CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

FEDERAL ESTATE AND GIFT TAXATION

DOES THE ESTATE TAX ADVERSELY AFFECT FARMERS? An article published by the Economic Research Service claims that farmers are more likely than the general public to be subject to the federal estate tax, although the article acknowledges that farmers have several provisions to lessen the impact with careful estate planning. Durst, "Federal Estate Taxes Affecting Fewer Farmers but the Future Is Uncertain." http://www.ers.usda.gov/AmberWaves/June09/Features/FederalEstateTax.htm Comment by Dr. Neil E. Harl: It is my view that, with a $3,500,000 applicable exclusion amount in effect for this year, and a near certainty that the figure will remain there for 2010 and beyond (until inflation leads to indexing or a statutory increase) the vast majority of farmers and ranchers, even those who do not plan well, have little to worry about. That means $7,000,000 for a husband and wife.

Although the work is slightly dated, Burman, Gale and Rohaly, "Options for Reforming the Estate Tax," 117 *Tax Notes* 379 (April 18, 2005), found that an applicable exclusion amount of $3,500,000 would reduce the number of farms and small businesses affected sharply with only an estimated 30 small businesses and farms affected annually. The Congressional Budget Office, also in a 2005 study, found that, with a $3,500,000 applicable exclusion amount, an estimated 187 farmers would file returns, 65 would owe federal estate tax and only 13 would not have sufficient liquidity to pay the federal estate tax. Congressional Budget Office, "Effects of the Federal Estate Tax on Farms and Small Businesses," Table 8, July, 2005.

My own work, relying on IRS data published annually, shows for 2007 that, in the over $20,000,000 taxable estate bracket, 71 decedents' estates reported an average of $4,031,239 in farm property. It is true that some farm property is subject to federal estate tax but it is increasingly those with large estates, not those who have actually operated farm and ranch businesses. We need to be careful in assuming that a wealthy individual owning farmland and cash renting it to tenants is not coming in under the radar in terms of a policy that provides relief for those who are or have been involved in a farm or ranch business.

GIFTS. The taxpayers, husband and wife, transferred their residence to a trust which was intended to meet the qualified personal residence trust (QPRT) requirements. The IRS ruled that the property qualified as a personal residence under I.R.C. § 2702(a)(3)(A)(iii) and Treas. Reg. § 25.2702-5(b)(2) because (1) it was comparable in size to other nearby properties used for residential purposes, including adjacent land that was not in excess of what was reasonably appropriate for residential purposes, taking into consideration the property's size and location; and (2) the property satisfied the primary use requirements of Treas. Reg. § 25.2702-5(b)(2)(iii). The taxpayers transferred their reminder interests in the QPRT to an irrevocable trust in exchange for cash and marketable securities equal in value to the remainder interests valued using the I.R.C. § 7520 valuation rules. The IRS ruled that the transfer did not constitute a taxable gift and was not subject to the I.R.C. § 2702(a)(2) valuation rules so long as neither taxpayer was terminally ill and both received adequate consideration. **Ltr. Rul. 200919002, Dec. 23, 2008**.

MARITAL DEDUCTION. The decedent owned two partnerships which held stock in a closely-held corporation. The decedent's will bequeathed most of the estate to a trust for the surviving spouse and the trust included several smaller bequests which could be made if the sale of the stock was profitable. The estate representative included all of the value of the stock in the marital trust and claimed a marital deduction for that amount, arguing that the contingent bequests were not likely to be fulfilled, or would not be fulfilled for up to six years. The bequests also lapsed if the surviving spouse died before the funding of the bequests. The IRS sought summary judgment on the issue that the contingent bequests had to be included in the estate and excluded from the marital deduction. The court denied summary judgment, holding that an issue of fact remained as to the value of the corporation at the time of the decedent's death. **Alan Baer Revocable Trust, Dated February 9, 1996 v. United States, 2009-1 U.S. Tax Cas. (CCH) ¶ 60,573 (D. Neb. 2009)**.

TRANSFERS WITH RETAINED INTERESTS. The decedent's spouse had pre-deceased the decedent and had received most of the spouse's estate in a QTIP trust. The decedent had transferred some of the assets to a family limited partnership and gifted interests to the decedent's children. The decedent retained sufficient assets for the decedent's living expenses. The decedent's spouse had used the assets for active stock trading and the family partnership continued that activity with one of the decedent's children managing the stock account. The court found that the decedent had a legitimate non-tax reason for creating the partnership and excluded the assets transferred to the partners from the decedent's estate. Within one month of death, the decedent had broken a hip and undergone heart surgery. During the recovery, the decedent transferred additional assets to the family partnership. The court held that these assets were included in the decedent's estate because there was no legitimate non-tax reason for the transfer and the decedent retained insufficient assets to pay the decedent's living expenses and anticipated estate tax liability. **Estate of Miller v. Comm'r, T.C. Memo. 2009-119**.

FEDERAL INCOME TAXATION

BAD DEBT DEDUCTION. The taxpayer was divorced and, as part of the divorce agreement, had transferred a diamond ring to the former spouse. The former spouse was supposed to pay any liabilities associated with real property transferred to the spouse under the divorce agreement but the taxpayer was required to pay a loan against a house when the spouse failed to make payments. In addition, the taxpayer agreed to pay the former spouse's separate income tax liability for the last tax year of their marriage. The taxpayer claimed a theft loss for the ring, loan payments and tax payment. The court disallowed the theft loss deductions because (1) the ring was awarded to the former spouse under the divorce agreement, (2) the taxpayer was not a guarantor of the loan payments, and (3) the taxpayer had made the tax payments under a separate settlement with the former spouse. The appellate court affirmed. **Ferguson v. Comm'r, 2009-1 U.S. Tax Cas. (CCH) § 50,390 (5th Cir. 2009), *aff'g*, T.C. Memo. 2006-32**.

CORPORATIONS

CONTROLLED CORPORATIONS. The IRS has adopted as final regulations that provide guidance to taxpayers for determining which corporations are included in a controlled group of corporations. **74 Fed. Reg. 25147 (May 27. 2009)**.

EXECUTIVE COMPENSATION. The taxpayer corporation, prior to becoming a publicly-held corporation, entered into an employment contract with one of its executives. Under I.R.C. § 162(m) limits the deduction for covered employees applies where the compensation exceeds $1 million. However, Treas. Reg. § 1.162-27(f)(1) provides that the deduction limitation does not apply to compensation paid under an agreement entered into prior to the time a corporation becomes publicly held. Treas. Reg. § 1.162-27(f)(2) provides that a corporation may rely on Treas. Reg. § 1.162-27(f)(1) until the earliest of: (i) the expiration of the plan or agreement; (ii) the material modification of the plan or agreement, within the meaning of Treas. Reg. § 1.162-27(h)(1)(iii); (iii) the issuance of all employer stock and other compensation that has been allocated under the plan; or (iv) the first meeting of shareholders at which directors are to be elected that occurs after the close of the third calendar year following the calendar year in which the initial public offering occurs or, in the case of a privately held corporation that becomes publicly held without an initial public offering, the first calendar year following the calendar year in which the corporation becomes publicly held. The IRS ruled that compensation, including the grant of stock, is not subject to the deduction limitation where paid prior to the expiration of the earliest reliance period in sections 1.162-27(f)(1)(i) - (iv). **Ltr. Rul. 200919020, Feb. 2, 2009**.

DEPENDENTS. The taxpayer was divorced and the former spouse had legal and physical custody of the couple's child. The taxpayer did not provide any evidence of the amount of time the child lived with the taxpayer and the divorce child custody agreement provided that the former spouse would claim the child as a dependent for federal income tax purposes. The former spouse did not sign a document stating that the spouse would not claim the child as a dependent. The taxpayer paid child support payments during the tax year and claimed the child as a dependent on the taxpayer's federal tax return. The court held that the taxpayer was not entitled to the dependency deduction, child tax credit or earned income tax credit for the child. **Irions v. Comm'r, T.C. Memo. 2009-96**.

DISABLED ACCESS CREDIT. The taxpayer entered into a contract to purchase pay phones which were modified to provide easier access by disabled persons. The agreement provided for guaranteed minimum payments to the taxpayer but provided that the phone company had responsibility for locating, installing, monitoring and maintaining the phones. The agreement allowed the taxpayer to sell the phones back to the company after five years at the same price, or earlier less a 10 percent restocking fee. The taxpayer claimed depreciation deductions for the phones and claimed a tax credit, under I.R.C. § 44, the disabled access credit. The court held that the taxpayer did not have sufficient ownership interest in the phones to take a depreciation deduction. The court noted that the taxpayer had no responsibility for maintenance and no risk of loss of value because of the buy-back provision. The court also held that the disabled access credit could not be claimed by the taxpayer for the same reason as the denial of depreciation deductions. **Snyder v. Comm'r, T.C. Memo. 2009-97; Loveland v. Comm'r, T.C. Memo. 2009-98; Doherty v. Comm'r, T.C. Memo. 2009-99**.

DISASTER LOSSES. On April 21, 2009, the president determined that certain areas in Florida 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, tornadoes, and flooding, which began on March 26, 2009. **FEMA-1831-DR.** On April 22, 2009, the president determined that certain areas in Indiana are eligible for assistance from the government under the Act as a result of severe storms, tornadoes, and flooding, which began on March 8, 2009. **FEMA-1832-DR.** On April 23, 2009, the president determined that certain areas in Georgia are eligible for assistance from the government under the Act as a result of severe storms, tornadoes, and flooding, which began on March 26, 2009. **FEMA-1833-DR.** On April 27, 2009, the president determined that certain areas in Arkansas are eligible for assistance from the government under the Act as a result of severe storms and tornadoes which began on April 9, 2009. **FEMA-1834-DR.** On April 28, 2009, the president determined that certain areas in Alabama are eligible for assistance from the government under the Act as a result of severe storms, tornadoes, and flooding, which began on March 25, 2009. **FEMA-1834-DR.** Accordingly, taxpayers in the areas may deduct the losses on their 2008 federal income tax returns. See I.R.C. § 165(i).

The IRS has reminded taxpayers that, effective for 2009: (1) the 10-percent adjusted gross income limit for losses no longer applies; and (2) taxpayers must reduce the loss from each casualty event by $500. Taxpayers have the option of claiming disaster-related casualty losses on either their 2008 or 2009 federal returns. However, because of recent law changes, while claiming the losses on 2008 returns may result in faster refunds, waiting until 2009 to make the claim may be more beneficial depending on the taxpayer's circumstances. **See West Virginia Disaster Relief Notice OHWV09-41**.

DISCHARGE OF INDEBTEDNESS. The taxpayer defaulted on credit card payments and the credit card company obtained a judgment for the amount owed plus interest. The taxpayer filed for bankruptcy but the case was dismissed when the taxpayer failed to make the plan payments. Several years later, the credit card company forgave the debt and issued a Form 1099-C, Cancellation of Debt, for the amount the taxpayer owed on the account at the time. The taxpayer provided no evidence of insolvency at the time the credit card debt was forgiven. The court held that the amount of credit card debt forgiven was taxable income because the taxpayer was not insolvent and the debt was not forgiven as part of a bankruptcy case. **Hill v. Comm'r, T.C. Memo. 2009-101**.

EDUCATION EXPENSES. The taxpayer was a public school teacher and was employed full-time under a non-tenured status. In order to maintain that status, the taxpayer incurred education expenses during the year. The additional education would also be necessary for the taxpayer to obtain a higher status. The court held that the cost of the additional education was deductible because the education was required to maintain the taxpayer's eligibility as a teacher, even though it would also make the taxpayer eligible for a higher employment status. **Ray v. Comm'r, T.C. Summary Op. 2009-71**.

ELECTRICITY PRODUCTION CREDIT. The IRS has announced the 2009 inflation adjustment factor (1.4171) and the reference price used in determining the availability of the renewable electricity production credit to taxpayers producing electricity using wind at 4.32 cents per kilowatt hour. The inflation adjustment factor and reference prices apply to calendar year 2009 sales of kilowatt hours of electricity produced in the U.S. and its possessions from qualified energy resources. The renewable electricity production credit for calendar year 2009 is 2.1 cents per kilowatt hour on sales of electricity produced from wind energy, closed-loop biomass, geothermal energy and solar energy and 1.1 cents per kilowatt hour on sales of electricity produced from open-loop biomass, small irrigation power, landfill gas, trash combustion, qualified hydropower, marine and hydrokinetic energy facilities. **Notice 2009-40, 2009-1 C.B. 931**.

HEALTH SAVINGS ACCOUNTS. For tax years beginning after December 31, 2006, the maximum annual HSA is the indexed statutory amount, without reference to the deductible of the high deductible health plan. For calendar year 2010, the limitation on deductions under I.R.C. § 223(b)(2)(A) for an individual with self-only coverage under a high deductible health plan is $3,050 ($6,150 for family coverage). For calendar year 2010, a "high deductible health plan" is defined under I.R.C. § 223(c)(2)(A) as a health plan with an annual deductible that is not less than $1,200 for self-only coverage or $2,400 for family coverage, and the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed $5,950 for self-only coverage or $11,900 for family coverage. **Rev. Proc. 2009-29, I.R.B. 2009-22**.

INCOME. The taxpayers were members of the armed services on active duty who received a housing allowance which was paid to a private housing contractor on a military base. As part of a housing renovation program, the contractor paid the moving expenses of soldiers and families who were moved so that their housing could be renovated. In a Chief Counsel Advice letter, the IRS ruled that the payment for the moving expenses was not income to the taxpayers. **CCA Ltr. Rul. 200919031, March 20, 2009**.

IRA. Under I.R.C. § 72(t)(2)(D), an early distribution from an IRA is not subject to the additional 10-percent tax on early withdrawals if the amount is used to pay health insurance premiums in a tax year in which the taxpayer has received 12 consecutive weeks of unemployment compensation during that tax year or the succeeding year. In a Chief Counsel Advice letter, the IRS ruled that the Section 72(t)(2)(D) exception applies to self-employed taxpayers if the taxpayer can demonstrate that the taxpayer would have received unemployment compensation except for the fact that the taxpayer was self-employed. The ruling does not indicate what evidence would be sufficient. **CCA Ltr. Rul. 200920052, April 8, 2009**.

The taxpayer elected to receive distributions from an IRA in equal periodic payments. In one tax year, the taxpayer also received additional distributions which were entirely used to pay higher education expenses for the taxpayer's child. The taxpayer filed Form 5329, Additional Taxes on Qualified Plans and reported that the additional distributions were not subject to the 10 percent additional tax under the exception in I.R.C. § 72(t)(7) for higher education expenses. The issue was whether the additional distributions were counted toward the payments received under the equal payment election, resulting in all of those payments being subject to the 10 percent additional tax for early distributions. The court held that the additional payments eligible for the higher education expenses were not a modification of the equal periodic payments; therefore, the equal payments were not subject to the 10 percent additional tax. **Benz v. Comm'r, 132 T.C. No. 15 (2009)**.

INNOCENT SPOUSE. The taxpayer and former spouse had filed joint income tax returns which contained deductions from tax shelters which were found to be improper. The taxpayer requested innocent spouse relief for the resulting tax liability after the couple divorced and the IRS conceded the relief to the taxpayer. The former spouse intervened and provided evidence that the taxpayer had actual knowledge of the items claimed on the returns and argued that the taxpayer was not entitled to innocent spouse relief. Although the court found that the intervenor's evidence of the taxpayer's actual knowledge of the tax return items was persuasive, the court held that the evidence was not so compelling as to require overturning the IRS grant of innocent spouse relief. **Willela-Wilcox v. Comm'r, T.C. Summary Op. 2009-75**.

INTEREST RATE. The IRS has announced that, for the period July 1, 2009 through September 30, 2009, the interest rate paid on tax overpayments remains at 4 percent (3 percent in the case of a corporation) and for underpayments remains at 4 percent. The interest rate for underpayments by large corporations remains at 6 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 remains at 1.5 percent. **Rev. Rul. 2009-17, I.R.B. 2009-26.**

LIKE-KIND EXCHANGES. The taxpayer was a beneficiary of a trust which owned a one-third interest in a family farm as tenants-in-common with two other trusts, originally for the benefit of the taxpayer's two siblings. The one sibling died and the property in that trust passed to the surviving spouse and children. The decedent's survivors wanted to liquidate their interest in the farm. The three trusts exchanged their tenants-in-common interests for three equal valued fee simple interests in the farm. The ruling noted that the decedent's trust had a higher tax basis in its interest because of the death of the decedent. After the exchange, the decedent's trust's share of the property was sold to an unrelated party but the taxpayer and the other sibling retained their properties for use in a trade or business or for investment. The IRS noted that, although the taxpayer and other sibling were related parties, neither planned to sell their interests within two years. The IRS ruled that the taxpayer and other sibling were not related to the decedent's trust; therefore, the sale of the decedent's trust's interest in the farm after the exchange did not cause recognition of gain from the exchange under I.R.C. § 1031(f) which prohibits like-kind exchange non-recognition treatment where exchanged property is sold by a related party within two years after the exchange. **Ltr. Rul. 200920032, Feb. 3, 2009; Ltr. Rul. 200920027, Feb. 3, 2009**. **See also the lead article by Dr. Harl on page 81 of this issue**.

MEAL EXPENSES. A certified public accountant was permanently enjoined from preparing federal tax returns claiming that mariners were entitled to deductions for meal expenses while working on board a ship, even though no meal expenses were actually incurred. **United States v. Kapp, 2009-1 U.S. Tax Cas. (CCH) ¶ 50,376 (9th Cir. 2009)**.

PARTNERSHIPS

ADMINISTRATIVE ADJUSTMENTS. The taxpayer was one of three partners in a partnership which claimed a large charitable deduction for the contribution of software to a university. The partnership claimed the charitable deduction on a return which also claimed a double deduction for health insurance premiums paid. The premiums were claimed as health insurance expenses and as "other deductions." However, although the partners had equal shares of partnership profits and expenses generally, both the proper and duplicative health insurance deductions were not allocated equally. The IRS challenged the charitable deduction under the TEFRA partnership audit procedures. The taxpayer attempted to challenge the use of the TEFRA audit procedures, arguing that the partnership was a "small partnership" exempt from the procedures. Under the definition of "small partnership," in Treas. Reg. § 301.6231(a)(1)-1T(a)(3), a small partnership must allocate all deductions in the same proportion as other income and deductions. The court acknowledged that health insurance premiums are not relevant to the "same share" rule but held that the inclusion of the premiums as "other deductions" made them subject to the "same share" rule. The court noted that the IRS was entitled to rely on the income tax return to determine the nature of all deductions and was not required to determine whether the claimed "other deductions" were properly characterized. The case was affirmed in an appellate decision designated as not for publication. **Nehrlich v. Comm'r, 2009-1 U.S. Tax Cas. (CCH) ¶ 50,394 (9th Cir. 2009), *aff'g*, T.C. Memo. 2007-88**.

The taxpayers were members of a TEFRA partnership which filed amended Schedules K-1 which reflected a decrease in income and deductions. The taxpayers filed an amended return and sought a refund as part of an appeal of an assessment made before the filing of the amended Schedules K-1. The taxpayers did not include a Form 8082, Notice of Inconsistent Treatment of Administrative Adjustment Request (AAR). In addition, the amended return did not substantially comply with the requirements for an AAR because it was not filed in the manner required for a Form 8082 and did not include all the information required to be provided on a Form 8082. A copy of the amended return was not filed with the IRS center where the partnership return was filed and the amended return did not list the partnership's address, the partnership tax year to which the requested adjustments related and a detailed explanation of the specific reasons for the requested adjustments. The court held that, because the taxpayers did not file Form 8082 and the amended return did not substantially comply with the requirements of Form 8082, the income and deduction items remained partnership items over which the Tax Court did not have jurisdiction. **Samueli v. Comm'r, 132 T.C. No. 16 (2009)**.

PENALTIES. The taxpayers, husband and wife, were assessed accuracy-related penalties under I.R.C. § 6662 for tax liabilities arising form the use of trusts. The taxpayer claimed that they had relied on the advice of legal counsel in the claiming of deductions and income; however, the evidence showed that the taxpayers had sought counsel from an attorney who did not specialize in tax matters and who had specifically advised the taxpayers to seek the advice of a tax specialist. The taxpayers claimed to have relied on the advice of two tax specialists but neither specialist testified and the taxpayers did not present evidence of their qualifications. The court held that the accuracy-related penalty was properly assessed. The appellate court affirmed in a decision designated as not for publication. **Kierstead v. Comm'r, 2009-1 U.S. Tax Cas. (CCH) ¶ 50,391 (9th Cir. 2009), *aff'g*, T.C. Memo. 2007-158**.

PENSION PLANS. For plans beginning in May 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 3.76 percent, the corporate bond weighted average is 6.43 percent, and the 90 percent to 100 percent permissible range is 5.78 percent to 6.43 percent. **Notice 2009-45, I.R.B. 2009-22**.

The taxpayer was employed by a city as a emergency medical technician and obtained several loans from the taxpayer's retirement fund. The taxpayer applied for a refinancing of the loans and the loan processing authorization document explicitly stated that the refinancing option would likely result in taxable income. The document also offered two other options that would not result in taxable income: (1) an additional loan on the original terms; or (2) a new loan for a smaller amount. The original loan provided for 77 payments and the refinancing loan set the number of payments to the maximum of 130. The plan issued a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, reporting a distribution. The IRS assessed the taxpayer taxes on the distribution plus the 10 percent additional tax on early distributions. The court held that, under Treas. Reg. § 1.72(p)-1, Q-20, A-20(a)(2), the extension of the payment time to 130 months caused the replacement loan to be added to the amount of the loans replaced, resulting in loans in excess of the limit provided by I.R.C. § 72(p)(2)(A) and a taxable distribution for the amount in excess of the limit. **Marquez v. Comm'r, T.C. Summary Op. 2009-80**.

RETURNS. The IRS has published on its web site Publication 4779, Facts about Terminating or Merging Your Exempt Organization. **http://www.irs.gov/pub/irs-tege/p4779.pdf**

Taxpayers affected by the severe storms, flooding, mudslides and landslides in West Virginia counties of Mingo and Wyoming on May 3, 2009, have until July 2, 2009, to file returns, pay taxes and perform other time-sensitive acts otherwise due between May 3, 2009, and July 2, 2009. The filing extension does not apply to information returns in the Forms W-2, 1098, 1099 series, 1042-S or 8027, or to employment or excise tax deposits. **West Virginia Disaster Relief Notice OHWV09-41.**

SAFE HARBOR INTEREST RATES

June 2009

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	0.75	0.75	0.75	0.75
110 percent AFR	0.83	0.83	0.83	0.83
120 percent AFR	0.90	0.90	0.90	0.90
		Mid-term		
AFR	2.25	2.24	2.23	2.23
110 percent AFR	2.48	2.46	2.45	2.45
120 percent AFR	2.71	2.69	2.68	2.68
		Long-term		
AFR	3.88	3.84	3.82	3.81
110 percent AFR	4.26	4.22	4.20	4.`8
120 percent AFR	4.66	4.61	4.58	4.57

Rev. Rul. 2009-16, I.R.B. 2009-23.

SALE OF TIMBER. The IRS has adopted as final regulations governing the information reporting requirements for sales or exchanges of standing timber for lump-sum payments. Currently, I.R.C. § 6045(e) requires a "real estate reporting person," as defined in I.R.C. § 6045(e)(2), to make an information return and furnish a statement to the transferor with respect to a real estate transaction that consists in whole or in part of the sale or exchange of "reportable real estate." Treas. Reg. § 1.6045-4(b)(2) defines "reportable real estate" as, among other things, any present or future ownership interest in land. Treas. Reg. § 1.6045-4(c)(2)(i) provides that no return of information is required with respect to a sale or exchange of an interest in timber, provided that the sale or exchange of such property is not related to the sale or exchange of reportable real estate. The regulations provide that sales or exchanges of standing timber for lump-sum payments are "reportable real estate" transactions under Treas. Reg. § 1.6045-4(b)(2) and, thus, are to be reported as provided in I.R.C. § 6045(e) and the regulations. **74 Fed. Reg. 25429 (May 28, 2009)**.

SELF-EMPLOYMENT INCOME. The taxpayer was employed with a company which provided social workers to schools. The company issued the taxpayer a Form 1099-MISC listing the income. The taxpayer's return claimed the compensation as other income but did not pay any self-employment tax on the compensation. The taxpayer conceded that the income was self-employment income but claimed that the taxpayer could not pay the tax because of personal expenses. The court held that there was no exception for inability to pay taxes and affirmed the IRS assessment of self-employment taxes on the compensation. **George v. Comm'r, T.C. Summary Op. 2009-79**.

TRAVEL EXPENSES. The taxpayer was self-employed full-time as an interpreter by the state court system. The taxpayer and spouse lived in one city and the taxpayer accepted a job in another city while the spouse finished schooling. The taxpayer stayed at a motel during the days the taxpayer worked as an interpreter. The taxpayer also held part-time positions in the residence city. The spouse accepted a position in yet another city and the taxpayer sought and eventually obtained an interpreter position closer to the city where the spouse was employed. The taxpayer rented a house in the spouse's employment city and eventually sold the original house. The major issue was which city was considered the tax home for purposes of travel expenses. The court held that the taxpayer was not entitled to deduct travel, meals and other expenses for the employment in the other city because that city was considered the tax home for that employment. **Allen v. Comm'r, T.C. Memo. 2009-102**.

WORK OPPORTUNITY TAX CREDIT. Section 1221 of the American Recovery and Reinvestment Tax Act of 2009,Pub. L. No. 111-5, Div. B, Tit. I, (2009) amended I.R.C. § 51 to add two new targeted groups for purposes of the WOTC. Unemployed veterans and disconnected youth who begin work for an employer during 2009 or 2010 shall be treated as members of a targeted group for purposes of the WOTC. The IRS has issued a notice which sets forth the statutory definitions of "unemployed veteran" and "disconnected youth," and provides guidance on the definition of "disconnected youth." It also provides transition relief for employers who hire unemployed veterans or disconnected youth after December 31, 2008, and before July 17, 2009. **Notice 2009-28, I.R.B. 2009-24**.

RIGHT-TO-FARM

LEGISLATION. Oklahoma has enacted amendments to it right-to-farm law, Okla. Stat. tit. 50, § 1.1, to include in its definition of agricultural activities the "improvements or expansion to the activities provided in this paragraph including, but not limited to, new technology, pens, barns, fences, and other improvements designed for the sheltering, restriction, or feeding of animals of aquatic life, for storage of produce or feed, or for storage or maintenance of implements. If the expansion is part of the same operating facility, the expansion need not be contiguous; . . ." The new legislation also provides:

> "No action for nuisance shall be brought against agricultural activities on farm or ranch land which has lawfully been in operation for two (2) years or more prior to the date of bringing the action. The established date of operation is the date on which an agricultural activity on farm or ranch land commenced activity. If the physical facilities of the agricultural activity or the farm or ranch are subsequently expanded or new technology adopted, the established date of operation for each change is not a separately and independently established date of operation and commencement of the expanded activity does not divest the farm or ranch of a previously established date of operation. In any action for nuisance in which agricultural activities are alleged to be a nuisance, and which action is found to be frivolous by the court, the defendant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred in connection with defending the action, together with a reasonable amount for attorney fees. This section does not relieve agricultural activities of the duty to abide by state and federal laws, including, but not limited to, the Oklahoma Concentrated Animal Feeding Operations Act and the Oklahoma Registered Poultry Feeding Operations Act.

The new provisions are effective Nov. 1, 2009. **Okla. H.B. 1482**.

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FARM INCOME TAX, ESTATE AND BUSINESS PLANNING SEMINARS

by Neil E. Harl

January 4-8, 2010

Kailua-Kona, Big Island, Hawai'i.

Spend a week in Hawai'i in January 2010 and attend a world-class seminar on Farm Income Tax, Estate and Business Planning by Dr. Neil E. Harl. The seminar is scheduled for January 4-8, 2010 at Kailua-Kona, Big Island, Hawai'i, 12 miles south of the Kona International Airport.

NEW FOR 2010: This year we are asking for advance attendance commitment before contracting with the hotel. If you plan to attend the seminar, please send your name, address, phone number and e-mail address with a check for $100 to Agricultural Law Press, P.O. Box 835, Brownsville, OR 97327. If insufficient people send in their checks, we will cancel the seminar and return your deposit. If a sufficient number of people do send in their deposits, the seminar will be held and the deposits will become non-refundable and used to decrease the registration fee by $100. The decision whether to hold the seminar will be made on July 10, 2009 so please mail your deposit by July 5, 2009.

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.
- 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.
- 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.