CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

FEDERAL TAX

DISCHARGE. The debtor incurred federal taxes in 2002 while married. Although a return was timely filed, the taxes were not paid. From 2002 through filing for Chapter 7 in 2010, the debtor made some attempts to pay the taxes, the former spouse made some promises to pay the taxes, but only a small portion was paid. The debtor divorced during this time and had much less income. Although the court found that the debtor had made some excessive purchases and had some money to pay the taxes, the court found no attempts to hide money or property from the IRS and found that the taxpayer had not attempted to evade payment of the taxes. The court held that the 2002 taxes were not non-dischargeable under Section 523(a)(1)(C) for willfully attempting to evade or defeat payment of the taxes. **In re Waterman, 2012-1 U.S. Tax Cas. (CCH) ¶ 50,410 (Bankr. S.D. Iowa 2012)**.

FEDERAL FARM PROGRAMS

ORGANIC FOOD. On June 6, 2012, the AMS adopted as final regulations which continued, without change, the exemptions and prohibitions for multiple listings on the National List for 5 years after their respective sunset dates. One of the substances involved was pectin. *77 Fed. Reg. 33290 (June 6, 2012)*. Based upon new information from the organic industry, AMS is informing operations certified to the USDA organic regulations that AMS will allow operations to reformulate their pectin products until October 21, 2012. **77 Fed. Reg. 38463 (June 28, 2012)**.

FEDERAL ESTATE AND GIFT TAXATION

ESTATE PROPERTY. The decedent and predeceased spouse owned shares in a holding company owned by themselves and their children. The predeceased spouse owned 140 shares and the decedent owned 600 shares. On the death of the predeceased spouse, no probate was initiated because the executors did not know that the predeceased spouse had a will. The predeceased spouse's 140 shares remained on the corporation's books as owned by the predeceased spouse and no actions or votes were taken as to the shares. However, after the decedent died, the decedent's 600 shares and the predeceased spouse's 140 shares were included in the decedent's estate on the estate tax return. After the IRS challenged the valuation of the decedent's shares, the predeceased spouse's will was discovered which bequeathed the 140 shares to a trust. The decedent's estate argued that the predeceased spouse's 140 shares were, therefore, not included in the decedent's estate. The IRS argued that the failure of the predeceased spouse's estate to exercise control over the shares demonstrated that the decedent owned the shares and the shares were properly included in the decedent's estate. The court found, however, that the decedent and corporation failed to take any actions or control over the predeceased spouse's shares; therefore, the shares remained part of the predeceased spouse's estate until the formal probate of the predeceased spouse's will formally transferred the shares to the trust. **Estate of Richard v. Comm'r, T.C. Memo. 2012-173**.

FIDUCIARY LIABILITY. The decedent had received a gift from a family member who did not pay the gift taxes owed. On the death of the decedent, the executor was informed that the IRS might have a claim against the decedent's estate for the gift taxes. However, the executor made distributions of property to heirs and transferred estate property to a charitable trust. Under the trust agreement, the trust was liable for the estate's debts and taxes. The court held that the transfer of the estate property violated the Federal Priority Statute, 31 U.S.C. § 3713 such that the executor and trustee were personally liable for the gift taxes owed by the estate. The executor and trustee argued that, although they had knowledge of the potential claim by the IRS, they had received legal advice that the claim would not be valid. The court held that the knowledge of the potential claim was sufficient to raise liability under the Federal Priority Act for failing to preserve a sufficient amount of the estate for payment of the claim. **United States v. MacIntyre, 2012-2 U.S. Tax Cas. (CCH) ¶ 60,649 (S.D. Texas 2012)**.

IRA. The taxpayer was the surviving spouse of a decedent who owned an IRA at the time of death. The decedent had established a revocable living trust which became irrevocable on the decedent's death. The IRA listed the trustee of the trust as the remainder beneficiary. The trust provided for two funds, a marital fund and a non-marital fund. The IRA passed solely to the marital fund, under which the taxpayer had the right to all income and to distribution of all trust principal. The IRS ruled that the IRA funds would be treated as having passed directly to the taxpayer, the funds would not be treated as an inherited IRA, the taxpayer was able to roll over the funds to an IRA in the taxpayer's name, and the taxpayer would not be required to include the IRA funds in taxable income. **Ltr. Rul. 201225020, March 28, 2012**.

INSTALLMENT PAYMENT OF ESTATE TAX. A Chief Counsel Advice letter discussed three issues involving the installment payment of estate tax. First issue: The estate elected to pay taxes under I.R.C. § 6166 installments. The IRS determined later that some of the estate assets were not part of a closely-held business; therefore, the amount of estate tax eligible for deferral was less. The IRS ruled that the determination of the amount of estate property that qualified as closely-held business property would be reviewable by the Tax Court. Second issue: The estate

elected to pay taxes under I.R.C. § 6166 in installments. The IRS later assessed a deficiency that either disqualified the estate for installment payments or reduced the amount of deferrable taxes. The estate appealed the deficiency to the Tax Court. The IRS ruled that a determination on eligibility for installment payments had to wait until the Tax Court ruled on the deficiency. Issue three: The estate made a payment of a portion of the estate taxes and elected to pay the rest in installments. The first payment turned out to be higher than needed and the estate requested a refund, although the full estate had not been paid through installments. The IRS ruled that no refund could be made because the estate had not yet overpaid its total estate tax. The IRS noted that a refund of an overpayment of an installment was allowed. **Ltr. Rul. 201226027, April 20, 2012**.

REFUND. In February 2003, the decedent's estate filed the estate tax return and included in the estate farm real estate. In November 2003 a state court ruled that the decedent held only a vested remainder in the property instead of a fee simple interest. The state court of appeals affirmed the decision in January 2005 and the state supreme court denied further appeal in March 2006. In November 2008, the estate filed an administrative claim with the IRS for a refund of overpaid estate taxes resulting from the lesser value of the remainder interest in the farm property. The IRS rejected the refund claim as untimely filed, more than three years after payment of the estate taxes. The estate argued that the three year limit should have been tolled by the state court litigation. The court held that the claim was untimely filed and that equitable tolling should not be applied because the estate could have filed the claim within three years since the first two court cases were completed within that time. The appellate court affirmed in a decision designated as not for publication. **Davis v. United States, 2012-2 U.S. Tax Cas. (CCH) ¶ 60,650 (5th Cir. 2012), *aff'g*, 2012-1 U.S. Tax Cas. (CCH) ¶ 60,634 (N.D. Miss. 2011)**.

FEDERAL INCOME TAXATION

AGRICULTURAL EMPLOYEES. The taxpayer was an S corporation owned by one person and which operated an equestrian facility. The taxpayer hired two workers whose duties included cleaning the stalls, the barn area, the barn offices, the rest room, and the tack room; grooming horses; watering the horses; and moving the horses between pastures. The workers used only equipment provided by the taxpayer. The taxpayer did not withhold or pay any employment taxes, arguing that the workers were independent contractors. The court held that the workers were employees for federal employment tax purposes because (1) the taxpayer controlled the work performed by the workers, (2) the taxpayer owned all the facilities and equipment, (3) the workers had no risk of loss from their work, (4) the taxpayer had the right to fire the workers at will, (5) the workers' jobs supported the business operation of the taxpayer, (6) the workers had worked for the taxpayer for several years, and (7) the taxpayer provided housing and gave advances on salaries, indicating that the parties' intent was to create an employee-employer relationship. **Twin Rivers Farm, Inc. v. Comm'r, T.C. Memo. 2012-184**.

ALIMONY. The taxpayer's initial divorce degree included an agreement to pay monthly alimony payments to the former spouse. Eight months later the taxpayer and former spouse negotiated another agreement under which the taxpayer paid a one-time lump sum amount to the former spouse in lieu of the monthly payments. This agreement was not formalized by a court order and did not include any payments for past alimony obligations. The court held that, under Maine law, the new lump sum amount became a personal obligation of the taxpayer when executed and did not terminate had the taxpayer died before payment. Therefore, the lump sum payment did not qualify as deductible alimony. **Chiavacci v. Comm'r, T.C. Summary Op. 2012-63**.

BUSINESS EXPENSES. The taxpayers, husband and wife, owned a residential rental property and claimed deductions for "lost rent," essentially rent which was not paid by their tenants. The court held that no deduction for unpaid rent was allowed where the rent was not included in income. The court also noted that the deduction was properly disallowed for lack of any written records to substantiate the amount of unpaid rent. **Carmickle v. Comm'r, T.C. Summary Op. 2012-60**.

CHARITABLE CONTRIBUTIONS. The taxpayers, husband and wife, purchased a house in 2006 with the intent to demolish the house and build a new one. The taxpayers never used the house as a residence but obtained an asbestos report and an appraisal. The taxpayer granted permission to a local fire department to burn down the house as part of a training exercise. The taxpayers incurred additional expenses in order to prepare the house for the exercise. The taxpayers claimed a charitable deduction for the value of the house. The court held that the charitable deduction was properly denied because the taxpayers did not transfer the entire property to the fire department. **Patel v. Comm'r, 138 T.C. No. 23 (2012)**.

CHILD AND DEPENDENT CARE CREDIT. The IRS has published information on a tax credit that can help parents offset some day camp expenses. The Child and Dependent Care Tax Credit is available for expenses incurred during the summer and throughout the rest of the year. Children must be under age 13 in order to qualify. Taxpayers may qualify for the credit, whether the childcare provider is a sitter at home or a daycare facility outside the home. Taxpayers may use up to $3,000 of the unreimbursed expenses paid in a year for one qualifying individual or $6,000 for two or more qualifying individuals to figure the credit. The credit can be up to 35 percent of qualifying expenses, depending on income. Expenses for overnight camps or summer school/tutoring do not qualify. Taxpayers should save receipts and paperwork as a reminder and substantiate the credit for filing the 2012 tax return. Taxpayers should remember to obtain and save the Employee Identification Number of the camp as well as its location and the dates attended. For more information, see IRS Publication 503, *Child and Dependent Care Expenses*. **IRS Summertime Tax Tip 2012-01**.

CORPORATIONS

STOCK COMPENSATION PLANS. The IRS has issued a revenue ruling providing guidance as to whether dividends and dividend equivalents relating to restricted stock and restricted stock units (RSUs) that are performance-based compensation I.R.C. § 162(m)(4)(C) must separately satisfy the requirements under I.R.C. § 162(m)(4)(C) to be treated as performance-based compensation. Corporation X and Corporation Y are publicly held corporations within the meaning of I.R.C. § 162(m)(2). Both corporations maintain plans under which participating employees may be granted restricted common stock of the respective corporation or RSUs based upon the common stock of the respective corporation. The restricted stock and RSUs granted under the plans of Corporations X and Y vest upon the attainment of certain preestablished, objective performance goals and otherwise meet the requirements of Treas. Reg. § 1.162-27(e). The compensation received due to the vesting of the restricted stock and the vesting and payment of the RSUs is qualified performance-based compensation that is excluded from the applicable employee remuneration to which the deduction limitation under I.R.C. § 162(m) applies. *Situation 1*. Corporation X's plan provides that dividends and dividend equivalents otherwise payable to an employee during the period from grant through vesting with respect to performance-based restricted stock and RSU awards granted to the employee are accumulated and become vested and payable only if the related performance goals with respect to the restricted stock and RSUs are satisfied. All other requirements of Treas. Reg. § 1.162-27(e) are met with respect to the grant of rights to dividends and dividend equivalents. The IRS ruled that dividends and dividend equivalents paid under X's plan are qualified-performance based compensation and, therefore, are excluded from applicable employee remuneration for purposes of applying the $1,000,000 limitation on deductibility under I.R.C. § 162(m)(1) *Situation 2*. Corporation Y's plan provides for payment to an employee during the period from grant to vesting of dividends and dividend equivalents with respect to performance-based restricted stock and RSU awards granted to the employee at the same time dividends are paid on common stock of Corporation Y regardless of whether the performance goals established with respect to the restricted stock and RSUs are satisfied. The IRS ruled that dividends and dividend equivalents paid under Y's plan are not qualified-performance based compensation and therefore are included in applicable employee remuneration for purposes of applying the $1,000,000 limitation on deductibility under I.R.C. § 162(m)(1). **Rev. Rul. 2012-19, I.R.B. 2012-26**.

DEPRECIATION. In a Chief Counsel Advice letter, the IRS determined that a floating casino was nonresidential real property because, although the casino floated, the structure was deemed indefinitely moored and designed to be docked permanently. The IRS acknowledged that a court could hold that the property was a vessel, in which case the property was tangible personal property eligible for a recovery period of seven years. **CCA 201225012, Feb. 17, 2012**.

DISASTER RELIEF. Victims of tropical storm Debby that began on June 23, 2012, in parts of Florida may qualify for tax relief from the IRS. The President has declared Baker, Bradford, Clay, Columbia, Franklin, Hernando, Highlands, Pasco, Pinellas, Suwannee and Wakulla counties a federal disaster area. Individuals who reside or have a business in this county may qualify for tax relief. The declaration permits the IRS to postpone certain deadlines for taxpayers who reside or have a business in the disaster area. Certain deadlines falling on or after June 23 and on or before Aug. 22 have been postponed to Aug. 22, 2012. In addition, the IRS is waiving the failure-to-deposit penalties for employment and excise tax deposits due on or after June 23 and on or before July 9 as long as the deposits are made by July 9, 2012. If an affected taxpayer receives a penalty notice from the IRS, the taxpayer should call the telephone number on the notice to have the IRS abate any interest and any late filing or late payment penalties that would otherwise apply. Penalties or interest will be abated only for taxpayers who have an original or extended filing, payment or deposit due date, including an extended filing or payment due date, that falls within the postponement period. The IRS automatically identifies taxpayers located in the covered disaster area and applies automatic filing and payment relief. Affected taxpayers who reside or have a business located outside the covered disaster area must call the IRS disaster hotline at 1-866-562-5227 to request this tax relief. *Covered Disaster Area*. The counties listed above constitute a covered disaster area for purposes of Treas. Reg. § 301.7508A-1(d)(2) and are entitled to the relief detailed below. *Affected Taxpayers*. Taxpayers considered to be affected taxpayers eligible for the postponement of time to file returns, pay taxes and perform other time-sensitive acts are those taxpayers listed in Treas. Reg. § 301.7508A-1(d)(1), and include individuals who live, and businesses whose principal place of business is located, in the covered disaster area. Taxpayers not in the covered disaster area, but whose records necessary to meet a deadline listed in Treas. Reg. § 301.7508A-1(c) are in the covered disaster area, are also entitled to relief. In addition, all relief workers affiliated with a recognized government or philanthropic organizations assisting in the relief activities in the covered disaster area and any individual visiting the covered disaster area who was killed or injured as a result of the disaster are entitled to relief. The postponement of time to file and pay does not apply to information returns in the W-2, 1098, 1099 series, or to Forms 1042-S or 8027. The postponement also does not apply to employment and excise tax deposits. The IRS, however, will abate penalties for failure to make timely employment and excise tax deposits due on or after June 23 and on or before July 9 provided the taxpayer makes these deposits by July 9. *Casualty Losses*. Affected taxpayers in a federally declared disaster area have the option of claiming disaster-related casualty losses on their federal income tax return for either 2012 or 2011. Claiming the loss on an original or amended return for 2011 will get the taxpayer an earlier refund, but waiting to claim the loss on the 2012 return could result in a greater tax saving, depending on other income factors. Individuals may deduct personal property losses that are not covered by insurance or other reimbursements. Affected taxpayers claiming the disaster loss on last year's return should put the Disaster Designation "Florida/Tropical Storm Debby" at the top of the form so that the IRS can expedite the processing of the refund. *Other Relief*. The IRS will waive the usual fees and expedite requests for copies of previously filed tax returns for affected taxpayers. Taxpayers should put the assigned Disaster Designation in red ink at the top of Form 4506, *Request for Copy of Tax Return*, or Form 4506-T, *Request for Transcript*

of Tax Return, and submit it to the IRS. Affected taxpayers who are contacted by the IRS on a collection or examination matter should explain how the disaster impacts them so that the IRS can provide appropriate consideration to their case. **FL 2012-07, July 5, 2012**.

HOME OFFICE. The taxpayers, husband and wife, owned a residential rental property and claimed deductions on office space in their residence and included costs for vehicle insurance, vehicle depreciation and vehicle repairs. The taxpayers provided only a written summary of the expenses but no receipts or other records to substantiate the expenses. The court held that the IRS properly disallowed the home office deductions. **Carmickle v. Comm'r, T.C. Summary Op. 2012-60**.

INCOME. The taxpayer was employed by several employers over several tax years. In each year, the employers issued Form 1099 MISC to the taxpayer listing non-employee compensation. The taxpayer constructed substitute Forms 1099-MISC and changed the amounts to zero. The taxpayer failed to include the amounts on the original Forms 1099-MISC as taxable income on the taxpayer's returns and listed the taxpayer's occupation as "American Citizen." At trial the taxpayer admitted that the taxpayer performed services for the various employers and made only "frivolous and groundless" arguments for treatment of the compensation as nontaxable income. The court held that the amounts reported on the Forms 1099-MISC were taxable income to the taxpayer. **Jenkins v. Comm'r, T.C. Memo. 2012-181**.

INNOCENT SPOUSE RELIEF. The taxpayer owed taxes for 2001 and 2002 and filed for innocent spouse relief in 2008 in response to a Notice of Intent to Levy in 2005. The IRS initially denied the request solely because it was filed more than two years after collection efforts had begun. After the taxpayer filed a petition in the Tax Court, the IRS determined that innocent spouse relief could also be denied under several other factors. The taxpayer filed a motion for summary judgment, arguing that the IRS failed to give notice to the taxpayer of these other factors and that the only issue was the timeliness of the application for relief. In the meantime, the IRS issued *Notice 2011-70, 2011-2 C.B. 135* which expanded the period for filing for relief, and the IRS dropped the claim of untimeliness. The court held that the failure of the IRS to provide notice of the other factors prior to the filing of the petition did not prevent the IRS from raising them at trial. **Pham v. Comm'r, T.C. Memo. 2012-171**.

The taxpayer was an attorney who had participated in an arbitration negotiation and had the potential of receiving substantial fees for the negotiation. The taxpayer contributed the potential arbitration award fees to a personal foundation run by the taxpayer and claimed charitable deductions based on the transfer. The IRS denied the charitable deduction and assessed a deficiency in addition to taxes owed but not paid by the taxpayer. The taxpayer filed for innocent spouse relief. The court denied innocent spouse relief under I.R.C. § 6015(b), (c), and (f) because the tax deficiency was due entirely because of the taxpayer's contribution of the taxpayer's negotiation fees to the foundation and accepted by the taxpayer on behalf of the foundation. The court found that none of the taxes were attributable to the taxpayer's spouse. **Stanwyck v. Comm'r, T.C. Memo. 2012-180**.

PASSIVE FOREIGN INVESTMENT COMPANY. The IRS has published guidance regarding the treatment of certain government bonds for purposes of determining whether a foreign corporation is a passive foreign investment company (PFIC). I.R.C. § 1297(a) provides that a PFIC is any foreign corporation if 75 percent or more of its gross income for the taxable year is passive income or the average percentage of assets held by the corporation during the taxable year which produce passive income or which are held for the production of passive income is at least 50 percent. I.R.C. § 1297(b)(1) provides that passive income means any income which is of a kind which would be foreign personal holding company income as defined in I.R.C. § 954(c), subject to the exceptions of I.R.C. § 1297(b)(2). Under I.R.C. § 1297(b)(2)(A), the term "passive income" does not include any income derived in the active conduct of a banking business by an institution licensed to do business as a bank in the United States or, to the extent provided in regulations, by any other corporation (active banking exception). In *Notice 89-81, 1989-2 C.B. 399*, the IRS described rules that would expand the active banking exception to certain foreign corporations not licensed to do business as a bank in the United States, and identified the types of banking activities that produce income excluded from passive income under the active banking exception. The IRS announced that, solely for purposes of I.R.C. § 1297 in 2011, 2012 and 2013, the income from qualifying government bonds held by an active bank qualifies for the active banking exception. **Notice 2012-45, I.R.B. 2012-29**.

PAYMENT-IN-KIND. The IRS has issued a revenue procedure containing sample language that may be used (but is not required to be used) for making an election under I.R.C. § 83(b). The revenue procedure provides examples of the income tax consequences of making such an election. I.R.C. § 83(a) provides generally that if, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of the fair market value of the property (determined without regard to any restriction other than a restriction which by its terms will never lapse) as of the first time that the transferee's rights in the property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over the amount (if any) paid for the property is included in the service provider's gross income for the taxable year which includes such time. **Rev. Proc. 2012-29, I.R.B. 2012-28**.

QUALIFIED ENERGY BONDS. The IRS has issued a notice with guidance concerning qualified energy conservation bonds under I.R.C. § 54D. The notice addresses questions regarding qualified conservation purposes eligible for financing with these bonds, particularly (1) how to measure reductions of energy consumption in publicly-owned buildings by at least 20 percent under I.R.C. § 54D(f)(1)(A)(i) and (2) what constitutes a "green community program" under I.R.C. § 54D(f)(1)(A)(ii). **Notice 2012-44, I.R.B. 2012-28**.

RETURNS. The IRS has announced a plan to help U.S. citizens residing overseas, including dual citizens, catch up with tax filing obligations and provide assistance for people with foreign retirement plan issues. The IRS will provide a new option to help some U.S. citizens and others residing abroad who haven't been filing tax returns and provide them a chance to catch up with their tax filing obligations if they owe little or no back taxes. The new

procedure will go into effect on Sept. 1, 2012. The IRS offered the new procedures that will allow taxpayers who are low compliance risks to get current with their tax requirements without facing penalties or additional enforcement action. These people generally will have simple tax returns and owe $1,500 or less in tax for any of the covered years. The IRS also announced that the new procedures will allow resolution of certain issues related to certain foreign retirement plans, such as Canadian Registered Retirement Savings Plans. In some circumstances, tax treaties allow for income deferral under U.S. tax law, but only if an election is made on a timely basis. The streamlined procedures will be made available to resolve low compliance risk situations even though this election was not made on a timely basis. Taxpayers using the new procedures announced will be required to file delinquent tax returns along with appropriate related information returns for the past three years, and to file delinquent Reports of Foreign Bank and Financial Accounts for the past six years. Submissions from taxpayers that present higher compliance risk will be subject to a more thorough review and potentially subject to an audit, which could cover more than three tax years. The IRS also released new details regarding the offshore voluntary disclosure program announced in January and closed a loophole used by some U.S. citizens. **IR-2012-64**.

S CORPORATIONS

SHAREHOLDERS. The taxpayers were two shareholders in an S corporation who executed a voting trust agreement. One shareholder was the trustee and the voting trust held all shares. The taxpayers remained the recipients of their share of corporate profits and losses. The IRS ruled that the voting trust was an eligible shareholder of the S corporation. **Ltr. Rul. 201226019, Feb. 16, 2012**.

SHAREHOLDER BASIS. The taxpayers, husband and wife, owned an S corporation in the medical equipment business. The taxpayers claimed pass-through losses from the corporation which were denied by the IRS for lack of basis in their interests in the corporation. The taxpayers claimed that their bases were increased from loans made to the corporation in the form of either direct payments or by paying expenses of the corporation. The court upheld the IRS denial of the losses because the corporation's books failed to show that any loans were outstanding and to what extent any of the loans were not offset by prior losses. **Welch v. Comm'r, T.C. Memo. 2012-179**.

TANNING SERVICES EXCISE TAX. The IRS has issued final and temporary regulations relating to disregarded entities (including qualified subchapter S subsidiaries) and the indoor tanning services excise tax. Effective July 1, 2010, section 10907 of the Patient Protection and Affordable Care Act, Public Law 111-148, 124 Stat. 119 (2010), added new Chapter 49 to the Internal Revenue Code, which imposes an excise tax on amounts paid for indoor tanning services under I.R.C. § 5000B. **77 Fed. Reg. 37806 (June 25, 2012)**.

TIPS. The IRS has issued a revenue ruling providing guidance for employers and employees in a question and answer format regarding taxes imposed on tips under the Federal Insurance Contributions Act (FICA), including information on the difference between tips and service charges, the reporting of the employer share of FICA taxes under I.R.C. § 3121(q) and the I.R.C. § 45B credit. The revenue ruling clarifies and updates guidelines first presented in *Rev. Rul. 95-7, 1995-1 C.B. 185*, concerning the taxes imposed on tips under the FICA and the notice and demand under I.R.C. § 3121(q). **Rev. Rul. 2012-18, I.R.B. 2012-26**.

IN THE NEWS

PESTICIDES. A Colorado judge has ruled that a farmer spraying for mosquitoes needed to prevent the pesticide from drifting into a neighboring organic farm, likening the action to a form of trespassing. The court ruled that two farmers cannot use pesticides within 150 feet of an organic farm run by a neighbor and could only apply the pesticide when winds would not cause it to drift onto their neighbor's property. The defendants had sprayed Fyfanon, a pesticide containing malathion, in or on their fields in efforts to protect themselves against the mosquito-borne West Nile virus. The plaintiff's farm, which could lose its organic status if the presence of pesticide is detected, sued in trespass for drifting spray. **DenverPost.com, July 6, 2012, http://www.denverpost.com/ci_21022037/judge-rules-delta-farmers-use-pesticides-form-trespassing?refresh=no&webredirect=&stopvalue=&stopparam=#ixzz1zu3tUt3Z**

FARM ESTATE AND BUSINESS PLANNING

by Neil E. Harl

The Agricultural Law Press is honored to publish the completely revised and updated 16th 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.

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AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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September 20-21, 2012, Sioux Falls, SD **Ramada Hotel, 1301 W. Russell St., Sioux Falls, SD 57104 ph. 605-336-1020**

The topics include:

First 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

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.

Second day

FARM ESTATE AND BUSINESS PLANNING

New Legislation

The Liquidity Problem

Property Held in Co-ownership
- Federal estate tax treatment of joint tenancy
- Severing joint tenancies 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
- Family-owned business deduction recapture
- Property included in the gross estate
- Traps in use of successive life estates
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Taxable estate
- The applicable exclusion amount
- Unified estate and gift tax rates
- Portability and the new 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

Limited Partnerships

Limited Liability Companies
- Developments with passive losses
- Corporate-to-LLC conversions
- New regulations for LLC and LLP losses

The 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

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

Social Security
- In-kind wages paid to agricultural labor

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