Agricultural Law Press
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Issue Contents

Agricultural Law Digest

Volume 14, No 12 June 13, 2003 ISSN 1051-2780

Jobs and Growth Tax Relief Reconciliation Act of 2003 (Pub. L. No. 108-27): Summary of Selected Provisions

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

Expense method depreciation

The expense method depreciation annual allowance, which was $25,000 for 2003, has been increased to $100,000 effective for taxable years beginning after 2002 and before 2006. The increase is effective for 2003, 2004 and 2005. Thereafter, the limit returns to $25,000 unless there is further legislation to change the amount. **Act Sec. 202(a), amending I.R.C. § 179(b)(1).**

The phase-out for eligible property is increased to $400,000 from $200,000 for taxable years beginning after 2002 and before 2006. The phase-out applies, dollar for dollar, to qualifying property placed in service each year above the phase-out amount. **Act Sec. 202(b), amending I.R.C. § 179(b)(2).**

Off-the-shelf computer software is eligible for expense method depreciation if placed in service in a taxable year beginning after 2002 and before 2006. **Act Sec. 202(c), amending I.R.C. § 179(d)(1)(A)(ii).**

The dollar limit ($100,000) and the phase-out threshold amount ($400,000) are adjusted for inflation in calendar years after 2003 and before 2006. **Act Sec. 202(d), amending I.R.C. § 179(b)(5)(A).**

The inflation adjustment is in $1,000 increments for the $100,000 amount and $10,000 increments for the $400,000 amount. **Act Sec. 202(d), amending I.R.C. §179(b)(5)(B).**

The 2003 Act excludes air conditioning and heating units from eligibility for expense method depreciation. The legislation also excludes from eligibility property described in I.R.C. § 50(b) (property used outside the United States, property used for lodging, property used by certain tax-exempt organizations and property used by governmental units or foreign persons or entities). **Act Sec. 202(c), amending I.R.C. § 179(d)(1).**

The new law also provides that expense method depreciation elections can be revoked (with respect to any taxable year beginning after 2002 and before 2006) by the taxpayer with respect to any property; the revocation, once made, is irrevocable. **Act Sec. 202(e), amending I.R.C. § 179(c)(2).**

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The next issue of the *Digest* will be published on July 8, 2004.

Agricultural Law Digest is published by the Agricultural Law Press, P.O. Box 50703, Eugene, OR 97405 (ph 541-302-1958), bimonthly except June and December. Annual subscription $110 ($90 by e-mail).

Bonus depreciation amount

The Act increases the special allowance for eligible property acquired after September 10, 2001, and before September 11, 2004 (the cut-off date before the 2003 amendment) from 30 percent to 50 percent of the income tax basis of eligible property (after expense method depreciation has been claimed). **Act Sec. 201(a), amending I.R.C. § 168(k)(4).**

The increased allowance applies to property the original of which commences with the taxpayer after May 5, 2003 if the property was acquired by the taxpayer after May 5, 2003 and before January 1, 2005 if there was no binding contract for the acquisition of the property in effect before May 6, 2003. If there was a binding contract in effect before May 6, 2003, but not before September 11, 2001, the property remains qualified for the 30 percent allowance previously available.

The property must be placed in service under the new provision before January 1, 2005 except, for property described in I.R.C. § 168(k)(2)(B) (property having longer production periods) before January 1, 2006. **Act Sec. 201(a), amending I.R.C. § 168(k)(4)(B).**

For *passenger automobiles*, which are subject to inflation-adjusted depreciation limits, the increase in the first year allowance for new vehicles under the bonus depreciation rules is boosted from $4600 to $7650 with the same effective dates as for the increase from 30 percent to 50 percent of the income tax basis of eligible property. Thus, for new passenger automobiles that are depreciable, the allowable depreciation is $3060 plus $7650 or $10,710 if acquired after May 5, 2003. For new passenger automobiles acquired before May 6, 2003, the limit is $3060 plus $4600 or $7660. The first year limit for used passenger automobiles remains at $3060. **Act Sec. 201(a), amending I.R.C. § 168(k)(4)(D).**

Under the 2003 Act, an election with respect to any class of property for purposes of bonus depreciation does not apply to all property in the class. **Act Sec. 201(a), adding I.R.C. § 168(k)(4)(E).**

The bonus depreciation amendments apply to taxable years ending after May 5, 2003. **Act Sec. 201(d).**

Capital gains

The 2003 Act reduces the income tax rate on long-term capital gains from 10 percent to five percent for those in the 10 or 15 percent brackets and from 20 percent to 15 percent for those in higher income tax brackets. The reduction applies to both regular tax and alternative minimum tax calculations. For those in the 15 percent income tax bracket, the Act reduces the rate on long-term capital gains to zero for taxable years beginning after 2007 and before 2009 (unless changed in the meantime). **Act Sec. 301(a), amending I.R..C. §§ 1(h)(1), 55(b)(3).**

The provision applies to sales after May 5, 2003, in taxable years ending on or after May 6, 2003. The provision continues through 2007. **Act Sec. 301(d)(1).**

The provision provides for proration for 2003. **Act Sec. 301(c), amending I.R.C. § 1(h)(1).**

The 2003 Act wipes out the eight and 18 percent rates from earlier legislation. **Act Sec. 301(b)(1)(A).**

Dividends

Under the Act, dividends from domestic corporations (either C or S corporations) and qualified foreign corporations are generally taxed at the same rates as net long-term capital gain for taxable years beginning after December 31, 2002 and beginning before January 1, 2009. This provision applies for purposes of both regular tax and alternative minimum tax purposes. Thus, dividends will be taxed under the provision for 2003 at rates of five and 15 percent. **Act Sec. 302(a), adding I.R.C. § 1(h)(11).**

If a shareholder does not hold a share of stock for more than 60 days during the 120-day period beginning 60-days before the ex-dividend date, dividends on the stock are not eligible for the reduced rates. **Act Sec. 302(a), amending I.R.C. § 1(h)(11)(B)(iii).**

Corporate "penalty" taxes

The 2003 Act reduces the accumulated earnings tax rate (to 15 percent) and the personal holding company tax rate (also to 15 percent) effective in 2003. **Act Sec. 302(e)(5), (6), amending I.R.C. §§ 531, 541.**

Alternative minimum tax

The Act increases the AMT exemption amount for married taxpayers filing a joint return and surviving spouses from $49,000 to $58,000 and for unmarried taxpayers from $35,750 to $40,250 for taxable years beginning in 2003 and 2004. **Act Sec. 106(a), amending I.R.C. § 55(d)(1)(A), (B).**

Income tax rates

The Act accelerates the reductions in the regular income tax rates in excess of the 15 percent rate. For 2003 through 2005, the regular income tax rates in excess of 15 percent are 25 percent, 28 percent, 33 percent and 35 percent. **Act Sec. 105(a), amending I.R.C. § 1(i)(2).**

Beginning in 2005 and running through 2007, the Act increases the taxable income level for the 10 percent regular income tax rate brackets for single individuals from $6,000 to $7,000 and, for married individuals filing jointly from $12,000 to $14,000. **Act Sec. 104(a), amending I.R.C. § 1(i)(B)(i).**

The Act increases the size of the 15 percent regular income tax bracket for joint returns to twice the bracket width of the 15 percent regular income tax rate bracket for single individuals for 2003 and 2004. **Act Sec. 102(a), amending I.R.C. § 1(f)(8)(B).**

Standard deduction

The Act increases the basic standard deduction amount for joint returns to twice the basic standard deduction for single returns effective for 2003 and 2004. For taxable years beginning after 2004, the applicable percentages revert to those allowed under pre-Act law. **Act Sec. 103(a), amending I.R.C. § 63(c)(9).**

Child tax credit

The Act increases the child tax credit from $600 to $1,000 for 2003 and 2004. After 2004, the credit reverts to pre-Act levels. **Act Sec. 101(a), amending I.R.C. § 24(a)(2).**

For 2003, the increased amount of child credit is paid in advance, supposedly beginning in July, 2003, on the basis of information in each taxpayer's 2002 return filed in 2003. Advance payments are not expected to individuals who did not claim the child credit for 2002. **Act Sec. 101(b), enacting I.R.C. § 6429.**

Corporate estimated tax

Under the Act, 25 percent of corporate estimated tax payments due on September 15, 2003, is not due until October 1, 2003. **Act Sec. 104(a).**

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

ANIMAL ABUSE. The defendant was charged, under Or. Rev. Stat. § 167.320, with first degree animal abuse for shooting a neighbor's dog. The defendant argued that the statute was unconstitutionally vague and overbroad. The trial court agreed and held that the Tenth Amendment to the U.S. Constitution prohibited state statutes which proscribed conduct which was otherwise constitutional. The appellate court held that the Tenth Amendment did not prohibit any authority of the states to regulate the conduct of its citizens but only limited the authority of the federal government to that expressly granted by the U.S. Constitution, with the remaining authority reserved to the states. Because the Tenth Amendment did not limit the state's authority, the Oregon statute was not prohibited by the Tenth Amendment and was constitutional. **State of Oregon v. Thomas, 63 P.3d 1242 (Or. Ct. App. 2003)**.

BANKRUPTCY

<u>GENERAL</u>-*ALM* § 13.03.*

EXEMPTIONS.

HOMESTEAD. The debtor owned 85.51 acres of rural land divided into three contiguous tracts of 59 acres, a 20 foot strip of land, and 26 acres on which the debtor had a 1.34 acre homestead. The 26 acre tract also was used for a campground and trailer park. The 59 acre tract contained buildings, sewage treatment facilities and recreational areas used in conjunction with the campground. The 26 acre tract was conveyed to a corporation wholly-owned by the debtors, in order to obtain financing to develop the campground. The debtors refinanced the loan into a personal loan secured by the 26 acres; however, there was no conveyance of the property to the debtors personally. The debtors claimed the 85.51 acres as part of their exempt homestead under Tex. Prop. Code § 41.002 and a judgment creditor objected based on ownership of the land by the corporation and the use of all but the 1.34 acres as a business. The Bankruptcy Court allowed only the 59 acres and the 1.34 acres as eligible for the rural homestead exemption because the 26 acres were used for a business. The appellate court reversed as to the 26 acres, holding that the statute did not prohibit use of parts of a rural homestead for a business. The court noted that a reason for the large size of the exemption was to accommodate farmers who used the land to make a living. The court also found that the conveyance to the corporation had no substance because no title was passed, no compensation was paid and the debtors continued to use the property in the same manner as before the conveyance. ***In re* Perry, 289 B.R. 860 (W.D. Tex. 2003),** ***rev'g in part and aff'g in part,*** **267 B.R. 759 (Bankr. W.D. Tex. 2001)**.

<u>FEDERAL TAX</u>-*ALM* § 13.03.*

DISCHARGE. The taxpayer was a doctor with a small practice in Alaska. In 1992, the taxpayer established a three-tiered asset protection trust to own all personal and business assets in an attempt to avoid federal income tax. The taxpayer ceased filing personal income tax returns for 1992 through 1997. The taxpayer was audited and investigated for criminal tax evasion. Although the taxpayer agreed to cooperate and did eventually file the missing returns, no tax payments were made. The court held that the 1992 through 1997 taxes were nondischargeable under Section 523(a)(1)(C) for willfull attempt to evade payment of taxes. ***In re* Rowen, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,502 (Bankr. Alaska 2003)**.

The debtor was a real estate agent who failed to file income tax returns and pay taxes for 1992 through 1997. During that time the debtor moved without sending a change of address to the IRS and made substantial payments of other debts. The IRS constructed substitute returns, assessed taxes and filed a Notice of Levy with the debtor's employer. After the Notice of Levy, the debtor made several small offers of compromise which were rejected and filed the missing tax returns. The debtor filed a Chapter 7 case within three years after filing the returns and sought a discharge of the taxes. The court held that the taxes were not dischargeable under Section 523(a)(1) because the debtor's untimely returns were not considered returns for purposes of Section 523(a)(1). ***In re* Washburn, 290 B.R. 162 (Bankr. M.D. Fla. 2003)**.

While the debtor was associated with a group of tax protesters, the debtor failed to file tax returns for 1992 through 1995. The debtor claimed excess deductions and exceptions so that the amount of withheld taxes was minimal. The IRS constructed substitute returns and made assessments based on those returns. The debtor then filed returns using the figures supplied by the IRS assessments. The debtor agreed to make installment payments but failed to make any payments and eventually filed for Chapter 7. The court held that the debtor was not entitled to a discharge of the taxes because the untimely filed returns were not considered returns for purposes of Section 523(a)(1). ***In re* Weintraub, 290 B.R. 410 (Bankr. M.D. Fla. 2003)**.

COMMERCIAL LAW

FRAUD. The plaintiffs were a national class of farmers who purchased the herbicide Poast, manufactured by the defendant.

The plaintiffs charged that the defendant fraudulently marketed Poast and a less expensive version, Poast Plus, differently even though both products were the same and both received EPA registration. Evidence showed that the defendant advertised that only Poast was registered with EPA, that the defendant used mailings, processors and dealers to warn farmers of "off-label" use of Poast Plus. Also, the defendant had state inspectors investigate the defendant's dealers for selling Poast Plus to certain crop farmers, which led to fraudulent criminal prosecutions. Evidence also showed that the defendant lied to the North Dakota Pesticide Control Board to conceal the fact that Poast Plus was EPA-registered for the same crops as Poast. The jury returned a verdict for the farmer-class awarding damages of $15,000,000. The court tripled the damages and added costs, pushing the award to $53 million. On appeal, the court affirmed the award and the certification of the class. See also *Peterson v. BASF Corp., 618 N.W.2d 821 (Minn. Ct. App. 2000).* **Peterson v. BASF Corp., 657 N.W.2d 853 (Minn. Ct. App. 2003).**

ENVIRONMENTAL LAW

CLEAN WATER ACT. The plaintiffs owned property downstream from a farm which the defendant leased. The defendant owned and operated a business which accepted and processed "spent mushroom substrate" (SMS) which was the waste material from growing mushrooms. The defendant did not grow any mushrooms but processed the SMS only from other growers. The SMS was dumped onto the land and left uncovered so that portions of the waste would leach out with rainwater, leaving material suitable for potting soil. The waste water drained into a stream which flowed into a pond on the plaintiffs' property. The plaintiffs filed an action for violation of the Clean Water Act (CWA), Pennsylvania Clean Streams Law (PCSL) and public and private nuisance. The court granted summary judgment for the plaintiffs on the issue that the defendant's operation was a point source and violated the CWA by discharging pollutants into navigable waters without a NPDES permit. Summary judgment was denied, however, as to the violation of the PCSL because the plaintiffs failed to prove that the discharge was sewage or industrial waste as defined by Pa. Stat. tit. 35, § 691.1. The court denied summary judgment on the public and private nuisance claims because the plaintiffs failed to provide support for the claim that the waste water runoff created an unreasonable interference with their use of their property. **Reynolds v. Rick's Mushroom Service, Inc., 246 F. Supp.2d 449 (E.D. Pa. 2003)**.

FEDERAL AGRICULTURAL PROGRAMS

PAYMENT LIMITATIONS. The CCC has adopted as final regulations which implement provisions of the Farm Security and Rural Investment Act of 2002 regarding limits on the income of persons eligible for program participation. The regulations set forth the criteria to be applied in determining whether certain income limits have been exceeded by an individual or entity and thus making such individual or entity ineligible for certain CCC commodity and conservation program benefits. The rules provide that, for individuals, CCC will use the adjusted gross incomes reported by the individual in the prior three years to the IRS and a comparable amount for all other entities such as corporations, limited partnerships, and charitable institutions. This rules also include provisions concerning payment eligibility determinations for program participants who are reservist military personnel called to active duty as the result of Operation Iraqi Freedom, and other similar military operations. **68 Fed. Reg. 33341 (June 4, 2003)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT. The plaintiffs were sellers of agricultural produce and sold produce to the defendant corporations in two months for which they were not paid. The two defendant corporations had two common shareholders, shared a business address and shared a business office address. The parties had made several transactions in the past but used the first corporation as the buyer on the invoices because the second corporation did not have a PACA license, even though the parties recognized that the produce was purchased by the second corporation. Eventually, the second corporation received its PACA license but the plaintiffs still refused to sell only to the second corporation because of credit concerns; therefore, the invoices used the names of both corporations as buyer. The plaintiffs sought an injunction against both corporations, pending resolution of the PACA trust issues for nonpayment for the produce. The first corporation argued that it should not be subject to the injunction because it was not the actual buyer of the produce. Although the court withheld final judgment on the issue, the court held that, for the purposes of issuing an injunction, the first corporation would be considered a buyer of the produce because its name was on the invoices involved. **Horizon Marketing v. Kingdom Inter. Ltd., 244 F. Supp. 2d 131 (E.D. N.Y. 2003)**.

POULTRY PROCESSING. The Department of Labor is inviting comments on its draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing. The draft guidelines are available on OSHA's web page, http://www.osha.gov, and through its publications office. Interested persons may submit written or electronic comments on the draft guidelines. OHSA will also hold a stakeholder meeting where the public is invited to express its views on the draft guidelines. **68 Fed. Reg. 22536 (June 4, 2003).**

WHEAT. The Federal Grain Inspection Service has issued proposed regulations which revise the United States Standards for Wheat to amend the definition of the class Hard White Wheat to insert subclasses. The proposed rules also change the definition of Contrasting Classes for Hard Red Winter Wheat and Hard Red Spring Wheat and insert language into the wheat standard to specify the sample size used to determine sample grade factors. **68 Fed. Reg. 33408 (June 4, 2003)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The taxpayer established a charitable trust which was to be funded from the taxpayer's residuary estate. The trust agreement provided that the trust principal was to be used for funding college scholarships for graduates of a high school, to provide funds to colleges, and for historic preservation of buildings and open spaces. The IRS ruled that the value of the property used to fund the trust was eligible for the charitable deduction. **Ltr. Rul. 200322013, Feb. 14, 2003.**

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent's will passed a farm to a trust for the decedent's three children. The estate elected to pay the federal estate tax by installments. The trust provided for cash leasing of the land to the three children at fair market value, either personally or to entities controlled by the children. Two of the children had leased some of the farm land as sole proprietors but later formed wholly-owned, single person LLCs which were taxed as pass-through entities. The leases were changed to make the LLCs the tenants under the leases. The IRS ruled that the change to the LLCs was a mere change in the form of the businesses and did not cause acceleration of the installment payments of estate tax. **Ltr. Rul. 200321006, Feb. 12, 2003**.

SPECIAL USE VALUATION. The IRS has issued the 2003 list of average annual effective interest rates charged on new loans by the Farm Credit Bank system to be used in computing the value of real property for special use valuation purposes:

District	Interest rate
Columbia	9.18
Omaha/Spokane	7.23
Sacramento	6.92
St. Paul	7.36
Springfield	7.26
Texas	7.19
Wichita	7.44

Rev. Rul. 2003-53, I.R.B. 2003-__.

FEDERAL INCOME TAXATION

C CORPORATIONS.

EMPLOYEE. The taxpayer was a tax attorney and formed a C corporation to operate the law practice business. The taxpayer was the sole shareholder, president and secretary-treasurer. The taxpayer provided all of the services which generated the corporation's income and managed all of the corporation's business affairs. The court held that the compensation received by the taxpayer from the corporation was wages and any employment-related expenses were miscellaneous itemized deductions and not business deduction. **Kovacevich v. Comm'r, T.C. Memo. 2003-161**.

In the same facts as the case above, the corporation was assessed penalties for failure to deposit employment taxes and for underpayment of tax for the wages paid to the sole shareholder, president, and secretary-treasurer of the corporation. **Western Management, Inc. v. Comm'r, T.C. Memo. 2003-162**.

CHILD TAX CREDIT. The IRS has announced that it will begin mailing $400 checks to taxpayers who timely filed 2002 tax returns on which the child tax credit was claimed. The child tax credit was increased to $1000 per eligible child for 2003 from $600 in 2002. Taxpayers who are not eligible for the advance payment may still claim the full $1000 credit per eligible child on their 2003 returns. Taxpayers need to take the advance payment into account when claiming the child tax credit for 2003 and make any changes based on the number of eligible children in 2003 that may differ from the number of eligible children in 2002. For example, a taxpayer with an eligible child who was 16 in 2002 will receive the advance payment for that child under this program, even though no tax credit will be available for that child in 2003, resulting in excess tax credit taken for that child for 2003 and necessitating an increase in the income tax by $400 for 2003. **IR-2003-68**.

COST-SHARING PAYMENTS. The Secretary of Agriculture has determined that cost-share payments made to individuals under the Forest Land Enhancement Program (FLEP) are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife. This determination permits recipients to exclude certain payments under FLEP from gross income for federal income tax purposes to the extent allowed by the I.R.C. § 126. **68 Fed. Reg. 33443 (June 4, 2003)**.

DEPENDENTS. The taxpayer was divorced and the divorce decree granted custody of the couple's two children to the taxpayer's former spouse, although neither the divorce or custody decree was submitted as evidence. The taxpayer claimed the two children as dependents on the taxpayer's income tax return but did not attached a written declaration waiving the spouse's right to the dependency deduction. The children lived most of the year with the custodial spouse. The court held that the taxpayer could not claim the children as dependents nor claim the earned income tax credit for the children. **Jones v. Comm'r, T.C. Summary Op. 2003-66**.

The taxpayer had two children who lived most of the year with foster parents. The taxpayer did not provide evidence that the taxpayer provided more than one-half of the support for the children nor that the children lived with the taxpayer for more than one-half of the tax year. The court held that the taxpayer could not claim the children as dependents nor claim the earned income tax credit based upon the children as eligible children under I.R.C. § 32(c)(3)(A). **Linton v. Comm'r, T.C. Memo. 2003-160**.

DEPRECIATION. The taxpayers purchased a mobile home in 1982, removed the wheels and axles and placed the home on a lakeside lot. Taxpayers added improvements to the structure including a 12 by 24 foot deck, a concrete perimeter, storage area, electrical wiring, a water system, a boathouse, a dock andan electric lift. The home was converted to rental property in 1991 and the taxpayer started claiming a depreciation deduction based on a 10-year life, assuming that the property was placed in service in 1982. The court held that the property was placed in service in 1991 for depreciation purposes and was depreciable under MACRS over 27.5 years as residential rental property.See Harl, "Depreciating Mobile Homes," 12 *Agric. L. Dig.* 145 (2001). **Rupert v. Comm'r, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,486 (9th Cir. 2003), *aff'g*, T.C. Memo. 2001-179**.

DISASTER LOSSES. On May 15, 2003, the President determined that certain areas in Illinois were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C.

§ 5121, as a result of severe storms, tornadoes and flooding that began on May 6, 2003. **FEMA-1469-DR**. Accordingly, taxpayers who sustained losses attributable to the disaster may deduct the losses on their 2002 federal income tax returns.

IRA. The taxpayer was self-employed and employed by the state of Florida which provided a pension plan for the taxpayer. Prior to employment for the state, the taxpayer had established a Keogh account. The taxpayer made a contribution to the Keogh account in the tax year the taxpayer was employed with the state and the taxpayer did not received any self-employment income. The court held that the taxpayer was not entitled to a deduction for the contribution to the Keogh plan because the taxpayer did not have any income from self-employment. **Rosetti v. Comm'r, T.C. Memo. 2003-157**.

LEGAL FEES. The taxpayer was a retired engineer but continued to provide consulting services. The taxpayer's daughter was involved in a divorce proceeding which included a contest for custody of the daughter's child. At one point the taxpayer also sought custody of the grandchild. The taxpayer claimed the legal expenses for the divorce and custody proceedings as business legal expenses. The court held that the legal fees were not deductible because the legal proceedings were not part of the business but were a personal expense of the taxpayer. **Rupert v. Comm'r, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,486 (9th Cir. 2003),** ***aff'g*****, T.C. Memo. 2001-179**.

MEDIATION. The IRS has announced that it has made permanent two programs that allow taxpayers and the IRS to reach agreement on tax disputes more quickly. The IRS has also announced a pilot program to expedite the resolution of Tax Exempt Bond disputes. The IRS has made permanent the Fast Track Mediation (FTM) program. This program gives small businesses, self-employed taxpayers and the IRS the opportunity to mediate disputes through an IRS Appeals officer, who acts as a neutral party. In this program, most tax disputes are resolved within 40 days compared to several months though the regular appeal process. The IRS has also made permanent the Fast Track Settlement (FTS) program. The program enables the IRS to resolve tax disputes with large and mid-size businesses at an earlier stage, which is often within a shorter time than through the normal audit and appeal processes. Finally, the IRS has created a pilot FTM program for tax-exempt bonds. **Rev. Proc. 2003-40, I.R.B. 2003-__; Rev. Proc. 2003-41, I.R.B. 2003-__**.

NON-COMPETITION AGREEMENT. The taxpayer purchased an interest in a car dealership. As part of the sales agreement, the seller agreed not to open or operate a car dealership within a certain distance. The initial agreement was entered into in 1990 but the sale did not close and no noncompetition agreement was executed because the seller did not receive payment for the agreement. The dealership was resold in 1993 under similar terms but the sales agreement expressly stated that the earlier sale contract was terminated. The taxpayer argued that the second sales agreement was an extension or amendment of the 1990 agreement; therefore, 1990 law applied and the noncompetition agreement payments did not need to be amortized. The court held that the 1990 agreement had been terminated; therefore, the 1993 sales contract was a new contract and I.R.C. § 197 required the noncompetition agreement to be amortized over 15 years. **Frontier Chevrolet, Inc. v. Comm'r, 2003-1 U.S. Tax Cas. (CCH) ¶ 50,490 (9th Cir. 2003),** ***aff'g*****, 116 T.C. 289 (2001)**.

PENSION PLANS. The IRS has announced that it is making changes to several programs that allow plan sponsors and administrators to voluntarily correct problems with their retirement plans: the Self-Correction Program (allows administrators to correct problems without notifying the IRS); the Voluntary Correction Program (allows administrators to correct plan errors after obtaining IRS approval); and the Audit Closing Agreement Program (allows for corrections to be made while the plan is under audit, provided that the IRS gives its approval). **Rev. Proc. 2003-44, I.R.B. 2003-__**.

For plans beginning in June 2003, the weighted average is 5.39 percent with the permissible range of 4.85 to 5.93 percent (90 to 120 percent permissible range) and 4.85 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 2003-30, I.R.B. 2003-__**.

TIP INCOME. The taxpayer was a tax-exempt social club which had unrelated business income from food and beverage services provided to a small number of nonmember patrons. The wait staff received tip income from these services which was included in the employee income subject to social security tax. The IRS ruled that the taxpayer could claim the credit under I.R.C. § 45B for the portion of employer social security taxes paid with respect to employee tips received from both members and nonmembers. **Rev. Rul. 2003-64, I.R.B. 2003-__**.

WITHHOLDING TAXES. The IRS has published new income tax withholding tables on its website (www.irs.gov) for employers to use in figuring how much federal income tax to withhold from workers' wages to reflect changes made by the Jobs and Growth Tax Relief Reconciliation Act (H.R. 2), which President Bush signed on May 28, 2003. The posted tables contain the percentage method formulas used by payroll programmers. The IRS expects to mail printed copies of Publication 15-T, which contains all the tables, to employers nationwide by the third week of June. Employers are requested to implement the new tables as soon as they can work them into their payroll systems. Barring unusual circumstances, the changes should be implemented no later than July 1, 2003. **IR-2003-69**.

NEGLIGENCE

CROP SPRAYING. The plaintiff was a cotton farmer with a field neighboring a rice crop owned by one of the defendants. The rice field owner hired another defendant to aerially spray the rice field with a herbicide. Soon after the spraying, the plaintiff's field showed signs of damage from the herbicide and the plaintiff brought suit for negligence against the land owner and the sprayer. The jury verdict found no negligence by the defendants. The plaintiff appealed, citing four errors of the trial court: (1) the admission as evidence of conclusions of the state Plant Board of insufficient evidence of cause; (2) failure to include a jury instruction that violation of crop spraying regulations was evidence of negligence; (3) failure to include a jury instruction that the negligence of the crop sprayer was chargeable to the land owner because the spraying was inherently dangerous; and (4) admission of evidence of historical crop yields in the area to show lack of damage. The court held (1) the conclusions of the state Plant Board should not have been admitted as evidence because they were unduly prejudicial to the jury and invaded the jury's fact finding role; (2) the two jury instructions should have been allowed as accurate statements of law; and (3) the evidence of historical yields should not have been admitted because there was no showing of comparability of land and conditions between the historical yields and the plaintiff's field. **McCorkle Farms, Inc. v. Thompson, 84 S.W.3d 884 (Ark. Ct. App. 2003)**.

STATE REGULATION OF AGRICULTURE

WAREHOUSES. The plaintiff was a bean producer who contracted with a bonded warehouse to mill and market the beans, with the price of the beans determined by the eventual sale to a third party. The plaintiff sued for breach of contract, claiming that the defendant warehouse had fraudulently concealed that the beans were used by the defendant to cover a short position in beans and thus determining the price. The defendant claimed that the beans were sold at a later date when the price was less. The jury had found (1) the defendant did appropriate the beans to cover the short position, (2) the price of the beans on that date, and (3) punitive damages. After the judgment, the plaintiff sought indemnity from the state Commodity Indemnity Account Program (CIAP) and received an amount equal to 90 percent of the jury compensatory award in exchange for assignment of the judgment against the defendant. The plaintiff then sought and obtained an award of attorneys' fees for the CIAP action. The defendant challenged the jury verdict as not supported by the evidence and excessive as to the punitive damages because the punitive damages exceeded 50 percent of the assets of the defendant during trial. The court upheld the jury verdicts as supported by substantial evidence. The court also upheld the punitive damage award because of evidence that the defendant's employees were directed to falsify documents as to the plaintiff and in preparation for trial. The court upheld the amount of the punitive damage award because the defendant had transferred many assets prior to trial and the award was not excessive relative to the compensatory damages. Finally, the court reversed the award of attorneys' fees for the CIAP action because the action did not constitute an effort to collect a judgment from the defendant. The court found that the CIAP action was part of a separate state agency action which facilitated recovery of losses resulting from contracts with commodity warehouses, not the enforcement of judgments. **Griff, Inc. v. Curry, 63 P.3d 441 (Idaho 2003)**.

ZONING

EXCLUSIVE FARM USE. The defendant was a telecommunications company which wanted to establish a series of cell phone towers in the county. The towers were to provide expanded rural cell phone service and would be leased to other parties for additional antennas. The defendant determined that one cell tower had to be located on land zoned for exclusive farm use and sought a permit for the tower construction. The plaintiffs owned the land on which the tower was to be built and objected to the permit. The county denied the permit but the permit was approved on appeal to the Land Use Board of Appeals (LUBA). The LUBA ruled that the county had considered factors not enumerated in the statute, Or. Rev. Stat. § 215.275, and had failed to make findings of fact and law. The statute provided that a non-farm use facility could be located on EFU land "if the facility must be sited in an exclusive farm use zone in order to provide the service." The plaintiffs argued that there was a reasonable alternative to the new tower in that the cell phone system could be created using existing towers and the new tower was not necessary for establishing the new service. The defendant argued that its need to provide additional leasing space for third party antennas necessitated the new tower. The LUBA agreed with the defendant, ruling that the service purposes of the tower could be established by the defendant and that the statutory factors had to be reviewed in light of those purposes. The court disagreed, holding that the proper standard for determining whether a reasonable alternative existed was the public service involved, the cell phone service, and that the leasing of antenna space had to further that public service. Because the county board had not made specific findings on this issue, the case was remanded for those findings. **Sprint PCS v. Washington County, 63 P.3d 1261 (Or. Ct. App. 2003)**.

CITATION UPDATES

Estate of Costanza v. Comm'r, 320 F.3d 595 (6th Cir. 2003), ***rev'g and rem'g*, T.C. Memo. 2001-128** (gift) see p. 36 *supra*.

Kimbell v. United States, 244 F. Supp.2d 700 (N.D. Tex. 2003) (transfers with retained interests) see p. 21 *supra*.

IN THE NEWS

STARLINK LITIGATION. The deadline for filing the Corn Loss Proof of Claim and Release for compensation under the non-Starlink Farmers Settlement (see p. 79 *supra*) has been extended 60 days, with a new due date of July 31, 2003. That is the same due date as for the Property Damage Proof of Claim and Release, which was not extended. The court opinion, *In Re Starlink Corn Products Litigation, Docket No. 1403 (N.D. Ill. 2003)*, had contained authority for an extension. The only other change was to drop the requirement for a map from FSA. Application forms can be obtained from the website at www.non-starlinkfarmerssettlement.com or by calling 1-888-833-4317.

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