

# CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

## BANKRUPTCY

### FEDERAL TAX

**DISCHARGE.** The debtor failed to file tax returns for 2001 through 2006 until audited by the IRS. The returns were filed in 2008 and the debtor signed a Tax Court stipulation as to amount of taxes, penalties and interest owed. Instead of paying the deficiency, the debtor transferred funds into cashier checks and transferred real property to the debtor and spouse as tenants by the entirety in order to remove assets from the IRS reach. After the IRS filed a petition to foreclose against the transferred property, the debtor filed for Chapter 7, with only the IRS as a creditor. The court held that the taxes owed were not discharged in the Chapter 7 case because the debtor willfully attempted to avoid or defeat the paying of taxes and the transfer of the property was avoidable as a fraudulent transfer. The court held that the failure of the debtor to file tax returns until audited and to pay the taxes as provided by the agreed to Tax Court order demonstrated that the debtor acted to avoid the payment or collection of the taxes. **United States v. Major, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,305 (M.D. Fla. 2016).**

## FEDERAL FARM PROGRAMS

**CROP INSURANCE.** The FCIC has adopted as final regulations amending the Common Crop Insurance Regulations, Texas Citrus Fruit Crop Insurance Provisions, to provide policy changes to better meet the needs of policyholders, to clarify existing policy provisions, and to reduce vulnerability to program fraud, waste, and abuse. The final rule modifies or clarifies certain definitions, clarifies unit establishment, clarifies substantive provisions for consistency with terminology changes, modifies the insured causes of loss, clarifies required timing for loss notices, modifies portions of loss calculation formulas, and addresses potential misinterpretations or ambiguity related to these issues. The changes will be effective for the 2018 and succeeding crop years. **81 Fed. Reg. 38061 (June 13, 2016).**

The FCIC has adopted final regulations amending the Common Crop Insurance Regulations, Basic Provisions to provide policy changes and to clarify existing policy provisions to better meet the needs of policyholders, including the qualifications for double cropping and determining when it is practical to replant. **81 Fed. Reg. 40477 (June 22, 2016).**

**RAISINS.** The AMS has adopted as final regulations revising the United States Standards for Grades of Processed Raisins by

removing five references to the term “midget” throughout the standards. **81 Fed. Reg. 40779 (June 23, 2016).**

## FEDERAL ESTATE AND GIFT TAXATION

**IRA.** The decedent and surviving spouse lived in a community property state. The decedent owned an IRA which had the decedent’s and spouse’s child as the beneficiary. The spouse filed a claim against the estate for one-half of the community property in the estate and the state court approved a settlement under which a portion of the IRA was to be distributed to the spouse as a rollover to the spouse’s IRA. Under I.R.C. § 408(g), the rules of I.R.C. § 408 are to be applied without regard to community property laws. The IRS ruled that, because the spouse was not the named beneficiary of the decedent’s IRA and because the spouse’s community property interest in the IRA is disregarded, the spouse may not be treated as a payee of the inherited IRA for the child and the spouse may not rollover any amounts from the inherited IRA for the child. Because the child was the named beneficiary of the decedent’s IRA and because the spouse’s community property interest is disregarded, any “assignment” of an interest in the inherited IRA for the child to the spouse would be treated as a taxable distribution to the child. Therefore, the IRS ruled that the order of the state court cannot be accomplished under federal tax law. **Ltr. Rul. 201623001, March 3, 2016.**

**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 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 estate 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. 201621002, March 7, 2016; Ltr. Rul. 201621014, March 2, 2016; Ltr. Rul. 201621019, Feb. 29, 2016; Ltr. Rul. 201625002, March 8, 2016.**

## FEDERAL INCOME TAXATION

### AGRICULTURAL CHEMICALS SECURITY CREDIT.

The taxpayer leased, maintained, serviced and repaired containers which were used to transport agricultural chemicals. The taxpayer claimed the agricultural chemicals security credit for each container based on expenditures to protect the chemicals in the containers. The IRS noted that the expenditures were required to comply with other federal Department of Transportation and other federal agency standards. I.R.C. § 450(a) provided a 30 percent credit for qualified chemical security expenditures paid or incurred after June 18, 2008, and before January 1, 2013. I.R.C. § 450(b) provided that the amount of the Section 450 credit determined with respect to any facility for any taxable year shall not exceed \$100,000, reduced by the aggregate amount of credits determined under Section 450(a) with respect to such facility for the five prior taxable years. In a Technical Advice memorandum, the IRS ruled that the containers leased by the taxpayer were not separate “facilities” eligible for the credit because the containers were not integrated units capable of transporting the chemicals independently. In addition, the security expenditures were already required by other agencies; therefore, they were not made specifically to increase the security of the chemicals transported. *TAM 201532034, May 13, 2015*. The IRS has issued a revision of the above ruling. Under the revision, the credit was disallowed, not because the containers were not integrated units, but because they were not on-site facilities. The IRS ruled that the term facility did not include transportation equipment. **TAM 201624022, Feb. 16, 2016, revising TAM 201532034, May 13, 2015.**

**BUSINESS EXPENSES.** The taxpayer worked as a contractor for oil companies in the United States and Nigeria. The taxpayer claimed a variety of business expense deductions, including contractor labor expenses and advertising. The taxpayer’s bank records did not include any evidence of these transactions and the taxpayer claimed that most of them were paid in cash. However, the court ruled that the “cash receipts” presented by the taxpayer were not credible evidence of the transactions because they were all identical and contained the same errors. The court held that the IRS properly disallowed the deductions for the labor and travel expenses for lack of substantiation by the taxpayer. **Amadi v. Comm’r, T.C. Memo. 2016-120.**

**CONSERVATION EASEMENTS.** The taxpayer owned 882 acres of mostly unimproved ranch land used for recreation by the taxpayer’s family. Access to the property was only over easements granted by neighbors, including the federal government. The land was subject to a contract with the county government which limited the use of the property; however, the contract was not part of the case record. The taxpayer granted a conservation easement to a charitable organization and claimed a charitable deduction for the value of the easement. The taxpayer’s appraisers testified that the highest and best use of the ranch before the easement was as a vineyard and residential development. After the easement,

the appraisers claimed that the highest and best use was for recreation. The court held that the property could not be used for a vineyard because (1) the property did not have sufficient water, (2) the access easements did not allow for the additional road use for a vineyard, (3) the taxpayer failed to show that there was any market for vineyards in the area, and (4) the taxpayer failed to show that a vineyard was economically feasible. The court also held that the property could not be used for residential development because of the contract with the county which limited development of the property. Thus, the court held that the highest and best use of the property did not change and the value of the property did not decrease after the grant of the easement. Because the easement did not cause any decrease in the value of the property, the easement had no value and no charitable deduction was allowed. The appellate court affirmed in a decision designated as not for publication. **Mountanos v. Comm’r, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,302 (9th Cir. 2016), aff’g, T.C. Memo. 2013-138.**

**DISCHARGE OF INDEBTEDNESS.** The IRS has issued a revenue ruling which discusses the qualification of “real property used in a trade or business” in two situations for purposes of the qualified real property indebtedness exclusion of I.R.C. § 108(c) (3)(A). In the first situation, the taxpayer was a sole proprietor engaged in the business of developing and leasing real property. In 2016, the taxpayer obtained a loan of \$10,000,000 from a bank and used the entire loan proceeds to construct an apartment building for use in the taxpayer’s leasing business. The taxpayer secured the loan with the apartment building and leased units in the apartment building through the taxpayer’s leasing business. Before the loan’s maturity date, the taxpayer reduced the principal of the loan to \$8,000,000. On the loan’s maturity date, the taxpayer was unable to repay the full \$8,000,000 of principal that the taxpayer owed to the bank because the taxpayer has only \$5,500,000 in cash. The fair market value of the apartment building was \$5,000,000 and the taxpayer’s adjusted basis was \$9,400,000. After negotiations, the bank agreed to cancel the loan on the apartment building in exchange for \$5,250,000 in cash. At the time of the loan cancellation, the taxpayer was not under the jurisdiction of a bankruptcy court nor insolvent. For the taxable year in which the bank canceled the loan, the taxpayer elected to exclude under I.R.C. § 108(a)(1)(D) the \$2,750,000 (\$8,000,000 - \$5,250,000) of cancellation of debt income arising from the cancellation of the loan. In situation 2, the facts are the same as those in Situation 1, except instead of constructing and leasing units in an apartment building, the taxpayer was engaged in the business of developing and holding real property for sale. The taxpayer obtained the \$10,000,000 loan from a bank to construct a residential community and subdivided the residential community into lots and holds the lots primarily for sale. The taxpayer secured the loan with the residential community real property. The IRS ruled that, in the first situation, because the taxpayer used the property in the taxpayer’s business of leasing, the property was depreciable and therefore qualified as real property used in a trade or business. Conversely, in the second situation, the property was held for resale and was not depreciable and, therefore, was not real property used in a trade or business. Therefore, the property

in the first situation was eligible for the I.R.C. § 108(c)(3)(A) exception but the property in the second situation was not eligible. The ruling obsoletes *Rev. Rul. 76-86, 1976-1 C.B. 37* which held that both types of property were eligible for the exception. **Rev. Rul. 2016-15, I.R.B. 2016-26.**

The taxpayer owned two items of real property used in a trade or business. At the time of the debt forgiveness, the first property was security on a debt. At the same time, the second property was security on a second debt. The second debt was also secured by the first property, and a third debt was secured by the second property. The proceeds from the third debt were used to improve the first property and were not used for funding any part of the second property. The proceeds from a fourth debt were used to improve the second property and were not used for funding any part of the first property. The third debt was reduced, resulting in a discharge of indebtedness. In its calculation of the maximum exclusion amount under I.R.C. § 108(c)(2), the taxpayer reduced the fair market value of the first property by the fourth debt without also adding the value of the first property to the second property. On this basis, the taxpayer excluded the entire amount of the third debt that was discharged. In a Chief Counsel Advice letter, the IRS ruled that the third debt was qualified real property business indebtedness (QRPBI) only as to the first property because the third debt was used only on the first property. In determining the amount of QRPBI eligible for the exclusion in I.R.C. § 108(c)(2), the fair market value of only the first property was to be used, reduced by all other debts secured by the first property which were also QRPBI as to the first property. **CCA 201623009, March 2, 2016.**

The IRS has adopted as final regulations relating to the exclusion from gross income, under I.R.C. § 108(a), of discharge of indebtedness income of a grantor trust or an entity that is disregarded as an entity separate from its owner. The regulations provide rules regarding the term “taxpayer” for purposes of applying Section 108 to discharge of indebtedness income of a grantor trust or a disregarded entity. The regulations affect grantor trusts, disregarded entities, and their owners. The regulations provide that, for purposes of applying I.R.C. § 108(a)(1)(A) and (B) to discharge of indebtedness income of a grantor trust or a disregarded entity, the term taxpayer, as used in Sections 108(a)(1) and (d)(1) through (3), refers to the owner(s) of the grantor trust or disregarded entity. The regulations further provide that grantor trusts and disregarded entities themselves will not be considered owners for this purpose. The regulations provide that, in the case of a partnership, the owner rules apply at the partner level to the partners of the partnership to whom the discharge of indebtedness income is allocable. **T.D. 9771, 81 Fed. Reg. 37504 (June 10, 2016).**

**DEPENDENT CHILD CARE CREDIT.** The IRS has published information about the Child and Dependent Care Credit. (1) *Care for Qualifying Persons.* A taxpayer’s expenses must be for the care of one or more qualifying persons; a dependent child or children under age 13 generally qualify. (2) *Work-related Expenses.* The expenses for care must be work-related such that a taxpayer must pay for the care so the taxpayer can work or look for work. The rule also applies to a spouse if

a couple files a joint return. A spouse meets this rule during any month the spouse is a full-time student or is physically or mentally incapable of self-care. (3) *Earned Income Required.* Taxpayer must have earned income which includes wages, salaries, tips and net earnings from self-employment. The spouse must also have earned income if a couple files jointly. A spouse is treated as having earned income for any month that they are a full-time student or incapable of self-care. (4) *Joint Return if Married.* Generally, married couples must file a joint return. Taxpayers can still take the credit, however, if they are legally separated or living apart from a spouse. (5) *Type of Care.* Taxpayers may qualify for the credit whether they pay for care at home, at a daycare facility or at a day camp. (6) *Credit Amount.* The credit is worth between 20 and 35 percent of the allowable expenses. The percentage depends on a taxpayer’s income. (7) *Expense Limits.* The total expense in a year is limited to \$3,000 for one qualifying person or \$6,000 for two or more. (8) *Certain Care Does Not Qualify.* Taxpayers may not include the cost of certain types of care for the tax credit, including: overnight camps or summer school tutoring costs; care provided by a spouse or a child who is under age 19 at the end of the year; and care given by a person the taxpayer can claim as a dependent. (9) *Keep Records and Receipts.* Taxpayers should keep all your receipts and records for filing taxes next year. Taxpayers will need the name, address and taxpayer identification number of the care provider. Taxpayers must report this information when they claim the credit on Form 2441, *Child and Dependent Care Expenses*. (10) *Dependent Care Benefits.* Special rules apply if a taxpayer gets dependent care benefits from an employer. Taxpayers may be able to claim it at any time during the year for qualifying care. IRS Publication 503, *Child and Dependent Care Expenses*, provides complete details on all the rules. **IRS special Tax Tip 2016-10.**

**DIVORCE.** While they were married, the taxpayers co-owned three businesses in unequal shares. The couple divorced and the divorce agreement provided for distribution of the businesses in equal shares to each party. The transfers of the businesses were accomplished but within one year after the divorce the former spouse filed a court motion to force the taxpayer husband to sell all of his interests in the businesses to the former spouse. A new divorce settlement was agreed to by both parties and the taxpayer husband sold all interests in the businesses to the former spouse. The taxpayers treated the sale as non-taxable under I.R.C. § 1041 because it was made incident to a divorce. Under I.R.C. § 1041(c) “a transfer of property is incident to the divorce if such transfer—(1) occurs within 1 year after the date on which the marriage ceases, or (2) is related to the cessation of the marriage.” The IRS argued that, because the sale occurred more than one year after the divorce and was not included in the divorce agreement, the sale of the business interests was not eligible for Section 1041 treatment. The IRS pointed to Treas. Reg. § 1-1041-1T(b), Q & A-7 which provides that a “transfer of property is related to the cessation of the marriage if the transfer is pursuant to a divorce or separation instrument, . . . and the transfer occurs not more than 6 years after the date on which the marriage ceases.” In this case, the IRS argued that the sale was not made incident to the divorce agreement because the original divorce agreement did not provide for the sale of any business interests. The IRS pointed to an



example in the same regulation that allowed for an exception only where the terms of the original agreement could not be executed because of a legal or business impediment. The court held that the exception in the regulation was not a requirement but only an example of a rebuttal of the presumption that a transfer not made under the original agreement was not made incident to a divorce. In this case, the sale of the business interests was made to effect a division of marital property incident to a divorce and was eligible for Section 1041 nonrecognition treatment. **Belot v. Comm'r, T.C. Memo. 2016-113.**

**HEALTH INSURANCE.** If a taxpayer filed for an extension of time to file a 2015 federal tax return and benefits from advance payments of the premium tax credit being made to the taxpayer's coverage provider, it is important to file the 2015 return sooner rather than later. Taxpayers must file a 2015 tax return and reconcile any advance payments to ensure they can continue having advance credit payments paid on their behalf in future years. Advance payments of the premium tax credit are reviewed in the fall by the Health Insurance Marketplace for the next calendar year as part of their annual re-enrollment and income verification process. If a taxpayer does not file and reconcile, the taxpayer will not be eligible for advance payments of the premium tax credit in 2017. Taxpayers should use Form 8962, *Premium Tax Credit*, to reconcile any advance credit payments made on their behalf and to maintain their eligibility for future premium assistance. Taxpayers who have not filed and reconciled 2015 advance payments of the premium tax credit by the Marketplace's fall re-enrollment period, including those that filed extensions, may not have their eligibility for advance payments of the PTC in 2017 determined for a period of time after they have filed their tax return with Form 8962. **Health Care Tax Tip 2016-56.**

**HOBBY LOSSES.** The taxpayers, husband and wife, operated an Amway distributorship. The husband was also otherwise employed full time as a software manager and the wife was otherwise unemployed. The court held that the Amway distributorship activity was not operated with the intent to make a profit because (1) the activity was not operated in a businesslike manner since the taxpayers did not keep complete and accurate records of their activity, with bookkeeping limited to retaining receipts; (2) the taxpayers had no expertise in running a distributorship and sought the advice of only people involved in the Amway business; (3) the taxpayers had no other experience with operating a business; (4) the activity never produced an annual profit; and (5) the activity losses offset income from the husband's employment. **Hess v. Comm'r, T.C. Summary Op. 2016-27.**

**LIFE INSURANCE.** The taxpayers, husband and wife, purchased a life insurance policy on the husband's life, with the wife as beneficiary. The taxpayers paid a single lump sum premium for the policy. The loan allowed the taxpayers to borrow against the cash value of the policy and to have the interest due on the loans capitalized into the loan principle. The taxpayers obtained several loans over ten years, eventually exceeding the cash value of the policy. The insurance company terminated the policy when the loans plus interest exceeded the cash value of the policy and issued a Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance*

*Contracts, etc.* showing a gross distribution of \$237,897, payment of premiums of \$87,500 and a taxable distribution of \$150,397. The taxpayers argued that the loans were actually distributions of the cash value of the policy; however, the court held that the amounts were all characterized on the insurance annual statements as loans; therefore, the amounts were all loans. The taxpayers also argued that, if the cancellation of the loans produced taxable income, the taxable amount should be reduced by the amount of interest accrued. The court held that the interest was non-deductible personal interest. **Mallory v. Comm'r, T.C. Memo. 2016-110.**

**MORTGAGE INTEREST DEDUCTION.** The taxpayers owned two rental properties which were purchased using promissory notes issued to the sellers. The notes provided for biannual interest only payments for 30 years with the principal due at the end of the note. The taxpayers failed to make the interest payments for 2008 and 2009 and the mortgages were modified to capitalize the unpaid interest for each year. The taxpayers claimed interest expense deductions for both years, based on the unpaid but capitalized interest. The court held that the mortgage modifications did not constitute interest payments but rather allowed the taxpayers to postpone the paying of interest; thus, the taxpayers were not entitled to deductions for the interest that was capitalized into the unpaid mortgage principal. **Slavin v. Comm'r, T.C. Summary Op. 2016-28.**

#### PARTNERSHIPS

**ENTITY CLASSIFICATION.** The taxpayer was a foreign entity eligible for classification as a partnership for federal tax purposes but failed to timely file a Form 8832, *Entity Classification Election*, to be treated as a partnership for federal tax purposes. The IRS granted an extension of time to file the Form 8832. **Ltr. Rul. 201624005, Feb. 1, 2016; Ltr. Rul. 201624006, Feb. 22, 2016; Ltr. Rul. 201624010, Feb. 22, 2016; Ltr. Rul. 201624016, March 2, 2016.**

**PENSION PLANS.** For plans beginning in June 2016 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 2.63 percent. The 30-year Treasury weighted average is 3.05 percent, and the 90 percent to 105 percent permissible range is 2.74 percent to 3.20 percent. The 24-month average corporate bond segment rates for June 2016, without adjustment by the 25-year average segment rates are: 1.50 percent for the first segment; 3.88 percent for the second segment; and 4.89 percent for the third segment. The 24-month average corporate bond segment rates for June 2016, taking into account the 25-year average segment rates, are: 4.43 percent for the first segment; 5.91 percent for the second segment; and 6.65 percent for the third segment. **Notice 2016-38, 2016-1 C.B. 1065.**

**QUARTERLY INTEREST RATE.** The IRS has announced that, for the period July 1, 2016 through September 30, 2016, 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. 2016-12, I.R.B. 2016-26.**

**RETURNS.** The IRS has announced that Get Transcript Online is now available for all users to access a copy of their tax transcripts and similar documents that summarize important tax return information. The relaunch of Get Transcript Online addresses increased cybersecurity threats by using a new, more secure access framework. This framework enables the IRS to require a two-step authentication process for all online tools and applications that require a high level of assurance. To access the new Get Transcript Online feature, taxpayers must have an e-mail address, a text-enabled mobile phone and specific financial account information, such as a credit card number or certain loan numbers. Taxpayers who registered using the older process will need to re-register and strengthen their authentication in order to access the tool. As part of the new multi-factor process, the IRS will send verification, activation or security codes via e-mail and text. The IRS warns taxpayers that it will not initiate contact via text or e-mail asking for log-in information or personal data. The IRS texts and e-mails will only contain one-time codes. See *Fact Sheet 2016-20* for details on what is needed to successfully access Get Transcript Online. **IR-2016-85.**

### SAFE HARBOR INTEREST RATES

July 2016

	Annual	Semi-annual	Quarterly	Monthly
<b>Short-term</b>				
<b>AFR</b>	0.71	0.71	0.71	0.71
110 percent AFR	0.78	0.78	0.78	0.78
120 percent AFR	0.85	0.85	0.85	0.85
<b>Mid-term</b>				
<b>AFR</b>	1.43	1.42	1.42	1.42
110 percent AFR	1.57	1.56	1.56	1.55
120 percent AFR	1.71	1.70	1.70	1.69
<b>Long-term</b>				
<b>AFR</b>	2.18	2.17	2.16	2.16
110 percent AFR	2.40	2.39	2.38	2.38
120 percent AFR	2.62	2.60	2.59	2.59

**Rev. Rul. 2016-17, I.R.B. 2016-27.**

### S CORPORATIONS

**ACCOUNTING METHOD.** The taxpayers were shareholders in an S corporation on the cash method of reporting. For 2008 through 2011, the corporation received checks in one calendar year which were deposited in the following tax year. In calculating income for each year, the corporation included in taxable income only the amounts deposited in the tax year. Thus, checks received in 2008 were deposited in 2009 and included in 2009 income. The 2008 tax year was closed and no changes could be made to the corporation's taxable income for that year. However, the IRS argued that checks received in 2008, 2009, 2010 and 2011 and deposited in 2009, 2010, 2011 and 2012 had to be included in taxable income for 2009, 2010 and 2011. The taxpayers argued that the checks received in 2008 but deposited in 2009 should be excluded from 2009 taxable income. This would result in nonrecognition of the income from the checks received in 2008, a closed tax year, and deposited in 2009. Under precedent in the Ninth Circuit Court of Appeals (the court of appeal for this case), the duty of consistency, or quasi-estoppel, is an equitable doctrine which prevents a taxpayer from benefiting in a later year from an error or omission in an earlier year which cannot be corrected because the limitations period for the earlier year has expired. The duty has three factors: (1) a representation

or report by the taxpayer, (2) reliance by the Commissioner, and (3) an attempt by the taxpayer after the statute of limitations has run to change the previous representation or to recharacterize the situation in such a way as to harm the Commissioner. The court held that the duty of consistency prevented the corporation from removing from taxable income the checks received in 2008 but included in taxable income in 2009. **Squeri v. Comm'r, T.C. Memo. 2016-116.**

**SELF-EMPLOYMENT TAX.** The taxpayer was a real estate agent who received commission income from a real estate company. The company issued to the taxpayer a Form 1099-MISC, *Miscellaneous Income*, reporting \$20,130 of payments. The taxpayer reported the payments on Schedule C but did not file or pay for any self-employment tax on the payments. The only argument presented by the taxpayer was that the first deficiency notices from the IRS did not list any self-employment tax due. The court rejected this argument in that the taxpayer's liability for self-employment tax depended upon the facts and not the accuracy of any IRS notice of deficiency. **Wang v. Comm'r, T.C. Memo. 2016-123.**

**WORK OPPORTUNITY CREDIT.** The IRS has announced additional transition relief for employers claiming the Work Opportunity Tax Credit (WOTC) under I.R.C. §§ 51 and 3111(e). This notice expands and extends by three months the transition relief provided in *Notice 2016-22, 2016-1 C.B. 488* for meeting the 28-day deadline in I.R.C. § 51(d)(13)(A)(ii). This notice applies to employers that (1) hire members of targeted groups (other than qualified long-term unemployment recipients) on or after January 1, 2015, and on or before August 31, 2016, or (2) hire members of the new targeted group of qualified long-term unemployment recipients on or after January 1, 2016, and on or before August 31, 2016. **Notice 2016-40, I.R.B. 2016-27.**

## AGRICULTURAL TAX SEMINARS

by Neil E. Harl

Due to serious family medical issues, Dr. Harl has had to cancel at least the first three seminars previously announced. Although Dr. Harl may need to cancel the remaining seminars, except Ames, IA, here are the tentative cities and dates for the seminars in 2016 at this time:

**August 24-25, 2016** - Quality Inn, Ames, IA

**September 15-16, 2016** - Ramkota Hotel, Sioux Falls, SD

**September 22-23, 2016** - Holiday Inn, Rock Island, IL

**October 11-12, 2016** - Atrium Hotel, Hutchinson, KS

See the pack page for more information or visit  
[www.agrilawpress.com](http://www.agrilawpress.com).



# AGRICULTURAL TAX SEMINARS

by Neil E. Harl

**See page 111 above for 2016 cities and dates.**

Join us for expert and practical seminars on the essential aspects of agricultural tax law. Gain insight and understanding from one of the country's foremost authorities on agricultural tax law. The seminars will be held on two days from 8:00 am to 5:00 pm. Registrants may attend one or both days. On the first day, Dr. Harl will speak about farm and ranch estate and business planning. On the second day, Dr. Harl will cover farm and ranch income tax. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch. A discount (\$25/day) is offered for attendees who elect to receive the manuals in PDF format only ([see registration form online for use restrictions on PDF files](#)).

The topics include:

## First day

### FARM ESTATE AND BUSINESS PLANNING

#### New Legislation

#### Succession planning and the importance of fairness

#### The Liquidity Problem

#### Property Held in Co-ownership

- Federal estate tax treatment of joint tenancy
- Severing joint tenancies and resulting basis
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- 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

#### Taxation of Debt

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

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