CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

NO ITEMS.

FEDERAL FARM PROGRAMS

CONSERVATION. The NRCS has announced that it plans to issue a series of revised conservation practice standards in the National Handbook of Conservation Practices. These standards include: Air Filtration and Scrubbing (Code 371), Animal Trails and Walkways (Code 575), Combustion System Improvement (Code 372), Conservation Crop Rotation (Code 328), Diversion (Code 362), Dust Control on Unpaved Roads and Surfaces (Code 373), Forage Harvest Management (Code 511), Herbaceous Weed Control (Code 315), Range Planting (Code 550), and Riparian Herbaceous Cover (Code 390). NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their respective electronic Field Office Technical Guides. These practices may be used in conservation systems that treat highly erodible land (HEL) or on land determined to be a wetland. **75 Fed. Reg. 4525 (Jan. 28, 2010**).

FEDERAL ESTATE AND GIFT TAXATION

GENERATION-SKIPPING TRANSFERS. The decedents, husband and wife, had established a pre-September 25, 1985 trust for their grandchildren and grandchildren's issue. The trustee executed an instrument of severance to divide the trust into five trusts, one for each grandchild, with income and distribution provisions identical to the original trust. The reason for the division was the improved management and investment of the trust assets for the individual beneficiaries. The IRS ruled that the division of the trust would not subject the trust to GSTT. **Ltr. Rul. 201003015, Sept. 14, 2009**.

TRUSTS. The decedent and spouse established a trust which provided for passing of the trust to three trusts on the death of one of the spouses. After the death of the decedent, the estate discovered that the trust agreement contained several scrivener's errors which had some estate expenses being paid from the wrong subsequent trust. The language was changed by a court order and the estate sought a ruling that the modifications did not create a general power of appointment in the surviving spouse nor result in any taxable gifts. The IRS ruled that the modification were in keeping with the original intent of the grantors to minimize estate taxes; therefore, the modifications did not result in any of the trusts being included in the surviving spouse's estate or in any taxable gifts. **Ltr. Rul. 201002013, Sept. 30, 2009**.

FEDERAL INCOME TAXATION

CHARITABLE DEDUCTIONS. The IRS has issued a Chief Counsel Advice letter which presents an outline, originally a Power Point presentation, of the issues involving the charitable contribution of a facade easement. The letter discusses the qualifications for the deduction as well as accuracy-related penalties, tax return preparer and appraiser penalties and penalties for promotion of abusive tax shelters. **CCA Ltr. Rul. 201002038, March 2009**).

CORPORATIONS

NON-SHAREHOLDER CONTRIBUTION TO CAPITAL. The taxpayer corporation received a federal grant to assist the taxpayer in constructing a plant. The government waived any repayment obligation. The IRS cited *United States v. Chicago, Burlington & Quincy Railroad Co., 412 U.S. 401 (1973)*, for the factors to determine whether a governmental payment was characterized as a contribution to capital: (1) the contribution must become a permanent part of the transferee's working capital structure; (2) the contribution may not be compensation, such as a direct payment for a specific, quantifiable service provided for the transferor by the transferee; (3) the contribution must be bargained for; (4) the contribution foreseeably must result in benefit to the transferee in an amount commensurate with its value; and (5) the contribution ordinarily, if not always, will be employed in or contribute to the production of additional income and its value will be assured in that respect. Under these factors, the IRS ruled that the governmental payments were contributions to the corporation's capital and not income to the corporation. Under I.R.C. § 362(c)(2), the basis of the assets contributed or created by the governmental payments are reduced by the amount of the governmental payments. The IRS noted that if the value of the payments exceeded the corporation's basis in the plant, the basis of other corporate assets must be reduced by the excess amount. **Ltr. Rul. 201003005, Oct. 22, 2009**.

DEPENDENTS. The taxpayer was divorced and was the biological parent of a minor child from the marriage. The divorce decree awarded the taxpayer on even numbered tax years to claim the child as a dependent on federal tax returns if the taxpayer was current on all child support payments. The decreee required the spouse to execute all necessary forms to allow the taxpayer to claim the dependency deduction for the child. However, the spouse did not execute From 8332, Release of Claim for Exemption for Child of Divorced or Separated Parents. The taxpayer filed the income tax return in an even-numbered year and attached only a copy of the divorce decree. The court held that the divorce decree was insufficient as a substitute for Form 8332; therefore, the taxpayer was not entitled to the dependency deduction for the child. **Thomas v. Comm'r, T.C. Memo. 2010-11**.

The taxpayer lived with the unmarried parent of two children who were not the taxpayer's biological children. The court held that, because the parent of the children was entitled to claim the children as qualifying children on the parent's return, the taxpayer could not claim the children for the dependency deduction, the earned income tax credit and the child tax credit. **Mamoudou v. Comm'r, T.C. Summary Op. 2010-9**.

DOMESTIC PRODUCTION DEDUCTION. The taxpayer was a grain marketing and agricultural supply cooperative which provided its members and some eligible non-members with a variety of services. The taxpayer sold a broad range of farm supplies, including energy products, crop nutrients, and livestock feed, to its local farm supply cooperative members, which they in turn sold to their farmer and rancher members. The taxpayer also sold farm supplies directly to farmer and rancher members. The taxpayer paid cash to members and eligible non-members for farm commodities sold to the taxpayer for resale and export. The payments were in addition to patronage dividends paid from net earnings of the taxpayer. The taxpayer sought a ruling that the cash payments for commodities were eligible pre-unit retains which could be added back to calculate qualified production activities income (QPAI) for purposes of the domestic production deduction. The IRS ruled that the payments met all the qualifications of per-unit retains; therefore, the payments could be included in QPAI. **Ltr. Rul. 201002009, Oct. 1, 2009**.

HEALTH INSURANCE SUBSIDY. The IRS has announced that workers who lose their jobs during January and February 2010 may qualify for a 65-percent subsidy on their COBRA health insurance premiums, and these newly-eligible individuals, along with those already receiving the subsidy, can now receive it for up to 15 months, according to the Internal Revenue Service. Created by the American Recovery and Reinvestment Act of 2009, the COBRA subsidy eligibility period was originally scheduled to expire at the end of 2009, and eligible individuals only qualified for the subsidy for nine months. But the Department of Defense Appropriations Act, 2010, enacted on Dec. 19, extended the eligibility period and the maximum duration of COBRA premium assistance. As a result, workers who are involuntarily terminated from employment between Sept. 1, 2008, and Feb. 28, 2010, may be eligible for a 65-percent subsidy of their COBRA premiums for a period of up to 15 months. Involuntarily terminated employees who meet certain other requirements, and certain family members of those individuals, are referred to as "assistance-eligible individuals." Employers must provide COBRA coverage to assistance-eligible individuals who pay 35 percent of the COBRA premium. Employers are reimbursed for the other 65 percent by claiming a credit for the subsidy on their payroll tax returns: Form 941, Employers Quarterly Federal Tax Return, Form 944, Employer's Annual Federal Tax Return, or Form 943, Employer's Annual Federal Tax Return for Agricultural Employees. Employers must maintain supporting documentation for the claimed credit. The administrator of a group health plan or other entity must notify certain assistance-eligible individuals of the extension by Feb. 17, 2010. For assistance-eligible individuals whose nine months of subsidy had already ended, the new law also provides an extended period for the retroactive payment of their 35 percent share during a transition period. More information about the COBRA subsidy, including questions and answers for employers, and for employees or former employees, is on the COBRA pages of IRS.gov. **IR-2010-009**.

INSTALLMENT REPORTING. *The IRS has revoked the following letter ruling because of a misstatement or omission of controlling facts*. The taxpayer and another unrelated individual were equal partners in several partnerships. The unrelated individual was the trustee of a trust in which the taxpayer had no interest. The taxpayer, trustee and two other unrelated individuals formed a fourth partnership as an LLC which was a disregarded entity for federal income tax purposes. The LLC owned a commercial real estate building depreciated with the straight-line method. The taxpayer sold the taxpayer's entire interest in the fourth partnership to the trust under an installment agreement which granted the taxpayer a security interest in the trust assets as security for the promissory note used to purchase the partnership interest. The IRS ruled that the related-party provisions of I.R.C. § 453(e)(1) did not apply to the transaction, the taxpayer could report the gain using the installment method of reporting, and the taxpayer recognized 100 percent of the unrecaptured I.R.C. § 1250 gain to the extent that I.R.C. § 1231 gain existed in each tax year attributable to the sale. Ltr. Rul. 200937007, March 10, 2009. **Ltr. Rul. 201002034, Oct. 1, 2009**.

LETTER RULINGS. The taxpayer had filed for a private ruling from the IRS and received notice that the IRS was going to rule against the taxpayer. The taxpayer sought to have the entire letter ruling withheld from publication, arguing that the IRS refused to sufficiently redact enough information to prevent disclosure of the taxpayer. The Tax Court held that it did not have authority to grant a request to prevent publication of a letter ruling in its entirety but only had jurisdiction to rule as to whether specific language in a ruling was entitled to redaction. **Anonymous v. Comm'r, 134 T.C. No. 2 (2010)**.

MAKING WORK PAY CREDIT. The IRS has published information on the Making Work Pay credit. (1) In 2009 and 2010, the Making Work Pay provision provides a refundable tax credit of up to $400 for individuals and up to $800 for married taxpayers filing joint returns. (2) For taxpayers who receive a paycheck and are subject to withholding, the credit will typically be handled by their employers through automated withholding changes. (3) Taxpayers receiving less than the full amount of the allowable credit through reduced withholding will be entitled to claim any remaining credit when they file their tax return. (4) The amount of the credit actually received during 2009 in the form of reduced withholding will be reported on a taxpayer's 2009 tax return. Taxpayers who do not have taxes withheld by an employer during the year can claim the credit on their 2009 tax return filed in 2010. (5) Taxpayers who file Form 1040 or 1040A will use Schedule M, Making Work Pay and Government Retiree Credits to figure the Making Work Pay Tax Credit. Completing Schedule M will help taxpayers determine whether they have already received the full credit in their paycheck or are due more money as a result of the credit. (6) Taxpayers who file Form 1040-EZ will use the worksheet for Line 8 on the back of the 1040-EZ to figure their Making Work Pay Tax Credit. (7) In 2010, taxpayers may notice that paychecks are slightly lower than in 2009. The slight decrease may be because of the Making Work Pay Credit. Most of the credit for wage earners is distributed through reduced withholding. The credit – which was spread out over nine months last year – is being spread over 12 months this year. A little less credit in each paycheck means slightly higher withholding. (8) Certain taxpayers should review their tax withholding to ensure enough tax is being withheld in 2010. Those who should pay particular attention to their withholding include: married couples with two incomes, individuals with multiple jobs, dependents, pensioners, Social Security recipients who also work, and workers without valid Social Security numbers. Having too little tax withheld could result in potentially smaller refunds or – in limited instances – small balance due rather than an expected refund. (9) To ensure your current withholding is appropriate for a taxpayer's individual situation, taxpayers can review Publication 919, How Do I Adjust My Tax Withholding? Taxpayers can also perform a quick check of withholding using the interactive IRS Withholding Calculator on IRS.gov. (10) If taxpayers find a need to adjust withholding, they should submit a revised Form W-4, Employee's Withholding Allowance Certificate to their employer. **IRS Tax Tip 2010-15**.

MILITARY PERSONNEL. The IRS has issued guidance in the form of questions and answers with respect to certain provisions of the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), Pub. L. No. 110-245. The sections of the HEART Act addressed in this notice are section 104 (relating to survivor and disability payments with respect to qualified military service), section 105 (relating to treatment of differential military pay as wages), section 107 (relating to distributions from retirement plans to individuals called to active duty), section 109 (relating to contributions of military death gratuities to Roth IRAs and Coverdell education savings accounts), and section 111 (relating to an employer credit for differential wage payments to employees who are active duty members of the uniformed services). **Notice 2010-15, I.R.B. 2010-6**.

NON-PROFIT ORGANIZATIONS. The Internal Revenue Service has issued a reminder for tax-exempt organizations to make sure they file their annual information form on time. In 2010 the tax-exempt status of any non-profit that has not filed the required form in the last three years will be revoked. The Pension Protection Act of 2006 requires that non-profit organizations that do not file a required information form for three consecutive years automatically lose their federal tax-exempt status. This requirement has been in effect since the beginning of 2007. A list of revoked organizations will be available to the public, as well as state charity and tax officials on this web site. If an organization loses its exemption, it will have to reapply with the IRS to regain its tax-exempt status. Any income received between the revocation date and renewed exemption may be taxable. Small non-profit organizations with annual receipts of $25,000 or less can file an electronic notice, Form 990-N (e-Postcard). They will need only a few basic pieces of information to file: the organization's employer identification number, its tax year, legal name and mailing address, any other names used, an Internet address if one exists, the name and address of a principal officer and a statement confirming the organization's annual gross receipts are normally $25,000 or less. Tax-exempt organizations with annual receipts above $25,000 are required to file the Form 990 or the Form 990-EZ annually. Private foundations file Form 990-PF. Churches and integrated auxiliaries of churches are not required to file Form 990-series returns or notices. Form 990-series returns and e-Postcards, are due by the 15th day of the 5th month after an organization's tax year ends. **IR-2010-10**.

PARTNERSHIPS

ELECTION TO ADJUST PARTNERSHIP BASIS. A portion of the partnership interests was purchased in one tax year. The partnership failed to make the I.R.C. § 754 election to adjust the basis of partnership property. In the second tax year (the ruling does not indicate whether the second year was the following or a later tax year), more of the partnership interests were sold. When the return was prepared for the second year, the failure to make the Section 754 election in the first year was discovered. The IRS ruled that an extension of time was not granted to make the election for the first year because the partnership did not establish the partnership acted reasonably and in good faith. **Ltr. Rul. 201002026, Sept. 25, 2009**.

PENALTIES. The IRS has issued a revised revenue procedure which identifies circumstances under which the disclosure on a taxpayer's return, for 2009 and later, of a position with respect to an item is adequate for the purpose of reducing the understatement of income tax under I.R.C. § 6662(d) (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the preparer penalty under I.R.C. § 6694(a) (relating to understatements due to unrealistic positions). **Rev. Proc. 2010-15, I.R.B. 2010-7**, ***amending*****, Rev. Proc. 2008-14, 2008-1 C.B. 435**.

PENSION PLANS. The taxpayer held an interest in an employer-sponsored qualified retirement plan. The taxpayer received a distribution from the plan which was used to purchase a residence. The taxpayer argued that the distribution was not subject to the 10 percent tax on early distributions because the money was used to purchase a residence. The court held that the exception applied only to individual retirement accounts and pension plans; therefore, no exception applied. **Armbrust v. Comm'r, T.C. Summary Op. 2010-5**.

REFUNDS. The IRS has published a list of six things taxpayers need to know about using a federal tax refund to purchase savings bonds. (1) Taxpayers may use a portion of their refund to purchase up to $5,000 in U.S. Series I Savings Bonds. (2) The total amount of saving bonds purchased must be a multiple of $50. Additional money over the specified amount must be deposited into another financial account – such as a checking or savings account. (3) The bonds will be issued in the taxpayer's name. For married taxpayers filing a joint return, the bonds will be issued in the names of both spouses. (4) Taxpayers will receive the U.S. savings bonds in the mail. (5) Taxpayers normally select this option by filing Form 8888, Direct Deposit of Refund to More Than One Account. (6) Form 8888 has step-by-step instructions on how to select this option and how to specify the amount of refund a taxpayer wants to use to purchase savings bonds. For more information about the U.S. Savings Bonds refund option, visit IRS.gov. **IRS Tax Tip 2010-11**.

RETURNS. The IRS has free tax forms and publications on a wide variety of topics available through five easy methods for getting the information you need. (1) On the internet: taxpayers can access forms and publications on the IRS web site 24 hours a day, seven days a week, at IRS.gov. (2) By Phone: taxpayers can call 1-800-TAX-FORM (800-829-3676) Monday through Friday 7:00 am to 10:00 pm local time – except Alaska and Hawaii which are Pacific time – to order current year forms, instructions and publications as well as prior year forms and instructions. (3) At Convenient Locations in Your Community: During the tax filing season, many libraries and post offices offer free tax forms to taxpayers. Some libraries also have copies of commonly requested publications. Many large grocery stores, copy centers and office supply stores have forms taxpayers can photocopy or print from a CD. (4) By Mail Order: taxpayer tax forms and publications from the IRS National Distribution Center at 1201 N. Mitsubishi Motorway, Bloomington, IL, 61705-6613. Taxpayers should receive your products 10 days after receipt of the order. (5) Taxpayer Assistance Centers :There are 401 TACs across the country where IRS offers face-to-face assistance to taxpayers, and where taxpayers can pick up many IRS forms and publications. Visit IRS.gov and go to Contact My Local Office on the individuals page to find a list of TAC locations by state. On the Contact My Local Office page, taxpayers can also select TAC Site Search and enter a zip code to find the IRS walk-in office nearest as well as a list of the services available at specific offices. **Tax Tip 2010-14**.

The IRS has published information on the Free File service which provides free federal income tax return preparation and electronic filing for all taxpayers on the Internet. Free File is offered through a partnership between the IRS and the Free File Alliance, a group of private-sector tax software companies. Free File offers two options. The first is Traditional Free File, which includes approximately 20 tax preparation software products from which to choose. Taxpayers with 2009 incomes of $57,000 or less are eligible for this service. The second option is Free File Fillable Forms, which is an electronic version of IRS paper forms. All taxpayers can use Free File Fillable Forms to prepare and file tax forms electronically. Use the following steps to file a return through IRS Free File: Step 1. Access www.IRS.gov and click the Free File logo or go to www.irs.gov/freefile. Taxpayers must access Free File companies through the official IRS Web site to qualify for the free service. Step 2. Determine Eligibility. If a taxpayer's 2009 income was $57,000 or less, the taxpayer is eligible for Traditional Free File's easy-to-use, step-by-step software. If income was higher, a taxpayer is still eligible for Free File Fillable Forms. Step 3. Link to Free File Company Service: If the taxpayer opts for Traditional Free File, the taxpayer can choose one of the approximate 20 offerings by reviewing which one fits the taxpayer's situation. The taxpayer can click "I Will Choose A Free File Company" or "Help Me Find A Free File Company." To get started with Free File Fillable Forms, just click the "Choose Free File Fillable Forms" button. Step 4. Prepare and e-file your Federal Income Tax Return. Either Traditional Free File or Free File Fillable Forms will allow the taxpayer to file a return electronically, for free. Both the fillable-forms option and the "full service" Free File offerings are only available through www.IRS.gov; otherwise, the provider may charge a fee. **IRS Tax Tip 2010-16**.

The IRS has announced that taxpayers in several states who file paper income tax returns will send them to different processing centers this year. Taxpayers in Maine, Maryland, Massachusetts, New Hampshire, Vermont, Virginia and the District of Columbia will now send their tax returns to the IRS Kansas City Service Center in Kansas City, Mo. Taxpayers in Indiana and Michigan will send their tax returns to the IRS Fresno Service Center, in Fresno, Calif. Taxpayers in Alabama will send their tax returns to the IRS Austin Service Center in Austin, Texas. Taxpayers who use the envelope provided with the income tax instructions do not have to be concerned with the address change; their returns automatically will go to the correct center. Taxpayers who e-file will not be affected by the address changes. For taxpayers who file paper returns, the correct center addresses are on labels inside the tax packages they receive in the mail. Taxpayers who do not receive a package and need the service center address should refer to the back cover of the instructions to Form 1040, Form 1040A and Form 1040EZ. **IR-2010-16**.

The IRS has issued a reminder that taxpayers can have their federal tax refunds deposited directly into their bank accounts by choosing Direct Deposit. The IRS lists the following issues: (1) Thousands of paper checks are returned to the IRS by the U.S. Post Office every year as undeliverable mail and Direct Deposit eliminates the possibility taxpayers won't receive their check and prevents the refund from being stolen; (2) The money goes directly into the taxpayer's bank account; (3) Entering the correct bank account and bank routing numbers on the tax form will insure that refund will be received quicker than ever; and (4) Taxpayers can also deposit their refund into multiple accounts. With the split refund option, taxpayers can divide their refunds among as many as three checking or savings accounts and up to three different U.S. financial institutions. Use IRS Form 8888, Direct Deposit of Refund to More Than One Account, to divide a refund among different accounts. A word of caution: some financial institutions do not allow a joint refund to be deposited into an individual account. Check with your bank or other financial institution to make sure your Direct Deposit will be accepted. For more information about direct deposit of a tax refund and the split refund option, check the instructions for the tax form. Helpful tips are also available in IRS Publication 17, Your Federal Income Tax. **IRS Tax Tip 2010-19**.

The IRS has listed eight reasons to file a federal income tax return even if the taxpayer is not otherwise required to file a return. (1) Federal Income Tax Withheld. If the taxpayer is not required to file, taxpayer should file to get money back if federal income tax was withheld from the taxpayer's pay, the taxpayer made estimated tax payments, or had a prior year overpayment applied to this year's tax. (2) Making Work Pay Credit. The taxpayer may be able to take this credit if the taxpayer earned income from work. The maximum credit for a married couple filing a joint return is $800 and $400 for other taxpayers. (3) Government Retiree Credit. A taxpayer may be eligible for this credit if the taxpayer received a government pension or annuity payment in 2009. However, the amount of this credit reduces any making work pay credit the taxpayer received. (4) Earned Income Tax Credit. The taxpayer may qualify for EITC if the taxpayer worked, but did not earn a lot of money. EITC is a refundable tax credit; which means the taxpayer could qualify for a tax refund. (5) Additional Child Tax Credit. This credit may be available if the taxpayer has at least one qualifying child and the taxpayer did not get the full amount of the Child Tax Credit. (6) Refundable American Opportunity Credit. This education tax credit is available for 2009 and 2010. The maximum credit per student is $2,500 and the first four years of postsecondary education qualify. (7) First-Time Homebuyer Credit. The credit is a maximum of $8,000 or $4,000 if the taxpayer's filing status is married filing separately. The credit applies to homes bought anytime in 2009 and on or before April 30, 2010. However, the taxpayer has until on or before June 30, 2010, if the taxpayer entered into a written binding contract before May 1, 2010. If the taxpayer bought a home after November 6, 2009, the taxpayer may be able to qualify and claim the credit even if the taxpayer already owned a home. In this case, the maximum credit for long-time residents is $6,500, or $3,250 if the taxpayer's filing status is married filing separately. (8) Health Coverage Tax Credit. Certain individuals, who are receiving Trade Adjustment Assistance, Reemployment Trade Adjustment Assistance, or pension benefit payments from the Pension Benefit Guaranty Corporation, may be eligible for a Health Coverage Tax Credit worth 80 percent of monthly health insurance premiums on the 2009 tax return. **IRS Tax Tip 2010-17**.

The IRS has announced that it is developing a new tax schedule for businesses to file if their total assets exceed $10 million, if they have one or more uncertain tax positions that affect their U.S. federal income tax liability and if the taxpayer determines its federal income tax reserves under Financial Accounting Standards Board Interpretation No. 48, Accounting for Uncertainty in Income Taxes, or other similar accounting standards. The new schedule will be filed with Form 1120, U.S. Corporation Income Tax Return, or other business tax returns. The new reporting requirements will not apply to returns filed for 2009. **Ann. 2010-9, I.R.B. 2010-7**.

SAFE HARBOR INTEREST RATES

February 2010

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	0.72	0.72	0.72	0.72
110 percent AFR	0.79	0.79	0.79	0.79
120 percent AFR	0.86	0.86	0.86	0.86
		Mid-term		
AFR	2.82	2.80	2.79	2.78
110 percent AFR	3.10	3.08	3.07	3.06
120 percent AFR	3.39	3.36	3.35	3.34
		Long-term		
AFR	4.44	4.39	4.37	4.35
110 percent AFR	4.89	4.83	4.80	4.78
120 percent AFR	5.34	5.27	5.24	5.21

Rev. Rul. 2010-6, I.R.B. 2010-6.

TRAVEL EXPENSES. The taxpayer was employed by three companies at three different job sites during the tax year. Although the taxpayer had substantiated most travel expenses, the IRS disallowed travel expenses which were not substantiated. The taxpayer argued that the taxpayer could use the per diem method for travel expenses but the court held that the per diem method could only be used where the employer provided a per diem allowance. The court held that the unsubstantiated travel expenses were properly disallowed. **Evans v. Comm'r, T.C. Summary Op. 2010-7**.

WITHHOLDING TAXES. A petition for review has been filed with the U.S. Supreme Court in the following case. The taxpayers were nonprofit corporations which offered graduate medical education programs for medical residents and fellows. The residents were enrolled in courses, performed research and participated in teaching rounds, receiving grades, evaluations and certification at the end of the program. The residents performed medical services for more than 40 hours per week and received stipends to help offset the cost of enrollment. The taxpayers did not withhold or pay FICA taxes on the stipends, arguing that the stipends were exempt under I.R.C. § 3121(b)(10) as amounts paid to students. The IRS issued regulations which restricted the I.R.C. § 3121(b)(10) exemption to organizations with a primary purpose of education and for part-time employment only. The trial court held that the regulations were invalid as improperly restricting the exemption beyond the statute. The appellate court reversed, holding the regulations consistent with other FICA exceptions which focused on part-time employment. **Mayo Foundation for Medical Education and Research v. United States, 2009-1 U.S. Tax Cas. (CCH) ¶ 50,432 (8th Cir. 2009), *rev'g*, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,577 (D. Minn. 2007)**.

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by Neil E. Harl

May 4-5, 2010

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Tuesday, May 4, 2010

FARM INCOME TAX

New Legislation

Reporting Farm Income

Leasing land to family entity
Constructive receipt of income
Deferred payment and installment payment arrangements for grain and livestock sales
Payments from contract production
Items purchased for resale
Items raised for sale
Crop insurance proceeds
Weather-related livestock sales
Sales of diseased livestock
Reporting federal disaster assistance benefits
Gains and losses from commodity futures

Claiming Farm Deductions

Soil and water conservation expenditures
Fertilizer deduction election
Farm lease deductions
Prepaid expenses
Preproductive period expense provisions
Paying rental to a spouse
Paying wages in kind
Section 105 plans

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
New like-kind guidelines for personal property
Partitioning property
Exchanging partnership assets

Taxation of Debt

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

Wednesday, May 5, 2010

FARM ESTATE AND BUSINESS PLANNING

The Liquidity Problem

Property Held in Co-ownership

Federal estate tax treatment of joint tenancy
Severing joint tenancies
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
Family-owned business deduction recapture
Property included in the gross estate
Claiming deductions from the gross estate
Marital and charitable deductions
Taxable estate
The unified credit and other credits
Unified estate and gift tax rates
Generation skipping transfer tax
Federal estate tax liens
Undervaluations of property
Reopening an examination

Gifts

Use of the Trust

The General Partnership

Limited Partnerships

Limited Liability Companies

The Closely-Held Corporation -

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

Financing, Estate Planning Aspects and Dissolution of Corporations

Corporate stock as a major estate asset
Valuation discounts
Dissolution and liquidation
Reorganization

Social Security

In-kind wages paid to agricultural labor

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