CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

Chapter 12

SALE OF CHAPTER 12 ESTATE PROPERTY. The Chapter 12 debtor sold inventory calves and breeding cows and bulls under the provisions of the plan. After the sale was completed, the debtor treated the post-petition tax as an unsecured debt pursuant to Section 1222(a)(2)(A) for the sale of both the breeding livestock and the calf inventory. The debtor used the marginal tax allocation method described in *In re Knudsen, 389 B.R. 643 (N.D. Iowa 2008)*, to determine the tax liability. The IRS argued that the calves in inventory were not used in the farming operation but were merely a product of the farm, based on treatment of inventory under I.R.C. § 1231(b). The court rejected this argument, noting that Section 1222(a)(2)(A) makes no distinction for capital or non-capital assets; therefore, the tax liability which arose from the sale of the calf inventory was eligible for Section 1222(a)(2)(A) treatment. In addition, the court approved of the use of the marginal tax allocation described in *In re Knudsen*. **In re Ficken, No. 05-52940-HRT (Bankr. D. Colo. July 30, 2009).**

FEDERAL TAX

DISCHARGE. The debtor, with two siblings, was an executor of the debtor's father's estate. In 1998, the estate elected to pay the federal estate tax in installments but stopped making the payments after six years when about half of the taxes remained unpaid. The debtor caused most of the estate to be transferred to the debtor and other siblings with the intent to use the revenue from the property to fund the estate tax payments. The debtor invested the funds in a business which eventually failed and the debtor filed for bankruptcy. The debtor sought a discharge of the debtor's personal liability for the estate tax. The IRS argued that the debt was not dischargeable under Section 523(a)(1)(C) because the debtor willfully attempted to evade payment of the taxes. The court held that the taxes were not dischargeable because the debtor transferred the estate property to the debtor's company without adequate consideration when the debtor knew that the debtor had a duty to preserve the estate in order to pay the known tax liability. **Carroll v. United States, 2009-2 U.S. Tax Cas. (CCH) ¶ 60,577 (N.D. Ala. 2009)**.

REFUND. The debtor filed for Chapter 7 in January 2009 and indicated to the trustee that a federal tax refund was expected from the 2008 joint income tax return filed with the debtor's former spouse who did not have taxable income in 2008. The trustee sought recovery of the full refund and the debtor argued that one-half of the refund was not estate property because it belonged to the former spouse. The court held that one-half of the refund was presumed to belong to the spouse. The case did not include any discussion of the evidence needed to rebut the presumption of equal ownership. ***In re* Vongchanh, 2009-2 U.S. Tax Cas. (CCH) ¶ 50,514 (Bankr. N.D. Ill. 2009)**.

FEDERAL FARM PROGRAMS

BIOBASED PRODUCTS. The USDA has issued proposed regulations that establish a voluntary labeling program for biobased products under Section 9002 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008. Under the proposed labeling program, a biobased product, after being certified by USDA, could be marketed using the "USDA Certified Biobased Product" label. The presence of the label will mean that the product meets USDA standards for the amount of biobased content and that the manufacturer or vendor has provided relevant information on the product for the USDA BioPreferred web site. The proposed rule applies to manufacturers and vendors who wish to participate in the voluntary labeling program and to other entities (e.g., trade associations) that wish to use the label to promote biobased products. **74 Fed. Reg. 38295 (July 31, 2009)**.

CONSERVATION STEWARDSHIP PROGRAM. The CCC has issued interim final regulations which set forth the policies, procedures, and requirements necessary to implement the Conservation Stewardship Program as authorized by the Section 2301 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The purpose of the Conservation Stewardship Program is to encourage producers to address resource concerns in a comprehensive manner by undertaking additional conservation activities, and improving, maintaining and managing existing conservation activities. **74 Fed. Reg. 37499 (July 29, 2009)**.

FARM LOANS. The FSA has issued proposed regulations amending the Farm Loan Programs direct loan servicing regulations to implement provisions of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The first amendment would further emphasize transistioning borrowers to private sources of credit in the shortest time practicable. The second amendment would amend the Homestead Protection lease regulations by extending the right to purchase the leased property to the lessee's immediate family when the lessee is a member of a socially disadvantaged group. The third amendment would amend the account liquidation regulations to suspend certain loan acceleration and foreclosure actions, including suspending interest accrual and offsets, if a borrower has filed a claim of program discrimination that has been accepted as valid by USDA and is at the point of acceleration or foreclosure. The fourth amendment would amend the supervised bank account regulations to be consistent with the recently amended Federal Deposit Insurance Act. **74 Fed. Reg. 39565 (Aug. 7, 2009)**.

The plaintiff had conveyed a 670 acre farm to the FSA in satisfaction of a debt and entered into a five year lease of the property from the FSA. The lease gave the plaintiff an option to purchase the farm at the end of the lease for an amount determined by an independent appraisal. An appraisal was made when the plaintiff expressed an intent to exercise the option but the plaintiff claimed that the appraisal was improperly inflated. The plaintiff sought judicial review after exhausting all administrative appeals. The court held that the plaintiff failed to provide any evidence to show a different value for the property; therefore, the appraisal was upheld. In addition, the plaintiff claimed that policies of the federal government improperly deprived the plaintiff of income. The plaintiff listed the following improper policies: (1) a grain embargo placed by the United States in 1980; (2) the entrance of millions of illegal aliens into the United States; (3) the North American Free Trade Agreement; (4) the failure of the United States government to adequately enforce antitrust statutes; and (5) the failure of the Secretary of Agriculture to maintain market conditions favorable to farmers. The court held that these claims had no merit and upheld the trial court's award of summary judgment for the federal government. **Magee v. United States, 2009 U.S. App. LEXIS 16021 (5th Cir. 2009)**.

FEDERAL ESTATE AND GIFT TAXATION

CHARITABLE DEDUCTION. The decedent had established a charitable remainder trust in which the trust agreement provided for distribution of the remainder only to qualified organizations. The trust defined a qualified organization as an organization "described in §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Internal Revenue Code." The language of the trust in other sections indicated that the intent of the decedent was that the decedent's foundation was to be a qualifying organization and was to receive the distribution from the trust. However, after the decedent's death, the trustee discovered that the foundation was not an organization listed under I.R.C. § 170b)(1)(A) and obtained a judicial amendment of the trust to remove that code section from the definition of a qualifying organization. The IRS ruled that the amendment of the trust agreement to remove I.R.C. § 170b)(1)(A) from the definition of qualifying organization did not disqualify the trust as a charitable remainder trust. In addition, the estate could take a charitable deduction for the trust because the decedent had retained the power to change the charitable beneficiary, causing the trust to be included in the decedent's estate. **Ltr. Rul. 200932020, April 21, 2009**.

GIFTS. On November 28, 2001, the taxpayers established trusts for their children. On the same day, the taxpayers formed three limited liability companies which were issued state certificates of formation on December 21, 2001. On December 28, 2001 and January 11, 2002, the taxpayers transferred property to the LLCs. Also on January 11, 2002 the taxpayers assigned interests in the LLCs to the children's trusts. The taxpayers filed gift tax returns which discounted the value of the LLC interests transferred to the children's trusts as minority interests by 58 percent. The court held that the transfer of the property to the LLCs on the same day as the transfer of the interests in the LLCs to the children's trusts was an indirect gift of interests in the property and not entitled to any minority interest discount. Although the taxpayers claimed that the LLC interests were transferred at least one day after the LLCs were funded, the court held that dates on the documents established that both events occurred on the same day. **Heckerman v. United States, 2009-2 U.S. Tax Cas. (CCH) ¶ 60,578 (W.D. Wash. 2009)**.

SPECIAL USE VALUATION. The IRS has issued the 2009 list of average annual effective interest rates charged on new loans by the Farm Credit Bank system to be used in computing the value of real property for special use valuation purposes for deaths in 2009:

District	Interest rate
AgFirst, FCB	7.63
AgriBank, FCB	6.50
CoBank, FCB	6.17
Texas, FCB	6.59
U.S. AgBank, FCB	6.23

District	States
AgFirst	Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, West Virginia
AgriBank	Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Wisconsin, Wyoming
CoBank	Alaska, Connecticut, Idaho, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington
Texas	Alabama, Louisiana, Mississippi, Texas
U.S. AgBank	Arizona, California, Colorado, Hawaii, Kansas, Nevada, New Mexico, Oklahoma, Utah

Rev. Rul. 2009-21, 2009-2 C.B. 162.

FEDERAL INCOME TAXATION

ADVANCED ENERGY PROJECT CREDIT. The IRS has published a notice establishing the qualifying advanced energy project program under I.R.C. § 48C(d) and announcing an initial allocation round of the qualifying advanced energy project credit under the qualifying advanced energy project program. The purpose of the qualifying advanced energy project program is to encourage taxpayers to re-equip, expand or establish manufacturing facilities for the production of certain energy related property. **Notice 2009-72, I.R.B. 2009-36**.

CORPORATIONS.

ESTIMATED TAX. President Obama signed the Corporate Estimated Tax Shift Act of 2009 (Pub. L. No. 111-42) on July 28, 2009. The legislation affects the estimated tax payments of corporations with assets of $1 billion or more, as well as the temporary deferral of a portion of the estimated tax payments for all other corporations otherwise due in September 2010 and 2011. Specifically, the law provides that Act Sec. 401 of the Tax Increase Prevention and Reconciliation Act of 2005 (Pub. L. No 109-222) and any subsequent modifications to the law will not apply to any installment of corporate estimated tax otherwise due after December 31, 2009.

COST-SHARING PAYMENTS. The IRS has determined that all or a portion of cost-share payments received under the Forest

Health Protection Program (FHPP) is eligible for exclusion from gross income to the extent permitted by I.R.C. § 126. The IRS notes that I.R.C. § 126(b)(1) and Treas. Reg. § 16A.126-1 can be used to determine what portion, if any, of the cost-share payments is excludable from gross income under I.R.C. § 126. The FHPP, authorized under the provisions of § 8 of the Cooperative Forestry Assistance Act of 1978, Pub. L. No. 95-313, 92 Stat. 368 (1978), as amended by Title XII, § 1218 of the International Narcotics Control Act of 1990, Pub. L. No. 101-624, 104 Stat. 3531 (1990), is a program to protect forests, trees, and wood products, stored wood, and wood in use directly on the National Forest System and, in cooperation with others, on other lands in the United States. **Rev. Rul. 2009-23, 2009-2 C.B. 177**.

COURT AWARDS AND SETTLEMENTS. The taxpayer filed suit against a former employer for employment discrimination in which the taxpayer sought back and front pay, damages for emotional distress and attorneys' fees. The parties reached a settlement and sought a ruling as to whether the employer was required to withhold employment taxes from the settlement payments. The court held that (1) the portion of the settlement paid for back pay was subject to mandatory withholding because the payment was made for services actually performed and (2) the portion of the settlement paid for front pay was subject to mandatory withholding because the front pay derived from the employee-employer relationship. The parties had agreed that the portion of the settlement for emotional distress and attorneys' fees was to be reported on Form 1099 and not Form W-2; therefore, those payments were not subject to withholding. **Josifovich v. Secure Computing Corp., 2009-2 U.S. Tax Cas. (CCH) ¶ 50,543 (D. N.J. 2009)**.

DEPRECIATION. The IRS has released a coordinated issue paper that addresses the question of the appropriate cost recovery period for open-air parking structures under I.R.C. § 168(a). Open-air parking structures are buildings as defined in Treas. Reg. § 1.48-1(e). For depreciation purposes under I.R.C. § 168, these parking structures are nonresidential real property with a cost recovery period generally of 39 years. **All Industries—Applicable Recovery Period Under Code Sec. 168(a) for Open-Air Parking Structures, Coordinated Issue Paper (LMSB4-0709-029) (Effective Date: July 31, 2009).**

DISASTER LOSSES. On July 13, 2009, the President determined that certain areas in Tennessee are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and tornadoes, which began on June 12, 2009. **FEMA-1851-DR.** On July 30, 2009, the President determined that certain areas in Maine are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on June 18, 2009. **FEMA-1852-DR.** On July 31, 2009, the President determined that certain areas in Nebraska are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding, which began on June 5, 2009. **FEMA-1853-DR.** Accordingly, taxpayers in the areas may deduct the losses on their 2008 federal income tax returns. See I.R.C. § 165(i).

DISCHARGE OF INDEBTEDNESS. The taxpayer had purchased an automobile with a loan but defaulted on the loan. The loan company notified the taxpayer that it was going to repossess the automobile. The taxpayer turned the automobile over voluntarily and the loan company issued a Form 1099-C, Cancellation of Debt, for the amount of the loan outstanding at the time of the repossession. The taxpayer did not include the forgiven debt amount in taxable income. The taxpayer claimed that the automobile had a value at the time of the repossession at least equal to the amount of the outstanding loan. No contradictory evidence as to the value of the automobile was presented. The court held that the taxpayer did not have discharge of indebtedness income because the loan company received at least equal value for the amount of loan forgiven. **Martin v. Comm'r, T.C. Summary Op. 2009-21**.

EDUCATION EXPENSES. The taxpayer held a master's degree in clinical psychology and obtained a job as a mental health practitioner. The taxpayer incurred education expenses for course work leading to a doctoral degree in psychology. After obtaining the advanced degree, the taxpayer was employed as a psychologist. The court held that the education expenses for the doctorate were not deductible because the degree qualified the taxpayer for a new trade or business. **Ortega v. Comm'r, T.C. Summary Op. 2009-120**.

FIRST TIME HOMEBUYER CREDIT. The IRS announced the first successful tax fraud prosecution involving the first-time homebuyer credit. A Jacksonville, Florida, return preparer pled guilty to falsely claiming the first-time homebuyer credit on a client's federal income tax return. The preparer faces a possible sentence of three years in jail, a fine of up to $250,000 or both. The IRS also pointed out that the Service has executed seven search warrants and has 24 open criminal investigations of potential fraudulent abuse involving this credit. The IRS is using several sophisticated computers and programs to screen tax returns quickly to identify fraudulent first-time homebuyer credit claims. As a final warning, the IRS reminds taxpayers that they remain ultimately responsible for the accuracy of their tax returns regardless of whether they prepared the return or it was prepared for them. **IR-2009-69**.

IRA. The taxpayer, under age 59 1/2, owned an IRA and had begun receiving substantially equal periodic payments which included payment of an amount sufficient to pay state and federal taxes on the distributions. In one tax year, the IRA custodian failed to pay the state and federal taxes, resulting in a total payment/distribution less than the equal periodic payments. The taxpayer requested a ruling that the failure to distribute the entire required distribution amount for the calendar year, and a proposed makeup distribution in the next calendar year would not be considered a modification of a series of substantially equal period payments under I.R.C. § 72(t)(2)(A)(iv) and would not result in the imposition of the 10 percent additional tax under I.R.C. § 72(t)(1). The IRS granted the request. **Ltr. Rul. 200930053, April 27, 2009**.

INSTALLMENT REPORTING. The taxpayer sold their personal residence and used the exclusion under I.R.C. § 121 to exclude a portion of the gain from the sale from taxable income. The sale involved two annual payments and the taxpayers wanted to use the installment method of reporting the taxable gain but their income tax return preparer told them that they could not use the installment method of reporting the gain because they used the Section 121 exclusion. The tax return preparer filled out their return with all of the taxable gain reported as taxable income in the year of the sale. Two years later the taxpayers' new tax return preparer told them that both the exclusion and installment method reporting were available in the same year. The taxpayers requested permission to revoke the election out of installment reporting and the IRS granted the request. **Ltr. Rul. 200931001, April 14, 2009**.

MEALS. The taxpayer was employed as an engineer aboard a commercial fishing vessel. The taxpayer was charged for meals received while at sea but the taxpayer elected to use the federal per diem meals and incidental expense rate. The court held that the taxpayer was entitled to deduct only 50 percent of the federal per diem rate. **Kurtz v. Comm'r, 2009-2 U.S. Tax Cas. (CCH) ¶ 50,517 (11th Cir. 2009), *aff'g*, T.C. Memo. 2008-111**.

NET OPERATING LOSSES. The IRS has issued a reminder to small businesses that the deadline is approaching to take advantage of the expanded business loss carryback option included in the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5). Under I.R.C. § 172(b)(1)(H), as amended by the Act, many small businesses that had expenses exceeding their income for 2008 can choose to carry the resulting loss back for up to five years, instead of the usual two. Eligible individuals have until October 15, 2009, to choose this expanded carryback option, while eligible calendar-year corporations have until September 15, 2009. An "individual" in this context includes a sole proprietor that qualifies as an eligible small business (ESB), an individual partner in a partnership that qualifies as an ESB, and a shareholder in an S corporation that qualifies as an ESB. For example, a small business that had a net operating loss (NOL) in 2008 could carry that loss back to 2003, rather than 2006. Because the loss is spread over more years, the resulting refund could be larger than it would otherwise be. An ESB that elects to take this option can benefit by offsetting the loss against income earned in up to five prior tax years, getting a refund of taxes paid up to five years ago, or using up part or all of the loss now, rather than waiting to claim it on future returns. The option is available for ESBs that had no more than an average of $15 million in gross receipts over a three-year period ending with the tax year of the NOL. This choice is available for only one tax year. A refund as a result of this option can be accelerated by individuals by filing Form 1045 and by corporations by filing Form 1139. **IR-2009-72.**

PARTNERSHIPS

ADJUSTED BASIS ELECTION. A partner in the taxpayer partnership died during the tax year but the partnership failed to make the I.R.C. § 754 election to adjust partnership basis in partnership property for that tax year. The IRS granted an extension of time to make the election. **Ltr. Rul. 200932037, April 29, 2009**.

PASSIVE ACTIVITY LOSSES. The taxpayers were married individuals who filed their tax returns jointly. The taxpayers represented that they were in a real property business as defined by I.R.C. § 469 and were qualified under I.R.C. § 469(c)(7)(B) to make an election to treat all their interests in rental real estate as a single rental real estate activity but taxpayers filed their joint return without the statement required under Treas. Reg. § 1.469-9(g)(3). The IRS granted the taxpayers an extension of time to file the statement and make an effective election. **Ltr. Rul. 200931038, April 10, 2009**.

PENSION PLANS. For plans beginning in August 2009 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 4.40 percent, the corporate bond weighted average is 6.48 percent, and the 90 percent to 100 percent permissible range is 5.83 percent to 6.48 percent. **Notice 2009-63, I.R.B. 2009-34**.

PERSONAL RESIDENCE INTEREST. Taxpayers, husband and wife, owned a "second residence" under Treas. Reg. § 1.163-10T. The taxpayers obtained a loan from a bank secured by a mortgage on the second residence. On the taxpayers' tax returns, the taxpayers deducted amounts as qualified residence interest under I.R.C. § 163(h)(3), in reasonable reliance on the advice of a qualified tax professional. The taxpayers sought an extension of time to elect to treat the interest on the mortgage as interest paid on indebtedness not secured by a qualified residence under Treas. Reg. § 1.163-10T(o)(5). The IRS granted the request for an extension. **Ltr. Rul. 200932030, April 14, 2009**.

The taxpayers purchased a personal residence and made payments on an assumed mortgage. However, Form 1098, showing mortgage interest paid was sent to the previous owners. The court noted that the financing arrangements for the purchase were not clear but held that the taxpayers had proved that they were the legal and beneficial owners of the residence and were entitled to a mortgage interest deduction for their mortgage payments. **Johnson v. Comm'r, T.C. Summary Op. 2009-124**.

PRACTICE BEFORE IRS. The IRS has issued proposed regulations clarifying that under Section 10.27(b) of Treasury Department Circular No. 230, 31 C.F.R. Part 10, a practitioner may charge a contingent fee for services rendered in connection with the IRS's examination of or challenge to an amended return or claim for refund or credit that is filed (1) before the taxpayer received a written notice of examination of, or a written challenge to, the original tax return, or (2) no later than 120 days after receipt of the written notice or challenge. Further, a contingent fee may be charged for services rendered in connection with a whistleblower claim under I.R.C. § 7623. The proposed regulations restate the guidance issued in *Notice 2008-43, 2008-1 C.B. 748*. **74 Fed. Reg. 37183 (July 28, 2009)**.

RELIGIOUS ORGANIZATIONS. The IRS has issued proposed regulations updating the questions and answers in Treas. Reg. §301.7611-1, relating to church tax inquiries and examinations, to reflect changes in IRS offices caused by the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. No. 105-206). **74 Fed. Reg. 39003 (Aug. 5, 2009)**.

S CORPORATIONS

ASSESSMENTS. The taxpayer was a majority shareholder in two S corporations which were sold. The taxpayer overstated the taxpayer's basis in the corporations, resulting in an understatement of taxable income from the sales. More than three years and less than six years after the filing of the tax return for the year of the sale, the IRS filed a notice of deficiency which resulted from a reduction of the taxpayer's basis in the corporations. The taxpayer sought summary judgment because the assessment was filed more than three years after the filing of the return. The IRS argued that the six year limitation applied because the return understated taxable income. The court held that the six year limitation did not apply because the overstatement of basis was not an understatement of receipt of income. **Beard v. Comm'r, T.C. Memo. 2009-184**.

The taxpayer was a partner in a partnership which sold partnership property. The partnership overstated the partnership's basis in the property, resulting in an understatement of taxable income from the sale. More than three years and less than six years after the filing of the tax return for the year of the sale, the IRS filed a final partnership administrative adjustment which resulted from a reduction of the partnership's basis in the property sold. The taxpayer sought summary judgment because the FPAA was filed more than three years after the filing of the return. The IRS argued that the six year limitation applied because the return understated taxable income. The court held that the six year limitation did not apply because the overstatement of basis was not an understatement of receipt of income. **Salman Ranch Ltd. v. United States, 2009-2 U.S. Tax Cas. (CCH) ¶ 50,528 (Fed. Cir. 2009), *rev'g*, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,803 (Fed. Cls. 2007)**.

TAX SCAMS. The IRS has issued a reminder to avoid identity theft scams that may use the IRS name, logo or web site address to trick taxpayers into believing that the scam is a genuine IRS request for personal information or other official communication. Such scams can operate through fax, phone, or e-mail (also called phishing scams). The IRS does not normally contact taxpayers or request personal information by email and any communications purportedly from the IRS asking for a lot of detailed personal information should be suspect. If an individual receives any such email, they should not open any attachments or click on any links in the email. Any suspicious email should be forwarded to the IRS at phishing@irs.gov and then deleted from the recipient's inbox. When in doubt, individuals should contact the IRS directly at 1-800-829-1040, to make sure that any suspicious communications were in fact sent by the IRS. Recent scams have involved the Making Work Pay tax credit, false notices claiming that the recipient is entitled to receive millions of dollars from recovered funds, lottery winnings or cash consignments, counterfeit IRS Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, and other counterfeit IRS forms, and most commonly, tax refund scams. With respect to refund scams, the IRS stresses that taxpayers are not required to complete special forms to receive tax refunds that were claimed on previously filed returns. In addition, the public should be on the lookout for suspicious communications that threaten consequences for failure to respond, that use incorrect grammar or odd phrasing or that contain extremely long e-mail addresses that do not start with the actual IRS web site address http://www.irs.gov/. **IR-2009-71.**

TRAVEL EXPENSES. The U.S. State Department has published the maximum rates of per diem allowances for travel in foreign areas. These rates are used for determining per diem rates that employers can use to reimburse employees for lodging, meals and incidental expenses incurred during business travel away from home with the need to produce receipts. See *Rev. Proc. 2007-63, 2007-2 C.B. 809*. **CCH MISC-DOC, 2009ARD 150-1, August 1, 2009**.

The taxpayer was employed as a carpenter and would drive from the taxpayer's home to the construction company, from the company to the job site and, on occasion, from the first job site to a second job site. The taxpayer kept a written record of all job-related travel, although the case is unclear that the taxpayer kept a record of each section of the daily travel. The court held that the taxpayer kept sufficient written records to substantiate the travel expenses but allowed a deduction only for travel between the first job site and the second job site because travel from home to the company and first job site was part of the nondeductible commuting travel. **De Chasing v. Comm'r, T.C. Summary Op. 2009-127**.

TRUSTS. A decedent had established a testamentary trust for the five children of a niece. The children received equal shares of the income from the trust during the lifetime of the niece and equal shares of the trust corpus upon the death of the niece. The trustee obtained a judicial division of the trust into five equal trusts with a pro rata division of the trust corpus. The IRS ruled that the division of the trust did not result in recognition of gain or loss. **Ltr. Rul. 200932029, April 23, 2009**.

IN THE NEWS

HOME OFFICE DEDUCTION. Fortune Small Business online has reported that U.S. Representatives John McHug, R-N.Y., and Kurt Schrader, D-Ore., have introduced the Home Office Deduction Simplification Act. The bill would create a standard $1,500 home office deduction, which owners could opt for instead of the current rules. It would translate into a tax savings of about $500 for those who are not currently taking the home office deduction, says Keith Hall, tax adviser for the National Association for the Self-Employed. The bill has 28 co-sponsors. **Ian Mount, "A Simpler Home Office Deduction," Fortune Small Business, August 14, 2009**.

TAX ISSUES. The IRS has issued a request to business taxpayers, associations and other interested parties to submit new issues involving a tax controversy to the Industry Issue Resolution (IIR) program. The objective of the IIR program is to resolve business tax issues common to significant numbers of taxpayers through new and improved guidance that will save the time and expense that would otherwise be expended through examinations. Submissions may be made any time; however, issues submitted and received by August 31, 2009, will be considered for acceptance in April. The IRS reviews submissions semi-annually. The Service will make its project selections based on the criteria set forth in Rev. Proc. 2003-36, 2003-1 CB 859. For each issue selected, a multi-functional team of IRS, Chief Counsel, and Treasury personnel is assembled to gather and analyze relevant facts from industry groups and other interested persons. **IR-2009-70**.

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FARM INCOME TAX, ESTATE AND BUSINESS PLANNING SEMINARS

by Neil E. Harl

January 4-8, 2010

Sheraton Keauhou Bay Resort & Spa

Kailua-Kona, Big Island, Hawai'i.

We are happy to report that a sufficient number of people have sent in deposits for this seminar that we have decided to hold the seminar. Thus, the seminar will not be cancelled except for extraordinary circumstances. We encourage all subscribers to let us know if you plan to attend. Additional brochures will be sent out this fall.

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Seminar sessions run from 8:00 a.m. to 12:00 p.m. each day, Monday through Friday, with a continental breakfast and break refreshments included in the registration fee. Each participant will receive a copy of Dr. Harl's 400+ page seminar manual *Farm Income Tax: Annotated Materials* and the 600+ page seminar manual, *Farm Estate and Business Planning: Annotated Materials,* both of which will be updated just prior to the seminar.

Here is a sample of the major topics to be covered:

- Farm income items and deductions; losses; like-kind exchanges; and taxation of debt including the Chapter 12 bankruptcy tax provisions.
- Deferring crop insurance proceeds and livestock sales; reinvestment opportunities for livestock to avoid reporting the gain; involuntray conversions.
- Circumstances under which self-employment tax is due
- Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.
- Introduction to estate and business planning.
- Co-ownership of property, including discounts, taxation and special problems.
- Federal estate tax, including alternate valuation date, special use valuation, handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.
- Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.
- Organizing the farm business—one entity or two, corporations, general and limited partnerships and limited liability companies ; emphasis on entity liquidations, reorganizations and other strategies for removing capital from the entity.
- Recent developments in the treatment of losses of LLCs and LLPs
- Recent legislation tax provisions.

The seminar registration fee is $645 for current subscribers to the *Agricultural Law Digest,* the *Agricultural Law Manual* or the *Principles of Agricultural Law*. The registration fee for nonsubscribers is $695. For more information call Robert Achenbach at 541-466-5544 or e-mail at robert@agrilawpress.com.