CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

EXEMPTIONS

MOTOR VEHICLE. The debtors, husband and wife, filed a joint Chapter 7 petition and each claimed an exemption in a pickup truck as a business tool. The truck, however, was titled only in the husband's name and the trustee objected to the wife's exemption claim. The court held that the tool of the trade exemption applied to the individual debtor's interest in property; therefore, the wife could not claim an exemption because the wife had no ownership interest in the pickup. **In re Miller, 255 B.R. 221 (Bankr. D. Neb. 2000)**.

Chapter 12-*ALM* § 13.03[8].*

NOTE: The Bankruptcy Reform Bill was vetoed by President Clinton; therefore, there is no statutory authorization for Chapter 12, which expired on June 30, 2000.

DISCHARGE. The debtor served as executor for the debtor's parent's estate which included a farm. The debtor farmed the land during the administration of the estate without paying rent to the estate. In addition, the debtor wrote one check on the estate account for the debtor's personal use. An action was brought in state probate court and the debtor was ordered to repay the check and pay the fair market rent for use of the farm. The estate filed a claim for the probate court judgment amount and sought a ruling that the claim was nondischargeable as a fraud or defalcation while the debtor was a fiduciary. The initial issue was whether the probate court order had any preclusive effect as to the dischargeability of the judgment. The court held that, although the probate court did not consider the bankruptcy effect of the case, the fact determinations were entitled to preclusive effect and those facts demonstrated that the debtor had committed fraud while serving in a fiduciary capacity. The court held that the probate judgment claim was non dischargeable. ***In re* Nelson, 255 B.R. 314 (Bankr. D. N.D. 2000)**.

FEDERAL TAX-*ALM* § 13.03[7].*

ADMINISTRATIVE EXPENSES. The debtor's Chapter 7 estate incurred administrative expenses during the administration of the estate. The trustee filed an income tax return for the estate and claimed the administrative expenses as a deduction from gross income of the estate, resulting in no income tax owed by the estate. The IRS disallowed the deduction except as a miscellaneous deduction, limited to the amount in excess of 2 percent of gross income. The IRS argued that, because the debtor would not be allowed a deduction from gross income for bankruptcy administrative expenses, the bankruptcy estate should not be allowed such a deduction. The court held that I.R.C. § 1398(h)(1) specifically allows bankruptcy estates deductions not otherwise disallowed. The court then looked to I.R.C. § 67 which allows estates and trusts to deduct administrative expenses from income. The court held that I.R.C. § 67 applied to bankruptcy estates. A similar case, *In re Sturgill, 217 B.R. 291 (Bankr. D. Or. 1998)*, held that bankruptcy administrative expenses were not deductible as trade or business expenses. The court noted that I.R.C. § 67 was not raised or discussed in that case. See Harl, "Expenses in Bankruptcy" 11 *Agric. L. Dig.* 81 (2000). ***In re* Miller, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,137 (Bankr. E.D. Tex. 2000)**.

ESTATE PROPERTY. The debtor owned interests in several employee pension plans and was receiving monthly distributions when the debtor filed for Chapter 13. The IRS filed a claim for taxes which exceeded the value of the debtor's property. Tax liens had been filed pre-petition and the issue was whether the pension plan payments were included in bankruptcy estate property so as to be considered as part of the property securing the IRS claim. The pension plans had clauses restricting assignment or attachment of the plan distributions or principal. The court held that the pension plan payments were subject to the tax liens; therefore, the plan restrictions were not effective under nonbankruptcy law and the pension plan payments were included in estate property. The court held that the present value of the monthly payments was part of the security for the tax claim. ***In re* McIver, 255 B.R. 281 (D. MD. 2000)**.

FEDERAL AGRICULTURAL PROGRAMS

ANIMAL WELFARE. The APHIS has adopted as final regulations allowing APHIS to place animals confiscated from situations detrimental to the animals' health and well-being with a person or facility that is not licensed by or registered with the APHIS, if the person or facility can offer a level of care equal to or exceeding that required by the regulations. **66 Fed. Reg. 236 (Jan. 3, 2001)**.

DISASTER PAYMENTS. The Livestock Indemnity Program for Contract Growers was originally enacted in 2000 to provide payments for contract livestock producers who suffered losses in 1999. Final regulations implementing that program were issued in June 2000, 65 Fed. Reg. 36550 (June 8, 2000). All of the funds for that program were not used so the program has been extended to cover losses through February 7, 2000. The CCC has issued final regulations implementing the extension of the program. **65 Fed. Reg. 82892 (Dec. 29, 2000)**.

FARM LOANS. The FSA has issued interim regulations which amend the regulations governing the FSA's direct operating loan program by simplifying the application process

for certain farmers requesting assistance of $50,000 or less and for certain recurring operating loan applicants. **66 Fed. Reg. 1570 (Jan. 9, 2001)**.

MEAT AND POULTRY PRODUCTS. The AMS has adopted as final regulations providing a voluntary, user-fee-funded program under the provisions of the Agricultural Marketing Act of 1946 to inspect and certify equipment and utensils used to process livestock and poultry products. Livestock and poultry processing equipment and utensils inspected and certified by AMS to voluntary consensus standards for sanitary design will provide a third party assurance that they meet minimum requirements for cleanability, suitability of materials used in construction, durability and inspectability. **66 Fed. Reg. 1189 (Jan. 5, 2001)**.

Secretary Glicjkman has announced that the pork checkoff program has been rejected in a referendum of pork producers and will be terminated.

MILK. The AMS has issued a notice of the availability of revisions to the U.S. Standards for Grades of Nonfat Dry Milk (Spray Process), the U.S. Standards for Instant Nonfat Dry Milk, and the U.S. Standards for Grades of Dry Buttermilk and Dry Buttermilk Product. The changes reduce the Standard Plate Count (bacterial estimates) for U.S. Extra Grade nonfat dry milk (spray process) and instant nonfat dry milk to a maximum of 10,000 per gram for U.S. Extra Grade dry buttermilk and dry buttermilk product to a maximum of 20,0000 per gram, and for U.S. Standard Grade dry buttermilk and dry buttermilk product to a maximum of 75,000 per gram. **66 Fed. Reg. 350 (Jan. 3, 2001)**.

PEANUTS. The CCC has adopted as final regulations amending the regulations for the peanut price support program to ease conditions for marketing Segregation 3 peanuts by allowing the peanuts to be reconditioned and regraded in certain limited instances. Peanuts are graded as ``Segregation 3'' peanuts when they are found by visual inspection to have Aspergillus flavus (A. flavus) mold. This rule would allow a farmer whose peanuts were found at a buying point inspection to have the mold to reclean those peanuts at the buying point and have them visually reinspected within 24 hours. The farmer could obtain such a re-inspection only once for any given lot. **66 Fed. Reg. 1807 (Jan. 10, 2001)**.

FEDERAL ESTATE AND GIFT TAXATION

TRUSTS. The taxpayer was a trustee which incurred fees for its trust for investment strategy advice provided by private investment advisors and accounting, tax preparation, and management services. The court held that the fees were not deductible under I.R.C. § 67 because the fees "would not have been incurred if the property were not held in . . . trust." **Mellon Bank, N.A. v. United States, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,153 (Fed. Cls. 2000)**.

FEDERAL INCOME TAXATION

C CORPORATIONS-*ALM* § 7.02[3].*

DEFINITION. The IRS has issued proposed regulations under I.R.C. § 7701 that address the federal tax classification of a business entity wholly owned by a foreign government and provide that a nonbank entity that is wholly owned by a foreign bank cannot be disregarded as an entity separate from its owner (disregarded entity) for purposes of applying the special rules of the IRC applicable to banks. The IRS also issued proposed regulations under I.R.C. § 892 that provide that a partnership can be a controlled commercial entity for purposes of I.R.C. § 892(a)(2)(B). **66 Fed. Reg. 2854 (Jan. 12, 2001)**.

DISTRIBUTIONS. The IRS has issued proposed regulations which apply the rules of I.R.C. § 357(d), involving the treatment of liabilities assumed by a shareholder, to distributions under I.R.C. § 301. The proposed regulations provide that the amount of a distribution under Section 301 will be reduced by the amount of any liability that is treated as assumed by the distributee within the meaning of Section 357(d)(1) and (2). **66 Fed. Reg. 723 (Jan. 4, 2001)**.

EMPLOYEE STOCK OWNERSHIP PLAN. A corporation had two classes of common stock, non-voting and voting. Both classes had identical dividend rights. The stock was eligible for trading on the over-the-counter bulletin board but neither was regularly traded. The IRS ruled that the stock was not considered "publicly traded" for purposes of I.R.C. §§ 409(l)(1), 1042(c)(1)(A) which require stock in an ESOP be "readily tradable on an established securities market." **Ltr. Rul. 200052014, Sept. 27, 2000**.

CASUALTY LOSSES. The taxpayers purchased two parcels of property on which to operate a nursery. The taxpayers made improvements to the road on the property costing $6,840. The existing road and improvements were severely damaged in floods and the taxpayer claimed a casualty loss which equaled the tax basis of the entire property. The court noted that the taxpayers had treated, for income tax purposes, the road as separate property, since the improvement costs were not capitalized into the land basis and the taxpayer had claimed a depreciation deduction for the road improvement costs. The court held that the road was a separate improvement on the land, was subject to separate depreciation, and had a basis equal only to the cost basis demonstrated by the taxpayers of $6,840. The court noted that the taxpayers had not presented any evidence of the portion of the land purchase price which was allocated to the existing road. The appellate court affirmed in a decision designated as not for publication. **Cziraki v. Comm'r, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,141 (9th Cir. 2000), *aff'g*, T.C. Memo. 1998-439**.

CHARITABLE DEDUCTION. The IRS has adopted as final regulations governing the character of certain distributions from a charitable remainder trust. In these transactions, a taxpayer typically contributes highly appreciated assets to a charitable remainder trust having a relatively short term and relatively high payout rate. Rather

**Agricultural Law Manual* (ALM).

than sell the assets to obtain cash to pay the annuity or unitrust amount to the beneficiary, the trustee borrows money, enters into a forward sale of the assets, or engages in some similar transaction. Because the borrowing, forward sale, or other similar transaction does not result in current income to the trust, the parties attempt to characterize the distribution of cash to the beneficiary as a tax-free return of corpus under I.R.C. § 664(b)(4). Distributions may continue to be funded in this manner for the duration of the trust term. The appreciated assets may be sold and the transaction closed out in the last year of the trust, or the trustee may distribute the appreciated assets, subject to a contractual obligation to complete the transaction, to the charitable beneficiary. The regulations provide that, to the extent that a distribution of the annuity or unitrust amount from a charitable remainder trust is not characterized in the hands of the recipient as income from the categories described in I.R.C. § 664(b)(1), (2), or (3) (determined without regard to the rules in the regulations) and was made from an amount received by the trust that was neither a return of basis in any asset sold by the trust (determined without regard to the rules in the regulations) nor attributable to a contribution of cash to the trust with respect to which a deduction was allowable under I.R.C. §§ 170, 2055, 2106, or 2522, the trust will be treated as having sold, in the year for which the distribution is due, a pro rata portion of the trust assets. The regulations provide that any transaction that has the purpose or effect of circumventing this rule will be disregarded. For example, a return of basis in an asset sold by a charitable remainder trust does not include basis in an asset purchased by the charitable remainder trust from the proceeds of a borrowing secured by previously contributed assets. **66 Fed. Reg. 1034 (Jan. 5, 2001), adding Treas. Reg. § 1.643(a)-8**.

The IRS has discovered an abuse of the charitable lead trust provisions. There is no statutory limitation on the permissible term for a guaranteed annuity interest or a unitrust interest in order for the trust to qualify for the charitable deduction. The IRS has found that taxpayers attempt to take advantage of the regulations by using an unrelated individual's measuring life, as the term of a charitable lead trust, to artificially inflate the charitable deduction. Taxpayers select as a measuring life an individual who is seriously ill but not "terminally ill" within the meaning of the I.R.C. § 7520 regulations. Because the individual is not "terminally ill" as defined in the regulations, the charitable interest is valued based on the actuarial tables. These tables take into account the life expectancies of all individuals of the same age as the individual who is the measuring life, even though such individual has been carefully chosen because he or she likely will not live to an average life expectancy. When the seriously ill individual dies prior to the life expectancy, the amount the charity actually receives will be significantly less than the amount on which the gift or estate tax charitable deduction was based. Conversely, the amount of the actual transfer to the remainder beneficiaries will be significantly greater than the amount subject to gift or estate tax.

The IRS has adopted as final regulations under which the permissible term for guaranteed annuity interests and unitrust interests is either a specified term of years, or the life of certain individuals living at the date of the transfer. Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and a lineal ancestor of all the remainder beneficiaries. However, this limitation regarding permissible measuring lives does not apply in the case of a charitable guaranteed annuity interest or unitrust interest payable under a charitable remainder trust described in I.R.C. § 664. An interest payable for a specified term of years can qualify as a guaranteed annuity or unitrust interest even if the governing instrument contains a "savings clause" intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. For example, a guaranteed annuity or unitrust interest that will terminate on the earlier of 30 years or 21 years after the death of the last survivor of the descendants of any grandparent of the donor living on the date of the creation of the interest will be treated as payable for a specified term of years. **66 Fed. Reg. 1040 (Jan. 5, 2001)**.

COURT AWARDS AND SETTLEMENTS. The taxpayer owned a corporation which purchased and operated an automobile dealership. The dealership eventually failed and the taxpayer sued the manufacturer's region sales division for breach of contract, promissory fraud, violations of the Alabama Motor Vehicle Franchise Act, felonious injury, interference with business relations, misrepresentations and suppression of facts, and violation of RICO. Although the taxpayer suffered mental distress from the dealings with the defendant, the taxpayer did not allege any personal injury or any injury to the taxpayer's personal business reputation. The parties reached a large settlement which the taxpayer sought to exclude from income. The court held that the taxpayer could not exclude the settlement because no portion of the pleadings alleged a personal injury claim. The court also held that the portion of the settlement paid to the taxpayer's attorneys under a contingent fee arrangement was excludible from income under *Cotnam v. Comm'r, 263 F.3d 119 (5th Cir. 1959).* **Griffin v. Comm'r, T.C. Memo. 2001-5**.

DISASTER PAYMENTS. On December 18, 2000, the president determined that certain areas in Alabama were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of severe storms and tornadoes on December 16, 2000. **FEMA-1352-DR**. On December 28, 2000, the President determined that certain areas in Arkansas were eligible for assistance under the Act as a result of severe winter ice storms beginning on December 12, 2000. **FEMA-1354-DR**. On December 29, 2000, the President determined that certain areas in North Dakota were eligible for assistance under the Act as a result of severe winter storms and tornadoes beginning on November 1, 2000. **FEMA-1353-DR**. On December 28, 2000, the President determined that certain areas in Oklahoma were eligible for assistance under the Act as a result of severe winter ice storms beginning on December 25, 2000. **FEMA-3158-EM**. . On December 13, 2000, the President determined that certain areas in Wyoming were eligible for assistance under the Act as a result of severe winter storms beginning on October 31, 2000. **FEMA-1353-DR**. Accordingly, a taxpayer who sustained a loss attributable to the disasters may deduct the loss on his or her 1999 federal income tax return.

EMPLOYEE BENEFITS. The IRS has issued guidance on "split-dollar" life insurance arrangements between employers

and employees. The IRS will generally accept the parties' characterization of the employer's payments under a split-dollar arrangement, provided that (i) such characterization is not clearly inconsistent with the substance of the arrangement, (ii) such characterization has been consistently followed by the parties from the inception of the arrangement, and (iii) the parties fully account for all economic benefits conferred on the employee in a manner consistent with that characterization. **Notice 2001-10, I.R.B. 2001-__**.

EXCISE TAX. The IRS has announced that the excise tax on sales of luxury passenger vehicles during 2001 is reduced to 4 percent of the sales price in excess of $38,000. The domestic segment tax portion of the tax on amounts paid for personal air travel during 2001 is $2.75 per segment. The excise tax on use of international air travel facilities during 2001 increased to: $12.80 per person for flights that begin or end in the United States and $6.40 per person for domestic segments that begin or end in Alaska or Hawaii (applies only to departures). The IRS also announced the excise tax rates as well as credit and refund rates for gasohol. **IRS Newsstand, "What's Hot in Tax Forms," http://www.irs.gov**.

IRA. The taxpayer owned interests in two IRAs and was less than 59 years old. The taxpayer had been divorced and as part of the divorce proceedings was required to pay the former spouse $29,000 in property settlement. The taxpayer failed to make that payment and was eventually ordered by a court to make the payment or face incarceration. The taxpayer had few other liquid assets and had to withdraw the funds from the IRAs. The taxpayer argued that the exception of I.R.C. § 408(d)(6) applied to exclude the early withdrawals from the taxpayer's gross income as withdrawals made incident to a divorce. The court held that withdrawals were included in gross income because the divorce decree did not require the withdrawal of IRA funds, only the payment of the fixed sum. **Czepiel v. Comm'r, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,134 (1st Cir. 2000), *aff'g*, T.C. Memo. 1999-289**.

LETTER RULINGS. The IRS has issued its annual list of procedures for issuing letter rulings. **Rev. Proc. 2001-1, I.R.B. 2001-__, _**.

The IRS has issued its annual list of procedures for furnishing technical advice to District Directors and Chiefs, Appeals Offices. **Rev. Proc. 2001-2, I.R.B. 2001-__, _**.

The IRS has issued its annual list of tax issues for which the IRS will not give advance rulings or determination letters. **Rev. Proc. 2001-3, I.R.B. 2001-__**.

The IRS has issued its annual list of procedures for issuing letter rulings on employee plans. **Rev. Proc. 2001-4, I.R.B. 2001-__, _**.

LIKE-KIND EXCHANGES. The taxpayers, husband and wife, purchased a residence and used it as their primary residence for several years. The taxpayers purchased another residence and converted the first residence into a rental property. The fair market value of the property was much less than the taxpayers' adjusted basis in the property at the time of the conversion. The rental property was then exchanged for another rental property. The fair market value of the taxpayers' property was almost double the fair market value of the property received. The court held that (1) the taxpayers' basis in the first rental property was the fair market value at the time of the conversion, (2) the adjusted basis of the exchanged property was the adjusted basis of the first property less the difference in fair market value, considered boot, between the exchanged properties. **Bundren v. Comm'r, T.C. Memo 2001-2**.

PARTNERSHIPS-*ALM* § 7.03.*

CONTRIBUTIONS OF STOCK OF A PARTNER. The IRS has issued proposed regulations governing situations where a corporation acquires an interest in a partnership that holds stock in that corporation (or the partnership subsequently acquires stock in that corporation in an exchanged basis transaction), the partnership does not have an election under I.R.C. § 754 in effect for the year in which the corporation acquires the interest, and the partnership later sells or exchanges the stock. In these situations, the increase (or decrease) in the corporation's adjusted basis in its partnership interest resulting from the sale or exchange of the stock equals the amount of gain (or loss) that the corporate partner would have recognized (absent the application of I.R.C. § 1032) if, for the taxable year in which the corporation acquired the interest, a section 754 election had been in effect. The purpose of these proposed regulations cannot be avoided through the use of tiered partnerships or other arrangements. For example, the proposed regulations provide that if a corporation acquires an indirect interest in its own stock through a chain of two or more partnerships (either where the corporation acquires a direct interest in a partnership or where one of the partnerships in the chain acquires an interest in another partnership), and gain or loss from the sale or exchange of the stock is subsequently allocated to the corporation, then the bases of the interests in the partnerships included in the chain shall be adjusted in a manner that is consistent with the purpose of the proposed regulations. **66 Fed. Reg. 315 (Jan. 3, 2001), adding Treas. Reg. § 1.705-2.**.

PENSION PLANS. For plans beginning in December 2000, the weighted average is 5.93 percent with the permissible range of 5.34 to 6.23 percent (90 to 106 percent permissible range) and 5.34 to 6.52 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2001-3, I.R.B. 2001-__**.

The IRS has issued a revenue procedure which provides guidance for complying with the user fee program of the Internal Revenue Service as it pertains to requests for letter rulings, determination letters, etc., on matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division; and requests for administrative scrutiny determinations under *Rev. Proc. 93-41, 1993-2 C.B. 536*. **Rev. Proc. 2001-8, I.R.B. 2001-__**.

RETURNS. The IRS has issued a revised list of the filing locations for corporation, S corporation and partnership returns. The new locations are listed in the instructions to the income tax returns.

The IRS has announced that Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, due for decedents domiciled in the following states and Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, due for tax year 2000 with the donors living in the following states should be filed at the Cincinnati Service

**Agricultural Law Manual* (ALM).

Center, Cincinnati, Ohio 45999: Arkansas, Delaware, Hawaii, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Washington, D.C., West Virginia and Wisconsin. **IRS Newsstand, "What's Hot in Tax Forms**," **http://www.irs.gov.**

The IRS has adopted as final regulations providing that the date of an electronic postmark given by an authorized electronic return transmitter will be deemed the filing date if the date of the electronic postmark is on or before the filing due date. The regulations also permit the Commissioner to enter into an agreement with an electronic return transmitter or to prescribe in forms, instructions, or other appropriate guidance the procedures under which the electronic return transmitter is authorized to provide taxpayers with an electronic postmark to acknowledge the date and time that the electronic return transmitter received the electronically filed document. An electronic return transmitter is defined for purposes of the regulation the same as in the revenue procedures governing the Electronic Filing Program, *Rev. Proc. 98-50, I.R.B. 1998-38-8*, and the On-Line Filing Program, *Rev. Proc. 98-51, I.R.B. 1998-38-20*. An electronic postmark is a record of the date and time that an authorized electronic return transmitter receives the transmission of the taxpayer's electronically filed document on its host system. For taxable years beginning after 1998, the rules on electronic postmarks are effective for documents submitted to electronic return transmitters that are authorized to provide an electronic postmark pursuant to Sec. 301.7502-1T(d)(2). **Treas. Reg. § 301.7502-1(d). 66 Fed. Reg. 2257 (Jan. 12, 2001)**.

The IRS has announced the release of revised Publication 551 (Revised December 2000), Basis of Assets. This document is available at no charge (1) by calling the IRS's toll-free telephone number, 1-800-829-3676; (2) via the internet at http://www.irs.gov/prod/cover.html; (3) through FedWorld; or (4) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

S CORPORATIONS-*ALM* § 7.02[3][c].*

BUILT-IN GAINS. The taxpayer corporation was originally a C corporation. The taxpayer elected S status in 1988 but revoked the election in 1989. The taxpayer re-elected S corporation status in 1994. When the second election was made, the taxpayer had built-in gains from years when the taxpayer was a C corporation. Under TRA 1986, a transition rule applied to corporations which made an S corporation election prior to January 1, 1989. The taxpayer argued that the transition rule applied to its built-in gains because it had made an S corporation election prior to January 1, 1989. The court held that the transition rule applied to the taxpayer's most recent election which occurred prior to January 1, 1989. Because the taxpayer had revoked the 1988 election, only the 1994 election would be used. The court held that the 1994 election was not eligible for the transition rule. **Colorado Gas Compression, Inc. v. Comm'r, 116 T.C. No 1 (2001)**.

DISCHARGE OF INDEBTEDNESS. The taxpayer was a shareholder in an S corporation which was a partner in a joint venture which realized discharge of indebtedness income in 1991. The taxpayer increased the basis of the taxpayer's S corporation stock by the taxpayer's share of the discharge of indebtedness income passed through the S corporation. At the time of the discharge of the indebtedness, the S corporation was insolvent and had net operating losses. The increase in the stock basis enabled the taxpayer to deduct the carried-over losses in a later year. The IRS argued that the discharge of indebtedness income was not an item of income for purposes of determining stock basis because discharge of indebtedness income was excluded under the insolvency exclusion rule of I.R.C. § 108. The Tax Court held that, because the corporation was insolvent, I.R.C. § 108 caused an exclusion of the discharge of indebtedness income at the corporation level which was offset by reduction in tax attributes of the corporation, leaving no tax consequences to flow to the shareholders such as would increase the shareholders' basis in stock. The Supreme Court reversed, holding that discharge of indebtedness income was a pass-through item of corporation income which was applied first to increase the shareholders' basis, second to any shareholder losses, and finally to offset any tax attributes. In this case, the shareholders had sufficient losses to use up the entire discharge of indebtedness income. **Gitlitz v. United States, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,147 (S. Ct. 2001), *rev'g*, 182 F.3d 1143 (10th Cir. 1999), *aff'g sub nom.*, Winn v. Comm'r, T.C. Memo. 1998-71, *withdrawing* T.C. Memo. 1997-286.**

PRODUCT LIABILITY

VACCINE. The plaintiff owned and operated a mink farm and had purchased a distemper vaccine from the defendant manufacturer. The plaintiff alleged that the vaccine failed to prevent the distemper in the minks and sued for damages under theories of breach of implied and express warranties, strict liability, negligence, misrepresentation and noncompliance with federal regulations. The court held that the breach of implied and express warranties, strict liability, and negligence claims were preempted by federal law governing the licensing of vaccines. The court held that the misrepresentation claim was preempted because the plaintiff did not allege that the defendant made any representations other than those carried on the label of the vaccine. The court held that the noncompliance claim was not preempted; however, the defendant was granted summary judgment on this claim because the plaintiff failed to provide any evidence that the vaccine did not comply with the regulations. **Cooper v. United Vaccines, Inc., 117 F. Supp.2d 864 (E.D. Wis. 2000)**.

CITATION UPDATES

HB & R, Inc. v. United States, 229 F.3d 1119 (8th Cir. 2000) (travel expenses), see 11 *Agric. L. Dig.* 174 (2000).

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