family if . . . during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which. . . there was material participation by the decedent or member of the decedent's family in the operation of the farm or other business. . . "[5]

Expressions by the Department of the Treasury

The first question is whether the provision in I.R.C. § 469(h)(3) has been incorporated into the Health Care and Education Reconciliation Act of 2010.[6] Nothing in the 2010 Act, the temporary regulations issued[7] or the final regulations[8] refer to I.R.C. 469(h)(3) specifically.

The second question is the meaning and scope of the commentary accompanying the final regulations.[9] The Department of the Treasury acknowledges that regulations under I.R,C. § 469 do not ". . . affect the treatment of any item of income or gain under any provision of the Code other than section 469."[10] Also, the commentary makes the point clearly that Section 1411 does not embrace the "real estate professional" rules in I.R.C. § 469, for example, and notes I.R.C. § 469 provides 11 types of activities that constitute a real property trade or business and ". . . only a few of the 11 enumerated activities may be relevant in determining whether rents are derived in the ordinary course of the trade or business, such as the activities of "rental" and "leasing."[11] It is clear that the Department of the Treasury has distanced itself in I.R.C. § 1411 from I.R.C. § 469 except where the two sections are, indeed, parallel. That hardly seems to be the case with I.R.C. § 469(h)(3).

So what does all of this mean?

Our advice, until further guidance is received in the form of rulings or cases, is to advise clients that there is risk in believing that I.R.C. § 469(h)(3) applies to the 3.8 percent tax rules of I.R.C. § 1411. Expressions to date by the Department of the Treasury in terms of sketching out the influence I.R.C. § 469 is going to have under the 3.8 percent tax system are not encouraging in terms of assuming that I.R.C. § 469(h)(3) will be applicable to I.R.C. § 1411.

It may be years before further guidance is available. In the meantime, the question is the degree of risk that is comfortable for the client.

ENDNOTES

[1] I.R.C. § 1411(a), enacted as part of the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, § 1402(a)(1), 124 Stat. 129 (2010). See generally Harl, "The Unearned Income Medicare Contribution (3,8 Percent tax) for Pass-Through Entities (S Corporations and Partnerships: A Red Flag," 25 *Agric. L. Dig*. 49 (2014); Harl, "Final Regulations Under the Additional Hospital Insurance Tax (0.9 Percent) and the Unearned Medicare Contribution (3.8 Percent)," 24 *Agric. L. Dig*. 187 (2013); Harl, "Proposed Regulations for the Unearned Income Medicare Tax," 24 *Agric. L. Dig*. 1 (2012).

[2] I.R.C. § 1411(b).

[3] I.R.C. § 1411(c)(1)(A)(i).

[4] *Id*.

[5] I.R.C. § 2032A(b)(1)(c)(ii).

[6] See note 1 *supra*.

[7] NPRM REG 130507, December 5, 2012, published as Prop. Treas. Reg. §§ 1.1411-0 through 1.1411-10, and Prop. Treas. Reg. § § 1.469-0 and 1.469-11.

[8] T.D. 9644, November 26, 2013, 2013-2 C.B. 676.

[9] See note 1 *supra*.

[10] See T.D. 9644, Paragraph II(5)(A).

[11] See T.D. 9644, Paragraph II(5)(E)(iii).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

PREFERENTIAL TRANSFERS. The debtor was a grain storage facility owned and operated by an individual. The individual also operated a farm and had filed for bankruptcy. In the several years prior to the debtor's filing for bankruptcy, the debtor had transactions with several farmers for crops stored in the debtor's facility before and after sale to third parties. The transactions had a history of payment over the few months after delivery of the crop. The debtor also sold farm supplies to the farmers and often settled all accounts at the end of each calendar year. That pattern was continued during the year prior to the filing for bankruptcy and the trustee sought to recover the payments made in the last year as preferential transfers. The debtor argued that the transfers were not voidable because they were made within the ordinary course of business. The court also found that the testimony and evidence supported a finding that the farm actually was still owed money from the past year's transactions, even though the farmer had not filed a claim in the bankruptcy case. The debtor had included the farmer as a creditor. Therefore, the court held that the payments to the farmer by the debtor in the year before the bankruptcy filing were not preferential transfers because they were made in the ordinary course of business and the creditor did not receive more than what would be received in a Chapter 7 case. ***In re* Tanglewood Farms, Inc., 2014 Bankr. LEXIS 2288 (Bankr. E.D. N.C. 2014)**.

CHAPTER 12

AUTOMATIC STAY. The debtor filed for Chapter 12 and the plan was confirmed in January 2013. The debtor and a secured creditor had entered into a stipulation approved by the court that provided: "7. The automatic stay of 11 U.S.C. §362 shall terminate on the date of the entry of the order of confirmation; 8. However, Creditor shall not take any action to enforce either the pre-confirmation obligation, the obligation due under the Plan, or the obligation due under this Stipulation, so long as Debtors are not in default under the Plan and this Stipulation." After the confirmation, the creditor sent new loan statements to the debtor that were intended for use by the creditor to account for the unsecured portion of the claim. The debtor sought damages for violation of the automatic stay from the issuance of the new loan statements. The court held that no violation of the automatic stay occurred because the automatic stay was terminated upon the confirmation of the Chapter 12 plan. The proper action was an action for contempt of court because the stipulation became a court order. In addition, the court held that the loan statements did not violate the stipulation because the loan statements were not an attempt to enforce an obligation against the debtor. ***In re* Neve, 2014 Bankr. LEXIS 2327 (Bankr. N.D. Calif. 2014)**.

ELIGIBILITY. The Chapter 12 debtor had farmed from 1976 to 2010 when the debtor became disabled. In 2011 and 2013, the debtor's sole income was social security payments. In 2012, the debtor had social security income plus the proceeds of a lawsuit for damages to crops in 2006, 2007 and 2008. At the time of the bankruptcy case, the debtor testified that the debtor only produced hay on the farm and gave it to family and friends. The debtor indicated that the debtor did not intend to pursue any future farming activities on the land. A creditor challenged the debtor's eligibility for Chapter 12. The court first looked at the year preceding the filing of the bankruptcy petition. In that year, 2012, the debtor had social security income of $20,000 and proceeds from the crop damage lawsuit of $30,000. The court held that the lawsuit proceeds were farm income; therefore, the debtor had farming income greater than 50 percent of all income. Although the crop damage occurred in prior years, the the court held that the statute requires only that the farm-related income be received in the year before the petition filing. The court applied the "totality of the circumstances" test and determined that the debtor was not currently engaged in a farming operation. The court noted that the debtor testified that the debtor did not intend to actively engage in farming for income and that the debtor was no longer subject to the inherent economic risks of farming. Thus, the court held that the debtor was not eligible for Chapter 12. The debtor sought permission to convert the case to Chapter 13. Although the court acknowledged that there was no direct authority to convert a case directly from Chapter 12 to Chapter 13, the court did find that a debtor could convert to Chapter 7 and then to Chapter 13. However, the court held that there was no reason to require the two-step conversion and authorized the debtor to file a motion to convert the case directly to Chapter 13 since it would not prejudice the creditors or debtor. ***In re* McLawchlin, 2014 Bankr. LEXIS 2455 (Bankr. S.D. Texas 2014)**.

USE OF ESTATE PROPERTY. The debtors, husband and wife, owned and operated a dairy farm through a limited liability company. The debtors had purchased the dairy farm with a real estate mortgage and commercial security agreement with a bank which provided for a blanket security interest on the land, equipment, livestock, and milk and cattle sale proceeds. The debtors had suffered losses to their cows from stray electricity and sought permission to sell the damaged cows and use the proceeds to purchase new cows for the dairy. The debtors proposed providing replacement liens on the the new cows and provided for monthly payments based on the amount of milk sales as the new cows began full production. The court approved the use of the sale proceeds to purchase replacement cows because the creditor was adequately protected and the debtors had demonstrated their expertise at the dairy operation, thwarted only by the stray voltage problem which had been corrected. The appellate court affirmed. ***In re* Vander Vegt, 2014 U.S. Dist. LEXIS 71781 (N.D. Iowa 2014), *aff'g*, 499 B.R. 631 (Bankr. N.D. Iowa 2013)**.

FEDERAL TAX

DISCHARGE. The debtor lived on social security income and filed for Chapter 7 in February 2013. The debtor listed federal taxes owed for 2009. The 2009 tax return was filed under an extension in October 2010. The debtor sought a discharge of the 2009 taxes, arguing that, but for the extension, the 2009 taxes would be dischargeable under Section 727. The IRS argued the letter of the law that, because the tax return was due, including the extension, to be filed within three years of the bankruptcy filing, the taxes involved were a priority claim nondischargeable in bankruptcy. The debtor agreed but asked for an equitable ruling because of the poverty of the debtor. The court responded that the Bankruptcy Code did not have a hardship exception and the court had no equitable power to avoid the clear statutory rule. Therefore, the taxes were nondischargeable. The court noted that the IRS has payment plans and even the authority to place the debt in non-collectable status. ***In re* Leslie, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,297 (Bankr. N.D. Iowa 2014)**.

FEDERAL FARM PROGRAMS

CONSERVATION RESERVE PROGRAM. The CCC and FSA have announced the continuation of the CRP Continuous sign-up, with revised cropping history requirements as specified in the 2014 Farm Bill. Announcement also discusses the opportunity for producers of certain CRP contracts to terminate the contract early (referred to as "early-outs"). The 2014 Farm Bill also continues, with modifications, the CRP Transition Incentives Program (TIP). The FSA also announced an opportunity for participants to extend eligible CRP contracts currently scheduled to expire on September 30, 2014, for one additional year. CRP, including TIP, will continue to be implemented under the existing regulations, except as specified in the announcement, which will be followed by amendments to the applicable regulations to implement changes required by the 2014 Farm Bill after the completion of the appropriate National Environmental Policy Act analysis. **79 Fed. Reg. 32435 (June 5, 2014)**.

CROP INSURANCE. The FCIC has adopted as final regulations that provide forage seed insurance. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crop insurance programs. The intended effect of this action is to convert the Forage Seed pilot crop insurance program to a permanent insurance program for the 2015 and succeeding crop years. **79 Fed. Reg. 30703 (May 29, 2014)**.

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The decedent died in 2010 and the executor retained an accountant to advise on estate tax matters including the necessity to file a Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*. The accountant prepared the Form 8939 but failed to file the form before January 17, 2012. The estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to file the Form 8939 to make the I.R.C. § 1022 election and to allocate basis provided by I.R.C. § 1022 to eligible property transferred as a result of the decedent's death. *Notice 2011-66, 2011-2 C.B. 184 section I.D.1*, provides that the IRS will not grant extensions of time to file a Form 8939 and will not accept a Form 8939 filed after the due date except in four limited circumstances provided in section I.D.2: "Fourth, an executor may apply for relief under § 301.9100-3 in the form of an extension of the time in which to file the Form 8939 (thus, making the Section 1022 election and the allocation of basis increase), which relief may be granted if the requirements of § 301.9100-3 are satisfied. The IRS granted an extension of time to file the election. **Ltr. Rul. 201421007, Feb. 19, 2014.**

GENERATION SKIPPING TRANSFERS. Prior to September 25, 1985, two identical trusts became irrevocable at the death of the settlor. The trust beneficiaries were the settlor's children and the trusts were to terminate on the expiration of a period ending 21 years after the death of the last survivor of those of settlor's children and their issue who were living at the time of the settlor's death. The trusts obtained three judicially approved amendments of the trust agreements: (1) an investment advisory committee was authorized to control the investments of the trusts, (2) authorization was provided for the trustee to change the state location of the trust, and (3) the validity, construction and effect of the provisions of the trusts shall be governed by the laws of one state, and the administration of the respective trust shall be governed and regulated according to and by the laws of another state. The IRS ruled that the amendments did not subject the trusts to GSTT because the amendments did not shift the beneficial interest to a lower generation in the trusts or to extend the time for vesting of any beneficial interest in the trusts beyond the period provided for in the original trusts. **Ltr. Rul. 201422011, Jan. 29, 2014**.

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. To obtain the benefit of portability of the decedent's DSUE amount to the spouse, the decedent's estate was required to file Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, on or before the date that is 9 months after the decedent's date of death or the last day of the period covered by an extension. The decedent's estate did not file a Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The spouse, as executrix of the decedent's estate, represented that the value of the decedent's gross estate is less than the basic exclusion amount in the year of the decedent's death and that during the decedent's lifetime, the decedent made no taxable gifts. The spouse requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to elect portability of the decedent's DSUE amount pursuant to I.R.C. § 2010(c)(5)(A). The IRS granted the estate an extension of time to file Form 706 with the election. **Ltr. Rul. 201421002, Jan. 14, 2014**.

PRE-DEATH GIFTS. The decedent had inherited stock in a family corporation from a pre-deceased spouse. The decedent made several gifts of the stock and filed Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return, in 1999 through 2008. The decedent died in 2008 and the IRS examined the gift tax returns in 2012 and issued deficiencies. The IRS also increased the value of the gifts for federal estate tax purposes and the estate argued that the assessments were void because the assessments were made more than three years after the filing of the gift tax returns. The court noted that the statute of limitations applied only if the gift tax returns provided sufficient information to the IRS to make a determination of the nature of the gifted property. The court stated that, under Treas. Reg. § 301.6501(c)-1(f)(2)(iv), a gift reported on a Form 709 or on a statement attached to a Form 709 will be considered adequately disclosed if the taxpayer provides, among other things, a detailed description of the method used to determine the fair market value of the property transferred, including any financial data (for example, balance sheets, etc., with explanations of any adjustments) that were used in determining the value of the property. The estate sought a summary judgment on the issue that the Forms 709 adequately disclosed the nature of the gifts, but the court found that the statements with the Forms 709 did not reveal that the corporation owned another closely-held entity; therefore, the court held that there remained an issue of material fact as to whether the Forms 709 adequately revealed the nature of the gifted property. The summary judgment motion was denied. **Estate of Hicks v. Comm'r, T.C. Memo. 2014-100**.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayer was a lawyer and owned the law practice as a sole proprietorship. The taxpayer filed Schedule C for the business and claimed deductions for business expenses. The taxpayer did not provide any records to substantiate the expenses except cancelled checks and credit card statements, none of which identified the business purpose of the expense. The court held that the deductions were not allowed above the amounts allowed by the IRS for lack of substantiation. **Canatella v. Comm'r, T.C. Memo. 2014-102**.

CAPITAL GAINS. The taxpayer purchased undeveloped property and spent eight years attempting to develop the property for resale. The taxpayer then spent two years looking for additional investors to complete the development. The taxpayer eventually sold the property to another developer who paid the taxpayer when a property unit was sold. The taxpayer claimed that the property was investment property and the gain from the sale was capital gain. The court found that the taxpayer's intent in purchasing the property was to develop the property for resale to customers because the taxpayer spent nearly 10 years of significant effort trying to develop the property so that units could be sold. Therefore, the gain from the eventual sale was not capital gain but ordinary "other income." **Allen v. United States, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,300 (N.D. Calif. 2014)**.

CORPORATIONS

DISTRIBUTIONS TO SHAREHOLDERS. The taxpayer wholly-owned a trucking company which was threatened with termination because of legal troubles with the state regulatory agency. The taxpayer had built the company and controlled the operations as the essential employee managing the company. In order to remove the regulatory threat, the taxpayer decided to form a new company to be run by the taxpayer's children. The new company did not receive any assets of the original company but the new company did use some of the same employees and contracted truck drivers. The assets remaining in the original company were used to pay legal expenses. The IRS issued a deficiency based on its belief that the original company distributed the value of its goodwill as a going concern to the taxpayer. The court held that what goodwill existed in the company was owned by the taxpayer individually. The court noted that the original company had no goodwill by the time of the formation of the second company because of the regulatory threat to its business and existence. Therefore, the taxpayer did not realize any gain from the distribution of goodwill from the original company. **Bross Trucking, Inc. v. Comm'r, T.C. Memo. 2014-107**.

FOREIGN CORPORATIONS. The IRS has adopted as final regulations governing Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*. The final regulations affect certain 25-percent foreign-owned domestic corporations and certain foreign corporations that are engaged in a trade or business in the United States that are required to file Form 5472. The IRS also announced that new proposed regulations will be issued that would remove a current provision for timely filing of Form 5472 separately from an income tax return that is untimely filed. As a result, the proposed regulations would require Form 5472 to be filed in all cases only with the filer's income tax return for the taxable year by the due date (including extensions) of that return. **79 Fed. Reg. 32644 (June 6, 2014)**.

DEPRECIATION. The taxpayer was the common parent of an affiliated group that joined in filing a consolidated federal income tax return on a calendar year basis. For three tax years the taxpayer did not claim the additional first year depreciation deduction for any classes of qualified property placed in service by the taxpayer during each of those taxable years. The taxpayer, however, inadvertently failed to attach the election statement not to claim the additional first year depreciation deduction for all classes of qualified property placed in service by the taxpayer, as required by Treas. Reg. § 1.168(k)-1(e)(3)(ii), to the consolidated federal income tax returns. The IRS granted a 60-day extension of time to file amended returns with the election statement. **Ltr. Rul. 201422008, Feb. 12, 2014**.

ELECTRICITY PRODUCTION CREDIT. The 2014 inflation-adjustment factor used in determining the availability of the credit for renewable electricity production, refined coal production, and Indian coal production under I.R.C. § 45 for qualified energy resources and refined coal is 1.5088. The inflation adjustment factor for Indian coal is 1.1587. The credit for refined coal production is $6.590 per ton of qualified refined coal sold in 2012. The credit for Indian coal production is $2.317 per ton of Indian coal sold in 2014. The 2014 reference price for fuel used as feedstock is $56.88 per ton. The amount of the credit is 2.3 cents per kilowatt hour on sales of electricity produced from wind energy, closed-loop biomass, geothermal energy and solar energy, and 1.1 cents per kilowatt hour on sales of electricity produced from open-loop biomass, small irrigation power facilities, landfill gas facilities, trash combustion facilities, qualified hydropower facilities, and marine and hydrokinetic energy facilities. Because the 2014 reference price for electricity produced from wind does not exceed eight cents multiplied by the inflation adjustment factor, the phaseout of the credit does not apply to such electricity sold during calendar year 2014. Because the 2014 reference price for fuel used as feedstock for refined coal does not exceed the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor plus 1.7, the phaseout of the credit does not apply to refined coal sold during calendar year 2014. The phaseout of the credit for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy does not apply to such electricity sold during calendar year 2014. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable

energy for 2014 have not yet been determined. **Notice 2014-36, 2014-1 C.B. 1058.**

FIRST TIME HOMEBUYER CREDIT. The taxpayer-wife had purchased a home in 1999 and in 2002 the wife transferred title to the property to the wife's two minor children. The taxpayer-wife continued to live in the home and paid all expenses associated with the property, including expenses for electricity, trash service, homeowner's insurance, and real property taxes. In 2008, the taxpayers purchased a second home and used it as their principal residence. The prior residence was then converted to a rental property and the taxpayers reported the rent and expenses from the property on their Schedule E. The taxpayers claimed the first time homebuyer credit for the purchase of the second residence, which was denied by the IRS. The court held that, although title to the first home was transferred to the children, the taxpayer-wife had retained the benefits and burdens of ownership of the first residence after transfer of title to the children; therefore, the wife had a present ownership in a residence at the time of the purchase of the second residence and was ineligible for the first time homebuyer credit for the second home purchase. **Douglas v. Comm'r, T.C. Memo. 2014-104**.

INCOME OF MINISTERS. The defendant was the head minister and organizer of a church with 50 active junior ministers. The junior ministers took a vow of poverty and assigned all their income, earned from employment outside the church, to the church. The junior ministers also assigned title to their homes and other property to the church. The church held accounts for each minister and paid for the ministers' personal needs, including mortgages on the homes, from the ministers' accounts. Each minister also had the ability to withdraw up to 90 percent of all funds in the accounts. The IRS sought an injunction against the defendant for promoting an abusive tax shelter, which the trial court granted. On appeal the appellate court affirmed, holding that the junior ministers were not agents of the church and their income was not earned as an agent and on behalf of the church. **United States v. Hartshorn, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,305 (10th Cir. 2014), *aff'g*, 2012-1 U.S. Tax Cas. ¶ 50,241 (D. Utah 2012)**.

IRA. The taxpayer owned an IRA through a brokerage account. The taxpayer wanted to purchase some real estate and keep the property in the IRA. The brokerage firm had indicated that it would not provide for the account to own real property; however, the taxpayer went ahead with the transaction by withdrawing the funds from the IRA and purchasing the property in the name of the IRA account. When the real estate was sold a few years later, the proceeds were placed into the IRA as a rollover distribution. The IRS filed a deficiency based on an early withdrawal without a rollover within 60 days. Although the court acknowledged that IRAs are allowed to own real estate, the court held that, because the brokerage company did not allow its IRA accounts to hold real property, the taxpayer's attempt to do so failed to place the real estate in the IRA. **Dabney v. Comm'r, T.C. Memo. 2014-108**.

QUARTERLY INTEREST RATE. The IRS has announced that, for the period July 1, 2014 through September 30, 2014, the interest rate paid on tax overpayments remains at 3 percent (2 percent in the case of a corporation) and for underpayments remains at 3 percent. The interest rate for underpayments by large corporations remains at 5 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 remains at 0.5 percent. **Rev. Rul. 2014-14, I.R.B. 2014-27.**

S CORPORATIONS

LOSSES FROM DISTRIBUTIONS. A corporation was originally formed as a C corporation but changed to an S corporation. The corporation redeemed real estate to a partnership at a time when the fair market value was less than the adjusted tax basis. In a Chief Counsel Advice letter, the IRS noted that the resulting loss was considered an I.R.C. § 311(a) loss and was not recognized because it was a distribution which was not part of a liquidation. The issue was whether the S corporation could reduce the shareholder's basis and accumulated adjustments account by the amount of the loss. The IRS ruled that the disallowed I.R.C. § 311(a) losses are treated as non-deductible, non-capital expenses pursuant to I.R.C. § 1367(a)(2)(D). Thus, a I.R.C. § 311(a) loss reduces the shareholders' bases in S corporation stock, and the S corporation must reduce its accumulated adjustments account. The rule for C corporations applied also to S corporations unless inconsistent. **CCA 201421015, Feb. 14, 2014**.

SOCIAL SECURITY TAX. The taxpayer was a retired airline pilot and had paid FICA taxes on the value of the retirement benefits when the taxpayer retired. After the taxpayer had retired, the airline declared bankruptcy and most of the taxpayer's retirement benefits were lost. The taxpayer sought a refund of the FICA taxes based on the reduction in value of the retirement benefits after the bankruptcy. The court held that the retirement benefits were properly valued and taxed at the time of retirement and that no discount for the risk of losing the benefits was required by I.R.C. § 3121 and regulations. No authority for refund of FICA taxes under the "Special Timing Rule" with benefits taxed although deferred. **Balestra v. United States, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,303 (Fed. Cls. 2014)**.

TAX SHELTERS. The taxpayer operated two cattle and horse ranches owned by by a limited partnership. The taxpayer held a super-majority interest in the partnership through a wholly-owned S corporation. The IRS argued that the use of the S corporation to own the interest in the ranch partnership made the partnership a tax shelter, required to use accrual reporting, even though the taxpayer actively participated in the operation of the partnership business for over five years and the participation was attributed to the ownership interest. The IRS argued that the active participation exception applied only where the individual taxpayer owned the interest in the limited partnership in the individual's name and not through a pass-through entity. The court rejected this requirement as not specifically required in the statute which merely mentions "any interest" in the partnership. The court noted that the use of the S corporation did not change the taxation of the taxpayer's income from the operation in that the income passed through the S corporation to the taxpayer. Thus, the court held that the partnership was not a tax shelter required by I.R.C. § 464 to use the accrual method of reporting income. The decision is designated as not for publication. **Burnett Ranches, Ltd. v. United States, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,295 (5th Cir. 2014)**.

PROPERTY

EASEMENT. The parents of one of the plaintiffs, husband and wife, had transferred a portion of the parents' land to the plaintiffs. Because the property was land-locked, the parents granted an easement over a portion of their land of an existing gravel road. Where the easement road joined with the public road, a cattle guard had been constructed in the middle of the easement road. After the easement was conveyed, a wooden fence was erected at the entrance to the easement road and painted the same color as the plaintiffs' house. As issue of fact at the trial level was whether the parents or the plaintiffs constructed the fence. The trial court found that the parents constructed the fence with some participation by the plaintiffs. Five years later, the parents of one of the defendants, husband and wife, deeded a portion of their land to the defendants. That land included the easement road. Several years later, the defendants replaced the wooden fence because it would no longer hold their cattle. The plaintiff wanted the fence reconstructed as it was originally, but when the defendants refused to allow reconstruction of the fence, the plaintiffs sued for its removal based on their ownership of the fence through easement by estoppel. On appeal the appellate court noted that the original deed granted an easement only for egress and ingress and that "no fences, buildings, or other improvements shall be placed in, on or upon said easement..." Thus, the original easement grant did not include any personal property such as the fence or cattle guard. The appellate court also ruled that the trial court's finding that the parents constructed the fence was supported by sufficient evidence since both parties had indicated at least some role of the parents in the fence construction. Thus, the appellate court upheld the trial court's dismissal of the action because the plaintiffs failed to present sufficient evidence that the parents or the defendants ever treated the fence and cattle guard as property included in the easement. **Gaylor v. Stiver, 2014 Tex. App. LEXIS 4763 (Tex. Ct. App. 2014)**.

STATE REGULATION OF AGRICULTURE

AGRICULTURAL USE. The taxpayers owned and operated a business in which they bred, raised, and trained Friesian horses. The business also hosted camps and demonstrations and provided riding lessons, cottage rentals, and horse-drawn carriage rides. The farm was enrolled in the Agricultural and Managed Forest Land Use Value Program (Current Use Program) for property tax purposes. The state refused to enroll the buildings in the Current Use Program because the taxpayers received more than half of their income from non-farming activities. The state acknowledged that the horse breeding and sale activities were farming activities but argued that the other activities did not constitute farming; therefore, the buildings related to those activities were not eligible for the Current Use Program. The court first looked to the statute, 32 V.S.A. § 3752, and noted that the statute did not include the taxpayers' activities, except for raising of livestock, in the definition of farming. The court also looked at federal bankruptcy cases which held that activities such as or similar to riding lessons and horse-drawn carriage rides were not farming activities. Thus, the court held that the taxpayers' income from riding lessons, cottage rentals, and horse-drawn carriage rides was not farming income and the buildings related to those activities were not eligible for the Current Use Program. **Labrie v. Vermont Department of Taxes, 2014 Vt. Super. LEXIS 38 (Vt. Super. 2014)**.

FARM ESTATE AND BUSINESS PLANNING

by Neil E. Harl

NEW 18th Edition Available

The Agricultural Law Press is honored to publish the revised 18th Edition of Dr. Neil E. Harl's excellent guide for farmers and ranchers who want to make the most of the state and federal income and estate tax laws to assure the least expensive and most efficient transfer of their estates to their children and heirs. The 18th Edition includes all new income and estate tax developments from the 2012 tax legislation and Affordable Care Act.

We also offer a PDF version for computer and tablet use for $25.00.

Print and digital copies can be ordered directly from the Press by sending a check for $35 (print version) or $25 (PDF version) to Agricultural Law Press, 127 Young Rd., Kelso, WA 98626. Please include your e-mail address if ordering the PDF version and the digital file will be e-mailed to you.

Credit card purchases can be made online at www.agrilawpress.com or by calling Robert at 360-200-5666 in Kelso, WA.

For more information, contact robert@agrilawpress.com.

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

On the back cover, we list the agricultural tax seminars coming up in the summer of 2014. Here are the cities and dates for the seminars later this summer and fall 2014:

August 25-26, 2014 - Quality Inn, Ames, IA
August 27-28, 2014 - Holiday Inn, Council Bluffs, IA
September 4-5, 2014 - Honey Creek Resort, Moravia, IA
September 15-16, 2014 - Courtyard Hotel, Moorhead, MN
September 18-19, 2014 - Ramkota Hotel, Sioux Falls, SD
October 2-3, 2014, Holiday Inn, Rock Island, IL
October 6-7, 2014 -Best Western Hotel, Clear Lake, IA
October 13-14, 2014 - Ramada Hotel, Hutchinson, KS
November 24-25, 2014 - Adam's State Univ., Alamosa, CO

Each seminar will be structured the same as the seminars listed on the back cover of this issue. More information will be posted on www.agrilawpress.com and in future issues of the *Digest*.

Agricultural Law Press
127 Young Rd., Kelso, WA 98626

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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 for use restrictions on PDF files).

June 23-24, 2014, Parke Regency Hotel, 1413 Leslie Dr., Bloomington, IL, ph. 309-662-4300

June 25-26, 2014, Hilton Garden Inn, 8910 Hatfield Dr., Indianapolis, IN ph. 317-856-9100

More locations and dates listed on previous page.

The topics include:

First day

FARM ESTATE AND BUSINESS PLANNING

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
Undervaluations of property
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
Leasing land to family entity
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
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
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.

The seminar early-bird discount registration fees for *current subscribers* (and for each one of multiple registrations from the same firm) to the *Agricultural Law Digest*, the *Agricultural Law Manual*, or *Farm Estate and Business Planning* are $225 (one day) and $400 (two days). The early-bird registration fees for *nonsubscribers* are $250 (one day) and $450 (two days). Nonsubscribers may obtain the discounted fees by purchasing any one or more of our publications. See www.agrilawpress.com for online book and newsletter purchasing.

Contact Robert Achenbach at 360-200-5666, or e-mail Robert@agrilawpress.com for a brochure.

APPROVED
CONTINUING EDUCATION
PROVIDER