1-31-1996

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/vol8/iss3/2

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.
by a person other than the decedent, such as a trust, the cancellation is treated as a transfer by that person immediately after the decedent’s death.\(^3\)

**Forgiveness to help financially troubled buyer**

IRS ruled, in 1987, that cancellation of principal in a debt restructuring involving an installment sale contract did not result in income tax consequences to the seller.\(^5\) That ruling did not recognize the enactment of I.R.C. § 453B in 1980 (requiring recognition of gain on forgiveness of principal) and has been criticized.\(^3\)

**FOOTNOTES**

5. Id. See I.R.C. § 2512.
7. I.R.C. § 2503(b).
9. Id.
10. Supra note 4.
11. Id.
13. Id.
15. Id.
16. Supra note 4.
17. Supra note 8.
18. Supra note 11.
27. Id.

**CASES, REGULATIONS AND STATUTES**

by Robert P. Achenbach, Jr.

---

**CHAIN OF TITLE**. The disputed property was part of a single parcel previously owned by a person deceased at the time of trial. Prior to the decedent’s death, the disputed property was conveyed to the plaintiff with a life estate reserved by the decedent. That transfer was not recorded. At the decedent’s death the entire parcel was transferred by will to a predecessor in interest of the defendant and title was transferred through several owners before reaching the defendant. Each of these transactions was recorded. The plaintiff or the plaintiff’s lessees continuously possessed the disputed property after the death of the decedent and used the property for planting grass and grazing cattle, repaired damage caused by storms, built a fish pond on the property, paid taxes on the land for most years and visited and made other improvements to the property. The defendants argued that adverse possession was not long enough because the possession of the decedent and the lessees could not be included in the time of adverse possession. The court held that, because title was transferred to the plaintiff by the decedent, the decedent’s possession and the lessee’s possession were included in the time of adverse possession. The court also ruled that the possession of the plaintiff, the decedent and the lessee was sufficiently open and adverse to grant title to the plaintiff. *Robertson v. Dombrowski*, 678 So.2d 637 (Miss. 1996).

**BANKRUPTCY**

**FEDERAL TAXATION-ALM § 13.03[7].**

**AVOIDABLE LIENS.** In October 1994, the IRS filed a notice of levy on accounts receivable held by a third party and owed to the debtor. The IRS did not file a Notice of Tax Lien. The levied funds were not paid because of pending state court actions. The debtor filed for Chapter 7 in February 1995 and the trustee obtained turnover of the funds. The IRS argued that the funds secured its claim for taxes. The court held that the funds were estate property and not a secured claim because the IRS security interest was not perfected and was, therefore, avoidable by the trustee. *In re HDI Partners*, 202 B.R. 524 (Bankr. S.D. Fla. 1996).

**CLAIMS.** The IRS had filed tax liens in 1992 for assessments made in 1991 for taxes and penalties owed by the debtor for 1989 and 1990. The IRS filed a secured claim for the taxes covered by the liens, a claim for priority taxes and a claim for general unsecured taxes. The debtor’s plan proposed to reallocate some of the priority taxes to the

---

*Agricultural Law Manual (ALM). For information about ordering the Manual, see the last page of this issue.*
secured claim and a corresponding amount of the secured claim to the unsecured claim. Because the plan provided for only partial payment of the unsecured claims, the plan provided for a decrease of $13,000 in payments for the taxes. The debtor argued that the $13,000 decrease was necessary for a successful plan. The court found that the IRS secured claims were properly designated and filed; therefore, the court had no authority to reallocate taxes among the different classes of claims. *In re Senise*, 202 B.R. 403 (Bankr. D. S.C. 1996).

**DISCHARGE.** The debtor worked for a securities brokerage firm and executed “treasury bill rolls” for the firm which were later ruled to have illegal tax benefits. The debtor was a partner in the firm and when the partnership’s tax returns were challenged by the IRS, the pass through of disallowed items caused the debtor’s personal returns to be false. The debtor was convicted of conspiracy to commit tax fraud, was required to file amended returns and pay the tax deficiency caused by the loss of partnership deductions. The IRS sought to have the taxes involved be declared nondischargeable for filing a fraudulent return and willfully failing to pay taxes. The IRS also argued that the taxes were nondischargeable as restitution for criminal acts. The court held that the debtor’s returns were not fraudulent because the incorrectness of the returns resulted from the brokerage firm’s misconduct. The debtor was also held not to have willfully attempted to evade payment of taxes because the debtors did not know the tax benefits claimed by the partnership were illegal. The court also held that the taxes were not nondischargeable restitution payments because the amounts to be paid were tax deficiencies caused by the recharacterization of partnership tax items. *In re Rile*, 202 B.R. 169 (Bankr. M.D. 1996).

**TAX LIEN.** The Chapter 7 trustee had applied to the Bankruptcy Court for permission to hire a real estate broker who had a client who wanted to purchase estate property. The application was approved to the extent that the prospective client did purchase the property. The client purchased the property. Before the payment of the commission was finally approved, the IRS levied the trustee for payment of the commission in order to collect on taxes owed by the real estate broker. The trustee refused to pay the commission to the IRS because the fee payment had not been finally approved by the Bankruptcy Court. The court ruled that the fee was subject to the levy because there were no facts or reasons why the fee would not have been paid; therefore, the trustee was personally liable for failure to pay the commission to the IRS under the levy. *United States v. Ruff*, 99 F.3d 1559 (11th Cir. 1996), aff’g, 179 B.R. 967 (M.D. Fla. 1995).

**FEDERAL AGRICULTURAL PROGRAMS**

**BORROWER’S RIGHTS-ALM § 11.01[2].** The defendants had borrowed funds from the FmHA (now FSA) which were secured by farm land. The defendants defaulted on the loan and filed for bankruptcy. Their bankruptcy plan was confirmed and the case was closed. The defendants inquired about loan restructuring but were told to contact the FmHA in a few months. The FmHA sent a notice of loan restructuring rights to the defendants’ bankruptcy attorney as required by 7 C.F.R. § 1951.907 and also sent notice by certified mail to the defendants, although notice to the defendants was not required. The notice was signed by the defendants’ son who did not give the defendants the letter. The FmHA eventually denied the defendants any loan restructuring because the defendants did not timely request restructuring. The defendants argued that notice was insufficient because the defendants did not receive actual notice of their restructuring rights. The court held that the FmHA more than complied with its regulations and that the certified mailing of notice to the defendants was legally sufficient. *U.S. v. Birchem*, 100 F.3d 607 (8th Cir. 1996), aff’g, 883 F. Supp. 1334 (D. S.D. 1995).

The plaintiff was the surviving spouse of a decedent who, with the plaintiff, had borrowed money from the FmHA (now FSA) for operation of their farm. After the death of the decedent, the plaintiff defaulted on payments on the FmHA loan and the FmHA sent to the plaintiff a loan restructuring package. However, the FmHA stopped the restructuring review process when it learned that the decedent’s estate was still open and the FmHA filed a claim against the estate. The claim forced the estate to bring a partition action for the sale of the farm. The plaintiff filed suit, alleging that the FmHA had improperly ceased restructuring process. The District Court granted summary judgment for the FmHA, holding that because the final administrative decision was made. The appellate court reversed, holding that the decision to suspend the restructuring review caused the plaintiff to lose any chance of further review because the sale of a portion of the farm would make it impossible for the plaintiff to make sufficient income from the remaining property to pay the loan. The FmHA was ordered to complete the administrative appeal through the NAD. *Chamblee v. Espy*, 100 F.3d 15 (4th Cir. 1996).

**BRUCELLOSIS.** The APHIS has issued proposed regulations amending the brucellosis regulations to provide for the Administrator to conduct a special review of areas with fewer than 10,000 head of cattle or bison in order to determine whether an area may qualify for Class A brucellosis status. Currently, the brucellosis regulations provide for such reviews to be conducted at the State level. Extending the provisions for special review to the area level would allow areas with a herd infection rate over 0.25 percent, but that might otherwise meet the criteria for Class A status, to undergo a special review to determine whether Class A status should be conferred on the area. *62 Fed. Reg. 1406 (Jan. 10, 1997).*

**COMMODITY FUTURES.** The Chicago Mercantile Exchange has issued proposed amendments to its live cattle futures contract. The primary proposed amendments will: (1) modify the par yield grade and weight range specifications and the sources and calculation methods for establishing price differentials for non-par quality grades, yield grades, and carcass-weights; (2) extend the delivery period for live-graded deliveries by five business days; (3) change the last trading day of expiring contract months; and (4) increase to 600 from 300 contracts the spot month speculative position limit applicable on those days preceding the last five trading days, with the existing limit
of 300 contracts being retained during the last five trading days of the contract month. 62 Fed. Reg. 2657 (Jan. 17, 1997).

**CROP INSURANCE.** The FCIC has issued proposed regulations which include the Table Grape Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. 62 Fed. Reg. 2059 (Jan. 15, 1997).

The FCIC has issued proposed regulations which include the Forage Seed Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. 62 Fed. Reg. 2055 (Jan. 15, 1997).

**FEDERAL INCOME TAXATION**

**ALLOCATION OF BASIS.** For multiple asset acquisitions after May 6, 1986, involving "assets which constitute a trade or business", for purposes of determining the transferee's basis in the assets and the gain or loss of the transferor, the consideration received is to be allocated among the acquired assets in the same manner as prescribed in I.R.C. § 338(b)(5). See I.R.C. § 1060(a), (c). Under former Temp. Treas. Reg. § 1.338(b)-2T, basis in multiple asset acquisitions was allocated generally to four classes of assets (1) cash and cash-like items; (2) certificates of deposit, government securities and other marketable stock or securities; (3) all assets not in Class (1), (2) and (4) ; and (4) intangible assets in the nature of goodwill and going concern value (in that order) in proportion to fair market values. Under amended temporary regulations, the fourth class is split into (4) intangibles other than goodwill and going-concern value and (5) goodwill and going-concern value. 62 Fed. Reg. 2267 (Jan. 16, 1997), amending Temp. Treas. Reg. § 1.338(b)-2T.

**COOPERATIVES.** The taxpayer was a state-wide tax-exempt agricultural cooperative which formed a second agricultural cooperative operating on a regional basis. The taxpayer provided educational and promotional services for the subsidiary cooperative. The court held that the fees received for the services were not unrelated business income to the taxpayer. Ohio Farm Bureau Fed., Inc. v. Comm'r, 106 T.C. 222 (1996). The IRS has ruled that because of the contrary ruling in Ohio Farm Bureau Fed., Inc., the IRS is revoking GCM 39865, Nov. 21, 1991. GCM 39891, Jan. 2, 1997.

**COURT AWARDS AND SETTLEMENTS.** The taxpayer sued an employer for age discrimination under the Age Discrimination in Employment Act (ADEA). The suit was settled for cash, half of which was characterized as representing lost pension and insurance benefits and the other half as ADEA liquidated damages. The court held that all of the settlement was included in gross income because none of the settlement was received on account of personal injuries or sickness. Gray v. Comm'r, 97-1 U.S. Tax Cas. (CCH) ¶ 50,136 (10th Cir. 1997).

The taxpayer filed a wrongful termination action against an employer, alleging injury from mental distress. The action was settled with a payment to the taxpayer in exchange for a release of all claims. Neither the action nor the settlement allocated any of the award to the mental distress claim. The court found that the taxpayer had a strong case for the mental distress claim and allocated one-half of the settlement to that claim, with the rest to punitive damages. The court held that the payments for mental distress were excludible from gross income because the payments were related to a tort-like claim and were for personal injuries. The punitive damages were held to be included in gross income. Barnes v. Comm'r, T.C. Memo. 1997-25.

**DEPRECIATION.** The taxpayer purchased partnership interests in several “tax-oriented” partnerships. The partnerships purchased several pieces of improved real estate by using nonrecourse notes far in excess of the fair market value of the properties. The partnerships claimed depreciation using bases of the properties increased by the amount of the nonrecourse debt. Although the court acknowledged some cases which allowed a basis to the extent of fair market value for nonrecourse debt in excess of fair market value, the court held that none of the nonrecourse debt was included in basis if the nonrecourse debt substantially exceeded the fair market value of the property. The court noted that the partnerships were self-styled “tax-oriented” partnerships. Bergstrom v. United States, 97-1 U.S. Tax Cas. (CCH) ¶ 50,143 (Fed. Cls. 1996).

**CASUALTY LOSSES.** The President has declared certain areas of Pennsylvania as disaster areas from Nov. 8, 1996 storms and areas of Lane, Coos and Douglas counties in Oregon as disaster areas from flooding beginning on Nov. 17, 1996. Losses from these casualties may be deducted in taxpayers’ 1995 returns.

**ENVIRONMENTAL CLEANUP COSTS.** The IRS has issued a proposed revenue procedure which would provide guidance for issuing letter rulings on the tax treatment, under I.R.C. §§ 162 and 263, of environmental cleanup costs involving a single environmental cleanup transaction. The proposed procedures would apply for an experimental period of two years once the final procedures are issued. The public is invited to comment on the proposed procedures. Notice 97-7, I.R.B. 1997-__

**FARM CREDIT SYSTEM.** The taxpayer was an Agricultural Credit Association which was previously a Federal Land Bank Association. As an FLB, the taxpayer’s income was exempt from federal income tax under 12 U.S.C. § 2098. The IRS ruled that the long-term lending income of the ACA was not exempt from federal income taxation. Ltr. Rul. 9652001, July 17, 1996.

**INSTALLMENT REPORTING—ALM § 6.03[1].** CCH has reported that H.R. 426, introduced by Rep. Nethercutt has 97 co-sponsors. The bill repeals the inclusion of income from the sale of farm property (grain, other crops and livestock) from alternative minimum tax for taxpayers using the cash method of tax accounting. For discussion of the AMT problem see Harl, “Installment Sales of Commodities and AMT,” 7 Agric. L. Dig. 93 (1996); Harl, “More on Installment Sales of Commodities and AMT,” 7 Agric. L. Dig. 173 (1996). CCH also reported that IRS

---

*Agricultural Law Manual (ALM). For information about ordering the Manual, see the last page of this issue.*
Commissioner Margaret Milner Richardson has stated that the IRS will not conduct audits to enforce the current rule until Congress has an opportunity to act on the new legislation. Senator Charles Grassley of Iowa also plans to introduce similar legislation in the Senate.

IRA. The decedent’s estate included an IRA which designated the decedent’s estate as primary beneficiary. The decedent’s surviving spouse was the sole beneficiary under the decedent’s will and executor of the estate and planned to roll over the IRA funds to the spouse’s own IRA within 60 days after distribution from the estate. The IRS ruled that as sole beneficiary and executor of the estate, the surviving spouse would be treated as having received the IRA funds directly from the decedent and the rollover of the funds would cause them to be included in gross income. Ltr. Rul. 9703036, Oct. 24, 1996.

The taxpayer owned an interest in an IRA which purchased a 3.32 percent limited partnership interest in a partnership which operated a tire marketing business and rental of a warehouse. The IRS ruled that the partnership income received by the IRA was unrelated business income. Ltr. Rul. 9703026, Oct. 29, 1996.


The IRS has issued its annual list of procedures for furnishing technical advice to District Directors and Chiefs, Appeals Offices. Rev. Proc. 97-2, I.R.B. 1997-__

The IRS has issued its annual list of tax issues for which the IRS will not give advance rulings or determination letters. Rev. Proc. 97-3, I.R.B. 1997-__

The IRS has issued procedures for issuing determination letters on issues under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations). Rev. Proc. 97-4, I.R.B. 1997-__

The IRS has issued procedures for issuing determination letters on the qualified status of employee plans under Sections 401(a), 403(a), 409 and 4975(e)(7). Rev. Proc. 97-6, I.R.B. 1997-__

The IRS has issued revised fee schedules for issuing determination letters on the qualified status of employee plans under Sections 401(a), 403(a), 409 and 4975(e)(7). Rev. Proc. 97-8, I.R.B. 1997-2.

NET OPERATING LOSSES. In 1984, the taxpayers had no regular tax liability but had $46,000 of AMT. In 1985, the taxpayers had a net operating loss and AMT net operating losses. The taxpayers’ return preparer wanted to carryback the AMT net operating losses but waive the carryback of regular net operating loss. On the 1985 return the preparer made the election to waive the “net operating loss carryback period,” intending the election to apply only to regular net operating loss through the use of the singular form of net operating loss. The court held that this was insufficient to split the election between AMT and regular net operating loss and the election applied to both. The issue of whether the split was allowable was not reached. Miller v. Comm’r, 99 F.3d 1042 (11th Cir. 1996).

RETURNS. The IRS has issued a new Form 8832 for entities choosing not to take advantage of the default rules under the recent final regulations governing the “check the box” method for entities not required to be taxed as corporations to elect to be taxed as either a partnership or corporation. Ann. 97-5, I.R.B. 1997-__

The IRS has issued revised Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return; Form 709-A, United States Short Form Gift Tax Return; Form 941 Employer’s Quarterly Federal Tax Return; and Form 1096, Annual Summary and Transmittal of US Information Returns. Forms may be ordered from the IRS at 1-800-829-3676 or downloaded from the internet at http://www.irs.ustreas.gov/prod/.

The taxpayer was self-employed in the business of selling hearing aids and giving hearing tests in Colorado and other states. The taxpayer lived in Denver and provided some financial support for a spouse. The taxpayer failed to file income tax returns for four years and failed to provide any records to the IRS in an audit. The IRS used data from the U.S. Department of Labor, Bureau of Labor Statistics for the cost of living of a single person. The figures were adjusted for the consumer price index for the taxpayer’s city of residence, Denver, and the IRS used the figures to calculate the taxpayer’s income for the four tax years. The court upheld the determinations as reasonable. Wallace v. Comm’r, T.C. Memo. 1997-28.

S CORPORATIONS-ALM § 7.02[3][c].*

PASSIVE INVESTMENT INCOME. The corporation owned four improved real properties which were leased to businesses. The corporation provided rental related services to the tenants, including renovations, cleaning and maintenance, landscaping and parking lot maintenance. The corporation also provided, through third party contractors, trash and snow removal. The corporation interviewed prospective tenants, negotiated leases, bills; collected rent; and represented itself in legal disputes. Under the leases, the corporation provided heat, hot water and fire, liability and boiler insurance for all the businesses. The IRS ruled that the rental income was not passive investment income for purposes of the S corporation election. Ltr. Rul. 9702007, Oct. 3, 1996.

SHAREHOLDER SHARE. An S corporation made contributions to a charitable foundation which used a portion of the funds for charity outside the United States. The IRS ruled that, although the charitable deduction would be limited at the corporation level, the deduction was allowed for the shareholders because the deduction was to be determined at the shareholder level. Ltr. Rul. 9703028, Oct. 22, 1996.

SALE OF RESIDENCE. The taxpayer had purchased a five acre rural property which was used as a residence. The taxpayer operated a mobile farrier service but did not use any of the real property for the business. The taxpayer also operated a horse breeding and boarding business but used other leased property for this business. When the neighborhood of the residence became more densely populated, the taxpayer decided to purchase 51 acres of secluded rural property which consisted of a flat plain and a steep hilly area. The plain was not suitable for a residence because of cultural and flood plain restrictions. The taxpayer...
did use 7.5 acres of the plain for operating the horse breeding and boarding business. The taxpayer constructed a residence in the hilly area. The taxpayer claimed all of the 51 acres, except the 7.5 acres used for the business, as a residence and claimed the cost of the 43.5 acres as deferred gain from the sale and repurchase of a residence. The court found that the taxpayer did use all of the hilly area for residential purposes, including horseback riding, hiking and enjoying the secluded nature of the property. The court also found that the taxpayer used only 7.5 acres in the business; therefore, the court allowed the taxpayer to defer the gain from the first residence to the extent of the value of the 43.5 acres and the cost of constructing a house on the land.


SAFE HARBOR INTEREST RATES
February 1997

<table>
<thead>
<tr>
<th></th>
<th>Annual</th>
<th>Semi-annual</th>
<th>Quarterly</th>
<th>Monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFR</td>
<td>5.81</td>
<td>5.73</td>
<td>5.69</td>
<td>5.66</td>
</tr>
<tr>
<td>110% AFR</td>
<td>6.40</td>
<td>6.30</td>
<td>6.25</td>
<td>6.22</td>
</tr>
<tr>
<td>120% AFR</td>
<td>7.00</td>
<td>6.88</td>
<td>6.82</td>
<td>6.78</td>
</tr>
</tbody>
</table>

**SELF-EMPLOYMENT INCOME.** The taxpayer was a grower of grain. The taxpayer purchased units of equity participation in a cooperative association. Under a uniform marketing agreement with the cooperative, the taxpayer agreed to deliver a designated amount of grain each year and to appoint the cooperative as the taxpayer’s sole agent for the marketing and sale of the grain. The taxpayer was obligated to supply third party grain if the taxpayer did not produce enough grain in a year to meet the agreement amount. The cooperative agreed to make payments to the taxpayer for 80 percent of the loan value of the grain, storage and interest payments, patronage dividends, and payment for value added to the grain by the cooperative based on a year-end determination of the cooperative’s net proceeds form all operations, considering the need for further compensation for the grain and the cooperative’s financial needs. Because the taxpayer used almost all of the grain produced on the farm for feeding to livestock on the farm, most of the grain provided under the agreement was purchased from other producers. The taxpayer also purchased additional grain for livestock feed. The taxpayer stated that the agreement with the cooperative was an investment plan and that the taxpayer did not have enough production capability to produce livestock for feed and meet the delivery requirements of the agreement. The IRS ruled that the taxpayer was in the business of growing grain; therefore, the value added payments were self-employment income to the taxpayer and income from the sale of property held primarily for the sale to customers in the ordinary course of business. Ltr. Rul. 9652007, Aug. 30, 1996).

The IRS has issued proposed regulations which allow individuals to determine whether they are limited partners for purposes of the self-employment tax, I.R.C. § 1402(a)(13). The new proposed regulations replace previously issued proposed regulations governing treating certain members of Limited Liability Companies as limited partners for self-employment tax purposes. The proposed regulations define a limited partner of entities considered a federal tax partnership, independent of state law classifications of the taxpayer’s status in an entity. Thus, federal defined partnerships include general and limited partnerships and LLCs. A taxpayer is a limited partner unless the taxpayer has (1) personal liability for the debts or claims against the partnership by reason of being a partner, (2) has the authority to contract on behalf of the partnership, or (3) participates more than 500 hours in a tax year in the partnership trade or business. However, if the partnership substantially performs only professional services, no partner who provides some of those services will be considered a limited partner. The proposed regulations also allow an individual with more than one class of interests in a partnership to exclude from self-employment income, amounts received from limited partnership interests. Thus, individuals may exclude from self-employment income amounts which are demonstrably returns on capital invested in the partnership. 62 Fed. Reg. 1702 (Jan. 13, 1997), amending Treas. Reg. § 1.1402(a)-2.

The taxpayer was primarily a dairy farmer but entered into three annual contracts for the lease of land to a vegetable cannery. Under the contracts, titled “Canning Beet Contract,” the taxpayer agreed to produce a set number of tons of beets on a fixed number of acres. The taxpayer supplied all of the machinery, supplies, seeds, fertilizer and labor for the production, harvest and transport of the beets. The taxpayer spent an average of less than 100 hours annually to produce the beet crop. The contracts gave the cannery the authority to set planting and harvest dates, otherwise all production decisions were made by the taxpayer. The cannery made payments to the taxpayer for the beets and included a document that stated that all payments were for leased land and were rental income. The cannery supplied the taxpayer with a Form 1099-MISC characterizing the payments as rental income and the taxpayer reported that income as rental income not subject to self-employment tax. The court ruled that the contract payments were self-employment income under I.R.C. § 1402(a)(1) because the taxpayer was obligated and did materially participate in the production of the beets on the taxpayer’s farm, since the taxpayer supplied all of the equipment and all of the labor. Schmidt v. Comm’r, T.C. Memo. 1997-41.

**TAX COURT.** The taxpayers argued that a Tax Court judge was required to recuse himself because the judge was Deputy Chief Counsel for Litigation and Acting Chief Counsel of the IRS when the taxpayer’s tax claims were first investigated by the IRS. Although the judge did not have direct connection with the case, the judge’s subordinates did work on the case. The court held that there was no authority for recusal of Tax Court judges except for...
individual voluntary compliance with the Code of Conduct for United States Judges; therefore, the judge was not required to recuse himself. Nobles v. Comm’r, 97-1 U.S. Tax Cas. (CCH) ¶ 50,144 (9th Cir. 1997).

TAX PREPARERS. The taxpayer was a professional tax return preparer who had pleaded guilty to impeding and obstructing the administration of the Internal Revenue Code by preparing and filing false returns for clients. The taxpayer did not sign the returns as preparer and counseled the clients not to reveal the taxpayer as the return preparer. The court upheld enhancement of the sentence imposed on the clients not to reveal the taxpayer as the return preparer. The taxpayer did not sign the returns as preparer and counseled by preparing and filing false returns for clients. The obstructing the administration of the Internal Revenue Code tax return preparer who had pleaded guilty to impeding and

LANDLORD AND TENANT

BREACH OF LEASE. The parties had entered into a one year lease of a farm, with the lease automatically renewable on an annual basis for two years unless a written termination was received before the end of the previous year. The trial court found that, at the end of the first year, the defendant asked the plaintiff if the farm could be leased by a third party and the third party did farm the land during that year. The trial court also found that the defendant did not provide any written notice of termination as to the third year and that the land was not farmed in the third year by anyone and the defendant did not pay the rent for that year. The plaintiff claimed that the plaintiff’s hay crop, grown on land neighboring the leased land, had a smaller yield because the failure of the defendant to pay the rent in the third year prevented the plaintiff from being able to pay the irrigation costs. The trial court awarded the plaintiff the unpaid rent plus damages for the loss of yield of the hay crop. The appellate court affirmed, holding that the trial court’s factual findings were reasonable and that the causal connection between the breach of the lease and the loss of hay production was sufficient to allow the damage award. Zanotti v. Cook, 922 P.2d 1077 (Idaho Ct. App. 1996).

PROPERTY

EASEMENTS. An abandoned railroad grade divided the parties’ properties such that a portion of the grade was necessary for access to the plaintiff’s property, a cattle ranch. The defendant had granted an easement over the grade and the parties constructed a fence and gate for allowing access to the plaintiff’s property and for fencing in the livestock. The plaintiff removed the gates and replaced them with cattle guards and sought court approval for the right to substitute the guards for the gates and to prohibit the defendants from placing gates on the easement. The trial court reached a compromise which allowed the guards to remain and allowed the defendants to place gates within the fence along the easement but not across the easement. The appellate court approved the compromise ruling as best meeting the needs of all parties. Lazy Dog Ranch v. Telluray Ranch Corp., 923 P.2d 313 (Colo. Ct. App. 1996).

SECURED TRANSACTIONS

PRODUCER’S LIEN. The debtor was a cannery which purchased tomatoes from a farmer. One of the officers of the debtor was an acquaintance of the farmer and approached the farmer with the contract to purchase the tomatoes. In the first year, the farmer signed an agreement to subordinate the farmer’s producer lien to the debtor’s secured creditor. That contract was successfully completed by both parties. In the second year, the farmer also signed the subordination agreement but the debtor filed for bankruptcy before the farmer was fully paid and the creditor claimed a priority security interest in the debtor’s remaining assets. The farmer had many years of experience in growing and selling tomatoes but could not read words and relied on others to explain the contents of contracts. Although the farmer understood the nature of the subordination agreement, the farmer relied on the oral statements of the debtor’s officers that the company was in good financial health and that the subordination agreement was needed only to obtain the funds for payment of the tomatoes. The farmer argued that the subordination agreement was not an effective waiver of the producer’s lien because the farmer did not have complete information about the rights which were given up. The Bankruptcy Court held that the subordination agreement was not effective because of the misrepresentations of the debtor’s officers which either misled the farmer or failed to provide the farmer with sufficient information for a knowledgeable waiver. The appellate court reversed. The appellate court agreed that the subordination agreement was to be treated as a waiver; however, the court disagreed that the debtor was required to provide financial and credit information to the farmer in order for the subordination agreement to have been made knowingly. In re GVF Cannery, Inc., 202 B.R. 140 (N.D. Cal. 1996), rev’g, 188 B.R. 651 (Bankr. N.D. Cal. 1995).

STATE REGULATION OF AGRICULTURE

FERTILIZER. The plaintiff ordered liquid fertilizer from the defendant which was supposed to contain 30 percent nitrogen. The fertilizer was delivered to tanks on the plaintiff’s farm. The plaintiff applied the fertilizer but the grain produced on those acres was stunted as a result of insufficient nitrogen. The plaintiff requested the Fertilizer Administrator for the N.C. Dept. of Agriculture (N.C.D.A.) to test the nitrogen content of the fertilizer remaining in the tanks. Under N.C. Gen. Stat. § 106-655, the N.C.D.A. was authorized to test fertilizer for compliance with fertilizer laws. The regulations promulgated under the statute required the testing to occur only at site of manufacture. The test showed that the fertilizer in the farm tanks had only 18 percent nitrogen and the plaintiff sued the fertilizer supplier for breach of warranty. N.C. Gen. Stat. § 106-662(e)(4) provided that no suit for damages could be brought unless an official test had shown that the fertilizer was not in compliance with the law. The defendant argued that N.C. Gen. Stat. § 106-662(e)(4) barred the plaintiff’s suit because no test was made at the site of manufacture. The court agreed and dismissed the suit. Barber v. Continental Grain Co., 477 S.E.2d 77 (N.C. Ct. App. 1996).
MILK. The Maine Dairy Farm Stabilization Act, Me. Rev. Stat. tit. 36, §§ 4541-4547, imposed a tax on all packaged fluid milk sold in Maine irrespective of the origin of the milk but provided a rebate only to Maine dairy producers. A company which sold out of state milk in Maine sued, arguing that the tax and rebate program violated the Commerce Clause of the U.S. Constitution. Citing West Lynn Creamery, Inc. v. Healy, 114 S.Ct. 2205 (1994), the appellate court reversed a holding for the state and ruled that the tax and rebate program violated the Commerce Clause. Cumberland Farms, Inc. v. LaFaver, 33 F.3d 1 (1st Cir. 1994), rev’g and rem’g, 834 F. Supp. 27 (D. Me. 1993). In response to this case, the Maine legislature passed legislation imposing a tax on all milk sold in Maine, irrespective of the point of origin. In separate legislation in subsequent years, the legislature appropriated money to the Maine Milk Commission for distribution to Maine milk producers. The plaintiffs, Massachusetts dairy farmers, argued that the new legislation violated the Commerce Clause as an impediment on interstate commerce. In addition, the plaintiff argued that the tax legislation should be read in conjunction with the distribution legislation as an improper method of doing what was prohibited in the previous Cumberland case. The court held that the tax legislation was constitutional since the tax applied to all milk sales equally. The court also refused to link the tax legislation to the distribution legislation. Cumberland Farms, Inc. v. Mahany, 943 F. Supp. 83 (D. Me. 1996).

CITATION UPDATES
LeFever v. Comm’r, 100 F.3d 778 (10th Cir. 1996), aff’g 103 T.C. 525 (1994) (special use valuation) see Vol. 7, p. 185.

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

Adverse Possession
Chain of title 17

Bankruptcy
Federal taxation
  Avoidable lien 18
  Claims 18
  Discharge 19
  Tax lien 19
Federal Agricultural Programs
  Borrower’s rights 19
  Brucellosis 19
  Commodity futures 19
  Crop insurance 20
Federal Income Taxation
  Allocation of basis 20
  Cooperatives 20
  Depreciation 20
  Casualty losses 20
  Environmental cleanup costs 20
  Farm Credit System 20
  Installment reporting 20
  IRA 21
  Letter rulings 21
  Net operating losses 21
  Returns 21
  S Corporations
    Passive investment income 21
    Shareholder share 21
  Sale of residence 21
  Safe harbor interest rates
    February 1996 22
  Self-employment income 22

Tax Court 22
  Tax preparer 23
Landlord and Tenant
  Breach of lease 23
Property
  Easements 23
Secured Transactions
  Producer’s lien 23
State Regulation of Agriculture
  Fertilizer 23
  Milk 24