The last individual involved sufficiently to receive a new basis was the grandfather and that happened at his death in 1932. The arguments continued for some time.

So is a retained life estate a good idea?

It is a good idea to consider carefully, at the time of decision making, every conceivable fact pattern that might emerge before inking any type of granted life estate or retained life estate documents.

The Treasury Regulations now provide guidance, also, on life estates to the donor's spouse,[3] son or daughter,[4] and charitable organizations.[5]

Careful planning is needed to avoid unexpected tax consequences at death, paying particular attention to retained life estates and, of course, the provisions in proposed granted life estates.

END NOTES

[1] Harl, 1 *Farm Income Tax Manual* § 3.20[5][a][v] (2017). See 8 *Agricultural Law* § 62.02 (2017).

[2] I.R.C. § 2036(a)(1). See Treas. Reg. § 20.2036-1(c)(1)(i).

[3] See I.R.C. § 2036(a).

[4] See I.R.C. § 2036(a); Treas. Reg. § 20.2055-2(e)(2)(ii).

[5] Treas. Reg. 20.2055-2e(2).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

MARSHALLING. The debtors, husband and wife, owned and operated a farm. One bank held a first priority interest in the debtors' homestead and in the proceeds from the sale of the debtors' farm equipment. A second creditor held a second priority interest in only the equipment proceeds. The farm equipment was sold and the second creditor sought to invoke the doctrine of marshaling to require the bank to seek payment from the homestead first, thus allowing the second creditor a priority lien on the equipment proceeds. The bank argued that marshaling would violate Iowa homestead law by unnecessarily invading property that is otherwise exempt from the second creditor's collection efforts. The court stated that there were three elements necessary to support a claim for marshaling: (1) the existence of two creditors with a common debtor; (2) the existence of two funds belonging to the common debtor; (3) the legal right of one of the creditors to satisfy its claim from either of the two funds, and the legal right of the other creditor to satisfy its claim from only one of the funds. Both creditors agreed that all three elements were met in this case. The court noted, however, that the doctrine also requires the court to apply the doctrine equitably as to all parties. Thus, marshaling would not be appropriate if it inequitably affects the debtors' homestead rights. The second creditor claimed that, under Iowa Code § 561.16, the bank would be able to recover from the homestead because the homestead lien and equipment lien were created by separate loan contracts. Iowa Code § 561.16 provides in part: "The homestead may be sold to satisfy debts of each of the following classes: . . . . 2. Those created by written contract by persons having the power to convey, expressly stipulating that it shall be liable, but then only for a deficiency remaining after exhausting all other property pledged by the same contract for the payment of the debt." The court rejected this reasoning because, if the loans were considered separate contracts, then the third element supporting marshaling would no longer be met. Therefore, the court held that marshaling of the bank's liens would not be required. ***In re* Schantz, 2017 Bankr. LEXIS 2207 (Bankr. N.D. Iowa 2017)**.

CHAPTER 12

DISMISSAL. The debtor filed for Chapter 12 in June 2016 and a Chapter 12 plan was to be filed by September 12, 2016. On September 9, 2016, the debtor filed for an extension of time to file the plan because of problems with the debtor's farm irrigation and well. An extension to October 12, 2016 was granted, but the debtor filed for another extension on October 12, 2016 because of an illness in the debtor's family. The second extension was denied. However, the debtor filed a plan on October 17, 2016 which proposed to pay secured creditors interest-only payments on an annual basis in an aggregate amount of about $50,000 per year for five years. The debtor disclosed that the plan assumed the receipt of disaster relief funds or agricultural loan proceeds that would enable the debtor to install new well pumping equipment necessary in order to restore the debtor's ability to irrigate the farm with well water. The Bankruptcy Court refused to consider the plan as untimely filed and ordered the dismissal of the case "for cause." Section 1221 provides that "the debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable." The appellate court vacated and remanded the Bankruptcy Court decision because the Bankruptcy Court did not explain what standard it used to deny the extension. Thus, the appellate court ordered the case to be remanded to the Bankruptcy Court for explanation of the standard used. ***In re* Davis, 2017 Bankr. LEXIS 2169 (9th Cir. 2017)**.

FEDERAL ESTATE AND GIFT TAXATION

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a "deceased spousal unused exclusion" (DSUE) amount to a surviving spouse. The decedent's estate did not file a timely Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The estate represented that the value of the decedent's gross estate was less than the basic exclusion amount in the year of the decedent's death including any taxable gifts made by the decedent. The IRS granted the estate an extension of time to file Form 706 with the election. *Note: The IRS has provided for a simplified method of obtaining an extension of time to file a portability election for small estates that are not normally subject to filing a Form 706. See Rev. Proc. 2017-34, 2017-1 C.B. 1282.* **Ltr. Rul. 201732001, April 24, 2017; Ltr. Rul. 201732002, April 28, 2017; Ltr. Rul. 201732003, April 28, 2017; Ltr. Rul. 201732004, April 28, 2017; Ltr. Rul. 201732005, April 14, 2017; Ltr. Rul. 201732007, April 24, 2017; Ltr. Rul. 201732008, April 24, 2017; Ltr. Rul. 201732009, April 28, 2017; Ltr. Rul. 201732010, May 3, 2017; Ltr. Rul. 201732014, April 17, 2017; Ltr. Rul. 201732016, April 10, 2017; Ltr. Rul. 201732017, April 20, 2017; Ltr. Rul. 201732; Ltr. Rul. 201732018, April 11, 2017; Ltr. Rul. 201732019, April 19, 2017; Ltr. Rul. 201732022, April 10, 2017; Ltr. Rul. 201732023, April 11, 2017; Ltr. Rul. 201732027, April 17, 2017.**

FEDERAL INCOME TAXATION

CHARITABLE DEDUCTIONS. The taxpayers were two brothers who each owned 50 percent of the interests in an LLC taxed as a partnership. The partnership owned 355 acres of farm land which was leased to an farm operating partnership, also wholly-owned by the brothers. The LLC conveyed to a charitable organization a conservation easement restricting the development rights attached to the 355 acres. After conveying the conservation easement, the LLC sold its interest in the property to an unrelated party. The LLC reported a capital gain from the sale of the property and the sale of the conservation easement. The LLC also reported a noncash charitable contribution for the difference between the purported value of the property before the conveyance of the conservation easement and the purported value of the property after the conveyance of the easement, minus the amount received from the sale of the conservation easement. As 50 percent partners of the LLC, the brothers each claimed, as a passthrough item, their shares of the noncash charitable contribution deductions on Schedules A, *Itemized Deductions* and reported their shares of the gain from the sale of the LLC's interest in the property on Schedules D, *Capital Gains and Losses*, of their respective income tax returns as long-term capital gain. I.R.C. § 170(b)(1)(E)(i) generally limits the deduction from the donation of a qualified conservation contribution to 50 percent of the donor's "contribution base," defined by I.R.C. § 170(b)(1)(G) as the taxpayer's adjusted gross income less the value of other charitable contributions for the year. I.R.C. § 170(b)(1)(E)(iv) provides a special rule for contributions of property used in agriculture or livestock production. If the individual is a "qualified farmer or rancher" for the taxable year for which the contribution is made, then that individual may deduct the value of the donation up to 100 percent of the taxpayer's contribution base, less the amount of all other charitable contributions allowable under I.R.C. § 170(b)(1) made during the year. I.R.C. § 170(b)(1)(E)(v) defines the term "qualified farmer or rancher" as an individual whose gross income from the trade or business of farming, within the meaning of I.R.C. § 2032A(e)(5), is greater than 50 percent of the individual's gross income for the taxable year. I.R.C. § 2032A(e)(5) sets forth activities, the revenues of which constitute income from the trade or business of farming: "(A) cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm; (B) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and (C) (i) the planting, cultivating, caring for, or cutting of trees, or (ii) the preparation (other than milling) of trees for market." In this case, the taxpayers argued that the income received from the sale of the farmland was farm income; therefore, the taxpayers received more than 50 percent of their income from farming for purposes of I.R.C. § 170(b)(1)(E)(iv) allowing a deduction for 100 percent of the donors' contribution bases. The court noted that the taxpayers did not individually own the farm land nor the conservation easement donated and sold. Pursuant to I.R.C. § 703(a), while the taxable income of a partnership is generally computed in the same manner as in the case of an individual, the deduction for charitable contributions provided in I.R.C. § 170 is not allowed to the LLC/partnership. Treas. § 1.703-1(a)(2)(iv) provides that "[e]ach partner is considered as having paid within his taxable year his distributive share of any contribution or gift, payment of which was actually made by the partnership within its taxable year ending within or with the partner's taxable year. This item shall be accounted for separately by the partners as provided in section 702(a)(4)." I.R.C. § 702(a)(4) provides that in determining income tax, each partner shall take into account separately their distributive share of the partnership's charitable contributions. Thus, the court ignored the LLC and looked at each individual taxpayer to determine whether the taxpayer is a qualified farmer. The taxpayers argued that, although the sale of farm land is not an activity listed in I.R.C. § 2032A(e)(5), the income from the sale of the land should be considered income from farming in that the land was used in the trade or business of farming. The court disagreed, holding that I.R.C. § 2032A(e)(5) was specific and unambiguous in listing the activities constituting farming for purposes of I.R.C. § 170, and gain from the sale of farm land was not an activity of farming. In addition, the court noted that I.R.C.

§ 702(b) provides that "[t]he character of any item of income, gain, loss, deduction, or credit included in a partner's distributive share under paragraphs (1) through (7) of subsection (a) shall be determined as if such item were realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership." Thus, because the LLC was not engaged in a farming activity, the character of the sale of the farmland is determined at the partnership level and, in this case, is clearly not income from any farming activity carried on by the LLC. The characterization of income from the sale of the property by the LLC flows through to the taxpayers, and in the taxpayers' hands, the sale proceeds do not constitute income from the trade or business of farming. Therefore, the court held that the gain from sale of farmland was not income from farming for purposes of the exception to the limit for charitable deductions for donation of a qualified conservation contribution. **Rutkoske v. Comm'r, 149 T.C. No. 6 (2017)**.

The taxpayers were limited partnerships which purchased undeveloped rural land for development into residential properties. The taxpayers sold limited partnership interests in exchange for the right to own a five acre residential parcel. The taxpayers also granted a conservation easement over a portion of the property. The easement allowed the limited partners to alter the boundaries of their parcels, with approval of the charitable organization, although the parcel owners could not increase the total land of any parcel nor decrease the amount of land subject to the easement. The IRS denied a deduction for the value of the conservation easement because the grant was not in perpetuity. The Tax Court agreed, noting that the property involved in the easement was not fixed because the boundaries of the residential lots could be changed. The Tax Court also noted that the documentation provided to the easement grantee was inaccurate, incomplete and insufficient to clearly determine the terms of the easement, as required by Treas. Reg. § 1.170A-14(g)(5)(i). On appeal, the appellate court reversed and remanded the case back to the Tax Court. The appellate court noted the Tax Court's reliance on *Belk v. Comm'r, 774 F.3d 221 (4th Cir. 2014), aff'g, 140 T.C. 1 (2013)*. In *Belk*, the easement allowed substitution of non-easement property for property included in the easement. Although the appellate court in this case agreed with the holding in *Belk*, it held that allowing modification of the easement boundaries was not sufficient to violate the perpetuities requirement of I.R.C. § 170(h)(2)(C). The appellate court also reversed and remanded on the issue of the documentation requirements, holding that the Tax Court failed to consider all of the evidence provided by the taxpayers. **BC Ranch II, L.P. v. Comm'r, 2017-2 U.S. Tax Cas. (CCH) ¶ 50,306 (5th Cir. 2017), *vac'g and rem'g*, T.C. Memo. 2015-130.**

DEPENDENTS. The taxpayers, husband and wife, filed a 2012 tax return as married filing jointly and claimed their daughter and the daughter's three children as dependents. From January through September 2012, the daughter and children lived with the taxpayers. In September 2012, the taxpayer purchased a mobile home for the daughter and children and they moved into the home in that month. Sometime later in 2012, the daughter's partner moved into the trailer. The daughter and partner were not married in 2012 and the partner was not a biological parent to the children. The daughter and partner filed a joint return for 2012 and claimed the children as dependents. In computing taxable income I.R.C. § 151(c) allows as a deduction an exemption for each dependent of a taxpayer. I.R.C. § 152(a) defines the term "dependent" to mean either a "qualifying child" or a "qualifying relative" of the taxpayer. Under I.R.C. § 152(d)(1), the term "qualifying relative" means an individual: (A) who bears a specified relationship to the taxpayer; (B) whose gross income is less than the exemption amount; (C) with respect to whom the taxpayer provides over one-half of the individual's support; and (D) who is not a qualifying child of the taxpayer or of any other taxpayer. However, under I.R.C. § 152(b)(2), even if an individual satisfies the requirements of Section 152(d)(1), the individual may not be treated as a dependent of a taxpayer if the individual filed a joint income tax return with a spouse "for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins." The IRS argued that, although the daughter and partner were not legally married, their filing of a joint return was evidence of a common law marriage. The court found that the taxpayers failed to provide evidence to refute the IRS evidence that the couple were married; therefore, the taxpayers could not claim the daughter and her children as dependents. The court noted that the taxpayers failed to obtain testimony from the daughter on the issue of her marriage. **Woolsey v. Comm'r, T.C. Summary Op. 2017-62**.

GAMBLING LOSSES. In 2013, the taxpayer husband engaged in a variety of recreational gambling activities: betting on college and professional sports, playing slot machines, and buying lottery tickets. The husband won $5,060 on slot machines at three different casinos and otherwise sustained $6,983.25 in gambling losses. On the taxpayer's joint return, petitioners did not report any gambling winnings or losses for the 2013 taxable year and claimed a standard deduction of $12,200. The IRS received three Forms W-2G, *Certain Gambling Winnings*, reporting petitioner husband's receipt of gambling winnings and assessed additional taxes based on those winnings. The taxpayer did not claim to be in the trade or business of gambling and did not dispute the report of gambling winnings but argued that the winnings were offset by the amounts of bets placed to produce the winnings. The court agreed with past cases that a casual gambler's gross income from a wagering transaction should be calculated by subtracting the bets placed to produce the winnings. However, the court found that the taxpayers here failed to provide evidence of the bets placed to produce the winnings reported on the Forms W2G. In the case of taxpayers not engaged in the trade or business of gambling, I.R.C. § 165(d) provides that gambling losses are allowable as an itemized deduction, but only to the extent of gambling winnings. If taxpayers take the standard deduction instead of itemizing their deductions, they may not deduct any gambling losses. Therefore, the court upheld the IRS assessment of taxes based on the reported winnings. **Bon Viso v. Comm'r, T.C. Memo. 2017-154**.

HIGHWAY USE TAX. The IRS has published information for truckers and other owners of heavy highway vehicles who must file their next federal highway use tax return by Thursday, Aug. 31, 2017. The deadline generally applies to Form 2290 and the accompanying tax payment for the tax year that begins July 1, 2017, and ends June 30, 2018. Returns must be filed and tax payments made by Aug. 31 for vehicles used on the road during July. For vehicles first used after July, the deadline is the last day of the month following the month of first use. Though some taxpayers have the option of filing Form 2290 on paper, the IRS encourages all taxpayers to take advantage of the speed and convenience of filing this form electronically and paying any tax due electronically. Taxpayers reporting 25 or more taxed vehicles must e-file. Tax-suspended vehicles do not count toward the 25-or-more taxed vehicle threshold. The highway use tax applies to highway motor vehicles with a taxable gross weight of 55,000 pounds or more. This generally includes trucks, truck tractors and buses. Ordinarily, vans, pickups and panel trucks are not taxable because they fall below the 55,000-pound threshold. The tax of up to $550 per vehicle is based on weight, and a variety of special rules apply, explained in the instructions to Form 2290. The form can be filed online and any required tax payment can also be made online. Find an approved provider for Form 2290 on the 2290 e-file partner's page. Generally, e-filers receive their IRS-stamped Schedule 1 electronically minutes after filing. They can then print the Schedule 1 and provide it to their state department of motor vehicles, without visiting an IRS office. For those who choose to visit an IRS office, they should note that the agency's taxpayer assistance centers now operate on a "by-appointment" basis. See the Taxpayer Assistance Center Office Locator on IRS.gov for details. **IR-2017-129**.

HOBBY LOSSES. The taxpayer was a psychiatrist who worked as an independent contractor for a clinic. The taxpayer also owned and operated a horse breeding, selling and showing operation which had only net losses from 2005 through 2011 and minimal revenues. The court examined some of the eight factors in Treas. Reg. § 1.183-2(b) to determine whether the horse operation was operated with the intent to make a profit. The court held that the taxpayer did not operate the horse activity with the intent to make a profit because: (1) the taxpayer did not maintain separate records or a bank account for the activity; (2) the taxpayer provided no proof that the taxpayer sought the advice of experts as to any part of the horse activity; (3) the taxpayer provided no evidence of appreciation in value of any of the farm assets; (4) the operation had only losses and no profitable years; and (5) the losses from the activity offset substantial income from other sources. **Knowles v. Comm'r, T.C. Memo. 2017-152**.

MOVING EXPENSES. The IRS has published information about moving expenses. In order to deduct moving expenses, a taxpayer's move must meet three requirements: (1) The move must closely relate to the start of work. Generally, taxpayers can consider moving expenses within one year of the date they start work at a new job location. Additional rules apply to this requirement. (2) The taxpayer's move must meet the distance test. The taxpayer's new main job location must be at least 50 miles farther from the taxpayer's old home than the taxpayer's previous job location. (3) The taxpayer must meet the time test. After the move, the taxpayer must work full-time at the new job for at least 39 weeks in the first year. If the taxpayer is self-employed, the taxpayer must meet this test and work full-time for a total of at least 78 weeks during the first two years at the new job site. If the taxpayer's income tax return is due before the taxpayer has met this test, the taxpayer can still deduct moving expenses if the taxpayer expects to meet it. See Publication 521, *Moving Expenses*, for more information about these rules. If a taxpayer can claim this deduction, here are a few more tips from the IRS: *Travel*. Taxpayers can deduct transportation and lodging expenses for themselves and household members while moving from the old home to the new home. Taxpayers cannot deduct travel meal costs. *Household goods and utilities*. Taxpayers can deduct the cost of packing, crating and shipping things. Taxpayers may be able to include the cost of storing and insuring these items while in transit. Taxpayers can deduct the cost of connecting or disconnecting utilities. *Nondeductible expenses*. Taxpayers cannot deduct as moving expenses any part of the purchase price of the new home, the cost of selling a home or the cost of entering into or breaking a lease. See Publication 521 for a complete list. *Reimbursed expenses*. If the taxpayer's employer later pays for the cost of a move that the taxpayer deducted on a tax return, the taxpayer may need to include the payment as income. Taxpayers report any taxable amount on the tax return for the year the taxpayer gets the payment. *Address Change*. Taxpayers should be sure to update the taxpayer's address with the IRS and the U.S. Post Office. To notify the IRS file Form 8822, *Change of Address*. *Premium Tax Credit*. If the taxpayer or anyone in the taxpayer's family purchased health coverage through the Marketplace and had advance payments of the premium tax credit paid in advance to the insurance company to lower the monthly premiums, it is important to report life changes to the Marketplace when they happen. Moving to a new address is one change a taxpayer should report. **IRS Summertime Tax Tip 2017-20**.

PASSIVE ACTIVITY LOSSES. The taxpayer worked as an independent contractor for a loan company, working as a mortgage broker, and as an employee of another loan company, working as a real estate loan originator. The taxpayer did not present any evidence of the time spent on the loan activities. The taxpayer managed three rental properties; however, the evidence included only proof that the taxpayer was a partial owner of one property, with no evidence of ownership of the other two properties. The taxpayer received compensation from the other owners of the one property for providing management services for that property. The taxpayer did not maintain records of the time and activities spent with the rental properties and provided a log of such activities only in response to the IRS audit. However, even that log did not provide any specific information about the services provided for each property. The taxpayer claimed loss deductions for two of the properties and net income from the third. In the case of an individual I.R.C. §§ 469(a)(1)(A), (2)(A) disallows any current deduction for a passive activity loss. Under I.R.C. § 469(c)(1), a passive activity is any trade or business in which the taxpayer does not materially participate. Rental activity is generally treated as *per se* passive regardless of whether the taxpayer materially participates, unless the taxpayer qualifies as a real estate professional under the exception provided by I.R.C. §

469(c)(7)(B). Section 469(c)(7)(C) defines a real property trade or business for purposes of the real estate professional test as follows: "For purposes of this paragraph, the term "real property trade or business" means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business. The court held that neither the taxpayer's mortgage brokerage services nor loan origination services were performed in a real property trade or business within the meaning of I.R.C. § 469(c)(7)(C), that the hours spent performing mortgage brokerage services and loan origination services were not included for purposes of the real estate professional test, and that the taxpayer did not meet the definition of a real estate professional under I.R.C. § 469(c)(7)(B) because the taxpayer failed to prove that the taxpayer performed at least 750 hours per year on the rental activities nor that the taxpayer spent more time on the rental activities than was spent on the taxpayer's other personal services trades or businesses. The court rejected the taxpayer's post-audit constructed time logs as unreliable and insufficient proof to support any finding that the taxpayer spent more than 750 hours on the rental activities. Therefore, the court held that the rental activity losses were passive and properly disallowed. **Hickam v. Comm'r, T.C. Summary Op. 2017-66**.

SAFE HARBOR INTEREST RATES
September 2017

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	1.29	1.29	1.29	1.29
110 percent AFR	1.43	1.42	1.42	1.42
120 percent AFR	1.56	1.55	1.55	1.55
		Mid-term		
AFR	1.94	1.93	1.93	1.92
110 percent AFR	2.13	2.12	2.11	2.11
120 percent AFR	2.33	2.32	2.31	2.31
		Long-term		
AFR	2.60	2.58	2.57	2.57
110 percent AFR	2.86	2.84	2.83	2.82
120 percent AFR	3.12	3.10	3.09	3.08

Rev. Rul. 2017-17, I.R.B. 2017-36.

TAX RETURNS. The IRS has announced that it is mailing letters this month to more than 1 million taxpayers with expiring Individual Taxpayer Identification Numbers and urged recipients to renew them as quickly as possible to avoid tax refund and processing delays. ITINs with middle digits 70, 71, 72 or 80 are set to expire at the end of 2017. The notice being mailed, CP-48 Notices, explains the steps taxpayers need to take to renew the ITIN if it will be included on a U.S. tax return filed in 2018. Taxpayers who receive the notice but have acted to renew their ITIN do not need to take further steps unless another family member is affected. Under the Protecting Americans from Tax Hikes (PATH) Act, ITINs that have not been used on a federal tax return at least once in the last three consecutive years will also expire Dec. 31, 2017. Affected taxpayers who expect to file a tax return in 2018 must submit a renewal application. ITINs with middle digits 78 and 79 that expired at the end of last year can be renewed at any time. *Who Needs an ITIN?* ITINs are used by people who have tax filing or income reporting obligations under U.S. law but are not eligible for a Social Security number (SSN). *Who Should Renew an ITIN?* Taxpayers with ITINs set to expire and who need to file a tax return in 2018 must submit a renewal application. Others do not need to take any action. Taxpayers whose ITINs expired due to lack of use should only renew their ITIN if they will have a filing requirement in 2018. Taxpayers who are eligible for, or who have, an SSN should not renew their ITIN, but should notify IRS both of their SSN and previous ITIN, so that their accounts can be merged. Taxpayers whose ITINs have middle digits 78 or 79 that have expired should renew their ITIN if they will have a filing requirement in 2018. *Family Option Remains Available*. Taxpayers with an ITIN with middle digits 70, 71, 72, 78, 79 or 80 have the option to renew ITINs for their entire family at the same time. Those who have received a renewal letter from the IRS can choose to renew the family's ITINs together even if family members have an ITIN with middle digits other than 70, 71, 72, 78, 79 or 80. Family members include the tax filer, spouse and any dependents claimed on the tax return. *How to Renew an ITIN* To renew an ITIN, taxpayers must complete a Form W-7 and submit all required documentation; taxpayers are not required to attach a federal tax return. There are three ways to submit the W-7 application package: (1) Mail the Form W-7, along with original identification documents or copies certified by the issuing agency, to the IRS address listed on the Form W-7 instructions. The IRS will review the identification documents and return them within 60 days. (2) Taxpayers have the option to work with Certified Acceptance Agents (CAAs) authorized by the IRS to help them apply for an ITIN. CAAs can certify all identification documents for primary and secondary taxpayers and certify that an ITIN application is correct before submitting it to the IRS for processing. A CAA can also certify passports and birth certificates for dependents. This saves taxpayers from mailing original documents to the IRS. (3) Taxpayers can call and make an appointment at a designated IRS Taxpayer Assistance Center instead of mailing original identification documents to the IRS. *Avoid Common Errors Now; Prevent Delays Next Year.* Several common errors can delay some ITIN renewal applications. The mistakes generally center on missing information and/or insufficient supporting documentation. Here are a few examples of mistakes taxpayers should avoid: (1) *Filing with an expired ITIN*. Federal returns that are submitted in 2018 with an expired ITIN will be processed. However, exemptions and/or certain tax credits will be disallowed. Taxpayers will receive a notice in the mail advising them of the change to their tax return and their need to renew their ITIN. Once the ITIN is renewed, any applicable exemptions and credits will be restored and any refunds will be issued. (2) *Missing a reason for applying*. A reason for needing the ITIN must be selected on the Form W-7. (3) *Missing a complete foreign address*. When renewing an ITIN, if Reason B (non-resident alien) is marked, the taxpayer must include a complete foreign address on their Form W-7. (4) *Mailing incorrect identification documents*. Taxpayers mailing their ITIN renewal applications must include original identification documents or certified copies by the issuing agency and any other required attachments. They must also include the ITIN assigned to them and the name under which it was issued in 6e-f. Taxpayers should review the Form W-7 instructions for detailed information and carefully check their package before submitting it. As a reminder, the IRS no longer accepts passports that do not have a date of entry into the U.S. as a stand-alone identification document for dependents from a country other than Canada or Mexico, or dependents of U.S. military personnel overseas. The dependent's passport must have a date of entry stamp, otherwise the following additional documents to prove U.S. residency are required: U.S. medical records for dependents under age 6, U.S. school records for dependents under age 18, and U.S. school records (if a student), rental statements, bank statements or utility bills listing the applicant's name and U.S. address, if over age 18. **IR-2017-128**.

PROPERTY

BOUNDARY FENCES. The plaintiff and defendant owned adjacent farms. The plaintiff raised cattle on the land and the defendant did not raise any animals. In 1991 the fence between the properties fell into disrepair and the plaintiff obtained a court order for a fence viewer with the intent to seek payment for replacing the fence from the defendant. However, the defendant constructed a new fence at the defendant's sole expense. That fence again fell into disrepair in 2014 and the plaintiff filed the instant case to obtain a fence viewer and partial payment by the defendant. The trial court ordered the fence viewer and ordered that the defendant pay one-half of cost of the new fence. The defendant argued that the plaintiff should be solely responsible for the fence because only the plaintiff had livestock on the property. Pennsylvania Fence Law, 29 Penn. Stat. § 41 provides in part: ". . . owners of improved and occupied land shall erect and maintain an equal part of all line or division fences between them, nor shall any such owner be relieved from liability under the provisions of this act except by the consent of the adjoining owner." The Fence Law also provides for fence viewers to determine the sufficiency of fences and for sharing the cost of repairing any insufficient fence. The court held that there was no requirement in the Fence Law that both neighbors keep cattle on their property in order to force both neighbors to contribute to the cost of repairing the fence. The court noted that, although the defendant did not currently keep cattle or other livestock, the defendant's farm was capable of keeping livestock. **Croner v. Popovich, 2017 Pa. Super. Unpub. 2939 (Pa. Super. 2017)**.

WORKERS' COMPENSATION

AGRICULTURAL EMPLOYEE. The plaintiff was hired by a partnership which owned and operated a corn and soybean farm. The plaintiff was hired primarily to drive trucks for the operation, but the job description covered any work to be performed on the farm, including transporting supplies and manure, maintenance of the farm equipment and other farm property, and hauling crops. The plaintiff was injured while obtaining a load of fertilizer for the farm when the fill hose disconnected and pushed the plaintiff to the ground. The plaintiff filed an application for workers' compensation benefits with the state Workers' Compensation Board, asserting that the defendant had refused to treat the plaintiff's injuries as work-related and had not provided any benefits or medical care as required under the Indiana Workers' Compensation Act (WCA), Ind. Code §§ 22-3-2-2 *et seq*., The evidence showed that the defendant's workers' compensation insurance had expired two days prior to the accident. The WC Board ruled that the plaintiff was an agricultural employee exempt from the WCA requirements. Ind. Code § 22-3-2-9(a)(2) exempts "farm or agricultural employees" from receiving workers' compensation benefits for work-related injuries. The court stated that, whether a worker is a farm or agricultural employee depends on the "'whole character' of the work the employee performs," rather than the "work performed at the time of the injury or the nature and scope of the employer's business." The plaintiff argued that he was not an agricultural employee because he did not perform any of the agricultural activities but merely drove a truck and provided equipment maintenance. The court stated that the test to be applied is what is the whole character of the employment. The court held that the whole character of the plaintiff's employment was agricultural because the plaintiff was hired to work on anything involving the farm and that included farm activities such as transporting crops and manure and farm equipment maintenance. Therefore, the plaintiff's employment was exempt from the WCA provisions. **O'Keefe v. Top Notch Farms, 2017 Ind. App. LEXIS 312 (Ind. Ct. App. 2017)**.

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by Neil E. Harl

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- Property included in the gross estate
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- Taxable estate
- The applicable exclusion amount
- Unified estate and gift tax rates
- Portability and the regulations
- Federal estate tax liens
- Gifts to charity with a retained life estate

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
- Problems in Exchanges of partnership assets

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

Self-employment tax
- Meaning of "business"

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