

shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement between the owner or tenant and another individual which provides such other individual shall produce agricultural or horticultural commodities . . . on such land, and that there shall be material participation by the owner or tenant. . . in the production or the management of the production of such agricultural or horticultural commodities and (B) there is material participation. . . . “ That language *does not apply to other kinds of entities engaged in something other than the production of agricultural or horticultural commodities*. Although Congress might not have realized the importance of that limitation, it is there and creates a barrier to assessing self-employment tax where the involvement is less than “material participation.”

It is entirely possible that the Department of the Treasury could possibly take the position that the quoted language does not prevent imposing self-employment tax on those *not* meeting the material participation test but that seems unlikely.

The recent history of trying to expand self-employment tax liability. The checkered history of trying to expand self-employment tax liability with specific targeting of farm and ranch taxpayers has been something less than successful. In the *Mizell* controversy⁸ the Eighth Circuit Court of Appeals rebuffed attempts to impose self-employment tax on rental income of farmland, adding involvement as lessor to involvement in the farming or ranching entity.⁹

In the battle over the imposition of self-employment tax on government payments such as the Conservation Reserve Program, the Eighth Circuit Court of Appeals reversed the Tax Court’s holding in favor of the Government’s point of view.¹⁰

In conclusion

The problem is not so much with Congressional enactments;

the problems have been with attempts to expand beyond what was anticipated by the Congress. The disagreements over whether those moves by the tax administering bodies in the Administration go beyond Congressional intent will likely go on., . . and on . . . and will be refereed by the judicial system. For relatively small taxpayers, in particular, that imposes an unfair financial burden on the targeted taxpayers to resist the shift in tax administration.

ENDNOTES

¹ 2016-1 U.S. Tax Cas. (CCH) ¶ 50,328 (10th Cir. 2016).

² I.R.C. § 7701(a)2). See Treas. Reg. § 301.7701-1(a)(2).

³ T.C. Memo. 2015-81, *aff’d*, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,328 (10th Cir. 2016).

⁴ As is widely known, Subchapter K includes Sections 701 through 777 of the bulk of partnership tax law.

⁵ 91 T.C. 222 (1988).

⁶ T.C. Memo. 2015-81, *aff’d*, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,328 (10th Cir. 2016).

⁷ I.R.C. § 1402(a)(1).

⁸ *Mizell v. Comm’r*, T.C. Memo. 1995-571. See generally 5 Harl, *Agricultural Law* § 37.03[3][a][i] (2016); 2 Harl, *Farm Income Tax Manual* § 8.05[5] (2016 ed.); Harl, *Agricultural Law Manual* § 4.06[3][a] (2016).

⁹ *McNamara, et al. v. Comm’r*, 236 F.3d 410 (8th Cir. 2000), *non-acq.*, I.R.B. 2003-42.

¹⁰ *Morehouse v. Comm’r*, 769 F.3d 616 (8th Cir. 2014). See Harl, “Surprising Move by the Tax Court on Self-Employment tax Liability,” 140 *Tax Notes* 931 (August 26, 2013); Harl, “The Eighth Circuit Reverses the Tax Court in *Morehouse v. Commissioner*,” 25 *Agric. L. Dig.* 161 (2014).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

FEDERAL FARM PROGRAMS

ANIMAL WELFARE ACT. The APHIS has issued proposed regulations amending the Animal Welfare Act (AWA) regulations in response to the 2014 Farm Bill amendment to the Act that provides the Secretary of Agriculture with the authority to determine that animal dealers and exhibitors are not required to obtain a license under the Act and regulations if the size of the business conducting AWA-related activities is determined to be *de minimis* by the Secretary. The APHIS has reviewed past compliance with the AWA of currently-regulated facilities and has determined that *de minimis* businesses, as defined in the rule are capable of providing adequate care and treatment of the

animals involved in regulated business activities. The proposed regulations exclude from the definition of “exhibitor” some owners of household pets that are exhibited occasionally, generate less than a substantial portion of income, and reside exclusively with the owner. Dealers and exhibitors operating at or below the thresholds determined for their particular AWA-related business activity would be exempted from federal licensing requirements established under the AWA and regulations. **81 Fed. Reg. 51386 (Aug. 4, 2016).**

GRAIN STANDARDS. The GIPSA has adopted as final regulations revising existing regulations and adding new regulations under the United States Grain Standards Act (USGSA), as amended, in order to comply with amendments to the USGSA made by the Agriculture Reauthorizations Act of 2015. The new regulations eliminate mandatory barge weighing, remove the discretion for emergency waivers of inspection and weighing, revise GIPSA’s fee structure, revises exceptions to official agency geographic boundaries, extend the length of licenses and

designations, and impose new requirements for delegated states. **81 Fed. Reg. 49855 (July 29, 2016).**

ORGANIC FOOD. The AMS has adopted as final regulations addressing recommendations submitted to the Secretary of Agriculture by the National Organic Standards Board (NOSB) following their April 2015 meeting. These recommendations pertain to the 2016 Sunset Review of substances on the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List). Consistent with the recommendations from the NOSB, this final rule removes five nonorganic nonagricultural substances from the National List for use in organic handling: Egg white lysozyme, cyclohexylamine, diethylaminoethanol, octadecylamine, and tetrasodium pyrophosphate when their use exemptions (allowances) expire on September 12, 2016. **81 Fed. Reg. 51075 (Aug. 3, 2016).**

FEDERAL ESTATE AND GIFT TAXATION

EXECUTOR LIABILITY FOR ESTATE TAX. The taxpayer owned a certificate of deposit which was levied against by the IRS to satisfy personally a tax obligation of the taxpayer's deceased husband's estate. As executrix of the estate, the taxpayer had transferred stock from the estate to the taxpayer without consideration, making the estate insolvent. The taxpayer first sought assistance from the Taxpayer Advocate Service but was unable to obtain help. The taxpayer also filed an administrative claim but it was denied. More than nine months after the levy, the taxpayer filed a suit for wrongful levy. The IRS argued that, because the taxpayer had not filed a request for return of the property within nine months after the levy, the nine month statute of limitations under I.R.C. §§ 7426(i), 6532(c)(1) on suits for wrongful levy applied. The court agreed and dismissed the suit. On appeal, a different issue was litigated. The taxpayer argued that the estate stock was used to pay administrative and other claims which had precedence over the tax liability claim. However, the court found that the taxpayer failed to provide evidence that the stock transferred was used to pay any administrative expenses; therefore, the taxpayer was personally liable for the estate's taxes up to the value of the stock transferred. **United States v. McNicol, 2016-2 U.S. Tax Cas. (CCH) ¶ 50,366 (1st Cir. 2016), aff'g sub. nom. United States v. Estate of Reitano, 2014-2 U.S. Tax Cas. (CCH) ¶ 50,442 (D. Mass. 2014).**

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a "deceased spousal unused exclusion" (DSUE) amount to a surviving spouse. To obtain the benefit of portability of the decedent's DSUE amount to the spouse, the decedent's estate was required to file Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, on or before the date that is 9 months after the decedent's date of death or the last day of the period covered by an extension. The decedent's estate did not file a timely Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The estate represented that the value of the decedent's gross estate was less than the basic exclusion amount in

the year of the decedent's death including any taxable gifts made by the decedent. The estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to elect portability of the decedent's DSUE amount pursuant to I.R.C. § 2010(c)(5)(A). The IRS granted the estate an extension of time to file Form 706 with the election. **Ltr. Rul. 201630001, March 29, 2016; Ltr. Rul. 201630005, April 13, 2016; Ltr. Rul. 201630007, March 29, 2016; Ltr. Rul. 201630010, March 23, 2016; Ltr. Rul. 201630012, March 29, 2016; Ltr. Rul. 201631001, March 29, 2016; Ltr. Rul. 20163002, March 29, 2016; Ltr. Rul. 20163003, March 29, 2016.**

VALUATION. The IRS has issued proposed regulations concerning the valuation of interests in corporations and partnerships for estate, gift, and generation-skipping transfer (GST) tax purposes as to the treatment of certain lapsing rights and restrictions on liquidation in determining the value of the transferred interests. The proposed regulations amend Treas. Reg. § 25.2701-2 to address what constitutes control of an LLC or other entity or arrangement that is not a corporation, partnership, or limited partnership. The proposed regulations would amend Treas. Reg. § 25.2704-1 to address death bed transfers that result in the lapse of a liquidation right and to clarify the treatment of a transfer that results in the creation of an assignee interest. The proposed regulations would amend Treas. Reg. § 25.2704-2 to refine the definition of the term "applicable restriction" by eliminating the comparison to the liquidation limitations of state law. Further, the proposed regulations would add a new section, Treas. Reg. § 25.2704-3, to address restrictions on the liquidation of an individual interest in an entity and the effect of insubstantial interests held by persons who are not members of the family. The proposed regulations clarify, in Treas. Reg. §§ 25.2704-1 through 25.2704-3, that I.R.C. § 2704 applies to corporations, partnerships, LLC's, and other entities and arrangements that are business entities within the meaning of Treas. Reg. § 301.7701-2(a), regardless of whether the entity or arrangement is domestic or foreign, regardless of how the entity or arrangement is classified for other federal tax purposes, and regardless of whether the entity or arrangement is disregarded as an entity separate from its owner for other federal tax purposes. Under the proposed regulations, a corporation is any business entity described in Treas. Reg. § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8), an S corporation within the meaning of section 1361(a)(1), and a qualified subchapter S subsidiary within the meaning of section 1361(b)(3)(B). For this purpose, a qualified subchapter S subsidiary is treated as a corporation that is separate from its parent owner. Under the proposed regulations, a partnership would be any other business entity within the meaning of Treas. Reg. § 301.7701-1(a), regardless of how the entity is classified for federal tax purposes. For purposes of the test to determine control of an entity and to determine whether a restriction is imposed under state law, the proposed regulations provide that in the case of any business entity or arrangement that is not a corporation, the form of the entity or arrangement would be determined under local law, regardless of how it is classified for other federal tax purposes, and regardless of whether it is disregarded as an entity separate from its owner for other federal tax purposes. The proposed regulations clarify, in Treas. Reg. § 25.2701-2, that control of an LLC or of any other entity or arrangement that is not a corporation, partnership, or limited partnership would constitute the holding of at least 50 percent of either the capital or profits interests of the entity or

arrangement, or the holding of any equity interest with the ability to cause the full or partial liquidation of the entity or arrangement. Further, for purposes of determining control, under the attribution rules of existing Treas. Reg. § 25.2701-6, an individual, the individual's estate, and members of the individual's family are treated as holding interests held indirectly through a corporation, partnership, trust, or other entity. The proposed regulations would amend Treas. Reg. § 25.2704-1(a) to confirm that a transfer that results in the restriction or elimination of any of the rights or powers associated with the transferred interest (an assignee interest) is treated as a lapse within the meaning of I.R.C. § 2704(a). This is the case regardless of whether the right or power is exercisable by the transferor after the transfer because the statute is concerned with the lapse of rights associated with the transferred interest. Whether the lapse is of a voting or liquidation right is determined under the general rules of Treas. Reg. § 25.2704-1. The proposed regulations also would amend Treas. Reg. § 25.2704-1(c)(1) to narrow the exception in the definition of a lapse of a liquidation right to transfers occurring three years or more before the transferor's death that do not restrict or eliminate the rights associated with the ownership of the transferred interest. The proposed regulations remove the exception in Treas. Reg. § 25.2704-2(b) that limits the definition of applicable restriction to limitations that are more restrictive than the limitations that would apply in the absence of the restriction under the local law generally applicable to the entity. The proposed regulations also revise Treas. Reg. § 25.2704-2(b) to provide that an applicable restriction does include a restriction that is imposed under the terms of the governing documents, as well as a restriction that is imposed under a local law regardless of whether that restriction may be superseded by or pursuant to the governing documents or otherwise. A new class of restrictions is described in the proposed regulations that would be disregarded, described as "disregarded restrictions." Under Treas. Reg. § 25.2704-3 of the proposed regulations, in the case of a family-controlled entity, any restriction on a shareholder's, partner's, member's, or other owner's right to liquidate his or her interest in the entity will be disregarded if the restriction will lapse at any time after the transfer, or if the transferor, or the transferor and family members, without regard to certain interests held by nonfamily members, may remove or override the restriction. Under the proposed regulations, such a disregarded restriction includes one that: (a) limits the ability of the holder of the interest to liquidate the interest; (b) limits the liquidation proceeds to an amount that is less than a minimum value; (c) defers the payment of the liquidation proceeds for more than six months; or (d) permits the payment of the liquidation proceeds in any manner other than in cash or other property, other than certain notes. **REG-163113-02, 81 Fed. Reg. 51413 (Aug. 4, 2016).**

FEDERAL INCOME TAXATION

CHARITABLE DEDUCTIONS. The IRS has published information for taxpayers who donate time to a charity for deducting charity-related travel expenses. *Qualified Charities.* To deduct costs, a taxpayer must volunteer for a qualified charity. Most groups must apply to the IRS to become qualified. Churches and

governments are generally qualified, and do not need to apply to the IRS. Taxpayers should ask the group about its status before donate time, money or property. Taxpayers can use the Select Check tool on IRS.gov to check a group's status. *Out-of-Pocket Expenses.* Taxpayers may be able to deduct some of their costs including travel. The costs must be necessary while the taxpayer is away from home. All costs must be unreimbursed, directly connected with the services, incurred only because of the services to the charity, and not personal, living or family expenses. *Genuine and Substantial Duty.* A taxpayer's charity work has to be real and substantial throughout the trip. Taxpayers cannot deduct expenses if they only have nominal duties or did not have any duties for significant parts of the trip. *Value of Time or Service.* Taxpayers cannot deduct the value of their time or services that are given to charity, including the income lost while the taxpayer served as an unpaid volunteer for a qualified charity. *Travel Taxpayers Can Deduct.* The types of expenses that taxpayers may be able to deduct include: air, rail and bus transportation, car expenses, lodging costs, cost of meals, and taxi or other transportation costs between the airport or station and a hotel. *Travel Taxpayers Cannot Deduct.* Some types of travel do not qualify for a tax deduction. For example, taxpayers cannot deduct travel costs if a significant part of the trip involves recreation or vacation. For more on these rules, see Publication 526, *Charitable Contributions*. **IRS Summertime Tax Tip 2016-12.**

CORPORATIONS

TRANSFeree LIABILITY FOR TAXES. The taxpayers were shareholders of a corporation which manufactured and sold grain drying equipment and which had sold all its assets. In an attempt to avoid the capital gains tax from the sale of the assets, the shareholders agreed to allow another company to purchase their stock for the same amount as the proceeds of the asset sale. The court held that the IRS properly disregarded the sale of the stock and characterized the transaction as a liquidation of the corporation under federal tax and Indiana fraudulent transfer law. Thus, when the corporation failed to pay taxes, the shareholders remained liable for the unpaid taxes under I.R.C. § 6901. **Weintraut v. Comm'r, T.C. Memo. 2016-142.**

DOMESTIC PRODUCTION ACTIVITIES DEDUCTION.

The taxpayer was a sports league which contracted with a television network to broadcast the taxpayer's games. In a Chief Counsel Advice letter, the IRS ruled on the issue of whether the taxpayer performed its production activities with respect to the game broadcasts pursuant to the contract with the sports league so that it was necessary to determine whether the taxpayer had the benefits and burdens of ownership of the game broadcasts during the period of production for purposes of Treas. Reg. §§ 1.199-3(f)(1) and 1.199-3(k)(8). The IRS pointed out that the network was in the business of producing broadcasts and had control over all aspects of the production, including control of cameras, as well as graphics and sound effects. The network also had control over the employees used in the production and all equipment used in the production. The IRS ruled that the network was the producer of the broadcasts; therefore, the taxpayer's income from the contract cannot be considered derived from a disposition of qualified film produced by the taxpayer and were

not domestic production gross receipts. **CCA 201630015, April 13, 2016.**

FOREIGN ACCOUNTS. The IRS has issued guidance with respect to jurisdictions that are treated as if they had a FATCA intergovernmental agreement (IGA) in effect pursuant to *Announcement 2014-17, 2014-18 I.R.B. 1001*, but that do not sign the IGA before December 31, 2014. *Announcement 2014-38* provides that a jurisdiction that is treated as if it had an IGA in effect, but that has not yet signed an IGA, retains such status beyond December 31, 2014, provided that the jurisdiction demonstrates firm resolve to sign the IGA as soon as possible. After December 31, 2014, Treasury will review the list of jurisdictions having an agreement in substance on a monthly basis to assess whether it continues to be appropriate to treat such a jurisdiction as if it had an IGA in effect or whether a jurisdiction should be removed from the list. Treasury has announced that, on January 1, 2017, Treasury will begin updating the IGA list to provide that certain jurisdictions that have not brought their IGA into force will no longer be treated as if they have an IGA in effect. Each jurisdiction with an IGA that is not yet in force and that wishes to continue to be treated as having an IGA in effect must provide to Treasury by December 31, 2016, a detailed explanation of why the jurisdiction has not yet brought the IGA into force and a step-by-step plan that the jurisdiction intends to follow in order to sign the IGA (if it has not yet been signed) and bring the IGA into force, including expected dates for achieving each step. In evaluating whether a jurisdiction will continue to be treated as if it has an IGA in effect, Treasury will consider whether: (1) the jurisdiction has submitted the explanation and plan (with dates) described above; and (2) that explanation and plan, as well as the jurisdiction's prior course of conduct in connection with IGA discussions, show that the jurisdiction continues to demonstrate firm resolve to bring its IGA into force. With respect to the timing of the exchange of prior year information upon entry into force of a Model 1 IGA, Treasury does not intend to find foreign financial institutions to be in significant non-compliance with the IGA as long as any information for prior years is exchanged before the next September 30th after the obligation under the IGA to exchange information has taken effect. **Ann. 2016-27, I.R.B. 2016-33.**

HOME MORTGAGE INTEREST. The IRS has acquiesced to the following decision. The taxpayers were not married and purchased two residences, each owned jointly. Each taxpayer paid a portion of the mortgage interest on each property. The total mortgage interest paid exceeded \$2 million. Each taxpayer filed a separate return and claimed their individual mortgage interest payments as a mortgage interest deduction. Based on *CCA 200911007, March 13, 2009*, the IRS limited the total interest deduction to the amount of interest on \$1.1 million, allocating a portion of the allowed interest deduction to each taxpayer based on the proportion paid by each taxpayer. The taxpayers argued that the deduction limit (interest up to an amount for a mortgage indebtedness of \$1.1 million) was allowable for each taxpayer. The IRS calculation was based on a limitation applied to both residences. The Tax Court agreed with the IRS, holding that the deduction was limited to \$1.1 million of indebtedness for each home owned by the taxpayers jointly. On appeal the appellate court reversed, holding that the I.R.C. § 163(h)(3) limitation applied

to each taxpayer and not to each residence. *Voss v. Comm'r, 796 F.3d 1051 (9th Cir. 2015), rev'g sub nom. Sophy v. Comm'r, 138 T.C. 204 (2012)*. **Acq. Ann., 2016FED (CCH) ¶ 46,378 (Aug. 1, 2016).**

INCOME. The IRS has adopted as final regulations relating to property transferred in connection with the performance of services. The 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 regulations eliminate the requirement under Treas. Reg. § 1.83-2(c) that a copy of the I.R.C. § 83(b) election be submitted with an individual's tax return for the year the property is transferred. **T.D. 9779, 81 Fed. Reg. 48707 (July 26, 2016).**

INNOCENT SPOUSE RELIEF. The taxpayer and former spouse each were members of separate business entities and each filed a Schedule C for their own businesses as part of joint returns for 2009 and 2010. The IRS assessed additional taxes resulting from disallowance of deductions for both businesses. The taxpayer applied for innocent spouse relief which was granted by the IRS as to the tax deficiency resulting from the disallowed deductions attributed to the former spouse's business. The former spouse also applied for innocent spouse relief which was granted by the IRS as to the tax deficiency resulting from the disallowed deductions attributed to the taxpayer's business. However, the taxpayer also sought innocent spouse relief from the tax deficiency attributed to the taxpayer's business. The taxpayer admitted that relief was not available under I.R.C. § 6015(b), (c). The taxpayer sought relief under I.R.C. § 6015(f). The issue was whether the taxpayer satisfied the seventh condition listed in *Rev. Proc. 2013-34, 2013-2 C.B. 397* which allows relief for a spouse who was subject to sufficient abuse from the former spouse so as to prevent any challenge to items on the returns. The abuse exception allows a taxpayer to obtain relief even where the tax deficiency is attributable to the taxpayer's income. The taxpayer provided no evidence to support the claim of abuse other than the taxpayer's testimony which the court did not find to be credible. The court noted that the taxpayer had full control over the taxpayer's business finances and admitted to failing to review the tax returns prepared by a tax return preparer. Thus, the court upheld denial of innocent spouse relief as to the tax deficiency attributed to the taxpayer's business. **Hardin v. Comm'r, T.C. Memo. 2016-141.**

PARTNERSHIPS

ADMINISTRATIVE ADJUSTMENTS. The IRS has issued proposed regulations pursuant to section 1101(g)(4) of the Bipartisan Budget Act of 2015 (BBA), Pub. L. No. 114-74, regarding an election to apply the new partnership audit regime

enacted by that act to certain returns of a partnership. The regulations provide the time, form, and manner for making this election. The regulations affect any partnership that wishes to elect to have the new partnership audit regime apply to its returns filed for certain taxable years beginning before January 1, 2018. Section 1101(a) of the BBA replaces subchapter C of chapter 63 of the Internal Revenue Code effective for partnership taxable years beginning after December 31, 2017. Prior Subchapter C of chapter 63 contains the unified partnership audit and litigation rules that were enacted as part of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248 (TEFRA). These partnership audit and litigation rules are commonly referred to as the TEFRA partnership procedures. The TEFRA rules included the small partnership exception discussed in Harl, “Repeal of the ‘Small Partnership’ Exception: A Devious and Highly Suspicious Congressional Move,” 27 *Agric. L. Dig.* 41 (2016). The BBA also removes subchapter D of chapter 63 of the Code (containing audit rules for electing large partnerships) and part IV of subchapter K of chapter 1 of the Code (prescribing the income tax treatment for electing large partnerships), effective for partnership taxable years beginning after December 31, 2017. The proposed regulations provide the time, form, and manner for a partnership to make an election pursuant to section 1101(g) (4) of the BBA to have the new partnership audit regime apply to any of its partnership returns filed for a partnership taxable year beginning after November 2, 2015 and before January 1, 2018. **T.D. 9780, 81 Fed. Reg. 51835 (Aug. 5, 2016).**

ELECTION TO ADJUST BASIS. The taxpayer was a limited liability company which elected to be taxed as a partnership. A member of the taxpayer died during the tax year but the taxpayer failed to make a timely election under I.R.C. § 754 to adjust the partnership basis in partnership property. The IRS granted an extension of time to file an amended return with the election. **Ltr. Rul. 201630013, April 22, 2016; Ltr. Rul. 201630014, April 22, 2016; Ltr. Rul. 201631006, April 25, 2016; Ltr. Rul. 201631008, April 25, 2016; Ltr. Rul. 201631009, April 25, 2016.**

RENTAL OF RESIDENCE. The taxpayer owned two residences and claimed to have rented the California residence for six months of the tax year and rented the Florida residence for one month in the tax year. The taxpayer claimed a loss deduction for the California residence which was denied by the IRS because the taxpayer lived in the residence during the tax year for more than the greater of 14 days or 10 percent of the period of the rental. See I.R.C. § 280A(d). The court found the taxpayer’s testimony to be not credible and found that the taxpayer failed to prove any aspect of the rental of the California residence; therefore, the court held that the IRS properly denied any deduction for expenses exceeding the rental income from the property. **Szanto v. Comm’r, T.C. Memo. 2016-145.**

RETURNS. The IRS has published information on how a taxpayer can get federal tax return information from the IRS. Tax return transcripts are free and taxpayers can get them for the current year and the past three years. A *tax return* transcript shows most line items from the tax return that was filed. It also includes items from any accompanying forms and schedules that were filed. The transcript does not reflect any changes the taxpayer

or the IRS made after the original return was filed. A *tax account* transcript includes the taxpayers’ marital status, the type of return filed, the adjusted gross income and taxable income. It does include any changes that the taxpayer or the IRS made to the tax return after it was filed. Taxpayers can get free transcripts immediately online or by phone, by mail or by fax within five to 10 days from the time IRS receives a request. To view and print your transcripts online, go to IRS.gov and use the Get Transcript tool. To order by phone, call 800-908-9946 and follow the prompts. Taxpayers can also request transcripts using a smartphone with the IRS2Go mobile phone app. To request an individual *tax return* transcript by mail or fax, complete Form 4506T-EZ, *Short Form Request for Individual Tax Return Transcript*. Businesses and individuals who need a *tax account* transcript should use Form 4506-T, *Request for Transcript of Tax Return*. If a taxpayer needs a copy of a filed and processed tax return, it will cost \$50 for each tax year. Taxpayers should complete Form 4506, *Request for Copy of Tax Return*, to make the request. Mail it to the IRS address listed on the form for the taxpayer’s area. Copies are generally available for the current year and past six years. Taxpayers should allow 75 days for delivery. If a taxpayer lives in a federally declared disaster area, the taxpayer can get a free copy of the tax return. Visit IRS.gov for more disaster relief information. **IRS Summertime Tax Tip 2016-11.**

The IRS has issued a Notice concerning the changes to the ITIN program. The Protecting Americans from Tax Hikes Act of 2015 (PATH Act), Pub. L. 114-113, div. Q, § 203 enacted on December 18, 2015, modified I.R.C. § 6109, making significant changes to the Individual Taxpayer Identification Number (ITIN) program. The basic process for applying for an ITIN will not change as a result of the PATH Act. Individuals apply for an ITIN by mail by submitting Form W-7, *Application for IRS Individual Taxpayer Identification Number*, (Form W-7SP for the Spanish language version) and the required documentation usually with the tax return for which the ITIN is needed. Under the Path Act, ITIN applications can be made in-person to authorized IRS agents or to a community-based certified acceptance agent approved by the IRS. Taxpayers should first check <https://www.irs.gov/uac/tac-locations-where-in-person-document-verification-is-provided> to find a location that has employees authorized to review and accept applications, and if applicable, make an appointment before visiting. The PATH Act also provides for expiration of an ITIN if not used on a federal tax return for three consecutive tax years. ITINs not used on a federal income tax return in the last three years (covering 2013, 2014, or 2015) will no longer be valid to use on a tax return as of January 1, 2017. ITIN holders in this group who need to file a tax return next year will need to renew their ITINs. The renewal period begins Oct. 1, 2016. ITINs issued before 2013 will begin expiring in 2016, and taxpayers will need to renew them on a rolling basis. The first ITINs that will expire under this schedule are those with middle digits of 78 and 79 (Example: 9XX-78-XXXX). The renewal period for these ITINs begins October 1, 2016. The IRS will mail letters to this group of taxpayers starting in August to inform them of the need to renew their ITINs if they need to file a tax return and explain steps they need to take. The schedule for expiration and renewal of ITINs that do not have middle digits of 78 and 79 will be announced

at a future date. Expired ITINs can be renewed under procedures provided in the Notice. **Notice 2016-48, I.R.B. 2016-33.**

The IRS has published information on how a taxpayer can get federal tax return information from the IRS. Tax return transcripts are free and taxpayers can get them for the current year and the past three years. A *tax return transcript* shows most line items from the tax return that was filed. It also includes items from any accompanying forms and schedules that were filed. The transcript does not reflect any changes the taxpayer or the IRS made after the original return was filed. A *tax account transcript* includes the taxpayers' marital status, the type of return filed, the adjusted gross income and taxable income. It does include any changes that the taxpayer or the IRS made to the tax return after it was filed. Taxpayers can get free transcripts immediately online or by phone, by mail or by fax within five to 10 days from the time IRS receives a request. To view and print your transcripts online, go to IRS.gov and use the Get Transcript tool. To order by phone, call 800-908-9946 and follow the prompts. Taxpayers can also request transcripts using a smartphone with the IRS2Go mobile phone app. To request an individual *tax return transcript* by mail or fax, complete Form 4506T-EZ, *Short Form Request for Individual Tax Return Transcript*. Businesses and individuals who need a *tax account transcript* should use Form 4506-T, *Request for Transcript of Tax Return*. If a taxpayer needs a copy of a filed and processed tax return, it will cost \$50 for each tax year. Taxpayers should complete Form 4506, *Request for Copy of Tax Return*, to make the request. Mail it to the IRS address listed on the form for the taxpayer's area. Copies are generally available for the current year and past six years. Taxpayers should allow 75 days for delivery. If a taxpayer lives in a federally declared disaster area, the taxpayer can get a free copy of the tax return. Visit IRS.gov for more disaster relief information. **IRS Summertime Tax Tip 2016-11.**

SALE OF RESIDENCE. The IRS has published information about the tax issues involved in selling a personal residence. *Exclusion of Gain.* Taxpayers may be able to exclude part or all of the gain from the sale of their home. This rule may apply if taxpayers meet the eligibility test which requires that the taxpayer must have owned and used the residence as a main home for at least two out of the five years before the date of sale *Exceptions May Apply.* There are exceptions to the ownership, use and other requirements. One exception applies to persons with a disability. Another applies to certain members of the military, certain government and Peace Corps workers. *Exclusion Limit.* The most gain a taxpayer filing separately can exclude from tax is \$250,000. This limit is \$500,000 for joint returns. The net investment income tax will not apply to the excluded gain. *May Not Need to Report Sale.* If the gain is not taxable, taxpayers may not need to report the sale to the IRS on their tax return. *When You Must Report the Sale.* Taxpayers must report the sale on the tax return if they cannot exclude all or part of the gain. Taxpayers must report the sale if they choose not to claim the exclusion. That is also true if they get Form 1099-S, *Proceeds From Real Estate Transactions*. If a taxpayer reports the sale, the taxpayer should review the questions and answers on the net investment income tax on IRS.gov. *Exclusion Frequency Limit.* Generally, taxpayers may exclude the gain from the sale of their main home only once every two years. Some exceptions may apply to this rule. *Only a Main Home Qualifies.* If a taxpayer owns more

than one home, the taxpayer may only exclude the gain on the sale of the main home. A taxpayer's main home usually is the home that the taxpayer lives in most of the time. *First-time Homebuyer Credit.* If a taxpayer claimed the first-time homebuyer credit when the taxpayer bought the home, special rules apply to the sale. *Home Sold at a Loss.* If a taxpayer sells the main home at a loss, the taxpayer cannot deduct the loss on the tax return. *Report The Address Change.* After a taxpayer sells the home and moves, the taxpayer should update the address with the IRS. To do this, file Form 8822, *Change of Address* and mail it to the address listed on the form's instructions. If the taxpayer purchased health insurance through the Health Insurance Marketplace, the taxpayer should also notify the Marketplace if the taxpayer moves out of the area covered by the current Marketplace plan. For more on this topic, see Publication 523, *Selling Your Home*. **IRS Summertime Tax Tip 2016-13.**

FARM ESTATE AND BUSINESS PLANNING

by Neil E. Harl
19th Edition (2016)

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AGRICULTURAL TAX SEMINARS

by Neil E. Harl

Due to a worsening family medical need, Dr. Harl has been forced to cancel all 2016 seminars except the seminars in Ames, IA on August 24 and 25, 2016.

Dr. Harl regrets having to make this decision and any inconvenience to the folks who already registered for the cancelled seminars. Registrants for the cancelled seminars will be offered a full refund or the transfer of the registration to the seminars in Ames, IA. See more details on the back page.



AGRICULTURAL TAX SEMINARS

by Neil E. Harl

August 24-25, 2016 - Quality Inn, Ames, IA

Join us for expert and practical seminars on the essential aspects of agricultural tax law. Gain insight and understanding from one of the country's foremost authorities on agricultural tax law. The seminars will be held on two days from 8:00 am to 5:00 pm. Registrants may attend one or both days. On the first day, Dr. Harl will speak about farm and ranch estate and business planning. On the second day, Dr. Harl will cover farm and ranch income tax. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch. A discount (\$25/day) is offered for attendees who elect to receive the manuals in PDF format only ([see registration form online for use restrictions on PDF files](#)).

The topics include:

First day

FARM ESTATE AND BUSINESS PLANNING

New Legislation

Succession planning and the importance of fairness

The Liquidity Problem

Property Held in Co-ownership

Federal estate tax treatment of joint tenancy
Severing joint tenancies and resulting basis
Joint tenancy and probate avoidance
Joint tenancy ownership of personal property
Other problems of property ownership

Federal Estate Tax

The gross estate
Special use valuation
Property included in the gross estate
Traps in use of successive life estates
Basis calculations under uniform basis rules
Valuing growing crops
Claiming deductions from the gross estate
Marital and charitable deductions
Taxable estate
The applicable exclusion amount
Unified estate and gift tax rates
Portability and the regulations
Federal estate tax liens
Gifts to charity with a retained life estate

Gifts

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

Use of the Trust

The General Partnership

Small partnership exception
Eligibility for Section 754 elections

Limited Partnerships

Limited Liability Companies

Developments with passive losses
Corporate-to-LLC conversions

New regulations for LLC and LLP losses

Closely Held Corporations

State anti-corporate farming restrictions
Developing the capitalization structure
Tax-free exchanges
Would incorporation trigger a gift because of severance of land held in joint tenancy?
"Section 1244" stock
Status of the corporation as a farmer
The regular method of income taxation
The Subchapter S method of taxation, including the "two-year" rule for trust ownership of stock
Underpayment of wages and salaries
Financing, Estate Planning Aspects and Dissolution of Corporations
Corporate stock as a major estate asset
Valuation discounts
Dissolution and liquidation
Reorganization
Entity Sale
Stock redemption

Social Security

In-kind wages paid to agricultural labor

Second day

FARM INCOME TAX

New Legislation

Reporting Farm Income

Constructive receipt of income
Deferred payment and installment payment arrangements for grain and livestock sales
Using escrow accounts
Payments from contract production
Items purchased for resale
Items raised for sale
Leasing land to family entity
Crop insurance proceeds
Weather-related livestock sales
Sales of diseased livestock

Reporting federal disaster assistance benefits
Gains and losses from commodity futures, including consequences of exceeding the \$5 million limit

Claiming Farm Deductions

Soil and water conservation expenditures
Fertilizer deduction election
Depreciating farm tile lines
Farm lease deductions
Prepaid expenses
Preproductive period expense provisions
Regular depreciation, expense method depreciation, bonus depreciation
Repairs and Form 3115; changing from accrual to cash accounting
Paying rental to a spouse
Paying wages in kind
PPACA issues including scope of 3.8 percent tax

Sale of Property

Income in respect of decedent
Sale of farm residence
Installment sale including related party rules
Private annuity
Self-canceling installment notes
Sale and gift combined.

Like-Kind Exchanges

Requirements for like-kind exchanges
"Reverse Starker" exchanges
What is "like-kind" for realty
Like-kind guidelines for personal property
Partitioning property
Problems in Exchanges of partnership assets

Taxation of Debt

Turnover of property to creditors
Discharge of indebtedness
Taxation in bankruptcy.

Self-employment tax

Meaning of "business"

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

Contact Robert Achenbach at 360-200-5666, or e-mail Robert@agrilawpress.com for a brochure.

