2-23-1996

Cases, Regulations and Statutes

Robert P. Achenbach Jr.
Agricultural Law Press, robert@agrilawpress.com

Follow this and additional works at: http://lib.dr.iastate.edu/aglawdigest

Part of the Agricultural and Resource Economics Commons, Agricultural Economics Commons, Agriculture Law Commons, and the Public Economics Commons

Recommended Citation
Available at: http://lib.dr.iastate.edu/aglawdigest/vol7/iss4/2

This Article is brought to you for free and open access by the Journals at Iowa State University Digital Repository. It has been accepted for inclusion in Agricultural Law Digest by an authorized editor of Iowa State University Digital Repository. For more information, please contact digirep@iastate.edu.
Reporting by secured lenders

Under another provision, secured lenders who acquire an interest in the property in full or partial satisfaction of the debt (or have reason to know the property was abandoned) are required to file a Form 1099-A with IRS and furnish a statement to the debtor. If the borrower is personally liable for repayment of the debt, the Form 1099-A is to state the fair market value of the property at the time the interest is acquired. In the absence of clear and convincing evidence to the contrary, the proceeds of sale on foreclosure, execution or other sale are considered to be the fair market value of the property.

The 1995 regulations make it clear that a financial entity is not required to file both a Form 1099-A and a Form 1099-C (showing discharge of indebtedness) for the same debtor. The filing requirements for secured lenders are satisfied if, in lieu of filing a Form 1099-A, a Form 1099-C is filed.

In conclusion

The new regulations, while effective only for discharges after December 21, 1996, will bring substantially greater certainty to this area. The facts and circumstances approach (with three identifiable events) of the temporary regulations left a substantial burden on creditors to ascertain when discharge had occurred. Under the final regulations, the list of eight identifiable events is an exclusive list.

FOOTNOTES

3. I.R.C. §§ 6050J, 6050P.
5. Treas. Reg. § 1.6050P-1(h).
8. I.R.C. § 6050P.
10. Id.
18. I.R.C. § 108(c).
19. I.R.C. § 108(g).
33. Id.
34. Id.
35. Id.
36. Id.
37. Id.
38. Treas. Reg. § 1.6050P-1(b)(7).
39. Id.
40. I.R.C. § 6050J(a), (e).
43. Treas. Reg. § 1.6050P-1(e)(3).
44. Id. This provision is effective for discharges of indebtedness after December 31, 1994.
45. See note 5 supra.
46. T.D. 8654, Supplementary Information.
bushels of corn to the plaintiff. A hail storm destroyed most of the defendant’s corn crop such that the defendant was able to ship only 70,000 bushels. The parties attempted negotiations for the remainder of the contract amount but did not reach any settlement. The defendant purchased some corn on the market and resold it to the plaintiff under the contract but eventually failed to supply the entire contract amount. The plaintiff sued for damages resulting from its purchase of the remaining amount from other sources at a price higher than the contract price. The defendant argued that the contract was limited to corn grown by the defendant and that the hail storm excused performance of the contract. The court found that the contract contained no language restricting the source of the corn except that the corn be grown in the continental United States. Therefore, the court held that the source of the corn was not an essential element of the contract and the defendant was liable for the full 300,000 bushels. ConAgra, Inc. v. Bartlett Partnership, 540 N.W.2d 333 (Neb. 1995).

REJECTION. The plaintiff was a potato grower who contracted with the defendant, a manufacturer of potato chips, for the sale of chipping potatoes to the defendant. The contract required that the potatoes produce chips with at least #1 or #2 color on the 1978 Snack Food Association "Fry Color Chart." The plaintiff sent samples to the defendant who rejected the potatoes because the resulting chips did not meet the color standard. Several more loads were sent and each was rejected for the same reason. The color determination was based on a visual inspection. The plaintiff had some potatoes tested with an Agtron machine, a photo electric refraction tester, and some of the potatoes tested within the #2 range but some did not. The court found that the use of visual testing was the norm for the industry at the time of the contract; therefore, the failure of the defendant to use the Agtron machine for testing was not a breach of the contract. The court held that the failure of the potatoes to meet the color requirement expressly included in the contract was a substantial impairment of the contract and justified the defendant's refusal to accept any of the plaintiff's potatoes. Hubbard v. UTZ Quality Foods, Inc., 903 F. Supp. 444 (W.D. N.Y. 1995).

ENVIRONMENTAL LAW

DAIRY FARM. The petitioner began construction of a factory dairy farm and at the first inspection by the Ohio Environmental Protection Agency (OEPA), the petitioner had stated that the farm would have over four thousand cows. The OEPA sent a letter to the petitioner requiring a permit for the construction of waste treatment facilities at the farm. The petitioner refused to comply with the request, arguing that it had reduced the number of anticipated cows to 400 and was eligible for the small farm exemption to the permit requirement. However, the petitioner did not decrease the size of the facilities, including the waste treatment facilities. The state Environmental Board of Review (EBR) held a hearing and issued an order denying the exception and requiring the petitioner to obtain a permit. The court held that the exception applied only if the petitioner's facilities could support a maximum of less than 1000 "animal units" (with one cow equaling 1.4 animal units). The court found that the EBR’s decision failed to identify the facts which supported its decision. The EBR decision was found to merely restate the evidence presented which was often contradictory as to whether the facility would support more than 714 cows. The EBR decision was reversed and remanded for specific findings of fact as to whether the petitioner's facility would support more than 714 cows. Red Hill Farm Trust v. Schregardus, 656 N.E.2d 1010 (Ohio App. 1995).

FEDERAL AGRICULTURAL PROGRAMS

GRAZING PERMITS. The defendants had obtained a permit to graze cattle on national forest land. A portion of the land was burned in a forest fire and the Forest Service prohibited any grazing on the burned portion until reseeding could be accomplished. The defendants complied for one year but began grazing the second year in violation of the Forest Service's order. The Forest Service revoked the defendants' permit and, after the defendants continued to graze cattle on the land, assessed the defendants for unauthorized grazing on the land. The defendants argued that the federal government did not own the land because the land was transferred to Nevada, under the "equal footing doctrine," when Nevada became a state. The court held that the "equal footing doctrine" did not apply to land within federally owned land in the state but referred to political equality with the other states. The court also rejected the defendants' argument that the years of grazing permits created a vested right to graze on the land. Finally, the court rejected any "necessity" defense because the defendants failed to show that the grazing was necessary to protect themselves or their cattle. United States v. Gardner, 903 F. Supp. 1394 (D. Nev. 1995).

MEAT INSPECTION. The AMS has adopted as final regulations removing the "B" maturity (30-42 months of age) carcasses with slight or small marbling degrees from the Choice and Select grades and moving them to the Standard grade. 61 Fed. Reg. 2891 (Jan. 30, 1996).

FEDERAL ESTATE AND GIFT TAX

LOANS WITH BELOW MARKET INTEREST RATES-ALM § 6.01[1][a].* Certiorari has been requested in the U.S. Supreme Court in the following case. In 1980, the taxpayers transferred stock to trusts for the taxpayers’ children in exchange for promissory notes with 6 percent interest. In 1981, the taxpayers made loans to two of the trusts with no interest charged. The IRS considered the first transactions as gifts to the extent the interest rate was less than 11.5 percent and the second transactions as gifts to the extent the interest rate was less than 12 percent in 1981, 10.6 in 1982 and 8.6 percent in 1983. The taxpayers argued that the test rate for both transactions was the 6 percent safe harbor rate of I.R.C. § 483. The trial and appellate courts agreed with the holding of Krabbenhoft v. Comm'r, 939 F.2d 529 (8th Cir. 1991) and held that I.R.C. § 483 applies to the entire tax code but did not apply to valuation of gifts with interest rates below the market rate. As to the second transaction, the taxpayers argued that the IRS’s retroactive
The court held that the highest and best use of the land for residential purposes because the land was zoned for residential purposes. The estate argued that the highest and best use of the land was for commercial purposes. The court ruled that the estate had failed to prove that the land was zoned for commercial purposes and that a rezoning of the land for commercial purposes would be difficult.

The taxpayers each transferred stock in a closely-held corporation to a spouse, subject to a buy-sell agreement. The taxpayers had a right of first refusal to repurchase the shares at fair market value if (1) the spouse decided to sell the shares, (2) the taxpayer and spouse divorced, or (3) the spouse died and did not will the stock to the taxpayer. The IRS ruled that the transfer of stock to the spouse qualified for the federal gift tax marital deduction.

The taxpayers, husband and wife, established several grantor-retained annuity trusts funded with corporate stock. The annuities required quarterly payments of income; however, the stock had a history of no dividends and the taxpayers anticipated that this would continue through the term of the annuities. Therefore, the annuities provided that the taxpayers would loan cash to the annuities sufficient to make the required payments. The loans charged no interest so long as the trusts were grantor trusts. The IRS ruled that the taxpayers' retained interests were not qualified retained annuity interests because no amounts were payable from the trusts and the taxpayers' retained interests in the trust were not capable of valuation because of the loan provisions.

The decedent had owned 50 percent of a trust which owned two parcels of rural land zoned as residential. The issue in the case was the highest and best use of the land for purposes of determining the fair market value of the parcels. The estate argued that the highest and best use of the land was for residential purposes because the land was zoned residential and any attempt to rezone the land for commercial purposes would be difficult. The court held that the evidence demonstrated that development from the nearby town toward the parcels was commercial and that a commercial use value of the property was appropriate.

The taxpayers, husband and wife, owned residential property with equal undivided community property interests. The taxpayers each transferred their own interest in the property to separate 15 year trusts. The trusts provided that if the grantor died before the end of 15 years, the trust terminated and the assets reverted to the grantor's estate. The will of each grantor passed the revested interest to the surviving spouse. If the residence ceased to be the personal residence of the grantor, the trust was to be converted to an annuity trust. The IRS ruled that (1) the residence qualified as a personal residence under Treas. Reg. § 25.2702-5(c)(2); (2) the trusts were qualified personal residence trusts which qualified for the exception of I.R.C. § 2702(a)(3)(A)(ii) to the special valuation rules of I.R.C. § 2702(a)(2); and (3) because the value of each grantor's retained interest exceeded 5 percent of the value of the trust property, each grantor was considered the owner of the trust and would include trust income, deductions and credits against tax attributable to the trust under I.R.C. § 671. Ltr. Rul. 9606003, Nov. 7, 1995.

FEDERAL INCOME TAXATION

BAD DEBTS. The taxpayer was a 50 percent owner of a corporation in which the taxpayer served as employee, treasurer and vice-president. The debtor performed engineering and accounting services for the corporation's business. The taxpayer's salary was $30,000 per year. The taxpayer loaned more than $600,000 to the corporation over several years in order to offset the corporation's difficulties with receiving payments from customers, some of which were other entities owned by the taxpayer. When several of the corporation's customers filed for bankruptcy, the taxpayer claimed the debt to the corporation as a business bad debt deduction, arguing that the loans were made to protect the taxpayer's employment with the corporation. The court held that the taxpayer's loans to the corporation were made with the intent to protect the taxpayer's investment in the corporation because the amount of the loans greatly exceeded the taxpayer's salary and the loans also protected the taxpayer's investments in the corporations which were served by the corporation receiving the loans. In re Mills, 189 B.R. 707 (Bankr. W.D. Tenn. 1995).

C CORPORATIONS

ACCOUNTING METHOD. A C corporation was a debtor in bankruptcy. The debtor had consistently used the cash method of accounting and the IRS used that method of accounting to determine its tax claims filed in the case. The bankruptcy trustee argued that under I.R.C. § 448, the debtor was required to use the accrual method of accounting; therefore, the federal tax claim should have been calculated using the accrual method of accounting. The court held that under I.R.C. § 448, an unauthorized method of accounting may be allowed if, in the opinion of the Commissioner, income is clearly reflected by the use of the method. In this case, the IRS agent testified that the cash method of accounting did clearly reflect the actual income of the corporation; therefore, the court held that the tax claim could be determined under the cash method of accounting. Morrissey v. IRS, 189 B.R. 821 (W.D. Okla. 1995).

COURT AWARDS AND SETTLEMENTS. When the taxpayer's employment was terminated, the taxpayer signed an agreement which contained provisions prohibiting the taxpayer from suing the employer for claims related to the employment termination, including claims arising under the Age Discrimination in Employment Act of 1967. The taxpayer received a lump sum payment representing 49 weeks of wages. The taxpayer excluded the payment from income, arguing that the payment was received in settlement of tort-like claims. The court held that the

*Agricultural Law Manual (ALM). For information about ordering the Manual, see the last page of this issue.
payment was severance pay includible in income. Webb v. Comm'r, T.C. Memo. 1996-50.

DEPRECIATION-ALM § 4.03[4].* The taxpayer operated several businesses, including a law practice and several farms, which were operated by several corporations or by the taxpayer as sole proprietor. Although the taxpayer did not provide any direct evidence of the basis of a pickup truck used in one of the farms and for the law practice, the court determined that some basis did exist from the evidence that the taxpayer paid interest on a loan used to purchase the truck. The taxpayer was not allowed depreciation deductions for a tractor and other farm implements used on another farm because no evidence was presented that the taxpayer owned these items or that they were used in the taxpayer's sole proprietorship businesses and not in the businesses operated by the corporations. Hall v. Comm'r, T.C. Memo. 1996-27.

The IRS has issued tables, revised for inflation, detailing the limitation on depreciation deductions for automobiles first placed in service during 1996:

<table>
<thead>
<tr>
<th>Tax Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st tax year</td>
<td>$3,060</td>
</tr>
<tr>
<td>2d tax year</td>
<td>4,900</td>
</tr>
<tr>
<td>3d tax year</td>
<td>2,950</td>
</tr>
<tr>
<td>Each succeeding year</td>
<td>1,775</td>
</tr>
</tbody>
</table>

The IRS also issued tables providing the amounts to be included in income for automobiles first leased during 1996. Rev. Proc. 96-25.

EMPLOYEE BENEFITS. The taxpayer was an officer and 51 percent shareholder of one corporation and 98 percent shareholder of a subsidiary corporation. The subsidiary purchased two paid-up life insurance policies on the life of the taxpayer. The policies were issued to a trust as owner and the trust entered into a split-dollar agreement with the subsidiary under which the trust agreed to repay the premium amounts paid by the subsidiary. The agreement was to terminate if (1) the subsidiary ceased to operate or filed for bankruptcy, (2) the taxpayer's employment terminated, or (3) the trust or taxpayer requested termination of the agreement. If the agreement terminated prior to the death of the taxpayer, the subsidiary would still receive reimbursement for premiums paid from the cash surrender value of the policy. The IRS ruled that Rev. Rul. 64-328, 1964-2 C.B. 11 and Rev. Rul. 66-110, 1966-1 C.B. 12 applied to require that the taxpayer must include in income the value of the cost-free insurance provided by the agreement plus any increase in the cash surrender value which exceeded the premiums paid by the subsidiary. For determining the value of the cost-free insurance to the taxpayer, the IRS referred the taxpayer to Rev. Rul. 55-747, 1955-2 C.B. 228 and Rev. Rul. 67-154, 1967-1 C.B. 11. Ltr. Rul. 9604001, Sept. 8, 1995.

EXCISE TAX ON TRUCKS. The taxpayer manufactured a semitrailer truck which was capable of loading and transporting round and square bales of hay. Although the vehicle was capable of traveling on highways at highway speeds, the vehicle could not be operated at night on highways and required special length, width and weight permits for most highway travel. The IRS ruled that (1) for purposes of Treas. Reg. § 48.4061(a)-1(d)(2)(ii)(A), the semitrailer was specially designed for the primary function of transporting hay other than over the highway; (2) the permits needed to use the vehicle loaded on the highway substantially impaired the vehicle's usage on highways for purposes of Treas. Reg. § 48.4061(a)-1(d)(2)(ii); and (3) the vehicle came within the exception to the definition of highway vehicle under Treas. Reg. § 48.4061(a)-1(d)(2)(ii) and was not subject to the tax of I.R.C. § 4051(a)(1). Ltr. Rul. 9605007, Nov. 3, 1995.

FALSE RETURNS. The taxpayer had lost two farms to foreclosure. In an attempt to strike back at persons and entities which the taxpayer held responsible for the foreclosures, the taxpayer sent fictitious bills for rent to these parties.. The taxpayer claimed the billed amounts as income and claimed withheld taxes from the bills. The taxpayer filed for income tax refunds based on the fictitious income and withheld taxes. The taxpayer was convicted of willfully filing false returns. The taxpayer appealed the conviction on the basis that the jury instruction regarding willfulness was erroneous in that it allowed the jury to consider the reasonableness of the taxpayer's belief that the taxes and deductions claimed were legitimate. The court held that the jury could consider the reasonableness of the taxpayer's beliefs in determining whether the beliefs were held in good faith. United States v. Hilgeford, 96-1 U.S. Tax Cas. (CCH) ¶ 50,068 (7th Cir. 1996).

HOBBY LOSSES. The taxpayer was a plastic surgeon employed by a corporation wholly-owned by the taxpayer. The taxpayer claimed that the taxpayer purchased farmland and horses to be trained as polo ponies with the intent to attract potential patients for the plastic surgery practice. The farmland, horses and equipment were purchased with the taxpayer's own funds and the taxpayer failed to produce any evidence that the polo pony business did attract any patients for the plastic surgery business. The court held that the two businesses could not be combined for purposes of determining the profitability of the horse farm. The court then examined the nine factors of Treas. Reg. § 1.183-2(b) to determine whether the horse farm was operated with the intent to make a profit. The court found that (1) the taxpayer did not keep adequate records or create a plan to make the operation profitable, (2) the taxpayer did not have sufficient expertise for operating a profitable polo pony training operation, (3) the taxpayer did not have a reasonable expectation of eventual profit from appreciation, (4) the farm had an extensive history of continuing and increasing losses, (5) the taxpayer had substantial income from the plastic surgery business, and (6) the taxpayer used the farm for primarily recreational purposes as part of the taxpayer's interest in playing polo. The court held that the polo pony farm activity was not entered into with the intent to make a profit and disallowed deductions in excess of income from the activity. Wilkinson v. Comm'r, T.C. Memo. 1996-39.

The taxpayer was employed full time as a veterinarian. The taxpayer purchased a farm and raised cattle for several years, but during the tax years in question, no farming or ranching operations occurred on the farm. However, oil was discovered on the property and the taxpayer entered into a royalty agreement with an oil production company which paid the taxpayer a royalty free of all production expenses. The taxpayer hired a manager who lived on the farm and
maintained the property but the manager performed no activities which affected the oil production. The taxpayers claimed the farm expenses against the oil income. The court held that because no farming operations were conducted on the farm, the expenses incurred by the taxpayer were not ordinary and necessary business expenses and were disallowed. The court also held that the expenses were unrelated to the oil production since the income received from the oil was free of production expense to the taxpayer and none of the manager’s activities were related to the oil production. The taxpayer argued that deductions should have been allowed to the extent of the appreciation in the value of the farm. The court held that, under Treas. Reg. § 1.183-1(d)(1), a farming activity can be combined with holding land for investment only if the net farm income was sufficient to reduce the cost of retaining the land. Because the taxpayer only had net losses, farm expenses could not be claimed as an expense based on appreciation of the land. The taxpayer also purchased another farm which was used for a variety of farm and ranch operations, most of which ended with the taxpayer donating the livestock to a charitable organization. The taxpayer did not keep separate records for the farm nor did the taxpayer make any plan to determine the profitability of the various activities. The taxpayer formed an S corporation to operate that farm. The taxpayer did not have any expertise in the types of livestock operations attempted and did not seek expert advice. The taxpayer argued that because the Tax Court had not found any element of recreation or pleasure from the taxpayer’s operation of the second farm, the farm must have been either a business or other profit-seeking activity. The court held that the recreation or pleasure element was only one of nine factors involved and held that on the basis of the other factors, the Tax Court’s holding that the second farm was not operated with the intent to make a profit was not clearly erroneous. Westbrook v. Comm’r, 68 F.3d 868 (5th Cir. 1995).

PARTNERSHIPS-ALM § 7.03.*

CONTRIBUTIONS. A limited partnership was composed of an individual 99 percent limited partner and an S corporation as 1 percent general partner. The shareholders of the corporation were all siblings and the individual limited partner was a parent of the shareholders. The shareholders contributed identical portfolios of cash and marketable securities to the corporation which contributed a portion of the assets to the partnership. The portfolios satisfied the diversification standard of I.R.C. § 368(a)(2)(F)(ii). The limited partner also contributed stock and securities to the partnership sufficient to maintain the respective interests in the partnership as before the contributions. The limited partner’s contributed portfolio did not satisfy the diversification standard of I.R.C. § 368(a)(2)(F)(ii). The IRS ruled that the transfers of the corporation and limited partner were not transfers to an investment company under I.R.C. § 351(e)(1) if the partnership was incorporated; therefore, no gain or loss would be recognized from the transfers. Ltr. Rul. 9606007, Nov. 9, 1995.

PENSION PLANS. The taxpayer received a check from a former employer’s profit-sharing retirement plan almost two years after termination of employment. The taxpayer did not know about or contribute to the plan. The taxpayer deposited the check into the taxpayer’s bank account and several months later sent a check for part of the amount back to the former employer, apparently as a belated investment in the plan. The court held that the distribution check was all included in the taxpayer’s income because the taxpayer did not make any contribution to the plan before the distribution and did not roll over the distribution to a qualified retirement plan. Silver v. Comm’r, T.C. Memo. 1996-42.

For plans beginning in January 1996, the weighted average is 7.05 percent with the permissible range of 6.35 to 7.62 percent (90 to 109 percent permissible range) and 6.35 to 7.76 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). Notice 96-9, I.R.B. 1996-6, 26. Note: The IRS has issued two notices numbered as 96-9.

S CORPORATIONS-ALM § 7.02[3][c].*

ADMINISTRATIVE ADJUSTMENTS. The petitioner was a shareholder of a dissolved S corporation. The corporation had designated another shareholder as the tax matters person for several years. The tax matters person signed an extension of time for the IRS to file a Notice Final S Corporation Administrative Adjustment as to the corporation. Prior to the signing, no other person had been designated as tax matters person, the tax matters person had not resigned, nor had the corporation revoked the tax matters person’s designation. Therefore, the court held that the tax matters person was authorized to sign the extension. The decision has been designated as not for publication. Praxiteles, Inc. v. Comm’r, 96-1 U.S. Tax Cas. (CCH) ¶ 50,049 (9th Cir. 1996).

WITHHOLDING TAXES. The IRS has issued proposed regulations relating to when amounts deferred under or paid from certain nonqualified deferred compensation plans are taken into account as wages for purposes of the employment taxes imposed by FICA and FUTA. 61 Fed. Reg. 2194 (Jan. 25, 1996).

NEGLIGENCE

HERBICIDES. The plaintiffs were cotton growers whose cotton fields were damaged from the drifting on to their land of herbicides aerially sprayed on neighboring land. The plaintiffs included as defendants in their suit for damages the sellers of the herbicides to the aerial sprayer and the owners of the sprayed properties. The plaintiffs claimed liability of the sellers rested on negligence per se because the sellers sold the herbicides to an unlicensed applicator in violation of law. The court held that no statute or administrative regulation prohibited the selling of registered herbicides to unlicensed applicators. The administrative regulations did require the sellers to report all sales of herbicides and the report forms did have a space for the license number of the purchaser, but the regulations did not prohibit the sales if no license number was provided. The court also held that even if the sale to an unlicensed applicator was prohibited and the sale of the herbicide was negligence per se, the sale of the herbicide was not a direct cause of the damage to the plaintiffs’ cotton crops; therefore, the sellers were not liable for the damage. The
The court held that the "home rule" law could not be applied where it conflicted with other law. Gravert v. Nebergall, 539 N.W.2d 184 (Iowa 1995).

**PROPERTY**

**FENCES.** The plaintiff owned land at the edge of a city and the defendant owned neighboring land just outside the city limits such that the property line between the two properties was the city limits. The defendant raised miniature horses on the property. The defendant requested the rural township trustees to mediate a dispute as to who should maintain the fence. The fence viewers ruled that each party should be required to maintain about half of the fence. The plaintiff appealed to the District Court which held that the application of Iowa Code Chapter 359A was unconstitutional in that the plaintiff received no benefit from the fence because the plaintiff did not use the property for raising livestock and because the defendant received a benefit unrelated to any governmental interest. The appellate court reversed, holding that a disparity between the benefits received by landowners separated by a mutual fence was not sufficient to make the fence law unconstitutional. In addition, the court held that the plaintiff failed to demonstrate that maintaining a portion of the fence was unduly oppressive which would amount to an unconstitutional exercise of governmental authority. The plaintiff also argued that the "home rule" statute, Iowa Code § 364.1, preempted the fence statute and applied here because the plaintiff lived within the city limits. The court held that the "home rule" law could not be applied where it conflicted with other law. Gravert v. Nebergall, 539 N.W.2d 184 (Iowa 1995).

**HUNTERS.** The defendant was a manager of a farm.

The defendant confronted a party of hunters who were on a section line on the farm property. The hunters claimed that the defendant took pictures and drove a vehicle around them in an effort to prevent their successful hunting in the area. The defendant was convicted, under S.D. Cod. Laws § 41-9-8, of intentionally interfering with lawful hunting. The defendant argued that the hunters were not lawfully hunting, under S.D. Cod. Laws § 41-9-1.1. In order to get to the hunting area, the hunters traveled along a section line which, by statute, is a public highway unless vacated or abandoned. There was no evidence that the section line highway was vacated or abandoned in this case. However, lawful hunting can occur on a section line without the approval of the adjoining property owner only if the section line was improved for vehicular travel or was commonly used by the public for vehicular travel. In this case, a farm path created by the defendant's machinery was the only "improvement" to the section line and the hunters had to leave their vehicles because of marshy land in order to reach the hunting area. The court held that the farm path was not an improvement for vehicular travel; therefore, the hunters were not lawfully hunting and the defendant could not be convicted of interfering with lawful hunting. State v. Tracy, 539 N.W.2d 327 (S.D. 1995).

**SECURED TRANSACTIONS**

**OWNERSHIP.** The plaintiff claimed ownership of a farm tractor in which the defendant claimed a security interest through a security agreement covering farm equipment owned by the plaintiff's son. The tractor was purchased by the plaintiff using a tractor owned by the plaintiff's son as downpayment. The tractor was delivered to the son and the plaintiff gave the plaintiff a promissory note for part of the purchase price. The plaintiff paid for about half of the cost of the tractor. The son did pay off the note, claimed the tractor as a personal asset on financial statements, and claimed the depreciation deductions on federal income tax returns. The jury ruled for the plaintiff and the trial court denied a motion by the defendant for judgment notwithstanding the verdict. The lower appellate court held that the plaintiff did not retain any ownership interest in the tractor and did not perfect any purchase money security interest in the tractor by filing or possession; therefore, the tractor was owned by the son and was subject to the defendant's security interest. Therefore, a denial of the defendant's motion was improper. The Nebraska Supreme Court reversed, holding that there remained an issue of fact as to whether the plaintiff had given title to the tractor to the son; therefore, the denial of the motion was proper. Melcher v. Bank of Madison, 539 N.W.2d 837 (Neb. 1995), rev'g, 529 N.W.2d 814 (Neb. Ct. App. 1995).

**REPOSSESSION.** The debtor had granted a security interest in the debtor's registered shorthorn cattle to a creditor. The debtor defaulted on the loan secured by the cattle and after some delay while the debtor sought other financing, the creditor repossessed the cattle without notice to the debtor, as allowed by the security agreement. The creditor placed the cattle under the care of other ranchers while the creditor sought foreclosure. The debtor alleged that the repossession was improper and that the creditor failed to properly care for the cattle after repossession. The evidence showed that the caretakers failed to properly feed the cattle and bred the cattle indiscriminately, without preserving or recording the lineage of the calves born after the repossession. The court held that the repossession was improper and that the creditor failed to properly care for the cattle after repossession. The court recognized the special value and needs of registered cattle and allowed the debtor an offset for damage to the cattle and calves against the creditor's claim. In re Krug, 189 B.R. 948 (Bankr. D. Kan. 1995).
STATE TAXATION

AGRICULTURAL USE. The taxpayer owned 11.75 acres in the city of Eagan which were unoccupied and dormant from 1960 through March 1993. In January 1993, the land was classified as industrial land. In April 1993, the taxpayer cash leased the land to a farmer who planted and harvested vegetables. Under Minn. Stat. § 273.111, the green acre statute, land may be eligible for special valuation and tax deferment if the land is agricultural land, meaning a "contiguous acreage of ten acres of more, primarily used during the preceding year for agricultural purposes." The court held that because the land was dormant in 1992, the land did not qualify for the green acres status in 1993. A footnote states that the county assessor did allow green acre status for the land in 1994. McLean v. County of Dakota, 540 N.W.2d 76 (Minn. 1995).

CITATION UPDATES

Est. of Kurz v. Comm’r, 68 F.3d 1028 (7th Cir. 1995), aff’d, 101 T.C. 44 (1993) (power of appointment) see Vol. 6, p. 182.


AGRICULTURAL LAW MANUAl

by Neil E. Harl

This comprehensive, annotated looseleaf manual is an ideal deskbook for attorneys, tax consultants, lenders and other professionals who advise agricultural clients. The book contains over 900 pages and an index.

As a special offer to Digest subscribers, the Manual is offered to new subscribers at $115, including at no extra charge updates published within five months after purchase. Updates are published every four months to keep the Manual current with the latest developments. After the first free update, additional updates will be billed at $100 per year or $35 each.

For your copy, send a check for $115 to Agricultural Law Press, P.O. Box 50703, Eugene, OR 97405.

Satisfaction guaranteed. 30 day return privilege.

ISSUE INDEX

Bankruptcy
- Federal taxation
  - Claims 26
  - Discharge 26

Contracts
- Excuse 26
- Rejection 27

Environmental Law
- Dairy farms 27

Federal Agricultural Programs
- Grazing permits 27
- Meat inspection 27

Federal Estate and Gift Tax
- Loans with below market interest rates 27
- Marital deduction 28
- Valuation 28

Federal Income Taxation
- Bad debts 28
- C corporations
  - Accounting method 28
  - Court awards and settlements 28
- Depreciation 29
- Employee benefits 29
- Excise tax on trucks 29
- False returns 29
- Hobby losses 29
- Partnerships
  - Contributions 30
  - Pension plans 30
  - S corporations
  - Administrative adjustments 30
- Withholding taxes 30

Negligence
- Herbicides 30

Property
- Fences 31
- Hunters 31

Secured Transactions
- Ownership 31
- Repossession 31

State Taxation
- Agricultural use 31