trustee given specific authority to allocate the assets between or among the heirs.[3] In a 2003 private letter ruling, the decedent's will stated that, at the time of termination of the trust, the trustees were to partition (or have the properties judicially portioned) between and among the children.[4] The plan of termination allowed for the beneficiaries to request the type of assets that would be distributed to them at the time of termination of the trust and that the distributions would not necessarily be made on a *pro rata* basis. A state statute made it clear that distributions did not have to be *pro rata*. Those state statutory provisions were applicable to trusts with a *situs* in the state

A earlier IRS ruling[5] had taken the position that if neither the trust instrument nor local law authorizes the trustee to make *non-pro rata* distributions of property in kind, the distribution is treated as a sale or exchange even though there is a mutual agreement between or among the beneficiaries as to the plan of distributions. A 1981 ruling added a warning that where a federal statute specifies that gain must be recognized, that takes the matter out of the realm of state law and gain (or loss) must be recognized.[6]

What this adds up to is this – unless the federal statute in question specifically requires recognition of gain or loss, if there is a state law provision permitting *non-pro rata* distribution and the trustee has the authority exercisable at that time to make such non-pro rata distributions, the exercise of that authority does not result in the recognition of gain or loss to the beneficiaries.[7]

Specific bequests

Another discrete alternative is for the parents simply to make the decisions on who is to receive which property after the deaths of the parents and specify that outcome in the will or trust. That avoids the tax aspects of the division of property after death but it may result in criticism of the parents' decisions. That aspect often weighs heavily upon the parents to the point that they end up preferring for someone else to make those decisions.

If that is the case, the parents should consider authorizing the trustee to make the decisions. It is not completely clear that a passage in a will or trust alone is sufficient authorization without a state law provision authorizing a trustee or trustees to so act but the passage in the 2003 private letter ruling referring to the fact that, in discussing *Rev. Rul. 1969-486,*[8] reference is made to the passage, in that ruling that "neither the trust instrument nor local law authorized the trustee to make a *non-pro rata* distribution. . . ."[9] That would suggest that a provision in the trust alone might be sufficient authority for the trustee to act.

ENDNOTES

[1] Treas. Reg. § 1.1001-1(a). See Rev. Rul. 56-437, 1956-2 C.B. 507 (conversion of stock in joint tenancy into tenancy in common); Rev. Rul,. 79-44, 1979-2 C.B. 265 (gain recognized on partition of farmland only to the extent one received a note equal to one-half the outstanding mortgage); Ltr. Rul. 200411022, Dec. 10, 2003 (partition of tenancy in common property not sale or exchange); Ltr. Rul. 200411023, Dec. 10, 2003 (same). See also Ltr. Rul, 200919027, Feb. 3, 2009) (parties were not "related persons;" could have been characterized as a partition).

[2] See Harl, "More on Related-Party Like Kind Exchanges,"20 *Agric. L. Dig*. 129 (2009); Harl, "Partition and the Related Party Rule," 13 *Agric. L. Dig*. 145 (2002); Harl, "Income Tax Consequences on Partition and Sale of Land," 11 *Agric. L. Dig*. 113 (2000).

[3] See Ltr, Rul. 200334030, May 19, 2003.

[4] *Id*.

[5] Rev. Rul. 1969-486, 1969-2 C.B. 159.

[6] Rev. Rul. 83-61, 1983-1 C.B.. 78 (involved interpretation of I.R.C. § 333 (tax-free or nearly tax-free corporate liquidation) which was repealed by the Tax Reform Act of 1986, Pub. L. No. 99-514, § 631(e)(3), 100 Stat. 2269 (1986).

[7] Rev. Rul. 1983-61, 1983-1 C.B. 78; Ltr. Rul. 200334030, May 19, 2003. *Compare* Rev. Rul. 1969-486, 1969-2 C.B. 159.

[8] 1969-2 C.B. 159.

[9] Ltr. Rul. 200334030, May 19, 2003.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

CONTRACTS

WARRANTY. The plaintiff purchased a used tractor from the defendants. In the online advertisement, the defendants claimed that the tractor was in "excellent condition" and during a phone conversation the defendants said that it was "field ready." The plaintiff test drove the tractor and inspected it. The plaintiff found some mechanical problems which were fixed by the defendants. After the tractor was at the plaintiff's farm, the plaintiff discovered that the tractor had a major oil leak. A further inspection by a mechanic revealed additional repairs that would be needed before the tractor could be used. The plaintiff attempted to return the tractor for a refund but the defendants refused to refund any money. The plaintiff filed suit alleging breach of express warranty and breach of implied warranty of fitness in that the advertisement and oral statements by the defendants constituted an express warranty. The trial court ruled for the defendants on the basis that the term "excellent condition" was an opinion and that the plaintiff was an experienced farmer with mechanical experience such that the plaintiff did not rely on the defendants to determine the quality of the tractor. On appeal the appellate court affirmed, holding that the defendants did not make any representations which were essential

to the bargain and which were relied upon by the plaintiff. The court also upheld the ruling as to the implied warranty of fitness for a particular use because the plaintiff did not rely on the defendants to determine whether the tractor was suitable for the plaintiff's intended use. The court noted that the plaintiff had been farming for 54 years and had extensive experience with repairing and operating farm machinery. **Chinn v. Fecht, 2015 Ill. App. Unpub. LEXIS 20 (Ill. Ct. App. 2015)**.

FEDERAL FARM PROGRAMS

FARM PROGRAM ELIGIBILITY. The plaintiff was the beneficiary of an Illinois land trust that held title to farmland. The land was leased to an operator who farmed the land and shared the revenue with the trust. As the trust beneficiary, the plaintiff formally held only a personal property interest in the income generated by the farmland and neither legal nor equitable title to the land itself. The title to the property was held instead by the bank which was designated as the trustee. The plaintiff contended that it should be recognized as an owner of the property and as such eligible for receipt of federal farm subsidies under the USDA's direct and counter cyclical program. Under 7 U.S.C. § 7901(12), the definition of a "producer" eligible for subsidies includes an "owner" that shares in risk of producing a farm crop. An "owner" is defined in the regulations as "one who has legal ownership of farmland." *7 C.F.R. § 718.2*. The USDA concluded that because the plaintiff did not hold title to the property, it was not an owner of the property eligible for benefits. The court looked at Illinois precedents as to whether a beneficiary of a land trust was deemed the legal owner of the land in the trust. The court held that, although the beneficiary of a land trust has been held to be the equitable owner of the land, the title owner, the trustee of a land trust, was always held to be the legal owner. Therefore, the court held that the FSA denial of benefits was not contrary to the statute nor an arbitrary and capricious interpretation of the statute and regulations. **Stable Investments Partnership v. Vilsack, 2015 U.S. App. LEXIS 151 (7th Cir. 2015), *aff'g*, 2014 U.S. Dist. LEXIS 34565 (N.D. Ill. 2014)**.

FEDERAL ESTATE AND GIFT TAXATION

ALTERNATE VALUATION DATE. After the federal estate tax return was due, the executor consulted with an attorney and the estate tax return was filed within one year after the due date. The executor then filed for an extension of time to make the alternate valuation date election of I.R.C. § 2032. The IRS granted the extension because it found that the executor acted reasonably and in good faith in reasonably relying on a qualified tax professional. There is no discussion as to why consulting an attorney was reasonable where the consultation occurred after the due date of the return. **Ltr. Rul. 201503003, Sept. 30, 2014**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued a revenue procedure which revises the general procedures under I.R.C. § 446(e) and Treas. Reg. §1.446-1(e) to obtain advance and automatic consent to change a method of accounting for federal income tax purposes. Generally, this procedure is effective for Forms 3115 filed on or after January 16, 2015, for a year of change ending on or after May 31, 2014. The revisions of the prior *Rev. Proc. 2011-14, 2011-1 C.B. 330* include (1) a transaction which results in the sale of exchange of 50 percent of more of a partnership's capital and profits is a transaction that constitutes the cessation of a partnership's trade or business; (2) an issue is "under consideration" as of the date of the IRS operative written notification of the taxpayer; (3) an issue is no longer "under consideration" when an examination ends unless the examining agent provides the taxpayer with written notification that the item is an issue placed in suspense; (4) a corporation that is or was formerly a member of a consolidated group has an "issue under consideration" before examination if the same item is an issue under consideration before examination for any member of that consolidated group for the tax year(s) that the corporation was a member of the consolidated group; (5) an entity (including a limited liability company) treated as a partnership or an S corporation for federal income tax purposes also has an issue under consideration before examination if the same item is an issue under consideration in an examination of a partner, member, or shareholder's federal income tax return; (6) an entity treated as a partnership or S corporation has a method of accounting as an issue under consideration before an appeals office or a federal court if it is an issue under consideration by an appeals office or a federal court for a partner, member, or shareholder's federal income tax return; and (7) a corporation that is or was formerly a member of a consolidated group is "before a federal court" during the period of time the consolidated group is "before a federal court" for the tax year(s) it was a member of the consolidated group. **Rev. Proc. 2015-13, I.R.B. 2015-5**.

The IRS has issued a revision of *Rev. Proc. 2011-14, 2011-1 C.B. 330* that provides a list of accounting methods to which the automatic change procedures in *Rev. Proc. 2015-13, I.R.B. 2015-5 above*, apply. The revenue procedure is effective for a Form 3115 filed on or after January 16, 2015, for a year of change ending on or after May 31, 2014. The changes include (1) the provision relating to advances made by a lawyer on behalf of clients, is amplified and modified to include method changes involving cases handled on a noncontingent fee basis; (2) the rule relating to impermissible to permissible methods of depreciation or amortization is clarified to provide that a taxpayer can make a change if the asset is depreciable or amortizable under the taxpayer's present or proposed method of accounting; (3) the provision relating to changes for research and experimental (R&E) expenditures under I.R.C. § 174 now applies

to a method change from treating R&E expenditures under any provision of the Code, other than I.R.C. § 174, to treating R&E expenditures under I.R.C. § 174; (4) where a taxpayer already has a valid I.R.C. § 174 election in effect but fails to treat a portion of its R&E expenditures in accordance with its valid election, the taxpayer may change its method regarding that portion of its R&E expenditures to conform to its valid election; (5) for certain UNICAP methods used by resellers and reseller-producers, the rule is clarified to provide that the change does not apply to a reseller or reseller-producer that wants to change its method of accounting for interest capitalization; (6) as to changes to a reasonable allocation method described in Treas. Reg. § 1.263A-1(f)(4) for self-constructed assets, the rule is modified to provide that a reseller-producer may make this change, and that a producer or reseller-producer not capitalizing a cost subject to I.R.C. § 263A may make a change to capitalizing that cost under a reasonable method within the meaning of Treas. Reg. § 1.263A-1(f)(4) (other than the methods specifically described in Treas. Reg. § 1.263A-1(f)(2) or Treas. Reg. § 1.263A-1(f)(3)) that the producer or reseller-producer is already using for self-constructed assets; (7) the general rule for change from the cash method to an accrual method is modified to provide that a concurrent change to a special method is permitted to be made, if such change is also an automatic change under this revenue procedure, a section of the Code, or regulations, or in other guidance published in the Internal Revenue Bulletin; (8) for changes from the cash to an accrual method for specific items, the rule is modified to provide that the change does not apply to a change in method of accounting for interest that is not taken into account under Treas. Reg. § 1.446-2; (9) the rule for debt issuance costs is modified to include a change for capitalized debt issuance costs from one permissible method to another permissible method under the last sentence of Treas. Reg. § 1.446-5(b)(2) if the total original issue discount determined for purposes of Treas. Reg. § 1.446-5 is *de minimis*; (10) for advance payments, the rule is modified to include a change for advance payments that are defined in Treas. Reg. §1.451-5(a)(1); (11) the rule relating to retainage is clarified to provide that the change does not apply to retainage for long-term contracts that must be accounted for under the percentage-of-completion method under I.R.C. § 460, or to long-term-contracts accounted for under exempt percentage of completion method or the completed contract method, and the rule is modified to require a new separate designated automatic accounting method change number for retainage received under long-term contracts; (12) for changes for long-term contracts, the rule is amplified and modified to include a change made by a taxpayer that is required to change its method of accounting for its long-term contracts as defined in I.R.C. § 460(f) to the percentage of completion method (PCM) described in Treas. Reg. § 1.460-3(b)(2) if the taxpayer fails to use the PCM in the first taxable year and the succeeding taxable year(s); (13) the rule relating to changes involving timing of incurring liabilities for vacation pay is amplified and modified to include method changes involving sick pay, and severance pay in addition to vacation pay; (14) for changes in computing ending inventory under the retail inventory method, the rule is modified to provide that a retail taxpayer, using the cost or market, whichever is lower method, may make a change to computing the cost complement to comply with Treas. Reg. § 1.471-8(b)(3), including a change from an improper method to an alternative method for computing the cost complement and a change from one method described in Treas. Reg. §1.471-8(b)(3) to another method described in Treas. Reg. §1.471-8(b)(3); and (15) the rule relating to changes within the inventory price index computation method, is modified and amplified to include changes from using a representative appropriate month to using an appropriate month, and is modified to provide that the eligibility rule in section 5.01(1)(f) of *Rev. Proc. 2015-13* is inapplicable in the case of a taxpayer using the 10 percent method described in Treas. Reg. § 1.472-8(e)(3)(iii)(C)(2) that makes a change under section 22.07(1)(f) of this revenue procedure. **Rev. Proc. 2015-14, I.R.B. 2015-5**.

ALIMONY. The taxpayer's former spouse filed for divorce in June 2005 and created a draft marriage dissolution agreement which was presented to the taxpayer but not signed by either party. During 2006 the couple were separated and on June 27, 2006 a final divorce decree was issued but without any provision for alimony. However, the taxpayer made $37,000 in payments to the firmer spouse and claimed the payments as deductible alimony payments. Alimony payments were included in a final divorce decree issued by the court which incorporated the terms of the final version of the marriage dissolution agreement signed by the parties. The IRS denied the deduction for 2006 because the payments were not made pursuant to a divorce or separation instrument as required by I.R.C. § 71(b)(1). The court held that the draft marriage dissolution agreement was not sufficient to be a divorce instrument because the parties had not agreed to all its terms and had not signed it. The court noted that the final marriage dissolution agreement specifically stated that the alimony payments would begin on the execution of the agreement and did not relate back to prior payments. **Milbourn v. Comm'r, T.C. Memo. 2015-13**.

ALTERNATIVE FUEL CREDIT. The IRS has issued rules claimants must follow to make a one-time claim for payment of the credits and payments allowable under I.R.C. §§ 6426(c), 6426(d) and 6427(e) for biodiesel (including renewable diesel) mixtures and alternative fuels sold or used during calendar year 2014 (collectively, 2014 biodiesel and alternative fuel incentives). These rules are prescribed under § 160(e) of the Tax Increase Prevention Act of 2014 (Pub. L. No. 113-295). The notice also provides instructions for how a claimant may offset its I.R.C. § 4081 liability with the I.R.C. § 6426(e) alternative fuel mixture credit, and provides instructions for how a claimant may make certain income tax claims for biodiesel, second generation biofuel, and alternative fuel. **Notice 2015-3, I.R.B. 2015-6**.

DISCHARGE OF INDEBTEDNESS. The taxpayer was the owner of a limited liability company (LLC) which was taxed as a disregarded entity. The LLC was solely liable on a debt which was discharged in bankruptcy by transferring the collateral to the creditor. The IRS ruled that the debt was characterized as nonrecourse because the taxpayer was not personally liable on the debt; therefore, the taxpayer is treated as selling the LLC asset in exchange for discharge of the liabilities and the discharged debt is taxed under I.R.C. §§ 61(a)(3) and 1001 and

not as discharge of indebtedness income. **FAA 20150301F, Jan. 21, 2015**.

EMPLOYEE BENEFITS. The IRS has issued a notice which provides that: (1) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2015 for which the vehicle cents-per-mile valuation rule provided under Treas. Reg. § 1.61-21(e) may be applicable is $16,000 for a passenger automobile and $17,000 for a truck or van; and (2) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2015 for which the fleet-average valuation rule provided under Treas. Reg. § 1.61-21(d) may be applicable is $21,300 for a passenger automobile and $22,900 for a truck or van. If an employer provides an employee with a vehicle that is available to the employee for personal use, the value of the personal use must generally be included in the employee's income and wages. I.R.C. § 61; Treas. Reg. § 1.61-21. If the employer meets certain requirements, the employer may elect to determine the value of the personal use using certain special valuation rules, including the vehicle cents-per-mile rule and the fleet-average value rule set forth in Treas. Reg. § 1.61-21(d) and (e), respectively. Both the vehicle cents-per-mile rule and the fleet-average value rule provide that those rules may not be used to value personal use of vehicles that have fair market values exceeding specified maximum vehicle values on the first day the vehicles are made available to employees. These maximum vehicle values are indexed for inflation and must be adjusted annually by referring to the Consumer Price Index. In years prior to 2013, these maximum vehicle values and guidance on their calculation and application were provided by Revenue Procedure. Guidance on the calculation and application of these maximum vehicle values is set forth in Treas. Reg. § 1.61-21(d) and (e) and does not change from year-to-year. Accordingly, beginning in 2013, only the maximum vehicle values as adjusted for inflation will be published annually in a shorter notice. **Notice 2015-1, 2015-1 C.B. 249**.

HEALTH INSURANCE. The IRS has published information to guide taxpayers and tax return preparers properly prepare tax returns as to the requirements of the Affordable Care Act. *Form 8965, Health Coverage Exemptions* Taxpayers complete this form to report a Marketplace-granted coverage exemption or claim an IRS-granted coverage exemption on the return. Use the worksheet in the Form 8965 Instructions to calculate the shared responsibility payment. *Form 8962, Premium Tax Credit* Taxpayers complete this form to reconcile advance payments of the premium tax credit, and to claim this credit on the tax return. Additionally, if individuals purchased coverage through the Health Insurance Marketplace, they should receive Form 1095-A, *Health Insurance Marketplace Statement*, which will help complete Form 8962. *Form 1040* Line 46: Taxpayers enter advance payments of the premium tax credit that must be repaid; Line 61: Taxpayers report health coverage and enter individual shared responsibility payment; and Line 69: If eligible, taxpayers claim net premium tax credit, which is the excess of allowed premium tax credit over advance credit payments. *Form 1040A* Line 29: Taxpayer enter advance payments of the premium tax credit that must be repaid; Line 38: Taxpayers report health coverage and enter individual shared responsibility payment; and Line 45: If eligible, taxpayers claim net premium tax credit, which is the excess of allowed premium tax credit over advance credit payments. *Form 1040EZ* Line 11: Taxpayers report health coverage and enter individual shared responsibility payment. Form 1040EZ cannot be used to report advance payments or to claim the premium tax credit. **Health Care Tax Tip, HCTT-2015-1; see also HCTT-2015-2, HCTT-2015-3, HCTT-2015-4**.

INCOME. The taxpayer entered into two contracts in 2009 to provide human eggs for use by other people to conceive children. Under the contracts, the taxpayer received $20,000 in 2009 in compensation for the "time, effort, inconvenience, pain, and suffering in donating her eggs. This fee is for Donor's good faith and full compliance with the donor egg procedure, not in exchange for or purchase of eggs and the quantity or quality of eggs retrieved will not affect the Donor Fee." The taxpayer omitted the payments from income, arguing that the money was received for the pain and suffering only and was non-taxable under I.R.C. § 104(a)(2). The court found that the money was received for services and not the sale of property but noted that money received for services was taxable. Treas. Reg. § 1.104-1(c)(1) provides "Section 104(a)(2) excludes from gross income the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness." The court noted that, although the regulation does not specifically require that the money be received in a court action, the remaining language still requires that the money be received from litigation or a settlement in lieu of litigation. **Perez v. Comm'r, 144 T.C. No. 4 (2015)**.

INSTALLMENT REPORTING. The taxpayers, husband and wife, sold an asset in one tax year for 30 percent in cash and the remainder in a 12-year promissory note. The taxpayers hired an accountant to prepare their tax return for the year of sale and the accountant, without the knowledge or direction of the taxpayers, filed the return with the entire gain from the transaction reported in income, thus electing out of installment reporting. The accountant stated that an error in calculating taxable income led to the decision to elect out of installment reporting. The taxpayer sought and extension of time to revoke the election out of installment reporting. The IRS granted the request. **Ltr. Rul. 201503005, Oct. 1, 2014**.

MORTGAGE INTEREST. The taxpayer lived in a house owned by the taxpayer's parents and a brother. The mortgage loan on the house was in the name of the parents only. During 2010 only the taxpayer and mother lived in the house and the taxpayer paid all of the mortgage payments under an oral agreement with the taxpayer's mother and siblings that the payments would be counted toward the taxpayer's equity in the home. In 2013, the taxpayer's name was added to the title for the home. The taxpayer claimed the mortgage interest deduction for 2010 but the IRS denied the deduction. Although the court recognized that the home mortgage deduction is available only for taxpayers who are obligated on the mortgage loan, the court held that Treas. Reg. §

1.163-1(b) allowed the deduction in such cases where the taxpayer is the legal or equitable owner of the real estate. Under California law, a taxpayer may be held to have an equitable interest in real estate if an agreement with the title owners can be proved that the taxpayer was granted an interest in the property. In this case, the court held that the taxpayer had demonstrated an agreement with the family members that the taxpayer's payments of the mortgage, property taxes and insurance gave the taxpayer an equitable interest in the home; therefore, the taxpayer was eligible for the home mortgage interest deduction. **Phan v. Comm'r, T.C. Summary Op. 2015-1**.

PASSIVE ACTIVITY LOSSES. The taxpayers, husband and wife, owned a townhouse which was rented during the tax year. The wife was employed full time and the husband was employed for about 1200 hours per year. The husband performed all the management and maintenance services for the rental property. The taxpayers presented calendars which purported to show the number of hours spent by the husband on the rental activity but the court discounted much of the evidence as unreliable and contradictory. Therefore, the court found that the husband did not spend more time on the rental activity than was spent employed in non-rental activity. The court held that the husband did not qualify as a real estate professional under I.R.C. § 469(c)(7) and the losses from the rental activity were passive activity losses. **Flores v. Comm'r, T.C. Memo. 2015-9**.

PENSION PLANS. For plans beginning in January 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 2.83 percent. The 30-year Treasury weighted average is 3.35 percent, and the 90 percent to 105 percent permissible range is 3.01 percent to 3.51 percent. The 24-month average corporate bond segment rates for January 2015, without adjustment by the 25-year average segment rates are: 1.22 percent for the first segment; 4.11 percent for the second segment; and 5.20 percent for the third segment. The 24-month average corporate bond segment rates for January 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 6.99 percent for the third segment. **Notice 2015-5, I.R.B. 2015-5**.

RETURNS. The IRS has announced the launch of Free File, which makes brand-name tax software products and electronic filing available to most taxpayers for free. If a taxpayer earned $60,000 or less last year, the taxpayer is eligible to choose from among 14 software products. If the taxpayer earned more, the taxpayer is still eligible for Free File Fillable Forms, the electronic version of IRS paper forms. This more basic Free File option, which is best for people comfortable preparing their own tax return, will be available January 20, 2015. **IR-2015-4**.

The IRS has published information on deciding whether taxpayers should file returns for 2014. In most cases, the amount of income, filing status and age determine if a taxpayer must file a tax return. Other rules may apply if a taxpayer is self-employed or a dependent of another person. *New for 2014: Premium Tax Credit*. If a taxpayer bought health insurance through the Health Insurance Marketplace in 2014, the taxpayer may be eligible for the new Premium Tax Credit. The taxpayer will need to file a return to claim the credit. If the taxpayer purchased coverage from the Marketplace in 2014 and chose to have advance payments of the premium tax credit sent directly to the insurer during the year, the taxpayer must file a federal tax return. The taxpayer should reconcile any advance payments with the allowable Premium Tax Credit. Taxpayers should receive Form 1095-A, *Health Insurance Marketplace Statement*, by early February and the new form will have information that will help taxpayers file their tax returns. *Excess Tax Withheld or Paid*. Taxpayers due any refund have to file a tax return to get it. *Earned Income Tax Credit*. If a taxpayer worked and earned less than $52,427 in 2014, the taxpayer could receive the EITC as a tax refund, up to $6,143, if the taxpayer qualifies with or without a qualifying child. Taxpayers can use the 2014 EITC Assistant tool on IRS.gov to find out if they qualify. Taxpayers must file a tax return to claim the EITC. *Additional Child Tax Credit*. Taxpayers who have at least one child that qualifies for the Child Tax Credit do not qualify for the full credit amount, may qualify for the Additional Child Tax Credit obtainable only by filing a return. *American Opportunity Credit*. The AOTC is available for four years of post secondary education and can be up to $2,500 per eligible student. The taxpayer or dependent must have been a student enrolled at least half time for at least one academic period. Even if a taxpayer does not owe any taxes, the taxpayer still may qualify; however, taxpayers must complete Form 8863, *Education Credits*, and file a return to claim the credit. Taxpayers may use the Interactive Tax Assistant tool on IRS.gov to see if they can claim the credit. **IRS Tax Tip 2015-03**.

S CORPORATION

TRUST. The taxpayer was an S corporation which had one shareholder die. The decedent shareholder's will bequeathed shares of the taxpayer to a trust. Although the taxpayer had two years to make the election to be an electing small business trust, the taxpayer failed to make the election, causing the S corporation status to terminate. The IRS ruled that the failure to make the election was inadvertent and allowed an extension of time for the taxpayer to make the election. **Ltr. Rul. 201503004, Oct. 6, 2014**.

SAFE HARBOR INTEREST RATES
February 2015

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	0.48	0.48	0.48	0.48
110 percent AFR	0.53	0.53	0.53	0.53
120 percent AFR	0.58	0.58	0.58	0.58
		Mid-term		
AFR	1.70	1.69	1.69	1.68
110 percent AFR	1.87	1.86	1.86	1.85
120 percent AFR	2.04	2.03	2.02	2.02
		Long-term		
AFR	2.41	2.40	2.39	2.39
110 percent AFR	2.66	2.64	2.63	2.63
120 percent AFR	2.90	2.88	2.87	2.86

Rev. Rul. 2015-3, I.R.B. 2015-6.

SICK PAY. The IRS has announced that Form 8922, *Third-*

Party Sick Pay Recap, must be used by third parties and employers to report total payments of certain sick pay paid by third parties on or after January 1, 2014. Form 8922 must be used for filing "third-party sick pay recaps" to reconcile the reporting of sick pay paid by a third party on behalf of employers to employees in situations in which the liability for the FICA taxes on the sick pay is split between the employer and the third party under applicable regulations. Form 8922 must be filed instead of the Form W-2 and Form W-3 third-party sick pay recaps, which were filed with the Social Security Administration (SSA) for third-party sick pay paid before January 1, 2014. Employers and third parties will file the Form 8922 with the IRS rather than the SSA, and will no longer file third-party sick pay recaps with SSA for payments made on or after January 1, 2014. If a taxpayer (either a third party or an employer) was formerly obligated to file with SSA third-party sick pay recaps on Forms W-2 and W-3 for sick pay paid in 2013 and prior years and the sick pay is paid under the same factual circumstances, that same taxpayer instead will be required to file Form 8922 with IRS for sick pay paid in 2014 and subsequent years. **Notice 2015-6, I.R.B. 2015-5**.

TRAVEL EXPENSES. The taxpayer was a long-haul truck driver. When not on the road driving, the taxpayer stayed with a friend in Minnesota. The taxpayer described the Minnesota property as a kibbutz-style property, involving a communal, shared residence with other members. However, the taxpayer did not provide any evidence that the taxpayer contributed to the maintenance of the property. The court held that the taxpayer had no tax home in that the Minnesota property was used only as a guest and not as a permanent member of a communal residence. With no tax home, the taxpayer was properly denied deductions for meals and other travel expenses incurred while driving the truck. **Jacobs v. Comm'r, T.C. Summary Op. 2015-3**.

STATE REGULATION OF AGRICULTURE

FEDERAL PREEMPTION. Cal. Health & Safety Code § 25980 *et seq*. prohibits the sale in California of products that are "the result of force feeding a bird for the purpose of enlarging the bird's liver beyond normal size." The plaintiffs were producers and sellers of foie gras made from fattened duck liver, the sale of which was prohibited by the statutes. The plaintiffs argued that the California statutes were preempted by the Poultry Products Inspection Act ("PPIA"), 21 U.S.C. §§ 451-470 and sought an injunction against enforcement of the law. The defendant Attorney General of California sought dismissal, arguing that the case was not justiciable because the defendant has not personally threatened to prosecute plaintiffs under the law and that the only alleged threats of enforcement were made by county district attorneys. The court found that the defendant was able to bring enforcement actions under the law and the defendant refused to state that such actions would never be brought; therefore, the defendant was a proper party to the litigation. The PPIA expressly preempts states from imposing: "[m]arking, labeling, packaging, or ingredient requirements (or storage or handling requirements . . . [that] unduly interfere with the free flow of poultry products in commerce) in addition to, or different than, those made under this chapter [the PPIA] with respect to articles prepared at any official establishment in accordance with the requirements under this chapter . . . ." The court found that the plaintiff's foie gras producing facilities were "official establishments" subject to the PPIA and that the PPIA regulated the production of foie gras and other products made "wholly or in part from any [goose or duck] carcass or part thereof." *21 U.S.C. §§ 453(e), (f)*. Thus, the court held that the California statute's ban on the sale of foie gras made from force-fed ducks was preempted by the PPIA by adding requirements for sale not required by the PPIA. **Association des Eleveurs de Canards et d Oies du Quebec v. Harris, 2015 U.S. Dist. LEXIS 5806 (C.D. Calif. 2015)**.

STATE TAXATION OF AGRICULTURE

AGRICULTURAL USE. The taxpayer purchased 70 acres of woodland in September 2011 which had several buildings on it. The taxpayer built an enclosure for raising ducks, cleaned up the lodge building, and repaired one of the barns. The taxpayer also entered into an oral lease in 2011 and a written lease in 2012 for the tenant to farm the land and harvest timber. The tenant testified that all of the tenant's income came from the agricultural activities on the property. The Kansas Court of Tax Appeals ruled that the county had properly determined that the taxpayer's use of the property was commercial and not agricultural and that the burden of proof was on the taxpayer to show the use of the property. On appeal, the appellate court reversed, holding first that the county had the burden of proof to demonstrate that the property was correctly classified as commercial property. Because the county did not provide any evidence in the hearing before the Court of Tax Appeals, the ruling was vacated. However, the appellate court held that the taxpayer still had to present evidence to support the agricultural classification claimed by the taxpayer. The court held that the taxpayer had presented sufficient evidence of the taxpayer's and tenant's activities on the property to harvest trees and improve the property for various farming activities. Therefore, the court reversed the Court of Tax Appeals decision and ordered the county to classify the property as agricultural. **In the Matter of the Equalization Appeal of Camp Timberlake, LLC, For Tax Year 2012 in Johnson County, 2015 Kan. App. Unpub. LEXIS 16 (Kan. Ct. App. 2015)**.

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