CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

FEDERAL TAX

AUTOMATIC STAY. The debtor filed for Chapter 7 in September 2014 and listed anticipated tax refunds for 2011 and 2012 as part of the bankruptcy estate, a portion of which was designated as exempt under Va. Code § 34-4 as a homestead exemption. The bankruptcy schedules also listed an amount owed to the USDA for a deficiency resulting from the foreclosure sale of the debtor's residence. The debtor filed the returns for 2011 and 2012 after filing for bankruptcy claiming refunds but the IRS withheld the refund for application against the USDA loan deficiency. The debtor filed a motion charging the IRS with violating the automatic stay in retaining the refunds. The Bankruptcy Court held that the offset violated the automatic stay and ordered the payment of the refunds to the debtor. The trustee and USDA reached an agreement on the offset but the issue remained as to the portion of the refunds claimed as exempt property. The court noted a split of court authority as to whether the automatic stay prevents the IRS from offsetting tax refunds against non-tax government liabilities. However, the court noted that Section 362(b)(26) was amended to specifically provide that the automatic stay does not prevent "the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability… ." Because the amendment did not include the offset of non-income tax liability, the court reasoned that the amendment indicated that the Congress intended that the automatic stay prohibited the offsetting of tax refunds against non-income tax liabilities. The IRS argued that, under I.R.C. § 6402, the refunds were not bankruptcy estate property until the IRS approves the refunds; therefore, the automatic stay does not apply to a refund until the IRS allows the refund. The court held that I.R.C. § 6402 applies only in cases where the refund is applied to owed taxes and not to non-tax liabilities. The court affirmed the Bankruptcy Court decision that the IRS violated the automatic stay by offsetting the refunds against the USDA loan deficiency. ***In re*** **Addison, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,158 (W.D. Va. 2016)**.

DISCHARGE. The debtor filed for Chapter 7 in March 2014 and received a discharge in June 2014. The debtor sought to have federal income taxes for 2006 and 2007 declared discharged in the case. In August 2009, the IRS sent the debtor a notice of assessment and demand for payment for the amounts shown on a substitute 2006 tax return prepared by the IRS. In May 2010, the IRS sent the debtor a notice of assessment and demand for payment for the amounts shown on a substitute 2007 tax return prepared by the IRS. Both the 2009 and 2010 notices were not received by the debtor because the debtor had moved and not informed the IRS of the debtor's new address. The debtor did not file the 2006 and 2007 returns until September 2010. The IRS argued that the late filed returns were not returns for purposes of Section 523(a)(1)(B)(i) because they were not filed until after the IRS filed notices of assessment. The debtor claimed that the returns were filed late because of the debtor's drug addiction. The court noted that the debtor did not claim that the debtor was completely disabled by the addiction and noted that the debtor was employed during the years involved. The court held that the returns filed after the IRS assessments were not returns for purposes of Section Section 523(a)(1)(B)(i) and the taxes were nondischargeable under that section. ***In re*** **Selbst, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,155 (Bankr. E.D. N.Y. 2016)**.

FEDERAL FARM PROGRAMS

GRAIN STANDARDS. The GIPSA has issued proposed regulations revising existing regulations and adding new regulations under the United States Grain Standards Act in order to comply with amendments to the USGSA made by the Agriculture Reauthorizations Act of 2015, *Pub. L. No. 114-54*. The proposed regulations eliminate mandatory barge weighing, remove the discretion for emergency waivers of inspection and weighing, revise GIPSA's fee structure, revise exceptions to official agency geographic boundaries, extend the length of licenses and designations, and impose new requirements for delegated states. **81 Fed. Reg. 3970 (Jan. 25, 2016)**.

POULTRY. The APHIS has issued interim regulations amending the regulations pertaining to certain diseases of livestock and poultry to specify conditions for payment of indemnity claims for highly pathogenic avian influenza (HPAI). The interim regulations provide a formula that will allow the splitting of such payments between poultry and egg owners and parties with which the owners enter into contracts to raise or care for the eggs or poultry based on the proportion of the production cycle completed. The interim regulations also provide for the payment of indemnity for eggs required to be destroyed due to HPAI, thus clarifying an existing policy. The interim regulations require owners and contractors, unless specifically exempted, to provide a statement that at the time of detection of HPAI in their facilities, they had in place and were following a biosecurity plan aimed at keeping HPAI from spreading to commercial premises. **81 Fed. Reg. 6745 (Feb. 9, 2016)**.

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The decedent died in 2010 and the executor retained an accountant to advise on estate tax matters including the necessity to file a Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*. The accountant failed to prepare and file the Form 8939 before January 17, 2012 and the IRS rejected the Form 8939 filed shortly after the due date. The 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 I.R.C. § 1022 to eligible property transferred as a result of the decedent's death. *Notice 2011-66, 2011-2 C.B. 184 section I.D.1*, provides that the IRS will not grant extensions of time to file a Form 8939 and will not accept a Form 8939 filed after the due date except in four limited circumstances provided in section I.D.2: "Fourth, an executor may apply for relief under § 301.9100-3 in the form of an extension of the time in which to file the Form 8939 (thus, making the Section 1022 election and the allocation of basis increase), which relief may be granted if the requirements of § 301.9100-3 are satisfied. The IRS granted an extension of time to file the election. **Ltr. Rul. 201605012, Sept. 16, 2015.**

BASIS OF ESTATE PROPERTY. Section 2004 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, *Public Law 114-41, 129 Stat. 443 (2015)* added new I.R.C. §§ 1014(f) and 6035. The IRS issued *Notice 2015-57, 2015-2 C.B. 294* which delayed until February 29, 2016, the due date for any statements required under I.R.C. § 6035(a)(3)(A) to be provided before February 29, 2016. I.R.C. §6035(a)(1) provides that the executor of any estate required to file a return under I.R.C. § 6018(a) must furnish, both to the Secretary and to the person acquiring any interest in property included in the decedent's gross estate for federal estate tax purposes, a statement identifying the value of each interest in such property as reported on such return and such other information with respect to such interest as the Secretary may prescribe. The IRS has issued a notice which provides that executors and other persons required to file or furnish a statement under I.R.C. § 6035(a)(1) or (a)(2) before February 29, 2016, need not do so until March 31, 2016, in order to provide executors and such other persons the opportunity to review the proposed regulations to be issued under I.R.C. §§ 1014(f) and 6035 before preparing a Form 8971 and any Schedule A. The Treasury Department and IRS recommend that executors and other persons required to file a return under I.R.C. § 6018 wait to prepare the statements required by I.R.C. § 6035(a)(1) and (a)(2) until the issuance of proposed regulations by the Treasury Department and the IRS addressing the requirements of I.R.C. § 6035. The Treasury Department and the IRS expect to issue proposed regulations under I.R.C. §§ 1014(f) and 6035 very shortly. **Notice 2016-19, I.R.B. 2016-9**.

GENERATION SKIPPING TRANSFERS. The settlors, husband and wife, established an irrevocable trust for their three children and the husband established a revocable trust. On the husband's death, the revocable trust property was distributed to the irrevocable trust for the three children. The settlors had allocated the generation skipping transfer exemption to both trusts such that both trusts had an inclusion ratio of zero. The childrens' trust provided for trustee discretion to accumulate or distribute income and discretion to distribute trust principal for the beneficiaries' health, support in reasonable comfort or education. The trustee petitioned a local court to split the trust into three trusts, one for each child. The IRS ruled that the division of the trust (1) did not cause the trusts to be include in the settlor's estates, (2) did not cause the resulting trusts to be subject to GSTT, (3) did not result in a gift to the children, (4) did not result in realization of any gain or loss to the beneficiaries or the trusts, (5) resulted in the basis of the trust's property carrying over to the new trusts, and (6) resulted in each new trust to be treated as a separate taxpayer. **Ltr. Rul. 201604001, Aug. 1, 2015**.

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 spouse, as executrix of the decedent's estate, represented that the value of the decedent's gross estate is less than the basic exclusion amount in the year of the decedent's death and that during the decedent's lifetime, the decedent made no taxable gifts. The spouse 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. 201605003, Sept. 3, 2015; Ltr. Rul. 201605008, Sept. 3, 2015; Ltr. Rul. 201605009, Sept. 3, 2015; Ltr. Rul. 201605010, Sept. 3, 2015; Ltr. Rul. 201605011, Sept. 3, 2015**.

FEDERAL INCOME TAXATION

ACCOUNTING. The taxpayer, a domestic corporation, was on a taxable year ending June 30, consistent with the tax year of its majority owner. The taxpayer proposed changing its taxable year to end December 31 for a better matching of its annual revenue and expenses. However, the taxpayer's final decision to change its tax year end had not been made by the due date of the short period ending December 31 year, owing to the newness of the entity and certain administrative details and approvals from its shareholders. Thus, the taxpayer filed the Form 1128 after the due date of the return for the short period (including extensions). The taxpayer did not file its federal income tax return for the short period by the due date of the return, nor did

the taxpayer request an extension of time to file its return for the short period. Within 90 days of the original return due date and before the failure to make the regulatory election was discovered by the IRS, the taxpayer requested an extension of time to file Form 1128. The taxpayer stated that if it had timely filed its Form 1128, it would have qualified to effectuate the change in accounting period under the automatic consent procedures of *Rev. Proc. 2006-45, 2006-2 C.B. 851*. The IRS granted the extension. **Ltr. Rul. 201604012, Oct. 21, 2015**.

DEPENDENTS. The taxpayer was divorced in 2010 and the divorce decree included a child custody agreement which provided that the taxpayer would be allowed to claim the dependency deduction for their two children. The agreement also provided that the former spouse would provide a signed Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents so long as the taxpayer was current with child support payments. During 2011 the children lived most of the year with the former spouse and the taxpayer made all child support payments. However, the former spouse failed to send a signed Form 8332 to the taxpayer for 2011. The taxpayer claimed the dependency deduction and child tax credit for the two children and included with the 2011 return a copy of the divorce decree provision governing the use of the dependent deduction for the children. Treas. Reg. § 1.152-4(e)(1)(ii) allows substitutes for Form 8332 but the substitute documents must be executed solely for the purpose of serving as a written declaration that the former spouse will not claim the dependency deduction for the children. The regulations specifically state that court orders, decrees and separation agreements will not qualify as substitutes for Form 8332. Thus, the court held that the taxpayer was not eligible to claim the dependency deduction and child tax credit for the two children. **He v. Comm'r, T.C. Summary Op. 2016-4**.

ENROLLED AGENTS. The IRS has issued proposed amendments to the regulations increasing the user fee for the special enrollment examination to become an enrolled agent from $11 to $99 for each part of the examination. **81 Fed. Reg. 4221 (Jan. 26, 2016)**.

FIRST TIME HOMEBUYER CREDIT. The taxpayers were husband and wife when they purchased a residence together in September 2008. The taxpayers claimed a first time homebuyer credit for the purchase of that residence. In June 2004, prior to the couple's marriage, the husband had purchased a residence and began to live there. In April 2005, the couple met and the husband often resided with the wife at her apartment. After the couple married in 2006, the couple lived in the husband's residence until May 2007. The couple lived in a series of apartments from May 2007 through September 2008 when they bought the residence for which they claimed the first time homebuyer's credit. The husband claimed a state homestead exemption for the prior residence in 2005, 2006, 2007 and 2008, received mail at the residence, and used the residence's address on tax returns and other documents. The taxpayers argued that the prior residence was never used as a principal residence because the husband intended to rent the property. The court discredited the husband's testimony on this point as contradictory to the mortgage documents on the original residence which prohibited the use of the property for renting to third parties and the claiming of the homestead exemptions. The court held that the husband owned a principal residence within three years of purchasing the residence for which the first time homebuyer credit was claimed; therefore, the taxpayers could not claim the credit for the second residence. **Blackbourn v. Comm'r, T.C. Summary Op. 2016-5**.

HEALTH INSURANCE. The IRS has published information concerning seasonal workers covered by the ACA. When determining if an organization is an applicable large employer (ALE) employers must measure the workforce by counting all employees. However, there is an exception for seasonal workers. If an employer's workforce exceeds 50 full-time employees for 120 days or fewer during a calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days were seasonal workers, the employer is not considered an applicable large employer. A seasonal worker for this purpose is an employee who performs labor or services on a seasonal basis. For example, retail workers employed exclusively during holiday seasons are seasonal workers. The terms seasonal worker and seasonal employee are both used in the employer shared responsibility provisions, but in two different contexts. The term seasonal worker is relevant for determining whether an employer is an applicable large employer subject to the employer shared responsibility provisions. For this purpose, employers may apply a reasonable, good faith interpretation of the term "seasonal worker." **Health Care Tax Tip 2015-17**.

The IRS has published definitions to three terms that are significant in determining whether an organization is an ALE. A full-time employee is an employee who is employed on average, per month, at least 30 hours of service per week, or at least 130 hours of service in a calendar month. A full-time equivalent employee is a combination of employees, each of whom individually is not a full-time employee, but who, in combination, are equivalent to a full-time employee. An aggregated group is commonly owned or otherwise related or affiliated employers, which must combine their employees to determine their workforce size. To determine if an organization is an applicable large employer for a year, count the organization's full-time employees and full-time equivalent employees for each month of the prior year. If the employer is a member of an aggregated group, count the full-time employees and full-time equivalent employees of all members of the group for each month of the prior year. Then average the numbers for the year. Employers with 50 or more full-time equivalent employees are applicable large employers and will need to file an annual information return reporting whether and what health insurance they offered employees. In addition, they are subject to the employer shared responsibility provisions. **Health Care Tax Tip 2015-14**.

HOBBY LOSSES. The taxpayer, through an S corporation, started a Tennessee Walking Horse breeding activity in 1992 and claimed losses in 2003, 2004 and 2005 which were disallowed by the IRS. The court held that the activity was not engaged in with the intent to make a profit because (1) the taxpayer did not keep sufficient financial records to assess the profitability of the activity or to change the activity to make it profitable; (2) the taxpayer made few changes in the activity in order to make the activity profitable; (3) although the taxpayer was personally knowledgeable and hired experts on the horses, the taxpayer did not have expertise or seek experts as to the business of breeding

horses; (4) the taxpayer had no experience in changing an unprofitable business to profitability; (5) the activity had losses in all years except one in which a modest profit was achieved; (6) the losses offset substantial income from other sources; and (7) the taxpayer received significant personal pleasure from showing and riding the horses. *Estate of Stuller v. United States, 2014-2 U.S. Tax Cas. (CCH) ¶ 50,379 (C.D. Ill. 2014)*. The individual taxpayer, a shareholder of the corporation, received rental payments for the corporation's use of the farm. The rent was included on the taxpayer's individual tax return as taxable income. After the above case was decided, the taxpayer filed for a refund based on the claim that, because the corporation's deductions for the rent expense were disallowed, the same rent should not be included in the taxpayer's individual income. The court held that the taxpayer could not change the character of the rental income after an adverse court ruling because allowing such a change would remove the incentive to file an accurate return. The appellate court affirmed. **Estate of Stuller v. United States, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,165 (7th Cir. 2016), *aff'g*, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,224 (C.D. Ill. 2015)**.

INFLATION ADJUSTMENTS. The IRS has issued a revenue procedure which provides the inflation adjustments for additional items that are adjusted for inflation due to the enactment of the Protecting Americans from Tax Hikes Act (PATH Act) of 2015. *Certain Expenses of Elementary and Secondary School Teachers*. For taxable years beginning in 2016, under I.R.C. § 62(a)(2)(D) the amount of the deduction allowed under I.R.C. § 162 which consists of expenses paid or incurred by an eligible educator in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom is not in excess of $250. *Qualified Transportation Fringe Benefit*. For taxable years beginning in 2016, the monthly limitation under I.R.C. § 132(f)(2)(A) regarding the aggregate fringe benefit exclusion amount for transportation in a commuter highway vehicle and any transit pass is $255. *Election to Expense Certain Depreciable Assets*. For taxable years beginning in 2016, under I.R.C. § 179(b)(1) the aggregate cost of any § 179 property that a taxpayer elects to treat as an expense cannot exceed $500,000. Under I.R.C. § 179(b)(2)(C), the $500,000 limitation is reduced (but not below zero) by the amount the cost of I.R.C. § 179 property placed in service during the 2016 taxable year exceeds $2,010,000. **Rev. Proc. 2016-14, I.R.B. 2016-9, *modifying* Rev. Proc. 2015-53, 2015-2 C.B. 615**.

INNOCENT SPOUSE RELIEF. The taxpayer's former spouse was convicted of failing to file a tax return for 2006 when the taxpayer and spouse were still married. The spouse was sentenced to imprisonment and required to pay restitution. Following the filing of the judgment, the U.S. Attorney's Office applied for and received a writ of garnishment targeting the property and wages of the taxpayer and former spouse. The taxpayer divorced in 2014 and sought to quash the writ of garnishment on the taxpayer's wages and retirement accounts, arguing that the innocent spouse provision of I.R.C. § 66(c) was a defense to the writ. The court held that I.R.C. § 66(c) provides tax relief for innocent spouse but the criminal restitution charged against the former spouse was not a tax. In addition, the court found that the taxpayer was aware of the income of the former spouse that was not reported due to the failure to file a return. Therefore, the court held that the writ of garnishment against the taxpayer's property was not avoidable under I.R.C. § 66(c). **United States v. Tilford, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,166 (5th Cir. 2016)**.

LIKE-KIND EXCHANGES.The taxpayer owned aircraft which were used by the taxpayer's disregarded entity for business purposes but was also used for the taxpayer's personal use. The aircraft were exchanged for replacement aircraft also used in part for business and in part for personal purposes. An IRS examining agent presented a question as to whether the aircraft could be considered two properties for purposes of I.R.C. § 1031, one property for business use and one property for personal use. In a Chief Counsel Advice letter, the IRS ruled that there was no authority for splitting a piece of property into two properties, one eligible for like-kind exchange treatment and one not. In determining whether the aircraft were held for productive use in a trade or business, the percentage of flights for business use was one factor in making the determination as well as (1) the measurement of business/investment use versus personal use based on flight hours, not just flights; (2) the percentages of business/investment use versus personal use for flights and flight hours for the year before the year of the exchange; and (3) which flights and flight hours were determined to be repositioning flights and the nature of the flight following the repositioning flight. **CCA 201605017, Oct. 19, 2015**.

PARTNERSHIPS

CONVERSION. The taxpayer was a limited partnership owned by a second partnership and was classified as a disregarded entity for tax purposes. The taxpayer also owned an interest in a third limited partnership. A fourth partnership purchased an interest in the third partnership and exchanged that interest for an interest in the taxpayer. This exchange changed the taxpayer to a partnership for tax purposes and merged the third partnership into the taxpayer. The IRS ruled that (1) the taxpayer continued after the merger, (2) no gain or loss was recognized by the partners except to the extent I.R.C. § 752 applied, (3) the holding period and basis of the taxpayer's partners' interests continued after the merger. In addition, the taxpayer's tax year did not close and the taxpayer did not need to obtain a new taxpayer identification number. **Ltr. Rul. 201605004, Oct. 19, 2015**.

ELECTION TO ADJUST BASIS. The taxpayer was an LLC which elected to be taxed as a partnership. The taxpayer did not state why an election under I.R.C. § 754 was available to it but it failed to make the election with its return. The IRS granted the taxpayer an extension of time to file an amended return with the election. **Ltr. Rul. 201605007, Oct. 28, 2015**.

ENTITY CLASSIFICATION. The taxpayer was a non-corporate entity which intended to elect to be treated as a disregarded entity. The taxpayer failed to file a timely filed Form 8832, *Entity Classification Election*. The IRS granted an extension of time to file the Form 8832. **Ltr. Rul. 201505001, Oct. 6, 2015**.

PASSIVE ACTIVITY LOSSES. The taxpayers, husband and wife, owned an S corporation which operated a real

estate company and a C corporation which operated a medical clinic. The husband worked full time for the medical clinic and materially participated in its operation. Neither taxpayer materially participated in the real estate activity and were not engaged in a "real property trade or business" as described in I.R.C. § 469(c)(7)(B), (C). The real estate company leased real property to the C corporation and the taxpayer reported the rental income as passive income on Schedule E. Treas. Reg. § 1.469-2(f)(6) generally recharacterizes as nonpassive the net rental activity income from an item of property if the property is rented for use in a trade or business activity in which the taxpayer materially participates. The taxpayers raised two arguments that the "self-rental" rule did not apply in this case. First, the taxpayer argued that I.R.C. § 469 did not apply to S corporations. The court disagreed, noting that the case law was well settled that I.R.C. § 469 passive loss rules apply to pass-through entity income. The taxpayers also argued that the "self rental" is inapplicable because S corporation, as the lessor, did not participate in the trade or business of the C corporation as lessee. The court held that the application of the rule as to the taxpayers was valid in that the taxpayers received the income from the rental activity and the application of the rule affected the character of that income. The appellate court affirmed in a decision designated as not for publication. **Williams v. Comm'r, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,173 (5th Cir. 2016), *aff'g*, T.C. Memo. 2015-76**.

PENSION PLANS. The IRS has issued a Notice which provides guidance on mid-year changes to a safe harbor plan under I.R.C. §§ 401(k) and 401(m). The Notice provides that a mid-year change either to a safe harbor plan or to a plan's safe harbor does not violate the safe harbor rules merely because it is a mid-year change, provided that applicable notice and election opportunity conditions are satisfied and the mid-year change is not a prohibited mid-year change, as described in the Notice. **Notice 2016-16, I.R.B. 2016-7**.

For plans beginning in February 2016 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 2.86 percent. The 30-year Treasury weighted average is 3.11 percent, and the 90 percent to 105 percent permissible range is 2.80 percent to 3.27 percent. The 24-month average corporate bond segment rates for February 2016, without adjustment by the 25-year average segment rates are: 1.43 percent for the first segment; 3.94 percent for the second segment; and 4.96 percent for the third segment. The 24-month average corporate bond segment rates for February 2016, taking into account the 25-year average segment rates, are: 4.43 percent for the first segment; 5.91 percent for the second segment; and 6.65 percent for the third segment. **Notice 2016-18, I.R.B. 2016-9**.

QUALIFIED TUITION PROGRAMS. The IRS has issued a Notice which provides transition relief for I.R.C. § 529 qualified tuition programs that timely file a 2015 Form 1099-Q, *Payments From Qualified Education Programs (Under Sections 529 and 530)*, that does not reflect the repeal of the aggregation requirement under I.R.C. § 529(c)(3)(D) applicable to distributions from qualified tuition programs. Section 302(b) of the Protecting Americans from Tax Hikes Act of 2015 (the PATH Act), enacted on December 18, 2015, as part of the Consolidated Appropriations Act, 2016 (*Pub. L. 114-113*), repealed I.R.C. § 529(c)(3)(D) effective for distributions made after December 31, 2014. In response to concerns expressed by Section 529 qualified tuition programs about their inability to adjust their systems to retroactively accommodate the new method of calculating the earnings portion of a distribution before the due date of the 2015 Form 1099-Q, the IRS will not impose penalties under I.R.C. § 6693 solely because of a reported earnings computation that does not reflect the repeal of I.R.C. § 529(c)(3)(D). This Notice is limited to 2015 Forms 1099-Q required to be filed by February 29, 2016 (or March 31, 2016, if filed electronically). This Notice does not provide penalty relief for any other failure that would cause a program to be subject to penalties under I.R.C. § 6693 or any penalty under any other provision of the Code. **Notice 2016-13, I.R.B. 2016-7**.

S CORPORATIONS

ELECTION. The taxpayer was a corporation which claimed it had timely filed Form 2553, *Election by a Small Business Corporation* but the IRS had no record of the filing. The IRS granted an extension time to file the For 2553. **Ltr. Rul. 201504006, Aug. 27, 2015**.

SUBSIDIARY. The taxpayer was a corporation which elected to be taxed as an S corporation. The taxpayer owned all of the stock of another S corporation but inadvertently failed to file Form 8869, *Qualified Subchapter S Subsidiary Election* for the subsidary corporation. The IRS granted an extension of time file Form 8869. **Ltr. Rul. 201604011, Oct. 8, 2015**.

TREASURY OFFSET PROGRAM. The taxpayer was 17 years delinquent on a student loan and the IRS withheld an income tax refund which it applied to the student debt. In a *pro se* petition, the taxpayer alleged that the collection on the student debt was barred by a statute of limitations but did not cite any statutory statute of limitations governing student loans. The court noted first that the action required that the Department of Education be a party to the proceeding but held that, even if the Department of Education was a named party, the taxpayer's case would be dismissed because, under 20 U.S.C. § 1091a(a)(2)(D), there is no statute of limitations on the collection of student loans. **McQueen v. Comm'r, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,160 (S.D. Ohio 2016)**.

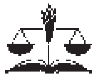
AGRICULTURAL TAX SEMINARS

by Neil E. Harl

See the back page for more information about these seminars. Here are the cities and dates for the seminars in 2016:

May 5-6, 2016 - Quality Inn, Grand Island, NE
June 20-21, 2016 - Indianapolis, IN
August 17-18, 2016 - Holiday Inn, Council Bluffs, IA
August 24-25, 2016 - Quality Inn, Ames, IA
September 15-16, 2016 - Ramkota Hotel, Sioux Falls, SD
September 22-23, 2016 - Holiday Inn, Rock Island, IL
October 11-12, 2016 - Atrium Hotel, Hutchinson, KS

Each seminar will be structured the same as described on the back cover of this issue. More information will be posted on www.agrilawpress.com.



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AGRICULTURAL TAX SEMINARS

by Neil E. Harl

See page 39 above for 2016 cities and dates.

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
- Exchanging partnership assets

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

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