What about partnerships?

In 2013, the Chief Counsel's Office of IRS announced that "I.R.C. 465 does not apply to partnerships," citing the case of *Hambrose Leasing 1984-5 Limited Partnership v. Commissioner*.[13] However, to understand the limits of the Chief Counsel's brief statement, it is necessary to look carefully at the *Hambrose* case. That Tax Court holding involved non-recourse financing of the partnership's debt. The determination of a partner's amount "at risk" with respect to partnership liabilities personally assumed *was not a partnership item*, but was an "affected item" *as to which the Tax Court lacked jurisdiction in a partnership-level proceeding*.[14]

Hambrose refers to "affected items", involving "the determination of amounts "at risk" with respect to partnership liabilities personally assumed by individual partners" and notes that was not a partnership item, but was an *affected item* which can be dealt with *only in a proceeding involving the partners and not in the partnership level proceeding which was the situation in the Hambrose case*.[15] This conclusion is based on the definition of "partnership item" in I.R.C. § 6231 ("required to be taken into account for the partnership's taxable year.") As the *Hambrose* court stated, "our conclusion is consistent with the legislative pattern which recognizes the separateness of partnership items, non-partnership items and "affected items."

Therefore, with partnerships, the first determination is to ascertain which kind of item it is before making conclusions as to the appropriate strategy for applying the "at risk" rules. The Chief Counsel's brief statement should not be misconstrued.

ENDNOTES

[1] I.R. C. §. 465(c). See generally 4 Harl, *Agricultural Law* § 30.09 (2015); 1 Harl, *Farm Income Tax Manual* § 3.02[2] (2015 ed.).

[2] See TAM 9035005, May 30, 1990.

[3] I.R.C. § 465(c)(3)(B).

[4] Temp. Treas. Reg. § 1.465-1T(a)(2).

[5] I.R.C. § 465(b).

[6] *Id*.

[7] I.R.C. § 465(b)(2).

[8] I.R.C. § 465(b)(2).

[9] I.R.C. § 465(b)(3). See Van Wyk v. Comm'r, 113 T.C. 441 (1999).

[10] I.R.C. § 465(b)(3)(B).

[11] I.R.C. §. 465(c)(1)(B).

[12] I.R.C. § 464(e).

[13] 99 T.C. 298 (1992).

[14] Roberts v. Comm'r, 94 T.C. 853 (1990).

[15] See I.R.C. § 6226(f).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

FEDERAL FARM PROGRAMS

SCRAPIE. The APHIS has issued proposed regulation which amend the scrapie regulations by changing the risk groups and categories established for individual animals and for flocks, increasing the use of genetic testing as a means of assigning risk levels to animals, reducing movement restrictions for animals found to be genetically less susceptible or resistant to scrapie, and simplifying, reducing, or removing certain recordkeeping requirements. The proposed regulations also provide designated scrapie epidemiologists with more alternatives and flexibility when testing animals in order to determine flock designations under the regulations. The proposed regulations change the definition of high-risk animal, which will change the types of animals eligible for indemnity, and to pay higher indemnity for certain pregnant ewes and early maturing ewes. **80 Fed. Reg. 54660 (Spet. 10, 2015)**.

FEDERAL ESTATE AND GIFT TAXATION

GIFTS. The taxpayers, husband and wife, created an irrevocable trust with 60 beneficiaries, their children, lineal descendants and their spouses. The trust was funded by four separate real estate properties including the taxpayers' residence for a total value of $3,262,000. The trust granted each beneficiary the power, during the year in which the trust was created and during any subsequent year when property was added, "to withdraw property from the Trust including the property transferred." The amount "subject to a power of withdrawal by each beneficiary" was limited annually to the lesser of a formula-derived amount and "[t]he maximum federal gift tax exclusion under section 2503(b) * * * in effect at the time of the transfer." If any beneficiary had a disagreement with the trustee as to any requested distribution, the trust required the dispute "shall be submitted to arbitration before a panel consisting of three persons of the Orthodox Jewish faith." The taxpayers claimed annual gifts of $720,000 by allocating $24,000 to each beneficiary. In addition, the trust document had an *in terrorem* clause which revoked a beneficiary's rights "in the event a beneficiary of the Trust shall directly or indirectly institute, conduct or in any manner whatever take part in or aid in any proceeding to oppose the distribution of the Trust Estate, or files any action in a court of law, or challenges any distribution set forth in this Trust in any court, arbitration panel or any other manner. . ." The IRS disallowed the gift tax exclusions based on the argument that the beneficiaries were never intended to receive the annual distributions and, under the *in terrorem* clause would be reluctant to pursue enforcement of the distribution right; therefore, they did not receive an enforceable present interest in the trust. However, the court pointed out that the *in terrorem* clause did not apply to the annual distribution rights and that beneficiaries did have the right to arbitration through the arbitration panel. Thus, the Tax Court held that the trust did create present interests in the trust for the beneficiaries and the gift tax exclusion applied. *Mikel v. Comm'r, T.C. Memo. 2015-64*. The taxpayers filed for recovery of the litigation costs. I.R.C. § 7430 provides for the award of litigation costs to a taxpayer in a proceeding involving the determination of any tax, interest, or penalty. Such an award may be made where the taxpayer: (1) is the prevailing party; (2) exhausted available administrative remedies; (3) did not unreasonably protract the proceeding; and (4) claimed reasonable costs. The court held that the IRS position was reasonably justified in that it relied on a reasonable interpretation of the *in terrorem* clause based on a literal interpretation. Therefore, the court held that the taxpayers were not entitled to recover litigation costs under I.R.C. § 7430. **Mikel v. Comm'r, T.C. Memo. 2015-173**.

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 nine 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 including 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. 201536005, June 5, 2015 ; Ltr. Rul. 201537010, April 29, 2015**.

FEDERAL INCOME TAXATION

APPEALS. The IRS has issued a revenue procedure that announces the elimination of the appeals arbitration program and obsoletes *Rev. Proc. 2006-44, 2006-2 C.B. 800*, which formally established the appeals arbitration program. **Rev. Proc. 2015-44, 2015-2 C.B. 354**.

CHARITABLE DEDUCTIONS. The IRS has issued proposed regulations that implement the exception to the "contemporaneous written acknowledgement" (CWA) requirement for substantiating charitable contribution deductions of $250 or more. The proposed regulations provide rules concerning the time and manner for donee organizations to file information returns that report the required information about contributions. The IRS stated that some taxpayers under examination for their claimed charitable contribution deductions have argued that a failure to comply with the CWA requirements of I.R.C. § 170(f)(8)(A) may be cured if the donee organization files an amended Form 990, *Return of Organization Exempt From Income Tax*, that includes the information described in I.R.C. § 170(f)(8)(B) for the contribution at issue. These taxpayers argue that an amended Form 990 constitutes permissible donee reporting within the meaning of I.R.C. § 170(f)(8)(D), even if the amended Form 990 is submitted to the IRS many years after the purported charitable contribution was made. The IRS has consistently maintained that the I.R.C. § 170(f)(8)(D) exception is not available unless and until the Treasury Department and the IRS issue final regulations prescribing the method by which donee reporting may be accomplished. Moreover, the Treasury Department and the IRS have concluded that the Form 990 is unsuitable for donee reporting. Thus, the proposed regulations provide for donee reporting as a substitute for the CWA, at the option of the donee. If the donee does not file a report the gift to the IRS and the donor, the donor is still required to obtain the CWA. The IRS is working on a form to be used by donees for this purpose. **80 Fed. Reg. 55802 (Sept. 17, 2015)**.

COOPERATIVES. The taxpayer was a farmer cooperative taxed as a nonexempt subchapter T cooperative and organized as an agricultural marketing association. The taxpayer markets its member's products (not identified) in raw and processed form. The taxpayer incurred a loss in one tax year attributable to both patronage and nonpatronage business. The taxpayer planned to allocate the loss attributable to the patronage business against the current and future income from the patronage business. Similarly, the loss attributable to the nonpatronage business was allocated to the income from the nonpatronage business. The IRS ruled (1) the taxpayer could carry forward the patronage loss under I.R.C. § 172; (2) in future years, after the loss was offset by patronage income, the remaining patronage income was available for distribution as patronage dividends; (3) the carryover of the patronage loss would not require a recomputation of the patronage dividend exclusion or deduction; (4) the taxpayer could carry forward the nonpatronage share of the loss under I.R.C. § 172; and (5) the plan to offset losses did not affect the taxpayer's operation as a cooperative for tax purposes. **Ltr. Rul. 201536011, May 19, 2015**.

CORPORATIONS

CONTROLLED GROUPS. The IRS has adopted as final regulations which revise the examples that illustrate the controlled group rules applicable to regulated investment companies (RICs). The revised examples illustrate how the controlled group rules affect the RIC asset diversification tests. **80 Fed. Reg. 55243 (Sept. 15, 2015)**.

ENTITY CLASSIFICATION. The taxpayer was a foreign company which was eligible to elect to be taxed as a disregarded entity in the United States. However, the taxpayer failed to timely file Form 8832, *Entity Classification Election*, to elect to be classified as a disregarded entity for federal tax purposes. Treas. Reg. § 301.7701-3(b)(2)(i) provides that, unless a foreign eligible entity elects otherwise, the entity is: (A) a partnership if it has two or more members and at least one member does not have limited liability; (B) an association if all members have limited liability; or (C) disregarded as an entity separate from its owner if it has a single owner that does not have limited liability. Treas. Reg. § 301.7701-3(a) provides that a business entity that is not classified as a corporation under Treas. Reg. § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. An eligible entity with a single owner can elect to be classified as an association (and thus a corporation under Treas. Reg. § 301.7701-2(b)(2)) or to be disregarded as an entity separate from its owner. The IRS granted the taxpayer an extension of time to file the election. **Ltr. Rul. 201537008, May 27, 2015**.

DEPRECIATION. Section 125(a) of the Tax Increase Prevention Act of 2014 (TIPA) amended I.R.C. § 168(k)(2) by extending the placed-in- service date for property to qualify for the 50-percent additional first year depreciation deduction. Section 125(c)(2) of the TIPA amended I.R.C. § 168(k)(4) by allowing corporations to elect not to claim the 50-percent additional first year depreciation deduction for certain property placed in service generally after December 31, 2013, and before January 1, 2015, and instead to increase their alternative minimum tax (AMT) credit limitation under I.R.C. § 53(c). Section 127(d) of the TIPA amended I.R.C. § 179(f) by extending the application of I.R.C. § 179(f) from any taxable year beginning after 2009 and before 2014 to any taxable year beginning after 2009 and before 2015. Taxpayers with a taxable year beginning in 2013 and ending in 2014 that filed their 2013 federal tax returns before the enactment of the TIPA may be uncertain how to claim the 50-percent additional first year depreciation for qualified property placed in service after December 31, 2013, in taxable years ending in 2014. The IRS has issued a revenue procedure which provides the procedures for claiming or not claiming the 50- percent additional first year depreciation for this property. The revenue procedure provides the procedures for a taxpayer that treated the amount of a 2010, 2011, 2012, or 2013 disallowed I.R.C. § 179 deduction for qualified real property as property placed in service on the first day of the taxpayer's last taxable year beginning in 2013 and wanted to carryover that amount to any taxable year beginning in 2014 in accordance with I.R.C. § 179(f)(4), as amended by the TIPA. **Rev. Proc. 2015-48, I.R.B. 2015-40**.

The taxpayer was the common parent of a multinational group of companies, and it filed Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*, on a calendar-year basis. The multinational group designed, manufactured and distributed a product via wholesale, retail, and e-commerce throughout the world. The taxpayer placed in service qualified property (as defined in I.R.C. § 168(k)(2)) during the taxable year. The taxpayer failed to file timely a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, requesting an extension of time to file Form 1120-F for the taxable year. As a result, the taxpayer untimely filed a Form 1120-F, including the election statement not to claim the additional first year depreciation deduction under I.R.C. §§ 168(k)(1), 168(k)(5) for qualified property placed in service during the taxable year, for the taxable year. The taxpayer was not aware that its Form 7004 had not been filed timely until it received a notice from the IRS indicating that the taxpayer had not timely filed Forms 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*, for the taxable year. The IRS granted the taxpayer an extension of time to file the election not to deduct the additional first year depreciation. **Ltr. Rul. 201537017, June 3, 2015**.

DISCHARGE OF INDEBTEDNESS. The taxpayer purchased an automobile with a retail installment contract requiring monthly payments over 60 months at 21.5 percent. In 2005, the taxpayer defaulted on the contract, and the auto was repossessed and sold at auction. The auction net proceeds were applied against the loan balance. After failing to collect the balance from the taxpayer, the lender assigned the debt to five collection agencies from 2006 through 2011 but the debt was not collected from the taxpayer. The lender decided to write-off the debt and sent a Form 1099-C, Cancelation of Debt, to the taxpayer showing a discharge of indebtedness of $4,602.46 in 2011. The Form 1099-C was returned without delivery. The taxpayer did not include the discharge of indebtedness income in taxable income on the 2011 return. The taxpayer argued that no debt was discharged because the lender received the full value of the loan when it repossessed the car. The court found that the installment agreement provided for the taxpayer's personal liability for any deficiency after the repossession and sale; therefore, the taxpayer was personally liable on the loan. The taxpayer also argued that the debt was deemed discharged in 2008, 36 months after the application of the auction proceeds on the loan. Treas. Reg. § 1.6050P-1(b)(2)(iv), provides, in part: "The presumption that an identifiable event has occurred may be rebutted by the creditor if the creditor (or a third-party collection agency on behalf of the creditor) has engaged in significant, bona fide collection activity at any time during the 12-month period ending at the close of the calendar year, or if facts and circumstances existing as of January 31 of the calendar year following expiration of the 36-month period indicate that the indebtedness has not been discharged. For purposes of this paragraph (b)(2)(iv)— (A) Significant, *bona fide* collection activity does not include merely nominal or ministerial collection action, such as an automated mailing; . . ." The IRS produced evidence that the lender had assigned the debt to five collection agencies from 2006 through 2011 but did not produce any evidence of any actual collection efforts. The court held that the IRS has failed to provide any evidence of any significant, *bona fide* activity that would indicate an active creditor and thus failed to rebut the presumption that an identifiable event discharging petitioner's debt occurred in 2008. The court held that the debt was discharged in 2008 and the taxpayer did not have any discharge of indebtedness income in 2011. **Clark v. Comm'r, T.C. Memo. 2015-175**.

FOREIGN INCOME. The IRS and Department of the Treasury have announce that they intend to amend regulations under I.R.C. §§ 1471-1474 to extend the time that certain FATCA transitional rules will apply. Specifically, the amendments will extend: (1) the date for when withholding on gross proceeds and foreign pass-through payments will begin; (2) the use of limited branches and limited foreign financial institutions (limited FFIs); and (3) the deadline for a sponsoring entity to register its sponsored entities and re-document such entities with withholding agents. In addition, in order to reduce compliance burdens on withholding agents that hold collateral as a secured party, proposed regulations will amend the regulations under chapter 4 to modify the rules for grandfathered obligations in relation to collateral. The transitional rules provided in the notice facilitate an orderly transition for withholding agents and FFIs regarding FATCA compliance. The notice provides additional time for withholding agents and FFIs to modify their systems in stages as necessary to address the phase-out of the above-mentioned transitional rules consistent with the information reporting and compliance objectives of FATCA. **Notice 2015-66, I.R.B. 2015-41**.

HEALTH INSURANCE. The IRS has published information for employers as to what must be reported to the IRS. For purposes of the health care law, the information that health coverage providers, including employers that provide self-insured coverage, report to the IRS includes the following: (1) the name, address, and employer identification number of the provider; (2) the responsible individual's name, address, and taxpayer identification number – or date of birth if a TIN is not available; (3) if the responsible individual is not enrolled in the coverage, providers may, but are not required to, report the TIN of the responsible individual; (5) the name and TIN, or date of birth if a TIN is not available, of each individual covered under the policy or program and the months for which the individual was enrolled in coverage and entitled to receive benefits; and (6) for coverage provided by a health insurance issuer through a group health plan, the name, address, and EIN of the employer sponsoring the plan, and whether the coverage is a qualified health plan enrolled in through the Small Business Health Options Program – known as SHOP – and the SHOP's identifier. See http://www.irs.gov/Affordable-Care-Act/Questions-and-Answers-on-Information-Reporting-by-Health-Coverage-Providers-Section-6055. **Health Care Tax Tip 2015-55**.

The IRS has issued a notice which advises taxpayers that the Treasury Department and the IRS intend to propose regulations under I.R.C. § 6055 (1) providing that health insurance issuers must report coverage in catastrophic health insurance plans described in Section 1302(e) of the Affordable Care Act enrolled in through an Affordable Insurance Exchange; (2) allowing electronic delivery of statements reporting coverage under expatriate health plans unless the recipient explicitly refuses consent or requests a paper statement; (3) allowing filers reporting on insured group health plans to use a truncated taxpayer identification number (TTIN) to identify the employer on the statement furnished to a taxpayer; and (4) specifying when a provider of minimum essential coverage is not required to report coverage of an individual who has other minimum essential coverage. **Notice 2015-68, I.R.B. 2015-41**.

IRA. The taxpayer owned an IRA which was used to buy securities, including shares in two master limited partnerships. For the tax year involved, both partnerships issued Forms K-1 showing the IRA's share of ordinary business losses. The taxpayer reported these losses on Schedule E. The taxpayer also received a distribution from the IRA which was reported on the taxpayer's Form 1040. The IRS disallowed the losses as incurred by the IRA and not the taxpayer. Under I.R.C. §§ 72, 408(d), 7701(a)(37), an owner of an IRA may not deduct any losses from IRA investments until all funds have been distributed and the distributions were less than the taxpayer's basis in the IRA. The taxpayer argued that such losses were recognized because the IRA functioned as a pass-through entity as a grantor trust. The court held that the statute was clear that losses incurred within an IRA's investments were not deductible by the IRA owner until the IRA was fully distributed. **Fish v. Comm'r, T.C. Memo. 2015-176**.

The taxpayer was convicted of several crimes and ordered to pay a fine and restitution. The taxpayer's only assets were an interest in a pension plan. The taxpayer had the pension funds transferred to an IRA in a non-taxable rollover. After the conviction was upheld on appeal, the court ordered the distribution of some of the IRA funds to pay the fine and part of the restitution. The taxpayer did not include the distributions in taxable income and the IRS assessed taxes on the distributions. The taxpayer argued that the distributions were not taxable because the taxpayer did not receive the funds, the taxpayer received no benefit from the distributions and the distributions were involuntary. The court disagreed, finding that the taxpayer received a benefit from the payment of the fine and restitution obligations. Thus, the court held that the distributions were taxable to the taxpayer. **Rodrigues v. Comm'r, T.C. Memo. 2015-178**.

LEGAL EXPENSES. The taxpayer licensed a patent from an affiliated company. The license agreement provided that the taxpayer and affiliate would share any costs incurred in defending the patent and that the affiliate had complete control over any litigation concerning patent infringement. The agreement also provided for the sharing of any recovery from an infringement case. The taxpayer filed a patent infringement action against an unrelated company and incurred legal costs as provided by the licensing agreement. The IRS ruled that the taxpayer could deduct the taxpayer's share of the legal costs as ordinary and necessary business expenses under I.R.C. § 162(a). **Ltr. Rul. 201536006, June 1, 2015**.

LETTER RULINGS. Section 4 of *Rev. Proc. 2015-3, 2015-1 C.B. 129*, sets forth areas in which the Service ordinarily will not issue letter rulings or determination letters. "Not ordinarily" means that unique and compelling reasons must be demonstrated to justify the issuance of a letter ruling or determination letter. The IRS has issued a revenue procedure which adds two areas to Section 4 of *Rev. Proc. 2015-3*: (1) Any issue relating to the qualification, under I.R.C. § 355 and related provisions, of a distribution, or another distribution which is part of the same plan or series of related transactions, if property owned by any distributing corporation or any controlled corporation becomes the property of a regulated investment company (RIC), within the meaning of I.R.C. § 851, or a real estate investment trust (REIT), within the meaning of I.R.C. § 856, in a "conversion transaction" (as defined in Treas. Reg. § 1.337(d)-7(a)(2)(ii)) with respect to which no deemed sale election described in Treas. Reg. § 1.337(d)-7(c) is made, and the conversion transaction and the distribution are parts of a plan or series of related transactions. This shall not apply if, immediately after the date of the distribution, both the distributing corporation and the controlled corporation will be RICs, or both of such corporations will be REITs, and there is no plan or intention on the date of the distribution for either the distributing corporation or the controlled corporation to cease to be a RIC or a REIT. (2) Any issue relating to the qualification, under I.R.C. § 355 and related provisions, of a distribution, or another distribution which is part of the same plan or series of related transactions, if, immediately after any such distribution, the fair market value of the gross assets of the trade(s) or business(es) on which the distributing corporation or the controlled corporation relies to satisfy the active trade or business requirement of I.R.C. § 355(b) is less than 5 percent of the total fair market value of the gross assets of such corporation. **Rev. Proc. 2015-43, I.R.B. 2015-_**.

PASSIVE ACTIVITY LOSSES. The taxpayer wife was employed part-time as a marketing director. The wife estimated about 1,040 hours were spent at the employment. The taxpayer and spouse owned two rental properties on which the taxpayer spent time managing. One property was managed by an unrelated company. During the audit of the taxpayers' returns, the taxpayers constructed a log of the wife's time and work spent on the rental activity, showing 852 hours spent during the tax year. That log was later amended to show 1,254 hours spent during the tax year. The logs were constructed from notes made contemporaneously with the work performed. The court noted that a good portion of the hours listed involved research of the housing market. The taxpayers argued that the wife met the requirements of I.R.C. § 469(c)(7)(B)(i) in that the amended log showed that the hours the wife spent in connection with their rental real estate activity exceed the hours she spent performing personal services for her employer. The court questioned the accuracy of the wife's 1040 hours spent at the employment, noting that the amount of income from the employment indicated more hours than were claimed. However, assuming the 1040 hours were correct, the original rental activity log did not show enough hours to exceed one-half of the wife's total personal services for the tax year. The court held that the amended log was not adequate to prove the additional hours because it was not created contemporaneously with the work and was not supported by other evidence. Therefore, the court held that the wife did not meet the I.R.C. § 469(c)(7)(B)(i) requirements and the rental losses were passive activity losses. **Farris v. Comm'r, T.C. Summary Op. 2015-53**.

PAYMENT OF TAXES. Effective January 1, 2016, the IRS will not accept any payment greater than $99,999,999.00. Two or more checks will be required, or the IRS recommends that the taxpayers use Fed Wire to make their payments. Federal Reserve banks will not accept any checks over the amount of $99,999,999.00. Effective January 1, 2016, any checks received over that amount will be rejected. **Ann. 2015-23, 2015-2 C.B. 311**.

PENSION PLANS. For plans beginning in September 2015 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 2.86 percent. The 30-year Treasury weighted average is 3.15 percent, and the 90 percent to 105 percent permissible range is 2.84 percent to 3.31 percent. The 24-month average corporate bond segment rates for September 2015, without adjustment by the 25-year average segment rates are: 1.34 percent for the first segment; 4.03 percent for the second segment; and 5.06 percent for the third segment. The 24-month average corporate bond segment rates for September 2015, taking into account the 25-year average segment rates, are: 4.72 percent for the first segment; 6.11 percent for the second segment; and 6.81 percent for the third segment. **Notice 2015-61, I.R.B. 2015-39**.

RENTAL PROPERTY. The taxpayers, husband and wife, owned two rental properties in addition to their principal residence. The first rental property was rented for a few years but was not rented for 10 years, including the two tax years involved in this case. The taxpayers made only two inquiries to sell the property but did not list the property with any realtor. The court held that the taxpayers could not deduct any losses from the property because the property was not used in a trade or business or for the production of income. In addition, the losses were passive activity losses because the taxpayer did not spend at least 750 hours managing the property. The second house was owned jointly by the wife and the couple's daughter and was rented to the taxpayers' daughter. The court held that the losses from that house could not be claimed on Schedule E because property was not used in a trade or business or for the production of income by the taxpayers. The court found that the wife's ownership was merely an accommodation to the daughter who could not purchase the house on her own. The appellate court affirmed in a decision designated as not for publication. **Robinson v. Comm'r, 2015-2 U.S. Tax Cas. (CCH) ¶ 50,481 (4th Cir. 2015), *aff'g*, T.C. Memo. 2014-120**.

The taxpayers, husband and wife, owned a second residence which they had constructed and placed for sale. When the property did not sell, the taxpayers rented the property to unrelated persons for several years. When the renters moved out, the taxpayers' daughter leased the house at a below-market rent. The taxpayers had claimed the rental income and expenses on Schedule E for most years but changed to reporting the income and expenses on Schedule C during the three years involved in the case. The court held that the taxpayers could not claim any expenses as deduction in excess of the income from the property because a family member rented the property at less than fair market value. **Okonkwo v. Comm'r, T.C. Memo. 2015-181**.

RETURNS. In a Chief Counsel Advice letter, the IRS stated, ". . . the officer of the sole remaining member of an LLC, which is the manager of the taxpayer (an LLC), has authority to sign the Form 1120 for the taxpayer. Counsel for taxpayer have represented that the officer has authority to act on behalf of the taxpayer. In absence of proof otherwise, the Service is entitled to rely on [I.R.C.] Section 6062, which provides in part, 'The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.' See also Treas. Reg. § 1.6062-1(c). Taxpayer may also be estopped in the future from asserting that the officer did not authority to sign the return, or any Forms 2848 and Forms 872. The elements of estoppel have been variously described, but for our purposes, to claim estoppel, the Service must prove that: (1) there was a false representation or a wrongful misleading silence by the taxpayer; (2) the false representation or wrongful silence related to a question of fact and not an opinion or statement of law; (3) the IRS was adversely affected by the acts or statements (or failure to act or make statements) by the taxpayer; and (4) the Service was ignorant of the true facts. *See Union Texas International Corp v. Commissioner, 110 T.C. 321 (1998)*. Whether or not a representation that a certain officer has authority to sign a return or other document is more in the nature of a question of fact, and not an opinion or statement of law. We believe the elements of estoppel could be met in this case." **CCA 201536025, June 16, 2015**.

S CORPORATIONS.

SUBSIDIARIES. The taxpayer was an S corporation which acquired all the stock of another C corporation as a subsidiary. The taxpayer failed to file a timely Form 8869, *Qualified Subchapter S Subsidiary Election*. The IRS granted an extension of time to file Form 8869. **Ltr. Rul. 201536015, June 1, 2015**.

SAFE HARBOR INTEREST RATES
October 2015

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	0.55	0.55	0.55	0.55
110 percent AFR	0.61	0.61	0.61	0.61
120 percent AFR	0.66	0.66	0.66	0.66
		Mid-term		
AFR	1.67	1.66	1.66	1.65
110 percent AFR	1.84	1.83	1.83	1.82
120 percent AFR	2.00	1.99	1.99	1.98
		Long-term		
AFR	2.58	2.56	2.55	2.55
110 percent AFR	2.84	2.82	2.81	2.80
120 percent AFR	3.09	3.07	3.06	3.05

Rev. Rul. 2015-21, I.R.B. 2015-40.

TRAVEL EXPENSES. The IRS has issued a notice which provides the 2015-2016 special *per diem* rates for taxpayers to use in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home. The special transportation industry meal and incidental expenses (M&IE) rates are $63 for any locality of travel in the continental United States and $68 for any locality of travel outside the continental United States (CONUS). The rate for the incidental expenses only deduction is $5 per day for travel inside or outside the Continental United States. The *per diem* rates in lieu of the rates described in *Notice 2014-57, 2014-2 C.B. 723* (the *per diem* substantiation method) are $275 for travel to any high-cost locality and $185 for travel to any other locality within CONUS. The amount of the $275 high rate and $185 low rate that is treated as paid for meals for purposes of I.R.C. § 274(n) is $68 for travel to any high-cost locality and $57 for travel to any other locality within CONUS. The per diem rates in lieu of the rates described in *Notice 2014-57* (the meal and incidental expenses only substantiation method) are $68 for travel to any high-cost locality and $57 for travel to any other locality within CONUS. **Notice 2015-63, I.R.B. 2015-40**.

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AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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. The seminars will be held on two days from 8:00 am to 5:00 pm. Registrants may attend one or both days. On the first day, Dr. Harl will speak about farm and ranch estate and business planning. On the second day, Dr. Harl will cover farm and ranch income tax. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch. A discount ($25/day) is offered for attendees who elect to receive the manuals in PDF format only (see registration form online for use restrictions on PDF files).

See Page 151 above for a list of cities and dates for Fall 2015 Seminars

The topics include:

First 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
- 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 regulations
- Federal estate tax liens
- Gifts to charity with a retained life estate

Gifts
- Reunification of gift tax and estate tax
- Gifts of property when debt exceeds basis

Use of the Trust
The General Partnership
- Small partnership exception
- Eligibility for Section 754 elections

Limited Partnerships
Limited Liability Companies
- Developments with passive losses
- Corporate-to-LLC conversions
- New regulations for LLC and LLP losses

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, including the "two-year" rule for trust ownership of stock
- Underpayment of wages and salaries

Financing, Estate Planning Aspects and Dissolution of Corporations
- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization
- Entity Sale
- Stock redemption

Social Security
- In-kind wages paid to agricultural labor

Second day

FARM INCOME TAX

New Legislation
Reporting Farm Income
- 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
- Leasing land to family entity
- Crop insurance proceeds
- Weather-related livestock sales
- Sales of diseased livestock
- Reporting federal disaster assistance benefits
- Gains and losses from commodity futures, including consequences of exceeding the $5 million limit

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
- Repairs and Form 3115; changing from accrual to cash accounting
- Paying rental to a spouse
- Paying wages in kind
- PPACA issues including scope of 3.8 percent tax

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.

The seminar registration fees for each of multiple registrations from the same firm and for *current subscribers* to the *Agricultural Law Digest*, the *Agricultural Law Manual*, or *Farm Estate and Business Planning* are $225 (one day) and $400 (two days). The early-bird registration fees for *nonsubscribers* are $250 (one day) and $450 (two days). Nonsubscribers may obtain the discounted fees by purchasing any one or more of our publications. See www.agrilawpress.com for online book and newsletter purchasing.

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