CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

WILD ANIMALS. The plaintiff was injured when the plaintiff's car struck a wild elk lying on an interstate highway. The plaintiff filed suit against the state for negligently failing to prevent elk from crossing the highway. The state argued that it could not be held liable for the actions of wild animals not in its control. The state appealed a jury verdict for the plaintiff but the appellate court affirmed the verdict because the state had a duty to protect motorists from known dangers. **Booth v. State of Arizona, 93 P.3d 61 (Ariz. Ct. App. 2004)**.

BANKRUPTCY

GENERAL

SETOFF. The farm debtor originally filed for Chapter 7 and that case was closed with the debtor personally discharged of debts, including secured debts owed to the FSA. The creditor sought foreclosure of those secured debts but the foreclosure was delayed by the debtor's filing for Chapter 12. The debtor was allowed to enroll in federal farm programs post-petition and became entitled to payments under those programs. The USDA sought a setoff of the farm program payments against the secured debts. The court held that, because the debtor was relieved of personal liability for the secured debts in the prior Chapter 7 case, there existed no mutual prepetition personal debts between the USDA and the debtor to support a setoff under Section 553(a). The appellate court affirmed. ***In re* Myers, No. 02-2350 (10th Cir. 2004), *aff'g*, 284 B.R. 478 (Bankr. 10th Cir. 2002)**.

CHAPTER 12

RESIGNATION OF TRUSTEE. The court received a notice that the U.S. Trustee (UST) had accepted the resignation of the standing Chapter 12 trustee for the court's district. The UST did not file the letter with the court or provide any notice to the court, parties or attorneys involved in current Chapter 12 cases. The UST argued that, because the UST had the power to appoint the standing trustee and to appoint a successor trustee, the UST had the authority to remove the standing trustee. The Bankruptcy Court held that the standing trustee could be removed only after notice and a hearing as required by Section 324 and that the UST's powers did not include the power to remove the standing trustee without court approval. The appellate court reversed, agreeing with the UST, that the UST power to appoint trustee's implied the power to accept their resignation without prior court notice or approval. ***In re* Brookover, 352 F.3d 1083 (6th Cir. 2004), *rev'g and rem'g*, 259 B.R. 884 (Bankr. N.D. Ohio 2001)**.

FEDERAL TAX

DISCHARGE. The The debtor filed income tax returns for 1981 and 1982 but with crossed out jurats. The court ruled that the altering of the jurats made the returns unverified and not valid returns; therefore, the taxes owed for those years was nondischargeable under Section 523(a)(1)(B)(i). ***In re* Pelullo, 2004-1 U.S. Tax Cas. (CCH) ¶ 50,191 (Bankr. E.D. Pa. 2004)**.

The debtor had failed to timely file income taxes for several years but eventually filed the returns for 1983 through 1990 in 1992. The IRS acknowledged receipt of all but the 1986 return. The debtor filed for Chapter 7 and received a discharge but the IRS argued that the 1986 taxes owed were not discharged because no return was filed. The debtor presented evidence of a signed and dated copy of the 1986 return which was also signed by the return preparer. The court held that the copy of the return and the fact that the return was filed with several other returns which were received moved the burden of proof to the IRS to show that it did not receive the return. Because the IRS filed to prove that the return was not filed, the court held that the 1986 taxes were discharged. The IRS also argued that the filing of the 1986 return six years after it was due was not an "honest and reasonable attempt" to meet the filing requirements and should not be considered a return for purposes of Section 523(a)(B). The court held that, because the late returns were filed in order to enable the debtor to make offers in compromise, the returns served a valid good faith purpose and would be considered valid returns for purposes of the discharge of the taxes owed. ***In re* Payne, 2004-1 U.S. Tax Cas. (CCH) ¶ 50,210 (Bankr. N.D. Ill. 2004)**.

The debtor failed to timely file income tax returns for 1990 and 1992. The IRS constructed substitute returns and made assessments based on those returns. The debtor eventually did file the 1990 and 1992 returns and some of the assessments were abated based on those returns. The court held that the late filed returns did not qualify as returns for purposes of Section 523(a)(1)(B)(i) and that the 1990 and 1992 taxes owed were nondischargeable for failure to file a return for those years. ***In re* Moroney, 352 F.3d 902 (4th Cir. 2004), *aff'g*, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,117 (E.D. Va. 2002)**.

FEDERAL AGRICULTURAL PROGRAMS

ADMINISTRATIVE OFFSET. The plaintiffs were a corporation, family trust and partnership which operated farms. In each case, a government farm program payment to the entity was reduced by an offset of money owed personally by a shareholder, member or partner to the CCC or USDA. Under its interpretation of the regulations, the USDA gave notice of the offset to the individuals but not to the plaintiffs. The plaintiffs argued that the no-notice to non-debtors policy violated their due process rights. The District Court dismissed the case for lack of subject matter jurisdiction because the plaintiffs had not exhausted their administrative appeals, as required by 7 U.S.C. § 6912(e). The appellate court reversed and held that the statute did not prohibit judicial review of the USDA action because the exhaustion statute merely reiterated the exhaustion requirement and did not specifically prohibit judicial review until administrative appeals were exhausted. The court also noted that the exhaustion doctrine was not required to be followed where there was a constitutional claim which was "(1) collateral to a substantive claim of entitlement, (2) colorable, and (3) one whose resolution would not serve the purposes of exhaustion." The court held that all three conditions were met: (1) the USDA had no administrative appeal process for facial constitutional claims against a regulatory policy, (2) lack of notice was a colorable due process claim, and (3) exhaustion of the administrative appeal process would be futile because the National Appeals Division had no authority over this kind of claim. The USDA also claimed that the case was moot because it had changed its policy to provide notice to non-debtors, but the court refused to dismiss the case because of some evidence that local USDA offices were not providing notice to non-debtors. On remand, the District Court held that the CCC had the statutory and regulatory authority to offset the debts, the debts of the plaintiffs could be offset against amounts owed to the individuals who were represented by the plaintiffs, and the Production Flexibility Contracts signed by the individual members of the plaintiffs state that the amounts owed under the PFCs could be used to offset other amounts owed to the USDA. **McBride Cotton and Cattle Corp. v. Veneman, 296 F. Supp.2d 1125 (D. Ariz. 2004), *on rem. from*, 290 F.3d 973 (9th Cir. 2002)**.

APPLES. The FCIC has issued proposed regulations which amend the apple crop insurance regulations for the 2004 crop year. **69 Fed. Reg. 16181 (March 29, 2004)**.

ENVIRONMENTAL QUALITY INCENTIVES PROGRAM. The CCC has issued interim regulations which amend the Environmental Quality Incentives Program (EQIP) regulations to describe how the Natural Resources Conservation Service (NRCS) intends to implement Conservation Innovation Grants (CIG) for eligible governmental or non-governmental organizations or individuals on a competitive basis as authorized by the Farm Security and Rural Investment Act of 2002. CIG will be available to applicants who submit proposals for projects that involve EQIP-eligible farmers and ranchers. **69 Fed. Reg. 16391 (March 29, 2004).**

TUBERCULOSIS. The APHIS has announced the indefinite delay for the compliance date for classification of Texas, California and New Mexico as modified accredited states under the tuberculosis regulations. **69 Fed. Reg. 13218 (March 22, 2004)**.

FEDERAL ESTATE AND GIFT TAXATION

FORGIVENESS OF DEBT. The decedent had owned 40 percent of a golf course business also owned by the decedent's son and his wife. The decedent's will contained a provision forgiving any debt owed to the decedent by the son. The decedent became incapacitated before death and another of the decedent's sons had power of attorney over the decedent's affairs. The other son, on behalf of the decedent, acquired the secured debt against the golf course in order to avoid a foreclosure of the debt against the land. The decedent held the debt at the time of death and the estate released the golf course and the son from liability on the debt. This action was approved by the state probate court. The IRS argued that the decedent's purchase, through the power of attorney, was improper and should not be valid for federal estate tax purposes. The court disagreed, pointing to the valid business purpose for the purchase of the debt, the decedent's clear intent in the will to forgive all debts held by the other son and the probate court's approval of the transactions. **Estate of McDonald v. United States, 2004-1 U.S. Tax Cas. (CCH) ¶ 60,479 (N.D. Ala. 2004)**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued guidance for the administrative procedures required for taxpayers to obtain automatic consent to change to a method of accounting allowed under the regulations. **Rev. Proc. 2004-23, I.R.B. 2004-16**.

CORPORATIONS.

EMPLOYEE. The taxpayer was an S corporation with one shareholder who was also the sole officer and director, and the taxpayer operated a business of veterinary surgical consultations for other veterinarians. The business operations were performed by the shareholder and the business was located at the shareholder's residence. The corporation did not have a separate bank account and the business and personal income and expenses were handled through the shareholder's personal bank account. The corporation reported income for 1997 and 1998, deductions for compensation paid to officers but no deductions for wages or salaries. The shareholder reported the shareholder's share of income from the corporation on Schedule K-1 and Schedule E. The corporation did not withhold or pay any employment taxes. The court held that the shareholder was an employee of the taxpayer and the taxpayer was required to withhold, report and pay employment taxes. The appellate court affirmed in a decision designated as not for publication.

Specialty Transport & Delivery Services, Inc. v. Comm'r, 2004-1 U.S. Tax Cas. (CCH) ¶ 50,203 (2d Cir. 2004), *aff'g*, T.C. Memo. 2003-51. Veterinary Surgical Consultants v. Comm'r, 2004-1 U.S. Tax Cas. (CCH) ¶ 50,209 (3d Cir. 2004), *aff'g*, T.C. Memo. 2003-48.

CLAIM OF RIGHT DOCTRINE. The taxpayer sold all the stock of an S corporation to a third party in 1995 and various other properties in 1996. The gain from the sales was not reported as income on the taxpayer's income tax returns. The taxpayer filed for bankruptcy in 1998 and the Bankruptcy Court ruled that the stock and property sales were void for fraud and ordered the taxpayer to repay the purchase amounts. The taxpayer argued that the gain from the original sales was not taxable because the money from the sales was not received under a claim of right. However, the court noted that there were no restrictions on the taxpayer's use of the proceeds of the sales; therefore, the gain was taxable when the properties were sold. **Hamlett v. Comm'r, T.C. Memo. 2004-78**.

COURT AWARDS AND SETTLEMENTS. The U.S. Supreme Court has granted certiorari in the following case. The taxpayer sued a former employer for race discrimination in termination of employment. The suit asked only for back pay and attorneys' fees as damages. The parties reached a settlement which characterized the payments as for personal injury to the taxpayer. The court held that the character of the settlement proceeds was determined by the pending claims made in the lawsuit; therefore, the settlement proceeds were for back pay and attorneys' fees and were included in the taxpayer's income. The appellate court affirmed on the issue of whether the settlement proceeds were included in the taxpayer's income but reversed on the issue of the attorneys' fees, which were excluded from income because the contingency fee agreement removed the fees from the taxpayer's control. **Banks v. Comm'r, 2003-2 U.S. Tax Cas. (CCH) ¶ 50,675 (6th Cir. 2003), *aff'g in part and rev'g in part*, T.C. Memo. 2001-48**.

The U.S. Supreme Court has granted certiorari in the following case. The taxpayer had been employed as a loan officer in a bank but was forced to leave when the taxpayer refused to divulge confidential information about clients. The taxpayer sued the bank for intentional interference with contract and economic expectations for wrongful discharge from employment. The parties eventually reached a settlement which included punitive damages and payment directly to the taxpayer's attorneys. The taxpayer argued that the compensatory damages, the portion of the settlement paid to the attorneys and the punitive damages were excludible from income. The Tax Court acknowledged that the taxpayer's lawsuit was based on tort but held that the settlement proceeds and punitive damages were included in income because the tort was not based on personal injuries. Although acknowledging a split of authority on the issue, the Tax Court also held that the settlement proceeds paid directly to the taxpayer's attorney were included in income. The appellate court affirmed on the issue of the settlement proceeds paid to the taxpayer but reversed on the issue of the taxability of the attorney fee portion of the settlement, holding that, under Oregon law, the attorney's had sufficient property rights in the fees to remove them from the taxpayer's taxable income. **Banaitis v. Comm'r, 2003-2 U.S. Tax Cas. (CCH) ¶ 50,638 (9th Cir. 2003), *aff'g in part and rev'g in part*, T.C. Memo. 2002-5**.

DEPRECIATION. The IRS has issued tables detailing the (1) limitations on depreciation deductions for owners of passenger automobiles first placed in service during calendar year 2004, including separate limitations on passenger automobiles designed to be propelled primarily by electricity and built by an original equipment manufacturer (electric automobiles); (2) the amounts to be included in income by lessees of passenger automobiles first leased during calendar year 2004, including separate inclusion amounts for electric automobiles; and (3) the maximum allowable value of employer-provided automobiles first made available to employees for personal use in calendar year 2004 for which the vehicle cents-per-mile valuation rule provided under Treas. Reg. § 1.61-21(e) may be applicable. A passenger automobile to which the additional 50 percent first-year allowance under I.R.C. § 168(k)(4) applies (or would apply but for an election under I.R.C. § 168(k)(4)(E)) and for which no election has been made under I.R.C. § 168(k)(2)(C)(iii) is referred to as a "Section 168(k)(4) passenger automobile."

For non-Section 168(k)(4) automobiles (other than electric automobiles) placed in service in 2004 the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$2,960
2d tax year	4,800
3d tax year	2,850
Each succeeding year	1,675

For Section 168(k)(4) automobiles (other than electric automobiles) placed in service in 2004 the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$10,610
2d tax year	4,800
3d tax year	2,850
Each succeeding year	1,675

For non-Section 168(k)(4) electric automobiles placed in service in 2004 the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$8,880
2d tax year	14,300
3d tax year	8,550
Each succeeding year	5,125

For Section 168(k)(4) electric automobiles placed in service in 2004 the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$31,830
2d tax year	14,300
3d tax year	8,550
Each succeeding year	5,125

Rev. Proc. 2004-20, I.R.B. 2004-13, 642.

DISASTER LOSSES. On January 15, 2004, the President determined that certain areas in Connecticut were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of record snow fall that began on December 5, 2003. **FEMA-3192-EM**. Accordingly**,** taxpayers who sustained losses attributable to the disaster may deduct the losses on their 2002 federal income tax returns.

ELECTRICITY PRODUCTION CREDIT. The IRS has announced the 2004 inflation adjustment factor (1.2230) and reference prices used in determining the availability of the renewable electricity production credit to taxpayers producing electricity using wind (3.24 cents per kilowatt hour) or closed-loop biomass and poultry waste (zero cents per kilowatt hour). The inflation adjustment factor and reference prices apply to calendar year 2004 sales of kilowatt hours of electricity produced in the U.S. and its possessions from qualified energy resources. The renewable electricity production credit for calendar year 2004 is 1.8 cents per kilowatt hour on the sale of electricity produced from wind, closed-loop biomass, and poultry waste energy resources.

HEALTH SAVINGS ACCOUNTS. The IRS has issued guidance on the types of preventive care that can be provided under a high deductible health plan (HDHP) and on the interaction between an HDHP and other prescription drug benefits. **Notice 2004-25, I.R.B. 2004-15; Rev. Rul. 2004-38, I.R.B. 2004-15; Rev. Proc. 2004-22, I.R.B. 2004-15**.

IRA. The taxpayer received a lump sum distribution in 1990 from a pension plan and transferred the full amount to a personal IRA in a transaction which qualified for rollover treatment and continued deferral of any gain from the lump sum distribution. In 1997, the taxpayer received a distribution from the IRA of an amount subject to tax as an early distribution. The taxpayer argued that the original rollover was a "nondeductible contribution" to the IRA which increased the taxpayer's basis in the IRA and decreased the amount of the 1997 distribution which was subject to tax. The court held that the rollover did not qualify as a nondeductible contribution because the rollover amount was subject to tax if the amount was not placed in an IRA within 60 days. **Sternberg v. Comm'r, 2004-1 U.S. Tax Cas. (CCH) ¶ 50,202 (E.D. N.Y. 2004)**.

NET OPERATING LOSSES. The taxpayer claimed a net operating loss on a timely filed 1996 income tax return and an amended return filed before the due date of the original return. Although there was a question as to this, the court assumed that the taxpayer had attached to the original return and amended return a handwritten note that the taxpayer intended to carry the losses forward. However, the court noted that the amounts listed in the purported notes were not the same amounts listed on the actual returns and the notes did not include any reference to I.R.C. § 172; therefore, the court held that the notes were insufficient to make an election out of the three-year carryback period for net operating losses and held that the taxpayer could not claim the excess net operating losses in later years except to the extent the losses were not offset by income from the three prior tax years. **Kilburg v. Comm'r, T.C. Summary Op. 2004-36**.

PARTNERSHIP.

STATUTE OF LIMITATIONS. The taxpayers were general partners in a partnership. When the partnership failed to pay employment taxes, the IRS filed an assessment against the partnership but the taxes were not paid. The taxpayers filed for bankruptcy and the IRS filed claims for the unpaid taxes assessed against the partnership. The taxpayers argued that the IRS claims were barred by the three year statute of limitations and that the assessment against the partnership did not cause an extension of the statute of limitations as against the individual partners because they were not named in the original assessment. The IRS argued that, because the taxpayers had agreed that the partnership was liable for the debt, the claim against the individual partners was valid. The Ninth Circuit Court of Appeals held that the partners were not liable for the debt because, under California law, a judgment had to be obtained before partners were personally liable for a partnership obligation. The U.S. Supreme Court reversed, holding that there was no statutory requirement that each partner be named in an assessment against the partnership because the assessment involves primarily a determination of the amount of tax and extends the period for collection of the tax, not the period for which a taxpayer is liable for the tax. Therefore, the assessment of the tax against the partnership extended period for collection of the partnership's liability to ten years, with the partners personally liable for the partnership's debts. **Galletti v. United States, 2004-1 U.S. Tax Cas. (CCH) ¶ 50,204 (U.S. Sup. Ct. 2004), *rev'g*, 314 F.3d 336 (9th Cir. 2002)**.

PASSIVE ACTIVITY LOSSES. The taxpayer owned residential rental property and claimed a deduction for losses in excess of $25,000 from the operation of the property. The taxpayer claimed to be eligible for the real estate professional exception of I.R.C. § 469(c)(7); however, the taxpayer did not provide any written evidence of the hours spent managing the property or the types of services provided by the taxpayer. The court held that the taxpayer's oral testimony was insufficient to support the taxpayer's claim to have spent more than 750 hours per year on the activity; therefore, the taxpayer was not entitled to deduct losses in excess of $25,000. **Galagar v. Comm'r, T.C. Summary Op. 2004-39**.

SALE OF RESIDENCE. The taxpayers, husband and wife, sold their residence in 1994 and realized gain on the sale. The taxpayers did not include the gain on their 1994 income tax return but filed Form 2119, indicating that they intended to purchase a replacement residence within two years. The taxpayers did not purchase a replacement residence but did not notify the IRS until 2001 when they filed an amended return for 1994 and 1999, including the gain in the 1999 tax year. The taxpayers did not pay any of the additional tax from the gain and the IRS assessed the tax in 2002. The taxpayers argued that the 2002 assessment was untimely because it was more than three years after the 1994 tax return was filed. The court noted, however, the I.R.C. § 1034(j) provides that the three year limitation period for assessments starts when the IRS is notified that the taxpayers do not intend to purchase replacement property; therefore, because the IRS was not notified until the amended return was filed in 2001, the court held that the 2002 assessment was timely. The taxpayers also asked for relief under a 1997 amendment of I.R.C. § 121 to allow for a onetime exclusion of gain where the sale was necessitated because of medical costs. The court refused to allow the application of the 1997 amendment because the 1997 Act did not apply retroactively to cover the taxpayer's 1994 sale. **Rehberg v. Comm'r, T.C. Memo. 2004-41**.

TAX SHELTERS. The IRS has issued a notice to taxpayers that it will challenge the tax benefits claimed from transactions which involve an S corporation's issuance of nonvoting stock and warrants either (1) to its shareholders, who subsequently donate the nonvoting stock to an exempt party, or (2) directly to an exempt party. Following the donation, the parties claim that the exempt party owns 90 percent of the S corporation's stock and that any income allocated on the nonvoting stock does not give rise to unrelated business taxable income (UBTI). The shareholders may also claim charitable deductions for the stock donation. As owners of 100 percent of the S corporation's voting stock, the shareholders can determine the amount and timing of distributions made with respect to voting and nonvoting stock. They exercise that power to cause the S corporation to limit or suspend shareholder distributions while the exempt party purportedly owns the nonvoting stock. The shareholders later exercise their warrants and dilute the exempt party's shares of nonvoting stock, or the S corporation or shareholders purchase the nonvoting stock from the exempt party at a reduced value. Ultimately, the exempt party receives a share of the total economic benefit of stock ownership that is substantially lower than the share of the S corporation income allocated to it. The transactions will be challenged by the IRS under the substance over form doctrine and the single-class of stock qualification for S corporation status. The exempt entity may also be charged with failure to register as a tax shelter. **Notice 2004-30, I.R.B. 2004-17**.

THEFT LOSS. The IRS has issued a notice that taxpayers may not claim a loss for the decrease in the value of stock which may have resulted from the misconduct of a corporation or its officers. The IRS acknowledged that a loss deduction may be allowed where the stock has become completely worthless but Treas. Reg. § 1.165-4(a) prohibits a deduction for the decline in value of stock. **Notice 2004-27, I.R.B. 2004-16**.

TRAVEL COSTS. The IRS has issued the applicable terminal charge and the Standard Industry Fare Level (SIFL) mileage rates for determining the value of noncommercial flights on employer-provided aircraft in effect for 2004 for purposes of the taxation of fringe benefits. For flights taken during the period from January 1, 2004 through June 30, 2004, the terminal charge is $34.45, and the SIFL rates are: $0.1884 per mile for the first 500 miles; $0.1437 per mile 501 through 1,500 miles; and $0.1381 per mile over 1,500 miles. The value of a flight is determined under the base aircraft valuation formula by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple provided in Reg. § 1.61-21(g)(7) and then adding the applicable terminal charge. **Rev. Rul. 2004-36, I.R.B. 2004-12, 620.**

LANDLORD AND TENANT

TERM. The plaintiff leased farmland from the defendant for the planting of wheat, pasture of cattle and planting of alfalfa. The written lease stated that the lease would run from May 1, 1998 to April 30, 2001 and the lease was terminated on that date. However, the lease also stated that the plaintiff would have ownership of the 1999 through 2002 wheat crops. This would give the plaintiff the 2002 crop which would be planted and harvested after the lease terminated. The same paragraph, however, specifically mentioned that the plaintiff would have ownership of the 2001 crop. The court found that the transfer of a post-lease crop was inconsistent with local farming practices. The court held that the inconsistency of the dates in the paragraph and the transfer of a post-lease crop made the lease ambiguous on this issue and held that the plaintiff was not entitled to the post-lease crop. The lease also provided for the plaintiff to receive farm program payments and crop certificates after the lease termination. The plaintiff argued that the lease was written by the defendant and should be construed against the defendant. The court noted that the defendant was not an attorney and the lease was not written by an attorney; therefore, the court held that the lease would not be construed against the defendant. The court held that the plaintiff was not entitled to the farm program payments or crop certificates after the lease termination. **T.R. Incorp. of Ashland, Kansas v. Brandon, No. 90,469 (Kan. Ct. App. 2004)**.

IN THE NEWS

FOOD SAFETY. In response to the threat of bioterrorism and the perceived threat of bovine spongiform encephalopathy, the U.S. Government Accounting Office asked Congress on March 31, 2004, to scrap the convoluted federal food safety laws and create a single independent food agency. A highly efficient food inspection system is needed to maintain the safety of the U.S. food supply, Lawrence Dyckman, director of natural resources and environment at the GAO, told the House Government Reform Civil Service Subcommittee. A "uniform,

Agricultural Law Press
P.O. Box 50703 Eugene, OR 97405

consistent and risk-based" system of laws should be developed and implemented by a single agency to avoid misallocated funding and resources, and overlapping of duties which occur in the current system, said Dyckman. The Bush administration opposes the idea, saying that the multiple-agency approach works well. In separate statements, Robert Brackett, director of FDA's Center for Food Safety and Applied Nutrition and Merle Pierson, USDA deputy undersecretary for food safety, noted that the current system has given the United States one of the safest food supplies in the world, the Washington Times reported. **Brendan O'Neill, April 1, 2004 for Meatingplace.com**

MINERAL RIGHTS. Under Section 8 of the Pittman Underground Water Act of 1919, each land grant, or patent, in Nevada reserved to the United States all coal and other "valuable minerals" in the lands, and the right to remove the same. A Nevada landowner had extracted sand and gravel from the land and was ruled in trespass of federal reserved mineral rights by the Bureau of Land Management. The Ninth Circuit Court of Appeals had ruled, 314 F.3d 1080 (9th Cir. 2003), that the sand and gravel were "valuable minerals" and the extraction violated the federal reserve of mineral rights under the Pittman Act. The U.S. Supreme Court has reversed that decision, holding that sand and gravel were not "valuable" as that term was used to describe sand and gravel in Nevada when the Act was passed. The court supported its holding by noting that the Pittman Act cross-referenced the General Mining Act of 1872 which excluded sand and gravel from coverage under the 1872 Act. **Bedroc, Ltd. v. United States, No. 02—1593 (U.S. Sup. Ct. March 31, 2004), *rev'g*, 314 F.3d 1080 (9th Cir. 2003)**.

SELF-EMPLOYMENT TAX. In the July 11, 2003 issue of *Agricultural Law Digest*, the article, "Developments in CRP Payment Reporting," 14 *Agric. L. Dig.* 97 (2003), by Neil Harl discussed the conflict between CCA Ltr. Rul. 200325002, May 29, 2003, and Ltr. Rul. 8822064, March 7, 1988. The 1988 letter ruling had held that a retired taxpayer who was not materially participating in a farming operation did not have self-employment tax liability for payments under the Conservation Reserve Program for that farming operation. However, the 2003 CCA letter ruling concluded that a taxpayer who ". . . was not engaged in the trade or business of farming . .. . but personally fulfilled his CRP contractual obligations" was liable for the 15.3 percent self-employment tax on the CRP payments. Further, the broad language in the 2003 CCA letter ruling suggested that the same treatment could be applied to other land idling situations. The 2003 ruling stated—

"Furthermore, participation in a USDA land diversion program and in the devotion of such land to conservation purposes under such programs will be treated as material participation in the operation of a farm with respect to the diverted acres."

Publication of the 2003 CCA letter ruling injected enormous uncertainty into the handling of CRP payments.

On March 26, 2004, Cong. Earl Pomeroy of North Dakota convened a hearing in Bismarck, North Dakota, to discuss the problem. The session was attended by representatives of the Internal Revenue Service at the state, regional and national levels, tax practitioners, farmers, North Dakota State University faculty and staff members of Cong. Pomeroy. Professor Neil Harl addressed the group by videoconference from Ames, Iowa, and provided a memorandum on the history of the problem to those in attendance. Cong. Pomeroy indicated that he would be taking up the issue with the Commissioner in a few days and hoped for a resolution. Professor Harl recommended that the 2003 CCA letter ruling be withdrawn or reissued ". . . with a narrowing of the ruling to harmonize with" the 1988 letter ruling on which taxpayers have relied for 16 years.

SPRING AG OUTLOOK. The California Chapter of the American Society of Farm Managers & Rural Appraisers (ASFMRA) will present on Thursday, April 22, 2004, in Visalia, CA, its annual Spring Ag Outlook, an agribusiness conference focusing on commodities, agribusiness issues and statewide agricultural land and lease values. The conference promotional brochure is on their website at www.calasfmra.com.

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