and losses to S corporation shareholders.[15] IRS, on the other hand, argued that the bankruptcy estate was entitled to the entire loss even though the bankruptcy estate did not own any stock of either S corporation until the date of bankruptcy filing. Thus, the bankruptcy estate owned all of the stock of both corporations at the corporations' year end and, therefore, was entitled to claim the entire loss. The taxpayer had not elected to close the year as of the day of bankruptcy filing and to create two short years.[16]

The Tax Court agreed with IRS, pointing out that the bankruptcy estate is entitled to the individual debtor's items of income or loss from the bankruptcy commencement date[17] while any items of income or loss that the debtor received before filing for bankruptcy would remain with the debtor.[18] Because the income or loss of an S corporation is determined as of the last day of the S corporation's taxable year, losses of the two S corporations for that year flowed through in their entirety to the bankruptcy estate with none passing to the debtor individually.[19]

In a 2001 Chief Counsel's Advice letter ruling,[20] the facts were identical to *Williams v. Commissioner*.[21] Indeed, the facts in the 2001 ruling appear to be that of the 2004 case. The IRS ruled that the debtor could not claim the net operating losses from the two S corporations because the losses passed to the bankruptcy estate. The ruling points out that the net operating losses could then be used to decrease the basis of the stock to the extent of discharge of indebtedness which occurred as part of the bankruptcy case. If any net operating losses remained after the basis reduction, those losses passed to the debtor. After the bankruptcy case closed, the lowered basis for the stock also passed to the debtor.[22]

Loss carryforward after discharge

The Tax Court in *Williams v. Commissioner*[23] also held that the sole shareholder of the two S corporations was not entitled to carry forward the losses to which the sole shareholder succeeded after the shareholder's debts were discharged in bankruptcy.[24] Although discharge of indebtedness income realized as a result of bankruptcy discharge is excluded from gross income in the year of discharge, any loss carry forward must be reduced dollar for dollar by the amount of debt discharged. Inasmuch as the amount of the S corporation's losses was less than the discharged debt, the shareholder had no loss to recognize in the years after discharge.

Footnotes

[1] I.R.C. § 1398(c)(1). See generally 5 Harl, *Agricultural Law* § 39.04[2][a] (2004).

[2] Williams v. Comm'r, 123 T.C. 144 (2004).

[3] I.R.C. § 1398(a).

[4] I.R.C. § 1399. See 11 U.S.C. § 541(a).

[5] I.R.C. §§ 1398, 1399.

[6] I.R.C. § 1398(d)(1).

[7] I.R.C. § 1398(d)(2)(A), (C).

[8] I.R.C. § 1398(d)(2)(A).

[9] I.R.C. § 1398(d)(2)(E).

[10] I.R.C. § 1398(g).

[11] *Id.*

[12] See *In re* Mirman, 89-1 U.S. Tax Cas. (CCH) ¶ 9297 (E.D. Va. 1989) (debtors individually liable for income taxes for year involuntary bankruptcy filed against them where debtors did not elect to end taxable year as of date of bankruptcy filing); *In re* Pratlvadi, 281 B.R. 816 (Bankr. W.D. N.Y. 2002) (taxes for year of bankruptcy filing were post-petition debt where debtors did not elect to bifurcate tax year of bankruptcy filing).

[13] 123 T.C. 144 (2004).

[14] See I.R.C. § 1377(a)(1).

[15] *Id.*

[16] Williams v. Comm'r, 123 T.C. 144 (2004), footnote 10.

[17] I.R.C. § 1398(e)(1).

[18] *Id.*

[19] Williams v. Comm'r, 123 T.C. 144 (2004).

[20] CCA Ltr. Rul. 200217003, December 14, 2001.

[21] 123 T.C. 144 (2004).

[22] See 5 Harl, *supra* note 1 at § 39.04[1].

[23] 123 T.C. 144 (2004).

[24] *Id.*

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

HORSES. The defendant operated a horse trail ride which was offered to cruise participants as part of shore leave activities. The plaintiff signed-up for the horse ride and was required to sign a waiver of the defendant's liability for risks inherent in the trail ride and for negligence by the defendant or its employees. The plaintiff was bitten by one of the horses during the ride and sued for negligence and strict liability. The defendant sought a summary judgment based on the signed waiver of liability. The court examined Hawaii Rev. Stat. § 663-1.54 which governed liability of operators of recreational activities for the public and governed liability waivers. The court held that the statute explicitly prohibits the waiver of liability for negligence and, although the statute does limit liability for risks inherent in an activity, the statute states that the issue of whether a risk is inherent is an issue of fact. Thus, the court held that the waiver could not release the defendant from liability for negligent acts and was void to the extent the waiver applied to negligent acts. In addition, the defendant had not provided sufficient proof that a horse bite was an inherent risk of the trail ride; therefore, summary judgment could not be granted. **King v. CJM Country Stables, 315 F. Supp.2d 1061 (D. Hawaii 2004)**.

ENVIRONMENTAL LAW

HOG CONFINEMENT SYSTEM. Case summary submitted by Roger A. McEowen. A "facility," as defined in 42 U.S.C. §§ 9603(a), 9601 (9) (Secs. 101(9)(A) and 101(9)(B) of CERCLA) includes every place where hazardous substances come to be located, and ammonia is included as a hazardous substance under Sec. 102 of the Act. The defendant, an operator of a hog farm comprised of eight hog barns using a common waste management system for 25,000 hogs, was required to comply with reporting requirement of CERCLA for emitting more than 100 lbs. of ammonia gas per day from the hog "facility." The defendant's argument that each hog barn should be a separate "facility" for purposes of the reporting requirements was rejected as contrary to the plain language of the statute. The court followed *Sierra Club, Inc. v. Tyson Foods, Inc., 299 F. Supp. 2d 693 (W.D. Ky. 2003)*. The concurring judge wanted the issue of whether hog waste is a "hazardous substance" to be briefed on remand. **Sierra Club v. Seaboard Farms, Inc., No. 03-6104 (10th Cir. Oct. 28, 2004)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has adopted as final regulations adding the fluorescence polarization assay to the lists of confirmatory and official tests for determining the brucellosis disease status of test-eligible cattle, bison, and swine. The APHIS stated that the test was added because the fluorescence polarization assay has been shown to provide an efficient, accurate, automated, and cost-effective means of determining the brucellosis status of test eligible cattle, bison, and swine. **69 Fed. Reg. 64245 (Nov. 4, 2004)**.

DISASTER ASSISTANCE. On October 26, 2004, the President signed H.R. 4837 which provided agricultural disaster assistance payments. See U.S. House of Representatives web site http://agriculture.house.gov/info/agdisasterasst%2010-04.pdf.

• Crop Disaster Assistance. The Act provides financial assistance to producers on a farm (other than producers of cottonseed or sugarcane) incurring qualifying crop or quality losses due to damaging weather or related condition for either the 2003, 2004, or 2005 crop. Assistance is limited to only one of the crop years 2003, 2004, or, in limited cases, 2005 as elected by the producer. Qualifying crop losses for the 2005 crop are limited to only those losses caused by a hurricane or tropical storm of the 2004 hurricane season in counties receiving a Presidential disaster declaration.

The Act requires that USDA administer the program in the same manner as for the disaster bill contained in the 2001 Agriculture Appropriations bill. Farmers will be compensated if their losses exceed 35 percent of historic yields. The payment formulas provide greater benefits to producers who bought insurance on their eligible crops: farmers with eligible losses of insured crops will be compensated at 65 percent of crop insurance market price elections; farmers with eligible losses to uninsured crops (for which crop insurance is available) will be compensated at 60 percent of the crop insurance market price elections and must agree to purchase crop insurance for the next two crops; farmers with eligible losses to noninsurable crops (for which crop insurance is unavailable) will be compensated at 65 percent of the five-year average NASS price (NAP area loss triggers do not apply). Benefits are limited to $80,000 per person. Benefits under the crop disaster assistance program will not be prorated.

The Act deems ineligible for financial assistance those producers who did not purchase crop insurance or file appropriate paperwork for a noninsurable commodity for the year incurring the losses. The Act provides a waiver if the producers enter into a contract to purchase insurance coverage (at higher than the catastrophic level) for the insurable commodity for each of the next two crops, or in the case of a noninsurable commodity, file the required paperwork and pay the administrative fee for each of the next two crops.

The Act deems ineligible for financial assistance those producers with adjusted gross incomes of greater than $2.5 million in 2003. The Act deems ineligible for financial assistance those producers not in compliance with highly erodible land conservation and wetland conservation provisions.

The Act limits financial assistance to no greater than 95 percent of what the value of the crop would have been in the absence of losses.

The Act does not allow producers to be eligible for payments under this section if they receive payments from Section 32 funds with respect to 2004 hurricane crop losses.

• Livestock Assistance Program The Act provides financial assistance for livestock losses to producers for 2003 or 2004 losses (but not both years) in a county that has received an emergency designation by the President or the Secretary after January 1, 2003.

The Act allows funding to be made available for the American Indian livestock program.

The Act requires that USDA administer the program in the same manner as for the disaster provisions in the 2001 Agriculture Appropriations bill.

• Tree Assistance Program The Act provides funding to producers who suffered tree losses during the period beginning on December 1, 2003, through December 31, 2004.

The Act provides an additional $15 million to eligible forest land owners who produce periodic crops of timber from trees for commercial purposes and who have suffered tree losses during the period beginning on December 1, 2003, through December 31, 2004.

The Act does not allow producers to be eligible for payments under this section if they receive payments from Section 32 funds with respect to 2004 hurricane crop losses.

• Emergency Conservation Program The Act provides $50 million to provide assistance to participants in the Emergency Conservation Program.

• Commodity Credit Corporation The Act requires the Secretary to use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this Act.

• Offset The Act caps the Conservation Security Program at $6,037,000,000 for the period of fiscal years 2005 through 2014. The Conservation Security Program, with an estimated 10-year cost of approximately $9 billion prior to the limitation under this bill, remains the third largest conservation program provided by the U.S. Department of Agriculture.

• Emergency Conservation Program The Act provides an additional $100 million for expenses resulting from natural disasters.

• Emergency Watershed Protection Program The Act provides an additional $250 million to repair damages to waterways and watersheds resulting from natural disasters.

• Rural Community Advancement Program The Act provides an additional $68 million to repair damages to water and waste disposal systems and community facilities resulting from natural disasters. The Act provides that $50 million of this total shall be available for water and waste disposal grants and $18 million of this total shall be available for community facility direct loans and grants. This additional funding shall only be available for projects in communities affected by hurricanes and tropical storms in calendar year 2003 or 2004.

• Rural Housing Service The Act provides an additional $5 million in budget authority.

The Act provides an additional $13 million for Rural Housing Assistance Grants for damages resulting from natural disasters, of which $8 million shall be for grants and contracts for very low-income housing repair, and of which $5 million shall be for domestic farm labor housing grants and contracts. Funding and contracts are available for projects in communities affected by hurricanes and tropical storms in calendar year 2003 or 2004.

• Sugarcane Assistance The Act provides $40 million for sugarcane assistance. $32.8 million of this total shall be available to make payments to eligible processors in Florida to compensate first processors and producers for crop and other losses that are related to hurricanes, tropical storms, excessive rains, and floods in Florida during calendar year 2004 in counties receiving a Presidential disaster declaration in 2004 due to hurricanes. Payments are to be calculated and paid on the basis of losses on 40 acre harvesting units and on the same terms and conditions as the payments made under section 207 of the Agricultural Assistance Act of 2003. $7.2 million of this total shall be provided to Hawaii for assistance to an agricultural transportation cooperative in Hawaii.

• Dairy Assistance The Act provides $10 million to make payments to dairy producers for dairy production losses and dairy spoilage losses in counties receiving a Presidential disaster declaration in 2004 due to hurricanes.

• Cottonseed Assistance The Act provides $10 million in assistance to producers and first handlers of the 2004 crop of cottonseed located in counties receiving a Presidential disaster declaration in 2004 due to hurricanes.

• Rural Community Advancement Program The Act designates Burlington and Camden Counties in New Jersey to be rural areas during fiscal year 2005, and designates the communities in these counties to be rural areas during fiscal year 2005 for purposes of the direct and guaranteed loan programs.

• Emergency Watershed Protection The Act requires the Secretary to provide financial and technical assistance to repair and, if necessary, replace Hope Mills Dam, in Cumberland County, North Carolina.

• Private Forest Landowner Assistance The Act provides $10 million to provide assistance to eligible private forest landowners owning not more than 5,000 acres of forest crop in counties receiving a Presidential disaster declaration as a result of hurricane, tropical storm, or related events for the purposes of debris removal, replanting of timber, and other such purposes.

• Pecan Assistance The Act provides $8.5 million to provide assistance under the Tree Assistance Program for pecan producers who suffered tree loss or damage due to damaging weather related to any hurricane or tropical storm of the 2004 hurricane season in counties receiving a Presidential disaster declaration.

• Section 32 The Act provides $90 million to Section 32 to make payments with respect to 2004 hurricane losses.

• Administrative Expenses The Act provides $4 million for administrative expenses to the Farm Service Agency.

FEDERAL ESTATE AND GIFT TAXATION

IRA. Decedent's gross estate included an IRA. After the payment of all debts and expenses, the decedent's estate did not contain sufficient cash to pay the estate tax and distributions from the IRA were made to the decedent's estate to obtain the necessary cash to pay the estate taxes. The estate treated the IRA distribution as income in respect of decedent under I.R.C. § 691(a) and, therefore, reported the distribution as income on the estate's income tax return. In addition, on its income tax return, the estate claimed a deduction under I.R.C. § 691(c) for estate taxes attributable to the IRA distribution. The Section 691(c) deduction claimed was less than the amount of income taxes paid by the estate for the income reported with respect to the IRA distribution. On the decedent's estate tax return, the estate deducted the amount that the income taxes exceeded the deduction, taking the position that the excess amount was either a claim against the decedent's estate, or an administrative expense of selling property of the estate in order to pay the estate taxes under I.R.C. § 2053(a). The IRS ruled that the income taxes paid on post-death income were not eligible for a deduction as administrative expenses. **T.A.M. 200444021, June 21, 2004**.

MARITAL DEDUCTION. The decedent and surviving spouse had created two trusts which had the surviving spouse as remainder beneficiary. Under the first trust, the surviving spouse had the discretionary power to direct that trust income be paid to the decedent's heirs and the trust provided for a guardian to receive the surviving spouse's income. The IRS ruled that these provisions did not make the trust ineligible for the marital deduction. The second trust provided that the income paid to the surviving spouse was to be paid or accumulated at the discretion of the trustees. The IRS ruled that this trust was not eligible for the marital deduction because the surviving spouse was not fully entitled to all income. **T.A.M. 200444023, May 4, 2004**.

The decedent's estate created two trusts, a credit shelter trust and a marital trust, both with the surviving spouse as sole income beneficiary. The first trust was to be funded with as much property as would pass without federal estate tax liability, with the remainder to pass to the second trust. The estate elected QTIP deductions for both trusts. At the death of the surviving spouse, the decedent's estate discovered that the QTIP election had not been necessary to reduce the federal estate tax and sought a declaration that the election could be voided as not necessary. The IRS ruled that the election could be disregarded for purposes of including the trust property in the surviving spouse's estate. The IRS also granted the decedent's estate an extension of time to split the marital trust into two trusts and to make a reverse-QTIP election as to one of the split trusts. **Ltr. Rul. 200443027, July 7, 2004**.

FEDERAL INCOME TAXATION

AMERICAN JOBS CREATION ACT OF 2004, PUB. L. NO. 108-357: ADDITIONAL DISCUSSIONS.
by Neil E. Harl

Livestock sold because of weather-related conditions. The Act extends from two years to four years the period for reinvestment of the proceeds from sale of livestock held for draft, dairy or breeding purposes because of weather-related conditions if the area has been designated as eligible for assistance by the federal government. It appears that the requirement of federal designation applies only to reinvestment beyond the two-year period. **Act Sec. 311(b), amending I.R.C. § 1033(e)(2)(A)**. The Secretary is given authority to extend, on a regional basis, the period for replacement if the weather-related conditions continue for more than three years. **Act Sec. 311(b), amending I.R.C. § 1033(e)(2)(B).** The Act also expands the provision on sale because of environmental contamination (I.R.C. § 1033(f)) to apply also to sale of eligible livestock because of weather-related conditions where it is not feasible for the taxpayer to reinvest the proceeds in property similar or related in use. The proceeds can be reinvested in "other property…used for farming purposes…" except for investment in real property which is reserved for soil contamination or other environmental contamination. This provision is limited to two-year reinvestment, not four. **Act Sec. 311(a), amending I.R.C. § 1033(f), I.R.C. § 1033(a)(2)(B)(i).** The Act amends the provision applicable to the one-year deferral for sale or exchange of livestock because of weather-related conditions to state that an election is valid if made during the replacement period for livestock under I.R.C. § 1033(e) if I.R.C. § 1033(e) applies to a sale or exchange of livestock. That means the election can be made within the four-year period. **Act Sec. 311(c), amending I.R.C. § 451(e).** The various amendments in Act Sec. 311 apply to any taxable year with respect to which the due date (without regard to extensions) for the return is after December 31, 2002. **Act Sec. 311(d).**

Start-up expenses and organizational expenditures. For amounts paid or incurred after October 22, 2004, after October 22, 2004, a taxpayer is allowed to elect to deduct up to $5,000 of start-up expenses and $5,000 of organizational expenditures in the taxable year the trade or business begins. **I.R.C. §§ 195(b)(1), 248(a).** Each $5,000 is reduced (but not below zero) by the amount the cumulative cost of start-up or organizational expenses exceed $50,000, respectively. **I.R.C. §§ 195(b)(1)(A)(ii), 248(a)(1)(B).** Excess start-up and organizational expenditures are amortized over 15 years. **I.R.C. §§ 195(b)(1)(B), 248(a)(2).** The amendments eliminate 60-month amortization for both start-up expenses and organizational expenditures. **Act Sec. 902, amending I.R.C. §§ 195, 248.**

Attorneys fees and costs in lawsuits and settlements involving discrimination in employment or enforcement of civil rights. For fees and costs paid after October 22, 2004, with respect to a judgment or settlement occurring after that date, AJCA of 2004 provides for a deduction for attorneys fees and other costs associated with discrimination in employment or enforcement of civil rights. **Act Sec. 703, amending I.R.C. § 62(a)(19).**

CAPITAL ASSETS. The taxpayer had won a state lottery and received annual payments for five years before assigning the annual payments to a third party in exchange for a lump sum payment. The taxpayer reported the assignment as a sale of a capital asset with a tax basis of zero. The court, consistent with several prior cases, held that the lottery payments were not capital assets because their was no underlying investment by the taxpayer. **Watkins v. Comm'r, T.C. Memo. 2004-244**.

CORPORATIONS.

DISTRIBUTIONS TO SHAREHOLDERS. The taxpayer corporation operated a manufacturing business. The taxpayer distributed real estate and improvements, inventory, additional operating capital, accounts receivable, and accounts payable associated with each of its plants to several new limited partnerships. The taxpayer did not contribute the rolling stock, administrative assets, and administrative staff associated with its plants. The taxpayer then distributed limited partnership interests to its shareholders. The taxpayer argued that the taxpayer would recognize gain on the distribution based on the value of the partnership interests transferred to the shareholders, discounted for lack of marketability and minority interest. The IRS ruled that, for purposes of I.R.C. § 311(b), the property to be valued was the actual business assets transferred to the limited partnerships because the taxpayer distributed something (assets) different than what its shareholders received (partnership interests). Therefore, I.R.C. § 311(b) required the taxpayer to recognize gain on the appreciation of the assets it transferred, not on the value of the partnership interests distributed. **T.A.M. 200443032, July 13, 2004**.

COURT AWARDS AND SETTLEMENTS. The taxpayer was employed as an attorney with a law firm and received biweekly compensation. The law firm asked the taxpayer to resign and the firm and taxpayer entered into resignation negotiations. The resignation agreement provided for biweekly or lump sum severance pay and some opportunity to use an office for a job search. The agreement contained a waiver and release of all legal and equitable claims against the firm. The firm withheld FICA and other employment taxes from the payments. The taxpayer argued that a portion of the payments were excludible from income as payments for physical injuries or sickness. The court held that, under the clear terms of the resignation agreement, the payments were in the form of severance payments and were not for any claims for physical injury or sickness. **Ndirika v. Comm'r, T.C. Memo. 2004-250**.

DISASTER LOSSES. On October 18, 2004, the President determined that certain areas in Virginia were eligible for assistance under the Disaster Relief and Emergency Assistance Act (42 USC 5121) as a result of severe storms and flooding which began on September 27, 2004. **FEMA-1570-DR**. Accordingly, taxpayers in the affected areas who sustained losses may deduct them on their 2003 federal income tax returns.

DISCHARGE OF INDEBTEDNESS. The IRS has adopted as final regulations relating to the information reporting requirement under I.R.C. § 6050P for cancellation of indebtedness. The proposed regulations reflect the enactment of I.R.C. § 6050P(c)(2)(D) by the Ticket to Work and Work Incentives Improvement Act of 1999 which requires lenders to report discharges of indebtedness. In addition, under the regulations, if an organization that is required to report under Section 6050P (an applicable entity) forms, or avails itself of, some other entity for the principal purpose of holding loans acquired by the applicable entity, then, for purposes of Section 6050P, the entity so formed or availed of is treated as having a significant trade or business of lending money and is subject to the reporting rules. **T.D. 9160, 69 Fed. Reg. 62181 (Oct. 25, 2004)**.

EARNED INCOME CREDIT. The taxpayer was an inmate at a federal correctional institution throughout the tax year and earned wages of $1,600 working for the prison. The taxpayer reported the wages, claimed the standard deduction, and claimed an earned income credit of $128 which was the basis of a refund claim for $128. The court noted that I.R.C. § 32(c)(2)(B) excluded from the definition of earned income any income received for services performed while a taxpayer was an inmate at a penal institution. The taxpayer argued that the exclusion did not apply because the work was performed outside the prison and was voluntary. The court held that the statute did not distinguish between the location of the work but applied to all income for services while the taxpayer was a prison inmate; therefore, the taxpayer was not eligible for the earned income tax credit. **Rogers v. Comm'r, T.C. Memo. 2004-245**.

IRA. The taxpayer had retired from employment and received distributions as part of a series of equal periodic payments from a qualified retirement plan. The taxpayer also received a lump sum distribution in excess of the periodic payments in one tax year and the court held that this excess distribution was subject to the 10 percent additional tax. **Smith v. Comm'r, T.C. Summary Op. 2004-146**.

INTEREST. The IRS ruled that interest received with past-due child support payments is included in gross income because the interest was assessed after and independent of the original child support award. **Ltr. Rul. 200444026, Sept. 22, 2004**.

LOAN TO QUALIFYING CARE FACILITY. The IRS has announced the inflation-adjusted amount that a taxpayer 65 years old or older may lend to a qualifying care facility without incurring imputed interest as allowed under I.R.C. § 7872(g)(2). For 2005 the amount is $158,100. **Rev. Rul. 2004-108, I.R.B. 2004-47**.

LOW-INCOME HOUSING CREDIT. Because of the widespread damage to housing caused by Hurricanes Charley, Frances, Ivan, and Jeanne, the IRS has determined that it is appropriate to temporarily suspend certain income limitation requirements under I.R.C. § 42 for qualified low-income housing projects in Florida that are beyond the first year of the credit period under I.R.C. § 42(f)(1). The suspension will apply to low-income housing projects, approved by the Florida Housing Finance Corporation, in which vacant units are rented to individuals displaced by Hurricane Charley, Frances, Ivan, or Jeanne. **Notice 2004-76, I.R.B. 2004-48**. The IRS is also providing the same relief for certain low-income housing in Ohio, **Notice 2004-75, I.R.B. 2004-48,** and Alabama, **Notice 2004-74, I.R.B. 2004-48.**

OFFERS IN COMPROMISE. The IRS has issued a warning to taxpayers to beware of tax practitioners who encourage the use of an offer in compromise as a way to settle tax claims for "pennies on the dollar." The IRS's warning targets the actions of "unscrupulous promoters" who charge excessive fees when there is no chance that the taxpayer will qualify for the offer in compromise. Although the IRS has the authority to settle tax claims for less than their full amount, an offer in compromise may be considered only after other options, such as an installment agreement, are considered. The IRS suggests that taxpayers who are potential candidates for an offer in compromise contact state and local tax professional associations to find enrolled agents, CPAs or attorneys to help them prepare and submit an offer in compromise. The IRS also notes that in some cases the $150 application fee for an offer in compromise may be waived. Taxpayers who have explored other options can also use the checklist in the Form 656 package to determine if they qualify for an offer in compromise. Additional information on payment and collection can be found on the IRS's web site at www.irs.gov, in IRS Publication 594, "The IRS Collection Process," and in Form 9465, "Installment Agreement Request." **IR-2004-130.**

QUALIFIED DEBT INSTRUMENTS. The IRS has announced the 2005 inflation adjusted amounts of debt instruments which qualify for the interest rate limitations under I.R.C. §§ 483 and 1274:

Year of Sale or Exchange	1274A(b) Amount	1274A(c)(2)(A) Amount
2005	$4,483,000	$3,202,100

The $4,483,000 figure is the dividing line for 2005 below which (in terms of seller financing) the minimum interest rate is the lesser of 9 percent or the Applicable Federal Rate. Where the amount of seller financing exceeds the $4,483,000 figure, the imputed rate is 100 percent of the AFR except in cases of sale-leaseback transactions, where the imputed rate is 110 percent of AFR. If the amount of seller financing is $3,202,100 or less (for 2005), both parties may elect to account for the interest under the cash method of accounting. **Rev. Rul. 2004-107, I.R.B. 2004-47**.

REFUNDS. In a Chief Counsel Advice letter, the IRS has ruled that a hand-delivered Letter 569 informing a taxpayer that a refund claim has been disallowed does not commence the two-year period of limitations for bringing a refund suit under I.R.C. § 6532. The IRS noted that the letter does not contain information about appeal rights. The IRS also noted that a taxpayer and IRS may still agree to waive the notice requirements and extend the period of limitations by a mutual agreement which specifically mentions the notice requirements. **CCA Ltr. Rul. 200444019, June 24, 2004**.

RETURNS. The IRS has issued Form 1040, Schedule SE (2004), Self-Employment Tax, and instructions; Form 4835 (2004), Farm Rental Income and Expenses; Form 6198 (2004), At-Risk Limitations; Form 8027 (2004), Employer's Annual Information Return of Tip Income and Allocated Tips; Form 8027-T (2004), Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips; Form 8878 (2004), IRS e-file Signature Authorization for Application for Extension of Time To File; Form 8879 (2004), IRS e-file Signature Authorization; and Form 8880 (2004), Credit for Qualified Retirement Savings Contributions. The IRS has also issued revised Publication 225, Farmers' Tax Guide and revised Publication 575, Pension and Annuity Income. The forms are available on the IRS web site, www.irs.gov/formspubs/index.html, in the Forms & Pubs section. The documents are available at no charge and can be obtained (1) by calling the IRS's toll-free telephone number, 1-800-TAX-FORM (1-800-829-3676); (2) through FedWorld on the Internet; or (3) by directly accessing the Internal Revenue Information Services bulletin board at (703) 321-8020.

NEGLIGENCE

HOG CONFINEMENT SYSTEM. The plaintiff purchased the mineral rights, primarily for oil, for several thousand acres in Illinois. The preliminary testing showed the oil to be saleable; however, when the oil was extracted, the oil was found to have been contaminated with bacteria from animal wastes. The contamination affected the oil in the ground and the oil equipment used by the plaintiff, making everything unusable. The plaintiff sued for negligence and negligence per se the hog confinement farms, the designers and builders of the confinement systems and the professional consultants for the confinement systems. The negligence per se claim was based on the leaking waste being a violation of the state environmental law. The court held that a claim for negligence per se could not be based on the violation of the environmental law because the law did not impose strict liability on violators. The court held that the claim of negligence was allowed because the plaintiff alleged a duty of ordinary care to not contaminate the plaintiff's property, the mineral rights. **Test Drilling Service Co. v. The Hanor Co., 322 F. Supp.2d 957 (C.D. Ill. 2003)**.

STATE TAXATION

AGRICULTURAL USE. The taxpayer was an Indian nation which owned 32,000 acres which had been taxed as agricultural use property. The county assessor changed the status of the property to residential and nonagricultural and increased the assessment by almost 10 times. At issue was the classification of 27,000 of those acres. Of the disputed acres, 6,700 were used to pasture a private elk herd which had been in existence for over 40 years. The elk were closely managed and were harvested through organized hunts sold to the public. The remaining acres were managed to assist in the care of the elk herd. The county argued that the 27,000 acres were used primarily for the care and harvest of the elk herd and, because elk were not livestock, the 27,000 acres were not used for agricultural purposes. The court noted that N.M. Code § 7-36-20(B) defined livestock to include "cattle, buffalo, horses . . . and other domestic animals useful to man." The court reasoned that elk were just as useful to man as buffalo and cattle and, therefore, were livestock under the statute. The court held that, because the raising of livestock was clearly an agricultural use, the tribal lands were eligible for agricultural use valuation. **Jicarilla Apache Nation v. Rodarte, 92 P.3d 642 (N.M. 2004)**.

CITATION UPDATES

Ronald Moran Cadillac, Inc. v. United States, 2004-2 U.S. Tax Cas. (CCH) (9th Cir. 2004) (interest deduction for loans to shareholders) see p. 116 *supra*.

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AGRICULTURAL TAX AND LAW SEMINARS

by Neil E. Harl and Roger A. McEowen

January 7-8, 2005

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The seminars will be held on Friday and Saturday, January 7 & 8, 2005. Registrants may attend one or both days, with separate pricing for each combination. On Friday, January 7, 2005 Dr. Harl will speak about farm and ranch income tax. Topics will include a review of the new tax legislation, depreciation, self-employment income, like-kind and involuntary exchanges, discharge of indebtedness income, sale of farm and ranch property, several types of farm income and deductions.

On Saturday, Roger McEowen will cover many issues of farm and ranch business and estate planning. Topics will include special use valuation, formation and taxation of corporations and partnerships, limited liability companies, gift taxation, S corporations, estate planning aspects of corporations and partnerships, and employee status of shareholders and officers.

Your registration fee includes comprehensive annotated seminar materials for the days attended and lunch.

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