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INCONSISTENCY IN HANDLING FARM INCOME?

— by Neil E. Harl* and Roger A. McEowen**

With government farm payments making up close to half of net farm income (and nearly 100 percent in some states), the focus on how the subsidies are to be reported has taken on added importance.[1] The problem is complicated by three features—(1) farmers can elect to have Commodity Credit Corporation loans (which is the vehicle for two of the three ways program benefits are delivered to farmers and landowners) treated as loans or as income;[2] (2) the subsidies are delivered to eligible participants in three distinctly different systems of payments; and (3) dollar limitations on payments have been imposed by the Congress[3] although in recent years Congress has provided a way to avoid the payment limitations.[4] The latter involves the use of a special statute-based procedure which involves what are known as commodity certificates.[5] The evidence indicates that the principal use of commodity certificates is for cotton and rice with a modest use for soybeans. Relatively little use of commodity certificates has been observed for corn and wheat.

Options for receiving subsidies

As noted, federal farm subsidies involving the production of the so-called "program commodities" (those for which a payment is provided) are made available to producers under three mutually exclusive options[6]—

- One, the most widely used, is called a "loan deficiency payment" (LDP).[7]

Example: Assume the upland cotton loan rate (which is set by Congress) is 52 cents per pound. A Commodity Credit Corporation loan (CCC is a federally chartered corporation formed essentially as fiscal agent of the U.S. Department of Agriculture)[8] could be obtained for 52 cents per pound of eligible cotton.

With an LDP, however, a CCC loan is not obtained. Rather, a payment is made to the eligible participant (farm tenant, owner-operator or share-rent landowner) based upon the amount by which the loan rate exceeds the AWP (adjusted world price).[9] Assuming the AWP is 32 cents per pound of cotton, the eligible participant would receive a payment of 20 cents per pound. The eligible participant would be ineligible for either of the other two options, but would still be able to benefit from the CCC program if the crop is sold before harvest or is forward contracted.[10]

The 20 cents-per-pound payment would be—(1) reported to IRS and to the taxpayer on a Form CCC-1099G, Information Return and by the taxpayer on Schedule F; and (2) subject

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to the payment limitation for combined marketing loan gains and LDPs. That limit is $75,000.[11]

• The second option, for eligible participants, is to use a "marketing loan" which produces a "marketing loan gain."[12]

Example: Once again, assume a cotton loan rate of 52 cents per pound and an AWP of 32 cents per pound. The eligible participant would take out the loan at 52 cents per pound and could repay the loan at 32 cents per pound. That would produce a marketing loan gain of 20 cents per pound of cotton.

Again, the 20 cents-per-pound payment would be—(1) reported to IRS and to the taxpayer on a Form CCC-1099G, Information Return and by the taxpayer on Schedule F; and (2) subject to the payment limitation for marketing loan gains and LDPs of $75,000.

• The third option is to use a special procedure, the details of which were developed by the U.S. Department of Agriculture several years ago, using commodity certificates[13] (which are available for wheat, upland cotton, rice, feed grains and oilseeds). With that procedure, the eligible participant takes out a CCC loan for the commodity at the loan rate and, in essentially the same transaction, purchases a commodity certificate of a size needed to repay the loan at the AWP.

Example: Again, assume a cotton loan rate of 52 cents per pound and an AWP of 32 cents per pound. Repayment of the CCC loan at 32 cents per pound produces a loan gain of 20 cents per pound of cotton.

The 20 cents per pound gain, however—(1) is not reported to IRS under current practice of the government agency involved and (2) does not count against the payment limitation. Indeed, this third option, involving commodity certificates, is typically used when the eligible participant expects to encounter the payment limitation.

The fact that the 20 cent per pound gain from this option does not count against the payment limitation has been specifically authorized by Congress.[14]

To sum up

In all three instances, if the eligible individual actually sells the upland cotton for 35 cents per pound, the eligible participant would have received a 20 cent per pound subsidy and would have realized (and recognized) 35 cents per pound on the actual sale of the commodity for a total of 55 cents per pound of cotton. The economic benefit under the three options is comparable (other than for the relief from the payment limitations) if the taxpayer in the third option reports properly the 20 cent per pound of gain on the exchange. If the taxpayer does not report the gain under the third option, the benefit of that option is proportionately greater by the amount of the income tax benefit from not reporting the gain.

The key questions are—(1) why does USDA not report the gains under the third option to IRS, as is done with the other two; and (2) what are the behavioral consequences of having two options with the gain reported to the IRS and the third is not?

Consequences of not reporting gain to IRS

Aside from the obvious issue of whether reporting of gain on commodity certificates is required (the authors know of no authority to excuse reporting), the concerns are—(1) the behavioral impact on taxpayers who know gain from options 1 and 2 are reported to IRS and the gain from option 3 is not (which really relates to the rate of compliance with tax law, i.e., whether the gain is properly reported by the taxpayer to IRS even though the U.S. Department of Agriculture (through the Farm Service Agency) did not report the gain as a matter of information reporting) and (2) perceptions of unfairness by taxpayers who are treated differently for essentially the same government benefit.

In conclusion

Additional guidance from the Internal Revenue Service is needed as to whether information reporting of gain by the government agency providing the subsidy is required. The importance of this matter is underscored by the fact that nearly $2 billion in commodity certificate gains was triggered in 2001.

FOOTNOTES

1 See generally, 11 Harl, *Agricultural Law* Ch. 91 (2003); Harl, *Agricultural Law Manual* § 10.03 (2003).

2 See I.R.C. § 77(a). See also Rev. Proc. 2002-9, I.R.B. 2002-3, App. Sec. 1.01(2).

3 See Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, Sec. 1603, 7 U.S.C. § 1308.

4 See Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act of 2000, Pub. L. No. 106-78, Sec. 812.

5 See Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, Sec. 1608, amending 7 U.S.C. § 1308.

6 A fourth option, which has rarely been used in recent years, is to forfeit the commodity under loan to the Commodity Credit Corporation. See note 7 *infra*.

7 Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, Sec. 1205.

8 15 U.S.C. §§ 714b, 714c. See 11 Harl, *Agricultural Law* § 90.01 (2003).

9 For most commodities, the reference is to the Posted County Price (PCP) on the date the loan is obtained.

10 The LDP must be applied for between the date of harvest and the date of title transfer but not later than the final loan availability date.

11 Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, Sec. 1603(a), amending 7 U.S.C. § 1308.

12 Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, Sec. 1201 7 U.S.C. § 7931.

13 Federal Agriculture Improvement and Reform Act of 1996, as amended, Sec. 166(b)(3), 7 U.S.C. § 7286. See N 5 *supra*.

14 See Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act of 2000, Pub. L. No. 106-78, Sec. 812, amending the Agricultural Market Transition Act (7 U.S.C. § 7281 *et seq*.) adding Sec. 166.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

ELIGIBILITY. For the tax year preceding the filing for Chapter 12, the debtor had cash rent income from leasing farm property, income from the sale of hogs, cattle and grain, and social security benefits. A creditor challenged the debtor's eligibility for Chapter 12 because the cash rent income exceeded 50 percent of the debtor's total income for the tax year preceding the bankruptcy filing. The court cited *In re Armstrong, 812 F.2d 1024 (7th Cir. 1987)*, as binding precedent (this case would be eventually appealable to the Seventh Circuit) that cash rent income was not income from a farming operation; therefore, the debtor was not eligible for Chapter 12. ***In re*** **Swanson, 289 B.R. 372 (Bankr. D. Ill. 2003).**

FEDERAL AGRICULTURAL PROGRAMS

COTTONSEED. The CCC has adopted as final regulations implementing the 2002-crop Cottonseed Payment Program authorized by section 206 of the Agricultural Assistance Act of 2003. Section 206 requires the CCC to provide assistance to producers and first-handlers of the 2002 crop of cottonseed. **68 Fed. Reg. 20331 (April 25, 2003).**

FARM CREDIT ADMINISTRATION. The FCA has announced that it is considering whether to revise its regulations governing the limitations on credit which may be extended to farmers, ranchers, and aquatic producers or harvesters who borrow from Farm Credit System institutions that operate under titles I or II of the Farm Credit Act of 1971. The FCA is also considering whether it should modify our regulatory definition of "moderately priced" rural housing. The FCA is seeking comments on both of these proposed changes. **68 Fed. Reg. 23425 (May 2, 2003).**

PERISHABLE AGRICULTURAL COMMODITIES ACT. The AMS has adopted as final regulations which extend PACA coverage to fresh and frozen fruits and vegetables that are coated or battered. **68 Fed. Reg. 23377 (May 2, 2003).**

TUBERCULOSIS. The APHIS has issued interim regulations amending the bovine tuberculosis regulations regarding state and zone classifications by removing California from the list of accredited-free states and adding it to the list of modified accredited advanced states. **68 Fed. Reg. 20333 (April 25, 2003).**

FEDERAL ESTATE AND GIFT TAX

ALTERNATE VALUATION DATE. The decedent's estate was eligible for the alternate valuation election. The executor hired a tax professional to prepare the federal estate tax return but the professional failed to make the alternate valuation election on the timely filed return. The executor hired an accountant to file the estate income tax return and the accountant discovered the failure to make the election. The IRS granted an extension to file a return with the alternate valuation election. **Ltr. Rul. 200317053, Jan. 23, 2003**.

FAMILY-OWNED BUSINESS DEDUCTION. The decedent's estate included farm property which was eligible for the family-owned business deduction (FOBD). The co-executors hired an attorney to prepare the federal estate tax return but the attorney failed to elect the FOBD on the timely filed return because the attorney believed, incorrectly, that the estate could not make a FOBD election if the estate made a special use valuation election. The IRS granted an extension to file a return with the FOBD election. **Ltr. Rul. 200317008, Jan. 6, 2003**.

INNOCENT SPOUSE RELIEF. In one situation, a decedent had filed a claim for innocent spouse relief prior to death. After the decedent's death, the executor continued the claim. In the second situation, the spouse died and the executor filed the initial claim for innocent spouse relief. The IRS ruled that the executor had the power in both cases to pursue the innocent spouse relief claim. **Rev. Rul. 2003-36, I.R.B. 2003-18, 849**.

LIFE INSURANCE. A Louisiana decedent had purchased a life insurance policy on the decedent's life during marriage, named the decedent as the policy owner, and did not transfer ownership of that policy before death. The IRS ruled that the policy was presumed to be community property under Louisiana law and one-half of the proceeds was includible in the decedent's gross estate under I.R.C. § 2042, Treas. Reg. § 20.2042-1(c)(5). If the decedent's spouse had predeceased the decedent, one-half of the value of the property would be includible in the spouse's gross estate under I.R.C. § 2033, Treas. Reg. § 20.2031-8(a)(2). The ruling follows the holding in *Estate of Burris v. Comm'r, T.C. Memo. 2001-210*. **Rev. Rul. 2003-40, I.R.B. 2003-17. 813**.

MARITAL DEDUCTION. The decedent's will bequeathed an amount to the surviving spouse sufficient to reduce the estate tax to zero after taking into account any estate tax credits. The remaining property was bequeathed to the spouse for life. Because the property bequeathed to the spouse pursuant to Article V met the requirements of qualified terminable interest property under I.R.C. § 2056(b)(7)(B)(i)(I) and (II) and the value of the property

was listed on Schedule M, the estate was deemed to have made an election to have such property treated as QTIP under Section 2056(b)(7). However, the value of the property which passed outright to the spouse was valued less than the credits; therefore, no property passed under the life estate bequest and the QTIP election was unnecessary. The IRS ruled that the QTIP election was null and void for purposes of I.R.C. §§ 2044(a), 2056(b)(7), 2519(a), and 2652 because it was not necessary to reduce the estate tax. **Ltr. Rul. 200318039, Jan. 21, 2003**.

The decedent's estate was assessed a deficiency for gift taxes paid by the decedent within three years of death (see TRANSFERS WITHIN THREE YEARS OF DEATH, infra). The deficiency resulted in additional administration expenses and the estate sought a deduction for those expenses. The estate included a marital deduction bequest and some of the marital bequest property was used to pay some of the administration expenses. The court held that the administration expense deduction was allowable but would decrease the marital deduction to the extent the marital bequest property was used to pay the administration expenses. **Brown v. United States, 2003-1 U.S. Tax Cas. (CCH) ¶ 60,462 (9th Cir. 2003)**

TRANSFERS WITHIN THREE YEARS OF DEATH. The decedent had created a life insurance trust to hold life insurance on the surviving spouse's life. The decedent gave the spouse the funds needed to fund the trust and agreed that the trust funding was subject to gift tax. The decedent and spouse elected to be jointly liable for the gift; however, the decedent gave the spouse the funds needed to pay the spouse's share of the gift tax. The decedent died within three years and the IRS assessed a deficiency against the estate from inclusion of the spouse's share of the gift tax on the trust transfer. The court applied the step transaction doctrine to hold that the spouse's share of the gift tax was deemed paid by the decedent and was included in the decedent's estate under I.R.C. § 2035. **Brown v. United States, 2003-1 U.S. Tax Cas. (CCH) ¶ 60,462 (9th Cir. 2003)**.

TRUSTS. Qualified revocable trusts may elect under I.R.C. § 645 to be treated and taxed as part of an estate, and not as a separate trust, for all tax years of the estate ending after the date of the decedent's death and before the applicable date that terminates the election period. The applicable date for decedents dying on or after December 24, 2002 is set by Treas. Reg. 1.645-1(f)(2)(ii), effective on that date, where an estate tax return must be filed. The IRS has announced that qualified revocable trusts for decedents dying before December 24, 2002 may use the Treas. Reg. § 1.645-1(f)(2)(ii) dates if Form 1041, U.S. Income Tax Return for Estates and Trusts, has not been filed treating the Section 645 election period as terminated. **Notice 2003-33, I.R.B. 2003-__**.

FEDERAL INCOME TAXATION

CAPITAL ASSETS. The taxpayer failed to make a timely election under Section 311(e) of the Tax Reform Act of 1997, Pub. L. No. 105-34, for the taxpayer's taxable year ending January 31, 2001, to recognize a deemed sale of assets held on January 1, 2001, and to commence a post-January 1, 2001, holding period for those assets. The failure was caused by difficulty in valuing the assets. The IRS granted an extension to make the election. **Ltr. Rul. 200318048, Jan. 23, 2003**.

C CORPORATIONS.

CONTRIBUTIONS. The IRS has announced that it is considering proposing rules regarding the amount of liability a corporate transferee of property is treated as assuming in connection with a contribution of encumbered property to the corporation and certain tax consequences that result from the corporate transferee's assumption of such a liability. The IRS is seeking pre-publication comments on the proposed regulations. **68 Fed. Reg. 23931 (May 6, 2003).**

REORGANIZATION. The taxpayer corporation formed a new corporation and transferred one of the taxpayer's businesses to the new corporation in exchange for all of the new corporation's stock. The new corporation transferred the business assets to a second new corporation in exchange for 40 percent of the second corporation. The IRS ruled that the initial transfer of assets to the new corporation by the taxpayer satisfied the control requirement of I.R.C. § 351(a) and did not recognize gain or loss from the transfer. **Rev. Rul. 2003-51, I.R.B. 2003-__**.

DEPRECIATION. The IRS, using the Industry Issue Resolution Program, has issued new guidance clarifying the appropriate recovery period to be used in computing depreciation deductions for gasoline pump canopies. The canopies do not constitute inherently permanent structures and are classified as tangible personal property includible in asset class 57.0 of *Rev. Proc. 87-56, 1987-2 CB 674*, for depreciation purposes. Thus, the cost of the canopies can be recovered over either five or nine years, depending upon the depreciation system used. Further, the supporting concrete footings used to anchor the canopies constitute inherently permanent structures classified as land improvements includible in asset class 57.1 of Rev. Proc. 87-56 for depreciation purposes. As a result, the cost of the concrete footings can be recovered over either 15 or 20 years depending upon the depreciation system used. **Rev. Rul. 2003-54, I.R.B. 2003-__**.

DISASTER LOSSES. On April 26, 2003, the President determined that certain areas in Alaska were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of severe winter storms beginning on March 16, 2003. **FEMA-1461-DR**. On April 25, 2003, the President determined that certain areas in Florida were eligible for assistance under the Act as a result of severe storms on March 27, 2003. **FEMA-1460-DR**. On March 14, 2003, the President determined that certain areas in Pennsylvania were eligible for assistance under the Act as a result of snow storms on February 14-19, 2003. **FEMA-3180-EM**. Accordingly, taxpayers who sustained losses attributable to the disaster may deduct the losses on their 2002 federal income tax returns.

EMPLOYEE BENEFITS. The IRS has ruled that reimbursement of employee medical expenses paid by employer-provided debit and credit cards were excludible from the employee's income where the medical expenses were substantiated

by employer or merchant procedures and where the employee was required to compensate the employer for nonmedical expenses. **Rev. Rul. 2003-43, I.R.B. 2003-__**.

INCOME. The taxpayer cared for the taxpayer's mother-in-law for over six years. After the mother-in-law died, the taxpayer filed a claim against the estate for the value of the services to the decedent. The taxpayer received a residence owned by the decedent but had the residence deeded directly to the taxpayer's son, although the taxpayer and spouse used the residence as their home and the son was in the military. The son was not part of the claim against the estate. The court held that the son held the residence as a mere nominee as part of the taxpayer's attempt to avoid attachment of the residence by the IRS. The court held that the value of the residence was income to the taxpayer for the services rendered to the decedent. **United States v. Dieter, 2003-1 U.S.Tax Cas. (CCH) ¶ 50,439 (D. Minn. 2003)**.

IRA. The IRS has adopted as final regulations that provide a new method to be used for calculating the net income attributable to IRA contributions that are distributed as a returned contribution pursuant to I.R.C. § 408(d)(4) or recharacterized pursuant to I.R.C. § 408A(d)(6). **68 Fed. Reg. 23586 (May 5, 2003).**

INSTALLMENT REPORTING. The taxpayers, husband and wife owned stock which was not publicly traded or subject to substantial restrictions on sale. The stock was sold, with all payments to be made after the year of sale. The taxpayers hired an accounting firm to prepare their return and the accounting firm did not make the election to report the gain from the sale of the stock on the installment method. An internal review of the return by the accounting firm revealed the eligibility for the installment reporting election and the taxpayers sought permission to revoke their election out of installment reporting. The IRS granted the permission to revoke the election. **Ltr. Rul. 200317014, Jan. 14, 2003**.

LIKE-KIND EXCHANGES. The IRS has issued a revenue procedure which provides safe harbors for certain aspects of I.R.C. § 1031 to qualify property exchanges for like-kind exchange treatment where the taxpayer has a continuing like-kind exchange program (LKE program) using an unrelated intermediary involving multiple exchanges of 100 or more properties. **Rev. Proc. 2003-39, I.R.B. 2003-__**.

PARTNERSHIPS

CONTRIBUTED PROPERTY. The taxpayers, husband and wife, each owned property individually and jointly. The taxpayers exchanged interests in some of the property such that the taxpayers each owned an interest in several items of property. These items were contributed to a limited partnership with the taxpayers as general and limited partners. The IRS ruled that the contributions did not result in recognition of gain or loss because the partnership would not be considered an investment company if the partnership was a corporation. **Ltr. Rul. 200317011, Jan. 7, 2003**.

PASSIVE ACTIVITY LOSSES. A testamentary trust was established in 1956 and funded with a cattle ranch. The trust was managed by the trustee who hired several full and part-time employees, including a manager, for the ranch. The trustee also took an active part in managing the ranch. The trust claimed deductions for net operating losses for several tax years which were disallowed by the IRS which argued that the ranch activity was a passive activity and not allowed losses in excess of income under I.R.C. § 469. The court noted that the IRS had not issued any regulations and no published cases existed on this issue. The court held that the trust, as the taxpayer, materially participated in the ranch activity because the trustee's participation in the ranch was regular, continuous and substantial and employees added to the involvement; therefore, the losses were not passive activity losses. Dr. Neil Harl will publish an article on this case in the next issue of the *Digest*. **The Mattie K. Carter Trust v. United States, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,418 (N.D. Texas 2003)**.

PENSION PLANS. For plans beginning in May 2003, the weighted average is 5.43 percent with the permissible range of 4.89 to 5.97 percent (90 to 120 percent permissible range) and 4.89 to 6.52 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2003-32, I.R.B. 2003-__**.

The IRS has announced the withholding and reporting requirements applicable to eligible deferred compensation plans described in I.R.C. § 457(b) for periods after December 31, 2001. Specifically, the notice addresses: (1) income tax withholding and reporting with respect to annual deferrals made to a I.R.C. § 457(b) plan; (2) income tax withholding and reporting with respect to distributions from a I.R.C. § 457(b) plan, including changes for a I.R.C. § 457(b) plan established by a state or local government employer enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. No. 107-16); (3) Federal Insurance Contributions Act payment and reporting with respect to annual deferrals under a I.R.C. § 457(b) plan; (4) employer identification numbers used in connection with trusts established under I.R.C. § 457(g); and (5) the application of annual reporting requirements to I.R.C. § 457(b) plan administrators and trustees holding assets of a I.R.C. § 457(b) plan in accordance with I.R.C. § 457(g). **Notice 2003-20, I.R.B. 2003-__**.

REFUNDS. The IRS has issued a revenue ruling on the effect of the I.R.C. § 7503 extension on the time limitation for filing for a refund. Claims for refunds must be made by the later of (1) three years after a tax return was due, including the automatic four month extension and a valid Section 7503 extension, or (2) two years after the tax was paid. Section 7503 allows an extension when a return or tax is due on a Saturday, Sunday or legal holiday. The extension allows the return or tax to be due on the next day which is not a Saturday, Sunday or legal holiday. The IRS ruled that the Section 7503 extension does not apply if the tax is not paid or the return is not filed on the next day which is not a Saturday, Sunday or legal holiday. Therefore, the limitation period for a claim for refund does not include the Section 7503 extension if the return filing or tax payment was not made on the next day which is not a Saturday, Sunday or legal holiday. For example, if April 15 occurs on a Saturday but the return is not filed until the following Thursday, the due date for that return remains April 15 and any claim for a refund must be made by April 15 three years later. If the same return was filed on the following Monday (April 17), the refund

claim may be made up to three years after that date. **Rev. Rul. 2003-41, I.R.B. 2003-17, 814**.

RETURNS. I.R.C. § 6103(c), as amended by section 1207 of the Taxpayer Bill of Rights II, Pub. L. No. 104-168, 110 Stat. 1452 (1996), authorizes the IRS to disclose returns and return information to such person or persons as the taxpayer may designate in a request for or consent to disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. Disclosure is permitted subject to such requirements and conditions as may be prescribed by regulations. With the amendment in 1996, Congress eliminated the requirement that disclosures to designees of the taxpayer must be pursuant to the written request or consent of the taxpayer. The IRS has adopted as final regulations authorizing the disclosure of tax returns and return information to a designee of the taxpayer pursuant to a nonwritten request or consent when the taxpayer seeks the assistance of a third party in resolving a tax matter. The final regulations also amend the existing regulations to clarify the rules applicable to written requests or consents to disclosure. **68 Fed. Reg. 22596 (April 29, 2003).**

SPLIT DOLLAR LIFE INSURANCE. The IRS has issued proposed regulations which supplement the 2002 proposed regulations (see 13 *Agric. L. Dig*. 125 (2002)) by providing guidance on the valuation of economic benefits (including the valuation of an interest in policy cash value) under an equity split-dollar life insurance arrangement governed by the economic benefit regime. **68 Fed. Reg. 24898 (May 9, 2003)**.

TAX SCAMS. The IRS has issued a warning detailing two new tax schemes that target the families of those serving in the armed forces and e-mails users. In both schemes, people represent themselves as being from the IRS. In particular, the IRS warns consumers to beware of any variation of a scenario in which a telephone caller posing as an IRS employee indicates that a family member is entitled to a $4,000 refund because a relative is in the armed forces and then requests a credit card number to cover a $42 fee for postage. The scammer provides an actual IRS toll-free number as the call back number in order to make the call seem legitimate. However, the scammer then makes numerous unauthorized purchases with the victim's credit card number. In another scheme, victims receive an e-mail that appears to be from the IRS. The e-mail contains links to a non-IRS internet web page that asks for personal and financial information. Such information could be used to steal the respondent's identity and get access to sensitive financial date or accounts. Taxpayers who are on the receiving end of one of the scams should contact the Treasury Inspector General for Tax Administration (TIGTA) by calling the toll-free fraud referral hotline at 1-800-366-4484, faxing a complaint to 202-927-7018 or writing to the TIGTA Hotline, P.O. Box 589, Ben Franklin Station, Washington, D.C. 20044-0589 or by accessing TIGTA's website at www.ustreas.gov/tigta. **IR-2003-63**.

THEFT LOSS. The taxpayer purchased stock in a company on the advice of a stock broker. The stock was eventually sold at a loss and the taxpayer claimed the loss as a deduction for the year of the sale. Three years later, it was determined that the broker had violated securities laws in the sale of the stock. The taxpayer claimed another deduction for theft loss for the reduction in value of the stock. The court held that no theft loss was available, assuming that a theft had occurred, because the taxpayer failed to provide evidence of the taxpayer's basis in the stock in the year the theft was discovered. **Beaver v. Comm'r, T.C. Memo. 2003-129**.

TRUSTS. The taxpayer trust was established in 1945 and had passed through several generations of income beneficiaries. The trustees did not have any financial investment experience and hired outside financial advisors. The trust deducted the cost of the advisors from trust income; however, the IRS disallowed the deduction to the extent it exceeded 2 percent of the trust income. The IRS argued that the expense was a miscellaneous itemized deduction because the expense was not unique to the administration of a trust but was customary for investment of substantial assets. The court noted that Virginia law provided a trustee with absolute immunity from liability for investments made in any of the three statutory assets. See Va. Code § 26-40.01. Therefore, the court held that investment costs were not a unique administrative cost for trusts in Virginia and the costs were subject to the 2 percent of gross income limitation. The case leaves intact the conflict between *Mellon Bank, N.A. v. United States, 265 F.3d 1275 (Fed. Cir. 2001)* (trust investment fees subject to 2 percent limitation) and *O'Neill v. Comm'r, 994 F.2d 302 (6th Cir. 1993)* (trust investment costs fully deductible from trust income). **Scott v. United States, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,428 (4th Cir. 2003), *aff'g*, 2002-1 U.S. Tax Cas. (CCH) ¶ 50,364 (E.D. Va. 2002)**.

PRODUCTS LIABILITY

HERBICIDE. The plaintiffs produced seed corn and used a herbicide manufactured by the defendant. The plaintiffs alleged that the herbicide caused leaf wrap which prevented emergence of the corn plants and loss of seed crop. The herbicide label stated that the herbicide was safe for seed corn crops, although the label acknowledged that some early effects on the plants could occur but also stated that "the crop recovers quickly with no loss of yield." The plaintiff filed claims against the manufacturer for breach of express and implied warranties, negligent failure to warn, strict liability for failure to warn, negligent misrepresentation, false advertising, negligent testing, negligent labeling, and consumer fraud. The defendant argued that FIFRA preempted all of the plaintiffs' claims. The plaintiffs argued that the label language "the crop recovers quickly with no loss of yield" was a voluntary warranty not required by FIFRA. The court held that all of the plaintiffs' claims were based upon the information on the label; therefore, the claims were preempted by FIFRA. **Dahlman Farms, Inc. v. FMC Corp., 2002 U.S. Dist. LEXIS 26050 (D. Minn. 2002)**.

CITATION UPDATES

Smithfield Foods, et. all. v. Miller, 241 F. Supp.2d 978 (S.D. Ia. 2003) (corporate ownership of farms) see McEowen & Harl, "Iowa Ban on Packer Ownership of Livestock Ruled Unconstitutional" p. 17 *supra*.

IN THE NEWS

CONSERVATION RESERVE PROGRAM. The first general signup for the Conservation Reserve Program (CRP) in three years got underway this week at FSA offices across the country. Land that ranks high on an Environmental Benefits Index is most likely to be accepted. The current farm bill increases the maximum permitted size of the CRP from the previous limit of 36.4 million acres to 39.2 million acres. In the past, it was possible to bring new land into production for a short period and then enroll it in CRP. That is no longer allowed. Under the new farm bill, land is generally not eligible unless it is already in CRP or unless it was planted at least four of the six years between 1996 and 2001. USDA has announced it will reserve about 2 million acres for use in the continuous CRP signup. This program is used to enroll limited acreages, such as in filter strips and stream corridors. Details on signup requirements are available at local USDA-FSA offices. Deadline for the general CRP sign up is May 30. Information and resources are also available online on FSA's web site: http://www.fsa.usda.gov/dafp/cepd/crpinfo.htm. See *68 Fed. Reg. 24829 (May 8, 2003)*. **Agriculture Online**.

GENETICALLY MODIFIED ORGANISMS-*In re STARLINK*. On April 7, 2003, the United States District Court for the Northern District of Illinois (Judge James B. Moran), *In Re Starlink Corn Products Litigation, Docket No. 1403 (N.D. Ill. 2003),* approved the settlement of class actions initially filed in state or federal courts in 10 states involving 23 farmer plaintiffs claiming damages as a result of the presence of Starlink corn (or the CRY9C protein) in the United States corn supply. The settlement arrangements specify that two types of recoveries are possible. Forms and instructions for filing can be downloaded from http://www.non-starlinkfarmerssettlement.com. Downloading produces a form printed with the claimant's name and address and the claim number.

Corn loss proof of claim and release. A claim for corn loss must be completed by the operator of the farm from which non-Starlink corn was harvested in 2000. The instructions state that "farm operator" means the person or entity who runs the farm, making the day-to-day decisions for the farm. If there is more than one operator for the farm, the form should be completed by the primary operator. Apparently, tenants in landlord-tenant relationships are to file the claim and then account to the landlord if it is a share lease. Only one Corn Loss form should be submitted for each farm. A place is provided for corporate officers or partners filing for a corporation or partnership to sign their names and titles on the signature page. For those who did not harvest non-Starlink corn in 2000 but did so in 1998, 1999, 2001 or 2002, the acreage is to be averaged and reduced by a factor of 90 percent. This claim procedure is for compensation from the adverse impact of Starlink on corn prices, whether or not growing crops or stored grain suffered contamination from Starlink. The form must be postmarked no later than May 31, 2003 and mailed by prepaid, first class mail.

Property damage proof of claim and release. The property damage claim, again, is to be submitted by the operator of the farm. The key difference of a damage claim from a corn loss claim is that the property damage claim requires documentation that non-CRY9C corn grown for grain was cross pollinated by CRY9C corn or non-CRY9C corn was commingled with CRY9C corn at the elevator or other storage facility while the producer retained title to the non-CRY9C corn. The claim cannot include compensation previously received from Aventis Crop Science or Starlink Logistics. The form for property damage must be postmarked not later than July 31, 2003, and mailed by prepaid first class mail. **By Dr. Neil E. Harl**.

HOMELAND SECURITY. The Secretary of the Department of Homeland Security, Tom Ridge, endorsed an ambitious concept for nationwide identification of all commercial livestock. Ridge's support is the latest, vivid signal of progress toward a national animal identification plan. Spurred partly by post-Sept. 11 fears of bioterrorism, industry and government officials are speeding up work on the proposals. Proponents speak of a "gate-to-plate" system tagging individual swine, cattle and dairy cows from their birth to their ultimate culinary destination. Ideally, the system would enable tracking of a specific animal within 48 hours of a public health problem. Useful even in peacetime, this proposal has gained special resonance because of what Ridge described Monday as "references that we pick up in the intelligence community" that the U.S. food supply could be a terrorist target. Agriculture Department officials are to meet with livestock industry representatives in hopes of completing specific plans and timetables to present at this October's convention of the U.S. Animal Health Association. So far, crucial decisions as to who would maintain the records, and for how long, have yet to be made. The possible tagging system, too, remains a work in progress, with some suggesting ear tags and others proposing the planting of electronic chips inside the animals. It is predicted it could still be "two to five years" before any system takes effect. **Michael Doyle**.

SHARED APPRECIATION AGREEMENTS. The federal District Court for the District of North Dakota has held that the Agriculture Credit Act, 7 U.S.C. Sec. 2001, unambiguously requires recapture of fifty percent of the appreciated value of the property securing the loan upon the expiration date of a shared appreciation agreement, where the expiration date occurred more than four years after the date of the agreement. The plaintiff's action for a declaratory judgment asserting a different construction of the Act and the agreement was properly dismissed. **Stahl v. USDA, Case No. 02-2915 (D. N.D. 2003)**.

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