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- Renewable Energy and Energy Efficiency Program

Action for failure of insecticide to have distinctive odor, color or feel preempted by FIFRA

In recent years, farmers, ranchers and other applicators of pesticides have sought a means of subjecting pesticide and herbicide manufacturers to liability for damages and personal injury resulting from contact with the chemicals.[1] Most of these cases have been dismissed under the strong defense of preemption of the cause of action by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) because the cause of action would impose an additional requirement, usually in the form of a warning about the particular injury or damage involved in the suit, on the labeling of the chemical product.[2]

However, several cases have carved exceptions to the general preemptive effect of FIFRA of actions based on negligent failure to warn where:

(1) the manufacturer could comply with both federal labeling requirements and state tort duty to purchasers;[4]

(2) the warning could be provided by means other than the label;[5]

(3) the state tort liability affected only the sale and use of the regulated chemicals;[6] or

(4) the labeling requirements were not so comprehensive as to prohibit state tort actions.[7]

In addition, plaintiffs have been able to bring actions based on other theories of negligence, not based on failure to warn, which have been held not preempted by FIFRA, including:

(1) negligent design and testing;[8]
(2) failure to recall contaminated fungicide;[9]
(3) inadequate design and testing;[10]
(4) failure to comply with FIFRA;[11]
(5) breach of warranty;[12]
(6) strict liability;[13]
(7) failure to notify EPA of contamination;[14]
(8) misrepresentation;[15]
(9) defective herbicide;[16]
(10) claims based on information missing from label;[17] and
(11) defective container.[18]

In a 2004 Southern District of Iowa case,[19] the plaintiff grain farmer applied an insecticide manufactured by the defendant. The insecticide was applied as a hopperbox seed treatment in accordance with the label instructions. However, the plaintiff testified that the plaintiff did not comply with the personal protective equipment requirements on the label while applying the insecticide.

The plaintiff alleged that the insecticide was defective in design because it contained no distinctive odor, color, feel or irritant that would alert the user to the presence of the insecticide so as to seek treatment for contamination as warned on the insecticide label. The plaintiff brought suit under claims of product liability, implied warranty of fitness for a particular purpose, implied warranty of merchantability, and recklessness.

In a motion to dismiss, the defendant manufacturer argued that the claims were preempted by FIFRA because the claims were based on the label's failure to warn about the lack of a distinctive color, odor or touch.

The court stated that the determining factor to distinguish an action based on failure to warn (preempted) from an action based on a defective product (not preempted) was whether the manufacturer would merely add a warning about the lack of a distinctive color or odor instead of actually adding the color or odor. Under this rule, the court held that the plaintiff's claims were primarily based on a failure to warn because a manufacturer would tend to avoid the claims by adding a warning that the insecticide did not have a distinctive odor, color or touch instead of changing the formulation of the insecticide. The defendant had submitted evidence that the manufacturing process did not allow the addition of a distinctive color or odor because the same

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machinery was used to mix other farm chemicals and the additives would also be applied to those chemicals. Because the plaintiff's claims were based on a failure to warn, the claims were preempted by FIFRA.

In addition, the court noted that 40 C.F.R. § 153.155(b)(2) excepted from the use of color additive pesticides that were applied through hopperbox mixing, as was done in the present case. The court held that this regulation was an implied preemption of any action involving the issue of the use of color or other additives.

In contrast to the actions listed above which successfully hurdled the FIFRA preemption bar, in the 2004 Iowa case, the farmer's claim that the insecticide needed a distinctive color or odor was an attack on adequacy of the EPA-approved labeling of the insecticide and not the insecticide's manufacturing or design quality or effectiveness.

—Robert P. Achenbach, Executive Director, AALA

[1] See Harl, *Agricultural Law*, § 15.05[1][a] (2004).

[2] *Id.*

[3] See 7 U.S.C. § 136v(b).

[4] *Ferebee v. Chevron Chem. Co.*, 736 F.2d 1529 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1062 (1985) (FIFRA did not preempt state tort action for failure to warn because manufacturer's compliance with federal statutory labeling and state tort liability requirements not impossible); *Thornton v. Fondren Green Apartments*, 788 F. Supp. 930 (S.D. Tex. 1992) (same); *Riden v. ICI Americas, Inc.*, 763 F. Supp. 1500 (W.D. Mo. 1991) (plaintiff brought action against rat poison manufacturer for injuries resulting from use on plaintiff's farm; plaintiff alleged that product defective and defendant negligent in failing to warn against handling product or breathing dust; court held that FIFRA does not expressly or impliedly pre-empt state common law tort actions involving failure to warn; court found that FIFRA labeling requirements not uniform for each manufacturer and allow variations which go beyond minimum requirements of FIFRA).

[5] *King v. E.I. du Pont de Nemours & Co.*, 806 F. Supp. 1030 (D. Me. 1992) (in case involving FIFRA registered herbicide, state tort action may be allowed if failure to warn involved failure to warn by means other than label; action prohibited under preemption doctrine where plaintiffs alleged only failure to warn on defendant's products).

[6] *Couture v. Dow Chem. U.S.A.*, 804 F. Supp. 1298 (D. Mont. 1992) (state tort action for failure to warn regulated only sale and use of herbicides and, therefore, was not preempted by FIFRA prohibition of state labeling requirements).

[7] *Cox v. Velsicol Chem. Corp.*, 704 F. Supp. 85 (E.D. Pa. 1989) (state court action against pesticide manufacturer for failure to warn adequately about risks of use of pesticide not preempted by federal labeling requirements); *Roberts v. Dow Chemical Co.*, 702 F. Supp. 195 (N.D. Ill. 1988) (same).

[8] *National Bank of Commerce v. Dow Chemical Co.*, 165 F.3d 602 (8th Cir. 1999) (negligent design and testing claim against insecticide manufacturer not pre-empted by FIFRA); *Ackerman v. Cyanamid Co.*, 586 N.W.2d 208 (Iowa 1998) (negligent design and testing claim against herbicide manufacturer not pre-empted by FIFRA).

[9] *Miller v. E.I. du Pont de Nemours & Co.*, 880 F. Supp. 474 (S.D. Miss.1994) (action for failure to recall contaminated fungicide not preempted by FIFRA).

[10] *Higgins v. Monsanto Co.*, 862 F. Supp. 751 (N.D. N.Y. 1994) (actions for inadequate testing of pesticide, for failure to comply with FIFRA, for breach of warranties voluntarily placed on labels, and for strict liability as unreasonably dangerous product not preempted by FIFRA).

[11] *Id.*

[12] *Id.*

[13] *Id.*; *Roberson v. E.I. du Pont de Nemours & Co.*, 863 F. Supp. 929 (W.D. Ark. 1994) (action for breach of warranty not preempted because warranty voluntarily placed on label by manufacturer); *Johnson v. Monsanto Chemical Co.*, 129 F. Supp.2d 189 (N.D. N.Y. 2001) (strict liability and misrepresentation claims not preempted by FIFRA).

[14] *Roberson v. E.I. du Pont de Nemours & Co.*, 863 F. Supp. 929 (W.D. Ark. 1994) (action for violation of FIFRA for failing to notify the E.P.A. of contamination not preempted by FIFRA)

[15] *Prather v. Ciba-Geigy Corp.*, 852 F. Supp. 530 (W.D. La. 1994) (actions for breach of express warranty and for misrepresentation in sale of herbicide not preempted by FIFRA); *M & H Enterprises v. Tri State Delta Chemicals, Inc.*, 984 S.W. 2d 175 (Mo. Ct. App. 1998) (action for misrepresentation resulting from representations by seller comparing pesticide to other products not pre-empted by FIFRA); *Anderson v. Dow Agrosciences, LLC*, 262 F. Supp.2d 1280 (W.D. Okla. 2003) (failure to warn about peanut herbicide use on akaline soils preempted by FIFRA; action for negligence in herbicide manufacturer's claiming that plants would "grow out of it" not preempted by FIFRA).

[16] *Hopkins v. American Cyanamid Co.*, 666 So.2d 615 (La. 1996) (claims for failure to warn preempted by FIFRA; claims for defective herbicide not preempted); *Cole v. Central Valley Chemicals, Inc.*, 9 S.W.3d 207 (Tex Ct. App. 1999) (suit for defective herbicide not pre-empted by FIFRA where basis of action was misrepresentations made by defendant and not on label).

[17] *Bruce v. ICI Americas, Inc.*, 933 F. Supp. 781 (S.D. Iowa 1996) (claims not based on information missing from or included on labels not preempted by FIFRA; non-preempted claims barred by conspicuous disclaimers).

[18] *Lucas v. Bio-Lab, Inc.*, 108 F. Supp.2d 518 (E.D. Va. 2000) (injury from chemical fumes due to alleged defective container; claims of defective packaging not pre-empted by FIFRA).

[19] *Wuebker v. Wilbur-Ellis Co.*, 338 F. Supp.2d 974 (S.D. Iowa 2004).

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— Drew L. Kershen, Professor of Law, The University of Oklahoma, Norman, OK

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Proposed repeal of the federal estate tax—Is this a good idea for agriculture?

By Roger A. McEowen and Neil E. Harl

Under legislation enacted in 2001,[1] the federal estate tax applicable exclusion rises for deaths through 2009 with the federal estate tax repealed in 2010. Unless the Congress passes additional legislation addressing the matter, the federal estate tax will return for deaths after 2010. Even before the 2001 legislation was passed, calls were being made for a permanent repeal of the federal estate tax. Those calls have been renewed in recent months, particularly in light of the results of the fall 2004 federal election.

The following table sets forth the scheduled increase in the estate tax applicable exclusion as well as the top estate tax rate applicable to taxable estates as specified under the 2001 legislation:

Year	Estate Tax Applicable Exclusion Exemption Amount	Estate Tax Top Rate[2]
2002	1,000,000	50%
2003	1,000,000	49%
2004	1,500,000	48%
2005	1,500,000	47%
2006	2,000,000	46%
2007	2,000,000	45%
2008	2,000,000	45%
2009	3,500,000	45%
2010	Repealed	0%
2011	1,000,000	55%

Thus, under present law, a decedent's estate is not subject to federal estate tax until the taxable estate value exceeds $1,500,000 (for deaths in 2004 and 2005). As the table illustrates, that amount rises to $3,500,000 in 2009, the estate tax is repealed in 2010, and then applies to taxable estates above $1,000,000 for deaths in 2011 and thereafter (and at a higher top rate).

History of and rationale for the federal estate tax

The federal estate tax was first adopted in 1916 with the express purpose of raising revenue.[3] Presently, the revenue raised by the federal estate tax (and the transfer tax system in general) is quite small in comparison with the federal government's total receipts—hovering around one percent.[4] Thus, the revenue-raising function of the tax is no longer paramount. But, one overriding purpose of the federal estate tax system remains - to reduce large concentrations of family wealth. The Congress pointed to this purpose in enacting large increases in amounts exempt from transfer taxation in 1981.[5] Likewise, much of the impetus behind the estate tax was the view that people in capitalist societies are able to amass wealth for transmission to the natural objects of their bounty because the government, the economy, and society as a whole make it possible.Thus, in the process of wealth accumulation and transfer, the American capitalist system of government and society is a silent partner that is entitled to its share of the wealth of those citizens who benefit from the opportunities that they are afforded.

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In addition to the news items published in the *Agricultural Law Update*, the AALA board also recognizes the value of allowing members a forum to express their opinions on agricultural law topics. Opinion articles, such as this, must be well researched, properly cited, and otherwise up to the standards of excellence maintained thoughout the *Update*. We welcome others. Views expressed by the authors do not reflect the official position of the AALA or its Board of Directors.

Justification for repeal

Central to George W. Bush's first presidential campaign was the promise of substantial tax cuts, and central to his tax cut program was elimination of the gift tax and the estate tax, which he characterized as the "death tax." Consequently, the Economic Growth and Tax Relief Reconciliation Act of 2001 provided for the modification, and eventual one-year repeal, of the estate tax as indicated above. The president's reelection has again given rise to talk concerning making the one-year repeal of the federal estate tax in 2010 permanent. One of the most frequently cited reasons for repeal of the federal estate tax is the "…hardships that the tax inflicts on closely-held family businesses and farms."[6] The data, however, do not support that frequently-made assertion.

Estates subject to federal estate tax

The number of estates subject to the federal estate tax has been quite modest in recent years. Of the roughly 2.3 million deaths in 2003, only 30,627 incurred estate tax liability.[7] That is approximately 1.3 percent of all deaths. The average amount of federal estate tax paid by these estates was $674,420 per estate.

Payment of estate tax by estate size

In 2003, the largest 505 estates (those with taxable estates exceeding $20,000,000) paid an average of $10,265,364 each in federal estate tax.[8] The largest 1,329 estates (those with taxable estates exceeding $10,000,000 of taxable estate) paid an average of $6,115,653 each in federal estate tax.[9] The top 3,486 (those with taxable estates exceeding $5,000,000 in taxable estate) paid an average of $3,542,703 each in federal estate tax.[10] All other taxable estates (the remaining 27,141 taxable estates) had an average estate tax bill of $271,200 each in 2003. Thus, federal estate tax liability is heavily skewed toward the largest taxable estates, and it is those estates that would be the primary beneficiaries of permanent repeal.

Taxable estates containing farm property

Of the 30,627 taxable estates in 2003, only 1,967 estates reported containing some farm property.[11] That is 6.4 percent of taxable estates, and .0085 percent of all estates in 2003. Also, the bulk of farm property is held by taxable estates of $10 million and up, illustrated as follows:

Taxable Estate Size	Number	Average Value of Farm Property
$1,000,000-2,500,000	1,309	$92,559
$2,500,000-5,000,000	392	168,844
$5,000,000-10,000,000	139	194,352
$10,000,000-20,000,000	65	465,523
$20,000,000 or more	61	3,113,852[12]

Why does the estate tax not apply to the vast majority of farm and ranch estates? Clearly, the impact of the federal estate tax on farms and ranches (and other small businesses) has been substantially cushioned by several provisions that have been enacted beginning in 1976. For example, special use valuation of farmland can be elected on eligible farmland and has the potential to reduce the value for federal estate tax purposes by 40 to 60 percent (and even more) when there is substantial non-farm

influence on value. Also, the family-owned business deduction (enacted in 1997, but repealed for deaths after 2003) has reduced the impact of the federal estate tax. Likewise, discounts for co-ownership (up to 20 percent) and for entity ownership (up to 35 percent) have been almost routinely approved by IRS and/or the courts.

Who pays federal estate tax?

Households in the top five percent of the income distribution bear 91 percent of the estate tax burden. These same households bear 49 percent of the federal income tax burden. Households in the top 20 percent of the income distribution bear 99 percent of the estate tax burden and 77 percent of the federal income tax burden. Also, approximately 91 percent of the federal estate tax is paid by estates of persons with annual incomes exceeding $190,000 at the time of death.

In confirming the fact that the big run-up in wealth in recent years has largely bypassed the agricultural sector, the data show that the average tax paid in 2003 in states that are heavily agricultural is dramatically lower than the more urban states. For example, the bottom five states in terms of average federal estate tax paid per estate in 2003 were South Dakota, Iowa, Rhode Island, West Virginia and Washington.[13] Conversely, the top five states in terms of average federal estate tax paid per estate in 2003 were Delaware, District of Columbia, New Hampshire, Idaho and New York.[14]

Who would benefit from permanent repeal?

As noted above, the largest 3,486 taxable estates in 2003 (those with taxable estates above $5,000,000) paid an average of $3,542,703 in federal estate tax. The remaining 27,141 taxable estates had an average estate tax bill of $271,200. The remaining 2.27 million deaths in 2003 did not trigger any federal estate tax liability. Thus, the largest taxable estates would be the primary beneficiaries of permanent repeal. That fact alone makes it obvious what is really driving federal estate tax repeal. Federal estate tax is paid by the wealthiest two percent of decedents (and an even smaller percentage of farm decedents). Their heirs would be the principal beneficiaries of permanent repeal.

How would the Congress pay for permanent repeal?

In an era of growing federal budget deficits, the loss of any revenue (no matter how small) is a serious matter. The revenue loss from the federal estate tax would result in a shift of the tax burden to other taxes, most notably the federal income tax. While a very small (but broad-based) income tax rate hike could easily replace all revenue lost by repeal of the federal estate tax, such a move would raise a significant policy question. Should the Congress eliminate a tax paid by the wealthiest two percent (at the most) and replace it with a tax increase (however slight) on a much broader segment of the taxpaying public? It is important to note that, as the price for the one-year repeal of the federal estate tax in 2010 under current law, the Congress specified that, in 2010, property passing at death will no longer receive a step up or "fresh start" basis. Instead, such property will have a basis in the hands of the estate's heirs equal to the lesser of its basis in the hands of the decedent or its date of death fair market value.[15] As a means of paying for permanent repeal of the federal estate tax, the Congress could easily eliminate new basis at death. That would not be a good trade-off for agriculture. In the vast majority of agricultural estates, obtaining a new tax basis in property that passes through the estate is of far greater importance to the heirs than the potential application of the federal estate tax.

Long-term implications of permanent repeal

Impact on charitable giving

Clearly, the prospect of the potential application of the federal estate tax at death encourages charitable giving.[16] In 2003, a total of $241 billion was given to the nation's 850,000 charities. The Congressional Budget Office estimates that charitable giving would decline between six percent and 12 percent if the federal estate tax is repealed. The federal estate tax also encourages charitable giving during life as a way to reduce federal estate tax values.

Economic impacts

Repeal of the federal estate tax on a permanent basis and loss (or even a partial loss) of the new income tax basis at death would be enormously disadvantageous to the economy generally, but particularly for the agricultural sector for several reasons. First, as illustrated above, federal estate tax is paid by the wealthiest two percent (and an even smaller percentage of farm decedents). Loss of a new basis at death would result in additional income tax on sale by heirs up and down the income and asset scale, would tend to lock assets into families and would become an increasingly difficult burden in terms of proving basis. Because the primary beneficiaries of permanent repeal would be the wealthiest in society, they would have additional assets to invest in farm assets. Over time, this would be expected to lead to a gradual increase in farm asset ownership by the very wealthy. The proportion of land rented would be expected to rise as farmers would have an increasingly difficult time in competing for land ownership. Second, permanent repeal would accelerate the already pronounced trend toward greater concentration of wealth in the United States. Third, permanent repeal would almost certainly result in a significant decline in charitable giving. Finally, the revenue lost from federal estate tax repeal would result in a shift of burden to other taxes, most notably the federal income tax (or its successor). The income tax is a concern to a far greater segment of agriculture than the federal estate tax.

What should be done?

Clearly, the Congress should scrap the idea of permanently repealing the federal estate tax.[17] However, the data also indicate that it is possible for the Congress to raise the applicable exclusion to a level that will shield even more estates from estate taxation while preserving the revenue generated from the tax. Thus, it makes sense for the applicable exclusion to be increased presently to somewhere in the range of 3 to 4 million dollars per decedent (and indexed for inflation), with the top tax rate in the range of 40 to 45 percent. The rest of the estate tax system should be retained as is, including the rule permitting a new basis at death.

Conclusion

There is no empirical data to support the oft-heard complaint that the estate tax causes the demise or forced sale of family farms and closely-held businesses. It is sad to see agriculture being used as a "shill" for the advancement of political agendas when the data does not support the argument, and negative impacts to the sector would result if permanence of repeal occurs.

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[1] Pub. L. No. 107-16, 115 Stat. 41 (2001).

[2] For deaths in 2004 and 2005, the top rate applies to taxable amounts over $2,000,000. When the estate tax applies (for deaths in 2004 and 2005) it begins at a rate of 45 percent and rises to 47 percent (for deaths in 2005).

[3] See H.R. Rep. No. 922, 64th Cong., 1st Sess. 1-5 (1916).

[4] For fiscal year 2003, the federal estate tax generated revenue of just under 21 billion dollars, the lowest amount since fiscal year 1997.

[5] Senate Report No. 144, 97th Cong., 1st Sess. 124 (1981) states: "Historically, one of the principal reasons for estate and gift taxes was to break up large concentrations of wealth. Generally, small and moderate-sized estates have been exempt from the estate and gift taxes…".

[6] *See, e.g.*, Lantz, Gurley and Linna, *Popular Support for the Elimination of Estate Taxes in the United States?"99* Tax Notes 1263 (2003).

[7] Internal Revenue Service, Statistics of Income Division, Unpublished Data, November 2004, accessible at http://www.irs.gov/pub/irs-soi/03es05gr.xls

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] IRS does not separately report farm real estate. Farm real estate is reported under the category of "Other Real Estate." A report issued by the Congressional Research

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Repeal of estate tax/Cont. from page 5
Service (CRS) on June 9, 2003, included an estimate of the amount of farm real estate included in the "Other Real Estate" category. Approximately $1.6 billion of the assets reported in the "Other Real Estate" category is believed to be farmland. The conclusion by CRS was that farm real estate included in taxable estates in 2001 was estimated to total $1,582,774,000 which is approximately 1.28 percent of all taxable estate value. Farm assets in total account for 1.6 percent of total taxable estate value.

[13] Internal Revenue Service, Statistics of Income Division, Unpublished Data, November 2004, accessible at http://www.irs.gov/pub/irs-soi/03es05gr.xls.

[14] *Id.*

[15] However, the executor will be allowed to increase (but not above fair market value) the basis of appreciated property passing to other than a surviving spouse by up to $1,300,000 plus any unused capital loss carry forward and the amount of all reductions in basis effected in the case of property where the date of death value of such property was less than its adjusted basis in the decedent's hands. The basis of property passing to a surviving spouse may be increased by an additional $3,000,000.

[16] I.R.C. §2055 authorizes a deduction for transfers to three basic types of recipients: (1) the federal government, state governments or subdivisions thereof; (2) corporations operated exclusively for religious, charitable, scientific, literary, or educational purposes, which do not attempt to influence elections and are not substantially engaged in carrying on propaganda or influencing legislation; and (3) certain fraternal and veterans organizations.

[17] Such an approach appears unlikely, however. With the convening of the new Congress in January of 2005, there will probably be enough votes for permanent repeal of the estate tax. Repeal is not a certainty, but in the Senate (which has been the major obstacle for repeal) the balance of power appears to have shifted enough to provide the necessary 60-vote majority. The Republicans have a 55-45 vote majority in the Senate, and it appears likely that 53 Republicans would vote for permanent repeal (Chafee (RI) and McCain (AZ) can be expected to not vote for permanent repeal). Seven returning Democrat Senators are on record as supporting permanent repeal of the federal estate tax.

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Top 10 Reasons for AALA Members to Recruit New Members

Number 10. AALA wants to build on its momentum.

AALA added more than 150 new members in 2004, and we need to build on our momentum. In November of 2003, AALA had 527 members. By September 30, 2004, AALA had 681 members. By December 31, 2004, AALA had 708 members.

Number 9. AALA has always been a membership-driven organization.

New members bring new ideas, energy and expertise to the AALA!

Number 8. All participants in the Member Recruitment Program are eligible to enter a drawing for a CASH PRIZE and consolation prizes.

Each member earns one ticket for the drawing for each new membership. Each member earns four tickets for the drawing for each new attendee at the Kansas City symposium.

Number 7. AALA Members are the BEST advertisement for the AALA.

Your personal experience with AALA is the best reason your colleagues will consider joining AALA and attending the Kansas City symposium.

Number 6. Membership is our "bread and butter."

AALA relies on dues from members and attendance at its annual symposium for all of its operating revenues. The financial stability of AALA is dependent on the number of annual memberships and symposium attendance.

Number 5. We make it EASY for you to contact your colleagues and encourage them to join AALA and/or to attend the Kansas City symposium.

Special recruitment brochures are available for download from the website (www.aglaw-assn.org) or by contacting the Executive Director of the AALA, Robert Achenbach, at Roberta@aglaw-assn.org. The website also includes a sample letter that can be customized by you to send to your colleagues.

Number 4. The CASH PRIZE is equivalent to the 2005 annual conference registration fee.

In 2004, this fee was $345. All participants in the Member Recruitment Campaign will be recognized at the Kansas City symposium. All members (including students) are eligible to participate in the drawing.

Number 3. Don't you talk to everyone you know about AALA anyway?

Number 2. AALA has been a membership-driven organization for 25 years.

We must "grow" our membership to be strong for the next 25 years.

Finally, the Number 1 reason to participate in the Membership Recruitment Campaign is ... the Cash Prize!

If you have questions about the Member Recruitment Campaign, please contact Robert Achenbach, Executive Director of the AALA at RobertA@aglaw-assn.org. Official Rules for participation in the Member Recruitment Program follow.

--Submitted by the AALA Membership Committee: Maureen Kelly Moseman, Chair; Jeffrey Feirick; Peggy Kirk Hall; Eldon McAfee; Harrison Pittman; Jesse J. Richardson, Jr.; Robert Serio; Charles J. Sullivan; Mark Thornburg; and Larry Gearhardt

Official Rules for the 2004-2005 Member Recruitment Program

The AALA Membership Committee and Board of Directors have approved a new membership recruitment program to increase the membership of the AALA. The greatest asset to the members is their networking with the many and diverse members of the association, both at the annual conference and throughout the year. Although the membership committee has been able to increase the membership by over 100 members during 2004, there remain thousands of agricultural law academics, lawyers, accountants, students and business professionals who are not yet members or who have let their membership lapse. In recognition that the best method of recruitment is the personal recommendation, the Membership Committee and Board of Directors are asking all members to contact the people they know in agriculture with information about the benefits of joining the AALA.

The Great 2005 Membership Recruitment Program Raffle

As an incentive for members to participate in the membership recruitment program, all members who recruit a new member or who recruit a nonmember to attend the 2005 Annual Agricultural Law Symposium in Kansas City, MO will receive a chance for a cash prize in a raffle drawing to be held at the 2005 conference.

Rules: A "nonmember" is any person or organization which was not an AALA member in 2004. A "current member" is any person or organization who is a member in 2004 or 2005. For each individual nonmember recruited who becomes a member in 2005, a current member who recruited the nonmember will receive one (1) ticket for the drawing. For each recruited individual nonmember who attends the 2005 annual conference in Kansas City, MO, the current member who recruited the nonmember will receive four (4) tickets in the drawing. Thus, if a current member recruits a new member and that new member attends the annual conference, the recruiting member will receive a total of five (5) tickets in the drawing. Recruitment of an institutional membership entitles the recruiting member to three (3) tickets.

Members will be provided with special recruitment brochures (included in the conference materials provided in Des Moines and available for download from the AALA website) which will provide for identification of the recruiting member so that proper credit will be made for each new member recruited. Members may want to write their names on the membership brochures on the application form to ensure credit. Additional materials may be obtained from the AALA web site or from Robert Achenbach, RobertA@aglaw-assn.org.

Members of the Membership committee, Board of Directors and the Executive Director are not eligible for the drawing. The AALA database of past members will not be made available to members for this program but will be used by the Membership Committee, Board of Directors and the Executive Director to recruit new members.

Prizes: The earned tickets will be placed in a drawing to be held at the annual conference in Kansas City. The first ticket drawn will receive the First Prize, a cash award equal to the 2005 annual conference registration fee for a member ($345 in 2004). Consolation prizes will also be awarded.

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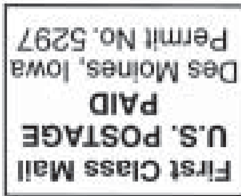

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AMERICAN AGRICULTURAL LAW ASSOCIATION NEWS

From the Executive Director:

2005 membership renewals have been coming in at a steady pace but almost half the members have yet to renew. Please help save the cost of postage and printing of second notice letters by sending your membership renewal payment soon. Unfortunately, members can no longer renew memberships online due to credit card processing rules.

If you haven't renewed your AALA membership for 2005 by March 1, 2005, this may be your last *Update* issue.

The AALA board has given approval for the printing of a membership directory this spring. The deadline for inclusion in the directory is March 15, 2005. The printing will proceed shortly after that date and only current members can be included.

Everyone's membership renewal packet contained membership brochures to give to prospective members. More are available at any time, plus we now have copies of the brochure for the 2004 conference on glossy paper which can be used to show prospective members one of the benefits of AALA membership. Please let me know if you could use some of these brochures.

If you have not already done so, now is the time to fill in October 7 and 8, 2005 as the dates for the AALA Annual Agricultural Law Symposium and Meeting at the Country Club Plaza Marriott in Kansas City, MO.

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