6-7-1996

Cases, Regulations and Statutes

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reinvestment, reacquisition for indebtedness or low income housing reinvestment to the extent the basis represents the basis of other property owned by the taxpayer or a related person during 1980 (or 1986). The latter rule could apply to tax-free exchanges involving farm buildings (20-year property).

FOOTNOTES
2 See 4 Harl, supra n. 1, ch. 29; Harl, supra n. 1, § 4.03[4].
3 I.R.C. § 179(d)(2)(A), (B).
9 For a comparison of the two depreciation systems, see 4 Harl, supra n. 1, §§ 29.05[2][c], 29.05[2][d].
11 I.R.C. § 263A(e)(4)(A). The definition also includes operating a nursery or sod farm; the raising or harvesting of trees bearing fruit, nuts or other crops; and ornamental trees (other than evergreen trees more than six years old when severed from the roots). I.R.C. § 263A(e)(4)(B).
14 See ns. 7 and 8 supra.
15 See n. 5 supra.
17 Id.
22 See Drake v. United States, 642 F. Supp. 830 (N.D. Ill. 1986) (taxpayer’s interest in condominium purchased from divorced spouse in 1981 eligible as recovery property where spouse’s interest in condominium held with taxpayer during marriage as tenants by entirety).
29 I.R.C. § 168(c)(1).

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

FENCE. The plaintiffs had purchased their land in 1967 with a barbed wire fence around it. The land was used to graze cattle and the plaintiff planted trees along one portion of the fence. In 1988, the defendant purchased neighboring land and had the land surveyed. The survey showed the fence to be on the defendant’s land and the defendant removed the fence from the defendant’s land and replaced it with a wooden fence. The plaintiff claimed ownership of the disputed strip by adverse possession. The court denied the plaintiffs’ claim that the fence was the boundary by acquiescence, because the plaintiffs failed to show that the fence was considered the boundary line by previous owners as a result of a boundary dispute. Mohrke v. Greenwood, 915 S.W.2d 585 (Tex. Ct. App. 1996).

The parties owned neighboring tracts of farm land separated by a fence which had been in existence at its current location since the 1880s. The court found that the pre-1977 owners of the tracts had acquiesced to the fence as the boundary between the tracts; however, in 1977 both tracts were owned by one company for 15 days. In the history of the tracts, all the conveyances and deeds described the boundary truthfully without mentioning the fence which was about 100 feet on to the defendant’s property. The court held that the common ownership of both tracts destroyed the acquiescence of the fence as the boundary and started the time limits for adverse possession anew; therefore, the plaintiff did not acquire title to the disputed land by adverse possession. Salazar v. Terry, 911 P.2d 1086 (Colo. 1996), aff’g, 892 P.2d 391 (Colo. Ct. App. 1994).

ANIMALS

ANIMAL NUISANCE. The defendant was convicted twice of violating Revised Ordinance of Honolulu §§ 7-2.2(a), 7-2.3 for keeping roosters which were noisy in the early morning. In both cases the convictions arose from a complaint of a neighbor and a single citation from an investigating officer. The defendant argued that both
The tax court held that the city zoning ordinances allowed the raising of livestock on the property for commercial or food raising purposes and that an issue of fact remained as to whether the defendant was raising all of the roosters for commercial or food raising purposes. The court noted that the defendant gave some testimony that some of the roosters were raised for showing and held the raising of roosters for showing was not a permitted use under the city ordinances. State v. Nobriga, 912 P.2d 567 (Hawai'i Ct. App. 1996).

**BANKRUPTCY**

**CHAPTER 12-ALM § 13.03[8].**

**ELIGIBILITY.** The debtors had been sugarcane farming since 1972. In 1991, the debtors purchased a tractor in order to begin converting their operation to raising soybeans. In 1994, the year before the filing of the Chapter 12 petition, the debtors were able to plant only a small sugarcane crop and a late planted soybean crop; however, the debtors produced gross income from farming of $25,000. The debtors also had $1,400 of rental income from a sharecropping arrangement. Because the income from farming was low, the debtors sold the tractor and harvester in 1994 which produced taxable gain of $31,000. In 1993, the debtors began full-time off-farm employment and in 1994, earned combined wages of $37,000. A creditor objected to the debtors’ plan, arguing that the debtors were not eligible for Chapter 12 because more than 50 percent of their income came from nonfarm sources. The creditor argued that the equipment sales and sharecropping payments were not farm income. The court held that the debtors were engaged in farming in 1994 because they were at risk for the crops they planted and the crop produced by the sharecropper. The court also held that the equipment sales were included in farm income because the equipment was sold in order for the debtors to continue their farming operation, albeit at a reduced level. The creditor also argued that the determination of farm income could only be based on the debtors’ 1994 Schedule F items of income. The court rejected this argument as not required by the Bankruptcy Code. Cottonport Bank v. Dichiara, 193 B.R. 798 (W.D. La. 1996).

**FEDERAL TAXATION-ALM § 13.03[7].**

**ADMINISTRATIVE EXPENSES.** The debtor originally filed for Chapter 11 but converted the case to Chapter 7 after two years. The IRS filed a claim in the Chapter 7 case for post-petition, preconversion taxes plus interest and penalties. The parties agreed that the taxes and interest were entitled to administrative expense priority but disagreed as to the penalties. The court held that under Section 503(b), the penalties were entitled to the same priority as the taxes to which the penalties applied. However, the court applied Section 510(c)(1) and subordinated the penalties to all other priority claims, thus causing the penalties to be paid pro rata with other second priority claims. The IRS had also filed a claim after the claims bar date in the Chapter 7 case for additional taxes for the same period. The court allowed the additional claim as an amendment to the original timely filed claim because the amendment related to the same type of tax and the same taxable period. The court also subordinated the penalties associated with the additional taxes. The Supreme Court reversed, holding that the Bankruptcy Court did not have the authority to change the statutory priority order. United States v. Noland, 96-1 U.S. Tax Cas. (CCH) ¶ 50,252 (S. Ct. 1996), rev'g In re First Truck Lines, Inc., 48 F.3d 210 (6th Cir. 1995), aff'g unrep. D. Ct. dec. aff'g, 141 B.R. 621 (Bankr. S.D. Ohio 1992).

**PRIORITY.** The IRS filed an unsecured claim for unpaid taxes resulting from the debtor’s embezzlement of funds. The debtor argued that the taxes were not entitled to priority because the taxes were due more than three years before the filing of the petition and because no priority is provided for taxes which the debtor attempted to evade or which resulted from a fraudulent return. The IRS argued that the taxes were entitled to priority because the taxes were assessable after the case was filed, under the extended limitations period of I.R.C. § 6501(e)(1)(A), because the embezzled funds exceeded 25 percent of the debtor’s reported income. The court held, however, that under Section 523(a)(1)(C) the taxes are not entitled to priority because the debtor filed a fraudulent return and willfully attempted to evade payment of the taxes by not reporting the embezzled funds as income. Matter of Zieg, 194 B.R. 469 (Bankr. D. Neb. 1996).

**REOPENING CASE.** The debtors filed for Chapter 13 and listed a claim for federal taxes with the amount set at zero. The IRS was notified of the case and the deadline for filing claims but did not file a claim until three months after the bar date for claims. The debtors’ plan was confirmed without objection from the IRS and provided for no payment on the tax claim. At the end of the plan, the trustee filed a report showing all plan payments had been made and that the IRS claim was filed late and was not paid. The IRS was notified about this report and failed to object. The trustee’s report was approved, the debtors were discharged, and the case was closed. Seven months later, the IRS filed a motion to reopen the case, under Section 350(b), and vacate the discharge. The court held that, because the order of confirmation was within the jurisdiction of the Bankruptcy Court and did not deprive the IRS of due process, the confirmation order could not be voided and a reopening of the case was futile. The court rejected the IRS argument that the failure of the debtors to provide for payment of priority tax claims was a jurisdictional defect voiding the confirmation order. In re Puckett, 193 B.R. 842 (Bankr. N.D. Ill. 1996).

**STATUTE OF LIMITATIONS.** The debtor was assessed for FICA taxes in November 1981 and for FUTA taxes in July 1983. The debtor executed a waiver in June 1986 which provided for an extension to December 1992 of the period for collection of the taxes if an offer of compromise was made, with an additional extension after that date to equal the period of the pending offer plus one
year. The debtor submitted an offer of compromise in October 1986 and withdrew the offer in June 1987. In March 1993, the debtor filed for Chapter 7 and received a discharge in July 1991. In August 1994, the extension period under the waiver expired. On September 13, 1994, the IRS attached the debtor’s assets for collection of the taxes and on September 15, 1994, the debtor filed the instant Chapter 13 case. The IRS argued that the Chapter 7 case tolled the collection period under Section 108(c). The court held that Section 108(c) did not apply because the waiver agreement did not incorporate the extension provided by Section 108(c) and because the end of the waiver period did not occur during the Chapter 7 case. Because the period for collection had expired prior to the Chapter 13 case, the IRS had no viable claim for the taxes. In re Klingshirn, 194 B.R. 154 (Bankr. N.D. Ohio 1996).

**CONTRACTS**

**NONCOMPETITION AGREEMENT.** The plaintiff had been a 50 percent shareholder and officer in the defendant corporation. The plaintiff’s employment was terminated and a stock purchase agreement was executed which prohibited the plaintiff from engaging in the processing or sale of citrus concentrate or fresh juices for three years. The plaintiff purchased a cold-storage facility without objection from the defendant. The cold-storage facility did some mixing of juices as part of its ordinary services for its storage customers. The defendant refused to make payments under the stock purchase agreement, claiming that the plaintiff breached the noncompetition clause because the mixing of juices was equivalent to processing of juices. The court upheld the trial court’s ruling that the mixing of juices did not violate the noncompetition clause because the mixing was incidental to the cold-storage business which was not prohibited by the noncompetition clause. Becker Holding Corp. v. Becker, 78 F.3d 514 (11th Cir. 1996).

**FEDERAL AGRICULTURAL PROGRAMS**

**AGRICULTURAL LABOR.** The plaintiff was injured while working on the defendants’ tobacco and sweet potato farm and sued for violations of the Migrant and Seasonal Agricultural Workers Protection Act (MSAWPA) and negligence. The plaintiff was hired and worked under the supervision of a farm labor contractor and the plaintiff claimed that the defendants were liable as a joint employer of the plaintiff. The court held that the defendants were joint employers of the plaintiff with the labor contractor under the supervision of a farm labor contractor and the plaintiff. The court held that the defendants were liable as a joint employer of the plaintiff. The court held that the Chapter 7 case tolled the collection period under Section 108(c). The court held that Section 108(c) did not apply because the waiver agreement did not incorporate the extension provided by Section 108(c) and because the end of the waiver period did not occur during the Chapter 7 case. Because the period for collection had expired prior to the Chapter 13 case, the IRS had no viable claim for the taxes. In re Klingshirn, 194 B.R. 154 (Bankr. N.D. Ohio 1996).

**BRUCELLOSIS.** The APHIS has adopted as final regulations changing Wisconsin from an accredited-free state to an accredited-free (suspended) state. 61 Fed. Reg. 16617 (April 16, 1996).

**GRAIN STANDARDS.** The Grain Inspection, Packers and Stockyards Admin. (GIPSA) has adopted as final regulations amending the grain standards for barley to include two classes, malting barley and barley; to remove the U.S. Choice grade for two-row malting barley; and to revise several grading procedures and inspection standards. 61 Fed. Reg. 18486 (April 26, 1996).

**HANDBOOKS.** The plaintiff challenged the Forest Service’s issuance of a special use permit for construction of a communications tower on a butte on which the plaintiff also had a tower. The plaintiff claimed that the permit violated a Manual and Handbook published by the Forest Service for use by its employees. The court held that the Manual and Handbook was not entitled to any force or effect of law because the book was not issued in accordance with the procedural requirements of the Administrative Procedures Act and was not issued under any statutory authority. This case has similar implications for the FSA handbooks. Western Radio Services Co., Inc. v. Espy, 79 F.3d 896 (9th Cir. 1996).


**MILK.** The FSA has adopted as final regulations continuing the Dairy Indemnity Payment Program to the extent of the recently appropriated funds. 61 Fed. Reg. 18485 (April 26, 1996).

**VACCINES.** See Lynnbrook Farms v. Smithkline Beecham Corp., 79 F.3d 620 (7th Cir, 1996) infra under Products Liability.

**FEDERAL ESTATE AND GIFT TAX**

**INSTALLMENT PAYMENT OF ESTATE TAX.** The decedent owned interests in several rental properties. The decedent or the decedent’s daughter performed various activities in managing the properties including (1) interviewing prospective tenants, (2) enforcing lease terms, (3) collecting rent payments, (4) various bookkeeping and regulatory functions, and (5) making or contracting for maintenance of the properties. However, the tenants provided landscaping; snow and trash removal; air conditioning, plumbing, painting, and electrical maintenance; and fire insurance. The IRS ruled that the decedent’s interests in the properties were not interests in closely held businesses for purposes of I.R.C. § 6166. Ltr. Rul. 9621007 (Feb. 13, 1996).

**JOINT TENANCY PROPERTY.** The decedent’s predeceased spouse had inherited real property and transferred the property to both of them as tenants by the entirety in 1955. The spouse died in July 1989 and 50 percent of the value of the property was included in the spouse’s estate. The decedent sold the property in 1990 and...
used the estate tax value for 50 percent of the property (under the “fractional share” rule) as the basis for determining gain from the sale. The decedent’s executor filed an amended income tax return for the year of the sale to use a basis of the full estate tax value of the property, under the “consideration furnished rule, removing all gain from the sale transaction. The issue was whether ERTA 1981 amendments to I.R.C. § 2040 providing for the fractional share rule replaced the former “consideration furnished” rule for pre-1977 joint tenancy transfers. The court cited Gallenstein v. United States, 975 F.2d 286 (6th Cir. 1992) to support its holding that the 1981 amendment did not completely replace the previous rule and the decedent was entitled to include the entire value of the property for estate tax purposes as the property’s basis in the sale. Patten v. United States, 96-1 U.S. Tax Cas. (CCH) ¶ 60,231 (W.D. Va. 1996).

VALUATION. The IRS has issued proposed regulations which would allow reformation of a personal residence trust within 90 days after a gift tax return is due for the trust creation. The proposed regulations also provide that a qualified personal residence trust cannot allow the transfer of the residence to the grantor, the grantor’s spouse or any entity controlled by the grantor or the grantor’s spouse. This could have important implications for buying back the residence after the period of the retained interest. See Harl, “Reacquiring the Residence from a GRIT,” 6 Agric. L. Dig. 137 (1995), 61 Fed. Reg. 16623 (April 16, 1996), amending Treas. Reg. § 25.2702-5.

The taxpayer donated stock to a university in 1976 and valued the shares at $10.00 each for federal income tax charitable deduction purposes. The trial court used evidence of subsequent sale transactions to determine the value of the stock on the date of the gift. Although the appellate court upheld the use of subsequent events to prove the value of the gift, the case was remanded because the trial court’s valuation was not based on the evidence and was too speculative. On remand, the court valued the stock based on an adjusted net worth analysis with a discount for the taxpayer’s minority interest. The value of intangibles was not included for lack of evidence of their values and the price determined by a buy-sell agreement was ignored because of no evidence that the agreement was executed. Krapf v. U.S., 96-1 U.S. Tax Cas. (CCH) ¶ 50,249 (Fed. Cls. 1996), on rem'n from, 977 F.2d 1454 (Fed. Cir. 1992), rem'g, 17 Cl. Ct. 750 (1989).

FEDERAL INCOME TAXATION

BAD DEBT. The taxpayer was an anesthesiologist who purchased stock in a small corporation which operated a printing business. The taxpayer made several loans to the corporation which eventually became worthless and the taxpayer claimed a business bad debt deduction for the amount of the worthless loans. The court held that the taxpayer was not entitled to a business bad debt deduction because the taxpayer was not in the business of lending money to corporations. Gubbini v. Comm’r, T.C. Memo. 1996-221.

The taxpayer was a corporation which owned several subsidiary corporations, one of which operated a lingerie store. The taxpayer made payments on several expenses incurred by the subsidiary while the subsidiary was remodeling its store and the taxpayer received promissory notes in return. When the store failed, the taxpayer claimed the amounts owed on the notes as business bad debts. The court examined 11 factors used in Roth Steel Tube Co. v. Comm’r, 800 F.2d 625 (6th Cir. 1986), aff’g T.C. Memo. 1985-58 to determine whether the amounts paid by the taxpayer were debt or equity. The court held that the amounts were equity because (1) the subsidiary did not make any principal or interest payments on the notes, (2) the subsidiary was thinly capitalized, (3) the subsidiary’s business was closely aligned with the taxpayer’s, (4) no security was provided for the notes, (5) the subsidiary would not have been able to obtain financing under similar terms offered by the notes, (6) the funds were used for capital expenses, and (7) the subsidiary did not maintain any sinking fund for repayment of the notes. Deja Vu, Inc. v. Comm’r, T.C. Memo. 1996-234.

BUSINESS EXPENSES. The taxpayer was a corporation in the ready-mix concrete business. The taxpayer rented trucks from a related corporation and the lease provided that the lessor corporation was responsible for the expenses for the tires on the trucks. The taxpayer claimed that the lease was orally modified to make the taxpayer responsible for the tire expenses. The court held that the taxpayer failed to present sufficient evidence to contradict the lease terms and disallowed a deduction for the tires. Fountain Valley Transit Mix, Inc. v. Comm’r, T.C. Memo. 1996-244.

CAPITAL LOSSES. The taxpayer owned an 83 percent interest in a partnership. The taxpayer established a trust for the taxpayer’s grandchildren and named two unrelated individuals as trustees. The taxpayer then sold the partnership interest to a related party. The court held that the substance of the transaction was a sale of property to the trust and, in such cases, the seller is considered the grantor of the trust property and the transaction was not subject to the I.R.C. § 267(a) disallowance of the capital loss on the sale of the partnership interest to a related party. The court held that the partnership interest was sold to the trustees, the taxpayer was not considered the grantor of the trust property and the transaction was not subject to the I.R.C. § 267(a) disallowance of the capital loss on the sale of the partnership interest to a related party. The court held that the substance of the transaction was a sale of property to the trust and, in such cases, the seller is considered the grantor of the property and cannot recognize any capital loss on the transaction under I.R.C. § 267(a). Meek v. Comm’r, T.C. Memo. 1996-236.

COURT AWARDS AND SETTLEMENTS. The taxpayer sued a previous employer for breach of contract and for racial discrimination. The parties reached a negotiated settlement with payment of two $70,000 checks to the taxpayer. The settlement agreement did not allocate any of the checks to the racial discrimination claim. The taxpayer had no other evidence that one-half of the money was paid for the racial discrimination claim; therefore, the court held that none of the settlement amount could be allocated to the racial discrimination claim. The case is designated as not for publication. Strong v. Comm’r, 96-1 U.S. Tax Cas. (CCH) ¶ 50,223 (9th Cir. 1996).
HEALTH INSURANCE. The taxpayer was a corporation to which a closing agreement was valid. The case is designated as not for publication. Miller v. Comm'r, 96-1 U.S. Tax Cas. (CCH) ¶ 96113.001, see the last page of this issue.

The closing agreement was the subject of a criminal investigation by the IRS and during this investigation, the IRS consented to an extension of the limitations period for assessing taxes attributable to partnership items. The extension but after the normal period for assessments had expired, the taxpayer signed a closing agreement which included deficiencies owed by the taxpayer relating to partnership items. The taxpayer argued that the IRS failed to inform the taxpayer about the criminal investigation of the TMP which prohibited the TMP from acting as TMP thus invalidating the extension of the assessment period. The taxpayer argued that the IRS had a fiduciary duty to inform the taxpayer since no other TMP was designated. The court held that there was no statutory or other authority that imposed a fiduciary duty on the IRS to act as TMP if a new TMP is not designated; therefore, the closing agreement was valid. The case is designated as not for publication. In re Miller, 96-1 U.S. Tax Cas. (CCH) ¶ 96-21012, Feb. 16, 1996.

LIKE-KIND EXCHANGES. The taxpayers were shareholders in a corporation which attempted to sell real property in a like-kind exchange using an escrow account because the buyer did not own any suitable exchange property. The corporation placed the cash from the sale into the escrow account which had no restrictions on its use except that the corporation was to designate the property to be purchased with the funds within 180 days. The court held that the escrow account had insufficient restrictions to qualify the transactions as a like-kind exchange for federal income tax purposes. Miller v. Comm'r, T.C. Memo. 1996-214.

The taxpayer owned ranch land which was actively used in the business of breeding, raising and selling cattle. The county in which the land was located wanted to obtain a scenic easement on the property and the taxpayer wanted to obtain suitable like-kind property in exchange for the easement. The taxpayer planned to obtain timber, farm or ranch land in a three-party exchange and use the land for the production of timber, crops or cattle. The IRS ruled that a fee interest in timber, farm or ranch land would qualify as like-kind property in exchange for the scenic conservation easement on the ranch property. Ltr. Rul. 9621012, Feb. 16, 1996.

PARTNERSHIPS-ALM § 7.03.*

TAX MATTERS PARTNER. The taxpayer was a partner in a tax shelter partnership in which another partner was the tax matters partner (TMP). The TMP became the subject of a criminal investigation by the IRS and during this investigation, the IRS consented to an extension of the limitations period for assessing taxes attributable to partnership items. During the extension but after the normal period for assessments had expired, the taxpayer signed a closing agreement which included deficiencies owed by the taxpayer relating to partnership items. The taxpayer argued that the closing agreement should be voided because the IRS failed to inform the taxpayer about the criminal investigation of the TMP which prohibited the TMP from acting as TMP thus invalidating the extension of the assessment period. The taxpayer argued that the IRS had a fiduciary duty to inform the taxpayer since no other TMP was designated. The court held that there was no statutory or other authority that imposed a fiduciary duty on the IRS to act as TMP if a new TMP is not designated; therefore, the closing agreement was valid. The case is designated as not for publication. In re Miller, 96-1 U.S. Tax Cas. (CCH) ¶ 96-21012, Feb. 16, 1996.

PENSION PLANS. For plans beginning in April 1996, the weighted average is 6.93 percent with the permissible range of 6.24 to 7.49 percent (90 to 109 percent permissible range) and 6.24 to 7.63 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). Notice 96-32, I.R.B. 1996-22, 7.

* Agricultural Law Manual (ALM). For information about ordering the Manual, see the last page of this issue.
The taxpayer was the sole shareholder of a corporation which had established a defined benefit pension plan for all employees, including the taxpayer. The plan prohibited the assignment or alienation of vested benefits by any participant. When the corporation ran into financial difficulty, the taxpayer decided to provide additional cash to the corporation by waiving the taxpayer’s interest in the pension plan. The court held that the waiver resulted in the value of the taxpayer’s interest in the plan being included in the taxpayer’s gross income because the waiver was a prohibited attempt to assign or alienate the interest in the plan. Gallade v. Comm’r, 106 T.C. No. 20 (1996).

SAFE HARBOR INTEREST RATES

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S CORPORATIONS-ALM § 7.02[3][c].

UNRELATED BUSINESS INCOME. The taxpayer was a shareholder in an S corporation which terminated without repaying the shareholders for their stock. The taxpayer claimed the loss as an ordinary loss under I.R.C. § 1244. The court disallowed the loss deduction because the taxpayer failed to provide sufficient evidence of the stock basis. Gubbini v. Comm’r, T.C. Memo. 1996-221

STATE REGULATION OF AGRICULTURE

NONRESIDENT ALIEN OWNERSHIP OF LAND. The Iowa legislature has passed legislation allowing nonresident alien businesses which do not actively engage in farming to own up to 1,000 acres and lease up to 280 additional acres of land in an economic development area. House File 2234, enacted May 2, 1996.

STATE TAXATION

AD VALORUM TAXES. The plaintiff owned a grain storage facility used to collect, inspect, clean, blend and store grain which was loaded on to ocean ships for export. Under Art. 7, § 21(d)(2) of the Louisiana Constitution, grain held for export was exempt from Louisiana ad valorem taxes. The plaintiff’s county assessor determined that the plaintiff’s facility did more than hold grain for export and that the facilities were leased to nonresident aliens. The court held that the action was preempted by FIFRA. The court acknowledged a split of authority on this issue as to advertisements and other written materials not on the label; however, the court held that the action was preempted, especially where, as here, the plaintiff had not seen or relied on the advertisements. Kuiper v. American Cyanamid Co., 913 F. Supp. 1236 (E.D. Wis. 1996).

PRODUCTS LIABILITY

HERBICIDE. The plaintiff purchased the herbicide Scepter which was manufactured by the defendant. The plaintiff applied the herbicide to soybean fields in one crop year after being told by the seller that it was safe to plant corn on treated acres within 12 months after applying the herbicide. The plaintiff testified that this information came from the seller and not from any advertisements. However, the same information was on the printed label on the product. The plaintiff sought to hold the defendant liable for negligent misrepresentation in advertising and the statements of the seller. The defendant claimed that the action was preempted by FIFRA. The court acknowledged a split of authority on this issue as to advertisements and other written materials not on the label; however, the court held that the action was preempted, especially where, as here, the plaintiff had not seen or relied on the advertisements. Kuiper v. American Cyanamid Co., 913 F. Supp. 1236 (E.D. Wis. 1996).

VACCINES. The plaintiff vaccinated cattle with two vaccines produced by the defendant. Some of the cattle died, either from failure of the vaccine to prevent disease or a defect in the vaccines that caused the deaths directly. The plaintiff sued the defendant in strict liability, misrepresentation, false advertising, and breach of implied warranties of merchantability and fitness for a specific purpose. The vaccines were licensed under the Virus-Serum-Toxin Act by APHIS and the defendant argued that regulations issued by APHIS completely preempted the plaintiff’s causes of action. The court upheld the preemption regulation as a rational and necessary part of the authority granted to APHIS to control and license vaccines. The court noted that a license by APHIS was a determination by APHIS that the vaccine was safe and effective; therefore, any state action which challenged the safety or effectiveness of a licensed vaccine was preempted by the APHIS regulations. The ruling leaves little chance that any state law cause of action will be allowed against a defective licensed animal vaccine. Lynnbrook Farms v. Smithkline Beecham Corp., 79 F.3d 620 (7th Cir. 1996).

SAFE HARBOR INTEREST RATES

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Gisclair v. Comm’r, T.C. Memo. 1996-221

STATE REGULATION OF AGRICULTURE

NONRESIDENT ALIEN OWNERSHIP OF LAND. The Iowa legislature has passed legislation allowing nonresident alien businesses which do not actively engage in farming to own up to 1,000 acres and lease up to 280 additional acres of land in an economic development area. House File 2234, enacted May 2, 1996.

STATE TAXATION

AD VALORUM TAXES. The plaintiff owned a grain storage facility used to collect, inspect, clean, blend and store grain which was loaded on to ocean ships for export. Under Art. 7, § 21(d)(2) of the Louisiana Constitution, grain held for export was exempt from Louisiana ad valorem taxes. The plaintiff’s county assessor determined that the plaintiff’s facility did more than hold grain for export and that the facilities were leased to nonresident aliens. The court held that the action was preempted by FIFRA. The court acknowledged a split of authority on this issue as to advertisements and other written materials not on the label; however, the court held that the action was preempted, especially where, as here, the plaintiff had not seen or relied on the advertisements. Kuiper v. American Cyanamid Co., 913 F. Supp. 1236 (E.D. Wis. 1996).

PRODUCTS LIABILITY

HERBICIDE. The plaintiff purchased the herbicide Scepter which was manufactured by the defendant. The plaintiff applied the herbicide to soybean fields in one crop year after being told by the seller that it was safe to plant corn on treated acres within 12 months after applying the herbicide. The plaintiff testified that this information came from the seller and not from any advertisements. However, the same information was on the printed label on the product. The plaintiff sought to hold the defendant liable for negligent misrepresentation in advertising and the statements of the seller. The defendant claimed that the action was preempted by FIFRA. The court acknowledged a split of authority on this issue as to advertisements and other written materials not on the label; however, the court held that the action was preempted, especially where, as here, the plaintiff had not seen or relied on the advertisements. Kuiper v. American Cyanamid Co., 913 F. Supp. 1236 (E.D. Wis. 1996).
AGRICULTURAL USE. The taxpayer owned two parcels of land, each used only for growing pine trees. The properties were rezoned as residential but the properties contained no residences or habitable structures. The county assessor then assessed the properties reflecting their use as residential property based on the zoning change. The taxpayer argued that the assessments should have been made based on the actual use of the property. The court held that Miss. Code § 27-35-50 required property assessments to be made on the basis of the actual current use of the property and that the growing of timber was included in the definition of agricultural use. Riley v. Jefferson Davis County, 669 So.2d 748 (Miss. 1996).

CITATION UPDATES

E. Norman Peterson Marital Trust v. Comm’r, 78 F.3d 795 (2d Cir. 1996), aff’g, 102 T.C. 798 (1994) (generation skipping transfers) see p. 52 supra.


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