CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ADVERSE POSSESSION

PUBLIC ROAD. The disputed road ran just inside the property of one of the plaintiffs who objected to the listing of the road as a public road. The road was originally constructed at the direction of the board of supervisors in 1967. In 1984, the road was paved under the direction of the board. Public funds were used to finance the construction and later paving of the road. the road was used by the plaintiffs to access their properties and the plaintiffs sought a ruling that the road was abandoned and was not a public road. The evidence showed that the road had been used by the public school bus, had been continuously maintained by the county, and was used by the general public to access one of the plaintiff's vegetable farm to purchase produce from the plaintiff. The court held that the evidence was sufficient to support the trial court's ruling that the road had become a public road through prescriptive use by the county and public. **Robinson v. Lincoln County Bd. Of Supervisors, 2008 Miss. App. LEXIS 34 (Miss. Ct. App. 2008)**.

BANKRUPTCY

FEDERAL TAX

DISCHARGE. The debtor, an accountant, had filed several bankruptcy cases over 20 years with most cases dismissed for failure to comply with filing requirements. None of the cases listed the debtors' 1977, 1978 and 1979 tax liabilities in the schedule of claims. During the time between 1977 and the time of the current bankruptcy filing, the debtor had a source of income and had access to substantial funds under a power of attorney over the debtor's parent's estate. The debtor lived a lavish lifestyle but failed to pay the taxes, using the bankruptcy cases as a means of discharging the taxes when possible. The debtor also failed to file income tax returns except only after demand from the IRS. The court held that the 1977, 1978 and 1979 taxes were nondischargeable because the debtor willfully attempted to defeat and evade the payment of the taxes. The appellate court affirmed *per curiam* in an opinion designated as not for publication. ***In re* Zimmerman, 2008-1 U.S. Tax Cas. (CCH) ¶ 50,146 (11th Cir. 2008).** ***aff'g*, 2006-2 U.S. Tax Cas. (CCH) ¶ 50,548 (S.D. Fla. 2006)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has issued proposed regulations amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Texas from Class A to Class Free. **73 Fed. Reg. 6007 (Feb. 1, 2008)**.

COTTON. The AMS has announced its determination not to conduct a continuance referendum regarding the 1991 amendments to the Cotton Research and Promotion Order provided for in the Cotton Research and Promotion Act amendments of 1990. This determination is based on the results of a sign-up period conducted September 3 through November 30, 2007, during which eligible cotton producers and importers were provided an opportunity to request a continuance referendum. **73 Fed. Reg. 5494 (Jan. 30, 2008)**.

EMERGING MARKETS PROGRAM. The CCC has announced the availability of funding for the Emerging Markets Program (EMP) for fiscal year 2008. The CCC is soliciting applications from the private sector and from government agencies for FY 2008 and will award funds in early 2008. The EMP is administered by personnel of the Foreign Agricultural Service. **73 Fed. Reg. 4172 (Jan. 24, 2008)**.

FARM LAND STATISTICS. The NASS has issued a report on the number of farms and livestock operations in 2007. The report states that the number of farms in the United States in 2007 is estimated at 2.08 million, 0.6 percent fewer than in 2006. Total land in farms, at 930.9 million acres, decreased 1.5 million acres, or 0.16 percent, from 2006. The average farm size was 449 acres during 2007, an increase of three acres from the previous year. The decline in the number of farms and land in farms reflects a continuing consolidation in farming operations and diversion of agricultural land to nonagricultural uses. The report also states that the number of operations with cattle totaled 967,440 during 2007, down slightly from 2006 and 2 percent below 2005. Beef cow operations in 2007 were down 1 percent from 2006 and 2 percent below 2005. Milk cow operations were 5 percent below last year and 9 percent below two years ago. The number of operations with hogs totaled 65,640 during 2007, down slightly from 2006 and down 2 percent from 2005. Places with 2,000 or more head accounted for 82 percent of the inventory. The number of operations with sheep totaled 70,590 during 2007, up 2 percent from 2006 and up 3 percent from 2005. Of all sheep operations that include breeding sheep, 91.1 percent were comprised of 1-99 head, 7.4 percent had 100-499 head, and the remaining 1.5 percent were

operations with 500 head or more. Operations with 1-99 head account for 30.8 percent of the inventory, 100-499 head account for 23.1 percent of the inventory, and 500+ head account for 46.1 percent of the inventory. The number of operations with goats totaled 108,130 during 2007, up 4 percent from 2006. Angora goat operations totaled 4,550, down 4 percent from 2006. Milk goat operations totaled 19,930, up slightly from 2006. Meat goat operations totaled 90,270, up 4 percent from 2006. Total goat operations will be equal to or less than the sum of angora, milk and meat because places which own more than one goat type only count as one operation. **Sp Sy 4 (Feb. 2008)**.

MILK. The AMS has announced that it is inviting comments on a proposed amendment to the Fluid Milk Promotion Order (Order). The proposed amendment, requested by the National Fluid Milk Processor Promotion Board (Board), which administers the Order, would reduce the burden of late-payment charges applied to processors who underreport the amount of assessments which they owe to the Board, provided that the processor has not made more than two reporting errors in the prior 12 months. This amendment would reduce the burden of late-payment charges on processors who underpay assessments due to unintentional errors or miscalculations. The Board believes the late-payment charge is a necessary provision of the Order to encourage payment by all processors subject to the assessment and helps ensure the receipt of assessments owed to the Board. However, the Board also believes that there are instances when unintentional errors and miscalculations occur, and in such cases, the late-payment charge could be viewed as excessive. All other provisions of the Order would remain unchanged. **73 Fed. Reg. 4762 (Jan. 28, 2008)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT. The plaintiff sold fresh fruits and vegetables to the defendant who failed to pay for the produce. The defendant claimed that it sent a letter to the plaintiff with a partial payment and an offer to make weekly installment payments. The letter provided that, if the plaintiff accepted such new payment terms, the plaintiff was to deposit the check and send a new statement reflecting the new terms. The plaintiff claimed to have not received the letter but cashed the first check and seven subsequent checks. The plaintiff filed suit after the checks stopped and the defendant proposed monthly installments. The suit was suspended when more payments were made, but the suit was resumed when payments again stopped. The trial court awarded the plaintiff the amount unpaid on the invoices plus interest but denied the plaintiff any rights in the PACA trust funds. The court reviewed the rules governing waiver of PACA trust fund rights resulting from post-transaction payment agreements and noted that modifications of payment terms for up to 30 days after delivery of the produce. In addition, the court acknowledged that the Second Circuit Court of Appeals has allowed modification of payment terms to occur orally, but the court agreed with the the Third, Seventh and Eighth Circuit Courts of Appeals that a modification must be in writing in order to effect a waiver of PACA trust fund rights. The court held that the defendant's original letter proposing a modification of payment terms and subsequent writings by the plaintiff constituted sufficient evidence of a written agreement between the parties to modify the payment terms beyond the original terms and waiving the plaintiff's rights to the PACA trust fund. **Bocchi Americas Associates, Inc. v. Commerce Fresh Marketing Inc., 2008 U.S. App. LEXIS 1237 (5th Cir. 2008), *aff'g*, 2006 U.S. Dist. LEXIS 73009 (S.D. Tex. 2006)**.

FEDERAL ESTATE AND GIFT TAXATION

GENERATION-SKIPPING TRANSFERS. An irrevocable trust was established by a decedent who became incompetent prior to Oct. 22, 1986 until death, with the decedent's child as the beneficiary and the child's three children as remainder beneficiaries. The trust applied to a local court for partition of the trust into three trusts with identical terms to the original trust but each with only one remainder beneficiary. The trust also applied for modification of the successor trustee provisions. The partition and modifications were approved by the court. The IRS ruled that the partition and modifications did not subject the trusts to GSTT. **Ltr. Rul. 200804015, Oct. 4, 2007**.

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent's estate included an interest in a limited liability company (LLC) which owned real property. The estate elected to pay the federal estate tax in ten annual installments and submitted a written agreement consenting to the creation of a special estate tax lien to secure the installment payment of estate tax. The lien was on the decedent's interest in the LLC. In a Chief Counsel Advice letter, the IRS noted that a lien on an interest in an LLC would be accepted only where (1) the collateral must be expected to survive the deferral period, I.R.C. § 6324A(b)(1)(A); (2) the collateral must be identified in the agreement, I.R.C. § 6324A(b)(1)(B); and (3) the value of the collateral must be sufficient to pay the estate tax liability plus the aggregate amount of interest payable over the first four years of the deferral period. I.R.C. § 6324A(b)(2). The IRS noted that it does not have the authority to reject collateral proffered by the estate on the grounds that it would be burdensome for the IRS to determine the value. Nor does the IRS have the authority to reject collateral proffered by the estate because the service would prefer other collateral. The estate also included a pledge and escrow agreement which included an agreement by the estate to provide annual reports or certified financial statements as to the secured property. The IRS noted that such requirements are not imposed by the statute but stated that it would accept such terms as an aid to monitoring the security of the lien. The IRS stated that the Notice of Federal Tax Lien would be filed as required by the laws of the state where the property is located. If an interest in an LLC is considered personal property under state law, the lien is to be filed in the state of residence of the taxpayer, the decedent's estate. The IRS noted that the residence of the estate could be either the residence state of the decedent or the residence state of the executor. The IRS Chief Counsel recommended filing the lien in the state of both residences, if different. **CCA Ltr. Rul. 200803016, Oct. 11, 2007**.

SPECIAL USE VALUATION. The decedent's estate included timber and farm land and the estate tax return prepared by an accountant made a protective election to value the timber and farm land under special use valuation. However, the accountant failed to advise the estate that the protective election had to be perfected within 60 days after the IRS issued a closing letter. the IRS granted the estate a 60-day extension of time to perfect the protective election. **Ltr. Rul. 200804014, Sept. 12, 2007**.

TRANSFERS WITH RETAINED INTERESTS. The grantors had established four trusts, one for each of their children and heirs. The grantors had no retained interest in the four trusts. The trustees petitioned a local court to merge the trusts into one trust with essentially the same provisions as the separate trusts such that each beneficiary retained the same income and principal interests and the same rights of distribution and power of appointment. The grantors had no retained interest in the merged trust. The IRS ruled that the merger of the trusts did not constitute a taxable gift from the grantors, the trust assets where not includible in the gross estates of the grantors or beneficiaries. However, the trust assets were includible in the gross estates of the beneficiaries to the extent the powers of appointment would include the assets under I.R.C. § 2041. **Ltr. Rul. 200804013, Sept. 26, 2007**.

FEDERAL INCOME TAXATION

ALIMONY. The taxpayers, former husband and wife, were divorced and part of the divorce decree awarded payments from the husband's pension plan when the husband made any distributions. The husband argued that the payments made to the former-wife were income to the former-wife because the divorce decree gave the former-wife an ownership interest in the pension fund. The court held that the divorce decree did not award the former-wife an interest in the pension fund because the divorce court had no authority to transfer any title to the pension fund and the divorce decree provided only payment of a percentage of any distribution, a simple monetary award, and not any percentage of the entire fund. **Platt v. Comm'r, T.C. Memo. 2008-17**.

BAD DEBTS. The taxpayer owned a sole proprietorship which operated a engineering consulting business. The taxpayer used cash from an engineering business to pay the expenses of seven other businesses started by the taxpayer. When the seven businesses ceased operation or were sold, the taxpayer claimed the unreimbursed expenses as business bad debts. The court held that the taxpayer was not entitled to a business bad debt deduction for the unreimbursed expenditures because no creditor-debtor relationship was formed between the taxpayer and the seven businesses. The court noted that no obligation to repay existed since (1) there was no oral or written agreement for repayment terms or interest, (2) no repayments were demanded or made, and (3) the expenditures were not structured as loans. Instead, the court held that the expenditures were contributions to capital as part of the taxpayer's attempt to keep the businesses operating. **Bynum v. Comm'r, T.C. Memo. 2008-14**.

CAPITAL GAINS. The taxpayer was a retired insurance agent. The taxpayer had operated the insurance agency as a corporation and entered into a corporate agent agreement with the insurance company. When the taxpayer retired the insurance company paid to the corporation termination payments which were later paid to the taxpayer after the corporation terminated. The taxpayer claimed that the termination payments were capital gain, either as received in exchange for the taxpayer's interest in the corporation or in exchange for the corporate agent agreement with the insurance company. The court held that the payments were ordinary income because the corporate agent agreement was not a capital asset to the taxpayer since the taxpayer had no property rights in the agreement. Instead, the agreement applied to set the taxpayer's service obligations and rights between the taxpayer and the insurance company. In addition, the termination payments were made under the terms of the agreement, not in exchange for it. **Trantina v. United States, 2008-1 U.S. Tax Cas. (CCH) ¶ 50,138 (9th Cir. 2008), *aff'g*, 2005-2 U.S. Tax Cas. (CCH) ¶ 50,449 (D. Ariz. 2005)**.

CORPORATIONS

COMPENSATION**.** The taxpayer was a publicly-held corporation under I.R.C. § 162(m)(2), which had adopted an incentive plan that provided a variety of incentive awards, including performance share and performance unit awards intended to be qualified performance-based compensation under I.R.C. § 162(m)(4)(C). The taxpayer entered into an employment agreement with one of its executives which provided that if the executive's employment is terminated by the taxpayer other than for cause or by the executive for good reason, any performance goal under any outstanding performance share or performance unit awards would be deemed to be achieved at target and the awards vested at termination to the extent such awards would have become vested in accordance with the regular vesting schedule had the executive's employment continued for a period of two years following the executive's termination date. The terms "cause" and "good reason" are defined in the agreement. The IRS ruled that the provision in the agreement allowing for payment of performance share or performance unit awards under the plan upon the executive's termination by the taxpayer without cause or by the executive with good reason does not meet the exception in Treas. Reg. § 1.162-27(e)(2)(v) that allows compensation to be payable upon death, disability or change of ownership or control. Thus, compensation paid to the executive with respect to performance share or performance unit awards was not payable solely upon attainment of a performance goal, for purposes of I.R.C.§ 162(m)(4)(C) and was not performance-based compensation. **Ltr. Rul. 200804004, Sept. 21, 2007**.

EARNED INCOME CREDIT. The IRS kicked off Earned Income Tax Credit (EITC) Awareness Day on January 31 by publishing guidance touching on the EITC and related issues. **IR-2008-13**.

FOREIGN INCOME. The taxpayer performed work in Antarctica and the taxpayer excluded the wages earned while in Antarctica under I.R.C. § 911 as foreign income. The court

held that income earned in Antarctica was not excludible under I.R.C. § 911 because Antarctica was not recognized by the U.S. government as a foreign sovereign nation. McDonald **v. Comm'r, T.C. Memo. 2008-11; McPike v. Comm'r, T.C. Memo. 2008-12; Yamasaki v. Comm'r, T.C. Memo. 2008-7.**

GAMBLING LOSSES. The taxpayer was a pathological casino gambler who gambled heavily and nearly constantly after winning a lottery jackpot. The taxpayer retained W-2G forms issued by the casinos, withdrawal slips from ATMs, copies of checks issued by the casinos, credit card receipts and bank statements. The taxpayer also presented testimony of a girl friend who accompanied the taxpayer to the casinos and an expert on gambling addiction. The court held that the taxpayer had sufficiently substantiated the gambling losses through these records, even though the taxpayer did not maintain a written gambling log as suggested in *Rev. Proc. 77-29, 1977-2 C.B. 538*. **Gagliardi v. Comm'r, T.C. Memo. 2008-10**.

MINISTERS. The taxpayers were faculty members or served in executive, management or administrative positions at a university. The university was founded and supported by a specific religious denomination. The IRS ruled that the rental allowances received by the taxpayers were excluded from income as income of a minister of the gospel under I.R.C. § 107. **Ltr. Rul. 200803008, Oct. 18, 2007**.

PENALTIES. The IRS has issued a revised revenue procedure which identifies circumstances under which the disclosure on a taxpayer's return, for 2007 and later, of a position with respect to an item is adequate for the purpose of reducing the understatement of income tax under I.R.C. § 6662(d) (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the preparer penalty under I.R.C. § 6694(a) (relating to understatements due to unrealistic positions). **Rev. Proc. 2008-14, I.R.B. 2008-7, *amending*, Rev. Proc. 2006-48, 2006-2 C.B. 934**.

PENSION PLANS. The IRS has announced a later uniform effective date for applying proposed regulations addressing computations used in determining the minimum funding requirements of single-employer pension plans. The final regulations will not apply to plan years beginning before January 1, 2009. For plan years beginning during 2008, taxpayers must follow applicable statutory provisions, as reasonably interpreted, under I.R.C. §§ 430, 436, although they may rely on the proposed regulations in doing so. However, in applying such statutory provisions taxpayers may only use substitute mortality tables as approved by the IRS under the procedures set forth in *Rev. Proc. 2007-37, 2007-1 C.B. 1433*, must use averaging methods to determine the value of plan assets only in accordance with methods prescribed by regulation, and may estimate the funding target attainment percentage only as permitted by regulation. **Notice 2008-21, I.R.B. 2008-7**.

RETURNS. In a news release, the IRS expanded on free tax return preparation assistance that will be available from the IRS and its nonprofit and community organization partners to low-income and elderly taxpayers at nearly 12,000 locations this season. The IRS Volunteer Income Tax Assistance (VITA) Program offers free tax help to people earning less than $40,000. The Tax Counseling for the Elderly (TCE) Program offers free tax help to people age 60 and older. **IR-2008-12**.

SALE OF PROPERTY. A bill has been introduced into the U.S. House of Representatives which would exclude up to $500,000 of gain on the sale of farmland to a first-time farmer. **H.R. 5134**.

S CORPORATIONS

PASSIVE INVESTMENT INCOME. The taxpayer was an S corporation, which through a related property manager, provided various services to the tenant of a commercial rental property. These services included monitoring all exterior and interior maintenance of the property; maintenance and repair of the building structural components and systems, including the roof and the heating system; maintenance of an alleyway; and assistance with and supervision of tenant improvements. In addition to the services provided to the tenants, the property manager, on behalf of the corporation, marketed the property and negotiated leases, collected rent and a portion of the real estate taxes from the tenant, obtained and paid for insurance and paid the real estate taxes. The IRS ruled that the rental income from the property was not passive investment income because the corporation provided significant services for the property. **Ltr. Rul. 200804008, Oct. 16, 2007**.

TAX LIENS. The IRS has adopted as final regulations related to release of lien and discharge of property under I.R.C. §§ 6325, 6503, and 7426. The final regulations update existing regulations and contain procedures for processing a request made by a property owner for discharge of a federal tax lien from property under I.R.C. § 6325(b)(4). The final regulations also clarify the impact of these procedures on I.R.C. §§ 6503(f)(2) , 7426(a)(4), (b)(5). These regulations reflect the enactment of Sections 6325(b)(4), 6503(f)(2), and 7426(a)(4) by the *IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (1998)*. These code sections were enacted by Pub. L. 105-206 to provide a way for a person, other than the taxpayer against whom the underlying tax was assessed, to obtain a discharge of a tax lien attached to property owned by the taxpayer, and for the government to determine whether to refund a deposit or bond amount paid by such person. The regulations are intended to conform to these statutory changes. **73 Fed. Reg. 5741 (Jan. 31, 2008)**.

TAX SCAMS. The IRS has issued a warning to taxpayers about several new e-mail and telephone scams which claim to be from the IRS. One scam involves an attempt to obtain taxpayers' bank account information for a purported direct deposit of the tax rebate currently discussed by the Congress. Another scam uses an e-mail to link to a site for accessing a tax refund claim form. Another fraudulent e-mail claims that the taxpayer is being audited and requests bank account information. The IRS requests taxpayers to forward questionable e-mails to phishing@IRS.gov. **IR-2008-11**.

THEFT LOSSES. The taxpayers claimed theft loss deductions for the losses incurred as a result of fraudulent sales

of gems and jewelry. The court held that the taxpayers could claim a deduction for the amount of losses known because of the adjudication or settlement of some of their claims against the thief, even though some claims remained to be resolved. The unresolved claims would produce loss deductions in later tax years when those claims became resolved and the total theft loss from those claims was finally determined. **Johnson v. United States, 2008-1 U.S. Tax Cas. (CCH) ¶ 50,142 (Fed. Cl. 2008)**.

TRAVEL EXPENSES. The taxpayer worked as a millwright and was normally assigned jobs through a union hall near the taxpayer's residence. In the tax year involved, the taxpayer had to accept some jobs well outside the normal travel distance and assigned from distant union halls. The distant jobs were shorter in duration. The taxpayer claimed travel expenses for the distant jobs. The court held that the distant jobs were temporary work sites and the taxpayer could deduct the travel expenses for these jobs to the extent substantiated by written logs and receipts. **Lease v. Comm'r, T.C. Summary Op. 2008-11**.

The taxpayer was employed as a merchant seaman who incurred travel expenses while attending a firefighting school and incidental employee business expenses for the merchant seaman job. The taxpayer's employer provided the taxpayer with meals and lodging on ships without charge and provided uniforms and safety equipment. The taxpayer claimed meals and incidental expenses deductions for the time spent on ship but the court disallowed the meal expense deductions because the taxpayer's meals and lodging were provided by the employer. However, the taxpayer was entitled to a per diem rate deduction for deemed substantiated incidental expenses as provided by *Rev. Proc. 2002-63, 2002-2 C.B. 698* and *Rev. Proc. 2003-80, 2003-2 C.B. 1043*, for the 2003 tax year. **Balla v. Comm'r, T.C. Memo. 2008-18**.

PROPERTY

RAILROAD EASEMENTS. The plaintiffs were owners of land over which railroad beds were converted to recreational trails under the Rails-to-Trails Act, 16 U.S.C. § 1247. The plaintiff argued that the conversion to recreational use constituted an abandonment of the railroad easement and transfer of title back to the landowners, entitling the landowners to compensation for governmental taking of their recovered land. The railroad easements were created under the General Railroad Right-of-Way Act of 1875 (1875 Act), 43 U.S.C. § 934-939. The plaintiffs argued that, under *Hash v. United States, 403 F.3d 1308 (Fed. Cir. 2005)*, conversion of the railroad easements under the Rails-to-Trails Act for recreational use constituted an abandonment of the easements and a taking without compensation. The government argued that the conversion by the Rails-to-Trails Act was intended to preserve the easements for possible reactivation as railroad lines; therefore, the temporary conversion for trail use was an acceptable use of the 1987 Act easements. The court held with the Federal Circuit Court of Appeals that the conversion to recreational use, even for the purpose of holding the property for possible future reuse as railroads, was not a permissible use of the 1875 Act easements; therefore, the conversions were uncompensated governmental takings of property in violation of the Fifth Amendment. **Schneider v. United States, 2008 U.S. Dist. LEXIS 3191 (D. Neb. 2008)**.

STATE REGULATION OF AGRICULTURE

CONCENTRATED ANIMAL FEEDING OPERATION. The plaintiffs challenged the Michigan Department of Environmental Equality (MDEQ) general permit for CAFOs as violating the federal Clean Water Act in that the general permit did not require inclusion of a CAFO's nutrient management plan in the terms of the general permit such that the nutrient management plans would be subject to public review and comment before a CAFO would be granted a permit. The court held that the discharge rates of a CAFO's nutrient management plan were effluent limitations, under Clean Water Act as held in *Waterkeeper Alliance, Inc. v. United States Environmental Protection Agency, 399 F.3d 486 (2d Cir. 2005)*. The court held that such discharge rates are effluent limitations because they affect the rates of discharge from a point source into navigable waters. Because the Clean Water Act requires public participation in the development, revision, and enforcement of any effluent limitation, the court held that the MDEQ must include a CAFO's nutrient management plan in the terms of the general permit. The court noted that such CAFO nutrient management plans would therefore be subject to public review and comment before the MDEQ approves the permit. **Sierra Club Mackinac Chapter v. Department of Environmental Equality, 2008 Mich. App. LEXIS 142 (Mich. Ct. App. 2008)**.

ZONING

AGRICULTURAL USE. The plaintiff leased a farm on which the plaintiff grew crops. The plaintiff contracted with a local waste disposal company to have municipal sewage sludge delivered to the farm which was used on the crop land as fertilizer. However, much of the waste had to be stored on the farm for some time before it was all used. The local zoning board ruled that the storage of the waste on the property violated the zoning restrictions for the property as a non-agricultural use of the land. The plaintiff argued that the storage and use of the waste met the requirements of the state Nutrient Management Act (NMA) which preempted any zoning restrictions. The plaintiff argued that the NMA only required that stored waste be incorporated into the soil "as soon as feasible" which preempted the zoning prohibition of storing of waste for any time. The court noted that the NMA required concentrated animal operations to create and file a nutrient management plan under which waste was to be managed in conformance with NMA rules and regulations. Although the

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NMA allowed other farms to file voluntary management plans, the plaintiff did not do so. Therefore, the court held that the NMA did not preempt the zoning restrictions on long-term waste storage where a farmer did not file a waste management plan. **Walck v. Lower Towamensing Township Zoning Hearing Board, 2008 Pa. Commw. LEXIS 19 (Penn. Commw. 2008)**.

IN THE NEWS

CORPORATE OWNERSHIP OF FARM LAND. Brownsfield News Online reported that a new ban on corporate farming may be coming in Nebraska, but only if the Nebraska Legislature acts on a measure to supplant Nebraska's previous ban on corporate farming, which was ruled unconstitutional. State Senator M.L. "Cap" Dierks of Ewing introduced LB 1174 last week. The measure is designed to replace Initiative 300, a constitutional amendment approved by Nebraska voters more than 20 years ago, then struck down by a federal appeals court last year. "We think there's a need for some protections for our family farmers," Dierks said. "Protections from corporate takeover and invasion and whatever you want to call it, so this bill will do that." And to do that, Dierks added, without violating the Interstate Commerce Clause of the U.S. Constitution or the Americans with Disabilities Act, the two reasons the appeals court struck down Initiative 300 last year. Nebraska Farmers Union President John Hansen, a long time champion of the corporate farming ban, said his attorneys tell him LB 1174, if passed, would withstand a court challenge. "We worked with our legal team to address the specific issues that were litigated and we feel that we have kept faith with the original intent and structure of Initiative 300," Hansen told Brownfield. The next step for LB 1174 is a public hearing on February 12th. From there, Dierks said he will try to get the measure approved by the Nebraska Senate Agriculture Committee. If he succeeds, Dierks said he will prioritize the bill for debate in the full legislature. **Brownfield News, Jan. 28, 2008.** http://www.brownfieldnetwork.com/gestalt/go.cfm?objectid=C26EB7B8-C68B-E78B-C20630A94F8CF3D8

2008 FARM BILL. The Congressional Research Service has published a report on the tax provisions in the House and Senate versions of the 2008 Farm Bill. **"Comparison of the House and Senate 2007 Farm Bills," Jan. 22, 2008; Order Code RS22759. http://opencrs.com/document/RS22759/**

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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