were far more limited than today and the amount of annual revenue was fairly modest, at least when measured by today's standards.

- The third reason for the export-import language was to preserve harmony among the states. The major concern at the time was the advantage of the maritime or seaboard states in terms of being the gateways for imports from other countries and the point of shipment of exports to points outside the United States. The understood objective was, as some have stated, to foster a free flow of goods in commerce. There apparently was relatively little concern about the movement of goods from state to state although the "dormant" commerce clause[8] focused on that aspect of the movement of goods. Obviously, the widespread use of air shipments has undercut the original argument relating to the inherent advantage of maritime states.

The litigated cases

In an early U.S. Supreme Court decision, *Woodruff v. Parham,*[9] the court held that a uniform tax imposed by a municipal corporation on all sales in the municipality, whether the sales were made by a citizen of that state or a citizen of some other state, and whether the goods sold were the produce of the state within which the ordinance as passed or of some other state, was validly imposed. In a more recent case, *Itel Containers International Corp. v. Huddleston*,[10] the State of Tennessee had imposed a state sales or use tax on the leasing of containers used to ship cargo in international commerce. The court held that the tax was not a tax on imported or exported goods, but rather a tax on a business transaction occurring within the state. Moreover, the tax did not draw revenue from the federal government in violation of the export-import clause.[11]

In a California case, *Sugarman v. State Board of Equalization,*[12] the taxpayer had purchased a yacht which was built in Amsterdam, The Netherlands and had the yacht shipped to San Francisco. The State of California imposed a use tax on the yacht. The taxpayer objected on various grounds, including constitutional grounds. The trial court held for the taxpayer in finding the state use tax unconstitutional. However, the California Supreme Court reversed the case on appeal, noting that the immunity of imported goods (in this case the yacht) from state taxation under the United States Constitution[13] was lost when the yacht was unwrapped and placed in the water in California for use in the State of California.

In conclusion

The right of states to impose a use tax on imported goods, notwithstanding the wording of the United States Constitution,[14] is clearly established under judicial precedent. That does not mean, however, that a state might not enact a tax that would clearly fall within the constitutional language although states appear to enjoy considerable latitude in that respect.

ENDNOTES

[1] See, e.g., Itel Containers International Corp. v. Huddleston, 507 U.S. 60 (1993). See also "Developments in the Law—Federal Limitations on State Taxation of Interstate Business," 75 *Harv. L. Rev*. 953 (1962); Hartman, "State Taxation of Interstate Commerce: A Survey and An Appraisal." 46 *Va. L. Rev*. 1051, 1058-65 (1960).

[2] Art. I, § 10, Clause 2.

[3] Art. I, § 10, Clause 2.

[4] See, e.g., Caterpillar Tractor Co. v. The Department of Revenue, 47 Ill. 2d 278, 265 N.E. 2d 675 (1970) (use of imported goods by Illinois users subject to state use tax).

[5] See Klein, "Effect on state or local taxes of Federal Constitution's import-export clause (Art. I, § 10, cl. 2)," 122 L.Ed.2d 853 (2008).

[6] 423 U.S. 276 (1976).

[7] *Id*.

[8] U.S. Const. Art. I, § 8.

[9] 75 U.S. 123 (1868).

[10] 507 U.S. 60 (1993).

[11] U.S. Const. Art. I, § 10, Cl. 2.

[12] 51 Cal. 2d 361, 333 P.2d 333 (1958).

[13] Art. I, § 10, Cl. 2.

[14] Art. I, § 10, Cl. 2.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

EXEMPTIONS.

PENSION PLANS. The debtor claimed a profit-sharing plan and two IRAs as exempt retirement funds under Section 522(b)(4)(A). The court held that the profit-sharing fund was not eligible for the exemption because the debtor failed to get a favorable determination letter from the IRS for the plan. Because the IRAs received rollover funding from the plan, the IRA funds were also not qualified for the exemption. In addition, the court found that the plan was disqualified because the debtor had control of the fund and engaged in prohibited transactions. ***In re* Daniels, 2011-2 U.S. Tax Cas. (CCH) ¶ 50,477 (Bankr. D. Mass. 2011)**.

CHAPTER 12

PLAN. The chapter 12 debtors owned a horse farm. The Chapter 12 plan provided that the value of the farm was $400,000 and was subject to a secured claim of the first mortgage holder of $400,000 and a $100,000 second lien. The plan treated the first mortgage as a secured claim and provided for payments over 30 years at 4.25 percent. The second lien was treated as an unsecured claim and paid with other unsecured claims. Although no creditor objected to the plan, the court sua sponte raised the issue as to whether a chapter 12 plan could provide for payments longer than five years. The court noted several precedents, including *Travelers Ins. Co. v. Bullington, 878 F.2d 354, 357 (11th Cir. 1989)* and *In re Fortney, 36 F.3d 701 (7th Cir. 1994)*, for allowing such payments and held that the debtors' plan was confirmable. ***In re*** **Tognini, 2011 Bankr. LEXIS 2629 (Bankr. E.D. Va, 2011)**.

SECURED CLAIMS. The Chapter 12 debtor filed a motion for valuation of three parcels of real property used in the farming operation. The court first held that the valuation method for the properties was determined by the Chapter 12 plan's disposition of the properties. One property had a seven-lot subdivision on it, with the rest used in the farming operation. The debtor indicated that some of the lots would be sold. The court held that property was to be valued at fair market value. The second property was entirely used in the farm operation and was to be retained by the debtor in continued farming operations. The court held that this property was also to be valued at fair market value. The third property was used in the debtor's farming operation but the chapter 12 plan provided for two dispositions: (1) transfer of the property to the secured creditor if the value of the property exceeded the loan amount or (2) retention of the property by the debtor in the farming operation if the value was less than the loan amount. The court held that under scenario (1) the liquidation value of the property was to be used, and under scenario (2) the fair market value was to be used. ***In re*** **McElwee, 2011 Bankr. LEXIS 2176 (Bankr. M.D. Penn. 2011)**.

FEDERAL FARM PROGRAMS

NO ITEMS.

FEDERAL ESTATE AND GIFT TAXATION

GROSS ESTATE. The decedent's pre-deceased spouse had left a portion of the estate to a trust for the decedent and their children. The decedent served as co-trustee with a bank and the co-trustees had the power to apportion trust income among the beneficiaries. The co-trustees also had the power to distribute trust corpus for the "necessary maintenance, education, health care, sustenance, welfare or other appropriate expenditures needed by . . . [the beneficiaries] taking into account the standard of living to which they are accustomed." The decedent's estate excluded the value of the trust assets from the decedent's estate and the IRS assessed taxes based on inclusion of the trust assets in the decedent's estate because the decedent had a general power of appointment over the assets. The IRS argued that the power to invade trust principal was not restricted by an ascertainable standard under state law. The court held that the trust language did establish an ascertainable standard, under Mississippi law, related solely to the decedent's health, education, support or maintenance; therefore, the decedent did not have a general power of appointment over trust principal at the time of death. **Estate of Chancellor v. Comm'r, T.C. Memo. 2011-172**.

MARITAL DEDUCTION. The decedent's will contained the following language: "To the extent that I own any equity interest at my death in any of the following closely held investments, i.e. [Assets], it is my desire that such equity interests be retained and that each of them be distributed so that all such equity interests are ultimately owned in equal shares by [Children]. If any of them are deceased, it is my desire that the decedent's share of such equity interests be owned equally by such decedent's children." The court held that this created a specific bequest which was mandatory on the executor. Thus, the court held that the property involved in this bequest was not included in the residuary estate which passed to the surviving spouse and was not eligible for the marital deduction. **Ltr. Rul. 201126030, March 1, 2011**.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayer was an independent contractor. The taxpayer lost all business records when the taxpayer's house was foreclosed upon and destroyed with the records in the house. The taxpayer rented space in another house and used part of that space to store tools and run the taxpayer's business. However, the taxpayer did not use the space exclusively for business. The taxpayer claimed depreciation deductions for a truck and tools used in the business and claimed travel expenses for travel to work sites. The court held that the taxpayer did not have a home office for travel expenses purposes because the space was not used exclusively for business. Because the taxpayer worked at each site separately, no travel expenses were allowed between the work sites and the taxpayer's residence. There was no claim for travel expenses between work sites. The court also denied the depreciation deductions for the truck and tools for lack of substantiation of the value of that property. **Bogue v. Comm'r, T.C. Memo. 2011-164**.

The taxpayer had operated a remodeling business before it was sold. The taxpayer then started an activity in which the taxpayer purchased two improved properties and remodeled the buildings before reselling the properties, one at a gain and one at a loss. The taxpayer filed a Schedule C for the activity, claiming deductions for depreciation, travel expenses and other expenses. The taxpayer did not continue the activity after the sale because the real estate market was worsening. The IRS denied the deductions on the basis that the taxpayer did not operate a trade or business. The court held that the taxpayer's real estate activity was a trade or business because the taxpayer had substantial experience at remodeling, kept adequate records and stopped the activity when it became clear that it would not be profitable. **Morgan v. Comm'r, T.C. Summary Op. 2011-92**.

CHILD AND DEPENDENT CARE CREDIT. The IRS has published information about qualifying the expenses of summer day camp for children for the child and dependent care credit. The child and dependent care credit are available for expenses incurred during the summer and throughout the rest of the year. The cost of day camp may count as an expense towards the child and dependent care credit. Expenses for overnight camps do not qualify. Whether your childcare provider is a sitter at your home or a daycare facility outside the home, taxpayers may get some tax benefit if they qualify for the credit. The credit can be up to 35 percent of qualifying expenses, depending on income. Taxpayers may use up to $3,000 of the unreimbursed expenses paid in a year for one qualifying individual or $6,000 for two or more qualifying individuals to figure the credit. For more information, see IRS Publication 503, *Child and Dependent Care Expenses*, available at www.irs.gov or by calling 800-TAX-FORM (800-829-3676). **IRS Summertime Tax Tip 2011-01**.

DEPENDENTS. During 2008, the taxpayer lived with the taxpayer's mother and three siblings. The taxpayer attended college and worked several jobs, giving most of the money to the mother for family expenses, including clothes and games for a sister, age 11. The mother did not claim the sister as a dependent but the taxpayer did. The taxpayer also claimed an earned income tax credit and a child tax credit, based on the dependent sister. The court held that the taxpayer could claim the dependency deduction, earned income tax credit and a child tax credit because the sister satisfied the relationship test, the principal abode test and the support test and was not claimed as a dependent on the mother's return. Note: For tax years beginning after Dec. 31, 2008, the statute, I.R.C. § 152(c)(4), was amended to provide that if an individual may be claimed as a qualifying child by two or more taxpayers for a taxable year beginning in the same calendar year, such individual shall be treated as the qualifying child of the taxpayer who is the parent of the individual. *Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, § 501(c)(2)(B)(i), 122 Stat. 3980 (2008).* **Abdi v. Comm'r, T.C. Summary Op. 2011-89**.

The taxpayer was divorced and the former spouse was awarded custody in the divorce decree. The former spouse filed a petition for increased child support and the court decree awarding the child support also decreed that the taxpayer was entitled to claim the child dependency exemption for the child. When the taxpayer filed an income tax return claiming the exemption for the child, the taxpayer enclosed a copy of the decree but did not enclose a signed copy of Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents. The court held that the taxpayer was not entitled to the exemption because the court order did not specify the tax years involved nor did it contain the former spouse's social security number. **Briscoe v. Comm'r, T.C. Memo. 2011-165**.

DISABILTY PAYMENTS. The taxpayer adopted a disability plan under state law to provide certain benefits for employees who sustain a job-related injury, illness or occupational disease arising out of the course and within the scope of employment. Under the plan, an employee injured on duty would receive 75 percent of the employee's salary at the time of injury for the first six-month period. The six-month period could be extended for an additional six months upon the taxpayer's receipt of supplementary medical documentation. The employee would receive 65 percent of salary for the second six-month period. The IRS ruled that benefits paid to an employee under the plan were paid pursuant to a statute in the nature of workers' compensation and amounts paid under the plan were excludable from the employee's gross income under I.R.C. § 104(a)(1). **Ltr. Rul. 201127010, March 31, 2011**.

DOMESTIC PRODUCTION DEDUCTION. The taxpayer was a grain marketing and agricultural supply cooperative which provided its members and some eligible non-members with a variety of services. The taxpayer sold a range of farm supplies, including energy products, crop nutrients, and livestock feed, to members and others. The taxpayer paid cash to members and eligible non-members for farm commodities sold to the taxpayer for resale and export. The payments were in addition to patronage dividends paid from net earnings of the taxpayer. The taxpayer sought a ruling that the payments for commodities were eligible pre-unit retains which could be added back to calculate qualified production activities income (QPAI) for purposes of the domestic production deduction. The IRS ruled that the payments met all the qualifications of per-unit retains; therefore, the payments could be included in QPAI. **Ltr. Rul. 201126012, March 23, 2011**.

IRA. The taxpayer was solicited by a financial advisor to participate in a scheme to convert the taxpayer's traditional IRA to a Roth IRA without payment of any taxes. The taxpayer eventually worked with two more advisors on the scheme but did not seek any independent advice as to the legality of the scheme. The scheme involved setting up empty corporations and shifting the IRA accounts between the corporations and dissolving the corporations after the final conversion to the Roth IRA. The court held that the scheme lacked any economic substance and was an attempt to evade the IRA distribution and excess Roth IRA contribution rules. The taxpayer was assessed penalties under I.R.C. § 6651(a)(1) because the taxpayer failed to disclose the scheme on Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts, and did not seek independent advice as to the tax ramifications of the scheme. **Paschall v. Comm'r, 137 T.C. No. 2 (2011)**.

The taxpayer was solicited by a financial advisor to participate in a scheme to convert the taxpayer's traditional IRA to a Roth IRA without payment of any taxes. The taxpayer eventually worked with two more advisors on the scheme but did not seek any independent advice as to the legality of the scheme. The scheme involved setting up empty corporations and shifting the IRA accounts between the corporations and dissolving the corporations after the final conversion to the Roth IRA. The court held that the scheme lacked any economic substance and was an attempt to evade the IRA distribution and excess Roth IRA contribution rules. The taxpayer was assessed accuracy-related penalties under I.R.C. § 7491(c). The court held that the penalties were properly assessed because the taxpayer did not seek independent advice as to the tax ramifications of the scheme. **Swanson v. Comm'r, T.C. Memo. 2011-156**.

INNOCENT SPOUSE. The taxpayer was denied equitable innocent spouse relief from taxes due during a period when the taxpayer was married. The IRS denied the relief solely because the unpaid taxes were attributable to the taxpayer's income. The court held that the IRS denial solely on that ground was improper; however, the court upheld the denial of relief because the taxpayer did not demonstrate that the former spouse had misappropriated joint funds by failing to use those funds to pay the taxes. The appellate court affirmed in a decision designated as not for publication. **Maluda v. Comm'r, 2011-2 U.S. Tax Cas. (CCH) ¶ 50,475 (3d Cir. 2011), *aff'g*, T.C. Memo. 2009-281**.

LIMITED LIABILITY COMPANY. The taxpayer formed a limited liability company and wanted the LLC to be taxed as a partnership. The taxpayer failed to timely file Form 8832, Entity Classification Election. The IRS granted an extension of time for the taxpayer to file Form 8832. **Ltr. Rul. 201126024, March 14, 2011**.

MEDICAL DEDUCTION. The decedent died in 2008. During 2007 the decedent was diagnosed with Alzheimer's disease and the decedent's doctor determined that the decedent needed assistance and supervision 24 hours a day. The decedent's brother, acting under a power of attorney, hired two persons to provide the 24 hours a day care. The court held that the 24 hour per day care was qualified long-term care services eligible for the medical expense deduction for amounts over 7.5 percent of adjusted gross income. **Estate of Baral v. Comm'r, 137 T.C. No. 1 (2011)**.

MORTGAGE INTEREST. The taxpayer began living with the owner of a house in 2003. The taxpayer initially paid rent to the partner but gradually increased payments in assistance with the partner's mortgage payments. The couple agreed in early 2007 that the taxpayer should become a part owner of the house but the taxpayer was not added to the mortgage and deed until June 13, 2007. The taxpayer claimed a mortgage interest deduction for all of 2007 but the IRS disallowed the deduction for interest paid before June 13, 2007. The court held that the taxpayer was not entitled to the deduction for interest paid before June 13, 2007 because the taxpayer did not have a legal or equitable ownership interest in the house. **Wheeler v. Comm'r, T.C. Summary Op. 2011-83**.

PASSIVE ACTIVITY LOSSES. The taxpayers, husband and wife, owned several improved real properties which were rented out as time-share condominiums. Some of the units were rented on average for less than seven days at a time and some were rented on average more than seven days at a time. The taxpayers paid unrelated companies to manage the condominiums. The court held that the taxpayers did not materially participate in the rental operations because the hired management was not attributable to the taxpayers and the taxpayers did not otherwise spend sufficient time on the rental activity. The court held that the taxpayers could not include the time they spent on bank deposits, post office visits, recordkeeping, tax return preparation, and travel to the properties as hours of participation in the rental activity. The court also found that the hours listed for maintenance and repairs were exaggerated. The court held that the taxpayers did not meet any of the tests of material participation; therefore, the rental income was passive investment income and the taxpayers were not entitled to deductions for the losses in excess of those allowed by the IRS. **Jende v. Comm'r, T.C. Summary Op. 2011-82**.

PENSION PLANS. For plans beginning in July 2011 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 4.27 percent, the corporate bond weighted average is 5.97 percent, and the 90 percent to 100 percent permissible range is 5.37 percent to 5.97 percent. **Notice 2011-59, I.R.B. 2011-31**.

S CORPORATIONS

ASSESSMENTS. A petition for review by the U.S. Supreme Court has been filed in the following case. 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 Tax Court held that the six year limitation did not apply because the overstatement of basis was not an understatement of receipt of income. The Seventh Circuit Court of Appeals reversed, holding that the understatement of basis was a omission of gross income that extended the limitation period. **Beard v. Comm'r, 2011-1 U.S. Tax Cas. (CCH) 50,176 (7th Cir. 2011), *rev'g*, T.C. Memo. 2009-184**.

ELECTION. The taxpayer formed a limited liability company and wanted the LLC to be taxed as an S corporation. The taxpayer failed to timely file Form 8832, Entity Classification Election, and Form 2553, Election by a Small Business Corporation. The IRS granted an extension of time for the taxpayer to file both forms.

Ltr. Rul. 201127008, March 31, 2011.

STUDENT INCOME. The IRS has published information about the taxes owed by students performing summer jobs. When a student first starts a new job the student must fill out a Form W-4, Employee's Withholding Allowance Certificate. This form is used by employers to determine the amount of tax that will be withheld from the paycheck. If a student has multiple summer jobs, make sure all employers are withholding an adequate amount of taxes to cover the total income tax liability. To make sure withholding is correct, a taxpayer can use the withholding calculator on www.irs.gov. All tips a taxpayer receives are taxable income and are therefore subject to federal income tax. Many students do odd jobs over the summer to make extra cash. Earnings students receive from self-employment – including jobs like baby-sitting and lawn mowing – are subject to income tax. If the taxpayer has net earnings of $400 or more from self-employment, the taxpayer will also have to pay self-employment tax. This tax pays for the taxpayer's benefits under the social security system. Social security and medicare benefits are available to individuals who are self-employed the same as they are to wage earners who have social security tax and medicare tax withheld from their wages. The self-employment tax is figured on Form 1040, Schedule SE. Food and lodging allowances paid to ROTC students participating in advanced training are not taxable. However, active duty pay – such as pay received during summer advanced camp – is taxable. Special rules apply to services a taxpayer performs as a newspaper carrier or distributor. The taxpayer is a direct seller and treated as self-employed for federal tax purposes if the taxpayer meets the following conditions: (1) The taxpayer is in the business of delivering newspapers. (2) All the taxpayer's pay for these services directly relates to sales rather than to the number of hours worked. (3) The taxpayer performs the delivery services under a written contract which states that the taxpayer will not be treated as an employee for federal tax purposes. **IRS Summertime Tax Tip 2011-02**.

TAX RETURN PREPARERS. The IRS has announced it will send letters to approximately 100,000 tax return preparers who prepared returns in 2011 but failed to follow new requirements. In 2010, the IRS launched an initiative to increase its oversight of the tax return preparation industry and regulate the conduct of tax return preparers. All paid tax return preparers must obtain a Preparer Tax Identification Number (PTIN) and, when required to do so, sign their names and include their PTINs on the returns and refund claims they prepare for compensation. Starting July 7, 2011, the IRS began sending letters to about 100,000 tax return preparers who either used outdated PTINs or used social security numbers as identifying numbers on returns they prepared this filing season. The letters explain the new oversight program, inform preparers of how to register for a new PTIN, or renew an old PTIN, and where to get assistance. Some unscrupulous preparers may attempt to elude the new oversight program by not signing returns they prepare. Taxpayers should never use tax return preparers who refuse to sign returns and enter PTINs. In an effort to identify these "ghost preparers," the IRS later this year also will send letters to taxpayers who appear to have had assistance with their returns but lack tax return preparer signatures. The letter will inform taxpayers how to file a complaint against preparers who failed to sign returns and explain how to choose legitimate tax preparers. The goal of the letters is to protect taxpayers by ensuring that all paid federal tax return preparers are registered with the IRS, and sign tax returns they prepare and use an identifying number when required to do so. **IR-2011-74**.

VEHICLE EXPENSES. The taxpayer operated several businesses and claimed car and truck expenses on Schedule C. The evidence also showed that the taxpayer also included the expenses under other expenses. The taxpayer had mileage logs for use of the vehicles but no receipts for repairs or oil changes. The court held that the IRS properly disallowed the duplicated car and truck expenses. **Wilson v. Comm'r, T.C. Summary Op. 2011-85**.

NUISANCE

RIGHT-TO-FARM ACT. The plaintiffs operated a nursery on land zoned as agricultural-residential. After a nuisance complaint was filed with the county, the county found the plaintiffs in violation of several sections of the county Unified Land Development Code. The plaintiff filed suit against the county, arguing that the zoning requirements violated the Florida Right to Farm Act, Fla. Stat. Ch. 823. The Florida statute was enacted in 2000 and the zoning ordinances were enacted in 1989. The court held that, under Fla. Stat. § 823.14(6), the statute did not apply to restrict zoning ordinances in existence at the time of passage of the right-to-farm statute; therefore, the application of the zoning requirements on the plaintiff was not prohibited. **Wilson v. Palm Beach County, 2011 Fla. App. LEXIS 8934 (Fla. Ct. App. 2011)**.

SECURED TRANSACTIONS

CROP LIEN. The debtors were potato farmers who had obtained several loans over the years from a creditor bank. The loans were secured by the potato crops and farm equipment. In 2009 a crop disaster prevented the debtors from repaying the loan for that year; however, the bank agreed to forebear from foreclosing on the loan for 2010. The debtors were able to plant a crop in 2010 by obtaining smaller loans from other sources and signed an agreement that the bank's forbearance was not a new loan. The 2010 crop proceeds were first used to pay off the short term creditors who supplied funds for the 2010 crop and the debtor filed for Chapter 12 bankruptcy. The debtors sought a ruling that the bank's lien did not extend to the remainder of the 2010 crop. The court held that the financing statements filed to perfect the crop loans remained in force during 2010 and covered "crops to be grown;" therefore, the bank's lien extended to the 2010 crop. The debtors also sought permission to roll over the proceeds of the 2010 crop to the 2011 crop year so that a 2011 crop could be produced. The court rejected this request because the debtors did not provide adequate protection of the bank's liens. ***In re* Moore, 2011 Bankr. LEXIS 2397 (Bankr. N.D.**

Miss. 2011).

IN THE NEWS

MILLENNIUM MULTIPLE EMPLOYER WELFARE BENEFIT PLAN. The Millennium Multiple Employer Welfare Benefit Plan, a racketeering scheme disguised as an ERISA employee benefit plan, defrauded more than 500 people of $300 million, according to a federal RICO complaint. The Internal Revenue Service has announced that it has reached an agreement with the Millennium Multiple Employer Welfare Benefit Plan (Millennium Plan). The Millennium Plan is presently the subject of a bankruptcy proceeding that was filed on June 9, 2010, in the U.S. Bankruptcy Court for the Western District of Oklahoma (Case No. 10-13528). Under the agreement reached with the IRS and the terms of the Order Confirming Modified Plan dated June 16, 2011, the Millennium Plan will terminate its operations, liquidate its assets and distribute approximately $80 million in assets to individual participants. The agreement with the IRS resolves certain issues relating to an IRS investigation into the design, marketing, operation and management of the Millennium Plan. The agreement with the IRS also provides a procedure for resolving hundreds of income tax and penalty examinations of employers and employees who participated in the Millennium Plan. Finally, the agreement with the IRS addresses tax issues relating to the liquidation of the Millennium Plan, including information reporting and income tax withholding requirements. **IR-2011-72**.

HIGHWAY USE TAX. The IRS announced that, for truckers and other owners of heavy highway vehicles, their next federal highway use tax return, usually due Aug. 31, will instead be due on Nov. 30, 2011. In general, the highway use tax applies to trucks, truck tractors and buses with a gross taxable weight of 55,000 pounds or more. Ordinarily, vans, pick-ups and panel trucks are not taxable because they fall below the 55,000-pound threshold. Because the highway use tax is currently scheduled to expire on Sept. 30, 2011, this extension is designed to alleviate any confusion and possible multiple filings that could result if Congress reinstates or modifies the tax after that date. Under temporary and proposed regulations filed on July 15, 2011 in the Federal Register, the Nov. 30 filing deadline for Form 2290, Heavy Highway Vehicle Use Tax Return, for the tax period that begins on July 1, 2011, applies to vehicles used during July, as well as those first used during August or September. Returns should not be filed and payments should not be made prior to Nov. 1. To aid truckers applying for state vehicle registration on or before Nov. 30, the new regulations require states to accept as proof of payment the stamped Schedule 1 of the Form 2290 issued by the IRS for the prior tax year, ending on June 30, 2011. Under federal law, state governments are required to receive proof of payment of the federal highway use tax as a condition of vehicle registration. Normally, after a taxpayer files the return and pays the tax, the Schedule 1 is stamped by the IRS and returned to filers for this purpose. A state normally may accept a prior year's stamped Schedule 1 as a substitute proof of payment only through Sept. 30. For those acquiring and registering a new or used vehicle during the July-to-November period, the new regulations require a state to register the vehicle, without proof that the highway use tax was paid, if the person registering the vehicle presents a copy of the bill of sale or similar document showing that the owner purchased the vehicle within the previous 150 days. **IR-2011-77**.

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New Legislation

Reporting Farm Income
- Leasing land to family entity
- Items purchased for resale
- Items raised for sale
- Crop insurance proceeds
- Sales of diseased livestock
- Gains and losses from commodity futures

Claiming Farm Deductions
- Soil and water conservation expenditures
- Fertilizer deduction election
- Farm lease deductions
- Preproductive period expense provisions
- Paying wages in kind

Sale of Property
- Income in respect of decedent
- Sale of farm residence
- Installment sale including related party rules
- Sale and gift combined.

Like-Kind Exchanges
- Requirements for like-kind exchanges
- What is "like-kind" for realty
- Partitioning property

Taxation of Debt
- Turnover of property to creditors
- Discharge of indebtedness

Second day

FARM ESTATE AND BUSINESS PLANNING

New Legislation

The Liquidity Problem

Property Held in Co-ownership
- Federal estate tax treatment of joint tenancy
- Traps in severing joint tenancies
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- Other problems of property ownership

Federal Estate Tax
- The gross estate
- Special use valuation
- Property included in the gross estate
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Generation-skipping transfer tax, including later GST consequences for transfers in 2010
- Taxable estate
- The unified credit and other credits
- Unified estate and gift tax rates
- Basis for deaths in 2010
- Federal estate tax liens

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

Use of the Trust

Multiple Entity Business Planning

The General Partnership

Limited Partnerships

Limited Liability Companies
- Developments with passive losses

The Closely-Held Corporation
- State anti-corporate farming restrictions
- Developing the capitalization structure
- Tax-free exchanges

Status of the Corporation as a Farmer
- The regular method of income taxation
- The Subchapter S method of taxation

Financing, Estate Planning Aspects and Dissolution of Corporations
- Corporate stock as a major estate asset
- Dissolution and liquidation
- Reorganization

Social Security
- In-kind wages paid to agricultural labor

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