CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

CRUELTY TO ANIMALS. The Georgia Department of Agriculture impounded 46 horses and three donkeys on the plaintiff's farm for failure to provide adequate food and water after a warrant-based inspection by a state equine inspector, a sheriff's deputy and a state-employed veterinarian. The plaintiff filed suit for recovery of the animals, claiming that the impoundment violated the due process clause and the equal protection clause of the Fourth Amendment of the U.S. Constitution. The plaintiff argued that the state failed to provide pre- and post-impoundment appeal procedures. The court granted summary judgment for the state on the issue of due process, holding that Georgia Code § 2-2-9.1 provided adequate post-deprivation appeal procedures to contest the impoundment and that pre-impoundment appeals were not required because of the imminent danger to the horses. The plaintiff argued that the impoundment violated the equal protection clause because the impoundment statute treated individual owners differently from licensed pet dealers. The court also granted summary judgment under the equal protection claim because the differing procedures had a rational basis, including the impoundment of animals held by licensed dealers which are not owned by the dealers. **Reams v. Irvin, 2008 U.S. Dist. LEXIS 25350 (N.D. Ga. 2008)**.

BANKRUPTCY

GENERAL

AVOIDABLE TRANSFERS. In 2004, the debtor had entered into a contract to purchase a one-half interest in 155 acres of farm land from the debtor's parent. The original price was $27,000, with $5,000 down and the rest to be paid in installments. In 2007, the debtor transferred the purchased interest by quit claim deed back to the parent without compensation other than the release of the $15,000 owed on the contract. The land was appraised at over $1,850 per acre. The debtor then filed for Chapter 7 and the trustee sought to avoid the transfer of the interest in land as either actual or constructive fraud and filed a motion for summary judgment on the issue. The debtor was insolvent after the transfer. The debtor argued that the transfer was made to avoid contract forfeiture and that the land had no value to the debtor. The court denied summary judgment on the issue of actual fraud because issues of fact remained as to the intent of the debtor in making the transfer. However, the court granted summary judgment on the issue of constructive fraud, holding that the debtor voluntarily transferred an interest in the property with one year of filing for bankruptcy for less than a reasonable value and resulting in the insolvency of the debtor. The court noted that, although the debtor was in default on the contract, the amount owed, $15,000, was far less than the fair market value of the half interest in 155 acres of land worth at least $1,850 per acre. **Schnittjer v. Houston, 2008 Bankr. LEXIS 874 (Bankr. N.D. Iowa 2008)**.

FEDERAL AGRICULTURAL PROGRAMS

COST-SHARE AGREEMENT. The plaintiff operated a "spent mushroom substrate" (SMS) transfer business which processed waste from mushroom growing operations. The plaintiff entered into a cost-sharing agreement with the federal Natural Resources Conservation Service (NRCS) to build the transfer facility. Pursuant to the contract, NRCS designed and provided specifications for conservation practices to be implemented at the transfer facility, including a storage area, leaching field, wastewater impoundment and spray system. The plaintiff installed the components and operated the facility. Neighbors of the facility sued the plaintiff for violation of the federal Clean Water Act and state environmental laws and won an injunction. The plaintiff settled the case for money and an agreement to draft a rehabilitation plan and make structural changes to the buildings. The plaintiff submitted a claim under the Contracts Disputes Act for damages against the NRCS for breach of implied warranty in the design of the facility. The court held that the claim could not be brought under the Act because the Act applied only to contracts for goods or services. **Rick's Mushroom Service, Inc. v. United States, 2008 U.S. App. LEXIS 6904 (Fed. Cir. 2008), *aff'g*, 76 Fed. Cl. 250 (2007)**.

KARNAL BUNT. The APHIS has issued interim regulations removing Baylor, Knox, Throckmorton and Young counties in Texas from the list of karnal bunt regulated areas. **73 Fed. Reg. 18701 (April 7, 2008)**.

TUBERCULOSIS. The APHIS has issued interim regulations changing the status of Minnesota from modified accredited advanced state to modified accredited state. **73 Fed. Reg. 19139 (April 9, 2008)**.

FEDERAL ESTATE AND GIFT TAXATION

ESTATE TAX LIEN. The decedent's estate had elected to pay

much of the estate tax by installment. The IRS increased the value of stock in the decedent's estate and assessed additional taxes, to which the estate's representative consented. The decedent's will bequeathed to the estate's representative the stock and other real property, three houses, in the estate. The representative had sold the houses, stopped making the installment payments and declared bankruptcy. The IRS sought collection of the unpaid taxes from the houses under the special estate tax lien. The house purchasers paid the taxes through claims against the title insurance company which had failed to give notice of the liens. The title insurance company sought to challenge the IRS increase in valuation, under 28 U.S.C. § 1346; however, the court held that the only authority for the action was I.R.C. § 7426 which prohibited such third-party challenges to the valuation of estate property. **First American Title Ins. Co. v. United States, 2008-1 U.S. Tax Cas. (CCH) ¶ 60,560 (9th Cir. 2008), *aff'g*, 2005-1 U.S. Tax Cas. (CCH) ¶ 60,501 (W.D. Wash. 2005)**.

GENERATION-SKIPPING TRANSFER TAX. A decedent created a trust which became irrevocable and was funded from the decedent's residuary estate. The trust was to place all assets in a limited partnership and distribute the partnership interests in trust to 11 beneficiaries who were at least two generations below the decedent, skip beneficiaries. Each skip beneficiary's parent possessed a testamentary general power of appointment with respect to the skip beneficiary's trust to transfer the trust property remaining at the parent's death to any person or entity, including the parent's estate. The power of appointment granted to a parent did not include a present right to receive trust principal or income, and the parent was not a permissible current recipient of trust principal or income. The IRS ruled that, the parents' testamentary power of appointment was not an interest in a respective non-exempt trust, for generation-skipping transfer tax purposes and the trusts were subject to GSTT. **Ltr. Rul. 200814016, Dec. 19, 2007**.

TRUST. The taxpayers, husband and wife, established a charitable remainder unitrust which provided for an annual payment of a percentage of the value of the trust principal to the taxpayers and/or a charitable organization, at the discretion of an independent trustee. At the death of one of the taxpayers, the unitrust amount would be paid to the surviving taxpayer for life. After the death of the surviving taxpayer, the remainder would be paid to a charitable foundation as designated by the taxpayers. The IRS ruled that, unless the actual annual payment to the charitable organization was a de minimis amount, the trust was qualified as a charitable reminder unitrust and, upon the death of the first taxpayer to die, the unitrust interest passing to the surviving spouse qualified for the estate tax marital deduction. **Ltr. Rul. 200813006, Nov. 21, 2007**.

A parent transferred a residence to a 10-year qualified personal residence trust for the parent's benefit, with the remainder to pass to the parent's children. The parent paid gift tax on the transfer of the remainder interest to the children. At the end of the trust period, the residence passed to the children who continued to hold the residence in trust and who transferred a one-year term interest to the parent to occupy the residence. The parent leased the residence from the children. The IRS ruled that the childrens' trust was a qualified personal residence trust under the provisions of Treas. Reg. § 25.2702-5(c) and I.R.C. § 2702(a)(3)(A)(ii). **Ltr. Rul. 200814011, Dec. 6, 2007**.

FEDERAL INCOME TAXATION

2008 TAX REBATE. The IRS has announced that information on the economic stimulus payment is available in Spanish at Centro de Información Sobre los Pagos de Estímulo Económico, on the Spanish language section of the IRS's website (www.irs.gov/espanol). The IRS has also released a Spanish-language translation of Package 1040A-3, Notice and Instructions for Requesting Your Economic Stimulus Payment. Free File-Economic Stimulus Payment is also available in Spanish. **IR-2008-53**.

BAD DEBT DEDUCTION. The taxpayer was a parent corporation which purchased promissory notes issued by a trust established by an LLC formed by a subsidiary of the taxpayer. The proceeds of the original notes were used to obtain capital for the subsidiary's growth plans. The taxpayer later purchased the LLC and became the grantor/owner of the trust. The notes were discharged for less than full value and the taxpayer claimed a bad debt deduction. The IRS ruled that the taxpayer could not claim a bad debt deduction for the notes because the relationship between the taxpayer and trust was disregarded for income tax purposes. **Ltr. Rul. 200814026, Dec. 17, 2007**.

BUSINESS DEDUCTIONS. The taxpayer was employed full time as a college physics professor. The taxpayer claimed to have operated several businesses out of the taxpayer's home during the tax years in question and filed Schedule C for each business, but included no income for the businesses, with business expense deductions. The taxpayer provided little written evidence to support the existence of the businesses and the court held that the taxpayer was not allowed deductions beyond those allowed by the IRS for lack of substantiation. The appellate court affirmed *per curiam* in a decision designated as not for publication. **Kanofsky v. Comm'r, 2008-1 U.S. Tax Cas. (CCH) ¶ 50,260 (3d Cir. 2008), *aff'g*, T.C. Memo. 2006-79**.

The taxpayer owned and operated a law practice and claimed deductions for expenses associated with that business. However, the only evidence presented to support those deductions were copies of checks, bank statements and credit card statements. None of the evidence identified the items or services purchased or the business purpose for the expense. The court held that the deductions were properly disallowed for lack of substantiation. **Odelugo v. Comm'r, T.C. Memo. 2008-92**.

The taxpayer was employed by a state agency and operated a business as an insurance agent. The taxpayer claimed business expense deductions for advertising, travel expenses, and meals and entertainment expenses. The taxpayer did not provide written evidence to support the business purpose of the expenses

and the court held that the deductions were properly disallowed by the IRS for lack of substantiation. **Oji v. Comm'r, T.C. Memo. 2008-85**.

COURT AWARDS AND SETTLEMENTS. The taxpayer filed a suit against a former employer for wrongful termination, alleging physical injury, emotional distress and family problems. The parties negotiated a settlement which allocated part of the proceeds to back wages and part to emotional distress, pain and suffering and other non-wage damages. The employer issued a W-2 Form for the back wages and a From 1099 for the other payments. The court held that none of the settlement proceeds was excludible from taxable income because I.R.C. § 104(a)(2) specifically makes payments for emotional distress not excludible from taxable income. The court noted that the settlement agreement made no mention of any payments for physical injury or physical sickness. **Pettit v. Comm'r, T.C. Memo. 2008-87**.

The taxpayer filed a complaint with a state equal employment opportunity commission for employment discrimination by a potential employer. The parties reached a settlement and the taxpayer received $20,000. The potential employer submitted to the IRS a Form 1099-MISC listing the payment as miscellaneous income. The taxpayer included the payment in income on Schedule C but claimed a deduction for other expenses. The taxpayer included Form 8275, Disclosure Statement, which claimed that the Form 1099-MISC improperly characterized the settlement as income. The court held that the settlement payment was included in the taxpayer's income because the settlement was not paid for physical injuries or sickness. **Phelps v. Comm'r, T.C. Memo. 2008-86**.

DEPRECIATION. The taxpayer operated a facility which produced fuel grade ethanol from hydrocarbon feedstocks and fermentation of starches released from milled biostocks. In a Chief Counsel Advice letter, the IRs ruled that the corn and other biomass used to produce the fuel grade ethanol were depreciable under I.R.C. § 167(a) and classified as Asset Class 49.5 under *Rev. Proc. 87-56, 1987-2 C.B. 674* as assets used in the conversion of refuse, solid waste, or biomass into fuel. **CCA Ltr. Rul. 200814025, Dec. 14, 2007**.

DISASTER LOSSES. On March 19, 2008, the president determined that certain areas in Missouri are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and flooding, which began on March 17, 2008. **FEMA-1749-DR**. On March 20, 2008, the president determined that certain areas in Georgia are eligible for assistance from the government under the Act as a result of severe storms and tornadoes, which began on March 14, 2008. **FEMA-1750-DR**. On March 26, 2008, the president determined that certain areas in Arkansas are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding, which began on March 18, 2008. **FEMA-1751-DR**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2007 returns.

EMPLOYEE. The taxpayer was a social worker employed by a firm which provided health care services to active and retired military personnel. The IRS ruled that the taxpayer was an employee subject to federal employment and income tax withholding because the employer exercised substantial control over the duties of the taxpayer, since the employer provided the work instructions, training, supplies and equipment. **Ltr. Rul. 200813033, Dec. 7, 2007**.

FUEL CREDIT. The IRS has announced that the reference price that is to be used in determining the availability of the I.R.C. § 45K tax credit for the production of fuel from nonconventional sources for calendar year 2007 is $66.52. Because the reference price exceeds $23.50 multiplied by the inflation adjustment factor, the credit per barrel equivalent of qualified fuel sold in calendar year 2007 is reduced by $4.87 to $2.38. The nonconventional source fuel credit for 2007 is $3.28 per barrel-of-oil equivalent of qualified fuels. **Notice 2008-44, I.R.B. 2008-16**.

GOVERNMENTAL SUBSIDY PAYMENTS. The USDA's Commodity Credit Corporation (CCC) administers the bioenergy program (BEP), 7 U.S.C. § 8108, which provides for cash payments to U.S. commercial bioenergy producers based on each company's annual increase in its bioenergy production from eligible commodities. The BEP is designed to encourage increased purchases of eligible commodities for the purpose of expanding production of such bioenergy, including commercial fuel-grade ethanol and biodiesel made from program eligible commodities. Eligible commodities include barley, corn, grain sorghum, oats, rice, wheat, soybeans, sunflower seed, canola, crambe, rapeseed, safflower, sesame seed, flaxseed, mustard, and cellulosic crops such as switchgrass and hybrid poplars. All commercial bioenergy producers meeting all program requirements are eligible to participate in the BEP. A commercial bioenergy producer does not have to own the production facility to qualify for the BEP payments. To participate, producers must complete a Bioenergy Program Agreement, Form CCC 850 (Agreement). The Agreement contains the terms, conditions, and eligibility requirements to participate in the BEP and is not negotiable. Once the agreement is executed and accepted by the USDA, the producer is under an obligation to meet specific contract production levels, record keeping, and record submission requirements to obtain payment. The CCC pays eligible producers subsidy payments up to a congressional funding limit on a quarterly basis. The BEP does not require that the subsidy payments be used for any specific purpose. Payments to each producer are capped at five percent of the annual funding limit per year. USDA conditions payments on increases in bioenergy production as reported by a participating producer compared to the previous year's production. In a coordinated issue paper, the IRS stated that, under I.R.C. § 118(a), the BEP payments were gross income to the recipients and not capital contributions because the payments were intended to compensate the companies for operating costs and not for capital asset acquisition. **Coordinated Issue Paper- Agriculture Industry, LMSB-04-0308-019, April 8, 2008.**

IRA. The taxpayer received an early distribution from an IRA of $25,000 in December 2002 and deposited the amount in the taxpayer's business checking account. The taxpayer testified

that, within 60 days after receiving the distribution, the taxpayer instructed the business bookkeeper to send a check for $25,000 to a broker for deposit in a new IRA. The check was not received and no account was opened. The taxpayer claimed that the failure to deposit the distribution in the new IRA was not discovered until 2005 when an IRS deficiency notice was received. The court held that the distribution was included in taxable income because the taxpayer had failed to exercise reasonable efforts to insure that the money was properly deposited in a new IRA. The court noted that the taxpayer failed to monitor whether the check was cashed or to enquiry why no report of the IRA came from the broker. **Atkin v. Comm'r, T.C. Memo. 2008-93**.

INSTALLMENT REPORTING. The taxpayer entered into a deferred like-kind exchange of property but the exchange was not completed because the taxpayer failed to find replacement property within the required time. The taxpayer informed the tax return preparer that the income from transaction should be reported in installments but the preparer reported all of the gain in one tax year. The IRS ruled that the taxpayer could revoke the election out of installment reporting. **Ltr. Rul. 200813019, Dec. 17, 2007**.

The taxpayer entered into a sale of property for cash plus a promissory note. The taxpayer informed the tax return preparer that the income from the transaction should be reported in installments but the preparer reported all of the gain in one tax year. The IRS ruled that the taxpayer could revoke the election out of installment reporting. **Ltr. Rul. 200813032, Dec. 21, 2007**.

The taxpayer entered into a sale of property for cash plus a promissory note. The taxpayer informed an accountant that the income from the transaction should be reported in installments but the accountant prepared the income tax return to report all of the gain in one tax year. The IRS ruled that the taxpayer could revoke the election out of installment reporting. **Ltr. Rul. 200814013, Dec. 21, 2007**.

LIFE INSURANCE. The IRS has issued guidance regarding the application of I.R.C. §§ 101(j) and 264(f) to life insurance contracts that are subject to split-dollar life insurance arrangements. The notice provides that a modification of a split-dollar life insurance arrangement that does not entail any change to the life insurance contract underlying the arrangement will not be treated as a material change in the life insurance contract for purposes of I.R.C. §§ 101(j) and 264(f). **Notice 2008-42, I.R.B. 2008-15**.

PASSIVE ACTIVITY LOSSES. The taxpayer owned several residential rental properties and claimed deductions for losses resulting from those properties. The taxpayer consented that the losses were passive activity losses but failed to provide substantiation of the losses claimed. In addition, the taxpayer claimed that some of the losses were suspended losses from previous years which were deductible because the taxpayer sold the associated properties. The court held that the taxpayer failed to substantiate the amount of the suspended losses, noting that prior tax returns were not sufficient proof in themselves of the amount of the allowable losses. **Uy v. Comm'r, T.C. Summary Op. 2008-36**.

PAYMENT OF TAXES. The IRS has reminded taxpayers who owe taxes but are unable to pay in full by the April 15 that several payment options are available. Members of the military serving in combat-zone localities and taxpayers in certain disaster areas can wait until after April 15 to file and pay. Taxpayers who need more time to pay their taxes may be eligible for an extension of time up to 120 days to pay. Individuals can request an extension of time to pay by using the Online Payment Agreement link at www.irs.gov. Taxpayers may also apply for an installment agreement by using the on-line payment option or by attaching Form 9465, Installment Agreement Request, to the front of their tax returns. No fee is charged for the payment extension, but a user fee will apply for an installment agreement. The amount of the fee is dependent on the method of payment. While interest still applies whether a taxpayer is eligible for a payment extension or installment agreement, penalties are cut in half. **IR-2008-56**

PENSION PLANS. For plans beginning in April 2008 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 4.39 percent, the corporate bond weighted average is 5.99 percent, and the 90 percent to 100 percent permissible range is 5.39 percent to 5.99 percent. **Notice 2008-45, I.R.B. 2008-17**.

PROPERTY TAXES. The taxpayer was a real property developer who contracted with a public housing authority to construct and develop a housing development. The development property was not subject to property taxes but the taxpayer was required to make payments to the public authority equal to the taxes which would have been assessed on the property. When the properties were leased to tenants, the tenants would make these payments in lieu of taxes (PILOT). The PILOT funds were used by the public authority for covering costs associated with the development of the property. The IRS ruled that the PILOT payments were deductible under I.R.C. § 164 as real property taxes. **Ltr. Rul. 200814002, Dec. 13, 2007.**

REFUND CLAIM. The taxpayers filed suit against the IRS for improper collection of the excise tax on long distance telephone service, a tax which was terminated in 2006. The court held that the claims were dismissed because the taxpayers had not exhausted their administrative remedies before filing suit. ***In re* Long-Distance Telephone Servce Federal Excise Tax Refund Litigation, 2008-1 U.S. Tax Cas. (CCH) ¶ 70,274 (D. D.C. 2008)**.

RETURNS. The IRS has announced that it urges taxpayers who need to file for an automatic extension of time to file a return to e-file Form 4868, Automatic Extension of Time to File by the due date for their federal income tax return. The IRS reminds taxpayers that an extension of time to file the return does not provide an extension of time to pay the taxes without possible penalties and interest. **IR-2008-55**.

STATE TAXES. The IRS has issued a Chief Counsel Advice letter discussing the federal tax treatment of a state homestead income tax credit. In general, the homestead tax credit either reduced a taxpayer's state income tax liability or could be used to reduce the taxpayer's local property taxes. Any unused credit

could be carried forward to offset future income or property taxes. The IRS noted that the use of credit reduced the federal deduction for state income and/or property taxes if the taxpayer included the state taxes on Schedule A. The IRS also stated that the state would be required to report on Form 1099-G refunds to state taxpayers as a result of the credit only if the refund was $10 or more, but only if the taxpayer itemized deductions. **CCA Ltr. Rul. 200814022, Dec. 12, 2007**.

TAX RETURN PREPARERS. The defendant was an income tax return preparer who prepared at least 23 "federal income tax returns for customers with taxable income that erroneously show nothing but zeros on most if not all returns" To these forms, the defendant attached several exhibits, including a legal argument in support of the zero return, excerpts from House Reports on I.R.C. amendments, and a Department of Treasury memorandum. The exhibits general argued that non-employee compensation was not income under I.R.C. § 61. The court granted an injunction prohibiting the defendant from preparing tax returns for others because the defendant violated I.R.C. §§ 6694, 6695 for willfully understating customers' tax liability and failing to furnish the defendant's identifying number on the returns. **United States v. Ballard, 2008-1 U.S. Tax Cas. (CCH) ¶ 50,267 (N.D. Texas 2008)**.

TAX SHELTERS. The taxpayers had invested $8,000 in six partnership interest units in a jojoba limited partnership. The taxpayers claimed over $20,000 in losses as their share of the partnership losses from research and development costs. The partnership was determined to be not entitled to the research and development losses and the taxpayer were also denied the use of the losses. In this case, the taxpayers were found to have failed to use due care in making the investment in that the taxpayers failed to make any investigation into the propriety of the losses other than the information supplied by the partnership promoter. **Ghose v. Comm'r, T.C. Memo. 2008-80**.

TRAVEL EXPENSES. The IRS has issued proposed regulations covering the amount of travel expenses which may be deducted by state legislators who make an election under I.R.C. § 162(h) to have their residence in the legislative home district treated as their tax home. The regulations incorporate the rules set forth in *Rev. Rul. 82-33, 1982-1 C.B. 28*. **73 Fed. Reg. 16797 (March 31, 2008)**.

The U.S. State Department has published the maximum rates of per diem allowances for travel in foreign areas. These rates are used for determining per diem rates that employers can use to reimburse employees for lodging, meals and incidental expenses incurred during business travel away from home with the need to produce receipts. See *Rev. Proc. 2007-63, 2007-2 C.B. 809*. **CCH MISC-DOC, 2008ARD 066-1, April 2, 2008**.

TRUSTS. The taxpayer, while married, established a charitable remainder trust with the taxpayer as current income beneficiary and the surviving spouse as remainder beneficiary. Under a divorce judgment, the trust was split into two equal trusts with the taxpayer as income beneficiary of one trust and the former spouse as the beneficiary of the other trust. Each beneficiary was the remainder beneficiary of the other trust. The IRS ruled that the split trusts were charitable remainder unitrusts and that no gain or loss was recognized under I.R.C. § 1041 because the split and transfer of interests was incident to a divorce. **Ltr. Rul. 200814003, Dec. 12, 2007**.

WAGES. The taxpayer employer made payments to employees in exchange for termination of their employment. The payments were made while the employees were furloughed from their jobs. The taxpayer argued that the payments were excluded from wages as supplemental unemployment benefits because the employees were already not working when the payments were made and the payments represented the transition of unemployment from undetermined duration to permanent unemployment. The court held that, because the decision to permanently terminate employment was made by the employee, the payments were wages subject to FICA withholding taxes. **United States v. JPS Composite Materials Corp., 2008-1 U.S. Tax Cas. (CCH) ¶ 50,252 (D. S.C. 2008)**.

WITHHOLDING TAXES. The taxpayer was an insurance company which paid its retired insurance agents renewal commissions on policies sold by the agents prior to retirement. In a Chief Counsel Advice letter, the IRS ruled that the renewal commissions constituted a nonqualified deferred compensation plan and were wages for purposes of FICA taxes. **CCA Ltr. Rul. 200813042, Dec. 17, 2007**.

The taxpayer was a university which offered graduate medical education programs for medical residents and fellows. The residents were enrolled in courses, performed research and participated in teaching rounds, receiving grades, evaluations and certification at the end of the program. The residents received stipends to help offset the cost of enrollment and the taxpayers did not withhold or pay FICA taxes on the stipends, arguing that the stipends were exempt under I.R.C. § 3121(b)(10) as amounts paid to students. The court held that the amounts paid to the medical residents were exempt form FICA taxes because the services provided by the residents were incidental to and part of the purpose of pursuing postgraduate education. **Regents of the University of Minnesota v. United States, 2008-1 U.S. Tax Cas. (CCH) ¶ 50,262 (D. Minn. 2008)**.

NEGLIGENCE

LAST CLEAR CHANCE. The plaintiff was driving a tractor on a highway at about 10 miles per hour and had allowed several vehicles to pass. The defendant was driving a loaded dump truck behind the last vehicle to be waved around by the plaintiff and just as the defendant started to pass, the plaintiff turned left into the other lane, resulting in a collision of the vehicles. The trial court submitted the issue of last clear chance to the jury which returned a verdict, in part, for the plaintiff. The testimony demonstrated that the defendant had three seconds or less to avoid the accident after the plaintiff began to turn. The court held that the evidence demonstrated as a matter of law that the defendant had no chance to avoid the collision; therefore, the issue of last clear chance should not have been submitted to the jury and the trial court judgment was reversed. **Dotson v. Davis,**

2008 N.C. App. LEXIS 598 (N.C. Ct. App. 2008).

NUISANCE

CONFINED ANIMAL FEEDING OPERATION. The defendant had obtained a state permit to build and operate two confined animal feeding operations (CAFOs); however, the permit for the second CAFO had expired. The plaintiffs were neighbors who brought an action for anticipatory nuisance and sought an injunction against the building of the facilities. The trial court granted summary judgment for the defendant. The plaintiffs appealed, arguing that (1) the trial court improperly considered the defendant's intended compliance with state Department of Natural Resources standards and regulations, (2) the trial improperly concluded that the CAFO would not be a nuisance if operated as planned, (3) the trial court improperly failed to include the effects of the second CAFO. On the first issue, the court held that the trial court properly considered the DNR standards and regulations because the DNR standards and regulations, while not conclusive on the issue of nuisance, were relevant to a determination as to whether a CAFO would be a nuisance. On the second issue, the plaintiffs alleged that the CAFO would negatively impact their health, water quality, odors, and property values. The court held that the negative effects alleged by the plaintiffs were too speculative and contingent to support an injunction prohibiting construction of the CAFO. The court held that the plaintiffs failed to demonstrate that any of the alleged negative effects would certainly result from the CAFO. On the third issue, the court held that the trial court properly refused to consider the second CAFO because no permit was obtained and the details of that facility were too contingent to support an injunction against it or the planned CAFO. **Simpson v. Kollasch, 2008 Iowa Sup. LEXIS 50 (Iowa 2008)**.

IN THE NEWS

ESTATE AND GIFT TAX. Commerce Clearing House has reported on a a hearing of the Senate Finance Committee investigating the unification of the federal estate and gift tax rules, changes to the installment payment of estate tax rules, elimination of estate taxes, and changes to the estate tax marital deduction. **2008 TaxDay, Item #C.2 (April 4, 2008)**.

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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