Rev. Proc. 2014-54[11] goes on to state that a taxpayer (including a qualified taxpayer (referred to as a "qualifying taxpayer") must attach to Form 3115 (a) a statement with a description of the assets to which the change applies (e.g., "all 5-year property placed in service in 2009 in Holmdel, New Jersey," (b) a statement attached to the Form 3115 a description of the general asset account to which the change applies, (c) a statement that the taxpayer agrees to specified additional terms and conditions of the relevant statutes involved and (d) a statement that the election made ". . . is irrevocable and will be binding on the taxpayer for computing taxable income for the year of change and for all subsequent years with respect to the assets that are subject to the election."

In conclusion

It is clear that compliance with the final regulations,[12] *Rev. Proc. 2014-16*[13] and *Rev. Proc. 2014-54*[14] is a not an insignificant task, especially the first time through the procedure. One wonders if all of this complexity is justified in light of – (1) the trend to allow a write-off of a substantial part of the income tax basis in the first year, with the trend toward minimizing depreciation; and (2) the taxpayer and tax practitioner time necessary to comply fully with the published authorities.

ENDNOTES

[1] T.D. 9636, Sept. 13, 2013, 2013-2 C.B. 331, corrected July 18, 2014.

[2] T.D. 9564, Dec. 23, 2011, 2012-2 C.B. 614, corrected March 28, 2012 and Dec. 19, 2012.

[3] T.D. 9564, Dec. 23, 2011, 2012-2 C.B. 614, corrected March 28, 2012 and Dec. 19, 2012.

[4] See generally, Harl, "Temporary Regulations on Repairs, Depreciation and Capitalization," 23 *Agric. L. Dig.* 41 (2012).

[5] See the Preamble to T.D. 9636, Sept. 13, 2013, 2013-2 C.B. 331, under the heading of "Explanation of Provisions," section VI(D)(2)(E), for a brief discussion of a "safe harbor" for small taxpayers. Note that Preambles merely provide an explanation of what is in the regulations and have no legal status. In the last paragraph under (E) mention is made of a safe harbor for building property held by "small taxpayers" but there is no mention of a definition for "small taxpayer" and the language mentions only "buildings." It does allude to a tax return filing rather than a Form 3115 filing but in the context only for "buildings."

[6] 2014-1 C.B. 606.

[7] 2014-2 C.B. 675 (which is 62 pages in length).

[8] 2014-1 C.B. 606.

[9] 2014-2 C.B. 675.

[10] 2014-2 C.B. 675.

[11] 2014-2 C.B. 675.

[12] T.D. 9636, Sept. 13, 2013, 2013-2 C.B. 331, *corrected* July 18, 2014.

[13] 2014-1 C.B. 606.

[14] 2014-2 C.B. 675.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

HORSES. The plaintiff was injured when the plaintiff's motorcycle struck a horse owned by the defendant. The plaintiff sought recovery in negligence by the defendant for failing to secure the horse. The trial jury awarded medical damages to the plaintiff but reduced the award by 49 percent for contributory negligence. The plaintiff appealed, arguing that the jury instruction on contributory negligence should not have been given and that the award was inadequate. The appellate court first noted that drivers have a duty to keep a proper lookout. The court noted that there was substantial evidence that other motorcyclists riding with the plaintiff saw the horse, and other loose horses, and were able to avoid them. Finally, the court pointed to evidence that the plaintiff had visited several bars during the day while traveling with the group of motorcyclists. All this evidence was sufficient to give the contributory negligence instruction to the jury which was responsible for weighing the evidence to determine whether the plaintiff's actions contributed to the accident; therefore, the jury instruction and final determination were within the range findings from the evidence presented. The plaintiff also argued that the damage award was inadequate because it provided no compensation for pain and suffering. The appellate court noted that the evidence showed that the plaintiff left the scene prior to the arrival of medical help, did not seek treatment until the next day and did not complete physical therapy recommended by a doctor. The appellate court held that such evidence was sufficient for the jury to determine that there was no more than *de minimis* or no pain and suffering. **Macias v. Bader, 2014 Neb. App. LEXIS 206 (Neb. Ct. App. 2014)**.

The plaintiff sought to purchase a horse from one of the defendants. The plaintiff visited the horse at the defendant trainer's stable. The plaintiff was told that the horse required an experienced rider and the plaintiff told the trainer that the plaintiff was an experienced rider. The plaintiff wanted to ride the horse and the trainer suggested that the plaintiff remove the riding spurs the plaintiff was wearing but the plaintiff refused. In attempting to mount the horse, the horse spun and threw the plaintiff off. The horse was exercised a bit and the plaintiff removed the spurs. However, when the plaintiff mounted the horse, the horse immediately bucked the plaintiff off, resulting injuries. The trial court granted summary judgment to the defendants based on the immunity granted by the Ohio Equine Liability Law, Ohio Rev. Stat. § 2305.321 *et seq*. On appeal, the plaintiff argued that the exception provided in Ohio Rev. Stat. § 2305.321(B)(2)(d) applied because the trainer exhibited wanton misconduct in that (1) the trainer had not ridden, lunged or tuned the horse out for normal exercise on the day of the incident, (2) it was normal to turn the horse out to pasture for exercise approximately five to six hours per day, (3) the trainer knew very little if anything about the plaintiff's riding ability, (4) any information the trainer might have obtained would probably have had no bearing on her allowing the plaintiff to get up on the horse, (5) the trainer allowed the plaintiff to get up on the horse after the plaintiff had fallen or been thrown off the horse once and (6) the trainer allowed the plaintiff to continue riding the horse without intervening even after the trainer claimed to have seen the plaintiff "off balance [and] not having a good seat." The court upheld the summary judgment because the trainer had given the plaintiff the information about the exercise status of the horse, the plaintiff refused to exercise the horse before attempting to ride, the plaintiff was asked to remove the spurs and did not comply, the defendant did exercise the horse after the first incident, and the plaintiff was aware of the risks of riding an unknown horse. **Dennis v. Nickajack Farms, Ltd., 2014 Ohio App. LEXIS 5305 (Ohio Ct. App. 2014)**.

BANKRUPTCY

FEDERAL TAX

DISCHARGE. The debtors, husband and wife, had filed a Chapter 7 case in October 2010 and the debtors received a discharge in February 2011. The debtors had outstanding federal tax liabilities for 2000 and 2001 for which the debtors had untimely filed Forms 1040 in May 2005 after being assessed the taxes in November 2004. The issue was whether the May 2005 Forms 1040 constituted a return for purposes of Section 523(a)(1)(B)(i), allowing the discharge of the taxes reported. The Bankruptcy Court ruled that a document is a "return" for purposes of Section 523(a)(1)(B)(i) if the document complies with "applicable filing requirements" concerning the form and contents of a return, the place and manner of filing, and the types or classifications of taxpayers that are required to file returns, and if it otherwise complies with requirements of nonbankruptcy law. The Bankruptcy Court rejected the IRS argument, that timeliness was also an essential "applicable filing requirement;" therefore, the May 2005 Forms 1040 were returns for purposes of Section 523(a)(1)(B)(i) and the taxes properly reported therein were dischargeable. On appeal, the District Court reversed, holding that the untimely filed returns were not "returns" for purposes of Section 523(a)(1)(B)(i) because the filing of the returns served no purpose since the IRS had already filed assessments in November 2004. On further appeal, the appellate court affirmed. ***In re* Mallo, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,129 (10th Cir. 2014), *aff'g*, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,628 (D.C. Colo. 2013), *rev'g*, 2012-2 U.S. Tax Cas. (CCH) ¶ 50,674 (Bankr. D. Colo. 2012).**

CONTRACTS

RESTRAINING ORDER. The plaintiffs entered into oral contracts for the operation of their horse breeding business by the defendants for three years while the plaintiffs were working outside the United States. The plaintiffs filed suit alleging that the defendants materially breached those oral contracts by botching sales, advertising, and breeding contracts, failing to adequately care for the horses, and diverting business to other horses. The complaint also alleged tortious interference with advantageous business relationships or prospective economic relations and violations of the Michigan Usury Act. Additionally, an accounting was requested because the parties dispute the amount of money the plaintiffs owe for the defendants' boarding and other services. Before the plaintiffs could serve the complaint on the defendants, the defendants planned a sheriff's sale of all the horses, worth over $600,000, to cover $26,000 of costs claimed to be owed. The plaintiffs sought a temporary restraining order to prevent the sale. The court granted the restraining order because (1) the sale would cause irreparable harm to the plaintiffs, (2) the restraining order would not significantly harm the defendants, (3) there is a strong public interest in enforcing valid contracts and fair treatment of animals, and (4) the plaintiffs had demonstrated a likelihood of success of their claims, although subject to claims of the defendants. **Auld MacDonald Farms Arabians v. Twin Creek Farms, 2014 U.S. Dist. LEXIS 178636 (W.D. Mich. 2014)**.

FEDERAL FARM PROGRAMS

FARM LOANS. The FSA has adopted as final regulations amending the Farm Loan Programs (FLP) loan making and servicing regulations to reflect several changes required by the 2014 Farm Bill. The changes were implemented administratively upon the passage of the 2014 Farm Bill; this rule makes conforming amendments in the FSA regulations. The changes include: increasing the percent of guarantee for conservation loans; reducing the interest rate for direct Farm Ownership (FO) loans made under a joint financing arrangement; eliminating the oil, gas, and mineral appraisal requirement; increasing the maximum loan amount for a direct FO loan made under the downpayment program; eliminating the rural residency requirement for the rural youth loans (YL); allowing a borrower who had YL debt forgiveness to receive future government loans under certain circumstances; excluding microloans (ML) to beginning or veteran farmers from the existing operating loans (OL) term limitations, and add a special ML interest rate available to beginning and veteran farmers; eliminating the term limit for guaranteed OLs; and amending the definition of a beginning farmer, increasing the maximum owned acreage requirement. **79 Fed. Reg. 78689 (Dec. 31, 2014)**.

LIVESTOCK MARKETING FACILITIES. The APHIS has issued proposed regulations amending the regulations governing approval of facilities that receive livestock moved in interstate commerce. The proposed regulations include several amendments to the conditions under which livestock may move to such facilities without official identification or prior issuance of an interstate certificate of veterinary inspection or alternative documentation. **80 Fed. Reg. 6 (Jan. 2, 2015)**.

MARKETING ASSISTANCE LOANS. The FSA has adopted as final regulations required by the 2014 Farm Bill to update the Marketing Assistance Loan (MAL) and Loan Deficiency Payments (LDP) Programs for wheat, feed grains, soybeans, oilseeds, peanuts, pulse crops, cotton, honey, wool and mohair. In general, the 2014 Farm Bill extends the existing programs with minor changes that are implemented in this rule, including a revised formula for upland cotton loan rates. The final rules also amend the regulations for the Economic Adjustment Assistance for Users of Upland Cotton Program, the Extra Long Staple (ELS) Cotton Competitiveness Payment Program, and the Sugar Program to reflect that the programs were extended by the 2014 Farm Bill. **80 Fed. Reg. 113 (Jan. 2, 2015)**.

FEDERAL ESTATE AND GIFT TAXATION

FAILURE TO TIMELY FILE RETURN. The decedent died in December 2008 and the taxpayer was appointed executor. The taxpayer hired an attorney to assist with administration of the estate who failed to tell the taxpayer that the attorney was suffering from brain cancer at the time. Although the taxpayer knew that an estate tax return was due by September 30, 2009, the return was not filed until January 2011 and the IRS assessed a late-filing penalty under I.R.C. § 6651(a)(1) and for late payment of the taxes under I.R.C. § 6651(a)(2). The taxpayer presented evidence that the attorney suffered from an unknown disabling medical condition and that the attorney was disbarred for failing to properly advise the taxpayer and timely carry out the attorney's duties. The taxpayer argued that the use of the attorney constituted reasonable cause and lack of willful neglect in failing to timely file and pay the taxes. The taxpayer also argued that the failure to meet the tax filing and payment deadlines resulted from circumstances largely beyond the taxpayer's control, the court held that there was no evidence to support a finding that the taxpayer was an executor without the ability to control whether the deadline was met. The court held that reliance on counsel alone cannot constitute reasonable cause for the late filing and payment of taxes. On the willful neglect issue the court defined willful neglect as "a conscious, intentional failure or reckless indifference." However, the court also held that mere carelessness is enough for an executor to be subject to the late filing and tax payment penalties. The evidence showed that the taxpayer had received several notices from the state and federal agencies that tax returns and other probate filings were overdue, notices from family members as to the attorney's incompetence, and warnings from other legal counsel of the need to find new representation. Thus, the court held that the taxpayer was well aware of the deadlines for return filings and tax payment and the failure to act on those deadlines constituted willful neglect and subjected the estate to the assessed penalties. **Specht v. United States, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,134 (S.D. Ohio 2015)**.

FEDERAL INCOME TAXATION

AMERICAN OPPORTUNITY CREDIT. The taxpayer s, husband and wife, owned an I.R.C. § 529 education plan for their child. The child enrolled in a community college in the fall of 2010. In December 2010, the taxpayers paid the tuition for the Spring 2011 semester from the Section 529 account. The taxpayers claimed the American Opportunity Credit for the tuition payment on their 2011 return. The taxpayers used cash method reporting on their joint 2011 return. The court ruled that I.R.C. § 25A(g)(4) contemplates the scenario where, as here, a taxpayer prepays qualified tuition and related expenses during one taxable year for an academic period that begins during the first three months of the following taxable year. In that instance, I.R.C. § 25A(g)(4) provides that the academic period is treated as beginning during the taxable year in which payment was made. This provision therefore requires taxpayers to claim the credit with respect to the taxable year that the expenses were paid when the academic period begins in January, February, or March of the following year. Therefore, the court held that the taxpayers could not claim the tuition expenses paid in December 2010 on their 2011 return. **Ferm v. Comm'r, T.C. Summary Op. 2014-115**.

BUSINESS EXPENSES. The taxpayer was a lawyer who purchased a small airplane to travel for business and personal purposes. The taxpayer used the airplane for relatively short trips instead of a car to avoid traffic in the city. The taxpayer kept a written log of all flights, some of which were used for training flights and some for maintenance flights. The court allowed deductions for the costs of operating the airplane to the extent the taxpayer demonstrated a business purpose for the flights. However, because the business use of the plane did not exceed the personal use of the plane, the court held that the taxpayer was properly denied expense method depreciation for the plane. **Peterson v. Comm'r, T.C. Memo. 2015-1**.

CHARITABLE DEDUCTION. The taxpayer and spouse purchase 456 acres of ranchland and granted a conservation easement over 180 acres of the property in 2003. The land was subject to a deed of trust securing an installment agreement of the purchase of the land. A subordination agreement was signed by the note holder in 2005. The IRS denied a charitable deduction for the easement, arguing that the easement was not granted in perpetuity at the time of the grant because the subordination agreement was not signed in the year of the grant of the easement. The taxpayer argued that the chance of a foreclosure of the mortgage was so remote as to be negligible; therefore, the grant was enforceable in perpetuity. The taxpayer argued that the subordination agreement was not required if the chance of a foreclosure of the mortgage was so remote as to be negligible. The court held that both requirements of Treas. Reg. § 1.170A-14(g)(2), (3) needed to be met in order for the easement to be granted in perpetuity sufficient for eligibility for a charitable deduction. The appellate court affirmed. **Mitchell v. Comm'r, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,130 (10th Cir. 2015), *aff'g*, 138 T.C. 324 (2012)**.

CORPORATIONS

DISREGARDED ENTITIES. The taxpayer was a foreign owned subsidiary of a U.S. corporation and intended to elect to be treated as a disregarded entity. The taxpayer failed to timely file a valid Form 8832, *Entity Classification Election*, to elect to be treated as a disregarded entity for federal tax purposes. The IRS granted an extension of time to file the Form 8832. **Ltr. Rul. 201501001, Aug. 20, 2014**.

DEPLETION. The taxpayer was employed by an oil company to purchase oil and gas rights to real property. A portion of the taxpayer's compensation came from bonuses calculated as a percentage of the net income from the oil and gas properties purchased by the taxpayer for the company. The taxpayer initially reported the bonus income as ordinary income but filed amended returns claiming the bonuses as capital gains and depletion deductions. Treas. Reg. § 1.611-1 provides that a depletion deduction may only be taken by an owner of an "economic interest" in the mineral deposits which is acquired by investment in the mineral in place and which is returned through the extraction of the mineral. The taxpayer argued that the taxpayer made an investment of skill, time and experience in acquiring the oil and gas properties for the employer. The court held that an economic interest cannot be acquired only by investment of time, skill and experience but much require an outlay of capital; thus, the taxpayer did not have an economic interest in the oil and gas which could be depleted and was eligible for a depletion deduction. The court also noted that the second requirement of Treas. Reg. § 1.611-1 was not met by the taxpayer's bonuses in that the bonuses were not paid from the extraction of oil and gas but were paid as an incentive for the taxpayer to find more properties. **Gaudreau v. United States, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,126 (D. Kan. 2014)**.

LETTER RULINGS. The IRS has issued its annual list of procedures for issuing letter rulings. Appendix A contains a schedule of user fees for requests. **Rev. Proc. 2015-1, 2015-1 C.B. 1**.

The IRS has issued its annual revision of the general procedures relating to the issuance of technical advice to a director or an appeals area director by the various offices of the Associate Chief Counsel. The procedures also explain the rights a taxpayer has when a field office requests technical advice. **Rev. Proc. 2015-2, 2015-1 C.B. 105**.

The IRS has issued its annual list of tax issues for which the IRS will not give advance rulings or determination letters. **Rev. Proc. 2015-3, 2015-1 C.B. 129**.

The IRS has issued its annual list of procedures for issuing letter rulings involving exempt organizations. **Rev. Proc. 2015-4, 2015-1 C.B. 144**.

The IRS has released an updated revenue procedure which explains when and how the IRS issues technical advice memoranda in the employee plans areas (including actuarial matters) and exempt organizations areas. **Rev. Proc. 2015-5, 2015-1 C.B. 186.**

The IRS has issued procedures for issuing determination letters on qualified status of employee plans under I.R.C. §§ 401(a), 403(a), 409 and 4975. **Rev. Proc. 2015-6, 2015-1 C.B. 194.**

The IRS has issued a revised revenue procedure which provides guidance for complying with the user fee program of the Internal Revenue Service as it pertains to requests for letter rulings, determination letters, etc., on matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division; and requests for administrative scrutiny determinations under *Rev. Proc. 93-41, 1993-2 C.B. 536*. **Rev. Proc. 2015-8, 2015-1 C.B. 235**.

OIL AND GAS LEASE. The taxpayers purchased property in 1996 and 1998 which had expiring oil and gas leases. After the old leases expired, the taxpayers entered into new oil and gas leases and received a bonus payment for entering the leases. The leases entitled the taxpayers to 16 percent of the net profits from any oil and gas extracted under the leases. The taxpayers claimed the bonus payment as long-term capital gain. The court held that the bonus payment was ordinary income to the taxpayers because the taxpayers retained an interest in the oil and gas extracted. The court also held that the taxpayers could not claim any depletion deduction against the bonus payment because the taxpayers failed to provide any evidence of the amount of royalties they expected from the leases. The appellate court affirmed in a decision designated as not for publication. **Dudek v. Comm'r, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,124 (3rd Cir. 2014), *aff'g*, T.C. Memo. 2013-272**.

PASSIVE ACTIVITY LOSSES. The taxpayers, husband and wife, owned a three apartment building next door to their residence. The husband was an unemployed and disabled military veteran and did all of the management of the apartments. The activities included daily inspection of the property, collection of rents, scheduling repairs, obtaining new renters, managing accounts and making small miscellaneous repairs. The IRS disallowed deductions for losses in excess of the I.R.C. § 469(i) offset, reduced by the income phaseout provisions of I.R.C. § 469(i)(3). The taxpayers argued that the husband qualified for the exception for real estate professionals as provided by I.R.C. § 469(c)(7)(B). The court noted that the husband's disability required additional time for the husband to complete most activities. Based on the credible testimony of the taxpayers, the court found that the husband spent at least 650 hours per year on maintenance alone. The other activities were found to be sufficient to demonstrate that the husband spent more than 750 hours per year on the rental activity and qualified as a real estate professional; therefore, the taxpayers were entitled to deduct the full rental activity losses. **Lewis v. Comm'r, T.C. Summary Op. 2014-112**.

PROPERTY TAXES. The taxpayer was a limited liability company (LLC) created for the purpose of constructing and leasing the residential portion of buildings above city schools. Under an agreement with the state, the taxpayer made payments to the public landlord of each property instead of real property taxes. The IRS ruled that the taxpayers were permitted to deduct as real property taxes under I.R.C. § 164 these payments in lieu of taxes (PILOT). The PILOT payments satisfied the three-prong test articulated in *Rev. Rul. 71-49, 1971-1 C.B. 103* because they: (1) were measured by and imposed at the same rate as applicable real property taxes were imposed; (2) were imposed pursuant to a state statute; and (3) the PILOT payments could only by used for public purposes. In addition, the subsequent unit owners were entitled to deduct as real property taxes under I.R.C. § 164 such portion of common charges paid as were applicable toward the PILOT obligations. **Ltr. Rul. 201452015, Sept. 16, 2014**.

RETURNS. The IRS has announced that it will begin accepting 2014 tax returns electronically on January 20, 2015. Paper tax returns will begin processing at the same time. The decision follows Congress renewing a number of "extender" provisions of the tax law that expired at the end of 2013. **IR-2014-119**.

S CORPORATION

EMPLOYEE STOCK OWNERSHIP PLAN. The taxpayer was a wholly-owned corporation which elected S corporation status. The taxpayer sponsored an employee stock ownership plan (ESOP) managed by a trust and with the shareholder as the only participant. The ESOP was initially funded with a $200,000 loan which was used to purchase the taxpayer's stock, which was used as security for the loan and held by the trust in a suspense account. The ESOP incorporated the anti-abuse requirements of I.R.C. § 409(p) because the trust held stock of taxpayer, an S corporation. The ESOP provided: "No portion of the Trust Fund attributable to (or allocable in lieu of) Company Stock in an S corporation may, during a "nonallocation year," accrue (or be allocated directly or indirectly under any plan maintained by the Employer meeting the requirements of Code Section 401(a)) for the benefit of any disqualified person." During 2002 the trust owned 80 percent of the taxpayer's common stock and the shareholder owned the rest. The ESOP allocated shares of taxpayer's stock to the shareholder in 2002. At that time the taxpayer was treating the ESOP as a qualified plan under I.R.C. § 401(a) and the trust as tax exempt under section 501(a). In 2002 the trust made or was credited with making a payment to petitioner toward the loan. The trust then released from the suspense account 8.4568 shares of the taxpayer's stock, all of which were allocated to the shareholder. The shareholder was the taxpayer's sole employee and the ESOP's sole participant. The IRS determined in the deficiency notice that the trust had violated I.R.C. § 409(p) for 2002 by releasing the taxpayer's shares from the suspense account and allocating them to the shareholder. The IRS concluded that the taxpayer owed excise tax of under I.R.C. § 4979A and determined in the deficiency notice that the taxpayer was liable for additions to tax under I.R.C. §§ 6651(a) and (b) because the taxpayer neither paid excise tax for 2002 nor filed a Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*. The taxpayer argued that the ESOP was not a qualified plan but the court noted that the quoted language above tracked exactly the language needed for a qualified plan. Although the taxpayer violated the S corporation rules because it had two classes of stock, the court held that the taxpayer would be deemed an S corporation because the taxpayer and shareholder filed all returns as if the taxpayer was an S corporation. Thus, the court held that the shareholder was a disqualified person because the shareholder held more than 10 percent of the stock of the S corporation taxpayer. Therefore, the court held that the distribution of the stock from the trust to the shareholder was an impermissible allocation subject to excise tax. **Ries Enterprises, Inc. v. Comm'r, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,131 (8th Cir. 2014), *aff'g*, T.C. Memo. 2014-14**.

LATE FILING PENALTY. The taxpayer was a single shareholder subchapter S corporation. The taxpayer's Form 1120S return were filed by an employee-officer who had not filed timely returns for 2002 through 2012. For the 2010 return, the taxpayer claimed that the officer mailed a Form 7004, *Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns*, on March 15, 2011, the due date for the 2010 return. The extension, if valid, terminated on September 15, 2011 but the IRS did not receive the 2010 Form 1120S until January 31, 2012. The IRS had no record of receipt of the Form 7004 and assessed a late filing penalty under I.R.C. § 6699 based on the failure to file the 2010 return until January 2012. The taxpayer claimed that the extension was timely filed and, at worst, the taxpayer was liable for only one month of penalty because the 2010 Form 1120S was filed in October 2011, one month after the termination of the extension. The court held that the extension was not effective because the taxpayer provided no evidence of the mailing of the Form 7004 other than testimony of the officer. Similarly, the court held that the Form 1120S for 2010 was not filed until January 2012 because the taxpayer failed to provide any evidence of an earlier filing. **Roshdieh, M.D. Corp. v. Comm'r, T.C. Summary Op. 2014-113**.

SUBSIDIARY ELECTION. The taxpayer was an S corporation which wholly-owned a subsidiary corporation. Although the taxpayer intended to treat the subsidiary as a qualified subchapter S subsidiary, the taxpayer failed to file a Form 8869, *Qualified Subchapter S Subsidiary Election*. The IRS granted an extension of time for the taxpayer to file Form 8869. **Ltr. Rul. 201450012, Aug. 19, 2014**.

The taxpayer elected to be a subchapter S corporation. A subsidiary was formed which also made an election to be a subchapter S corporation. As part of a reorganization under I.R.C. § 368(a)(1)(F), the shareholders of the subsidiary contributed all of their stock in the subsidiary to the taxpayer, thereby causing the subsidiary to become a wholly-owned subsidiary of the taxpayer. The subsidiary then converted to a limited liability company, and by default was treated as a disregarded entity for federal tax purposes. Afterwards, the taxpayer made an election to treat the subsidiary as a qualified subchapter S subsidiary (QSub). However, the taxpayer discovered that its election to treat the subsidiary as a QSub was ineffective due to the subsidiary's failure to meet all the requirements of I.R.C. § 1361(b)(3)(B) at the time the election was made. The taxpayer represented that the ineffective QSub election was inadvertent and not the result of tax avoidance or retroactive tax planning. The taxpayer further represented that no federal tax return of any person has been filed inconsistent with a valid QSub election having been made. The subsidiary and the taxpayer agreed to make any adjustments required by the IRS consistent with the treatment of the subsidiary as a QSub. The IRS granted the taxpayer an extension of time to file a proper election. **Ltr. Rul. 201501007, Sept. 16, 2014**.

INSURANCE

POLLUTANT. The plaintiffs owned and operated a dairy farm with around 600 dairy cows. The plaintiffs purchased a farm insurance property and personal liability policy from the defendant which covered scheduled property, including equipment for handling manure from the dairy operation. The policy expressly excluded losses resulting from the "discharge, dispersal, seepage, migration, release, or escape of 'pollutants' into or upon land, water, or air" and "any loss, cost, or expense arising out of any ... claim or suit by or on behalf of any governmental authority relating to testing for, ... cleaning up, removing, ... or in any way responding to or assessing the effects of 'pollutants.'" Pollutant is defined in the policy as "any solid, liquid, gaseous ... irritant or contaminant, including ... waste. Waste includes materials to be recycled, reclaimed, or reconditioned, as well as disposed of." The plaintiffs used the covered equipment to spread manure on their fields pursuant to a nutrient management plan prepared by a certified crop agronomist and approved by the Washington County Land and Water Conservation Division. However, the Wisconsin Department of Natural Resources notified the plaintiffs that manure from the plaintiffs' farm had polluted a local aquifer and contaminated their neighbors' water wells. When several neighbors demanded compensation, the plaintiffs notified defendant of the claims. The defendant sought to deny coverage because the manure was a pollutant. First, the court noted that the policy definition of pollutant was so broad as to include almost any substance which could be an irritant or cause damage in certain circumstances. Therefore, the court followed the case precedent that the definition had to be determined "as understood by a reasonable person in the position of the insured." In this case, the court found that the plaintiff would not consider manure to be a pollutant but as a nutrient used as beneficial to production of agricultural products for use in the dairy. Therefore, the court held that the defendant could not deny coverage for damage caused by manure runoff. On appeal, the appellate court reversed in part and remanded, holding that manure was a pollutant in that is was undesirable, commonly held to be harmful and was not universally present. Thus, the pollution exclusion in the general farm coverage liability policy excluded coverage for the damage. Similarly, the pollution exclusion in the farm chemicals coverage excluded coverage for the same reason. However, the court held that coverage was included in the "Damage to Property of Others" clause because manure seepage was specifically covered. **Wilson Mutual Ins. Co. v. Falk, 2014 Wis. LEXIS 956 (Wis. 2014),** ***rev'g and rem'g*****, 844 N.W.2d 380 (Wis. Ct. App. 2013)**.

PROPERTY

EASEMENT. The defendants owned a rural residence on 2.41 acres which was subject to an easement granted to the plaintiffs who owned land-locked pastures neighboring the defendants. The easement grant stated: "The easement granted herein shall be for ingress and egress for vehicular and pedestrian traffic and utilities for the use and benefit of the Dominant Estate." The plaintiffs had acquired their land from an owner who had used the property as a horse farm with a barn and pastures. When the plaintiffs began to clean up the barn area and install horse fencing, the defendants attempted to block access over the easement by digging holes and storing property on the easement and several times personally block access to the property. The plaintiffs sought an injunction preventing the defendants from such actions. The trial court granted a permanent injunction, ruling that the easement covered the defendants' entire property but was limited to a reasonable amount of space as needed to move horses in and out of the plaintiffs' property, including trucks and small machinery. On appeal, the plaintiffs agreed that they would accept an easement over a strip of land on the edge of the property. The defendants argued on appeal that the ruling allowed the plaintiffs to expand their use of the easement to walk horses across the easement for use of the property as a pasture. The appellate court found that the evidence demonstrated that the plaintiffs' property had been used as a horse farm with pasture when the easement was granted; therefore, the use of the easement to walk horses to the property was not a new use. The defendants also argued that permanent injunctive relief was improper in that the plaintiffs only intended to use the property as a horse pasture. The appellate court found that the evidence showed that the plaintiffs had expended time and money to improve their property for use by horses when the defendants started blocking access to the easement; therefore, the permanent injunction was proper. **Barnes v. Prairie Horse Farms, LLC, 2014 Ind. App. Unpub. LEXIS 1694 (Ind. Ct. App. 2014)**.

IN THE NEWS

DRONES. "The Federal Aviation Administration has granted a Washington company (Advanced Aviation Solutions LLC) an exemption to fly unmanned aerial vehicles ("UAVs" or "drones") commercially for "precision agriculture" and "crop scouting" purposes. In general, FAA regulations prohibit any person from flying a UAV in national airspace without an airworthiness certification (except for model aircraft flow under the "hobby" aircraft guidance document). A person may seek to avoid airworthiness certification by seeking an exemption under Section 333 of the FAA Modernization and Reform Act of 2012 ("FMRA")." **Janzen Ag Law (blog), Jan. 8, 2015, http://www.janzenaglaw.com/2015/01/faa-approves-ag-drone-flights-for-one.**html