been repealed for 2012. It is obvious what is helping to drive the efforts to repeal the federal estate tax .

Taxable estates owning farm property

Of the total number of taxable estates, 3738, paying federal estate tax in 2012, 500 decedents reported some farm property in 2012. Note that this is principally personal property inasmuch as farm real property is not reported separately by the Internal Revenue Service. Farm real estate is reported under the category of "Other Real Estate." A report released by the Congressional Research Service on June 9, 2003,[6] showed that approximately $1.6 billion of assets reported in the "Other Real Estate" category were believed to be farmland at the time of the study, 2001. The conclusion by the Congressional Research Service was that farm real estate made up approximately 1.28 percent of all taxable estate value.

Average value of farm property by estate tax bracket

As noted in Table 1, the largest average value of farm property by size of taxable estate was $4,972,582 for those in the $20,000,000 or more tax bracket who reported some farm property. Those in the under $5,000,000 bracket reported an average of $1,023,551 in farm property. The figure was $2,355,572 for those in the $5,000,000 to $10,000,000 taxable estate bracket.

Table 1. Average Value of Farm Property by Estate Tax Bracket (Taxable Estates)

Tax Bracket	Number	Average Value of Farm Property
Under $5,000,000	29	$1,023,551
$5,000,000 to 10,000,000	276	2,355,572
$10,000,000 to $20,000,000	116	3,324,974
over $20,000,000	79	4,972,582
Total	500	

Obviously, up-to-date numbers on a more precise basis for farm real estate would produce a clearer picture. That awaits a reworking of IRS data collection and processing of numbers from the filed federal estate tax returns.

ENDNOTES

[1] The latest date for which date of death data are available was for 2009.

[2] See SOI Estate Tax Data Tables, Internal Revenue Service, December 26, 2013.

[3] I.R.C. §§ 2210, 2664, added by the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 41 (2001) (which dropped the federal estate and generation-skipping tax rates to 45 percent in 2007).

[4] I.R.C. § 1022. See Notice 2011-66, 2011-2 C.B. 184; Rev. Proc. 2011-41, 2011 C.B. 188. See also Harl, "Guidance on Handling Basis Allocations for Deaths in 2010," 22 *Agric. L. Dig*. 121(2011); Harl, "Confusion Over Income Tax Basis for Deaths in 2010," 21 *Agric. L. Dig*. 177 (2010).

[5] SOI Estate Tax Data Tables, Internal Revenue Service, December 26, 2013.

[6] Congressional Research Service, "Report for Congress – Asset Distribution of Taxable Estates: An Analysis," May 23, 2003.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

AUTOMATIC STAY. The debtor purchased 84 head of dairy cattle in June 2012 and agreed to pay in installments of monthly milk assignments. The debtor made two such payments and made a third by cash. The creditor/seller learned that the debtor was in financial difficulty and removed 45 cattle on November 30, 2012, one day after the debtor had filed for Chapter 12 unbeknownst to the seller. On December 6, 2012, the seller participated in a count of the debtor's cattle as part of the bankruptcy case. On advice of counsel, the seller returned 42 cattle on December 21, 2012. The remaining three had already been sold. The debtor filed a motion for contempt, claiming damages from the repossession of the 45 cattle from lost milk proceeds, including losses caused by the frequent moving of the cattle in December to and from the debtor's property. The court awarded these damages plus punitive damages for violation of the automatic stay for over three weeks before the return of the cattle. On appeal the appellate court affirmed. ***In re* Purdy, 2014 U.S. Dist. LEXIS 43280 (W.D. Ky. 2014), *aff'g*, 2013 Bankr. LEXIS 2247 (Bankr. W.D. Ky. 2013)**.

FEDERAL TAX

AUTOMATIC STAY. The debtor filed for Chapter 7 in February 2013 and listed a 2012 federal income tax refund as an asset of the estate. The debtor claimed the refund as an exemption. The debtor also listed a debt to the U.S. Department of Agriculture Rural Development Service which was a deficiency remaining on a guaranteed but foreclosed mortgage. The IRS informed the debtor that the refund had been withheld and applied on the deficiency owed to the USDA. The debtor filed a motion to recover the refund as offset in violation of the automatic stay. The court held that the refund became estate property when the debtor filed for bankruptcy prior to the offset; therefore, the offset violated the automatic stay. ***In re*** **Sexton, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,249 (Bankr. W.D. Va. 2014)**.

The debtor purchased 84 head of dairy cattle in June 2012 and agreed to pay in installments of monthly milk assignments. The debtor made two such payments and made a third by cash. The creditor/seller learned that the debtor was in financial difficulty and removed 45 cattle on November 30, 2012, one day after the debtor had filed for Chapter 12 unbeknownst to the seller. On December 6, 2012, the seller participated in a count of the debtor's cattle as part of the bankruptcy case. On advice of counsel, the seller returned 42 cattle on December 21, 2012. The remaining three had already been sold. The debtor filed a motion for contempt, claiming damages from the repossession of the 45 cattle from lost milk proceeds, including losses caused by the frequent moving of the cattle in December to and from the debtor's property. The court awarded these damages plus punitive damages for violation of the automatic stay for over three weeks before the return of the cattle. On appeal the appellate court affirmed. ***In re*** **Purdy, 2014 U.S. Dist. LEXIS 43280 (W.D. Ky. 2014), *aff'g*, 2013 Bankr. LEXIS 2247 (Bankr. W.D. Ky. 2013)**.

DISCHARGE. The debtors, husband and wife, did not initially file returns or pay taxes for 2004, 2005 and 2006. In 2008 the IRS initiated an audit and sent a notice of deficiency for the unpaid taxes. Several months later after the IRS sent notice of intent to levy the taxes, the debtors filed the returns. The IRS accepted the returns and adjusted the amounts owed as stated on the returns. The debtors filed for Chapter 7 in November 2011 with the taxes still unpaid and received a discharge. The IRS sought to have the taxes declared nondischargeable because of the late filed returns. The court held that the returns were sufficient to make the taxes dischargeable even though the returns were filed late because the IRS accepted the returns and altered the assessed amount based on the returns and because the returns were an honest attempt by the debtors to comply with the filing requirements, even though filed years after the due dates. ***In re*** **Martin, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,247 (Bankr. E.D. Calif. 2014).**

REFUND. The debtor filed an individual Chapter 7 petition in bankruptcy in January 2012. The debtor and non-debtor spouse had filed a federal joint tax return for 2011 which requested a federal tax refund and a state joint tax return which also requested a refund. The Chapter 7 trustee sought recovery of one-half of the refund for the debtor's estate. The debtor filed evidence that, if the debtor and spouse had filed a separate returns, all of the refund would be claimed by the spouse and resulted solely from the spouse's overpayment of estimated taxes. The Bankruptcy Court applied the 50/50 rule and approved the trustee's motion. On appeal, the appellate court reversed, holding that the amount of refund allocable to the debtor's income and payment of taxes was the better formula for determining how much of a joint return refund was an individual debtor's estate property. ***In re*** **Lee, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,248 (S.D. Ind. 2014)**.

FEDERAL FARM PROGRAMS

CROP INSURANCE. The FCIC has issued proposed regulations which amend the Common Crop Insurance Regulations, Pear Crop Provisions to improve coverage available to pear producers, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. Changes are also proposed to the Optional Coverage for Pear Quality Adjustment Endorsement to broaden coverage available to producers to manage their risk more effectively. The proposed changes will be effective for the 2015 and succeeding crop years. **79 Fed. Reg. 20110 (April 11, 2014)**.

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The decedent died in 2010 and the executor retained an accountant to advise on estate tax matters including the necessity to file a Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*. The accountant prepared the From 8939 but failed to file the form before January 17, 2012. The estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to file the Form 8939 to make the I.R.C. § 1022 election and to allocate basis provided by I.R.C. § 1022 to eligible property transferred as a result of the decedent's death. *Notice 2011-66, 2011-2 C.B. 184 section I.D.1*, provides that the IRS will not grant extensions of time to file a Form 8939 and will not accept a Form 8939 filed after the due date except in four limited circumstances provided in section I.D.2: "Fourth, an executor may apply for relief under § 301.9100-3 in the form of an extension of the time in which to file the Form 8939 (thus, making the Section 1022 election and the allocation of basis increase), which relief may be granted if the requirements of § 301.9100-3 are satisfied. The IRS granted an extension of time to file the election. **Ltr. Rul. 201414003, Dec. 2, 2013.**

GROSS ESTATE. The decedent and spouse had created nearly identical trusts which provided for the survivor to serve as trustee and create three trusts, two marital trusts and one family trust. The spouse died first and the estate claimed a marital deduction for the two marital trusts. However, the decedent failed to actually fund any of the trusts and merely continued to administer the original trust. The decedent made several distributions from the trust, two of which were used to make charitable contributions to a college as provided under the trust's terms. After the decedent's executor discovered the decedent's failure to comply with the spouse's trust's terms, the executor and other heirs agreed to allocate all of the distributions to the marital trusts, essentially depleting them with no assets to include in the decedent's taxable estate. The IRS disagreed and allocated all of the distributions to the family trust, resulting in the martial trust assets being included in the decedent's estate. The court held a middle ground, allowing the distributions used for charitable gifts to be made from the family trust because the trust provisions included authority to make charitable gifts from the family trust but the distributions directly to the decedent were held to be made from the marital trusts because those trusts allowed the decedent to make distributions directly to the decedent for personal use. **Estate of Olsen v. Comm'r, T.C. Memo. 2014-58**.

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. To obtain the benefit of portability of the decedent's DSUE amount to the spouse, the decedent's estate was required to file Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, on or before the date that is 9 months after the decedent's date of death or the last day of the period covered by an extension. The decedent's estate did not file a Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The spouse, as executrix of the decedent's estate, represented that the value of the decedent's gross estate is less than the basic exclusion amount in the year of the decedent's death and that during the decedent's lifetime, the decedent made no taxable gifts. The spouse requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to elect portability of the decedent's DSUE amount pursuant to I.R.C. § 2010(c)(5)(A). The IRS granted the estate an extension of time to file Form 706 with the election. **Ltr. Rul. 201414001, Dec. 2, 2013**.

VALUATION. The decedent and predeceased spouse owned stock in a company. The shareholders' agreement provided that the corporation would purchase all the stock upon the death of the shareholders. In order to fund the purchase, the corporation purchased paid-up life insurance on the lives of the shareholders. The agreement prevented the corporation from borrowing against the policies or encumbering them in any way. The shareholders decided to sell their stock to an employee stock ownership plan and borrowed the funds which were loaned to the ESOP and used to purchase the stock. The funds from the stock sale were placed in marital trusts for the benefit of the decedent. At the spouse's death, the decedent received the benefit of the trusts. However, the corporation began to encounter financial difficulties and the lender for the ESOP stock purchase demanded collateral, which was supplied by the life insurance policies, allowed by waiver of the shareholder agreement. When the corporation filed for bankruptcy, the ESOP sued the estate of the predeceased spouse and the trustee of the marital trusts. The decedent's estate sought a discount on the value of the trust assets in the estate, based on the existing lawsuit. The court held that no discount could be applied because a hypothetical buyer would not require a discount for the value of the trust assets. The appellate court affirmed. **Estate of Foster v. Comm'r, 2014-1 U.S. Tax Cas. (CCH) ¶ 60675 (9th Cir. 2014), *aff'g*, T.C. Memo. 2011-95**.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The U.S. Supreme Court has denied certiorari in the following case. The taxpayer was an independent contractor. The taxpayer lost all business records when the taxpayer's house was foreclosed upon and destroyed with the records in the house. The taxpayer rented space in another house and used part of that space to store tools and run the taxpayer's business. However, the taxpayer did not use the space exclusively for business. The taxpayer claimed depreciation deductions for a truck and tools used in the business and claimed travel expenses for travel to work sites. The court held that the taxpayer did not have a home office for travel expenses purposes because the space was not used exclusively for business. Because the taxpayer worked at each site separately, no travel expenses were allowed between the work sites and the taxpayer's residence. There was no claim for travel expenses between work sites. The court also denied the depreciation deductions for the truck and tools for lack of substantiation of the value of that property. The appellate court affirmed in a decision designated as not for publication. **Bogue v. Comm'r, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,354 (3d Cir. 2013), *aff'g*, T.C. Memo. 2011-164**.

COOPERATIVES. The taxpayer was a subchapter T cooperative. Historically, the taxpayer mailed written nonqualified written notices of allocation for the year which were paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred. The taxpayer decided to use the lower cost method of sending the notices by e-mails to its members with e-mail addresses who have not elected to receive written notices. The members, whether they received the notice by mail or e-mail, redeemed their patronage dividends during the following year and the taxpayer claimed an exclusion or deduction for the redeemed patronage dividends. The IRS ruled that the e-mail notices were nonqualified written notices of allocation of patronage dividends. **Ltr. Rul. 201413002, March 6, 2014**.

DEPENDENTS. The taxpayer had a child with a former spouse. The divorce decree provided for joint custody. For 2010, taxpayer claimed the child as a dependent and claimed the additional child tax credit and earned income tax credit based on the child as a dependent. In 2010, the divorce decree was modified to provide visitation of the child with each parent for half of the year, starting with the date of the order on April 10, 2010. The taxpayers did not provide sufficient evidence of the living arrangements of the child between January 1 and April 10, 2010 and the court held that, without that evidence, the IRS properly denied the dependency deduction, the additional child tax credit and the earned income tax credit. **Sergienko v. Comm'r, T.C. Memo. 2014-56**.

The taxpayer's divorce decree provided for joint custody of one child but the former spouse had physical custody of the child. The decree also provided that the taxpayer would be entitled to claim the dependency deduction for the child for thirteen years and attached the divorce decree to each return. The taxpayer did not attach a Form 8332, *Release of Claim to Exemption for Child of Divorced or Separated Parents* to the returns because the former spouse would not agree to sign the form. The IRS did not object to the returns until the last year, when the former spouse also claimed the dependency deduction for the child. The court held that the taxpayer was not entitled to the dependency deduction because the child lived most of the tax year with the former spouse, the former spouse did not sign the Form 8332 and the taxpayer did not include a signed Form 8332 with the return. **Allred v. Comm'r, T.C. Memo. 2014-54**.

FIRST TIME HOMEBUYER CREDIT. The taxpayers, husband and wife, purchased a residence together. The taxpayers were married in November 2008 but lived in separate residences until the residence was purchased. The husband had rented a house for the three years prior to the purchase and the wife owned and lived in a house from April 2004 until the purchase. On the couple's joint 2009 tax return, they claimed the first time homebuyer credit of $6,500. The husband qualified for the credit under I.R.C. § 36(c)(1) (no ownership of a principal residence for the prior three years) and the wife qualified for the credit under I.R.C. § 36(c)(6) (ownership and residence in same residence for five consecutive years within prior eight years) but the IRS denied the credit because it claimed that both taxpayers must qualify for the credit under the same subsection. The court held that there was no provision requiring married taxpayers to qualify under the same subsection of I.R.C. § 36(c); therefore, the taxpayers were eligible for the credit. On appeal the appellate court reversed, holding that married taxpayers were treated as a unit and both taxpayers must qualify for the credit under the same provision. **Packard v. Comm'r, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,234 (11th Cir. 2014), *rev'g and rem'g*, 139 T.C. 390 (2012)**.

Under a deceased parent's will, the taxpayer received a half share in the parent's home. The taxpayer's sibling received the other half. The full title was transferred to the taxpayer in exchange for $215,000 paid to the executor and eventually to the other sibling. The taxpayer claimed the first time homebuyer credit for the purchase of the home. The court noted that I.R.C. § 36(c)(3)(A)(i) defines a "purchase" for purposes of the FTHBC as "any acquisition, but only if * * * the property is not acquired from a person related to the person acquiring such property." Although a sibling is not a related person under I.R.C. § 36(c)(5), an executor or beneficiary of an estate is a related person; therefore, the court held that the taxpayer was not eligible for the first time homebuyer credit because the home was not a qualifying purchase from an unrelated party. The appellate court affirmed in a decision designated as not for publication. **Zampella v. Comm'r, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,250 (3d Cir. 2014), *aff'g*, T.C. Memo. 2012-359**.

FRIVOLOUS TAX ARGUMENTS. The IRS has announced the publishing of the 2014 version of "The Truth about Frivolous Tax Arguments." See http://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Introduction. The document describes and responds to some of the common frivolous tax arguments made by those who oppose compliance with federal tax laws. The cases cited demonstrate how frivolous arguments are treated by the IRS and the courts. The 2014 version includes numerous recently-decided cases that demonstrate that the courts continue to regard such arguments as illegitimate. Examples of frivolous arguments include contentions that taxpayers can refuse to pay income taxes on religious or moral grounds by invoking the First Amendment; that the only "employees" subject to federal income tax are employees of the federal government; and that only foreign-source income is taxable. Promoters of frivolous schemes encourage taxpayers to make unreasonable and outlandish claims to avoid paying the taxes they owe. While taxpayers have the right to contest their tax liabilities, no one has the right to disobey the law or disregard their responsibility to pay taxes. The penalty for filing a frivolous tax return is $5,000. The penalty is applied to anyone who submits a tax return or other specified submission, if any portion of the submission is based on a position the IRS identifies as frivolous. Those who promote or adopt frivolous positions also risk a variety of other penalties. For example, taxpayers could be responsible for an accuracy-related penalty, a civil fraud penalty, an erroneous refund claim penalty, or a failure to file penalty. The Tax Court may also impose a penalty against taxpayers who make frivolous arguments in court. Taxpayers who rely on frivolous arguments and schemes may also face criminal prosecution for attempting to evade or defeat tax. Similarly, taxpayers may be convicted of a felony for willfully making and signing under penalties of perjury any return, statement, or other document that the person does not believe to be true and correct as to every material matter. Persons who promote frivolous arguments and those who assist taxpayers in claiming tax benefits based on frivolous arguments may be prosecuted for a criminal felony. **IR-2014-51**.

HOME ENERGY TAX CREDITS. The IRS has published information about home energy tax credits. *Non-Business Energy Property Credit*. This credit is worth 10 percent of the cost of certain qualified energy-saving items you added to your main home last year. This includes items such as insulation, windows, doors and roofs. Taxpayers may also be able to claim the credit for the actual cost of certain property, including items such as water heaters and heating and air conditioning systems. Each type of property has a different dollar limit. This credit has a maximum lifetime limit of $500. Taxpayer may use only $200 of this limit for windows. A taxpayer's main home must be located in the U.S. to qualify for the credit. Taxpayers must 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 rely on it to claim the credit, but do not attach it to your return. Keep it with the tax records. This credit expired at the end of 2013. Taxpayers may still claim the credit on their 2013 tax return if they did not reach the lifetime limit in prior years. *Residential Energy Efficient Property Credit*. This tax credit is 30 percent of the cost of alternative energy equipment installed on or in a taxpayer's home. Qualified equipment includes solar hot water heaters, solar electric equipment and wind turbines. There is no dollar limit on the credit for most types of property. If a taxpayer's credit is more than the tax the taxpayer owes, the taxpayer can carry forward the unused portion of this credit to next year's tax return. The home must be in the U.S. but does not have to be the taxpayer's main home. This credit is available through 2016. See Form 5695, *Residential Energy Credits*, to claim these credits. **IRS Tax Tip 2014-47**.

INCOME. The taxpayer was employed and owned three residential rental properties. The taxpayer filed income tax returns and claimed losses from the rental properties, primarily caused by repairs, interest and tax expenses. The taxpayer also claimed substantial charitable cash contribution deductions. The IRS disallowed the taxpayer's repair expense and charitable contribution deductions for lack of substantiation and included additional rental income because of unexplained deposits in the taxpayer's bank account records. The taxpayer presented handwritten receipts for the repair expenses but the receipts did not identify the payee, when the work was done or what type of work was done. The receipts were also not printed on business stationery. The court held that the repair deductions were properly disallowed for lack of substantiation. The taxpayer argued that the use of the bank records to determine income was improper because many deposits were from the taxpayer's wages; however, the taxpayer provided no records to substantiate the claims. The court held that the IRS determination of income was proper. **Hershberger v. Comm'r, T.C. Memo. 2014-63**.

IRA. The IRS has issued a revenue ruling that provides simplified safe harbor due diligence procedures a plan administrator may use in order to be deemed to have reasonably concluded that an amount was a valid rollover contribution. The revenue ruling provides two new streamlined safe harbor due diligence procedures that, in the absence of evidence to the contrary, will give rise to the presumption that the administrator of the receiving plan reasonably concluded that a rollover was valid. **Rev. Rul. 2014-9, I.R.B. 2014-17**.

INNOCENT SPOUSE RELIEF. The taxpayer and former spouse filed an electronic joint return for 2009 in early January 2010. In late January 2010, the taxpayer discovered that the return did not include all the income received by the taxpayer or all the income received by the spouse but the taxpayer made no attempt to disavow or amend the return. In May 2010 the taxpayer filed for divorce and the divorce became final in February 2011. After the IRS filed a notice of deficiency for the unreported income, the taxpayer filed for innocent spouse relief. The court held that the taxpayer was not entitled to statutory relief under I.R.C. § 6015(b) or (c) because the taxpayer knew that income was not fully reported on the joint return. As to equitable relief, the court held that the taxpayer met all of the factors for granting equitable relief but only as to the spouse's share of the unreported income; therefore, the court did not grant equitable innocent spouse relief as to the tax on the taxpayer share of the unreported income. **Raschke v. Comm'r, T.C. Summary Op. 2014-32**.

LIMITED LIABILITY COMPANY. The taxpayer was a limited liability company which intended to be taxed as an association but failed to timely file a Form 8832, *Entity Classification Election*. The IRS granted an extension of time to file the election. **Ltr. Rul. 201414008, Nov. 19, 2013**.

In an IRS Advice Memorandum, the IRS discussed the tax consequences under I.R.C. § 465 of three types of guarantees by a member of a limited liability company (LLC) classified as a partnership or disregarded entity for federal tax purposes. (1) When a member of an LLC classified as a partnership or disregarded entity for federal tax purposes guarantees the LLC's debt, the member is at risk with respect to the amount of the guaranteed debt, without regard to whether such member waives any right to subrogation, reimbursement, or indemnification from the LLC, but only to the extent that (a) the member has no right of contribution or reimbursement from persons other than the LLC, (b) the member is not otherwise protected against loss within the meaning of I.R.C. § 465(b)(4), and (c) the guarantee is bona fide and enforceable by creditors of the LLC under local law. (2) When a member of an LLC classified as a partnership for federal tax purposes guarantees qualified nonrecourse financing of the LLC, the member's amount at risk is increased by the amount guaranteed, but only to the extent that (a) such debt was not previously taken into account by that member, (b) the guaranteeing member has no right of contribution or reimbursement from persons other than the LLC, (c) the guaranteeing member is not otherwise protected against loss within the meaning of I.R.C. § 465(b)(4), and (d) the guarantee is bona fide and enforceable by creditors of the LLC under local law. (3) When a member of an LLC guarantees qualified nonrecourse financing of the LLC, the amount of the guaranteed debt no longer meets the definition of "qualified nonrecourse financing" under I.R.C. § 465(b)(6)(B) if the guarantee is bona fide and enforceable by creditors of the LLC under local law, and the amount of the guaranteed debt will no longer be includible in the at-risk amount of the other non-guarantor members of the LLC. **AM-2014-003, April 8, 2014**.

PASSIVE ACTIVITY LOSSES. The taxpayer was an attorney who also operated a racehorse breeding program through a stallion owned by the taxpayer. The taxpayer sought owners of breeding mares to foal offspring of the stallion as prospective racehorses. The taxpayer did much of the marketing of the stallion but hired stables, trainers and advisors to assist in the breeding, raising and training of the horses. The taxpayer had only losses for the tax years involved but the IRS agreed that the activity was entered in with a profit motive but disallowed the losses under I.R.C. § 469 as passive activity losses. The taxpayer did not have contemporaneous written records of the time spent on the activity but the taxpayer presented only a narrative summary in which the taxpayer described the work performed in connection with the thoroughbred activity and estimated the time spent performing such work for each of the years at issue. The taxpayer prepared the summary with the assistance of an attorney in preparation for trial, using telephone records, credit card invoices, and other contemporaneous materials. For each year the taxpayer claimed time for the following work done in connection with the thoroughbred activity: preparing and distributing promotional materials; telephone conversations with his associates, advisors, and potential customers; business trips to the state where the stallion was stabled; registering the horses for state and national awards; reviewing and placing mortality insurance on the stallion; reviewing and paying bills;

recordkeeping; and continuing education. The taxpayer claimed 862 hours in 2003 and 937 hours in 2004 spent on the activity. The court accepted the evidence as demonstrating that the taxpayer spent at least 500 hours on the activity in each year, noting that much of the summary was corroborated by receipts, credit card statements, call records and third party testimony. Thus, the taxpayer was held to have materially participated in the activity under Temp. Treas. Reg. § 1.469-5T(a). **Tolin v. Comm'r, T.C. Memo. 2014-65**.

The taxpayer was employed as a real estate agent and personally owned and operated two residential rental properties. The taxpayer did not elect to treat the two activities as one activity. The rental activities generated only losses and the IRS denied a loss deduction for the properties as passive activity losses. The taxpayer argued that the taxpayer's real estate agent activities should be included in the time spent on the rental properties but the court held that the time spent on the real estate agent activities could not be added to the time spent on the rental activity unless the taxpayer made the election to treat the two activities as one. The taxpayer provided only reconstructed activity logs of the taxpayer's work on the rental properties and the court disregarded most of the logs as unreliable; therefore the court upheld the disallowance of the loss deductions as passive activity losses. **Gragg v. United States, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,245 (N.D. Calif. 2014)**.

PENSION PLANS. For plans beginning in April 2014 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 3.62 percent. The 30-year Treasury weighted average is 3.44 percent, and the 90 percent to 105 percent permissible range is 3.10 percent to 3.62 percent. The 24-month average corporate bond segment rates for April 2014, without adjustment by the 25-year average segment rates are: 1.19 for the first segment; 4.06 for the second segment; and 5.11 for the third segment. The 24-month average corporate bond segment rates for April 2014, taking into account the 25-year average segment rates, are: 4.43 for the first segment; 5.62 for the second segment; and 6.22 for the third segment. **Notice 2014-27, I.R.B. 2014-18**.

RETURNS. In response to news of the "Heartbleed" bug affecting internet sites, the IRS has stated that it continues to accept tax returns as normal. "Our systems continue operating and are not affected by this bug, and we are not aware of any security vulnerabilities related to this situation. We continue to monitor the situation and remain in contact with our software partners." The IRS advises taxpayers to continue filing their tax returns as they normally would in advance of the April 15 deadline. **e-News for Tax Professionals, 2014-15**.

S CORPORATIONS

ELECTION. The taxpayer was formed as an LLC and was initially a disregarded entity. The taxpayer intended to be taxed as an association but neither Form 8832, *Entity Classification Election*, nor Form 2553, *Election by a Small Business Corporation*, was timely filed. The IRS granted the taxpayer an extension of time to file the elections. **Ltr. Rul. 201414012, Dec. 3, 2013**.

WAGES. The taxpayer had employees who were required to work outside the United States. The taxpayer provided additional wages to the employees in order to compensate the employees for work-related costs as well as foreign taxes, if any, resulting from the foreign employment such that the employee would receive the same amount as if the employee remained in the United States. In some cases, the taxpayer did not withhold employment taxes and paid the employee's share of the employment taxes. In a Chief Counsel Advice letter, the IRS rejected the taxpayer's claims for refund of excess paid employment taxes because the taxpayer did not obtain the employees' consent. In addition, the IRS ruled that the value of the employees' employment taxes and other amounts paid to compensate the employees for foreign taxes were wages to the employees. **CCA 201414019, March 10, 2014**.