CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

EXEMPTIONS

ADOPTION TAX CREDIT. The debtor filed for Chapter 7 in November 2011. The debtor had adopted two children earlier in 2011 and, in the debtor's federal tax return for 2011, filed in February 2012, the debtor claimed the adoption tax credit for $26,760. The debtor claimed the refund as exempt under 735 Ill. Comp. Stat. 5/12-1001(g)(1) as general public assistance. The court held that the tax credit was eligible for the exemption because the tax credit was a refundable credit, making the credit a benefit conferred by the U.S. Congress on lower and middle income taxpayers. ***In re* Johnson, 2012-2 U.S. Tax Cas. (CCH) ¶ 50,652 (Bankr. N.D. Ill. 2012)**.

CHILD TAX CREDIT. The debtors filed for Chapter 7 and claimed federal tax refunds as exempt. The refunds resulted from the child tax credit claimed by the debtors and the debtors claimed the refund as exempt under Colo. Rev. Stat. § 13-54-102(1)(o) which exempts "[t]he full amount of any federal or state income tax refund attributed to an earned income tax credit or a child tax credit." The child tax credit is generally a nonrefundable federal tax credit; however, the additional child tax credit portion is refundable. The court looked only at the nonrefundable child tax credit. The court noted that the exemption was available only to refunds attributed to the child tax credit. The court reasoned that, because the nonrefundable child tax credit could not produce any refund by itself, the debtors' refund could not be attributed to the nonrefundable child tax credit but could result, for example, from overpayment of withheld income taxes. Therefore, the court held that the nonrefundable portion of the child tax credit was not eligible for the Colorado exemption. ***In re* Borgman, 2012-2 U.S. Tax Cas. (CCH) ¶ 50,637 (10th Cir. 2012)**.

FEDERAL TAX

DISCHARGE. The debtor filed for Chapter 7 on December 31, 2009 and received a discharge on April 12, 2010. On July 30, 2010, the IRS filed a claim for unpaid federal income taxes for 2003 and 2004. The 2003 tax assessment was based on a substitute return prepared by the IRS because the debtor did not file a return for that year. The debtor argued that a return was filed on July 19, 2007 when the debtor filed a signed Form 4549, *Income Tax Examination Changes*. The IRS received the debtor's 2004 return on September 2, 2008 but the debtor claimed that a return was filed before April 15, 2005. For the 2003 taxes, the court held that neither the IRS substitute return nor the Form 4549 qualified as a return under Section 523(a); therefore, the taxes were not dischargeable in the Chapter 7 case. For the 2004 taxes, the court held that the debtor failed to provide sufficient evidence that the 2004 return was filed prior to September 2, 2008; therefore, because that return was filed within two years of the bankruptcy filing, the 2004 taxes were also nondischargeable. **Fernandez v. United States, 2012-2 U.S. Tax Cas. (CCH) ¶ 50,644 (Bankr. W.D. Tex. 2012)**.

FEDERAL FARM PROGRAMS

ORGANIC FOOD. The AMS has adopted as final regulations which clarify a provision of the Organic Foods Production Act of 1990 and the regulations issued thereunder that require periodic residue testing of organically produced agricultural products by accredited certifying agents. The final rule amends the USDA National Organic Program regulations to make clear that accredited certifying agents must conduct periodic residue testing of agricultural products that are to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))." The final rule expands the amount of residue testing of organically produced agricultural products by clarifying that sampling and testing are required on a regular basis. The final rule also requires that certifying agents, on an annual basis, sample and conduct residue testing from a minimum of five percent of the operations that they certify. **77 Fed. Reg. 67239 (Nov. 9, 2012)**.

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The decedent died in 2010 and all of the decedent's assets were owned in the name of a revocable trust created by the decedent that became irrevocable upon death. The trustee retained a tax professional to advise on estate tax matters including the necessity to file a Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*. The trustee requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to file the Form 8939 to make the I.R.C. § 1022 election and to allocate basis provided by I.R.C. § 1022 to eligible property transferred as a result of the decedent's death. *Notice 2011-66, 2011-2 C.B. 184 section I.D.1*, provides that the IRS will not grant extensions of time to file a Form 8939 and will not accept a Form 8939 filed after the due date except in four limited circumstances provided in section I.D.2: "Fourth, an executor may apply for relief under § 301.9100-3 in the form of an extension of the time in which to file the Form 8939 (thus, making the Section 1022 election and the allocation of basis increase), which relief may be granted if the requirements of § 301.9100-3 are satisfied. Taxpayers should be aware, however, that, in this context, the amount of time that has elapsed since the decedent's death may constitute a lack of reasonableness and good faith and/or prejudice to the interests of the government (for example, the use of hindsight to achieve a more favorable tax result and/or the lack of records available to establish what property was or was not owned by the decedent at death), which would prevent the grant of the requested relief." In this case the IRS granted an extension of time to file the election. **Ltr. Rul. 201243010, July 12, 2012**.

GIFTS. The taxpayer created a trust intended to qualify as a personal residence trust (QPRT) under Treas. Reg. § 25.2702-5(c), and on the same date, the taxpayer's spouse also created a separate QPRT. At the time of the creation of the two trusts, the taxpayer and spouse jointly owned their personal residence. The taxpayer executed a deed intending to transfer the taxpayer's interest in the residence to the first trust and the taxpayer's spouse executed a deed intending to transfer the spouse's interest in residence to the second trust. Both the taxpayer and spouse filed their respective Forms 709, *United States Gift (and Generation-Skipping Transfer) Tax Returns* for the gifts to the trusts. However, a review of the taxpayer's estate plan, determined that there was a scrivener's error, in that the deed transferring the taxpayer's interest in the residence to the first trust mistakenly transferred the interest to the second trust. The taxpayer filed a civil action in a state court to reform the deed on the ground of mutual mistake. The IRS ruled that reformation of the transfer by a state court order will make the taxpayer's transfer of the taxpayer's interest in the residence a completed gift to the first trust. **Ltr. Rul. 201244014, May 30, 2012**.

RETURN. The taxpayer made gifts in 2007 but failed to timely file a gift tax return. The original return was due on April 15, 2008 but the return was not filed until September 11, 2008. The IRS assessed penalties and interest and rejected the taxpayer's request for abatement based on the taxpayer poor health which caused the delay in filing the return. The court used the criteria that reasonable cause to excuse a late filing was dependent on whether the taxpayer convincingly demonstrates that a disability beyond the taxpayer's control rendered the taxpayer unable to exercise ordinary business care. In this case, the taxpayer suffered pneumonia, recurrent upper respiratory infections, knee replacement surgery, a thyroid growth, heart palpitations and cataract surgery. The ailments did not subject the taxpayer to long hospital stays, nor was the taxpayer continuously incapacitated. The court held that the ailments were not severe enough to be a reasonable cause for failure to timely file the gift tax return. The court noted that during the same period the taxpayer had filed income tax returns, transferred property and made estimated tax payments, and the taxpayer had made previous taxable gifts with timely filed returns. **Stine v. United States, 2012-2 U.S. Tax Cas. (CCH) ¶ 60,655 (Fed. Cls. 2012)**.

FEDERAL INCOME TAXATION

BAD DEBTS. The taxpayer owned a portion of an engineering consulting business and a metal fabrication business. The metal fabrication business was not successful and the consulting business provided funds to keep the metal fabrication business going until the business was stopped. The taxpayer claimed most of the amounts paid to the metal fabrication business as bad debt deductions in the year the metal fabrication business terminated. The court held that the funds paid were not eligible for the bad debt deduction because the payments were not bona fide loans since (1) there was no promissory note, bond, or indenture evidencing the metal fabrication business's alleged indebtedness to the consulting business; (2) there was no definitive maturity date for repayment and a repayment schedule; (3) the consulting business debt was subordinated to the metal fabrication business's other debt; (4) the consulting business did not require the metal fabrication business to provide security or collateral; and (5) the source of any repayment was tied to the fortunes of the metal fabrication business. **Herrera v. Comm'r, T.C. Memo. 2012-308**.

The taxpayer was an attorney who started a retail shoe sales business. The company experienced difficulty in obtaining loans for operating capital so the taxpayer provided several contributions of funds to the company. The contributions were labeled as loans but the taxpayer never received any repayment. The taxpayer attempted to claim the contributions as bad debt deductions but the deductions were disallowed. The Tax Court held that the contributions were not bona fide loans because (1) the company could not obtain credit elsewhere, (2) repayment was dependent upon the success of the company which the taxpayer knew was not likely to be able to repay the amounts, (3) repayment was expected only if the company was able to obtain outside loans, and (4) the taxpayer subordinated the repayment of the contributions by allowing other loans to be paid first. The appellate court, in a decision designated as not for publication, held that the Tax Court had sufficient evidence to support its ruling that the contributions were not bona fide loans eligible for a bad debt deduction. **Ramig v. Comm'r, 2012-2 U.S. Tax Cas. (CCH) ¶ 50,639 (9th Cir. 2012), *aff'g*, T.C. Memo. 2011-147**.

DEPRECIATION. An electric utility installed new residential electricity meters used by the taxpayer to measure electricity usage by customers, as well as other, more advanced functions, such as communication with the taxpayer's central database through the internet, communication to, and display on, the customer's home computer, and an automatic disconnect switch. The IRS ruled that, because the taxpayer's meter had a central processing unit containing extensive storage, logic, arithmetic, and control capabilities enabling it to perform its functions actually used in the year at issue, as well as its potential functions that were not used that year, the meter was an information system and was included in asset class 00.12. The IRS also ruled that, because the meter was part of both an asset class (00.12, information systems) and an activity class (49.14, assets used in the transmission and distribution of electricity for sale, with a 30-year class life), the asset classification applied. See *Rev. Proc. 87-56, 1987-2 CB 674*. **Ltr. Rul. 201244015, Sept. 16, 2011**.

DIESEL FUEL. The IRS, in response to shortages of clear diesel fuel caused by Hurricane Sandy, has announced that it will not impose a tax penalty when dyed diesel fuel is sold for use or used on the highway. This relief applies beginning Oct. 30, 2012 in New Jersey, New York, and Pennsylvania and will remain in effect through Nov. 20, 2012. This penalty relief is available to any person that sells or uses dyed fuel for highway use. In the case of the operator of the vehicle in which the dyed fuel is used, the relief is available only if the operator or the person selling the fuel pays the tax of 24.4 cents per gallon that is normally applied to diesel fuel for on-road use. The IRS will not impose penalties for failure to make semimonthly deposits of this tax. IRS Publication 510, *Excise Taxes*, has information on the proper method for reporting and paying the tax. Ordinarily, dyed diesel fuel is not taxed, because it is sold for uses exempt from excise tax, such as to farmers for farming purposes, for home heating use and to local governments for buses. **IR-2012-85**.

DISASTER LOSSES. On October 18, 2012, the President determined that certain areas in Florida are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of Hurricane Isaac which began on August 26, 2012. **FEMA-4084-DR**. On October 30, 2012, the President determined that certain areas in New York are eligible for assistance from the government under the Act as a result of a Hurricane Sandy which began on October 27, 2012. **FEMA-4085-DR**. On October 30, 2012, the President determined that certain areas in New Jersey are eligible for assistance from the government under the Act as a result of a Hurricane Sandy which began on October 26, 2012. **FEMA-4086-DR**. On October 30, 2012, the President determined that certain areas in Connecticut are eligible for assistance from the government under the Act as a result of a Hurricane Sandy which began on October 27, 2012. **FEMA-4087-DR**. Accordingly, taxpayers in the areas may deduct the losses on their 2011 federal income tax returns. See I.R.C. § 165(i).

DISASTER PAYMENTS. The IRS has announced that, because Hurricane Sandy is designated as a qualified disaster for federal tax purposes, qualified disaster relief payments made to individuals by their employer or any person can be excluded from those individuals' taxable income. Qualified disaster relief payments include amounts to cover necessary personal, family, living or funeral expenses that were not covered by insurance. They also include expenses to repair or rehabilitate personal residences or repair or replace the contents to the extent that they were not covered by insurance. Again, these payments would not be included in the individual recipient's gross income. The IRS also announced that the designation of Hurricane Sandy as a qualified disaster means that employer-sponsored private foundations may provide disaster relief to employee-victims in areas affected by the hurricane without affecting their tax-exempt status. Like all charitable organizations, employer-sponsored private foundations should follow the guidance in Publication 3833, *Disaster Relief: Providing Assistance Through Charitable Organizations*, in providing assistance to employees or their family members affected by Hurricane Sandy. **IR-2012-84**.

DISCHARGE OF INDEBTEDNESS. The taxpayer hired a debt reduction company to negotiate a reduction in two debts owed to credit card companies. The negotiations were successful and the companies forgave a portion of both credit card debts. The debt reduction company charged for their services. Although the court held that the discharge of indebtedness income could not be reduced by the fee charged, the fee was eligible as a miscellaneous itemized deduction, subject to the 2 percent limitation and/or any alternative minimum tax. **Tran v. Comm'r, T.C. Summary Op. 2012-110**.

FIRST TIME HOMEBUYER'S CREDIT. The taxpayers, husband and wife, purchased a residence together. The taxpayers were married in November 2008 but lived in separate residences until the residence was purchased. The husband had rented a house for the three years prior to the purchase and the wife owned and lived in a house from April 2004 until the purchase. On the couple's joint 2009 tax return, they claimed the first time homebuyer's credit of $6,500. The husband qualified for the credit under I.R.C. § 36(c)(1) (no ownership of a principal residence for the prior three years) and the wife qualified for the credit under I.R.C. § 36(c)(6) (ownership and residence in same residence for five consecutive years within prior eight years) but the IRS denied the credit because it claimed that both taxpayers must qualify for the credit under the same subsection. The court held that there was no provision requiring married taxpayers to qualify under the same subsection of I.R.C. § 36(c); therefore, the taxpayers were eligible for the credit. **Packard v. Comm'r, 139 T.C. No. 15 (2012)**.

LIFE INSURANCE. The taxpayer purchased a life insurance policy through the taxpayer's employer, with premiums paid through payroll deductions. After the taxpayer changed employers, the taxpayer stopped paying the premiums. Several years later, the taxpayer received a Form 1099-R from the insurance company showing a gross distribution and a taxable amount. The taxpayer asked the insurance company about the form and the insurance company replied that the policy had an automatic premium loan provision which borrowed any unpaid premium from the policy. Thus, the policy had borrowed all the premiums that the taxpayer did not pay after changing employment. The court held that it was established law that the payment of debt against a life insurance policy by offsetting the cash value of the policy resulted in taxable income to the policy holder; therefore, the taxpayer had taxable income when the insurance company used the cash value of the policy to pay the loan against the policy created by the unpaid premiums. **White v. Comm'r, T.C. Summary Op. 2012-108**.

LIMITED LIABILITY COMPANIES. The taxpayer's shareholders formed a corporation and later converted the company to a limited liability company. The taxpayer represented that it intended to continue to be treated as an association taxable as a corporation; however, the taxpayer failed to timely file Form 8832, *Entity Classification Election* to elect to be treated as an association taxable as a corporation for federal tax purposes. The IRS granted an extension of time to file the Form 8832. **Ltr. Rul. 201243005, May 31, 2012**.

The taxpayers, husband and wife, formed a limited liability company (LLC) with a third person to provide computer software for medical facilities. The husband provided the main technical expertise but the wife was made a limited partner and the husband was hired under a management agreement. The wife provided some credit for operations, served as the tax matters partner, signed LLC contracts and provided marketing advice. The LLC filed partnership returns which characterized payments to the husband and wife as mostly guaranteed payments with some payments characterized as ordinary income distributed from LLC profits. The taxpayers did not pay self-employment taxes on the guaranteed payments. After the returns were audited, the LLC claimed that the original returns were incorrect and that the payments to the wife were distributions of her share of profits as a limited partner. The court held that the taxpayers could not disavow the original characterization of the payments because the taxpayers controlled the LLC, the husband provided the return information to the company's return preparer, and the taxpayers did not disavow the treatment of the payments as guaranteed payments until after the IRS had raised the self-employment tax issue after examining the LLC's tax returns. The court noted that the original characterization was more consistent with the parties' actual relationship with the LLC, in that the husband provided significant services for the company and the wife provided sufficient services to justify the payments to her as compensation. **Howell v. Comm'r, T.C. Memo. 2012-303**.

PASSIVE ACTIVITY LOSSES. In a Chief Counsel Advice letter, the IRS stated "It is our position that a trust cannot meet the qualifying tests of 469(c)(7)(B) because those tests are intended to apply only to individuals. Only individuals are capable of performing 'personal services' (as defined in section 1.469-9(b)(4)), and the statute specifically states that the personal services must be performed by the taxpayer. Section 469(c)(7)(D)(i) provides a separate 'gross income' test for closely held C corporations to qualify for treatment under section 469(c)(7), but the statute otherwise does not provide any rules for trusts, estates, or personal service corporations. We believe this position is not only supported by a plain reading of the statute and regulations, but by the legislative history for section 469(c)(7) which explicitly states that this provision is intended to apply to individuals and closely held C corporations. We believe it is clear that trusts, estates, and personal service corporations do not fall within the definition of 'individuals' for this purpose." **CCA 201244017, Aug. 3, 2012**.

PENALTIES. I.R.C. § 6702(d) authorizes the IRS to reduce the amount of the frivolous tax submission penalty assessed under I.R.C. § 6702(a) or (b) if the IRS determines that a reduction would promote compliance with and administration of the federal tax laws. The IRS has issued a revenue procedure which describes the limited circumstances in which a person may be eligible for a one-time reduction of any unpaid I.R.C. § 6702 penalty liabilities. This revenue procedure also prescribes how a person may request a reduction and the eligibility requirements for reduction. Generally, if a person satisfies all eligibility criteria of the revenue procedure, including filing all tax returns and paying all outstanding taxes, penalties (other than under I.R.C. § 6702) and related interest, the IRS will reduce all unpaid I.R.C. § 6702 penalties assessed against that person to $500. **Rev. Proc. 2012-43, I.R.B. 2012-49**.

PENSION PLANS. For plans beginning in November 2012 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 3.66 percent, the corporate bond weighted average is 5.13 percent, and the 90 percent to 100 percent permissible range is 4.62 percent to 5.13 percent. **Notice 2012-66, I.R.B. 2012-49**.

The taxpayer received distributions from a qualified retirement plan under a court order for payment of alimony to an ex-spouse. The funds were paid to the taxpayer who made payments to the ex-spouse. I.R.C. § 72(t)(2)(C) allows an exception to the 10 percent tax on early distributions for distributions made an alternate payee under a qualified domestic relations order (QDRO). Because the taxpayer received the distribution and there was no QDRO prepared, the court held that the distribution was subject to the 10 percent penalty for early withdrawals. **Hartley v. Comm'r, T.C. Memo. 2012-311**.

REGISTERED TAX RETURN PREPARERS. A petition for review has been denied by the U.S. Supreme Court for the following case. The plaintiff was an attorney and CPA who obtained a preparer tax identification number (PTIN) under the new regulations for registered tax return preparers and paid the $64.25 fee. The plaintiff filed for a refund of the fee, arguing that the fee was improperly assessed because the IRS had no authority to assess the fee inasmuch as the PTIN used to be assigned without a fee. The appellate court upheld the fee because the new regulations required the PTIN in order for the plaintiff and other tax return preparers to prepare income tax returns for a fee, thus conferring a benefit on the plaintiff. **Brannen v. United States, 2012-1 U.S. Tax Cas. (CCH) ¶ 50,390 (11th Cir. 2012)**.

RETURNS. The IRS announced additional tax relief to individuals and businesses affected by Hurricane Sandy in Connecticut, New Jersey and New York. Other locations may be added in coming days based on additional damage assessments by FEMA. The tax relief postpones various tax filing and payment deadlines that occurred starting in late October. As a result, affected individuals and businesses will have until Feb. 1, 2013 to file these returns and pay any taxes due. This includes the fourth quarter individual estimated tax payment, normally due Jan. 15, 2013. It also includes payroll and excise tax returns and accompanying payments for the third and fourth quarters, normally due on Oct. 31, 2012 and Jan. 31, 2013 respectively. It also applies to tax-exempt organizations required to file Form 990 series returns with an original or extended deadline falling during this period. The IRS will abate any interest, late-payment or late-filing penalty that would otherwise apply. The IRS automatically provides this relief to any taxpayer located in the disaster area and taxpayers need not contact the IRS to get this relief. Beyond the relief provided by law to taxpayers in the FEMA-designated counties, the IRS will work with any taxpayer who resides outside the disaster area but whose books, records or tax professionals are located in the areas affected by Hurricane Sandy. All workers assisting the relief activities in the covered disaster areas who are affiliated with a recognized government or philanthropic organization are eligible for relief. Taxpayers who live outside of the impacted area and think they may qualify for this relief need to contact the IRS at 866-562-5227. In addition, the IRS is waiving failure-to-deposit penalties for federal payroll and excise tax deposits normally due on or after the disaster area start date and before Nov. 26, if the deposits are made by Nov. 26, 2012. Details on available relief can be found on the disaster relief page on IRS.gov. **IR-2012-83**.

TRAVEL EXPENSES. In 2008, the taxpayer received wages from several companies from working at several locations around the country. The taxpayer claimed deductions for lodging, meals, incidentals and mileage expenses for employment-related travel. The taxpayer provided no written evidence to support the claimed expenses and could not provide any specific dates or purpose of the travel expenses. The taxpayer argued that the expenses could be determined under *Rev. Proc. 2007-63, 2007-2 C.B. 809*, and *Rev. Proc. 2008-59, 2008-2 C.B. 857*, which provide rules for using a per diem method to substantiate the amounts of lodging, meals, and incidental expenses paid or incurred away from the taxpayer's home. The court noted that those revenue procedures provide that the amount of travel expenses will be deemed substantiated for purposes of Treas. Reg. § 1.274-5, provided the employee substantiates the elements of time, place, and business purpose of the travel for that day. The court held that, because the taxpayer failed to substantiate the elements of time, place, and business purpose of the travel, the taxpayer was not allowed to use the per diem method to determine the deductions. **Harris v. Comm'r, T.C. Memo. 2012-312**.

UNEMPLOYMENT BENEFITS. In 2008, the taxpayer received wages from several companies and unemployment benefits. The taxpayer argued that the unemployment benefits were exempt from income tax. The court noted that a $2,400 exclusion was available for unemployment benefits received in 2009 but no such exemption was available in 2008; therefore, the benefits had to be included in taxable income. **Harris v. Comm'r, T.C. Memo. 2012-312**.

WAGES. The taxpayer filed W-4 forms with the taxpayer's employer which claimed that the taxpayer was exempt from taxation. The employer withheld small amounts of income tax and the normal amount of social security and medicare tax and issued a Form W-2 to the taxpayer showing $60,000 in wages and the withheld amounts. The taxpayer filed substitute Forms W-2 with the income tax returns which claimed no taxable income and sought a refund for all withheld amounts. The IRS made assessments based on substitute returns that it created. The taxpayer argued that I.R.C. § 61 makes no mention of the term wages; therefore, wages were not taxable income. The court dismissed this as a frivolous argument and upheld the tax assessments. **Nix v. Comm'r, T.C. Memo. 2012-304**.

WORK OPPORTUNITY TAX CREDIT. The IRS has announced that employers planning to claim an expanded tax credit for hiring certain veterans should act soon to receive thousands of dollars through the Work Opportunity Tax Credit, but only if the veteran begins work before the new year. Here are six key facts about the WOTC as expanded by VOW to Hire Heroes Act of 2011: (1) *Hiring Deadline*. Employers may be able to claim the expanded WOTC for qualified veterans who begin work on or after Nov. 22, 2011 but before Jan. 1, 2013. (2) *Maximum Credit*. The maximum tax credit is $9,600 per worker for employers that operate for-profit businesses, or $6,240 per worker for tax-exempt organizations. (3) *Credit Factors*. The amount of credit will depend on a number of factors, including the length of the veteran's unemployment before being hired, the number of hours the veteran works and the amount of the wages the veteran receives during the first-year of employment. (4) *Disabled Veterans*. Employers hiring veterans with service-related disabilities may be eligible for the maximum tax credit. (5) *State Certification*. Employers must file Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity Credit*, with their state workforce agency. The form must be filed within 28 days after the qualified veteran starts work. (6) *E-file*. Some states accept Form 8850 electronically. Visit the IRS.gov website and enter 'WOTC' in the search field for forms and more details about the expanded tax credit for hiring veterans. **IRS Special Edition Tax Tip 2012-14**.

IN THE NEWS

IRS WEB VIDEOS. The IRS has added three new online videos:

Online Payment Agreement – A step-by-step guide to requesting an installment agreement online. http://www.irsvideos.gov/Individual/PayingTaxes/OPA

Lien Notice Withdrawal – Benefits of and procedures for having a lien notice withdrawn. http://www.irsvideos.gov/Individual/IRSLiens/LienNoticeWithdrawal

Payment Alternatives When You Owe the IRS – Webinar covering installment agreements, offers in compromise, temporary suspensions of collection and more. http://www.irsvideos.gov/PaymentAlternatives/

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AGRICULTURAL TAX SEMINARS

by Neil E. Harl

Due to unexpected demand and success from our Ames, Fargo, and Sioux Falls seminars, we have added four new seminars in November and December. Join us for expert and practical seminars on the essential aspects of agricultural tax law. Gain insight and understanding from one of the country's foremost authorities on agricultural tax law. **Note, Dr. Harl will not be participating in the ISU Tax Schools in 2012 so these seminars are the only chance to hear Dr. Harl speak about important tax issues this fall.** The seminars will be held on two days from 8:00 am to 5:00 pm. Registrants may attend one or both days, with separate pricing for each combination. On the first day, Dr. Harl will speak about farm income tax. On the second day, Dr. Harl will cover farm estate and business planning. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch.

Online registration is available at www.agrilawpress.com. Four locations and dates to choose from:

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December 10-11, 2012, 812 University St., Graham Conference Center, Central College, Pella, IA
December 13-14, 2012, Isle Casino Hotel, 1777 Isle Parkway, Bettendorf, IA ph. 800-724-5825
December 17-18, 2012, Clarion Inn, 2101 4th St. SW, Mason City, IA ph. 641-423-1640

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

Succession planning and the importance of fairness

The Liquidity Problem

Property Held in Co-ownership
- Federal estate tax treatment of joint tenancy
- Severing joint tenancies and resulting basis
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- Other problems of property ownership

Federal Estate Tax
- The gross estate
- Special Use Valuation
- 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
- Major gifts in 2012 and the possibility of "claw-back"

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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