CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

FEDERAL TAX

REFUNDS. The debtor was married but filed for Chapter 13 separately. The debtor's plan provided that all income tax refunds were to be paid to the bankruptcy estate. The debtor and spouse filed their returns using the joint filer status and the debtor sought a modification of the plan to provide that only the debtor's share of the refund was required to be paid to the estate. The court held that, because Florida law provides that spouses have a separate interest in tax refunds, the Chapter 13 plan could not require the spouse to turn over the spouse's portion of the refund in the estate. ***In re* Rice, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,198 (Bankr. M.D. Fla. 2010)**.

The debtor was married but filed for Chapter 13 separately. The issue was how much of a refund resulting from a joint return filed with a non-debtor spouse was included in the debtor's bankruptcy estate. The court reviewed three methods of calculating the non-spouse's share of the refund: (1) the amount proportional to the withheld taxes of each spouse, (2) the amount proportional to the incomes of each spouse, and (3) an equal share. The court held that the equal share method was appropriate because the spouses were jointly liable on any taxes; therefore, both should share equally in any refund. Thus, the court held that only half of any refund was included in the debtor's estate. ***In re* Smith, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,205 (Bankr. S.D. Ind. 2011)**.

FEDERAL FARM PROGRAMS

FARM AND RANCH LANDS PROTECTION PROGRAM. The CCC has adopted as final regulations amending the governing regulations for the Farm and Ranch Lands Protection Program as amended by the 2008 Farm Bill. **76 Fed. Reg. 4027 (Jan. 24, 2011)**.

FARM LOANS. The FSA has adopted as final regulations amending the Farm Loan Program's direct loan servicing regulations to implement provisions of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The first amendment further emphasizes transitioning borrowers to private sources of credit in the shortest time practicable. The second amendment amends 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 amends 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 the borrower's account is at the point of acceleration or foreclosure. The fourth amendment amends the supervised bank account regulations to make the FSA regulations on insurable account limits consistent with the regulations of the Federal Deposit Insurance Corporation. 7**6 Fed. Reg. 5055 (Jan. 28, 2011)**.

NATIONAL INSTITUTE OF FOOD AND AGRICULTURE. The USDA has adopted as final regulations amending a number of regulations of the USDA principally to reflect the establishment of the National Institute of Food and Agriculture and the abolishment of the Cooperative State Research, Education, and Extension Service, as mandated by section 251(f)(2) of the Department of Agriculture Reorganization Act of 1994, 7 U.S.C. 6971(f)(2). **76 Fed. Reg. 4801 (Jan. 27, 2011)**.

PACKERS AND STOCKYARDS ACT. The U.S. Supreme Court has denied certiorari in the following case. The plaintiff was a broiler chicken producer who raised the chickens under contracts with the defendant chicken processor. The defendant's payment schedule was based on weights of the chickens delivered. The plaintiff filed several complaints when the defendant prevented the plaintiff from being present when the chickens were weighed. The plaintiff also attempted to organize other producers. After the plaintiff refused to make expensive changes to the plaintiff's farm, the plaintiff's contract was not renewed, and the plaintiff alleged that the defendant had violated 7 U.S.C. §§ 192(a), (b) of the Packers and Stockyards Act by "engaging in unfair, unjustly discriminatory, or deceptive practices." The defendant argued that the plaintiff had not alleged or shown any adverse effect on competition; therefore, no violation of Sections 192(a), (b) occurred. The court held that a allegation of adverse impact on competition was required for a violation of 7 U.S.C. §§ 192(a), (b) of the Packers and Stockyards Act. **Terry v. Tyson Farms, Inc., 604 F.3d 272 (6th Cir. 2010), *cert. denied*, 2011 U.S. LEXIS 1031 (Sup. Ct. 2011)**.

FEDERAL ESTATE AND GIFT TAXATION

ALTERNATE VALUATION DATE. The estate hired a CPA to file the federal estate tax return which was timely filed. The CPA failed to consider and make the alternate valuation election on the return. The IRS granted an extension of time to file an amended return with the election. **Ltr. Rul. 201103003, Sept. 15, 2010**.

GENERATION-SKIPPING TRANSFERS. The taxpayers were great-grandchildren of a decedent who had died decades ago and whose will created trusts for the decedent's child and grandchildren. The trust provisions violated the rule against perpetuities at the time of the decedent's death but state law was changed to a "wait and see" rule. The current trust beneficiaries disagreed as to the terms of the trust and its affects under state law and negotiated a settlement which modified some elements of the trust. The IRS ruled that the modifications resulted from a bona fide legal dispute and would not cause the trust distributions to be a gift or income to the beneficiaries, nor would the modifications subject the trust to GSTT. **Ltr. Rul. 201104001, July 29, 2010**.

GIFTS. The taxpayers, husband and wife, formed an LLC with each owning 50 percent of the interests and funded with undeveloped real property and securities. The taxpayers also created trusts for their children and transferred interests in the LLC to the trusts. For gift tax purposes, the value of the LLC interests was discounted for lack of control and marketability. Although the trust and transfer documents were originally undated, the documents were eventually dated to show a simultaneous funding of the LLC and the trusts. The court held that the transfers to the trusts were indirect gifts because the sequence of creation of the trusts, funding of the LLC and transfers to the trusts did not occur in the proper sequence. The taxpayer attempted to reform the dates of the trusts but the court denied the reformation. The court noted that, even with a change of the dates, the gifts would be held to be indirect gifts under the step-transaction doctrine. The appellate court reversed, holding that there remained material issues of fact concerning the date of the taxpayers' intent to donate the interests. **Linton v. United States, 2011-1 U.S. Tax Cas. (CCH) ¶ 60,611 (9th Cir. 2011), *rev'g in part*, 2009-2 U.S. Tax Cas. (CCH) ¶ 60,575 (D. Wash. 2009)**.

PROPERTY WITH RETAINED INTEREST. The decedent was living in a residence purchased originally with funds provided by the decedent's daughter and son-in-law. Title to the residence was originally held by the decedent but was transferred to heirs within three years of death. The court held that the decedent's possession of the house as a residence and holding of legal title was sufficient to include the house in the decedent's estate because the decedent retained the beneficial interest in the house after conveying title to the heirs. **Estate of Van v. Comm'r, T.C. Memo. 2011-22**.

VALUATION. The decedent had owned a 1,100 acre ranch and had deeded a one-fifth interest in the ranch to each of five children, subject to the decedent's life estate in the ranch to use the ranch. The decedent continued to live on the ranch and pay all expenses associated with the property up to the decedent's death. The decedent did not pay rent to the children and did not seek permission to make any changes to the property. Although it was clear that the ranch was estate property under I.R.C. § 2036(a)(1), the estate argued that the federal estate tax value of the property should be discounted for the five minority interests in the property. The court disagreed and held that no discount would be applied for federal estate tax purposes because the ranch was treated as passing only on the death of the decedent under I.R.C. § 2036(a)(1) because the decedent retained a life estate in the property. **Estate of Adler v. Comm'r, T.C. Memo. 2011-28**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The taxpayer, a limited liability corporation, inadvertently failed to file a Form 7004, Application for Automatic Extension to File Certain Business Income Tax, Information, and Other Returns, for its taxable year. As a result, the taxpayer did not timely file its Form 1065, U.S. Return of Partnership Income, along with an original Form 3115 to change its method of accounting of depreciation for certain depreciable assets. The IRS granted an extension of time to file the Form 3115 with the original Form 1065. **Ltr. Rul. 201104027, Oct. 19, 2010**.

BAD DEBTS. The taxpayer informally agreed to help another person develop, manufacture and market a new fishing lure. The taxpayer initially provided funding without restrictions but later put notations on the funding checks that the amounts were loans. No loan documents were written or signed and no repayment terms were set. After the relationship ended, the taxpayer did not make any attempt to collect on the loans. The taxpayer filed returns which included a Schedule C that listed the contributed amounts as cost of goods sold. The court rejected this characterization because the taxpayer had no proof that the funds were used to create inventory. The taxpayer also argued that the contributions were deductible bad debts but the court also rejected this argument because there was no evidence that a bona loan existed. **Hultquist v. Comm'r, T.C. Memo. 2011-17**.

BUSINESS EXPENSES. The taxpayer was a self-employed consultant for architects and claimed substantial deductions for business expenses on Schedule C. As part of an audit of the returns, the taxpayer refused to provide any substantiation for the claimed expenses, arguing that the substantiation requirement violates the taxpayer's Fifth Amendment rights under the U.S. Constitution. The taxpayer was not the subject of any criminal investigation or case. At trial, the taxpayer claimed the same Fifth Amendment right and refused to provide any substantiation for the expenses. The court held that the deductions were properly disallowed for failure to substantiate the business relationship or amount of the expenses. **Raeber v. Comm'r, T.C. Memo. 2011-39**.

COOPERATIVES. The taxpayer was a tax-exempt vegetable marketing cooperative. The taxpayer had purchased a corporation in order to preserve its main market for the members' crops. The percentage of the purchases made by the corporation from the taxpayer exceeded the percentage of ownership in the corporation by the taxpayer. The taxpayer eventually was forced to sell the corporation because of financial issues but the taxpayer received a gain on the sale. The IRS ruled that the gain was patronage-source income because of the purchase of the corporation attributable to the members' business in the cooperative. **Ltr. Rul. 201103007, Oct. 5, 2010**.

The taxpayer was a tax-exempt farmers' marketing cooperative. After the loss of federal crop subsidies, the taxpayer's board decided to terminate but retain the operation of the facility until such time as it became certain that the facility would never be needed. Although the regular business of the cooperative ceased, the facilities were leased to another cooperative. The facilities were eventually sold at a gain. The IRS ruled that the rents and commissions received before the sale were non-patronage income but incidental to the taxpayer's operation and did not affect the tax-exempt status. The IRS also ruled that the gain from the sale of the facilities was patronage income because it was distributed to members based on the number of years each member used the taxpayer's facilities. **Ltr. Rul. 201105008, Oct. 5, 2010**.

COURT AWARDS AND SETTLEMENTS. The taxpayer had purchased disability income insurance and sued the insurance company when the company denied benefits after the taxpayer became disabled. The court awarded compensatory and punitive damages, interest, and costs to the taxpayer which the taxpayer did not include in taxable income. The IRS assessed a deficiency for the punitive damages, interest and a portion of the costs. The taxpayer argued that the punitive damages were excludible from income under I.R.C. § 104(a)(3) because the damages would not have been awarded but for the insurance policy. The court held that the punitive damages were taxable income because the punitive damages were not payments under an insurance policy for personal injury or sickness but were only awarded as a punishment of the insurance company. **Greenberg v. Comm'r, T.C. Memo. 2011-18**.

DEPRECIATION. The taxpayer, a limited partnership, timely filed its partnership return with an election not to claim additional first year "bonus" depreciation but failed to attach the election statement to the return. The IRS granted an extension of time to file an amended return with the statement of election. **Ltr. Rul. 201103031, Oct. 6, 2010**.

The taxpayer, a C corporation, timely filed its tax return with an election not to claim additional first year "bonus" depreciation. The taxpayer relied on the advice of a tax return preparer but did not realize the impact the election would have on other tax items and sought an extension of time to revoke the election. The IRS granted an extension of time to file an amended return without the election. **Ltr. Rul. 201105023, Oct. 28, 2010**.

This ruling apparently involved the same corporation as *Ltr. Rul. 201105023* just above. The taxpayer sought an extension to make the I.R.C. § 168(k)(4) election provided in the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (2008). I.R.C. § 168(k)(4)(A) provides that for the corporation's first taxable year ending after March 31, 2008, and for each subsequent taxable year, the corporation must not claim the additional first year depreciation deduction for all eligible qualified property, must use the straight line method of depreciation as the applicable depreciation method for all eligible qualified property, and must increase its business credit limitation under I.R.C. § 38(c) and the AMT credit limitation under I.R.C. § 53(c) by the bonus depreciation amount (as defined in I.R.C. § 168(k)(4)(C) and as determined under section 5 of *Rev. Proc. 2008-65, 2008-2 C.B. 1082*) that is determined for that taxable year and allocated to such limitation. Specifically, I.R.C. § 168(k)(4)(E)(iii) and (iv) provide, in general, that the corporation will be able to claim unused credits from taxable years beginning before January 1, 2006, that are allocable to research expenditures or AMT liabilities. The IRS granted the taxpayer an extension of time to make the I.R.C. § 168(k)(4) election. **Ltr. Rul. 201105013, Oct. 28, 2010**.

DOMESTIC PRODUCTION DEDUCTION. The taxpayer was a non-exempt farmers' cooperative which purchased grain from members for marketing to the public and members. The taxpayer did not operate on a pooling basis. Thus, the taxpayer's grain marketing proceeds were not shared equally on the basis of patronage and distributed in the form of harvest advances and progress payments with a final settlement after the pool closes as they would be if the taxpayer pooled. Commodity price risk did not automatically shift from the taxpayer's members to a pool at the time of harvest. Rather, that risk remained with members until they sell their grain to the taxpayer for marketing. The IRS ruled that the payments to members constituted per-unit retain allocations; therefore, the IRS ruled that the cooperative was allowed to add back these amounts paid to members as net proceeds in calculating its qualified production activities income under I.R.C. § 199(d)(3)(C). **Ltr. Rul. 201105015, Oct. 13, 2010**.

EMPLOYEE BENEFITS. The IRS has issued a correction of *Rev. Proc. 2011-11, 2011-1 C.B. 329* which had incorrectly stated the procedure applied to vehicles placed in service in 2010, where it should have said 2011. **Ann. 2011-9, 2011-1 C.B. 499**.

FIRST TIME HOMEBUYER CREDIT. The taxpayer's original house was destroyed by a fire and the taxpayer had a new residence built on the land. During the construction, the taxpayer lived 60 percent of the year with a friend and 40 percent of the year in a storage shed on the land. The construction took more than three years. In a Chief Counsel Advice letter, the IRS ruled that the taxpayer was eligible for the first time homebuyer's credit because the taxpayer did not live on the property more than 50 percent of the time during the three years before moving into the new house. **CCA 201104037, Oct. 19, 2010**.

The taxpayer purchased a first residence from the taxpayer's parents and claimed the first time homebuyer's credit for the purchase. The taxpayer claimed that the Form 5405 and IRS Publication 4819 failed to specifically state that the homebuyer's credit was not available for purchases from family members. The court held that the failures of the form and publication did not override the clear provisions of I.R.C. § 36(c) which prohibits the credit for intra-family purchases of a residence. **Nievinski v. Comm'r, T.C. Summary Op. 2011-10**.

INCOME. A state provided an incentive program which provided payments to health care professionals who perform services in under-served areas of the state. The payments are not restricted to repayment of student loans and are based on a percentage of the cost of tuition for medical school. In a Chief Counsel Advice letter, the IRS ruled that the payments were taxable income to the recipients because the payments were not required to be used to repay student loans, which is a requirement for exclusion under I.R.C. § 108(f)(4). **CCA 201104032, Sept. 24, 2010**.

IRA. I.R.C. § 4975(d)(20) provides that an IRA may engage in sales of property, loans and transfers or use of IRA assets with a party in interest (or a disqualified person) who is a party in interest only because the person provides services (or has certain relationships with a service provider), as long as the IRA receives no less, nor pays no more, than adequate consideration in connection with the transaction. The exemption does not apply to a fiduciary (or an affiliate) who has or exercises any discretionary authority or control with respect to the investment of the assets involved in the transaction or provides investment advice with respect to the assets. In a Chief Counsel Advice letter, the IRS ruled that the lease of a building in an IRA for no rent does not qualify for the exemption under I.R.C. § 4975(d)(20) because there was no adequate consideration paid for the use of the property and is a prohibited transaction under I.R.C. § 4975(c)(1)(D) and (E). **CCA 201105035, Jan. 6, 2011**.

LIMITED LIABILITY COMPANY. The taxpayer was a psychiatrist who originally operated a practice as a sole practitioner. With the advice of a CPA, the taxpayer formed a limited liability company with the taxpayer as 95 percent owner and a managing corporation as a 5 percent owner. The taxpayer's interest was further divided into a 10 percent general partnership interest and a 90 percent limited partner interest. The taxpayer then paid self-employment tax only on the 10 percent interest. The LLC did not elect to be taxed as an association. The court held that all of the new entities would be disregarded such that all of the income would be self-employment income to the taxpayer. **Robucci v. Comm'r, T.C. Memo. 2011-19**.

MAKING WORK PAY CREDIT. The IRS has published tips on the Making Work Pay Credit, which provides a refundable tax credit of up to $400 for individuals and up to $800 for married taxpayers filing joint returns. Most workers received the benefit of the Making Work Pay Credit through larger paychecks, reflecting reduced federal income tax withholding during 2010. Taxpayers who file Form 1040 or 1040A will use Schedule M to figure the Making Work Pay Tax Credit. Completing Schedule M will help taxpayers determine whether they have already received the full credit in their paycheck or are due more money as a result of the credit. Taxpayers who file Form 1040-EZ should use the worksheet for Line 8 on the back of the 1040-EZ to figure their Making Work Pay Credit. Taxpayers cannot take the credit if their modified adjusted gross income is $95,000 for individuals or $190,000 if married filing jointly or more, they can be claimed as a dependent on someone else return, they do not have a valid social security number or they are a nonresident alien. **IRS Tax Tip 2011-15**.

MEDICAL DEDUCTIONS. The IRS has published information about deductions for medical and dental expenses and other benefits. Taxpayers may deduct only the amount by which the total medical care expenses for the year exceed 7.5 percent of adjusted gross income. Taxpayers do this calculation on Form 1040, Schedule A in computing the amount deductible. Taxpayers can only include the medical expenses paid during the year. Taxpayers' total medical expenses for the year must be reduced by any reimbursement. It makes no difference if the taxpayer receives the reimbursement or if it is paid directly to the doctor or hospital. Taxpayers may include qualified medical expenses paid for the taxpayer, spouse, and dependents, including a person claimed as a dependent under a multiple support agreement. If either parent claims a child as a dependent under the rules for divorced or separated parents, each parent may deduct the medical expenses he or she actually pays for the child. Taxpayers can also deduct medical expenses paid for someone who would have qualified as a dependent except that the person did not meet the gross income or joint return test. A deduction is allowed only for expenses primarily paid for the prevention or alleviation of a physical or mental defect or illness. Medical care expenses include payments for the diagnosis, cure, mitigation, treatment, or prevention of disease, or treatment affecting any structure or function of the body. The cost of drugs is deductible only for drugs that require a prescription except for insulin. Taxpayers may deduct transportation costs primarily for and essential to medical care that qualify as medical expenses. The actual fare for a taxi, bus, train, or ambulance may be deducted. If the taxpayer uses a car for medical transportation, the taxpayer can deduct actual out-of-pocket expenses such as gas and oil or can deduct the standard mileage rate for medical expenses. With either method the taxpayer may include tolls and parking fees. Distributions from Health Savings Accounts and withdrawals from Flexible Spending Arrangements may be tax free if the taxpayer pays qualified medical expenses. For additional information on medical deductions and benefits, see Publication 502, Medical and Dental Expenses, or Publication 969, Health Savings Accounts and Other Tax-Favored Health Plans. **IRS Tax Tip 2011-21**.

The IRS has announced that breast pumps and supplies that assist lactation are medical care under I.R.C. § 213(d) because, like obstetric care, they are for the purpose of affecting a structure or function of the body of the lactating woman. Therefore, if the remaining requirements of I.R.C. § 213(a) are met (for example, the taxpayer's total medical expenses exceed 7.5 percent of adjusted gross income), expenses paid for breast pumps and supplies that assist lactation are deductible medical expenses. The IRS also stated that amounts reimbursed for these expenses under flexible spending arrangements, Archer medical savings accounts, health reimbursement arrangements, or health savings accounts are not income to the taxpayer. **Ann. 2011-14, I.R.B. 2011-9**.

NON-CONVENTIONAL FUEL PRODUCTION CREDIT. On the advice of the taxpayers' tax return preparer, the taxpayers invested in a partnership which claimed to be entitled to non-conventional fuel production credits under I.R.C. § 29 (now § 45K). The taxpayer did not investigate the partnership prior to the investment to determine whether the partnership was entitled to the credit. The court found that the partnership was not entitled to any credit and upheld the IRS disallowance of the taxpayers' share of the credit. The court also held that the taxpayers' were not entitled to any deduction for the purchase of the partnership interest because the taxpayers were not engaged in any trade or business as to the investment. **Collins v. Comm'r, T.C. Memo. 2011-37**.

PARTNERSHIPS

ASSESSMENTS. 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 because of the basis overstatement. The court held that the six year limitation did not apply because the overstatement of basis was not an understatement of receipt of income. **Home Concrete & Supply, LLC v. United States, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,207 (4th Cir. 2011), *rev'g*, 2009-2 U.S. Tax Cas. (CCH) ¶ 50,794 (E.D. N.C. 2009)**.

PARTNERS' DISTRIBUTIVE SHARE. The taxpayer was a limited liability partnership which operated a law practice with three partner lawyers, each with a 30 percent interest in profits and losses. A fourth partner was an S corporation which held a 10 percent profit and loss interest. In the tax year involved, the partnership allocated 87 percent of the partnership income to the S corporation. The partnership argued that the allocation was required by the partnership agreement but failed to produce a copy of the agreement. The court held that the IRS properly reallocated the income to the four partners based on their interests in profits and losses. The individual partners' shares of income were subject to self-employment tax. **Renkemeyer, Campbell & Weaver, LLP v. Comm'r, 136 T.C. No. 7 (2011)**.

PENSION PLANS. For plans beginning in February 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 6.10 percent, and the 90 percent to 100 percent permissible range is 5.49 percent to 6.10 percent. **Notice 2011-13, I.R.B. 2011-9**.

SOCIAL SECURITY BENEFITS. The taxpayers, husband and wife, filed a joint income tax return. The taxpayer had $59,000 of adjusted gross income and $15,000 of social security benefits for the tax year. The taxpayer did not include the social security benefits in taxable income, arguing that to do so would amount to double taxation. The court held that the statute was clear that a portion of social security benefits were taxable if other income plus one-half of the social security benefits exceeded a base amount ($32,000 in this case), as provided in I.R.C. § 86. **Lowery v. Comm'r, T.C. Summary Op. 2011-9**.

TAX RETURN PREPARERS. The IRS has issued a notice providing instructions for tax return preparers who have failed to obtain a PTIN after a good faith effort to obtain one. If tax return preparers using the online system are unsuccessful in obtaining a PTIN, the IRS system will notify them that their application was not processed and provide appropriate instructions. Complying with these instructions prior to the preparation of a tax return or claim for refund for compensation will establish that these individuals are making a good faith effort to comply with the new PTIN requirement. Tax return preparers who applied for a PTIN using paper Form W-12 prior to the date of publication of this notice in the Internal Revenue Bulletin and have not received a PTIN generally will receive a PTIN or an acknowledgment of receipt of the PTIN application within six weeks of the IRS' receipt of the PTIN application or within six weeks of the date of publication of this notice, whichever is later. Tax return preparers who apply for a PTIN using paper Form W-12 after the date of this notice generally will receive a PTIN or an acknowledgment of receipt of the PTIN application within six weeks from the date the application is submitted. For individuals who do not attempt to submit a PTIN application via the online system, the submission of a processable paper Form W-12 and payment generally constitutes a good faith attempt to comply with the requirement to obtain a PTIN. Accordingly, the IRS will permit any tax return preparer receiving (1) notice from the IRS that the IRS was unable to process their online PTIN application or (2) an acknowledgment of receipt of the paper PTIN application to prepare and file tax returns or claims for refund for compensation after the tax return preparer complies with all instructions provided in the notification or acknowledgment letter. **Notice 2011-11, 2011-1 C.B. 497**.

TRAVEL EXPENSES. The taxpayer was employed as a phlebotomist and traveled extensively to visit patients to draw blood for testing at the employer's laboratory. The taxpayer claimed deductions for travel expenses but did not produce any written records to substantiate any of the travel. The court held that the travel expense deductions were properly disallowed for lack of substantiation. **Martinez v. Comm'r, T.C. Memo. 2011-34**.

WITHHOLDING TAXES. The IRS has announced that, for wages paid after December 31, 2010, the procedures employers use to determine income tax withholding on wages paid for services performed by nonresident alien employees within the United States are different than the procedures used in 2010. The new procedures are explained in Publication 15 (Circular E), Employer's Tax Guide, for use in 2011 and Notice 1036, Early Release Copies of the 2011 Percentage Method Tables for Income Tax Withholding. **Notice 2011-12, I.R.B. 2011-8**.

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AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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Tuesday, May 10, 2011

FARM INCOME TAX

New Legislation

Reporting Farm Income
- Leasing land to family entity
- Constructive receipt of income
- Deferred payment and installment payment arrangements for grain and livestock sales
- Payments from contract production
- Items purchased for resale
- Items raised for sale
- Crop insurance proceeds
- Weather-related livestock sales
- Sales of diseased livestock
- Reporting federal disaster assistance benefits
- Gains and losses from commodity futures

Claiming Farm Deductions
- Soil and water conservation expenditures
- Fertilizer deduction election
- Farm lease deductions
- Prepaid expenses
- Preproductive period expense provisions
- Regular depreciation, expense method depreciation, bonus depreciation
- Paying rental to a spouse
- Paying wages in kind
- Section 105 plans

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

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

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

Wednesday, May 11, 2011

FARM ESTATE AND BUSINESS PLANNING

New Legislation

The Liquidity Problem

Property Held in Co-ownership
- Federal estate tax treatment of joint tenancy
- 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
- Family-owned business deduction recapture
- Property included in the gross estate
- Traps in use of successive life estates
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Taxable estate
- The unified credit and other credits
- Unified estate and gift tax rates
- Generation skipping transfer tax, including later GST consequences for transfers in 2010
- Basis for deaths in 2010
- Federal estate tax liens
- Undervaluations of property
- Reopening an examination

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

Use of the Trust

The General Partnership

Limited Partnerships

Limited Liability Companies
- Developments with passive losses
- Corporate-to-LLC conversions

The Closely-Held Corporation -
- State anti-corporate farming restrictions
- Developing the capitalization structure
- Tax-free exchanges
- Would incorporation trigger a gift because of severance of land held in joint tenancy?
- "Section 1244" stock

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

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

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