VOLUME 19, NUMBER 5, WHOLE NUMBER 222 APRIL 2002

State place of origin labeling requirements for agricultural products

Place of origin labeling requirements imply mandates that a product be identified as to the place (i.e., country, state) where it originated. Agricultural interests strongly support requirements that food products, at least at the retail market, be labeled with an indication as to the product's place of origin, particularly with regards to meat products being imported from a foreign country.[1] They feel it is vital to "[e]nhacing market opportunities for domestic meat, meat products and all agricultural commodities[,]" characterizing place of origin labels as "critical to the agriculture industry."[2] Nearly every state has some interest in requiring certain agricultural products to be labeled as to their place of origin, but such requirements will always raise federal constitutional concerns based on the Commerce Clause.[3] Oregon became concerned about its place of origin labeling laws in the late 1980s because of an opinion from the Oregon Attorney General addressing state place of origin requirements as to fryers.[4] By 1989, Oregon amended its labeling laws with regards to lamb meat,[5] and by 1997 did the same with regards to fryers.[6]

State labeling laws

Most states, at one time or another, have had laws requiring place of origin labeling as to an agricultural product. Some states have statutes that require labeling as to a product's place of origin only if the product is being imported from a foreign country.[7] Other states require the labeling of all products being imported from another state or country, but place special emphasis on the health and safety rationales for the labeling requirement.[8] However, some states place no such emphasis on health or safety concerns.[9] Still other states may provide for place of origin labeling for a product of particularly local concern (e.g., Maine crayfish, Maryland crab, New Hampshire venison).[10] The trend in these statutes is to focus on products from a foreign jurisdiction (i.e., a different state or country), requiring that they be labeled as to their place of origin before entering a state's borders. In contrast to labeling requirements, the state of Minnesota has entered into a partnership with agricultural producers in its state to trademark a logo indicating that a product was grown in Minnesota and then engaging in aggressive marketing of the trademark brand.[11]

Oregon has taken a different approach, requiring the labeling of domestic products as domestically grown or produced, but requiring no place of origin label on foreign products.[12] With regards to fryers,[13] Oregon law provides that "[a]ll fryers and fryer parts that are exposed or offered for sale for human consumption in this state and that have been grown in Oregon must be conspicuously identified to the consumer or purchaser as fryers or fryer parts that are Oregon-grown."[14] Fryers offered for sale at the place of production (i.e., on the farm) or fryers in transit for purposes of storage, inspection, grading, packing, or processing, are exempt from the labeling requirement.[15] The Oregon statutes, by their very terms, require only that a fryer grown in Oregon and offered for sale in Oregon be labeled as Oregon-grown. Even if a fryer is Oregon-grown, it may move in commerce without a label if it is moving to another place for further preparation for market. These aspects of the Oregon statute prove to be critical when assessing them in light of the United States Constitution.

The Commerce Clause

The United States Constitution provides that "The Congress shall have Power…To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."[16] Although this is an affirmative grant of power to the federal government, it is also a "self-executing limitation on state authority to enact laws imposing substantial burdens on interstate commerce[,] even in the absence of Congressional action."[17] This limitation, characterized as the Dormant Commerce Clause, does not apply if a particular state regulation is expressly authorized by

Continued on page 2

INSIDE

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IN FUTURE ISSUES

- *Boulder Fruit Express* case
- *Overton Distributors, Inc.* case

Congress.[18] Such authorization must be "expressly stated" or "made unmistakably clear."[19]

In the absence of Congressional consent, the state regulation must be examined to determine if it discriminates against interstate commerce, either on its face or through its effects.[20] If the regulation is discriminatory, it can be sustained only upon a finding that: "(1) the statute has a legitimate local purpose; (2) the statue serves this interest; and (3) nondiscriminatory alternatives, adequate to preserve the legitimate local purpose, are not available."[21] If the statute regulates both interstate and domestic commerce in the same manner (i.e., evenhandedly and without discrimination), it may be sustained upon a finding that: (1) the statute has a legitimate local purpose; (2) the statute serves that interest; (3) the statute's only effects on interstate commerce are incidental; and (4) the burden imposed upon interstate commerce is not "clearly excessive in relation to the putative local benefits." [22]

In *Pike v. Bruce Church, Inc*, [23] the United States Supreme Court addressed the constitutionality of an Arizona requirement that all cantaloupes grown in Arizona be labeled as such before interstate transportation.[24] Arizona was attempting to require Bruce Church to package and label its products in the state of Arizona before interstate shipment, despite the fact that Bruce Church could not establish a packing facility in Arizona without incurring substantial costs.[25] The purpose of Arizona's requirement was to "promote and preserve the reputation of Arizona growers."[26] The court found that interest to be legitimate.[27] However, the Court still invalidated the Arizona requirement, based on the Commerce Clause, because its incidental effects on interstate commerce were extremely burdensome in relation to any local benefit.[28] Courts have also invalidated statutes that require place of origin labels on imported meat because such laws discriminate against interstate commerce, burden such, and are solely intended to protect domestic markets.[29]

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Oregon's innovative avoidance of the Commerce Clause

In contrast to a requirement that an imported agricultural produce be labeled as to its place of origin, Oregon law, with regards to fryers, provides that fryers grown and offered for sale in Oregon be labeled as Oregon-grown.[30] In assessing the Oregon statute under the Commerce Clause, one must first look to federal authorization or consent for such regulation.[31] The Perishable Agricultural Commodities Act of 1930 (PACA)[32] makes it unlawful, in connection with a transaction in interstate or foreign commerce, "[f]or any commission merchant, dealer, or broker to misrepresent by word, act, mark, stencil, label, statement, or deed, the…State, country, or region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign commerce."[33] However, PACA does not prohibit, nor allow, particular state regulation regarding place of origin labeling.

Because no Congressional consent for Oregon's statute is present, it must be determined if the statute discriminates against interstate commerce.[34] The statute does not reach interstate commerce as it only applies to a product that will be both produced and sold in Oregon. The produce will not move in interstate commerce. Rather than discriminating against foreign producers, the Oregon statute discriminates in favor of foreign producers by placing additional burdens on domestic producers. Unlike the Arizona regulation in *Pike*, Oregon's law provides an exception where the product will move in interstate commerce for purposes of market preparation. Additionally, the propriety of Oregon's statute derives some support from a Florida scheme requiring grapefruit that was grown, processed, and packaged in the state to bear a label indicating it was Florida grapefruit.[35] That scheme was found to be valid because it did not burden interstate commerce, did not erect a barrier against interstate commerce, and had no effect on the importation of similar products into the state.[36]

If the Oregon statute is considered to be regulating domestic and interstate commerce in an evenhanded manner, although it appears to favor interstate commerce, then it is appropriate to examine the statute's purpose, ability to achieve that purpose, incidental effects on interstate commerce, and the burden on such commerce in relation to its local benefits.[37] The purposes of the Oregon statute are to promote the Oregon fryer industry and to protect the consumer from health and safety concerns related to transported products.[38] The statute serves these purposes by requiring the Oregon-grown label. The label allows consumers to differentiate Oregon fryers from non-Oregon fryers. This permits a consumer to favor that product found to be superior. Additionally, the promotion of a state's industry is clearly a legitimate state interest.[39] The label also serves to protect consumers from any health concerns related to products that are transported in a refrigerated state, as a consumer with such a concern will be able to distinguish those products receiving such treatment from those produced and processed locally.

The Oregon statute arguably has no effects, either direct or incidental, upon interstate commerce. The Oregon statutes does not require any place of origin labeling on foreign products, but Oregon law does prohibit false advertising or misuse of the Oregon-grown label.[40] Such misleading advertising is already prohibited by PACA, so Oregon law is merely a reiteration.[41] Congress has already acquiesced in such a restriction and Oregon law inflicts no additional burdens upon interstate commerce. This allows the Oregon statute to avoid the balancing test promulgated in *Pike* [42] as there is no burden to weigh against the local benefits.

Conclusion

Because of the increasing desire by consumers to differentiate local products from foreign products, and because of the desire by state legislatures to promote their domestic agricultural industry, every state has an interest in requiring place of origin labels on agricultural products. However, the Dormant Commerce clause places obstacles to such efforts,

Cont. on p.7

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Continued on p. 7

Summary of selected provisions of the Job Creation and Worker Assistance Act of 200

By Philip E. Harris

President Bush signed the Job Creation and Worker Assistance Act of 2002 (Pub. Law 107-147) on 9 March 2002. The 2002 Act includes several provisions designed to stimulate business investment, including some that specifically target investments in a portion of lower Manhattan (the New York Liberty Zone) that was affected by the 11 September 2001 terrorist attack. Many of the provisions are effective for investments after 10 September 2001. The provisions most likely to affect farming businesses are discussed below.

Additional 30% first-year depreciation

The Act allows an additional 30% first-year depreciation deduction for both regular tax and alternative minimum tax purposes for the taxable year in which qualified property is placed in service. The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. A taxpayer is allowed to elect out of the additional first-year depreciation for any class of property for any taxable year.

Qualified property

To qualify for the additional first-year depreciation deduction property must meet all of the following requirements:

1. The property must be property to which the general rules of MACRS apply that has an applicable recovery period of 20 years or less. Property that is water utility property (as defined in I.R.C. §168(e)(5)), computer software other than computer software covered by I.R.C. §197, or qualified leasehold improvement property also meets this first requirement.

Example 1. In 2002, Clarence built and placed in service a house for his farm workers to live in and a machine shed. The house does not qualify for the 30% additional first-year depreciation because it has a recovery period of more than 20 years. The machine shed does qualify because its recovery period is 20 years.

2. The original use of the property must commence with the taxpayer on or after 11 September 2001.

Example 2. In 2002, Betty purchased some cattle from her neighbor who was liquidating his dairy herd. Her purchases included some yearling heifers that were ready to be bred and some 2-year old cows that were producing milk. The heifers qualify for the 30% additional first-year depreciation because they had not been placed in service before Betty bought them. The cows do not qualify for the additional 30% first-year depreciation because they had been used in a diary herd before Betty bought them.

Example 3. In 2002, Steve bought some heifers from Sheila. Sheila is in the business of raising dairy cattle for sale to dairy producers. She was holding the heifers for sale in the ordinary course of business and had bred the heifers before selling them to enhance their value as dairy animals. Steve is likely to be allowed to claim the 30% additional first-year depreciation on the heifers since Sheila did not hold the heifers for production of income in a trade or business.

If Sheila had held the animals for use in her own dairy herd, breeding them would be treated as placing them in service. Consequently, Steve would not be allowed to claim the 30% additional first-year depreciation on the heifers since he does not meet the "original use" requirement.

Practitioner Note. The Joint Tax Committee explanation of the 2002 Act states that additional capital expenditures incurred to recondition or rebuild acquired property (or owned property) will satisfy the "original use" requirement. However, the cost of reconditioned or rebuilt property acquired by the taxpayer would not satisfy the "original use" requirement.

1. The taxpayer must purchase the property after 10 September 2001 and before 11 September 2004. (Property that was subject to a binding contract before 11 September 2002 is not eligible.)

Example 4. Anne purchased a tractor on 5 September 2001 and a disc on 15 September 2001. She had signed a contract to purchase the disc on 3 September 2001. Anne cannot claim the 30% additional first-year depreciation on the tractor because it was purchased before 11 September 2001. She cannot claim the 30% additional first-year depreciation on the disc because it was subject to a binding contract before 1 September 2001.

2. The property must be placed in service before 1 January 2005.

Example 5. Peter purchased a two-month old bull on 5 September 2004 for use in his breeding herd. Since the bull is not ready to be placed in service before 1 January 2005, Peter cannot claim the 30% additional first-year depreciation on the bull even though it was purchased before 11 September 2004.

Property does not qualify for the 30% additional first year depreciation if it is:

3. Listed property used 50% or less in a trade or business, or

Example 6. Judy purchased a pick-up truck in 2002 to be used 40% in her farming business and 60% for personal use. She cannot claim the 30% additional first-year depreciation on the pick up.

4. Property for which the taxpayer is required to use the alternative depreciation system (ADS).

Example 7. Roger has elected to deduct preproduction expenses that would otherwise have to be capitalized under I.R.C. §263A(d)(3). As a result of that election, I.R.C. §263A(e)(2) requires him to use ADS depreciation on all assets used in his farming business. Consequently, he is not allowed to claim the 30% additional first-year depreciation on any of the assets he uses in his farming business.

Ordering rules

The 30% additional first year depreciation is claimed after the I.R.C. §179 deductions and before regular depreciation.

Example 8. Jane paid $74,000 for a tractor on 15 March 2002. She elects to deduct $74,000 of the cost under I.R.C. §179 and does not elect out of the 30% additional first year depreciation. Her deductions for 2002 with regard to the tractor are as follows:

Cost	$74,000
I.R.C. §179 deduction	24,000
Remaining basis	$50,000
Additional first year rate	x 30%
Additional first year depreciation	$15,000
Remaining basis	$35,000
First year MACRS rate	x 10.71%
First year MACRS depreciation	$ 3,749

Therefore her total deductions are $24,000 + $15,000 + $3,749 = $42,749.

Election out

Taxpayers are treated as claiming the 30% additional first year depreciation unless they elect out of the provision. The election out is made on a class-by-class basis. The Form 4562 instructions (re-

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vised March 2002) tell taxpayers to attach a statement to the tax return that indicates the classes of property for which the taxpayer is electing not to claim the 30% additional first year depreciation. The election must be made by the due date (including extensions) of the tax return for the year in which the qualified property was placed in service. If the tax return was timely filed without the election, the taxpayer has six months after the due date of the return to file an amended return and make the election.

Example 9. Jane from the previous example could elect out of the 30% additional first year depreciation by attaching a statement to her 2002 income tax return saying that she is making the election out for all property in the 7-year class. The effect of the election is to reduce the total depreciation deduction for 2002 but to increase depreciation deductions for subsequent years since the adjusted basis of the tractor for computing depreciation for those years is $50,000 rather than $35,000.

If Jane did not attach that election to her timely filed return, she could file an amended return within six months of the due date of the original return (excluding extensions) to make the election out.

Observation. If Jane neither claims the 30% additional first year depreciation nor elects out of the 30% additional first year depreciation she must still reduce her basis by the 30% additional first year depreciation. That reduction will affect calculations such as her depreciation for subsequent years and her gain or loss on a subsequent sale of the tractor.

1. Special rules for returns filed before 1 June 2002

Rev. Proc. 2002-33, 2002-20 IRB 1 (29 April 2002) provides special rules for tax returns filed before 1 June 2002 for the 2000 and 2001 tax years. Taxpayers who did not claim the 30% additional first year depreciation on those returns and did not make the election out of claiming the 30% additional first year depreciation have the following options.

a. Claiming the 30% additional first year depreciation

One option is to claim the 30% additional first year depreciation by filing an amended return for the year the qualified property was placed in service. This amended return must be filed by the due date (excluding extensions) of the tax return for the next succeeding tax year. Alternatively, the 30% additional first year depreciation can be claimed by filing a Form 3115, Application for Change in Accounting Method, with the tax return for the next succeeding tax year.

Example 10. On 1 October 2001, Robert purchased a $10,000 front end loader to use in his farm business. He filed his 2001 tax return on 27 February 2002. On that return, he claimed the $24,000 I.R.C. §179 deduction on other equipment and he claimed $10,000 x 10.71% = $1,071 of depreciation on the loader. Robert can claim the 30% x $10,000 = $3,000 of additional first year depreciation for the loader by filing an amended return for 2001 on or before 15 April 2003, the due date of his 2002 return. At the top of the amended return he must include the statement "Filed Pursuant to Rev. Proc. 2002-33." The amended return, will show the $3,000 additional first year depreciation as well as the $321 ($3,000 x 10.71%) reduction in regular depreciation resulting from the basis decrease caused by the additional first year depreciation.

Alternatively, Robert could file Form 3115 with his 2002 tax return.

Practitioner Note. By requiring the amended return for 2000 or 2001 to be filed by the due date of the tax return for the next tax year, the IRS is apparently treating the late claiming of the 30% additional first year depreciation as a change in method of accounting. Consequently, to make a late claim of the 30% additional first year depreciation for 2002 or later years, taxpayers would have to file Form 3115. Alternatively, taxpayers could argue that the late claim of the 30% additional first year depreciation is a mathematical or posting error under Treas. Reg. §1.446-1(e)(2)ii)(b). That error can be corrected by filing an amended return within three years of the due date of the return for the year the asset was placed in service or within in two years of the date the tax was paid for that year, whichever is later.

b. Forgo the 30% additional first year depreciation

Another option is to forgo the 30% additional first year depreciation. A taxpayer who filed a tax return for 2000 or 2001 before 1 June 2002 and did not claim the 30% additional first year depreciation is deemed to have elected out of claiming it if he or she claimed regular depreciation on that return.

Example 11. If Robert from the previous example wants to forgo the 30% additional first year depreciation on the loader, he needs to do nothing. By claiming regular depreciation for the loader on his 2001 tax return he is deemed to have elected out of claming the 30% additional first year depreciation. Therefore, his basis in the loader will be decreased only by the regular depreciation.

2. Class-by-class election

The classes of property for purposes of the election out of the 30% additional first year depreciation include:

- 3-year property
- 5-year property
- 7-year property
- 10-yar property
- 15-year property
- 20-year property
- computer software depreciated under I.R.C. §167(f)(1)

Example 12. In 2002, Sarah bought a tractor and a disc and also built a new barn for use in her farming business. If Sarah elects out of the 30% additional first year depreciation for the tractor, that election applies also to the disc but not to the barn.

3. Revoking an election out

A taxpayer can revoke an election out of the 30% additional first year depreciation only with the prior written consent of the Commissioner. Rev. Proc. 2002-1, 2002-1 I.R.B. 1 sets out the procedure for requesting the Commissioner's permission.

4. Changing an I.R.C. §179 deduction

Neither the Joint Committee Explanation of the 2002 Act nor Rev. Proc. 2002-33 address the issue of changing an I.R.C. §179 deduction in the situation where a taxpayer would now be better off with a different I.R.C. §179 deduction as a result of the new 30% additional first year depreciation.

Example 13. On 15 March 2001, Sam paid $30,000 for a grain drill to use in his farming business. On 15 September, he paid $24,000 for a chisel plow. He filed his 2001 income tax return on 28 February 2002 and claimed the following deductions:

Chisel plow:	$24,000
I.R.C. §179 deduction	$24,000
Grain drill:	
$30,000 x 10.71% =	
$3,213 depreciation	3,213
Total for both items	$27,213

As a result of the 2002 Act, Sam would like to change his I.R.C. §179 election from his chisel plow to his grain drill so that he can take advantage of the 30% additional first year depreciation on the plow. If he can change the election, his deductions for these two items on his 2002 tax return would be as follows:

Chisel plow:	
sum of $24,000 x 30% additional first year depreciation	$ 7,200
($24,000 - $7,200) x 10.71% MACRS depreciation	1,799
Total for chisel plow	$ 8,999

Cont. on p.7

JOB CREATION ACT Cont. from page 5

Grain drill:

sum of $24,000 I.R.C. §179 deduction	$24,000
($30,000 -$24,000) x 10.71% MACRS depreciation	643
Total for grain drill	24,643
Total for both items	$33,642

Treas. Reg. §1.179-5(b) states that the I.R.C. §179 election can be revoked only with the consent of the Commissioner. That consent will be granted only in extraordinary circumstances. Sam could argue that the 2002 Act changes in the depreciation are circumstances that warrant a revocation of the I.R.C. §179 election so that he can use it more productively on property placed in service before 11 September 2001.

Depreciation of passenger automobiles

The Act increases the first year limitation on the amount of depreciation deductions allowed with respect to certain passenger automobiles under I.R.C. §280F by $4,600. The $4,600 increase is not indexed for inflation.

Example 14. In May 2002, Nancy paid $25,000 for a pick up that she uses 80% in her farming business. If she does not elect to claim the I.R.C. §179 expense deduction on the pick up, her 2002 depreciation is calculated as follows:

Lesser of:

1. The sum of:

a. The 30% additional first year depreciation on 80% of the basis

80% x $25,000 x 30%	$6,000
b. MACRS depreciation on remaining $19,000	
$19,000 x 15% =	2,850
Total	$8,850
2. 80% of passenger automobile limit	
Prior law first year limit	$3,060
2002 Act increase	4,600
Total	$7,660
Business use	x 80%
Passenger automobile limit	$6,128

Therefore, Nancy can claim $6,128 of depreciation on her pick up in 2002.

Qualifying passenger automobiles

To qualify for the increased first year passenger automobile limit on depreciation, the vehicle must meet the same qualified property requirements as discussed above for the 30% additional first year depreciation limit. An election out of the 30% additional first year depreciation disqualifies the passenger automobile for the increase in the first year limit.

Example 15. If Nancy from the previous example elects out of the 30% additional first year depreciation, her 2002 depreciation for the pick up is calculated as follows:

Lesser of:

1. MACRS depreciation on 80% of $25,000	
80% x $25,000 x 15%	$3,000
2. 80% of passenger automobile limit without the increase	
Prior law first year limit	$3,060
Business use	x 80%
Passenger automobile limit	$2,448

Therefore, Nancy can claim $2,448 of depreciation on her pick up in 2002.

Example 16. If Nancy from Example 14 above used the pick up only 40% in her farming business, she is not eligible for the 30% additional first year depreciation or the increase in the first year passenger automobile limit. Her 2002 depreciation is calculated as follows:

Lesser of:

1. MACRS depreciation on 40% of $25,000	
80% x $25,000 x 15%	$1,500
2. 40% of passenger automobile limit without the increase	
Prior law first year limit	$3,060
Business use	x 40%
Passenger automobile limit	$1,224

Therefore, Nancy can claim $1,224 of depreciation on her pick up in 2002.

Net operating losses

Temporary five-year carryback

The 2002 Act temporarily extends the general NOL carryback period to five years (from two years) for NOLs arising in taxable years ending in 2001 and 2002. This change does not affect farm NOLs since they already qualified for a five-year carry back under I.R.C. §172(b)(1)(G).

Increase in NOL deduction for alternative minimum tax

The 2002 Act also allows an NOL deduction attributable to NOL carrybacks arising in taxable years ending in 2001 and 2002, as well as NOL carryforwards to these taxable years, to offset 100 percent of a taxpayer's alternative minimum taxable income (AMTI).

Discharged debt of S corporations

The 2002 Act clarifies the effect of discharged debt that is excluded from an S corporation's income under I.R.C. §108. In *Gitlitz v. Commissioner,* 531 U.S. 206 (2001) the United States Supreme Court ruled that income from the discharge of indebtedness of an S corporation that is excluded from income is treated as an item of income which increases the basis of a shareholder's stock in the S corporation and allows the suspended corporate loss to pass thru to a shareholder. The 2002 Act provides that income from the discharge of indebtedness of an S corporation that is excluded from the S corporation's income is not taken into account as an item of income by any shareholder and thus does not increase the basis of any shareholder's stock in the corporation.

The provision generally applies to discharges of indebtedness after 11 October 2001.The provision does not apply to any discharge of indebtedness before 1 March 2002, pursuant to a plan of reorganization filed with a bankruptcy court on or before 11 October 2001.

Example 17. Barney and Suzie each own 50% of the shares of Pine Ridge Farm, Inc., and S corporation. Pine Ridge Farms has had tax losses for a few years. Barney and Suzie each have $75,000 of suspended losses that they could not deduct because they had no basis in their shares in Pine Ridge Farms. In 2002, Valley Bank discharged $100,000 of Pine Ridge Farm's debt. Since Pine Ridge Farms was insolvent before and after the discharge, all of the discharge of indebtedness was excluded form income under I.R.C. §108(a)(1)(B).

Under the *Gitlitz* decision, Barney and Suzie could each increase their basis in their shares by $50,000, which would allow each of them to deduct $50,000 of their suspended losses. The 2002 Act amends I.R.C. §108 so that Barney and Suzie cannot increase their bases in their shares of stock. Consequently, they cannot deduct any of the suspended losses.

PLACE OF ORIGIN/Cont. from p.2

particularly when the labeling laws are focused on foreign producers. The Oregon approach, as described above, avoids any Commerce Clause concerns by imposing its labeling laws upon local producers only and acting in tandem with federal law to restrict false advertising as to a product's place of origin by foreign producers. Such a scheme does not burden interstate commerce, acting instead to place additional burdens on domestic commerce. By skirting the Commerce clause in such a manner, the state may still fulfill the desires of consumers and promote the state's agricultural economy.

-David P. Claiborne,, J.D. anticipated 2002, Willamette University College of Law

[1] D. Lane and M. Thornton, *Consumers Need to Know Origin of Feed Products*, The Voice of Agriculture, April 29, 1999 (American Farm Bureau)(visited March 18, 2002). http://www.fb.com/news/nr/nr99/nr0429.html

[2] Id

[3] *See* generally Diane M. Allen, annotation, Validity, Under Commerce Clause (Art. I, section 8, cl. 3) of State Statutes Regulating Labeling of Food, 79 A.L.R. Fed. 246 (1986).

[4] 1987 WL 278341 (Or. Op. Atty. Gen.)(finding Commerce Clause concerns with regards to Oregon law requiring all fryers to be labeled as to their place of origin).

[5] *See* Or. Rev. Stat. § 619.411 et seq.

[6] *See* Or. Rev. Stat. §§ 619.350 et seq.

[7] *See, e.g.*, Idaho Code § 37-1604; Kan. Stat. Ann. § 65-6a47. Both the Idaho and Kansas statutes provide as follows:

Every wholesaler or retailer who sells or offers for sale in the state of Idaho through a meat market, store or otherwise, any meats, either frozen, canned, cured, processed, or any mixture thereof, or any poultry, eggs or butter which are the products of any country foreign to the United States, shall clearly label such meat, poultry, eggs or butter as "imported," naming the country of its origin, the date it was originally packaged, whether it was frozen, and the date or dates it was subsequently refrozen, if any, which labeling shall be in lettering not less than one-half inch (1/2") in height.

See also Nev. Rev. Stat. § 583.045 (requiring place of origin labeling on meat to be sold at a meat market, but only if the meat has been imported from a foreign country); S.D. Codified Laws § 39-5-5 (same); Tex. Agric. Code Ann. § 150.002 (same); Wyo. Stat. Ann. § 35-7-119 (same).

[8] *See, e.g.*, Ky. Rev. Stat. Ann. 257.410, providing as follows:

Every container of poultry under five (5) months of age, including baby chicks, started checks, turkey poults, and any other newly hatched domestic poultry, except those intended for immediate slaughter, and hatching eggs shipped or otherwise brought into this state shall bear an official label or certificte showing the name and address of the shipper, the authority under which the testing for pullorum disease was done and the pullorum control and eradication class of the product, the use of said certificate or label to be approved by the official state agency or the livestock sanitary official of the state of origin.

[9] *See* Miss. Code Ann. § 69-1-25 (allowing administrative body to require place of origin labeling on seeds, feeds, fertilizers, bulbs, vegetables, and all other products of a farm, grove, forest, or garden).

[10] *See, e.g.*, Me. Rev. Stat. Ann. Tit. 12, § 6861-A (requiring country or state of origin to be labeled on all containers of crayfish meat); Md. Code Ann., Health-General I § 21-339 I requiring containers of crab meat to be labeled with the state where the crab was picked); N.H. Rev. Stat. Ann. § 212:30-d (requiring the place of origin to be labeled on a bill of sale related to red deer and elk meat).

[11] *See* Minn. Stat. § 17.102. *See also* Minnesota Department of Agriculture, Minnesota Grown Program (visited March 18, 2002) <http://www.mda.state.mn.us/mngrown/default.htm>

[12] *See, e.g.*, Or. Rev. Stat. §§ 619.355 (requiring Oregon-grown fryers to be labeled as such), 619.416 (requiring Oregon-grown lamb to be labeled as such).

[13] A "fryer" is any chicken "slaughtered under the age of six months, produced for sale for human consumption as a fryer, broiler or fryer-roaster, or the cut-up parts of such a chicken." Or. Rev. Stat. § 619.350(2).

[14] Or. Rev. Stat. § 619.3355(1).

[15] Or. Rev. Stat. §§ 619.355(2), 619.375.

[16] U.S. Const. Art. I, § 8, cl. 3.

[17] *United Egg Producers v. Puerto Rico*, 77 F.3d 567, 570 (1st Cir. 1996).

[18] *Id.* ("Congress may 'redefine the distribution of power over interstate commerce' by" allowing a state to regulate in a manner that would otherwise be impermissible).

[19] *Id.*

[20] *Id.* at 571.

[21] *Government Supplier's Consolidating Services, Inc. v. Bayh*, 753 F. Supp. 739, 763 (S.D. Ind. 1990).

[22] *Id.*

[23] *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

[24] *Id.* at 138.

[25] *Id.* at 141-42, 145.

[26] *Id.* at 143.

[27] *Id.*

[28] *Id.* at 142, 145-46.

[29] *See International Packer Ltd. v. Hughes*, 271 F. Supp. 430 (S.D. Iowa 1967); *Armour & Co. v. Nebraska*, 270 F. Supp. 941 (D. Neb. 1967).

[30] *See supra* notes 12-15 and accompanying text.

[31] *See supra* notes 18-19 and accompanying test.

[32] 7 U.S.C. §§ 499a *et seq.*

[33] 7 U.S.C. § 499b(5).

[34] *See supra* note 20 and accompanying text.

[35] *Florida Canners Assoc. v. Florida*, 371 So.2d 503, 506 (Fla. Dist. Ct. App. 1979).

[36] *Id.* at 516-17.

[37] *See supra* note 22 and accompanying test.

[38] The latter purpose is reflected in the legislative history of Oregon's original fryer label law. *See supra* note 4.

[39] *See supra* notes 26-27 and accompanying text.

[40] Or. Rev. Stat. § 619.365.

[41] *See supra* note 33 and accompanying text.

[42] *See supra* note 28 and accompanying text.

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