CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

FEDERAL TAX

DISCHARGE. The debtors had filed for Chapter 13 in 2005 but the case was dismissed in 2007 prior to completion of the plan. The debtors filed a Chapter 7 case in 2010 and sought discharge of their 2005 and 2006 taxes under Section 523(a)(8)(A)(i) because the tax returns were due more than three years before the filing of the Chapter 7 petition. The IRS argued that the three year period was increased by the period of the prior Chapter 13 plan. The court first noted language added to Section 523 in 2005 that codified the case law providing for a suspension of the three year look back period when the IRS is prevented from collecting the taxes sought to be discharged under that section. The court looked at the case history of the provision and held that the suspension did not apply in this case because the IRS was not prevented from collection of the taxes during the plan period of the prior Chapter 13 case; therefore, only the three year look back period applied and the taxes were dischargeable. ***In re* Kolve, 2011-2 U.S. Tax Cas. (CCH) ¶ 50,639 (Bankr. W.D. Wis. 2011)**.

FEDERAL FARM PROGRAMS

TUBERCULOSIS. The APHIS has issued interim regulations amending the bovine tuberculosis regulations regarding state and zone classifications by reclassifying a zone in Minnesota consisting of portions of Lake of the Woods, Roseau, Marshall, and Beltrami counties as accredited-free status. Since the remainder of the state is already classified as accredited free, the entire state of Minnesota is now classified as accredited free. **76 Fed. Reg. 61253 (Oct. 4, 2011)**.

The APHIS has issued interim regulations amending the bovine tuberculosis regulations regarding state and zone classifications by reclassifying a zone in New Mexico consisting of Curry and Roosevelt counties as accredited-free status. Since the remainder of the state is already classified as accredited free, the entire state of New Mexico is now classified as accredited free. **76 Fed. Reg. 61251 (Oct. 4, 2011)**.

FEDERAL ESTATE AND GIFT TAXATION

GENERATION SKIPPING TRANSFERS. The decedent had created a trust for the decedent's descendants which became irrevocable prior to September 25, 1985. The trust provided for remainder beneficiaries of the descendants of the decedent and their descendants. The family discovered that the members carried a genetic disorder which was carried to succeeding generations in a more severe form, thus the family believed that many descendants may wish to adopt children. In order to insure that adopted children would receive remainder interests in the trust, the trust was modified by a local court to included adopted children in the definition of "descendant." The IRS ruled that this modification did not subject the trust to GSTT. **Ltr. Rul. 201138027, June 15, 2011**.

The decedent had created an irrevocable trust for the decedent's children and heirs. After the death of the decedent, it was discovered that there was no evidence that the decedent had filed Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*, for transfers to the trust, although the spouse's Form 709 was found by the IRS. The decedent's estate sought an extension of time to file the Form 709 for the decedent in order to allocate the GST exemption to the transfers to the trust. The IRS granted the estate an extension of time to allocate the GST exemption to the trust transfers. **Ltr. Rul. 201138028, June 17, 2011**.

PORTABILITY ELECTION. The IRS has issued a notice that alerts executors of the estates of decedents dying after December 31, 2010, of the need to file a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, within the time prescribed by law (including extensions) in order to elect to allow the decedent's surviving spouse to take advantage of the deceased spouse's unused exclusion amount, if any, pursuant to section 303(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, *P. L. No. 111-312, 124 Stat. 3302 (2010)* and I.R.C. § 2010(c)(5)(A). In particular, for the executor of the estate of a decedent to elect under section 2010(c)(5)(A) (a "portability election") to allow the decedent's surviving spouse to use the decedent's unused exclusion amount, the executor is required to file a Form 706 for the decedent's estate, even if the executor is not otherwise obligated to file a Form 706. This notice also alerts executors of the estates of decedents dying after December 31, 2010, that the estate of such a decedent will be considered to have made a portability election if a Form 706 is timely filed in accordance with the instructions for that form. For those estates filing a Form 706 that choose not to make a portability election, this notice addresses how to avoid making the election. This notice also reminds taxpayers that a portability election can be made only on a Form 706 timely filed by the estate of a decedent dying after December 31, 2010, and any attempt to make a portability election on a Form 706 filed for the estate of a decedent dying on or before December 31, 2010, will be ineffective. Finally, this notice alerts taxpayers that the Treasury Department and the Internal Revenue Service intend to issue regulations under section I.R.C. § 2010(c) to address issues arising with respect to the portability election, and anticipate that those regulations will be consistent with the provisions of this notice. See Harl, "Portability —Great Idea, But Full of Planning Problems," 22 *Agric. L. Dig*. 137 (2011). **Notice 2011-82, I.R.B. 2011-42**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued proposed regulations relating to the retail inventory method of accounting. The regulations restate and clarify the computation of ending inventory values under the retail inventory method and provide a special rule for certain taxpayers that receive margin protection payments and similar vendor allowances. The regulations affect taxpayers that are retailers and elect to use a retail inventory method. **76 Fed. Reg. 62327 (Oct. 7, 2011)**.

The taxpayer, a corporation, hired a tax advisor to timely file its consolidated federal tax return with two original Forms 3115, *Application for Change in Accounting Method*, filed under *Rev. Proc. 2008-52, 2008-2 C.B. 587*, to change the method of accounting for professional service fees and advance payments for the taxpayer and a wholly owned subsidiary. However, due to an oversight by the taxpayer's controller, the taxpayer inadvertently failed to timely file duplicates of the Forms 3115 with the IRS national office, as required by section 6.02(3)(a) of *Rev. Proc. 2008-52*. The IRS granted an extension of time for the taxpayer to file the duplicate Forms 3115 with the IRS National Office. **Ltr. Rul. 201138030, June 24, 2011**.

CHARITABLE DEDUCTION. The taxpayer manufactured food products and donated inventory items to local food banks and other charitable organizations that provided food for the needy. The taxpayer did not file Form 8283, *Noncash Charitable Contributions*, with its tax return and did not file the form within 90 days after request from the IRS. In a Field Attorney Advice letter, the IRS ruled that the charitable deduction was not allowed because of the failure to file or supply Form 8283 with an appraisal of the food products donated. **FSA 20113801F, Oct. 3, 2011**.

The taxpayer purchased a six-story residential townhouse in a certified historical district of New York City. The taxpayer granted a conservation easement on the facade of the property which restrict the development rights for the property. The court held that the IRS properly disallowed a charitable deduction for the conservation easement because the taxpayer did not submit a qualified appraisal for the property before and after the grant of the easement. The court noted several errors and inconsistencies which invalidated the appraisal. **Friedberg v. Comm'r, T.C. Memo. 2011-238**.

CORPORATIONS

DEPRECIATION. The taxpayer was a corporation which had acquired a large number of depreciable assets in the tax year. The taxpayer's tax adviser recommended using the general asset account rules under I.R.C. § 168(i)(4) and the tax return was filed using the general asset account method, but the tax return preparer failed to mark the appropriate box on Form 4562. The IRS granted an extension of time to file an amended return with the proper election checked. **Ltr. Rul. 201138003, June 20, 2011**.

DEPRECIATION. The taxpayer was a limited partnership involved in the development of a residential property. The taxpayer relied upon an outside tax preparer to prepare its federal partnership tax return, including any elections. However, the timely filed tax return did not include an election under I.R.C. § 168(g)(7) to use the Alternate Depreciation System to depreciate the property because the taxpayer's outside tax preparer did not utilize the updated cost projections, which the outside tax preparer had access to because the firm created all of taxpayer's financial statements, in order to determine the depreciation method that should be used for the property. The property consisted of real property and personal property that were classified as 5-year property, 15-year property, or residential rental property for MACRS purposes. The IRS granted an extension of time to file an amended return with the election. **Ltr. Rul. 201138001, June 24, 2011**.

DISCHARGE OF INDEBTEDNESS. The taxpayer had leased farm land from the U.S. Navy but failed to pay the rent. After the lease was terminated in 1999, the Navy initially attempted to recover the unpaid rent but referred the case to the Defense Finance and Accounting Service and eventually the U.S. Treasury Department when no rent was paid. The court found no evidence of collection efforts by the Accounting Service, the Treasury or the Navy until 2006 when the Navy filed a Form 1099-C listing the unpaid rent as discharged. Under Treas. Reg. § 1.6050P-1(b)(2)(iv) an identifiable event of discharge of indebtedness is presumed to occur if no collection efforts or other evidence of the debt have occurred within 36 months after the last non-payment period. The court held that the discharge occurred prior to 2006 because no collection efforts, lien filings or packaging of the debt for sale occurred within 36 months after the termination of the lease and the last attempts to collect the debt. **Kleber v. Comm'r, T.C. Memo. 2011-233**.

DISASTER LOSSES. On August 31, 2011, the President determined that certain areas in New Jersey are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of Hurricane Irene which began on August 27, 2011. **FEMA-4021-DR**. On September 1, 2011, the President determined that certain areas in Vermont are eligible for assistance from the government under the Act as a result of Tropical Storm Irene which began on August 29, 2011. **FEMA-4022-DR**. On September 15, 2011, the President determined that certain areas in New Jersey are eligible for assistance from the government under the Act as a result of severe storms and flooding which began on August 13, 2011. **FEMA-4033-DR**. On September 16, 2011, the President determined that certain areas in Maryland are eligible for assistance from the government under the Act as a result of Hurricane Irene which began on August 24, 2011. **FEMA-4034-DR**. On September 23, 2011, the President determined that certain areas in Kansas are eligible for assistance from the government under the Act as a result of flooding which began on June 1, 2011. **FEMA-4035-DR**. Accordingly, taxpayers in the areas may deduct the losses on their 2010 federal income tax returns. See I.R.C. § 165(i).

DOMESTIC PRODUCTION DEDUCTION. The taxpayer was a non-exempt farmer's marketing and purchasing agricultural cooperative. The cooperative made payments to members which were qualified per-unit retain allocations because they were (1) distributed with respect to the crops that the cooperative stored, processed and marketed for its patrons; (2) determined without reference to the cooperative's net earnings; and (3) paid pursuant to a contract with the patrons establishing the necessary pre-existing agreement and obligation, and within the payment period of I.R.C. § 1382(d). The IRS ruled that the cooperative was allowed to add back these amounts paid to members as net proceeds in calculating its qualified production activities income under I.R.C. § 199(d)(3)(C). **Ltr. Rul. 201138002, June 9, 2011; Ltr. Rul. 201138039, June 9, 2011**.

EARNED INCOME TAX CREDIT. The IRS has announced that it is issuing proposed regulations that would require paid tax return preparers, beginning in 2012, to file a due diligence checklist, Form 8867, with any federal return claiming the Earned Income Tax Credit (EITC). It is the same form that is currently required to be completed and retained in a preparer's records. The due diligence requirement, enacted by Congress over a decade ago, was designed to reduce errors on returns claiming the EITC, most of which are prepared by tax professionals. The IRS created Form 8867, Paid Preparer's Earned Income Credit Checklist, to help preparers meet the requirement by obtaining eligibility information from their clients. Preparers have been required to keep copies of the form, or comparable documentation, which is subject to review by the IRS. To help ensure compliance with the law and that eligible taxpayers receive the right credit amount, the proposed regulations would require preparers, effective Jan. 1, 2012, to file the Form 8867 with each return claiming the EITC. **IR-2011-98**.

EMPLOYEE EXPENSES. The IRS has published updated rules for using a per diem rate to substantiate, under I.R.C. § 274(d) and Treas. Reg. § 1.274-5, the amount of ordinary and necessary business expenses paid or incurred while traveling away from home. Taxpayers are not required to use a method described in this revenue procedure and a taxpayer may substantiate actual allowable expenses if the taxpayer maintains adequate records or other sufficient evidence. The revenue procedure provides rules for using a per diem rate to substantiate the amount of an employee's expenses for lodging, meals, and incidental expenses, or for meals and incidental expenses only, that a payor (an employer, its agent, or a third party) reimburses. Employees and self-employed individuals that deduct unreimbursed expenses for travel away from home may use a per diem rate for meals and incidental expenses, or incidental expenses only, under this revenue procedure. The revenue procedure does not provide rules for using a per diem rate to substantiate the amount of lodging expenses only. **Rev. Proc. 2011-47, I.R.B. 2011-42, *superseding*, Rev. Proc. 2010-39, 2010-2 C.B. 459**.

The IRS has announced an update of the simplified per diem rates that employers (or their agents or third parties) can use to reimburse employees for lodging, meals and incidental expenses incurred on or after October 1, 2011 during business travel away from home without the need to produce receipts. The simplified "high-low" per diem rates have increased to $242 for high-cost localities and increased to $163 for localities within CONUS. For purposes of applying the high-low substantiation method and the 50-percent limitation on meal expenses, the federal meal and incidental expense rate is treated as $65 for a high-cost locality and $52 for any other locality within CONUS. The notice provides a list of the high-cost localities. **Notice 2011-81, I.R.B. 2011-42**.

FIRST TIME HOMEBUYER CREDIT. The taxpayer purchased a residence in 2002 but defaulted on the mortgage in 2006. The mortgagee sold the home in a foreclosure sale on January 3, 2007. The taxpayer purchased a second home on October 9, 2009 and filed a claim for the first time homebuyer's credit on the taxpayer's 2009 return. The court held that the taxpayer did not qualify for the credit because the taxpayer had owned the first residence up to the date of the foreclosure sale which occurred within three years before the purchase of the second home. **Drain v. Comm'r, T.C. Memo. 2011-242**.

HOBBY LOSSES. The taxpayers purchased timeshares in various resort condominiums with the intent to build up sufficient ownership that would have created retirement income for them. The taxpayers claimed deductions for various costs associated with the acquisition and management of the timeshares, including travel expenses. The court disallowed the travel expenses because the taxpayers failed to provide written substantiation of the portion of the travel expenses which were directly attributable to the timeshare acquisition and management activity. The court also disallowed the losses in excess of revenue from the timeshare activity for failure of the taxpayers to engage in the activity with the intent to make a profit because (1) the taxpayers did not create or follow a business plan to make a profit, (2) the taxpayers did not consult with experts as to how to make the activity profitable, (3) the taxpayers did not devote a substantial amount of time to the activity, (4) the activity produced only losses, and (5) the losses offset significant income from other sources. **Rundlett v. Comm'r, T.C. Memo. 2011-229**.

INNOCENT SPOUSE. The taxpayer had prepared the taxpayer's and former spouse's joint tax returns when the couple were married. The former spouse provided records of the spouse's gambling activity and the taxpayer prepared the returns using those documents. The IRS audited the returns and assessed a deficiency resulting from disallowance of deductions for the gambling losses. The couple filed an appeal of the deficiency but the case was controlled by the former spouse since the couple had filed for divorce. After the deficiency was upheld, the taxpayer filed for innocent spouse relief. The IRS argued that the deficiency appeal case was *res judicata* as to the taxpayer's liability. The court held that *res judicata* did not apply here because the taxpayer had no meaningful opportunity to participate in the deficiency appeal case. Because the IRS had stipulated that, without the bar of *res judicata*, the taxpayer was entitled to innocent spouse relief, the court granted the relief. **Harbin v. Comm'r, 137 T.C. No. 7 (2011)**.

The taxpayer had filed joint income tax returns with the taxpayer's spouse. The taxpayer had wage income and the spouse had self-employment income from a dentist practice. The taxpayer did not participate in preparing the tax returns but had a chance to review them before signing them. Three tax returns were filed at the same time and showed a large amount of taxes due. The taxpayer sought equitable innocent spouse relief which the court denied because, under the factors provided by *Rev. Proc. 2003-61, 2003-2 C.B. 296*, (1) the taxpayer was still married to the spouse, (2) the taxpayer should have realized that the large amount of taxes would not be paid, (3) the taxpayer had sufficient income to pay the taxes over time and still afford basic living expenses, and (4) the taxpayer received benefit from the failure to pay the taxes because the spouse's income covered a large portion of the household expenses which allowed the taxpayer to use income to cover education expenses for the taxpayer. The other factors of *Rev. Proc. 2003-61* were found to be neither favoring or denying relief. **Karam v. Comm'r, T.C. Memo. 2011-230**.

MORTGAGE INTEREST. The taxpayers, husband and wife, purchased a beach front property and, as part of the sales agreement, required the existing house to be removed before closing. The taxpayers obtained a loan for the purchase of the vacant land. The sale was closed in 2006 and the taxpayer immediately began a long and complex attempt to acquire the required state permits for construction of a residence on beach front property. The process took much longer than expected because of environmental regulations but was completed in 2008. By this time, the credit requirements for construction loans had stiffened and the taxpayers were unable to obtain a construction loan. The taxpayer sold the property for a loss in 2009. The taxpayer claimed mortgage interest deductions for 2007, 2008 and 2009 but these were disallowed by the IRS because no physical construction of the residence had commenced in any of those years. The court held that the construction of the residence had commenced in the tax years involved because, during each year, the taxpayers had a reasonable expectation that physical construction would begin and the only thing preventing construction was an unexpectedly delayed permit process. **Rose v. Comm'r, T.C. Summary Op. 2011-117**.

PARTNERSHIPS

ASSESSMENTS. The United States Supreme Court has granted certiorari in the following case. The taxpayer was a partner in a partnership which sold partnership property. The partnership overstated the partnership's basis in the property, resulting in an understatement of taxable income from the sale. More than three years and less than six years after the filing of the tax return for the year of the sale, the IRS filed a final partnership administrative adjustment which resulted from a reduction of the partnership's basis in the property sold. The taxpayer sought summary judgment because the FPAA was filed more than three years after the filing of the return. The IRS argued that the six year limitation applied because the return understated taxable income because of the basis overstatement. The court held that the six year limitation did not apply because the overstatement of basis was not an understatement of receipt of income. **Home Concrete & Supply, LLC v. United States, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,207 (4th Cir. 2011), *rev'g*, 2009-2 U.S. Tax Cas. (CCH) ¶ 50,794 (E.D. N.C. 2009)**.

The taxpayer was a partner in a partnership which sold partnership property. The partnership overstated the partnership's basis in the property, resulting in an understatement of taxable income from the sale. More than three years and less than six years after the filing of the tax return for the year of the sale, the IRS filed a final partnership administrative adjustment (FPAA) which resulted from a reduction of the partnership's basis in the property sold. The taxpayer sought summary judgment because the FPAA was filed more than three years after the filing of the return. The IRS argued that the six year limitation applied because the return understated taxable income. The Tax Court held that the six year limitation did not apply because the overstatement of basis was not an understatement of receipt of income. On appeal, the appellate court agreed that, under its prior decision in *Burks v. United States, petition for review (S. Ct. 8/30/11), 2011-1 U.S. Tax Cas. (CCH) ¶ 50,219 (5th Cir. 2011), rev'g, 2008-2 U.S. Tax Cas. (CCH) ¶ 50,702 (N. D. Tex. 2008)*, the overstatement of basis was not an understatement of receipt of income. The appellate decision is designated as not for publication. **R and J Partners v. Comm'r, 2011-2 U.S. Tax Cas. (CCH) ¶ 50,645 (5th Cir. 2011)**.

PENSION PLANS. For plans beginning in October 2011 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 4.20 percent, the corporate bond weighted average is 5.86 percent, and the 90 percent to 100 percent permissible range is 5.28 percent to 5.86 percent. **Notice 2011-84, I.R.B. 2011-43**.

The taxpayer was a minor who received the decedent's, the taxpayer's father's, entire interest in a pension plan. The taxpayer's guardian, the taxpayer's mother ordered the lump sum distribution from the plan and paid state and federal taxes on the distribution. A conservator was appointed for the taxpayer and the conservator sued the mother for return of the lump sum distribution. The distribution was repaid by the mother over time and the conservator sought a ruling that the repaid funds were still eligible for a trustee-to-trustee nontaxable distribution of the pension funds. The IRS ruled that the taxpayer was still eligible for the non-taxable trustee-to-trustee transfer of the funds to the taxpayer's IRA. **Ltr. Rul. 201139011, July 7, 2011**.

The taxpayer was enrolled in a qualified retirement plan and retired from employment when the taxpayer was 53 years old. Two years later, the taxpayer received distributions from the plan which the taxpayer reported as taxable income but the taxpayer did not pay the 10 percent penalty for early withdrawals. Under I.R.C. § 72(t)(v), an exception to the 10 percent penalty is for distributions ". . . (v) made to an employee after separation from service after attainment of age 55." The taxpayer argued that, because the distribution was made after the taxpayer attained age 55, the exception applied. The court held that the age limitation applied to the date when the taxpayer retired, not when the distribution was received. Because the taxpayer retired at age 53, the exception did not apply to the distribution made when the taxpayer was age 55. **Watson v. Comm'r, T.C. Summary Op. 2011-113**.

REGISTERED TAX RETURN PREPARERS. The IRS has issued guidance to individuals who have or will obtain a preparer tax identification number (PTIN), including a provisional PTIN, or who become registered tax return preparers. The notice provides guidance regarding the last date that provisional PTINs may be obtained, provides that provisional PTINs must be continually maintained, and clarifies that, beginning in 2012, provisional PTIN holders must complete continuing education requirements. The notice also provides guidance regarding PTIN (including provisional PTIN) renewal, provides that certain individuals must be fingerprinted and pass a suitability check prior to obtaining a PTIN, and provides guidance regarding continuing education requirements for registered tax return preparers. **Notice 2011-80, I.R.B. 2011-43**.

The IRS has announced proposed regulations which would establish a new user fee for individuals to take the registered tax return preparer competency examination and a new user fee for certain persons to be fingerprinted in conjunction with the preparer tax identification number, acceptance agent, and authorized e-file provider programs. The IRS portion of the fingerprinting fee would be $33, and the IRS portion of the testing fee would be $27. These user fees are in addition to any fees charged by the third-party vendors administering the programs. The fees to be charged by third-party vendors are not being announced at this time, but the total fees, including the IRS user fees, are expected to be between $60 and $90 for fingerprinting and $100 and $125 for testing. **76 Fed. Reg. 59329 (Sept. 26, 2011)**.

S CORPORATION

SECOND CLASS OF STOCK. The taxpayer was a family-owned S corporation. The taxpayer agreed to participate in a scheme under which the taxpayer donated most of its non-voting stock to a charitable organization which held the stock for a few years. The stock transfer had the effect of allocating all of the corporation's income to the charity. The stock was intended to be repurchased a number of years later at a set amount, with only capital gains taxes paid on the profit. In order to protect the legitimate shareholders from the charity keeping the shares, the taxpayer issued stock warrants to the shareholders which, if exercised would dilute the stock of the charity such as to return the equity back to the shareholders. The court held that these warrants created a second class of stock which terminated the S corporation status of the taxpayer, resulting in the corporation being taxable on the income earned during the years the stock was held by the charity. **Santa Clara Valley Housing Group, Inc. v. United States, 2011-2 U.S. Tax Cas. (CCH) ¶ 50,637 (N.D. Calif. 2011)**.

SMALL BUSINESS HEALTH CARE CREDIT. The IRS has published information about the small business health care tax credit. Small employers that pay at least half of the premiums for employee health insurance coverage under a qualifying arrangement may be eligible for the small business health care tax credit. The credit is specifically targeted to help small businesses and tax-exempt organizations that primarily employ 25 or fewer workers with average income of $50,000 or less. Here is what small employers need to know so they don't miss out on the credit for tax year 2010: (1) Hurricane Irene, Tropical Storm Lee and other recent disaster-related tax relief postponed certain tax filing and payment deadlines to Oct. 31, 2011. Qualifying businesses affected by these natural disasters still have time to file and claim the small employer health care credit on Form 8941 and claim it as part of the general business credit on Form 3800, which they would include with their tax return. (2) Sole proprietors who file Form 1040, partners and S corporation shareholders who report their income on Form 1040 and had requested an extension have until Oct. 17 to complete their returns. They would also use Form 8941 to calculate the small employer health care credit and claim it as a general business credit on Form 3800, reflected on line 53 of Form 1040. (3) Tax-exempt organizations that file on a calendar year basis and requested an extension to file to Nov. 15 can use Form 8941 and then claim the credit on Form 990-T, Line 44f. (4) Businesses who have already filed can still claim the credit. Small businesses that have already filed and later determine they are eligible for the credit can always file an amended 2010 tax return. Corporations use Form 1120X and individual sole proprietors use Form 1040X. (5) Businesses that could not use the credit in 2010 may be eligible to claim it in future years. Some businesses that already locked into health insurance plan structures and contributions for 2010 may not have had the opportunity to make any needed adjustments to qualify for the credit for 2010. So these businesses may be eligible to claim the credit on 2011 returns or in years beyond. Small employers can claim the credit for 2010 through 2013 and for two additional years beginning in 2014. For tax years 2010 to 2013, the maximum credit for eligible small business employers is 35 percent of premiums paid and for eligible tax-exempt employers the maximum credit is 25 percent of premiums paid. Beginning in 2014, the maximum tax credit will go up to 50 percent of premiums paid by eligible small business employers and 35 percent of premiums paid by eligible tax-exempt organizations. Additional information about eligibility requirements and calculating the credit can be found on the Small Business Health Care Tax Credit for Small Employers page of IRS.gov. **Special Edition Tax Tip 2011-06**.

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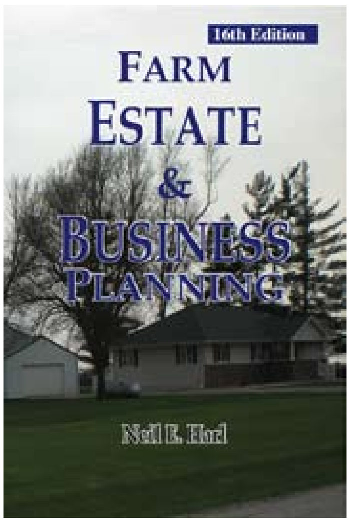

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