

Consideration of audit risk and likelihood of settlement

The final regulations, consistent with former § 1037, provide that a practitioner must not, in evaluating a Federal tax matter, take into account the possibility that a tax return will not be audited or that an issue will not be raised on audit.⁹ As stated in the final regulations, “the practitioner must. . . not, in evaluating a Federal tax matter, take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit.” Obviously, such statements, if made, can have an impact on the behavior of clients.

Negotiation of taxpayer checks

The final regulations (and the proposed regulations) provide that a practitioner may not endorse or otherwise negotiate any check issued to a client by the government in respect of a Federal tax liability, including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the practitioner or any firm or other entity with whom the practitioner is associated.¹⁰

General standard of competence

Section 1035 of the proposed regulations¹¹ provided that a practitioner must possess the necessary competence to engage in practice before the IRS and that competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged.¹² The competence standard in § 10.35 of the final regulations contemplates that a practitioner may become competent in a variety of ways, including consulting with experts in the relevant area and studying the relevant law.¹³ The explanation goes on to state that whether consultation and/or research are adequate to make a practitioner competent in a particular situation depends upon the facts and circumstances of

the particular situation.¹⁴ The bottom line is that “a practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged.”¹⁵

ENDNOTES

¹ 2014-2 C.B. 1. See generally 1 Harl, *Farm Income Tax Manual* § 1.09[3][j][iii][A] (2014 ed.). See also Harl, “Final Regulations on Practice Before IRS Added to Circular 230,” 18 *Agric. L. Dig.* 169 (2007).

² REG-138367-06, 77 Fed. Reg. 57,055 (2012).

³ Paragraph I(A)(1) of the Preamble, T.D. 9668, 2014-2 C.B. 1.

⁴ *Id.*

⁵ See note 2 *supra*.

⁶ See note 1 *supra*.

⁷ 31 C.F.R. part 10, § 10.37.

⁸ 31 C.F.R., Part 10, § I(B)(1).

⁹ 31 C.F.R., Part 10, § 10.37(a)(2)(vi).

¹⁰ 31 C.F.R., Part 10, § I(B)(5)(iv), § 1031.

¹¹ REG-138367-06.

¹² 31 C.F.R., Part 10, § I(B)(5)(iii).

¹³ *Id.*

¹⁴ 31 C.F.R., Part 10, § 1035.

¹⁵ *Id.*

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

EXEMPTIONS.

IRA. Prior to the debtor filing for bankruptcy filing, the debtor had received an IRA from a deceased parent. The debtor claimed the monthly payments from the IRA as exempt under Section 522(d)(12) for retirement funds. The court found that an inherited IRA contained additional restrictions on contributions, distributions and rollovers from an IRA owned by a debtor. The differences were sufficient to change the inherited IRA from a retirement account to a time-limited, tax deferral account. Therefore, the court held that the inherited IRA was no longer retirement funds eligible for the Section 522(d)(12) exemption. On appeal, the U.S. Supreme Court affirmed. *In re Clark*, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,317

(U.S. Sup. 2014), *aff'g*, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,389 (7th Cir. 2013).

TAX REFUNDS. The taxpayer filed for Chapter 7 in December 2013 and filed the 2013 federal income tax return in April 2014, claiming a tax refund resulting in part from a child tax credit and earned income tax credit. The remainder of the refund was claimed exempt in part as a wild card exemption and cash-on-hand exemption. The trustee objected to the exemption of the refund for the child tax credit because the credit was not refundable. The court agreed and denied the deduction for the child tax credit portion of the refund. The trustee also objected to the entire earned income tax credit (EIC) being exempt, arguing that the refund should be apportioned in amounts equal only to the proportion of the taxes offset by the EIC. The court rejected that position, noting that such a rule would lead to difficult complexity in calculating exempt and non-exempt portions of tax refunds. Thus, the court allowed the full EIC as an exempt portion of the tax refund. *In re Yost*, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,313 (Bankr. N.D. Ohio 2014).

FEDERAL FARM PROGRAMS

NO ITEMS.

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The decedent died in 2010 and the executor retained an accountant to advise on estate tax matters including the necessity to file a Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*. The accountant prepared the Form 8939 but failed to file the form before January 17, 2012. The estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to file the Form 8939 to make the I.R.C. § 1022 election and to allocate basis provided by I.R.C. § 1022 to eligible property transferred as a result of the decedent's death. *Notice 2011-66, 2011-2 C.B. 184 section I.D.1*, provides that the IRS will not grant extensions of time to file a Form 8939 and will not accept a Form 8939 filed after the due date except in four limited circumstances provided in section I.D.2: "Fourth, an executor may apply for relief under § 301.9100-3 in the form of an extension of the time in which to file the Form 8939 (thus, making the Section 1022 election and the allocation of basis increase), which relief may be granted if the requirements of § 301.9100-3 are satisfied. The IRS granted an extension of time to file the election. **Ltr. Rul. 201423005, Dec. 4, 2013.**

GSTT. An irrevocable trust was established prior to September 25, 1985, with the taxpayer as income beneficiary. The trust gave the taxpayer a testamentary special power of appointment over the trust corpus to lineal descendants, siblings, nephews, nieces, or cousins, but not to the taxpayer's estate. The taxpayer included a codicil to the taxpayer's will which exercised the power of appointment in trust to the taxpayer's children. The children's trust would be identical to the original trust, including a special power of appointment. The IRS ruled that the exercise of the special power of appointment did not subject the original trust to GSTT because the power of appointment was included in the original trust and the exercise did not change the vesting of ownership of an interest in the trust. **Ltr. Rul. 201425007, Feb. 25, 2014.**

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent's estate filed for an extension of time to file the estate tax return, Form 706. The application for an extension included a payment of \$2,494,088 which was identified as the estimated amount of non-deferrable estate tax due. The application indicated that the estate planned to elect to pay the remaining estate tax in installments. The extension was granted and the estate filed a Form 706 within the extension period making the installment payment election. However, the amount of non-deferred estate

tax was only \$512,226 and the estate sought a refund of the excess paid with the extension application. The IRS refused, arguing that no overpayment of estate tax had yet occurred and that the overpayment of non-deferred estate tax would be applied to the first installment payments. The court noted that, although I.R.C. § 6402 allows for refund of overpayments of tax, the provision grants the IRS discretion to credit such overpayments against other taxes owed. In addition, I.R.C. § 6403 provides that an overpayment of an installment payment of tax is to be credited against future installments. The court noted a disagreement on the issue among other court holdings, and the court held that the overpayment of the estimated non-deferred estate taxes was properly applied to the future installments and was not required to be refunded to the estate. **Estate of McNeely v. United States, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,323 (D. Minn. 2014).**

FEDERAL INCOME TAXATION

ALIMONY. The taxpayer was divorced and the divorce decree ratified and included a marital settlement agreement between the taxpayer and former spouse which provided for monthly "maintenance and child support" payments which terminated upon the death of the spouse or the taxpayer. The agreement also provided that the amounts paid would be income to the spouse and deductible from the gross income of the taxpayer under I.R.C. §§ 71 and 215. After the child support portion of the taxpayer's deductions for the payments were not allowed by the IRS, the taxpayer obtained a state court order declaring that the past payments were solely maintenance payments to the spouse and included in the spouse's gross income and deductible by the taxpayer. The state court even went so far as to state that a portion of the maintenance agreement was erroneously included in the divorce decree. The Tax Court noted that state court adjudications of the federal tax character of divorce payments were generally disregarded. The court held that there was no error in the divorce decree in that the maintenance agreement was intended to be fully incorporated in the decree by the taxpayer and spouse; therefore, the payments were properly apportioned by the IRS into child support and alimony payments, with only the alimony portion deductible by the taxpayer. **Baur v. Comm'r, T.C. Memo. 2014-117.**

BUSINESS EXPENSES. The taxpayer was a corporation which manufactured non-alcoholic beverages and which acquired a lease of a bottling plant. The lease included a purchase option which the taxpayer exercised. An appraisal showed that the fair market value of the bottling plant without the lease was \$2.75 million. The taxpayer purchased the property for a negotiated \$9 million, capitalized the fair market value of \$2.75 million and claimed the remainder of the purchase price as a business expense for buying out the lease. The IRS had argued an interpretation of Section 167(c) (2) that required the capitalization of the payment for the lease because the property purchased was subject to a lease when the property was purchased. The trial court ruled that I.R.C. § 167(c)

(2) did not prohibit the characterization of the lease buyout as a business expense because the court interpreted Section 167(c)(2) to not apply where the property was not subject to a lease after the purchase. Because the taxpayer's purchase price of the property included the purchase price of the remaining lease payments due under the lease, the court held that Section 167(c)(2) did not prohibit treating the price of the lease payments as a business expense. The appellate court affirmed. **ABC Beverage Corp. v. United States, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,320 (6th Cir. 2014), aff'g, 2009-1 U.S. Tax Cas. (CCH) ¶ 50,124 (D. Mich. 2009).**

CARBON DIOXIDE SEQUESTRATION CREDIT. The IRS has announced the inflation adjustment factor for the carbon dioxide (CO₂) sequestration credit under I.R.C. § 45Q for calendar year 2014. The inflation adjustment factor for calendar year 2014 is 1.0754. The I.R.C. § 45Q credit for calendar year 2014 is \$21.51 per metric ton of qualified CO₂ under I.R.C. § 45Q(a)(1) and \$10.75 per metric ton of qualified CO₂ under I.R.C. § 45Q(a)(2). **Notice 2014-40, 2014-2 C.B. 100.**

CHARITABLE CONTRIBUTIONS. The taxpayers, husband and wife, purchased a residential property within a registered historic district, and donated a façade conservation easement to a non-profit organization and claimed a charitable deduction for the value of the easement. The Tax Court originally held that the deduction was properly denied because the appraisal report did not meet the requirements of Treas. Reg. § 1.170A-13(b)(2)(ii). The Tax Court rejected the appraisal because the appraisal did not describe the property or the terms of the easement, contain a statement indicating it was prepared for income tax purposes, or provide the method and specific basis for valuing the easement. On appeal, the appellate court reversed, holding that the appraisal was qualified because it provided the basic method of the valuation, explained past IRS treatment of facade conservation easement valuations, and provided sufficient information for the IRS to evaluate the appraisal. On remand to the Tax Court, the Tax Court held that the easement had no value because the easement did not adversely affect the marketability of the property and the property was already otherwise subject to development restrictions by the New York Landmark Preservation Commission. On further appeal, the appellate court affirmed on the grounds that the Tax Court holding was based on substantial evidence that the conservation easement did not adversely affect the value of the property. **Scheidelman v. Comm'r, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,324 (2d Cir. 2014), aff'g, T.C. Memo. 2013-18, on rem. from, 2012-1 U.S. Tax Cas. (CCH) ¶ 50,402 (2d Cir. 2012), rev'g and rem'g, T.C. Memo. 2010-151.**

The taxpayer partnership purchased several improved parcels of real estate in New Orleans, including an historic building. The partnership granted a facade conservation easement to the historic building to a nonprofit organization. The partnership claimed a charitable deduction for the value of the easement based on a reduction in value of the historic building and the neighboring buildings owned by the partnership. The easement did not place any restrictions on the neighboring buildings, however, and the Tax Court held that the deduction could not include any loss of

value of the neighboring buildings. In addition, the Tax Court rejected the partnership's use of the reconstruction cost method of valuation because it was unlikely that the building would be rebuilt if destroyed. The Tax Court also rejected use of the income method of valuation because any income from the use of the building was too speculative. The valuation was restricted to the comparable method. On appeal, the appellate court held that the effect on valuation of neighboring properties should have been allowed in valuing the easement because changes to the neighboring building were limited by aspects of the easement. The appellate court also held that the Tax Court should have allowed the valuation to factor in the effect on the highest and best use of all the neighboring properties owned by the partnership. On remand, the Tax Court held that the effect of the easement on the use and value of other neighboring buildings owned by the taxpayer was not sufficiently demonstrated by the taxpayer in that the easement's terms did not specifically prevent modification of the other buildings. The Tax Court also reaffirmed its valuation of the easement, holding that the highest and best use of the property as a luxury hotel did not solely determine the value of the easement because the property value could also be based on its second-best use. On further appeal the appellate court affirmed the Tax Court's valuation of the property after the transfer of the easement as supported by substantial evidence. **Whitehouse Hotel Limited Partnership v. Comm'r, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,316 (5th Cir. 2014), aff'g on point, 139 T.C. 304 (2012), on rem. from, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,564 (5th Cir. 2010), vac'g and rem'g, 131 T.C. 112 (2008).**

EMPLOYEE EXPENSES. The taxpayer was employed as a cable company sales representative. The job required substantial amounts of travel to customers' homes and the company did not reimburse the taxpayer for vehicle or other travel expenses. The taxpayer used a personal vehicle for travel to customers' homes and kept travel records in a calendar log book. However, the taxpayer kept record only of occasional odometer readings and did not record the particular details of each customer visit in the log. The court held that, although it was clear that the taxpayer had work-related travel expenses, the expenses were not deductible because the taxpayer failed to properly substantiate the expenses. **Garza v. Comm'r, T.C. Memo. 2014-121.**

FOREIGN ACCOUNTS. The IRS has issued a revenue procedure which expands the streamlined filing compliance process, or "streamlined procedures" for foreign account holders. The original streamlined procedures announced in 2012 were available only to non-resident, non-filers and taxpayer submissions were subject to different degrees of review based on the amount of the tax due and the taxpayer's response to a "risk" questionnaire. The expanded streamlined procedures are available to a wider population of U.S. taxpayers living outside the country and, for the first time, to certain U.S. taxpayers residing in the United States. The changes include: (1) eliminating a requirement that the taxpayer have \$1,500 or less of unpaid tax per year; (2) eliminating the required risk questionnaire; and requiring the taxpayer to certify that previous

failures to comply were due to non-willful conduct. For eligible U.S. taxpayers residing outside the United States, all penalties will be waived. For eligible U.S. taxpayers residing in the United States, the only penalty will be a miscellaneous offshore penalty equal to 5 percent of the foreign financial assets that gave rise to the tax compliance issue. **Rev. Proc. 2014-38, I.R.B. 2014-29, modifying, Rev. Proc. 2014-13, 2014-1 C.B. 419.**

The taxpayer owned accounts with two online poker web sites and one online financial organization, all of which were located outside the United States. In 2006 and 2007, the taxpayer had at some point over \$10,000 in the three accounts but the taxpayer did not file Foreign Bank and Financial Accounts Report (FBAR) for 2006 and 2007 until 2010, after a FBAR examination had been started by the IRS. In addition, the 2006 FBAR failed to include one of the online accounts. The IRS assessed defendant with civil penalties under 31 U.S.C. 5321(a)(5) for non-willful failure to submit FBARs, as required by 31 U.S.C. 5314, regarding the taxpayer's interest in the three foreign accounts. The IRS assessed a \$30,000 penalty for 2006, which included a \$10,000 penalty for each of the three accounts, and a \$10,000 penalty for 2007 based on one account. The taxpayer argued that the online accounts were not "a bank, securities, or other financial account." The court disagreed, noting that the taxpayer could deposit, withdraw and transfer funds in the accounts; therefore, the online accounts were subject to the FBAR rules. The taxpayer also argued that, because the online sites had accounts in the United States, the taxpayer's money could have been actually kept in the United States. The court held that the FBAR rules applied to the taxpayer's funds in the online accounts because the online accounts were located in foreign countries. **United States v. Hom, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,307 (N.D. Calif. 2014).**

HEALTH INSURANCE. The IRS has adopted as final regulations providing guidance on the tax credit available to certain small employers that offer health insurance coverage to their employees under I.R.C. § 45R, enacted by the Patient Protection and Affordable Care Act. The regulations generally incorporate the provisions of *Notice 2010-44, 2010-1 C.B. 717* and *Notice 2010-82, 2010-2 C.B. 857* but are modified to reflect the differences between the statutory provisions applicable to years before 2014 and those applicable to years after 2013. **T.D. 9670, 79 Fed. Reg. 36640 (June 30, 2014).**

HOME MORTGAGE INTEREST. The taxpayer originally lived in Minnesota where the taxpayer owned and operated a landscaping business. The taxpayer owned a home in Minnesota. When the business had financial difficulties, the taxpayer moved to Arizona for a portion of a tax year to try establishing a business of house "flipping." The taxpayer returned to Minnesota in the same year and restarted the landscaping business. The IRS disallowed any deductions for mortgage interest on the Minnesota home. The court held that the Minnesota home was the taxpayer's qualified residence and that the mortgage interest and real estate taxes paid were deductible. **Sievers v. Comm'r, T.C. Memo. 2014-115.**

INNOCENT SPOUSE RELIEF. During marriage the taxpayer and former spouse withdrew funds from the spouse's

retirement plan. The withdrawn funds were included in gross income on the couple's joint return but the spouse failed to pay the taxes. The taxpayer claimed to have no knowledge that the taxes would not be paid. After the couple divorced, the taxpayer filed for innocent spouse relief from the unpaid taxes. The court found that the taxpayer met the initial requirements of Rev. Proc. 2013-34, 2013-2 C.B. 296: (1) the taxpayer filed a joint return for the taxable year for which relief is sought; (2) the relief was not available to the taxpayer under I.R.C. § 6015(b) or (c); (3) the claim for relief was timely filed; (4) no assets were transferred between the spouses as part of a fraudulent scheme; (5) the spouse did not transfer disqualified assets to the taxpayer; (6) the taxpayer did not knowingly participate in the filing of a fraudulent joint return; and (7) the tax liability from which the taxpayer seeks relief was attributable to an item of the nonrequesting spouse. Thus, the court looked at the factors for granting equitable relief under I.R.C. § 6015(f) and held that relief was allowed because (1) the couple were no longer married; (2) the taxpayer did not know the taxes would not be paid and had no control over the couple's finances; (3) the taxpayer did not receive a substantial benefit from the income; (4) the spouse had agreed to pay the tax liability as part of the divorce settlement; (5) the taxpayer had since complied with all tax laws; and (6) the taxpayer had health problems. **Molinet v. Comm'r, T.C. Memo. 2014-109.**

INVOLUNTARY CONVERSIONS. The taxpayers, husband and wife, placed one of their real properties for sale. Although a buyer was found, the sale did not close until the buyer sued to force the sale. The taxpayers did not purchase replacement property within two years after the sale. The gain from the sale was not reported on the tax return for the year of sale. The taxpayers argued that the sale qualified for nonrecognition of the gain as an involuntary conversion. The court held that the sale did not qualify as an involuntary conversion because (1) the sale was not made under any compulsion, (2) the taxpayers voluntarily listed the property for sale, and (3) no replacement property was obtained. **United States v. Peters, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,319 (E.D. Mo. 2014).**

LIKE-KIND EXCHANGES. The taxpayer purchased real property in 1995 for \$488,000 and paid a former spouse \$500,000 for the spouse's marital interest in the property as part of a divorce settlement. The taxpayer later paid a second spouse \$80,000 for that spouse's marital interest in the property as part of a divorce settlement. The taxpayer sold the property for \$2,250,000 on August 15, 2008 and purchased another property on August 29, 2008. The taxpayer claimed that both properties were held for business use and claimed the transactions qualified for like-kind I.R.C. § 1031 treatment because the taxpayer used an attorney, the taxpayer's son, as a qualified intermediary. The IRS rejected the claim and allowed only an exclusion of gain from the sale of a personal residence. The court held that the attorney was not a qualified intermediary under Treas. Reg. § 1.1031(k)-1(g) because the attorney was the taxpayer's son. The taxpayer also argued that the payments in the two divorce decrees increased the taxpayer's basis in the property. The court noted that Temp. Treas. Reg. § 1.1041-1T(d), Q&A-10, provides that the transferor

of property under I.R.C. § 1041, incident to a divorce, recognizes no gain or loss on the transfer even if the transfer was in exchange for the release of marital rights or other consideration, regardless of whether the property is separately owned or is a division of community property. In addition, the transferee, here the taxpayer, receives the property with the same basis as in the hands of the transferor, the two divorced spouses. Therefore, the court held that the payments to the spouses did not increase the taxpayer's basis in the property. **Blangiardo v. Comm'r, T.C. Memo. 2014-110.**

The IRS has issued a revenue procedure which provides guidance for entering into a qualified intermediary (QI) withholding agreement with the IRS under Treas. Reg. § 1.1441-1(e)(5)1. The revenue procedure provides the application procedures for becoming a QI and renewing a QI agreement. The procedure also provides a copy of the final qualified intermediary withholding agreement (QI agreement) and provides that such agreement is not intended to be modified by a rider. The objective of the QI agreement is to allow a foreign intermediary to assume the withholding and reporting obligations for payments of income (including interest, dividends, royalties, and gross proceeds) made to its account holders or payees through one or more foreign intermediaries or flow-through entities. **Rev. Proc. 2014-39, I.R.B. 2014-29.**

LIMITED LIABILITY COMPANIES. An LLC filed a partnership return, Form 1065, which was signed by the tax return preparer using the name of one of the owners of the LLC. The LLC was owned by a "corporation sole" and a foreign entity. The foreign entity owner claimed that the tax return preparer signed the return. Although acknowledging that no statute or regulation governed the signing of returns by LLCs, in a Chief Counsel Advice letter, the IRS noted that the instructions to Form 1065 require a member of an LLC to sign the return. Because the LLC return in this case was not signed by a member of the LLC, the return was not valid. The IRS also noted that, even if a member had signed the return, the return was incorrectly signed in the name of the entity and should have been signed by the individual owner of the entity. **CCA 201425011, Feb. 21, 2014.**

PARTNERSHIPS

AT RISK. In a short Chief Counsel Advice letter, the IRS stated "At risk under section 465 does not apply to partnerships. *Hambrose v. Commissioner.*" **CCA 201424022, May 19, 2014.**

PASSIVE ACTIVITY LOSSES. The taxpayers, husband and wife, were both employed full time, with the husband employed for 1680 hours per year. The couple owned two rental properties for which the taxpayer claimed a loss of \$44,266 on Schedule E. The taxpayer maintained a written log of hours spent on the rental activities which showed a total of 256 hours, with most of the hours performed by the husband. The taxpayers argued that the husband qualified under I.R.C. § 469(c)(7)(B) as a real estate professional because the husband spent more than 50 percent of all personal services on the real estate activity. Although the written record showed only a total of 256 hours performed by both taxpayers, the taxpayers argued that the husband spent more time than was shown by the written records. The court found that the

taxpayers did not sufficiently prove enough additional hours of work performed by the husband to qualify for the Section 469(c)(7)(B) exception. Without the allowance of the rental losses, the taxpayers' adjusted gross income exceeded the \$150,000 phaseout limit; therefore, no rental losses were allowed. **Alfaro v. Comm'r, T.C. Summary Op. 2014-54.**

The taxpayers, husband and wife, were both employed full time and owned one rental property. The husband managed three rental properties, one owned by the taxpayers and two owned by the husband's father. The taxpayers reported a loss for their rental property for two tax years on Schedule E. The taxpayers argued that the husband qualified under I.R.C. § 469(c)(7)(B) (i) as a real estate professional because the husband spent more than 50 percent of all personal services on the real estate activity. Although the taxpayer presented logs of the time spent on the rental activity, the court did not believe that the taxpayer spent more time on the rental activity than was spent on the taxpayer's employment activity; therefore, the court held that the losses were properly denied. **Bogner v. Comm'r, T.C. Summary Op. 2014-53.**

PENSION PLANS. For plans beginning in June 2014 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 3.52 percent. The 30-year Treasury weighted average is 3.39 percent, and the 90 percent to 105 percent permissible range is 3.08 percent to 3.60 percent. The 24-month average corporate bond segment rates for June 2014, without adjustment by the 25-year average segment rates are: 1.16 for the first segment; 4.04 for the second segment; and 5.11 for the third segment. The 24-month average corporate bond segment rates for June 2014, taking into account the 25-year average segment rates, are: 4.43 for the first segment; 5.62 for the second segment; and 6.22 for the third segment. **Notice 2014-41, 2014-2 C.B. 97.**

SAFE HARBOR INTEREST RATES

	July 2014			
	Annual	Semi-annual	Quarterly	Monthly
	Short-term			
AFR	0.31	0.31	0.31	0.31
110 percent AFR	0.34	0.34	0.34	0.34
120 percent AFR	0.37	0.37	0.37	0.37
	Mid-term			
AFR	1.82	1.81	1.81	1.80
110 percent AFR	2.00	1.99	1.99	1.98
120 percent AFR	2.18	2.17	2.16	2.16
	Long-term			
AFR	3.06	3.04	3.03	3.02
110 percent AFR	3.37	3.34	3.33	3.32
120 percent AFR	3.68	3.65	3.63	3.62

Rev. Rul. 2014-20, I.R.B. 2014-28.

TAX PRACTICE. The IRS has adopted as final regulations governing standards for written advice given by practitioners. The final regulations eliminate many of the complex rules governing covered opinions in Treas. Reg. § 10.35, while expanding the requirements for written advice under Treas. Reg. § 10.37. **T.D. 9668, June 10, 2014.** See article by Neil Harl on page 97 *supra*.

TAX PROTESTOR. The taxpayer admitted receiving

payments from Social Security and two pension funds; however, the taxpayer failed to file a return for 2009 or pay any taxes on the amounts received. The taxpayer argued only that the taxpayer knew of no law requiring the taxpayer to file a return. The IRS made assessments based on substitute returns but the taxpayer denied that the IRS had any authority to do so. The court held that the taxpayer owed taxes on the social security and pension fund payments and authorized penalties for the failure to timely file, failure to timely pay, and failure to pay estimated taxes. Although the court did not impose the penalty for making frivolous arguments, the court warned the taxpayer that future use of frivolous arguments would merit penalties. **Bowers v. Comm’r, T.C. Memo. 2014-130.**

TAX RETURN PREPARERS. The IRS has announced that guidance will soon be issued outlining a new voluntary program designed to encourage education and filing season readiness for paid tax return preparers. The program will be in place to help taxpayers during the 2015 filing season. The Annual Filing Season Program will allow unenrolled return preparers to obtain a record of completion when they voluntarily complete a required amount of continuing education (CE), including a course in basic tax filing issues and updates, ethics, and other federal tax law courses, and a test. **IR-2014-75.**

TAXPAYER BILL OF RIGHTS. The IRS has announced that it has adopted the “Taxpayer Bill of Rights” and will include them in a revised edition of Pub. 1, *Your Rights as a Taxpayer*. The ten rights are: (1) The Right to Be Informed; (2) The Right to Quality Service; (3) The Right to Pay No More than the Correct Amount of Tax; (4) The Right to Challenge the IRS’s Position and Be Heard; (5) The Right to Appeal an IRS Decision in an Independent Forum; (6) The Right to Finality; (7) The Right to Privacy; (8) The Right to Confidentiality; (9) The Right to Retain Representation; and (10) The Right to a Fair and Just Tax System. **IR-2014-72.**

TRAVEL EXPENSES. The taxpayer worked as an independent contractor truck driver for a trucking company. The taxpayer claimed that all records for 2009 were lost and claimed deductions for expenses related to the truck activity. The court first ruled that, because the truck was used in a business of providing to unrelated persons services consisting of the transportation of persons or property for compensation or hire, the taxpayer was not subject to the strict substantiation requirements of I.R.C. § 274. However, without any records to support the miles claimed to have been driven by the taxpayer, the court approved only a portion of the claimed expenses. **Baker v. Comm’r, T.C. Memo. 2014-122.**

TRUSTS. The taxpayers, husband and wife, established a trust which held life insurance policies on the lives of the taxpayers. The trust was a grantor trust for federal income tax purposes. One taxpayer also owned another grantor trust which held other substantial assets. The individual trust purchased the life insurance policies from the joint trust to guarantee sufficient assets to pay the insurance premiums. The IRS described the transfer as (1) a transfer between the same taxpayer since one grantor owns and interest in both trusts, and (2) the transfer from the joint trust to the individual trust resulted in a gift to the taxpayer who did not own an interest in the individual trust. Thus, the IRS ruled that the transfer was not a transfer for valuable consideration under I.R.C. § 101(a)(2). Under I.R.C. § 101(a)(2), if a life insurance contract

or any interest therein is transferred for valuable consideration, the exclusion from gross income provided by I.R.C. § 101(a)(1) is limited to an amount equal to the sum of the actual value of the consideration and the premiums and other amounts subsequently paid by the transferee. **Ltr. Rul. 201423009, Feb. 27, 2014.**

FARM ESTATE AND BUSINESS PLANNING

by Neil E. Harl

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The Agricultural Law Press is honored to publish the revised 18th Edition of Dr. Neil E. Harl’s excellent guide for farmers and ranchers who want to make the most of the state and federal income and estate tax laws to assure the least expensive and most efficient transfer of their estates to their children and heirs. The 18th Edition includes all new income and estate tax developments from the 2012 tax legislation and Affordable Care Act.

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Print and digital copies can be ordered directly from the Press by sending a check for \$35 (print version) or \$25 (PDF version) to Agricultural Law Press, 127 Young Rd., Kelso, WA 98626. Please include your e-mail address if ordering the PDF version and the digital file will be e-mailed to you.

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For more information, contact robert@agrilawpress.com.

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

On the back cover, we list the agricultural tax seminars coming up in the late summer of 2014. Here are the cities and dates for the seminars later this fall 2014:

September 15-16, 2014 - Courtyard Hotel, Moorhead, MN

September 18-19, 2014 - Ramkota Hotel, Sioux Falls, SD

October 2-3, 2014, Holiday Inn, Rock Island, IL

October 6-7, 2014 -Best Western Hotel, Clear Lake, IA

October 13-14, 2014 - Doubletree Hotel, Wichita, KS

November 24-25, 2014 - Adams State Univ., Alamosa, CO

Each seminar will be structured the same as the seminars listed on the back cover of this issue. More information will be posted on www.agrilawpress.com and in future issues of the *Digest*.



AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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 for use restrictions on PDF files).

August 19-20, 2014, Quality Inn, 2601 E. 13th St., Ames, IA, ph. 515-232-9260

August 27-28, 2014, Holiday Inn, Council Bluffs, IA ph. 712-322-5050

September 4-5, 2014, Honey Creek Resort, Moravia, IA, ph. 641-724-9100

More locations and dates listed on previous page.

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
Undervaluations of property

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

Leasing land to family entity
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

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
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
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.

The seminar registration fees for *current subscribers* (and for each one of multiple registrations from the same firm) to the *Agricultural Law Digest*, the *Agricultural Law Manual*, or *Farm Estate and Business Planning* are \$225 (one day) and \$400 (two days). The early-bird registration fees for *nonsubscribers* are \$250 (one day) and \$450 (two days). Nonsubscribers may obtain the discounted fees by purchasing any one or more of our publications. See www.agrilawpress.com for online book and newsletter purchasing.

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