The consequences of *Rev. Proc. 2015-33*

What *Rev. Proc. 2015-33*[9] seems to be saying is that newly organized firms, authorized by *Rev. Proc. 2015-20*[10] can use the "simplified procedure" outlined in *Rev. Proc. 2015-20*[11] provided the conditions for the "simplified procedure" are otherwise met. However, that avenue is not open for taxpayers wishing to *change* their method of accounting and those firms must secure consent of the Commissioner. Thus, it essentially narrows the eligibility to use the "simplified procedure" to new, start-up, firms.

Address for copies sent to Ogden, Utah

Rev. Proc. 2015-33[12] also states that a signed copy of Forms 3115 is to be sent to the Ogden, Utah address specified in Rev. Proc. 2015-1[13] which is—

Internal Revenue Service
1973 N. Rulon White Blvd
Mail Stop 4917
Ogden, Utah 84404

However, if the Form 3115 is sent by certified mail, it should be sent to –

Internal Revenue Service
1973 N. Rulon White Blvd
Mail Stop 4917
Ogden, Utah 84201-1000.

Applications on Form 3115 are to be filed under the transition rule provided in *Rev, Proc. 2015-33*,[14] as specified in Section 3.02 thereof (referring back to *Rev. Proc. 2015-13*),[15] with the IRS in Ogden Utah *and not with the national office of the Internal Revenue Service* despite the requirement in *Rev. Proc. 2011-14*[16] that copies of applications were to be sent to the national office.

ENDNOTES

[1] 2015-1 C.B. 694.

[2] See Harl, "Changing From Accrual to Cash Accounting: Watch Your Step," 26 *Agric. L. Dig*. 65 (2015). See also 1 Harl, *Farm Income Tax Manual* § 1.07[1][c] (Matthew Bender 2015); Harl, "At Last—Relief From the Repair Regulations," 26 *Agric. L. Dig*. 33 (2015).

[3] T.C. Memo. 2000-323 (overhaul of towboat diesel engines out of action for 10-12 days, held to be "repairs").

[4] 291 F.Supp. 2d 699 (W.D. Tenn. 2003), *aff'd,* 2005-1 U.S. Tax Cas. ¶ 50,186 (6th Cir. 2005) (four part test of (1) whether taxpayer treated component part as part of larger unit of property for any purpose; (2) whether the economic life of a component was co-extensive of the larger unit; (3) whether the larger unit and smaller unit can function independently; and (4) whether a component part can and is maintained while affixed to the larger unit; aircraft was single unit of property so costs of engine shop visits deductible).

[5] T.D. 9564, Dec. 23, 2011, 2012-1 C.B. 614.

[6] T.D. 9636, Sept. 13, 2013, 2013-2 C.B. 331.

[7] Rev. Proc. 2014-16, 2014-1 C.B. 606; Rev. Proc. 2014-54, 2014-2 C.B. 675 (which was 62 pages in length); Rev. Proc. 2015-13, 2015-1 C.B. 419; Rev. Proc. 2015-14, 2015-1 C.B. 450; Rev. Proc. 2015-20, 2015-1 C.B. 694; Rev. Proc. 2015-33, 2015-1 C.B. 1067.

[8] 2015-1 C.B. 1067.

[9] 2015-1 C.B. 1067.

[10] 2015-1 C.B. 694.

[11] 2015-1 C.B. 694.

[12] 2015-1 C.B. 1067.

[13] § 9.05(4), 2015-1 C.B. 1.

[14] 2015-1 C.B. 1067.

[15] § 15.02(1), 2015-1 C.B. 419.

[16] 2011-1 C.B. 330.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

EXEMPTIONS

IRA. The debtors, husband and wife, filed for Chapter 7 and claimed an IRA as exempt under Section 522(d)(12) of the federal exemptions. The creditors objected to the exemption on the basis that the IRA was no longer exempt from taxation because the IRA had engaged in prohibited transactions under I.R.C. § 4975(c). The evidence showed that, prior to the bankruptcy filing, the IRA entered into a partnership with an LLC owned by the debtors. The debtor husband directed the IRA trustee to distribute funds which were used to acquire real property which was contributed to the partnership along with other IRA funds. The court held that the IRA was not eligible for the exemption because the debtor husband was a disqualified person who engaged in a prohibited transaction with the IRA in purchasing land and contributing it to the partnership in exchange for an interest in the partnership. ***In re* Kellerman, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,331 (Bankr. D. Ark. 2015)**.

LIEN AVOIDANCE. The debtors filed for Chapter 7 and the claims included a priority mortgage and a junior mortgage against the debtors' home. The primary mortgage amount exceeded the fair market value of the home; therefore, the junior mortgage was unsecured. The debtors sought to void the junior mortgage under Section 506(d). Section 506(d) provides, "To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void." The court cited *Dewsnup v. Timm, 502 U. S. 410 (1992)* which construed the term "secured claim" in Section 506(d) to include any claim "secured by a lien and . . . fully allowed pursuant to § 502." Because the priority and junior creditors' claims here are both secured by liens and allowed under Section 502, they could not be voided under the definition given to the term "allowed secured claim" by *Dewsnup*. **Bank of America, N.A. v. Caulkett, ___ U.S. ___ (S. Ct. June 1, 2015)**.

FEDERAL FARM PROGRAMS

FACILITY GUARANTEE PROGRAM. The CCC has issued proposed regulations which would revise and amend the regulations at 7 CFR 1493 subpart C used to administer the Facility Guarantee Program (FGP). Changes in this proposed rule incorporate statutory changes from the Food, Conservation, and Energy Act of 2008 and modifications intended to reduce the burden on participants and improve program efficiency and effectiveness. Certain revisions will ensure the FGP is operated in compliance with the Organization for Economic Cooperation and Development Arrangement on Officially Supported Export Credits. The proposed regulations incorporate changes made to the regulations for the Export Credit Guarantee Program (GSM-102), that are also applicable to the FGP. **80 Fed. Reg. 34080, (June 15, 2015)**.

ORGANIC FOOD. The AMS has published a notice on the renewal of three synthetic and two nonsynthetic substances on the National List, along with any restrictive annotations. The 2015 Sunset Review pertains to the National Organic Standards Board's review of the need for the continued allowance for seven substances on the USDA National List of Allowed and Prohibited Substances. **80 Fed. Reg. 35177, (June 19, 2015)**.

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The decedent died in 2010 and the executor retained an attorney to advise on estate tax matters including the necessity to file a Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*. The attorney failed to prepare and file the Form 8939 before January 17, 2012. The estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to file the Form 8939 to make the I.R.C. § 1022 election and to allocate basis provided by I.R.C. § 1022 to eligible property transferred as a result of the decedent's death. *Notice 2011-66, 2011-2 C.B. 184 section I.D.1*, provides that the IRS will not grant extensions of time to file a Form 8939 and will not accept a Form 8939 filed after the due date except in four limited circumstances provided in section I.D.2: "Fourth, an executor may apply for relief under § 301.9100-3 in the form of an extension of the time in which to file the Form 8939 (thus, making the Section 1022 election and the allocation of basis increase), which relief may be granted if the requirements of § 301.9100-3 are satisfied. The IRS granted an extension of time to file the election. **Ltr. Rul. 201523009, Feb. 11, 2015.**

PORTABILITY. The IRS has adopted as final regulations that provide guidance on the estate and gift tax applicable exclusion amount, in general, as well as on the applicable requirements for electing portability of a deceased spousal unused exclusion (DSUE) amount to the surviving spouse and on the applicable rules for the surviving spouse's use of this DSUE amount. The final regulations are dated June 12, 2015 and replace the temporary regulations that were slated to expire on June 15, 2015. See Harl, "Regulations Issued for 'Portability,'" *Agric. L. Dig*. 97-98 (2012). T.D. 9725, **80 Fed. Reg. 34279 (June 16, 2015)**.

FEDERAL INCOME TAXATION

ABLE ACCOUNTS. The IRS has issued proposed regulations implementing a new federal law authorizing states to offer specially-designed tax-favored ABLE (Achieving a Better Life Experience) accounts to people with disabilities who became disabled before age 26. The new law authorizes any state to offer its residents the option of setting up an ABLE account. Alternatively, a state may contract with another state that offers such accounts. The account owner and designated beneficiary of the account is the disabled individual. In general, a designated beneficiary can have only one ABLE account at a time, and must have been disabled before his or her 26th birthday. Contributions in a total amount up to the annual gift tax exclusion amount, currently $14,000, can be made to an ABLE account on an annual basis, and distributions are tax-free if used to pay qualified disability expenses. These are expenses that relate to the designated beneficiary's blindness or disability and help that person maintain or improve health, independence and quality of life. For example, they can include housing, education, transportation, health, prevention and wellness, employment training and support, assist technology and personal support services and other expenses. In general, an ABLE account is not to be counted in determining the designated beneficiary's eligibility for any federal means-tested programs, or in determining the amount of any benefit or assistance provided under those programs, although special rules and limits apply for Supplemental Security Income purposes. The proposed regulations provide guidance to state programs, designated beneficiaries and other interested parties on a number of issues. For example, the proposed regulations explain the flexibility the programs have in ensuring an individual's eligibility for an ABLE account. They also indicate that the IRS will develop two new forms that ABLE account programs will use to report relevant account information annually to designated beneficiaries and the IRS Form 1099-QA for distributions and Form 5498-QA for contributions. Note, the proposed regulations are scheduled to be published in the Federal Register on June 22, 2015. **IR-2015-91**.

ACCOUNTING METHOD. The IRS has issued a revenue procedure which modifies the procedures in *Rev. Proc. 2015-13, 2015-5 C.B. 419*, for obtaining the consent of the Commissioner to change a method of accounting for federal income tax purposes under I.R.C. § 446(e) and Treas. Reg. § 1.446-1(e). The revenue procedure (1) modifies the transition rules under section 15.02(1)(a)(ii) of *Rev. Proc. 2015-13* to provide additional time to file Forms 3115 under *Rev. Proc. 2011-14, 2011-4 C.B. 330*, as clarified and modified by *Rev. Proc. 2012-39, 2012-41 C.B. 470*; (2) clarifies when the automatic change procedures do not apply if the taxpayer engages, within the requested year of change, in a transaction to which I.R.C. § 381(a) applies; (3) clarifies the meaning of "three-month window" under section 8.02(1)(a)(ii) of *Rev. Proc. 2015-13* for a taxpayer with a 52-53 week taxable year; and (4) discusses a clarification to the applicable Ogden, UT, address provided in section 9.05 of *Rev. Proc. 2015-1, 2015-1 C.B. 1*. The Digest is publishing, as the lead article in this issue, an article on this revenue procedure. **Rev. Proc. 2015-33, 2015-1 C.B. 1067**.

AMERICAN OPPORTUNITY CREDIT. The taxpayer hired a tax return preparer to prepare the taxpayer's 2011 tax return. The taxpayer claimed that the return preparer fraudulently claimed the American Opportunity Credit on the return which created a refund. However, the refund was not paid to the taxpayer but was diverted by the IRS to offset child support payments in arrears. The IRS disallowed the American Opportunity Credit and the taxpayer admitted that the taxpayer was not entitled to the credit. The taxpayer argued that the taxpayer was not responsible for claiming the credit, although the taxpayer admitted that the taxpayer did not review the return before signing it. The court held that the taxpayer had a duty to review the return and could not escape liability for underpayment of tax because of the actions of the return preparer. The taxpayer also argued that the taxpayer should not have to repay the refund because the IRS applied that amount to pay the taxpayer's child support debt. The court held that the use of the refund to offset the child support payments did not affect the taxpayer's liability for repayment of the erroneous refund. **Devy v. Comm'r, T.C. Memo. 2015-110**.

BUSINESS EXPENSES. The taxpayers, husband and wife, engaged in an Amway distributorship business. The taxpayers filed Schedule C for the business, claiming deductions for mileage, travel and other expenses. The taxpayers claimed that their travel records were lost twice but the court did not believe their testimony and found that the travel records presented by the taxpayers were created just prior to presentation to their tax return preparer and for trial. Thus, the court upheld the IRS disallowances of the deductions claimed by the taxpayers for lack of substantiation either through contemporaneous records or other credible evidence. **Amegankpoe v. Comm'r, T.C. Summary Op. 2015-36**.

CORPORATIONS

CONSOLIDATED RETURNS. The IRS has issued proposed amendments to the consolidated return regulations. The amendments would revise the rules concerning the use of a consolidated group's losses in a consolidated return year in which stock of a subsidiary is disposed of. The proposed regulations clarify that the absorption of members' losses to offset income of other members in the consolidated return year is made on a *pro rata* basis, consistent with the *pro rata* absorption of losses from taxable years ending on the same date that are carried back or forward under the rules of Treas. Reg. §§ 1.1502-21(b) and 1.1502-22(b) (relating to net capital loss carrybacks and carryovers). In order to address apportionment anomalies that may arise if capital gains are present, the proposed regulations would provide that the separate net operating loss of a member, solely for apportionment purposes, is its loss determined without regard to capital gains (or losses) or amounts treated as capital gains. The proposed regulations require a group to first determine the amount of each disposed subsidiary's loss that will be absorbed by computing consolidated taxable income (CTI) without regard to gain or loss on the disposition of the stock of any subsidiary (the absorbed amount). Once the amount of a subsidiary's absorbed loss is determined under that computation, the absorbed amount for each disposed of subsidiary is not redetermined. Determining each disposed of subsidiary's absorbed amount establishes an immutable number that will also be the amount of reduction to the basis of a subsidiary's stock taken into account in computing the owning member's gain or loss on the disposition of the subsidiary's stock. After the absorbed amount is determined, the owning member's basis of the subsidiary stock is adjusted under Treas. Reg. § 1.1502-32 (and Treas. Reg. § 1.1502-36 as relevant). The actual computation of CTI can then be made, taking into account losses of each disposed of subsidiary equal to that amount. In some cases, however, applying the generally applicable rules and regulations would result in less than all of a disposed of subsidiary's absorbed amount being used. **REG-101652-10, 80 Fed. Reg. 33211 (June 11, 2015)**.

CONTRIBUTIONS. The taxpayer had operated a real estate business as a sole proprietorship until September 2008. At that time, the taxpayer incorporated the business by entering into a purchase agreement with the sole proprietorship to sell "all the work in process, customer lists, contracts, licenses, franchise rights, trade names, goodwill, and other tangible and intangible assets" to the new corporation. The corporation was owned wholly by the taxpayer and spouse. The purchase agreement provided that the purchase price was payable in monthly installments of $10,000 or more on the first of each month and that the unpaid principal amount was subject to 10 percent interest each year. The corporation did not provide any security for the purchase price, and a promissory note was not executed. The corporation amortized the purchase price over five years and the taxpayers reported capital gains under installment reporting and reported interest income. The court held that, under the 11 factors used in *A.R. Lantz Co. v. United States, 424 F.2d 1330 (9th Cir. 1970)*, the transaction was a contribution to the corporation and not a sale because (1) repayment was dependent upon the income of the corporation; (2) the taxpayer had limited enforcement ability, especially with no security agreement; (3) the corporation had no assets prior to the agreement; (4) the owners of the sole proprietorship were also the owners of the corporation; (5) interest on the payments was paid from the corporation's income; and (6) the corporation had no ability to borrow on the same conditions. The court found three factors which indicated a sale, (1) the taxpayer reported the transaction as a sale, (2) the purchase agreement was worded as a promissory note, and (3) and the payment schedule had a maturity date. The other factors were neutral; therefore, the court ruled that the transaction was a contribution of assets to the new corporation. **Bell v. Comm'r, T.C. Memo. 2015-111**.

TERMINATION. The taxpayer corporation was administratively dissolved by the state for failure to file an annual report and pay an annual franchise tax. The taxpayer was aware of the dissolution and continued to file federal returns and pay federal taxes. The taxpayer renewed its status as a corporation soon after discovering the administrative dissolution. The IRS ruled that the taxpayer's status as a corporation for federal tax purposes was not terminated by reason of the administrative dissolution and subsequent re-incorporation of the taxpayer under state law. **Ltr. Rul. 201522001, Jan. 21, 2015**.

DISASTER LOSSES. On May 21, 2015, the President determined that certain areas in West Virginia are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of a severe storms, flooding and landslides which began on April 13, 2015. **FEMA-4221-DR**. On May 26, 2015, the President determined that certain areas in Oklahoma are eligible for assistance from the government under the Act as a result of severe storms, flooding and tornadoes which began on May 5, 2015. **FEMA-4222-DR.** On May 29, 2015, the President determined that certain areas in Texas are eligible for assistance from the government under the Act as a result of severe storms, flooding and tornadoes which began on May 4, 2015. **FEMA-4223-DR.** Accordingly, taxpayers in the areas may deduct the losses on their 2014 federal income tax returns. See I.R.C. § 165(i).

FILING STATUS. The taxpayers, husband and wife, were Somali immigrants. The wife had four children by a prior marriage to the deceased half-brother of the husband. The taxpayers used a tax return service which had employees who spoke Somali to file their 2011 return. The husband used the filing status of head of household and the wife used the status of single. The husband claimed two of the children as dependents. The IRS ruled that the husband was only entitled to use married filing separately status. The husband argued that he should be allowed to filed an amended return using married filing jointly status. The Tax Court held that I.R.C. § 6013(b)(2)(B) barred the husband from filing an amended return using the married filing jointly status because the husband originally filed with a "separate return" of head of household status. The Tax Court also held that the taxpayer could not claim the earned income credit because the credit was available only to taxpayers filing with the married filing jointly status. On appeal, the appellate court reversed, holding that the "separate return" prohibition applied only to the status of married filing separately; therefore, the taxpayer was entitled to file an amended return using a joint return. **Ibrahim v. Comm'r, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,334 (8th Cir. 2015), *rev'g and rem'g*, T.C. Memo. 2014-8**.

HEALTH INSURANCE. The IRS has published information about determining if an organization is an applicable large employer and the exception for seasonal workers. If an employer's workforce exceeds 50 full-time employees for 120 days or fewer during a calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days were seasonal workers, the employer is not considered an applicable large employer. A seasonal worker for this purpose is an employee who performs labor or services on a seasonal basis. For example, retail workers employed exclusively during holiday seasons are seasonal workers. The terms "seasonal worker" and "seasonal employee" are both used in the employer shared responsibility provisions, but in two different contexts. Only the term "seasonal worker" is relevant for determining whether an employer is an applicable large employer subject to the employer shared responsibility provisions. For this purpose, employers may apply a reasonable, good faith interpretation of the term "seasonal worker." For more information, see the "Determining if an Employer is an Applicable Large Employer" web page on IRS.gov/aca. **Heath Care Tax Tip 2015-34**.

HOBBY LOSSES. The taxpayer was engaged in the training, showing and breeding of dressage horses. In the six tax years involved, the taxpayer had only $588 in income and over $154,000 in expenses. The taxpayer's activities with the horses in these years was minimal but the court found that the taxpayer maintained a "going concern." However, the court held that the losses from the horse activities were not deductible because the taxpayer did not operate the activity with the intent to make a profit. The ruling was based on these factors: (1) the taxpayer spent very little time on the activity during the years involved; (2) the taxpayer had insufficient assets in the horse activity to expect any appreciation sufficient to cover the losses; (3) the taxpayer did not have other successful similar businesses, including past horse activities; (4) the taxpayer had substantial losses during the years involved; (5) the taxpayer had no years of profit; (6) the losses offset income from other activities; and (7) the taxpayer received personal pleasure from riding horses. The court discussed one of the main factors in many hobby loss case, the carrying on of the activity in a businesslike manner, which includes recordkeeping, modifying the activity to make it more profitable, advertising and other usual business supporting activities. The court found this factor neutral in this case because the IRS failed to provide any evidence of these matters. **McMillan v. Comm'r, T.C. Memo. 2015-109**.

IRA. The taxpayer had owned an interest in a 401(k) pension plan. The taxpayer received distributions from the pension plan which were contributed to a private IRA over which the taxpayer was trustee. The IRA funds were used to purchase a 98 percent interest in an LLC, taxed as a corporation. The taxpayer formed the LLC but did not take any ownership interest in the company. The taxpayer was the manager of the LLC which operated a used car business, and the taxpayer received compensation from the LLC's income. The court held that the taxpayer engaged in a prohibited transaction by receiving compensation from the LLC which was an asset of the IRA of which the taxpayer was a fiduciary. Because the taxpayer engaged in a prohibited transaction, the entire distribution from the pension plan was included in the taxpayer's income and was subject to the 10 percent additional tax for early distributions. The decision was affirmed by the appellate court. **Ellis v. Comm'r, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,328 (8th Cir. 2015), *aff'g*, T.C. Memo. 2013-245**.

LETTER RULINGS. The IRS has issued an amendment to *Rev. Proc. 2015-3, 2015-1 C.B. 129* to include in the list of areas in which the IRS will not issue letter rulings or determination letters the issue of whether the assets in a grantor trust receive an I.R.C. § 1014 basis adjustment at the death of the deemed owner of the trust for income tax purposes when those assets are not includible in the gross estate of that owner under chapter 11 of subtitle B of the Internal Revenue Code. **Rev. Proc. 2015-37, I.R.B. 2015-26, *amplifying* Rev. Proc. 2015-3, 2015-1 C.B. 129**.

PARTNERSHIPS

DISTRIBUTIONS. The IRS has issued proposed regulations that would allow consolidated group members that are partners in the same partnership to aggregate their bases in stock distributed by the partnership for the purpose of limiting the application of rules that might otherwise cause basis reduction or gain recognition. The proposed regulations would also require certain corporations that engage in gain elimination transactions to reduce the basis of corporate assets or to recognize gain. The proposed regulations provide for the aggregation of basis within the same consolidated group (as defined in Treas. Reg. § 1.1502-1(h)), for purposes of I.R.C. § 732(f), when two conditions are met. First, two or more of the corporate partners receive a distribution of stock in a distributed corporation. Second, the distributed corporation is or becomes a member of the distributee partners' consolidated group following the distribution. The proposed regulations provide that, in the event of a gain elimination transaction, I.R.C. § 732(f) shall apply as though the corporate partner acquired control (as defined in I.R.C. § 732(f)(5)) of the distributed corporation immediately before the gain elimination transaction. **REG-138759-14, 80 Fed. Reg. 33452 (June 12, 2015)**.

PENSION PLANS. For plans beginning in June 2015 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 2.96 percent. The 30-year Treasury weighted average is 3.19 percent, and the 90 percent to 105 percent permissible range is 2.87 percent to 3.35 percent. The 24-month average corporate bond segment rates for June 2015, without adjustment by the 25-year average segment rates are: 1.30 percent for the first segment; 4.07 percent for the second segment; and 5.11 percent for the third segment. The 24-month average corporate bond segment rates for June 2015, taking into account the 25-year average segment rates, are: 4.72 percent for the first segment; 6.11 percent for the second segment; and 6.81 percent for the third segment. **Notice 2015-42, I.R.B. 2015-26**.

PREPAID RENT. The taxpayer was the sole owner of an S corporation. The taxpayer's corporation constructed a commercial building and entered into a 10-year lease with an unrelated company (lessee). The lease required the lessee to pay monthly rent to the corporation, and the monthly rent is based on the amount of "project costs" the corporation incurred in acquiring and developing the leased property. The lease provided the lessee with the unilateral option to make a one-time payment to reduce "project costs" to be used in the calculation of rent and thus reduce the amount of rent otherwise owed by the lessee under the lease. In 2008 the lessee elected to make a $1 million payment to the corporation pursuant to the terms of the lease. The IRS argued that the $1 million payment was rental income to the corporation and was reportable for the year of receipt. The taxpayer argued that the $1 million payment was not rental income. Alternatively, the taxpayer argued that pursuant to I.R.C. § 467 the $1 million payment received from the lessee was reportable as rental income ratably over the 10-year life of the lease. The court held that the lump sum payment was rent income to the taxpayer because the payment was made pursuant to the lease rent provisions and was used to reduce future rent. The court held that the taxpayer could not rely on the constant rental accrual method of I.R.C. § 467(b)(2) to allocate a portion of the lump sum payment to future rent income because that provision required "a determination by the Commissioner" for implementation. The court held that the proportional rental accrual method of Treas. Reg. § 1.467-2(a)(2) does not apply because the lease did not provide for prepaid rent. **Stough v. Comm'r, 144 T.C. No. 16 (2015)**.

QUARTERLY INTEREST RATE. The IRS has announced that, for the period July 1, 2015 through September 30, 2015, the interest rate paid on tax overpayments remains at 3 percent (2 percent in the case of a corporation) and for underpayments remains at 3 percent. The interest rate for underpayments by large corporations remains at 5 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 remains at 0.5 percent. **Rev. Rul. 2015-12, I.R.B. 2015-26.**

S CORPORATIONS

PASSIVE INVESTMENT INCOME. The taxpayer was an S corporation which owned and leased a commercial real estate property. The taxpayer provided services, including daily janitorial and rubbish removal services, regular maintenance, repairs and inspection covering plumbing, electrical and drainage systems as well as roofing, landscaping and building improvements. The services also included daily security services and management and control of all common areas, including parking lots and picnic table areas. The taxpayer negotiated and executed leases with tenants, settled tenant disputes, collected rents and monthly sales reports, negotiated bank loans and insurance contracts for the property and performed background checks on prospective tenants. The IRS ruled that the rental income from the property was not passive investment income to the taxpayer. **Ltr. Rul. 201523008, Feb. 4, 2015**.

TRAVEL EXPENSES. The taxpayers, husband and wife, filed a Schedule C for the husband's work activities and Schedule F for the wife's work activities. The husband was employed as a teacher at a community college 470 miles from their residence. The wife was employed on a farm owned by the wife's parents. The taxpayer's claimed a business deduction for the travel by the husband to the college and in the college town to meet clients. The taxpayer's also claimed a business deduction for the wife's vehicle use traveling to the farm and on farm business errands. Although the husband maintained a log of the mileage incurred, the court held that the mileage between the residence and college was nondeductible commuting travel expense and the remaining log entries did not meet the substantiation requirements because the entries did not specify the business purpose nor other information about each trip. The court also disallowed all of the wife's travel expenses for lack of substantiation of the business purpose of each trip. The wife presented only monthly summaries of travel and a few receipts but none of the evidence included a business purpose. **Renner v. Comm'r, T.C. Memo. 2015-102**.

WAGES. The taxpayer was a corporation which failed to timely make payment of a terminated employee's final wages. Under California law, the taxpayer had to pay late payment penalties to the terminated employee. In a Chief Counsel Advice letter, the IRS ruled that the late payment penalty was not wages because the payment was not based on services provided by the employee but was based on misconduct of the employer. **CCA 201522004, Feb. 10, 2015**.

IN THE NEWS

ESTATE TAX. CCH has reported that the IRS has announced on its website that it will only issue estate tax closing letters on request, for estate tax returns (Form 706) filed on or after June 1, 2015. The IRS indicated that an estate should wait at least four months after filing the return to make the request. For estate tax returns filed before June 1, 2015, the IRS will generally continue its practice of issuing closing letters. The letter will be issued within four to six months after the return is filed, provided the return is accepted as filed and has no other errors or special circumstances. If a return is selected for audit or is reviewed for statistical purposes, the IRS indicated it will take more time to issue the closing letter. In some cases, the IRS will not issue a closing letter for a return filed before June 1, 2015. For a return that was filed after January 1, 2015, the Service will not issue a closing letter if the estate did not meet the filing threshold for an estate tax return and the IRS rejected the estate's "portability" election. The filing threshold (the value of the gross estate) is indexed for inflation and is set at $5,250,000 for 2013; $5,340,000 for 2014; and $5,430,000 for 2015. A portability election is an election by a deceased spouse's estate to transfer the estate's unused exclusion (unused threshold) amount to the surviving spouse. The surviving spouse can add this unused exclusion to the survivor's own exclusion amount when calculating estate and gift taxes owed by the survivor during life or at the survivor's death. The IRS may reject a portability election if the return was filed late or if the estate failed to meet the requirements of *Rev. Proc. 2014-18, 2014-1 C.B. 513*, for electing portability. *Rev. Proc. 2014-18* granted an extension until December 31, 2014, for an estate to file an estate tax return and elect portability, but only if the return was complete and properly-prepared. Estates that were not able to file by December 31, 2014, could still request an extension from the IRS to file the return. In other cases, the IRS will still issue a closing letter for estate tax returns filed after January 1, 2015, and before June 1, 2015. For example, if the estate met the filing threshold, the IRS will issue a letter. If the filing threshold was not met, but no portability election was made (or the IRS accepted a portability election), the IRS will issue a letter. For questions about estate tax closing letter requests, callers may contact the IRS at 866-699-4083. **Federal Tax Day - Current, I.3, "IRS Will No Longer Routinely Issue Estate Tax Closing Letters after May 31, 2015," (Jun. 19, 2015)**.

Agricultural Law Press
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AGRICULTURAL TAX SEMINARS

by Neil E. Harl

Join us for expert and practical seminars on the essential aspects of agricultural tax law. Gain insight and understanding from one of the country's foremost authorities on agricultural tax law. The seminars will be held on two days from 8:00 am to 5:00 pm. Registrants may attend one or both days. On the first day, Dr. Harl will speak about farm and ranch estate and business planning. On the second day, Dr. Harl will cover farm and ranch income tax. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch. A discount ($25/day) is offered for attendees who elect to receive the manuals in PDF format only (see registration form online for use restrictions on PDF files).

See Page 103 above for a list of cities and dates for Spring and Summer 2015

The topics include:

First day

FARM ESTATE AND BUSINESS PLANNING

New Legislation
Succession planning and the importance of fairness
The Liquidity Problem
Property Held in Co-ownership
- Federal estate tax treatment of joint tenancy
- Severing joint tenancies and resulting basis
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- Other problems of property ownership

Federal Estate Tax
- The gross estate
- Special use valuation
- Property included in the gross estate
- Traps in use of successive life estates
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Taxable estate
- The applicable exclusion amount
- Unified estate and gift tax rates
- Portability and the regulations
- Federal estate tax liens
- Undervaluations of property

Gifts
- Reunification of gift tax and estate tax
- Gifts of property when debt exceeds basis

Use of the Trust
The General Partnership
- Small partnership exception
- Eligibility for Section 754 elections

Limited Partnerships
Limited Liability Companies
- Developments with passive losses
- Corporate-to-LLC conversions
- New regulations for LLC and LLP losses

Closely Held Corporations
- State anti-corporate farming restrictions
- Developing the capitalization structure
- Tax-free exchanges
- Would incorporation trigger a gift because of severance of land held in joint tenancy?
- "Section 1244" stock
- Status of the corporation as a farmer
- The regular method of income taxation
- The Subchapter S method of taxation, including the "two-year" rule for trust ownership of stock
- Underpayment of wages and salaries

Financing, Estate Planning Aspects and Dissolution of Corporations
- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization
- Entity Sale
- Stock redemption

Social Security
- In-kind wages paid to agricultural labor

Second day

FARM INCOME TAX

New Legislation
Reporting Farm Income
- Constructive receipt of income
- Deferred payment and installment payment arrangements for grain and livestock sales
- Using escrow accounts
- Payments from contract production
- Items purchased for resale
- Items raised for sale
- Leasing land to family entity
- Crop insurance proceeds
- Weather-related livestock sales
- Sales of diseased livestock
- Reporting federal disaster assistance benefits
- Gains and losses from commodity futures, including consequences of exceeding the $5 million limit

Claiming Farm Deductions
- Soil and water conservation expenditures
- Fertilizer deduction election
- Depreciating farm tile lines
- Farm lease deductions
- Prepaid expenses
- Preproductive period expense provisions
- Regular depreciation, expense method depreciation, bonus depreciation
- Repairs and Form 3115; changing from accrual to cash accounting
- Paying rental to a spouse
- Paying wages in kind
- PPACA issues including scope of 3.8 percent tax

Sale of Property
- Income in respect of decedent
- Sale of farm residence
- Installment sale including related party rules
- Private annuity
- Self-canceling installment notes
- Sale and gift combined.

Like-Kind Exchanges
- Requirements for like-kind exchanges
- "Reverse Starker" exchanges
- What is "like-kind" for realty
- Like-kind guidelines for personal property
- Partitioning property
- Exchanging partnership assets

Taxation of Debt
- Turnover of property to creditors
- Discharge of indebtedness
- Taxation in bankruptcy.

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