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# CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

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## BANKRUPTCY

### CHAPTER 12

**ELIGIBILITY.** The debtors, husband and wife, had purchased ranch land in Colorado in 1999. In 2007, the debtors purchased another tract of land and obtained a construction loan in order to build a residence. When the construction was completed, the bank refused to convert the loan to a permanent loan and threatened foreclosure. The debtors filed for Chapter 12 and the bank argued that the debtors were not eligible for Chapter 12 because most of their debt was related to the construction of the residence. The Bankruptcy Court, District Court and Bankruptcy Appeals Panel held that the residence had sufficient relationship to the farm for the construction debt to be considered farm debt and to entitle the debtors to use Chapter 12. The courts noted that the residence was located on the farm and contained an office and storage for the farm records. On appeal, the appellate court reversed and remanded the case back to the Bankruptcy Court, holding that the Bankruptcy Court had used the wrong legal standard. The appellate court held that “there must be a direct and substantial connection between the debt for a principal residence” in order for the principal residence debt to be included in the debt arising from the farm operation. The court acknowledged that this test is new. In dicta, the court stated: “To be sure, consistent with this opinion and its factual setting, we are confident that ordinarily the proximity of a farmer’s principal residence to his farming operation—viewed in isolation—will be legally irrelevant to the question of whether the debt ‘for’ that residence ‘arises out of’ a farming operation. Furthermore, standing alone, the mere presence of an office in a farmer’s principal residence ordinarily will not be sufficient to establish that the debt ‘for’ the office portion of that principal residence ‘arises out of’ a farming operation.” *In re Reson Lee Woods*, 2014 U.S. App. LEXIS 2960 (10th Cir. 2014), *rev’g and rem’g*, 465 B.R. 196 (Bankr. 10th Cir. 2012).

## FEDERAL FARM PROGRAMS

No items.

## FEDERAL ESTATE AND GIFT TAXATION

**DISCLAIMER.** The taxpayer was a current beneficiary of an irrevocable trust created in 1977. Under the terms of the trust the trustees have the discretion to make distributions of income, accumulated income and principal to current beneficiaries in event of illness, accident, or other misfortune, or in the event of any emergency, or if in the judgment of the trustees, it is necessary for the comfortable maintenance, support or education of any beneficiary. The taxpayer also had the right to a per stirpital portion of the trust corpus on termination of the trust. The trust was to terminate 20 years after the death of the survivor of the children of the settlor and all descendants living on the date of the creation of the trust. The taxpayer made a written disclaimer of the right to the taxpayer’s portion of the trust principal on termination of the trust. The disclaimer was made within nine months after the taxpayer reached the age of majority. The IRS ruled that the disclaimer was effective for federal estate and gift tax purposes and would not result in any federal gift tax. **Ltr. Rul. 201407009, Nov. 8, 2013.**

**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 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. 201407002, Nov. 4, 2013.**

## FEDERAL INCOME TAXATION

**ALIMONY.** The taxpayer was divorced and, as part of the divorce proceedings, had reached a marital settlement agreement

with the former spouse. The agreement provided for a waiver of any claims for alimony, distribution of marital assets, and a payment from the taxpayer of \$40,000 to the former spouse in further equalization of the distribution of marital assets. The settlement agreement was incorporated into the final divorce order. The taxpayer claimed a deduction for \$40,000 for the payment as alimony. The court held that the payment was not eligible for the alimony deduction because (1) it is designated as an equalization of property distribution, (2) the divorce order includes a waiver of both parties to any alimony claim, and (3) the divorce order states that it shall apply to both parties and their “personal representatives, successors, and assigns for all time;” thus, the payment was payable after the death of the spouse. **McNealy v. Comm’r, T.C. Summary Op. 2014-14.**

**CHILD TAX CREDIT.** The IRS has published information about the Child Tax Credit. If a taxpayer has a child under age 17, the Child Tax Credit may save money at tax-time. *Amount of credit.* The non-refundable Child Tax Credit may help reduce federal income tax by up to \$1,000 for each qualifying child taxpayer claims on a return. *Qualifications.* For this credit, a qualifying child must pass seven tests: (1) *Age test.* The child must have been under age 17 at the end of 2012. (2) *Relationship test.* The child must be the taxpayer’s son, daughter, stepchild, foster child, brother, sister, stepbrother, or stepsister. A child may also be a descendant of any of these individuals, including the taxpayer’s grandchild, niece or nephew. Taxpayers should always treat an adopted child as the taxpayer’s own child. An adopted child includes a child lawfully placed with the taxpayer for legal adoption. (3) *Support test.* The child must not have provided more than half of their own support for the year. (4) *Dependent test.* The taxpayer must claim the child as a dependent on a federal tax return. (5) *Joint return test.* The child cannot file a joint return for the year, unless the only reason they are filing is to claim a refund. (6) *Citizenship test.* The child must be a U.S. citizen, U.S. national or U.S. resident alien. (7) *Residence test.* In most cases, the child must have lived with the taxpayer for more than half of 2012. *Limitations.* The Child Tax Credit is subject to income limitations, and may be reduced or eliminated depending on the taxpayer’s filing status and income. *Additional Child Tax Credit.* If the taxpayer qualifies and gets less than the full Child Tax Credit, the taxpayer could receive a refund even if the taxpayer owes no tax with the refundable Additional Child Tax Credit. *Form 8812.* If the taxpayer qualifies to claim the Child Tax Credit, taxpayers should make sure to check whether the taxpayer must complete and attach the new Form 8812, *Child Tax Credit*, with the return. If the taxpayer qualifies to claim the Additional Child Tax Credit, the taxpayer must complete and attach Schedule 8812. See IRS Publication 972, *Child Tax Credit*, for more details. **IRS Tax Tip 2014-18.**

**CAPITAL GAINS.** The taxpayer filed several *qui tam* actions against a former employer and others for fraud against the Medicare Program. The actions resulted in several recoveries by the government and payments to the taxpayer. The taxpayer reported the payments as capital gains income. The taxpayer argued that in the *qui tam* actions, the taxpayer essentially sold information to the government in exchange for the reward. The court held that the payments were ordinary income because the taxpayer did not own a property interest in the information provided to the government and the government did not pay a set fee for the information. **Patrick**

**v. Comm’r, 142 T.C. No. 5 (2014).**

**CAPITAL LOSSES.** The taxpayer was employed full time as an engineer but also engaged in sporadic trading of securities. Although the taxpayer reported the gains and losses as capital gains and losses for 12 tax years, the taxpayer changed the reporting to ordinary gains and losses after learning about the possibility of the reporting rules for securities traders. The taxpayer also made a late election to use the marked-to-market method of accounting for the securities. The court held that the taxpayer did not qualify as a trader under I.R.C. § 475(f) because (1) the taxpayer did not make trades on a frequent and consistent basis, (2) the taxpayer did not make a substantial number of trades in a given year, and (3) the value of the trades was not substantial. The court found that the taxpayer’s trading activities did not rise to the status of a trade or business because the trading activity did not attempt to capture the swings in the daily market; therefore, the trades produced capital gains and losses. **Assaderaghi v. Comm’r, T.C. Memo. 2014-33.**

**DEPRECIATION.** The IRS has issued tables detailing the (1) limitations on depreciation deductions for owners of passenger automobiles (and for trucks and vans) first placed in service during calendar year 2014 and (2) the amounts to be included in income by lessees of passenger automobiles first leased during calendar year 2014.

For passenger automobiles placed in service in 2014 the depreciation limitations are as follows:

<u>Tax Year</u>	<u>Amount</u>
1st tax year.....	\$3,160
2d tax year .....	5,100
3d tax year .....	3,050
Each succeeding year .....	1,875

For trucks and vans placed in service in 2014 the depreciation limitations are as follows:

<u>Tax Year</u>	<u>Amount</u>
1st tax year.....	\$3,460
2d tax year .....	5,500
3d tax year .....	3,350
Each succeeding year .....	1,975

For leased passenger automobiles, I.R.C. § 280F(c) requires a reduction in the deduction allowed to the lessee of the passenger automobile. The reduction must be substantially equivalent to the limitations on the depreciation deductions imposed on owners of passenger automobiles. Under Treas. Reg. § 1.280F-7(a), this reduction requires a lessee to include in gross income an inclusion amount determined by applying a formula to the amount obtained from tables included in the revenue procedure. Each table shows inclusion amounts for a range of fair market values for each taxable year after the passenger automobile is first leased. **Rev. Proc. 2014-21, I.R.B. 2014-11.**

The IRS has issued a revenue procedure which modifies *Rev. Proc. 2012-20, 2012-1 C.B. 700* and sets forth procedures by which a taxpayer may obtain the automatic consent of the Commissioner to change the taxpayer’s method of accounting provided in Temp. Treas. Reg. §§ 1.167(a)-4T, 1.168(i)-1T, 1.168(i)-7T, and 1.168(i)-8T for taxable years beginning on or after January 1, 2012. This change applies to a taxpayer who wants to change its methods of accounting to comply with Temp. Treas. Reg. § 1.167(a)-4T for MACRS property and certain depreciable

intangible assets that the taxpayer placed in service after December 31, 1986, or with Temp. Treas. Reg. § 1.168(i)-1T, § 1.168(i)-7T, or § 1.168(i)-8T for MACRS property. The revenue procedure also modifies *Rev. Proc. 2011-14, 2011-1 C.B. 330* to allow a late partial disposition election under Prop. Treas. Reg. § 1.168(i)-8 or a revocation of a general asset account election under Prop. Treas. Reg. § 1.168(i)-1T or Prop. Reg. § 1.168(i)-1 to be treated as a change in method of accounting for a limited period of time. **Rev. Proc. 2014-17, I.R.B. 2014-12.**

The taxpayer was a corporation which timely filed consolidated federal income tax returns for three years. Taxpayer did not claim the additional first year depreciation deduction under I.R.C. §§ 168(k)(1) or (k)(5) for all classes of qualified property placed in service during the three tax years. However, the taxpayer inadvertently failed to attach the election statement not to deduct the additional first year depreciation for such property to the consolidated federal income tax returns for either year. The taxpayer did not make the election under I.R.C. § 168(k)(4) to accelerate alternative minimum tax credits in lieu of the additional first year depreciation deduction with respect to its extension property as defined in I.R.C. § 168(k)(4)(H)(iii) or its round two extension property as defined in I.R.C. § 168(k)(4)(I)(iv). The IRS granted the taxpayer an extension of time to file an amended return with the statement making the election out of the additional first-year depreciation. **Ltr. Rul. 201408016, Nov. 19, 2013.**

**DISCHARGE OF INDEBTEDNESS.** The taxpayer forfeited title to rental properties to the lender in a foreclosure transaction. The lender issued Form 1099-C, *Cancellation of Debt*, to the taxpayer reflecting cancellation of recourse debt. The taxpayer represented that the taxpayer was insolvent at the time of the foreclosure transaction and that the amount of the taxpayer's insolvency exceeded the amount of debt cancelled. A CPA prepared the taxpayer's federal income tax return and properly reported the taxpayer's cancellation of indebtedness income on Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*, as income excluded from the insolvency exception under I.R.C. § 108(a)(1)(B) but did not complete Part II of Form 982, which requires reduction of tax attributes. Further, the CPA failed to advise the taxpayer to make the election on Line 5 of Part II to reduce the basis of depreciable property prior to reducing net operating losses. The IRS initiated an examination of the taxpayer's federal income tax return and the CPA and the taxpayer discovered the failures to complete Form 982 and make a timely I.R.C. § 108(b)(5) election. The IRS granted a 45 day extension for the taxpayer to file an amended return with the election. **Ltr. Rul. 201408007, Nov. 14, 2013.**

**FOREIGN ACCOUNTS.** The Treasury Department and the Internal Revenue Service have issued the final packages of regulations for implementing the Foreign Account Tax Compliance Act (FATCA). Enacted by Congress in 2010, the law targets non-compliance by U.S. taxpayers using foreign accounts. The regulations lay out a step-by-step process for U.S. account identification, information reporting, and withholding requirements for foreign financial institutions (FFIs), other foreign entities, and U.S. withholding agents. The regulations implement FATCA's obligations in stages to minimize burdens and costs

consistent with achieving the statute's compliance objectives. The rules and implementation schedule are also adjusted to allow time for resolving local law limitations to which some FFIs may be subject. FATCA was enacted in 2010 by Congress as part of the Hiring Incentives to Restore Employment (HIRE) Act. FATCA requires FFIs to report to the IRS information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. See Harl, "Reporting Foreign Accounts and Funds and Foreign Assets," 23 *Agric. L. Dig.* 121 (2012). **T.D. 9657; T.D. 9658.**

**HEALTH INSURANCE.** The IRS has created an online Health Care Tax Tips service on the IRS web page to help taxpayers understand what they need to know for the federal individual income tax returns they are filing this year, as well as for future tax returns about the Premium Tax Credit and making health care coverage choices. The online service includes information on (1) how health care choices taxpayers make for 2014 may affect their taxes; information about getting health care coverage through the Health Insurance Marketplace; (3) information about the basics of the Premium Tax Credit, including who might be eligible and how to get the credit; (4) information about types of qualifying coverage, exemptions from having coverage, and making a payment if a taxpayer does not have qualifying coverage or an exemption; (5) tips that help with filing the 2013 tax return, including information about employment status, tax favored health plans and itemized deductions; (6) basic tips to help people determine if the Affordable Care Act affects them and their families, and where to find more information; and (7) the importance of reporting any changes in circumstances that involve family size or income when advance payments of the Premium Tax Credit are involved. In addition to Health Care Tax Tips, the IRS.gov/aca website offers informative flyers and brochures, Frequently Asked Questions and in-depth legal guidance regarding the tax provisions of the Affordable Care Act. **IR-2014-19.**

The IRS has published information about the health care insurance requirements starting in 2014. A taxpayer must choose to either have basic health insurance coverage (known as minimum essential coverage) for the taxpayer and everyone in the taxpayer's family for each month or go without health care coverage for some or all of the year. If a taxpayer does not maintain health insurance coverage, the taxpayer will need to either seek an exemption or make an individual shared responsibility payment for the period that the taxpayer is not covered with the 2014 income tax return filed in 2015. If a taxpayer chooses to have health care coverage, qualifying coverage includes: (1) health insurance coverage provided by the taxpayer's employer (including COBRA and retiree coverage), (2) health insurance coverage the taxpayer purchases through a Marketplace, (3) Medicare, Medicaid or other government-sponsored health coverage including programs for veterans, or (4) coverage the taxpayer buys directly from an insurance company. If a taxpayer purchases health insurance coverage through the Marketplace, the taxpayer may be eligible for financial assistance including the premium tax credit, which will help lower the out-of-pocket cost of the monthly insurance premiums. Qualifying coverage does not include certain coverage that may provide limited benefits, such as coverage only for vision care or dental care, workers' compensation, or coverage only

for a specific disease or condition. If a taxpayer chooses to go without coverage or experience a gap in coverage, the taxpayer may qualify for an exemption if the taxpayer does not have access to affordable coverage, the taxpayer has a gap of less than three consecutive months without coverage, or the taxpayer qualifies for one of several other exemptions. A special hardship exemption applies to individuals who purchase their insurance through the Marketplace during the initial enrollment period but due to the enrollment process have a coverage gap at the beginning of 2014. If a taxpayer (or any of the taxpayer's dependents) do not maintain coverage and do not qualify for an exemption, the taxpayer will need to make an individual shared responsibility payment with the taxpayer's return. In general, the payment amount is either a percentage of the taxpayer's household income or a flat dollar amount, whichever is greater. A taxpayer will owe 1/12th of the annual payment for each month the taxpayer (or dependents) do not have coverage and are not exempt. The annual payment amount for 2014 is the greater of (1) 1 percent of the household income that is above the tax return filing threshold for the taxpayer's filing status, such as Married Filing Jointly or single, or the flat dollar amount, which is \$95 per adult and \$47.50 per child, limited to a maximum of \$285. The individual shared responsibility payment is capped at the cost of the national average premium for the bronze level health plan available through the Marketplace in 2014. Taxpayers will make the payment when they file their 2014 federal income tax return in 2015. For more information about the individual shared responsibility provision and the premium tax credit, visit [IRS.gov/aca](http://IRS.gov/aca). Visit the Department of Health and Human Services at [HealthCare.gov](http://HealthCare.gov) for more information about health insurance coverage options and the Health Insurance Marketplace, financial assistance and exemptions. **Health Care Tax Tip, HC-TT-2014-01.**

**IRA.** The taxpayer was single and was employed at two companies, one for the first half of the year and the other during the second half of the year. The first employer did not provide a qualified retirement plan but the second employer did, and the taxpayer made contributions to the retirement plan. The taxpayer also contributed to the taxpayer's personal IRA and claimed the contribution as an IRA deduction. The taxpayer total wage income was \$86,532. The court held that the taxpayer was not entitled to an IRA deduction because the taxpayer was enrolled in an employer's qualified retirement plan and had adjusted gross income greater than \$53,000, the phase-out point for single taxpayers. **Hurd v. Comm'r, T.C. Summary Op. 2014-17.**

**INNOCENT SPOUSE RELIEF.** The taxpayer and former spouse had filed joint income tax returns prepared by the taxpayer when the couple was married. One of the returns failed to include commissions earned by the former spouse and the taxpayer sought innocent spouse relief from payment of the taxes owed on the unreported commissions. The court examined only equitable spouse relief because the taxpayer had prepared the return involved. The court examined the seven factors and held that relief was granted because the couple was no longer married, the amount of tax owed was too small to benefit the taxpayer, and the taxpayer had since complied with all tax laws. The only factor which weighed against relief was that the taxpayer had knowledge of the unreported commissions. **Howerter v. Comm'r, T.C. Summary Op. 2014-15.**

**LIMITED LIABILITY COMPANIES.** The taxpayer was originally formed as a corporation but converted to a limited liability company. The taxpayer intended to elect to be taxed as a corporation but failed to timely file Form 8832, *Entity Classification*. The IRS granted the taxpayer an extension of time to file Form 8832. **Ltr. Rul. 201408013, Oct. 31, 2013.**

**PASSIVE ACTIVITY LOSSES.** The taxpayers, husband and wife, owned six residential properties, five of which they rented out during 2009 and one of which they used as their residence. The properties were all purchased in poor condition and the taxpayers spent personal hours renovating each property before renting it. The renovations in 2009 for the sixth property were carried out while the taxpayers lived in it. In 2011, the taxpayers created a log of activities spent on the properties in 2009 but did not provide any supporting evidence to substantiate the activities. The log identified a few hours spent on the rented properties but claimed over 1,000 hours spent renovating the taxpayers' residence. The taxpayers argued that this time should be included in the hours spent on the rental activities because the taxpayers intended to move out and rent the property when the renovations were completed. The court held that the taxpayers did not meet the requirements of I.R.C. § 469(c)(7)(B) because the 2011-created log did not properly substantiate the taxpayers' hours spent on the rent activities and the time spent on renovating the residence could not be included because the residence was used for personal purposes. **Smith v. Comm'r, T.C. Summary Op. 2014-13.**

**PENALTIES.** The taxpayer participated in several partnerships which were determined to be shams for lack of economic substance and, because there were no valid partnerships for tax purposes, the IRS determined that the partners could not claim a basis for their partnership interests greater than zero and that any resulting tax under payments would be subject to a 40-percent penalty for gross valuation misstatements. The taxpayer argued, and the District Court and Fifth Circuit Court of Appeals agreed, that the gross valuation penalty could not be imposed in a partnership-level proceeding. The U.S. Supreme Court reversed, holding that the improper claim of basis in the partnership interests in sham partnerships could give rise to a gross valuation misstatement and that the District Court had jurisdiction to assess the penalty. **United States v. Woods, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,604 (U.S. 2013), rev'g, 20-12-2 U.S. Tax Cas. (CCH) ¶ 50,657 (5th Cir. 2012).** The Fifth Circuit Court of Appeals has vacated and remanded the following case for review in light of the holding in *United States v. Wood*. **Nevada Partners Fund, L.L.C. v. United States, 720 F.3d 594 (5th Cir. 2013), vac'd and rem'd, Nevada Partners Fund, LLC v. United States, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,191 (5th Cir. 2014).**

**RETURNS.** The IRS has published guidance for employed taxpayers who do not receive a Form W-2 from their employer. (1) *Contact the employer first.* Taxpayers should ask their employer – or former employer – to send a Form W-2 if it has not already been sent. Make sure the employer has the taxpayer's correct address. (2) *Contact the IRS.* After February 14, a taxpayer may call the IRS at 800-829-1040 if the taxpayer has not yet received a Form W-2. The taxpayer should be prepared to provide name, address, Social Security number and phone number. Taxpayers should also have the following information when they call: the employer's

name, address and phone number; the taxpayer's employment dates; and an estimate of the taxpayer's wages and federal income tax withheld in 2013, based upon the taxpayer's final pay stub or leave-and-earnings statement, if available. (3) *File the income tax return on time.* Taxpayers should still file their tax return on or before April 15, 2014, even if they have not yet received their Form W-2. Taxpayers should file Form 4852, *Substitute for Form W-2, Wage and Tax Statement*, in place of the Form W-2. Taxpayers should use the form to estimate their income and withholding taxes as accurately as possible. The IRS may delay processing the return while it verifies the information on the Form 4852. If a taxpayer needs more time to file, the taxpayer can get a six-month extension of time by filing Form 4868, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return*. If a taxpayer is requesting an extension, the taxpayer must file this form on or before April 15, 2014. If a taxpayer receives the missing W-2 after filing the tax return and the information on the W-2 is different from what the taxpayer reported using Form 4852, then the taxpayer must correct the tax return by filing Form 1040X, *Amended U.S. Individual Income Tax Return* to amend the tax return. **IRS Tax Tip 2014-17.**

#### SAFE HARBOR INTEREST RATES

##### March 2014

	Annual	Semi-annual	Quarterly	Monthly
<b>Short-term</b>				
<b>AFR</b>	0.28	0.28	0.28	0.28
110 percent AFR	0.31	0.31	0.31	0.31
120 percent AFR	0.34	0.34	0.34	0.34
<b>Mid-term</b>				
<b>AFR</b>	1.84	1.83	1.83	1.82
110 percent AFR	2.02	2.01	2.00	2.00
120 percent AFR	2.21	2.20	2.19	2.19
<b>Long-term</b>				
<b>AFR</b>	3.36	3.33	3.32	3.31
110 percent AFR	3.69	3.66	3.64	3.63
120 percent AFR	4.04	4.00	3.98	3.97

**Rev. Rul. 2014-8, I.R.B. 2014-11.**

**TIP INCOME.** The IRS has published information on the taxation of tips. *Tips are taxable.* Taxpayers must pay federal income tax on any tips they receive. The value of non-cash tips, such as tickets, passes or other items of value are also subject to income tax. *Include all tips on the income tax return.* Taxpayers must include the total of all tips received during the year on their income tax return. This includes tips directly from customers, tips added to credit cards and the taxpayer's share of tips received under a tip-splitting agreement with other employees. *Report tips to the employer.* If a taxpayer receives \$20 or more in tips in any one month, from any one job, the taxpayer must report the tips for that month to the taxpayer's employer. The report should only include cash, check, debit and credit card tips the taxpayer received. The taxpayer's employer is required to withhold federal income, Social Security and Medicare taxes on the reported tips. Taxpayers should not report the value of any noncash tips to their employer. Use Publication 1244, *Employee's Daily Record of Tips and Report to Employer*, to keep a daily log of tips. For more information, see Publication 1244 or Publication 531, *Reporting Tip Income*. **IRS Tax Tip 2014-16.**

**WAGES-IN-KIND.** The IRS has adopted as final regulations relating to property transferred in connection with the performance of services under I.R.C. § 83. I.R.C. § 83 addresses the tax consequences

of the transfer of property in connection with the performance of services. The final regulations provide several clarifications regarding whether a substantial risk of forfeiture exists in connection with property subject to section 83. Specifically, the final regulations clarify that (1) except as specifically provided in I.R.C. § 83(c)(3) and Treas. Reg. §§ 1.83-3(j) and (k), a substantial risk of forfeiture may be established only through a service condition or a condition related to the purpose of the transfer, (2) in determining whether a substantial risk of forfeiture exists based on a condition related to the purpose of the transfer, both the likelihood that the forfeiture event will occur and the likelihood that the forfeiture will be enforced must be considered, and (3) except as specifically provided in I.R.C. § 83(c)(3) and Treas. Reg. §§ 1.83-3(j) and (k), transfer restrictions do not create a substantial risk of forfeiture, including transfer restrictions that carry the potential for forfeiture or disgorgement of some or all of the property, or other penalties, if the restriction is violated. **79 Fed. Reg. 10663 (Feb. 26, 2014).**

## IN THE NEWS

**GRAIN STORAGE.** "Under pressure from lawmakers in the Senate and House, OSHA has agreed to withdraw its 2011 guidance memorandum on regulating small farms with grain storage. That instructional memorandum was viewed as violating a long-standing congressional prohibition on OSHA regulation of small farms and as a potentially costly burden on more than 300,000 farms in the United States with on-farm grain storage. . . . The OSHA withdrawal of its June 2011 directive follows its acknowledgement in January 2014 that small farms with grain storage facilities are exempt from the OSHA regulations." **Mississippi Business Journal, Feb. 13, 2014.**

## AGRICULTURAL TAX SEMINARS

by Neil E. Harl

On the back cover, we list the agricultural tax seminars coming up in the spring of 2014. Here are the cities and tentative dates for the seminars later this summer and fall 2014:

**June 23-24, 2014** - Parke Regency, Bloomington, IL

**June 25-26, 2014** - Hilton Garden Inn, Indianapolis, IN

**August 25-26, 2014** - Quality Inn, Ames, IA

**August 27-28, 2014** - Holiday Inn, Council Bluffs, IA

**September 4-5, 2014** - Hotel TBA, Moravia, IA

**September 15-16, 2014** - Hotel TBA, Moorhead, MN

**September 18-19, 2014** - Hotel TBA, Sioux Falls, SD

**October 2-3, 2014**, Hotel TBA, Rock Island, IL

**October 6-7, 2014** - Clarion Inn, Mason City, IA

**October 13-14, 2014** - Hotel TBA, Hutchinson or Wichita, KS

**November 24-25, 2014** - Adam's State Univ., Alamosa, CO

Each seminar will be structured the same as the seminars listed on the back cover of this issue. More information will be posted on [www.agrilawpress.com](http://www.agrilawpress.com) and in future issues of the *Digest*.



# AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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, with separate pricing for each combination. 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 is offered for attendees who elect to receive the manuals in PDF format only. E-mail [robert@agrilawpress.com](mailto:robert@agrilawpress.com) for a brochure.

**April 28-29, 2014, Springfield, MO, Doubletree Hotel, 2431 N. Glenstone Ave., Springfield, MO ph. 417-831-3131**

**May 5-6, 2014, Grand Island, NE, Quality Inn & Conference Center, 7838 S. Highway 281, Grand Island, NE ph. 308-384-7770**

**May 29-30, 2013, Hilton Garden Inn Denver Airport, 16475 E. 40th Circle, Aurora, CO, ph. 303-371-9393.**

See page 39 for the other 2014 seminars' dates and cities .

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
- 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

- 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
- Corporations
- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization
- Entity Sales
- Stock redemptions
- 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
- Leasing land to family entity
- 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.

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