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Cases, Regulations and Statutes

Robert P. Achenbach Jr.
_Agricultural Law Press, robert@agrilawpress.com_

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**Recommended Citation**

In conclusion

Quite clearly, unless the statute is amended or the regulations or handbooks are revised, care should be exercised in handling the conveyance of program crops to a newly-formed entity if a CCC loan is desired on the commodity.

FOOTNOTES

3 I.R.C. §§ 351(a), 368(c).
4 Id.
6 I.R.C. 482. See, e.g., Rooney v. U.S., 305 F.2d 681 (9th Cir. 1962).
7 See, e.g., Connery v. U.S., 460 F.2d 1130 (3d Cir. 1972) (prepaid advertising).
10 Ltr. Rul. 8431032, no date given.
11 See 7 C.F.R. §§ 1421.5 (general eligibility requirements); 1421.4 (eligible producers).
12 See 7 C.F.R. §§ 1421.5, 1421.4.
13 7 C.F.R. § 1421.4(a).
14 Id., § 1421.4(a)(1).
15 7 C.F.R. § 1421.4(b).
16 7 C.F.R. § 1421.30.
17 6-LP, Amend. 1 (1994).
18 Id., p. 3-1.
19 Id., p. 3-17.
20 5-PA (Rev. 10, Amend. 34, p. 9-7.
21 Id.
22 See letter dated February 14, 1995, from Thomas L. Grau, Acting State Executive Director, Consolidated Farm Service Agency, to Pete Tallman, Atlantic, Iowa.
23 Id., p. 9-8.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

EXCLUSIVE POSSESSION. The parties' properties were owned by one person who sold the plaintiff the north 225 acres in 1969. The disputed land was a strip between the plaintiff's land and a road which bordered the land sold to the defendant in 1989. The deed to the defendant included the disputed strip; however, a fence enclosed the strip with the plaintiff's property until 1992 when the defendant took down the fence and put up a fence at the record boundary line on the plaintiff's side of the disputed strip. The strip consisted of wild brushy land with little usefulness except for hunting. The plaintiff presented evidence that the plaintiff used the land for grazing cattle, repaired the fence and allowed others to hunt on the property. The defendant presented evidence that, during any ten year period, either the defendant or the defendant's predecessor in interest paid the property taxes for the strip and allowed others to hunt on the property. The court held that the burden was on the plaintiff to demonstrate exclusive possession of the disputed land because the land was wild and unimproved. The court held that the defendant's evidence of use was sufficient to prevent acquisition of the disputed land by the plaintiff by adverse possession. Cunningham v. Hughes, 889 S.W.2d 864 (Mo. Ct. App. 1994).

POSSESSION BY COTENANTS. The land in dispute was once owned by an ancestor of the parties to the suit. When the ancestor died, the will conveyed the ranch property to six children. Only one of the children wanted to continue operating the ranch and obtained quitclaim deeds from the other five children of their interests in the ranch. However, the will description of the ranch omitted 40 acres and the quitclaim deeds from the heirs also omitted the same 40 acres. Therefore, the heirs each still owned a sixth of the 40 acres under the residuary clause of the will. The ranch was later transferred to a corporation, the plaintiff, but this time the deed included all of the ranch land. The 40 acre error was not discovered until the corporation attempted to sell the land. When the heirs, the defendants, of one of the original children refused to quitclaim their interests in the 40 acres, the corporation brought suit to have title conveyed by adverse possession. Citing Fitchen Bros. Comm. Co. v. Noyes' Estate 246 P. 773 (Mont. 1926), the court stated that the rule in Montana was that in order for possession of a cotenant to be adverse against another cotenant, the other cotenant must be ousted by an express act declaring possession to be exclusive by the possessing cotenant. In this case, the plaintiff failed to oust the defendants because it appeared that no one knew that the defendants still had an interest in the ranch. The plaintiff cited Nicholas v. Cousins, 459 P.2d 970 (Wash. 1969) and City & County of Honolulu v.
**BANKRUPTCY**

**GENERAL-ALM § 13.03."**

**AVOIDABLE LIENS.** The debtor was a wholesale dealer in food products who had purchased but not paid for dairy and food products from a producer. One month after the debtor filed for Chapter 11, the producer filed a beneficiary’s notice of intent under Minn. Stat. § 27.138 to preserve trust assets for the amount owed. The producer sought recovery of the trust assets from the bankruptcy estate as not included in bankruptcy estate property. The court held that the statute did not create a trust because none of the traditional indicia of a trust existed, such as (1) a trustee, (2) fiduciary duties, and (3) restrictions on use of trust assets. Because the statute created no separate corpus, allowed trust assets to be commingled with the purchaser’s other assets, and created no fiduciary duty on the purchaser, no trust indicia were present. Instead, the court held that the statute created only a security interest which was perfected upon filing of the beneficiary’s notice of intent to preserve trust assets. Because the producer did not file the notice until after the petition, the security interest was unperfected and avoidable by the trustee. In addition, the court noted that the statute allowed the purchaser to sell the “trust” assets free of the security interest in several instances; therefore, the trustee as a bona fide purchaser, took possession of the assets free of the security interest. On appeal the District Court reversed. The court discussed the parallels between the Minnesota law and PACA and held that Minn. Stat. § 27.138 created a trust in favor of the seller, the seller complied with the requirements for preserving the rights to the trust corpus and that the trust corpus was not bankruptcy estate property. On remand the Bankruptcy Court held that an issue of fact remained as to whether some of the fruit juice products were covered by the Minnesota law because the evidence was not clear as to whether the juices were still perishable after processing. *In re Country Club Market, Inc.*, 175 B.R. 1011 (Bankr. D. Minn. 1994), *on rem. from*, 175 B.R. 1005 (D. Minn. 1994), *rev’d* and *rem’d*, 162 B.R. 226 (Bankr. D. Minn. 1993).

**EXEMPTIONS**

**HOMESTEAD.** The debtor was a widow whose husband had died in 1984. The debtor continued to live in the marital residence and claimed a personal exemption of $7,500 for the homestead and an exemption for the deceased spouse of $7,500. Under III. Cod. Stat. 5/12-902, the exemption of a deceased spouse continues for the benefit of the surviving spouse so long as the surviving spouse continues to live in the residence. The court held that the plain language of the statute allowed the debtor to claim both deductions. *In re Rhoades*, 176 B.R. 167 (Bankr. C.D. Ill. 1994).

**IRA.** The debtor was 50 years old, unemployed and single. The debtor had little exempt property other than $18,000 in an IRA. The court held that the IRA was eligible for the pension plan exemption under 14 Me. Rev. Stat. § 4422 and that the debtor was eligible for the exemption because the IRA was reasonably necessary for the debtor’s support. *In re Bates*, 176 B.R. 104 (Bankr. D. Me. 1994).

**FEDERAL TAXATION-ALM § 13.03[7]."**

**CLAIMS.** The debtor had claimed several items of personal property as exempt and sought to exclude that property from attachment of a pre-petition lien filed by the IRS. The IRS argued that the property was not exempt as to the lien because I.R.C. § 6334 allows the exemptions only as to levies to collect taxes and not as to liens. The Bankruptcy Court held that the distinction argued by the IRS was unreasonable because it would create a lien which could not be enforced by levy unless the debtor converted the property into nonexempt assets. Therefore, the Bankruptcy Court held that the lien did not cover the exempt personal property. The District Court reversed, holding that I.R.C. § 6321 provided for tax liens to attach to all property without exception. The appellate court affirmed. *In re Voelker*, 42 F.3d 1050 (7th Cir. 1994), *aff’d*, 175 B.R. 989 (W.D. Wis. 1994), *rev’d*, 164 B.R. 308 (Bankr. W.D. Wis. 1993).

**COMPROMISE OFFERS.** The debtors had made an offer to compromise prior to assessment of back taxes and the compromise was rejected by the IRS. After the assessment, IRS alleged that the debtors had made an oral second offer of compromise and the debtors’ attorney had sent a letter appealing the rejection of the second offer. The court held that the first offer did not extend the period for making pre-petition assessments under Section 507(a)(7)(A)(ii) because it occurred prior to the assessment, the oral second offer was not a valid offer because it was not made on IRS forms, and the appeal of the second rejection did not constitute an offer for purposes of Section 507. *In re Aberl*, 175 B.R. 915 (N.D. Ohio 1994), *aff’d*, 159 B.R. 792 (Bankr. N.D. Ohio 1993).

**DISCHARGE.** At issue was the dischargeability of taxes due more than three years before the filing of the petition. For the years at issue, the joint filing debtors...
were either late in filing or were forced to file after failing to file tax returns. The debtors maintained only poor business records and paid taxes on time only through taxes withheld from wages. In several of the filings, incorrect deductions were claimed and income was omitted. During the years at issue, the debtors had sufficient funds to pay the taxes due. The court held that the actions of the debtors indicated a willful attempt to evade taxes, making the taxes for those years nondischargeable. *In re Binkley*, 176 B.R. 260 (Bankr. M.D. Fla. 1994).

At issue was the dischargeability of taxes due more than three years before the filing of the petition. For the years at issue, the debtor failed to file income tax returns until contacted by the IRS. The debtor supplied the IRS with all records and signed the returns prepared by the IRS. The debtor made $28,000 in payments on the taxes owed before filing for bankruptcy. The court held that the mere failure to file tax returns was insufficient evidence of willful attempt to evade taxes since the debtor did supply the records, sign the returns and attempt to make payment. *In re Miller*, 176 B.R. 266 (Bankr. M.D. Fla. 1994).

**FEDERAL AGRICULTURAL PROGRAMS**

**BRUCELLOSIS.** The APHIS has adopted as final reduction of the designation of Virginia from an accredited free (suspended) state to a modified accredited free state. 60 Fed. Reg. 11898 (March 3, 1995).

**MIGRANT AGRICULTURAL LABOR-ALM § 3.04.** The plaintiffs were migrant agricultural laborers who harvested crops for the defendant. The plaintiffs alleged that the defendant failed to pay the promised hourly and piece wages, failed to provide promised return transportation at the end of the harvest, failed to pay the wages when due, and violated the information and recordkeeping requirements of the Migrant and Seasonal Agricultural Workers Protection Act (MSWAPA or the Act). The Act does not contain any limitation period for bringing an action for violations of the Act and the trial court applied the state one year limitation period for liabilities created by statute. Ariz. Rev. Stat. § 12-541(3), as applied to the predecessor of the MSWAPA in *Rivera v. Anaya*, 726 F.2d 564 (9th Cir. 1984). The appellate court reversed on several grounds. First, the court characterized the MSWAPA as nonuniform, including several types of actions which would qualify for different limitation periods under state law; therefore, the plaintiffs’ causes of action needed to be individually characterized for the correct state limitations period. The court ruled that all of the plaintiffs’ causes of action involved aspects of an employment contract, even the recordkeeping and information issues because these issues involved information about the employment conditions. Therefore, the state’s three year statute of limitations for contract actions applied. Second, the court ruled that a one year limitation period was inconsistent with the MSWAPA because MSWAPA did not apply to MSWAPA because MSWAPA did not create the contract causes of action but merely federalized them. *Barajas v. Bermudez*, 43 F.3d 1251 (9th Cir. 1994).

**POULTRY PRODUCTS.** Under a recently enacted California statute, Cal. Food & Agric. Code § 26661, poultry products could only be labeled as “fresh” if the products had been stored above 25 degrees. Under the federal Poultry Products Inspection Act (PPIA), 21 U.S.C. §§ 451-470, and USDA regulations, poultry products may be labeled as fresh if stored between 0 and 40 degrees. The plaintiffs argued that the PPIA preempted the state statute. The state argued that its statute only prohibited certain labeling and did not add any labeling requirement or require a different label than the federal act. The trial court held that a prohibition was equal to a requirement and that, because the state law prohibited a label that the federal law allowed, the state requirement was in addition to and different from the federal requirement and was preempted. This portion of the trial court ruling was affirmed on appeal. The trial court also held that, because the state labeling requirement was not severable from the similar requirements for advertising and other marketing methods, the state was enjoined from enforcing any of the statute. The appellate court reversed on this issue, holding that the labeling requirements were grammatically and functionally severable from the other parts of the statute. *National Broiler Council v. Voss*, 44 F.3d 749 (9th Cir. 1994), rev’g in part and aff’g in part, 851 F. Supp. 1461 (E.D. Cal. 1994).

**WETLANDS.** The Army Corps of Engineers, the EPA, the NRCS, the FWS and National Marine Fisheries Service have issued proposed guidelines for the establishment, use and operation of mitigation banks for providing compensatory mitigation for adverse impacts to wetlands. 60 Fed. Reg. 12286 (March 6, 1995).

**FEDERAL ESTATE AND GIFT TAX**

**DISCLAIMERS-ALM § 5.02[6].** The decedent and surviving spouse were residents of a community property state and entered into an agreement to treat all separately owned property as community property. The agreement provided that on the death of one spouse, the property would all vest in the surviving spouse. After the
death of the decedent and on the advice of legal counsel, the surviving spouse had all property in the name of the decedent, primarily brokerage accounts, changed to show the surviving spouse as owner but the surviving spouse did not accept any of the property or any income from the property. Within nine months of the decedent's death the surviving spouse filed a disclaimer of all of the decedent's interest in community property. The IRS ruled that under Washington law, community property could not be disposed of without the consent of both spouses and a community property agreement was binding on both parties at the death of one of the parties and constituted a will substitute. The IRS ruled that the disclaimer period started at the death of the decedent and the surviving spouse's disclaimer within nine months of the decedent's death was timely. The IRS also ruled that the mere change of title to the surviving spouse of the accounts was not sufficient to void the disclaimer. Ltr. Rul. 9507017, Nov. 15, 1994.

**GENERATION SKIPPING TRANSFERS—ALM § 5.04[6].** The taxpayer was the beneficiary of an irrevocable trust established in 1967 by the taxpayer's parent. The taxpayer was co-trustee with the taxpayer's daughter and a bank. The taxpayer received all net income from the trust and had the right to distributions of corpus for the health and support of the taxpayer; however, the taxpayer could not participate in authorizing distributions of corpus. The taxpayer and co-trustees entered into an agreement to even out distributions from the trust income based on anticipated trust income. The remainder interests in the trust passed to the taxpayer's issue. The IRS ruled that the agreement would not subject the trust to GSTT because the agreement did not alter the taxpayer's rights in the trust. Ltr. Rul. 9506028, Nov. 10, 1994.

The taxpayer was the beneficiary of an irrevocable trust established in 1950 by the taxpayer's parent. The taxpayer was co-trustee with the taxpayer's daughter and a bank. The taxpayer received the greater of all net income from the trust or $25,000 annually. The taxpayer had the right to distributions of corpus for the health and support of the taxpayer; however, the taxpayer could not participate in authorizing distributions of corpus. The taxpayer and co-trustees entered into an agreement to even out distributions from the trust income based on anticipated trust income. The remainder interests in the trust passed to the taxpayer's issue. The IRS ruled that the agreement would not subject the trust to GSTT because the agreement did not alter the taxpayer's rights in the trust. Ltr. Rul. 9506029, Nov. 10, 1994.

The taxpayers owned equal shares in an irrevocable trust established by the taxpayers' parent in 1982. The trust held shares of common stock with voting rights in one company. That company had several subsidiaries and the company decided that it should reorganize under a holding company. Under the reorganization agreement subject to court approval, the company would exchange its stock for an equal number of shares of the holding company and transfer all of its stock in the subsidiaries to the holding company. The trust would then hold stock with equal value and rights in the holding company and the trust agreement was changed to reflect the new stock ownership. The IRS ruled that (1) the exchange did not amount to an exercise or release of a power of appointment held by the taxpayers; (2) the exchange would not cause the stock to be included in the taxpayers' gross estates; (3) the exchange would not result in any gift; and (4) the exchange would not subject the trust to GSTT. Ltr. Rul. 9507016, Nov. 15, 1994.

**TRANSFERS WITH RETAINED INTERESTS—ALM § 5.02[4].** The decedent had suffered injuries from complications at birth and the decedent, through the decedent's parents, sued the hospital and doctors for malpractice. The parties reached various settlements which provided lump sum payments and annual payments. The decedent's parents (the ruling is not clear when the decedent died) obtained approval from the probate court to establish two trusts to receive the decedent's settlement proceeds. The trusts provided for the decedent to receive until age 18 trust net income necessary for the decedent's health, education and support with the trust corpus to be distributed to the decedent at age 18. The remainder was to pass as appointed by the decedent, or, upon failure of the decedent to appoint trust corpus, to the decedent's heirs. The IRS ruled that the settlement proceeds were the decedent's property because the law suits were personal to the decedent; therefore, the trust property was the decedent's property and was includible in the decedent's estate because the decedent retained the power to alter the disposition of the trust property. Ltr. Rul. 9506004, Nov. 1, 1994.

**VALUATION.** The taxpayer transferred a mineral interest in property to a ten-year trust for the taxpayer’s children. The trust provided for distribution of income reduced by a 15 percent depletion reserve. The trustees had the power to sell or dispose of trust property and reinvest in other productive property. The taxpayer filed a gift tax return and valued the gift by first reducing the fair market value by the 15 percent depletion reserve and then valuing the income interest using Table B of Treas. Reg. § 25.2512-5(f). The taxpayer argued that the use of the table was appropriate because the trustees had the power to sell the depleting asset and reinvest in nondepleting assets. The court held that the value of the interest was to be decreased by the 15 percent depletion reserve but no further reduction in value could be made because the asset would be depleted before the termination of the trust. The court pointed out that the taxpayer provided no indication of any intention by the trustees to sell the trust property. The appellate affirmation was designated as not for publication and has limited precedential value. Froh v. Comm’r, 95-1 U.S. Tax Cas. (CCH) ¶ 60,189 (9th Cir. 1995), aff’g, 100 T.C. 1 (1993).
FEDERAL INCOME TAXATION

BAD DEBTS - ALM § 4.03[7]. The debtor was a bankruptcy estate for a business debtor. The owner of the business had made several "loans" to another company in an attempt to keep that company operating so as to provide business for the debtor company. The other company eventually failed and the estate claimed the loss of the "loaned" money as a business bad debt deduction. The debtor company had listed the "loaned" funds as a capital investment on a credit application and the other company had listed the "loaned" funds as capital investment on credit applications and account statements. The court held that the estate was not entitled to a bad debt deduction for the amounts contributed to the other company because the parties treated the funds as a capital contribution and did not issue any evidence of a loan, such as a maturity date, interest or repayment schedules. The decision is designated as not for publication and has limited precedential effect. In re Duffy, 95-1 U.S. Tax. Cas. (CCH) ¶ 50,110 (Bankr. E.D. Calif. 1994).

C CORPORATIONS - ALM § 7.02.*

LIQUIDATION. The taxpayer was a corporation which liquidated during negotiations concerning a failed attempt to purchase another business. The court held that the settlement amount received after the liquidation was not taxable to the corporation because the corporation liquidated before the settlement was reached and there was no evidence that the negotiations were delayed to avoid the taxes. Beauty Acquisition Corp. v. Comm'r, T.C. Memo. 1995-87.

DISASTER AREAS - ALM § 4.05[2]. The IRS has announced the disaster areas designated by the President for 1994 for purposes of eligibility of taxpayers to qualify for I.R.C. § 165(i) deferral of claiming losses from those disasters. Rev. Rul. 95-17, I.R.B. 1995-9, 4.

DISCHARGE OF INDEBTEDNESS - ALM § 4.02[15]. The taxpayer owned a portion of a family business which owned a profit-sharing trust of which the taxpayer was an administrator and co-trustee. The taxpayer had borrowed from the trust and the debt was discharged when the trust was terminated. The court held that the taxpayer could not exclude the debt from income because the taxpayer was not insolvent. In addition, the debt was not considered a discharge but a distribution because the debt was still collectible, either from the taxpayer's liability as a fiduciary of the trust or from the taxpayer's vested interest in the trust. Caton v. Comm'r, T.C. Memo. 1995-80.

FUEL TAX CREDIT. The taxpayer used sawdust to produce a gas used to fire boilers which produced steam used in a process upgrading ethanol for use in gasoline. The taxpayer claimed a fuel tax credit for a portion of the cost of the ethanol because the sawdust was used in the ethanol enhancement process. The court held that the fuel tax credit was available only if the fuel produced from a biomass was sold to third parties. The court held that the fuel produced by the sawdust was not sold to third parties but was only used by the taxpayers to make other fuel which was sold to third parties; therefore, the taxpayer was not eligible for the credit. United States v. King, 95-1 U.S. Tax. Cas. (CCH) ¶ 50,091 (4th Cir. 1995), aff'd, 94-1 U.S. Tax. Cas. (CCH) ¶ 50,013 (D. Va. 1994).

INVESTMENT TAX CREDIT - ALM § 4.04.* The taxpayer agreed to construct a facility to burn a city's solid waste to generate electricity. The facility was operational in 1984 but the facility did not produce as much electricity as planned and the taxpayer's business eventually failed. The IRS argued, and the Tax Court held, that the facility was not eligible for the biomass energy tax credit, investment tax credit or depreciation because the facility was never "placed in service" since the facility did not generate the amount of electricity intended. The appellate court reversed, holding that the facility was eligible for the credits and depreciation because the facility was fully operational since it had the necessary permits, was under the possession and control of the taxpayer and was running on a regular basis. Sealy Power, Ltd. v. Comm'r, 95-1 U.S. Tax. Cas. (CCH) ¶ 50,103 (5th Cir. 1995), rev'g, T.C. Memo. 1992-168.

The taxpayers were employed in various professions and invested in a solar energy equipment leasing program. The program was run by the investment promoters and did not involve any participation by the taxpayers. The court held that the taxpayers were not entitled to investment tax credit, depreciation and energy tax credits from the investments because the leasing transactions were shams since the taxpayers had no intention of making a profit from the investments, did not participate in the business and the lessees retained any appreciation on the equipment. In addition, the promoters were not experienced at solar energy equipment leasing and were primarily tax specialists, indicating that the program was tax motivated. Johnson et al. v. U.S., 95-1 U.S. Tax. Cas. (CCH) ¶ 50,109 (Fed. Cir. 1995).

INVIOLUNTARY EXCHANGES - ALM § 4.02[16]. The taxpayer's residence and contents were destroyed in a Presidentially declared disaster. The taxpayer received $35x in insurance proceeds for unscheduled insured personal property. The taxpayer received $10x for separately scheduled personal property and $300x for the loss of the residence. The taxpayer constructed a new residence for $300x and purchased one painting for $10x which was separately scheduled for insurance. The IRS ruled that no gain or loss was recognized from the loss and repurchase of unscheduled property and that because the taxpayer spent more to replace the residence and separately scheduled property than was received in insurance proceeds, no gain or loss...
would be recognized from those transactions. \textit{Rev. Rul. 95-22, I.R.B. 1995-12.}

\textbf{NET OPERATING LOSSES.} In 1977 and 1978, the debtor filed federal income tax returns which showed net operating losses (NOLs). The returns carried the statement that the NOLs were elected to be carried forward under I.R.C. § 56(b)(3)(C); however, this section did not provide for any election to carry net operating losses forward. The IRS argued that the returns were sufficient to bar any carryback of the NOLs. The court held that the election was insufficient to waive the right to carry the NOLs back because the statement had the wrong statute listed. \textit{Powers v. Comm'r, 95-1 U.S. Tax Cas. (CCH) ¶ 50,086 (5th Cir. 1995), rev'g, T.C. Memo. 1986-494.}

\textbf{PASSIVE ACTIVITY LOSSES-ALM} § 4.05[3].* The taxpayer had excess passive activity losses in 1986 and sought to carry back the excess losses to 1984 and 1985 tax years. The court disallowed the carrybacks because, under 1986 law, passive activity losses could only be carried forward. \textit{Adler v. U.S., 95-1 U.S. Tax Cas. (CCH) ¶ 50,098 (Fed. Cls. 1995).}

\textbf{PENSION PLANS.} For plans beginning in February 1995, the weighted average is 7.29 percent with the permissible range of 6.56 to 7.95 percent (90 to 109 percent permissible range) and 6.56 to 8.02 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). \textit{Notice 95-9, I.R.B. 1995-10, 10.}

\textbf{S CORPORATIONS-ALM} § 7.02[3][c].* TRUSTS. The decedent established a revocable inter vivos trust and funded the trust with \textit{S} corporation stock. At the death of the decedent, the trust was divided into two trusts. One of these trusts provided that all net income was to be paid to the beneficiary at least quarterly and the trustees had the discretion to distribute trust corpus if necessary for the beneficiary's education, health or support. At the death of the beneficiary, the trust was to be split into several trusts, one for each grandchild of the decedent, with each beneficiary receiving net income at least quarterly. The beneficiary had the right to one third of trust corpus at ages 25, 30 and 35, with any remainder held by the beneficiary's heirs. The IRS ruled that the trusts would qualify as QSSTs if the appropriate elections are filed. \textit{Ltr. Rul. 9506011, Nov. 3, 1994.}

\section*{NEGLIGENCE}

\textbf{EMPLOYER LIABILITY.} The plaintiff worked as a ranch hand for the defendants. One week before the plaintiff's work related injury, the plaintiff injured his back while helping the defendant start an airplane, a non-work related activity. The plaintiff was injured during a "working" of some calves. Because of the plaintiff's back injury, the plaintiff was given the lightest work, branding, vaccinating and castrating the calves. After doing this work on one calf, the plaintiff had to

\textbf{STATE REGULATION OF AGRICULTURE}

\textbf{RACEHORSE BREEDING.} Under Ohio Rev. Code §§ 3769.082(D), 3769.085 and Ohio Admin. Code § 3769-15-34, only standardbred horses born to stallions which stood for breeding in Ohio during the "entire breeding season" of the year in which the colt was sired could be raced in Ohio. The breeding season for horses in the United States is from mid-February through July. The plaintiff wanted to "double-breed" its mares by sending them to Australia for the November through January breeding season there. The defendant racing commission argued that such double breeding was barred by the statute and administrative regulations. The court held that an interpretation of "breeding season" as including only the February through July period was consistent with the purpose of the act to protect the Ohio breeding business by preventing horses bred in other states from racing in Ohio. In addition, the widespread practice of breeding standardbred horses in the United States during that period indicated that the legislature followed that practice in choosing the term "breeding season" instead of using a term such as "breeding year." \textit{Pickwick Farms v. Ohio State Racing Comm., 644 N.E.2d 1115 (Ohio Ct. App. 1994).}
ZONING

AGRICULTURAL PRESERVATION. An individual had applied to the county zoning commission for approval to build a non-resource dwelling in an area zoned for agricultural use only. The plaintiff appealed to the land use board the county’s decision to grant the application and the land use board affirmed the county’s decision by pointing to an exception in the zoning ordinance that allowed nonagricultural construction in areas where agricultural use is impracticable. However, the land use board did not refer to any evidence that agricultural use was impracticable. The defendant responded that the applicant’s attorney testified as to the exception, but the court held that such evidence was not sufficient to support the land use board’s ruling. In addition, the court ruled that the land use board’s ruling was deficient because it did not clearly identify the parameters of the claimed exception so that any evidence, if there had been any, could be reviewed under the standards of the exception. The respondent also argued that the land use board had given an alternate finding that the zoning ordinance allowed nonagricultural construction so long as any remaining land remain in agricultural use. The court held that this so-called exception would completely nullify any zoning restriction because it effectively required agricultural use only in areas not used for other purposes. The case was remanded to the land use board for proceedings to obtain evidence and to identify the exception relied upon by the board. Reeves v. Yamhill County, 888 P.2d 79 (Or. Ct. App. 1995).

AGRICULTURAL LAW MANUAL

by Neil E. Harl

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