pointed out that rents consistent with market rates "very strongly suggest" that the rental arrangement should stand on its own as an independent transaction without self-employment tax being due. That has been the guiding authority in the Eighth Circuit since that decision was announced --fair market rentals should not be subject to self-employment tax unless there is material participation under the lease.

Under that approach, only excessive rents (above prevailing market rental rates) should be subject to self-employment tax. Arguably, for excessive rentals only the excess should be subject to SE tax inasmuch as a lessor is always entitled to receive a reasonable rental on the land involved, free of SE tax, unless there is material participation. The cases subsequent to the Eighth Circuit case have imposed SE tax on the entire rental amount where the rentals exceeded a reasonable rental.[9]

As noted, IRS in October of 2003 entered a non-acquiescence in the Eighth Circuit Court decision[10] which served notice that, while the Eighth Circuit decision was good authority in that circuit court area, it was not viewed as authority elsewhere.

IRS appears to be proceeding to litigate, if necessary, to establish its position as the law of the land by winning a case in another court of appeals area followed by an appeal to the United States Supreme Court. A case in Upstate New York, which would have been appealable to the Second Circuit Court, was settled out of court. Another case is developing in a situation in the Seventh Circuit Court area (Illinois, Indiana and Wisconsin) with a trial set for later this year.

So what's our advice?

Follow the lead of the Eighth Circuit decision and be prepared to prove that the rental paid is a reasonable rental. Also, if the situation presents itself, be prepared to argue that, even for rentals failing the "fair market rental" test, only the excess above what would have been a reasonable fair market rental should be subject to self-employment tax. Litigating to a court of appeals level is costly with the burden of resisting the IRS position falling unevenly on those selected to test the IRS position. Strive to develop the best possible defense against an IRS challenge.

ENDNOTES

1 I.R.C. § 1402(a).

2 I.R.C. § 1402. See. e.g., Mizell v. Comm'r, T.C. Memo. 1995-571; McNamara v. Comm'r, 236 F.3d 410 (8th Cir. 2000), *rev'g*, T.C.Memo. 1999-333, *non-acq*., I.R.B. 2004-42. See generally 2 Harl, *Farm Income Tax Manual* § 8.05[5] (2015 Ed.); 5 Harl *Agricultural Law* § 37.03[a][i] (2015); Harl, *Agricultural Law Manual* § 4.06[3] (2015). Seee also Harl, "Renting Land to a Family Partnership, Corporation or LLC," 7 *Agric. L. Dig*. 49 (1996); Harl, "Renting Land to a Family Entity," 7 *Agric. L. Dig*. 157 (1996); Harl, "More on Mizell," 12 *Agric. L. Dig*. 9 (2001); Harl, "The Latest on Mizell," 13 *Agric. L. Dig*. 137 (2002).

3 McNamara v. Comm'r, 236 F. 3d 410 (8th Cir. 2000).

4 AOD CC-2003-3, October 20, 2003, I.R.B. 2003-42.

5 I.R.C. § 1402.

6 I.R.C. § 1402(a)(1) (". . . under an arrangement. . . .").

7 I.R.C. § 1402(a)(1).

8 McNamara v. Comm'r, 236 F.3d 410 (8th Cir. 2000).

9 Solvie v. Comm'r, T.C.Memo. 2004-55 (rental on hog barn (calculated at $21 per hog per rotation) was above a fair market rental and entirely subject to SE tax).

10 AOD CC-2003-3, Oct. 20, 2003, I.R.B. 2003-42.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

NO ITEMS.

FEDERAL FARM PROGRAMS

CONSERVATION RESERVE PROGRAM. The CCC and FSA have issued interim regulations which amend the Conservation Reserve Program (CRP) regulations to implement provisions of the Agricultural Act of 2014 (the 2014 Farm Bill). The new rule specifies eligibility requirements for enrollment of grassland in CRP and adds references to veteran farmers and ranchers to the provisions for Transition Incentives Program contracts, among other changes. The provisions in this rule for eligible land primarily apply to new CRP offers and contracts. For existing contracts, this rule provides additional voluntary options for permissive uses, early terminations, conservation and land improvements, and incentive payments for tree thinning. **80 Fed. Reg. 41987 (July 16, 2015)**.

ORGANIC FOOD. The AMS has issued a proposed rule addressing recommendations submitted to the Secretary of Agriculture by the National Organic Standards Board (NOSB) following their October 2014 meeting. These recommendations pertain to the 2015 Sunset Review of substances on the USDA's National List of Allowed and Prohibited Substances (National List). Consistent with the recommendations from the NOSB, the proposed rule would remove two non-organic agricultural substances from the National List for use in organic handling, fortified cooking wines--marsala wine and sherry wine. The proposed rule would also remove two listings for synthetic substances allowed for use in organic crop production on the National List, streptomycin and tetracycline, as their use exemptions expired on October 21, 2014. **80 Fed. Reg. 45449 (July 30, 2015)**.

FEDERAL ESTATE AND GIFT TAXATION

BASIS OF ESTATE PROPERTY. The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 requires that the fair-market value that sets the basis for any property acquired from a decedent be consistent for the value of that property for estate-tax purposes. Effective for property with respect to which an estate tax return is filed after July 31, 2015, the basis of any property inherited cannot exceed the value reported on the estate tax return. Additionally, the Act requires new information reporting for inherited property for which an estate tax return is filed after July 31, 2015. The Act obligates the executor of any estate required to file an estate tax return to furnish to IRS and to the recipients of the inherited property a statement identifying the value of the property as reported on the estate tax return. The statement must be provided no later than the earlier of 30 days after the estate tax return was required to be filed (including extensions) or 30 days after filing the estate tax return. **Pub. L. No. 114-41, § 2004 (2015), *adding* I.R.C. § 6035**.

GROSS ESTATE. The decedent's estate included three parcels of citrus orchard land and a 28 percent interest in a trust which owned two other parcels of citrus orchard land. All the parcels were contiguous and the parties agreed that the highest and best use of the land would be by assembling all the parcels into one parcel and developing the parcel for residential use. The IRS argued that the assemblage of the parcels was required to determine the fair market value of all parcels and to determine the decedent's estate's share of that value. The estate argued that the parcels should be valued separately because there was no evidence that any of the owners would agree to selling all the parcels as one. The IRS argued that assemblage was reasonably likely because of the favorable economic effect on the value of all interests and because the share owners were all related. The court noted that neither appraisal expert would recommend a potential buyer buy any parcel as an investment because of a poor likelihood that the whole parcel would be sold as one unit. In addition, the court found that the mere family relationship of the share owners was an insufficient indicator that the share owners would agree to sell the parcels as one unit; therefore, the court held that the appraisal of the separate parcels was proper for determining value for federal estate tax purposes. **Estate of John A. Pulling v. Comm'r, T.C. Memo. 2015-134**.

FEDERAL INCOME TAXATION

ALIMONY. The taxpayer was divorced and the divorce decree provided for maintenance payments from the ex-spouse. However, the decree provided that the ex-spouse was required to continue the payments after the death of the taxpayer. The IRS ruled that the maintenance payments were not alimony under I.R.C. § 71 (b)(1) because the ex-spouse's liability for the payments did not cease at the death of the taxpayer. **Ltr. Rul. 201531013, April 30, 2015**.

BUSINESS EXPENSES. The taxpayer performed accounting and tax preparation services for clients. The taxpayer owned two residences in separate cities and rented an office in a third city. The rent for the office was claimed as a business expense deduction and the office was the work location of the taxpayer's employees. The taxpayer used a portion of the two residences to perform business activities but did not use either residence to meet with clients. The taxpayer claimed deductions for the business use of the two residences. The court first determined that the rented office was the taxpayer's principal place of business because the taxpayer spent 50 percent or more of the business activities at the rented office and had all of the employees performing work at that location. Therefore, the taxpayer's residences did not meet any of the requirements of I.R.C. § 280A(c)(1) to allow business deductions for the use of the two residences. **Hawk v. Comm'r, T.C. Memo. 2015-139**.

CORPORATIONS

RETURNS. The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 changes the filing deadline for C corporations to the 15th day of the fourth month after the end of the tax year. Accordingly, calendar year C corporations will have to file by April 15 following the year end. **Pub. L. No. 114-41, § 2006 (2015)**.

DEPENDENTS. The taxpayer was divorced and the divorce decree provided that the taxpayer would be able to declare one child as a dependent for federal tax purposes and the ex-spouse would be able to declare two other children as dependents. However, the ex-spouse was given custody of the children who lived with the ex-spouse during the tax year. The divorce decree was not signed by the taxpayer or ex-spouse. The taxpayer filed a return using the head of household status and claiming one child as a dependent. The taxpayer did not obtain a signed Form 8332, *Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent*, from the ex-spouse. Under I.R.C. § 152(e)(4), a non-custodial spouse can claim the exemption for a child if the custodial spouse signs either Form 8332 or a document similar to Form 8332. The taxpayer argued that the divorce decree was a "written declaration," by the ex-spouse releasing the dependency exemption for the one child. The court acknowledged that a divorce decree can operate as a written declaration by the ex-spouse; however, in this case the divorce decree was not signed by either party and could not function as a written declaration. **Porter v. Comm'r, T.C. Memo. 2015-141**.

DISASTER LOSSES. On July 13, 2015, the President determined that certain areas in Louisiana 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 May 18, 2015. **FEMA-4228-DR**. On July 16, 2015, the President determined that certain areas in Colorado are eligible for assistance from the government under the Act as a result of severe storms, tornadoes, mudslides and flooding which began on May 4, 2015. **FEMA-4229-DR**. On July 20, 2015, the President determined that certain areas in Kansas are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on May 4, 2015. **FEMA-4230-DR.** Accordingly, taxpayers in the areas may deduct the losses on their 2014 federal income tax returns. See I.R.C. § 165(i).

FARMING SYNDICATES. The taxpayer was a fruit and vegetable farming corporation on the cash method of accounting for tax purposes. The corporation also maintained financial accounting for business purposes on the accrual method. The taxpayer did its own packing of the fruits and vegetables, often in the fields, and was required to pre-purchase all the containers with pre-printed labels for each crop. At the end of the tax year, the taxpayer had varying amounts of each type of packaging left over which was held for use in future crops. On returns for 2006-2008, the taxpayer claimed all costs of purchasing the containers as a deduction in the tax year the containers were purchased. Note: Treas. Reg. § 1.162-3 was amended in 2013, *T.D. 9636, 2013-2 C.B. 331* and the court in this case used the 2008 version. Treas. Reg. § 1.162-3 (2008) provided:

> "Taxpayers carrying materials and supplies on hand should include in expenses the charges for materials and supplies only in the amount that they are actually consumed and used in operation during the taxable year for which the return is made, provided that the costs of such materials and supplies have not been deducted in determining the net income or loss or taxable income for any previous year."

The IRS argued that the only exception to this rule is I.R.C. § 464 that allows a deduction for "feed, seed, fertilizer and other similar farm supplies." The IRS argued that the packaging materials are not similar to farm supplies; therefore, Section 464 and Treas. Reg. § 1.162-3 require the taxpayer to deduct the costs of the packaging materials only in the tax year they are used in the business. The taxpayer argued that, because the taxpayer was not a farming syndicate, the Section 464 restrictions on deductions do not apply and, by implication, Section 464 allows cash basis non-farming syndicates to currently deduct supplies. In addition, the taxpayer argued that the "provided" clause in Treas. Reg. § 1.162-3 applied because the taxpayer had properly taken the deduction for such supplies in 2005. The court held with the taxpayer, holding that the consistent deduction for the cost of supplies purchased in the tax year allowed the current deduction for supplies purchased in the next year, although the supplies carried over to the subsequent tax year. The court noted that the "one-year rule"—the rule that a taxpayer has to use those supplies within an approximately one-year period—might limit deductibility in some other case. **Agro-Jal Farming Enterprises, Inc. v. Comm'r, 145 T.C. No. 5 (2015)**.

HEALTH INSURANCE. The IRS has published information for self-insured employers. All providers of health coverage, including employers that provide self-insured coverage, must file annual returns with the IRS reporting information about the coverage and about each covered individual. Insurance Companies must report on coverage under employer plans that are insured. Employers should report this information on Forms 1094-B and 1095-B or on Forms 1094-C and 1095-C, depending on whether the employer is an "applicable large employer" for purposes of the employer shared responsibility provisions. An "applicable large employer" is generally defined as an employer that employed an average of at least 50 full-time employees – including full-time equivalent employees – in the preceding calendar year. This tip does not apply to information reporting on health care coverage of individuals who are not employees or entitled to coverage because of a relationship to an employee. As coverage providers, employers providing self-insured coverage that are not applicable large employers must: (1) Report the coverage on a Form 1095-B, Health Coverage, filed with the IRS, accompanied by a Form 1094-B transmittal. While filers of more than 250 Forms 1095-B must e-file, the IRS allows and encourages entities with fewer than 250 forms to e-file. (2) Furnish a copy of the 1095-B to a "responsible individual," the person who should be the statement recipient. For employer coverage, the statement recipient generally is the employee. Providers, including self-insured employers, may electronically furnish the Form 1095-B if the recipient consents. If an employer providing self-insured coverage is an "applicable large employer," it generally reports information regarding coverage of an individual on Form 1095-C instead of Form 1095-B. Form 1095-C combines reporting for two provisions of the Affordable Care Act for these employers. However, when reporting coverage of an individual who was not a full-time employee for any month of the year, an applicable large employer may choose to use Form 1095-B. The information reporting requirements are first effective for coverage provided in 2015. Thus, health coverage providers will file information returns with the IRS in 2016, and will furnish statements to individuals in 2016, to report coverage information in calendar year 2015. The information that a provider must report to the IRS includes the following:

•The name, address, and employer identification number of the provider.

• The responsible individual's name, address, and taxpayer identification number (TIN), or date of birth if a TIN is not available. If the responsible individual is not enrolled in the coverage, providers may, but are not required to, report the TIN of the responsible individual.

• 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. For more information, see "Questions and Answers on Information Reporting by Health Coverage Providers" on IRS.gov/aca. Employers who provide self-insured coverage should review Publication 5125, *Responsibilities for Health Coverage Providers*. **Heath Care Tax Tip 2015-42**.

The IRS has published information on adjustment of the premium tax credit. If a taxpayer has insurance through the Health Insurance Marketplace, the taxpayer may be getting advance payments of the premium tax credit. These are paid directly to a taxpayer's insurance company to lower the monthly premium. Changes in income or family size may affect a taxpayer's premium tax credit. If a taxpayer's circumstances have changed, the time is right for a mid-year checkup to see if the taxpayer needs to adjust the premium assistance the taxpayer is receiving. Taxpayers should report changes that have occurred since they signed up for their health insurance plan to their Marketplace as they occur. Changes in circumstances that taxpayers should report to the Marketplace include: (1) an increase or decrease in income; (2) marriage or divorce; (3) the birth or adoption of a child; (4) starting a job with health insurance; (5) gaining or losing eligibility for other health care coverage; and (6) changing a residence. Reporting the changes will help avoid getting too much or too little advance payment of the premium tax credit. Getting too much means the taxpayer may owe additional money or get a smaller refund when the taxpayer files the tax return. Getting too little could mean missing out on premium assistance to reduce monthly premiums. Repayments of excess premium assistance may be limited to an amount between $300 and $2,500 depending on income and filing status. However, if advance payments of the premium tax credit were made, but the taxpayer's income for the year turns out to be too high to receive the premium tax credit, the taxpayer will have to repay all of the payments that were made on the taxpayer's behalf, with no limitation. Therefore, it is important that taxpayers report changes in circumstances that may have occurred since they signed up for a plan. Changes in circumstances also may qualify taxpayers for a special enrollment period to change or get insurance through the Marketplace. In most cases, if a taxpayer qualifies for the special enrollment period, the taxpayer will have 60 days to enroll following the change in circumstances. More information about special enrollment is available at HealthCare.gov. **Health Care Tax Tip 2015-43**.

The Trade Preferences Extension Act of 2015 (Pub. L. No. 114-27, enacted June 29, 2015), extended and modified the expired Health Coverage Tax Credit. Previously, those eligible for HCTC could claim the credit against the premiums they paid for certain health insurance coverage through 2013. The HCTC can now be claimed for coverage through 2019 and applies retroactively to 2014. The law is similar to the version of the credit that expired in 2013 but includes modifications that affect how the credit is administered. The IRS will provide guidance on the credit in the near future, including guidance for taxpayers who also qualify for the Premium Tax Credit under the Affordable Care Act. In the meantime, the IRS offers the following guidance to anyone who may be eligible for the Health Coverage Tax Credit: (1) Until the IRS provides further information and can confirm taxpayer eligibility for HCTC, taxpayers should not discontinue or change current health coverage, including COBRA or Health Insurance Marketplace coverage. (2) The HCTC is retroactive for tax year 2014, meaning eligible taxpayers can claim it for 2014 by filing an amended return. (3) More details will be available soon and taxpayers should wait for this information before they file an amended return. Updates and guidance will be posted on IRS.gov as it becomes available. **2015ARD 147-7, Aug. 5, 2015**.

INCOME. The IRS has issued proposed regulations relating to property transferred in connection with the performance of services. The proposed regulations affect certain taxpayers who receive property transferred in connection with the performance of services and make an election to include the value of substantially nonvested property in income in the year of transfer. I.R.C. § 83(b) and Treas. Reg. § 1.83-2(a) permit a service provider to elect to include in gross income, as compensation for services, the excess (if any) of the fair market value of the property at the time of transfer over the amount (if any) paid for the property. The election is to be made within 30 days after the transfer of the property. The IRS has discovered that taxpayers who e-file cannot make the election because the tax preparation software does not provide a means to include a copy of the prior election with the current e-filed return. The proposed regulations eliminate the requirement under Treas. Reg. § 1.83-2(c) that a copy of the Section 83(b) election be submitted with an individual's tax return for the year the property is transferred. **REG-135524-14, 80 Fed. Reg. 42439 (July 17, 2015)**.

INNOCENT SPOUSE RELIEF. The taxpayer and spouse had filed joint tax returns for 2004, 2006 and 2008 for which tax deficiencies and penalties assessments were made. During the appeal of the assessments, the taxpayer requested innocent spouse relief from joint liability. The main source of income came from a business owned by the spouse. The taxpayer performed accounting services for the business. The court found that the taxpayer met all but the seventh condition of *Rev. Proc. 2013-34, 2013-2 C.B. 397* because the taxpayer had handled the business finances. The court noted, however, that an exception to the seventh consideration was made if the taxpayer had been a victim of abuse by the spouse and that abuse resulted in the taxpayer's being unable to challenge or question the treatment of the items on the returns. The taxpayer had presented evidence of consistent spouse abuse during the tax years involved; therefore, the court held that the taxpayer met all seven considerations and was entitled to innocent spouse relief. **Sapp v. Comm'r, T.C. Memo. 2015-143**.

INSTALLMENT METHOD REPORTING. The taxpayer was an S corporation acquired by another corporation in an asset sale. Under the sales agreement, the acquiring corporation paid no funds in the first year, but agreed to pay a significant amount of the funds two years later, with the final amount to be held in escrow until later years. Thus, the stock sale was an "installment sale" under I.R.C. § 453 because, under the terms of the sales agreement, at least one payment was to be received after the end of the first year. In the second year , the taxpayer's accountant completed and timely filed the taxpayer's first year federal return, Form 1120S, and the related Forms 1040 for the shareholders. The accountant treated the sale as an installment sale on all of the returns. After the sale of the taxpayer, but prior to the due date of the taxpayer's and the shareholders' tax returns, there was a change in the tax law that increased the tax rate for capital gains reported in taxable years after that year. The accountant, however, did not advise the taxpayer or its shareholders prior to the due date for filing the returns that the taxpayer could elect not to report the stock sale on the installment method, nor did the accountant advise that the tax law had changed. The IRS ruled that the taxpayer could make the election out of the installment method of reporting the gain from the sale in an amended return. **Ltr. Rul. 201530001, April 22, 2015**.

MARIJUANA TAX. The taxpayer paid the Washington state excise tax on the retail sale of marijuana and requested a ruling as to the federal tax treatment of the business expense. The ruling does not identify whether the taxpayer was a producer of marijuana or a retailer of marijuana. In a Chief Counsel Advice letter, the IRS ruled that, because an excise tax is not listed in I.R.C. § 164(a)(1)-(6), the excise tax must either be capitalized into the cost of acquiring marijuana for sale or applied to reduce the amount received from the distribution/sale of the marijuana. The ruling noted that I.R.C. § 280E does not prohibit the reduction of the amount received because the excise tax is not a deduction from gross income or a credit against tax. **CCA 201531016, June 9, 2015**.

PARTNERSHIPS

ASSESSMENTS. The following case has been overruled by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015. The taxpayer was a partner in a partnership which sold partnership property. The partnership overstated the partnership's basis in the property, resulting in an understatement of taxable income from the sale. More than three years and less than six years after the filing of the tax return for the year of the sale, the IRS filed a final partnership administrative adjustment which resulted from a reduction of the partnership's basis in the property sold. The taxpayer sought summary judgment because the FPAA was filed more than three years after the filing of the return. The IRS argued that the six year limitation applied because the return understated taxable income because of the basis overstatement. The Supreme Court held that the six year limitation did not apply because the overstatement of basis was not an understatement of receipt of income. *Home Concrete & Supply, LLC v. United States, 2012-1 U.S. Tax Cas. (CCH) ¶ 50,315 (S. Ct. 2012), aff'g, 634 F.3d 249 (4th Cir. 2011),* ***rev'g****, 2009-2 U.S. Tax Cas. (CCH) ¶ 50,794 (E.D. N.C. 2009)***.** Under the 2015 legislation, the six year limitation applies where income is understated because of an overstatement of basis. **Pub. L. No. 114-41, § 2005 (2015)**.

ELECTION TO ADJUST BASIS. The taxpayer was an LLC which elected to be taxed as a partnership. During the tax year, a partnership interest was transferred to an unrelated person. The taxpayer used a tax advisor to prepare tax returns. The advisor did not inform the taxpayer that the election to adjust basis under I.R.C. § 754 was available and the return was filed without the election. The IRS granted an extension of time to file an amended return with the election. **Ltr. Rul. 201530004, April 10, 2015**.

PARTNERS' DISTRIBUTIVE SHARE. The IRS has adopted as final regulations regarding the determination of partners' distributive shares of partnership items of income, gain, loss, deduction and credit when a partner's interest varies during a partnership taxable year due to disposition of all or part of the interest. The final regulations provide that, if a partner's interest changes during the partnership's taxable year, the partnership shall determine the partner's distributive share using the interim closing method. However, the partnership by agreement of the partners may use the proration method. For each partnership taxable year in which a partner's interest varies, the proposed regulations provide that the partnership must use the same method to take into account all changes occurring within that year. Also, the final regulations modify the existing regulations regarding the required taxable year of a partnership. **T.D. 9728**, **80 Fed. Reg. 45865 (Aug. 3, 2015)**.

PAYMENTS FOR SERVICES. The IRS has issued proposed regulations relating to disguised payments for services under I.R.C. § 707(a)(2)(A). The proposed regulations provide guidance to partnerships and their partners regarding when an arrangement will be treated as a disguised payment for services. The proposed regulations also include conforming modifications to the regulations governing guaranteed payments under I.R.C. § 707(c). The proposed regulations include modifications to *Rev. Procs. 93-27, 1993-2 C.B. 343* and *2001-43, 2001-2 C.B. 191*, relating to the issuance of interests in partnership profits to service providers. The proposed regulations provide that an arrangement will be treated as a disguised payment for services if (i) a person (service provider), either in a partner capacity or in anticipation of being a partner, performs services (directly or through its delegate) to or for the benefit of the partnership; (ii) there is a related direct or indirect allocation and distribution to the service provider; and (iii) the performance of the services and the allocation and distribution when viewed together, are properly characterized as a transaction occurring between the partnership and a person acting other than in that person's capacity as a partner. The proposed regulations provide a mechanism for determining whether or not an arrangement is treated as a disguised payment for services under I.R.C. § 707(a)(2)(A). An arrangement that is treated as a disguised payment for services under the proposed regulations will be treated as a payment for services for all purposes of the Code. **REG-115452-14, 80 Fed. Reg. 43652 (July 23, 2015)**.

RETURNS. Under prior law, partnership returns were due by the 15th day of the fourth month after the end of the partnership's tax year (for calendar-year partnerships, the initial due date is April 15 following the yearend). The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (the Act) changes due dates for partnerships and C corporations. Partnerships and S corporations will now have an initial filing deadline of 15th day of the third month after the end of the tax year. Accordingly, partnerships and S-corporations with a calendar year will have to file by March 15 following the yearend. A six-month extension is available. **Pub. L. No. 114-41, § 2006 (2015)**.

SMALL PARTNERSHIP EXCEPTION. In a Chief Counsel Advice letter, the IRS stated: "Under Treas. Reg. 301.6231(a)(1)-1(a)(1)(last sentence) any corporation that is not an S corporation is deemed to be a C corporation solely for the purpose of applying the small partnership exception to TEFRA. So your state law "Corporation sole", as an incorporated entity under state law, would be deemed to be a C corporation. Cf. Treas. Reg. 1.7701-2(b). So if your partnership has 10 or fewer partners, all of whom are individuals (other than non-resident aliens) or C corporations, the small partnership exception to TEFRA applies absent an affirmative election to be governed by the TEFRA provisions. I don't think that the check-the-box regulations allow it to change its classification, but if it purports to make such an election check back." **CCA 201530019, June 17, 2015**.

PENSION PLANS. The IRS has issued a notice which notice provides updated static mortality tables to be used for defined benefit pension plans under I.R.C. § 430(h)(3)(A) and Section 303(h)(3)(A) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, as amended (ERISA). These updated tables, which are being issued using the methodology in the existing final regulations under § 430(h)(3)(A), apply for purposes of calculating the funding target and other items for valuation dates occurring during calendar year 2016. The notice also includes a modified unisex version of the mortality tables for use in determining minimum present value under I.R.C. § 417(e)(3) and § 205(g)(3) of ERISA for distributions with annuity starting dates that occur during stability periods beginning in the 2016 calendar year. **Notice 2015-53, I.R.B. 2015-__**.

REFUNDS. The IRS has adopted as final regulations for filing a claim for credit or refund. The final regulations provide guidance to taxpayers generally as to the proper place to file a claim for credit or refund. The regulations are updated to reflect changes made by the enactment of the Tax Reform Act of 1976, the Internal Revenue Service Restructuring and Reform Act of 1998, and the Community Renewal Tax Relief Act of 2000.

The Proper Place To File a Claim for Credit or Refund. If a taxpayer is required to file a claim for credit or refund on a particular form, then the claim must be filed in a manner consistent with that form and the related instructions. For example, to correct an amount reported on a Form 1040, Treas. Reg. § 301.6402-3(a)(2) requires that the taxpayer file the claim on a Form 1040X. Accordingly, a claim for refund of an overpayment of individual income taxes would need to be filed on a Form 1040X at the location specified in the instructions provided for the form. If filing instructions are not otherwise provided, a claim for credit or refund must be filed with the Service Center at which the taxpayer would be required to file a current tax return for the type of tax to which the claim relates. The final regulations revise Treas. Reg. § 301.6402-2(a)(2) to clarify that claims should not be filed at a different location based upon where the tax either was paid or was required to have been paid. Nor would it be relevant if the tax was properly paid at a different location in a prior year because the taxpayer had a change in residence.

The Proper Form for Filing a Claim for Credit or Refund. An individual taxpayer must use a Form 1040X to file a claim for refund of income tax. The final regulations would revise Treas. Reg. § 301.6402-2(c) to provide that taxpayers must use the form prescribed for filing a particular claim for credit or refund. When there is no alternative form prescribed, a claim for credit or refund is to be filed on a Form 843, "Claim for Refund and Request for Abatement."

Claims for Employment Taxes. The final regulations revise Treas. Reg. § 301.6402-2(d) to provide that when filing a claim for employment taxes, a separate claim must be made for each taxable period. For example, if an employer overpaid social security taxes on Forms 941 filed for the third and fourth quarters in 2010, then the employer must file a separate Form 941-X for each quarter. **T.D. 9227, 80 Fed. Reg. 43949 (July 24, 2015)**.

STATE REGULATION OF AGRICULTURE

AGRICULTURAL GAG LAW. The plaintiffs sought a ruling that Idaho Code § 18-7042 was unconstitutional under the First Amendment and the Equal Protection Clause of the U.S. Constitution. Section 18-7042 prohibits, under criminal penalties, an employee or other person from obtaining video or other record of agricultural production without the permission and knowledge of the facility owner. Under the law, a journalist or animal rights investigator can be convicted for not disclosing their media or political affiliations when requesting a tour of an industrial feedlot, or applying for employment at a dairy farm. Idaho Code § 18-7042(1)(a), (c). An employee can be convicted for videotaping animal abuse or life-threatening safety violations at an agricultural facility without first obtaining the owner's permission. Idaho Code § 18-7042(1)(d). Any person who violates the law—whether an animal rights' investigator, a journalist, or an employee—faces up to a year in jail. In addition, a journalist or whistleblower convicted under the law can be forced to pay publication damages pursuant to a restitution provision that requires payment for "twice" the "economic loss" a business suffers as a result of any exposé revealing animal abuse or unsafe working conditions. Idaho Code § 18-7042(4). The court held that the statute attempted to restrict content-based speech and was subject to the highest scrutiny under the First Amendment protections. The court found no compelling state interest protected by the statute which would override the First Amendment protections of speech; therefore, the statute was unconstitutional under the First Amendment. The court also held that the statute violated the Equal Protection Clause because the statute was not rationally related to a legitimate government interest. In both issues, the state argued that it was protecting the privacy and property of dairy owners but the court rejected that those purposes did not override the constitutional protections afforded by the First Amendment and the Equal Protection Clause. The court noted that property owners were already protected by laws on trespass, conversion and fraud. **Animal Legal Defense Fund, et al. v. Otter, 2015 U.S. Dist. LEXIS 102640 (D. Idaho 2015)**.

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by Neil E. Harl

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See Page 127 above for a list of cities and dates for Summer and early Fall 2015 Seminars

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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
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