employee pays or incurs.[14] However, a self-employed taxpayer operating an unincorporated business is not entitled to deduct health insurance costs paid or incurred by the taxpayer for the taxpayer, spouse and dependents *except as provided in I.R.C. § 162(l)*.[15] That subsection limited the deduction to a percentage of the total through 2002.[16] Since 2002, the allowable percentage has been 100 percent of the deduction but that was not the case in *Albers v. Commissioner*[17] which arose in 2001 when the percentage was 60 percent.[18]

The Tax Court found that the taxpayer-employer (Mr. Albers) failed to establish that he paid the amount of the insurance premiums and the claimed reimbursed expenses for medical care for his wife as employee, her spouse (Mr. Albers) and her dependent children.[19] Moreover, the Tax Court found that the taxpayers had failed to establish that any part of the claimed medical insurance premiums and the claimed medical expenses were ordinary and necessary business expenses paid or incurred by the sole proprietor (Mr. Albers) in carrying on his farming operation.[20] Consequently, the deduction claimed on Schedule F for "employee benefit programs" was disallowed.[21]

Where should the amounts have been deducted?

Self-employed persons may deduct from gross income (line 29 on the 2006 federal income tax return, for example) 100 percent of amounts paid during the year for health insurance for themselves, their spouses and dependents.[22] The deduction cannot exceed the taxpayer's net earned income derived from the trade or business for which the insurance plan was established.[23] Amounts eligible for the deduction do not include amounts paid for any period during which the self-employed individual is eligible to participate in a subsidized health plan maintained by the employer or the spouse's employer.[24]

Thus, it continues to be important to deduct the medical insurance amounts in the prescribed manner even though 100 percent of the amounts paid for health insurance may be deductible.

FOOTNOTES

[1] Albers v. Comm'r, T.C. Memo. 2007-144. See I.R.C. § 105(b). See generally 4 Harl, *Agricultural Law* § 28.02[6][d] (2007); Harl, *Agricultural Law Manual* § 4.03[11] (2007); Harl, *Farm Income Tax Manual* § 703(b) (2006 ed.).

[2] I.R.C. § 105(b). See Rev. Rul. 71-588, 1971-2 C.B. 91 (reimbursed amounts not taxable to employees, one of whom was spouse of sole proprietor).

[3] I.R.C. § 105(b).

[4] Rev. Rul. 71-588, 1971-2 C.B. 91.

[5] *Id.*

[6] GCM 34488, April 30, 1971.

[7] *Id.* The original GCM, GCM 33127, Nov. 9, 1965, was reconsidered in GCM 34488, *supra*.

[8] Rev. Rul. 71-588, 1971-2 C.B. 91.

[9] *Id.*

[10] Rev. Rul. 2002-58, 2002-2 C.B. 541.

[11] *Id.* See Wollenburg v. United States, 75 F. Supp. 2d 1032 (D. Neb. 1999).

[12] T.C. Memo. 2007-144.

[13] I.R.C. § 162(a).

[14] *Id.* See Treas. Reg. § 1.162-10(a).

[15] I.R.C. § 162(l)(1)(A).

[16] I.R.C. § 162(l)(1)(B).

[17] T.C. Memo. 2007-144.

[18] I.R.C. § 162(l)(1)(B).

[19] Albers v. Comm'r, T.C. Memo, 2007-144; I.R.C. § 105(b).

[20] *Id.*

[21] *Id.*

[22] I.R.C. § 162(l)(1).

[23] I.R.C. § 162(l)(2)(A). See Reynolds v. Comm'r, T.C. Memo. 2000-20, *aff'd on another issue*, 296 F.3d 607 (7th Cir. 2002); "Business Expenses," Pub. 535, p. 25. See also CCA Ltr. Rul. 200524001, May 17, 2005 (self-employed sole proprietor could deduct medical insurance premiums for sole proprietor and family to extent of income from trade or business for which insurance purchased).

[24] I.R.C. § 162(l)(2)(B). See Reynolds v. Comm'r, T.C. Memo. 2000-20, *aff'd on another issue*, 296 F.2d 607 (7th Cir. 2002).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

CATTLE. The plaintiffs were injured when their car hit the defendant calf which had wandered on to the highway. The plaintiffs sued for negligence in failing to keep the calf off the highway and failing to promptly capture the calf after it escaped. The trial court granted summary judgment to the defendants on the basis that the plaintiffs had failed to show that the defendant owned or possessed the calf. On appeal, the appellate court reversed, holding that there was sufficient evidence to raise a factual issue as to the ownership of the calf. The court noted that an employee of the defendant had told police that a calf was missing. **Lindsey v. Chillicothe Livestock Market, Inc., 2007 Mo. App. LEXIS 857 (Mo. Ct. App. 2007)**.

FEDERAL AGRICULTURAL PROGRAMS

DAIRY PRODUCT REPORTING PROGRAM. The AMS has issued final regulations establishing the Dairy Product Mandatory Reporting Program authorized by the Farm Security and Rural Investment Act of 2002 to provide for timely, accurate, and reliable market information to facilitate more informed marketing decisions and promote competition in the dairy product manufacturing industry. **72 Fed. Reg. 36341 (July 3, 2007)**.

FEDERAL ESTATE AND GIFT TAXATION

CHARITABLE DEDUCTION. The IRS has issued two sample forms for inter vivos charitable lead annuity trusts (CLATs): one for a nongrantor CLAT with a term of years annuity period and one for a grantor CLAT. The revenue procedure provides annotations to the sample trust provisions and samples of certain alternate provisions. **Rev. Proc. 2007-45, I.R.B. 2007-29**.

The IRS has a sample form for a testamentary charitable lead annuity trust (CLAT). The revenue procedure provides annotations to the sample trust provisions and samples of certain alternate provisions. **Rev. Proc. 2007-46, I.R.B. 2007-29**.

The decedent had created an inter vivos trust with two persons and two charities as remainder beneficiaries. After the decedent's death, the trust passed to the remainder holders in four equal shares. Each beneficiary was entitled to one-half of their one-quarter share of the trust property in 2006 and the remainder in 2016. The trust provided that, if any individual beneficiary died, that person's share would pass to the remaining beneficiaries equally. The estate claimed a deduction for the portion of the trust that was estimated would eventually be received by the charities. The IRS denied the deduction under I.R.C. § 2055(e)(2) because the trust was a split-interest trust which created interests for charities and non-charities in the the same property. The estate argued that the statute did not apply because the trust essentially created two trusts, one for the individuals and one for the charities. The court rejected that argument based on *Zabel v. United States, 995 F. Supp. 1036 (D. Neb. 1998),* which denied a charitable deduction to a similarly structured trust. The estate also argued that I.R.C. § 2055(e)(2) was ambiguous in that it did not define a split interest trust; therefore, the court should examine the legislative history to determine whether the estate's trust was intended to be covered by the statute. The court cited *Estate of Johnson v. United States*, *941 F.2d 1318, 1321 (5th Cir. 1991),* in support of its holding that the statute was not ambiguous; therefore, there was no need to discuss the legislative history of the statute. The court noted that the estate's trust did not avoid the abuses mentioned in the legislative history in that one of the individual beneficiaries could still deplete a portion of the trust by ordering the trustee to seek high income, high risk investments because all remaining property would pass to the charities and not the individual's heirs. The court held that the charitable deduction was properly denied. **Galloway v. United States, 2007-2 U.S. Tax Cas. (CCH) ¶ 60,543 (3d Cir. 2007),** ***aff'g*****, 2006-1 U.S. Tax Cas. (CCH) ¶ 60,525 (W.D. Penn. 2006)**.

GENERATION SKIPPING TRANSFERS. The decedent had established an irrevocable trust prior to September 25, 1985 for the decedent's spouse with a remainder to three children. On the death of the spouse, three trusts were created, one for each surviving child. The trusts had the beneficiaries' children as remainder holders. One of these trusts petitioned a state court to split the trust into three trusts, with each trust having one child of the beneficiary as the remainder holder. The IRS ruled that the division of the trust would not subject it to GSTT. **Ltr. Rul. 200725008, March 13, 2007**.

The decedent had established an irrevocable trust prior to September 25, 1985 for the decedent's spouse with a remainder to a daughter and a further remainder to her two children. On the death of the decedent, spouse and daughter, one trust remained with the two grandchildren as beneficiaries. The trust petitioned a state court to split the trust into two trusts, with each trust having one grandchild as the beneficiary under the same terms as the original trust. The IRS ruled that the division of the trust would not subject it to GSTT. **Ltr. Rul. 200724020, Feb. 20, 2007**. ***See also*** **Ltr. Rul. 200726003, March 26, 2007 (split of trust)**.

Prior to September 25, 1985, the decedent established a trust for the decedent's son and children. The son had the power to require annual distributions from trust principal of up to the greater of $5,000 or 5 percent of the value of the trust principal. The trust allowed the son to make this request any time during the year but the power was not cumulative. The trust petitioned a state court to modify this power to require the son to make the request by the end of January of each year. The IRS ruled that the modification did not subject the trust to gift tax and did not subject the trust to GSTT. **Ltr. Rul. 200726008, March 22, 2007**.

IRA. The decedent owned an IRA and had designated a trust as the beneficiary. The surviving spouse was the trustee of this trust and had complete discretionary power to distribute trust property. The spouse had the trust distribute the IRA funds to an IRA in the spouse's name. The IRS ruled that the distribution was not included in the spouse's taxable income. **Ltr. Rul. 200724032, March 23, 2007**.

LOANS. The decedent had been disabled by an accident in childhood. The parents and guardian filed a law suit and obtained a settlement of almost $2 million. Because the decedent would need lifetime medical care and the parents were concerned that the substantial settlement would prevent the decedent from eligibility for medicaid assistance, the settlement, with approval of a state court adjudicating the interests of the decedent, paid most of the proceeds to the father who then loaned $1 million to a trust for the decedent's benefit. The trust paid interest to the father and the interest was included in the father's taxable income. At the death of the decedent, the remainder of the $1 million loan was paid to the father and the estate claimed a deduction from the estate of the amount paid to the father as an estate debt. The court held that

the estate was allowed the deduction because the loan was a bona fide loan approved by a state court. **Estate of Hicks v. Comm'r, T.C. Memo. 2007-182**.

SPECIAL USE VALUATION. The IRS has issued the 2007 list of average annual effective interest rates charged on new loans by the Farm Credit Bank system to be used in computing the value of real property for special use valuation purposes for deaths in 2007:

District	Interest rate
AgFirst	7.17
AgriBank	6.10
CoBank	5.58
Texas	6.08
U.S. AgBank	5.81

District	States
AgFirst	Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, West Virginia
CoBank	Alaska, Connecticut, Idaho, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington
AgriBank	Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Wisconsin, Wyoming
Texas	Alabama, Louisiana, Mississippi, Texas
U.S. AgBank	Arizona, California, Colorado, Hawaii, Kansas, Nevada, New Mexico, Oklahoma, Utah

Rev. Rul. 2007-45, 2007-2 C.B. 49.

TRANSFERS WITH RETAINED INTERESTS. The decedent had transferred funds, stock and other assets in a marital trust to a family limited partnership and transferred partnership interests to family members. The court found that the decedent retained control over and the benefits from the transferred property because the stock remained in the decedent's name, the decedent received the interest and dividends and the decedent deposited the proceeds of the sale of some of the property in the decedent's personal account. Therefore, the transferred assets were included in the decedent's estate under I.R.C. §§ 2033 or 2036. **Estate of Gore v. Comm'r, T.C. Memo. 2007-169**.

VALUATION. The decedent had won a state lottery and at the decedent's death was entitled to 10 more annual payments of the winnings. The court held that the remaining payments were properly valued using the I.R.C. § 7520 annuity tables. **Davis v. United States, 2007-1 U.S. Tax Cas. (CCH) ¶ 60,542 (D. N.H. 2007)**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has announced in a revenue procedure that it will follow *Westpac Pacific Food v. Comm'r, 451 F.3d 970 (9th Cir. 2006)*, with respect to taxpayers that adopt the Advance Trade Discount Method of accounting. The revenue procedure permits accrual method taxpayers to account for advance trade discounts under the Advance Trade Discount Method and provides procedures to obtain the automatic consent of the Commissioner to change to the Advance Trade Discount Method. **Rev. Proc. 2007-53, I.R.B. 2007-30**.

ALTERNATIVE MINIMUM TAX. The taxpayer filed as a head of household with the taxpayer's parents as dependents. The taxpayer's return showed $121,309 of wages and $35,017 of itemized deductions, including medical and dental, state and local taxes, other taxes, gifts, employe business expense and fees. The taxpayer claimed tax owed only under the regular tax system but the IRS assessed a deficiency based on an additional $4,000 taxes calculated using the alternative minimum tax. The taxpayer argued that the AMT should not apply to non-wealthy taxpayers. The court held that the AMT provisions were clear and properly calculated by the IRS. **Kamara v. Comm'r, T.C. Summary Op. 2007-103**.

The taxpayers, husband and wife, sold their farm and failed to purchase another residence, resulting in all of the capital gain from the sale being taxable. The taxpayers included the gain in taxable income at the capital gains rate but did not calculate or pay the alternative minimum tax. The taxpayers argued that the AMT should not apply to their case because the capital gains came form the sale of a residence/farm. The court held that the AMT had no exception for the taxpayers' situation and held that AMT applied to the taxpayers. **Moore v. Comm'r, T.C. Summary Op. 2007-104**.

BUSINESS EXPENSES. The taxpayer claimed various expenses for mileage, travel, and meals relating to a business as a self-employed minister. The taxpayer claimed no income from the business and was otherwise employed full time with the U.S. Postal Service. The taxpayer provided no detailed written substantiation records to support the expenses, claiming that the records were stolen. The court held that the expenses were not allowed as deductions for lack of substantiation. **Oswandel v. Comm'r, T.C. Memo. 2007-183**.

COOPERATIVES. The taxpayer was a non-exempt rural telecommunications cooperative. The taxpayer borrowed from a rural telephone bank and was required to purchase stock in the bank as part of the loan. The bank was dissolved and the stock redeemed. The IRS ruled that the taxpayer could exclude from income so much of the proceeds of the stock redemption as was distributed to members based on their proportion of business with the taxpayers. Amounts allocated to non-member business was not excludible from income. **Ltr. Rul. 200724017, March 1, 2007**.

COURT AWARDS AND SETTLEMENTS. The Tax Court has withdrawn its original opinion in the following case and issued a new opinion. The taxpayer was fired from employment with a roofing company and filed a suit against the employer for violation of the Michigan Whistleblower's Protection Act. The suit was submitted for mediation and the employer paid $80,000 in settlement of the litigation. The taxpayer excluded the proceeds from taxable income, arguing that the money was compensation for personal injuries. The court noted that the taxpayer did not incur any medical expenses, consult with a medical professional or inform the employer of any physical injuries. The court held that the settlement proceeds were included in taxable income because the proceeds were not received as compensation for personal injuries. **MacMurray v. Comm'r, T.C. Summary Op. 2007-90,** ***withdrawn and reissued***

as, **T.C. Summary Op. 2007-118**.

The plaintiff filed complaints against a former employer for employment discrimination based on whistleblower provisions in six environmental statutes. The plaintiff sought, and was awarded, damages for mental pain and anguish and for damage to personal reputation. The court held that the first test of *Commissioner v. Schleier*, *515 U.S. 323 (1995),* was met in that the six statutes created tort-like actions but the second test of a claim based on physical injuries was not met because mental pain and anguish were not physical personal injury. Although the plaintiff suffered from Bruxism (gnashing of teeth while sleeping), the court noted that the physical damage resulted from the mental anguish and not from the discrimination. Therefore, the court held that the judgment payments were included in income. **Murphy v. I.R.S., 2007-2 U.S. Tax Cas. (CCH) ¶ 50,531 (D.C. Cir. 2007),** ***aff'g*****, 2005-1 U.S. Tax Cas. (CCH) ¶ 50,237 (D. D.C. 2005)**.

The taxpayer sued a former employer for sexual and racial harassment. The parties reached a negotiated settlement and the taxpayer received a cash payment which was not included in taxable income by the taxpayer. The court held that the settlement proceeds were taxable because there was no evidence that the employer intended any of the settlement to compensate the taxpayer for physical injuries. **Smith v. Comm'r, T.C. Summry Op. 2007-106**.

DEPRECIATION. The IRS has ruled that a taxpayer manufacturer which maintains a pool of rotable spare parts as part of a separate repair operation of items manufactured by the taxpayer may treat the rotable spare parts as depreciable assets. Rotable spare parts are parts or units which are swapped out of a disabled piece of equipment instead of repairing the swapped out part. Swapping parts prevents loss of use of the equipment during the repair of the part. The IRS stated that the treatment of the parts needs to be substantially similar to the treatment of the taxpayers in *Hewlett-Packard Co. v. United States, 71 F.3d 398 (Fed. Cir. 1995), rev'g, Apollo Computer, Inc. v. United States, 32 Fed. Cl. 334 (1994), and Honeywell, Inc. v. Comm'r, T.C. Memo. 1992-453, aff'd per curiam, 27 F.3d 571 (8th Cir. 1994).* **Rev. Proc. 2007-48, I.R.B. 2007-29**.

The taxpayer operated a large farm on the accrual method of accounting and subject to the animal capitalization rules of Treas. Reg. § 1.263A-4. The taxpayer bred animals born on the farm, placing each breeder in service for depreciation purposes when the animal is ready for insemination. Animals are born and inseminated on a daily basis, so the taxpayer selected the mid-point of the taxable year as the time breeders are placed in service, with placed-in-service dates occurring in thirds each year. In a Chief Counsel advice letter, the IRS ruled that the capitalized costs of a self-produced breeder animal under § 263A would generally consist of: (1) the acquisition costs of the breeder animal; (2) if the breeder animal is not the first yield of its parent, the preproductive period costs incurred from the acquisition of the breeder animal or the breeding or implantation of its parent until the breeder animal is born; (3) if the breeder animal is the first yield of its parent, a reasonably allocable portion of the preproductive costs incurred from the acquisition of the breeder animal or the breeding or implantation of its parent until the breeder animal is born (the remainder of the costs being allocated and capitalized to the parent); at taxpayer election, the breeder animal (as the first yield of its parent) can bear all of the depreciation allowance accruing on the parent during this period; (4) preproductive period costs of the breeder animal from its birth until it is first bred or implanted; if the breeder animal is the first yield of its parent, some portion of these costs may be allocable to the second yield of the parent during the weaning of the breeder animal; and (5) a reasonably allocable portion of the preproductive period costs incurred from first breeding or implantation until the breeder animal gives birth to its first yield (the remainder of the costs being allocated and capitalized to the first yield); at taxpayer election, the first yield can bear all of the depreciation allowance accruing during this period. The IRS also ruled that the capitalized costs of a self-produced *non-breeder* animal under § 263A would generally consist of: (1) the acquisition costs of the non-breeder animal; (2) if the non-breeder animal is not the first yield of its parent, the preproductive period costs incurred from the acquisition of the non-breeder animal or the breeding or implantation of its parent until the non-breeder animal is born; (3) if the non-breeder animal is the first yield of its parent, a reasonably allocable portion of the preproductive costs incurred from the acquisition of the non-breeder animal or the breeding or implantation of its parent until the non-breeder animal is born (the remainder of the costs being allocated and capitalized to the parent); at taxpayer election, the non-breeder animal (as the first yield of its parent) can bear all of the depreciation allowance accruing on the parent during this period; and (4) preproductive period costs of the non-breeder animal from its birth until it is placed in service; if the non-breeder animal is the first yield of its parent, some portion of these costs may be allocatable to the second yield of the parent during the weaning of the breeder animal. The IRS also ruled that it would not challenge the placed-in-service date of a breeder animal as the date in which the animal can first be bred. The ruling also provided an example to further illustrate the ruling. **CCA Ltr. Rul. 200725037, March 2, 2007**.

DISABILITY PAYMENTS. The taxpayer received disability payments after termination of employment. The court held that the payments were taxable income because the payments were determined by the length of the taxpayer's employment and age and not by the nature of the disability. **Thomas v. Comm'r, T.C. Summary Op. 2007-110**.

DISASTER LOSSES. On June 7, 2007, the president determined that certain areas in Nebraska 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, tornadoes and flooding, which began on May 4, 2007. **FEMA-1707-DR**. On June 11, 2007, 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 flooding, which began on May 5, 2007. **FEMA-1708-DR**. On June 29, 2007, the president determined that certain areas in Texas are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding, which began on June 16, 2007. **FEMA-1709-DR**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2006 returns.

HOBBY LOSSES. The taxpayers were employed as police officers and also operated a horse training and breeding farm, although at a continuous loss. The court held that the taxpayers operated the farm with the intent to make a profit because (1) the operation was carried on in a businesslike manner with substantial advertising and records sufficient to improve profitability; (2) the taxpayers changed the operation to improve profitability; (3) the taxpayers did not ride the horses for pleasure; (4) one taxpayer had significant experience with training horses and the taxpayers consulted with experts as to the feeding, caring and training of horses; (5) the taxpayer spent a considerable amount of time on the operation; (6) the taxpayers reasonably expected the herd to appreciate in value and had devoted considerable funds from their employment to the operation; and (7) the taxpayers did not have substantial income from other sources which was offset by the farm losses. **Wilson v. Comm'r, T.C. Summary Op. 2007-117**.

The taxpayers, husband and wife, owned a horse boarding farm which was 350 miles from the husband's employment. The taxpayers employed persons to operate the facility and eventually sold the farm as an on-going business because the farm never generated a profit. The court held that the horse boarding farm was operated with the intent to make a profit because (1) the taxpayers maintained extensive, detailed and accurate records of the activity in an attempt to make it profitable and the taxpayers sold the farm when it became clear they could not operate it profitably; (2) the taxpayers had either extensive business expertise or expertise with boarding horses; (3) the taxpayers' contributed substantial amounts from their income to support the farm; and (4) the taxpayers did not receive personal pleasure from the activity because the taxpayers lived too far away to enjoy horseback riding. **Rozzano v. Comm'r, T.C. Memo. 2007-177**.

HYBRID MOTOR VEHICLE CREDIT. The IRS has certified the 2008 Mazda Tribute 2WD Hybrid as eligible for an alternative motor vehicle credit of $3,000 as a qualified hybrid motor vehicle. The IRS has certified the 2008 Mazda Tribute 4WD Hybrid as eligible for an alternative motor vehicle credit of $2,200 as a qualified hybrid motor vehicle. **IR-2007-126**.

INSURANCE EXPENSE. The taxpayer operated a business which was required by governmental regulation to clean-up environmental damage from the business, if and when the business operation ceases. The taxpayer estimated the current cost of such clean-up and contracted with an insurance company to pay that amount currently in exchange for the insurance company's promise to pay the clean-up costs up to twice the insurance premium initially paid. The IRS ruled that the premium paid was not deductible as an insurance expense because the only risk involved was an economic investment risk of the amount of the remediation costs based on when the business ceased. There was no insurance risk because the remediation was an event certain to take place. **Rev. Rul. 2007-47, I.R.B. 2007-30**.

INTEREST RATE. The IRS has announced that, for the period July 1, 2007 through September 30, 2007, the interest rate paid on tax overpayments remains at 8 percent (7 percent in the case of a corporation) and for underpayments remains at 8 percent. The interest rate for underpayments by large corporations remains at 10 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 remains at 5.5 percent. **Rev. Rul. 2007-39, I.R.B. 2007-26.**

JURISDICTION. The taxpayer received a notice of deficiency from the IRS on October 16, 2006. The taxpayer filed by mail a petition with the Tax Court which was received on January 22, 2007, more than 90 days after the taxpayer received the deficiency notice, the time limit for timely filed petitions under I.R.C. § 6213(a). The court noted that the petition envelope did not bear a U.S.P.S. postmark. The court received testimony from the taxpayer as to when the envelope was mailed, noted that the filing check was dated January 16, 2007 and noted that some court mail is delayed by irradiation treatments. The court held that the petition was timely filed because it was mailed within 90 days after the notice of deficiency was delivered. **Blake v. Comm'r, T.C. Memo. 2007-184**.

LIFE INSURANCE. The taxpayers, husband and wife, purchased a life insurance policy on the life of their daughter as part of a plan to fund the daughter's college education. The taxpayers were listed as the owners of the policy. The taxpayers obtained loans against the cash surrender value of the policy and eventually cashed out the policy in full. The court held that the proceeds of the policy was taxable income to the taxpayers to the extent the proceeds exceeded their basis in the policy. **Straus v. Comm'r, T.C. Summary Op. 2007-107**.

MORTGAGE INTEREST. The taxpayer claimed Schedule A deductions for mortgage interest and real estate taxes relating to a house owned by the taxpayer's father and an unrelated individual. The mortgage loan was in the name of the taxpayer's parents. The taxpayer made the actual mortgage payments and paid the real estate taxes on the house. The court held that the taxpayer was not allowed the deductions for mortgage interest or real estate taxes because the taxpayer did not own any interest in the house. **Nair v. Comm'r, T.C. Summary Op. 2007-116**.

PARTNERSHIPS

GAMBLING LOSSES. The taxpayer owned an interest in a partnership which operated a gambling business. The partnership engaged in wagers which produced net wagering gains. The taxpayer also engaged in personal wagering which resulted in net wagering losses. The IRS ruled that the taxpayer could net the taxpayer's share of partnership wagering gains against the taxpayer's personal wagering losses. **CCA Ltr. Rul. 200725036, Feb. 9, 2007**.

PASSIVE ACTIVITY LOSSES. The taxpayer had invested in a partnership which purchased and rented low income housing. Although the taxpayer began investing prior to enactment of the passive activity loss limitation rules, the taxpayer was denied deductions for passive activity losses for tax years after the enactment of the rules. The taxpayer argued that the rules were improperly retroactive in that they affected pre-enactment investment decisions. The court rejected this argument and upheld the limitation of the loss deductions applied for tax years after 1986. **Ziegler v. Comm'r, T.C. Memo. 2007-166**.

PENSION PLANS. For plans beginning in June 2007 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities rate for this period is 4.90 percent, the corporate bond weighted average is 5.81 percent, and the 90 percent to 100 percent permissible range is

5.23 percent to 5.81 percent. **Notice 2007-51, I.R.B. 2007-26**.

The taxpayer employer maintained a defined contribution plan qualified under I.R.C. § 401(a) and on the calendar year. The plan participants include both current and former employees. The plan provided that an employee has a fully vested and non-forfeitable interest in his or her account balance upon either completion of 3 years of service or attainment of age 65. The plan also provided for each participant to have a fully vested and non-forfeitable right to his or her account balance upon the plan's termination or upon a partial termination of the plan that affects the participant. The taxpayer ceased operations at one of its four business locations and 23 percent of the plan participants who are employees ceased active participation in the plan due to a severance from employment (excluding any severance from employment that is either on account of death or disability, or retirement on or after normal retirement age) during the plan year. Some of these participants are fully vested due to having completed 3 years of service or having attained age 65. The plan was not terminated. The IRS ruled that a partial termination of the plan occurred because more than 20 percent of the participating employees lost employment. **Rev. Rul. 2007-43, I.R.B. 2007-28**.

The IRS has announced that, as of September 7, 2007, it will discontinue accepting applications for opinion and advisory letters for pre-approved and volume submitter defined benefit plans that have not been restated to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. No. 107-16) and other changes in plan qualification requirements listed in *Notice 2007-3, 2007-1 C.B. 254*. **Ann. 2007-61, I.R.B. 2007-28**.

RETURNS. The IRS announced that it will notify tax-exempt organizations with less than $25,000 in gross receipts that such organizations will be required to file a Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or 990-EZ. **IR-2007-129**.

SALE OF RESIDENCE. Two unmarried taxpayers each owned a house before they met. After the two married, they needed a larger house than either owned because of the number of children in the blended family. The taxpayers purchased a larger third house and sold their individual houses, with the one house sold before it was owned for two years by that taxpayer. The IRS ruled that the sale of the house was due to an unforeseen circumstance and the taxpayer would be allowed, by Treas. Reg. § 1.121-3(b), to exclude the gain from the sale based on the ratio of the number of days the taxpayer owned the residence over 730 days. **Ltr. Rul. 200725018, March 15, 2007**.

SELF-EMPLOYMENT INCOME. The taxpayers, husband and wife, were an accountant and real estate broker. Both taxpayers assigned their earnings to S corporations formed by each. The taxpayer received distributions from their corporations but did not withhold any self-employment taxes or pay estimated taxes on the amounts they earned but assigned to the corporations. The court held that the amounts earned by the taxpayers were self-employment income subject to self-employment taxes because the taxpayers were not employees of the corporations. **Arnold v. Comm'r, T.C. Memo. 2007-168**.

SOCIAL SECURITY TAXES. The taxpayer operated accredited medical residency programs for new doctors who have completed their medical education. The taxpayer withheld and paid FICA taxes on the amounts paid to the medical residents and filed for a refund of those payments, arguing that the medical residents qualified for the student exception under I.R.C. § 3121(b)(10). The IRS sought a summary judgment based on the argument that medical residents as a matter of law could never qualify for the student exception. The court held that the determination of whether the stipends paid to medical residents were subject to FICA taxes was to be based on the nature of the relationship between the residents and the payor of the stipend. If the relationship was educational, the student exception applied to relieve the stipends from FICA tax. The trial court found that the medical residents were not students and granted the IRS motion for summary judgment. On appeal, the appellate court held that, as a matter of law, the hospital was not precluded from the student exception and substantial fact issues remained which prevent summary judgment. **United States v. Mount Sinai Medical Center of Florida, Inc., 2007-1 U.S. Tax Cas. (CCH) ¶ 50,525 (11th Cir. 2007), *rev'g and rem'g*, 2005-1 U.S. Tax. Cas. (CCH) ¶ 50,156 (M.D. Fla. 2005)**.

TAX SHELTERS. The IRS has issued temporary regulations governing the reporting requirements for tax-exempt entities which participate in prohibited tax shelter transactions. **72 Fed. Reg. 36869 (July 6, 2007)**.

TRUSTS. The U.S. Supreme Court has granted certiorari in the following case. The taxpayer was the beneficiary of a testamentary trust established by the taxpayer's deceased parent's will. The trustees had broad authority to invest the trust principal and the trustees hired an investment company to manage the trust's investments. The trust claimed the entire investment company fees as a deduction on line 15a "Other deductions not subject to the 2% floor" of Form 1041 for the trust. The trust argued that I.R.C. § 67(e)(1) allowed full (i.e. not subject to the 2 percent floor) deductions for trusts for costs of administration which would not have been incurred if the property were not held in trust. The trust argued that the trustees were required by their fiduciary duty to seek professional investment advice, which would not be required if the property were held by an individual. The IRS argued that there was no such fiduciary duty under state law and that investment services were commonly used by individuals; therefore, investment services costs were not excluded from the 2 percent floor. The court noted a split in authority in the reported cases, with *Scott v. United States, 328 F.3d 132 (4th Cir. 2003) and Mellon Bank, N.A. v. United States, 265 F.3d 1275 (Fed. Cir. 2001),* holding that investment costs were subject to the 2 percent floor and *O'Neill v. Comm'r, 994 F.2d 302 (6th Cir. 1993), rev'g. 98 T.C. 227 (1992)* holding that investment costs were not subject to the 2 percent floor. The court decided to follow the holdings of *Scott* and *Mellon Bank* to hold that the investment costs were subject to the 2 percent floor because investment services were not unique to trusts and were not required by any fiduciary duty. The appellate court affirmed. **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)**.

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LABOR

AGRICULTURAL LABOR. The plaintiff was employed by an agricultural cooperative which engaged in the planting, cultivation and harvesting of sugar cane and rice. The crops are grown on land owned by others which pay a fee to the coop. The coop employs its own workers and independent contractors to carry on the farming operations The plaintiff's job was to deliver fuel for and maintain equipment used in the farming operations, including equipment used by the independent contractors. The plaintiff's job was performed solely on the farms operated by the coop. The court held that the plaintiff was an agricultural laborer under the secondary definition of agricultural labor as established by *Farmers Reservoir & Irrigation Co. v. McComb, 337 U.S. 755 (1949)*. **Sariol v. Florida Crystals Corp., 2007 U.S. App. LEXIS 15831 (11th Cir. 2007)**.

STATE TAXATION

PERSONAL PROPERTY TAX. The taxpayer was a turkey producer/processor which raised turkeys from eggs produced in its own breeder facility. The young poults are raised by independently-owned growing facilities and eventually shipped to processing facilities owned by the taxpayer. The taxpayer claimed that 94 percent of the turkey products were shipped out-of-state and claimed an interstate commerce exemption from state personal property tax on 94 percent of its inventory, including turkeys at the growing facilities. The state rejected most of the exemption claim, ruling that the turkeys were not part of the processing operation inventory until they arrived at the processing plant. The court held that Ind. Code § 6-1.1-3-11 defined processor inventory as property that "will be used" in the processing operation; therefore, because the taxpayer remained the owner of the turkeys while the turkeys were at the growing facilities and the turkeys were intended for the processing operation, the turkeys were eligible for the interstate commerce exemption from personal property tax. **Perdue Farms, Inc. v. Boone Township Assessor, 2007 Ind. Tax LEXIS 46 (Ind. Tax Ct. 2007)**.

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