CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

ELIGIBILITY. The debtor had farmed with a brother in a partnership from 1993 through 2010 when the partnership was dissolved. The dissolution agreement split some of the farm equipment but the brother assumed the partnership liabilities and paid cash for the value of the debtor's partnership interest. The debtor's share of farming income for 2007 through 2010 exceeded 50 percent of the debtor's total income. After the dissolution and up to the bankruptcy petition, the debtor continued to farm alone in a much smaller operation. The debtor filed for Chapter 12 in 2011 and federal and state tax claims arising from the dissolution of the partnership were filed in the debtor's bankruptcy case and the IRS argued that the debtor was not eligible for Chapter 12 because the debtor did not have farm income for at least three years before the filing of the petition, because the debtor changed farming operations in 2010. The IRS argued that the farm income eligibility requirements had to be met by the debtor in the farming operation active when the petition was filed; therefore, the debtor's income from the partnership could not be considered. The court disagreed and held that the farm income requirement did not require that the income come solely from the operation active when the debtor filed the petition and could be combined with all farm activity during the three years prior to the petition. Because the debtor's farming income in two of the pre-bankruptcy years exceeded non-farm income, the debtor was eligible for Chapter 12. ***In re* Hemann, Bankruptcy No. 11-00261 (Bankr. N.D. Iowa 2013)**.

TAX CLAIMS FROM SALE OF CHAPTER 12 PROPERTY. The debtor had farmed with a brother in a partnership from 1993 through 2010 when the partnership was dissolved. The dissolution agreement split some of the farm equipment but the brother assumed the partnership liabilities and paid cash for the value of the debtor's partnership interest. The debtor filed for Chapter 12 in 2011 and federal and state tax claims arising from the dissolution of the partnership were filed in the debtor's bankruptcy case. The debtor argued that Section 1222(a)(2)(A) allowed the stripping of priority status to the tax claims (making them dischargeable) because they arose out of the sale of farm property. The IRS argued that the dissolution of the partnership was a sale of the debtor's partnership interest which was not a farm asset. The debtor argued that, under the "small partnership exception," I.R.C. § 6231(a)(1)(B)(i), the partnership was disregarded and the dissolution resulted in a sale of the farm assets themselves. The court did not rule on the applicability of the "small partnership exception" but ruled that the debtor's interest in the partnership was a farm asset for purposes of Section 122(a)(2)(A); therefore, the tax claims were subject to stripping of their priority and subject to discharge. ***In re* Hemann, Bankruptcy No. 11-00261 (Bankr. N.D. Iowa 2013)**.

FEDERAL TAX

DISCHARGE. The debtor had sold a cable company and was liable for substantial capital gains taxes. In an attempt to decrease the tax liability, the debtor invested in sham transactions designed to create tax losses with minimal investment. The debtor filed for Chapter 11 and sought discharge of the taxes resulting from disallowance of the investment losses. The debtor argued that the debtor was the victim of misrepresentations by the promoters of the schemes and tax advisors. The court held that the taxes were nondischargeable because the debtor attempted to evade payment of taxes by investing in the sham activities. The court held that the debtor was an experienced and sophisticated business owner and failed to independently verify the legality of the transactions which produced such high tax benefits without substantial investment. In addition, the court held that the debtor did not reasonably rely on the tax advice of the promoters and their tax advisors. Finally, the court noted that the debtor failed to retain enough funds to pay the known tax liability after the loss deductions were disallowed. The appellate court affirmed. ***In re* Vaughn, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,260 (D. Colo. 2013), *aff'g*, 2012-1 U.S. Tax Cas. (CCH) ¶ 50,130 (Bankr. D. Colo. 2011)**.

FEDERAL FARM PROGRAMS

ORGANIC FOODS. The AMS has issued a notice announcing draft guidance for review and comment by accredited certifying agents, certified operations, material evaluation programs, and other organic industry stakeholders. The first set of draft guidance documents implements recommendations from the National Organic Standards Board concerning the classification of materials under the USDA organic regulations (*7 C.F.R. Part 205*). The Classification of Materials draft guidance, NOP 5033, details the procedures and decision trees for classifying materials used for organic crop production, livestock production, and handling. The second set of draft guidance documents, NOP 5034, provides clarification regarding materials for use in organic crop production. These documents include an itemization of allowed natural and synthetic materials and a limited appendix of materials prohibited in organic crop production. The notice explains the policy of the National Organic Program concerning the portions of the regulations in question, referenced herein. The notice invites organic producers, handlers, certifying agents, material evaluation programs, consumers and other interested parties to submit comments about these guidance provisions. Once completed, final guidance documents will be available from NOP through "The Program Handbook: Guidance and Instructions for Certifying

Agents and Certified Operations." This handbook provides those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the USDA organic regulations. The current edition of the program handbook is available online at http://www.ams.usda.gov/nop or in print upon request. **78 Fed. Reg. 19637 (April 2, 2013)**.

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The decedent died in 2010 and the trustee for the decedent's estate retained an attorney to prepare estate tax documents, including the necessity to file a Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*. The trustee of the decedent's estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to file the Form 8939 to make the I.R.C. § 1022 election and to allocate basis provided by section 1022 to eligible property transferred as a result of the decedent's death. The IRS granted the extension. **Ltr. Rul. 201312029, Nov. 26, 2012**.

LATE FILING OF ESTATE TAX RETURN. The decedent was married to a non-U.S. citizen and the estate's attorney advised the executor that the marital deduction would not be allowed for property passing to a non-U.S. citizen surviving spouse. However, the attorney advised that the marital deduction would be available if the surviving spouse became a citizen and resident of the United States before the filing of the estate tax return. Because the executor knew that it would take some time for the surviving spouse to become a citizen, the estate filed for an extension, paying the estimated estate taxes as if no marital deduction was allowed. However, the surviving spouse did not become a citizen until after the extension expired. The estate attorney then advised that a late filed return would still not incur penalties if it waited for the surviving spouse to become a citizen. The estate filed its return nine months after the surviving spouse became a citizen. The estate argued that the late-filing penalty should not be imposed because it reasonably relied on the attorney's advice to wait to file the return. Although the court held that the estate reasonably relied on the advice of the attorney for the initial delay in filing, the court held that the estate waited too long after the surviving spouse became a citizen to file the return. The court found that the estate did not rely on any attorney advice to take nine months to file after the surviving spouse became a citizen; therefore, the late-filing penalty was properly imposed. **Estate of Liftin v. United States, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,256 (Fed. Cls. 2013)**.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayers, husband and wife, purchased approximately 140 acres of land that was improved with a farmhouse and outbuildings and that also consisted of crop land and pasture land. Petitioners rented out the farmland separately from the farmhouse. Since purchasing the land petitioners had numerous local farmers lease the crop land and the pasture land. Petitioners attempted to rent out the farmhouse but were unsuccessful in finding tenants to rent the house in exchange for cash. Various relatives of the taxpayers lived in the house in exchange for services, such as maintenance and repair, for 24 of the 31 years that the taxpayers owned the house. The taxpayers also used the house to store tools and for overnight stays when they were working on the farm. The taxpayers claimed deductions for expenses related to the house, including automobile, insurance, repair, supplies and utility expenses, most of which were disallowed by the IRS. The taxpayers argued that they rented the house in exchange for services but the court noted that the bartered rent was not included as income on the taxpayers' returns and the taxpayers provided no evidence that the bartered service were valued at fair rental value. In addition, the taxpayer failed to provide sufficient records to substantiate the automobile expenses. The court held that the deductions were properly disallowed because the taxpayers provided insufficient evidence that the house was used for the production of income. **Meinhardt v. Comm'r, T.C. Memo. 2013-85**.

CHARITABLE DEDUCTIONS. The IRS has published information on the charitable deduction. If a taxpayer wants a tax deduction, the taxpayer must donate to a qualified charitable organization. Taxpayers cannot deduct contributions made to either an individual, a political organization or a political candidate. Taxpayers must file Form 1040 and itemize deductions on Schedule A. If a taxpayer's total deduction for all noncash contributions for the year is more than $500, the taxpayer must also file Form 8283, *Noncash Charitable Contributions*, with the tax return. If a taxpayer receives a benefit of some kind in return for the charitable contribution, the taxpayer can only deduct the amount that exceeds the fair market value of the benefit received. Examples of benefits a taxpayer may receive in return for a contribution include merchandise, tickets to an event or other goods and services. Donations of stock or other non-cash property are usually valued at fair market value. Used clothing and household items generally must be in good condition to be deductible. Special rules apply to vehicle donations. Fair market value is generally the price at which someone can sell the property. a taxpayer must have a written record about the donation in order to deduct any cash gift, regardless of the amount. Cash contributions include those made by check or other monetary methods. That written record can be a written statement from the organization, a bank record or a payroll deduction record that substantiates the donation. That documentation should include the name of the organization, the date and amount of the contribution. A telephone bill meets this requirement for cellphone text donations if it shows this same information. To claim a deduction for gifts of cash or property worth $250 or more, a taxpayer must have a written statement from the qualified organization. The statement must show the amount of the cash or a description of any property given. It must also state whether the organization provided any goods or services in exchange for the gift. A taxpayer may use the same document to meet the requirement for a written statement for cash gifts and the requirement for a written acknowledgement for contributions of $250 or more. If a taxpayer donates one item or a group of similar items that are valued at more than $5,000, the taxpayer must also complete Section B of Form 8283. This section generally requires an appraisal by a qualified appraiser. For more information on charitable contributions, see Publication 526, *Charitable Contributions*. For information about noncash contributions, see Publication 561, *Determining the Value of Donated Property*. **IRS Tax Tip 2013-45**.

DEPRECIATION. The taxpayer made the election to deduct the 100 percent additional first year depreciation deduction for all qualified property. However, the taxpayer learned that taking the deduction would substantially increase the taxpayer's state income tax. The IRS granted an extension of time to file an amended return without the election. **Ltr. Rul. 201312021, Dec. 14, 2012**.

DISABILITY BENEFITS. The taxpayer was the parent of a legally incapacitated daughter who was injured in a motor vehicle accident. The taxpayer received payments from a no-fault benefit insurance program offered by the state for persons injured in a motor vehicle accident. The IRS ruled that the payments were excluded from taxable income as disability payments for physical injuries. **Ltr. Rul. 201313018, Dec. 14, 2012**.

DOMESTIC PRODUCTION DEDUCTION. The taxpayer operated a publishing company which created digital versions of books which were printed by another company. In a Chief Counsel Advice letter, the IRS ruled that the creation of the digital copy of the books did not constitute the manufacture, production, growth, or extraction of qualifying production property. **CCA 201313020, Nov. 20, 2011**.

EDUCATION COSTS. The IRS has published information about the American Opportunity Credit and the Lifetime Learning Credit. *The American Opportunity Credit*. The AOTC is worth up to $2,500 per eligible student and is available for the first four years of higher education at an eligible college, university or vocational school. The credit lowers a taxpayer's taxes and is partially refundable. This means a taxpayer could get a refund of up to $1,000 even if the taxpayer owes zero tax. An eligible student must be working toward a degree, certificate or other recognized credential. The student must be enrolled at least half time for at least one academic period that began during the year. Taxpayers generally can claim the costs of tuition and required fees, books and other required course materials. Other expenses, such as room and board, do not qualify. *The Lifetime Learning Credit*. The credit is worth up to $2,000 per tax return per year. The yearly limit applies no matter how many students are eligible for the credit. The credit is nonrefundable which means the amount a taxpayer can claim is limited to the lower of the $2000 or amount of tax owed. The credit is available for all years of higher education, including courses taken to acquire or improve job skills. Taxpayers can claim the costs of tuition and fees required for enrollment or attendance, including amounts for course-related books, supplies and equipment. A taxpayer cannot claim either of these credits if someone else claims the taxpayer as a dependent on his or her tax return. Both credits are subject to income limitations and may be reduced or eliminated depending on the taxpayer's income. Keep in mind that a taxpayer cannot claim both credits for the same student in the same year. Taxpayers may not claim both credits for the same expense. Parents or students claiming either credit should receive a Form 1098-T, *Tuition Statement*, from their educational institution. Taxpayers should make sure Form 1098-T is complete and correct. More details about these credits and other college tax benefits can be found in Publication 970, *Tax Benefits for Education*. **IRS Tax Tip 2013-44**.

ENERGY CREDITS. The IRS has published information about the tax credits available for non-business energy expenses. *Non-Business Energy Property Credit*. Taxpayers may claim a credit of 10 percent of the cost of certain energy saving property added to their main home, including the cost of qualified insulation, windows, doors and roofs. In some cases, a taxpayer may be able to claim the actual cost of certain qualified energy-efficient property. Each type of property has a different dollar limit. Examples include the cost of qualified water heaters and qualified heating and air conditioning systems. This credit has a maximum lifetime limit of $500. Taxpayers may only use $200 of this limit for windows. A taxpayer's main home must be located in the U.S. to qualify for the credit. Not all energy-efficient improvements qualify, so taxpayers need to be sure they have the manufacturer's credit certification statement, usually available on the manufacturer's website or with the product's packaging. A recent law extended the credit for two years through the end of 2013. *Residential Energy Efficient Property Credit*. This tax credit is 30 percent of the cost of alternative energy equipment installed on or in a taxpayer's home. Qualified equipment includes solar hot water heaters, solar electric equipment and wind turbines. There is no limit on the amount of credit available for most types of property. If the credit is more than the tax owed, a taxpayer can carry forward the unused portion of this credit to next year's tax return. The taxpayer must install qualifying equipment in connection with the taxpayer's home located in the United States. It does not have to be the taxpayer's main home. The credit is available through 2016. To claim the credit, taxpayers use Form 5695, *Residential Energy Credits*. **IRS Tax Tip 2013-48**.

ESTIMATED TAXES. The IRS has published information on payment of estimated taxes. If a taxpayer does not have taxes withheld from income, the taxpayer may need to make estimated tax payments. This may apply if the taxpayer has income such as self-employment, interest, dividends or capital gains. It could also apply if the taxpayer does not have enough taxes withheld from the taxpayer's wages. If the taxpayer is required to pay estimated taxes during the year, the taxpayer should make these payments to avoid a penalty. Generally, the taxpayer may need to pay estimated taxes in 2013 if the taxpayer expects to owe $1,000 or more in taxes on the federal tax return. Other rules apply, and special rules apply to farmers and fishermen. When figuring the amount of estimated taxes, a taxpayer should estimate the amount of income expected to be received for the year. A taxpayer should also include any tax deductions and credits that will be eligible to claim. Be aware that life changes, such as a change in marital status or a child born during the year can affect taxes. Taxpayers should try to make the estimates as accurate as possible. Taxpayers normally make estimated tax payments four times a year. The dates that apply to most people are April 15, June 17 and Sept. 16 in 2013, and Jan. 15, 2014. Taxpayers should use Form 1040-ES, *Estimated Tax for Individuals*, to figure your estimated tax. Taxpayers may pay online or by phone. Taxpayers may also pay by check or money order, or by credit or debit card. More information about the payment options are included in the Form 1040-ES instructions and the Electronic Payment Options Home Page at IRS.gov. If a taxpayer mails payments to the IRS, the taxpayer should use the payment vouchers that come with Form 1040-ES. For more information about estimated taxes, see Publication 505, *Tax Withholding and Estimated Tax*. **IRS Tax Tip 2013-49**.

FOREIGN ACCOUNTS. CCH has reported: "In an email to tax professionals, the IRS noted that it has received some Forms 8938, Statement of Foreign Financial Assets, from domestic entity filers for tax year 2012; however, these entities are not required to file Form 8938 with Forms 1120, 1120S, 1065 and 1041 for 2012. The IRS is planning to issue regulations in the future that will require a domestic entity to file Form 8938 if the entity is formed or availed of to hold specified foreign financial assets and the value of those assets exceeds the appropriate reporting threshold. Until the IRS issues such regulations, only individuals must file Form 8938." **CCH Federal Tax Day, April 5, 2013**.

HEALTH INSURANCE. The IRS has published information about the deduction for health insurance costs by self-employed taxpayers. The deduction is for medical, dental or long-term care insurance premiums that self-employed people often pay for themselves, their spouse and their dependents. The insurance can also cover a taxpayer's child who was under age 27 at the end of 2012, even if the child was not a dependent. Taxpayers may be able to take this deduction if one of the following applies to them: (1) the taxpayer had a net profit from self-employment and the taxpayer would report this net profit on a Schedule C, *Profit or Loss From Business*, Schedule C-EZ, *Net Profit From Business*, or Schedule F, *Profit or Loss From Farming*; (2) the taxpayer had self-employment earnings as a partner reported to the taxpayer on Schedule K-1 (Form 1065), *Partner's Share of Income, Deductions, Credits, etc.*; (3) the taxpayer used an optional method to figure net earnings from self-employment on Schedule SE, Self-Employment Tax; and (4) the taxpayer was paid wages reported on Form W-2, *Wage and Tax Statement*, as a shareholder who owns more than two percent of the outstanding stock of an S corporation. There are also some rules that apply to how the insurance plan is established. Taxpayers need to follow these guidelines to make sure the plan qualifies: If the taxpayer is self-employed and files Schedule C, C-EZ, or F, the policy can be in the taxpayer's name or in the taxpayer's business name. If the taxpayer is a partner, the policy can be in the taxpayer's name or the partnership's name and either can pay the premiums. If the policy is in the taxpayer's name and the taxpayer pays the premiums, the partnership must reimburse the taxpayer and include the premiums as income on the taxpayer's Schedule K-1. If the taxpayer is an S corporation shareholder, the policy can be in the taxpayer's name or the S corporation's name and either can pay the premiums. If the policy is in the taxpayer's name and the taxpayer pays the premiums, the S corporation must reimburse the taxpayer and include the premiums as wage income on the taxpayer's Form W-2. For more information, see Publication 535, *Business Expenses*. **IRS Tax Tip 2013-43**.

LEGAL EXPENSES. The taxpayer was divorced and the divorce decree included a provision requiring the couple to transfer their interests in real property to a trust for their two children. The decree also provided that any proceeds of a sale of the property would remain in the trust. The property was sold several years later for many times its worth at the time of the divorce decree. The taxpayer filed suit to recover a portion of the proceeds, arguing that the trust was over-funded for the needs of the children. The trial and appellate courts held that the entire proceeds of the sale were to be kept in the trust for the children. The taxpayer claimed the legal fees from the lawsuit as a deduction on Schedule A. The court held that the legal fees were non-deductible personal expenses because the subject of the lawsuit was a personal matter arsing out of the divorce proceedings. **Tsai v. Comm'r, T.C. Summary Op. 2013-26**.

LIMITED LIABILITY COMPANY. In a Chief Counsel Advice letter, the IRS stated: "State law provides for who can sign for an LLC, i.e., a manager/member. Usually state law says the members have management authority unless the operating agreement provides otherwise. If the husband is the sole owner and manager of the LLC, there would be no reason to have anyone else sign for the LLC. If you get the husband and wife to sign for themselves, you don't need any agreement from the LLC. In the case of a Form 870-LT this is the better course of action since a pass-thru cannot bind indirect partners as to partner-level items." **CCA 201312042, Feb. 5, 2013**.

PASSIVE INVESTMENT LOSSES. The taxpayer was employed full time and owned 28 rental apartment units which had a tax loss in the tax year involved. The taxpayer claimed to have worked on the rental properties for more hours per year than at the taxpayer's employment but provided only oral testimony and a calendar which was purported to be a contemporaneous record of the hours worked on the rental units but was recorded on a calendar with a later copyright date printed on it. Thus, the court did not believe the taxpayer's evidence of the hours worked and held that the taxpayer did not work more hours on the rental units than on the taxpayer's employment and did not meet the requirements of I.R.C. § 469(c)(7)(B) to have the losses treated as nonpassive activity losses. **Hassanipour v. Comm'r, T.C. Memo. 2013-88**.

PENSION PLANS. The taxpayer received a distribution from a qualified plan and received a Form 1099-R from the employer that indicated that the distribution was eligible for tax-free rollover to an IRA. The taxpayer contributed the distribution to an IRA and excluded all of the distribution from income. However, a portion of the distribution was not eligible. In a subsequent tax year, the taxpayer learned from the employer that the distribution did not all qualify for the rollover and the taxpayer withdrew the portion not eligible for rollover. In a Chief counsel Advice letter, the IRS ruled that the excess distribution was taxable income and the 6 percent excise tax applied because the period for reassessing the initial exclusion from income had expired and the duty of consistency prevented the taxpayer from filing an amended return to undo the error. **CCA 201313025, Aug. 31, 2012**.

The rates below reflect changes implemented by the Moving Ahead for Progress in the 21st Century Act (*Pub. L. No. 112-141*). For plans beginning in April 2013 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 3.16 percent. The corporate bond weighted average is 3.52 percent, and the 90 percent to 105 percent permissible range is 3.17 percent to 3.69 percent. The 24-month average corporate bond segment rates for April 2013, without adjustment by the 25-year average segment rates are: 1.50 for the first segment; 4.22 for the second segment; and 5.26 for the third segment. The 24-month average corporate bond segment rates for April 2013, taking into account the 25-year average segment rates, are: 4.94 for the first segment; 6.15 for the second segment; and 6.76 for the third segment. **Notice 2013-28, I.R.B. 2013-19**.

PLUG-IN ELECTRIC VEHICLE CREDIT. I.R.C. § Section 30D provides a credit for qualified plug-in electric drive motor vehicles including passenger vehicles and light trucks. For vehicles acquired after December 31, 2009, the credit is equal to $2,500 plus, for a vehicle which draws propulsion energy from a battery with at least 5 kilowatt hours of capacity, $417, plus an additional $417 for each kilowatt hour of battery capacity in excess of 5 kilowatt hours. The total amount of the credit allowed for a vehicle is limited to $7,500. In a Chief Counsel Advice letter the IRS ruled that eligibility of a vehicle for the credit is determined when the title passes to the taxpayer; however, the credit can be claimed only in the taxable year in which the vehicle is placed in service. **CCA 201312034, July 12, 2012**.

REPORTING. A state department of transportation acquired property through a condemnation proceeding. In a Chief Counsel Advice letter, the Chief Counsel's Office ruled that the DOT had to issue a Form 1009-S under I.R.C. § 6041 including the full amount of the proceeds paid to the property owner if the amount exceeded $600. The CCO also ruled that the Form 1009-S did not need to include the payee's taxpayer identification number if the DOT made a good faith but unsuccessful attempt to obtain the number. **CCA 201313028, June 5, 2012**.

RETURNS. The IRS has published information for U.S. citizens and residents who lived or worked abroad in 2012 who need to file a federal income tax return. If a taxpayer is living or working outside the United States, the taxpayer generally must file and pay tax in the same way as people living in the U.S. This includes people with dual citizenship. (1) *Report Worldwide Income*. The law requires U.S. citizens and resident aliens to report any worldwide income. This includes income from foreign trusts, and foreign bank and securities accounts. (2) *File Required Tax Forms*. In most cases, affected taxpayers need to file Schedule B, *Interest and Ordinary Dividends*, with their tax returns. Some taxpayers may need to file additional forms. For example, some may need to file Form 8938, *Statement of Specified Foreign Financial Assets*, while others may need to file Form TD F 90-22.1, *Report of Foreign Bank and Financial Accounts*, with the Treasury Department. See Publication 4261, *Do You Have a Foreign Financial Account?*, for more information. (3) *Consider the Automatic Extension*. U.S. citizens and resident aliens living abroad on April 15, 2013, may qualify for an automatic two-month extension to file their 2012 federal income tax returns. The extension of time to file until June 17, 2013, also applies to those serving in the military outside the U.S. Taxpayers must attach a statement to their returns explaining why they qualify for the extension. (4) *Review the Foreign Earned Income Exclusion*. Many Americans who live and work abroad qualify for the foreign earned income exclusion. This means taxpayers who qualify will not pay taxes on up to $95,100 of their wages and other foreign earned income they received in 2012. See Forms 2555, *Foreign Earned Income*, or 2555-EZ, *Foreign Earned Income Exclusion*, for more information. (5) *Don't Overlook Credits and Deductions*. Taxpayers may be able to take either a credit or a deduction for income taxes paid to a foreign country. This benefit reduces the taxes these taxpayers pay in situations where both the U.S. and another country tax the same income. (6) *Use IRS Free File*. Taxpayers who live abroad can prepare and e-file their federal tax return for free by using IRS Free File. People who make $57,000 or less can use Free File's brand-name software. People who earn more can use Free File Fillable Forms, an electronic version of IRS paper forms. Free File is available exclusively through the IRS.gov website. (7) *Get Tax Help Outside the U.S.* Taxpayers living abroad can get IRS help in four U.S. embassies and consulates. IRS staff at these offices can help with tax filing issues and answer questions about IRS notices and tax bills. The offices also have tax forms and publications. To find the nearest foreign IRS office, visit the IRS.gov website. At the bottom of the home page click on the link labeled 'Contact Your Local IRS Office.' Then click on 'International.' More information is available in Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*. **IRS Tax Tip 2013-42**.

TAX RETURN PREPARERS. The taxpayer was defrauded by a tax return preparer who filed a false return for the taxpayer without the taxpayer's knowledge. The false refund was paid to the tax return preparer who paid half of the amount to the taxpayer. Note: the ruling does not give the actual amounts but apparently the taxpayer was not aware of the amount falsely reported by the return preparer. In a Chief Counsel Advice letter, the IRS ruled that it was appropriate to abate the portion of the additional tax assessed that resulted from the tax return preparer's fraud. **CCA 201313029, May 4, 2012**.

THEFT LOSSES. The taxpayers, husband and wife, invested in a company which bought and sold real estate for investment. Although the company was successful for 12 years, the company defaulted on its obligations to its investors and eventually filed for bankruptcy, causing the taxpayers to lose a substantial part of their investments. The taxpayers claimed a theft loss deduction for the amount lost. The main issue discussion in length by the court was whether state or federal law governed the definition of theft. Although the court acknowledged precedent for the use of state law to control the definition, the court ruled that federal law and the common definition of theft was sufficient in this case. The case was heard on cross motions for summary judgment, both of which were denied because many factual issues remained to be determined by trial. **Goeller v. United States, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,238 (Fed. Cls. 2013)**.

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by Neil E. Harl

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Three locations and dates to choose from this spring (see page 58 above for the rest of the 2013 schedule):

April 29-30, 2013, Osage Beach, MO, Tan-Tar-A Resort, 494 TanTarA Dr., Osage Beach, MO
May 6-7, 2013, Grand Island, NE, Quality Inn & Conference Center, 7838 S. Highway 281, Grand Island, NE
May 30-31, 2013, Greeley, CO, Clarion Inn & Conference Center, 701 8th St., Greeley, CO

The topics include:

First day

FARM INCOME TAX

New Legislation
Reporting Farm Income
Leasing land to family entity
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
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
Paying rental to a spouse
Paying wages in kind
Section 105 plans
Sale of Property
Income in respect of decedent
Sale of farm residence
Installment sale including related party rules
Private annuity
Self-canceling installment notes
Sale and gift combined.
Like-Kind Exchanges
Requirements for like-kind exchanges
"Reverse Starker" exchanges
What is "like-kind" for realty
Like-kind guidelines for personal property
Partitioning property
Exchanging partnership assets
Taxation of Debt
Turnover of property to creditors
Discharge of indebtedness
Taxation in bankruptcy.

Second 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
Family-owned business deduction recapture
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 new regulations
Federal estate tax liens
Undervaluations of property
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
Eligibility for "small partnership" exception
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
Social Security
In-kind wages paid to agricultural labor

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