CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

AVOIDABLE LIENS. The debtor owned a mobile home which was subject to a non-possessory, non-purchase money security interest. The debtor claimed the home as exempt and sought to avoid the lien as impairing the exemption, under Section 522(f), of a household good. The court held that a mobile home was not a household good; therefore, the lien avoidance provision did not apply. ***In re* Hoss, 233 B.R. 684 (W.D. Va. 1999)**.

EXEMPTIONS.

RURAL HOMESTEAD. The debtor owned a one-half interest in 200 acres of ranch land, a 34 acre tract of contiguous, unfenced ranch land and three acres of fenced land leased to an oil company. The debtor lived with the debtor's parent, who owned the other half interest in the ranch land, on a parcel owned by the parent. The debtor presented no evidence of plans to reside on any one of the three parcels. The debtor claimed the 136 acres as rural homestead property exempt under Tex. Prop. Code § 41.002(b)(1), arguing that the exemption did not require that the debtor live on the property, since the property was used to support the debtor and the debtor's family. The court held that the exemption required the debtor to live on the property or to at least demonstrate a present intent to reside on the property and denied the entire exemption. ***In re* Brooks, 233 B.R. 696 (Bankr. N.D. Tex. 1999)**.

The debtor had owned a 89 acre farm for several years before granting a life estate in the property to the debtor's parents. The debtor then leased the property from the parents who lived on other property. The debtor initially paid rent to the parents but had not paid rent in recent years. The debtor claimed the property as an exempt rural homestead. The creditors argued that the debtor did not have a sufficient interest in the property to claim an exemption. The court held that the reversionary interest plus the possessory interest as a tenant were sufficient interest in the property to claim the exemption. ***In re* Eskew, 233 B.R. 708 (Bankr. W.D. Tex. 1998)**.

CHAPTER 12-*ALM* § 13.03[8].*

DISMISSAL. The debtors had been under bankruptcy protection over several cases spanning 13 years. The basic difficulty arose from the debtors' sale of a crop which was security for a loan from a supplier. The debtors admitted to the sale and the validity of the security interest; however, the debtors' plans first treated the creditor as unsecured, arguing that the loss of the collateral destroyed the security interest. The debtors' final plan did not provide for any plan payments to the supplier but placed the supplier's claim outside of the bankruptcy plan as not discharged. The debtors had contested the claim because they claimed that seed and other supplies provided by the supplier were defective. The Bankruptcy Court refused to confirm the final plan and dismissed the case for failure to file a confirmable plan. The Bankruptcy Court had repeatedly warned the debtors to propose a plan which provided for the supplier's claim. The District Court affirmed, holding that the debtors' excessive delays in the face of repeated warnings from the Bankruptcy Court demonstrated a lack of good faith and abuse of the bankruptcy process. ***In re* Barger, 233 B.R. 80 (Bankr. 8th Cir. 1999)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

AUTOMATIC STAY. The debtors filed their 1978 and 1979 tax returns but failed to pay the taxes. The debtors filed for Chapter 7 in July 1982 and the IRS obtained the debtors' consent to extend the times for assessment for 1978 and 1979. In April 1988, the Chapter 7 case was dismissed but the IRS was not notified about the dismissal until October 1989, although the IRS asked the Clerk of Court 13 times about the status of the case. The debtors filed a second case in July 1990 and received a general discharge in November 1990. The IRS then proceeded to levy against the debtors' assets for payment of the 1978 and 1979 deficiencies. The debtors argued that the assessment period had expired and that the general discharge in the second case had discharged the taxes. The court held that the filing of the first case suspended the assessment period until the IRS was notified about the dismissal of the case. The court held that the IRS had reasonably relied on the Clerk of Court to provide correct information about the case. The court also held that the taxes were not discharged in the second case because the tax claim was a priority claim not subject to discharge. **Richmond v. United States, 172 F.3d 1099 (9th Cir. 1999)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The plaintiff leased land from the Fish and Wildlife Service and other parties. The leases provided that the plaintiff's share of the crop would be determined from the number of acres planted or prevented from planting, except that acres prevented from planting because of backwater flooding were not included. The plaintiff filed a crop insurance claim for crops which could not be planted due to backwater flooding but the claim was denied because the plaintiff had no interest in any crop in the backwater-flooded acres. The court held that, under lease the plaintiff had no share in a crop not planted because of backwater flooding; therefore, the plaintiff had no insurable interest in any of those acres to support a crop insurance claim. **Davidson v. Glickman, 169 F.3d 996 (5th Cir. 1999)**.

DAIRY RECOURSE LOAN PROGRAM. Beginning on January 1, 2000, the Commodity Credit Corporation (CCC) will make recourse loans to commercial processors of dairy products. The CCC has issued proposed regulations which would make recourse loans available to dairy processors through a central location, as opposed to in-person applications taken at Farm Service Agency (FSA) state or county offices, allow the loan collateral to be based on a rolling, commingled inventory, versus an identity preserved inventory, and miscellaneous other changes which would provide for a more customer-friendly program. **64 Fed. Reg. 39442 (July 22, 1999)**.

FARM PROGRAM HANDBOOKS. The plaintiff had originally filed a Report of Acreage, ASCS Form 578, showing the number of acres planned to be planted and the number of acres for conserving use. Because of backwater flooding, much of the conserving use acres were flooded. The plaintiff sought to change the acreage report to include the conserving acres in the prevented planting acres. The county FSA disapproved the revision, pointing to a handbook provision, ASCS Handbook 2-CP § 83, prohibiting revision of acreage reports where the revision would benefit the producer. The plaintiff argued that the handbook provision was a legislative rule which was void because the handbook provision had been promulgated under the procedures required by the Administrative Procedures Act. Instead, 7 C.F.R. § 718.24 controlled and allowed revisions of acreage reports without limitation. The court agreed, holding that the handbook provision went beyond the rules in the regulations and required notice and comment procedures before being effective. **Davidson v. Glickman, 169 F.3d 996 (5th Cir. 1999)**.

JURISDICTION. The plaintiff was a dairy which filed a petition with the USDA challenging the validity of the assessment under the Dairy Promotion Program. The plaintiff sought interim relief allowing it to deposit the assessment in an escrow account pending resolution of the matter. The Administrative Law Judge denied the request and the plaintiff sought review in the District Court. The District Court held that it did not have jurisdiction because the ALJ ruling was not a final ruling of the administrative process on the main issue of the case, the assessment under the DPP. The appellate court affirmed, holding that the plaintiff had to complete the administrative review process before seeking review by the courts. **Gallo Cattle Co. v. U.S.D.A., 159 F.3d 1194 (9th Cir. 1998)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT. The plaintiff was a produce distributor which sold 16 shipments of potatoes to a company which was connected to the defendant. The plaintiff brought a reparations action to collect for the potatoes but the defendant did not participate in the administrative procedures. A reparations award was granted to the plaintiff and the plaintiff sought to enforce the order in the District Court. The defendant raised new defenses in the District Court case and the plaintiff argued that no new issues could be litigated in an enforcement action. The court held that a judicial review of a reparation order was a trial de novo and the defendant could raise issues as if the case was an original trial. The first defense raised was that the defendant was not subject to PACA because the defendant was not licensed at the time of the transactions. The court found that the only change in the defendant was that the defendant had been licensed but the license had expired less than four weeks before the transactions; therefore, the defendant failed to show that it was not subject to PACA. The second defense was that the contracts involved were void for violating the Illinois Statute of Frauds. The court held that failure to satisfy the Illinois Statute of Frauds did not make a contract void, only unenforceable in state courts; therefore, the Statute of Frauds did not affect liability under PACA. **United Potato Co., Inc. v. Burghard & Sons, Inc., 18 F. Supp. 2d 894 (N.D. Ill. 1998)**.

PSEUDORABIES. The APHIS has issued interim animal health regulations to provide for the payment of indemnity by the USDA for the voluntary depopulation of herds of swine known to be infected with pseudorabies. The payment of indemnity will encourage depopulation of infected herds and, therefore, will reduce the risk of other swine becoming infected with the disease. The program was to expire on July 15, 1999 but has been continued indefinitely. **64 Fed. Reg. 37395 (July 12, 1999)**.

FEDERAL ESTATE AND GIFT TAX

1999 TAX BILL. The U.S. House of Representatives has passed tax legislation which includes the following provision: The estate and gift tax would be eliminated over a 10-year period. The step-up of tax basis would also be eliminated except for property passing to a surviving spouse and property with a fair market value of $2 million or less. Any indebtedness against property would reduce its fair market value. **H.R. 2488, 106th Cong., 1st Sess. (1999)**.

GIFT. The decedent had owned stock with a predeceased sister. Title to the stock was held in the sister's name alone; however, the sisters declared the income from the stock as co-owners. After the death of the sister, the decedent transferred the decedent's share of stock by sales agreement and deed of gift to the decedent's niece and nephews. The stock certificates were not transferred, however, until the next tax year. The court held that the decedent had sufficient ownership in the stock to transfer them, the sales agreement and deed of gift were sufficient to complete the gifts when executed and the delivery of the certificates was not required because the decedent had demonstrated sufficient intent to make the gift from the documents. **Estate of Davenport v. Comm'r, 99-2 U.S. Tax Cas. (CCH) ¶ 60,348 (10th Cir. 1999), *aff'g*, T.C. Memo. 1997-390**.

TRANSFERS WITH RETAINED INTERESTS-*ALM* § 5.02[3].* In 1951, the decedent and parent owned most of the stock of a family corporation. In order to meet the inheritance and control desires of the shareholders, the decedent and parent entered into an agreement for the transfer of the parent's stock at death to the decedent in trust for life with

**Agricultural Law Manual* (ALM).

remainders to the parent's grandchildren. The decedent agreed to transfer the decedent's stock by will to the same trusts. The IRS argued that, although the agreement was reached in bona fide bargaining and the decedent did provide some consideration for the agreement, the consideration was not full and adequate; therefore, the stock in the trusts was included in the decedent's gross estate. The IRS argued that the consideration had to equal the value of the entire property transferred; whereas, the estate argued that the consideration only had to equal the value of the remainder interest transferred. The Tax Court held that the value of the decedent's future contribution of stock was not sufficient consideration for the parent's agreement to transfer stock to the trusts; therefore, the decedent's interest in the trust was not received for adequate consideration. The Tax Court included the value of the stock in the trusts in the decedent's gross estate, decreased by the value of the decedent's stock contributed to the trusts. The appellate court reversed, holding that the property would not be included in the decedent's estate if the decedent's consideration equaled the value of the remainder interest transferred by the parent. The case was remanded for a determination of values. The appellate court also held that the valuation date was the date of the original agreement. **Estate of Magnin v. Comm'r, 99-2 U.C. Tax Cas. (CCH) ¶ 60,347 (9th Cir. 1999), *rev'g*, T.C. Memo. 1996-25**.

VALUATION OF STOCK. The decedent was a shareholder in a law firm corporation. The corporation had purchased life insurance on the life of the decedent which would fund the purchase of the decedent's stock and any cases or work in progress. The firm paid the $5 million insurance proceeds to the decedent's estate and characterized $4 million of it as non-employee compensation. The estate claimed that the proceeds were paid entirely for the decedent's stock. The Tax Court held that, under the life insurance stock purchase agreement, the insurance proceeds were not intended only for payment for the stock. The Tax Court valued the stock without considering the insurance policy or advanced client costs. The appellate court agreed that the insurance proceeds were, in part, compensation for the decedent's cases and work in progress and were income in respect of decedent. The appellate court also affirmed as to exclusion of the insurance policy from the value of the stock, holding that the value of the insurance policy was offset by the stock purchase obligation. The appellate court remanded the case for inclusion of the advanced client costs in determining the value of the stock, because the advances were treated as loans on the corporation's books. **Estate of Cartwright v. Comm'r, 99-2 U.S. Tax Cas. (CCH) ¶ 50,666 (9th Cir. 1999)**.

The decedent owned 12,000 shares of stock in a bank corporation which had issued 100,000 total shares. The stock was not sold publicly but 1,100 shares were sold one month before the decedent's death. The court used that sale as evidence of the fair market value of the stock because the sale was arm's length and had no special circumstances. The court discounted the decedent's stock by 10 percent for the large block of shares, acknowledging that the shares could be sold in smaller blocks over time. **Estate of Branson v. Comm'r, T.C. Memo. 1999-231**.

FEDERAL INCOME TAXATION

1999 TAX BILL. The U.S. House of Representatives has passed tax legislation which includes the following provisions:

(1) The individual capital gains tax rates would be reduced from 20 percent to 15 percent and from 10 percent to 7.5 percent (for taxpayers in the 15 percent individual income tax bracket). The corporate capital gains tax rate would be reduced from 35 percent to 30 percent in 2004

(2) A 100 percent deduction would be provided for health insurance premiums and long-term care insurance premiums.

(3) An additional exemption (currently $2,750) would be provided for individuals who care for elderly family members at home.

(4) The availability of medical savings accounts (MSAs) would be expanded and the MSA program would be made permanent.

(5) Employers would be allowed to offer long-term care insurance in cafeteria plans.

(6) The Housing and Urban Development Secretary would be authorized to designate 20 renewal communities in both urban and rural areas.

(7) The alternative minimum tax for both individuals and corporations would be phased out.

(8) A number of expiring tax credits, including the research, work opportunity, and welfare-to-work tax credits would be extended.

(9) Medicare beneficiaries would be allowed to take an above-the-line deduction, meaning individuals may take the deduction whether or not they itemize, to cover the cost of prescription drug insurance coverage, contingent upon certain Medicare changes. **H.R. 2488, 106th Cong., 1st Sess. (1999)**.

CHARITABLE DEDUCTION. The taxpayers were trusts which owned rural land on which a man-made lake was located. A school district had purchased property neighboring the lake and was required by the local water management plan to provide 15 percent of its land for water retention for prevention and control of floods. The taxpayers conveyed a perpetual easement over a portion of the lake to the school district, essentially allocating the water retention ability of that portion of the lake to the school district for purposes of meeting the school district's 15 percent water retention requirements for the neighboring property. The IRS ruled that the easement qualified for a charitable deduction as a qualified conservation easement. **Ltr. Rul. 9927014, April 7, 1999**.

CORPORATIONS

DEFINITION. The taxpayer was employed full time as an engineer. The taxpayer formed a corporation for the purpose of designing and marketing a suspended light rail system to state and local governments. The corporation had no income and did not acquire any contracts, but the taxpayer incurred expenses associated with attempting to convince governments to build the system. The taxpayer claimed the expenses as personal business deductions, arguing that the corporation should be ignored as merely a method of presenting a business appearance to prospective customers. The court held that the corporation was validly formed and served a business purpose; therefore, the expenses were deductible only by the corporation. The court also noted that the expenses would also have to be amortized over 60 months as start-up expenses. **Willits v. Comm'r, T.C. Memo. 1999-230**.

The taxpayer had formed a corporation but the corporation had no office outside of the taxpayer's home, no phone number and conducted no business other than alleged services provided by the taxpayer to the taxpayer's wife in her employment as a loan officer. The wife paid the corporation $100,000 for alleged services performed solely by the taxpayer. The court held that the taxpayer failed to provide any substantiating evidence that the services were performed or were worth what was paid for them. Therefore, the court held that the $100,000 was not deductible as a business expense and was taxable income to the taxpayer. **Boehm v. Comm'r, T.C. Memo. 1999-227**.

DEPRECIATION. The taxpayers owned a tobacco farm and claimed depreciation for a barn used for storing, curing and preparing tobacco produced on their farm. The court held that the barn was not eligible for expense method depreciation because it did not qualify as a "structure other than a building" under I.R.C. § 1245(a)(3)(B). The court also held that the barn did not qualify as a single purpose horticultural structure under I.R.C. §§ 1245(a)(3)(D), 168(I)(13)(B)(ii), because the barn was not used exclusively for the production of a horticultural product. The barn was classified as 20-year property and as a farm building under Rev. Proc. 87-56. **Hart v. Comm'r, T.C. Memo. 1999-236**.

IRA. The taxpayer's spouse died owning an interest in two IRAs. The taxpayer was the designated surviving beneficiary of the IRAs and created four additional IRAs, each with a different child as the remainder beneficiary. The IRS ruled that the amount rolled over from the decedent's IRAs into the new IRAs was not included in the taxpayer's income. **Ltr. Rul. 9928040, April 20, 1999**.

INSTALLMENT SALES. For expense method depreciation on assets disposed of by installment sale, all payments received under the contract are deemed to have been received in the year of sale to the extent of expense method depreciation claimed on the property. I.R.C. § 453(i)(1). Legislation has been introduced in the U.S. House of Representatives which would exclude from this rule property used in a farming business (as defined in I.R.C. § 263A(e)(4)). **H.R. 2537, 106th Cong., 1st Sess. (1999)**.

INTEREST. The taxpayers owned a horse which was an asset of a horse farm business. The horse died and the taxpayers received the proceeds of an insurance claim. The taxpayers elected to defer the gain, intending to repurchase another horse. However, no horse was purchased and the taxpayers filed an amended return to include the gain recognized plus interest. The taxpayers sought to deduct the interest paid on the taxes as a business expense. The court followed the precedent of the Fourth, Eighth and Ninth Circuit Courts of Appeals in holding that interest on federal taxes was nondeductible personal interest. **Kirk v. United States, 99-2 U.S. Tax Cas. (CCH) ¶ 50,687 (E.D. Ky. 1999)**.

MEAL AND ENTERTAINMENT EXPENSES. Legislation has been introduced in the U.S. House of Representatives which would increase over eight years the deductible portion of meal and entertainment expenses from the current 50 percent to 80 percent (in 2008). **H.R. 2554, 106th Cong., 1st Sess. (1999)**.

The IRS has announced three actions as a result of the Ninth Circuit's opinion in *Boyd Gaming Corporation v. Comm'r,--F.3d --(9th Cir. 1999), rev'g T.C. Memo 1997-445*. The IRS (1) acquiesced in the opinion, (2) withdrew proposed training materials relating primarily to the application of I.R.C. § 119 to employer-provided meals in the hospitality industry, *Ann. 98-77, I.R.B. 1998-34, 30* and (3) terminated the settlement initiative related to this issue, *Ann. 98-78, I.R.B. 1998-34, 30*. **Ann. 99-77, I.R.B. 1999-32**.

OFFERS IN COMPROMISE. The IRS has issued temporary regulations governing offers in compromise of income tax owed. The temporary regulations continue the traditional grounds for compromise based on doubt as to liability or doubt as to collectibility. In addition, to reflect the changes made in RRA 1998, the temporary regulations allow a compromise where there is no doubt as to liability or as to collectibility, but where either (1) collection of the liability would create economic hardship, or (2) exceptional circumstances exist such that collection of the liability would be detrimental to voluntary compliance. Compromise based on these hardship and equity bases may not, however, be authorized if it would undermine compliance. Although the temporary regulations set forth the conditions that must be satisfied to accept an offer to compromise liabilities arising under the internal revenue laws, they do not prescribe the terms or conditions that should be contained in such offers. Thus, the amount to be paid and future compliance or other conditions precedent to satisfaction of a liability for less than the full amount due are matters left to the discretion of the Secretary.

The temporary regulations also add provisions relating to the promulgation of requirements for providing for basic living expenses, evaluating offers from low income taxpayers, and reviewing rejected offers, as required by RRA 1998. The temporary regulations provide for the development and publication of national and local living allowances that permit taxpayers entering into offers in compromise to have an adequate means to provide for their basic living expenses. In accordance with I.R.C. § 7122(c)(3)(A), the temporary regulations also require the development of supplemental guidelines for the evaluation of offers from "low income" taxpayers. **64 Fed. Reg. 39020 (July 21, 1999)**.

RENTAL PROPERTY. The taxpayers, husband and wife, purchased the house owned by the wife's parents and rented the house back to them at $100 less than the fair rental value of the house. The taxpayers claimed expenses and depreciation associated with the house as held for production of income. The court held that, because the house was not rented for fair rental value, the house was considered as used by the taxpayers as a personal residence. Therefore, the court held that the taxpayers were not entitled to any deductions as to expenses associated with the property as income property. The taxpayer were eligible only for Schedule A deductions, including taxes and interest. **Jackson v. Comm'r, T.C. Memo. 1999-226**.

RETURNS. The IRS has announced the publication of revised Form 706-GS(D) (Revised June 1999), Generation-

Skipping Transfer Tax Return For Distributions and Form 706-GS(D-1) (Revised June 1999), Notification of Distribution From a Generation-Skipping Trust. These documents are available at no charge and can be obtained either: (1) by calling the IRS's toll-free telephone number, 1-800-TAX-FORM (1-800-829-3676); (2) via the World Wide Web at http://www.irs.ustreas.gov/prod/; (3) through FedWorld on the Internet; or (4) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

For 1996 and 1997, the taxpayer claimed an exemption for a minor son but failed to provide a social security or taxpayer identification number for the son as required by I.R.C. § 151. Instead, the taxpayer filed an affidavit pursuant to Treas. Reg. § 301.6109-1(c) and claimed that the regulation provided an exception to the statute. The court held that the statute took precedence over the regulation and created an absolute requirement that no exemption was allowed if the return did not report a SSN or TIN for the dependent claimed as an exemption. **Furlow v. United States, 99-2 U.S. Tax Cas. (CCH) ¶ 50,684 (D. Md. 1999)**.,

REVENUE BULLETINS. The IRS has announced a change in the format of the Internal Revenue Bulletin. Beginning with I.R.B. 1999-28, the page numbers will run consecutively from one I.R.B. to the next instead of starting each I.R.B. with page one. Reprints of the weekly I.R.B.s will be bound together to form the Cumulative Bulletin. **Ann. 99-69, I.R.B. 1999-28, 33**.

SAFE HARBOR INTEREST RATES
August 1999

	Annual	Semi-annual	Quarterly	Monthly
Short-term				
AFR	5.43	5.36	5.32	5.30
110 percent AFR	5.99	5.90	5.86	5.83
120 percent AFR	6.53	6.43	6.38	6.35
Mid-term				
AFR	5.96	5.87	5.83	5.80
110 percent AFR		6.56	6.46	6.416.37
120 percent AFR		7.16	7.04	6.986.94
Long-term				
AFR	6.23	6.14	6.09	6.06
110 percent AFR		6.86	6.75	6.696.66
120 percent AFR		7.51	7.37	7.307.26

S CORPORATIONS-*ALM* § 7.02[3][c].*

ELECTION. Four shareholders elected to have their corporation taxed as an S corporation. However, a misunderstanding between the shareholders and the professional preparing the election for the corporation caused the Form 2553, Election by a Small Business Corporation, to not be filed. The shareholders, however, filed their personal income tax returns as if the election had been properly filed. The IRS granted the corporation an extension to file the Form 2553 within 60 days after receiving the letter ruling. **Ltr. Rul. 9928026, April 19, 1999**.

INADVERTENT TERMINATION. The taxpayers had formed two S corporations. One shareholder transferred shares in one corporation to the other corporation. The transfer caused the first corporation to lose S corporation status, an effect not understood by the shareholder. All parties had filed returns as if the S corporation elections were effective. The shareholders planned to rectify the situation by transferring all of the first corporation's stock to the second and filing a qualified subchapter S subsidiary election for the first corporation. The IRS ruled that the termination would be waived as inadvertent. **Ltr. Rul. 9928024, April 16, 1999**.

TARGETED JOBS TAX CREDIT. The taxpayer had employed persons during the effective years of the targeted jobs tax credit. The court found that the taxpayer and employees had satisfied all of the statutory requirements for the credit except receiving certification from a local agency. The only reason the local agency did not certify the employees was because of lack of resources and because the federal government shut down the program before all of the certifications were processed. The taxpayer claimed the credit anyway, arguing that it had made a good faith effort to obtain certification. The IRS argued that the regulations, Treas. Reg. § 1.51-1(d)(1), required the certification in order to take the credit. The court held that the taxpayer was entitled to the credit because the certification process was required only as a means to reduce uncertainty as to whether employees met the requirements for the credit; therefore, once it was determined by the IRS that the employees met the requirements, the taxpayer was eligible for the credit, even without certification. **Perdue Farms, Inc. v. United States, 99-2 U.S. Tax Cas. (CCH) ¶ 50,659 (D. Md. 1999)**.

TRADE OR BUSINESS. The taxpayers purchased rural land on which they built a log cabin for a personal residence. The taxpayer formed a corporation to own the land; however, the taxpayers presented no evidence of a business operated by the corporation and presented no evidence of corporate bank accounts or business expenses. The court held that the taxpayers could not claim any business deductions associated with the property. **Streck v. Comm'r, 99-2 U.S. Tax Cas. (CCH) ¶ 50,650 (6th Cir. 1999)**.

STATE REGULATIONS OF AGRICULTURE

WETLANDS. The plaintiff had purchased land which was regulated wetlands and was restricted to use as a peat farm. The plaintiff wanted to convert the land with some trenching and filling to make it suitable for cranberry farming but the state denied a permit under the Michigan Wetlands Protection Act (WPA), Mich. Cod. Laws §§ 324.30301 *et seq*. The plaintiff argued that because the plaintiff was going to farm the land, the plaintiff was exempted from the WPA provisions. The court looked to the federal Clean Water Act (CWA) which required a state to enact laws at least as restrictive as the federal act in order for the state to administer the CWA in the state. Because the CWA prohibited activities on wetlands that made farming possible or expanded farming operations, the state law had to be interpreted to require the same restrictions. Therefore, the court held that activities on wetlands which made a new type of farming possible were prohibited by the WPA and the state was correct to deny the plaintiff's permit. **Huggett v. DNR, 590 N.W.2d 747 (Mich. Ct. App. 1998)**.

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SEMINAR IN PARADISE

FARM ESTATE AND BUSINESS PLANNING

by Neil E. Harl and Roger A. McEowen

January 24-28, 2000

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• Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.

• Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.

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