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Cases, Regulations, and Statutes

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

BANKRUPTCY

FEDERAL TAX-ALM § 13.03[7].*

DISCHARGE. The debtor had pled guilty for violation of 18 U.S.C. § 371 for conspiracy to impair the lawful functions of the IRS by failing to report income. The debtor sought to discharge the tax on that unreported income and the IRS argued that the taxes were nondischargeable under Section 523(a)(1)(C) for willful attempt to evade taxes. The court held that the debtor was collaterally estopped by the debtor’s guilty plea to the conspiracy charge from denying that the debtor had willfully attempted to evade the taxes; therefore, the taxes were nondischargeable. In re Summers, 266 B.R. 292 (Bankr. E.D. Penn. 2001).

The debtor had severed as executor of a decedent’s estate which had failed to fully pay federal estate taxes. The IRS had filed suit against the debtor for payment of those taxes and that suit was pending when the debtor filed for Chapter 7. The IRS argued that the taxes were nondischargeable under Section 523(a)(4) as a debt resulting from fraud or defalcation while acting in a fiduciary capacity. The debtor argued that the IRS lacked standing to challenge the tax on that unreported income and the IRS asserted that the taxes were dischargeable under Section 523(a)(1)(C) for willful attempt to evade taxes. The court held that the implied warranties of merchantability and fitness for a particular purpose had been breached. The court held that, therefore, the taxes were nondischargeable. In re Tomlin, 266 B.R. 350 (N.D. Tax. 2001).

CONTRACTS

HEDGE-TO-ARRIVE CONTRACTS. The Chapter 12 debtor was a farmer who had entered into several hedge-to-arrive contracts which provided for delivery of grain but allowed the debtor to rollover the delivery of the grain to subsequent years. The contracts also contained clauses which required all disputes involving the contracts to be arbitrated under the National Grain and Feed Association arbitration rules. After the debtor defaulted on the contracts, the buyer obtained a state court judgment to enforce the arbitration provisions and the parties submitted the dispute to arbitration. The arbitration panel ruled that the hedge-to-arrive contracts were enforceable and not illegal off-exchange futures contracts because actual delivery of the grain was intended. The buyer filed a claim in the bankruptcy case based on the arbitration award. The debtor sought to challenge the claim on the basis that the arbitration award was improper because of industry bias of the arbitration panel and because the hedge-to-arrive contracts were illegal off-exchange futures contracts. The court held that the debtor failed to prove that the arbitration panel was biased or exceeded its authority and also upheld the panel’s ruling that the contracts were enforceable. In re Robinson, 265 B.R. 722 (Bankr. 6th Cir. 2001).

WARRANTY. The plaintiff purchased a used tractor from the defendant. The tractor immediately had mechanical problems and after six months of attempting to fix these problems and 160 hours of use, the plaintiff sued for breach of express and implied warranties, fraud, misrepresentation and deceit. The trial court held that the tractor had defective o-rings and the implied warranties of merchantability and fitness for a particular purpose had been breached. The appellate court held that sufficient evidence was presented to support the trial court’s ruling that the tractor had defective o-rings which caused the mechanical problems. The defendant argued that the plaintiff waited too long to claim that the implied warranties of merchantability and fitness for a particular purpose had been breached. The court held that, considering the plaintiff’s difficulty in determining the actual problem, the amount of time between the purchase of the tractor and the suit to recover damages was reasonable. Eggly v. Letvin Equip. Co., 632 N.W.2d 435 (N.D. 2001).
FEDERAL AGRICULTURAL PROGRAMS

TOBACCO. The FSA has issued final regulations which implement the provisions of the Agricultural Risk Protection Act of 2000 regarding transfers of tobacco allotments, the lease and transfer of burley tobacco quota and recordkeeping for burley tobacco quota and acreage. It also implements the provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001 regarding the Tobacco Loss Assistance Program 2000. 66 Fed. Reg. 53507 (Oct. 23, 2001).

The FSA has announced the intention of the Secretary of Agriculture to release the burley tobacco farm designation information, which includes, but is not limited to, the farm serial number, operator's name and address and pounds designated to a specific market location and provides notice of the method in which interested parties can opt out of that release. The release will be to the designated warehouse operator, receiving station buying company or dealer in order to facilitate an orderly marketing of the 2001 crop of burley tobacco. 66 Fed. Reg. 53945 (Oct. 25, 2001).

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The decedent owned an interest in property in which a conservation easement was granted to a charitable organization. The conservation easement transfer was completed after the decedent’s death but before the timely filing of the estate tax return. The owners of the other interests in the property claimed charitable deductions for the transfer on their federal income tax returns. The estate sought to make an election under I.R.C. § 2031(c)(9) to claimed a charitable deduction for the decedent’s share of the conservation easement transferred. The Section 2031(c)(9) election requires that no other charitable deduction can be claimed for the conservation easement. The IRS ruled that the limitation on the Section 2031(c)(9) applied only as to the decedent’s interest in the property. Because no other person claimed a charitable deduction for the decedent’s interest in the conservation easement, the decedent’s estate could claim a charitable deduction as to that interest. Ltr. Rul. 200143011, July 25, 2001.

GIFT. The taxpayer had originally sold real estate to the taxpayer’s children for a downpayment and a promissory note. However, the taxpayer returned the downpayment checks and never attempted to collect on the note. The children executed a mortgage for the taxpayer and the taxpayer released the mortgage when one child needed to secure a loan on the property. When the checks were returned, an accompanying letter referred to the purchase of the real estate by the children and a gift of only the downpayment. The IRS filed a tax lien against the taxpayer’s property and the issue was whether the taxpayer had any attachable interest in the property when the tax lien was filed. The court held that if the transaction was a purchase, the taxpayer still had a right of payment which was subject to the lien. However, if the taxpayer had forgiven the entire note, no interest remained to be attached. The court held that the transaction was a sale in which the taxpayer retained an interest in the property sufficient for the tax lien to attach. See also United States v. Jepsen, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,608 (W.D. Ark. 2000) (ruling on summary judgment). United States v. Jepsen, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,698 (8th Cir. 2001).

The taxpayer, as part of estate tax planning, formed a corporation and transferred cash, Treasury notes and tax-free municipal bonds to the corporation in exchange for all of the stock. The taxpayer made gifts of the stock to various family members and the main issue was the value of the gifts for federal gift tax purposes. The issues included (1) whether the corporation should be disregarded as having no economic substance and the gifts be valued based on the value of the underlying assets; (2) whether restrictions on the sale and use of the corporate assets should be disregarded; (3) whether restrictions on the sale of the stock should be disregarded; and (4) whether discounts for gifts of minority interests and lack of marketability should be allowed. In a Chief Counsel advice letter, the IRS ruled that the corporation should be disregarded because the corporation operated no business, paid no officers, had no employees, functioned as a mere conduit for planned family gifting, and was formed for the sole purpose of reducing federal transfer taxes. The IRS also ruled that the gifts did not satisfy the I.R.C. § 2703(b) “safe harbor” requirements for exception to the statute’s application and that no discounts from the fair market value of each proportionate gift of the corporation’s underlying cash and securities should be allowed. CCA LTR. Rul. 200143004, July 5, 2001.

SPECIAL USE VALUATION. The decedent’s daughter, as executor, sought legal advice as to whether the daughter or the decedent owned a ranch. The attorney advised that the daughter owned the ranch and that the ranch was not included in the decedent’s estate. The daughter timely filed the estate tax return and did not include the ranch in the gross estate. The daughter then filed a quiet title action in state court which ruled that the daughter held the ranch in constructive trust for the estate. The daughter, again under advice of counsel, did not amend the estate tax return to include the ranch in the decedent’s estate. The IRS audited the return and determined that the ranch was owned by the decedent at death. The daughter filed an appeal with the Tax Court which ruled that the ranch was included in the estate. The daughter requested an extension of time to file a special use valuation election. The IRS granted the extension. Ltr. Rul. 200143014, July 26, 2001.

TRUSTS. The taxpayers, husband and wife, each established a grantor retained annuity trust (GRAT). Each
trust provided that if the annuitant died with a surviving spouse, the surviving spouse would continue as annuitant. Each trust also allowed the grantor the power to revoke the remainder annuity for the surviving spouse. The taxpayers valued the remainder interests of both trusts using both lives. The court held that a qualified annuity interest had to set a certain term in order to qualify the trust as a GRAT. Because the lifetime of the secondary annuitant was uncertain and could be revoked, the GRATs had to be valued using a single life. *Cook v. Comm'r*, 2001-2 U.S. Tax Cas. (CCH) ¶ 60,422 (7th Cir. 2001), aff'd, 115 T.C. No. 2 (2000).

The taxpayers, husband and wife established a charitable remainder unitrust with the taxpayers as lifetime beneficiaries and a charitable organization as remainder holder. Each taxpayer had the power to revoke by will the survivor’s right to the benefits of one-half of the trust in the case of the death of a taxpayer. The taxpayer decided to divorce and, as part of the property settlement, divide the trust into two separate trusts, each owning one-half of the original trust assets and each as the lifetime beneficiary of the separate trusts. The trusts were identical except that no survivor beneficiary was included. The IRS ruled that (1) the division of the trust would not cause any of the trusts to fail to qualify as charitable remainder trusts under I.R.C. § 664; (2) the division of the trust would not terminate the trust’s status as a trust described in, and subject to, the private foundation provisions imposed on split-interest trusts under I.R.C. § 4947(a)(2), and would not result in the imposition of an excise tax under I.R.C. § 507(c); (3) the resulting trusts would not be treated as newly created organizations and would succeed to the aggregate tax benefit defined by I.R.C. § 507(d) in proportion to the fair market value of the assets transferred to the resulting trusts; (4) the proposed division of the trust would not be an act of self-dealing under I.R.C. § 4941; (5) the division of the trust would not be a taxable expenditure under I.R.C. § 4945; and (6) if reasonable in amount, the legal and other expenditures incurred by the trust to effect the division of the trust would not be self-dealing under I.R.C. § 4941 nor a taxable expenditure under I.R.C. § 4945. *Ltr. Rul. 200143028, July 31, 2001.*

**FEDERAL INCOME TAXATION**

**ACCOUNTING METHOD.** The taxpayer was a C corporation which manufactured and sold computer software programs. The taxpayer had annual gross receipts of just under $5 million. The taxpayer used a hybrid method of accounting for book and tax purposes. The IRS determined that the taxpayer should have used the accrual method of accounting and assessed a deficiency. The taxpayer argued that the IRS determination was an abuse of discretion because (1) the taxpayer had less than $5 million in gross receipts and met the exception of I.R.C. § 448(b)(3) because it had consistently used a cash method of accounting; (2) the taxpayer did not receive substantial income from the sale of merchandise; and (3) the taxpayer had already changed to the accrual method two years after the tax year involved here. The court held that (1) the $5 million limit did not entitle the taxpayer to use the cash method but merely provided a point at which the accrual method was required; (2) the software was considered merchandise; and (3) the taxpayer’s later accounting change did not affect the propriety of the IRS action for the tax year involved here. *Nemetschek North America, Inc. v. Comm'r*, T.C. Memo. 2001-288.

**BAD DEBTS.** The taxpayer loaned $20,000 to a co-employee in 1987 and received a promissory note to be repaid in 23 days. No payments were made for seven years when the co-employee died in 1994. The taxpayer made no attempt to collect the debt from the co-employee’s estate and claimed the debt as a nonbusiness bad debt deduction in 1996. The taxpayer provided no evidence that the debt was uncollectible. The court held that the debt was not deductible because the taxpayer failed to demonstrate that the transaction was a bona fide debt and that the debt became worthless in 1996. The court noted that the taxpayer made no attempt to collect the debt for nine years, even after the co-employee died. *Webb v. Comm'r*, T.C. Summary Op. 2001-172.

**BUSINESS EXPENSES.** The taxpayer operated a construction business and claimed various deductions for business expenses. The taxpayer’s records were kept at the office of the taxpayer’s accountant and those records were lost through circumstances beyond the taxpayer’s control. The court accepted the testimony of the taxpayer as substantiation of the expenses to the extent the testimony was not controverted by evidence presented by the IRS. The court allowed most of the expense deductions but did not allow a depreciation deduction because the taxpayer did not present evidence identifying the property depreciated. *Furnish v. Comm'r*, T.C. Memo. 2001-286.

**CAPITAL GAIN.** Under Section 311(e) of TRA 1997, noncorporate taxpayers could elect to treat capital assets as having been sold and repurchased at fair market value on January 1, 2001. The election requires that any gain be “recognized notwithstanding any provision of the . . . Code.” The taxpayer made the election in respect to the principal residence owned by the taxpayer with a basis more than $250,000 less than the fair market value. The IRS ruled that § 121 did not apply to the recognition of gain resulting from a Section 311(e) election as to the residence. A future issue of the Digest will publish an article by Neil Harl on this ruling and other features of the 1997 statute *Rev. Rul. 2001-57, I.R.B. 2001-__.*

**COURT AWARDS AND SETTLEMENTS-ALM § 4.02[14].** The taxpayer was convicted for two violations of the antitrust provisions under the Sherman Act. The taxpayer was also the defendant under a civil action brought under Section 4 of the Clayton Act for the same violations. In addition, the taxpayer had entered into settlement negotiations with a third party for the same violations, but no
law suit had been filed. The taxpayer reached settlements with both parties and claimed the settlement amounts as business deductions. The IRS ruled that the two-thirds exclusion of I.R.C. § 162(g) for payments made for damages under an action brought under Section 4 of the Clayton Act applied only to the settlement reached with the party who had filed suit against the taxpayer. The IRS ruled that the exclusion did not apply to the other settlement payment because no law suit had been filed. Ltr. Rul. 200143006, July 10, 2001.

IRA. The taxpayer was employed until January 16, 1996 with an employer who provided a qualified pension plan. The taxpayer made contributions to the plan and the taxpayer’s interest in the plan was vested. The taxpayer found new employment for the remainder of 1996 but that employer did not provide a pension plan. The taxpayer made a contribution of $2,000 to an IRA in 1996 and deducted that amount from gross income. The court held that the 1996 IRA contribution was not deductible because the taxpayer was a participant in a qualified pension plan during some portion of 1996. Trull v. Comm’r, T.C. Summary Op. 2001-168.

PASSIVE ACTIVITY LOSSES. The taxpayer was a 35 percent shareholder in an S corporation which operated a restaurant. The taxpayer claimed the taxpayer’s share of corporate losses but the IRS disallowed the losses as resulting from a passive activity. The taxpayer presented a written description of the time spent on corporate affairs which was prepared as part of the IRS audit process and also presented oral testimony as to the amount of time spent on corporate business. The court held that this evidence was not reliable and could not be considered in determining whether the taxpayer actively participated in the corporation’s business. The court held that the losses were passive activity losses because the taxpayer failed to prove that the taxpayer actively participated in the business. Newhart v. Comm’r, T.C. Memo. 2001-289.

PENSION PLANS. For plans beginning in October 2001, the weighted average is 5.76 percent with the permissible range of 5.18 to 6.05 percent (90 to 106 percent permissible range) and 5.18 to 6.34 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). Notice 2001-65, I.R.B. 2001-43, 369.

The IRS has issued proposed regulations that provide guidance concerning the requirements for retirement plans providing catch-up contributions to individuals age 50 or older pursuant to the provisions of I.R.C. § 414(v) added by EGRTTA 2001. The proposed regulations would affect I.R.C. § 401(k) plans, I.R.C. § 408(p) SIMPLE IRA plans, I.R.C. § 408(k) simplified employee pensions, I.R.C. § 403(b) tax-sheltered annuity contracts, and I.R.C. § 457 eligible governmental plans, and would affect participants eligible to make elective deferrals under these plans or contracts. 66 Fed. Reg. 53555 (Oct. 23, 2001).

REFUNDS. The IRS has announced that almost 300,000 advance payment checks authorized under EGRTTA 2001 remain unclaimed because of incorrect taxpayer addresses. Taxpayers have until December 5, 2001 to notify the IRS of their correct address in order to receive a check; otherwise, the 2001 tax payment will need to be included in the 2001 tax return as a credit. Form 8822 should be used to notify the IRS of a change of address. IR-2001-103.

RETURNS. The IRS has announced that the IRS Martinsburg Computing Center (MCC) Information Reporting Program call site now has a toll-free telephone number, 866-455-7438. The call site provides service to the payer community (financial institutions, employers, and other transmitters of information returns). The call site answers both magnetic media and tax law questions relating to the filing of information returns (Forms 1096, 1098, 1099, 5498, 8027, W-2G, and W-4). The call site also answers magnetic media questions related to Forms 1042-S, and tax law and paper filing related questions about Forms W-2 and W-3, as well as handling inquiries dealing with backup withholding and reasonable cause requirements due to missing and incorrect taxpayer identification numbers. The call site accepts calls from all areas of the country. Payers and transmitters may still use the original telephone number, which is 304-263-8700 or Telecommunications Device for the Deaf, 304-267-3367. These are toll calls. The call site can also be reached via e-mail at mccirp@irs.gov. Hours of operation for the Call Site are Monday through Friday, 8:30 a.m. to 4:30 p.m. Eastern time. Ann. 2001-107, I.R.B. 2001-44, 419.

The IRS has announced the publication of revisions of the following forms: Form 1040 (2001), U.S. Individual Income Tax Return; Form 1040, Schedules A&B (2001), Itemized Deductions and Interest and Ordinary Dividends, and instructions; Form 1040, Schedule E (2001), Supplemental Income and Loss, and instructions; Form 1040 or 1040A, Schedule EIC (2001), Earned Income Credit; Form 1040, Schedule F (2001), Profit or Loss From Farming, and instructions; Form 1040, Schedule J (2001), Farm Income Averaging, and instructions; Form 1040A, Schedule 2 (2001), Child and Dependent Care Expenses for Form 1040A Filers, and instructions; Form 1040A, Schedule 3 (2001), Credit for the Elderly or the Disabled for Form 1040A Filers, and instructions; and Form1040-EZ (2001), Income Tax Return for Single and Joint Filers With No Dependents; Form 1040, Schedule R (2001), Credit for the Elderly or the Disabled, and instructions; Form 1040, Schedule SE (2001), Self-Employment Tax; Form 1040-V (2001), Payment Voucher; Form 1041T (2001), Allocation of Estimated Tax Payments to Beneficiaries; Form 2106-EZ (2001), Unreimbursed Employee Business Expenses; Form 2441 (2001), Child and Dependent Care Expenses, and instructions; Form 4952 (2001), Investment Interest Expense Deduction; Form 4970 (2001), Tax on Accumulation Distribution of Trusts; Form 8752 (2001), Required Payment or Refund Under Section 7519; Form 8812 (2001), Additional Child Tax Credit; Form 8825 (2001), Rental Real Estate Income and Expenses of a Partnership or an S
Corporation; Form 8843 (2001), Statement for Exempt Individuals and Individuals With a Medical Condition; and Instructions for Form 1040, Schedule C (2001), Profit or Loss from Business; and Instructions for Form 1040A (2001), U.S. Individual Income Tax Return; Form 8863 (2001), Education Credits (Hope and Lifetime Learning Credits). These documents are available at no charge (1) by calling the IRS’s toll-free telephone number, 1-800-829-3676; (2) through FedWorld; (3) via the internet at http://www.irs.gov/prod/cover.html; or (4) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

S CORPORATIONS-ALM § 7.02{3}[c].*

BUILT-IN GAINS. The taxpayer was an S corporation which had been assessed for built-in gains tax for two tax years. The taxpayer appealed to the Tax Court but the IRS moved to dismiss for lack of jurisdiction. The IRS argued that the built-in gains tax was a subchapter S item which required the issuance of a final S corporation administrative adjustment and had to be determined in a unified audit and litigation procedure for an S corporation. The taxpayer argued that the built-in gains tax was not a subchapter S item and that Treas. Reg. § 301.6245-1T was invalid. The court agreed with the IRS and dismissed the case. New York Football Giants, Inc. v. Comm’r, 117 T.C. No. 15 (2001).

SOCIAL SECURITY TAX-ALM § 4.06.* Beginning with the January 2, 2002 payment, the monthly social security benefit payment is a maximum of $545 for an individual and $817 for a couple. The maximum amount of annual wages subject to Old Age Survivors and Disability Insurance for 2002 is $84,900, with all wages and self-employment income subject to the medicare portion of the tax. The retirement earnings test exempt amount (the point at which retirees begin to lose benefits in conjunction with their receipt of additional earnings) was eliminated for individuals age 65 through 69 as of January 2000. However, it remains in effect for individuals age 62 through 64 and a modified test applies for the year in which an individual reaches age 65. The retirement earnings test exempt amount will rise from $25,000 a year to $30,000 a year for the year in which an individual attains age 65; the test applies only to earnings for months prior to reaching age 65. One dollar in benefits will be withheld for every $3 in earnings above the limit and no limit on earnings will be imposed beginning in the month of the individual’s 65th birthday. For retirees under age 65, the retirement earnings test exempt amount is $11,280 a year, with $1 withheld for every $2 in earnings above the limit. The amount of wages necessary for one quarter of coverage is $870.

TRAVEL EXPENSES. The taxpayer operated a delivery business and paid its drivers 40 percent of the delivery charge. A portion of the payment was straight wages, with the remainder allocated to reimbursement for car and other expenses. The drivers provided monthly statements of actual miles and expenses but the reimbursement amount did not equal the mileage rate and expenses reported. The difference occurred because the drivers could include more than one delivery in a single trip. The court held that the entire payment was wages subject to withholding because the reimbursement was not based on actual mileage or expenses and the taxpayer did not require the employees to return any reimbursement above the actual mileage rate or expenses reported. Shotgun Delivery, Inc. v. United States, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,700 (9th Cir. 2001), aff’d on point, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,210 (N.D. Calif. 2000).

WITHHOLDING TAXES. IRS has announced procedures that business taxpayers may use to redesignate their estimated income tax overpayments as employment tax deposits, so that their overpayments can be used to pay their current employment tax obligations. To make the redesignation, taxpayers should contact the IRS through its disaster relief toll-free telephone number, 1-866-562-5227. Ann. 2001-112, I.R.B. 2001__

JUDGMENTS

STATUTE OF LIMITATIONS. The defendant had entered into a grain supply agreement with a cooperative which used the grain to produce ethanol. The cooperative borrowed money from a lender and assigned the supply contract as security for the loan. The cooperative defaulted on the loan and the lender sought to enforce the grain supply contract and receive the grain from the defendant who refused. The lender obtained a judgment against the defendant and assigned the judgment to the plaintiff who attempt to collect almost 10 years after the original judgment but within the 10 year statute of limitations of Minn. Stat. § 550.01 for judgments. The defendant argued that the three year statute of limitation of Minn. Stat. § 550.366 applied because the judgment was for a debt on agricultural property. The plaintiff argued that the shorter period did not apply because no debt was involved as to the defendant. The court held that the defendant’s failure to perform the grain supply contract created a debt involving personal property; therefore, the three year statute of limitations applied to bar recovery on the judgment. Westchester Fire Ins. Co. v. Hasbargen, 632 N.W.2d 754 (Minn. Ct. App. 2001).

LANDLORD AND TENANT

TERMINATION. The plaintiff farmed 250 acres under an oral lease with the plaintiff’s parents. The parents transferred the property to a trust for their benefit. The trust provided that the parents would serve as co-trustees with the plaintiff’s brother as a successor co-trustee upon the death of either parent. The mother also executed a durable power of attorney which designated the brother as the mother’s attorney-in-fact. The father died and the brother assumed the role of attorney-in-fact for the mother. The brother mailed a notice of termination of lease to the plaintiff by certified
mail along with a proposed cash lease. The plaintiff refused delivery of the notice. The brother then posted the notice on the plaintiff’s trailer. The court held that the brother had sufficient authority as successor co-trustee to terminate the oral lease and that the service of the termination notice at the plaintiff’s residence was sufficient. Green v. Green, 29 P.3d 448 (Kan. Ct. App. 2001).

STATE REGULATION OF AGRICULTURE

INSPECTION FEES. The plaintiff Colorado corporation was a registered commercial fertilizer handler in Kansas. Under Kan. Stat. § 2-1205, the plaintiff was required to pay an inspection fee based on the amount of fertilizer sold each year. The plaintiff argued that the fee was unconstitutional because it generated far more revenue than the cost of the inspection program and was vague in that it fails to designate who must register fertilizer under the program. The court held that although the statute does not designate who must do the registration, the fee statute provided sufficient guidance that fertilizer handlers must register the fertilizer they sell. The court also held that the revenues generated by the fee were not excessive because the revenue was also used in the state water fund used to protect state waterways. Busby, Inc. v. Kansas Dept. of Agric., 29 P.3d 441 (Kan. Ct. App. 2001).

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