

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

FEDERAL ESTATE AND GIFT TAXATION

GIFTS. The IRS has published information concerning taxable gifts. *Nontaxable Gifts.* The general rule is that any gift is potentially taxable. The following are nontaxable gifts:

- Gifts that do not exceed the annual exclusion amount for the calendar year,
- Tuition or medical expenses a taxpayer pays directly to a medical or educational institution for another person,
- A taxpayer's gifts to their spouse,
- Gifts to a political organization for its use, and
- Gifts to charities.

Annual Exclusion. For 2016 and 2017, the annual exclusion amount is \$14,000. If a taxpayer makes a taxable gift to another person, the gift tax usually does not apply until the value of the gift exceeds the annual exclusion amount for the year. *No Tax on Recipient.* Generally, the person who receives the gift will not have to pay tax on it. *Gifts Not Deductible.* A taxpayer cannot deduct the value of gifts they make (other than deductible charitable contributions as subject to the tax code). *Forgiven Debt and Certain Loans.* Taxpayers who forgive debt or make an interest-free loan or below the applicable market interest rate may be subject to the gift tax. *Gift-Splitting.* A taxpayer and spouse can give up to \$28,000 to a third party without making that gift taxable. The taxpayer needs to consider one-half of the gift as from the taxpayer and one-half given by the spouse. *Filing Requirement.* Taxpayers need to file Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*, if any of the following apply:

- The taxpayer gave gifts to at least one person (other than a spouse) that amounts to more than the annual exclusion for the year (\$14,000 for 2016 and 2017).
- The taxpayer and their spouse are splitting a gift. This is true even if half of the split gift is less than the annual exclusion.
- If the taxpayer gave a person (other than a spouse) a gift of a future interest in property that the recipient cannot actually possess, enjoy, or from which that person will receive income later.
- A taxpayer gifting a spouse an interest in property that will terminate due to a future event.

For more information, see Publication 559, *Survivors, Executors and Administrators*. **IRS Tax Tip 2017-47.**

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a "deceased spousal unused exclusion" (DSUE) amount to a surviving spouse. The decedent's estate did not file a timely Form 706 to make the portability election.

The estate discovered its failure to elect portability after the due date for making the election. The estate represented that the value of the decedent's gross estate was less than the basic exclusion amount in the year of the decedent's death including any taxable gifts made by the decedent. The IRS granted the estate an extension of time to file Form 706 with the election. **Ltr. Rul. 201714012, Dec. 14, 2016; Ltr. Rul. 201714016, Dec. 21, 2016; Ltr. Rul. 201714022, Dec. 9, 2016; Ltr. Rul. 201714023, Dec. 19, 2016; Ltr. Rul. 201714025, Dec. 9, 2016; Ltr. Rul. 201714027, Dec. 16, 2016.**

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued a revenue procedure which provides the List of Automatic Changes to which apply the automatic change procedures in *Rev. Proc. 2015-13, 2015-1 C.B. 419, as clarified and modified by Rev. Proc. 2015-33, 2015-1 C.B. 1067.* Among the list are (1) a change where a taxpayer wants to change its method of accounting for loans received from the Commodity Credit Corporation from including the loan amount in gross income for the taxable year in which each loan is received to treating each loan amount as a loan; (2) a change for a lawyer who advances money to pay for costs of litigation or for other expenses on behalf of clients, and who wants to change the method of accounting for such advances from treating them as deductible business expenses to treating them as loans to clients on a non-contingent or a contingent fee basis; a change for a timber grower that wants to change its method of accounting to treat post-establishment fertilization costs of an established timber stand as ordinary and necessary business expenses deductible under § 162; and (4) a change by a taxpayer that wants to change from an impermissible to a permissible method of accounting for depreciation or amortization (depreciation) for any item of depreciable or amortizable property under the taxpayer's present or proposed method of accounting: (i) for which the taxpayer used the impermissible method of accounting in at least two taxable years immediately preceding the year of change, (ii) for which the taxpayer is making a change in method of accounting under *Treas. Reg. § 1.446-1(e)(2)(ii)(d)*, (iii) for which depreciation is determined under *I.R.C. §§ 56(a)(1), 56(g)(4)(A), 167, 168, 197, 1400I, or 1400L(c)* or under any additional first year depreciation deduction provision; and (iv) that is owned by the taxpayer at the beginning of the year of change. **Rev. Proc. 2017-30, I.R.B. 2017-17.**

CORPORATIONS

ENTITY CLASSIFICATION. The taxpayer was formed as a limited liability company and was eligible to elect to be taxed as

a corporation for federal tax purposes. The taxpayer failed to file a Form 8832, *Entity Classification Election*, to elect to be treated as an association taxable as a corporation for federal tax purposes. The IRS granted an extension of time to file the Form 8832. **Ltr. Rul. 201714004, Dec. 13, 2016; Ltr. Rul. 201714005, Dec. 13, 2016; Ltr. Rul. 201714006, Dec. 13, 2016.**

DEPRECIATION. The IRS has issued a revenue procedure which provides guidance under §§ 124(c)(2), 124(d), 124(e), 143(b), and 167(b) of the Protecting Americans From Tax Hikes Act of 2015, enacted as Division Q of the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242 (Dec. 18, 2015). Sections 124(c)(2), (d), and (e) of the PATH Act amend I.R.C. § 179 by (1) making permanent the treatment of qualified real property as I.R.C. § 179 property under I.R.C. § 179(f), (2) making permanent the permission granted under I.R.C. § 179(c)(2) to revoke without the consent of the Commissioner any election made under I.R.C. § 179 and any specification contained in that election, and (3) allowing certain air conditioning or heating units to be eligible as I.R.C. § 179 property under I.R.C. § 179(d) (1). Section 143(b) of the PATH Act amends I.R.C. § 168(k) by (1) extending the placed-in-service date for property to qualify for the additional first year depreciation deduction, (2) modifying the definition of qualified property under I.R.C. § 168(k)(2), (3) extending and modifying the election under I.R.C. § 168(k)(4) to increase the alternative minimum tax credit limitation in lieu of the additional first year depreciation deduction, (4) adding I.R.C. § 168(k)(5), which allows a taxpayer to elect to deduct the additional first year depreciation for certain plants bearing fruits and nuts before such plants are placed in service, (5) adding I.R.C. § 168(k)(6), which provides a phase down of the additional first year depreciation deduction percentage for future taxable years, and (6) adding I.R.C. § 168(k)(7), which allows a taxpayer to elect not to deduct additional first year depreciation for any class of property. Section 167(b) of the PATH Act adds new I.R.C. § 168(j)(8), which allows a taxpayer to elect not to apply I.R.C. § 168(j) for any class of property. **Rev. Proc. 2017-33, I.R.B. 2017-19.**

DISASTER LOSSES. On March 16, 2017, the President determined that certain areas in California were eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe winter storms and flooding which began on January 18, 2017. **FEMA-4305-DR.** On March 21, 2017, the President determined that certain areas in Wyoming were eligible for assistance from the government under the Act as a result of a severe winter storm which began on February 6, 2017. **FEMA-4306-DR.** On March 27, 2017, the President determined that certain areas in Nevada were eligible for assistance from the government under the Act as a result of severe winter storms and flooding which began on February 5, 2017. **FEMA-4307-DR.** On April 1, 2017, the President determined that certain areas in California were eligible for assistance from the government under the Act as a result of severe winter storms and flooding which began on February 1, 2017. **FEMA-4308-DR.** Accordingly, taxpayers in these areas may deduct the losses on their 2017 or 2016 federal income tax returns. See I.R.C. § 165(i).

ELECTRICITY PRODUCTION CREDIT. The 2017 inflation-adjustment factors used in determining the availability of the credit for renewable electricity production, and refined coal production under I.R.C. § 45 for qualified energy resources and refined coal is 1.5792. The credit for refined coal production is \$6.909 per ton of qualified refined coal sold in 2017. The 2017 reference price for fuel used as feedstock is \$51.09 per ton. The amount of the credit is 4.55 cents per kilowatt hour on sales of electricity produced from wind energy. Because the 2017 reference price for electricity produced from wind does not exceed eight cents multiplied by the inflation adjustment factor, the phaseout of the credit does not apply to such electricity sold during calendar year 2017. Because the 2017 reference price for fuel used as feedstock for refined coal does not exceed the \$31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor plus 1.7, the phaseout of the credit does not apply to refined coal sold during calendar year 2017. The amount of the credit for calendar year 2017 is 2.4 cents per kilowatt hour on sales of electricity produced from wind energy, closed-loop biomass, geothermal energy and solar energy, and 1.2 cents per kilowatt hour on sales of electricity produced from open-loop biomass, small irrigation power facilities, landfill gas facilities, trash combustion facilities, qualified hydropower facilities, and marine and hydrokinetic energy facilities. The phaseout of the credit for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy does not apply to such electricity sold during calendar year 2017. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy for 2017 have not yet been determined. **2017 FED (CCH) ¶ 46,267, April 12, 2017.**

FOREIGN INCOME. The IRS has published information on reporting of foreign income. *New Deadline for Reporting Foreign Accounts.* Starting in 2017, the deadline for filing the annual Report of Foreign Bank and Financial Accounts (FBAR) is now the same as for a federal income tax return. This means that the 2016 FBAR, Form 114, must be filed electronically with the Financial Crimes Enforcement Network (FinCEN) by April 18, 2017. FinCEN will now grant filers missing the April 18 deadline an automatic extension until Oct. 16, 2017 to file the FBAR. Specific extension requests are not required. In the past, the FBAR deadline was June 30 and no extensions were available. In general, the filing requirement applies to anyone who had an interest in, or signature or other authority, over foreign financial accounts whose aggregate value exceeded \$10,000 at any time during 2016. Because of this threshold, the IRS encourages taxpayers with foreign assets, even relatively small ones, to check if this filing requirement applies to them. The form is only available through the BSA E-Filing System website. *Most People Abroad Need to File.* An income tax filing requirement generally applies even if a taxpayer qualifies for tax benefits, such as the Foreign Earned Income exclusion or

the Foreign Tax credit, which substantially reduce or eliminate U.S. tax liability. These tax benefits are only available if an eligible taxpayer files a U.S. income tax return. A special extended filing deadline applies to U.S. citizens and resident aliens who live and work abroad. For U.S. citizens and resident aliens whose tax home and abode are outside the United States and Puerto Rico, the income tax filing deadline is June 15, 2017. The same applies for those serving in the military outside the U.S. and Puerto Rico. Tax payments are still due on April 18, and interest will apply to any payment received after that date. See *U.S. Citizens and Resident Aliens Abroad* at www.irs.gov for details. Nonresident aliens who received income from U.S. sources in 2016 also must determine whether they have a U.S. tax obligation. The filing deadline for nonresident aliens is April 18. See *Taxation of Nonresident Aliens* on www.irs.gov. *Special Income Tax Return Reporting for Foreign Accounts and Assets*. Federal law requires U.S. citizens and resident aliens to report any worldwide income, including income from foreign trusts and foreign bank and securities accounts. In most cases, affected taxpayers need to complete and attach Form 1040, Schedule B to their tax return. Part III of Schedule B asks about the existence of foreign accounts, such as bank and securities accounts, and usually requires U.S. citizens to report the country in which each account is located. In addition, certain taxpayers may also have to complete and attach to their return Form 8938, *Statement of Foreign Financial Assets*. Generally, U.S. citizens, resident aliens and certain nonresident aliens must report specified foreign financial assets on this form if the aggregate value of those assets exceeds certain thresholds. *IRS Reporting for Canadian Retirement Accounts*. In 2014, the IRS eliminated a special annual reporting requirement that applied to taxpayers who hold interests in either of two popular Canadian retirement plans. As a result, many Americans and Canadians with registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs) do not need to file Form 8891 to report details on these plans. This does not affect any other reporting requirements that may apply, such as FinCEN Form 114 and Form 8938. *Specified Domestic Entity Reporting*. For tax year 2016, certain domestic corporations, partnerships and trusts that are considered formed for the purpose of holding (directly or indirectly) specified foreign financial assets must file Form 8938 if the total value of those assets exceeds \$50,000 on the last day of the tax year or \$75,000 at any time during the tax year. For more information on domestic corporations, partnerships and trusts that are specified domestic entities and must file Form 8938, as well as the types of specified foreign financial assets that must be reported, see *Who Must File, Specified Domestic Entity, Specified Foreign Financial Assets, Interests in Specified Foreign Financial Assets, and Assets Not Required To Be Reported. Report in U.S. Dollars*. Any income received or deductible expenses paid in foreign currency must be reported on a U.S. tax return in U.S. dollars. Likewise, any tax payments must be made in U.S. dollars. Both Forms 114 and 8938 require the use of a Dec. 31 exchange rate for all transactions, regardless of the actual exchange rate on the date of the transaction. Generally, the IRS accepts any posted exchange rate that is used consistently. *Expatriate Reporting*.

Taxpayers who relinquished their U.S. citizenship or ceased to be lawful permanent residents of the United States during 2016 must file a dual-status alien return, attaching Form 8854, *Initial and Annual Expatriation Statement*. A copy of the Form 8854 must also be filed with Internal Revenue Service Philadelphia, PA 19255-0049, by the due date of the tax return (including extensions). See the instructions for this form and Notice 2009-85, *Guidance for Expatriates Under Section 877A*, for further details. **IR-2017-82**.

IRS NOTICES. The IRS has published information with some suggestions on how to best handle a letter or notice from the IRS. Simply responding will take care of most IRS letters and notices. Most IRS notices are about federal tax returns or tax accounts. Each notice deals with a specific issue and provides specific instructions on what to do. Careful reading is essential. A notice may likely be about changes to a taxpayers' account, taxes owed or a payment request. Sometimes a notice may ask for more information about a specific issue or item on a tax return. If a notice indicates a changed or corrected tax return, taxpayers should review the information and compare it with their original return. There is usually no need to reply to a notice unless specifically instructed to do so, or to make a payment. Taxpayers must respond to a notice they do not agree with. Mail a letter explaining why there is a disagreement with the IRS. The address to mail the letter is on the contact stub at the bottom of the notice. Include information and documents for the IRS to consider and allow at least 30 days for a response. There is no need to call the IRS or make an appointment at a taxpayer assistance center for most notices. If a call seems necessary, use the phone number in the upper right-hand corner of the notice. Taxpayers should be sure to have a copy of the tax return and notice when calling. Always keep copies of any notices received with tax records. Taxpayers should be alert for tax scams. The IRS sends letters and notices by mail. IRS does not contact people by e-mail or social media to ask for personal or financial information. The IRS will not demand payment a certain way, such as prepaid debit or credit card. Taxpayers have several payment options for taxes owed. For more on this topic, visit irs.gov. Click on the link 'Respond to a Notice' at the bottom center of the home page. Also, see Publication 594, *The IRS Collection Process*. **IRS Tax Tip 2017-49**.

LIMITED LIABILITY COMPANIES. The taxpayers were the three members of a professional limited liability company (PLLC) which owned and operated a law practice in Mississippi. The PLLC elected to be taxed as a partnership. The PLLC oral members' agreement provided for monthly guaranteed payments to each member, with any excess firm profit to be distributed to the members. The members paid self-employment tax on the guaranteed payments but excluded the distributive share payments from self-employment income, arguing that the payments were made to limited partners. I.R.C. § 1402(a) (13) provides the following exclusion from self-employment income: "[T]here shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) to that partner

for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services . . .” The court noted that the I.R.C. does not provide a definition of limited partner for purposes of I.R.C. § 1402(13). Thus, the court looked to federal and state partnership law. Under federal partnership tax law, a limited partnership must have general and limited partners, with the general partners having control over the management and operation of the partnership and limited partners excluded from management and control. Under Mississippi limited partnership law, Miss. Code § 79-14-303, a limited partner loses limited liability protection if the limited partner participates in control of partnership affairs. The court found that the PLLC was controlled by all the members; therefore, the court held that the members were not limited partners under state and federal law and their distributive shares of the PLLC profits were subject to self-employment tax. **Castigiola v. Comm’r, T.C. Memo. 2017-62.**

PENALTIES. The IRS has published information about late filing and late payment penalties. *Two penalties may apply.* One penalty is for filing late and one is for paying late. They can add up fast. Interest accrues on top of penalties. *Penalty for late filing.* If taxpayers file their 2016 tax return more than 60 days after the due date or extended due date, the minimum penalty is \$205 or, if they owe less than \$205, 100 percent of the unpaid tax. Otherwise, the penalty can be as much as 5 percent of their unpaid taxes each month up to a maximum of 25 percent. *Penalty for late payment.* The penalty is generally 0.5 percent of taxpayers’ unpaid taxes per month. It can build up to as much as 25 percent of their unpaid taxes. *Combined penalty per month.* If both the late filing and late payment penalties apply, the maximum amount charged for the two penalties is 5 percent per month. *Taxpayers should file even if they cannot pay.* Filing and paying as soon as possible will keep interest and penalties to a minimum. IRS e-file and Free File programs are available for returns filed after the deadline. If a taxpayer cannot pay in full, getting a loan or paying by debit or credit card may be less expensive than owing the IRS. *Late payment penalty may not apply.* If taxpayers requested an extension of time to file their income tax return by the tax due date and paid at least 90 percent of the taxes they owe, they may not face a failure-to-pay penalty. However, they must pay the remaining balance by the extended due date. Taxpayers will owe interest on any taxes they pay after the April 18 due date. *No penalty if reasonable cause.* Taxpayers will not have to pay a failure-to-file or failure-to-pay penalty if they can show reasonable cause for not filing or paying on time. **IRS Tax Tip 2017-51.**

PENSION PLANS. For plans beginning in April 2017 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 3.08 percent. The 30-year Treasury weighted average is 2.91 percent, and the 90 percent to 105 percent permissible range is 2.62 percent to 3.05 percent. The 24-month average corporate bond segment rates for April 2017, *without adjustment* by the 25-year average segment rates are: 1.65 percent for the first segment; 3.82 percent for the second segment; and 4.76 percent for the third segment. The 24-month average

corporate bond segment rates for April 2017, taking into account the 25-year average segment rates, are: 4.16 percent for the first segment; 5.72 percent for the second segment; and 6.48 percent for the third segment. **Notice 2017-27, I.R.B. 2017-17.**

Upon retirement, the taxpayer owned two pensions provided as part of the taxpayer’s former employment. The evidence showed that the taxpayer became depressed after the retirement and the taxpayer and spouse suffered financial difficulties. The taxpayer requested two distributions from the pension plans when the taxpayer was less than age 59 1/2. The distribution checks went uncashed until the taxpayer’s tax return preparer saw Forms 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, reporting the two distributions. The tax preparer advised the taxpayer to place the funds in an IRA, which the taxpayer did. However, the rollover to the IRA did not occur within 60 days after the distributions from the pension plans and the IRS assessed taxes and penalties on the distributions. The taxpayer argued that the taxpayer was entitled to a waiver of the 60-day rollover requirement due to the depressed mental condition the taxpayer suffered during this time. Under I.R.C. § 402(c)(3)(B): “The Secretary may waive the 60-day requirement . . . where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.” Rev. Proc. 2003-16, 2003-1 C.B. 359 provides four factors to be considered in granting a waiver of the 60-day rollover requirement: “(1) errors committed by a financial institution . . .; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.” The court held that the taxpayer’s suffering of severe depression was sufficient cause to grant a waiver. **Trimmer v. Comm’r, 148 T.C. No. 14 (2017).**

RETURNS. The IRS has published information about filing amended returns. *File using paper form.* Taxpayers should use Form 1040X, *Amended U.S. Individual Income Tax Return*, to correct the tax return. Taxpayers cannot file amended returns electronically. They can obtain the form on IRS.gov/forms at any time. Mail the Form 1040X to the address listed in the form’s instructions. *Amend to correct errors.* File an amended tax return to correct errors or make changes to an original tax return. For example, taxpayers should amend to change their filing status, or to correct their income, deductions or credits. *Do not amend for math errors, missing forms.* Taxpayers generally do not need to file an amended return to correct math errors on their original return. The IRS will automatically correct these items. In addition, taxpayers do not need to file an amended return if they forgot to attach tax forms, such as a Form W-2 or a schedule. The IRS will mail a request to the taxpayer, if needed. *File within three-year time limit.* Taxpayers usually have three years from the date they filed the original tax return to file Form 1040X to claim a refund. A taxpayer can file it within two years from the date they paid the tax, if that date is later. That means the last

day for most people to file a claim for a refund for tax year 2013 is April 18, 2017. See Form 1040X instructions for special rules that may apply. *Use separate forms for each year.* Taxpayers who are amending more than one tax return must file a Form 1040X for each tax year. Mail each year’s Form 1040X in separate envelopes to avoid confusion. Note the tax year of the amended return on the top of the Form 1040X. Check the form’s instructions for where to mail the amended return. *Attach other forms with changes.* If a taxpayer uses other IRS forms or schedules to make changes, they need to attach them to the Form 1040X. *Wait to file for corrected refund for tax year 2016.* If due a refund from their original tax year 2016 return, taxpayers should wait to get it before filing Form 1040X to claim an additional refund. Amended returns may take up to 16 weeks to process. *Pay additional tax.* If the taxpayer will owe more tax, they should file Form 1040X and pay the tax as soon as possible to avoid penalties and interest. Consider using IRS Direct Pay to pay any tax directly from a checking or savings account at no cost. **IRS Tax Tip 2017-48.**

The IRS has issued a revenue procedure providing general rules and specifications for paper and computer-generated substitutes for Form 941, *Employer’s QUARTERLY Federal Tax Return*; Schedule B (Form 941), *Report of Tax Liability for Semiweekly Schedule Depositors*; Schedule D (Form 941), *Report of Discrepancies Caused by Acquisitions, Statutory Mergers, or Consolidations*; Schedule R (Form 941), *Allocation Schedule for Aggregate Form 941 Filers*; and Form 8974, *Qualified Small Business Payroll Tax Credit for Increasing Research Activities*. **Rev. Proc. 2017-32, 2017-2 C.B. 1109.**

SAFE HARBOR INTEREST RATES

May 2017

	Annual	Semi-annual	Quarterly	Monthly
Short-term				
AFR	1.15	1.15	1.15	1.15
110 percent AFR	1.27	1.27	1.27	1.27
120 percent AFR	1.38	1.38	1.38	1.38
Mid-term				
AFR	2.04	2.03	2.02	2.02
110 percent AFR	2.24	2.23	2.22	2.22
120 percent AFR	2.45	2.44	2.43	2.43
Long-term				
AFR	2.75	2.73	2.72	2.71
110 percent AFR	3.02	3.00	2.99	2.98
120 percent AFR	3.31	3.28	3.27	3.26

Rev. Rul. 2017-11, I.R.B. 2017-19.

SECURED TRANSACTIONS

MECHANIC’S LIEN. The defendants purchased a mothballed ethanol plant and hired the plaintiffs to repair the facility into working order. During the repairs, the facility produced excessive amounts of a byproduct called thin stillage. The defendant hired the plaintiff also to remove and transport the stillage to a local cattle farm as feed for cattle. The plaintiffs filed mechanic’s liens for work on the facility, including the cost of removal and transport of the

thin stillage. After the defendants filed for bankruptcy, the plaintiffs sought to foreclose on the mechanic’s liens. The defendant argued that no mechanic’s lien attached to the costs of hauling the thin stillage because that work did not improve or repair the property. The plaintiffs argued that the thin stillage hauling was a necessary part of the repair process which could not continue without the removal of the large amounts of excess thin stillage. Minn. Stat. § 514.01 states that: “Whoever . . . contributes to the improvement of real estate by performing labor, or furnishing skill, material or machinery for any of the purposes hereinafter stated . . . shall have a lien upon the improvement, and upon the land on which it is situated or to which it may be removed, that is to say, for the erection, alteration, repair, or removal of any building . . .” The court held that the statute provided the exclusive property improvement activities for which a mechanic’s lien can be attached and that removal of byproducts of a manufacturing plant was not included in that list in the statute; therefore, a mechanic’s lien could not attach to the costs of hauling byproducts of a manufacturing facility. **M&G Services v. Buffalo Lake Advanced Biofuels, LLC, 2017 Minn. App. LEXIS 52 (Minn. Ct. App. 2017).**

ZONING

NONCONFORMING USE. The plaintiff had filed for a building permit to construct seven farm buildings for a dairy operation. The permit described the building site as 100 acres plus 6388 acres as non-building land. The building permit was approved prior to the defendant town’s changing the zoning status of the plaintiff’s land. Under the new zoning ordinance, the plaintiff’s dairy operation would not be a permitted use; however, after litigation, the plaintiff was allowed to construct the buildings as a vested right of nonconforming use acquired prior to the zoning change. In this case, the plaintiff argued that, because the additional 6388 acres were identified in the building permit, the plaintiff also acquired a vested right in a nonconforming use of the 6388 acres in support of the dairy operation, for growing crops and dispersing manure, although the use violated the new zoning ordinance. The court found no case law directly supporting or denying the plaintiff’s argument but found that Wisconsin case law provides that in order for a nonconforming use to create a vested right to use property contrary to a zoning ordinance, the nonconforming use must exist prior to the zoning ordinance change. Thus, the court held that the mere identification of associated land in the building permit was not a sufficient prior nonconforming use to give the plaintiff a vested right to use the associated land in a manner which violated the new zoning ordinance. **Golden Sands Dairy, LLC v. Town of Saratoga, 2017 Wisc. App. LEXIS 259 (Wisc. Ct. App. 2017).**



AGRICULTURAL TAX SEMINARS

by Neil E. Harl

August 24-25, 2017 & October 30-31, 2017 - Quality Inn, Ames, IA

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

The topics include:

First day

FARM ESTATE AND BUSINESS PLANNING

New Legislation

Succession planning and the importance of fairness

The Liquidity Problem

Property Held in Co-ownership

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

Federal Estate Tax

The gross estate
Special use valuation
Property included in the gross estate
Traps in use of successive life estates
Basis calculations under uniform basis rules
Valuing growing crops
Claiming deductions from the gross estate
Marital and charitable deductions
Taxable estate
The applicable exclusion amount
Unified estate and gift tax rates
Portability and the regulations
Federal estate tax liens
Gifts to charity with a retained life estate

Gifts

Reunification of gift tax and estate tax
Gifts of property when debt exceeds basis

Use of the Trust

The General Partnership

Small partnership exception
Eligibility for Section 754 elections

Limited Partnerships

Limited Liability Companies

Developments with passive losses
Corporate-to-LLC conversions

New regulations for LLC and LLP losses

Closely Held Corporations

State anti-corporate farming restrictions
Developing the capitalization structure
Tax-free exchanges
Would incorporation trigger a gift because of severance of land held in joint tenancy?
"Section 1244" stock
Status of the corporation as a farmer
The regular method of income taxation
The Subchapter S method of taxation, including the "two-year" rule for trust ownership of stock
Underpayment of wages and salaries
Financing, Estate Planning Aspects and Dissolution of Corporations
Corporate stock as a major estate asset
Valuation discounts
Dissolution and liquidation
Reorganization
Entity Sale
Stock redemption

Social Security

In-kind wages paid to agricultural labor

Second day

FARM INCOME TAX

New Legislation

Reporting Farm Income

Constructive receipt of income
Deferred payment and installment payment arrangements for grain and livestock sales
Using escrow accounts
Payments from contract production
Items purchased for resale
Items raised for sale
Leasing land to family entity
Crop insurance proceeds
Weather-related livestock sales

Sales of diseased livestock

Reporting federal disaster assistance benefits
Gains and losses from commodity futures, including consequences of exceeding the \$5 million limit

Claiming Farm Deductions

Soil and water conservation expenditures
Fertilizer deduction election
Depreciating farm tile lines
Farm lease deductions
Prepaid expenses
Preproductive period expense provisions
Regular depreciation, expense method depreciation, bonus depreciation
Repairs and Form 3115; changing from accrual to cash accounting
Paying rental to a spouse
Paying wages in kind
PPACA issues including scope of 3.8 percent tax

Sale of Property

Income in respect of decedent
Sale of farm residence
Installment sale including related party rules
Private annuity
Self-canceling installment notes
Sale and gift combined.

Like-Kind Exchanges

Requirements for like-kind exchanges
"Reverse Starker" exchanges
What is "like-kind" for realty
Like-kind guidelines for personal property
Partitioning property
Problems in Exchanges of partnership assets

Taxation of Debt

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

Self-employment tax

Meaning of "business"

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