CASES, REGULATIONS AND STATUTES

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FEDERAL AGRICULTURAL PROGRAMS

CONSERVATION RESERVE PROGRAM. The CCC has announced the opportunity to allow Conservation Reserve Program (CRP) participants with certain established vegetative cover to voluntarily modify the CRP contract to utilize certain CRP land enrolled for a critical feed use this year without a rental reduction. Producers will be required to obtain a modified conservation plan to include, among other things, haying or grazing of the established cover. **73 Fed. Reg. 31053 (May 30, 2008)**.

COTTON. The CCC has adopted as final regulations revising the upland cotton regulations to use Far East prices instead of Northern Europe prices in determining the upland cotton adjusted world price (AWP). The AWP is used to determine repayment rates for marketing assistance loans and to establish loan deficiency payments. **73 Fed Reg. 30274 (May 27, 2008)**.

The AMS has adopted as final regulation raising the user fees for cotton producers for 2008 crop cotton classification services under the Cotton Statistics and Estimates Act and the Cotton Standards Act of 1923. The fee for the 2008 crop increases to $2.00 per bale. **73 Fed. Reg. 30734 (May 29, 2008)**.

IMPORTS/EXPORTS. The APHIS has issued proposed regulations amending the regulations concerning user fees for import- and export-related services that APHIS provides for animals, animal products, birds, germ plasm, organisms, and vectors. The proposed regulations increase those fees for fiscal years 2009 through 2013 in order to ensure that the fees accurately reflect the anticipated costs of providing the services each year. **73 Fed. Reg. 31771 (June 4, 2008)**.

FEDERAL ESTATE AND GIFT TAXATION

ALTERNATE VALUATION DATE. The decedent's estate executor hired an attorney to file the federal estate tax return within one year of the due date for the return but the attorney failed to make the alternate valuation date election. The IRS granted the estate an extension of time to file an amended return with the election. **Ltr. Rul. 200821003, Jan. 7, 2008**.

SPLIT-DOLLAR LIFE INSURANCE. The taxpayer husband created an irrevocable trust, which was the designated owner of two second-to-die life insurance policies on the lives of the husband and wife. Under the agreement, the trustee was designated as the owner of the policies and could exercise all rights of ownership except the right of the couple upon the agreement's termination to be repaid the cash surrender value of the policies prior to termination. While the couple was living, the trust was obligated to pay premiums equal to the cost of current life insurance protection on their joint lives. During the life of the survivor of the couple, the trust would pay that portion of the premiums equal to the lesser of the P.S. 58 table (see *Rev. Rul. 55-747, 1955-2 C.B. 228*) amount, or the rate for annually renewable term insurance generally available for standard risks. The taxpayers were obligated to pay the balance. The trustee also executed a collateral assignment, assigning the policies to the taxpayers but retaining all rights of ownership in the policies except the right of the taxpayers or the estate of the survivor to receive the amount specified on termination of the agreement. The IRS ruled that the premium payments made by the taxpayers pursuant to the split-dollar life insurance agreement did not result in a taxable gift by the couple under I.R.C. § 2511. The IRS also ruled that, because the taxpayers did not retain any incidents of ownership in the policies under the agreement and the collateral assignment, the proceeds of the policies payable to the trust were not includible in the gross estate of the second to die of either spouse under I.R.C. § 2042(2). However, the IRS ruled that the portion of the proceeds payable to the survivor's estate was includible under I.R.C. § 2042(1). **Ltr. Rul. 200822003, Jan. 28, 2008**.

TRUSTS. The taxpayer established an irrevocable trust for the benefit of the taxpayer. The trust was modified to provide the trustee with the discretion to reimburse the taxpayer for any income taxes attributable to the inclusion of trust income in the taxpayer's taxable income. The discretion was subject to the approval of a "reimbursement committee" and at least one beneficiary who qualified as an adverse party under I.R.C. § 672(c). The IRS ruled that the modification of the trust did not cause inclusion of the trust in the taxpayer's gross estate. **Ltr. Rul. 200822008, Feb. 6, 2008**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has ruled that a public utility changed its method of accounting when the utility changed its treatment of sewer connection fees from nontaxable capital contributions to taxable income. **Rev. Rul. 2008-30, I.R.B. 2008-25**.

DISASTER LOSSES. On May 8, 2008, the president determined that certain areas in Mississippi are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and flooding, which began on March 20, 2008. **FEMA-1753-DR**. On May 9, 2008, 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 April 9, 2008. **FEMA-1754-DR**. On May 9, 2008, the president determined that certain areas in Maine are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on April 28, 2008. **FEMA-1755-DR**. On May 8, 2008, 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 May 10, 2008. **FEMA-1756-DR**. On May 19, 2008, the president determined that certain areas in Kentucky are eligible for assistance from the government under the Act as a result of severe storms, tornadoes, landslides and flooding, which began on April 3, 2008. **FEMA-1757-DR**. On May 20, 2008, the president determined that certain areas in Arkansas are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding, which began on May 2, 2008. **FEMA-1758-DR**. On May 22, 2008, the president determined that certain areas in South Dakota are eligible for assistance from the government under the Act as a result of near record snow which began on May 1, 2008. **FEMA-1759-DR**. On May 23, 2008, the president determined that certain areas in Missouri are eligible for assistance from the government under the Act as a result of severe storms and tornadoes, which began on May 10, 2008. **FEMA-1760-DR**. On May 23, 2008, the president determined that certain areas in Georgia are eligible for assistance from the government under the Act as a result of severe storms, and tornadoes, which began on May 11, 2008. **FEMA-1761-DR**. On May 20, 2008, the president determined that certain areas in Colorado are eligible for assistance from the government under the Act as a result of severe storms and tornadoes, which began on May 22, 2008. **FEMA-1762-DR**. On May 27, 2008, the president determined that certain areas in Iowa are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding, which began on May 25, 2008. **FEMA-1763-DR**. On May 28, 2008, the president determined that certain areas in Mississippi are eligible for assistance from the government under the Act as a result of severe storms and tornadoes which began on April 4, 2008. **FEMA-1764-DR**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2007 returns.

DISCHARGE OF INDEBTEDNESS. The taxpayers purchased a house but sold the house in a "short" sale for less than the mortgage loan. The lender agreed to accept the proceeds of the sale in full satisfaction of the mortgage loan balance and issued a Form 1099-C to the taxpayers for the $74,494 forgiven in the transaction. The taxpayers failed to prove that any of the exceptions of I.R.C. § 108(a) applied to the discharge of indebtedness income; therefore, the court held that the full amount forgiven was taxable income. **Stevens v. Comm'r, T.C. Summary Op. 2008-61**.

ELECTRICITY PRODUCTION CREDIT. The IRS has announced the 2008 inflation adjustment factor (1.3854) and reference price used in determining the availability of the renewable electricity production credit to taxpayers producing electricity using wind at 3.29 cents per kilowatt hour. The inflation adjustment factor and reference prices apply to calendar year 2008 sales of kilowatt hours of electricity produced in the U.S. and its possessions from qualified energy resources and refined coal. The factor is 1.0591 for Indian coal. The renewable electricity production credit for calendar year 2008 is 2.1 cents per kilowatt hour on sales of electricity produced from wind energy, closed-loop biomass, geothermal energy and solar energy and 1.0 cent per kilowatt hour on sales of electricity produced from open-loop biomass, small irrigation power, landfill gas, trash combustion and qualified hydropower facilities. **Notice 2008-48, I.R.B. 2008-21**.

HEALTH SAVINGS ACCOUNTS. The IRS has issued guidance on the proper tax treatment of qualified health savings account (HSA) funding distributions, effective for tax years beginning after 2006. A qualified HSA funding distribution is a one-time, direct transfer from an individual's traditional individual retirement account (IRA) or Roth IRA to the individual's HSA. The IRS guidance reflects the rules provided in I.R.C. § 408(d)(9), as added by the Tax Relief and Health Care Act of 2006 (Pub. L. No. 109-432), and includes numerous examples that illustrate how these rules should be applied. **Notice 2008-51, I.R.B. 2008-25**.

The IRS has issued guidance on contributions to Health Savings Accounts (HSAs) with respect to amendments made to I.R.C. § 232 by the Tax Relief and Health Care Act of 2006 (Pub. L. No. 109-432). The guidance addresses establishing HSAs, annual and monthly HSA contribution limits, HSA distributions not used for qualified medical expenses and excise taxes on excess contributions. **Notice 2008-52, I.R.B. 2008-25**.

INTEREST RATE. The IRS has announced that, for the period July 1, 2008 through September 30, 2008, the interest rate paid on tax overpayments decreases to 5 percent (4 percent in the case of a corporation) and for underpayments decreases to 5 percent. The interest rate for underpayments by large corporations decreases to 7 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 decreases to 2.5 percent. **Rev. Rul. 2008-27, I.R.B. 2008-26.**

RETURNS. The IRS has announced that the IRS is postponing until July 28 certain deadlines for taxpayers who reside or have a business in the Butler, Blackhawk, Buchanan and Delaware counties, in the May 25, 2008, Iowa storm and tornado disaster area. The postponement applies to return filing, tax payment and certain other time-sensitive acts otherwise due between May 25 and July 28. In addition, the IRS will waive the failure to deposit penalties for employment and excise deposits due on or after May 25 and on or before June 9, as long as the deposits were made by June 9. **Iowa Storm, Tornado Victims May Qualify for IRS Disaster Relief, MIL-2008-35, May 30, 2008**.

S CORPORATIONS

BUILT-IN GAINS. The taxpayer corporation owned mineral interests when the corporation elected to change from a C corporation to an S corporation. The taxpayer mined the minerals and processed them after the election and during the 10-year recognition period. The IRS ruled that the income from the minerals mined and processed after the subchapter S election were not built-in gains under I.R.C. § 1374(d)(3). **Ltr. Rul. 200821022, Dec. 21, 2007**.

TAX SHELTERS. The court approved an injunction against a multi-level marketing organization for organizing and promoting abusive tax shelter schemes where the organization and members of its executive council knew that statements made in promotion conferences were false and would cause irreparable harm to customers and the government. **United States v. Pinnacle Quest International, 2008-1 U.S. Tax Cas. (CCH) ¶ 50,349 (N.D. Fla. 2008)**.

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THEFT LOSS. The taxpayer was the sole shareholder of an S corporation. The taxpayer claimed theft losses from embezzlement over several tax years, claiming that an employee embezzled funds from the corporation. However, the taxpayer failed to provide written evidence to support the embezzlement claim and no criminal action was brought in state court against the employees. The taxpayer filed a police report but no arrests were made. The IRS disallowed all but a small portion of the claimed losses and the court upheld the IRS determination because the taxpayer failed to substantiate the amount and character of the losses. In addition, a penalty for substantial underpayment of tax was imposed. The appellate court affirmed in a decision designated as not for publication. **Geiger v. Comm'r, 2008-1 U.S. Tax Cas. (CCH) ¶ 50,358 (11th Cir. 2008), *aff'g*, T.C. Memo. 2006-271**.

NEGLIGENCE

EMPLOYER LIABILITY. The plaintiff worked as a farmhand on the defendant's farm. The plaintiff was injured while trying to start a tractor while standing on the ground next to the tractor. The plaintiff claimed that the defendant was negligent in failing to properly instruct the plaintiff as to the operation of the tractor. The court noted that the plaintiff's own evidence demonstrated that the plaintiff had 38 years of experience in operating tractors and that the accident occurred because the plaintiff left the tractor in gear when the plaintiff attempted to start the tractor while standing in front of a wheel. The court agreed with the trial court finding that the accident was caused by the plaintiff's own actions and not from any action or omission by the defendant and upheld summary judgment for the defendant. **Jackson v. Murphy Farm and Ranch, Inc., 2008 Miss. App. 306 (Miss. Ct. App. 2008)**.

AALA ANNUAL AGRICULTURAL LAW SYMPOSIUM

The American Agricultural Law Association is holding its 29th annual Agricultural law Symposium on October 24 & 25, 2008 at the Marriott Hotel in downtown Minneapolis, MN.

Topics will include annual updates on bankruptcy, income and estate tax, federal farm programs, food safety and environmental law. Special panel presentations are being planned for topics of special interest to Minnesota and Midwest practitioners, as well as panel discussions on national agricultural law topics.

More information can be found on the AALA web site http://www.aglaw-assn.org or by contacting Robert Achenbach, AALA Executive Director at RobertA@aglaw-assn.org or by phone at 541-466-5444.