CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

AVOIDABLE TRANSFERS. The debtor had originally filed for Chapter 12. The debtor was a manager of an LLC but not an owner or member of the LLC. In October 2012, during the Chapter 12 case, the LLC sold a tractor to unrelated persons and received the proceeds into the LLC bank account. In May 2013, the Chapter 12 case was converted to Chapter 7 and the Chapter 7 trustee filed suit against the LLC and a family trust to consolidate them within the debtor's bankruptcy estate. The trustee obtained a temporary restraining order against the LLC prohibiting it from selling or transferring any assets, noting that the LLC records showed that the LLC had been removing assets during the Chapter 12 case. In June 2013, the trustee filed a complaint in the Chapter 7 case against "John Doe" defendants which were alleged to have received transfers from the LLC during the Chapter 12 case. The LLC and trust were consolidated into the Chapter 7 estate by court order in December 2014 effective *nunc pro tunc* back to March 2012 (prior to the sale of the tractor). After the retroactive consolidation order, the trustee filed an avoidance action against the purchasers of the tractor as an avoidable transfer. The purchasers argued that the two year limitations period of Section 549 applied to prohibit the avoidance. The trustee acknowledged that the December 2014 consolidation order was more than two years after the sale of the tractor; the trustee argued that the two year period was equitably tolled by the consolidation litigation. The court held that the limitation period was not tolled by the consolidation proceedings because the trustee had knowledge of the potential avoidable transfer in May 2013 when the case was converted to Chapter 7 and the trustee obtained the LLC records. In addition, the court noted that the trustee had filed a "John Doe" motion in 2013 but never identified the purchasers as one of the potential avoidance targets. Thus, the purchasers of the tractor had no notice that any avoidance action was even contemplated until more than two years after the sale and any avoidance action was barred by Section 549. ***In re* Clark, 2016 Bankr LEXIS 984 (Bankr. 9th Cir. 2016), *aff'g*, 525 B.R. 442 (Bankr. D. Idaho 2015)**.

FEDERAL TAX

DISCHARGE. The debtor did not timely file the returns or pay the taxes for 2000 through 2003. The IRS created substitute returns and sent notices of deficiency to the debtor who did not appeal the notices. In 2006, the IRS assessed the tax deficiencies. In October 2007, the debtor filed returns for all four years and the IRS adjusted the assessments based on the information in the returns. The debtor filed for Chapter 7 in July 2011, received a discharge in November 2011, and sought to have the taxes declared discharged. The IRS argued that the late filing of the returns did not comply with all applicable non-bankruptcy law and did not constitute returns under Section 523(a)(1)(B)(ii). The court adopted the four part test of *Beard v. Comm'r, 82 T.C. 766, 777 (1984), aff'd, 793 F.2d 139 (6th Cir. 1986)* which held that a return must purport to be a return; must be executed under penalty of perjury; must contain sufficient data to allow calculation of tax; and must represent an honest and reasonable attempt to satisfy the requirements of the tax law. The court acknowledged that other courts have held that *any* untimely filed tax return did not constitute a return; however, the court looked at the issue of whether the late filing of a return constituted evidence of the lack of an honest and reasonable attempt to satisfy the requirements of the tax law, the fourth test under *Beard*. The court held that the taxes were nondischargeable because the three to six year delay in filing the returns and the debtor's waiting until after the IRS created a substitute return and assessed the taxes in the substitute returns indicated that the untimely returns were not honest and reasonable attempts to satisfy the requirements of the tax law. ***In re* Justice, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,239 (11th Cir. 2016)**.

FEDERAL FARM PROGRAMS

NO ITEMS.

FEDERAL ESTATE AND GIFT TAXATION

GIFTS. The IRS has published information about taxable gifts. *Nontaxable Gifts*. The general rule is that any gift is a taxable gift. However, there are exceptions to this rule. The following are nontaxable gifts: gifts that do not exceed the annual exclusion ($14,000 for 2016) for the calendar year; tuition or medical expenses taxpayers paid directly to a medical or educational institution for someone, gifts to a spouse; gifts to a political organization for its use, and gifts to charities. *Annual Exclusion*. The gift tax usually does not apply until the value of the gift exceeds the annual exclusion for the year. *No Tax on Recipient*. Generally, the person who receives a gift will not have to pay taxes on it. *Gifts Not Deductible*. Making a gift does not ordinarily affect income taxes. Taxpayer cannot deduct the value of gifts made (other than deductible charitable contributions). *Forgiven Debt and Certain Loans*. The gift tax may also apply when a taxpayer forgives a debt or gives a loan that is interest-free or charges an interest rate below the market interest rate. *Gift-Splitting*. A taxpayer and spouse can give a gift up to $28,000 to a third party without making it a taxable gift. Married taxpayers can consider that one-half of the gift be given by each spouse. *Filing Requirement*. Taxpayers must file Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*, if any of the following apply: the taxpayer gave gifts to at least one person (other than a spouse) that amount to more than the annual exclusion for the year; the taxpayer and spouse are splitting a gift, even if half of the split gift is less than the annual exclusion; the taxpayer gave someone (other than a spouse) a gift of a future interest that the donee cannot actually possess, enjoy, or from which they will receive income later; or the taxpayer gave a spouse an interest in property that will terminate due to a future event. For more information, see Publication 559, *Survivors, Executors, and Administrators*. **IRS Tax Tip 2016-57**.

A Chief Counsel Advice letter discusses the statute of limitations on assessments of gift tax for gifts that are understated on the return for the year of the gift and understated on subsequent returns in later years. I.R.C. § 6501(c)(9) provides for an unlimited period for assessment of tax on understated gifts on returns for the year of the gift. Treas. Reg. § 301.6501(c)-1(f) provides that: "If a transfer of property … is not adequately disclosed on a gift tax return … or in a statement attached to the return, filed for the calendar year period in which the transfer occurs, then any gift tax imposed … on the transfer may be assessed … at any time." However, in subsequent years, the original understated gift is listed as part of the calculation of the subsequent gifts. The CCA ruled that the subsequent understatement of the original gift on later returns does not have an unlimited assessment period but is subject to the three year limitation period of I.R.C. § 6501(a). The IRS noted that the six-year limitation period for substantial omissions in I.R.C. § 6501(e)(2) will not extend the limitation period for gift tax returns whose only defect is underreported prior year gifts, because the language "if the taxpayer omits from … the total amount of the gifts made during the period for which the return was filed " also refers to the current-year gifts; gift tax returns are annual returns, even if the taxpayer is required to report prior year gifts and to properly use those when calculating the tax on the current year gifts. However, the ruling also notes that the exceptions for false or fraudulent returns with intent to evade tax, I.R.C. § 6501(c)(1) and willful attempts to defeat or evade tax, I.R.C. § 6501(c)(2) also provide an unlimited assessment period which are not subject to limitation of assessments on subsequent gift tax returns. **CCA 201614036, March 10, 2016**.

The grantor created an irrevocable trust, for the benefit of the grantor and the other beneficiaries. During the grantor's lifetime, the corporate trustee must distribute such amounts of net income and principal to any of the beneficiaries as directed by a distribution committee and/or the grantor, as follows: (1) At any time, the trustee, pursuant to the direction of a majority of the distribution committee, with the written consent of the grantor, shall distribute to any of the beneficiaries such amounts of the net income or principal of the trust. (2) At any time, the trustee, pursuant to the direction of all distribution committee members, shall distribute to the beneficiaries such amounts of the net income. (3) At any time, the trustee, shall distribute to any of the beneficiaries, other than the grantor, all or any portion of the principal of the trust directly for the health, education, maintenance, or support of the beneficiaries as directed by the grantor. The grantor's exercise of grantor's distribution power shall be exercisable in a nonfiduciary capacity. The distribution committee may direct that distributions be made equally or unequally and to or for the benefit of any one or more of the beneficiaries to the exclusion of others. Any net income not distributed by the trustee will be accumulated and added to principal. The trust provides that at all times there must be at least two members of the distribution committee. If at any time there are fewer than two individuals serving on the distribution committee, then the distribution committee shall be deemed not to exist. The grantor shall not serve as a member of the distribution committee. The distribution committee shall consist of two adults other than the grantor who are also beneficiaries. The distribution committee members also act in a nonfiduciary capacity. A vacancy on the distribution committee must be filled in the following order: the grantor's father, the grantor's son, and the grantor's daughter. Upon the grantor's death, the trust shall terminate and the remaining balance of the trust shall be distributed to or for the benefit of any person, other than the grantor's estate, the grantor's creditors, or the creditors of the grantor's estate, as the grantor may appoint by will. In default of the exercise of this limited power to appoint by the grantor, the balance of trust property will be divided into equal shares and distributed either outright or in trust to or for the grantor's named individuals.

The IRS ruled that the contribution of property to the trust was not a completed gift; any distribution by the committee to the grantor was a return of property and not a gift; any distribution by the committee to a beneficiary was not a gift by a member of the committee; any distribution to a beneficiary was a completed gift by the grantor; and at the grantor's death, the grantor's interest in the trust was included in the grantor's estate but not the estate of any committee member. **Ltr. Rul. 201613007, Dec. 4, 2015; Ltr. Rul. 201614006, Dec. 4, 2015; Ltr. Rul. 201614007, Dec. 4, 2015; Ltr. Rul. 201614008, Dec. 4, 2015**.

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a "deceased spousal unused exclusion" (DSUE) amount to a surviving spouse. To obtain the benefit of portability of the decedent's DSUE amount to the spouse, the decedent's estate was required to file Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, on or before the date that is 9 months after the decedent's date of death or the last day of the period covered by an extension. The decedent's estate did not file a timely Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The spouse, as executrix of the decedent's estate, represented that the value of the decedent's gross estate is less than the basic exclusion amount in the year of the decedent's death and that during the decedent's lifetime, the decedent made no taxable gifts. The spouse requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to elect portability of the decedent's DSUE amount pursuant to I.R.C. § 2010(c)(5)(A). The IRS granted the estate an extension of time to file Form 706 with the election. **Ltr. Rul. 201613006, Nov. 13, 2015; Ltr. Rul. 201613010, Dec. 7, 2015, Ltr. Rul. 201613011, Dec. 2, 2015; Ltr. Rul. 201614005, Nov. 16, 2015.**

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. A taxpayer made an automatic change for its taxable year beginning Jan. 1, 2014, under Section 10.11(3)(a)(i) of *Rev. Proc. 2015-14, 2015-1 C.B 450,* to deduct non-incidental materials and supplies in the taxable year they are used or consumed in accordance with Treas. Reg. §§ 1.162-3(a)(1) and (c)(1). Under section 10.11(6)(b)(i) of *Rev. Proc. 2015-14*, the taxpayer calculated its I.R.C. § 481(a) adjustment taking into account only amounts paid or incurred in taxable years beginning on or after Jan. 1, 2014. In a Chief Counsel Advice letter, the IRS discussed the issue of, for costs paid or incurred by the taxpayer in taxable years beginning *prior* to Jan. 1, 2014, whether an auditor can examine or change the taxpayer's method of accounting for non-incidental materials and supplies that were deducted when paid or incurred by the taxpayer to the correct method of deducting those items when they were used or consumed in the taxpayer's operations. The IRS ruled that the taxpayer has audit protection for the costs of non-incidental materials and supplies paid or incurred prior to Jan. 1, 2014. The IRS reasoned that Section 8.01 of *Rev. Proc. 2015-13, 2015-1 C.B. 419*, provides that, except as otherwise provided in Section 8.02 of *Rev. Proc. 2015-13*, when a taxpayer timely files a Form 3115, the IRS will not require the taxpayer to change its method of accounting for the same item for a taxable year prior to the requested year of change. **CCA 201614037, March 15, 2016**.

AMERICAN OPPORTUNITY CREDIT. The taxpayer attended college in 2011 and 2012 and paid the spring 2012 semester tuition on December 18, 2011 even though payment was not due until January 25, 2012. On the taxpayer's 2012 income tax return, the taxpayer claimed an American Opportunity Credit of $2500 for the spring 2012 tuition, including Form 8863, *Education Credits (American Opportunity and Lifetime Learning Credits)*, with the return. The college did not issue a Form 1098-T, *Tuition Statement*, for 2012 and the IRS disallowed the credit for 2012. Under Treas. Reg. § 1.25A-5(e)(1), the American Opportunity Tax Credit is allowed "only for payments of qualified tuition and related expenses for an academic period beginning in the same taxable year as the year the payment is made." The court held that, because the taxpayer used a calender-based tax year, the payment of the tuition in 2011 prohibited the claiming of the credit in 2012 for that payment. **McCarville v. Comm'r, T.C. Summary Op. 2016-14**.

BUSINESS EXPENSES. The taxpayer owned two businesses operated as sole proprietorships, a tax return preparation business and a restaurant. The taxpayer filed an untimely return for 2008 and claimed deductions for the expenses associated with the restaurant but had no receipts or other records of the payment of the expenses. The taxpayer claimed that a former friend who kept the records had taken them when the friend left the restaurant. The taxpayer presented testimony about the operation of the business and explained that most of the bills were paid with cash but the taxpayer did present a newspaper ad to show the advertising costs and the lease for the building to support the rent deduction. The court held that the rent expenses, the wages for the cook and a portion of the advertising expenses were allowed as deductions. **Arizaga v. Comm'r, T.C. Memo. 2016-57**.

CORPORATIONS

BUILT-IN LOSSES. The IRS has adopted as final regulations under I.R.C. §§ 334(b)(1)(B) and 362(e)(1). The regulations apply to certain nonrecognition transfers of loss property to corporations that are subject to federal income tax and affect the corporation's receiving the loss property. The regulations provide a framework for identifying importation property and determining whether the transfer of the property is a transaction subject to the anti-loss importation provisions. **81 Fed. Reg. 17066 (March 28, 2016)**.

DEPRECIATION. The IRS has issued tables detailing the (1) limitations on depreciation deductions for owners of passenger automobiles (and for trucks and vans) first placed in service during calendar year 2016 and (2) the amounts to be included in income by lessees of passenger automobiles first leased during calendar year 2016.

For passenger automobiles placed in service in 2016 the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$3,160
2d tax year	5,100
3d tax year	3,050
Each succeeding year	1,875

For trucks and vans placed in service in 2016 the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$3,560
2d tax year	5,700
3d tax year	3,350
Each succeeding year	2,075

The procedure also provides revised tables of depreciation limitations and lessee inclusion amounts for passenger automobiles that were first placed in service or first leased by the taxpayer, respectively, during 2016 and to which the 50 percent additional first year depreciation deduction under I.R.C. § 168(k)(1)(A) applies as extended by the Protecting Americans from Tax Hikes Act of 2015, Pub. L. No. 114-113, § 143(a), 128 Stat. 4010 (2014).

For passenger automobiles placed in service in 2016 for which the additional first year depreciation deduction applies, the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$11,160
2d tax year	5,100
3d tax year	3,050
Each succeeding year	1,875

For trucks and vans placed in service in 2016 for which the additional first year depreciation deduction applies, the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$11,560
2d tax year	5,700
3d tax year	3,350
Each succeeding year	2,075

For leased passenger automobiles, I.R.C. § 280F(c) requires a reduction in the deduction allowed to the lessee of the passenger automobile. The reduction must be substantially equivalent to the limitations on the depreciation deductions imposed on owners of passenger automobiles. Under Treas. Reg. § 1.280F-7(a), this reduction requires a lessee to include in gross income an inclusion amount determined by applying a formula to the amount obtained from tables included in the revenue procedure. The revenue procedure includes tables showing the inclusion amounts for a range of fair market values for each taxable year after the passenger automobile is first leased.

2015 amounts revised. For passenger automobiles (that are not trucks or vans) placed in service by the taxpayer in calendar year 2015 for which the I.R.C. § 168(k) additional first year depreciation deduction applies, the revenue procedure contains the revised dollar amount of the depreciation limitations for each taxable year. For trucks or vans placed in service by the taxpayer in calendar year 2015 for which the I.R.C. § 168(k) additional first year depreciation deduction applies, the revenue procedure contains the revised dollar amount of the depreciation limitations for each taxable year. If the I.R.C. § 168(k) additional first year depreciation deduction does not apply to a passenger automobile placed in service by the taxpayer in calendar year 2015, the depreciation limitations for each taxable year in *Rev. Proc. 2015-19, 2015-1 C.B. 656* apply. **Rev. Proc. 2016-23, I.R.B. 2016-16**.

EMPLOYEE BUSINESS EXPENSES. If a taxpayer paid for work-related expenses out of the taxpayer's own pocket, the taxpayer may be able to deduct those costs. In most cases, taxpayers can claim allowable expenses if they itemize on IRS Schedule A, *Itemized Deductions*. Taxpayers can deduct the amount that is more than two percent of their adjusted gross income. *Ordinary and Necessary*. A taxpayer can only deduct unreimbursed expenses that are ordinary and necessary to the taxpayer's work as an employee. An ordinary expense is one that is common and accepted in the industry. A necessary expense is one that is appropriate and helpful to the business. *Expense Examples*. Some costs that may be deductible include: required work clothes or uniforms not appropriate for everyday use; supplies and tools used on the job; business use of a car; business meals and entertainment; business travel away from home; business use of the taxpayer's home; and work-related education costs. This list is not all-inclusive. Special rules apply if an employer reimburses the taxpayer for expenses. To learn more, check out Publication 529, *Miscellaneous Deductions*. You should also refer to Publication 463, Travel, Entertainment, Gift and Car Expenses. *Forms to Use*. In most cases, taxpayers report expenses on Form 2106 or Form 2106-EZ. After figuring the allowable expenses, a taxpayer lists the total on Schedule A as a miscellaneous deduction. *Educator Expenses*. If taxpayers who are K-12 teachers may be able to deduct up to $250 of certain expenses paid in 2015. These may include books, supplies, equipment and other materials used in the classroom. Taxpayers claim this deduction as an adjustment on the return, rather than an itemized deduction. For more on this topic see Publication 529. *Keep Records*. Taxpayers must keep records to prove the expenses deducted. For what records to keep, see Publication 17, *Your Federal Income Tax*. **IRS Tax Tip 2016-50**.

EXCISE TAX ON HIGHWAY VEHICLES. The IRS has issued proposed regulations relating to the excise taxes imposed on the sale of highway tractors, trailers, trucks, and tires; the use of heavy vehicles on the highway; and the definition of highway vehicle related to these and other taxes. The proposed regulations reflect legislative changes and court decisions regarding these topics. The proposed regulations affect manufacturers, producers, importers, dealers, retailers, and users of certain highway tractors, trailers, trucks, and tires. The proposed regulations define a highway vehicle as any self-propelled vehicle, or any truck trailer or semitrailer, designed to perform a function of transporting a load over public highways. The proposed regulations also provide exceptions for specified mobile machinery, off-highway vehicles, and non-transportation trailers and semitrailers for purposes of the tax on the sale of heavy vehicles, the highway use tax, and the credits and payments allowed for certain nontaxable uses. The exception for mobile machinery restates I.R.C. § 4053(8) and the exceptions for off-highway vehicles and non-transportation trailers and semitrailers restate I.R.C. § 7701(a)(48)(A) and (B). **81 Fed. Reg. 18544 (March 31, 2016)**.

FOREIGN INCOME. The IRS has published information about taxation of income from a foreign source to a U.S. citizen or resident who worked abroad. *Report Worldwide Income*. By law, U.S. citizens and residents must report their worldwide income. This includes income from foreign trusts and foreign bank and securities accounts. *File Required Tax Forms*. Taxpayers may need to file Schedule B, *Interest and Ordinary Dividends*, with the U.S. tax return. Taxpayers may also need to file Form 8938, *Statement of Specified Foreign Financial Assets*. In some cases, taxpayers may need to file FinCEN Form 114, *Report of Foreign Bank and Financial Accounts*. *Review the Foreign Earned Income Exclusion*. If a taxpayer lives and works abroad, the taxpayer may be able to claim the foreign earned income exclusion. If the taxpayer qualifies, the taxpayer does not pay tax on up to $100,800 of wages and other foreign earned income in 2015. See Form 2555, *Foreign Earned Income*, or Form 2555-EZ, *Foreign Earned Income Exclusion*, for more details. *Don't Overlook Credits and Deductions*. Taxpayers may be able to take a tax credit or a deduction for income taxes paid to a foreign country. These benefits can reduce taxes if both countries tax the same income. *Additional Child Tax Credit*. Taxpayers cannot claim the additional child tax credit if they file Form 2555, *Foreign Earned Income*, or 2555-EZ, *Foreign Earned Income Exclusion*. *Tax Filing Extension is Available*. If the taxpayer lives outside the U.S. and cannot file a tax return by the April 18, 2016 due date, the taxpayer may qualify for an automatic two-month extension until June 15, 2016. This extension also applies to those serving in the U.S. military abroad. Taxpayers will need to attach a statement to the tax return explaining why they qualify for the extension. **IRS Tax Tip 2016-49**.

IRA. The taxpayers were husband and wife and the husband had owned an interest in a pension fund through the husband's employer. The husband terminated that employment and transferred the pension funds to an IRA owned by the taxpayers in a tax-free rollover. The taxpayers used the funds in the IRA to purchase the stock of a new C corporation formed by the taxpayers. The corporation in turn purchased another existing business. A portion of the purchase price was from funds in the taxpayers' personal bank accounts and a promissory note to the seller. The promissory note was secured by the new business assets and a personal guarantee from the taxpayers. The taxpayers reported the pension plan distributions on their return and disclosed that the funds were rolled over to the IRAs but did not disclose the purchase of the business nor the personal guarantees of the promissory note. Under I.R.C. § 4975(c)(1)(B), a prohibited transaction includes the lending of money or extension of credit between an IRA and a disqualified person, which includes the IRA owner who retains discretionary control over the investments in an IRA. The court followed its decision in *Peek v. Commissioner, 140 T.C. 216 (2013)* under similar facts and held that the personal guarantee of the loan for the corporation's purchase of the business was a prohibited transaction which disqualified the IRAs and made the distributions from the pension plan subject to income tax and the 10 percent penalty for early withdrawals. **Thiessen v. Comm'r, 146 T.C. No. 7 (2016)**.

PARTNERSHIPS

PARTNERSHIP LOSSES. The taxpayer and four other individuals formed a limited liability company which elected to be taxed as a partnership. The partners agreed to forego any salaries until the partnership had sufficient cash flow so, during the tax year involved, the taxpayer did not receive any salary. The company terminated during the tax year and sent a Schedule K-1 to the taxpayer showing a capital contribution of $25,000 for the taxpayer which represented a portion of the foregone wages. The K-1 also showed the taxpayer's share of the partnership's net loss of $39,142. The IRS disallowed the deduction for the losses because the taxpayer *had no basis in the partnership interest*. Under I.R.C. § 705, the basis of a partner's interest is not increased by the value of services performed unless and until the value of those services has been subjected to taxation. Therefore, the court held that the taxpayer's share of the partnership loss was not deductible. **Hastings v. Comm'r, T.C. Memo. 2016-61**.

SELF-EMPLOYMENT. The taxpayer solely owned a corporation which operated a steel fabrication business. The corporation was liquidated in a Chapter 7 bankruptcy case but the supply of steel scrap pieces was abandoned by the bankruptcy estate. Although the taxpayer started another steel fabrication business, it produced little income. However, the taxpayer discovered that there was a market for the steel scrap and the taxpayer sold the scrap over seven years with an average of two sales each month. The taxpayer reported the income from the sales as miscellaneous income but the IRS assessed a deficiency based on treatment of the income as self-employment income. I.R.C. § 1402(a)(3)(C) exempts the sale of a taxpayer's own property from the definition of "self employment income" with two exceptions. The first is for the sale of property that is the "stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year." The second is for the sale of "property held primarily for sale to customers in the ordinary course of the trade or business." The court looked to the definition of "property held primarily for sale to customers in the ordinary course of the trade or business" provided in I.R.C. § 1221(a)(1) governing capital assets. Using precedent from the Section 1221 cases, the court held that the income from the sales of the steel scrap was not realized from a trade or business because (1) the sales were not sufficiency frequent or regular, (2) the scrap was held for a longer time than a regular business would hold such inventory, and (3) the proceeds were not reinvested in more scrap or otherwise used in business activity. **Ryther v. Comm'r, T.C. Memo. 2016-56**.

TAX PAYMENT. The IRS has announced a new payment option for individual taxpayers who need to pay their taxes with cash. In partnership with ACI Worldwide's OfficialPayments.com and the PayNearMe Company, individuals can now make a payment without the need of a bank account or credit card at over 7,000 7-Eleven stores nationwide. Individuals wishing to take advantage of this payment option should visit the IRS.gov payments page, select the cash option in the "other ways you can pay" section and follow the instructions. Taxpayers will receive an e-mail from OfficialPayments.com confirming their information. Once the IRS has verified the information, PayNearMe sends the taxpayer an e-mail with a link to the payment code and instructions. Individuals may print the payment code provided or send it to their smart phone, along with a list of the closest 7-Eleven stores. The retail store provides a receipt after accepting the cash and the payment usually posts to the taxpayer's account within two business days. There is a $1,000 payment limit per day and a $3.99 fee per payment. Because PayNearMe involves a three-step process, the IRS urges taxpayers choosing this option to start the process well ahead of the tax deadline to avoid interest and penalty charges. In this new option, PayNearMe is currently available at participating 7-Eleven stores in 34 states. Most stores are open 24 hours a day, seven days a week,. For details about PayNearMe, the IRS offers a list of frequently asked questions on IRS.gov. Check IRS.gov/payments for the most current information about making a tax payment. **IR-2016-56**.

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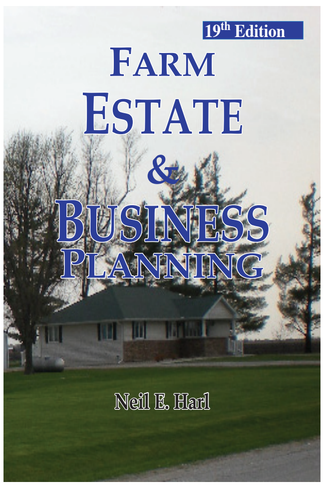

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