

- Income averaging for farmers was made a permanent part of the Internal Revenue Code. The concept would otherwise have expired after 2000.

- A special five year net operating loss carryback for farmers was adopted. Tax refunds may be obtained for net operating loss carrybacks.

- A provision was adopted preventing application of the doctrine of constructive receipt to AMTA payments (the payments under the 1996 farm bill). Earlier, Congress had acted to allow the Spring, 1999 payment to be available for payment in the fall of 1998. Under the new provision, payments will be included in income in the year payment is actually received. Without the legislation, the payments could have been deemed to be constructively received—and hence taxable—in 1998 even though not actually received until 1999.

- The deductibility of health care insurance premiums for self-employed individuals is accelerated by the legislation. Self-employed individuals will be able to deduct 60 percent in 1999 through 2001, 70 percent in 2002 and 100 percent in 2003 and later years.

Disaster Relief

The legislation includes \$2.575 billion in funding to address crop disaster losses. The Secretary of Agriculture is given broad authority to create and implement a disaster program.

- Single year disaster — the legislation makes \$1.5 billion available to assist producers with crop losses in 1998.

- Multi-year disaster — an additional \$875 million is made available to provide assistance to producers who have suffered a multiple-year crop loss, especially for farmers in the Upper Midwest whose crops have suffered from wheat scab disease and multi-year flooding.

- Livestock feed assistance — \$200 million in funding is provided for cost share assistance to livestock producers who lost their 1998 supplies of feed to disasters.

Several conditions are imposed on the legislation—

- Payments will be available to all producers of all crops who have had crop losses.

- Payments will be allowed for losses in quantity and quality (specifically including aflatoxin) as well as severe economic losses because of damaging weather or related conditions.

- The Secretary is given authority to determine eligible crop losses, loss thresholds, eligible persons, payment limitations and payment rates.

- The Secretary is authorized to provide incentives to those who purchased crop insurance in 1998.

- Recipients of 1998 disaster assistance who did not purchase crop insurance in 1998 are required to purchase crop insurance for the next two years.

Market Loss Assistance

The legislation provides \$3.15 billion in payments to producers eligible for contract payments under provisions of the 1996 farm bill. The assistance will be paid in the form of a one-time payment similar to the Agriculture Market Transition (AMTA) payments under the 1996 farm bill. The additional payment will total about 52 percent of the AMTA payment received by a producer in fiscal year 1998.

From the amount allocated for market loss assistance, dairy producers will receive payments totaling \$200 million through procedures to be determined by the Secretary.

Bio Diesel

In order to provide market loss assistance to soybean producers who are not eligible for AMTA payments, the legislation amends the Energy Policy Act of 1992 to provide fuel use credits to operators of vehicle fleets who use fuel containing at least 20 percent bio diesel by volume. It is estimated that the increased demand will increase prices by several cents per bushel.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-ALM § 13.03.*

EXEMPTIONS

HOMESTEAD. The debtor owned 2.61 acres which included the debtor's residence and land leased to a corporation owned by the debtor and former spouse. The corporation operated a nursery on the leased property. The debtor constructed an irrigation system on the property and later leased the irrigated property to an unrelated third party. The entire property could not be subdivided. The court held that the leased portion of the property could not be exempt under the Florida homestead exemption. The court required the debtor to pay to the bankruptcy estate the value of the leased portion or the whole property was to be sold, with the proceeds divided between the

exempt and non-exempt portions. *In re Nofsinger*, 221 B.R. 1018 (Bankr. S.D. Fla. 1998).

PLAN. The debtor was a purchasing cooperative which dealt in agricultural chemicals, including fertilizers, pesticides and herbicides. A creditor objected to the valuation of the inventory in the debtor's plan. The debtor's valuation expert testified that the value of the chemicals was only 10-15 percent of costs because the inventory of chemicals would be very difficult to sell because the chemicals were at several locations around the country, were packaged in branded containers, and were difficult to handle. The creditor argued that the inventory could be liquidated over time at no less than 50 percent of cost by continuing to sell the chemicals to the debtor's member retailers. The court held that the debtor's valuation would be used because the sale of the entire inventory at liquidation would yield a greater payment to creditors than any attempt to sell the inventory to member retailers. *In re Voluntary*

Purchasing Grps., Inc., 222 B.R. 105 (Bankr. E.D. Tex. 1998).

FEDERAL TAXATION-ALM § 13.03[7].*

DISCHARGE. The debtors filed for an automatic extension to file their 1993 tax return and listed the estimated tax due as zero. The 1993 return was filed on July 5, 1994 and showed taxes due of over \$11,000. The debtors filed for bankruptcy on June 25, 1997, less than three years after the return was filed with the extension but more than three years after the original due date of the return. The debtors and IRS stipulated that the return was not fraudulent. The debtors argued alternatively that either (1) the three year period in Section 507(a)(8)(A) and 523(a)(1)(A) ran only from the original due date of the return or (2) the extension was invalid because the debtor knew that the taxes due would be more than zero when the extension was filed. The court held that the three year period was counted from the date the return was filed under a valid extension and that the extension was valid because the debtor stipulated that the return was not fraudulent and failed to provide any evidence that the debtor knew the extension tax statement was false. *In re Hermann, 221 B.R. 944 (Bankr. N.D. Okla. 1998).*

RETURNS. The debtor filed an income tax return for the bankruptcy estate and then filed an amended return for the estate. The debtor requested a prompt determination with only the amended return. The amended return was accurate but failed to include the amount of taxable income listed on the original return. The IRS failed to notify the debtor that the return was selected for examination within 90 days after receiving the debtor's request. The IRS originally argued that an exception to that rule applied because the amended return contained a material misrepresentation from the failure to include the taxable income from the original return. The Bankruptcy Court held that the omission of the original taxable income was not a material misrepresentation; therefore, the IRS was prohibited from challenging the amended return. On appeal, the IRS argued only that the failure of the IRS to timely object to the return discharged only the debtor from additional tax liability. The District Court agreed and held that the estate was not discharged from additional tax liability by the IRS delay. *In re Grassgreen, 221 B.R. 975 (M.D. Fla. 1996), aff'g in part and rev'g in part, 200 B.R. 696 (Bankr. M.D. Fla. 1996).*

CONTRACTS

PURCHASE OPTION. The defendant had been leasing ranch property to a third party and the lease contained a provision giving the tenant a preferential right to purchase the ranch if the ranch was to be sold. The defendant reached an agreement with the plaintiff for the sale of the ranch subject to the preferential right to purchase. The defendant sent a letter to the tenant which stated that the tenant could exercise the preferential right by purchasing the ranch on the same terms as the agreement with the plaintiff. The letter also stated that the tenant could declare the intent to exercise the right by signing the letter and returning it to the defendant within 20 days. Instead, the defendant and tenant orally agreed to sell the ranch to the tenant on different terms. The tenant then signed the letter and returned it to the defendant. The plaintiff sued for breach of contract and sought specific performance of the sale agreement. The court held that the tenant failed to properly exercise the preferential right of purchase because the tenant did not comply

with the requirements of the notice letter in that the tenant's purchase terms were different from the sale terms with the plaintiff. Because the tenant did not properly exercise the preferential right, the court held that the tenant had no rights in the ranch superior to the defendant or plaintiff and that the defendant's failure to perform the sales agreement with the plaintiff was a breach of that contract. **Abraham Investment Co. v. Payne Ranch, Inc., 968 S.W.2d 518 (Tex. Ct. App. 1998).**

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has issued proposed amendments to the brucellosis regulations to allow a state to retain its Class Free status following the detection of an affected herd if the state meets certain conditions. These conditions, which would include quarantining, testing, and depopulating the affected herd and conducting an investigation to ensure that brucellosis has not spread from the affected herd, would allow a state to avoid losing its Class Free status due to an isolated case of infection being detected in the State. The purpose of the amendment is to encourage states to promptly resolve isolated cases of brucellosis and thus ensure the continued progress of state and federal efforts toward the eradication of brucellosis in domestic cattle and bison herds. Without this proposed change in the regulations, a state could lose its Class Free status following the detection of a single affected herd and would not have as great an incentive to take swift and decisive action to determine the source of the infection, eliminate the affected herd, and ensure that the disease had not spread to other herds in the state. **63 Fed. Reg. 49670 (Sept. 17, 1998).**

The APHIS has adopted as final amendment of the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Louisiana from Class Free to Class A. **63 Fed. Reg. 53548 (Oct. 6, 1998).**

The APHIS has adopted as final amendment of the brucellosis regulations concerning the interstate movement of swine by adding Oklahoma to the list of validated brucellosis-free States. **63 Fed. Reg. 53548 (Oct. 6, 1998).**

The APHIS has issued interim regulations amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Mississippi from Class A to Class Free. **63 Fed. Reg. 53780 (Oct. 7, 1998).**

The APHIS has issued interim regulations amending the brucellosis regulations concerning the interstate movement of swine by adding South Carolina to the list of validated brucellosis-free states. **63 Fed. Reg. 53781 (Oct. 7, 1998).**

FUNGICIDE. See the following case under **Products Liability**, *infra*. **Kawamata Farms v. United Agri Products, 948 P.2d 1055 (Hawai'i 1998).**

KARNAL BUNT DISEASE. The APHIS has adopted as final amendments to the Karnal Bunt regulations to allow, under certain conditions, commercial lots of seed to move from restricted areas for seed. The new rules also amend the testing requirements for regulated articles other than seed, remove certain articles from the list of articles regulated because of Karnal Bunt, clarify the terms "used mechanized harvesting equipment" and "used seed conditioning equipment," and clarify requirements for soil movement with vegetables. The

changes would relieve restrictions on the movement of articles from areas regulated because of Karnal Bunt. The new rules amend the requirements for treating millfeed and soil, and remove the methyl bromide treatment alternative for decorative articles. The new rules amend the definition of surveillance areas to more clearly distinguish between surveillance areas and restricted areas. In addition, the new rules amend the regulations governing the importation of wheat into the United States to make the definition of the term "Karnal Bunt" consistent with the definition of that term in the Karnal Bunt regulations. **63 Fed. Reg. 50747 (Sept. 23, 1998).**

PERISHABLE AGRICULTURAL COMMODITIES ACT. The plaintiff sold \$7 million in cranberries to the defendant and brought suit under PACA for the remaining \$4.4 million due. The shipments were made from September 25, 1997 through November 25, 1997. The sale agreement provided for payment of 75 percent of the price within ten days of delivery and 12.5 percent of the price due on January 1, 1998 and February 1, 1998. The court held that the plaintiff was not entitled to PACA trust protection because the payment terms allowed some payments more than 30 days after delivery. **Hiller Cranberry Products v. Koplovsky Foods, Inc., 2 F. Supp.2d 157 (D. Mass. 1998).**

TUBERCULOSIS. The APHIS has adopted as final amendment of the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Hawaii from an accredited-free (suspended) state to an accredited-free state. **63 Fed. Reg. 53547 (Oct. 6, 1998).**

The APHIS has adopted as final regulations concerning animals destroyed because of tuberculosis to provide for the payment of federal indemnity to owners of cattle, bison, and captive cervids that have been classified as suspects for tuberculosis and have been destroyed, when it has been determined by the APHIS that the destruction of the suspect animals will contribute to the tuberculosis eradication program in U.S. livestock. The regulations also allow the U.S. Department of Agriculture to pay herd owners some of their expenses for transporting the suspect cattle, bison, and captive cervids to slaughter or to the point of disposal, and for disposing of the animals. Prior to this rule, owners of cattle, bison, and captive cervids could only receive federal indemnity for affected and exposed animals destroyed because of tuberculosis, and animals in an affected herd destroyed as part of a herd depopulation. Indemnity for suspects will provide incentive for owners to promptly destroy suspect animals, thereby hastening the diagnosis of tuberculosis in a herd. **63 Fed. Reg. 53546 (Oct. 6, 1998).**

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The decedent's will established a trust funded with the residuary estate. The trust provided for four income interests, two for individuals and two for charitable organizations. The interests of the individuals lasted for the lesser of 21 years or the lifetime of the individuals. At the termination of the individual interests, the entire principal passed to the charities. The estate sought a charitable deduction for 50 percent of the trust. The trust was not a charitable remainder annuity trust, a charitable remainder unitrust, or a

pooled income fund as defined in I.R.C. §§ 664(d)(1)-(3), 642(c)(5). The court held that no charitable deduction was allowed for the trust because the trust provided for a split interest of individuals and charitable organizations in the same trust and the trust was not structured as a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund. The estate argued that the trust was structured so as to be as secure as the exceptions allowed by I.R.C. § 2055. The court held that the trust was not as secure for the charities' interests because the individuals would want the principal invested in higher return but more risky investments which could reduce the principal remaining for the charities. The court noted that the statute was clear and evidenced clear Congressional intent to require the specific structuring of split interest trusts in order for the trusts to qualify for the charitable deduction. **Zabel v. United States, 98-2 U.S. Tax Cas. (CCH) ¶ 60,328 (D. Neb. 1998).**

FARMER-OWNED BUSINESS DEDUCTION. On page 20 of the instructions for Form 706, under "Material Participation," the instructions state:

"To make the section 2057 election, either the decedent or a member of the decedent's family must have materially participated in the trade or business to which the ownership interest relates for at least 5 of the 8 years ending on *the date of the decedent's death.*"(italics added)

The italicized words should read "the earlier of the decedent's retirement, disability or death."

GROSS ESTATE-ALM § 5.02.* The decedent had received an interest in trust in real property. The trust provided the decedent with the power to withdraw 5 percent of trust corpus annually and a special power of appointment over trust corpus to the decedent's and pre-deceased spouse's descendants. The decedent did not exercise either power. The decedent's executor included the entire trust corpus in the decedent's estate and used the fair market value of the property as the basis to determine gain from the post-death sale of the property. The court held that the trust corpus did not pass to the decedent's estate upon the decedent's death but remained in the trust and the special power of appointment was extinguished upon the decedent's death; therefore, only 5 percent of the trust corpus was included in the decedent's gross estate and only the fair market value of that 5 percent was usable as a step-up in basis in the sale of the property. The appellate court affirmed in a decision designated as not for publication. **Prokopov v. Comm'r, 98-2 U.S. Tax Cas. (CCH) ¶ 60,329 (2d Cir. 1998), aff'g, T.C. Memo. 1997-229.**

TRUSTS. The taxpayer owned a fee simple title interest in a property consisting of land improved by a single family residence, a sheep barn, a horse barn, and a wood and tool shed. The property was placed in a trust which was designed to be a qualified personal residence trust. The property was consistent with properties in the neighborhood and was not used for commercial purposes. The IRS ruled that the property was a qualified personal residence. **Ltr. Rul. 9841015, July 2, 1998.**

VALUATION. The decedent owned an interest in property bequeathed by the decedent's predeceased spouse. The interest included a testamentary power of appointment over the property. By will, the decedent exercised the power of appointment over certain property the decedent received in trust from the predeceased spouse in favor of the predeceased spouse's children who were the decedent's step-children. The property over which decedent exercised the general power of appointment included the general and limited partnership

interests subject to restrictions on the transfer of these interests. The IRS ruled that the decedent's step-children were members of the decedent's family for purposes of determining if any option, agreement, right, or restriction was a device to transfer the property to members of the decedent's family for less than adequate and full consideration in money or money's worth under I.R.C. § 2703(b)(2). **Ltr. Rul. 984105, June 4, 1998.**

FEDERAL INCOME TAXATION

BAD DEBT DEDUCTION. The taxpayer had established a wholly-owned S corporation to perform securities transactions solely for the taxpayer. The taxpayer contributed cash to the corporation which was used to purchase the securities. The contributions were not secured nor were any notes written or interest charged on the contributions. The corporation eventually became insolvent. The taxpayer claimed a bad debt deduction for the amounts contributed to the corporation; however, the court held that the contributions were not bona fide debt because no debtor-creditor relationship was established. The appellate court affirmed in a decision designated as not for publication. **Boatner v. Comm'r, 98-2 U.S. Tax Cas. (CCH) ¶ 50,785 (9th Cir. 1998), aff'g, T.C. Memo. 1997-379.**

CORPORATIONS-ALM § 7.02.*

DEDUCTIONS. The taxpayer was the sole shareholder of a corporation established to develop a computer-controlled sprinkler system invented by the taxpayer. The taxpayer purchased equipment which was contributed to the corporation. For the tax years in issue, the taxpayer claimed all business expenses on the taxpayer's personal Schedule C and the corporation did not have any income. The court held that the expenses belonged to the corporation and could not be claimed on the taxpayer's personal returns. **Das v. Comm'r, T.C. Memo. 1998-353.**

EMPLOYMENT TAXES. The taxpayer operated a business which bought, stored, cleaned and sold grass seed. The taxpayer hired an employee to handle the marketing of the seeds. The employee was given the title of treasurer but performed only minor duties as treasurer. The court held that the employee was an independent contractor because (1) the taxpayer's board of directors did have control over the employee and were only interested in the results the employee produced; (2) the employee had previously acquired expertise in seed marketing; (3) the parties treated the employee as an independent contractor; (4) the employee kept an office away from the taxpayer's plant and did not visit the taxpayer's plant very often; (5) the employee did not make extensive, required or detailed reports to the taxpayer; (6) the taxpayer did not train the employee; (7) the taxpayer did not pay the employee during the regular payroll periods; and (8) the taxpayer did not give the employee any fringe benefits, including, but not limited to health insurance, workers' compensation coverage, and retirement plans. **Seeds, Inc. v. United States, 98-2 U.S. Tax Cas. (CCH) ¶ 50,767 (E.D. Wash. 1998).**

EXPENSE METHOD DEPRECIATION. The taxpayer originally filed a timely income tax return and listed business property under the I.R.C. § 179 expense method depreciation deduction. The original return included expenses for the purchase of an automobile but the IRS denied that deduction.

The taxpayer then filed an amended return which left off the car and added additional items. The taxpayer claimed to have filed a second amended return but provided no evidence of the return. The taxpayer argued that the automobile was used in her business but provided no substantiation of that claim. The court held that the expense method deduction could not be allowed for the additional items because they were not listed on the original return, the amended return was filed after the due date for the original return, and the taxpayer did not obtain IRS consent for revocation of the first election. The court also denied the deduction for the car because the taxpayer failed to substantiate its business use. **Green v. Comm'r, T.C. Memo. 1998-356.**

HOBBY LOSSES. The taxpayers, husband and wife, operated an activity that included the breeding, care, showing, and occasional sale of cutting horses used in competitions. The husband was employed full time in another business and the wife devoted at least six hours a day to the horse activity. The horse activity never had a taxable profit. The court held that the taxpayers did not operate the horse activity with the intent to make a profit, based on the following findings: (1) although the taxpayers maintained accurate and separate records of the activity, the taxpayers did not use the records to evaluate the profitability of the activity; (2) the taxpayers did not create a plan for profitability other than to try to economize in purchases; (3) although the wife developed expertise in the riding and breeding of horses, the taxpayers did not have or acquire expertise in operating a business involving horses; (4) the wife devoted substantial time to the activity but much of the time had an element of personal enjoyment and recreation; (5) the taxpayers failed to demonstrate that any of the horses would appreciate sufficiently to offset the years of losses; (6) the activity had 23 years of losses; and the taxpayers had substantial income from the husband's employment which was offset by the horse activity losses. **Sullivan v. Comm'r, T.C. Memo. 1998-367.**

HOME OFFICE. The taxpayer was self-employed as a commercial fisherman on a boat owned by a corporation in which the taxpayer was a one-third shareholder. The boat was located and operated in ocean waters off Alaska and Washington but the taxpayer lived the rest of the year with his spouse and children in Minnesota. The taxpayer used a room in the taxpayer's house to arrange business for the boat and stored fishing gear in a shed on the taxpayer's property. The court held that the taxpayer's principal place of business was on the boat in Alaska and Washington and denied any deduction for the use of the taxpayer's residence in Minnesota. **LaFavor v. Comm'r, T.C. Memo. 1998-366.**

MEAL EXPENSES. The taxpayer operated an acupuncture practice in an office shared with a chiropractor. The parties referred clients to each other. The two met each day for lunch and discussed issues relating to their practices and the use of the office. The parties alternated paying for the meals. The taxpayer claimed the cost, less 50 percent, of the meals as a business expense. The court denied the deduction because the purpose of the meals was not to further the taxpayer's business. The court noted that the frequency of the lunches and the reciprocal nature of the meal payment arrangement demonstrated the lack of any business purpose for the meals. **Dugan v. Comm'r, T.C. Memo. 1998-373.**

PARTNERSHIPS-ALM § 7.02[3][c].*

LIMITED LIABILITY COMPANIES. The taxpayer was a general partnership that owned and operated real property

improved by a building with commercial office space. The taxpayer was mortgagee on a commercial mortgage secured by the real property as well as by the leases in and the personal property on that real property. In addition, each of the partners of the taxpayer had personally guaranteed the mortgage. Each partner's personal guarantee of the mortgage, however, was limited to a percentage of the mortgage equal to double the partner's percentage ownership interest in the partnership. Each partner of the taxpayer contributed the interest in the partnership interest to a new limited liability company (the LLC) in exchange for an equal membership interest in the LLC. The partnership and the LLC merged in accordance with state law, and the LLC continued the business operations of the partnership. Each member of the LLC continued to have the same personal liability under the mortgage as that member had as a partner. The IRS ruled (1) the LLC would be deemed a continuation of the partnership and no termination of the partnership will result under I.R.C. § 708; (2) neither the LLC nor the partnership would recognize any gain or loss as a result of the consolidation or merger; (3) to the extent that there was no change in any partner's individual share of the partnership's liabilities, none of the partners in the partnership would recognize gain or loss as a result of the exchange of the interest in the partnership for an interest in the LLC; (4) the LLC would have a basis in the assets acquired from the partnership equal to the basis of such assets in the hands of the partnership; (5) to the extent that there was no change in any partner's individual share of the partnership's liabilities, each member of the LLC would have a basis in the LLC equal to the basis of that member's partnership interest in the partnership; (6) the holding period of each member's interest in the LLC would include the holding period of that member's partnership interest in the partnership; (7) the taxable year of the partnership would not close with respect to any of the partners; and (8) the LLC did not need to obtain a new taxpayer identification number for federal income tax purposes and could report its activities using the taxpayer identification number of the partnership. **Ltr. Rul. 9841030, July 14, 1998.**

PASSIVE ACTIVITY LOSSES. The taxpayers, husband and wife, owned a commercial building and leased the building to a personal service corporation owned and operated by one of the taxpayers as a law office. The taxpayers claimed the rental income as passive activity income and offset the income against other passive activity losses. The IRS denied the offset under Treas. Reg. § 1.469-2(f)(6), which provided that rental income was not passive if it came from the leasing of property to a business in which the taxpayer materially participated. The taxpayers argued that the regulation was not authorized by the statute. The court held that the legislative history of I.R.C. § 469 indicated Congressional intent that such a regulation could be promulgated to prevent converting nonpassive income into passive income by leasing property to a related entity. **Fransen v. United States, 98-2 U.S. Tax Cas. (CCH) ¶ 50,776 (E.D. La. 1998).**

RETURNS. The IRS has announced the publication of Form 1099C, Cancellation of Debt, and Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness. These and other forms are available from the IRS web site at <http://www.irs.ustreas.gov>.

SALE OF RESIDENCE. The taxpayers decided to sell their residence in California and move to Missouri to retire. The

taxpayer agreed to exchange their residence for another residence in a neighboring town in a transaction which would give the taxpayers enough cash to purchase property in Missouri. The new property was not used as a residence for the taxpayers but was immediately marketed for sale. The new residence was eventually sold for a loss which the taxpayers claimed as a short-term business loss deduction which was used to offset gain realized on the sale of the first residence. The court held that the second residence was not purchased with any intent to make a profit and disallowed the loss deduction. **Taylor v. Comm'r, T.C. Memo. 1998-351.**

SOCIAL SECURITY TAX-ALM § 4.06.* Beginning with the January 2, 1999 payment, the monthly social security benefit payments will increase 1.3 percent to a maximum of \$500 for an individual and \$751 for a couple. The maximum amount of annual wages subject to Old Age Survivors and Disability Insurance for 1999 is \$72,600, with **all** wages and self-employment income subject to the medicare portion of the tax. For 1999, the maximum amount of annual earnings before reduction of benefits is \$15,500 for persons aged 65 through 69 and \$9,600 for persons under age 65. The amount of wages necessary for one quarter of coverage is \$640.

NUISANCE

AGRICULTURAL AREA. The plaintiff sought designation, under Iowa Code Ch. 352, of the plaintiff's rural property as an agricultural area. The county board denied the application based upon the objections of the neighboring town, which was bordered on three sides by the property and neighboring landowners. The county board ruled that granting the designation would violate a purpose of the statute in that the designation would adversely affect the property rights of the neighboring landowners. The court upheld the denial of the application, holding that the county board had sufficient evidence of the adverse impact on neighboring property owners. **Petersen v. Harrison Cty. Bd. of Suprvs., 580 N.W.2d 790 (Iowa 1998).**

PRODUCT LIABILITY

FUNGICIDE. The defendants formulated, manufactured, packaged, marketed and distributed a fungicide that the plaintiff applied to soil on the plaintiff's farm. The plaintiff alleged that the fungicide damaged crops because the fungicide was adulterated with atropine, a herbicide. The plaintiff brought actions in negligence and strict liability based on defective design of the fungicide and in breach of express warranty from label statements not required by FIFRA or approved by the EPA. The defendants argued that the actions were preempted by FIFRA. The court held that the claims based on defective design were not preempted by FIFRA and the breach of express warranty claim for label statements not required by FIFRA or approved by EPA was not preempted by FIFRA. **Kawamata Farms v. United Agri Products, 948 P.2d 1055 (Hawaii 1998).**



PROPERTY

EASEMENT. The plaintiff leased property from the defendant and the parties agreed to install an underground pipeline from a river neighboring the defendant's property to the leased property and the plaintiff's own land. The plaintiff paid additional rent to compensate the defendant for the pipeline construction and obtained a water use permit from the state. The lease had a term of 10 years and provided that (1) an easement was granted by the defendant for the pipeline and (2) the easement terminated if the lease terminated. The defendant decided not to renew the lease at the end of the 10 year term and prohibited the plaintiff from pumping water through the pipeline for use on the plaintiff's land. The court held that the lease provisions controlled the easement rights and the plaintiff had no permanent easement to pump water through the pipeline. The plaintiff also sought to acquire the easement through N.D.C.C. § 61-01-04 which allowed a private right of eminent domain for public use. The trial court had ruled that the plaintiff's use of the water was not a public use, but the appellate court reversed, holding that a beneficial use of public water could be a public use. The court held that the plaintiff could exercise the private right of eminent domain if the trial court on remand found that the easement was necessary for application of the water for a beneficial use. **Mougey Farms v. Kaspari**, 579 N.W.2d 583 (N.D. 1998).

STATE REGULATION OF AGRICULTURE

LIVESTOCK CONFINEMENT FACILITIES. The defendants planned to build a large livestock confinement facility and the Kansas Department of Health and Environment (KDHE) issued a permit for the construction of the facility. The plaintiffs challenged the permit but the facility, to the extent of construction on June 27, 1994, was determined to be exempt from the permit requirement. The plaintiffs brought the current action to enforce the permit requirement as to additional facilities built by the defendants. The trial court granted summary judgment for the defendants, holding that the facility expansion had occurred within the planned perimeter of the facility as it existed on June 27, 1994, thus the facility was still exempt from the permit requirements. The appellate court

reversed, holding that factual issues remained as to what facility existed on June 27, 1994 and what existed currently. **Ringler Trust v. Meyer Land & Cattle**, 958 P.2d 1162 (Kan. App. 1998).

STATE TAXATION

USE TAX. The taxpayer operated a banana and tomato wholesale business. The bananas were received very green and the taxpayer had to induce the ripening process by placing the bananas in ripening booths filled with ethylene gas for several days. The tomatoes arrived, however, with the ripening process already started and the taxpayer's employees only inspected, sorted and packaged the ripening tomatoes. The employees were required to wear protective clothing to prevent contamination of the fruit. The taxpayer sought exemption of the equipment used in ripening the bananas and preparing the tomatoes, including the protective clothing worn by the employees. Under Ind. Code §§ 6-2.5-5-1, -2, -3, personal property used in production of other personal property was exempt from the use tax. The court held that the banana ripening process was production because the bananas were converted from inedible, nonripening fruit to edible, ripening fruit by the taxpayer's actions. The tomato handling was not production because nothing was done to change the nature of the tomatoes by the taxpayer. The protective clothing was exempt. **Indianapolis Fruit v. Dept. of State Revenue**, 691 N.E.2d 1379 (Ind. Tax 1998).

CITATION UPDATES

L.L. Bean v. Comm'r, 145 F.3d 53 (1st Cir. 1998), *aff'g*, **T.C. Memo. 1997-175** (investment tax credit) see p. 94 *supra*.

Oeltjenbrun v. CSA Investors, Inc., 3 F. Supp.2d 1024 (N.D. Ia. 1998) (hedge-to-arrive contracts) see p. 84 *supra*.

