CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

FEDERAL ESTATE AND GIFT TAXATION

TAX LIEN. The decedent's estate was comprised primarily of a residence subject to a federal tax lien. The state probate court issued a final order providing for the distribution of the estate assets, again primarily the proceeds of the sale of the residence, with no distribution to the federal government on the lien. The IRS succeeded in removing the state court case to federal District Court and filing a motion to reduce the tax lien to judgment and payment from the proceeds. The estate filed a motion for the court to determine the priorities of the various claims of the estate, IRS and other parties as to the proceeds. When the United States files notice of a federal tax lien, it enjoys priority over all other interests, except for purchasers, holders of security interests, mechanics lienors, and judgment lien creditors whose interests are choate at the time that the notice of federal tax lien is filed. The estate's personal representative, the decedent's surviving spouse, argued that her surviving spouse statutory allowance under Ind. Code § 29-1-4-1 and the expenses of the administration of the estate should have priority for payment ahead of other claims, including those of the IRS. Federal tax liens have priority over the claims of the estate's representative. Under I.R.C. § 6323, if an interest is not accorded superpriority under I.R.C. § 6323(b), then priority is determined by the first-in-time rule. Because the IRS filed notice of the tax lien before the death of the decedent, its lien has priority over the estate's representative's claims which arose after the death of the decedent. **In the Matter of the Estate of Simmons, 2017-2 U.S. Tax Cas. (CCH) ¶ 50,353 (S.D. Ind. 2017)**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The taxpayer was an S corporation on the accrual method of accounting. The taxpayer was wholly-owned by one person who also owned another S corporation on the cash method of accounting. The cash corporation manufactured a product which it sold on credit to the accrual corporation. The taxpayer determined that its method of accounting for the purchases from the cash corporation was improper under I.R.C. § 267 and sought a ruling for an extension of time to file Form 3115, allowing it to change its method of accounting beginning with the first open taxable year so as to comply with I.R.C. § 267. *Rev. Proc. 2015-13, 2015-1 C.B. 419* provides that, unless specifically authorized by the Commissioner or by statute, a taxpayer may not change an established method of accounting by amending its prior federal income tax return(s) and provides that, unless specifically authorized by the Commissioner or by statute, a taxpayer may not request, or otherwise make, a retroactive change in method of accounting. However, Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections. The IRS stated that it is not in the interest of sound tax administration to permit taxpayers from requesting, or otherwise making, a retroactive change in a method of accounting, whether the change is from a permissible or impermissible method. Thus, the IRS ruled that the request for an extension was denied because (1) the accounting method regulatory election for which an extension of time was requested was subject to the procedure described in Treas. Reg. § 1.446-1(e)(3)(i) and (2) the proposed change in accounting method required an I.R.C. § 481(a) adjustment, the Government's interests are deemed prejudiced by the late filing of the taxpayer's Form 3115 unless taxpayer demonstrates unusual and compelling circumstances. **Ltr. Rul. 20174005, June 28, 2017; Ltr. Rul. 20174016, June 28, 2017.**

BUSINESS EXPENSES. The IRS has published four tips for businesses that need to reconstruct their records. To create a list of lost inventories, business owners can get copies of invoices from suppliers. Whenever possible, the invoices should date back at least one calendar year. For information about income, business owners can get copies of last year's federal, state and local tax returns. These include sales tax reports, payroll tax returns, and business licenses from the city or county. These will reflect gross sales for a given period. Owners should check their mobile phone or other cameras for pictures and videos of their building, equipment and inventory. Business owners who do not have photographs or videos can simply sketch an outline of the inside and outside of their location. For example, for the inside the building, they can draw out where equipment and inventory were located. For the outside of the building, they can map out the locations of items such as shrubs, parking, signs, and awnings. **IRS Tax Tip 2017-56**.

The taxpayer was involved in several jobs which involved driving customers to destinations, including a job as a cabby, an Uber driver and a bus driver. All of these activities were handled on a cash basis and the taxpayer did not keep records of the transactions nor any of the expenses incurred in the activities. However, the taxi cab company, Uber and bus company employers issued Forms 1099-K which reported the payments made to the taxpayer. In an audit of three tax years, the IRS used an analysis of the taxpayer's bank account deposits to determine that the taxpayer had unreported income and disallowed most of the business expenses claimed on Schedule C for lack of substantiation. The court found that the taxpayer's testimony was unreliable as uncorroborated, self-serving and/or conclusory and unsupported by any written business records; therefore, the court held that the IRS

assessment based on unreported income and disallowed deductions was proper. **Justine v. Comm'r, T.C. Memo. 2017-198**.

COURT AWARDS AND SETTLEMENTS. The taxpayer sued a former employer for workplace discrimination and received a settlement payment designated as compensation for emotional distress caused by the discrimination. The taxpayer included the settlement proceeds in taxable income for the year received but later sought a refund of the taxes on the settlement. I.R.C. § 104(a)(2) provides that "gross income does not include . . . the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness . . .." I.R.C. § 104(a)(6) specifically identifies emotional distress as not a physical illness or injury. The court held that the taxpayer's settlement was included in taxable income. The appellate court affirmed in a decision designated as not for publication. **Tritz v. United States, 2017-2 U.S. Tax Cas. (CCH) ¶ 50,371 (9th Cir. 2017), *aff'g*, 2016-2 U.S. Tax Cas. (CCH) ¶ 50,346 (C.D. Calif. 2016)**.

EDUCATORS' EXPENSES. The IRS has published information about three key work-related tax benefits that may help educators reduce what they pay in taxes. Educators can take advantage of tax deductions for qualified expenses related to their profession. The costs many educators incur out-of-pocket include items such as classroom supplies, training and travel. There are two methods educators can choose for deducting qualified expenses: Claiming the Educator Expense Deduction (up to $250) or, for those who itemize their deductions, claiming eligible work-related expenses as a miscellaneous deduction on Schedule A. A third key benefit enables many teachers and other educators to take advantage of various education tax benefits for their ongoing educational pursuits, especially the Lifetime Learning Credit or, in some instances depending on their circumstances, the American Opportunity Tax Credit. *Educator Expense Deduction* Educators can deduct up to $250 ($500 if married filing jointly and both spouses are eligible educators, but not more than $250 each) of unreimbursed business expenses. The educator expense deduction, claimed on either Form 1040 Line 23 or Form 1040A Line 16, is available even if an educator does not itemize deductions. To do so, the taxpayer must be a kindergarten through grade 12 teacher, instructor, counselor, principal or aide for at least 900 hours a school year in a school that provides elementary or secondary education as determined under state law. Those who qualify can deduct costs like books, supplies, computer equipment and software, classroom equipment and supplementary materials used in the classroom. Expenses for participation in professional development courses are also deductible. Athletic supplies qualify if used for courses in health or physical education. *Itemizing Deductions (Using Schedule A)*. Often educators have qualifying classroom and professional development expenses that exceed the $250 limit. In that case, they may claim these excess expenses as a miscellaneous deduction on Schedule A (Form 1040 or Form 1040NR). In addition, educators can claim other work-related expenses, such as the cost of subscriptions to professional journals, professional licenses and union dues. Transportation expenses may also be deductible in situations such as, for example, where an educator assigned to teach at two different schools needs to drive from one school to the other on the same day. Miscellaneous deductions of this kind are subject to a two-percent of adjusted gross income limit. This means that a taxpayer must subtract two percent of their adjusted gross income from the total qualifying miscellaneous deduction amount. For more information, see Publication 529, *Miscellaneous Deductions*. *Keeping Records*. Educators should keep detailed records of qualifying expenses noting the date, amount and purpose of each purchase. This will help prevent a missed deduction at tax time. Taxpayers should also keep a copy of their tax return for at least three years. Copies of tax returns may be needed for many reasons. If applying for college financial aid, a tax transcript may be all that is needed. A tax transcript summarizes return information and includes adjusted gross income. Get one from the IRS for free at www.IRS.gov. **IR-2017-166**.

GAMBLING INCOME AND LOSSES. The taxpayer was employed full time and spent a good portion of the taxpayer's non-working hours gambling at casinos. The taxpayer claimed gambling income and losses on Schedule C and included non-wager expenses such as travel, insurance, depreciation and supplies. The issue in the case was whether the taxpayer was a professional gambler entitled to report income and losses, including non-wager expenses, on Schedule C. The court examined the taxpayer's activities under the nine factors of Treas. Reg. 1.183-2(b) used to determine whether an activity is engaged in with the intent to make a profit. The court held that the taxpayer was not engaged in gambling with the intent to make a profit because (1) the taxpayer did not maintain complete records of the activity except for player records maintained by the casinos which did not provide daily records nor include any of the non-wager expenses; (2) the taxpayer did not consult with experts as to how to make the gambling profitable; (3) the taxpayer did not withdraw from employment in order to spend more time on the gambling activity; (4) the taxpayer received recreational pleasure from the gambling; (5) the taxpayer had no history of success at similar activities; (6) the taxpayer's gambling produced only losses over several years; (7) the taxpayer's gambling produced no profits over several years; and (8) the gambling losses offset wages from other activities. Thus, the court held that the taxpayer was entitled to deduct losses from the gambling activity equal only to the income from gambling. **Boneparte v. Comm'r, T.C. Memo. 2017-193**.

IDENTITY THEFT. The IRS has issued an alert to tax professionals and their clients to a fake insurance tax form scam that is being used to access annuity and life insurance accounts. Cybercriminals currently are combining several tactics to create a complex scheme through which both tax professionals and taxpayers have been victimized. There may be variations but one scam works like this: The cybercriminal, impersonating a legitimate cloud-based storage provider, entices a tax professional with a phishing email. The tax professional, thinking they are interacting with the legitimate cloud-based storage provider, provides their email credentials including username and password. With access to the tax professional's account, the cybercriminal steals client email addresses. The

cybercriminal then impersonates the tax professional and sends emails to their clients, attaching a fake IRS insurance form and requesting that the form be completed and returned. The cybercriminal receives replies by fax and/or by an email very similar to the tax professional's email – using a different email service provider or a slight variation to the tax pro's address. The subject line varies but may be "urgent information" or a similar request. The awkwardly worded text of the email states: "Dear Life Insurance Policy Owner, Kindly fill the form attached for your Life insurance or Annuity contract details and fax back to us for processing in order to avoid multiple (sic) tax bill (sic)." The cybercriminal, using data from the completed form, impersonates the client and contacts the individual's insurance company. The cybercriminal then attempts to obtain a loan or make a withdrawal from those accounts. **IR-2017-171**.

IRA. The taxpayer claimed that the taxpayer's spouse made several withdrawals from the taxpayer's IRA without the taxpayer's knowledge or permission. The withdrawals were not discovered until after the 60-day rollover period had elapsed. The taxpayer sought a waiver of the 60-day rollover period. I.R.C. § 408(d)(1) provides that, except as otherwise provided in I.R.C. § 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72. I.R.C. § 408(d)(3) provides the rules applicable to IRA rollovers. I.R.C. § 408(d)(3)(A) provides that Section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if: (1) the entire amount received (including money or any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or (2) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3))." I.R.C. § 408(d)(3)(I) provides that the 60-day requirement under I.R.C. §§ 408(d)(3)(A) and 408(d)(3)(D) may be waived where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. The IRS granted the taxpayer a waiver of the 60-day period. **Ltr. Rul. 201739017, July 3, 2017**.

PARSONAGE ALLOWANCE DEDUCTION. The District Court for the Western District of Wisconsin has once again (see *Freedom From Religion Foundation, Inc. v. Lew, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,600 (W.D. Wis. 2013), rev'd on issue of standing, 773 F.3d 815 (7th Cir. 2014)*) ruled that the I.R.C. § 107(2) exclusion from taxable income of the parsonage allowance was unconstitutional as a violation of the Establishment Clause of the First Amendment to the U.S. Constitution. **Gaylor v. Mnuchin, 2017-2 U.S. Tax Cas. (CCH) ¶ 50,372 (W.D. Wis. 2017)**.

PARTNERSHIPS.

DEFINITION. The taxpayers were father and son and they operated several farming activities on several parcels of land, some contributed by the father and some jointly purchased by both. Although the taxpayers shared and reported profits equally, the father claimed a greater portion of the expenses than the son. The Tax Court held that the taxpayers operated the farm as an equal partnership and the farm was taxable as a partnership; thus, the father was restricted to an equal share of the expenses as deductions. The appellate court affirmed in a decision designated as not for publication. *Holdner v. Comm'r, 2012-2 U.S. Tax Cas. (CCH) ¶ 50,626 (9th Cir. 2012), aff'g, T.C. Memo. 2010-175*. After the IRS attempted to collect the taxes owed as determined by the above cases, the taxpayer challenged the collection on the basis that the original assessments were incorrect. The Tax Court granted summary judgment to the IRS under res judicata because the issue was litigated in the above cases. The appellate court affirmed in a decision designated as not for publication. *Holdner v. Comm'r, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,105 (9th Cir. 2015), aff'g unrep. T.C. Memo. dec*. The taxpayer then filed another suit, this time in federal District Court, again challenging the assessment of taxes. 28 U.S.C. §1346(a)(1) provides that district courts have "original jurisdiction, concurrent with the United States Court of Federal Claims" over civil actions against the United States "for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws." Jurisdiction of the District Court is limited by 26 U.S.C. §7422(a) which limits a taxpayer's right to bring a refund suit by providing that "[n]o suit or proceeding shall be maintained … for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary." Thus, in order for a District Court to have jurisdiction over this matter, the taxpayer must establish that the taxpayer has filed a claim for refund with the IRS, has paid the full amount of tax allegedly due, and has not filed a petition with the Tax Court. The District Court held that it lacked jurisdiction in this case because the taxpayer failed to show any of the three requirements. The appellate court affirmed in a decision designated as not for publication. **Holdner v. United States, 2017-2 U.S. Tax Cas. (CCH) ¶ 50,374 (9th Cir. 2017), *aff'g*, 2016-2 U.S. Tax Cas. (CCH) ¶ 50,486 (D. Ore. 2016)**.

ELECTION TO ADJUST BASIS. The IRS has issued proposed regulations modifying the regulations governing the I.R.C. § 754 election to adjust partnership basis in partnership property. The current regulations provide the method to make the I.R.C. § 754 election and provides that an I.R.C. § 754 election shall be made in a written statement (section 754 election statement) filed with the partnership return for the taxable year during which the

distribution or transfer occurs. For the I.R.C. § 754 election to be valid, the return must be filed not later than the time prescribed for filing the return for such taxable year, including extensions. The current regulation requires that the I.R.C. § 754 election statement (i) set forth the name and address of the partnership making the election, (ii) be signed by any one of the partners, and (iii) contain a declaration that the partnership elects under I.R.C. § 754 to apply the provisions of I.R.C. § 734(b) and I.R.C. § 743(b). Accordingly, under the current regulation, a partnership that files an unsigned I.R.C. § 754 election statement with its partnership return (whether filed electronically or on paper) has not made a valid I.R.C. § 754 election. Currently the only remedy for failing to make a proper I.R.C. § 754 election is to request relief under Treas. Reg. § 301.9100 *et seq*. to make a late I.R.C. § 754 election either: (1) through automatic relief, if the error is discovered within 12 months pursuant to Treas. Reg. § 301.9100-2 or (2) through a private letter ruling request pursuant to Treas. Reg. § 301.9100-3. In order to ease the burden on partnerships seeking to make a valid I.R.C. § 754 election and to eliminate the need to seek relief through a letter ruling, the Treasury Department and the IRS are proposing to amend the current regulation to remove the signature requirement in Treas. Reg. § 1.754-1(b)(1). The amended regulation will provide that a taxpayer making a I.R.C. § 754 election must file a statement with its return that: (i) sets forth the name and address of the partnership making the I.R.C. § 754 election, and (ii) contains a declaration that the partnership elects under I.R.C. § 754 to apply the provisions of I.R.C. § 734(b) and I.R.C. § 743(b). The amendments to this regulation are proposed to apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as a final regulation in the Federal Register. However, the IRS stated in the preamble to the proposed regulations that taxpayers may rely on the proposed regulation for periods preceding the proposed applicability date. Accordingly, partnerships that filed a timely partnership return containing an otherwise valid I.R.C. § 754 election statement, but for the missing signature of a partner on the statement, will not need to seek letter ruling relief in such cases. **82 Fed. Reg. 47408 (Oct. 12, 2017)**.

PENSION PLANS. The IRS has adopted as final regulations prescribing mortality tables to be used by most defined benefit pension plans. The tables specify the probability of survival year-by-year for an individual based on age, gender, and other factors. This information is used (together with other actuarial assumptions) to calculate the present value of a stream of expected future benefit payments for purposes of determining the minimum funding requirements for a defined benefit plan. These mortality tables are also relevant in determining the minimum required amount of a lump-sum distribution from such a plan. In addition, the final regulations update the requirements that a plan sponsor must meet to obtain IRS approval to use mortality tables specific to the plan for minimum funding purposes (instead of using the generally applicable mortality tables). **82 Fed. Reg. 46388 (Oct. 5, 2017)**.

For plans beginning in October 2017 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 2.78 percent. The 30-year Treasury weighted average is 2.87 percent, and the 90 percent to 105 percent permissible range is 2.58 percent to 3.01 percent. The 24-month average corporate bond segment rates for October 2017, *without adjustment* by the 25-year average segment rates are: 1.76 percent for the first segment; 3.74 percent for the second segment; and 4.63 percent for the third segment. The 24-month average corporate bond segment rates for October 2017, taking into account the 25-year average segment rates, are: 4.16 percent for the first segment; 5.72 percent for the second segment; and 6.48 percent for the third segment. **Notice 2017-63, I.R.B. 2017-44**.

REFUNDS. In a Chief Counsel Advice letter, the IRS discussed the various times when an overpayment of tax is deemed a payment of tax for purposes of the limitation on claims for refunds. Under I.R.C. § 6402(a), a tax is considered paid when an overpayment of one tax is credited against an unpaid liability for another type of tax. Under I.R.C. § 6513(d), a tax is also considered paid when an overpayment in one year is credited against a deficiency in tax for a different tax year. I.R.C. § 7422(d) provides that where an overpayment in one year is credited to a deficiency for another year, the date of payment is the date the Service credits the overpayment against the deficiency, and the two-year-from-payment period begins to run on that date. Under I.R.C. § 6513(d), where a taxpayer, reporting an overpayment for a tax year (the first year), elects to credit the overpayment to estimated tax for the next tax year (the second year), the amount credited constitutes a payment for the second year and is considered paid on the filing date for the second year's return. The overpayment ceases to exist for the first year and the taxpayer can only file a claim for refund with respect to payment in the second year, not the first year. **CCA 201739013, July 27, 2017**.

INSURANCE

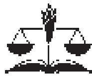
COVERAGE. The plaintiff owned and operated commercial poultry farms in several states, including Minnesota and Iowa. In 2011, it purchased a Premises Pollution Liability Insurance Policy from the defendant. The policy insured the plaintiff's farms against losses caused by a "pollution condition," defined as, "[t] he discharge, dispersal, release, escape, migration or seepage of any . . . irritant, contaminant, or pollutant . . . on, in, into, or upon [covered] land and structures." It also provided "remediation" coverage for costs incurred responding to a "pollution condition," specifically, "reasonable expenses required to restore, repair or replace real or personal property to substantially the same condition it was in prior to being damaged during the course of responding to a 'pollution condition.'" The plaintiff's chickens became infected with bird flu and the plaintiff lost much of its flocks to the disease. The chickens not killed by the disease were ordered destroyed by state and federal regulators. The plaintiff incurred expenses replacing the lost chickens and had to heat the chicken housing until the buildings were refilled with chickens. The heat was required during the replacement period because there were not enough chickens to provide heat. The plaintiff

filed an insurance claim with the defendant but was denied both recovery for the lost chickens and for the cost of the heating. The defendant argued that the plaintiff's birds were not "damaged during the course of responding to a pollution condition." According to the defendant, the plaintiff's birds were damaged by a pollution condition, bird flu, and not by the response to that infection. The court disagreed, noting that the evidence showed that not all of the plaintiff's birds were sick when they were ordered to be destroyed; thus, those birds were damaged as part of the response to the "pollution" of the disease and the policy covered the replacement costs under the remediation provision. As to the heating expenses, the court found that the barns were not damaged by the disease; therefore, the court held that the remediation provision did not cover the expenses incurred to heat the chicken houses while the flocks were being repopulated. **Rembrandt Enterprises, Inc. v. Illinois Ins. Co., 2017 U.S. Dist. LEXIS 147030 (D. Minn 2017)**.

LABOR

AGRICULTURAL EMPLOYEES. The plaintiffs were employees of the defendant at the defendant's feed mill. The defendant also owned and operated a hog farm but the plaintiffs did no work on that farm. The feed produced at the mill was sold to third parties and was used to feed the defendant's animals. The plaintiffs performed a variety of work at the feed mill, including mixing of feed, scheduling delivery trucks, working with bag and bulk ingredients, and performing occasional repair work. The plaintiffs filed a complaint under the federal Fair Labor Standards Act, 29 U.S.C. § 207(a), and Indiana wage payment statute alleging that the defendant failed to pay them for overtime performed at the feed mill. The defendant argued that the plaintiffs' work at the feed mill constituted secondary agriculture under 29 U.S.C. § 213(b)(12); therefore, the plaintiffs were exempt from the overtime rules. See also 29 C.F.R. § 780.105 (secondary agriculture includes "operations other than those which fall within the primary meaning of the term. It includes any practices, whether or not they are themselves farming practices, which are performed either by a farmer or on a farm as an incident to or in conjunction with 'such' farming operations"). The U.S. Department of Labor had investigated the defendant for violation of overtime rules in years prior to the years involved in this case. The DOL report found that the majority of the feed produced at the defendant's mill was used on the defendant's hog farm; therefore, the feed mill qualified as secondary agriculture and was exempt from the overtime rules. The court in this case questioned the sales findings by the DOL because the defendant did not produce financial data supporting the DOL finding. The court stated that courts consider several factors in determining whether an operation is secondary agriculture, including (1) the common understanding of farming, competitive factors, and the prevalence of the practice by farmers (2) the size of the operations and respective sums invested in land, buildings and equipment for the regular farming operations and in plant and equipment for performance of the practice; (3) the amount of the payroll for each type of work; (4) the number of employees and the amount of time they spend in each of the activities; (5) the extent to which the practice is performed by ordinary farm employees and the amount of interchange of employees between the operations; (6) the amount of revenue derived from each activity; (7) the degree of industrialization involved; and (8) the degree of separation established between the activities. The defendant argued that the conclusions and rulings of the DOL report should be controlling in that little had changed in the operation during the plaintiffs' employment a couple of years after the DOL report. The court noted, however, that (1) the DOL report acknowledged that changes in the defendant's sales could quickly change the DOL conclusions, and (2) the defendant failed to provide financial and sales evidence to support the DOL findings. Thus, the court denied summary judgment for either party because of the lack of evidence of the sales of the feed produced at the feed mill to the hog farm and to the public during the employment of the plaintiffs. **Kidd v. Wallace Pork Systems, Ltd., 2017 U.S. Dist. LEXIS 163174 (N.D. Ind. 2017)**.

SEASONAL AND MIGRANT AGRICULTURAL WORKERS. The plaintiffs were migrant agricultural workers who were hired by the defendants to perform migrant agricultural work at several farms. The plaintiffs sought damages and injunctive and declaratory relief for violations of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801-1872 (AWPA). The plaintiffs alleged that the defendants violated the AWPA by failing to pay their wages when due, resulting in plaintiffs receiving less than the wages that they were owed, and failing to include in their payroll records the full amount of earnings, resulting in earnings being underreported to the Social Security Administration and the Florida Reemployment Assistance Program. The plaintiffs also alleged that the defendants (1) failed to provide plaintiffs with a written disclosure of the terms and conditions of the proffered employment, as required by the AWPA, including required information regarding the workers' compensation insurance coverage with respect to their employment; (2) transported the plaintiffs in vehicles that lacked insurance or sufficient insurance coverage for personal injuries and property damage as required by the AWPA; and willfully filed fraudulent IRS Forms W-2 for plaintiffs that underreported plaintiffs' wages, resulting in tax liability for plaintiffs, and affecting plaintiffs' ability to claim Social Security benefits. The defendants filed a motion to dismiss the petition for failure to set forth sufficient allegations of fact to support the claim that the defendants were employers as defined by the AWPA. The AWPA, 29 U.S.C. § 1802(2), imposes obligations on "agricultural employers," defined as including those who recruit, solicit, hire, employ, furnish, or transport any migrant or seasonal farmworkers. See also 29 C.F.R. § 500.20(d). Under 29 U.S.C. § 1802(5), one "employs" an individual if it "suffers or permits" the individual to work. The court found that the plaintiffs alleged that defendants were both registered and acted as farm labor contractors and that in exchange for monetary payment, defendants recruited, transported, and furnished plaintiffs for employment harvesting corn at various farms, thus meeting the AWPA definition of employer. The court held that the allegations in the petition were sufficient to state a claim under the AWPA. **Dorseli v. Gonzalez, 2017 U.S. Dist. LEXIS 158245 (M.D. Fla. 2017)**.



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by Neil E. Harl

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There is still plenty of room for you to join us for expert and practical seminars on the essential aspects of agricultural tax law. Gain insight and understanding from one of the country's foremost authorities on agricultural tax law. The seminars will be held on two days from 8:00 am to 5:00 pm. Registrants may attend one or both days. On the first day, Dr. Harl will speak about farm and ranch estate and business planning. On the second day, Dr. Harl will cover farm and ranch income tax. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch. A discount ($25/day) is offered for attendees who elect to receive the manuals in PDF format only **(see registration form online for use restrictions on PDF files)**.

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New Legislation
Succession planning and the importance of fairness
The Liquidity Problem
Property Held in Co-ownership
- 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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