$40,000, if the partnership year did not close at the partner's death, the $100,000 of income would be reported by the partner's successor in interest but the taxes and mortgage interest would be reported on the decedent's final individual income tax return. If the successor was the estate, the estate would be required to report the income without the offsetting deductions. The decedent's final return would report deductions but with no offset against the income.

For partnership tax years after 1997, death of a partner causes a closing of the partnership tax year with respect to the deceased partner with the income and deductions included on the decedent's final income tax return. That means that the income attributable to the deceased partner's partnership interest must be allocated between the pre-death and post-death periods.[10] Under the regulations, this allocation is made by an interim closing of the partnership books or, if all partners agree, on a pro rata basis based on the number of days in the period.[11]

Self-employment tax implications

For social security purposes, the distributive share of a partner for the year of death up to the end of the month in which the partner died is reported as self-employment income for the year of death.[12] For the purpose of determining the partner's distributive share up to the date of death, the ordinary income or loss of the partnership is treated as having been realized or sustained ratably over the partnership's taxable year.[13] The term "deceased partner's distributive share" includes the share of the estate or of any other person succeeding, by reason of the partner's death, to rights with respect to the partnership interest.[14] There is no election involved.

Basis of interest at death

The income tax basis of the partnership interest in the hands of the estate or other successor in interest of the deceased partner is the fair market value of the partnership interest at death reduced by the amount of the deceased partner's share of unrealized receivables and increased by the partner's share of partnership liabilities.[15] Unrealized receivables do not receive a new income tax basis at death, retaining their character as income in respect of decedent.[16] In no event can the basis of unrealized receivables be adjusted by an election under either I.R.C. § 743 and I.R.C. § 754 or under I.R.C. § 732(d).[17]

Footnotes

1 I.R.C. § 706(c). See generally 8 Harl, *Agricultural Law* § 60.06[3][a] (2006); Harl, *Agricultural Law Manual* § 7.03[4] (2006); Harl, *Farm Income Tax Manual* § 914 (Matthew Bender 2006). See also Harl, "Planning for Retirement and Death of a Partner," 17 *Agric. L. Dig.* 145 (2006).

2 Treas. Reg. § 1.706-1(c)(3).

3 I.R.C. § 706(c)(2)(A).

4 I.R.C. § 706(c)(2)(A). Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1246(a), 111 Stat. 788 (1997).

5 *Id.*

6 See Treas. Reg. § 1.706-1(c)(3).

7 Treas. Reg. § 1.706-1(c)(3)(i).

8 *Id.*

9 Taxpayer Relief Bill of 1997 Conference Report and Statement of the Managers (H.R. 2014), July 31, 1997.

10 Treas. Reg. § 1.706-1(c)(2)(ii).

11 *Id.*

12 I.R.C. § 1402(f).

13 I.R.C. § 1402(f)(1).

14 I.R.C. § 1402(f)(2).

15 See generally Harl, *Farm Income Tax Manual* § 914(b) (Matthew Bender 2006).

16 I.R.C. § 691(a). See George Edward Quick Trust v. Comm'r, 444 F.2d 90 (8th Cir. 1971).

17 Rev. Rul. 66-325, 1966-2 C.B. 249. See Harl, "Planning for Retirement and Death of a Partner," 17 *Agric. L. Dig.* 145 (2006).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

HORSES. The plaintiffs enrolled their child in a horse riding school owned and operated by the defendants. The plaintiffs signed an Equine Activity Liability Release which complied with Ohio Code § 2305.321(c). The child was injured during a trial ride during which the child's horse was led by an instructor. The horse reared when it heard a clap of thunder and the child was thrown from the horse. The plaintiffs argued that the fall and injury occurred as a result of the failure of the defendant properly to test the horse for suitability for young, inexperienced riders. The court held that the cause of the accident was the unexpected thunder and that the horse's reaction was within the range of inherent risks of equine activity; therefore, the defendant was protected from liability by the Ohio Equine Activity Immunity Statute, Ohio Code § 2503.321. The plaintiffs also attacked the validity of the liability release they signed when they enrolled the child. The court held that the release was valid because it essentially tracked the language of the statute. **Markowitz v. Bainbridge Equestrian Center, Inc., 2007 Ohio App. LEXIS 1411 (Ohio Ct. App. 2007)**.

BANKRUPTCY

GENERAL

PLAN. The debtor filed for Chapter 13 and the Farm Service Agency and a private bank filed secured claims in the case. The debtor sold estate property and used the proceeds to reduce the secured claims. The debtor's confirmed plan provided for payments on the claims but not enough payment to pay off the claims. The plan provided, however, for the creditors to retain their liens until the claims were fully paid, some time after the termination of the plan. The Chapter 13 trustee objected to the plan because it did not provide for full payment of all secured claims. The court held that the confirmed plan was allowed because no secured creditor objected to the plan and the plan provided for the retention of the liens after the discharge until the claims were paid. ***In re*** **Westenberg, 2007 Bankr. LEXIS 1033 (Bankr. E.D. Wis. 2007)**.

ENVIRONMENTAL LAW

PRIVATE RIGHT OF ACTION. The plaintiffs, neighbors of the defendant hog farmer, had brought a nuisance action under the Mississippi Air and Water Pollution Control Law. The defendant argued that the state statute did not provide a right of private action to enforce the statute. The court held that the statute provided only for enforcement through the state commission established by the statute; therefore, no suit could be brought by private citizens. ***In re*** **Moore, 2007 U.S. Dist. LEXIS 24456 (N.D. Miss. 2007),** ***aff'g*****, 310 B.R. 795 (Bankr. N.D. Miss. 2004)**.

FEDERAL AGRICULTURAL PROGRAMS

BEANS. The GIPSA has issued a notice that it intends to revise the U.S. standards for beans to provide applicants with an optional grade designation for bean certification and to remove the requirements that the percentage of high moisture and, in the case of mixed beans, the percentage of each class in the mixture be shown on the grade line. **72 Fed. Reg. 19168 (April 17, 2007)**.

GUARANTEED FARM LOANS. The FSA has adopted as final regulations which revise the Interest Assistance Program as to how a guaranteed loan borrower may obtain a subsidized interest rate on a guaranteed farm loan. The changes include (1) deletion of annual review requirements, (2) limitations on loan size and period of assistance, and (3) streamlining of claim submission. **72 Fed. Reg. 17353 (April 9, 2007)**.

PACKERS AND STOCKYARDS ACT. The GIPSA has adopted as final regulations amending the rules of practice governing proceedings under the Packers and Stockyards Act to provide a mechanism for settling cases without instituting formal proceedings. **72 Fed. Reg. 19108 (April 17, 2007)**.

PEAS. The GIPSA has issued a notice that it intends to revise the U.S. standards for Whole Dry Peas, Split Peas, and Lentils to provide applicants with an optional grade designation for pea and lentil certification and to remove the requirement that, in the case of mixed dry peas, the percentage of each class in the mixture be shown on the grade line. **72 Fed. Reg. 19169 (April 17, 2007)**.

FEDERAL ESTATE AND GIFT TAXATION

DONEE LIABILITY. The decedent had made inter vivos gifts to the taxpayers who were appointed executors of the decedent's estate. The gifts were made more than 10 years before the decedent's death. The gifts resulted in a gift tax liability for the decedent's estate which was unpaid. The IRS sought to impose personal liability on the taxpayers as donees of the gifts under I.R.C. § 6324(b). The taxpayers argued that the lapse of the 10-year limitation period on the lien in I.R.C. § 6324(b) extinguished their liability for the gift tax. The court held that the 10-year period applied only as to the lien which secured the government's claim for taxes. The court held that the proper limitation period on personal liability was the three-year period of I.R.C. § 6502(a) which had not expired because the gift tax return was not filed until 11 years after the gifts were made and a deficiency notice was filed within three years after the return was filed. In addition, as part of an earlier Tax Court decision, *Estate of Davenport v. Comm'r, T.C. Memo. 1997-390, aff'd, 184 F.3d 1176 (10th Cir. 1999),* the value of the stock was determined as part of the holding. The taxpayers argued that the Tax Court valuation determination was not *res judicata* in the present case because the Tax Court case involved different fact issues. The appellate court held that the Tax Court case involved the same set of litigated facts and was entitled to *res judicata* effect here. **United States v. Estate of Davenport, 2007-1 U.S. Tax Cas. (CCH) ¶ 60,539 (5th Cir. 2007),** ***rev'g*****, 327 F. Supp.2d 725 (S.D. Tex. 2004),** ***on rem. from*****, 309 F.3d 1263 (10th Cir. 2002),** ***aff'g in part and rev'g in part*****, 159 F. Supp.2d 1330 (N.D. Okla. 2001)**.

GENERATION-SKIPPING TRANSFERS. A trust was established prior to September 25, 1985 by a decedent's will and the trust provided for equal shares to each of the decedent's grandchildren. The trust petitioned a local court for modification of the trust in order to help one of the grandchildren in financial difficulties. The state court approved modifications which (1) permitted a series of semi-annual guaranteed annuity payments to a charity to be made in a single cash distribution and (2) advanced the date of the distributions which could be made to the grandchild. The IRS ruled that the modifications did not subject the trust to GSTT because the modifications did not shift any beneficial interests in the trust to anyone occupying a generation lower than the beneficiaries who held interests prior to the modifications and the modifications did not extend the

time for vesting of any beneficial interest. **Ltr. Rul. 200714009, Dec. 19, 2007**.

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent's estate made the election to pay the estate tax, over $28 million, in installments. The IRS required the estate either to secure a bond equal to twice the amount of tax deferred or to provide a special lien under I.R.C. § 6324A in order to qualify for the election. The estate did not meet the requirements and requested a discretionary waiver of the requirements based on the strong financial condition of the estate's businesses and the tax history of the decedent's heir. The IRS had established a "bright-line" bond requirement: "The Service requires estates to furnish a surety bond as a prerequisite for granting the installment payment election. Instead of furnishing a surety bond, the estate may choose to elect the special lien provided for in IRC 6324A that requires the estate to have a lien placed on a specific property. This property must have a value equal to the total deferred tax plus four years of interest and must be expected to exist until the entire tax is paid." *Internal Revenue Manual Sec. 4.25.1.4.9(1)*. The decedent's estate challenged this rule as an abuse of discretion. The court noted that the IRS had flip-flopped on this rule several times since 1987 and the current rule was the result of a report of a substantial number of defaulted installment agreements which had not been secured by bonds or liens. The court noted that such oscillations in the interpretation of the installment election requirements reduces the deference of the court on the IRS interpretation. The court held that the use of a "bright-line" requirement of a bond or lien was an abuse of discretion; however, the court did not grant the estate summary judgment because several issues of fact remained as to whether the estate was entitled to a waiver. **Estate of Roski v. Comm'r, 128 T.C. No. 10 (2007)**.

TRUSTS. The taxpayer formed a complex trust taxable under I.R.C. § 661 et seq. The trustees had the power to distribute all or part of trust income to charitable organizations selected by the trustees. I.R.C. § 4947(a)(2) provides that, in the case of a trust which is not exempt from tax under I.R.C. § 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in I.R.C. § 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under I.R.C. §§ 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, certain private foundation rules are applicable to such split-interest trusts including I.R.C. § 4941. The IRS ruled that the distribution of the trust's income to charitable organizations in exercise of the trustees' power to make discretionary distributions would not result in the trust coming under or within the provisions of I.R.C. § 4947(a)(2). **Ltr. Rul. 200714025, Jan. 12, 2007**.

FEDERAL INCOME TAXATION

ARCHER MEDICAL SAVINGS ACCOUNTS. The IRS has announced that April 19, 2007 was not a "cut-off" date and 2005 and 2006 were not "cut-off" years for the ARCHER MSA pilot project. The number of Archer MSA returns filed for 2004 were 39,037 and 35,246 for 2005, far short of the 750,000 required for a cut-off of the program. **Ann. 2007-44, I.R.B. 2007-19**.

BAD DEBT DEDUCTION. The taxpayer was hired as a business consultant to advise a corporation about the acquisition of another corporation. In the process of the acquisition process the taxpayer agreed to lend money to the acquiring corporation to cover current costs and to accept deferred compensation until the acquiring corporation could find separate financing. The acquisition eventually fell through and the acquiring corporation declared bankruptcy without paying the loan to the taxpayer. The loan was discharged in the bankruptcy case. The IRS ruled that the taxpayer could deduct the value of the loan as a business bad debt because the loan was made for the purpose of protecting the taxpayer's consulting fee. The IRS noted that the proposed acquisition continually experienced significant cash flow problems which required the loan and the expected amount of consulting fees was substantially large so as to support a business motive for the loan. **Ltr. Rul. 200714008, Dec. 22, 2006**.

CAPITAL GAINS. The taxpayer won the state lottery which paid the winnings in annual installments. The taxpayer received two annual payments before selling the right to the remaining payments for a lump sum. The taxpayer reported the lump sum as capital gain, arguing that the winnings were a capital asset because the winnings had appreciated in value. The court, acknowledging substantial precedent, held that the lump sum proceeds were ordinary income. **Prebola v. Comm'r, 2007-1 U.S. Tax Cas. (CCH) ¶ 50,423 (2d Cir. 2007), *aff'g*, T.C. Memo. 2005-261**.

CASUALTY LOSSES. The taxpayer owned various assets that were damaged as a result of a casualty. Some of the assets were nearly destroyed whereas others required less substantial repairs. The taxpayer incurred repair costs to rebuild the assets that were nearly destroyed and to repair the assets that were less damaged. The taxpayer used its repair costs for all assets as an estimate of its loss under I.R.C. § 165 and deducted those same repair costs under I.R.C. § 162(a) as ordinary and necessary business expenses. In an Advice Memorandum, the IRS ruled that, to the extent the damage or destruction of the property qualified for a loss deduction, the costs of restoring the property must be capitalized in the basis of the property and cannot be claimed as a Section 162(a) deduction. **IRS Advice Memorandum, AM 2006-006, April 16, 2007**.

The taxpayer's car was damaged in 2002 and the taxpayer did not receive any insurance proceeds for the loss. The taxpayer claimed a casualty loss in 2003 for the damage to the car in 2002. The court held that the loss was properly disallowed because the taxpayer failed to provide any evidence that the loss was recoverable in 2002 but not recoverable in 2003. **Ataky v. Comm'r, T.C. Memo. 2007-84**.

CORPORATIONS

SUSPENSE ACCOUNTS**.** The taxpayer was a C corporation and the parent of an affiliated group of corporations that file a consolidated tax return. The taxpayer engaged in the business of farming and qualified as a "family corporation," as that term is defined in I.R.C. § 447(d)(2)(C)(i). The taxpayer initially used the cash receipts and disbursements method of accounting but prior to 1997, the taxpayer was required by I.R.C. § 447 to change from the cash receipts and disbursements method of accounting to the accrual method of accounting. At that time, the taxpayer established a suspense account under I.R.C. § 447(i)

in lieu of taking into account adjustments under I.R.C. § 481(a). The taxpayer was not required to make, and did not make, any adjustment to the suspense account until the Taxpayer Relief Act of 1997, P.L. 105-34, amended I.R.C. § 447(i) to provide for the phaseout of existing suspense accounts. For its first several tax years following the amendment of I.R.C. § 447(i), the taxpayer reduced its suspense account by the applicable portion (as defined I.R.C. § 447(i)(5)(C)) and included that amount in gross income. The taxpayer was advised to engage in a restructuring transaction. The taxpayer formed a new wholly owned subsidiary and transferred substantially all of its assets and liabilities to the subsidiary solely in exchange for the stock of the subsidiary. No gain or loss was recognized pursuant to I.R.C. § 351. The taxpayer retained the suspense account and *de minimis* assets from its farming business. After the restructuring transaction, the taxpayer's taxable income decreased dramatically. Each year the taxpayer reduced the suspense account by the amount calculated - using only its own income for purposes of I.R.C. § 447(i)(5)(B)(i)(II) --and included that amount in gross income. The subsidiary was profitable, and its taxable income exceeded the taxpayer's taxable income for years prior to the restructuring transaction. In later years, the subsidiary acquired additional assets in successive acquisitions, mergers, and restructurings, thereby further increasing its taxable income. The subsidiary filed a consolidated tax return with the taxpayer's group and used the same method of accounting as the taxpayer. There were no intercompany transactions between the subsidiary and the taxpayer. The IRS ruled that no acceleration of the suspense account balance occurred in the year of the restructuring transaction and the income of the wholly owned subsidiary should be added to the taxpayer's income in making the calculations under I.R.C. § 447(i)(5)(B)(i)(II). **Ltr. Rul. 200715007, March 8, 2007**.

DEPRECIATION. The IRS has issued tables detailing the (1) limitations on depreciation deductions for owners of passenger automobiles (and for trucks and vans) first placed in service during calendar year 2007, including separate limitations on passenger automobiles designed to be propelled primarily by electricity and built by an original equipment manufacturer (electric automobiles); and (2) the amounts to be included in income by lessees of passenger automobiles first leased during calendar year 2007, including separate inclusion amounts for electric automobiles.

For passenger automobiles (other than electric automobiles) placed in service in 2007 the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$3,060
2d tax year	4,900
3d tax year	2,850
Each succeeding year	1,775

For trucks and vans placed in service in 2007 the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$3,260
2d tax year	5,200
3d tax year	3,050
Each succeeding year	1,875

I.R.C. § 280F(a)(1)(C), which directed the use of higher depreciation deduction limits for certain electric automobiles, was applicable only to property placed in service after December 31, 2001 and before January 1, 2007. Accordingly, separate tables are no longer provided for electric automobiles, and taxpayers should use the applicable table provided in this revenue procedure. **Rev. Proc. 2007-30, I.R.B. 2007-18**.

DISASTER LOSSES. On March 30, 2007, the president determined that certain areas in Iowa are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of record snow, which began on February 28, 2007. **FEMA-3275-EM.** Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2006 returns.

HOBBY LOSSES. The taxpayer was an equestrian competitive rider when the taxpayer decided to attempt to build an interior design and barn design business, catering especially to the wealthy horse owners who competed in and attended horse competition shows. The taxpayer used the taxpayer's participation in the horse clubs and shows to meet potential clients and relied primarily on word-of-mouth recommendations to obtain clients. The taxpayer used knowledge of the horse showing business to create barns and house interiors which reflected the tastes, needs and interests of other horse enthusiasts. The taxpayer combined the businesses for tax purposes as one integrated business. Together, the businesses showed a profit but the horse competition activities alone had only losses. The IRS disallowed the losses from the horse activities because the activity was not engaged in for profit. The court examined the close and complimentary relationship of the two activities and held that the taxpayer could combine the two activities as one business for tax purposes. The court noted that the horse activity was possible only if it supported the design business and the design business would not have clients without the horse activities. The court held that, with the businesses combined, the resulting profit demonstrated that they were engaged in with the intent to make a profit. **Topping v. Comm'r, T.C. Memo. 2007-92**.

IRA. In 2001 the taxpayers, husband and wife, paid $20,000 in college tuition payments for their son. In 2002, the son obtained a $19,000 student loan and the wife received an early distribution of $19,900 from an IRA. The taxpayers did not make any payments on the student loan in 2002. The taxpayers included the $19,900 distribution in income for 2002 but did not pay the 10 percent penalty for early distribution because the taxpayers claimed an exception for qualified education expenses made in 2001. The court held that the exception applied only to education expenses paid in the year of the early distribution; therefore, the $19,900 was subject to the early distribution penalty. **Duronio v. Comm'r, T.C. Memo. 2007-90.**

PARTNERSHIPS

ADMINISTRATIVE ADJUSTMENTS. The taxpayer was one of three partners in a partnership which claimed a large charitable deduction for the contribution of software to a university. The partnership claimed the charitable deduction on a return which also claimed a double deduction for health insurance premiums paid. The premiums were claimed as health insurance expenses and as "other deductions." However, although the partners had

equal shares of partnership profits and expenses generally, both the proper and duplicative health insurance deductions were not allocated equally. The IRS challenged the charitable deduction under the TEFRA partnership audit procedures. The taxpayer attempted to challenge the use of the TEFRA audit procedures, arguing that the partnership was a "small partnership" exempt from the procedures. Under the definition of "small partnership," in Treas. Reg. § 301.6231(a)(1)-1T(a)(3), a small partnership must allocate all deductions in the same proportion as other income and deductions. The court acknowledged that health insurance premiums are not relevant to the "same share" rule but held that the inclusion of the premiums as "other deductions" made them subject to the "same share" rule. The court noted that the IRS was entitled to rely on the income tax return to determine the nature of all deductions and was not required to determine whether the claimed "other deductions" were properly characterized. **Nehrlich v. Comm'r, T.C. Memo. 2007-88**.

CHECK-THE-BOX ELECTION. The taxpayer was the sole owner of several limited liability companies and did not make the election to be taxed as a corporation. The businesses were assessed for federal employment taxes and the taxpayer was assessed personally for the taxes because the businesses were treated as sole proprietorships. The taxpayer challenged the "check-the-box" election regulations as exceeding the IRS statutory authority and as violating the separate entity status of an LLC under state law. The court upheld the election regulations as a reasonable interpretation of the statute. **Littriello v. United States, 2007-1 U.S. Tax Cas. (CCH) ¶ 50,426 (6th Cir. 2007)**.

ELECTION TO ADJUST BASIS. The taxpayer partnership consisted of two partners which were subsidiaries of a parent corporation. The parent corporation was acquired by another corporation and the partners in the taxpayer were considered as purchased directly by the acquiring corporation. The taxpayer inadvertently failed to make a timely I.R.C. § 754 election and requested an extension of time to file the election. The extension was granted by the IRS. **Ltr. Rul. 200714005, Nov. 20, 2006**.

PENSION PLANS. The IRS has issued guidance on how I.R.C. § 409A applies to split-dollar life insurance arrangements. The guidance covers the allocation of earnings between I.R.C. § 409A grandfathered benefits and nongrandfathered benefits, what does and does not constitute a material modification to a split-dollar arrangement under Treas. Reg. § 1.61-22 and when split-dollar arrangements are subject to the below-market loan rules of Treas. Reg. § 1.7872-15. The guidance also covers split-dollar life insurance arrangements that are not grandfathered under newly issued Treas. Reg. § 1.409A-6 but are grandfathered under Treas. Reg. § 1.61-22 and provides other transition rules. **Notice 2007-34, I.R.B. 2007-17**.

REPAIRS. The taxpayers owned two rental properties which required substantial remodeling due to damage caused by tenants. The taxpayers claimed all of the remodeling expenses as current deductions, resulting in net losses over two years. The IRS disallowed a substantial portion of the deductions, claiming that the expenses had to be capitalized in the depreciation basis of the rental properties. The taxpayers argued that, because of their advanced ages, 75 years old, they could not recover the expenses through depreciation in their lifetimes. The court held that I.R.C. § 263(a) was clear that amounts paid for permanent improvements to buildings that increased the value of the property could not be currently deducted; therefore, the IRS properly disallowed a portion of the deductions which met these requirements. **Gay v. Comm'r, T.C. Memo. 2007-87**.

RETURNS. The IRS announced that victims of the major storm affecting several Northeastern states had until April 26, 2007 to file returns due on April 17, 2007. **IR-2007-92**.

The IRS has announced a six-month tax filing and payment extension to those affected by the shootings on April 16, 2007, at Virginia Tech, in Blacksburg, Va. This relief applies to the victims, their families, emergency responders and university students and employees. **IR-2007-90**.

S CORPORATIONS

SHAREHOLDER BASIS. The taxpayers were shareholders of an S corporation and made advances to the corporation on an open account. The corporation made repayments during the tax year and had tax losses. The taxpayers made additional contributions to the corporation in order to increase their stock basis so that they could pass through the corporation net losses. The court held that the advances and repayments during a single tax year could be netted instead of being treated as separate transactions during the year. *Brooks v. Comm'r, T.C. Memo. 2005-204*. In response to *Brooks*, the IRS has issued proposed regulations which provide that an open account debt is defined as shareholder advances not evidenced by separate written instruments for which the principal amount of the aggregate advances (net of repayments on the advances) does not exceed $10,000 at the close of any day during the S corporation's tax year. Separate advances under a line of credit agreement not evidenced by a separate written instrument would be included in the definition. To determine whether shareholder advances and repayments on advances exceed the $10,000 aggregate principal threshold, the shareholder would have to maintain a running balance of those advances and repayments, and the principal amount of the open account debt. **72 Fed. Reg. 18417 (April 12, 2007)**.

SAFE HARBOR INTEREST RATES
May 2007

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	4.85	4.79	4.76	4.74
110 percent AFR	5.34	5.27	5.49	5.21
120 percent AFR	5.83	5.75	5.71	5.68
		Mid-term		
AFR	4.62	4.57	4.54	4.53
110 percent AFR	5.09	5.03	5.00	4.98
120 percent AFR	5.56	5.48	5.44	5.42
		Long-term		
AFR	4.90	4.84	4.81	4.79
110 percent AFR	5.39	5.32	5.29	5.26
120 percent AFR	5.89	5.81	5.77	5.74

Rev. Rul. 2007-29, I.R.B. 2007-19.

SELF-EMPLOYMENT INCOME. Senator Dorgan and 11 other senators have introduced a bill which provides that conservation reserve program payments received by active or retired farmers would not be subject to self-employment tax. **Sen. 1155, 110th Cong. 1st Sess. (2007)**.

TRUSTS. A petition for review by the U.S. Supreme Court has

been filed in the following case. The taxpayer was the beneficiary of a testamentary trust established by the taxpayer's deceased parent's will. The trustees had broad authority to invest the trust principal and the trustees hired an investment company to manage the trust's investments. The trust claimed the entire investment company fees as a deduction on line 15a "Other deductions not subject to the 2% floor" of Form 1041 for the trust. The trust argued that I.R.C. § 67(e)(1) allowed full (i.e. not subject to the 2 percent floor) deductions for trusts for costs of administration which would not have been incurred if the property were not held in trust. The trust argued that the trustees were required by their fiduciary duty to seek professional investment advice, which would not be required if the property were held by an individual. The IRS argued that there was no such fiduciary duty under state law and that investment services were commonly used by individuals; therefore, investment services costs were not excluded from the 2 percent floor. The court noted a split in authority in the reported cases, with *Scott v. United States, 328 F.3d 132 (4th Cir. 2003) and Mellon Bank, N.A. v. United States, 265 F.3d 1275 (Fed. Cir. 2001),* holding that investment costs were subject to the 2 percent floor and *O'Neill v. Comm'r, 994 F.2d 302 (6th Cir. 1993), rev'g. 98 T.C. 227 (1992)* holding that investment costs were not subject to the 2 percent floor. The court decided to follow the holdings of *Scott* and *Mellon Bank* to hold that the investment costs were subject to the 2 percent floor because investment services were not unique to trusts and were not required by any fiduciary duty. The appellate court affirmed. **William L. Rudkin Testamentary Trust v. Comm'r, 2006-2 U.S. Tax Cas. (CCH) ¶ 50,569 (2d Cir. 2006), *aff'g*, 124 T.C. 304 (2005)**.

IN THE NEWS

FARM LOANS. "**Federal Database Exposes Social Security Numbers**" The Social Security numbers of tens of thousands of people who received loans or other financial assistance from two Agriculture Department programs were disclosed for years in a publicly available database, raising concerns about identity theft and other privacy violations. Officials at the Agriculture Department and the Census Bureau, which maintains the database, were evidently unaware that the social security numbers were accessible in the database until they were notified last week by a farmer from Illinois, who stumbled across the database on the internet on www.Fedspending.org, which provides a searchable database of federal government expenditures. The site uses information from the Census database. The farmer was able to identify almost 30,000 records in the database that contained social security numbers. While there was no evidence to indicate whether anyone had in fact used the information improperly, officials at the Agriculture Department and the Census Bureau removed the social security numbers from the Census web site last week. The agency was notifying people whose social security numbers were disclosed on the site. The agency was also planning to contract with a company to monitor the credit reports of all the affected individuals, at an estimated cost of about $4 million. **Excerpted from New York Times Online, April 20, 2007**. See http://www.nytimes.com/2007/04/20/washington/20cnd-data.html?ex=1334721600&en=c542880366521982&ei=5088&partner=rssnyt&emc=rss

IRS. On April 19, 2007, IRS Commissioner Everson announced his resignation to become the CEO of the American Red Cross.

FARM INCOME TAX, ESTATE AND BUSINESS PLANNING SEMINARS

by Neil E. Harl

Outrigger Keauhou Beach Resort, Big Island, Hawai'i.

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Spend a week in Hawai'i in January 2008! Balmy trade winds, 70-80 degrees, palm trees, white sand beaches and the rest of paradise can be yours; plus a world-class seminar on Farm Income Tax, Estate and Business Planning by Dr. Neil E. Harl. The seminar is scheduled for January 8-12, 2008 at the spectacular ocean-front Outrigger Keauhou Beach Resort on Keauhou Bay, 12 miles south of the Kona International Airport on the Big Island, Hawai'i.

Seminar sessions run from 8:00 a.m. to 12:00 p.m. each day, Tuesday through Saturday, with a continental breakfast and break refreshments included in the registration fee. Each participant will receive a copy of Dr. Harl's 400+ page seminar manual *Farm Income Tax: Annotated Materials* and the 600+ page seminar manual, *Farm Estate and Business Planning: Annotated Materials,* both of which will be updated just prior to the seminar.

Here are a sample of the major topics to be covered:

• Farm income items and deductions.

• Like-kind exchanges.

• Introduction to estate and business planning.

• Liquidity planning with emphasis on 15-year installment payment of federal estate tax.

• Co-ownership of property, including discounts, taxation and special problems.

• Federal estate tax, including alternate valuation date, special use valuation, handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.

• Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.

• Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.

• Organizing the farm business—one entity or two, corporations, general and limited partnerships and limited liability companies.

The Agricultural Law Press has made arrangements for **substantial discounts on hotel rooms at the Outrigger Keauhou Beach Resort**, the site of the seminar.

The seminar registration fee is $645 for current subscribers to the *Agricultural Law Digest* or the *Agricultural Law Manual*. The registration fee for nonsubscribers is $695. For more information call Robert Achenbach at 541-302-1958 or e-mail at robert@agrilawpress.com.

Agricultural Law Press
P.O. Box 50703 Eugene, OR 97405

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

May 17-18, 2007 Interstate Holiday Inn, Grand Island, NE

Come join us for expert and practical seminars on the essential aspects of agricultural tax and law. Gain insight and understanding from the nation's top agricultural tax and law instructor.

The seminars are held on Thursday, and Friday from 8:00 am to 5:00 pm. Registrants may attend one or both days, with separate pricing for each combination. On Thursday, Dr. Harl will speak about farm and ranch income tax. On Friday, Dr. Harl will cover farm and ranch estate and business planning. Your registration fee includes comprehensive annotated seminar materials for the days attended and lunch.

The seminar registration fees for *current subscribers* to the *Agricultural Law Digest*, the *Agricultural Law Manual*, or *Principles of Agricultural Law* (and for each one of multiple registrations from one firm) are $185 (one day) and $360 (two days).

The registration fees for *nonsubscribers* are $200 (one day) and $390 (two days). respectively.

Digest subscribers will receive a brochure in the mail soon. Full information is available online at http://www.agrilawpress.com Contact Robert Achenbach at 541-302-1958, e-mail Robert@agrilawpress.com

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SELECTED ISSUES IN FARM TAXATION

By Roger A. McEowen

June 11-12, 2007 Grand Ely Lodge, Ely, MN

The seminar is designed to provide attendees with a comprehensive and practical understanding of major agricultural income tax issues. In addition, the speaker is open to questions and responses from the attendees. Registrants may attend one or both days, with separate pricing for each combination. Your registration fee includes a comprehensive, annotated manual that will be updated just before the seminar. Break refreshments are included in the registration fee. NOTE: Register early due to space availability. Registration is limited to 70 participants.

The seminars are held on Monday from 1:00 am to 5:00 pm, and Tuesday from 8:00 am to noon. Registrants may attend one or both days. On Monday, Professor McEowen will speak about farm and ranch income tax. On Tuesday, Professor McEowen will cover farm and ranch estate and business planning. Your registration fee includes comprehensive annotated seminar materials for the days attended.

The seminar registration fees are $90 (one day) and $150 (two days). After February 28, 2007, the registration fees are $125 (one day) and $200 (two days). respectively.

These seminars are sponsored by Iowa State University. Full information is available online at www.extension.iastate.edu/agdm/wdlegalandtaxes.HTML. Contact Paula Beckman, Agricultural Law, Iowa State University, 206 Curtiss Hall, Ames, IA 50011-1050 Tel: 515-294-6924 Fax: 515-294-0700 E-mail: pbeckman@iastate.edu