CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

HORSES. The plaintiff and companion had been visiting the defendant's guest ranch and riding on trail rides on the ranch for 13 years before the accident. The defendant offered three levels of riding, basically determined by the experience of the rider and the speed of the horses on the ride. The plaintiff chose the advanced level after using the lower level in prior years. At the advanced level the horses were loped or cantered for short periods. The defendant provided documents to the plaintiff entitled "Visitor's Acknowledgement of Risk" which discussed at length the risks involved with horseback riding on trails. The plaintiff signed the documents to indicate agreement and understanding of the information. The plaintiff was injured when her horse, one the plaintiff had used in the past, stepped into a gopher hole while loping. The plaintiff sued in negligence, arguing that (1) the accident was not within the normal risk of horseback riding because the ride should not have occurred where there were gopher holes, (2) the defendant failed to properly screen the plaintiff's riding ability, and (3) the trail ride was not sufficiently supervised. In particular, the plaintiff pointed to the documents as promising to provide skilled guides for the rides. The plaintiff argued that this promise preempted any assumption of risk defense because the providing of the guides was an action outside the normal risk of riding horses. The trial court refused to allow a jury instruction on this issue, holding that the documents did not create a contract or other duty to provide a certain level of skilled guides. Therefore, the case was to be decided first on the issue of whether the injury resulted from a normal risk of horseback riding before any other issues of negligence could be considered. The appellate court agreed and upheld the jury verdict that the injury resulted as part of the normal risks of horseback riding. **Beckwith v. Weber, 2012 Wyo. LEXIS 66 (Wyo. 2012)**.

BANKRUPTCY

CHAPTER 12

PLAN. The debtor filed for Chapter 12 and filed a plan which provided for the sale of a portion of the debtor's farm land for payment of all claims. The plan also provided that, if the property did not sell within a set time, the property would be sold at auction. The debtor also proposed to obtain other employment to help fund the plan and to change the farming operation to generate income. The main secured creditor objected to the plan as not feasible and too speculative and the plan did not sell enough assets. The trustee also objected to the plan as not feasible. The trustee also objected to the plan because the plan did not pay creditors the amount they would receive in a Chapter 7 case and the plan failed to pay the trustee's costs until the property was sold. The court held that the plan was feasible because the debtor presented a reasonable farming plan and had a backup plan of employment to produce income. However, the court held that the plan did not provide for the same payment of creditors as a Chapter 7 case would provide because the plan provided for only the sale of acres secured by one mortgage. The court reasoned that the creditor could purchase the land at the auction for only the amount of the loan, leaving no funds for payment of the other creditors. Therefore, the plan failed under Section 1225(a)(4). **In re Erickson, 2012 Bankr. LEXIS 1837 (Bankr. D. Wyo. 2012)**.

FEDERAL FARM PROGRAMS

NO ITEMS.

FEDERAL ESTATE AND GIFT TAXATION

ALTERNATE VALUATION. The estate's co-executors hired an accountant to prepare and file Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*. The accountant advised the co-executors that the alternate valuation election, under I.R.C. § 2032 could not be made. The co-executors later learned that the alternate valuation election was available and should have been made. The IRS granted an extension of time for the estate to make the election. **Ltr. Rul. 201216013, Jan. 5, 2012**.

In a Chief Counsel advice letter, the IRS ruled that an estate was eligible to seek relief to make the alternate valuation election under I.R.C. § 2032. The federal estate tax return was filed within one year of the due date of the return, so the estate could seek relief, in a letter ruling, even more than one year after the due date. **CCA 201216037, March 28, 2012**.

ESTATE PROPERTY. The decedent formed a family limited partnership and made the decedent and a trust formed by the decedent limited partners. The trust was terminated and the decedent became the sole limited partner. The decedent's two sons were made general partners. The decedent and the trust contributed property to the partnership but the sons did not. Instead the partnership made loans to the sons. One loan was held to be valid because the partnership had a bona fide expectation of repayment but the other loan was determined to be a gift because no creditor-debtor relationship was established. The court then looked at Arizona law to determine whether the partnership actually existed.

The court found that the sons did not receive partnership interests because no transfers of partnership interests were recorded, either by exchange for contributions or by gift transfer. Because only the decedent was a partner, the partnership terminated under state law and all partnership property became the property of the decedent. Therefore, all partnership property was included in the decedent's estate. **Estate of Lockett v. Comm'r, T.C. Memo. 2012-123**.

GENERATION SKIPPING TRANSFERS. The decedents had created four irrevocable trusts for their daughter prior to September 25, 1985. At the death of both grantors and the daughter, each of the four trusts was divided into four separate trusts, resulting in a total of 16 trusts, four for each of the daughter's four children. The trust petitioned a state court to combine the trusts for each child into one trust and to change the situs of the trusts only for purposes of administration of the trusts. The IRS ruled that the merger of the trusts and change of situs did not subject the trusts to GSTT. **Ltr. Rul. 201216010, Jan. 10, 2012**.

JOINT TENANCY PROPERTY. The taxpayers, husband and wife held property as tenants by the entirety. The taxpayers executed an agreement to govern the disposition of the property on the death of each of the spouses. The agreement provided that on the death of the first spouse to die, one half of the value of property must be held in trust during the survivor's life. The survivor could exchange his or her own separate property for the portion of property to be held in trust. The survivor would receive the other half of property outright. The trust provided for the survivor to receive the trust income, and if the survivor: (i) does not remarry, or (ii) remarries and certain conditions are met, he or she may receive principal in the trustee's absolute discretion. The remaining principal will be distributed to designated remainder holders at the survivor's death. The taxpayers sought a ruling as to whether *Rev. Rul. 71-51, 1971-1 C.B. 274* applied. In *Rev. Rul. 71-51,* the spouses held property as joint tenants with right of survivorship. They executed joint and mutual wills providing that all property at the time of the death of either was to be held by the survivor for life with the right to the income. On the survivor's death, the remainder interest in the property was to be distributed to their children. *Rev. Rul. 71-51* states that, under the general rule relating to joint tenancies, a surviving joint tenant does not take the cotenant's interest as a successor, but takes it by right under the instrument creating the joint tenancy. The joint tenancy property passed outside of the will, and the survivorship interest in the jointly held property ripened into absolute ownership on the death of the first spouse to die. The spouses' testamentary dispositions could not affect the survivor's absolute right to the joint tenancy property. In this ruling, the IRS ruled that *Rev. Rul. 71-51* did not apply because the agreement and resulting trust constituted a binding contract creating rights and interests that superseded and extinguished those of the tenancy by the entirety. At the death of the first spouse to die, the property is non-testamentary in character and passes in accordance with state law. **Ltr. Rul. 201216005, Dec. 8, 2012**.

VALUATION. The IRS has issued an acquiescence to the result only in the following case. The decedent's estate had valued contingent interests in stock held by the decedent. The IRS rejected the valuation and assessed additional taxes. The court found that the stock was essentially worthless on the decedent's date of death because the company's business plan failed; therefore, the contingent interests in the stock were worthless, entitling the estate to a refund. *Alan Baer Revocable Trust v. United States, 2010-1 U.S. Tax Cas. (CCH) ¶ 60,590 (D. Neb. 2010)*. **Acquiescence Announcement, (CCH) FINH ¶30,708**.

FEDERAL INCOME TAXATION

ALIMONY. The taxpayer's divorce decree provided for a lump sum payment to the former spouse, paid in monthly installments over one year. The decree included no provisions effective on the death of the former spouse prior to the end of the year but state law provided that such payments would be payable to the former spouse's estate. The court held that the payments were not deductible as alimony. **Rood v. Comm'r, T.C. Memo. 2012-122**.

As part of the divorce decree, the taxpayer was required to close out a joint bank account and pay the balance to the former spouse and to pay the former spouse $26,000 within 60 days, which the taxpayer did. The taxpayer claimed the entire amount as an alimony deduction. The joint bank account balance was disallowed by agreement of the parties. The taxpayer argued that the $26,000 met all the requirements of I.R.C. § 71(b)(1)(B) and (D). The IRS argued that the requirements were not met because the divorce decree had no provision as to termination of the obligation on the death of the former spouse. The court noted that deductibility does not require that the termination provision be included in the divorce decree if termination would occur under other state law. The court held that, under Pennsylvania law, the divorce decree provision for payment of the $26,000 would have survived the death of the former spouse; therefore, the payment was not deductible alimony. **Hammond v. Comm'r, T.C. Summary Op. 2012-38**.

BUSINESS EXPENSES. The taxpayer operated a lawn care business and claimed expense deduction for cars and trucks, repairs and maintenance, supplies and materials and charitable contributions. The car and truck, repairs and maintenance, supplies and materials expenses were denied for lack of substantiation, although 20 percent of the repairs and maintenance, supplies and materials expenses were allowed because the taxpayer provided some receipts so that the court could estimate the allowable deductions. The charitable deductions were based on landscaping services the taxpayer provided to a church without charge. The court held that the deductions were not allowed because the taxpayer failed to provide evidence as to how much of the contribution was for services and how much was for unreimbursed expenses. **Leak v. Comm'r, T.C. Summary Op. 2012-39**.

The taxpayer operated four businesses, in this country and abroad, and claimed a variety of business deductions for expenses and depreciation. Nearly all of the deductions were disallowed for failure to substantiate the business purpose or the amount of the expense. **Olagunju v. Comm'r, T.C. Memo. 2012-119**.

CASUALTY LOSS. The taxpayer was an heir of an estate which included a residence of the decedent. The taxpayer was to receive a portion of the residence. The residence was demolished by the City of Chicago and the estate filed a suit against the city for wrongful demolition. The trial court held a hearing on the amount of damages and awarded the estate $118,000 in 2003. The taxpayer received a portion of this award. In 2006, the taxpayer filed an amended return for 2003 claiming a $269,230 casualty loss and a refund for 2003 taxes. The IRS rejected the refund claim for failure to provide evidence of the value of the property before and after the demolition, less the lawsuit recovery. The issue in this case was whether the issue of the value of the residence was precluded by the state court judgment in the demolition case. The court held that the state court precluded any further litigation as to the property's value because the same issue was determined in the state court and the taxpayer participated in that litigation. Therefore, the amount received by the taxpayer in the state court action fully compensated the taxpayer for any loss. **Gorski v. United States, 2012-1 U.S. Tax Cas. (CCH) ¶ 50,329 (Fed. Cls. 2012)**.

CHARITABLE CONTRIBUTIONS. The taxpayers were owners of units in an historic condominium building in New York City. Working as a group, the taxpayers donated a facade conservation easement in the building to a charitable organization. The taxpayers obtained an appraisal to determine the value of the easement and claimed charitable deductions for each taxpayer's share of the easement. The court held that the easement had no value because the building was already subject to substantial limitations under the New York City Landmarks Preservation Commission. **Dunlap v. Comm'r, T.C. Memo. 2012-126**.

DEPENDENTS. The taxpayer had a child by a former spouse. The divorce decree declared the primary residence of the child to be with the former spouse. However, the decree also granted the taxpayer the deduction for the child as a dependent and required the former spouse to execute "on forms acceptable to the Internal Revenue Service" a declaration granting the dependency deduction to the taxpayer in 2000 and all years thereafter so long as the taxpayer was current on child support payments. The former spouse refused to execute From 8332 and the taxpayer claimed the deduction and attached a copy of the divorce agreement to the tax returns. The IRS initially argued that the divorce agreement was an insufficient replacement for Form 8332 because the agreement did not contain the former spouse's social security number. The court held that this deficiency was not substantial and held that the divorce agreement was a qualified substitute for Form 8832 because it specifically listed the years to which it applied and contained all other essential information otherwise listed in Form 8332. **Scalone v. Comm'r, T.C. Summary Op. 2012-40**.

DOMESTIC PRODUCTION DEDUCTION. The taxpayer was a farmer's marketing and purchasing agricultural cooperative. The cooperative made payments to members and participating patrons for grain produced by the members and patrons which were qualified per-unit retain allocations because they were (1) distributed with respect to the crops that the cooperative stored, processed and marketed for its patrons; (2) determined without reference to the cooperative's net earnings; and (3) paid pursuant to a contract with the patrons establishing the necessary pre-existing agreement and obligation, and within the payment period of I.R.C. § 1382(d). The IRS ruled that the cooperative was allowed to add back these amounts paid to members as net proceeds in calculating its qualified production activities income under I.R.C. § 199(d)(3)(C). **Ltr. Rul. 201216011, Jan. 17, 2012.**

HEALTH SAVINGS ACCOUNTS. For tax years beginning after December 31, 2012, the maximum annual HSA is the indexed statutory amount, without reference to the deductible of the high deductible health plan. For calendar year 2013, the limitation on deductions under I.R.C. § 223(b)(2)(A) for an individual with self-only coverage under a high deductible health plan is $3,250 ($6,450 for family coverage). For calendar year 2013, a "high deductible health plan" is defined under I.R.C. § 223(c)(2)(A) as a health plan with an annual deductible that is not less than $1,250 for self-only coverage or $2,500 for family coverage, and the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed $6,250 for self-only coverage or $12,500 for family coverage. **Rev. Proc. 2012-26, I.R.B. 2012-20**.

IRA. At age 49, the taxpayer received an early distribution from a qualified retirement plan. The taxpayer reported the distribution as income but did not pay the 10 percent additional tax for an early distribution. No reason was given for the early distribution and the court held that the 10 percent additional tax applied because the distribution did not qualify for any of the exceptions in I.R.C. § 72(t)(2). **Randolph v. Comm'r, T.C. Memo. 2012-125**.

INNOCENT SPOUSE RELIEF. The taxpayer and former spouse operated a copier service business with the taxpayer performing administrative duties and the spouse making service calls. The taxpayer was listed as a co-owner of the business and had authority to write checks from the business accounts. In the divorce, the taxpayer assigned all rights to the business to the former spouse. The taxpayer and spouse filed joint returns for 1999, 2000 and 2001 with most of the income coming from the business. However, the quarterly estimated taxes and the taxes due on the returns were not paid and the taxpayer knew the tax payments were not being made. When the IRS attempted to collect the back taxes, the taxpayer filed for innocent spouse relief. Although the IRS agreed that the taxpayer was entitled to innocent spouse relief, the former spouse challenged the taxpayer's request. The court held that the taxpayer was not entitled to innocent spouse relief because the taxes arose from the income produced by the business in which the taxpayer was a part owner and in which the taxpayer was heavily involved in management and operation. In addition, the court noted that the taxpayer had used some of the business funds for personal expenses instead of paying the taxes. The court did not find any evidence of abuse or intimidation, noting that the taxpayer had worked with the business accountant in preparation of the returns. **Nunez v. Comm'r, T.C. Memo. 2012-121**.

LODGING EXPENSES. In Notice 2007-47, 2007-1 C.B. 1393, the IRS had issued interim guidance, pending amendment of Treas. Reg. § 1.262-1(b)(5), as to the deductibility of lodging expenses incurred while traveling away from home. Under existing regulations, lodging expenses are not deductible unless they qualify for a deduction under I.R.C. § 217. The new rule would allow deduction of lodging expenses if the expenses are deductible under I.R.C. §§ 162 or 217. The IRS will not apply Treas. Reg. § 1.262-1(b)(5) to expenses for lodging of an employee not incurred while the employee is traveling away from home that an employer provides to the employee, or requires the employee to obtain, under the following conditions: (1) the lodging is on a temporary basis; (2) the lodging is necessary for the employee to participate in or be available for a bona fide business meeting or function of the employer; and (3) the expenses are otherwise deductible by the employee, or would be deductible if paid by the employee, under I.R.C. § 162(a). The IRS has now issued proposed regulations relating to the deductibility, under I.R.C. § 162, of expenses for lodging when not traveling away from home (local lodging). The proposed regulations provide that expenses paid or incurred for local lodging may be deductible as ordinary and necessary expenses of a taxpayer's trade or business, including the trade or business of being an employee. The proposed regulations provide a safe harbor for certain local lodging at a business meeting, conference, or other activity or function. Other local lodging expenses may be deductible as business expenses depending on the facts and circumstances. The proposed regulations also provide that, under I.R.C. § 262, a taxpayer's costs incurred for local lodging are personal expenses unless the expenses are deductible under I.R.C. § 162. **77 Fed. Reg. 24657 (April 25, 2012)**.

ORPHAN DRUG CREDIT. The taxpayer failed to make a coherent presentation of an argument and the court determined that the taxpayer sought to justify a credit under the so-called Orphan Drug Credit of I.R.C. § 45C or the so-called Increasing Research Activities Credit of I.R.C. § 41. I.R.C. § 45C(b)(2)(B) provides that the Orphan Drug Credit may be allowed for qualified clinical testing expenses related to a "rare disease or condition * * * designated under section 526 of the Federal Food, Drug, and Cosmetic Act." The court denied the credit because the taxpayer failed to provide evidence of any expenses incurred for clinical trials or research and development. **Ellis-Babino v. Comm'r, T.C. Memo. 2012-127**.

PARTNERSHIPS

ASSESSMENTS. The taxpayer was a partner in a partnership which sold partnership property. The partnership overstated the partnership's basis in the property, resulting in an understatement of taxable income from the sale. More than three years and less than six years after the filing of the tax return for the year of the sale, the IRS filed a final partnership administrative adjustment which resulted from a reduction of the partnership's basis in the property sold. The taxpayer sought summary judgment because the FPAA was filed more than three years after the filing of the return. The IRS argued that the six year limitation applied because the return understated taxable income because of the basis overstatement. The Supreme Court held that the six year limitation did not apply because the overstatement of basis was not an understatement of receipt of income. **Home Concrete & Supply, LLC v. United States, 2012-1 U.S. Tax Cas. (CCH) ¶ 50,315 (S. Ct. 2012), *aff'g*, 634 F.3d 249 (4th Cir. 2011), *rev'g*, 2009-2 U.S. Tax Cas. (CCH) ¶ 50,794 (E.D. N.C. 2009)**.

The U.S. Supreme Court has vacated and remanded the following case for consideration in light of the *Home Concrete* case above. The taxpayer was a partner in a limited partnership. The partnership filed its 1999 federal tax return on April 20, 2000, showing a net loss. The taxpayer filed a personal income tax return which included the taxpayer's share of the partnership loss. In December 2004, the IRS issued a notice of final partnership administrative adjustment (FPAA) which adjusted the partnership basis in property such that the net loss was reduced. The taxpayer filed an objection to the FPAA as untimely filed past the three year statute of limitations provided by I.R.C. § 6229(a). The IRS argued that the extended six-year statute of limitations of I.R.C. § 6501(e)(1)(A) allowed the filing of the FPAA. The trial court held that, because the original partnership return included the basis item, the extended six year limitation period did not apply and the FPAA had to be filed within three years; therefore, the FPAA was invalid and the court had no jurisdiction to enforce it. In 2010, the IRS adopted final regulations which stated: "an understatement of gross income resulting from an overstatement of unrecovered cost or other basis constitutes an omission from gross income for purposes of 6501(e)(1)(A)." Treas. Reg. §301.6229(c)(2)-1(a)(1)(iii). On appeal the appellate court reversed, holding that the regulations were a reasonable interpretation of the statute and could be applied retroactively to impose the six year statute of limitation. Also vacated and remanded were *Beard v. Comm'r, 2011-1 U.S. Tax Cas. (CCH) 50,176 (7th Cir. 2011), rev'g, T.C. Memo. 2009-184; Salman Ranch Ltd. v. Comm'r, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,405 (9th Cir. 2011), rev'g, unpub. Tax Court dec.; Intermountain Insurance Service of Vail, LLP v. Comm'r, 2011-2 U.S. Tax Cas. (CCH) ¶ 50,468 (D.C. Cir. 2011), rev'g, T.C. Memo. 2009-195; UTAM, Ltd. v. Comm'r, 2011-2 U.S. Tax Cas. (CCH) ¶ 50,467 (D.C. Cir. 2011) aff'g, T.C. Memo. 2009-253*. **Grapevine Imports, Ltd. v. United States, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,264 (Fed. Cir. 2011), *rev'g and rem'g*, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,555 (Fed. Cls. 2007)**.

STATE TAXATION OF AGRICULTURE

AGRICULTURE USE. The plaintiffs owned a 23 acre rural property. One acre was used for growing asparagus. Eighteen acres were used as horse pasture for grazing of commercially boarded horses on the property. One acre was used for storing hay. Two acres were used for the horse buildings and one acre was used for the residence. The county changed the classification to residential homestead from agricultural homestead after passage of Minn. Stat. § 273.13 (23) which requires a minimum of 10 acres of agricultural production. The statute includes commercial boarding of horses in the definition of agriculture if there is also raising or cultivating of agricultural products on the property. The county assessor argued that the statute requires a minimum of 10 acres of agricultural production in addition to any horse pasture in order to include the commercial boarding of horses as agricultural use. The court disagreed, holding that horse pasture was included in the acres used for agricultural production. Therefore, the plaintiffs met the 10 acres minimum requirement with one acre of asparagus, 18 acres for horse pasture, one acre for hay storage and two acres for commercial horse boarding. **DeMars v. County of Washington, 2012 Minn. Tax LEXIS 26 (Minn. Tax Ct. 2012)**.

The plaintiffs owned an 18.3 acre rural property consisting of 12.6 acres of horse pasture, 4.7 acres of farm buildings used for commercial horse boarding, three acres for hay production, and one acre for the residence. The county changed the classification to residential homestead from agricultural homestead after passage of Minn. Stat. § 273.13 (23) which requires a minimum of 10 acres of agricultural production. The statute includes commercial boarding of horses in the definition of agriculture if there is also raising or cultivating of agricultural products on the property. The county assessor argued that the statute requires a minimum of 10 acres of agricultural production in addition to any horse pasture in order to include the commercial boarding of horses as agricultural use. The court disagreed, holding that horse pasture was included in the acres used for agricultural production. Therefore, the plaintiffs met the 10 acres minimum requirement with three acres of hay production, 12.6 acres for horse pasture, and 4.7 acres for commercial horse boarding. **Sarappo v. County of Washington, 2012 Minn. Tax LEXIS 27 (Minn. Tax Ct. 2012)**.

VETERINARIANS

NEGLIGENCE. The defendant was a horse veterinarian hospital at which the plaintiff's horse was injured during a surgery. The horse's trachea was injured during the insertion or removal of the anesthesia tube but that injury was not discovered for several hours, after the horse had been released and transported to the owner's barn. The horse was released without an examination, even though the plaintiff noted that the horse was in some distress. The horse was treated at another facility for the injury but several months later had to be euthanized when the horse foundered while recovering. The plaintiff sued the defendant and three individual veterinarians but the jury found only the defendant negligent. The defendant appealed, arguing that there was no substantial evidence that it failed to satisfy the applicable standard of care or that its act or omission contributed to any injury. The court characterized the case against the hospital as negligence for failure to have a policy in place to determine that the horse was medically fit for discharge after surgery was negligent. The hospital argued that the plaintiff's expert witness failed to support the essential testimony that the hospital breached a standard of care by not giving the horse a full examination before discharge. The court held that the expert's testimony was sufficient in that the expert testified as to the standard of care that a reasonably careful veterinary hospital would use in similar circumstances and explained that this opinion was based in part on decades of personal experience performing surgery in and managing veterinary hospitals. The court upheld the jury verdict against the hospital as supported by the evidence. **Brownstein v. Baker Equine Hospital, Inc., 2012 Cal. App. Unpub. LEXIS 3312 (Calif. Ct. App. 2012)**.

IN THE NEWS

TAX PLANNING. The IRS has published a list of eight things taxpayers can do now to make next April 15 easier. (1) *Adjust your withholding*. Why wait another year for a big refund? Now is a good time to review all withholding and make adjustments for next year, especially if the taxpayer would prefer more money in each paycheck this year. If the taxpayer owed at tax time, perhaps the taxpayer would like next year's tax payment to be smaller. Use IRS's Withholding Calculator at www.irs.gov or Publication 919, *How Do I Adjust My Tax Withholding*? (2) *Store your return in a safe place*. Put the 2011 tax return and supporting documents somewhere secure where it is easy to find them if the taxpayer receives an IRS notice and needs to refer to the return. If it is easy to find, it can also use it as a helpful guide for next year's return. (3) *Organize recordkeeping*. Taxpayers should establish a central location where everyone in the household can put tax-related records all year long. Anything from a shoebox to a file cabinet works. Just be consistent to avoid a scramble for misplaced mileage logs or charity receipts come tax time. (4) *Review your paycheck*. Taxpayers should make sure their employer is properly withholding and reporting retirement account contributions, health insurance payments, charitable payroll deductions and other items. These payroll adjustments can make a big difference on a taxpayer's bottom line. Fixing an error in a paycheck now gets the taxpayer back on track before it becomes a huge hassle. (5) *Shop for a tax professional early*. If a taxpayer uses a tax professional to help strategize, plan and make financial decisions throughout the year, then search now. Taxpayers will have more time when not up against a deadline or are anxious about a refund. Taxpayers are ultimately responsible for the accuracy of their return regardless of who prepares it. Find tips for choosing a preparer at www.irs.gov. (6) *Prepare to itemize deductions*. If a taxpayer's expenses typically fall just below the amount to make itemizing advantageous, a bit of planning to bundle deductions into 2012 may pay off. An early or extra mortgage payment, pre-deadline property tax payments, planned donations or strategically paid medical bills could equal some tax savings. See the Schedule A instructions for expenses that can be deducted if itemizing and then prepare an approach that works best. (7) *Strategize tuition payments*. The American Opportunity Tax Credit, which offsets higher education expenses, is set to expire after 2012. It may be beneficial to pay 2013 tuition in 2012 to take full advantage of this tax credit, up to $2,500, before it expires. For more information, see IRS Publication 970, *Tax Benefits for Education*. (8) *Keep up with changes*. Taxpayers can find out about tax law changes, helpful tips and IRS announcements all year by subscribing to IRS Tax Tips through www.irs.gov or IRS2Go, the mobile app from the IRS. The IRS issues tips regularly during summer and tax season. Special Edition tips are sent periodically with other timely updates. **IRS Special Edition Tax Tip 2012-07**.

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AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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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 unified credit and other credits
- Unified estate and gift tax rates
- Generation skipping transfer tax, including later GST consequences for transfers in 2010
- Federal estate tax liens
- Undervaluations of property
- Reopening an examination

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 Corporation -
- 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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