the disposition of the installment obligation is by bequest, devise or inheritance by the obligor or by cancellation by the estate representative.[16] Unless there is some act of cancellation of the obligation, the disposition is considered to have occurred no later than the conclusion of administration of the estate.[17] For obligations held by a person other than the decedent, such as a trust, the cancellation is treated as a transfer immediately after the decedent's death by that person.[18]

Presumably, disposition of an installment obligation to two or more persons, one of whom is the obligor, results in a taxable disposition to the extent of the obligor's interest acquired in the installment obligation. To avoid that result, the decedent could dispose of the installment obligation to the other heirs (who are not obligors under the installment obligation) with other property passing to the obligor.

Installment sale by the estate

For installment sale obligations entered into by the administrator or executor on behalf of the estate, distribution of the installment sale obligation from the estate constitutes a taxable disposition by the estate.[19] A statutory provision[20] shields from recognition of gain amounts with respect to property under special use valuation and then only to the extent the fair market value at death or the alternate valuation date exceeds the special use value and then only if the transfer is to a qualified heir.[21] The exception in I.R.C. § 453B(c), for "transmission of installment obligations at death," does not apply to installment obligations entered into by the estate inasmuch as the distribution of installment obligations entered into by an estate would not involve "the transmission of installment obligations at death."[22]

In conclusion

The disposition of installment obligations at death deserves careful planning attention before death of the seller under the obligation if deferral of recognition of gain is to be assured under income in respect of decedent rules.[23]

FOOTNOTES

1 See generally 6 Harl, *Agricultural Law* § 48.03 (2002); Harl, *Agricultural Law Manual* § 6.03[1] (2002).

2 See I.R.C. § 691(a).

3 I.R.C. § 2031(a).

4 Estate of Robinson v. Comm'r, 69 T.C. 222 (1977).

5 Eisenberg v. Comm'r, 155 F.3d 50 (2d Cir. 1998), *rev'g* T.C. Memo. 1997-483, acq. I.R.B. 1999-4, 4; Estate of Dunn v. Comm'r, 2002-2 U.S. Tax Cas. (CCH ¶ 60,446 (5th Cir. 2002) (value of assets reduced by 34 percent for built-in taxable gains for 62.96 percent interest in corporation). See Estate of Welch v. Comm'r, T.C. Memo. 1998-167, *rev'd*, 2000-1 U.S. Tax Cas. (CCH) ¶ 60,372 (6th Cir. 2000) (estate entitled to present evidence of built-in gains tax involving corporate stock; no legal prohibition against discount); Estate of Jameson v. Comm'r, 267 F.3d 366 (5th Cir. 2001); vacating and remanding, T.C. Memo. 1999-43 (Tax Court "inappropriately" denied consideration of full discount of accrued capital gains; involved timber property).

6 I.R.C. § 691(c)(2). See Ltr. Rul. 199007016, Nov. 16, 1989 (no recognition of gain to estate where installment obligation transferred outright to surviving spouse or in satisfaction of residuary bequests).

7 I.R.C. § 453B(c).

8 See 6 Harl, *supra* note 1, § 48.03[8][h][i].

9 See, e.g., Ltr. Rul. 198302044, Oct. 8, 1982.

10 See Jack Ammann Photogrammetric Engineers, Inc. v. Comm'r, 341 F.2d 466 (5th Cir. 1965) (no income tax obligation on merger of obligor and obligee of installment obligation); Wilkinson v. Comm'r, 49 T.C. 4 (1967) (merger of obligor and obligee under installment sale obligation was taxable disposition to taxpayers).

11 Pub. L. No. 96-471, 94 Stat. 2247, 2253 (1980).

12 I.R.C. § 691(a).

13 I.R.C. § 691(a)(5). See Ltr. Rul. 199108027, Nov. 26, 1990.

14 Ltr. Rul. 199108027, Nov. 26, 1990.

15 *Id*.

16 H. Rep. 96-1042, 96th Cong., 2d Sess. 22 (1980).

17 *Id.* at 23.

18 See I.R.C. § 691(a)(5)(A)(iii).

19 I.R.C. § 453B(a). See Rev. Rul. 55-159, 1955-1 C.B. 391.

20 I.R.C. § 1040.

21 I.R.C. § 1040(a). See I.R.C. § 2032A(e)(1).

22 I.R.C. § 453B(c).

23 I.R.C. § 691(a).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

FEDERAL TAX-*ALM* § 13.03[7].*

AUTOMATIC STAY. The debtor was a partnership and the partners had filed a Tax Court case seeking readjustment of a final partnership administrative adjustment. The partners sought a stay of the Tax Court proceedings, based on the automatic stay in bankruptcy. The court held that the debtor was not involved in the Tax Court proceeding because the debtor was not a taxed entity and had no assets subject to the partners' claims in bankruptcy. The court held that the partners' Tax Court case was not stayed by the partnership's bankruptcy case. ***In re* Madison Recycling Assoc., 2002-2 U.S. Tax Cas.**

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(CCH) ¶ 50,626 (6th Cir. 2002), ***aff'g*****, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,361 (D. Ky. 2001)**.

DISCHARGE. The debtors had filed a consent which extended the time the IRS had for making assessments. The debtors timely filed their returns for 1995 and 1996 but the IRS, within the extension consented to, made additional assessments. The debtors filed appeals in the Tax Court of the additional assessments and the Tax Court case was still pending when the debtors filed for bankruptcy. The court held that the assessments were stayed by the Tax Court case and remained enforceable until the Tax Court case was resolved. Because the Tax Court case was pending on the bankruptcy petition date, the additional taxes were not dischargeable under Section 523(a)(1)(A)(iii). ***In re*** **Pilva, 2002-2 U.S. Tax Cas. (CCH) ¶ 50,635 (Bankr. S.D. Ohio 2002)**.

NET OPERATING LOSSES. The debtor was a closely-held S corporation. The debtor had net operating losses in one pre-petition year and the shareholders did not make the election to carry the NOLs to later tax years and the NOLs were carried back to previous years, resulting in refunds to the shareholders. The Chapter 7 trustee sought to recover those refunds by characterizing the failure to make the carryforward election as a pre-petition preferential transfer. The court held that the refunds were not recoverable because (1) the NOLs were not corporation property but belonged to the shareholders as a passthrough item and (2) there was no transfer of the debtor's property. ***In re*** **Forman Enterprises, Inc., 2002-2 U.S. Tax Cas. (CCH) ¶ 50,655 (Bankr. W.D. Penn. 2002)**.

POST-PETITION INTEREST. The taxpayer filed for Chapter 11 and the IRS filed claims for pre-petition priority tax deficiencies. The Chapter 11 plan was confirmed and provided for full payment of the tax claims but did not provide for payment of interest which accrued post-petition and pre-confirmation. The court held that, under *Bruning v. United States, 376 U.S. 358 (1964)*, the interest on a nondischargeable tax claim was also nondischargeable and survived the bankruptcy case, whether filed as a claim or not, as a personal obligation of the debtor. ***In re*** **Tuttle, 291 F.3d 1238 (10th Cir. 2002),** ***aff'g*****, 2001 Bankr. LEXIS 293 (Bankr. 10th Cir. 2001)**.

FEDERAL AGRICULTURAL PROGRAMS

APPLES. The CCC has adopted as final regulations which establish the Apple Market Loss Assistance Payment Program II which provides direct payments to apple producers to provide relief due to the low prices received for the 2000 crop. **67 Fed. Reg. 57719 (Sept. 12, 2002)**.

CROP INSURANCE. The FCIC has issued proposed regulations amending the General Administrative Regulations; the Group Risk Plan of Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions as mandated by the Federal Crop Insurance Act, as amended by the Agricultural Risk Protection Act of 2000. **67 Fed. Reg. 58911 (Sept. 18, 2002)**.

FARM LOANS. The FSA has adopted as final regulations amending its agricultural loan mediation regulations to implement the requirements of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 and the United States Grain Standards Act of 2000. The regulations establish and modify requirements and procedures for certification and funding of state mediation programs. This regulations also move the mediation provisions from Part 1446 of title 7 of the Code of Federal Regulations to Part 785. **67 Fed. Reg. 57309 (Sept. 10, 2002)**.

SEEDS. The AMS has issued a policy statement which makes clear that the AMS has a comprehensive compliance program in place that monitors and tests seed shipped in interstate commerce for truthful varietal labeling. The AMS stated that recently, numerous interested parties, including officials of the National Cattlemen's Beef Association and Mississippi State University, have expressed concern that with the expiration of the Plant Variety Protection Certificate issued under the Plant Variety Protection Act for the Marshall variety of annual ryegrass, inferior seed of other varieties may be marketed as Marshall annual ryegrass. The policy statement describes the procedures and enforcement actions which are used to monitor compliance with the labeling provisions of the Federal Seed Act. **67 Fed. Reg. 59769 (Sept. 24, 2002)**.

FEDERAL ESTATE AND GIFT TAX

ALTERNATE VALUATION DATE. The decedent's estate filed a timely Form 706. Although the estate hired an estate tax attorney and an accountant, no alternate valuation date determination and no election were made. After the Form 706 filing, the executors learned about the availability of the alternate valuation election and filed for an extension of time to make the election. The IRS granted the extension. **Ltr. Rul. 200236041, June 11, 2002**.

CHARITABLE DEDUCTION. The decedent made bequests through a will and an inter vivos trust. The will provided for payment of claims and taxes from the residuary estate but provided for payment of any deficiency from the trust. The trust had charitable and noncharitable beneficiaries but did not allocate the tax burden between the beneficiaries. The court held that the charitable deduction was reduced by the charitable bequest's liability for claims and taxes. **Estate of Bradford v. Comm'r, T.C. Memo. 2002-238**.

CLAIMS. The decedent had made inter vivos gifts of stock to children. The decedent filed a gift tax return and based the gift tax on a shareholder buy-sell agreement. The gift transfer provided that, if the stock value was later increased, the decedent would reimburse the donees for any additional gift tax paid. The IRS audited the decedent's estate tax return and determined that the stock value was greater than claimed on the gift tax return but the assessment against the estate was barred as untimely. The IRS then assessed the donees for the gift tax. The state probate court allowed the donees' claims against the estate for the additional gift tax paid. The estate sought a deduction for the gift tax paid under the state ruling. The District Court held that the deduction would be allowed as a valid claim against the estate. The next issue was the value of the claim against the estate. The estate had claimed a deduction for the entire amount of additional gift tax resulting from the increased valuation of the stock by the IRS. Nine months after the decedent's death, the IRS and estate agreed to a compromise value amount which was much less than the initial IRS value. The appellate court remanded the case back to the District Court for a determination of the value of the claim against the estate for the potential additional gift tax liability and instructed the court that no evidence was to be presented concerning post-death events. The court followed *Ithaca Trust Co. v. United States, 279 U.S. 151 (1929)*, which held that the value of estate assets and liabilities was to be determined as of the date of death, without any consideration of post-death events. On remand, the District Court relied on two expert witnesses who testified as to the merits of the claims against the estate and valued the claims in excess of the amount of property subject to the claims, resulting in zero estate tax due. **Estate of O'Neal v. United States, 2002-2 U.S. Tax Cas. (CCH) § 60,448 (N.D. Ala. 2002),** ***on rem from*****, 2001-2 U.S. Tax Cas. (CCH) ¶ 60,412 (11th Cir. 2001),** ***rem'g*****, 2000-1 U.S. Tax Cas. (CCH) ¶ 60,365 (N.D. Ala. 1999)**.

FAMILY-OWNED BUSINESS DEDUCTION. The decedent's estate filed a timely Form 706. Although the estate hired an attorney and an tax accountant, no family-owned business deduction election was made. After the IRS began an examination of the estate tax return, the executor hired an estate tax attorney, learned about the availability of the family-owned business deduction and filed for an extension of time to make the election. The IRS granted the extension. **Ltr. Rul. 200234004, Jan. 18, 2002**.

TRANSFERS WITH RETAINED INTERESTS. The decedent had formed two family limited partnerships (FLPs) and transferred most of the decedent's assets to the entities. The court held that the FLPs were validly formed but held that the decedent retained control over the assets transferred because there was an implied understanding with the other members, the decedent's heirs, that the decedent would retain the economic benefits of the property for the decedent's support. **Estate of Thompson v. Comm'r, T.C. Memo. 2002-246**.

VALUATION OF STOCK. The taxpayers owned stock in a family closely-held food distributing corporation. The taxpayers transferred shares to trusts for their children. The stock was valued by giving 70 percent weight to the market approach and 30 percent weight to the income approach. The stock was then allowed a 40 percent discount for lack of marketability and 5 percent discount for lack of voting rights in one tax year. Because some business risks increased in later years, the lack of marketability discount was increased to 45 percent. **Okerlund v. United States, 2002-2 U.S. Tax Cas. (CCH) ¶ 60,447 (Fed. Cls. 2002)**.

FEDERAL INCOME TAXATION

CAPITAL EXPENSES. The taxpayers leased a store in a shopping mall. The taxpayers had to make substantial improvements in order to use the space for a bakery, including ceilings, walls and floors; ventilation systems, utility systems, safety and handicapped facilities; and general remodeling of the space. The improvements, except bakery equipment were to become the property of the landlord upon installation. The lease abated the rent for the first six months. The taxpayers claimed that the cost of the improvements was offset as rent payments. However, the six months of rent totaled only $18,000 and the remodeling expenses exceeded $127,000. The court held that the remodeling expenses were capital expenses except to the extent of the value of the six months of free rent. The taxpayers were not allowed an expense method depreciation deduction because no election was made on the original returns. **McGrath v. Comm'r, T.C. Memo. 2002-231**.

CLEAN-BURNING FUEL DEDUCTION. The IRS has issued a corrected version of its certifications of two hybrid gas-electric automobiles as being eligible for the clean-burning fuel deduction. Purchasers of a new Honda Insight for model years 2000, 2001 and 2002 and purchasers of a Honda Civic Hybrid for model year 2003 will be able to claim a deduction of $2,000 for the year that the vehicle was first put into use. The original IRS announcement had stated that the Honda Insight was certified for model years 2001, 2002 and 2003. See also *Rev. Proc. 2002-42, I.R.B. 2002-24, 1188.* **IR 2002-97**.

DEPENDENTS. The taxpayer was awarded custody of the taxpayer's children under a divorce decree. The taxpayer provided more than one-half of the support for the children until the taxpayer became unemployed. The taxpayer's former spouse requested the taxpayer to sign a waiver of the taxpayer right to claim a dependency deduction for the children so the spouse could claim the deduction. The taxpayer signed Form 8332 which provided for a waiver through 2013. The taxpayer became employed again and claimed the dependency deduction for 1998, although no written disclaimer of Form 8332 was filed. The court held that, because the validity of the Form 8332 was not successfully challenged, the waiver remained in effect for 1998 and the taxpayer could not claim the dependency deduction or the child tax credit for the children in 1998. **Bramante v. Comm'r, T.C. Memo. 2002-228**.

The taxpayer claimed a dependent deduction for a child who the taxpayer initially thought was the taxpayer's child but who was determined by blood test to not be the taxpayer's biological child. The child lived with the biological parent who was not married to the taxpayer. The child visited the taxpayer on weekends and the taxpayer provided some support for the child. The taxpayer also claimed head of household filing status and earned income credit based on the child as the taxpayer's dependent. The court held that the child was not a dependent of the taxpayer and denied use of the head of household status, the dependent deduction and the earned income credit. **Merriweather v. Comm'r, T.C. Memo. 2002-226**.

DISASTER PAYMENTS. On September 10, 2002, the President determined that certain areas in North Dakota were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of severe storms, flooding and tornadoes beginning on June 8, 2002. **FEMA-1431-DR**. On September 10, 2002, the president determined that certain areas in Wisconsin were eligible for assistance under the Act as a result of severe storms, flooding and tornadoes on September 2, 2002. **FEMA-1432-DR**. Accordingly, a taxpayer who sustained a loss attributable to these disasters may deduct the loss on his or her 2001 federal income tax return.

DIVIDENDS. The IRS has announced an increase, from $400 to $1500, of the threshold for filing a separate schedule for interest or dividend income for most taxpayers for 2002. **IR-2002-102**.

EMPLOYEE BENEFITS. A taxpayer established a self-insured medical expense reimbursement plan on December 1 of a tax year. The plan provided that it was effective as of January 1 of that year. Under the plan, a participating employee was eligible for reimbursement of medical expenses incurred by the employee, the employee's spouse, and dependents (as defined in I.R.C. § 152) during the plan year (January 1 through December 31). An employee became a participant in the plan upon its establishment on December 1. Prior to the establishment of the plan, the employee had incurred medical expenses that qualified for reimbursement under the plan and submitted those claims for reimbursement to the employer in December. The taxpayer reimbursed the employee for the medical expenses incurred prior to the establishment of the plan in accordance with the terms of the plan. The IRS has issued a revenue ruling which rules that reimbursement payments received by the employee for the medical expenses incurred by the employee before December 1 were not excluded from income. See also *Wollenberg v. U.S., 75 F. Supp.2d 1032 (D. Neb. 1999)*. **Rev. Rul. 2002-58, I.R.B. 2002-38**.

The taxpayer was employed for 17 days when the taxpayer was injured in an automobile accident. The taxpayer received disability insurance payments from a policy carried by the employer. The taxpayer testified that the taxpayer paid $3.00 per day for this policy but did not prove that this was the sole payment of the policy premiums or that any amount paid by the employer was included in the taxpayer's income. The court held that the disability insurance payments were included in the taxpayer's income because at least part of the policy premium was paid by the employer which did not include the payments in the taxpayer's income. **Miley v. Comm'r, T.C. Memo. 2002-236**.

GAMBLING LOSSES. The taxpayer engaged in an effort to make money from gambling, primarily on slot machines. The taxpayer used credit card advances to fund the gambling but stopped after incurring debt. The taxpayer did receive two payoffs from casinos that required Forms W2-G which reported winnings of $4,500. The taxpayer claimed the standard deduction but did not report the winnings in income. The taxpayer did not keep full and accurate records of the gambling wins and losses and did not operate the activity as a business. The court held that the gambling losses, which it assumed were greater than the winnings, were not deductible as business expenses but were only deductible as itemized expenses. The court also held that, because the taxpayer claimed the standard deduction, no additional deductions for gambling losses were allowed and the winnings were included in income. **Neymeyer v. Comm'r, T.C. Summary Op. 2002-120**.

IRA. The taxpayer had a self-directed IRA through an investment brokerage. The taxpayer wanted the IRA to purchase stock in a corporation but the brokerage refused because the stock was not publicly traded. The taxpayer directed the brokerage to issue a check from the IRA funds in the name of the corporation. The check was forwarded to the taxpayer who sent the check on to the corporation. The corporation sent the stock certificates to the taxpayer who forwarded them to the brokerage to be held in the IRA. The court held that the issuance of the check from the IRA funds was not a taxable distribution because the taxpayer served only as a conduit for the brokerage in its purchase of the stock. **Ancira v. Comm'r, 119 T.C. No. 6 (2002)**.

MARKET SEGMENT SPECIALIZATION PROGRAM. The IRS has released a Market Segment Specialization Program (MSSP) Audit Technique Guide for examiners regarding the swine industry, **IRPO ¶217,971**,and the poultry industry, **IRPO ¶216,215**.

MILEAGE DEDUCTION. The IRS has issued a revenue procedure which provides that the standard mileage rate for 2003 is 36 cents per mile for business use, 14 cents per mile for charitable use and 12 cents per mile for medical and moving expense purposes. The revenue procedure also provides rules under which the amount of ordinary and necessary expenses of local travel or transportation away from home that are paid or incurred by an employee will be deemed substantiated under Treas. Reg. §1.274-5 when a payor (the employer, its agent, or a third party) provides a mileage allowance under a reimbursement or other expense allowance arrangement to pay for such expenses. Use of a method of substantiation described in this revenue procedure is not mandatory and a taxpayer may use actual allowable expenses if the taxpayer maintains adequate records or other sufficient evidence for proper substantiation. **Rev. Proc. 2002-61, I.R.B. 2002-39**.

PARTNERSHIPS-*ALM* § 7.03.*

CLOSING AGREEMENTS. The taxpayers were partners in cattle-breeding tax shelter partnerships which were involved in Tax Court proceedings. An associate chief of appeals signed Form 906 closing agreements with the taxpayers which resolved disputes over tax treatment of partnership items. The taxpayers later filed for bankruptcy and challenged the validity of the closing agreements under Delegation Order 97 which prevented closing agreements involving issues pending in litigation. The court held that Delegation Order 209 permitted the closing agreement as to partners even though the partnership was involved in a tax case. ***In re* Crowell, 2002-2 U.S. Tax Cas. (CCH) ¶ 50,659 (6th Cir. 2002), *aff'g*, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,303 (D. Tenn. 2001)**.

PASSIVE ACTIVITY LOSSES. The taxpayers, husband and wife, owned several rental properties, including a farm. The taxpayers incurred net losses from the activities and sought to have the losses considered as nonpassive activity losses based on the taxpayers' status as real estate professionals because they spent more than 750 hours a year on the activities. The taxpayers used an activity calendar to estimate the number of hours spent on the rental activities. The court held that the use of the calendar was insufficient to prove the 750 hours of activity since the calendar was not adjusted to reflect the actual amount of time and the specific activity involved. Because the taxpayers were not real estate professionals, the rental activities were passive activities and subject to the passive loss rules. **Fowler v. Comm'r, T.C. Memo. 2002-223**.

REFUNDS. The IRS levied against the decedent's real property and sold the property. The proceeds of the sale exceeded the tax due and the IRS notified the decedent of a right to a refund of the excess proceeds. The decedent refused to file a claim because the decedent believed the "proceeds were the work of the devil." The decedent then tried to file a claim for refund but the IRS determined that the decedent had waited too long. However, the IRS changed its position and determined that the excess proceeds were a deposit and not a tax payment; therefore, repayment was not prohibited by the refund statute of limitations. The IRS failed to locate the decedent until after the decedent died, when the estate filed a claim for the excess proceeds. In a Chief Counsel Advice letter, the IRS ruled that the excess proceeds were a deposit. As a result, the deposit was not subject to the refund statute of limitations and was repayable, without interest, to the decedent's estate. **CCA Ltr. Rul. 200237001, June 6, 2002**.

REPAIRS. The taxpayer owned a residential rental property and had the roof repaired after leaks started. The contractors replaced the roofing material covering the entire roof. The court held that the cost of the roof repair was currently deductible and was not a capital cost because the repairs were not made to prolong the life of the property, increase its value, or make it adaptable to another use. **Campbell v. Comm'r, T.C. Summary Op. 2002-117**.

RETURNS. The IRS has announced the publication of Form 943 (2002), Employer's Annual Tax Return for Agricultural Employees, and instructions; Form 8160-C (2002), Form 1065 Package Information; and Form SS-5 (3-2001), Social Security Administration Application for a Social Security Card. These publications can be obtained by calling 1-800-TAX-FORM (1-800-829-3676); they are also available on the IRS's web site at www.irs.gov.

S CORPORATIONS-*ALM* § 7.02[3][c].*

EMPLOYEE. The taxpayer was an S corporation wholly owned by one shareholder who also served as president of the taxpayer. The shareholder was an accountant and performed all the accounting services and business management for the taxpayer. The court held that the shareholder/president was an employee of the taxpayer and amounts paid to the shareholder were subject to employment taxes because the shareholder served as an officer of the taxpayer and performed substantial services for the taxpayer. **Joseph M. Grey Public Accountant, P.C. v. Comm'r, 119 T.C. No 5 (2002)**.

STRADDLES. The IRS has announced that it plans to challenge transactions designed to use a straddle, one or more transitory shareholders, and the rules of subchapter S, to allow a shareholder to claim an immediate loss while deferring an offsetting gain in an S corporation investment. First, the IRS may disallow the loss under I.R.C. § 165(c)(2) by asserting that the loss was not incurred in a transaction undertaken for profit. Second, the IRS may disregard the transitory ownership of the shareholders other than the taxpayer and would, thus, allocate all income and losses from the activities of the S corporation to the taxpayer. Third, the IRS may disallow the taxpayer's loss deduction under I.R.C. § 269 by asserting that the taxpayer acquired control of the S corporation with the principal purpose of avoiding or evading federal income tax. In addition, the IRS may challenge the allowance of the loss deduction based on other statutory provisions, including I.R.C. § 988, and the step transaction, economic substance, business purpose, and substance over form doctrines. Transactions that use a partnership instead of an S corporation also will be challenged under the partnership anti-abuse rule of Treas. Reg. § 1.701-2. Persons who are required to satisfy the registration requirement of I.R.C. § 6111 with respect to the transaction and who fail to do so may be subject to the penalty under I.R.C. § 6707(a). Persons who are required to satisfy the list-keeping requirement of I.R.C. § 6112 with respect to the transaction and who fail to do so may be subject to the penalty under I.R.C. § 6708(a). Moreover, participants in or promoters and reporters of the transaction or substantially similar transactions may be liable for accuracy-related, return preparer, promoter, and the aiding and abetting penalties. **Notice 2002-65, I.R.B. 2002-__**.

SAFE HARBOR INTEREST RATES
October 2002

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	2.03	2.02	2.01	2.01
110 percent AFR	2.23	2.22	2.21	2.21
120 percent AFR	2.43	2.42	2.41	2.41
		Mid-term		
AFR	3.46	3.43	3.42	3.41
110 percent AFR	3.81	3.77	3.75	3.74
120 percent AFR	4.16	4.12	4.10	4.09
		Long-term		
AFR	4.90	4.84	4.81	4.79
110 percent AFR	5.39	5.32	5.29	5.26
120 percent AFR	5.89	5.81	5.77	5.74

Rev. Rul. 2002-61, I.R.B. 2002-40.

SALE OF RESIDENCE. The taxpayers sold a residence and reported the gain but included on Form 2119 their intent to repurchase a new residence within the replacement period. The taxpayers later filed an amended Form 2119 which identified the new residence and its purchase price. The amended form claimed a one-time exclusion of gain under I.R.C. § 121 and deferment of the rest of the gain under I.R.C. § 1034. The IRS disallowed the exclusion and deferment, ruling that the initial residence was not the taxpayers' principal residence. The IRS ruling was within three years after the amended Form 2119 but more than three years after the initial Form 2119. The taxpayers argued that the ruling as to the principal residence ruling was

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barred by the three year statute of limitations. The court held that the taxpayers' claim of the exclusion and deferment of gain triggered the limitations period under I.R.C. § 1034 and that the determination as to the nature of the initial residence was part of the IRS determination and was governed by the later period of limitations. Because the IRS determination was made within three years of the amended Form 2119, the determination was timely. **Pilaria v. Comm'r, T.C. Memo. 2002-230**.

TRAVEL EXPENSES. The IRS has released applicable terminal charges and the Standard Industry Fare Level (SIFL) mileage rates for use in determining the value of noncommercial flights on employer-provided aircraft taken from July 1, 2002, through December 31, 2002. The terminal charge is $38.02, and the SIFL mileage rates are: up to 500 miles, $0.2080 per mile; 501-1,500 miles, $0.1586 per mile; and over 1,500 miles, $0.1524 per mile. **Rev. Rul. 2002-56, I.R.B. 2002-37, 526**.

PRODUCTS LIABILITY

SEED. The plaintiffs were farmers whose corn was allegedly contaminated with Starlink genetically-modified corn. The Starlink corn seed was approved by the EPA only for nonhuman consumption and was commingled with corn for human consumption because shippers and producers were not aware that the Starlink corn was planted nearby or was included in shipments. The plaintiffs alleged that the defendant Starlink seed producer failed to properly inform producers about the use restriction and failed to notify subsequent purchasers and users of the EPA-imposed use restrictions. The plaintiffs brought actions under theories of conversion, negligence, public and private nuisance, and violation of the Tennessee Consumer Protection Act and North Carolina Unfair Trade Practices Act. The court held that, to the extent the actions involved the warning content of the labels, the actions were preempted. However, the court otherwise allowed the claims for conversion, negligence, public and private nuisance, and violation of the Tennessee Consumer Protection Act and North Carolina Unfair Trade Practices Act to the extent that the defendant (1) violated duties imposed by the limited EPA registration; (2) made representations to growers that contradicted the EPA-approved label; and (3) failed to inform parties handling the genetically modified corn after the sale of the corn. ***In re* Starlink Corn Products Liability Litigation, 2002 U.S. Dist. LEXIS 12791 (N.D. Ill. 2002)**.

TRESPASS

TIMBER. The defendant was hired by a third party to remove timber from that party's land which was adjacent to the plaintiff's land. The defendant removed trees from four acres of land belonging to the plaintiff and the plaintiff brought actions for trespass, nuisance and negligence. The plaintiff sought triple damages under Wis. Stat. § 26.09 which was recently amended to provide for higher damages than the previous statute. The court held that the amended statute did not apply retroactively because it made substantive changes in the damages and standards of liability and did not specifically provide for retroactive application. The trial court had awarded damages based only on the stumpage value of the trees cut as provided by the statute. The plaintiff argued that it was also entitled to restoration damages. The court held that the statute did not provide for the exclusive measure of damages and that the plaintiff could recover restoration or other damages if the other common law actions were successfully proved. **Bill's Distributing, Ltd. v. Cormican, 647 N.W.2d 908 (Wis. Ct. App. 2002)**.

WORKERS' COMPENSATION

AGRICULTURAL LABORER. The plaintiff was employed as a roper with the defendant. The defendant corporation operated a farm and a cattle feedlot. The feedlot fed livestock owned by the defendant and owned by third parties under feeding contracts. The farm provided grain and other feed for the feedlot and the manure from the feedlot was spread on the farmland. The plaintiff was one of three employees and was injured while roping calves for the feedlot operation. The plaintiff filed a workers' compensation claim and the defendant argued that the plaintiff was a ranch laborer and was excluded from coverage under Neb. Rev. Stat. § 48-106(2). The court acknowledged that the workers' compensation statutes in many states have been interpreted so as to focus on the nature of the employee's work in determining whether the employer was subject to the statute. However, the court held that in Nebraska the focus is on the nature of the employer's business and an employer could have more than one type of business for workers' compensation purposes. In this case, the court held that the defendant's feedlot operation was a separate operation and was not a farm or ranch because the defendant offered feeding services to customers. Because the plaintiff was injured while performing duties for the commercial feedlot, the plaintiff was not a ranch laborer and was covered by workers' compensation. **Larsen v. DB Feedyards, Inc., 648 N.W.2d 306 (Neb. 2002)**.

CITATION UPDATES

Kerr v. Comm'r, 292 F.3d 490 (5th Cir. 2002), aff'g, 113 T.C. 450 (1999) (valuation) see p. 116 *supra*.

Gulig v. Comm, 293 F.3d 279 (5th Cir. 2002), *aff'g sub nom.*, Estate of Strangi v. Comm'r, 115 T.C. 478 (2000) (valuation) see p. 116 *supra*.

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