April 2003. The bank was listed as a secured creditor for the unpaid amount of the farm loans. The debtors filed for subsidy payments for the 2002 crop which were included in the bankruptcy estate. The debtors did not farm during 2003 and did not apply for or receive crop subsidy payments for 2003. The debtors received a discharge in February 2004 and the case was closed in April 2004. The debtors resumed farming in 2004 and applied for and received crop subsidy payments for the 2004 crop. The FSA made out the payment checks to the debtors and the bank. The debtors reopened the bankruptcy case to determine the status of the bank's security interest in the 2004 subsidy payments, arguing that the payments were not subject to the bank's security interest because of Section 552(a) in that the 2004 subsidy did not arise until post-petition because the application for the payments was made post-petition. The bank argued that, because the security interest applied to subsidy payments received before the petition, under Section 522(b)(1), the security interest continued post-petition. The court held that, because the 2004 subsidy payments required a new application and the application was made post-petition, the subsidy payments were not subject to the pre-petition security interest. **Regions Bank v. Mills, 2006 U.S. Dist. LEXIS 53045 (W.D. La. 2006)**.

FEDERAL TAXATION

DISCHARGE. The debtor failed to timely file and pay taxes for 1992 through 1996 and the IRS constructed substitute returns for making an assessment of the taxes, interest and penalties due. The debtor filed the returns for those years in 1999 and the IRS abated some of the assessed taxes based on the filed returns. The debtor filed for Chapter 7 in February 2003 and sought a discharge of the 1992 through 1996 taxes. The IRS argued that the debtor's returns did not qualify as returns for purposes of Section 523(a)(1) because they were filed after substitute returns were constructed and the taxes assessed. The court held that the debtor's returns did qualify as returns because the IRS made use of the returns in abating some of the taxes. ***In re* Colsen, 446 F.3d 836 (8th Cir. 2006), *aff'g*, 322 B.R. 118 (Bankr. 8th Cir. 2005), *aff'g*, 311 B.R.765 (Bankr. N.D. Iowa 2004)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The plaintiff corporation owned three subsidiaries through which it sold crop insurance. The plaintiff sought to sell its crop insurance policies to an unrelated company but the transfer was not approved by the Risk Management Agency and the sale fell through. The failed transfer resulted in the RMA's taking control of the plaintiff's policies and transferring them with compensation to other companies. The plaintiff filed suit in the Court of Federal Claims, arguing that the transfer of its policies by the RMA constituted an unconstitutional taking without compensation by a government agency. The plaintiff argued that the Tucker Act, 28 U.S.C. § 1491(a)(1) provided for jurisdiction in the Federal Court of Claims. The court held that the court did not have subject matter jurisdiction over the case because 7 U.S.C. § 1506(d) grants exclusive jurisdiction in the Federal District Courts for suits against the "corporation" which took precedence over the jurisdiction conferred by the Tucker Act. Also at issue here was whether the RMA is included in the statute as part of the "corporation," the Federal Crop Insurance Corporation. The court held that the RMA was included within the FCIC because the agencies were so intertwined as to be coextensive. The court dismissed the case for lack of subject matter jurisdiction. **Acceptance Insurance Companies, Inc. v. United States, 2006 U.S. Claims LEXIS 225 (Ct. Fed. Cls. 2006)**.

PEANUTS. The CCC has issued the storage and handling rates for the 2006 crop of peanuts pledged as collateral for marketing assistance loans. **71 Fed. Reg. 46184 (Aug. 11, 2006)**.

SUGAR. Prior to 1996, the interest rate on CCC sugar loans was set by the CCC by regulation. From 1996 to 2002, the interest rate on CCC loans to sugar producers was set by statute and equaled the interest rate on other CCC agricultural commodity loans. Under the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, § 1401(c)(2), 116 Stat. 187 (2002) (codified at 7 U.S.C. § 7283(b)), sugar was removed from the definition of agricultural commodity for purposes of the interest rate on CCC loans. However, the CCC decided to maintain the sugar loan interest rate equal to the interest rate for other commodities. *7 C.F.R. § 1405.1*. The plaintiffs, sugar processors, sued to require the CCC to return the interest rate to pre-1996 legislation levels. The court reviewed the statutory history of the 2002 change which indicated that Congress believed that the provision would decrease the interest rate on sugar loans. However, the court held that the 2002 change merely reverted the authority to set the interest rate back to the CCC without any specification of the interest rate to be charged. The court also held that the CCC had the authority to set the interest rate above the cost of funds. On remand, the plaintiffs sought to further argue two claims which the plaintiffs argued were not ruled upon by the appellate court. First, the plaintiffs argued that the surcharge was an unconstitutional tax. Although the District Court acknowledged that the court of appeals did not provide a specific ruling on this claim, the District Court held that the appellate court had ruled that the surcharge was not a tax but a fee; therefore, the plaintiffs' claim was included in the appellate court's ruling that summary judgment was to be granted to the defendant. Second, the plaintiffs argued that their claim that the interest rate selected was arbitrary and capricious was not ruled on by the appellate court; therefore, the District Court should rule on this claim. The District Court held that the claim was not part of the original petition and not part of the appeal; therefore, the claim could not be ruled on at this point. The court noted that the plaintiffs had only raised the issue of the CCC authority to set the interest rate not the CCC's method of determining the rate. Summary judgment for the defendant was ordered as provided in the appellate decision. **Holly Sugar Corp. v. Veneman, 2006 U.S. Dist. LEXIS 52948 (D. D.C. 2006), *on rem. from*, 437 F.3d 1210 (D.C. Cir. 2006), *rev'g*, 355 F. Supp. 2d 181 (D. D.C. 2005)**.

FEDERAL ESTATE AND GIFT TAXATION

INSTALLMENT PAYMENT OF ESTATE TAX. A decedent's estate properly elected on its timely filed United States Estate (and Generation-Skipping Transfer) Tax Return, Form 706, to pay a portion of the estate tax in installments under I.R.C. § 6166. The period of limitations on assessment expired and the IRS issued a closing letter to the executor of the estate. The estate had not provided an I.R.C. § 6165 bond or granted the IRS an I.R.C. § 6324A lien in lieu of the bond. In addition, the IRS had not yet granted the estate the I.R.C. § 6166 election. In a Chief Counsel Advice letter ruling, the IRS ruled that the expiration of the period for assessments did not affect the requirement that an estate provide a Section 6165 bond or Section 6324A lien in order to pay federal estate tax in installments under I.R.C. § 6166. **CCA Ltr. Rul. 200627023, May 19, 2006**.

FEDERAL INCOME TAXATION

ALTERNATIVE MINIMUM TAX. The taxpayer received employee incentive stock options from an employer and had losses from the exercise of the options. Although the losses were limited under regulation income tax rules, the taxpayer argued that the losses were not limited under the AMT because no statute or regulation covers stock option losses for AMT purposes. The court held that the IRS had issued guidance in *Notice 2004-28, 2004-1 C.B. 783*, that AMT stock option exercise losses were subject to the same limitation as regular losses, under I.R.C. § 1211. The court upheld the IRS interpretation and held the taxpayer's stock option exercise losses were subject to the I.R.C. § 1211 limitation. **Norman v. United States, 2006-2 U.S. Tax Cas. (CCH) ¶ 50,429 (N.D. Calif. 2006)**.

COOPERATIVES. The taxpayer was a rural telephone cooperative. The taxpayer decided to work with an unrelated corporation to provide cellular telephone service to the taxpayer's customers/members and contributed funds to a new corporation which would be used to construct the new system. The costs of building and providing the cellular system became too high and the taxpayer decided to sell its interest in the corporation. The taxpayer paid the proceeds of the sale to its members based on the membership during the time that the taxpayer owned the interest in the corporation. The IRS ruled that the proceeds of the sale of the taxpayer's interest in the corporation were patronage-source income and would be deductible to the extent distributed to the members. **Ltr. Rul. 200627007, March 7, 2006**.

DISABLED ACCESS CREDIT. The taxpayers, husband and wife, purchased title pay phones and subscribed to a computer service which allowed hearing-impaired people to call them without using the free TTY service provided by all telephone companies. Although the taxpayers "purchased" title to the phones, the seller retained ownership of the phones and liability for maintenance. The taxpayers claimed a tax credit under I.R.C. § 44, arguing that the computer telephone service was obtained in order to comply with the Americans with Disability Act. The court held that the credit was not allowed because the computer telephone system was not required in order to comply with the ADA since all public telephone services are already required to provide telephone service for hearing-impaired individuals without extra charge. **Crooks v. Comm'r, 2006-2 U.S. Tax Cas. (CCH) ¶ 50,423 (6th Cir. 2006)**.

DISASTER LOSSES. On July 21, 2006, the president determined that certain areas in Missouri are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms, which began on July 29, 2006. **FEMA-3267-EM.** On August 1, 2006, the president determined that certain areas in Ohio are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on July 27, 2006. **FEMA-1656-DR** On August 4, 2006, the president determined that certain areas in Alaska are eligible for assistance from the government under the Act as a result of snow melt and ice jam flooding, which began on May 13, 2006. **FEMA-1657-DR.** Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2005 returns.

DEPRECIATION. The IRS has issued guidance regarding the 50-percent additional depreciation allowance for qualified Gulf Opportunity Zone property acquired on or after August 28, 2005, and placed in service before January 1, 2008 (January 1, 2009, in the case of residential rental and nonresidential real property) allowed by I.R.C. § 1400N(d), as added by the Gulf Opportunity Zone Act of 2005. **Notice 2006-67, I.R.B. 2006-32**.

The taxpayer operated a rent-to-own business and, on the advice of a professional income tax return preparer made the election under I.R.C. § 168(k)(2)(D)(iii) not to deduct the 30 percent and 50 percent additional first year depreciation for qualified property and 50 percent bonus depreciation property acquired during that taxable year. The taxpayer hired a new accountant more familiar with the rent-to-own business and discovered that less alternative minimum tax would be owed if the election was not made. The IRS ruled that the taxpayer would be allowed an extension of time in which to revoke the election. **Ltr. Rul. 200626038, March 3, 2006**.

EMPLOYEE HOUSING EXPENSES. The taxpayers were employed by a U.S. corporation and moved to Australia during the employment in order to perform their tasks there. The taxpayers did not pay for their housing costs while in Australia but lived in regular houses provided by the employer in a nearby city but not in housing on the employer's premises. No work was performed in the taxpayers' Australian residence. The taxpayers excluded the value of the housing from their taxable income under I.R.C. § 119, arguing that the housing was provided for the convenience of the employer on the employer's business premises. The issue was whether the living quarters were provided on the employer's premises. The court noted that living quarters have been held to be "on the employer's premises" where the living quarters are an integral part of the performance of the employee's duties. Living quarters have been held to be generally an integral part of business property if the employee does enough work for the employer at the living quarters so that the living quarters are identified with the interests of the business and serve important business functions. The court held that the taxpayers' living quarters were not integral to the interests of the employer because no work was performed there, the living quarters were 22 miles away from the employer's premises and the living quarters were in a public part of town. **Hargrove v. Comm'r, T.C. Memo. 2006-159**.

HEALTH SAVINGS ACCOUNTS. The IRS has adopted as final regulations governing the definition of comparable contributions made by employers to employees' HSAs to include only payments of (1) the same amount or (2) the same percentage of the employee's deductible for all employees within the same category of coverage. The comparable test is to be applied separately to each category of employees, (1) current full-time employees; (2) current part-time employees; and (3) former employees. The regulations also allow an employer to contribute only to the HSAs of employees who have a High Deductible Health Plan (HDHP) provided by the employer. However, if the employer contributes to the account of an employee who has a non-employer provided HDHP, the employer must make comparable contributions to the accounts of all such employees. **71 Fed. Reg. 43056 (July 31, 2006)**.

HOBBY LOSSES. The taxpayer was fully employed as a sales director and engaged in entering bass fishing tournaments on a regular basis. Although the taxpayer received several cash prizes from the bass fishing tournaments, the income never exceeded the expenses from entering the tournaments. The court held that the taxpayer did not engage in the bass fishing tournaments with the intent to make a profit because (1) although the taxpayer maintained

separate and accurate records of the activity, the taxpayer did not have a business plan to make the activity profitable; (2) although the taxpayer was an expert bass fisherman, the taxpayer had no expertise as to making competitions a profitable business; (3) none of the business assets was expected to appreciate in value; (4) the activity had only losses and no expectation of a profit; (5) the activity losses offset income from other sources; and (6) the taxpayer received substantial personal pleasure from the activity. **Hill v. Comm'r, T.C. Summary Op. 2006-120**.

HYBRID VEHICLE TAX CREDIT. The IRS has announced that General Motors vehicles which have qualified for the alternative motor vehicle credit under I.R.C. § 30B continue to qualify for the credit because General Motors has not sold more than 60,000 vehicles as of the previous calendar quarter. **IR-2006-122**.

LETTER RULINGS. The IRS has issued revised procedures for processing requests for expedited letter rulings for reorganizations and I.R.C. § 355 distributions. **IR-2006-123**.

PARTNERSHIPS

ELECTION TO ADJUST BASIS IN PARTNERSHIP PROPERTY. The decedent had transferred a one-fourth interest in certain real estate to the decedent's children but retained the right to 100 percent of the income from the property. The decedent and children transferred their interests in the real estate to an LLC in exchange for a 25 percent interest in the LLC which was treated as a partnership for federal tax purposes. The decedent retained the right to receive 100 percent of the income attributable to the real estate. The decedent died and the decedent's estate, pursuant to the decedent's will, distributed the decedent's 25 percent interest in the LLC to the children. The LLC's partnership return was timely filed, but an I.R.C. § 754 election to adjust the basis of partnership property was not filed with the return. The stated reason was that, although the LLC and its partners were aware of the election, the benefit it provided did not outweigh the complexity of creating multiple bases. The decedent's estate was audited and the examiners determined that, pursuant to I.R.C. § 2036, the real estate transferred to the LLC, with respect to which the decedent retained the right to receive the income, was fully includible in the decedent's gross estate. After this determination was made, the taxpayer requested permission to make a late I.R.C. § 754 election. The IRS denied an extension to make the election because the estate was aware of the election and waited until after an audit to decide to make the election. **Ltr. Rul. 200626003, Feb. 28, 2006**.

PENSION PLANS. For plans beginning in August 2006 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities rate for this period is 4.84 percent, the 90 percent to 105 percent permissible range is 4.35 percent to 5.08 percent, and the 90 percent to 110 percent permissible range is 4.35 percent to 5.32 percent. The corporate bond weighted average is no longer relevant for plans beginning after 2005. **Notice 2006-74, I.R.B. 2006-35**.

The taxpayer corporation changed its pension plan from a defined-contribution plan to a cash-balance defined-benefit plan. The plans were identical but the new plan would allow younger workers to earn more interest in that they would be working more years. Older employees argued that the higher interest earnings in the new plan constituted age discrimination. The court held that a difference created by an employee's potential number of remaining employment years was not age discrimination because the variation was not necessarily age-based. **Cooper v. IBM Personal Pension Plan, 2006-2 U.S. Tax Cas. (CCH) ¶ 50,448 (7th Cir. 2006)**.

RETURNS. Due to the continued closure of the main IRS headquarters, the IRS has announced a new temporary address for hand delivery of certain documents. Until further notice, documents that may be hand delivered to the main IRS headquarters, and other documents that are normally delivered to the main headquarters, should be delivered instead to Courier's Desk, Room 105, First Floor, Internal Revenue Service, Attn: CC:PA:LPD:DRU, Crystal Mall 4 Building at 1901 S. Bell St., Washington, D.C. or 1941 Jeff Davis Highway, Arlington, Va. **IR-2006-124**.

S CORPORATIONS

SHAREHOLDER BASIS. The taxpayer was the sole shareholder of an S corporation. The corporation obtained a $4 million loan from a bank for business operations. The loan was secured by the corporation's business property and inventory. The loan was paid from the corporation's accounts with the lending bank. The corporation defaulted on the loan and was forced into involuntary bankruptcy. The corporation had substantial losses and the taxpayer increased the taxpayer's basis in the stock by the amount of the loan in order to claim the losses as deductions. The taxpayer argued that the increase in basis was allowed because (1) the taxpayer personally guaranteed the loan, (2) the taxpayer pledged stock to secure the loan, and (3) the taxpayer incurred a cost when the taxpayer lost control of the corporation. The court held generally that a shareholder's basis may be increased only where the shareholder makes an economic outlay to the corporation. The court held that the mere guarantee of a corporate loan is insufficient to increase a shareholder's basis, but the shareholder must have actually made a payment under the guarantee terms. The court also held that the taxpayer failed to prove that the bank looked to the taxpayer or the taxpayer's stock for any repayment of the loan. The court noted that the evidence supported the finding that the bank looked solely to the corporation's assets as security for the loan. The court held that the taxpayer also failed to show any loss of control or any value of any loss of control of the corporation. Thus, because the taxpayer failed to show any economic outlay to the corporation as part of the loan, the taxpayer could not increase the taxpayer's basis in the corporation by the loan amount. **Maloof v. Comm'r, 2006 U.S. App. LEXIS 19890 (6th Cir. 2006), *aff'g*, T.C. Memo. 2005-75**.

SALE OF RESIDENCE. The taxpayer was single with three children when the taxpayer purchased a residence. The taxpayer

married and the new spouse brought two additional children and an ailing parent to the household. In order to provide sufficient care for the ailing parent, the couple sold the residence and moved to a new residence less than two years after the purchase of the taxpayer's residence. The IRS ruled that the sale of the taxpayer's house was the result of unforeseen circumstances and allowed the exclusion of gain on the sale of the taxpayer's house based on the maximum dollar limitation multiplied by a fraction equal to the number of days lived in the house divided by 730. **Ltr. Rul. 200626024, March 23, 2006**.

TAX-ADVANTAGED ACCOUNTS. The IRS has updated its list of entities that have been approved to serve as nonbank trustees and custodians for several types of tax-advantaged savings accounts including: (1) Archer medical savings accounts established under I.R.C. § 220; (2) health savings accounts described in I.R.C. § 223; (3) custodial accounts of retirement plans qualified under I.R.C. § 401; (4) custodial accounts for stock in a regulated investment company, as described in I.R.C. § 403(b)(7); (5) trust or custodial accounts of traditional individual retirement accounts under I.R.C. § 408 and Roth IRAs under I.R.C. § 408A; (6) Custodial accounts of eligible deferred compensation plans of state and local governments and exempt organizations, as described in I.R.C. § 457(b); and (7) Coverdell education savings accounts described in I.R.C. § 530. **Ann. 2006-45, I.R.B. 2006-31**.

TIP WAGES. The IRS has provided rules for a new tip reporting procedure under the Tip Rate Determination/Education Program. The new procedure, called the Attributed Tip Income Program or ATIP, is available for certain employers in the food and beverage industry and reduces many of the existing reporting requirements. As with the other procedures under the Tip Rate Determination/Education Program, for participating employers, the IRS will not challenge on audit the amount of tips the employer reports as wages. Unlike other procedures under the Tip Rate Determination/Education Program, ATIP does not require an employer to enter into an individual agreement with the IRS. Employers who participate in ATIP report tip income of their employees based on a formula that uses a percentage of gross receipts, which are generally distributed among employees based on employer practices. Participation in ATIP is entirely voluntary for both employers and employees. An employer may participate in ATIP if, in the year prior to enrollment, at least 20 percent of the employer's gross receipts from food and beverage sales are charge receipts showing charged tips and at least 75 percent of the employer's tip-earning employees agree to participate. This test is done for each of the employer's establishments that seek to enroll in ATIP. To enroll, an eligible employer checks the designated box on its Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips. For employers participating in ATIP, the IRS will not initiate employer-only I.R.C. § 3121(q) examinations and tip income reporting requirements will be reduced. Participating employees will not need to keep a daily tip log and the IRS will not initiate an employee tip examination during ATIP participation. **IR-2006-118**.

TRUSTS. The taxpayer owned a second residence used primarily as a vacation home. Although the taxpayer allowed friends and relatives to use the house, no rent was charged and the house was not rented to the public. The taxpayer transferred the house to a trust intended to qualify as a qualified personal residence trust. The IRS ruled that the house was a qualified residence because the property was similar in size and use as neighboring properties and was used exclusively for residential purposes. **Ltr. Rul. 200626043, Feb. 23, 2006**.

RACKETEERING

CHICKEN FARM. The plaintiffs purchased a chicken farm which was growing chickens provided under a contract with a chicken processor. Without the chicken supply/purchase contract, the farm was worthless for any other farming activity. The chicken processor required the plaintiffs to use a specific bank and appraiser for the mortgage loan in order to continue the contract after the sale. The plaintiffs alleged that the appraisal was inflated above market value. Once the farm was purchased the processor required the plaintiffs to make substantial capital improvements to the farm, again under the threat of the loss of the contract. Yet, even after all the conditions were met, the processor cancelled the contract, resulting in the default of the plaintiffs on their mortgage and capital improvement loans. The farm was sold at foreclosure to the bank at a substantially reduced price. The plaintiffs brought an action against the former farm owner, the bank and the chicken processor under state fraud and contract law and the federal Racketeering Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq. The plaintiffs alleged that the defendant set up a scheme to defraud the plaintiffs: (1) advertise the farm with promises of long term chicken supply/purchase contracts and require the buyer to use specific bankers and appraisers who would confirm a grossly inflated price for the property; (2) reward the bankers and appraisers with a steady stream of farmers selling and buying the processor's farms, with the bankers and appraisers getting appraisal fees, and closing costs; (3) arbitrarily demand and extract capital improvements from the farm buyers; (4) terminate the chicken contract with the farmer, rendering the farm worthless; (5) once the farmer is in this position, give the farmer the option to participate in the scheme or foreclose on the farm at a lower price; and (6) return to step one. The defendants sought dismissal of the case, arguing that RICO did not apply to them or that the allegations of the petition were false. The court noted that a RICO action required a showing of a person who engages in a pattern of racketeering activity, connected to the acquisition, establishment, conduct, or control of an enterprise. The court noted that, in ruling on a motion to dismiss, the plaintiffs' allegations in the petition were deemed true. The court held that the plaintiffs had alleged sufficient facts

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which, if true, would prove a violation of RICO and the state fraud claims; therefore, the motion to dismiss was denied. **Do v. Pilgrim's Pride Corp., 2006 U.S. Dist. LEXIS 55374 (E.D. Tex. 2006)**.

ZONING

AGRICULTURAL USE. The defendants purchased 40 acres of rural land and used the property to breed, raise and train horses. The defendants' property was zoned for agricultural purposes. The defendants built a horse racing track on the property to be used to train racehorses. The county zoning board sought an injunction to prohibit the use of the race track as prohibited under the agricultural zoning status. The defendants argued that the training of race horses was an agricultural use exempt from local zoning restrictions. The court acknowledged that the raising and training of horses in general is an agricultural pursuit but held that the raising and training of horses for racing purposes was not an agricultural activity because the ultimate use of the horses, racing, was not an agricultural activity; therefore, the defendant's use of the property for training racehorses violated the agricultural zoning of the property. The defendants also argued that, because their use of the property to train racehorses existed before the property was zoned agricultural, they were entitled to a pre-existing use exemption. The court remanded the case on this issue, noting that the exemption would be limited to the extent of the use of the property before the enactment of the zoning ordinance. **Seward County v. Navarro, 133 P.3d 1283 (Kan. Ct. App. 2006)**.

IN THE NEWS

FARM REAL PROPERTY VALUES. The National Agricultural Statistics Service has issued it 2006 report of national farm real estate values. Farm real estate values, a measurement of the value of all land and buildings on farms, averaged $1,900 per acre on January 1, 2006, up 15 percent from 2005. The $1,900 per acre is a record high and $250 more than a year earlier. Cropland and pasture values rose by 13 and 22 percent, respectively, since January 1, 2005. Cropland values averaged $2,390 per acre and pasture values averaged $1,000 per acre on January 1, 2006, compared with $2,110 and $820 per acre, respectively, a year earlier. The increase in farm real estate values continues to be driven by a combination of mostly nonagricultural factors, including relative low interest rates and strong demand for nonagricultural land uses. Demand for farm real estate as an investment continues to be a strong market influence. Regional increases in the average value of farm real estate ranged from 8.9 percent in the Delta region to 35 percent in the Mountain region. The highest farm real estate values are in the Northeast region, where urban influences have pushed the average value to $4,550 per acre. In the Corn Belt region *farm real estate values* rose 12 percent, to $3,040 per acre. The Northern Plains region, with its expanse of pasture and rangeland, had the lowest farm real estate values, at $834 per acre. The Southeast region had the highest average increase in cropland value, at $4,550, up $890 per acre. In the Corn Belt region *cropland values* rose 12 percent, to $3,230 per acre. The Lake States region also increased 12 percent, to $2,550 per acre. Together, the Corn Belt and Lake States regions account for nearly one-third of the U.S. total cropland acres. The Southeast region had the highest average increase in pasture value, up $1,510 per acre. In the Northern Plains, Southern Plains, Mountain, and Pacific regions (17 western states) pasture values per acre increased 15 percent, 24 percent, 54 percent, and 13 percent, respectively. Together, the 17 western states account for about 89 percent of the total pasture acres on farms in the 48 States. All NASS reports are available by subscription free of charge direct to your e-mail address from www.nass.usda.gov. **Sp Sy 3 (2006)**.

AMERICAN AGRICULTURAL LAW ASSOCIATION ANNUAL CONFERENCE

The 27th Annual Agricultural Law Symposium will be held October 13-14, 2006 at the Hyatt Regency Hotel on the Savannah Riverfront in Savannah, GA. Information about the symposium program and registration materials are available at www.aglaw-assn.org For a conference brochure or more information about the conference, contact Robert P. Achenbach, AALA Executive Director at RobertA@aglaw-assn.org