[15] Ltr. Rul. 200203010, Oct. 4, 2001 (attorney fees not itemized deduction but trade or business deduction so not subject to alternative minimum tax).

[16] Cotnam v. Comm'r, 263 F.2d 119 (5th Cir. 1959); Srivastava v. Comm'r, T.C. Memo. 1998-362, *rev'd,* 220 F.3d 353 (5th Cir. 2000) (attorney had common law lien under Texas law).

[17] Estate of Clarks, 202 F.3d 854 (6th Cir. 2000) (contingency fees are property of attorney; not taxable to client); Brisco v. United States, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,420 (6th Cir. 2001) (interest earned on attorney's contingency fee could be excluded from income; involved personal injuries); Banks v. Comm'r, 345 F.3d 373 (6th Cir. 2003), *cert. granted,* 3/29/04.

[18] Davis v. Comm'r, T.C. Memo. 1998-248, *aff'd,* 210 F.3d 1346 (11th Cir. 2000) (Cotnam v. Comm'r, *supra*, followed; involved same jurisdiction).

[19] Griffin, III v. Comm'r, T.C. Memo. 2001-5 (Cotnam v. Comm'r, *supra*, followed).

[20] See, e.g., Srivastava v. Comm'r, T.C. Memo. 1998-362, *rev'd,* 220 F.3d 353 (5th Cir. 2000) (common law lien under Texas law).

[21] 345 F.3d 373 (6th Cir. 2003), *cert. granted*, 3/29/04.

[22] 340 F.3d 1074 (9th Cir. 2003), *cert. granted,* 3/29/04.

[23] Pub. L. No. 108-357, Sec. 703, signed Oct. 22, 2004.

[24] It is not clear when a judgment or settlement "occurs." See Wood, "Effective Date of Attorney Fee Deduction Misses Many Judgments," 105 *Tax Notes* 1643, 1644 (Dec. 20, 2004).

[25] *Id.*, Sec. 703, amending I.R.C. § 62(a)(19).

[26] *Id.*

[27] *Id.*

[28] I.R.C. § 62(e).

[29] *Id.*

# CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

## BANKRUPTCY

### GENERAL

**DISCHARGE.** The debtor was the president of and owned 50 percent of a corporation which operated a grain warehouse. The debtor had issued eight warehouse receipts for corn and soybeans purchased from the warehouse when the warehouse did not have sufficient inventory to cover the receipts. The shortage was discovered on audit and the Nebraska Public Service Commission closed the warehouse, seized the inventory and took control of the corporation's records. The holder of the warehouse receipts sued the debtor for fraudulent misrepresentation, negligent misrepresentation and deceptive trade practices. The debtor did not provide any testimony, invoking the debtor's Fifth Amendment right against self-incrimination. A summary judgment was granted to the receipt holder, along with a monetary judgment. The debtor filed for Chapter 7 and the judgment creditor sought a ruling that its judgment was nondischargeable under Sections 523(a)(2)(A) (false representation) and 523(a)(4) (breach of fiduciary duty). The court held that the creditor had failed to demonstrate any fiduciary duty owed by the debtor to the creditor; therefore, the judgment award was not made nondischageable under Section 523(a)(4). However, the court held that the state court judgment against the debtor was sufficient to make the judgment award nondischargeable because the doctrines of collateral estoppel and/or res judicata required giving full effect to the judgment for purposes of the bankruptcy case. The court held that the failure of the debtor to testify in the state court proceedings was insufficient to avoid application of res judicata or collateral estoppel. In addition, the court noted that the judgment creditor had presented sufficient independent evidence of fraud to support nondischargeability of the judgment award. ***In re* White, 315 B.R. 741 (Bankr. D. Neb. 2004)**.

### CHAPTER 13

**LIEN AVOIDANCE.** The debtor filed for Chapter 13 and sought avoidance of a tax lien. The IRS argued that the debtor did not have any power to avoid liens in Chapter 13. Although the court acknowledged a split of authority on the issue, the court upheld the Bankruptcy Court decision to allow the debtor to avoid the lien. **United States v. Dewes, 315 B.R. 834 (N.D. Ind. 2004)**.

### FEDERAL TAXATION

**DISCHARGE.** The debtor had timely filed income tax returns for 1981, 1982, 1983, and 1984. The returns were audited and assessments made for additional taxes due to the adjustment of the cost basis of the sale of stock. For several years, the debtor or the debtor's attorney met with IRS agents, arguing that the adjustments were incorrectly made. The debtor made two offers in compromise, both of which were rejected. The debtor then filed for Chapter 7 and sought a ruling that the 1981 through 1984 taxes were dischargeable. The IRS argued that the taxes were nondischargeable under Section 523(a)(1)(C) for willfully attempting to evade payment of the taxes. The IRS pointed to the debtor's closing of all bank accounts and stalling tactics in making very low offers in compromise. The court held that the debtor's conduct was not sufficient to demonstrate a willful attempt to evade payment of the taxes. The court found that the debtor had worked with the IRS over the years to resolve the dispute and had made two offers in compromise. The court also noted that the debtor had not attempted to hide assets or made any false statements to mislead the IRS. The court held that the

taxes were dischargeable. ***In re* O'Callaghan, 316 B.R. 550 (Bankr. M.D. Fla. 2004)**.

# FEDERAL AGRICULTURAL PROGRAMS

**EMERGING MARKETS PROGRAM**. The CCC has adopted as final regulations implementing the Emerging Markets Program authorized by Section 1542(d) of the Food, Agriculture, Conservation, and Trade Act of 1990. **70 Fed. Reg. 253 (Jan. 4, 2005)**.

**ORGANIC FOODS.** The AMS has adopted as final regulations which would exempt any person producing and marketing solely 100 percent organic products from paying assessments to any research and promotion program administered by the AMS. In the explanation and examples, the AMS points out the 100 percent requirement applies to the producer's entire operation, not for each commodity. Thus, a farmer who grows all organic soybeans but also grows nonorganic corn is not exempt from assessment under the soybean promotion, research and consumer information program. **70 Fed. Reg. 2743 (Jan. 14, 2005)**.

The AMS has adopted as final regulations which exempt any person producing and marketing solely 100 percent organic products from paying assessments for market promotion, including paid advertising, activities to marketing order programs administered by the AMS. **70 Fed. Reg. 2763 (Jan. 14, 2005)**.

# FEDERAL ESTATE AND GIFT TAXATION

**ALTERNATE VALUATION DATE**. The Deficit Reduction Act of 1984 provided that the alternate valuation date election may be made on the estate tax return, whether it is filed timely or late, as long as the return is filed no more than one year after the due date, including extensions. Temp. Treas. Reg. § 301.9100-6T(b) reflected this change to the law and provided that once a return that failed to make the election was filed, the election could not be made on a subsequent return unless the subsequent return was filed by the due date (including extensions) of the original return. This limitation is not found in Treas. Reg. §§ 301.9100-1, 301.9100-3 that apply to all requests for an extension of time to make an election submitted to the IRS on or after December 31, 1997. The IRS has adopted as final regulations which reflect the change made by the Deficit Reduction Act of 1984. In addition, the regulations remove Temp. Treas. Reg. § 301.9100-6T(b) so that estates that fail to make the alternate valuation election on the last estate tax return filed before the due date or the first return filed after the due date will be able to request an extension of time to make the election under the provisions of Treas. Reg. §§ 301.9100-1 and 301.9100-3. However, in view of the statutory one year limitation imposed under I.R.C. § 2032(d)(2), no request for an extension of time will be granted if the request is submitted to the IRS more than one year after the due date of the return (including extensions of time to file actually granted). The Tax Reform Act of 1986 amended I.R.C. § 2032(c)(2) to provide that the alternate valuation date election may be made only if the election results in a decrease both in the value of the gross estate and in the sum of the estate tax and generation-skipping transfer tax liability (reduced by credits allowable against these taxes). The regulations also provide guidance on making a protective election under I.R.C. § 2032 if, on the initial estate tax return, use of the alternate valuation method would not result in a decrease in both the value of the gross estate and the sum (reduced by allowable credits) of the estate tax and the generation-skipping transfer tax liability of the estate. The protective election is revocable on a subsequent return filed on or before the due date of the return (including extensions of time to file actually granted). If the protective election becomes effective to decrease the value of the estate and the estate tax, the election becomes irrevocable. **70 Fed. Reg. 295 (Jan. 4, 2005), amending Treas. Reg. 20.2032-1(b)**.

**VALUATION OF STOCK**. The decedent's estate included 11.6 percent of the stock of a closely-held bank corporation. The remaining stock was owned by an unrelated corporation. Within 15 months before the decedent's death, the stock-owning corporation purchased from the decedent a block of 10 shares for $1,000 per share and a block of 7 shares for $1,500 per share. After the decedent's death, the corporation purchased the decedent's remaining 11.6 percent interest in the bank for $1.1 million ($9,483 per share). The sale price was based on an appraisal and negotiations between the decedent's estate and the purchasing corporation. The appraised value was less than the final sale price. The estate valued the stock at its book value, $14,169, less a 45 percent minority interest discount, for a total value of $903,988. The IRS assessed a deficiency based on a higher value of the stock established by the post-death sale and expert appraisals. The court held that the post-death sale price was a valid indication of the stock value because the sale price was reached through arm's-length negotiations between unrelated parties. The court held that the sale price, less a 3 percent discount for inflation, was the value of the stock for federal estate tax purposes. **Estate of Noble v. Comm'r, T.C. Memo. 2005-2**.

# FEDERAL INCOME TAXATION

**BUSINESS EXPENSES**. The taxpayers, husband and wife, were both high school teachers. The husband was a high school

golfing coach and the wife taught English. The wife claimed employee business expense deductions for expenses for movies, theater tickets, videos, supplies, film and film developing costs, drycleaning, book and periodical subscriptions, gifts, and travel. The wife argued that these expenses were related to the performance of her duties as a teacher. The court held that the expenses, while related to the performance of the wife's teaching, were essentially personal and not deductible as business expenses. The husband claimed a deduction for the cost of a country club membership because the membership allowed the high school golf team to use the country club golf course for practice. The court held that country club dues are expressly nondeductible under Treas. Reg. § 1.274-2(a)(2)(iii)(a). The understatement of tax resulting from the improper deductions was almost 50 percent of the total tax due and the court upheld the IRS assessment of the accuracy-related penalty under I.R.C. § 6662(a) because the taxpayers did not have any reasonable cause for the disallowed deductions. **Garcia v. Comm'r, T.C. Summary Op. 2005-2**.

The taxpayer was a grade school teacher and claimed business expenses deductions for manicures and education credit for school supplies. The taxpayer did not provide any records to support the deductions or credit except for some receipts for the manicures. The court held that the manicures were nondeductible personal expenses and the school supplies were not expenses covered by the education credit. **Muhammad v. Comm'r, T.C. Summary Op. 2005-7**.

**CHARITABLE DEDUCTION**. The taxpayer was a dentist and made contributions to a charitable organization. The charitable organization used the funds to purchase split-dollar life insurance policies on the taxpayer and agreed to split any proceeds with trusts established by the taxpayer. The organization provided receipts for the contributions but did not state that any benefits were received by the taxpayer. The court held that the taxpayer was not entitled to a charitable deduction based on the receipts which were not based on a good faith estimate of the value of the benefits received by the taxpayer. The appellate court affirmed in a decision designated as not for publication. **Weiner v. Comm'r, 2005-1 U.S. Tax Cas. (CCH) ¶ 50,130 (9th Cir. 2004), *aff'g*, T.C. Memo. 2002-153**.

An appeal to the U.S. Supreme Court has been filed in the following case. The taxpayers, husband and wife, formed a family trust which reached an agreement with a charitable organization for the organization to acquire a life insurance policy on the life of the wife. The trust made payments to the charity without restrictions but the charity used the contribution to pay the premium on the insurance policy. The trust made another payment the following year and the charity again made the premium payment. The trust and charity agreed to split the proceeds of the insurance upon the death of the wife. The agreement and insurance policy were terminated the third year. The court held that the taxpayers were not entitled to a charitable deduction for the contributions to the charity because the taxpayers received something of value in exchange. When the payments were made, the charity supplied the taxpayers with a receipt stating that no consideration was paid for the contributions, which was false. The court held that the false receipt resulted in the taxpayers failing to have sufficient substantiation of the contributions to support a deduction. **Addis v. Comm'r, 2004-2 U.S. Tax Cas. (CCH) ¶ 50,291 (9th Cir. 2004), *aff'g*, 118 T.C. 528 (2002)**.

Under Pub. L. No. 109-1,enacted January 7, 2005, a charitable deduction is allowed on taxpayers' returns for cash donations made by February 1, 2005 to charitable organizations for relief of the Indian Ocean tsunami disaster. The taxpayers have a choice for such contributions to be claimed on the 2004 or the 2005 returns but not on both. The IRS recommended that taxpayer write on checks that the amount was intended for the tsunami relief and that taxpayers check the IRS web site for qualified charities. **IR-2005-6**.

**CORPORATIONS**

OFFICER COMPENSATION. The taxpayer was CEO and majority shareholder of a large retail business corporation and received compensation of $157,000 plus an annual bonus of 5 percent of the corporation's net income before taxes. The court held that a portion of the total income was not deductible by the corporation because the compensation exceeded the amount which would be paid by other companies for similar services. The taxpayer filed a motion for reconsideration, arguing that the court had failed to require a bad faith element as part of a determination that the excess compensation was a constructive dividend. On reconsideration, the court held that there was no requirement to show bad faith as part of a ruling that the excess compensation was taxable as a constructive dividend. **Menard, Inc. v. Comm'r, T.C. Memo. 2005-3, *aff'g on reconsideration*, T.C. Memo. 2004-207**.

**LETTER RULINGS**. The IRS has issued its annual list of procedures for issuing letter rulings. **Rev. Proc. 2005-1, I.R.B. 2005-1, 1**.

The IRS has issued its annual list of procedures for furnishing technical advice to District Directors and Chiefs, Appeals Offices. **Rev. Proc. 2005-2, I.R.B. 2005-1, 86**.

The IRS has issued its annual list of tax issues for which the IRS will not give advance rulings or determination letters. **Rev. Proc. 2005-3, I.R.B. 2005-1, 118**.

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. 2005-8, I.R.B. 2005-1, 243**.

**LIKE-KIND EXCHANGES**. The IRS has issued a notice that, if the last day of the 45-day identification period, 180-day

exchange period or the 180-day period for holding property by a qualified exchange accommodation titleholder occur on or after the date of a Presidentially-declared disaster or specified war activities, the taxpayer is eligible for up to a 120 day postponement." Neil Harl will write an article on this topic for a future issue of the *Digest*. **Notice 2005-3, I.R.B. 2005-3**.

**LIMITED LIABILITY COMPANY**. The taxpayer and a third party created a limited liability company (LLC) under state law, but the third party left the organization and the taxpayer was the sole member. The taxpayer filed for a taxpayer identification number from the IRS and indicated that the LLC was a partnership with the taxpayer as general partner. The taxpayer did not file Form 8832, Entity Classification Election, to be treated as other than a partnership. The IRS assessed employment taxes based on the taxpayer's parent as an employee of the LLC. The taxpayer claimed that the parent was a member of the LLC as an investor but the parent claimed that the parent was only an investor. The taxpayer also claimed that the taxpayer reported all LLC income on the taxpayer's individual tax return. No articles of organization or other documentation of ownership were provided. In a Chief Counsel Advice letter, the IRS ruled that it could not determine how many members the LLC had for federal tax purposes because of the lack of written documentation and the conflicting testimony of the taxpayer and parent. The IRS also ruled that the taxpayer's reporting of all the income of the LLC on the taxpayer's individual income tax return did not affect the issue of the number of members of the LLC, because there existed conflicting evidence as to the number of members. **CCA Ltr. Rul. 200501001, Sept. 21. 2004**.

**PENSION PLANS.** For plans beginning in January 2005 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the corporate bond weighted average is 6.10 percent with the permissible range of 5.49 to 6.10 percent (90 to 100 percent permissible range). The 30-year Treasury securities rate for this period is 5.10 percent, the 90 percent to 105 percent permissible range is 4.59 percent to 5.35 percent, and the 90 percent to 110 percent permissible range is 4.59 percent to 5.61 percent. **Notice 2005-9, I.R.B. 2005-4**.

**PARTNERSHIPS**.

HEALTH SAVINGS ACCOUNTS. The IRS has published guidance on contributions made by an partnership to a partner's health savings account. A partnership's contributions to a partner's HSA that are treated as a distribution to the partner are not deductible by the partnership and do not affect the distributive share of partnership income and deductions. The contributions, therefore, are not included in the partner's self-employment income net earnings. The individual partner may claim an above-the-line deduction for the contribution within the parameters of I.R.C. § 223. However, if the contribution is made by the partnership for services and treated as a guaranteed payment, then the partnership may deduct the contribution as a business expense. Accordingly, the contribution is treated as a distributive share of partnership income and included in the individual partner's gross income. Assuming that the partner is an eligible individual, the partner may deduct the amount contributed to the HSA as an adjustment to gross income and the contributions are included in self-employment income. **Notice 2005-8, I.R.B. 2005-3**.

RETURNS. The IRS has issued Revised Schedules K-1. Form 1065 (Schedule K-1), Partner's Share of Income, Deductions, Credits, etc., was redesigned to look like Form W-2 and include a coding system similar to the coding system used for Box 12 of Form W-2. The schedules also are scannable and the instructions have been streamlined. The forms are available on the IRS web site, www.irs.gov/formspubs/index.html, in the Forms & Pubs section.

**RETURNS**. The IRS has issued the following revised forms: Form 990-W (2005), Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations; Form 1065 (2004), U.S. Return of Partnership Income; Form 1120, Schedule M-3 (2004), Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million or More, and instructions; Form 1120-F (2004), U.S. Income Tax Return of a Foreign Corporation; Form 1120S (2004), U.S. Income Tax Return for an S Corporation; Form 2848 (Rev. March 2004), Power of Attorney and Declaration of Representative; Form 4626 (2004), Alternative Minimum Tax —Corporations; Form 8554 (Rev. April 2004), Application for Renewal of Enrollment to Practice Before the Internal Revenue Service; Form 8827 (2004), Credit for Prior Year Minimum Tax —Corporations; Form 8868 (Rev. December 2004), Application for Extension of Time To File an Exempt Organization Return; Form 8889 (2004), Health Savings Accounts (HSAs); Form SS-5 (10-2004), Application for a Social Security Card; Form W-5 (2004), Earned Income Credit Advance Payment Certificate; and Form W-5 (2005), Earned Income Credit Advance Payment Certificate; Instructions for Form 1040, 2004 Tax Table; Notice 210 (Rev. July 2002), Preparation Instructions for Media Label; Notice 1027 (Rev. April 1998), How to Prepare Media Label for Form W-4; Notice 1277 (July 2001), Correction To Notice of Status and Amount of Immediate Tax Relief; and Notice 1311 (May 2002), Suspended Filing for Schedule F (Form 5500); Publication 51 (Rev. January 2005), (Circular A), Agricultural Employer's Tax Guide; Publication 1345A (December 2004), Filing Season Supplement for Authorized IRS e-file Providers; and Publication 3195 (Rev. 1-2005), You May Not Need to File a 2004 Tax Return. The forms are available on the IRS web site, www.irs.gov/formspubs/index.html, in the Forms & Pubs section.

The IRS has announced that taxpayers who downloaded the 2004 version of Publication 225, Farmer's Tax Guide, before December 15, 2004, should note the following changes: On page 3, a paragraph has been added to reflect a recent regulation amendment that increases the FUTA tax deposit threshold from $100 to $500 for tax periods after December 31, 2004. On page 42, the last sentence under the paragraph, "Reduced dollar limit for cost exceeding $410,000," has been corrected. It now reads: "If the cost of your section 179 property placed in service during 2004 is $512,000 or more, you cannot take a section 179 deduction and you cannot carry over the cost that is more than

$512,000." Previously, the $512,000 dollar amount was shown as $510,000.

**S CORPORATIONS**

HEALTH SAVINGS ACCOUNTS. The IRS has published guidance on contributions made by an S corporation to a shareholder's health savings account. Contributions by an S corporation to a shareholder owning more than 2 percent of the outstanding shares of stock (2 percent shareholder) for services are deductible by the S corporation and included in the shareholder's income. Under I.R.C. § 1372, an S corporation is treated as a partnership and a 2 percent shareholder is treated as a partner for purposes of applying the applicable fringe benefit provisions. For employment tax purposes, however, a 2 percent shareholder is treated as an employee rather than a self-employed individual. Accordingly, if the I.R.C. § 3121(a)(2)(B) exclusion requirements are met, the contributions will not be subject to FICA tax. Assuming that the deemed-partner is an eligible individual, the deemed-partner may deduct the amount contributed to the HSA as an adjustment to gross income. **Notice 2005-8, I.R.B. 2005-3**.

RETURNS. The IRS has issued Revised Schedules K-1. Form 1120S (Schedule K-1), Shareholder's Share of Income, Deductions, Credits, etc., was redesigned to look like Form W-2 and include a coding system similar to the coding system used for Box 12 of Form W-2. The schedules also are scannable and the instructions have been streamlined. The forms are available on the IRS web site, www.irs.gov/formspubs/index.html, in the Forms & Pubs section. **IR-2005-4**.

The IRS has issued proposed regulations which require C and S corporations with assets of $50 million or more to file electronically Form 1120, U.S. Corporation Income Tax Return or Form 1120S, U.S. Income Tax Return for an S Corporation for tax years ending on or after December 31, 2005. For tax years ending on or after December 31, 2006, the requirement is extended to corporations with $10 million or more in assets. **T.D. 9175**.

**TAX SHELTERS**. The taxpayer invested in a farm tax shelter partnership which was determined to be a sham by the IRS. The taxpayer was assessed for taxes and assessed enhanced interest under I.R.C. § 6621(c) because the partnership was determined to be a sham. The court held that imposition of enhanced interest required a showing that the partnership lacked economic substance and the taxpayer lacked any profit motive in making the investment. Because the court held that the taxpayer had a profit intent when the investment was made, the court held that the assessment of enhanced interest was improper. On appeal, the appellate court affirmed on the point but for the reason that concessions made by the individual taxpayers had made it impossible to determine which of the transactions were tax-motivated. **Weiner v. United States, 2005-1 U.S. Tax Cas. (CCH) ¶ 50,137 (5th Cir. 2004), *aff'g on point*, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,191 (S.D. Tex. 2002)**.

**THEFT LOSS**. The taxpayer had invested over $200,000 in the stock of a publicly-traded corporation. The corporation incurred legal difficulties and the stock price plunged from over $6 a share to under $0.40 a share. The taxpayer claimed a theft loss deduction for the loss of value of the stock and filed Form 8275, Disclosure Statement, which stated that the corporation had engaged in "a pattern of willful and mis-leading disclosures and non-disclosures" that constituted theft by fraud or false pretenses against its shareholders, including the taxpayer. The court held that the taxpayer failed to demonstrate that the crime of theft had occurred by the corporation against the taxpayer. Although the taxpayer may have had a tort action for fraud or negligence against the corporation, these types of actions did not support a theft loss deduction. **Singerman v. Comm'r, T.C. Summary Op. 2005-4**.

# PRODUCT LIABILITY

**PESTICIDE.** The plaintiff claimed an injury from the use of an insecticide which was applied with planted seeds by mixing in the planter hopperbox. The plaintiff alleged that the insecticide was defective in design because it contained no distinctive odor, color, feel or irritant which would alert the user to the presence of the insecticide so as to seek treatment for contamination as warned on the insecticide label. The plaintiff brought suit under claims of product liability, implied warranty of fitness for a particular purpose, implied warranty of merchantability, and recklessness. The defendant manufacturer argued that the claims were preempted by FIFRA because the claims were based on the label's failure to warn about the lack of a distinctive color, odor or touch. The court noted that 40 C.F.R. § 153.155(b)(2) excepted from the use of an odor or color additive for pesticides which were applied through hopperbox mixing, as was done in the present case. The court held that this regulation was an implied preemption of any action involving the issue of the use of color or odor additives. The court held that the plaintiff's claims were primarily based on a failure to warn because a manufacturer would tend to avoid the claims by adding a warning that the insecticide did not have a distinctive odor or color instead of changing the formulation of the insecticide. Because the plaintiff's claims were based on a failure to warn, the claims were preempted by FIFRA. **Wuebker v. Wilbur-Ellis Co., 338 F. Supp.2d 974 (S.D. Iowa 2004)**.

# CITATION UPDATES

**Mourad v. Comm'r, 387 F.3d 27 (1st Cir. 2004), *aff'g*, 121 T.C. 1 (2003)** (bankruptcy of S corporation), see p. 6 *supra*.

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