Cases, Regulations, and Statutes

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First, the purchase of commodity certificates (typically in the amount of what is needed to pay off the CCC marketing assistance loan) produces an income tax basis in the certificate equal to its face amount (not an income tax deduction). That is because the certificate is acquired for resale, not for use in the business.

Second, using the commodity certificate to pay off the CCC loan (the lesser of the CCC loan or the posted county price) does not produce gain on the certificate but does produce marketing assistance loan gain.

Example 1. Corn is placed under CCC loan in the amount of $1.87 per bushel in 2001. In 2001, the commodity is redeemed when the county posted price is $1.50 per bushel. The corn is sold later in 2001 for $1.75. If the taxpayer had not made the I.R.C. § 77(a) election, the taxpayer would have no income to report in 2000 but would have $1.75 per bushel gain on the crop itself in 2001 plus $.37 per bushel of marketing loan gain. The commodity certificate used to redeem the corn from the CCC loan would be treated the same as money with the certificate worth $1.50 per bushel (and having an income tax basis equal to $1.50 per bushel) used to pay off the CCC loan which requires payment of $1.50 per bushel either in cash or certificate. The net amount of income per bushel is $1.75 + .37 or $2.12 per bushel.

Example 2. Assuming the same facts as in Example 1 except that the taxpayer has elected to treat CCC loan amounts as income, the taxpayer would have $1.87 per bushel of gain in 2000, the year the CCC loan is taken out. That would become the income tax basis of the crop. On redemption at $1.50 per bushel in 2001, the taxpayer would trigger a marketing assistance loan gain of $.37 per bushel. When the crop is sold later in 2001 for $1.75 per bushel, the taxpayer would have a loss of $.12 per bushel (basis of $1.87 per bushel and a selling price of $1.75 per bushel). The net gain to the taxpayer, over both years, is $1.87 + $.37 - $.12 or $2.12, the same as in Example 1. However, $1.87 would be reported in 2000 with the balance reported in 2001.

The argument has been made, based in part on the 1987 revenue ruling and in part on a subsection of the Internal Revenue Code that taxpayer should be allowed to deduct the marketing assistance loan gain ($0.37 per bushel in the above example) from the income tax basis per bushel ($1.87) rather than to report the $.37 currently (in 2001). That would enable the marketing assistance loan gain to be deferred until the crop is sold (which would be a benefit if the crop were sold after 2001).

The Internal Revenue Service has been asked to allow the deduction of the marketing assistance loan gain from the income tax basis of the crop (where CCC loan proceeds are treated as income). No decision has been made on the matter as of press time.

FOOTNOTES

5. See I.R.C. § 77(a).
10. See note 5 supra.
15. See I.R.C. § 77(a).
17. Id.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

HORSES. The plaintiff was injured by a horse bite while visiting riding stables owned by the defendant. The plaintiff was invited to the stables by another child whose parents belonged to the stable association. The defendant argued that the court should change the case law precedents and hold stable owners strictly liable for injuries caused by the horses. The defendant noted that the state had a statute which imposed strict liability on dog owners. The court refused to extend the dog owner’s law to horse owners, noting that the legislature could have included horse owners in the strict liability statute. The court held that the defendant was not liable for the injury because the defendant was not aware that children of the association members were inviting friends to the stables and feeding the horses. For the same reason, the court refused to hold that the stable was an attractive nuisance as a basis for the defendant’s liability. In addition, the court noted that the injured child testified that the child was well aware of the dangers of feeding the horses and knew the proper way to feed the horses by hand. Pullan v. Steinmetz, 16 P.3d 1245 (Utah 2000).

*Agricultural Law Manual (ALM).*
**BANKRUPTCY**

**FEDERAL TAX-ALM § 13.03[7].**

ADMINISTRATIVE EXPENSES. The IRS has ruled, in a Chief Counsel Advice letter, that post-petition taxes in a chapter 13 case are not eligible for administrative expense status because the bankruptcy estate is not a separate taxable entity. CCA Ltr. Rul. 200113027, Feb. 8, 2001.

DISCHARGE. The debtor, a surgeon, failed to file and pay income taxes for 10 years, during which the debtor suffered from alcoholism. The court found that the debtor did no affirmative acts to avoid payment of the taxes but that the debtor was merely indifferent to paying the taxes, a condition caused by the alcoholism. Once the debtor sought treatment for the alcoholism, the debtor fully cooperated with the IRS and filed all of the unfiled returns. The Bankruptcy Court held that the taxes were dischargeable because the debtor did not willfully attempt to evade payment of the taxes. The Bankruptcy Court reiterated the holding in In re Haas, 48 F.3d 1153 (11th Cir. 1997) that the mere failure to file and pay taxes when able to do so was not sufficient to render the taxes nondischargeable. The appellate court reversed, holding that the debtor’s failure to file and pay the taxes was sufficient conduct to make the taxes nondischargeable where the debtor knew that the taxes and returns were due. The court noted that the debtor had sufficient control over the debtor’s alcoholism to perform surgery; therefore, the alcoholism was insufficient to make the failure to file and pay the taxes less than willful. In re Fretz, 2001-U.S. Tax Cas. (CCH) ¶ 50,470 (11th Cir. 2001), rev’g unrep. D. Ct. dec. aff’g, 239 B.R. 605 (Bankr. N.D. Ala. 1999).

**FEDERAL AGRICULTURAL PROGRAMS**

CONFERENCES. A conference, "Fixing the Farm Bill," was held at the National Press Club, Washington, DC, on March 27, 2001. The conference was organized by John A. Schnittker, Schnittker Associates, Santa Ynez, California, and Neil E. Harl, Director, Center for International Agricultural Finance, Iowa State University. For access to the papers see web site: http://www.econ.iastate.edu/faculty/harl/FFB/ffb.html.

GENETICALLY MODIFIED ORGANISMS. The Washington Post has reported that a Canadian canola farmer was successfully sued by Monsanto Co. for failing to pay licensing fees for the use of canola seeds produced by plants pollinated by genetically modified canola in neighbors’ fields. The result means that farmers who plant non-GMO crops near GMO crops cannot save any seeds for replanting without paying the licensing fee to the GMO patent owner. M. Kaufman, “Court Says Canadian Used Company’s Plants, Washington Post, March 30, 2001.

**FEDERAL ESTATE AND GIFT TAX**

**LEGISLATION.** The U.S. House of Representatives has passed legislation which would replace the unified credit with an exemption ($700,000 in 2002-2003, $850,000 in 2004, $950,000 in 2005 and $1,000,000 in 2006 and later). The legislation would also repeal I.R.C. § 1014 (new basis of estate property at death) after 2010; provide for up to $1,300,000 basis increase thereafter for each estate with $3,000,000 in additional maximum basis increase for surviving spouses; and increase from 15 to 45 the number of partners/shareholders allowable for 15-year installment payment of federal estate tax. H.R. 8.

Legislation has been introduced in the U.S. House of Representatives which would eliminate the limit on the family-owned business deduction. H.R. 1210. Legislation has been introduced in the U.S. House of Representatives which would exclude the tax on any gain from the sale of a qualified family farm to a family member who continues to materially participate in the operation of the farm. H.R. 1179.

**BELOW-MARKET INTEREST LOANS.** A corporation was owned by many members of one family, none with a majority interest. The corporation made no-interest loans to several entities which were owned in part by the shareholders of the corporation and by nonshareholder family members. The IRS assessed taxes for interest income deemed earned by the taxpayers, under I.R.C. § 7872. The taxpayers argued that Section 7872 applied only for loans from a corporation to majority shareholders. The court held that the rules applied to below-market interest loans from the corporation to any shareholder or to entities owned by shareholders. The appellate court affirmed in a decision designated as not for publication. Rountree Cotton Co., Inc. v. Comm’r, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,316 (10th Cir. 2001), aff’g, 113 T.C. No. 28 (1999).

CHARITABLE DEDUCTION. The decedent’s will provided a bequest to the decedent’s brother in trust with a remainder to a charitable organization. The trust was not a qualified charitable trust since the brother had the power to invade the trust without limit. However, after receiving only $33,000, the brother died before the estate filed its tax return. The other heirs challenged the will and agreed to drop the contest in exchange for receiving the right to seek a charitable deduction for the estate, thus increasing the remainder estate which passed to these heirs. The court held that I.R.C. § 2055(e)(3)(F) the trust became reformed upon the death of the brother because the brother’s death fixed the amount passing under the trust to the charity; therefore, the amount passing under the trust was eligible for the charitable deduction. The IRS argued that the brother’s receipt of funds from the trust removed the trust from application of section 2055(e)(3)(F), but the court held that the statute contained no exception for cases where the trust beneficiary receives a portion of the trust before dying. On reconsideration, the
court held that the trust was not eligible for a charitable deduction because the reformation did not occur until after the brother had received distributions from the trust. 


CLAIMS. The decedent had received from a predeceased spouse an usufruct (life estate) in mineral rights in land, with the remainder passing to the decedent’s children. The decedent received the royalties over several years before death. The estate deducted the value of the royalties received as a claim of the children against the estate. The estate argued that the decedent was required to account for and repay any royalties received and retained during the usufruct. The court examined state law and the predeceased spouse’s will and held that the type of usufruct granted to the decedent did require the decedent to account for and repay any mineral royalties received during the usufruct; therefore, the children were entitled to repayment from the estate and the estate was entitled to a deduction for the amount paid. The appellate court affirmed in a decision designated as not for publication. 

MARSHALL v. COMM’R, 2001-1 U.S. Tax Cas. (CCH) ¶ 60,397 (5th Cir. 2001), aff’g, 99-2 U.S. Tax Cas. (CCH) ¶ 60,360 (E.D. La. 1999).

DEDUCTIONS. The decedent had redeemed stock received from the estate of a predeceased spouse. The decedent realized gain on the redemption, based on the basis in the stock established by the predeceased spouse’s estate for federal estate tax purposes. The decedent’s estate tax return claimed a deduction for the federal income tax paid on the stock redemption. The predeceased spouse’s estate tax return was audited and the value of the stock was increased, thus increasing the decedent’s basis in the stock and decreasing the income tax liability. The decedent’s estate filed for a refund which was allowed. The IRS then assessed a deficiency against the decedent’s estate tax because of a decrease in the deduction for federal income tax. The estate argued that post-death events should not be considered in determining the amount of a deduction which was valid on the date of the decedent’s death. The estate cited Propstra v. United States, 680 F.2d 1248 (9th Cir. 1982) and Estate of Sachs v. Comm’r, 88 T.C. 769 (1987), rev’d, 856 F.2d 1158 (8th Cir. 1988) which did not allow changes based on post-death events. The Tax Court distinguished the current case on the basis that the estate here had requested the refund of income taxes, demonstrating that the income tax liability was contingent as of the decedent’s death. The Tax Court held that the income tax deduction for estate tax purposes had to be decreased by the amount of the refund. The Tax Court also held that the deduction for state income taxes was also decreased since the state tax liability was dependent upon the estate’s income tax liability. The appellate court reversed, holding that the post-death events cannot be considered in valuing a deduction. 

EST. OF McMORRIS v. COMM’R, 2001 U.S. Tax Cas. (CCH) ¶ 60,396 (10th Cir. 2001), rev’g, T.C. Memo. 1999-82.

GROSS ESTATE. The decedent’s estate included an interest in a QTIP trust received from the decedent’s predeceased spouse. The trust owned 42 percent of farm land. The land was contributed to a limited partnership.

However, the operation of the farm, including management of timber and peach orchards, was handled by a separate general partnership in which the trust was not a partner. The court held that the timber and orchard and other farm personal property was not included in the QTIP trust property because title were reserved by the decedent and predeceased spouse and contributed to the general partnership. 


LIFE INSURANCE. The taxpayers, husband and wife, established a trust for the benefit of their parents and heirs. The trusts owned life insurance policies on the lives of the taxpayers. The trusts contributed the insurance policies to a limited partnership in exchange for limited partnership interests. The taxpayers were also limited partners in the partnership. The limited partnership also owned other investment properties. Under I.R.C. § 101(a)(1) gross income does not include amounts received under a life insurance contract, if such amounts are paid because of the death of the insured. However, under I.R.C. § 101(a)(2), if a life insurance contract or any interest therein is transferred for valuable consideration, the exclusion from gross income provided by Section 101(a)(1) is limited to an amount equal to the sum of the actual value of the consideration and the premiums and other amounts subsequently paid by the transferee. An exception to the Section 101(a)(2) rule is provided in I.R.C. § 101(a)(2)(B) for insurance contracts transferred to partnerships in which the insured is a partner. The IRS ruled that the trust’s life insurance policies were transferred for valuable consideration, the exchanged partnership interests, but that the exception applied because the taxpayers were limited partners in the receiving partnership. The IRS also ruled that the partnership held all the incidents of ownership such that the policies would not be included in the taxpayers’ estates. 


VALUATION. The decedent’s estate included an interest in a QTIP trust received from the decedent’s predeceased spouse. The trust owned 42 percent of farm land. The court held that the value of the land for federal estate tax purposes could be discounted by 30 percent of the fair market value.


The taxpayers established a trust for themselves, with remainders to their children. The taxpayers transferred to the trust a residence which included an 8.7 acre main lot, a one-seventh interest in a 16.7 wooded lot and easements granting access to the properties which ran between the two parcels. The IRS ruled that the entire property qualified as a personal residence and that the trust was a qualified personal residence trust. 


VALUATION OF STOCK. The decedent owned 19.86 percent of the stock of a family-owned S corporation, the largest block of stock owned by any one shareholder. The estate valued the stock at $29.77 per share, based upon a pre-death appraisal and two post-death sales of stock by other family members to another family member. The sales were made without negotiation and without any determination of the fair market value of the stock. The court held that the post-death sales were not determinative of the value of the
stock because the transactions were not negotiated and the number of shares sold was much smaller than the decedent’s holdings. The estate presented an expert appraiser’s appraisal of the stock in support of the $29.77 value but the Tax Court found that the appraiser’s valuation was defective because it was based solely upon sale of the stock to other shareholders, which was not required by the corporation’s bylaws. The Tax Court held that the IRS valuation of the stock was to be used because the estate failed to present sufficient evidence to rebut that valuation. The appellate court reversed, holding that the post-death sale of stock was representative of the fair market value because the sellers did not have to sell the stock, the buyers obtained an appraisal from a brokerage, and the buyers were not closely related to the sellers or the decedent. Morrissey v. Comm’r, 2001-1 U.S. Tax Cas. (CCH) ¶ 60,395 (9th Cir. 2001), rev’g sub. nom., Estate of Kaufman v. Comm’r, T. C. Memo. 1999-119.

The taxpayers had transferred by gift stock in a closely-owned corporation and had valued the stock at $175.24 per share for gift tax purposes. IRS had issued a deficiency notice based upon an income-based appraised value of $260.13 per share. At trial both parties presented expert valuations, with the IRS expert valuing the stock at $260.61 per share on a market-based approach. The court held that the taxpayer’s expert’s valuation was flawed; therefore, because the taxpayer failed to provide evidence to support the taxpayer’s valuation of the stock, the IRS value in the notice of deficiency was presumed correct and upheld. Wall v. Comm’r, T.C. Memo. 2001-75.

**FEDERAL INCOME TAXATION**

**LEGISLATION.** CCH has published a report by the Joint Committee on Taxation on an overview of current and proposed taxation law for small business and agriculture. JCX-19-01.

**BUSINESS EXPENSES.** The taxpayer operated a financial planning business as well as maintained employment with a bank. The taxpayer claimed business deductions for depreciation, office expenses, meals and travel expenses. Most of the items were substantiated only by entries in a daily planner and credit card monthly statements. The court found that several of the daily planner entries were not clear as to the business purpose for the expense and held that only the expenses clearly substantiated as to date, amount and business purpose were allowed as deductions. Bishop v. Comm’r, T.C. Memo. 2001-82.

The taxpayer was not allowed business deductions for more than those allowed by the IRS because the taxpayer did not keep any records of the amounts, dates and purposes of the expenses. Gapikia v. Comm’r, T.C. Memo. 2001-83.

**COOPERATIVES.** The IRS has announced that it acquiesces in the following case. The taxpayer was a nonexempt agricultural cooperative which owned directly or through stock ownership oil and gas refinery businesses which provided petroleum products to the members of the taxpayer. The taxpayer sold the stock and properties when the businesses became nonprofitable and the issue was whether the proceeds of the sales were patronage-sourced income. The court held that the proceeds were patronage-sourced income because the property was directly related to the taxpayer’s business with its members. The court rejected the IRS argument that all capital gain was nonpatronage-sourced income. Farmland Indus., Inc. v. Comm’r, T.C. Memo. 1999-388, acq., I.R.B. 2001-__.

**COURT AWARDS AND SETTLEMENTS.** The taxpayer owned property neighboring a petroleum processing plant. The taxpayer complained about the odors and appearance of the plant and the plant owners agreed to purchase the taxpayer’s property for cash and 450 acres of property elsewhere. The taxpayer signed a release of all claims against the plant owners. The court held that, under Texas law, an action for emotional harm could not result from the lawful operation of the plant. The court also held that the taxpayer had not made any claim in tort for personal harm but that the proceeds were paid in compensation for the property rights transferred to the plant owners; therefore, the proceeds were included in the taxpayer’s gross income to the extent they exceeded the taxpayer’s basis in the property. The appellate court affirmed in a decision designated as not for publication. Holland v. United States, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,465 (5th Cir. 2001), aff’g, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,465 (S.D. Texas 2000).

The taxpayer was a former employee of an employer who was sued by class action for overtime compensation, liquidated damages, attorney fees and costs. The taxpayer was a member of the class but did not actively participate in the suit. The action was settled and the taxpayer received a portion of the settlement. The taxpayer did not include any of the proceeds in income, arguing that the proceeds represented compensation for personal injury from racial discrimination claims against the employer. The court noted that no racial discrimination claims were raised as part of the class action lawsuit or settlement negotiations. The court held that the proceeds were included in the taxpayer’s income as back pay, liquidated damages, attorneys’ fees and costs. The IRS acknowledged that the taxpayer was entitled to an itemized deduction for the attorneys’ fees and costs. Waters v. Comm’r, T.C. Summary Op. 2001-46; Nelson v. Comm’r, T.C. Summary Op. 2001-44.

**DISASTER PAYMENTS.** The IRS has issued additional guidelines for extensions for filing returns and paying estimated, income, gift and estate taxes for persons suffering losses from the 2000 Cerro Grande fire in New Mexico. IR-2001-42.

On March 20, 2001, the President determined that certain areas in Maine were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of near-record snow on March 5-7, 2001. FEMA-3164-EM. Accordingly, a taxpayer who sustained a loss attributable to the disasters may deduct the loss on his or her 2000 federal income tax return.

**MARKET SEGMENT TRAINING GUIDE.** The IRS has announced the publication of a revised Market Segment
Specialization Program Audit Technique Guide—IRC Section 183: Farm Hobby Losses with Cattle Operations and Horse Activities.

PENSION PLANS. For plans beginning in March 2001, the weighted average is 5.87 percent with the permissible range of 5.29 to 6.17 percent (90 to 106 percent permissible range) and 5.29 to 6.46 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). Notice 2001-28, I.R.B. 2001-13, 944.

The taxpayer an attorney who operated the practice through a professional corporation. The corporation provided a pension plan in which the taxpayer was the sole participant. The plan allowed loans of up to 50 percent of the vested interest in the plan for up to five years. The taxpayer borrowed money from the plan. The loan agreement provided for monthly payments of principal and interest over five years with a large balloon payment at the end of the term. The monthly payments would require 15 years to repay the loan. The court held that the loan was included in the taxpayer’s income in the year made because the loan violated I.R.C. §§ 72(p)(2)(B)(i) or 72(p)(2)(C) in that the loan either exceeded the five year limitation of Section 72(p)(2)(B)(i) or the level amortization amount requirement of Section 72(p)(2)(C). Plotkin v. Comm’r, T.C. Memo. 2001-71.

RETURNS. The IRS has released revised Publication 51 (Rev. January 2001), Circular A, Agricultural Employer’s Tax Guide (Including 2001 Wage Withholding and Advance Earned Income Credit Payment Tables) and Publication 1779, Independent Contractor or Employee (Rev. 12-99). These documents are available at no charge (1) by calling the IRS’s toll-free telephone number, 1-800-829-3676; (2) via the internet at http://www.irs.gov/prod/cover.html; (3) through FedWorld; or (4) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

The IRS has announced that it will follow the holding of Weisbart v. United States, 222 F.3d 93 (2d Cir. 2000), rev’g. 99-1 U.S. Tax Cas. (CCH) ¶ 50,549 (E.D. N.Y. 1999), which held that, under I.R.C. § 7502(a), a claim for refund on a delinquent original return will be considered filed on the postmark date. This rule will apply to other tax returns as well. Final regulations have been issued which are consistent with this announcement. See Treas. Reg. § 301.7502-1(f), 66 Fed. Reg. 2257 (Jan. 11, 2001). CC-2001-019.

SALE OF RESIDENCE. The taxpayer, a certified public accountant, sold a residence in December 1993. In August 1995, a corporation wholly-owned by the taxpayer completed a residence. The taxpayer used the residence for temporary sleeping quarters but kept the taxpayer’s personal belongings in the taxpayer’s camper. The corporation accepted a third party offer to buy the house in November 1995. In early December, the corporation executed a quitclaim deed for the house to the taxpayer in exchange for an offset of debt owed to the taxpayer. On December 26, 1995, the taxpayer quitclaimed the title to the house back to the corporation which then sold it to the third party. The court held that the sale of the house to the taxpayer was not bona fide and did not qualify the taxpayer for deferment of gain from the sale of the first house. Because the purchase of the house was not bona fide and was made solely to qualify the taxpayer for the deferral of gain, the court upheld the IRS assessment of the accuracy-related penalty. Bare v. Comm’r, T.C. Summary Op. 2001-48.

The taxpayer purchased a new residence before selling the old residence. The old residence was rented until it was sold more than two years after the purchase of the new residence. The taxpayer sought a court ruling which would allow the deferral of gain, even though the two year period had expired. The court held that it had no jurisdiction to extend the two year period of I.R.C. § 1034(a). Anthony v. Comm’r, T.C. Summary Op. 2001-41.

SOCIAL SECURITY TAX. The taxpayer had reported self-employment income and expenses and earned income credit on a timely filed return which claimed a refund. The IRS audited the return and disallowed the self-employment income and expenses and earned income credit, resulting in a tax deficiency which was paid by the taxpayer. The IRS notified the Social Security Administration of the abatement of the self-employment taxes for SSA purposes. The taxpayer later submitted information which supported the income and expenses and filed for a refund again after the statute of limitations had run on assessment of the self-employment taxes. In addition, the IRS had no authority or procedure to notify the SSA of the repayment of self-employment taxes. In a Service Center Advice letter, the IRS ruled that the self-employment taxes could still be offset against the last refund claim, even though the assessment limitation period had expired. The IRS also stated that procedures would be created for notifying the SSA of late changes in the payment of social security taxes in cases similar to the one in this letter. SCA Ltr. Rul. 200113002, May 30, 2000.

THEFT LOSS. The taxpayer entered into a contract with an out-of-state company to sell that company’s product. The taxpayer paid a fee of $24,000 but was unable to ever receive sufficient product to carry on the business. The taxpayer made several attempts in 1994 to obtain the return of the taxpayer’s investment but was unsuccessful. The taxpayer claimed to have continued to try to recover the investment in 1995 and 1996 but presented no substantiating evidence. The court held that the taxpayer failed to demonstrate that a theft loss had occurred and that the loss occurred in 1996. Gupta v. Comm’r, T.C. Summary Op. 2001-47.

INSURANCE

BAD FAITH. The plaintiff had obtained a real and personal property insurance policy from the defendant. Because the policy excluded coverage for loss of animals from freezing, the plaintiff purchased extra coverage for this loss. The plaintiff lost 297 cattle in two separate snow storms and filed for recovery of the loss from the defendant. The defendant refused to pay the loss until each animal had been necropsied, which required the plaintiff to thaw each animal and have it examined by a veterinarian for cause of death and then retain the animals. The defendant told the...
plaintiff that the plaintiff had to prove the cause of death, even though the policy covered all losses. The defendant eventually refused to cover the losses because the plaintiff did not completely own the animals. The plaintiff had obtained investors who contributed money in exchange for a portion of the profits from the animals. The court found that the policy referred only to the insured as “owner” of the property but did not provide any definition of that term. The policy did not provide that partial ownership was not covered under the policy. The plaintiff received a jury verdict for actual, bad faith and punitive damages. The court rejected the defendant’s argument that the policy required 100 percent ownership of covered property. The court noted that the defendant was aware of the plaintiff’s partial interest in the cattle before and after the policy was purchased and failed to inform the plaintiff that the policy would not fully cover animals in which the plaintiff had a partial interest. The court held that the policy use of the word “owner” was ambiguous and would be interpreted against the defendant as the drafter of the document. The court also upheld the award for bad faith because the evidence demonstrated that the defendant attempted to discredit the plaintiff, attempted to hide facts, and placed an unreasonable demand on the plaintiff to have the cattle necropsied and stored on the farm for several months. The evidence even included a tape recording of the defendant’s agents plotting how they could avoid paying on the claim. The court also upheld the punitive damages for the same reasons. Sawyer v. Farm Bureau Mut. Ins. Co., 619 N.W.2d 644 (S.D. 2000).

PRODUCT LIABILITY

HERBICIDE-ALM § 2.04. The plaintiffs were wheat and barley farmers and applied to their crops herbicide manufactured by the defendant. For several weeks after the application, the nighttime temperatures were near or below freezing. A state Department of Agriculture expert told the plaintiffs that cold temperatures could cause damage to crops treated with the herbicide. The plaintiffs sued in negligence, breach of warranty and strict liability, claiming that the defendant was negligent in manufacturing, advertising and selling a product which could cause damage when applied at the normal time for application, in the spring when the nights were cold. The trial court dismissed all claims as preempted by FIFRA. The appellate court held that the suit was preempted by FIFRA because the EPA approval of the herbicide label stated that the EPA would no longer consider the herbicide to be defective. The court held that this instruction was improper in that the “defective condition unreasonably dangerous” language was superfluous and confusing because a herbicide which was defective was unreasonably dangerous as a matter of law. The plaintiffs also appealed the jury verdict on the basis that it should have been allowed to present evidence of the content of the herbicide label. The defendant argued that, even under the prior appellate holding of this case, FIFRA preempted all state law damage claims involving information on the label. The court held that, in Sleath v. West Mont, 16 P.2d 1042 (Mont. 2000), it reversed its prior ruling in this case; therefore, the label contents were admissible and the trial court’s refusal to allow the evidence was reversible error. Earlier case: McAlpine v. Rhone-Poulenc Ag. Co., 947 P.2d 474 (Mont. 1997), McAlpine v. Rhone-Poulenc Ag. Co., 16 P.3d 1054 (Mont. 2000).

The plaintiffs were peanut farmers who had applied on their crops a herbicide manufactured by the defendant. The plaintiffs filed suit for strict liability, breach of express and implied warranties, and violation of the Texas Deceptive Trade Practice-Consumer Protection Act. The defendant argued, and the trial court granted summary judgment on the grounds, that the suit was preempted by FIFRA. The plaintiffs claimed that the herbicide off-label advertisements and brochures stated that the herbicide could be mixed with another herbicide without damaging crops. In addition, the herbicide label stated that it could be mixed with another herbicide without damaging crops. The plaintiffs produced evidence that the damage to their crops resulted from mixing these two herbicides before applying them. The court noted that the EPA had issued Pesticide Regulation Notice 96-4 which stated that the EPA would no longer consider the efficacy of registered herbicides in the registration process. The court also noted that this notice was merely a restatement of a two decade practice by the EPA in not considering the efficacy of registered herbicides. Therefore, the court held that FIFRA did not preempt state court actions involving herbicide labeling where the action involved the ability of the herbicide to perform as indicated on the label. This case conflicts with several other state court cases, including cases which have discussed the effect of Notice 96-4. Geye v. American Cyanamid Co., 32 S.W.3d 916 (Tex. Ct. App. 2000).

CITATION UPDATES


Gitlitz v. United States, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,147 (S. Ct. 2001) on rem., 2001-1 U.S. Tax Cas. (CCH) ¶ 50,319 (10th Cir. 2001), vac’g, 182 F.3d 1143 (10th Cir. 1999), aff’g sub nom., Winn v. Comm’r, T.C. Memo. 1998-71 (discharge of indebtedness) see p. 15 supra.

Muhich v. Comm’r, 238 F.3d 860 (7th Cir. 2001) (trusts) see p. 29 supra.
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October 2-5, 2001  Interstate Holiday Inn, Grand Island, NE

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The seminar are held at each site on Tuesday, Wednesday, Thursday, and Friday. Registrants may attend one, two, three or all four days, with separate pricing for each combination. On Tuesday, Dr. Harl will speak about farm and ranch income tax. On Wednesday, Dr. Harl will cover farm and ranch estate planning. On Thursday, Roger McEowen will cover farm and ranch business planning. On Friday, Roger McEowen will cover current developments in several other areas of agricultural law. Your registration fee includes comprehensive annotated seminar materials for the days attended which will be updated just prior to the seminar. The seminar materials will also be available on CD-ROM for a small additional charge. A buffet lunch and break refreshments are also included in the registration fee.

Here are some of the major topics to be covered:

• Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.
• Taxation of debt, taxation of bankruptcy, the latest on SE tax of rental of land to a family-owned entity; income averaging; earned income credit; commodity futures transactions; paying wages in kind.
• Farm estate planning, including 15-year installment payment of federal estate tax, co-ownership discounts, alternate valuation date, special use valuation, family-owned business deduction (FOBD), marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, trusts, and generation skipping transfer tax.
• Gifts and federal gift tax, including problems with future interests, handling estate freezes, and “hidden” gifts.
• Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.
• Legal developments in farm contracts, secured transactions, bankruptcy, real property, water law, torts, and environmental law.

Special room discounted rates are available at each hotel for seminar attendees.

The seminar registration fees for current subscribers (and for multiple registrations from one firm) to the Agricultural Law Digest, the Agricultural Law Manual, or Principles of Agricultural Law are $180 (one day), $345 (two days), $500 (three days), and $650 (four days). The registration fees for nonsubscribers are $200, $385, $560 and $720, respectively. Please Note: the registration fees are higher for registrations within 20 days prior to the seminar, so please call for availability and the correct fees. More information and a registration form are available online at www.agrilawpress.com

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