with generic commodity certificates,[9] that information returns were not required, although the Service conceded that such gains were taxable. The IRS pronouncement in 2004 stated –

> "A farmer can use CCC certificates to facilitate repayment of a CCC loan. If a farmer uses cash instead of certificates, the farmer will receive a Form CCC-1099-G Information Return showing the market gain realized. However, if a farmer uses CCC certificates to facilitate repayment of a CCC loan, the farmer will not receive any information return. Regardless of whether a CCC-1099-G is received, the market gain is either reported as income or as an adjustment to the basis of the commodity, depending on whether the special election has been made."[10]

By going that far but not requiring information reporting, the IRS focused attention on the moral hazard involved, by acknowledging that the gain is taxable but refusing to order information reporting *even though the other three methods of delivering marketing loan benefits all involved information reporting*. That stance was criticized.[11]

Reconsideration by IRS

On July 24, 2007, the Internal Revenue Service reversed course and issued guidance stating that "for loans repaid on or after January 1, 2007, the CCC reports market gain associated with the repayment of a CCC loan whether the taxpayer repays the loan with cash or uses CCC certificates in repayment of the loan.[12] The CCC reports the market gain on Form 1099-G, *Certain Government Payments*."

The same publication also confirmed that a taxpayer who has elected to treat CCC loans as income[13] can account for the market gain ". . . for the year in which a CCC loan is repaid by making an adjustment to the basis of the commodity that secures the loan. The taxpayer's basis in the commodity before the repayment of the loan is equal to the amount of the loan previously reported as income. That basis is reduced by the amount of any market gain associated with the repayment of the loan."[14]

In conclusion

With all of the attention currently being focused on payment limitations, this development is likely to be greeted warmly by those urging a level playing field in handling subsidy payments. However, marketing loan benefits associated with repayment of CCC loans with generic commodity certificates and forfeiture of commodities to CCC in repayment of non-recourse loans remain exempt from the statutory payment limitation of $75,000 for that type of benefit.[15]

FOOTNOTES

1 IR 2004-38, March 18, 2004. See Harl and McEowen, "Inconsistency in Handling Farm Income?" 99 *Tax Notes* 923 (2003); Harl and McEowen, "Inconsistency in Handling Farm Income: One More Time," 103 *Tax Notes* 476 (2004). See generally Harl, *Farm Income Tax Manual* § 305(b) (2006 ed.); Harl, *Agricultural Law Manual* § 4.02[1][b] (2007).

2 I.R.B. 2007-33.

3 Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (2002).

4 See note 1 *supra*.

5 See note 3 *supra*.

6 See Harl and McEowen, "Inconsistency in Handling Farm Income? 99 *Tax Notes* 923 (2003).

7 I.R.B. 2007-33.

8 IR-2004-38, March 18, 2004.

9 Harl and McEowen, "Inconsistency in Handling Farm Income?" 99 *Tax Notes* 923 (2003).

10 IR-2004-38, March 18, 2004.

11 Harl and McEowen, "Inconsistency in Reporting Farm Income: One More Time," 103 *Tax Notes* 476 (2004).

12 Notice 2007-63, I.R.B. 2007-33.

13 I.R.C. § 77(a). See Rev. Proc. 2002-9, 2002-1 C.B. 327, App. § 1.01.

14 Notice 2007-63, I.R.B. 2007-33.

15 Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, § 1603(a), 116 Stat. 134 (2002), *amending* 7 U.S.C. § 1308.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ADVERSE POSSESSION

FENCE. The two properties involved had once been part of the same ranch. The plaintiffs purchased their parcel from the ranch owner and their parcel was enclosed by a single fence which they treated as the boundary to their land. The plaintiffs planted the land with blue spruce trees, including the area in dispute on the north side of the southern boundary. The defendants purchased their parcel from someone who had purchased the parcel from the ranch owner. A survey was performed, showing the true boundary line north of the fence so the defendants had the fence removed and built a new fence on the true boundary. The plaintiffs filed suit to quiet title and for damages for the trees removed on the disputed strip by the defendants. The fence was in disrepair and did not follow a straight line but wandered with the topography of the land. The evidence also showed that the fence served only as a pasture division fence on the original ranch and never served as a boundary line. The trial court entered judgment for the defendants because the fence was insubstantial and was a fence of convenience creating a permissive use of the disputed strip by the plaintiffs. **Addison v. Handrich, 2007 Wyo. LEXIS 119 (Wyo. 2007)**.

The defendant and successors had owned their land for over 50 years and had fenced their land to include the disputed strip of land. The land was fairly wild and wooded but was used by the defendants for livestock pasturing, horse riding, hunting, harvesting timber and permissive use by guests and the public. The land was also posted with locally recognized purple paint. The plaintiff purchased the neighboring land in 2004 and a survey indicated that the disputed strip was within the titled land belonging to the plaintiff. The trial court found that the defendant and successors had obtained title to the disputed land by adverse possession because of the long term and varied uses of the land within the fenced area. The plaintiff pointed to the poor condition of the fence, the defendant's failure to object to claims of title to the land when the plaintiff first moved in and to the defendant's questioning of title to real estate brokers. The court held that such actions were relevant to the defendant's hostile intent but insufficient to override the trial jury's finding that the defendant's other actions established open and notorious possession of the land within the fence. **Stewart v. Morgan, 2007 Ark. App. LEXIS 512 (Ark. Ct. App. 2007)**.

BANKRUPTCY

GENERAL

ATTORNEY FEES. The attorney for Chapter 12 debtors was approved by the court, but the case was dismissed before a plan was confirmed. The court retained jurisdiction over the case to conclude administration of the estates. The attorney did not seek court approval for attorney's fees incurred during the Chapter 12 case. Instead, the attorney approached the debtors privately and obtained a promissory note for the bankruptcy and non-bankruptcy legal fees. The debtors made several payments on the note. The court held that the promissory note was unenforceable because the attorney failed to obtain permission to charge attorney's fees, as required by Section 330, and to disclose payments on the note, as required by Section 329. The court ordered the attorney to return all payments made on the note. ***In re* Brown, 2007 Bankr. LEXIS 2211 (Bankr. N.D. Okla. 2007)**.

CHAPTER 12

LIENS. The Bureau of Indian Affairs (BIA) had guaranteed loans made by a bank for the Chapter 12 debtors to purchase tribal lands. However, the mortgage for the loans was not perfected at the time the debtors filed for Chapter 12 and the BIA applied for permission to perfect the mortgage post-petition. The court held that the BIA had not identified any legal basis for the post-petition perfection of the lien, noting that, even if the perfection was allowed, the debtors, as debtors-in-possession could avoid the lien. **United States v. Hump, 2007 Bankr. LEXIS 2230 (Bankr. D. S.D. 2007)**.

CRIMINAL LAW

SEARCHES. The defendant pled guilty to maintaining a controlled dangerous substance (marijuana) production facility. The defendant moved to suppress evidence obtained when the police flew over the defendant's farm corn field and spotted the marijuana growing in the middle of the field. The court held that the defendant did not have any expectation of privacy for the field from inspection by helicopter. The court held that the first observation of the marijuana was incidental to the locating of the farm by air and that the corn field was not part of the residence so as to be protected by the expectation of privacy associated with the residence. **State of New Jersey v. Marolda, 2007 N.J. Super LEXIS 246 (N.J. Super. 2007)**.

FEDERAL AGRICULTURAL PROGRAMS

ANIMAL AND PLANT HEALTH INSPECTION SERVICE. APHIS has announced a new web site that will list significant guidance documents and other information provided by APHIS. See http://www.aphis.usda.gov/guidance. **72 Fed. Reg. 40270 (July 24, 2007)**.

BOVINE SPONGIFORM ENCEPHALOPATHY. The FSIS has adopted as final regulations prohibiting the processing for human consumption non-ambulatory "downer" cattle and cattle tissue identified as specified risk materials (SRMs) and prohibiting the use of high pressure stunning devices that could drive SRM tissue into the meat. **72 Fed. Reg. 38699 (July 13, 2007)**.

BRUCELLOSIS. The APHIS has adopted as final regulations which eliminate the requirement for pre-export tuberculosis and brucellosis testing of certain cattle being exported to countries that do not require such testing. **72 Fed. Reg. 40064, (July 23, 2007)**.

The APHIS has adopted as final regulations amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Idaho from Class A to Class Free. **72 Fed. Reg. 40062 (July 23, 2007)**.

GUARANTEED LOANS. The plaintiff bank agreed to loan a tomato growers' cooperative $9 million over three loans and sought to have the loans guaranteed by the defendant, Rural Business-Cooperative Service (the agency). The first two loans were made and guaranteed by the agency but the loans were in default by the time the application for guarantee of the third loan was made. The defendant's loan officer was found to have misrepresented the financial condition of the cooperative in applying for the third loan guarantee and did not disclose that some of the third loan proceeds were used to cure the defaults on the first two loans. All three loans defaulted and the bank sought payment under the guarantees by the agency. The agency argued that the plaintiff bank had violated the terms of the guarantee by failing to monitor the financial affairs of the cooperative, specifically in failing to obtain a required financial audit before making the third loan. In addition, the agency argued that the plaintiff bank had made loans to an ineligible borrower and allowed the borrower to use borrowed funds to pay off prior debts. The District Court held that the agency properly denied the claim for payment on the guarantee because of the bank's violation of the regulations, guarantee agreements and general fiduciary duties. The appellate court affirmed. **Farmers Bank of Hamburg v. USDA, 2007 U.S. App. LEXIS 17228 (8th Cir. 2007), *aff'g*, 2006 U.S. Dist. LEXIS 266193 (E.D. Ark. 2006)**.

WETLANDS. The plaintiff owned farm land through which a creek flowed, creating several oxbows, horseshoe shaped curves of land. The plaintiff had asked the local Natural Resources Conservation Service office to make a wetlands determination as to the oxbow land but called off the inspection. The local office learned that the plaintiff had started to fill the oxbow land and made an inspection of the oxbows. The local office determined that the oxbows contained wetlands because of the presence of hydric soil, hydrology of wetlands and hydrophytic vegetation. The plaintiff ignored the warnings of the local office and completed the filling in of the oxbows. The NRSC office cited the plaintiff for filling in of wetlands in violation of the law and the plaintiff appealed the decision. At all stages of the appeal, the plaintiff argued that the NRCS failed to properly document the wetland characteristics of the oxbows as required by agency manuals and failed to demonstrate that the oxbows could not have been used for cultivation before the filling took place. The court held that the NRCS properly relied on its personnel to inspect the land and such expert determinations were sufficient to support the finding that the oxbows were wetlands. The court held that the burden was on the plaintiff to show that the oxbows were cultivatable before the filling and that the filling did not change the character of the land. **Clark v. USDA, 2007 U.S. Dist. LEXIS 46341 (S.D. Iowa 2007)**.

FEDERAL ESTATE AND GIFT TAXATION

ADMINISTRATIVE EXPENSES. The IRS has issued proposed regulations concerning which estate and non-grantor trust administrative expenses are subject to the 2 percent floor for miscellaneous deductions under I.R.C. § 67(a). The proposed regulations provide that costs incurred by estates or non-grantor trusts that are unique to an estate or trust are not subject to the 2 percent floor. For this purpose, a cost is unique to an estate or trust if an individual could not have incurred that cost in connection with property not held in an estate or trust. To the extent that expenses paid or incurred by an estate or non-grantor trust do not meet this standard, they are subject to the 2 percent floor of section 67(a). (Neither section 67 nor this rule applies to expenses that are excluded under section 67(b) from the definition of miscellaneous itemized deductions, or to expenses related to a trade or business.) Under the proposed regulations, whether costs are subject to the 2 percent floor on miscellaneous itemized deductions depends on the type of services provided, rather than on taxpayer characterizations or labels for such services. Thus, taxpayers may not circumvent the 2 percent floor by "bundling" investment advisory fees and trustees' fees into a single fee. The regulations provide that, if an estate or non-grantor trust pays a single fee that includes both costs that are unique to estates and trusts and costs that are not, then the estate or non-grantor trust must use a reasonable method to allocate the single fee between the two types of costs. The regulations also provide a non-exclusive list of services for which the cost is either exempt from or subject to the 2 percent floor. See also *William L. Rudkin Testamentary Trust v. Comm'r, 2007 U.S. LEXIS 8325 (S. Ct. 2007), **cert. granted**, 467 F.3d 149 (2d Cir. 2006), **aff'g**, 124 T.C. 304 (2005)* (investment advice fees were subject to Section 67(a) 2 percent limitation); *William O'Neill, Jr. Irrevocable Trust v. Comm'r, 98 T.C. 227 (1992), rev'd, 994 F.2d 302 (6th Cir. 1993), non-acq., 1994-2 C.B. 1* (investment fees not subject 2 percent floor). **72 Fed. Reg. 41243 (July 27, 2007)**.

GENERATION SKIPPING TRANSFERS. The trust settlor established a trust before September 25, 1985, which had remainder interests passing to the settlor's surviving "lawful issue." After the birth of a great-grandchild out of wedlock, the trustee determined that the great-grandchild would not be a remainder holder of the trust because, under state law, the great-grandchild was not a "lawful issue" of the settlor. The trustee petitioned a state court for reformation of the trust to remove the term "lawful." The IRS ruled that the reformation of the trust would not subject the trust to GSTT because the reformation was the result of a bona fide legal issue that was resolved in accordance with state law. **Ltr. Rul. 200728033, March 26, 2007**.

The decedent had established an irrevocable trust prior to September 25, 1985 with a charitable beneficiary for a term of 15 years and the decedent's children as beneficiaries for life, with remainders to the children's issue. After the charitable beneficiary's term ended, the trustee petitioned a state court to divide the trust into five trusts, one for each current beneficiary. Each trust retained the terms of the original trust but included only one-fifth of the principal. The IRS ruled that the division of the trust did not subject the resulting trusts to GSTT. **Ltr. Rul. 200728017, April 4, 2007**.

The decedent had established an irrevocable trust prior to September 25, 1985 with the decedent's children as beneficiaries, with remainders to the children's issue. The trustee petitioned a state court to divide the trust into two trusts, one for each current beneficiary. Each trust retained the terms of the original trust but included half of the principal. The IRS ruled that the division of the trust did not subject the resulting trusts to GSTT. **Ltr. Rul. 200728031, April 10, 2007**.

A trust was established prior to September 25, 1985, for the purpose of providing for the care of the grantor's sister-in-law and cousin. Both beneficiaries had died and the trust continued for the remainder holders. The remainder holders petitioned a state court for termination of the trust and division of trust principal as provided by the trust. The state court approved the termination because the purpose of the trust no longer existed after the death of the primary beneficiaries. The IRS ruled that the termination of the trust and distribution of the principal did not subject the trust property to GSTT. **Ltr. Rul. 200728011, April 9, 2007**.

MARITAL DEDUCTION. The taxpayer was the surviving spouse of a decedent who, with the spouse, had created a trust for their benefit. At the death of the decedent, the trust was split into two trusts, a marital trust and a non-marital trust. The non-marital trust was to receive sufficient estate property so as to reduce the estate tax to zero, with the remainder to the marital trust. The decedent's executor claimed a QTIP election for the marital trust, although the estate owed no estate tax. The spouse requested a ruling allowing the revocation of the QTIP election, which the IRS granted because the election provided no estate tax benefit for the decedent's estate. **Ltr. Rul. 200729028, April 11, 2007**.

RETURNS. The decedent died with a will executed in the United States and a superseding will executed in Germany. The will nominated two of the decedent's elderly friends as executors but they did not know about the German will. The executors relied entirely on an attorney to handle estate matters, including the preparation and filing of the estate tax return. When the German will was discovered, the attorney advised the executors to cease estate administration. The evidence was uncertain whether the attorney advised the executors not to file an estate tax return. The court found that the executors did not rely on the attorney's advice not to file an estate tax return; therefore, the estate was liable for the I.R.C. § 6651(a)(1) penalty for failure to timely file an estate tax return. **Zlotowski v. Comm'r, T.C. Memo. 2007-203**.

TRUST. The taxpayer established a trust for the benefit of the taxpayer, the taxpayer's sibling, child and stepchild. Under the trust, the taxpayer retained a limited testamentary power over trust principal. The trust also provided each beneficiary the power to receive distributions if approved by either the taxpayer or any other beneficiary. The IRS ruled that contributions to the trust would not result in a taxable gift because the taxpayer retained the limited testamentary power over trust principal. The IRS also ruled that a taxable gift would occur if the taxpayer released the testamentary power during the taxpayer's lifetime or if trust principal was distributed to another beneficiary. The IRS ruled that while all of the current beneficiaries were alive, none of the trust income, deductions or credits were attributable to any beneficiary. **Ltr. Rul. 200729025, April 10, 2007**.

FEDERAL INCOME TAXATION

ALTERNATIVE MINIMUM TAX. The taxpayer received incentive stock options as part of compensation from an employer. The taxpayer exercised the options in 2000 and received over $1 million in stock for a purchase price of $9,225. However, in 2001, the corporation terminated and the stock became worthless. The exercise of the stock options resulted in recognition of AMT in 2000 and the taxpayer argued that the subsequent loss in 2001 should be allowed to reduce the 2000 AMT. The court held that capital losses could not be carried back for AMT purposes because AMT capital losses were subject to the same restrictions as regular tax capital losses. The appellate court affirmed **Merlo v. Comm'r, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,554 (5th Cir. 2007), *aff'g*, 126 T.C. 205 (2006)**.

BUSINESS EXPENSES. The taxpayer incurred costs from the moving of a processing facility to a new location. The taxpayer failed to produce written records documenting the nature of the expenses, whether purchasing equipment, moving equipment or installing equipment. The court held that the deductions for the expenses were properly disallowed for lack of substantiation. **Tyson Foods, Inc. v. Comm'r, T.C. Memo. 2007-188**.

CAPITAL ASSETS. The taxpayer operated an electrical generation and sale business and was allocated sulfur dioxide emission allowances from the EPA each year. The allowances could be sold or purchased as necessary to meet the sulfur dioxide emissions from the taxpayer's facilities. The IRS ruled that the emission allowances were not supplies for purposes of I.R.C. § 1221(a)(8). **Ltr. Rul. 200728032, April 5, 2007**.

CHIEF COUNSEL ADVICE. The plaintiff sought to force the IRS to disclose e-mails and other written documents composed by the national Office of the Chief Counsel (OCC) for distribution to field offices. The plaintiff argued that such communications constituted Chief Counsel Advice subject to disclosure under I.R.C. § 6110. The IRS argued that such short communications were not subject to disclosure because they were informal advice requiring less than two hours of preparation and research. The court held that the IRS "two hour" rule was contrary to the statutory requirement for disclosure of OCC advice; therefore, the written, including e-mail, communications involving interpretations of revenue provisions had to be disclosed. **Tax Analysts v. I.R.S., 2007-2 U.S. Tax Cas. (CCH) ¶ 50,553 (D.C. Cir. 2007), *aff'g*, 2006-1 U.S. Tax Cas. (CCH) ¶ 50,223 (D. D.C. 2006)**.

COURT AWARDS AND SETTLEMENTS. The taxpayer was employed as a loan officer but the employment was terminated when the taxpayer was found to have cooperated with the FBI investigation of the employer. The taxpayer filed suit for wrongful termination, breach of contract, intentional breach of contract, infliction of emotional distress, promissory estoppel, breach of fiduciary duty, equitable claim for unjust enrichment, public policy and common law, tortious interference with contractual relationship, and civil conspiracy. The petition made no claim of personal injury, except for emotional distress and adverse health effects. The parties reached a settlement and the taxpayer received funds in compensation for back wages and emotional pain and suffering. The taxpayer did not include the settlement proceeds in taxable income, arguing that the proceeds were compensation for physical injuries. The court held that the settlement proceeds were taxable income because the petition did not list any physical injuries and the settlement agreement did not list any physical injuries. The taxpayer, at trial, claimed that the legal fees paid from the settlement were deductible from income; however, the court held that the attorney fees were limited to the 2 percent floor for miscellaneous itemized deductions. Because the taxpayer had originally claimed the standard deduction, no deduction was allowed for attorney's fees. **Schoolcraft-Burkey v. Comm'r, T.C. Summary Op. 2007-126**.

DISASTER LOSSES. On July 2, 2007, the president determined that certain areas in New York are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of storms and flooding, which began on June 19, 2007. **FEMA-1710-DR**. On July 2, 2007, the president determined that certain areas in Kansas are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on June 26, 2007. **FEMA-1711-DR**. On July 7, 2007, the president determined that certain areas in Oklahoma are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding, which began on June 10, 2007. **FEMA-1712-DR**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2006 returns.

EXPENSE METHOD DEPRECIATION. The taxpayers operated a janitorial cleaning business and purchased a vehicle used in the business. The cost of the vehicle was claimed on Form 2106, Employee Business Expenses, on line 2, "parking fees, tolls, and transportation, including train, bus, etc., that did not involve overnight travel or commuting to and from work." The taxpayers did not list the vehicle expense on line 13 of Schedule C, "Depreciation and section 179 expense deduction" and did not file Form 4562, Depreciation and Amortization. The taxpayers also failed to present evidence that the vehicle was deductible as an employee business expense. The court held that the cost of the vehicle could not be claimed as expense method depreciation deduction because a proper election was not made with the income tax return and that the cost also did not qualify as an employee business expense. **Byard v. Comm'r, T.C. Summary Op. 2007-120**.

FOREIGN INCOME. The taxpayer performed work in Antarctica and the taxpayer excluded the wages earned while in Antarctica under I.R.C. § 911 as foreign income. The court held that income earned in Antarctica was not excludible under I.R.C. § 911 because Antarctica was not recognized by the U.S. government as a foreign sovereign nation. **Sundin v. Comm'r, T.C. Memo. 2007-185; Hulse v. Comm'r, T.C. Memo. 2007-186; Nevins v. Comm'r, T.C. Memo. 2007-187; Key v. Comm'r, T.C. Memo. 2007-190; Shaw v. Comm'r, T.C. Memo 2007-195; Gravelle v. Comm'r, T.C. Memo 2007-196; Hicks v. Comm'r, T.C. Memo 2007-197; Sheid v. Comm'r, T.C. Memo 2007-198; Self v. Comm'r, T.C. Memo 2007-199.**

INDIANS. The taxpayer was a member of the Canadian Micmac Indian tribe and resided and worked in the United States. The taxpayer claimed that the taxpayer was exempt from federal taxes because of a 1776 treaty with the tribe. The court rejected the interpretation that the treaty provided for any federal tax exemption and held that all residents of the United States who have income are subject to federal income tax. **Metallic v. Comm'r, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,552 (1st Cir. 2007), *aff'g*, T.C. Memo. 2006-123.**

IRA. As a result of losing employment because of mental disability problems, the taxpayer withdrew funds from a retirement account. The taxpayer's condition improved and the taxpayer was able to return to employment the following year. The taxpayer included the funds in income but did not pay the 10 percent penalty for early withdrawal of the funds. The taxpayer argued that the withdrawal was entitled to the exemption from the penalty provided for disability under I.R.C. § 72(t)(3)(A)(iii). The court noted that Treas. Reg. § 1.72-17A(f)(4) excludes remediable conditions from the definition of disability; therefore, only permanent disabilities qualify for the exemption. Because the taxpayer's disability was only temporary, the court held that the early withdrawal of funds from the IRA was subject to the 10 percent early withdrawal penalty. **Warrington v. Comm'r, T.C. Summary Op. 2007-122**.

LIKE-KIND EXCHANGES. The taxpayer loaned money to an exchange accommodation titleholder (EAT) who purchased replacement like-kind property from an unrelated party. The taxpayer transferred the relinquished like-kind property to a related party for fair market value. The related party transferred the relinquished property to a qualified intermediary (an affiliate of the EAT) who transferred the replacement property to the taxpayer. The IRS ruled that the transfer of the relinquished property to the related party, with immediate transfer to the EAT, did not disqualify the transfers for like-kind exchange treatment. **Ltr. Rul. 200728008, April 12, 2007**.

MEDICAL EXPENSES. The taxpayer, age 17, suffered several developmental disorders but was able to attend a college only with the assistance of a school which provided tutoring and specialized social, academic and independent living skill development assistance to the taxpayer. The IRS ruled that the costs of the school were eligible for the medical costs deduction. **Ltr. Rul. 200729019, April 10, 2007**.

PARTNERSHIPS

BASIS ADJUSTMENT ELECTION. The taxpayer partnership had a trust as the majority limited partner. The trust beneficiary died but the partnership failed to file an I.R.C. § 754 election to adjust partnership basis in partnership property. The IRS granted an extension of time to file the election. **Ltr. Rul. 200729024, April 10, 2007**.

PASSIVE ACTIVITY LOSSES. The taxpayer was employed full time as a youth counselor, employed part-time as an adjunct professor and managed a four apartment rental building. The taxpayer claimed a rental real estate loss of over $68,000 which the IRS disallowed as a passive activity loss. The taxpayer argued that the loss was allowable because the taxpayer qualified as a real estate professional because the taxpayer spent more than 750 hours performing services for the activity. The taxpayer presented a written calendar of activities which was prepared for trial. The taxpayer claimed the calendar was based on records kept in a handheld computer but the entries did not include the specific number of hours spent each day on the rental activity. The court found that the taxpayer's calculation of hours spent on the activity was merely an estimate of the hours, based on assumptions not supported by the records. The court held that the evidence was insufficient to prove the number of hours actually spent on the activity. In addition, the court held that, even if the taxpayer's calculation was correct, the number of hours still did not qualify the taxpayer as a real estate professional because such hours did not exceed one-half of the total hours worked by the taxpayer. **Harmon v. Comm'r, T.C. Summary Op. 2007-127**.

PENSION PLANS. For plans beginning in July 2007 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 5.20 percent, the corporate bond weighted average is 5.83 percent, and the 90 percent to 100 percent permissible range is 5.25 percent to 5.83 percent. **Notice 2007-61, 2007-2 C.B. 140**.

QUALIFIED FUEL CELL CREDIT. The IRS has certified the 2005 and 2006 Honda FCX as eligible for the qualified fuel cell vehicle credit of $12,000 as a qualified fuel cell vehicle. Apparently, these vehicles are currently available only by lease and only in areas where special hydrogen refueling equipment is available. **IR-2007-133**.

RETURNS. The IRS has announced a new electronic PIN signature requirement for electronically filed returns beginning in 2008. The IRS is eliminating the need for sending a paper signature document for e-filed returns by requiring the use of a self-selected PIN or a practitioner PIN. Taxpayers can select a five-digit PIN and Electronic Return Originators (EROs) can use a practitioner PIN when filing electronically. Practitioners will no longer send Form 8453, U.S. Individual Income Tax Declaration, for an e-filed return. Instead, EROs will use new Form 8879, IRS e-file Signature Authorization, which they are required to retain in their files. **IR-2007-130.**

SAFE HARBOR INTEREST RATES
August 2007

	Annual	Semi-annual	Quarterly	Monthly
Short-term				
AFR	5.00	4.94	4.91	4.89
110 percent AFR	5.50	5.43	5.39	5.37
120 percent AFR	6.02	5.93	5.89	5.86
Mid-term				
AFR	5.09	5.03	5.00	4.98
110 percent AFR	5.61	5.53	5.49	5.47
120 percent AFR	6.13	6.04	6.00	5.97
Long-term				
AFR	5.31	5.24	5.21	5.18
110 percent AFR	5.84	5.76	5.72	5.69
120 percent AFR	6.39	6.29	6.24	6.21

Rev. Rul. 2007-50, I.R.B. 2007-32.

TRUSTS. The taxpayers, husband and wife, were the beneficiaries of a nominal trust which owned land with a residence. The taxpayer had the trust transfer the property to themselves and the property was divided, with one parcel having the taxpayers' residence and several related structures on it. The taxpayers transferred the parcel to a personal residence trust which had a second trust as the remainder holder. The second trust was established by the taxpayers and was required to transfer to the taxpayers cash and marketable securities equal in value to the value of the remainder interest, as determined under I.R.C. § 7520. The IRS ruled that the property transferred to the personal residence trust was a personal residence under I.R.C. § 2702(a)(3)(A)(ii) and Treas. Reg. § 25.2702-5(b)(2). The IRS also ruled that the transfer of the remainder interest to the second trust did not result in a taxable gift. **Ltr. Rul. 200728018, March 19, 2007**.

The taxpayer owned a vacation residence on a property in a neighborhood of similar vacation homes. The residence was transferred to a trust and the IRS ruled that the residence qualified as a personal residence and the trust qualified as a personal residence trust. **Ltr. Rul. 200729004, April 5, 2007**.

The taxpayers, while husband and wife, created a charitable remainder trust with themselves as beneficiaries. The taxpayers divorced and, pursuant to the divorce decree, split the trust into two equal trusts with the same terms as the original trust but with only one taxpayer as current beneficiary. The IRS ruled that the split of the trust did not result in any change in income, gift or estate tax consequences from the original trust. **Ltr. Rul. 200728026, March 29, 2007**.

WITHHOLDING TAXES. The IRS has adopted as final regulations that provide guidance for employers and employees with regard to Form W-4, Employee's Withholding Allowance Certificate. Guidance is provided concerning the submission of copies of certain withholding exemption certificates to the IRS, IRS notification to employers and employees of the maximum number of withholding exemptions permitted and the use of substitute forms. The regulations also provide that, if the IRS determines that a withholding exemption certificate contains a materially incorrect statement or if an employee fails to provide an adequate response to a request for verification of the statements on a certificate, the IRS may issue a notice to the employer that specifies the maximum number of withholding exemptions the employee may claim. Employees who want to claim complete exemption from withholding or a number of withholding exemptions more than the maximum specified by the IRS must submit new withholding exemption certificates and written statements supporting their claims directly to the IRS. **T.D. 9337, 72 Fed. Reg. 38478 (July 13, 2007).**

IN THE NEWS

CONSERVATION RESERVE PROGRAM. The USDA has announced the extension of CRP acreage available for emergency haying and grazing to include an area radiating 210 miles out from all counties previously approved for emergency haying and grazing in Alabama, Indiana, Mississippi, Montana, Ohio, Oregon and Tennessee. To be approved for emergency haying or grazing, a county must be listed as a level "D3 Drought -- Extreme" or greater according to the U.S. Drought Monitor, www.drought.unl.edu/dm/monitor.html, or have suffered at least a 40 percent loss of normal moisture and forage for the preceding four-month qualifying period. USDA Farm Service Agency (FSA) state committees may authorize emergency haying or grazing of CRP land in counties currently listed as level D3 drought. Maps and more information on emergency haying and grazing are available at local FSA offices and online at: www.fsa.usda.gov/FSA/webapp?area=home&subject=copr&topic=crp-eg.

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The Seminars in Paradise have returned!

FARM INCOME TAX, ESTATE AND BUSINESS PLANNING SEMINARS

by Neil E. Harl

Outrigger Keauhou Beach Resort, Big Island, Hawai'i. January 8-12, 2008

Spend a week in Hawai'i in January 2008! Balmy trade winds, 70-80 degrees, palm trees, white sand beaches and the rest of paradise can be yours; plus a world-class seminar on Farm Income Tax, Estate and Business Planning by Dr. Neil E. Harl. The seminar is scheduled for January 8-12, 2008 at the spectacular ocean-front Outrigger Keauhou Beach Resort on Keauhou Bay, 12 miles south of the Kona International Airport on the Big Island, Hawai'i.

Seminar sessions run from 8:00 a.m. to 12:00 p.m. each day, Tuesday through Saturday, with a continental breakfast and break refreshments included in the registration fee. Each participant will receive a copy of Dr. Harl's 400+ page seminar manual *Farm Income Tax: Annotated Materials* and the 600+ page seminar manual, *Farm Estate and Business Planning: Annotated Materials,* both of which will be updated just prior to the seminar.

Here are a sample of the major topics to be covered:

• Farm income items and deductions; losses; like-kind exchanges; and taxation of debt including the new Chapter 12 bankruptcy tax.

• Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.

• Introduction to estate and business planning.

• Co-ownership of property, including discounts, taxation and special problems.

• Federal estate tax, including alternate valuation date, special use valuation, handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.

• Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.

• Organizing the farm business—one entity or two, corporations, general and limited partnerships and limited liability companies.

The Agricultural Law Press has made arrangements for **substantial discounts on partial ocean view hotel rooms at the Outrigger Keauhou Beach Resort**, the site of the seminar.

The seminar registration fee is $645 for current subscribers to the *Agricultural Law Digest,* the *Agricultural Law Manual* or the *Principles of Agricultural Law*. The registration fee for nonsubscribers is $695. Brochures will be sent to all subscribers soon. For more information call Robert Achenbach at 541-302-1958 or e-mail at robert@agrilawpress.com.