

within I.R.C. § 6231(a)(1)(b) *are not required to file a return as a partnership*. That is crystal clear.

Until recently, that interpretation was followed without question. A few complaints were heard, mostly coming from tax practitioners who objected to the fact that the filing was so simple that it “hurt their bottom line” because filing a tax return was made so simple many taxpayers could prepare their own return.

So why is there complaining?

The Chief Counsel Memorandum states, erroneously, that neither I.R.C. § 6031 nor I.R.C. § 6698 “. . . contain an automatic exception to the general filing requirement. That is simply not true. There is no way to read any statute to require any “general filing requirement” or any other requirement imposed on partnerships that are required by the “small partnership” exception. The two concepts are simply not linked. The “small partnerships” are separate and distinct from other partnerships that do not qualify for the “small partnership” statute. The “small partnership” was enacted to provide a simpler way to file a tax return for small partnerships.

Other guidance

Another source of helpful guidance is Rev. Proc. 84-35³ (which

is cited erroneously seven times in the Office of Chief Counsel Memorandum as Rev. Proc. 84-53 which has nothing to do with the controversy).

The Chief Counsel memorandum states that “. . . we conclude that Rev. Proc. 84-35 does not provide an automatic exemption to partnerships from the requirement of filing a Form 1065. “ That statement is totally misleading. As those who have been taking advantage of the “small partnership” know, the income from the “small partnership” is simply passed directly to the taxpayer for inclusion in their Form 1040.

END NOTES

¹ The Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 402(a), 96 Stat. 324 (1982), *enacting* I.R.C. § 6231(a)(1)(B).

² See Office of Chief Counsel, Internal Revenue Service Memorandum, CCA 201733013, July 12, 2017.

³ This author was a member of a small task force convened by the Department of the Treasury and IRS in 1967 to generate ideas on how the matter should be addressed. That group produced several ideas, most of which were enacted in 1969, 1976, 1982 and 1986.

³ 1984-1 C.B. 509.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

MARSHALLING. The debtor had originally filed for Chapter 12. A bank held a security interest in the debtor’s real estate, crops and farm equipment. Another creditor had a security interest in the crops and equipment but no interest in the real estate. The second creditor sought, under the doctrine of marshalling, to require the bank to look to the real estate first so that the second creditor could recover from the other farm property. The court in the Chapter 12 bankruptcy case denied the marshalling request because the Chapter 12 plan provided that the debtor would retain the real estate in the farm operation. *In re Ferguson, 2011 Bankr. LEXIS 4581 (Bankr. C.D. Ill. 2011)*. The Chapter 12 case was later converted to Chapter 7 with all property sold. The second creditor again sought to have the marshalling request reinstated and approved. The debtor and IRS objected to the request, arguing that the funds from the sale of the crop and equipment were needed to pay the taxes resulting from the sale of the real property, crops and equipment. Note: the Bankruptcy Court had applied the holding in *Hall v. U.S., 566 U.S. 506 (2012)* during the Chapter 12 case and held that the taxes from the sale of the farm property were not dischargeable unsecured claims. The Bankruptcy Court stated that the debtor’s personal liability for the taxes from the sale of the real property in the Chapter 7 case was not clear. The debtor and IRS further argued

that allowing the second creditor to receive the funds from the sale of the crops and equipment would be unfair to the other creditors and debtor in reducing the funds available to pay claims. The Bankruptcy Court noted that the doctrine of marshalling was not a fairness issue but one of protecting secured claimants by ordering the payment of priority secured claims first from priority collateral so that junior lienholders could recover from other collateral. Thus, the Bankruptcy Court held that marshalling would be allowed and the second creditor paid first from the funds remaining from the sale of the crops and equipment, subject only to trustee fees. The appellate court affirmed. *In re Ferguson, 2017 U.S. Dist. LEXIS 140567 (C.D. Ill. 2017), aff’g, 2013 Bankr. LEXIS 3386 (Bankr. C.D. Ill. 2013)*.

FEDERAL ESTATE AND GIFT TAXATION

GIFTS. The decedent created a limited liability company to which the decedent contributed 12 works of art. After an appraisal of the value of the artwork was obtained, the decedent gave interests in the LLC to several nieces equal in value to the unified credit at the time plus the annual exclusion amount in late 2001 and early 2002. The purpose of the gifts was to reduce the estate tax liability for the art works. The decedent initially planned to make annual gifts of additional LLC interests to the nieces in amounts equal to the annual exclusion amount. Because the 2002 gifts of the LLC

units exceeded the annual exclusion amount, the nieces signed an agreement to pay the gift taxes on the transfers of the LLC units. After the decedent remarried, the decedent sued the nieces in two state courts to have the gifts declared incomplete, but both courts held the gifts to be complete. The decedent died in November 2002. In a 2013 case, the Tax Court held that the decedent's estate was collaterally estopped from arguing that the gifts were not complete. See *Estate of Sommers v. Comm'r, T.C. Memo. 2013-8*. The IRS assessed a deficiency against the estate based on inclusion in the value of decedent's gross estate the gift tax determined to be due as a result of the 2002 gifts, \$510,648, because decedent had made those gifts less than three years before death. See I.R.C. § 2035(b). The IRS also excluded from decedent's gross estate the value the estate had assigned to the artwork that decedent had transferred to the LLC and reduced the marital deduction allowable to the estate by the estate tax liability resulting from the section 2035(b) inclusion that would have to be paid out of marital assets. Treas. Reg. § 20.2053-6(d) provides that gift taxes owed by a decedent's estate at death are generally deductible. The issue in this case was whether inclusion of the pre-death gifts is offset by a deduction allowable in the same amount under I.R.C. § 2053(a) on the ground that the gift tax liability was not paid until after decedent's death. The court held that, because the estate had a viable claim against the nieces for payment of the gift tax on the 2002 gifts of the LLC units, the estate could not claim the payable gift tax as an estate tax deduction. **Estate of Sommers v. Comm'r, 149 T.C. No. 8 (2017).**

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a "deceased spousal unused exclusion" (DSUE) amount to a surviving spouse. The decedent's estate did not file a timely Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The estate represented that the value of the decedent's gross estate was less than the basic exclusion amount in the year of the decedent's death including any taxable gifts made by the decedent. The IRS granted the estate an extension of time to file Form 706 with the election. *Note: The IRS has provided for a simplified method of obtaining an extension of time to file a portability election for small estates that are not normally subject to filing a Form 706. See Rev. Proc. 2017-34, 2017-1 C.B. 1282.* **Ltr. Rul. 201734002, May 2, 2017; Ltr. Rul. 201734005, May 9, 2017; Ltr. Rul. 201734006, May 16, 2017; Ltr. Rul. 201734008, May 16, 2017.**

REFUND. The decedent died in 2016. The decedent failed to timely file a 2008 income tax return, although the decedent was granted an automatic extension to October 2009 to file the return. For 2008, the decedent had income taxes withheld, applied a refund from 2007 and made an additional payment with the extension request. Thus, the decedent paid \$50,000 against a 2008 tax liability of \$9,000. The estate claimed that the decedent was suffering from a financial disability in 2008 through 2016 in that the decedent had a failing memory during that time. The estate presented a statement from the decedent's physician and the decedent's son, who held a power of attorney for the decedent, as to the decedent's memory issues. The 2008 return was filed in 2014 and claimed a refund.

The IRS argued that the statute of limitations on a refund request had expired. Under I.R.C. § 6511(a), the statute of limitations for filing a claim for a refund of an overpayment of tax is "3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later." I.R.C. § 6511(h) provides that when an individual is "financially disabled," the time limitations are tolled. An individual qualifies as financially disabled if ". . . unable to manage financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." I.R.C. § 6511(h)(2)(A). A person is not financially disabled if "any other person is authorized to act on behalf of such individual in financial matters." I.R.C. § 6511(h)(2)(B). Rev. Proc. 99-21, 1999-1 C.B. 18 provides that financial disability can be shown by providing statements from a medical professional and a statement from the person requesting the refund that no person was authorized to act for the disabled taxpayer. The court found that (1) the statement from the son was insufficient because it acknowledged that the son had a power of attorney in 2009 which authorized the son to file a return and (2) the physician's statement was insufficient because it failed to identify the specific dates during which the decedent was unable to manage her financial affairs. Therefore, the court held that the estate failed to prove that the decedent was financially disabled in 2009 and later years to toll the running of the statute of limitations on a claim for refund. **Estate of Kirsch v. United States, 2017-2 U.S. Tax Cas. (CCH) ¶ 50,319 (W.D. N.Y. 2017).**

SPECIAL USE VALUATION. Under I.R.C. § 2032A(e)(7)(A)(ii), rates on new Farm Credit System Bank loans are used in computing the special use value of real property used as a farm for which an election is made under I.R.C. § 2032A. The IRS has issued the 2017 list of average annual effective interest rates charged on new loans by the Farm Credit Bank system to be used in computing the value of real property for special use valuation purposes for deaths in 2017:

District	2017 Interest Rate
AgFirst, FCB	5.08
AgriBank, FCB	4.34
CoBank, FCB	4.00
Texas, FCB	4.67

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

Rev. Rul. 2017-16, 2017-2 C.B. 215.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayer was a business professor and filed Schedules C for two consulting businesses. One of the businesses claimed deductions for wages paid to several people, including the taxpayer's daughter. The taxpayer filed form 1099-MISC for the payments but the forms had various errors in identifying the payees. The taxpayer did not provide documentation to support the amount and nature of the wages expenses other than incomplete bank statements, a spreadsheet summary of the payments and the taxpayer's testimony. I.R.C. § 162 allows as a deduction "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." For an expenditure to be an ordinary and necessary business expense, generally the taxpayer must show a *bona fide* business purpose for the expenditure, and there must be a proximate relationship between the expenditure and the business of the taxpayer. See Treas. Reg. § 1.162-1(a). Personal, living, and family expenses are generally not deductible. I.R.C. § 262. Taxpayers are required to maintain sufficient records to establish the amount and purpose of any deduction. I.R.C. § 6001; Treas. Reg. § 1.6001-1(a), (e). The Tax Court noted several inconsistencies of the taxpayer's evidence and held that the wage deduction was properly disallowed by the IRS for lack of substantiation. The Tax Court stated that the payments to the taxpayer's daughter required extra scrutiny and were disallowed because the taxpayer failed to provide written evidence sufficient to determine whether any of the payments were gifts. The appellate court affirmed in a decision designated as not for publication. **Besaw v. Comm'r, 2017-2 U.S. Tax Cas. (CCH) ¶ 50,314 (9th Cir. 2017), *aff'g*, T.C. Memo. 2015-233.**

CHARITABLE DEDUCTIONS. The taxpayer was a limited partnership which had purchased a historic factory building in Pittsburgh, PA which the taxpayer converted into luxury apartments. The taxpayer granted a historic preservation and conservation easement on the property facade to a charitable organization by deed of easement. The deed did not contain any statement as to whether the organization had provided any goods or services to the taxpayer in exchange for its gift. The taxpayer timely filed a partnership return for the year of the easement grant and included a Form 8283, Noncash Charitable Contributions, but the form also did not include a statement that the organization had not provided any goods or services to the taxpayer in exchange for its gift. However, more than two years after the grant of the easement, the organization provided a letter stating that the organization did not provide any goods or services in exchange for the easement. I.R.C. § 170(f)(8)(A) provides: "No deduction shall be allowed . . . for any contribution of \$250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B)." I.R.C. § 170(f)(8)(B) provides that a CWA must include the following information: (1) the amount of cash and a description (but not value) of any property other than cash

contributed; (2) whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (1); and (3) a description and good faith estimate of the value of any goods or services referred to in clause (2). An acknowledgment qualifies as "contemporaneous" only if the donee provides it to the taxpayer on or before the earlier of "the date on which the taxpayer files a return for the taxable year in which the contribution was made" or "the due date (including extensions) for filing such return." I.R.C. § 170(f)(8)(C)(i) and (ii). The taxpayer argued that the deed of easement was sufficient to qualify as a CWA. The court agreed, noting that the deed provided that it contained the entire agreement between the parties. The court held, based on similar facts and holdings in two other cases, *310 Retail, LLC v. Comm'r, T.C. Memo. 2017-164* and *RP Golf, LLC v. Comm'r, T.C. Memo. 2012-282*, that the deed of easement substantially complied with the CWA requirement and the taxpayer was allowed the claimed charitable deduction. **Big River Development, L.P. v. Comm'r, T.C. Memo 2017-166.**

DISASTER LOSSES. On July 12, 2017, the President determined that certain areas in New York were eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe winter storm which began on March 14, 2017. **FEMA-4322-DR.** On July 12, 2017, the President determined that certain areas in North Dakota were eligible for assistance from the government under the Act as a result of flooding which began on March 23, 2017. **FEMA-4323-DR.** On July 25, 2017, the President determined that certain areas in Oklahoma were eligible for assistance from the government under the Act as a result of severe storms and flooding which began on May 16, 2017. **FEMA-4324-DR.** On August 1, 2017, the President determined that certain areas in Nebraska were eligible for assistance from the government under the Act as a result of severe storms which began on June 12, 2017. **FEMA-4325-DR.** On August 2, 2017, the President determined that certain areas in Michigan were eligible for assistance from the government under the Act as a result of severe storms and flooding which began on June 22, 2017. **FEMA-4326-DR.** On August 5, 2017, the President determined that certain areas in Wyoming were eligible for assistance from the government under the Act as a result of flooding which began on June 7, 2017. **FEMA-4327-DR.** On August 8, 2017, the President determined that certain areas in Oregon were eligible for assistance from the government under the Act as a result of severe winter storms and flooding which began on January 7, 2017. **FEMA-4328-DR.** On August 9, 2017, the President determined that certain areas in New Hampshire were eligible for assistance from the government under the Act as a result of severe storms and flooding which began on July 1, 2017. **FEMA-4329-DR.** Accordingly, taxpayers in these areas may deduct the losses on their 2017 or 2016 federal income tax returns. See I.R.C. § 165(i).

DISASTER RELIEF. The IRS has issued an announcement which provides relief to taxpayers who have been adversely affected by Hurricane Harvey and who have retirement assets

in qualified employer plans that they would like to use to alleviate hardships caused by Hurricane Harvey. In addition, this announcement provides relief from certain verification procedures that may be required under retirement plans with respect to loans and hardship distributions. **A-2017-11, I.R.B. 2017-39.**

The IRS has announced that, in response to shortages of undyed diesel fuel caused by Hurricane Harvey, it will not impose a penalty when dyed diesel fuel is sold for use or used on the highway. This relief applies beginning Aug. 25, 2017, in the areas and counties for which the Environmental Protection Agency (EPA) issued waivers for Texas Low Emission Diesel Fuel. This penalty relief is available to any person that sells or uses dyed fuel for highway use. In the case of the operator of the vehicle in which the dyed fuel is used, the relief is available only if the operator or the person selling the fuel pays the tax of 24.4 cents per gallon that is normally applied to diesel fuel for highway use. The IRS will not impose penalties for failure to make semimonthly deposits of this tax. IRS Publication 510, *Excise Taxes*, has information on the proper method for reporting and paying the tax. **IR-2017-139.**

The IRS has announced that Hurricane Harvey victims in parts of Texas have until Jan. 31, 2018, to file certain individual and business tax returns and make certain tax payments. This includes an additional filing extension for taxpayers with valid extensions that run out on Oct. 16, and businesses with extensions that run out on Sept. 15. The IRS is offering this expanded relief to any area designated by the Federal Emergency Management Agency (FEMA), as qualifying for individual assistance. Currently, the following Texas counties are eligible for relief: Aransas, Bee, Brazoria, Calhoun, Chambers, Fort Bend, Galveston, Goliad, Harris, Jackson, Kleberg, Liberty, Matagorda, Nueces, Refugio, San Patricio, Victoria and Wharton. Taxpayers in localities added later to the disaster area will automatically receive the same filing and payment relief. The tax relief postpones various tax filing and payment deadlines that occurred starting on Aug. 23, 2017. As a result, affected individuals and businesses will have until Jan. 31, 2018, to file returns and pay any taxes that were originally due during this period. This includes the Sept. 15, 2017 and Jan. 16, 2018 deadlines for making quarterly estimated tax payments. For individual tax filers, it also includes 2016 income tax returns that received a tax-filing extension until Oct. 16, 2017. The IRS noted, however, that because tax payments related to these 2016 returns were originally due on April 18, 2017, those payments are not eligible for this relief. A variety of business tax deadlines are also affected including the Oct. 31 deadline for quarterly payroll and excise tax returns. In addition, the IRS is waiving late-deposit penalties for federal payroll and excise tax deposits normally due on or after Aug. 23 and before Sept. 7, if the deposits are made by Sept. 7, 2017. Details on available relief can be found on the disaster relief page on IRS.gov. **IR-2017-135.**

HEALTH INSURANCE. The IRS has issued a revenue procedure which provides the monthly national average premium for qualified health plans that have a bronze level of coverage and are offered through Exchanges for taxpayers to use in determining

their maximum individual shared responsibility payment under I.R.C. § 5000A(c)(1)(B) and Treas. Reg. § 1.5000A-4. **Rev. Proc. 2017-48, I.R.B. 2017-__.**

The taxpayers, husband and wife, enrolled in health insurance for 2014 through a health insurance Marketplace. The taxpayers elected to receive a monthly advance premium tax credit (APTC) of \$1,077 to cover part of the cost of the monthly premium paid on behalf of petitioners directly to the insurance company. The taxpayers timely filed for 2014 a joint Form 1040A in February 2015. The taxpayers reported (1) wage income of \$16,918, (2) a taxable pension or annuity distribution of \$27,192, and (3) Social Security income of \$31,089, of which \$19,307 was taxable. The taxpayers reported adjusted gross income (AGI) of \$63,417. After the filing of the 2014 return, the taxpayers separately mailed a Form 1095-A, Health Insurance Marketplace Statement, and a Form 8962, Premium Tax Credit (PTC), each of which respondent received in October 2015. The taxpayers' Form 1095-A reflected monthly APTC payments of \$1,077, totaling \$12,924. Petitioners' Form 8962 reported modified adjusted gross income (MAGI) of \$75,199, which included the nontaxable portion of Social Security income and reflected a family size of two persons. In the notice of deficiency respondent determined that petitioners were ineligible for the PTC because their MAGI for 2014, \$75,199, exceeded \$62,040, which was 400% of the federal poverty line amount for their family size for 2014. The taxpayers timely filed a petition in which they asserted that they were informed by the Marketplace that they qualified for insurance coverage through 2014. The taxpayers also assert that they would not have purchased insurance through the Marketplace if they had known that they did not qualify for the PTC. Under I.R.C. § 36B(c)(1) (A), a taxpayer generally qualifies for the PTC if the taxpayer has household income that is equal to an amount that is at least 100%, but not greater than 400%, of the federal poverty line amount for the taxpayer's family size for the taxable year. See also Treas. Reg. § 1.36B-2(b)(1). Household income is defined as the MAGI of the taxpayer plus the MAGI of family members (1) for whom the taxpayer properly claims deductions for personal exemptions and (2) who were required to file a federal income tax return under I.R.C. § 1. See I.R.C. § 36B(d); Treas. Reg. § 1.36B-1(d), (e)(1). When preparing an income tax return, a taxpayer who has received the APTC is required to reconcile the APTC payments made during the year with the amount of the PTC for which the taxpayer is actually eligible. If the total APTC payments exceed the amount of the eligible PTC, the taxpayer owes the excess as a tax liability, subject to a repayment limitation in I.R.C. § 36B(f)(2) (B). MAGI for purposes of eligibility for the premium tax credit is determined by adding to AGI the following amounts which are normally excludable from income: (1) amounts excluded from gross income under section 911; (2) tax-exempt interest the taxpayer receives or accrues during the taxable year; and (3) social security benefits (within the meaning of I.R.C. § 86(d)) not included in gross income under I.R.C. § 86. The court noted that the taxpayers were apparently misled by the Marketplace that they were entitled to a PTC for their insurance in 2014. However, the court held that the error did not override the statute's specific requirement that the taxpayers were eligible for the PTC only if

their MAGI did not exceed 400% of the federal poverty level for 2014. Therefore, the taxpayers were required to repay the APTC for 2014. **Walker v. Comm’r, T.C. Summary Opinion 2017-50.**

INCOME OF MINORS. The taxpayers, husband and wife, had one child who participated in child beauty pageants. The taxpayers reported the child’s winnings on Schedule C and deducted the costs incurred in traveling, clothing and entrance fees, resulting in a tax loss. I.R.C. § 73(a) requires inclusion of “amounts received in respect of the services of a child” in the child’s own gross income rather than that of the parents. I.R.C. § 73(b) treats all expenditures attributable to amounts includable in the child’s gross income solely by reason of Section 73(a) as paid or incurred by the child. This is the case even if a parent made the expenditure. See Treas. Reg. § 1.73-1(b). The court held that the prize winnings and pageant expenses were solely attributable to the child and no loss deduction was allowed to the taxpayer parents. **Lopez v. Comm’r, T.C. Memo. 2017-171.**

INNOCENT SPOUSE RELIEF. The taxpayer and former spouse filed a joint return for 2012 which included a Schedule C for the taxpayer and a Schedule C for the former spouse. The couple were divorced in 2014. The taxpayer had some knowledge of the ex-spouse’s business but did not participate in it. In addition to the taxpayer’s business, the taxpayer owned a rental property purchased before the couple married of which the income and expenses were reported on Schedule E. The IRS assessed additional taxes for the 2012 tax year and the taxpayer sought innocent spouse relief. The court held that the taxpayer was not eligible for innocent spouse relief under I.R.C. § 6015(b) because the tax deficiency was not attributable solely to income from the ex-spouse and the taxpayer had reason to know that the ex-spouse understated items on the ex-spouse’s Schedule C. I.R.C. § 6015(c) allows a qualifying requesting spouse who is no longer married to the person with whom the joint return was filed to receive proportionate relief from joint liability in accordance with I.R.C. § 6015(d). I.R.C. § 6015(d) generally provides that items giving rise to a deficiency shall be allocated between the spouses as though they had filed separate returns—with the requesting spouse liable only for the proportionate share of the deficiency resulting from the allocation. I.R.C. § 6015(c) does not apply to any portion of a deficiency if the requesting spouse had actual knowledge, when signing the return, of an item giving rise to the portion of the deficiency otherwise allocable to the nonrequesting spouse. In this case, the court found that a portion of the deficiency resulted from the ex-spouse’s overstatement of expenses on Schedule C of which the taxpayer did not have actual knowledge. Thus, the taxpayer was granted relief only for the portion of the deficiency solely attributable to the errors on the ex-spouse’s Schedule C. **Busch v. Comm’r, T.C. Memo. 2017-169.**

LIKE-KIND EXCHANGES. The IRS has issued a nonacquiescence as to the holding in the following case. The taxpayer was a family-owned S corporation which operated drug stores. The taxpayer worked with a professional qualified intermediary service to purchase land for development of a new drug store. Under the agreement with the intermediary, the intermediary would purchase the land and the taxpayer would have the right to purchase the land at a stated time and price.

The land and subsequent construction of a store on the land was financed by a loan guaranteed by the taxpayer. After the construction of the store, the taxpayer leased the store from the qualified intermediary. At that time, the taxpayer entered into an agreement to sell property to an unrelated party also with a qualified intermediary. The proceeds of the sale of the taxpayer’s property were used by the second qualified intermediary to acquire the new store and land from the first qualified intermediary. The Tax Court held that the transactions qualified for like-kind exchange treatment because the qualified intermediary held legal title in the land and the store until shortly before the exchange occurred. I.R.C. § 1031 allows non-recognition of gain or loss in an exchange of properties held for productive use in a trade or business or for investment if such properties are exchanged solely for like-kind properties held for productive use in a trade or business or for investment. Although Rev. Proc. 2000-37, 2000-2 C.B. 308 addresses specified reverse “parking” arrangements, the transactions occurring in this case occurred prior to the issuance of Rev. Proc. 2000-37. Thus, the court applied general like-kind exchange principles and case law to the transactions in this case. In reviewing the case law involving deferred exchanges, the Tax Court noted that courts have allowed great latitude to taxpayers in structuring deferred exchanges. Thus, the Tax Court held that the taxpayer’s pre-exchange, temporary possession of the replacement property pursuant to a lease from the exchange facilitator did not prevent like-kind exchange treatment of the transactions. The court noted that the length of time that the first property was owned by the qualified intermediary was 17 months, much longer than has been allowed in similar cases, and indicated that a longer period could make such transactions ineligible for like-kind exchange treatment. The IRS did not provide any reasoning for its nonacquiescence in the holding of the case. **Estate of Bartell v. Comm’r, 147 T.C. 140 (2016), nonacqu., 2017-2 C.B. 194.**

JOB HUNTING EXPENSES. The IRS has published information on deducting costs related to job searches: *Same Occupation.* Expenses are tax deductible when the job search is in a taxpayer’s current line of work. *Résumé Costs.* Costs associated in preparing and mailing a résumé are tax deductible. *Travel Expenses.* Travel costs to look for a new job are deductible. Expenses including transportation, meals and lodging are deductible if the trip is mainly to look for a new job. Some costs are still deductible even if looking for a job is not the main purpose of the trip. *Placement Agency.* Job placement or employment agency fees are deductible. *Reimbursed Costs.* If an employer or other party reimburses search related expenses, like agency fees, the expenses are not deductible. *Schedule A.* Report job search expenses on Schedule A of a 1040 tax return and claim them as miscellaneous deductions. The total miscellaneous deductions cannot be more than two percent of adjusted gross income. Taxpayers cannot deduct these expenses if they (1) are looking for a job in a new occupation, (2) had a substantial break between the ending of their last job and looking for a new one, or (3) are looking for a job for the first time. For more information on job hunting expense deductions, refer to Publication 529, *Miscellaneous Deductions.* **IRS Summertime Tax Tip 2017-24.**

PARTNERSHIPS

RETURNS. The IRS has issued a notice which provides penalty relief to partnerships that filed certain untimely returns or untimely requests for extensions of time to file those returns for the first taxable year that began after December 31, 2015, by the fifteenth day of the fourth month following the close of that taxable year. Section 2006 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (the Surface Transportation Act), *Pub. L. No 114-41, 129 Stat. 443 (2015)*, amended I.R.C. § 6072 and changed the date by which a partnership must file its annual return. The due date for filing the annual return of a partnership changed from the fifteenth day of the fourth month following the close of the taxable year (April 15 for calendar-year taxpayers) to the fifteenth day of the third month following the close of the taxable year (March 15 for calendar-year taxpayers). The new due date applies to the returns of partnerships for taxable years beginning after December 31, 2015. Other partnership returns affected include Form 1065-B, *U.S. Return of Income for Electing Large Partnerships*, Form 8804, *Annual Return for Partnership Withholding Tax (Section 1446)*, Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax*, Schedules K-1 which are generally due to the IRS on the same date as the partnership's Form 1065 or Form 1065-B. Some partnerships must also file additional returns, such as Form 5471, "Information Return of U.S. Persons With Respect to Certain Foreign Corporations," by the due date of the Form 1065 or Form 1065-B. Relief from the filing penalties will be granted if the returns are timely filed, including extensions, under the prior law. Note: The Notice refers consistently to returns of "partnerships." As pointed out in the lead article in this issue, "small partnerships" are not required to file a return. **Notice 2017-47, I.R.B. 2017-38.**

REFUND. The taxpayer obtained the automatic six-month extension for filing the taxpayer's 2012 return. The taxpayer had made estimated tax payments and included an additional payment with the extension request, all of which were deemed paid on April 15, 2013. The taxpayer failed to timely file the 2012 return and the return was not filed until August 29, 2015, claiming a refund. However, on June 15, 2015, the IRS sent the taxpayer a notice of deficiency which included unpaid taxes and penalties. The taxpayer filed a petition with the Tax Court on September 16, 2015. The court found two limitation periods for filing for a refund. I.R.C. § 6511(b)(2)(A) allows a refund claim if the claim is filed "within 3 years from the time the return was filed." Where a notice of deficiency is filed prior to the return, the refund claim is deemed made on the date of the notice of deficiency. In this case, the court held that, because the refund claim was deemed made before the actual filing of the return, the three year limitation period of I.R.C. § 6511(b)(2)(A) did not apply. Under I.R.C. § 6511(b)(2)(B): "If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim." The court held that, because the refund claim was deemed made on June 15, 2015 and the taxpayer made the tax payments on April 15, 2013, the refund claim was not made during the two years prior to the refund claim. Thus, the court held that the taxpayer claim for refund was made after the two and three year statutes of limitation

had expired and no refund was allowed. **Borenstein v. Comm'r, 149 T.C. No. 10 (2017).**

SALE OF RESIDENCE. The taxpayer purchased a residence with the taxpayer's parents. The taxpayer borrowed \$234,312 and the parents supplied \$40,000 in cash. Ten years later, the parents transferred their interest in the property to the taxpayer by gift. The taxpayer refinanced the mortgage several times until 2007 when the taxpayer sold the home back to the parents in exchange for their paying \$664,048 in loans against the home. At the time of the sale, the fair market value of the house was \$975,000. The issue was how much long-term gain was recognized by the taxpayer from that sale. The IRS argued that the gain from the sale equaled the fair market value of the house less the costs of sale and less the taxpayer's basis in the property. I.R.C. § 1001(b) provides that the amount realized from the sale of property is the sum of any money received plus the fair market value of property other than money that is received. The amount realized also includes the amount of debt discharged by the buyer. The court found that the basis of the house equaled the taxpayer's original loan, \$234,312, plus the parents' basis, \$40,000, in their interest gifted to the taxpayer. The court found that on the sale of the house to the parents, the taxpayer realized \$647,297, the amount of discharged loans, \$664,048, less the costs of the sale, \$16,751. The court held that the taxpayer's total gain from the sale, \$372,585, equaling the amount realized, \$647,297, less the taxpayer's basis in the house, \$274,312. The taxpayer was allowed the exclusion under I.R.C. § 121 of \$250,000 of gain, resulting in taxable long-term gain of \$122,585. **Fiscalini v. Comm'r, T.C. Memo. 2017-163.**

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

Federal Estate Tax

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

Gifts

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

Use of the Trust

The General Partnership

Small partnership exception
Eligibility for Section 754 elections

Limited Partnerships

Limited Liability Companies

Developments with passive losses
Corporate-to-LLC conversions

New regulations for LLC and LLP losses

Closely Held Corporations

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

Social Security

In-kind wages paid to agricultural labor

Second day

FARM INCOME TAX

New Legislation

Reporting Farm Income

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

Sales of diseased livestock

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

Claiming Farm Deductions

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

Sale of Property

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

Like-Kind Exchanges

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

Taxation of Debt

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

Self-employment tax

Meaning of "business"

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