

The regulations warn against using this as an occasion to transfer the low income tax basis assets to the lowest tax-bracket taxpayer of the three. That is obliquely referred to as a “device” and is frowned upon to the point that it can derail a reorganization.⁴

Distribution of the “old” corporation’s stock in the respective subsidiaries in exchange for the “old” corporation’s stock held by each of the parties. Each of the parties give up their stock in the “old” corporation and become the sole owners of a particular subsidiary which has already been funded with agreed-upon properties. As is the case with tax-free exchanges generally, except to the extent gain or loss is recognized, the income tax basis of the stock in the “old” corporation carries over to the subsidiary for each individual owner. Likewise, the income tax basis of the assets as “qualified property”⁵ transferred from the “old” corporation carries over to the appropriate subsidiary.

So what does this all mean for farm and ranch reorganizations?

The lessons for farm and ranch reorganizations are spelled out in two revenue rulings.⁶ In the first of the two revenue rulings, *Rev. Rul. 1973-234*, the reorganization involved a livestock share lease with active involvement in the operation which satisfied the active business requirement. The ruling states that the term “actively conducted” connotes substantial management and operational activities. The other ruling, *Rev. Rul. 86-126*, involved a crop share lease⁷ with sharing of some expenses but with the tenant providing most of the management. The ruling recites that the activities of the corporate officers in renting the land, providing advice and reviewing accounts were not substantial enough to meet the active business requirement.

In general, cash rent leases are viewed as failing the “active business” test inasmuch as it is difficult to meet the requirements for eligibility under the active business test because of the dominance of the tenant in management decisions. But it is

important to note that *even share rent leases can fail the test for a reorganization*. That calls for a careful assessment of the importance of meeting that test as required by the statute even under a crop share or livestock share lease.

ENDNOTES

¹ I.R.C. § 368(a)(1)(D). See generally 8 Harl, *Agricultural Law* § 59.07[2] (2015); Harl, *Agricultural Law Manual* § 7.02[6][c][i] (2015); 2 *Farm Income Tax Manual* § 7.06[c][i] (2015 ed.). See also Harl, “Consequences of Divisive, Type D, Reorganizations for S Corporations,” 22 *Agric. L. Dig.* 25 (2011).

² See, e.g., Harl, “Fairness in Estate and Business Planning,” 23 *Agric. L. Dig.* 153 (2012); Harl, “Ignoring Reality: Iowa Supreme Court Decides Case Involving “Oppression” by Majority Shareholder in Farm Corporation,” 24 *Agric. L. Dig.* 113 (2013); Harl, “The Latest Chapter in the Baur Saga,” 25 *Agric. L. Dig.* 129 (2014); Harl, “Farm and Ranch Estate (and Business) Planning—Part I,” 42 *Estate Planning* 8, #3 (2015).

³ See Duffy, “2013 Iowa Farmland Value Survey,” Iowa State University, December 2013 (5.1 percent increase in average farmland values in Iowa, a record).

⁴ I.R.C. § 335(a)(1)(B). See Treas. Reg. § 1.355-2(d).

⁵ See I.R.C. §§ 355(d), 355(c)(2), 361(c)(2).

⁶ See *Rev. Rul. 73-234*, 1973-2 C.B. 180; *Rev. Rul. 86-126*, 1986-2 C.B. 58.

⁷ The language of the ruling leaves some question as to whether the arrangement was what might be termed a conventional crop share lease.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

NO ITEMS.

FEDERAL FARM PROGRAMS

BEANS. The AMS has announced that it proposes to revise the United States Standards for Grades of Canned Baked Beans. AMS is proposing to replace process-specific language “Product description” in the standard with language reflective of current canned baked bean manufacturing practices. Additionally, AMS proposes separating the canned dried beans, canned pork and beans,

and canned baked beans grade standards from one shared standard document into three separate standard documents. **80 Fed. Reg. 50262 (Aug. 19, 2015).**

POULTRY. The FSIS has issued proposed regulations amending the definition and standard of identity for the “roaster” or “roasting chicken” poultry class to better reflect the characteristics of “roaster” chickens in the market today. “Roasters” or “roasting chickens” are described in terms of the age and ready-to-cook (RTC) carcass weight of the bird. Genetic changes and management techniques have continued to reduce the grow-out period and increased the RTC weight for this poultry class. Therefore, FSIS is proposing to amend the “roaster” definition to remove the 8-week minimum age criterion and increase the RTC carcass weight from 5 pounds to 5.5 pounds. **80 Fed. Reg. 50228 (Aug. 19, 2015).**

FEDERAL ESTATE AND GIFT TAXATION

BASIS OF ESTATE PROPERTY. The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 requires that the fair-market value that sets the basis for any property acquired from a decedent be consistent with the value of that property for estate-tax purposes. Effective for property with respect to which an estate tax return is filed after July 31, 2015, the basis of any property inherited cannot exceed the value reported on the estate tax return. Additionally, the Act requires new information reporting for inherited property for which an estate tax return is filed after July 31, 2015. The Act obligates the executor of any estate required to file an estate tax return to furnish to IRS and to the recipients of the inherited property a statement identifying the value of the property as reported on the estate tax return. The statement must be provided no later than the earlier of 30 days after the estate tax return was required to be filed (including extensions) or 30 days after filing the estate tax return. *Pub. L. No. 114-41, § 2004 (2015), adding I.R.C. §§ 1014(f), 6035.* The IRS has issued a notice which provides that, for each statement required by I.R.C. § 6035 to be filed with the IRS or furnished to a beneficiary before February 29, 2016, the due date for filing or furnishing that statement is delayed until February 29, 2016. This notice applies to executors of estates of decedents and to other persons who are required under I.R.C. § 6018(a) or (b) to file a return if that return is filed after July 31, 2015. The delay was required to allow the IRS time to issue further guidance for these filings. Executors and other persons required to file or furnish a statement under I.R.C. § 6035(a)(1) or (a)(2) should not do so until the issuance of forms or further guidance by the Treasury Department and the IRS addressing the requirements of I.R.C. § 6035. **Notice 2015-57, I.R.B. 2015-36.**

CHARITABLE REMAINDER TRUSTS. The IRS has adopted as final regulations providing rules for determining a taxable beneficiary's basis in a term interest in a charitable remainder trust (CRT) upon a sale or other disposition of all interests in the trust to the extent that basis consists of a share of adjusted uniform basis. The new rules are intended to prevent the following series of transactions that attempt to avoid recognizing gain from appreciated property in a CRT: Upon contribution of assets to the CRT, the grantor claims an income tax deduction under I.R.C. § 170 for the portion of the fair market value of the assets contributed to the CRT (which generally have a fair market value in excess of the grantor's cost basis) that is attributable to the charitable remainder interest. When the CRT sells or liquidates the contributed assets, the taxable beneficiary does not recognize gain, and the CRT is exempt from tax on such gain under I.R.C. § 664(c). The CRT reinvests the proceeds in other assets, often a portfolio of marketable securities, with a basis equal to the portfolio's cost. The taxable beneficiary and charity subsequently sell all of their respective interests in the CRT to a third party. The taxable beneficiary takes the position that the entire interest in the CRT has been sold as described in I.R.C. § 1001(e)(3) and, therefore, I.R.C. § 1001(e)(1) does not apply

to the transaction. As a result, the taxable beneficiary computes gain on the sale of the taxable beneficiary's term interest by taking into account the portion of the uniform basis allocable to the term interest under Treas. Reg. §§ 1.1014-5 and 1.1015-1(b). The taxable beneficiary takes the position that this uniform basis is derived from the basis of the new assets acquired by the CRT rather than the grantor's basis in the assets contributed to the CRT. In an attempt to prevent such abuses, the proposed regulations provide a special rule for determining the basis in certain CRT term interests in transactions to which I.R.C. § 1001(e)(3) applies. In these cases, the regulations provide that the basis of a term interest of a taxable beneficiary is the portion of the adjusted uniform basis assignable to that interest reduced by the portion of the sum of the following amounts assignable to that interest: (1) the amount of undistributed net ordinary income described in I.R.C. § 664(b)(1); and (2) the amount of undistributed net capital gain described in I.R.C. § 664(b)(2). The regulations do not affect the CRT's basis in its assets, but rather are for the purpose of determining a taxable beneficiary's gain arising from a transaction described in I.R.C. § 1001(e)(3). However, the IRS and the Treasury Department may consider whether there should be any change in the treatment of the charitable remainderman participating in such a transaction. **T.D. 9729, 80 Fed. Reg. 48249 (Aug. 12, 2015).**

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 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 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. 201532002, April 29, 2015.**

SPECIAL USE VALUATION. The IRS has issued the 2015 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 2015:

District	2015 Interest Rate
AgFirst, FCB	5.21
AgriBank, FCB	4.56
CoBank, FCB	4.17
Texas, FCB	4.73
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. 2015-18, 2015-2 C.B. 209.

FEDERAL INCOME TAXATION

ALIMONY. The taxpayer was divorced and the divorce decree included an informal written agreement between the parties that the former spouse would make monthly payments of \$5232 to the taxpayer as “alimony/child support” for eight years or until the taxpayer married or co-habitated. The agreement was incorporated into the divorce decree. The taxpayer excluded the monthly payments from taxable income, arguing that they were not alimony because the payments would not cease at the death of the taxpayer. The court looked to Delaware law to determine whether state law dictated an interpretation of the agreement terms. Although the court found that Delaware law required explicit and express language in the agreement to terminate payments at death, the court ultimately found the Delaware law ambiguous. The court held that the payments were not alimony because the eight year term of the monthly payments indicated that the payments were not contingent upon the survival of the taxpayer. The court noted that the agreement did contain two termination conditions, indicating that the parties intended the payments to continue after the death of the taxpayer for the remainder of the eight years. **Crabtree v. Comm’r, T.C. Memo. 2015-163.**

ANNUITY. In 2003, the taxpayers, husband and wife, purchased an annuity using the proceeds of the sale of stock inherited from the wife’s parents. The stock sales resulted in a net loss. The annuity had a starting date of February 3, 2047. The taxpayers withdrew \$525,000 from the annuity to purchase a residence. On the date of withdrawal, the annuity had accrued earnings of \$182,302. The annuity company issued a Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, listing the amount of the accrued earnings as taxable income. The taxpayers did not include any of this amount in taxable income, arguing that the losses on the sale of the stock should offset the accrued earnings. However, the taxpayers’ income tax returns for the years since the stock sale included a deduction of \$3,000 each year from the stock sale which offset ordinary income. The court noted that the “income-first” rule of I.R.C. § 72(e) provides that payments received before the annuity starting date “shall be included in gross income to the extent allocable to income on the contract.” I.R.C. § 72(e)(2)(B). This amount is calculated by subtracting the recipient’s “investment in the contract” from the cash value of the contract immediately before the distribution is received, disregarding any surrender charges. I.R.C. § 72(e)(3)(A).

The recipient is thus taxed on the full amount of the distribution or the full amount of earnings accrued in the annuity contract, whichever amount is less. Therefore, the court held that, because the taxpayers withdrew funds before the start date of the annuity, the amount of accrued earnings up to the withdrawn amount were taxable income to the taxpayers. **Tobias v. Comm’r, T.C. Memo. 2015-164.**

CHARITABLE DEDUCTION. The taxpayers owned a 74 acre undeveloped rural property which was partially subdivided into seven residential lots. The taxpayers granted a conservation easement for 80 percent of the property covering the area outside of the seven lots. Although the easement agreement warranted that there were no outstanding mortgages on the property, the property was subject to a mortgage held by a bank on the date of the transfer. The agreement also provided that the agreement could be amended under “appropriate” circumstances. The taxpayers obtained a subordination agreement from the bank several years after the transfer, although the bank required a buy-down of the mortgage first. The taxpayers claimed a charitable deduction for the value of the easement as determined by an appraisal. The IRS challenged the deduction because (1) the grant of the conservation easement was a condition of receiving permission from the county to subdivide the land; (2) the conservation easement was not protected in perpetuity because (a) the terms of the easement allowed taxpayer and the charitable organization to amend the easement by agreement, (b) mortgage on the land was not subordinated at the time of the grant, and (c) the easement failed to provide for the allocation of proceeds to the charitable organization in the event the easement was extinguished; (3) the taxpayers’ deduction for the contribution of the easement is limited to the basis allocated to the easement; and (4) the easement was overvalued. On the issue of (2)(b), the taxpayers argued that the bank would have subordinated its mortgage at the time of the transfer. The Tax Court noted, however, that a bank officer refused to testify that the bank would have subordinated the mortgage at the time and the subsequent subordination agreement required a buy-down of the mortgage, indicating that the bank would not have freely subordinated its mortgage to the charitable organization. In any case, the Tax Court held that the requirement that all liens against the property had to be subordinated was an absolute requirement for a charitable deduction for a grant of an easement; therefore, the deduction was properly denied by the IRS. On appeal the appellate court affirmed. **Minnick v. Comm’r, 2015-2 U.S. Tax Cas. (CCH) ¶ 50,430 (9th Cir. 2015), aff’g, T.C. Memo. 2012-345.**

CHARITABLE ORGANIZATION. The taxpayer performed chemical research and consulting for health supplement companies. The taxpayer did not include payments from these companies in income because the taxpayer claimed to be working as an I.R.C. § 501(c)(3) tax-exempt organization. The taxpayer had not filed as a nonprofit with the state of Massachusetts; had not filed for non-profit status with the IRS; and had not filed any Form 990, *Return of Organization Exempt From Income Tax*. The court found that the taxpayer had also not formed a separate organization in that the taxpayer performed

all of the activities and personally received all the payments in the taxpayer's personal bank accounts. After the taxpayer was audited, the taxpayer did obtain Section 501(c)(3) status for a corporation by filing Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. The taxpayer argued that, although formal recognition of the charitable organization did not exist for the tax years involved, the taxpayer carried on the activities with the intent to form such an organization once sufficient capital was accumulated. The court held that the income from the taxpayer's activities was all taxable because the taxpayer failed to form a separate entity for which charitable organization status could be conferred. **George v. Comm'r, T.C. Memo. 2015-158.**

CORPORATIONS

CLASSIFICATION. The taxpayer was a limited liability company which elected to be taxed as a corporation but which failed to timely file the Form 8832, *Entity Classification Election*. The IRS granted an extension of time to file the Form 8832. **Ltr. Rul. 201532003, March 12, 2015; Ltr. Rul. 201532027, March 12, 2015.**

HEALTH INSURANCE. The Affordable Care Act applies an approach to common ownership that also applies for other tax and employee benefit purposes. This longstanding rule generally treats companies that have a common owner or similar relationship as a single employer. These are aggregated companies. The ACA combines these companies to determine whether they employ at least 50 full-time employees including full-time equivalents. If the combined employee total meets the threshold, then each separate company is an applicable large employer. Each company – even those that do not individually meet the threshold – is subject to the employer shared responsibility provisions. These rules for combining related employers do not determine whether a particular company owes an employer shared responsibility payment or the amount of any payment. The IRS will determine payments separately for each company. **Health Care Tax Tip 2015-50.**

DISASTER LOSSES. On July 29, 2015, the President determined that certain areas in Vermont are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of a severe storm and flooding which began on June 9, 2015. **FEMA-4232-DR.** On July 30, 2015, the President determined that certain areas in South Dakota are eligible for assistance from the government under the Act as a result of severe storms, tornadoes, and flooding which began on June 17, 2015. **FEMA-4233-DR.** On July 31, 2015, the President determined that certain areas in Iowa are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on June 20, 2015. **FEMA-4234-DR.** On August 5, 2015, the President determined that certain areas in Commonwealth of the Northern Mariana Islands are eligible for assistance from the government under the Act as a result of Typhoon Soudelor which began on August 1, 2015. **FEMA-4235-DR.** On August 7, 2015, the President determined that certain areas in West Virginia are eligible for assistance from the government under the Act as a

result of severe storms, landslides and flooding which began on July 10, 2015. **FEMA-4236-DR.** On August 7, 2015, the President determined that tribal members of the Oglala Sioux Tribe of the Pine Ridge Indian Reservation are eligible for assistance from the government under the Act as a result of severe storms, straight-line winds, and flooding which began on May 8, 2015. **FEMA-4237-DR.** Accordingly, taxpayers in the areas may deduct the losses on their 2014 federal income tax returns. See I.R.C. § 165(i).

EDUCATION EXPENSES. The taxpayer attended law school in Germany and obtained a license to practice law. The taxpayer moved to the United States and attended law school. The taxpayer passed the bar examination in New York. During law school, the taxpayer was a manager of a building project and filed a *qui tam* action under the False Claims Act, although the record was unclear as to the dates of these activities. The taxpayer claimed deductions for expenses relating to the legal education in the United States. The taxpayer argued that the United States law degree was not a requirement for the New York bar examination; therefore, the education expenses were deductible under Treas. Reg. § 1.162-5(a) as education necessary to maintain or improve the taxpayer's law skills. The court found that the taxpayer failed to prove that the taxpayer was qualified to take the New York bar exam on the basis of the German law degree and license or by any other qualifications except for the law school degree obtained in the United States. Thus, the legal education expenses were not eligible for a deduction. **O'Connor v. Comm'r, T.C. Memo. 2015-155.**

HEALTH INSURANCE. The IRS has published information for large employers' compliance with the Affordable Care Act. Some of the provisions of the health care law apply only to "applicable large employers," which is generally those with 50 or more full-time equivalent employees. The ACA requires ALEs to file information returns in 2016 with the IRS and provide statements to their full-time employees about the health insurance coverage the employer offered. *Monthly Tracking.* To prepare for the reporting requirements in 2016, applicable large employers should be tracking information each month of 2015, including: (1) Whether the employer offered full-time employees and their dependents minimum essential coverage that meets the minimum value requirements and is affordable. (2) Whether the employees enrolled in the self-insured minimum essential coverage the employer offered. *Annual Information Reporting.* The first statements to employees must be provided by January 31, 2016, and the first information returns to the IRS must be filed by February 28, 2016, or March 31, 2016, if filed electronically. ALEs must file Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, and Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*, with the IRS annually, no later than February 28 – March 31 if filed electronically – of the year immediately following the calendar year to which the return relates. ALEs are also required to provide a statement to each full-time employee that includes the same information provided to the IRS, by January 31 of the calendar year following the calendar year for which the information relates. ALEs that file 250 or more information returns during the calendar year must file the returns electronically. ALEs who are self-insured—who sponsor self-insured group

health plans—are subject to the employer information reporting requirements as well as the reporting requirements for providers of minimum essential coverage. *Other Reporting Requirements.* The Additional Medicare Tax applies to wages, compensation, and self-employment income. An employer must withhold and report an additional 0.9 percent on employee wages or compensation that exceeds \$200,000. Employers may be required to report the value of the health insurance coverage provided to each employee on his or her Form W-2. For more information, including whether the employer is subject to an employer shared responsibility payment, see Publication 5196, *Understanding Employer Reporting Requirements of the Health Care Law*. **Health Care Tax Tip 2015-48.**

The IRS has placed several ACA videos on the IRS Video Portal. Each provides about 40 minutes of detailed information on the specific tax provision mentioned in the title: Employer Shared Responsibility Provision (47 minutes); Employer-Sponsored Health Coverage Information Reporting Requirements for Applicable Large Employers (37 minutes); Information Reporting Requirements for Providers of Minimum Essential Coverage (35 minutes). Taxpayers can view the recorded webinars in the IRS Video Portal using one of the following tabs: Businesses, Tax Professionals, Governments and Non-Profits. After clicking on one of these tabs, simply select “Affordable Care Act” from the list of topics on the left side of the screen, and you will see a list of recordings about these and other ACA topics. **Health Care Tax Tip 2015-51.**

HOBBY LOSSES. The taxpayer filed Schedules C for 2007-2009 for a real estate business. The taxpayer was otherwise employed full time, attending or unemployed during these three years. The taxpayer sold one property during these years but claimed expense deductions resulting in losses for all three years. The court found that the taxpayer did not have sufficient records to substantiate most of the expenses and the court found most of the records to be suspect on their face. The court held that the taxpayer did not conduct the real estate activity with the intent to make a profit because (1) the taxpayer did not maintain records of the activities, a business bank account or make any changes to the operation to make it more profitable; (2) the taxpayer had no expertise in real estate sales; (3) the activity never showed a profit; and (4) the losses from the activity offset income from employment. The court noted that the other factors of Treas. Reg. § 1.183-2(b) were neutral. In the alternative, the court held that, even if the taxpayer was held to have intended to make a profit, the business expense deductions would be disallowed for lack of substantiation. **Pouemi v. Comm’r, T.C. Memo. 2015-161.**

HOME MORTGAGE INTEREST. The taxpayers were not married and purchased two residences, each owned jointly. Each taxpayer paid a portion of the mortgage interest on each property. The total mortgage interest paid exceeded \$2 million. Each taxpayer filed a separate return and claimed their individual mortgage interest payments as a mortgage interest deduction. Based on *CCA 200911007, March 13, 2009*, the IRS limited the total interest deduction to the amount of interest on \$1.1 million, allocating a portion of the allowed interest deduction to each

taxpayer based on the proportion paid by each taxpayer. The taxpayers argued that the deduction limit (interest up to an amount for a mortgage indebtedness of \$1.1 million) was allowable for each taxpayer. The IRS calculation was based on a limitation applied to both residences. The Tax Court agreed with the IRS, holding that the deduction was limited to \$1.1 million of indebtedness for each home owned by the taxpayers jointly. On appeal the appellate court reversed, holding that the I.R.C. § 163(h)(3) limitation applied to each taxpayer and not to each residence. **Voss v. Comm’r, 2015-2 U.S. Tax Cas. (CCH) ¶ 50,427 (9th Cir. 2015), aff’g sub nom. Sophy v. Comm’r, 138 T.C. 204 (2012).**

INCOME. The IRS has issued an announcement that the IRS will not assert that an individual whose personal information may have been compromised in a data breach must include in gross income the value of the identity protection services provided by the organization that experienced the data breach. Additionally, the IRS will not assert that an employer providing identity protection services to employees whose personal information may have been compromised in a data breach of the employer’s (or employer’s agent or service provider’s) recordkeeping system must include the value of the identity protection services in the employees’ gross income and wages. The IRS will also not assert that these amounts must be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to such individuals. This announcement does not apply to cash received in lieu of identity protection services, or to identity protection services received for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee’s compensation benefit package. This announcement also does not apply to proceeds received under an identity theft insurance policy; the treatment of insurance recoveries is governed by existing law. **Ann. 2015-22, I.R.B. 2015-35.**

IRA. The taxpayer withdrew funds from an IRA with the intent to roll over the funds to another IRA. The withdrawn funds were placed in a bank account, and a check drawn on that account was sent to the second IRA. The check was rejected by the second IRA custodian as a “starter check.” The taxpayer then submitted a similar check on another bank account but the second check was not deposited into the second IRA within the 60 day period after the initial withdrawal. The taxpayer requested a waiver of the 60-day rollover period. The IRS granted the waiver. **Ltr. Rul. 201523023, March 10, 2015.**

MARIJUANA SALES. The taxpayer operated two medical marijuana dispensaries which provided legal marijuana sales under California law. The taxpayer’s dispensary was searched by federal drug enforcement agents and an amount of marijuana and food containing marijuana was seized. The taxpayer filed a timely income tax return and included the value of the seized marijuana in gross receipts and cost of goods sold. The taxpayer also claimed business expense deductions on Schedule C. The taxpayer had no more than one month’s worth of sales and expense receipts because the taxpayer routinely destroyed such records. The court disallowed the business expense deductions for lack of substantiation and because such deductions were prohibited by I.R.C. § 280E since the expenses were incurred in a business involved in selling

federally controlled substances. The court also held that the seized marijuana and edibles could not be included in the cost of goods sold because the taxpayer failed to provide sufficient evidence of the seized items and their value. However, even with evidence of value, the court held that the value would not be included in cost of goods sold because the marijuana was seized and not sold. **Beck v. Comm’r, T.C. Memo. 2015-149.**

PASSIVE ACTIVITY LOSSES. The taxpayer was a full time teacher who also managed six rental properties owned by the taxpayer and spouse. The IRS conceded the issue that the taxpayer materially participated in the rental activities but disallowed the losses from the activity as passive activity losses. The IRS argued that the taxpayer did not work more than 750 hours annually on the activity and did not spend more time on the activity than other personal service activities. The taxpayer presented a log of the time spent teaching and spent on the rental activity. The court noted several errors in the records, including working more than 24 hours in a day, allowing one hour for each check written and providing no listing of time spent outside the classroom on lesson preparing, student meetings and test correcting. Thus, the court held that the taxpayer’s records were completely unreliable and insufficient proof of the time spent by the taxpayer on the rental activity. Because the taxpayer did not have proof of the time spent on the rental activity, the losses from the activity were passive activity losses. **Escalante v. Comm’r, T.C. Summary Op. 2015-47.**

PENSION PLANS. For plans beginning in August 2015 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 3.07 percent. The 30-year Treasury weighted average is 3.17 percent, and the 90 percent to 105 percent permissible range is 2.85 percent to 3.33 percent. The 24-month average corporate bond segment rates for August 2015, without adjustment by the 25-year average segment rates are: 1.32 percent for the first segment; 4.06 percent for the second segment; and 5.09 percent for the third segment. The 24-month average corporate bond segment rates for August 2015, taking into account the 25-year average segment rates, are: 4.72 percent for the first segment; 6.11 percent for the second segment; and 6.81 percent for the third segment. **Notice 2015-55, 2015-2 C.B. 217.**

SAFE HARBOR INTEREST RATES

September 2015

	Annual	Semi-annual	Quarterly	Monthly
Short-term				
AFR	0.54	0.54	0.54	0.54
110 percent AFR	0.59	0.59	0.59	0.59
120 percent AFR	0.65	0.65	0.65	0.65
Mid-term				
AFR	1.77	1.76	1.76	1.75
110 percent AFR	1.95	1.94	1.94	1.93
120 percent AFR	2.12	2.11	2.10	2.10
Long-term				
AFR	2.64	2.62	2.61	2.61
110 percent AFR	2.90	2.88	2.86	2.86
120 percent AFR	3.16	3.14	3.13	3.12

Rev. Rul. 2015-19, I.R.B. 2015-36.

RETURNS. The IRS has issued final, temporary and proposed regulations that remove the automatic extension of time to file

information returns in the W-2 series. The temporary regulations allow only a single, 30-day, nonautomatic extension of time to file these information returns. The changes are being implemented to accelerate the filing of W-2s so they are available earlier in the filing season for use in the IRS’s identity theft and refund fraud detection processes. **T.D. 9730, 80 Fed. Reg. 48433 (Aug. 13, 2015).**

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

See the back page for information about these seminars. Here are the cities and dates for the seminars this summer and early fall 2015:

- August 24-25, 2015** - Holiday Inn, Council Bluffs, IA
- August 27-28, 2015** - Quality Inn, Ames, IA
- September 3 & 4, 2015** - Truman State University Student Union, Kirksville, MO
- September 14 & 15, 2015** - Courtyard Hotel, Moorhead, MN
- September 17 & 18, 2015** - Ramkota Hotel, Sioux Falls, SD
- September 28 & 29, 2015** - Holiday Inn, Rock Island, IL
- October 13 & 14, 2015** - Atrium Hotel, Hutchinson, KS

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

FARM ESTATE AND BUSINESS PLANNING

by Neil E. Harl

18th Edition (2014)

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 through 2014.

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

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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 online for use restrictions on PDF files).

See Page 135 above for a list of cities and dates for Summer and early Fall 2015 Seminars

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
- 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
- Exchanging partnership assets

Taxation of Debt

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

The seminar registration fees for each of multiple registrations from the same firm and for *current subscribers* 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.

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