CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

CHAPTER 12-*ALM* § 13.03[8].*

On May 11, 2001, the President signed a temporary extension, until May 31, 2001, for Chapter 12, the Family Farmer Reorganization chapter of the Bankruptcy Code. **H.R. 256; Pub. L. No. 107-8**.

FEDERAL TAX-*ALM* § 13.03[7].*

DISCHARGE. The debtors had filed returns for 1992, 1993 and 1994 but had not paid the taxes owed. The debtors filed several bankruptcy cases in response to attempts by the IRS to levy for the taxes. The debtors filed the current bankruptcy case in 1998 such that all three tax returns were due more than three years before the petition filing. The IRS sought to have the taxes for all three years declared nondischargeable because the interim bankruptcy cases tolled the three year period of Sections 523(a)(1) and 507(a)(8). The court initially held that the three year period could be tolled by equitable considerations to allow the IRS sufficient time to attempt collection. The court held that the 1992 taxes were dischargeable because the IRS had over 1200 days to seek collection of the taxes. The court held, however, that the 1993 and 1994 taxes were nondischargeable because the IRS had only 798 and 311 days to collect those taxes. The court noted that the debtors had attempted to negotiate payment and had not attempted to evade payment of the taxes. ***In re* Hamrick, 259 B.R. 224 (Bankr. M.D. Ga. 2000)**.

ESTATE PROPERTY. The debtor owned interests in several employee pension plans and was receiving monthly distributions when the debtor filed for Chapter 13. The IRS filed a claim for taxes which exceeded the value of the debtor's property. Tax liens had been filed pre-petition and the issue was whether the post-petition pension plan payments were included in bankruptcy estate property so as to be considered as part of the property securing the IRS claim. The pension plans had clauses restricting assignment or attachment of the plan distributions or principal. The District Court held that the pension plan payments were subject to the tax liens; therefore, the plan restrictions were not effective under nonbankruptcy law and the pension plan payments were included in estate property. The District Court held that the present value of the monthly payments was part of the security for the tax claim. On remand, the Bankruptcy Court noted that the contrary holding in *In re Keyes, 255 B.R. 819 (Bankr. E.D. Va. 2000)* supported the Bankruptcy court's disagreement on this issue, but the court held that the District Court's ruling was the law of the case. ***In re* McIver, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,384 (Bankr. D. Md. 2001), *on rem. from*, 255 B.R. 281 (D. Md. 2000)**.

FEDERAL AGRICULTURAL PROGRAMS

"MAD COW" DISEASE. The APHIS has issued proposed regulations amending the livestock and meat importation regulations by adding Germany, Italy, and Spain to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in native-born animals in those regions. Germany, Italy, and Spain are currently listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States. The effect of this action is a continued restriction on the importation of ruminants that have been in Germany, Italy, or Spain and meat, meat products, and certain other products of ruminants that have been in Germany, Italy, or Spain. **66 Fed. Reg. 22425 (May 4, 2001), *amending* 9 C.F.R. § 94.18**.

FEDERAL ESTATE AND GIFT TAX

GROSS ESTATE. The decedent owned land which was leased to a corporation owned by the decedent which processed and marketed nuts produced by the decedent. The written lease had a term of 10 years and allowed the tenant to continue leasing at will. The lease had no provision for fixtures added to the property by the corporation. The court held that, under California law, a tenant had the right to remove business fixtures during the term of the lease. The court further held that the term of a lease did not include holdover tenancies. At the decedent's death, the original term had expired and the corporation was leasing the property at will. Therefore, the court held that the business fixtures on the property belonged to the decedent and were included in the decedent's gross estate. The appellate court reversed in a decision designated as not for publication. The appellate court held that the lease included an implied right to remove trade fixtures because the lease treated any holdover as an extension of the original lease terms, including the right to remove trade fixtures. The case was remanded for findings as to whether the fixtures involved were trade fixtures governed by the lease. **Estate of Frazier v. Comm'r, 2001-1 U.S. Tax Cas. (CCH) ¶ 60,404 (9th Cir. 2001), *rev'g and rem'g*, T.C. Memo. 1999-201**.

SPECIAL USE VALUATION-*ALM* § 5.03[2].* In a Chief Counsel Advice letter, the IRS has ruled that the I.R.C.

§ 6324B lien on recapture of special use valuation benefits does not automatically expire and release 10 years after the death of the decedent. The IRS ruled that a recapture event during the 10 years could extend the lien beyond the 10 years; therefore, the lien should not be released after the 10 years until a determination has been made that no recapture event has occurred during the 10 years. **CCA Ltr. Rul. 200119053, March 16, 2001**.

TRUST. The decedent's will created a trust prior to September 25, 1985, for each of three children with the remainders to pass in trust to the children of each child. One of the decedent's children died and that child's trust interest passed to that child's three children. The trust obtained a local court order partitioning the trust into three separate trusts, with each trust retaining the same provisions as the original trust. The IRS ruled that the partitioning of the trust did not subject the trust to GSTT. **Ltr. Rul. 200118038, Feb. 05, 2001**.

The taxpayers, husband and wife, transferred all their personal and business property to a trust. The taxpayers continued to have complete control over the assets and made use of them as before transfer to the trust. The taxpayers, as co-trustees had discretionary authority to distribute income and principal. The trusts transferred no other beneficial interests to other persons. The taxpayers claimed that the trusts were not formed for tax benefits, but the court held that the trust was a sham without any economic substance. The court held that the taxpayers were liable for tax on income earned by the taxpayers' business, which was also self-employment income. **Castro v. Comm'r, T.C. Memo. 2001-115**.

VALUATION. The decedent owned an interest in a marital trust established by a predeceased spouse for which the predeceased spouse's estate claimed a marital deduction. The trust owned 44 percent of the stock of a corporation. The decedent also individually owned another 50 percent of the stock of the same corporation. The trust gave the decedent a general power of appointment over the trust corpus. The IRS, in a field service advice, ruled that the 44 percent share and 50 percent share of the corporation must be aggregated in determining the value of the stock in the decedent's estate. The ruling stated that a general power of appointment over property has been considered by Congress and the courts to be the equivalent of outright ownership of the property. **FSA Ltr. Rul. 200119013, Feb. 6, 2001**.

The taxpayers, husband and wife, owned 90 percent of the outstanding stock of a closely held corporation that developed, constructed, and sold single-family houses. Each taxpayer created a 15-year grantor retained annuity trust (GRAT) funded with stock in the company. Each GRAT provided a fixed annual annuity to the grantor based on the initial fair market value of the trust assets. The remainder passed first to the surviving spouse in trust and then to the descendants of each grantor. The taxpayers argued that the retained interests in the annuities should be valued as interests for the term of 15 years or for the lives of the grantor and spouse, whichever is shorter. The IRS argued that the interests in the annuities that were given to each spouse were not qualified interests, the retained interests were single-life annuities, and the retained interests in the annuities should be valued as interests for the term of 15 years or for the life of the grantor, whichever is shorter. The court held that the facts were nearly identical to those in *Cook v. Comm'r, 115 T.C. 15, 23 (2000)*, and, as in *Cook*, the interests in the trusts were not qualified interests because the trust created a dual-life annuity in violation of Treas. Reg. § 25.2702-3(d)(3). **Schott v. Comm'r, T.C. Memo. 2001-110**.

VALUATION OF STOCK. The decedent owned a 49 percent interest in a corporation which operated a hair salon products business under the decedent's name. The Tax Court had valued the full company at fair market value with a discount for the loss of the decedent to the company. The Tax Court also discounted the value of the stock by 35 percent for a minority interest and lack of marketability. Finally, the Tax Court discounted the value of the stock by 15 percent because of a pending lawsuit. The appellate court reversed, holding that the Tax Court failed to provide sufficient support for the valuations and discounts applied. **Estate of Mitchell v. Comm'r, 2001-1 U.S. Tax Cas. (CCH) ¶ 60,403 (9th Cir. 2001), *rev'g in part*, T.C. Memo. 1997-461**.

FEDERAL INCOME TAXATION

ACCOUNTING PERIOD. The IRS has issued proposed revenue procedures for approving changes in accounting period or method. The basic change in procedure is that the IRS will require "additional terms, conditions and adjustments" to neutralize any distortion of income resulting from the change of accounting method or period. The current procedure provides for denying changes if more than a de minimis distortion would result from the change in accounting method or period. **Notice 2001-35, I.R.B. 2001-23; Notice 2001-34, I.R.B. 2001-23.**.

ALIMONY. The taxpayer's divorce agreement provided that the taxpayer was to make weekly child support payments until the minor children reach age 18, die or become emancipated. The divorce agreement also provided for monthly payments to the former spouse until the child support payments cease. The court held that the payments to the spouse were not deductible from the taxpayer's income as alimony because the payments were contingent upon the payments for the children. **Bonar v. Comm'r, T.C. Summary Op. 2001-70**.

BELOW-MARKET INTEREST LOANS. The taxpayers were the controlling shareholders of a horse farm corporation. The taxpayers made several loans totaling $2 million to the corporation which did not pay interest to the taxpayers. The loans were recorded on the corporation's books but no repayment terms were written. The corporation's tax returns indicated that the advances were loans. Only a portion of the loans was repaid. The taxpayers claimed that the loans were capital contributions but the court found that the loans were intended by the taxpayers to be repaid. The court held that the loans were demand loans with a below-market interest rate; therefore, the taxpayers were considered to have income for the amount of uncharged interest. The appellate court affirmed in a decision designated as not for publication. **Estate of Hoffman v. Comm'r, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,401 (4th Cir. 2001)**, ***aff'g***, **T.C. Memo. 1999-395**.

COOPERATIVES. Legislation has been introduced in the U.S. House of Representatives which would amend I.R.C. § 1388 to "reestablish the marketing aspects of farmers' cooperatives in relation to adding value to a farmer's product by feeding it to animals and selling the animals and to grant a declaratory judgment remedy relating to the status and classification of farmers' cooperatives." **H.R. 1821**.

The taxpayer was a cooperative which was originally organized as a corporation in one state. The taxpayer formed an LLC in another state which elected to be taxed as an association for federal income tax purposes. The taxpayer then merged with the LLC. The taxpayer continued to operate as a cooperative. Although the IRS ruled that it would not make a determination as to the tax-free status of the type F reorganization under I.R.C. § 368(a)(1)(F), the IRS ruled that the taxpayer would qualify as a cooperative under Subchapter T as an LLC because the taxpayer elected to be taxed as an association. **Ltr. Rul. 200119016, Feb. 6, 2001**.

CORPORATIONS-*ALM* § 7.02.*

COMPENSATION. The taxpayer was a wholly-owned corporation which provided insurance adjusted services to insurance companies. The taxpayer was founded and owned by a person who was highly qualified and respected as a claims adjuster and who was indispensable to the business of the taxpayer. The shareholder's compensation was tied to the gross receipts of the taxpayer. The compensation paid to the shareholder was held to be excessive, and the excessive portion was held to be dividends. The court noted that the compensation depleted nearly all of the taxpayer's profits. **Eberl's Claim Service, Inc. v. Comm'r, 2001-1 U.S. Tax Cas. (CCHJ) ¶ 50,396 (10th Cir. 2001)**.

LOANS TO SHAREHOLDERS. The IRS has posted a revised version of the Shareholder Loans Market Segment Specialization Program (MSSP) Audit Technique Guide (5-01) on its website, http://www.irs.gov. It addresses issues regarding loans to shareholders. It examines bona fide debt v. non-bona fide debt, the mechanics of bona fide debt, below-market loans, demand loans, the de minimis exception, computations and interest issues on market rate loans.

REORGANIZATION. A corporation merged with another corporation, with some shareholders receiving stock and others cash. After the merger, the first corporation sold 50 percent of its operating assets and retained the proceeds. The IRS ruled that, under Rev. Rul. 88-48, 1988-1 C.B. 117, the merger qualifies for Section 368 treatment because, although the corporation sold 50 percent of its assets after the merger, the corporation retained the proceeds. **Rev. Rul. 2001-25, I.R.B. 2001-22**.

COURT AWARDS AND SETTLEMENTS-ALM § 4.02[14]. The taxpayer had sued an insurance company for fraudulently selling the taxpayer supplemental medicare insurance which the taxpayer could not use. The taxpayer was awarded compensatory and punitive damages and post-judgment interest. The taxpayer's attorneys collected the award and paid the taxpayer one-half as arranged under their fee agreement. The court held that the punitive damage award and post-judgment interest were included in the taxpayer's gross income and that the amount retained by the attorneys was eligible for the miscellaneous deduction for the taxpayer. **Foster v. United States, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,392 (11th Cir. 2001), *aff'g on point*, 106 F. Supp. 2d 1234 (N.D. Ala. 2000)**.

DISASTER PAYMENTS. On April 17, 2001, the President determined that certain areas in Mississippi were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of severe storms and flooding on April 3-5, 2001. **FEMA-1365-DR**. On May 2, 2001, the President determined that certain areas in Iowa were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of severe storms, tornadoes and flooding beginning on April 8, 2001. **FEMA-1367-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.

DISCHARGE OF INDEBTEDNESS. The taxpayers, husband and wife, negotiated with several creditors for full payment of several loans. As part of the payment agreement, a portion of the loans was discharged without payment. The debtors argued that the discharged loan amounts were not included in income because the taxpayers were insolvent at the time of the discharge. The taxpayer calculated their insolvency by excluding from their assets property which was exempt from the claims of creditors under state law. The court held that, under *Carlson v. Comm'r, 116 T.C. 87 (2001)*, exempt assets could not be excluded in determining a taxpayer's solvency at the time of discharge of indebtedness. See Harl, "Calculating Solvency: A New Development," 12 *Agric. L. Dig.* 73 (2001). **Johns v. Comm'r, T.C. Summary Op. 2001-67**.

ELECTRICITY PRODUCTION CREDIT. The IRS has announced the 2001 inflation-adjusted electricity production credit of 1.7 cents per kilowatt-hour on the sale of electricity produced from wind, closed-loop biomass and poultry waste energy sources. **Notice 2001-33, I.R.B. 2001-19, 1155**.

Legislation has been introduced in the U.S. Senate which would include electricity produced from <u>all</u> animal waste as a renewable energy source eligible for the electricity production credit. **S. 845**.

HOBBY LOSSES. The taxpayer operated a volleyball club activity which sponsored volleyball camps, sold branded volleyball paraphernalia and provided consultation to volleyball teams. The court held that the activity was engaged in with the intent to make a profit because the taxpayer maintained sufficient records, sought advice as to how to make the activity profitable, was an expert at volleyball and spent a significant amount of time at the activity. **Nelson v. Comm'r, T.C. Memo. 2001-117**.

IRA. The taxpayer was a part-time teacher and was required to participate in the state sponsored pension plan, with mandatory contributions withheld from the taxpayer's wages. The taxpayer also contributed $2000 to an IRA and claimed a deduction for that contribution. The taxpayer argued that the taxpayer should not be considered an active participant in the state pension plan because the taxpayer's interest would not vest within 10 years. The court held that taxpayer was an active participant in the state pension plan because the taxpayer made contributions to the plan. **Wade v. Comm'r, T.C. Memo. 2001-114**.

LEASES. The IRS has issued guidelines for advance ruling purposes in determining whether certain transactions purporting to be leases of property are leases for federal income tax purposes. The guidelines apply to transactions called "leveraged leases." These are leases with a lease term that covers a substantial part of the useful life of the leased property and the lessee's payments to the lessor are sufficient to discharge the lessor's payments to the lender. The guidelines clarify the circumstances in which an advance ruling recognizing the existence of a lease ordinarily will be issued. **Rev. Proc. 2001-28, I.R.B. 2001-19, 1156.** A second revenue procedure provided the information and representations required to be furnished by a taxpayer in requesting a ruling on a leveraged lease. All parties to the lease must join in the ruling request. **Rev. Proc. 2001-29, I.R.B. 2001-19, 1160**.

LIKE-KIND EXCHANGES. The taxpayer was involved in a like-kind exchange under I.R.C. § 1031. The property to be acquired was owned by an LLC with one owner. The LLC did not elect to be taxed as an association for federal income tax purposes. The purchased real property was the sole asset of the LLC. Instead of acquiring the parcel of real property owned by the LLC, the buyer acquired the LLC in order to avoid real estate transfer fees. The IRS ruled that the LLC would be disregarded for purposes of I.R.C. § 1031 because the LLC had only one owner and did not elect to be taxed as an association. **Ltr. Rul. 200118023, Jan. 31, 2001**.

NON-COMPETITION AGREEMENT. The taxpayer purchased an interest in a car dealership. As part of the sales agreement, the seller agreed not to open or operate a car dealership within a certain distance. The initial agreement was entered into in 1990 but the sale did not close and no noncompetition agreement was executed because the seller did not receive payment for the agreement. The dealership was resold in 1993 under similar terms but the sales agreement expressly stated that the earlier sale contract was terminated. The taxpayer argued that the second sales agreement was an extension or amendment of the 1990 agreement; therefore, 1990 law applied and the noncompetition agreement payments did not need to be amortized. The court held that the 1990 agreement had been terminated; therefore, the 1993 sales contract was a new contract and I.R.C. § 197 required the noncompetition agreement to be amortized over 15 years. **Frontier Chevrolet, Inc. v. Comm'r, 116 T.C. No. 23 (2001); Burien Nissan, Inc., v. Comm'r, T.C. Memo. 2001-116**.

PENSION PLANS. The taxpayer participated in an employer sponsored pension plan and made several loans from the plan. The repayments terms were for 999 biweekly payments, totaling 83.42 years. The taxpayer did not provide evidence that any of the loan proceeds were from nondeductible contributions. The court held that the loan proceeds were includible in income because the repayment period exceeded five years and because the taxpayer failed to demonstrate that any of the proceeds were allocated to nondeductible contributions to the plan. **Campbell v. Comm'r, T.C. Memo. 2001-118**.

PREPRODUCTION EXPENSES. The taxpayer was a corporation which operated a citrus orchard. The taxpayer instituted advanced techniques in planting, fertilizing and irrigating which minimized the growing period between planting and fruit production. The taxpayer was able to produce some fruit within two years, but not full production. Although the taxpayer was able to produce fruit within two years, the taxpayer did not provide evidence that the nationwide average preproduction period for citrus fruit was less than two years. The court found that the taxpayer had used special and advanced techniques which were not widely used. The IRS argued that the prohibition in I.R.C. § 263A(d)(3)(C) of citrus and almond growers from electing out of the capitalization rules for four years indicated Congressional intent that the preproductive period for citrus was longer than two years. The court held that the prohibition in I.R.C. § 263A(d)(3)(C) would be superfluous unless the preproductive period for citrus was intended to be at least four years. In addition, the court held that the taxpayer failed to demonstrate that even the taxpayer's methods would produce a commercially viable harvest within two years; therefore, the taxpayer was required to capitalize the preproductive period expenses. The appellate court affirmed in an opinion designated as not for publication. **Pelaez and Sons, Inc. v. Comm'r, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,395 (11th Cir. 2001), *aff'g*, 114 T.C. No. 28 (2000).**

RETURNS. The taxpayer was not married but lived with a same sex partner. The taxpayer shared assets and income with the partner. The court ruled that the taxpayer was not entitled to file using married taxpayer status and that the filing status classifications of the Internal Revenue Code were constitutional. The appellate court affirmed in a decision designated as not for publication. **Mueller v. Comm'r, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,391 (7th Cir. 2001), *aff'g*, T.C. Memo. 2000-132**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

DISCHARGE OF INDEBTEDNESS. The taxpayer was a shareholder in an S corporation which realized discharge of indebtedness income. The taxpayer increased the basis of the taxpayer's S corporation stock by the taxpayer's share of the discharge of indebtedness income passed through the S corporation. At the time of the discharge of indebtedness, the S corporation was insolvent. The increase in the stock basis enabled the taxpayer to deduct carried-over losses in a later year. The IRS argued that the discharge of indebtedness income was not an item of income for purposes of determining stock basis because discharge of indebtedness income was excluded under the insolvency exclusion rule of I.R.C. § 108. The Tax Court held that, because the corporation was insolvent, I.R.C. § 108 caused an exclusion of the discharge of indebtedness income at the corporation level which was offset by reduction in tax attributes of the corporation, leaving no tax consequences to flow to the shareholders such as would increase the shareholders' basis

***Agricultural Law Manual* (ALM).**

in stock. The case has been vacated in light of the holding in *Gitlitz v. United States, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,147 (S. Ct. 2001)*. **Eberle v. Comm'r, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,390 (9th Cir. 2001),** ***vac'g*****, T.C. Memo. 1999-287**.

SAFE HARBOR INTEREST RATES
June 2001

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	4.15	4.11	4.09	4.08
110 percent AFR	4.57	4.52	4.49	4.48
120 percent AFR	4.99	4.93	4.90	4.88
		Mid-term		
AFR	5.02	4.96	4.93	4.91
110 percent AFR	5.53	5.46	5.42	5.40
120 percent AFR	6.04	5.95	5.91	5.88
		Long-term		
AFR	5.75	5.67	5.63	5.60
110 percent AFR	6.34	6.24	6.19	6.16
120 percent AFR	6.92	6.80	6.74	6.71

Rev. Rul. 2001-27, I.R.B. 2001-___.

SALE OF RESIDENCE. The taxpayers, husband and wife owned a residence. The title to the residence was transferred to a grantor trust established and owned by the taxpayers. The trust transferred the title to a partnership. The taxpayers each owned 1 percent of the partnership, with the trust owning the remaining 98 percent. The IRS originally ruled that the taxpayers would be treated as owning the residence at all times. The IRS has revoked this ruling as contrary to IRS views. **Ltr. Rul. 200004022, Feb. 5, 2001, revoking**, **Ltr. Rul. 200004022, Oct. 28, 1999**.

TRAVEL EXPENSES. The IRS has released revised Publication 1542 (Rev. March 2001), Per Diem Rates (For Travel Within the Continental United States). This document is available at no charge (1) by calling the IRS's toll-free telephone number, 1-800-829-3676; (2) via the internet at http://www.irs.gov/prod/cover.html; (3) through FedWorld; or (4) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

PROPERTY

EMINENT DOMAIN. The defendant operated a manufacturing facility which produced various chemical products, including herbicides and water treatment chemicals. The defendant obtained a permit from the state of Louisiana to dispose of wastewater from the facility by injecting the water into underground sand areas between impermeable layers of rock. The plaintiffs were neighboring land owners who claimed that the wastewater migrated along the sand layers to areas under their property. The plaintiffs brought an action for unjust enrichment, trespass and governmental takings without compensation in violation of the Louisiana constitution. Only the third claim was involved in this case. The plaintiffs argued that the defendant had obtained governmental authority to contaminate their underground property without adequate compensation. The court held that the wastewater underground disposal permit did not make the defendant a "state actor" subject to the constitutional provision prohibiting takings without compensation. The court stated that the defendant had to have received express authority by statute or from the state agency in order for the takings provision to apply to the defendant. **Mongrue v. Monsanto Co., No. 00-30052 (E.D. La. May 7, 2001)**.

IN THE NEWS

(a new service featuring items in newspapers
and other secondary sources)

BANKRUPTCY. A Bankruptcy Court has ruled that former farmers could exempt livestock and farm equipment because the debtors intended to return to farming. The debtors had started a trucking business to pay farm debts and living expenses but were not engaged in farming when the bankruptcy petition was filed.

The debtor's interest in a profit-sharing plan provided by the debtor's employer was held to be estate property even though the profit-sharing payments did not vest until after the petition was filed. ***In re*** **Booth, No. 00-8053 (Bankr. 6th Cir. March 16, 2001)**.

A debtor was allowed a full residence exemption for a residence in joint tenancy with two siblings. ***In re*** **Abernathy, No. 00-6098EM (Bankr. 9th Cir. March 8, 2001)**.

INSURANCE. The Eighth Circuit Court of Appeals has ruled that heat damage from mold was covered under an insurance policy which covered damage from "ensuing fire." **Oakley v. Farmland Mutual, ___ F.3d ___ (8th Cir. 2001)**.

NUISANCE. A state trial court in Kentucky has allowed the residents of a town to sue a factory chicken farm located outside the town as odor nuisance under a town ordinance.

PENSION PLANS. The U.S. Supreme Court has ruled that an ex-spouse is the beneficiary of a insurance policy and pension plan owned by the deceased where the deceased failed to change the beneficiary after the divorce. **Engelhoff v. Engelhoff, No. 99-1529 (S. Ct. March 21, 2001)**.

WATER RIGHTS. A federal District Court in Oregon has upheld a Bureau of Reclamation decision not to release water for irrigation in order to protect threatened coho salmon and to honor treaty obligations. Farmers from the Klamath Basin had sought an injunction because the Bureau's decision left no water for irrigation for 90 percent of the 200,000 acres in the irrigated by the Klamath Project.

CITATION UPDATES

Armstrong v. United States, 132 F. Supp.2d 421 (W.D. Va. 2001) (valuation of stock) see p. 29 *supra*.

Est. of McMorris v. Comm'r, 243 F.3d 1254 (10th Cir. 2001), ***rev'g*****, T.C. Memo. 1999-82**.(deductions) see p. 60 *supra*.

AGRICULTURAL LAW PRESS
P.O. Box 50703 Eugene, OR 97405

The Agricultural Law Press presents

2001 AGRICULTURAL TAX AND LAW SEMINARS

by Neil E. Harl and Roger A. McEowen

June 19-22, 2001 Ramada Conference Center, Columbia, MO
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.
- Farm estate planning, 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**