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Cases, Regulations and Statutes

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(2) the discharged indebtedness is not treated as a purchase price reduction, (3) the taxpayer has no preconceived plan or intention to dispose of the assets, (4) the selected assets are depreciable having a weighted average remaining useful life no longer than the weighted average remaining useful life of all the taxpayer's depreciable properties excluding fully depreciated assets, (5) the taxpayer has sufficient bases to absorb the basis adjustment, (6) in no instance will basis be reduced below salvage value and (7) the assets are not depreciable using the retirement-replacement-betterment method. In addition, the taxpayer must agree to treat basis reduction as ordinary income on later sale and to adjust depreciation subsequently claimed accordingly.\textsuperscript{21}

Planning principles

Basis reduction is deemed to have occurred at the beginning of the taxable year following the taxable year in which the discharge of indebtedness occurs.\textsuperscript{22} That means, for most taxpayers, reduction of basis is carried out as of January 1 of the year following the year of debt discharge. This creates a "zone of manipulation" for debtors in terms of making advantageous adjustments in property ownership. The adjustments may involve —

- Disposal of property before the end of the taxable year in which the indebtedness is cancelled if it would be advantageous not to reduce the basis of those assets.
- Acquisition of additional property before the start of the taxable year following the year of debt discharge in order to absorb basis reduction and perhaps avoid recognition of income from discharge of indebtedness (which could happen with solvent debtors generally and even with solvent farm debtors).\textsuperscript{23}

- Delay in acquisition of property until after the start of the following taxable year.
- Giving special attention to property acquired through incurrence of the cancelled debt or securing the cancelled debt because those items are first and second in line for basis adjustment.

FOOTNOTES

5. I.R.C. § 108(e)(5).
6. I.R.C. § 1017(b)[2].
8. I.R.C. § 1017(b)[2].
12. Id.
13. Treas. Reg. § 1.1017-1[a].
14. Id.
15. Id.
16. Treas. Reg. § 1.1017-1[b][7].
17. Treas. Reg. § 1.1017-1[a][3].
21. See, e.g., Ltr. Rul. 8544001, July 12, 1985. For a citation to other rulings approving special basis reduction, see 4 Harl, supra n. 1, § 39.03[6], n. 142.
22. I.R.C. §§ 1017(a), 108(b)(5)(B).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

**BANKRUPTCY**

**CHAPTER 11**

PLAN-ALM § 13.03[5].\textsuperscript{*} The debtor operated a cattle ranch. The Farm Credit Bank (creditor) had two claims, one secured by land and the other an unsecured deficiency judgment resulting from foreclosure of other mortgages. The value of the debtor’s assets exceeded the value of the total debts by 3 to 1. The debtor’s plan (1) placed the creditor’s unsecured claim in a separate class and provided for security of that claim from the debtor’s cattle, and (2) provided for payment of the secured claim over 20 years at the contract rate of interest. Although the debtor had substantial losses in pre-petition years, the plan provided that plan payments would be made from the sales of cattle, including additional sales if necessary to meet monthly payments. The creditor objected to the plan in that (1) it was unfair to place the creditor’s unsecured claim in a separate class, (2) the 20 year payment period was unfair, and (3) the debtor’s pre-petition loss record demonstrated that the debtor could not meet the plan payments without liquidation of the herd. The court upheld the plan, noting that the pre-petition losses were self-inflicted as the debtor attempted to increase the quality of the herd. The court also held that placement of the creditor’s unsecured claim in a separate class was reasonable because of the security provided. The court also held that the 20 year payment period was not unfair in that the creditor had caused the bankruptcy filing in the first place by failing to negotiate a payment schedule with a debtor who had more than enough assets to secure the payments. *In re Shoeneberg*, 156 B.R. 963 (Bankr. W.D. Tex. 1993).

**CHAPTER 12-ALM § 13.03[8]***

TRUSTEE FEES. The debtors’ plan provided for annual $1,500 payments for the trustee’s fee; however, a standing trustee had been appointed in the district and the trustee objected to the plan because the plan did not include the statutory 10 percent fee. The debtors argued that the 10 percent fee was excessive in this case for the amount of effort and expenses incurred by the trustee. The debtors also argued that the court had the power to review the standing trustee’s fee for reasonableness. The court held that it had

\textsuperscript{*}Agricultural Law Manual (ALM). For information about ordering the Manual, see the last page of this issue.
no power to set or review the standing trustee’s fee. The court questioned the need for a standing trustee in the district and the need for a 10 percent fee which could endanger many Chapter 12 plans. In addition, the court noted that the fee could force many debtors into paying claims directly to the creditors in order to avoid the fee. In re Marriot, 156 B.R. 803 (Bankr. S.D. Ill. 1993).

CHAPTER 13

PLAN-ALM § 13.03[5]. The debtor had granted the secured creditor a mortgage on the debtor’s residence. The mortgage also listed appliances, furniture and equipment in the residence as security for the loan. The debtor’s plan bifurcated the mortgage into secured and unsecured claims and the creditor objected, arguing that Section 1322(b)(2) prohibited modification of mortgages against the debtor’s residence. The court agreed but held that because the mortgage was also secured by the furniture, appliances and equipment in the house, the creditor’s claim was not eligible for the Section 1322(b)(2) protection. The mortgage was a federally guaranteed loan and the creditor argued that the loan was completely secured. The court held that the mortgage could be considered secured only to the extent of the fair market value of the collateral. In re Hamond, 156 B.R. 943 (E.D. Pa. 1993).

FEDERAL TAXATION-ALM § 13.03[7]* AUTOMATIC STAY. The IRS filed a pre-petition levy against the debtors’ bank account funds. The debtors filed for Chapter 13 and sought sanctions against the IRS for failure to release the liens and for post-petition collection of the levied funds. The court held that the levy divested the debtors of their interest in the funds; therefore, the post-petition collection did not affect estate property and did not violate the automatic stay. The IRS also failed to reduce its claim by the collected funds and the court held that the funds could be ordered to be turned over to the estate. However, because a turnover of the funds would increase the interest penalty assessed against the debtors, the turnover would not be ordered. In re Abercrombie, 156 B.R. 782 (Bankr. N.D. Tex. 1993).

DISCHARGE. The debtors filed for Chapter 13 with a plan which provided for payment of all priority taxes but did not provide for any payments on secured tax claims. The IRS filed one claim for priority taxes and one secured claim for taxes. The debtors did not object to the IRS claims and the IRS did not object to the plan. The court held that the IRS claims in excess of the plan tax payments were discharged but that the lien securing the remaining taxes survived the bankruptcy case. The court rejected a petition by the debtors to value the IRS secured claim, holding that the time for such valuation was during the bankruptcy case before the confirmation of the plan. In re Kuebler, 156 B.R. 1012 (Bankr. E.D. Ark. 1993).

In 1981, the debtor had filed a W-4 form listing 40 exemptions. In 1987, the debtor filed returns for 1982 through 1985 claiming three exemptions. The debtor filed bankruptcy more than three years after the returns were filed and claimed the taxes owed as dischargeable. The IRS argued that the taxes were not dischargeable because the false W-4 form, the late filed returns and the filing of bankruptcy just after the taxes became dischargeable were an attempt to evade taxes. The Bankruptcy Court had excluded evidence that the debtor had willfully failed to pay the taxes and held that the remaining evidence did not prove a willful attempt to evade taxes and that the taxes were dischargeable. The District Court reversed, holding that the evidence of willful failure to pay the taxes was relevant. On remand, the Bankruptcy Court held that under the stipulated facts, the IRS failed to show that the debtor had willfully attempted to evade taxes. In re Peterson, 93-2 U.S. Tax Cas. (CCH) ¶ 50,499 (D. Wyo. 1993), on rem. from, 93-1 U.S. Tax Cas. (CCH) ¶ 50,101 (D. Wyo. 1993), rev’g, 132 B.R. 68 (Bankr. D. Wyo. 1991).

LITIGATION COSTS. The court held that because a Bankruptcy Court is not a “court of the United States,” a Bankruptcy Court has no authority to make an award of litigation costs under I.R.C. § 7430. The District Court held that a Bankruptcy Court has two choices, either to refer the matter to the District Court or to make proposed findings of fact and conclusions of law which are then submitted to the District Court for review. In re Yochum, 156 B.R. 816 (D. Nev. 1993).

RESPONSIBLE PERSON. The debtor was a general partner in a partnership. The debtor signed an agreement with the other general partner making the other partner solely responsible for payroll and withholding taxes. The court held that because Utah partnership law provides that all general partners are jointly and severally liable for partnership debts, the debtor was liable for the responsible person 100 percent penalty of I.R.C. § 6672 for withholding taxes not paid by the partnership. The court also held that it had no jurisdiction to order that the IRS seek recovery from the managing partner before seeking payment from the debtor’s estate. In re Norton v. U.S., 93-2 U.S. Tax Cas. (CCH) ¶ 50,516 (Bankr. D. Idaho 1993).

SETOFF. In 1989, the debtor filed for Chapter 7 and claimed federal income tax refunds for 1988 and 1989 as exempt. The debtor received a discharge and in 1990 filed 1988 and 1989 income tax returns, claiming the refunds. The IRS withheld the 1988 refund as a setoff against the federal tax claim in the bankruptcy case. The debtor petitioned for payment of the withheld refund, arguing that the IRS was not entitled to a setoff because (1) the debt was discharged in the bankruptcy case and (2) the refund was exempt property. The court held that the refund and tax claims were pre-petition mutual debts eligible for setoff and that the discharge of the claim and exemption of the refund did not affect the IRS right to set off the mutual debts. Posey v. I.R.S., 156 B.R. 910 (W.D. N.Y. 1993).

CONTRACTS

FRAUD. The plaintiff contracted with the defendant to purchase a one-half embryo interest in the defendant’s Angus donor cow. The plaintiff alleged that the defendant fraudulently induced the plaintiff to purchase the interest in the cow by (1) making false predictions as to the production of the donor cow and the show and breeding status of the cow, and (2) making false statements as to the formation of a partnership, the court held that because no fiduciary relationship existed between the parties, no
misrepresentations could be made where the conditions of the cow were open to both parties. The Court also held that misrepresentations as to the legal status of the parties as a partnership were not actionable fraud. Mabry v. Pelton, 432 S.E.2d 588 (Ga. Ct. App. 1993).

**STATUTE OF LIMITATIONS.** The plaintiff was a wheat farmer who alleged that on May 28, 1986, the defendant orally agreed to purchase 85,000 bushels of wheat at $3.75/bu. The plaintiff filed the action on May 21, 1991 and the defendant argued that the action was time barred by the four-year statute of limitation on contracts for the sales of goods under Mont. Code § 30-2-725(1). The plaintiff argued that Mont. Code § 27-2-202(2) allowed five years for bringing actions based on oral contracts. The court held that the four-year limitation applied because the statute was more specific in that it applied only to contracts involving sales of goods. Mogan v. Cargill, Inc., 856 P.2d 973 (Mont. 1993).

**FEDERAL AGRICULTURAL PROGRAMS**

**BEANS.** The FGIS has issued proposed regulations eliminating the factor “clean-cut weevil-bored beans” from the grade requirement for the class Blackeye beans and changing the grade limits for the factors “total defects,” “blistered, wrinkled and/or broken beans,” and “splits” for the class Baby Lima beans. 58 Fed. Reg. 49248 (Sept. 22, 1993).

**BORROWER'S RIGHTS-ALM § 11.01[2].** The plaintiff had obtained several emergency farm loans from the FmHA which were discharged in the plaintiff’s bankruptcy case. After the case was closed the FmHA foreclosed on the liens securing the discharged loans. The plaintiff sought invalidation of the foreclosure and sale, arguing that the FmHA failed to provide restructuring and other pre-foreclosure rights as required by the Agricultural Credit Act of 1987. The court held that the plaintiff was not entitled to the 1987 Act rights because the plaintiff was no longer a “borrower” once the plaintiff’s personal liability for the debts was discharged in bankruptcy. Cummings v. FmHA, 825 F. Supp. 769 (N.D. Tex. 1992).

**FOREIGN OWNERSHIP OF AGRICULTURAL LAND-ALM § 13.07[1].** The ASCS has adopted as final amendments to the definition of agricultural land for purposes of the reporting requirements for foreign ownership of agricultural land in the U.S. In particular, the regulation defines land used for forestry production as “land exceeding 10 acres in which 10 percent is stocked by trees of any size, including land that formerly had such tree cover and that will be naturally or artificially regenerated.” Query, whose crystal ball is to be used for the regeneration prediction? Does the regulation mean “at least” or “more than” 10 percent tree cover? 58 Fed. Reg. 48273 (Sept. 15, 1993).

**PERISHABLE AGRICULTURAL COMMODITIES ACT-ALM § 10.05[2].** The debtor had purchased broccoli and cauliflower from a producer under purchase contracts which provided for payment within 45-60 days. The producer filed timely notice of intent to preserve its rights in the PACA trust and petitioned the court to determine the amount of the producer’s rights in the PACA trust. 7 C.F.R. § 46.46(f)(2) provides that producers are not entitled to PACA trust protection for contracts with a payment period over 30 days. The producer argued that the requirement in the regulation was invalid because the statute, 7 U.S.C. § 499e(c)(3), provided no maximum requirement for purchase contracts. The court upheld the validity of the regulation after examining the legislative history of the statute wherein the Congress indicated that it was leaving to the Secretary the responsibility of determining the maximum payment period for producer contracts eligible for PACA trust protection. In re Altabon Foods, Inc., 998 F.2d 718 (9th Cir. 1993).

**PESTICIDES-ALM § 2.04.** The plaintiff purchased and used an aerosol can of insecticide manufactured by the defendant. A chemical in the insecticide triggered an asthmatic reaction in the plaintiff and the plaintiff sued the defendant for failure to warn of a possible asthmatic reaction. It was undisputed that the label on the can complied with FIFRA labeling requirements. The court held that the state failure to warn action was pre-empted by FIFRA. Kolich v. Sysco Corp., 825 F. Supp. 959 (D. Kan. 1993).

**FEDERAL ESTATE AND GIFT TAX**

**DISCLAIMERS.** The decedent’s estate contained several certificates of deposit (CD’s). One set of CD’s was owned completely by the decedent. One set was owned as a joint tenant with the surviving spouse and three daughters. One set of CD’s was owned by the decedent but provided for payment to the surviving spouse on the decedent’s death. A final set of CD’s was owned by the decedent and surviving spouse as joint tenants with a remainder payable to the daughters. The surviving spouse filed a timely written disclaimer of all interests in the CD’s, including the survivorship interests and the interests created by the decedent’s will. The IRS ruled that the disclaimer was effective because the surviving spouse’s interests in the CD’s was not created until the death of the decedent and the interests would pass either under the decedent’s will or by the terms of the CD contract. Ltr. Rul. 9336011, June 8, 1993.

**GENERATION SKIPPING TRANSFERS-ALM § 5.04[6].** Testamentary irrevocable trusts with grandchildren as remainder beneficiaries were created on the trustors’ deaths in 1947 and 1950. No additions were made to the trusts after September 25, 1985. Each trust corpus consisted of publicly traded stock and stock in a closely-held corporation in which one grandchild was active. The trustee sought a state court order amending the trusts to allow non-pro rata distribution of trust assets upon termination of the trusts. The IRS ruled that the amendment would not subject the trusts to GSTT. Ltr. Rul. 9335005, May 25, 1993.

In June and July 1986, the decedents, husband and wife, transferred assets to trusts for their grandchildren. The grantors filed gift tax returns and elected to treat the trusts as

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*Agricultural Law Manual (ALM). For information about ordering the Manual, see the last page of this issue.*
FEDERAL INCOME TAXATION

APPEALS. The IRS has issued proposed regulations amending the Statement of Procedural Rules pertaining to how a taxpayer may administratively appeal adjustments of a taxpayer’s federal tax liability. 58 Fed. Reg. 48802 (Sept. 20, 1993).

BAD DEBTS-ALM § 4.03[7]. The taxpayer was allowed a bad debt deduction for a loan to the taxpayer’s wholly-owned corporation where the taxpayer had intended that the loan be repaid and the taxpayer received no income from the corporation during the period of the loan. The worthless loan was deductible as a business bad debt because the court found that the loan was made for the purpose of protecting the taxpayer’s salary. Baldwin v. Comm’r, T.C. Memo. 1993-433.

HOBBY LOSSES-ALM § 4.05[1]. The taxpayer claimed deductions for expenses relating to a goat raising activity. The court held that the deductions were not allowed because the goat raising business was not entered into with the intent to make a profit since the activity was not conducted in a business-like manner. Keller v. Comm’r, T.C. Memo. 1993-415.

INVoluntary CONVERSION. The taxpayer owned a single family residence which was rented to others. The residence was destroyed by a tornado. The nature of the surrounding property had changed to high value residential developments and the taxpayer could not afford to reconstruct a dwelling in keeping with the change; therefore, the taxpayer sold the land and purchased replacement land on which a replacement dwelling would be constructed. The IRS ruled (1) that the nature and use of the land was sufficiently tied to the house to constitute an economic unit, and (2) that the taxpayer could defer, under I.R.C. § 1033, the gain from the insurance proceeds from the loss of the house and the proceeds from the sale of the land to the extent the proceeds did not exceed the cost of the replacement land and dwelling. Ltr. Rul. 9334007, May 26, 1993.

PARTNERSHIPS-ALM § 7.03*

LIMITED LIABILITY COMPANIES. The taxpayers formed a partnership under the Delaware limited liability company statute. The partnership agreement and state LLC law provided that the bankruptcy or liquidation of a partner would cause the dissolution of the partnership. The LLC agreement allowed for continuation of the partnership after a terminating event if a majority of the remaining members voted to continue the partnership. The IRS ruled that the partnership lacked the corporate characteristic of continuity of life. The LLC agreement provided that the management of the LLC was vested in all of the partners. The IRS ruled that the LLC lacked the corporate characteristic of centralized management; therefore, the LLC would be taxed as a partnership for federal tax purposes. Ltr. Rul. 9335032, June 4, 1993.

The taxpayers formed a partnership under the state limited liability company statute. The partnership agreement and state LLC law provided that the bankruptcy or
liquidation of a partner would cause the dissolution of the partnership. The IRS ruled that the partnership lacked the corporate characteristic of continuity of life. The partnership agreement and state LLC law provided that a partner could not transfer an interest in the partnership without the consent of the other partners. The IRS ruled that the partnership lacked the corporate characteristic of free transferability of interests; therefore, the partnership would be taxed as a partnership for federal tax purposes. Ltr. Rul. 9335062, June 11, 1993.

PENSION PLANS. The taxpayer received a lump sum distribution from a qualified pension plan when the plan was terminated. The taxpayer was age 54 and still employed by the plan sponsor at the time of the distribution. The court held that the distribution was not eligible for 10-year averaging because the reason for the distribution was not one of the four qualifying events in I.R.C. § 402(e)(4)(A). Clark v. Comm’r, 101 T.C. No. 15 (1993).

SAFE HARBOR INTEREST RATES

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S CORPORATIONS-ALM § 7.02[3][c]*

ELECTION. Because of an error by the taxpayer corporation’s attorney, the taxpayer failed to file Form 2553, Subchapter S Election, but filed Form 1120S as an S corporation for three years. The taxpayer argued that the IRS was “equitably estopped” from denying the taxpayer S corporation status because the IRS “accepted” the tax returns. The court held that, under Office of Personnel Management v. Richmond, 496 U.S. 414 (1990), estoppel may not be asserted against the federal government for recovery of “public funds.” In addition, the taxpayer did not reasonably rely on the IRS’s “acceptance” of the tax returns which are subject to audit and administrative adjustments. Smith S, Inc. v. Comm’r, 93-2 U.S. Tax Cas. (CCH) ¶ 50,514 (E.D. N.C. 1993).

SALE OF RESIDENCE. The taxpayers sold a residence and purchased property which contained a residence and a business. The taxpayers paid more for the entire property than its fair market value and allocated the excess entirely to the residential portion of the property in order to decrease the amount of gain from the sale of the previous residence. The court held that none of the excess purchase price over fair market value could be allocated to the residential portion of the property because the taxpayers failed to provide any evidence to support the allocation. Richards v. Comm’r, T.C. Memo. 1993-422.

LABOR

AGRICULTURAL LABOR-ALM § 3.02.* The defendant was a large commercial producer and processor of chicken eggs. The employees at one of the defendant’s plants voted to have the United Food and Commercial Workers International Union represent them in collective bargaining. The defendant argued that the employees were agricultural laborers and that the plant was exempt from the requirements of the National Labor Relations Act. The NLRB had ruled in another case that a commercial plant did not have agricultural laborers if the plant regularly handled any amounts of products from outside producers. The burden of proof was on the defendant to show that outside eggs were not being regularly processed at the plant. The court upheld the NLRB’s determination that the defendant’s employees were not agricultural laborers because of sufficient evidence that the plant regularly processed eggs from outside producers. N.L.R.B. v. Cal-Maine Farms, Inc., 998 F.2d 1336 (5th Cir. 1993).

BOYCOTT. The plaintiffs were supporters of the United Farm Workers’ boycott of California grapes. The plaintiffs had attempted to distribute leaflets and petitions in support of the boycott at the defendant’s grocery store but were arrested at the instigation of the defendant. The plaintiffs sued the defendant for denial of free speech rights and were awarded $750 damages each. The court held that the Texas Constitution provides no private right of action for damages to enforce an individual’s right of free speech. Albertson’s, Inc. v. Ortiz, 856 S.W.2d 836 (Tex. Ct. App. 1993).

SEASONAL AGRICULTURAL LABOR-ALM § 3.04.* The plaintiffs were migrant seasonal agricultural laborers who worked for the defendants on their vegetable farm. The plaintiffs alleged violations of the Seasonal Agricultural Worker Protection Act (the Act) and the defendants argued that they were exempt from the Act because of the family farm exception. The plaintiffs argued that the family farm exception was not available because the defendants transported the workers on various implements and vehicles on the farm. The court held that the transportation of workers that occurs in the normal course of operations on the farm was insufficient to make the defendants subject to the Act. However, the court remanded the case for trial on the issue of whether third parties recruited workers for the defendants. The court noted that word-of-mouth references by the workers to other workers was not recruiting under the Act. The court also noted that the defendants failed to file and pay federal employment taxes for the workers. The court held that the plaintiffs only had standing to seek the reporting of the taxes because the payment of the taxes did not change their eligibility for the social security benefits. The plaintiffs also alleged that the defendant violated the minimum wage law by temporarily withholding amounts from the paychecks until the last day of work (used as an incentive to keep the workers until the end of the harvest). The court agreed that this was a violation but remanded the case for a determination of the amount of damages, noting that the withheld amounts were eventually repaid and that such repaid amounts should be credited against the damages. Calderon v. Witvoet, 999 F.2d 1101 (7th Cir. 1993).
NUISANCE

LIVESTOCK PENS-ALM § 13.08.* The plaintiffs purchased their property in 1949. The defendant purchased property on the other side of a road from the plaintiffs’ residence in 1981. Directly across from the plaintiffs’ residence, the previous owner had a livestock holding pen which was used for feeding and working cattle which otherwise roamed on nearby pastures. The defendant improved the pens and started a confined feedlot operation and the plaintiffs filed suit for an injunction of the operation as a nuisance and damages for invasion of privacy. Under Kan. Stat. § 2-3202, agricultural activities are presumed not to be a nuisance if conducted in a manner consistent with good agricultural practice and established prior to surrounding nonagricultural activities. The plaintiffs’ residence was part of a farm operation conducted by the plaintiffs. The court held that because the defendant’s use was not prior to the plaintiffs’ use and the plaintiffs’ use was agricultural, the “right-to-farm” statute did not apply. The court also held that under the traditional concepts of nuisance for farmland, the defendant was not entitled to a summary judgment. The court held that the defendant was entitled to summary judgment on the action for invasion of privacy because the odors from the feedlot were not a physical intrusion on the plaintiffs’ property. Finlay v. Finlay, 856 P.2d 183 (Kan. Ct. App. 1993).

HOG FARM-ALM § 13.08.* The plaintiffs purchased and moved into their rural residence in February 1985. The defendants moved into a farm across the road from the plaintiffs residence in May 1987 and began a hog operation. The area surrounding the parties farms was rural with some residential development. The state Department of Agriculture inspected the defendants’ farm and required a livestock waste management program in order for the farm to be considered in compliance with the statutory right-to-farm requirements. The waste management program was implemented. The court held that the defendants’ farm was not subject to a private nuisance suit because (1) it was operated in conformity with generally accepted agricultural practices, and (2) the use of the area within a one mile radius of the defendants’ property had not changed before the defendants started their hog operation. Steffens v. Keeler, 503 N.W.2d 675 (Mich. Ct. App. 1993).

PARTNERSHIP

DEFINITION-ALM § 7.03[1].* The plaintiff contracted with the defendant to purchase a one-half embryo interest in the defendant Angus donor cow. The plaintiff argued that the parties had formed a partnership but the court disagreed, pointing to the purchase contract which explicitly denied that the contract formed a partnership. The court also noted that no terms of the partnership agreement were established. Mabry v. Pelton, 432 S.E.2d 588 (Ga. Ct. App. 1993).

PRODUCTS LIABILITY

TRACTOR. The plaintiff’s tractor was destroyed by a fire caused by either a faulty fuse panel or accumulation of debris on a heat shield. The plaintiff filed a claim for the loss from the insurance company which paid the claim. The plaintiff filed a strict liability and negligence suit against the tractor manufacturer. The defendant argued that the insurance company was the real party in interest and was not eligible to bring a strict liability action. The court held that the insurance company was the real party in interest under an assignment clause in the insurance policy and that Ga. Code § 51-1-11(b)(1) allowed strict liability actions only for individuals. The court also held that the manufacturer was not liable for negligence because the evidence failed to show the cause of the fire resulted from a defect of design or manufacture. USF & G Co. v. J.I. Case Co., 432 S.E.2d 654 (Ga. Ct. App. 1993).

STATE REGULATION OF AGRICULTURE

PESTICIDES-ALM § 2.04.* The defendants were the owners and employees of an orchard and were observed by inspectors from the Department of Environmental Protection and Energy (DEPE) improperly applying pesticides to their trees. The DEPE offered the defendants reduced fines in settlement of the offenses but the defendants refused the offers. The DEPE brought an action in Superior Court to impose penalties under the Pesticide Act, N.J. Stat. §§ 13:1D-9(e), 13:1F-10, 2A:58-1. The Superior Court remanded the case back to the DEPE for an administrative hearing on the defendants’ liability. The appellate court held that the statute provides for primary jurisdiction in the Superior Court for actions brought by the DEPE. The court also held that the action was not subject to the two year statute of limitations for criminal proceedings because the penalties involved did not involve a forfeiture. State v. Larchmont Farms, 628 A.2d 761 (N.J. Super. 1993).

STATE BOARDS. The Kansas State Board of Agriculture (the Board) was elected by delegates of state private agricultural associations at the Board’s annual meeting. The court found that the Board was a state agency with general governmental powers because the Board’s functions included such duties as the appointment of the state Dairy Commissioner which affected all residents of Kansas. The court held that the method of electing the Board violated the “one person, one vote” principle of the equal protection clause of the U.S. Constitution and permanently enjoined the election of another board until the legislature enacted a constitutional method of election. Hellebust v. Brownback, 824 F. Supp. 1511 (D. Kan. 1993); 824 F. Supp. 1524 (D. Kan. 1993).

WILD ANIMALS. As part of a legislative directive, the state Department of Fish and Game (the department) began relocating wild tule deer to their original native ranges, which included areas near the plaintiff’s property. The plaintiff sued the state for damages from the elk to the plaintiff’s property and crops, arguing that the relocation was a governmental taking without compensation. Although the state did the relocating, monitored the elk, licensed the hunting of the elk and made attempts to keep the elk off private property, the court held that the state did not sufficiently control the elk to be liable for damages caused by the elk. The court held that the state’s involvement in the relocation and monitoring did not change the nature of the
elk as wild animals and established law placed no duty on
the state for damages done by wild animals. Moerman v.
TRESPASS

TIMBER. The defendant purchased timber land adjacent to the plaintiff’s property. The defendant’s father had incorrectly marked the boundary between the properties; therefore, when the defendant’s contractor removed trees, the contractor removed trees on the plaintiff’s property. The plaintiff sued for double damages, under Me. Rev. Stat. § 7552-A, because the defendant failed to mark the true boundary. The plaintiff also sought treble damages, under Me. Rev. Stat. § 7552, for willful and knowing cutting of the plaintiff’s timber. The court held that the defendant’s good faith attempt to mark the boundary and reliance on the father’s markings was insufficient to bar application of Me. Rev. Stat. § 7552-A. The court also ruled that treble damages were not justified because the defendant made a good faith effort to mark the boundary and that knowledge of facts that indicated problems with the markings was insufficient to prove willfulness which required evidence of complete disregard for the plaintiff’s rights. Fraser v. Barton, 628 A.2d 146 (Me. 1993).

CITATION UPDATES


Nalle v. Comm’r, 997 F.2d 1134(5th Cir. 1993), rev’g, 99 T.C. 187 (1992) (investment tax credit) see p. 146 supra.

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