trust principal each year typically from the bypass trust (generally referred to as the 5/5 power), may result in inclusion in the gross estate to the extent of the value of rights that had not lapsed. Lapses of a 5/5 power do not result in either federal gift tax or federal estate tax *as to the value of the lapsed property before the year of death*.[7]

However, for the year of death, there is included in the gross estate the amount which the holder of the power was entitled to withdraw for the year in which death occurred, less any sums were or might have been received during the time in that year in which the individual was living.[8] Thus, the only concern at death is the amount of unexercised value in that year. As the regulations state,[9] –

> ". . . at death. . . there will be included in his gross estate the [amount] which he was entitled to withdraw for the year in which his death occurs less any amount which he may have taken during the year."

The lapses in prior years *are not included in the gross estate*. But the "annual exemption" of the 5/5 power does not apply to the withdrawals not made for the year of death. As some have suggested, this might encourage drafters to make the power exercisable only for a certain period each year, such as the last two weeks of the year. The authority for that, however, is sparse.

ENDNOTES

[1] See I.R.C. § 2041(b)(1). See generally 5 Harl, *Agricultural Law* § 43.02[7][c] (2016); Harl, *Agricultural Law Manual* § 5.02[6] (2016).

[2] I.R.C. § 2041(b)(1).

[3] E.g., Forsee v. United States, 76 F. Supp. 2d 1135 (D. Kan. 1999) (right to invade corpus for "happiness" was not limited by an ascertainable standard; corpus of trust included in the gross estate). See Ltr. Rul. 9344004, July 13, 1993 ("health, maintenance support, comfort, and welfare" not limited by an ascertainable standard).

[4] I.R.C. § 678(d).

[5] I.R.C. § 678(d). See Ewing v. Roundtree, 228 F. Supp. 132, 143 (M.D. Tenn. 1964).

[6] *Id*.

[7] Treas. Reg. § 20.2041-3(d)(3).

[8] See Estate of Dietz v. Comm'r, T.C. Memo. 1996-471. See also Ltr. Rul. 201216034, Jan. 11, 2012; Ltr. Rul. 201038004, June 15, 2010.

[9] Treas. Reg. § 20.2041-3(d)(3).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

AUTOMATIC STAY. The debtor was a nursery owner who entered into a "contract grow agreement," under which a creditor supplied trees to be grown by the debtor. The agreement provided that the creditor would supply much of the cost of raising the trees to market condition and would purchase the trees back from the debtor at a cost less than market value and decreased by the amounts provided for the raising costs. Under one provision of the agreement, the debtor waived any right to the automatic stay as to any claim filed by the credit in a bankruptcy proceeding. The creditor sought relief from the automatic stay under two theories: (1) the waiver of the right to the automatic stay and (2) its characterization of the agreement as a bailment such that the trees were not bankruptcy estate property because, under the agreement, the creditor retained title to the trees. The court first noted that waivers of rights to automatic stays are general held to be unenforceable as against public policy. In addition, the court found that (1) the waiver was not bargained for and was not exchanged for any consideration, (2) the debtor had a reasonable chance for a successful reorganization which would be threatened by allowing relief from the automatic stay, and (3) relief from the automatic stay would harm other creditors' rights. Thus, the court held that relief from the automatic stay would not be granted merely because of the waiver provision in the grower's agreement. ***In re* Jeff Benfield Nursery, Inc., 2017 Bankr. LEXIS 196 (Bankr. W.D. N.C. 2017)**.

FEDERAL FARM PROGRAMS

FARM PROGRAM PAYMENT LIMITATION. The plaintiff was a farmer who had received federal farm program payments in 2005 through 2008. The FSA determined that the plaintiff was not a separate person from an LLC which also received payments. The FSA sought the return of all payments received by the plaintiff. The court noted that the plaintiff had exchanged undocumented loans to and from the LLC and made bulk purchases of farm supplies with the LLC such that it was impossible to determine which assets and liabilities belonged to the plaintiff or LLC. Therefore, the plaintiff was not a separate person for purposes of the payment limitations. The plaintiff also argued that the payments received by the plaintiff and the LLC did not exceed the per person payment limitation; therefore, no refunds were necessary. The court held that, because the plaintiff was not a separate person from the LLC, separate payments to the plaintiff were not proper and required repayment to the FSA. The court acknowledged that the plaintiff raised this equitable argument at the administrative hearing phase but the administrative hearing officer rejected any equitable request because the plaintiff had not made a good faith effort to comply with the payment limitation provisions. Finally, the plaintiff sought to apply the "finality rule" under 7 C.F.R. § 718.306(a) which provides that any determination by a state or county FSA becomes "final . . . and binding 90 days from the date the application for benefits has been filed." The court held that, under 7 C.F.R. § 718.306(a)(2), (4), the "finality rule" did not apply if a determination was based on misrepresentations or false statements or if the plaintiff had reason to know the determination was erroneous. The exception did not require that the participant acted maliciously or with an intent to deceive, only that incorrect information was supplied that led to the erroneous determination. The court held that the plaintiff's application for the payments included misinformation that the plaintiff provided 100 percent of capital and labor on the plaintiff's farm and that the plaintiff did not receive any operating loans from related entities. Thus, the court held that the plaintiff was not eligible for separate program payments as a separate person and was required to refund all the payments. **Harmon v. USDA, 2016 U.S. App. LEXIS 23105 (9th Cir. 2016)**.

FEDERAL ESTATE AND GIFT TAXATION

LATE-FILED RETURN PENALTY. The decedent died in October 2011 and two sons were appointed as executors. Because of disputes over the estate, the executors hired a law firm to provide estate tax assistance. The attorneys recommended that the executors seek an extension of time to file the estate tax return and to pay the estate tax. A Form 4678, *Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes*, was filed with the IRS. The IRS granted a six month extension for filing the estate tax return and a one year extension for payment of any estate tax. However, the attorneys erroneously informed the executors that the extension for filing was one year. The estate paid an estimate of the taxes early but did not file the return until six months after the extension. The estate sought abatement of the late-filing penalty. Under I.R.C. § 6651(a)(1), when a taxpayer fails to file a tax return by the due date, including any extension of time for filing, a late penalty applies "unless it is shown that such failure is due to reasonable cause and not due to willful neglect." Treas. Reg. § 301.6651-1(c)(1) provides that reasonable cause will excuse a failure to file timely only "[i]f the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time." The court noted that the issues surrounding the timely filing of estate tax returns, extensions for filings and extensions for paying were sufficiently complex so as to confuse most non-lawyer executors. Although the court acknowledged a conflict of rulings on similar cases, the court followed precedent in the Third Circuit Court of Appeals that the executors had reasonable cause for the late filing of the estate tax return because they reasonably relied on the advice of tax professionals to determine the proper date for filing the return. **Estate of Hake v. United States, 2017-1 U.S. Tax Cas. (CCH) ¶ 60,699 (M.D. Penn. 2017)**.

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. **Ltr. Rul. 201709012, Nov. 9, 2016; Ltr. Rul. 201709013, Nov. 9, 2016; Ltr. Rul. 201709014, Nov. 9, 2016; Ltr. Rul. 201709019, Nov. 9, 2016; Ltr. Rul. 201709022, Nov. 9, 2016.**

FEDERAL INCOME TAXATION

ADDITIONAL MEDICARE TAX. The IRS has published information about the Additional Medicare Tax. *Tax Rate*. The Additional Medicare Tax rate is 0.9 percent. *Income Subject to Tax*. The tax applies to the amount of wages, self-employment income and railroad retirement (RRTA) compensation that is more than a threshold amount. For more information, go to *Questions and Answers for the Additional Medicare Tax* on irs.gov. *Threshold Amount*. Filing status determines the threshold amount. For those who are married and file a joint return, they must combine the wages, compensation or self-employment income of their spouse with their own. The combined total income determines if it is over the threshold for this tax. The threshold amounts are

Filing Status	Threshold Amount
Married filing jointly	$250,000
Married filing separately	$125,000
Single	$200,000
Head of household	$200,000
Qualifying widow(er) with dependent child	$200,000

Withholding/Estimated Tax. Employers must withhold this tax from wages or compensation when they pay employees more than $200,000 in a calendar year. Self-employed taxpayers should include it for estimated tax liability purposes. *Underpayment of Estimated Tax*. People who had too little tax withheld or did not pay enough estimated tax may owe an estimated tax penalty. IRS Publication 505, *Tax Withholding and Estimated Tax*, provides rules and details on estimated taxes. People who owe this tax should file Form 8959, with their tax return. People should also report any Additional Medicare Tax withheld by their employer or employers on Form 8959. **IRS Tax Tip 2017-27**.

CHARITABLE DEDUCTION. The taxpayer claimed a charitable deduction for $338,080 for contribution of a 50 percent interest in a jet aircraft to a museum in 2010. The jet was originally purchased by the taxpayer and an unrelated LLC in 2007 for a total of $42,000 and was never used. The taxpayer included with the 2010 return (1) an acknowledgement letter from the president of the museum, (2) a Form 8283 executed by the museum's director, (3) a donation agreement signed by the president of the museum, and (4) an appraisal of the value of the donation. I.R.C. § 170(f)(12) provides more stringent requirements for the contemporaneous written acknowledgement than I.R.C. § 170(f)(8) for contributions of used vehicles, including airplanes, whose claimed value exceeds $500, to include (1) the name and taxpayer identification number of the donor; (2) the vehicle identification number or similar number; (3) a certification of the intended use or material improvement of the vehicle and the intended duration of such use; (4) a certification that the vehicle would not be transferred in exchange for money, property, or services before completion of such use or improvement; (5) whether the donee organization provided any goods or services in exchange for the vehicle; and, if so, (6) a description and good-faith estimate of the value of such goods or services. Form 1098-C, *Contributions of Motor Vehicles, Boats, and Airplanes*, is to be used to provide the information and must be filed by the charitable organization to the IRS and the donor by February 28, 2011 for a 2010 tax year contribution. The filing requirements are strict and the doctrine of substantial compliance is not applied. The court found that no Form 1098-C was filed by the museum and that the documents provided by the taxpayer with the return did not satisfy many of the specific requirements of I.R.C. § 170(f)(12), including (1) the donation agreement was not signed by the donor/taxpayer, (2) the donation agreement did not contain the taxpayer identification number of the taxpayer, and (3) the deed of gift did not identify a certification of the intended use of the aircraft and the intended duration of such use. Thus, the court held that the taxpayer failed to provide a contemporaneous written acknowledgement by the museum with the taxpayer's return and the charitable deduction was properly denied. **Izen v. Comm'r, 148 T.C. No. 5 (2017)**.

DISCHARGE OF INDEBTEDNESS. The IRS has published information about tax on discharge of indebtedness income. *Main Home*. If the canceled debt was a loan on a taxpayer's main home, a taxpayer may be able to exclude the canceled amount from income. The taxpayer must have used the loan to buy, build or substantially improve the main home to qualify. The main home must also secure the mortgage. *Loan Modification*. If a taxpayer's lender canceled or reduced part of a mortgage balance through a loan modification or "workout," the taxpayer may be able to exclude that amount from taxable income. The taxpayer may also be able to exclude debt discharged as part of the Home Affordable Modification Program, or HAMP. The exclusion may also apply to the amount of debt canceled in a foreclosure. *Refinanced Mortgage*. The exclusion may apply to amounts canceled on a refinanced mortgage. This applies only if the taxpayer used proceeds from the refinancing to buy, build or substantially improve the main home and only up to the amount of the old mortgage principal just before refinancing. Amounts used for other purposes do not qualify. *Other Canceled Debt*. Other types of canceled debt such as second homes, rental and business property, credit card debt or car loans do not qualify for this special exclusion. On the other hand, there are other rules that may allow those types of canceled debts to be nontaxable. *Form 1099-C*. If a lender reduced or canceled at least $600 of a taxpayer's debt, the taxpayer should receive Form 1099-C, *Cancellation of Debt*, by Feb. 1. This form shows the amount of canceled debt and other information. *Form 982*. If a taxpayer qualifies, report the excluded debt on Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness*. The taxpayer should file the form with the income tax return. *irs.gov Tool*. Taxpayers should use the Interactive Tax Assistant tool - *Do I Have Cancellation of Debt Income on My Personal Residence*? - on irs.gov to find out if their canceled mortgage debt is taxable. *Exclusion Extended*. The law that authorized the exclusion of cancelled debt from income was extended through Dec. 31, 2016. For more on this topic see Publication 4681, *Canceled Debts, Foreclosures, Repossessions and Abandonments*. **IRS Tax Tip 2017-23**.

ENERGY CREDITS. The IRS has published information for taxpayers who made certain energy efficient improvements to their home last year and may qualify for a tax credit this year. *Non-Business Energy Property Credit*. Part of this credit is worth 10 percent of the cost of certain qualified energy-saving items added to a taxpayer's main home last year. Qualified improvements include adding insulation, energy-efficient exterior windows and doors, and certain roofs. Taxpayers should not include the cost to install these items. The other part of the credit is not a percentage of the cost. It includes the installation costs of certain high-efficiency heating and air-conditioning systems, high-efficiency water heaters and stoves that burn biomass fuel. The credit amount for each type of property has a different dollar limit. This credit has a maximum lifetime limit of $500. Taxpayers may only use $200 of this limit for windows. A taxpayer's main home must be located in the U.S. to qualify for the credit. The non-business energy property credit is only available for existing homes. Taxpayers should be sure to have the written certification from the manufacturer that the product qualifies for this tax credit. Manufacturers usually post it on their website or include it with the product's packaging. Taxpayers can use this to claim the credit. Do not attach it to a tax return. Keep it with tax records. Taxpayers may claim the credit on their 2016 tax return if they did not reach the lifetime limit in past years. Under current law, Dec. 31, 2016, was the deadline for qualifying improvements to the taxpayer's main U. S. home. *Residential Energy Efficient Property Credit*. This tax credit is 30 percent of the cost of alternative energy equipment installed on or in a home. This includes the cost of installation. Qualified equipment includes solar hot water heaters, solar electric equipment, wind turbines and fuel cell property. There is no dollar limit on the credit for most types of property. If the credit is more than the tax owed, carry forward the unused portion of this credit to next year's tax return. The home must be in the U.S. It does not have to be a taxpayer's main home, unless the alternative energy equipment is qualified fuel cell property. The residential energy efficient property credit is available for both existing homes and homes under construction. This credit is available through 2016. Taxpayers should use Form 5695, *Residential Energy Credits*, to claim these credits. For more information on this topic, refer to the form's instructions. **IRS Tax Tip 2017-21**.

HEALTH INSURANCE. The IRS has issued a Notice which extends the period for an employer to furnish an initial written notice to its eligible employees regarding a qualified small employer health reimbursement arrangement (QSEHRA) under I.R.C. § 9831(d). A QSEHRA is an arrangement described in I.R.C. § 9831(d), which was added by the 21st Century Cures Act (Cures Act), *Pub. L. No. 114-255, 130 Stat. 1033 (2016)*. Under that section, an eligible employer (generally an employer with fewer than 50 full-time employees, including full-time equivalent employees, that does not offer a group health plan to any of its employees) may provide a QSEHRA to its eligible employees. Under a QSEHRA, after an eligible employee provides proof of coverage, payments or reimbursements may be made to that eligible employee for expenses for medical care incurred by the eligible employee or the eligible employee's family members. I.R.C. § 9831(d)(1) provides that a QSEHRA will not be treated as a group health plan. I.R.C. § 9831(d)(4) generally requires an eligible employer to furnish a written notice to its eligible employees at least 90 days before the beginning of a year for which the QSEHRA is provided (or, in the case of an employee who is not eligible to participate in the arrangement as of the beginning of such year, the date on which such employee is first so eligible). I.R.C. § 9831(d)(4)(B) provides that the written notice must include: (1) a statement of the amount that would be the eligible employee's permitted benefit under the arrangement for the year; (2) a statement that the eligible employee should provide the information described in clause (1) to any health insurance exchange to which the employee applies for advance payment of the premium tax credit; and (3) a statement that if the eligible employee is not covered under minimum essential coverage for any month, the employee may be liable for an individual shared responsibility payment under I.R.C. § 5000A for that month and reimbursements under the arrangement may be includible in gross income. I.R.C. § 6652(o), which was also added by the Cures Act, imposes a penalty for failing to timely furnish eligible employees with the required written QSEHRA notice. Section 18001(a)(7) of the Cures Act provides that this penalty applies for years beginning after December 31, 2016, and further provides that an eligible employer that provides a QSEHRA to its eligible employees for a year beginning in 2017 will not be treated as failing to timely furnish the initial written notice if the notice is furnished to its eligible employees no later than 90 days after the enactment of the Cures Act. The 90th day after the enactment of the Cures Act was March 13, 2017. For more information about QSEHRAs, see FAQs About Affordable Care Act Implementation Part 35, Q 3, issued by the Department of Labor, the Department of the Treasury (Treasury), and the Department of Health and Human Services (https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part- 35.pdf). In order to provide eligible employers additional time to furnish the initial required written notice to eligible employees following the issuance of such guidance, an eligible employer that provides a QSEHRA to its eligible employees for a year beginning in 2017 is not required to furnish the initial written notice to those employees until after further guidance has been issued by Treasury and the IRS. That further guidance will specify a deadline for providing the initial written notice that is no earlier than 90 days following the issuance of that guidance. No I.R.C. § 6652(o) penalties will be imposed for failure to provide the initial written notice before the extended deadline specified in that guidance. Employers that furnish the QSEHRA notice to their eligible employees before further guidance is issued may rely upon a reasonable good faith interpretation of the statute to determine the contents of the notice. **Notice 2017-20, I.R.B. 2017-11**.

MEDICAL EXPENSES. The IRS has published information to help taxpayers know what qualifies as deductible medical and dental expenses. *Itemize*. Taxpayers can only claim medical expenses that they paid for in 2016 if they itemize deductions on a federal tax return. *Qualifying Expenses*. Taxpayers can include most medical and dental costs that they paid for themselves, their spouses and their dependents including:

- the costs of diagnosing, treating, easing or preventing disease;
- the costs paid for prescription drugs and insulin;
- the costs paid for insurance premiums for policies that cover medical care; and
- some long-term care insurance costs.

Exceptions and special rules apply. Costs reimbursed by insurance or other sources normally do not qualify for a deduction. More examples of what costs taxpayers can and can't deduct are in IRS Publication 502, *Medical and Dental Expenses*. *Travel Costs Count*. It is possible to deduct travel costs paid for medical care. This includes costs such as public transportation, ambulance service, tolls and parking fees. For use of a car, deduct either the actual costs or the standard mileage rate for medical travel. The rate is 19 cents per mile for 2016. *No Double Benefit*. Taxpayers should not claim a tax deduction for medical expenses paid with funds from a Health Savings Accounts or Flexible Spending Arrangements. Amounts paid with funds from these plans are usually tax-free. *Use the Tool*. Taxpayers can use the Interactive Tax Assistant tool on irs.gov to see if they can deduct their medical expenses. **IRS Tax Tip 2017-26**.

MORTGAGE INTEREST. The taxpayer lived with a girlfriend in a residence purchased by the girlfriend using a mortgage loan in the name of the girlfriend. The taxpayer had wanted to join in the purchase and loan but was unable to do so because of personal debt issues. The taxpayer claimed a deduction for $14,400 in home mortgage interest payments. The girlfriend executed a letter stating that the taxpayer had paid $1,000 per month towards the mortgage for 10 years. There was no explanation of how $1,000 per month produced a $14,000 deduction. I.R.C. § 163(h)(3) allows a deduction for interest paid on acquisition indebtedness on a qualified residence. The court acknowledged that even if a taxpayer is not directly liable under the mortgage, the taxpayer may nevertheless be entitled to a deduction for qualified residence interest paid if the taxpayer can establish legal or equitable ownership of the mortgaged property as a result of the payments. The court held that the letter from the girlfriend did not state that the taxpayer had any interest in the property, legal, equitable, or otherwise, by reason of the taxpayer's payments. In addition, the court found that the taxpayer failed to provide any other evidence that the payments were made by the taxpayer, such as checks, bank statements or other records. Thus, the court held that the mortgage interest deduction was properly denied. **Jackson v. Comm'r, T.C. Summary Op. 2017-11**.

PARTNERSHIPS

ADMINISTRATIVE ADJUSTMENTS. The taxpayer was the managing partner and tax matters partner of a partnership set up to facilitate the transfer of foreign debt to the partnership in order to provide the taxpayer with artificial losses to offset income from other sources. The taxpayer obtained opinions from accountants and tax lawyers as to the legality of the transactions. The IRS brought a TEFRA administrative adjustment case which recharacterized the transactions and assessed taxes and penalties. The partnership filed a court appeal and argued that penalties for the underpayment of taxes were improper under I.R.C. § 6664(c)(1) because the partnership had reasonable cause for its tax position, but the case was dismissed. The taxpayer then brought a case to challenge the imposition of the penalties against the taxpayer, again using the argument that the taxpayer had reasonable cause for the tax position and had filed the taxpayer's returns in good faith. The IRS argued that the TEFRA administrative adjustment ruling was conclusive of the issue of the imposition of the penalties; therefore, the taxpayer could not individually re-litigate the issue. The trial court agreed and granted summary judgment to the IRS. On appeal, the appellate court reversed, holding that the penalty issue could be raised at the partnership level and the partner level. On remand to the trial court, the trial court held that the penalties were improperly assessed because the taxpayer had reasonably relied on the professional tax opinions. **McNeill v. United States, 2017-1 U.S. Tax Cas. (CCH) ¶ 50,165 (D. Wyo. 2017), *on rem from*, 2016-2 U.S. Tax Cas. (CCH) ¶ 50,401 (10th Cir. 2016)**.

ELECTION TO ADJUST PARTNERSHIP BASIS. The taxpayer was a partnership which intended to include an I.R.C. § 754 election with its timely-filed tax return but inadvertently failed to include the election. The IRS granted an extension of time to file an amended return with the election. **Ltr. Rul. 201709005, Dec. 1, 2016, Ltr. Rul. 201709006, Dec. 1, 2016, Ltr. Rul. 201709009, Nov. 29, 2016**.

QUARTERLY INTEREST RATE. The IRS has announced that, for the period April 1, 2017 through June 30, 2017, the interest rate paid on tax overpayments remains at 4 percent (3 percent in the case of a corporation) and for underpayments remains at 4 percent. The interest rate for underpayments by large corporations remains at 6 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 remains at 1.5 percent. **Rev. Rul. 2017-6, I.R.B. 2017-12.**

S CORPORATIONS

CHARITABLE CONTRIBUTIONS. The taxpayer was an S corporation with several qualified subchapter S subsidiaries. The subsidiaries contributed business properties to a charitable I.R.C. § 501(c)(3) organization. Some of the properties were transferred subject to mortgage debt. I.R.C. § 1011(b) provides that, if a deduction is allowable under I.R.C. § 170 (relating to charitable contributions) by reason of a sale, then the adjusted basis for determining the gain from such sale shall be that portion of the adjusted basis which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the property. Under Treas. Reg. § 1.1011-2(a)(3), if property is transferred subject to an indebtedness, the amount of the indebtedness must be treated as an amount realized for purposes of determining whether there is a sale or exchange to which I.R.C. § 1011(b) and Treas. Reg. § 1.1011-2 apply, even though the transferee does not agree to assume or pay the indebtedness. Thus, upon the contribution of an encumbered property to a charity, the transfer is treated as a bargain sale. The IRS ruled that the basis of the properties contributed to a charity must be determined separately for each contributed property subject to an encumbrance. **Ltr. Rul. 201709001, Nov. 2, 2016**).

SHAREHOLDER BASIS. The taxpayer was the sole owner of an S corporation which operated a computer business. The corporation obtained a loan which was guaranteed by the taxpayer. In 2010, the corporation was liquidated but remained liable for the loan. The corporation's 2010 final tax return reported an ordinary business loss and no basis for the taxpayer's stock. In 2011, the loan was renewed in the name of the corporation, was again guaranteed by the taxpayer and the taxpayer continued to make payments on the loan, although there was no evidence as to whether the payments were made from the corporation's bank account or the taxpayer's. The taxpayer claimed a pass-through loss for 2010 which was disallowed by the iRS because of any proof that the taxpayer had any basis in the taxpayer interest in the corporation. The taxpayer argued that the taxpayer assumed the loan upon the corporation's liquidation; therefore, the assumption of the loan was considered a capital contribution of capital to the corporation and an increase in basis in the corporation. The court acknowledged that a guarantee of a corporation's loan by the shareholder would increase the shareholder's basis if the lender looked to the shareholder as the primary obligor for payment of the loan. The court held that the taxpayer did not become the sole obligor on the loan because there was no evidence of the source of the funds for the payments on the loan after the corporation liquidated or that the renewal of the loan after the liquidation changed the terms or the named obligor on the loan. Thus, the loan did not increase the taxpayer's basis in the corporation and the pass-through loss was not allowed. **Tinsley v. Comm'r, T.C. Summary Op. 2017-9**.

TAX COLLECTION. The IRS has published a copy of the CP40 notice to be sent to taxpayers whose accounts are transferred to private debt collectors. Under the Fixing America's Surface Transportation Act of 2015 (FAST Act), the IRS is required to contract with private debt collections to collect certain overdue federal taxes. Generally, private collection agencies will handle accounts the IRS has removed from its inventory because of a lack of resources or inability to locate the taxpayer. These accounts include: (1) accounts that have not been assigned to an IRS employee and more than one-third of the limitations period has run; and (2) accounts where there has been no contact for more than 365 days between the IRS and the taxpayer. The CP40 notice states that the taxpayer's overdue tax account has been assigned to a private collection agency and provides the name, address and phone number of the collector. The private collectors are required to work with taxpayers to resolve overdue accounts, explain payment options and provide payment plans to those unable to pay in full. The CP40 notice contains an authentication number that will be included in the private debt collector's letter confirming transfer of the account. In addition, before discussing the account, the private debt collector will ask for the taxpayer's name, address of record and the first five digits in the authentication number. The debt collector is required to provide the subsequent digits to confirm its identity. **2017ARD 041-3, Feb. 28, 2017**.

UNEMPLOYMENT BENEFITS. The IRS has published information for taxpayers who received unemployment benefits. *Unemployment payments are Taxable*. Taxpayers should include all unemployment compensation as income for the year. Taxpayers should receive a Form 1099-G, *Certain Government Payments*, by Jan. 31. This form shows the amount received and the amount of any federal income tax withheld. *There are Different Types*. Unemployment compensation includes amounts paid under federal law or state law as well as railroad, trade readjustment and airline deregulation laws. Even some forms of disability payments can count. For more information, see IRS Publication 525. *Union Benefits May be Taxable*. Benefits received from regular union dues as income might be taxable. Other rules may apply if a taxpayer contributed to a special union fund and those contributions to the fund are not deductible. In this case, taxpayers report only income exceeding the amount of contributions made. *Tax May be Withheld*. Those who receive unemployment can choose to have federal income tax withheld by using Form W-4V, *Voluntary Withholding Request*. Those choosing not to have tax withheld may need to make estimated tax payments during the year. *Visit irs.gov for Help*. Taxpayers facing financial difficulties should visit the irs.gov page *"What Ifs" for Struggling Taxpayers*. This page explains the tax effect of various life events such as job loss. For those who owe federal taxes and cannot pay, the payments tab on www.irs.gov provides some options. In many cases, the IRS can take steps to help ease the financial burden. **IRS Tax Tip 2017-25**.

LANDLORD AND TENANT

TERMINATION. The defendants had lived on an acreage owned by the plaintiffs for 24 years. The plaintiffs sent the defendants a 30-day notice of termination of their possessory interest and occupancy of said residence and premises under Iowa Code § 562A.34(3). When the defendants did not leave, the plaintiffs filed an action for forcible entry and detainer to evict the defendants. The defendants argued that their occupancy of the property was in the nature of a farm tenancy and the termination notice was subject to the requirements of Iowa Code §§ 562.5 and 562.7 and had to be made prior to September 1, with termination to take place the following March 1. The only farming activity claimed by the defendants was the pasturing of a 38 year old horse on the property. The Court of Appeals noted that, under prior law, the termination requirements were required only for "tenants occupying and cultivating farms." See Iowa Code § 562.5 (2005). However, the current statute required only that the tenant have a farm tenancy, defined as "a leasehold interest in land held by a person who produces crops or provides for the care and feeding of livestock on the land, including by grazing or supplying feed to the livestock." Iowa Code § 562.1A(2) (2015). Because the defendants were grazing one horse, the Court of Appeals held that the defendants occupied the property under a farm tenancy and the termination notice was not valid. On further appeal the Iowa Supreme Court reversed, holding that the grazing of one horse was insufficient to characterize the lease as a farm tenancy; therefore, the termination of the lease was not subject to the requirements of Iowa Code §§ 562.5 and 562.7. **Porter v. Harden, No. 15-0683 (Iowa March 10, 2017), *rev'g*, 2016 Iowa App. LEXIS 478 (Iowa Ct. App. 2016).**

SECURED TRANSACTIONS

BAILMENT VERSUS FINANCING ARRANGEMENT. The debtor was a nursery owner who entered into a "contract grow agreement," under which a creditor supplied trees to be grown by the debtor. The agreement provided that the creditor would supply much of the cost of raising the trees to market condition and would purchase the trees back from the debtor at a cost less than market value and decreased by the amounts provided for the raising costs. The agreement provided that the creditor would retain title to the trees and the creditor argued that the agreement created a bailment of the trees free of other security interests granted by the debtor to other creditors. Under North Carolina law, a bailment is created upon the delivery of possession of goods and the acceptance of their delivery by the bailee. In order to "deliver" property, the bailor must relinquish exclusive possession, custody, and control to the bailee. Thus, the critical question is the degree of control exercised by the purported bailee over the purported bailor's property. The court found that no bailment existed because the creditor did not relinquish exclusive possession, custody, and control to the debtor but the parties maintained shared control over the trees until repurchased by the creditor. In addition, the court held that the agreement was a disguised financing transaction because the creditor supplied most of the costs of raising the trees and subtracted those costs from a capped amount to be paid for the trees upon repurchase. Thus, the creditor supplied money and property to the debtor during the growing of the trees and extracted interest when the trees were repurchased for less than market value. ***In re* Jeff Benfield Nursery, Inc., 2017 Bankr. LEXIS 196 (Bankr. W.D. N.C. 2017)**.

MECHANIC'S LIEN. The defendants owned a farm and orally contracted the plaintiffs to install pattern tiling of a 47 acre portion of the farm. During the work, the work was delayed several times by wet weather and a request by the defendants to decrease the space between tile lines. At the end of the work, the defendant paid only less than half of the charges, arguing that the plaintiffs incorrectly charged by the foot of tile installed and not by the acre and the work was not timely completed. The plaintiff filed a mechanic's lien for the unpaid portion of the work and sued to foreclose on the lien. The trial court ruled that the charging "by the foot" was the agreed upon rate, given the testimony of the parties and usage of trade. The trial court dismissed the untimely completion argument because of the wet weather and the defendant's failure to object during construction. The appellate court affirmed, noting substantial evidence to support the trial court's ruling. **Hjelmeland v. Collins, No. 15-1901 (Iowa Ct. App. March 8, 2017)**.

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- Other problems of property ownership

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

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

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