provide the federal share of the cost of developing specific essential community facilities in rural areas. **Act § 763**. The amount of a grant may not exceed 75 percent of the cost of developing the facility. ***Id***.

Rural Electrification Act of 1936. Numerous amendments are made to the Rural Electrification Act of 1936. **Act § 771**.

The legislation specifically prohibits conditioning assistance under any rural development program on any requirement that the recipient of the assistance accept or receive service from any particular utility, supplier or cooperative. **Act § 778**.

Fund for Rural America. An account is established to be known as the Fund for Rural America. **Act § 793(a)**. The account is to be funded with $100,000,000 on January 1, 1997, October 1, 1998 and October 1, 1999. **Act § 793(b)**.

The Fund may be used for several rural development activities —

• Authorized under the Housing Act of 1949 for (1) direct loans to low income borrowers, (2) loans for financial assistance for domestic farm laborers, (3) financial assistance for housing for domestic farm laborers, (4) payments for elderly not now receiving rental assistance, (5) grants and contracts for mutual and self-help housing, (6) grants for rural housing preservation; or

• Conducted under any rural development program. **Act § 793(c)**.

The Under Secretary of Agriculture for Rural Economic and Community Development has been renamed the Under Secretary of Agriculture for Rural Development. **Act § 794, *amending* 7 U.S.C. § 6941.**

Title VIII — Research, Extension and Education

(This title contains funding guidelines and appropriation authority for work in research, extension and education.)

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

EXEMPTIONS

IRA. In 1991, the debtor rolled over funds from a terminated pension plan to an IRA. The debtor filed for Chapter 7 in 1994 and claimed $286,000 in the IRA as exempt under Mass. Gen. Law, ch 235, § 34. The trustee objected to the exemption to the extent the rolled-over amount exceeded 7 percent of the debtor's total income for the five years before the bankruptcy filing. The debtor argued that the 7 percent limit did not apply to rolled-over funds but only applied to new deposits. The court held that the statute was unambiguous and limited the IRA exemption to an amount equal to 7 percent of the debtor's income for the five pre-petition years. ***In re* Goldman, 192 B.R. 1 (D. Mass. 1995), *aff'g*, 182 B.R. 622 (Bankr. D. Mass. 1995)**.

GRAIN STORAGE FACILITY. The debtor's business consisted primarily of purchasing grain for conditioning and resale as seed, either to third parties or the producer of the grain. The debtor also sold farm equipment and various farm inputs. Several creditors sought a fifth priority under Section 507(a)(5)(A) for their claims against the debtor as a grain storage facility. The court held that claims from creditors who purchased, but did not receive, farm equipment and farm inputs were not entitled to the priority because the claims did not involve grain or the proceeds of grain. The court also denied fifth priority to claims for unpaid wages. The court denied a fifth priority to claims for the prepayment for seed which was not delivered to creditors who were not producers of grain but who sold the seed to third parties. The last group of creditors was grain producers who sold grain to the debtor and who were not paid. Some of the grain was processed for seed but some was resold to third parties to the extent not needed for the seed inventory. The court held that Section 507(a)(5)(A) was not intended to apply to situations where grain was sold to the storage facility with title passing to the facility. The court assumed that the debtor qualified as a grain storage facility, although doubted that the debtor qualified as a grain storage facility. The court held that in order for a producer to be entitled to the fifth priority, the producer must have retained title to the grain while the grain was in the storage facility. ***In re* Mickelson, 192 B.R. 516 (Bank. D. N.D. 1996)**.

PLAN. The debtor filed for Chapter 13 and one of the secured claims was held by the FmHA (now the FSA). The debtor's plan provided for payment of the claim at 6.5 percent interest. The debtor argued that the FmHA offered 5 percent loans to new farmers and 8 percent loans to established farmers. The debtor argued that if the FmHA had been able to foreclose on the debtor's property, the land would have been offered to new farmers first at the 5 percent rate and, only if no new farmers were found, would the 8 percent rate be applied for a loan to purchase the debtor's land. Therefore, the debtor proposed a rate halfway between the two rates as a reasonable compromise. The Bankruptcy and District Courts held for the debtor; however, the appellate court reversed, holding that the plan was to provide a market rate of interest and by definition, the 5 percent rate was not a market rate of interest but a subsidized rate. In addition, the debtor was not a new farmer and could not qualify for the lower rate; therefore, the lower rate should not have been considered in determining the market rate of interest to be paid during the plan. ***In re* Roso, 76 F.3d 179 (8th Cir. 1996)**.

CHAPTER 12-*ALM* § 13.03[8].*

DISCHARGE. The debtor was divorced in 1984. A 1986 amendment to the property settlement gave the former spouse a judgment lien against the debtor's farm real and personal property to the extent of the unpaid property settlement. In April 1995, the former spouse obtained a monetary judgment for the unpaid property settlement and in May 1995, the debtor filed for Chapter 12. Soon after the divorce decree, the debtor quitclaimed the farm homestead of 480 acres back to the debtor's parents from whom the debtor had purchased the farm on installment contract. The farm homestead was worth several times what remained owed on the debt. After the farm homestead was deeded back to the parents, the debtor continued to live and farm on the homestead without payment of rent. The debtor also transferred livestock to the parents for consideration far below the value of the livestock. During all of these transfers, the former spouse held a judgment lien on the property but did not receive any payment on the debt. The former spouse sought to have the property settlement debt declared nondischargeable under several theories. First, the former spouse argued that the debt was nondischargeable under Section 727(a)(5) because the debtor failed to adequately explain the loss of assets. The court held that the transfers occurred too long before the bankruptcy case to apply Section 727. Second, the former spouse argued that the debt was nondischargeable under Section 523(a)(4) because of fraud or defalcation while acting as a fiduciary. The court held that the debtor was not a fiduciary as to the former spouse as to the property settlement. Third, the former spouse argued that the debt was nondischargeable under Section 523(a)(6) for willful and malicious injury to the property of another. The court held that in transferring the farm homestead and livestock for less than adequate consideration while retaining the use of the property and without compensating the former spouse for the security interest lost in the transfers, the debtor willfully and maliciously damaged the former spouse's security interest in the property with full knowledge that the transfers would injure the former spouse's rights in the property. The court also held that the debt would be nondischargeable under Section 523(a)(15) because the debtor would have sufficient income after the discharge of other bankruptcy debts to pay the property settlement. ***In re*** **Straub, 192 B.R. 522 (Bankr. D. N.D. 1996)**.

REOPENING CASE. The debtors had reached an agreement with the Commodity Credit Corporation (CCC) in their Chapter 12 case for the deposit of the proceeds of collateral in an account pending the debtors' appeal of a cash collateral decision. The appeals were decided in favor of the CCC and the CCC obtained disbursement of the proceeds. However, at the time of the disbursement, the proceeds had grown because of accrued interest and the entire amount was distributed to the CCC. The debtors did not challenge the distribution and the case was eventually closed. Three years after the distribution, the debtors sought to reopen the bankruptcy case to challenge the distribution of the interest to the CCC, claiming excusable neglect for the late challenge. The court held that although a case could be reopened for excusable neglect, the three year delay was too long to allow reopening a case for excusable neglect. ***In re*** **Watford, 192 B.R. 276 (Bankr. M.D. Ga. 1996)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

DISCHARGE. The debtor filed for Chapter 11 and the IRS and state of Illinois filed claims for employment taxes not paid by the debtor. The debtor's plan provided for full payment of the tax claims and the plan was confirmed. After the debtor paid the tax claims, the state filed a claim for additional prepetition employment taxes and the IRS filed a claim for additional FUTA taxes based on the additional state claim. The debtor argued that the claims were barred by the confirmation of the plan. The court held that, because the tax claims were priority nondischargeable claims, whether or not filed, the confirmation of the plan did not affect the status of the claims and the claims were allowed after confirmation of the plan. The court also held that the governmental units were not estopped from bringing the claims because the debtor failed to show any misrepresentation by the government entities or any reliance by the debtor on the filed claims. ***In re*** **McConahey, 192 B.R. 187 (Bankr. S.D. Ill. 1996)**.

The debtors filed for Chapter 11 and the IRS filed a claims for secured, unsecured priority and general unsecured tax claims. The debtors' plan provided for full payment of the claims over the six years of the plan with interest from the date of confirmation. The IRS then sought post-petition, preconfirmation interest on its claims. The court held that, because the plan provided for full payment of the tax claims, no post-petition, preconfirmation interest was allowed. The court noted that such interest would be allowed if the plan did not provide for full payment. ***In re*** **Heisson, 192 B.R. 294 (Bankr. D. Mass. 1996)**.

The debtor filed for Chapter 13 and the IRS filed a claim for taxes owed more than three years before the petition date. The tax claim involved unreported income resulting from the debtor's embezzlement of funds. The taxes were considered as taxes for which the debtor filed a fraudulent return or willfully attempted to evade, under Section 523(a)(1)(C). The court held that, under the plain language of Section 1328(a), the taxes were dischargeable in Chapter 13. ***In re*** **Zieg, 96-1 U.S. Tax Cas. (CCH) ¶ 50,161 (Bankr. D. Neb. 1996)**.

The debtor had filed a previous Chapter 13 case which was dismissed. The debtor filed the current Chapter 13 case and the IRS filed a claim for 1987 and 1988 taxes. The debtor argued that the taxes were dischargeable because the taxes were for years more than three years before the current bankruptcy filing. The court held that the first bankruptcy filing tolled the three year period in Section 507(a)(8)(A) during the first bankruptcy case. Because less than three years passed after the taxes were due and the filing of the second case, less the duration of the first bankruptcy case, the taxes were dischargeable. ***In re*** **Taylor, 96-1 U.S. Tax Cas. (CCH) ¶ 50,181 (3d Cir. 1996)**.

FEDERAL AGRICULTURAL PROGRAMS

CONSERVATION RESERVE PROGRAM. The CCC has issued interim regulations, effective immediately, which allow producers with CRP contracts which expire on September 30, 1996 to terminate the contracts early. The producers may then use the land for farming, haying or grazing under approved conditions. If the land is highly erodible, the land may be farmed if farmed under an Alternative Conservation System as determined by the NRCS. If the land is used for haying or grazing, the use must be according to a plan determined by the NRCS. Land not eligible for the early termination includes land with an

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erodibility index greater than 15, land within an average of 100 feet of a stream or other permanent water body, land subject to a CRP easement and land containing grass waterways, filter strips, shallow water areas for wildlife, bottomland timber, field windbreaks and shelterbelts. Land for which an early release has been granted will not be eligible for reenrollment. **61 Fed. Reg. 10671 (March 15, 1996)**.

GRAIN HANDLING FACILITIES. The OSHA has adopted as final regulations governing protection of employees who enter flat storage structures for grain. **61 Fed. Reg. 9578 (March 8, 1996)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT-*ALM* § 10.05[2].* See case summary p. 12 *supra*. **Conforti v. U.S., 74 F.3d 838 (8th Cir. 1996), *on rehearing*, 69 F.3d 897 (8th Cir. 1995), *aff'g and rev'g*, 54 Agric. Dec. 649 (1995)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The decedent's estate created a trust with the decedent's daughter as income beneficiary with a remainder to a charitable organization. The trust originally provided for all net income to be paid to the beneficiary and provided the trustee with the power to amend the trust to insure that the trust qualified as a charitable remainder unitrust. The trustee petitioned a state court to amend the trust to provide annual payments to the beneficiary expressed as a percent of the fair market value of the trust's assets. The IRS ruled that because the change in the beneficiary's interest was less than 5 percent of the value of the trust assets, the amendment qualified the trust as a charitable remainder unitrust. **Ltr. Rul. 9613012, Dec. 26, 1995**.

GIFTS OF COMMODITY FUTURES CONTRACTS. The taxpayer donated commodities futures contracts to a private foundation. Because of I.R.C. § 1256, the taxpayer could not donate the 40 percent portion of the contract eligible for only short term capital gain or loss treatment; therefore, the taxpayer treated only the 60 percent portion of the contracts eligible for long term capital gain or loss treatment as donated to the foundation. The IRS objected to the charitable deduction for the 60 percent portion under two theories: (1) the transfers were not eligible for the deduction because the gifts represented only partial interests in the contracts and (2) the marked-to-market rules of I.R.C. § 1256 required the taxpayers to recognize any income or loss upon the transfer of the contracts to the foundation. The trial court held that the transfers of 60 percent of the futures contracts were not partial interests because the taxpayer retained no interest in the transferred portion. The trial court held that the imposition of the 60-40 limitations on capital gain or loss treatment of futures contracts did not affect the charitable deduction of transfers divided according to the 60-40 split. The trial court also held that the marked-to-market rules did not apply to gift transfers. The appellate court reversed on the last two issues, holding that I.R.C. § 1256 applied to recognize gain upon donation of the futures contracts. **Greene v. U.S., 96-1 U.S. Tax Cas. (CCH) ¶ 50,180 (2d Cir. 1996), *rev'g*, 864 F. Supp. 407 (S.D. N.Y. 1994)**.

SPECIAL USE VALUATION-*ALM* § 5.03[2]. The IRS has issued the 1996 list of average annual effective interest rates charged on new loans by the Farm Credit Bank system to be used in computing the value of real property for special use valuation purposes:

District	Interest rate
Columbia	8.98
Omaha	8.38
Sacramento	9.28
St. Paul	8.73
Spokane	8.48
Springfield	8.59
Texas	8.86
Wichita	8.44

Rev. Rul. 96-23, I.R.B. 1996-__.

TRANSFERS WITH RETAINED INTERESTS. The decedent had transferred the decedent's residence, valued at $1.3 million, to the decedent's sons for a promissory note for $337,000, with a retained life estate for the decedent. The sons' income from the family corporation was insufficient to make the payments on the note until the decedent forgave one year's payment and increased the sons' compensation and bonuses from the corporation. The decedent also transferred the note to the corporation. The note was paid off by the time of the decedent's death due to large bonuses paid to the sons. The court held that the value of the residence, less the amounts paid by the sons, was included in the gross estate under I.R.C. § 2036(a) because the consideration for the transfer was only 26 percent of the full value of the property. **Wheeler v. U.S., 96-1 U.S. Tax Cas. (CCH) ¶ 60,226 (W.D. Tex. 1995)**.

VALUATION. The decedent's estate consisted of 50 percent of the voting stock of a family owned corporation in which the decedent's heirs owned all of the nonvoting stock and the other 50 percent of the voting stock. The estate was allowed a 25 percent discount in the value of the decedent's stock for lack of marketability but the IRS denied a discount of 10 percent for a minority interest. The court held that the allowance of a lack of marketability discount did not preclude allowance of a minority discount. Because a 50 percent interest in the voting stock was insufficient to control corporate affairs, the decedent's estate was allowed a 10 percent discount for a minority interest. **Wheeler v. U.S., 96-1 U.S. Tax Cas. (CCH) ¶ 60,226 (W.D. Tex. 1995)**.

The decedent owned unregistered voting stock in a corporation in which the decedent was an affiliate under federal securities law. The stock was subject to federal security law restrictions on the sale of the stock during the decedent's life but the restrictions did not apply to the decedent's estate. The estate argued that the stock should be valued for estate tax purposes with a discount for the restrictions in effect during the decedent's life. The court ruled that the valuation was to be determined by reference to the interest which passed by reason of the decedent's death; therefore, because the stock passed to the estate without the restrictions, no discount for the restrictions could be applied to the value of the stock. **Estate of McClatchy v. Comm'r, 106 T.C. No. 9 (1996)**.

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The decedent owned a 67 percent interest in a leasehold in a parking garage. The executors valued the leasehold for estate tax purposes based on a pending offer to purchase the leasehold. The sale did not occur, however, and the leasehold was sold to the decedent's son for much less than the estate tax value. The executors sought to amend the estate tax return to decrease the value. The trial court denied the lower value, holding that the executors failed to rebut the IRS valuation of the leasehold at the value originally claimed by the estate. The appellate court affirmed, holding that the executors failed to show that the trial court's decision was erroneous. **Wrona v. U.S., 96-1 U.S. Tax Cas. (CCH) ¶ 60,227 (Fed. Cir. 1996)**.

FEDERAL INCOME TAXATION

DEPRECIATION. The taxpayers used a home office for their financial services activity and for managing two residential rental properties. The taxpayers claimed depreciation deductions for computer equipment used exclusively for those business activities. The taxpayers did not keep any records to substantiate the computer business use. The taxpayers were allowed home office deductions for the home office. The court held that the computer equipment was not "listed property" under I.R.C. § 280F(d)(4)(B) requiring substantiation records because the equipment was used at a regular business establishment which included a home office. **Zeidler v. Comm'r, T.C. Memo. 1996-157**.

NET OPERATING LOSSES. The taxpayer had claimed a NOL carryover from 1990 to 1991; however, the taxpayer failed to timely file the 1990 tax return. The court held that the taxpayer failed to timely file the waiver to carryback NOL because the tax return was not timely filed. The Tax Court had disallowed any carryback because the taxpayer failed to substantiate the carryback to the three years before 1990. The appellate court affirmed on the first issue and reversed on the second issue, holding that the Tax Court had not given the taxpayer sufficient opportunity to demonstrate that the NOLs could not have been carried back. **Moretti v. Comm'r, 96-1 U.S. Tax Cas. (CCH) ¶ 50,162 (2d Cir. 1996)**.

SOCIAL SECURITY. Congress has passed new limits on the maximum amount of annual earnings before reduction of benefits for persons who reach retirement age:

1997	$12,500	2001	$17,000
1998	$13,500	2002	$25,000
1999	$14,500	2003	$30,000
2000	$15,500		

H.R. 3136.

NEGLIGENCE

AERIAL SPRAYING. The plaintiffs grew tomatoes and jalapenos peppers which suffered damage from exposure to herbicide. The plaintiffs sued in negligence the defendants who had sprayed neighboring fields with herbicide. The court focused on the plaintiffs' presentation of evidence to rebut the defendant's testimony that the defendant used reasonable care in spraying the neighboring fields. The court found that the plaintiffs failed to provide expert testimony as to the care used by the defendant in applying the herbicide. The plaintiffs had provided expert testimony as to the effect of the herbicide on the tomatoes and jalapenos but the testimony did not cover the reasonableness of the defendant's care in applying the herbicide. The court held that the trial court should have entered a directed verdict for the defendant because the plaintiffs failed to provide evidence that the spraying was not done with reasonable care. **Hager v. Romines, 913 S.W.2d 733 (Tex. Ct. App. 1995)**.

CITATION UPDATES

Walthall v. Comm'r, 911 F. Supp. 1275 (D. Alaska 1995). (Partnership administrative adjustments) see p. 47 *supra*.

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